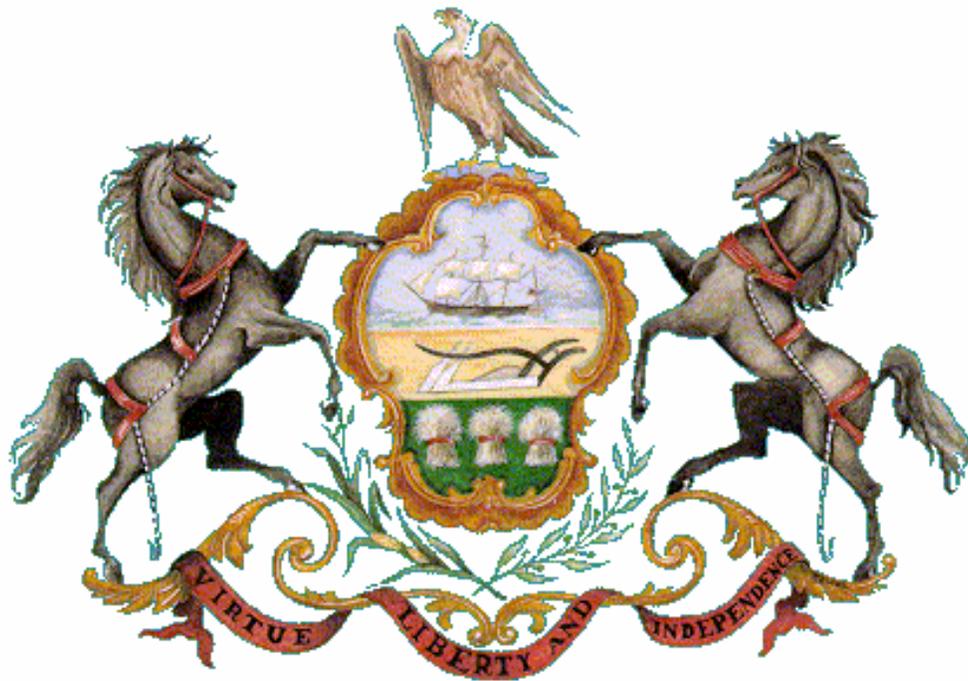


# **PENNSYLVANIA ELECTION REFORM TASK FORCE**

## **Final Report on Executive Order 2004-11**



**Edward G. Rendell**  
Governor

**Pedro A. Cortés**  
Secretary of the Commonwealth  
Chairman

May 12, 2005

The Honorable Edward G. Rendell  
Governor of Pennsylvania  
Room 225, Main Capitol  
Harrisburg, PA 17120

Dear Governor Rendell:

As the Chairman of the Pennsylvania Election Reform Task Force, I am pleased to submit the Task Force's Final Report to you for your review and consideration.

On December 13, 2004, by Executive Order 2004-11, you created the Task Force comprised of distinguished individuals with knowledge of Pennsylvania's election processes. Following its organizational meeting on February 1, 2005, the Task Force held several meetings to review, discuss, and debate the various topics delineated in your Executive Order. Our last meeting on May 9, 2005 resulted in the adoption of this Final Report.

You charged the Task Force with reviewing several critical aspects of the election process including the date of the presidential primary election, the absentee voting process, absentee voting with respect to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), voter participation, and compliance with the Help America Vote Act (HAVA). The Task Force's recommendations in the Final Report embody the spirit of your charge and are a culmination of testimony from election experts and the public, intensive research on election processes in the 50 states and District of Columbia, and extensive discussion and deliberation among the members.

The Task Force believes that the recommendations in the Final Report provide a solid foundation for election reform and further the ultimate goal of increasing voter participation in the Commonwealth.

I commend my fellow Task Force members for their hard work, diligence, and commitment to this project, and their willingness to improve Pennsylvania's electoral processes. It has been an honor and pleasure to serve as Chairman of the Pennsylvania Election Reform Task Force. I look forward to working with you in your efforts to ensure open and fair elections for all citizens of the Commonwealth.

Respectfully submitted,

Pedro A. Cortés, Chairman  
Pennsylvania Election Reform Task Force

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# Overview

**The Pennsylvania Election Reform Task Force (Task Force) was created on December 13, 2004 by Executive Order 2004-11 of Governor Edward G. Rendell. The Order delineated the following reasons for creation of the Task Force:**

- Pennsylvania is the sixth most populous state in the nation but the intentions of voters residing in Pennsylvania are not weighted appropriately in the presidential primary election process because the Pennsylvania Primary Election occurs after the primary elections in 26 other states.
- The interest of Pennsylvania voters would benefit from reviewing options for apportionment of electoral votes.
- In the 2004 Presidential Election, slightly more than nine million Pennsylvanians were eligible to vote but only 5.76 million or 62 percent of eligible voters actually voted.
- During the voting cycles for the 2004 Primary and General Elections, court challenges were filed to address issues concerning the statutory requirements regarding the processing of absentee ballots for deployed members of the armed forces and the practices used by Pennsylvania's 67 counties to meet the absentee voter processing requirements of federal and state law.
- Pennsylvania's system for distributing and receiving absentee ballots may present an impediment to the goal of increasing voter participation.
- Pennsylvania's counties are working toward full compliance with the Help America Vote Act (HAVA), which requires increased attention to issues of voter access, education, improved election machines, election operations, and election official training.
- States are expanding voting opportunities to include early voting (before Election Day) and/or voting by mail.
- Pennsylvanians must be assured that the Commonwealth's election system provides for the greatest level of participation and access while safeguarding the privacy of each vote and the integrity of every election.

# Tasks

**Executive Order 2004-11 set forth the following tasks for consideration:**

- (a) The Task Force shall examine options and make recommendations for changing the date of the Primary Election, including legislative changes, and timelines necessary to achieve recommended changes.
- (b) The Task Force shall review all absentee voting statutes, regulations and county practices and shall recommend legislative or regulatory actions appropriate to improve access to the election process for individuals who cannot get to a polling place on Election Day.
- (c) The Task Force shall review all absentee voting statutes, regulations and county practices and shall recommend legislative or regulatory actions necessary to ensure the ability to participate in elections by those subject to the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).
- (d) The Task Force shall examine options and make recommendations to increase voter participation, including, but not limited to, early voting, voting by mail and/or other similar system reforms, while ensuring the privacy and security of all ballots cast.
- (e) The Task Force shall make recommendations to address specific deficiencies at the state or county level with respect to compliance with HAVA.
- (f) The Task Force may examine other voting reforms such as methods for apportioning electoral votes.

# Pennsylvania Election Reform Task Force Members

The Task Force consisted of 13 members. The Secretary of the Commonwealth served as the Chair of the Task Force.

- **Pedro A. Cortés**, Secretary of the Commonwealth

Governor Rendell appointed four members to represent various constituencies affected by or knowledgeable about Pennsylvania's election processes.

- **Lesa Gelb**, Attorney, Cefalo & Associates
- **Barry Kauffman**, Executive Director, Common Cause of Pennsylvania
- **William H. Lamb**, Attorney, Lamb McErlane PC; Judge of the Court of Judicial Discipline of the Commonwealth of Pennsylvania; former Justice of the Pennsylvania Supreme Court
- **Daniel Shea**, Director, Center for Political Participation; Associate Professor of Political Science, Allegheny College

The President Pro Tempore of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives each appointed one private citizen with knowledge of Pennsylvania's election processes.

- **Gladys M. Brown**, Deputy Chief Counsel to the Senate Minority Leader (Appointed by Senator Robert J. Mellow, Minority Leader)
- **Robert L. Byer**, Attorney, Kirkpatrick & Lockhart Nicholson Graham LLP; former Judge of the Court of Judicial Discipline of the Commonwealth of Pennsylvania; former Judge of the Pennsylvania Commonwealth Court (Appointed by Senator Robert C. Jubelirer, President Pro Tempore)
- **Gene DiGirolamo**, Representative for 18<sup>th</sup> District, Pennsylvania House of Representatives (Appointed by Representative John M. Perzel, Speaker of the House)
- **Robert Lee Jr.**, Voter Registration Administrator, Philadelphia County (Appointed by Representative H. William DeWeese, House Minority Leader)

The County Commissioners Association of Pennsylvania (CCAP) appointed three members (Commissioners, election officials, or private citizens).

- **Donna Gority**, County Commissioner, Blair County

- **Douglas E. Hill**, Executive Director, County Commissioners Association of Pennsylvania
- **Joseph R. Passarella**, Director of Voter Services, Montgomery County

The League of Women Voters appointed one member.

- **Lora Lavin**, Government Specialist Representative, League of Women Voters

# Pennsylvania Election Reform Task Force Meetings

The Task Force held its first meeting on February 1, 2005 at the Governor's Residence. Governor Rendell addressed the Task Force and Department of State staff made presentations on election administration and the six tasks in Executive Order 2004-11.

Over the course of the next three months, the Task Force conducted an extensive review of the six tasks on the dates listed below. This included research and review of issues and articles relevant to the tasks, Department of State presentations, guest presentations, public commentary, and debate and deliberation of policy issues and motions. Information from these meetings, including research materials, public comments, meeting minutes, and transcripts, is available on the Pennsylvania Election Reform Task Force website ([www.dos.state.pa.us/election\\_reform](http://www.dos.state.pa.us/election_reform)). The "Final Votes" for each task are included in Appendix A of this Final Report.

- **February 1, 2005** – Overview of Election Administration in Pennsylvania and Primer on Task Force Issues
- **February 17, 2005** – Primary Date Change
- **March 3, 2005** – Absentee Voting and Uniform and Overseas Citizens Absentee Voting Act
- **March 17, 2005** – Voter Participation
- **March 31, 2005** – Help America Vote Act
- **April 14, 2005** – Electoral College and Other Reforms
- **April 21, 2005** – Final Consideration and Vote
- **May 9, 2005** – Adoption of Final Report

# Executive Summary

## **Task (a) – Primary Date Change**

Governor Rendell asked the Task Force to review the date of Pennsylvania’s presidential primary election mindful that Pennsylvania’s primary occurs after the primary elections in 26 other states, and Pennsylvanians have not influenced the selection of a presidential nominee since 1976. Governor Rendell believed that moving the presidential primary election date would provide Pennsylvania voters with a greater opportunity to participate in the selection of presidential nominees.

The Task Force not only reviewed the date of the primary election, but also the possibility of bifurcating the presidential and state primary elections, the processes and procedures relative to ballot access and other pre-primary election activities, and even the possibility of eliminating the presidential primary election in favor of a caucus. The Task Force agrees with Governor Rendell and believes moving the presidential and state primary elections to an earlier date will provide Pennsylvanians a voice in the selection of the President commensurate with its population rank among the states in the absence of an organized national system for presidential primaries. Therefore, the Task Force recommends the following:

- Establish the first Tuesday in March as the date of the primary election in 2008 and 2012 (presidential election years).
- Sunset on November 30, 2014 the legislation setting these primary election dates to provide the General Assembly sufficient time to review the efficacy of an early presidential primary.
- Work with the General Assembly to refine ballot access procedures to accommodate appropriately these primary election dates.

## **Task (b) – Absentee Voting**

Governor Rendell asked the Task Force to review the absentee voting process, which he considers a possible impediment to the overall goal of increasing voter participation. Improving access to the election process for individuals who cannot get to a polling place on Election Day would theoretically increase voter participation.

The Task Force considered several issues associated with absentee voting, including the qualifications to vote absentee, the application process, the absentee balloting process, the availability of absentee voter information, and the relationship of the provisions of the *Pennsylvania Constitution (Constitution)* related to the absentee voting process. The Task Force finds Pennsylvania’s absentee voting processes and procedures to be overly restrictive and

believes that voter participation will increase by simplifying the absentee voting process and making it more accessible. The highlight of the Task Force’s recommendations for this issue is the empowerment of voters to exercise their franchise by “no-excuse absentee ballots.” This reform would allow electors to vote by absentee ballot regardless of the reason for not being able to vote at their polling places.

The Task Force understands that the following recommendations may require amendments to the *Pennsylvania Election Code (Code)* and *Constitution*. Additionally, the Task Force makes these recommendations with the understanding that corresponding provisions in the *Code* pertaining to the integrity of the election process and secrecy of the ballot are retained:

- Eliminate all reasons or conditions necessary to qualify for an absentee ballot and permit any qualified elector to vote by absentee ballot without excuse (“no-excuse absentee ballots”).
- Allow qualified electors to apply for an absentee ballot at any time prior to a primary election or general election, including on the date of a primary election or general election at a time no later to allow for the return of the ballot by the close of the polls, but no sooner than the date of the immediately preceding primary election or general election.
- Allow submission of an application for an absentee ballot by facsimile or computerized electronic transmission provided it contains all required information and a facsimile of the elector’s signature or the signature of an adult member of the elector’s immediate family.
- Require county boards of elections to print absentee ballots immediately upon certification of the official ballot and begin to deliver or mail absentee ballots to qualified electors immediately upon receipt of absentee ballots from the printer but no later than one week following receipt of the certification.
- Allow absentee ballots to be returned to the county boards of elections by the elector personally, United States mail, an individual representative of an elector specifically authorized to deliver the elector’s absentee ballot, or a commercial delivery or courier service.
- Provide that all absentee ballots shall be canvassed before the completion of the official count of all votes cast, provided they are postmarked no later than the day before Election Day and received no later than seven days after Election Day or they are hand delivered by the close of the polls.
- Require absentee ballots to be retained, canvassed, and counted at the county boards of elections with procedures to ensure that no elector votes more than once.

- Require county boards of elections to make publicly available at the office of the county board of elections and upon request on Election Day and as soon as practicable following the receipt of absentee ballots a list of electors, arranged by election district, who voted by absentee ballot. The county board of elections should continue to send precinct lists to the polling places.
- Require district election officials to make a list of absentee electors available for inspection only upon written request.
- Authorize the Secretary of the Commonwealth to require county boards of elections to report to the Secretary information concerning domestic civilian, overseas civilian, and military absentee ballots, including specifically, but not limited to, the number of absentee ballot applications received, the number of electors listed on the permanent absentee ballot qualification list, the number of absentee ballots distributed or mailed, and the number of absentee ballots returned by electors.
- Make all changes to the absentee voting process and procedures in a manner that maintains the integrity, security, and secrecy of the process.

