

September 20, 2021 PRE ELECTION MEETING OF THE DELAWARE COUNTY ELECTION BOARD

PRESENT: Gerald Lawrence
Ashley Lunkenheimer
John P. McBlain
Michael Molinero, Solicitor

Also Present: Jim Allen, Director of Elections
Laureen Hagan, Bureau of Elections
Crystal Winterbottom, Voter Registration Office
Jim Savage, Voting Machine Warehouse
Lisa Jackson, Campaign Finance Supervisor
Christina Iacono, Poll Worker Coordinator
Christine Reuther
Catherine Celli
Amy Caruso
Barbara Bergerlantz

Mr. Lawrence called the meeting to order

Pledge of Allegiance

Oath of Office: John P. McBlain. Mr. Lawrence administered the oath to Mr. McBlain.

Consideration of Agenda. No additions or changes.

Approval of Minutes from the September 1, 2021 Board Meeting. Ms. Lunkenheimer moved to approve the June 7, 2021 board minutes and Mr. Lawrence seconded the motion. Motion to approve the September 1, 2021 board minutes approved 2-0 1 abstain. Mr. McBlain abstained.

Director of Elections Report

Mr. Allen welcomed Mr. McBlain.

Ballot Preparation Status. Mr. Allen informed the board that as of noon the ballot designs were being wrapped up for all precincts. Mr. Allen went on that the next steps would be proofing and “locking down” the files. Mr. Allen state he was optimistic that V-drives could begin arriving at the warehouse later this week for the start of Logic & Accuracy testing. Mr. Allen went on to remind the board that the Department of State only certified the ballot the week prior however a mock-up of the ballots was distributed to party leaders August 29, 2021. Mr. Allen also stated that this is the time using paper ballots with cross filed candidates listed. He went on to state that cross filed candidates are only listed one time to prevent overvotes per state law. Mr. Allen then went onto say that the other first is that it will be a 2-sheet ballot for everyone as per the law the judicial retention questions needed to be on a separate sheet. Mr. McBlain stated that keeping consistency makes the changes least confusion and asked if the stacking of candidates top to bottom was approved by the board? Mr. Allen stated that layout is required by Hart Intercivic and that there cannot be double or triple columns as it reads the boxes in one column not like the Danaher system. It was then stated that this is pretty much statewide and goes by party of the Governor (DEM then DEM/REP then REP). Mr. McBlain asked if it was required by party. Mr. Allen stated that per the law with paper ballot and so that each candidate is only listed once. Mr. Lawrence stated they are listed sequentially and explained how the top of the list is decided similar to the way it was prior with the different columns. It was clarified that it was a state law not Hart requirement and Mr. McBlain asked Mr. Molinaro if he or a colleague could send him the section of the act pertaining to this to get him up to speed and Mr. Lawrence stated Mr. Parks can send that to him.

Ballot Printing / Mailing Projected Schedule. Mr. Allen stated the ballot printing and mailing is still projected to occur at the end of September with a one-week turnaround on the first batch of approximately 35,000 Vote By Mail and Absentee ballots. He went onto state at this time, we anticipate those files would go to the printers at the end of Sept. to allow the mail to drop in early October. Mr. Allen informed those present that the 20 military/overseas ballots went out on time Fri., Sept. 17. Mr. McBlain inquired regarding the Permanent Mail In list that he was notified that people found 2 deceased voters on the permanent list. Mr. McBlain asked if there was a fail safe or procedure in place to cross check to see if people have died since the last election. Mr. Allen stated that he and Ms. Winterbottom of Voter Registration spoke about doing something above the actions of the Department of State which works with "ERIC" electronic registered information center which locate duplicates in other jurisdictions and deaths. He went on to state there is a lag in that process. Mr. Allen went on to state that Voter Registration will be looking into working with the Register of Wills for deaths for the last 6 months he went on to state that once their registration is cancelled even if ballot already mailed when ballot is returned it is recognized as cancelled put aside and not counted unless there is proof that the person is still alive and eligible for active registration. Mr. McBlain stated that something needs to be in process and mentioned all the news coverage regarding this matter. Mr. Lawrence was glad Mr. Allen was looking into the matter.

