

HANGLEY ARONCHICK SEGAL  
PUDLIN & SCHILLER

Mark A. Aronchick (ID No. 20261)  
Michele D. Hangle (ID No. 82779)  
Robert A. Wiygul (ID No. 310760)  
John B. Hill (ID No. 328340)  
One Logan Square, 27th Floor  
Philadelphia, PA 19103-6933  
(215) 568-6200

*Counsel for Respondents*

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

NAACP PENNSYLVANIA STATE  
CONFERENCE,

Petitioner,

v.

KATHY BOOCKVAR, IN HER CAPACITY AS  
SECRETARY OF THE COMMONWEALTH OF  
PENNSYLVANIA, et al.

Respondents.

No. 364 MD 2020

**RESPONDENTS' BRIEF IN OPPOSITION TO  
PETITIONER'S APPLICATION FOR SPECIAL RELIEF  
IN THE NATURE OF A PRELIMINARY INJUNCTION**

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Respondents, Kathy Boockvar, in her official capacity as Secretary of the Commonwealth of Pennsylvania, and Jessica Mathis, in her official capacity as Director of the Bureau of Election Services and Notaries, submit this Brief in Opposition to Petitioner’s Application for Special Relief in the Form of a Preliminary Injunction (“Application”).

## **I. INTRODUCTION**

Petitioner seeks to effect a comprehensive overhaul of Pennsylvania’s election procedures and impose numerous additional requirements on the county boards of elections—via a mandatory preliminary injunction issued by this Court. According to Petitioner, because the expected persistence of COVID-19 will pose challenges to voters and election administrators during the upcoming general election in November 2020, this Court should fashion and impose—and superintend and enforce—a panoply of new requirements and procedures that would effectively overhaul Pennsylvania’s existing voting procedures to accord with Petitioner’s desired policies. Many of these policy changes are sweeping and would require, at a minimum, a massive amount of human and financial resources—not to mention time—to design and implement. Petitioner’s proposed order would, among other things:

- Require each of Pennsylvania’s 67 county boards of elections to establish additional satellite election offices—that is, locations where voters can, prior to election day, request, complete, and submit absentee or mail-in ballots, all in one visit—“in a range of easily

accessible locations, and during weekends and evenings”;

- Require each of Pennsylvania’s 67 county boards of elections to provide “ballot drop boxes,” distributed throughout the county, where voters can deliver their absentee or mail-in ballots prior to and on election day, and require counties that already provide such drop boxes to “expand the number”;
- Require each of Pennsylvania’s 67 county boards of elections to mail paper applications for mail-in ballots to all registered voters in the county;
- Require each of Pennsylvania’s 67 county boards of elections to ensure that, if they relocate a given polling place, no voter will need to travel more than 0.5 miles farther than they travelled to reach the original polling place; and
- Require each of Pennsylvania’s 67 county boards of election “to ensure that there are a sufficient number of polling places to ensure that no voter must wait more than 30 minutes to vote.”

Memorandum of Law in Support of Petitioner’s Application for Special Relief in the Form of a Preliminary Injunction 11-12 (Aug. 6, 2020) (“Pet’r Br.”).

Moreover, and most radically, Petitioner demands that all Pennsylvania counties using ballot-marking devices (BMDs)—that is, electronic voting machines that print a voter-verifiable paper ballot based on selections a voter makes on a touchscreen—replace them with hand-marked paper ballot voting systems before the November election.<sup>1</sup> Incredibly, Petitioner presses this demand

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<sup>1</sup> As discussed below, although Petitioner’s current argument is purportedly based on COVID-19 considerations, Petitioner’s counsel have been trying to force Pennsylvanians to vote on hand-marked paper ballots since well before the pandemic began. *See infra* Section II.C.

notwithstanding that it has already been rejected by a federal court as completely infeasible. The court found that such a mandate “would have calamitous consequences” and “effectively disenfranchise Philadelphia’s one million registered voters”—even if it had been issued *in April of this year (i.e., with four additional months of lead time before the general election) and applied to just three counties*. (Wiygul Decl., Ex. 1, at 39-40.) Unfortunately, Petitioner has placed its blinkered—and unfounded—hostility to electronic voting machines above the interest of Pennsylvania voters.

Respondents do not dispute that at least some of the *other* changes Petitioner seeks might well have the salutary effect of facilitating voting. Nor do Respondents dispute that COVID-19 will present challenges to election administration in November; the Department of State and the county boards have undertaken herculean efforts to meet these challenges, and continue to work assiduously to address them. But Petitioner’s Application, which argues that this Court should impose Petitioner’s broad array of desired electoral reforms via preliminary injunction and *as a matter of constitutional law*, is fatally misconceived. This is true for a number of fundamental reasons.

First, as pointed out in Respondents’ pending Preliminary Objections, Petitioner has failed to join indispensable parties, namely, the county boards of elections. As a result, even if this Court issued the injunction Petitioner desires, it

would be largely ineffectual. Under the Election Code, it is the county boards that have discretionary authority to establish the location of polling places; decide whether to set up satellite election offices, send out mail-in ballot applications, and set up “drop boxes” for return of ballots; and choose between BMD-based and hand-marked paper ballot voting systems. Put simply, Respondents cannot issue the binding directives Petitioner appears to seek.

Second, and relatedly, Petitioner’s mandatory preliminary injunction would violate the cardinal rule that enforcement of an injunction must not require too great an amount of supervision from the court. The injunction Petitioner seeks here would require the Court to micromanage the election operations of 67 different county boards of elections—to determine, for example, likely wait times at individual polling places, the distance voters would have to travel to reach relocated polls, and whether counties have set up and adequately distributed sufficient numbers of drop boxes and satellite election offices. In short, even if this Court had jurisdiction over the necessary parties, the requested injunction would be unworkable.

Third, the requested injunction would do more harm than good and thus fails the balance-of-the-equities test. Indeed, much of the relief sought is simply infeasible. Forcing Pennsylvania counties to transition from BMDs to hand-marked paper ballots—in two months, in advance of a presidential election likely

to generate an unprecedented number of votes, while grappling with the challenges of a pandemic—would not only cost millions of dollars; it would almost certainly lead to chaos and disarray, disenfranchising a great number of voters. Other items of requested relief are also cost-prohibitive. To take only one example, the satellite election offices that Petitioner wants to mandate in every county of the Commonwealth would likely cost \$100,000 to \$125,000 each.

Fourth, Petitioner fails to establish any violation that could serve as a predicate for the relief requested. A mandatory preliminary injunction is an extraordinary remedy that should be utilized only in the rarest of cases, and only where the movant has made a “very strong showing” of a “clear right to relief.” *Medico v. Makowski*, 793 A.2d 167, 169 (Pa. Commw. Ct. 2002) (en banc). Petitioner does not come close to meeting this bar. Petitioner’s Application relies largely on the significant consolidation and relocation of polling places in Philadelphia and Allegheny counties during the June 2020 primary election, contending that these changes put undue burdens on the ability of certain electors to vote. But the consolidation that took place in those counties was permitted only by virtue of special legislation enacted to address an expected shortage of poll workers during the primary election. Those statutory provisions have expired and have not been reenacted. And Petitioner ignores the substantial measures that Philadelphia and Allegheny have taken—and plan to take—to facilitate voting



during the general election. Moreover, although Petitioner's injunctive mandates would apply to every county in the Commonwealth, Petitioner provides no evidence whatsoever regarding the vast majority of those counties (none of which are parties to this litigation).

Finally, Petitioner's argument that BMD-based voting systems present a greater risk of COVID-19 infection than hand-marked paper ballot systems is irresponsible fear-mongering based on strained conjecture and assumptions at odds with the facts. Strikingly, although jurisdictions around the country have conducted elections during the pandemic—using both BMD-based and hand-marked paper ballot systems—Petitioner presents no data or other objective evidence to support its claim that BMD-based systems are unsafe. In sum, Petitioner's evidentiary showing falls far short of what is required for them to be awarded the mandatory injunctive relief they seek.

These are just some of the reasons why Petitioner's Application must be denied. As detailed below, a preliminary injunction cannot issue unless the movant can establish every one of at least a half-dozen different elements. Petitioner cannot establish any of them.

## **II. FACTUAL BACKGROUND**

### **A. The June 2020 Primary Election**

No one disputes that the 2020 Pennsylvania primary election was

unprecedented. This is true for at least four reasons, two of which were anticipated long before the election, and two of which were not.

First, pursuant to a directive issued by the Department of State in 2018, many Pennsylvania counties launched new, modernized voting technology during the primary election (the others had introduced such technology in 2019). As a result, all Pennsylvanians now vote on new, more accessible, auditable, and secure voting systems providing a voter-verified paper ballot. Recognizing the time needed to effectuate such transitions in an orderly manner, the Department issued its directive in early 2018, but did not require counties to implement the new technology until the 2020 primary. (Marks Decl. ¶¶ 3-7.)

Second, the recent primary was the first election in which, thanks to Act 77 of 2019, any registered voter in Pennsylvania could vote by “no excuse” mail-in ballot, even if that voter was otherwise ineligible for an absentee ballot. Based on other states’ experiences of adopting new mail-in voting process, the Department and county boards of election anticipated that it would take some time for Pennsylvania voters to embrace this new voting method. But the third significant challenge to the management of the 2020 primary election—the COVID-19 pandemic—turned that prediction upside down. (*Id.* ¶¶ 8-14.)

In March 2020, as the severity of the crisis became clear, the Department, together with the counties and the General Assembly, began taking steps to ensure

that all Pennsylvania voters would be able to cast their ballots as safely and easily as possible under the circumstances. One critical such step was the General Assembly's passage of Act 12 of 2020, which postponed the primary election from April 28 to June 2, 2020. (*Id.* ¶¶ 16-17.)

Act 12 also responded to the reality that, due to fear of infection, counties were having extreme difficulties in recruiting poll workers to staff polling places during the primary election. (*Id.* ¶ 18.) At the same time, counties were also forced to relocate many polling places because the institutions that housed them—nursing homes, for example—were no longer open to the public. (*Id.* ¶ 19.)

Recognizing that many counties simply would not be able to open their usual number of polling place locations, the General Assembly included provisions in Act 12 that lifted restrictions on how counties could recruit poll workers, where they could relocate polling places, and the type of notice they had to give when doing so. (*Id.* ¶ 20.) *See* 25 Pa. Stat. §§ 3581, 3582. Act 12 also permitted counties to consolidate multiple polling places into a smaller number of locations. (Marks Decl. ¶ 20.) Some Pennsylvania counties—particularly large, urban ones such as Philadelphia and Allegheny—used this authority to significantly reduce the number of polling places in the primary election. (Bluestein Aff. ¶¶ 30-33; Voyer Decl. ¶ 1.) Philadelphia, for example, consolidated the approximately 830 polling places in use in the November 2019 election into approximately 190 polling places.

(Bluestein Aff. ¶ 33.) Nearly half of Pennsylvania counties, however, did not consolidate any polling places at all, and many others consolidated no more than a handful. (Marks Decl. ¶ 41.)

In the meantime, due to the pandemic and stay-at-home orders implemented to stop the spread of the virus, Pennsylvanians embraced mail-in voting in impressive numbers. Nearly 1.5 million voters cast their votes by mail-in or absentee ballot. This was 17 times the number that voted absentee in the 2016 primary, when approximately 84,000 absentee ballots were cast. (*Id.* ¶ 21.)

The final challenge to the 2020 primary election emerged just days before the primary election, when civil unrest broke out nationally and in regions throughout the Commonwealth in response to the tragic death of George Floyd. As a result of this unrest, at least two boards of elections were forced to evacuate their offices, and some voters were unable to reach election offices or ballot drop boxes to return their voted ballots. In response to these burdens on the voting process, on June 1, 2020, the day before the primary election, Governor Wolf signed an executive order that extended the deadline for receipt of absentee and mail-in ballots by seven days in the six counties that were under civil-unrest-related states of emergency: Allegheny, Dauphin, Delaware, Erie, Montgomery, and Philadelphia. (*Id.* ¶¶ 22-24.)

Despite all these changes and challenges, Pennsylvanians voted safely and

peacefully in the primary, embracing the new mail-in voting option, and the new voting systems performed well. In addition to the nearly 1.5 million people who voted by mail, over 1.3 million Pennsylvanians voted in person. Reports of significant incidents were fewer than reported in many comparable prior elections, and overall turnout was far higher than in 2012, the last time a presidential primary was uncontested on both sides of the aisle. Respondents do not contend the election was perfect. But, as a whole, the herculean efforts taken by Pennsylvania's election administrators met the challenges presented. And the lessons learned from the primary will help ensure a smoother voting experience in November's general election. (*Id.* ¶¶ 25-28.)

**B. Preparations for the November 2020 General Election**

For several reasons, Respondents expect that many of the issues that arose in the primary election will not recur, or will be significantly mitigated, in the general election.

**1. Mail-in Ballots**

In the primary election, counties received a surge of applications for mail-in and absentee ballots as the applicable deadline approached, putting a great deal of pressure on the counties' systems for processing and mailing ballots. But now that more voters are familiar with mail-in voting, and are aware that the COVID-19 pandemic is unlikely to subside before the general election, many voters will apply

for ballots earlier in the process. Indeed, many voters have already applied; more than 1 million voters who requested ballots for the primary election also opted to receive general election ballots. To reinforce this trend, the Department, as well as community groups, candidates, political parties, and other stakeholders, is engaging in public relations efforts to encourage voters to apply for mail-in ballots as early as possible. (*Id.* ¶¶ 29-31.)

The Department has also taken steps to make it easier for voters to return mail-in and absentee ballots. For example, on July 31, 2020, the Department announced that the Commonwealth would provide funding to counties to pre-pay postage for voters to return ballots by mail at no cost to the voter. The Department has also issued guidance to counties encouraging them to develop plans for how voters can return ballots in person, and to submit an initial such plan to the Department 45 days before the election. This guidance explains that counties may establish multiple ballot return locations, and encourages counties to select such locations based on considerations of convenience, accessibility, historical congestion at polling places, and proximity to disadvantaged communities. The Department has also provided guidelines for providing public notice of the availability of ballot return sites, and for security, signage, and accessibility at such sites. Although the Department cannot require counties to provide multiple sites

for voters to return their ballots, Respondents expect this guidance will assist those counties that wish to provide these services. (*Id.* ¶¶ 32-36.)

In fact, a number of counties are taking significant steps to facilitate the in-person return of mail-in ballots. For example, Philadelphia, which is the focus of much of Petitioner's Application, plans to make available, at locations distributed throughout the City, a number of secure drop boxes, mobile drop-off locations, and day-of-election sites at which voters can return in person their completed absentee or mail-in ballots. (Bluestein Aff. ¶¶ 43, 57.) Philadelphia also plans to create 15 additional satellite election offices—at a cost of \$100,000 to \$125,000 each—which will allow voters to apply for a mail-in ballot in person, receive it, complete it, and return it, all in one visit. (*Id.* ¶¶ 54-55.) Philadelphia is planning to operate these offices from mid-September through election day, and to have them open Monday through Friday, into the evening on Monday through Thursday, and open on weekends. (After the ballot-application deadline has passed, the sites will be able to collect ballots delivered in person through election day.) (*Id.* ¶ 56.)

In addition, certain counties that fell behind in the issuance of mail-in and absentee ballot applications in the primary election are taking steps to improve their processes in the general election, including providing additional staffing, engaging mail houses, and procuring equipment to streamline fulfillment of ballot requests. (Marks Decl. ¶ 37.)

## **2. In-Person Voting**

The bulk of Petitioner's grievances regarding in-person voting arise from the extensive consolidation of polling places that occurred in some jurisdictions in the primary election. As noted above, that consolidation was made possible by certain provisions of Act 12 that are no longer in effect. Respondents are not aware of any legislative effort to permit similar polling place consolidation for the general election, nor are they currently advocating for such legislation, because it does not appear that extensive polling place consolidation will be necessary. (Marks Decl. ¶¶ 38-39.) For example, Philadelphia, which opened approximately 190 polling places in the primary election, currently plans to open between 700 and 800 polling places in the general election. (Bluestein Aff. ¶¶ 45-48.) And Allegheny County expects to open the same number of polling places as it did during the November 2019 general election. (Voye Decl. ¶¶ 3-4.) In short, neither the Department nor the counties believe that polling places should be consolidated if it is not necessary to do so. The extensive consolidations in the primary election were a reaction to an emerging crisis. (Marks Decl. ¶ 40.)

### **C. The History of Petitioner's Attempts to Force All Pennsylvania Voters to Vote on Optically Scanned Hand-Marked Paper Ballots**

Petitioner demands that this Court force 20 Pennsylvania counties to abandon BMD-based voting systems and require all voters to vote on optically scanned hand-marked paper ballots in the November 2020 general election. This



demand is purportedly predicated on health concerns related to COVID-19. But the campaign against BMDs—by Petitioner’s counsel and other devotees of hand-marked paper ballots—pre-dates the novel coronavirus.

Last November, a group led by former Presidential candidate Jill Stein filed a motion in federal court, contending that the ExpressVote XL—the BMD selected by Philadelphia and two other Pennsylvania counties—should be banned based on, among other things, its supposed vulnerability to hacking. The court held a three-day evidentiary hearing in February 2020. On April 29, 2020, it issued a 41-page opinion thoroughly rejecting all of plaintiffs’ arguments and finding their motion was “based ... on absolutely nothing.” (Wiygul Decl., Ex. 1, at 41.) In the court’s words, plaintiffs’ assertions that that the voting machines were vulnerable to hacking were “baseless and irrational.” (*Id.* at 1.) More importantly for purposes of Petitioner’s present Application, the federal court held that, “[e]ven if [plaintiffs] had presented a strong claim on the merits”—which they had not—the court would still have denied the motion because banning Philadelphia’s ability to use the ExpressVote XL in the November 2020 election “would destroy the City’s ability to hold an election this year” and “effectively disenfranchise Philadelphia’s one million registered voters.” (*Id.* at 39-41.) “These significant public harms” provided “an independent basis to deny [the plaintiffs’] Motion.” (*Id.* at 41.) Notably, the court’s conclusion that it was too late for Philadelphia to transition to

another voting system by the November 2020 election was made *in April*. By the time this Court rules on Petitioner’s present Application, it will be September—and a forced transition to a new voting system will be even more calamitous.

In December 2019, a couple of weeks after Stein filed her motion in federal court, Free Speech for People, co-counsel for Petitioner here, filed a lawsuit in this Court on behalf of a group of petitioners (the “*NEDC* action”), which likewise sought to prevent counties from using the ExpressVote XL. Petitioners in that action alleged “security” issues similar to those raised by Stein, and extolled the ostensible virtues of “hand-marked paper ballots tabulated with optical scanners.” (Wiygul Decl., Ex. 2 ¶ 245.) In January 2020, the *NEDC* petitioners filed an application for preliminary injunction seeking an order immediately banning use of the ExpressVote XL in any Pennsylvania elections, and advocating the “use [of] a hand-marked paper ballot system.” (Wiygul Decl., Ex. 3, at 5.) After the Secretary provided evidence that changing voting technology within months of the primary election—then scheduled for April 28, 2020—would severely disrupt the election, the petitioners withdrew their application on January 24, 2020, acknowledging that making the change they sought would “take time” and “be confusing.” (Wiygul Decl., Ex. 4.) In their notice of withdrawal, they promised that they would soon file an application for an accelerated schedule and a “resolution on the merits[] in March 2020,” so as to provide sufficient time (in

petitioners' view) for the ExpressVote XL to be replaced "before the November 2020 general election." (*Id.*) But no such application was filed.

In June 2020, the *NEDC* petitioners emerged once again to demand that the case must be resolved in time to replace the ExpressVote XL before the November general election. The Secretary opposed the petitioners' application to expedite the proceedings, pointing out that "it [was] far too late" to transition to new voting systems in time for the November 2020 election. (Wiygul Decl., Ex. 5.) The Court denied the application. Oral argument on the Secretary's pending Preliminary Objections in *NEDC* is tentatively scheduled for October.

Embracing the maxim that a crisis should never be allowed to go to waste, Petitioner here, represented by the same co-counsel as the *NEDC* petitioners, has seized upon the COVID-19 pandemic as an opportunity to take another bite at the apple. Petitioner's argument rests on an affidavit by a purported medical expert, Dr. David J. Weber, who has no apparent expertise in voting systems or procedures but opines that contaminated surfaces, such as the touchscreen of a BMD, present a potential risk of contracting COVID-19. Neither Petitioner nor any of its witnesses address the fact that it is possible to vote on BMDs *without* having to directly contact the touchscreen (for example, while wearing disposable gloves or using a disposable stylus). (Blaustein Aff. ¶¶ 37-38; Baumert Decl. ¶¶ 23-26, 28, 34-35, 41; Marks Decl. ¶¶ 50-51.) Nor do they address the actual voting procedures used

by Pennsylvania counties utilizing BMDs. Nor do they consider that a voter is likely to contact more shared surfaces when using a hand-marked paper ballot voting system. (*See* Bleustein Aff. ¶ 82; Baumert Decl. ¶¶ 31, 41; Marks Decl. ¶ 47.) Notably, many Pennsylvania counties successfully used BMDs in the June 2020 primary election. (Baumert Decl. ¶ 37; Marks Decl. ¶¶ 52-53, 68-69.) Yet Petitioner presents no data or other evidence suggesting that that election was associated with any spike in COVID-19 infections, let alone an infection rate that was higher for counties using BMDs.

Petitioner’s North Carolina affiliate—represented by the same co-counsel, Free Speech for People, as Petitioner here—recently moved for a similar preliminary injunction in North Carolina, arguing that a BMD in that state, the ExpressVote, should be replaced by hand-marked paper ballots because of, among other things, the alleged risk of COVID-19 infection. Plaintiff in that case made the same arguments supported by the same experts as Petitioner here. On August 19, 2020, after an evidentiary hearing, the North Carolina court denied the motion. The court not only found that plaintiffs had not proved that the use of the ExpressVote would increase the risk of COVID-19 infection; it also held that “requiring the 21 Defendant counties to switch to entirely new voting systems before the 2020 general election” “would create considerable risk that Defendant counties would be unable to perform their duties, as well as cause confusion about

the particulars of how voting would take place,” thus threatening to “disenfranchis[e] many voters.” (Wiygul Decl., Ex. 6, at 8-9 ¶¶ 18, 21.)

### **III. ARGUMENT**

Petitioner has a heavy burden to meet to obtain preliminary injunctive relief. Such an injunction may not issue unless Petitioner establishes each of the following “essential prerequisites,” *Reed v. Harrisburg City Council*, 927 A.2d 698, 702 (Pa. Commw. Ct. 2007):

First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages.

Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings.

Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct.

Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits.

Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending activity.

Sixth, and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.

*Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003) (internal citations omitted); *see Reed*, 927 A.2d at 702-03.

Moreover, because Petitioners seek a sweeping mandatory injunction overriding decisions made by the Secretary and county boards of elections pursuant to the discretionary authority vested in them by the Election Code, and compelling public officials to spend millions of dollars, this Court must apply even “greater scrutiny” to the injunction prerequisites than it would in the case of “a prohibitory injunction”; a mandatory preliminary injunction “is an extraordinary remedy that should be utilized only in the rarest cases.” *Purcell v. Milton Hershey Sch. Alumni Ass’n*, 884 A.2d 372, 377 (Pa. Commw. Ct. 2005) (citing *Summit Towne Centre, Inc.*, 828 A.2d 995); accord *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Commw. Ct. 2010); *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2012 WL 5374328, at \*2 (Pa. Commw. Ct. Nov. 1, 2012); Standard Pa. Prac. 2d § 83:9 (2008) (“[T]he court must exercise extreme care and act in *only the clearest of circumstances* when a mandatory preliminary injunction is requested.” (emphasis added)). And “[a] mandatory injunction should never be granted when its enforcement will require too great an amount of supervision by the court.” *Applewhite*, 2012 WL 5374328, at \*2 (quoting *Cameron v. Carbondale*, 76 A. 198, 199 (Pa. 1910)); accord *Dept. of Public Welfare v. Portnoy*, 566 A.2d 336, 341 (Pa. Commw. Ct. 1989) (en banc), *aff’d*, 612 A.2d 1349 (Pa. 1992).

In fact, under any level of scrutiny, it is clear that Petitioner has failed to establish *any* of the essential prerequisites of a preliminary injunction, and that its Application must therefore be denied.

**A. Petitioners Have Failed to Make the Required “Very Strong Showing” of a “Clear Right to Relief”**

Proponents of any preliminary injunction must establish they are likely to prevail on the merits of their claims. A mandatory injunction imposes an even heavier burden: it will issue “only upon a very strong showing that the plaintiff has a clear right to relief.” *Medico v. Makowski*, 793 A.2d 167, 169 (Pa. Commw. Ct. 2002) (en banc) (citing *Portnoy*, 566 A.2d 336). For multiple independent reasons, Petitioner here cannot satisfy this test. Its Amended Petition suffers from several fundamental legal defects enumerated in Respondents’ pending Preliminary Objections, which are incorporated by reference. And even if Petitioner’s claims were legally viable (as they are not), Petitioner has failed to adduce evidence that could possibly justify the sweeping, statewide relief it seeks here.

**1. Petitioner Has Failed to Join the County Boards of Elections, Who Are Indispensable Parties**

As a threshold matter, as this Court found in a similar lawsuit less than three months ago, Petitioner’s Application must be denied for lack of jurisdiction, as Petitioner has failed to join indispensable parties, namely, the county boards of elections. “In Pennsylvania, an indispensable party is one whose rights are so

directly connected with and affected by litigation that [the entity] must be a party of record to protect such rights[.]” *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 346 A.2d 788, 789 (Pa. 1975); *see also CRY, Inc. v. Mill Service, Inc.*, 640 A.2d 372, 375 (Pa. 1994) (stating same). “The absence of indispensable parties goes absolutely to the jurisdiction, and without their presence the court can grant no relief.” *Powell v. Shepard*, 113 A.2d 261, 264–65 (Pa. 1955) (quotations and citations omitted). The following considerations are “pertinent” to determining whether a party is indispensable: “1. Do absent parties have a right or interest related to the claim? 2. If so, what is the nature of that right or interest? 3. Is that right or interest essential to the merits of the issue? 4. Can justice be afforded without violating the due process rights of absent parties?” *DeCoatsworth v. Jones*, 639 A.2d 792, 797 (Pa. 1994) (citation omitted).

Petitioner’s Application makes it even clearer that the boards of elections are necessary parties to this case. Petitioner alleges that the county boards of elections will engage in conduct – or inaction – that will violate voters’ constitutional rights with respect to the November 2020 general election. For example, the Application contends that the county boards will: provide too few polling places; provide inadequate notice of changes in polling places; allow for excessive delays in the voting process, thus threatening to create excessive wait times for voters; and provide too few locations where voters can deliver in person completed absentee



and mail-in ballots before the close of polls on election. Because Petitioner alleges that the county boards of election will be at least partially responsible for the violations of the Pennsylvania Constitution predicted by their Application, “justice [cannot] be afforded without violating the due process rights of” the boards. *DeCoatsworth*, 639 A.2d at 797; *see also CRY*, 640 A.2d at 376 (party was indispensable where it was accused of “misfeasance and malfeasance”).

Crucially, much of Petitioner’s requested relief is within the purview of the boards of elections. The Election Code vests the board of each county with “jurisdiction over the conduct of ... elections in such county.” 25 P.S. § 2641(a). Under the Election Code, the boards are responsible for, among other things, “select[ing] and equip[ping] polling places”; “purchas[ing], preserv[ing], stor[ing] and maintain[ing] primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and ... procur[ing] ballots and all other supplies for elections”; and “prepar[ing] and publish[ing] ... all notices and advertisements in connection with the conduct of primaries and elections[.]” 25 P.S. § 2642. County boards have discretion to exercise their jurisdiction over the conduct of elections within the boundaries set forth by the Election Code. *See, e.g., Dorris v. Lloyd*, 100 A.2d 924, 926-27 (Pa. 1953) (“while there undoubtedly are some duties imposed by law upon county boards of election that are purely ministerial, it is gravely doubtful whether the inspection of the conduct of

primaries and elections and the investigation do not involve the exercise of a broad range of discretion in the manner and extent of their performance”); *Appeal of McCracken*, 88 A.2d 787, 788 (Pa. 1952) (observing that “[t]he Election Code makes the County Board of Election more than a mere ministerial body”). The relief requested by Petition directly implicates this jurisdiction and asks this Court to impose mandatory duties on the county boards that appear nowhere in the Election Code. (*See* Pet’r Br. at 11-12 (Paragraphs 1-6 of requested relief).) Put simply, although Petitioners seek to assert judicial control over nearly every aspect of the November election, they have not joined the county boards that would be responsible for implementing the changes they seek.

Nor can Petitioner circumvent the need to join the boards of elections by simply asking the Court to order Respondents to *direct* the county boards to do as Petitioner seeks. Although the Secretary could conceivably force county boards to switch to hand-marked paper ballots in the general election by de-certifying any other voting system for use in Pennsylvania, *see* 25 Pa. Stat. § 3031.5(c) (prohibiting the use of an electronic voting system not certified by the Secretary),<sup>2</sup> the Election Code does not authorize the Secretary to impose requirements on the number and location of polling places beyond those imposed by the Election Code.

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<sup>2</sup> As explained herein, contrary to Petitioner’s unfounded suggestion, the Secretary has no non-discretionary duty to de-certify BMDs, and she does not believe it would be appropriate to do so.

(*See* Pet’r Br. at 11-12 (Paragraphs 1 and 3 of requested relief).) Nor is the Secretary authorized to require county boards to mail notice of polling-place changes to voters; to establish satellite or mobile locations where voters can request, complete and submit mail-in ballots; to send mail-in ballot applications to all registered voters; or to provide or expand the number of ballot drop boxes. (*See id.* (Paragraphs 2, 4-6 of requested relief).) Without the presence of the boards as respondents, the relief sought by Petitioner—even if it could otherwise be granted—would be impossible to enforce.

That the county boards are indispensable parties to this case is only confirmed by recent decisional authority. In a similar case decided less than three months ago, this Court concluded that the presence of accusations “against the county boards of elections” and the fact that “this Court cannot order the county boards of elections to provide [relief] ... without being allowed to defend” “present[] a compelling case that the county boards of elections have a direct interest in the Petition and as such are indispensable parties.” Memorandum Opinion at 9, *Michael Crossey, et al. v. Kathy Boockvar, et al.*, No. 266 M.D. 2020 (Pa. Commw. Ct. May 28, 2020) (Leavitt, J.) (unreported opinion) (denying Petitioners’ preliminary injunction application). Particularly given the nature of the specific relief requested by Petitioners’ Application in this case, the same conclusion here.

## **2. Petitioner’s Claims Against Respondents Are Barred by the Doctrine of Sovereign Immunity**

In addition to the jurisdictional bar presented by Petitioner’s failure to join the county boards of election, this lawsuit—and, in particular, the relief sought in the Application—is barred by the doctrine of sovereign immunity. “[S]overeign immunity bars claims seeking mandatory injunctions to compel affirmative action by Commonwealth officials.” *Stackhouse v. Commonwealth*, 892 A.2d 54, 61 (Pa. Commw. Ct. 2006); accord *Fawber v. Cohen*, 532 A.2d 429, 433-34 (Pa. 1987) (quoting *Phila. Life Ins. Co. v. Commonwealth*, 190 A.2d 111, 114 (Pa. 1963)) (sovereign immunity prohibits suits that “seek to compel *affirmative action on the part of state officials*” (emphasis in original)); see also *Snelling v. Dept. of Transp.*, 366 A.2d 1298, 1304 (Pa. Commw. Ct. 1976) (holding sovereign immunity bars portion of suit seeking to compel the Secretary of the Department of Transportation “to revoke previously issued highway occupancy permits”).

The doctrine of sovereign immunity is quintessentially applicable here. *All* of the relief sought by Petitioner takes the form of a mandatory injunction that would compel Respondents to issue certain directives to the county boards of election or to undertake other affirmative actions. (*See* Pet’r Br. 11-12.) Indeed, Petitioner flatly admits, as it must, that the relief it seeks is an order “compel[ling] the Respondents—the Commonwealth’s chief election officers—to act.” (*Id.* at 13.) Each item of relief proposed by Petitioner would require Respondents and the

county boards of elections to take specific actions that, indisputably, are *not* required of them by the Election Code. (*See id.* at 11-12.)

This Court’s *Stackhouse* decision is particularly instructive. The *Stackhouse* plaintiff, like Petitioner here, contended that a particular administrative system was unconstitutional. Specifically, Stackhouse alleged “that the State Police’s internal affairs investigation system violated Article I, Section 1 of the Pennsylvania Constitution because of a lack of training, guidelines, policy, restrictions and procedures.” *Stackhouse*, 892 A.2d at 57. As a remedy for this alleged constitutional violation, Stackhouse sought, among other things, an order preventing the Defendants from subjecting her “to any investigative process or system in which no training, guidelines, policy limitation or restriction is utilized to protect the rights to which [Stackhouse was allegedly] entitled.” *Id.* at 61. This Court held that “[w]hile facially seeking to restrain conduct, the ultimate thrust of the relief requested is to obtain an order mandating imposition of guidelines, policies, limitations and restrictions upon State Police internal affairs investigations,” and Stackhouse’s claim seeking that relief was therefore barred by sovereign immunity.<sup>3</sup> *Id.* at 62. Petitioner’s claims here are even more

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<sup>3</sup> This Court held that sovereign immunity also barred the declaratory relief sought in *Stackhouse*. *See id.* at 62. As the Court explained, “where a request for a declaration of rights can have no effect nor serve any purpose other than as the legal predicate for ... [an]other immunity-barred claim in the same action, the demand for declaratory relief ought to fall along with the claim it serves to support. The purpose of absolute sovereign immunity—to insulate state agencies and employees not only from judgment but also from being required to expend the

straightforwardly barred, as Petitioner does not even attempt to couch them artfully in the form of a prohibitory injunction. Rather, on their face, all of Petitioners’ claims seek to “obtain an order mandating imposition of guidelines, policies, limitations and restrictions upon [Respondents]” with respect to the administration of the upcoming election. *See id.* As this Court held in *Stackhouse*, such claims run afoul of the doctrine of sovereign immunity.

### **3. Petitioner Fails to Make Out a Constitutional Violation That Could Warrant the Relief Sought**

Even if this Court had jurisdiction to consider Petitioner’s claims (as it does not), Petitioner falls well short of making a “very strong showing” of a “clear right” to the relief sought.

#### **(a) Petitioner’s Application Cannot Carry Its Extraordinarily Heavy Burden**

As an initial matter, it is difficult to overstate the burden Petitioner must carry. Plaintiff asks this Court to override the election-administration decisions of the Secretary and all 67 of Pennsylvania’s county boards of election—the public officials vested with discretionary authority to administer elections by the Election Code—and assert control over virtually every aspect of the elections process, from ballot applications, to polling-place locations, to the selection of voting systems, to ballot collection. As noted above, Petitioner seeks a mandatory preliminary

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time and funds necessary to defend suits—would be frustrated if the declaratory action were allowed to go forward under these circumstances.” *Id.*

injunction, “an extraordinary remedy that should be utilized only in the rarest cases.” *Purcell*, 884 A.2d at 377.

In addition, Petitioner asserts exclusively constitutional claims. In essence, Petitioner contends that the existing statutory regulations governing in-person and mail-in voting are, as applied to the upcoming general election, insufficiently protective of the right to vote. But it is well established that “any party challenging the constitutionality of a statute must meet a heavy burden, for [courts] presume legislation to be constitutional absent a demonstration that the statute ‘clearly, palpably, and plainly’ violates the Constitution.” *Working Families Party v. Commonwealth*, 209 A.3d 270, 278-79 (Pa. 2019). With respect to the Free and Equal Elections Clause on which Petitioner primarily relies, this Court has said:

It is not possible, nor does the Constitution require, that th[e] freedom and equality of election shall be a perfect one.... Individuals may experience difficulties, and some may even lose their suffrages by the imperfection of the system; but this is no ground to pronounce a law unconstitutional, unless it is a clear and palpable abuse of the power [to regulate elections] in its exercise.

*Patterson v. Barlow*, 60 Pa. 54, 76 (1869); *see also League of Women Voters*, 178 A.3d at 809-10 (noting that this Court “has not retreated from [*Patterson*’s] interpretation of the Free and Equal Elections Clause”).

To the extent the constitutional provisions invoked by Petitioner are implicated by the election regulations—or, more precisely, lack thereof—

Petitioner challenges, Petitioner identifies the wrong standard for evaluating whether the mandatory injunctive relief it seeks is required as a matter of constitutional law. Petitioner contends that “Pennsylvania’s election scheme is subject to strict scrutiny because it disproportionately burdens some individuals in connection with their fundamental right to vote.” (Pet’r Br. 51.) But courts have repeatedly rejected such arguments. As the United States Supreme Court observed in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), “States may, and inevitably must, enact reasonable regulations of parties, elections and ballots to reduce election- and campaign-related disorder.” *Id.* at 358. Although these laws “will invariably impose some burden upon individual voters,” “to subject every voting regulation to strict scrutiny,” as Petitioners here suggest, “would tie the hands of States seeking to assure that elections are operated equitably and efficiently,” *Burdick*, 504 U.S. at 433, and “compel ... courts to rewrite ... electoral codes.” *Clingman v. Beaver*, 544 U.S. 581, 593 (2005). “The Constitution does not require that result.” *Id.* As the Pennsylvania Supreme Court has explained, “the state may enact substantial regulation containing reasonable, non-discriminatory restrictions to ensure honest and fair elections that proceed in an orderly and efficient manner.” *Banfield*, 110 A.3d at 176-77.<sup>4</sup>

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<sup>4</sup> Petitioner does not cite any cases that hold, or even suggest, that strict or intermediate scrutiny applies to challenges to regulations similar in character to the election regulations—or, more precisely, the absence of particular affirmative, voting-facilitating actions desired by Petitioner—



To the extent Petitioner suggests that heightened constitutional scrutiny is appropriate because the election regulations at issue—or the absence of the particular affirmative actions desired by Petitioner—allegedly have disproportionate effects on members of certain communities, Petitioner misstates the controlling constitutional principles. When a facially neutral regulatory regime, such as the one at issue, “is subjected to equal protection attack, an inquiry into intent is necessary to determine whether the legislation in some sense was *designed* to accord disparate treatment on the basis of [suspect] considerations.” *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 484-85 (1982) (emphasis added);<sup>5</sup> *see also Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at \*25 (Pa. Commw. Ct. Jan. 17, 2014) (stating that it was challenger’s burden to establish that neutral law with purportedly discriminatory effect “was enacted at least in part because of its adverse effects upon identifiable groups” (citation omitted)). Petitioner has not presented any allegation or evidence that the regulatory regime at issue was adopted because lawmakers intended to discriminate against a suspect class, thus ending the constitutional inquiry.

Finally, to the extent Petitioner’s claims are properly characterized as a

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that are the subject of this lawsuit.

<sup>5</sup> “The equal protection provisions of the Pennsylvania Constitution are analyzed by this Court under the same standards used by the United States Supreme Court when reviewing equal protection claims under the Fourteenth Amendment to the United States Constitution.” *Love v. Borough of Stroudsburg*, 597 A.2d 1137, 1139 (Pa. 1991).

contention that Respondents are required to take certain affirmative actions within the discretionary authority delegated to them by the Election Code, Petitioner cannot prevail unless it can show that Respondents’ actions—or inaction—was the product of “fraud, bad faith, abuse of discretion or clearly arbitrary action.”

*Banfield*, 110 A.3d at 174 (quoting *Winslow-Quattlebaum v. Maryland Ins. Group*, 752 A.2d 878, 881 (Pa. 2000)). Indeed, the Supreme Court has specifically applied this standard to challenges to the Secretary’s decision not to decertify certain voting machines for use by county boards of elections. *See Banfield*, 110 A.3d at 174 (affirming grant of summary relief in favor of Secretary and rejecting statutory and constitutional challenges to Secretary’s certification of direct-recording electronic voting machines).

**(b) Petitioner Is Not Likely to Succeed on Its Claims for Statewide Mandatory Injunctive Relief Based on Alleged Burdens on In-Person Voting**

Petitioner’s Petition and Application fail to proffer any evidence—let alone sufficient evidence—to support their claims for mandatory injunctive relief with respect to the upcoming general election. Where, as here, a petitioner seeks prospective injunctive relief, it must show a “real and immediate threat that [it] will be wronged in the future”; a threat that is “conjectural or hypothetical” is insufficient. *Logan v. Lillie*, 728 A.2d 995, 1000 (Pa. Commw. Ct. 1999). The Application fails to satisfy this standard.

Petitioner’s claims for relief regarding alleged burdens on in-person voting (*see* Pet’r Br. at 11-12 ¶¶ 1-4) are predicated on certain provisions in Act 12, which (a) authorized boards of elections to drastically reduce the number of polling places during the June 2020 primary by as much as 60% on their own initiative, and even further with the approval of the Department of State (*see* Pet’r Br. 22-23)—(b) “provided that the polling place for an election district could be moved to any other election district anywhere in the county” (*id.* at 23)—and (c) did not require notice of a relocated polling place to be posted at the original polling place (*id.* at 27-28). *See* 25 Pa. Stat. § 3582. The Application provides no evidence at all about the effect of Act 12 on the overwhelming majority of Pennsylvania counties, but it states that, in the June 2020 primary election, “Respondents authorized Philadelphia to reduce polling places from 850 to 190, and they authorized Allegheny County to reduce polling places from 830 to 211.” (Pet’r Br. at 23.) Petitioner contends that this extensive consolidation of polling places, combined with the long distances some voters had to travel to reach their new polling places (which could be located anywhere in the county) and alleged lack of adequate notice of the new locations, imposed an unconstitutional burden on in-person voting.

But as Petitioner concedes, the provisions of Act 12 to which it objects expired after the primary election, and county boards are now subject to the same

restrictions on relocation of polling places as were in place before the COVID-19 pandemic began. *See* 25 Pa. Stat. § 3585 (stating that the aforementioned provisions of Act 12 “shall expire on July 3, 2020”). These restrictions do *not* allow the extensive consolidation permitted by Act 12, *do* put tight limits on when and how far a relocated polling place can be moved, *see* 25 Pa. Stat. § 2727(a) (providing that, if there is not suitable building available to serve as a polling place in a given election district, a polling place may be located in a building “in another election district *within the same or immediately adjacent ward, ... provided such other building is located in an election district which is immediately adjacent to the boundary of the election district for which it is to be the polling place* and is directly accessible therefrom by public street or thoroughfare” (emphasis added), and *do* require notice of relocated polling places to be posted at the original location, *see* 25 Pa. Stat § 2726(a).

Petitioner cannot obtain *prospective* injunctive relief based on alleged burdens imposed in the past by laws no longer in effect. Attempting to bridge this gap, Petitioner asserts that, “[a]lthough the emergency election procedures in Act 12 ... applied only to the Primary Election, there is a real threat that substantially similar legislation will be passed that will be applied to the November 2020 election to reduce the number of polling places, without adequate notice to voters.” (Petition for Review ¶ 73 (filed June 18, 2020); *accord* Pet’r Br. 18 (asserting that

“Pennsylvania will again limit in-person voting for the general election as it did during the primary election”).) But unless and until such hypothetical legislation is enacted, Petitioner cannot make out an actual, immediate threat of harm. At most, the alleged threat to Petitioner’s in-person voting rights is “conjectural,” which is legally insufficient. *Logan*, 728 A.2d at 1000.

But even if the Act 12 provisions were still in place, Petitioner would still fail to carry its burden because it presents no evidence whatsoever about the procedures and practices that any county board of elections is *actually* likely to implement in the general election. To put the point differently: a county board of elections may do more to facilitate voting than the Election Code requires. For example, the Philadelphia Board of Elections is planning to engage in a number of actions with respect to the November 2020 election that are not required by the Election Code. These include (a) mailing notices to every household in Philadelphia identifying the location of its polling place and (b) establishing a number of satellite elections offices at which voters can, during a single visit, apply for, complete, and return an absentee or mail-in ballot prior to election day. (Bluestein Aff. ¶¶ 51, 54-57.) Without some evidence of how any particular county board is actually going to conduct the general election, Petitioner cannot possibly show a “real and immediate threat” of constitutional injury.

This points to another pervasive deficiency in Petitioner’s Application.

Petitioner’s claims, by their vary nature, require a county-by-county analysis. The particular burdens on a voter’s ability to vote will depend on, among other things, the specific characteristics of the voter’s county (size, population density, etc.), as well as, as just discussed, differences in the way each county administers its elections (number of polling places, provisions for notice, number of locations at which absentee and mail-in ballots can be applied for and returned via in-person delivery, etc.). Petitioner alleges prospective constitutional injury and seeks mandatory injunctive relief on a statewide basis. But Petitioner provides no evidence whatsoever regarding the circumstances or election-administration procedures in the overwhelming majority of counties. Indeed, almost all of the relevant county-specific information provided in the Application relates to only two counties, Philadelphia and Allegheny<sup>6</sup>—and even then, the evidence addresses only the primary election conducted under the provisions of Act 12. (*See* Pet’r Br. 22-23.) This deficiency underscores that the county boards of election are indispensable parties to this action. It also provides yet another reason why Petitioner fails to make out a claim for the sweeping statewide injunction it seeks.

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<sup>6</sup> The Application asserts that, “[w]hile Allegheny County and Philadelphia County consolidated more polling locations than most other counties in Pennsylvania, polling-location consolidation occurred all over the state.” (Pet’r Br. 26.) But the only evidence cited in support of that assertion, Paragraph 31 of the Declaration of Dr. Marc Meredith, provides no specific information whatsoever about polling-place consolidation anywhere in Pennsylvania.

**(c) Petitioner Is Not Likely to Succeed on Its Claims for  
Statewide Mandatory Injunctive Relief Based on  
Alleged Burdens on Mail-In Voting**

Petitioner likewise fails to make a “very strong showing” of a “clear right” to the injunctive relief it seeks with respect to mail-in voting. Petitioner predicts that “[c]ounty board of elections and mail delivery delays will lead to disenfranchisement for Pennsylvania voters who timely request an absentee or mail-in ballot, yet are unable to receive, cast, and mail their ballot and guarantee its receipt by Election.” (Pet’r Br. 34.) But Petitioner’s assertion that county boards of elections will encounter undue delays in processing mail-in ballot applications is supported by nothing but speculation; evidence that a few county boards encountered issues processing ballots during the primary, without more (and Petitioner offers nothing more), does not show a likelihood of undue delays during the upcoming general election. And such evidence certainly does not provide a basis for a statewide injunctive order.

Respondents do, however, agree with Petitioner, that there is an actual, immediate risk of disenfranchisement posed by the United States Postal Service’s recent announcement of statewide mail delays expected during the general election. As Respondents recently informed the Pennsylvania Supreme Court, the Postal Service has warned Secretary Boockvar that, due to these delays, ““there is a significant risk that ... ballots may be requested in a manner that is consistent with

[Pennsylvania’s] election rules and returned promptly, and yet not be returned in time to be counted.’ To state it simply: voters who apply for mail-in ballots in the last week of the application period and return their completed ballot by mail will, through no fault of their own, likely be disenfranchised.” Praecipe to Withdraw Certain of Respondents’ Preliminary Objections Based on United States Postal Service’s Announcement of Statewide Mail Delays Affecting General Election at 7 (Aug. 13, 2020), *Crossey v. Boockvar*, No. 108 MM 2020 (Pa. Sup. Ct.).

Respondents have therefore asked the Supreme Court to “order that ballots mailed by voters on or before 8:00 p.m. on election day will be counted if they are otherwise valid and received by the county boards of election on or before the third day following the election.” *Id.* That request is currently pending in the *Crossey* case.<sup>7</sup>

Notably, however, Petitioner here does not request such an extension of the “received by” deadline—which is plainly the relief appropriate for the particular threat of disenfranchisement at issue—in its preliminary injunction Application. And, for reasons discussed above, Petitioner fails to make the requisite “very strong showing” of a “clear right” to the relief it *does* request—an order requiring every county in Pennsylvania to create satellite election offices and provide for or

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<sup>7</sup> The same request for relief is set forth in Secretary Boockvar’s Application for the Court to Exercise Extraordinary Jurisdiction Over the Commonwealth Court Case Docketed at 407 MD 2020, which was filed on August 16, 2020, in *Pennsylvania Democratic Party v. Boockvar*, No. 133 MM 2020 (Pa. Sup. Ct.).



expand drop-off locations for return of absentee and mail-in ballots. Petitioner provides no evidence that, in any particular county (let alone all 67 counties), voters' ability to deliver their absentee or mail-in ballot in person will be unconstitutionally burdened in the absence of the relief Petitioner seeks. Additionally, Petitioner provides no evidence regarding whether certain county boards are *already* planning to provide some or all of the relief sought, or to take other steps to ease the burdens Petitioner predicts. In fact, in significant respects, Philadelphia is planning to do *more* to facilitate voting than Petitioner requests. (Bluestein Aff. ¶¶ 51, 54-57.) Without such evidence, the Court has no basis to conclude that the injunction sought by Petition is necessary to cure an actual, non-speculative, immediately impending constitutional injury.

**(d) Petitioner Is Not Likely to Succeed on Its Claim for Mandatory Injunctive Relief Requiring All Counties to Use Hand-Marked Paper Ballots During the November 2020 Election**

Finally, Petitioner is unlikely to succeed on the merits of its claim seeking to force all Pennsylvanians to vote on hand-marked paper ballots in the general election—which would require at least 17 counties to transition to a new voting system within the span of only two months. As noted above, *see supra* Section II.C, Petitioner's argument is an attempt to put old wine (an inveterate hostility to ballot-marking devices) into a new bottle (the COVID-19 crisis). And it shows.

As an initial matter, any Pennsylvania voter who *wants* to vote in the general

election using a hand-marked paper ballot may do so. Thanks to Act 77, every Pennsylvania voter may apply for an absentee or mail-in ballot—which they will mark by hand—and return. (Marks Decl. ¶¶ 9-12.) Petitioner, however, insists that this Court should overrule the judgment of the Secretary, who has not deemed it appropriate to de-certify BMDs for use during the COVID-19—as well as the judgment of county boards of election who have selected and decided to use certified BMDs during the general election—and judicially compel all county boards of election to utilize hand-marked paper ballot voting systems for in-person voting at all polling places. As noted above, because the Pennsylvania legislature has delegated to the Secretary the determination of whether particular voting systems should be certified for use in Pennsylvania, Petitioner has the heavy burden of showing that the Secretary’s decision to maintain the certification of certain BMDs was not only incorrect, but also the product of “fraud, bad faith, abuse of discretion or clearly arbitrary action.” *Banfield*, 110 A.3d at 174 (internal quotation marks omitted). Petitioners do not come close to carrying this burden.

Tellingly, although Petitioner and its witnesses note that the United States Election Assistance Commission and Centers for Disease Control has published guidance addressing how to clean and disinfect BMDs and other voting devices to protect voters from exposure to COVID-19, Petitioner does not cite any guidance from these bodies—or any other institutional authority on voting—recommending

that jurisdictions abandon BMDs for hand-marked paper ballots. Nor does Petitioner identify any suggestion from any such authority that BMDs present a higher risk of COVID-19 infection than hand-marked paper ballots. Respondents are aware of no such guidance or suggestion. Given the attention devoted to issues of voting safety during the pandemic, that alone is revealing.

The evidence and argument presented by Petitioner's Application does not support the conclusion Petitioner urges. Petitioner's reasoning is as follows: "Any *bare hand contact* with a surface may lead to contracting COVID-19 if the previous person was infected (even if asymptomatic) unless the entire touchable surface was appropriately disinfected." (Pet'r Br. 19 (emphasis added).) Further, one of Petitioner's witnesses states that, "[i]n his experience, voting on a BMD typically takes much longer than hand-marking a paper ballot." (Ritchie Aff. ¶ 23.) Petitioner then suggests that BMD touchscreens will need to be thoroughly disinfected after each use, whereas (apparently) surfaces likely to be touched in the course of voting with a hand-marked paper ballot will not need to be disinfected after each use. The result, according to Petitioner, is either that voters using BMDs are more likely to be exposed to COVID-19 because of touching the BMD screens or, if sufficient disinfecting procedures are employed, long waits will develop, which will supposedly also increase the risk of infection relative to hand-marked paper ballot systems.

Petitioner’s argument is flawed at virtually every step. First, it is not necessary that voters have “bare hand contact” with the touchscreen of BMDs. Rather, voters can wear disposable clothes or use a disposable stylus such as a Q-tip. (Baumert Decl. ¶¶ 23, 25, 28, 34-35, 41; Bluestein Aff. ¶¶ 37-38; Marks Decl. ¶ 51.) Such equipment not only protects the voter who uses it; it also protects the touchscreen from contamination, working to keep subsequent voters safe as well. For example, during the June 2020 primary election, Philadelphia, which uses a BMD known as the ExpressVote XL, provided voters with disposable gloves to wear when signing the poll book and making their selections on the BMDs. (Bluestein Aff. ¶¶ 37-38.) The gloves did not affect the functionality of the ExpressVote XL machines, and, contrary to the prediction of Petitioner and its witness, there is no evidence that the protective measures used to guard against COVID-19 infection caused any significant delays at polling places, let alone increased rates of infection. (*Id.* ¶¶ 38-40, 42; Marks Decl. ¶¶ 51-52.) In sum, Petitioner offers no data in support of its argument, only conjecture – which is legally insufficient to carry Petitioner’s heavy burden. For this very reason, a North Carolina court recently rejected the same arguments and evidence Petitioner presents here. (Wiygul Decl., Ex. 6 ¶ 18 (describing the injury alleged by Plaintiffs as “highly speculative” and finding that “the evidence presented does not establish that the use of [the BMD at issue] in a polling place will increase a

voter’s likelihood of contracting COVID-19 as Defendants have promulgated guidelines to alleviate this risk”).

In fact, much of Petitioner’s conjecture strains credulity. For example, there is good reason to doubt the conclusory assertion that voting using BMDs necessarily takes “much longer” than voting by hand-marked paper ballot. (Ritchie Aff. ¶ 23.) The ExpressVote XL used by Philadelphia and other Pennsylvania counties is an “all in one” BMD that prints a ballot reflecting selections made by the voter and then, after the voter has had an opportunity to review the ballot and verify her selections, scans the ballot and tabulates the vote. (Bluestein Aff. ¶¶ 13.) Consequently, the voter does not need to take her ballot to a separate machine to be scanned. (*Id.*) By contrast, voters using hand-marked paper ballots must collect their ballot, take it to a booth or stand to complete it in private, then place it in a privacy sleeve and walk over to a separate scanning machine, where she may have to stand in another line.<sup>8</sup> (*Id.* ¶¶ 73, 80-82; Marks Decl. ¶ 74.) Moreover, while BMDs such as the ExpressVote XL prevent voters from making overvotes (*i.e.*, voting for more selections in a given race than permissible, thereby preventing any such selections from being counted), a voter

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<sup>8</sup> For related reasons, voters using hand-marked paper ballot voting systems are likely to touch a larger number of objects than voters using BMDs such as the ExpressVote XL. (*See* Bluestein Aff. ¶ 83; Baumert Decl. ¶ 31.) This fact cuts against Petitioner’s argument that the need to disinfect touched surfaces will necessarily create longer wait times at polling places using BMDs rather than those utilizing hand-marked paper ballot systems.

using a hand-marked paper ballot will not be informed that she has overvoted until she attempts to scan her ballot, at which point she will be given the option of spoiling her existing ballot and starting over with a new one. (Bluestein Aff. ¶¶ 13, 80; Baumert Decl. ¶¶ 19, 40.) This difference represents a significant savings of time for BMD-based voting systems relative to hand-marked ballot systems. (Bluestein Aff. ¶ 80.)

Moreover, even if Petitioner could establish that, in the abstract, voting by hand-marked paper ballot takes significantly less time than voting by BMD—assuming adequate time to find suitable polling places for, and educate poll workers and voters on the use of, both systems—that fact would be irrelevant to the issue before the Court. Petitioner seeks an order requiring Pennsylvania counties to transition to and implement hand-marked paper ballot systems *in only two months*—and to do so in a presidential election in which historic turnout is expected and the resources of county boards of elections are already heavily taxed. (Marks Decl. ¶¶ 61-83; Bluestein Aff. ¶¶ 59-78.) Given the confusion and disarray that such a forced transition would inevitably produce, it is a near certainty that voting would proceed more smoothly and quickly if the existing BMD voting systems are allowed to remain in place. (Marks Decl. ¶ 83; Bluestein Aff. ¶ 65.)

In sum, Petitioner fails to show that allowing counties to continue to use BMDs is less safe than forcing them to transition to hand-marked paper ballots.

**B. Petitioner Has Failed to Show that “Irreparable Harm” Will Occur If the Relief Sought Is Not Granted**

Just as Petitioner cannot establish a likelihood of success on the merits, it cannot satisfy the separate requirement of showing that the preliminary injunction it seeks is necessary to avoid immediate, irreparable injury. “Actual proof of irreparable harm” is a “threshold evidentiary requirement to be met before a preliminary injunction may issue.” *Reed v. Harrisburg City Council*, 927 A.2d 698, 704 (Pa. Commw. Ct. 2007) (citing *New Castle Orthopedic Assocs. v. Burns*, 393 A.2d 1383 (Pa. 1978)). “In order to meet this burden, a plaintiff must present ‘concrete evidence’ demonstrating ‘actual proof of irreparable harm.’ The plaintiff’s claimed ‘irreparable harm’ cannot be based solely on speculation and hypothesis.” *City of Allentown v. Lehigh Cnty. Auth.*, 222 A.3d 1152, 1160 (Pa. Super. Ct. 2019); accord *Summit Towne Ctr.*, 828 A.2d at 1002 (holding that trial court properly denied preliminary injunction where evidence supporting claim of irreparable harm was “no[t] concrete” and “rested almost entirely on speculation and hypothesis”). Indeed, “[i]t is established that ... ‘speculative considerations ... cannot form the basis for issuing [a preliminary injunction].’” *Novak v. Commonwealth*, 523 A.2d 318, 320 (Pa. 1987) (quoting *Berkowitz v. Wilbar*, 206 A.2d 280, 282 (Pa. 1965)) (second omission and alteration in *Novak*); accord *Reed*, 927 A.2d at 704 (“proof of injury” that is “speculative and conjectural” does not support an injunction (citing *Samerica Corp. of Market Street v. Goss*, 295 A.2d 277

(Pa. 1972))).

As shown above, *see supra* Section III.A, Petitioner’s claim that irreparable constitutional injury will occur unless the Court issues the statewide injunctive relief it seeks is entirely speculative, conjectural, and hypothetical. With respect to the alleged burdens on in-person voting, Petitioner assumes that all Pennsylvania counties will consolidate polling places to the extent and in the same way that Philadelphia and Allegheny County did during the June 2020 election—even though the provisions of Act 12 allowing such consolidation have expired and have not been reenacted. With respect to the alleged burdens on voting via absentee and mail-in ballots, Petitioner assumes—without any evidentiary basis—that the specific relief it seeks (including extensive provision of satellite election offices and drop boxes for return of ballots) will be *constitutionally* required in every county in the Commonwealth, and that the measures counties will implement to facilitate such voting will be unconstitutionally insufficient. Finally, Petitioner speculates—without any support from voting-safety authorities, or any data drawn from the primary election conducted during the COVID-19 pandemic—that BMD voting systems necessarily present a significantly higher risk of infection than hand-marked paper ballot systems.

Petitioner’s speculation and conjecture cannot, as a matter of law, establish the essential prerequisite of immediate, irreparable harm. For this reason, too, its



application for a preliminary injunction must be denied.

**C. The Injunction Sought by Petitioner Is Not Appropriately Tailored to Abate the Alleged Injury**

Nor is the relief requested by Petitioner appropriately tailored to abate any constitutional injury. For an injunction to be proper, the movant “must show that the injunction it seeks is reasonably suited to abate the offending activity.” *Summit Towne Ctr.*, 828 A.2d at 1001 (citations omitted). In *Albee Homes, Inc. v. Caddie Homes, Inc.*, 207 A.2d 768 (Pa. 1965), for example, the Supreme Court rejected an injunction—in the form of a restrictive covenant—that would have extended beyond a geographic region in which the employee had “a direct and reasonable connection,” because “to allow the covenant to extend its tentacles throughout an area so vast as here envisioned” would be unreasonable. *Id.* at 773.

This Court should likewise refuse the statewide mandatory injunction sought by Petitioner here. As shown above, Petitioner adduces virtually no evidence regarding the circumstances of any Pennsylvania counties outside Philadelphia and Allegheny. And even with respect to those two counties, Petitioner presents no evidence of the measures and procedures that will likely be in place for the upcoming general election. Even putting these fatal deficiencies aside, the relief urged by Petitioner is not tailored to the harm alleged. For example, Petitioner asks for an injunction requiring all county boards of election to provide “a sufficient number of polling places to ensure that no voter must wait more than 30

minutes to vote.” (Pet’r Br. 11-12.) The number of polling places, however, are not the primary driver of wait times; the number of poll workers and check-in stations is a far more significant factor. (Bluestein Aff. ¶¶ 53, 77.) And the number of check-in stations is a function of the number of poll workers available, something neither elections official nor this Court can control. Moreover, Petitioner’s one-size-fits-all injunction takes no account of the significant differences among Pennsylvania’s 67 counties. (Marks Decl. ¶¶ 54-57.) For example, even assuming that it might make sense to require relocated polling places in densely populated urban areas to be situated no farther than 0.5 miles from their original location (*see* Pet’r Br 12) (as shown below, such a rule may not be feasible to implement, *see infra* Section III.E), such a requirement would be inappropriate in Pennsylvania’s many rural counties. (Marks Decl. ¶ 56.)

As discussed above, Respondents do agree that, in light of the Postal Service’s recent letter, there is a concrete threat of statewide delays in the delivery of mail during the general election, which would impose an unconstitutional burden on the right to vote. The appropriate remedy for that violation, however, is an extension of the received-by deadline for mail-in and absentee ballots—not the panoply of unfunded mandates Petitioner seeks to impose on all 67 counties by way of preliminary injunction.

Petitioner’s position appears to be that, in response to the challenges posed

by the COVID-19 pandemic, county boards of elections should be judicially compelled to implement every conceivable affirmative measures that would facilitate voting. This argument is undeniably well-intentioned, and Respondents fully support efforts by county boards of election to make it easier and more convenient for voters to obtain and return their ballots. Some of the measures Petitioner advocates would, to be sure, be good public policy. But the argument that county boards should be *judicially compelled* to implement all such facilitative measures, *as a matter of constitutional law*, is untenable. There is no apparent limiting principle. Further, the argument overlooks that, in our system of government, it is public officials who are entrusted, at least in the first instance, with the responsibility and authority to determine how to allocate finite resources in service of various competing public needs. Their decisions can be judicially overridden only when they fail to fulfill clear legal duties, and any injunctive relief must be narrowly tailored to cure the specific, proven legal injury at issue. The unprecedentedly broad relief sought by Petitioner cannot be reconciled with these core tenets.<sup>9</sup>

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<sup>9</sup> Petitioner asserts that its “proposed relief here is no more than what other courts have put in place in [other] circumstances.” (Pet’r Br. 40.) As the cases cited by Petitioner show, that is simply wrong. All but one of the cases involve extensions of election deadlines in response to natural disasters or other exigent circumstances. (*See id.* 40-42.) Such relief is far more discrete and administrable than the sweeping mandatory injunction Petitioner demands here. In the remaining case, the court merely ordered that election officials distribute emergency paper ballots to voters at a particular election division or precinct if 50% or more of the electronic voting machines at the precinct become inoperable. (*See id.* at 41 (citing *NAACP State*

Given the past efforts by Petitioner’s counsel to abolish BMDs on other purported grounds, Respondents are less sanguine about the intentions behind Petitioner’s demand that all county boards of election transition to hand-marked paper ballots. But putting Petitioner’s agenda aside, the remedy it seeks runs afoul of the principles governing preliminary injunctive relief. It is not appropriately tailored to address any proven injury. Moreover, as discussed in more detail below, it threatens to plunge the general election into disarray, creating delays and other burdens on voting far worse than any Petitioner purports to solve. *See infra* Section III.E.