### **Task (c) – Uniformed and Overseas Citizens Absentee Voting Act**

Court challenges were filed to address issues concerning the statutory requirements regarding the processing of absentee ballots used during the 2004 elections for members of the armed forces and the practices used by Pennsylvania’s counties to meet the absentee voter processing requirements of federal and state law. Governor Rendell recognized the need to ensure that military and overseas citizens have the same access to the election process as all registered voters and charged the Task Force with reviewing the absentee voting process for military and overseas citizens.

The Task Force made many of its recommendations under Task (b) – Absentee Voting – knowing they would benefit all citizens including those covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). However, the Task Force also considered issues specific to military and overseas citizens including the timeframes to mail the names of candidates, the accuracy of candidate lists, and easy access to applications and ballots. The Task Force understands the following recommendations may require amendments to the *Code* and possibly the *Constitution*:

- Retain the existing deadline of 45 days prior to a primary or election (and in the case of electors in remote or isolated areas of the world, 50 days prior to a primary and 70 days prior to an election) for mailing absentee ballots to military and overseas voters.
- Provide procedures (as applied to electors subject to the requirements of UOCAVA) that enable all courts of the Commonwealth to decide nomination petition and nomination paper objection cases (including appeals) no later than one week prior to the date when absentee ballots must be sent to military and overseas civilian absentee electors and

adjust the time period for filing objections and appeals as well as the time period for withdrawals of candidates for the purpose of facilitating the courts' deliberations and decisions in such cases.

- Authorize the use of the Federal Write-in Absentee Ballot (FWAB) in all elections for all offices.
- Make all changes to the absentee voting process and procedures for individuals in the military and overseas citizens in a manner that maintains the integrity, security, and secrecy of the process.

### **Task (d) – Voter Participation**

When the Task Force convened for its first meeting on February 1, 2005, Governor Rendell clearly stated to the members that his ultimate goal in forming the Task Force was increasing voter participation. In the 2004 presidential election, slightly more than nine million Pennsylvanians were eligible to vote, however, only 5.76 million (62%) actually voted. While Task (d) of Executive Order 2004-11 clearly delineated the charge to increase voter participation, the other five tasks also had a direct impact on voter participation, and the Task Force's subsequent discussions reflected the cumulative impact of all six tasks on voter participation.

The Task Force examined early voting (in-person early voting, no-excuse absentee ballots, and voting by mail), Election Day (same-day) registration, improved access to polling places, and Internet voting. The Task Force determined that no-excuse absentee ballots (See Task (b) – Absentee Voting) provide citizens a means to vote early with little or no intrusion on the dynamics of the Election Day process. The Task Force, however, did not reach the same conclusion for in-person early voting, voting by mail, and Election Day registration and stated several reasons for its position. Those reasons are discussed in the Report starting on page 40. The Task Force also determined that Internet voting should not be considered because the current state of technology presented many unresolved Internet security and ballot secrecy issues at this time.

The Task Force also addressed the issue of polling place accessibility (See also Task (e) – Help America Vote Act). For the purposes of voter participation, the Task Force concluded more polling places physically located in schools would increase the number of polling places accessible to individuals with disabilities. Therefore, the Task Force determined a mandatory in-service day for all schools on both primary and general election day would help achieve this goal. Accordingly, the Task Force makes the following recommendations:

- Authorize “no-excuse absentee ballots.”
- Designate the date of the primary and general election as school in-service days.

### *Task (e) – Help America Vote Act*

After the 2000 General Election, the United States Congress enacted the Help America Vote Act of 2002 (HAVA). HAVA is applicable to all federal elections held in the United States and contains provisions that affect election administration in Pennsylvania. Following the 2004 General Election, Governor Rendell asked the Task Force to make recommendations to address specific deficiencies at the state or county level with respect to compliance with HAVA.

The Task Force had extensive discussions on numerous issues pertaining to HAVA, including provisional ballots, voter identification, polling place accessibility, alternative language accessibility, voter verifiable paper audit trails and ballots, and alternative ballots. The Task Force identified several areas for improvements and enhancements.

The Task Force considered counting a provisional ballot as long as the voter is registered somewhere in the Commonwealth and modifying the provisional ballot envelope to include a voter registration application section, but ultimately rejected both ideas. While the Task Force recommends keeping the current provisional ballot process, including the methodology for counting full and partial ballots, the members believe the envelope format could be improved, that a provisional voter should be allowed to cast the ballot via other means (in addition to paper ballots), and that efforts should be made to give individuals who cast a provisional ballot an opportunity to register to vote in future elections in anticipation of the possible rejection of their provisional ballot for failure to be registered to vote. The Task Force also believes polling place accessibility requirements need to be specified in the *Code* and that “curbside voting” will be a positive step toward ensuring all individuals are provided an equal opportunity to cast their vote in person. Finally, the Task Force identified several areas of federal law and policy that should be incorporated in the *Code*, including alternative language accessibility; what constitutes a vote; and the purpose, scope, and process for alternative ballots, and subsequently makes the following recommendations:

- Maintain the existing purpose, scope, and process for the use of provisional ballots.
- Require the Department of State to re-visit the format of the provisional ballot envelope.
- Authorize casting provisional ballots by paper ballots as currently allowed and by other available methods, such as electronic voting systems.
- Require that the county boards of elections include Voter Registration Mail Applications with election materials distributed to district election officials to provide for use by individuals casting provisional ballots to apply to register to vote for the next succeeding election.
- Specify polling place accessibility requirements and standards for compliance.
- Allow the use of “curbside voting.”

- Incorporate federal law regarding alternative language accessibility into Pennsylvania law.
- Adopt the Voting Standards Development Board report, “What Constitutes a Vote?”
- Recommend that the General Assembly conduct hearings related to voter verifiable paper ballots and voter verifiable paper audit trails.
- Include in Pennsylvania law the purpose, scope, and process for using alternative ballots in compliance with federal standards and current Pennsylvania procedures.

### **Task (f) – Electoral College and Other Reforms**

Governor Rendell asked the Task Force to review options for apportionment of electoral votes, as well as any other reforms as time permitted in completing the charges clearly delineated in the Executive Order.

The Task Force reviewed the options for apportionment of electoral votes and determined this issue should be resolved on a national basis, as opposed to Pennsylvania unilaterally moving away from the “winner-take-all” method of electing presidential electors.

The Task Force also discussed the placement of questions on a ballot, as well as ballot access procedures for minor political parties and political bodies, and makes the following related recommendations:

- Provide greater access to the ballot for minor political parties and political bodies.
- Prohibit the placement of questions on the ballot unless the appropriate legislative body and governing authority certify the question to the Department of State or the county boards of elections no later than one week prior to the date when absentee ballots must be sent to military and overseas civilian absentee electors (60 days prior to the election).

### **Conclusion**

The Task Force dedicated considerable time and effort discussing the six tasks identified in Executive Order 2004-11. We make the recommendations contained in this Final Report in a sincere effort to increase voter participation in the Commonwealth. However, election reform is an exhaustive and complex subject. The recommendations in this Report should not be deemed a comprehensive response to reform Pennsylvania's election process. Several other issues that affect voter confidence in elections and voter turnout are relevant and ought to be studied further, including redistricting, campaign finance reform, instant run-off voting, and proportional representation.

## **Task (a) – Primary Date Change**

*The Task Force shall examine options and make recommendations for changing the date of the Primary Election, including legislative changes, and timelines necessary to achieve recommended changes.*

Executive Order 2004-11, Task (a)

### **Issue**

#### **Presidential Primaries and Caucuses**

Primaries and caucuses are the mechanisms political parties use to nominate candidates and/or elect delegates to national conventions. The differences between the two methods, however, are substantial. Primaries are governmentally administered elections similar to November elections. Voters cast a ballot for their favored candidates via paper ballot, machine, or electronic voting system, and their votes are tallied directly. In 2004, 38 states and the District of Columbia assigned political delegates through either primary elections or some combination of primary elections and caucuses.

The type of primary depends on whether the state permits voters registered as independent or members of minor political parties to participate. There are open, semi-open, and closed primaries in the United States. An open primary allows any voter to choose either party's ballot for the election. A semi-open primary allows independent and unaffiliated voters to participate but prohibits voters registered as Democrats or Republicans from participating in the other party's primary process.<sup>1</sup> Pennsylvania has a closed primary, meaning the primary election is closed to individuals unaffiliated with the respective party. Only voters registered as Democrats or Republicans can vote in their party's primary.

The political parties administer caucuses, as opposed to government entities. Voters gather in a designated local gathering place and declare their support for candidates. The candidate supported by the majority of voters then sends delegates to a district convention. The delegates at the district convention select delegates to send to a state convention and, ultimately, a national convention.

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<sup>1</sup> Curtis Gans, "The Primary and Caucus System in U.S. Elections," Foreign Press Center Briefing, United States Department of State, November 14, 2003; Transcript available from <http://fpc.state.gov/fpc/26226.htm>; Internet.

## 2004 Presidential Primary Election Calendar

Pennsylvanians have had little to virtually no influence in the selection of a presidential nominee since 1976.<sup>2</sup> The 2004 Pennsylvania Primary Election was held on April 27. This was 13 weeks into the national cycle for the presidential primary election calendar. Presidential nominees were decided in early primary election states more than a month earlier.

Since 1980, states have altered their election calendars to provide their electorate with the most influence possible on the nomination. In 1976, the presidential primary calendar began on February 24 in New Hampshire and most primaries were held in May and early June. By the end of week six of the 1976 presidential primary election calendar, 19 percent of the national convention delegates were selected. By the end of week six of the 2004 presidential primary election calendar (March 2), 58 percent of the national convention delegates were decided.<sup>3</sup> The following table contains the dates of primaries and caucuses held in 2004:<sup>4</sup>

WEEK	Presidential Primary/Caucus Date	STATE	State Primary Date
	Jan 13	District of Columbia	Sep 14
	Jan 19	Iowa Caucuses	Jun 8
1	Jan 27	New Hampshire	Sep 14
2	Feb 3	Arizona	Sep 7
	Feb 3	Delaware	Sep 11
	Feb 3	Missouri	Aug 3
	Feb 3	North Dakota Caucuses	Jun 8
	Feb 3	Oklahoma	Jul 27
	Feb 3	South Carolina	Jun 8
	Feb 7	Michigan Caucus (D)	Aug 3
	Feb 7	Washington Caucus (D)	Sep 14
	Feb 8	Maine Caucus (D)	Jun 8
3	Feb 10	District of Columbia Caucus (R)	Sep 14
	Feb 10	Tennessee	Aug 5
	Feb 10	Virginia	Jun 8
	Feb 14	District of Columbia Caucus (D)	Sep 14
	Feb 14	Nevada Caucus (D)	Sep 7
4	Feb 17	Wisconsin	Sep 14
5	Feb 24	Hawaii Caucus (D)	Sep 18
	Feb 24	Idaho Caucus (D)	May 25
	Feb 24	Utah	Jun 22
6	Mar 2	California	Mar 2

<sup>2</sup> G. Terry Madonna and Michael Young, "The Compelling Case for Moving the Pennsylvania Primaries," (Franklin and Marshall, PA: Center for Politics and Public Affairs), *Allentown Call*, March 26, 2000; available from <http://politics.fandm.edu/pprimary.htm>; Internet.

<sup>3</sup> William G. Mayer, "Front-Loading the Primaries: the Wrong Approach to Presidential Politics?" January 14, 2004; Transcript from the Brookings Institution's available from <http://www.brookings.edu>; Internet.

<sup>4</sup> George Washington University (<http://www.gwu.edu/~action/2004/>); Project Vote Smart (<http://www.vote-smart.org/>); Federal Voting Assistance Program (<http://www.fvap.gov/>)

WEEK	Presidential Primary/Caucus Date	STATE	State Primary Date
	Mar 2	Connecticut	Aug 10
	Mar 2	Georgia	Jul 20
	Mar 2	Maryland	Mar 2
	Mar 2	Massachusetts	Sep 14
	Mar 2	Minnesota Caucus	Sep 14
	Mar 2	New York	Sep 14
	Mar 2	Ohio	Mar 2
	Mar 2	Rhode Island	Sep 14
	Mar 2	Vermont	Sep 14
7	Mar 9	Florida	Aug 31
	Mar 9	Louisiana	Sep 18
	Mar 9	Mississippi	Mar 9
	Mar 9	Texas	Mar 9
	Mar 9	Washington Caucus (R)	Sep 14
	Mar 13	Kansas Caucus (D)	Aug 3
8	Mar 16	Illinois	Mar 16
	Mar 20	Alaska Caucus (D)	Aug 24
	Mar 20	Wyoming County Caucus (D)	Aug 17
9	Mar 23	Utah Caucus (R)	Jun 22
10	Apr 13	Colorado Caucuses	Aug 10
<b>13</b>	<b>Apr 27</b>	<b>Pennsylvania</b>	<b>Apr 27</b>
	May 4	Indiana	May 4
	May 4	North Carolina	May 4
	May 8	Arizona State Convention (R)	Aug 17
	May 8	Wyoming State Convention (R)	Sep 7
	May 11	Nebraska	May 11
	May 11	West Virginia	May 11
	May 15	Wyoming State Caucus (D)	Aug 17
	May 18	Arkansas	May 18
	May 18	Kentucky	May 18
	May 18	Oregon	May 18
	May 25	Idaho	May 25
	Jun 1	Alabama	Jun 1
	Jun 1	New Mexico (R)	Jun 1
	Jun 1	South Dakota	Jun 1
	Jun 8	Montana	Jun 8
	Jun 8	New Jersey	Jun 8
	Jan 1 - Mar 30	Maine Caucus (R)	
	Jun 4 - Jun 6	Hawaii Convention (R)	
	Apr 20 - May 1	Nevada State Convention (R)	
	May 14 - May 15	Delaware State Convention (R)	
	May 20 - May 22	Arkansas State Convention (R)	
	May 21 - May 22	Michigan State Convention (R)	
	Jun 4 - Jun 6	Virginia State Convention (R)	

## Important Election Dates in Pennsylvania

Pennsylvania's primary and election days are established by the *Pennsylvania Constitution (Constitution)*<sup>5</sup> and the *Pennsylvania Election Code (Code)*.<sup>6</sup> The *Constitution* mandates that elections be classified as general elections and municipal elections. It establishes the Tuesday next following the first Monday of November in even numbered years as the date for general elections, and the Tuesday next following the first Monday of November in odd numbered years as the date for municipal elections. The *Code* contains rules governing primaries.

