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To: The Berks County Board of Commissioners
From: Brian H Leinhauser, Esquire
Date: August 3, 2022
Re: EXTERNAL Report of Top to Bottom Review of the Berks County Primary Election
Held May 17, 2022

I. INTRODUCTION

This Report summarizes a top to bottom review of the primary election held May 17, 2022 in the County of Berks, Pennsylvania. The review included interviews with employees from Berks County and Election Systems and Software (“ES&S”). The review included analysis of key documents related to the May 17, 2022 election including training materials used for the workers of the voting precincts, updated procedures for the Primary Election, and the Petitions filed and Orders issued to extend the voting hours on Election Day.

The issues experienced during the May 17, 2022 election originated from the electronic signatures of the electors not being uploaded to the Electronic Poll Books (“EPB”). The May 17, 2022 Primary Election was the first time the EPB were utilized County-wide. The electronic signatures, that should have been uploaded, are compared to the signature of the voter when they sign-in to vote. Poll workers are required to compare the signature of the electors to the electronic signature when the electors sign-in on election day. However, since no electronic signatures were uploaded to the EPB, there was nothing for the poll workers to compare the signature of the electors to when the electors sign-in to vote which is required to verify the identity of the voter. This major issue resulted in a chain of other issues experienced on Election Day that included difficulties communicating a change over from the EPB to paper pollbooks, challenges distributing paper pollbooks, difficulties communicating a Court Order extending voting hours was issued, challenges preparing and distributing provisional ballots, and overall difficulties within Berks County Election Services.

II. ANALYSIS OF ISSUES

1. The genesis of the issues experienced during the May 17, 2022 primary election in Berks County was the electronic voter signatures were not uploaded to the EPB prior to Election Day.

The process of collecting the data of the electors and loading the data onto an EPB involves pulling the voter data from the Pennsylvania Statewide Uniform Registry of Electors (“SURE”) system, formatting it and loading it onto a secure portal (“SFT”) to be downloaded by the County. The election day data that is to be uploaded onto the EPBs is provided to the County by ES&S via their SFT site. The data set is comprised of five (5) files in total that the County must download from ES&S’s secure site. It was the County’s responsibility to download the data

and then drop the data onto USB sticks to be loaded onto the EPB for Election Day. The County was provided with training and instruction on downloading the Election Day data and loading it onto the USBs.

According to ES&S, all the downloads are documented, and the final data was downloaded by the County on May 11, 2022, at 2:33 p.m. Eastern Standard Time. The signature files were included in the data that was downloaded. However, ES&S determined the signatures were missing from all EPBs because ES&S accessed the USBs and saw it only contained four (4) of the five (5) files—the signature file that was needed for signatures to be displayed was missing. ES&S further provided that all 202 precincts had the exact same issue on Election Day. The EPB will function without the signature file loaded but it will display a no signature image.

Typically, and according to ES&S, the ownership of the data falls on the county running the election. ES&S has some ownership in the process to make sure the data is converted properly and provided in a secure manner, but when the data is converted and sent back to the customer, it is the customer's responsibility to ensure the data is correct and complete. According to ES&S, three (3) other Pennsylvania counties utilizing EPB did not report any issues on Election Day. ES&S did not perform an investigation as to why Berks County had a problem because it was obvious the issue in Berks County was the signature files, that should have been included with the poll data files, were not included.

1.a. Prior to Election Day, training provided on the EPB referenced voter signature comparison but indicates there was reliance on prior success with the EPB.

Prior to the election on May 17, 2022, the County provided training on the EPB. Training sessions occurred in April and May of 2022 for poll workers to include Judges of Elections and inspectors. Registrars were required to attend the training class so that they could answer questions regarding the EPB on the phones. Training was provided by County and ES&S employees and the materials covered in each of the trainings was the same during each session. Poll workers were aware they needed to compare signatures and this issue was also covered in the administrative training session. The training did involve some opportunity to work hands on with an EPB. During training, when the topic of file transfer from the USB to the EPBs was touched upon, ES&S was informed that the County had done the transfer before, successfully, and they knew where to find the files.

