

**LANCASTER COUNTY ELECTION BOARD MEETING**  
**WEDNESDAY, OCTOBER 28, 2020**

The Board of Elections met today for an Election Board Meeting.

Present at today's meeting were:

**Ray D'Agostino, Chairman**  
**Joshua G. Parsons, Vice-Chairman**  
**Craig E. Lehman**  
**BOARD OF ELECTIONS**

**Lawrence M. George**  
**CHIEF CLERK**

**Lisa Johnson**  
**ASSISTANT CHIEF CLERK**

Also present was:

**Sam Mecum, Esquire**  
**LEGAL ADVISOR TO THE DEMOCRATIC COMMITTEE**

**Randall Wenger, Chief Clerk/Registrar**  
**BOARD OF ELECTIONS**

Commissioner D'Agostino called the meeting to order at 9:33 a.m.

Commissioner D'Agostino announced the postponement of approval of the September 23, 2020 Election Board Meeting Minutes, October 7, 2020 Election Board Minutes and October 14, 2020 Election Board Minutes.

**November 3, 2020 General Election Update:**

Mr. Wenger said yesterday at 5:00 p.m. was the deadline for voters to apply for an absentee and mail-in ballot. As of that time, they had processed 109,637 applications and received 72,098 voted ballots back. They also wrapped up voter registration at the end of last week and are in the process of certifying that but have 354,000 voters in Lancaster County going into the General Election. Voting equipment is being delivered all this week to polling locations. Poll books are being printed by their new poll book vendor today and will be here on Friday for review. They are in the process of packing judge supply bags and are providing a total of 60 provisional ballots per precinct, up from the traditional 30.

Commissioner D'Agostino said a well-attended meeting was held about election security, along with a press conference and on Monday, October 26. Between 66 and 67 constables are going through training at the Public Safety Training Center related to the election. Consensus from the meeting is that no one is expecting trouble, but it is prudent to be prepared. Contact info will be shared among the precinct judges of election, constables, police and the District Attorney's Office to ensure expedited communication and the sheriff is working on getting radios for the constables. An election Board meeting is scheduled for Monday, November 2nd to appoint substitute workers and a short meeting will be held on election day at 7:00 a.m. to start the pre-canvassing process at the Convention Center. Both meetings have been properly advertised.

Mr. Wenger said beginning this evening the Chestnut Street entrance at the County Administration Building will be open by sheriff deputies for the ballot drop box until 8:00 p.m. and the same on Thursday evening. He pointed out that LNP ran an article on the front page of today's newspaper that Friday would be the same, but that was not what was discussed, approved, distributed and posted on our website; and he has not yet been able to get a response as to from where that information came. The entrance will also be open on Saturday from 9:00 a.m. until 2:00 p.m., not on Sunday, but again on Monday, November 2<sup>nd</sup> it will be open until 8:00 p.m. On election day the office will be open to the public as well as the drop box from 7:00 a.m. until 8:00 p.m. He noted that none of the extended hours are for the office. On Saturday, judges of elections will pick up their supplies. On Monday, they will transfer the ballots to the Convention Center, County IT staff will move the scanning equipment, machine techs will be transferring the envelop opener and other supplies to begin the pre-canvassing and canvassing process on Tuesday which will continue through the remainder of the week. Mr. Wenger, one full-time, one part-time staff member and some temps will be at the Convention Center, along with about 160 volunteers, who have been asked to arrive at 6:30 a.m. for training.

Commissioner Parsons recognized the great job they are doing, saying the amount of work that has gone into this election is unbelievable. He noted that only one member of the public is here at this last substantive election board meeting which tells him people are satisfied with the conduct thus far, but this could be the most contentious election of our lifetime so we have to keep in mind that anything they do has the likelihood to be litigated.

Commissioner D'Agostino said that in an effort to be abundantly transparent, he and Mr. Wenger have discussed having representatives of both Republican and Democratic parties coming in to view the logs and see what is going to be transferred to the Convention Center. We are not going to announce when the ballots will be moved due to security, sheriff deputies will be on hand during the move and providing security the entire time, including at while they are at the Convention Center. The Commissioner stated that he has been a witness to such great, dedicated and committed work by the staff. Yesterday he worked the line waiting to talk with elections staff, and the important thing was not one person was disgruntled, everybody was pleased with the work of the election department. That is amazing considering some people waited an hour and a half and it is because of Mr. Wenger and his staff.

Commissioner Lehman echoed his colleagues, saying all the work done by the election staff is extraordinary, especially under very difficult circumstances. He advised Mr. Wenger to contact LNP and ask them for a correction regarding the evening hours on Friday because the public needs to be notified that was incorrect.

Commissioner Parsons asked if we have a good way to identify approved volunteers at the Convention Center. Mr. Wenger explained that

Lancaster County Election Board Meeting  
Wednesday, October 28, 2020

at the meeting on Monday they are appointing the machine inspectors and all the substitute election officials, who will be listed in exhibits A and B. This year they have updated the Resolution with an exhibit C, which includes the names of the individuals who volunteered for the Convention Center canvassing activity and will sign in as they arrive on Tuesday morning. Mr. Wenger also said they are going to provide two meals for everyone.

