

**BERKS COUNTY BOARD OF ELECTIONS
MEETING MINUTES
October 24, 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 October 17, 2024, Election Board meeting as presented.

PUBLIC COMMENT ON AGENDA ITEMS

Christina Worley, Cumru Township, asked if the list of poll worker appointments was available for anyone to see the names and assignments. Ms. Norton said it is not, but the poll workers who are appointed are sent letters.

Agenda Items

1. Discussion of voter letter read at October 17 Election Board meeting

Chief Operating Officer Kevin Barnhardt explained that the letter read at the Oct. 17 Election Board meeting alleging potential voter intimidation from Make the Road representatives had been translated to English. He recommended that the Election Board refer the matter to the District Attorney's office for further investigation.

On the motion of Commissioner Leinbach, seconded by Commissioner Santoni, the board approved to refer the matter to the District Attorney's office for further investigation.

2. Discussion of possible voter intimidation/ballot harvesting incident

Mr. Barnhardt said the County was also looking into reports of a possible voter intimidation and ballot harvesting incident that occurred outside of the Berks County Services Center on Oct. 14, when county offices were closed. Mr. Barnhardt recommended that the matter also be referred to the District Attorney.

On the motion of Commissioner Santoni, seconded by Commissioner Leinbach, the board approved to refer the matter to the District Attorney's office for further investigation.

Mr. Barnhardt also gave an update about his findings related to the Make the Road festival advertised to take place at the courthouse on Nov. 2. He said organizers told him the plan was to be outside the Services Center for a brief amount of time before walking

to City Park for a luncheon. Mr. Barnhardt said his intentions are to make sure that, if an event would be occurring on County property, everyone follows the proper procedures in place for a safe and secure election.

3. Approve Poll Worker Appointment

On the motion of Commissioner Santoni, seconded by Commissioner Leinbach, the Board approved the appointment of poll workers for the November 5, 2024, General Election. Anne Norton informed the Board that there are roughly 993 poll workers being appointed to poll worker positions. She said each would be sent a letter regarding their appointment.

4. Update on bulk ballot delivery referral

First Assistant County Solicitor Cody Kauffman said that County detectives investigated the matter discussed at the Oct. 17 meeting related to a bulk delivery of ballots from a nursing home facility. He said the investigation determined that the incident appeared to be a product of ignorance of the law by the individual who mailed the ballots, rather than nefarious intent. He said the main issue in the matter is that it appears someone other than the electors themselves mailed the ballots, without designated agent forms.

Commissioner Rivera asked for more details about the nursing home's specific process for handling mail. He wanted to determine if the voters followed the same process they typically would to send mail from the nursing home. Mr. Kauffman said it appeared the standard mailing process had been followed by residents. He said he believes the situation is a unique and limited circumstance and noted that the Courts have found that the Election Code typically favors counting ballots. He noted that, in this limited circumstance, he would not have an objection to counting these ballots. He further indicated that the Board could also vote to reissue new ballots with clear instructions that if returned by someone other than the voter, there would need to be proper designated agent forms.

Commissioner Leinbach said he was not ready to make a decision. He said historically he sides with voters who made an honest attempt but noted that the law continues to change. He said he would like more time to get further information.

Commissioner Santoni said he understood Commissioner Leinbach's position, but felt that with the proximity of Election Day, there was not enough time to wait another week. He said if the Board chose to not count them, there may not be enough time to then send reissued ballots to these voters. He recommended the Board count the ballots, based on the circumstances, saying he wished to err on the side of enfranchising voters.

Commissioner Rivera agreed that the current timeline would give very little time for the ballots to be cancelled and reissued if the Board waited another week.

On the motion of Commissioner Santoni, seconded by Commissioner Rivera, the Board voted 2-1 to count the ballots received in the bulk envelope, based on the unique circumstances discovered during the District Attorney's investigation. Commissioner Leinbach dissented.

Commissioner Leinbach offered an amendment to the motion before the vote, asking to not count the ballots, but to instead cancel and reissue them with clear instructions of what was acceptable. Commissioner Santoni did not accept the amendment to his motion, stating that there was not enough time.