According to the *Code*, primaries are scheduled as follows:

*General Primary:* In the even-numbered year the President is not being elected, primaries are held on the third Tuesday in May. In presidential nomination years, the general primary is held on the fourth Tuesday in April. Candidates for all offices to be filled at the ensuing general election must be nominated at the general primary. Delegates to the national conventions, not presidential candidates, are elected during the presidential primary election. Delegates may be apportioned based on the vote obtained by the respective presidential candidate, if permitted by the rules of the political party. Currently, only the Democratic Party apportions delegates this way and allows delegate commitments.

*Municipal Primary:* In all odd-numbered years, primaries are held on the third Tuesday in May. Candidates for all offices to be filled at the ensuing municipal election are nominated during the municipal primary.

The General Assembly on occasion has changed the date of the primary because of the simultaneous occurrence of a religious holiday.<sup>7</sup>

## Primary Ballot Access

The dates of the primary and general elections affect nomination procedures and the timing of all other election-related activities. The primary election is the process used in Pennsylvania by qualified political parties to nominate their candidates for public office and elect their party officials and delegates to the national convention. The date of the primary election especially affects ballot access procedures.

Candidates who seek a party nomination or office at the primary election must file nomination petitions with the Secretary of the Commonwealth or the county boards of elections depending on the office sought. As currently structured, the process begins with the circulation of

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<sup>5</sup> Article VII, Sections 2 and 3

<sup>6</sup> 25 P.S. § 2601 *et seq.*

<sup>7</sup> Act 1983-59 moved the 1984 General Primary from April 24, 1984 to April 10, 1984. Act 1990-131 moved the 1994 General Primary (not a Presidential election year, but a gubernatorial election year) from May 17, 1994 to May 10, 1994. Act 1999-51 moved the 2000 General Primary from April 25, 2000 to April 4, 2000. All three acts amended section 603 of the *Code*.

nomination petitions 13 weeks before the primary election and concludes with the filling of any vacancies of nominees for public office 75 days before the November election.

The primary nomination process encompasses several procedures that occur within timeframes dictated by the date of the primary election. These procedures include, but are not limited to, the circulation and filing of nomination petitions for the various public and party offices on the primary ballot, the time and manner of withdrawal of candidates, the deadline to file objections to nomination petitions, and the withdrawal of candidates nominated at the primary.<sup>8</sup>

## **2004 Pennsylvania Primary Election Calendar**

*The following dates represent election activities in 2004:*

Last day for political parties to file party rules with the Secretary <i>(30 days prior to first day to circulate nomination petitions)</i>	December 29, 2003
First day to circulate and file nomination petitions <i>(13<sup>th</sup> Tuesday prior to primary)</i>	January 27, 2004
Last day to circulate and file nomination petitions <i>(10<sup>th</sup> Tuesday prior to primary)</i>	February 17, 2004
Last day to file objections to nomination petitions <i>(7 days after the deadline to file nomination petitions)</i>	February 24, 2004
Last day, if possible, for the courts to render decisions on objection cases <i>(15 days after the deadline to file nomination petitions)</i>	March 3, 2004
Last day for withdrawal by candidates who filed nomination petitions <i>(15 days after the deadline to file nomination petitions)</i>	March 3, 2004
Last day to register before the primary <i>(30 days prior to primary)</i>	March 29, 2004
GENERAL PRIMARY <i>(4<sup>th</sup> Tuesday of April)</i>	April 27, 2004

### **Task Force Deliberations**

Governor Rendell asked the Task Force to review the date of Pennsylvania's presidential primary election because while "Pennsylvania is the sixth most populous state in the nation, [but] the intentions of voters residing in Pennsylvania are not weighted appropriately in the presidential primary election process because the Pennsylvania Primary Election occurs after the primary elections in 26 other states." The Task Force discussed this issue, identified as Task (a),

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<sup>8</sup> Section 978 of the *Code* (25 P.S. § 2938)

during its meetings on February 17, March 3, and April 14, 2005. Task Force members reviewed the available research on the issue and discussed four important questions:

- What is the earliest feasible date for Pennsylvania’s presidential primary election?
- Should the presidential primary election continue to be combined with the primary election for all state offices or should it be separate?
- Should the current processes, procedures, and timeframes relative to ballot access and other activities related to the primary election be revised?
- Should Pennsylvania eliminate the presidential primary election and move to a caucus procedure?

The Task Force heard testimony by the Democratic State Committee of Pennsylvania, the Republican State Committee of Pennsylvania, the Commonwealth Court, and Dr. Terry Madonna, Director, Center for Politics and Public Affairs, Franklin & Marshall College. The members largely agreed during the ensuing discussion that an earlier primary election could be advantageous to Pennsylvania voters by providing a greater opportunity to participate in the selection of presidential nominees and ultimately the election of the President of the United States. Disagreement was primarily focused on potentially greater administrative responsibility for election administrators, potential disruptions from inclement weather and the rush of the holiday season, and disruption to the historically customary period familiar to the public and potential candidates for the circulation and review of nomination petitions. In particular, there was no consensus among the members on the various issues relating to the appropriate timeframe for circulating nomination petitions and the applicability of this timeframe to individuals seeking a public office for which the primary election is conducted during both presidential and non-presidential primaries. Some Task Force members argued that a late February or early March primary election date would create problems with the current election calendar because nomination petitions would be circulated and/or filed during the December holiday season. In an effort to avoid these problems, the members discussed several ideas including the reduction of the time necessary to gather signatures on nomination petitions and bifurcation of the primary election, thus holding the presidential primary election on a different date than the primary election for all other offices.

To improve the involvement of Pennsylvania’s voters in the presidential primary election process and avoid the perceived pitfalls of moving the presidential primary election to an earlier date, the Task Force members reviewed the possibility of switching Pennsylvania to a caucus system. However, the members decided that a caucus system would not increase voter participation and abandoned the idea.

The Task Force believes that the best scenario for resolving problems associated with the scheduling of primary elections in the fifty states and the District of Columbia is best left to the national political parties in concert with the states as indicated in the study issued in 2000 by the Joint State Government Commission (JSGC). However, since the JSGC issued its report, no

plan or program has received national consensus. Therefore, the Task Force believes it is time for Pennsylvania to act.

The Task Force agrees with Governor Rendell and believes moving the presidential primary election to an earlier date could provide Pennsylvania citizens a voice in the selection of the President commensurate with its population rank among the states. This objective can be achieved best under the current national environment for electing the President by moving the date of Pennsylvania's presidential primary election to the first Tuesday in March in 2008 and 2012. The Task Force further believes this move to an early presidential primary election date should sunset on November 30, 2014 to provide the Legislature the opportunity to make a judgment about the efficacy of retaining the earlier primary election date.

The Task Force discussed various scenarios for modifying the election calendar associated with an earlier primary election to avoid the circulation and filing of nomination petitions over the December holiday season.<sup>9</sup> Several Task Force members felt this would be poor timing and make it difficult for candidates to obtain signatures on nomination petitions. In addition, election administrators argued that it would present staffing problems in their offices because they would still be reviewing voter records after the previous November election and updating voter histories, as well as performing other election-related tasks. The Task Force understands these concerns and is sympathetic to the concerns of county election offices in the Commonwealth. After extensive discussion, the Task Force agreed that the process would need to be modified in conjunction with establishing a primary election date in early March, but the details of modifying the process are best left for the determination of the General Assembly.

As previously stated, the Task Force was also concerned about imposing two different nomination procedures relative to the same office and believes that the nomination procedures should be the same without regard to whether the primary election for the office occurs variably during a presidential or non-presidential primary election. For example, the Task Force understands that nomination procedures should be the same for the office of Senator in the General Assembly regardless of the year when the primary election for this office is held.

Finally, the Task Force rejected the idea of a bifurcated primary in the presidential election year. The Task Force concludes that conducting two primary elections in a presidential election year would result in decreased voter participation in both primaries and that it would create administrative and fiscal problems in securing district election officials and polling places and conducting a full set of voter registration and ballot preparation activities for a third time in one year.

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<sup>9</sup> These scenarios may be found among the records and materials of the Task Force on its website at [http://www.dos.state.pa.us/election\\_reform/](http://www.dos.state.pa.us/election_reform/)

## **Recommendations**

1. The *Pennsylvania Election Code* should be amended to set the dates of the primary elections in 2008 and 2012 (presidential elections) as the first Tuesday in March (sunset on November 30, 2014).
2. The specifics of refining the ballot access procedures should be left to the General Assembly.

## Task (b) – Absentee Voting

*The Task Force shall review all absentee voting statutes, regulations and county practices and shall recommend legislative or regulatory actions appropriate to improve access to the election process for individuals who cannot get to a polling place on Election Day.*

Executive Order 2004-11, Task (b)

### Issue

#### **Absentee Voting Statutes**

In Pennsylvania, absentee voting is regulated by three statutory sources: the *Pennsylvania Constitution (Constitution)*, the *Pennsylvania Election Code (Code)*, and various federal laws.<sup>10</sup>

The *Constitution* dictates that the General Assembly must provide for absentee voting, the reasons why qualified electors must be allowed to vote absentee, and that ballots must be returned to the voter's resident election district for canvassing.

Until 1963, absentee ballot voting in Pennsylvania was not authorized by the General Assembly except for individuals in the military. The constitutional provision contained in Article VII, Section 14 was added to the *Constitution* on November 5, 1957.<sup>11</sup> However, the General Assembly did not implement Article VII, Section 14 until 1963 when it expanded the qualifications for absentee ballot voting to the categories of individuals referenced in the *Constitution*.<sup>12</sup> The General Assembly has historically interpreted the *Constitution* as limiting absentee voters to the categories specified therein and has never authorized absentee voting for those citizens not specified in the *Constitution* or federal law.

Article XIII of the *Code*<sup>13</sup> implements this provision of the *Constitution* providing absentee voting for the categories of voters described therein. Certain categories of voters including the military and those associated with the military are authorized to vote absentee by the *Code* and federal law. Additionally, the *Code* provides for return of the absentee ballot to the election districts as prescribed by the *Constitution*. However, in the case of election districts using

<sup>10</sup> The federal laws regulating absentee voting include the Federal Voting Rights Act of 1965 and the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. §§ 1973ff through 1973ff-6).

<sup>11</sup> In 1957, the provision was added to the *Pennsylvania Constitution* of 1874 (also referred to as the *Constitution* of 1873) as Article VIII, Section 19, and was renumbered by Governor's proclamation on July 7, 1967 as Article VII, Section 14.

<sup>12</sup> The Act of 1963, August 13, P.L. 707, § 20 effective January 1, 1964.

<sup>13</sup> Sections 1301-1309 of the *Code* (25 P.S. § 3146.1-3146.9)

central electronic voting tabulation units, the *Code* provides that absentee ballots may be delivered to a central location for tabulation or canvassing after being sent to and processed at the resident election district.

### **Who May Vote by Absentee Ballot**

As provided in the *Constitution* and the *Code*, the following electors may vote by absentee ballot in any election:

1. Members of the armed forces.
2. A spouse or dependent residing with or accompanying a member of the armed forces and absent from the municipality of residence.
3. A member of the Merchant Marine, and his/her spouse and dependents residing with or accompanying him/her, who are absent from the Commonwealth or the municipality of residence.
4. A member of a religious or welfare group attached to and serving with the armed forces and his/her spouse and dependents residing with or accompanying him/her who are absent from the Commonwealth or the municipality of residence.
5. A civilian employee of the United States outside the territorial limits of the United States and the District of Columbia and his/her spouse and dependents residing with or accompanying him/her.
6. Hospitalized or bedridden veterans absent from their municipality of residence.
7. A person who, because of illness or physical disability, is unable to attend his/her polling place or to operate a voting machine and obtain assistance by distinct and audible statements.
8. A person who is absent from his/her municipality of residence during the entire period the polls are open for voting because of duties, occupation, business, or vacation. This includes students who attend college outside of their municipality of residence.
9. A spouse or dependent accompanying a person employed by the Commonwealth or the Federal Government within the territorial limits of the United States and the District of Columbia in the event the employee's duties, occupation, or business requires him or her to be absent from the Commonwealth or the municipality of residence.
10. A county employee with Election Day duties related to the conduct of the election.
11. A person who observes a religious holiday falling on Election Day.

### **Absentee Ballot Application Procedures**

*Timeline for Applying for an Absentee Ballot:* By law, applications for absentee ballots must be received in the office of the county board of elections not earlier than 50 days before any primary or election and not later than 5:00 P.M. on the first Tuesday prior to the day of any primary or election. An exception is provided for emergencies. An elector in active military service may apply for an absentee ballot at any time but must return the voted ballot by the statutory deadline. Absentee ballot applications are available at courthouses and other public offices throughout the Commonwealth.

*Emergency Application Deadline:* If an emergency arises after the deadline to apply for an absentee ballot, an Emergency Absentee Ballot Application may be obtained from the county board of elections, either in person, by mail, or by messenger. The law sets the deadline for filing an emergency application at 5:00 P.M. on the Friday before the primary or election. The law also requires that the absentee ballot must be voted and received by the county board of elections by the Friday before the primary or election. Examples of emergencies include becoming sick or disabled or an unforeseen business trip. On the emergency application, the fact of the emergency must be attested to before a notary public or any person empowered to take acknowledgments. In the case of illness or physical disability, a supporting affidavit from the attending physician is required and should state that due to the elector's physical condition, the elector could not apply before the Tuesday deadline or that the illness or disability occurred after the deadline to apply for an absentee ballot.

