IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ROBERT ROSSMAN, in his official capacity as member of the Potter County Board of Elections, *Petitioner*, v. **DEPARTMENT OF STATE OF THE COMMONWEALTH OF PENNSYLVANIA**, *and* **AL SCHMIDT**, *in his official capacity as Secretary of the Commonwealth*, Respondents.	:	No. 516 MD 2024

APPLICATION FOR SUMMARY RELIEF BY PETITIONER ROBERT ROSSMAN

Pursuant to Pa.R.App.P. 123(a), and Pa.R.App.P. 1532(b), Petitioner Robert Rossman, in his official capacity as a member of the Potter County Board of Elections and Registration Commission, submits this Application for Summary Relief seeking final judgment and in support thereof, avers as follows:

I. INTRODUCTION.

This case presents a challenge to the validity of a self-styled "directive" issued by Respondents Pennsylvania Department of State

and Secretary of the Commonwealth, Al Schmidt, which purports to prohibit county registration commissions from rejecting voter registration applications submitted by individuals who provide identifying information that conflicts with the information contained in official government databases.

But the Pennsylvania law governing voter registration requires the exact opposite course of action. Specifically, Act 3 of 2002,[1] and the accompanying regulations, flatly prohibit approval of a voter registration that has not been properly completed, or includes information that is inconsistent. Instead, under such circumstances, county registration officials—like Commissioner Rossman—are obligated by law to take certain steps to ascertain the necessary information and, if after reasonable effort, the defect cannot be resolved, they are required to reject the application. 25 Pa.C.S. § 1328(b). In the end, because the Secretary's directive has no basis in law and palpably conflicts with the statutory scheme enacted by the General Assembly, it must be declared unlawful.

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[1] Act of Jan. 1, 2002, P.L. 18, No. 3, *see* 25 Pa.C.S. § 1101, *et seq*.

Resolution of this issue turns on settled precepts of statutory construction. And because the relevant provisions of Act 3 are not ambiguous, the analysis should begin and end with the text of the statute. Specifically, by its plain terms, Act 3 requires county election officials to reject applications that are not "properly completed"—*i.e.*, applications with respect to which "necessary information" is either "incomplete" or "inconsistent." 25 Pa.C.S. § 1328(b)(2)(i). In turn, the "necessary information" referenced in Section 1328 includes, as relevant here, either the applicant's driver's license number (DLN), or the last four digits of the individual's Social Security number (SSN-4) (together, "Unique Identifying Number").[2] And examining the "common and approved usage" of the material terms,[3] an application containing a Unique Identifying Number that does not match the information contained in the relevant government database,[4] is not "properly

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[2] 4 Pa. Code § 183.1 (defining a voter registration application as a form prescribed by the Secretary that request, among other things, the applicant's Unique Identifying Number); *see* 4 Pa. Code § 183.5 (delineating information on application that is "optional"—*i.e.*, not "necessary").

[3] *See generally* 1 Pa.C.S. § 1903.

[4] Where an applicant provides a DLN, the relevant information is matched against the records maintained by the Pennsylvania Department of Transportation (PENNDOT) and, in the case of SSN-4, county officials consult the United States Social Security Administration's database.

completed" because the "necessary information" is either "incomplete" or "inconsistent."[5]

Given Act 3's unambiguous language, this Court need not look beyond plain text of the statute. But to the extent this Court finds the relevant statutory provisions materially ambiguous, the various guideposts for discerning legislative intent further bolster the conclusion that a voter registration application may not be approved if, upon cross referencing relevant government databases, the Unique Identifying Number provided on the application does not correspond to the rest of the necessary information on the application, like the applicant's name and date of birth. This construction is supported by extensive legislative history surrounding the Act's enactment. In fact, an examination of "the occasion for [Act 3], the context in which it was passed, the mischief it was designed to remedy, and the object it sought to attain[,]" *Commonwealth v. Cullen-Doyle*, 164 A.3d 1239, 1242 (Pa.

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[5] INCONSISTENT, CONSISTENCY, The Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/inconsistent and https://www.merriam-webster.com/dictionary/consistency.

2017), shows that precisely this type of "matching" was central to effectuating the General Assembly's intent.

Moreover, this process serves at least two important policy goals. *First*, it helps promote public confidence and trust in elections because, as a matter of commonsense, people are more likely to trust an election when they believe some investigation—however minimal—has been conducted to confirm the identities of those individuals registered to participate. *Second*, this type of front-end matching—matching before adding individuals to the registration lists as opposed to after their addition—prevents voter rolls from being polluted by registrants with incorrect information or fraudulent or duplicate registrations. It is far easier to ensure pristine voter rolls by preventing the introduction of errors as opposed to working to remedy them after they have been introduced. That is especially true given that federal law does not make it easy to remove names from voter rolls once they have been added. *See, e.g.*, 52 U.S.C. § 20507.

The Secretary, for his part, has never seriously disputed any of this. Indeed, his directive makes no effort at all to contend with state law, failing to cite a shred of Pennsylvania authority in support of its

legal conclusions. *See* Pennsylvania Department of State, *Directive Concerning HAVA-Matching Drivers' Licenses or Social Security Numbers for Voter Registration Applications*, at 1 (2018) (the 2018 Directive) (Exhibit A). Instead, it jumps straight to federal law, insisting that the Help America Vote Act of 2002 (HAVA),[6] *forbids* county registration commissioners from rejecting applications with inconsistent necessary information. *See* Ex. A.

But the Secretary's position is deeply flawed. It is based *entirely* on a bare, unanalyzed, citation to a solitary never-appealed federal district court opinion issued in the context of a motion for a preliminary injunction. *See id.* at 1 (citing *Washington Ass'n of Churches v. Reed*, 492 F.Supp.2d 1264, 1268 (W.D. Wash. 2006)). Even worse, the 2018 Directive steadfastly ignores a subsequent decision from a federal court of appeals, which reached precisely the opposite conclusion. *See Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153 (11th Cir. 2008) (*Browning*). And perhaps most jarringly, the 2018 Directive makes no effort to grapple with the fact that HAVA *expressly* instructs

[6] *See* 52 U.S.C. §§ 20901-21145 (formerly 42 U.S.C. §§ 15301-15545).

states to "determine whether the information provided by an individual is sufficient . . . *in accordance with State law*." 52 U.S.C. § 21083(a)(5)(A)(iii) (emphasis added). That is, HAVA itself brings the question of whether to accept or reject an application with mismatched information right back around to state law. Ultimately, no source of law supports the Secretary's directive. It is flatly contradicted by state law. And it is not required by federal law.

