



November 3, 2024

By email

To: All Pennsylvania County Solicitors

RE: Improper Challenges to Federal Mail Ballot Voters

Dear County Solicitor,

On Friday, we learned that at least nine counties in Pennsylvania received mass-produced challenges to the eligibility of qualified overseas voters who applied for and were approved for absentee ballots in the November 2024 election. These mass challenges, which purport to proceed under the Election Code provision relating to challenges to mail ballot applications, assert that the challenged voters should not be allowed to vote because they are outside the United States and are not registered to vote in Pennsylvania.

Nearly 50 years ago, Congress enshrined overseas U.S. Citizens' continued right to vote in the district in which they last lived, but only for federal elections. Consequently, county boards of election legally must allow the challenged voters to cast ballots for federal offices in the upcoming election. The challengers either misunderstand or ignore this longstanding federal law. Either way, the law requires that these challenges be summarily denied.

The challenged voters are U.S citizens now living abroad whose last U.S. residence was in Pennsylvania. These individuals are entitled to vote in federal elections under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which President Reagan signed into law in 1986. *See* 52 U.S.C. §§ 20302(a), 20310(5)(C). UOCAVA authorizes these "federal voters" to vote in the district in which they last lived in the Commonwealth, but only in federal elections, *i.e.*, for President, U.S. Senator, and U.S. Representative. While these voters may not be technically "registered" to vote in Pennsylvania for purposes of state elections, federal law indisputably protects their right to vote for federal offices.

Here, the challengers appear to have simply mass-produced and batch-submitted challenges to all or virtually all of these UOCAVA federal voters in certain counties. In addition to being legally deficient, mass-produced challenges like these are not a proper use of the

Election Code’s absentee-ballot-application-challenge provisions because they are not based on individualized information about the voter known personally to the challenger. The challenge process, which can require boards of elections to expend precious public resources during the height of the election season, is not an appropriate means for the challengers to simply register their disagreement with the clear requirements of federal law.

We caution that taking any action to prevent these UOCAVA federal voters’ ballots from being opened and counted in federal elections based on such mass challenges would be unlawful. The challenged voters are qualified “overseas voters” within the meaning of federal law. *See* 52 U.S.C. § 20310(5)(C). And federal law provides that election officials must allow such overseas voters “to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.” *Id.* § 20302(a)(1). Pennsylvania Department of State Guidance also sets forth the process by which these federal law requirements are carried out by the county boards of elections. You may find that guidance [at this link](#).

The proper course of action for any county receiving mass challenges to these federally-qualified “overseas voters” is to summarily reject the challenges as both procedurally and substantively deficient. Counties should formally dismiss or deny the challenges as quickly as possible to minimize any delay or disruption to the canvassing process.

If your county has received these mass-generated challenges, we would appreciate it if you could let us know at the email address provided at the end of this letter. At a minimum, we ask you to advise the Department of State of your receipt of such challenges.

A more detailed analysis follows. If you have any questions about this issue, please do not hesitate to contact us.

ANALYSIS: THE MASS VOTER CHALLENGES ARE LEGALLY DEFICIENT

Beginning on or about November 1, less than a week before the November 2024 general election, a few Pennsylvania residents began batch-filing thousands of cookie-cutter mass challenges to certain absentee voters. The challenged voters are U.S. citizens who now live abroad and whose last domestic residence was Pennsylvania. These voters have requested an absentee ballot to vote for federal offices. They affirmed as part of that application process that their last U.S. residence was Pennsylvania, they now live abroad and their intent to return is uncertain, and they otherwise meet the qualifications to vote under state law (such as age and citizenship status). Each county board where these citizens last lived approved their application based on a determination that they were in fact so qualified.

As of the date of this letter, we are aware of over three thousand of these challenges being batch-submitted to officials across at least nine counties. These challenges to UOCAVA federal voters are in addition to, and different from, the improper mass challenges to domestic civilian and military-family mail ballot voters that we wrote to you about on October 28, 2024. Those are based on the voters’ filing of a change-of-address form with the U.S. Postal Service.