*Categories of Absentee Ballot Applicants:* There are three general categories of absentee ballot application procedures based on the status of the applicant's voter registration and/or the applicable deadline to apply for an absentee ballot.

- Category I. Applicants who do not need to be registered to vote and have no deadline to apply for an absentee ballot (but the county board of elections must receive the voted ballot by 5:00 P.M. on the Friday before the election).
- Category II. Applicants who must be registered to vote, but may do so concurrently with applying for an absentee ballot.
- Category III. Applicants who must be registered to vote by the voter registration deadline in order to qualify for an absentee ballot.

*Permanently Disabled Electors List:* Any qualified registered elector, including any qualified bedridden or hospitalized veteran, who because of illness or physical disability is unable to attend his/her polling place on the day of the primary or election or operate a voting machine and state distinctly and audibly that he/she is unable to do so, with a physician's certificate of disability attached to the absentee ballot application, may be placed on a permanently disabled absentee ballot list. An absentee ballot application must be mailed to each individual for each primary or election as long as he/she does not lose his/her voting rights. The individual will not be required to file a physician's certificate of disability with each application; however, must file a certificate of disability every four years in order to maintain his/her eligibility to vote. Anyone who loses his/her disability must inform the county board of elections.

## **Absentee Balloting Procedures**

The *Code* dictates the absentee balloting procedures that must be followed in every primary and election. Specific and detailed procedures provide for a timeline for county boards of elections to deliver absentee ballots to applicants, a timeline for ballot receipt, a method to afford assistance in voting absentee, a process for the return and counting of absentee ballots, the requirements for certain electors voting absentee ballots in districts of residence, and the process of special write-in absentee ballots.

*Timeline for County Boards of Elections to Deliver Absentee Ballot to Applicants:* The county board of elections, upon receipt and approval of an absentee ballot application filed by any elector in Category I (except bedridden or hospitalized veterans) or Category II, must not later than 45 days prior to the day of the primary or election begin to deliver or mail official absentee ballots or special write-in absentee ballot when official absentee ballots are not yet printed. Thereafter, as additional absentee ballot applications of such electors are received, the board must deliver or mail official absentee ballots (or special write-in absentee ballots when official absentee ballots are not yet printed) to such additional electors within 48 hours after approval of their absentee ballot applications.

If an elector in Category I or II includes with his/her absentee ballot application a statement that he/she is unable to vote during the regular absentee balloting period by reason of living or performing military service in an extremely remote or isolated area of the world, the county board must not later than 50 days prior to the day of the primary or not later than 70 days prior to the day of the election begin to deliver or mail to such elector an official absentee ballot or special write-in absentee ballot.

Upon receipt and approval of an absentee ballot application from any bedridden or hospitalized veteran or any elector in Category III, the county board of elections must begin to deliver or mail official absentee ballots on the second Tuesday prior to the primary or election. As additional absentee ballot applications are received and approved, the board must deliver or mail official absentee ballots within 48 hours.

*Timeline for Absentee Ballot Receipt:* Under Pennsylvania law, county boards of elections must receive a voted absentee ballot no later than 5:00 P.M. on the Friday before the primary or election. This is the earliest deadline of any state in the nation. In presidential elections, under the Federal Voting Rights Act, a ballot may be counted for the Office of President and Vice President if it is received by the close of the polls on Election Day.

*Assistance in Voting Absentee:* Any elector who, because of illness or physical disability, is unable to go to his/her polling place or to operate a voting machine and obtain assistance by distinct and audible statements, may receive voting assistance if a declaration is recorded on his/her registration card stating that he/she has a physical disability which renders him/her unable to see or mark the official absentee ballot. The exact nature of the disability must be recorded on the registration card. Additionally, the elector requiring assistance must submit with the absentee ballot application a statement containing the precise nature of the disability which renders him/her unable to see or mark the official absentee ballot and that to the best of his/her

knowledge and belief he/she will still suffer from the physical disability at the time of voting his/her official absentee ballot.

The elector requiring assistance may select an adult person to assist him/her in voting and the assistance must be rendered in secret. The adult person rendering the assistance in voting is required to complete, date, and sign a “Declaration of Person Rendering Assistance.” The declaration form must be returned to the county board of elections in the mailing envelope addressed to the county board of elections within which the small “official absentee ballot” envelope is returned, but outside the “official absentee ballot” envelope.

*The Return and Counting of Absentee Ballots:* County boards of elections must receive voted absentee ballots no later than 5:00 P.M. on the Friday before the election. Absentee ballots must be delivered to the county board of elections either by mail or by the elector in person. Absentee ballots are opened and counted in the election district where the absentee ballot applicant resides. The county board of elections must deliver absentee ballots to the appropriate polling place with the distribution of other election supplies. The district election board must count all the absentee ballots immediately after the close of the polls on Election Day.

On Election Day, if an absentee elector is not absent from his/her county of residence, or has recovered from his/her illness, he/she is required to appear at the assigned polling place to cast a regular ballot. The absentee ballot will be voided after the individual casts the regular ballot in person.

*Certain Electors Voting Absentee Ballots in Districts of Residence:* A qualified elector in actual military service present in his/her voting district of residence on any primary, special, municipal, or general election day who has not already voted in the election may apply to vote in person at the office of the county board of elections of the county of his/her residence. Each must contain the information required by the *Code* and a statement by the applicant that he/she has not already voted in the election.

The county board of elections must determine from the information on the application, or from any other source, that the applicant possesses all the qualifications of a qualified elector, other than being registered or enrolled. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application must be marked “approved.”<sup>14</sup> When approved, the county board of elections must insert the applicant’s name and residence (and at primaries, the party enrollment) in the “Military, Veterans’ and Emergency Civilian Absentee Voters File.”

*Special Write-In Absentee Ballots:* Ordinarily, an absentee voter votes on an official absentee ballot printed by the county board of elections that is substantially the same as the ballots or ballot labels that are used on Election Day at the polling places. However, civilian absentee voters who are outside the United States on Election Day and electors in military service might receive a special write-in absentee ballot. Election officials use special write-in ballots when they are required by law to deliver absentee ballots to certain absentee voters, but official absentee ballots have not yet been printed. The special write-in ballot includes all of the offices and questions that appear on the official ballot for the elector’s election district, but not the

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<sup>14</sup> Subject to the limitations contained in Section 1302.2 of the *Code*, 25 P.S. § 3146.2b.

names of the candidates for the offices. Instead, election officials provide the voter a separate list that includes the names of all of the candidates who have filed nomination petitions or nomination papers seeking to appear on the official ballot and who have not withdrawn or had their names removed from the ballot by a court. A special write-in absentee ballot returned to the county board of elections is handled and counted in the same manner as an absentee ballot cast on an official absentee ballot.

### **Federal Voting Acts**

Two federal acts affect the absentee voting process in Pennsylvania: the Federal Voting Rights Act (FVRA) and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

The FVRA applies only to November presidential elections and guarantees any United States citizen the right to vote in a presidential election. It permits absentee ballots to be received up to the close of the polls on Election Day.

In addition, the federal Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. §§ 1973ee-1973ee-6) provides that if a polling place is inaccessible, the voter must be provided an alternative means of casting a ballot. In Pennsylvania, that alternative means is the absentee ballot. These ballots, termed “alternative ballots,” may be received up to the close of the polls.

### **Task Force Deliberations**

The Task Force discussed several issues associated with absentee voting, including the qualifications to vote absentee, the application process, the absentee balloting process, the availability of absentee voter information, and the relationship of the provisions of the *Constitution* related to the absentee voting process.

The Task Force finds the procedures and processes for absentee voting currently mandated by the *Code* to be extremely restrictive. Access to an absentee ballot is now limited to specific categories of voters. An applicant must strictly meet the current deadlines for submitting and returning applications and ballots. The Task Force believes making the absentee voting process more accessible by lifting these restrictions will open the franchise to all qualified voters and increase participation in the election process.

The Task Force concludes that any registered voter should be permitted to apply for an absentee ballot. If any qualified elector cannot get to a polling place on Election Day, the elector should be able to vote by absentee ballot regardless of the reason (no-excuse absentee ballot).

The Task Force also concludes that the procedures and timeframes for applying for and voting by an absentee ballot have the effect of disenfranchising voters. The current procedures and timeframes culminate with the earliest deadline in the nation for the return of an absentee ballot, the Friday before an election. Pennsylvania must open the absentee ballot application and voting process. The Task Force supports eliminating the current deadlines to apply for an absentee ballot and to vote by absentee ballot. An elector should be allowed to apply for an absentee

ballot and vote it any time prior to an election as long as the ballot can be returned before the close of polls on the day of the election or is postmarked no later than the day before Election Day and received by the county board of elections no later than seven (7) days after the day of election. However, no application for an absentee ballot may be submitted or accepted until after the day of the immediately preceding primary or election.

The Task Force finds the restrictions placed on the method of delivering absentee ballot applications and absentee ballots to the county boards of elections to be archaic and impose artificial barriers to counting absentee ballots that are valid in all other respects. Absentee ballot applicants and voters should be able to have their applications and ballots delivered to the county courthouse by an authorized representative or a commercial delivery service or courier such as FedEx, United Parcel Service, Express Mail, or comparable commercial service providers.

The Task Force acknowledges that by amending deadlines to apply for and vote by absentee ballot, the current process of counting absentee ballots in the precinct will have to be changed to accommodate administrative need. Central counting of absentee ballots enhances ballot security and uniform application of standards in canvassing ballots. The Task Force believes that absentee ballots should be counted at a central location, with procedures to ensure that no elector has voted more than once.

The Task Force also discussed the current requirement that the list of absentee electors be publicly displayed at the office of the county board of elections as well as the polling place. Making the list of absentee electors available is a necessary component to prevent fraud through challenges to absentee ballots, but citizens voting by absentee ballot have expressed security concern over the public listing of their names in the polling place. Instead, absentee ballot voter lists should be available at the polling place and individuals should be permitted to inspect the lists upon written request, but only by placing the request in writing for security purposes.

The Task Force understands in making these recommendations that in addition to the *Code*, the *Constitution* may need to be amended to accommodate these recommendations. If the General Assembly determines that an amendment to the *Constitution* is necessary, the Task Force urges the General Assembly to accomplish this in conformance with Article XI of the *Constitution* as soon as possible.

Finally, the Task Force understands that the absentee voting process as currently constructed in Pennsylvania law is designed to protect the integrity of the election process and to guarantee the secrecy of the ballot. Therefore, the recommended changes to the absentee voting process are made with the understanding that all such protections and guarantees be preserved although the specific related statutory provisions may need to be revised.

## *Recommendations*

1. The *Pennsylvania Constitution*, if necessary, and the *Pennsylvania Election Code* should be amended to eliminate all reasons or conditions necessary to qualify for an absentee ballot and permit any qualified elector to vote by absentee ballot without excuse (“no-excuse absentee ballots”).
2. The *Pennsylvania Election Code* should be amended to allow qualified electors to apply for an absentee ballot at any time prior to a primary election or general election, including on the date of a primary election or general election at a time no later to allow for the return of the ballot by the close of the polls, but no sooner than the date of the immediately preceding the primary election or general election.
3. The *Pennsylvania Election Code* should be amended to allow submission of an application for an absentee ballot by facsimile or computerized electronic transmission provided it contains all required information and a facsimile of the elector’s signature or the signature of an adult member of the elector’s immediate family.
4. The *Pennsylvania Election Code* should be amended to require county boards of elections to print absentee ballots immediately upon certification of the official ballot and begin to deliver or mail absentee ballots to qualified electors immediately upon receipt of absentee ballots from the printer but no later than one week following receipt of the certification.
5. The *Pennsylvania Election Code* should be amended to allow absentee ballots to be returned to the county boards of elections by personal hand delivery by the elector, United States mail, an individual representative of an elector specifically authorized to deliver the elector’s absentee ballot pursuant to a statutory declaration, or a commercial delivery or courier service that accepts and delivers as an intermediary between third parties in the ordinary course of its business throughout the year documents and packages deliverable to a specific street address.
6. The *Pennsylvania Election Code* should be amended to provide that all absentee ballots containing a postmark no later than the day before Election Day (must be received no later than seven days after Election Day) or hand-delivered by the close of polls on Election Day shall be canvassed before the completion of the official count of all votes cast.
7. The *Pennsylvania Constitution*, if necessary, and the *Pennsylvania Election Code* should be amended to require all absentee ballots to be retained, canvassed, and counted at the county boards of elections with procedures to ensure that no elector votes more than once.
8. The *Pennsylvania Election Code* should be amended to require county boards of elections to make publicly available at the office of the county board of elections and upon request on Election Day and as soon as practicable following the receipt of absentee ballots a list of electors, arranged by election district, who voted by absentee ballot. The county board of election should continue to send precinct lists to the polling places.

9. The *Pennsylvania Election Code* should be amended to require district election officials to make a list of absentee electors available for inspection only upon written request.
10. The *Pennsylvania Election Code* should be amended to authorize the Secretary of the Commonwealth to require county boards of elections to report to the Secretary of the Commonwealth information concerning domestic civilian, overseas civilian, and military absentee ballots, including specifically but not limited to the number of absentee ballot applications received, the number of electors listed on the permanent absentee ballot qualification list, the number of absentee ballots distributed or mailed, and the number of absentee ballots returned by electors.
11. All changes to the absentee voting process and procedures shall be made in a manner that maintains the integrity, security, and secrecy of the process.

## **Task (c) – Uniformed and Overseas Citizens Absentee Voting Act**

*The Task Force shall review all absentee voting statutes, regulations and county practices and shall recommend legislative or regulatory actions necessary to ensure the ability to participate in elections by those subject to the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).*

Executive Order 2004-11, Task (c)

### **Issue**

#### **Overview of UOCAVA**

Replacing two federal laws,<sup>15</sup> the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) was enacted on August 28, 1986.<sup>16</sup>

The federal government exercises its powers and duties under UOCAVA through a “presidential designee.” The presidential designee under UOCAVA is the Secretary of Defense, who has delegated his responsibilities to the Federal Voting Assistance Program (FVAP) within the Department of Defense. Section 101 of UOCAVA prescribes FVAP’s responsibilities.<sup>17</sup>

In addition to reposing powers in and imposing duties upon FVAP as the presidential designee, UOCAVA imposes upon states a number of requirements in the administration of general, primary, and special elections for federal office. Those state responsibilities include the following:

1. Active members of the uniformed services and merchant marine, their eligible family members, and overseas voters who are eligible to vote in the state’s federal elections<sup>18</sup> must be permitted to register and vote by absentee ballot in elections for federal office.