Further Discussion:

Mr. Kauffman provided updates on recent activity in the federal Western District litigation about the dating requirement on mail-in and absentee ballots and the Butler County case regarding accepting provisional ballots for voters whose mail-in or absentee ballots were rejected due to an error. He said the Western District litigation is currently stayed, pending a decision from the US Supreme Court regarding whether the US Supreme Court will grant certiorari to hear the appeal of whether the Third Circuit Court of Appeals erred in vacating the Western District's prior decision, which found that the mail-in/absentee ballot dating requirement violated the materiality provision of the federal Civil Rights Act. Mr. Kauffman said the stay is good news for the Election Board because it indicates there will hopefully be no decisions from the Western District that could change to the current law before Election Day or before certification.

In the Genser v. Butler County case, Mr. Kauffman said the Pennsylvania Supreme Court, in a 4-3 decision, affirmed the Commonwealth Court of Pennsylvania's 2-1 decision, which found that voters, whose mail-in/absentee ballots were rejected due to an error, could vote by provisional ballot and that the provisional ballot would be counted, absent any disqualifying errors with the provisional ballot. Mr. Kauffman said these rulings affirm the position the County of Berks has taken on this matter.

Commissioner Rivera gave a follow-up on a request from Commissioner Leinbach, from the Oct. 17 Election Board meeting, to send a letter to the Governor's office, Senate, and House of Representatives about the ongoing dating requirement issue in Pennsylvania. Commissioner Rivera said Mr. Kauffman prepared the letter and read the letter during the meeting.

The Commissioners thanked Mr. Kauffman and Alexa Antanavage for their work on the letter.

Election Director's Report

Ms. Norton shared that nearly 46,742 mail-in and absentee ballots have been mailed out so far, and about 30,000 voted ballots have been received back. She said the deadline to apply for a mail-in application is October 29. Testing of the central scanners and tabulators will be held Friday, October 25, at the SAM building, 19 N. 6th St, Reading. Testing of the electronic poll books will begin on Monday, October 28, at the South Campus.

General Comments from the Board regarding current election-related issues

Commissioner Rivera reminded voters to not give their ballots to anyone, but to only return them to the Election Services office or via an official County ballot drop box. He also reminded voters that during the General Election, they can vote for any party, not just candidates of the party they are registered with. He noted that votes are cast in secret and voters do not need to tell anyone who they plan to vote for or did vote for after Election Day.

Commissioner Santoni also gave a reminder that the deadline to register to vote in the 2024 General Election had passed.

Public Comment

Jeffrey Wolfe, Brecknock Township, shared that the general public should not blame the Election Board for various situations, based on the circumstances. He noted that election results cannot always be posted immediately on Election night due to the large amount of mail-in ballots that can only be opened Election Day. He also highlighted that the Board cannot be blamed for disenfranchising voters because there are clear laws as to what is accepted and what is not. He said it is unfortunate the Board is placed in no-win situations due to ever-changing laws and said he believes it is only right and just that the Election Code be revised.

Heather Bouchard, Mohnton Borough, said she saw voting machines at the Mifflin YMCA and asked how the machines could be tested if they were already delivered to the precinct. She voiced further concerns about the traffic flow at the Mifflin YMCA on Election Day and asked if the lines could be set up differently.

Roxann Curran, Reading, said she had concerns about the ballots that were in the bulk delivery from the nursing home facility, especially if the voters were impaired and did not have anyone to advocate for them. She said she believes this is fertile ground for voter fraud and disagreed with the Board's decision to count them. She said she also has ongoing concerns about the Make the Road event on Nov. 2.

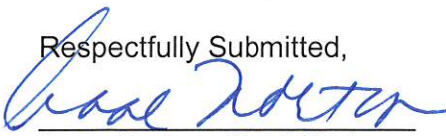
Zelda Yoder, Reading, said she appreciates everything the Board does to ensure fair elections in Berks and said she hopes for a robust turnout. She said she has been working to contact voters who made errors on their mail-in ballots to help them understand the steps they need to take to correct them to comply with the law. She said she appreciates the effort by the County to count the votes of voters who are trying to follow the correct process.

Judith Ingram, Cumru Township, submitted an online comment: "Could you request designated agent forms from nursing home voters to make the votes legal retroactively?"

In response to Ms. Bouchard's question, Ms. Norton said the voting machines were tested in late September and are sealed and secured. She said she would speak with the Judge of Election to work with the Mifflin YMCA to see if they could adjust the traffic flow as requested.

ADJOURNMENT 11:57 a.m.

Respectfully Submitted,



Anne Norton, Chief Clerk