Status of Purchasing: Mailing, Voting Booths. Mr. Allen presented that both the pre-election household mailing bid and the voting booth bid are scheduled to be received and opened later this month for consideration by the County Council and the Board of Elections in early October. Mr. McBlain stated he had not seen the mailing and Mr. Lawrence explained the layout design and information of the double sided carded which was followed up by Mr. Allen. Mr. McBlain asked what happens if these post cards come back undeliverable and Mr. Allen explained why they cannot be changed to inactive until the day after the election however no postcards will be mailed to inactive voters. Mr. McBlain suggested keeping a list and Mr. Allen stated that the mailing is return service. Mr. McBlain asked when these would be mailing out and Mr. Allen stated that with the bids ending and paper suppliers hopefully between October 5-10th.

Status of Voter Service Centers. Mr. Allen stated there was not much new to report. He went on to state there have been meetings with representatives of the City of Chester and Upper Darby Township and next hope to wrap up any agreements to address items such as security, staffing on Saturdays and cleaning services. When asked by Mr. McBlain in regards to the locations of the Upper Darby location Mr. Allen explained the issues with the location in Upper Darby last year and that the change is to a location next to the drop box which used to be a library and that Chester City is still in City Hall possibly in the Community Room.

Other Updates. Mr. Allen stated that Delaware County's election staff is among the very few serving on a select committee to advise the state on using straight-forward language on emails and letters that let voters know about items such as voter-registration deadlines and the opportunity to apply online to vote by mail. We have also worked to greatly simplify the annual letter that may be required to be mailed to voters again next January. Mr. Allen then informed the board that on Friday, he gave a Zoom presentation on election security to the League of Women Voters for Central Delaware County. The League and Mr. Allen covered a wide range of issues including concerns that the office has received emails regarding the subpoenas for the voter's private information.

Complaint: Dual Candidacy (action item). Mr. Allen stated that last week, a complaint was received from a voter in Wallingford Swarthmore School District Region 1, about a candidate who is on the unofficial candidate and listed for two Region 1 school board seats on the ballots this fall. Amy Caruso won a party primary on May 18 to appear on the Nov. 2 ballots in the contest for a 4-year seat in Region 1. Then, this summer, an August 2021 resignation by a Region 1 Board member created a vacancy. That, in turn, created a contest on the ballot for a 2-year seat for Region 1. The Republican Party nominated Amy Caruso to also appear on the ballot as a candidate for the 2-year-seat in Region 1. He went on to state that once the complaint was received it was forwarded to the board and legal counsel to hear and consider the laws and the legal analyses to direct staff on

how to proceed with the nomination for the 2-year seat. Both political parties were advised of this being on the agenda.

Mr. Lawrence asked if anyone was there on behalf of Ms. Caruso or either of the political parties. Mr. Lawrence explained that Mr. Molinaro would give legal analysis, a motion made, time for discussion, public comment then determine if action needs to be taken. Mr. Lawrence then recognized Ms. Caruso. Mr. Molinaro then stated that he is from the Solicitors office and that He was filling in for Manly Parks who is normally the board solicitor. Mr. Molinaro then stated that Mr. Parks, another staffer and himself reviewed this over the weekend and the easiest way to present was to read Mr. Parks findings from the statues and sections of the law and then explain it further. Mr. Molinaro read the following legal analysis from Manly Parks:

Here I have learned that the vacancy is **not** due to death or withdrawal of a prior nominee (which the situation governed by section 979). As such, the section of the Election Code that governs the filling of the vacancy is actually Section 993, which provides as follows:

“Section 993. Filling of Certain Vacancies in Public Office by Means of Nomination Certificates and Nomination Papers.--(a) In all cases where a vacancy shall occur for any cause in an elective public office, including that of judge of a court of record, at a time when such vacancy is required by the provisions of the Constitution or the laws of this Commonwealth to be filled at the ensuing election but at a time when nominations for such office cannot be made under any other provision of this act, nominations to fill such vacancies shall be made by political parties in accordance with party rules relating to the filling of vacancies by means of nomination certificates in the form prescribed in section nine hundred ninety-four of this act, and by political bodies by means of nomination papers in accordance with the provisions of sections nine hundred fifty-one, nine hundred fifty-two and nine hundred fifty-four of this act. No such nomination certificate shall nominate any person who has already been nominated by any other political party or by any political body for the same office unless such person is a candidate for the office of judge of a court of common pleas, the Philadelphia Municipal Court or for the office of school director in districts where that office is elective or for the office of justice of the peace. No such nomination papers shall nominate any person who has already been nominated by any political party or by any other political body for any office to be filled at the ensuing November election, unless such person is a candidate for the office of judge of a court of common pleas, the Philadelphia Municipal Court or for the office of school director in districts where that office is elective or for the office of justice of the peace.”