**D. The Injunction Sought by Petitioner Would Require This Court to Supervise and Superintend the Election Operations of 67 Different County Boards of Elections**

The injunction sought by Petitioner should be denied for an additional reason: “its enforcement will require too great an amount of supervision by the court.” *Applewhite*, 2012 WL 5374328, at \*2. Petitioner moves for an injunction that would be tantamount to a court-ordered overhaul of the election-administration procedures in place in 67 different Pennsylvania counties. (*See* Pet’r Br 11-12.) Indeed, an injunction requiring *more* superintendence by the Court is difficult to imagine. The difficulty, if not impossibility, of enforcing such

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*Conference of Pa. v. Cortes*, 591 F. Supp. 2d 757 (E.D. Pa. 2008).) That is very different from forcing 17 counties to dispense with electronic voting machines altogether and switch to an entirely new voting system for the registering and counting of millions of votes—to say nothing of all of the other relief Petitioner requests here.

a sweeping structural injunction provides an additional basis for denying Petitioner's Application.

**E. Granting a Preliminary Injunction Would Cause Greater Injury Than Denying It, Harm Other Interested Parties, and Adversely Affect the Public Interest**

It is well settled that a preliminary injunction “should in no event ever be issued unless the greater injury will be done by refusing it than in granting it.” *Reed*, 927 A.2d at 704. Relatedly, a preliminary injunction must be denied if it will “substantially harm other interested parties in the proceedings” or “adversely affect the public interest.” *Id.* at 702-03 (quoting *Summit*, 828 A.2d at 1001). This constellation of requirements provides an independent basis for denying Petitioners' Application.

**1. The Harms of an Order Compelling All Pennsylvania Counties to Use Hand-Marked Paper Ballots During the November 2020 Election—to the Commonwealth, to Non-Party Counties, and to the Public Interest—Would Be Severe**

As discussed above, *see supra* Section III.A-B, the purported harms of continuing to conduct elections using BMDs are based on uninformed conjecture directly at odds with how Pennsylvania counties actually conducted the June 2020 primary election. Entry of the requested mandatory preliminary injunction, on the other hand, would impose undeniable, severe harms on the Commonwealth, the counties, and the citizenry of Pennsylvania.

First, an injunction would result with certainty in judicial micromanaging of the Secretary's discretion regarding certification of voting machines. *See Novak*, 523 A.2d at 320 (reversing Commonwealth Court's grant of preliminary injunction and explaining that "[t]he harms which the Commonwealth Court sought to prevent by issuance of the injunction ... are speculative in nature, whereas the injunction's interference with management of the [Department of Revenue] is of a most certain form"). Strong, bedrock principles counsel against judicial interference in the discretionary acts of government officials.

Second, the non-party counties who have purchased the ExpressVote XL would also be substantially harmed. Under the Election Code, counties are expressly delegated the authority to choose and utilize the certified voting system of their choice. *See, e.g.*, 25 Pa. Stat § 2642(c) ("county boards of elections, within their respective counties, shall exercise ... all powers granted to them by this act, ... which shall include the following: ... to purchase, preserve, store and maintain primary and election equipment of all kinds, including ... voting machines"). An injunction would effectively nullify that authority. Counties would be forced to use a new voting system they have already exercised their discretion to reject. Such an outcome cannot be squared with the Election Code, is not required by the Pennsylvania Constitution, and would significantly undermine the authority of the county boards of elections.

Third, entry of a mandatory preliminary injunction would inflict monetary harm and costs on the counties and taxpayers and, most significantly, put the orderly administration of the 2020 elections at risk. A grant of the relief Petitioners request would require expenditure of millions of dollars in taxpayer money to procure and house optical scanning machines, and would require government officials to devote significant additional time and attention to replacing the ExpressVote XL machines. (Marks Decl. ¶¶ 61-83; Bluestein ¶¶ 59-78.)

Further, an injunction would prejudice the Commonwealth's and the counties' interest in carrying out orderly elections, force the counties to make intricate policy decisions in a short amount of time, and distract government officials from other important work on behalf of citizens. (Marks Decl. ¶¶ 61-83; Bluestein ¶¶ 59-78.) By the time this Court rules on Petitioner's Application, election day will be only two months away. As the record makes abundantly clear, that is far too little time to allow for all Pennsylvania counties using BMD-based voting systems to make an orderly transition to optically scanned hand-marked paper ballots. Indeed, it was too late to begin such a transition in April 2020, when Judge Paul Diamond of the Eastern District of Pennsylvania ruled—after a three-day evidentiary hearing—that decertification of the ExpressVote XL, the BMD used in Philadelphia and two other counties, would be “calamitous” because it

“would effectively disenfranchise Philadelphia’s one million registered voters” and would “destroy the City’s ability to hold an election this year.” (Wiygul Decl., Ex. 1, 39-40.) Decertification of BMDs between now and November would be even more of a calamity.

It is impossible to overstate this point: The relief Petitioners seek would almost certainly disrupt the administration of the November 2020 election, threatening chaos and widespread confusion. Respondents do not make this point lightly or hyperbolically. Judge Diamond’s finding that a decertification order would be “calamitous” (and would have been calamitous even if it had issued in April) is an appropriately stark assessment of the stakes. The election officials of Philadelphia—the largest county in the Commonwealth by far, and one which successfully procured and utilized the ExpressVote XL in the November 2019 and June 2020 elections—literally do not know how they would be able to transition to a different voting system by the November 2020 election without raising the substantial risk, at the very least, of severe disruptions, delays, and voter disenfranchisement. (Bluestein Aff. ¶¶ 75-78.) The City’s Board of Elections selected the ExpressVote XL to replace the City’s DRE machines on February 20, 2019, and the City needed effectively all of the time between then and the November 2019 election to acquire and implement the new voting systems, test and confirm their accuracy, reevaluate over 800 polling locations, train thousands



of poll workers and interpreters, and perform over 800 demonstrations needed to educate voters about the new machines. (*Id.* ¶¶ 13-22, 62, 72.) And all that was (1) for polling-place machines that are, in key respects, similar in operation to the City’s previous machines and thus familiar to its poll workers and voters and (2) in a non-presidential-election year. (*Id.* ¶¶ 69-70, 76.)

If the Court grants Petitioners’ requested preliminary injunction, Philadelphia would be faced with the prospect of selecting and implementing a new voting system in a presidential election year involving what is anticipated to be unprecedentedly high turnout and perhaps more than 700,000 votes cast. (*Id.* ¶ 59.) Considerably compounding the administrative burden, Philadelphia’s Board of Elections also expects an enormous influx of voter registration applications. (*Id.*) If forced to transition to an optically scanned ballot system, the Board would likely need to find larger polling places to provide privacy for voters filling out the ballots and space for ADA-compliant ballot-marking devices, in addition to either securing space for the scanners themselves. (*Id.* ¶ 62.) The Board would also need to develop new procedures for scanning and retraining poll workers on these alternative systems. (*Id.* ¶¶ 63-68.) Moreover, because of the recent enactment of Act 77, the Board has already been required to commit substantial resources—in addition to those required in 2019—to comply with the statute’s requirements that counties provide mail-in ballots to all voters who request them. (*Id.* ¶ 60.)

Put simply, for Philadelphia to administer the November 2020 Presidential Election with a different voting system in all of its polling places would require massive additional resources that do not currently exist and that the Board of Elections does not know how it would acquire. (*Id.* ¶¶ 59-78.) And changing polling-place voting systems for the second time in as many years would, in itself, risk widespread confusion by voters and poll workers—particularly if the switch is as significant as going from electronic machines to hand-marked paper ballots. (*Id.* ¶¶ 69-70, 76, 78.) All of this was true at least as early as April 2020, as found by a federal court after a contested evidentiary hearing. (Wiygul Decl., Ex. 1.) Petitioner’s notion that Philadelphia could transition to new voting systems in only *two months* is nothing more than creative fiction.

Under Pennsylvania law, this testimony by election officials is entitled to “great deference” by the courts. *Kuznik v. Westmoreland Cnty. Bd. of Comm’rs*, 902 A.2d 476, 506-07 (Pa. 2006). And what they testify to here is exactly the sort of threatened election disruption that routinely leads courts to deny preliminary injunction requests like Petitioners’ Application. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (“Court order[s] affecting elections ... can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”). *United States v. City of Phila.*, No. 06-4592, 2006 WL 3922115, at \*2 (E.D. Pa. Nov. 7, 2006) (“The U.S. Supreme

Court has long acknowledged that the timing in cases involving upcoming elections is a relevant consideration in determining the propriety of immediately effective relief.” (citing cases)); *Crookston v. Johnson*, 841 F.3d 396, 397-98 (6th Cir. 2016) (“When an election is ‘imminent’ and when there is ‘inadequate time to resolve factual disputes’ and legal disputes, courts will generally decline to grant an injunction to alter a State’s established election procedures.”); *Schade v. Md. State Bd. of Elections*, 930 A.2d 304, 327 (Md. 2007) (“[I]njunctive relief may be inappropriate in an elections case if the election is too close for the State, realistically, to be able to implement the necessary changes before the election.... [A]lthough the election process is one fraught with uncertainty[, i]t does not follow [] that a court should add a further element of wholly unanticipated uncertainty in the process at the eleventh hour.... [A] change in voting systems at the late date that this case involved, would have done more harm than good. There was no guarantee that the appellants’ proposed remedy, *i.e.* the implementation of specific security measures and a paper ballot option, would have resulted, in fact, in a ‘secure’ election. No system is infallible.” (internal quotation marks omitted)).

Citing this jurisprudence, the North Carolina Superior Court, in its recent decision denying the NAACP’s motion for a preliminary injunction similar to the one they seek against BMDs here, concluded that “[t]he *Purcell* principle counsels against issuing an injunction so close to an election.” (Wiygul Decl., Exhibit 6

¶ 21 (citing *Purcell*, 549 U.S. 1).) As the court explained, “[i]ssuance of a preliminary injunction would create considerable risk that Defendant [North Carolina] counties would be unable to perform their duties, as well as cause confusion about the particulars of how voting would take place. The combination of these factors could have the effect of disenfranchising many voters in Defendant counties.” (*Id.*) Accordingly, “after considering the harm Plaintiffs will suffer and comparing it to the harm a preliminary injunction would do to Defendants,” the court concluded that “the equities weigh in favor of denying Plaintiffs’ request for a preliminary injunction.” (*Id.* ¶ 22.) The same is true here.

## **2. Petitioner Has No Adequate Response to the Harm a Decertification Order Would Cause**

Apparently recognizing the harm its proposed preliminary injunction would wreak, Petitioner advances several arguments for why the disruption would supposedly be less severe than it appears. But Petitioner’s responses are facile – and entirely insufficient.

First, Petitioner points to hearsay statements that two counties—Crawford and Luzerne—decided, no later than April, to switch to hand-mark paper ballots in advance of the primary election. (Pet’r Br. 22, 59; Tulante Aff., Exs. 69-70.) But even if those counties’ transitions were accomplished and proceeded smoothly (Petitioner offers no evidence whatsoever on these issues), this would prove nothing about the ability of a jurisdiction like Philadelphia to accomplish such a

transition within two months of the November 2020 presidential election. There were many fewer votes in the June 2020 primary than will vote in the general election. (Bluestein Aff. ¶¶ 41, 59; Marks Decl. ¶ 26.) Furthermore, and crucially, Philadelphia's election system and administration are without comparison in the Commonwealth—in size, diversity, and complexity. In sum, Petitioner's inadmissible evidence about plans announced by Luzerne and Crawford counties in April in no way shows that other counties currently using the ExpressVote XL could feasibly transition to a new system between now and the November 2020 election.

Second, Petitioner suggests that it would be feasible to require all counties to switch to a hand-marked paper ballot system because counties must already print and process hand-marked absentee, emergency, and provisional ballots, and must have paper ballots available for voters to use in the event 50% or more of electronic voting machines in a particular polling place become inoperable. (Pet'r Br. 59-60.) Absentee ballots, however, are not completed by voters or collected or scanned at polling places. (Bluestein Aff. ¶ 75.) And there is a critical, night-and-day difference between having paper ballots available for use by a relatively small number of voters who are ineligible to vote on regular ballots, or as a contingency plan in the event of a power outage or similar eventuality at a particular polling place, and a wholesale, countywide transition from electronic ballot-marking

devices to optically scanned hand-marked ballots for as many as hundreds of thousands of voters. (*Id.*) Being compelling to effectuate such a transition in effectively two months—during an ongoing pandemic, for a presidential general election promising historic voting numbers—would indeed threaten calamity.

### **3. Granting Other Relief Requested by Petitioner Would Also Cause Greater Injury Than Denying It**

Much of the other mandatory injunctive relief sought by Petitioner is also infeasible or, at a minimum, inadvisable. (*See* Marks Decl. ¶¶ 54-60; *Bluestein Aff.* ¶¶ 50-53, 58.) For example, Petitioner’s request that no polling place be moved more than 0.5 miles from its original location may not be workable in every case; there may simply not be a location within that distance that complies with the accessibility requirements of the ADA and is otherwise suitable. (*Bluestein Aff.* ¶ 50; *see also* Marks Decl. ¶ 56.) Similarly, Petitioner’s demand that each of Pennsylvania’s 67 counties establish satellite election offices—at a likely cost of \$100,000 to \$125,000 each (*Bluestein Aff.* ¶ 55)—would require counties to spend significant resources at a time public finances are already stretched precariously thin. (Marks Decl. ¶ 57.) Petitioner offers no suggestion for where the needed money can be found. Respondents support the idea of additional satellite county election offices, but forcing county boards of election to cannibalize their budgets to comply with a mandatory injunction is likely to do more harm than good.

This issue points out a larger flaw with Petitioner’s case. Petitioner presents no basis for concluding Respondents and county boards will not faithfully discharge the duties of their respective offices and do the best they can given the realities they face. COVID-19 has undeniably imposed burdens on both election officials and voters. Respondents and county boards of election have worked diligently to navigate these challenges so as to maximize access to the franchise while ensuring that elections proceed safely, fairly, and securely. To this end, several county boards of election have announced that they intend to implement measures similar or identical to the ones proposed by Petitioner here. Judicial imposition of a one-size-fits-all mandatory preliminary injunction, however, will serve only to tie the hands of election officials, entangle the Court in the election-administration operations of 67 different counties, and exacerbate—not solve—the challenges at issue.

**F. The Preliminary Injunction Sought by Petitioner Would Not Preserve the Status Quo**

The injunction sought by Petitioner is also inappropriate because it would not preserve the status quo. As noted above, the provisions of Act 12 that allowed significant consolidation of polling places are no longer in place. Thus, the most likely target of an injunction has already been removed. The injunction Petitioner seeks here would require a panoply of actions and expenditures that have never been mandated by the Election Code. On its face, what Petitioner demands is not a

return to the status quo ante but rather a “comprehensive” remaking of Pennsylvania’s election laws.<sup>10</sup> Whatever their public policy merit, Petitioner’s proposed electoral reforms are not an appropriate form of injunctive relief.

**G. Petitioner Must Post a Substantial Bond to Obtain the Relief Requested**

For a preliminary injunction to issue, the Pennsylvania Rules of Civil Procedure require the posting of a bond or cash by the Petitioner in an amount to be established by the Court:

[A] preliminary or special injunction shall be granted only if ... the plaintiff files a bond in an amount fixed and with security approved by the court ... conditioned that if the injunction is dissolved because improperly granted or for failure to hold a hearing, the plaintiff shall pay to any person injured all damages sustained by reason of granting the injunction and all legally taxable costs and fees.

Pa. R. Civ. P. 1531(b).

“The bond ‘requirement is mandatory and an appellate court must invalidate a preliminary injunction if a bond is not filed by the plaintiff.’” *Walter v. Stacy*, 837 A.2d 1205, 1208 (Pa. Super. Ct. 2003) (quoting *Soja v. Factoryville Sportsmen’s Club*, 522 A.2d 1129, 1131 (Pa. Super. Ct. 1987)).

In setting the amount of the bond, the trial court should “require a bond which would cover damages that are reasonably foreseeable.” *Greene Cnty.*

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<sup>10</sup> Petitioner aptly describes the injunction it seeks as “comprehensive.” Petitioner’s Application for Special Relief in the Nature of a Preliminary Injunction ¶ 8 (Aug. 6, 2020).



*Citizens United by Cumpston v. Greene Cnty. Solid Waste Auth.*, 636 A.2d 1278, 1281 (Pa. Commw. Ct. 1994). In this case, Petitioner asks the Court to issue an order requiring all counties using BMDs to transition hand-marked paper ballots, which threatens to make a debacle of the upcoming election. Such an order would force the affected counties to make massive additional investments in new voting systems; new elections infrastructure; an advertising campaign to apprise the public that their voting systems are changing (for many, the second major change in two years); retraining of election personnel and voters; and personnel to manage this process and cope with the additional election day demands. The Department of State would also be required to make massive investments in additional personnel and training materials, as well as the extensive litigation that would certainly go along with such a seismic disruption to the voting system. Even if the injunction were withdrawn, it would be too late to undo the damage; given the timing of the 2020 elections, if the Department decertifies BMDs even temporarily, the counties and the Department must immediately find a way to move forward.

Other aspects of the injunctive relief sought by Petitioner would also impose significant costs. Indeed, the requirement that each county establish satellite election offices would likely, by itself, cost many millions of dollars. (*See* *Bluestein Aff.* ¶ 55.)

Therefore, should the Court decide to issue the injunction—and it should not—the balance of equities dictates that it set the amount of security required at an amount sufficient to compensate all entities that the injunction will injure. *See Greene County Citizens United by Cumpston*, 636 A.2d at 1281. While this amount cannot easily be calculated to the penny, it is certain to be tens of millions of dollars. The required bond will doubtless be large, but it must be commensurate with the amount of harm that a grant of the requested injunction would cause.

#### **IV. CONCLUSION**

For the reasons set forth above, Respondents respectfully request that the Court DENY Petitioner's Application for Special Relief in the Nature of a Preliminary Injunction.

Respectfully submitted,

HANGLEY ARONCHICK SEGAL  
PUDLIN & SCHILLER

Dated: August 21, 2020

By: /s/ Michele D. Hangley

Mark A. Aronchick (ID No. 20261)  
Michele D. Hangley (ID No. 82779)  
Robert A. Wiygul (ID No. 310760)  
John B. Hill (ID No. 328340)

One Logan Square, 27<sup>th</sup> Floor  
Philadelphia, PA 19103  
Tel: (215) 568-6200  
Fax: (215) 568-0300

*Counsel for Respondents*

**CERTIFICATION REGARDING PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: August 21, 2020

/s/ Michele D. Hangley  
Michele D. Hangley

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

NAACP Pennsylvania State Conference,	:	
	:	
Petitioner,	:	
	:	
v.	:	No. 364 MD 2020
	:	
KATHY BOOCKVAR, in her official capacity as Secretary of the Commonwealth, <i>et al.</i> ,	:	
	:	
Respondents.	:	
	:	
	:	
	:	

**DECLARATION OF JONATHAN MARKS IN SUPPORT OF  
RESPONDENTS' RESPONSE IN OPPOSITION TO APPLICATION FOR  
SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY INJUNCTION**

I, Jonathan Marks, declare under the penalty of perjury pursuant to 18  
Pa.C.S. § 4902 that:

I am the Deputy Secretary for Elections and Commissions for the  
Department of State (the "Department") of the Commonwealth of Pennsylvania. I  
make this declaration in support of Respondents' Response in Opposition to  
Petitioner's Application for Special Relief in the Nature of a Preliminary  
Injunction.

**The 2020 Primary Election Presented Unprecedented Challenges to  
Commonwealth and County Election Officials**

1. The 2020 primary election was conducted under the most challenging

circumstances that I have faced in my nearly 18 years of election administration experience.

2. This is true for at least four reasons. Two of these reasons were anticipated long before the election, but two were not.

3. First, all Pennsylvanians voted on new, more accessible, auditable, and secure voting systems providing a voter-verifiable paper record. All 67 counties debuted their new voting systems in 2019 or in the 2020 primary, completing a two-year initiative to bring these new systems with augmented election security and integrity to all Pennsylvanians.

4. In early 2018, the Department issued directives that required all counties to purchase modern voting systems with voter-verifiable paper records no later than December 31, 2019, and preferably have them in place by the November 2019 general election.

5. After these 2018 directives, the Department certified a number of voting systems, and the county boards of elections (the “counties”) engaged in a long process of evaluating the various systems; procuring and acquiring the new technology; implementing the systems; training poll workers in their use; and educating the public about them.

6. Some counties put their new systems in place in 2019; others rolled them out for the first time in the 2020 primary election.

7. The transition from one kind of voting technology to another at polling places involves a learning process for poll workers and voters. The transition can be more complicated when poll workers and voters are asked to adapt to methods of voting that are dramatically different from the methods they have used before—for example, switching from voting on machines to hand marking paper ballots, or vice versa.

8. The second reason that the June 2020 primary election presented particular difficulties was that it was the first election conducted under Pennsylvania's overhauled election law.

9. On October 31, 2019, Governor Wolf signed bipartisan election reform legislation—Act 77 of 2019—into law.

10. Before Act 77 was passed, the only way to vote by mail was with absentee ballots, which were only available to voters who were absent from their municipalities on election day or who had a disability or illness.

11. If a voter did not qualify for an absentee ballot, she was required to either vote in person at her polling place on election day, or not vote at all.

12. Among other reforms, Act 77 provided that all qualified electors would be permitted to vote with mail-in ballots.

13. Based on other states' experiences of adopting new mail-in voting processes, the Department and the counties anticipated that it would take some

time for Pennsylvania voters to embrace this new voting method. We expected that numbers of mail-in ballots would increase steadily over several elections, as voters and election administrators adapted to the new law, but that most voters would continue to vote in person as they had always done.

14. The third significant challenge to the management of the 2020 primary election, the COVID-19 pandemic, turned that prediction upside down.

15. As the Court is undoubtedly aware, the COVID-19 pandemic has affected every aspect of Pennsylvanians' personal, commercial, and civic life.

16. In March 2020, as the severity of the crisis became clear, the Department, together with the counties and the General Assembly, began taking steps to ensure that all Pennsylvania voters would be able to cast their ballots as safely and easily as was possible under the circumstances.

17. The General Assembly took a critical step toward mitigation by passing Act 12 of 2020, which postponed the primary election from April 28 to June 2, 2020.

18. Because of the fear of infection, counties had extreme difficulties in recruiting poll workers to staff polling places during the primary election.

19. Counties also were forced to relocate many polling places because the institutions that housed them—nursing homes, for example—were no longer open to the public.

20. The General Assembly, recognizing that many counties simply would not be able to open their usual number of polling place locations, also included provisions in Act 12 to lift restrictions on how counties could recruit poll workers and where they could locate polling places. Act 12 also permitted counties to consolidate multiple polling places into a smaller number of locations.

21. In the meantime, due to the pandemic and stay-at-home orders implemented to stop the spread of the virus, Pennsylvanians embraced mail-in voting in impressive numbers. Nearly 1.5 million voters cast their votes by mail-in or absentee ballot. This was 17 times the number that voted absentee in the 2016 primary, when approximately 84,000 absentee ballots were cast.

22. The final challenge to the 2020 primary election emerged just days before the primary election, when civil unrest broke out nationally and in regions throughout the Commonwealth in response to the tragic death of George Floyd. This unrest led to curfews and travel restrictions, and Governor Tom Wolf signed a disaster emergency declaration that covered six counties.

23. This unrest had a direct effect on some election administration. At least two boards of elections were forced to evacuate their offices. Some voters were unable to reach election offices or ballot drop boxes to return their voted ballots.

24. On June 1, 2020, one day before the primary election, Governor Wolf



signed an executive order that extended the deadline for receipt of absentee and mail-in ballots by seven days in the six counties that were under states of emergency: Allegheny, Dauphin, Delaware, Erie, Montgomery, and Philadelphia.

25. Despite all these changes and challenges, Pennsylvanians voted safely and peacefully in the primary, embracing the new mail-in voting option, and the new voting systems performed well. Reports of significant incidents were fewer than reported in many comparable prior elections, and overall turnout was far higher than in 2012, the last time a presidential primary was not contested on both sides of the aisle.

26. In addition to the nearly 1.5 million people who voted by mail, over 1.3 million Pennsylvanians voted in person on June 2.

### **Steps that the Department and the Counties Are Taking to Improve the Voting Experience in the General Election**

27. Although the primary election was not perfect, on the whole, the actions taken by Pennsylvania's election administrators met the formidable challenges presented.

28. Lessons learned from the primary will help ensure a smoother voting experience in the general election in November.

### ***Mail-in and Absentee Ballots***

29. In the 2020 primary election, counties received a surge of applications for mail-in and absentee ballots as the application deadline approached. This surge put a great deal of pressure on the counties' systems for processing and mailing ballots.

30. Now that more voters are familiar with mail-in voting, and aware that the COVID-19 pandemic is unlikely to subside before the general election, many voters will apply for ballots earlier in the process. Indeed, many voters have already applied; more than 1 million voters who requested ballots for the primary election also opted to receive general election ballots.

31. The Department, as well as community groups, candidates, political parties, and other stakeholders, is engaging in public relations efforts to encourage voters to apply early for mail-in ballots.

32. The Department has also taken steps to make it easier for voters to return mail-in and absentee ballots.

33. First, the Department announced on July 31, 2020, that the Commonwealth would provide funding to counties to pre-pay postage for voters to return ballots by mail at no cost to the voter.

34. Second, on August 19, 2020, the Department issued the "Pennsylvania Absentee and Mail-in Ballot Return Guidance" attached as Exhibit A. This

guidance provides that each county should adopt a plan and procedures for voters to return their ballots in person, and should submit an initial plan to the Department 45 days before the election.

35. The Ballot Return Guidance explains that counties may establish multiple ballot return locations, and lists considerations that counties should take into account when selecting these locations, including convenience, accessibility, historical congestion at polling places, and proximity to disadvantaged communities.

36. The Ballot Return Guidance also gives guidelines for providing public notice of the availability of ballot return sites, and for security, signage, and accessibility at ballot return sites.

37. I understand that certain counties that fell behind in the issuance of mail-in and absentee ballots applications in the primary election are taking steps to improve their processes in the general election, including additional staffing, engaging mail houses, and procuring equipment to streamline fulfillment of ballot requests.

### ***In-Person Voting***

38. Petitioner has alleged that the extensive polling place consolidations permitted by Act 12 are likely to recur. At this point, however, I do not anticipate anything close to the primary election's level of polling place consolidations for

the general election.

39. Act 12's consolidation provisions are no longer in effect. I am not aware of any legislative effort to permit similar polling place consolidation for the general election. It does not currently appear that extensive polling place consolidation will be necessary.

40. Neither the Department nor, to my knowledge, the counties believe that polling places should be consolidated if it is not necessary to do so. The extensive consolidations in the June 2020 primary election were a reaction to an emerging crisis.

41. Even in the 2020 primary election, when counties were first trying to adapt to the challenges of COVID-19, nearly half of Pennsylvania counties did not consolidate any polling places at all. Many more consolidated no more than a handful of polling places.

42. Only four counties—Allegheny, Cameron, Forest, and Philadelphia—had to seek the Department's approval to consolidate more than 60% of their polling places. Absent statutory approval to do so, it is my understanding that none of these counties will be able to impose polling place cuts at anywhere near their primary election levels for the general election.

***Polling place health & safety***

43. Before the primary election, the Department provided counties with

advice about how best to set up and operate their polling places to facilitate social distancing.

44. The Department also procured 6,000 safety kits to provide to counties, which included masks, gloves, hand sanitizer, and other supplies for safely administering in-person voting.

45. Petitioner claims that voting on touch screen voting machines presents greater health risks than voting on hand-marked paper ballots.

46. While I am not a health expert, it is my understanding as an election administrator that neither method of voting is inherently riskier than the other, and either method requires careful safety protocols.

47. Voters who vote on hand-marked paper ballots must touch a number of surfaces within the polling place, including the ballots themselves, pens, privacy sleeves, writing surfaces, and, possibly, scanners. They also have closer contact with the poll workers who hand them ballots and, possibly, poll workers who assist with scanners.

48. Voters who vote on ballot marking devices must touch the device itself and, for devices that do not scan and tabulate ballots, their ballots and the scanner.

49. Under either circumstance, hand hygiene and regular cleaning of surfaces are critical, which is why the Department has instructed counties to

provide hand sanitizer and/or disposable gloves to voters.

50. In preparation for the 2020 general election, the Department is procuring supplies for every polling place in the Commonwealth, including gloves, hand sanitizer, disinfectant, masks, and tabletop plexiglass shields. The Department is also encouraging counties to procure their own additional supplies.

51. I understand that some counties that use ballot marking devices provided finger caps to their voters to allow them to touch screens safely. I am not aware that this practice caused any delays or problems with the voting process.

52. I am also not aware of any increase in the rate of COVID-19 infections associated with Pennsylvania's primary election.

53. I also understand that the counties who used touch screens instructed poll workers to clean the screens frequently, using wipes or sanitizing spray. I did not hear any reports that this practice caused delays or machine malfunctions.

**The Remedies Petitioner Seeks Are Impractical, Unlikely to Remedy the Harms Alleged, and, if Granted, Could Have Devastating Consequences for the General Election**

54. Petitioner’s proposed reforms do not accommodate the diversity of Pennsylvanians’ needs; some of them would achieve the opposite of their intended goals; and as a whole, the injunctions Petitioners seek are so burdensome and far reaching that they could overwhelm the election system and actively disenfranchise voters.

***Petitioner’s One-Size-Fits-All Solutions Do Not Account for the Diverse Needs of Pennsylvania Counties***

55. Some of the relief Petitioner seeks, while potentially applicable in some counties, would be inappropriate in many others.

56. For example, many of Pennsylvania’s counties are primarily rural. In areas where polling places are far apart, suitable buildings for polling places are spread over great distances, and voters primarily travel by road, a requirement that polling places may not be moved by more than .5 of a mile is neither helpful to voters nor practical.

57. Similarly, Petitioner asks the Court to order the Secretary to “instruct county board of elections offices to establish satellite or mobile locations where voters can request, complete, and submit their mail-ballots, in a range of easily accessible locations, and during weekends and evenings.” Petition Proposed Order at 2. While these facilities may well be helpful in counties with hundreds of

thousands of registered voters, the expense and use of staff time would likely not be worthwhile in a county with registration of only a few thousand people.

***Petitioner Ignores the Harm That Its Proposed Solutions Would Cause***

58. Statewide elections in Pennsylvania are massive efforts involving thousands of polling places, election staff, and volunteers, and millions of voters. The legal and logistical considerations involved are enormously complex. Many aspects of an election must be planned months or years in advance; if one task is thrown off schedule, it may cause unexpected consequences elsewhere.

59. Each change in election procedures, no matter how minor it appears, can have significant secondary consequences for other aspects of the process, such as staffing, funding, information technology capacity, space constrictions, and deadlines. Adding unexpected, burdensome, and costly tasks at this late stage in the election cycle means that other essential needs may suffer.

60. Changes that also appear to be helpful can also backfire by confusing voters. For example, several counties have concluded that sending paper mail-in ballot applications to every registered voter is not advisable. In addition to the fact that processing paper applications takes significantly more staff time than processing electronic applications submitted online, voters who have already submitted applications electronically may be confused and apply again when they receive a paper application in the mail. While duplicate applications will be



rejected, processing the duplicates will unnecessarily burden county and Department staff.

61. One item on Petitioner’s list that would be particularly disruptive is the demand that 17 of Pennsylvania’s 67 counties—in which all voters currently vote on BMDS at polling places on election day—overhaul their polling place operations.

62. Petitioner’s expert, Donald Mark Ritchie, opines that this change could easily be accomplished in time for the general election. He is wrong; even if it were possible to replace existing voting technology in the short time remaining before the election, which it is not, it would cause severe disruption to voting and significant voter and pollworker confusion.

63. At present, there are two broad categories of voting systems in use in Pennsylvania. The first, optical or digital scan paper ballot systems, requires voters to hand mark paper ballots.

64. In most counties that use these hand marked paper ballots, the voters feed the ballots into a scanner at the polling place, which scans the ballots and tabulates the votes. In some smaller counties, election workers transport the ballots to a central location for scanning and tabulation.

65. The second category of voting systems in use are ballot marking devices (“BMDs”). These systems provide a touch screen interface to assist each

voter in marking a paper ballot reflecting the voter's choices.

66. Some BMDs return the marked paper ballot to the voter, who then feeds it into a scanner or places it in a ballot box for central tabulation. Other BMDs, called "hybrid" or "all-in-one" BMDs, also scan and tabulate the ballot.

67. Because voters with disabilities may be unable to hand mark paper ballots independently and privately, federal law requires every polling place that uses optical scan equipment to have at least one BMD for use by voters with disabilities.

68. At present, eight Pennsylvania counties use hybrid BMDs for all in-person voters. Philadelphia, Northampton, and Cumberland Counties use the Election Systems & Software ("ES&S") ExpressVote XL; Cameron, Elk, McKean, Northumberland, and Potter Counties use the ES&S ExpressVote Tabulator.

69. Nine other counties use BMDs and scanners for all in-person voters: Berks, Forest, Washington, Westmoreland, Warren, Bradford, Columbia, Union, and Susquehanna.

70. If the Court mandated hand-marked paper ballots, the nine counties in which all in-person voters use BMDs combined with precinct scanners would have to provide space and writing surfaces at which voters could hand mark their ballots. Many polling places do not have room for this change, and would have to be relocated.

71. These counties would also have to print large numbers of preprinted paper ballots, which are more costly than paper ballots marked by a BMD.

72. These counties would also have to retrain their poll workers, provide new poll worker instructions, and adapt the layout of each polling place to ensure that voters could follow the new processes while remaining socially distanced.

73. These counties would also have to provide extensive new voter education with no time remaining to do so, to voters who just learned a different new voting system within the last year.

74. Petitioner's requested relief would be even more disruptive and costly for the eight counties that use hybrid BMDs, which include the Commonwealth's largest county, Philadelphia. These counties would be required to procure equipment that is likely no longer available between now and November, and add multiple new elements to their polling places such as booths with privacy screens, tables or other writing surfaces, and scanners.

75. At least one BMD would need to remain at each polling place for use by people with disabilities. Because of all the space required for BMDs, writing surfaces, and scanners, as well as the need for additional power supplies for scanners, I expect that many – if not most – of the polling places in these jurisdictions would have to be relocated to accommodate these changes.

76. Moreover, precinct scanners cannot be purchased off the shelf. They

must be certified by the Secretary and be part of the same suite of election technology that the county already uses for other purposes.

77. For at least some of the eight counties, depending on manufacturers' resources and demand from other states, appropriate numbers of precinct scanners would likely not be available in time for the 2020 general election at any cost.

78. It is unlikely, for example, that the thousands of scanners that Philadelphia would need for its polling places will be available immediately.

79. Even if scanners are available, there is not time to procure them. To put a new piece of voting technology in place, a county must go through the procurement process, select a device, physically acquire the machines, test them, make any changes to the voting infrastructure that the machines require, hold training sessions for poll workers and the public, and much more.

80. The entire process typically takes many months, and often over a year. In the case of Philadelphia, the process takes at least 18 months to two years.

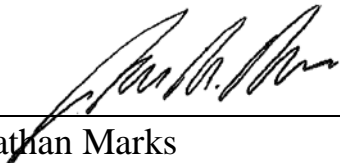
81. Even if equipment and space could somehow be found before the general election, introducing hand-marked paper ballots and scanners to jurisdictions that currently do not use them would, I believe, guarantee confusion and delays on election day.

82. Philadelphia, for example, has not used hand-marked paper ballots for decades, and has never used precinct scanners.

83. To force voters and poll workers to adapt to completely novel processes and technology in a high-turnout election, in the midst of a pandemic, two months before the election, is, I believe, a recipe for severe election day disruptions in the eight counties affected.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 21, 2020.

  
\_\_\_\_\_  
Jonathan Marks

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

NAACP PENNSYLVANIA STATE  
CONFERENCE, et al.,

Petitioner,

v.

KATHY BOOCKVAR, IN HER CAPACITY AS  
SECRETARY OF THE COMMONWEALTH OF  
PENNSYLVANIA, et al.

Respondents.

No. 364 MD 2020

**AFFIDAVIT OF SETH BLUESTEIN**

I, Seth Bluestein, make this Affidavit and state as follows:

1. I am of legal age and competent to provide this Affidavit. All the information herein is based on my own personal knowledge unless otherwise stated.

2. Since July 2017, I have served as Chief Deputy Commissioner for Philadelphia City Commissioner Al Schmidt. Since January 2018, I have also served as Chief Integrity Officer for the Office of the City Commissioners in Philadelphia. From January 2012 to July 2017, I served as Deputy Commissioner for Commissioner Al Schmidt.

3. The Philadelphia City Commissioners are three elected officials in charge of elections and voter registration for the City of Philadelphia. Each

Commissioner is elected to serve a four-year term. The Commissioners set and enforce department policies to administer voter registration and conduct elections in accordance with federal and state voter registration and election laws.

4. Pursuant to the Pennsylvania Election Code, the Commissioners constitute the Board of Elections for Philadelphia County . The day to day operations of the Board, including much of the work described below that is performed in preparation for elections, is conducted by its employees, overseen by the Executive Director, Joseph Lynch, and the offices of the City Commissioners. References below to “the Board” include the work of the Board staff and offices of the City Commissioners in preparation for the election and are not limited to matters on which the three-member Board of Elections has reached a formal determination.

5. I hold a Masters Degree in Public Administration from the Fels Institute of Government at the University of Pennsylvania and a Bachelors Degree in Political Science and History from the University of Pennsylvania.

6. By virtue of my work as Deputy and now Chief Deputy Commissioner for Commissioner Schmidt, I have a thorough knowledge of Philadelphia’s election procedures and administration and have firsthand knowledge of how many recent elections in Philadelphia have been conducted, including the primary and general elections of 2019 and the primary election that

took place on June 2, 2020. I also have knowledge of the Board's current plans for the administration of the general election in Philadelphia on November 3, 2020.

### Background on Voting Machines in Philadelphia

7. Prior to the November 2019 General Election, Philadelphia used Danaher direct-recording electronic (DRE) voting machines.

8. Based on knowledge I have acquired in my work as Deputy and Chief Deputy Commissioner, I am aware that, before Philadelphia used the DRE voting machines, it used lever voting machines. Philadelphia transitioned to the Danaher DRE machines in 2002, a non-presidential election year. In the year leading up to the 2002 election, the Board conducted roughly 500 demonstrations in the community in order to familiarize voters with how to use the new machines. Educating voters on the use of voting systems through demonstrations and printed materials to ensure voters can express their will at the polls is an important function of the Board of Elections.

9. In 2002, the Board also held well over 100 trainings, multiple times each week, for poll workers to teach them how to operate the new machines to ensure they could be successfully used on election day. Trainings were held at a different location in the City each week.

10. Transitioning to new voting systems during lower-expected-turnout elections allows the Board to devote additional staff to testing the new system,



voter demonstrations, and poll workers trainings. It also minimizes the potential disruption to the election in the event of unforeseen issues that may occur during the first use of a new system.

### Board Implementation of a New Voting System in 2019

11. In early 2018, the Pennsylvania Department of State directed all county boards of elections to transition to voting systems producing voter-verifiable paper records. Such systems were to be selected by no later than December 31, 2019, and implemented by the 2020 primary election.

12. Consistent with best-practices standards for voting technology developed at the national level, the Department's directive made clear that both optically scanned hand-marked ballots and ballot-marking devices ("BMDs") were capable of producing the required voter-verifiable paper records. As used in this context, a BMD is an electronic voting device that prints a voter-verifiable paper record containing the voter's selections; that paper record serves as the official record of the vote. In conjunction with the Department's directive, the Secretary of the Commonwealth has examined several different BMDs and certified them for use in Pennsylvania. Under the Pennsylvania Election Code, county boards of election may select any of the BMDs certified by the Secretary for use in their counties.

13. On February 20, 2019, the Philadelphia Board of Elections selected

one such certified BMD, the ExpressVote XL, manufactured by Election Systems & Software (“ES&S”), to replace the Danaher DRE machines. The ExpressVote XL is a “hybrid” or “all in one” machine that combines a ballot-marking device with a scanner and tabulator: the machine prints a paper ballot based on selections the voter makes on an electronic touchscreen, scans the ballot, and then, after the voter has had an opportunity to review the ballot and verify her selections, the machine tabulates the vote, and stores the ballot in a secure collection bin. Given this design, it is not necessary for voters to take their completed ballot to a separate scanning machine located elsewhere within the polling place. The ExpressVote XL also complies with the Americans with Disabilities Act (ADA), both because it can be used by the visually impaired and voters in wheelchairs. Unlike optically scanned hand-marked ballots, the ExpressVote XL also prevents overvotes and avoids issues of determining voter intent.

14. Beginning in April 2019, the Board began to receive shipments of the ExpressVote XLs. As each shipment was received, the Board performed User-Acceptance Testing (UAT) on every ExpressVote XL received by the Board. Ultimately, the Board received and tested roughly 3,750 ExpressVote XLs.

15. While the UAT process was ongoing, in June 2019, the Board also began conducting public demonstrations of the ExpressVote XL. These demonstrations are important and necessary to familiarize voters with the system

prior to its use in an election.

16. Board staff held semi-weekly demonstrations at City Hall and the Municipal Services Building throughout the summer. Two staff members also conducted weekly demonstrations at a location in Reading Terminal Market. And the Board provided multiple staff and machines for demonstrations at special events at the National Constitution Center such as the Fourth of July, Constitution Day, and National Voter Registration Day.

17. The Board also held numerous demonstrations at City Council meetings, events held by city, state, and federal elected officials, ward and civic group meetings, public schools, block parties, senior fairs, libraries, senior centers, recreation centers, swimming pools, nursing homes, and retirement and assisted living facilities. The Board also took requests for demonstrations from members of the public.

18. In total, the Board performed 827 demonstrations over the five months from June through the end of October 2019. A true and correct copy of the list of these demonstrations is attached hereto as Exhibit 1.

19. For demonstrations, the Board arranged for the machines to be populated with sample ballots so that voters could practice voting on the new systems. For each demonstration, the Board had to arrange transportation and staffing. Demonstrations involved between one and four machines, requiring at

least three to four staff members.

20. In addition to familiarizing the public with a voting system, the Board offers training to poll workers to ensure they are familiar with and able to properly operate voting systems on election day. Poll worker familiarity with a voting system is important to ensure that polls are orderly on election day.

21. During years in which there is no change to a voting system, the Board provides a single training for poll workers roughly two months before each election. However, because the ExpressVote XLs were new, the Board decided to hold additional trainings to familiarize poll workers with the new voting system.

22. During July and August, the Board, in conjunction with ES&S staff, held local trainings for the thousands of poll workers and interpreters in the City. The Board held between two and four training sessions each day, including on weekends, at a different location each week, with over 100 in total. As part of this process, the Board also relocated several training locations and polling places due to accessibility problems.

#### Preparation for and Conduct of the November 2019 Election

23. For the November 2019 General Election, the Board had approximately 830 polling locations for the 1,703 distinct election divisions, each of which have their own machines and, depending on the candidates in a given election cycle, their own ballot. There were 304,553 votes cast. Overall, this

election went as smoothly, if not more smoothly, than previous elections. On Election Day, the Board received far fewer complaints about voting machines, and replaced fewer than half as many voting machines, than it had during the preceding Primary Election.

### Act 77

24. Last year, the state legislature enacted Act 77 of 2019, which significantly changed the requirements for voter registration and elections beginning with the 2020 primary election.

25. Among other things, Act 77 requires the Board to process voter registration applications up to 15 days before the election, *i.e.*, October 19, 2020, for the general election. (Registration applications were previously due no later than 30 days before an election.)

26. Act 77 also requires the Board to provide a no-excuse mail-in ballot to voters who are not eligible for absentee ballots. Voters can apply for these ballots up until October 27, 2020, for the 2020 General Election.

27. Due to the ongoing COVID-19 pandemic, the Board expects an extremely large number of Philadelphia voters – hundreds of thousands of them – to apply for and submit mail-in ballots in the 2020 general election.

28. Because the 2020 general election is the first general election to be conducted under these new requirements, the Board must concurrently develop and

implement procedures to comply with the requirements and train its employees on the procedures.

### Preparation for and Conduct of the 2020 Primary Election

29. Pennsylvania's 2020 primary election was initially scheduled to take place on April 28, 2020. But in response to the COVID-19 pandemic, which took hold in March 2020, the General Assembly enacted Act 12 of 2020, which, among other things, rescheduled the primary election for June 2, 2020.

30. The public health crisis led to a sharp reduction in the number of poll workers available to staff polling places during the primary election. Many of Philadelphia's poll workers are seniors, who face a heightened risk from COVID-19 and were unable or unwilling to work at polling places during the primary election.

31. Pennsylvania law, as well as the proper functioning of the election process, requires a certain number of poll workers at each polling place. Accordingly, the reduction in availability of poll workers meant that the Board was unable to staff the number of polling places used during the November 2019 election.

32. At the same time, it was evident that, due to the new availability of no-excuse mail-in ballots and concerns about contracting COVID-19, a significant percentage of voters in the June 2020 primary election would vote by absentee or

mail-in ballot rather than in person at a polling place.

33. Act 12 authorized each county board of elections, for purposes of the June 2, 2020 primary election only, to consolidate the number of polling places to achieve a reduction of up to 60% of polling place locations in the county. Act 12 further authorized boards of elections, also for purposes of the primary election only, to reduce the number of polling places beyond 60% if warranted by the county's circumstances and approved by the Department of State. Pursuant to this provision, the Board applied for and received permission from the Department of State to consolidate polling places in Philadelphia so as to provide 188 polling places during the primary election, as compared with approximately 830 polling places during the November 2019 general election.

34. In preparing to conduct the June 2, 2020 primary election, a top priority for the Board was protecting Philadelphia voters and poll workers from COVID-19. In designing procedures and protocols for the election, the Board drew on guidance and information provided by the Pennsylvania Department of State, United States Election Assistance Commission, the United States Centers for Disease Control, and ES&S, the manufacturer of the ExpressVote XL voting machines used by Philadelphia voters.

35. Consistent with guidance from the Pennsylvania Department of State and public health authorities, the Board directed poll workers to wear masks while

inside polling places and to maintain appropriate social distancing. To reinforce social distancing, the Board provided poll workers with tape to mark appropriately-spaced places for voters to stand while waiting in line.

36. Attached as Exhibit 2 is a true and correct copy of a document regarding COVID-19-related precautions that the Board provided poll workers for guidance in the 2020 primary election.

37. The Board also worked to protect voters and poll workers from contracting COVID-19 from any potentially contaminated surfaces. Based on the procedures at Philadelphia polling places, there are three primary occasions where voters are likely to touch an object touched by others: while signing the poll book at the check-in station, taking the paper ballot to insert in the voting machine, and while using the touchscreen of the ExpressVote XL to register their voting selections. Poll workers provided voters with disposable gloves and instructed voters to wear them while signing the poll book, handling their ballot, and using the ExpressVote XL machines, so as to avoid direct contact between a voter's skin and objects in the polling place. Sanitizing hand wipes were made available to voters as they exited polling places after completing the voting process.

38. Before the primary election, Board employees tested the ExpressVote XL machine using the disposable gloves. Use of the gloves did not impair the functionality of the machines in any discernible way. Nor am I aware of any



reports from voters of any difficulties in voting on the ExpressVote XL machines caused by wearing the gloves or any other COVID-19-related precautions.

39. Polling places were provided with manufacturer-approved cleaning solution to be used when necessary to clean the ExpressVote XL machines. The Board is not aware of any reports that cleaning of the ExpressVote XL machines during the primary election caused any problems with the functioning of those machines.

40. The Board is not aware of any significant delays in voting caused by cleaning of the ExpressVote XL machines. To the contrary, based on my experience in the 2020 primary, the cleaning of machines did not have any significant impact on wait time.

41. The Board is aware of one or two instances in which the wrong machine was sent to a polling place – that is, a machine programmed with the ballot containing the races for one election district was sent to the polling place of a different election district – which caused some delays in the affected polling places. This error was attributable to the significant consolidation in the number of polling places. Approximately 348,740 Philadelphians voted in the June 2020 primary election. Of these, approximately 166,887 voted in person at polling places on election day.

42. The Board is unaware of any data indicating any increase in the rate

of COVID-19 infections in connection with the primary election.

43. To facilitate voting by absentee and mail-in ballot, the Board established and administered three categories of drop-off locations, at which voters who had received an absentee or mail-in ballot could return their ballots in person during the week leading up to election day. First, the Board operated two 24/7 drop-off locations at City Hall and the Board of Elections office at 520 N. Columbus Boulevard. Second, to serve voters residing in Philadelphia neighborhoods located far from the center of the City, the Board established ten two-hour mobile drop-off location at which voters could return their absentee and mail-in ballots in person before election day. Third, as election day approached, the Board approved establishing, for each council district in Philadelphia, one election day drop-off office for voters to return their absentee and mail-in ballots in person on June 2, 2020.

#### Preparations for the 2020 General Election

##### A. Polling Places

44. It is my understanding that Petitioner is concerned about burdens it believes were imposed on the ability of certain Pennsylvania citizens to vote in person as a result of the consolidation of polling places allowed by Act 12.

45. As noted above, during the primary election, pursuant to Act 12, the Board sought and received permission to consolidate the number of polling places

from approximately 830 to 188.

46. The polling-place-consolidation provisions in Act 12 are no longer in effect, and I do not currently expect any similar statutory authorization to be enacted with respect to the 2020 general election.

47. With the expiration of the aforementioned Act 12 provisions, the authority of county boards of election to consolidate polling places has shrunk to its pre-COVID scope, which is significantly more limited: Where a suitable site for a polling place is not available in a given election district, a county board, may, not less than 20 days prior to any election, designate as the polling place for such election district a suitable public building situated in another election district, including a public building that houses another polling place.

48. Although the number of polling places that the Board is able to provide depends on many factors—including, critically, whether there is a resurgence of COVID-19 in the Philadelphia area between now and election day—the Board is planning to provide between 700-800 polling places in Philadelphia for the general election.

49. The Board's current expectation is that 80% of the City's Divisions will occupy the same polling places as they did during the November 2019 election.

50. With respect to the remaining expected 20% of polling places, the

Board is striving to locate them as close as reasonably possible to their original location. Petitioner's attempt to put an arbitrary limit, such as 0.5 miles, on the distance between the original and new location is unworkable, however, because, among other reasons, polling places must meet ADA accessibility requirements, and it may not always be feasible for the Board to obtain a new site, within that distance, that complies with all applicable requirements.

51. The Board intends to provide notice of any change in polling places as soon as it reasonably can. For the upcoming general election, the Board currently plans to send postcards to all Philadelphia households informing each of its polling place. Consistent with the requirements of Pennsylvania law, the Board will also post notices of any changes in polling places at the original polling places, the Board's website, offices, and in local newspapers.

52. Given the vagaries of the COVID-19 pandemic, however, a notice that is sent too early may, counter-productively, cause more confusion, as a different notice may need to be sent later in the event that a polling place location needs to be relocated after that date.

53. It is my understanding that Petitioner seeks an order requiring a sufficient number of polling places such that voter wait times never exceed 30 minutes. In the Board's experience, however, the number of polling places is not a principal driver of wait times. Instead, wait times tend to be a function of the

number of poll-workers able to check in voters, the number of check-in stations, and the number of voting machines available for a given population of voters. In the upcoming general election, as in a typical election, the City's 1,703 Divisions will each have a check-in station and voting machines, regardless of the actual number of physical polling places. The number of poll workers available is (a) not entirely within the control of the Board and (b) is likely to depend on COVID-19 infection rates in Philadelphia during the lead-up to the November general election.

B. In-Person Early Voting and Voting by Mail

54. The Board also currently plans to provide for various sites for in-person early voting of the sort requested by Petitioner in its application for a preliminary injunction. Such sites will take advantage of the provisions of Act 77 that allow voters to apply for an absentee or mail-in ballot in person, receive it, complete it, and return it—all in one visit to the county board of elections.

55. The Board currently intends to locate two of these sites at City Hall and 520 N. Columbus Boulevard, assuming it can put protocols and arrangements in place to make those locations available to the public safely while the risks from COVID-19 persist. In addition, the Board currently plans, contingent on securing grant funding, additional staffing, and additional technology, to create 15 additional regional offices at which voters can apply in-person for, and return, absentee and mail-in ballots. Each of these sites is expected to cost \$100,000-

\$125,000, which accounts for the expense of, among other things, staffing, technology, furniture, and personal protective equipment.

56. Assuming the necessary funding is secured, the Board expects to open these early voting sites in phases, beginning with the office at City Hall and at the Board's office on 520 N. Columbus Boulevard as soon as the general election ballot is finalized. The Board expects these offices will operate from approximately mid-September through Election Day, and will be open Monday through Friday, during normal business hours, Monday through Thursday in the evening, and also open on weekends. After the deadline for applying for absentee and mail-in ballots has passed, the sites will serve as, among other things, ballot drop-off locations up to and including election day.

57. As it did during the June 2020 primary election, the Board also plans on making available secure drop boxes and mobile drop-off locations at which voters can return in person their completed absentee or mail-in ballots.

58. It is my understanding that Petitioner seeks an order requiring each county board of elections to mail paper applications for an absentee or mail-in ballot to every registered voter in Philadelphia. Such an order would be cost-prohibitive for a large jurisdiction such as Philadelphia, and would further burden the Board's finite staffing resources, which are already stretched exceedingly thin, threatening to hinder and delay other aspects of election administration. Currently,

most ballot applications in Philadelphia are processed online, which is far more efficient; processing paper applications requires time-intensive data entry.

It Is Not Feasible for Philadelphia to Transition from the ExpressVote XL to Optically Scanned Hand-Marked Paper Ballots for the November 2020 Election

59. The Board expects at least 700,000 votes to be cast for the 2020 General Election. The Board also expects an enormous influx of voter registration applications preceding the 2020 presidential election. For comparison, the Board received nearly 500,000 applications in 2016, more than double the number received in 2015. Of those, nearly 175,000 were paper applications physically filed with the Board following registration drives.

60. Furthermore, due to the anticipated continuation of the COVID-19 pandemic, the Board expects a large number of voters to apply for, and vote by, an absentee or mail-in ballot. Under Act 77, voters may apply for an absentee or mail-in ballot up to one week prior to election day. Ensuring that such applications are processed timely will require a substantial commitment of staff resources, which will be unavailable to effectuate a transition to a new voting system.

61. The November general election is expected to be one of the highest turnout elections in recent Pennsylvania history. To meet the Act 77 requirements, as well as the other election-preparation obligations discussed above, the Board of Elections will have to use all of its available resources.

62. If the Board was compelled to switch to a new voting system for the

2020 general election, the Board would need to reevaluate each and every polling place to ensure there were sufficient space. This would require physical inspection of many polling places. If the new system included optically scanned hand-marked ballots, the Board would likely need to find larger polling places to provide privacy for voters filling out the ballots and space for ADA compliant ballot-marking devices, in addition to the space for the scanners themselves.

63. Changing to a new voting system would also require the Board staff to retrain up to 8,500 poll workers and interpreters. The Board would have to create and print new election guides with instructions for poll workers to set up and use the machines. In addition, handouts from the vendor showing voters how to use the system—including, in the case of optically scanned hand-marked paper ballots, the scanners—would also need to be printed and translated into additional languages.

64. If the Board was forced to acquire new voting machines—including optical scanners—for the 2020 general election, the Board would need to determine if the current warehouse facilities could house the new machines, if the facilities needed to be reconfigured, or if the Board would need to lease new facilities.

65. Although the Board will do everything it can to ensure the coming elections are conducted in a fair and orderly manner, I believe that Petitioner's



proposal to compel Philadelphia to transition to a hand-marked paper ballot voting system between now and the November 2020 general election is unworkable; if implemented, it would create an unacceptable likelihood of severe confusion on election day, undermining the fairness and orderliness of the election process, and disenfranchising voters.

66. Using hand-marked paper ballots with a central scanning system in the general election in Philadelphia would vastly increase the amount of paper ballots that the Board needs to print, supply, transport, store, and process, and the amount of time it will take to scan and tabulate those ballots. I believe that such an increase could overwhelm the Board's ability to conduct orderly election day activities.

67. Switching to scanners in individual polling places to speed the process is also not feasible. That would require a separate procurement process that could take many months. Perhaps even more importantly, poll workers would also have to be trained on properly operating these scanners, including what to do with ballots that the scanners have difficulty reading or misread. The Board would also need to develop procedures for adjudicating unclear or machine-unreadable ballots either in real-time at the division level or centrally at a later time, which would require segregating or sorting ballots to identify those needing further review.

68. Regardless of the type of scanning system used, the Board would also need to train up to 8,500 poll workers, many of whom are elderly, on procedures for how to conduct the election using pre-printed paper ballots. Such a process would be different from the historical experience of Philadelphia's poll workers and would require significant training.

69. One of the advantages of switching to the ExpressVote XL, from my perspective, was that the procedures used by both poll workers and voters were similar to those used with Philadelphia's previous voting machines. Among other things, that meant that poll workers did not have to worry about tabulating votes or storing cast ballots, because the machines did that for them.

70. Philadelphia has used voting machines for over half a century. To switch back to hand-marked paper ballots, the entire voting process would have to be reorganized. The Board would need to develop new procedures at polling places to distribute ballots, for voters to vote, to collect ballots while preserving voter anonymity, to tabulate votes, and to preserve the chain of custody of the ballots.

71. The Board would need to arrange for secure storage of blank ballots, procure secure containers to hold cast ballots, and procure stands or booths for voters to use, and equipment to organize the voting process.

72. In order to ensure voters did not leave the polling place with blank or

voted paper ballots, the Board would need to reorganize the voting process.

Among other things, the Board would need to ensure that voters were required to deposit their ballot (whether cast or spoiled) before leaving the polling place. This step would likely slow down the voting process, which could lead to lines at polling places. The Board would also need to evaluate the over 800 polling places to ensure that there was sufficient room for voters to mark their ballots and to reconfigure the room so that voters moved through these steps in order. Otherwise, the Board would need to move polling places, potentially creating further confusion on election day.

73. In addition to space for voters to collect their ballots and take them to stands or booths to mark their ballots in privacy, the polling places would also have to allow for voters to each take their ballot to a separate area to be scanned.

74. Furthermore, due to accessibility requirements imposed by federal law, each polling place would also need to have a ballot-marking device, which, given the timing constraints, would necessarily be an ExpressVote XL. Not only would this increase the space required at any polling place; it is also likely that many voters without a disability would want to vote on the familiar touchscreen device rather than by hand-marking a paper ballot, thereby increasing congestion and delays.

75. Petitioner and one of its witnesses, Donald Mark Ritchie, suggest that

it would be feasible to switch, between now and the November 2020 election, from the ExpressVote XL to a hand-marked paper ballot system because Philadelphia must already print and process hand-marked mail-in, absentee, emergency, and provisional ballots. Absentee and mail-in ballots, however, are not completed by voters, or scanned, at polling places. And, for reasons evident from the discussion above, there is a critical, night-and-day difference between having paper ballots available for use by the relatively small number of voters who are required to cast a provisional ballot, or as a contingency plan in the event of a power outage or similar eventuality at a particular polling place, and a wholesale, citywide transition from all-in-one ballot-marking devices to optically scanned hand-marked ballots. Being compelled to effectuate such a transition in effectively two months—during an ongoing pandemic, for a presidential general election promising historic voting numbers—is, frankly, difficult even to contemplate.

76. In short, while it might have been possible to procure an alternative voting system, develop the necessary procedures, and implement them through training and demonstration back in February 2019 in time for the 2020 general election, I do not believe it would be possible at this point and believe that doing so would be deeply irresponsible. By way of comparison, the Board decided to transition from DRE machines to the ExpressVote XL system in February 2019, and the Board was not in a position to conduct an election using the new system

until November 2019—and that was during a non-presidential year, without no-excuse mail-in ballots, and without a pandemic. Petitioner now asks the Court to require Philadelphia to transition to yet another voting system—one far more different from its predecessor than the ExpressVote XL was relative to the previous DREs—in only two months.

77. I am also concerned that the amount of training required in transitioning to another system for the City’s up to 8,500 poll workers and interpreters would cause attrition among that group, particularly given the burdens imposed by the COVID-19 pandemic. This would be the third method of voting in less than two years in Philadelphia. The Board already faces ongoing challenges recruiting and training sufficient numbers of poll workers to ensure a smooth election process and additional attrition would worsen this problem. Greater attrition among poll workers would also threaten to increase wait times for voter check-in, directly contrary to Petitioner’s stated goals.

78. Transitioning to hand-marked paper ballots on the timeframe proposed by Plaintiffs is simply not workable. It would likely lead to chaos at the polls, with poll worker and voter confusion, long lines and wait times, and, ultimately, voter disenfranchisement.

Certain Other Assertions in the Affidavit of Donald Mark Ritchie

79. The paragraphs above address certain assertions in the Affidavit by Mr. Ritchie submitted by Petitioner. In addition to these assertions, Mr. Ritchie contends that, “[i]n [his] experience, voting on a [ballot-marking device] typically takes much longer than hand-marking a paper ballot.” It is unclear what, if any, data serves as the basis for this contention.

80. I believe there are significant grounds to doubt Mr. Ritchie’s assertion, at least with respect to the time needed to vote on the ExpressVote XL. For one thing, because the ExpressVote XL is a hybrid device, there is no need for the voter to take her completed ballot to a separate scanning station, at which point she may need to wait in an additional line before scanning her ballot. Further, as Mr. Ritchie’s Affidavit notes, in voting systems utilizing optically scanned hand-marked ballots, a voter who overvotes her ballot is not informed of that fact until she feeds it into the scanner, at which point she is given the option of spoiling her ballot and completing a new one. By contrast, the ExpressVote XL prevents overvotes in the first instance. This feature represents a significant savings of time over a hand-marked paper ballot system.

81. In any event, for reasons stated above, I believe that, if Philadelphia were compelled to switch from the ExpressVote XL to optically scanned hand-marked paper ballots between now and election day in November, the attendant

confusion and disarray that would result would almost certainly create significantly greater wait times than would be the case if the election were conducted, as previously planned, using ExpressVote XL machines.

82. Mr. Ritchie also suggests that voters who vote on ballot-marking devices such as the ExpressVote XL touch more high-contact surfaces than voters using an optically scanned hand-marked paper ballot system. Again, I believe there are significant grounds to doubt that assertion. As noted above, there are three primary points in the voting process where a Philadelphia voter touches an object that may be touched by others: (1) when signing the poll book, (2) when a paper ballot is handed to her to place into the voting machine, and (3) using the touchscreen of the ExpressVote XL to make her voting selections. By contrast, based on Mr. Ritchie's own account, voters using a hand-marked paper ballot system are likely to touch: (1) a pen when signing the poll book (and possibly also the poll book itself); (2) a paper ballot handed to them by a poll worker; (3) a privacy sleeve used to conceal the ballot as it is carried to the scanner; (4) the table or booth at which the voter marks the ballot; and (5) perhaps also the scanner into which the voter feeds the ballot.

I affirm that the statements set forth in this Affidavit are true to the best of my knowledge and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: August 21, 2020

A handwritten signature in black ink, appearing to read "Seth Bluestein". The signature is fluid and cursive, with the first name "Seth" and last name "Bluestein" clearly distinguishable.

