

**BERKS COUNTY BOARD OF ELECTIONS
MEETING MINUTES
November 14, 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 October 24, and 31, 2024, Election Board meetings as presented.

PUBLIC COMMENT ON AGENDA ITEMS

None.

Agenda Items

1. Hearing on Provisional Ballot Challenges

First Assistant County Solicitor Cody Kauffman announced that a hearing on several provisional ballot challenges filed by both the McCormick and Casey campaigns during the official computation and canvassing period would commence. By law, the hearing had to be held within 7 days of when the challenges were filed and be recorded by an official stenographer. Mr. Jason Ulrich represented the Casey campaign and Mr. Daniel Sulvetta represented the McCormick campaign.

Mr. Kauffman explained that while challenges must be filed individually for each ballot in question, it would be appropriate for the Board to consider and rule on the challenges categorically. He said the category would be announced and then both parties would be given the opportunity to make their respective arguments, followed by input and recommendations from the County Solicitor's Office and Jeff Bukowski, who serves as special counsel to the Board of Elections. The Board would then take official action on the specific category that was discussed.

- a) *McCormick campaign challenged counting provisional ballots that were missing the signature of the minority inspector and/or judge of elections.*

Mr. Kauffman explained that Berks did not reject provisional ballots that are missing the signature of the minority inspector and/or judge of election. The McCormick campaign challenged that determination, arguing that provisional ballots should be signed by both the minority inspector and judge of election.

Mr. Kauffman and Mr. Bukowski referred to section 3050(a.4)(5)(ii) of the Election Code, which provides a specific list of the scenarios in which provisional ballots should not be counted. They highlighted that the scenario of the ballot not being signed by the minority inspector and/or judge of elections was not on that list. The solicitor's office and Mr. Bukowski recommended denying the challenge.

On the motion of Commissioner Leinbach, seconded by Commissioner Santoni, the Board denied the challenge from the McCormick campaign related to provisional ballots that were not signed by the minority inspector and/or judge of election.

- b) *Casey campaign challenged rejecting provisional ballots that did not include the voter's signature in section 2 and 4 of the declaration envelope.*

Representatives for the Casey campaign argued that the missing voter signatures do not affect the Board's ability to determine the validity of the ballot and could be the result of poll worker error.

Mr. Kauffman and Mr. Bukowski again referred to section 3050(a.4)(5)(ii), which states that a provisional ballot should not be counted if it is not signed in both places by the voter. The solicitor's office and Mr. Bukowski recommended denying the challenge.

On the motion of Commissioner Leinbach, seconded by Commissioner Santoni, the board denied the challenge from the Casey campaign related to provisional ballots that were not signed by the voter in section 2 and 4 of the declaration envelope.

- c) *Casey campaign challenged rejecting provisional ballots that did not contain a secrecy envelope.*

The Casey campaign argued that provisional ballots that were missing secrecy envelopes could likely be the result of poll worker error, and therefore should not disenfranchise the voter's rights. Mr. Ulrich argued that since the missing secrecy envelope occurred numerous times in some precincts, there was circumstantial evidence of poll worker error, but when questioned on specific evidence, said he did not have specific testimony from any affected voters to support the claim.

Ms. Norton explained that poll workers are thoroughly trained on how to handle provisional ballots and are provided secrecy and outer declaration envelopes. She also displayed a provisional voting checklist that is posted in the provisional voting area so that the voter can also confirm that each step is completed correctly.

The solicitor's office and Mr. Bukowski recommended denying the challenge pursuant to section 3050(a.4)(5)(ii), which requires a provisional ballot to contain a secrecy envelope.

On the motion of Commissioner Leinbach, seconded by Commissioner Santoni, the board denied the challenge from the Casey campaign related to provisional ballots that did not contain secrecy envelopes.

- d) *A challenge filed related to rejecting provisional ballots where the election official did not include a reason was withdrawn.*
- e) *Casey campaign challenged rejecting provisional ballots for specific voters who were determined to be not registered to vote in Berks County.*

Initially, the Casey campaign filed challenges against all provisional ballots rejected because the voter was not registered in Berks County. However, Mr. Ulrich noted the campaign would be withdrawing those challenges, except for a list of roughly 70 voters who the campaign believed were legally registered to vote.

Mr. Kauffman explained that election services conducts a thorough review of each provisional ballot in the state database and attempts to locate voters not only by the provided name, but also date of birth and address. Ms. Norton shared that she had previously reviewed a list of roughly 300 names provided by the Casey campaign and only found a few that were registered. She said those provisional ballots were then counted.

Mr. Ulrich said there could be some overlap between the lists, but the campaign's team believed that many of the 70 names on the new list were registered.

Mr. Kauffman and Mr. Bukowski recommended that the challenge be sustained in part to the extent that any of the named individuals were found to be qualified, registered electors in Berks County and otherwise entitled to have the provisional ballots counted. Further, the challenge should be denied if additional due diligence confirms the named voters are either not qualified, registered electors or that their provisional ballots should be disqualified for other reasons.

On the motion of Commissioner Santoni, seconded by Commissioner Leinbach, the board ruled in accordance with the solicitor's and Mr. Bukowski's recommendation, sustaining the challenge in part and denying the challenge in part, based upon the legal recommendation of Mr. Kauffman and Mr. Bukowski and further research into the individual voter records.

- f) *Casey campaign challenge related to absentee and mail-in ballots that were not counted for various discrepancies.*

Mr. Ulrich further explained that the campaign was only looking to challenge two categories of absentee and mail-in ballots: (1) incorrectly dated or undated and (2) distinguishing marks. He said the campaign was withdrawing all other challenges related to absentee and mail-in ballots.

