

**BERKS COUNTY BOARD OF ELECTIONS
MEETING MINUTES
September 26, 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
Jeff Bukowski, Special Counsel to the Board of Elections**

CALL TO ORDER: 11:00 A.M.

APPROVAL OF THE MINUTES

The Board approved the minutes for the September 19, 2024, Election Board meeting as presented.

PUBLIC COMMENT ON AGENDA ITEMS

None.

Agenda Items

1. Permanent Polling Place Change for the 2024 General Election

On the motion of Commissioner Santoni, seconded by Commissioner Leinbach, the Board approved the following permanent polling place change for the 2024 General Election.

City of Reading – Ward 18, Precinct 3

**From: The Plex at Alvernia
455 Saint Bernadine Street
Reading, PA 19601**

**To: Calvary Community Center (Calvary Baptist Church)
201 Noble Street
Reading, PA 19611**

Ms. Norton explained that notifications of the change were posted within the precinct for a five-day period for any objections. She said no objections were filed. She said that after the change is approved by the Election Board, letters will be sent to all registered voters in the precinct to notify them of the change. She said any changes must be made at least 20 days before Election Day.

2. Counting of Undated and Incorrectly Dated Absentee/Mail-In Ballots for the 2024 General Election and Approval of the Permissible Date Range for Absentee/Mail-in Ballots for the 2024 General Election

First Assistant County Solicitor Cody Kauffman said that, as in previous elections, the Board must decide whether to count undated or incorrectly dated mail-in and absentee ballots. He noted this has been an ongoing issue for many years and there is still no immediate clarity in sight. Mr. Kauffman reminded the Board that the Ball v. Chapman matter from 2022 held that Pennsylvania Law commands that a mail-in or absentee ballot be dated correctly to be counted and left the determination of the correct date range up to each County after the November 2022 election. Mr. Kauffman said the Solicitor's Office's recommendation is that Ball v. Chapman is the current legal guidance on this issue, and therefore undated and incorrectly dated ballots should not be counted. He also recommended that, due to recent court activity related to this issue, that undated and incorrectly dated ballots be segregated.

Mr. Kauffman highlighted that there is ongoing court activity related to the dating requirement, including the Black Political Empowerment case and the pending Western District litigation. He said that in the Black Political Empowerment case, several advocacy groups filed an application for King's Bench, but that the PA Supreme Court has not yet decided whether to exercise its King's Bench authority to hear and decide the matter. He asked Jeff Bukowski, special counsel, to provide an update on the Western District litigation.

Mr. Bukowski said it remains an ever-changing landscape, with new cases filed every day. Specifically in the Western District litigation, he said there are two cases essentially making the same claim that not counting undated or incorrectly dated absentee and mail-in ballots violates the Equal Protection Clause of the United States Constitution. He said he hopes that if a decision is made, it is either sufficiently before Election Day, or well after certification.

Ms. Norton explained that the recommended date range for the mail-in and absentee ballots was 9/20/2024 to 11/5/2024, based on the first day ballots were available to voters and Election Day. She noted that the ballot was thoroughly tested by the staff prior to becoming available to voters.

On the motion of Commissioner Leinbach, seconded by Commissioner Santoni, the Board approved to segregate and not count undated and incorrectly dated ballots for the 2024 General Election. The Board further approved that the acceptable date range on the outer envelope of the mail-in and absentee ballots be 9/20/2024 through 11/5/2024.

3. Election Litigation Update

Mr. Kauffman said there are currently six pending lawsuits or litigation that he and Mr. Bukowski are following. He said two of the cases were already discussed, three others are related to ballot curing and the final one is the Zimmerman litigation about returning absentee ballots to the individual precincts to be canvassed. He asked Mr. Bukowski to provide an update on the Zimmerman case.

Mr. Bukowski explained that the Zimmerman case was filed by two elected state representatives, challenging the central counting of absentee ballots as a violation of a provision of the U.S. Constitution. He said the case was appealed to the PA Supreme Court and just yesterday the PA Supreme Court issued an order denying the appeal and vacating the Commonwealth Court's order, based on the grounds that the Commonwealth Court did not have jurisdiction to hear the case. He said the case has been dismissed with prejudice and is another example that the PA Supreme Court is taking jurisdictional issues relating to election law very seriously.