And finally, even if the 2018 Directive could somehow be squared with the plain language of the statutory scheme governing voter registration—and it cannot—the binding rule of law that it purports to establish cannot be implemented without being subject to public notice, comment, and review, in accordance with the Regulatory Review Act, Commonwealth Documents Law, and Commonwealth Attorneys' Act. Having failed to undergo "mandatory, formal rulemaking procedure that is, with rare exceptions, required for the promulgation of [agency] regulations[,]" the 2018 Directive is an unlawful—and, thus, unenforceable—*de facto* regulation. *Corman v. Acting Secretary of Pa. Dep't of Health*, 367 A.3d 561, 573 (Pa. Cmwlth. 2021) (quoting *Naylor v. Dep't of Pub. Welfare*, 54 A.3d 429, 433 (Pa. Cmwlth. 2012)).

In short, the 2018 Directive has no basis in law. The Secretary has no authority to create a binding norm by edict—much less override existing legislation. His actions are plainly unlawful and should be declared as much by this Court.

II. BACKGROUND.

A. Pennsylvania's voter registration statute.

On January 31, 2002, the Governor signed into law Act 3 of 2002, which substantially amended Pennsylvania's voter registration laws and codified them under Title 25 of the Pennsylvania Consolidated Statutes, *see* 25 Pa.C.S. §§ 701-1906. Shortly thereafter, in December 2002, the Secretary promulgated the requisite regulations, which have remained unchanged since their inception and are an integral part of Act 3's voter registration scheme.[7] Of particular relevance here are the requirements pertaining to the submission, review, and disposition of voter registration applications.

First, under Act 3, voter registration application must include a request for, among other things, the applicant's Unique Identifying

[7] *See* Pa. Bull., Vol. 32, No. 52, at 6340-59 (Dec. 28, 2002); *see also* 4 Pa. Code. Ch. 183.

Number.[8] Importantly, while the regulations specify that some of the information requested in an application is "optional"—and, thus, "may not be considered when determining the acceptance or rejection of the application"—an applicant's DLN is not included in the list of "additional or optional information." 4 Pa. Code § 183.5(f). Similarly, an applicant's SSN-4 is optional only "***if the applicant's driver's license number is provided***[.]" *Id*. at § 183.5(f)(8) (emphasis added).[9] In other words, one of these two numbers is mandatory and thus "necessary information."

Second, Act 3 also sets forth the parameters for reviewing and approving voter registration applications. Specifically, under Section 1328, the registration commission for the county where the applicant resides is responsible for accepting or rejecting an application. *See* 25

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[8] *See* 4 Pa. Code § 183.1(a) (defining the "VRMA" as the "[t]he Statewide voter registration application form, in accordance with section 1327(a) of the act (relating to preparation and distribution of applications)[,]" which requests, *inter alia*, an applicant's driver's license number and the terminal four digits of the social security number).

[9] As noted in the Petition for Review, the current version of the Pennsylvania official voter registration application form created by the Department, *see* PFR, Ex. A, as well as the National Voter Registration Form, *see* PFR, Ex. B, confirms that an applicant's correct Unique Identifying Number is a necessary datapoint. *See* PFR, ¶¶ 26-30.

Pa.C.S. § 1328(b)(2)-(8).[10] In carrying out this obligation, the county official must consult the Statewide Uniform Registry of Electors (the SURE system) and examine the voter registration application to ascertain the applicant's qualifications and eligibility to register. *See* 25 Pa.C.S. § 1328(a)(2). Specifically, Section 1328 provides that, "[u]pon receiving a voter registration application, a commissioner, clerk or registrar of a commission shall . . .[e]xamine the application to determine[,]" *inter alia*, "[w]hether the application is complete," 25 Pa.C.S. § 1328(a)(2)(i), and "[w]hether the applicant is a qualified elector." *Id.* at § 1328 (a)(2)(ii).

If, upon such examination, it appears that the application, among other things, "contains the required information indicating that the applicant is a qualified elector of the county[,]" the application must be approved and the information contained therein logged into the SURE system. *See* 25 Pa.C.S. § 1328(b)(3)(ii), (4)(ii), (5)(ii), (6)(ii), (7)(ii),

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[10] *See also* 4 Pa. Code § 183.5(a) (a commission "shall be responsible for making the final decision to accept or reject an applicant's application to register to vote in accordance with section 1328"); *see generally* 25 Pa.C.S. §§ 1322(a), 1323(c)(2)-(3), 1324(b), 1325(f).

(8)(iii).[11] On the other hand, if the application was not properly completed, the commission must "use reasonable efforts" to ascertain information that is necessary for voter registration," which "shall include" mailing a notice to the applicant or calling the applicant, if a phone number is available and is incomplete, inconsistent or unclear on an applicant's application form. 4 Pa. Code. § 183.5(c). But where "the application remains ***incomplete or inconsistent***[,]" despite such "reasonable efforts by the commission to ascertain the necessary information," the application must be rejected. 25 Pa.C.S. § 1328(b)(2)(i) (emphasis added).

B. The Federal Help America Vote Act of 2002 (HAVA).

Approximately ten months after Act 3 was enacted, President George W. Bush signed into law the Help America Vote Act of 2002 (HAVA), 52 U.S.C. §§ 20901-21145 (formerly 42 U.S.C. §§ 15301-15545).[12] As relevant here, HAVA generally provides that "an

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[11] Once the information is entered, the applicant is also assigned a unique identification number and added to the county's general register. *See* 25 Pa.C.S. §§ 1328(c), 1328.1; *see also* 25 Pa.C.S. § 1222(c)(3), (6), (10).

[12] HAVA, as explained by the Eleventh Circuit Court of Appeals, is "Congress's attempt to strike a balance between promoting voter access to ballots on the one hand and preventing voter impersonation fraud on the other." *Browning*,

application for voter registration for an election for Federal office may not be accepted or processed by a State unless" it contains either: (1) the applicant's DLN; or (2) the applicant's SSN-4. *See* 52 U.S.C. § 21083(a)(5)(A)(i). Furthermore, under HAVA, States must "match" and "verify[]" that information with information from the "State motor vehicle authority" and Social Security Administration. 52 U.S.C. § 21083(a)(5)(B)(ii) (citing 42 U.S.C. § 405(r)(8)). Notably, although HAVA does not expressly mandate rejection of applications in the event of a mismatch, or if a voter's identity cannot be confirmed, it does expressly require States to verify the applicant's identity and information provided in the application in accordance with State law, providing that the "State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, ***in accordance with State law***." 52 U.S.C. § 21083(a)(5)(A)(iii) (emphasis added).[13]

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522 F.3d 1153, 1168 (11th Cir. 2008); *see also generally Banfield v. Cortes*, 110 A.3d 155, 160 (Pa. 2015) ("In October 2002, Congress enacted [HAVA] to reform the nation's voting process in response to the issues that arose in the 2000 presidential election.").

