

**BERKS COUNTY BOARD OF ELECTIONS  
MEETING MINUTES  
September 19, 2024 – 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 August 29, 2024, Election Board meeting as presented.

**PUBLIC COMMENT ON AGENDA ITEMS**

None.

**Agenda Items**

**1. Logic and Accuracy (L&A) Testing**

Ms. Norton explained that L&A testing is conducted prior to every election to ensure that the voting machines are properly configured and in good working order. The L&A testing for the DS200 tabulators and ExpressVote ballot-marking devices will begin Monday, September 30, at the Berks County South Campus, 400 E. Wyomissing Avenue, Mohnton. Testing of the central scanners will be held Friday, October 25, at the SAM building, 19 N. 6<sup>th</sup> Street, Reading. Testing of the electronic poll books will begin on Monday, October 28, at the South Campus.

Commissioner Rivera explained that the testing is open for observers representing any of the political parties, from the media, or from the public. All observers must register with Election Services beforehand to attend the testing. He said the testing will begin promptly at 9 a.m. each day and the lead technician will give a demonstration of the testing process the first day.

On the motion of Commissioner Leinbach, seconded by Commissioner Santoni, the Board approved the dates, times and locations for Logic & Accuracy testing of the DS200 tabulators, ExpressVote ballot marking devices, poll books and high-speed scanners for the 2024 General Election.

**2. Proposed Ballot Drop Box Schedule**

Ms. Norton explained that the drop box procedures are the same as previous elections. There will be two deputy sheriffs monitoring each drop box and each drop box is under video surveillance. She said the Election Services staff opens the drop boxes each day, and then collects and counts the ballots before closing them each night. The ballots are

then brought back to the Election Services office, where they are counted again. She said the only change to the schedule was to close the drop boxes at 6 p.m. the Monday before Election Day.

Commissioner Rivera explained that the drop boxes are locked when they are not open. He reminded voters that if a voter has a physical disability, the voter can fill out a designated agent form to have someone drop off their ballot on their behalf.

On the motion of Commissioner Santoni, seconded by Commissioner Leinbach, the Board approved the Ballot Drop Box Schedule for the 2024 General Election, as follows:

<b>DROP BOX SCHEDULE</b>	
<b>Locations: Services Center, Agricultural Center and South Campus</b>	
<b>NOVEMBER 5, 2024 - GENERAL ELECTION</b>	
<b>DATE</b>	<b>HOURS</b>
<b>MONDAY - 10/21/24</b>	<b>8 AM - 5 PM</b>
<b>TUESDAY - 10/22/24</b>	<b>8 AM - 5 PM</b>
<b>WEDNESDAY - 10/23/24</b>	<b>8 AM - 5 PM</b>
<b>THURSDAY - 10/24/24</b>	<b>8 AM - 5 PM</b>
<b>FRIDAY - 10/25/24</b>	<b>8 AM - 5 PM</b>
<b>MONDAY - 10/28/24</b>	<b>8 AM - 5 PM</b>
<b>TUESDAY - 10/29/24</b>	<b>8 AM - 5 PM</b>
<b>WEDNESDAY - 10/30/24</b>	<b>8 AM - 5 PM</b>
<b>THURSDAY - 10/31/24</b>	<b>8 AM - 5 PM</b>
<b>FRIDAY - 11/1/24</b>	<b>8 AM - 5 PM</b>
<b>SATURDAY - 11/2/24</b>	<b>8 AM - 1 PM</b>
<b>SUNDAY - 11/3/24</b>	<b>12 PM - 4 PM</b>
<b>MONDAY - 11/4/24</b>	<b>8 AM - 6 PM</b>
<b>TUESDAY - 11/5/24</b>	<b>7 AM - 8 PM</b>

**3. Update on Undated and Incorrectly Dated Absentee/Mail-in Ballot Litigation**

First Assistant Solicitor Cody Kauffman shared that there was a recent case before the Commonwealth Court of PA (Black Political Empowerment v. Schmidt and Philadelphia and Allegheny County Boards), arguing that the dating requirement for absentee and mail-in ballots violates the free and equal election clause of the Pennsylvania Constitution. The Commonwealth Court's ruling found that the dating requirement did

violate this clause, but the ruling was promptly appealed to the PA Supreme Court. Last Friday, the PA Supreme Court vacated the Commonwealth Court's decision, finding that the court lacked subject matter jurisdiction since the lawsuit only named two county boards of election, not all 67 county boards of election.

