

**Report on Requirements and Recommendations for
Miami County Board of Elections November 2018 General Election**

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I. EXECUTIVE SUMMARY

This document will provide comprehensive detail of the findings as well as the required and recommended next steps as a result of the vote count discrepancy that occurred at the Miami County Board of Elections (“Board”) during the November 2018 General Election.

After conducting an investigation, there is no evidence that indicates anything unlawful or malicious played any part in what transpired at the Board. Nor was there any technological or machine malfunction. Instead, inadequate human processes and preparation caused the failure of the Board and its staff to properly download and tally in-person absentee votes cast in the election.

Specifically, Board staff members were tasked with shutting down the machines used for in-person absentee voting. These machines are the same as the machines used on Election Day, however, they require an additional step for processing in-person absentee votes as compared to the machines used on Election Day.

Board staff members were new to the task of shutting down in-person absentee voting machines and not provided with the proper training, nor given any documentation necessary to understand the appropriate process for shutting down the machines in question. Because of this, Board staff members did not complete the required additional step of downloading the votes cast before turning off the machines.

In light of this failure, Secretary LaRose placed the Board on administrative oversight on January 25, 2019 and his office had already begun instituting necessary reforms within the Board which, if followed properly, will ensure this situation will not happen again. This Report includes those additional steps the Board is required to complete before the Board can be removed from administrative oversight.

Finally, all county Boards of Elections should read this Report and its Requirements and Recommendations in order to ensure they are taking all necessary steps to protect the votes cast by Ohioans.

II. INVESTIGATIVE PROCESS

On January 18, 2019, Secretary LaRose learned that the Board had not reported 6,282¹ in-person absentee votes cast in the November 2018 General Election and immediately launched an investigation into the Board. On January 25, 2019 the Board was placed under administrative oversight pursuant to Ohio Revised Code (“R.C.”) §3501.05(DD) and Ohio Administrative Code 111:3-2.

On January 24, 2019, three investigators from the Elections Division of the Secretary of State’s Office travelled to the Board and conducted interviews. The investigators collectively conducted separate interviews at the Board office of eight individuals, including all four Board members and all current full-time staff. The former Director of the Board was interviewed off-site, these interviews lasted approximately nine hours.

Beginning on January 29, 2019, staff from the Elections Division of the Secretary of State’s Office have hosted a weekly conference call with the Board’s staff and two Board members, one from each political party. The purpose of these calls is to assist the Board in auditing, creating, and updating policies and procedures; identifying long-term and weekly goals and tasks for the Board staff; preparing for the May 2019 Primary/Special Election; and searching for a new director. These conference calls will continue until the administrative oversight designation is lifted by the Secretary of State.

On January 31, 2019, the same three investigators from the Elections Division of the Secretary of State’s Office returned to the Board, where they interviewed two representatives from the Board’s voting system vendor. The investigators and vendor representatives tested the various TSX machine screens and interacted with the vendor software to gain a complete understanding of what occurred on November 6, 2018. These interviews lasted approximately three hours.

Finally, the three investigators interviewed one part-time staff member of the Board on February 4, 2019, and a former Deputy Director of the Board on February 11, 2019.

On February 12, 2019, Secretary LaRose visited the Board and met with Board staff and two Board members. Secretary LaRose underscored the importance of cooperating with the investigation and reminded the Board to utilize his office as a partner and a resource.

¹ The office learned that over 6,000 votes had not been reported, but the exact number was revealed during the investigation.

Secretary LaRose instructed the Board to reconcile the in-person absentee votes and amend its official results. The Board certified its amended results on January 22, 2019, and amended its Absentee Supplemental Report on February 13, 2019. The amended data from the Board is published on the Ohio Secretary of State's website under the 2018 Official Elections Results page. Since this time, the Secretary of State's Office has worked to prepare a thorough and transparent report and has continued to hold weekly calls with the Board to ensure that the Board is prepared to conduct the May 2019 Primary/Special Election.

III. TIMELINE OF EVENTS

The following timeline of events is based on information gathered from the interviews as set forth above.

