

Meeting of the Commissioners - Elections
May 26, 2021

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MEETING OF THE COMMISSIONERS

May 26, 2020

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COMMISSIONERS PRESENT:

LISA DEELEY, CHAIRWOMAN

AL SCHMIDT, COMMISSIONER

OMAR SABIR, COMMISSIONER

HELD AT:

City Commissioners Office
240 Spring Garden Street
Philadelphia, PA 19123

REPORTED BY: Patricia Slater

Strehlow & Associates, Inc.

(215)504-4622

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2 PROCEEDINGS

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4 CHAIRWOMAN DEELEY: Good
5 morning.

6 The Elections Board of the
7 May 18, 2021 primary and special
8 election, having reconvened on
9 this day of May 26, 2021, shall
10 continue with the business of
11 canvas and computation.

12 We will begin with public
13 comment.

14 Commenter's shall state
15 where they live or if they are not
16 a resident of Philadelphia, but they are
17 a Philadelphia taxpayer. Public
18 comment is not an opportunity for
19 dialogue or Q and A, it is public
20 comment; a chance for you to tell
21 us what you think. Each speaker
22 shall have two minutes. However,
23 I may extend this time at my
24 discretion.

1 All public comments must be
2 relevant or germane to Board
3 business. Finally, it is my
4 responsibility to preserve the
5 order and decorum of these
6 meetings; as such, profane,
7 slanderous, discriminatory, or
8 personal attacks will not be
9 tolerated.

10 Anyone wishing to offer
11 public comment at this time,
12 please step forward.

13 MR. GERELLA: Good morning,
14 Commissioners.

15 My name is Rich Gerella.
16 I'm a resident of Philadelphia and
17 a member of Protect our Vote
18 Philly.

19 I just want to be brief
20 here, we continue to be absolutely
21 confounded by the decision of this
22 Board and it's members not to mark
23 duplicated ballots, and not to
24 label them with the word

1 "duplicate." It's very clear in
2 the Election Code that they should
3 be, and it might seem like a minor
4 thing, but it's straight out in
5 the Election Code that duplicated
6 ballots have to be marked, quote,
7 duplicate, unquote. It would be
8 easy to do, and it's a real
9 mystery to us why this Board would
10 decide not to do something that's
11 plainly required by Election Code.

12 I think it speaks to perhaps
13 an underlying problem or perhaps
14 the Board thinks that the
15 legislature's intent in writing
16 the Election Code is made up of
17 things which are optional, they're
18 not. It's required by Election
19 Code. Every duplicated ballot
20 shall be labeled with the word
21 duplicate. Why that happened,
22 it's a mystery.

23 Thank you.

24 CHAIRWOMAN DEELEY: Is there

1 anyone else here for public
2 comment?

3 (No response.)

4 CHAIRWOMAN DEELEY: Hearing
5 none.

6 We will here from a report
7 from the Secretary, Commissioner
8 saber, regarding e-mailed public
9 comments.

10 COMMISSIONER SABIR: Good
11 morning.

12 There were no public
13 comments e-mailed by 9:45.

14 CHAIRWOMAN DEELEY: Thank
15 you.

16 We will now proceed -- is
17 there any other old business?

18 (No response.)

19 CHAIRWOMAN DEELEY: Hearing
20 none.

21 We will proceed to new
22 business with the presentation to
23 the return board, Mr. Garrett
24 Dietz.

1 MR. DIETZ: Good morning,
2 Commissioners.

3 We have a few categories of
4 ballots for your consideration.

5 Category 1, we have ballots
6 where the declaration envelope was
7 blank, meaning that it does not
8 have the signature of the voter or
9 a date present. And there are 146
10 ballots in this category.

11 CHAIRWOMAN DEELEY: I vote
12 to not count.

13 COMMISSIONER SCHMIDT: I
14 vote to not count.

15 COMMISSIONER SABIR: I vote
16 to not count.

17 CHAIRWOMAN DEELEY: Proceed.

18 MR. DIETZ: Category Number
19 2, this is a category where the
20 declaration ballot is missing the
21 signature of the voter, but the
22 date is present and there are 15
23 ballots in this category.

24 CHAIRWOMAN DEELEY: I vote

1 to not count.

2 COMMISSIONER SCHMIDT: I

3 vote to not count.

4 COMMISSIONER SABIR: I vote

5 to not count.

6 CHAIRWOMAN DEELEY: Proceed.

7 MR. DIETZ: Category number

8 3, the voter affixed their

9 signature on the declaration

10 envelop, but the declaration is

11 missing the date of...

