



2021 Annual Report on Election Integrity

Berks County Republican Committee

**To the Berks County Board of Elections, the Berks County Row
Officers, the President Judge of the Berks County Court of
Common Pleas, and the Berks County Delegation
in the Pennsylvania General Assembly**

August 2022

**SECURE THE VOTE PROJECT
BERKS COUNTY REPUBLICAN COMMITTEE**

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Preface.

This is the second report of a project begun last year, where several members of the Berks County Republican Committee volunteered and formed a “Secure the Vote Project.” In preparing this Report, Project volunteers had numerous occasions to meet with employees of the Berks County Office of Election Services. They also met with the Berks County Board of Elections, with the Berks County Board of Commissioners, with various members of our delegation in the Pennsylvania General Assembly, and with representatives of the Omaha-based company, Election Systems & Software (“ES&S”), which manufactured and supplied important voting machines and other equipment.

As citizens of Berks County, we cannot emphasize strongly enough for our elected representatives — at the State- and county-levels — to collaborate together to promote the best interests of the Commonwealth and of Berks County. This is especially true as to election integrity. We believe the Commonwealth and the County are “joined at the hip” if there will be any meaningful progress.

We also hope this Report will clarify our expectations, as well as our understandings, of what our government leaders are responsible for. Consistent with the constitutional law, our government leaders must (1) make the law, primarily through statutory codification; (2) enforce the law; (3) report to citizens on its progress; and (4) continually study its making and enforcing for improvement. These are the means of safeguarding the election process. The integrity of the election process is a fundamental social contract between a government and its people. To that end, it is our responsibility, as the people, to observe and report anything we believe will facilitate continuous improvement and to vote for and support those who will stand for election integrity.

Therefore, I am very pleased to present this Report to the Berks County Board of Elections, the Berks County Row Officers, the President Judge of the Berks County Court of Common Pleas, and the Berks County delegation in the Pennsylvania General Assembly. Under the Pennsylvania Election Code, our County Commissioners also sit as the Board of Elections, joined by the assistance of appointed officers, namely, the Director of Elections and the Solicitor. Notwithstanding a creeping intrusion by the Government of the United States, the County Commissioners of Berks County retain primary responsibility for the administration of elections.

For the first time, we have presented this Report to all Row Officers and to the President Judge in the Court of Common Pleas. Besides the fact that all have at different times stood as candidates for election, our maturing understanding has now reached a point of identifying how these officials have opportunity to contribute towards election integrity. The President Judge, for instance, has significant oversight responsibilities for Court Administration, which is a regular consumer of the Statewide Uniform Registry of Electors (SURE) for the purpose of jury selection. Computer software is used to generate a summons for jury duty based on records in SURE. If the U.S. Postal Service returns a summons as undeliverable, then that is important information whether the registration is no longer active and should be provided to the Office of Election Services.

This Report addresses the issue of purging inactive voter registrations more rapidly and proactively. Other Row Officers may be able to help facilitate an orderly process. The offices of the Coroner and the Register of Wills and Clerk of Orphans' Court possess information whether a voter has passed away. The Recorder of Deeds possesses information whether a voter moved out of the County. These are illustrative of the need for inclusion of all Row Officers in the discussion.

This Report identifies concerns relating to the voting machines and potential security issues based on observations from the year 2021. If not addressed, these concerns may exacerbate a loss of public confidence in the integrity of our elections, in addition to leaving open the danger of election fraud itself. At the heart of our constitutional republic is free and fair elections, and those must be safeguarded by our public servants or else America as we know it today will be no more. There is no room for complacency; our nation, Commonwealth, and County can ill afford that. Everyone is obligated to show vigilance, such as (i) identifying existing irregularities and pathways for fraud in both registration and in voting, (ii) introducing quality assurance programs on the State and county levels, and (iii) promoting a culture of continuous improvement and investigation, and (iv) effective enforcement of existing laws, including, if necessary, criminal prosecution.

We regard as arrogant, if not conceited, any suggestion that election fraud cannot happen here. It can. And the necessary barriers must be put in place to make our Commonwealth and our County a tough target. It is not enough to wait for problems to materialize; it is the responsibility of our government leaders to identify and to eliminate the pathways to election fraud. It is our expectation that our State and county officials will meet with us to discuss our concerns and recommendations

and to learn what ideas and concepts they envision to enhance registration and voting integrity.

This Report is also very timely because we are distressed to learn that the Berks County Director of Elections has resigned, being the third person to resign from that position since 2020.

Clay D. Breece, Chairman
Berks County Republican Committee
August 2022

I. The 2021 Election Cycle and Summary of Findings.

On May 18, 2021, more than 58% of Berks County voters approved amendments to the Pennsylvania Constitution,¹ authorizing our legislature to override the disaster emergency declarations of the Governor.² For the first time in recent memory, Republican candidates for the Court of Common Pleas — James Gavin and Tina Boyd — won Primary nominations on the Republican and Democrat tickets. Republicans also had the benefit of competitive primaries for two County row officers, i.e., Coroner and Treasurer. The 2021 Election Cycle was also marked by massive write-in campaigns, particularly for school director. The *Reading Eagle* reported “an unprecedented 33,285 write-in votes” cast on November 2nd, and that two write-in candidates for school director and two write-in candidates for township supervisor had defeated candidates nominated by Primary.³

Voters expressed serious discontent with their school directors. In July of 2020, the Pennsylvania School Boards Association (PSBA) published Policy 832, which embraced Critical Race Theory and educational equity concepts. While parents and taxpayers were focused on the 2020 presidential election, several school boards in Berks County quietly adopted Policy 832, with or without modifications. The PSBA also published an *Equity Communication Guidance for Pennsylvania School Districts*, encouraging teachers and administrations to say “equity” and avoid “equality,” and to say “black lives matters” and avoid, “all lives matter.”⁴ The Berks County Intermediate Unit pushed through an *Anti-Racism and Equity Statement*, ostensibly committing all superintendents to the principles of educational equity. By the 2021 Primary Election, many parents had not discovered either the adoption of Policy 832 or its rollout in their school districts before realizing that many incumbent Republican school directors were culpable. There was also significant discontent with school district responses to COVID-19.

¹ Berks County Bd. of Elections, Official Results Report of the 2021 Primary, at 4 (June 10, 2021).

² Governor’s Office, Proclamation on Constitutional Amendment, 51 PA. BULL. 3436, 3436-37 (June 26, 2021) (Pa. Const., art. III, § 9); Governor’s Office Proclamation on Constitutional Amendment, 51 PA. BULL. 3437, 3437-38 (June 26, 2021) (Pa. Const., art. IV, § 20).

³ Karen Shuey, *5 Takeaways from This Year’s Election in Berks County*, READING EAGLE (Reading, Pa.), Nov. 19, 2021.

⁴ Pennsylvania School Boards Ass’n, *Equity Communication Guidance for Pennsylvania School Districts*, at 3 (2020).

For the Republican nominations for school director in Region 3 of the Kutztown Area School District, write-in candidate Jason Koch defeated incumbent Charles N. Shurr, Jr. by 12 votes, and write-in candidate Jeremiah Light came within approximately 112 votes of defeating incumbent Karl H. Nolte, III.

On September 11, 2021, the Berks County Republican Committee amended its Bylaws, authorizing post-Primary endorsements for write-in candidates for school director. We came to realize the reality of cross-filing for school director, where the Election Code permits registered Democrats to file nomination petitions for the Republican Primary (and vice versa),⁵ combined with many years of inattention, had permitted many persons to sneak onto the Republican ticket whose viewpoints were too far left-of-center and out-of-line with a majority of their communities. BCRC committee members availed themselves of the post-Primary endorsement for write-in candidates in the Kutztown Area, Tulpehocken Area, and Wilson school districts. As a result, two write-in candidates won the Municipal Election, Jeremiah Light in Kutztown Area and Harry L. Fox, Jr. in Tulpehocken Area.⁶ In Wilson School District, three endorsed write-in candidates — Craig Stonaha, Val Delp, and Meghan Epler — won the Election Day count with more than 11,000 combined votes.⁷ But they lost, ostensibly, on account of mail-in ballots. In Schuylkill Valley School District, Republican write-in candidates Charles Grebloski and Scott Rickert polled 2,345 votes, nearly defeating the Primary nominees.⁸ Write-in candidates for school director also polled significant votes in the Oley Valley and Brandywine Heights school districts.⁹

Write-in campaigns were by no means limited to school director. In Centre Township, Republican write-in candidates Jason Troutman and James Fitterling defeated the Primary nominees for Township Supervisor.¹⁰

In the final election results, Republican challenger John Fielding, III won the Coroner's Office, and Republican candidates, Jonathan Del Collo and A. Dennis Adams, retained the Prothonotary and Treasurer positions.¹¹ District Attorney John T. Adams is now the last Democrat standing for the County row officers.

⁵ 25 P.S. § 2870.

⁶ Berks County Bd. of Elections, Official Results of 2021 Municipal General, at 12 (Nov. 22, 2021).

⁷ *Id.* at 16.

⁸ *Id.* at 19.

⁹ *See id.* at 13, 15.

¹⁰ *Id.* at 40, 49.

¹¹ *Id.* at 3.

Election Day results showed Republican candidates winning public office, only for sizable numbers of mail-in ballots to subsequently become tabulated — after November 2nd — ostensibly causing their defeat. As shown in Table 1.1 and 1.2 below, this occurred in the Governor Mifflin School District, where voters had to choose four school directors, and in Spring Township, where voters had to choose two Township Supervisors. For Governor Mifflin School District, this was shocking because it caused the first-place winner — Republican Annette Baker — to become fifth-place. Likewise, military ballots were not tabulated by the Berks County Office of Election Services until Thursday, November 4th.

TABLE 1.1 2021 MUNICIPAL ELECTION RESULTS FOR SCHOOL DIRECTOR IN GOVERNOR MIFFLIN SCHOOL DISTRICT					
Candidate	Election Day	Mail-In	Provisional	Total	Rank
Annette C. Baker (R)	3,121	364	5	3,490	5
Christina Worley (R)	3,116	793	8	3,917	2
James D. Ulrich (R/D)	3,088	1,166	12	4,266	1
Cody Tyler Youse (R)	3,029	352	6	3,387	6
Michelle Hill-O'Brien (D)	2,392	1,230	11	3,633	3
Caryn Friedlander (D)	2,369	1,189	11	3,569	4
Note: Voters to choose four. ¹²					

TABLE 1.2 2021 MUNICIPAL ELECTION RESULTS FOR TOWNSHIP SUPERVISOR IN SPRING TOWNSHIP					
Candidate	Election Day	Mail-In	Provisional	Total	Rank
Michael S. Wertz (R)	2,622	528	7	3,157	1
Mitchell R. Darcourt (R)	2,448	423	9	2,880	3
Jess Royer (D)	1,695	1,206	12	2,913	2
Note: Voters to choose two. ¹³					

¹² Berks County Bd. of Elections, Official Results of 2021 Municipal General, at 14 (Nov. 22, 2021).

¹³ *Id.* at 49.

Governor Mifflin School District is one of 18 assigned to the Berks County Intermediate Unit. What occurred there did not happen in any of those other school districts. Likewise, what occurred in Spring Township did not happen in any of the other 72 municipalities within Berks County.

The only other incumbent Republican Township Supervisor who lost re-election was Allen L. Leiby in Maxatawny Township.¹⁴ He harmed his reputation by voting in favor of a massive warehouse development project, consisting of more than 12,000,000 square feet of pristine farmland, where his sister and his son-in-law had parcels under contract with the developer.¹⁵

Berks County consists of 202 precincts across 72 municipalities, with more than 264,000 registered voters. The Berks County Office of Elections Services has appropriately maintained more than 800 voting machines, responded to the lateness of Municipal Primary Election returns, initiated pilot programs in five precincts, and acquired a new building to house all voting machines. Additionally, the Office of Election Services processed more than 30,000 write-in votes in the 2021 Municipal Election and cooperated with a statutory, Act 97 recount and recanvassing ordered by the Pennsylvania Secretary of State. The Office of Election Services continues to show professionalism and care in light of these challenges.

For the 2021 Municipal Election, the Berks County Board of Elections hired the technical services of an Omaha-based company, Election Systems & Software (“ES&S”).¹⁶

Regardless of who should be held responsible, the people of Berks County are presented with the following concerns in our elections:

(1) Malfunctions were observed in Spring Township Precinct 8 and Oley Township Precinct 1, where the touchscreens on the ES&S ExpressVote Universal Voting System were switching the voter’s choice of Republican candidate to the Democrat candidate. Blurry and nonresponsive ES&S touchscreens were also observed in Lower Heidelberg, Bern, and Albany.

¹⁴ Berks County Bd. of Elections, Official Results of 2021 Municipal General, at 44 (Nov. 22, 2021).

¹⁵ Notice of Land Use Appeal ¶¶ 32, 34, Robert P. Grim et al. v. Maxatawny Township Bd. of Supervisors, C.A. No. 21-11517 (C.P. Berks July 9, 2021), *appeal docketed*, No. 1452 CD 2021 (Pa. Commw. Ct. Dec. 30, 2021).

¹⁶ Appendix 4, Answer to Question 13.

(2) There is a serious disparity of inactive voters on the registry in favor of Democrats by a margin of two-to-one: 52.2% Democrat, 25.4% Republican, and 22.3% Other. The Berks County Board of Commissioners is not taking advantage of all the tools available under the statutory law, as well as recent clarification by the U.S. Supreme Court in the case of *Husted v. A. Philip Randolph Institute* (2018).¹⁷ Our Commissioners are laboring under a misapprehension of law that it takes at least 10 years to purge an inactive registration. But as the Court clarified, the National Voter Registration Act does not force the Berks County Office of Election Services to wait two general elections before starting the five-year clock of purging an inactive registration. An address verification notice can be sent if a voter does not cast a ballot for at least one general election. Pennsylvania law empowers our Commissioners to reduce the waiting period from 10 years to five.

(3) Pennsylvania law also authorizes our Board of Commissioners to purge inactive voter registrations through the Neighborhood Canvassing Method. We recommend that it consist of at least one County employee as Inspector of Registration who exercises training, supervision, and retention of citizen-volunteers who serve as special inspectors of registration. Berks County is authorized to appoint at least 404 special inspectors of registration. We take the position that the statutory law does not prohibit persons who hold party office from serving.