A. Monday, November 5, 2018

The ten TSX machines that were set up for in-person absentee voting at the county Board of Elections were shut down the night of Monday, November 5, 2018 after in-person absentee voting concluded. Several members of the Board's staff assisted with the shutdown of these machines. The staff shutting down the machines used the instructions that the Board provides to precinct election officials for shutting down the TSX machines that are deployed to polling locations on Election Day.

B. Tuesday, November 6, 2018 (Election Night)

The memory cards from the in-person absentee voting TSX machines were uploaded into the Global Election Management System ("GEMS"), which is the Board's tabulation system that produces results and reports. After uploading the memory cards and tabulating the results, the Board produced the evening's first summary report at approximately 7:45 p.m. Since the Board staff tracked the daily count for in-person absentee voting, the Board was generally aware that there were approximately 13,000 absentee votes.

However, the first report, containing only the results from absentee ballots, showed approximately 7,000 tabulated votes. Two Board members discussed their concern with the report and the aggregated vote total contained therein and instructed Board staff to review the problem. Board staff acknowledged the discrepancy and began working to identify and resolve the problem.

At approximately 8:10 p.m., the on-site representative of the Board's voting system vendor called another representative of the vendor to discuss the problem and next steps and jointly worked to resolve the issue. During this time, memory cards containing votes cast at polling locations on Election Day were also being uploaded to GEMS. The Board staff produced a second summary report at approximately 8:15 p.m. that reflected an increase in vote totals.

Because of the increase in vote totals, both Board staff and Board members thought the issue was resolved. In fact, the increased vote totals in the second report were attributable to the addition of the votes cast at polling locations and not the resolution of the initial discrepancy in absentee votes. A separate issue surfaced on Election Night that involved approximately 65 memory cards returned from TSX machines deployed to several polling locations. Board staff were unable to import the results contained on these memory cards into GEMS. Board staff and the on-site vendor representative concluded that results needed to be manually entered into GEMS. To manually enter the results, Board staff inserted each memory card back into a TSX machine and printed a summary report of the results contained on each memory card. Two Board staff (a bipartisan team) manually inputted the results from each summary report into GEMS and produced the final election report of the evening. This process began at approximately 8:30 p.m. on Election Night and lasted until the staff was notified by the Secretary of State at 1:24 a.m. on Wednesday, November 7, 2018 that it had submitted all the required reports.

C. Monday, November 26, 2018

The Board conducted the Official Canvass of the November 2018 General Election. Board staff assured the Board members that all of the votes had been reported, including the in-person absentee votes. As was common practice for this Board, the Board reviewed a summary report—and not a more-detailed report of results broken down categorically.

D. Thursday, December 20, 2018

Board staff were contacted by staff at Secretary of State Jon Husted's Office regarding an unusual discrepancy in voter history that was identified during a review of the information that had been sent by the Board to the Statewide Voter Registration Database ("SWVRD"). Following this call, Board staff discovered that the discrepancy in voter history was the result of unreported votes from in-person absentee voting. Board staff contacted one Board member regarding the issue.

E. Friday, December 21, 2018

The other Board members were told that there was an issue with in-person absentee votes not being reported. In an effort to find the cause of the problem, one Board member called the Board's voting system vendor. The vendor's representative stated that the issue was due to the votes contained on the memory cards from the in-person absentee voting TSX machines not being marked as "accepted."

F. Monday, January 7, 2019

One Board member and Board staff held a conference call with the vendor representative. The vendor representative suspected that the in-person absentee voting TSX machines were not shut down properly. This caused votes contained on the memory cards associated with those machines to not be marked as "accepted." Due to this failure, the votes contained on those cards were not reported in the final vote count.

G. Wednesday, January 9, 2019 to Monday, January 14, 2019

After the January 7, 2019 conference call with the vendor, at least one Board member worked with their county prosecutor to determine whether the Board had the legal authority to amend the results and post them on the Board's website. When the Board determined that there was authority for the Board to amend the results, the Board wanted to do so as quickly as possible. The Board promptly scheduled a meeting to address the issue publicly.

