

LANCASTER COUNTY ELECTION BOARD MEETING
FRIDAY, NOVEMBER 6, 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

Christina Hausner, Esquire
COUNTY SOLICITOR

Also present was:

Mel Newcomer, Esquire
SOLICITOR TO THE BOARD OF ELECTIONS

Diane Skilling, Deputy Chief Clerk /Deputy Chief Registrar
BOARD OF ELECTIONS

Randall Wenger, Chief Clerk/Registrar
BOARD OF ELECTIONS

Commissioner D'Agostino called the meeting to order at 9:00 a.m.

November 3, 2020 General Election Update:

Mr. Wenger explained that this is the kickoff to our official count and canvass per State Statute which begins at 9:00 on the Friday after the election and was advertised in LNP. Staff will begin going through provisional ballots, reviewing the return sheets, adjudicating and resolving write-in votes that were cast, along with unpacking election returns at the warehouse. Next week they will be adding in the military and overseas ballots. By the eighth day finishing up adding any timely received absentee and mail-in ballots. Because of the more than 5,578 provisional ballots, they are planning to continue this canvassing operation, which is open to watchers for parties or candidates and their counsel, up through the weekend and next week. On Monday and Tuesday, they received a total of 561 'late' ballots, after 8 pm on Friday through the postal service but postmarked by election day. Noting a reduction of one based upon counsel regarding FedEx not being an appropriate delivery method, the Supreme Court order pertains to postal service deliveries. One ballot was received today but it was not timely postmarked. 91,448 ballots have been scanned into SURE and 110,391 absentee and mail-in ballots of all categories were issued. They have received 260 overseas civilian, 462 Federal voters and 322 military ballots and that number will continue to grow through Tuesday. These will be opened and added into the results on Wednesday, Veteran's day. Mr. Wenger said they have approximately 350 damaged mail ballots which will go through a replacement process in order to track them. He has not counted naked ballots, but they are secured in a tub at the office. When they are done that will be part of the difference between ballots received and votes counted.

In response to Commissioner Lehman's question, Mr. Wenger said the total number of absentee overseas and military ballots received and scanned into SURE as of now is 1,044, noting this number will go up as they have more that have not been scanned and they have until next Tuesday to be returned.

Commissioner D'Agostino asked Mr. Wenger to discuss how they are handling late, naked and ballots with identifying marks in the SURE system.

Mr. Wenger said they have not been altered in SURE. Identifying marks are impossible because they have been separated from their 'owners information' so you open the secrecy envelop and have a ballot that is signed, we do not have that voters bar code in front of us to change. Nothing that was received that was naked has been rescanned into SURE at this point to change its status. Due to his understanding of the Board's direction, they have all been sitting in a secure tub in his office and there has been no change to their status. Noting the certification is November 23rd with the first signing the Wednesday prior.

Commissioner Lehman repeated what he said previously, for those "naked" ballots when they come in their status should be changed per the Department of State guidance. When you start to do provisional ballots, if someone would happen to have a "naked" ballot and would vote provisionally that provisional ballot will not count because we have not properly changed the status of those "naked" ballots. Needed to point that out so if someone would happen to have gone to their polling place, insisted that they vote because we have not done the proper due process in terms of changing the status of "naked" ballots which is consistent with the Supreme Court ruling and the Department of State guidance, those folks will be basically disenfranchised a second time.

Commissioner Parsons agreed now that the election is over, whatever their process is, they should change that in SURE. The question was on election day should voters be contacted as Mr. Mecum had suggested and apparently happened in some counties and the Department of State suggested that counties cure mail-in ballots that were naked or otherwise rejected. That is not only not in the election code, not only not in the Supreme Court ruling, but it is also potentially illegal and potentially criminal.

Commissioner Lehman objected, he does not know what the Department of State said and what other counties said but there is nothing that he has advocated here that is illegal and he is not going to let Commissioner Parsons imply that there is because that is completely inappropriate.

Commissioner Parsons is saying the Department of State's guidance that they sent out was not in election code and not in the Pennsylvania Supreme Court so you cannot just make up things on the fly in an election and he is not advocating that Lehman would purposely do something illegal.