(4) Act 77 mail-in voting has now created an entire system where no human being physically appears at any relevant stage: A person can register to vote by mail and without physically appearing before the county board of elections; and a person can cast a ballot by mail and without physically appearing before the county board of elections. This has significantly increased the need for permanent resources for investigation and prosecution of election fraud which have not been forthcoming from our County. We call upon our District Attorney and County Commissioners to create a dedicated and fully-funded election fraud unit by the County Detectives which will begin tracking the submission of mail-in ballots and signature-comparison in the Statewide Uniform Registry of Electors (SURE) System.

(5) On the county-level, greater interagency cooperation can uncover election fraud and facilitate purging of inactive voter registrations. The President Judge of the Berks County Court of Common Pleas and the County Row Officers have relevant information in their possession which, if shared through appropriate funding by the Board of Commissioners, can yield investigative leads to the County Detectives on election fraud and to the Office of Election Services for inactive voter

¹⁷ 584 U.S. ___, 138 S. Ct. 1833 (2018).

registrations. Under the direction of the President Judge, the Office of Jury Services has records whether any jury summons is returned as undeliverable. Voter registrations are regularly used to summon a venire. Our Register of Wills and Clerk of the Orphans' Court has records whether a resident was adjudged incapacitated and in need of a guardian. Our Coroner possesses death certificates of residents. Our Sheriff and his deputies possess records whether service of civil process on residents was attempted and unsuccessful. Our Treasurer and our Recorder of Deeds have records whether residents relocated out of the County or became delinquent on their property taxes. All this data, if captured, can further a robust system of purging inactive voter registrations and of uncovering fraud.

(6) ES&S represents that its ExpressVote Universal Voting System is neither connected to the Internet nor equipped with Wi-Fi capability. We have not been presented with any certification or contractual promise by ES&S to that effect, which would have legal consequences if breached. We believe the "honor system" is not enough. Of concern is the possibility, whether a production oversight or not, that a Wi-Fi Telit module is embedded in the equipment's computer motherboards. The Berks County Board of Commissioners should proactively work with the Pennsylvania Department of State to confirm, through manual inspection, that the Telit (or similar module) is not installed within the ExpressVote Universal Voting System.

(7) In April of 2022, Berks County Election Services confirmed the ES&S ExpressPoll pollbooks¹⁸ are supplied with a wireless TP-link router which qualifies as a local area network (LAN) that can also communicate with an ExpressVote activation card printer in each precinct. The implementation of a LAN in precincts increases the level of cybersecurity-related risks. The purported need for LAN is for the pollbooks to communicate with each other within a single polling station. But each polling station will receive only two tablets, which renders any LAN completely unnecessary given the alternative of a manual USB cable. Additionally, there is no certified testing by the U.S. Election Assistance Commission (EAC) to validate whether the voting machines and ExpressPoll Pollbooks by ES&S can resist cyberattacks, with or without Internet connection. While ES&S relies on encryption technology, from the standpoint of cyberattacks, it is a wall, not a fortress. We do not believe that Internet or wireless capability is an end in itself. To the extent ES&S fails to recognize that ethic, then the County should begin the process of locating an alternative manufacturer. We regard this as forward-thinking, by taking into account

¹⁸ Appendix 2.

expected technological improvements in quantum-computing, which will increasingly breach encrypted data.

(8) The 2021 Municipal Election presented a significant increase in write-in campaigns for school director, especially where the Berks County Republican Committee amended its Bylaws to authorize the endorsement of write-in candidates for school director. Blurry computer screens were experienced by voters in Albany Township, where attempting to cast write-in votes for Republican Jeremiah Light. In Bern Township Precinct 1, voters also experienced slow computers, where attempting to cast write-in votes for Republicans Charles Grebloski and Scott Rickert. Fortunately, these glitches did not alter the outcome, but raise concerns over the ability of the voting machines and software provided by ES&S to handle such volume of write-in voting activity.

(9) For each district election board, the ES&S systems generated results after the polls closed on Election Day, showing the number of write-in votes cast for each office but without any further capability of review. We want the systems by ES&S to generate results for write-in candidates. We also want preliminary tabulation of votes for write-in candidates to be completed by the district election boards before the returns are made to the County.

(10) There is no indication whether certain recommendations from our 2020 Report have been acted on. That includes the following:

- Perform a vulnerability analysis of the ES&S voting machines.
- Investigate whether the ES&S equipment has any Telit-manufactured or comparable wideband modules embedded in the computer motherboards.
- Assure the presence of a Democrat and Republican poll watcher in any precinct where a DS200 ballot-scanner fails and unscanned ballots must be temporarily housed within the “C” Bin until the DS200 resumes operation.
- Resolving the incongruence where the 2020 U.S. Census shows fewer residents in a precinct than the number of registered voters.
- Investigate voter registrations having a date of birth earlier than 1920.
- Reducing to writing and updating standard operation procedures in the Berks County Office of Election Services.

II. Candidate-Switching and Touchscreen Malfunctions during Massive Write-In Campaigns.

While the polls were open on November 2, 2021, voters and poll watchers observed malfunctions with the computer touchscreens on the ES&S ExpressVote Universal Voting System. In bears mention that Project volunteers did not have poll watchers in every precinct throughout Berks County. How widespread these malfunctions remain undetermined. However, with an unprecedented 33,285 write-in votes, a serious reexamination of ES&S equipment and software is important.

Candidate-Switching Malfunctions.

In Spring Township Precinct 8, where a voter selected a Republican candidate for statewide judicial office, the touchscreen then changed the voter's selection to the Democrat candidate when the voter moved on to the next selection. In one instance, a voter asked for assistance from an Inspector of Election. The Inspector provided a touch screen stylus as an alternative to touching the screen with the voter's fingers, but this too did not immediately resolve the problem. The touch screen stylus required an exorbitant amount of physical pressure than what is ordinary for the problem to resolve.¹⁹

In Oley Township Precinct 1, voters experienced a similar problem with the ES&S ExpressVote touchscreen. Where presented with the problem, a poll worker made an unhelpful comment, "Do not make this about the last election." The machine was later shutdown and restarted, which is believed to have resolved the malfunction.²⁰

Significantly Delayed Responses.

In Lower Heidelberg Precinct 1, it was observed that the ES&S ExpressVote Universal Voting System was so slow that it could take a voter as long as 15 minutes to complete voting.²¹ Similarly, in Bern Township Precinct 1, significantly delayed responses were observed where casting write-in votes for school director.²²

¹⁹ Appendix 3, Item 4.

²⁰ Appendix 3, Item 5.

²¹ Appendix 3, Item 3.

²² *Ibid.*

Blurry Touchscreens Where Casting Write-in Votes.

In Albany Township, there was one ES&S ExpressVote touchscreen that became exceptionally blurry *only* where a voter attempted to cast a write-in vote for Republican Jeremiah Light for school director in Region 3 of the Kutztown Area School District. This, fortunately, did not prevent Jeremiah Light from winning the election. The Board of Elections partially granted Light’s petition to cumulate write-in votes, and certified him as the winner with 761 votes.²³

However, Appendix 11 illustrates at least 78 variant spellings that resulted from that election. ES&S should investigate as a quality assurance issue whether any of these misspellings occurred in the malfunctioning computer. A name as easy to spell as “Jeremiah Light” would probably indicate that some voters had difficulty with the touchscreen rather than human error. Some of the misspellings show a voter’s attempt at a write-in but subsequent giving-up, such as “Lgh” and “Jer,” as well as repetitive characters, suggesting a problem either with eyesight or the touchscreen, such as “Jereemiah Ligght.”

The County’s Response.

With the exception of Albany Township, Project volunteers reported these instances to the Office of Election Services.²⁴ The Office acknowledged its awareness that the ES&S ExpressVote touchscreens were having “calibration issues” and an ES&S technician was available to recalibrate as needed. The Office took the position that either restarting the computers or recalibrating the touchscreens were all that was necessary for resolution. The Office also pointed out that the equipment permits voters to review their selections prior to printing the ballot cards and inserting the same into the DS-200 scanner for tabulation.²⁵

The Office of Election Services believes these malfunctions can be resolved through better training of the poll workers, because the ES&S ExpressVote Universal Voting System takes an appreciable amount of time to load. The Office suspects that impatient machine technicians can contribute to the problem by touching the screens while in the process of starting up.²⁶

²³ Berks County Bd. of Elections, Official Results of 2021 Municipal General, at 12 (Nov. 22, 2021).

²⁴ *See, generally*, Appendix 3.

²⁵ Appendix 3, Items 3-5 (County’s Response).

²⁶ Appendix 3, Item 3 (County’s Response).

Recommendations.

What is entirely unresolved, and a matter of serious public concern, is whether these malfunctions were software-related, hardware-related, or both. If the matter involved an uncalibrated or malfunctioning touchscreen, for instance, then it would seem to be mostly hardware-related. But that doesn't adequately explain the switching of votes from Republican to Democrat. There is a world of difference between a touchscreen that is nonresponsive and one that distorts a voter's choice.

III. Inactive Registrations and Unlawful Voting.

We find it upsetting where candidates won the Election Day count, such as Annette Baker for School Director and Mitchell Darcourt for Township Supervisor, only to supposedly lose on account of sizable mail-in ballots. As far as we can tell, no action has been taken by our County government to investigate why more than 1,200 mail-in ballots were submitted in the 2021 Municipal Election in the Governor Mifflin School District and to examine whether similar trends occurred in comparable school districts. Several sources of election fraud include (1) forging mail-in ballots for inactive voters, (2) forging mail-in ballots for vulnerable populations, such as the elderly and infirm, and (3) forging or submitting unqualified voter registrations to vote in person or by mail.

Pennsylvania law assigns the lion's share of maintaining a current voter registry, and enforcing criminal penalties against unqualified voters, on the county-level. Since 1995,²⁷ the Berks County Board of Commissioners is required to “institute a program to protect the integrity of the electoral process and to ensure the maintenance of accurate and current registration records.”²⁸ The program must be “uniform” and “nondiscriminatory,” among other things.²⁹ A voter's registration can be canceled if (1) upon the request of the voter, (2) upon the death of the voter, (3) upon the voter's change of residence, and (4) upon a period of inactivity coupled with the voter's failure to respond to statutory notices.³⁰ A registration cannot be canceled solely by reason of failure to vote.³¹ Inactivity, however, is a reasonable inference that the individual probably changed residence. More than 10% of the American population moves each year. For that reason, the statute treats inactivity as a means of ascertaining whether the voter's address is no longer current.³²

By the end of 2021, Berks County has approximately 18,809 inactive voter registrations. Of that figure, 9,308 are Democrats, 4,910 are Republicans, and 4,591 are third parties or independents. Thus, the ratio of inactive Democrat-to-Republican

²⁷ Act of June 30, 1995, No. 25, 1995 Pa. Laws 170, *repealed and substantially reenacted by* Act of Jan. 31, 2002, No. 3, §§ 6-7, 2002 Pa. Laws 18, 81-82 (codified at 25 Pa.C.S. §§ 1101 to 1906).

²⁸ 25 Pa.C.S. § 1901(a); *see also, id.* § 1203(b)(2) (requiring the County board of commissioners to serve as the Commission for purposes of the statute).

²⁹ *Id.* § 1901(a).

³⁰ *See id.* § 1901(a)-(b).

³¹ 52 U.S.C. § 20507(b)(2).

³² *See* 25 Pa.C.S. § 1901(b)-(c). For statistics on moving over a one-year period, *see, generally*, U.S. Census Bureau, CB16-189, *Americans Moving at Historically Low Rates* (Nov. 16, 2016).

registrations remains 1.9-to-1, whereas total registrations are almost equal for Democrats and Republicans. As our 2020 Report points out, whether intentional or not, there is an appearance of partisan bias in the number of “inactive” registrations. How the law classifies “inactive” will be momentarily revisited but should broadly reach all inactivity for at least five years. The concern is even greater if taking into account that “inactive” status is not applied automatically. Where nonparticipation itself is considered, Berks County has approximately 21,847 persons who have not voted since 2017, whether classified as “active” or as “inactive.”

Inactive Voter Registrations.

TABLE 3.1 2021 END-OF-YEAR FIGURES ON INACTIVE, REGISTERED VOTERS IN BERKS COUNTY				
Registrations	Political Party			Total
	Democrat	Republican	Other / None	
Inactive	9,308	4,910	4,591	18,809
Percentage	52.2%	25.4%	22.3%	100%
Ratio in Favor of Democrats		1.9-to-1	2.03-to-1	
2021 Registrations	113,358	108,231	42,949	264,181
Percentage	42.8%	41.0%	16.2%	100%
Ratio in Favor of Democrats		1.04-to-1	2.63-to-1	

Table 3.2 shows the changes which occurred in-between the years 2020 and 2021.

TABLE 3.2 CHANGES BETWEEN 2020 AND 2021 ON INACTIVE, REGISTERED VOTERS IN BERKS COUNTY				
Registrations	Political Party			Total
	Democrat	Republican	Other / None	
Inactive	-1,482	-779	-591	-2,852
Percentage	52.0%	27.3%	20.7%	100%
Ratio in Favor of Democrats		1.90	2.08	
2020 Registrations	118,358	110,396	43,466	272,220
Percentage	43.4%	40.6%	16.0%	100%
Ratio in Favor of Democrats		1.07	2.72	

Nonparticipating Voter Registrations.

TABLE 3.3 2021 END-OF-YEAR FIGURES ON NONPARTICIPATING, REGISTERED VOTERS IN BERKS COUNTY, WHETHER CLASSIFIED AS ACTIVE OR INACTIVE					
Stopped Voting by End of	Political Party			Yearly Total	Cumulative Total
	Democrat	Republican	Other / None		
2000	159	129	96	384	384
2004	348	245	245	838	1,222
2008	1,326	664	635	2,625	3,847
2012	2,024	986	866	3,876	7,723
2016	7,081	4,171	2,866	14,124	21,847
Total	10,944	6,195	4,708		21,847
Percentage	50.1%	28.4%	21.5%		

Table 3.4 shows the changes which occurred in-between the years 2020 and 2021.

