

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

Hon. Guy Reschenthaler, in his capacity
as a candidate for reelection to U.S.
House of Representatives, Hon. Dan
Meuser, in his capacity as a candidate
for reelection to U.S. House of
Representatives, Hon. Glenn “G.T.”
Thompson, in his capacity as a
candidate for reelection to U.S. House
of Representatives, Hon. Lloyd
Smucker, in his capacity as a candidate
for reelection to U.S. House of
Representatives, Hon. Mike Kelly, in his
capacity as a candidate for reelection to
U.S. House of Representatives, Hon.
Scott Perry, in his capacity as a
candidate for reelection to U.S.
House of Representatives, PA
Fair Elections,

File No. 24-1671

Plaintiffs

vs.

Amended Complaint

Al Schmidt, in his official capacity
as Secretary of the Commonwealth,
or successor, Jonathan Marks, in his
official capacity as the Deputy
Secretary for Elections and
Commissions for the
Commonwealth of Pennsylvania,
or successor,

Defendants

Plaintiffs, by and through their undersigned counsel, respectfully allege and represent the following for their Complaint.

1. The Plaintiffs Guy Reschenthaler, Dan Meuser, Glenn “G.T.” Thompson, Lloyd Smucker, Mike Kelly, and Scott Perry are Congressmen seeking re-election to the U.S. House of Representatives in the November 5, 2024, general election in the Commonwealth of Pennsylvania (“Commonwealth” or “Pennsylvania”).

2. Plaintiffs seek prospective declaratory and injunctive relief to ensure legal compliance with federal and state law regarding the verification of voter registration applicants’ identity and eligibility before accepting and counting ballots from UOCAVA applicants in the Commonwealth of Pennsylvania.

3. The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) establishes special voting privileges reserved for members of the military, their family members, and other non-military U.S. citizens abroad.

4. UOCAVA requires states to first determine if a voter registration applicant is qualified to receive those voting privileges. The federal law requires all states to “accept and process, with respect to any election for Federal office, any **otherwise valid** voter registration application and absentee ballot application...” [52 U.S.C. § 20302(a)(a)(2)] before triggering the privileges for UOCAVA eligible voters. (Emphasis added).

5. To verify identity and eligibility and to determine if an application is otherwise valid, the federal Help America Vote Act (HAVA) establishes the minimum standards. 52 U.S.C. § 21083(a)(5)(A)(i-iii)(verification of voter registration information).

Applicants who seek to vote in a federal election must provide, at the time of registration, a valid driver's license number. *Id.* If the individual has not been issued a driver's license, they may use the last four digits of their social security number. For applicants who have no DLN and who have not been issued a SSN, HAVA has a Special Rule that a State can assign them a unique identifying number and verify their identity and eligibility using other approved documents. *Id.*

6. In addition to the minimum federal requirements, Pennsylvania law, 25 Pa.C.S. § 3502 explicitly requires UOCAVA applicants to satisfy the voter eligibility requirements of the Commonwealth. 25 Pa.C.S. § 3502. To be eligible under Pennsylvania law, applicants must “satisfy the voter eligibility requirements of the Commonwealth including residency requirements.” *Id.*

7. The Pennsylvania Election Code establishes that a UOCAVA application may be rejected if an “omission prevents election officials from determining whether the UOCAVA applicant is eligible to vote.” 25 Pa.C.S. § 3515.

8. When attempting to determine if an absentee ballot application is “otherwise valid”, county election officials “shall ascertain from the information on such application, district register or **from any other source** that such applicant possesses all the qualifications of a qualified elector other than being registered or enrolled.” 25 Pa.C.S. § 3146.2b

9. In direct conflict with federal and state law, Defendants Secretary of the Commonwealth Al Schmidt or Deputy Secretary for Elections Johnathan Marks, or

both, have issued directives and guidance to county officials to exempt UOCAVA applicants entirely from any verification requirements.

10. The Defendants’ non-verification position has been confirmed in sworn testimony in the General Assembly. Ex. B (House Committee Meetings, *Public Hearing on election administration considerations (in particular in advance of the 2022 General Election)*), at 59:10–1:00:14 (Sept. 14, 2022).¹

11. When asked about how UOCAVA applicants are verified in a 2022 hearing, the Deputy Secretary for Elections, Johnathan Marks testified: “That group of voters are specifically exempted from [sic] the HAVA verification requirements... They do not have to provide PennDOT ID or last 4 of SSN... There’s no systematic verification.” *Id.*

12. The Defendants’ non-verification position is also confirmed in their 2023 Pennsylvania Military and Overseas Voters Guidance (Oct. 18, 2023) (Ex. E) which includes the Department of State’s “position.”

13. “The Department’s position is that covered voters are exempt from the Election Code’s ID requirements for absentee voters.” *Id.*

14. The Defendants cannot cite to any legal authority, statutory or otherwise, as a valid legal basis for their “position” that UOCAVA voters are exempt from voter registration identification requirements, state eligibility requirements and

¹ This exhibit in the record is a video recording, available at <https://www.legis.state.pa.us/cfdocs/legis/CMS/ArchiveDetails.cfm?SessYear=2021&MeetingId=2450&Code=-1&Chamber=H>

absentee ballot application requirements because no such exemption exists in state or federal law. See, e.g., Ex. A.

15. Under the U.S. Constitution’s Supremacy Clause, preemption occurs when a state law or practice conflicts with a federal law and when it is impossible to comply with both state law and federal law.

16. Because the Defendants’ statewide directives conflict with federal law, and it is impossible to comply with both the directives and federal law, the Defendants’ statewide directives and guidance are preempted by federal law.

17. The Commonwealth’s practice is an illegally structured election process which makes Pennsylvania’s elections vulnerable to ineligible votes by individuals or entities who could purport to be UOCAVA-eligible, register to vote without verification of identity or eligibility but receive a ballot by email and then vote a ballot without providing identification at any step in the process.

18. The Commonwealth’s “position” allows UOCAVA applicants to register to vote, receive absentee ballots and to cast ballots in federal elections that do not comply with the requirements of federal and state law. Defendants’ disregard for the law creates an opportunity for inclusion of ineligible ballots such that the ultimate tally of the votes may not accurately reflect the legal results which could affect a close Congressional election—an injury to Plaintiffs.

19. Foreign nations, in efforts to interfere with U.S. elections, could easily submit falsified FPCAs for ballots to unduly influence U.S. elections. See, e.g.,

<https://www.justice.gov/opa/press-release/file/1449226/dl> (last visited Sept. 30, 2024) (Sealed indictment, *U.S. v. Seyed Mohmnad Hosein Mousa Kazemi*, 21 Cr. 644).

20. According to Defendants' Absentee and Mail Ballot Report, over 25,000 UOCAVA ballots for the November 5, 2024, election have already been transmitted to potentially unverified UOCAVA applicants. See: <https://copaftp.state.pa.us/> (Sept. 30, 2024)

21. The Defendants' Directives and guidance to county election officials to not attempt to verify the identity or eligibility of UOCAVA applicants, as required by federal law under UOCAVA and HAVA, is an ongoing and continuing act and, hence, is an impending and continuing injury as the illegal election structure departs from federal legal mandates.

22. Therefore, the Plaintiffs, who are Congressional candidates, are entitled to prospective declaratory and injunctive relief for upcoming elections.

JURISDICTION AND VENUE

23. This action arises under the Constitution of the laws of the United States.

24. This Court has jurisdiction pursuant to Articles III and VI of the United States Constitution, 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3), 28 U.S.C. § 1346(a)(2), and 42 U.S.C. § 1983.

25. The Help America Vote Act has a preemption clause for inconsistent state laws. 52 U.S.C. § 21084.

26. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28

U.S.C. §2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

27. Venue is proper under 28 U.S.C. § 1391(b) because all events giving rise to Plaintiffs' claims against Defendants occurred in the Commonwealth of Pennsylvania.

PARTIES

28. Guy Reschenthaler brings this complaint in his capacity as a candidate for reelection to U.S. House of Representatives from the 14th district of Pennsylvania.

29. Dan Meuser brings this complaint in his capacity as a candidate for reelection to U.S. House of Representatives from the 9th district of Pennsylvania.

30. Glenn "GT" Thompson brings this complaint in his capacity as a candidate for reelection to U.S. House of Representatives from the 15th district of Pennsylvania.

31. Lloyd Smucker brings this complaint in his capacity as a candidate for reelection to U.S. House of Representatives from the 11th district of Pennsylvania.

32. Mike Kelly brings this complaint in his capacity as a candidate for reelection to U.S. House of Representatives from the 16th district of Pennsylvania.

33. Scott Perry brings this complaint in his capacity as a candidate for reelection to U.S. House of Representatives from the 10th district of Pennsylvania.

34. Plaintiffs Guy Reschenthaler, Dan Meuser, Glenn "GT" Thompson, Lloyd Smucker, Mike Kelly and Scott Perry are currently elected members of the U.S. House of Representatives. These Plaintiffs seek re-election in the November 5, 2024, election. Moreover, they intend to run for federal office in the future and have plans to do so. As

candidates, they have federal rights to a fair and equal election, including that state and local election officials comply with federal election laws and voter registration information verification requirements.

35. PA Fair Elections is an association of Pennsylvania voters dedicated to election integrity and election official legal compliance, which includes UOCAVA voters on active duty in the US military. These UOCAVA voters have federal rights to a fair and equal election, including that state and local election officials comply with federal election laws and voter registration information verification requirements.

36. Defendant Al Schmidt is the Secretary of the Commonwealth of Pennsylvania. He is a political appointee of the Governor and is designated as the Commonwealth's Chief Election Official and thus has certain duties imposed upon him by the Commonwealth's election code which are established by the legislature.

37. Defendant Jonathan Marks is the Deputy Secretary for Elections and Commissions for the Commonwealth of Pennsylvania.

38. Defendant Al Schmidt and Defendant Jonathan Marks are both within the executive office of the Pennsylvania Department of State.

39. The Defendants or their successors are sued in their official capacity only. The Defendants are not sued for damages, but for prospective declaratory and injunctive relief only.

FACTUAL ALLEGATIONS

40. Plaintiffs who are Congressional candidates in the 2024 election are forced

to participate in Pennsylvania's illegally structured federal election process.

41. The Commonwealth's practice is an illegally structured election process which makes Pennsylvania's elections vulnerable to ineligible votes by individuals or entities who could purport to be UOCAVA-eligible, register to vote without verification of identity or eligibility but receive a ballot by email and then vote a ballot without providing identification at any step in the process.

42. The Commonwealth's practice allows UOCAVA applicants to register to vote, to apply for, receive and to cast ballots that do not comply with the requirements of federal and state law, such that the potentially invalid ballots could be accepted, and, in turn, the invalid votes could change the result of a close Congressional election—an injury to Plaintiffs.

43. The Defendants' directives to county election officials to not attempt to verify the identity or eligibility of UOCAVA applicants, as required by federal law under HAVA and UOCAVA, and under state law is an ongoing and continuing act and, hence, is an impending and continuing injury as the illegal election structure departs from federal legal mandates.

44. Additionally, each Plaintiff-Congressman, under the Elections Clause, has individual U.S. Representative standing because the Defendants' actions and interpretations of state law are an effective repeal or amendment to federal election law depriving the Congressman of an opportunity to vote on the subject—an injury to each Congressman.

45. Congressman Guy Reschenthaler resides in Washington County, Pennsylvania. He is running for re-election in the 14th District of Pennsylvania on November 5, 2024. He also intends and has plans to seek a federal office in the future. He would vote no if given an opportunity to vote on a federal bill to exempt Pennsylvania from complying with the legal requirements of UOCAVA and HAVA as detailed in this complaint.

46. Congressman Dan Meuser resides in Luzerne County, Pennsylvania. He is running for re-election in the 9th District of Pennsylvania on November 5, 2024. He also intends and has plans to seek a federal office in the future. He would vote no if given an opportunity to vote on a federal bill to exempt Pennsylvania from complying with the legal requirements of UOCAVA and HAVA as detailed in this complaint.

47. Congressman Glenn “GT” Thompson resides in Centre County, Pennsylvania. He is running for re-election in the 15th District of Pennsylvania on November 5, 2024. He also intends and has plans to seek a federal office in the future. He would vote no if given an opportunity to vote on a federal bill to exempt Pennsylvania from complying with the legal requirements of UOCAVA and HAVA as detailed in this complaint.

48. Congressman Lloyd Smucker resides in Lancaster County, Pennsylvania. He is a candidate for re-election in the 11th District of Pennsylvania in the US House of Representatives on November 5, 2024. He also intends and has plans to seek a federal office in the future. He would vote no if given an opportunity to vote on a federal bill

to exempt Pennsylvania from complying with the legal requirements of UOCAVA and HAVA as detailed in this complaint.

49. Congressman Mike Kelly resides in Butler County, Pennsylvania. He is running for re-election in the 16th District of Pennsylvania on November 5, 2024. He also intends and has plans to seek a federal office in the future. He would vote no if given an opportunity to vote on a federal bill to exempt Pennsylvania from complying with the legal requirements of UOCAVA and HAVA as detailed in this complaint.

50. Congressman Scott Perry resides in York County, Pennsylvania. He is running for re-election in the 10th District of Pennsylvania on November 5, 2024. He also intends and has plans to seek a federal office in the future. He would vote no if given an opportunity to vote on a federal bill to exempt Pennsylvania from complying with the legal requirements of UOCAVA and HAVA as detailed in this complaint.

51. To begin, the U.S. Constitution's Elections Clause authorizes states to regulate the times, places and manner of federal election subject to Congressional enactments.

52. The Elections Clause, ratified in 1790, as part of the original U.S. Constitution, provides:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

53. The Plaintiffs believe that the purpose of the Elections Clause is twofold.

54. First, the Elections Clause divides the legal responsibility for regulating

federal elections. That responsibility lies primarily with the states subject to Congressional enactments.

55. Second, the Plaintiffs believe that the Elections Clause lodges the power to regulate elections in the respective legislative branches of the states and the federal government.

56. Congress, pursuant to the Elections Clause, enacted UOCAVA in 1986 regulating absentee voting in federal elections by military and overseas citizens.

57. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), P.L. 99-410, 52 U.S.C. §§ 20301–20311, 39 U.S.C. § 3406, 18 U.S.C. §§ 608–609, is a federal law dealing with federal elections and voting rights.

58. The act requires that all U.S. states, the District of Columbia, Puerto Rico, Guam, American Samoa, and the U.S. Virgin Islands allow certain eligible U.S. citizens to register to vote and to vote by absentee ballot in federal elections.

59. The act is Public Law 99-410 and was signed into law by President Ronald Reagan on August 28, 1986.

60. The Plaintiffs believe that UOCAVA facilitates military and overseas voting distinct from other absentee voting by providing privileges to eligible voters.

61. The Plaintiffs understand that the Federal Post Card Application (FPCA) (Ex. G) is the form used by members of the U.S. military and their family members to register to vote and to request an absentee ballot under UOCAVA in every state, including Pennsylvania.

62. The FPCA may be returned by physical postal mail, email, or fax. *Id.*

63. Under UOCAVA, the FPCA can also be used by U.S. citizens who reside outside of the United States but who are not members of the military. *Id.*

64. The FPCA is both a voter registration form and absentee ballot application combined in a single document. *Id.* See Ex. L (diagram of FPCA registration and absentee processes).

65. UOCAVA, 52 U.S.C. § 20302(a)(a)(2), is accurately quoted in part as follows and requires states to “accept and process, with respect to any election for Federal office, any **otherwise valid** voter registration application and any **otherwise valid** absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election.” (Emphasis added).

66. The Plaintiffs understand that the privileges for registering and voting under UOCAVA apply to an otherwise eligible applicant which means that in order for the UOCAVA privileges to be in effect, there must first be a voter eligible to vote in the state.

67. The FPCA includes fields for applicants to provide the HAVA required driver’s license or social security number information. *Id.*

68. The Plaintiffs’ understanding is that federal law anticipates that the state will have additional requirements beyond the minimum HAVA requirements. Thus, the FPCA also includes a field for state specific instructions and “additional information”

that the applicant must provide.

69. Non-military UOCAVA-eligible voters include study abroad students, individuals who work outside of the U.S., and U.S. citizens who reside abroad.

70. Members of the military and their family members who vote as military under UOCAVA must have valid IDs that could be matched to data in government databases to verify identity and eligibility. The Plaintiffs' understanding is that unlike some states that allow overseas votes from those who have never lived in the state, Pennsylvania is not a "never-resided" state, meaning that only those U.S. citizens who lived in Pennsylvania before moving abroad would be eligible to vote in any election in Pennsylvania. *Pennsylvania, Federal Voting Assistance Program*, <https://www.fvap.gov/guide/chapter2/pennsylvania> (last visited May 29, 2024).

71. According to the EAC's report, Election Administration and Voting Survey 2020 Comprehensive report, in Pennsylvania's last Presidential election (2020), the state received approximately 27,000 ballots through UOCAVA, with approximately 20,000 of those ballots coming from non-military applicants.²

72. Congress, pursuant to the Elections Clause, enacted HAVA in 2002 which included requirements for states to verify registration information for all voters including UOCAVA voters.

²ELECTION ADMINISTRATION AND VOTING SURVEY 2020 COMPREHENSIVE REPORT, U.S. Election Assistance Commission, https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf

73. In 2002, Congress, pursuant to the Elections Clause, enacted HAVA which included, in part, requirements on states to verify registration information for all voters including UOCAVA voters.

74. The Help America Vote Act (HAVA), codified at 52 U.S.C § 21083 et seq. (Pub. L. 107–252, title III, § 303, Oct. 29, 2002, 116 Stat. 1708), under 52 U.S.C. § 21083(a)(5), titled “Verification of voter registration information” establishes mandates for voter registration applicants to provide information, in-part “to enable each such [election] official to verify the accuracy of the information provided on applications for voter registration.” *Id.* at § 21083(a)(5)(B) Text of HAVA, 52 U.S.C. § 21083). (*Help America Vote Act of 2002-Conference Report: Hearing on H.R. 3295 Before the Senate*, 107th Cong. S10488–516 (2002)).

75. The Congressional record reflects that Senator Christopher “Kit” Bond remarked about the underlying rationale and necessity for an identification process as he is accurately quoted as stating:

Congress agreed that while the mail-in cards have made registration more accessible, the policy has also created increased opportunities for fraud. To address this, we created an identification requirement for first-time voters who register by mail. The security of the registration and voting process is of paramount concern to Congress and the identification provision and the fraud provisions in this bill are necessary to guarantee the integrity of our public elections and to protect the vote of individual citizens from being devalued by fraud. Every false registration and every fraudulent ballot cast harms the system by cancelling votes cast by legitimate voters. It undermines the confidence of the public that their vote counts and therefore undermines public confidence in the integrity of the electoral process.

<https://www.congress.gov/107/crec/2002/10/16/CREC-2002-10-16.pdf>.

76. The Plaintiffs' understanding is that HAVA establishes minimum requirements for all applicants registering to vote to provide information with their application for registration in 52 U.S.C. § 21083(a)(5)(A).

77. Under 52 U.S.C. § 21083(a)(5)(A), a voter registration application may not be accepted or processed by a state unless the application includes the following:

- If an individual has been issued a driver's license, they *must* provide their driver's license number. *Id.* at (a)(5)(A)(i)(I);
- In the case of an individual who has not been issued a driver's license, the last four digits of the applicant's social security number may be used. *Id.* at (a)(5)(A)(i)(II); or
- If an individual does not possess a driver's license or social security number, the state may assign a unique number, but that individual may not vote in a Federal election unless they provide some other document to establish identity and eligibility. *Id.* at (a)(5)(A)(ii).

78. Data from the Social Security Administration, from the ssa.gov website shows that a very small percentage of adult US citizens do not have an SSN or a DLN.³

79. HAVA's Special Rule only applies to applicants who do not have a driver's license and who have not been issued a social security number; however, that special rule does not apply to applicants who do have a driver's license or a social security number. The Special Rule does not apply to individuals who provide invalid DLN or invalid SSN.

80. Furthermore, under HAVA's Special Rule, adding a person to the voter registration database and assigning them a number does not eliminate the need to verify the accuracy of the information on the application. The applicants are added to the statewide voter

² (<https://www.ssa.gov/dataexchange/documents/HAVV%20model.pdf>)

registration database and then the official must verify the accuracy of the voter registration information as described in 5(B)(i).

5(B) REQUIREMENTS FOR STATE OFFICIALS.— (i) SHARING INFORMATION IN DATABASES.—The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information **in the database of the statewide voter registration system** with information in the database of the motor vehicle authority to the extent required to enable each such official to **verify the accuracy of the information provided on applications for voter registration.** (emphasis added)

81. The Social Security Administration’s enumeration at birth (EAB) is a program that allows parents to complete applications for SSNs for their newborns as part of the hospital birth registration process; so, approximately 99% of SSNs for infants are assigned through the EAB process. (Source: <https://secure.ssa.gov/poms.nsf/lnx/0110205505>)

82. A parent cannot even claim their child as a dependent on an income tax return unless that child has a social security number which serves as further incentive to ensure that all children have a social security number. [source: <https://www.ssa.gov/pubs/EN-05-10023.pdf>]

83. Data from the US Department of Transportation, Federal Highway Administration shows that 91% of all American adults have a driver’s license. <https://www.fhwa.dot.gov/policyinformation/statistics/2021/dl20.cfm> and <https://hedgescompany.com/blog/2024/01/number-of-licensed-drivers-us/>

84. Based on the data from the SSA, US DOT and the IRS, there is only a small percentage of adult US citizens who have neither a DLN nor an SSN. Identification is required for overseas travel. Therefore, the number of UOCAVA applicants to whom the Special Rule could apply would necessarily be a small number.

85. A valid passport is required to enter and leave most foreign countries. Some countries may allow you to enter with only a birth certificate, or with a birth certificate and a driver's license. However, the rules established under the U.S. Intelligence Reform and Terrorism Prevention Act of 2004, require that all persons, including U.S. citizens, traveling by air, must present a valid passport to reenter the United States. <https://exchanges.state.gov/us/required-documentation#:~:text=Only%20the%20U.S.%20Department%20of,is%20the%20best%20documentation%20available.>

86. Defendants' directive and position conflate HAVA's Special Rule for Applicants **without** a driver's license or social security number to somehow include applicants who provide invalid DLN or invalid, but the Special Rule clearly only applies to individuals who have been issued neither.

(ii) SPECIAL RULE FOR APPLICANTS WITHOUT DRIVER'S LICENSE OR SOCIAL SECURITY NUMBER.—If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

87. The Plaintiffs' understanding is that the very small number of those individuals eligible to vote who have not been issued a driver's license or state identification or social security number to whom the HAVA Special Rule applies, can still apply to register to vote and be assigned a unique voter ID number in the statewide voter registration database, but they must prove their identity and eligibility by alternate

means prior to voting in a federal election. 52 U.S.C. §§ 21083(a)(5)(A)(ii)–(iii).

88. The Plaintiffs’ understanding is that examples of other acceptable documents include government issued documents like a U.S. Passport or military ID. HAVA also includes documents like a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. *E.g., id.* at § 21083(b)(2)(A)(i)(II).

89. As detailed above, UOCAVA provides for military and military families, and non-military U.S. citizens abroad, to receive certain privileges to vote absentee.

90. Before voting, eligible citizens intending to vote through UOCAVA may apply to register to vote and simultaneously apply to request an absentee ballot using the Federal Post Card Application (FPCA). Ex. G (FPCA 2023 Print Version).

91. To determine if an applicant is eligible to receive the privileges afforded under UOCAVA, states must first determine if the application is “otherwise valid” as a voter registration application and as an absentee ballot application according to state and federal requirements.

92. Pennsylvania law established identification and eligibility requirements for voter registration applications and additional identification requirements for absentee ballot applications.

93. HAVA, as a federal law, established the minimum level of verification of identity and eligibility for all individuals who seek to register to vote in any federal election. *See, e.g.,* 52 U.S.C. § 21083(a)(5), as described above.

94. HAVA requires all voter registration applicants to provide valid voter registration identification before an applicant can vote in a federal election.

95. Congress passed HAVA in 2002, in part, to make it “easier to vote, harder to cheat.”

96. HAVA section 304, regarding preemption sets the minimum standards for election administration. States may establish “election administration requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title or any law described in section 906.” 52 U.S.C. § 21084. No state may establish laws that are less strict than the minimum standard established by HAVA. *Id.*

97. The Plaintiffs’ understanding is that § 21083(a)(5)(a) governing minimum ID requirements, applies to all who are applying to register to vote.

98. There are additional identification requirements in 52 U.S.C. § 21083(b) for individuals who registered by mail and then choose to vote by mail, but registering to vote, applying for an absentee ballot and voting by mail are separate processes. Nothing in the text of the law states that mail-in-specific requirements supplant HAVA’s registration identification and verification requirement of (a)(5).

99. The Plaintiffs’ understanding is that under 52 U.S.C. § 21083(b), this section establishes additional identification requirements for first time voters who registered to vote by mail.

100. One such requirement under 52 U.S.C. § 21083(b)(2)(i), involves an

individual who successfully registered to vote by mail but appears to vote in-person. That individual would be required to present a current, valid photo ID, and proof of address through some sort of bill or other government document that “shows the name and address of the voter.” *Id.* at (ii)(II).

101. The Plaintiffs’ understanding is that §21083(b) also allows for casting a provisional ballot in the absence of the required ID.

102. The Plaintiffs’ understanding is that for first time voters who registered by mail and who choose to vote by mail for the first time, HAVA requires them to include a photocopy of their ID with their mail ballot.

103. The Plaintiffs’ understanding is that UOCAVA privileges apply to “otherwise eligible” individuals who are members of the military and their family members who are stationed far from home and to non-military US citizens who are overseas at the time of the election.

104. UOCAVA was enacted in 1986 before email and other forms of electronic communication were readily available.

105. Due to the “absentee” component of UOCAVA eligibility, nearly all UOCAVA ballots would have necessarily been submitted by mail.

106. HAVA establishes the minimum requirements, but many states have requirements that exceed the minimum requirement in HAVA and are stricter. It is also the Plaintiffs’ understanding that state laws regarding requirements for absentee ballot applications also vary. The Plaintiffs’ understanding is that one of the privileges afforded

to eligible UOCAVA voters is the right to vote absentee even if the state laws would have otherwise limited access to absentee ballots.

107. PA law requires the provision of certain information as part of the absentee ballot application process. Absentee ballot applications of military applicants should not be rejected for missing information if the missing information can be ascertained by the county board. 25 Pa. Stat. § 3146.2b(b): “Providing, however, that no application of any qualified elector in military service shall be rejected for failure to include on the elector's application any information if such information may be ascertained within a reasonable time by the county board of elections.”

108. When HAVA was passed in 2002, Congress enumerated an exception for UOCAVA voters who registered by mail and who would be necessarily voting absentee by mail.

109. UOCAVA voters who have been registered and are entitled to vote under UOCAVA are not required to submit a photocopy of their ID with the ballot when they return the ballot by mail. HAVA paragraph 52 U.S.C. § 21083(b)(1) – requiring a copy of the ID with the ballot --shall not apply in the case of a person who is “entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.”

110. The Plaintiffs’ understanding is that HAVA exempts UOCAVA eligible and qualified voters from the (b)(1) requirement to also include a copy of their ID with their mail ballot but does not exempt UOCAVA voters from *ever* providing identification information prior to voting, or from the general (a)(5) requirements to provide HAVA

required identification information when registering to vote.

111. Consistent with HAVA's b(1)exception, Pennsylvania's election code exempts qualified and eligible UOCAVA electors from the additional proof of identification document requirements with the returned absentee ballot.

Pa. Stat. § 3146.2(j) Notwithstanding the provisions of this section requiring proof of identification, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).

112. Consistent with HAVA, if an applicant is determined to be a qualified elector according to state and federal law and if they are determined to be eligible to receive UOCAVA voting privileges, that elector shall not be required to provide the additional proof of identification otherwise required with the returned voted absentee ballots.

113. In 2012, the Pennsylvania General Assembly enacted the Uniform Military and Overseas Voters Act (UMOVA), which was signed into law on October 24, 2012. 25 Pa.C.S. § 3501, et seq.

114. Pennsylvania's UMOVA extends to Pennsylvania's state and local elections the accommodations and privileges for military and overseas voters found in federal UOCAVA law. *Id.*

115. UMOVA applies to all elections conducted in Pennsylvania and helps to ensure compliance with UOCAVA and the MOVE Act. *Id.*

116. Pennsylvania law is accurately quoted as, covered voters include all the

following: (1) A uniformed-service voter who is registered to vote in the Commonwealth; (2) An overseas voter who is registered to vote in the Commonwealth; (3) A uniformed-service voter who is not registered to vote in the Commonwealth but who otherwise satisfies the voter eligibility requirements of this Commonwealth; and (4) An overseas voter who is not registered to vote in the Commonwealth but who otherwise satisfies the voter eligibility requirements of this Commonwealth including residency requirements. 25 Pa.C.S. § 3502.

117. Under Pennsylvania law, the UOCAVA applicants must satisfy the voter eligibility requirements under state and federal law before becoming a covered voter.

118. Notably, the Plaintiffs' understanding is that Pennsylvania's enactment of UMOVA state law cannot supersede 52 U.S.C. § 21083(a)(5)(A) and HAVA's voter registration information verification requirements or UOCAVA's requirement that election officials first determine if the voter registration application and the absentee ballot applications are otherwise valid.

119. Minimum state requirements are established in the Pennsylvania Election Code. PA Election Code § 3502 requires UOCAVA applicants to "satisfy the voter eligibility requirements of the Commonwealth including residency requirements." Further, an overseas applicant's application can be rejected if an omission prevents an election official from determining whether the applicant is eligible. (§ 3515).

120. Voter eligibility requirements of the Commonwealth are described in § 1301(a) and accurately quoted as:

- At least 18 years of age on the day of the next election;
- A citizen of the United States for at least one month;
- Resident of the Commonwealth for at least one month; and
- Not confined in a penal institution for conviction of a felony within the last five years

121. But, the PA Department of State takes the “position” that UOCAVA applicants are exempt from HAVA’s registration information verification requirements.

122. The Defendants’ directives and guidance to the counties on UOCAVA applicants direct county officials not to attempt to verify identity and eligibility and not to follow 52 U.S.C. § 21083(a)(5)(A) and its voter registration information verification requirements.

123. The Plaintiffs’ understanding is that the majority of UOCAVA applicants provide a DLN or SSN4 on the application but the Defendants direct counties not to even attempt to verify the information that UOCAVA applicants provided on the FPCA.

124. Al Schmidt is Pennsylvania’s chief election official. HAVA also charges Secretary Schmidt—as well as his predecessors and successors who serve as the state’s chief election official—with the responsibility to establish a system to match the applicant’s identification numbers provided against information in official government databases prior to voting in a federal election:

The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications

for voter registration.

52 U.S.C. § 21083(a)(5)(B)(i).

125. The chief state election official is responsible under HAVA to ensure that, prior to accepting or processing a registration, officials verify the accuracy of the information on a voter registration application by comparing to information in the state motor vehicle authority and/or with information in the social security administration.

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office **may not be accepted or processed by a State** unless the application includes—
(I) in the case of an applicant who has been issued a current and valid driver’s license, the applicant’s driver’s license number; or
(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant’s social security number.

52 U.S.C. § 21083(a)(5)(A)(i) (emphasis added).

126. HAVA requires chief election officials to enter into agreements with the state motor vehicles department and the Commissioner of the Social Security Administration to verify information for applicants who have drivers’ licenses and for those who do not have a state issued driver’s license or identification. *Id.* at § 21083(a)(5)(B)(i-ii).

127. In violation of HAVA, Pennsylvania’s chief election official Schmidt, or Deputy Secretary Marks or both, through the Department of State’s Voter ID Guidance, from September 26, 2022, is accurately quoted, in part, as follows: “Those entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)... are not required to provide proof of identification.” Ex. M.

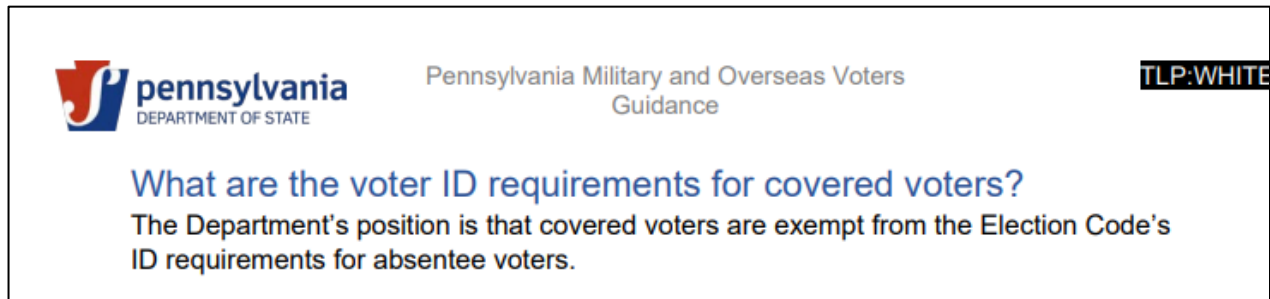
128. Although Defendants do have a process for HAVA-required verification of applicants' identifying information, the Defendants instruct counties not to attempt to verify UOCAVA applicants as required under 52 U.S.C. § 21083(a)(5)(A).

129. In 2022, Deputy Secretary of the Commonwealth, Jonathan Marks confirmed that Pennsylvania's current practice is to exempt UOCAVA voters entirely from verification requirements.

130. When asked how counties verify information for UOCAVA applicants during a hearing in the General Assembly, the Deputy Secretary for Elections, Johnathan Marks testified: "That group of voters are specifically exempted from [sic] the HAVA verification requirements... They do not have to provide PennDOT ID or last 4 of SSN... There's no systematic verification." Ex. B (House Committee Meetings, *Public Hearing on election administration considerations (in particular in advance of the 2022 General Election)*, at 59:10–1:00:14 (Sept. 14, 2022)).⁴

131. The Secretary or Deputy Secretary, or both, through the Department of State's Guidance on Military and Overseas Voters (Ex. E) includes the "Department's position" that UOCAVA applicants are exempt for ID requirements.

⁴ This exhibit in the record is a video recording, available at <https://www.legis.state.pa.us/cfdocs/legis/CMS/ArchiveDetails.cfm?SessYear=2021&MeetingId=2450&Code=-1&Chamber=H>



[<https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2023-Pennsylvania-Military-Overseas-Voters-Guidance-2.1.pdf>]

132. Essentially, the Defendants through directives and guidance to county election officials exempt UOCAVA applicants entirely from verification of identity and eligibility as required under state law and federal law.

133. Defendants have illegally adopted a “position” that the voter registration requirements for verification of identity and eligibility in federal and state law can be waived by expanding HAVA’s narrow exceptions to the additional mail ballot return identification requirements.

134. If the Defendants’ directive and guidance are based on the Defendants’ position on or interpretation of state statutes, such as Pennsylvania’s Uniform Military and Overseas Voters Act (UMOVA), 25 Pa.C.S. § 3501, et seq., then those state statutes, to the extent they conflict with the federal requirements for voter registration requirements for verification of identity and eligibility, are preempted by HAVA and UOCAVA.

135. Furthermore, despite the almost obvious contradiction between federal

law mandates and the Secretary's issued directives and guidance, two Pennsylvania administrative complaints based on Pennsylvania's non-compliance with § 21083(a)(5)(A) have been rejected by Office of General Counsel. *Wood v. Pennsylvania Department of State*, Docket No. 2022-04, Report of the Office of General Counsel (Jan. 3, 2023) at 8 (Ex. C); *PA Fair Elections v. Pennsylvania Department of State*, Docket No. 2023-001 (appeal pending), Final Determination (No. 21, 2023) at 7 (Ex. D).

136. In the appeal to the Commonwealth Court, case no. 1512 CD 2023, the Defendants have filed a response brief reiterating their position that UOCAVA applicants are exempt from HAVA's requirements for voter registration information verification. (Ex. F)

137. But, the U.S. Department of Defense, FVAP.gov website, U.S. Department of Justice and the U.S. Election Assistance Commission have all confirmed that UOCAVA applicants are not exempt from voter registration application information verification requirements.

138. The Federal Voting Assistance Program (FVAP), which is charged with overseeing UOCAVA for the Department of Defense, provides an electronic version of the FPCA. The website includes instructions for UOCAVA applicants to supply one or more forms of personal identification. If federal law created an exemption from voter registration information verification requirements for UOCAVA voters, the FPCA would not include fields for identification, nor would it include instructions for providing proof of identity or eligibility.