1.b. Testing of the EPB prior to Election Day, Berks County personnel were not continuously present which likely resulted in County personnel not becoming aware that the electronic signatures were not uploaded.

Prior to Election Day, Berks County's EPB are subjected to Logic and Accuracy ("L&A") testing under the Pennsylvania Election Code. The purpose of L&A testing is to ensure the EPB are loaded with the proper data and to make sure it is working properly prior to distribution to the voting precincts. Here, the L&A testing started at approximately 2:30 p.m. on Wednesday, May 11, 2022 when ES&S received the database from the County via a USB data stick. Once the data is received, it is loaded onto each EPB. After the data is loaded, and ES&S

verifies that it is the correct name of the election, it is saved to the EPB and the EPB is shut down to make sure the EPB retains the information. ES&S then restarts the EPB and verifies the correct name for the election, the correct date, and that the EPB is operating on the correct version of software. Next, ES&S launches the EPB and selects the correct polling location and saves it. After that, ES&S tests to make sure that the EPB will operate correctly to include launching the EPB and searching for a voter by using the scanner and manual search functions. Next, ES&S goes through the whole process that the poll worker would go through on Election Day. The L&A testing in this case was complete on Friday, May 13, 2022.

As the L&A testing was conducted, the voters' signatures were not uploaded into the EPB because the signature file was not downloaded by the County on the USB data stick. As ES&S was performing the L&A testing, ES&S personnel assigned to conduct the L&A testing were not aware, nor were they advised, that Pennsylvania's Election Code requires poll workers to verify the signature of voters during the check-in process and that Pennsylvania required the electronic signatures to be uploaded into the EPB.

While some key County personnel were present for the first day of L&A testing, County personnel were not present for the entirety of the testing. During the L&A testing, the presence of County personnel is needed to validate and ensure compliance with all the nuances of the County's voting procedures. The County does not have documentation to demonstrate that someone from the County was present during the entirety of the L&A testing. ES&S's goal is to tell the County how the product works, provide guidance as to best practices, but in terms of verifying the exact test for the exact workflow, it is typically done by the client due to the nuances of each County. If L&A testing was done correctly, the error with the signatures should have been discovered during that process. The responsibility to identify missing data falls on both sides, but if the County had been more actively involved in the L&A testing, they would have been able to resolve the issue as it was clear that the signatures are missing

2. It was discovered on Election Day that the elector electronic voter signatures were not uploaded to the EPB.

Early on Election Day, it was noticed by personnel from Berks County Election Services ("Election Services"), who were visiting the polling precincts to assist with other technical issues, that the voter signatures were missing from the EPB. It was also reported by a poll worker or Judge of Elections to Election Services that the EPB were missing the signatures of the electors. While there are indications that some of the voting precincts were able to use the EPB, it was later learned that the EPB at all precincts lacked electronic signature verification. Once it was reported that the signatures of electors were not being verified, the Election Board agreed to discontinue use of the EPB and deploy paper pollbook back-ups. The decision to pull EPB and deploy paper pollbooks was made between 8:00 a.m. and 8:30 a.m. on Election Day.

2.a. Subsequent to the realization that the elector signatures were not uploaded to the EPB, the County experienced communication challenges notifying the 202 precincts of the switch from EPB to the paper pollbooks.

After the decision was made to use paper pollbooks, County personnel started calling the Judges of Elections at each precinct to let them know the paper pollbooks were being deployed. All precincts are assigned a County-issued cell phone. An attempt was made to call all precincts, but the County was receiving so many phone calls that it was difficult to make outgoing phone calls. County staff were using personal cell phones to try and reach the precinct County-issued cell phones, however, many of the phones were not turned on or were not answered.

Despite communication issues via telephone, the County also prepared a statement that went out to the County media list at 9:45 a.m. The statement was also sent to the delegation of senators, representatives, etc., and posted on the County website in English and in Spanish. The statement read: “The County of Berks is aware of an issue impacting the new electronic poll books and is distributing backup paper pollbooks throughout the County. The details behind the issue will be reviewed after Election Day and a full and detailed explanation will be provided at that time. All Election Day media inquiries should be sent to me either by e-mail or my cell 610-816-1242.”