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Seth Bluestein



# **EXHIBIT 1**

	day	start	end	ward	div	address	zip	event
1	7-Jun-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market (Center Court across from Brass Pig)
2	7-Jun-19	9:00 AM	5:00 PM	5	30	520 N Columbus Blvd	19123	Voter Registration Office 5th FL
3	8-Jun-19	12:00 PM	4:00 PM	54	22	2228 Cottman Ave	19149	Northeast Regional Library
4	10-Jun-19	1:00 PM	5:00 PM	66	30	11099 Knights Rd	19154	Katharine Drexel Library
5	11-Jun-19	3:00 PM	5:45 PM	63	3	501 Rhawn St	19111	Fox Chase Library
6	13-Jun-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market (Center Court)
7	13-Jun-19	7:00 PM	8:30 PM	35	3	7040 Oxford Ave	19111	Burholme Townwatch and Civic Association
8	14-Jun-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	City Hall Room 195 Jury Room
9	14-Jun-19	3:00 PM	7:00 PM	1	3	1430 E Passyunk Ave	19147	South Philadelphia Older Adult Center
10	14-Jun-19	10:00 AM	2:00 PM	49	21	5325 Old York Rd	19141	State Representative Kinsey's Senior Fair - The Yorkhouse
11	14-Jun-19	12:00 PM	3:00 PM	6	14	1016 N 41st St	19104	Veterans on the Move Fest - West Philadelphia Senior Community Center
12	15-Jun-19	11:00 AM	4:00 PM	8	15	1400 JFK Blvd	19107	Disability Pride Parade & Celebration - City Hall Courtyard
13	15-Jun-19	11:00 AM	1:00 PM	35	10	6000 Rising Sun Ave	19111	35th Ward Town Hall and Health Fair - Lawncrest Recreation Center
14	15-Jun-19	10:00 AM	1:00 PM	64	4	3201 Ryan Ave	19136	Congressman Brendan Boyle's Senior Expo - Lincoln High School
15	17-Jun-19	1:00 PM	5:00 PM	9	7	8711 Germantown Ave	19118	Chestnut Hill Library
16	17-Jun-19	11:30 AM	12:30 PM	58	3	10100 Jamison Ave	19116	NORC Monthly Meeting
17	18-Jun-19	7:00 PM	9:00 PM	23	4	1010 Arrott St	19124	Northwood Civic Association - Simpson Recreation Center
18	19-Jun-19	6:00 PM	7:00 PM	8	15	50 S 16th St 37th FL Board Rm	19103	8th Ward Dem Committee Meeting
19	19-Jun-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	City Hall Room 195 Jury Room
20	19-Jun-19	1:00 PM	5:00 PM	57	6	9233 Roosevelt Blvd	19114	Welsh Road Library
21	20-Jun-19	6:00 PM	7:30 PM	13	20	1939 W Venango St	19140	13th Dem Ward Demo
22	20-Jun-19	3:00 PM	6:00 PM	21	43	705 E Cathedral Rd	19128	Andorra Library
23	20-Jun-19	7:00 PM	8:30 PM	57	18	8512 Frankford Ave	19136	Upper Holmesburg Civic Association - St. Dominic's Marian Hall
24	21-Jun-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	City Hall Room 195 Jury Room

	day	start	end	ward	div	address	zip	event
25	21-Jun-19	10:00 AM	1:00 PM	41	25	7340 Jackson St	19136	Senior Community Services Fair - Northeast Family Service Center
26	21-Jun-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market (Center Court)
27	22-Jun-19	11:00 AM	3:00 PM	61	12	101 E Godfrey Ave	19120	Community Fair
28	22-Jun-19	11:00 AM	4:00 PM	49	17	1301 W Ruscomb St	19141	Community Carnival and Health Fair - Second Macedonia Baptist Church
29	24-Jun-19	1:00 PM	5:00 PM	57	6	9233 Roosevelt Blvd	19114	Welsh Road Library
30	25-Jun-19	7:30 PM	TBA	31	18	2600 Aramingo Ave	19125	Olde Richmond Civic Association
31	25-Jun-19	9:30 AM	12:00 PM	8	10	1904 Walnut St	19103	The Church of the Holy Trinity
32	25-Jun-19	3:00 PM	5:45 PM	39	7	200 Snyder Ave	19148	Whitman Library
33	26-Jun-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
34	26-Jun-19	6:00 PM	TBA	3	11	700 Cobbs Creek Pkwy	19143	Ward Meeting
35	26-Jun-19	10:00 AM	2:30 PM	32	16	1936 N Judson St	19121	Job Fair
36	26-Jun-19	2:00 PM	4:00 PM	23	18	1824 Foulkrod St	19124	Whitehall Residents Council
37	27-Jun-19	6:00 PM	7:00 PM	8	7	22 S 22 St	19103	DC 47 Delegate Assembly
38	27-Jun-19	2:00 PM	TBA	61	24	600 W Cheltenham Ave	19126	Cheltenham Nursing and Rehabilitation Center
39	27-Jun-19	5:00 PM	7:30 PM	22	2	6757 Greene St	19119	West Mt. Airy Neighbors Annual Meeting
40	27-Jun-19	7:15 PM	8:30 PM	50	28	7210 Ogontz Ave	19150	W O L Older Adult Center
41	28-Jun-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
42	28-Jun-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market (Center Court across from Brass Pig)
43	28-Jun-19	12:00 PM	4:00 PM	38	17	4700 Wissahickon Ave Bldg A Ste 126	19144	Resources for Human Development
44	29-Jun-19	1:00 PM	3:00 PM	12	14	50 E Wister St	19144	Elders Place
45	29-Jun-19	11:00 AM	3:00 PM	59	17	5800 Germantown Ave	19103	Unity Day - Vernon Park
46	30-Jun-19	9:30 AM	12:30 PM	5	26	20 N American St	19106	Independence Day Celebration
47	30-Jun-19	12:00 PM	3:00 AM	3	10	520 S 61st St	19143	Community Block Party
48	1-Jul-19	9:00 AM	4:00 PM	5	16	525 Arch St	19106	All-American Celebration 2019 - National Constitution Center
49	2-Jul-19	11:00 AM	2:00 PM	52	1	5050 Parkside Ave	19131	State Senator Vincent Hughes Senior Fair
50	2-Jul-19	9:00 AM	4:00 PM	5	16	525 Arch St	19106	All-American Celebration 2019 - National Constitution Center
51	2-Jul-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market (Center Court)

	day	start	end	ward	div	address	zip	event
52	3-Jul-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
53	3-Jul-19	9:00 AM	4:00 PM	5	16	525 Arch St	19106	All-American Celebration 2019 - National Constitution Center
54	3-Jul-19	10:00 AM	1:00 PM	36	37	1401 S 16th St	19146	Reed Street Presbyterian Apartments
55	4-Jul-19	9:00 AM	4:00 PM	5	16	525 Arch St	19106	All-American Celebration 2019 - National Constitution Center
56	5-Jul-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
57	8-Jul-19	7:30 PM	8:15 PM	5	31	990 Spring Garden St	19123	Aravea Public Voting System Demo
58	8-Jul-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
59	8-Jul-19	10:00 AM	11:45 AM	31	16	2607 E Cumberland St	19125	St. Anne's Senior Citizens Center
60	9-Jul-19	11:00 AM	1:00 PM	24	6	3901 Market St	19104	Lobby
61	10-Jul-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
62	10-Jul-19	9:30 AM	1:30 PM	47	9	2100 W Cecil B Moore Ave	19121	MLK Older Adult Center Voting System Demo
63	10-Jul-19	9:00 AM	11:00 AM	56	20	8101 Bustleton Ave	19152	Northeast Older Adult Center
64	10-Jul-19	10:00 AM	2:00 PM	4	8	5600 Race St	19139	Haddington Elderly
65	10-Jul-19	5:00 PM	8:00 PM	41	12	6742 Torresdale Ave	19135	Tacony Library
66	11-Jul-19	6:30 PM	8:30 PM	21	6	175 Green Ln	19127	Manayunk Neighborhood Council Meeting
67	11-Jul-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market Voting System Demo
68	11-Jul-19	12:00 PM	3:00 PM	50	10	1500 Wadsworth Ave	19150	Wadsworth Library
69	12-Jul-19	12:00 PM	3:00 PM	8	15	1400 JFK Blvd	19107	Councilwoman Jannie Blackwell Birthday Bash
70	12-Jul-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
71	12-Jul-19	11:00 AM	2:30 PM	40	5	2100 S 58th St	19143	Mary Field Apts /Community Room
72	12-Jul-19	9:00 AM	1:00 PM	32	2	1900 N 20th St	19121	Everybody Ready Public Health Preparedness Training
73	12-Jul-19	12:00 PM	2:00 PM	57	26	16 Old Ashton Rd	19152	Rep. Ed Neilson's 2020 Census Job Recruiting Workshop
74	12-Jul-19	10:00 AM	2:00 PM	4	8	5600 Race St	19139	Shipping / Community Room
75	12-Jul-19	12:00 PM	4:00 PM	50	28	2000 Washington Ln	19138	West Oak Lane Library
76	14-Jul-19	2:00 PM	5:00 PM	25	1	2733 E Clearfield St	19134	Veterans Appreciation BBQ - Veteran's Boxing Association
77	15-Jul-19	12:00 PM	4:00 PM	51	5	1201 S 51st St	19143	Kingsessing Library
78	15-Jul-19	4:00 PM	8:00 PM	22	11	6945 Germantown Ave	19119	Mount Airy Monday Market
79	15-Jul-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
80	16-Jul-19	12:00 PM	2:00 PM	5	21	219 Spring Garden St	19123	Democratic City Committee

	day	start	end	ward	div	address	zip	event
81	16-Jul-19	10:00 AM	11:00 AM	14	10	827 N Franklin St	19123	Dining Hall
82	16-Jul-19	11:00 AM	2:00 PM	58	37	11048 Rennard St	19116	Northeast Adult Day Care
83	16-Jul-19	1:30 PM	3:00 PM	5	22	509 S Broad St	19147	Philadelphia Senior Center Voting System Demo
84	16-Jul-19	6:00 PM	7:30 PM	47	6	1718 W Cecil B Moore Ave	19121	Philly NAN Voting System Demo
85	16-Jul-19	3:00 PM	5:30 PM	36	29	1700 S Broad St	19145	Community Health Fairs and Farmer's Market - South Philadelphia Library
86	16-Jul-19	6:30 PM	TBA	35	8	6200 Rising Sun Ave	19111	Lawncrest Civic Association Meeting
87	17-Jul-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
88	17-Jul-19	1:00 PM	3:00 PM	12	15	18 W Cheltenham Ave	19144	Interfaith House
89	17-Jul-19	1:00 PM	5:00 PM	34	41	7422 Haverford Ave	19151	Overbrook Park Library
90	17-Jul-19	10:00 AM	TBA	11	9	1531 W Tioga St	19140	Presbyterians' Inspired Life
91	17-Jul-19	10:00 AM	4:00 PM	11	16	2104 W Venango St	19140	Venango House Apartments
92	18-Jul-19	10:00 AM	2:00 PM	7	10	3825 Whitaker Ave	19124	Comhar Inc.
93	18-Jul-19	2:00 PM	3:30 PM	44	2	5300 Media St	19131	Conestoga Recreation Center
94	18-Jul-19	6:00 PM	8:00 PM	53	20	1400 Cottman Ave	19111	Rep. Jared Solomon Town Hall Meeting Voting System Demo
95	18-Jul-19	3:00 PM	4:00 PM	35	5	6401 Martins Mill Rd	19111	Philadelphia Protestant Home
96	18-Jul-19	5:00 PM	7:00 PM	29	12	2823 W Girard Ave	19130	PHL Vue Voting System Demo - 29th Ward
97	18-Jul-19	6:00 PM	8:00 PM	49	21	5325 Old York Rd	19141	Rep. Kinsey Voting System Demo
98	19-Jul-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
99	19-Jul-19	12:30 PM	1:30 PM	33	14	1251 E Sedgley Ave	19134	Juniata Park Older Adult Center
100	19-Jul-19	5:00 PM	8:00 PM	24	8	3900 Lancaster Ave	19104	16th Police District Promise Zone Community Fun Day 2019
101	19-Jul-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market Voting System Demo
102	20-Jul-19	10:00 AM	2:00 PM	59	19	43 W Haines St	19144	14th Police District Community Day
103	20-Jul-19	10:00 AM	3:00 PM	43	14	13th St and Tioga St	19141	Community Day
104	22-Jul-19	1:00 PM	3:00 PM	58	3	2109 Red Lion Rd	19115	Oakwood Residence Assisted Living
105	22-Jul-19	5:00 PM	7:15 PM	24	4	3509 Spring Garden St	19104	24th Ward Voting System Demo
106	22-Jul-19	1:00 PM	5:00 PM	22	11	6945 Germantown Ave	19119	Lovett Memorial Library
107	22-Jul-19	6:00 PM	7:30 PM	13	20	19th & Erie Ave	19140	Mastery Charter / Grover Cleveland School
108	22-Jul-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
109	23-Jul-19	11:00 AM	1:00 PM	40	5	2100 S 58th St	19143	Mary Field Apartments
110	23-Jul-19	1:00 PM	4:00 PM	7	5	173 W Allegheny Ave	19134	Somerset Villas

	day	start	end	ward	div	address	zip	event
111	23-Jul-19	1:30 PM	3:00 PM	58	31	10400 Roosevelt Blvd	19116	St. John Neumann Center for Rehabilitation & Healthcare
112	24-Jul-19	5:00 PM	7:30 PM	8	21	1420 Locust St	19102	Academy House
113	24-Jul-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
114	24-Jul-19	1:00 PM	3:00 PM	24	6	3817 Market St Comm Rm 2nd FL	19104	Ralston/Mercy Douglass House
115	24-Jul-19	10:00 AM	11:30 AM	52	9	2101 Belmont Ave	19131	Simpson House
116	24-Jul-19	1:30 PM	3:00 PM	56	13	7800 Bustleton Ave	19152	Voting Education for 2019
117	25-Jul-19	1:00 PM	3:00 PM	34	8	5901 W Columbia Ave	19151	Tustin Recreation Center
118	25-Jul-19	2:00 PM	5:00 PM	52	14	5325 Overbrook Ave	19131	Wynnefield Library
119	26-Jul-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
120	26-Jul-19	11:00 AM	3:00 PM	8	10	1905 Locust St	19103	Philadelphia City Institute Library
121	26-Jul-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market Voting System Demo
122	26-Jul-19	11:00 AM	1:00 PM	29	7	1515 N 24th St	19121	29th Ward Voting System Demo
123	27-Jul-19	10:00 AM	12:00 PM	5	12	919 Walnut St	19107	Self Contained Public Awareness
124	27-Jul-19	10:00 AM	2:00 PM	21	22	6300 Ridge Ave	19128	Annual Hospitalized Veterans Tribute - Gorgas Park
125	27-Jul-19	12:00 PM	3:00 PM	65	17	4500 Rhawn St	19136	Councilmember Bobby Henon Back to School Event
126	27-Jul-19	2:00 PM	7:30 PM	13	16	1648 W Hunting Park Ave	19140	Triumph Baptist Church Voting System Demo
127	29-Jul-19	1:00 PM	5:00 PM	66	30	11099 Knights Rd	19154	Katharine Drexel Library
128	29-Jul-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
129	29-Jul-19	10:00 AM	3:00 PM	18	10	1601 E Palmer St	19125	Neumann Senior Housing
130	29-Jul-19	10:00 AM	11:00 AM	46	8	4700 Springfield Ave	19143	Star Harbor Senior Community Center
131	30-Jul-19	10:00 AM	1:00 PM	23	6	4744 Frankford Ave	19124	Councilmember Sanchez's Summer Pop-up Office
132	30-Jul-19	11:00 AM	3:00 PM	9	2	7310 Stenton Ave	19150	Conference Room
133	30-Jul-19	6:00 PM	7:30 PM	47	6	1718 W Cecil B Moore Ave	19121	Philly NAN Office
134	31-Jul-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
135	31-Jul-19	10:00 AM	4:00 PM	13	11	1539 W Courtland St	19141	Front Step Inc
136	31-Jul-19	4:00 PM	6:00 PM	42	25	5501 N 5th St	19120	Greater Olney Library
137	31-Jul-19	9:30 AM	2:00 PM	58	3	10100 Jamison Ave	19116	KleinLife
138	31-Jul-19	6:00 PM	8:00 PM	47	4	1628 W Master St	19121	National Temple Baptist Church
139	31-Jul-19	2:00 PM	4:00 PM	59	25	6300 Greene St	19144	Wesley Enhanced Living at Stapeley in Germantown
140	1-Aug-19	1:00 PM	5:00 PM	38	13	3501 Midvale Ave	19121	Falls of Schuylkill Library

	day	start	end	ward	div	address	zip	event
141	1-Aug-19	5:00 PM	6:30 PM	8	15	30 S 15th St Ground FL - Former Parliamnet Coffee	19102	Pipeline
142	1-Aug-19	1:30 PM	2:30 PM	39	45	1711 S Broad St	19148	SEAMAAC
143	1-Aug-19	6:00 PM	7:00 PM	16	2	2326 N 16th St	19132	Winchester Advisory Committee Board Community Meeting
144	2-Aug-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
145	2-Aug-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market Voting System Demo
146	2-Aug-19	11:00 AM	3:00 PM	7	7	199 E Erie Ave	19134	9th Annual Back to School Carnival and Resource Fair
147	3-Aug-19	8:00 AM	12:00 PM	14	4	665 N Broad St	19123	Laborers' District Council
148	3-Aug-19	8:00 AM	1:00 PM	37	12	N Broad St and Lehigh Ave	19132	Philly Free Streets 2019
149	3-Aug-19	10:00 AM	2:00 PM	13	16	1648 W Hunting Park Ave	19140	Triumph Baptist Church Voting System Demo
150	4-Aug-19	12:00 PM	4:00 PM	23	23	4355 Paul St	19124	Mizpah S D A Church
151	5-Aug-19	10:00 AM	1:00 PM	24	2	3320 Haverford Ave	19104	Charles Durham Library
152	5-Aug-19	7:00 PM	7:30 PM	3	17	5800 Cobbs Creek Pkwy	19143	Cobbs Creek Neighbors Community Meeting
153	5-Aug-19	10:00 AM	2:00 PM	32	2	1900 N 20th St	19121	District 5 Health Center
154	5-Aug-19	5:00 PM	8:30 PM	60	9	5100 Pine St	19143	National Night Out Kickoff 2019 - Malcolm X Park
155	5-Aug-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
156	5-Aug-19	6:00 PM	7:30 PM	11	18	3100 N 22nd St	19132	Panati Playground
157	5-Aug-19	3:00 PM	7:00 PM	25	5	2987 Almond St	19134	Richmond Library
158	6-Aug-19	6:00 PM	7:30 PM	28	5	32nd & York Sts	19132	32nd & York Sts.
159	6-Aug-19	6:00 PM	8:00 PM	63	3	500 Rhawn St	19111	Fox Chase National Night Out
160	6-Aug-19	5:30 PM	7:00 PM	13	11	1539 W Courtland St	19141	Front Step Inc.
161	6-Aug-19	1:45 PM	TBA	61	5	101 E Olney Ave	19120	Grace Adult Day Care
162	6-Aug-19	3:00 PM	7:00 PM	35	10	6098 Rising Sun Ave	19111	Lawncrest Library
163	6-Aug-19	6:30 PM	7:30 PM	34	3	6119 Race St	19139	National Night Out 2019 - 61st and Race Street
164	6-Aug-19	7:30 AM	10:00 AM	14	7	719 W Girard Ave	19123	Summer Camp
165	7-Aug-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
166	7-Aug-19	4:00 PM	6:00 PM	52	4	3701 Conshohocken Ave	19131	Duffield House
167	7-Aug-19	7:00 PM	8:30 PM	6	15	4015-17 Poplar St	19104	United Block Captains Association Voting System Demo
168	8-Aug-19	3:00 PM	TBA	52	7	3939 Conshohocken Ave	19131	Veterans Eventq
169	8-Aug-19	5:00 PM	8:00 PM	21	6	4416 Main St (Canal View Park)	19127	Stroll the Street

	day	start	end	ward	div	address	zip	event
170	8-Aug-19	10:00 AM	2:00 PM	19	16	4th St & Lehigh Ave	19133	Senator Tartaglione Community Day Event
171	8-Aug-19	6:00 PM	8:00 PM	59	17	35 W Cheltenham Ave	19144	Rep. Kinsey Voting System Demo
172	8-Aug-19	5:00 PM	6:30 PM	15	10	1737 Francis St	19130	Francisville Pool Family Swim Time
173	8-Aug-19	9:30 AM	3:30 PM	2	1	916 S Swanson St	19147	Olde Swedes Church Voting System Demo
174	8-Aug-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market Voting System Demo
175	9-Aug-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
176	9-Aug-19	5:00 PM	7:00 PM	5	17	321 Fairmount Ave	19123	Northern Liberties Recreation Center Family Swim Time
177	9-Aug-19	4:00 PM	6:00 PM	52	10	3900 W Ford Rd	19131	Park Plaza Condos
178	9-Aug-19	1:00 PM	3:00 PM	52	22	5300 Parkside Ave	19131	Parkside Evans Playground
179	9-Aug-19	11:00 AM	1:00 PM	50	28	2000 E Washington Ln	19138	Senior Chat & Chew
180	10-Aug-19	11:00 AM	5:00 PM	34	1	6001 Market St	19139	60th Street Summer Jam
181	10-Aug-19	1:00 PM	5:00 PM	29	14	1400 N 26th St	19121	Brewerytown Sharswood Unity Day
182	10-Aug-19	12:00 PM	3:00 PM	36	2	1900 Washington Ave	19146	Chew Playground
183	10-Aug-19	10:00 AM	11:30 AM	50	10	2800 W Cheltenham Ave	19150	50th Ward Public Voting System Demo
184	10-Aug-19	10:00 AM	TBA	23	18	1900 Wakeling St	19124	Frankford Community Day
185	10-Aug-19	4:00 PM	6:00 PM	51	5	51st St & Chester Ave	19143	51st Ward Cookout
186	10-Aug-19	3:00 PM	5:00 PM	13	14	4301 Germantown Ave	19140	17th Annual Nicetown CDC Giveback Festival
187	10-Aug-19	9:00 AM	12:00 PM	52	1	1719 N 52nd St Suite G	19131	Parkside Association
188	12-Aug-19	3:00 PM	7:00 PM	39	25	2437 S Broad St	19148	Fumo Family Library
189	12-Aug-19	1:00 PM	4:30 PM	4	2	5543 Haverford Ave	19139	Haverford Library
190	12-Aug-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
191	12-Aug-19	1:00 PM	3:00 PM	17	4	6300 Old York Rd	19141	Phillip Murray House
192	13-Aug-19	2:00 PM	6:00 PM	12	15	68 W Cheltenham Ave	19144	Joseph E. Coleman Northwest Regional Library
193	13-Aug-19	6:30 PM	8:00 PM	18	9	1328 N 4th St	19122	Olde Kensington Neighborhood Association Voting System Demo
194	14-Aug-19	2:00 PM	3:00 PM	7	5	173 W Allegheny Ave	19133	Casa Caribe
195	14-Aug-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
196	14-Aug-19	6:30 PM	8:00 PM	26	21	2433 S 15th St	19145	Broad Street West Civic Association Meeting
197	14-Aug-19	12:00 PM	4:00 PM	54	22	2228 Cottman Ave	19149	Northeast Regional Library
198	14-Aug-19	7:00 PM	9:00 PM	56	39	2350 Tremont St	19115	Residents Meeting
199	14-Aug-19	3:00 PM	4:00 PM	35	5	6401 Martins Mill Rd	19111	The Philadelphia Protestant Home
200	15-Aug-19	2:00 PM	5:00 PM	2	11	932 S 7th St	19147	Charles Santore Library



	day	start	end	ward	div	address	zip	event
201	15-Aug-19	5:00 PM	6:30 PM	15	10	1737 Francis St	19130	Francisville Pool Family Swim Time
202	15-Aug-19	10:00 AM	2:00 PM	35	10	6000 Rising Sun Ave	19111	Senator Tartaglione Community Day Event
203	15-Aug-19	5:00 PM	6:30 PM	23	4	1010 Arrott St	19124	Family Swim
204	15-Aug-19	9:00 AM	5:00 PM	5	16	151 N 4th St	19106	Old First Reformed Church Voting System Demo
205	16-Aug-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
206	16-Aug-19	12:00 PM	4:00 PM	42	6	221 E Wyoming Ave	19120	Philadelphia First Responders Appreciation Day
207	16-Aug-19	6:00 PM	8:00 PM	36	31	17th & Fitzwater Sts	19146	Marian Anderson Recreation Center
208	16-Aug-19	2:00 PM	4:00 PM	22	19	6757 Chew Ave	19119	Rep. Chris Rabb Senior Chat and Chew
209	16-Aug-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market Voting System Demo
210	16-Aug-19	10:00 AM	1:00 PM	11	9	1531 W Tioga St	19140	Tioga Presbyterian Apartments
211	17-Aug-19	4:00 PM	8:00 PM	62	6	1600 Dyre St	19124	1st Annual Safe Initiation Block Festival
212	17-Aug-19	2:00 PM	6:00 PM	13	21	1723 W Erie Ave	19140	3700 N. Bouvier St. Festival
213	17-Aug-19	1:00 PM	2:30 PM	17	8	2101 W 65th Ave	19138	Faith Fewllowship Baptist Church
214	17-Aug-19	2:30 PM	5:00 PM	47	6	Sydenham St & Cecil B Moore Ave	19121	Heritage CDC Corp.
215	17-Aug-19	11:00 AM	3:00 PM	12	1	1100 E Chelten Ave	19138	Sen. Haywood's Back to School Festival
216	17-Aug-19	11:00 AM	3:00 PM	59	16	458 E Rittenhouse St	19144	Rittenhouse and Morton Community Recognition Day
217	17-Aug-19	11:00 AM	2:00 PM	58	14	1701 Bowler St	19115	7th Police District Community Day
218	17-Aug-19	10:30 AM	12:30 PM	13	9	4600 N 16th St	19141	Health Fair
219	17-Aug-19	11:00 AM	3:00 PM	34	8	5901 Columbia Ave	19151	Annual District Day
220	17-Aug-19	10:00 AM	4:00 PM	43	15	3509 Old York Rd	19140	Voice Community Day Block Party
221	19-Aug-19	1:00 PM	5:00 PM	40	49	2851 Island Ave	19153	Eastwick Library
222	19-Aug-19	4:00 PM	8:00 PM	22	11	6945 Germantown Ave	19119	Mount Airy Monday Market
223	19-Aug-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
224	19-Aug-19	2:30 PM	3:30 PM	56	22	2101 Strahle St	19152	Samuel Tabos Apartments
225	19-Aug-19	6:45 PM	9:00 PM	8	16	1919 Chestnut St	19103	William Penn House (Community Room)
226	20-Aug-19	10:00 AM	12:00 PM	39	27	821 Dudley St	19148	Asian Seniors Meeting with Councilman David Oh
227	20-Aug-19	9:00 AM	5:00 PM	27	19	3417 Spruce St	19104	University of Pennsylvania New Student Orientation Student Services Expo
228	20-Aug-19	6:00 PM	8:20 PM	32	28	2500 W Norris St	19121	Ward Meeting
229	20-Aug-19	7:00 PM	TBA	35	8	6200 Rising Sun Ave	19111	Community Meeting
230	20-Aug-19	4:30 PM	6:00 PM	60	4	5429 Chestnut St	19139	Democratic Training
231	20-Aug-19	2:00 PM	3:00 PM	7	17	200 E Somerset St	19134	Somerset Villas

	day	start	end	ward	div	address	zip	event
232	20-Aug-19	3:00 PM	5:30 PM	36	29	1700 S Broad St	19145	Community Health Fairs and Farmer's Market - South Philadelphia Library
233	21-Aug-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
234	21-Aug-19	6:00 PM	8:00 PM	17	11	6101 Limekiln Pike	19141	Giving Of Self Partnership
235	21-Aug-19	9:00 AM	5:00 PM	27	19	3417 Spruce St	19104	University of Pennsylvania New Student Orientation Student Services Expo
236	21-Aug-19	10:30 AM	12:30 PM	5	16	25 N 4th St	19106	Residents Meeting
237	21-Aug-19	12:00 PM	2:00 PM	19	16	2600 N 5th St	19133	197th District Voting System Demo
238	22-Aug-19	6:00 PM	8:00 PM	44	1	1323 N 52nd St	19131	Bible Way Baptist Church
239	22-Aug-19	6:00 PM	7:30 PM	4	16	5801 W Girard Ave	19127	Summer Jazz Series - Carrol Park
240	22-Aug-19	6:00 PM	7:00 PM	60	3	5120 Chestnut St	19139	Janie Blackwell's Vendor Demo
241	22-Aug-19	2:00 PM	4:00 PM	52	12	2100 N 49th St	19131	Kearsley Rehabilitation & Nursing Center
242	22-Aug-19	1:00 PM	3:00 PM	23	21	4649 Paul St	19124	New Courtland
243	22-Aug-19	10:00 AM	2:00 PM	62	17	5773-45 Frankford Ave	19135	Senator Tartaglione Community Day Event
244	22-Aug-19	7:00 PM	9:00 PM	65	16	4637 Decatur St	19136	Wm. D. Oxley American Legion
245	23-Aug-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
246	23-Aug-19	11:00 AM	2:00 PM	37	6	1010 W Lehigh Ave	19133	Oak Street Health Patient Appreciation Day
247	23-Aug-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market Voting System Demo
248	23-Aug-19	11:30 AM	2:00 PM	8	14	320 S Broad St	19102	University of the Arts' Student Activities and Community Engagement Fair
249	24-Aug-19	1:00 PM	6:00 PM	59	2	Haines & Ardleigh Sts	19144	Awbury Park
250	24-Aug-19	10:00 AM	2:00 PM	40	12	6208 Grays Ave	19142	Grace Christian Fellowship Church
251	24-Aug-19	10:30 AM	12:00 PM	43	1	Old York Rd & Hunting Park Ave	19140	Weekly Saturday Farmers Market
252	24-Aug-19	11:00 AM	6:00 PM	3	19	5800 Block of Catherine St	19143	Block Party and Family Fun Day.
253	24-Aug-19	11:00 AM	TBA	52	15	2276 Georges Ln	19131	Bookbag Glve Away Event
254	26-Aug-19	12:00 PM	4:00 PM	17	11	6017 Ogontz Ave	19141	David Cohen Ogontz Library
255	26-Aug-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
256	26-Aug-19	12:00 PM	2:00 PM	36	36	1300 S Broad St	19146	P.E.P. Headquarters
257	26-Aug-19	10:00 AM	11:30 AM	30	9	1941 Christian St	19146	St. Charles Senior Center
258	26-Aug-19	6:30 PM	8:00 PM	36	25	2744 Dickinson St	19146	Grays Ferry Community Council
259	27-Aug-19	6:00 PM	7:30 PM	48	6	1920 S 20th St	19145	Dixon House
260	27-Aug-19	5:30 PM	7:30 PM	28	5	3133 Ridge Ave	19121	Voting Rights Workshop

	day	start	end	ward	div	address	zip	event
261	27-Aug-19	1:00 PM	TBA	61	21	6926 Old York Rd	19136	Penn Asian Senior Services
262	27-Aug-19	8:30 AM	3:30 PM	8	30	440 N Broad St	19130	Voter Education and Registration Drive
263	27-Aug-19	9:00 AM	10:00 AM	37	7	2601 N Broad St	19132	Station House Voting System Demo
264	28-Aug-19	5:00 PM	8:00 PM	61	22	6901 Old York Rd	19126	Bromley House
265	28-Aug-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
266	28-Aug-19	5:00 PM	6:00 PM	14	7	801 W Girard Ave	19122	Ife House
267	28-Aug-19	2:00 PM	4:00 PM	65	12	7979 State Rd	19136	Riverview Homes
268	28-Aug-19	11:00 AM	1:00 PM	57	12	3075 Holme Ave	19136	Thunderbird Lanes
269	28-Aug-19	1:00 PM	3:00 PM	64	15	8401 Roosevelt Blvd	19152	August Residence Meeting Wesley Enhanced (Pennypack)
270	28-Aug-19	10:00 AM	2:00 PM	5	27	259 N Lawrence St	19106	Women Veterans' Center
271	29-Aug-19	2:30 PM	5:30 PM	23	15	2000 Wakeling St	19124	Rep. Dawkins' Back to School Event
272	29-Aug-19	1:00 PM	2:30 PM	57	27	9350 Ashton Rd	19114	JEVS Human Services
273	29-Aug-19	6:30 PM	8:30 PM	43	25	3890 N 10th St (10th and Pike)	19140	Lenfest Center
274	29-Aug-19	10:00 AM	11:30 AM	26	21	2433 S 15th St	19145	Marconi Older Adults Center
275	29-Aug-19	6:00 PM	7:30 PM	21	4	4300 Silverwood St	19128	Summer Jazz Series - Pretzel Park
276	29-Aug-19	12:00 PM	3:00 PM	44	2	5353 Master St	19131	Simpson Fletcher Conestoga House
277	30-Aug-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
278	30-Aug-19	3:00 PM	4:30 PM	59	18	6101 Morris St	19144	Four Freedoms House
279	30-Aug-19	11:00 AM	2:00 PM	19	9	2830 N American St	19133	Pan American Academy Charter School Back to School Party
280	30-Aug-19	6:00 PM	8:00 PM	17	29	1950 W Rockland St	19141	17th Ward Demo
281	30-Aug-19	11:00 AM	1:00 PM	5	24	51 N 12th St	19107	Reading Terminal Market Voting System Demo
282	30-Aug-19	2:00 PM	4:00 PM	6	2	4401 Haverford Ave	19104	St. Ignatius Nursing Home
283	31-Aug-19	10:00 AM	3:00 PM	40	4	5400 Lindbergh Blvd	19143	First Annual Hooked on Health Community Health Fair
284	31-Aug-19	10:00 AM	12:00 PM	36	21	2421 Dickinson St	19146	Church of the Redeemer
285	3-Sep-19	10:00 AM	3:00 PM	5	12	714 Market St	19106	Parole Department Voting System Demo
286	4-Sep-19	6:30 PM	8:30 PM	49	20	1300 W Godfrey Ave	19141	CCP Godfrey Ave Room 216
287	4-Sep-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
288	4-Sep-19	2:00 PM	TBA	64	15	8301 Roosevelt Blvd	19152	Deer Meadows Retirement Community
289	4-Sep-19	6:00 PM	8:00 PM	1	4	1025 Mifflin St	19148	Councilman Squilla's Voting System Demo
290	4-Sep-19	6:00 PM	6:45 PM	43	2	4417 N 6th St	19140	Esperanza Health Center

	day	start	end	ward	div	address	zip	event
291	4-Sep-19	10:00 AM	12:00 PM	47	7	1728 W Montgomery Ave	19121	Faith Taberncle Baptist Church
292	4-Sep-19	7:00 PM	8:00 PM	6	15	4015-17 Poplar St	19104	United Block Captains Monthly Meeting
293	4-Sep-19	11:00 AM	1:00 PM	56	14	7328 Castor Ave	19152	Lee's Hoagie House Demo
294	4-Sep-19	6:00 PM	7:00 PM	5	30	500 N 2nd St	19123	Membership Meeting
295	5-Sep-19	7:00 PM	9:00 PM	34	1	6011 Market St	19139	Home Healthcare Plus
296	5-Sep-19	11:00 AM	TBA	21	17	403 Rector St	19128	Journey's Way
297	5-Sep-19	6:30 PM	8:30 PM	21	28	6301 Ridge Ave	19128	Central Roxborough Civic Monthly Meeting
298	5-Sep-19	1:00 PM	TBA	61	21	6926 Old York Rd	19126	Penn Asian Senior Services: Ever Green Center
299	5-Sep-19	5:30 PM	7:30 PM	39	1	2400 S 9th St	19148	Rep. Fiedler's Community Meeting
300	5-Sep-19	6:00 PM	6:30 PM	52	9	3910-3918 Conshohocken Ave	19131	Summer Jazz Series - Woodside Park
301	6-Sep-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
302	6-Sep-19	11:00 AM	1:00 PM	59	15	6153 Germantown Ave	19144	New Bethel AME Church Voting System Demo
303	6-Sep-19	10:00 AM	12:00 PM	5	24	213 N 10th St	19107	On Lok Senior Center
304	6-Sep-19	5:00 PM	7:00 PM	5	3	699 Ranstead St	19106	Philly Cam
305	6-Sep-19	10:00 AM	2:00 PM	7	11	3503 B St	19134	The Office of Angel Cruz ( State Rep.)
306	6-Sep-19	11:00 AM	1:00 PM	50	10	1500 Wadsworth Ave	19150	Senior Chat & Chew - Wadsworth Library
307	7-Sep-19	4:30 PM	6:00 PM	46	18	4614 Cedar Ave	19143	Cedar Point Park Block Party
308	7-Sep-19	12:00 PM	2:00 PM	5	21	219 Spring Garden St	19123	Democratic City Committee
309	7-Sep-19	10:00 AM	3:00 PM	8	15	1400 JFK Blvd	19107	Campus Philly's CollegeFest 2019
310	7-Sep-19	10:00 AM	2:00 PM	38	15	4100 Ridge Ave	19127	East Falls Farmers Market
311	7-Sep-19	12:00 PM	3:00 PM	47	2	1510 W Stiles St	19121	1510 W Stiles Street Block Party
312	7-Sep-19	10:00 AM	2:00 PM	65	17	4500 Rhawn St	19136	Holmesburg Community Day - Holmesburg Recreation Center
313	7-Sep-19	12:00 PM	6:00 PM	38	9	2140 N 33rd St	19121	13th Annual Strawberry Mansion Day
314	7-Sep-19	10:00 AM	1:00 PM	35	5	6401 Martins Mill Rd	19111	Councilman Taubenberger's and CareGivers America: Senior Health & Resource Expo - Philadelphia Protestant Home
315	7-Sep-19	1:00 PM	3:00 PM	5	3	669 Ranstead St	19106	Philly Cam
316	7-Sep-19	12:00 PM	4:00 PM	42	10	4800 Whitaker Ave	19124	42nd Ward Annual Cookout
317	7-Sep-19	12:30 PM	3:30 PM	36	12	20th & Tasker Sts	19145	Ralph Brooks Park
318	7-Sep-19	10:00 AM	1:00 PM	58	24	1400 Southampton Rd	19116	State Representative Martina White's 5th Annual Kids Fest - Somerton Youth Organization

	day	start	end	ward	div	address	zip	event
319	7-Sep-19	1:00 PM	4:00 PM	27	20	3916 Locust Walk	19104	St. Mary's Episcopal Church at Penn
320	8-Sep-19	2:00 PM	4:30 PM	52	10	2000 Belmont Mansion Dr	19131	Congressman Dwight Evans' Congressional Cookout
321	8-Sep-19	12:00 PM	2:00 PM	4	12	5732 Race St	19139	Mount Caramel Baptist Church
322	9-Sep-19	1:30 PM	3:30 PM	58	35	12003 Bustleton Ave	19116	Goldstein Apartments - Community Room
323	9-Sep-19	12:30 PM	4:30 PM	5	12	18 S 7th St	19106	Independence Library
324	9-Sep-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
325	9-Sep-19	6:30 PM	8:00 PM	18	18	1301 N 2nd St	19123	South Kensington Community Partners
326	9-Sep-19	10:00 AM	2:00 PM	3	4	6250 Walnut St	19139	3rd Ward Public Voting System Demo
327	10-Sep-19	10:00 AM	12:00 PM	8	7	22 S 22nd St 2nd FL	19103	Executive Board Meeting
328	10-Sep-19	2:00 PM	6:00 PM	47	11	1710 N Croskey St 1st FL	19121	Bently Hall
329	10-Sep-19	7:15 PM	8:30 PM	65	17	4500 Rhawn St	19136	Holmesburg Civic Association - Holmesburg Recreation Center
330	10-Sep-19	11:00 AM	1:00 PM	47	13	1900 W Master St	19121	Moore Manor / 1st Floor
331	10-Sep-19	5:00 PM	7:00 PM	8	29	2200 Arch St	19103	NA
332	10-Sep-19	7:00 PM	9:00 PM	65	7	9607 James St	19114	General Membership Meeting
333	10-Sep-19	7:00 PM	8:30 PM	66	7	10980 Norcom Rd	19154	Normandy Civic Association - SPIN Community & Fitness
334	10-Sep-19	7:00 PM	8:00 PM	5	12	233 S 10th St	19107	Washington West Civic Association Public Meeting
335	10-Sep-19	6:00 PM	7:30 PM	29	8	23rd and Master St	19121	29th Ward Meeting
336	10-Sep-19	10:00 AM	2:00 PM	3	4	6250 Walnut St	19139	3rd Ward Public Voting System Demo
337	10-Sep-19	11:00 AM	1:00 PM	50	28	7210 Ogontz Ave	19138	West Oak Lane Senior Center Demo
338	11-Sep-19	5:30 PM	8:00 PM	8	7	22 S 22nd St 2nd FL	19103	Delegate Meeting
339	11-Sep-19	7:45 PM	8:30 PM	63	1	7976 Oxford Ave	19111	Fox Chase Homeowners Monthly Community Meeting
340	11-Sep-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
341	11-Sep-19	12:00 PM	4:00 PM	37	18	601 W Lehigh Ave	19133	Lillian Marrero Library
342	11-Sep-19	11:00 AM	6:00 PM	8	18	1900 JFK Blvd	19103	Residents Meeting
343	11-Sep-19	12:30 PM	2:00 PM	47	13	2013 Ridge Ave	19123	PHA Monthly Meeting
344	11-Sep-19	3:00 PM	4:00 PM	56	29	8900 Roosevelt Blvd	19115	Robert Saligman Apts
345	11-Sep-19	10:00 AM	12:00 PM	63	11	900 PineValley Blvd	19111	Villages at Pine Valley
346	11-Sep-19	6:00 PM	8:00 PM	50	3	8107 Thouron Ave	19150	Woodcrest United Church
347	12-Sep-19	1:00 PM	3:00 PM	17	9	6100 N 21st St	19138	17th Ward Voting Sysrem Demo
348	12-Sep-19	6:30 PM	8:00 PM	8	29	1901 JFK Blvd 30th FL	19104	Kennedy House
349	12-Sep-19	10:00 AM	11:30 AM	3	2	6232 Market St	19139	Oak Street Health (Cobbs Creek)

	day	start	end	ward	div	address	zip	event
350	12-Sep-19	12:00 PM	3:00 PM	13	18	1717 W Hunting Park Ave	19140	Opportunity Tower
351	12-Sep-19	6:00 PM	7:30 PM	34	29	7630 Woodbine Ave	19151	Representative Cephas Voting System Demo
352	12-Sep-19	12:30 PM	1:00 PM	8	26	642 N Broad St	19130	RCA Meeting
353	12-Sep-19	5:30 PM	7:30 PM	24	5	301 N 36th St	19104	Back to School Night
354	12-Sep-19	7:00 PM	8:30 PM	66	7	10980 Norcom Rd	19154	Walton Park Civic - SPIN Community & Fitness
355	12-Sep-19	6:00 PM	8:00 PM	40	5	2050 S 58th St	19143	Witherspoon Sr. Apartments
356	12-Sep-19	6:30 PM	8:30 PM	30	5	1720 Christian St	19146	Y M C A
357	13-Sep-19	2:30 PM	3:30 PM	6	2	4400 Fairmount Ave	19104	Angela Court Apartments
358	13-Sep-19	12:30 PM	1:45 PM	65	4	5100 Convent Ln	19114	Bakers Bay Community Center
359	13-Sep-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
360	13-Sep-19	10:00 AM	11:30 AM	65	20	9355 State Rd	19114	Delaire Landing Rec. Center
361	13-Sep-19	11:00 AM	2:00 PM	63	3	501 Rhawn St	19111	Fox Chase Library
362	13-Sep-19	9:30 AM	4:00 PM	12	14	4701 Germantown Ave	19144	Philly Office Retail
363	13-Sep-19	11:00 AM	2:00 PM	40	5	2050 S 58th St	19143	Healthy from Head to Toe Senior Association Fair
364	13-Sep-19	10:30 AM	11:30 PM	35	15	5450 Roosevelt Blvd	19124	St. Martin of Tours Seniors Senior Group
365	14-Sep-19	11:00 AM	5:00 PM	5	24	10th and Cherry St	19107	Mid-Autumn Festival
366	14-Sep-19	11:00 AM	12:30 PM	43	15	3600 N 11th St	19140	11th & Venango Play Lot
367	14-Sep-19	12:30 PM	2:30 PM	52	10	2000 Belmont Mansion Dr	19131	Belmont Mansion
368	14-Sep-19	10:00 AM	1:00 PM	20	3	12th and Cecil B Moore Ave	19122	Bright Hope Baptist Church Information Fair
369	14-Sep-19	1:00 PM	4:00 PM	27	7	43rd & Kingsessing Ave	19143	Woodland Ave Reunion - Clark Park
370	14-Sep-19	10:00 AM	2:00 PM	7	5	3200 N Mascher St	19140	3rd Annual Community Celebration at Collazo Playground
371	14-Sep-19	1:00 PM	3:00 PM	13	2	4700 Wayne Ave	19144	13 Ward Committee Meeting
372	14-Sep-19	1:00 PM	3:00 PM	64	6	3400 Hartel Ave	19136	3400 Hartel Ave Block Party
373	14-Sep-19	10:00 AM	2:00 PM	43	1	1101 W Hunting Park Ave	19140	Hunting Park United
374	14-Sep-19	1:00 AM	6:00 PM	59	14	180 E Tulpehocken St	19144	Men Who Care of Germantown Outreach Event
375	14-Sep-19	11:00 AM	1:00 PM	52	15	2251 N 54th St (Ground Level)	19131	Homecoming Community Day - Pinn Memorial Baptist Church
376	14-Sep-19	10:00 AM	1:00 PM	66	19	3745 Clarendon Ave	19114	Settlement Music School Open House
377	15-Sep-19	2:30 PM	4:00 PM	60	3	125 S 52nd St	19139	52nd & Samson St.
378	15-Sep-19	4:00 PM	8:00 PM	8	19	2100 Block of Spring St	19103	Logan Square Neighbors Association Block Party
379	15-Sep-19	9:00 AM	2:30 PM	34	9	6122 Haverford Ave	19151	Calvary Baptist Church Voting System Demo

	day	start	end	ward	div	address	zip	event
380	15-Sep-19	12:00 PM	5:00 PM	41	23	7309 Frankford Ave	19136	Councilman Bobby Henon's Mid-Autumn Festival
381	15-Sep-19	8:00 AM	2:00 PM	5	15	1039 N Lawrence St	19123	St. John Neumann Center Voting System Demo
382	15-Sep-19	3:00 PM	6:00 PM	36	4	2300 Wharton St	19146	36th Ward Cookout
383	16-Sep-19	6:00 PM	7:00 PM	34	6	6059 Haverford Ave	19151	Capt'n's Town Hall Meeting
384	16-Sep-19	11:45 AM	TBA	58	3	10100 Jamison Ave	19116	Lunch and Learn
385	16-Sep-19	4:00 PM	8:00 PM	22	11	6945 Germantown Ave	19119	Mount Airy Monday Market
386	16-Sep-19	7:45 PM	8:15 PM	54	6	1601 Hellerman St	19149	Take Back Your Neighborhood - Max Myers Rec Center
387	16-Sep-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
388	16-Sep-19	7:00 PM	TBA	2	23	725 S 10th St	19147	Bella Vista Neighbors Association - Palumbo Recreation Center
389	16-Sep-19	7:00 PM	9:00 PM	62	19	5560 Harbison Ave	19124	St. Bartholomew Catholic Church
390	16-Sep-19	4:30 PM	8:00 PM	61	1	5520 N 5th St	19120	Universal Hair Gallery
391	16-Sep-19	10:00 AM	2:00 PM	5	27	213 N 4th St	19106	Giving Back Veterans Workshop
392	16-Sep-19	6:45 PM	9:00 PM	8	16	1919 Chestnut St	19103	William Penn House
393	17-Sep-19	11:00 AM	5:00 AM	20	7	2101 N Broad St	19122	Anderson Hall
394	17-Sep-19	2:00 PM	6:00 PM	14	9	953 N 10th St	19123	Childs Memorial Baptist Church
395	17-Sep-19	10:00 AM	1:00 PM	14	5	1100 Fairmount Ave	19123	Voter Registration Sign-up
396	17-Sep-19	8:30 AM	2:30 PM	5	16	525 Arch St	19106	Constitution Day - National Constitution Center
397	17-Sep-19	10:00 AM	2:00 PM	13	6	4340 Germantown Ave	19140	Nice Town Court 1 Apartments
398	17-Sep-19	10:30 AM	12:30 PM	52	8	4001 Conshohocken Ave	19131	Park Tower Apartments
399	17-Sep-19	1:30 PM	3:00 PM	47	6	1718 W Cecil B Moore Ave	19121	Philly NAN Voting System Demo
400	17-Sep-19	6:00 PM	8:00 PM	16	16	2301 Edgley St	19121	Raymond Rose Community Center
401	17-Sep-19	3:00 PM	5:30 PM	36	29	1700 S Broad St	19145	Community Health Fairs and Farmer's Market - South Philadelphia Library
402	17-Sep-19	1:00 PM	5:00 PM	3	4	6212 Walnut St	19139	3rd Ward Voting System Demo
403	18-Sep-19	2:00 PM	5:00 AM	53	4	6304 Castor Ave	19149	Bushrod Library
404	18-Sep-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
405	18-Sep-19	1:00 PM	3:00 PM	56	13	7800 Bustleton Ave	19152	Glendale Uptown Home
406	18-Sep-19	6:30 PM	8:30 PM	63	4	1304 Rhawn St	19111	community Meeting
407	18-Sep-19	7:00 PM	8:00 PM	12	15	20 W Armat St	19144	Greene Street Friends School
408	18-Sep-19	5:00 PM	7:00 PM	37	6	2601 N 11th St	19133	Hope Partnership in Education
409	18-Sep-19	12:00 PM	2:00 PM	27	19	119 S 31st St	19104	Ron's Cafe
410	18-Sep-19	5:00 PM	6:30 PM	9	6	8301 Germantown Ave	19118	Back to School Night

	day	start	end	ward	div	address	zip	event
411	18-Sep-19	8:00 PM	10:00 PM	33	4	1391 E Cayuga St	19124	62nd Ward Meeting
412	18-Sep-19	6:30 PM	8:00 PM	2	23	725 S 10th St	19147	2nd Ward Voting System Demo
413	18-Sep-19	7:00 PM	8:30 PM	27	7	600 S 43rd St	19104	Rosenberger Hall
414	18-Sep-19	6:00 PM	8:00 PM	21	38	7100 Henry Ave	19128	Back to School Night
415	18-Sep-19	10:00 AM	12:00 PM	4	13	230 N 57th St	19139	St. Matthews Manor
416	18-Sep-19	11:00 AM	6:30 PM	32	19	2829 W Diamond St	19121	Strawberry Mansion N A C
417	18-Sep-19	7:15 PM	8:15 PM	0	0	4741 Mayfair St	19135	Monthly meeting
418	18-Sep-19	11:00 AM	1:00 PM	37	9	2862 Germantown Ave	19133	Warnock Village Voting System Demo
419	18-Sep-19	6:00 PM	8:00 PM	5	9	1315 Spruce St	19107	Liberty City LGBT Club Voting System Demo
420	19-Sep-19	6:30 PM	7:30 PM	5	21	219 Spring Garden St	19123	Philly Young Dems Meeting
421	19-Sep-19	6:00 PM	7:30 PM	38	15	4208-4208 Ridge Ave	19129	Summer Jazz Series - InnYard Park
422	19-Sep-19	1:30 PM	3:00 PM	51	5	1201 S 51st St	19143	Kingsessing Library
423	19-Sep-19	8:30 AM	9:00 AM	59	1	6100 Stenton Ave	19138	Voter Registration
424	19-Sep-19	4:00 PM	5:00 PM	40	11	6901 Woodland Ave	19142	Outley House
425	19-Sep-19	10:00 AM	1:00 PM	31	18	2328 E Lehigh Ave	19125	Senator Tartaglione Senior Expo
426	19-Sep-19	12:00 PM	6:00 PM	30	1	1525 Fitzwater St	19146	Scottish Rite House
427	19-Sep-19	5:00 PM	8:00 PM	3	19	5845 Catharine St	19143	3rd Ward Voting System Demo
428	19-Sep-19	11:00 AM	TBA	63	3	525 Rhawn St	19111	St Cecillas Senior Group - St. Cecilia's School
429	19-Sep-19	6:30 PM	TBA	38	10	3217 W Clearfield St	19132	38th Ward Meeting
430	19-Sep-19	6:00 PM	8:00 PM	17	4	6344 N Broad St	19126	17th Ward Voting System Demo
431	19-Sep-19	6:00 PM	7:30 PM	34	8	5901 W Columbia Ave	19151	Representative Cephas Voting System Demo
432	19-Sep-19	11:00 AM	2:00 PM	14	1	1310 Wallace St	19123	Health Fair
433	20-Sep-19	6:00 PM	7:30 PM	43	17	542 W Erie Ave	19140	542 W. Erie Ave
434	20-Sep-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
435	20-Sep-19	1:30 PM	TBA	22	6	127 R W Gorgas Ln	19119	Germantown Apts & Cottages
436	20-Sep-19	12:00 PM	7:00 PM	5	24	1101 Arch St	19107	2019 Philly High School Fair
437	20-Sep-19	4:00 PM	7:00 PM	52	10	3900 Ford Rd	19131	Park Plaza Condos
438	20-Sep-19	10:00 AM	1:00 PM	21	41	7201 Ridge Ave	19128	Councilman Taubenberger's and CareGivers America: Senior Health & Resource Expo - Roxborough YMCA
439	21-Sep-19	11:00 AM	7:00 PM	48	14	1437 W Passyunk	19145	1437 W. Passyunk Ave.
440	21-Sep-19	12:00 PM	2:00 PM	28	5	32nd & York Sts	19132	SMFBC Health and Awareness/WellnessDay
441	21-Sep-19	1:00 PM	3:00 PM	14	3	1318 W Girard Ave	19123	Congressman Boyle Voter Education Event
442	21-Sep-19	9:30 AM	11:30 AM	61	5	5675 N Front St Ste 180	19120	Congressman Boyle Voter Education Event



	day	start	end	ward	div	address	zip	event
443	21-Sep-19	10:00 AM	2:00 PM	43	22	1333 W Erie Ave	19140	Community Outreach
444	21-Sep-19	1:00 PM	3:00 PM	38	13	3501 Midvale Ave	19129	Falls of Schuylkill Library
445	21-Sep-19	1:00 PM	3:00 PM	13	2	4700 Wayne Ave	19144	Happy Hollow Playground
446	21-Sep-19	11:00 AM	1:00 PM	52	23	5376 W Berks St	19131	Senator Hughes' Community Picnic
447	21-Sep-19	12:30 PM	2:00 PM	37	20	2909 N 08th St	19133	Women's Wellness Saturday
448	21-Sep-19	11:00 PM	1:00 PM	0	0	2401 W Cheltenham Ave	19150	Oak Street Health
449	21-Sep-19	10:00 AM	3:00 PM	49	9	5248 N 5th St	19120	Oasis City Church
450	21-Sep-19	10:00 AM	2:00 PM	5	24	1101 Arch St	19107	2019 Philly High School Fair
451	21-Sep-19	11:00 AM	1:00 PM	52	15	2251 N 54th St	19131	Pinn Memorial Church Voting System Demo
452	21-Sep-19	10:00 AM	1:00 PM	3	19	5845 Catharine St	19143	3rd Ward Voting System Demo
453	21-Sep-19	9:00 AM	11:00 AM	35	8	6200 Rising Sun Ave	19111	Senior Fair
454	22-Sep-19	11:30 AM	1:30 PM	3	10	6150 Cedar Ave	19143	Voter Education
455	22-Sep-19	12:00 PM	3:00 PM	60	5	5240 Chestnut St	19139	Community Service
456	22-Sep-19	12:30 PM	2:30 PM	3	9	6250 Cedar Ave	19143	3rd Ward Voting System Demo
457	22-Sep-19	1:00 PM	3:00 PM	6	3	428 N 41st St	19104	Mt. Pisgah AME Church
458	22-Sep-19	1:00 PM	5:00 PM	61	23	6816 N 10th St	19126	61st Ward Annual Cookout
459	22-Sep-19	6:00 PM	6:30 PM	15	6	2401 Pennsylvania Ave (Social Room #B)	19130	Voting System Demo
460	23-Sep-19	6:00 PM	6:30 PM	13	19	2201 Hunting Park Ave	19140	39th Police District
461	23-Sep-19	5:00 PM	7:30 PM	3	17	5801 Baltimore Ave	19143	3rd Ward Voting System Demo
462	23-Sep-19	12:00 PM	2:00 PM	8	15	City Hall Room 330	19107	Councilwoman Sanchez's Puerto Rican Flag Raising Ceremony
463	23-Sep-19	12:00 PM	4:00 PM	8	25	1651 Ben Franklin Pkwy	19102	Friends Select
464	23-Sep-19	7:00 PM	TBA	58	42	9945 President St	19115	Hayes Memorial Playground
465	23-Sep-19	9:30 AM	11:30 AM	47	9	2100 W Cecil B Moore Ave	19121	Open House
466	23-Sep-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
467	23-Sep-19	11:00 PM	1:30 PM	17	3	6401 Ogontz Ave	19126	Mt Airy COGIC
468	23-Sep-19	9:00 AM	12:30 PM	52	7	3955 Conshohocken Ave	19131	Sharon Baptist Church Voting System Demo
469	24-Sep-19	6:30 PM	8:00 PM	30	12	2309 Carpenter St	19146	Birchwood @ Grays Ferry
470	24-Sep-19	9:30 AM	5:00 PM	8	30	1700 Spring Garden St	19130	Community College of Philadelphia
471	24-Sep-19	9:00 AM	10:30 AM	16	18	2150 W Lehigh Ave	19132	NVRD 2019
472	24-Sep-19	6:30 PM	7:30 PM	56	35	1913 Welsh Rd	19151	56th Republican Ward Meeting
473	24-Sep-19	10:00 AM	12:00 PM	52	12	2600 Belmont Ave	19131	Inglis House - Founders Hall

	day	start	end	ward	div	address	zip	event
474	24-Sep-19	6:00 PM	8:00 PM	64	4	5920 Morton St	19144	59th Ward Voting System Demo
475	24-Sep-19	10:00 AM	11:00 AM	59	2	6200 Crittenden St	19138	CAB Voter Registration event for students and community members.
476	24-Sep-19	12:00 PM	2:00 PM	52	22	1717 N 54th St	19131	Presby Life
477	24-Sep-19	12:30 PM	TBA	27	11	3615 Chestnut St	19104	Ralston Center
478	24-Sep-19	6:00 PM	8:00 PM	3	20	1220 S 58th St	19143	Seventh Day Adventist Church
479	24-Sep-19	5:30 PM	7:30 PM	36	30	3301 Tasker St	19145	Meeting
480	25-Sep-19	6:30 PM	8:00 PM	37	10	2901 N 12th St	19133	North Philadelphia League of Voters Voting System Demo
481	25-Sep-19	6:30 PM	8:30 PM	43	25	10th and Pike Sts	19140	43rd Ward Voting System Demo
482	25-Sep-19	3:00 PM	7:00 PM	8	15	1724 Arch St	19103	Enter through double glass doors on JFK boulevard, off of the Comcast plaza.
483	25-Sep-19	7:00 PM	TBA	21	45	600 E Cathedral Rd	19128	21st Ward Neighbors Meeting and Voting System Demo
484	25-Sep-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
485	25-Sep-19	8:30 AM	10:30 AM	17	7	6201 N 21st St	19138	Voter Registration
486	25-Sep-19	1:30 PM	3:00 PM	57	3	2990 Holme Ave	19136	Immaculate Mary Center for Rehabilitation & Healthcare
487	25-Sep-19	2:00 PM	3:00 PM	8	7	22 S 22nd St	19103	PCDC Voter Registration and Demo
488	25-Sep-19	6:15 PM	8:00 PM	64	12	2990 St Vincent St	19149	Mayfair Community Center / Gym
489	25-Sep-19	1:15 PM	2:30 PM	60	1	4508 Chestnut St	19139	Mercy Life West Philadelphia
490	25-Sep-19	6:30 PM	7:30 PM	39	7	200 Snyder Ave	19148	Whitman Council, INC Meeting
491	25-Sep-19	7:00 PM	TBA	57	3	3031 Stamford Rd	19136	Holmesburg Civic Association Monthly Meeting
492	25-Sep-19	6:00 PM	8:00 PM	34	8	5901 W Columbia Ave	19151	Tustin Recreation Center
493	25-Sep-19	11:00 AM	1:00 PM	50	28	7210 Ogontz Ave	19138	West Oak Lane Senior Center Demo
494	25-Sep-19	6:30 PM	7:30 PM	22	22	815 E Washington Ln	19138	Community Meeting
495	26-Sep-19	6:30 PM	8:00 PM	37	10	2901 N 12th St	19133	12th and Cambria Advisory Council Community Meeting
496	26-Sep-19	6:00 PM	8:00 PM	17	16	2100 Chew Ave	19138	17th Ward Voting Demo
497	26-Sep-19	6:00 PM	8:00 PM	50	6	7701 Mansfield Ave	19150	Town Hall and Voting Demo
498	26-Sep-19	7:00 PM	9:00 PM	18	5	418 E Girard Ave	19125	18th Ward Voting System Demo
499	26-Sep-19	11:00 AM	TBA	58	35	730 Byberry Rd	19116	FOP Senior Citizens Inc
500	26-Sep-19	5:30 PM	7:00 PM	26	23	3900 Gateway Drive	19145	State Rep. Maria Donatucci Voting System Demo

	day	start	end	ward	div	address	zip	event
501	26-Sep-19	1:45 PM	4:00 PM	13	16	1798 W Hunting Park Ave	19140	Mastery Votes
502	26-Sep-19	2:00 PM	6:00 PM	28	3	2201 N 28th	19132	Back to School Knight
503	26-Sep-19	7:00 PM	8:30 PM	30	3	1600 Lombard St	19146	Independence Charter School
504	26-Sep-19	9:30 AM	11:30 AM	6	6	91 N 48th St	19139	Youth Voter Registration Day
505	26-Sep-19	5:30 PM	7:30 PM	20	3	10th & Oxford Sts	19122	Marie Dendy Recreation Center
506	26-Sep-19	5:45 PM	6:30 PM	24	4	624 N 34th St	19104	Mt. Vernon Manor (Phase 1)
507	26-Sep-19	9:00 AM	12:00 PM	21	17	5800 Ridge Ave	19128	Rep. DeLlssio's Senior Expo
508	26-Sep-19	8:00 AM	10:00 AM	31	11	2501 Kensington Ave	19125	Grandparents Day
509	26-Sep-19	6:30 PM	8:30 PM	52	7	3955 Conshohocken Ave	19131	Quarterly Meeting
510	26-Sep-19	6:00 PM	7:30 PM	4	14	5700 Haverford Ave	19131	Representative Cephas Voting System Demo
511	26-Sep-19	7:30 PM	TBA	15	18	860 N 24th St	19130	Fairmount Civic Association - The City School
512	26-Sep-19	6:00 PM	7:30 PM	52	24	5425 Upland Way	19131	Summer Jazz Series - Triangle Park
513	26-Sep-19	6:30 PM	8:30 PM	30	9	19th and Fitzwater St	19146	SOSNA General Meeting
514	26-Sep-19	7:00 PM	9:00 PM	50	28	7210 Ogontz Ave	19138	10th Ward Meeting
515	26-Sep-19	6:00 PM	7:30 PM	20	6	1300 W Jefferson St	19121	20th Ward Voting System Demo
516	27-Sep-19	1:00 PM	4:00 PM	14	1	1235 Spring Garden St	19123	Bebashi: Transition To Hope
517	27-Sep-19	10:00 AM	12:30 PM	52	10	2000 Belmont Mansion Drive	19131	UPMC Participant Forum
518	27-Sep-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
519	27-Sep-19	12:30 PM	2:30 PM	12	11	501 King St	19144	Public Event
520	27-Sep-19	12:00 PM	4:00 PM	33	17	601 East Indiana Ave	19134	McPherson Square Library Voter Registration Event
521	27-Sep-19	12:30 PM	3:00 PM	40	11	2125 S 70th St	19142	Paschall Senior Housing
522	27-Sep-19	11:00 AM	1:00 PM	8	23	158 N 23rd St	19103	Riverside Presbyterian Apartments
523	27-Sep-19	1:00 PM	2:00 PM	6	11	4035 Parrish St	19104	Sarah Allen Senior Home
524	27-Sep-19	10:00 AM	4:00 PM	4	3	659 N 56th St	19131	Vine Memorial Baptist Church
525	27-Sep-19	10:30 AM	1:30 PM	60	3	5120 Chestnut St	19139	Southwest Division Senior Day
526	28-Sep-19	1:30 PM	3:30 PM	15	15	1933 Brandywine St	19130	1900 Block of Brandywine block party.
527	28-Sep-19	7:00 AM	12:00 PM	52	1	Belmont & Ave of the Republic	19131	22nd Annual Walter E. Brandon Sickle Cell 5-K Walk/Run
528	28-Sep-19	2:00 AM	4:00 PM	15	3	18th ST & Wallace St	19130	Community Festival
529	28-Sep-19	3:00 PM	5:00 PM	28	14	2808 Lehigh Ave	19132	Free Library
530	28-Sep-19	12:00 PM	1:30 PM	29	3	2925 W Flora St	19121	Humble Tabernacle of Love Church
531	28-Sep-19	11:00 AM	2:00 PM	8	7	2110 Chestnut St	19103	Lutheran Church of the Holy Communion