139. The Defendants' directives and guidance to county election officials are to not attempt to verify the information provided on the FPCA and to not attempt to match information to an official government database--even if the applicant provided a DLN or SSN4 on the FPCA.

140. The Secretary or Deputy Secretary, or both, instruct counties to send a UOCAVA applicant a ballot, including ballots for federal elections, without verifying identity or eligibility in violation of HAVA and in violation of UOCAVA.

141. A 2014 brief filed by the U.S. Department of Justice on behalf of the U.S. Elections Assistance Commission (EAC), is accurately quoted as: stated:

Arizona notes that after passage of Proposition 200, the Federal Voting Assistance Program ("FVAP") at the Department of Defense granted its request to add instructions regarding its proof-of-citizenship requirement to the Federal Post Card Application, a voter registration and absentee ballot application form for overseas citizens developed pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. § 1973ff(b)(2). EAC001702, EAC0017S0-S1. However, the UOCAVA is a separate statute from the NVRA and contains no language similar to the NVRA's limitation that the Federal Form "may require only such identifying information ... as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." 42 U.S.C. § 1973gg-7(b)(1). The FVAP's decision therefore has no bearing on the States' requests to the EAC.

<https://www.justice.gov/sites/default/files/crt/legacy/2014/05/14/kobachmotions.pdf>, p. 44 (last visited: Sep. 29, 2024).

142. This comment, by the Department of Justice on behalf of the EAC, shows that there is NO federal exemption from ID requirements for UOCAVA applicants.

143. In fact, the Department of Defense, Department of Justice and the EAC

have confirmed that a state can reject FPCAs that are not accompanied by documentary proof of US citizens if state law requires that DPOC to be “otherwise valid” in the state.

144. There is no exemption to identification and eligibility verification requirements in UOCAVA and the Supremacy Clause and 52 U.S.C. § 21084 prohibit Defendants from issuing a directive that conflicts with federal law.

145. Furthermore, other states comply with 52 U.S.C. § 21083(a)(5)(A) and its voter registration application information verification requirements.

146. The Plaintiffs’ understanding is that Pennsylvania’s procedures for UOCAVA applicants in this regard contradict other state’s procedures for compliance with federal law.

147. Publicly available documents accessible on the internet, include the procedures for UOCAVA voters from the state of Ohio. Ex. H (Ohio 12-K Instructions for Uniformed Services or Overseas Voters).

148. In addition to identification required on the FPCA, Ohio also instructs UOCAVA voters to complete their ballots, and fill out identification information envelopes, on which a UOCAVA voter must provide the last four digits of their social security number, their Ohio driver’s license or state ID card number, or a copy of a different form of photo ID. *Id.*

149. Georgia is another example of a state that has a procedure properly to verify identity of UOCAVA voters. Ex. I (Georgia Secretary of State UOCAVA Ballot Issuing/Mailing PowerPoint Training Presentation PDF).

150. The Georgia training guide explains how to verify identification information that may be provided on a UOCAVA application: “Best practice would be to start the search by DL number since this is a data point that must be verified anyway.”

Id.

151. UOCAVA applicants in Georgia whose identification information on the FPCA cannot be matched to an official government database are sent a provisional ballot with instructions for how to provide proof of identity and eligibility. *Id.*

152. Consistent with Georgia law and federal law, if the voter fails to provide the proof of identity and eligibility, their ballot will not be counted. *Id.*

153. Alaska requires non-military UOCAVA applicants to provide a copy of their US Passport (or similar Department of State document) with their UOCAVA voter registration application. See <https://www.elections.alaska.gov/voter-information/military-overseas-and-college-voters/#seas> (last visited: Sep. 29, 2024)

154. Minnesota’s Secretary of State’s website includes the HAVA ID requirements for UOCAVA applicants and training materials for local election officials and includes instructions for how to process non-matches. The SOS documents make it clear that the UOCAVA applicants must provide a US Passport, driver’s license or state ID number or the last four digits of their social security number. “Pursuant to statutory requirements, the absentee record includes the following information: voter’s name, voter’s present or former address of residence in Minnesota, school district number, **passport number, Minnesota driver’s license or state identification card**

number, or the last four digits of the voter's social security number, category of UOCAVA voter." Source: <https://www.sos.state.mn.us/media/5058/absentee-voting-administration-guide.pdf> (emphasis added).

155. Additionally, the Minnesota Secretary of State PowerPoint on UOCAVA Management lists the HAVA verification steps for UOCAVA applications:

The image is a screenshot of a PowerPoint slide with a dark background and white text. On the left side, the title "Accept and Reject of UOCAVA Ballots" is written in a large, serif font. To the right of the title, there is a vertical white line. Further to the right, there is a list of verification steps, each preceded by a diamond symbol (◊). The steps are: 1. The voter's name on the envelope appears substantially the same on the application; 2. The voter has signed the certification on the back of the signature envelope; 3. The voter has provided the same identification number as on the application, with sub-points (a) and (b) detailing acceptable forms of ID and the requirement that the ballot was returned by the same individual to whom it was sent; 4. The voter is not known to have died; 5. The voter has not already voted in the election in person or by absentee; and a final note that if county delegates AB voting to municipalities, UOCAVA ballots need to be forwarded to that delegated jurisdiction.

Ex. J (Source: <https://www.sos.state.mn.us/media/4925/2-02-uocava-management-final.pptx>, p. 4 (last visited: Sep. 29, 2024).

156. In 2006, a federal district court in the State of Washington issued a preliminary injunction confirming HAVA requires voter registration information verification. *Washington Ass'n of Churches v. Reed*, 492 F.Supp.2d 1264 (W.D. Wash 2006).

The district court, held that the statute was likely to stand as an obstacle to HAVA and the statute was likely to stand as an obstacle to Voting Rights Act. *Id.* Afterwards, the court issued a permanent injunctive order, pursuant to stipulation of the parties, requiring, under HAVA, that Washington State not count any ballot from an applicant who has not provided documentation to confirm his or her identity and eligibility sufficient for the government to complete the verification process:

(c)No [provisional] ballot cast pursuant to paragraph (1)(c) above shall be tabulated or regarded as containing valid votes for any office or measure until the Defendant receives information or the voter presents or submits documentation sufficient to register the voter as described in paragraph (1)(a) [driver license no. or social security number] or (1)(b) [alternate identification information] above.

Ex. K.

157. Pennsylvania's guidance violates UOCAVA and does not meet HAVA's minimum standard.

158. HAVA sets the minimum standard for states for verification of identity.

159. The Plaintiffs' understanding is that the Supremacy Clause and 52 U.S.C. § 21084 bar Pennsylvania from making exceptions to this federal law because the Elections Clause makes state law regulating times, places and manner of federal elections subject to Congressional enactments.

160. Therefore, Defendants may not create a directive that contradicts UOCAVA and HAVA which are both Congressional enactments.

161. The Plaintiffs' understanding is that the HAVA minimum requirements apply to all voter registration applicants and states must first determine if an applicant is

otherwise eligible to receive UOCAVA voting privileges.

162. The Plaintiffs' understanding is that the only exemption granted to qualified UOCAVA applicants under HAVA, is from the requirement for first time voters who register by mail and vote by mail for the first time to include a photocopy of their ID with their absentee ballots. HAVA does not exempt UOCAVA applicants from requirements for verification of identity and eligibility for voter registration.

163. The EAC's official guidance on the requirements of HAVA, explains that states should not accept unverified registration applications.

Make every effort to ensure that a voter registration application is not rejected as unverifiable until the State has given the individual an opportunity to correct the information at issue and attempted to validate the accuracy of the government information contained in its databases. **This does not mean that States should accept or add unverified registration applications to the statewide list.** Rather, it means only that election officials should make certain efforts before an application is determined to be unverifiable and finally rejected. The EAC recommends that in the event a State determines that the information provided in a registration application does not match the information contained in a verification database, States contact the individual in order to: (1) inform him or her of the disparity, (2) provide a meaningful opportunity for the applicant to respond or provide the correct information and (3) explain the consequences of failing to reply...

https://www.eac.gov/sites/default/files/eac_assets/1/1/Implementing%20Statewide%20Voter%20Registration%20Lists.pdf (emphasis added).

164. Notably, Pennsylvania law does not allow U.S. citizens who have never resided in the state to register and vote in the state.

165. The Plaintiffs' understanding is that eligible U.S. citizens who have previously resided in Pennsylvania and who could apply for UOCAVA privileges would

be required to have a valid driver's license, photo identification, a social security number or Passport. Identification is required to board an airplane, cross the border or otherwise travel abroad.

166. The Plaintiffs' understanding is that for limited number of eligible UOCAVA applicants who swear and affirm that they do not have a driver's license or state identification and whom have never been issued a social security number, HAVA requires them to provide other documentation to establish identity and eligibility prior to voting in a federal election.

167. The Plaintiffs' understanding is that despite the fact that most applicants who submit the FPCA do provide a driver's license or the last four digits of their social security number, Defendants, have instructed and continue to instruct Pennsylvania counties not to attempt to verify the information.

168. To be eligible under Pennsylvania law, applicants must "satisfy the voter eligibility requirements of the Commonwealth including residency requirements." 25 Pa.C.S. § 3502.

169. UOCAVA requires the states to first determine if the applicant is eligible.

170. The Plaintiffs' understanding is that in contradiction of UOCAVA and HAVA, Defendants instruct counties not to verify information provided on the FPCA and instruct counties not to determine if the applicant meets the eligibility requirement of prior Pennsylvania residence.

171. Nonetheless, the Department of State's Guidance on Military and

Overseas voters includes the “Department’s position” that UOCAVA applicants are exempt for ID requirements. Ex. E.

172. As described in the US Department of Justice indictment, Iranian nationals, in efforts to interfere with U.S. elections, demonstrated that bad actors could easily create and submit falsified FPCAs in Pennsylvania’s November 5, 2024, federal elections. *See, e.g.*, <https://www.justice.gov/opa/press-release/file/1449226/dl> (last visited Sept. 30, 2024) (Sealed indictment, *U.S. v. Seyed Mohammad Hosein Mousa Kazemi*, 21 Cr. 644).

COUNT I

UOCAVA and HAVA Preemption

173. Plaintiffs hereby incorporate by reference the above paragraphs as if fully restated herein.

174. The Supremacy Clause, Art. VI, cl. 2, is accurately quoted as follows:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

175. The U.S. Supreme Court has recognized that the Supremacy Clause is not a source of federal rights or confer a cause of action. The Court also recognized that the Supremacy Clause instructs what courts should do when state and federal laws clash, but is silent as to who may enforce federal laws in court, and in what circumstance they may do so. In this regard, the Court has noted that federal district courts may issue injunctive

relief upon finding state regulatory actions are preempted.

176. The Plaintiffs' understanding is that, unlike non-election cases, under the Elections Clause, Supremacy Clause preemption is presumed when Congress enacts laws regulating the times, places and manner of federal elections.

177. Moreover, HAVA, 52 U.S.C. § 21084, has a preemption provision creating minimum federal legal standards and preempting inconsistent state laws:

§21084. Minimum requirements

The requirements established by this subchapter are minimum requirements and nothing in this subchapter shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this subchapter so long as such State requirements are not inconsistent with the Federal requirements under this subchapter or any law described in section 21145 of this title.

178. Defendants have implemented an illegal election structure regarding military and overseas voting that the Plaintiff-Congressional candidates and UOCAVA voters are forced to participate in.

179. Defendants have implemented an illegal election structure that creates vulnerabilities and the opportunity for ineligible ballots to dilute valid ballots from military service members.

180. Votes tallied in the Pennsylvania illegal election structure undermine the credibility of the election for federal office.

181. The Plaintiffs as candidates either gain or lose by the forced participation in the state's illegal election activities.

182. The Plaintiffs as candidates are participating in the upcoming November

5, 2024, general election for federal office.

183. The candidates' forced participation in the illegal election structure regarding absentee voters and the tally of those votes, may not accurately reflect the legally valid votes cast.

184. An inaccurate vote tally is a concrete and particularized injury to the plaintiff candidates.

185. Also, UOCAVA voters who are members of PA Fair Elections members, are injured by Defendants' directives and guidance invalidating their and others' UOCAVA votes by failing to verify voter registration information prior to counting UOCAVA ballots which is required by federal law.

186. The Defendants' legal violations cause candidates' forced participation in an illegal election structure regarding absentee voters and the tally of those votes, may not accurately reflect the legally valid votes cast.

187. Defendants' guidance or directives, or both, to county election officials not to attempt to verify the identity of UOCAVA applicants who seek to vote and actually cast a ballot, as required by federal law under HAVA and UOCAVA (as previously described and as incorporated for Count I), are ongoing and continuing acts and, hence, are an impending and continuing injury as the illegal election structure departs from federal legal mandates.

188. There is a causal connection between the challenged conduct of the Secretary's or the Deputy Secretary's, or both's, policy and guidance and the asserted

injury.

189. To verify identity and eligibility, HAVA establishes the minimum standards. 52 U.S.C. § 21083(a)(5)(A)(i-iii)(verification of voter registration information).

190. Applicants who seek to vote in a federal election must provide at the time of registration, a valid driver's license number. *Id.*

191. If the individual has not been issued a driver's license, they may use the last four digits of their social security number (or if they have neither, the State shall assign them a unique identifying number and verify their identity and eligibility using other HAVA approved documents). *Id.*

192. The Plaintiffs' understanding is that in direct conflict to federal law (UOCAVA and HAVA), and in conflict with Pennsylvania law (25 Pa. Stat. §§3501, 3515) Defendants have issued directives to county officials to exempt UOCAVA applicants entirely from any attempt to verify identity or eligibility.

193. Under the U.S. Constitution's Supremacy Clause, and HAVA, 52 U.S.C. § 21084, preemption occurs when a state action conflicts with a federal law and when it is impossible to comply with both state action and federal law.

194. The Plaintiffs' understanding is that because the Defendants' statewide directive conflicts with federal law, the Defendants' statewide directive is preempted by federal law because it is impossible to comply with both the state Directives and guidance and federal law.

195. Notably, the Defendants have not specified or referenced any particular

law they rely on for their “position” or directives and guidance.

196. If the Defendants’ Directives and guidance are based on the Defendants’ position on or interpretation of state statutes, such as Pennsylvania’s Uniform Military and Overseas Voters Act (UMOVA), 25 Pa.C.S. § 3501, et seq., then those state statutes, to the extent they conflict with the federal requirements for voter registration requirements for verification of identity and eligibility, are preempted by HAVA and UOCAVA.

197. Injunctive relief will redress the injury because the former will mitigate the latter.

198. The Secretary or Deputy Secretary, or both, are responsible for enforcement of Commonwealth of Pennsylvania laws governing all state elections, including federal elections.

199. The Defendants circumvent state and federal law through directives or guidance or both which are preempted by the federal law.

200. The Defendants’ guidance or directives, or both, directing the counties to accept and process applications without first determining if the applications are “otherwise valid” is preempted by federal law.

201. Plaintiffs seek prospective declaratory and injunctive relief against the Defendants.

PRAYER FOR RELIEF

For the reasons stated in this complaint, the Plaintiffs request that this Court

grant the following relief:

1. Enter a declaratory judgment that the directives and guidance issued by the Defendants through the Pennsylvania Department of State by the Defendants and any underlying supporting state law purportedly superseding UOCAVA and HAVA's voter registration requirements for verification of the identity and eligibility of Pennsylvania UOCAVA applicants, are preempted by federal law;

2. Issue an order granting injunctive relief enjoining Defendants Schmidt and Marks from any further actions funding, supporting, or facilitating the directives and guidance based on them being preempted by federal law;

3. Issue an order for injunction instructing Defendants to provide directions to county election officials on the legally mandated procedures to comply with federal and state law in upcoming elections by requiring verification of the identity and eligibility of UOCAVA applicants, including state residency requirements, prior to accepting and counting the UOCAVA ballots;

4. Issue an order for injunction requiring county election officials to segregate UOCAVA ballots returned for the 2024 election until the identity and eligibility of the applicant can be verified as required under HAVA and state law; and

5. Grant such other and further relief as is just and appropriate.

Respectfully submitted,

Dated: October 7, 2024

/s/ Erick G. Kaardal

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Pending

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Attorney for Plaintiffs



DIRECTIVE CONCERNING HAVA-MATCHING
DRIVERS' LICENSES OR SOCIAL SECURITY NUMBERS
FOR VOTER REGISTRATION APPLICATIONS

Pursuant to Section 1803(a) of Act 3 of 2002, 25 Pa.C.S. § 1803(a), the following Directive is issued by the Department of State to clarify and specify legal processes relating to HAVA-matching of drivers' license numbers (or PennDOT ID card numbers) and Social Security numbers when voters submit new voter registration applications or an application to reactivate a cancelled record.

This Directive underscores that Pennsylvania and federal law are clear that voter registrations may *not* be rejected based solely on a non-match between the applicant's identifying numbers on their application and the comparison database numbers.

As stated in the Department of State's August 9, 2006 *Alert Re: Driver's License and Social Security Data Comparison Processes Required by The Help America Vote Act (HAVA)*, HAVA requires only the following:

- (1) that all applications for new voter registration include a current and valid PA driver's license number, the last four digits of the applicant's social security number, or a statement indicating that the applicant has neither a valid and current PA driver's license or social security number; and
- (2) that voter registration commissions compare the information provided by an applicant with the Department of Transportation's driver's license database or the database of the Social Security Administration.

HAVA's data comparison process "was intended as an administrative safeguard for 'storing and managing the official list of registered voters,' and not as a restriction on voter eligibility." *Washington Ass'n of Churches v. Reed*, 492 F.Supp.2d 1264, 1268 (W.D. Wash. 2006).

Counties must ensure their procedures comply with state and federal law, which means that if there are no independent grounds to reject a voter registration application other than a non-match, the application may *not* be rejected and must be processed like all other applications.

It is important to remember that any application placed in 'Pending' status while a county is doing follow-up with an applicant whose driver's license or last four of SSN could not be matched **MUST** be accepted, unless the county has identified another reason to decline the application. Leaving an application in Pending status due to a non-match is effectively the same as declining the application while denying the applicant access to the statutory administrative appeals process, and as described above is **not** permitted under state and federal law.

Exhibit B

House Committee Meetings, *Public Hearing on election administration considerations (in particular in advance of the 2022 General Election)* (Sept. 14, 2022)

<https://www.legis.state.pa.us/cfdocs/legis/CMS/ArchiveDetails.cfm?SessYear=2021&MeetingId=2450&Code=-1&Chamber=H>

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION**

Jessica M. Wood,	:	
Complainant	:	
	:	
v.	:	
	:	DOCKET NO. 2022-04
Pennsylvania Department of State,	:	
Respondent	:	

FINAL REPORT OF THE OFFICE OF GENERAL COUNSEL

I. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

Complainant Jessica Wood commenced this action on or about October 3, 2022, by filing with the Commonwealth of Pennsylvania Department of State (the “Department”) a verified Statement of Complaint Form (“Complaint”) under the Pennsylvania Election Code (“Code”), 25 P.S. § 3046.2, against Respondent Pennsylvania Department of State, Bureau of Commissions, Elections and Legislation, alleging violations of Title III of the Help America Vote Act, 52 U.S.C. § 21083 (“HAVA”). In accordance with Section 1206.2(c)(1) of the Code, 25 P.S. § 3046.2(c)(1), the Department forwarded the Complaint within three business days of receipt to the Commonwealth of Pennsylvania Office of General Counsel (“OGC”) on or about October 6, 2022.

Pursuant to Section 1206.2(c)(2) of the Code, 25 P.S. § 3046.2(c)(2), because the parties did not reach an agreement within 20 days of the Complainant’s filing, the Department filed a written response to the Complaint on October 24, 2022, a copy of which was provided to Complainant pursuant to Section 1206.2(c)(3) of the Code, 25 P.S. § 3046.2(c)(3).

Complainant did not request a hearing as was their right under Section 1206.2(c)(3)-(4) of the Code, 25 P.S. § 3046.2(c)(3)-(4). Having considered the written submissions of the parties,

the undersigned Office of General Counsel attorney, Rodney R. Akers, Esq., submits this Final Report and Order within ninety days after the October 3, 2022 filing of the Complaint.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The undersigned hereby makes the following proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. Complainant Jessica Wood is a Pennsylvania resident with an address at [REDACTED]. Complainant's Statement of Complaint, at 1.

2. The Pennsylvania Statewide Uniform Registry of Electors ("SURE") system is Pennsylvania's centralized voter registration and election management system developed and implemented to comply with HAVA and with Act 3 of 2002, 25 Pa.C.S. § 1222. Respondent's Answer at 2.

3. The Department manages and oversees the SURE system, which ensures the accuracy and integrity of voter registration records maintained by the election authorities in each county. The SURE system also facilitates determinations of voter eligibility, maintains precinct data, and produces poll books. Respondent's Answer at 3-5.

CONCLUSIONS OF LAW

1. The Help America Vote Act of 2002, 52 U.S.C. 20901 *et. seq.* ("HAVA"), enacted after the 2000 U.S. Presidential election, was designed to achieve reforms "to improve our country's election system." *See* H.R. REP. No. 107-329, at 31 (2001). HAVA was passed to ensure that eligible voters would not be 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.

2. HAVA also contains Title III, entitled “Uniform and Nondiscriminatory Election Technology and Administration Requirements, 52 U.S.C. §§ 21081 – 21102, which, *inter alia*, covers the following categories: Voting systems standards (Section 301), Provisional voting and voting information requirements (Section 302), Computerized statewide voter registration list requirements and requirements for voters who register by mail (Section 303).

3. Section 402 of HAVA requires a state, like Pennsylvania, that has received any payments under HAVA to set up a state-based administrative complaint procedure to remedy any grievances for those who believe that a violation of any provision of Title III has occurred, is occurring, or will occur. 52 U.S.C. § 21112(a).

4. In Pennsylvania, the procedure for making complaints of claimed Title III violations pursuant to Section 402 is provided for in Section 1206.2(a) of the Pennsylvania Election Code, 25 P.S. § 3046.2(a).

5. Neither the procedure contemplated by Section 402 of HAVA, nor the procedure provided by Pennsylvania law allows for asserting complaints with respect to or addressing any claimed violation of law outside of the administration of Title III of HAVA.

6. The undersigned does not have any authority under Section 402 of HAVA or the procedures for addressing HAVA complaints under the Pennsylvania Election Code or any other statute to make a determination as to any alleged violations of laws other than Title III of HAVA.

7. Section 303 of HAVA requires that each state shall implement a “single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level” containing the name and registration information of every

legally registered voter in the state. 52 U.S.C. § 21083(a)(1). The state is required to coordinate the computerized list with other agency databases within the state and provide immediate electronic access to election officials, including local election officials, so that they may be able to enter information into the list. *Id.* The Department, acting through the Secretary of State, has the responsibility to implement and has implemented such a list through the SURE system.

8. Section 303 of HAVA further provides that state and local election officials shall conduct list maintenance consistent with other statutes, including the National Voter Registration Act, 52 U.S.C. § 20501 *et seq.* (“NVRA”), so that ineligible voters are removed and that eligible voters are not removed, and provide adequate security measures to prevent unauthorized access to the list. 52 U.S.C. § 21083(a) (2-4).

9. The state is further required, pursuant to Section 303 of HAVA, to obtain certain information from applicants seeking voter registration and to enter into agreements with the state motor vehicle authority (who shall enter into an agreement with the Commissioner of Social Security) to verify the accuracy of information in the voter registration system. 52 U.S.C. § 21083(a)(5).1.

10. Section 303(c) of HAVA provides that the last 4 digits of a social security number shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974. 52 U.S.C. § 21083(c).

11. Complainant has not met the legal burden of establishing that the Respondent violated HAVA, 52 U.S.C. § 21083 as there was no evidence adduced by the Complainant in their Complaint, they did not request a hearing as permitted in accordance with the Code, nor did the Complainant submit any other information to substantiate their allegations.

III. ANALYSIS AND DISCUSSION

This matter involves alleged violations of the Help America Vote Act, 52 U.S. Code § 21083 (Pub. L. 107-252, title III, § 303, Oct. 29, 2002, 116 Stat. 1708 (“HAVA”). The Complaint alleges, *inter alia*, that Respondent is violating HAVA by failing to independently verify the citizenship status of potential voter registrants, or confirm the identity of such voters through matches with different registration numbers.

Complainant also has alleged that the Respondent violated statutes other than HAVA including the National Voter Registration Act, 52 U.S.C. § 20501 *et seq.* (“NVRA”) and possibly, the federal and state constitutions. As this process is conducted exclusively under HAVA, the undersigned is appointed under the Commonwealth’s HAVA complaint procedures and is not empowered to address claims outside HAVA, the undersigned does not make a determination as to any claims asserted by Complainant that do not arise under HAVA.

HAVA was enacted after the 2000 Presidential Election to help states update their election technologies and make it easier for citizens to register to vote and to vote. Title III of HAVA includes provisions regarding voting systems standards, provisional voting and requirements for a computerized statewide voter registration list (Section 303, 52 U.S.C. § 21083). Complainant commenced this proceeding by the filing of a complaint pursuant to the process outlined in Section 402 of HAVA, 52 U.S.C. § 21112(a), which requires states that have accepted payments under HAVA to set up an administrative complaint procedure for those who claim a violation of Title III of HAVA. *See also* 25 P.S. § 3046.2.

Complainant has not established their claim that a violation of Title III of HAVA has occurred, is occurring or is about to occur. Put differently, Complainant has not established that

the Department has violated, is violating, or will violate Section 303. That section requires that each state shall implement a “single, uniform, official, centralized interactive computerized statewide voter registration list defined, maintained and administered at the state level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State.” 52 U.S.C. §21083(a)(1)(A). There has been proffered no evidence that the Respondent has failed to do so. In addition to failing to meet their burden of proving any of the claims alleged in the Complaint, Complainant also argued that the Department has violated other laws and the federal and state constitutions. Those efforts to salvage any kind of plausible legal claim also fail as they are beyond the purview of this proceeding or the authority of the undersigned.

The only issue here is whether Complainant has proven a violation of Section 303. They have not done so. Complainant relies solely on their Statement of Complaint form. There does not appear to be a genuine dispute as to the substance of the Department’s efforts to promote eligible voter registration as intended by HAVA. Rather, the principal disagreement appears to focus on whether certain registration requirements of Pennsylvania must be met as part of the HAVA process. The evidence submitted by the Department in its written response to the Complaint, uncontested by the Complainant, amply demonstrates that Pennsylvania’s SURE system complies with the requirements in Section 303.

Respondent Has Not Violated Title III of HAVA Through Its Administration of SURE

One of the key features of Title III was and remains the administration of voter registration lists. Complainant and Respondent do not dispute that HAVA requires “each state . . . [to] implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at

the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State.” 52 U.S.C. § 21083(a)(1)(A).

In addition to this centralized statewide list, HAVA prohibits the acceptance or processing of an application for voter registration unless it includes a driver’s license number (“DL”), the last four digits of a social security number (“SSN4”), or a statement reflecting that the applicant has not been issued either a current and valid driver’s license or a social security number. *Id.* § 21083(a)(5)(A).

The Department avers that this requirement is used to distinguish voters who might have the same name or birth date - not to deny eligibility. The language of the statute as well as its legislative history strongly support this assertion: this requirement was meant as an administrative safeguard for storing and managing the official list of registered voters and not to restrict voter eligibility. *Id.* § 21083(a)(1)(A); 148 Cong. Rec. S10488- 02, *S10490 (daily ed. Oct. 16, 2002); H.R. Rep. 107-329(I), at 36 (2001) (“It is likely that states will find it necessary to create a unique identifier to distinguish registered voters who happen to have the same name and/or birth date. The unique identifier so created will be used to assure that list maintenance functions are attributable to the correct voter; to avoid removing registrants who happen to have the same name and birth date as a felon, for example.”). It should be noted as well that Section 21083(a)(5) requires that an applicant without a DL or SSN4 be given a unique identification number prior to registration. Accordingly, the Complainant’s claim that HAVA requires a state to match a DL or SSN4 is without foundation, given that the statute explicitly does not require an applicant to have either.

Respondent Has Not Violated Title III of HAVA With Respect To Its 2018 Directive

The Complainant also avers that the Department misapplied a directive it issued in 2018 to clarify and specify legal processes relating to HAVA-matching of drivers' license numbers (or PennDOT ID card numbers) and Social Security numbers when voters submit new voter registration applications or an application to reactivate a cancelled record. Specifically, the Department issued a one-page communication entitled *Directive Concerning HAVA –Matching Drivers' Licenses or Social Security Numbers for Voter Registration Applications* ("Directive"), which provides direction to counties that a failure to match a SSN4 or DL number for a voter registration application should *not* serve as the basis to reject a voter registration application, a position that is consistent with HAVA. Despite Complainant's assertions to the contrary, the Directive does not indicate that a subsequent analysis of other factors cannot serve as a basis for voter approval or rejection: Pennsylvania law requires that counties analyze registration applications to ensure that a prospective voter does have the qualifications to vote.¹ However, HAVA prohibits such analysis and prohibits the reliance on the failure of a provided social security number or Pennsylvania driver's license to match with those databases as a basis to deny voter registration to an applicant.

Complainant's Remaining Assertions are Outside of the Jurisdiction of this Proceeding.

In the Complaint, Complainant asserts that they are seeking relief under Title III of HAVA and a determination that the alleged conduct violates the Act. Complainant also appears to seek relief and a determination that the Department has violated the NVRA, and United States and Pennsylvania Constitutions in an attempt to aver that allowing non-citizens to register to vote is illegal. To the extent that any such claims are asserted, such claims fall outside the scope of this

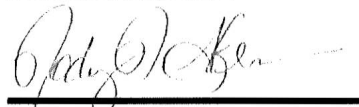
¹ The analysis of a voter registrant's application is a duty of counties. 25 Pa.C.S. §§ 1321 – 1330.

proceeding. As Section 1206.2(a) of the Election Code makes clear, this instant procedure is limited to complaints of purported HAVA Title III violations pursuant to Section 402, 25 P. S. § 3046.2(a). Accordingly, the undersigned lacks authority to address claims outside of Title III of HAVA and cannot not do so in the absence of jurisdiction.

IV. CONCLUSION AND DETERMINATION

Having reviewed the Complaint in this matter, Respondent's response thereto, and have given these matters thorough consideration, the undersigned concludes that Complainant has not established a violation of Title III of HAVA that has occurred, is occurring or will occur. Accordingly, it is determined that the Complaint in this matter be dismissed. Upon consideration of the foregoing, it is also determined that the undersigned does not have any authority to consider or make recommendations as to any claims outside the scope of Title III of HAVA. To the extent Complainant raised any additional such claims in this proceeding, the undersigned makes no determination as to those non-HAVA claims. As there is no finding of a violation of Title III of HAVA, the undersigned did not need to prepare a remedial plan and has not done so.

SUBMITTED BY:



Rodney R. Akers
Office of General Counsel

Dated January 3, 2023

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION**

Jessica M. Wood,	:	
Complainant	:	
	:	
v.	:	
	:	DOCKET NO. 2022-04
Pennsylvania Department of State,	:	
Respondent	:	

ORDER

WHEREAS, Complainant Jessica Wood commenced this action on October 3, 2022, by filing with the Commonwealth of Pennsylvania Department of State (the “Department”) a Statement of Complaint Form (“Complaint”) in accordance with 25 P.S. § 3046.2 against Respondent, the Department, alleging violations of the Help America Vote Act, 52 U.S. Code § 21081 – 21102 (“HAVA”);

WHEREAS, pursuant to Section 1206.2(c)(1) of the Pennsylvania Election Code (the “Code”), 25 P.S. § 3046.2(c)(1), within three business days of receipt, the Department forwarded the Complaint to the Commonwealth of Pennsylvania Office of General Counsel (“OGC”) on October 6, 2022;

WHEREAS, pursuant to Section 1206.2(c)(2) of the Code, 25 P.S. § 3046.2(c)(2), because the parties did not reach an agreement within 20 days, the Department filed a written response to the Complaint on October 24, 2022, a copy of which was provided to the Complainant pursuant to Section 1206.2(c)(3) of the Code, 25 P.S. § 3046.2(c)(3);

WHEREAS, Complainant did not request an informal hearing as was their right under Section 1206.2(c)(3)-(4) of the Code, 25 P.S. § 3046.2(c)(3)-(4);

WHEREAS, having considered the written submissions of the parties,

AND NOW, it is hereby ORDERED and DECREED:

1. The Complainant has not established any violation of Title III of the Help America Vote Act, 52 U.S.C. §§ 21081 – 21102, that has occurred, is occurring or will occur.
2. The Complaint in this matter is dismissed.
3. The Office of General Counsel does not have authority to consider claims in this matter outside the scope of Title III of the Help America Vote Act, 52 U.S.C. §§ 21081 – 21102, and to the extent the Complainant raised any additional claims in these proceedings, the undersigned makes no determination as to those claims.



Rodney R. Akers
Office of General Counsel

Dated: January 3, 2023

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION**

Jessica M. Wood, :
 Complainant :
 :
 v. :
 : **DOCKET NO. 2022-04**
Pennsylvania Department of State, :
 Respondent :

**NOTICE OF FINAL REPORT AND ORDER
AND PROOF OF SERVICE**

I, Rodney R. Akers, hereby certify that on this 3rd day of January, 2023, I filed the Final Report and Order with the Office of General Counsel, Commonwealth of Pennsylvania, and further state that I sent copies of the Final Report and Order to the parties, by electronic mail as follows:

For Complainant:

Jessica M. Wood

████████████████████
██
██
██

For Respondent:

John M. Hartzell, Deputy Chief Counsel
Kathleen A, Mullin, Assistant Counsel
Gregory M. Darr, Assistant Counsel
Pennsylvania Department of State
306 North Office Building
Harrisburg, PA 17120
Tel: 717-783-0736



Rodney R. Akers
Office of General Counsel

Dated January 3, 2023

CERTIFICATE OF SERVICE

I, Kathleen A. Mullen, do hereby certify that on September 12, 2023, I caused the foregoing copy of this document to be served via email and U.S. mail upon the following:

Heather Honey
1451 Quentin Rd., Ste. 232
Lebanon, PA 17042
Heather@verityvote.us

Erick G. Kaardal
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Ste. 3100
Minneapolis, MN 55402
kaardal@mklaw.com

/s/ Kathleen A. Mullen
Kathleen A. Mullen

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION**

PA FAIR ELECTIONS AND	:	
HEATHER HONEY,	:	
	:	
Complainants,	:	Docket Number 2023-001
	:	
v.	:	
	:	
PENNSYLVANIA DEPARTMENT	:	
OF STATE,	:	
	:	
Respondent.	:	

FINAL DETERMINATION

I. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

Complainants Pennsylvania Fair Elections and Heather Honey (“Complainants” or “Complt.”) commenced this action on August 23, 2023, by filing with the Commonwealth of Pennsylvania Department of State (“Department” or “Resp.”) a verified Statement of Complaint Form (“Complaint” or “Compl.”) under Section 1206.2 of the Pennsylvania Election Code. The Complaint alleged violations of Title III of the Help America Vote Act of 2002 (“HAVA”), 52 U.S.C. § 21081 *et seq.*, against the Department and its Secretary, Al Schmidt. In accordance with the Election Code, 25 P.S. § 3046.2(c)(1), the Department forwarded the Complaint to the Governor’s Office of General Counsel on or about August 28, 2023. On September 12, 2023, the Department filed a written response in accordance with 25 P.S. § 3046.2(c)(2).

The Complaint requested an informal hearing, which a complainant is entitled to under 25 P.S. § 3046.2(c)(3). Following a prehearing scheduling order, each party filed a prehearing memorandum, along with a witness and exhibit list, on November 3, 2023. A hearing was conducted before the undersigned on November 6, 2023. Having considered the written

submissions of the parties and the arguments and evidence advanced at the November 6 hearing, the undersigned Deputy General Counsel, Stephen R. Kovatis, Esq., submits this Final Determination and Order.

For the reasons set forth below, the Complainants have not established a violation of Title III of HAVA, and Complaint is therefore dismissed.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Complainant Pennsylvania Fair Elections is an association of Pennsylvania citizens concerned with the fairness and integrity of elections in Pennsylvania, including issues of election system vulnerabilities. Compl. ¶ 1; H'rg. Tr. 11-12.