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<sup>15</sup> UOCAVA repealed and replaced the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975.

<sup>16</sup> Public Law 99-410, codified as 42 U.S.C. §§ 1973ff—1973ff-6.

<sup>17</sup> See 42 U.S.C. § 1973ff.

<sup>18</sup> UOCAVA applies to (See 42 U.S.C. § 1973ff-6 (definitions).):

1. Members of the U.S. uniformed services who, by reason of their active duty, are absent from the place of residence where they are qualified to vote.

2. Members of the uniformed services and their eligible family members and other citizens who reside outside the territorial United States must be afforded the opportunity by mail to apply to register to vote and to apply for an absentee ballot using the Federal Post Card Application (FPCA) form that is prescribed by the FVAP. All states must accept the FPCA form from UOCAVA voters as a combination voter registration and absentee ballot application.<sup>19</sup>
3. States must accept valid voter registration applications and applications for an absentee ballot for elections for federal office from absent uniformed and overseas voters and their eligible family members, if they are received at least 30 days before the election (or such lesser period permitted by state law).
4. For any general election for federal office, and subject to certain conditions, states must permit absent members of the uniformed services and their eligible family members and citizens who are residing outside the United States and its territories who are eligible to vote in the state to cast their absentee ballot using a Federal Write-In Absentee Ballot (FWAB) that is prescribed by FVAP.<sup>20</sup>

In addition, a UOCAVA-protected voter may request through the FPCA that he or she be provided an absentee ballot for each subsequent election for federal office held in the state for the next two regularly scheduled general elections.<sup>21</sup> If the voter makes this request, the state is required to provide an absentee ballot to the voter for each subsequent election for federal office held in the state during that period, unless the voter informs the state that he or she no longer wishes to be registered in the state or the state determines that the voter has registered in another state.<sup>22</sup>

### **Federal Write-In Absentee Ballot (FWAB)**

When permitted by UOCAVA to be used in general elections for federal office, a FWAB must be submitted and processed in the manner that is provided by state law for absentee ballots.<sup>23</sup> However, UOCAVA places certain restrictions on the use of the FWAB:

1. An absent uniformed services voter or overseas voter who has made a timely application for an absentee ballot from the state in which the voter is eligible to vote,

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2. Members of the merchant marine who, by reason of their active service, are absent from the place of residence where they are qualified to vote.

3. The family members of U.S. uniformed services and merchant marine members.

4. U.S. citizens residing outside the United States.

<sup>19</sup> See 42 U.S.C. § 1973ff-1(a)(4).

<sup>20</sup> See 42 U.S.C. § 1973ff-1.

<sup>21</sup> 42 U.S.C. § 1973ff-3(a).

<sup>22</sup> 42 U.S.C. § 1973ff-3(b).

<sup>23</sup> 42 U.S.C. § 1973ff-2(b).

- but who has not received the state absentee ballot, may vote for federal office in a general election using the FWAB.<sup>24</sup>
2. UOCAVA requires a state to accept a FWAB from any absent uniformed services voter irrespective of whether the FWAB has been submitted from within or outside the territorial limits of the United States. However, for overseas voters who are not absent uniformed services voters, states may *not* accept a FWAB that has been mailed from within the territorial limits of the United States.<sup>25</sup>
  3. A state is not required to accept a FWAB from a qualified absent uniformed services voter or overseas voter unless the state received an application for absentee ballot by the state’s deadline for the receipt of applications for absentee ballot.<sup>26</sup> (Under Pennsylvania law, a qualified absentee military elector or overseas elector may apply for an absentee ballot “at any time before any ... election for any official absentee ballot...”<sup>27</sup> Therefore, under UOCAVA, Pennsylvania county boards of elections must accept for consideration under Pennsylvania law a FWAB that is timely and properly submitted by any absent uniformed services voter or overseas voters who applied for an absentee ballot any time before the date of the general election.)
  4. If a state absentee ballot of an absent uniformed services voters or overseas voter is received by the appropriate state election official not later than the deadline for receipt of the state absentee ballot under state law, then the state absentee ballot is the voter’s absentee ballot and the FWAB is not considered or counted.<sup>28</sup> (An absent uniformed services voters or overseas voter who submits a FWAB and later receives a state absentee ballot, may submit the state absentee ballot and, if the state ballot is timely received by the state elections officials, the state absentee ballot supersedes the FWAB.)<sup>29</sup>
  5. A FWAB cannot be used in any primary election or in any election that does not include a federal office. In addition, under Pennsylvania law, even a FWAB that is a valid ballot for federal offices is not valid for any state or local office.

### **Task Force Deliberations**

The Task Force made many of its recommendations under Task (b) – Absentee Voting – knowing they would benefit all citizens including those covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). However, there are specific issues relating to military and overseas citizens that require special consideration. These issues include timeframes to mail the names of candidates to such citizens, the accuracy of the candidate lists, and easy access to applications and ballots from other sources.

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<sup>24</sup> See 42 U.S.C. § 1973ff-2.

<sup>25</sup> 42 U.S.C. § 1973ff-2(b)(1).

<sup>26</sup> 42 U.S.C. § 1973ff-2(b)(2)(A).

<sup>27</sup> *Pennsylvania Election Code* § 1302(a), 25 P.S. § 3146.2(a).

<sup>28</sup> 42 U.S.C. § 1973ff-2(b)(3).

<sup>29</sup> See 42 U.S.C. § 1973ff-2(d).

The Task Force discussed the time requirements for ensuring absentee ballots are received by military and overseas citizens in sufficient time to be voted and returned in time to be counted. The Task Force concludes that the timeframes for beginning the process for sending absentee ballots to military and overseas citizens as currently required by the *Pennsylvania Election Code (Code)* are sufficient in conjunction with the recommendations for revising the process and procedures for absentee ballot voting.

The Task Force does believe, however, that in many elections, the accurate printing of ballots and their subsequent distribution to the voters is often delayed by judicial review of objections to nomination petitions. Therefore, the Task Force recommends that the General Assembly establish procedures under which all courts of the Commonwealth will be able to decide nomination petition and nomination paper objection cases (including appeals) quickly, thus enabling the counties to print and distribute ballots quickly.

The Task Force also favors the implementation of procedures to make it easier for military electors and overseas citizens to procure and vote their ballots in all federal and state elections. Pennsylvanians in the military or living overseas do not, under current state law, have an opportunity to use the Federal Write-in Absentee Ballot (FWAB) to vote for candidates for non-federal offices. There is no reason why citizens who qualify to vote should not be able to use the FWAB to vote for candidates for Pennsylvania state and local offices. This is an important and sensible change to the *Code*, and the Task Force strongly endorses it.

As with the recommendations regarding changes in the absentee voting process, the Task Force strongly believes the integrity of the absentee voting process must be preserved. The Task Force makes the following recommendations with the understanding that all such protections and guarantees be preserved although specific related statutory provisions may need to be revised.

### **Recommendations**

1. The absentee voting processes as applied to electors subject to the requirements of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) should retain the existing deadlines contained in the *Pennsylvania Election Code* for mailing absentee ballots to military and overseas voters.
2. The absentee voting processes as applied to electors subject to the requirements of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) should establish procedures under which all courts of the Commonwealth will be able to decide nomination petition and nomination paper objection cases (including appeals) no later than one week prior to the date when absentee ballots must be sent to military and overseas civilian absentee electors and adjust the time period for filing objections and appeals as well as the time period for withdrawals of candidates for the purpose of facilitating the courts' deliberations and decisions in such cases.

3. The absentee voting processes as applied to electors subject to the requirements of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) should authorize the use of the Federal Write-in Absentee Ballot (FWAB) in all elections for all offices.
4. All changes to the absentee voting process and procedures for persons in the military and overseas citizens shall be made in a manner that maintains the integrity, security, and secrecy of the process.

## **Task (d) – Voter Participation**

*The Task Force shall examine options and make recommendations to increase voter participation, including, but not limited to, early voting, voting by mail and/or other similar system reforms, while ensuring the privacy and security of all ballots cast.*

Executive Order 2004-11, Task (d)

### **Issue**

Over the past decade, several states have taken steps to simplify the voting process and subsequently increase turnout. They have implemented “early voting,” relaxed their registration policies, and established Internet and mail voting systems and processes.

In states with early voting, voters may cast a ballot before the official Election Day. Twenty-nine (29) states have implemented a method of early voting in an effort to increase voter turnout by making voting more accessible to the voter. The three primary methods to vote early are voting by mail, “in-person early voting,” and “no-excuse absentee ballots.”

The Commonwealth does not utilize an early voting method. The only opportunity a Pennsylvania voter may have to vote before Election Day is by absentee ballot. Since both absentee voting and voting in person require the Pennsylvania voter to meet certain qualifications, neither qualifies as an “early voting” method.

### **In-Person Early Voting**

“In-person early voting” permits a voter to go to a specific location to cast a ballot prior to the election. This method of early voting has many forms. In Texas, voters may go to a designated early polling place in their political subdivision up to 17 days before Election Day and cast their vote using the same voting method they would use on Election Day.<sup>30</sup> Voters in Georgia may vote in person at the county registration office seven days before Election Day. In many cases, such as Georgia, the voter completes an absentee ballot.<sup>31</sup> Therefore, there is some similarity between in-person early voting and no-excuse absentee balloting. In Florida, despite the fact that the early voter casts a ballot on a machine, the state considers that vote an absentee vote.<sup>32</sup>

<sup>30</sup> Texas Election Code. Ann. §§ 7.85.001, 7.85.002

<sup>31</sup> Georgia Code. Ann. § 21-2-381

<sup>32</sup> Florida Stat. Ch. § 9.101.101.657

## **No-Excuse Absentee Ballots**

Voting by absentee ballot has been considered a reason to vote early in most states. However, not every voter qualifies because a valid reason must be provided to obtain an absentee ballot. As a result, some states utilize a “no-excuse absentee ballot” process. This process allows a voter to apply for an absentee ballot without providing a reason. Many states also have established times when a voter can complete an absentee ballot in person. In Alaska, a voter can go to an election supervisor’s office 15 days before Election Day and complete an absentee ballot without providing a reason.<sup>33</sup> Some states provide additional measures. In Washington, not only can a voter complete an absentee ballot in person, the state also has a permanent absentee list.<sup>34</sup> The voter is added to a list and automatically sent a ballot for every election. Approximately 73% of the votes cast in Washington were cast before Election Day in 2004. Currently, 27 states have some form of no-excuse absentee ballots.

## **Vote-by-Mail**

In a “vote-by-mail” system, a voter receives a ballot in the mail approximately two weeks before Election Day. The voter completes the ballot and sends it to the appropriate venue. Oregon conducts all elections via mail. In 1993, the state conducted its first statewide special election by mail. The system was tested prior to 1998 when Oregon voters passed a measure (by 70%) expanding both the primary and general elections to a vote-by-mail system. In 2000, Oregon became the first state to administer a presidential election entirely by mail. In 2004, Oregon was fifth in the percentage of eligible voters who voted on Election Day.

## **Internet Voting**

Internet voting is a controversial concept for reforming the election process. Although Internet voting does not necessarily correlate to a form of early voting, it is plausible that if this method was implemented, electors could be permitted to vote prior to Election Day.

## **Election Day Registration**

Election Day registration is another process states have implemented to improve voter turnout. Currently, six states allow a voter to register on Election Day: Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming. This process allows the voter to register on Election Day and then immediately vote after doing so. Five of the six states allow voters to register at their polling place. Maine allows voters to register on Election Day and requires that they do so at their local city hall or municipal building. The voter then returns to his or her precinct to vote. For the 2004 General Election, the top four states in voter turnout were Maine, Minnesota, New Hampshire, and Wisconsin.

North Dakota does not require individuals to register to vote. Its process relies on poll workers to identify and allow a prospective voter to cast a vote. Since there is no registration system in place, essentially everyone who is a state resident is eligible to vote.

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<sup>33</sup> Alaska Stat. § 15.20.010

<sup>34</sup> Washington Rev. Code §§ 29A.40.010, 29A.40.040

## *Task Force Deliberations*

The Task Force examined the issue of voter participation and considered alternative voting methods used across the nation to increase voter participation. It discussed early voting, Election Day (same-day) registration, improved access to polling places, and Internet voting.

The Task Force considered various early voting techniques, including in-person early voting, no-excuse absentee ballots, and voting by mail. During the discussion of early voting, the Task Force examined statistics from other states that illustrated the correlation between early voting and voter turnout. While there was agreement that theoretically early voting would provide electors more opportunities to cast a vote and subsequently increase turnout, statistics revealed that the correlation between early voting and voter turnout is minimal. Some Task Force members were also concerned that early voting techniques diminish the civic sense of community experienced on Election Day. The Task Force agreed that Election Day involves more than the act of casting a vote. The act of voting is a symbol of camaraderie and patriotism that should not be reduced to placing a letter in the mail or going to a satellite polling place two weeks before Election Day.

The second issue surrounding early voting is whether Pennsylvania county government has the staff and financial resources necessary to implement early voting techniques. Many counties experience difficulty filling positions at polling places. District election officials may be less willing to staff polling places two weeks prior to the election. Additionally, there was concern that financial resources for administering an early voting process would be scarce and perhaps nonexistent. The Task Force believes that the evidence available from other states does not warrant an investment in early voting methods at this time. If statistics eventually demonstrate that early voting techniques dramatically increase turnout, it may be appropriate to reconsider and possibly implement them.

It is important to note that the Task Force reached this conclusion mindful that its endorsement of no-excuse absentee ballots at a prior meeting provided citizens a means to vote early, with little or no intrusion on the dynamics of the Election Day process. (See discussion on Task (b) – Absentee Voting.)