12 CHAIRWOMAN DEELEY: Garrett,

13 I have a few questions regarding

14 that.

15 Is there any reason to

16 believe that anyone other than the

17 voters listed on the declaration

18 envelope voted those ballots?

19 MR. DIETZ: There's no

20 reason to believe that.

21 CHAIRWOMAN DEELEY: Has

22 there been any fraud or

23 irregularity being alleged?

24 MR. DIETZ: There is none.

1 CHAIRWOMAN DEELEY: Are all
2 of these voters registered and
3 eligible to vote?

4 MR. DIETZ: Yes.

5 CHAIRWOMAN DEELEY: So the
6 voter only failed to add the date?

7 MR DIETZ: Correct.

8 CHAIRWOMAN DEELEY: And
9 these ballots were received by
10 election day at 8 p.m.?

11 MR. DIETZ: Yes, they were.

12 MR. DIETZ: When were
13 ballots first made available?

14 MR. DIETZ: April 19th.

15 CHAIRWOMAN DEELEY: Are
16 there correspondence codes for all
17 the ballots from the 2021 primary?

18 MR. DIETZ: Yes, there are.

19 CHAIRWOMAN DEELEY: And are
20 all the declaration envelopes in
21 the style that we had only used
22 for the 2021 primary?

23 MR. DIETZ: Yes, that's
24 correct.

1 CHAIRWOMAN DEELEY: So these
2 ballots could have only be signed
3 between April 19, 2021 and May 18,
4 2021, correct?

5 MR. DIETZ: Correct.

6 CHAIRWOMAN DEELEY: For me,
7 this is an issue of enfranchising
8 verse disenfranchising. Failure
9 to add to a date is a minor
10 technicality, otherwise the voter
11 did everything right. Nobody is
12 alleging fraud. The Supreme Court
13 has stated over and over and
14 upheld the principal that the
15 Election Code must be liberally
16 construed as to not deprive the
17 voter of their right to elect a
18 candidate of their choice.

19 We voted to count these last
20 November and the Supreme Court
21 upheld that decision. Justice
22 Donohue stated, "That while
23 failures to include a handwritten
24 name, address or date in the voter

1 declaration on the back of the
2 outer envelope, while constituting
3 technical violations of the
4 Election Code do not warrant the
5 wholesome disenfranchisement of
6 thousands of Pennsylvania voters.
7 As we acknowledged in Shambach,
8 "Ballots containing mere minor
9 irregularities should only be
10 stricken for compelling reasons."
11 I agree with this assessment.

12 As the results of the votes
13 from this Broad, the Department of
14 State redesigned the declaration
15 envelopes to eliminate most of
16 those requirements enfranchising
17 voters from all around
18 Pennsylvania. Yet, because of one
19 Justice's opinion, the date is
20 still on the envelope.

21 I believe the same way I
22 believed in November that we
23 should not punish these voters who
24 did everything else right, from

1 having their votes counted due to
2 a minor technicality.

3 Furthermore, since the Supreme
4 Court allowed these to count in
5 November, we should stay
6 consistent so as to not confuse
7 the voters. I will also note,
8 that the voters clearly are
9 confused by this requirement as
10 this is the largest category of
11 ballots coming before us today.

12 Therefore, my vote is that
13 we count these ballots.

14 COMMISSIONER SCHMIDT:

15 Because I believe the law is clear
16 that unfortunately a date is
17 required, which is also the reason
18 why the Department of State kept
19 the date on the declaration
20 envelope to begin with,
21 unfortunately I vote to not count
22 these ballots.

23 COMMISSIONER SABIR: Just

24 for clarity, um, the signatures --

1 are part of the envelope. Is that
2 right?

3 MR. DIETZ: For Category 3,
4 yes.

5 COMMISSIONER SABIR: I vote
6 to count.

7 CHAIRWOMAN DEELEY: Those
8 ballots will count?

9 MR. DIETZ: Right. And
10 there were 1,319 ballots counted.

11 CHAIRWOMAN DEELEY: Thank
12 you.

13 MR. DIETZ: The next
14 Category, Category Number 4, these
15 are ballots that are were not
16 enclosed in a secrecy envelope.
17 There are 493,000 ballots in this
18 category.

19 CHAIRWOMAN DEELEY: So --
20 I'm sorry, again, Garret I have a
21 couple questions.

22 So the voter only failed to
23 put the ballot in the secrecy
24 envelope?

1 MR. DIETZ: Correct.

2 CHAIRWOMAN DEELEY: Were
3 secrecy envelopes sent with every
4 ballot?

5 MR. DIETZ: They were.

6 CHAIRWOMAN DEELEY: Has
7 there been any fraud or
8 irregularity being alleged?

9 MR. DIETZ: No.

10 CHAIRWOMAN DEELEY: Is there
11 any reason to believe that anyone
12 other than the voter listen on the
13 declaration enveloped voted on
14 these ballots?