H. Friday, January 18, 2019

Secretary LaRose's Office was made aware of approximately 6,282² in-person absentee votes in Miami County that had not been reported in the Official Canvass for the 2018 General Election. Secretary LaRose immediately took action and launched an investigation.

I. Friday, January 25, 2019

Secretary LaRose's Office placed the Board under administrative oversight pursuant to Ohio Revised Code ("R.C.") §3501.05(DD) and Ohio Administrative Code 111:3-2.

IV. FINDINGS OF FACT

The Miami County Board of Elections uses TSX machines, which are direct recording electronic voting machines, for in-person absentee voting. The Board set up ten TSX machines at their office for in-person absentee voting during the November 2018 General Election. During in-person absentee voting, the machines were set up each morning and monitored throughout the day by Board staff.

The TSX machines used for in-person absentee voting are the same as the machines deployed to polling locations on Election Day; however, they are programmed differently. Because the 20-day³ period for challenging a voter's registration and ability to cast an absentee ballot overlapped with the 29-day period for in-person absentee voting, the TSX machines used for in-person absentee voting required an extra step where the votes are marked as "accepted" on each machine at the conclusion of the in-person absentee voting period.⁴ This programming is consistent with prior practice of the Board.

² The office learned that over 6,000 votes had not been reported, but the exact number was revealed during the investigation.

³ Recently, Ohio law was amended, changing the deadline for challenging a voter's registration and ability to cast an absentee ballot to 30 days prior to the election. R.C. 3503.24, effective March 20, 2019.

⁴ This allowed for the Board to remove a ballot if a successful challenge to a voter's registration was filed after the start of in-person absentee voting.

In prior elections, the Board staff member responsible for the shutdown of the in-person absentee voting TSX machines knew that the machines used for in-person absentee voting needed to be shut down differently than those used at polling locations.⁵ This staff member was told that the proper procedure required him to accept the votes contained on each TSX machine prior to shutting it down, but the Board never created, and did not have, separate written shutdown instructions outlining this difference.

The 2018 General Election was the first election held subsequent to the departure of the aforementioned staff member. On Monday, November 5, 2018, after the close of in-person absentee voting, multiple staff members of the Board collectively shut down the ten TSX machines that were set up for in-person absentee voting. Unlike the recently departed staff member, none of the staff who assisted in the shutdown process on November 5, 2018 were aware of the minor difference in the programming of the TSX machines used for in-person absentee voting and mistakenly followed the instructions that the Board provides for shutting down Election Day machines. Votes cast on the in-person absentee voting TSX machines were correctly retained on the memory card, but the extra step was not taken during shutdown to mark them as “accepted.”

The Board began the unofficial canvass of the election after the polls closed at 7:30 p.m. on Election Day. A bipartisan team handled the uploading of the results from the TSX machine memory cards deployed for in-person absentee voting and those deployed to the polling locations. A representative from the Board’s voting system vendor was on site to provide support.

Due to the incorrect shutdown of the in-person absentee voting TSX machines, votes cast on the in-person absentee TSX machines were not reported with the other tabulated votes. Consequently, when GEMS produced the first report of election results on Election Night, the aggregate number of votes did not include the total number of absentee votes—both in-person and by mail—as it should have.

Board members raised questions when the number of votes on the first report of election results were inconsistent with the known number of absentee voters. Board staff requested assistance from the on-site vendor representative to determine the cause of the suspected discrepancy and it was determined that, in order for GEMS to report results for in-person absentee voting, the Board staff needed to accept those results through a different screen display in GEMS.

After performing this step, the staff ran a second report of results, and the number of votes was significantly higher. The increase in the number of votes convinced the Board members and staff that the issue had been resolved. However, the increased numbers on the report was actually a reflection of the fact that memory cards from TSX machines deployed to polling locations had *also* been uploaded into GEMS (the aggregated total did not separately categorize vote types). The additional number of votes from the memory cards deployed to polling locations cloaked the fact that the vote totals from the memory cards from the TSX machines deployed for in-person absentee voting were still not reported.