The Task Force also debated Election Day registration at length. The Task Force was impressed that statistically, in 2004, the four states with the highest voter turnout were states that allow Election Day registration. However, the Task Force was fairly evenly divided on this issue. Some members expressed concerns regarding the logistics of Election Day registration. They worried that district election officials could be overwhelmed with individuals trying to register to vote in addition to those who were voting. As with early voting, there was a concern that polling place staffing would be an issue. Additionally, one Task Force member provided articles regarding recent Election Day fraud issues in Wisconsin, and some members concluded that the risk of fraud is not a risk the Commonwealth should be willing to take. Some Task Force members argued that other states have found a process to successfully address or avoid whatever potential pitfalls or difficulties might arise in implementing or administering Election Day registration. The Task Force discussed various procedures to identify an Election Day registration process that would be palatable for all members, including the possibility of allowing citizens to register

to vote at a central location and allowing the prospective registrant to vote a provisional ballot to prevent fraudulent voting. Ultimately, by a narrow vote, the Task Force defeated a proposal to recommend Election Day registration.

The Task Force addressed the issue of physical accessibility of polling places (also discussed in Task (e) – Help America Vote Act). For the purposes of voter participation, the Task Force concluded more polling places physically located in schools would increase the number of accessible polling places to individuals with disabilities, thus allowing more individuals to participate in the election process who might otherwise be frustrated or discouraged to participate. The Task Force concluded that a mandatory in-service day for all schools on both primary and general election day would make many more schools available for use as polling places and ease security concerns expressed by school administrators.

The Task Force rejected suggestions to extend the hours the polls are open and to declare Election Day as a state holiday.

The Task Force also discussed a vote-by-mail process similar to that used by Oregon. The Task Force believes that voting by mail would require extensive revision to Pennsylvania’s voting process, which it does not feel the Commonwealth could implement quickly without in-depth review. The Task Force also believes, as indicated in the discussion on early voting, that voting is a communal experience. Therefore, voting by mail is not recommended.

The Task Force examined Internet voting. Members raised concerns regarding the security of the Internet and the ability of current technology to satisfy the mandate in the *Constitution*<sup>35</sup> that whatever method adopted for casting and recording votes must preserve voting secrecy. The consensus of the Task Force was that Pennsylvania should not pursue Internet voting at this time; however, it is an idea that merits consideration in the future.

### **Recommendations**

1. The *Pennsylvania Election Code* should be amended to authorize “no-excuse absentee ballots.”
2. The *Pennsylvania Election Code* should be amended to designate the date of the primary and general election as school in-service days.

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<sup>35</sup> *Pennsylvania Constitution*, Article VII, sec. 4.

## **Task (e) – Help America Vote Act**

*The Task Force shall make recommendations to address specific deficiencies at the state or county level with respect to compliance with HAVA.*

Executive Order 2004-11, Task (e)

### **Issue**

After the 2000 General Election, the United States Congress enacted the Help America Vote Act of 2002 (HAVA), P.L. 107-252 (42 U.S.C. § 15301 *et seq.*). HAVA is applicable to all federal elections held in the United States and contains provisions that affect election administration in Pennsylvania, including:

1. Creates standards for all voting systems used by counties.
2. Requires each state to develop standards for what constitutes a vote.
3. Provides for the use of provisional ballots.
4. Implements additional identification requirements for those who vote for the first time and have registered by mail.
5. Requires states to implement a statewide voter registration database.
6. Provides for additional verification information for voter registration applicants.
7. Contains special requirements for first-time voters if they registered by mail.
8. Requires additional information of voter registration applicants.
9. Requires voter education and poll worker training.

HAVA also requires states to conduct educational programs for voters and election officials, establishes a new federal agency (Election Assistance Commission) to administer the Act, and provides federal funding for states to implement the programs required by the Act. The requirements of HAVA with the most impact are in Title III.

### **The Pennsylvania General Assembly's Response to HAVA**

On January 31, 2002, in anticipation of Congress passing HAVA, the General Assembly enacted Act 2002-3. Act 3 consolidated former provisions of the Pennsylvania Voter Registration Act (PVRA) and provided for the design, development, and implementation of the Statewide Uniform Registry of Electors (SURE), a statewide voter registration system to be administered by the Secretary of the Commonwealth.

In December 2002, the Pennsylvania General Assembly enacted Act 2002-150, amending the *Pennsylvania Election Code (Code)* to include several provisions designed to comply with

HAVA. These amendments have the effect of making those rules under HAVA applicable to both federal and state elections in the Commonwealth.

In its provisions relative to HAVA, Act 150:

1. Delineates requirements for the county boards of election to process provisional ballots.
2. Provides voter identification requirements for those that vote in a precinct for the first time (regardless of the method used to register).
3. Specifies procedures when complaints are received under Title III of HAVA.
4. Creates the Voting Systems Development Board to establish guidelines for determining what constitutes a vote on voting systems used in the Commonwealth.
5. Establishes a State Plan Advisory Board to advise the Secretary of the Commonwealth regarding development of the Pennsylvania State Plan (State Plan).

### **Development of the Pennsylvania State Plan**

As required by HAVA and Act 150, the Secretary of the Commonwealth on February 27, 2003 convened the State Plan Advisory Board to advise him regarding development of the State Plan. The Board made its recommendations to the Secretary on May 12, 2003. The Secretary incorporated many of the Board's recommendations into the 2003 State Plan. The Board reconvened on June 18, 2004 to advise the Secretary regarding the 2004 State Plan.

The objective of the State Plan is to modernize Pennsylvania's voting systems, guarantee that all registered voters have the opportunity to vote, and ensure that voting systems provide equal opportunities and are easy to use. The goal of the State Plan is ensuring the citizens of the Commonwealth the most fair and equitable election system possible.

As required by HAVA and Act 150, the Secretary of the Commonwealth developed the 2004 amendments to the State Plan in consultation with the Board. The objective of the 2004 amended State Plan is to provide an update of Pennsylvania's progress regarding the plans and goals described in the 2003 State Plan; to inform the EAC and the public of the Commonwealth's accomplishments during the 2003-04 fiscal year; and to describe the Commonwealth's plans to continue its efforts to modernize Pennsylvania's voting systems, guarantee all registered electors the opportunity to vote, and ensure that voting systems provide equal opportunities and are easy to use. The goal of the State Plan, as revised, is ensuring the citizens of the Commonwealth the most fair and equitable election system possible, and summarizing material changes.

### **Implementation of HAVA Requirements – the 2004 Elections**

When HAVA was enacted and throughout 2004, the Commonwealth and the 67 county boards of elections worked diligently to implement the requirements imposed by HAVA for the 2004 General Primary and General Election. The Department of State implemented voter identification programs; designed, printed, and made election and voter registration materials available in both English and Spanish; developed standards for what constitutes a vote; designed

materials for provisional ballots; redesigned voter registration applications; provided Election Day information and notices for posting at the polling places; trained county election officials; held training sessions for district election officials; and conducted voter education programs.

In addition, the Department of State and Deloitte Consulting LLP conducted a comprehensive, statewide quality assurance assessment program targeting the infrastructure and preparedness of the 67 counties for the 2004 General Election. Deloitte consultants visited all counties and assessed them on quality assurance and preparedness concerning eight categories: voting systems, provisional ballots and voter identification, absentee and alternative ballots, reporting of results, ballot review, accessibility, resources, and training and education. As a result of the quality assurance assessment, each county received a specific post-assessment letter detailing its strengths and weaknesses as well as recommendations for improvement. The Department and Deloitte also wrote and distributed two global communiqués highlighting statewide trends and recommendations and an “Election Officials’ Information Card.” The Department provided several counties additional training resources, ranging from presentation materials and handouts to Department/Deloitte-conducted training sessions for district election officials. Counties with unique challenges received additional consultation and guidance from the Department. The quality assurance assessment significantly raised the awareness and ensured the preparedness of both the Department and the counties for the 2004 General Election.

For the first time in history, the Rendell Administration organized and coordinated an “Election Day Initiative” for the 2004 General Election. The initiative offered a direct line of communication between the county election directors and the Department of State via three tiers of staff assistance: Commonwealth liaisons dispatched to central elections offices in 64 counties, Bureau of Commissions, Elections, and Legislation (BCEL) staff, and a team of subject matter experts stationed in the Department’s Executive Office. County election officials presented questions to the liaisons, the liaisons transmitted the questions to BCEL staff, and the Department subject matter experts provided thorough and efficient policy and legal guidance to the counties. The initiative successfully helped to address Election Day problems quickly and uniformly throughout the Commonwealth.

### **Implementation Deficiency – Provisional Ballots**

Considering the high voter turnout and the new procedures that had to be implemented for the 2004 General Election, Pennsylvania had a successful Election Day. However, counties experienced some problems on Election Day. The most serious problem encountered was that some counties did not have an adequate supply of provisional ballots to meet demand.

HAVA requires states to provide for “provisional voting” in federal elections held on or after January 1, 2004. Specifically, if a voter’s name does not appear on the official list or the election official asserts the voter is ineligible, the voter is entitled to cast a provisional ballot if the voter asserts that he or she is registered to vote and eligible to vote in the election at the election district where he/she has appeared. The voted ballot or written affirmation information must be transmitted to the appropriate local election official for verification. If the information is verified, the provisional ballot is counted. Pennsylvania is required by HAVA to provide a free

access system so voters who voted a provisional ballot can determine the disposition of their individual provisional ballot.

During the 2004 General Primary, 2,480 provisional ballots were cast statewide. During the 2004 General Election, 56,558 provisional ballots were cast. Voters were able to call a toll-free telephone number or access a Department of State website to determine the disposition of their provisional ballot.

At the 2004 General Election, election districts in several counties that had estimated their provisional ballot needs based on demand from the spring primary depleted their supply of provisional ballots early in the day. It was reported, in some cases, that electors were turned away and not permitted to vote while in other cases electors had to wait until the county re-supplied the polling place with provisional ballots. In Allegheny County, the court of common pleas extended the voting hours for the election by creating a central location in the City of Pittsburgh where voters could go to cast a provisional ballot until 9:30 P.M., 90 minutes after the polls closed.

### **Implementation Deficiency – Voting Standards**

Another issue that must be addressed is the standards for what constitutes a vote. Each state must adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. Act 150 of 2002 incorporated this requirement into the *Code* by establishing a Voting Standards Development Board. The standards adopted by the Board, known as *What Constitutes a Vote*, were later declared by statute, Act 2004-98, to have the force and effect of the law for the 2004 General Election. That legislation was necessary after the Supreme Court of Pennsylvania determined that the standards were advisory and were not legally binding on the courts, or even on the county boards of elections. Although Act 2004-98 corrected the matter for the 2004 election, it appears that absent permanent statutory language the standards revert to an advisory capacity.

### **Task Force Deliberations**

The Task Force discussed numerous issues pertaining to the Help America Vote Act (HAVA), including provisional ballots, voter identification, polling place accessibility, alternative language accessibility, voter verifiable paper audit trails and ballots, and alternative ballots.

The Task Force examined several issues pertaining to provisional ballots. Some members supported counting a provisional ballot as long as the voter is registered somewhere in the Commonwealth. Although the Task Force members were in accord that the vote of every registered individual should count, some members voiced concerns that a voting system that requires provisional ballots to be counted across county lines facilitates voter fraud. Some members observed that nothing would prevent an individual from voting in multiple counties and having each vote count. Election administrators would have no way of knowing who voted where until they scanned all voter certificates and updated the voter history records. The Task

Force concluded that the current provisional balloting system is acceptable and adequately provides an opportunity for registered electors to vote and have their vote recorded.

The Task Force discussed the format of the provisional ballot envelope and concluded that it should be modified. The statute currently requires two signatures on the envelope, and the Department of State designed the envelope accordingly. However, voters often fail to sign twice, which results in the disqualification of the provisional ballot. The Task Force has determined that this “two signature requirement” creates undue confusion, and, to make the provisional ballot process more voter friendly, recommends that the Department of State re-visit the format of the envelope.

The Task Force also examined allowing provisional ballots to be cast by means other than the current paper ballot process. Specifically, the Task Force reviewed whether authorization should be provided to allow provisional ballots to be cast on electronic voting systems. The Task Force believes that allowing this would aid individuals with disabilities that need assistance with voting by paper ballot.

The Task Force considered authorizing the use of the provisional ballot envelope as a voter registration application, either for the election in which the ballot was voted and subsequent elections or for elections occurring after the election in which it is voted. Some members supported this concept since it would enable the counting of more provisional ballots or alternatively ensure unregistered voters whose provisional ballots were not counted would be registered for future elections. Most Task Force members, however, did not support this idea because they believed district election officials are not equipped to handle additional responsibilities at the polling place. Nonetheless, the Task Force agrees with the basic premise of implementing a process that facilitates submission of voter registration applications at polling places on Election Day by individuals whose provisional ballots may be rejected. Therefore, the Task Force recommends that all polling places make available and distribute voter registration applications to individuals casting their vote by provisional ballot on Election Day.

The Task Force also studied polling place accessibility. Paul O’Hanlon, Esquire, Disabilities Law Project presented testimony stressing the importance of making every polling place accessible for individuals with disabilities. The Task Force, concurring with Mr. O’Hanlon, recommended the *Code* specify polling place accessibility standards, with a goal of providing as uniform and universal accessibility as possible statewide so that all individuals are provided an equal opportunity to cast their vote in person.

The Task Force discussed the possibility of allowing a citizen with a disability to vote at a nearby polling place or a regional polling place if that individual was assigned to an inaccessible polling place, but rejected those strategies because requiring a voter with a disability to travel to a central location defeats the purpose of providing the voter with a comparable voting experience. In addition, because ballot faces always vary from precinct to precinct and some counties may not be able to produce the different ballots with existing equipment, going to a neighboring precinct would preclude the voter from casting a ballot for many offices. As an alternative, the Task Force recommends the institution of curbside voting. Curbside voting will allow a voter with a disability to vote at his or her assigned polling place by paper ballot or other

means, but outside of the building where the polling place is located. This is not intended to relieve the counties from responsibility for meeting uniform polling place accessibility, but is intended primarily to help in circumstances where unforeseen barriers arise or are found on Election Day.