15 MR. DIETZ: No.

16 CHAIRWOMAN DEELEY: Has
17 there -- are all these voters
18 registered and eligible to vote?

19 MR. DIETZ: Yes, they are.

20 CHAIRWOMAN DEELEY: Well, I
21 will say this going to be a really
22 tough vote for me.

23 I was the one who raised
24 this issue before last year's

1 election. Since then, there was a
2 massive voter education effort and
3 there has been a significant lower
4 number of naked ballots.

5 In November, I voted to
6 count the naked ballots, but I was
7 unable to get any of my colleagues
8 to join me. But since then, in
9 that same case that dealt with the
10 ballots that we voted to count in
11 November, the Supreme Court, again
12 opinioned that the secrecy
13 envelope is a mandatory
14 requirement. Maybe if we had
15 counted the naked ballots in
16 November, the Court would have
17 given it more consideration. The
18 naked ballot issue is different
19 than the date issue where the
20 Supreme Court split on whether the
21 absence of the date should
22 invalidate a ballot post November
23 2020.

24 In two very recent

1 decisions, the Supreme Court
2 stated that the secrecy envelope
3 is a mandatory requirement,
4 therefore it is unlikely that a
5 vote to count would be upheld on
6 appeal.

7 I still believe that the
8 secrecy envelope is a vestige of
9 the past and unnecessary. If the
10 goal is to keep a voter's vote
11 secrete, we provide the envelope
12 with every ballot. By not putting
13 the ballot in the secrecy envelop,
14 either by accident or intentional,
15 they are giving up their right to
16 secrecy but they should not being
17 giving up their right to vote. We
18 do not cancel the ballots of
19 people who give up their right to
20 secrecy by posting pictures of
21 their ballots on Facebook, and we
22 shouldn't be here.

23 In addition, it makes the
24 time to open and process these

1 ballots take longer and without
2 pre-canvassing we need all the
3 time that we can get.

4 In fact, the issue that we
5 had last Tuesday with the
6 extractors only effected the
7 secrecy envelopes, they opened the
8 outer declaration envelope without
9 issue. If we did not have a
10 secrecy envelope, then those
11 40,000 ballots would have been up
12 on the website at 8 p.m.

13 Until the Legislature or the
14 Court changes this requirement,
15 voters will continue to be
16 disenfranchised. But as I stated
17 earlier, my hands are tied by not
18 one but two recent Supreme Court
19 decisions.

20 I regrettably vote to not
21 count these ballots.

22 COMMISSIONER SCHMIDT:
23 Because the law was clear
24 unfortunately last year, and the

1 Supreme Court was here last year
2 and since then that ballots not
3 enclosed in a secrecy envelope
4 can't count. I testified in front
5 of the House and Senate on this
6 very issue suggesting the law be
7 changed, but it hasn't. So I,
8 again, regrettably vote to not
9 count these ballots.

10 COMMISSIONER SABIR: I vote
11 no.

12 CHAIRWOMAN DEELEY: These
13 ballots not be counted.

14 Proceed.

15 MR. DIETZ: Category Number
16 5, this is where the marker of the
17 voter is on the right side of the
18 declaration envelope. This where
19 a voter would put their mark if
20 they were unable to sign the
21 declaration envelope, but in this
22 category, they're missing the
23 signature of a witness.

24 There are 4 ballots in this

1 category.

2 CHAIRWOMAN DEELEY: Do you
3 have these ballots with you?

4 MR. DIETZ: Not with me, no.

5 CHAIRWOMAN DEELEY: Is it an
6 "X" or an actual signature?

7 MR. DIETZ: No. There all
8 four with an X.

9 CHAIRWOMAN DEELEY: And on
10 their Sure Record is their
11 signature an "X"?

12 MR. DIETZ: Their signature
13 is not an "X".

14 CHAIRWOMAN DEELEY: I vote
15 to not count.

16 COMMISSIONER SCHMIDT: I
17 vote to not count.

18 COMMISSIONER SABIR: I vote
19 to not count.

20 CHAIRWOMAN DEELEY: Proceed.

21 MR. DIETZ: Category Number
22 6, this is a category where the
23 voter when applying for an
24 absentee or mail-in ballot, their

1 form of identification, which is
2 the last four of their Social, a
3 PA drivers license, or
4 identification card number, the
5 voter responded to a letter that
6 we sent to all voters that failed
7 this identification check.