[13] *See also id.* at § 21084 ("The requirements established by this subchapter are minimum requirements and nothing in this subchapter shall be construed to

C. The Department's shifting interpretation of HAVA.

The Department's initial reading of HAVA, quite naturally, was that its provisions—when coupled with Pennsylvania law—***require*** the counties to ensure that the information provided by an applicant **match** information in either the Commonwealth's driver's license database or the database of the Social Security Administration. Indeed, in December 2003, the Department published a Notice in the Pennsylvania Bulletin instructing as follows:

> For applications for voter registration received on and after January 1, 2006, section 303(a)(5) of HAVA will prohibit the acceptance or processing of the application unless (i) the application includes the driver's license number of an applicant who has been issued a current and valid driver's license, or if the applicant does not have a current and valid driver's license, the last four digits of the applicant's social security number (except for an applicant who declares in his application that he has neither a current and valid driver's license nor a social security number); and (ii) elections officials determine that the number provided by the applicant is valid.

Pa. Bull., Vol. 33, No. 50, at 6340-59 (Dec. 13, 2003).

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prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this subchapter so long as such State requirements are not inconsistent with the Federal requirements under this subchapter or any law described in section 21145 of this title." (citing 52 U.S.C. § 21145)).

On August 9, 2006, however, the Department issued a document directed to county election commissions entitled, "*Alert re: Driver's License and Social Security Data Comparison Processes Required by the Help America Vote Act (HAVA)*" (hereafter, the 2006 Alert), a copy of which is attached hereto as Exhibit B. This new alert baldly declared that "failure to achieve a match between a voter registration application and a record in the Commonwealth's driver's license database or the database of the Social Security Administration ***is not a reason to reject the application***." *Id.* at 5 (emphasis added).

Notably, the 2006 Alert purported to recognize—in bolded, underlined, and italicized language—that "**the disposition of an application for voter registration must be made solely by the county voter registration commission under the standards and procedures prescribed by *Pennsylvania* law**." *Id.* (emphasis in original). In substance, however, it lacked any foundation in Pennsylvania law. In fact, the 2006 Alert did not cite any Pennsylvania legal authority whatsoever—not a statute, not a regulation, not even a common pleas court decision. What the 2006 Alert ***did*** cite was *Reed*, a never-appealed judicial opinion purporting to interpret HAVA, which

was issued in the context of a preliminary injunction by a federal court in Washington State.[14]

Next, in 2018, the Department issued a document directed to county election commissions entitled, "*Directive Concerning HAVA-Matching Drivers' Licenses or Social Security Numbers for Voter Registration Applications*" (hereafter, the 2018 Directive). *See* Ex. A. The 2018 Directive relayed the same basic message as the 2006 Alert: a mismatch resulting from cross-checking the Unique Identifying Number is not a proper basis for rejecting a new voter registration application. But unlike the 2006 Alert, which was somewhat more circumspect in its characterization of the law, the 2018 Directive purports to have been issued pursuant to Section 1803(a) of Act 3,[15] and claims that

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[14] Importantly, the 2006 Alert does not provide any empirical data (or even estimates) on how often a record was mistakenly identified as a mismatch.

[15] *See id.* at 1 (citing 18 Pa.C.S. § 1803(a) ("The department shall have the authority to take any actions, including the authority to audit the registration records of a commission, which are necessary to ensure compliance and participation by the commissions."). Notably, Section 1803(a) permits the Department to "take ***any actions***, . . . necessary to ensure" a commission's compliance with Act 3, *see id.* at § 1803(b), including recourse to Section 1804, which ***requires*** the State Treasurer, upon notice from the Secretary, to withhold ***all money*** appropriated to a county by the Commonwealth. *See id.* at § 1804(b) (providing that, upon receiving the requisite notification "the State Treasurer shall . . . withhold any part or all of the State appropriations to which a county is entitled, including funding for the court of common pleas but excluding funding for human services").

"**Pennsylvania and federal law are clear that voter registrations may *not* be rejected based solely on a non-match between the applicant's identifying numbers on their application and the comparison database numbers**." *Id.* (emphasis in original). Thus, according to the 2018 Directive, such applications "**may *not* be rejected and must be processed like all other applications.**" Ex. A at 1 (emphasis in original).

Moreover, the 2018 Directive also expressly prohibits counties from placing any application "in 'Pending' status while a county is doing follow-up with an applicant whose driver's license or [SSN-4] could not be matched" and provides that such applications "**MUST** be accepted, unless the county has identified another reason to decline the application." *Id.* (emphasis in original). According to the 2018 Directive, approving voter registration despite a mismatch is required to "**comply with state and federal law**[.]" *Id.* (emphasis in original).[16]

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[16] Importantly, the Secretary has never attempted to promulgate either the 2006 Alert, or the 2018 Directive as a final-form regulation. In fact, neither document has ever even been published in the Pennsylvania Bulletin. As explained by the Pennsylvania Supreme Court:

Notwithstanding the certainty with which it describes the law, the 2018 Directive—much like the 2006 Alert—is largely devoid of any legal analysis. To begin, like the 2006 Alert, the 2018 Directive fails to cite **any Pennsylvania law** in support of its interpretation of Act 3's matching requirement. As for Federal law, the 2018 Directive purports to rely on *Reed*. But aside from quoting *Reed*'s description of the alleged intent underlying HAVA, the 2018 Directive fails to explain how that decision fits into the analysis of Pennsylvania law. And critically, nowhere in the 2018 Directive does the Department acknowledge that the sole authority on which it relies (*i.e.*, *Reed*), was rejected by the Eleventh Circuit Court of Appeals in *Browning*.

III. STATEMENT OF RELIEF SOUGHT.

Pursuant to Rule of Appellate Procedure 1532(b), Petitioner respectfully requests that this Court enter judgment in his favor

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> The Pennsylvania Bulletin is the official gazette of the Commonwealth of Pennsylvania. It is published weekly and, is, inter alia, the temporary supplement to the Pennsylvania Code, which is the official codification of agency rules and regulations and other statutorily authorized documents. Courts are required to take judicial notice of the Pennsylvania Bulletin.

Kuznik v. Westmoreland Cnty. Bd. of Comm'rs, 902 A.2d 476, 483 (Pa. 2006).

relative to both counts and declare the 2018 Directive contrary to Pennsylvania law because: (1) it requires Petitioner to ignore incomplete and inconsistent voter registration applications (Count I); and (2) it is unlawful and unenforceable de facto regulation (Count II).