In consideration of the various rulings by the courts and limited action taken by the General Assembly regarding “what constitutes a vote” as required by Act 2002-150, the Task Force believes that the General Assembly should adopt the standards developed by the Voting Standards Development Board.

The Task Force heard extensive testimony from various individuals and groups regarding the implementation of voter verified paper ballots and voter verified paper audit trails. This issue is receiving significant attention by the media, state legislatures, the United States Congress, and proponents and opponents. The Task Force, due to time constraints and the complexity of the issue, does not believe it has sufficient information or understanding of the impact of the results of implementing procedures relative to voter verified paper ballots and voter verified paper audit trails, or alternative paperless electronic verification. The members, however, understand the importance of the issue and appreciate the concerns of supporters and opponents. The Task Force, therefore, recommends the General Assembly to convene public hearings on this issue.

Finally, the Task Force discussed alternative ballots. Because Pennsylvania has no state law applicable to alternative ballots but must administer the related federal law, the General Assembly should enact legislation that mirrors the federal law.

### **Recommendations**

1. The General Assembly should maintain the use of provisional ballots as currently utilized.
2. The Commonwealth/Department of State should re-visit the format of the provisional ballot envelope (based on its original purpose).
3. The *Pennsylvania Election Code* should be amended to allow provisional ballots to be cast via other means (in addition to paper ballots).
4. The *Pennsylvania Election Code* should be amended to require that the county boards of elections include Voter Registration Mail Applications with election materials distributed to district election officials to provide for use by individuals casting provisional ballots to apply to register to vote for the next succeeding election.
5. The *Pennsylvania Election Code* should be amended to specify polling place accessibility requirements and standards for compliance.
6. The *Pennsylvania Election Code* should be amended to allow the use of “curbside voting.”

7. The *Pennsylvania Election Code* should be amended to incorporate federal law regarding alternative language accessibility.
8. The *Pennsylvania Election Code* should be amended to adopt the Voting Standards Development Board report, “What Constitutes a Vote.”
9. The General Assembly should conduct hearings related to voter verifiable paper ballots and voter verifiable paper audit trails.
10. The *Pennsylvania Election Code* should be amended to include the purpose, scope, and process for alternative ballots in compliance with federal standards and current Pennsylvania procedures.

## Task (f) – Electoral College and Other Reforms

*The Task Force may examine other voting reforms such as methods for apportioning electoral votes.*

Executive Order 2004-11, Task (f)

### Issue

#### History/Intent of the Electoral College

The framers of the *United States Constitution* created the United States electoral system in Article II, Section 1, Clauses 2 and 3. The second clause delineates the method for determining the number of electoral votes for each state (equal to the number of congressional seats). This method of distribution was designed to protect the interests of small, less populous states and prevent them from being ignored during elections. The third clause stipulates that each state's electors meet in their respective states and cast ballots for their choice for President. Each elector was to cast two votes for President, with at least one vote cast for a candidate outside of his or her home state. The candidate with the absolute majority (more than one-half) was declared President. The candidate with the second highest number of electoral votes became Vice President.

This system was designed before the emergence of political parties. Due to the increasing popularity of political parties, the Twelfth Amendment was added to the *United States Constitution* in 1804. This Amendment requires that electors cast *one* vote for President and a *separate* vote for Vice President. This system has remained in effect for the last 200 years.

The *United States Constitution* maintains a federal system of government and has two major intents: to ensure “that the victor obtain a sufficient popular vote to enable him to govern (although this may not be the absolute majority), and that such a popular vote be sufficiently distributed across the country.”<sup>36</sup> A candidate would have to win popular votes in various states to be awarded that state's electoral votes. This would ensure that candidates not only focus on the more populous regions, but also the smaller regions as well. The legitimate fear of lack of information outside of the candidate's home state, as a result of minimal communication, would result in the election of Presidents from the most populous regions, leaving the smaller states underrepresented, if represented at all. The framers also feared that no candidate would have a great enough popular majority to govern the entire country. By having electoral votes awarded

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<sup>36</sup> William Kimberling, “The Electoral College,” Federal Election Commission National Clearing House on Election Administration, May 1992.

to states based on their congressional representation, each state would have a voice in the election.

Another intent, though not fully realized at the time, was the Electoral College system could prevent racial, religious, or economic factions in the nation. By having candidates win states, not just votes, the system confines potentially influential groups from uniting votes across state lines and significantly affecting the results of an election.<sup>37</sup>

Since the Electoral College process is part of the original *United States Constitution*, a constitutional amendment would be necessary to abolish it. The *United States Constitution* does not mandate the method of choosing electors or that electors vote as a unit, though they usually do so. The method of choosing electors is the responsibility of the states. Therefore, it is constitutional for a state to split its electoral votes between two or more candidates if its legislature decides to do so. However, individual state constitutions, statutes, and codes may bar the splitting of electoral votes.

### **Pennsylvania: “Winner-Take-All” Method**

In Pennsylvania, electors are chosen by a direct statewide election. The candidate who wins the most votes in a statewide popular election wins all of the electoral votes for the state. This is called the “winner-take-all” method, and 48 states utilize this method.

The *Pennsylvania Constitution* does not specifically delineate the winner-take-all method. The *Code*, Article XV, Section 3191 mentions the required number of presidential electors. Section 3192 states the day and time when the presidential electors shall meet and that the electors “ shall then and there perform the duties enjoined upon them by the Constitution and laws of the United States.”

While this article would not need to be amended to allow apportioning of electoral votes, there are other articles and sections within the *Code* that would. For example, Article X could present an issue due to the ballot structure explained in section 2963. In Pennsylvania, when voting for the office of President, a voter is actually electing the candidate’s electors. These electors are listed on the ballot as a group for the candidate. Since the electors are elected as a group, and not individually, this section of the *Code* bars the splitting of the electors. An act of the General Assembly would be required to amend the *Code* and allow the apportioning of electoral votes.

### **Maine and Nebraska: “Congressional District Method”**

Maine and Nebraska utilize an alternative method of distributing their electoral votes called the Congressional District Method. The states are divided into congressional districts. Each district is allocated one of its state’s electoral votes. The winner of the popular vote in each district is awarded that district’s electoral vote. The winner of the statewide popular vote is then awarded the state’s remaining two electoral votes. Maine implemented this method in 1972 and Nebraska in 1996. Since enactment, the statewide winner consistently has won all of the state’s districts; therefore, the electoral votes have never been split.

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<sup>37</sup> George Will, “Colorado’s Crucial Vote,” *Newsweek*, August 30, 2004, 60.

## **Colorado: Proposed “Selection of Presidential Electors” Method**

In the 2004 General Election, Colorado presented a ballot initiative that proposed a different method of choosing electors. The proposed amendment to the Colorado Constitution (Amendment 36) entitled “Selection of Presidential Electors,” suggested eliminating the “winner-take-all” method of awarding electoral votes that is currently utilized. The proposed method would apportion Colorado’s electoral votes based on the percentage of votes received by each candidate in a statewide popular election. This would allow Colorado to have a nearly-direct statewide popular election for President. The electoral votes would be divided, in whole numbers, among the competing candidates. Voters did not pass the initiative, with 65.22% voting against it.

### **Proposed Congressional Legislation**

Three joint resolutions pertaining to the Electoral College were introduced in 2004 in the Second Session of the 108<sup>th</sup> Congress: House Joint Resolution 103, House Joint Resolution 109, and House Joint Resolution 112. These resolutions would have provided for the direct election of the President.

In addition, three joint resolutions pertaining to the Electoral College were introduced in 2005 in the First Session of the 109<sup>th</sup> Congress: House Joint Resolution 8, House Joint Resolution 36, and Senate Joint Resolution 11.

House Joint Resolution 8, introduced in the House on January 4, 2005 and titled the “Every Vote Counts Amendment,” proposes an amendment to the United States Constitution that calls for the abolition of the Electoral College and provides for the direct election by popular vote of the President and Vice President by the citizens of the United States. It was referred to the House Subcommittee on the Constitution on March 2, 2005.

House Joint Resolution 36 was introduced March 2, 2005. The resolution proposes an amendment that calls to abolish the Electoral College and provides for the direct election of the President and Vice President by the popular vote of all citizens of the United States, regardless of place of residence. It was referred to the House Committee on Judiciary on March 2, 2005.

Senate Joint Resolution 11 was introduced in the Senate on March 16, 2005. The resolution proposes an amendment to the Constitution to abolish the Electoral College and provides for the direct election by popular vote of the President and Vice President. The resolution also allows Congress to determine the time, place, and manner of holding the election. Congress shall also prescribe, by law, the manner in which the results of the election shall be ascertained and declared. It was referred to the Senate Committee on the Judiciary on March 16, 2005.

### **Task Force Deliberations**

While each presidential election generates discussion of eliminating the Electoral College or making it more reflective of the popular vote, the Task Force believed that unilaterally adopting

either of the alternatives, the congressional district method used by Maine and Nebraska or the proportional distribution proposed for Colorado, would dilute the Pennsylvania electoral pool and take away its importance to candidates as a swing state. The Task Force believes that Pennsylvania should retain its winner-take-all method, pending discussion of other alternatives at the national level, and consequently makes no recommendation, including no recommendation to Congress or the national parties, on the matter.

An issue the Task Force discussed that was not specifically mentioned in the Executive Order was ballot access procedures for minor political parties and political bodies. The Task Force heard testimony from a coalition of minor parties, including the Green Party and Libertarian Party, regarding their difficulty in obtaining ballot access and the effect they believe this has on voter participation. While the Task Force had no way of measuring the effect on voter participation in this context because of the lack of available data and statistics, the testimony presented seems to suggest that Pennsylvania should review the statutory provisions currently applicable to ballot access for minor political parties and political bodies. The process relative to minor political parties in particular seems to merit more scrutiny.

The Task Force also discussed the lack of a statutory standard or deadline for action by a qualified governing body to place a question on the ballot. The Task Force felt the lack of statutory guidance causes ballot certification delays and/or the untimely printing of absentee ballots, which could lead to the disenfranchisement of voters. Therefore, the Task Force recommends that the General Assembly impose a statutory timeframe to place questions on the ballot.

### **Recommendations**

1. The *Pennsylvania Election Code* should be amended to provide greater access to the ballot for minor political parties and political bodies.
2. The *Pennsylvania Election Code* should be amended to prohibit the placement of questions on the ballot unless the appropriate legislative body and governing authority certify the question to the Department of State or the county boards of elections no later than one week prior to the date when absentee ballots must be sent to military and overseas civilian absentee electors (60 days prior to the election).

## Appendix A – Final Votes

At the April 21, 2005 meeting – Final Consideration and Vote – the Chairman of the Task Force opened the floor for a motion and a second to consider and vote upon individually each motion. The Task Force moved, seconded, and adopted the motion. Department of State staff read each motion, and the Task Force members discussed the motion. At the conclusion of the discussion, Department of State staff called the roll, repeated the vote cast (“Yes” or “Aye,” “No” or “Nay,” and “Abstained”), and recorded the vote. The votes for all motions follow:

### *Task (a) – Motions and Votes for Primary Date Change*

1. The *Pennsylvania Election Code* should be amended to set the dates of the primary elections in 2008 and 2012 (presidential elections) as the first Tuesday in March (sunset on November 30, 2014).

**YES: 9** (Brown, Byer, DiGirolamo, Gelb, Kauffman, Lamb, Lavin, Shea, Cortés)

**NO: 4** (Gority, Hill, Lee, Passarella)

**ABSTAINED: 0**

2. The specifics of refining the ballot access procedures should be left to the General Assembly.

**YES: 10** (Brown, Byer, DiGirolamo, Gelb, Gority, Lamb, Lavin, Lee, Shea, Cortés)

**NO: 1** (Kauffman)

**ABSTAINED: 2** (Hill, Passarella)

3. On a one-time trial basis (2008), the presidential primary should be bifurcated from the state general primary.

**YES: 2** (Byer, DiGirolamo)

**NO: 10** (Brown, Gelb, Gority, Hill, Kauffman, Lamb, Lavin, Lee, Passarella, Cortés)

**ABSTAINED: 1** (Shea)

**Task (b) – Motions and Votes for Absentee Voting**

1. The *Pennsylvania Constitution*, if necessary, and the *Pennsylvania Election Code* should be amended to eliminate all reasons or conditions necessary to qualify for an absentee ballot and permit any qualified elector to vote by absentee ballot without excuse (“no-excuse absentee ballots”).

**YES: 8** (Gelb, Gority, Hill, Kauffman, Lavin, Lee, Shea, Cortés)

**NO: 5** (Brown, Byer, DiGirolamo, Lamb, Passarella)

**ABSTAINED: 0**

2. The *Pennsylvania Election Code* should be amended to allow qualified electors to apply for an absentee ballot at any time prior to a primary election or general election, including on the date of a primary election or general election at a time no later to allow for the return of the ballot by the close of the polls, but no sooner than the date of the immediately preceding primary election or general election.

**YES: 13**

**NO: 0**

**ABSTAINED: 0**

3. The *Pennsylvania Election Code* should be amended to allow submission of an application for an absentee ballot by facsimile or computerized electronic transmission provided it contains all required information and a facsimile of the elector’s signature or the signature of an adult member of the elector’s immediate family.

**YES: 13**

**NO: 0**

**ABSTAINED: 0**

4. The *Pennsylvania Election Code* should be amended to establish a process and procedure for a permanent absentee ballot qualification list for the purpose of allowing a qualified elector to receive an absentee ballot without submitting an application for an absentee ballot.

**YES: 0**

**NO: 13**

**ABSTAINED: 0**

5. The *Pennsylvania Election Code* should be amended to require county boards of elections to print absentee ballots immediately upon certification of the official ballot and begin to deliver or mail absentee ballots to qualified electors immediately upon receipt of absentee ballots from the printer but no later than one week following receipt of the certification.

**YES: 13**

**NO: 0**

**ABSTAINED: 0**

**Task (b) – Motions and Votes for Absentee Voting (continued)**

6. The *Pennsylvania Election Code* should be amended to allow absentee ballots to be returned to the county boards of elections by personal hand delivery by the elector, United States mail, an individual representative of an elector specifically authorized to deliver the elector’s absentee ballot pursuant to a statutory declaration, or a commercial delivery or courier service that accepts and delivers as an intermediary between third parties in the ordinary course of its business throughout the year documents and packages deliverable to a specific street address.