Mr. Kauffman provided a summary of the existing law and court rulings in Pennsylvania to support the County's position to not count undated and incorrectly dated absentee and mail-in ballots. Mr. Ulrich agreed that Mr. Kauffman correctly summarized the current status of the law, but the campaign disagrees with those

rulings. The solicitor's office and Mr. Bukowski recommended denying the challenge based upon the current state of Pennsylvania law regarding updated and incorrectly dated ballots.

On the motion of Commissioner Leinbach, seconded by Commissioner Santoni, the board denied the challenge from the Casey campaign related to undated and incorrectly dated absentee and mail-in ballots.

Regarding distinguishing marks, Mr. Kauffman explained that the law states that a ballot shall not be counted if it contains any marks that identify the voter. He said that election services receives ballots with a wide range of marks and errs on the side of counting ballots. He said a stray mark does not automatically invalidate a ballot, but if there is clear identifying information, the ballot cannot be counted.

On the motion of Commissioner Leinbach, seconded by Commissioner Santoni, the Board denied the challenge from the Casey campaign related to absentee and mail-in ballots rejected for distinguishing marks.

Mr. Kauffman said that there were no further challenges that needed to be discussed.

On the motion of Commissioner Leinbach, seconded by Commissioner Santoni, the Board ruled that the decisions made during the hearing related to the counting or not counting of provisional ballots would be active retroactively and prospectively.

The Provisional Ballot Challenge Hearing was officially closed.

2. Discussion of Drop Box Concerns

Mr. Kauffman shared that there were three reported incidents of voters returning more than one ballot at a County drop box. In the first incident, he said the deputy sheriff reportedly recognized the voter from a previous visit to the drop box. When he asked the voter about it, the voter stated they were there previously to drop off their daughter's ballot and were now dropping off their ballot. In the second incident, he said the voter deposited one ballot and then leaned over the drop box and pulled a second ballot from their jacket and deposited it, too. In the third incident, he said the voter appeared with two ballots and when informed by the deputy sheriff that they could only drop off their ballot, the voter said, "too bad," and deposited both ballots into the drop box.

Mr. Kauffman said surveillance video footage had been obtained from two of the incidents and they were working on getting the video of the third incident. He recommended referring all three matters 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 matters to the District Attorney's office for further investigation.

3. Discussion of complaint regarding assisted living facility voting concerns

Mr. Kauffman shared that he received a complaint from an individual who is a care provider in the community alleging that another individual working in an assisted living

facility exerted a level of undue influence over individuals serviced by the facility. The complainant said that one such individual did not recall requesting a mail-in ballot, but a mail-in ballot was submitted for that individual. Mr. Kauffman said he spoke with the complainant again and they were consistent with their reiteration of their concerns. He recommended referring the matter to the District Attorney's office for further investigation.

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.

4. Unofficial Returns Reporting Form

Ms. Norton explained that the Department of State reviews the unofficial returns reporting forms from counties to determine if a statutory recount is needed. The unofficial returns do not include the provisional or military/overseas ballots.

On the motion of Commissioner Leinbach, seconded by Commissioner Santoni, the Board authorized the submission of the Unofficial Returns Reporting Form to the Department of State.

Election Director's Report

Ms. Norton said that there were more than 3,152 provisional ballots. She said the staff finished reviewing and making determinations on those ballots earlier in the morning. She said about 1,600 of the provisional ballots were rejected.

Ms. Norton noted that the mandatory 2% audit was scheduled to begin on Monday, November 18. She said it will likely take two days to complete since it will be completed by hand. She said the county party committees were sent information about the audit to allow for participants and observers.

Commissioner Leinbach complimented the Election Services team and all the poll workers, County workers and legal team. He said the election was incredibly well-run and managed, in large part due to the attention and hours put in by the staff.

Commissioner Rivera said that a letter was sent to the Reading Eagle thanking the elections staff, poll workers, and everyone who worked to help make November 5, 2024, a success.

Commissioner Santoni said that Anne and Stephanie and the entire team did a great job, he said he knows that it isn't over yet, but that everyone involved did a phenomenal job.

Public Comment

Christina Worley, Cumru Township, spoke about concerns about things she observed on Election Day. She said the tabulator at Cumru 6 went down and the Judge of Election did not have an alternate way for voters to cast their ballots until it was fixed. She said this led to long lines and some voters left without voting. She also has concerns about the voting machines used at Kenhorst 1, claiming that one of the machines goes down every election.

Roxann Curran, Reading, shared that she was a poll watcher at Reading 3-2 and arrived early to watch the entire process. She said she told the Judge of Election a list of things she wanted

to see, based on her training. She said he never showed her the things she requested, so she is not sure if they were done. She claimed the Judge of Election was not cooperative.

Ms. Norton explained that there is a bypass bin in the tabulator that is to be used if it is not working correctly. She said she did speak with the Judge of Election at Cumru 6 on Election Day about that alternative, but by that time the technician was already there to resolve the issue. In regard to the concerns about Kenhorst 1, she said that all machines are tested prior to being sent to their respective precincts and are not deployed if there are any issues. Ms. Norton also noted that the elections staff reviews all the paperwork and reports from every precinct after Election Day.

Commissioner Leinbach reminded poll watchers that if they do observe any issues on Election Day, they need to contact Election Services right away so that it can be resolved quickly.

General Comments from the Board regarding current election-related issues

ADJOURNMENT 12:38 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Anne Norton", written in a cursive style.

Anne Norton, Chief Clerk