	day	start	end	ward	div	address	zip	event
532	28-Sep-19	10:00 AM	2:00 PM	6	7	722 N Preston St	19104	Community Outreach
533	28-Sep-19	12:00 PM	2:00 PM	61	21	6614 N 12th St	19126	Oak Lane Library
534	28-Sep-19	11:00 PM	1:00 PM	43	16	11th & Venango	19140	Play Lot Playground
535	28-Sep-19	2:00 PM	4:00 PM	16	16	2301 Edgley St	19121	Raymond Rosen Comm. Center
536	28-Sep-19	11:00 AM	2:00 PM	36	31	1719 Morris St	19145	St. Thomas Aquinas Voting System Demo
537	28-Sep-19	12:00 PM	2:00 PM	13	25	3600 N Broad St	19140	Zion Baptist Church Voting System Demo
538	29-Sep-19	12:30 PM	2:00 PM	20	3	1601 N 12th St	19122	Bright Hope Baptist Church
539	29-Sep-19	11:00 AM	2:30 PM	9	6	2 Bethlehem Pike	19118	Chestnut Hill Fall for the Arts Festival
540	29-Sep-19	10:00 AM	1:00 PM	38	21	2901 N 25th St	19132	Christ Like Baptist Church
541	29-Sep-19	12:00 PM	3:00 PM	60	5	5240 Chestnut St	19139	Community Service
542	29-Sep-19	1:00 PM	3:00 PM	32	1	25th & Montgomery Ave	19121	Morris Brown A. M. E. Church
543	29-Sep-19	2:00 PM	7:00 PM	7	1	Lehigh Ave & Mascher Sts	19133	Outdoor Festival
544	29-Sep-19	1:00 PM	3:00 PM	59	16	87 E Haines	19144	Providence Baptist Church
545	29-Sep-19	11:30 AM	1:30 PM	49	17	1301 W Ruscomb St	19141	Second Macedonia Baptist Church
546	30-Sep-19	3:00 PM	7:00 PM	44	10	4800 Brown St	19104	Neighborhood Advisory Sub Committee
547	30-Sep-19	1:00 PM	2:00 PM	39	10	501 Jackson St	19148	Jackson Place Apt
548	30-Sep-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
549	30-Sep-19	6:30 PM	8:00 PM	17	4	6344 N Broad St	19141	St. Mark's Lutheran Church
550	30-Sep-19	3:00 PM	8:00 PM	61	19	200 W 65th Ave	19126	Sturgis Playground
551	1-Oct-19	10:00 AM	3:00 PM	5	35	714 Market St	19106	Adult Probation and Parole Department
552	1-Oct-19	2:00 PM	6:00 PM	42	7	169-171 W Wyoming Ave	19140	Bethel Worship Center
553	1-Oct-19	10:30 AM	11:30 AM	59	17	5818 Germantown Ave	19144	Centre on the Park Voting System Demo
554	1-Oct-19	5:00 PM	7:30 PM	49	20	1300 W Godfrey Ave	19141	Community College of Philadelphia
555	1-Oct-19	6:00 PM	8:00 PM	49	20	4901 Kingsessing Ave	19143	Kingsessing Recreation Center
556	1-Oct-19	7:00 PM	8:30 PM	26	7	2600 S Broad St	19145	Philadelphia Performing Arts Charter School
557	1-Oct-19	6:00 PM	7:30 PM	47	6	1718 W Cecil B Moore Ave	19121	Philly NAN Voting System Demo
558	1-Oct-19	6:00 PM	8:00 PM	15	16	NW Corner of 19th and North Sts	19130	Spring Garden Civic Association
559	2-Oct-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
560	2-Oct-19	7:00 PM	TBA	63	11	8540 Verree Rd	19111	Ward Meeting
561	2-Oct-19	7:00 PM	8:00 PM	6	15	4015-17 Poplar St	19104	United Block Captains Monthly Meeting
562	2-Oct-19	5:00 PM	7:00 PM	8	7	22 S 22nd St	19103	Phila. Joint Board/ Workers United
563	2-Oct-19	7:00 PM	9:00 PM	21	25	504 Hermit St	19128	Kowalski Post

	day	start	end	ward	div	address	zip	event
564	2-Oct-19	7:00 PM	9:00 PM	34	29	7630 Woodbine Ave	19151	Quarterly Meeting
565	2-Oct-19	12:00 PM	4:00 PM	8	31	1901 Vine St	19103	Free Library of Philadelphia - Parkway Central Library
566	2-Oct-19	10:00 AM	12:30 PM	16	15	2200 N 22nd St	19132	Head Start Policy Council
567	2-Oct-19	2:00 PM	7:00 PM	52	1	1575 N 52nd St	19131	Voter Registration Drive
568	2-Oct-19	7:00 PM	9:00 PM	18	17	1832 N Howard St	19122	18th Ward Voting System Demo
569	3-Oct-19	6:00 PM	9:00 PM	46	10	1400 Pointe Breeze Ave	19145	Night Market
570	3-Oct-19	10:30 AM	11:00 AM	8	7	22 S 22nd St	19103	Informational Meeting
571	3-Oct-19	1:00 PM	3:00 PM	18	17	6100 N 21st St	19138	Corinthian Comm. & Education Center
572	3-Oct-19	6:00 PM	7:00 PM	32	15	1845 N 23rd	19121	St. Elizabeth RCO Meeting
573	3-Oct-19	6:00 PM	7:30 PM	52	14	5301 Overbrook Ave	19131	Representative Cephas Voting System Demo
574	3-Oct-19	1:00 PM	4:00 PM	58	14	9896 Bustleton Ave	19115	Paul's Run Retirement Community
575	3-Oct-19	6:00 PM	8:00 PM	5	10	3 Penns Landing	19106	Pier 3 Penns Landing
576	3-Oct-19	6:30 PM	8:30 PM	48	14	1939 S Bancroft St	19145	GRASP - Second District Brewing
577	3-Oct-19	5:30 PM	7:30 PM	44	16	5201 Haverford Ave	19139	Spectrum Health Services Voting System Demo
578	3-Oct-19	6:00 PM	8:00 PM	29	8	2300 Master St	19121	Brewerytown Sharswood Coalition Monthly Meeting
579	4-Oct-19	11:30 AM	3:00 PM	5	9	315 S Broad St	19107	Broad St. Ministry
580	4-Oct-19	9:00 AM	12:00 PM	8	15	1400 JFK Blvd	19107	Jury Duty Demo
581	4-Oct-19	9:22 AM	12:00 PM	8	32	1699 Spring Garden Str	19130	Masterman High School
582	4-Oct-19	10:00 AM	1:00 PM	56	20	8101 Bustleton Ave	19152	Councilman Taubenberger's and CareGivers America: Senior Health & Resource Expo - Palbano Recreation Center
583	4-Oct-19	7:00 PM	9:00 PM	52	3	4000 City Ave	19131	If you're woke, Vote.
584	4-Oct-19	3:00 PM	5:00 PM	44	16	51ST & Reno Sts	19139	West Mill Creek Recreation Center
585	4-Oct-19	12:00 PM	2:00 PM	52	18	2001 N 54th St	19131	Wynne Senior
586	5-Oct-19	12:00 PM	3:00 PM	34	2	149 N 61st St	19139	100 Blk. N. 61st St.
587	5-Oct-19	11:00 AM	3:00 PM	52	1	1500 N 50th St	19131	Annual Parkside Public Safety Day
588	5-Oct-19	3:00 PM	6:00 PM	6	9	814 N 41st St	19104	Voting machine demonstration
589	5-Oct-19	10:00 AM	2:00 PM	46	13	56th & Christian Sts	19143	Christy Recreation Center
590	5-Oct-19	10:00 AM	2:00 PM	38	15	4100 Ridge Ave	19127	East Falls Farmers Market
591	5-Oct-19	12:00 PM	3:00 PM	29	12	Between 28th & 29th on Girard Ave	19130	2019 Girard Avenue Street Festival
592	5-Oct-19	11:00 AM	1:30 PM	0	0	7605 Old York Rd Elkins Park	19027	Gratz College

	day	start	end	ward	div	address	zip	event
593	5-Oct-19	1:00 PM	3:00 PM	40	50	70th & Lindbergh Blvd	19142	Holy Reedemer Church
594	5-Oct-19	11:00 AM	3:00 PM	34	1	6011 Market St	19139	Home Health Care Plus
595	5-Oct-19	10:30 AM	12:00 PM	12	5	5698 Wister St	19144	Monthly Meeting
596	5-Oct-19	12:00 PM	4:00 PM	18	13	144 W Diamond St	19122	35th Annual Festival
597	5-Oct-19	10:00 AM	1:00 PM	6	18	4700 Wyalusing Ave	19131	3rd Ward Community Event
598	5-Oct-19	12:00 PM	4:00 PM	50	15	1350 E Vernon Rd	19150	Grown Folks Fall Festival - St. Raymonds School
599	5-Oct-19	9:00 AM	1:00 PM	27	16	4308 Woodland Ave	19143	Family Matters Conference
600	6-Oct-19	10:00 AM	2:00 PM	6	18	4701 Lancaster Ave	19131	Christian Stronhold Baptist Church
601	6-Oct-19	12:00 PM	3:00 PM	60	5	5240 Chestnut St	19139	Community Service
602	6-Oct-19	6:00 PM	8:00 PM	22	12	6753 Germantown Ave	19119	Jesus Is The Way Christian Church
603	6-Oct-19	1:00 PM	3:00 PM	24	5	3500 Baring St	19104	Metropolitan Baptist Church
604	6-Oct-19	1:00 PM	4:00 PM	52	15	6376 City Ave	19151	Overbrook Presbyterian Church
605	6-Oct-19	3:00 PM	6:00 PM	52	10	3900 Ford Rd	19131	Park Plaza Condominiums
606	6-Oct-19	11:30 PM	3:00 PM	52	15	2251 N 54th St	19131	Pinn Memorial
607	6-Oct-19	2:30 PM	5:00 PM	32	23	1844 N 32nd St	19121	Prince of Peace Baptist Church
608	6-Oct-19	7:45 AM	1:00 PM	52	7	3955 Conshohocken Ave	19131	Sharon Baptish Church Services & Voting System Demo
609	6-Oct-19	2:00 PM	4:00 PM	4	11	1542 N 56th St	19131	Church Service
610	7-Oct-19	5:00 PM	7:00 PM	34	25	6361 Lancaster Ave	19151	Monthly Chapter Meeting
611	7-Oct-19	5:30 PM	7:00 PM	6	17	1224 N 42nd St	19104	East Parkside Residence Association Meeting
612	7-Oct-19	7:30 PM	8:00 PM	12	15	5457 Wayne Ave	19144	Germantown House
613	7-Oct-19	2:00 PM	7:00 PM	5	35	701 Market St Ste 5200	19106	Intellectual Disabilities Agency Voting System Demo
614	7-Oct-19	10:15 AM	TBA	64	12	2990 Saint Vincent St	19149	Tacony Mayfair Seniors Meeting
615	7-Oct-19	7:00 PM	8:30 PM	56	12	8034 Bustleton Ave	19152	meetings
616	7-Oct-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
617	7-Oct-19	4:00 PM	6:00 PM	25	5	2987 Almond St	19134	Richmond Library
618	7-Oct-19	7:00 PM	TBA	21	41	7201 Ridge Ave	19128	Ridge Park Civic Assocation - Roxborough YMCA
619	7-Oct-19	11:00 AM	12:30 PM	29	7	1515 N 24th St	19121	Sharswood Towers
620	7-Oct-19	4:00 PM	5:00 PM	39	35	2101 S Broad St	19148	South Philly High School
621	7-Oct-19	4:00 PM	7:00 PM	40	12	6328 Paschall Ave	19142	Sen. Anthony Hardy Williams' Voting System Demo
622	8-Oct-19	6:00 PM	8:00 PM	19	13	2428 N Fairhill St	19133	2428 N. Fairhill St.
623	8-Oct-19	6:00 PM	7:00 PM	37	2	2231 N Broad St	19132	Monthly RCO meeting
624	8-Oct-19	6:30 PM	8:30 PM	38	1	3226 McMichael St	19129	Councilman Curtis Jones Voting System Demo

	day	start	end	ward	div	address	zip	event
625	8-Oct-19	2:00 PM	7:00 PM	23	16	1657 Kinsey St	19124	Campbell A M E Church
626	8-Oct-19	7:00 PM	9:00 PM	38	2	2527 W Allegheny Ave	19132	Quarterly meeting
627	8-Oct-19	6:00 PM	8:00 PM	27	19	3301 Walnut St	19104	Delegates meeting
628	8-Oct-19	6:00 PM	8:00 PM	52	12	2600 Belmont Ave	19131	Inglis House
629	8-Oct-19	10:00 AM	3:00 PM	5	35	701 Market St Ste 5200	19106	Intellectual Disabilities Agency Voting System Demo
630	8-Oct-19	7:15 PM	8:00 PM	33	3	K & Cayuga Sts	19124	Juniata Park Civic Association
631	8-Oct-19	11:00 AM	12:00 PM	8	15	1401 JFK Blvd	19102	Municipal Services Building
632	8-Oct-19	12:00 PM	2:30 PM	30	1	1525 Fitzwater St	19146	Scottish Rite House
633	8-Oct-19	10:30 AM	1:00 PM	1	17	1301 S Columbus Blvd	19147	Retirees Meeting
634	8-Oct-19	12:00 PM	3:00 PM	52	28	2627 Mifflin St	19145	St. John Neumann Place II
635	8-Oct-19	6:00 PM	8:00 PM	52	28	3901 Conshohocken Ave	19131	The Pavilion Apts
636	8-Oct-19	7:00 PM	TBA	1	17	1290 Southampton Rd	19116	Somerton Civic Association - Walker Lodge 306 IOOF
637	9-Oct-19	11:00 AM	5:00 PM	32	19	2829 W Diamond St	19121	2829 W. Diamond St.
638	9-Oct-19	10:00 AM	12:00 PM	8	5	1606 Walnut St	19103	DC47 Retirees Chapter
639	9-Oct-19	1:45 PM	3:00 PM	4	2	5620 Wyalusing Ave	19131	Camphor Memorial Church
640	9-Oct-19	10:00 AM	2:00 PM	42	2	141 E Hunting Park Ave	19124	Concilio
641	9-Oct-19	12:30 PM	2:00 PM	1	4	1025 Mifflin St	19148	East Passyunk Community Center
642	9-Oct-19	2:00 PM	4:00 PM	59	18	6101 Morris St	19144	Four Freedoms House
643	9-Oct-19	1:00 PM	4:00 PM	60	10	5200 Pine St	19143	Global Leadership Academy
644	9-Oct-19	10:00 AM	3:00 PM	5	35	701 Market St Ste 5200	19106	Intellectual Disabilities Agency Voting System Demo
645	9-Oct-19	12:00 PM	3:00 PM	21	17	403 Rector St	19128	Journey's Way
646	9-Oct-19	11:00 AM	12:00 PM	6	14	1016 N 41st St	19104	LCFS West Philadelphia Senior Center
647	9-Oct-19	6:00 PM	8:00 PM	12	1	1100 E Cheltenham Ave	19138	12th Ward Voting System Demo
648	9-Oct-19	4:00 PM	6:00 PM	44	2	5353 Master St	19131	Simpson Fletcher / Conestoga
649	9-Oct-19	7:00 PM	8:30 PM	25	12	2537 E Monmouth St	19134	South Port Richmond Civic Association Meeting
650	9-Oct-19	12:00 PM	3:00 PM	48	7	2600 Moore St	19145	St John Neumann Place
651	9-Oct-19	3:00 PM	8:00 PM	61	19	200 W 65th Ave	19126	Sturgis Playground
652	9-Oct-19	2:00 PM	4:00 PM	17	20	1420 Clearview st	19141	Suffolk Manor
653	9-Oct-19	5:00 PM	8:00 PM	3	7	431 S 60th St	19139	3rd Ward Voting System Demo
654	9-Oct-19	6:00 PM	8:00 PM	36	9	1814 Wharton ST	19146	36th Ward Voting System Demo
655	10-Oct-19	4:00 PM	6:00 PM	47	5	1410 N 16th St	19121	Rep. Kenyatta Voting System Demo
656	10-Oct-19	6:00 PM	7:30 PM	52	10	2000 Belmont Mansion Drive	19131	Belmont Mansion

	day	start	end	ward	div	address	zip	event
657	10-Oct-19	5:30 PM	6:30 PM	14	2	1240 N 10th St	19122	Harrison Plaza Community Center
658	10-Oct-19	10:00 AM	3:00 PM	5	35	701 Market St Ste 5200	19106	Intellectual Disabilities Agency Voting System Demo
659	10-Oct-19	12:00 PM	4:00 PM	11	12	3401 N 20th St	19140	Playground Demo
660	10-Oct-19	10:00 AM	1:00 PM	64	12	2990 St Vincent St	19149	Senator Tartaglione Senior Expo
661	10-Oct-19	10:30 AM	6:00 PM	45	1	4725 Richmond St	19137	Office of State Rep. Joseph Hohenstein
662	10-Oct-19	10:30 AM	11:45 AM	4	21	5898 Lancaster Ave	19131	Office of St. Rep. Morgan Cephas Overbrook HS Demo
663	10-Oct-19	12:00 PM	2:00 PM	8	32	642 N Broad St	19130	Philadelphia Corporation for the Aging / 2nd fl. auditorium
664	10-Oct-19	6:30 PM	7:30 PM	17	4	6300 Old York Rd	19141	Councilman David Oh Voting System Demo
665	10-Oct-19	5:30 PM	7:30 PM	44	16	5201 Haverford Ave	19139	Spectrum Health Services Voting System Demo
666	10-Oct-19	5:30 PM	7:30 PM	40	30	8398 Lindbergh Blvd	19152	Eastwick Leadership & St. Rep Maria Donatucci Demo Event
667	10-Oct-19	6:00 PM	8:00 PM	40	5	2050 S 58th St	19143	Monthly Meeting
668	11-Oct-19	6:00 PM	8:00 PM	27	16	1414 S 47th St	19143	Woodland Playground Voting System Demo
669	11-Oct-19	2:00 PM	5:00 PM	26	20	2401 Penrose Ave	19145	Catch Behavioral Health Center
670	11-Oct-19	12:30 PM	TBA	27	19	3001 Walnut St	19104	Retiree' meeting
671	11-Oct-19	10:00 AM	3:00 PM	5	35	701 Market St Ste 5200	19106	Intellectual Disabilities Agency Voting System Demo
672	11-Oct-19	11:00 AM	6:00 PM	27	17	1411 S 50th St	19143	Mount Zion Baptist Church of Philadelphia Demo
673	11-Oct-19	10:00 AM	1:00 PM	66	5	2700 Southampton Rd	19154	Senator John Sabatina Senior Expo
674	11-Oct-19	11:00 AM	TBA	40	22	6916 Elmwood Ave	19142	Southwest Senior Center
675	11-Oct-19	7:00 PM	9:00 PM	52	3	4000 City Ave	19131	If you're vote
676	11-Oct-19	2:00 PM	4:00 PM	23	18	1824 Foulkrod St	19124	Whitehall Resident Council
677	12-Oct-19	11:00 PM	2:00 PM	37	9	2950 Germantown Ave / Side entrance	19133	Universal Hagar Spiritual Church Demo Event
678	12-Oct-19	12:30 PM	3:00 PM	16	14	2251 N 22nd St	19132	Cecil B Moore Rec Center Voting Demo
679	12-Oct-19	12:00 PM	5:00 PM	38	9	3401 Reservoir Drive	19121	Indego Neighborhood Fair
680	12-Oct-19	12:30 PM	2:00 PM	32	13	2021 W Diamond St	19121	Historical Jones Tabernacle A. M. E. Church
681	12-Oct-19	1:30 PM	3:00 PM	51	5	1201 S 51st St	19143	51st Ward Voting System Demo
682	12-Oct-19	10:00 AM	11:00 AM	49	22	800 W Olney Ave	19120	42nd Ward Meeting and Voting System Demo
683	12-Oct-19	10:30 AM	12:00 PM	6	7	647 N 42nd St	19104	Mt. Oliver Tabernacle Baptist Church Demo
684	12-Oct-19	9:00 AM	12:00 PM	52	15	54th & Wynnefield Ave	19131	52nd Ward Demo
685	12-Oct-19	11:00 AM	5:00 PM	18	16	1714 N Mascher St	19122	Philly Comosite Demo Event
686	12-Oct-19	10:00 AM	1:00 PM	3	10	520 S 61st	19139	3rd Ward Voting System Demo



	day	start	end	ward	div	address	zip	event
687	12-Oct-19	10:00 AM	1:00 PM	3	7	431 S 60th St	19139	3rd Ward Voting System Demo
688	12-Oct-19	11:00 PM	1:00 PM	22	29	6400 Ardleigh St	19119	True Light Fellowship Church
689	13-Oct-19	11:00 AM	2:30 PM	6	9	814 N 41st St	19104	Senator Hughes Office
690	13-Oct-19	11:00 PM	3:00 PM	21	22	6300 Ridge Ave	19128	Harvest Festival - Gorgas Park
691	13-Oct-19	11:00 AM	TBA	4	12	5732 Race St	19131	Mt. Carmel Baptist Church
692	13-Oct-19	12:00 PM	1:30 PM	9	5	8044 Stenton Ave	19118	Youth / Teen engagement Sunday
693	13-Oct-19	2:30 PM	3:30 PM	60	15	5301 Spruce St	19139	Zion Hill Baptist Church
694	14-Oct-19	5:45 PM	6:30 PM	6	15	1224 N 41st St	19104	Christ Church Community Baptist Church
695	14-Oct-19	6:00 PM	8:00 PM	9	2	224 E Gowan Ave	19119	Grace Epiphany Church Demo
696	14-Oct-19	6:00 PM	8:00 PM	22	12	6753 Germantown Ave	19119	Jesus is the Way Christian Church
697	14-Oct-19	7:15 PM	8:30 PM	46	4	54th & Cedar Ave 7th Fl Chapel	19143	Philadelphia Mercy Hospital
698	14-Oct-19	6:30 PM	7:30 PM	48	12	2130 S 21st St	19145	West Passyunk Neighbors Association Demo Event
699	14-Oct-19	10:00 AM	2:00 PM	46	10	5039 Baltimore Ave	19143	The Peoples Baptist Church Voting System Demo
700	15-Oct-19	3:00 PM	5:00 PM	24	6	3401 Market St ( Suite #100 )	19104	Drexel Exite Center
701	15-Oct-19	7:00 PM	8:00 PM	50	6	1000 E Hortter St	19150	50th Ward Voting Demo
702	15-Oct-19	7:00 PM	9:00 PM	52	14	5301 Overbrook Ave	19131	Councilman Curtis Jones Voting System Demo
703	15-Oct-19	5:30 PM	7:30 PM	44	13	400 N 50th St	19139	Philadelphia Police Captains Town Hall Meeting
704	15-Oct-19	6:00 PM	7:30 PM	8	25	2 Franklintown Blvd	19103	Monthly Meeting
705	15-Oct-19	5:30 PM	7:30 PM	60	3	125 S 52nd St	19139	Office of Sen. Anthony Williams Voting Demo
706	15-Oct-19	12:30 PM	2:30 PM	65	2	9215 Keystone St	19114	PATH INC, Vocational Program
707	15-Oct-19	7:00 PM	TBA	35	5	6401 Martins Mill Rd	19111	35th and 53rd GOP Ward Demo
708	15-Oct-19	3:00 PM	5:30 PM	36	29	1700 S Broad St	19145	Community Health Fairs and Farmer's Market - South Philadelphia Library
709	15-Oct-19	10:00 AM	2:00 PM	38	17	4200 Wlssahickon Ave	19129	Showing voter how to use new voting machine.
710	15-Oct-19	6:00 PM	7:30 PM	16	2	2326 N 16th St	19132	Winchester Rec. Voting Demo
711	16-Oct-19	1:00 PM	3:00 PM	65	20	9355 State Rd	19114	Delaire Landing Residents Meeting
712	16-Oct-19	9:00 AM	11:30 AM	50	10	2800 W Cheltenham Ave	19150	Enon Tabernacle Baptist Church
713	16-Oct-19	3:00 PM	7:00 PM	28	8	2450 W Sergeant St	19132	New Life Missionary Freewill Baptist Church Demo
714	16-Oct-19	12:00 PM	3:00 PM	13	18	1717 W HUnting Park Ave	19140	13th Ward Voting System Demo
715	16-Oct-19	2:00 PM	4:00 PM	34	25	6376 City Ave	19151	Overbrook Presbyterian Church Voting System Demo
716	16-Oct-19	10:30 AM	1:00 PM	8	10	1816 Chestnut St	19103	General membership meeting

	day	start	end	ward	div	address	zip	event
717	16-Oct-19	12:00 PM	2:00 PM	59	16	38 E Price St	19144	Polite Temple Baptist Church Voting Demo
718	16-Oct-19	2:00 PM	3:00 PM	58	20	650 Edison Ave	19116	Somerton Center
719	16-Oct-19	12:00 PM	3:00 PM	52	18	2001 N 54th St		Wynne Residence
720	17-Oct-19	12:00 PM	4:00 PM	8	34	100 S Broad St	19102	Senior Citizens Day/ Union Members
721	17-Oct-19	6:00 PM	8:00 PM	34	7	6010 Lansdowne Ave	19151	6010 Lansdowne Ave.
722	17-Oct-19	12:00 PM	2:30 PM	0	0	864 Main St	19023	APWU Local #89 Union Hall
723	17-Oct-19	7:00 PM	9:30 PM	0	0	864 Main St		Informational meeting
724	17-Oct-19	6:30 PM	8:00 PM	65	4	5100 S Convent Ln	19114	Bakers Bay / Club House
725	17-Oct-19	6:00 PM	8:00 PM	40	19	2401 S 67th St	19143	Councilman Kenyatta Johnson Voting Demo
726	17-Oct-19	6:00 PM	7:30 PM	24	16	772 N 38th St	19104	Mantua Civic Association - Church of Faith
727	17-Oct-19	6:00 PM	8:00 PM	5	9	330 S 13th St	19107	Church of St. Luke and the Epiphany
728	17-Oct-19	6:30 PM	8:30 PM	34	15	6101 W Oxford St	19151	Councilman Curtis Jones Voting System Demo
729	17-Oct-19	6:30 PM	8:00 PM	56	10	7701 Loretto Ave	19111	Rhawnhurst Civic Monthly Meeting
730	17-Oct-19	6:30 PM	8:00 PM	38	1	2800 Fox St	19129	38th Ward Meeting
731	17-Oct-19	7:00 PM	9:00 PM	5	1	261 St James Pl	19106	Society Hill Towers
732	17-Oct-19	5:30 PM	7:30 PM	44	16	5201 Haverford Ave	19139	Spectrum Health Services Voting System Demo
733	17-Oct-19	4:00 PM	6:00 PM	20	9	Polett & Liacouras Wk / 1900 N 13th St	19122	Temple University's New Library Opening
734	17-Oct-19	9:00 AM	11:00 AM	50	1	8500 Pickering St	19150	Kitchen Of Love Food Pantry Voting Demo
735	17-Oct-19	5:00 PM	7:30 PM	13	16	1648 W Hunting Park Ave	19140	13th Ward Voting System Demo
736	17-Oct-19	12:00 PM	6:00 PM	47	3	1400 N Broad St	19121	47th Ward Voting Demo
737	18-Oct-19	3:00 PM	4:30 PM	48	23	3001 Moore St	19145	3001 Moore St.
738	18-Oct-19	11:00 AM	1:00 PM	5	22	1300 Lombard St	19147	Casa Farnese Apartments
739	18-Oct-19	8:00 AM	3:30 PM	5	24	801 Market St	19107	2019 Annual Philadelphia Autism Project Conference
740	18-Oct-19	10:30 AM	12:30 PM	59	16	123 E Price St	19144	Face to Face Org. Meeting
741	18-Oct-19	10:30 AM	11:30 AM	18	1	1340 Frankford Ave	19125	Office of St. Rep Malcolm Kenyatta Demo
742	18-Oct-19	1:00 PM	5:00 PM	40	30	2946 Island Ave	19153	Eastwick United Meeting
743	18-Oct-19	1:00 PM	3:00 PM	48	21	2506 Jackson St	19145	Wilson Park Residents Council Meeting
744	19-Oct-19	10:00 AM	1:00 PM	61	22	6901 Old York Rd	19126	Bromley House
745	19-Oct-19	4:00 PM	6:00 PM	46	17	801 S 48th St	19143	Calvary Center for Culture and Community
746	19-Oct-19	12:00 PM	2:00 PM	36	21	2421 Dickinson St	19146	Church of the Redeemer
747	19-Oct-19	11:00 AM	12:30 PM	8	15	1400 JFK Blvd	19107	Breaking Barriers Org. Voting Demo
748	19-Oct-19	9:00 PM	3:00 PM	50	10	2800 W Cheltenham Ave	19150	Enon Tabernacle Demo

	day	start	end	ward	div	address	zip	event
749	19-Oct-19	1:00 PM	3:00 PM	13	2	4700 Wayne Ave	19144	13th Ward Voting System Demo
750	19-Oct-19	4:00 PM	8:00 PM	6	6	761 N 47th St	19131	Lucien Blackwell Center Voting Demo
751	19-Oct-19	1:00 PM	3:00 PM	4	8	5539 Vine St	19139	Mt. Pleasant Baptist Church Voting Demo
752	19-Oct-19	12:00 PM	3:00 PM	49	5	4301 N Broad St	19140	Price Hall Masonic Temple
753	19-Oct-19	10:00 AM	3:00 PM	50	12	1215 E Vernon Rd	19150	Reformation Lutheran Church Voting Demo
754	19-Oct-19	9:30 AM	2:00 PM	52	5	5701 Wynnefield Ave	19131	Office of St. Senator Hughes Voting Demo
755	19-Oct-19	12:00 PM	4:00 PM	12	9	5421 Germantown Ave	19144	Team Caribe Feeding Voting Demo
756	19-Oct-19	12:00 PM	3:00 PM	9	6	16 E Highland Ave	19118	Witches and Wizards 2019
757	20-Oct-19	8:30 AM	12:30 PM	8	15	641 Lindley ave	19120	49th Ward Voting System Demo
758	20-Oct-19	2:30 PM	5:00 PM	4	8	215 n 57th St	19139	St. Matthew A.M.E. Church Demo
759	20-Oct-19	10:00 AM	2:00 PM	34	25	6361 Lancaster Ave	19151	Office of St. Rep. Morgan Cephas Voting Demo
760	21-Oct-19	6:00 PM	7:30 PM	4	4	1249 N 55th St	19131	Alleyne Memorial A M E Zion Church
761	21-Oct-19	6:30 PM	8:00 PM	15	10	1737 Francis St	19130	Francisville Recreation Center
762	21-Oct-19	4:00 PM	8:00 PM	22	11	6945 Germantown Ave	19119	Mount Airy Monday Market
763	21-Oct-19	7:30 PM	9:00 PM	24	5	3500 Baring St	19104	PoweltonVillage Civic Association Meeting
764	21-Oct-19	9:00 AM	3:00 PM	8	15	1401 JFK Blvd	19107	Municipal Services Building Voting System Demo
765	21-Oct-19	11:00 AM	1:00 PM	13	16	3975 Germantown Ave	19140	Nazerene Baptist Church
766	21-Oct-19	4:00 PM	6:00 PM	14	9	6th St Girard Ave	19123	Ramonita DeRodriguez Library Demo Event
767	21-Oct-19	11:30 AM	1:30 PM	1	3	1430 E Passyunk Ave	19147	South Philadelphia Older Adult Center
768	21-Oct-19	7:00 PM	9:00 PM	52	3	4000 City Ave	19131	If you woke& Motivation Monday
769	21-Oct-19	5:00 PM	7:30 PM	60	1	4501 Chestnut St	19131	Community Meeting
770	22-Oct-19	7:00 PM	TBA	66	22	4501 Woodhaven Rd	19154	Nick's Roast Beef at Katie O's
771	22-Oct-19	1:30 PM	3:30 PM	36	25	1701 S 28th St	19145	Anthony Wayne Senior Housing
772	22-Oct-19	10:00 AM	11:30 AM	66	5	2701 Southampton Rd	19154	Delaware Valley Veterans Home
773	22-Oct-19	6:00 PM	8:00 PM	43	18	3914 N 6th St	19140	43rd Ward Meeting and Demo
774	22-Oct-19	6:00 PM	7:30 PM	8	30	1924 Spring Garden St	19130	Chapter Board Meeting
775	22-Oct-19	1:00 PM	3:00 PM	22	3	315 W Johnson St	19144	The Apts at Cliveden
776	22-Oct-19	10:00 AM	2:00 PM	38	17	4200 Wissahickon Ave	19129	The Salvation Army Voting System Demo
777	23-Oct-19	3:00 PM	6:00 PM	60	6	137 S 58th St	19153	137 S. 58th St. The Consortium )
778	23-Oct-19	11:00 AM	5:00 PM	32	19	2829 W Diamond St	19121	Strawberry Mansion NAC Meeting
779	23-Oct-19	10:00 AM	12:00 PM	8	5	1606 Walnut St	19103	DC47 Retirees Membership Meeting
780	23-Oct-19	7:30 PM	8:30 PM	58	23	2060 Red Lion Rd	19115	Bustleton Civic Association Monthly Meeting
781	23-Oct-19	12:00 PM	2:00 PM	5	35	801 Market St / 7th Floor	19107	Community Behavioral Health

	day	start	end	ward	div	address	zip	event
782	23-Oct-19	2:00 PM	7:00 PM	34	24	1100 N 63rd St	19151	Kimbell Funeral Home
783	23-Oct-19	7:00 PM	8:30 PM	22	11	6945 Germantown Ave	19119	Northwest Village Network - Lovett Memorial Library
784	23-Oct-19	7:00 PM	9:00 PM	57	17	9151 Academy Rd	19135	Penn Crisp
785	23-Oct-19	5:30 PM	7:00 PM	41	6	6447 Torresdale Ave	19135	41st Ward Meeting
786	23-Oct-19	6:00 PM	7:30 PM	15	19	641 N 24th St	19130	State Rep. Donna Bullock' Voting System Demo
787	23-Oct-19	5:30 PM	7:30 PM	36	4	2300 Wharton St	19146	Sen. Anthony Williams' Voting System Demo
788	24-Oct-19	6:00 PM	8:00 PM	17	9	6100 N 21st St	19138	Corinthian Comm & Education Center Voting System Demo
789	24-Oct-19	6:30 PM	8:00 PM	59	15	6001 Germantown Ave	19144	First United Methodist Church of Germantown
790	24-Oct-19	3:00 PM	4:30 PM	43	13	3301 Old York Rd	19140	M. M. Bethune
791	24-Oct-19	7:00 PM	9:00 PM	6	3	428 N 41st St	19104	Mt. Pisgah A M E Church
792	24-Oct-19	9:30 AM	1:00 PM	8	25	1425 Arch St 1st FL	19102	ORP / Rise Philadelphia Voting Demo
793	24-Oct-19	6:00 PM	8:00 PM	16	16	2301 Edgley St	19121	Jobs Plus Event
794	24-Oct-19	3:00 PM	6:00 PM	60	4	5429 Chestnut St	19139	Senior Citizens Residence
795	24-Oct-19	5:30 PM	7:30 PM	44	16	5201 Haverford Ave	19139	Spectrum Health Services Voting System Demo
796	24-Oct-19	3:00 PM	7:00 PM	15	6	2401 Pennsylvania Ave	19130	The Philadelphian
797	25-Oct-19	2:00 PM	4:00 PM	14	8	1100 Poplar St	19123	John Street Community Center
798	25-Oct-19	11:00 AM	2:00 PM	47	12	1776 N Broad St	19121	Council President Darrell Clarke's Senior Event
799	26-Oct-19	10:00 AM	2:00 PM	49	5	4541 N Broad St	19140	4541 N. Broad St.
800	26-Oct-19	1:00 PM	3:00 PM	28	2	2229 N 29th St	19132	Dauphin Street Baptist Church Demo Event
801	26-Oct-19	11:00 AM	5:00 PM	60	19	266 S 58th St	19139	G I S Garden Memorial Tribute
802	26-Oct-19	9:00 AM	2:00 PM	35	7	6418 Rising Sun Ave	19111	Loving Hand Ministry
803	26-Oct-19	4:00 PM	6:00 PM	41	3	5700 Torresdale Ave	19124	41st Ward Halloween Family Night
804	26-Oct-19	12:00 PM	3:00 PM	9	12	7500 Germantown Ave	19119	St. Rep. Chris Rabb's Office Voting Demo
805	26-Oct-19	12:00 PM	3:00 PM	44	18	550 N 52nd St	19151	Office of Movita Johnson-Harrell Voting System Demo
806	26-Oct-19	12:30 PM	3:00 PM	52	13	4910 Wynnefield Ave	19131	52nd Ward Voting Demo
807	26-Oct-19	10:00 AM	1:00 PM	51	14	5220 Whitby Ave	19143	Comqueros Community Senior Fair
808	27-Oct-19	9:30 AM	11:30 AM	58	13	9768 Verree Rd	19115	Meet the Candidates at Congregations of Shaare Shamayim Synagogue
809	27-Oct-19	1:00 PM	2:00 PM	16	17	2521 N 23rd St	19132	Love Zion Baptist Church Voting System Demo
810	27-Oct-19	9:00 PM	1:00 PM	13	5	312 W Manheim St	19144	New Hope Temple Baptist Church
811	27-Oct-19	12:00 PM	2:00 PM	42	19	5532 Rising Sun Ave	19120	New Horizon Baptist Church Voting Demo
812	27-Oct-19	3:00 PM	5:00 PM	61	25	406 W Cheltenham Ave	19144	Philadelphia Hair Artistry, Inc. Voting System Demo

	day	start	end	ward	div	address	zip	event
813	27-Oct-19	5:30 PM	6:45 PM	5	9	330 S 13th St	19107	Dignity Philadelphia Voting Demo
814	28-Oct-19	5:00 PM	7:00 PM	37	1	2259 N 10th St	19133	37th Ward Voting System Demo
815	28-Oct-19	6:00 PM	7:00 PM	65	7	5001 Linden Ave	19114	65th Ward Voting Demo
816	29-Oct-19	1:00 PM	3:00 PM	7	4	3150 N Mascher St	19133	Councilwoman Sanchez Field Office Voting Demo
817	29-Oct-19	6:00 PM	8:00 PM	29	5	2438 Ridge Ave	19121	First Immanuel Baptist Church
818	29-Oct-19	12:30 PM	1:30 PM	21	33	201 Spring Lane	19128	Lankenau Mock Election
819	29-Oct-19	10:00 AM	2:00 PM	38	17	4200 Wissahickon Ave	19129	The Ray and Joan Kroc Center Demo
820	30-Oct-19	3:00 PM	5:00 PM	52	17	5100 Lebanon Ave	19131	52nd Ward Voting Demo
821	30-Oct-19	10:00 AM	1:00 PM	57	1	9130 Academy Rd	19114	Councilman Taubenberger's and CareGivers America: Senior Health & Resource Expo - Cannstatter Volkfest Verein
822	30-Oct-19	11:30 AM	12:30 PM	8	5	1606 Walnut St	19103	District Council #47
823	30-Oct-19	3:00 PM	TBA	63	7	8580 Verree Rd	19111	Holy LaFayette-Redeemer
824	30-Oct-19	6:00 PM	8:00 PM	60	9	5026 Spruce St	19145	Barrier Breaking Org. Voting Demo
825	31-Oct-19	5:30 PM	7:30 PM	44	16	5201 Haverford Ave	19139	Spectrum Health Services Voting System Demo
826	31-Oct-19	4:00 PM	6:30 PM	40	5	5736 Chester Ave	19143	191st Legislative District Event and Demo
827	31-Oct-19	6:00 PM	8:00 PM	29	8	2300 W Master St	19121	Brewerytown Sharswood Coalition - Vaux Promise Academy

## **EXHIBIT 2**

# VOTER CHECK IN AND ADMISSION SLIPS

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**For the 2020 Primary Election Poll Books will be printed by Polling Place, not Ward-Division.** Each voter who arrives at the polls on Election Day should be directed to the correct table based on their last name to sign the poll book according to the Voting Procedures listed in the Election Board Training Guide. Each table should have a Board Worker checking-in voters in the poll book, a Board Worker looking up and marking admission slips, and at least one Machine Inspector activating the ExpressVote XLs.

**Check Mail-in and Absentee Voters Lists for All Voters.** All voters who apply for a Mail-in or Absentee Ballot are prohibited by the Election Code from voting on the ExpressVote XLs. This will be indicated in the poll book and Mail-in and Absentee Voters Lists. **Be sure to check the Mail-in and Absentee Voters Lists before you check a voter in.** All voters who appear to vote but have applied for a Mail-in or Absentee Ballot will be afforded the opportunity to vote by Provisional Ballot. Detailed information regarding the procedures for voting by Provisional Ballot may be found in the Election Board Training Guide.

**Admission Slips Will Replace the Yellow Number 2 and Number 4 books.** After the voter signs the Poll Book an Election Board Official will write the Admission Number on the Admission Slip and hand it to the voter. **The yellow Number 2 and Number 4 books will not be used for this Election.** If a voter is in the poll book but not in the Admission Slips, the Election Board Official will create a Slip for that voter by writing their name, Ward-Division, Party and Admission Number. Blank Admission Slips can be found in the Election Materials Box.

**Use Admission Slips to set the Voter's Ward-Division and Party on the Voting Machine.** At the Voting Machine, the voter will hand the Slip to the machine inspector, who will set the Ward-Division and Party on the Voting Machine according to the information on the Admission Slip. Machine Inspectors will return Admission Slips to the table, where the Election Board Official will place them in the clear plastic bag labeled "Checked in Admission Slips Returned by Machine Inspectors." After the close of polls Admission Slip Bags will be returned in the Election Materials Box.

**NOTE: After the polls have closed, place the Mail-in and Absentee Voter List into the Vinyl USB Results Bag for police pickup.**

**NOTE: Election Board Officials are NOT PERMITTED to grant an individual the right to vote on the Voting Machines if the voter's name is not listed in the poll book or supplemental sheets, or if they applied for a Mail-in or Absentee Ballot as indicated in the poll book or Mail-in and Absentee List, even if the Election Board Officials believe the registration records to be in error. In this situation a voter MUST be afforded the opportunity to vote by Provisional Ballot.**

# **OPERATING THE EXPRESSVOTE XL & PACKING SUPPLIES**

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**Power On the Voting Machine.** Open and turn on the ExpressVote XL at the beginning of Election Day according to the procedures outlined in the Election Board Training Manual and the quick reference card.

**Initiating a Voting Session.** The Machine Inspector will get the Admission Slip from the Board Worker looking up admission slips, stand at the side of the ExpressVote XL, draw the privacy curtain to the side, and insert the paper ballot into the card slot.

**Select the voter's Ward-Division and Party.** Continue to stand at the side of the ExpressVote XL, holding the privacy curtain to the side and select the voter's registered Ward-Division and party on the touchscreen from the information on the Admission Slip, then confirm selections when prompted

**Direct Voter to Enter Booth.** When the Language Selection screen appears, direct voter to enter the booth so they can begin their voting session. Ensure the voter's privacy is respected at all times.

**Shut Down the Voting Machine at the Close of Polls according to the procedures outlined in the Election Board Training Manual and the quick reference card.**

**Sign the Tapes.** Place the last tape (the longest printed Election Results Report) from each ExpressVote XL into the RTC Envelope, and then place the RTC Envelope into the vinyl USB Results Bag. The longest printed Election Results Report contains the Write-In votes.

**Place Supplies in Vinyl Results Bags.** Each Polling Place has 2 vinyl Results Bags, the bags will be picked up by the Philadelphia Police Department at the end of Election Day. The following items must be placed in each vinyl bag for pickup:

1. **USB Results Bag** - The USB Sticks for every ExpressVote XL in the polling place, whether the ExpressVote XL was used or not, must be placed in the vinyl USB Results Bag. **DO NOT PUT THE VINYL BAG INTO THE HOPPER SACK.**
2. **Supplies & Results Tape Bag** - Printed Machine Tapes, Mail-in and Absentee Voters Lists, Cell Phone, and Keys
  - **Printed Machine Tapes.** The white RTC Envelope containing the printed result tapes must be placed in the vinyl USB Results Bag for Police pickup. This is the LAST (longest) results receipt from each machine which contains the Write-In votes.
  - **Mail-in and Absentee Voters Lists** (if any). Place the Mail-in and Absentee Voters Lists into the vinyl USB Results Bag.
  - **Cell Phone.** Power off the cell phone that was provided in the Election Materials Box.
  - **Keys.** All keys for the ExpressVote XLs.

**Pack Hopper Sacks according to the procedures outlined in the Election Board Training Manual.** A separate Police Officer will pick up the Hopper Sacks NOTE: If the police do not arrive to pick up the vinyl USB Results Bag by 9:00 PM on Election Day, notify the Office of the City Commissioners by calling **215-686-1530**.



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## COVID-19 SAFETY MEASURES

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### FACE COVERINGS, DISTANCING, AND DISINFECTING

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**Face Coverings** are required for the entire Election Board, if anyone requires a face covering, it will be provided with other personal protective equipment (PPE) and cleaning supplies on the morning of the Election.

**Voters should be strongly encouraged to wear a face covering** and offered a mask from the polling place's PPE supplies. However, if a voter refuses to wear a face covering, they must be allowed access to the polling place regardless of their reason. In the event a voter refuses to wear a face covering, escort them through the voting process while ensuring they maintain a 6-foot distance from others at all times.

**6-foot distances** will be marked in the polling place lines with floor tape and orange cones to help ensure that voters maintain appropriate distances from others. Other PPE (e.g., plexiglass barriers) may be installed in the polling place prior to Election Day.

**To assist with disinfection**, all voters will be provided with a glove before voting for use on the voting machine's touchscreen. After voting, voters will be provided with an alcohol hand wipe. **DO NOT USE HAND WIPES ON TOUCHSCREENS.** If a touchscreen requires disinfection, a vendor recommended cleaning solution will be available at the polling place.

**NOTE: A voter cannot be denied entry to the polling place for refusing to wear a face covering.**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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NAACP PENNSYLVANIA STATE  
CONFERENCE,

Petitioner,

v.

KATHY BOOCKVAR, SECRETARY OF  
THE COMMONWEALTH, AND JESSICA  
MATHIS, DIRECTOR OF THE BUREAU  
OF ELECTION SERVICES AND  
NOTARIES

Respondents.

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NO. 364 MD 2020

**DECLARATION OF DEAN C. BAUMERT IN SUPPORT OF RESPONDENTS’  
OPPOSITION TO PETITIONER’S APPLICATION FOR PRELIMINARY  
INJUNCTION**

I, Dean C. Baumert, affirm under the penalties for perjury that the following  
representations are true:

I am a Principal Product Manager for Election Systems & Software, LLC (“ES&S”). I  
make this declaration in support of Respondents’ Opposition to Petitioner’s Application for  
Preliminary Injunction.

I am the Product Manager responsible for all touchscreen marking and tabulating  
products for ES&S which includes the ExpressVote Universal Voting System as a Marker and as  
a Tabulator, as well as the ExpressVote XL Full-Face Universal Voting System as a Tabulator.  
I have served ES&S in project, development, and product management roles across all of the  
ballot scanner/tabulator products including as the project manager leading the development and  
implementation of ES&S’s ExpressVote as a Marker and as the Product Manager leading the

development and implementation of the ExpressVote XL as a Tabulator, both of which are described below. I have prior industry experience in engineering, manufacturing and retail systems including point of sale, pharmacy, merchandising, reporting, logistics and networking.

## **I. ES&S's Position in the Marketplace**

1. ES&S provides voting machines to approximately 30% of the nation's more than 10,000 voting jurisdictions. ES&S is 100% American-owned and, over more than thirty years, has grown into an industry leader with solutions for each step of an election.

2. ES&S has engaged in continuous investment in research and development, resulting in new and improved voting technology (built with the highest standards of security) that helps election officials conduct secure and successful elections. Examples of such voting technology are the ExpressVote and ExpressVote XL products.

## **II. The ExpressVote and ExpressVote XL - Testing, Approval and Success**

3. ES&S values transparency and works closely with all levels of the U.S. government, academia, and other experts to ensure the integrity of votes being cast on its voting machines.

4. ES&S has invited and welcomed numerous experts and government officials, including critics, to see its operations first-hand and to discuss potential improvements.

5. ES&S actively collaborates with the U.S. Department of Homeland Security; has all of its equipment certified through the U.S. Election Assistance Commission ("EAC"), a federal agency created by the bipartisan Help America Vote Act of 2002; and voluntarily takes part in many other collaborations with groups and individuals interested in protecting America's voting systems.

**A. EAC & State Certification**

6. Voting machines provided by ES&S are certified by the EAC and undergo robust testing for accuracy, reliability, usability and security conducted by accredited independent testing authorities. The ExpressVote and ExpressVote XL are no exception.

7. ES&S voluntarily adheres to the EAC's Federal Testing Program. Under that Program, ES&S submits all of its systems to voting system test laboratories accredited by the National Institute of Standards and Technology ("NIST"). These labs perform tests in accordance with the federal voting system standards. EAC-certified systems are required to complete testing with zero errors in over one and one half million marked selections.

8. In addition to the mandatory reviews conducted under the Federal Testing Program, several states also engage independent firms to audit the security of voting machines as part of the certification process in their states.

9. The ExpressVote has been state certified in Alaska, Alabama, Arkansas, Arizona, California, Colorado, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Maine, Michigan, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Jersey, Nevada, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, West Virginia, Wyoming, the District of Columbia, and the Virgin Islands. The ExpressVote XL has been state certified in California, Delaware, Mississippi, New Jersey, Pennsylvania, and Texas.

10. The EVS 6.0.0.0 voting system release includes ES&S's Electionware Election Management Software (EMS), precinct-ballot scanner/tabulators, high-speed central ballot scanner/tabulators, as well as touch screen ballot marking and tabulating products. As part of this certification, the ExpressVote and ExpressVote XL products were subject to extensive accessibility, reliability, accuracy, security and other testing outlined in the EAC's Voluntary

Voting System Guidelines (“VVSG”) version 1.0, to which all voting systems being offered to Pennsylvania must be certified.

11. EVSS 6.0.0.0 satisfied those testing requirements and received EAC certification on July 2, 2018, establishing its compliance with VVSG federal standards. Each ES&S release undergoes extensive security testing and ES&S submits a complete set of software components to the voting systems testing labs for review.

12. The ExpressVote has been part of the EAC certification testing process for EVS voting system releases 5.2.0.0, 5.2.0.3, 5.2.0.4, 5.2.1.0, 5.2.1.1, 5.2.2.0, 5.2.3.0, 5.2.4.0, 5.4.0.0, 5.4.1.0, 6.0.0.0, 6.0.2.0, 6.0.3.0, 6.0.2.1, 6.0.4.0, 6.0.4.3, 6.1.0.0, and 6.1.1.0. The ExpressVote XL has been part of the EAC certification testing process for EVS voting system releases 6.0.0.0, 6.0.2.0, 6.0.2.1, 6.0.3.0, 6.0.4.0, 6.1.0.0, and 6.1.1.0. Each release has been certified as compliant with the VVSG 1.0. *See* Election Assistance Commission, Certified Voting Systems, *available at* <https://www.eac.gov/voting-equipment/certified-voting-systems/> (last visited August 17, 2020).

## **B. Pennsylvania Certification**

13. ES&S submitted its first request for certification by the Pennsylvania Department of State of the EVS 6.0.0.0 voting system, the first EVS release to feature both the ExpressVote and ExpressVote XL products, on May 16, 2018.

14. The Department and the state examiner (SLI Compliance – an independent Voting System Test Laboratory (VSTL) accredited by the National Voluntary Laboratory Accreditation Program (NVLAP Lab Code 200733-0: TESTING), <https://www.slicompliance.com/>) scheduled an examination of EVS 6.0.0.0 between June 25-28, 2018 to determine its compliance with Article XI-A of the Pennsylvania Election Code. The examination included six main areas: (1) source code review; (2) documentation

review; (3) system level testing; (4) security/penetration testing; (5) privacy analysis; and (6) usability analysis. The functional examination was open to the public and was videotaped by Department staff.

15. As a result of the examination, several enhancements were made to facilitate proper handling of Pennsylvania's straight party voting method on the ExpressVote and ExpressVote XL. In addition, performance enhancements were made to the Electionware Reporting module which reads in results media from the voting machines and generates all jurisdiction-required election reports. EVS 6.0.2.1 voting system incorporated those enhancements into an updated release. The system components remained the same; the only change in the new release were the aforementioned software enhancements.

16. EVS 6.0.2.1 voting system underwent independent testing in September 2018 to obtain EAC certification and certification by the Pennsylvania Department of State. The Department's examiner determined that the EVS 6.0.2.1 voting system release complied with Article XI-A of the Pennsylvania Election Code and certified it on November 30, 2018. Likewise, on November 12, 2018, the EAC certified that EVS 6.0.2.1 complied with VVSG.

### **III. Touch-Screen Voting vs. Voting on Hand-Marked Paper Ballots**

17. ES&S sells and supports every manner of in-person voting machines used in the United States (including touch screen ballot-marking devices ("BMDs") for all and so-called "hybrid" touch screen BMD/Tabulator machines), and hand-marked paper ballots in combination with touch screen BMDs for assisted voting required by ADA. In addition, ES&S supports scanning and tabulating in the precinct or at a central location.

18. Touch-screen ballot marking devices were first offered as a means of providing voters with various disabilities equal opportunity to independently make their vote selections and mark a paper ballot. Their language and audio capabilities also offer visually impaired voters,

low literacy voters, and voters that require an alternate language a means of having the ballot read to them.

19. Touch-screen voting machines also allow the voter to more efficiently vote their ballot correctly by warning them of under-voted contests or blank ballots, and fully prevent them from making mistakes such as overvoting a contest that would prevent their votes from being counted. Voters are allowed to review their selections before they are printed, greatly reducing the chance that they have to request a replacement ballot because they marked it incorrectly.

20. Touch screen BMDs made by ES&S mark ballots in a way that prevents an unclear mark from being detected. Voters that hand-mark paper ballots very often mark their selections in an incomplete or incorrect manner and are confused when the ballot scanner presents them with an alert. Alerts from improperly marked ballots are ignored by voters as much as 5% of the time, causing particular races to not be counted on their ballots.

21. Touch screen voting machines like the ExpressVote XL present the entire ballot to the voter and, by using a grid format, allow voters to vote for candidates of a particular party very quickly.

#### **IV. Dr. Weber's Assertions Are Unfounded**

22. ES&S has provided guidance regarding disinfecting solutions and wipes that are safe for use with the ExpressVote XL's touch screen, plastic housing, and keypad and that are, based on the latest recommendations from the CDC, effective for eliminating as best as possible the COVID-19 virus.

23. ES&S has also provided a number of "touchless voting" options that include various inexpensive, disposable stylus products that can be used by voters to make their selection or poll workers to interact with the user interface without contacting or damaging the ExpressVote and ExpressVote XL touch screens.

24. Cleaning options and touchless voting methods were successfully utilized in various elections around the country, including the use of simple solutions such as a cotton swabs (i.e. Q-Tip) and disposable gloves in Pennsylvania ExpressVote jurisdictions.

25. There has been no data from any of these real-life examples demonstrating that touch-screen voting causes the risk of COVID-19 spread to increase more than voting by hand-marked paper ballot.

26. The CDC, in a document attached to Petitioner's own motion, itself expects voting to be conducted safely on touch-screen machines through use of a "stylus or similar object." *See* Ex. 26 to Motion, at 5 (CDC's guidance for touch-screen voting, which recommends using a "stylus or similar object").

27. Dr. David Weber's affidavit contains a number of inaccurate assertions and mistaken assumptions.

28. Dr. Weber inaccurately states that "[e]very voter will have to touch the electronic voting device screen or keypad a number of times to vote and touch the plastic components when inserting and retrieving the ballot card." Weber Aff., ¶ 71. Not so. In fact, every voter can use a Q-Tip or other intermediary such that the voter's skin does not touch the ExpressVote or ExpressVote XL's touch screen. Among others, a voter may record his or her vote using a disposable glove.

29. Dr. Weber also mischaracterizes ES&S's cleaning recommendations. ES&S does not—contrary to Dr. Weber's suggestion—recommend that the touch screen surface itself be wiped for up to 10 minutes. Dr. Weber takes out of context a reference to cleaning a variety of types of "external surfaces" of the voting machine products, which may be wiped "between 30 seconds and 10 minutes depending on the product." Ex. 29 at 2 (emphasis added).



30. The touch screen surface itself may be cleaned in 30 seconds or less.

Jurisdictions that offer a touchless option such as a Q-Tip may use their discretion to reduce the frequency of the wipe down of the machines.

31. Dr. Weber offers no facts for the contention that voting on the ExpressVote or ExpressVote XL exposes a voter to greater risk than voting on a hand-marked paper ballot. A voter voting by pen and paper (seated or standing) necessarily touches with both hands more surfaces and objects than a voter using a Q-Tip (in one hand) to vote on the ExpressVote XL.

32. Voting by touch screen is associated with faster, not slower, voting compared to hand-marked paper ballots. Moreover, poll workers must clean far more surfaces when voters vote by hand-marked paper ballot voters than when voters use a Q-Tip to vote on touch screens. The suggestion that hand-marked paper ballots, and all the cleaning associated with same, will not delay the voting process is erroneous.

33. Dr. Weber warns that touching electronic voting devices presents a higher risk of transmitting COVID-19 than by voting by hand-marked paper ballots because “coronaviruses have been found to survive for up to 4 to 5 days on glass surfaces and up to 5 days on plastic,” Weber Aff., ¶ 70, but he does not acknowledge that voters typically mark a hand-marked paper ballot in a voting booth, which itself is made of plastic. In so doing, voters are typically resting their hands and/or arms on the writing surface for a longer amount of time than they would when touching a touch screen.

34. Dr. Weber does not acknowledge that in the case of a “hybrid” voting implementation, such that used by the ExpressVote XL, voters can vote in a completely touchless manner by (1) having the poll worker insert the card to activate the ballot, (2) the voter

using an inexpensive, single-use stylus, and finally (3) the machine delivering the ballot into the attached bin.

35. Dr. Weber argues that in some counties, “poll workers must touch the screen of the voting device to activate the machine” and which “creates additional vectors of transmission.” *Id.* at ¶ 72. However, Dr. Weber fails to acknowledge that the poll worker can also use a stylus or disposable glove to activate the machine.

36. Dr. Weber criticizes ES&S’s cleaning procedures by noting the time needed to clean a touch screen but does not equally acknowledge the time needed to clean a voting booth used by individuals to vote on paper ballots. Again, voters marking a paper ballot are typically resting their hands and/or arms on the writing surface for a longer amount of time than they would when touching a touch screen with a Q-tip or disposable glove.

37. Dr. Weber conspicuously offers no analysis of or evidence from the June 2020 Pennsylvania primary elections which were carried out during COVID-19 and on the ExpressVote and ExpressVote XL machines in multiple Pennsylvania counties.

## **V. Mr. Ritchie’s Assertions Are Unfounded**

38. Mr. Ritchie indicates his belief that a voter’s use of a BMD typically takes much longer than hand-marking a paper ballot. His experience in the State of Minnesota, however, is only with older generations of BMDs, specifically ones used only by disabled voters. Certain disabled voters, depending on their individual circumstances, often take much longer to mark a ballot. Mr. Ritchie’s experience is not on-point with Pennsylvania’s systems.

39. Mr. Ritchie provides no actual data to support his assertions and does not acknowledge improvements made to touch-screen voting in recent years, particularly those afforded a voter on an ExpressVote XL. The ExpressVote XL, which is used in Philadelphia, presents the entire ballot on a single screen and allows for very fast voting. Voting sessions on

the ExpressVote XL over a number of Pennsylvania elections averaged about 80 seconds from ballot activation to vote casting, with many voters completing their session in less than 20 seconds.

40. Mr. Ritchie fails to acknowledge that a touch-screen voting machine prevents voters from common marking mistakes such as over-votes, which would cause a voter filling in a hand-marked ballot to have their ballot rejected at the scanner and result in the voter having to start the voting process over again, greatly increasing their time in the poll site.

41. Mr. Ritchie argues that hand-mark paper ballots minimize the number of high-contact surfaces that will be touched by a voter. He fails to understand that touch-screen voting can be done without touching the screen by means of a stylus or glove and fails to acknowledge that a voter will most certainly touch common-use areas of a voting booth for extended periods of time while hand-marking a ballot.

42. Mr. Ritchie indicates that counties “will have little to no difficulty switching to hand-marked paper ballots as the primary voting method,” Ritchie Aff. at ¶ 39 but does not appear to seriously consider the cost of precinct scanners for those using “hybrid” BMD/tabulators and voting booths. There is no suggestion or evidence that any of the counties that have expended time and resources to prepare for touch-screen voting have anywhere near the number of tabulators needed to process hand-marked paper ballots.

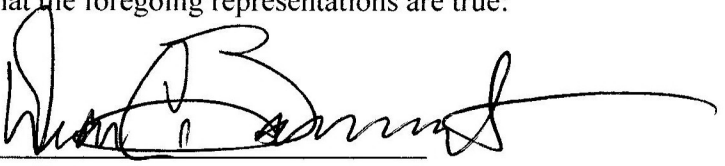
43. Petitioner’s demand that touch screens be abandoned in favor of paper ballots could in fact expose voters to COVID-19 at greater levels and lead to longer delays on Election Day. It would also leave many jurisdictions scrambling to count large numbers of ballots in a timely fashion unless they make a significant additional investment in both ballot scanning devices for the additional ballot printing costs. The City of Philadelphia alone would need

thousands of ballot scanners—which it does not own, and which cannot be manufactured, procured, shipped, and tested in the time remaining before the coming election —likely costing Philadelphia alone upwards of \$10 million dollars in order to count an all-hand-marked ballot election. Because of the movement to vote-by-mail, the demand for tabulators have all but eliminated available inventories such that large orders could not be supported. COVID-related supply chain issues, on top of manufacturing lead times, would make the manufacturing of machines in the timeframe needed impossible.

