

**BERKS COUNTY BOARD OF ELECTIONS
MEETING MINUTES
March 28, 2024 – 11:00 A.M.**

**Michael S. Rivera, Chair (virtual)
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.

PUBLIC COMMENT ON AGENDA ITEMS

None.

APPROVAL OF THE MINUTES

The Board approved the minutes for the March 14, 2024, Election Board meeting as presented.

Agenda Items

1. Permanent Polling Place Changes for the 2024 General Primary

On the motion of Commissioner Santoni, seconded by Commissioner Rivera, the Board approved the following permanent polling place changes for the 2024 General Primary.

Mohnton Borough

From: Saint John's Evangelical Lutheran Church
1 Front St. Plaza
Mohnton, PA 19540

To: Mifflin Area YMCA
140 Chestnut Street
Mohnton, PA 19540

Exeter Township – Precinct 3

From: Exeter Village Recreation Building
200 Eastwick Drive
Reading, PA 19606

To: Lorane Elementary School
699 Rittenhouse Drive
Reading, PA 19606

2. **Temporary Polling Place Change for the 2024 General Primary**

On the motion of Commissioner Rivera, seconded by Commissioner Santoni, the Board approved the following temporary polling place change for the 2024 General Primary.

Bern Township – Precinct 1

From: Bern Township Municipal Building
1069 Old Bernville Road
Reading, PA 19605

To: Victory Baptist Church
1059 Victory Circle
Reading, PA 19605

3. **Discussion on Undated and Misdated Absentee/Mail-in Ballots for the Upcoming 2024 General Primary**

First Assistant County Solicitor, Cody Kauffman, provided a brief background on the 2022 court ruling on the Ball v. Chapman matter. In this matter, the Court ordered that the County Boards of Elections were “to refrain from counting any absentee and mail-in ballots that contained undated or incorrectly dated outer envelopes.” The Court further directed county boards of elections to “segregate and preserve any ballots contained in undated or incorrectly dated outer envelopes.”

In November 2023, just prior to final vote certification, the US District Court for the Western District of Pennsylvania issued an order in the NAACP v. Schmidt matter, finding that the rejection of undated or incorrectly dated ballots based solely upon the omitted or incorrect date violates the Materiality Provision of the Civil Rights Act. Pursuant to this ruling, undated and incorrectly dated ballots were counted for the November 2023 Municipal Election. That ruling was subsequently appealed to, and stayed by, the Third Circuit Court of Appeals.

Jeff Bukowski, Special Counsel to the Board of Elections, noted that the Third Circuit Court of Appeals issued its decision yesterday on an expedited basis, in a 2 to 1 decision, to reverse the decision of the district court judge. He said it came down to a statutory interpretation, with the appeals court finding that the statute does not apply to the requirement of dating the ballots, but instead applies to prohibit states from placing immaterial requirements on potential electors for purposes of their registration or right to vote. Mr. Bukowski and Mr. Kauffman recommended to not count undated or incorrectly dated ballots for the upcoming 2024 Primary Election based upon this ruling by the Third Circuit Court of Appeals. They also recommended that incorrectly dated ballots be defined as those dated outside of the first day of mail-in/absentee ballots being mailed and 8:00 pm on Election Day. Additionally, Mr. Bukowski recommended segregating the undated and incorrectly dated ballots since there could be further legal action in the future.

On the motion of Commissioner Rivera, seconded by Commissioner Santoni, the Board approved not counting undated or misdated absentee and mail-in ballots and to segregate them from all other ballots. The Board further approved that the date range to determine incorrectly dated ballots is the first date the mail-in/absentee ballots are sent out until 8:00 pm on Election Day.

4. Update on Logic and Accuracy (L&A) Testing of Precinct Voting Machines

Ms. Norton noted that the Logic and Accuracy (L&A) testing for the DS200 precinct tabulators and ExpressVote ballot-marking devices is completed. She said more than 1,000 machines underwent testing that mirrors what happens on Election Day. The technicians load the ballots on the ExpressVote machines and then open the poll and vote each contest. Those voted ballots are then ran through the DS200 tabulators. The technicians then close the polls and check that the results are being read correctly. They then clear out the testing information, clean the machines and seal them up for delivery to the polling locations.

Commissioner Rivera said he attended the testing on Monday and wanted to highlight that the testing is handled by several individuals who are cross-checking each other at each step of the process.

Ms. Norton also noted that several observers stopped by during the testing and noted that the lead technician did a great job of giving a brief demonstration and answering their questions.

5. Update on Mail-in and Absentee Ballot Requests

Ms. Norton noted that Election Services processed over 18,000 mail-in and absentee ballot applications. She said elections received the test deck of the ballots from the printer earlier this morning and was working on testing them right now. She said the voter data for the first batch was pulled and would be sent to the printer once the testing was complete so that they could start mailing the ballots out. She said the ballots are expected to be mailed out by the end of next week.

Commissioner Leinbach reiterated that something needs to be done about how long litigation can continue related to the candidates for the ballot because he believes that this is too late for the first batch of ballots to be going out.

Election Director's Report

Ms. Norton noted that the last day to register to vote is Monday, April 8, and the last day to apply for a mail-in or absentee ballot is Tuesday, April 16.

She said Election Services continues to host poll worker training classes, which are held at the Services Center, SAM building, and Ag Center. Poll workers are still needed due to last minute scheduling conflicts. Currently there are six Judge of Election positions available throughout the County.

Ms. Norton shared that sample ballots for all precincts are available on the Elections website. She said there is a link in the announcement section on the home page.

Finally, Ms. Norton noted that the third ballot drop box is in place at the South Campus location and the security cameras will be installed next week.

General Comments from the Board regarding current election-related issues

Commissioner Santoni reminded voters that voting by mail is safe and secure. He said he understands there can be a lot of confusion with the different court rulings and encouraged voters to follow the instructions and remember to sign and date their ballots.

Commissioner Rivera agreed with Commissioner Santoni's reminder and added that voters can check the status of their mail-in or absentee ballot through the state's website, www.vote.pa.gov. He also noted that Commissioner Santoni was recently named to CCAP's Elections Reform Committee and encouraged him to bring up the issue of needing a deadline for finalizing the candidate list so that ballots can be mailed out sooner.

Public Comment

Jeffrey Wolfe, Brecknock Township, submitted written comments and requested information and all types of communications related to the County's ballot drop boxes. He said he has concerns about "ballot stuffing", but is glad the drop boxes are located in secure government buildings with deputies and security cameras.

Adjournment:

On the motion of Commissioner Santoni, seconded by Commissioner Rivera, the meeting was adjourned at 11:50 a.m.

Respectfully Submitted,



Anne Norton, Chief Clerk