

MINUTES

Erie County Council

View More at
www.eriecountypa.gov



BOARD OF ELECTION MEETING MINUTES 11-7-22

Call to Order

Chairwoman Rennie called the meeting to order at 8:30am.

Roll Call

Members Present: Chairwoman Mary Rennie, Vice Chairman Terry M. Scutella, Charlie Bayle, Andre Horton, Brian Shank , and Jim Winarski

Also present: Julie Slomski, Megan Moore, Tonia Fernandez, Tom Talarico, Esq.

Hearing of the Public

Freda Tepfer, Erie: She thanked the Board for the hard work they had done. She mentioned that, even as a well-informed member of the public, she still worried about whether she did something wrong with her ballot. She disclosed there was a period of time when undated ballots would be counted, and not all of the given information and instructional videos mentioned dating the ballots.

Cliff Smathers, Northeast: He countered the previous statements and stated that Erie County decided to use and massage the dates, even though there was no protection for them to do so. He voiced his feelings that there were laws for a reason, and whenever we look past those laws and try to figure out people's intents, it moved the line that was drawn in the sand as to what was or was not okay. He noted it was easier to just say it was the date or it was not the date as it made clear black and white lines. He stated he would like the Board to follow that rule.

Tom Eddy, Fairview: He alleged that there had been pre-canvassing of the ballots without any watchers there. He claimed that according to the law, any pre-canvassing of ballots had to have watchers from both parties. He claimed those ballots had been sorted and pre-canvassed without anyone there to watch. He stated the Board may have video recording, but that did not supersede the issue.

Mrs. Rennie stated they normally allowed the public to speak but she had to correct what he said. She stated there had not been any pre-canvassing, which was the opening of the ballots. She voiced she had an issue with that statement as it was completely false.

Art Leopold, Millcreek: He revealed he was all for curing ballots and stated a

vote was important, a date not so much. He asked the Board to put in place a process of curing ballots even if they needed to put those ballots aside, so they could be looked at later. He stated although the Supreme Court of Pennsylvania had ruled, there may be subsequent rulings as the days move on. He professed he appreciated their efforts and thanked them for their time.

Mrs. Rennie apologized to Mr. Eddy for cutting him off, and allowed him to continue.

Tom Eddy, Fairview: He affirmed that the law stated a certain thing and that was that was ballots needed dated, and dated correctly. He stated for them to make a resolution now, to say we can change the law on our own as a County, was really stretching their authority. He commented everyone should just follow the law. He stated they had no idea who the individuals were, one group or another. He stated jumping in and making changes did not sit well with him.

Jim Wertz, Erie; He stated he wanted to clarify the guidance provided by the Department of State, after the Supreme Court decision which allowed counties to make the decision to cure the ballots, which allowed the Voter to correct the error, not the county to correct the error on behalf of the Voter. He described this as an opportunity for the Board of Elections to reach out to those voters who had technical, but inconsequential, error on their ballot envelope. He noted party affiliation was not known, and he strongly encouraged the Board to allow the curing of the ballots in an attempt to reach out to those voters so that every vote was counted. He stated that every vote submitted between September 27th and November 8th was a valid ballot regardless of a technical error on the date line of the exterior envelope of those submitted ballots. He encouraged the Council to allow the curing of the ballots.

Mrs. Rennie stated the Hearing of the Public was the chance for people to be heard, and normally they would not comment, but she felt she had to do so to protect the integrity of the Office of Elections.

David Waples; Mr. Waples stated he was one of the people that did not put a date on the envelope, and wanted the chance to correct it.

Action for Consideration by the Board

Mrs. Rennie stated they had worked on the resolution well before the weekend but some changes were made recently. She brought attention to the fact that there was a procedure for curing ballots and, because of the Supreme Court ruling, it had thrown them into a gray area. She asked Solicitor Talarico to weigh in on this.

Mr. Talarico explained that curing ballots had been done for years before mail-in voting, and that was done with absentee ballots. He stated people who could not show up on Election Day would mail their ballots in and some people made mistakes. He mentioned they were immaterial to their desire and intent to vote for somebody. He stated the Election Board in Erie County had always tried to