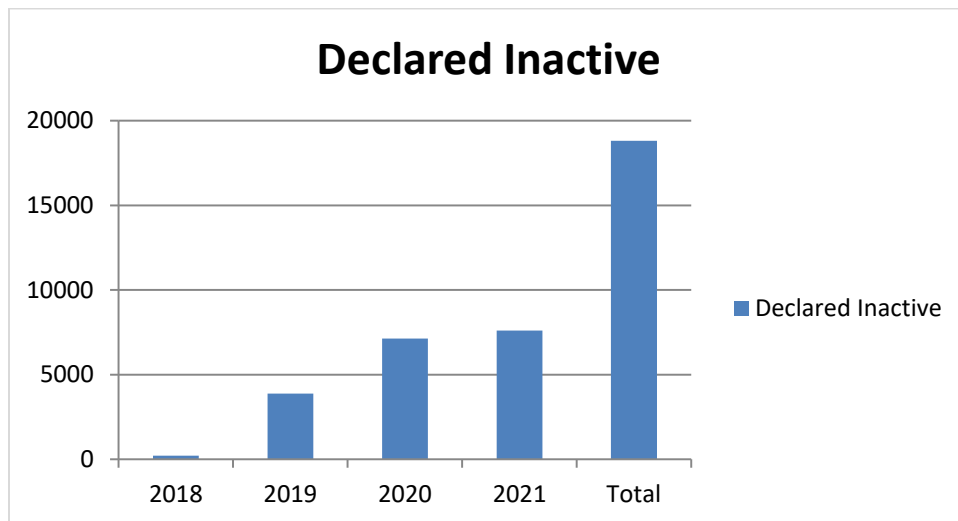
TABLE 3.4 CHANGES BETWEEN 2020 AND 2021 ON NONPARTICIPATING, REGISTERED VOTERS IN BERKS COUNTY, WHETHER CLASSIFIED AS ACTIVE OR INACTIVE					
Stopped Voting by End of	Political Party			Yearly Total	Cumulative Total
	Democrat	Republican	Other / None		
2000	-35	-38	-20	-93	-93
2004	-89	-59	-34	-182	-275
2008	-365	-97	-115	-557	-852
2012	-2,479	-1,392	-955	-4,826	-5,678
2016	-4,040	-2,122	-2,231	-8,387	-14,065
Total	-7,002	-3,708	-3,355		-14,065
Percentage	49.8%	26.4%	23.8%		

Historical Performance in Purging Inactive Registrations.

While the ratio of inactive Democrats-to-Republicans has remained unchanged, it is important to recognize that Berks County is moving in the right direction. As shown in Table 3.5, beginning in 2018, the Office of Election Services has steadily increased its work towards classifying voter registrations as inactive.

TABLE 3.5 FOUR-YEAR LOOKBACK IN VOTER INACTIVITY CLASSIFICATION IN BERKS COUNTY		
End of Year	Registrations Classified as Inactive	Future Year for Potential Cancellation.
2018	203	2023—2024
2019	3,878	2024—2025
2020	7,130	2025—2026
2021	7,598	2026—2027
Total	18,810	

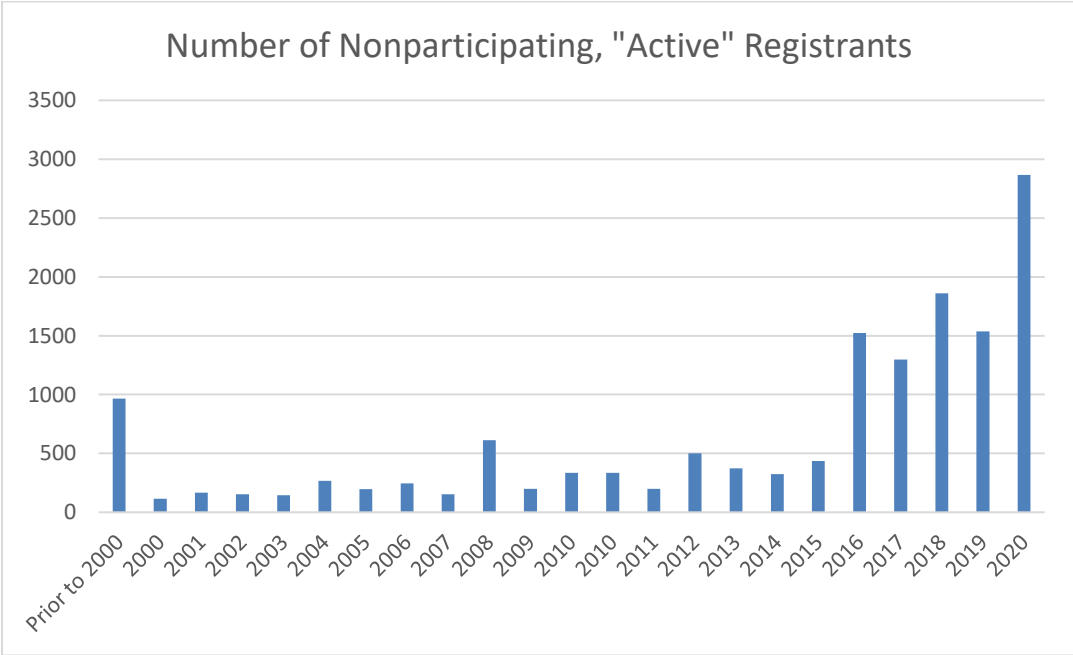
The same data are presented in the following chart:



However, the progress in Berks County towards classifying inactive voters was not readily seen. Table 3.6 presents nonparticipating voters who have not been classified as “inactive.”

<p style="text-align: center;">TABLE 3.6 HISTORY OF NONPARTICIPATING, “ACTIVE” VOTER REGISTRATIONS IN BERKS COUNTY</p>			
Stopped Voting by the End of	Nonparticipating, “Active” Registrations	Stopped Voting by the End of	Nonparticipating, “Active” Registrations
Prior to 2000	967	2010	335
2000	116	2011	198
2001	167	2012	501
2002	152	2013	372
2003	144	2014	324
2004	268	2015	435
2005	196	2016	1,524
2006	245	2017	1,297
2007	154	2018	1,860
2008	613	2019	1,537
2009	198	2020	2,866

The same data are presented in the following chart:



Methods for Purging Inactive or Unqualified Voter Registrations.

In 2002, the General Assembly created the Statewide Uniform Registry of Voters (SURE).³³ Under the SURE System, the Berks County Board of Commissioners is required, within 14 days, to update a voter registration upon receipt of a PennDOT application, a PennDOT change of address (whether transmitted by the Pennsylvania Department of State or from another county), transfers from other county election boards, and the Deceased Voter's List from the Pennsylvania Department of Health, among other things.³⁴ The Pennsylvania Secretary of State is also authorized to cooperate with the U.S. Postal Service for obtaining information whether registered voters have changed their addresses.³⁵ Thus, whenever a person submits a Change of Address form to the USPS, a copy can be forwarded by USPS to the Berks County Office of Election Services.

However, in 2015 the U.S. Office of Inspector General estimated that as many as 40% of Americans who move do not inform the Postal Service.³⁶ This obviously creates the need for additional methods. Beginning in 1993, the U.S. Congress passed the National Voter Registration Act (NVRA).³⁷ It sought to curb State practices where registrations were purged without any prior notice to the voter. The 1995 Pennsylvania Voter Registration Act, which became replaced by the 2002 Pennsylvania Voter Registration Act, sought to implement federal requirements under NVRA.³⁸ The federal statute, however, created some ambiguity that the U.S. Supreme Court recently clarified as to Ohio's purging program, as shown below.

The Mailing Method.

Under NVRA, federal law created minimum requirements: A registration can be purged if the voter fails to send a return card after receiving a statutory notice, asking if the address is current, and does not vote for at least two general elections

³³ Act of Jan. 31, 2002, No. 3, § 1, sec. 1222, 2002 Pa. Laws 18, 30-33 (codified as amended at 25 Pa.C.S. § 1222).

³⁴ 4 Pa. Code § 183.7(a).

³⁵ 25 Pa.C.S. § 1901(b)(1)(i).

³⁶ U.S. Office of Inspector General, Strategies for Reducing Undeliverable as Addressed Mail, at 15 (May 1, 2015) (Rep. No. MS-MA-15-006).

³⁷ Act of May 20, 1993, Pub. L. 103-31, 107 Stat. 77 (current version at 52 U.S.C. § 20501 *et seq.*).

³⁸ *See, generally*, Act of June 30, 1995, No. 25, 1995 Pa. Laws 170, *repealed and substantially reenacted* by Act of Jan. 31, 2002, No. 3, §§ 6-7, 2002 Pa. Laws 18, 81-82 (codified at 25 Pa.C.S. §§ 1101 to 1906).

for federal office.³⁹ General elections for federal office occur every two years. But NVRA did not expressly answer how early the statutory notice can be sent. That unintentionally caused many State and local officials to think they couldn't send the notice until after a person did not vote for two general elections — which created, basically, at least **eight years** of inactivity before a registration could be purged.

In 2018, however, the U.S. Supreme Court clarified “no provision of federal law specifies the circumstances under which a return card may be sent” to voters by State or local officials.⁴⁰ The Court upheld the validity of Ohio’s Supplemental Process, where the statutory notice is sent after a voter does not vote (or sign a nomination petition or update their address with a State agency) for at least two consecutive years. This allowed Ohio to accelerate the removal of inactive registrations, where the voter passed away or relocated, or it was a “ghost” registration. Ohio, like Pennsylvania, “regularly holds elections on both even and odd years.”⁴¹ If the voter fails to respond to the statutory notice, then an additional four consecutive years is followed before the registration is purged, which “makes a total of six years of nonvoting before removal.”⁴²

Significantly, the Court’s decision leaves open that the States are not obligated to wait even two consecutive years before sending the statutory notice.

Pennsylvania law is modeled on NVRA, with one distinction: After a statutory notice is sent and the voter does not respond, there must be at least five years of inactivity before the registration is purged.⁴³ For that reason, we have heard our Board of Commissioners more than once assert that it takes at least 10 years to purge an inactive registration. This line of thinking follows the old confusion before the U.S. Supreme Court’s 2018 clarification.

However, consistent with that same clarification, Pennsylvania law gives our Board of Commissioners discretion to “establish a program by sending a direct, nonforwardable first class ‘return if undeliverable—address correction requested’ mailing to all registered electors in the county.”⁴⁴

³⁹ 52 U.S.C. § 20507(d)(1)(B).

⁴⁰ *Husted v. A. Philip Randolph Inst.*, 584 U.S. ___, 138 S. Ct. 1833, 1839 (2018).

⁴¹ *Id.* at 1841.

⁴² *Id.*

⁴³ 25 Pa.C.S. § 1901(b)(3).

⁴⁴ *Id.* § 1901(b)(1)(ii).

In other words, like Ohio’s Supplemental Program, the Berks County Board of Commissioners does not have to wait two general elections (i.e., four years) before mailing the statutory notice. It can, if it so desires, begin the process of sending statutory notice the moment a registered voter does not cast a ballot in a single general election in even-numbered years. If that voter does not send the return card after receiving the statutory notice, then that begins the five-year clock.

In essence, our Commissioners can cut the waiting period from 10 years to five before an inactive registration is purged. This is not some evil act of suppressing the vote, as a regular columnist for *The Morning Call* points out, “If voters don’t respond” to the statutory notice, then “some of the blame is on them.”⁴⁵ As additional safeguards, a registration should not be regarded as inactive, even if the individual does not vote, if Berks County has records from other State or county agencies showing the individual’s address is current, such as paying school or property taxes or renewing a driver’s license.

The Neighborhood Canvassing Method.

Under Pennsylvania law, the Berks County Board of Commissioners is also authorized to establish a program of canvassing, where qualified persons visit the buildings where an individual is registered to vote.⁴⁶ This can be done either by hiring employees for that purpose or appointing citizen-volunteers.⁴⁷ Employees for that purpose are called “inspectors of registration,”⁴⁸ and are disqualified if holding party office, such as membership in the Berks County Republican Committee.⁴⁹ On the other hand, citizen-volunteers, which the statute calls “special inspectors” of registration, must themselves be registered to vote and the number of appointments cannot be more than double the number of precincts in the County.⁵⁰ They must be appointed “without reference to residence in election districts or to political affiliation or beliefs.”⁵¹ As mentioned in this Report, Berks County consists of 202 precincts, which would entitle 404 citizen-volunteers.

⁴⁵ Paul Muschick, *Pennsylvania Voters Don’t Need to Fear the Voting Record Purge*, THE MORNING CALL (Allentown, Pa.), June 14, 2018.

⁴⁶ 25 Pa.C.S. § 1901(b)(2).

⁴⁷ *Id.* § 1901(b)(2)(i) (“inspectors of registration”); *see also, id.* § 1204(b)(2) (enabling the hire of registrars and inspectors of registration).

⁴⁸ *Id.* § 1901(b)(2)(i).

⁴⁹ *Id.* § 1204(b)(6).

⁵⁰ 25 Pa.C.S. § 1901(b)(2)(iv).

⁵¹ *Id.* § 1901(b)(2)(v).

We interpret the statute to mean that the Office of Election Services cannot refuse the appointment of a special inspector of registration by virtue of holding party office. The Berks County Republican Committee, and Berks County Democratic Committee, can recruit from their memberships those who are willing to serve as special inspectors of registration.

If the canvassers determine that a registered voter no longer resides at that address, or “for any other reason appears to be not qualified to vote,” then a notice is to be left at that address, and a confirmatory notice promptly mailed by the Board of Commissioners, directing the voter to contact a person designated by the Commissioners to verify that individual’s qualifications to vote. The time for the voter to respond cannot be less than seven days or more than 15 days from the date of the notice.⁵² The Neighborhood Canvassing Method cannot be followed if the notice window burdens the voter with having to respond within 15 days before Election Day.⁵³

The Neighborhood Canvassing Method appears to be the most underutilized in the Commonwealth. The Pennsylvania Secretary of State reports that, in 2020, only 13 registrations in SURE were canceled by the Neighborhood Canvassing Method.⁵⁴

County Interagency Cooperation.

The Pennsylvania Department of State regulates the cooperation between counties and between the Department and a county. But neither the statute nor the regulations by the Department of State curtail interagency cooperation within a county. On the contrary, the SURE System authorizes the Berks County Board of Commissioners to make regulations to carry into effect its responsibilities to maintain current and accurate voter registrations.⁵⁵ The County Code also authorizes our Commissioners to fund county agencies, including the Row Offices.⁵⁶

Whether yielding investigative leads for election fraud, or for purging inactive voter registrations, the President Judge of the Berks County Court of Common Pleas and our County Row Officers possess considerable information which can be

⁵² *Id.* § 1901(b)(2)(iii).

⁵³ *Id.* § 1901(b)(2)(iii).

⁵⁴ Pennsylvania Sec’y of State, The Administration of Voter Registration in Pennsylvania: 2020 Rep. to the Pennsylvania Gen. Assembly, at 19 (June 2021).

⁵⁵ 25 Pa.C.S. § 1203(f).

