

**TESTIMONY BEFORE THE PENNSYLVANIA SENATE INTERGOVERNMENTAL
OPERATIONS COMMITTEE BY LESLIE OSCHÉ, CHAIRMAN, BOARD OF
COMMISSIONERS, BUTLER COUNTY
THURSDAY, MARCH 31, 2022**

GOOD MORNING, LADIES AND GENTLEMEN AND MEMBERS OF THE COMMITTEE. MY NAME IS LESLIE ANN OSCHÉ AND I AM ONE OF THREE ELECTED MEMBERS OF THE BOARD OF COMMISSIONERS OF BUTLER COUNTY, ALSO SERVING AS CHAIRMAN. IN THIS ROLE, AS DEFINED BY ELECTION CODE, I ALSO SERVE AS A MEMBER OF THE BOARD OF ELECTIONS AND CERTIFY THAT I WAS NOT A CANDIDATE FOR OFFICE DURING THE 2020 OR 2021 CALENDAR YEARS, THEREBY WAS ACTING AS A MEMBER OF THE BOARD OF ELECTIONS DURING THOSE TWO ELECTION YEARS.

THANK YOU FOR THE OPPORTUNITY TO PROVIDE TESTIMONY THIS MORNING RELATED TO THE USE OF DROP BOXES IN PA ELECTIONS AND MORE SPECIFICALLY TO BUTLER COUNTY'S EXPERIENCE AND CONDUCT OF ELECTIONS AS IT RELATES TO THE USE OF DROP BOXES, FOLLOWING THE PASSAGE OF ACT 77 IN OCTOBER OF 2019.

THE 2020 ELECTION, BOTH IN LOCAL AND NATIONAL TERMS, WAS UNPRECEDENTED. NOT IN THE MODERN HISTORY OF OUR COUNTY HAVE WE WITNESSED SUCH A HIGH INCREASE IN THE NUMBER OF REGISTERED VOTERS, THE USE OF MAIL-IN AND EARLY IN-PERSON VOTING AS ALTERNATIVES TO IN-PERSON PRECINCT VOTING, THE LEVEL OF PUBLIC SCRUTINY BEFORE, DURING, AND AFTER ELECTION DAY, THE EXTENT TO WHICH ELECTIONS WERE CONTESTED AND LITIGATED BEFORE AND AFTER ELECTION DAY AND THE IMPACT OF A GLOBAL PANDEMIC ON THE ELECTION PROCESS.

ACT 77 OF 2019 REPRESENTED THE MOST SIGNIFICANT CHANGE TO THE LAWS GOVERNING ELECTIONS IN THE COMMONWEALTH OF PENNSYLVANIA IN MODERN HISTORY. FURTHER, RULINGS BY THE PENNSYLVANIA SUPREME COURT, SUPREME COURT OF THE UNITED STATES, AND DIRECTIVES BY THE GOVERNOR OF PENNSYLVANIA AS PART OF THE DECLARATION OF EMERGENCY RELATED TO COVID-19, CAUSED A CASCADE OF INTERPRETATIONS ABOUT THE NEW VOTING LAWS RESULTING IN MANY LAST-MINUTE CHANGES TO PROCEDURES WHICH CREATED CONFUSION AND MISTRUST AMONG VOTERS AND ELECTION OFFICIALS ACROSS THE COMMONWEALTH.

IN RESPONSE TO THIS, THE BUTLER COUNTY COMMISSIONERS CREATED A TRI-PARTISAN ELECTION COMMISSION IN JANUARY OF 2021 (TO INCLUDE REPRESENTATIVES OF BOTH THE REPUBLICAN AND DEMOCRATIC PARTIES AS WELL AS AN INDEPENDENT OR UNAFFILIATED VOTER) WITH THE STATED PURPOSE OF REVIEWING AND UNDERSTANDING THE ELECTIONS PROCESS IN ITS ENTIRETY AS PRESENTED BY THE DIRECTOR OF ELECTIONS AND VOTER REGISTRATION; IDENTIFYING STRENGTHS AND WEAKNESSES IN THE CURRENT PA ELECTION CODE, IN CHANGES BROUGHT ABOUT BY ACT 77, AND PA IN DEPARTMENT OF STATE DIRECTIVES; AND FINALLY TO ISSUE A REPORT WITH RECOMMENDATIONS AVAILABLE TO THE PUBLIC, ELECTED OFFICIALS, STATE ASSOCIATIONS AND THE BUTLER COUNTY BOARD OF ELECTIONS.