help those people, and advised them that they had a defective ballot that had to be corrected. He proposed the idea of the Notice to Cure was what was paramount under the Election Code in the Constitution and that everybody got the right to vote, nobody was disenfranchised. He proclaimed it was not so much that someone was not following the law if you were not following the letter of the law, you were following the law if you accomplished what the law intended. He explained that all of these laws intended to embrace and franchise people so that they could vote. He expressed that they did not want to disenfranchise those people's votes simply because they failed to date or for some other reason. He professed what had not happened was that the procedure itself had not been voted on by the Board or documented in writing, so the Board formalized the curing process by adopting a resolution that permitted the Election Board to contact voters who had sent in a mail-in ballots, but forgot to date it. He stated ballots were being checked out to confirm the identity of the voter and address, and was done internally by the system. He noted there were all kinds of checks on the ballots to ensure that the person whose vote was inside the secure envelope was the person who voted. He stated the board had already adopted the Notice to Cure procedure, and as far as dating and not dating, the Supreme Court decision that came out on November 5th was to amend the earlier order by defining what an inaccurately dated vote was. He stated the response was anything after September 19th could be counted. He disclosed the general rule was still that the Election Boards were required to segregate all of the undated or inaccurately dated ballots, and preserve them to be counted or not counted depending on the Election Board itself. He stated there was no court in Pennsylvania or the U.S. that had prohibited or outlawed the Notice to Cure procedure. He disclosed the Board of Elections was adopting the most recent Supreme Court decision with respect to the treatment of undated, irregularly dated, or incorrectly dated ballots that day. He noted it did not truly affect the Board of Elections because they had always segregated defective ballots, preserved them, and counted them later. He proclaimed the only thing for the Board to do that day was decide whether to include, as another item in the notice to cure process, undated and inaccurately dated ballots. He stated there was a case pending in Commonwealth Court, where the litigants were arguing whether the law did prohibit that, and the case had not been decided. He assumed that the Court would do the same thing and say that the Election Code did not prohibit Notice to Cure procedures, and it was best that the legislator took it up and rule on that issue itself.

Ms. Slomski stated she wanted to reconfirm the supplemental order from the Pennsylvania Supreme Court after their meeting, all ballots that were dated outside the range of September 19th through November 8th for mail-in and August 30th through November 8th for absentee were considered incorrectly dated. She stated that there were 168 undated ballots and 184 incorrectly dated ballots, bringing a total of 352 ballots that were undated or incorrectly dated. She explained that out of those ballots, 184 were incorrectly dated, 124 that were dated but in the wrong spot, and 11 that were partially dated. She disclosed she would like to ask the Board to allow them to begin filling the 124 ballots with the

misplaced dates. She confirmed that all 352 ballots that were undated or incorrectly dated had been segregated and preserved until they took action. She stated when the Election office was scanning the ballots, Voters received a rejection error, and would then reach out to the office. She expressed that, in addition to the resolution, she would like permission for those 124 ballots that were dated on the wrong line to be filed in their appropriate precincts.

Mrs. Rennie stated that would be a matter of adjudication rather than curing.

Ms. Slomski stated that would save them time on Election Day. She noted that when the Board started reviewing ballots that were going through the pre-canvassing process that may have an error, the Board would usually decide that it came down to the intent of the Voter. She requested the Board allow the 124 ballots be filed.

Mr. Talarico stated they were not inaccurately dated ballots and could be adjudicated. He explained inaccurately dated ballots were ones that could not be deciphered or ones that had been dated before September 19th. He stated those were the only inaccurately dated ballots.

Mrs. Rennie stated that was a matter for adjudication as well, and Board consideration. She agreed that if the date was there, there should be no difference if it was a half an inch off the line but the date was accurate.

Mr. Scutella questioned Ms. Slomski on how much extra work this would put on the office.

Ms. Slomski replied that it did require extra work but they were there to serve the Voters. She stated that they were 24 hours away from Election Day, so it did put them in a predicament, but that was why she wanted to release this information out to the media, so the community could help track down those individuals.

Mr. Bayle stated he was a rule follower, though he had now always been that way. He stated he had learned a valuable lesson about attention to detail while attending a class on leadership through a military-affiliated college. He explained they were given a test that he breezed through, only to find out at the end, the instructions were to not make a single mark on the test and he was given an F. He stated he feared they were taking away personal accountability and responsibility from these individuals. He stated he understood people made mistakes but also, they had to learn from these mistakes. He stated that for that reason, he would not support the resolution in front of them.

Mr. Horton proposed they should ensure that every valid, registered Voter could exercise their franchise, as well as their constitutional right to vote. He described it as a staple of their democracy, and was tantamount to being an American citizen. He stated they were in full accordance with the law. He expressed he whole-heartedly supported the resolution. He mentioned the only thing they were voting on today had been explained by their solicitor, so it was a no-brainer for

him. He asked not to let the Erie County Board of Elections stand in the way of anyone exercising their franchise.

Mr. Shank argued they were not trying to deny anyone the right to vote. He stated that as a Veteran, he took an oath of the Constitution, and he still took it very seriously. He explained that when you go to a polling place to vote in person, you have to sign and date a form for the privilege of voting. He declared that it was no different for the mail-in ballots. He stated if an individual cannot follow simple instructions for signing and dating a legal document, we're in a lot of trouble. He stated he found it a stretch of the law and order that everyone talks about, especially when the rules were clear. He expressed he would not be supporting this resolution, as it was a simple task that they had asked of those individuals.

Mr. Scutella stated that he respected everything his colleagues had said. He assumed that a lot of the individuals who made an error were elderly, and questioned if they were going to deny them the privilege to vote over a mistake. He stated he would support the resolution to allow them that opportunity. He stated it did not matter whether they were Republican, Democrat, or Independent, they should still be given their constitutional right to vote.