2. Complainant Heather Honey is a Pennsylvania citizen and a founding member and director of Pennsylvania Fair Elections. Compl. ¶ 1; H'rg. Tr. 12.

3. The Department has issued a Directive Concerning HAVA Matching Drivers' Licenses or Social Security Numbers for Voter Registration Applications (the "Directive"). Compl. H'rg Ex. 2.

4. The Directive states, in bold text, that "**voter registrations may *not* be rejected based solely on a non-match between the applicant's identifying numbers on their application and the comparison database numbers.**" Compl. H'rg Ex. 2.

5. The Directive further states, again in bold, that "**if there are no independent grounds to reject a voter registration application other than a non-match, the application may *not* be rejected and must be processed like all other applications.**" Compl. H'rg Ex. 2.

6. The Complainants presented no evidence that the Department prohibits or interferes with the ability of counties to take steps to verify voter information, provided that counties do so in accordance with federal and state law.

7. Voters eligible under the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301 *et seq.* (“UOCAVA”), may submit to the Department a Federal Post Card Application (“FCPA”). Resp. H’rg Ex. C.

8. The FCPA serves a dual purpose—it allows a UOCAVA voter to register to vote by mail and it serves as an application for an absentee ballot. 52 U.S.C. § 20302(a)(4).

9. The FCPA instructs Pennsylvania UOCAVA voters to “provide your Pennsylvania-issued ID number or the last four digits of your Social Security Number.” Resp. H’rg. Ex. C at C-5.

10. The FCPA further instructs that if a UOCAVA voter does not have a Pennsylvania ID number or Social Security number, “you must enter in Section 6: ‘I do not have a Social Security Number or Pennsylvania-issued ID number.’” Resp. H’rg. Ex. C at C-5.

11. The FCPA is returned to a voter’s “election official,” and the FCPA lists the mailing address of each Pennsylvania county’s Board of Elections as the “[l]ocal election offices” where FCPAs should be sent. Resp. H’rg. Ex. C.

12. The FCPA does not require a UOCAVA voter to send any proof of identification, like a copy of a driver’s license or Social Security card, along with the FCPA. Resp. H’rg. Ex. C.

B. Conclusions of Law

1. HAVA was enacted after the 2000 U.S. Presidential election, designed “to improve our country's election system.” *See* H.R. REP. No. 107-329, at 31 (2001). HAVA was passed to ensure that eligible voters would not be 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(a).

2. Pennsylvania law dictates that the Election Code should be construed in a manner that “favors the fundamental right to vote and enfranchises, rather than disenfranchises, the electorate.” *Pa. Democratic Party v. Boockvar*, 662 Pa. 39, 65, 238 A.3d 345, 361 (2020).

3. Title III of HAVA, entitled “Uniform and Nondiscriminatory Election Technology and Administration Requirements,” addresses voting systems standards; provisional voting and voting information requirements; and the creation of a computerized statewide voter registration list, including requirements for voters who register by mail. 52 U.S.C. §§ 21081-21102.

4. HAVA requires states to establish an administrative complaint procedure to remedy any grievances for those who believe that a violation of any provision of Title III has occurred, is occurring, or will occur. 52 U.S.C. § 21112(a).

5. Pennsylvania has done so in its Election Code. 25 P.S. § 3046.2.

6. In accordance with the procedure Pennsylvania has established, Complainants bring this claim under Title III of HAVA. Specifically, Complainants allege that the guidance provided by the Department to counties regarding treatment of FCPA forms for UOCAVA voters violates Section 303 of HAVA, 52 U.S.C. § 21083 (“Section 303”).

Section 303(a) – HAVA’s Computerized Voter Registration List

7. In Section 303(a), HAVA requires the Department to “implement . . . a single, uniform, official, centralized, interactive computerized statewide voter registration list . . . that contains the name and registration information of every legally registered voter in the State and

assigns a unique identifier to each legally registered voter in the State.” 52 U.S.C.

§ 21083(a)(1)(A). HAVA calls this the “computerized list.” *Id.*

8. When assembling the computerized list, the Department may not, in most cases, accept an application for voter registration for an election for federal office unless the application includes a driver’s license number for those who have been issued a current and valid driver’s license or, for those without a driver’s license number, the last four digits of the applicant’s Social Security number. 52 U.S.C. § 21083(a)(5)(A)(i). Section 303(a) does not expressly state what, if any, further action must be take with respect to these numbers.

9. For an application for voter registration for an election for federal office where the applicant has neither a valid driver’s license nor Social Security number, the Department is required to assign the applicant a unique number for purposes of the computerized list. 52 U.S.C. § 21083(a)(5)(A)(ii).

10. Once it receives an application for voter registration for an election for federal office, HAVA requires that the Department “shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with [Pennsylvania] law.” 52 U.S.C. § 21083(a)(5)(A)(iii).

11. “HAVA’s matching requirement was intended as an administrative safeguard for ‘storing and managing the official list of registered voters,’ and not as a restriction on voter eligibility.” *Washington Ass’n of Churches v. Reed*, 492 F.Supp.2d 1264, 1268 (W.D. Wash. 2006).

Section 303(b) – HAVA’s Identification Requirement for Voters Who Registered by Mail

12. In subsection (b), HAVA sets forth a series of requirements for many voters who had registered by mail and had not previously voted in the state. 52 U.S.C. § 21083(b)(1).

13. Generally, those who had registered by mail and who vote in person are required to provide valid identification at the time that they vote. 52 U.S.C. § 21083(b)(2)(A)(i). And those who had registered by mail and who vote by mail are required to submit copies of their valid identification. 52 U.S.C. § 21083(b)(2)(A)(ii).

14. However, the requirements of subsection (b) of HAVA do not apply to, among others, voters who are “entitled to vote by absentee ballot under [UOCAVA].” 52 U.S.C. § 21083(b)(2)(C)(i).

UOCAVA Voters

15. Under UOCAVA, states are obligated to allow “absent uniformed services voters and overseas voters” to vote using the state’s absentee procedures. 52 U.S.C. § 20302(a)(1).

16. An “absent uniformed services voter” is an active duty a member of a uniformed service or merchant marine, or a spouse or dependent, who is absent from the state due to their service. 52 U.S.C. § 20310(1).

17. An “overseas voter” is an absent uniformed services voter who is absent from the state on Election Day or a person who resides outside the United States but is otherwise qualified to vote in a state. 52 U.S.C. § 20310(5).

18. Federal law requires states to accept the FCPA as “simultaneous voter registration application and absentee ballot application” for UOCAVA voters. 52 U.S.C. § 20302(a)(4).

III. ANALYSIS AND DISCUSSION

The question in this case is whether the Complainants have established that the Department’s treatment of UOCAVA voters violates HAVA. Simply put, they have not.

Complainants focus their alleged violation on Section 303(a) and Section 303(b) of HAVA. They argue that the Department violates HAVA by failing to verify the identity of

UOCAVA voters at the time that these voters register and apply for an absentee ballot via the FPCA. However, Complainants are unable to show how any Department practice, including the Directive, violates the clear and plain text of HAVA. Instead, Complainant's objection appears to be to HAVA itself—that it ought to have stronger verification requirements at the initial voter registration stage in Section 303(a) or that it ought not to exempt UOCAVA voters from its standard verification requirements for most voters who registered by mail in Section 303(b). But what HAVA *ought* to do is not within the purview of a Title III complaint. Both Congress and Pennsylvania's General Assembly—attempting to balance access to the polls on one hand with election security on the other—decided on the current procedure for processing registration and absentee voting for UOCAVA voters. The Department's Directive adheres to that system, and thus does not violate HAVA.

Department Policy Is Consistent with Section 303(a)

There is no dispute that Section 303(a) of HAVA requires the Department to build and maintain a computerized voter registration list. *See generally* 52 U.S.C. § 21083(a). The parties do dispute what HAVA requires the Department to do when assembling that list. Complainants believe that the Department must verify and confirm the identity of registrants—particularly UOCAVA voters who registered via the FCPA—at the time that the list is assembled. The Department, citing the district court's reasoning in *Washington Ass'n of Churches v. Reed*, 492 F.Supp.2d 1264 (W.D. Wash. 2006), argues that Section 303(a) requires no such thing.

Nothing in Section 303(a) requires the verification obligation at the registration stage that Complainants seek to impose on the Department. The plain text requires only that registrants submit their driver's license number or the last four digits of their Social Security number—it does not require any further documentation or matching between name and number at this stage.

See 52 U.S.C. § 21083(a)(5)(A)(i).¹ Any attempt to read a matching requirement into Section 303(a) is belied by the “[s]pecial rule” for those without a driver’s license or Social Security number, which requires only that the state “assign the applicant a number.” *See* 52 U.S.C. § 21083(a)(5)(A)(ii). If Congress intended to require states to use the information submitted at the registration stage for verification purposes, it would have required every voter to submit some type of verifiable identification. But it did not. Instead, the purpose of Section 303(a) is that it provides states with the tools to assemble a complete, accurate, and non-redundant list of registered voters. *See Reed*, 492 F.Supp.2d at 1268 (finding that Congress intended the Section 303(a) list to be “an administrative safeguard for ‘storing and managing the official list of registered voters,’ and not as a restriction on voter eligibility.”). The verification or matching obligation on which Complainants base their claim is not in the statutory text and is ancillary to the statutory purpose.

During argument, Complainants pointed to Section 303(a)(5)(A)(iii), which requires a state to “determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.” 52 U.S.C. § 21083(a)(5)(A)(iii). However, this subsection does not require of states anything that is not otherwise required by state law, and Complainants fail to point to anything in Pennsylvania law that would require the Department to do more with respect to UOCAVA voters than what they already do. By contrast, the Department pointed to multiple provisions of the Election Code that, like HAVA itself, expressly exempt UOCAVA voters from certain obligations. *See* 25 P.S.

¹ Complainants argue that Section 303(a) imposes a requirement that a voter seeking to register must “provide either a Driver’s License, or Social Security card to verify identity at the time of voter registration.” Compl. Pre-H’rg Mem. at 2; *see also* H’rg Tr. 70. This argument misreads HAVA. Nothing in the plain language of Section 303(a) requires a voter to provide actual documentation at the time of registration.

§ 3146.2(j) (exempting UOCAVA voters from proof of identification requirements for absentee ballot applications); *id.* § 3146.5(c) (exempting UOCAVA voters from proof of identification requirements when sending the absentee ballot); *id.* § 3146.8(i) (exempting UOCAVA voters from proof of identification requirements during canvassing). Complainants advance policy, not statutory, arguments, citing their belief that Pennsylvania’s current regime lacks adequate verification measures for UOCAVA voters. *See* H’rg. Tr. 43-61 & Compl. Ex. 3 & 8. But this evidence is irrelevant to their HAVA claim, because a Title III action cannot adjudicate what Pennsylvania ought to do as a matter of policy. Thus, while the Complainants believe that the Department’s letter and the cited testimony from Jonathan Marks show problems in how UOCAVA voters are handled, this do not evince a Department policy that violates HAVA.

In their papers and during the hearing, the Complainants presented evidence regarding the policies and procedures of other states, including the state of Washington in the final stipulated order in the *Reed* case, which they contend shows these states matching and verifying information submitted at the registration stage. *See* H’rg. Tr. 32-42. But whether and how a state *may* use registration information for matching purposes is not at issue here; the question instead is whether the Department *must* require matching of UOCAVA voters’ information at the registration stage under HAVA. Regardless of the answer to the former, the answer to the latter is no. Similarly, because Section 303(a)(5)(A)(iii) invokes state law, different states might have different statutory schemes governing their elections, which might result in a different analysis under this subsection. Consequently, the practice of other states cannot support a claim that the Department’s practice violates HAVA. Further, in Pennsylvania it is the counties and not the Department who receives and processes the FCPAs. While Complainants believe that at least one county did not properly process FCPAs during the 2020 election, *see* H’rg. Tr. at 23-28, the

evidence they presented was speculative and conclusory at best. The particular manner in which counties process individual FCPAs, if neither required nor prohibited by the Department, cannot be the basis for a claim that the Department violates HAVA.

Nothing in Department policy identified by the Complainants is inconsistent with what is required under Section 303(a). The Directive states that counties may not reject a UOCAVA voter's registration and absentee ballot application using the FPCA *solely* because the number does not match a comparison database. *See* Compl. H'rg Ex. 2. This directive is consistent with Section 303(a), which does not require states to perform a check and to reject the registration of a non-matching voter. In other words, the Department's instruction is neither required by nor prohibited by HAVA. Because HAVA is silent as to any matching requirement, it is equally silent as to the consequence of a non-match.

Complainants have thus failed to show how the Department violates Section 303(a) in any directives or policy regarding treatment of UOCAVA voters.

Section 303(b) Does Not Apply to UOCAVA Voters

While Section 303(a) governs the building and maintenance of a registration list, Section 303(b) sets the minimum identification documents which must be provided at the time of voting by voters who registered by mail. *See generally* 52 U.S.C. § 21083(b). It provides that in-person voters must present certain documentation at the time of voting and that mail voters must send copies of this documentation with their ballots. *Id.* § 21083(b)(2)(A). However, Section 303(b) expressly provides that it does not apply to UOCAVA voters. *Id.* § 21083(b)(3)(C)(i).

Complainants do not dispute that plain language of the statute means that Section 303(b) does not apply to UOCAVA voters. *See* Compl. ¶ 34. Instead, they argue that Section 303(b)'s exemption for UOCAVA voters should be read narrowly, such that it would not "exempt

UOCAVA voters from eligibility requirements or identity verification as required in § 21083(a)(5) prior to voting in a Federal Election.” Compl. Pre-H’rg Mem. at 16. However, as described above, Section 303(a) does not require the Department to perform any matching or verification, and it does not require applicants to submit any documentation. Nothing in Section 303(b) purports to impose any additional burden on voters during the registration process under Section 303(a). Complainants’ argument seeks to improperly graft a new requirement onto HAVA that is simply not there.

IV. CONCLUSION AND DETERMINATION

Wherefore, for the reasons stated above, Complainants have failed to show that the Department’s guidance with respect to UOCAVA voters violates Title III of HAVA. The Complaint is therefore DISMISSED. It is further determined that, because no violation of HAVA has been established, no remedial plan is necessary. This shall be considered a final determination of the Office of General Counsel under 25 P.S. § 3046.2(c).

DATED: November 21, 2023

SUBMITTED BY:



Stephen R. Kovatis
Deputy General Counsel

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION**

PA FAIR ELECTIONS AND	:	
HEATHER HONEY,	:	
	:	
Complainants,	:	Docket Number 2023-001
	:	
v.	:	
	:	
PENNSYLVANIA DEPARTMENT	:	
OF STATE,	:	
	:	
Respondent.	:	

ORDER

WHEREAS, Complainants Pennsylvania Fair Elections and Heather Honey (“Complainants”) commenced this action on August 23, 2023, by filing with the Commonwealth of Pennsylvania Department of State (“Department”) a verified Statement of Complaint Form (“Complaint”) under Section 1206.2 of the Pennsylvania Election Code;

WHEREAS, the Complaint alleged violations of Title III of the Help America Vote Act of 2002 (“HAVA”), 52 U.S.C. § 21081 *et seq.*, against the Department and its Secretary, Al Schmidt;

WHEREAS, in accordance with the Election Code, 25 P.S. § 3046.2(c)(1), the Department forwarded the Complaint to the Governor’s Office of General Counsel on or about August 28, 2023 and filed a written response in accordance with 25 P.S. § 3046.2(c)(2) on September 12, 2023;

WHEREAS, the Complaint requested an informal hearing, which took place on November 6, 2023 and permitted all parties to present evidence and argument supporting their respective positions;

AND NOW, having considered the written submissions of the parties and the arguments and evidence advanced at the November 6 hearing, it is **ORDERED** and **DECREED** as follows:

1. The Complainants have failed to establish that the Department has or is violating HAVA.
2. This matter is therefore **DISMISSED**.
3. This shall constitute a final agency determination of this matter in accordance with 25 P.S. § 3046.2(c)(5).

DATED: November 21, 2023

SUBMITTED BY:



Stephen R. Kovatis
Deputy General Counsel

STATE OF PENNSYLVANIA

DEPARTMENT OF STATE, BUREAU OF COMMISSIONS, ELECTION
AND LEGISLATION

* * * * *

PA FAIR ELECTIONS & *
HEATHER HONEY, *
Complainants * Docket No. 2023-001
vs. *

PENNSYLVANIA DEPARTMENT OF *
STATE AL SCHMIDT, Secretary*
of the Commonwealth or his *
Successor, *
Respondent *

* * * * *

BEFORE: STEVE KOVATIS, Hearing Officer
HEARING: Monday, November 6, 2023
9:25 a.m.
LOCATION: MICROSOFT TEAMS
WITNESSES: Heather Honey

Reporter: Nicholas Martin

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A P P E A R A N C E S

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I N D E X

1		
2		
3	DISCUSSION AMONG PARTIES	5 - 10
4	<u>WITNESS</u> : HEATHER HONEY	
5	DIRECT EXAMINATION	
6	By Attorney Teufel	10 - 74
7	CROSS EXAMINATION	
8	By Attorney Mullen	74 - 88
9	DISCUSSION AMONG PARTIES	88 - 120
10	CERTIFICATE	121
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

E X H I B I T S

		Page
<u>Number</u>	<u>Description</u>	<u>Offered</u>
Exhibit 1	HAVA 21083	67
Exhibit 2	HAVA Matching Directive 2018	21
Exhibit 3	10/28/22 Letter	58
Exhibit 4	9/26/22 UMOVA Overview	21
Exhibit 5	FPCA 2013	65
Exhibit 6	9/26/22 DOS Voter ID	
	Guidance	21
Exhibit 7	Excerpts of Congressional	
	Record 10/16/22	67
Exhibit 8	Video Recording Public	
	Hearing	46
Exhibit 9	Ohio From 12-K UOCAVA	
	Ballot Instructions	32
Exhibit 10	GA Microsoft PowerPoint	38
Exhibit 11	11/3/23 Screenshot	68
Exhibit 12	Heather Honey FVAP	
	Training Certification	73
Exhibit 13	10/4/23 Email	27

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
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HEARING OFFICER: Good morning, everyone. My name is Steve Kovatis. I am Deputy General Counsel at the Governor's office of General Counsel. We are here for a hearing in the Pennsylvania Fair Elections in Heather Honey versus the Pennsylvania Department of State and Secretary Al Schmidt matter. That is OGC's docket number 2023-001. This is a complaint brought under Title III of the Help America Vote Act, and it's brought via the Pennsylvania Election Code at 25 PS Section 3046.2. So I think the first thing, as I mentioned, I'm here on behalf of OGC Counsel. I see counsel are present. Would you like to introduce yourself for the record? And we'll start with the Complainant's counsel.

ATTORNEY TEUFEL: Hello, I'm Greg Teufel from a different OGC. OGC Law in Pittsburgh and here on behalf of PA Fair Elections and Heather Honey.

HEARING OFFICER: Good morning, Mr. Teufel.

ATTORNEY TEUFEL: Good morning.

HEARING OFFICER: Counsel for the

1 Department.

2 ATTORNEY MULLEN: Yes. Good morning.
3 Kathleen Mullen. I'm assistant counsel in the
4 Department of State, Office of Chief Counsel, and
5 here on behalf of the Secretary of the Commonwealth
6 and the Department of State. My colleague, Greg
7 Darr is also on the video. I'll let him introduce
8 himself.

9 ATTORNEY DARR: Yep. Gregory Darr,
10 Assistant Counsel, Department of State.

11 HEARING OFFICER: Great. And, Ms.
12 Honey, you're also present as the Complainant in the
13 case.

14 MS. HONEY: Yes, sir.

15 HEARING OFFICER: And you are
16 represented here by Mr. Teufel?

17 MS. HONEY: I am.

18 HEARING OFFICER: Great. I think
19 before we get into it, I just wanted to talk about
20 some kind of ground rules as to how we can proceed.
21 We'll discuss just some preliminary housekeeping
22 matters, and then we'll go into the hearing. The
23 statute calls this an informal hearing, so we'll
24 proceed, I guess, in accordance with what the
25 statute says.

1 The way that I see it, and I'm happy
2 to have a discussion with counsel if you have any
3 other ideas for how to proceed. But my inclination
4 is to give both sides, obviously, a full and fair
5 opportunity in order to present your case. First
6 the Complainant and then the Department. I think it
7 makes sense to use a traditional, orderly
8 presentation for the Complainant to present whatever
9 facts you want to present. The Department, you can
10 present whatever facts you want to present. And
11 then we can separately deal with argument, any legal
12 argument that you have based on those facts.

13 I don't intend to place a limit on
14 either side. So I think it's important that you
15 both do not interrupt each other during your
16 presentations. I will give both sides an
17 opportunity to rebut. We'll go back and forth at
18 the end. So if there's something you want to
19 respond to at any point that the other side says
20 you'll be given that opportunity to respond. I
21 don't intend to limit one presentation and one
22 presentation. We'll go back and forth until both
23 sides are fully heard.

24 Obviously, you can make any
25 objections to the other side's presentation that you

1 need to. But again, I remind you that this is an
2 informal hearing. I am likely to just accept the
3 evidence into the record, and then we can deal with
4 whatever needs to happen on argument. And if
5 there's something critical, you can go ahead and do
6 that. But again, I would ask that you try not to
7 interrupt the presentation of your opponent unless
8 absolutely necessary.

9 To the extent I recognize, I've read
10 the briefing on both sides, and I appreciate that.
11 This is, I think, a largely legal matter. There's
12 certainly not, I don't think, a lot of factual
13 disputes in the case. To the extent we can
14 stipulate to any facts, I don't know if there's been
15 any discussions among the parties about stipulating
16 to any facts. But even as we go, if we can agree to
17 things, I think that can help us streamline the
18 process and get to the nub of the issue here today.

19 Any questions or concerns with the
20 process here? Hearing nothing. The first
21 housekeeping matter that I have is just to address
22 the appointment letter. I know, Ms. Mullen, you
23 raised an issue with a prior appointment letter
24 regarding the timing. I appreciate the issue that
25 you raised. There was a new appointment letter that

1 went out on Friday. Did both parties have a chance
2 to see that letter, and are there any concerns about
3 proceeding today and proceeding on the course as set
4 forth in that letter? Mr. Teufel?

5 ATTORNEY TEUFEL: No. No problems
6 that I can see.

7 HEARING OFFICER: Ms. Mullen?

8 ATTORNEY MULLEN: No concerns. Thank
9 you.

10 HEARING OFFICER: Do either parties
11 have any preliminary housekeeping. Other matters
12 that we need to address before we get started? Mr.
13 Teufel?

14 ATTORNEY TEUFEL: None that I can
15 see. Thank you.

16 HEARING OFFICER: Ms. Mullen?

17 ATTORNEY MULLEN: I just wanted to
18 note, I did send an Exhibit C this morning, and I
19 just wanted to make sure that everybody did receive
20 that.

21 ATTORNEY TEUFEL: We did receive it.

22 HEARING OFFICER: And we did receive
23 it as well. Thank you. Okay.

24 Then I think I can turn it over to
25 Mr. Teufel. And allow you to begin to present what

1 you'd like to present.

2 ATTORNEY TEUFEL: Okay, excellent.

3 So we have one witness, Ms. Heather
4 Honey. She's going to be the witness through whom
5 we introduce our exhibits and the basic factual
6 background that will preface our legal arguments.
7 So I believe the witness gets sworn in first.

8 Is that correct?

9 HEARING OFFICER: Yes. Would you
10 like to - so if that's where we're going to go to
11 begin, then I would ask the court reporter to swear
12 in Ms. Honey.

13 ---

14 HEATHER HONEY,
15 CALLED AS A WITNESS, AND HAVING FIRST BEEN DULY
16 SWORN, TESTIFIED AND SAID AS FOLLOWS:

17 ---

18 CHAIR: Okay.

19 ---

20 DIRECT EXAMINATION

21 ---

22 BY ATTORNEY TEUFEL:

23 Q. And for the record, your full name is
24 Heather Honey, H-O-N-E-Y.

25 Correct?

1 A. That's correct.

2 Q. And can you tell the -?

3 ATTORNEY TEUFEL: I guess, should we
4 call it the tribunal, or how do we refer to - the
5 hearing officer? Is it that -?

6 HEARING OFFICER: Sure. The hearing
7 officer.

8 BY ATTORNEY TEUFEL:

9 Q. Okay.

10 Can you tell the Hearing Officer, please,
11 what is Pennsylvania Fair Elections? PA Fair
12 elections?

13 A. Yeah. So Pennsylvania Fair Elections is
14 a nonpartisan coalition of individuals and groups
15 and basically all kind of coming together with the
16 hopes of restoring confidence in the election system
17 in Pennsylvania.

18 Q. And what does that organization do? PA
19 Fair Elections?

20 A. Yeah. So we host weekly calls to
21 essentially educate people about election operations
22 and to sort of distill the difference between the
23 truth and fiction regarding election
24 vulnerabilities. So there's a lot of information
25 out there, some of it not true. Some of it is true.

1 We have these meetings every week, and generally we
2 have about 80 to 100 folks join each week, and we
3 just kind of focus on different areas of the
4 election system. Most recently, were covering sort
5 of poll worker and poll watcher reminders and
6 responsibilities, that sort of thing.

7 Q. And what's your personal role with PA
8 Fair Elections?

9 A. So I'm the director of PA Fair Elections,
10 and I am also the primary trainer. There are other
11 folks that also do some of the training calls, but
12 generally I'm the sort of primary trainer, unless I
13 can find somebody else to do it.

14 HEARING OFFICER: I apologize, but
15 can you give me one quick second?

16 ATTORNEY TEUFEL: Absolutely.
17 Please.

18 ---

19 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

20 ---

21 BY ATTORNEY TEUFEL:

22 Q. All right.

23 So just by way of your personal
24 background information. Are you involved with any
25 other such organizations?

1 A. Yeah, I mean, I'm the executive director
2 of the Election Research Institute, which is a
3 nonprofit organization that does research related to
4 election systems across the country. I'm also the
5 founder and president of Verity Voting, which is a
6 research and investigation organization. Again,
7 digging into sort of like the history of some of the
8 laws surrounding elections, federal laws and state
9 laws. And I'm the state lead for the Election
10 Integrity Network as well, and a special
11 investigator for Mohrman, Kaardal and Erickson,
12 which is a law firm out of Minnesota that does, you
13 know, sort of public interest litigation.

14 Q. You mentioned Election Integrity Network.
15 What's that?

16 A. The Election Integrity Network is an
17 organization out of DC that sort of supports
18 individual states, again, sort of working to restore
19 confidence in the elections. I think that we can
20 all agree that there's a pretty big issue there, and
21 so we're trying to address those issues. But it's a
22 national organization. I think they have state
23 leads in about 27 states now. Might be more than
24 that.

25 Q. Okay.

1 So specific to this case, can you tell
2 the Hearing Officer about your UOCAVA voting
3 research and investigation?

4 A. Yeah, so early on, it was new to me what
5 UOCAVA really was. I had always, like most people,
6 thought that UOCAVA voters were military voters.
7 And so I was a little bit surprised by the fact that
8 they largely aren't. So I started doing some
9 research, and in the course of doing that, I had the
10 opportunity to speak with the former director of the
11 Federal Voting Assistance Program. And again, the
12 Federal Voting Assistance Program is the agency
13 under the Department of Defense that administers
14 UOCAVA on behalf of the Secretary of Defense. So
15 the Secretary of Defense is the presidential
16 designee responsible for overseeing it.

17 So the FVAP isn't just to support
18 military UOCAVA voting. FVAP is the organization of
19 the Department that oversees the administration of
20 UOCAVA for both military and non-military. So I got
21 a lot of great information there.

22 I've also had the opportunity to speak
23 with current and former secretaries of state in
24 other states across the country about this topic. I
25 spoke with folks at the EAC as part of the research,

1 trying to understand exactly what does the federal
2 law require and what can the states do and what they
3 can't do.

4 Q. What's the EAC?

5 A. The Election Assistance Commission.

6 Q. And just to be clear, I'm pretty sure
7 everyone here knows, but when we refer to UOCAVA, of
8 course, we're talking about the Uniformed and
9 Overseas Citizens Absentee Voting Act, 52 USC 20301,
10 et sec. Go ahead. You were - continue, please,
11 explaining about your UOCAVA voting research and
12 investigation?

13 A. Sure. Yeah. I also spoke with election
14 officials in Pennsylvania and several other states
15 about kind of, well, how do you actually handle
16 these applications, these federal postcard
17 applications, when they come in? I actually spoke
18 with active duty members of the military and
19 veterans about their voting experience and how it
20 worked in practice. I actually took the Department
21 of Defense Training that they provide to voting
22 assistance officers who are assigned on various
23 bases to be able to help administer that on behalf
24 of the DOD. I attended UOCAVA outreach and voting
25 training that was hosted by several nonprofit

1 organizations.

2 And as I mentioned, I did quite a bit of
3 research into the history of military and overseas
4 voting changes that were made when UOCAVA passed,
5 sort of the congressional record around that, and
6 then the MOVE Act in 2009 when that was introduced,
7 and kind of the congressional record around that.
8 And then I really kind of compared what various
9 states were doing and how the states were
10 administering UOCAVA and the differences from state
11 to state in that regard.

12 Q. Okay.

13 So did you talk about how you spoke with
14 active duty members of the military and veterans?

15 A. I did.

16 Q. Okay.

17 And you took the DOD training program for
18 voter assistance offices?

19 A. I did.

20 Q. Okay.

21 Have you published any reports on your
22 research?

23 A. Yeah, actually, we published a
24 comprehensive report on UOCAVA voting in 2020. We
25 published that, I think, late 2021 or maybe early

1 2022, because a lot of the information that we
2 analyzed came from the EAVS, which is the Election
3 Administration and Voting Survey, which is a federal
4 requirement where all states, all the way down to
5 every sort of jurisdiction, has to report to the
6 federal government on the administration of UOCAVA
7 voting in their jurisdiction. So that report -
8 which is done every two years. So there was one for
9 the 2020 election, then there was one for The 2022
10 election. They're generally about a year behind.

11 So the report that we published, again,
12 was specifically about the UOCAVA voting, generally,
13 the history of it, how it came to be, and then the
14 actual sort of state by state data. We analyzed
15 that as well, had the opportunity as part of sort of
16 - because this is an area that I feel very
17 passionately about. I was invited to speak to
18 various groups across the country, in Wisconsin,
19 Arizona, Washington, Florida, Pennsylvania, on the
20 topic of UOCAVA voting, and recently did a
21 presentation, again down in Virginia, which kind of
22 also encompassed the 2022 EAVS data as well.

23 Q. Can you talk a little more about specific
24 research you conducted regarding Pennsylvania's
25 UOCAVA voting?

1 A. Yeah. So I reviewed all of the
2 directives, the UMOVA directives, the directives on
3 identification verification. Again, we did a series
4 of Right to Know requests to kind of better
5 understand not just what the directives said, but
6 how this was actually working in practice and what
7 was going on. So as part of that, we actually got
8 copies of the federal postcard applications from one
9 county so that we could review all of them and sort
10 of see how is this actually working in Pennsylvania
11 specifically. And then - so what we found -.

12 Q. So -.

13 A. Oh, go ahead. Sorry.

14 Q. So what you obtained from that county -
15 did you have a chance to review Exhibit C,
16 Department of State Exhibit C that was provided this
17 morning? And is that representative of what you
18 reviewed in terms of the, I want to say it
19 correctly, FPCA application form for Pennsylvania?

20 A. Well, I don't have the Exhibit C in front
21 of me. I can -.

22 Q. I can pull that up on the screen.

23 A. Did you want me to email that?

24 Q. I did email that to you, Heather, this
25 morning. Do you see that in your email?

1 A. Yeah.

2 Q. Okay.

3 This should be Exhibit C. There we go.

4 A. Okay.

5 ATTORNEY TEUFEL: Are you guys seeing
6 it?

7 THE WITNESS: Yes, I can see it.

8 BY ATTORNEY TEUFEL:

9 Q. Okay.

10 I'm just going to scroll down briefly
11 here and show you the document that's been marked
12 Exhibit C for the Department of State and say, does
13 this appear to be similar to the form you received
14 from, you said Lycoming County was it?

15 A. Right. So, yeah, it is the federal
16 postcard application and what we received actually
17 were the completed ones. So the federal postcard
18 applications that were submitted by applicants in
19 order - this is the form that we got. We just had
20 the page one that has the application on it.

21 Q. So did you get the pages with all the
22 instructions as well, specific to Pennsylvania or
23 just the -?

24 A. Yeah, I have those. The county didn't
25 send them, but this is available on the Federal

1 Voting Assistance Program, the DOD website. So I do
2 have this, yeah.

3 Q. And I mean, I'm sure they're going to
4 offer that into.

5 ATTORNEY TEUFEL: But, and I don't
6 know if, Mr. Kovatis, do you prefer that we offer
7 the exhibits at the end or in the middle or you
8 don't have a preference?

9 HEARING OFFICER: You can do it
10 however you'd like.

11 ATTORNEY TEUFEL: Okay.

12 So, I mean, I'm sure the Department
13 of State is going to get around to it. Their
14 Exhibit C is obviously just a bigger version of our
15 Exhibit 5, so I'm happy to rely on their Exhibit C
16 as the exhibit. I presume they don't have an
17 objection. I just want to offer that into evidence.

18 ATTORNEY MULLEN: No objection.

19 ATTORNEY TEUFEL: Okay.

20 BY ATTORNEY TEUFEL:

21 Q. And then, Ms. Honey, you were referencing
22 various directives that you reviewed. By the way,
23 am I still sharing?

24 HEARING OFFICER: I was going to say,
25 Mr. Teufel, you're sharing. I just realized what

1 was happening. You are sharing your screen of the
2 Zoom call. There you go.

3 ATTORNEY TEUFEL: Okay. All right.

4 Well, stop sharing for a second there
5 so I don't overshare. But in any event, so I'm
6 going to pull up exhibits, let's see Exhibits 2, 4
7 and 6, and ask if these are the directives that you
8 referenced just now that you reviewed as part of
9 your research. So first I'm going to pull up
10 Exhibit 2 and I'm going to see if my sharing skills
11 persist.

12 ---

13 (Whereupon, Complainant's Exhibit 2, HAVA
14 Matching Directive 2018, was marked for
15 identification.)

16 (Whereupon, Complainant's Exhibit 4, 9/26/23
17 UMOVA Overview, was marked for identification.)

18 (Whereupon, Complaint's Exhibit 6, 9/26/22 DOS
19 Voter ID Guidance, was marked for
20 identification.)

21 ---

22 BY ATTORNEY TEUFEL:

23 Q. All right.

24 So I'm showing you what's been marked
25 Exhibit 2, which is a directive concerning have a

1 matching driver's licenses or Social Security
2 numbers for voter registration applications. Is
3 this one of the - I apologize.

4 So is that one of the directives that you
5 reviewed as part of your research of Pennsylvania
6 UOCAVA practices?

7 A. Yes, it is. Okay.

8 ATTORNEY TEUFEL: And I would offer
9 Exhibit 2 into evidence for the hearing.

10 HEARING OFFICER: Any objection?

11 ATTORNEY MULLEN: No objection.

12 BY ATTORNEY TEUFEL:

13 Q. Okay.

14 And now I'm also going to pull up Exhibit
15 4. And now do you see what's been marked as Exhibit
16 4 on your screen, which is the Pennsylvania
17 Department of State Overview of Uniform Military and
18 Overseas Voters Act.

19 A. I see that, yep.

20 Q. Okay.

21 And is that also one of the directives
22 you reviewed as part of your research?

23 A. It is.

24 ATTORNEY MULLEN: I'm going to just
25 object to the term directive. The document states

1 what it states.

2 Okay.

3 HEARING OFFICER: Go ahead, Mr.
4 Teufel.

5 ATTORNEY TEUFEL: All right, so I
6 would like to offer into evidence Exhibit 4 as well.

7 ATTORNEY MULLEN: No objection.

8 HEARING OFFICER: Thank you.

9 BY ATTORNEY TEUFEL:

10 Q. Okay.

11 And then I'm going to pull up Exhibit 6.
12 This is Pennsylvania Department of State Voter
13 Identification requirements for voting. Was this
14 also one of the documents you reviewed as part of
15 your research of Pennsylvania UOCAVA practices?