44. Lastly, Mr. Ritchie does not acknowledge the specific benefit touch-screen machines provide for early voting. Vote centers used for early voting must issue many different possible ballot styles, and touch-screen voting machines are particularly useful in meeting the needs of early vote centers without the need for on-site ballot printing.

I affirm under the penalties for perjury that the foregoing representations are true:

Executed on August 21, 2020.

  
Dean Baumert

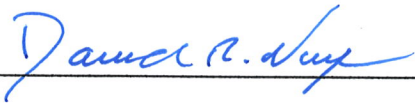
## **DECLARATION OF DAVID VOYE**

I am David Voyer, the Manager of the Division of Elections of Allegheny County, Pennsylvania. I make the following statements. They are accurate to the best of my knowledge:

1. Act 12 authorized each county board of elections to consolidate polling places and reduce polling place locations by up to 60%. This modification applied to the June 2, 2020 primary election only. Act 12 further authorized each board to further reduce the number of polling places for the 2020 primary election if warranted by the county's circumstances and approved by the Department of State. Pursuant to this provision, the Allegheny County Board of Elections (Board) applied for and received permission from the Department of State to consolidate polling places in Allegheny County so as to provide 211 polling places during the primary election, as compared with 1323 polling places in 830 locations the November 2019 general election.
2. The polling-place-consolidation provisions in Act 12 are no longer in effect, and I do not currently expect any similar statutory authorization to be enacted with respect to the 2020 general election.
3. The Board is making efforts to recruit enough poll workers to open every polling place, 1323, in total. This polling place configuration is planned for the November 3 general election. Although the Board's ability to open every polling place during the general election will depend on many factors—including, critically, the extent of COVID-19 infections in the Pittsburgh area between now and election day—it currently appears that Allegheny County has recruited far more poll workers for November than it was able to muster in June, which number is projected to be sufficient to staff all 1323 polling places.
4. Thus, the Board currently expects that it will be able to function at, its normal level of polling places for the general election.
5. The Board also currently expects that 96% of those polling places will occupy the same locations as they did during the November 2019 election.

6. With respect to the remaining expected 4% of polling places, the Board is striving to locate them as close as reasonably possible to their original location and, to the extent possible, in the actual election district.

7. If a polling place must be moved, however, the Board cannot guarantee that it will be able to locate the new polling place less than 0.5 miles from the original one. Only a limited number of sites with the required features (space, ADA accessibility requirements, electrical power sources, etc.) are available, and there may not always be an available site located within 0.5 miles of the original site. In addition, there is a certain amount of resistance from existing polling places, as to use in November.



David Voye



Date

HANGLEY ARONCHICK SEGAL  
PUDLIN & SCHILLER

Mark A. Aronchick (ID No. 20261)  
Michele D. Hangley (ID No. 82779)  
Robert A. Wiygul (ID No. 310760)  
John B. Hill (ID No. 328340)  
One Logan Square, 27th Floor  
Philadelphia, PA 19103-6933  
(215) 568-6200

*Counsel for Respondents*

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

NAACP PENNSYLVANIA STATE  
CONFERENCE,

Petitioner,

v.

KATHY BOOCKVAR, IN HER CAPACITY AS  
SECRETARY OF THE COMMONWEALTH OF  
PENNSYLVANIA, et al.

Respondents.

No. 364 MD 2020

**DECLARATION OF ROBERT A. WIYGUL IN SUPPORT OF  
RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONER'S  
APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF A  
PRELIMINARY INJUNCTION**

I, Robert A. Wiygul, declare under the penalty of perjury pursuant to 18

Pa.C.S. § 4902 that:

1. I am a shareholder of the law firm of Hangley Aronchick Segal Pudlin

& Schiller, counsel for Respondents, Secretary of the Commonwealth Kathy Boockvar and Jessica Mathis, Director of the Bureau of Election Services and Notaries of the Pennsylvania Department of State. I make this declaration in support of Respondents' Brief in Opposition to Petitioner's Application for Special Relief in the Form of a Preliminary Injunction ("Application").

2. Attached as Exhibit 1 is a true and correct copy of a Memorandum filed by the court on April 29, 2020, in *Stein v. Boockvar*, No. 16-6287 (E.D. Pa.).

3. Attached as Exhibit 2 is a true and correct copy of the Petition for Review Addressed to the Court's Original Jurisdiction filed on December 12, 2019, in *National Election Defense Coalition v. Boockvar*, No. 674 MD 2019 (Pa. Commw. Ct.).

4. Attached as Exhibit 3 is a true and correct copy of Petitioners' Brief in Support of Application for Special Relief in the Form of a Preliminary Injunction Under Pa. R.A.P. 1532 filed on January 10, 2020, in *National Election Defense Coalition v. Boockvar*, No. 674 MD 2019 (Pa. Commw. Ct.).

5. Attached as Exhibit 4 is a true and correct copy of the Praecipe to Withdraw Motion for Preliminary Injunction filed on January 24, 2020, in *National Election Defense Coalition v. Boockvar*, No. 674 MD 2019 (Pa. Commw. Ct.).

6. Attached as Exhibit 5 is a true and correct copy of the Response in Opposition to Petitioner's Request to Expedite Disposition on Respondent's



Preliminary Objections to Petitioners' Petition for Review filed on June 10, 2020, in *National Election Defense Coalition v. Boockvar*, No. 674 MD 2019 (Pa. Commw. Ct.).

7. Attached as Exhibit 6 is a true and correct copy of the Order Denying Plaintiffs Motion for Preliminary Injunction filed on August 19, 2020, in *North Carolina State Conference of the NAACP v. North Carolina State Board of Elections*, No. 20-CVS-5035 (N.C. Super. Ct.).

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on August 21, 2020.

/s/ Robert A. Wiygul

# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JILL STEIN, et al.,**

**Plaintiffs,**

**v.**

**KATHY BOOCKVAR,**

*in her official capacity as Secretary of the  
Commonwealth of Pennsylvania, et al.,*

**Defendants.**

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**Civ. No. 16-6287**

**Diamond, J.**

**April 29, 2019**

**MEMORANDUM**

In moving to enforce the Agreement settling her 2016 lawsuit, failed presidential candidate Jill Stein asks me to bar the use of almost 4,000 voting machines, thus making it impossible for Philadelphia to participate in the 2020 presidential election. This is of a piece with the 2016 action itself: Stein’s eleventh-hour voting machine “hacking” allegations and request for a recount that would have disenfranchised some six million Pennsylvania voters. In both instances, Dr. Stein publicly announced that she seeks to promote election integrity. Yet, the Commonwealth suggests that she seeks to promote only herself. Pennsylvania’s computer expert testified credibly in 2016 that Stein’s allegations “are approximately as likely as the fact that androids from outer space are living amongst us and passing as humans.” (12/6/16 Hr’g Tr. 63:23-64:9.) Her allegations now—that the challenged voting machines are unreliable and thus violate the Settlement Agreement—are as baseless and irrational. I will deny her Motion.

**I. PROCEDURAL HISTORY**

Dr. Stein and several Pennsylvania voters filed the instant Motion on November 26, 2019—almost a year after this case settled. (Doc. No. 112). Over Stein’s opposition, I granted the Philadelphia Board of Elections’ and the City’s Motion to Intervene as Defendants (although I will refer to all Defendants as the Commonwealth). (Doc. Nos. 131, 136 ¶ 2); Fed. R. Civ. P. 24(a).

In the same Order, I identified factual issues to be addressed at an evidentiary hearing. (Doc. No. 136 ¶ 4.) Following a telephone conference with the Parties, I decided various motions and found that the Commonwealth had made a *prima facie* showing that Stein’s delay in filing the instant Motion was unwarranted and prejudicial. (Doc. No. 161.) I also set out procedures for the hearing that began on February 18. (*Id.*) The Parties introduced documents and called witnesses, including the product manager of the ExpressVote XL (the challenged voting machine), who demonstrated its use. At the hearing’s conclusion on February 21, 2020, I asked the Parties to submit proposed findings and conclusions. The matter has been fully briefed. (Doc. Nos. 180 & 182.)

## II. LEGAL STANDARDS

I have jurisdiction to enforce the terms of the Settlement Agreement. (SA ¶ 13; see Dismissal Order ¶ 3, Doc. No. 110); Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 381 (1994). “Motions for the enforcement of settlement agreements resemble motions for summary judgment, and courts employ a similar standard of review.” Orthophoenix, LLC v. Stryker Corp., 2017 WL 1197675, at \*4 (D. Del. Mar. 28, 2017); see Tiernan v. Devoe, 923 F.2d 1024, 1031–32 & n.5 (3d Cir. 1991); Myers v. AutoZoners, LLC, 2017 WL 6316586, at \*7 (W.D. Pa. Dec. 11, 2017). I “must treat all of the non-movant’s assertions as true, and, ‘when these assertions conflict with those of the movant, the former must receive the benefit of the doubt.’” Orthophoenix, 2017 WL 1197675, at \*4 (D. Del. Mar. 28, 2017) (quoting Tiernan, 923 F.2d at 1032). I must “view the facts in the light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor.” Myers, 2017 WL 6316586, at \*7 (quoting Adreoli v. Gates, 482 F.3d 641, 647 (3d Cir. 2007)). Enforcement is appropriate only if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

### **III. BRIEF OVERVIEW**

In settling the Stein lawsuit, the Commonwealth emphasized that it was simply implementing the decision it had made well before: to “replace [Pennsylvania’s] aging voting equipment in the next few years” with “modern machines [that] will include a paper record” the voter could review. (Wolf Press Release, Jx 2.) Stein’s lawsuit had nothing to do with that decision, which was part of a national movement away from Direct Recording Electronic voting machines (“DREs”) that record votes only electronically. When the Settlement was negotiated, the sole concern expressed by Stein’s lawyers or “expert” was that the Commonwealth might extend its use of DREs (which the Commonwealth had already committed to retiring). Accordingly, in entering into the Agreement, Stein understood that Pennsylvania was considering for statewide approval—“certification” under state law—machines which maintained a paper record that could be reviewed by the voter and audited (if necessary). Among them was the ExpressVote XL.

In the eight months following the Settlement, Stein expressed no concern as the Commonwealth certified various machines which, in turn, were purchased by counties throughout Pennsylvania. Only a year after settling did she allege that the XL did not comport with the Settlement Agreement, although she repeatedly changed the basis for her objection. By then, however, Philadelphia had already purchased some \$30 million of these machines. Two smaller counties had also purchased XLs. The credible evidence shows that the XL is exactly the kind of voting machine contemplated by the Agreement, and that Stein has not shown that I should grant her belated Motion.

### **IV. RELIEF REQUESTED**

Like her challenge to Philadelphia’s voting machines, Stein’s request for relief continues to “evolve.” Stein initially urged that because the XL does not comport with the Agreement, I

should order its immediate decertification. (Pls.’ Mot. to Enforce 2.) Although she never amended her Motion, she subsequently altered her request for relief. Likely realizing that the XL’s immediate decertification would make it impossible for Philadelphia to conduct its 2020 primary election (which the Commonwealth has moved from April 28 to June 2), she suggested in her Reply Brief that I might order the Commonwealth to decertify the machines after the primary. (Pls.’ Reply Br. 15.) Given the compelling evidence that Philadelphia could not replace the XLs in time for the November 2020 presidential election, however, she again has changed her request for relief, this time suggesting that “the appropriate course is not to deny the motion, but to order decertification for 2021.” (Pls.’ Proposed Conclusions of Law 22.) Remarkably, in the next sentence, she reverts to her previous request, urging me to “order the Secretary of the Commonwealth to decertify the ExpressVote XL in time for the November 2020 General Election.” (*Id.*)

Dr. Stein’s inability to decide what relief she wants underscores her Motion’s lack of factual or legal basis.

## **V. FACTUAL FINDINGS**

From the outset, the Parties disputed “material facts concerning the . . . *terms*” of the Settlement Agreement. Tedesco Mfg. Co.v. Honeywell Int’l, Inc., 371 F. App’x 316, 319 (3d Cir. 2010). Accordingly, I conducted the February 2020 hearing. See Leonard v. Univ. of Del., 204 F. Supp. 2d 784, 786 (D. Del. 2002). Three of the four witnesses Stein called were adverse—employed by the Commonwealth or the City. Her only witness was computer expert, J. Alex Halderman, PhD, whose ill-considered theories formed the basis of both Stein’s original Complaint and the instant Motion to Enforce. I largely discredit Halderman’s testimony and credit the testimony of the other witnesses called both by Stein and the Commonwealth: Secretary of State Kathy Boockvar; Department of State Chief Counsel Timothy Gates; DOS Executive Deputy

Chief Counsel Kathleen Kotula; Dean Baumert of Election Systems & Software (the company that manufactures and markets the XL); City of Philadelphia Procurement Commissioner Monique Nesmith-Joyner; and Executive Director of the Philadelphia Board of Elections Joseph Lynch. Based on their testimony and related evidence, I make the following findings. Because the record shows that Dr. Stein was and remains the moving force behind her Motion—while her co-Plaintiffs have played no discernable role—I have referred only to her throughout.

#### **A. 2016 Litigation**

On December 5, 2016—a week before Pennsylvania’s deadline to certify its presidential electors—Dr. Stein and voter Plaintiff Randall Reitz filed a Complaint, alleging statewide voter fraud caused by massive “hacking” of Pennsylvania’s DRE Machines. (See, e.g., Pls.’ Mem. of Law in Support of PI Mot. 27, Doc. No. 5 (“Pennsylvania uses antiquated, vulnerable voting machines easy to hack . . .”); id. 29 (“The right to vote would be meaningless if it meant only the right to *cast* a vote on Election Day, with no assurance that the vote was accurately *counted*.”).) Stein sought, *inter alia*, invalidation of significant parts of Pennsylvania’s Election Code, and a mandatory injunction: (1) requiring the Commonwealth Secretary to recount the votes cast in the November 2016 presidential election; and (2) allowing Stein to conduct forensic examinations of Pennsylvania’s DRE voting machines. (Doc. No. 1.) Like the relief she seeks now, her requested relief in 2016 also “evolved”: during the December 9, 2016 evidentiary hearing, Stein narrowed her request, ultimately seeking “a hand recount of all paper ballots of one precinct in each of the seventeen paper-ballot Counties and a forensic review of the election management systems of six Counties, including Philadelphia.” (PI Mem. Op. at 8, Doc. No. 55.) Granting even this narrowed request would have precluded timely certification of Pennsylvania’s presidential vote.

I refused her injunction request on five alternative grounds. (Doc. Nos. 54 & 55.) Threshold defects—including Stein’s lack of standing and her prejudicial, unexplained delay—

barred relief. Moreover, Stein showed neither any likelihood that she would succeed on the merits of her claims, nor any threat of immediate, irreparable harm. Indeed, Stein presented no evidence that any hacking had actually occurred. The only part of Dr. Halderman’s 2016 testimony that I credited was his admission “that he had ‘no evidence’ that any voting machine was hacked, and that the election outcome was ‘probably not’ the result of a hack.” (PI Mem. 25, 28 (quoting 12/9/16 Hr’g Tr. 25:22–26:1, 26:19–24).)

Stein did not appeal my ruling. On February 14, 2017, she filed an Amended Complaint, rehashing Dr. Halderman’s discredited hacking theories, and alleging violations of her First and Fourteenth Amendment rights. Basing her claim to standing on her failed candidacy, she again sought a forensic review of Pennsylvania’s DRE machines, and again asked me to invalidate the recount provisions of the Pennsylvania Election Code. (Amended Compl., Doc. No. 71.) The gravamen of Stein’s “hacking” charge was that DREs are vulnerable because they did not produce a “paper trail” to identify malfeasance or irregularities. (*Id.* ¶¶ 1–2; *see id.* ¶ 24 (“Pennsylvania . . . relies disproportionately and primarily on electronic voting with no paper trail.”).)

Although Stein sought to add new Plaintiffs and allegations, her Amended Complaint had many of the same defects as her initial pleading. In moving to dismiss, the Commonwealth argued persuasively that the lead Plaintiff had no standing: Dr. Stein was not registered to vote in Pennsylvania; received less than 1% of Pennsylvania’s vote in the 2016 presidential election; and conceded that granting the relief she requested would not result in her winning the Pennsylvania presidential vote. Although I was inclined to dismiss her from the case, “erring on the side of caution at this early stage, I conclude[d] that Dr. Stein’s allegations, generously read, are sufficient to confer standing” with respect to some of her claims. (Order on Mot. to Dismiss 17, Doc. No. 98.) I did, however, dismiss the bulk of Stein’s Amended Complaint. Remarkably, in the instant



Motion, Stein states that I had “denied [the Commonwealth’s] Motion to dismiss in substantial part.” (Pls.’ Mot. to Enforce 1.)

## **B. The Commonwealth’s Initiative**

In 2017, the Department of State announced an “Initiative” to replace its DREs with machines that “conform to enhanced standards concerning resiliency, auditability[,] and security.” (Directive Concerning the Purchase of Electronic Voting Systems, Jx 1.) In February 2018—nine months before Stein’s lawsuit settled—DOS thus stated that Pennsylvania would certify only voting machines that “employ[] a voter-verifiable paper ballot or a voter-verifiable paper record of the votes cast by a voter.” (*Id.*) In crafting the Initiative, the Commonwealth relied on “Securing the Vote Report,” prepared by election experts, who urged use of machines that create a paper ballot readable by people that are also countable by machine or by hand. (2/18/20 Tr. 86:25–87:22, 90:7–16; National Academies of Sciences, Engineering & Medicine, Securing the Vote: Protecting American Democracy, Dx F.) Governor Wolf stated that “[c]ounties across Pennsylvania are preparing to replace their aging voting equipment in the next few years” with “modern machines [that] will include a paper record.” (Wolf Press Release.) In April 2018, DOS directed all counties—which, under state law, are responsible for procuring “certified” voting equipment—to purchase voting machines that comport with the Initiative’s “voter-verifiable paper record[]” requirement. (Boockvar Decl. ¶ 15, Dx Y.) This would substantially overhaul voting in Pennsylvania, where, as of the 2016 election, 50 of 67 counties (including Philadelphia, its largest) used DREs. (2/18/20 Tr. 62:11–15.)

The Initiative was part of a nationwide movement to replace outmoded voting machines with systems that employ paper records to facilitate post-election auditing. (Marks Testimony at 1–2, Jx 13 (discussing, *inter alia*, Securing the Vote).) The Commonwealth also issued a Directive to vendors detailing the requirements—including use of a “voter-verifiable paper record”—that

their systems must meet to be certified for use in Pennsylvania. (Attachment E to 6/12/18 Directive Concerning Electronic Voting System Examinations by DOS, Jx 7.)

There are two types of voting machines available that meet those requirements: (1) “hand-marked ballot systems,” by which the voter completes a ballot by hand and feeds it “into a scanner”; and (2) “ballot-marking devices”—machines that “print a paper and the paper is the official vote of record.” (2/18/20 Tr. 63:5–13.) DOS publicly releases monthly “Poll Book” Reports, indicating which voting systems (or “suites,” as the Commonwealth describes groups of related machines) are certified, and the status of those under review. (2/18/20 Tr. 285:11–86:21; see, e.g., 9/21/18 Pennsylvania Voting System & Electronic Poll Book Report, Jx. 12.)

### **C. Initial Settlement Communications**

Immediately after I dismissed most of Dr. Stein’s Amended Complaint, the Parties began settlement discussions. Mr. Gates served as the Commonwealth’s primary negotiator, assisted by his deputies, Ms. Kotula and John Hartzell, and Deputy Attorney General Sue Ann Unger. (2/18/20 Tr. 59:9–10, 211:6–18.) Stein’s lead counsel, Ilann Maazel, and his associate negotiated for Stein. (Id. 175:7–13.) Dr. Halderman provided technical advice and served as Stein’s “designee for purposes of” monitoring Pennsylvania’s voting system certifications. (2/19/20 Tr. 3:21–22, 84:16–25.)

The Commonwealth would settle only if its “central goal” was met: to resolve this litigation “consistent with” Pennsylvania’s “path” toward replacing its aging DREs “with new systems that employed a voter-verifiable paper ballot system.” (2/18/20 Tr. 56:17–58:7; see id. at 210:7–12 (Gates) (“And the idea was, if we can settle the case for the Initiative and the things that [the Commonwealth was] already doing, why not? Why not try to settle the case?”).)

Secretary Boockvar instructed her negotiators to “provide to the Plaintiffs information that would make it clear what [the Commonwealth’s] path entailed.” (2/18/20 Tr. 60:3–5.) Gates did

just that. (Id. 179:21–22; see id. 179:22–180:1 (“I think we had an opportunity to settle this case because, one, we are getting rid of the DRE machines, which I know that [Plaintiffs] hate. And, two, we are moving into systems that provide a voter-verifiable record that can be audited.”); id. 210:7–12.)

Before the first settlement conference, Ms. Unger informed Dr. Stein about the Commonwealth’s “path.” (9/28/18 Unger Email, Jx 14.) Attached to Unger’s email were:

- The September 21, 2018 Poll Book Report, which listed the voting system suites under consideration along with their testing status. (9/28/18 Poll Book Report, Jx 12.)
- DOS Commissioner Marks’s February 9, 2018 email to the county boards of election advising of the DOS’s Initiative to move from DREs to machines that employ “a voter verifiable-ballot or a voter-verifiable paper record of the votes cast by a voter.” (9/28/18 Unger Email; see 2/9/18 Marks Email, Jx 1.)
- Marks’s April 12, 2018 email and press release, advising that Initiative compliant voting machines must be selected by December 31, 2019, “and preferably in place by the November 2019 general election.” (4/12/18 Marks Email, Jx 5.)
- DOS’s revised Directive to vendors advising, *inter alia*, that the Commonwealth would certify only machines that employ “a voter-verifiable paper ballot or a voter-verifiable paper record of the vote cast by a voter.” (9/28/18 Unger Email; see 6/12/18 Directive Concerning Electronic Voting System Examinations by DOS, Jx 7.)
- Marks’s September 25, 2018 testimony to the Senate State Government Committee. (9/25/18 Marks Testimony, Jx 13.)

The Poll Book that Ms. Unger sent Stein provided that the Commonwealth had tested ES&S’s EVS 6.0.0.0/6.0.2.1—the “suite” containing the ExpressVote XL—between September 24 and 28. (See 9/21/18 Poll Book at 1.)

On October 5, 2018, the Parties spoke about the listed voting systems that the Commonwealth was considering for certification. (2/18/20 Tr. 215:5–216:8.) Mr. Maazel seemed “very please[d]” with the Commonwealth’s direction, but said he wanted to send the list to

Halderman, who would perform a “lemon check” to confirm that the Commonwealth was not considering DREs for certification. (*Id.* 215:19–216:18.)

Mr. Maazel responded to the Unger email on October 9, 2018, requesting “a more granular list” of machines to ensure that there were no DREs among them, and providing written “feedback” from Dr. Halderman. (10/9/18 Maazel Email, Jx 20.) Halderman had reviewed the voting systems under consideration (including the ExpressVote), noting that he did not “*disapprove* of them in their entirety. All of [the systems] (that use paper ballots) can be used with reasonable security if implemented with voter-verified paper ballots and manual audits.” (10/9/18 Maazel Email (emphasis in original).) Halderman stated that Pennsylvania should “certify [the voting systems] with restrictions that prohibit . . . dangerous functions.” (*Id.*) By this, Halderman—referring to an article by his mentor, computer science professor Andrew Appel—meant that although the ES&S ExpressVote “can work as traditional ballot marking devices,” it could be configured to “defeat the purpose of the paper trail” when “it is set up to print the *ballot* but not show it to the vote[r] . . . .” (*Id.* (emphasis added) (discussing Appel, Serious Design Flaw in ESS ExpressVote Touchscreen: “Permission to Cheat,” Jx 21 (explaining in detail the ExpressVote “ballot-marking device” and its “paper ballots,” and linking to a video of an ExpressVote ballot-marking machine in operation)).) Halderman thus knew that the ExpressVote XL employed a summary card (which he called a “ballot”) and that it tabulated votes by scanning barcodes on the card. (*Id.*; 2/19/20 Tr. 31:5–20, 52:3–22, 99:9–17.)

#### **D. Settlement Conference**

Magistrate Judge Rice conducted the conference on October 11, 2018, which was attended by Mr. Maazel and his associate, Secretary Boockvar, Mr. Gates, Ms. Kotula, and Mr. Hartzell. (Fact. Stip. ¶¶ 29–30.) In her settlement memorandum submitted to Judge Rice before the conference, Stein set out her demands: (1) that Pennsylvania move from DREs to “voting machines

with paper ballots”; and (2) that “Pennsylvania adopt risk-limiting audits.” (Plaintiffs’ 9/26/18 *Ex Parte* Settlement Memo, Jx 23, at 2.) Stein acknowledged the Commonwealth’s “process of updating its voting systems.” (*Id.*) Indeed, after the Secretary “communicated to the Plaintiffs” the exact “path that [the Commonwealth was] already on,” the Parties “reached agreement based on the common understanding of those terms.” (2/18/20 Tr. 150:23–24; *id.* 150:25–151:1.) As Secretary Boockvar described:

It was completely agreed upon that the path we were on, which again involved ballot-marking devices and hand-marked paper ballots, both were included as part of the path, and that as long as there was a voter-verifiable paper record that was auditable, reviewable by the voter before they cast their vote and auditable after the fact, that there was no disagreement whatsoever about those terms.

(*Id.* 100:2–9.) Secretary Boockvar credibly explained that the Commonwealth’s insistence on a “ballot” that comprised a “voter-verifiable paper record” were one and the same and of critical importance to Pennsylvania. Indeed, the Commonwealth would not have settled without Stein’s agreement to that path. (*Id.* 105:21–106:19.)

After the conference, Stein drafted a term sheet, in which she stated that the Commonwealth’s machines must produce “paper ballot” so that there would be a “voter-verifiable record of each vote . . . capable of supporting a robust pre-certification audit.” (Term Sheet for Settlement, Jx 24 ¶ 2; 2/18/20 Tr. 166:8–21.) Not only were these Stein’s primary concerns, they comprised her only concern: eliminating DREs, which did not allow voter-verification with a paper record and so could not reliably support an audit. Stein, her negotiators, and her expert designee thus had no interest in limiting the Commonwealth to machines that create a paper record listing all contest options or those that do not employ barcodes.

The Commonwealth added a choice of law provision to the term sheet, and replaced the phrase the “[t]he Secretary will require each county in Pennsylvania to implement these new voting

systems by the 2020 primaries” with the phrase “[t]he Secretary *will continue to direct* each county in Pennsylvania to implement these new voting systems by the 2020 primaries.” (Revised Term Sheet for Settlement, Jx. 25 ¶ 2 (emphasis added).)

The Secretary deemed non-negotiable the “will continue to direct” language, because it tied the Settlement Agreement to the “path [the Commonwealth] had already set.” (*Id.* 58:9–11.) The Parties executed the Agreement on November 28, 2018.

#### **E. The Settlement Agreement**

The Parties dispute the following provisions:

The Secretary will only certify new voting systems for use in Pennsylvania if they meet these criteria:

- a. The ballot on which each vote is recorded is *paper*<sup>3</sup>;
- b. They produce a *voter-verifiable record of each vote*; and
- c. They are capable of supporting a robust precertification auditing process.

The Secretary will continue to direct each county in Pennsylvania to implement these voting systems by the 2020 primaries, so that every Pennsylvania voter in 2020 uses *a voter-verifiable paper ballot*.

(Settlement Agreement at 2, ¶¶ 2–3, Jx 30.) In footnote 3, the Parties explained what paper ballot did not mean:

Footnote 3: A *VVPAT receipt* generated by a DRE machine *is not a paper ballot*.

Like Mr. Maazel’s request for “granular” information and Halderman’s “lemon check,” this footnote reflected Stein’s goal: the elimination of DREs, which (she believed) could be subject to vote tampering because they did not provide a voter-verifiable paper record of the votes cast. Footnote 3 thus also disqualifies DREs that create paper receipts.

The Commonwealth tartly notes that Stein announced the Settlement “with great fanfare” and “celebration.” (Defs.’ Opp’n 1, 2; 2/19/20 Tr. 143:24–144:6.) Indeed, Stein boasted to her Twitter following: “Huge victory for election integrity! We just settled our #recount lawsuit in Pennsylvania for a guarantee that PA will use paper ballots by 2020 . . . .” (Stein Tweets at 1, Dx N.) Stein’s “Communications Director” Dave Schwab lauded the Settlement Agreement (knowing it would allow ballot-marking devices that tallied votes by barcode). (*Id.* at 4.) Mr. Maazel also touted the Settlement Agreement the day after it was signed, declaring on his firm’s website: “We will be watching closely to ensure Pennsylvania implements every one of [the Agreement’s] important election reforms.” (Emery Celli 11/29/18 Press Release, Jx 33.)

In taking credit for Pennsylvania’s replacement of its DREs, Stein, her Communications Director, and her counsel ignored that the Commonwealth would have made the same equipment changes in the absence of the Stein litigation. Indeed, the litigation appears to have created a single benefit that would not otherwise have been conferred: the payment of \$150,000 to Stein’s lawyers. (SA ¶ 9.)

#### **F. Pennsylvania Certifies the ExpressVote XL**

During the February 2020 hearing, Mr. Baumert, who supervised the XL’s design and development, extensively discussed and demonstrated the machine’s many features. (*See* 2/19/20 Tr. 190:19–221:5.) Although each county chooses and procures its own voting machines, it must select voting machines certified by the Secretary of the Commonwealth and the United States Election Assistance Commission. 25 P.S. § 2621(b); (2/18/20 Tr. 11:18–23.) Because Dr. Stein charged that ES&S’s ExpressVote XL violates the Settlement Agreement, I ordered the Parties to bring an actual XL machine to the February 2020 hearing. (1/20/20 Tr. 21:7–22:2.) I closely examined the XL—which comprises a large touch screen on wheels, with a clear panel through which the ballot can be read:

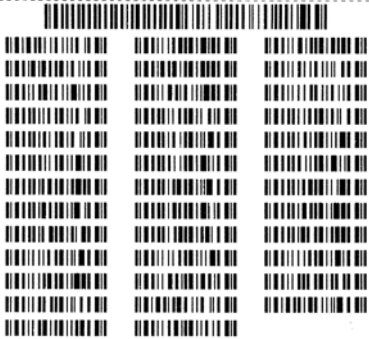


*Fig. 1 ExpressVoteXL (Px 1012.)*

The machine is reliable and easy to use. It is a hybrid device, combining ballot-marking and tabulating/scanning functionalities within a single system. (2/18/20 Tr. 105:1–6; 2/19/20 Tr. 186:22–187:6.) The voter first inserts a blank card into the slot to the right of the screen; this prompts the XL to load the appropriate ballot, which appears on the 32-inch touchscreen. (2/19/20 Tr. 186:25–187:6.) After she makes her selections, the machine prints them, producing a summary card:



COMMONWEALTH OF PENNSYLVANIA/COMMONWEA  
OFFICIAL MUNICIPAL ELECTION BALLOT-610  
12/19/2019  
PRECINCT 1, PRECINCT 1



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PRESIDENT/VICE PRESIDENT OF THE UNITED STATES-----  
REP KIMBERLY JONES  
UNITED STATES SENATOR-----  
REP JAMES COLLINS  
ATTORNEY GENERAL-----  
REP MORGAN WEST SR.  
GOVERNOR/LIEUTENANT GOVERNOR-----  
REP ARNOLD KRILL  
JUDGE OF THE SUPERIOR COURT-----  
W/I:WAYLON DALTON ←  
REPRESENTATIVE IN CONGRESS 5TH DISTRICT DISTRICT 5-----  
REP OTTO PERRY  
REPRESENTATIVE IN THE GENERAL ASSEMBLY 21ST DISTRICT DISTRICT 21-----  
REP RICHARD LAWTON  
JUDGE OF THE COURT OF COMMON PLEAS-----  
REP STEPHEN HARRICK  
REP GERALD DANSON  
REP SHIOMO ARCHIBALD  
REP DELORES DEVAN  
REP VIC POWERS  
REP CHARLIE NEIL  
REP STEVE WEST  
REP JOE PETERS  
REP MARY DANIEL  
REP JOHN ROY  
REP JIM YOUNG  
REP JACK WILLIAMS  
REP STEPHEN MILLER  
REP SHIRLEY HENNING  
REP SANDRA MILLS  
SCHOOL DIRECTOR DISTRICT 1-----  
REP GREG ORTIZ  
REP ADAM BILLIARD  
DEM SANDY WOODS  
SCHOOL DIRECTOR DISTRICT 1-----  
REP RICHARD FREER  
REP JOHN FEDOR  
REP KATE BILLIARD  
COUNTY COMMISSIONER-----  
DEM RAJ SINGH  
W/I:KIRA HILL ←  
COUNTY COMMISSIONER DISTRICT 1-----  
REP MARY SHAPIRO  
W/I:KIRA HILL ←  
ELECTION JUDGE-----  
W/I:JEREMY WADE ←  
BOROUGH COUNCIL-----  
REP ALISSA SHULTZ  
REP ZACHARY WILLS  
REP TANYA CULT  
SUPREME COURT RETENTION-----  
YES  
SUPERIOR COURT RETENTION-----  
YES

Fig. 2, ExpressVote XL Summary Card (Jx 57.)

Immediately before printing, the ExpressVote XL saves the votes from the touchscreen in its “temporary memory.” (2/19/20 Tr. 277:20–21.) The machine then compares what appears on

the screen (i.e. the voter's selections) with the information on the summary card, ejecting the card and displaying an error message in the event of a mismatch. (Id. 278:9–279:4.)

The voter views the card, which is easy to read, through the pane to the right of the touchscreen. At the top of the card is a “master” barcode recording information about all the voter's selections. Immediately below are smaller barcodes that correspond to individual races or ballot measures. Below the smaller barcodes is the text listing the voter's selections.

After reviewing the ballot, the voter decides whether to “spoil” or cast her vote. If she opts to spoil, the machine ejects the printed card. If the voter changes her mind and decides to cast the vote, the card can be reinserted into the machine or into another XL at the polling location. The voter cannot alter an ejected card because the XL will not print over the initial selections. For each ballot cast, the XL scans the barcodes, recording the votes in its permanent memory, and deposits the card into its ballot box.

The XL has many security features. The machine's design makes it very difficult to access the hard-drive and ballot box while the XL is in use. (Id. 194:22–195:5.) The machine recognizes only a special type of USB stick, onto which ES&S loads its election management system. (Id. 198:11–13.) A would-be hacker must have such a stick to meddle with the XL, which will not recognize generic drives, keyboards, or other devices. When the election choices are uploaded to the XL, it confirms that “the data has not been changed since it was sent from the . . . specific election management system.” (Id. 198:19–24.) The data is then encrypted and stored by the machine. As it is used, the data is unencrypted and placed in temporary memory. (Id. 199:3–7.)

The XL's software itself has a “number of checks” that ensure vote integrity. (Id. 226:7–19.) These protect data from being “intercepted and changed,” and ensure that what the machine's

output matches the vote cast. (Id.) The software checks complement “the physical controls of the machine,” along with chain of custody safeguards.

On November 12, 2018 the EAC certified that the group of voting machines referred to as the ES&S “suite”—including the XL—meets federal standards. (U.S. EAC, Certificate of Conformance at 2, Jx 28 (“ExpressVote XL is a hybrid paper-based polling place voting device that provides a full-face touchscreen vote capture that incorporates the printing of the voter’s selections as a cast vote record, and tabulation scanning into a single unit.”).) The EAC made its certification publicly available the day it issued. (2/18/20 Tr. 105:1–14.) The XL thus had to pass the EAC’s “million and a half mark test”: marking that many ballots without a mismatch between the tabulated and printed votes. (2/19/20 Tr. 225:10–226:3.) The EAC also tested and approved the XL’s software security. (Id. 228:13–229:14.)

Acting DOS Secretary Robert Torres certified the XL and other machines in the ES&S suite on November 30, 2018. (Fact. Stip. ¶ 43; ExpressVote Certification Report, Jx 34.) The Certification Report was publicly posted on DOS’s website. (Fact. Stip. ¶ 44; 2/18/20 Tr. 240:9–13.) Only voting systems that comply with state law requirements may be certified. See 25 P.S. § 3031.7. The ExpressVote suite thus qualified in six areas:

- (1) Source Code Review; (2) Documentation Review; (3) System Level Testing;
- (4) Security/Penetration Testing; (5) Privacy Analysis; and (6) Usability Analysis.

(ExpressVote Certification Report at 10.) DOS also conducted follow-up functionality and security examinations specific to the XL. (Id. at 20–21.) These tests (which took over four days) were open to the public and announced in DOS’s Poll Report Books. (2/18/20 Tr. 261:3–21.) DOS widely publicized the testing results and certification—immediately posting the full Report and issuing various press releases. (Id. ¶ 44; 2/18/20 Tr. 153:24–154:5.) Other states—including New Jersey, Delaware, California, and Texas—have certified the XL.

Although Stein offered no evidence as to when she learned of the XL's Pennsylvania certification, she certainly knew by the time of the certification's public announcement, given her knowledge during settlement negotiations that the XL was very close to certification, her lawyer's "watching closely" announcement, and her expert's "feedback" that he did not object to the machine's certification and his obligation to monitor the certification process. (See also Stein Tweets at 4 ("[U]nder the terms of the settlement, the Stein campaign will be appointing election security expert J. Alex Halderman to observe and provide input to Pennsylvania as they proceed to evaluate and certify new voting machines.") (Dave Schwab).) Indeed, Dr. Halderman acknowledged that in September 2018 he was provided with the Poll Book listing the machines the Commonwealth was examining, which stated that the ExpressVote's testing was scheduled for the week of September 24. (2/19/20 Tr. 87:21–88:20, 92:13–93:5.) The Poll Book provided a hyperlink to a page providing more information about the ExpressVote machines—including the XL—under consideration. (Id. 89:4–16.) Given Halderman's role as Stein's only expert advisor, his sworn testimony that he did not click on the hyperlink to learn more about the Commonwealth's prospective machines simply is not credible. (Id. 89:1–3.)

As certified by the Commonwealth, the human-readable text on the ExpressVote XL's paper card is "the official vote of record. (2/18/20 Tr. 91:14–15.) In the event of an audit or recount, "the words [on the paper cards] would be compared to the tabulated results from election night." (Id. 91:15–17 (Boockvar).) Pennsylvania prohibited the "permission to cheat" function—Halderman's sole concern. (10/9/18 Maazel Email.) The XL thus displays the printed ballot to the voter before she can finalize her vote. The Certification Report refers to the paper that the voter verifies as a "vote summary card," not as a paper ballot. (ExpressVote Certification Report at 5 ("The voter can print the vote summary card once they are ready to cast the vote.")) Secretary

Boockvar credibly explained that in its Certification Reports the DOS often borrows terminology employed by manufacturers. (2/18/20 Tr. 17:17–18:2; see ES&S Website Excerpts, Px 1012 (“The *vote summary card* serves as an audit trail for election officials.” (emphasis added)).)

#### **G. A Belated Challenge to the XL**

On July 16, 2019—some nine months after the Commonwealth certified the XL—a group of Pennsylvania voters, represented by three advocacy organizations, petitioned Secretary Boockvar to reexamine the ExpressVote XL. (Fact. Stip. ¶ 71; Petition for Reexamination, Jx 42.) The voters alleged that the XL violates Pennsylvania law. They criticized a design feature—the “printhead issue”—by which the printed, verified ballot must pass by the thermal printer en route to the ballot box. They theorized that a “malfunctioning or manipulated ExpressVote XL could add, modify, or invalidate votes *after* the voter has viewed, confirmed, and cast her ballot.” (Petition for Reexamination at 1.) The voters also contended that “the ExpressVote XL violates the settlement in *Stein v. Cortes*” because its “ballot card” is not a paper ballot for purposes of the Agreement. (*Id.* at 12.) This was the first suggestion that the XL violated the Agreement.

On September 3, 2019, Secretary Boockvar issued a Reexamination Report addressing the voters’ concerns and confirming certification of the ExpressVote XL. (Fact. Stip. ¶ 75; Reexamination Report, Jx 45.)

#### **H. Philadelphia Purchases the ExpressVote XL**

The City began replacing its DREs in April 2018, actually employing its new XLs in the November 2019 election. The City sought to follow its “Best Value” procurement process. On June 4, 2018, the City issued a “Request for Information” about available voting machines. (2/21/19 Tr. 17:24–18:3.) City officials from different departments drafted a “Request for Proposals,” which was shared publicly on November 30, 2018. (Fact. Stip. ¶ 45 ; 2/21 Tr. 7:21–

25.) The City’s “Selection Committee” conducted two rounds of reviewing and scoring the proposals submitted, assessing technical specifications and then cost.

This process, which also involved City Council review, culminated with the City Commissioners’ February 20, 2019 vote to purchase the XLs. (Fact. Stip. ¶¶ 50–51; Philadelphia City Commissioners Approve New Voter-Verifiable Paper Ballot Voting System and New Electronic Poll Books, 2/20/19 Press Release, Jx 37.) On May 3, 2019, the City and ES&S executed a \$29 million contract for 3,750 XL machines. (Contract, Px 1004; 2/21/20 Tr. 34:16–19.) Between April and August 2019, ES&S transported the machines from its “aggressive[ly]” secured Omaha headquarters to Philadelphia. (2/19/20 Tr. 233:13–19; 2/21/20 Tr. 34:9–12, 35:1–2.) The City stored the machines nested together in a locked warehouse, where four of the Boards’ Directors and twenty employees work. (2/21/20 Tr. 48:1–17.)

Board of Elections technicians (who themselves were trained by ES&S employees in Omaha) have conducted over 100 sessions instructing the City’s 8,000 poll workers on the XL’s use. (Id. 40:1–41:14.) Additionally, the Board held over 830 public XL demonstrations and training sessions before the November 2019 election. (Id. 42:12–15.)

The City “expedited” in “every way it possibly could” to have the machines in place in time for the November 2019 election in accordance with the Commonwealth’s Directive. (2/18/20 Tr. 124:21–23.) Procurement, training, and installing the XLs nonetheless “took 18 months in a non-presidential year.” (Id. 125:3–4.) As Secretary Boockvar explained, the process “takes longer, takes more resources, takes more preparation in a presidential year.” (Id. 125:16–126:4); see 2019 Act 77, P.L. 552.

By the time of the February 2020 hearing, the City had paid \$20 million to ES&S for the XL machines, with \$9 million to be paid. (2/21/20 Tr. 58:14.) In addition, the City had spent \$1.2

million to hire a transition consultant, over \$1 million to lease and modify the storage warehouse, and \$1.6 million for supplies. (Id. 57:7–16.)

The City has in place many election security protocols. All machines arrive at the poll site sealed and locked. Once the ballot is finalized, the Board of Elections pretests all voting machines: “this process include[s] full functional testing for every machine used on Election Day in which staff [cast prescribed votes] on each machine five times.” (Lynch Decl. ¶ 25, Dx AA; see Baumert Decl., Dx BB ¶ 21.) Each machine’s totals are confirmed against the correct outcome. (See Lynch Decl. ¶ 25, Dx AA.) Before public voting starts, poll workers ensure that the seal number matches the machine, break the seal, unlock the machine, enter a passcode, and upload the specifically configured ballot using a preprogrammed USB.

The City was quite pleased with the XL’s performance during the 2019 general election. (2/21/20 Tr. 33:13–16.) After Philadelphians cast their ballots on XLs during the November 2019 election, the machines underwent a statutorily-mandated audit. The City also volunteered to pilot a risk-limiting audit, manually checking statistical samples of paper ballots. (Tr. 117:11–118:4.) Both audits “confirmed the outcome of the election as recorded on election night.” (Id. 118:3–4.)

#### **I. Dr. Stein Challenges the XL**

Only after Pennsylvania voters raised the issue in their unsuccessful Petition did Dr. Stein first express her concern that the ExpressVote XL does not comport with the Settlement Agreement. Like her request for relief, her “concern” was a work in progress—changing as the Commonwealth responded to her criticisms.

In her July 29, 2019 letter to the Commonwealth, Stein raised a single issue: that the summary card is not “voter-verifiable” because although a voter can “verify” the text, she cannot verify the barcode the machine scans. (Id. at 2.) Although she was aware that the “printhead” issue had been raised in the voters’ Petition, Stein did not mention it in her letter. DOS responded

to Stein after the Secretary resolved the Petition. (8/9/19 Gates Letter, Jx 44.) The Department noted that the paper record includes “the voter’s selections . . . in both a barcode and as human-readable text,” and so complies with the Agreement’s requirement of a “voter-verifiable record of each vote.” (9/12/19 Gates Letter, Jx 47.)

In her October 1, 2019 letter, Stein raised new criticisms: for the first time urging that the XL violates the Settlement Agreement’s “paper ballot” requirement, and that the printhead issue precludes the robust auditing required by the Agreement. (10/1/19 Maazel Letter, JX 48.) After the Commonwealth responded, Stein filed the instant Motion on November 18, 2019, adding yet another “new” concern that harkened to her 2016 allegations: the XL is uniquely vulnerable to hacking. (See 11/13/19 Gates Email, Jx, 50; Pls’ Mot. to Enforce, Doc. No. 112.)

Just as Dr. Stein based her initial Complaint on the theories of Dr. Halderman (a professor at the University of Michigan), she bases the instant Motion on him as well. Halderman’s testimony was neither credible nor helpful. Throughout, he acted more as an advocate than an “expert.” Halderman repeatedly tried to avoid answering questions when the truthful response might not help Stein. (See, e.g., 2/19/20 Tr. 6:12–8:2, 9:24–10:4.) He routinely offered opinions without factual basis, apparently seeking to bolster Stein’s litigation position. (See, e.g., id. 16:14–18–7, 62:18–63:7, 66:13–16, 80:9–15, 82:2–83:8.) Indeed, Halderman’s “advocacy” was so vigorous, I was compelled to caution him (to no avail). (Id. 62:18–64:4.) Curiously, Stein’s designated monitor could not recall when he first learned about the XL’s basic features, and knew very little about how the XL is used in Pennsylvania. (See, e.g., 2/19/20 Tr. 103:10–12.) Halderman could not recall how he familiarized himself with the XL. (Id. 99:22–100:19.) He was unable to explain why he had sent “feedback” to Mr. Maazel encouraging the Commonwealth to certify the ExpressVote XL (with restrictions not relevant to this dispute). (2/19/20 Tr. 53:11–19.)



Halderman’s testimony that he could not recall either when he learned of the XL’s key features, or its testing and certification by the Commonwealth (thus making him incompetent to advise Stein during settlement negotiations), was certainly untrue. (See, e.g., id. 88:8–91:9, 99:9–100:9.) Remarkably, even Dr. Stein apparently understands that Halderman has little credibility: she urges that “when it comes to settlement discussions and the meaning of terms in the Agreement, Dr. Halderman’s views are irrelevant.” (Pls.’ Proposed Findings of Facts ¶ 127 n.6.)

***“Paper Ballot”***

Dr. Halderman testified that the XL’s summary card is not a ballot because it provides only the voter’s selections, rather than all contest options. Yet, in July 2018 Halderman visited E&S’s Omaha headquarters, where he saw the paper ballot produced by the ExpressVote 2.1, and raised no objection, even though its ballot is identical to that produced by the ExpressVote XL. (2/19/20 Tr. 103:4–104:24.) Moreover, in his written “feedback” to Mr. Maazel, Halderman did not raise this criticism of the XL or the five other voting machines, endorsing them even though they employ similar summary cards. (10/9/18 Maazel Email; 2/19/20 Tr. 99:13–14, 139:10–24.) Plainly, he believes the summary card is a ballot within the meaning of the Agreement. Indeed, he has referred to the summary card as a “ballot” repeatedly. (10/9/18 Maazel Email.) When asked to explain, Halderman testified “I might have been speaking imprecisely . . . . I don’t recall.” (2/19/20 Tr. 53:15, 53:19.)

At Halderman’s apparent urging, Stein included in her Motion yet another reason the XL violated the Agreement: the machine violates the Agreement’s footnote 3 because it is actually a DRE with VVPAT, providing a “receipt” and not a paper record. (2/19/20 Tr. 6:18–7:1.) Yet, Halderman never raised this dubious suggestion in his written “feedback,” presumably because it is incorrect: the XL is not a DRE—it does not “directly record” the voter’s selection. Rather, it

tabulates votes from the summary card, completely unlike a DRE. (See 10/9/18 Maazel Email (encouraging certification of all non-DRE machines, including ExpressVote models).)

***“Voter-Verifiable Record of Each Vote”***

Halderman testified that the XL does not produce a voter-verifiable record of the vote because “nothing that the voter has . . . seen and been able to interpret is ever being read by the machine.” (2/19/20 Tr. 26:9–15.) After acknowledging that a voter can read the text disclosing the voter’s choices, however, Halderman agreed that verifiability would be an issue only if there is a mismatch between the barcode and the text. (Id. 26:16–25.) Yet, Halderman did not dispute that the machine itself will not record a vote if there is a mismatch between the barcode and the text. This is also the very discrepancy that an audit will detect. (Id. 237:12–238:17 (describing multiple audit techniques for catching mismatches).) Moreover, ***there is no evidence that the XL has ever produced such a mismatch.*** (2/18/20 Tr. 157:6-10 (Boockvar) (no evidence of mismatch); 2/19/20 Tr. 224:17–225:15 (Baumert) (no evidence of mismatch in testing or in any of the 11 or 12 elections in which the XL has been used).) In certifying the XL, the EAC found no such mismatch in its million and a half marks test. Halderman reluctantly acknowledged as much:

Q. Sitting here today, you don’t have any evidence that any ExpressVote XL Machine has actually done that [i.e. produced a ballot with a barcode that did not match the text] in any election, isn’t that right? A. ***No, I don’t.***

Id. 66:13–16 (emphasis added).)

Halderman was unable to explain how a hacker could actually create and install malware that reprograms each XL to print ballot cards with barcodes that mismatch the text. (Id. 72:21–73:1 (Q. You are unaware of anyone ever having actually done it [i.e. introduced malware into an XL]. Have you ever seen it done? A. I don’t. I have no evidence that anyone has ever done that to these machines. Q. Have you ever seen it done as an experiment? A. No, I haven’t.”).) The

hacker would have to remove the City’s numbered seal on each XL (then replacing it with a matching, unbroken seal), “break into [each] machine[]” to gain access to the hard drive within a sealed compartment, and “replace the data drive that has the operating system” with compatible software able to bypass hash checking. (Id. 229:22–25, 230:1–7.) The hacker would thus first need to obtain a version of ES&S’s election software, which is kept at their secure headquarters. (Id. 232:3–11.) The malware, which does not presently exist, would have to be extremely sophisticated to deceive the XL’s internal security checks (which confirm that the XL has not been altered from day-to-day), and to communicate with the printer and paper path. (Id.) Halderman provided nothing to suggest that this ever has or even could occur.

In sum, there is no truth in Dr. Halderman’s “hacking” testimony.

***“Capable of Supporting a Robust Pre-Certification Audit”***

Dr. Halderman speculated that the XL cannot support the required audit because it is vulnerable to malware attacks that would render the underlying paper votes unreliable. (See, e.g., 2/19/20 Tr. 13:23–24.) As I have found, the malware suggestion has no basis. Moreover, even if the malware could somehow be created and then inserted (into some 4,000 machines individually), it would have to overcome the XL’s hardware features designed to make meddling impossible.

Dr. Halderman speculated that “if [the ExpressVote XL’s] software is compromised, it would be possible for the machine to print on the ballot card again after the voter has seen it,” thus compromising the integrity of the auditable paper trail. (2/19/20 Tr. 14:1–5.) Sophisticated malware could thus direct the XL’s printer to add votes to the ballot without the voter’s knowledge. When confronted with the unfortunate facts that the XL *printer has no erasing function* and the ballot provides virtually no space for additions, Halderman modified his theory, speculating that “the attacker [might] change [the ballot card] so that the first time it’s printed it leaves more space,”

or attack ballots only when a voter has left a selection blank. (*Id.* 18:2–3, 19:18–20.) Once again, Halderman testified that he has never actually seen this done. (*Id.* 80:9–15.)

The XL is designed to make the tampering Dr. Halderman’s suggests impossible. The machine uses a barcode that is “exceptionally difficult to modify” because it leaves little space to add digits and requires parallel changes to both the barcode and text digit. (2/19/20 Tr. 244:22–245:9; *see* Fig. 2, *supra*.) The XL “prints selections for every possible vote” (including “no selection” when none is made), leaving no space for fraudulent additions or alterations. (*Id.* 243:22–244:9.) Finally, Halderman’s hacker would have to reengineer and then reinstall each XL printer (designing it to print in reverse) to achieve his goal. Once again, this is fantasy.

Halderman further opined that the ExpressVote XL could be “corrupted” so that it improperly counts “spoiled” votes. Once again, Halderman offered this criticism without “any evidence . . . that [it has] actually happened with any XL machine that has been used” during an election. (*Id.* 82:7–11.) Once again, Halderman’s scenario is impossible. Mr. Baumert credibly explained: “the way the logic of the machine works, any time the card comes out the front, the vote data is destroyed, is erased in the working memory.” (2/19/20 Tr. 216:5–8.) The data is stored permanently (i.e. a vote is added) only when the card is deposited into the bin. (*Id.* 216:8–19.) A “spoiled” vote thus could not be “counted.”

Finally, Stein urges that I should believe Halderman because the Commonwealth “stonewalled” his attempts to obtain video recordings of tests performed on the XL and other voting machines. (*See* Pls.’ Proposed Findings of Fact ¶¶ 140–67; 2/19/20 Tr. 42:8–19.) The Commonwealth was obligated under the Agreement to inform Stein of machine testing. The record confirms that Halderman knew the XL had already been tested before the Agreement was signed. There is no evidence that Pennsylvania “stonewalled” Halderman. (SA ¶ 4.) The videos—

which the Commonwealth provided as a courtesy—were voluminous (comprising 17 hours for the XL alone), and had to be screened first by ES&S and other manufacturers to remove proprietary information. (2/18/20 Tr. 261:1–19, 266:14–267:19, 279:18–280:18; SA ¶ 4 (requiring the Commonwealth to “ensure that Plaintiffs are made aware of” and invited to onsite testing, but imposing no requirement that the Commonwealth furnish Plaintiffs with videos); *id.* ¶ 4(c) (denying Plaintiffs access to vendors’ “proprietary information”).)

Moreover, the videos are beside the point. Even after I gave Stein the opportunity to present relevant video excerpts to show how the testing footage informed her understanding of whether XL complies with the Settlement Agreement, she offered nothing. The testing videos have nothing to do with this dispute. Even assuming, *arguendo*, that the Commonwealth delayed providing Stein with irrelevant materials, that does nothing to fill this gap in Stein’s presentation.

#### **J. 2020 Elections Approach**

As of the time of this writing, Pennsylvania’s general election will take place on November 3, 2020, less than a year from the filing of the instant Motion. (Fact. Stip. ¶ 96.) Were I to order the Commonwealth to decertify the XL, the City would have to undertake another procurement process, which would likely not be completed until well after the primary and general elections. (2/19/20 Tr. 347:4–17.) Even if the City skipped its typical RFI and RFP steps, Procurement Commissioner Joyner-Neysmith testified credibly that as of February 21, 2020 there would not be enough time to select, purchase, and obtain replacement machines in time for either election. (2/21/20 Tr. 16:18–17:1.)

Putting the purchase process aside, the City could not adapt so quickly to new machines as a general election approaches. The Board of Elections would need to train its employees and over 8,000 poll workers who oversee elections—a process that took months during the XL’s rollout. (2/21/20 Tr. 40:1–41:15.) Yet, the Board has fewer resources now: part of its staff has been

reassigned to processing an expected dramatic increase in voter registrations. (*Id.* 28:12–15.) Both Secretary Boockvar and Philadelphia Board of Elections Executive Director Joseph Lynch thus testified that it would be very difficult, if not impossible, for Philadelphia to switch to new machines in time for the 2020 election. (2/18/20 Tr. 124:3–10; 2/21/20 Tr. 29:3–5.) The COVID-19 pandemic would undoubtedly increase these difficulties.

Finally, decertifying the XL would come at great financial cost to the City, which, at the time of the February 2020 hearing, had already expended well over \$20 million on the XLs and related costs. The City’s contract with ES&S states that the Company will provide replacement machines at no cost to the City in the event of decertification. (Contract art. XII, Px 1004.) That very general indemnification provision includes no timeline, mentions no particular replacement machines, and, if invoked by the City, would undoubtedly give rise, at the very least, to lengthy negotiations, likely followed by litigation. The City would in the interim be obligated to purchase new machines at considerable cost.

## **VI. DISCUSSION**

“A settlement agreement is a contract” governed by “familiar principles of contract law.” Tedesco Mfg Co. v. Honeywell Int’l, Inc., 127 F. App’x 50, 52 (3d Cir. 2005); In re Columbia Gas System, Inc., 50 F.3d 233, 241 (3d Cir. 1995). Pennsylvania law governs the disputed agreement. (SA ¶ 23.) To make out a breach of contract, Stein must prove: “(1) the existence of a contract, including its essential terms; (2) a breach of the contract; and (3) resultant damages.” Meyer, Darragh, Buckler, Bebenek & Eck P.L.L.C. v. Law Firm of Malone Middleman, P.C., 137 A.3d 1247, 1258 (Pa. 2016). I may order specific performance (which Dr. Stein seeks) only “where the facts clearly establish the [Plaintiffs’] right thereto, where no adequate remedy at law exists, and

where justice requires it.” Linde v. Linde, 210 A.3d 1083, 1090–91 (Pa. Sup. Ct. 2019) (internal quotation marks and citation omitted).

“[T]he fundamental rule of contract interpretation is to ascertain” the Parties’ intent. McDonough v. Toys R Us, Inc., 795 F. Supp. 2d 329, 333 (E.D. Pa. 2011). To evaluate whether a breach has occurred, I must interpret the contract in two steps. I “must make a preliminary assessment as to whether the contract” is ambiguous. Sanford Inv. Co. v. Ahlstrom Machinery Holdings, Inc., 198 F.3d 415, 421 (3d Cir. 1999). Ambiguity, which is a question of law, arises when a term “is susceptible to reasonable alternative interpretations.” Id.; see Commonwealth v. E.J. Albrecht Co., 430 A.2d 328, 330 (Pa. Commw. Ct. 1981). Although the Agreement itself embodies the Parties’ intent, I must “read[ ] the contract in the context in which it was made.” Pacitti v. Macy’s, 193 F.3d 766, 773 (3d Cir. 1999); Krizovensky v. Krizovensky, 624 A.2d 638, 643 (Pa. Sup. Ct. 1993) (“To determine whether there is an ambiguity, it is proper for a court to hear evidence from both parties and then decide whether there are objective indications that the terms of the contract are subject to differing meanings.”). I assess ambiguity by considering “the words of the contract, the alternative meaning[s] suggested by counsel, and the nature of the objective evidence to be offered in support of that meaning.” Mellon Bank, N.A. v. Aetna Bus. Credit, Inc., 619 F.2d 1001, 1011 (3d Cir. 1980).

If the contract is unambiguous, “the intent of the parties must be determined exclusively from the agreement itself.” Metzger v. Clifford Realty Corp., 476 A.2d 1, 5 (Pa. Sup. Ct. 1984). If the contract contains ambiguities, however, “extrinsic or parol evidence may be considered to determine the intent of the parties.” Id.; Columbia Gas, 50 F.3d at 241 (“Absent clear language in the settlement agreement to resolve a dispute over the proper construction of a contract, a court

may go outside the four corners of the contract and consider extrinsic and parol evidence presented by the parties.”).

As the fact finder, I must “resolve ambiguities and find the parties’ intent.” Id.

#### **A. The Settlement Agreement Is Ambiguous**

Courts deem unambiguous (and interpret as a matter of law) contract terms that are “so clear [they] can only be read one way.” Pennbar Corp. v. Ins. Co. of N. Am., 976 F.2d 145, 149 (3d Cir. 1992). “Where the language is clear and unambiguous, the court must construe the contract as written and may not modify the plain meaning under the guise of interpretation.” Adams Parking Garage, Inc. v. City of Scranton, 33 F. App’x 28, 31 (3d Cir. 2002); Globus Med., Inc. v. Vortex Spine, LLC, 213 F. Supp. 3d 719, 729 (E.D. Pa. 2016). Such clear language “speaks for itself and a meaning cannot be given to it other than that expressed.” Lesko v. Frankford Hospital-Bucks Cty., 15 A.3d 337, 342 (Pa. 2011) (quoting Steuart v. McChesney, 444 A.2d 659, 661 (1982)).

The instant case is quite different. Each of the Agreement’s disputed provisions uses language subject to conflicting, reasonable interpretations. Because this was apparent from the text of the Agreement, and confirmed by Stein’s Motion and the Commonwealth’s Response, I ordered the February 2020 hearing. See Mellon Bank, 619 F.3d at 1011. The evidence there presented shows that the Agreement’s key terms are ambiguous. See Baldwin v. Univ. of Pitt. Med. Ctr., 636 F.3d 69, 76 (3d Cir. 2011).

#### **“Paper Ballot” Requirement**

The Agreement provides that the Secretary may certify voting machines only if “[t]he ballot on which each vote is recorded is paper.” (SA ¶ 2(a).) As used here, “ballot” is ambiguous.



Stein urges that under Pennsylvania’s Election Code, a paper record is a “ballot” only if it lists all contest options and conforms in “layout and format” to the equipment on which the vote is cast. (Pls.’ Mot. 9 (quoting 25 P.S. § 3031.1).) She points out that other “ballots”—“absentee ballots” and “mail-in ballots”—contain contest options. (Pls.’ Proposed Conclusion of Law 6.)

The Commonwealth argues that the Election Code is nowhere mentioned in the Agreement, and that “paper ballot” is merely a “shorthand restatement” of the Parties’ requirement that “[t]he ballot on which each vote is recorded [be] paper.” (Defs.’ Opp’n at 24.) A paper record of the vote may be produced by hand or by a ballot-marking device; it may contain all contest options or merely the selections. (See Securing the Vote at 42–43.)

These conflicting interpretations confirm that “ballot,” as used in the Agreement, is ambiguous. Baldwin, 636 F.3d at 76

#### **Voter-Verifiable Record of Each Vote**

Under the Agreement, the Secretary may certify only those voting systems that “produce a voter-verifiable record of each vote.” (SA ¶ 2(b).) This phrase may be “understood in more senses than one,” so it too is ambiguous. Am. Eagle Outfitters v. Lyle & Scott Ltd., 584 F.3d 575, 588 (3d Cir. 2009).

Stein argues that the phrase means the actual *vote* created must be readable by human beings. Companion text mirroring the vote embodied in a barcode, in Stein’s view, is insufficient.

The Commonwealth urges that the phrase requires “a voter-verifiable ***record of*** the vote,” arguing that Stein improperly eliminates key language. (Defs.’ Opp’n 21 (emphasis in original).) The Commonwealth thus contends that the actual “vote”—*i.e.*, what is tallied in the first instance—may be computer-readable, provided it is accompanied by human-readable text.

Once again, these conflicting interpretations underscore that the phrase is ambiguous. Baldwin, 636 F.3d at 76 (“If the words of the contract are capable of more than one objectively reasonable interpretation, the words are ambiguous.”).

### **Robust Pre-Certification Audit**

Any machine certified by the Secretary must be “capable of supporting a robust pre-certification auditing process.” (SA ¶ 2(c); see also id. § III (“Robust Pre-Certification Auditing”).) What constitutes “robust pre-certification audit” is not specified. Rather, the Agreement provides that each county will determine its own process “based on the recommendation of a Work Group established by the Secretary” after applying certain principles. (Id. ¶ 5.) There is thus necessarily more than one reasonable interpretation of the disputed phrase.

