

The pre-election meeting of the Erie County Board of Elections was called to order by Board Member William Monaghan on Monday, November 1<sup>st</sup>, 2021 at 4:07 p.m.

<b>Roll Call:</b>	<b>(D) Thomas M. Ferrell, Chairman</b>	<b>Present via phone (did not make any motions, second any motions, or vote on any motions)</b>
	<b>(D) William J. Monaghan, Member</b>	<b>Present</b>
	<b>(R) Nicholas J. Smith, Member</b>	<b>Present</b>
	<b>(R) Jeffrey N. Krabill, Member</b>	<b>Present</b>

**Guests in attendance: Sue Brown and Gery Gross from Prosecutor's Office and Amy Grubbe**

**Motion to approve the minutes from the October 22<sup>nd</sup> meeting was made by Mr. Krabill, seconded by Mr. Smith. Motion carried.**

**Adrienne James, Deputy Director, stated that the board would need to review overvoted ballots. Some were true over-votes, while others simply needed to be re-made due to tears or timing marks. She stated that she and Director Lori Salyers already re-made the ballots how they anticipated the board would vote. The board took a few minutes to review the ballots.**

**Motion to accept the first three ballots as staff re-made them was made by Mr. Smith, seconded by Mr. Krabill. Motion carried.**

**Motion to accept the next ballot as staff re-made it was made by Mr. Monaghan, seconded by Mr. Krabill. Motion carried.**

**Motion to accept the next ballot as staff re-made it was made by Mr. Monaghan, seconded by Mr. Smith. Motion carried.**

**The last four ballots were not true over-votes; rather, they had to be re-made due to tears or timing marks. The board took a few minutes to review these ballots. Motion to accept these ballots as staff re-made them was made by Mr. Smith, seconded by Mr. Monaghan. Motion carried.**

**Next, Ms. Salyers stated that an individual came in to vote during early voting, and we had him registered in Vermilion City, in the precinct Vermilion 2-B. However, he stated that he lives in Vermilion Township. Ms. Salyers looked up his address on the auditor's website, and discovered that he indeed lives in Vermilion Township, specifically in the precinct Vermilion Township #1. Ms. Salyers showed the board members what she found on the auditor's website, and asked the board members if it was okay to change this voter's address in our voter registration system from Vermilion 2-B to Vermilion Township #1. The board took a few minutes to review the paperwork Ms. Salyers presented. Motion to make the change was made by Mr. Krabill, seconded by Mr. Smith. Motion carried.**

**Motion to take a five-minute recess was made by Mr. Monaghan, seconded by Mr. Smith. Motion carried. Board recessed at 4:26 p.m.**

**Motion to return to regular session was made by Mr. Krabill, seconded by Mr. Smith. Motion carried. Board returned to regular session at 4:39 p.m. to discuss the issue of a voter with covid. Mr. Monaghan stated he heard from the newspaper that someone was denied their right to vote today because of covid. Ms. Salyers stated that was not true. Mr. Gross stated that the voter in question did vote.**

Ms. Salyers then further explained the situation. She stated that she received a phone call today from a voter with covid who wanted to vote. Ms. Salyers contacted Jeff Hobday of the SOS legal department and told him her concerns. Mr. Hobday instructed Ms. Salyers to contact the county prosecutor and the county health department, so she did. When Ms. Salyers spoke to the voter again, she told the voter what both Gery Gross of the Prosecutor's Office and Pete Schade of the Health Department said, and referred her to both of them. The voter asked Ms. Salyers "Are you denying me my right to vote?" Ms. Salyers' response was "Absolutely not." Ms. Salyers stated that the voter came, she voted curbside, and she left.

Mr. Gross stated that the voter in question called him today and he spoke with her. He stated it came down to a disagreement on interpreting the phrase "physically unable to enter the polling location." Mr. Gross then quoted O.R.C. 3501.29, which states, "The board of elections shall permit any handicapped elector who travels to that elector's polling place, but who is unable to enter the polling place, to vote, with the assistance of two polling place officials of major political parties, in the vehicle that conveyed that elector to the polling place, or to receive and cast that elector's ballot at the door of the polling place." Mr. Gross further explained that the ORC defines handicapped as "having lost the use of one or both legs, one or both arms, or any combination thereof, or being blind or so severely disabled as to be unable to move about without the aid of crutches or a wheelchair."

Mr. Gross stated he doesn't think being covid positive fits in the definition as provided in the ORC. He then reviewed the process of curbside voting as outlined in the current directive. He stated that in last year's directive, which was limited to the 2020 primary and 2020 general, there was language referencing doing curbside voting due to covid. However, the SOS did not include this language in the current directive. Mr. Gross stated that some people might argue that if they have covid, then they are physically unable. Mr. Gross stated he thinks that's a stretch. He also stated that there is zero case law on this issue.

Mr. Gross then stated that the other factor is there is no pre-voting test of any kind. We cannot ask if people are sick, or if they are vaccinated. The only reason we would know anything about someone's covid status is if they volunteer it, which they're not required to do.

Mr. Gross then stated that he spoke with Jeff Hobday at the SOS. Mr. Hobday generally agrees that you either read this strictly as physically unable to enter like the ORC says, or anybody who drives up and wants to vote curbside, votes curbside, because we can't ask them questions. Mr. Krabill stated he thinks curbside voting was intended to be the exception, not the rule.

