

**BERKS COUNTY BOARD OF ELECTIONS
MEETING MINUTES
April 3, 2025 – 11:00 A.M.**

Michael S. Rivera, Chair
Christian Y. Leinbach, Vice Chair
Dante Santoni, Jr., Commissioner
Anne Norton, Chief Clerk
Christine M. Sadler, County Solicitor – not present
Cody L. Kauffman, First Assistant County Solicitor

CALL TO ORDER: 11:00 a.m.

APPROVAL OF THE MINUTES

The Board approved the minutes for the March 20, 2025, Election Board meeting as presented.

PUBLIC COMMENT ON AGENDA ITEMS

Zelda Yoder, Reading, said she looked forward to the discussion about the recent ruling in the Western District litigation regarding counting undated and incorrectly dated mail-in and absentee ballots. She said she understands the County of Berks is a named defendant in the litigation and asked the Board to not appeal the recent ruling. She said she doesn't believe the date is important on the ballot envelope since there is a clear timeline of when the ballots go out and when they are returned and that a missing or incorrect date is not a type of voter fraud.

Commissioner Leinbach said that the issue lies in the plain language of the current law. He believes it needs to be fixed legislatively instead of litigated within the courts. He said he does not see any value in the date, since each envelope is unique to that election and that voter, but the issue is the law states the ballot shall be signed and dated.

Agenda Items

1. Polling Place Change for the 2025 Municipal Primary

Anne Norton explained that this polling place change was the result of a request from the Twin Valley School District based on safety concerns. She said Robeson Township officials are aware of and understand the reason for the change.

On the motion of Commissioner Santoni, seconded by Commissioner Leinbach, the Board approved the following polling place change for the 2025 Municipal Primary.

Robeson Township – Precinct 4

From: Robeson Elementary School
801 White Bear Road
Birdsboro, PA 19508

To: St. John's Evangelical Lutheran Church
1035 Old River Road
Birdsboro, PA 19508

2. Logic & Accuracy (L&A) Testing Update

Ms. Norton said that an exact date for the Logic & Accuracy Testing of the DS200 tabulators and ExpressVote machines has not yet been set, but that Election Services was looking to schedule it for the week of April 14. She said that when a start date was determined, the parties would be notified, and the information would be posted on the website.

She said the L&A testing of the central scan tabulators would be held on May 9 at 9 a.m., and the L&A testing of the electronic poll books would begin on May 12.

Commissioner Rivera noted that L&A testing is one of the important steps in the election process because it ensures that all the voting machines are working properly. After testing is complete, the machines are sealed until Election Day.

3. Legislators Visit to Election Services

Commissioner Rivera said he was setting up visits for local legislators to tour Election Services before and on Election Day in an effort to further engage them in the process and understand the day-to-day operations.

Commissioner Santoni commended Commissioner Rivera's efforts, saying that the Board often calls on the local legislators to change the law, so it is important for them to have a first-hand experience to understand how the operation works.

Commissioner Leinbach said he believes it's a great idea and that most of the current legislators have likely not had any direct experience with the daily operations of the Election Services office.

COO Barnhardt stressed that the visits would be focused on observing and discussing the functions of the office, not discussing current legislation or the legal process.

4. Discussion on recent Presidential Executive Order

Commissioner Rivera asked Cody Kauffman, First Assistant County Solicitor, to provide an overview of the recent "Preserving and Protecting the Integrity of American Elections" presidential executive order issued on March 25, the various litigation filed in response to the executive order, and the potential impact the executive order could have on the County.

Mr. Kauffman started by noting that executive orders are not law, per se, but are directives given to federal agencies to take certain actions. He said the pertinent parts of the order that could affect Berks are the directive for the Elections Assistance Commission to update the national voter mail registration form to include information to confirm citizenship and the potential decertification of voting systems that utilize a bar code in the vote-casting and tabulation process.

Mr. Kauffman noted that multiple legal challenges have been filed in opposition to the executive order, seeking to block the order and have it declared illegal. He gave an overview of some of the counter arguments, including that the U.S. Constitution sets forth that the time, place, and manner of elections shall be prescribed to each state. He noted that another argument raised in opposition to the executive order was whether the

President has the authority to regulate the Election Assistance Commission (EAC), which was created to be an independent, bi-partisan agency.