Unsurprisingly, the Parties offer conflicting interpretations. Stein acknowledges that “[d]ifferent methods of pre-certification auditing exist,” but argues that the provision requires, at minimum, the capacity to check ballots “to correct any computer-based error or fraud.” (Pls.’ Mot. 12 (quoting Halderman Decl. ¶ 10).)

The Commonwealth argues that an acceptably robust pre-certification audit means hand-counting the votes cast in a “random, statistically appropriate sample of ballots” before certification “to ensure the machine-counted result is accurate.” (Defs.’ Opp’n 26.)

Although both sides “interpret” the contract to favor the outcome urged (as they do with the other disputed terms), each offers a “reasonable” interpretation. The term is thus ambiguous. See Madison Construction Co. v. Harleysville Mut. Ins. Co., 735 A.2d 100, 106 (Pa. 1999).

### **B. Extrinsic Evidence**

The credible evidence both underscores the ambiguity of the disputed terms and phrases and clarifies their meaning. When interpreting the ambiguous Settlement Agreement, I must “ask

as a matter of law how a reasonable person would read the term at issue.” Huang v. Att’y Gen., 620 F.3d 372, 385 (3d Cir. 2010); see Windows v. Erie Ins. Exchange, 161 A.3d 953, 958 (Pa. Super. Ct. 2017) (“Where the words used in a contract are ambiguous, the surrounding circumstances may be examined to ascertain the intent of the parties.”) (quoting Walton v. Phila. Nat’l Bank, 545 A.2d 1383, 1389 (Pa. Super. Ct. 1988)). “[C]onflicting parol evidence relevant to what the parties intended by the ambiguous provision” presents a question of fact which I resolve based on my findings, which I must resolve. Id. (quoting Walton, 545 A.2d at 1389).

### 1. “Paper Ballots”

The Settlement Agreement mentions paper ballots twice in its section titled “Voter-Verifiable Paper Ballots for Every Voter.” First, the Secretary may certify only machines for which “[t]he ballot on which each vote is recorded is paper.” (SA ¶ 2(a) & n.3.) Second, “[t]he Secretary *will continue to direct* each county in Pennsylvania to implement these voting systems by the 2020 primaries, so that every Pennsylvania voter in 2020 uses a *voter-verifiable paper ballot*.” (Id. ¶ 3 (emphases added).)

In defining “ballot” as used in the Agreement, Dr. Stein invokes for the first time a Pennsylvania Election Code “paper ballot” provision that requires “ballots” used in non-electronic voting to “conform[] in layout and format” to the voting screen. (Pls.’ Mot. to Enforce 9 (citing 25 P.S. § 3031.1); see 2/18/20 Tr. 141:11–19.) This obviously has nothing to do with the use of “ballot” in the Settlement Agreement. That is undoubtedly why, during settlement negotiations, no one referred to the Pennsylvania Election Code or this definition (which, in any event, is in a provision that does not apply to the XL). (2/18 Tr. 99:4–13, 141:14–15, 235:16–236:2.) To the contrary, Stein’s negotiators used the term “ballot” loosely throughout. As I have found, Dr. Halderman described the Commonwealth’s prospective machines as follows, “All of them (that use *paper ballots*) can be used with reasonable security if implemented with voter-verified paper

ballots and robust manual audits.” (10/9/18 Maazel Email (emphasis added).) In approving the ExpressVote, configured to show voters their printed ballot card before casting votes, Halderman called the ExpressVote’s summary card a “completed *ballot*.” (10/9/18 Maazel Email (emphasis added); 2/19/20 Tr. 133:134:6.) Indeed, the Appel blog post to which Halderman referred similarly calls the summary card a “paper ballot.” (Appel, Serious Design Flaw in ESS ExpressVote Touchscreen: “Permission to Cheat.”)

The Commonwealth also used the term “ballot” loosely, and often borrowed the varied terminology used by vendors. (2/18/20 Tr. 17:20–18:2.) The Commonwealth’s public announcements and negotiation statements reflected its overriding concern throughout: making the Settlement part of Pennsylvania’s “path” to machines that allowed each voter to create a verifiable paper record. Once again, Secretary Boockvar deemed the “continuing to direct” language nonnegotiable.

As I have found, Stein’s only concern during the negotiations was the replacement of DREs with machines that provided a paper record of selections made that the voter could verify and the Commonwealth audit. See Baldwin, 636 F.3d at 76, 78 (instructing district court to consider, *inter alia*, the parties’ “bargaining history” to identify and resolve ambiguous terms). Halderman’s “imprecise” use of “ballot” reflected that concern and belies any suggestion the Parties meant a printout containing all contest options. The materials introduced at the hearing—including Appel’s blog posts and vendor marketing materials—confirm that this loose usage of “ballot” is typical, and its inclusion in the Settlement Agreement would not have indicated to Stein or the Commonwealth a particular, narrow meaning. Moreover, Stein’s belated insistence on a machine that produces a “ballot” listing all contest options is not only outside the goal she sought to achieve during negotiations (elimination of Pennsylvania’s DREs), her interpretation would eliminate four

of the machines she knew the Commonwealth was considering for certification, and, in fact, did certify. (2/19/20 Tr. 139:10–16; see, e.g., Dominion Ballot Card, Jx 54; 2/19/20 Tr. 138:9–20.) Finally, including all contest options—and not just the options selected—would do nothing to enhance election integrity, Dr. Stein’s professed goal throughout the negotiations.

This history plainly confirms that the Parties intended to use “ballot” as “[a]n instrument, such as a paper or ball, used for casting a vote.” *ballot*, Black’s Law Dictionary (11th ed. 2019). Such an instrument need not contain all contest options.

## 2. “Voter-Verifiable Record of Each Vote”

This phrase requires that certified machines display or provide to the voter some sort of paper allowing her to confirm her selections before her vote is cast. As the extrinsic evidence underscored, this is closely connected to the Commonwealth’s Initiative to phase out DREs. The Initiative provided that “all voting systems purchased **on or after February 9, 2018** must be of the type that employs a voter-verifiable paper ballot of a voter-verifiable paper record of the votes cast by a voter.” (2/9/18 Directive; see Pennsylvania Department of State Invites Bids on New Paper Record Voting Systems, Jx 4; see also 2/18/20 Tr. 84:15–20.) The materials the Commonwealth shared with Stein during negotiations made clear that the Secretary would consider only machines that allow voters to confirm their choices with a ballot produced by the voter herself or with a printout from a ballot-marking device. (9/28/18 Unger Email; Revised Examination Directive, Attachment E, Jx 7, at 5.) Moreover, these documents left no doubt that the Commonwealth would embrace machines that tabulated votes through machine-readable code (such as barcodes and QR codes), allowing the voter to verify companion text. In fact, all the machines certified in Pennsylvania currently in use tabulate votes by reading symbols that are inscrutable to human beings. (Fact Stip. ¶¶ 98–110; 2/18/20 Tr. 132:22–133:2.)

Accordingly, as I have found and Secretary Boockvar explained, this phrase is closely related to the “paper ballot” requirement: together, they ensure that a voter confirms her vote on paper before it is tallied, distinguishing the new machines from DREs.

### **3. “Robust Pre-Certification Auditing”**

Although Stein believes that the XL is not “capable of supporting a robust pre-certification auditing process,” her reasons are unclear. (SA ¶ 2(c).) Halderman testified that because the XL can be “hacked” it cannot support a robust audit. (2/19/20 Tr. 13:20–14:10.) It thus appears that Stein defines the phrase as one that necessarily includes the requirement that the subject voting machine cannot be hacked. Yet, Halderman himself opined that every voting system using software can be “hacked.” (See, e.g., 2/19/20 Tr. 69:23–70:22.) Stein thus construes the phrase—and, by extension, the Agreement itself—as one imposing a requirement that is impossible to meet.

As I have found, Halderman could not credibly explain how Pennsylvania’s XL machines, with all their safeguards and security features, could be subject to tampering or the introduction of malware. The Commonwealth thus construes the audit requirement as one dependent on a secure machine that creates a paper voting record that the Commonwealth can scrutinize should a vote check or recount be necessary.

Only the Commonwealth’s understanding is supported by the extrinsic evidence or by reason.

### **C. The ExpressVote XL Does Not Violate the Settlement Agreement**

As I have found and the record overwhelmingly shows, the Agreement was but a part of the Commonwealth’s ongoing Initiative to replace its DREs with machines that would create a voter-verifiable paper record. The XL does just that.

The XL’s summary card is certainly a “paper ballot” as used by the Parties. (See Figure 2, *supra*.) The ballot-marking machine prints the voter’s selections for her to review before casting her vote. The written text is the official vote of record and relied upon during audits. There is no evidence that the barcode, which the scanner counts, ever mismatches the text. To the contrary, the evidence confirms that such a mismatch has never occurred and cannot occur.

The XL produces a voter-verifiable record of each vote. Because the “official vote of record” *is* the human readable text, the XL’s ballot card is both a human-verifiable “record of the vote” as well as a human-verifiable “vote.”

Finally, as I have found, the XL supports robust pre-certification auditing. Indeed, the ExpressVote XL *actually supported* a risk-limiting audit following the November 2019 election in Philadelphia. (2/18/20 Tr. 234:3–7.) Stein does not dispute that the XL has shown in practice that it supports a robust audit.

Stein’s reading of the Settlement Agreement would not only require the Commonwealth to decertify the XL, it would impugn almost all the machines currently used in Pennsylvania. (See, e.g., 2/18/20 Tr. 36:7–12 (all certified configurations, except one, “use either barcodes, QR codes[,] or timing marks or sensors”). Such a reading is necessarily wrong.

In sum, because the XL complies with the Settlement Agreement, I will deny Stein’s Motion.

#### **D. Dr. Stein’s Enforcement Motion Is Barred by Prejudicial Delay**

In the alternative, I conclude that the affirmative defense of laches bars the relief Stein seeks.

“Laches ‘is a defense developed by courts of equity’ to protect defendants against ‘unreasonable, prejudicial delay in commencing suit.’” SCA Hygiene Prods. Aktiebolag v. First

Quality Baby Prods., LLC, 137 S. Ct. 954, 960 (2017) (quoting Petrella v. Metro-Goldwyn-Mayer, Inc., 572 U.S. 663, 667 (2014)). Laches thus requires a showing of: (1) “a delay arising from [Plaintiffs’] failure to exercise diligence”; and (2) “prejudice to the [Defendants] resulting from the delay.” Sprague v. Casey, 550 A.2d 184, 187–88 (Pa. 1988). These questions are factual, depending on the circumstances of the case, including the nature of relief sought. See id.; see also Socony Mobil v. Continental Oil Co., 335 F.2d 438, 441–42 (10th Cir. 1964).

Once again, weeks before the February 2020 hearing, I found that the Commonwealth had made a *prima facie* showing of Stein’s unwarranted, prejudicial delay in filing her Motion. (Doc. No. 161 ¶ 2.) She presented nothing at the hearing to alter that determination.

I have found that at the time of the November 28, 2018 Settlement Agreement, Stein knew that the Commonwealth had already tested the XL and was about to certify the machine. I have also found that Stein knew about the XL’s certification at the time it was publicly and widely disclosed a month later. At that time, Stein knew of the XL’s key features (to which she now objects). Yet, Stein did not inform the Commonwealth of her belief that the XL violates the Settlement Agreement until July 29, 2019—*after* she was alerted to criticisms raised in the voters’ Petition for Reexamination. (7/29/19 Maazel Letter.) This eight-month delay thus reflects at best a lack of diligence, or at worst, a lack of good faith. Although Dr. Stein has never acknowledged when she learned of the certification, she seeks to excuse her delay by complaining that, after the Commonwealth repeatedly notified the public of the certification, it did not notify her personally, (even though it was under no obligation to do so). Although Halderman testified that he believed the Commonwealth “would contact [him] with information,” he admitted that he “was not involved in the settlement negotiations.” (2/19/20 Tr. 37:17–18, 84:24–25.) Indeed, Dr. Halderman had volunteered to monitor the Commonwealth’s certifications, and Mr. Maazel announced that he



would “be watching closely” to ensure the Commonwealth’s compliance with the Parties’ Agreement. As the Secretary put it, “you pretty much ha[d] to be living under a rock” to have missed it. (2/18/20 Tr. 154:4–5.) Plainly, the Commonwealth’s “failure” to provide Stein with its publicly disseminated and posted Certification Report does not excuse her eight-month delay.

Finally, Dr. Stein seeks to blame that delay on the time it took the Commonwealth to provide Dr. Halderman with the XL testing videos (which were made before the case settled). As I have found, however, those videos have nothing to do with Stein’s Motion. Even now, she does not explain what she learned from the videos that she did not already know that caused her to send her July 29 letter.

Stein’s delay is unreasonable and unwarranted, but, more importantly, it is greatly prejudicial. As I have found, granting the relief Stein seeks would effectively disenfranchise Philadelphia’s one million registered voters in 2020—just as granting the relief she belatedly sought in 2016 would have disenfranchised Pennsylvania’s six million voters. Such prejudice is grave and obvious. See Crookston v. Johnson, 841 F.3d 396, 399 (6th Cir. 2016) (“belated challenge to Michigan’s election procedures prejudices the State’s interest in holding orderly elections” and presents “a recipe for election-day confusion for voters and poll workers alike”); Republican Party v. Cortes, 218 F. Supp. 3d 396, 404 (E.D. Pa. 2016) (“There is good reason to avoid last-minute intervention in a state’s election process.”).

Stein has provided no evidence contradicting the Commonwealth’s initial showing of unwarranted delay or the testimony of Secretary Boockvar, Commissioner Nesmith-Joyner, and Executive Director Lynch of the great prejudice that decertifying the XL would cause. Rather, she argues only that “such testimony is not credible,” and that the 18 to 24 months the City would need

to replace the XLs is “unacceptable.” (Pls.’ Proposed Findings of Fact ¶¶ 211, 194.) This is not evidence; it is argument unsupported by evidence.

Stein thus has failed to refute the Commonwealth’s showing that the relief she seeks would have calamitous consequences. That prejudice, combined with Stein’s unwarranted delay, provides an independent basis to deny her Motion.

#### **E. Equitable Considerations Further Counsel Against Dr. Stein’s Motion**

In the further alternative, I will not order the Secretary to decertify the ExpressVote XL because doing so would destroy the City’s ability to hold an election this year. Although, as I have noted, Stein has repeatedly altered her request for relief, in her last iteration, she still seeks specific performance, asking me to “order the Secretary of the Commonwealth to decertify the ExpressVote XL in time for the November 2020 General Election.” (Pls.’ Proposed Conclusions of Law 22.) I will not do so.

Specific performance “is an equitable remedy for breach of contract.” Cotter v. Newark Housing Authority, 422 F. App’x 95, 99 (3d Cir. 2011); see Texas v. New Mexico, 482 U.S. 124, 131 (1987) (“[S]pecific performance is never demandable as a matter of absolute right, but as one which rests entirely in judicial discretion, to be exercised, it is true, according to the settled principles of equity, but not arbitrarily and capriciously, and always with reference to the facts of the particular case.”) (quoting Haffner v. Dobrinski, 215 U.S. 446, 450 (1910) (alteration in original)); Mrahunec v. Fausti, 121 A.2d 878, 880 (Pa. 1956) (“[S]pecific performance is not a matter of right but a matter of grace . . . .”). Even if Stein had presented a strong claim on the merits, such relief would be appropriate only if the benefits of decertifying the XL would be greater than the harm it exacts. See FTC v. Pa. State Hershey Med. Ctr., 838 F.3d 327, 352 (3d Cir. 2016); see also Reynolds v. Sims, 377 U.S. 533, 585 (1964) (“In awarding or withholding immediate

relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.”). It would not.

As I have found, if I order specific performance, Philadelphia’s voters will likely be disenfranchised, and the City would be compelled to spend millions of dollars on new machines. These significant public harms undoubtedly outweigh the “benefits” of ordering specific performance—and Stein has yet to offer evidence of what those benefits might be. See Wesberry v. Sanders, 376 U.S. 1, 18 (1964) (“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.”).

This completely inequitable imbalance provides an independent basis to deny her Motion.

## **VII. CONCLUSION**

The Commonwealth and the City have expended considerable resources to demonstrate that Dr. Stein has based her Motion on absolutely nothing. There is no credible evidence even suggesting that the EAC and Pennsylvania have certified machines that can be “hacked.” Yet, Dr. Halderman’s daft theories, promoted by Dr. Stein, will undoubtedly shake the belief of some in their government because Stein has convinced them that voting integrity is at risk in Pennsylvania. That is certainly the most unfortunate consequence of Stein’s pointless Motion.

Because there is no basis in fact or law to order the relief Stein seeks, I will deny her Motion.

An appropriate Order follows.

April 29, 2020

*/s/ Paul S. Diamond*

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Paul S. Diamond, J.

## **EXHIBIT 2**

John F. Murphy (PA Bar No. 206307)  
Lesley M. Grossberg (PA Bar No. 208608)  
Jeanne-Michele Mariani (PA Bar No. 327000)  
BAKER & HOSTETLER LLP  
2929 Arch Street  
Cira Centre, 12th Floor  
Philadelphia, PA 19104-2891  
Tel: (215) 568-3100

Ronald Fein (Pro Hac Vice motion to be filed)  
John Bonifaz (not seeking Pro Hac Vice admission)  
Ben Clements (not seeking Pro Hac Vice admission)  
FREE SPEECH FOR PEOPLE  
1320 Centre St. #405  
Newton, MA 02459

*Counsel for Petitioners*

NATIONAL ELECTION DEFENSE  
COALITION, CITIZENS FOR BETTER  
ELECTIONS, RICH GARELLA, RACHEL  
A. MURPHY, CAROLINE LEOPOLD,  
STEPHEN STRAHS, KATHLEEN  
BLANFORD, SHARON STRAUSS,  
ANNE C. HANNA, RAPHAEL Y. RUBIN,  
ROBERT F. WERNER, SANDRA  
O'BRIEN-WERNER, THOMAS P.  
BRUNO, JR., ROGER DREISBACH-  
WILLIAMS, and JEFF R. FAUBERT,

Petitioners,

v.

KATHY BOOCKVAR, SECRETARY OF  
THE COMMONWEALTH,

Respondent.

COMMONWEALTH COURT  
OF PENNSYLVANIA

ORIGINAL JURISDICTION

Docket No.:

**NOTICE TO PLEAD**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within 30 days after this Petition and Notice are served by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any claim or relief requested by the Petitioners.

**YOU SHOULD TAKE THIS PAPER TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

**DAUPHIN COUNTY BAR ASSOCIATION  
Lawyer Referral Service  
213 North Front Street  
Harrisburg, PA, 17101  
(717) 232-753**

John F. Murphy (PA Bar No. 206307)  
Lesley M. Grossberg (PA Bar No. 208608)  
Jeanne-Michele Mariani (PA Bar No. 327000)  
BAKER & HOSTETLER LLP  
2929 Arch Street  
Cira Centre, 12th Floor  
Philadelphia, PA 19104-2891  
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FREE SPEECH FOR PEOPLE  
1320 Centre St. #405  
Newton, MA 02459

*Counsel for Petitioners*

NATIONAL ELECTION DEFENSE  
COALITION, CITIZENS FOR BETTER  
ELECTIONS, RICH GARELLA, RACHEL  
A. MURPHY, CAROLINE LEOPOLD,  
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KATHY BOOCKVAR, SECRETARY OF  
THE COMMONWEALTH,

Respondent.

COMMONWEALTH COURT  
OF PENNSYLVANIA

ORIGINAL JURISDICTION

Docket No.:

**PETITION FOR REVIEW**  
**ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION**

## **I. INTRODUCTION**

1. This is a challenge to the Secretary of the Commonwealth's certification of the ExpressVote XL electronic voting machine on the grounds that it is insecure, unreliable, inaccessible to users with disabilities, and not remotely compliant with state ballot requirements, in violation of multiple provisions of the Pennsylvania Election Code and of voters' rights under the Pennsylvania Constitution.

2. In July 2019, before the machines were used in any election, some of the parties to this suit along with other concerned citizens (collectively, the "Petitioners") petitioned the Secretary of the Commonwealth of Pennsylvania ("the Secretary") to reconsider the certification of the machines. (*See* Exhibit A, Reexamination Request Petition ("Petition").) However, the Secretary gave little weight to their concerns and dismissed the petition in a largely perfunctory manner. (*See* Exhibit B, *Report Concerning the Reexamination Results of Election Systems and Software ExpressVote XL*, issued by Secretary Boockvar on September 3, 2019.)

3. Meanwhile, three Pennsylvania counties—Philadelphia County, Northampton County, and Cumberland County—relied on the Secretary's certification and spent millions of dollars buying these new machines, which had never before been used or tested in an actual election in Pennsylvania.



4. Many of the concerns the Petitioners raised came to fruition when the machines were debuted in Philadelphia and Northampton in the November 5, 2019 general election. The ExpressVote XL machine incorrectly tabulated votes in numerous contests, and voters reported many problems using the touchscreens and difficulty reading the machine-printed ballots to confirm they were correct.

5. Petitioners here (collectively “the Plaintiffs”)<sup>1</sup> are two non-profit groups — the National Election Defense Coalition (“NEDC”) and Citizens for Better Elections (“CBE”) — and individual members of the Pennsylvania electorate (“the Individual Plaintiffs”). NEDC and CBE include voting members of the Pennsylvania electorate within their organizations. Their core missions include helping members of the electorate exercise their right to vote in free and fair elections, and working to ensure that elections be conducted on systems that are secure, accessible, transparent, and auditable.

6. Plaintiffs challenge the Secretary’s certification, without adequate testing, of the ExpressVote XL electronic voting machine for use in Pennsylvania elections. The certification is in clear violation of the Pennsylvania Election Code’s substantive requirements for approving electronic voting machines, and impairs the rights of Pennsylvania citizens under the Pennsylvania Constitution to

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<sup>1</sup> In order to distinguish between the Petitioners who petitioned the Secretary in July 2019 and the parties bringing this Petition for Review Addressed to the Court’s Original Jurisdiction, the latter are referred to herein as “Plaintiffs.”

free and equal elections, the free exercise of the right of suffrage, secrecy in voting, and equal protection under the law.

7. The Secretary certified the machines<sup>2</sup> even though they violate the Pennsylvania Election Code and do not, and will not, reliably and consistently record, tally, and secure the votes of Pennsylvania's citizens. Plaintiffs seek to compel the Secretary to comply with the requirements of the Pennsylvania Election Code and the Pennsylvania Constitution in order to protect the right to vote and the integrity of the election process.

8. The ExpressVote XL voting machines certified by the Secretary violate the Pennsylvania Election Code in multiple ways: (a) they lack adequate security and reliability measures to ensure that each vote cast is properly recorded and counted; (b) they do not allow for a voter's choices to be kept private; (c) they fail to offer equal access to all registered voters, particularly those with physical or cognitive disabilities, and (d) they use ballot cards that do not even remotely comply with the detailed requirements specified by the General Assembly in the Election Code.

9. Plaintiffs assert the following causes of action:

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<sup>2</sup> The ExpressVote XL was originally certified by Acting Secretary of State Robert Torres. Respondent Kathy Boockvar was appointed Acting Secretary of the Commonwealth on January 5, 2019 and confirmed by the Senate on November 19, 2019.

### **Security and Reliability Violations**

- Count I:** Violation of Section 1107-A of the Pennsylvania Election Code, 25 P.S. § 3031.7(12), because the ExpressVote XL machines do not “[p]rovide acceptable ballot security procedures and impoundment of ballots to prevent tampering with or substitution of any ballots or ballot cards.”
- Count II:** Violation of Section 1107-A of the Pennsylvania Election Code, 25 P.S. § 3031.7(13), because the ExpressVote XL machines do not routinely and consistently “record[ ] correctly and compute[ ] and tabulate[ ] accurately every valid vote registered”
- Count III:** Violation of Section 1107-A of the Pennsylvania Election Code, 25 P.S. § 3031.7(11), because the ExpressVote XL machines are not “suitably designed and equipped to be capable of absolute accuracy.”

### **Voter Privacy and Secrecy Violations**

- Count IV:** Violation of Section 1107-A of the Pennsylvania Election Code, 25 P.S. § 3031.7(1), Section 1111-A of the Pennsylvania Election Code, 25 P.S. § 3031.11(b), and the Pennsylvania Constitution, Article VII Section 4, because the ExpressVote XL machines do not ensure “voting in absolute secrecy,” nor do they “prevent[ ] any person from seeing or knowing for whom any voter, except one who has received or is receiving assistance as prescribed by law, has voted or is voting,” nor do they ensure “secrecy in voting [is] preserved.”

### **Accessibility Violations**

- Count V:** Violation of Section 1107-A of the Pennsylvania Election Code, 25 P.S. § 3031.7(5), because the ExpressVote XL machines are not accessible for individuals with disabilities in a manner that permits “each” voter “to vote for any person and any office for whom and for which he is lawfully entitled to vote” with the same opportunity for access and participation (including privacy and independence) as other voters.

### **Ballot Format Violations**

- Count VI:** Violation of Section 1109-A of the Pennsylvania Election Code, 25 P.S. § 3031.9(e), because the ExpressVote XL machines do not allow for votes to “be printed on card or paper stock of the color of the party

of the voter [nor do they include] the appropriate party affiliation or independent status...on the ballot card.”

Violation of Section 1004 of the Pennsylvania Election Code 25 P.S. § 2964, because the ExpressVote XL machines “do not b[i]nd together [the ballots] in books of fifty, in such manner that each ballot may be detached and removed separately.”

Violation of Section 1112-A of the Pennsylvania Election Code, 25 P.S. §§ 3031.12 (b)(2)-(4), because the ExpressVote XL machines do not provide the voter an opportunity to “mak[e] a cross (X) or check (✓) mark or... a punch or mark sense mark in the square opposite the name” of the candidate or issue for which they are voting.

Violation of Section 1109-A of the Pennsylvania Election Code, 25 P.S. § 3031.9 (a)(2), because the ExpressVote XL machines do not provide a ballot card on which “the first ballot page shall list in the order that such political parties are entitled to priority on the ballot, the names of such political parties with designating arrows so as to indicate the voting square or position on the ballot card.”

**Violations of the Pennsylvania Constitution’s Guarantee of the Free Exercise of the Right of Suffrage**

**Count VII:** Violation of the Pennsylvania Constitution, Article I, Section 5, which guarantees free and equal elections and the free exercise of the right to suffrage.

Violation of Article I, Section 26, of the Pennsylvania Constitution, which prohibits discrimination against the civil right to vote.

10. Plaintiffs seek a declaration that the certification of the ExpressVote XL voting machine violates the aforementioned provisions of the Pennsylvania Election Code and the Pennsylvania Constitution.

11. Plaintiffs seek an Order directing the Secretary to decertify the ExpressVote XL voting machine for use in Pennsylvania.

## **II. JURISDICTION**

12. The Court has original jurisdiction over this Petition for Review pursuant to 42 P.S. § 761(a).

## **III. PARTIES**

13. Plaintiff National Election Defense Coalition (“NEDC”) is a D/B/A of Psephos, Inc., a nonpartisan 501(c)(3) organization, having the mission of guaranteeing everyone the right to vote and have their vote counted in a transparent and trustworthy electoral system. Psephos, Inc., doing business as NEDC, is incorporated in California and has organizational and associational standing by virtue of its mission and subscribers.

14. Plaintiff Citizens for Better Elections (“CBE”) is a Pennsylvania non-profit corporation whose mission is to ensure accurate, verifiable, and secure elections. CBE is incorporated in Pennsylvania and has organizational and associational standing by virtue of its mission and membership.

15. The Individual Plaintiffs are individuals who reside in and are registered to vote in Pennsylvania.

16. Plaintiff Rich Garella is an adult individual who resides in Philadelphia, Pennsylvania and is a duly qualified elector of Philadelphia County.

17. Plaintiff Rachel A. Murphy is an adult individual who resides in Philadelphia, Pennsylvania and is a duly qualified elector of Philadelphia County.

18. Plaintiff Caroline Leopold is an adult individual who resides in Philadelphia, Pennsylvania and is a duly qualified elector of Philadelphia County.

19. Plaintiff Stephen Strahs is an adult individual who resides in Philadelphia, Pennsylvania and is a duly qualified elector of Philadelphia County.

20. Plaintiff Kathleen Blanford is an adult individual who resides in Philadelphia, Pennsylvania and is a duly qualified elector of Philadelphia County.

21. Plaintiff Sharon Strauss is an adult individual who resides in Philadelphia, Pennsylvania and is a duly qualified elector of Philadelphia County.

22. Plaintiff Anne C. Hanna is an adult individual who resides in Philadelphia, Pennsylvania and is a duly qualified elector of Philadelphia County.

23. Plaintiff Raphael Y. Rubin is an adult individual who resides in Philadelphia, Pennsylvania and is a duly qualified elector of Philadelphia County.

24. Plaintiff Robert F. Werner is an adult individual who resides in Easton, Pennsylvania and is a duly qualified elector of Northampton County.

25. Plaintiff Sandra O'Brien-Werner is an adult individual who resides in Easton, Pennsylvania and is a duly qualified elector of Northampton County.

26. Plaintiff Thomas P. Bruno is an adult individual who resides in Easton, Pennsylvania and is a duly qualified elector of Northampton County.

27. Plaintiff Roger Dreisbach-Williams is an adult individual who resides in Easton, Pennsylvania and is a duly qualified elector of Northampton County.

28. Plaintiff Jeff R. Faubert is an adult individual who resides in Hellertown, Pennsylvania and is a duly qualified elector of Northampton County.

29. The Individual Plaintiffs have been required to use the ExpressVote XL electronic voting machines that are the subject of this suit.

30. Each Individual Plaintiff cast a ballot in the November 5, 2019 election, each wants to cast a ballot in future elections, and each wants their future votes and the votes of all Pennsylvanians to be properly counted and tallied.

31. Respondent Kathy Boockvar was appointed Acting Secretary of the Commonwealth of Pennsylvania on January 5, 2019 and confirmed by the Senate on November 19, 2019. *See* Department of State <https://www.dos.pa.gov/about-us/pages/secretary-of-the-commonwealth.aspx> (last accessed December 2019). In this capacity, she leads the Pennsylvania Department of State and is charged with the general supervision and administration of Pennsylvania's election laws, including among other things, the duty "to examine and re-examine voting machines, and to approve or disapprove them for use in this State, in accordance with the provisions of [the Pennsylvania Election Code]", 25 P.S. § 2621. She is sued in her official capacity.

#### **IV. FACTUAL ALLEGATIONS**

##### **A. The ES&S ExpressVote XL Voting Machine**

32. The ExpressVote XL is a polling place voting device. It is one of several voting machines which were introduced in the last few years which are

commonly referred to as all-in-one hybrid voting machines. They are called “all-in-one” because they combine two tasks which are more often performed by two separate devices: marking a voter’s choices on a piece of paper, and tabulating votes from a piece of paper. In an all-in-one hybrid, these two voting processes are contained in a single device.

33. The ExpressVote XL voting machine looks like this:



34. A voter uses the ExpressVote XL by inserting into the device a 4.25-inch wide blank card made of thermal paper.

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<sup>3</sup> Election Systems & Software, <https://www.essvote.com/products/expressvote-xl/> (last visited December 2019).

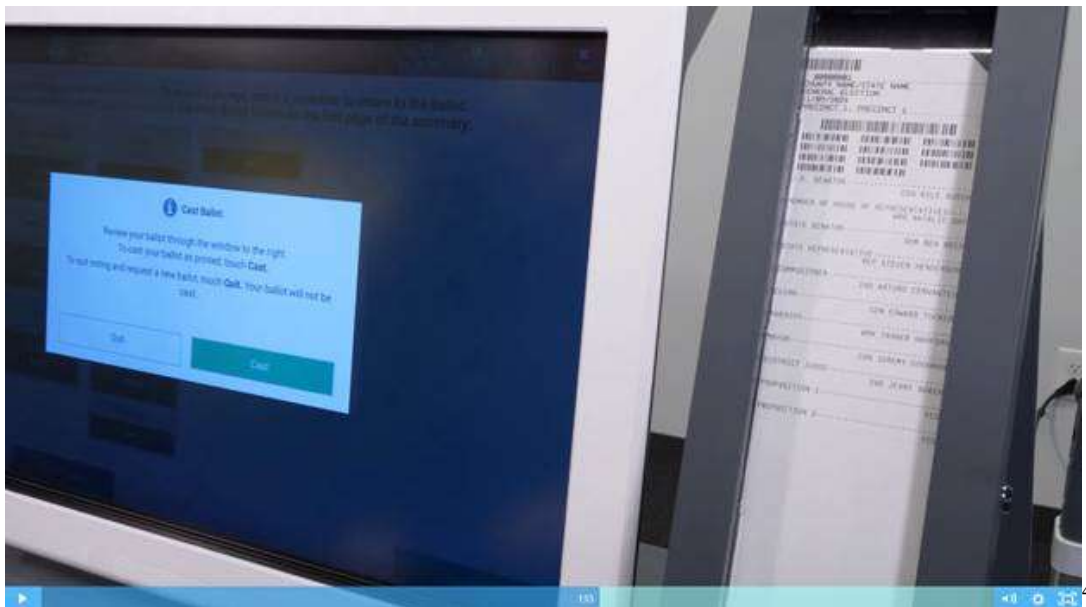


35. The voter uses the device's touch-operated screen and/or assistive technology (headphones or alternative controller) to select choices in one or more contests in the current election.

36. When the voter selects the "Print" button, the device prints the choices on the paper using a thermal printer.

37. The device then scans the printed paper that it just printed using an optical scanner and holds the scanned data in its memory.

38. The device presents the printed paper to the voter inside an enclosed box with a glass window on top.



39. The voter reviews the printed paper and selects one of two options in the interface: either to cast the ballot, or to spoil it.

<sup>4</sup> Election Systems & Software, <https://www.essvote.com/products/expressvote-xl/> (last visited December 2019).

40. If the voter chooses to cast the ballot, the device uses the data in its memory to add votes to the election tally and deposits the printed paper into a ballot container attached to the rear of the device.

41. If the voter chooses to spoil the ballot, then the device emits a repeating chime sound and displays instructions that the voter should wait for poll worker assistance.

42. Pennsylvania Election Code Section 1101-A, 25 P.S. § 3031.1, defines a “ballot” as: “ballot cards or paper ballots upon which a voter registers or records his vote or the apparatus by which the voter registers his vote electronically . . . .”

43. A ballot card is defined as a “a card which is compatible with automatic tabulating equipment and on which votes may be registered.”

Pennsylvania Election Code Section 1101-A, 25 P.S. § 3031.1.

44. The Pennsylvania Election Code defines a “paper ballot” as: “a printed paper ballot which conforms in layout and format to the voting device in use.” Pennsylvania Election Code Section 1101-A, 25 P.S. § 3031.1.

45. The paper used by the ExpressVote XL conforms to the Election Code’s definition of a “ballot card.”

46. The paper used by the ExpressVote XL is intended to be blank before printing, meaning that before one votes there will be no candidates listed on it.

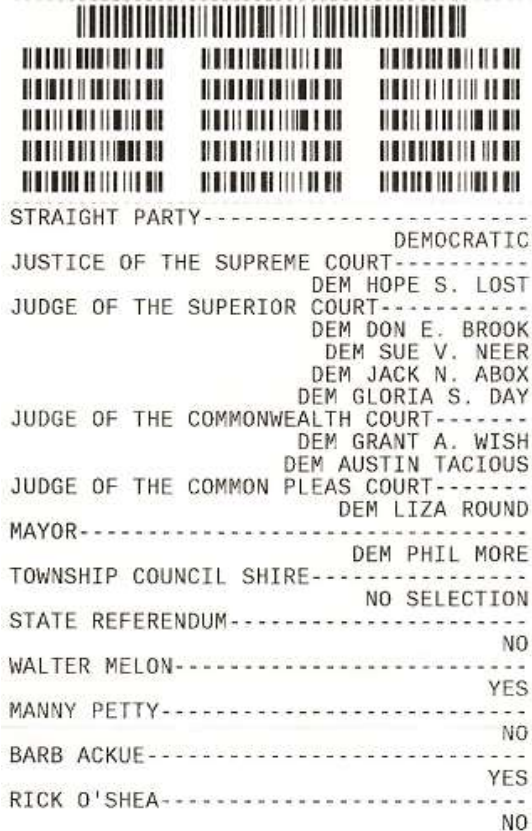
47. Therefore, the paper used by the ExpressVote XL does not conform to the Election Code's definition of a "*paper ballot*." (emphasis added).

48. On a phone call with the Secretary and members of the Pennsylvania Department of State on May 22, 2019, Deputy Secretary for Elections and Commissions Jonathan Marks stated that, using the definitions in the Election Code, the Commonwealth considers the paper used by the ExpressVote XL to be a "ballot card" and not a "paper ballot."

49. Once the ExpressVote XL prints on the ballot card, it contains three sections of content. At the top is general information about the current election (e.g., county, date, district). In the middle and near the top is a section containing one or more barcodes which are designed to encode information about the ballot and a voter's selections in a machine-readable format. Below the barcodes is a section containing one or more lines of text which is designed to provide a human-readable summary of a voter's selections.

50. Typically, the text lists a series of contests in the current election on the left and the corresponding selection, such as a candidate name, on the right. An example of a printed ballot card that was used in an April 26, 2018 demonstration of the ExpressVote XL machine at the Farm Show Complex in Harrisburg, Pennsylvania, is reproduced below:

ELECTIONWARE COUNTY/ELECTIONWARE STATE  
PA GENERAL ELECTION DEMO  
03/25/2018  
PRECINCT 1, PRECINCT 1



STRAIGHT PARTY-----  
DEMOCRATIC  
JUSTICE OF THE SUPREME COURT-----  
DEM HOPE S. LOST  
JUDGE OF THE SUPERIOR COURT-----  
DEM DON E. BROOK  
DEM SUE V. NEER  
DEM JACK N. ABOX  
DEM GLORIA S. DAY  
JUDGE OF THE COMMONWEALTH COURT-----  
DEM GRANT A. WISH  
DEM AUSTIN TACIOUS  
JUDGE OF THE COMMON PLEAS COURT-----  
DEM LIZA ROUND  
MAYOR-----  
DEM PHIL MORE  
TOWNSHIP COUNCIL SHIRE-----  
NO SELECTION  
STATE REFERENDUM-----  
NO  
WALTER MELON-----  
YES  
MANNY PETTY-----  
NO  
BARB ACKUE-----  
YES  
RICK O'SHEA-----  
NO

51. The machine is designed to tabulate each vote by scanning each barcode that is printed near the top of the ballot card.

52. The machine is not designed to tabulate from the touchscreen inputs, nor the human-readable text on the ballot card, only the barcodes.

## **B. Federal and State Certification Processes**

53. On or around June 5, 2017, Election Systems & Software (“ES&S”) submitted a voting system, EVS 6.0.0.0, for federal certification by the U.S. Election Assistance Commission (“EAC”). EVS 6.0.0.0 is a suite that includes voting machines, hardware, and software. It included a new model of electronic

voting machine, the ExpressVote XL. This voting system, including the ExpressVote XL, was certified by the EAC on July 2, 2018.

54. From June 25 to June 29, 2018, the Secretary conducted an examination of ES&S EVS 6.0.0.0, including the ExpressVote XL voting machine. The examination included a “public demonstration and functional examination, accessibility examination and security testing.” *See* Penn. Sec’y of State, *Report Concerning the Examination Results of Election Systems & Software EVS 6021 with DS200 Precinct Scanner, DS450 and DS850 Central Scanners, ExpressVote HW 2.1 Marker and Tabulator, ExpressVote XL Tabulator and ElectionWare EMS* (Nov. 30, 2018) (“Original Certification Report”), at 2, attached hereto as Exhibit C.

55. The functional and accessibility examinations were performed in the Commonwealth Capital Complex in Harrisburg, Pennsylvania. The functional examination was “open to the public and was videotaped by Department staff.” *Id.* at 3.

56. The examiners “concluded that the EVS 6000 did not comply with Sections 1107-A(3) and (13) of the Pennsylvania Election Code, 25 P.S. §§ 3031.7(3) & (13), because the ExpressVote XL and ExpressVote 2.1 did not accurately implement the Pennsylvania Method (PA Method) of straight party voting and the general election results did not allow adjudicating two write-in votes from ExpressVote XL ballots.” *Id.*

57. ES&S made software modifications to address the problems identified by the examination and made another software change to address a problem experienced in a primary election in the State of Kansas. The revised system and software was submitted to the EAC for federal certification and to the Secretary for state certification as EVS 6.0.2.1.

58. ES&S EVS 6.0.2.1 is a suite that includes voting machines, hardware, and software. Its central components are the Electionware election management software (used by election workers), several different types of ballot marking devices, and several optical scanners. The ExpressVote XL all-in-one hybrid voting machine, which is the subject of this suit, was certified as part of EVS 6.0.2.1.

59. From September 25 to September 28, 2018, a follow-up examination was conducted at the Colorado offices of SLI Global Solutions. Staff from the Department of State observed the follow-up examination via web conference, and the follow-up examination was videotaped.

60. On November 30, 2018, the Secretary certified EVS 6.0.2.1, including the ExpressVote XL voting machine, for use in Pennsylvania elections.

61. On July 16, 2019, CBE and NEDC filed a Petition signed by 200 duly registered electors in the Commonwealth of Pennsylvania (including several of the Individual Plaintiffs), requesting a re-examination of the ExpressVote XL, along with a check for \$450. *See Exhibit A, Examination Request Petition.*

62. The Petition to the Secretary enumerated ten grounds for re-examination.

63. On August 22, 2019, undersigned counsel submitted a letter to the Executive Deputy Chief Counsel of the Pennsylvania Department of State regarding the pending re-examination process. *See* the August 22 letter attached hereto as Exhibit D.

64. The August 22 letter stated in part:

Our understanding is that, to this point, every single examination and reexamination conducted in Pennsylvania since at least 2005 has been conducted in public, with very limited breaks for discussions of proprietary information. This precedent of transparency was set with the Secretary’s process in addressing the very first petition to re-examine a previously certified system . . . . Since then, to the best of our knowledge, every single examination and reexamination—including the 2012 re-examinations spurred by the litigation in *Banfield v. Cortes*—has been open to members of the public . . . . Please advise us on your view as to whether the re-examination is subject to the Sunshine Act [and] your office’s plans with regard to public access to the reexamination . . . .

*Id.*

65. The Secretary’s office did not answer the August 22 letter.

66. On September 3, 2019, the Secretary issued a report titled *Report Concerning the Reexamination Results of Election Systems and Software ExpressVote XL* (“Report Concerning Reexamination”, attached hereto as Exhibit B) in response to the Petition.

67. The re-examination was conducted at the Colorado offices of SLI Compliance, a voting system test lab.

68. Neither the petitioners nor the public were invited to observe the re-examination.

69. The Secretary dismissed outright seven out of the ten grounds for re-examination brought by Petitioners. The Report Concerning Reexamination states, “After a thorough and considered review of the Petition, the Acting Secretary has determined that claims three through seven, nine, and ten amount to purely legal arguments which do not apply to reexamination or certification of an electronic voting system.” *See* Exhibit B at 1.

70. The seven grounds dismissed outright by the Secretary included the petitioners’ concerns that the ExpressVote XL lacks required measures to prevent ballot fraud, prevents voters from knowing their votes were recorded and counted correctly, does not provide acceptable accessibility for voters with disabilities, and requires procedures which may constitute unlawful assistance in voting, all in violation of the Pennsylvania Election Code.<sup>5</sup>

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<sup>5</sup> Although not a subject of this suit, the tenth ground alleged that the certification of the ExpressVote XL is in contravention of a federal settlement in the matter of *Stein v. Cortes*, which requires the Secretary to “direct each county in Pennsylvania to implement these voting systems by the 2020 primaries, so that every Pennsylvania voter in 2020 uses a voter-verifiable paper ballot.” *See* “Settlement Agreement,” docket entry no. 108, *Stein v. Cortes*, No. 16-cv-06287 (E.D. Pa. Nov. 28, 2018), attached hereto as Exhibit E.



71. At the direction of the Secretary, SLI Compliance examined only three of the deficiencies listed in the Petition.

72. The Report Concerning Reexamination concluded that the ExpressVote XL did not violate the Election Code, but listed several “additional conditions” that jurisdictions using the machine “must” implement. *See* Exhibit B at 11-12.

**C. The ExpressVote XL’s Use in Pennsylvania Counties**

73. Since its certification for use in Pennsylvania, the ExpressVote XL has been purchased or selected for purchase by Philadelphia, Northampton, and Cumberland counties.

74. As of December 2, 2019, Pennsylvania had approximately 8,536,368 registered voters.

75. Approximately 1,446,240 registered voters (16.94%) reside in Philadelphia, Northampton, and Cumberland counties.<sup>6</sup>

76. The ExpressVote XL was used for an election in Pennsylvania for the first time by Philadelphia and Northampton Counties during the general election on November 5, 2019. Cumberland County did not use the ExpressVote XL in the November 5, 2019 general election as they were not in possession of them yet.

77. The ExpressVote XL remains certified for use in Pennsylvania.

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<sup>6</sup> “Pennsylvania Department of State Voting and Election Statistics” <https://www.dos.pa.gov/VotingElections/OtherServicesEvents/VotingElectionStatistics/pages/votingelectionstatistics.aspx> (last visited December 2019).

78. Philadelphia, Northampton, and Cumberland Counties intend to use the ExpressVote XL as the primary voting machine for all elections in 2020, including the April 28, 2020 primary election and November 3, 2020 general election, and beyond.

**D. The ExpressVote XL Does Not Provide Acceptable Ballot Security Procedures**

**i. Insecure Paper Path**

79. The ExpressVote XL has a single paper path which exposes a ballot card to the same internal printer which printed the ballot prior to impoundment. This hardware configuration only exists in certain all-in-one hybrid voting machines.

80. After the ExpressVote XL prints a ballot card with a voter's selections, the ballot card travels along a single paper path, moving towards the voter.

81. The ballot card first moves to a scanner where it pauses as the barcodes on the ballot card are read.

82. Then the ballot card continues along the path into a metal display box with a transparent top so that the voter can see it.

83. Once the voter chooses to cast the ballot card, the paper travels along the same paper path in reverse, this time moving away from the voter. It passes the scanner, then passes the printer, and is then impounded in the ballot container.

84. The Secretary's "Report Concerning Reexamination" confirms that the ballot card travels past the print head a second time prior to impoundment. *See* Exhibit B at 7.

85. The printer is controlled by software. The print head is raised and lowered by software.

86. The printer outputs data sent to it by software.

87. Aside from software-controlled hardware, the ExpressVote XL does not possess additional hardware intended to physically restrict the movement of the print head or to prevent it from contacting the ballot card at a time when it should not be in physical proximity to the card.

88. The software controlling the printer could be modified, replaced, or circumvented by an attacker who is able to get malicious code onto the voting machine.

89. The hardware inside the ExpressVote XL that marks the ballot card and the hardware that scans the ballot card are connected by the same software.

90. This enables a hacked machine's software to "know" what was printed on the ballot card early in the process and to make use of that information later.

91. For example, if a voter selected no candidate in one contest, a hacked machine would know that there was an opportunity to add a vote in that contest.

The software would also know if a certain candidate had been selected by the voter and could target only those ballots while leaving others alone.

92. Intentional malfeasance is not necessary. The printer on a malfunctioning voting machine could modify or deface a ballot card prior to impoundment.

93. The Pennsylvania Election Code, Section 1101-A, 25 P.S. § 3031.1, requires that an electronic voting system “provide for a permanent physical record of each vote cast.”

94. The primary purpose of having a paper ballot during an election is to collect durable evidence of voter intent.

95. Vote totals can be tallied digitally, but original, voter-marked ballots provide backup evidence to validate those totals.

96. The ExpressVote XL’s inability to create and preserve reliable paper evidence therefore threatens fundamental election security.

97. The ExpressVote XL can change not only the software-managed totals, but also the physical evidence that would show if those totals are correct or not. In this way, ballots altered by tampering could be used as proof that totals were not changed, even when they were.

98. If ballots are altered prior to impoundment, the altered ballots would be the official ballots.

99. Therefore, the ExpressVote XL does not produce a trustworthy and independent physical record of the voter's intended vote that can be used to audit, or double check, the election results to ensure that they accurately reflect voters' intent.

100. No voter using an ExpressVote XL machine can ensure that the paper ballot that they review before officially casting their vote is the actual record being tabulated or impounded.

101. This is particularly true since the barcode is read by the machine *prior* to the voter reviewing and officially casting his or her ballot.

102. Because there is no permanent, trustworthy, and independent physical record that can be used to audit election results generated by the ExpressVote XL, there can be no assurance that either the Plaintiffs' votes or the votes of any other Pennsylvania voter in the effected counties have been accurately cast and counted in accordance with voter intent, or that the election results are absolutely accurate.

103. The ExpressVote XL indeed produces a piece of paper, which can be counted and recounted as many times as desired. However, this piece of paper is not guaranteed to be a permanent physical record of *the voter's vote*, but rather only a record of the machine's own output—that is, data from an unreadable barcode stored in the machine that the voter cannot verify to ensure it matches readable text of a voter's choices.

104. Furthermore, the ExpressVote XL violates Section 1107-A of the Election Code, 25 P.S. § 3031.7(12), which requires that a voting system “[p]rovide[] acceptable ballot security procedures and impoundment of ballots to prevent tampering with or substitution of any ballots or ballot cards.”

105. The principle of software independence states: “A voting system is software-independent if an undetected change or error in its software cannot cause an undetectable change or error in an election outcome.”<sup>7</sup>

106. Software independence is crucial to ensure the auditability of election results. In order to conduct an audit, the integrity of the audit trail is paramount to the audit itself.

107. For example, in a district that uses paper ballots, the paper ballots can easily be verified and trusted to ensure that the audit is based on proper evidence. This is a scenario where one sees complete “software independence” as the audit trail is created by the voter themselves.

108. In the present case, the ExpressVote XL is not software-independent because the ballots themselves are created electronically and can be incorrectly coded by the machine or tampered with by a third party *after* the voter has cast his vote.

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<sup>7</sup> “On the Notion of Software-Independence in Voting Systems,” Ronald Rivest and John Wack, *Philosophical Transactions of The Royal Society*, August 6, 2008, Page 1, available at <https://people.csail.mit.edu/rivest/RivestWack-OnTheNotionOfSoftwareIndependenceInVotingSystems.pdf>

109. The ExpressVote XL does not conform with the principle of software independence.

110. While the Election Code does not specifically contemplate all-in-one hybrid voting machines with the ability to handle and to mark on ballots, it is common sense that a voting machine should not have the ability to change votes after the voter has confirmed and cast her ballot.

111. The same reasoning is evident and explicitly stated in Pennsylvania Election Code Section 1222, 25 P.S. § 3062(a), “No person while handling the ballots shall have in his hand any pencil, pen, stamp or other means of marking or spoiling any ballot.”

112. Acceptable ballot security procedures to prevent tampering must include a similar restriction on any machine handling the ballots as it does on any person handling the ballots.

## **ii. Insecure Administrator Access Panel**

113. The ExpressVote XL has an administrator access panel on the top of the machine, above the touchscreen, directly in the line of sight of voters.

114. The ExpressVote XL’s administrator access panel is readily available to voters while they are inside the private voting booth curtain.

115. No other voting machine certified for use in the Commonwealth has an access panel available to voters while they are hidden from the view of poll workers.

116. The access panel contains: (1) the on/off switch, (2) a “Supervisor Mode” switch which grants access to configuration and administrative features, (3) three USB ports, one occupied by the USB drive containing the election results and two which are open, (4) a CFLASH card containing the voting machine software is underneath a panel secured by screws.

117. The access panel is protected by a lock.

118. The lock can be picked quickly using tools which are easily obtained.

119. The locks on every ExpressVote XL in a given county are identically keyed.

120. A stolen or copied key from one district can be used in every other district for all future elections.

121. During the election on November 5, 2019 in Philadelphia, voters took photos of unlocked panels in at least three polling places.

122. A voting machine which provides voters with access to core system hardware and software while hidden from view does not provide acceptable ballot security procedures to prevent tampering.

### **iii. Insecure “Test Deck” feature**

123. The ExpressVote XL has a feature called “Test Deck” which is designed to provide a means for an election official to test the election on each machine that will be used for voting.



124. The Test Deck allows the software used by the touchscreen device, where the software controls for the Test Deck feature are operated, to communicate with the software used for tabulation of the election results.

125. The Test Deck software can create and submit digital ballots for tabulation.

126. The Test Deck feature enables an ExpressVote XL to manufacture a series of digital ballots with various vote patterns and submit them to the tabulator software *without* printing or scanning any paper ballot cards.

127. The Test Deck feature demonstrates that the ballot marking device portion of the ExpressVote XL can send an all-digital vote to the tabulator portion of the ExpressVote XL without having to use a paper record.

128. The Test Deck feature demonstrates that no hardware or software feature prevents the ballot marking portion of the ExpressVote XL from submitting electronic votes directly to the tabulator portion of the ExpressVote XL without creating a paper record.

129. Northampton County used the Test Deck feature during its logic and accuracy tests on and around October 9, 2019.

130. A voting machine that can create electronic ballots for tabulation without creating a permanent physical record does not reliably provide for a permanent physical record of each vote cast and does not provide acceptable ballot security procedures to prevent tampering.

**E. The Express Vote XL Fails to Provide All Voters with the Necessary Privacy and Absolute Secrecy in the Voting Process**

131. The ExpressVote XL violates Section 1107-A of the Election Code, 25 P.S. § 3031.7 (1), which requires that a voting system:

Provides for voting in absolute secrecy and prevents any person from seeing or knowing for whom any voter, except one who has received or is receiving assistance as prescribed by law, has voted or is voting.

**i. Chronological Ordering of Ballot Cards**

132. The ExpressVote XL stores ballot cards in chronological order in a ballot container.

133. Ballots stored in chronological order may allow a poll worker or an election official who knows even partial details about the sequence of voters to violate the absolute secrecy of one or more voters.

134. Most precinct ballot scanners tabulate paper ballots or ballot cards and then let the papers fall into a large bin at random. Extracting the ballots from the bin mixes them further.

135. The ExpressVote XL machine slides ballot cards into a narrow, ballot-sized container, one after another, neatly stacked.

136. When the polls close, the entire ballot container is removed and the ballot cards remain in chronological order inside.

137. The Secretary's own Report Concerning Reexamination confirmed that the ballot cards are stored in chronological order. *See Exhibit B at 8-9.*

138. A voter's ballot could be determined by referencing the order of voters in the poll book or on the numbered list of voters, by counting from the first or last ballot in the set, or by counting from another identifiable ballot, such as one with a known write-in vote.

139. The Pennsylvania Election Code requires every polling place to maintain a numbered list of voters. Voter names are added to the list in the order that they check-in. The lists are returned, along with the ballots, to the county election office after the polls close.

140. In polling places with only one ExpressVote XL device available for voting, the order of the voter names on the numbered list of voters will match the order of the ballot cards in the ballot container.

141. In polling places with more than one ExpressVote XL device available for voting, if each device is used exclusively by voters from a single party during a primary election, the voter names on the numbered list of voters, when filtered by the party affiliation recorded on the list, will match the order of the order of the ballot cards in the ballot container.

142. Chronologically ordered ballots fail to protect a voter's right to a secret ballot.

143. The ability to link voters to their ballots and to know how they voted enables information harvesting, vote buying and selling, and voter coercion.

144. The Pennsylvania Department of State has long held the position that voting systems with chronologically ordered ballots violate voter secrecy.

145. Dr. Michael Shamos, statutory examiner for the Secretary of the Commonwealth from 1980 to 2010, testified to a U.S. Senate committee in 2007, “Even paper trail advocates recognize that scrolled paper trails make it easy, not just possible, to determine how every voter in a precinct voted. The first voter’s ballot is first on the tape; the last voter’s is last; and everyone else’s is sequential order in between. A simple comparison between the paper trail and the poll list gives away everyone’s vote, in violation of the Section 201 requirement of a secret ballot. Even if only two percent of the vote is audited, it means that two percent of the voters are at risk of having their votes revealed.”<sup>8</sup>

146. The voting system cannot depend on procedures by poll workers—which may not be consistently or correctly employed—to restore ballot secrecy. The Election Code requires in 25 P.S. § 3031.7(1) that the voting system *itself* must provide for the required degree of ballot secrecy.

## **ii. Voter Secrecy During Spoliation**

147. Section 1107-A of the Election Code, 25 P.S. § 3031.7(10), requires that any voting system “that uses paper ballots or ballot cards to register the vote

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<sup>8</sup> Testimony before the U.S. Senate Committee on Rules and Administration, July 25, 2007, available at <http://euro.econ.cmu.edu/people/faculty/mshamos/Senate20070725.pdf> (last visited December 2019).

and automatic tabulating equipment to compute such votes . . . shall provide that a voter who spoils his ballot may obtain another ballot . . . .”

148. The combination of 25 P.S. § 3031.7(10)’s requirement that a voter be able to spoil their ballot, and 25 P.S. § 3031.7 (1)’s requirement that a voter be able to vote in “absolute secrecy” on a voting system that “prevents any person from seeing or knowing for whom any voter . . . has voted,” requires that a voter be able to spoil their ballot without any person seeing that ballot.

149. This right to secrecy when spoiling a ballot is consistent with section 301(a)(1)(A) (ii) of the federal Help America Vote Act of 2002 (HAVA), 52 U.S.C. § 21081(a)(1)(A)(ii), which requires that a voting system must:

provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error) ...

150. Voter secrecy is important even for a spoiled ballot. Among other factors, a voter might spoil a ballot to change or correct a vote for one particular candidate or issue, while desiring to protect the secrecy of votes for other candidates and issues.

151. The ExpressVote XL’s procedures for ballot spoliation and for physical review of a ballot fail to provide this required secrecy.

152. When any voter using the ExpressVote XL wants to spoil her ballot card or wants to handle the ballot card for physical review, the voter must select an option in the interface to “Quit” or “Spoil Ballot.”<sup>9</sup>

153. The ExpressVote XL then displays a spoliation message that can be configured by the jurisdiction.

154. In the Philadelphia County election on November 5, 2019, the spoliation message read: “Vote Session Canceled. Your ballot will be spoiled with no votes cast. A poll worker will be entering the booth to assist you.”

155. The ExpressVote XL then emits a chiming sound to alert a poll worker.

156. A poll worker must enter the voting booth, touch a designated location on the screen, enter an administrator password using an on-screen keypad, select the reason for the spoliation, and retrieve the ballot card from the windowed cartridge where it is held.

157. The ExpressVote XL does not allow a voter to spoil her ballot card without a poll worker entering the booth.

158. A poll worker must look at the ballot card while extracting it from the cartridge.

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<sup>9</sup> The exact text of the button is configurable and can be renamed by the jurisdiction.

159. The poll worker can see and know for whom the voter has voted or is voting.

160. Before the ballot card is extracted from the cartridge, it is a ballot which can be legally cast in the election. The voter has the right to change her mind, or she may have triggered the spoiling procedure inadvertently.

161. Upon extraction from the cartridge, the ballot card is a ballot which can still be reinserted and legally cast in the election.

162. The ExpressVote XL allows ejected ballots to be reinserted and cast.

163. The ejected ballot card remains a ballot which can be legally cast in the election until it is surrendered and marked “Spoiled” according to the procedures of the Pennsylvania Election Code.

164. The ExpressVote XL does not allow any voter to privately and independently correct an error through the issuance of a replacement ballot.

165. Pennsylvania Election Code § 1111-A, 25 P.S. § 3031.11 (b), provides that: “If any voter shall ask for further instructions concerning the manner of voting after entering the voting booth, any election officer may give him audible instructions *without entering such booth . . .*” (Emphasis added.)

166. The ExpressVote XL does not permit a voter to spoil the ballot without the poll worker entering the booth.

167. In the Report Concerning Reexamination, the Secretary “concluded that appropriate voter and poll worker training and instructions on the screen can ensure vote record secrecy.” *See* Exhibit B at 10.

168. Hoping that workers follow guidance and take precautions does not provide the level of secrecy that is mandated in the Pennsylvania Election Code.

169. A video taken at poll worker training on November 3, 2019 in Philadelphia County highlights the high probability that the legal procedures for spoiling a ballot will be violated and secrecy will not be maintained.<sup>10</sup> The trainer explained the procedure to poll workers as follows:

Keep in mind that ballot is not yet spoiled. It is still very much active, okay so you have to give it back to the voter. But keep in mind, before even entering the curtain please announce yourself to the voter. We don't want the voter to feel like you are intruding on their privacy, so let them know you are coming in to spoil their ballot. Once you've done that, the paper ballot will eject out of the machine, you hand it back to the voter. Please do not look at their selections. As hard as that will be.

We're only human so we make mistakes. Maybe glance, I don't know. But if you do, don't tell nobody else, okay?

170. Section 1830 of the Pennsylvania Election Code, 25 P.S. § 3530 (“Unlawful assistance in voting”) specifies that any voter who “permit[s] another to accompany him into the voting compartment or voting machine booth” or “any

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<sup>10</sup> *See* YouTube.com “PWT Nov 3 Vid 1/5 Spoiling a ballot/audience laughs at expense of voters” <https://www.youtube.com/watch?v=GGK0JpnpJsE&t=110s> at 1:30. (last accessed December 11, 2019).



person who shall go into the voting compartment or voting machine booth with another while voting or be present therein while another is voting” is guilty of a misdemeanor and may be sentenced to pay a fine, imprisonment, or both.

171. A voting system in which a voter exercising the legal right to spoil the ballot risks criminal charges is not “safely . . . useable in the conduct of elections” as required by 25 P.S. § 3031.7 (11).

172. The spoliation procedure can reveal an administrator password to the voter.

173. During public demonstrations of the ExpressVote XL, several members of the public reported easily observing the administrator password used during the spoliation procedure.

174. If the password is not kept secret, it opens up the possibility that unauthorized personnel could use the password to access functions in the machine related to voting and tabulation.

175. A voting machine that reveals the administrator password to any voter who requests ballot spoliation does not provide “acceptable ballot security procedures” under 25 P.S. § 3031.7(12).

**F. The ExpressVote XL Fails to Provide Adequate Accessibility to Voters with Disabilities**

176. Section 1107-A of the Pennsylvania Election Code, 25 P.S. § 3031.7(5), requires that a voting system “[p]ermits *each* voter to vote for any

person and any office for whom and for which he is lawfully entitled to vote, whether or not the name of such person appears upon the ballot as a candidate for nomination or election.” (Emphasis added.)

177. The requirement to permit “each” voter to vote for any person and any office for whom and for which he is lawfully entitled to vote includes voters with disabilities.

178. This “each” voter requirement is consistent with the Help America Vote Act of 2002 (HAVA), § 301(a), 52 U.S.C. § 21081(a)(3)(A), which requires that a voting machine “be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters,” and (to the extent that any HAVA Section 261 funds are involved in acquiring and or running the ExpressVote XL) HAVA section 261(b), 52 U.S.C. § 21021(b)(1), which provides that:

An eligible State and eligible unit of local government shall use the payment received under this part for— (1) making polling places . . . accessible to individuals with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

179. The Pennsylvania certification of ES&S EVS 6.0.2.1 included an accessibility testing report (“Accessibility Report”). See Original Certification Report, Exhibit C, at 67.<sup>11</sup>

180. In a departure from similar accessibility testing conducted on all other voting machines since 2017, the ExpressVote XL was harshly reviewed by the accessibility test group, comprised of several voters with a range of disabilities.

181. According to the Accessibility Report, “Every participant had at least one problem, despite relatively high election knowledge and digital experience, suggesting that the issue would be more severe for voters without these personal resources to help them understand what is happening.” *Id.* at 70.