Section 994 provides:

“Section 994. Number, Form and Requirements of Nomination Certificates to Fill Certain Vacancies.--(a) Each political party shall be entitled to nominate and to file nomination certificates in accordance with the provisions of section nine hundred ninety-three of this act for the purpose of supplying as many candidates as each elector will be entitled to vote for at the ensuing November election. Every nomination certificate for a November election required under the provisions of section nine hundred ninety-three of this act shall be in the form prescribed by the Secretary of the Commonwealth and shall set forth the following:

- (1) The office and district, if any, for which it is filed;
 - (2) The cause of the vacancy;
 - (3) The rule or rules of the political party setting forth the provisions applicable to the nomination of a candidate or candidates to fill said vacancy;
 - (4) That a quorum of the committee, caucus or convention as provided by the party rules duly convened and the names of those present at said meeting or their proxies that said persons are the duly appointed or elected members of said committee, caucus or convention;
 - (5) The name, residence and occupation of the candidate duly nominated at said meeting.
- (b) Every such certificate of nomination shall be signed by the presiding officer and the secretary or secretaries of the committees, caucus or convention and shall be sworn or affirmed to by them before any officer qualified to administer oaths.”

Sections 993 and 994 (somewhat inexplicably) do not include the “same office” limitation found in Section 979. Although there is a prohibition in section 993 against the nomination of a candidate under that section who has been nominated by “any political party or any other political body” for “any office to be filled at the ensuing November election” the plain language of the code clearly carves out elected school directors (the office in question here) from that prohibition.

Although the statutory scheme does not seem to make much sense, as best I can determine the nomination here is permitted (even though it would not have been if it were to fill a vacancy created with death or withdrawal of a candidate). Mr. Molinaro stated that Section 993 is the applicable section. Mr. Molinaro went on to explain same office two different terms. Mr. Lawrence summarized that if Ms. Caruso wins both that would be before the court and it is the solicitors recommendation to deny the complaint that was presented.

Ms. Lunkenheimer moved to deny the complaint that was presented and seconded by Mr. McBlain.

Mr. McBlain stated that hearing the response from the solicitor and agree that even though it mentions same office it is actually a different office. Mr. McBlain went on to explain that it wouldn't in the Anti Poach law and wondered why the board was obtaining this and it was not before the court as any objection to a petition would be typically as normally when filing to run items needed are taken at face value and not looked behind. Mr. McBlain stated he would not want to see the board become the second bite at the apple. Mr. Lawrence stated that is a good question and the solicitor was asked that it is not exactly the same as a petition and it was thought about last week. Mr. Allen agreed with Mr. McBlain and explained the sections and statues a little further.

Christine Reuther, Chair of Nether Providence Democratic committee. Ms. Reuther stated that to some extent she is agnostic about it in agreement with Mr. McBlain in regard to how smart is it to run the same person for both positions. Ms. Reuther stated that a 2 year and 4-year term are different office the candidate cannot hold both seats at the same time. Ms. Reuther gave reasons why someone who won a cross file does not get the benefit as now it would be 3 persons running for 2 seats. Ms. Reuther stated her concerns and also stated that as to why this was not taken to court she was not aware of who was appointed until the Thursday after with no statutory dates and more discussion about when the challenge the appointment. Ms. Reuther went on to discuss that there were 3 special elections (one for each of the region) and that the people did not want the school board appointing the replacements but if Ms. Carusso wins both offices that is putting the school board in the same position. Ms. Reuther stated that it is a strange situation with no statue. Mr. Lawrence stated he recognizes of the consequences but need to follow the law. Ms. Reuther then stated the issues with going to court.

Catherine Celli, 2nd Vice Chair of Darby Township. After listening to the meeting, it appears that the candidate's people have upstaged the system and then gave her reasons for the conclusion. Mr. Lawrence stated that the Republican party which Ms. Celli mentioned did nothing wrong in this case as it is a new office created by a vacancy and no one is switching anyone.