⁵ The upload history—from previous elections—reviewed by the investigators confirmed this.

Compounding matters, a separate issue surfaced on Election Night that the investigators suspect impacted the Board's ability to resolve the in-person absentee voting tabulation issue. This secondary issue involved approximately 65 memory cards returned from TSX machines deployed to several polling locations. On Election Night 2018, Board staff were unable to import the results contained on these memory cards into GEMS. Board staff and the vendor representative concluded that results needed to be manually entered into GEMS.⁶

To manually enter the results, Board staff inserted each memory card back into a TSX machine and printed a summary report of the results contained on each memory card. Beginning at 8:30 p.m. on Election Night, a bipartisan team of Board staff manually input the results from each summary report into GEMS and produced the final election report of the evening. This process lasted for several hours and likely masked the issue with the in-person absentee vote totals.

On November 26, 2018, the Board conducted the Official Canvass of the election. The issue with the unreported vote totals for in-person absentee voting remained undiscovered at this time. Investigators determined that this was primarily due to the fact that the Board lacked established policies and procedures to govern its conduct of the Official Canvass. A policy outlining how to reconcile election results—and compare the number of ballots cast to the number of voters—might have led to the discovery of the issue during the Official Canvass.

Additionally, the Board could have produced and reviewed a detailed report from GEMS that displays results by precinct and by ballot type (i.e., absentee, Election Day). If such a report had been produced and reviewed, Board members and staff may have noticed that the in-person absentee vote totals as a category were not reported. Instead, the Board reviewed only a summary report and relied on assurances from Board staff that all votes were properly uploaded into GEMS and reflected in the summary report.

Unfortunately, it was not until December 20, 2018 that Board staff suspected there may still be an issue with the unreported vote totals for in-person absentee voting. The Secretary of State's staff was reviewing voting history information provided by the Board for the SWVRD and noticed an unusual discrepancy in the voter history totals provided. The Secretary of State's staff, not knowing the cause of the unusual discrepancy, asked the Board staff about the discrepancy. The entire Board was not made aware of the issue until the next day. Once the Board was made aware of the issue, it earnestly began to search for the cause and determine how to remedy the results of the Official Canvass.

Secretary LaRose's investigation determined that the primary cause of the issue was the TSX machines used for in-person absentee voting were not shut down correctly—i.e., the votes cast on the machines were not accepted before the machines were shut down and, therefore, were not reported in GEMS. To verify the root cause, the investigators returned to the Board and walked

⁶ After Board staff created the database for the election in GEMS, they corrected a typographical error in ballot language for a local issue. Board staff were required to create a second database to incorporate this correction. The results on these cards could not be imported into the original database.

through this hypothesis with the vendor. The investigators and vendor conducted a test upload of memory cards into GEMS. The data, results, and test upload supported the theory that the TSX machines used for in-person absentee voting were not shut down correctly for the November 2018 General Election.

Importantly, the investigators found no signs of fraud or malice—alleged or otherwise—in the Board’s conduct of the Unofficial or Official Canvass of the election. Additionally, the investigators did not observe or uncover any technical problem or deficiency with the voting equipment or system used by the Board.

V. REQUIREMENTS AND RECOMMENDATIONS

The Secretary of State’s Office sets forth the following requirements and recommendations to ensure this investigation serves as a learning opportunity for the Board and to prevent such an issue from re-occurring in other counties.

A. The Board must create a set of policies that encompass the various aspects of election administration to provide for a uniform and consistent approach to its decision-making processes.

Policies governing the following topics must be created or updated, reviewed, and voted upon by the Board in a public meeting no later than Friday, April 19, 2019.

1. Reconciliation⁷ for the Unofficial Canvass and the Official Canvass;
2. Shutting Down Voting Machines Deployed for In-Person Absentee Voting (after the close of polls on Election Day);
3. Ballot and Document Proofing (including the proofing of the ballot generated by the Board’s remote ballot system vendor);
4. Voting System Testing (i.e., covering acceptance testing, logic and accuracy testing, and the public test);
5. External and Internal Communications (This policy must include details on how the Board staff is expected to interact with members of the Board, the public, and outside agencies. It also must outline the protocol for the Board staff and/or members to communicate with the press and the Board’s legal counsel, the county prosecuting attorney);
6. Provisional Ballot Review;

⁷ Reconciliation is the process of ensuring that each vote is accounted for and attributed to the same number of actual voters who participated in the election.