⁵⁶ 16 P.S. §§ 1780, 1782.

captured through appropriate funding and interagency cooperation. In most instances, computer software can be utilized, which includes an algorithm that cross-references information against the voter registry.

The District Attorney and County Detectives.

As can be expected, Unlawful Voting is an offense under the Election Code. If any person who is unqualified to vote casts a ballot or attempts to do so, at any primary or election, then there is criminal liability as a first degree misdemeanor. The accused can be fined for not more than \$10,000, imprisoned for not more than five years, or both.⁵⁷ The same penalties apply for any individual who knowingly submits a false voter registration.⁵⁸ It is also an offense if, within a polling station, the judge or inspector of election knowingly permits an unqualified person to vote.⁵⁹

Under the statutory law,⁶⁰ a person is not qualified to vote if:

- (1) Less than 18 years of age.
- (2) Not a citizen of the United States.
- (3) Not a resident of the precinct for at least 30 days.
- (4) If a convicted felon, then released from confinement in a penal institution for less than five years.

Additionally, a person is not qualified to vote if adjudicated incapacitated and in need of a guardian. But in these instances, the criminal offense occurs in context of a third-party who submitted a voter registration, or criminally impersonated, the incapacitated person.⁶¹ In this respect, Berks County is home to approximately 29 personal care homes and assisted living communities, and 15 nursing homes.⁶² Persons who become mentally incapacitated, or infirm, are vulnerable targets for election fraud.

⁵⁷ 25 P.S. § 3533.

⁵⁸ *See* 25 Pa.C.S. § 1703.

⁵⁹ 25 P.S. § 3523.

⁶⁰ 25 Pa.C.S. § 1301.

⁶¹ *See, e.g.*, 25 Pa.C.S. § 1703 (first degree misdemeanor); *see also*, 25 P.S. § 3527 (Interference with Primaries and Elections; Frauds; Conspiracy).

⁶² Berks County Area Agency on Aging, Personal Care Homes & Assisted Living Communities Guide (Jan. 21, 2022); Berks County Area Agency on Aging, Nursing Homes Guide (Jan. 21, 2022).

To accommodate persons who moved to another precinct, within the same county, less than 30 days before an election, or moved and failed to update their registration, the statutory law permits the individual to vote one last time at their former precinct. To obtain the benefit of this legal protection, the individual must file with the judge of election a signed removal notice.⁶³ If having moved out of the county, then the individual must file with the judge of election a signed certificate on oath or affirmation.⁶⁴

Curiously, however, the statutory law creates a unique benefit as to mail-in voting. If a person moved to a new residence within the same county where they are registered to vote, and if that person applies for a mail-in ballot using the new residence, then the law treats that as an automatic renewal notice.⁶⁵ Thus, the act of applying for a mail-in ballot operates an automatic updating of voter registration.

With the availability of mail-in ballots, an entire system emerged where no human being physically appears at any relevant stage: A person can register to vote by mail and without physically appearing before the county board of elections, and a person can cast a ballot by mail and without physically appearing before the county board of elections. This has significantly increased the need for permanent resources for investigation and prosecution that, thus far, have not been forthcoming from our District Attorney and County Commissioners.

Generally, the Pennsylvania Attorney General and the District Attorney of the county have concurrent jurisdiction to prosecute election-related criminal offenses.⁶⁶ However, the Attorney General has exclusive jurisdiction to prosecute violations of the “Motor Voter” Law where voter registration occurs while submitting, or updating, a driver’s license application.⁶⁷

The County Code vests the District Attorney with hiring and supervisory responsibilities for County Detectives.⁶⁸ In the absence of State or federal grants, the District Attorney’s Office is funded by the County at the discretion of the Board of Commissioners. With appropriate funding from the Commissioners, the District Attorney can create an election fraud unit within the County Detectives.

⁶³ 25 Pa.C.S. § 1501(b)(2).

⁶⁴ *Id.* § 1501(b)(3).

⁶⁵ *Id.* § 1501(b)(1).

⁶⁶ 25 P.S. § 3555; 25 Pa.C.S. §§ 1801, 1802.

⁶⁷ 25 Pa.C.S. §§ 1801, 1802

⁶⁸ *See, generally*, 16 P.S. § 1440.

The President Judge, Prothonotary, and Clerk of Courts.

Since 2002, the responsibilities of jury selection became vested in the President Judge of the Berks County Court of Common Pleas.⁶⁹ Under the authority and supervision of the President Judge, the Office of Jury Services is directed by law to summon a venire based on a randomized selection of voter registrations.⁷⁰ Consequently, the SURE System is regularly used for purposes of jury selection.

If a jury summons is mailed to a registered voter and returned as undeliverable, we are not aware of any process in place where that information is provided to the Office of Election Services by the Office of Jury Services.

Additionally, under the Judicial Code, if a summons is delivered and the voter either fails to appear at the venire or obtain an excusal, then that individual can be held in contempt of court and fined for not more than \$500, imprisoned for not more than 10 days, or both.⁷¹ In these instances, the Sheriff, Deputy Sheriff, or county detective can be dispatched to the voter's residence to investigate the circumstances. In practice, however, that is typically reserved for cases where a juror was empaneled and failed to appear at trial.⁷²

Criminal contempt is ordinarily a summary proceeding commenced by the trial judge.⁷³ That is very different from the regular features of a prosecutor who obtains an indictment or information.

In addition to the President Judge, two officers of the Court elected by Berks County voters are the Prothonotary and Clerk of Courts. Generally, in the Court of Common Pleas the Prothonotary manages the civil docket and the Clerk of Courts

⁶⁹ See 42 Pa.C.S. § 2122(a).

Previously, the responsibilities were vested in the elected office of Jury Commissioner, until abolished in Berks County in 2002. Act of May 9, 2002, No. 41, § 1, 2002 Pa. Laws 301, 302 (codified at 16 P.S. § 401(e)). The last elected jury commissioner was Republican Craig Wes Fisher (1938—2011), who was elected in 1997. See Archive on Elected Officials: Jury Commissioner and Prison Inspector, Berks County Office of Election Services (last retrieved Apr. 11, 2022), available at https://www.co.berks.pa.us/Dept/Elections/Documents/Archive/Elected_Officials_Jury_and_Prison_Inspector.pdf.

⁷⁰ 42 Pa.C.S. § 4521(a)(2).

⁷¹ 42 Pa.C.S. § 4584.

⁷² E.g., *Commonwealth v. Washington*, 353 A.2d 806, 806-07 (Pa. 1976) (County detective found empaneled juror asleep at home during trial).

⁷³ 42 Pa.C.S. § 4132(2).

manages the criminal docket, but both offices may perform any additional duties by order of the President Judge.⁷⁴ Consequently, the President Judge may enlist the assistance of the Prothonotary and Clerk of Courts within an interagency plan for cooperation for election integrity.

The Sheriff, Treasurer, and Recorder of Deeds.

In court proceedings, attorneys and civil litigants regularly rely upon voter registrations to locate where a party-opponent or witness resides. This is particularly acute where an individual rents a home and does not hold title. Under Pennsylvania law, the Sheriff is ordinarily responsible for service of process, whether a writ of summons, civil complaint, rule to show cause or petition, subpoena, or statutory notice.⁷⁵ Consequently, the Sheriff's Office likely possesses information whether voter registrations are not current, if an attempt to serve process was made and a registered voter is not found.

The Treasurer has oversight responsibility for the County Tax Bureau, which also regularly enlists the services of the Sheriff's Office. Whenever property-owners are delinquent on their school or property taxes, the Tax Bureau must provide notice of an Upset Sale by U.S. certified mail, return receipt requested.⁷⁶ For owner-occupied properties, the Sheriff's Office must effect personal service of notice of the Upset Sale at least 10 days before the sale date.⁷⁷ If a mailed notice is returned as undeliverable, then the Tax Bureau is obligated to consult the records of the Office of the Recorder of Deeds to make reasonable efforts to locate the property-owner.⁷⁸ Similarly, the Recorder of Deeds is obligated to inform municipal and school district tax collectors whenever there is a record of transfer of ownership of property within their jurisdictions.⁷⁹

If such property cannot be sold by Upset Sale, then the Tax Bureau must petition the Court of Common Pleas for authority to conduct a Judicial Sale, where the property will be sold free and clear of all liens.⁸⁰ If a Judicial Sale is ordered,

⁷⁴ 42 Pa.C.S. §§ 2737(6) (Prothonotary), 2757(5) (Clerk of Courts).

⁷⁵ *Id.* § 2921.

⁷⁶ 72 P.S. § 5860.602(e).

⁷⁷ *Id.* § 5860.601(a)(3).

⁷⁸ *Id.* § 5860.607a.

⁷⁹ 16 P.S. § 9706.

⁸⁰ 72 P.S. § 5860.610.

then the Tax Bureau must enlist the Sheriff's Office to serve notice on the property-owner.⁸¹

Since as early as 1775, the Recorder of Deeds has been charged with maintaining books, evidencing the conveyance of real property within the county.⁸² Presently, all conveyances are digitized into an online retrieval system.

If the Sheriff's Office attempts to serve process and the individual is not found at that address, or if the Tax Bureau provides notice by U.S. certified mail and it is returned as undeliverable, or if registered voters convey title to their properties to another, we are unaware of any process in place where such information is provided to the Office of Election Services if the individual is registered to vote. Most of this information can be captured through computer software.

The Coroner.

The Coroner's Office is responsible for completing death certificates, whether a resident died in a hospital or anywhere else in the County. Currently, the Coroner's Office remits death certificates to the Pennsylvania Department of Health which, in turn, submits a Deceased Voter's List to the Berks County Office of Election Services.⁸³ The SURE System mandates the Department of Health to notify the Office of Election Services within 60 days of receipt of the death certificate.⁸⁴

Why the Department of Health must act as a "middle man" is unclear, given the alternative where the Coroner can share information directly with the Berks County Office of Election Services.

In reality, there does not appear to be any auditing whether the Department of Health is keeping the 60-day mandate. In this respect, the County Coroner can meet and confer with the Board of Commissioners. They can first create a limited audit to determine the timing that the Department of Health remits notice to the Office of Election Services after receipt of the death certificate from the Coroner. If the 60-day requirement is not being met, then the Coroner and County Commissioners can determine whether a computer algorithm can cross-reference a deceased individual with the voter registry and automatically forward a death certificate to the Office of Election Services if there is match.

⁸¹ *Id.* § 5860.611.

⁸² 16 P.S. § 9731.

⁸³ 4 Pa. Code § 183.7(a)(7).

⁸⁴ 25 Pa.C.S. § 1505(a).

The Register of Wills and Clerk of the Orphans' Court.

In Berks County, the Register of Wills and Clerk of the Orphans' Court are consolidated into one office and, among other things, have administrative responsibilities over probate and estate matters, guardianship proceedings, and marriage license applications.⁸⁵

Pennsylvania law expressly provides the Board of Commissioners do not have to wait for the annual Deceased Voter's List from the Department of Health to purge the registrations of deceased voters. Our Commissioners "may also utilize published newspaper obituaries, letters testamentary or letters of administration issued by the office of the registrar of wills to cancel and remove the registration of an elector, provided that such removals are uniform, nondiscriminatory," and compliant with federal law.⁸⁶

The Register of Wills and Clerk of the Orphans' Court also possesses information whether an individual is unqualified to vote. If an adult is adjudged incapacitated and in need of a guardian by the Court of Common Pleas, then the Register of Wills and Clerk of the Orphans' Court can provide notice to the County Detectives to ensure that no mail-in ballots are submitted by that individual. Additionally, a marriage license application requires an individual to disclose their birthplace and the birthplace of their parents.⁸⁷ That furnishes investigative leads whether an individual is not a citizen of the United States and should be regularly cross-referenced with the voter registry, which can be performed by computer algorithm.

The County's Response.

The Office of Election Services acknowledged that, where a registration is qualified to be purged, the act of cancelling is undertaken every two years. This is noncompliant with the Pennsylvania Voter Registration Act, which requires "at least once per year" the cancellations of qualified registrations.⁸⁸

⁸⁵ *See, generally*, 20 Pa.C.S. §§ 711-12, 901.

⁸⁶ 25 Pa.C.S. § 1505(b).

⁸⁷ 23 Pa.C.S. § 1302(b).

⁸⁸ 25 Pa.C.S. § 1901(b)(4).

Recommendations.

Inactive voter registrations create a pathway for election fraud as applied to persons who moved out of the county. Whether inactive registrations are Republican, Democrat, third party or independent, where there is no individual present in Berks County to claim that vote as their own, then that vote can be illegally harvested by mail-in process or fraudulently cast in-person by another. Berks County needs to focus on an implementation plan to expend the necessary efforts to address all the “Inactive” registrant processes that could potentially lead to the cancelation of over 7,000 already identified “Inactive” registrants who have not voted prior to 2013 or relocated out of the County, as well as those who are not citizens of the United States.

The statutory law requires an annual process of purging the rolls for inactive voters, yet the Berks County Office of Election Services undertakes purging every two years. We are concerned that the Office is not keeping pace with the frequency of persons who annually relocate out of the county. If, as found by the U.S. Census Bureau, as much as 10% of registered voters move out of the county each year, then that is approximately 26,000 registrations. We are also concerned why the Office has not proactively engaged in any problem-solving for purging inactive voters. If this matter requires additional staffing, then the Office has not even said as much. We are hopeful that with the hiring of a new Director of Elections, Ms. Page Riegner, this matter may receive better attention than it has previously.

With the clarification by the U.S. Supreme Court in 2018, our Commissioners are authorized to begin the five-year waiting period by sending statutory notice after a voter does not cast a ballot in a general election in even-numbered years. There is no reason why the process should consume 10 years. Our research did not locate any ordinance adopted by the Berks County Board of Commissioners for establishing a written, uniform, nondiscriminatory removal process for inactive voters. If a written policy exists, then it should be reviewed whether an updating is necessary. The absence of a written policy or ordinance is a quality assurance issue which County management is properly held accountable for. The statute law authorizes the Board of Commissioners to establish a program of direct, nonforwardable first class “return if undeliverable—address correction requested” mail to all registered voters in Berks County. By implementing such a program, the Commissioners are starting the five-year clock for canceling inactive voter registrations without having to wait for a copy of a Change of Address form from the U.S. Postal Service.

We recommend a robust program where statutory notice by nonforwardable first class “return if undelivered-address correction requested” mail is made after a voter does not participate in one federal general election. Identifying those voters for the statutory notice can be accomplished through a computer algorithm. The statutory notices can be outsourced to a private printing and mailing vendor if the County does not already provide those services. Rather, it is the regular processing of returns which may be the most time-consuming and more staff should be hired for that purpose.