IV. STANDARDS

Pennsylvania Rule of Appellate Procedure 1532(b) provides that "[a]t any time after the filing of a petition for review in an appellate or original jurisdiction matter the court may on application enter judgment if the right of the applicant thereto is clear." In other words, an application for summary relief may be granted if "'a party's right to judgment is clear and no material issues of fact are in dispute.'" *Jubelirer v. Rendell*, 953 A.2d 514, 521 (Pa. 2008) (quoting *Calloway v. Pa. Bd. of Prob. & Parole*, 857 A.2d 218, 220 n.3 (Pa. Cmwlth. 2001)).

Under the Declaratory Judgments Act (DJA), 42 Pa.C.S. §§ 7531-41, courts have the power to "declare rights, status, and other legal relations[.]" 42 Pa.C.S. § 7532. The purpose of the DJA "is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and

administered." 42 Pa.C.S. § 7541(a); *see also Bayada Nurses, Inc. v. Com., Dep't of Labor & Industry*, 8 A.3d 866, 874 (Pa. 2010).

V. GROUNDS FOR RELIEF.

A present controversy exists between the parties because the Department has issued a "directive," backed up by draconian penalties, demanding that Commissioner Rossman act contrary to Pennsylvania law. Indeed, the 2018 Directive is contrary to Pennsylvania law in at least two ways: (1) it requires Petitioner to ignore incomplete and inconsistent voter registration applications; and (2) even if its requirements could be squared with the statutory language, it is an unlawfully unpromulgated *de facto* regulation. Accordingly, because no material facts are in dispute and Commissioner Rossman's right to declaratory judgment is clear as a matter of law, this Court should grant summary relief.

A. Because the validity of the 2018 Directive is in actual dispute and the parties' legal rights and obligations are uncertain, declaratory relief is appropriate.

As a threshold matter, because this action presents an actual justiciable controversy regarding Commissioner Rossman's "rights,

status, and other legal relations" under Act 3, declaratory relief is warranted. 42 Pa.C.S. § 7532.

Specifically, as repeatedly noted throughout this filing, Commissioner Rossman has a statutory duty to examine new voter registration applications for completeness and consistency. In turn, as indicated above, compliance with this duty ***requires*** him to match the information provided by the applicant by cross-referencing the appropriate database using the Unique Identifying Numbers. The 2018 Directive, however, purports to prohibit this practice. An uncertainty, therefore, exists regarding Commissioner Rossman's "rights" under Act 3 and the "legal relations" between the parties.

Along these same lines, the dispute between the parties also satisfies the "actual controversy" requirement because the parties' disagreement regarding the 2018 Directive is palpable and sufficiently concrete. *See Krasner v. Henry*, 319 A.3d 56, 72 (Pa. Cmwlth. 2024). Moreover, the specific penalties threatened by the 2018 Directive suggest the "ripening seeds of a controversy," which, under the DJA, are sufficient to establish an "actual controversy." *Liberty Mut. Ins. Co. v. S. G. S. Co.*, 318 A.2d 906, 909 (Pa. 1974). Specifically, as noted above, *see*

note 15 *supra*, the 2018 Directive purports to have been issued under 25 Pa.C.S. § 1803(a), which authorizes the Department to "take ***any actions***, . . . necessary to ensure" a commission's compliance with Act 3, including recourse to Section 1804, which ***requires*** the State Treasurer, upon notice from the Secretary, to withhold ***the majority of a county's appropriated money***. *See id.* at § 1803(b).[17]

Because of the 2018 Directive, and against these potential financial and criminal consequences, Commissioner Rossman has and continues to comply with its instructions—despite his continued disagreement with its validity.

B. Petitioner Rossman is entitled to summary relief relative to Count I because the 2018 Directive violates

[17] *See also id.* at § 1804(b) (requiring that, upon receiving the requisite notification "the State Treasurer shall . . . withhold any part or all of the State appropriations to which a county is entitled, including funding for the court of common pleas but excluding funding for human services").

Pennsylvania law and is not required under federal law by HAVA.

1. Pennsylvania law requires county registration officials to cross-reference the Unique Identifying Number provided on a new voter registration against the appropriate government database.

As noted above, Act 3 provides that, "[u]pon receiving a voter registration application, a commissioner, clerk or registrar of a commission shall . . .[e]xamine the application to determine[,]" *inter alia*, "[w]hether the application is complete," 25 Pa.C.S. § 1328(a)(2)(i), and "[w]hether the applicant is a qualified elector." *Id.* at § 1328 (a)(2)(ii). In turn, an application may be approved only where it contains "the required information" to show the applicant is a qualified elector of the county. 25 Pa.C.S. § 1328(b)(3)(ii).

Likewise, Section 1328 gives very clear instructions for how a commission is to handle an application that has not been "properly completed." It commands that, under such circumstances, a commission "shall . . . [r]eject a voter registration," that is "incomplete or inconsistent." 25 Pa.C.S. § 1328(b)(2)(i). Of course, this rejection may not occur until ***after*** it reasonably attempts to reconcile the information

with the applicant. *See id*.[18] The commission must attempt to give the applicant an opportunity to "complete" the application or resolve the inconsistency. But what is crystal clear is that the statute does not contemplate registering the applicant in the meantime. Contrary to the Secretary's directive, a commission can only add applicants to the rolls after their applications have been "properly completed."

Applying settled principles of statutory construction to the foregoing statutory framework, Commissioner Rossman has a clear right to relief. To begin, a plain language analysis of Act 3 demonstrates that county registration officials are prohibited from approving an application if there is a mismatch between the identifying information listed on the application and the information within PENNDOT or Social Security Administration databases.[19]

In this regard, under the Statutory Construction Act, words of a statute are to be construed according to "their common and approved

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[18] *See also* 4 Pa. Code § 183.5(c) ("a commission shall use reasonable efforts to ascertain information that is necessary for voter registration and is incomplete, inconsistent or unclear on an applicant's application form").

[19] *See generally In re Three Pennsylvania Skill Amuse. Devices*, 306 A.3d 432, 439 (Pa. Cmwlth. 2023) (*en banc*) ("It is a 'guiding principle of statutory construction that when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.'").

usage," 1 Pa.C.S. § 1903, which—in the absence of a statutory definition—is often ascertained by referencing the relevant term's dictionary definition.[20] Here, the material words are "completed" and "inconsistent." *See* 25 Pa.C.S. § 1328(b)(2)(i). "Complete" as an adjective is defined as "having all necessary parts, elements, or steps." COMPLETE, The Merriam-Webster Dictionary.[21] "Inconsistent" is defined as "lacking consistency"; in turn, "consistency" is defined as "agreement or harmony of parts or features to one another or a whole." INCONSISTENT, CONSISTENCY, The Merriam-Webster Dictionary.[22]

Under these definitions,[23] the meaning of Section 1328 is clear and free from all ambiguity. Where the critical data elements, such as the applicant's Unique Identifying Number, name, and birthday lack "agreement or harmony" (*i.e.*, cannot be matched), "the application [is]

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[20] *See, e.g.*, *Honey v. Lycoming Cnty. Offs. of Voter Servs.*, 312 A.3d 942, 951 (Pa. Cmwlth. 2024) ("In ascertaining the common and approved usage or meaning, a court may resort to the dictionary definitions of the terms left undefined by the legislature." (quoting *Mountz v. Columbia Borough*, 260 A.3d 1046, 1050 n.4 (Pa. Cmwlth. 2021))).