Mr. Winarski questioned whether the Voters of the uncounted ballots were informed of what had happened.

Mrs. Rennie stated it had went out on Friday after they had received notification of the Supreme Court ruling. She explained it went out on Friday because prior, they were instructed to include the incomplete ballots with the rest to be counted. She expressed the order had put them in a situation where none of the ballots would be recounted, and they would not be given the opportunity to correct those ballots. She stated there was a small window of opportunity for them to be able to correct their ballots, just like any other voter had the opportunity to correct an error on their ballot prior to the canvassing and pre-canvassing. She noted the precedent was clearly that they wanted to help people vote. She explained that voting assistance was needed by many people, and it would be nice to say that everyone should know exactly what to do but they were not there to pass judgment on whether someone was fit to vote. She stated that would be up to the Courts. She explained all they could do was give people a vehicle to issue their votes. She mentioned the procedure to cure was something they had done and the Courts had been silent on. She noted it had been done state-wide for many years, so there was nothing out of the ordinary and the procedure to cure was not sanctioning, it was simply giving people the chance to exercise their right to vote. She stated they were there to make the decision about whether they should give them the same right to make simple corrections or not. She stated she believed it was like what they had been doing all along and it was consistent with the policies and procedures. She explained that it was not excusing anything, but it did allow them to provide people with the ability to cast their vote. She added if something needed to be decided down the line by either the State Legislature or the Courts themselves, then that was on their side.

Ms. Slomski replied to Mr. Winarski's comment. She stated the incomplete ballots were scanned in as a canceled, no signature ballot and that then notified the individual. She noted some of them reached out when they had received the error out of concern, and they had advised them that they were not allowed to do anything with their ballot until the Board voted. She stated some individuals had been notified when they received that error.

Mr. Winarski asked if the rest of these individuals would be contacted within the next 24 hours to have them go to the Courthouse to correct the error on their ballot.

Ms. Slomski stated their goal was to call them, but to also post it on their website, send it out to the media, so everyone could help in this outreach effort. She stated they would need to go to the Courthouse in person, they could designate an agent to pick up their ballot, or there was a third opportunity where they could vote provisionally. She noted this was all listed in the resolution.

Resolution 16, 2022 "Notice to Cure Procedure on Undated and Incorrectly Dated Mail-In and Absentee Ballots"

A motion was made by Mr. Shank, seconded by Mr. Scutella, and carried 4-2 (Bayle, Shank).

Questions and Comments from the Board

Mrs. Rennie stated she believed the others were just adjudication on the dating, so if the date was correct and just an inch off, that was something that could be adjudicated.

Mrs. Slomski questioned whether they were able to move forward with publicizing the list, and allowing those individuals to vote. She asked for clarification if were they allowing them to file those 124 ballots away in their precinct that had the date on the wrong line, or if they were to wait until Election Day.

Mrs. Rennie expressed she felt it was a simple matter of adjudication that was very straight forward, but she was more comfortable when they were there in person to see the ballots. She stated if the correct date was on the ballot, even if it was an inch off the line, and the instruction following was close, she would count it.

Ms. Slomski stated that they would hold those 124 ballots for review by the Board on the following day.

Mrs. Rennie expressed that, as far as everything else went, it should be advertised and people should have the opportunity to come in.

Mr. Horton questioned if someone was unable to come in, how would they designate a person to come in and how do they go about designating someone to amend their ballot.

Ms. Slomski explained it was a designated agent form people used when they were obtaining a ballot for a spouse or someone they were a caretaker for. She noted that those individuals would need to qualify under the American Disability Act to complete that designated agent form, which was listed on the website, as well as in the office.

Mr. Horton explained he knew someone who had been notified of a mistake on their ballot. He questioned whether they could send someone to pick up a form or what were they to do.

Ms. Slomski confirmed they could email it to them, the individual could pull it from the website, or they could come into the office where they had printed copies of that authorized agent form.

Mrs. Fernandez questioned whether the voter could put a line through the incorrect date and put a new date, or if a new envelope needed to be used.

Mr. Horton stated they should correct and initial it.

Mrs. Fernandez expressed she only wanted to make sure they were giving out the correct information.

Ms. Slomski reminded Mrs. Fernandez that they would be holding on to the 124 ballots with the dates in the wrong areas. She also noted that for the 11 ballots that were partially dated, they were going to allow them to fill them out right there in the center.

Mrs. Rennie added that she would say it should be fixed on the envelope itself if the date was missing.

Mr. Horton presented it to just be standard and to standardize it.

Mrs. Rennie asked if there were any more questions or comments from the Board. She mentioned that she did her voting in person and enjoyed the experience of going to the polls. She stated the Poll Workers were there to assist Voters. She disclosed that, to her knowledge, they did not date anything at the polls, they signed, and also

got instructions from the Poll Workers who were able to talk them through any issues on the ballot. She expressed she was proud of the service they gave through Elections.

Adjournment

A motion to adjourn was made by Mr. Horton at 9:19am.