2.b. Once the decision was made to cease using the EPB, the County also experienced the challenge of distributing the paper pollbooks to the 202 voting precincts.

Prior to Election Day, the decision was made by the Election Board to print paper pollbooks, however, there was hesitancy to pass out the paper pollbooks to the polling locations because individuals who are not fans of technology may revert to the paper pollbooks in the event of frustration with the EPB. After the decision was made to switch to paper pollbooks, only a few County personnel were tasked with calling the Rovers to advise them to deploy the paper pollbooks and that they would be provided assistance. The paper pollbooks were with the Rovers for each region and as many County employees as possible from various departments were gathered to go out and physically meet the Rovers at various locations within their zone so they can have multiple people delivering pollbooks to each of the Rovers’ fifteen (15) polling regions. The process to deliver the paper pollbooks to each precinct took several hours. Some polling staff were informed when the paper pollbooks were delivered what happened and were instructed that the EPB were to be shut down. Other polling locations were informed, by individuals handing out the pollbooks, that someone from election services would contact them with instructions about what they were to do with the EPB. It was reported that at least one Judge of Elections, was adamant that he would not switch over from the EPB to the paper books.

2.c. While the County transitioned to paper pollbooks, voters were permitted to vote without verification and may have been asked for identification.

The County does not know what each precinct did to handle the signature issue from the time the polls opened to the time the paper pollbooks were deployed. However, the County is not aware of any instances where precincts turned voters away due to the EPB issue. It is the County’s understanding that during the time between the decision to use paper poll books and distribution of the paper pollbooks, voters were allowed to vote, but there was no verification of

signatures occurring. As supplies were turned-in, the County learned that some precincts were using provisional ballots during that time period which was not the instruction that was given.

Based on the information obtained, there is at least one report of a precinct asking voters for ID prior to voting. However, the report indicates the precinct asking for voter ID was instructed to discontinue this practice. While it is likely that some of the other 202 voting precincts may have asked voters for ID, preliminary reports do not indicate a widespread issue.

3. Due to the delays caused by the inability to utilize the EPB and switch to paper pollbooks, Petitions were filed with the Berks County Court of Common Pleas and Orders were issued extending the polling hours until 9:00 p.m.

In response to the issues with the EPB on Election Day, two (2) joint Petitions, one slightly different than the other, to extend the hours of voting at the polling places until 9:00 p.m. were filed by the Berks County Democratic and Republican Committees. The County had no objection to extending the hours provided that the Democratic and Republican Committees jointly file the Petition(s). After the hearing on the Petitions, The Honorable James M. Lillis, issued Orders extending voting hours until 9:00 p.m. on May 17, 2022. The Orders were issued at approximately 4:00 p.m. on Election Day.

4. Once the Court Orders were signed extending the polling hours until 9:00 p.m. there were further challenges communicating the Order extending hours to the 202 voting precincts.

Once the Order was issued extending the voting hours to 9:00 p.m., Election Services was responsible to communicate the Order to the polling places that they were to remain open until 9:00 p.m. The Order extending the polling hours was placed on the desks of Election Services personnel, but a meeting was not held, nor an announcement made regarding a notification plan. Several County personnel were focused on printing and delivery of additional provisional ballots to the voting precincts and intended to inform the poll workers when the additional provisional ballots were dropped off to the poll workers that they would have to stay open until 9:00 p.m. It became more of a priority to get the provisional ballots out than calling individual polling locations because there was difficulty contacting the polling locations. There was a lack of communication on Election Day and there is no indication that the responsibility to notify the precincts of the extended polling hours was an on-going effort by many people. As a result, the Order extending polling times was NOT communicated to all 202 polling places within the County.