Mr. Gross stated he thinks the SOS office probably thought covid was not that big of an issue this year, so they didn't address it. In interpreting statutes, if something was in the law, but the new version of the law doesn't have it in there anymore, then they did that on purpose. Ms. Brown added that the directives with the broader language expired when the state's emergency health status expired.

Mr. Krabill asked what takes precedence: a quarantine order by the Department of Health, or the constitutional right to vote. Mr. Krabill noted that he is not a lawyer, but he thinks it would be the constitutional right to vote. Mr. Gross then read the definition of quarantine according to ORC 3701.13. "Quarantine means the separation or restriction of movement of one more individuals who have come into direct contact with someone who has been medically diagnosed with a communicable or contagious disease." Mr. Gross noted it doesn't say you're never allowed to go anywhere.

Mr. Gross then stated that in speaking with Columbus, they had one possible recommendation. If somebody does call and says they need to vote curbside, an allowable question would be, "Are you unable to physically enter the polling location?" If we ask them that, and they say yes, then we curbside vote them. Mr. Gross iterated that we are not allowed to ask why they are physically unable; we just take them at their word. Then, in the process of curbside voting, the poll workers would take appropriate precautions, such as wearing p.p.e. and disinfecting.

Mr. Krabill stated he's glad we are having this conversation now, because it's not out of the realm of possibility that this situation comes up tomorrow. Mr. Smith asked if the voter with covid voted today, and Ms. Salyers and Mr. Gross both stated yes. Mr. Gross also stated that if a voter answers "no" to the physically unable question, then they would not curbside vote, unless the voter in question says, "Oh, you've taken away my right to vote." Mr. Gross stated that we should keep track of the people who say that, because we may be hearing from them again. Mr. Gross also stated that in his phone conversation with the voter with covid today, the voter suggested we keep track of all the people we're not letting vote. Mr. Gross' response was, "We're not letting people not vote, including you."

Mr. Krabill suggested letting the poll workers know about the "physically unable" question they are to ask people who want to vote curbside. Ms. Salyers stated that we would call all the VLMs tonight and let them know. Mr. Gross suggested emailing it to them as well.

Ms. Grubbe then stated she had a few comments. She stated she wants to make sure that everyone understands that no matter what the situation, if a voter says they cannot physically come in, even if it is due to covid, then they are permitted to vote curbside. Ms. Grubbe asked, "Is that what I'm hearing from you, Gery?" Mr. Gross replied yes.

Ms. Grubbe then referenced ORC 3501.29, which states, "At any polling place that is exempted from compliance by the secretary of state, the board of elections shall permit any handicapped elector who travels to that elector's polling place, but who is unable to enter the polling place, to vote, with the assistance of two polling place officials of major political parties, in the vehicle that conveyed that elector to the polling place, or to receive and cast that elector's ballot at the door of the polling place." Mr. Gross replied that he is not aware of any polling places in Erie County that are exempted. We're just going to assume that in all polling locations, we have the same policy. Ms. Grubbe then stated, "I appreciate all the time and effort that went into this."

Motion to recess until 7 p.m. tomorrow was made by Mr. Krabill, seconded by Mr. Smith. Motion carried. Board recessed at 5:10 p.m.

On Tuesday, November 2<sup>nd</sup>, motion to come out of recess and return to regular session was made by Mr. Krabill, seconded by Mr. Smith. Motion carried. Board resumed regular session at 7:04 p.m.

Ms. Salyers stated that she and Ms. James remade two ballots. One was an over-vote, but the voter crossed off the extra name and put their initials next to it. The other ballot had to be remade due to a tear. The board members took a few moments to review these ballots. Motion to accept the ballots as staff re-made them was made by Mr. Krabill, seconded by Mr. Smith. Motion carried.

Mr. Monaghan asked if there was anything else. Ms. Salyers stated she wanted to discuss the issue of poll worker pay for individuals, but she wasn't sure if this should happen in open session.

Motion to go into executive session to discuss poll worker personnel was made by Mr. Monaghan, seconded by Mr. Smith. A roll call vote was taken.

Mr. Monaghan- yes

Mr. Krabill- yes

Mr. Smith- yes

**Motion carried. Board went into executive session at 7:06 p.m.**

**Motion to return to regular session was made by Mr. Krabill, seconded by Mr. Smith. Motion carried. Board returned to regular session at 7:22 p.m. Ms. Salyers stated that at 7:30 p.m., she and Ms. James would check the dropbox.**

**Motion to recess was made by Mr. Krabill, seconded by Mr. Smith. Motion carried. Board recessed at 7:22 p.m.**

**Once the polls closed at 7:30 p.m., Ms. Salyers and Ms. James tabulated and uploaded the absentee results. As the sticks came back from the polling locations, they tabulated and uploaded the election night results.**

**Motion to leave recess and return to regular session was made by Mr. Krabill, seconded by Mr. Smith. Motion carried. Board resumed regular session at 10:17 p.m.**

**Motion to sign the unofficial results page and then adjourn the meeting was made by Mr. Smith, seconded by Mr. Krabill. Motion carried. The board members signed the results and adjourned at 10:18 p.m.**

**Lori J. Salyers, Director**

**Attest:**

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**Thomas M. Ferrell, Chairman**