Mr. Kauffman said that with the Commonwealth Court's order vacated, the current law regarding the dating requirement falls back to the Ball v. Chapman case, which previously found that PA law commands that a mail-in/absentee ballot must be correctly dated. He noted that the Western District litigation is still pending.

Mr. Kauffman said the dating requirement remains an ongoing issue and that there may be future court decisions that could affect whether undated and incorrectly dated mail-in/absentee ballots are counted in Pennsylvania.

Commissioner Leinbach encouraged voters to sign and date their absentee and mail-in ballots to ensure they will be counted. He said the state legislature and Governor need to make the language of the law clear and determine if a date is required or not. He said the current law is poorly written, causing confusion for voters.

Commissioner Santoni said he agreed with Commissioner Leinbach and encouraged voters to put the correct date on their ballots.

Ms. Norton also noted that the new ballot envelopes have the correct year printed on them, so voters only need to make sure to write the correct month and date.

#### **4. Counting Provisional Ballots When Mail Ballots are Rejected for Errors**

Mr. Kauffman provided an update about a recent lawsuit filed to the Supreme Court by the Republican National Committee that is arguing, in part, for the court to find that counties are prohibited from implementing "notice and cure" ballot curing measures and further, that County Boards not be allowed to count provisional ballots for voters who had mail-in or absentee ballots rejected for any reason.

Mr. Kauffman reminded the Board that when the Board previously discussed the Ball v. Chapman ruling shortly after that ruling occurred, the Board determined that if a voter's mail-in or absentee ballot was rejected, the voter would be allowed to vote by provisional ballot. He noted that provisional ballots are processed last during the official canvass, so the staff is able to check if that voter cast a legitimate vote by any other means before determining if the provisional ballot can be counted.

#### **5. Discussion Regarding the 2% Audit Procedure**

Mr. Kauffman explained that the County has received several emails and correspondences regarding the County's procedures for conducting the post-election 2% audit. He said the emails noted that the state's certification report for the voting system utilized by the County indicates that the 2% audit must be done entirely by manual hand count.

Mr. Kauffman said both he and Alexa Antanavage from the County Solicitor's Office reviewed the matter thoroughly. He said the certification report for the voting system does state the audit is to be done by manual hand count, but also later states that county boards should consult the Secretary of State's directive regarding the use of electronic voting systems. He said the most recent directive from the Secretary, which was issued after the certification report, instructs that counties may conduct the audit either manually or by scanning on a different type of scanner than was used on Election Day.

In recent years, Berks County has conducted the 2% audit partially by manual hand count and partially by scanning on a different model scanner. Mr. Kauffman said that after reviewing the law, he believes county boards do have some discretion in how they handle the 2% audit, but that the strongest argument and legal position would be to utilize a manual hand count. He said his biggest concern with making that change to the County's procedure would be the operational impact, since manual hand counts take more time and are more prone to errors, but said it is something the County can accommodate.

### **Election Director's Report**

Ms. Norton shared that the Department of State finalized the candidate list on Monday, which allowed the County to move forward with finalizing the ballot for the 2024 General Election. She said the staff sent the ballot files to the printer Wednesday and was waiting to receive a set of test ballots.

She said the staff has processed more than 30,000 ballot applications for the 2024 General Election but has also been working through more than 2,000 duplicate applications. She said that the office should soon have ballots available for over-the-counter voting, where a voter comes in and applies in-person and then can receive their ballot after a short wait.

Commissioner Rivera stressed the importance of testing the ballots before making them available or mailing them to voters. He said it is critical to test that the ballots are scanning correctly.

Commissioner Leinbach noted that the over-the-counter voting service is not new, but something that has been available to voters each election for as long as he could recall.