THE COMMISSION CONVENED IN FEBRUARY OF 2021, MEETING NINE TIMES, AND CONCLUDED ITS MEETINGS IN MAY OF 2021 AT WHICH TIME IT ISSUED A WIDELY SHARED AND PUBLISHED REPORT. IN SECTION I, TITLED "THE IMPACT OF MAJOR CHANGES IN ELECTION MANAGEMENT", THE REPORT NOTES

UNCLEAR ELECTION GUIDANCE AS AN IMPACT, SPECIFICALLY NOTING THAT ON AUGUST 19, 2020, THE DEPARTMENT OF STATE ISSUED ABSENTEE AND MAIL-IN BALLOT RETURN GUIDANCE THAT:

- SAID COUNTY BOARDS “SHOULD” ESTABLISH A PLAN AND ADOPT PROCEDURES FOR THE RETURN OF MAIL-IN BALLOTS AND “SHOULD” SUBMIT IT TO THE DEPARTMENT OF STATE AT LEAST 45 DAYS PRIOR TO THE ELECTION.
- SAID COUNTY BOARDS “MAY” ESTABLISH MULTIPLE BALLOT RETURN LOCATIONS WHERE A SECURE BALLOT RETURN RECEPTACLE “DROP BOX” MAY BE LOCATED. IN DEFINING SECURITY OF SAID RECEPTACLES, THE SAID THE BOARD “MUST” ENSURE A LIST OF PROCEDURES OF WHICH THEN USED THE WORD “SHOULD.”

KEEP IN MIND THAT THIS GUIDANCE IS DATED AUGUST 19, 2020 AND NOTED AS VERSION 1.0. SOME COUNTIES IN PA ALREADY DEPLOYED DROP BOXES DURING THE SPRING PRIMARY, PRIOR TO THIS GUIDANCE BEING RELEASED, AS THE DEPARTMENT OF STATE NOTIFIED COUNTIES IN MAY THAT THE USE OF DROP BOXES WAS ALLOWED.

BUTLER COUNTY DID NOT DEPLOY DROP BOXES DURING THE PRIMARY. WE INTERPRETED ACT 77 SECTION 1306-D VOTING BY MAIL-IN ELECTORS, SECTION a FINAL SENTENCE TO READ, “SUCH ENVELOPE SHALL THEN BE SECURELY SEALED AND THE ELECTOR SHALL SEND SAME BY MAIL, POSTAGE PREPAID, EXCEPTED WHERE FRANKED, OR DELIVER IT IN PERSON TO SAID COUNTY BOARD OF ELECTION.”

I HIGHLIGHT THE FACT THAT THE SENTENCE READS “THE ELECTOR” SHALL SEND OR DELIVER. AS SUCH OUR ELECTION BUREAU REPRESENTATIVES, WITH AFFIRMATION BY OUR SOLICITOR, WERE CHECKING IDENTIFICATION OF THOSE WHO WERE DELIVERING THEIR MAIL-IN BALLOTS TO BE SURE THEY WERE “THE ELECTOR.” WE WERE REPRIMANDED INITIALLY BY THE DEPARTMENT OF STATE FOR DOING SO. OUR SOLICITOR RESPONDED TO THE DEPARTMENT OF STATE INDICATING THAT ACCORDING TO CODE A VOTER MAY ONLY RETURN THEIR OWN BALLOT. THE DEPARTMENT ACCEPTED THAT INTERPRETATION AT THE TIME AND IN FACT HIGHLIGHTED THAT IN THEIR GUIDANCE WHICH AS NOTED WAS NOT ISSUED UNTIL AUGUST OF 2020.