We recommend the Board of Commissioners implement a Neighborhood Canvassing Method, consisting of at least one County employee as inspector of registration who exercises training, supervision, and retention of citizen-volunteers who are appointed as special inspectors of registration. The statute prohibits the Board from appointing special inspectors of registration based on their “political affiliations or beliefs.”⁸⁹ We interpret this provision to mean the Board of Commissioners may not inquire whether any candidate holds party office while seeking appointment as special inspector of registration. No published caselaw held otherwise. Consequently, the Berks County Republican Committee and Berks County Democratic Committee can recruit from their own membership those who are willing to serve.

We recommend the President Judge of the Court of Common Pleas, the director of Office of Jury Services, the Prothonotary and the Clerk of Court, and the Sheriff and District Attorney meet and confer with the County Commissioners. They should develop a regular practice where any jury summons, returned as undeliverable by the U.S. Postal Service, is remitted to a designated employee in the Office of Election Services. Such an employee can utilize that information for purposes of an inactive voter purging program. Similarly, these Row Officers should determine if a similar process should be followed where a jury summons is delivered and the individual fails to appear at the venire or discloses that he or she is not a citizen of the United States. A deputy sheriff, or a county detective, can be dispatched to a residence to determine if the voter registration is still current.

Act 77 mail-in voting requires a permanent system of investigation by the County Detectives. Through the oversight of the County Detectives, the District Attorney has jurisdiction to investigate and prosecute fraudulent voter registrations other than those submitted through driver’s license applications with the Pennsylvania Department of Transportation. We recommend that our County

⁸⁹ 25 Pa.C.S. § 1901(b)(2)(v).

Commissioners meet and confer with the District Attorney and the Chief County Detective to determine if the county detectives have sufficient resources for investigating election-related offenses with a particular focus on unlawful voting, fraudulent registration, and criminal impersonation of electors. The time has come for a permanent election fraud unit within the County Detectives.

To the best of our knowledge and understanding, the County retains the voter declarations submitted on the outer return envelope for mail-in ballots. However, there does not appear to be any regular investigation by the county detectives whether those individuals were (1) previously inactive or moved out of the County, (2) elderly, infirm, or incapacitated, or (3) submitted in the same hand.

We additionally believe the County Row Officers possess considerable information that, with an appropriate coordination, can help our county detectives uncover unlawful voting and fraudulent registration and can help a robust program of purging inactive voter registrations. Therefore, the County Commissioners, the District Attorney, and the Chief County Detective should meet and confer with the Row Officers and President Judge of the Court of Common Pleas.

Going forward, the Secure the Vote Project will begin a greater focus on the role of the County Row Officers, especially the District Attorney, in policing existing laws on unlawful voting and fraudulent registration. We also believe that greater utilizing of computer software can regularly cross-reference important information acquired by county agencies with voter registrations to furnish our county detectives with investigative leads.

We further recommend amending the statute of 25 Pa.C.S. § 1901 to authorize the hiring of constables for the purpose of the Neighborhood Canvassing Method. The statute should permit payment at an hourly rate, not by household. Constables are already in the regular practice of serving notice on households. If constables learn that an individual had moved out of the county, then it is cost-effective for them to later return to that household for posting the statutory notice. In any event, legislation which encourages greater utilization of the Neighborhood Canvassing Method furthers the public interest for free and honest elections.

IV. Internet Connection, Wi-Fi Capability, and USB Ports.

An important matter of public concern is whether the ES&S ExpressVote Universal Voting System has Internet connection, Wi-Fi capability, or USB ports. As popularized by the science fiction series, *Battlestar Galactica* (2004–2009), the strongest security against cyberattack is the absence of external interoperability. Project volunteers repeatedly requested that the Berks County Office of Election Services obtain written certification from ES&S that the DS200 and DS450 scanners, used for tabulation of ballots, do not have any Telit LE910-SV1 or equivalent module microchips embedded in the motherboards.⁹⁰ Such microchips have wireless connection capability, and the Telit-manufactured modules, in particular, are touted as having the broadest of cellular and band combinations.⁹¹

The Honor System.

The Office of Election Services made bona fide efforts to respond to our inquiries. At the same time, we believe an important opportunity was missed to obtain a more detailed validation document. Despite many representations by ES&S that their system does not have Internet connection or Wi-Fi capability,⁹² there is neither written certification nor any contractual promise to such effect. ES&S makes the same claim through a Frequently Asked Questions section of its Web site. To the best of our knowledge, this results in an “honor system,” where ES&S can represent whatever it wants without any legal consequences.

The difficulty with this position is that microchips with Wi-Fi capability were discovered in ES&S equipment in other States. As a result, a rational inference can be drawn that the same condition exists here. We maintain it is legally possible for the Office of Election Services to work with the Pennsylvania Department of State and independently examine the ES&S scanners and verify with photographic evidence the absence of microchips with Wi-Fi capability. But, thus far, the Office has not done so.

⁹⁰ E.g., Appendix 4, Question 10.

⁹¹ See, generally, Appendix 1.

⁹² See, e.g., Appendix 4, Answers to Questions 8 & 10.

USB Ports on the Tabulation Scanners.

The DS200 and DS450 scanners, used for tabulating the ballots, are equipped with USB ports that are purported to have restricted access. But a USB Port presents another pathway for cyberattack. ES&S represents to the public, “The unit only accepts approved and certified USB drives to prevent unauthorized data transfers or uploads.”⁹³ Additionally, ES&S points out that the scanners generate an audit log, showing all actions and events which occurred on the unit.⁹⁴ Previous BCRC observers during the calibration and testing of the ES&S ExpressVote machines and the DS250 and DS450 scanners did not locate any functional, external USB port. However, only a small number of such machines were examined.

The ExpressPoll Pilot Program.

On November 2, 2021, poll watchers observed an ES&S pilot program in Spring Township Precinct 8 and Exeter Township Precinct 3.⁹⁵ In those precincts and three others in Berks County, ES&S rolled out its ExpressPoll electronic pollbooks. These are tablets given to poll workers, which are utilized to access countywide voter registration records. The uses for ExpressPoll include (1) direct voters to the correct polling stations, (2) verify if a voter had requested a mail-in or absentee ballot, and (3) verify if a person already voted on Election Day.⁹⁶

Poll watchers observed that ExpressPoll pollbooks were also connected to a printer, which regularly printed confidential information.⁹⁷ This appears to include both the name and address of the individual offering to vote. To the best of our information, there is no suggestion the print-out had compromised the secret ballot by listing the candidates the individual had voted for. It was unclear to poll watchers whether print-outs were made for every voter or for a certain class of voters.

According to the County’s Sales Order Agreement for ExpressPoll pollbooks, “COSTARS 039-003, the TP-Link Wireless Router (for devices in one location to communicate with one ExpressVote activated card printer) is also provided for each precinct. It should be noted that a wireless router is sometimes referred to as a WLAN (wireless local area network) device. A wireless access point connects

⁹³ Election Systems & Software, LLC, DS200 Security Bulletin (2020) (Version 3.1.1).

⁹⁴ *Id.*

⁹⁵ Appendix 3, Item 13.

⁹⁶ Appendix 2.

⁹⁷ Appendix 3, Item 13.

devices to the network wirelessly, typically using radio frequencies in the 900 MHz and 2.4, 3.6, 5, and 60 GHz frequency bands.”

Project volunteers raised concerns with the Berks County Board of Elections regarding the risk of cybersecurity vulnerabilities with the ES&S ExpressPoll pollbooks because of their utilization of wireless technology.⁹⁸ The issue with cybersecurity is not imaginary, because a 2021 evaluation report by the Pennsylvania Department of State raised further vulnerability concerns with the ES&S ExpressPoll pollbooks.⁹⁹ The evaluation report found, “The counties using the ExpressPoll 7.2.0.0 EPB system should develop and implement a disaster recovery plan that includes the possibility of a data breach or cyber-attack on the EPB.”¹⁰⁰

The County’s Response.

In addition to the ES&S ExpressVote Universal Voting System, the Berks County Office of Election Services adamantly denies that the ES&S ExpressPoll pollbooks are connected to the Internet. Rather, the Office asserts that a fully encrypted wireless connection is established through a USB port so that all pollbooks are connected with each other within the same polling station only.¹⁰¹

We quote the Office as follows, “The E-Pollbooks cannot connect to the Internet. They are connected to each other within the confines of the specific polling place. It is a wireless connection through a USB [port] that is fully encrypted.”¹⁰²

The Solicitor of the Berks County Board of Elections also stated, “The EPBs are not in any way connected to WiFi at the precincts, nor are they connected to the actual voting equipment at the precinct (ExpressVote & DS200 optical scanner). The only EPB connectivity at the polling place is between poll books to ensure the integrity of process (double voting concerns).”¹⁰³

At first, the Office of Election Services asserted the ExpressPoll pollbooks cannot connect to the Internet. Then, on April 20, 2022, the Office notified the BCRC that previous information was incorrect and that more accurate information

⁹⁸ Appendix 4, Question 8.

⁹⁹ Pennsylvania Dep’t of State, Results of ES&S Electronic Poll Book ExpressPoll 7.2.0.0 Evaluation (Mar. 2, 2021).

¹⁰⁰ Appendix 12, at 13.

¹⁰¹ Appendix 3, Notes.

¹⁰² *Ibid.*

¹⁰³ E-mail from Solicitor Cody Kauffman, Esquire to John C. Archer et al. (Mar. 11, 2022).

would be provided in a meeting on April 25, 2022. Among those in attendance on April 25th were County Commissioner Christian Leinbach, Election Services Director Paige Riegner, Solicitor Cody Kauffman, and County Information Officer Justin Loose. During that meeting, the ES&S ExpressPoll pollbooks were configured and demonstrated as if within a precinct. An explanation was given on the registration process and components of the system. The components included registration computer tablets, ballot printers, registrants' printers, power supplies, USB cables, power supply cables, and a router. It was explained that the router had one function, i.e., provide an encrypted communication link between each tablet. In doing so, it is hoped the system will assure that individuals voted only once and will not use separate tablets to vote early and often.

We regard these assurances as nonresponsive to the evaluation report by the Pennsylvania Department of State which determined that the ES&S ExpressPoll pollbooks require strict monitoring for cyberattacks.¹⁰⁴

During the same meeting, it was demonstrated that USB thumb drives are used to upload the County's voter registration database into the tablets, which are likewise equipped with USB ports.

Project volunteers asked the Office of Election Services to opine on cybersecurity risk levels associated with the ES&S ExpressPoll pollbooks. The Office declined to do so but made assurances there is no record of any successful breaches. The Office also points out that pollbooks are not connected to remote systems, such as the Statewide Uniform Registry of Electors (SURE) System maintained by the Pennsylvania Department of State.

At the same time, the Office of Election Services disclosed that all but one of Berks County's 202 precincts will have exactly two tablets. The Secure the Vote Project takes the position that this renders any wireless capability unnecessary. Operationally, two tablets can be manually connected by USB cable, thereby eliminating any risks of cyberattacks. We believe that wireless capability is not an end in itself, rather, it is a balancing of benefits and risks. If the benefits are readily achieved by alternative means, then the risks are inappropriate. If ES&S does not share this ethic, and will continually design systems with Internet or wireless connections as an end in itself, then the County will need to evaluate whether to disengage and look for another manufacturer.

¹⁰⁴ Pennsylvania Dep't of State, Results of ES&S Electronic Poll Book ExpressPoll 7.2.0.0 Evaluation, at 7 (Mar. 2, 2021).

The Office of Election Services also clarified that the purpose of the printers connected to the ExpressPoll pollbooks was to create receipts for persons who cast provisional ballots. Provisional ballots are cast where a person, who otherwise appears to be eligible to vote, arrives at the correct polling station but is not found in the records of the SURE System. Provisional ballots are regularly tabulated. Copies of receipts were submitted by poll workers to the Office for archiving purposes. The Office asserts that all receipts were securely kept.

However, the Office admitted that it lacked information, and had to seek clarification from ES&S, whether print-out were limited to provisional ballots or if “we can choose which receipts to print.”

Recommendations.

Wherever there is external interoperability, such as Internet, Wi-Fi, or USB ports, there is a baseline risk of access by unauthorized parties. The only barrier against cyberattack in these instances is the use of data encryption and, to borrow the words of Election Services, “layers of security controls.” But every computer security expert acknowledges that, while encryption is better than nothing, it is never completely insurmountable. It is a wall, not a fortress.

The contract between the County and ES&S should include an express promise that the ES&S ExpressVote Universal Voting System has neither an Internet connection nor Wi-Fi capability. There should be appropriate legal consequences if that promise is breached, including liquidated damages. With or without the cooperation of the Pennsylvania Department of State, the Berks County Election Services should engage in the regular practice of manually inspecting the equipment to ensure the absence of microchips, such as the Telit module, which have Wi-Fi capability. The principle of “trust but verify” is necessary here.

We are deeply disturbed by any suggestion that our County government cannot proactively work with the Pennsylvania Department of State to manually inspect the ES&S equipment to verify the absence of any module with Wi-Fi capability. This should be a non-negotiable item, in our opinion, where no haggling should be allowed. From action or inaction, the County is either working to identify vulnerabilities to a secure election or it is not. During the April 25, 2022 meeting with Election Services, there was a consensus among stakeholders and County officials that the General Assembly can, and should, codify this as a requirement.

Such an initiative should be addressed with the Berks County delegation in the General Assembly.

Notwithstanding the representations by ES&S, we do not understand the necessity of having USB ports at all for the DS200 and DS450 scanners and tabulators. When the polls are closed, these machines generate receipts which are printed and the containers are opened, where the ballots transported by the district election boards to the Berks County Office of Election Services. Theoretically at least, the Office can have its employees re-scan the ballots through another DS200 or DS450 and see if the same results are produced on the receipts submitted by the district election boards as confirmation of ballot counting accuracy.

The roll of the printer for the ExpressPoll pollbooks also requires some clarification. We believe additional steps should be made to ensure that confidentiality of voter information is maintained. While the Office of Election Services made such assurances, no specifics were volunteered on how that was implemented. It is also unknown the extent of control by ES&S over this information.

We believe, and recommend, that any unused ports on the ExpressPoll pollbooks should be plugged so there is no opportunity for unauthorized access, including by way of Virtual Private Networks (VPNs).