Commissioner Lehman asked if someone decides to cancel their ballot before it is received by the County, what would their recourse be then to vote given that the mail-in ballot application deadline has expired? Mr. Wenger stated that if it was received on-time, they can have it canceled and replaced with a new ballot that has a new correspondence ID on the outer envelope. He advised folks to come in person to do this, as they are issued a new ballot right then and there.

Mr. Mecum asked if there was a mechanism that voters could be notified by a phone call if a ballot is not signed or is naked so they could possibly show up at their polling place before 8:00 p.m. and vote provisionally.

Commissioner Lehman is not in favor of phone calls because that assumes we have a phone number and to call some and not all is worse. He thinks what should be done is that when a mail ballot envelop is opened, and it contains a "naked" ballot, it should be cancelled in the SURE system which would send out an email notification. To him this is the only practical solution for notification because we cannot guarantee that we will have everyone's phone number.

Mr. Mecum said there were 3,250 "naked" ballots during the Primary and in his opinion there will be thousands which the Supreme Court of Pennsylvania ruled can be counted. He believes if you ask a thousand people who sent in envelopes with naked ballots in them, what would be of more concern to them that their vote not count or that maybe one person who is opening the ballots might actually see their ballot.

Mr. Wenger said the signature issue is addressed at the time the ballot is received by their office, they are being scanned in now and recorded in SURE as cancelled, no signature. He did note that not every voter has an email address in their file, and even fewer have a good phone number in SURE, and confirmed for Commissioner Lehman that online applications have to have an email address, but not paper applications.

Mr. Wenger confirmed for Commissioner D'Agostino that all mail-in ballots have been scanned in. Commissioner D'Agostino asked if the naked ballots are set aside on the day we open them. Mr. Wenger said there has not been updated guidance from the Department of State on that issue at this point on what to do with them, however they created a new code in SURE that is to be reserved for the process of cancelling them. He personally believes the Department of State envisions that is being done as they are coming in, which to him is troublesome because you cannot know with certainty that there is not a secrecy envelope until you begin opening them during the pre-canvass starting on election day.

Based on Commissioner Lehman's question, Mr. Wenger sent an inquiry to SURE asking whether there is an ability to go back and change the status after they have received and marked a ballot as valid but has not gotten a reply yet. Commissioner D'Agostino stated that his point is that until further guidance, we are going to do what we did in the primary, which is to set them aside.

Commissioner Parsons said there is no provision in the law for us to be calling people and the idea that we are going to peer into these envelopes after they have been sliced open and start looking through them is very troubling. If it is naked, it is set aside. Mr. Mecum's issue is with the Supreme Court, the Court ruled on this subject and they ruled in support of almost every single item the Pennsylvania Democratic Party wanted, however, we are supportive of the law.

Commissioner Lehman said the way he is looking at this is if you go to a polling place, get your ballot, vote and take it to the scanner - you have any time between the time you vote and the scanner to make any changes or correct any errors. If you put it in the machine and it kicks it out because of an overvote, you have an opportunity to fix those errors. Not having a secrecy envelope is now an error or a reason to cancel the ballot. Because you have this technology system, what we should be doing is when a "naked" ballot is determined during the pre-canvass, it should be coded as cancelled, it will send out an email notification and people are notified just like any person in a polling place would be that there is something wrong with their ballot. This is the only way to treat people who have mailed in their ballot the same way as people who are voting at the polls because that is how the process works. He is anxious to see what the Department of State says but thinks this is the right and equitable thing to do and the most efficient way to do it. This is completely consistent with what everybody is saying even though they do not like the approach.

Commissioner Parsons said once the ballot is separated out of the envelope, you cannot be connecting the two the two again. Commissioner Lehman said Commissioner Parsons is right, ballots without a secrecy envelope are not going to be counted, that means they are cancelled ballots, which means there is an obligation to input them into the SURE system as a cancelled ballot, then the SURE system can notify voters that their ballot is canceled.

Mr. Wenger said this is partly about the law, but we are also dealing with recent Court decisions and the two things that the Courts did not give that were sought are counting naked ballots and have counties require, or be permitted, to do some sort of outreach effort. There is no method in the law that he is aware of for what the Department of State is discussing, which is a process by which the ballots are cancelled, and he is not aware of a Court decision creating a remedy or a cure for this situation. He refers this issue to Ms. Hausner on that as the County Solicitor.

Ms. Hausner asked if it is practical with the huge number of ballots that when we are opening these envelopes, we stop every time we get a naked ballot and then data entry into the SURE system so that on election day itself an email is sent out to a voter. Mr. Wenger said that it would not be practical. He also stated that everything needs to be retained for 22 months, so these ballots are not going to be disposed. The plan is to set aside naked ballots in a secure bin as they are discovered during the pre-canvassing and canvassing process.