8 Unfortunately, their ID was still
9 not able to be cured based on the
10 information they gave us, and
11 neither their Social Security
12 number or their driver's license
13 number was present on their Sure
14 Record, so there is nothing that
15 we could verify against manually.

16 CHAIRWOMAN DEELEY: But each
17 of these voters received a letter
18 from was that indicated there was
19 this issue, and they responded to
20 us?

21 MR. DIETZ: Correct.

22 CHAIRWOMAN DEELEY: I vote
23 to count.

24 COMMISSIONER SCHMIDT: I

1 vote to count.

2 COMMISSIONER SABIR: I vote
3 to count.

4 CHAIRWOMAN DEELEY: Proceed.

5 MR. DIETZ: Category Number
6 7 is similar. Also there
7 verification failed when they
8 applied. They responded to the
9 letter, and the verification --
10 the ID that they responded with
11 wasn't what was on file. For
12 example, they may have responded
13 with the last four of their Social
14 but only there drivers license was
15 on their Sure Record or vice
16 versa.

17 CHAIRWOMAN DEELEY: But
18 these voters also received a
19 letter from us through the mail
20 and responded to said letter?

21 MR. DIETZ: Correct.

22 CHAIRWOMAN DEELEY: I vote
23 to count.

24 COMMISSIONER SCHMIDT: I

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1 VOTE to COUNT.

2 COMMISSIONER SABIR: I vote
3 to count.

4 MR. DIETZ: And that's it
5 for me.

6 CHAIRWOMAN DEELEY: Thank
7 you.

8 Is there anymore new
9 business?

10 (All respond no.)

11 CHAIRWOMAN DEELEY: Thank
12 you.

13 This meeting is adjourned --
14 I'm sorry, no adjourned.

15 Thank yo. Have a good day.

16 (Whereupon, the meeting
17 concluded at or about 11:24 a.m.)

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CERTIFICATE

I, hereby certify that the
proceedings is a true record of the
testimony given by the witness.

Court Reporter - Notary Public

(The foregoing certification
of this transcript does not apply
to any reproduction of the same by
any means, unless under the direct
control and/or supervision of the
certifying reporter.)