V. Canvassing, Write-in and Provisional Ballots, and Ballot Paper Security Measures.

Besides the risk of cyberattack is the need for protection against more conventional forms of election fraud, such as counterfeit ballots. Because the ES&S ExpressVote Universal Voting System uses scanners for the tabulation process, some safeguards should be implemented in the event of corrupt efforts to feed multiple, counterfeit ballots into the scanner or re-scanning the same ballot multiple times. We are informed that the ES&S ballot scanners can detect legitimate mail-in ballots. The ballot paper procured by the Berks County Office of Election Services is supposed to be notched at certain sections of the ballot so the scanners can detect and reject counterfeit ballots. But this technique does not prevent individuals who obtained the same ballot paper with similar notches for fraudulent purposes. Additionally, because mail-in ballots are separated from the outer envelope, which contains the voter's declaration, it is nearly impossible to track who had submitted a counterfeit mail-in ballot.

Structural Safeguards under the Election Code.

America's decentralized administration of elections reflects a sound proposition that poll workers are less likely to defraud their own communities rather than someone else's. With that in mind, the Election Code creates two sets of eyes for canvassing: (1) the district election board in each precinct and (2) the county election board. The district election board is comprised of the judge of election, and the majority and minority inspector of election.¹⁰⁵ Since the Pennsylvania Constitution of 1873,¹⁰⁶ where each political party may nominate only one inspector of election, the top two vote-getters become the majority and minority inspectors,¹⁰⁷ thereby guaranteeing representation for Republicans and Democrats in that precinct.

After the polls close, the ES&S ExpressVote Universal Voting System will print receipts, showing the final count for all votes cast at that precinct for each public office. The judge of election typically affixes a copy of the receipt to the front door of the polling station for immediate public inspection.

¹⁰⁵ 25 P.S. § 2671.

¹⁰⁶ Pa. Const., art. VIII, § 14 (1873), *reprinted in*, 5 THE FEDERAL AND STATE CONSTITUTIONS, COLONIAL CHARTERS, AND OTHER ORGANIC LAWS 3140 (Francis Newton Thorpe, ed., 1909).

¹⁰⁷ 25 P.S. § 2671. Appointments to fill vacancies must follow the same rule: the judge of election and majority inspector must be from the majority party and the minority inspector must be from the minority party. *Id.* § 2675.

Another line of deterrence against election fraud is the presence of poll watchers. However, we are not aware of any single election where every precinct had full coverage. Even so, it is not possible for them to observe each and every function that is performed at a polling station.

Against these structural safeguards, the following votes are tabulated at the county-level only, thereby bypassing the district election board:

- (1) Pre-election canvassing of absentee and mail-in ballots beginning at 7 a.m. on Election Day.¹⁰⁸
- (2) Canvassing of absentee and mail-in paper ballots after the polls close on Election Day.¹⁰⁹
- (3) Canvassing of military ballots after the polls close on Election Day.
- (4) Canvassing of write-in ballots after the polls close on Election Day.¹¹⁰

Absentee, mail-in, and military ballots are transported directly to the Office of Election Services, as the agency of the Berks County Board of Elections. Similarly, write-in ballots are not tabulated by the district election boards. Instead, the tabulation receipts printed by the ES&S ExpressVote Universal Voting System will only contain a notation on the total number of write-in votes per office. Greenwich Township Precinct 2 is illustrative. The receipt affixed to the front door of the polling station showed the following as to the four-year term for school director in Region 3 of the Kutztown Area School District:

Karl H. Nolte, III	134
Charles N. Shurr, Jr.	96
Jason Koch	307
Write-in	230
Write-in	2

The system did not present any data to the district election board, showing the number of write-in votes that correctly spelled “Jeremiah Light,” who was the

¹⁰⁸ 25 P.S. § 3146.8(g)(1.1).

¹⁰⁹ 25 P.S. § 3150.16(a).

¹¹⁰ 25 P.S. § 3155.

endorsed Republican write-in candidate that won that election with Jason Koch. Neither did the system print the number of misspellings of Jeremiah Light.

As a consequence, only one set of eyes becomes applied to canvassing these categories of votes. That increases the need for ballot paper security measures. It cannot be assumed that poll watchers are adequate to prevent election fraud. It is also our regular experience that poll watchers are not necessarily present at the polling station for the entirety of Election Day.

Pre-Canvassing and Canvassing by County Employees.

The Berks County Office of Election Services directly tabulates absentee, mail-in, military, and write-in ballots. For write-in voting, the Office customarily scans all write-in ballots and uploads them onto its Web site for public inspection.

The Office does not have any written, detailed instructions for canvassing procedures. For pre-canvassing of absentee and mail-in ballots, the Office regularly relies upon County employees who are not regularly employed by the Office. These additional employees may not necessarily be familiar with the process and require verbal instruction on how to open and stack envelopes, remove ballots, and recognize questionable documents.

The lack of written procedures is not a formality. During Election Day, a county employee discovered three ballots in Muhlenberg Township Precinct 5 where the voter either improperly filled them out with a pencil (instead of a pen) or they were entirely blank. The employee required instruction that the ballots still had to be submitted to the ES&S scanners in order for the audit log to register the fact that they were rejected by the scanner.

Act 77 Mail-In Ballots.

Mail-in ballots are submitted by means of two envelopes. The ballot is first placed within an envelope marked, “official election ballot,” which is colloquially called the “inner secrecy envelope.” As the name implies, the inner secrecy envelope is then placed within an outer return envelope. The outer envelope contains the voter’s declaration on the outside.

Act 77 requires county boards of election to reject any mail-in ballot that is “naked,” i.e., placed within the outer envelope only rather than the inner secrecy

envelope.¹¹¹ The statute also requires mail-in ballots to be rejected if the inner secrecy envelope contains any identification of the voter or the voter's political party affiliation.¹¹²

During canvassing, an observer witnessed a County employee who discovered a mail-in ballot accompanied by a typed letter from the voter who cast the same. Chief Administrative Officer Ron Seaman instructed the employee to destroy the letter without reading it. The letter may have been a ground for invalidating the mail-in ballot. This illustrates the significant need for written procedures from the Berks County Board of Elections.

Provisional Ballots.

If an individual appears to be qualified to vote and appears to have reported to the correct polling station, but for some reason is not shown on the Statewide Uniform Registry of Electors (SURE), then a provisional ballot can be submitted. If it is later determined the individual is registered to vote but went to an incorrect polling station, then the law requires the ballot to be partially counted to the extent those votes would have been counted if submitted at the correct polling station. In practice, this means that provisional ballots are counted towards statewide and countywide offices, but probably not for school director and municipal offices.

The need to partially count a provisional ballot, however, creates a conundrum where the ES&S ExpressVote Universal Voting System was not designed for such an event. During the canvassing following November 2, 2021, an observer witnessed County employees attempting to “recreate” a provisional ballot so it could be partially scanned by a DS450.

Re-Scanning the Same Ballot Multiple Times.

The ES&S ExpressVote Universal Voting System prevents the re-scanning of the same ballot multiple times because the DS200 scanners capture the ballot after having scanned it and stores it within a locked container. ES&S represents that each container can house approximately 3,500 ballots. The key to the locked containers is in possession of the Office of Election Services.

¹¹¹ 25 P.S. § 3150.16(a); *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 378-79 (Pa. 2020).

¹¹² 25 P.S. § 3146.8(g)(4).

Detecting Counterfeit Ballots.

The DS450 scanners are equipped with the ability to recognize counterfeit ballots, and are programmed to shut down if one is detected. However, the ballot stock paper must be compatible with the proprietary requirements of the DS450 scanners, so that any irregular or counterfeit ballots will be appropriately rejected at the tabulation stage.

At this time, we have not reviewed evidence on the capability of the DS200 scanners to detect counterfeit ballots.

The County's Response.

The Berks County Office of Election Services acknowledged it does not procure ballot stock paper that provides enhanced security measures, including watermarking or paper embeds. The Office does, however, procure ballot stock paper having notches which scanners can detect if there are counterfeits.

During a meeting of the County Commissioners in January of 2022, Mr. Kevin S. Barnhardt stated that a goal for 2022 to have updated written, canvassing procedures for the Office of Election Services.

The Office of Election Services acknowledged that County employees could not feed provisional ballots into the DS450, if only partially tabulating the ballot. For that reason, employees were required to have "re-created" some of the provisional ballots to the extent the law permitted a partial tabulation.

Recommendations.

If secure ballot paper, having good quality control and with a chain of custody, is not procured, then strong consideration should be given to its implementation. Various printers provide these sort of products which feature several types of embeds, including the use of a proprietary frequency as well as charged particle types. Some noteworthy printers of these products are NPC, Inc., situated in Claysburg, Pennsylvania, and Rolland-Sustana Group, which has facilities in De Pere, Wisconsin, and in Quebec, Canada.

The lack of written, detailed instructions and procedures for pre-canvassing and canvassing must be rectified as soon as possible as it is a significant quality-related issue. Similarly, although we applaud the Office of Election Services for posting write-in votes on its Web site, a challenge we've discovered is that the Office

doesn't clearly indicate if the results are tentative or final. Knowing the date of final certification is important because it starts a statutory clock for write-in candidates to submit petitions to cumulate misspellings on ballots.¹¹³

Finally, we do not understand why the ES&S ExpressVote Universal Voting System does not adequately process provisional ballots, such as the County employees are required to "re-create" a ballot. While provisional votes have never been seen to have altered the outcome of an election, a system which requires employees to re-create ballots for tabulation is one fraught with danger.

¹¹³ 25 P.S. § 3156 (five days after certification by the county board of elections).

VI. Assessing Our Elected Leaders and Public Servants.

Pennsylvanians deserve strong and unbiased leadership and decision-making capability for election matters, in both County government and in the General Assembly. So how well does Berks County perform? Because this is not capable of mathematical precision, we offer a subjective evaluation as citizens and voters who are supposed to be served by those we elect. Our evaluation is based on two years' worth of information. We gathered our information from a variety of sources: meetings of the County Commissioners and of the Board of Elections, poll watching among the various precincts and canvassing by County employees, and formal and informal responses from the Berks County Office of Election services, including responses to Right to Know Law requests. For General Assembly, we also evaluated sponsored and co-sponsored legislation and committee reports.

Our County Government.

From an overall perspective, the County Commissioners, Board of Elections, and Office of Election Services are performing reasonably well in their responsiveness and transparency. Some exceptions, however, include their lack of transparency in responding to our Report on the 2020 General Election and in the reduction in the observed political party bias in the number of inactive voter registrations. The Office of Election Services has provided selective-responses.¹¹⁴ We believe full responses will provide a meaningful indication how our County is responding to our areas of concern.

It is remarkable that the Office of Election Services has performed so well where it experienced two resignations by the Director of Elections over less than two years. This speaks to the professionalism that the staff of the Office strives to achieve. The Office has made significant strides to allow poll watchers to observe the testing and calibration of the ES&S machines. To the best of our knowledge, the Office showed diligence in responding to Right to Know Law requests.

Whether we agree or disagree with the responses from the County Commissioners, we acknowledge they have at least undertaken a response to our inquiries. It is our sincere hope our County Commissioners will exercise prudent judgment in the administration of our elections. Our County Commissioners have admitted the need to carefully restrict the number of sites where mail-in ballots can

¹¹⁴ See, generally, Appendix 4.

be dropped off. We believe that deputy sheriffs are integral to maintaining the integrity of ballot drop-offs and this effort has to be applauded.

From the totality of everything we have observed and learned, as well as the County’s responses in Appendix 4 and 5, we offer a rating shown in Table 6.1 below.

TABLE 6.1 SUBJECTIVE RATING OF THE BERKS COUNTY BOARD OF ELECTIONS AND OFFICE OF ELECTION SERVICES			
Item No.	Quantitatively Evaluated Attributes	Pro-Activeness	Transparency
1	Removal of deceased voters.	80%	100% ⁽¹⁾
2	Registration roll reduction of inactive and active registrants.	90%	100% ⁽¹⁾
3	Reduction of political party bias of inactive registrants.	0%	100% ⁽¹⁾
4	Effective responses to 2021 Incident Report observations.	100%	100%
5	Election Board meetings following elections.	100%	100%
6	Response to 2021 Questions.	80%	90%
7	Control of mail-in ballot drop boxes.	100%	100%
8	Participation in County Commissioners Association of Pennsylvania.	100%	100%
9	Utilization of unique ballot paper stock.	100%	100%
10	Response to Nov 2020 Election Report recommendations.	45%	50%
11	Question: Telit modules embedded in ES&S computer motherboards.	70%	80%
12	Concern with cybersecurity of the ES&S ExpressPoll pollbooks.	70% ⁽²⁾	80%
Notes:			
(1) Information obtained in December 7, 2021 registration database			
(2) Refer to ES&S ExpressPoll pollbooks – 3/2/2021			

We respectfully count against our County government the following:

There appears to be an overall reluctance to address probable voter registration and election activity vulnerabilities. There has not been any proactive response to the question of citizenship status of voter registration, multiple registrations of the same individuals, or ghost residences.¹¹⁵ There has not been any proactive response to the question of ballot harvesting operations. Sitting as the Board of Elections, the statutory law vests our County Commissioners with sufficient authority to investigate election fraud, including a subpoena power.¹¹⁶ The Election Code gives them authority to “investigate election frauds, irregularities and violations of this act, and to report all suspicious circumstances to the district attorney.”¹¹⁷

The County Commissioners have shown reluctance to contact ES&S and either obtain a written certification or otherwise negotiate for a contractual promise to the effect that the ES&S ExpressVote Universal Voting System is neither connected to the Internet nor has Wi-Fi capability. We likewise have not seen any vigorous attempt to ascertain why USB ports are necessary and what can be done to guard against cyberattacks. The commissioners have stated that the external USB ports are disconnected from the ES&S DS200 and DS450 scanners and, according to Republican observers, they appear to be disconnected.

For the Office of Election Services, greater care to involve poll watchers should be exercised as applied to the canvassing adjudication process. This includes the circumstances of deciding whether to cancel a mail-in ballot for observed noncompliance with Act 77 and other irregularities. In many instances, the Office is not permitting poll observers to closely inspect the process with their own eyes. We respectfully disagree with the Office’s excuses for involving poll observers in these areas. The Office asserted that untrained, unsworn poll observers should not have the opportunity to learn a voter’s identity and to learn how that individual had voted. But the identity of voters is a matter of public record,¹¹⁸ where anyone may (for only \$20.00) purchase all Berks County voter registrations from the Pennsylvania Secretary of State. Pennsylvania courts have likewise rejected any suggestion of confidentiality in that information.¹¹⁹ Consequently, the rationales offered by the Office strike us as poor excuses.