Despite direct communication challenges with the polling precincts, once Judge Lillis issued the Order that the polling times be extended, a brief statement was approved and distributed to the media and the local delegation list, and posted on the County Facebook page and the County Website. It is unknown if there was any discussion about calling Rovers to have them inform precincts of the extended polling times, however, the Rovers were allegedly made aware of the situation and asked to share the information. The Registrars were instructed that if they received phone calls to let the Judges of Election know that the polls needed to stay open an extra hour. Several locations called into election services and were notified of the polling time

change because they were hearing about it through the news media, various party watchers, or if staff contacted the polling place for an unrelated issue after the Order was issued. Despite these efforts, there was no organized attempt by Election Services to notify each precinct.

4.a. There were production challenges because all voters between 8:00 p.m. and 9:00 p.m. on Election Day were required to vote provisionally under federal law and as a result, additional provisional ballots had to be printed and distributed to the 202 voting precincts.

At the time the Order to extend polling hours was issued, the phones were still ringing nonstop regarding the pollbooks. The focus was on printing over 11,000 provisional ballots in two hours, having them packaged and transported to the precincts before the polls closed.¹ Additional provisional ballots were necessary because the County did not know how many electors already voted provisionally or whether the precincts had adequate supplies to accommodate the provisional voting ordered by the Court. The print job was a massive undertaking, took several hours, required coordination and remapping of other printers located throughout County Services Center, and some of the individuals that were hand delivering the provisional ballots did not leave the Berks County Services Center until 8:00 p.m. or shortly thereafter. As a result, some precincts were made aware that the hours were extended, and some were not.

4.b. The Court Order was not communicated to all voting precincts and, as a result, some precincts closed before 9:00 p.m. contrary to the Court's Order.

We know some polling places did not stay open until 9:00 p.m. because results from the election were delivered to the County before the extended hours for voting ended, and there were poll workers returning in a time frame that indicated they had not been open until 9:00 p.m. Additionally, when the Rovers arrived at some precincts they were closed, or it was already after 9:00 p.m. When arriving at some locations, at 8:15 p.m. or 8:30 p.m., the individuals delivering the additional provisional ballots called to report the polling locations were closed.

5. Throughout Election Day, there was confusion and communications issues, which likely contributed to issues experienced that day.

¹ 52 U.S.C. § 21082 provides “[a]ny individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.” 52 U.S.C.S. § 21082(c) (governing voters who vote after the polls close). 25 P.S. § 3045 provides “[a]t all primaries and elections the polls shall be opened at 7 A.M., Eastern Standard Time, and shall remain open continuously until 8 P.M., Eastern Standard Time, at which time they shall be closed.” 25 P.S. § 3045.

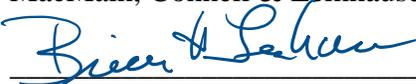
According to some, the scene in the Services Center was quite hectic. Shortly after 7:00 a.m. on Election Day, it seemed like everyone was on the phone and every phone was ringing, indicating that many precincts were reporting problems. Around 8:30 a.m., a Judge of Elections came to the Elections Office because she was unable to get through via the phone lines in Election Services. It was reported that Election Services could not make an outgoing call from the County because the phones had so many incoming calls. County employees had to use their personal cell phones as it was the only way to place an outgoing call. It was considered by some to be a higher-than-average volume of phone calls than expected.

III. RECOMMENDATIONS

Based on the above, prior to the next election in Berks County, we make the following recommendations:

- Employees from Elections Services must attend additional ES&S training.
- Poll workers should receive expanded hands-on training on the use of the EPB.
- All County election officials have an essential and functional knowledge of the Pennsylvania Election Code prior to attending training and L&A testing.
- Request that ES&S have someone present at all L&A testing that has a basic understanding of the Pennsylvania Election Code.
- A direct line of communication is established between Elections Services and the 202 polling precincts, *i.e.*, chatroom, website, etc., to facilitate group and individual communications are received and addressed in a timely and efficient manner.
- Ensure that the cell phones for each Judge of Elections are turned on and operational prior to each election.

If you have questions regarding the content of this report, please contact our office.

Respectfully Submitted,
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