182. The Accessibility Report noted that:

None of the participants could verify the ballot in the glass cage and...(1) blind voters had no access to the ballot to use personal technology that would enable them to vote; (2) low vision voters could not position the ballot so they could read the small text; (3) other voters had problems reading the ballot because of glare and because the sides of the ballot were obscured by the cage; and (4) while it is possible to have the ballot ejected to handle it while verifying, the procedure is unclear and it requires voters to tell the system they want to “Quit” and then call a poll worker in which of course violates the voter’s right to secrecy.

*Id.* at 74.

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<sup>11</sup> The Accessibility Report was appended as Attachment B to the Original Certification Report and is not consecutively paginated. The pin cites to the Accessibility Report are to the PDF page in the 99-page Original Certification Report document.

183. Participants in the accessibility study found the ExpressVote XL made it difficult to cast write-in votes. For a vote for a write-in candidate to count, spelling must be perfect and “[a]ll of the participants knew that a misspelled write-in would not be counted, but could not figure out how to review what was typed.” *Id.* at 70-71, 86-87.

184. Furthermore, the ExpressVote XL did not allow participants to review any write-in votes through the audio ballot because the text of the write-in is not encoded in the barcodes printed on the ballot card. *Id.* at 73, 75, 88.

185. The Accessibility Report states that “1 blind voter, who had struggled to enter a write-in and wanted to confirm what was on the ballot, found that the actual text of the write-in is not included in the review because it is not encoded in the paper ballot barcodes.” *Id.* at 73.

186. Voters relying on the audio ballot had significant issues with voting a “straight party” ticket.<sup>12</sup> If a voter selects a single candidate outside the straight-party ticket, the ExpressVote XL deselects all other candidates, without informing the audio-guided voter.

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<sup>12</sup> Section § 1107-A of the Election Code, 25 P.S. § 3031.7(3), presently requires that a voting system: “Permits each voter...to vote a straight political party ticket...by one mark or act, to vote for all the candidates of one political party.” Act No. 2019-77, P.L. 552, S.B. 421 (Oct. 31, 2019), removed this requirement for elections held on or after April 28, 2020.

187. The Accessibility Report describes this problem as “not only a failure to vote independently, but identifying and solving the problem requires revealing their votes to a poll worker or assistant.” *Id.* at 68-69.

188. The audio ballot does not announce the party of each candidate.

189. The Accessibility Report states that the audio ballot also “does not announce the party of each candidate. This made it impossible to complete tasks based on party, including confirming straight party selections.” *Id.* at 83, 86.

190. The Secretary’s own Accessibility Report makes it clear that the ExpressVote XL is not accessible for individuals with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters, and does not permit “each” voter to vote for to vote for any person and any office for whom and for which he is lawfully entitled to vote as required by 25 P.S. § 3031.7(5).

**G. The ExpressVote XL Fails to Provide Voters with Ballots that are in the Proper Form Mandated by the Election Code**

191. The General Assembly enacted detailed, specific requirements for ballot forms in the Election Code.

192. The Secretary is not authorized to waive or disregard statutory requirements of the Election Code.

193. The ExpressVote XL ballot forms violate the Pennsylvania Election Code in several ways: (1) the ballots are not printed on colors corresponding to the

voter's registered affiliation; (2) the ballots are not bound together in books of fifty for each district; (3) the ballots fail to allow for the proper marking by checkmark or "x" of a voter's choices; and (4) the positioning of the voter's choice next to a candidate or party preference is not in line with mandated procedure.

**i. Failure to Color-Code**

194. The Pennsylvania Election Code § 1109-A, 25 P.S. § 3031.9(e), requires that

In primary elections, the Secretary of the Commonwealth shall choose a color for each party eligible to have candidates on the ballot and a separate color for independent voters. The ballot cards or paper ballots and ballot pages shall be printed on card or paper stock of the color of the party of the voter and the appropriate party affiliation or independent status shall be printed on the ballot card . . . .

195. The ExpressVote XL ballots are not printed on colored paper.

196. All ExpressVote XL ballots used in Pennsylvania are printed on white paper.

197. When ballot cards are not on card or paper stock colored according to the party affiliation, the voter may tell the poll worker operating the ExpressVote XL a different party affiliation and cast fraudulent votes in another party's election, and the impounded ballot card would show no evidence of the fraud.

198. Colored card or paper stock with the party affiliation printed also reduces the chance that a poll worker will set the wrong ballot style for a voter by accident, causing her to cast a ballot in an election in which she is ineligible.

## **ii. Lack of Binding**

199. The ExpressVote XL violates Section 1004 of the Pennsylvania Election Code, 25 P.S. § 2964:

All the ballots for the same election district shall be bound together in books of fifty, in such a manner that each ballot may be detached and removed separately. [...] The ballots for each party to be used at a primary shall be bound separately.

200. The ExpressVote Ballots are not bound together in books.

201. The ExpressVote XL ballots are loose sheets of paper.<sup>13</sup>

202. Binding ballots in books is an important security measure to prevent ballot theft, loss, and fraud.

203. The Pennsylvania Election Code specifies many procedures and requirements to ensure strict ballot inventory control. *See* 25 P.S. § 2971 (requiring county board to keep records of ballots printed and furnished, as well as unused ballots and cancelled ballots); 25 P.S. § 3154(c) (requiring county board to publicly account for extra official ballots); 25 P.S. § 3031.13 (requiring polling places using electronic voting system ballot cards for district tabulation to report, at the close of the polls, “the number of such ballots issued to electors” and to reconcile the ballot count with the numbered list of voters); 25 P.S. § 3059 (“No

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<sup>13</sup> When the Petition was submitted, the ballot cards used by the ExpressVote XL also lacked serially-numbered, perforated stubs. On November 27, 2019 the Governor of Pennsylvania signed 2019 Act 94 which removed the requirement for perforated stubs, but left the binding requirement unchanged. *See* <https://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2019&sessInd=0&act=94> (last visited December 2019).

official ballot shall be taken from any book of ballots, except by an election officer or clerk when a person desiring to vote has been found to be a qualified elector entitled to vote. Not more than one ballot shall be removed at any one time or given to an elector, except in the case of a spoiled ballot as provided by this act.”).

204. The reason for these procedures and requirements to strictly control the ballot inventory, and to be accountable for every official ballot issued in an election, is to protect the integrity of the election.

205. Bound ballots are less likely to be inadvertently misplaced or lost than unbound ballots.

206. Bound ballots make it less likely a voter will be given more than one ballot than unbound ballots.

207. Bound ballots are less easily stolen and removed from the polling place than unbound ballots.

208. A stolen ballot could be used to create forged ballots.

209. A stolen ballot could be marked with preferred votes and another voter could be induced or coerced into casting it.

210. If the paper evidence of the election is to be considered trustworthy, it must be demonstrated that no paper evidence has been added or removed.

211. The inability to control and reconcile the ballot inventory in an election casts doubt on the election results.



### **iii. Failure to Provide for Proper Ballot Marking**

212. The ExpressVote XL violates Section 1112-A of the Pennsylvania Election Code, 25 P.S. § 3031.12(b)(2)-(4), which applies to districts using paper ballots or ballot cards.

213. The three procedures in 25 P.S. §§ 3031.12(b)(2-4) each specify that a voter shall vote on a ballot card by “making a cross (X) or check (✓) mark or by making a punch or mark sense mark in the square opposite the name” of the candidate, the party, the write-in position, or the answer to a ballot question.

214. The ExpressVote XL does not record a vote by making a cross or check mark, or a punch or mark sense mark.

215. On an ExpressVote XL ballot card there is no square opposite the name in which to place any mark. Instead a barcode is printed near the top of the ballot card, separate and far from the human-readable text. The barcodes are not even listed in the same order as the names are listed. Neither the human-readable text nor the barcodes comply with the mark requirement.

216. The type of mark and its position relative to the name is an important requirement for at least two major reasons. First, it allows the voter to verify that each vote matches her intent prior to casting the ballot card. Second, it enables the voter to see on the ballot card the choice that the voter selected, which is particularly important in categories where there are a large number of candidates

with more than one choice—if a voter makes a mistake, she will likely not catch it on the machine-printed ballot form.

#### **iv. Positions on the Ballot Card**

217. The ExpressVote XL violates 25 P.S. § 3031.9 (a)(2) which states that “the first ballot page shall list in the order that such political parties are entitled to priority on the ballot, the names of such political parties with designating arrows so as to indicate *the voting square or position on the ballot card* where the voter may insert by one mark or punch the straight party ticket of his choice.” (Emphasis added).

218. The ExpressVote XL does not indicate voting positions on the ballot card, nor does it use any “designating arrows.”

219. The ExpressVote XL does not list names of political parties in the order that they are entitled to priority on the ballot.

220. In fact, there are no fixed positions on the ballot card—the location of the barcode and human-readable text vary depending on the voter’s other selections.

221. Because the barcode contains the voter’s choices and the readable text at the bottom of the ballot is separate from those marks, it is impossible to know if they match and are therefore properly recording the voter’s choices. This inability to ensure a voter’s choice is in direct violation of the Election Code.

**H. The Secretary’s Reexamination of the ExpressVote XL Did Not Resolve the Concerns Raised in the July 16, 2019 Petition**

222. The Election Code requires that, during the certification process, each machine vendor demonstrate to the Secretary that its machine is capable of “absolute accuracy” and the counting of “every” valid vote. Pennsylvania Election Code § 1107-A (11), (13), 25 P.S. § 3031.7(11), (13). The Secretary of State is required to “examine” every machine, 25 P.S. § 3031.7, and ascertain if it meets the statutory standard of absolute accuracy, among others, and of having ballot security sufficient to “preclude . . . tampering.” Election Code § 1107-A(12), 25 P.S. § 3031.7(12).

223. If there are concerns that the Code has been violated by a certified machine, “the Secretary’s duty to re-examine [a voting machine] upon proper request is mandatory.” *Banfield v. Aichele*, 51 A.3d 300, 314 (Pa. Commw. Ct. 2012), *aff’d sub nom. Banfield v. Cortes*, 110 A.3d 155 (2015).

224. In this case, the Secretary’s re-examination procedures did not, and were not reasonably designed to, adequately determine whether the ExpressVote XL met the requirements of the Election Code for accuracy and security.

225. In the *Report Concerning Reexamination*, the Secretary dismissed seven out of the ten claims brought by Petitioners outright, such as concerns over accessibility for disabled individuals, stating that these grounds were “purely legal arguments which do not require reexamination.” See Exhibit B at 2.

226. For the remaining three claims, the Secretary noted that no violations would occur if the election staff and poll workers acted in accordance with certain “additional conditions” which, *inter alia*, focused mainly on the behavior of poll workers as opposed to the ExpressVote XL.

227. Regarding vote tampering, the Secretary stated that “the system documentation cited multiple procedures in place to ensure the XL is maintained, including: . . . poll worker selection, poll worker training, physical security of the polling place environment, physical security of the device . . . .” *Id.* at 7.

228. With regard to the allegation that the machines do not provide for voting in absolute secrecy, the Secretary stated that this was allegation was also baseless because

in accordance with recommended procedures, once an election has been closed, a poll worker will not be handling the paper vote summary records...The Examiners provided a recommendation suggesting that processes to randomize vote summary records should be performed at the county office in accordance with the Pennsylvania Election Code...In addition vote security is maintained when statutory procedures for commingling ballots is conducted prior to canvass and storage by the county board of elections.

*Id.* at 8-9.

229. With regard to the secrecy violations when spoiling a ballot, the Secretary reported that “appropriate voter and poll worker training and instructions on the screen can ensure vote record secrecy.” *Id.* at 10.

230. By resting the security of the machine on the precise following of instructions by poll workers who are capable of human error and who do not exist in a controlled environment, the Secretary's re-examination did not address the ExpressVote XL's violation of 25 P.S. §§ 3031.7(11), (12), (16), and (17) which state that, *inter alia*, each voting machine:

shall be so constructed and controlled that, during the progress of voting, it shall preclude every person from seeing or knowing the number of votes theretofore registered for any candidate or question; and it shall preclude every person from tampering with the tabulating element... It shall be constructed so that every person is precluded from tampering with the tabulating element during the course of its operation.

231. The Pennsylvania Election Code requires that *the machine itself*, without intervention from anyone, "shall preclude every person"—including poll workers—from seeing the vote numbers, and "shall be constructed so that every person"—including poll workers—"is precluded" from tampering. The machine itself must be constructed to secure security and secrecy for each individual voter.

232. The Secretary's reliance on the hope that poll workers and voters follow instructions precisely does not satisfy the requirements of the Code.

233. The Secretary was required to review seriously the defects of the ExpressVote XL as outlined in the July 16, 2019 Petition and she failed to do so. Instead she did a cursory review which gave credence to few of the well-founded defects in the machine and dismissed the rest with less than thorough responses.

Consequently, the Secretary's re-examination did not remedy the deficiencies of the ExpressVote XL, which remains certified in Pennsylvania.

**I. The ExpressVote XL Experienced Multiple Issues of Incorrect Tabulation of Votes During its Use in the November 5, 2019 Election in Philadelphia and Northampton Counties, Thereby Illustrating the Machine's Flaws**

234. ExpressVote XL machines were used for the first time in Northampton and Philadelphia Counties, Pennsylvania, for the November 5, 2019 election.

235. Several major issues with the ExpressVote XL were reported on and after Election Day. These issues included:

- a. Machines stopped working or would not start up.
- b. Touchscreens were too sensitive or not sensitive enough.
- c. Touchscreens registered a vote for a candidate or other voting target the voter did not touch and did not intend to cast a vote for.
- d. Voters had trouble seeing the printed ballot inside the glass-topped box.
- e. Votes were incorrectly tabulated, resulting in the need to re-scan all ballots using high-speed scanners.
- f. Some machines showed no votes for certain candidates.
- g. Entire precincts reported no votes for certain candidates.

236. The process of ballot verification in Northampton and Philadelphia counties was difficult for many voters, with voters reporting the text being too small, faint, and/or hard to read.

237. In a survey of 150 Philadelphia voters in the November 2019 general election, approximately half said that they had difficulty viewing the printed ballot card because of size and quality of the text and/or lighting conditions in the polling place.

238. In a contest for County Judge in Northampton County, a Democratic candidate was initially shown to have received approximately 0 votes after polls closed on Election Night.<sup>14</sup> This was an extremely unlikely result, given that straight-ticket party voting was available.

239. In fact, a machine recount conducted by election officials, from election night until the following morning using several borrowed optical scanners of different models than the ExpressVote XL, counted 26,142 votes for that candidate, and he was declared the winner.

240. The election-night recount allegedly addressed the *tabulation* problems on the ExpressVote XL. However, it did not and could not address the prevalent *ballot-marking* and *ballot-verification* problems. The secondary scanners were able to demonstrate that the ExpressVote XL printed 26,142 ballots

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<sup>14</sup> Election-night news reported up to 164 votes, perhaps due to some hand-counted absentee ballots.

indicating a vote for that candidate. The scanners cannot demonstrate that 26,142 Northampton County voters intended to vote for that candidate.

241. The failure to count votes correctly in the Northampton County general election indicates that the ExpressVote XL voting machine is not “capable of absolute accuracy” as required by Section 1107-A of the Election Code, 25 P.S. § 3031.7(11).

**J. Petitioners Are Entitled To Injunctive Relief *Pendente Lite***

242. Plaintiffs will suffer irreparable harm if the ExpressVote XL continues to be used in Pennsylvania elections because their votes may be ignored, marked incorrectly, counted incorrectly, or susceptible to hackers and the election may result in the certification of winners who are not supported by the majority of voters.

243. Plaintiffs have no adequate remedy at law and the public interest would not be harmed and would instead be benefited by an injunction *pendente lite*.

244. The inaccuracy, unreliability, and lack of a voter verifiable record in this instance not only violates the Pennsylvania Election Code and Constitution, but also has eroded the public’s confidence in the election process. Audits and recounts can address flaws in how ballots are *counted*, but not in how they are *marked*. Furthermore, no audit or recount can address the problem of voters who decide not to vote due to frustration or long lines caused by machine failures, or



accusations of unreliability or tampering. The poor performance of the machines in the November 2019 election amply demonstrated this threat.

245. The balance of hardships weighs strongly in Plaintiffs' favor and against the Secretary since upcoming elections can be conducted easily in any manner that complies with Pennsylvania law, including the use of hand-marked paper ballots tabulated with optical scanners.

246. The public interest in protecting the right to vote, in preserving the integrity of the electoral process, and in having electronic voting systems that do not violate Pennsylvania's Constitution or statutory law weighs heavily in Plaintiffs' favor.

### **COUNT I: Failure to Provide Acceptable Security Procedures**

#### **Violation of Pennsylvania Election Code § 1107-A, 25 P.S. § 3031.7(12)**

247. Plaintiffs incorporate by reference as if fully set forth herein each of the preceding allegations.

248. The Secretary's certification for use in Pennsylvania elections of the ExpressVote XL Voting Machine violates the Pennsylvania Election Code Section 1101-A, 25 P.S. § 3031, as it does not "[p]rovide acceptable ballot security procedures and impoundment of ballots to prevent tampering with or substitution of any ballots or ballot cards."

## **COUNT II: Failure to Record and Tabulate Accurately**

### **Violation of Pennsylvania Election Code § 1107-A, 25 P.S. § 3031.7(13)**

249. Plaintiffs incorporate by reference as if fully set forth herein each of the preceding allegations.

250. The Secretary's certification for use in Pennsylvania elections of the ExpressVote XL Voting Machine violates the Pennsylvania Election Code § 1107-A (13), 25 P.S. § 3031.7 (13), as the machines do not routinely and consistently "record[ ] correctly and compute[ ] and tabulate[] accurately every valid vote registered."

## **COUNT III: Failure to be Designed and Equipped for Absolute Accuracy**

### **Violation of Pennsylvania Election Code § 1107-A (11), 25 P.S. § 3031.7(11)**

251. Plaintiffs incorporate by reference as if fully set forth herein each of the preceding allegations.

252. The Secretary's certification for use in Pennsylvania elections of the ExpressVote XL Voting Machine violates the Pennsylvania Election Code § 1107-A (11), 25 P.S. § 3031.7(11) as they are not "suitably designed and equipped to be capable of absolute accuracy."

## **COUNT IV: Voter Privacy and Secrecy**

### **Violation of Pennsylvania Election Code § 1107-A, 25 P.S. § 3031.7(1), Section 1111-A of the Pennsylvania Election Code, 25 P.S. § 3031.11(b), and the Pennsylvania Constitution, Article VII § 4**

253. Plaintiffs incorporate by reference as if fully set forth herein each of the preceding allegations.

254. The Secretary’s certification for use in Pennsylvania elections of the ExpressVote XL Voting Machine violates the Pennsylvania Election Code § 1107-A, 25 P.S. § 3031.7 (1) and the Pennsylvania Constitution, Article VII, Section 4, as they are not capable of enabling “voting in absolute secrecy”, nor do they “prevent[] any person from seeing or knowing for whom any voter, except one who has received or is receiving assistance as prescribed by law, has voted or is voting.”

255. The Secretary’s certification for use in Pennsylvania elections of the ExpressVote XL Voting Machine violates the Pennsylvania Election Code § 1111-A, 25 P.S. § 3031.11 (b), because the ExpressVote XL machines require another person to enter the voting booth in order for a voter to exercise the right to spoil a ballot.

### **COUNT V: Accessibility**

#### **Violations of Pennsylvania Election Code § 1107-A, 25 P.S. § 3031.7(5)**

256. Plaintiffs incorporate by reference as if fully set forth herein each of the preceding allegations.

257. The Secretary’s certification for use in Pennsylvania elections of the ExpressVote XL Voting Machine violates the Pennsylvania Election Code § 1107-A, 25 P.S. § 3031.7(5), as they are not accessible for individuals with disabilities, and therefore do not permit “each” voter to vote for the candidates of their choice.

## **COUNT VI: Unlawful Ballot Format**

### **Violation of Pennsylvania Election Code §§ 1004, 1109-A, and 1112-A, 25 P.S. §§ 3031.9(e), 3031.9(a)(2), and 3031.12 (b)(2)-(4)**

258. Plaintiffs incorporate by reference as if fully set forth herein each of the preceding allegations.

259. The Secretary's certification for use in Pennsylvania elections of the ExpressVote XL Voting Machine violates Section 1109-A of the Pennsylvania Election Code, because the ExpressVote XL machines do not allow for votes to "be printed on card or paper stock of the color of the party of the voter [nor do they include] the appropriate party affiliation or independent status...on the ballot card."

260. The Secretary's certification for use in Pennsylvania elections of the ExpressVote XL Voting Machine violates Section 1004 of the Pennsylvania Election Code, 25 P.S. § 2964, because the ExpressVote XL machines "do not b[i]nd together [the ballots] in books of fifty in such a manner that each ballot may be detached and removed separately."

261. The Secretary's certification for use in Pennsylvania elections of the ExpressVote XL Voting Machine violates Section 1112-A of the Pennsylvania Election Code, 25 P.S. § 3031.12 (b)(2)-(4), because the ExpressVote XL machines do not provide the voter an opportunity to "mak[e] a cross (X) or check

(✓) mark or... a punch or mark sense mark in the square opposite the name” of the candidate that they are voting for . . . .”

262. The Secretary’s certification for use in Pennsylvania elections of the ExpressVote XL Voting Machine violates 25 P.S. § 3031.9 (a)(2) which states that “the first ballot page shall list in the order that such political parties are entitled to priority on the ballot, the names of such political parties with designating arrows so as to indicate the voting square or position on the ballot card.”

**COUNT VII: Free and Equal Elections, Right to Free Exercise of Suffrage,  
and Equal Protection in Right to Vote**

**Violation of Pennsylvania Constitution Article I, §§ 5 and 26**

263. Plaintiffs incorporate by reference as if fully set forth herein each of the preceding allegations.

264. Article I, Section 5 of the Pennsylvania Constitution protects the rights of all Pennsylvanians, including Plaintiffs, to vote by guaranteeing that “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

265. Article I, Section 26 of the Pennsylvania Constitution provides that “[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.”

266. The Secretary's certification of the ExpressVote XL machine and their subsequent use in Pennsylvania's elections has caused and will continue to cause violations of and interference with Plaintiffs' suffrage rights by making it likely that a significant number of votes will not be counted accurately, or at all.

267. The problems that were caused and which are likely to be caused by the certified voting systems create the risk that persons for whom the majority of voters have not cast their ballots will be declared the election winners and will take office, in contravention of the very essence of our democracy.

268. Plaintiffs' rights under Article I of the Pennsylvania Constitution include not only the right to have their own votes counted but also the right to see that the votes of their fellow citizens will be counted correctly, thereby assuring Plaintiffs that their votes will have the proper weight and that Pennsylvania's office holders are democratically elected.

269. The Secretary's certification of the ExpressVote XL threatens Plaintiffs' fundamental civil right to vote because the voting system's defects and security flaws create the risk that Plaintiffs, together with other Pennsylvania voters, have their votes rendered meaningless or, worse yet, deemed cast for a candidate for whom they did not vote.

270. Plaintiffs' equal protection rights under the Pennsylvania Constitution are likewise at risk because, while they are compelled to vote in counties using the ExpressVote XL, other registered voters in Pennsylvania may vote in precincts or

counties using voting systems, such as verifiable paper ballots that are counted by hand or by optical scanners, that do not suffer from the defects identified in this Petition.

271. The Secretary's Certification for use in Pennsylvania elections of the ExpressVote XL Voting Machines violates Article I §§ 5 and 26 of the Pennsylvania Constitution.

## **V. REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Respondents and:

- a. Declare that, for all the reasons identified above, ExpressVote XL violates the Pennsylvania Constitution and the Pennsylvania Election Code;
- b. Preliminarily and permanently enjoin the Secretary to decertify the ExpressVote XL voting machine for use in Pennsylvania; and
- c. Award Plaintiffs reasonable attorneys' fees and costs; and
- d. Grant such other and further relief that this Honorable Court deems just and appropriate.

Respectfully submitted,

**BAKER & HOSTETLER LLP**

Dated: December 12, 2019

/s/John Murphy

John Murphy

Lesley Grossberg

Jeanne-Michele Mariani

2929 Arch Street

Cira Centre, 12th Floor

Philadelphia, PA 19104-2891

T: (215) 568-3100

F: (215) 568-3439

johnmurphy@bakerlaw.com

lgrossberg@bakerlaw.com

jmariani@bakerlaw.com

**FREE SPEECH FOR PEOPLE**

/s/Ronald Fein

Ronald Fein

John Bonifaz

Ben Clements

Free Speech For People

1320 Centre St. #405

Newton, MA 02459

617-244-0234

rfein@freespeechforpeople.org

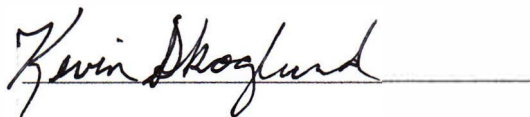
*Counsel for Petitioners*



## VERIFICATION

I, Kevin Skoglund, President and Chief Technologist for Citizens for Better Elections, verify that the facts set forth in the foregoing complaint are true and correct to the best of my information, knowledge and belief I understand that the statements contained herein are subject to the penalties of 18 P.S. § 4904 relating to unsworn falsification to authorities.

Dated: December 12, 2019

A handwritten signature in black ink, reading "Kevin Skoglund", is written over a horizontal line.

## VERIFICATION

I, Susan Greenhalgh, Vice President of Programs and Policy for the National Election Defense Coalition, verify that the facts set forth in the foregoing complaint are true and correct to the best of my information, knowledge and belief I understand that the statements contained herein are subject to the penalties of 18 P.S. § 4904 relating to unsworn falsification to authorities.

Dated: December 12, 2019



## **CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Plaintiffs National Election Defense Coalition, et. al.

Signature: /s/ John Murphy

Name: John Murphy

Attorney No.: PA 206307

**CERTIFICATE OF SERVICE**

I, John Murphy, certify that on December 12, 2019, I caused a true and correct copy of the foregoing Petition For Review Addressed To The Court's Original Jurisdiction to be served via certified mail, return receipt requested, and e-filing upon:

Secretary of the Commonwealth Kathy Boockvar  
302 North Office Building, PA 17120  
Harrisburg, PA 17120

and

Pennsylvania Office of Attorney General  
Strawberry Square  
Harrisburg, PA 17120

/s/John Murphy  
John Murphy

## **EXHIBIT 3**

John F. Murphy (PA Bar No. 206307)  
Lesley M. Grossberg (PA Bar No. 208608)  
Jeanne-Michele Mariani (PA Bar No. 327000)  
BAKER & HOSTETLER LLP  
2929 Arch Street  
Cira Centre, 12th Floor  
Philadelphia, PA 19104-2891  
Tel: (215) 568-3100

Ronald Fein (*Pro Hac Vice* motion pending)  
John Bonifaz (not seeking *Pro Hac Vice* admission)  
Ben Clements (not seeking *Pro Hac Vice* admission)  
FREE SPEECH FOR PEOPLE  
1320 Centre St. #405  
Newton, MA 02459

*Counsel for Petitioners*

NATIONAL ELECTION DEFENSE  
COALITION, CITIZENS FOR BETTER  
ELECTIONS, RICH GARELLA,  
RACHEL A. MURPHY, CAROLINE  
LEOPOLD, STEPHEN STRAHS,  
KATHLEEN BLANFORD, SHARON  
STRAUSS, ANNE C. HANNA,  
RAPHAEL Y. RUBIN, ROBERT F.  
WERNER, SANDRA O'BRIEN-  
WERNER, THOMAS P. BRUNO, JR.,  
ROGER DREISBACH-WILLIAMS, and  
JEFF R. FAUBERT,

Petitioners,

v.

KATHY BOOCKVAR, SECRETARY OF  
THE COMMONWEALTH,

Respondent.

COMMONWEALTH COURT  
OF PENNSYLVANIA

ORIGINAL JURISDICTION  
DOCKET NO.: 674-MD-2019

**PETITIONERS' BRIEF IN  
SUPPORT OF  
APPLICATION FOR  
SPECIAL RELIEF IN THE  
FORM OF A PRELIMINARY  
INJUNCTION UNDER PA.  
R.A.P. 1532**

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## **INTRODUCTION**

The Pennsylvania Constitution guarantees every citizen the right to vote in a free and fair election. The Pennsylvania Election Code protects this Constitutional right by placing strict requirements on every voting system used in the Commonwealth to ensure it will reliably perform its core functions: (1) to enable every eligible voter to cast exactly the votes they intend, (2) to ensure all voters can vote privately and independently, (3) to preserve and safeguard all cast votes, (4) to maintain the secrecy of all votes, and (5) to count all votes accurately. Yet the Commonwealth has chosen to endorse a new voting system, the ExpressVote XL, which fails at every one of these core functions and violates the plain requirements set forth in the law to guarantee them. Moreover, there are continued and credible complaints that the system is neither secure nor reliable, and is capable of being hacked.

Plaintiffs, who are Pennsylvania voters and organizations who represent and work with them, seek a preliminary injunction because if one is not granted, their constitutional rights will be severely impaired by a voting system which undermines their right to cast secret, verifiable, correct votes and which is capable of damaging tabulation errors that misrepresent the will of the voters. These injuries are not speculative—some have already been experienced during the November 5, 2019

general election where the machines were used in Philadelphia and Northampton counties.

Voters in Northampton County in particular suffered major impairments in the right to vote as votes were incorrectly tabulated; voters reported receiving blank print-outs, allowing for no verification of choices; and those with disabilities reported problems using the touch screen and reading the ballot cards. The problems were so bad that the Northampton County Election Commissioners unanimously supported a “vote of no confidence” in the ExpressVote XL.<sup>1</sup>

In a state with the potential to swing a national election, it is simply unacceptable for these problems to persist into the April 2020 primary and beyond. ES&S, the manufacturer of the ExpressVote XL, has been forced to acknowledge that the machines are fraught with issues—some of which they tried to explain away using “human error” as the scape goat, but others they conceded that at this time they do not have an official plan to address. (*See* Grossberg Decl. Ex. 2, Baumart Decl. ¶¶ 67-68.) And despite being aware of the problems involved with the machines, the Commonwealth has refused to take those issues seriously, even arguing that evidence of an informal survey of Philadelphia voters showing that approximately *half* of them had difficulty verifying their vote “does not claim that a single voter

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<sup>1</sup> *See* Grossberg Decl., Ex. 1, Tom Shortell, “No confidence: Northampton County election board ‘extremely disappointed’ in machines it selected,” *The Morning Call* (Dec. 19, 2019).

was actually unable to verify her vote.”<sup>2</sup> Plaintiffs here present sworn testimony that proves the opposite: that voters were unable to verify their choices. (Morales Decl. at ¶ 6).

For these reasons, and for those more fully explained below, Plaintiffs request that the Commonwealth be: (1) enjoined from using the ExpressVote XL in any election; (2) required to decertify the ExpressVote XL; and (3) ordered to implement replacement systems that are not in violation of the Pennsylvania Election Code or the Pennsylvania Constitution in order to maintain the integrity of Pennsylvania’s electoral system and its democracy as a whole.

### **STATEMENT OF FACTS**

The ExpressVote XL is a polling place electronic voting device. It is one of several voting machines introduced in the last few years commonly referred to as all-in-one hybrid voting machines. They are called “all-in-one” because they combine two tasks more often performed by two separate devices: marking a voter’s choices on a piece of paper, and tabulating votes from a piece of paper. In an all-in-one hybrid, these two voting processes are contained in a single device. The process works as follows: A voter inserts a blank ballot card into the machine; makes his or her vote selections on a touchscreen; from those selections the machine then prints

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<sup>2</sup> Defendants’ Response in Opposition to Plaintiffs’ Motion to Enforce the Settlement Agreement in *Stein v. Boockvar*, E.D. Pa. Civ. No. 2:16-cv-6287 (ECF No. 123 at 31), filed Dec. 12, 2019.

both a set of barcodes purportedly representing the voter's selections onto the ballot card, along with a summary of the voter's selections rendered in text; the voter has the opportunity to examine the printed ballot card through a clear pane to the right of the touchscreen; finally, the voter is then prompted to either "Cast vote" or "Spoil ballot." If the voter chooses "Cast vote", the machine then tabulates the voter's choices *from the barcodes* contained on the top of the ballot card (not the readable text). While the voter has supposedly checked his choices in the readable text portion of the ballot card, it is impossible to know for certain if that matches the information contain in the barcode. Once "cast," the ballot cards pass again past the printer head and are collected in a secured container attached to the machine in the order in which they were cast. (Grossberg Decl. Ex. 3, Verified Voting: ES&S ExpressVote XL; Appel Decl. ¶ 36.)

All computer-based vote-recording and vote-counting machines can be "hacked" to make them cheat. That is, a person or persons can install fraudulent software that deliberately misrecords or miscounts votes, to alter the outcome of elections. (Appel Decl. ¶ 1.) Since any computer or voting system that runs on programmable software can be hacked, no computer—or voting machine—is perfectly secure, and as a practical matter a state or county cannot hope to make its computer systems perfectly secure against sophisticated attackers. (Appel Decl. ¶ 10.)

Even voting machines with no active internet connection need to be “told” before every election, what contests are on the ballot, and which candidates are running in those contests. This “Ballot Definition File” needs to be downloaded into every voting machine before every election. (Appel Decl. ¶¶ 12-13.) It is well understood as a principle of computer security—and it has been demonstrated in practice on real voting machines—that fraudulent vote-stealing software can be made to propagate on removable-media memory cards, which are used on machines like the ExpressVote XL to store the Ballot Definition File. And, of course, insiders at the companies that manufacture voting machines (sometimes abroad), or the external suppliers that supply components of those machines, can deliberately or inadvertently install malicious software. Therefore, even without a connection to the internet, computerized voting machines like the ExpressVote XL are “hackable.”

For that reason, most U.S. election jurisdictions and over 70% of Pennsylvania counties use a hand-marked paper ballot system: voters mark paper ballots by hand and an optical scanner is used to count the votes on the paper ballots. This is considered the most secure system for voting because voters can verify directly the correctness of their votes and, if cheating is suspected, the paper ballots provide a durable record which can be recounted by human inspection, always yielding a tally of the true voter intent. (*Id.* at ¶ 14.)

Some voters cannot mark a paper ballot by hand, because of a visual impairment or motor disability. Since 2002, the federal Help America Vote Act requires every polling place to have an accessible voting device. In polling places that use hand-marked optical-scan ballots, a typical accommodation used is a Ballot-Marking Device (BMD). This is a computer with a touchscreen and with alternate input methods (such as an audio interface for blind voters or a sip-and-puff interface for voters with severe motor disabilities) that allow voters to indicate their votes; the BMD then prints a ballot that may be counted by an optical scanner. (*Id.* at ¶¶ 15-17.)

The ExpressVote XL, as noted above, is an “all-in-one” machine that combines the features of both a BMD and a tabulator. Like any computer-based voting machine, BMDs can be “hacked,” that is, their vote-marking software can be replaced by fraudulent vote-stealing software that steals votes by recording different votes on the paper ballot than what the voter indicated on the touchscreen. (Appel Decl. ¶ 22.) BMDs (and all-in-one machines such as the ExpressVote XL) are insecure because (1) most voters do not inspect the printed-out paper ballot carefully enough to notice whether the BMD has printed the same vote that they indicated on the touchscreen, and (2) even if some voters do notice, at most they can correct their own votes—they cannot prove the machine has been cheating—so their neighbors who did not carefully inspect their printed-out paper ballots will still have their votes



stolen, and election outcomes can be successfully altered by hackers. (Appel Decl. ¶ 23.)<sup>3</sup>

If a voter does notice that the paper ballot has a different candidate marked than they intended to vote for, the voter is supposed to inform a pollworker, who is then supposed to void that ballot and allow the voter to mark a fresh ballot. (Appel Decl. ¶ 29.) While in this case the voter has corrected the error, studies have shown that most voters do not spend the requisite time inspecting their ballot necessary to catch and correct errors. (Appel Decl. ¶¶ 24-28.) Because most voters won't notice the error, if a machine has been hacked to alter 5% of the votes but succeeds in altering only 4.5% of the votes because a very small number of voters notice and correct their ballots, the reported outcome is still incorrect, and the paper ballot is not a failsafe because the ballots do not necessarily reflect voter intent. (Appel Decl. ¶ 29.)

Even in circumstances where a voter does catch the error, the voter may not be able to prove that the mistake has been corrected – by the time the paper ballot is printed and tallied, the software, which has been hacked, could be programmed to

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<sup>3</sup> See also Bernhard et al., “Can Voters Detect Malicious Manipulation of Ballot Marking Devices?” University of Michigan study available at <https://jhalderm.com/pub/papers/bmd-verifiability-sp20.pdf> (attached hereto at Grossberg Decl., Ex. 4 and discussed at Appel Decl. ¶ 26); Appel, DeMillo and Stark, “Ballot-Marking Devices (BMDs) Cannot Assure the Will of Voters,” April 21, 2019 (available at <https://ssrn.com/abstract=3375755>), attached hereto at Grossberg Decl., Ex. 5, and discussed at Appel Decl. ¶ 28.)

show the “correct vote” on the screen, while keeping the “incorrect vote” hidden to the naked eye in the barcode read by the machine. (Appel Decl. ¶ 29.)

The ExpressVote XL is subject to the same security vulnerability as any BMD: if its computer is hacked to steal some fraction of the votes in a particular contest, and to deliberately mismark the paper ballot, then most voters will not notice. (Grossberg Decl., Ex. 4, Bernhard et al. (in mock polling place study of BMDs, only 40% of participants reviewed their printed ballots at all, only 6.6% reported the error to a poll worker, and only 7.8% correctly identified the error in an exit survey).) Those voters who do notice will have recourse limited to correcting only their own votes, and therefore the BMD succeeds in stealing the vast majority of votes that it attempts to steal. (Appel Decl. ¶ 37.) But the ExpressVote XL also exhibits additional problems that are *not* shared by all BMDs, or even all all-in-one machines. The ExpressVote XL is designed so that the ballot card passes under the print head again and *after* it has already been inspected by the voter while on the way to ballot box. (Appel Decl. ¶ 42.) At this point, hacked software can be programmed to record different votes. (Appel Decl. ¶ 43.) This is a severe security flaw: the ExpressVote XL’s hardware is designed so that, if it malfunctions or if rogue software is installed, it can alter or print additional votes on the ballot, after the voter approves the ballot for deposit into the ballot box. Even those voters who inspect their ballot and notice nothing amiss cannot ensure their vote is correctly

marked. And election officials auditing or recounting paper ballots cannot be sure they are seeing the same votes that the voter saw. (*Id.* at ¶ 44.) Put simply, there is no way to ensure that a voter's vote is securely cast and vote totals reflect the will of the electorate.

All of the above is in violation of Pennsylvania Election Code, Section 1101-A, 25 P.S. § 3031.1, which was written to ensure that a voter's vote remains secure and that every voting machine provide a permanent physical record of all cast votes. The ExpressVote XL does neither. While the insecurity of the voting machine is its most troubling feature, the machine violates many other sections of the Pennsylvania Election Code and the Pennsylvania Constitution, including Sections 1107-A and 1111-A of the Pennsylvania Election Code, ensuring secrecy in voting and accessibility for those with disabilities.

Based on these concerns, in July 2019, before the machines were used in any election, some of the parties to this suit along with other concerned citizens (collectively, the "Petitioners") petitioned the Secretary of the Commonwealth of Pennsylvania ("the Secretary") to reconsider the certification of the machines. (Grossberg Decl. Ex. 6, Reexamination Request Petition ("Petition").) However, the Secretary gave little weight to their concerns and dismissed the petition in a largely perfunctory manner. (Grossberg Decl. Ex. 7, *Report Concerning the Reexamination*

*Results of Election Systems and Software ExpressVote XL*, issued by Secretary Boockvar on September 3, 2019 (“Reexamination Report”).

Meanwhile, three Pennsylvania counties—Philadelphia County, Northampton County, and Cumberland County—relied on the Secretary’s certification and spent millions of dollars buying these new machines, which had never before been used or tested in an actual election in Pennsylvania. (Grossberg Decl. Ex. 8, Philadelphia County Contract with ES&S for purchase of ExpressVote XL.)

Many of the concerns the Petitioners raised came to fruition when the machines were debuted in Philadelphia and Northampton in the November 5, 2019 general election. Several major issues with the ExpressVote XL were reported on and after Election Day. The ExpressVote XL machine incorrectly tabulated votes in numerous contests, and voters reported problems using the touchscreens and difficulty reading the machine-printed ballots to confirm they were correct. (Bruno Decl. ¶ 6; Grossberg Decl. Ex. 9, Emily Previti, “Northampton officials unanimously vote ‘no confidence’ in ExpressVote XL voting machine,” *PA Post*, Dec. 20, 2019 (statement of Northampton County Election Commissioner Kathy Fox regarding touchscreen problems); Grossberg Decl., Ex. 10, *In re 2019 Municipal Election*, Nov. 5, 2019, at 6:3-23 (statement of Judge McFadden, in hearing challenge brought by two judicial retention candidates as to functioning of ExpressVote XL machines

during general election, that the Court “personally experienced” problems using the ExpressVote XL to vote.) The process of ballot verification in Northampton and Philadelphia counties was difficult for many voters, with voters reporting the text being too small, faint, and/or hard to read. (Morales Decl. ¶ 6; Hanna Decl. ¶¶ 6-10.)

In a contest for County Judge in Northampton County, the ExpressVote XL tallied votes and produced vote total reports that asserted a popular Democratic judicial candidate received approximately zero votes after polls closed on Election Night.<sup>4</sup> (Bruno Decl. ¶¶ 8-11.) This was impossible given that the candidate’s campaign manager and her parents voted for him and thus knew that the count was incorrect. (Bruno Decl. ¶ 10). Election officials conducted a recount of the ballot summary cards produced by the same faulty ExpressVote XLs, from election night until the following morning, using several borrowed optical scanners of different models than the ExpressVote XL. For the candidate who received zero votes by the ExpressVoteXL tally, the recount yielded a total of 26,142 votes, resulting in him being declared the winner.

These were not the only problems reported: there were also widespread reports of overly-sensitive touch screens which made it impossible for voters to

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<sup>4</sup> Election-night news reported up to 164 votes, perhaps due to some hand-counted absentee ballots. See Nick Corasaniti, “A Pennsylvania County’s Election Day Nightmare Underscores Voting Machine Concerns,” *The New York Times* (Nov. 30, 2019), available at <https://www.nytimes.com/2019/11/30/us/politics/pennsylvania-voting-machines.html> (last visited January 9, 2020).

select their true choices. (Munsey Decl. ¶ 9; Grossberg Decl., Ex. 11, Riley Yates and Tom Shortell, “The ‘new machines are garbage.’ Northampton County fielded dozens of elections complaints, newly released records show,” *The Morning Call* (Dec. 28, 2019) (summarizing Election Day voter complaints made to Northampton County election officials); Grossberg Decl. Ex. 12, *In re 2019 Municipal Election*, Nov. 5, 2019, 6:18-7:21 (transcript of hearing before Judge Baratta concerning Judge Koury and Judge Dally’s complaint that ExpressVote XL machines were only permitting voters to vote against their retention and not for)). Moreover, despite the repeated promise by the Secretary that the machines would work if pollworkers followed explicit instructions (Grossberg Decl. Ex. 7, Reexamination Report at 10), there were reports that pollworkers flagrantly violated procedure causing violations of voter secrecy, among other problems. (Garella Decl. ¶ 10, Munsey Decl. ¶ 14).

Certain that these problems will continue if the ExpressVote XL remains in use, Plaintiffs now turn to this Court for relief in the form of a preliminary injunction, without which immediate and irreparable harm is sure to affect the Pennsylvania voter population.

## **ARGUMENT**

Pursuant to Pennsylvania Rule of Appellate Procedure 1532(a), this Court may order special relief, including a preliminary injunction or special injunction, “in the interest of justice and consistent with the usages and principles of law.” The

standard for obtaining a preliminary injunction under Rule 1532(a) is the same as that for obtaining a preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *See Commonwealth ex rel. Pappert v. Coy*, 860 A.2d 1201, 1204 (Pa. Commw. Ct. 2004) (citing *Shenango Valley Osteopathic Hosp. v. Dep't of Health*, 451 A.2d 434, 441 (Pa. 1982)). The purpose of a preliminary injunction is to “put and keep matters in the position in which they were before the improper conduct of the defendant commenced.” *Hill v. Dep't of Corr.*, 992 A.2d 933, 936 (Pa. Commw. Ct. 2010) (quoting *Little Britain Twp. Appeal*, 651 A.2d 606, 611 (Pa. Commw. Ct. 1994)).

A preliminary injunction is warranted where: (1) relief is necessary to prevent immediate and irreparable harm; (2) greater injury will occur from refusing to grant the injunction than from granting it; (3) the injunction will restore the parties to the status quo as it existed before the alleged wrongful conduct; (4) the petitioner is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and (6) the public interest will not be harmed if the injunction is granted. *Brayman Const. Corp. v. Com., Dep't of Transp.*, 13 A.3d 925, 935 (Pa. 2011); *see also Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). All of those elements are present here. The Court should grant the requested preliminary injunctive relief in order to prevent irreparable harm to voter confidence in the fairness of our democratic elections.

Forcing Plaintiffs to cast votes using BMD-generated barcode ballots, which are unreadable to the human eye, imposes an unconstitutional burden given the unverifiable nature of such a system and the persistent threats of hacking and vote manipulation in today's environment. The Commonwealth cannot show any compelling state interest in the use of the ExpressVote XL to justify this severe burden, particularly when there are numerous cost-efficient alternatives available. In fact, as most of the counties in the Commonwealth have successfully opted to use paper ballots primarily marked by hand (with BMDs available to voters who require such a device for accessibility reasons), they can offer no need—or reason—at all for using computer-generated, unreadable barcodes to tabulate votes. Moreover, their use undermines important state interests in preventing fraud and promoting voter confidence.

**I. A PRELIMINARY INJUNCTION IS NECESSARY TO PREVENT IMMEDIATE AND IRREPARABLE HARM.**

The use of the ExpressVote XL threatens to prevent Petitioners from exercising their right to vote. The constitutional right at stake in this case is of the utmost importance: the right to vote “is pervasive of other basic civil and political rights, and is the bedrock of our free political system.” *Bergdoll v. Kane*, 557 Pa. 72, 85, 731 A.2d 1261, 1268-69 (1999) (*quoting Moore v. Shanahan*, 486 P.2d 506, 511 (Kan. 1971)). The right to vote is enshrined in the Pennsylvania Constitution: Article 1, Section 5 declares that “Elections shall be free and equal; and no power, civil or



military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Article VII, Section 4 guarantees that “All elections by the citizens shall be by ballot or by such other method as may be prescribed by law: Provided, that secrecy in voting be preserved.”

It is well recognized that threats to a fundamental constitutional right constitute “immediate” and “irreparable” harm, warranting a preliminary injunction. Thus, in *Pennsylvania State Education Association ex rel. Wilson v. Commonwealth, Department of Community and Economic Development, Office of Open Records*, 981 A.2d 383, 386 (Pa. Commonw. Ct. 2009), the court granted a preliminary injunction to prevent public disclosure of employees’ home addresses, in order to protect the employees’ constitutionally guaranteed right to privacy. Here, where the “bedrock” right to vote is at issue, the potential harm is no less immediate and irreparable. See *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (impairment of right to vote cannot be undone or adequately redressed once an election occurs); *Curling v. Kemp*, 334 F. Supp. 3d 1303, 1325-26 (N.D. Ga. 2018) (state use of an election system threatening that voters’ votes will not be counted accurately or equally in an upcoming election constitutes “real risk of suffering irreparable injury without court intervention.”).

The Secretary’s certification of the ExpressVote XL machine and their subsequent use in Pennsylvania elections has caused and will continue to cause

violations of and interference with Plaintiffs' suffrage rights by making it possible or probable that a significant number of votes will not be counted accurately, or at all.

The Pennsylvania Constitution affords every voter in this state the right to free and fair elections and the opportunity to cast his or her ballot without burden and within the confines of secrecy. *See* Pennsylvania Constitution Article I §§ 5 and 26, and Article VII § 4. The Commonwealth should be just as concerned about the issues with the ExpressVote XL as Plaintiffs. Security, secrecy and accuracy of elections are not partisan or gratuitous goals but instead necessities of an election system that sparks confidence in the electorate. The Commonwealth's interest in minimizing the short-term inconveniences that could follow decertification pales before Plaintiffs' and the public interest in ensuring free and fair elections.

The problems that were caused and which are likely to be caused by the ExpressVote XL machines create the risk that persons for whom the majority of voters have not cast their ballots will be declared the election winners and will take office, in contravention of the very essence of our democracy—and in 2020, the problems with these machines in Pennsylvania will resonate on a national level.

Plaintiffs' equal protection rights under the Pennsylvania Constitution are likewise at risk because, while they are compelled to vote in counties (Philadelphia Northampton, and Cumberland) using the ExpressVote XL, other registered voters

in Pennsylvania may vote in precincts or counties using voting systems that do not suffer from the defects identified by Plaintiffs in their Petition for Review. Plaintiffs are likely to experience Election Day impairments of their right to vote, and less likely to have their votes accurately marked and counted, than residents of those other counties. *See* Article 1, Section 26 of the Constitution of Pennsylvania (“Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.”). The Secretary’s certification for use in Pennsylvania elections of the ExpressVote XL Voting Machines violates Article I, §§ 5 and 26, and Article VII, § 4 of the Pennsylvania Constitution.

While the ExpressVote XL is set to be used again for the April 2020 primary elections and November 2020 general elections, the potential harm is even more immediate. In January 2020, ES&S EVS 6.1.0.0, will undergo certification review in Pennsylvania.<sup>5</sup> ES&S EVS 6.1.0.0 is a suite of products that includes voting machines, hardware, and software. The older version of the suite, ES&S EVS 6.0.2.1, originally contained the ExpressVote XL, and the new version still includes

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<sup>5</sup> See Emily Previti, “Human Error and Sensitive Touchscreens Blamed for Northampton Co. Election Problems,” *PA Post*, <https://papost.org/2019/12/12/human-error-and-sensitive-touchscreens-blamed-for-northampton-co-election-problems/> (last visited Dec. 27, 2019) (attached hereto at Grossberg Decl. Ex. 13).

ExpressVote XL. This means that the ExpressVote XL could be recertified by the Commonwealth within weeks.

Moreover, the State Representative for Philadelphia's 190<sup>th</sup> District, Movita Johnson-Harrell, resigned from office on December 13, 2019. A special election to fill the vacancy will be held in West Philadelphia on February 25, 2020.<sup>6</sup> Absent injunctive relief, Philadelphia County will conduct that election using the ExpressVote XL.

While those are concrete examples of the immediate harm that these counties face should the ExpressVote XL be allowed to continue to be used, the real harm is far more detrimental—it cuts to the trust that the entire electorate has in the machines and our voting system as a whole.

On December 19, 2019, Northampton County Election Commissioners unanimously supported a “vote of no confidence” in the ExpressVote XL after vendor Election Security & Software (ES&S) presented findings from their investigation into tabulation errors and other problems during the November 5, 2019 general election.<sup>7</sup> While ES&S representatives insisted that the problems that

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<sup>6</sup> See John Cole, “HD190: Special Election Set for February 25,” *Politics PA*, <https://www.politicspa.com/hd190-special-election-set-for-february-25/93123/> (last visited Dec. 27, 2019) (attached hereto at Grossberg Decl. Ex. 14).

<sup>7</sup> See Emily Previti, “Northampton Officials Unanimously Vote ‘No Confidence’ in ExpressVote XL Voting Machine,” *PA Post*, available at <https://papost.org/2019/12/20/northampton-officials-unanimously-vote-no-confidence-in-expressvote-xl-voting-machine/> (last visited Dec. 27, 2019) (attached hereto at Grossberg Decl. Ex. 9).

Northampton County experienced were the product of human error, the Election Commissioners were not convinced that those issues could be fixed before the next election, particularly since it is ES&S itself that made the machine, stands to profit from its use, and is in charge of giving the machine, a “clean bill of health.”<sup>8</sup>

There is no way to repair voters’ trust in the machines, and if voters do not trust the machines, they cannot trust the outcome of the election. If that is to happen, the entire state democracy stands to crumble under the weight of suspicion, distrust and frustration. The November 5, 2019 election in Northampton and Philadelphia counties shows that multiple individuals struggled to read the paper printout, and some reported that the ballot print out appeared blank.<sup>9</sup>

- A Philadelphia voter “found the ballot card very difficult to view” (Hanna Decl., ¶ 6); the card “was hard to read because the font on the ballot card was very small and very difficult to read in the dim light” (*id.* at ¶ 7); “[t]he text was very dense and poorly formatted” and difficult to verify “because the format of the vote summary was so different from the format of the on-screen ballot” (*id.* at ¶¶ 8-9);

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<sup>8</sup> See Previti, *supra* n.5.

<sup>9</sup> See “Election Concerns Ahead of 2020,” video available at <https://www.msnbc.com/hardball/watch/questions-about-election-security-ahead-of-2020-75856453665> (last visited January 4, 2020).

- Northampton voter stated, “I had difficulty reading my printed ballot. When my ballot card was printed and shown in the glass window, the card appeared blank. I tried but was unable to see any printing on the card. I cast the ballot anyway, without being confident my votes were recorded correctly.” (Morales Decl. ¶¶ 6-7.)
- A Northampton County judge stated from the bench that he “wasn’t aware that [he] was supposed to review the paper ballot” and “didn’t check the paper ballot against [his] vote” because he “assumed it was going to record it correctly.” (Grossberg Decl. Ex. 12, *In re 2019 Municipal Election* (Nov. 5, 2019) at 48:5-24 (statement of Judge Baratta).)

Additionally, the difficulty of voters in attempting to read and verify their ballots led to unusually lengthy lines at the polls, causing some voters to give up on voting at all and leaving their polling place in frustration. (Munsey Decl. ¶ 8.) It is clear that if Pennsylvania allows the ExpressVote XL to continue to be used, the harm will be immediate and consequential for the entire election system.

Accordingly, a preliminary injunction is necessary to prevent immediate and irreparable harm.

## **II. PETITIONERS ARE LIKELY TO PREVAIL ON THE MERITS.**

A party seeking an injunction is not required to “establish his or her claim absolutely,” but need only “demonstrate that substantial legal questions must be resolved to determine the rights of the parties.” *Costa v. Cortes*, 143 A.3d 430, 437 (Pa. Commw. Ct. 2016) (quoting *SEIU Healthcare Pa. v. Commonwealth*, 104 A.3d 495, 506 (Pa. 2014)); *see also, e.g., Ambrogi v. Reber*, 932 A.2d 969, 976 (Pa. Super. Ct. 2007) (“[T]he party seeking an injunction is not required to prove that he will prevail on his theory of liability, but only that there are substantial legal questions that the trial court must resolve to determine the rights of the parties.”). Here, Petitioners have a substantial likelihood of success on the merits because the ExpressVote XL violates the principles of security, privacy, accessibility, and ballot form found in the Pennsylvania Election Code, as outlined below. Because of these violations, the ExpressVote XL also cannot provide equal rights to suffrage or guarantee a secret ballot and is thus in violation of the Pennsylvania Constitution. The Supreme Court of Pennsylvania has recognized that constitutional challenges to legislative enactments may “raise important questions that are deserving of serious consideration and resolution” and therefore warrant a preliminary injunction. *Fischer v. Dep’t of Pub. Welfare*, 439 A.2d 1172, 1175 (Pa. 1982).

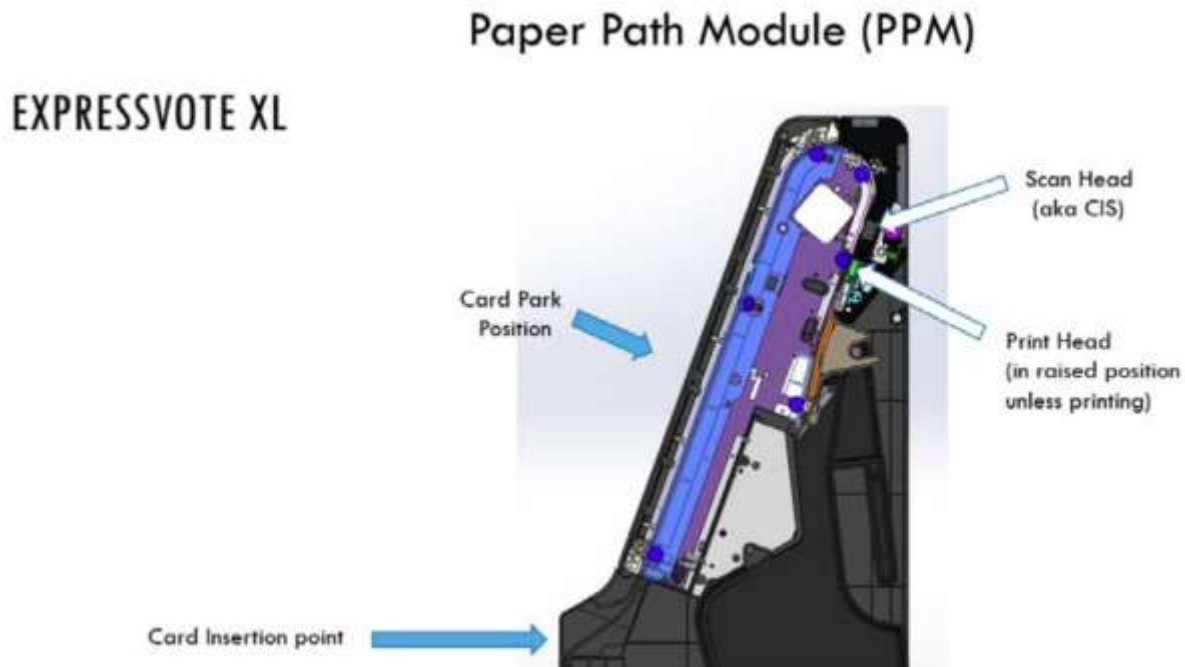
**A. The ExpressVote XL Does Not Provide Acceptable Ballot Security Measures in violation of the Pennsylvania Election Code, Section 1107-A, 25 P.S. § 3031.7(12)**

**1. Insecure paper path**

The ExpressVote XL has a single paper path which exposes a ballot card to the same internal printer which printed the ballot prior to impoundment. (Appel Decl. at ¶ 42.) This hardware configuration only exists in certain all-in-one hybrid voting machines. After the ExpressVote XL prints a ballot card with a voter's selections, the ballot card travels along a single paper path, moving toward the voter. The ballot card first moves to a scanner where it pauses as the barcodes on the ballot card are read. Then the ballot card continues along the path into a metal display box with a transparent top so that the voter can see it. (Appel Decl. at ¶ 40.) Once the voter chooses to cast the ballot card, the paper travels along the same paper path in reverse, this time moving away from the voter. It passes the scanner, then passes the printer, and is then impounded in the ballot container. (Appel Decl. at ¶ 42.) The Secretary's "Report Concerning Reexamination" confirms that the ballot card travels past the print head a second time prior to impoundment. *See* Grossberg Decl. Ex. 7, Reexamination Report at 7; *see also* Grossberg Decl. Ex. 2, Baumert Decl. at ¶¶ 50-59 (declaration of ES&S Principal Product Manager for the ExpressVote XL voting machine describing the Paper Path Module and confirming that the paper passes the print head "after verification" on its way to the ballot container). As



described and identified by Baumert, the ExpressVote XL's paper path module looks like this:



(Grossberg Decl. Ex. 2, Baumert Decl. at ¶ 53.)

The printer is controlled by software. The print head is raised and lowered by software. The printer outputs data sent to it by software. Aside from software-controlled hardware, the ExpressVote XL does not possess additional hardware intended to physically restrict the movement of the print head or to prevent it from contacting the ballot card at a time when it should not be in physical proximity to the card. The software controlling the printer could be modified, replaced, or circumvented by an attacker who is able to get malicious code onto the voting machine. (Appel Decl. at ¶ 43.) The hardware inside the ExpressVote XL that marks

the ballot card and the hardware that scans the ballot card are connected by the same software. This enables a hacked machine's software to "know" what was printed on the ballot card early in the process and to make use of that information later.

For example, if a voter selected no candidate in one contest, a hacked machine would know that there was an opportunity to add a vote in that contest; it could leave a blank space on the ballot card for the verification process, and then print a vote in the contest as the paper travels into the ballot container. (Appel Decl. at ¶ 43.) The software would also know if a certain candidate had been selected by the voter and could target only those ballots while leaving others alone. Intentional malfeasance is not necessary. The printer on a malfunctioning voting machine could modify or deface a ballot card prior to impoundment, and election officials auditing or recounting paper ballots cannot be sure that they are seeing the same votes that the voter saw. (Appel Decl. at ¶ 44.)

The ExpressVote XL's inability to create and preserve reliable paper evidence therefore threatens fundamental election security. The ExpressVote XL can change not only the software-managed totals, but also the physical evidence that would show if those totals are correct or not. In this way, ballots altered by tampering could be used as proof that totals were not changed, even when they were. If ballots are altered prior to impoundment, the altered ballots would be the official ballots. Therefore, the ExpressVote XL does not produce a trustworthy and independent

physical record of the voter's intended vote that can be used to audit, or double check, the election results to ensure that they accurately reflect voters' intent. Additionally, this flaw in the ExpressVote XL violates Section 1107-A of the Election Code, 25 P.S. § 3031.7(12), which requires that a voting system “[p]rovide[] acceptable ballot security procedures and impoundment of ballots to prevent tampering with or substitution of any ballots or ballot cards.”

No voter using an ExpressVote XL machine can ensure that the paper ballot that they review before officially casting their vote is the actual record being tabulated or impounded. (Appel Decl. at ¶¶ 29-33.) This is particularly true since the barcode is read by the machine *prior* to the voter reviewing and officially casting his or her ballot. (Grossberg Decl. Ex. 15, Halderman Decl. ¶ 7.) Because there is no permanent, trustworthy, and independent physical record that can be used to audit election results generated by the ExpressVote XL, there can be no assurance that either the Plaintiffs' votes or the votes of any other Pennsylvania voter in the affected counties have been accurately cast and counted in accordance with voter intent, or that the election results are accurate.

The ExpressVote XL indeed produces a piece of paper, which can be counted and recounted as many times as desired. However, this piece of paper is not guaranteed to be a permanent physical record of *the voter's vote*, but rather only a record of the machine's own output—that is, data from an unreadable barcode stored

in the machine that the voter cannot verify to ensure it matches readable text of a voter's choices.

The ExpressVote XL defeats auditability because an auditor cannot consistently determine whether the machines captured the voters' intent: a human auditor cannot read the barcode, and most voters as an empirical matter do not or cannot verify the written summary accompanying the barcode under election conditions. (Grossberg Decl. Ex. 15, Halderman Decl. ¶¶ 13-15.)

There is no guarantee that the barcode read by scanners to count the votes actually matches the text summary provided elsewhere on the ballot, whether due to miscoding, firmware malfunction, hacking, or other error. Thus, a barcode-ballot-based election system cannot produce an auditable record. Even the Blue Ribbon Commission on Pennsylvania's Election Security recommends against barcodes since they are non-readable to the voter.<sup>10</sup> The Pennsylvania Election Code emphasizes the use of ballot marks that can be read and verified by both a voter and auditor, such as a "check mark" or "x." *See* Pennsylvania Election Code, § 1112-A, 25 P.S. § 3031.12(b)(2)-(4). This is preferred over a non-readable bar code because it can easily be discerned by the human eye and because it ensures that when voting,

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<sup>10</sup> *See* Grossberg Decl. Ex. 16, The Blue Ribbon Commission on Pennsylvania's Election Security: Study and Recommendations, at nn. 49 and 53, available at [https://www.cyber.pitt.edu/sites/default/files/FINAL%20FULL%20PittCyber\\_PAs\\_Election\\_Security\\_Report.pdf](https://www.cyber.pitt.edu/sites/default/files/FINAL%20FULL%20PittCyber_PAs_Election_Security_Report.pdf).

an individual will put the marking next to his specified candidate of choice, cutting down on accidental errors, which would not be so easily picked up in the bar code context.