¹¹⁵ See, e.g., Appendix 4, Answers to Questions 1, 5.

¹¹⁶ 25 Pa.C.S. § 1203(g) & (i).

¹¹⁷ 25 P.S. § 2642(i).

¹¹⁸ 25 Pa.C.S. § 1207(a)(3).

¹¹⁹ E.g., *Meczkowski v. State Farm Ins.*, 3 Pa. D. & C.5th 308, 316 (C.P. Monroe 2006).

Notwithstanding these difficulties, we believe in good faith that the number of deceased voters have decreased in 2021 over 2020; that, through vigorous training of its employees, our County is not dependent on ES&S; and our County has made significant purges in the number of inactive registrations. However, there seems to be an exception, where our County is becoming more dependent on the ES&S ExpressPoll pollbooks and the handling of related-data.

Our Delegation in the General Assembly.

The Secure the Vote Project volunteers had many opportunities to interact with several members of the Pennsylvania General Assembly representing Berks County, namely, State Senator Dave Argall (Rep., S.D. 29) and State Representatives Barry Jozwiak (Rep., L.D. 5), Jim Cox (Rep., L.D. 129), David M. Maloney, Sr. (Rep., L.D. 130), Ryan Mackenzie (Rep., L.D. 134), and Gary Day (Rep., L.D. 187). It is with much regret that, as a result of legislative reapportionment in 2022, Berks County lost the stewardship of Senator Argall and Representatives Mackenzie and Day, and that Jim Cox declined to seek re-election.

Act 77 and Constitutional Challenges.

On January 29, 2019, then State Senator Mike Folmer (Rep., S.D. 48) penned a Memorandum to his colleagues. It pointed out that Article VII, Section 14 of the Pennsylvania Constitution limited absentee ballots to the traditional “for cause” categories, such as business travel, military service, illness, physical disability, etc. The Memorandum asserted that a constitutional amendment was necessary “to eliminate these limitations, empowering voters to request and submit absentee ballots for any reason—allowing them to vote early and by mail.”¹²⁰ On March 19, 2019, Folmer introduced a proposed constitutional amendment that would do exactly that.¹²¹ It was co-sponsored by Senator Argall.

On October 29, 2019, the Republican members from Berks County in the Pennsylvania House of Representatives, as well as Democrat Thomas R. Caltagirone (Dem., H.D. 127), voted for the final passage of Senate Bill 421, which became signed into law by Governor Wolf as Act 77. It created a “no excuse” system of mail-in voting under the Election Code and without amending the Pennsylvania Constitution. Representing Berks County, Senators Dave Argall, Bob Mensch (Rep., S.D. 24), and Judy Schwank (Dem., S.D. 11) also voted in favor of final passage of

¹²⁰ Memorandum to All Senate Members from State Sen. Mike Folmer (Jan. 29, 2019).

¹²¹ S.B. 411, 2021 Pa. Gen. Assemb. Sess. (June 18, 2021).

the bill while State Senator Katie Muth (Dem., S.D. 44) and State Representative Mark Rozzi (Dem., L.D. 126) voted against it.

Why they thought Act 77 was constitutional has never been explained to us.

On January 11, 2021, State Representative Mike Puskaric (Rep., L.D. 39) introduced House Bill No. 25. It repeals all portions of the Election Code created by Act 77 which authorized mail-in voting. From the Berks County delegation, the bill is co-sponsored by Jerry Knowles (Rep., L.D. 124), Jim Cox (Rep., L.D. 129), and Gary Day (Rep., L.D. 187). It was referred to the House State Government Committee where, for the rest of the year, it languished. State Representative Ryan Mackenzie (Rep., L.D. 134) is a member of that committee.

A discharge petition, which would have brought H.B. 25 out of the committee and to the floor for a vote, failed to gain enough votes. Berks County Republican Committee member Dean Klopp contacted State Representative Barry Jozwiak (Rep., L.D. 5) for support of the discharge petition. Jozwiak was noncommittal and indicated he would need to consult with House leadership.

On March 24, 2021, State Representative Jerry Knowles (Rep., L.D. 124) attended the North Region meeting of the Berks County Republican Committee, at our headquarters in Maiden Creek Township. Among other things, he apologized to the members for voting for Act 77.

On July 26, 2021, Doug McLinko, a County Commissioner for Bradford County, filed a Petition for Review in the Commonwealth Court.¹²² He alleged that “no excuse” mail-in voting under Act 77 violated Article VII, Section 1 of the Pennsylvania Constitution, which defines an elector as someone who “shall offer to vote,” among other things.¹²³ Over the past 150 years — beginning with the Civil War — the Supreme Court of Pennsylvania had twice interpreted that provision to mean that ballots cannot be mailed.¹²⁴ McLinko argued that nothing had changed and, in fact, Pennsylvania voters had to add Section 14 to Article VII of the Pennsylvania Constitution, which authorizes the traditional for-cause grounds for absentee voting.¹²⁵

¹²² Petition for Review in the Nature of an Action for a Declaratory Judgment, *Doug McLinko v. Commonwealth*, No. 244 MD 2021 (Pa. Commw. Ct. July 26, 2021).

¹²³ *Id.* ¶¶ 10-11 (quoting Pa. Const., art. VII, § 1).

¹²⁴ *Id.* ¶ 13 (discussing *Chase v. Miller*, 41 Pa. 403 (1862) and *In re Contested Election in Fifth Ward of Lancaster City*, 126 A. 199, 201 (Pa. 1924)).

¹²⁵ *Id.* ¶ 14.

On August 31, 2021, State Representatives Jozwiak, Maloney, and David H. Zimmerman (Rep., L.D. 99) joined with 11 other legislators in filing a Petition for Review in Commonwealth Court.¹²⁶ They replicated the same argument raised by McLinko and the case was consolidated with his.

On September 28, 2021, State Senator Doug Mastriano (Rep., S.D. 33) introduced Senate Bill 884. It is a joint-resolution to amend the Pennsylvania Constitution, expressly prohibiting any permanent list of mail-in voters and requiring absentee ballots (other than military ballots) to be received by 5 p.m. on the Friday before Election Day. From the Berks County delegation, only Senator Bob Mensch (Rep., S.D. 24) co-sponsored S.B. 884. It was referred to Senator Argall's State Government Committee, where no subsequent action was taken.

In a published opinion on January 28, 2022, the Commonwealth Court declared Act 77 unconstitutional in the McLinko litigation.¹²⁷ The Pennsylvania Department of State has appealed the decision and, even by the completion of this Report, no decision on the merits has been reached by our Supreme Court of Pennsylvania.

Cooperation with the Berks County Delegation.

Our Republican legislators in the Berks County delegation showed at least a respectable degree of cooperation with us, directly and by the assistance of their staff. We provided to them a survey shown in Appendix 9. On May 11, 2021, Project volunteers held a meeting with State Representative Jim Cox at the local office for Representative Barry Jozwiak. During this meeting, we discussed their answers to our questionnaire and election integrity surveillance results in Berks County. During this two-hour discussion, we were joined on the phone by State Representatives Ryan Mackenzie and David Maloney and by Craig Lutz, as representative for State Senator Dave Argall.¹²⁸ Craig Lutz believed the meeting was a success, where the BCRC conveyed its views on the 2020 General Election in our County.

An important takeaway from that meeting was a realization of a need for the legislators to periodically meet with our County Commissioners. In fact, Commissioner Christian Leinbach had expressed a need for this several years ago.

¹²⁶ Petition for Review, Timothy R. Bonner et al. v. Veronica Degraffenreid et al., No. 293 MD 2021 (Pa. Commw. Ct. Aug. 31, 2021).

¹²⁷ McLinko v. Commonwealth, 270 A.3d 1243 (Pa. Commw. Ct. 2022).

¹²⁸ See, generally, Appendix 7.

Report of the House State Government Committee.

The May 11th meeting with legislators also addressed an important report finalized by the House State Government Committee, *A Comprehensive Review of Pennsylvania's Election Laws: How Pennsylvania Can Guarantee Rights and Integrity in Our Election System* (May 10, 2021). Among other things, the Report concludes that voter ID should be required, counties are failing to verify a voter's citizenship, the SURE System cannot meet the demands for mail-in voting, and that post-election audits are outdated and should be undertaken by the Auditor General. The Report concluded that permitting individuals to register to vote 15 days before the election — as permitted by Act 77 — is too burdensome and the previous requirement of 30 days should be restored. The Report also confirmed the views of the Secure the Vote Project: “Cybersecurity threats to elections are ongoing and must inform election administration at every level.”

The Report also concluded that our voter registration system permits Web Application Programming Interface (API) by third parties. This creates security concerns. In fact, Mike Roman, an election fraud expert, pointed out this vulnerability was a major issue and may have contributed to many illegal ballots cast in the 2020 General Election.

The Report did not advocate for a repeal of “no excuse” mail-in ballots under Act 77. Instead, the Report recommended the need for a uniform application of signature verification of mail-in ballots.

As mentioned, the House State Government Committee made no effort to move forward House Bill 25, to repeal mail-in voting.

State Senator Dave Argall and the Senate State Government Committee.

Because State Senator Dave Argall is Chair of the Senate State Government Committee, special attention to his stewardship is important in this Report. With Tom Wolf holding the governorship, Argall took the position that not much legislation could be passed.

On March 15, 2021, Senator Argall co-sponsored Senate Bill No. 422. If enacted, it imposes the requirement of Voter ID in the Election Code.¹²⁹ It was referred to Senator Argall's State Government Committee, where no subsequent action was taken.

¹²⁹ S.B. 422, § 1, 2021 Pa. Gen. Assemb. Sess. (Mar. 15, 2021).

On May 6, 2021, Senator Argall co-sponsored Senate Bill No. 640, the Election Fraud Reporting Act.¹³⁰ If enacted, it obligates the Pennsylvania Auditor General to establish a telephone hotline where voters can report allegations of election fraud. The Auditor General must then prepare a report on election fraud allegations to legislative leaders.¹³¹ The bill does not direct for any investigation by the Auditor General. The bill was referred to Senator Argall’s State Government Committee, where no subsequent action was taken.

By June of 2021, the Senate Special Committee on Election Integrity and Reform published a Final Report.¹³² Among other things, the Special Committee surveyed 257 poll workers. Respondents to the survey gave divided responses as to drop boxes for mail-in ballots: “Some respondents discussed how their drop boxes were guarded by local sheriffs, while others stated that they were unmanned and unmonitored.”¹³³ Among other things, the Special Committee recommended pre-canvassing at least three days before Election Day and that applications for absentee and mail-in ballots be submitted 15 days before Election (instead of one week).¹³⁴ The Special Committee recommended a program of “real-time reporting system of deceased individuals,” that voter rolls are updated on a monthly basis throughout the year, and updated on a daily basis for two weeks before Election Day.¹³⁵ For mail-in ballot drop boxes, the Special Committee recommended only establishing 24/7 video surveillance.¹³⁶

On June 21, 2021, Senator Argall sponsored Senate Bill No. 784. It requires applications for absentee and mail-in ballots to be submitted 15 days before an election (instead of one week before an election),¹³⁷ and authorizes the county board of elections to begin pre-canvassing of absentee and mail-in ballots one-week before

¹³⁰ S.B. 640, 2021 Pa. Gen. Assemb. Sess. (May 6, 2021).

¹³¹ *Id.* § 3.

¹³² Pa. Sen. Spec. Comm. on Election Integrity and Reform, Report on the Special Committee’s Findings and Recommendations to the Senate and the Senate State Government Committee (June 2021), *available at* <https://pasenelectioncommittee.com/wp-content/uploads/sites/106/2021/06/election-integrity-report-final.pdf>.

¹³³ *Id.* at 8.

¹³⁴ *Id.* at 9-10.

¹³⁵ *Id.* at 11.

¹³⁶ *Id.* at 12.

¹³⁷ S.B. 784, §§ 1, 3, 2021 Pa. Gen. Assemb. Sess. (June 21, 2021).

Election Day.¹³⁸ The bill was referred to Senator Argall's State Government Committee, where no subsequent action was taken.

In August of 2021, Senator Argall, as Chair of the State Senate Government Committee, held a hearing with the Acting Pennsylvania Secretary of State, Veronica Degraffenreid, relating to the Risk-Limiting Audit (RLA) performed on the 2020 General Election by the Pennsylvania Department of State. BCRC Project volunteer John Archer was able to attend this hearing. From our review of information provided by the Department of State, there were at least 20 detailed questions that remained unanswered, many of which required detailed statistics. We then worked with staff for Senator Argall. On October 26, 2021, Senator Argall submitted a request to the Acting Pennsylvania Secretary of State.¹³⁹ Many of the inadequacies of the Risk-Limiting Audit are described in that letter and presented in the form of a question. The letter to the Pennsylvania Department of State requested more detailed explanations as to how their data was gathered, exactly what statistical methods (i.e., algorithms) were employed and why, and the definitions that were applied, especially the margin of error. Without specific answers to Senator Argall's October 26th letter, we do not know how the Risk-Limiting Audit can achieve any statistically valid or reliable results.

On February 18, 2022, the Pennsylvania Department of State responded to Senator Argall's letter with nonspecific, abstract statements which have failed to adequately defend the Risk-Limiting Audit program. As this Report is being completed, Senator Argall and his staff are preparing a further response, outlining the deficiencies.

On September 17, 2021, Senator Argall introduced Senate Bill 878. Besides other Republican State Senators, the Bill was co-cosponsored by Democrat Senators Judy Schwank (Dem., S.D. 11), Sharif Street (Dem., S.D. 3), Lisa Boscola (Dem., S.D. 18), and Carolyn Comitta (Dem., S.D. 19). The support of Senator Street is noteworthy, where he is the Democrat, Minority Chair of the State Government Committee. If enacted, among other things, Senate Bill 878 authorizes county boards of election to begin pre-canvassing absentee and mail-in ballots on the Saturday before Election Day and that it must be live-streamed in addition to permitting poll observers to be present.¹⁴⁰ It eliminates the permanent mail-in voting list, thereby

¹³⁸ *Id.* § 2.

¹³⁹ Appendix 8.

¹⁴⁰ S.B. 878, § 3, 2021 Pa. Gen. Assemb. Sess. (Sept. 17, 2021).

requiring voters to apply for mail-in ballots for each election.¹⁴¹ It directs the Pennsylvania Secretary of State to provide a voluntary professional certification and poll worker training program for county election officials, as well as official instructions and procedures manual and uniform standards for implementing drop boxes.¹⁴² It also directs the Secretary of State to create an electronic tracking system for mail-in ballots, monitoring the date on which a ballot is received and the date it is pre-canvassed or canvassed.¹⁴³

Despite having 12 co-cosponsors and the support of the Democrat Minority Chair, Senate Bill 878 was referred to Senator Argall's State Government Committee and no subsequent action was taken.