FURTHER, DURING THE MONTH OF MAY, PROTESTS RELATING TO EVENTS IN MINNEAPOLIS WERE TAKING PLACE IN OUR PUBLIC PARK ACROSS FROM THE GOVERNMENT CENTER AND IN COMMUNITIES AROUND THE COUNTY. WITH HEIGHTENED STRESS ON THE COMMUNITY OF BOTH COVID-19 AND WIDESPREAD PROTESTS, WE WERE CONCERNED ABOUT THE SECURITY OF DROP BOXES, MOST PARTICULARLY THAT SOMEONE COULD DROP A MATCH OR CIGARETTE BUTT INTO THE BOX POTENTIALLY DESTROYING BALLOTS CONTAINED THEREIN.

IT SHOULD BE NOTED THAT A MAIL-BOX IS MARKED US MAIL AND DOES NOT CALL OUT THE FACT THAT BALLOTS MAY BE CONTAINED WITHIN IT. HOWEVER, A DROP BOX CLEARLY INDICATES THAT BALLOTS MAY BE INSIDE. HAVING NO EXPERIENCE OR TIME TO RESEARCH THE HISTORY OR USE OF DROP BOXES, THE PRUDENT DECISION SEEMED TO BE NOT TO MAKE USE OF THEM IN THEIR BROADEST TERMS.

FINALLY, IT WAS OBVIOUS THAT GIVEN THE VERY HIGH LEVEL OF ADDED HUMAN RESOURCES NECESSARY JUST TO CARRY OUT THE APPLICATION AND DISTRIBUTION PROCESS OF MAIL-IN BALLOTS ALONG WITH THE CANVASSING OF SAID BALLOTS, AND THE ADDITION OF EARLY IN-PERSON VOTING AT

THE BUREAU OF ELECTIONS, IT WAS IMPRACTICAL TO ADD YET ANOTHER DIMENSION TO THE PROCESS AND DO IT WITH ANY LEVEL OF INTEGRITY.

CLEARLY THE USE OF DROP BOXES WAS DEBATED DURING AND FOLLOWING THE PRIMARY WITH NO CLEAR GUIDANCE. THEN **IN JULY**, THE DEMOCRATIC PARTY FILED A PETITION IN COMMONWEALTH COURT AGAINST KATHY BOOCKVAR, SECRETARY OF STATE AND THE BOARDS OF ELECTIONS IN ALL 67 COUNTIES SEEKING INJUNCTIVE RELIEF RELATED ON SEVERAL ISSUES RELATED TO ACT 77, ONE OF WHICH WAS TO CONFIRM THAT THE ACT PERMITS BOARDS TO PROVIDE SECURE ACCESSIBLE LOCATIONS FOR THE COLLECTION OF MAIL-IN AND ABSENTEE BALLOTS INCLUDING MOBILE OR TEMPORARY SITES OR DROP BOXES.

THEN ON AUGUST 16TH, SECRETARY BOOCKVAR PETITIONED THE SUPREME COURT TO EXERCISE EXTRAORDINARY JURISDICTION IN THE CASE CITING THAT WAS THE ONLY MEANS TO RESOLVE THE DISPUTE WITHOUT DISRUPTING THE ELECTION.

THREE DAYS LATER, ON AUGUST 19TH, COUNTIES RECEIVED GUIDANCE ON ESTABLISHING A BALLOT RETURN AND COLLECTION PLAN THAT SHOULD BE RECEIVED BY THE DEPARTMENT OF STATE ON OR BEFORE 45 DAYS PRIOR TO THE ELECTION OR WHAT WOULD HAVE BEEN ON OR AROUND **SEPTEMBER 20TH**.

THE RULING FROM THE SUPREME COURT WAS ISSUED ON SEPTEMBER 17TH INDICATING THEIR BROAD INTERPRETATION OF THE ACT, WHICH MAKES NO MENTION OF DROP BOXES, BUT INTERPRETS THAT THE BOARD OF ELECTIONS COULD DESIGNATE A SITE ANYWHERE AND DISREGARDS THE ARGUMENT OF OF EQUAL PROTECTION NOTING THAT THE **"EXACT MANNER IN WHICH THE COUNTY BOARDS OF ELECTIONS WOULD ACCEPT BALLOTS WAS UNKNOWN AT THAT POINT" ...SINCE OF COURSE THE PLANS WERE NOT DUE TO THE DEPARTMENT OF STATE UNTIL THE 20TH**.

