

**BERKS COUNTY BOARD OF ELECTIONS  
REGULAR MEETING MINUTES  
May 26, 2022 – 11:00 A.M.**

**Kevin S. Barnhardt, Chair**  
**Michael S. Rivera, Vice-Chair**  
**Christian Y. Leinbach, Commissioner**  
**Paige Riegner, Chief Clerk (virtual)**  
**Christine M. Sadler, County Solicitor**  
**Cody L. Kauffman, First Assistant County Solicitor**

**CALL TO ORDER- 11:02 A.M.**

**APPROVAL OF MINUTES**

The Board approved the minutes for the May 23, 2022 Special Election Board meeting as presented.

**PUBLIC COMMENT ON AGENDA ITEMS**

None

**AGENDA ITEMS:**

**1. Provisional Ballot Challenge to Court Ordered Extended Polling Hour**

The Board of Elections heard arguments by attorneys from the Oz and McCormick campaigns, both candidates ran for Republican U.S. Senate on the General Primary ballot held on May 17, 2022.

Attorney Jeremy Mercer, representing the McCormick campaign, argued that the petition filed jointly on May 17, 2022 before the Berks County Court of Common Pleas by the Democratic and Republican county committees had no factual or legal basis. Furthermore, he argued that the petition filed did not contain evidence as to how many polling locations were delayed in opening on election day, nor that voters were denied their right to vote or were denied the opportunity to vote by provisional ballot due to the delay. Finally, he asked the Board of Elections to apply the election code as written and not count the provisional ballots cast between 8 p.m. to 9 p.m. election night.

Attorney Jeff Bukowski, representing the Oz campaign, disagreed with the arguments posed by Mr. Mercer. Mr. Bukowski stated that the McCormick campaign attempted to challenge a duly entered court order that “clearly has jurisdiction over whether or not to extend the polling hours in Berks County.” He further argued that the attorneys representing Berks County were present at the hearing on May 17, 2022, and did not

challenge the order. Finally, he stated that it would be very difficult to find evidence or disenfranchised voters to meet the criteria in Mr. Mercer's argument in such a short time frame.

First Assistant County Solicitor Cody Kauffman verified that there was an issue impacting the electronic poll books on election day, that they were unable to confirm how many precincts were affected by this issue, and they were also unable to determine whether any voters were turned away on election day. However, at the hearing, they did make known the impacted polling places of which the county was aware. The county's attorneys also clarified that this list was evolving, and not an exhaustive list in any form. Furthermore, Mr. Kauffman stated that no objections were raised to Judge Lillis's order on election day.

On the motion from Commissioner Leinbach, seconded by Commissioner Rivera, the Board denied the McCormick campaign's challenge. The Commissioners explained that the Board has no authority to overrule a court order which the county agreed to uphold at the time it was issued and at the end of the day, protecting the rights of voters is a priority.

## **2. Undated Absentee and Mail-in Ballot Challenge**

On the motion from Commissioner Leinbach, seconded by Commissioner Rivera, the Board agreed not to count undated Absentee and Mail-in ballots received by the Election Services office for the May 17<sup>th</sup> General Primary election.

Commissioner Barnhardt clarified that he is in favor of counting undated Absentee and Mail-in ballots, stating that in his mind the voters did not intend to disqualify their ballot by not dating the outer envelope.

Commissioner Leinbach, however, felt that until the law is changed to clearly state that a date on an Absentee or Mail-in ballot is immaterial to the process, then he stands by the law and does not feel the Board can go against the "plain language" of the law.

## **3. Observer Distance During Pre-Canvassing**

The Board of Elections received a letter from representatives of the Republican party requesting a review of Observer guidelines during Pre-Canvassing of election returns, specifically speaking to the issue of the distance between Observers and the Pre-Canvassing process.

First Assistant County Solicitor Cody Kauffman provided an overview of the law as it pertains to observers. Kauffman explained that the law indicates that one authorized representative per candidate and party shall be permitted to remain in the room in which the absentee and mail-in ballots are pre-canvassed or canvassed. Kauffman further explained that the courts have left further guidelines up to the discretion of county Board of Elections.

Commissioner Barnhardt stated that he believes the county and the Election Services office have been more than accommodating, citing that the required distance of 15 feet is fair.

Commissioner Rivera stated that although he did not get a chance to read the letter from the Republican party representatives, he would like to review the existing policies, stating there is always room for improvement.

Commissioner Leinbach is of the mind that the county should go above and beyond to be transparent. He added that the county, in particular Cody Kauffman and Paige Riegner, have done a great job in responding to requests and questions in writing.

The Commissioners agreed to continue addressing these types of issues and requests in writing, including responding to this particular letter.

**4. Local Option Provision of the Pennsylvania Liquor Control Code**

On the motion from Commissioner Leinbach, seconded by Commissioner Rivera, the board authorized the execution of Certification of Results of referenda pursuant to the local option provision of the PA Liquor Control Code (Act 21 of 1951 P.L. 90).

**5. General Comments from the Board of Elections Regarding Current Election-Related Issues**

None

**CITIZEN COMMENT**

**1. John Palmer, Upper Bern Township**

Thank you for fielding my question. In the name of public interest how was the signature failure on the E poll books not caught during L&A testing that must be performed prior to every election? Was L&A testing not performed?

Commissioner Barnhardt responded that this will be included in the report which will be made public.

**ADJOURNMENT** – 12:56 P.M.