In November of 2021, staff for Senator Argall helped prepare a bill which would obligate the Pennsylvania Secretary of State to cooperate with the Auditor General and develop a quality assurance program. This draft would have implemented many of the goals identified by the Secure the Vote Project. The draft specifically required the quality assurance program to reduce risks involving irregularities, errors, and fraudulent activities through risk management assessments and to use measurable and testable performance standards. Among other things, the program had to specifically address qualified citizen registration, ballot mailings, audits of pre-canvassing, canvassing, and adjudication processes, registration database management, and voting machine and tabulators calibration, testing, and certification. The draft also imposed performance standards for audits, addressing many of the deficiencies that prompted Senator Argall's correspondence with the Acting Secretary of State.

To date, Senator Argall has not introduced the draft before the Senate.

Our legislature did not pass Senator Argall's bills. At the same time, these still performed a channeling function by developing the ideas and policies needed to improve our election system.

Ratings.

From the totality of everything we have observed and learned, we offer a rating shown in Table 6.2 below.

¹⁴¹ *Id.* § 4.

¹⁴² *Id.* § 1.

¹⁴³ *Id.*

TABLE 6.2
SUBJECTIVE RATING OF THE BERKS COUNTY DELEGATION IN THE
PENNSYLVANIA GENERAL ASSEMBLY

Item No.	Quantitatively Evaluated Attributes	Pro-Activeness	Transparency
1	Repeal of “no excuse” mail-in voting under Act 77.	Low	Moderate
2	Preparation and release of Pennsylvania State House’s Report after 10 public hearings.	High	High
3	Legislators’ response to election integrity survey questionnaire by participating in two-hour session.	High	High
4	Frequent amount of communication and coordination with BCRC regarding election issues.	Moderate	Moderate
5	Advanced knowledge of State-level public hearings on election issues.	High	High
6	Demonstrated interest in challenging the Department of State’s Risk-Limiting Audit principles and methods.	High	High
7	Demonstrated interest in promoting a quality assurance “continuous improvement” culture in government agencies.	High	High

Notes: As-applied to State Senator Dave Argall (Rep., S.D. 29) and State Representatives Barry Jozwiak (Rep., L.D. 5), Jim Cox (Rep., L.D. 129), David M. Maloney, Sr. (Rep., L.D. 130), Ryan Mackenzie (Rep., L.D. 134), and Gary Day (Rep., L.D. 187).

VII. Conclusions and Action Items.

Through the Secure the Vote Project, the Berks County Republican Committee is dedicated to interfacing with public officials and public servants who are committed to election integrity. It is our sincere hope to restore public confidence in our election system where our country, Commonwealth, and county are facing uncertain times and voter discontent. This Report, as well as our Report on the 2020 General Election, consistently describe irregularities and pathways for election fraud. We believe the most significant vulnerabilities lie in the voter registration process and an apparent inability of our County to ensure that voter registrations are active and not filled with unqualified persons.

Outstanding Action Items.

We conclude and recommend the following action items to our Berks County government, with primary responsibility vested in our County Commissioners, directly and by virtue of sitting as the Board of Elections:

1. Update, and reduce to writing, procedures in the Office of Election Services.
2. Promote a quality assurance program which promotes continuous improvement efforts, process audits, quality control, and lessons learned programs.
3. Respond to our Report on the 2020 General Election.
4. Evaluate touchscreen malfunctions with the ES&S ExpressVote Universal Voting System.
5. Improve training for precinct machine inspectors.
6. Identify voter registration and election process vulnerabilities and determine any prevention or mitigation of the risks.
7. Significantly reduce the number of inactive registrations, including at least annual purges. Implement a program where statutory verification notices are sent to voters who did not cast a ballot in any general election during even-numbered years. The waiting period for purging inactive voters should be reduced from 10 years to five without violating federal law.

8. Meet and confer with the District Attorney and the Chief County Detective to determine the number of county detectives, the budget, and resources necessary to investigate unlawful voting and fraudulent registrations within a permanent election fraud unit.
9. Meet and confer with the President Judge of the Court of Common Pleas and with the County row officers to create a robust system of interagency cooperation. It should be determined if these offices regularly possess records showing fair indicia of residents who are deceased, or relocated out of County, or are not citizens of the United States. Such information can be included within a regular program of purging inactive or unqualified voters as well as furnishing investigative leads to the County Detectives as to election fraud.

We conclude and recommend the following action items to our Berks County delegation in the Pennsylvania General Assembly:

1. Repeal “no excuse” mail-in voting under Act 77. It is unconstitutional and, even if that was not so, there is no ability to salvage this system.
2. Mandate signature-checking for absentee ballots.
3. Mandate, including, if necessary, by amendment of the Pennsylvania Constitution, the requirement for voters to provide photographic identification at the polling station on Election Day.
4. Appropriate the necessary resources for, and impose a statutory mandate on, the Pennsylvania Auditor General to annually perform a detailed audit the Statewide Uniform Registry of Electors (SURE) to determine the system’s effectiveness in assuring that the registration system is removing inactive and unqualified registrations from the rolls.¹⁴⁴
5. Mandate the cooperation of the Pennsylvania Department of State in any SURE audit by the Pennsylvania Auditor General.
6. Revitalize neighborhood canvassing of inactive voter registrations by amending 25 Pa.C.S. § 1901 to authorize the hiring of constables, if

¹⁴⁴ Appendix 6.

compensated hourly, for the same purpose of visiting dwellings to verify if voter registrations are current.

7. Identify criteria for quality assurance programs which should be implemented on the State and county levels.
8. Meet and confer with the County Commissioners and Director of Elections at least quarterly, or semiannually, to address election integrity.
9. Status any progress described in the House State Government Committee's report, *A Comprehensive Review of Pennsylvania's Election Laws: How Pennsylvania Can Guarantee Rights and Integrity in Our Election System* (May 10, 2021).
10. Respond — expressing agreement or disagreement — with proposals by the County Commissioners Association of Pennsylvania on election operations.
11. Appropriate the necessary resources for, and impose a statutory mandate on, the Commonwealth for a technical, investigative audit of all election equipment supplied by service-providers, such as ES&S.
12. Exercise oversight of the Pennsylvania Department of State, consistent with State Senator Argall's letter from October 26, 2021, concerning the Risk-Limiting Audit on the 2020 General Election.¹⁴⁵

The Uncertain Future of Act 77's "No Excuse" Mail-in Voting.

We maintain our belief that "no excuse" mail-in voting under Act 77 is a significant pathway for election fraud and has no redeeming value.

The General Assembly has not repealed the provisions for "no excuse" mail-in ballots created by Act 77. There is very strong evidence that they knew, or should have known, that Act 77 was unconstitutional before it was enacted. That is particularly shown by a proposed constitutional amendment, co-sponsored by Senator Argall, more than six months before the final passage of Act 77, which would have amended the Pennsylvania Constitution to authorize mail-in voting. As mentioned, the Commonwealth Court declared Act 77 unconstitutional last

¹⁴⁵ Appendix 8.

January.¹⁴⁶ At the time of this Report, we do not know whether our Supreme Court of Pennsylvania will affirm that decision. Even if “no excuse” mail-in ballots could be constitutional, the lessons learned from Act 77 include that no system of that magnitude could be rolled out without a realistic failure mode and effects analysis as well as a risk-management assessment. It is unclear to us how or why our elected representatives thought the benefits of Act 77 outweighed the risks, even if it was constitutional.

At no point has our delegation in the General Assembly provided a satisfactory explanation why they voted for Act 77 given the requirements in Article VII of the Pennsylvania Constitution — and more than 150 years of judicial construction — that voters may only offer to vote in person unless expressly covered by the “for cause” grounds for absentee voting. It is also unclear to us why certain members of our delegation — State Representatives Barry Jozwiak and David Maloney — would not support a repeal of Act 77 through House Bill 25, but then join in litigation to have Act 77 declared unconstitutional.

We find it inconsequential that Governor Wolf would have vetoed any attempt to repeal Act 77. We have a right to know who in the General Assembly is for repeal and who is against it, so that voters may decide which incumbents will be retained in the next election.

Previously-Identified Issues.

Our Report from the 2020 General Election pointed out numerous voter registration and election process vulnerabilities, pathways for fraud, and lax laws and regulations which inevitably lend themselves to fraud. That Report addressed, among other things, questions of deceased voters, noncitizen registrants, inflated registration rolls, and the political bias in the number of inactive registrations heavily favoring the Democratic Party.

That Report, however, was unable to confirm potential vulnerabilities such as ballot harvesting, multi-address registrants, criminal impersonation of voters, and non-existent addresses.

From these previously-identified vulnerabilities, this Report confirmed that the Berks County Office of Election Services has achieved an increased purging of inactive voter registrations. That is a positive development where the Office

¹⁴⁶ *McLinko v. Commonwealth*, Pennsylvania Dep’t of State, 270 A.3d 1243 (Pa. Commw. Ct. 2022).

deserves our applause. On the other hand, we are baffled why the Berks County Board of Elections declined to respond to this issue, notwithstanding the hard work of a professional staff.

Quality Assurance and Best Management Practices.

Because of the dire need to get right our voter registration and election process, our elected representatives and public servants in the Commonwealth and in the County of Berks must recognize that the challenges encountered are truly quality-related issues.

We find it highly essential for our elected representatives and public servants in the Commonwealth and in Berks County to recognize that elections have quality assurance challenges in the making and enforcing of the laws. We believe there are sound comparisons to other industries which demand safe and reliable standards. These industries embrace quality assurance programs as a means of controlling for high quality outcomes. If, for instance, an aircraft does not have safe operation, then nearly all problems stem from quality-related design defects, negligent manufacturing, deficient testing and inspection, improper maintenance, negligent hiring, training, or retaining of pilots, or breakdowns in communication or operating procedures. At the design phase, the aerospace industry regularly follows failure mode and effects analysis (FMEA), intending to identify and evaluate any vulnerable pathways and their mitigation.

The adoption of a quality culture is a leadership function. It is also a management tool used to assure that departments, groups, and personnel perform their assigned tasks at consistently higher levels that are measurable and controllable to achieve increased public confidence. Without the adoption of quality assurance programs, all persons involved are likely to continue to perform tasks at existing levels of quality without necessarily realizing when and where problems are occurring. The need for a culture of “continuous improvements” or higher quality results will not be achievable. When problems are finally discovered, corrections can cause major re-work to occur, which runs the risk of eroding public confidence in our elections and may call into question political motivations.

Quality assurance programs typically integrate several programs such as quality planning, quality control, vendor surveillance, material receipt inspection, detailed audits, failure mode and effect analysis, risk management, lessons learned, problem reporting and corrective action, and improvement recommendation programs.

The implementation of quality assurance programs in the Office of Election Services should not be a new revelation to government leaders, taking into account ISO-54000:2019 by the International Standards Organization. This directly applies to electoral organizations.

Quality assurance programs also assume — and in some industries it has been directly found — that the costs of correcting later-discovered mistakes could be at least tenfold, if not greater, than the costs of preventing the same. We believe the same principles apply to public functions, such as ensuring free and fair elections. It is not enough to wait for election fraud vulnerabilities to materialize, for instance, if capable of being identified and preempted or mitigated. It is not simply the need for elected representatives and public servants to meet their obligations to the public: Without quality assurance programs, then election integrity will not have a strong likelihood of any success and public discontent has a serious danger of growing.

Officials in several Pennsylvania counties have left the impression they have encountered no voting irregularities or experienced election fraud. In their view, the potential for ballot harvesting, registration by noncitizens and their possible casting of ballots, or registrants from other counties or State are not perceived as real problems. These impressions have developed for any number of reasons, including the absence of regular inquiries or investigations. It comes as no surprise, therefore, that irregularities do not become discovered in those circumstances. It also appears that many county officials hid behind the Risk-Limiting Audit by the Pennsylvania Department of State. Unfortunately, that rationale is also questionable on several grounds, including its inconsistency with the definition of quality audit. Audits are performed, not only to identify actual, but also potential vulnerabilities and to either prevent or mitigate the same.

Our disappointment with our elected representatives and public servants is not limited to the laws they make or enforce, but their disregard of the reality of human nature, especially Murphy's Law: "If anything can go wrong, it will," "If there is a possibility of several things going wrong, the one that will cause the most damage will be the one to go wrong," "Left to themselves, things tend to go from bad to worse," "If everything seems to be going well, you have obviously overlooked something."

With those principles in mind, we are deeply concerned by the risks of mail-in ballot harvesting, voter registration by non-citizens, criminal impersonation of voters, and pervasive inactive registrations having a partisan disparity. We are

dissatisfied with the so-called “Risk-Limiting Audit” by the Pennsylvania Department of State. That examined only a small number of ballots and its scope was limited as it only focused on determining whether ballots were tabulated properly from the 2020 General Election. That does not reach many other pathways for election fraud, as described in this Report. Risk limited audits are not a suitable substitute for the broader scope of quality assurance programs.

After the 2021 Municipal Election, the Pennsylvania Secretary of State ordered a statutory, Act 97 recount and recanvassing for the judicial election to the Commonwealth Court. Many volunteers signed-up and participated in the recanvassing. The results have not been released, but we are credibly informed that thousands of ballots were discovered to be cast by unqualified persons. Whether our elected representatives and public servants can be faulted for this or not, they certainly can be faulted if they do not undertake efforts to stave it off in future.

We renew our request from our Report on the 2020 General Election for Berks County to adopt a quality assurance program which embraces a principle of continuous improvement and a questioning attitude towards voter registration and election processes. We also believe the services of KineticXperience, LLC can be brought to bear on the matter of implementing quality assurance programs.

The quality-related challenges presented to the Office of Election Services are not limited to sending out letters in Spanish with an incorrect election date.

It is important to recognize that election integrity and quality measures must begin with the registration process to validate that applicants are qualified. Something more is needed than a check-the-box piece of paper. We likewise believe that relying on the SURE System to validate qualifications, such as citizenship, has already been proven to be fallible. The work by the Auditor General’s Office has already shown that SURE is permitting on the rolls an individual having multiple residences. This is a serious quality issue that must be corrected, and our County Commissioners have the authority to do it.

* * *

We are hopeful that our concerns will find redress by our public servants, and that public confidence will be restored in our election system.