THE GUIDANCE ISSUED BY THE DEPARTMENT OF STATE IN AUGUST OF 2020 THAT I REFERRED TO EARLIER IN MY TESTIMONY READS "COUNTY BOARDS OF ELECTIONS **MAY** ESTABLISH MULTIPLE BALLOT RETURN LOCATIONS WHERE VOTERS MAY RETURN THEIR OWN VOTED BALLOT. AT THESE STIES, THE COUNTY **MAY** PROVIDE VOTERS WITH ACCESS TO A SECURE BALLOT RETURN RECEPTACLE FOR THIS PURPOSE." THE REST OF THE DOCUMENT MAKES USE OF THE WORD **"SHOULD"** AND IN SOME AND ALSO INCLUDES LANGUAGE THAT SAYS **"COUNTIES ARE ENCOURAGED** TO OFFER BUSINESS HOURS OUTSIDE WEEKDAYS." CLEARLY THE USE OF THE WORDS, "MAY", "SHOULD," AND "ENCOURAGED" DO NOT MANDATE THEIR USE.

NOTING THAT WE DID NOT HAVE A CERTIFIED BALLOT UNTIL SEPTEMBER 17TH, AND HAD TO WAIT AT LEAST A WEEK TO RECEIVE FINAL PRINTED BALLOTS, THE ELECTION BUREAU HAD LITTLE MORE THAN FIVE WEEKS TO STUFF, MAIL, AND RECORD AS RECEIVED, MORE THAN 30,000 BALLOTS BEFORE THE GENERAL ELECTION. VERY LONG LINES FORMED IN OUR ELECTION BUREAU WITH PEOPLE TRYING TO EITHER VOTE EARLY OR TURN-IN BALLOTS OUT OF FEAR THAT THE MAIL WOULD NOT GET THEM BACK IN TIME. BUTLER COUNTY DID ESTABLISH A BALLOT RETURN STATION WITH A SECURE BOX IN THE LOBBY OF OUR GOVERNMENT CENTER, A STATION THAT WAS MANNED BY TWO TEMPORARY STAFF. THE GOVERNMENT CENTER ALSO HOUSES THE ELECTION BUREAU OFFICE. THIS WAS DONE TO MITIGATE THE NUMBER OF PEOPLE WALKING THROUGH THE BUILDING DURING THE PANDEMIC. AGAIN, THE STAFF WERE CHECKING IDENTIFICATION TO ENSURE THAT INDIVIDUALS WERE SUBMITTING "THEIR OWN" BALLOTS ACCORDING TO THE ELECTION CODE.

ON OCTOBER 21ST THE SECRETARY OF STATE ISSUED A PRESS RELEASE REMINDING VOTERS THEY COULD RETURN THEIR MAIL IN BALLOTS TO A DROP BOX LOCATION AND LISTED DROP BOX LOCATIONS ACROSS THE COMMONWEALTH. THIS CLEARLY HIGHLIGHTED THAT COUNTIES WERE PROVIDING DIFFERING OPTIONS FOR BALLOT RETURN. ONCE AGAIN, INDIVIDUALS WERE INSPIRED TO CALL OUR OFFICE DEMANDING THE USE OF BALLOT BOXES OR EXPANDED RETURN CENTERS THROUGHOUT THE COUNTY. THIS WAS ON TOP OF THE 1000 CALLS COMING IN DAILY OF PEOPLE CLAIMING THEY DID NOT RECEIVE THEIR BALLOT. WE EMPLOYED 20 ADDITIONAL TEMPORARY STAFF AND HAD TO SET UP A CALL CENTER TO TAKE CALLS. WE CANCELLED AND REISSUED SOME 12,000 BALLOTS, MORE THAN A THIRD OF ALL MAIL-IN BALLOTS ISSUED. COINCIDENTALLY OR NOT, TWO DAYS LATER ON OCTOBER 23RD, THE COUNTY RECEIVED A CEASE-AND-DESIST ORDER FROM THE ACLU DEMANDING WE NO LONGER CHECK IDENTIFICATION OF VOTERS SUBMITTING THEIR MAIL-IN OR ABSENTEE BALLOTS.