16 A. Yes.

17 ATTORNEY TEUFEL: Okay.

18 I would like to offer into evidence
19 Exhibit 6 as well.

20 ATTORNEY MULLEN: No objection.

21 ATTORNEY TEUFEL: Okay. Thank you.

22 BY ATTORNEY TEUFEL:

23 Q. All right.

24 So then we left off you were talking
25 about your research into Pennsylvania UOCAVA voting,

1 and you mentioned you'd received the Right to Know
2 responses from Lycoming County. What else did you
3 do in that Pennsylvania specific research?

4 A. So, with regard to Lycoming, what we - so
5 we did the initial Right to Know requests, and we
6 reviewed all of the federal postcard applications
7 that were submitted to the county. And then what we
8 found is that some of them were deficient in
9 different ways. Now, of course, they were redacted,
10 so they weren't deficient - we couldn't see driver's
11 license, we couldn't see Social Security number, we
12 couldn't see date of birth, but deficient in other
13 ways. So, for example, in order to be eligible to
14 vote UOCAVA, if you are non-military, you have to be
15 outside of the country. Right?

16 So, on some of the applications they had
17 their registration address in Lycoming County, and
18 then they had their current address in a different
19 part of Lycoming County. So obviously, that person,
20 the federal postcard application, would not be
21 accepted. But in that case, it was. So on the
22 forms that we got, they said whether they did or
23 didn't. So in order to see if there was any sort of
24 follow up done, in order to remedy deficiencies in
25 those federal postcard applications, we did a follow

1 up Right to Know to Lycoming County, and we just
2 said, hey, did you - for any of the federal postcard
3 applications that you received, did you do any sort
4 of communication to follow up, to correct any
5 deficiencies in the federal postcard application?
6 And I think the response is one of our exhibits
7 here. And essentially what they said is that they
8 don't do any follow up, and that they did not do any
9 follow up. So there were no responsive records to
10 that request.

11 ATTORNEY MULLEN: I'm going to object
12 on two things. First, on the basis of hearsay. Ms.
13 Honey certainly can testify to what she knows, but I
14 would object as hearsay to what other people said.
15 And then also, this could just be a standing
16 objection. It's fine for Ms. Honey to be talking
17 about facts. Any conclusions of law I would object
18 to her stating as a lay witness and not a lawyer in
19 her testimony. I don't want to interrupt
20 repeatedly, so I just want to make that clear. It's
21 standing. Thank you.

22 HEARING OFFICER: I appreciate that,
23 Ms. Mullen. As I mentioned, the rules require this
24 as an informal hearing. So I take that with some
25 relaxed standards. I appreciate the point that

1 you're making.

2 Mr. Teufel, if you want to respond
3 now, I'll give you that opportunity. But we could
4 also address this at the end or during an argument
5 portion any of that testimony. I'll give whatever
6 weight is relevant as it relates to the ultimate
7 conclusion in the case. And, Ms. Mullen, I
8 appreciate what you said, and you can have that
9 standing objection without having to make it
10 repeatedly.

11 ATTORNEY MULLEN: Thank you.

12 HEARING OFFICER: Mr. Teufel, would
13 you like to respond to that now, or do you want
14 to -?

15 ATTORNEY TEUFEL: Sure. I mean, my
16 only response would be basically no harm if this
17 witness were to express what could constitute a
18 legal opinion. Whereas in a jury trial, you might
19 find that unduly impressive on a jury in some way
20 and inappropriately prejudicial. In this situation
21 I'm sure the Hearing Officer, as I think you just
22 explained, will appropriately disregard legal
23 conclusions in favor of legal arguments presented by
24 the attorneys and look to the attorneys to provide
25 the legal arguments later and not be unduly

1 prejudiced by anything the witness may say.

2 HEARING OFFICER: With that, Mr.
3 Teufel, you can proceed.

4 BY ATTORNEY TEUFEL:

5 Q. Okay.

6 I just want to share with the Hearing
7 Officer and those on the Zoom call here, Exhibit 13
8 that you just mentioned.

9 ---

10 (Whereupon, Complainant's Exhibit 13, 10/4/23
11 Email, was marked for identification.)

12 ---

13 BY ATTORNEY TEUFEL:

14 Q. Okay.

15 So what I just put on the screen is you
16 recognize that as Exhibit 13 that you just
17 referenced. And can you explain what this is?

18 A. Right. So this is a Right to Know
19 request. This is actually the response from
20 Lycoming County to the Right to Know request. And
21 the request essentially said, if you scroll down, it
22 basically says, please provide copies of any and all
23 follow up - up just a little bit on the screen. So
24 I can quote it. Any and all follow-up
25 communications, including but not limited to, any

1 emails, letters, texts, et cetera, sent by the voter
2 services for incomplete UOCAVA applications.

3 Q. And the response you got was denied. No
4 records exist.

5 A. Exactly.

6 Q. Yeah.

7 ATTORNEY TEUFEL: And I forgot to
8 respond to the hearsay objection. This is a verbal
9 act. This is not hearsay. This is not a statement
10 of fact offered to prove the truth of the matter
11 asserted. The statement by the solicitor of
12 Lycoming County that records do not exist is a
13 verbal act, a response to a Right to Know request.
14 So I don't think it's technically hearsay under the
15 rules. I think that is a piece of information that
16 the Hearing Officer is free to consider as a fact
17 that they denied the request and they gave these
18 grounds.

19 You don't need to take this as
20 evidence that no records did exist or didn't exist,
21 but that they did give those grounds for why they
22 denied. That is a verbal act and not a hearsay
23 statement.

24 BY ATTORNEY TEUFEL:

25 Q. All right. Moving on here.

1 So what did you find in your research,
2 basically, of Pennsylvania UOCAVA requirements and
3 UOCAVA voting?

4 A. Some of the - some of the highlights of
5 our research were that, first of all, that most
6 UOCAVA voters are not military. In fact, in 2022
7 81, and a half percent of all UOCAVA ballots
8 transmitted in Pennsylvania went to non-military
9 voters. And the reason that's significant is
10 because when you're categorizing the voters, whether
11 they're military or non-military includes the active
12 duty member of the military, but also their spouse,
13 any voting age dependents, they're all categorized
14 as military. And so when you look at that and you
15 say in all of Pennsylvania, 81 percent were non-
16 military, that means that less than 20 percent were
17 military and military families. So that was, I
18 think, kind of a surprising thing, considering what
19 the general perception is of what UOCAVA voting is.

20 We also found that in 2020, kind of along
21 those same lines, that 36,000 plus ballots were
22 transmitted to applicants, and that of those, 26,000
23 went to non-military applicants. And 28,000 of all
24 of the ballots that were transmitted, the actual
25 physical ballots, were sent to applicants via email.

1 And so we talked a lot about, in our
2 research about the MOVE Act and how the MOVE Act,
3 which became law in 2010, was an amendment to UOCAVA
4 that essentially did a couple of things. But it
5 said that all states must offer applicant or, you
6 know, qualified UOCAVA voters the option to have
7 their ballot delivered to them electronically,
8 whether it was by email or fax or whatever, that the
9 states had to offer that opportunity.

10 And so what we found in Pennsylvania is
11 that, of course, they were complying with federal
12 law, and they are emailing ballots out to these
13 applicants. But again, so 28,000 of the ballots
14 went out by email.

15 Now, in terms of sort of election system
16 vulnerabilities that we identified, when somebody
17 applies for a ballot by email, and then you deliver
18 it by email, you're kind of eliminating the security
19 feature of making sure that the ballot's going to
20 where the ballot's supposed to go. So we thought
21 that was kind of interesting. But the most
22 significant thing that we found in our research is
23 that we realized that what Pennsylvania was doing
24 was something very different than what the Federal
25 Voting Assistance Program says and what other states

1 were doing specifically when it comes to the
2 verification of the information provided on a
3 federal postcard application.

4 For example, in the research, we looked
5 at some other states. So on the -.

6 Q. Just one second, when you referred to the
7 federal postcard application, again, you're talking
8 about what was Exhibit C, that's already been
9 admitted. That's what we're talking about when we
10 say the postcard application.

11 Correct?

12 A. Right. So the federal postcard
13 application is sort of a form that was created as a
14 result of UOCAVA, which gives UOCAVA eligible voters
15 the option of doing a voter registration application
16 and an absentee ballot application on a single form.
17 So that's what the federal postcard application is.
18 It's like a combined form where you can do both of
19 those things. However, the UOCAVA says that the
20 voters must meet the state requirements for voter
21 registration eligibility and must meet the
22 requirements for the absentee ballot application.
23 Right? So that's what UOCAVA says. In addition to
24 that - well, I'm sorry. Go ahead.

25 Q. So you were talking then about comparing

1 what PA does to what other states do and what your
2 research revealed.

3 A. Right. So, for example, one of the
4 things I think is really interesting, which is just
5 on the Federal Voting Assistance Program website, is
6 that in Alaska, if you are not military, right? If
7 you are not military, you have to give them a copy
8 of your passport. Right? Because Alaska says if
9 you are a resident of Alaska and you have traveled
10 out of the country, you would have needed a passport
11 or some similar thing. So it says that they have to
12 provide their passport information. Ohio, again, I
13 think we have a copy of what Ohio's requirements
14 are. They require verification of their driver's
15 license and so on. And Georgia has a process
16 that -.

17 Q. Before we move off of Ohio, let me pull
18 up what was previously marked as Exhibit 9, and I
19 will share that with the proceeding here.

20 ---

21 (Whereupon, Complainant's Exhibit 9, Ohio From
22 12-K UOVAVA Ballot Instructions, was marked for
23 identification.)

24 ---

25 BY ATTORNEY TEUFEL:

1 Q. Can you see Exhibit 9?

2 A. I can see that.

3 Q. Okay.

4 Are these the Ohio Secretary of State
5 Instructions for uniformed or overseas voters?

6 A. Yes.

7 Q. Okay.

8 And that you were just referencing?

9 A. Right.

10 Q. And what did you say that Ohio does
11 different from PA?

12 A. Essentially everything. Right? So it
13 says they have to provide their driver's license if
14 they have one. They have to provide a Social
15 Security number if they don't have that. And then
16 the county election officials verify that
17 information. But if they affirmatively state under
18 penalty of perjury. Right? Which is when they sign
19 the thing and they say, I don't have either, then
20 they have to provide something else. Right? Some
21 other form of identification that says whether it's
22 a passport or a birth certificate or what have you,
23 that if they swear and affirm that they've never
24 been issued a driver's license, swear and affirm,
25 they've never been issued a Social Security number.

1 Then they have to provide something else, right, in
2 order to be registered. And then they, of course,
3 send them the ballot however they want it, email or
4 mail, et cetera.

5 Q. Now, just to just interject, that's on
6 the first page of this, instructions for uniform
7 services or overseas voters. The second bullet
8 point under the second point has A, B, and C. You
9 must provide one of the following, and it's either
10 going to be the last four of your Social Security
11 number or what's referred to as an SS four, your
12 driver's license or state ID card number, or a copy
13 of these various other forms of acceptable ID,
14 different form of current photo identification,
15 driver's license, state ID card, interim ID form
16 issued by Ohio Bureau of Motor Vehicles, a U.S.
17 passport or passport card or U.S. Military ID card,
18 Ohio National Guard ID Card or U.S. Department of
19 Veterans Affairs ID card.

20 And it says, the copy of the photo ID
21 must include images of the front and back, except
22 for passport, which must include the passport's
23 identification page. It says to place a copy of
24 your ID in the return envelope separate from the
25 identification envelope. Election officials must be

1 able to see you have provided ID in order to open
2 and count your ballot. Okay.

3 So that's what you're referencing.

4 Correct?

5 A. Right.

6 Q. Okay.

7 So then, anything else about Ohio? Do
8 you want to -?

9 A. I think. I think that the overall point
10 is that the Department of State has said in
11 hearings, right, and in emails and stuff that
12 federal law provides an exemption for identification
13 for UOCAVA voters. But I think that looking at what
14 Alaska requires, looking at what Ohio requires and
15 many other states, I think that it just goes to the
16 point, at least for confirmation for me, as I was
17 researching this, that if there were a federal
18 exemption, then a state wouldn't be able to bypass
19 that exemption. Right? I mean, the states can't
20 override what the federal government says.

21 So if they say that a privilege, just
22 like the federal postcard application, is a
23 privilege afforded to UOCAVA eligible individuals, a
24 state can't say, nope, we're not going to accept
25 that. They must accept it. And so I think that

1 this just shows that the interpretation that the
2 Department of State is using, if that were the case,
3 then all of these other states would be in violation
4 of federal law, and the Department of Justice would
5 be going after them.

6 Q. Well, let me just interject.

7 HEARING OFFICER: Can I interrupt for
8 one second?

9 ATTORNEY TEUFEL: Sure, go ahead.

10 HEARING OFFICER: Ms. Honey, just to
11 Ms. Mullen's point earlier, I'm happy to hear your
12 evidence that you're going to present, but perhaps
13 it's best to leave the legal argument to your
14 counsel when it comes to arguing what UOCAVA allows
15 or doesn't allow or what exceptions exist or may not
16 exist. Those are statements of law that are not
17 properly the subject of witness testimony. But that
18 would be argument for your counsel to present. So
19 I'm happy to give you a little leeway to go, but
20 just bear in mind that your testimony, what I'm
21 really listening for are the facts that underlie
22 what's happened.

23 THE WITNESS: Okay. Understood.

24 ATTORNEY MULLEN: I would just like
25 to interject as well an objection as to relevance as

1 to any other state's law.

2 ATTORNEY TEUFEL: Okay.

3 And so I would like to offer exhibit
4 nine into evidence, understanding that objection.

5 HEARING OFFICER: And again, I won't
6 rule on the objection. I'll take it as argument in
7 the record as a whole. But go ahead, Mr. Teufel.
8 Thank you.

9 BY ATTORNEY TEUFEL:

10 Q. Okay.

11 And so can you tell us what your research
12 revealed as far as what Georgia does with UOCAVA?

13 A. Right. So, so what Georgia does is,
14 again, different than Ohio, but it appears to be
15 sort of the minimum requirement as I read it. And I
16 don't know if I can say that but, you know, because
17 HAVA says this is like the minimum, and - anyway so
18 I -.

19 Q. So more to the facts, like what did your
20 research reveal that Georgia requires.

21 A. Right. So what Georgia requires is that
22 when people submit a federal postcard application,
23 that the county election officials have to try to
24 match their driver's license. Right? If the person
25 has been issued a driver's license, they must

1 include that on the form. If they have not, if they
2 say they haven't been issued a driver's license,
3 they can put their Social Security number, but the
4 county election officials have to attempt to match
5 it. If they can't match it, then what they do is,
6 again, because they have to send out the ballot via
7 email or mail 45 days before the election or within
8 a certain period of time after receiving the
9 request, if it's fewer than 45 days, but they send
10 them a provisional ballot if they couldn't
11 successfully match the ID and if they couldn't
12 verify their identity and eligibility. So they
13 don't delay the delivery. Right? They just send a
14 ballot, but it's marked provisionally, and that's in
15 this document here.

16 Q. Okay.

17 So now what I have put up on the screen
18 is Exhibit 10.

19 ---

20 (Whereupon, Complainant's Exhibit 10, GA
21 Microsoft PowerPoint, was marked for
22 identification.)

23 ---

24 BY ATTORNEY TEUFEL:

25 Q. And what is Exhibit 10, please?

1 A. So Exhibit 10 again, I got this in
2 response to an open records request in the State of
3 Georgia, and I asked them for their training
4 materials for their county election officials. What
5 is the training provided to them to handle UOCOVA
6 federal postcard applications and UOVAVA voting?
7 And this was the response.

8 Q. When was that request made? And when was
9 the response made? Like what year?

10 A. 2021, I believe.

11 Q. Okay.

12 A. It might have been 2022. I'm sorry.

13 Q. Okay.

14 And you were mentioning that they matched
15 the driver's license or Social Security number
16 information. Is that what's indicated on page 6 of
17 16 here that I have up on the screen?

18 A. Right. That they - best practices what
19 they're supposed to do first and then -.

20 Q. Anything other specific that you'd like
21 to point out in this particular exhibit?

22 A. Yeah, if you go one more forward from,
23 you know, if the voter is mismatched, right? So if
24 they provide information that is mismatched, it says
25 that they can't - as the Department of State points

1 out, that they can't reject solely for a mismatch
2 between the identification information that they
3 provide. But if it doesn't match, that what they
4 have to do is send a provisional ballot while they
5 make an effort to resolve the discrepancy in their
6 application. So if you go to the next page, it
7 talks about sending them a provisional ballot and
8 letting them know that there was a deficiency in
9 their federal postcard application that needs to be
10 resolved, but that they should go ahead and vote
11 this provisional ballot. But attempt to resolve.

12 And keep in mind, too, in Georgia, just
13 like in Pennsylvania, the majority of these requests
14 come via email. So when you're talking about
15 contacting the voter in Georgia or in other states,
16 oftentimes that's sending them an email and saying,
17 hey, got your federal postcard application, but your
18 driver's license didn't match. Can you double check
19 it? Right? But in order to comply with federal
20 law, they've got to send a ballot, so they send a
21 provisional ballot.

22 Q. Okay.

23 Anything else you wanted to point out in
24 Exhibit 10?

25 A. No, that's it.

1 Q. Okay.

2 ATTORNEY TEUFEL: I would like to
3 offer Exhibit 10 into evidence as well.

4 HEARING OFFICER: Any objection?

5 ATTORNEY MULLEN: Yes, objections on
6 the basis of authenticity, hearsay and relevance.

7 ATTORNEY TEUFEL: The objection on
8 the basis of authenticity, the witness has
9 authenticated this document. She said how she
10 obtained it and what it is. That's all that's
11 required for authentication. You can, of course,
12 attract the credibility of the witness if you don't
13 believe her, but the document has been properly
14 authenticated by the witness.

15 As far as hearsay, again, this is a
16 written act. It is not hearsay. It's not offered
17 to prove the truth of the matters asserted. This is
18 the response of the Georgia Elections Division to a
19 open records type request in Georgia. It's an
20 official act of a government to provide this. This
21 is what they provided in response. So we're not
22 offering it to prove the truth of matters asserted
23 in the statement, but rather to show what they
24 responded. And this is what they say they do. Now,
25 this is what their verbal act of saying, this is

1 what we do, this is the training material we give.
2 That's an act of a government. That's not a
3 statement, the truth of which we're trying to
4 evaluate, but rather it's a verbal act in response
5 to a request.

6 So I would argue it's not hearsay and
7 I believe it is relevant. We'll make those
8 arguments later in terms of why, but I believe the
9 state will be taking the position that there are
10 certain things that are absolutely prohibited by
11 federal law. And we're not doing a 50 state survey
12 here because we don't want a 24 hour hearing, but
13 we're certainly providing numerous counterexamples
14 from Alaska, Ohio and Georgia that there are ways to
15 do this that are allowed under the law, or at least
16 these states seem to believe they are.

17 All right. So that's all the responses
18 to the objection. I know you're not going to rule
19 right now, so we'll continue through the testimony.

20 HEARING OFFICER: I'll accept the
21 document as what Ms. Honey testified, that this is
22 what she received from Georgia. And as with
23 everything else, give it whatever weight is due.

24 ATTORNEY TEUFEL: Thank you.

25 BY ATTORNEY TEUFEL:

1 Q. Okay. So moving on.
2 What else did you find in your research,
3 Ms. Honey?

4 A. Yeah, so after we collected this
5 information from all of these different states, I
6 reached out again to the former director of the
7 Federal Voting Assistance Program with the DOD and
8 just, hey, like, here's what you know, based on your
9 knowledge. So that when I was reporting on this,
10 that what I was reporting was accurate. I said, do
11 people who vote via UOCAVA have to prove that they
12 are who they say they are? And he said that they
13 do. So that our understanding of what was required
14 under UOCAVA was correct and that what these states
15 were doing was lawful and that there is a
16 requirement for that.

17 Q. Okay.
18 So did you raise any of the issues based
19 on your research with members of the Pennsylvania
20 State Legislature?

21 A. Yeah. So, of course, I was really
22 concerned when we realized that it appeared that
23 based on our research, that there were some
24 deficiencies in how Pennsylvania was doing it. I
25 reached out to my state representative, and that was

1 Frank Ryan. He's since retired. Interesting - it
2 was an interesting person to consult with. A,
3 because he was my representative. He was also on
4 the state government committee in Harrisburg, also a
5 former U.S. Marine and somebody who has worked in
6 his Marine reserve capacity to help sort of conduct
7 elections in foreign countries. Right? So he had a
8 vast amount of experience with this, and I shared
9 the information from our research with him. And he,
10 too was concerned and offered to ask - there was an
11 upcoming hearing of the State government committee,
12 and I gave him some of the documents, and he offered
13 to sort of ask some of those questions and try to
14 get answers from the Department of State during that
15 state government hearing.

16 Q. Okay.

17 And what all did you give him for
18 purposes of that hearing?

19 A. So I basically reviewed a lot of the
20 research. I did show him that other states, and
21 that the Department of Defense Training says that
22 people have to provide ID, that there is no
23 exemption from ID. There are some exemptions for
24 UOCAVA voters, but not from ID. And so then at the
25 hearing, which was in September of 2022,

1 Representative Ryan actually asked the secretary at
2 the time, Lee Chapman and Deputy Secretary Marks
3 were both testifying. And in response to his
4 questions, Jonathan Marks actually responded. And I
5 think we have that. I don't know if you want to
6 play that, but essentially what he said, if I may
7 paraphrase, is that they do not do any verification.
8 I think he said that those voters are specifically
9 exempt in federal law from providing ID. And of
10 course, that's sort of the point of this whole thing
11 that we don't believe so.

12 ATTORNEY TEUFEL: Mr. Kovatis, am I
13 pronouncing that correctly?

14 HEARING OFFICER: You are.

15 ATTORNEY TEUFEL: Okay.

16 We had as Exhibit 8, really just a
17 link to the hearing Committee meeting on election
18 administration in 2022 that was just referenced.
19 And then in our memorandum, we reference - find that
20 for you. We reference that the section from 59
21 minutes and 10 seconds through 1 hour and 14
22 seconds. So it's basically a one minute clip. If
23 you'd like, I'm happy to play that as part of the
24 hearing, or just leave that for you to review on
25 your own. But the link provided in Exhibit 8 will

1 get you to the page where you can find that video
2 and do it yourself. Or if you prefer, it's only one
3 minute. I can present it now however you prefer.

4 ---

5 (Whereupon, Complainant's Exhibit 8, Video
6 Recording of Public Hearing, was marked for
7 identification.)

8 ---

9 HEARING OFFICER: It's up to you. I
10 will look at it later. If there's something
11 specifically you want to testify to or point out
12 from it here, then maybe. But otherwise, I'm happy
13 to look at it later.

14 ATTORNEY TEUFEL: Okay.

15 Well, sure, since it's only one
16 minute.

17 ATTORNEY MULLEN: Well, I would
18 object. I don't have an objection to admitting this
19 testimony into evidence, but what I do object to is
20 just know one minute from several minutes of
21 testimony of Deputy Secretary Marks. So I would
22 object to that. I would simply request that the
23 hearing examiner review all that testimony, the
24 questioning from Mr. Ryan to Deputy Secretary Marks.

25 HEARING OFFICER: And Ms. Mullen,

1 your point is noted. And whatever we play here, I
2 will go back and look at the context on either side
3 of this, unless you also want to play a bigger clip
4 here. But again, I can go back and look at that.

5 ATTORNEY MULLEN: I don't want to
6 prolong things any, so I'm not going to do that.

7 HEARING OFFICER: I appreciate that.

8 ATTORNEY TEUFEL: Okay. All right.

9 Then I can pull that up real quickly
10 for you. Hang on, I'll get it to the correct point.

11 HEARING OFFICER: And Mr. Teufel,
12 what is the timestamp for the portion that you're
13 playing?

14 ATTORNEY TEUFEL: So the specific
15 section that we would like to have you focus on is
16 59 minutes, 10 seconds through 1 hour and 14
17 seconds. So roughly a 1 minute and 4 second clip.

18 HEARING OFFICER: Thank you.

19 ---

20 (WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

21 ---

22 BY ATTORNEY TEUFEL:

23 Q. So any event, what, if anything, did
24 Representative Ryan do with the information you
25 shared with him?

1 A. So after that hearing, again, I had an
2 opportunity to kind of meet with him and talk more
3 about sort - you know, obviously he's not a lawyer,
4 he's a lawmaker, but he's not a lawyer. I'm not a
5 lawyer. So I shared with him the information with
6 regard to what HAVA requires and what UOCAVA and the
7 MOVE Act required, and gave him the supporting
8 information there to show him that what other states
9 were doing was lawful.

10 But most importantly, what he was really
11 interested in is the fact that there's a provision
12 of HAVA that says that this is kind of like the
13 minimum you can do, right? States can do a lot more
14 than this, but it's like the minimum that you can
15 do.

16 And so he really was - so that's sort of
17 what he was interested in, which led us to sort of a
18 conversation, and again, because the directives that
19 I reviewed, -I guess they're not all directives.
20 Directives and the memos or the overviews on the
21 Department of State's website where they refer in
22 most of those to a decision in Washington,
23 association of Churches versus Reed. I actually
24 printed out a bunch of information from there to
25 show him that even when you look at specifically

1 what Washington ended up doing to resolve that in
2 the final order, and stipulation in that case that
3 they're not really doing what the Department of
4 State says it says.

5 So the Department of State, they refer to
6 that, but when you read the documents in the final
7 order, it essentially says that if you attempt to
8 match. Right? And it doesn't match that, what they
9 ended up doing in that final order was provisionally
10 registering somebody until they could verify their
11 identity and eligibility. That's what the final
12 order was.

13 Q. Let me pull something up on the screen
14 then while you're discussing it. This is referenced
15 in our brief, but I just want to show the Hearing
16 Officer what we're talking about this isn't per se
17 an exhibit. This is an order entered in a case in
18 the Washington Association of Churches versus Reed
19 case. And let me jump to the top of this document.
20 Is this document the document you were just
21 referencing? The order entered by the court
22 subsequent to its opinion in the Washington
23 Association of Churches versus Reed case?

24 A. Right.

25 Q. And then the provision you're referring

1 to in the order, is it the provision shown on the
2 screen, which is provision one B of the order? If
3 the defendant is unable to match driver's license
4 number, state identification card, or last four
5 digits of his or her Social Security number, if the
6 applicant presents and submits to an election
7 official alternative form of identification
8 acceptable under RCW 29 A 44.25, the voter shall be
9 registered to vote effective as of the date of the
10 submission of the receipt of the original
11 application, unless there exists a separate basis
12 for concluding the voter is ineligible.

13 And then if an applicant can - in
14 provision C of one if an applicant does not become
15 registered to vote under either paragraph one A or
16 one B above, unless there exists a separate basis
17 for concluding the applicant is ineligible to vote,
18 independent of the matching process, then the
19 applicant shall be provisionally registered to vote
20 and then all voters provisionally registered
21 pursuant to this paragraph shall be promptly
22 notified in writing of this provisional status, of
23 the need to provide additional documents or
24 information, and of the relevant deadlines. They
25 shall be included in the official rules of

1 registered voters maintained by the states and in
2 all electronic or paper copies used for election
3 administration purposes, but their provisional
4 status may be flagged to indicate that
5 identification is still required before their votes
6 may be counted. All voters provisionally registered
7 pursuant to this paragraph shall be permitted to
8 cast a ballot in any primary or election. Those are
9 the provisions of that order that you were calling
10 to the attention of Representative Ryan.

11 Is that correct?

12 A. Exactly. And just to sort of clarify
13 here, you know, as I said, we did research in a lot
14 of different states. There are some states that
15 allow people who have never resided, right? So if
16 you have never resided in a state but your say
17 parents last address was in a state, some of those
18 states allow people to register in the state where
19 their parents were registered, even if they never
20 lived there. Pennsylvania does not allow that. So
21 for you to be eligible in Pennsylvania, you actually
22 had to at some point live in Pennsylvania, right?
23 So Pennsylvania is not, as the DOD calls it, a never
24 resided state. So at some point you had to live in
25 the United States, right?

1 So if you left the United States, kind of
2 like Alaska rationalizes this, right, you had to
3 have something to get out of the country. So I say
4 that just to point out that in terms of barriers,
5 right? If somebody fills out a federal postcard
6 application as a U.S. citizen to vote in
7 Pennsylvania, in almost every case they have a
8 driver's license or a state issued photo ID. If
9 they don't, they almost certainly have a Social
10 Security number. There are some statistics on the
11 Social Security Administration website that say it's
12 like some tiny percentage of people that don't have
13 a driver's license and only have Social Security
14 number.

15 So in the event that somebody puts those
16 on their federal postcard application, Washington
17 Association of Churches says, try to match it. So
18 the fact that the Department of State is saying we
19 don't even try to match on a federal postcard
20 application, this part of the final order shows that
21 you got to match it. And if it doesn't match, there
22 are things that you can do to remedy it. Because
23 remember, the federal postcard application is both a
24 voter registration application and an absentee
25 ballot application in one.

1 Q. Okay.

2 And so can you talk about what you
3 learned about NV ballots or NV registrations in
4 Pennsylvania, what that means and what you learned
5 about that in your research?

6 A. Yeah. So what's interesting is that in
7 the process that the Department of State uses,
8 right. They don't do like a provisional
9 registration. But what they do is if somebody opts
10 to vote by mail or absentee ballot and they have not
11 been verified. So if they attempted to match a
12 regular one, keep in mind, they do not attempt to
13 match federal postcard applications. But otherwise
14 absentee ballot applications, if they try to match
15 them and they don't have a match, they're still sent
16 a ballot. Right? They still get their ballot, but
17 there's an NV indicated on the ballot type, right?
18 So that it's flagged in the system as needing
19 additional verification.

20 And so we were looking at this in terms
21 of, is this kind of like Pennsylvania's version of
22 provisionally registered kind of thing in terms of
23 what the law says. But what we found is that,
24 again, when it comes to the federal postcard
25 applications, they weren't even attempting the

1 match. So because they weren't even attempting the
2 match, we don't even know if there were any
3 mismatches or not. But when we looked at the number
4 of people who mismatched either on their voter
5 registration application or on their mail or
6 absentee ballot application in 2022, it was a really
7 high number.

8 And so Representative Ryan actually sent
9 a letter to the Department of State saying, like,
10 you should probably clarify these directives because
11 the counties don't understand what they're supposed
12 to do with these NVs. One of the things that I
13 thought was interesting is that in Chester County
14 specifically - so the Department of State said,
15 well, there's only 76,000 of these statewide.
16 Right?

17 But the Chester County Director of Voter
18 Services, Karen Barsoum, was asked about it in a
19 hearing, or, I'm sorry, in a Board of Elections
20 meeting, and she said they had 20 some thousand in
21 Chester County that she had to resolve.

22 Q. Okay.

23 Just to be clear, when an FPCA
24 application to register and obtain an absentee
25 ballot comes in, let's say it contains a driver's

1 license number, or SS four. In Pennsylvania, you're
2 saying your research revealed that the counties, I
3 guess, who are the ones who receive these
4 applications, do not do anything to match the
5 driver's license number or the SS four number.

6 Is that correct?

7 A. That's correct. And Jonathan Marks did
8 confirm that in that testimony as well.

9 Q. When the voters are registered to vote
10 pursuant to an FPCA, and I guess because they don't
11 even check whether the driver's license number or
12 the SS four matched, literally none of the voters
13 registered through the FPCA are marked NV as not
14 verified.

15 A. Correct.

16 Q. Unlike other voters who register by other
17 means, if their information can't be verified, they
18 would be marked NV so that before they would be
19 permitted to vote, the counties would know to obtain
20 additional verification information.

21 A. Right, exactly. And in the case of the
22 UOCAVA voters, just to sort of put a fine point on
23 this, a federal postcard application is good for an
24 entire year. So often if the voting assistant
25 officer on the base is doing their job, they're

1 having people send these in very early on, well
2 before even like a primary election. And so the
3 idea of what Washington Association of Churches
4 said, which is what the Department points to and
5 what other states do, is they don't delay the
6 sending of the ballot. Right? They just say, hey,
7 listen, there was a deficiency on your application
8 and we'd like you to try to fix that. That's a
9 separate process altogether. They're still getting
10 their ballot, they're still doing what they're doing
11 with their ballot, but there's a separate process to
12 try to fix that, whatever the problem was.

13 Q. And so if a UOCAVA - person claiming to
14 have eligibility to vote under UOCAVA fills out an
15 FPCA application to register and receive a
16 provisional ballot without even matching a driver's
17 license or SS four provided, or even if the person
18 checks that they don't have a driver's license or an
19 SS four, you say they're registered without anything
20 done to verify that they are either an eligible
21 voter or are who they say they are, other than just
22 reviewing the FPCA and making sure all the
23 appropriate boxes are checked, et cetera, just
24 relying on whatever information is supplied by the
25 purported UOCAVA voter, nothing's done to actually

1 verify it for registration purposes.

2 And then what about the vote itself?
3 When they receive the - this is also an application
4 for a provisional ballot?

5 A. Not a provisional ballot, it's a -.

6 Q. Oh, I'm sorry. It's an application for
7 an absentee ballot. So the ballot they send this
8 voter who's not had their identity verified, has not
9 had their eligibility verified, they're just taking
10 their word for it on the PCA application, they're
11 sent a absentee ballot. And it's not a provisional
12 ballot, it's just a regular absentee ballot?

13 A. Absolutely.

14 Q. And then how do the counties know when
15 they receive that absentee ballot that this one has
16 never had their identification or their eligibility
17 verified?

18 A. Well, so that's what's interesting, is
19 that the Department of State tells them that they
20 are exempt from identification requirements. But of
21 course, that's not what HAVA says at all.

22 Q. Okay.

23 So you're saying the counties are neither
24 instructed to do anything nor do they do anything to
25 verify the identification or eligibility of a UOCAVA

1 voter who has sent the provisional ballot to that
2 county? Sorry, not provisional ballot, absentee
3 ballot to that county.

4 A. Correct.

5 Q. Did the - you mentioned Representative
6 Ryan sending a letter to the Department of State.
7 Did the Department of State respond to that letter?

8 A. They did.

9 Q. Okay.

10 And I'm going to pull up what's been
11 marked Exhibit 3 and ask you to tell me, is that the
12 response to the letter?

13 ---

14 (Whereupon, Complainant's Exhibit 3, 10/28/22
15 Letter, was marked for identification.)

16 ---

17 BY ATTORNEY TEUFEL:

18 Q. Give me one second to pull it up.

19 Q. I'm showing you what's been marked
20 Exhibit 3. Is this the letter that the Department
21 of State sent in response to Representative Ryan's
22 letter that you were referencing earlier?

23 A. It is.

24 Q. Okay.

25 And anything in particular that you want

1 to highlight in this letter?

2 A. Yeah. So on page two, the first full
3 paragraph on page two. Right? Says under
4 Pennsylvania law - you know, it points out that
5 under Pennsylvania law, the County Board of
6 Elections must determine the qualifications of the
7 applicant by verifying proof of identification and
8 comparing the information provided on the
9 application. Right? So again, that kind of speaks
10 to the requirement to verify information on - here I
11 think they're talking about verify the information
12 on the application for mail ballot.

13 But remember, a federal postcard
14 application is both a voter registration and an
15 absentee ballot application. And so all of the
16 criteria has to be met for both of those things.
17 And so it talks about how they have to verify their
18 identity. And then if you go down to the paragraph
19 four on this page where it says your letter ignores.
20 Okay. What you'll notice there, it says counties
21 down - about halfway through counties must and do
22 reject mail and absentee ballots from individuals
23 whose proof of identification could not be verified.

24 But again, in the case of these UOCAVA
25 voters, they're not even trying to verify. And

1 again, I think that in my opinion, when you look at
2 HAVA says that if somebody gives you a driver's
3 license, you have to try to match it to a database.
4 If they give you a Social Security number, you have
5 to try to match it. And the vast majority of these
6 have either a driver's license or a Social Security
7 number.

8 Q. And you're saying your research revealed
9 that the counties are doing nothing to even attempt
10 to match the driver's license number, or SS four
11 numbers when they receive these FPCA applications.

12 A. Correct.

13 Q. Okay.

14 A. I will say, though, if I could just point
15 out one thing, one of the things that they do do,
16 right? And this is something that they do do, which
17 is very helpful, is they do a search to see if the
18 person is already registered before they create a
19 new registration. Right? They're checking to see
20 if they are already registered. So that is a check
21 that they do. If they don't find them, then they
22 add them without ever querying the PennDOT database
23 and without ever querying the Help America Vote
24 verification system with the Social Security
25 Administration.