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You cannot make up an idea that a "naked" ballot can be driven to a voter's house and get them to correct it or cure it. He thinks we would all agree that is not the case. You also cannot call a voter and get them to come in and that is the reason there is chaos in Pennsylvania right now because some counties did that even though it was not in election code and the Supreme Court ruling. The rule of law has to mean something and the Department of State right now to them the rule of law does not mean anything.

Commissioner Lehman said the rule of law he advocated for is the PA Supreme Court ruling saying "naked" ballots do not count. The status of the "naked" ballots when they come in simply says that they voted but is completely inaccurate. That is why the additional code was provided before the election to properly change the status of those votes. It should have been done on election day. For Lancaster County it would have worked the way he identified, but for other counties who did not start until Wednesday it would not have worked. When a ballot comes in and it is not going to be counted, it is simply transparent, appropriate, and consistent with the PA Supreme Court ruling to change that status. The automated system would have given them the ability to be aware of that and they could have voted provisionally on election day. There is nothing inappropriate about that, it is completely consistent with the PA Supreme Court ruling and the Department of State guidance. This stuff is not a la carte. The reason we are having confusion is because people are deciding which parts of the law they want to follow and which part they do not want to follow and that is exactly what is going on with ballots that are legally cast, received after 8 pm on Tuesday and by 5 pm on Friday, the 561. They are not late ballots. You can try to use whatever language you want to use to pretend they do not exist or somehow the legality of them is questionable. The bottom line is what is being done here is you do not like the current law so are waiting to hope the law will change to something that is more favorable.

Commissioner D'Agostino said we are going to have to agree to disagree. He has mentioned before and as has been heard now today, the law and the Supreme Court do not say anything about what Commissioner Lehman is talking about, and it also a potential violation of the Constitution.

Commissioner Parsons and Commissioner D'Agostino agreed to deal with the naked ballots after we get started on the canvass.

After discussion, Mr. Wenger will record the ballots that were lacking secrecy envelopes as cancelled in SURE before processing provisional ballots in the count and canvass.

Commissioner D'Agostino thanked Mr. Wenger and Ms. Skilling for everything they and staff have done particularly staying on top of this difficult situation which landed in our laps right before election day. He asked what has been learned from the vendor about the process to handle the ones that came in between Wednesday and today, noting the initial thought was there was another option but it was risky and would have taken a day if we had to reverse it.

Ms. Skilling said they had a conversation with the Department of State on election day and they gave her a recommendation on the process to remove these ballots. Last evening, she spoke with the head of customer support at Hart and they came to an agreement of how they will back out these votes with checks and securities in place to make it successful. Hart's suggestion is to have an archive of the database backed up in three separate external devices and securely sent to them for their examination, noting this should eliminate risk and be something she could restore. Each day's ballots received are scanned separately and then put in categories of legible postmarks, illegible postmarks and missing postmarks. They recommended the 561 be scanned separately and be the last votes entered in the database to make the restore easier to deal with. The alternative process takes a long time because it is precinct by precinct so it would be at least 240 attempts at manually adjusting the votes for all the candidates that appear on each precinct ballot. They discovered yesterday that another county had to do a massive vote adjustment and it was not working as they were hoping.

Ms. Skilling confirmed for Commissioner D'Agostino that the Secretary of State recommended we do nine different categories in case the Supreme Court rules in various ways, we will have the ability to pull up just one or more of those categories.

Ms. Skilling conformed for Commissioner Parsons that the most recent guidance is to put these votes in last which is different than the guidance received on Sunday.

Mr. Wenger clarified that Ms. Skilling is talking about a conversation with Hart and Commissioner Parsons is referring to Department of State guidance but Commissioner Parsons said the Department of State is talking to Hart and trying to figure out how to make their guidance possible. Now Hart is saying to put the votes in last which is essentially aligned with what the majority of this Board had said, do it at the end because of everything that is changing, and we have until Wednesday.

Commissioner Lehman said that is not what was said, what was said was we are going to set these aside and wait and see whether the law changes. You cannot change the argument today. His position all along has been very consistent. There is no argument about administrative complexity that nullifies the responsibility to canvass these ballots because they are legally cast ballots. These ballots were set aside with the hope that the law would be changed so they would never have to be counted.