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A a.m 21:17 able 19:9 absence 14:21 absentee 18:24 absolutely 3:20 accident 15:14 acknowledged... 10:7 actual 18:6 add 8:6 9:9 addition 15:23 address 9:24 adjourned 21:13,14 affixed 7:8 agree 10:11 AL 1:8 alleged 7:23 13:8 alleging 9:12 allowed 11:4 and/or 22:18 anymore 21:8 appeal 15:6 applied 20:8 apply 22:15 applying 18:23 April 8:14 9:3 assessment 10:11 Associates 1:23 attacks 3:8 available 8:13 <hr/> B back 10:1 ballot 4:19 6:20 12:23 13:4 14:18 14:22 15:12 15:13 18:24 ballots 3:23 4:6 6:4,5,10	6:23 7:18 8:9,13,17 9:2 10:8 11:11,13,22 12:8,10,15 12:17 13:14 14:4,6,10 14:15 15:18 15:21 16:1 16:11,21 17:2,9,13 17:24 18:3 based 19:9 believe 7:16 10:21 11:15 13:11 15:7 believed 10:22 belive 7:20 blank 6:7 board 2:6 3:2 3:22 4:9,14 5:23 brief 3:19 Broad 10:13 business 2:10 3:3 5:17,22 21:9 <hr/> C cancel 15:18 candidate 9:18 canvas 2:11 card 19:4 case 14:9 categories 6:3 category 6:5 6:10,18,19 6:23 7:7 11:10 12:3 12:14,14,18 17:15,22 18:1,21,22 20:5 CERTIFIC... 22:3 certification 22:14 certify 22:6 certifying 22:19 CHAIRW...	1:7 2:4 4:24 5:4,14 5:19 6:11 6:17,24 7:6 7:12,21 8:1 8:5,8,15,19 9:1,6 12:7 12:11,19 13:2,6,10 13:16,20 17:12 18:2 18:5,9,14 18:20 19:16 19:22 20:4 20:17,22 21:6,11 chance 2:20 changed 17:7 changes 16:14 check 19:7 choice 9:18 City 1:15 clarity 11:24 clear 4:1 11:15 16:23 clearly 11:8 Code 4:2,5 4:11,16,19 9:15 10:4 codes 8:16 colleagues 14:7 coming 11:11 comment 2:13,18,20 3:11 5:2 Commente... 2:14 comments 3:1 5:9,13 Commissio... 1:8,9 5:7,10 6:13,15 7:2 7:4 11:14 11:23 12:5 16:22 17:10 18:16,18 19:24 20:2 20:24 21:2 Commissio... 1:1,6,15 3:14 6:2 compelling	10:10 computation 2:11 concluded 21:17 confounded 3:21 confuse 11:6 confused 11:9 considerati... 6:4 14:17 consistent 11:6 constituting 10:2 construed 9:16 containing 10:8 continue 2:10 3:20 16:15 control 22:18 correct 8:7 8:24 9:4,5 13:1 19:21 20:21 correspond... 8:16 count 6:12,14 6:16 7:1,3,5 9:19 11:4 11:13,21 12:6,8 14:6 14:10 15:5 16:21 17:4 17:9 18:15 18:17,19 19:23 20:1 20:3,23 21:1,3 counted 11:1 12:10 14:15 17:13 couple 12:21 Court 9:12 9:20 11:4 14:11,16,20 15:1 16:14 16:18 17:1 22:11 cured 19:9 <hr/> D	date 6:9,22 7:11 8:6 9:9,24 10:19 11:16 11:19 14:19 14:21 day 2:9 8:10 21:15 dealt 14:9 decide 4:10 decision 3:21 9:21 decisions 15:1 16:19 declaration 6:6,20 7:9 7:10,17 8:20 10:1 10:14 11:19 13:13 16:8 17:18,21 decorum 3:5 DEELEY 1:7 2:4 4:24 5:4,14,19 6:11,17,24 7:6,12,21 8:1,5,8,15 8:19 9:1,6 12:7,11,19 13:2,6,10 13:16,20 17:12 18:2 18:5,9,14 18:20 19:16 19:22 20:4 20:17,22 21:6,11 Department 10:13 11:18 deprive 9:16 dialogue 2:19 Dietz 5:24 6:1,18 7:7 7:19,24 8:4 8:7,11,12 8:14,18,23 9:5 12:3,9 12:13 13:1 13:5,9,15 13:19 17:15 18:4,7,12 18:21 19:21 20:5,21	21:4 different 14:18 direct 22:17 discretion 2:24 discriminat... 3:7 disenfranc... 16:16 disenfranc... 10:5 disenfranc... 9:8 Donohue 9:22 driver's 19:12 drivers 19:3 20:14 due 11:1 duplicate 4:1 4:7,21 duplicated 3:23 4:5,19 <hr/> E e-mailed 5:8 5:13 earlier 16:17 easy 4:8 education 14:2 effected 16:6 effort 14:2 either 15:14 elect 9:17 election 2:8 4:2,5,11,16 4:18 8:10 9:15 10:4 14:1 Elections 2:6 eligible 8:3 13:18 eliminate 10:15 enclosed 12:16 17:3 enfranchisi... 9:7 10:16 envelop 7:10 15:13 envelope 6:6	7:18 10:2 10:20 11:20 12:1,16,24 14:13 15:2 15:8,11 16:8,10 17:3,18,21 enveloped 13:13 envelopes 8:20 10:15 13:3 16:7 example 20:12 extend 2:23 extractors 16:6 <hr/> F Facebook 15:21 fact 16:4 failed 8:6 12:22 19:6 20:7 Failure 9:8 failures 9:23 file 20:11 Finally 3:3 first 8:13 foregoing 22:14 form 19:1 forward 3:12 four 18:8 19:2 20:13 fraud 7:22 9:12 13:7 front 17:4 Furthermore 11:3 <hr/> G Garden 1:16 Garret 12:20 Garrett 5:23 7:12 Gerella 3:13 3:15 germane 3:2 give 15:19 given 14:17 22:8 giving 15:15	15:17 goal 15:10 going 13:21 good 2:4 3:13 5:10 6:1 21:15 <hr/> H hands 16:17 handwritten 9:23 happened 4:21 Hearing 5:4 5:19 HELD 1:14 House 17:5 <hr/> I ID 19:8 20:10 identification 19:1,4,7 include 9:23 indicated 19:18 information 19:10 intent 4:15 intentional 15:14 invalidate 14:22 irregularities 10:9 irregularity 7:23 13:8 issue 9:7 13:24 14:18 14:19 16:4 16:9 17:6 19:19 <hr/> J join 14:8 Justice 9:21 Justice's 10:19 <hr/> K keep 15:10 kept 11:18 <hr/> L label 3:24
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May 26, 2021

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