### **General Comments from the Board regarding current election-related issues**

Commissioner Rivera said poll workers and interpreters are still needed, so anyone interested in working at the polls should contact Election Services. He cautioned voters to be careful about misinformation that has been circulating, especially claims about early voting. He said ballots can only be made available after the candidate list is certified and ballots are thoroughly proofed and tested. He said the County will announce when ballots are available. He encouraged voters interested in voting by mail-in or absentee to check their status at [vote.pa.gov](http://vote.pa.gov) or to call the office before submitting additional applications that cause more work for the staff. Finally, he reminded voters that the deadline to apply for a ballot is Oct. 29.

Commissioner Leinbach said he has received multiple questions about why election board meetings are sometimes canceled. He explained that the schedule is set at the beginning of the year and noted that meetings are held as necessary. He said there are three reasons why a

meeting is cancelled: Lack of a quorum, lack of agenda items, or a potential scheduling conflict. He added that there is no law that dictates how often the Election Board must meet.

Commissioner Santoni reminded voters that the last day to register to vote in the 2024 General Election is October 21. He commended the elections staff and the solicitor's office for all their hard work.

Commissioner Rivera said that he has also received various emails asking the Election Board to verify voters' citizenship via the SAVE database. He explained that the SAVE database tracks the information of individuals who are going through the immigration process but does not have information for anyone who is a born citizen or anyone not pursuing the immigration process. Due to that, he said it would not be able to accurately verify the citizenship status of all voters.

### **Public Comment**

Jeffrey Wolfe, Brecknock Township, said he has ongoing concerns about non-citizens being on the voter rolls. He said other states have utilized the SAVE database to identify non-citizens on their voter records and that he has sent a letter to Secretary of State Al Schmidt urging him to utilize federal databases to identify non-citizens on Pennsylvania's voter rolls.

Lazaro Castellon, Shillington Borough, said he also has ongoing concerns about voter fraud, identity theft and non-citizens voting. He demanded that the Board use the SAVE database, propose legislation to purge voter rolls and enforce strict ID requirements. He said if they didn't, they would be choosing fraud.

Roxann Curran, Reading, also shared concerns about non-citizens voting, but acknowledged that she isn't sure if the county is able to utilize the federal tools autonomously. She asked the board to demand that the state allow the use of federal database to identify non-citizens.

Joe Rudderow, Maiden Creek Township, wanted to confirm that if a voter came to the elections office to correct an error on their mail-in or absentee ballot, the only thing they could correct would be the date or signature and that the voted ballot itself would remain unopened and secret.

Karl Lampart, Greenwich Township, submitted an online comment. He said, "How can Election Observers can observe the process of separation/rejection of ballots with no signatures, no date, or other criteria?"

Commissioner Rivera said that the issues brought up by many of the commenters would be better addressed at the state level. He said the county's job is to follow the law, but the Board cannot change the law. He urged the commenters to take their concerns to their legislators, who actually have the ability to enact changes to the law. He further said that calling the members of the Election Board names or raising one's voice during public comment will not move the Board to action. He said he appreciates individuals who present factual arguments with respect.

Commissioner Santonio said he considers his role on the Election Board to make sure the election is held to the highest level of integrity to be his most important job as a County Commissioner. He said the Board cares deeply about that duty. He reiterated that there is no evidence of non-citizens voting in Berks. He said if anyone has evidence about someone breaking the law, they should bring that forward for the Election Board to investigate.

Commissioner Leinbach said that the Berks County Commissioners welcome open dialogue with residents, which is why they include public comment during meetings and host regular unscripted town halls. He agreed with Commissioner Rivera's comments that many of the concerns voiced during the meeting were state-level issues. He said the Election Board does what it can do legally to stand up for the integrity of the election and for the confidence of voters.

Commissioner Rivera asked Mr. Kauffman to respond to Mr. Lampart's online question. Mr. Kauffman said that the law dictates the specific processes that observers may be present for and that observers are not permitted to observe the process of reviewing ballot envelopes. He said that having this process open to observers could create significant security and confidentiality concerns.

**ADJOURNMENT** 12:06 p.m.

Respectfully Submitted,

  
Anne Norton, Chief Clerk