A review of the recent challenges to UOCAVA federal voters in several of the affected counties reveals that the challenges are identical in format and content except for the voter's name and personal information. The challenges appear to have been mass-produced from a database using a "mail merge" function. Each asserts that the challenged voter is not eligible because the voter allegedly indicated on their ballot application "that they are currently and indefinitely out of the country" and are "not a member of the military" and "not registered to vote and therefore [are] not eligible to vote in Pennsylvania." The challenges appear to proceed based solely on information from a database, and the challengers do not purport to personally know any of the challenged voters.

These challenges are fatally flawed under federal law and should be rejected.

The federal UOCAVA and its predecessor statute have for decades guaranteed that U.S. citizens living abroad, like the challenged voters, may vote in federal elections. The UOCAVA's protections apply to "overseas voters," whom the statute defines as:

- (A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;
- (B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or
- (C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

52 U.S.C. § 20310(5).

UOCAVA guarantees that U.S. citizens who come within this definition of "overseas voters" may vote in federal elections. Under the UOCAVA, states "shall permit absent ... overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 52 U.S.C. § 20302(a)(1). **In other words, a UOCAVA-protected "overseas voter" as defined above *must* be permitted "to vote by absentee ballot" in federal elections. *Id.***

The first two categories of UOCAVA-protected "overseas voter" are also able to register and vote in Pennsylvania elections pursuant to Pennsylvania's Uniform Military and Overseas Voters Act (UMOVA), 25 Pa.C.S. § 3501 *et seq.* These categories of voters come within the definition of a "covered voter" under UMOVA, *see id.* § 3502, and accordingly they may register in Pennsylvania and also vote by mail ballot in state elections, pursuant to the provisions of UMOVA.

The third category of UOCAVA "overseas voters," who appear to be the citizens challenged here, are the so-called "federal voters." These U.S. citizens' last residence was in Pennsylvania before they moved abroad and they are uncertain whether and when they might

return to Pennsylvania. Because they currently reside abroad and their intent to return is uncertain, these voters are not covered by UMOVA and cannot register for and vote in elections for *state* offices. However, because “but for such residence” abroad these voters “would be qualified” to vote where they lived “before leaving the United States” (*i.e.*, in Pennsylvania), they are qualified “overseas voters” under UOCAVA. 52 U.S.C. § 20310(5)(C). Accordingly, they must be permitted “to vote by absentee ballot” for *federal* offices in the districts where they previously lived. *See id.* § 20302(a)(1).¹

Congress first extended federal voting rights to this group of U.S. citizens in the Overseas Voting Rights Act of 1975, 89 Stat. 1142, Pub. L. 94-203 (Jan. 2, 1976). And courts have acknowledged and affirmed these federal law provisions extending federal voting rights to voters who may not otherwise meet state residency requirements. *E.g.*, *Atty. Gen. of Guam v. United States*, 738 F.2d 1017, 1019–20 (9th Cir. 1984).

The Pennsylvania Department of State maintains current guidance on UOCAVA federal voters, which, consistent with federal law, provides that while such federal voters “need not (and cannot) meet [Pennsylvania] residency requirements,” they “*may still cast a vote for federal offices as a federal voter under UOCAVA.*” Pa. Dep’t of State, *Federal Voters under UOCAVA Guidance* 1-2 (Oct. 11, 2023), <https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2023-UOCAVA-Federal-Voters-Guidance-2.1.pdf> (emphasis added). This is the case even though UOCAVA federal voters formally “may not register to vote” under state law due to the residency requirement. *Id.* Federal law still requires that qualified UOCAVA federal voters be permitted to vote for federal offices. *See* 52 U.S.C. § 20302(a)(1).

Any attempt to exclude or prevent the counting of votes for federal offices cast by these voters based on current residency or failure to register is thus directly contrary to federal law. These U.S. citizens are specifically authorized to vote for federal offices notwithstanding their residency abroad or registration status.