7. Petition Acceptance, Review, and Processing;
8. Public Records; and
9. Social Media.

All incoming staff members must also review each written policy to ensure that they understand the policy and have the opportunity to ask questions before they are required to implement its provisions. Outgoing staff members should be interviewed prior to their departure to ensure specialized knowledge is not lost during each transition.

B. The Board must create a thorough and specific set of procedures and guidelines that clearly outline the processes of the Board consistent with its policies.

Each set of procedures and guidelines must have a corresponding, step-by-step checklist. Policies requiring such a detailed set of instructions include:

1. Reconciliation Procedures for the Unofficial and the Official Canvasses;
2. Voting System Testing (i.e., covering acceptance testing, logic and accuracy testing, and the public test);
3. Election Management and Voting System Operation; and
4. Ballot and Document proofing (including the proofing of the ballot generated by the Board's remote ballot system vendor).

C. The Board is required to read every communication pertaining to elections that is directed to the Board and issued by the Secretary of State's Office and execute the instructions provided therein.

Communication pertaining to elections includes, but is not limited to, directives, advisories, memoranda, emails, and notifications. At each Board meeting, the director and/or deputy director must present a list of every communication (directed to the Board) issued from the Secretary of State's Office during the previous month. Such a presentation must be reflected in the Board's meeting minutes.

The Secretary of State's Office recommends that the Board discuss how it plans to implement the instructions contained in each directive or advisory issued by the Secretary of State. Such a discussion not only serves to ensure that the Board is implementing such instructions but also that the Board is being accountable to its staff and the electors of Miami County.

D. The Board must collaborate as a body along with its staff members to maintain an updated and comprehensive Election Administration Plan ("EAP").

Each member of the Board must participate and aid the Board staff in drafting and preparing the EAP. Each Board member and its staff must be intimately familiar with all aspects of the EAP in order to adequately execute the Board's duties and responsibilities.

An updated EAP, after it has been thoroughly reviewed, must be voted on in a public meeting. A signature form, attesting that each member of the Board has reviewed and accepted the EAP, must be provided to the Secretary of State along with the EAP no later than Friday, April 19, 2019.

E. The Board must ensure that each (full-time) staff member receives extensive training on each aspect of the administration of elections and in particular must ensure that each staff member is trained to operate each system that the Board uses in the administration of elections.

This cross-training is critical to maximize accountability and bipartisan participation in each aspect of elections administration and to minimize the chance of errors occurring due to the absence of staff members. The systems that each staff member must be proficient in utilizing include, but are not limited to, the following:

1. The election management system and voting equipment (“Voting System”);
2. The voter registration system (which includes various modules such as absentee voting tracking, petition verification, etc.);
3. The electronic poll book system;
4. The remote ballot marking system;
5. The printing system used to produce ballots; and
6. The Geographic Information System (“GIS”) or other mapping software utilized for the purpose of establishing precinct boundaries, etc.

Prior to the November 2019 General Election, each (full-time) Board staff member must present to the Board their knowledge of each system to demonstrate proficiency and ensure that the Board members understand how the Board utilizes each system to administer elections.

F. The Board must review the reconciliation policy and procedure prior to voting on the Unofficial and Official certification of election results.

This review should allow the Board to view the results for each category of ballots cast, including ballots cast during in-person absentee voting, absentee cast by mail, Election Day, and provisional.

G. The Board must conduct a test election in July or August of 2019.

The test election will provide both the Board and the electorate an opportunity to utilize the county’s voting system. The Board should publicize this event, at a minimum, on its website, its social media accounts, and at least once in a paper of general circulation in the county.

H. The Board must collaborate as a public body on opportunities to improve and encourage the professional development of its staff.