The experience in Northampton County in the November 2019 election does not demonstrate that the ExpressVote XL's results are, in fact, auditable. A recount using reliable optical scanners can address concerns regarding the ExpressVote XL's ballot *tabulation* function. But an optical scanner recount cannot address concerns regarding the ExpressVote XL's ballot *marking* function—whether the machine-printed ballot cards in fact reflected what the voter selected on the electronic touchscreen. Put another way, Northampton County was able, using borrowed optical scanners, to ascertain that the ExpressVote XL printed 26,142 ballot cards indicating a vote for a particular candidate. But no optical scanner recount could ascertain whether 26,142 voters in fact chose that candidate on the touchscreen.

While the Election Code does not specifically contemplate all-in-one hybrid voting machines with the ability to both mark ballots and tabulate votes, it is common sense that a voting machine should not have the ability to change votes after the voter has confirmed and cast her ballot. The same reasoning is evident and explicitly stated in Pennsylvania Election Code Section 1222, 25 P.S. § 3062(a), “No person while handling the ballots shall have in his hand any pencil, pen, stamp or other means of marking or spoiling any ballot.” Acceptable ballot security

procedures to prevent tampering must include a similar restriction on any *machine* handling the ballots as it does on any *person* handling the ballots. The design of the ExpressVote XL machine, with the paper passing past the print head after voter verification on its way to the ballot container, violates this principle.

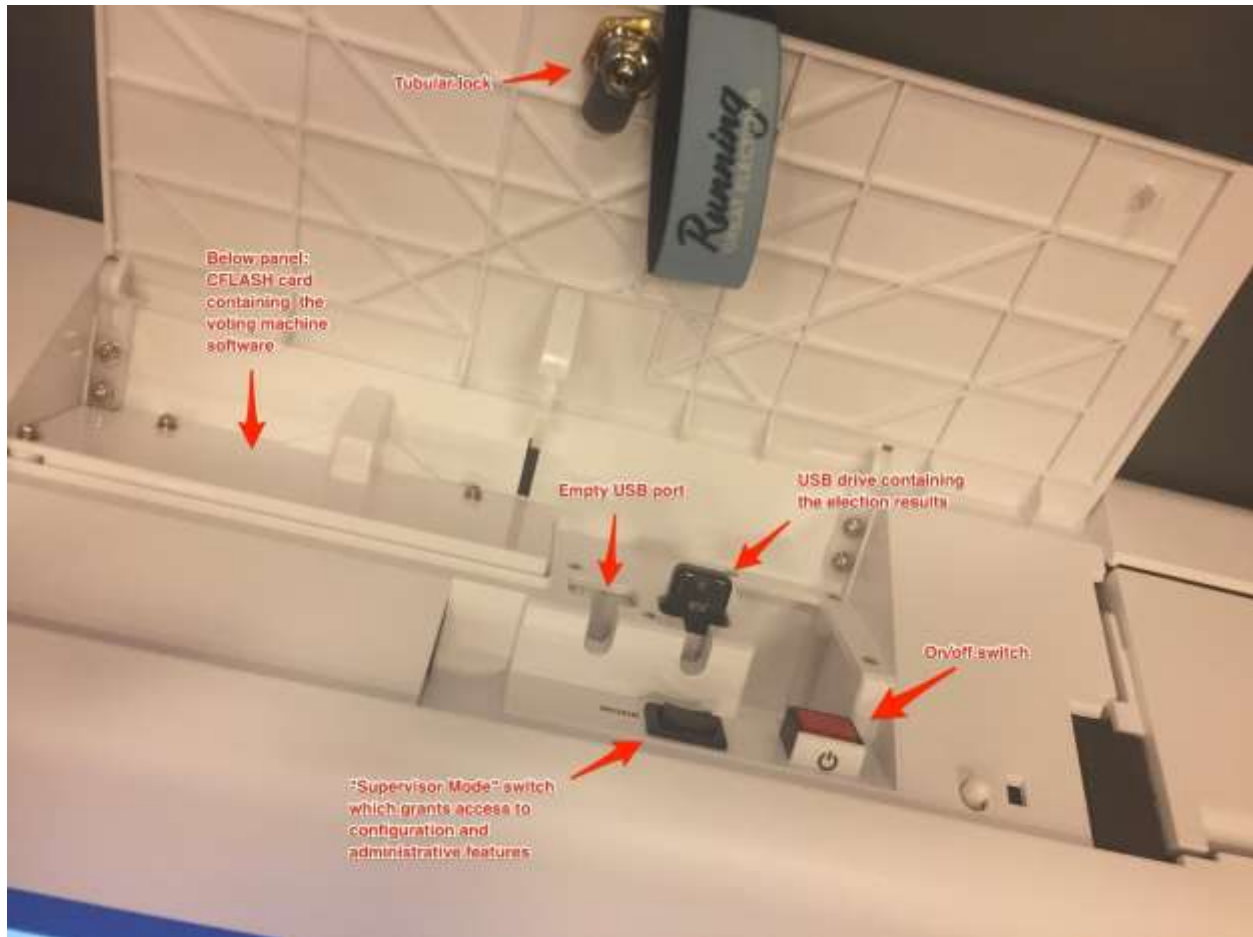
## **2. Insecure Administrator Access Panel**

The ExpressVote XL has an administrator access panel on the top of the machine, above the touchscreen, directly in the line of sight of voters. The ExpressVote XL's administrator access panel is readily available to voters while they are inside the private voting booth curtain. No other voting machine certified for use in the Commonwealth has an access panel available to voters while they are hidden from the view of poll workers.

The access panel contains: (1) the on/off switch, (2) a "Supervisor Mode" switch which grants access to configuration and administrative features, (3) three USB ports, one occupied by the USB drive containing the election results and two which are open, (4) a CFLASH card containing the voting machine software is underneath a panel secured by screws.<sup>11</sup>

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<sup>11</sup> CFLASH (or CompactFlash) is a solid-state mass storage device that can be erased and reprogrammed and is used in many portable electronic devices.

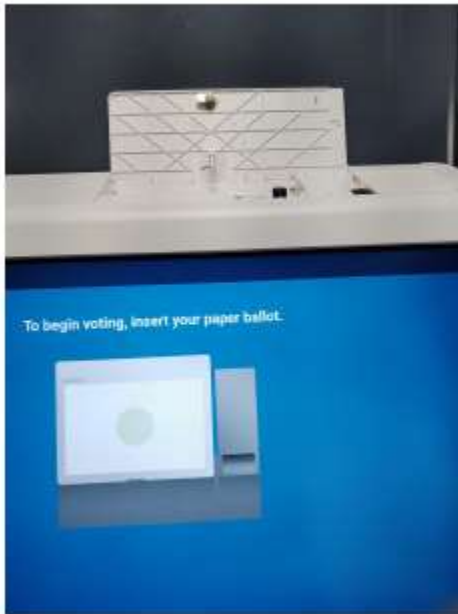


The access panel is ostensibly protected by a lock; however, the lock can be picked quickly using tools which are easily obtained. The locks on every ExpressVote XL in a given county are identically keyed.<sup>12</sup> A stolen or copied key from one polling place could thus be used in every other district for all future elections. This security flaw renders the machine extraordinarily susceptible to malicious interference or hacking.

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<sup>12</sup> See <https://youtu.be/5x3ybL4dZV0?t=180> (video of Philadelphia poll worker training held on November 3, 2019) (“The keys are universal. Don’t freak out if you lose them. Your neighbor has the same key. The password will also be cityside.”).

During the election on November 5, 2019 in Philadelphia, voters took photos of unlocked panels in at least three polling places. Among them was Raphael Rubin, a Philadelphia voter who observed that the access panel of the ExpressVote XL machine he was using to vote on November 5, 2019 was “wide open” and that “a storage device inserted in the machine was visible and physically accessible to me or any other voter who entered the booth.” (Rubin Decl. ¶ 7.) In fact, the machine Rubin voted on appeared to have an object intentionally placed in it to prevent the access panel door from closing. (Rubin Decl. at ¶ 8.) Photographs taken by Rubin while voting show the open administrator access panel at the top of the machine:



(Rubin Decl. at ¶ 10.)



A voting machine which provides voters with access to core system hardware and software while hidden from view does not provide acceptable ballot security procedures to prevent tampering, and violates the Pennsylvania Election Code.

### **3. Insecure and Inaccurate Testing Feature**

The ExpressVote XL has a feature called “Test Deck” which is designed to provide a means for an election official to test each machine that will be used for voting prior to the election. Put simply, it is like casting a series of sample ballots on the machine in order to test that the machine is working properly and the results match the known number of votes cast.

The Test Deck feature has two major flaws. First, perhaps most worrisome, it demonstrates a design flaw that makes the machine uniquely susceptible to hacking. Second, as the experience in Northampton County showed, it is not a sufficient or reliable way to test a particular ExpressVote XL machine’s accuracy.

Unlike other voting machines, where the ballot marking and tabulator functions are in separate pieces of hardware, the ExpressVote XL was designed with both functions housed in the same piece of hardware. (Appel Decl. ¶ 21; Grossberg Decl. Ex. 3.) The Test Deck feature indicates that the two functions can communicate directly, because it can create and submit completely digital ballots

for tabulation without using a paper record.<sup>13</sup> And if the machine can do this in Test Deck mode, then it has the capability to do it in regular operations. For example, if a machine is hacked, it has the potential to “read” the election results while in progress and then decide whether to add votes to a candidate or leave as is, depending on the hacker’s desired outcome.

Pre-election testing with the Test Deck feature cannot detect these types of compromise. After using the Test Deck feature, a pollworker can view the poll tape to test the accuracy of the machine. If the results on the tape are wrong, it is impossible to determine whether the test software malfunctioned or if the test votes were not tabulated with absolute accuracy. Without knowing which, it is impossible to assert that the machine is capable of accuracy, even after running the Pennsylvania-mandated Logic and Accuracy Testing. (Grossberg Decl. Ex. 18, Pennsylvania Secretary of State’s Original Certification Report for ES&S 6.0.2.1, including “Conditions for Certification” for ExpressVote XL (“Original Certification Report”), at 38).

Matt Munsey observed the “logic and accuracy” testing in Northampton County on October 9, 2019, in which a tester used the Test Deck software to cast

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<sup>13</sup> See Grossberg Decl. Ex. 17, EAC Modification Test Plan at 11, 33 (stating that ES&S EVA 6.0.4.0 modifications included “the ability to automatically print a test deck from tabulation mode for the ExpressVote XL” and that this feature “provides a means for the election official to test the election on each machine that will be used for voting”), available at <https://www.eac.gov/file.aspx?A=KGM1RUIEXrLHWrHymc7h25l50ojPE3ysZVeZTrLBiX4%3D> (last visited Dec. 27, 2019).

approximately 20 paperless ballots, then printed out a tape with the vote tabulation totals. (Munsey Decl. at ¶ 5.) Although 20 total ballots had been simulated, the summary tape showed mostly undervotes cast for every contest. (Munsey Decl. at ¶ 6 and Exhibit A, poll tape.) A voting machine that can create electronic ballots for tabulation without creating a permanent physical record does not reliably provide for a permanent physical record of each vote cast and does not provide acceptable ballot security procedures to prevent tampering.

**B. The ExpressVote XL Fails to Provide All Voters with the Necessary Privacy and Secrecy mandated by Section 1107-A of the Election Code, 25 P.S. § 3031.7 (1)**

The ExpressVote XL has multiple design flaws that individually and collectively violate Section 1107-A of the Election Code, 25 P.S. § 3031.7 (1), and Article VII, Section 4 of the Pennsylvania Constitution. Section 1107-A requires a voting system that:

Provides for voting in absolute secrecy and prevents any person from seeing or knowing for whom any voter, except one who has received or is receiving assistance as prescribed by law, has voted or is voting.

Article VII, Section 4 of the Pennsylvania Constitution guarantees that “All elections by the citizens shall be by ballot or by such other method as may be prescribed by law: Provided, That secrecy in voting be preserved.” The ExpressVote XL does not comport with the Pennsylvania electorate’s right to a secret ballot.

## **1. Chronological Ordering of Ballots**

The ExpressVote XL stores ballot cards in chronological order in a ballot container. Ballots stored in chronological order may allow a poll worker or an election official who knows even partial details about the sequence of voters to violate the absolute secrecy of one or more voters.

This is unusual. Most precinct ballot scanners tabulate paper ballots or ballot cards and then let the papers fall into a large bin at random. Extracting the ballots from the bin mixes them further. But the ExpressVote XL machine slides ballot cards into a narrow, ballot-sized container, one after another, neatly stacked. When the polls close, the entire ballot container is removed and the ballot cards remain in chronological order inside. The Secretary's own Report Concerning Reexamination confirmed that the ballot cards are stored in chronological order. (*See* Grossberg Decl., Ex. 7, Reexamination Report at 8-9.) A voter's ballot could be determined by referencing the order of voters in the poll book or on the numbered list of voters, by counting from the first or last ballot in the set, or by counting from another identifiable ballot, such as one with a known write-in vote.

The Pennsylvania Election Code requires every polling place to maintain a numbered list of voters. 25 P.S. § 3050(a.3)(5). Voter names are added to the list in the order that they check-in. The lists are returned, along with the ballots, to the county election office after the polls close. In polling places with only one

ExpressVote XL device available for voting, the order of the voter names on the numbered list of voters will match the order of the ballot cards in the ballot container. In polling places with more than one ExpressVote XL device available for voting, if each device is used exclusively by voters from a single party during a primary election, the voter names on the numbered list of voters, when filtered by the party affiliation recorded on the list, will match the order of the order of the ballot cards in the ballot container. Chronologically ordered ballots fail to protect a voter's right to a secret ballot. The ability to link voters to their ballots and to know how they voted enables information harvesting, vote buying and selling, and voter coercion.

The Secretary's solution to this identified problem was to require, as an "additional condition for certification" of the ExpressVote XL machine, that ballot collection bins "must be opened in the presence of board of election members and must be commingled before canvass and storage." (*See* Grossberg Decl. Ex. 7, Reexamination Report at 11.) In practice, this did not occur in the November 5, 2019 general election (i.e., the very first election after the Secretary's imposition of additional conditions upon reexamination of the ExpressVote XL), and continues to pose a problem notwithstanding the "additional condition for certification." In Northampton County, ballot cards were not shuffled at all. (Munsey Decl. at ¶ 14.) In Philadelphia, the unsealing, commingling, and storage of ExpressVote XL ballot cards took place *concurrent with* the canvass; took place without any kind of security

presence; and took place entirely outside of the presence of board of election members. (Garella Decl. at ¶¶ 15-21.) Even without those flaws, cutting a stack of ballot cards 4-6 times, as Philadelphia did, fails to protect ballot secrecy. It provides only minimal shuffling and still allows a ballot to be identified with high probability.<sup>14</sup> As this experience in Northampton and Philadelphia demonstrates, added procedures are insufficient to protect ballot secrecy or meet the Election Code's requirement in 25 P.S. § 3031.7(1) that the voting system *itself* must provide for the required degree of ballot secrecy.

## **2. Spoliation Procedures**

Section 1107-A of the Election Code, 25 P.S. § 3031.7(10), requires that any voting system “that uses paper ballots or ballot cards to register the vote and automatic tabulating equipment to compute such votes . . . shall provide that a voter who spoils his ballot may obtain another ballot . . . .” The combination of 25 P.S. § 3031.7(10)'s requirement that a voter be able to spoil their ballot, and 25 P.S. § 3031.7 (1)'s requirement that a voter be able to vote in “absolute secrecy” on a voting system that “prevents any person from seeing or knowing for whom any voter . . . has voted,” requires that a voter be able to spoil their ballot without any person seeing that ballot. This right to secrecy when spoiling a ballot is consistent with

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<sup>14</sup> A stack of ballot cards cut into six stacks and reassembled will only affect 12 cards and only change one of each of the two neighboring cards. A stack of 300 ballot cards (the stated capacity of the container) would be in 98% the same order.

section 301(a)(1)(A) (ii) of the federal Help America Vote Act of 2002 (HAVA), 52

U.S.C. § 21081(a)(1)(A)(ii), which requires that a voting system must:

provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error) ...

Voter secrecy is important even for a spoiled ballot. A voter might spoil a ballot to change or correct a vote for one particular candidate or issue, while desiring to protect the secrecy of votes for other candidates and issues. Or a voter could change her mind before the spoliation is completed and cast the ballot as-is.

The ExpressVote XL's procedures for ballot spoliation and for physical review of a ballot fail to provide this required secrecy. When any voter using the ExpressVote XL wants to spoil her ballot card or wants to handle the ballot card for physical review, the voter must select an option in the interface to "Quit" or "Spoil Ballot."<sup>15</sup> The ExpressVote XL then displays a spoliation message that can be configured by the jurisdiction.

Philadelphia voter Richard Garella used an ExpressVote XL machine in the November 5, 2019, election. (Garella Decl. at ¶ 3.) After making his selections and printing his ballot card, he decided to change his selections, and selected the "Spoil

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<sup>15</sup> The exact text of the button is configurable and can be renamed by the jurisdiction.

Ballot” option. (*Id.* at ¶ 4-5.) A box came up saying “Vote Session Canceled,” and the machine started chirping. (*Id.* at 5.) A poll worker opened the curtain and entered Garella’s voting booth without introducing or announcing himself. (*Id.* at ¶ 6.) The poll worker asked what Garella wanted to do; Garella explained that he wanted to change his vote. (*Id.*) Another poll worker then entered the booth, at which time both poll workers could see Garella’s printed ballot. (*Id.*) The second poll worker typed a security code into the machine and caused the machine to eject the ballot card, which she then took and handed to another pollworker outside the booth. (*Id.* at ¶ 7.) During the spoliation process, poll workers could see Garella’s vote selections both inside the booth and after they removed the spoiled ballot.

Pennsylvania Election Code § 1111-A, 25 P.S. § 3031.11 (b), provides that: “If any voter shall ask for further instructions concerning the manner of voting after entering the voting booth, any election officer may give him audible instructions *without entering such booth . . .*” (Emphasis added.) But the ExpressVote XL does not permit a voter to spoil the ballot without the poll worker entering the booth.

In the Report Concerning Reexamination, the Secretary “concluded that appropriate voter and poll worker training and instructions on the screen can ensure vote record secrecy.” (Grossberg Decl. Ex. 7, Reexamination Report.) Yet experience has already shown this to be false. Hoping that workers follow guidance,



and take precautions that experience shows they do not, fails to provide the level of secrecy mandated in the Pennsylvania Election Code.

A video taken at poll worker training on November 3, 2019 in Philadelphia County highlights the high probability that the legal procedures for spoiling a ballot will be violated and secrecy will not be maintained.<sup>16</sup> The trainer explained the procedure to poll workers as follows:

Keep in mind that ballot is not yet spoiled. It is still very much active, okay so you have to give it back to the voter. But keep in mind, before even entering the curtain please announce yourself to the voter. We don't want the voter to feel like you are intruding on their privacy, so let them know you are coming in to spoil their ballot. Once you've done that, the paper ballot will eject out of the machine, you hand it back to the voter. Please do not look at their selections. As hard as that will be.

We're only human so we make mistakes. Maybe glance, I don't know. But if you do, don't tell nobody else, okay?

It is also not lawful for poll workers to enter the voting booth while a voter is voting. Section 1830 of the Pennsylvania Election Code, 25 P.S. § 3530 (“Unlawful assistance in voting”) specifies that any voter who “permit[s] another to accompany him into the voting compartment or voting machine booth” or “any person who shall go into the voting compartment or voting machine booth with another while voting or be present therein while another is voting” is guilty of a misdemeanor and may

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<sup>16</sup> See “PWT Nov 3 Vid 1/5 Spoiling a ballot/audience laughs at expense of voters,” available at <https://www.youtube.com/watch?v=GGK0JpnpJsE&t=110s> at 1:30. (last accessed December 11, 2019).

be sentenced to pay a fine, imprisonment, or both. A voting system in which a voter exercising the legal right to spoil the ballot risks criminal charges is not “safely . . . useable in the conduct of elections” as required by 25 P.S. § 3031.7 (11).

The spoliation procedure can also reveal an administrator password to the voter. During public demonstrations of the ExpressVote XL, several members of the public reported easily observing the administrator password used during the spoliation procedure. Richard Garella was able to see the administrator password that was used when he spoiled his ballot during the actual election on November 5, 2019. (Garella Decl. at ¶ 7.) If the password is not kept secret, it opens up the possibility that unauthorized personnel could use the password to access functions in the machine related to voting and tabulation. A voting machine that reveals the administrator password to any voter who requests ballot spoliation does not provide “acceptable ballot security procedures” under 25 P.S. § 3031.7(12).

**C. The ExpressVote XL fails to Provide Adequate Accessibility to Voters with Disabilities in violation of Section 1107-A of the Pennsylvania Election Code, 25 P.S. § 3031.7(5)**

Section 1107-A of the Pennsylvania Election Code, 25 P.S. § 3031.7(5), requires that a voting system “[p]ermits *each* voter to vote for any person and any office for whom and for which he is lawfully entitled to vote, whether or not the name of such person appears upon the ballot as a candidate for nomination or election.” (Emphasis added.) The requirement to permit “each” voter to vote for any

person and any office for whom and for which he is lawfully entitled to vote includes voters with disabilities.

This “each” voter requirement is consistent with the Help America Vote Act of 2002 (HAVA), § 301(a), 52 U.S.C. § 21081(a)(3)(A), which requires that a voting machine “be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.” The “each” voter requirement also follows the federal requirement that (to the extent that any HAVA Section 261 funds are involved in acquiring and or running the ExpressVote XL):

An eligible State and eligible unit of local government shall use the payment received under this part for— (1) making polling places . . . accessible to individuals with disabilities, including the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

HAVA section 261(b), 52 U.S.C. § 21021(b)(1).

The Pennsylvania certification of ES&S EVS 6.0.2.1 included an accessibility testing report (“Accessibility Report”). (Grossberg Decl. Ex. 18, Original Certification Report at 67.)<sup>17</sup> In a departure from similar accessibility testing

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<sup>17</sup> The Accessibility Report was appended as Attachment B to the Original Certification Report and is not consecutively paginated. The pin cites to the Accessibility Report are to the PDF page in the 99-page Original Certification Report document.

conducted on all other voting machines since 2017, the ExpressVote XL was harshly reviewed by the accessibility test group, comprised of several voters with a range of disabilities.

According to the Accessibility Report, “Every participant had at least one problem, despite relatively high election knowledge and digital experience, suggesting that the issue would be more severe for voters without these personal resources to help them understand what is happening.” (*Id.* at 70.) The Accessibility Report noted that:

None of the participants could verify the ballot in the glass cage and...(1) blind voters had no access to the ballot to use personal technology that would enable them to vote; (2) low vision voters could not position the ballot so they could read the small text; (3) other voters had problems reading the ballot because of glare and because the sides of the ballot were obscured by the cage; and (4) while it is possible to have the ballot ejected to handle it while verifying, the procedure is unclear and it requires voters to tell the system they want to “Quit” and then call a poll worker in which of course violates the voter’s right to secrecy.

(*Id.* at 74.)

The Report also noted that the sensitive touch screen which often malfunctioned and selected the wrong candidates or deselected the right ones, affected “voters with a variety of disabilities.” (*Id.* at 50.) The Report stated that those with cognitive disabilities found it confusing and frustrating to use the machine; low vision voters had trouble reading the screen noting inadvertent

changes to selections; low literacy voters often missed cues on different parts of the screen; blind voters struggled as the audio did not announce deselections, which made ensuring accuracy impossible. (*Id.*) The Report recommended that the ExpressVote XL give the voter more independent control, announce selections and deselections, and provide voters more feedback before casting their vote. (*Id.*) Such major improvements have yet to be made, compromising the ability of those with disabilities to vote.

Participants in the accessibility study found the ExpressVote XL made it difficult to cast write-in votes. For a vote for a write-in candidate to count, spelling must be perfect and “[a]ll of the participants knew that a misspelled write-in would not be counted, but [they] could not figure out how to review what was typed.” (*Id.* at 70-71, 86-87.) Furthermore, the ExpressVote XL did not allow participants to review any write-in votes through the audio ballot because the text of the write-in is not encoded in the barcodes printed on the ballot card. (*Id.* at 73, 75, 88.) The Accessibility Report states that “1 blind voter, who had struggled to enter a write-in and wanted to confirm what was on the ballot, found that the actual text of the write-in is not included in the review because it is not encoded in the paper ballot barcodes.” (*Id.* at 73.) The Accessibility Report describes this problem as “not only a failure to vote independently, but identifying and solving the problem requires revealing their votes to a poll worker or assistant.” (*Id.* at 68-69.)

The Secretary's own Accessibility Report makes it clear that the ExpressVote XL is not accessible for individuals with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters and does not permit "each" voter to vote for any person and any office for whom and for which he is lawfully entitled to vote as required by 25 P.S. § 3031.7(5).

**III. GREATER INJURY WOULD RESULT FROM REFUSING AN INJUNCTION THAN FROM GRANTING ONE, AND GRANTING AN INJUNCTION WILL NOT SUBSTANTIALLY HARM OTHER INTERESTED PARTIES NOR ADVERSELY AFFECT THE PUBLIC INTEREST.**

Absent an injunction, as detailed above, the Pennsylvania electorate stands to have their votes misinterpreted, wrongly tallied, and unverified, with the major consequences of the wrong candidate being elected to office, all while voter confidence in the democratic system falters to an all-time low. The requested injunctive relief serves the public interest by ensuring that voters' votes are verifiable, secure, and correctly tallied, preserving public confidence in the electoral system.

The Commonwealth will likely argue that decertifying the ExpressVote XL machine will work a hardship on the counties planning to use them. But any such argument is refuted by the Secretary's March 2019 testimony on the issue of the importance of the Secretary's power to decertify election systems. The Secretary

testified that when the AVS Winvote system needed to be decertified in December 2007, the impacted counties (Northampton, Lackawanna, and Wayne) were able to “quickly acquire new equipment and train themselves and their poll workers in time for the presidential primary in April 2008.”<sup>18</sup> More specifically, Secretary Boockvar testified:

Sometimes decertification must happen very quickly, and it is very important to have a process in place that has the resiliency, knowledge base, and flexibility to study the issues quickly and assess whether changes must be made. For example, in late 2007, the Department was notified of an anomaly with the AVS Winvote system. The Department worked closely with the vendor to develop a plan and timeline to get the needed changes tested by the EAC and in to Pennsylvania for certification. Just as everyone agreed to the plan, the vendor backed out. The Department was left with no choice but to decertify the equipment. This decision was made in December 2007 and communicated immediately to the impacted counties...Those counties, with the help of the Department and fellow county election directors, were able to quickly acquire new equipment and train themselves and their poll workers in time for the presidential primary in April 2008. This same equipment was later also decertified in Virginia, two months before an election, and other states have had to make these types of decisions quickly as well.

Northampton’s inclusion in this incident is notable, since they may again be faced with replacing a voting system after decertification. In January 2008,

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<sup>18</sup> See Grossberg Decl. Ex. 19, Testimony of Acting Secretary Kathy Boockvar to the Pennsylvania State Senate regarding SB 48, March 26, 2019, at 9.

Northampton acted swiftly to obtain a new voting system. Five voting system vendors presented options on January 15. On January 17, a selection was made and approved by the County Council.<sup>19</sup> An entirely new voting system was procured and used in the April 2008 primary. Even if the Commonwealth were able to prove through a preponderance of the evidence that they could not replace the system in time to administer the April 28, 2020 primaries in the limited number of counties currently planning to use the ExpressVote XL, this Court can order Respondent to decertify the ExpressVote XL in time for the November 2020 general election, 11 months from now, and then use other alternatives in the meantime, some of which will be discussed in the next section. *See Curling v. Raffensperger*, 397 F. Supp. 3d 1334, 1407-12 (N.D. Ga. 2019) (denying preliminary injunction against direct-recording (*i.e.*, paperless) electronic voting machines in August 2019 as but granting injunction as to March 2020 primary elections).

Finally, since it was the counties, and therefore the tax payers, that ultimately paid for the new machines, there may be some concern that decertification could cause huge debts to the individual cities affected. Fortunately, the contract between Philadelphia and ES&S contains clear language that *ES&S*—not the taxpayer—

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<sup>19</sup> See Joe Nixon, “County: It’s Sequoia by a Landslide: With Lone Holdout, Council Picks New Voting Machine Vendor,” *The Morning Call* (Jan. 18, 2008) (attached hereto at Grossberg Decl., Ex. 20).



bears responsibility for replacement costs if the Secretary of the Commonwealth decertifies the ExpressVote XL. The contract provides:

Equipment and Provider Software modifications or replacements necessary due to decertification by . . . the Commonwealth of Pennsylvania . . . ***must be provided to City at no cost or it must be replaced with a certified system at no cost.*** [ES&S] shall be liable to City for any and all reasonable costs incurred to obtain and utilize such replacement voting systems and/or alternative voting methods for all elections occurring until the equipment is recertified, reapproved or City terminates [the contract] for cause and procures new equipment.

(Grossberg Decl. Ex. 8, Provider Agreement Between City of Philadelphia Procurement Department and Election Systems & Software dated May 13, 2019 (emphasis added).) Thus, if the Court orders Defendants to decertify the ExpressVote XL, ES&S will bear the cost of providing Philadelphia with new, compliant voting systems. The same is likely true of Cumberland County or any other county, as this is surely a standard provision.

The experience of voters, election commissioners, judges, and candidates for office in Northampton County in the 2019 general election is instructive and is alone reason to order the injunctive relief sought. On election day it became clear that the ExpressVote XL machines were providing inaccurate vote tallies, registering zero votes for some candidates despite straight-ticket party voting being available. Tom Bruno, an inspector of elections for Easton's 4th Ward in Northampton County, voted a straight Democratic ticket; however, once polls closed, both machines at his

polling place showed zero votes for Abe Kassis, a Democratic candidate for county judge. (Bruno Decl. at ¶¶ 5-9.) The machine showed over thirty straight-party votes for the Democratic ticket, so it was obvious that the ExpressVote XL machines, despite appearing to display the correct information on both the touchscreen and the ballot card for voter verification, “had somehow altered the votes when tabulating them, giving all votes to the only Republican candidate in a 3-candidate race for 2 judge positions.” (*Id.* at ¶ 11.)

The tabulation errors across Northampton County eroded public trust in the election system and, in view of the fatal flaw in the ExpressVote XL’s design, it is hardly reassuring to claim that the inaccurate zero vote count was “corrected” in a recount, thus proving that the system works. First, as noted above, the recount could only address problems in the ExpressVote XL’s ballot *tabulation*, not its ballot *marking*. Second, the ExpressVote XL’s incorrect tabulation was only noticed because of plainly erroneous results; the vast majority of errors, whether due to intentional interference or system malfunction, will not produce such obviously erroneous results. In all but the most obvious cases, errors would go undetected, even if they were of sufficient magnitude to shift the result.

With the constitutional right of suffrage at stake, it is more important that a voting system that was given a vote of “no confidence” by the Northampton County Election Commission be disallowed from use than it is to allow the Commonwealth

to hijack the constitutional right of suffrage in the name of administrative ease, which is never enough to approve an unconstitutional act. *See Robinson Tp., Washington County v. Com.*, 83 A.3d 901, 949 (Pa. 2013) “([M]ere administrative ease cannot justify a regulation which is inconsistent with the language and purpose of the statute”) (internal quotation omitted).

Given that an injunction will do nothing more than preserve the right of suffrage in its current form, it will not adversely affect the public interest. By definition, “[t]he public interest ... favors permitting as many qualified voters to vote as possible.” *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247–48 (4th Cir. 2014); *see also Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (the public has a “strong interest in exercising the fundamental political right to vote” (citations omitted)). And “upholding constitutional rights serves the public interest.” *Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). A preliminary injunction is also in the public’s best interest because it would enhance the integrity of the electoral processes that are “essential to the functioning of our participatory democracy.” *Purcell*, 549 U.S. at 4. The Commonwealth cannot seriously demonstrate injury resulting from the relief that Plaintiffs request. The cost and time it would take for the Commonwealth to move to a voter-verifiable secure system do not outweigh Plaintiffs’ significant constitutional interests. On balance of the injuries, the facts overwhelmingly favor granting Plaintiffs’ injunction.

#### **IV. A PRELIMINARY INJUNCTION WILL MAINTAIN THE STATUS QUO AND IS REASONABLY SUITED TO ABATE THE OFFENDING ACTIVITY.**

Petitioners' requested injunction seeks only to preserve the status quo. *See City of Philadelphia v. Commonwealth*, 837 A.2d 591, 604 (Pa. Commw. Ct. 2003) (granting preliminary injunctive relief and noting that "the public interest lies in favor of maintaining the status quo" pending determination of the merits in the case). "The status quo to be maintained is the last actual and lawful uncontested status, which preceded the pending controversy." *Corbett v. Snyder*, 977 A.2d 28, 43 (Pa. Commw. Ct. 2009). Here the offending activity that the injunction is designed to remedy is the improper certification of the ExpressVote XL. Simply put, no violation will occur if the Court enjoins the Secretary to decertify the machine. The Commonwealth also has multiple avenues to pursue in order to correct the offending activity, all of which are reasonably suited to correct the ill and put no undue burden on the Commonwealth or the counties in implementation of a new system.

If necessary, the Commonwealth could utilize temporary measures while a new system is being identified and procured. For example, Philadelphia and Northampton already use a central-count optical scanner to tabulate absentee and provisional paper ballots. In the upcoming February 25, 2020 special election in Pennsylvania House of Representatives District 190, paper ballots could be used, securely collected and scanned centrally. In the last special election for this district,

on March 12, 2019, there were 4,786 votes cast out of a voting-age electorate of approximately 60,000 residents.<sup>20</sup> Other options include borrowing or leasing an already certified system from another county or state. In the April 2020 primary, paper ballots could be made available to voters alongside the ExpressVote XL, to provide all voters who wish to use a genuine voter-verifiable paper ballot the opportunity to do so. The Court may wish to hold a hearing to identify other measures.

### **CONCLUSION**

For the foregoing reasons, Petitioners' Application for Special Relief in the Nature of a Preliminary Injunction should be granted.

Respectfully submitted,

**BAKER & HOSTETLER LLP**

Dated: January 10, 2020

/s/ Lesley M. Grossberg  
John F. Murphy  
Lesley Grossberg  
Jeanne-Michele Mariani  
2929 Arch Street  
Cira Centre, 12th Floor  
Philadelphia, PA 19104-2891  
T: (215) 568-3100  
F: (215) 568-3439  
johnmurphy@bakerlaw.com  
lgrossberg@bakerlaw.com  
jmariani@bakerlaw.com

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<sup>20</sup> See Grossberg Decl. Ex. 21, Ballotpedia: Pennsylvania House of Representatives District 190, [https://ballotpedia.org/Pennsylvania\\_House\\_of\\_Representatives\\_District\\_190](https://ballotpedia.org/Pennsylvania_House_of_Representatives_District_190) (last visited Dec. 27, 2019).

## **FREE SPEECH FOR PEOPLE**

/s/Ronald Fein

Ronald Fein

John Bonifaz

Ben Clements

Free Speech For People

1320 Centre St. #405

Newton, MA 02459

617-244-0234

rfein@freespeechforpeople.org

*Counsel for Petitioners*

### **CERTIFICATE OF COMPLIANCE**

The undersigned hereby certifies that Appellee has complied with the 14,000 word limit set forth in Pa. R.A.P. 2135(a)(1). According to the Word Count feature in Microsoft Office Word 2013, Petitioners' Brief contains 12,031 words, excluding the parts exempted by Pa. R.A.P. 2135(b).

Date: January 10, 2020

/s/ Lesley M. Grossberg  
Lesley M. Grossberg

## **CERTIFICATION**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: January 10, 2020

/s/ Lesley M. Grossberg  
Lesley M. Grossberg (Pa. 208608)



**CERTIFICATE OF SERVICE**

I, Lesley M. Grossberg, hereby certify that on January 10, 2020, I caused a true and correct copy of the foregoing document titled Petitioners' Brief in Support of Application for Special Relief in the Form of a Preliminary Injunction Under Pa. R.A.P. 1532, together with all supporting exhibits thereto, be served via hand delivery to Respondent Kathy Boockvar, Acting Secretary of the Commonwealth, at the following addresses:

Office of the Secretary of the Commonwealth  
302 North Office Building, 401 North Street  
Harrisburg, PA 17120

Pennsylvania Office of the Attorney General  
Strawberry Square Fl. 16  
Harrisburg, PA 17120

Date: January 10, 2020

/s/ Lesley M. Grossberg

PA Bar No. 208608

## **EXHIBIT 4**

John F. Murphy (PA Bar No. 206307)  
Lesley M. Grossberg (PA Bar No. 208608)  
Jeanne-Michele Mariani (PA Bar No. 327000)  
BAKER & HOSTETLER LLP  
2929 Arch Street  
Cira Centre, 12th Floor  
Philadelphia, PA 19104-2891  
Tel: (215) 568-3100

Ronald Fein (admitted Pro Hac Vice)  
John Bonifaz (not seeking Pro Hac Vice admission)  
Ben Clements (not seeking Pro Hac Vice admission)  
FREE SPEECH FOR PEOPLE  
1320 Centre St. #405  
Newton, MA 02459

*Counsel for Petitioners*

NATIONAL ELECTION DEFENSE  
COALITION, CITIZENS FOR BETTER  
ELECTIONS, RICH GARELLA, RACHEL  
A. MURPHY, CAROLINE LEOPOLD,  
STEPHEN STRAHS, KATHLEEN  
BLANFORD, SHARON STRAUSS,  
ANNE C. HANNA, RAPHAEL Y. RUBIN,  
ROBERT F. WERNER, SANDRA  
O'BRIEN-WERNER, THOMAS P.  
BRUNO, JR., ROGER DREISBACH-  
WILLIAMS, and JEFF R. FAUBERT,

Petitioners,

v.

KATHY BOOCKVAR, SECRETARY OF  
THE COMMONWEALTH,

Respondent.

COMMONWEALTH COURT  
OF PENNSYLVANIA

ORIGINAL JURISDICTION

Docket No.: 674 MD 2019

**PRAECIPE TO WITHDRAW MOTION FOR PRELIMINARY  
INJUNCTION WITH CONSENT FROM BOTH PARTIES**

On January 10, 2020 Petitioners in this case filed an Application for Preliminary Injunction seeking decertification of the ExpressVote XL by the Secretary of the Commonwealth. On January 22, 2020 the Secretary filed her response arguing against a preliminary injunction on the basis, *inter alia*, of concerns regarding implementation of a new system under these time constraints. Petitioners, with consent from the Secretary, hereby withdraw their Application for Preliminary Injunction. Petitioners' reasons for the withdraw follow.

Petitioners wish to ensure that all Pennsylvania voters are using legal voting systems as soon as possible and to achieve this in the most orderly and expedient manner possible. Petitioners continue to maintain that the ExpressVote XL violates the Pennsylvania Election Code and the Pennsylvania Constitution, and its continued use not only deprives Pennsylvania citizens of their right to suffrage, but also damages the integrity of the electoral system as a whole. Petitioners are confident that their concerns are well-founded and that they can win on the merits.

It is beyond doubt that 2020 is a very important election year for Pennsylvania, given its high profile as a swing state in national elections. Because of this, it is of the utmost importance to Petitioners that the ExpressVote XL is decertified before the November 2020 general election, not on a *preliminary* basis but on a *permanent* one. In an ideal world, this voting system would be replaced by

April so that the disastrous events surrounding the use of the machine in the November 5, 2019 election, and outlined in the Application for Preliminary Injunction are not replicated; however, Petitioners understand that, although administrative ease is not a basis for continuing a constitutional violation, changes can take time, and changes on a preliminary basis can be even more confusing for those indirectly affected by an order of this Court.

In light of the above, Petitioners withdraw their Application for Preliminary Injunction, and will instead seek relief in the form of a forthcoming motion for an accelerated briefing schedule and scheduling conference, setting a final pre-trial conference, or final resolution on the merits, in March 2020. Petitioners will of course endeavor to reach agreement, where possible, with the Secretary on such proposals before presenting them to the Court. Petitioners believe that this approach advances the interests of justice, conserves the Court's resources, and serves the goal of protecting the integrity of our elections.

Respectfully submitted,

**BAKER & HOSTETLER LLP**

Dated: January 24, 2020

/s/John Murphy  
John Murphy  
Lesley Grossberg  
Jeanne-Michele Mariani  
2929 Arch Street

Cira Centre, 12th Floor  
Philadelphia, PA 19104-2891  
T: (215) 568-3100  
F: (215) 568-3439  
johnmurphy@bakerlaw.com  
lgrossberg@bakerlaw.com  
jmariani@bakerlaw.com

*Counsel for Petitioners*

## **FREE SPEECH FOR PEOPLE**

/s/Ronald Fein

Ronald Fein

John Bonifaz

Ben Clements

Free Speech For People

1320 Centre St. #405

Newton, MA 02459

617-244-0234

rfein@freespeechforpeople.org

*Counsel for Petitioners*

**CERTIFICATE OF SERVICE**

I, John Murphy, certify that on January 24, 2020, I caused a true and correct copy of the foregoing Praecipe to Withdraw Motion to be served via the Court's electronic filing system upon the following:

Secretary of the Commonwealth Kathy Boockvar  
302 North Office Building, PA 17120  
Harrisburg, PA 17120

and

Pennsylvania Office of Attorney General  
Strawberry Square  
Harrisburg, PA 17120

/s/ John Murphy

John Murphy

## **EXHIBIT 5**



Petitioners cannot make up their minds about how they want this Court to handle these proceedings. The history of this case so far involves long stretches of inactivity on Petitioners' part, interspersed with pleas that the Court must drop everything and hear the case immediately. Petitioners waited for more than a year

after the November 2018 certification of the voting machine in question, the ExpressVote XL, to file their Petition seeking decertification of the machine. After another month passed, Petitioners filed an Application for Preliminary Injunction, only to withdraw it on the last business day before the hearing, after the Court had already held an in-person prehearing conference. *See* Praecipe to Withdraw dated Jan. 24, 2020. At that point, Petitioners promised the Court that they would soon file an application to accelerate the proceedings, with an eye to having a final pretrial conference by March 2020. *Id.* at 3. But no application was filed. Now, Petitioners have once again emerged to argue that the case must be resolved in time to decertify and replace the ExpressVote XL before the November general election—less than five months from now.

Respondent has no objection to this case proceeding on a normal schedule. However, there is no reason for the Court to turn its own procedures upside down in response to Petitioners' latest sounding of the alarm. As Respondents have shown many times over, it is simply impossible to replace the ExpressVote XL before the November 2020 election without disrupting the election and potentially disenfranchising large numbers of Pennsylvania voters. Moreover, Petitioners' Request presents no new reason to treat the case with any urgency. Respondent respectfully requests that the Court deny the Request and give full consideration to

Respondents' Preliminary Objections, including scheduling oral argument if the Court believes that it would be helpful.

First, it is far too late to decertify and replace the ExpressVote XL in time for the November 2020 election. Even when Petitioners first applied for a preliminary injunction in January 2020, it was too late. *See* Respondent's Brief in Opp. to Application for Preliminary Injunction dated January 22, 2020, at 53-63. It was still too late in April 2020, when Judge Paul Diamond of the Eastern District of Pennsylvania ruled that decertification of the ExpressVote XL would be "calamitous" because it "would effectively disenfranchise Philadelphia's one million registered voters" and would "destroy the City's ability to hold an election this year." Ex. A to Notice of Supplemental Authority dated April 30, 2020, at 39, 40. Decertification between now and November would be even more of a calamity. Bizarrely, Petitioners do not mention any of this in their Request, and do not explain how the Court could possibly implement any relief "in an orderly fashion" before the November 2020 election. Request at 3.

Second, although Petitioners contend that events during the June 2, 2020 primary somehow bolster their case, they provide no basis for this contention. Instead, they cite to two third-hand reports that "multiple" voting machines at three Philadelphia polling places malfunctioned during the primary election. *See* Request at 3-4. They present no firsthand accounts of these events and no

evidence as to why the machines malfunctioned, whether the alleged malfunctions have any connection to the flaws Petitioners allege, or whether the rate of malfunctions exceeded what is typically expected from any type of voting machine in any election (let alone an election taking place in the midst of a pandemic and civil unrest).

Finally, Respondents disagree with Petitioners' suggestion that the Court dispense with oral argument. Request at 3. Respondents believe that their Preliminary Objections raise significant issues of some complexity, and that the Court may well find oral argument useful. This is especially so with respect to the application of the six-month statute-of-limitations in 42 Pa.C.S. § 5522(b)(1) to challenges to the Secretary's voting-machine certification decisions, which is an issue of first impression. As Respondent has discussed (see Resp. Br. dated Apr. 30, 2020, at 44-48 & n.16), this issue has significant and far-reaching policy implications affecting the reliance interests of Pennsylvania counties, which have spent millions of dollars to purchase and implement voting machines certified by the Secretary.

Petitioners are sophisticated litigants who have longstanding familiarity with the ExpressVote XL. They had every opportunity to file this case promptly and to seek expedited relief in the form of a preliminary injunction, but chose to do neither. They should not ask the Court to alter its procedures now, when nothing

about their case has changed. Respondents respectfully ask this Court to deny Petitioners' Request.

Respectfully submitted,

**HANGLEY ARONCHICK SEGAL PUDLIN  
& SCHILLER**

Dated: June 10, 2020

By: /s/ Michele D. Hangle  
Michele D. Hangle (I.D. No. 82779)  
Robert A. Wiygul (I.D. No. 310760)  
Christina C. Matthias (I.D. No. 326864)  
One Logan Square, 27th Floor  
Philadelphia, PA 19103-6933  
(215) 568-6200 (Voice)  
(215) 568-0300 (Facsimile)

**TUCKER LAW GROUP**

Joe H. Tucker, Jr. (I.D. No. 56617)  
Dimitrios Mavroudis (I.D. No. 93773)  
1801 Market Street, Suite 2500  
Philadelphia, PA 19103  
(215) 875-0609 (Voice)

*Counsel for Respondent, Kathy Boockvar, in her  
official capacity as Secretary of the  
Commonwealth*

**CERTIFICATION REGARDING PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: June 10, 2020

/s/ Michele D. Hangley  
Michele D. Hangley

## **EXHIBIT 6**

FILED

STATE OF NORTH CAROLINA

2020 AUG 19 PM 5:08

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

20-CVS-5035

WAKE CO., C.S.C.

NORTH CAROLINA STATE

CONFERENCE OF THE NAACP, et. al,

Plaintiffs,

NORTH CAROLINA STATE BOARD  
OF ELECTIONS, et. al,

Defendants.

**ORDER DENYING PLAINTIFFS MOTION  
FOR PRELIMINARY INJUNCTION**

THIS MATTER CAME ON TO BE HEARD before the Court during the August 6, 2020, Session of Superior Court, Wake County. All adverse parties to this action received the notice required by Rule 65 of the North Carolina Rules of Civil Procedure. The Court considered the pleadings, arguments, briefs of the parties, supplemental affidavits, and the record established thus far, as well as submissions of counsel in attendance.

THE COURT, in the exercise of its discretion and for good cause shown, hereby makes the following:

Findings of Fact

1. The ExpressVote is a ballot-marking device ("BMD"), manufactured by Election Systems & Software ("ES&S"). Buell Aff. ¶¶ 25, 62.
2. Voters operate the ExpressVote by making their selection using the device's touch screen or keypad. Appel Aff. ¶ 21 n. 3. The ExpressVote then prints out a ballot summary card which reflects the voter's choices in two ways: a human unreadable barcode and a text summary of the voter's selections. *Id.* ¶¶ 34-35; Buell Aff. ¶¶ 4, 27-29.
3. The barcode, not the text summary, is scanned when tabulating the voter's selection. Appel Aff. ¶ 34; Buell Aff. ¶ 4.



4. On August 23, 2019, the State Board of Elections (“State Board”) certified the ExpressVote for in-person voting in North Carolina. Bell Aff. ¶¶ 6-7.

5. Plaintiff NC NAACP publicly opposed certification of the ExpressVote and made its position known at State Board meetings, testimony to Congress, and in correspondence with the Governor. See Bell Supp. Aff. ¶¶ 3-4 & Ex. 11; Cox Aff., Ex. 2; Spearman Aff. ¶ 3 & Exs. A at 3-4, B.

6. The U.S. Election Assistance Commission has certified the ExpressVote for use in federal elections, pursuant to the Help America Vote Act of 2002 (“HAVA”), 52 USC §§ 20962, 20971. Bell Aff. ¶ 8.

7. To earn this certification, the ExpressVote had to produce zero errors in one and one half million marked selections. Baumert Aff. ¶ 8.

8. The ExpressVote has been certified in 39 states and the District of Columbia. Baumert Aff. ¶ 10. There are over 90,000 units in use across various jurisdictions. *Id.* at ¶ 11.

9. According to ES&S there have been no reports of the ExpressVote producing a mismatch between the barcode and the text summary on the ballot summary card. *Id.* at ¶ 38.

10. Over the fall and winter of 2019, 21 Defendant county boards of election adopted the ExpressVote for use in elections. Bell Aff. ¶ 9 & Ex. 3. Some counties intend to use the ExpressVote for all in-person voting, while others will use it in a limited capacity, such as providing an accessible option for voters with disabilities. *Id.*

11. All Defendant counties have used the ExpressVote in two elections: fall 2019 municipal elections and March 2020 primaries. Bell Aff. ¶¶ 12-13.

12. Ballots cast using the ExpressVote were audited after both elections and revealed no tabulation errors. *Id.* at ¶¶ 12, 22.

13. Plaintiffs filed this lawsuit on April 17, 2020. The State Board was served on May 15, 2020 with service on the 21 county boards of election (“Defendant counties”) occurring on that date or later. Defendants filed motions to dismiss under Rules 12(b)(1), (2), and (6) on July 1, 2020. Plaintiffs then filed for a preliminary injunction on July 22, 2020.

14. Plaintiffs argue in their motion for a preliminary injunction that ExpressVote’s barcode system violates the Free Elections Clause of the North Carolina Constitution because a voter cannot verify that the selection contained in the barcode is accurate. Plaintiffs further allege concerns over the security of the ExpressVote with respect to hacking and that use of the ExpressVote would put voters at greater risk of contracting COVID-19 in their polling place.

### Conclusions of Law

#### Sovereign Immunity

1. Sovereign immunity precludes the exercise of personal jurisdiction over the state or its agencies. *Can Am S., LLC v. State*, 234 N.C. App. 119, 124, 759 S.E.2d 304, 308 (2014).

2. However, “[A]n aggrieved person has a direct claim under the North Carolina Constitution for violation of his or her constitutional rights when no adequate state law remedy exists.” *Corum v. Univ. of N.C.*, 330 N.C. 761, 782, 413 S.E.2d 276, 289, *cert. denied*, 506 U.S. 985, 113 S. Ct. 493, 121 L. Ed. 2d 431 (1992).

3. Defendants argue that Plaintiff should have pursued an administrative remedy under the Administrative Procedure Act. “As a general rule, where the legislature has provided by statute an effective administrative remedy, that remedy is exclusive and its relief must be exhausted before recourse may be had to the courts.” *Swan Beach Corolla, LLC v. County of Currituck*, 234 N.C. App. 617, 622, 760 S.E.2d 302, 307 (2014) (quoting *Presnell v. Pell*, 298

N.C. 715, 721, 260 S.E.2d 611, 615 (1979)). The court is deprived of subject matter jurisdiction when a plaintiff fails to exhaust administrative remedies. *Justice for Animals, Inc. v. Robeson County*, 164 N.C. App. 366, 369, 595 S.E.2d 773, 775 (2004). “Nevertheless, a party need not exhaust an administrative remedy where the remedy is inadequate.” *Swan*, 234 N.C. App. at 622, 760 S.E.2d at 307 (quoting *Affordable Care, Inc. v. North Carolina State Bd. of Dental Examiners*, 153 N.C. App. 527, 534, 571 S.E.2d 52, 58 (2002)). A plaintiff must plead facts justifying the avoidance of administrative procedures in the complaint. *Id.*

4. “Generally, constitutional claims are not subject to administrative remedies, so failure to pursue such remedies is not fatal to those claims.” *Swan*, 234 N.C. App. at 622-23, 760 S.E.2d at 308; *See Meads v. N.C. Dep’t of Agric.*, 349 N.C. 656, 670, 509 S.E.2d 165, 174 (1988); *Hardy ex rel. Hardy v. Beaufort County Bd. of Educ.*, 200 N.C. App. 403, 409, 683 S.E.2d 774, 779 (2009). “[W]hen there is a clash between [the Declaration of Rights of the N.C. Constitution] and sovereign immunity, the constitutional rights must prevail.” *Craig v. New Hanover County Bd. of Educ.*, 363 N.C. 334, 339, 678 S.E.2d 351, 355 (2009) (quoting *Corum*, 330 N.C. at 786, 413 S.E.2d at 292).

5. This action is not a “contested case” under the meaning of the APA. Further, an action seeking judicial review of any decision of the State Board of Elections is required to be brought in Wake County Superior Court. N.C.G.S. § 163-22(l). Therefore, Plaintiffs are properly pursuing a state law remedy and this Court has jurisdiction.

6. Even if the judicial review provided for in N.C.G.S. § 163-22(l) was not an adequate state law remedy in this case, jurisdiction would still be proper under *Corum*. The contested case provisions of the APA do not provide a path for Plaintiffs to make a claim in this case, and they have plead facts justifying their avoidance of administrative procedures in their



complaint. Plaintiffs' Compl. ¶¶ 145-47. It follows that Plaintiffs would have no adequate state law remedy and this Court may exercise personal jurisdiction over Defendants.

### Standing

7. "[B]ecause North Carolina courts are not constrained by the 'case or controversy' requirement of Article III of the United States Constitution, our state's standing jurisprudence is broader than federal law." *Davis v. New Zion Baptist Church*, 811 S.E.2d 725, 727 (N.C. Ct. App. 2018) (quotation marks omitted). At a minimum, a plaintiff in a North Carolina court has standing to sue when it would have standing to sue in federal court.

8. The North Carolina Supreme Court has broadly interpreted Article I, § 18 to mean that "[a]s a general matter, the North Carolina Constitution confers standing on those who suffer harm." *Mangum v. Raleigh Bd. Of Adjustments*, 362 N.C. 640, 642, 669 S.E.2d 279, 281 (2008). The "gist of the question of standing" under North Carolina law is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Goldston v. State*, 361 N.C. 26, 30, 637 S.E.2d 876, 879 (2006) (quoting *Stanley v. Dept. of Conservation & Dev.*, 284 N.C. 15, 28, 199 S.E.2d 641, 650 (1973)). Although the North Carolina Supreme Court has "declined to set out specific criteria necessary to show standing in every case, [it] has emphasized two factors in its cases examining standing: (1) the presence of a legally cognizable injury; and (2) a means by which the courts can remedy that injury." *Davis*, 811 S.E.2d at 727-28.

9. An association "has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests in seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the

relief requested requires the participation of individual members in the lawsuit.” *River Birch Assoc. v. Raleigh*, 326 N.C. 100, 130, 388 S.E.2d 538, 555 (1990) (quoting *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441 (1997)).

10. Organizational standing may be asserted when there is an injury to an organization’s ability to carry out its duties as a result of defendant’s conduct and that injury is redressable by the relief sought. *Indian Rock Ass’n, Inc. v. Ball*, 167 N.C. App. 648, 651, 606 S.E.2d 179, 181 (2004).

11. Individual plaintiffs have standing because the inability to verify the accuracy of one’s vote while casting it is a legally cognizable injury and an injunction preventing the use of the ExpressVote is a means by which the court can remedy that injury.

12. Plaintiff NAACP has satisfied the requirements for associational standing. It has members in all 21 defendant counties and has demonstrated a legally cognizable injury and means by which that injury can be remedied, which gives its members standing to sue in their own right. The interest in constitutionally protected free elections which it seeks to protect are germane to its purpose of protecting the political rights of its members and removing impediments to voting. Finally, this action does not require the participation of individual members.

13. Plaintiff NAACP has also satisfied the requirements for organizational standing. It has been injured by having to divert resources to address the adoption of the ExpressVote by the State Board and Defendant counties. This diversion of resources comes in the form of emergency livestreamed meetings with computer scientists and election administrators as well as advocacy efforts before the State Board and the U.S. House of Representatives.

### Preliminary Injunction

14. “The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an “extraordinary remedy” and will issue “only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-760 (1983) (emphasis in original); see also N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

15. The North Carolina Constitution, in the Declaration of Rights, Article I § 10, declares that “[a]ll elections shall be free.”

16. The North Carolina Supreme Court has recognized the importance of voting rights in our democracy. “Our government is founded on the will of the people. Their will is expressed by the ballot.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875).



17. The North Carolina Supreme Court has further opined that “all acts providing for elections, should be liberally construed, that tend to promote a fair election or expression of this popular will.” *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 428, 26 S.E.2d 638, 638 (1897).

18. Here, because much of the injury alleged by Plaintiffs’ is highly speculative, the Plaintiffs are unlikely to succeed on the merits. The ExpressVote has had no recorded tabulation errors and no incidents of hacks or data breaches. Furthermore, the evidence presented does not establish that the use of ExpressVote in a polling place will increase a voter’s likelihood of contracting COVID-19 as Defendants have promulgated guidelines to alleviate this risk. Bell Aff. ¶ 30 & Ex. 10; Bell Supp. Aff. Ex. 12 at 6-10.

19. The only non-speculative allegation presented is the ExpressVote’s use of a barcode for vote verification and tabulation. Plaintiffs’ ability to express themselves with their vote may be harmed by the inability to verify their selection. The ExpressVote uses a barcode in addition to text on the printout. The barcode, which is unreadable to a human, is what is read by the tabulator. A voter, then, has no way of knowing if the vote cast matches what is recorded in the barcode and ultimately counted by the tabulator. It is therefore conceivable that some level of irreparable injury will occur if the ExpressVote is used.

20. Plaintiffs request that Defendant counties be ordered to adopt paper ballots as the primary method of voting for the 2020 general election and that they replace the ExpressVote with accessible, non-barcode voting machines. However, nine Defendant counties have not used paper ballots for standard in-person voting since the early 2000’s. Bell 2d Supp. Aff. ¶ 10. Prior to adopting the ExpressVote, eighteen Defendant counties were using an earlier model of touch screen voting machine. *Id.* at ¶ 7. In order to restore the status quo, Defendant counties would be required to re-adopt outdated voting machines which left no paper trail for post-election audits.

Dickerson Supp. Aff. ¶ 22. These machines would be out of compliance with current voting machine requirements. N.C.G.S. § 163-165.7(a). Thus, issuing a preliminary injunction which truly restored the status quo would put Defendant counties in violation of state law.

21. This Court must also consider the feasibility of requiring the 21 Defendant counties to switch to entirely new voting systems before the 2020 general election, in which early voting begins on October 15, 2020. *Pender Cty. V. Bartlett*, 361 N.C. 491, 510, 649 S.E.2d 364, 376 (2007); *Reynolds v. Simms*, 377 U.S. 533, 585 (1964). The Purcell principle counsels against issuing an injunction so close to an election. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5, 127 S. Ct. 5, 7 (2006) (“Court order effecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”). Even if Defendant counties were able to source an adequate number of paper ballots, they would still be required to secure machines compliant with the HAVA to provide for voters with disabilities. Defendants contend that a switch to new voting systems is not merely impractical, but impossible. *See* Bell 2d. Supp. Aff. ¶¶ 2-13; Dickerson Supp. Aff. ¶¶ 12-24. Issuance of a preliminary injunction would create considerable risk that Defendant counties would be unable to perform their duties, as well as cause confusion about the particulars of how voting would take place. The combination of these factors could have the effect of disenfranchising many voters in Defendant counties.

22. After considering the harm Plaintiffs will suffer and comparing it to the harm a preliminary injunction would do to Defendants, the equities weigh in favor of denying Plaintiffs’ request for a preliminary injunction.

Laches



23. Laches is an equitable defense which may apply to bar injunctive relief. *See Roberts v. Madison Cty. Realtors Ass'n, Inc.*, 344 N.C. 394, 399, 474 S.E.2d 783, 787 (1996); *Moore v. Silver Valley Min. Co.*, 104 N.C. 534, 546, 10 S.E. 679, 683 (1889). It is applicable where a plaintiff unreasonably delays filing for relief, and the delay "worked to the disadvantage, injury, or prejudice of the person seeking to invoke the doctrine." *Fairley v. Holder*, 185 N.C. App. 130, 132-33, 647 S.E.2d 675, 678 (2007). "[T]he delay necessary to constitute laches depends upon the facts and circumstances of each case . . . ." *Id.* Such delay is "quite relevant to the balancing of the parties potential harms," because "an application for preliminary injunction is based upon an urgent need for the protection of a Plaintiff's rights, [and] a long delay in seeking relief indicates that speedy action is not required." *Quince Orchard Valley Citizens Ass'n v. Hodel*, 872 F.2d 75, 80 (4th Cir. 1989).

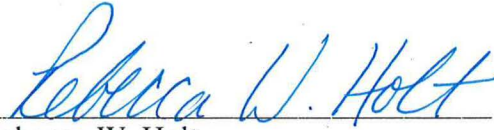
24. Plaintiffs publicly opposed certification of the ExpressVote but neglected to file this action until eight months after the ExpressVote was certified and did not file their motion for a preliminary injunction until eleven months had elapsed. During this delay the ExpressVote had been purchased by twenty-one Defendant counties and used in two elections. Granting the injunction now would injure Defendants by requiring them to devote substantial resources to switch to a different voting system, which may be impossible to implement in time for the election.

25. Accordingly, the doctrine of laches should bar Plaintiffs' injunction.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiff's motion for a preliminary injunction is hereby DENIED.

SO ORDERED, this 19<sup>th</sup> day of August, 2020.



Rebecca W. Holt  
Superior Court Judge Presiding

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission and by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Elizabeth Haddix  
Mark Dorosin  
LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS UNDER LAW  
PO Box 956  
Carrboro, NC 27520  
ehaddix@lawyerscommittee.org  
mdorosin@lawyerscommittee.org  
*Counsel for Plaintiffs*

Ezra D. Rosenberg\*  
Bradley S. Phillips\*  
John Powers\*  
LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS UNDER LAW  
1500 K Street NW, 9<sup>th</sup> Floor  
Washington, DC 2005  
erosenberg@lawyerscommittee.org  
bphillips@lawyerscommittee.org  
jpowers@lawyerscommittee.org  
*Counsel for Plaintiffs*

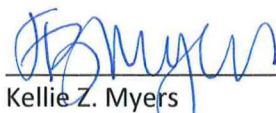
Moe Keshavarzi\*  
Bridget Russell\*  
Emerson Luke\*  
SHEPPARD MULLIN RICHTER & HAMPTON LLP  
333 South Hope Street, 43<sup>rd</sup> Floor  
Los Angeles, CA 90071-1422  
mkeshavarzi@sheppardmullin.com  
brussell@sheppardmullin.com  
*Counsel for Plaintiffs*

Courtney Hostetler\*  
Ronald Fein\*  
John Bonifaz\*  
Ben Clements\*  
FREE SPEECH FOR PEOPLE  
1320 Centre Street, # 405  
Newton, MA 02459  
chostetler@freespeechforpeople.org  
rfein@freespeechforpeople.org  
jbonifaz@freespeechforpeople.org  
bclements@freespeechforpeople.org  
*Counsel for Plaintiffs*

Paul M. Cox  
NC DEPARTMENT OF JUSTICE  
PO Box 629  
Raleigh, NC 27602  
pcox@ncdoj.gov  
*Counsel for Defendants*

\*Admitted pro hac vice

This the 19<sup>th</sup> day of August 2020.



Kellie Z. Myers  
Trial Court Administrator – 10<sup>th</sup> Judicial District  
kellie.z.myers@nccourts.org