1 ATTORNEY TEUFEL: I would like to
2 offer Exhibit 3 into evidence.

3 HEARING OFFICER: Any objection?

4 ATTORNEY MULLEN: No.

5 ATTORNEY TEUFEL: Thank you.

6 BY ATTORNEY TEUFEL:

7 Q. So what led you to file the complaint in
8 this matter?

9 A. Well, Representative Ryan retired. I was
10 hoping that he was going to have some ability to do
11 it, but he made the decision that he wasn't going to
12 run again. And so when we shared this with the
13 board and - the Steering Committee, I should say
14 it's not really official board. It's like a
15 steering committee, like a group of the leaders of
16 Pennsylvania fair elections. They said, you know,
17 like, why can't - why can't we you know, just point
18 out what the law says.

19 So when you look at what HAVA says about
20 verifying driver's licenses or Social Security
21 numbers when the person has it, we thought that was,
22 like, a pretty clear issue that we could raise
23 through the HAVA complaint process. So we were just
24 very much concerned about that. We were concerned,
25 again, that when people who aren't authorized or

1 aren't qualified to vote in an election, even if one
2 person votes, that's diluting the votes of valid,
3 qualified electors.

4 And, of course, we talked to quite a few
5 veterans and active duty members of the military, my
6 father is a veteran. And they were really kind of
7 also surprised. Right? I mean, this is supposed to
8 protect them. And they were surprised by this as
9 well. So that led us to the idea that we were going
10 to go ahead and file. Especially in light of the
11 fact that the Department of State acknowledges that
12 they don't do any sort of verification and that they
13 seemingly - to the Pennsylvania Fair Election
14 Steering Committee, it seemed like they were
15 misinterpreting this tiny, narrow exception and
16 making it apply to something much broader than what
17 it was.

18 Q. So when you say the Department of State
19 acknowledges that they don't verify the information
20 submitted on the FPCA, in what way did they
21 acknowledge that?

22 A. Well, again, I think that the questions
23 that Representative Ryan asked Jonathan Marks just
24 to confirm - we had talked to county election folks
25 and they no, we don't have to do anything with them.

1 We just have to register them and make sure that
2 their ballots are sent out timely. Right? Because
3 the Department of Justice actually does follow up on
4 that. And if somebody submits a federal postcard
5 application and you send a ballot to them with - 40
6 days before the election instead of 45, it's
7 possible the Department of Justice will send a
8 letter saying, hey, you did not follow and you
9 didn't do it in 45 days.

10 I think that the counties, at least the
11 people that we've talked to, I should say, obviously
12 we didn't talk to all 67 counties, but the people
13 that we talked to felt like that they were to make
14 sure that you don't query the driver's license or
15 Social Security number. You just get them
16 registered if they're not already registered.

17 A. All right.

18 Q. So what is the basis for your complaint
19 as you understand it?

20 A. Yeah, so the basis for the complaint,
21 again, when I wrote it, I'm not a lawyer, but I know
22 a bunch of lawyers. And so just like an ordinary
23 person reading HAVA, it basically says that this is
24 the minimum that a state can do. States can do a
25 lot more than what HAVA says, but states cannot do

1 less than what HAVA says. And so to our reading, it
2 said that if somebody has a driver's license or a
3 Social Security number, that they have to include
4 it. If they say they don't have it when they do,
5 that's perjury, according to the federal postcard
6 application. And so we felt like this would change
7 nothing for the voters. Right?

8 All the Department of State would have to
9 do is just say, oh, hey, by the way, when you get
10 this, just like if you got a paper voter
11 registration form from a voter registration drive,
12 check the driver's license, check the Social
13 Security number, see if it matches. And if it does,
14 great. If not, there are things - and there's
15 actually stuff in the federal postcard application
16 instructions that was their C exhibit that you
17 showed. If you read through there, it talks about
18 following up to correct deficiencies on there by
19 email. Right? Because most of them -.

20 Q. Yeah, let me pull that up then. Hang on
21 a second. You can point exactly to what you're
22 talking about.

23 A. Okay.

24 Q. In Exhibit C/Exhibit 5.

25 ---

1 (Whereupon, Complainant's Exhibit 5, FPCA 2013,
2 was marked for identification.)

3 ---

4 BY ATTORNEY TEUFEL:

5 Q. All right. Okay.

6 A. So if you scroll through there a little
7 bit. I'll see if I can find it.

8 Q. What are you looking for? I'm sorry.

9 A. I'm just looking for the instructions
10 there. I think go down to C-5. It might be on C-5.
11 Right. So C-5 says that - let me see here. So go
12 down just a little bit more. Okay.

13 Right. So it says your contact
14 information. So if you look at section four, your
15 contact information is recommended so that your
16 election official can contact you if they need
17 additional information in order to accept your
18 federal postcard application. Right?

19 So they're saying, hey, if there's a
20 deficiency on your federal postcard application,
21 make sure your email is there so we can contact you,
22 so you can fix it, so we can accept it. Right? I
23 think that sort of supports the idea that there's
24 this open line of communication. Again, most of
25 these do come in via email, and that's on the

1 instructions for the federal postcard application.

2 But I think the other thing, too, in
3 terms of why we submitted this complaint is, again,
4 I think that I can say this. I don't know if I'm
5 allowed to say this. I guess you'll tell me if I
6 can't, but that there's no federal exemption from
7 ID. The federal postcard application has
8 requirements for ID. And so I think that there's a
9 misunderstanding in terms of the way that the state
10 is reading it.

11 And even though state law says they're
12 exempt from ID, state law can't trump what the
13 federal law says. And so we just felt like if
14 somebody looked at this, because we checked to see
15 if anybody had ever challenged these directives
16 before, and we didn't find that. So we just felt
17 like if somebody had an opportunity to look at it
18 again, it places no burden on the voter. Right?
19 It's just a matter of having the county election
20 officials do what is required in federal law and
21 verify the information provided on an application
22 for voter registration.

23 Q. Okay.

24 And we submitted as Exhibits 1 and 7, the
25 particularly pertinent section of the Help America

1 Vote Act, which is 2103, just for your convenience.

2 ---

3 (Whereupon, Complainant's Exhibit 1, HAVA 21083,
4 was marked for identification.)

5 (Whereupon, Complainant's Exhibit 7, Excerpts of
6 Congressional Record 10/16/22, was marked for
7 identification.)

8 ---

9 ATTORNEY TEUFEL: I know you can
10 probably pull it out West Law yourself as well, of
11 course. But the particularly Exhibit 7 are the
12 excerpts of the congressional Record related to that
13 provision, which we cite in reference in our
14 memorandum of law. So I don't know - to the extent
15 we need to, but we'll offer Exhibits 1 and 7 into
16 the record. They are really more for convenience
17 for the Hearing Officer and being able to find those
18 things. They are really - they're law and/or legal
19 legislative history. So they're offered for your
20 convenience into the record.

21 HEARING OFFICER: That's understood.
22 Ms. Mullen, do you have any objection to accepting
23 those in the record?

24 ATTORNEY MULLEN: No objection.

25 ATTORNEY TEUFEL: Okay.

1 out, it says that you must provide your Pennsylvania
2 issued ID or your Social Security number if you have
3 them. Right? And again, because Pennsylvania is
4 not a never resided, just about everybody has them.
5 And it says that it's required. And then of course
6 - so this is just kind of to show that even on the
7 FVAP website, using Pennsylvania's requirements,
8 some states require a full Social Security number.
9 Pennsylvania is just the last four. But the fact
10 that it is required and that HAVA says that you have
11 to verify the information provided, it seems to me
12 that this would cover the vast majority of people
13 who submit a federal postcard application.

14 And it's not an additional requirement.
15 Right? That's, I guess the point that I'm trying to
16 make is that there's no additional - you don't have
17 to do - the voters are still doing exactly the same
18 thing. What we're asking really is for the
19 Department of State to correct what we believe is
20 their incorrect guidance.

21 Q. Okay.

22 ATTORNEY TEUFEL: And I would like to
23 offer into the record Exhibit 11.

24 HEARING OFFICER: Any objection?

25 ATTORNEY MULLEN: No objection.

1 BY ATTORNEY TEUFEL:

2 Q. Okay.

3 So what is the specific HAVA violation.
4 that you're alleging in your complaint?

5 A. So the specific one is really the failure
6 to meet the minimum requirements which require the
7 state to verify the information provided on a voter
8 registration application and to verify the identity
9 and eligibility prior to voting in any federal
10 election. We think that HAVA is pretty clear in
11 that, that the exception noted in HAVA is really
12 very narrow. It only applies to the requirement to
13 include something with your ballot.

14 As you can see on the Exhibit C that we
15 looked at, there's nothing to prevent the county
16 from contacting the person to fix a problem on their
17 federal postcard application. So the exception in
18 HAVA just says, hey, if you are eligible to vote
19 under UOCAVA, you don't have to photocopy your ID
20 and put it in with your ballot. Right? I mean,
21 that's essentially what it says, and for obvious
22 reasons. Right? I mean, that makes sense that they
23 would put that exception. And if you read the
24 congressional record, which we did as part of the
25 sort of background research, you can see what the

1 intent of the legislators in doing this.

2 Q. So what are you asking the Department of
3 State to do?

4 A. Yeah, so we're really asking the
5 Department of State that when they get a federal
6 postcard application, to attempt to match the
7 information provided and if there's not a match, to
8 follow up on the federal postcard application, as
9 the instructions say they will, and just know your
10 something is deficient, something's missing,
11 whatever. Please fix it. Not to delay the delivery
12 of the ballots in any way, but to make sure that
13 they're verifying.

14 And then in the case where somebody
15 affirmatively states under penalty of perjury, that
16 they've never received a driver's license and
17 they've never been issued a Social Security number
18 to give the county some guidance on what they should
19 ask for. Send us a copy of your email me your
20 utility bill, email me a passport, anything. Just
21 give the county some guidance on how they should
22 follow up in the very rare situation where somebody
23 again says they don't have a driver's license or a
24 Social Security number.

25 And so we're just really asking the

1 Department of State to kind of fix what we believe
2 are deficiencies in the process to protect voters.

3 Q. So I guess there's different ways of
4 addressing the problem that your research has
5 identified. Could they just mark the registrations
6 NV the way they do when they have other
7 registrations that haven't been verified? Would
8 that be enough to signal to the county that they
9 need to do additional inquiry to confirm the
10 eligibility and identification of the voter before
11 processing their votes?

12 A. I mean, they certainly could do that, but
13 the problem is that if they don't first do the HAVA
14 required matching in the database, they won't know
15 if they're verified or not. So they can't give them
16 an NV designation if they don't check to verify.

17 Q. Got you. Okay. All right.

18 Anything else you'd like to cover that I
19 haven't remembered to ask you about?

20 A. I can't think of anything.

21 ATTORNEY TEUFEL: Let me then just go
22 down our list of exhibits. Make sure I've offered
23 all of them.

24 HEARING OFFICER: While you're doing
25 that, Ms. Mullen, do you want to examine the

1 witness?

2 ATTORNEY MULLEN: I do have a short
3 examination.

4 HEARING OFFICER: Okay. Mr. Teufel,
5 we can take care of that at the end. Ms. Mullen, if
6 you're ready to proceed - well, Mr. Teufel, do you
7 have any other questions before -?

8 ATTORNEY MULLEN: Yeah. The only
9 reason I wanted to look through my list of exhibits
10 and make sure I didn't have any additional questions
11 is because - and I do actually have just one follow-
12 up question. Because there's one more exhibit I
13 wanted to get into the record that I neglected to
14 bring up with the witness. That's Exhibit 12.

15 ---

16 (Whereupon, Complainant's Exhibit 12, Heather
17 Honey FVAP Training Certification.)

18 ---

19 BY ATTORNEY TEUFEL:

20 Q. And this will be real quick, but I'm
21 going to share Exhibit 12 with you. Now, can you
22 identify for the Hearing Officer what Exhibit 12 is?

23 A. Yeah. So this is the - FVAP does a
24 training program online where you kind of go
25 through, you watch the instructions, and then you

1 kind of get your certificate of training. I had
2 done this, I don't know, a couple of years ago, but
3 I never got the certificate. So I just redid it so
4 that - to have the certificate, to show that I have
5 actually gone through all of those different
6 training modules available from the Department of
7 Defense.

8 Q. Okay, terrific.

9 ATTORNEY TEUFEL: So I would offer
10 Exhibit 12 as well into the record.

11 HEARING OFFICER: Any objection?

12 ATTORNEY MULLEN: No.

13 ATTORNEY TEUFEL: Okay, then with
14 that, I guess that would be the conclusion of our
15 Direct Examination of this witness. Thank you.

16 HEARING OFFICER: Great.

17 Ms. Mullen, before I hand it over to
18 you, we've been going about an hour and a half.
19 Does anybody need a quick comfort break, or do we
20 just want to proceed? And hearing nothing, I will
21 say, let's go ahead and proceed, Ms. Mullen, any
22 questions you have for the witness.

23 ATTORNEY MULLEN: Thank you.

24 ---

25 CROSS EXAMINATION

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BY ATTORNEY MULLEN:

Q. Good morning, Ms. Honey.

A. Good morning.

Q. I think it's still morning, right? Can you take a look at your Complainant's Exhibit 1, please? Which was the HAVA statute, section 21083.

ATTORNEY TEUFEL: Do you want me to pull it up for you, Ms. Mullen?

ATTORNEY MULLEN: If that would be convenient.

ATTORNEY TEUFEL: Yeah, I can do that.

ATTORNEY MULLEN: I appreciate that. Thank you.

ATTORNEY TEUFEL: Yeah.

THE WITNESS: What section of it? What page?

BY ATTORNEY MULLEN:

Q. Yeah, I just want to direct you to -.

ATTORNEY TEUFEL: Just take me a second. I'll scroll as you direct me. Okay. We're there.

ATTORNEY MULLEN: To page three, please, at the bottom.

1 ATTORNEY TEUFEL: Okay.

2 Page three of eight of Exhibit 1
3 we're scrolling to? Okay.

4 ATTORNEY MULLEN: Yes.

5 ATTORNEY TEUFEL: Okay. Here?

6 ATTORNEY MULLEN: Yes.

7 BY ATTORNEY MULLEN:

8 Q. We're talking about section A5 of HAVA.
9 And that is a requirement for provision of certain
10 information by applicants in connection with
11 registering.

12 Correct?

13 A. Correct.

14 Q. And so you would agree that that provides
15 that applicants are either supposed to provide
16 either their driver's license or their SSN four or
17 if they don't have that to state that.

18 Correct?

19 A. Right. I think that what it does say,
20 though, is that if you have a driver's license, you
21 must use that. Only if you have never been issued a
22 state driver's license, then you can use your Social
23 Security number. And only if you have never been
24 issued either can you provide some other
25 documentation to establish identity and eligibility.

1 Q. And then turning to page four, the next
2 page there. There's a Romanette three. Do you see
3 that?

4 A. Yeah.

5 Q. And essentially that says the state shall
6 determine whether the information provided by an
7 individual is sufficient to meet the requirements of
8 this sub paragraph in accordance with state law.

9 Right?

10 A. Right. This paragraph being the
11 paragraph on verification of voter registration
12 information.

13 Q. Yes. And you said this before, I just
14 wanted to make sure I had it. You said HAVA was
15 sort of a minimum requirement and states could do
16 more.

17 Is that right?

18 A. Yes. HAVA establishes the minimum
19 standards. There's actually a paragraph in here
20 somewhere that says that HAVA establishes the
21 minimum, that there's nothing to prevent the states
22 from doing more, but that states may not do less
23 than what HAVA says.

24 Q. You want to take a look at DOS Exhibit C,
25 please?

1 ATTORNEY TEUFEL: I can pull that up
2 for you too, if you like.

3 ATTORNEY MULLEN: Thank you. And
4 going to - I want to go to C-5.

5 ATTORNEY TEUFEL: Okay.

6 Sorry, I think I have to pull it up
7 from my email again. One second. Sorry.

8 ATTORNEY MULLEN: No, thank you.
9 Appreciate it.

10 ATTORNEY TEUFEL: Okay. This should
11 work. Okay. And you wanted what page started?

12 ATTORNEY MULLEN: C Five.

13 ATTORNEY TEUFEL: Okay.

14 There's C -5. Okay.

15 BY ATTORNEY MULLEN:

16 Q. And scrolling down a little bit. These
17 are the Pennsylvania instructions for completion of
18 the FPCA.

19 Right?

20 A. Right.

21 Q. And for Section One, Pennsylvania UOCAVA
22 applicants are instructed to must provide your
23 Pennsylvania issued ID number, the last four digits
24 of your Social Security number, or if you do not
25 have any of these, you are supposed to so state.

1 Correct?

2 A. Correct.

3 Q. Okay.

4 And I think you also had noted this in
5 your testimony that section four requests contact
6 information so that if the local county official had
7 questions about an application, they could
8 communicate with that registrant.

9 Correct?

10 A. Correct.

11 Q. And also section six requests that a
12 registrant provide any information that may assist
13 your election official in accepting this form.
14 Right?

15 A. Correct.

16 Q. And in Pennsylvania, the election
17 official, that will be the 67 counties Boards of
18 Elections.

19 A. Correct.

20 Q. At the bottom of C-5, there is a section
21 that states voting your ballot.

22 Do you see that?

23 A. Okay. Yeah, I see.

24 Q. Okay.

25 And then going on to the next page, that

1 requires that a voted ballot must be mailed to your
2 election official.

3 Is that right?

4 A. Correct.

5 Q. Do you have any reason to disagree that
6 voted ballots must be emailed to the election
7 official in Pennsylvania?

8 A. No. Voted ballots may not be emailed.
9 They have to be mailed.

10 Q. Sorry. I'm sorry. I apologize. Let me
11 ask the question again. Do you have any reason to
12 disagree that voted ballots must be mailed to the
13 election official in Pennsylvania?

14 A. No. I believe that's the law, and I
15 believe that's the guidance provided to the counties
16 that they must do that.

17 Q. Right. So email provision of a voted
18 ballot is not allowed under Pennsylvania law.

19 Is that right?

20 A. Correct. Right.

21 Q. I think I may have misunderstood
22 something in your briefing. I just wanted to make
23 that clear.

24 ATTORNEY TEUFEL: We would stipulate
25 to that. We were talking about emailing the ballot

1 to the voter, not the other direction.

2 ATTORNEY MULLEN: Very well.

3 BY ATTORNEY MULLEN:

4 Q. Now, going to your Representative Ryan's
5 letter, and there's a number in there, this 240,000
6 number. Do you recall that?

7 A. I do.

8 HEARING OFFICER: Hold on. Ms.
9 Mullen, which exhibit are we looking at? Three?

10 ATTORNEY MULLEN: Exhibit 3.

11 ATTORNEY TEUFEL: I'll pull it up.

12 Yeah, it is 3. There we go.

13 BY ATTORNEY MULLEN:

14 Q. Where this 240,000 unverified ballot
15 number, do you know where Representative Ryan got
16 that number?

17 A. I do.

18 Q. Okay.

19 And where is that?

20 A. So, on the Department of - well,
21 actually, it's like data.pa.gov, the Department of
22 State publishes the mail ballot request, not with
23 names or anything, just like the county, the kind of
24 ballot, et cetera. And on that document, it does
25 identify those ballot types that are NV ballot

1 types. So there's an NV mail ballot, and there's an
2 NV absentee ballot.

3 In the run up to the 2022 election, we
4 were pulling that data down. It's updated maybe
5 every couple of days. It might be updated every
6 day, I'm not sure. But we were pulling that data
7 down and just doing account of how many of these
8 ballot types, the NVs were out there. And again,
9 none of the UOCAVA ballot types were NV. None,
10 zero. So the NV was the other mail or absentee
11 ballots. And the total ended up being, I think, at
12 the end of it, like, close to 250,000 NVs.

13 Q. Okay. Thank you. I was just trying to
14 clarify.

15 So that number came from you?

16 A. It came from the Department data.pa.gov.

17 Q. And your analysis of that data?

18 A. Not necessarily mine, but I confirmed it.
19 But it's still up there. You can download it and
20 look at that as well. It's still on the website
21 from 2022.

22 Q. Okay.

23 And that was not a number that reflected
24 UOCAVA voters.

25 A. No. In fact, there was zero NV UOCAVA is

1 really kind of the point.

2 Q. You had provided a Right to Know request
3 response from Lycoming County.

4 Is that right?

5 A. Right.

6 Q. Exhibit 13.

7 ATTORNEY TEUFEL: I can pull that up
8 if you'd like.

9 ATTORNEY MULLEN: Sure.

10 ATTORNEY TEUFEL: Did that work?

11 ATTORNEY MULLEN: Yeah.

12 ATTORNEY TEUFEL: Wow. Thank you.

13 That's a lot smoother than I had been doing it.

14 Okay.

15 BY ATTORNEY MULLEN:

16 Q. And the date of that - I just want to be
17 clear. The date that you made that Right to Know
18 request was in August of 2023.

19 A. To be clear, I did not do this. The PA
20 Fair Elections folks, not me specifically, did this
21 Right to Know request. Obviously, were all working
22 together, but it was really - you know, because we
23 had gotten the federal postcard applications and we
24 had reviewed all of them and found that based on
25 Pennsylvania's requirements, there were

1 deficiencies. And it was our understanding, based
2 on the research, that there was no follow up done.
3 We just wanted to confirm from a county where we had
4 known deficiencies, to confirm that they - well, to
5 see if they did actually email the applicant to fix
6 those problems. And so this was like a confirmation
7 of what we had kind of already determined. But,
8 yeah, it was submitted. Looks like they received it
9 on August 29 of 2023.

10 Q. And that was more than two years from the
11 November 3, 2020 end date to your request.

12 Right?

13 A. Yeah.

14 Q. You talked a little bit about the
15 founding of Pennsylvania Fair Elections. Did you
16 establish that?

17 A. Yeah, me along with the board we did. Or
18 not the board. I mean, it's like a steering
19 committee. It's like a bunch of people that got
20 together and decided that we wanted to start having
21 these meetings and putting together county
22 taskforces to improve their relationship with their
23 county election officials, their Board of Elections,
24 and really sort of work on those relationships.

25 Q. Does Pennsylvania Fair Elections have a

1 website?

2 A. Yep, we do.

3 Q. And you had talked a little bit about
4 weekly calls and training. What types of training
5 does Pennsylvania Fair Elections offer?

6 A. You know, it kind of covers all areas of
7 election operations. Right? So sometimes, as I
8 mentioned, in the month of October, what we did is
9 we took different sections from Election day
10 operations so that we could sort of go through and
11 do training on everything from provisional ballots
12 to voters in need of assistance to what's the
13 process for surrendering a mail ballot at the
14 polling place? How do you check people in? We did
15 demos of Epoll books, various different
16 manufacturers of Epoll books, so that people - there
17 are some counties that are using Epoll books for the
18 first time. So we did some training on how that
19 works and paper poll books, just general election
20 operations.

21 Q. So you are a certified voting assistance
22 program. Well, let me ask that. Can you describe
23 what your certificate of training actually
24 establishes?

25 A. So on the DOD website for the Federal

1 Voting Assistance Program, they have modules for
2 somebody who wants to be like a voting assistance
3 officer. Right? So every base has to have - they
4 have to designate somebody to be that person. And
5 so they're just like online training modules, which
6 a couple of years ago, when we were doing this
7 research initially, I thought that they were
8 extremely helpful in just understanding what the
9 requirements were. So I had done that, and then
10 when I mentioned that I had done that, I don't know
11 if it was - it might have been Greg asked if I had
12 any sort of documentation of it. And at the time,
13 it didn't occur to me to - you know, it offers you
14 the opportunity to print your certificate of
15 completion. But I didn't do it then, so I just went
16 through it again. And you have to answer, it's like
17 a quiz kind of thing to get your certificate. So I
18 did it again to get the certificate. So it's just
19 modules to show that you understand what the
20 requirements are.

21 Q. So you would say you are familiar with
22 UOCAVA.

23 A. Yes.

24 Q. And overseas citizens are entitled to the
25 benefits of UOCAVA.

1 Is that correct?

2 A. They are.

3 Q. Are you familiar with the press release
4 that was issued in connection with this complaint?

5 A. I am.

6 Q. Did you write that press release?

7 A. Most of it. Not all of it, but most of
8 it.

9 Q. And what - what? Let me strike that.

10 Did Mr. Kaardal ever represent you in
11 this matter?

12 A. He did not. So - so he did not represent
13 me. I do work for. I'm a contractor for Mohrman,
14 Kaardal and Erickson, which is his firm. And so,
15 obviously, as I was going through this, I consulted
16 with him, and there's another attorney in his firm
17 who was very, very helpful to me. And I had hoped,
18 because they were talking to us about it, I had
19 hoped that they would be able to represent us. So
20 when I filed it, I included them on there. But
21 obviously, I shouldn't have because I wasn't paying
22 them. Right? They pay me. I wasn't paying them.
23 I made an assumption that I should not have made.

24 ATTORNEY MULLEN: I would just like
25 to request that Department's Exhibit B, which is the

1 press release, be admitted.

2 ATTORNEY TEUFEL: No objection.

3 ATTORNEY MULLEN: Thank you. I have
4 nothing further.

5 HEARING OFFICER: Mr. Teufel,
6 anything else for Ms. Honey?

7 ATTORNEY TEUFEL: Are there any
8 follow-up questions you would like me to be asking,
9 Ms. Honey, or you feel like we're good?

10 HEARING OFFICER: I'm asking if you
11 have anything based on what Ms. Mullen just -.

12 ATTORNEY TEUFEL: Right. Right off
13 the top of my head, I don't. I mean, I'm happy to
14 take a break and commiserate with my client to make
15 sure there's nothing she feels we should follow up
16 on. Or she can let me know right now in the
17 hearing, if you prefer, on a break, we can discuss
18 it. Whatever you prefer, Ms. Honey.

19 THE WITNESS: I mean, could we take
20 five minutes?

21 ATTORNEY TEUFEL: Would that be all
22 right, Mr. Kovatis?

23 HEARING OFFICER: Okay, fine by me.
24 But let's try to limit it to five minutes.

25 ATTORNEY TEUFEL: We will do.

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(WHEREUPON, A SHORT BREAK WAS TAKEN.)

HEARING OFFICER: We are back on the record after a break. Mr. Teufel, any further questions for Ms. Honey?

ATTORNEY TEUFEL: No further questions. Thank you.

HEARING OFFICER: I'm looking down at the pre hearing exhibits. It looks like you've gone through your only listed witness and all of your exhibits. Is there any other evidence the Complainant has to present?

ATTORNEY TEUFEL: No, we do not. Thank you.

HEARING OFFICER: Ms. Mullen, bearing in mind we'll come back for argument, is there any evidence, any additional evidence that the Department would like to present?

ATTORNEY MULLEN: No other evidence. Thank you.

HEARING OFFICER: We have not gotten to your Exhibit A, I believe.

Is that correct?

ATTORNEY MULLEN: I can withdraw

1 that. It's fine.

2 HEARING OFFICER: Okay, then - great.
3 So, Mr. Teufel, I will then turn it over to you.
4 And we can talk about the legal issues in the case.

5 ATTORNEY TEUFEL: Thank you. I'm
6 going to pull up Exhibit 1, which is the section
7 21083 of the Help America Vote Act. Just for
8 purposes of this sort of brief encapsulation of our
9 argument here.

10 We've obviously presented argument at
11 length in our memorandum, and that's what I'll
12 primarily rely upon. But I do want to highlight.
13 We are looking at section A5, verification of voter
14 registration information and the required provision
15 of certain information by applicants. And then if
16 you look at A53, it talks about determination of the
17 validity of the numbers provided. It says, the
18 states shall determine whether the information
19 provided by an individual is sufficient to meet the
20 requirements of this subparagraph.

21 There is no inapplicability under
22 UOCAVA for UOCAVA voters or alleged eligible UOCAVA
23 voters or having their information provided must be
24 verified. They must determine the validity of the
25 numbers provided. And when you say how must they do

1 that? Well, look to the next section requirements.
2 Again, requirements, not optional, or state
3 officials, how they shall determine the chief state
4 election official has to enter into an agreement to
5 be able to compare driver's license numbers and an
6 agreement to be able to compare Social Security
7 numbers. So the specific means by which they are
8 supposed to be determining whether the information
9 provided is sufficient to meet the requirements of
10 the subparagraph.

11 And note that the special rule only
12 applies - a special rule that allows them to not
13 have a valid driver's license number or Social
14 Security number applies only in the case of an
15 applicant who does not have a valid - has not been
16 issued a current valid driver's license number or
17 Social Security number.

18 So you've had testimony today that
19 indicates that unlike other voters where you
20 register to vote in Pennsylvania and you provide a
21 non-matching Social Security number, a non-matching
22 driver's license number or claim not to have either,
23 where they mark the registration NV in the sure
24 database, which signals to the counties to then do
25 follow up identification to make sure that the

1 person is both eligible to vote and is who they say
2 they are before they allow them to vote, whether it
3 be in person, whether it be by mail, in vote, or by
4 absentee vote.

5 For UOCAVA voters only because they're
6 not subject to the requirement of inserting with
7 their absentee ballot their identification
8 information, nothing is done. They're not marked NV
9 when they register via an FPCA application. They
10 don't even check if the driver's license number
11 matches or the Social Security numbers match. So
12 they can't even know whether to put an NV on there.
13 And then they don't warn the counties, this is a
14 person who hasn't had their eligibility or
15 identification verified in any way, and then they
16 just send out an absentee ballot, not a provisional
17 absentee ballot or standard absentee ballot. When
18 the county receives that, they have no indication
19 anywhere that this person's ballot - they have not
20 had their eligibility or their identification
21 verified in any way.

22 UOCAVA yes, liberally allows overseas
23 and military voters to vote. We're not trying to
24 prevent that in any way, shape or form. But
25 Pennsylvania law, the Pennsylvania Constitution

1 requires basic eligibility requirements to be met
2 and that only people who actually do meet those
3 eligibility requirements and not some imposter, only
4 those people be allowed to vote. And so the
5 requirements are clear on the Secretary of State to
6 give instructions to the counties to allow them to
7 fulfill their statutorily required and
8 constitutionally required duties to process only
9 votes of eligible voters who are who they say they
10 are. And by failing to match, which again have a
11 specifically requires that the state shall determine
12 whether those numbers match by entering into these
13 agreements.

14 By failing to do that with respect to
15 FPCA applications, the state has created a loophole
16 where someone who's not who they say they are, not
17 otherwise eligible to vote in Pennsylvania can fill
18 out an FPCA application, not have the numbers
19 checked, receive an absentee ballot, send the
20 absentee ballot in, have no follow up done by the
21 county to determine that voter's eligibility or
22 identity, and have the vote processed and counted,
23 diluting other valid votes with votes that have not
24 been vetted in any way to ensure that they are
25 valid. That's an intolerable situation and we would

1 ask that the Secretary of State be directed to fix
2 the situation.

3 There are obvious ways it can be
4 done. We're not trying to specify a one way to do
5 it, but obviously they are required under HAVA, this
6 is not discretionary, go through the matching
7 process with regard to FPCA applications, which
8 they're not doing currently, so that the information
9 is then available to then act on beyond that. When
10 they have non matching, or when someone selects that
11 they do not have a valid state driver's license
12 number or SS four, then they should be directed,
13 presumably, unless you want to do something wildly
14 inconsistent with what they do with every other
15 voter that doesn't have a matching number, they
16 should be marking those registrations NV and then
17 treating them the same way when they receive an
18 absentee ballot as other absentee ballots of other
19 voters who did not have a matching state driver's
20 license or matching Social Security number, and
21 allow and direct the counties to do the appropriate
22 follow up to determine the voters eligibility and
23 identity. So that's all we're asking for.

24 I think the factual record is established
25 that what should be occurring is not occurring here

1 and we ask that be rectified. Thank you.

2 HEARING OFFICER: Thank you, Mr.
3 Teufel, a couple quick questions. Where - when you
4 say that HAVA requires the matching process.

5 ATTORNEY TEUFEL: Yes.

6 HEARING OFFICER: Are you pointing to
7 5A3.

8 ATTORNEY TEUFEL: Both 5A3 and 5B
9 work together in saying you are required, states
10 shall, to determine the validity of the numbers
11 provided. HAVA is really clear. States are
12 required to determine the validity of numbers
13 provided and it says how in 5B, specifically through
14 comparing to the State motor vehicle database and
15 comparing to the Social Security database via the
16 contracts. So it's not leaving ambiguous how you're
17 supposed to go about determining whether the
18 information provided is sufficient to meet the
19 requirements of the subject.

20 How are you supposed to determine the
21 validity through comparing them to the database.
22 They're not doing that currently, and they've not
23 rebutted that evidence and testimony in any way,
24 shape or form. They don't seem to be maintaining
25 factually that they are doing it currently. They

1 should be directed to do that.

2 HEARING OFFICER: So when you're
3 pointing to subsection B, how do you reconcile, and
4 I believe the Department pointed this in their
5 papers, the provision - that these provision does
6 not apply to UOCAVA voters, that the five B - I'm
7 sorry, That the subsection B requirements do not
8 apply to UOCAVA voters. How can I consider a
9 violation of five - how do I consider a violation of
10 B when it says B doesn't apply to UOCAVA?

11 ATTORNEY TEUFEL: When you say B
12 doesn't apply, you're not talking about 5B, you're
13 talking about 21083. So this B does apply. Okay?
14 There's no exemption for - no inapplicability for
15 UOCAVA voters for this requirement. Now, when
16 you're talking about B, you're talking about
17 requirements for voters who register to vote by
18 mail. There is an exemption if I scroll down - or
19 not an exemption, but an inapplicability under B3.
20 This is 21083 B3C. It's inapplicable if they're
21 entitled to vote under UOCAVA.

22 And what are they saying is
23 inapplicable? They're saying what's inapplicable is
24 21083 one and two, which basically say if they've
25 registered and they haven't provided it, don't have

1 a matching number, essentially, then they have to
2 enclose certain acceptable forms of identification
3 with their ballot. UOCAVA voters do not have to
4 send that information with their ballot. That's all
5 that's inapplicable. HAVA does not generally say,
6 hey, UOCAVA voters do not have to prove they're
7 eligible or they are who they say they are under
8 state law. You, in fact, are not allowed under HAVA
9 to verify the eligibility or identification of
10 voters. Doesn't say that. It just says you're not
11 requiring them to enclose it with their ballot.

12 So with the postcard application, the
13 federal postcard application, they're not required
14 to enclose those items. That does not exempt them
15 from the requirement of proving they are who they
16 say they are and the requirement of proving that
17 they are eligible to vote under state law. The same
18 way every other voter in the state has to do. If
19 their driver's license number doesn't match or their
20 Social Security SS four doesn't match, they all get
21 follow-up calls and contacts to try and verify their
22 identity before their vote is counted. But FPCA
23 voters do not. And that's a problem that we're
24 trying to rectify.

25 So that's how we reconcile those,

1 that this is a very limited inapplicability of a
2 very specific means of identifying the voter, and
3 they are not required to enclose it with their
4 postcard. Okay. We're not saying they are, but
5 we're also saying you can't simply never validate
6 their identity and eligibility to vote. That's a
7 complete punting of all requirements under state
8 law, and that's not what HAVA dictates.

9 HEARING OFFICER: Okay.

10 Anything further, Mr. Teufel?

11 ATTORNEY TEUFEL: That's everything.

12 I really appreciate your question, too.

13 HEARING OFFICER: Thank you. Ms.
14 Mullen.

15 ATTORNEY MULLEN: Thank you, Mr.
16 Kovatis. The issue before us today is really a very
17 narrow one, and that's whether the Department has
18 violated Title III of HAVA. It's funny, we've heard
19 a lot about other states, a lot about Georgia and
20 Ohio and Alaska, very little about Pennsylvania
21 state law. And that's quite telling because
22 Pennsylvania law is different than those other laws.
23 And as Ms. Honey herself said, states can do more,
24 you know, HAVA presents the floor, states can do
25 more.

1 So again, the only issue is whether
2 the Department has violated Title III of HAVA for
3 this proceeding. We need to only look at the
4 language at issue, and that's Section 21083 A5A.
5 HAVA does not require that a registrant who cannot
6 provide identification verification be denied
7 registration.