Professional development of the Board staff is crucial to ensuring that the director and deputy director possess the skills necessary to manage the daily operation of the Board's office and master the technology integral to the administration of elections.

The Secretary of State's Office recommends that the Board work with the Miami County Commissioners to establish a budget to pay for costs associated with professional development opportunities for the Board staff. In locating opportunities for professional development, we recommend that the director and deputy director contact the following organizations and request information on professional development and training opportunities that might be beneficial for elections officials:

1. The Ohio Association of Elections Officials ("OAEO");
2. Election Center;
3. County Commissioners Association of Ohio; and
4. The U.S. Election Assistance Commission ("EAC").

The Secretary of State's Office recommends that the Board analyze the salaries of its director and deputy director to determine whether those salaries align with the salaries of directors and deputy directors in counties of a similar size. Additionally, the Board should consider the duties of the director and deputy director and consider whether the current salaries for those positions are commensurate with the level of training, knowledge, and responsibility required to competently fill those roles.

I. At least 120 days prior to the commencement of each election cycle, the Board must discuss whether it needs to contract with a vendor for support for that election, and, if so, what level of support is required.

Prior to entering into any agreement with a vendor for support for an election, the Board must communicate clearly to the vendor its needs and expectations with regard to that support. As a part of any agreement, the Board should include a timeline that details the tasks and deadlines that the vendor must meet.

J. The Board must evaluate its existing office space and determine whether there is a new space that better serves the needs of its staff and Miami County electors.

In making this determination, the Board must consider, at a minimum, the following:

1. Securing its voting equipment and sensitive data and documents;

2. Conducting in-person absentee voting in its office and monitoring and securing the voting equipment used by in-person absentee voters;
3. Ensuring the accessibility of its office space to individuals with a disability; and
4. Locating its critical election infrastructure—such as its voter registration server, election management system, and voting equipment—in a secured area of the office, which prevents unauthorized access.

Regardless of where the Board is located, best security practices should be implemented, including the addition of a sign-in sheet for (non-voting) visitors. Training should be provided to cover the security practices implemented by the Board.

The Board should contact the Americans with Disabilities Act (“ADA”) Coordinator employed by the Secretary of State’s Office and ask that he conduct an evaluation of any new facility that the Board is considering.

VI. CONCLUSION

As stated in the Findings of Fact section of this Report, it is clear that the discrepancy in the reporting of the results from the November 2018 General Election was the result of human error caused by both a lack of proper training and the Board’s lack of set policies and procedures. If proper training existed for the individuals responsible for shutting down the in-person absentee voting TSX machines for the November 2018 General Election, they would have been aware of the necessary step to do so properly.

More importantly, if the Board had a reconciliation policy; instructions for shutting down the TSX machines used for in-person absentee voting; and created and followed a policy requiring the Board to review a detailed report prior to approving the official results of an election, this error would have been caught—and remedied—prior to the Board’s certification of the official results.

In sum, the Board failed to do the following:

- Provide proper training for Board staff and members;
- Maintain set policies and standard operating procedures for the administration of elections, including the shutdown of voting machines;
- Review a detailed report of election results for discrepancies or errors;
- Effectively communicate with each other;
- Follow guidelines set by the Secretary of State’s Office; and
- Ensure that the duties of outgoing Board staff and members are understood by and reassigned to current Board staff and members.

The avoidable errors outlined in this Report are why the Board must follow the Requirements and Recommendations and ensure that the proper procedures are in place moving forward. If followed correctly, we are confident that such an incident will not occur again.

The Secretary of State's Office commends the Board and its staff for their cooperation and partnership to discover the root of the issue and their enthusiasm to accept our recommendations. The Secretary of State's Office will continue to partner with the Board as it administers the May 2019 election and until such a time as the Office believes the Board is fully prepared to operate independently.

This Report and the Requirements and Recommendations are instructive to all Ohio county boards of elections in adopting and implementing best election practices as technology continues to evolve. The voters of Ohio place their trust in all of Ohio's election officials, and we must all do our part to safeguard that trust.