AS INDICATED, FOLLOWING THE ELECTION, THE BOARD OF COMMISSIONERS CONVENED ATRI-PARTISAN ELECTION REVIEW COMMISSION. IN ADDITION TO NOTING THE UNCLEAR GUIDANCE OF THE DEPARTMENT OF STATE AND THE LAST-MINUTE RULING BY THE SUPREME COURT, THE COMMISSION SUPPORTED THE COUNTY'S DECISION NOT TO USE DROP BOXES BECAUSE OF THE STATUTORY REQUIREMENT THAT A VOTER MAY ONLY RETURN "THEIR OWN" BALLOT AND TO PREVENT BALLOT HARVESTING. HOWEVER, 7 OF THE 12 VOTING WERE NOT IN FAVOR OF THE USE OF DROP BOXES. VOTE WERE 3 AGAINST, 3 NEITHER FOR OR AGAINST, AND 6 WERE FOR USE OF DROP BOXES ONLY IN SPECIFIC LOCATIONS WHERE MANNED. AND AS FAR AS BOXES MONITORED BY CAMERA, AGAIN 7 WERE AGAINST THEIR USE, 2 WERE NEITHER FOR NOR AGAINST, AND 3 WERE FOR THEIR USE WITH CAMERA.

AS A BOARD OF ELECTIONS, WE TAKE SERIOUSLY OUR ROLE IN PROTECTION OF THE CHAIN OF CUSTODY OF BALLOTS. BUT IN THE INSTANCE OF MAIL-IN BALLOTING AND DROP BOXES, WE AS THE BOARD OF ELECTIONS HAVE NO WAY OF PROTECTING THAT BALLOT FROM THE TIME IT LEAVES OUR BUREAU OFFICE TO THE TIME IT IS RETURNED. THE USE OF DROP BOXES DOES NOTHING TO HELP US PROTECT BALLOTS, BUT INSTEAD CREATES JUST ANOTHER VARIABLE IN NEED OF MONITORING. AT THE VERY LEAST, A US MAIL BOX HAS FEDERAL PROTECTIONS AND SERIOUS REPERCUSSIONS TIED TO ITS USE OR MISUSE.

THE ENACTMENT OF ACT 77 BY THIS LEGISLATIVE BODY, LEFT OPEN TO INTERPRETATION OR PERHAPS GROSS MISINTERPRETATION OF THE LEGISLATURE'S INTENT BY THE SUPREME COURT REGARDING THE USE OF DROP BOXES. THE GUIDANCE ISSUED BY THE DEPARTMENT OF STATE GIVING OPTIONS TO COUNTIES FURTHER CREATES A CHALLENGE FOR BOARDS OF ELECTIONS, PARTICULARLY WHEN STATE HOUSE AND SENATE ALONG WITH CONGRESSIONAL DISTRICTS CROSS COUNTY LINES. WHILE WE APPRECIATE AND PREFER LOCAL CONTROL, WE DON'T APPRECIATE THE PURPOSEFUL ATTEMPTS AT COERSION TO ABIDE BY THE GUIDANCE. YOU, LADIES AND GENTLEMAN, HAVE PLACED 67 BOARDS OF ELECTIONS IN OUR COUNTIES IN A PLACE WHERE WE CANNOT CARRY OUT THE CONSTITUTIONAL CHARGE OR THE ELECTION CODE WITH THE INTEGRITY AND OATH THAT THIS OFFICE DEMANDS AND IS OWED TO THE PEOPLE OF THE COMMONWEALTH OF PENNSYLVANIA. WE ASK THAT YOU VERY CAREFULLY AND DELIBERATELY CONSIDER ANY NEXT STEPS TO RECTIFY THIS SITUATION.

THANK YOU FOR THE OPPORTUNITY TO PROVIDE THIS TESTIMONY.