Commissioner D'Agostino stated that this is not fair or equal treatment since not everyone provided an email address, particularly those that applied for a mail ballot using a paper application. Unlike going to the polling place, where you know every single voter who has an issue in your scenario will know they need to correct something.

Commissioner Lehman said that is not correct because your voter status will show that your vote was cancelled even if you do not have an email address. So yes, every voter would have the ability to know what their voter status was on election day. Commissioner D'Agostino is correct, not everyone would have an email address but the voter status on SURE would show that their vote was cancelled so even if they did get an email, they could look up their vote status, find out that their ballot was cancelled if they mailed it in and it lacked a secrecy envelope.

Commissioner Parsons said once you are opening ballots, you cannot be cancelling them because it is ripe for fraud. You have people pulling out ballots that they decide they do not like and then canceling it. Once the ballot is sliced open there cannot be anything other than set them aside into a different pile.

Commissioner Lehman said they should be cancelled just like any other ballot that has issues. Commissioner D'Agostino said there is no mechanism to do that and there is nothing in the law to do this either.

Commissioner Lehman said we already do notify voters about defects when a ballot comes in and a signature is not on it, they can go on their voter status on the SURE system and find that their ballot has been cancelled. Which is why he asked the first question in the meeting. So yes, there is a mechanism to do that. It only works for ballots that are cancelled. We have all agreed here that ballots without a secrecy envelope do not get counted so by definition they are cancelled.

Commissioner Parsons said there is nothing to agree on, the Pennsylvania Supreme Court ruled on it and our job is to follow the law, not invent new things that are not in the law.

Lancaster County Election Board Meeting  
Wednesday, October 28, 2020

Mr. Mecum said there is no legal basis for the opposite, it does not say 'thou shalt not notify somebody who has a naked ballot.'

Ms. Hausner noted the case law where there was a question about to what extent do you notify voters of defects, that argument was rejected, so she does not know where that obligation comes from but there is a solicitor for the Election Board, he may have some thoughts.

Commissioner D'Agostino said the Supreme Court said they are not to be counted.

Commissioner Parsons stated the law does not say a lot of things, should we hold them up to a light and figure it out, the law does not say we cannot do that but it would not be appropriate to do that. In the primary this Board, noting it was not all three of us, decided to count naked ballots. So, if he does not like the rules, take it up with the Supreme Court, the Democratic controlled Supreme Court.

Mr. Mecum said the argument is not that we count naked ballots, it is that we notify the sender of the naked ballot in some way or another that their ballot will not count and that is different from the counting or not counting discussion. He thought there should be a mechanism for notifying such voters, there will be thousands of them. Commissioner Parsons does not agree, saying there has been a lot more education on that since the primary. Commissioner D'Agostino reiterated that this would be violation of the U.S. Constitution related to fair and equal protection.

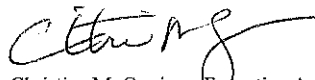
A question as to the process for being reissued a mail ballot was asked. Mr. Wenger stated that once a voter has requested and issued an absentee or mail-in ballot, whether they have it in hand or they do not have it in hand, as long as they have not returned it to the County as voted, they are permitted to show up at their polling place. The poll books for all those individuals who have been issued but not returned by the date the poll books went to press, which is last night, an absentee or mail-in ballot will be in the poll book and it will say remit ballot or vote provisional so the voter has two options either the voter is remitting their ballot and the return envelope per Act 12 2020 or if they do not have both pieces to remit and the condition of those two pieces is irrelevant, voted or unvoted does not matter, but they will have to have two pieces they will not assume there is a piece in your envelope, the voter will be asked to slice open their envelope and show the ballot is in there. Then they complete a seven-line declaration to surrender their ballot, the judge of elections attaches the declaration to the ballot and puts it in the ballot folder and the voter signs the poll book and votes a regular ballot. If the voter does not have both pieces to remit then the voter will vote provisionally once it is determined that their mail-in or absentee ballot was not returned by the deadline, whatever that happens to be, at least 8:00 election night, then that provisionally ballot will be eligible to be counted.

Mr. Mecum stated that either way they can vote provisional at the polling place. Mr. Wenger stated that if a voter has their ballot and if they have the return envelope, they do not need to vote provisionally. They surrender it and sign the declaration which is less writing than a provisional ballot, not as easy as just signing the poll book, but it is less places to sign and involves less people only the voter and the judge of election, whereas the provisional also involves the minority inspector in the process. It is a streamlined process to remit their ballot and the return envelope and sign the poll book and vote a regular ballot at the polling place. They are not interested in creating provisionals that do not need to exist, and this should cut down on that. In the primary, which operated under Act 77 of 2019, everybody who had an open ballot out to them whether they had it in their possession or not had to vote provisional. Now there is a remittance process for those who do have the pieces to take to the polling place and this should hopefully cut down on the number of provisionals.

On motion of Commissioner Parsons, seconded by Commissioner Lehman, the meeting adjourned at 10:26 a.m.

Motion passed unanimously.

Respectfully submitted,



Christine M. Carrigan, Executive Assistant  
Commissioners' Office