Amy Carusso, Region 1 of Wallingford Swarthmore School District. Ms. Carusso thanked the board for hearing this matter and stated that she is not a lawyer or a politician and is just looking for the best candidate for the Region 1 School Director and she believes that is her.

Barbara Bergerlantz, Person who sent the complaint. Ms. Bergerlantz stated that she sent the complaint as she feels that the board was the right way to go since the board was evaluating the nomination. Ms. Bergerlantz went on to state she feels the board does have discretion as the law does not have precedent and that the board could be that precedent. She went on to state that the situation is 2 bites of the apple and the Republican Party are covering their bets and intentionally put Ms. Carusso in the second spot to ensure she would win at least one. Ms. Bergerlantz is a resident of Region 1 and there are some very serious things the board need to talk about and things the school board need to do Ms. Bergerlantz stated that the board not taking action is disappointing. Ms. Bergerlantz went on to state that the voters deserve candidates in both terms and asked if Ms. Carusso was the only republican in the Region 1 to run?

Carol Miller, Vice Chair Republican Party. Ms. Miller stated that the candidates file a candidate's affidavit and proceeded to read the affidavit as her proof that it is a different office. Ms. Miller then mentioned a similar situation with Mary Gay Scanlon in which Mr. Lawrence stated that it was not the same situation, but it was agreed that was confusing.

Mr. Lawrence stated that it is a complicated situation and explained why he agrees with Ms. Lunkenheimer's motion. Ms. Lunkenheimer stated she understood Ms. Bergerlantz's concerns but agrees with Mr. Lawrence and then addressed Ms. Carusso and stated that it is disappointing as it will cause voter confusion and resource issues if she were to win both offices. However, with the law as it is it prohibits the board from upholding Ms. Bergerlantz's complaint. Mr. McBlain we need to see if the board has the authority to take action and he agrees with the solicitors finding. He went on to state he does not know if politically it is wise to run the same person for both position but some of the issues from the 2020 election and forward were rules changed by

courts etc. on the fly and he is on the board for certainty and the rules are the rules like them or not whether you like the outcome or not and if it causes confusion which may occur. Mr. McBlain stated that he feels that the board cannot and should not take action on this matter. Mr. Lawrence called the question of the motion to deny the complaint passed 3-0.

Campaign Finance Waiver Requests. Ms. Jackson stated that there were 2 petitions to waive the fines for Elysia Mancini Duerr and Township of Lower Chichester Republican Finance Committee. Ms. Jackson stated that Ms. Duerr was unaware of filing requirements for cycle 3 report and the Township of Lower Chichester Republican Finance Committee is having some issues as their Chair is deceased and the treasurer is ill. Mr. Lawrence explained the situation for a 1x waiver practice. Ms. Lunkenheimer moved to waive the fines for Elysia Mancini Duerr and Township of Lower Chichester Republican Finance Committee and seconded by Mr. McBlain. Motion passed 3-0.

Ms. Jackson then presented 3 committees for suspension those being: Rutledge Republican Committee, First Republican Club of Aston Township and Chester City Regular Republican Campaign. Ms. Jackson stated that the Rutledge Republican Committee last filed in 2018, has \$10.93 in the account, the treasurer resigned in early 2019 and the chairpersons mailed has been returned. Next Ms. Jackson stated that First Republican Club of Aston Township last filed in 2018 has a balance of \$7,229.32 and the treasurer resigned in 2016. And lastly the Chester City Regular Republican Campaign last filed 2018 has a balance of \$233.23, the treasurer resigned in 2018 as well as the chairperson resigning. Mr. Lawrence stated that the Aston committee would be tabled until the next meeting and they should be reached out to by some of the board members to find out what is going on as that is quite a lot of money. Ms. Lunkenheimer moved to dissolve the Rutledge Republican Committee and the Chester City Regular Republican Campaign and Mr. McBlain seconded the motion. Motion approved 3-0.

Polling Place Changes. Mr. Allen stated no action is needed as more review needed for proposed polling place changes under the ADA act.

Next meeting date. Mr. Allen proposed the date of October 4, 2021 and listed items that should be discussed at that meeting and all the board members agreed to October 4, 2021 at 9:30am.

There being no further business meeting adjourned.