8 Going back a little bit, Title III of
9 HAVA requires states to implement and to maintain a
10 single, centralized, computerized statewide voter
11 registration list and to assign a unique identifier
12 to each voter. In that regard, we have Section
13 21083 A5A of HAVA. And that requires a state to
14 either request either the driver's license number or
15 an SSN four, or state that they have neither. For
16 those without either of those two identification
17 numbers, HABA provides a special rule, Section 21083
18 A5A2 states, that the state shall assign the
19 applicant a number which will serve to identify the
20 applicant for voter registration purposes. The
21 reason for this is to have unique identifiers for
22 individuals.

23 There are many individuals that have the
24 same name and have the same birthday, and you want
25 to have a unique identifier so that counties can

1 perform list maintenance duties. But this
2 requirement is not a prerequisite for voter
3 registration. And if there were any doubt about
4 that, Romanette three in the statute makes that
5 clear. Romanette three is determination of validity
6 of the numbers provided. And that provision states,
7 it is the state that shall determine whether the
8 information provided by an individual is sufficient
9 to meet the requirements of that paragraph in
10 accordance with state law.

11 Exhibit 7 - Complainant's Exhibit 7
12 has a lot of language regarding these provisions,
13 and I would just direct the examiner to page 19 of
14 Exhibit 7, where it's talking a little bit about
15 this particular section. It says, however, nothing
16 in this section prohibits a state from accepting or
17 processing an application with incomplete or
18 inaccurate information.

19 HEARING OFFICER: Ms. Mullen, let me
20 stop you for one second. I'm not following where
21 you are. You're in the congressional record. The
22 Complainant's Exhibit 7?

23 ATTORNEY MULLEN: Correct.

24 HEARING OFFICER: Okay.

25 On Exhibit 7, on page 19.

1 ATTORNEY MULLEN: Page 19. I'm
2 sorry.

3 HEARING OFFICER: That's okay. I'm
4 trying to catch up with you.

5 ATTORNEY TEUFEL: I can pull that up
6 if you like.

7 HEARING OFFICER: No, I'm fine. I
8 have it in front of me.

9 ATTORNEY TEUFEL: Okay.

10 ATTORNEY MULLEN: Thank you.

11 HEARING OFFICER: I just wanted to
12 make sure I knew - I saw where we are. So where
13 exactly are you?

14 ATTORNEY MULLEN: There's three
15 columns. I'm on the first column, and the first
16 full paragraph it states, however.

17 HEARING OFFICER: Yes, thank you.

18 ATTORNEY MULLEN: And this language I
19 will represent is language from Senator Dodd. The
20 Complainants had also pointed out there's a lot of
21 language from Senator Dodd, who was one of the
22 sponsors here. It states, Section 305 A5A3
23 specifically reserves to the states the
24 determination as to whether the information supplied
25 by any voter - supplied by the voter, is sufficient

1 to meet the disclosure requirements of this
2 provision.

3 And then a little further down, it
4 says, consequently, a state may establish what
5 information is sufficient for verification,
6 preserving the sole authority of the state to
7 determine eligibility requirements for voters. And
8 in Pennsylvania, it's the counties that ultimately
9 are responsible for determining whether a voter has
10 provided sufficient information for voter
11 registration.

12 Now, as HAVA requires, all voters in
13 Pennsylvania that register to vote are required to
14 provide either their driver's license number or
15 their SSN four, or to state that they have neither.
16 And this includes UOCAVA voters, and that's made
17 clear in Exhibit C. What HAVA does not require is
18 the provision of these numbers is a condition for
19 registration, where that matching these numbers is a
20 condition for registration. How could it be when
21 there's a special rule for those that don't have any
22 of those numbers, and when Romanette three
23 specifically states that it is the states that have
24 to determine the sufficiency of a registrant's
25 application information.

1 The Department of State's 2018
2 directive on this is fully consistent with HAVA.
3 The Department provided that directive to the
4 counties, again, because it is county registration
5 commissions that ultimately have to make a
6 determination as to whether a registrant possesses
7 the qualifications to vote under Pennsylvania law,
8 and that's in the Pennsylvania Registration Law, 25
9 PACS 1328.

10 All the directive does is simply
11 state that a non-match cannot be the sole reason to
12 reject an application. Can there be other reasons?
13 Certainly. It simply states that the non-match
14 can't be the sole reason, which is consistent with
15 HAVA. Federal courts have similarly held that as
16 well, and we've cited a couple different federal
17 decisions on that point. The Washington Association
18 of Churches versus Reed case, as well as the Rosebud
19 Sioux Tribe case. The court ultimately in the Reed
20 case determined that such voters would have to vote
21 by provisional ballot. That was based on state law.

22 Also, ten months ago, just ten months
23 ago, the Office of General Counsel concluded that
24 the Department's 2018 directive does not violate and
25 is fully consistent with HAVA. Title III also

1 establishes identification requirements for first
2 time voters who register by mail. But as HAVA
3 states, clearly those requirements do not apply to
4 individuals who are entitled to vote pursuant to
5 UOCAVA.

6 Significantly, Pennsylvania law
7 exempts UOCAVA covered voters from the requirement
8 to provide proof of identification for the approval
9 of an application for an absentee ballot or to
10 ultimately vote an absentee ballot.

11 HEARING OFFICER: I'm sorry, where is
12 that, Ms. Mullen? In Pennsylvania - you said
13 Pennsylvania law exempts UOCAVA voters.

14 ATTORNEY MULLEN: Yes.

15 HEARING OFFICER: What are you
16 pointing to?

17 ATTORNEY MULLEN: Section 3146.8(I)
18 of the Election Code, Section 3146.2(J), Section
19 3146.2(B)(F), and Election 3146.5(B) - I'm sorry,
20 Section 3146.5 C. It says this repeatedly.

21 The letter to which is Exhibit 3
22 talks about absentee and mail in voters that have
23 either failed to provide their SSN four or their
24 driver's license, or have not had those numbers
25 matched. And the requirement is that those voters

1 need to provide identification within six days of an
2 election or else their ballot will not be counted.
3 And that's section 3146.8. Significantly, Section
4 3146.8(I) exempts UOCAVA voters from this
5 requirement.

6 What other states do has no relevance
7 to what Pennsylvania does. If Complainants don't
8 like Pennsylvania law, they should take it up with
9 the Pennsylvania Legislature. If the Department
10 were to require that UOCAVA voters provide
11 identification prior to their vote being counted who
12 haven't already provided that identification, that
13 would specifically violate the election code.

14 Now, Complainants have provided no
15 evidence that any of the 20,000 non-military votes,
16 as they call them, in the 2020 election came from
17 voters who failed to provide either a driver's
18 license or an SSN four. They provided no evidence
19 as to how many of these voters were even new
20 registrants. They provided no evidence of how many
21 UOCAVA military votes in the 2020 election failed to
22 provide SSN four or DL four. Any of these voters,
23 it's possible there could be a mismatch. That is
24 something that if Complainants don't like that, then
25 they have to address it with the legislature. The

1 Department is responsible for complying with the law
2 as it exists.

3 If Complainants don't like UOCAVA, they
4 should take it up with Congress. As it stands,
5 UOCAVA clearly includes overseas voters as those who
6 are entitled to the benefits of its provisions. And
7 UOCAVA requires states to permit both absent uniform
8 service voters and overseas voters to use the
9 federal postcard application to simultaneously
10 register and apply for a ballot.

11 It's clear Complainants don't like
12 that non-military voters are provided UOCAVA
13 protections that doesn't create a violation of HAVA.
14 Complainants have provided no evidence that there
15 was a vote of any overseas voter which was somehow
16 invalid, nor does the claim that military votes are
17 somehow diluted by overseas votes state any
18 violation under HAVA, or any law for that matter,
19 applying a federal statute like UOCAVA, which
20 specifically requires that certain treatment of a
21 distinct class of voters does not create a dilution
22 violation.

23 Courts have repeatedly rejected such
24 claims, such as the Bongette Court in the Third
25 Circuit, *Rucho v. Common Cause*. Essentially,

1 Complainants may not like the laws that is written
2 that does not render that the Department is in
3 violation of it, and we would respectfully request
4 that the complaint be dismissed.

5 HEARING OFFICER: So, Ms. Mullen, is
6 your argument essentially that this numerate three,
7 as you called it, the determination that validity
8 provided because it says in accordance with state
9 law and state law provides no provision, then
10 nothing is required under HAVA.

11 ATTORNEY MULLEN: This is for
12 registration. This is for registration purposes.
13 And the HAVA simply states that a state must request
14 the driver's license number, SSN four, or state that
15 the voter does not have one. It's ultimately up to
16 the state to determine whether that voter is
17 qualified to register under Pennsylvania law. The
18 matching or the provision of those numbers is not a
19 requirement, is not a prerequisite to registration.

20 And then you have on the other side,
21 the HAVA provision for voting for first time voters
22 who have registered through mail, and there are
23 identification requirements for those voters to
24 vote. But UOCAVA covered voters are specifically
25 exempted from those requirements.

1 HEARING OFFICER: Right. And they're
2 exempted by federal law, state law, or both?

3 ATTORNEY MULLEN: They're exempted by
4 HAVA. HAVA exempts them under Section B. And then
5 we also have Pennsylvania law, which exempts them
6 under multiple provisions from having to provide
7 identification under the provisions where other non
8 UOCAVA voters that have not matched are required to
9 provide identification.

10 Ultimately, it is up to the counties
11 to determine whether to accept or decline a voter
12 registration. There is nothing in the directive of
13 the Department of State that tells counties that
14 they can't decline voter registrations for other
15 reasons. The directive simply states the reason for
16 declination cannot solely be because of a non-match
17 of the SSN four or driver's license number or the
18 failure to provide one.

19 HEARING OFFICER: And where when you
20 say that's the direction from Department of State,
21 what are you pointing to?

22 ATTORNEY MULLEN: I'm pointing to
23 Exhibit 2, the directive, which is what the
24 Complainants have raised as being violative of Title
25 III of HAVA.

1 HEARING OFFICER: So, Mr. Teufel, I
2 think - Ms. Mullen, did you have anything else
3 before we go back?

4 ATTORNEY MULLEN: No, thank you.

5 HEARING OFFICER: I'll give you a
6 chance, Mr. Teufel, to add anything you want to add,
7 but just - is Ms. Mullen correct that what the
8 Complainant here is pointing to is the direction
9 that's contained in Exhibit 2? That's what the
10 objection is to.

11 ATTORNEY TEUFEL: No, the totality of
12 the directions to the county officials are
13 insufficient. Not simply that one directive is
14 insufficient, which that directive certainly doesn't
15 tell county officials that if the driver's license
16 number or the Social Security number on a FPCA does
17 not match, to do any kind of follow up verification
18 of the identity or eligibility of the voter to vote
19 before counting the vote. So it's the totality of
20 the directions that they give are insufficient to
21 meet the requirements of HAVA. That they are - and
22 to be clear, while they are required by HABA to
23 register a vote, or even if the Social Security
24 number or driver's license number doesn't match,
25 they are still required to check if it matches.

1 Under HAVA itself, that's a federal requirement.

2 Okay.

3 HEARING OFFICER: Where is that
4 requirement?

5 ATTORNEY TEUFEL: That requirement is
6 where we were - and I'll pull it up again if you
7 like. It is under A5 - Romanette A5. Let me pull
8 it up. Hang on. Probably easier. Just do it that
9 way. Okay.

10 HEARING OFFICER: A5, A3?

11 ATTORNEY TEUFEL: I believe that's
12 right. Yeah, I'm trying to pull it up so I can -.

13 HEARING OFFICER: I don't want to put
14 words in your mouth.

15 ATTORNEY TEUFEL: No, that's fine. I
16 think that's correct. But let me just quickly share
17 the screen, and I'll highlight the section I'm
18 talking about. There we are. Take me a second.
19 Okay. So not just A5, A3, but also A5, B1 and 2
20 read together, make it mandatory - and again, let me
21 respond, I guess if you would like, if it's okay.
22 The idea presented by the Department is that all the
23 whole purpose of a driver's license number or a
24 Social Security number is simply to have a unique
25 identifier for every voter. It's just a matter of

1 administrative convenience.

2 But no, this is not just to have a
3 unique identifier. This is a process of
4 verification of the registration information. And
5 they are being required to determine the validity,
6 not just determine the uniqueness, not just to
7 create a unique identifier, but verify the voter
8 registration information and determine the validity
9 of the numbers, provided that is very clearly
10 federally required. And what you are not hearing
11 from the state - sort of the first point of our
12 request is that they should be directed to go
13 through that verification process. They don't deny
14 they aren't doing it. They don't present evidence
15 to say, no, we are doing it. They just say, well,
16 we're still supposed to register them even if they
17 don't match.

18 I don't dispute that a FPCA
19 application, that person still has to be registered
20 even if the numbers don't match. Absolutely should
21 be marked NV, but still should be registered. And I
22 don't deny that you should still send out the
23 absentee ballot to that voter, but again, marking
24 their registration NV so the county knows before
25 they count the vote. I'm not saying before you send

1 them an absentee ballot, I'm not saying before you
2 register the voter, but before you count the vote,
3 you must determine that this is a person eligible to
4 vote and you should be confirming their identity
5 that they are that person who is eligible to vote.

6 Without doing that, you are allowing
7 people not permitted under the eligibility
8 requirements of Pennsylvania state statutes as well
9 as the Constitution. You're permitting people to
10 vote whose eligibility and identity has not been
11 verified in any way, shape or form. And while there
12 is an inapplicability requirement under HAVA that
13 went over before, that said, you don't have to do it
14 in the same way, at the same time as other voters.
15 If you're a UOCAVA voter, you don't have to enclose
16 it with the vote. You don't have to enclose it with
17 - under Pennsylvania law -.

18 And let me pull up 31. - 3146.2 25 PA
19 Stat 3146.2(J) was referenced by my friend for the
20 government, Ms. Mullen. But understand, this is
21 just like the UOCAVA inapplicability under HAVA.
22 It's just saying you don't have to, at the same
23 time, in the same way as other voters, provide
24 verification of identity. It doesn't say you don't
25 have to do it at all, and that it would be

1 impermissible for the counties to do their
2 constitutional and statutory duty of only counting
3 votes of people who are eligible to vote and are who
4 they say they are. And if you look this section
5 3146.2 is applications for absentee ballots. That
6 is providing a requirement of identity verification
7 at the time of application before you send them an
8 absentee ballot. That is not what we're contending
9 here is the problem.

10 The problem is that they get all the way
11 to counting the vote without ever checking the
12 identity. You're not requiring them to enclose it
13 with the application for the absentee ballot.
14 Understood. UOCAVA voters, that would be
15 inconvenient and difficult for them to do for
16 various reasons. We can understand why they're not
17 being required to validate their eligibility and
18 their identity in the same ways at the same times as
19 other voters. They are not, however, exempted
20 completely from the requirement of establishing
21 before their vote is counted that they are both
22 eligible and they are who they say they are.

23 Now, they can validate that through a
24 number of ways, through having a matching driver's
25 license number, through having a matching SS four,

1 or through having follow-up questions as is done by
2 the county for every other type of voter. The state
3 is contending that under Pennsylvania law, unique to
4 - different from other states, we don't require any
5 validation of eligibility to vote, any validation of
6 person's identity, and we don't instruct or allow
7 counties to engage in any of that verification of
8 that before they count an absentee ballot sent by
9 someone. We just have to take their word for it.
10 Whatever information is stated on the FPCA and hold
11 our nose and count their vote, it may well be
12 ineligible. You have no idea because you've taken
13 no steps and they admit this, they've taken no steps
14 to validate that this person is eligible or that
15 they are who they say they are.

16 And UOCAVA itself says it only
17 applies to people who are otherwise eligible to vote
18 under state law. And this 3146.2(J) doesn't change
19 the requirements for eligibility, doesn't say that
20 counties don't follow up. All it says is - let me
21 get it. Keep scrolling beyond where I would like.
22 Sorry. There we go. It says, notwithstanding the
23 provisions of this section requiring proof of
24 identification, it qualifies shall not be provided
25 identification. So this is making inapplicable the

1 requirements of this section only, not exempting
2 absentee voters under UOCAVA from any requirement of
3 proving eligibility, and not only that - or
4 identification. Again, this section only allows
5 qualified electors to do anything.

6 So the idea that no one has to establish
7 that they're qualified to vote, no one has to
8 establish their identity in any way, shape or form
9 at any time, and the votes can be counted, is
10 incredible. And they're standing here saying, hey,
11 you've got a problem with the fact that we allow
12 people to vote through FPCAs without ever
13 establishing eligibility or identity in any way,
14 shape or form. Take it up with the legislature.

15 Well, it's the obligation under
16 Pennsylvania state law and under HAVA for them,
17 number one, to actually engage in the matching
18 process to identify those voters whose driver's
19 license numbers and Social Security SS fours do not
20 match. That part's under federal law. Then under
21 state law, they're only allowed to count votes from
22 qualified electors. And you can't get around those
23 constitutional requirements of what constitutes a
24 valid voter and a valid vote in Pennsylvania. And
25 even though I would agree there's a hole in the law

1 in the sense of it doesn't spell out well if you're
2 not going to require it at the time of the
3 application for an official absentee ballot, when
4 and how are you doing it? It's not spelled out in
5 the law as clearly as we would like obviously,
6 there's no specific provision of if not now, when,
7 if not this way, how? But it certainly doesn't say
8 if you're a claim to be a UOCAVA eligible voter,
9 we'll take your word for it and count your vote
10 without making any steps to verify your eligibility
11 or voter identification.

12 If that really is what the harm of state
13 thinks the status of the law is in Pennsylvania,
14 then I hope they would join us in demanding that
15 this loophole be closed from the state legislature.
16 But I'm shocked if that's what they're saying.
17 They're acknowledging and agreeing, yeah, we don't
18 actually do anything to verify the eligibility or
19 identity of voters who claim they're eligible to
20 vote via UOCAVA application so that I, Greg Teufel
21 from Pittsburgh, Pennsylvania, could claim to be
22 anybody I want to be through an FCPA application and
23 that I'm out of the country and they won't do
24 anything to verify that I'm who I say I am or that
25 who I say I am is an eligible voter before they will

1 count the absentee ballot I receive and send back to
2 the county. That's a shocking description of
3 affairs in Pennsylvania.

4 I don't believe the law currently either
5 dictates or allows that they should be directed to
6 tell the counties that they are allowed after they
7 receive an absentee ballot from a registrant
8 pursuant to an FPCA whose state driver's license
9 number should be checked, or the SS four should be
10 checked, or if they claim they don't have either,
11 they should be marked NV, and they should direct the
12 counties to confirm the identity and eligibility of
13 the voter through the normal means they apply to
14 every other type of voter in the state before they
15 count the vote. And there is no exemption for
16 allowing counting of votes from voters who have not
17 been confirmed eligible and who they are under the
18 law.

19 So that's kind of where we're going with
20 this. And I think that we're arguing two different
21 things. They're saying, hey, we can register
22 people. Yes, you can. They're saying, hey, we can
23 send out absentee ballots before we verify who they
24 are. Yes, you can. But you have to, at some
25 manner, at some point, not just simply allow people

1 to vote on their say so that they're eligible and
2 that they are who they say they are. Thank you.

3 HEARING OFFICER: Ms. Mullen,
4 anything further?

5 ATTORNEY MULLEN: Yes, if I may.
6 Again, the issue here for this proceeding is whether
7 there's a violation of Title III of HAVA. I think
8 the evidence plainly establishes, and the clear
9 language of HAVA establishes that there is not.
10 Exhibit C has the Pennsylvania instructions.

11 Pennsylvania does require UOCAVA voters to provide
12 either an SSN four or a driver's license or state
13 that they do not have that. The matching process
14 occurs with those voters like it would any other.

15 What counties do ultimately is up to
16 the county. There is nothing contrary to that in
17 this state's directive, in the Department's
18 directive. A registrant cannot be denied
19 registration solely on the basis of a non-match.
20 State law provides certain exemptions for UOCAVA
21 voters with respect to the identification of the
22 requirements that are required of other voters.
23 UOCAVA voters are exempted from those. The
24 Department is not violating HAVA by following that
25 state law.

1 ATTORNEY TEUFEL: Okay.
2 Can I be allowed one brief follow up?
3 HEARING OFFICER: Sure thing.
4 ATTORNEY TEUFEL: Just the state -.
5 HEARING OFFICER: By the way, Mr.
6 Teufel, you have everybody - I think were sharing
7 your screen.
8 ATTORNEY TEUFEL: Let me stop doing
9 that. Sorry about that.
10 HEARING OFFICER: That's okay.
11 ATTORNEY TEUFEL: Tendency to
12 overshare, apparently. Sorry about that. So the
13 only thing I would respond to is the suggestion that
14 the matching process occurs. There was no evidence
15 offered to counter the testimony of the witness that
16 has heavily researched that issue. The matching is
17 not done. They're now claiming it is done based on
18 I don't know what. But that's a rather late
19 suggestion of a factual issue that I think there's
20 only evidence one side of. That's all I wanted to
21 follow up and thank you.
22 ATTORNEY MULLEN: And again, there is
23 no evidence from counties that matching is not done.
24 ATTORNEY TEUFEL: That's everything
25 we have then. Thank you.

1 HEARING OFFICER: Great. Well, I
2 appreciate everybody's time here. We will take the
3 matter under advisement and issue a decision in the
4 time period provided by law. Is there anything
5 further the parties wish to address?

6 ATTORNEY TEUFEL: Just want to thank
7 you for your time and attention.

8 HEARING OFFICER: Ms. Mullen,
9 anything further?

10 ATTORNEY MULLEN: No. Thank you.
11 And thank you, Mr. Teufel, for your skills in
12 displaying exhibits. I appreciate that.

13 HEARING OFFICER: Appreciate it. And
14 then we will then conclude today's proceeding.

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HEARING CONCLUDED AT 12:06 P.M.

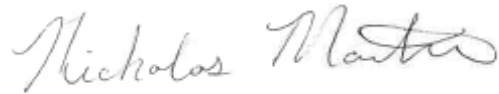
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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Hearing Officer Kovatis, was reported by me on November 6, 2023 and that I, Nicholas Martin, read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.

Dated the 20 day of November, 2023.



Nicholas Martin,

Court Reporter



Pennsylvania Military and Overseas Voters Guidance

Date: October 18, 2023

Version: 2.1



Background

Federal and state laws require certain election accommodations and procedures for citizens living abroad who wish to vote. These rules generally apply to three categories of individuals:

- 1) Voters in the uniformed services, their spouses and dependents, and, in certain cases, military veterans;
- 2) Individuals registered to vote in Pennsylvania but who reside overseas; and
- 3) So-called “federal voters,” who live overseas and do not intend to return to Pennsylvania and, therefore, may participate only in elections for federal offices (President, Vice President, U.S. Senator, and Representative in Congress).

This guidance provides background on the relevant laws and procedures for accommodating the first two categories of voters. For guidance relating to federal voters, please see the Department’s [UOCAVA Federal Voters Guidance](#).

Relevant laws

The federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (**UOCAVA**) requires that states and territories allow military and overseas citizens to register and vote by absentee ballot in elections for federal offices. In 2009, Congress enacted the Military and Overseas Voter Empowerment Act (**MOVE**), prescribing additional procedures. These federal laws do not apply to state and local elections.

Pennsylvania extended UOCAVA’s procedures to military and overseas voters registered to vote (or eligible to be registered to vote) with the Uniform Military and Overseas Voters Act (**UMOVA**). UMOVA applies to all elections conducted in Pennsylvania—including general elections, municipal elections, special elections, and primary elections¹—and helps to ensure compliance with the federal statutes.

UMOVA establishes the rules for registered or eligible Pennsylvania voters who are in the military or overseas at the time of an election. It does **not** establish rules for federal voters. Those voters are covered by UOCAVA. Please refer to the Department of State’s Guidance on Federal Voters Under UOCAVA for more detailed information on federal voters.

¹ See 25 Pa.C.S. §§ 3502, 3508(a).



Who is covered under UMOVA?

UMOVA covers voters in the uniformed services and voters living abroad who are eligible to vote in Pennsylvania.² The state law does not cover federal voters.

The law closely defines who can benefit from UMOVA. A **uniformed-service voter** is a qualified elector who is one of the following:

- 1) A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States who is on active duty;
- 2) A member of the United States merchant marine, the Commissioned Corps of the Public Health Service of the Department of Health and Human Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration of the United States;
- 3) A member on activated status of the National Guard or Pennsylvania National Guard³;
- 4) A spouse or dependent of an individual referred to in (1), (2), or (3); or
- 5) A veteran of a uniformed service (see 1, 2, and 3 above) who is bedridden or hospitalized due to illness or physical disability.⁴

Note: The inclusion of a bedridden or hospitalized veteran of a uniformed service (5, above) is unique to UMOVA, and this voter is not covered under UOCAVA.

An **overseas voter** is an individual who possess all the qualifications for voting in this Commonwealth (or who, by the next ensuing election, obtains all the qualifications) and who is outside the United States at the time of an election.⁵

To trigger UMOVA's protections, a qualified voter must inform the appropriate county board of elections of their status as a covered voter. To do this, the voter may use special forms called the [Federal Post Card Application \(FPCA\)](#) or a [Federal Write-In Absentee Ballot \(FWAB\)](#). These forms are available at <https://www.fvap.gov/eo/overview/materials/forms>.

² See 25 Pa.C.S. § 3502.

³ See 25 Pa.C.S. § 1102.

⁴ See 25 Pa.C.S. § 3502.

⁵ See 25 Pa.C.S. § 3502.



The voter also may simply indicate their overseas address, or include other sufficient identifying information, on a voter registration application or ballot application.⁶

Voter Registration and Absentee Ballot Request

Federal Post Card Application (FPCA)

Print clearly in blue or black ink, please see back for instructions.

This form is for absent Uniformed Service members, their families, and citizens residing outside the United States. It is used to register to vote, request an absentee ballot, and update your contact information. See your state's guidelines at FVAP.gov.

1. Who are you? Pick one.

- I request an absentee ballot for all elections in which I am eligible to vote AND:
- I am on active duty in the Uniformed Services or Merchant Marine -OR- I am an eligible spouse or dependent.
- I am a U.S. citizen living outside the country, and I intend to return.
- I am a U.S. citizen living outside the country, and my intent to return is uncertain.
- I am a U.S. citizen living outside the country, I have never lived in the United States.

For example, if any of the boxes highlighted below are checked on the FPCA, then the voter is covered under UMOVA.

Voter Information

Federal Write-In Absentee Ballot (FWAB)

Print clearly in blue or black ink, please see back for instructions.

Have you already registered and requested an absentee ballot?

Some states allow you to use this form to register and request ballots for future elections. Visit FVAP.gov for more details.

1. Who are you? Pick one.

- For absent Uniformed Service members, their families, and citizens residing outside the United States.
- I am on active duty in the Uniformed Services or Merchant Marine -OR- I am an eligible spouse or dependent.
- I am a U.S. citizen living outside the country, and I intend to return.
- I am a U.S. citizen living outside the country, and my intent to return is uncertain.
- I am a U.S. citizen living outside the country, I have never lived in the United States.

Registering to vote

Like other electors, **UMOVA-covered voters must register to vote in order to participate in an election.** There is one exception: active uniformed-service voters and veterans of a uniformed service who are bedridden or hospitalized due to illness or physical disability do not need to register to vote in order to cast a ballot.⁷

Overseas voters can register to vote in-person at their county board of elections, by mail using a registration application (the voter registration mail application, or **VRMA**), or any other method prescribed by Pennsylvania law. Covered voters may also use the FPCA to register to vote and apply for a military-overseas ballot at the same time.⁸ Uniformed-service voters may also use the FWAB to register to vote and to vote at the same time.⁹

⁶ See 25 Pa.C.S. § 3506(e).

⁷ See 25 Pa.C.S. § 3505(a).

⁸ See 25 Pa.C.S. § 3505(b)(1).

⁹ See 25 Pa.C.S. § 3505(b)(2).



How may a covered voter register to vote?

	FPCA	FWAB	VRMA	Online
Uniformed-service voter	x	x	x	x
Spouse/dependent of uniformed-service voter	x	x	x	x
A uniformed-service veteran bedridden/hospitalized due to illness or disability	x	x	x	x
Overseas voter	x		x	x

When must a covered voter register to vote?

	Not required to register	May apply to register at any time	At least 15 days prior to election
Uniformed-service voter (active service)	x		
Uniformed-service voter (inactive)		x	
Spouse/dependent of uniformed-service voter		x	
A uniformed-service veteran bedridden/hospitalized due to illness or disability	x		
Overseas voter			x

Applying for a military-overseas ballot

Note: A "military-overseas ballot" refers to either a FWAB or a specially prepared absentee ballot (including a special write-in absentee ballot).

Covered voters who are registered to vote in Pennsylvania may apply for a military-overseas ballot using either an absentee ballot application or the FPCA.¹⁰

If not registered to vote in Pennsylvania, a covered voter may use a FPCA to both register to vote and apply for a military-overseas ballot simultaneously.¹¹

¹⁰ See 25 Pa.C.S. § 3506(a).

¹¹ See 25 Pa.C.S. § 3506(b).



A uniformed-service voter may use the FWAB to register to vote, apply for a military-overseas ballot, and vote, all at the same time.¹² Uniformed-service voters do not, however, need to register to vote in order to cast a military-overseas ballot.

Voters can track the status of their ballot applications at <https://www.pavoterservices.pa.gov/>.

How may a covered voter apply for an absentee ballot?

	FPCA	FWAB	Absentee Ballot Application
Uniformed-service voter	x	x	x
Spouse/dependent of uniformed-service voter	x	x	x
A uniformed-service veteran bedridden/hospitalized due to illness or disability	x	x	x
Overseas voter	x		x

When can covered voters apply for a military-overseas ballot?

A covered voter may apply for a military-overseas ballot at any time prior to an election.¹³

Covered voters can make a **standing request** for receiving military-overseas ballots for each election in a calendar year. Submitting an application for a military-overseas ballot for a primary election must be considered a standing request for all subsequent special, general, or municipal election that calendar year.¹⁴

Note: A military-overseas ballot application for an election occurring prior to the primary, like a special election, does not constitute a standing request for subsequent elections.

When are counties required to transmit military-overseas ballots?

Counties must begin transmitting ballots and balloting materials to all covered voters not later than **45 days before the election** (or the preceding business day, where the 45th day before the election falls on a weekend or holiday) who by that date submit a valid military-overseas ballot application.¹⁵

However, in federal elections years—during which the 45th day before the election falls on a Saturday—the U.S. Department of Justice interprets UOCAVA to require that

¹² See 25 Pa.C.S. § 3506(d).

¹³ See 25 Pa.C.S. § 3507(a).

¹⁴ See 25 Pa.C.S. § 3507(b).

¹⁵ See 25 Pa.C.S. § 3508(a)(1).



ballots and balloting materials be sent on Saturday for any voters whose applications are received on that date.

For covered voters in extremely remote or isolated areas, counties must begin to transmit ballots and balloting materials not later than **50 days before a primary election** and not later than **70 days before a general or municipal election** (or the preceding business day, if the 50th or 70th day before the election falls on a weekend or holiday) to those voters who by that date submit a valid military-overseas ballot application.¹⁶

How do counties transmit ballots?

Counties may transmit ballots and balloting materials to voters via mail or, if requested by the voter, electronic transmission.¹⁷

What are the requirements for transmitting ballots to applicants who apply after the county begins transmitting ballots?

Counties that receive a valid military-overseas ballot application from a covered voter after the county has begun transmitting ballots and balloting materials must transmit a ballot and balloting materials to that voter not later than 48 hours after the application is received.¹⁸

*Note: For voters who apply after the county has already begun transmitting ballots and balloting materials, UMOVA requires the county to transmit the documents within 48 hours of receiving the application. UOCAVA is different and requires transmission within 48 hours of approving the application. This means that counties' obligations for transmitting ballots and balloting materials to federal voters are different than other overseas and military voters. In practice, though, counties should respond to **all** military-overseas ballot applications within the same period of time.*

When must ballots be cast by covered voters to be timely?

To be valid, the voter must submit the military-overseas ballot for mailing or other authorized means of delivery **not later than 11:59 p.m.** the day before the election.¹⁹ A military-overseas ballot delivered by the voter, in-person, to the appropriate county board of elections no later than the close of the polls on Election Day is also valid.²⁰

¹⁶ See 25 Pa.C.S. § 3508(b)(1).

¹⁷ See 25 Pa.C.S. § 3508(c).

¹⁸ See 25 Pa.C.S. § 3508(d).

¹⁹ See 25 Pa.C.S. § 3509(2).

²⁰ See 25 Pa.C.S. § 3509(1).



Voters can track the status of their ballot at <https://www.pavoterservices.pa.gov/>.

How may a covered voter vote an absentee ballot?

	Special Write-in Absentee Ballot ²¹	Official Absentee Ballot	FWAB
Uniformed-Service Voter	X	X	X
Overseas Voter	X	X	X

A county will only count a FWAB in the absence of a duly submitted standard absentee ballot from that voter.

What is the deadline for the county board of elections to receive a voted ballot?

A valid military-overseas ballot must be delivered to the appropriate county board of elections by 5 p.m. on the 7th day following the election to be counted.²²

Are there any postmark requirements?

No, provided that, at the time of completing the military-overseas ballot and balloting materials, the voter declared under penalty of perjury that the ballot was timely submitted, the ballot may not be rejected on the basis that it has no postmark, the postmark is unreadable, or the postmark is late.²³

What information must counties provide to overseas voters?

County boards of elections must facilitate voting with the FWAB by making available to covered voters a list of the offices and issues to be voted on at the upcoming election. The election notice must be prepared at least 90 days before an election and posted to the county board’s website.²⁴ The notice must contain a list of all ballot measures and offices, and specific instructions for how voters can make their choices. County boards must update the 90-day notice as soon as the county obtains a list of candidates from the Secretary of the Commonwealth (i.e., no later than 70 days before the election) and must continue to update the notice if changes to the ballot occur.²⁵

²¹ A Special Write-in Absentee Ballot is an absentee ballot counties prepare to transmit to covered voters before the county has finalized its Official Absentee Ballot. Both Special Write-in Absentee Ballots and Official Absentee Ballots are subject to the same deadlines and rules.

²² See 25 Pa.C.S. § 3511(a).

²³ See 25 Pa.C.S. § 3511(b).

²⁴ See 25 Pa.C.S. § 3514.

²⁵ See 25 Pa.C.S. § 3514(c).



What are the voter ID requirements for covered voters?

The Department's position is that covered voters are exempt from the Election Code's ID requirements for absentee voters.

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Version	Date	Description
1.0	09.26.2022	Conversion of county memo into guidance form
2.0	09.22.2023	Edits for clarity and consolidating prior guidance
2.1	10.18.2023	Correction to voter registration deadline information

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 1512 CD 2023

**PA FAIR ELECTIONS and HEATHER HONEY,
Petitioners**

v.