[21] *Available at* https://www.merriam-webster.com/dictionary/complete.

[22] *Available at* https://www.merriam-webster.com/dictionary/inconsistent and https://www.merriam-webster.com/dictionary/consistency.

[23] Notably, courts routinely rely on the Merriam-Webster dictionary. *See, e.g.*, *Greenwood Gaming & Ent., Inc. v. Dep't of Revenue*, 306 A.3d 319, 331 (Pa. 2023).

inconsistent." And if the number provided by the applicant is incorrect, the application lacks "all necessary parts, elements, or steps" and, thus, has not been "properly completed."

By contrast, the Secretary's construction runs headlong into the statute, as it implies that an applicant could "properly complete" an application simply by writing some 8-digit number written in the blank space for a DLN or some 4-digit number in the blank space for the SSN-4. On this view, the application would be "properly completed" regardless of whether those numbers corresponded to *any person*'s Unique Identifying Number, let alone to those of the applicant. In fact, however, even if an applicant could "complete" the application by writing fictitious digits in those blanks, such an application would not be "properly completed," 25 Pa.C.S. § 1328, because the application does not call for random digits that correspond to *some* driver's license or social security card; rather, the application calls for the Unique Identifying Number that belongs to the "the applicant." And in any event, even if such a string of random numbers could be said to "complete" the application, they would be "inconsistent" with everything

else on the application—foreclosing any possibility that the application had been "properly completed."

In short, the Secretary's formulation is not only untenable, but it is absurd and, thus, violates a basic presumption that courts must apply in discerning the plain text of a statute. *See Land Acquisition Servs., Inc. v. Clarion Cnty. Bd. of Comm'rs*, 605 A.2d 465, 467–68 (Pa. Cmwlth. 1992) ("In accordance with the rules of statutory construction, courts, when attempting to ascertain the intention of the General Assembly, must assume that the legislature did not 'intend a result that is absurd, impossible of execution or unreasonable.'" (quoting 1 Pa.C.S. § 1922(1))); *cf Ball v. Chapman*, 289 A.3d 1, 22, n.129 (Pa. 2023) ("To read the phrase 'fill out, date and sign,' to allow for any date, regardless of its relation to the acts of filling out and signing the declaration on an absentee or mail-in ballot would be to sanction an absurd result." (quoting 25 P.S. §§ 3146.6(a); 3150.16(a))). [24]

[24] *See also Gioffre v. Allegheny Cnty. Bd. of Prop. Assessment, Appeals & Rev.*, 315 A.3d 232, 236 (Pa. Cmwlth. 2024) ("Courts will look beyond the plain language of a statute, however, where the plain meaning would lead to an absurd result, and, in ascertaining legislative intent, we presume that the General Assembly does not intend a result that is absurd, impossible to execute, or unreasonable.").

Finally, although a plain-text analysis should be the end of the inquiry, the result would be the same even if this Court were to look beyond the plain text of the statute.[25]. Specifically, the various guideposts for discerning legislative intent also support the conclusion that a voter registration application may not be approved if the Unique Identifying Number is inconsistent. *See Bowman v. Sunoco, Inc.*, 65 A.3d 901, 906 (Pa. 2013) ("[I]f we deem the statutory language ambiguous, we must then ascertain the General Assembly's intent by statutory analysis, wherein we may consider numerous relevant factors." (citing 1 Pa. C.S. § 1921(c))).

To begin, an examination of "the occasion for [Act 3], the context in which it was passed, the mischief it was designed to remedy, and the object it sought to attain[,]" *Cullen-Doyle*, 164 A.3d at 1242, reflects an

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[25] Of course, an extratextual analysis would be permissible only if this Court were to determine that the pertinent provisions of Act 3 are materially ambiguous. *See Tri-Cnty. Landfill, Inc. v. Pine Twp. Zoning Hearing Bd.*, 83 A.3d 488, 510 (Pa. Cmwlth. 2014). As this Court has cautioned, however, "[a]n ambiguity exists when language is subject to two or more reasonable interpretations and not merely because two conflicting interpretations may be suggested." *Id.* . Thus, this Court may look beyond the plain text of the Act 3 only in the event that Respondents are able to identify a reasonable alternative interpretation of the relevant statutory provisions.

unmistakable intent to condition registration on "matching."[26] Second, and relevant to the analysis prescribed by the Statutory Construction Act, this practice serves at least two important policy goals. *See generally Miller v. Cnty. of Ctr.*, 173 A.3d 1162, 1168 (Pa. 2017) (noting that, in resolving an ambiguity, courts may consider, among other things, the General Assembly's "policy goals").

First, it helps promote public confidence and trust in elections, which is an important consideration when interpreting a statute governing the conduct of elections.[27] , Experience and commonsense dictate that people are more likely to have faith in an election system

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[26] This intent is manifest in the records of the Pennsylvania Joint Select Committee to Examine Election Issues, which was established in February 2001 to "examine, investigate and make a complete study of Pennsylvania's election laws, practices and procedures relating to voter eligibility, to the methods of voting, to the casting, counting and recounting of votes, to voter registration, to absentee balloting, to protections against fraud and to legal remedies related thereto." H.R. Con. Res 14, 2001 Gen. Assemb., Reg. Sess. 2001-2002 (Pa. 2001); *see generally* Joint Select Committee to Examine Election Issues, *Interim Report of the Joint Select Committee Regarding A Statewide Integrated Voter Registration System*, at 2-6 (2001), *available at* https://www.legis.state.pa.us/WU01/LI/TR/Reports/2001_0003R.pdf; *see also id.* at 29 (discussing the shortcomings of the voter registration law in effect at the time and recommending cross-checking through "effective interaction with other state agencies").

[27] *In re Petitions to Open Ballot Box Pursuant to 25 P.S. §3261(A)*, 295 A.3d 325, 328 & 338 (Pa. Cmwlth. 2023) (acknowledging that "many face a crisis of confidence in our electoral system" and ultimately preferring an interpretation that "promotes, rather than hinders, election integrity").

that requires officials to conduct at least a minimal degree of investigation before giving an individual access to the ballot box.. *Second*, while county officials work diligently to maintain the accuracy of their voter rolls throughout the year, front-end matching is far more effective in facilitating "clean" voter rolls, as it prevents the introduction of errors in the first instance.. That is especially true given that federal law does not make it easy to remove names from voter rolls once they have been added. *See, e.g.*, 52 U.S.C. § 20507.