Besides the foregoing fatal legal deficiency, these challenges are also deficient procedurally. The only valid basis for a challenge to an absentee or mail ballot application is that the applicant is not “qualified.” 25 P.S. § 3146.2b(a), § 3150.12b(a)(2). The burden of proof to demonstrate that the challenged voter is not a qualified elector is on the challenger. Challenges should be brought by individual electors based on individualized information about particular circumstances, personally known to the challenger, that render the challenged voter actually ineligible.

Mass-generated challenges, such as these, are *prima facie* insufficient and should be summarily rejected. They are not based on the challenger’s personal knowledge about the voter. They do not assert that the challenged UOCAVA federal voters do not meet any of the

¹ *See also* U.S. Federal Voting Assistance Program, *How to Determine Your Voting Residency*, <https://www.fvap.gov/info/laws/voting-residence>.

qualifications to vote other than residency. Nor do they make any individualized assertions about the voters that might call their prior residence in Pennsylvania into doubt.²

Rather, these challenges appear to have been produced en masse using the SURE system or some other voter database, in which UOCAVA federal voters are coded using a specific “federal unregistered” code. Again: Federal law specifically requires that U.S. citizens living abroad be permitted “to vote by absentee ballot” in federal elections in their last home state, whether or not they are registered or may become registered, so long as they “would be qualified to vote” there “but for” their residence. 52 U.S.C. §§ 20302(a), 20310(5)(C).

Challenging these voters based purely on their status as UOCAVA federal voters is not an appropriate use of the challenge process. The challengers may disagree with Congress’s determination to extend federal voting rights to these U.S. citizens (and with the last five decades of unbroken compliance with federal law across the Nation on this point). If so, they should contact their representatives in Congress. It is not proper for them to direct their disagreement to the county boards of elections, and to waste public resources by filing legally baseless mass challenges in defiance of federal law.

Accordingly, these mass-generated challenges are facially insufficient to show that these voters are not “qualified” to receive an absentee ballot in order to exercise their right to vote for federal offices as guaranteed by UOCAVA.

One other point bears mention for county boards of elections and other officials considering whether to grant these challenges: Voters can enforce the rights guaranteed in UOCAVA in federal court, including under 42 U.S.C. § 1983, which permits the award of attorneys’ fees to prevailing plaintiffs. *See Reitz v. Rendell*, No. CIV.A. 104-CV-2360, 2004 WL 2451454, at *1-*2 (M.D. Pa. Oct. 29, 2004) (enforcing the rights of overseas voters under UOCAVA in action brought by individual covered voters); *see generally Gonzaga University v. Doe*, 536 U.S. 273 (2002).

CONCLUSION

Any action by the boards of elections with respect to these election-eve mass-generated challenges to UOCAVA federal voters other than the swift rejection or dismissal of these challenges will violate federal and state law. We ask that the challenges be swiftly rejected or dismissed so as to avoid unnecessary litigation and expense. Any indication that a county

² Nor could the challengers be heard to argue that this category of voters did not meet any required identification or verification process. Consistent with federal law, the Election Code expressly provides that voters who are “entitled to vote by absentee ballot under [UOCAVA]” “shall not be required to provide proof of identification.” 25 P.S. §§ 3146.2(j), 3146.2b(f), 3146.5(c), 3146.8(i); *see also* 52 U.S.C. § 21083(b)(3)(C).

intends to pursue some other course will be treated as an imminent violation of law and the rights of protected voters.

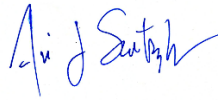
We also would greatly appreciate it if you would immediately inform us if you receive any challenges of the nature described above. If you intend to process any such challenges, we ask that you provide the list of voters who are being challenged and the date(s) of any hearing(s). And, at a minimum, we strongly encourage you to notify the Pennsylvania Department of State.

Please do not hesitate to contact us if you have any questions regarding any of the above. We would be happy to meet and discuss at your earliest convenience. You may contact us directly or email vote@aclupa.org.



/s/

Witold J. Walczak
Legal Director
ACLU of Pennsylvania Foundation



/s/

Ari J. Savitzky
Senior Staff Attorney, Voting Rights Project
American Civil Liberties Union Foundation