Commissioner D'Agostino said the issue at the time was we did not even know if we could pull them out per the Supreme Court ruling. We made it very clear, if these are to be counted, they will be counted. We are not trying to do anything other than make sure that we can follow the rules and make sure administratively we can handle this.

Commissioner Lehman thanked Commissioner D'Agostino for just confirming his argument by basically saying you wanted to wait because the law might change.

Commissioner Parsons asked if the Department of State call suggested that we buy different software on election day.

Mr. Wenger said there was a discussion of how some other election vendor systems would be able to accomplish this but it was not applicable to the Hart system; specifically to ES&S system which is in the majority of the state.

Commissioner Parsons said this is an impossible situation they have been put in and the fact the Department of State is changing guidance and recommending creating nine different possible election scenarios in the biggest most controversial election potentially in history and then choosing one is insanity. He also noted that every other county he is aware of is handling these late absentee ballots the same as we are so it is not a partisan issue, it is an issue of trying to make sure they can do what is being asked of them. If that is possible, he will accept their recommendation but that is different than what we heard at the last Board of Elections meeting which was it is impossible.

Commissioner Lehman said it was not presented at the last Election Board that it was impossible; it was difficult and frowned upon.

Commissioner D'Agostino said it was always an administrative burden and you can see over the last week how many times this has been changed so it is a good thing we waited so we can actually get it right just like everybody else as Commissioner Parsons said. It is a tricky situation because it has never been done before.

Mr. Wenger confirmed they can scan them, keep those v-Drives separate and upload them into the count, noting they will process military ballots by Wednesday.

Commissioner Parsons explained that an LNP article this morning said the County rebuts misinformation and there was a picture circulating on the internet about mail-in ballots, but it did not have anything from the County actually rebutting that; it did have the Department of State saying it was the County's fault. He asked if Mr. Wenger could explain whether we sent data incorrectly to the Department of State.

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Mr. Wenger said they sent data to the Department of State and it was not pointed out to him that they sent anything incorrectly. This was the first election the Department of State had asked them to break down vote totals into three different categories instead of just giving them vote totals. He believes the Board saw communication back in September of the three different categories of votes – in person at polling places, absentee and mail-in and provisional. It came to his attention election night that they were showing everything we were sending as mail ballot votes as opposed to in-person election day votes, but he has no knowledge of how that got there or how they mapped the data on their end. He confirmed that we only send the state voter totals very similar to what is on our website except our website shows all types of votes in single total and we used the same method to send them additional files but have not changed our file types.

Commissioner Parsons said LNP had a responsibility before they ran that to check with us, but they did not reach out to any Commissioners and he knows that Mr. Wenger was not able to call them back because he has been working non-stop. He also said when the Secretary of State falsely blames the County that is a serious thing so he will be dealing with that further.

Ms. Skilling said they had two people who attempted to drop off ballots at the counter after election day, but they did not accept them because they were not postmarked, and it was too late. Commissioner Parsons hopes other counties are also doing this.

Commissioner Parsons asked if any ballot that was naked or otherwise set aside would not show in the State's number, it would just show as cast and would not be subtracted out until it is changed in SURE.

Mr. Wenger is not sure what that will look like in SURE. He expects that will reduce the number of ballots cast when they cancel them, but this is more about how the Department of State has their SURE system programed than about county operations. He will check with the SURE help desk to confirm and send the Board what he finds.

Commissioner Lehman's advice to the Department of State is if they are providing codes, codes should be tracked separately because that is the only way to be transparent.

After discussion regarding new processes under Act 77, specifically 24-hour notice and adjourning the pre-canvass meeting held at the Convention Center, it was determined the Board will reconvene the pre-canvass meeting at 11:30 on Tuesday, November 10th and then adjourn that meeting

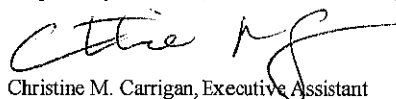
Commissioner Parsons made a motion to Convene the Count and Canvass process, seconded by Commissioner Lehman.

Motion passed unanimously.

On motion of Commissioner Parsons, seconded by Commissioner Lehman, the meeting adjourned at 9:45 a.m.

Motion passed unanimously.

Respectfully submitted,



Christine M. Carrigan, Executive Assistant
Commissioners' Office