2. HAVA does not prohibit conditioning registration on data matching.

Ultimately, the only legal basis the Secretary has offered for either his guidance or his directive is a bare, unanalyzed citation to a single Federal district court case from Washington state: *Reed*. But that decision is wholly inapposite.

First, as a jurisprudential matter, *Reed* provides no foundation for either the Secretary's directive because "[t]he decisions of the federal district courts may offer guidance, but they are not binding precedent upon this Court." *Gould v. City of Aliquippa*, 750 A.2d 934, 938 (Pa. Cmwlth. 2000). In fact, this is true even where a federal question is involved. *See Com. v. Lambert*, 765 A.2d 306, 315 n.4 (Pa. Super. 2000)

("Absent a United States Supreme Court pronouncement, decisions of federal courts are not binding on state courts, even when a federal question is involved."). Moreover, the procedural context in which *Reed* takes place counsels special caution. *Reed* was resolved upon a motion for a preliminary injunction—which the defendants never appealed. Accordingly, it is not even the law of the case in the very matter in which it was issued.[28]

The Secretary, for his part, has never attempted to justify his reliance on *Reed*. In fact, while both the 2006 Alert and 2018 Guidance cite *Reed*, neither offers any analysis of that decision—let alone a discussion of its application to Act 3. The Secretary's decision to cast aside state law in favor of a bare citation to a non-precedential opinion—issued by a single judge in a distant state—runs directly counter to principles of state sovereignty and self-government.

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[28] *See Klickitat Cnty. v. Columbia River Gorge Comm'n,* 770 F. Supp. 1419, 1426 (E.D. Wash. 1991) ("The decision to grant a preliminary injunction does not establish the 'law of the case' as to estop any of the parties from arguing the same issues again, nor the court from considering them at the trial on the merits."); *see also S. Or. Barter Fair v. Jackson Cnty.*, 372 F.3d 1128, 1136 (9th Cir.2004) ("[D]ecisions on preliminary injunctions are just that—preliminary—and must often be made hastily and on less than a full record.").

Worse still, not only does the Secretary rely entirely on a bare citation to non-binding authority as a justification for casting aside state law, but he also entirely ignores a subsequent ruling from a higher tribunal that reached precisely the opposite conclusion. As noted earlier, in *Browning*, a panel of the Court of Appeals for the Eleventh Circuit unequivocally held that HAVA does not preempt state laws that require pre-registration matching. *Browning,* 522 F.3d at 1168 (concluding that HAVA does not preclude pre-registration matching). The Secretary's failure to even acknowledge the existence of this countervailing authority—let alone contend with it—shows that the directive is the impermissible product of naked policy preferences, rather than a good-faith effort to comply with the demands of State and Federal law.

And, in any event, *Reed* was not particularly well-reasoned and, thus, its non-binding analysis should have little persuasive value. In fact, a close reading of that decision reveals the pervasive defects in its rationale. According to *Reed*, HAVA does not permit pre-registration matching because it requires those individuals whose names do not match the Unique Identifying Number reflected on their application to

produce identification documents at the time of voting. *See Reed*, 492 F. Supp. 2d at 1269. In other words, the district court believed that allowing states to enforce pre-registration matching laws would render HAVA's identification rules "mere surplusage." *Id.* at (citing 52 U.S.C.A. § 21083(b)(3)(B)(ii)). But as is evident from the Eleventh Circuit's opinion in *Browning*, this crux of the court's holding in *Reed* is fundamentally unsound because it fails to recognize that the identification requirements represent the "federal minimum" a state must do when the matching process fails, not that Congress mandated registering all individuals even those whose identifying numbers do not match. Browning, 522 F.3d at 1172; *see also* note 13 *supra*.

Moreover, to the extent the Secretary suggests that the 2018 Directive is supported by some species of federal preemption, such a reading of HAVA cannot be reconciled with any reasonable assessment of congressional intent. As an initial matter, if the relevant provisions of HAVA did preclude the enforcement of state laws that condition registration on matching, they would do so only for those who register by mail, since the relevant provisions of HAVA do not "discuss[] the

requirements and procedures for establishing [the] eligibility and identity of in-person registrants." *Browning*, 522 F.3d at 1172.

More fundamentally still, as the Eleventh Circuit concluded, "if HAVA were intended to preempt all state laws" that conditioned registration on applicants submitting consistent information about their identities "we would expect to see a more comprehensive regulation of voter registration and identification." *Id.* But there is no such comprehensive regulation. Nor is there any reason to believe Congress wanted to provide special protections from state registration rules to those who registered by mail. Quite the opposite, in fact, since that is "the very group upon whom Congress imposed additional federal identification requirements to counteract greater perceived risks of impersonation fraud." *Id.*[29]

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[29] In fact, the Secretary's position does not even find support in the partial concurring and dissenting opinion in *Browning*, the crux of which is that mismatches cannot "prevent a clearly and undisputedly eligible voter from having her vote counted." *Id.* at 1180. But even if that were correct, it would not affect the enforceability of Pennsylvania's matching rules. That is because, unlike the law at issue in Florida, Pennsylvania's statutory scheme ***expressly requires*** officials to use "reasonable efforts" to obtain the necessary information from the applicant ***before*** the application can be rejected, thereby ensuring that "undisputedly eligible" voters are not excluded from registration. *See* 25 Pa.C.S. § 1328(b)(2)(i); *see also* 4 Pa. Code § 183.5(c).

In short, nothing in HAVA requires the Secretary to direct commissions to ignore Pennsylvania law. HAVA does not prohibit states from engaging in pre-registration matching. The sole, and entirely unexplained, predicate for the 2018 Directive was fundamentally flawed. In short, the 2018 Directive, which subsumes the 2006 Alert, lacks any legal foundation. It is unlawful and should be declared as such by this Court.

C. Petitioner Rossman is entitled to summary relief on Count II because the Secretary's 2018 Directive is an unlawful (and unenforceable) *de facto* regulation.

As explained above, the 2018 Directive's palpable conflict with Act 3 is reason alone to prohibit its enforcement. But even if this Court were to conclude that the 2018 Directive can somehow be squared with the plain language of the statutory scheme governing voter registration, it is an unlawful (and unenforceable) *de facto* regulation.