Election Director's Report

Ms. Norton shared that Election Services received the test deck of ballots last Friday and completed the testing of those ballots the same day. She said the first batch of data, which included about 32,500 ballots, was sent to the printer to be printed and mailed. She said once the initial batch is mailed out, Election Services will send smaller batches to the printer every couple days to be mailed out.

She said that over-the-counter voting is available in the Election Services office, specifically for voters that will be out of town and unable to receive their ballots in time through the mail. She asked that voters continue to be patient and that their ballots are on the way. Finally, she noted that poll worker training classes were beginning tonight.

General Comments from the Board regarding current election-related issues

Commissioner Rivera stressed that voters interested in the over-the-counter service should not apply online, but instead come to the Election Services office, where the staff can walk them through the process. He highlighted that the deadline to apply for a mail-in or absentee ballot is October 29. He encouraged voters to not wait until the deadline, because that leads to a very short turnaround to get the ballot and return it by Election Day. He thanked the Election Services staff for all their hard work, especially coming in on Saturdays, and thanked the legal team for keeping the Board up to date with all of the ongoing litigation.

Commissioner Rivera also thanked the various groups running voter registration drives, but stressed the importance of making sure the applications are being completed correctly and completely and only for residents who are not currently registered to vote. He noted that a recent voter registration drive dropped off more than 1,200 forms, but many were incomplete or duplicate registrations. He also asked voters requesting ballots to not fill out multiple ballot applications.

Commissioner Santoni commended the Election Services staff and the legal team for all their hard work, noting there are only 40 days until Election Day. He said that after this election, he plans to beg and plead with his former peers in the state legislature to review and revise the election law to create consistent, common-sense policies and avoid all of these lawsuits.

Commissioner Leinbach thanked the Election Services staff for doing a great job and staying focused on election security and integrity. He also thanked Mr. Kauffman, Jeff Bukowski, and Ms. Antanavage, noting that he wished the County didn't have invest so much time and money into election litigation, but that it is unfortunately the current reality and future of elections. He said the Commissioners do regularly discuss various election issues with state legislators and

have been asking for election reform, specifically related to the undated ballot issue. Finally, he said there is a difference between doing what someone wants the Board to do and listening to the concerns. He said the Election Board always welcomes input and civil public discourse.

Public Comment

Roxann Curran, Reading, said she still has concerns about non-citizens voting in Berks County and wants the Election Board to demand that Secretary of State Al Schmidt provide counties with the tools needed to identify non-citizens on the voter rolls. She said if the Board does not, it is not doing its due diligence, and she won't believe there are clean elections in Berks.

Jeffrey Wolfe, Brecknock Township, said he has ongoing concerns about the voter rolls in Berks and possible voter registration anomalies. He also mentioned an audit of the state SURE system being conducted by the Auditor General.

Karl Lampart, Greenwich Township, submitted an online comment. "Is there anything we can do to improve transparency of the central count process for the Election Observers?"

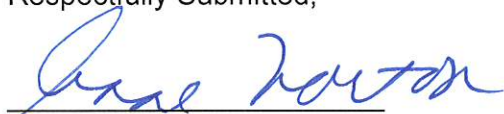
Mr. Kauffman noted for the record that another individual signed up for public comment, but was not a Berks County resident. He said that the public comment period is limited to the residents and taxpayers of Berks County and that he provided the individual with his contact information.

Commissioner Santoni said there isn't any evidence of a widespread issue of non-citizens voting. He said that if anyone has proof of non-citizens trying to vote, they should bring it forward to the Election Board to further investigate.

Commissioner Rivera shared that he recently spoke with the Auditor General about the audit of the SURE system. He said the audit was requested by the state legislature and will be an 8-12 month process.

ADJOURNMENT 12:00 p.m.

Respectfully Submitted,



Anne Norton, Chief Clerk