He said that due to the many legal challenges, it is likely that a federal judge could block the order while its legality is litigated in the courts. In the interim, he said he does not believe there is any immediate impact to Berks' current operations.

Commissioner Leinbach highlighted that the executive order is a directive to federal agencies, so any changes would first need to be made by the respective federal agencies, then come through the states and to the counties. As such, he said there is nothing Berks could do until further direction is provided.

Commissioner Santoni stated that he believes the executive order is a solution in search of a problem that simply doesn't exist to support President Trump's ongoing claims that the 2020 election was rigged. He said he finds it laughable that the federal government is telling states and counties how to run elections. He said he believes the entire thing is a waste of time and hopes federal legislators see that it is just more conspiracy nonsense.

5. Western District Litigation Update

Mr. Kauffman reminded the Board that, in 2023, Judge Baxter ruled that the dating requirement for mail-in and absentee ballots violated the materiality provision of the federal civil rights act. That decision was overruled by the Third Circuit Court and the litigation was sent back to Judge Baxter to rule on several other claims within the Western District litigation that had not been resolved, including constitutional claims. On Monday, Judge Baxter issued decisions on those claims, finding that the dating requirement impermissibly burdens a citizen's right to vote and, as such, violates the 1st and 14th amendments of the U.S. Constitution.

Mr. Kauffman noted that previously, the current law in Pennsylvania was based on the Ball v. Chapman decision, which found that undated and incorrectly dated mail-in/absentee ballots should not be counted. With Judge Baxter's most recent ruling, he said his recommendation, as of today, would be to count undated and incorrectly dated mail-in and absentee ballots.

However, Mr. Kauffman noted he was aware that the GOP intervenors filed an appeal of Judge Baxter's decision on Wednesday to the Third Circuit Court of Appeals and there were some discussions related to a petition for a stay in the matter. He said it would be premature for the County to take any specific action on whether to count these ballots today, due to the potential for appeals and a stay, and instead will make the decision closer to the election based on whatever the current law is at that time. He said that throughout these matters, the County has followed the law and continues to ask for clarity on this issue.

Commissioner Rivera noted that the County will continue to segregate undated and incorrectly dated mail-in and absentee ballots regardless because it is not clear what the final ruling will be.

Commissioner Leinbach reiterated that he believes this issue needs to be resolved within the law by the Governor and legislators. He said that if the law remains as it is written, it will continue to be a point of contention and litigation.

Election Director's Report

Ms. Norton shared that the Election Services office has processed and approved more than 11,600 mail-in and absentee ballot applications for the 2025 Municipal Primary. She said there were roughly 3,500 more left to be processed, based on what had been received to date.

She shared that some staff members held an outreach event at the Berks County Deaf and Hard of Hearing Services office and would be attending the naturalization ceremony the following week.

She said that the staff was continuing to confirm poll workers and sign them up for training classes, while the management team was working on finalizing and proofing the ballot.

General Comments from the Board regarding current election-related issues

None.

Public Comment

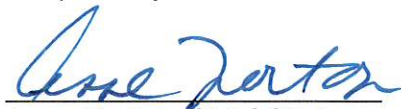
Jeffrey Wolfe, Brecknock Township, spoke about the Right to Know requests he submitted in March, noting that three of the requests were rejected because the requested records were not within the County's control. He said his questions were in regard to complaints made on Election Day, either to the County or through third-party hotlines. He said he believes the County should keep a list of all voter complaints and questions. He also suggested that all ballot marking devices include instructions for voters to check their ballot selections before and after printing the ballot card and to repeatedly press the button for their candidate of choice if "vote switching" occurs.

Commissioner Rivera said the Board has not heard of any scenario where a voter was not able to vote for their candidate of choice. He said that each time there is reported cases of "vote switching", the voter was able to amend their ballot.

Commissioner Leinbach stressed the importance of having the paper ballot card that allows the voter to physically review their selections before casting their ballot into the tabulator. He said the notion that there's vote switching occurring on the ballot marking devices, which do not tabulate votes, is simply wrong.

ADJOURNMENT 12:03 p.m.

Respectfully Submitted,



Anne Norton, Chief Clerk