**PENNSYLVANIA DEPARTMENT OF STATE,
Respondent**

BRIEF FOR RESPONDENT

Appeal from the Final Determination of the Office of General Counsel dated
November 21, 2023, No. 2023-001

Kathleen A. Mullen (ID No. 84604)
Ian B. Everhart (ID No. 318947)
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*On behalf of Respondent Pennsylvania
Department of State*

Date Filed: June 28, 2024

Exhibit F

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

COUNTER-STATEMENT OF JURISDICTION 3

COUNTER-STATEMENT OF SCOPE AND STANDARD OF REVIEW 4

COUNTER-STATEMENT OF QUESTIONS INVOLVED 5

COUNTER-STATEMENT OF THE CASE 6

SUMMARY OF ARGUMENT 10

ARGUMENT 12

I. Statutory Background. 12

 A. Help America Vote Act of 2002..... 12

 1. Computerized Registration List Requirement of Section 303(a). 12

 2. Identification requirement for certain voters who register by mail of
 Section 303(b). 16

 B. Uniformed and Overseas Citizens Absentee Voting Act. 16

 C. Pennsylvania Law..... 17

II. Dismissal of Petitioners’ Complaint Is Fully Supported Because Petitioners
Failed to Show Any Violation of HAVA. 20

 A. HAVA does not condition approval of a registration application on
 “matching” an ID number provided therein. 20

 B. The Department’s practices are consistent with HAVA and other laws.. 25

III. The Office of General Counsel’s Final Determination Properly Applies the
Law and Should Be Affirmed..... 28

CONCLUSION 32

CERTIFICATION 33

TABLE OF AUTHORITIES

CASES

Arizona v. Inter Tribal Council of Ariz., Inc.,
570 U.S. 1 (2013).....21

Balshy v. Pa. State Police,
988 A.2d 813 (Pa. Commw. Ct. 2010)4

Brakebill v. Jaeger,
905 F.3d 553 (8th Cir. 2018)14

Dunn v. Blumstein,
405 U.S. 330 (1972).....18

In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election,
241 A.3d 1058 (Pa. 2020).....22

In re Hickson,
821 A.2d 1238 (Pa. 2003).....6

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992).....6

Mixon v. Commw.,
759 A.2d 442 (Pa. Commw. Ct. 2000)18

Rosebud Sioux Tribe v. Barnett,
604 F. Supp. 3d 827 (D.S.D. 2022) 22, 23

Van Osdol v. Dep’t of Transp.,
909 A.2d 428 (Pa. Commw. Ct. 2006)4

Wash. Ass’n of Churches v. Reed,
492 F. Supp. 2d 1264 (W.D. Wash. 2006)22

CONSTITUTIONAL PROVISIONS

Pa. Const. art. VII, § 1.....18
U.S. Const. amend. XXVI, § 118

STATUTES

25 P.S. § 260219
25 P.S. § 3046.2 3, 6, 7, 10
25 P.S. § 3146.219
25 P.S. § 3146.2b19
25 P.S. § 3146.5 19, 27
25 P.S. § 3146.8 19, 26, 27
25 P.S. § 3150.12b19
25 P.S. § 3150.1519
25 Pa. Cons. Stat. § 122213
25 Pa. Cons. Stat. § 130118
25 Pa. Cons. Stat. § 1328 17, 18
42 Pa. Cons. Stat. § 7044
42 Pa. Cons. Stat. § 7633
52 U.S.C. § 20302.....17
52 U.S.C. § 20303.....16
52 U.S.C. § 20981.....12
52 U.S.C. § 21083..... *passim*

52 U.S.C. § 21112.....6
52 U.S.C. Ch. 20324
52 U.S.C. Ch. 2096
Help America Vote Act of 2002,
52 U.S.C. §§ 21081–21102.....6
N.D. Cent. Code § 40-21-1014

RULES

Pa. R.A.P. 15513
Pa. R.A.P. 211925
Pa. R.A.P. 213533
Pa. R.A.P. 21549
Pa. R.A.P. 218812
Pa. R.A.P. 7023

OTHER AUTHORITIES

Op. Pa. Att’y Gen. No. 1972-121 (May 5, 1972)18

INTRODUCTION

Petitioners PA Fair Elections and Heather Honey do not like the fact that both Congress and the Pennsylvania General Assembly decided to treat absentee military and overseas voters covered by UOCAVA differently than other voters for purposes of verification of identification prior to elections. Based on Petitioners' apparent dissatisfaction at the Pennsylvania Department of State for following the requisites of federal and state law, Petitioners submitted an administrative complaint pursuant to HAVA claiming that the Department of State violates HAVA through its 2018 Directive, which was specifically issued to ensure that counties comply with HAVA.

HAVA requires that all individuals who register to vote supply an identification number, either the last four digits of the individual's Social Security number or a driver's license number to be matched against existing government databases and assist states in creating a database of registered voters with a unique identifier. But HAVA makes clear that matching these numbers is not a prerequisite for registration and that state law determines the sufficiency of a voter's registration application. And HAVA has a "Special rule" requiring states to assign a unique number for registration purposes for those applicants who lack both a Social Security and driver's license number. The Department's Directive simply echoes these HAVA provisions, stating that county registration commissions cannot deny a voter registration application solely because of a nonmatch. Different HAVA provisions

and provisions of the Pennsylvania Election Code provide proof of identification requirements for absentee voters so that identity verification takes place before an absentee voter's ballot is counted. However, both HAVA and the Pennsylvania Election Code specifically exempt UOCAVA voters from this requirement. Petitioners claim this creates a "loophole" for which the Department is to blame. In so doing, they mischaracterize the Directive and ignore the clear language of HAVA, UOCAVA and the Pennsylvania Election Code.

As OGC correctly concluded, Petitioners have failed to show any violation of HAVA. Yet Petitioners now ask this Court to find that the Department has somehow violated HAVA by issuing a directive—the sole purpose of which is to ensure that county registration commissions comply with HAVA—and seek an Order that would require the Department to direct counties to violate the Pennsylvania Election Code by ignoring the special protections the General Assembly has seen fit to provide to UOCAVA voters. Petitioners unsurprisingly provide no legal authority or record evidence to support this request. The final determination of OGC should be affirmed.

COUNTER-STATEMENT OF JURISDICTION

Judicial review of proceedings under 25 P.S. § 3046.2 are “agency determination[s] subject to appellate review pursuant to 42 Pa.C.S. § 763.” Accordingly, this Court has “exclusive jurisdiction” of this appeal. 42 Pa. Cons. Stat. § 763(a); *see also* Pa. R.A.P. 702(a) and 1551.

COUNTER-STATEMENT OF SCOPE AND STANDARD OF REVIEW

In the absence of “a specific scope of review from the General Assembly,” the Court applies “the standard one for an appeal from an administrative agency:” whether constitutional rights have been violated, whether an error of law has been committed, or whether findings of fact are supported by substantial evidence. *Van Osdol v. Dep’t of Transp.*, 909 A.2d 428, 430 n.3 (Pa. Commw. Ct. 2006) (citing 42 Pa. Cons. Stat. § 704).

The Court’s standard of review requires affirmation of the order under appeal, “unless it shall find the adjudication is in violation of the constitutional rights of the appellants, or is not in accordance with law, or the statutory provisions controlling practice and procedure of Commonwealth agencies have been violated in the proceedings before the agency, or any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence.” *Balshy v. Pa. State Police*, 988 A.2d 813, 825 (Pa. Commw. Ct. 2010) (citing 42 Pa. Cons. Stat. § 704).

COUNTER-STATEMENT OF QUESTIONS INVOLVED

- I. Whether the Office of General Counsel’s dismissal of Petitioner’s HAVA Complaint was correct as a matter of law and supported by substantial evidence?

Agency Answer: Not answered by OGC.

Suggested Answer: Yes.

- II. Whether the Office of General Counsel properly determined that the Department’s Directive is consistent with HAVA.

Agency Answer: Yes.

Suggested Answer: Yes.

COUNTER-STATEMENT OF THE CASE

This proceeding comes before the Court on the Petition for Review of the Final Determination of the Governor’s Office of General Counsel (“OGC”) concluding that the Pennsylvania Department of State (“Department”) has not violated Title III of the Help America Vote Act of 2002 (“HAVA”), 52 U.S.C. §§ 21081–21102. (Section 303 of HAVA is codified at 52 U.S.C. § 21083. This brief uses the two citation formats interchangeably.)

HAVA requires states receiving certain federal grants to set up an administrative complaint procedure for those who believe they are aggrieved by a violation of Title III of HAVA. 52 U.S.C. § 21112(a)(2)(B). On August 23, 2023, Petitioners PA Fair Elections and Heather Honey (“Petitioners”) submitted a Complaint to the Department pursuant to Section 1206.2 of the Pennsylvania Election Code, 25 P.S. § 3046.2, which establishes Pennsylvania’s HAVA administrative complaint process.

PA Fair Elections describes itself as an unincorporated “association of Pennsylvania citizens concerned with the fairness and integrity of elections in Pennsylvania.” Heather Honey is its “founding member.” R.336a.¹ Petitioners’

¹ Neither PA Fair Elections nor Honey have made any allegations of injury that would support ordinary standing pursuant to Pennsylvania law or Article III standing under federal law. *See generally In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003) (“[I]t is not sufficient for the person claiming to be ‘aggrieved’ to assert the common interest of all citizens in procuring obedience to the law.”); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 575–76 (1992) (holding generalized grievance insufficient to establish standing).

Complaint alleged that the Department violates Title III of HAVA by failing to require that voters covered under the Uniformed and Overseas Citizens Absentee Voting Act of 1986, 52 U.S.C. § 20301–20311 (“UOCAVA”) provide identification when registering to vote. R.5a–6a. Specifically, Petitioners cited to Section 303(a)(5) of HAVA which requires applicants for voter registration to provide either a driver’s license number (“DLN”)² or the last four digits on their Social Security number (“SSN4,” together with DLN, “ID number”), which a state can then match against existing databases. If a voter has neither, HAVA requires a state to assign the applicant a number which will serve to identify them for voter registration purposes. Petitioners claimed that the Department’s Directive Concerning HAVA — Matching Drivers’ Licenses or Social Security Numbers for Voter Registration Applications (“Directive”) issued in 2018 violates HAVA. R.5a–6a (citing R.23a–27a).

Because the Complaint alleged a HAVA violation against the Department, the Department forwarded it to OGC for adjudication pursuant to 25 P.S. § 3046.2(c)(2) on August 28, 2023. R.335a.

The Department submitted a Response on September 12, 2023, explaining that the plain language of HAVA does not require states to match prospective voters to an existing identification number as a prerequisite to voter registration and that

² In referring to driver’s licenses and DLN herein, the Department means to include non-driver identification cards issued by the Pennsylvania Department of Transportation, as well as licenses to operate motor vehicles.

HAVA explicitly excludes UOCAVA voters from the identification requirements it otherwise establishes as a prerequisite to voting for voters who register by mail. R.39a–48a. Further, the Department explained that the Directive, which simply advises county voter registration commissions that voter registrations cannot be rejected for the *sole* reason of a non-match between the applicant’s identifying numbers on their application and the comparison database numbers, was fully consistent with HAVA.

The parties submitted pre-hearing memoranda of law on November 3, 2023. At Petitioners’ request, OGC convened an informal hearing before Hearing Examiner Stephen R. Kovatis on November 6, 2023. On November 21, 2023, OGC issued its Final Determination and Order, finding that Petitioners failed to show that the Department committed any violation of HAVA and dismissing the Complaint. R.333a–345a. Specifically, OGC concluded that the Directive was fully consistent with and did not violate HAVA. OGC further found that HAVA’s identification requirements for voters who register by mail specifically excluded UOCAVA voters. Accordingly, OGC dismissed the Complaint.

This appeal followed, based on the Petition for Review filed by Petitioners on December 21, 2023.

This Court set a briefing schedule on April 19, 2024; Petitioners’ brief was due on or before May 29, 2024 (with the designation of record due April 29, 2024

(being 30 days prior to the deadline for the brief, pursuant to Pa. R.A.P. 2154)).
Petitioners filed the Designation of Record untimely on May 20, 2024. Petitioners' Reproduced Record was filed timely on May 29, 2024, but their Brief was filed untimely on June 4, 2024.

SUMMARY OF ARGUMENT

The OGC’s decision is fully correct as a matter of law and supported by substantial evidence. It should be affirmed. The only question at issue in this narrow review concerning a HAVA administrative proceeding pursuant to Section 1206.2 of the Election Code is whether OGC’s determination that the Department through its Directive did not (and does not) violate any provision of Title III of HAVA. It is clear the Department has not. As the record shows, the Directive is fully consistent with HAVA.

HAVA requires that voter registration applicants provide either their DLN or SSN4 for purposes of matching that number against the database maintained by the state motor vehicle authority to verify the accuracy of that information for the purpose of assigning a unique identifier to each registrant to create a computerized list of registered voters. The plain language of HAVA makes clear that matching these numbers with existing database numbers is not a prerequisite for registration—HAVA actually has a “Special rule” requiring states to assign a unique number for registration purposes for those applicants who lack both a DLN and SSN4. Further, HAVA makes clear that state law determines the sufficiency of a voter’s registration application. The Directive, consistent with HAVA, simply states that county registration commissions cannot reject a voter registration application for the sole

reason that an applicant's numbers on their application do not match comparison database numbers. The Directive applies to all voter registration applications.

Further, the Department's practices with respect to UOCAVA voters are fully consistent with both HAVA, UOCAVA and the Pennsylvania Election Code. HAVA and the Election Code exempt UOCAVA voters from certain identification requirements that apply to other voters as a prerequisite to having their vote count. Petitioners' dissatisfaction with this fact does not create a violation of HAVA. Accordingly, the OGC's determination that the Department did not violate HAVA and dismissing the Complaint should be affirmed.

ARGUMENT³

I. Statutory Background.

Based on the number of statutes at play, a brief summary of those statutes as they apply to the issues raised here is helpful.

A. Help America Vote Act of 2002.

HAVA was enacted in the wake of the 2000 Presidential Election to ensure eligible voters would not be disenfranchised, and that voting and election administration systems “will be nondiscriminatory and afford each eligible and registered voter an equal opportunity to vote and have that vote counted.” 52 U.S.C. § 20981. Title III of HAVA, codified as Subchapter III and consisting of 52 U.S.C. §§ 21081–21102, created new mandatory minimum standards for states in several key areas of election administration, including as pertinent to the issues here: requirements for a computerized statewide voter registration system and requirements for voters who register by mail. *Id.*

1. Computerized Registration List Requirement of Section 303(a).

Specifically, HAVA requires that states develop “a single, uniform, official, centralized, interactive computerized statewide voter registration list” that assigns a

³ As a starting point, the untimeliness of Petitioners’ filings warrant dismissal independent of the merits. Because Petitioners’ designation of record and brief were filed untimely, this matter should be dismissed pursuant to Pa. R.A.P. 2188.

unique identifier to every registered voter. 52 U.S.C. § 21083(a)(1)(A).⁴ To that end, all registration applicants who possess either a driver’s license or Social Security Number must provide the DLN or SSN4. States are required to enter an agreement with their respective motor vehicle authority (i.e., the Pennsylvania Department of Transportation; “PennDOT”), which in turn must enter an agreement with the Commissioner of Social Security for the matching of information in the statewide voter registration system with information in the PennDOT database in order to enable the verification of information on voter registration applications. 52 U.S.C. § 21083(a)(5)(B).

Significantly however, a match of an ID number is not a prerequisite for registration under HAVA. This is evident by the clear language of HAVA itself. Specifically, HAVA provides a “Special rule for applicants without driver’s license or social security number” (“Special Rule”) for those registration applicants who lack both a DLN and an SSN4. For those applicants, HAVA requires that “the State *shall* assign the applicant a number which will serve to identify the applicant for voter registration purposes.” 52 U.S.C. § 21083(a)(5)(A)(ii).

Moreover, the clear language of Section 303(a)(5)(A)(iii) of HAVA mandates that state law governs whether the information provided by an individual is sufficient

⁴ Pennsylvania met this obligation by creating the Statewide Uniform Registry of Electors (the “SURE System” or “SURE”). 25 Pa. Cons. Stat. § 1222(a).

to meet whatever registration requirements are provided under state law. 52 U.S.C. § 21083(a)(5)(A)(iii) (“The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.”).

State law voter registration requirements vary widely.⁵ And nothing in HAVA was meant to supplant this. The plain language of the Section 303(a)(5), in addition to its legislative history makes this clear. As Senator Dodd emphasized: “With respect to the provisions of section 303(a)(5) which require verification of voter registration information, it is important to remember that nothing in this conference report establishes a Federal definition, or standard, for when a voter is duly registered. That authority continues to reside solely with State and local election officials pursuant to State law.” R.298a.

Echoing the text of the Special Rule, Senator Dodd further noted that if an applicant has neither a DLN nor an SSN4, the State shall issue the individual a number which becomes the voter’s unique identifier (as required for the centralized computerized registration list). R.298a. While the chief state election officer is

⁵ As of this writing, twenty-two states and the District of Columbia provide for same-day registration. Nat’l Conf. of State Legs., Same-Day Voter Registration (Oct. 31, 2023), <https://www.ncsl.org/elections-and-campaigns/same-day-voter-registration>, site visited June 25, 2024. One state, North Dakota, has no state-wide voter registration requirement. *Brakebill v. Jaeger*, 905 F.3d 553, 556 (8th Cir. 2018) (“North Dakota has no voter registration requirement . . .”); N.D. Cent. Code § 40-21-10 (providing for optional registration for voters within municipalities).

required to enter into agreements to match information supplied by the voter with motor vehicle or Social Security databases, “nothing in this section prohibits a State from accepting or processing an application with incomplete or inaccurate information. . . . The provision requires only that a verification process be established but it does not define when an applicant is a duly registered voter.” R.298–299a. As stated, that language is made clear by HAVA, which mandates that “State law” must determine whether the information provided by an applicant is sufficient for registration purposes pursuant to state law. 52 U.S.C. § 21083(a)(5)(A)(iii).

The legislative history also makes it clear that the purpose of matching a registrant’s ID numbers was to ensure that voters with the same name or birth date are distinguished as required for the centralized list. R.284a (“It is likely that states will find it necessary to create a unique identifier to distinguish registered voters who happen to have the same name and/or birth date. The unique identifier so created will be used to assure that list maintenance functions are attributable to the correct voter; to avoid removing registrants who happen to have the same name and birth date as a felon, for example.”).

2. Identification requirement for certain voters who register by mail of Section 303(b).

Certain voters who register by mail are subject to mandatory identification requirements imposed by HAVA if they have “not previously voted in an election for Federal office in the State” (*i.e.*, are first-time voters in the state, or had previously only voted in an election for state or local office). 52 U.S.C. § 21083(b)(1)(B). Voters can meet HAVA’s first-time voter identification requirements by providing their ID number which matches with an existing state identification record or by showing a photo or non-photo identification. 52 U.S.C. § 21083(b)(2)(A)(i), (b)(3)(A), (b)(3)(B).

Significantly, though, HAVA exempts UOCAVA voters from the requirement to provide photo or non-photo ID at the time of voting a mail ballot, regardless of whether those voters provided ID numbers during registration. 52 U.S.C. § 21083(b)(2)(C)(i).

B. Uniformed and Overseas Citizens Absentee Voting Act.

Congress enacted UOCAVA to ensure that active-duty military members, as well as other categories of U.S. citizens living overseas, are entitled to vote in elections for federal offices by absentee ballot. The definitions adopted by Congress apply UOCAVA to “absent uniformed services voters” and “overseas voters.” 52 U.S.C. § 20303. These groups include U.S. citizens who “reside[] outside the United

States” and active-duty members of the military (“UOCAVA voters”). 52 U.S.C. § 20310.

The U.S. Department of Defense has developed “an official post card form, containing both an absentee voter registration application and an absentee ballot application,” known as the Federal Post Card Application (“FPCA”), pursuant to 52 U.S.C. § 20301(b)(2). The states are required to accept the FPCA “for simultaneous voter registration application and absentee ballot application.” 52 U.S.C. § 20302(a)(4). The FPCA contains a space for the applicant’s DLN or SSN. R.73a–81a. The Pennsylvania-specific instructions, developed by the Department to accompany the FPCA, require that applicants “must provide your Pennsylvania-issued ID number or the last four digits of your Social Security Number;” for an applicant without either of these numbers, the applicant is advised to write “I do not have a Social Security Number or Pennsylvania-issued ID number.” R.76a.

C. Pennsylvania Law.

Pursuant to Section 1328 of the voter registration law, it is county voter registration commissions that receive voter registration applications, examine whether a prospective voter possesses the qualifications to vote, and depending upon the result of that examination, accepts them, rejects them, or otherwise disposes of them. 25 Pa. Cons. Stat. § 1328. The Pennsylvania voter registration law prescribes just four qualifications to register to vote: age, citizenship, residence, and

incarceration status. 25 Pa. Cons. Stat. § 1301(a), *accord* Pa. Const. art. VII, § 1.⁶ The voter registration law further offers just four grounds to reject a voter registration application: an incomplete application, non-qualification, non-entitlement to a transfer or address change, and non-entitlement to a name change. 25 Pa. Cons. Stat. § 1328(b)(2). “Failure to match ID number” is not among the bases offered in Pennsylvania law to reject a voter registration application. In other words, there is no matching prerequisite for a voter to register under Pennsylvania law.

Consistent with the voter registration law and with HAVA, the Department issued the Directive. R.23a, 84a, 265a. The Directive simply advises counties that they cannot reject a voter registration application solely on the basis of a non-match of an ID number. The Directive does not make any distinctions with respect to UOCAVA voters, nor even mentions them.

⁶ The text of Section 1301 purports to disqualify from registration anyone who has been incarcerated for a felony within the past five years, but that five-year exclusion was declared unconstitutional and is not in force. *Mixon v. Commw.*, 759 A.2d 442, 451 (Pa. Commw. Ct. 2000) (holding that individuals with felony convictions not currently incarcerated may register to vote), *aff’d* 783 A.2d 763, 763 (Pa. 2001).

The text of Article VII, § 1, grants the right to vote to twenty-one-year-olds resident in Pennsylvania at least 90 days and resident in the voting district for 60 days before the election. The franchise is broadened to include eighteen-year-olds and those resident in their voting district only 30 days as a result of federal law. U.S. Const. amend. XXVI, § 1 (eighteen-year-olds entitled to vote); Op. Pa. Att’y Gen. No. 1972-121 (May 5, 1972) (concluding that *Dunn v. Blumstein*, 405 U.S. 330, 348–49 (1972), prohibits the enforcement of certain durational residency requirements longer than 30 days).

When it comes to identification requisites in order to have one's vote for a particular election counted, the Election Code contains strict requirements going beyond HAVA's requirements for first-time voters who register by mail contained in Section 303(b). Pennsylvania mandates that absentee and mail-in voters provide proof of identification for every election; otherwise their vote will not count. 25 P.S. §§ 3146.2(e.2), 3146.2b(d), 3146.5(b)(1), 3146.8(h)(2), 3150.12b(c), 3150.15 (requiring proof of identification for absentee and mail-in voters in order for ballot to be counted). Proof of identification can be provided through, *inter alia*, a match of a voter's SSN4 or DLN. 25 P.S. § 2602(z.5)(3). Absentee or mail-in voters who fail to provide matching numbers must provide other proof of identification to their county board of elections within six days following an election or their ballot will not count for that election. 25 P.S. § 3146.8(h).

Crucially however, the General Assembly saw fit to carve out an exception to these identification requirements for certain types of voters, including UOCAVA voters. For instance, Section 1308(i) of the Election Code which governs the canvassing of absentee and mail-in ballots and provides identification requirements, states: "Notwithstanding the provisions of this section, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act. . . ." 25 P.S. § 3146.8(i).

II. Dismissal of Petitioners' Complaint Is Fully Supported Because Petitioners Failed to Show Any Violation of HAVA.

A. HAVA does not condition approval of a registration application on “matching” an ID number provided therein.

The plain language of HAVA precludes a state from rejecting a voter registration application for a non-match of an ID number. Indeed, one would have to ignore the Special Rule in Section 303(a)(5)(A)(ii) to read HAVA as Petitioners do. 52 U.S.C. § 21083(a)(5)(A)(ii). Petitioners also ignore Section 303(a)(5)(A)(iii), which explicitly empowers the states to determine whether an individual has provided sufficient information for registration pursuant to state law. 52 U.S.C. § 21083(a)(5)(A)(iii).

Petitioners have not and cannot cite any authority to show how the Directive, which simply directs counties not to reject a voter application for the sole reason of a non-match pursuant to the Special Rule in HAVA, could violate HAVA. Instead, Petitioners' attempt to confuse matters by repeatedly mischaracterizing the Directive. Pet'rs' Br. at 12. They claim that “Pennsylvania directs local election officials not to attempt to verify UOCAVA voters.” *Id.* Yet, by its terms, the Directive does not direct county voter registration commissions not to attempt to verify the identity of any voter registration applicants, including UOCAVA voters. R.23a; *contra* Pet'rs' Br. at 12, 15, 16, 17, 20. And the Pennsylvania-specific

instructions that accompany the FPCA require UOCAVA applicants to provide their ID number—or if they have neither a DLN or SSN⁴, to so state. R.73a–81a.

Petitioners cite to the Supremacy Clause seemingly to claim that the Directive is somehow preempted by HAVA. Pet’rs’ Br. at 18–19. This argument is a *non sequitur*. As the Supreme Court has recognized, “[b]ecause the power the Elections Clause confers is none other than the power to preempt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress’s preemptive intent.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 14 (2013). It is solely the text that controls whether a statutory provision enacted by Congress under the Elections Clause preempts a state requirement. *Id.* The text of both Section 303 and the Directive reveal no conflict so there can be no question of preemption. And Petitioners do not even attempt to identify any. The Directive was issued specifically so that county registration commissions would comply with HAVA’s Special Rule.

The holdings of federal courts which have confronted this issue completely contradict Petitioners’ contention that “HAVA requires election officials to determine the validity of numbers provided by applicants *before* they become voters.” Pet’rs’ Br. at 17 (emphasis in original).⁷ The language of both the Special Rule in Section 303(a)(5)(A)(ii) and HAVA’s direction in Section 303(a)(5)(A)(iii)

⁷ Notably, Petitioners’ only referenced support for that argument is their own Complaint.

that the State shall determine the sufficiency of the information provided for registration in accordance with state law make clear that the matching requirement is not a prerequisite for registration.

Significantly, where states have attempted to mandate a matching process as a prerequisite to registration as Petitioners seek here, courts have found such requirements to be in violation of HAVA. *See Wash. Ass'n of Churches v. Reed*, 492 F. Supp. 2d 1264, 1268–69, 1270 (W.D. Wash. 2006) *cited with approval in In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1075 (Pa. 2020). *See also Rosebud Sioux Tribe v. Barnett*, 604 F. Supp. 3d 827, 834–35 (D.S.D. 2022).

In *Reed*, plaintiffs sought to enjoin a Washington State statute which essentially required that the state match a potential voter's name to either the Social Security Administration's database or that of the state Department of Licensing before the applicant could be registered to vote. *Id.* at 1266. The *Reed* court found that such a matching requirement “directly conflicts with HAVA” and was therefore preempted. *Id.* at 1269. Citing to both the plain language of Section 21083 and legislative history, the *Reed* court concluded that “it is the assignment of some kind of unique identifying number to the voter that is the requirement, not the ‘match.’”

Id. at 1269–70.⁸ Similarly, a federal court in South Dakota recently concluded that denying registration when an applicant lacked a driver’s license or Social Security number and requiring the submission of an affidavit in front of the County Auditor as a prerequisite for registration conflicts with HAVA. *Rosebud*, 604 F. Supp. 3d at 834–35.

Contrary to Petitioners’ contentions, HAVA itself does not have one all-purpose “verification” protocol; rather, it prescribes specific and discrete procedures to be followed at different phases of the election process, contained in two different subsections: Section 21083(a) (concerning computerized registration list) and Section 21083(b) (concerning submission of identification prior to voting for those who register by mail). Petitioners improperly conflate these two sections into a single purported verification rule, but their claim falls apart when one examines the clear language of subsections (a) and (b).

As stated above, the purpose of Section 21083(a), as its title reflects, is to aid in establishing a computerized statewide voter registration list that will uniquely

⁸ Petitioners’ attempt to distinguish *Reed* simply highlights one of the major analytical flaws in their argument. They note that the final order in *Reed* made clear that the Court was not requiring the counting of ballots cast by voters whose SSN4 or DLN are not matched and who do not provide alternative identification. *See* Pet’rs’ Br. at 27–28. That in no way conflicts with the Directive which deals only with initial matching for registration purposes, not identification verification for absentee and mail in voters. As for identity requirements for voters who register by mail, HAVA specifically exempts UOCAVA voters. And Pennsylvania law, which provides stricter identity verification requirements for absentee and mail-in voters, does as well.

identify all registrants—so as to minimize the potential for confusion where registrants have the same name and birthday. The assignment of a unique voter ID in Section 21803(a)(5)(A)(ii) serves precisely this purpose.⁹ Nowhere does HAVA mandate that a positive “match” be found before a person’s registration be accepted. Such a requirement makes no sense in light of the Special Rule, which completely dispenses with the requirement to provide an ID number when the applicant has none. 52 U.S.C. § 21083(a)(5)(A)(ii).

Subsection (b) of HAVA Section 303 does contain an identification requirement for first-time voters who register by mail, which one can satisfy by matching an ID number (discussed in Part I.A.2, *supra*). 52 U.S.C. § 21083(b). But, as Petitioners must acknowledge, this identification requirement is inapplicable to, *inter alia*, UOCAVA voters. Pet’rs’ Br. at 23, *citing* 52 U.S.C. § 21083(b)(3)(C)(i). As discussed in Part I.C, *supra*, Pennsylvania’s identification requirements for absentee voters are stricter than those of HAVA, but they similarly exempt

⁹ As contemplated at the time HAVA was enacted, Pennsylvania’s SURE system assigns registrant a unique voter ID number, whether or not possessed of a DLN or SSN4:

It is likely that states will find it necessary to create a unique identifier to distinguish registered voters who happen to have the same name and/or birth date. The unique identifier so created will be used to assure that list maintenance functions are attributable to the correct voter; so as to avoid removing registrants who happen to have the same name and birth date as a felon, for example.

R.284a.

UOCAVA voters from having to provide other proof of identification if their ID numbers do not match or if they lack them. That was a choice made by the General Assembly. And, again, the Directive which deals only with the registration of voters and not with whether any voter's particular ballot in any election should count, has no relevance to this process.

B. The Department's practices are consistent with HAVA and other laws.

Petitioners claim that Department officials "acknowledge that even when the applicant provides a DLN on the FPCA, the elections officials are directed not to even attempt to match it to PennDOT records." Pet'rs' Br. at 16. Tellingly, there is absolutely no support for this assertion. Their citation to R.103a and R.311a does not help them. Page R.103a is Petitioners' Pre-Hearing Memorandum submitted to the hearing examiner during administrative proceedings.¹⁰ Page R.311a contains a link to the legislative hearing where Deputy Secretary Jonathan Marks, in response to one question regarding UOCAVA *ballots*, during an hours-long proceeding simply responded that proof of identification is exempted from verification pursuant

¹⁰ The memorandum simply references exhibits, none of which support this claim. They include: the Directive itself (Exhibit 2, R.23a, 84a, 265a) a letter from Acting Secretary of the Commonwealth Leigh Chapman to Representative Francis X. Ryan (October 28, 2022) (Exhibit 3; R.266a–269a), and Department guidance regarding Voter ID (Sept. 26, 2022) (Exhibit 6; RR278-280a), which together accurately explain Pennsylvania's processes for verifying identification of voters before their vote is counted pursuant to Pennsylvania law and note that UOCAVA voters are exempt from Pennsylvania's proof of identification requirements.

to Pennsylvania law.¹¹ 25 P.S. § 3146.8(i). Curiously, Petitioners ignore the fact that the Pennsylvania-specific instructions to the FPCA exactly mirror HAVA's requirements in Section 303(a)(5). R.73a–81a. Specifically, they state: “You must provide your Pennsylvania-issued ID number or the last four digits of your Social Security Number. If you do not have any of these numbers you must enter in Section 6: ‘I do not have a Social Security Number or Pennsylvania-issued ID number.’” Quite simply, there is no support in the record for the claim that the Department directs counties election officials not to match DLs or SSN4 on FPCA applications for UOCAVA voters.

With respect to those UOCAVA voters who do not match however, the Department correctly instructs counties, consistent with Section 1308(i) of the Election Code, that they cannot require proof of identification for such UOCAVA

¹¹ The full context of this testimony shows that Representative Francis X. Ryan was asking about the use of queries to verify mail ballot applications in advance of each election. Deputy Secretary Marks' response concerns not the registration application process but instead the ballot application process as made clear below:

Rep. Ryan: But one final question. The UOCAVA system. There's been a significant increase in the number of non-military ballots that came out through the system. What steps are taken to verify, by county election offices, to verify the information on the Federal Post Card Applications received from overseas non-military voters or is there any requirement to have verification done?

Dep. Sec'y Marks: Those voters, that group of voters are specifically exempted from the HAVA verification requirements. So they do not have to provide the PennDOT ID or last four of SSN. That's an exemption both in federal law and I believe state law as well. So there is no systematic verification if that's what you're asking.

voters whose identification has not been verified. 25 P.S. § 3146.8(i); *see also* R.278a–280a. This is not a violation of HAVA and, moreover, is in accord with state law. 52 U.S.C. § 21083(b)(3)(C)(i); 25 P.S. §§ 3146.2(j), 3146.2b(f), 3146.5(c), 3146.8(i) (all providing for such an exemption for UOCAVA voters). The Department’s guidance, and other communications (including to the county boards of elections and the Pennsylvania House State Government Committee) are all squarely in line with this unambiguous statutory text. Any alleged violation of Section 21083(b) is meritless.

Petitioners devote an inordinate amount of space in their argument recounting what other states do with respect to proof of identification of UOCAVA voters. Pet’rs’ Br. at 24–26 (discussing Georgia and Ohio).¹² That other states might have different requirements and procedures for UOCAVA voters is of no relevance. The only issue is whether Petitioners demonstrated a violation of HAVA. The OGC correctly found that they did not.

¹² Petitioners indeed spent a significant component of their presentation before the hearing examiner recounting the practices of other states. R.167a, 170a, 177a, 187a (discussing UOCAVA procedures for Alaska voters); R.167a, 172a–177a, 314a–330a (same for Georgia); R.167a–172a, 177a, 312a–313a (same for Ohio). Even assuming, *arguendo*, that Ms. Honey’s testimony was proper to demonstrate what those other states require, those other states’ policies are of no relevance in assessing whether the Department violated any provision of Title III of HAVA.

III. The Office of General Counsel’s Final Determination Properly Applies the Law and Should Be Affirmed.

After a full hearing in which Petitioners were generously permitted to present all of the evidence they sought, the OGC hearing examiner dismissed the complaint, finding Petitioners failed to show the Department violated HAVA. This determination contains findings of fact (“F.F.”) fully supported by the record and conclusions of law fully consistent with HAVA. R.336a–337a, F.F. 1–12. These findings support the Final Determination’s conclusions that the Department’s actions are fully consistent with the law.

In one of these findings, the hearing examiner specifically concluded that there was “no evidence” presented “that the Department prohibits or interferes with the ability of counties to take steps to verify voter information” R.336a–337a, F.F. 4, 5, 6. The examiner further found that the FPCA instructs Pennsylvania UOCAVA voters to provide their ID number, their SSN4 or state that they have neither. R.337a, F.F. 9-10. All of these findings were the product of a full hearing during which Petitioners had every opportunity to present evidence in support of their claims. R.136a, R.255a.

Yet the only “evidence” advanced by Petitioners to demonstrate the Department’s supposed wrongdoing consists of documents and testimony which actually demonstrate that the Department has acted entirely consistent with the law. *See generally* Pet’rs’ Br. at 20–24 (citing the Directive). And the only scintilla of

evidence provided by Petitioners as to the practice of any county, that one county purportedly did not properly process FPCAs during the 2020 election, based on a hearsay account from Ms. Honey regarding a response to a Right to Know request made by some unidentified person, R.218a, 332a, was correctly rejected as “speculative and conclusory at best.” R.343a–44a.¹³

In any case, Petitioners’ Brief is wholly devoid of any allegation that the Findings of Fact in the Final Determination are defective in any way. It does not even refer to the Final Determination’s Findings of Fact, much less persuasively argue that they are unsupported by substantial evidence. Nor could it. The OGC properly found that the record did not support Petitioners’ claims and any suggestion to the contrary is meritless.

Petitioners provide no evidence—and none is found in the record—which would support the conclusion that the Department has approved or encouraged, much less “directed,” county voter registration commissions not to attempt to match ID numbers submitted by voter registration applicants.

Similarly, the conclusions of law (“C.L.”) in the Final Determination fully outline HAVA and the requirements of Title III. R.337a–340a, C.L. 1–18. Significantly, the hearing examiner recognized:

¹³ A response from one county that no records exist for a Right to Know request seeking “incomplete HAVA applications” from over two years prior proves nothing.

- the mandate to establish a “computerized statewide voter registration list,” C.L. 7;
- the rules with respect to provision of information by voter registration applicants and the Special Rule for applicants who do not have an ID number, C.L. 8, 9;
- that determinations of the sufficiency of voter registration forms are to be made “in accordance with [Pennsylvania] law,” C.L. 10;
- that HAVA does not institute a restriction on voter eligibility, C.L. 11; and
- that HAVA exempts UOCAVA voters from the requirement to provide an ID number at the time of voting; C.L. 12–14.