Commonwealth agencies—like the Department—do not have the inherent power to make law and, therefore, "may do so only in the fashion authorized by the General Assembly[.]" *Nw. Youth Servs., Inc. v. Dep't of Public Welfare*, 66 A.3d 301, 310 (Pa. 2013) ("*Northwestern*

Youth II").[30] If—and ***only*** if—a proposed regulation successfully passes through these channels, does it become a "legislative rule" with the force of law. *Id.* In this regard, it bears emphasizing that, even where the General Assembly authorized the agency to fill statutory gaps in rulemaking, this power may be exercised only by "compliance with all of the formalities attending legislative rulemaking[.]" *Northwestern Youth II*, 66 A.3d. at 316.

On the other hand, agency pronouncements that are not promulgated through the process described above are considered non-legislative rules, which ***may*** be "exempt from notice-and-comment rulemaking and regulatory-review requirements[,]" provided that they ***do not function*** as regulations. *Northwestern Youth II*, 66 A.3d at 310-11. Thus, for example, documents which "fairly may be said to merely

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[30] That procedure generally requires recourse to the Commonwealth Documents Law, Regulatory Review Act, and Commonwealth Attorneys' Act, which require publication of a formal notice, public comment, and extensive review. This review process is multi-dimensional, requiring the agencies proposing the regulation, in the first instance, to perform extensive analysis of the proposed regulations, including identifying the financial and social impact of the regulation on individuals, small business, and other public and private organizations. *See* 71 P.S. § 745.5(a). In addition, proposed regulations are also submitted for review and approval to: (1) the Independent Regulatory Review Commission; (2) the Attorney General; and (3) a standing committee of each respective chambers of the General Assembly tasked with overseeing proposals by the agency seeking promulgation. 71 P.S. §§ 745.5b(b), 732-204(b).

explain or offer specific and conforming content to existing statutes or regulations within the agency's purview," do not need to be promulgated as regulations. *Id.* at 311. Similarly, documents "which are not intended to bind the public and agency personnel, but rather, merely express an agency's tentative, future intentions—also are not regulations subject to notice-and-comment rulemaking and regulatory-review requirements." *Id.*

Importantly, however, agency pronouncements which purport to be non-legislative rules, but nevertheless, create a binding norm on the agency, must undergo the same process as any regulation. Therefore, "if an interpretative rule or statement of policy ***functions*** as a regulation, then it will be nullified due to the agency's failure to obey the processes applicable to the promulgation of a regulation." *Shrom v. Pennsylvania Underground Storage Tank Indemnification Bd.*, 261 A.3d 1082, 1093 (Pa. Cmwlth. 2021) (emphasis added; quoting *Transportation Servs., Inc. v. Underground Storage Tank Indemnification Bd.*, 67 A.3d 142, 154 (Pa. Cmwlth. 2013)).

In sum, in determining whether a violation of the statutory requirements relative to promulgation of regulations has occurred, the

Court examines the ***substance*** of the agency action—not its form. Accordingly, where agency pronouncements—regardless of whether they are denominated as "guidances, manuals, interpretive memoranda, staff instructions, policy statements, circulars, bulletins, advisories, press releases," etc.—establish a binding norm, but have not been properly promulgated, the pronouncements are a nullity and may not be enforced. *Northwestern Youth II*, 66 A.3d at 310-11.

Relevant to the consideration of whether an agency pronouncement creates a binding norm is the plain language of the pronouncement, the manner in which it is implemented, and whether it purports to restrict discretion. *See Nw. Youth Servs., Inc. v. Com., Dep't of Pub. Welfare*, 1 A.3d 988, 993 (Pa. Cmwlth. 2010) ("*Northwest Youth I*").

With these principles in mind, the 2018 Directive plainly functions as a "regulation," as it purports to establish a binding norm. Indeed, it contains nearly every feature that is relevant to the assessment. Among other things, the 2018 Directive repeatedly (using capital letters or bold and italicized font to add emphasis), purports to tell the counties what they "must" do and what they "may not" do. The 2018 Directive is,

therefore, a quintessential example of an unpublished *de facto* regulation. *See Eastwood Nursing and Rehabilitation Center v. Dep't of Public Welfare*, 910 A.2d 134, 146 (Pa. Cmwlth. 2006) ("[T]he application and effect of the language in the provision, taken as a whole, shows the provision to be restrictive, directive, substantive, and, thus, more characteristic of a regulation.").

Notably, the 2018 Directive also invokes a statutory provision that allows the Department to not only commence legal action for noncompliance, but also cause the withholding of funds. *See Northwest Youth I*, 1 A.3d 993 (noting that an agency "policy statement" was, in effect, an unlawful unpromulgated regulation because, among other things, it provided for financial penalties).

In short, because the 2018 Directive is an unmistakable attempt to establish a binding norm, it should be struck down as an unlawful *de facto* regulation.

VI. CONCLUSION

Simply stated, Pennsylvania law requires voter registration applications to be complete and consistent. A complete and consistent application requires the name and the driver's license or Social Security

data supplied on the application to match the corresponding information in the appropriate database. The Department's directive to the contrary finds no support in the plain language of the relevant statute and is not compelled by HAVA.

Therefore, Petitioner respectfully requests that the Court grant this application and enter judgment in its favor, declaring the 2018 Directive is contrary to Pennsylvania law because: (1) it requires Petitioner to ignore incomplete and inconsistent voter registration applications; and (2) it is unlawful and unenforceable *de facto* regulation.

Respectfully submitted,

Dated: March 31, 2025

/s/ Shohin H. Vance

Matthew H. Haverstick (No. 85072)
Shohin H. Vance (No. 323551)
KLEINBARD LLC
Three Logan Square, 5th Floor
1717 Arch Street
Philadelphia, PA 19103
Ph: (215) 568-2000
Fax: (215) 568-0140
Eml: mhaverstick@kleinbard.com
svance@kleinbard.com

Attorneys for Petitioner

Exhibit A

pennsylvania
DEPARTMENT OF STATE

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

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

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

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

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

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

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

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

Exhibit B

ALERT RE: DRIVER'S LICENSE AND SOCIAL SECURITY DATA COMPARISON PROCESSES REQUIRED BY THE HELP AMERICA VOTE ACT (HAVA)

The Help America Vote Act of 2002 (HAVA) requires (1) that all applications for new voter registration include a current and valid PA driver's license number, the last four digits of the applicant's social security number, or a statement indicating that the applicant has neither a valid and current PA driver's license or social security number; and (2) that voter registration commissions compare the information provided by an applicant with the Department of Transportation's driver's license database or the database of the Social Security Administration, as appropriate. However, HAVA does **not** require as a condition of the approval of an application for voter registration that the voter registration commission successfully verify the information through those databases. Rather, under HAVA and Pennsylvania law, **the disposition of an application for voter registration must be made solely by the county voter registration commission under the standards and procedures prescribed by *Pennsylvania* law.**

The Department of State sends this alert to revise and clarify the policies and procedures that it previously adopted to comply with the database comparison process that HAVA has required for applications for new voter registration since the beginning of the year.

