



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

May 5, 2022

The Honorable James B. Martin
Lehigh County District Attorney
455 West Hamilton Street, Room 307
Allentown, PA 18101-1614

Dear District Attorney Martin,

I write to you today concerning your recent public statements regarding ballot drop box surveillance in Lehigh County for the upcoming primary election. It is my understanding that you intend to station detectives or other law enforcement officers at ballot drop boxes to monitor the number of mail-in or absentee ballots that voters deposit. I share your interest in ensuring that our state and federal election laws are followed and enforced, including laws concerning the delivery of mail-in or absentee ballots. That said, I write to inquire about your plans out of concern that they may have the effect of intimidating eligible voters and deterring their authorized agents from legally casting ballots.

First, as you know, assistance in voting by certain absentee and mail-in electors is legally authorized in Pennsylvania, and ballot drop boxes are a legally authorized method of delivery of ballots by these designated agents. *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020) (holding drop boxes lawful); *see DiPietrae v. City of Philadelphia*, 666 A.2d 1132, 1136 (Pa. Commw. Ct. 1995) (holding disabled voters can designate individuals to deliver a completed absentee ballot to a mailbox or in-person), *aff'd*, 543 Pa. 591, 673 A.2d 905 (1996); *see also* Pa. Dep't of State, *Authorize a Designated Agent to Help You Obtain and/or Return Your Mail-In or Absentee Ballot*, <https://www.vote.pa.gov/Resources/Documents/Authorize-Designated-Agent-for-Mail-in-or-Absentee-Ballot.pdf>. Because of this, it is very likely that an eligible voter who is also an authorized designated agent will deposit more than one ballot into one of the five drop boxes available in Lehigh County during the May 17 primary.

Moreover, I have a broader concern about the presence of law enforcement at the ballot boxes. As you can imagine, law enforcement officers, whether they be in uniform or in civilian clothes, positioned near a ballot drop box may very well dissuade eligible voters as well as authorized designated agents from legally casting ballots. *See generally* Nat'l Policing Inst., *Police Officer and Field Supervisor Duties on Election Day*, <https://www.policinginstitute.org/elections/#:~:text=Police%20Officer%20and%20Field%20Supervisor%20Duties%20on%20Election%20Day> (emphasizing that it is important for law enforcement to avoid the perception that they are monitoring or surveilling the election process and of minimizing actual or perceived

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interference with the voting process).¹ This is especially of concern if you intend on authorizing those officers to question persons dropping off ballots, which could inadvertently lead to selective enforcement or intimidation. It is well documented that in past decades law enforcement has intimidated voters, particularly in communities of color.² Your efforts “to enforce the law” may very well adversely impact the fundamental right to vote for eligible voters, particularly those who are unable to drop off their ballot for themselves due to a disability.

The Department of State takes voter intimidation seriously and we have issued guidance for voters and election officials explaining what voter intimidation is, the provisions of both Pennsylvania and federal law³ prohibiting voter intimidation, and how to report it.⁴ While I appreciate that law enforcement officials, such as yourself, have been entrusted with an important responsibility to enforce the law, I believe that as the Chief Election Officer of the Commonwealth of Pennsylvania it is my duty to ensure that voters can continue to cast their ballots without interference and that elections in this Commonwealth continue to run securely, freely and fairly.

In furtherance of that duty, I believe that it is important for me to request that you do not station law enforcement outside of ballot drop boxes in Lehigh County. Pennsylvania counties have successfully deployed ballot drop boxes following the Department of State’s guidance and best practices for security, monitoring, and proper chain-of-custody without the presence of law enforcement. My office is available to meet with you and discuss how we can work with election

¹ See also Joe Barrett & Zusha Elinson, *Police Struggle to Protect Voters and Avoid Intimidation at Polls*, Wall St. J., Oct. 26, 2020, <https://www.wsj.com/articles/police-struggle-to-protect-voters-and-avoid-intimidation-at-polls-11603720800>; U.S. Dep’t of Justice, *Federal Prosecution of Election Offenses*, at 84 (8th ed. 2017) (ebook) (stating that law enforcement investigating an election fraud matter “should carefully evaluate whether an investigative step under consideration has the potential to affect the election itself” and thus “overt criminal investigative measures should not ordinarily be taken in matters involving alleged fraud in the manner which votes were cast or counted until the election in question has been concluded”).

² For example, the national committee for one of the two major political parties was subject to a more than three-decade consent decree based on allegations that the party used off-duty police officers to intimidate voters in majority-minority precincts. See *Dem. Nat’l Comm. v. Repub. Nat’l Comm.*, 673 F.3d 192, 196-97 (3d Cir. 2012) (outlining the terms of the consent decree which included refraining from “interrogat[ing] prospective voters as to their qualifications to vote prior to their entry at a polling place” and “undertaking any ballot security activities in polling places or election districts . . . where a purpose or significant effect of such activities is to deter qualified voters from voting”). Notably, Lehigh County is one of three counties in Pennsylvania determined by the Census to be subject to the minority language assistance provisions of the Voting Rights Act because of the County’s significant population of Hispanic voters. See *Voting Rights Act Amendments of 2006, Determinations Under Section 203*, 86 Fed. Reg. 69,611, 69,614 (Dec. 8, 2021).

³ 18 U.S.C. §§ 241, 242, 245(b)(1)(A), 594; 52 U.S.C. § 20511(1); 25 P.S. § 3547.

⁴ See Pa. Dep’t of State, *Guidance on Voter Intimidation and Discriminatory Conduct* (Oct. 2020), <https://www.vote.pa.gov/Your-Rights/Pages/Voter-Intimidation.aspx>.

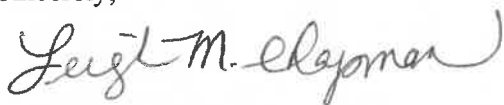
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officials in Lehigh County to ensure that the primary runs smoothly and that voters are able to cast their ballot without interference.

I would urge you to shift your focus from surveilling ballot drop boxes to voter education ahead of the 2022 primary election. The goal should be to properly educate voters about the availability of ballot drop boxes and the rules regarding third-party delivery before they deposit their ballots into ballot drop boxes.

The primary election is underway, and voters are already returning ballots. Please provide me with the details of your monitoring plan by May 11, 2022, so we can discuss a solution to ensure all eligible voters in Lehigh County are able to cast their ballots.

Sincerely,



Leigh M. Chapman
Acting Secretary of the Commonwealth