The Final Determination rightly notes that Petitioners “are unable to show how any Department practice, including the Directive, violates the clear and plain text of HAVA,” and concludes that the Department’s practices “adhere[]” to the system HAVA created. R.341a. None of the foregoing represents legal error, and Petitioners really make no argument to the contrary. Quite simply, Petitioners do not like that the Election Code excepts UOCAVA overseas voters from the requirement that one provide proof of identification for their ballot to be counted. Pet’rs’ Br. at 26. But that does not create a violation of HAVA. Nor do Petitioners cite any authority that overseas voters who vote pursuant to UOCAVA are to be treated any

differently than military voters. There is none; neither UOCAVA nor Pennsylvania law makes any such distinction.

Petitioners claim that “[t]he Department of State and the Secretary of the Commonwealth’s directive have created a loophole” with respect to UOCAVA voters misses the mark. Pet’rs’ Br. at 20. The Directive simply reflects HAVA’s requirements with respect to the Special Rule: that a voter registration application cannot be rejected for the sole reason of a non-match. This does not violate HAVA; rather, it is entirely consistent with HAVA. Moreover, both HAVA and the Election Code treat UOCAVA voters differently with respect to verification of identification prior to voting. The Department and Secretary simply execute the law as enacted. Any such “loophole” is in fact the deliberate creation of the United States Congress and Pennsylvania General Assembly, which have struck a balance after weighing the benefits and burdens of imposing certain requirements on UOCAVA voters.

The Office of General Counsel’s determination is fully supported and should be affirmed.

CONCLUSION

The Department's Directive is fully consistent with HAVA. The Final Determination of the Office of General Counsel dismissing Petitioner's Complaint is correct and fully supported by substantial evidence. Accordingly, the Court should affirm the Final Determination of the Office of General Counsel.

Respectfully submitted,

/s/ Kathleen A. Mullen

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*On behalf of Respondent Pennsylvania
Department of State*

Date: June 28, 2024

CERTIFICATION

This 28th day of June, 2024, I certify that:

Electronic version. The electronic version of this Brief that has been provided to the Court in .pdf format in an electronic medium today is an accurate and complete representation of the paper original of the document that is being filed by Respondent Pennsylvania Department of State.

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

The undersigned verifies that the preceding Brief does not contain or reference exhibits filed in the trial court under seal. Therefore, the preceding Brief does not contain confidential information.

Word Count. I certify that this filing contains 6,542 words and, thus, complies with the word count limit imposed by Pa. R.A.P. 2135(a)(1). In making this certification, I have relied on the word count of the word processing system used to prepare this filing.

Service. I am this day serving this Brief to all counsel of record electronically via the PACFile system, and to any *pro se* participants via electronic mail, with a certificate of service to be generated thereby.

/s/Kathleen A. Mullen

Kathleen A. Mullen

Voter Registration and Absentee Ballot Request

Federal Post Card Application (FPCA)

This form is for absent Uniformed Service members, their families, and citizens residing outside the United States. It is used to register to vote, request an absentee ballot, and update your contact information. See your state's guidelines at FVAP.gov.

Print clearly in blue or black ink, please see back for instructions.

1. Who are you? Pick one.

- I request an absentee ballot for all elections in which I am eligible to vote AND:
- I am on active duty in the Uniformed Services or Merchant Marine **-OR-** I am an eligible spouse or dependent.
 - I am a U.S. citizen living outside the country, and I intend to return.
 - I am a U.S. citizen living outside the country, and my intent to return is uncertain.
 - I am a U.S. citizen living outside the country, I have never lived in the United States.

Last name	Suffix (Jr., II)	<input type="checkbox"/> Mr. <input type="checkbox"/> Miss <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.
First name	Previous names (if applicable)	
Middle name	Birth date (MM/DD/YYYY)	
Social Security Number	Driver's license or State ID#	

2. What is your address in the U.S. state or territory where you are registering to vote and requesting an absentee ballot?

Your voting materials will not be sent to this address. See instructions on the other side of form.

Street address	Apt #
City, town, village	State
County	ZIP

3. Where are you now? You MUST give your CURRENT address to receive your voting materials.

Your mailing address. (Different from above) Your mail forwarding address. (If different from mailing address)

4. What is your contact information? This is so election officials can reach you about your request.

Provide the country code and area code with your phone and fax number. Do not use a Defense Switched Network (DSN) number.

Email:	Phone:
Alternate email:	Fax:

5. What are your preferences for upcoming elections?

- | | | |
|--|---|--|
| A. How do you want to receive voting materials from your election office? (Select One) | <input type="checkbox"/> Mail
<input type="checkbox"/> Email or online
<input type="checkbox"/> Fax | B. What is your political party for primary elections? |
|--|---|--|

6. What additional information must you provide?

Puerto Rico and Vermont require more information, see back for instructions. *Additional state guidelines* may be found at FVAP.gov. You may also use this space to clarify your voter information.

7. You must read and sign this statement.

I swear or affirm, under penalty of perjury, that:

- The information on this form is true, accurate, and complete to the best of my knowledge. I understand that a material misstatement of fact in completion of this document may constitute grounds for conviction of perjury.
- I am a U.S. citizen, at least 18 years of age (or will be by the day of the election), eligible to vote in the requested jurisdiction, and
- I am not disqualified to vote due to having been convicted of a felony or other disqualifying offense, nor have I been adjudicated mentally incompetent; or if so, my voting rights have been reinstated; and
- I am not registering, requesting a ballot, or voting in any other jurisdiction in the United States, except the jurisdiction cited in this voting form.

Sign here



Today's date
(MM/DD/YYYY)

You can vote wherever you are.

Agency Disclosure Statement

The public reporting burden for this collection of information, OMB Control Number 0704-0503, is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. DO NOT SUBMIT YOUR FORM TO THE E-MAIL ADDRESS ABOVE.

Privacy Advisory

When completed, this form contains personally identifiable information and is protected by the Privacy Act of 1974, as amended.

1. Fill out your form completely and accurately.

- Your U.S. address is used to determine where you are eligible to vote absentee. For military voters, it is usually your last address in your state of legal residence. For overseas citizens, it is usually the last place you lived before moving overseas. You do not need to have any current ties with this address. DO NOT write a PO Box # in section 2.
- Most states allow you to provide a Driver's License number or the last 4 digits of your SSN. New Mexico, Tennessee, and Virginia require a full SSN.
- If you cannot receive mail at your current mailing address, please specify a mail forwarding address.
- Many states require you to specify a political party to vote in primary elections. This information may be used to register you with a party.
- **Section 6 Requirements:** If your voting residence is Vermont, you must acknowledge the following by writing in section 6: "I swear or affirm that I have taken the Vermont Voter's Oath." If your voting residence is in Puerto Rico, you must list your mother's and father's first name.
- We recommend that you complete and submit this form every year while you are an absentee voter.

2. Remember to sign this form!

3. Return this form to your election official. You can find their contact information at FVAP.gov.

- Remove the adhesive liner from the top and sides. Fold and seal tightly. If you printed the form, fold it and seal it in an envelope.
- All states accept this form by mail and many states accept this form by email and fax. See your state's guidelines at FVAP.gov.

**Questions?
Email: vote@fvap.gov**

(Fill in the address of your election office.
The address can be found online at FVAP.gov.)

To

NO POSTAGE NECESSARY IN THE U.S. MAIL - DMM 703.8.0

OFFICIAL ABSENTEE BALLOTING MATERIAL - FIRST CLASS MAIL



International airmail postage is required if not mailed using the U.S. Postal Service, APO/FPO/DPO system, or diplomatic pouch.

From
(Your name and mailing address)

U.S. Postage Paid
39 USC 3406
PAR AVION





Instructions for Uniformed Services or Overseas Voters

R.C. 3511.021, 3511.09, 3511.021, 3505.181

Please Read Carefully

1 Complete Your Ballot

- Fill in the entire box or oval for your selection.
- Do not make any other markings on your ballot.
- Follow the specific instructions on the ballot.



2 Prepare Your Ballot and Envelope

On the **outside** of the Identification Envelope, you **must** do the following:

- Print your name and address on the Identification Envelope (if not already pre-printed by your board of elections).
- Provide **ONE** of the following:
 - A. The last four digits of your Social Security number **OR**
 - B. Your Ohio driver's license or state ID card number (2 letters followed by 6 numbers) **OR**
 - C. A **COPY** of a different form of current photo identification (a driver's license, state ID card, or interim ID form issued by the Ohio BMV; a US passport or passport card; or a US military ID card, Ohio National Guard ID card, or US Department of Veterans Affairs ID card). The copy of the photo ID must include images of the front and back, except for a passport which must include the passport's identification page.



Place the **copy of your ID** in the Return Envelope **separate** from the Identification Envelope. Election officials must be able to see you have provided ID in order to open and count your ballot.

- Sign your name. **Important!** Your ballot cannot be counted without your signature.
- Do not remove the numbered stub attached to your ballot. The numbered stub must remain attached to your ballot. Your ballot cannot be counted if the stub is removed.
- Sign your completed Identification Envelope.

If you received your ballot by mail:

- Place your voted ballot into the completed Identification Envelope.
- Seal the envelope. Your ballot cannot be counted if it is not sealed in the Identification Envelope.
- Place the sealed, completed and signed Identification Envelope into the Return Envelope.

If you received your ballot by fax or email:

- You may print a copy of the first page of the Return Envelope which accompanied your balloting materials from your county boards of elections (SOS Form 285 – using the number 10 or 6" x 9" template size depending on what will fit best on your envelope) and securely affix it to a return envelope.¹
- Place the Identification Envelope/Statement of Voter and your voted ballot in the Return Envelope. If you did not write your Ohio driver's license number, state ID card number, or the last four digits of your Social Security number on your Identification Envelope/Statement of Voter, include a copy of a current and valid photo identification (a driver's license, state ID card, or interim ID form issued by the Ohio BMV; a US passport or passport card; or a US military ID card, Ohio National Guard ID card, or US Department of Veterans Affairs ID card). Place the copy of your identification in the Return Envelope but not inside the Identification Envelope. Election officials must be able to determine you have provided identification in order to count your ballot.
- Seal the Return Envelope.

¹Alternatively, you may utilize the Open Postage-Paid Envelope Template on the Federal Voting Assistance Program website (www.fvap.gov and search "Envelopes") which may be used if mailed in the U.S. Postal System, which includes all U.S. military post offices (APO/FPO) overseas, or through the diplomatic pouch available at U.S. embassies/consulates. The template must be printed on a number 10 or larger.

3 Return Your Ballot

Return Your Ballot In Person By: **Election Day at 7:30 p.m.**

Mail Your Ballot By: **The close of polls on Election Day**



By Mail

- If you are returning the ballot through the U.S. Postal Service, APO/FPO system, or diplomatic pouch, no postage is necessary.
- If you are returning the ballot from outside of the U.S. Postal Service, APO/FPO system, or diplomatic pouch, you must affix sufficient postage to ensure the prompt delivery of your ballot. Affix any sufficient postage required to the envelope over the U.S. Postage Paid 39 USC 3406 indicia.
- In order for your ballot to be counted, the ballot must be submitted for mailing by the close of polls on Election Day and the voted ballot must be received by the county board of elections by the fourth day after the election.
- You may not return your absentee voter ballot to your polling place or transmit your ballot by electronic means (fax or email).
- Ballots received late cannot be counted.



In Person

If you are returning your absentee ballot in person to your board of elections, you must do so by 7:30 p.m. on Election Day. Only you, your spouse, child, or a near relative* may deliver your ballot to the board of elections for you. For county boards of elections locations and hours, please visit: VoteOhio.gov/boards.

You may **NOT** return your absentee ballot to your polling place.

4 Track Your Ballot

- Go to VoteOhio.gov/track.
- Select your county.
- Enter your first and last name to see where your ballot is or if it has been processed.

What happens if I make an error when I mark my ballot?

If you make a mistake when marking your ballot, please contact your county board of elections for a replacement ballot. You may request a replacement ballot only two times.

NOTICE:

If you change your mind about voting absentee and decide to vote at your polling location on Election Day, you will be required to vote a provisional ballot.

**Persons who may return the voted ballot include: the voter, the voter's spouse or the voter's father, mother, father-in-law, mother-in-law, grandfather, grandmother, brother, or sister of the whole or half blood, or the son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece (R.C. 3509.05).*



SOS ELECTIONS DIVISION

UOCAVA BALLOT ISSUING/MAILING

GEORGIA SECRETARY OF STATE | ELECTIONS DIVISION

GEORGIA ELECTIONS DIVISION

VISION

To produce trusted results that reflect the will of eligible Georgia voters.

MISSION

To ensure and promote secure, accurate, and fair elections that Georgia voters can have confidence in and to be a trustworthy custodian of Georgia's Great Seal.



LEARNING OBJECTIVES

- Processing/Mailing UOCAVA Ballots (Mailed Ballots and EBD)
- Absentee Ballot Report
- Ballot Packing and Mailing
- Ranked Choice Voting



UOCAVA ABSENTEE APPLICATION TIMEFRAMES

- The Federal Post Card Application or FPCA used by military and overseas citizens to register to vote and apply for an absentee ballot at the same time may be received as an application for an absentee ballot up to 180 days prior to election
- All other applications for an absentee ballot, including those for UOCAVA voters who make application on a state form, may not be accepted before the 78th day prior to the date of the election
- The last day to **accept** an application is 11 days prior to the date of the election (May 13th). Ballot applications received by 11:59 p.m. on May 13th (email, fax, SOS portal) should be accepted if eligible. *Ballot shall be mailed within three (3) calendar days.*
- UOCAVA mailout may begin as early as the 49th day prior to the election (April 5th) and must begin at least by the 45th day prior to the election (April 9th)



BALLOT PACKING AND MAILING

- Equipment & Supplies
 - Ballots
 - Envelopes
 - Instructions
 - Labels (for envelopes)
 - Mail Trays to keep ballots and ballot envelopes organized as they move through each stage of processing. You can use mail trays with large colored mail tray labels (or purchase colored mail trays).
- Mail tray carts or mail cages on wheels
- Carts that can be locked and sealed (in lieu of secure storage rooms)
- Signs that can be attached to carts showing contents and status
- Large signs to designate each area. (A plus if you can include visual charts displaying the steps in each individual processing stage.)



VERIFYING VOTER INFORMATION

- Best practice would be to start the search by DL number since this is a data point that must be verified anyway. If searching by DL number does not work, use one of the other searches available in the system
- Verify the voter's name and date of birth – DL number, too, if necessary
- Check for the party preference. If no preference is indicated, issue the voter a nonpartisan ballot
- Verify that the voter's signature is included and is an ink (hand) signature
- Once the required information has been verified, indicate on the application that the voter is either eligible or ineligible to receive a ballot



RECORDING THE VERIFIED INFORMATION CONTAINED ON THE APPLICATION

- Record the date the application was received, the VR number and the precinct name on the application
- When issuing the ballot, record onto the application the ballot issuance date and the type of identification produced by the voter
- If the application was rejected, record the information on the application



ABSENTEE APPLICATION - VOTER INELIGIBLE OR NOT TIMELY RECEIVED

- If the applicant is found to be ineligible or the application is not timely received
 - Reject the application and indicate the reason in writing on the application
 - Notify the applicant promptly in writing of the rejection and the grounds of ineligibility. Retain a copy for your records



ABSENTEE APPLICATION - VOTER WITH MISMATCHED INFORMATION

- An application for an absentee ballot may not be rejected solely due to a mismatch between the identifying information of the elector on the application and the identifying information of the elector on file with the Board of Registrars. In this case, you must issue a provisional ballot.



ABSENTEE APPLICATION - ISSUING A PROVISIONAL BALLOT FOR UOCAVA VOTERS

- Issuance of a provisional absentee ballot to a UOCAVA voter is no different than issuing a provisional absentee ballot for any other voter – as always, try reaching out to the voter by phone or email to clear up the issue.
 - Prepare a provisional packet for the voter
 - Place a label on the Oath envelope that states “Provisional Ballot”
 - Send the voter the Absentee Ballot Application Cure Affidavit and instructions for returning the Cure Affidavit and required ID

PROVISIONAL BALLOT



ABSENTEE APPLICATION - REGISTRAR IS UNABLE TO DETERMINE THE IDENTITY OF THE VOTER, APPLICATION NOT COMPLETE OR OATH NOT SIGNED

- Promptly contact the voter to request the necessary additional information and/or a signed copy of the oath



ABSENTEE APPLICATION – TIMEFRAME FOR BALLOT MAILOUT AND NOTIFICATIONS TO VOTERS

- Applications for absentee ballots, rejection letters, or letters seeking additional information must be mailed to voters within 3 days of receipt of the application 21-2-384(a)(2). For all timely received applications for absentee ballots, provisional absentee ballots and notices of rejection as soon as possible upon determining their eligibility within the time periods set forth.
- During the period for advance voting, the issuance of absentee ballots, provisional absentee ballots, and notices of rejection of application must be mailed out within 3 days after receiving a timely application for absentee ballot.
- It is always a good practice to reach out to voters via phone or email with questions regarding their application.

O.C.G.A §21-2-384(a)(2) (Page 332)



US CITIZEN RESIDING PERMANENTLY OVERSEAS

- May request an absentee ballot containing and Federal races including President, US Senate, and Congress, if:
 - The applicant was last domiciled in GA immediately prior to their departure from the US
 - If such citizen has met all other qualifications to vote even though while residing outside of the US, he or she does not have a place of abode or other address in GA
 - Has complied with all applicable GA qualifications and requirements consistent with federal law concerning absentee registration for and voting by absentee ballot
 - Does not maintain a domicile, is not registered to vote, and is not voting in any other state or election district of a state or territory or in any territory or possession of the US
 - Has a valid passport or card of identity and registration issued under the authority of the Secretary of State of the US or, on lieu thereof, an alternative form of identification consistent with Fed law and applicable state requirements, if a citizen does not possess a valid passport or card of identity and registration



UOCAVA BALLOT PACKET CONTENTS

- If sent by USPS, packet must contain both the election and the runoff ballot, 2 oath envelopes (one labeled for the runoff), 2 privacy envelopes, and appropriate instructions
- Oath envelope for the runoff ballot must contain a label with the following statement:

**Official Overseas/Military
General Primary Runoff Ballot
(June 21, 2022)**

This label sheet and instructions may be found on Firefly (Election Planner)

- The ballot packets delivered electronically (EBD) will contain all documents needed for the voter to cast their ballot and instructions for the proper return of their ballot. These ballots are transmitted by SOS.

GEORGIA SECRETARY OF STATE | ELECTIONS DIVISION

Instructions for marking and returning a **Ranked Choice Runoff Ballot**

What's in your ballot package?

Your voting materials in this package include:

- your official ballot
- these instructions
- your yellow return envelope
- a white envelope labeled Official Absentee Ballot

Before you begin

You must mark your ballot in private.

- No one can observe you marking your ballot except for
- an authorized person lawfully assisting you in marking your ballot if you are entitled to assistance, or
 - your child if under 18 years old, or
 - any child under 12 years old.

How to mark, seal, sign and return your ballot by Election Day

1. Mark your ballot

- Use a black or blue pen.
- If you are physically disabled or illiterate, you may have assistance marking your ballot. See the rules for who can receive assistance on the other side of the page.



- **Rank candidates in order of preference.** Use the box to the right of each candidate's name to rank candidates in order of preference. In the box next to the candidate, write 1 for 1st choice, write 2 for 2nd choice, write 3 for 3rd choice, and so on. Give each candidate a number from 1 to 5.

4. Complete the form and sign the return envelope

Read the oath carefully.

You are signing under penalty of false swearing that you voted your own ballot, have not allowed any unauthorized person to observe you marking your ballot and that you will not permit any unauthorized person to mail, deliver, or return your completed ballot.



- Use an ink pen.
- **Sign the oath** in your usual signature in the box next to the "X".
- Print your name.
- Enter your date of birth.

CODING BALLOTS IN GARVIS

- Proper reason codes for issuance and for rejection are important. Please try to be accurate. If free form must be used, be descriptive



LIST OF VOTERS REQUIRED FOR PUBLIC INSPECTION

- Each board of registrars office shall maintain for public inspection a master list, arranged by precincts, setting forth the name and residence of every elector to whom an official absentee ballot has been sent. Absentee electors, whose names appear on the master list may be challenged by any elector prior to 5:00 PM on the day before absentee ballots are to begin being scanned and tabulated. 21-2-384(d)
- This is a public list and is available on the Secretary of State's website



UOCAVA Management

2022 County Election
Administrator Training Conference



Agenda

- ◆ Overview of Process
- ◆ Accept and Reject of UOCAVA Ballots
- ◆ Important of Timeliness
& Corresponding with Voters
- ◆ Helpful Reports in SVRS
- ◆ Reporting to OSS

Overview of Process

- ◇ Uniformed and Overseas Citizens Absentee Voting Act
- ◇ Receive Online and Physical Applications
 - ◇ An application serves as a Voter Registration Application and an Absentee Ballot Application
- ◇ Voter Registration is processed, then Absentee Ballot Application
- ◇ All active applications MUST have ballots sent for all their address' elections. It is a statutory requirement to get these ballots sent timely.
 - ◇ For statewide/federal elections, our office MUST be notified by the 46th day prior to the primary or the general that ballots have been sent for all UOCAVA applications on file by the 46th day.
- ◇ Multiple delivery types
- ◇ Returned ballots are verified by a UOCAVA Ballot Board
 - ◇ Special Accept/Reject Process
 - ◇ Some accepted ballots may need to be duplicated
- ◇ Follow-up required for rejected ballots

Accept and Reject of UOCAVA Ballots

- ◇ Special UOCAVA Ballot Board
 - ◇ This ballot board is considered separate to the normal AB/MB ballot board
- ◇ Accept/Reject is different than normal AB/MB voting
 - ◇ Verification Steps:
 - ◇ 1. The voter's name on the envelope appears substantially the same on the application;
 - ◇ 2. The voter has signed the certification on the back of the signature envelope;
 - ◇ 3. The voter has provided the same identification number as on the application
 - ◇ a. Note: Voter can provide their passport, MN driver's license or state ID number, or the last four digits of their social security number.
 - ◇ b. If the identification numbers do not match, board members **must make an effort** to satisfy themselves that the ballot **was returned by the same individual to whom the ballot was sent.**
 - ◇ 4. The voter is not known to have died;
 - ◇ 5. The voter has not already voted in the election in person or by absentee.
 - ◇ If your county delegates AB voting to municipalities, UOCAVA ballots need to be forwarded to that delegated jurisdiction

Importance of Timeliness and Corresponding with Voters

- ◆ 46 Days is still the timeline for UOCAVAs, it doesn't change with election types (such as township elections). On the first day of the voting period, ballots must be sent for applications on file.
- ◆ Given the travel time required, and issues related to both domestic and foreign postal service, it is important to get ballots sent ASAP, processed ASAP, and follow up completed ASAP.
- ◆ Keep up with new applications during the voting period. Even if the application creates a ballot that needs to be sent "close" to the election date. It still needs to be processed! If you are concerned with timeliness for the voter, you can reach out to them.
- ◆ Keep in mind the differences in time zones for voters overseas. They might not see something or respond given what their clock shows. Try multiple forms of communication if listed.

Federal Write-in Absentee Ballots (FWABs)

The FWAB is available for UOCAVA voters who feel there may not be ample time to receive and return the official ballot they get through the FPCA. This can also be used by someone who did not receive the ballot they applied for through the FPCA.

The FWAB includes a Voter's Declaration/Affirmation page and the Write-In Absentee Ballot Pages. For it to be complete, the voter must submit both parts.

Case 1:24-cv-01671-CCC Document 23-10 Filed 10/07/24 Page 7 of 10

Federal Write-in Absentee Ballots (FWABs)

Two FWAB Scenarios to think about:

1) If an applicant did not previously submit an FPCA, treat the FWAB like an FPCA

- ◇ First, use the FWAB to update the voter's registration record
- ◇ Next, add a UOCAVA AB record for the voter
- ◇ The FWAB is the voter's ballot
- ◇ Do not issue an 'official' ballot for the election
- ◇ Use the SVRS ballot record to process the write-in ballot, mark as accepted/rejected based on ballot board's review of the FWAB
- ◇ Process the FWAB beginning seven days before the election

2) If a FWAB is received from a voter who previously submitted an FPCA and was issued an official ballot:

- ◇ Proceed as if the write-in ballot is the official ballot
- ◇ Following accepting/rejecting by the ballot board, mark the existing ballot record in SVRS as "accepted" or "rejected" as appropriate and check the FWAB checkbox to indicate the ballot is a FWAB
- ◇ Up until 8:00PM on election day, the potential exists for the official ballot be returned as well. To account for this, a FWAB in this scenario cannot be processed (separated from the secrecy envelope and run through the tabulator).

Helpful Reports in SVRS

- ◆ We highly recommend you use the various reports in SVRS to assist with your organization and administration of UOCAVA ballots.
- ◆ The "UOCAVA Statistics Certification" is also a very helpful report to run for our Department of Justice Reporting and post-election data review.
- ◆ Different reports in SVRS can do heavy lifting prior to, during, and even after the voting period.
- ◆ For example:
 - ◆ Running "Potential Duplicate UOCAVA Applications", "UOCAVA Ballot Materials", "UOCAVA Applications on File", and "UOCAVA's With Non-Matching Precincts" could help identify errors and allow you to correct those before heading into the voting period. That first delivery of ballots can be a lot of work and eliminating headaches prior to that goes a long way!
 - ◆ During the voting period, running "UOCAVA Current Ballot Status by Delivery Method" or "Absentee Ballot Count: Current Ballot Status" but selecting UOCAVA only can give you an idea of what state your sent ballots are in county-wide.

Reporting to OSS

- ◇ We are required to report MN UOCAVA administration to the Department of Justice for statewide/federal elections.
- ◇ Reach out to me directly with UOCAVA questions.
- ◇ Email me directly with reporting information. An all-counties email will go out from our office with information ahead of both elections.
 - ◇ Justin Dunford
 - ◇ Justin.Dunford@state.mn.us
 - ◇ 651-556-0617

Questions?

1 WHEREAS, the Court held oral argument on July 28, 2006; and

2 WHEREAS, on August 1, 2006, the Court issued an Order Granting Motion for
3 Preliminary Injunction; and

4 WHEREAS, pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, the
5 evidence received by the Court at the hearing on Plaintiffs' motion for a preliminary
6 injunction, as subsequently supplemented by later court order, would be admissible upon a
7 trial on the merits and would become part of the record on such a trial; and

8 WHEREAS, following discussion and consideration, the parties mutually stipulate to
9 the entry of this Order;

10 NOW THEREFORE,

11 Pursuant to the stipulation of the parties, the Court hereby finds and ORDERS as
12 follows:

13 1. Defendant, his employees, agents, representatives and successors in office are
14 permanently enjoined from enforcing RCW 29A.08.107 in such a way that any application
15 for voter registration is denied solely on the basis of a failure to match a voter's driver's
16 license number, state identification card number, or last four digits of a social security
17 number with information on record with the state Department of Licensing or federal Social
18 Security Administration, including by enforcement of RCW 29A.08.107(2) and (3). This
19 Order does not require Defendant to tabulate ballots or count votes cast by such voters absent
20 the completion of a matching process or the receipt of alternative identification by no later
21 than the day before certification of election results by the county canvassing board.

22 In accordance with the foregoing:

23 a. If the Defendant matches an applicant's driver's license number, state
24 identification card number, or last four digits of his or her social security number
25 with the records of the state Department of Licensing or federal Social Security
26 Administration, with or without seeking additional information or clarification

1 from the voter, the voter shall be registered to vote, effective as of the date of the
2 submission or receipt of the original application, unless there exists a separate
3 basis for concluding that the voter is ineligible to vote independent of the
4 matching process;

5 b. If Defendant is unable to match an applicant's driver's license number, state
6 identification card number, or last four digits of his or her social security number,
7 but the applicant presents or submits to an election official an alternative form of
8 identification acceptable under RCW 29A.44.205, the voter shall be registered to
9 vote, effective as of the date of the submission or receipt of the original
10 application, unless there exists a separate basis for concluding that the voter is
11 ineligible to vote independent of the matching process;

12 c. If an applicant does not become registered to vote under either paragraph (1)(a) or
13 (1)(b) above, unless there exists a separate basis for concluding that the applicant
14 is ineligible to vote independent of the matching process, then the applicant shall
15 be provisionally registered to vote. All voters provisionally registered pursuant to
16 this paragraph shall be promptly notified in writing of this provisional status, of
17 the need to provide additional documents or information, and of the relevant
18 deadlines. They shall be included in the official rolls of registered voters
19 maintained by the state and in all electronic or paper copies used for election
20 administration purposes, but their provisional status may be flagged to indicate
21 that identification is still required before their votes may be counted. All voters
22 provisionally registered pursuant to this paragraph shall be permitted to cast a
23 ballot in any primary or election;

24 d. No ballot cast pursuant to paragraph (1)(c) above shall be tabulated or regarded as
25 containing valid votes for any office or measure until the Defendant receives
26 information or the voter presents or submits documentation sufficient to register

1 the voter as described in paragraph (1)(a) or (1)(b) above. The Defendant is not
 2 required to tabulate votes cast pursuant to paragraph (1)(c) above, or treat them as
 3 properly cast votes for any office or measure unless the Defendant receives
 4 information or the voter presents or submits documentation sufficient to register
 5 the voter as described in paragraph (1)(a) or (1)(b). Upon receipt of such
 6 information or documentation by an election official, the ballot shall be tabulated
 7 and the voter shall be registered as a fully active registered voter, effective as of
 8 the date of the submission or receipt of the original application.

9 e. Nothing in this Order shall be construed to require the Defendant to maintain a
 10 voter in provisional status on the state's voter registration list after two federal
 11 general elections have been conducted since the date of the original application.

12 2. This Order constitutes a final order and judgment pursuant to Rule 54 resolving
 13 the merits of this action. The parties stipulate to the entry of this Order in full and final
 14 resolution of all claims and issues presented in this action, except claims for costs and
 15 attorney fees. The parties mutually agree that they will not appeal this Stipulated Final Order
 16 and Judgment to any court. This Court retains jurisdiction of this action to enforce the terms
 17 of this Order, and to adjudicate claims for costs and attorney fees.

18 IT IS SO ORDERED.

19 DATED this 16th day of March, 2007.

20 

21 RICARDO S. MARTINEZ
 22 UNITED STATES DISTRICT JUDGE

1 SUBMITTED jointly this _____ day of March, 2007, by:

2 HILLIS CLARK MARTIN &
3 PETERSON, P.S.

ROBERT M. MCKENNA
ATTORNEY GENERAL

4
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Federal Post Card Application is Both a Voter Registration Application and an Absentee Ballot Application

1

Voter Registration Application Process

- Registration Application Submitted
- Application Reviewed for Completeness
- Review Residency Eligibility/Correct County

Applicant provided a Driver's License

Applicant provided an SSN4

Applicant states that they have neither* assign a unique ID

Enter applicant information into Statewide Voter Registration Database and **THEN** attempt to verify information on the voter registration application

2

Absentee Ballot Application Process

- Absentee Ballot Application Submitted
- Application Reviewed for Completeness
- Confirm Applicant is a Qualified Elector

Board attempts to verify the proof of identification and compare the information on ballot application to the applicant's permanent registration card.

If Board confirms, ballot application is **Approved**

If proof of identification was not provided with the ballot application or not verified by the board, the board sends notice to the voter requiring them to provide proof of identification to the board or ballot will not be counted.

3

Ballots Mailed or Delivered Electronically to all **Approved** and all **NV** applicants

(b) Requirements for voters who registered by mail and (ii) who votes by mail, submits with the ballot a copy of ID with ballot

Qualified Elector UOCAVA Eligible
HAVA **Exemption** for Mail Ballot ID Requirements (b)(1) shall not apply to individuals who are **entitled to vote under UOCAVA**

NV/Provisional - Officials have not yet determined if individual is a qualified electors or if they are entitled to vote under UOCAVA

Attempt to match MVA

Attempt to match SSA

Attempt to verify the accuracy of the info on application

Match or Verification = **Verified/Otherwise Valid**

No Match or Verification = **Not Verified/Provisional**

Qualified Elector Entitled to vote under UOCAVA privileges

Provisionally Registered as not verified but requires additional information to determine if registration is valid and eligible-
Voter is contacted to present additional information

*This situation is not possible for eligible military and not feasible for an eligible overseas non-military. In the rare, case where an applicant could make this assertion, HAVA requires the state to assign the applicant a unique ID in the statewide voter registration database but THEN attempt to verify that the information on the voter registration application is accurate.



VOTER IDENTIFICATION REQUIREMENTS FOR VOTING

IDENTIFICATION REQUIREMENTS FOR IN-PERSON VOTING AT THE POLLING PLACE

Voters do not need to show photo identification at the polling place. Poll workers should not ask every voter for photo identification.

In 2014, the Commonwealth Court held that the in-person proof of identification requirements enacted under Act 18 of 2012 were unconstitutional. Those provisions are no longer in force even though *you may see them in Pennsylvania's Election Code*.

The Court's ruling on proof of identification ***applies only to identification requirements for voters who appear to vote at their polling place***. As a result of the ruling, the previous rules regarding identification requirements for first-time voters at the polling place remain in effect.

If a voter is voting for the **first time in an election district, the voter must show proof of identification, either photo or non-photo identification**. Returning voters need not show any identification unless otherwise noted in the poll book.

Forms of photo identification include:

- Pennsylvania driver's license or PennDOT ID card
- ID issued by any Commonwealth agency
- ID issued by the U.S. Government
- U.S. passport
- U.S. Armed Forces ID
- Student ID
- Employee ID

A non-photo identification that includes the voter's name and address is also acceptable.

Forms of non-photo identification include:

- Voter registration card issued by the County Voter Registration Office
- Non-photo ID issued by the U.S. Government
- Non-photo ID issued by any agency of the Commonwealth or U.S. Government
- Firearm permit
- Current utility bill
- Current bank statement
- Paycheck
- Government check



IDENTIFICATION REQUIREMENTS FOR ABSENTEE & MAIL-IN VOTING

Act 18 of 2012 imposed proof of identification requirements for voters applying to vote by absentee ballot. The court's ruling in 2014 did not affect those requirements and they remain in effect. Act 77 of 2019 instituted no excuse mail-in voting and included the same proof of identification requirements for mail-in ballots as for absentee ballots.

EXCEPTION: Those entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) or by alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (VAEH) are not required to provide proof of identification.

A voter applying to vote by absentee or mail-in ballot must provide proof of identification. If the voter has been issued a valid and current driver's license (or PennDOT ID card), the voter must provide the driver's license (or ID card) number.

If a voter does not have a driver's license (or PennDOT ID card), the voter must provide the last four digits of his or her Social Security number.

Only if the voter has ***neither*** a driver's license (or ID card) ***nor*** a Social Security number, then the voter must provide a copy of an ID that shows a NAME, a PHOTO, and an EXPIRATION DATE that is CURRENT. The copy of the photo identification must accompany the application for absentee or mail-in ballot.

Only limited types of photo identification are acceptable for this purpose, such as Photo IDs issued by the U.S. Government or the Commonwealth of Pennsylvania, and must include a valid expiration date (unless otherwise noted below) including:

- U.S. Passport
- U.S. Military ID (active duty and retired military ID may designate an expiration date that is indefinite). Military dependents' ID must contain current expiration date.
- Employee photo identification issued by Federal, Pennsylvania, Pennsylvania County, or Pennsylvania Municipal government.
- Photo identification issued by an accredited Pennsylvania public or private institution of higher learning.
- Photo identification issued by a Pennsylvania care facility, including long-term care facilities, assisted living residences and personal care homes.

A voter who does not include proof of identification with the absentee or mail-in ballot application should still receive a ballot; however, the county board of elections must send a notice to the voter with the ballot requiring the voter to provide proof of identification with the ballot. The voter has six (6) calendar days following the election to provide proof of identification.



ALL INFORMATION SHOULD REFLECT THE CURRENT LAW FOR IDENTIFICATION

All handouts, signage or other information must reflect current requirements and policy. Specifically, any and all materials relating to the in-person photo identification requirements of Act 18 of 2012 that the Commonwealth Court invalidated (including the “Show It” signs and polling place handouts) must be removed from public display.

Any automated phone messaging or answering services that contain information about voter identification must clearly and accurately reflect the identification requirements for “first-time” in-person voters, absentee, and mail-in voters.

Internal staff training documents/programs that are used for training staff on identification requirements for voters must accurately reflect the current identification requirements for “first-time” in-person voters, absentee, and mail-in voters.