



December 21, 2023

Representative Milou Mackenzie
Pennsylvania House of Representatives
405 Irvis Office Building
Harrisburg PA, 17120

Representative Mackenzie,

Thank you for your letter to Governor Shapiro and me regarding the issue involving the retention questions for Superior Court judges that occurred in Northampton County during the 2023 Municipal Election. As a former county election official, I am acutely aware that there is no room for error in election administration and can assure you that the Shapiro Administration takes seriously any issue that may disenfranchise any voter or cause them to lose trust in our democratic process.

The Department was in frequent contact with Northampton County on Election Day to provide election officials with all needed support. I, too, share your concern that no voter should ever be turned away from casting their vote. Be assured that the Department has engaged in a thorough review of what happened in Northampton County. I, as well as other Department personnel, have met with both Northampton County officials, including County Executive McClure, and ES&S, the voting system vendor. Both meetings were collegial and productive. We discussed what happened and how to avoid such errors in the future. Northampton County's statutorily required 2 percent audit and the Department's statewide risk limiting audit both showed that the reported election results were accurate.

I want to be clear that the intent of voters in Northampton County was captured and accurately reflected in the tabulated and certified election results. No votes were switched from Yes to No or vice versa. The Department's review of the issue that was identified in Northampton County on Election Day confirmed that this was a clerical labeling error by an employee of ES&S and not a tabulation error. After meeting with Northampton County Executive McClure and his team, the Department feels confident the county is taking all appropriate steps to ensure a similar error does not occur in future elections. We stand ready to assist the county and the vendor in this regard.

As background, Northampton voters use a touchscreen to mark their selected candidates. After a voter makes their selections, a separate window displays a paper ballot with their selections so the voter can verify that the paper record matches their on-screen choices. In preparation for the 2023 Municipal Election, ES&S mislabeled the contest titles for the two Superior Court retention races when abbreviating them for the summary screen. The error made it appear on the ballot display as though the voter's selections for the two retention elections were different than the voter's intent. In fact, the voting system was correctly programmed to accurately tabulate the voter's selections for the two retention elections. It was the *labels* for those two retention elections on the paper record display that

were incorrect. This labeling error impacted neither the voters' selections nor the tabulated results for these two retention races. This was human error by a technician for ES&S, as ES&S acknowledged in interviews with my office as part of our review.

With respect to your professed dissatisfaction with the county's voting system, as I explained above, the issue was the result of human error, not any flaw in the ES&S electronic voting system. Please note that this system has been certified by both the U.S. Election Assistance Commission and the Department and is used by countless jurisdictions throughout the country. The Department has utmost confidence in it. As you are aware, the Pennsylvania Election Code provides counties with the ability to choose a certified electronic voting system that works best for their unique needs. Any voting system can be susceptible to human error without proper checks.

In addition to the steps outlined above, the Department of State will also be reviewing and updating its logic and accuracy testing guidelines and facilitating additional training to help counties detect human errors like this and correct them before Election Day.

The Shapiro Administration looks forward to working with you and your colleagues from both parties and chambers on any potential legislative changes that would prevent these types of errors in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Schmidt". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Al Schmidt
Secretary of the Commonwealth