I. Background

Effective January 1, 2006, section 303(a)(5) of HAVA required State and local voter registration officials to implement processes for comparing information submitted on applications for new voter registration with the State's driver's license records and the

database of the Social Security Administration. The Department of State in January 2006 implemented these processes in Pennsylvania as a component of the Statewide Uniform Registry of Electors (SURE) system. Those policies and procedures were written based on the Department's understanding of the requirements of section 303(a)(5) of HAVA at that time.

During the months that these processes have been in use, however, it has become apparent to the Department that the policies and procedures it established to comply with this new requirement are not well designed to comply with HAVA and Pennsylvania law governing voter registration. Most importantly, the Department's policies and procedures appear to require the rejection of voter registration applications solely on the basis that the information submitted by the applicant failed to match information contained in the database of the Social Security Administration or on driver's license records. Neither HAVA nor Pennsylvania law requires that result. *See Washington Ass'n of Churches*, et al. *v. Sam Reed*, No. C06-0726RSM, op. at 4-5 (W.D. Wash. August 1, 2006) (HAVA's data comparison process "was intended as an administrative safeguard for 'storing and managing the official list of registered voters,' and not as a restriction on voter eligibility.").

For example, the transposition of a digit in the driver's license or social security number by either the applicant or at the time of data entry at the county registration office will result in a failure to match the applicant's driver's license record or social security record and could result in the applicant's voter registration application being rejected, without regard to the fact that the applicant meets all the eligibility requirements under Pennsylvania law to be a registered voter. Another common example is a voter

registration application that cannot be automatically matched with a record in a government database because the applicant customarily uses his or her middle name or a derivation of the applicant's given first name, rather than the applicant's full legal name. Completing a voter registration application using the name by which the individual is popularly known but not formally recorded in the social security database also will result in an inability to match the voter registration application with the person's social security record, notwithstanding the accuracy of all other information submitted by the applicant.

Other common examples of causes of failure to match include hyphens used within the name in one place and not in the other; and name changes adopted by individuals as part of the marriage or divorce processes or for other reasons that do not precisely conform to the form of name that appears in the database of the Social Security Administration.

Rejecting voter registration applications solely on these bases is not required by HAVA and is not authorized by Pennsylvania law. Because its policies and procedures appear to be resulting in the rejection of applications for reasons unrelated to the qualification of applicants to be registered voters, the Department has concluded that its procedures actually are frustrating the principal purpose and intent of HAVA to ensure that eligible persons are not disenfranchised.

Thus, in order to better meet the purpose and intent of HAVA and to facilitate the proper enfranchisement of all persons eligible under Pennsylvania law to vote, the Department is modifying the procedures and processes for using the driver's license record and social security number data comparison component of SURE. Also, the new

policy and procedure is more consistent with the policies and procedures that a majority of the States has adopted to implement the HAVA data comparison requirement.

II. Revised Policies and Procedures

A. *Applications for Voter Registration*

Under HAVA, a voter registration commission may not accept or process an application for voter registration unless it includes a driver's license number, the last four digits of a social security number, or a statement reflecting that the applicant has not been issued either a current and valid Pennsylvania driver's license or a social security number. *See* HAVA § 303(a)(5)(A). The Department's policies and procedures respecting this explicit HAVA requirement are consistent with HAVA, and therefore those policies and procedures will not be modified.

B. *Comparison with PennDOT and Social Security Administration databases is required by HAVA.*

If a driver's license number has been provided as part of the application for voter registration, HAVA requires the voter registration commission to submit the information provided in the application for comparison with the database of driver's license records maintained by the Pennsylvania Department of Transportation. *See* HAVA § 303(a)(5)(B)(i). If the applicant has not provided a driver's license number, but has provided the last four digits of the applicant's social security number, then HAVA requires the voter registration commission to submit the applicant's name and date of birth and the last four digits of the applicant's social security number for comparison with information maintained by the Social Security Administration. *See* HAVA § 303(a)(5)(B)(ii). The Department's policies and procedures implementing these explicit mandates of HAVA also will not be modified.

C. *Results and consequences of database comparisons.*

The Department's policy and procedures for use of the SURE data comparison component are clarified and revised to emphasize that under Pennsylvania law, and consistent with the purposes and intent of HAVA, the decision whether to approve or reject a proper application for voter registration is vested with the voter registration commission, as provided by 25 Pa.C.S. § 1328 (relating to approval of registration applications).

The HAVA data comparison requirements must be followed, but no provision of the HAVA data comparison requirement overrides the authority of the voter registration commission under Pennsylvania law to determine the validity of a voter registration application under the requirements of Pennsylvania law. Under HAVA and Pennsylvania law, the failure to achieve a match between a voter registration application and a record in the Commonwealth's driver's license database or the database of the Social Security Administration is not a reason to reject the application.[1]

In anticipation of this modification in policy and procedure, the Department earlier suspended the operation of SURE's program for automatically rejecting applications for voter registration based on an applicant's failure to respond to notices issued to applicants seeking additional information. Thus, rejection of an application for

[1] By contrast, section 303(b)(3)(B) of HAVA does explicitly require that an election official *successfully* match the information provided on a mail-in application for voter registration with an existing State identification record bearing the same driver's license number or last four digits of the individual's social security number in order for the applicant to qualify for exemption from HAVA's voter identification requirement for first-time voters prescribed by section 303(b)(1) of HAVA. However, section 303(b)(3)(B) of HAVA does not affect the authority of a voter registration commission to approve an application for voter registration under Pennsylvania law; it applies only to the voter identification requirements imposed on electors whose applications for voter registration have been approved. As it has done since 2004, the SURE system will track and identify for county boards of elections those registered electors who are required by HAVA to present or submit voter identification as a condition of voting for the first time in Pennsylvania (including by absentee ballot) in an election for Federal office.

voter registration now can be accomplished only by the affirmative action of the voter registration commission or its authorized staff, acting pursuant to its authority under Pennsylvania law.

In addition, the issuance to applicants of all form notices that are prescribed by the SURE system is at the sole discretion of the voter registration commission, acting in the exercise of its judgment under Pennsylvania law.

Until the Department has modified the policies and procedures issued through the SURE system, the Department of State recommends that the voter registration commissions perform their powers and duties respecting the consideration and approval or disapproval of applications for voter registration based on the provisions of Federal and Pennsylvania law, as outlined in this notice. Of course, as with all matters, the voter registration commissions should consult with their solicitors for necessary legal advice and counsel.