**YES: 13**  
**NO: 0**  
**ABSTAINED: 0**

7. The *Pennsylvania Election Code* should be amended to provide that all absentee ballots containing a postmark no later than the day before Election Day (must be received no later than seven days after Election Day) or hand-delivered by the close of polls on Election Day shall be canvassed before the completion of the official count of all votes cast.

**YES: 13**  
**NO: 0**  
**ABSTAINED: 0**

8. The *Pennsylvania Constitution*, if necessary, and the *Pennsylvania Election Code* should be amended to require all absentee ballots to be retained, canvassed, and counted at the county boards of elections with procedures to ensure that no elector votes more than once.

**YES: 13**  
**NO: 0**  
**ABSTAINED: 0**

9. The *Pennsylvania Election Code* should be amended to require county boards of elections to make publicly available at the office of the county board of elections and upon request on Election Day and as soon as practicable following the receipt of absentee ballots a list of electors, arranged by election district, who voted by absentee ballot. The county boards of elections should continue to send precinct lists to the polling places.

**YES: 13**  
**NO: 0**  
**ABSTAINED: 0**

10. The *Pennsylvania Election Code* should be amended to require district election officials to make a list of absentee electors available for inspection only upon written request.

**YES: 13**  
**NO: 0**  
**ABSTAINED: 0**

**Task (b) – Motions and Votes for Absentee Voting (continued)**

11. The *Pennsylvania Election Code* should be amended to authorize the Secretary of the Commonwealth to require county boards of elections to report to the Secretary of the Commonwealth information concerning domestic civilian, overseas civilian, and military absentee ballots, including specifically but not limited to the number of absentee ballot applications received, the number of electors listed on the permanent absentee ballot qualification list, the number of absentee ballots distributed or mailed, and the number of absentee ballots returned by electors.

**YES: 13**

**NO: 0**

**ABSTAINED: 0**

12. All changes to the absentee voting process and procedures shall be made in a manner that maintains the integrity, security, and secrecy of the process.

**YES: 13**

**NO: 0**

**ABSTAINED: 0**

**Task (c) – Motions and Votes for Overseas and Military Absentee Voting**

1. The absentee voting processes as applied to electors subject to the requirements of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) should retain the existing deadlines contained in the *Pennsylvania Election Code* for mailing absentee ballots to military and overseas voters.

**YES: 13**  
**NO: 0**  
**ABSTAINED: 0**

2. The absentee voting processes as applied to electors subject to the requirements of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) should establish procedures under which all courts of the Commonwealth will be able to decide nomination petition and nomination paper objection cases (including appeals) no later than one week prior to the date when absentee ballots must be sent to military and overseas civilian absentee electors and adjust the time period for filing objections and appeals as well as the time period for withdrawals of candidates for the purpose of facilitating the courts' deliberations and decisions in such cases.

**YES: 13**  
**NO: 0**  
**ABSTAINED: 0**

3. The absentee voting processes as applied to electors subject to the requirements of the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) should authorize the use of the Federal Write-in Absentee Ballot (FWAB) in all elections for all offices.

**YES: 13**  
**NO: 0**  
**ABSTAINED: 0**

4. All changes to the absentee voting process and procedures for persons in the military and overseas citizens shall be made in a manner that maintains the integrity, security, and secrecy of the process.

**YES: 13**  
**NO: 0**  
**ABSTAINED: 0**

**Task (d) – Motions and Votes for Voter Participation**

1. The *Pennsylvania Election Code* should be amended to provide that a voter may cast a ballot in person before Election Day. (Early Voting)

**YES: 0**  
**NO: 13**  
**ABSTAINED: 0**

2. The *Pennsylvania Constitution*, if necessary, and the *Pennsylvania Election Code* should be amended to authorize “no-excuse absentee ballots.”

**YES: 9** (Gelb, Gority, Hill, Kauffman, Lamb, Lavin, Lee, Shea, Cortés)  
**NO: 4** (Brown, Byer, DiGirolamo, Passarella)  
**ABSTAINED: 0**

3. The *Pennsylvania Election Code* should be amended to modify the voter registration system to provide for Election Day registration.

**YES: 6** (Brown, Gelb, Kauffman, Lavin, Shea, Cortés)  
**NO: 7** (Byer, DiGirolamo, Gority, Hill, Lamb, Lee, Passarella)  
**ABSTAINED: 0**

4. The *Pennsylvania Election Code* should be amended to extend voting hours beyond 7:00 A.M. to 8:00 P.M.

**YES: 0**  
**NO: 13**  
**ABSTAINED: 0**

5. The *Pennsylvania Election Code* should be amended to authorize the following alternative voting methods:

- a. Voting by mail (at this time – *e.g.* State of Oregon).

**YES: 0**  
**NO: 13**  
**ABSTAINED: 0**

- b. Internet voting (at this time).

**YES: 0**  
**NO: 13**  
**ABSTAINED: 0**

**Task (d) – Motions and Votes for Voter Participation (continued)**

6. The *Pennsylvania Election Code* should be amended to designate the date of the primary and general election as official state holidays.

**YES: 0**  
**NO: 13**  
**ABSTAINED: 0**

7. The *Pennsylvania Election Code* should be amended to designate the date of the primary and general election as school in-service days.

**YES: 13**  
**NO: 0**  
**ABSTAINED: 0**

8. The *Pennsylvania Election Code* should be amended to modify the voter registration system to provide for Election Day registration by provisional ballot. *Motion to table motion (d)-8 was voted:*

**YES: 9** (Brown, DiGirolamo, Gelb, Gority, Hill, Kauffman, Lee, Passarella, Cortés)  
**NO: 1** (Lavin)  
**DID NOT VOTE: 3** (Byer, Lamb, Shea)

**Task (e) – Motions and Votes for Help America Vote Act**

1. The *Pennsylvania Election Code* should be amended to extend the use of the provisional ballot to be counted anywhere in the state.

**YES: 3** (Kauffman, Lavin, Shea)

**NO: 10** (Brown, Byer, DiGirolamo, Gelb, Gority, Hill, Lamb, Lee, Passarella, Cortés)

**ABSTAINED: 0**

2. The General Assembly should maintain the use of provisional ballots as currently utilized.

**YES: 8** (Byer, DiGirolamo, Gelb, Gority, Hill, Lamb, Lee, Passarella)

**NO: 3** (Brown, Kauffman, Lavin)

**ABSTAINED: 2** (Shea, Cortés)

3. The Commonwealth/Department of State should re-visit the format of the provisional ballot envelope (based on its original purpose).

**YES: 13**

**NO: 0**

**ABSTAINED: 0**

4. The provisional ballot envelope should also serve as a voter registration form for individuals who are not registered to vote.

**YES: 5** (Brown, Gelb, Kauffman, Lavin, Shea)

**NO: 8** (Byer, DiGirolamo, Gority, Hill, Lamb, Lee, Passarella, Cortés)

**ABSTAINED: 0**

5. If #4 is adopted/recommended, should the provisional ballot envelope/voter registration form count for that election or the following election? *Not considered per #4.*

6. The *Pennsylvania Election Code* should be amended by specifying a formula for the number of provisional ballots to be distributed to the precincts on Election Day to ensure a sufficient number is available to the voters.

**YES: 2** (Kauffman, Shea)

**NO: 11** (Brown, Byer, DiGirolamo, Gelb, Gority, Hill, Lamb, Lavin, Lee, Passarella, Cortés)

**ABSTAINED: 0**

7. The *Pennsylvania Election Code* should be amended to allow provisional ballots to be cast via other means (in addition to paper ballots – e.g. electronic means).

**YES: 12** (Brown, Byer, DiGirolamo, Gelb, Gority, Hill, Kauffman, Lamb, Lavin, Lee, Shea, Cortés)

**NO: 0**

**ABSTAINED: 1** (Passarella)

**Task (e) – Motions and Votes for Help America Vote Act (continued)**

8. The *Pennsylvania Election Code* should be amended to require that the county boards of elections include Voter Registration Mail Applications with election materials distributed to district election officials to provide for use by individuals casting provisional ballots to apply to register to vote for the next succeeding election.

**YES: 13**

**NO: 0**

**ABSTAINED: 0**

9. The *Pennsylvania Election Code* should be amended to require a first-time voter to provide identification whether voting by absentee ballot or in person (a “first-time voter” shall be defined as an individual who is voting in a precinct for the first time).

**YES: 4** (Byer, Gority, Lamb, Shea)

**NO: 9** (Brown, DiGirolamo, Gelb, Hill, Kauffman, Lavin, Lee, Passarella, Cortés)

**ABSTAINED: 0**

10. The *Pennsylvania Election Code* should be amended to specify polling place accessibility requirements and standards for compliance.

**YES: 13**

**NO: 0**

**ABSTAINED: 0**

11. The *Pennsylvania Election Code* should be amended to allow citizens with a disability who are assigned to an inaccessible polling place to vote at an accessible polling place in an adjacent election district or an accessible regional vote center.

**YES: 1** (Shea)

**NO: 12** (Brown, Byer, DiGirolamo, Gelb, Gority, Hill, Kauffman, Lamb, Lavin, Lee, Passarella, Cortés)

**ABSTAINED: 0**

12. The *Pennsylvania Election Code* should be amended to allow the use of “curbside voting.”

**YES: 12** (Brown, Byer, DiGirolamo, Gelb, Gority, Hill, Kauffman, Lamb, Lavin, Passarella, Shea, Cortés)

**NO: 0**

**ABSTAINED: 1** (Lee)

13. The *Pennsylvania Election Code* should be amended to incorporate federal law regarding alternative language accessibility.

**YES: 13**

**NO: 0**

**ABSTAINED: 0**

**Task (e) – Motions and Votes for Help America Vote Act (continued)**

14. The *Pennsylvania Election Code* should be amended to adopt the Voting Standards Development Board report, “What Constitutes a Vote.”

**YES: 10** (Brown, DiGirolamo, Gelb, Gority, Hill, Lamb, Lavin, Lee, Shea, Cortés)

**NO: 0**

**ABSTAINED: 3** (Byer, Kauffman, Passarella)

15. The General Assembly should conduct hearings related to voter verifiable paper ballots and voter verifiable paper audit trails.

**YES: 10** (Brown, Byer, DiGirolamo, Gelb, Gority, Kauffman, Lamb, Lavin, Shea, Cortés)

**NO: 3** (Hill, Lee, Passarella)

**ABSTAINED: 0**

16. The *Pennsylvania Election Code* should be amended to include the purpose, scope, and process for alternative ballots in compliance with federal standards and current Pennsylvania procedures.

**YES: 13**

**NO: 0**

**ABSTAINED: 0**

**Task (f) – Motions and Votes for Electoral College and Other Reforms**

1. The *Pennsylvania Election Code* should be amended to provide that presidential electors be apportioned according to the votes cast in congressional districts (Maine and Nebraska’s “Congressional District” method).

**YES: 0**  
**NO: 13**  
**ABSTAINED: 0**

2. The *Pennsylvania Election Code* should be amended to provide that presidential electors be apportioned according to the percentage of votes cast statewide (Colorado’s proposed “Selection of Presidential Electors” method). *Motion tabled previously.*

3. The General Assembly should adopt a Joint Resolution urging the United States Congress to eliminate the Electoral College.

**YES: 4** (Gelb, Gority, Kauffman, Lavin)  
**NO: 7** (Byer, DiGirolamo, Hill, Lamb, Passarella, Shea, Cortés)  
**ABSTAINED: 2** (Brown, Lee)

4. The General Assembly should adopt a Joint Resolution urging the United States Congress to consider a proportional casting of electoral votes in each state.

**YES: 4** (Byer, Gority, Kauffman, Lavin)  
**NO: 7** (DiGirolamo, Gelb, Hill, Lamb, Passarella, Shea, Cortés)  
**ABSTAINED: 2** (Brown, Lee)

5. The *Pennsylvania Election Code* should be amended to provide greater access to the ballot for minor political parties and political bodies.

**YES: 12** (Brown, Byer, DiGirolamo, Gelb, Gority, Hill, Kauffman, Lamb, Lavin, Lee, Shea, Cortés)  
**NO: 0**  
**ABSTAINED: 1** (Passarella)

6. The *Pennsylvania Election Code* should be amended to replace the existing formula for determining when a party is eligible to appear on the ballot. The Delaware standards, which provide access based on the number of registered voters that a party has acquired, may serve as a model.

**YES: 6** (Byer, Gelb, Gority, Kauffman, Lavin, Shea)  
**NO: 7** (Brown, DiGirolamo, Hill, Lamb, Lee, Passarella, Cortés)  
**ABSTAINED: 0**

**Task (f) – Motions and Votes for Electoral College and Other Reforms (continued)**

7. The *Pennsylvania Election Code* should be amended to prohibit the placement of questions on the ballot unless the appropriate legislative body and/or governing authority certify the question to the Department of State or the county boards of elections no later than one week prior to the date when absentee ballots must be sent to military and overseas civilian absentee electors (60 days prior to the election).

**YES: 11** (Byer, DiGirolamo, Gelb, Gority, Hill, Kauffman, Lamb, Lavin, Lee, Passarella, Shea)

**NO: 0**

**ABSTAINED: 2** (Brown, Cortés)

## **Appendix B – Adoption of Final Report**

On May 9, 2005, the Task Force held its last meeting for the purpose of adopting the Final Report on Executive Order 2004-11. The motion below was moved and seconded. After a discussion and comment period, Department of State staff called the roll, repeated the vote cast (“Yes” or “Aye,” “No” or “Nay,” and “Abstained”), and recorded the vote. The members of the Task Force voted on the motion as follows:

1. Approve the Final Report of the Pennsylvania Election Reform Task Force and authorize Pedro A. Cortés, Secretary of the Commonwealth and Chairman of the Task Force, to transmit it to the Governor on behalf of the Task Force.

**YES: 13**

**NO: 0**

**ABSTAINED: 0**