



December 8, 2023

Kerry L. Meyers, President  
Ronald R. Heckman, Vice-President  
John Cusick  
Thomas A. Giovanni  
Lori Vargo Heffner  
Kevin Lott  
Tara M. Zrinski  
John P. Goffredo  
John A. Brown  
Northampton County Council  
669 Washington Street  
Easton, Pennsylvania 18042

Re: ExpressVote XL failures expose violation of voting system certification requirements

Dear Mr. President, Vice-President and Members of the Council,

We<sup>1</sup> are writing to share key information regarding the ExpressVote XL that may be useful to Northampton as it seeks to understand the failures of the ExpressVote XL, and contemplates the best path forward to reliable, trustworthy, accessible and accurate elections.

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<sup>1</sup> Protect Our Vote Philly is a non-partisan coalition of groups and individuals that acts as a watchdog over the Office of the City Commissioners, which operates Philadelphia's elections as the Board of Elections; we work to bring elections that are verifiably fair, accurate, and secure to Philadelphia, at a fair cost. Free Speech For People is a non-profit, non-partisan public interest legal organization that works to renew our democracy and our United States Constitution for the people.

Since 2019, our organizations have asserted that the ExpressVote XL is not suitable for the recording and counting of votes in Pennsylvania and other states. In 2019 we [filed a petition for re-examination](#) with the Pennsylvania Department of State, alleging that the ExpressVote XL did not meet the Commonwealth's voting system requirements. Later that year, we [sued the Secretary of State](#) seeking to decertify the ExpressVote XL. Plaintiffs settled the lawsuit.

Specifically, we wish to highlight that a system in full compliance with state and federal voting system requirements should have prevented the malfunction the ExpressVote XLs experienced in Northampton on November 7, 2023. In other words, it appears the ExpressVote XLs do not comply with a critical requirement necessary for state and federal voting system certification, potentially warranting decertification of the ExpressVote XL in the Commonwealth.

Pennsylvania requires all voting systems to be certified by both the U.S. Election Assistance Commission (EAC) and the Pennsylvania Department of State.<sup>2</sup> The ExpressVote XL was certified to the federal Voluntary Voting System Guidelines (VVSG) 1.0, which includes a provision that explicitly requires a voting system to ensure that a candidate's name remain consistent throughout the ballot. Section 3.2.4. iii of the federal VVSG 1.0 states:

*“The relationship between the name of a candidate and the mechanism used to vote for that candidate shall be consistent throughout the ballot.”<sup>3</sup>*

This requirement specifies a design that would prevent the sort of “clerical” error that wreaked havoc in Northampton. In essence, this certification requirement “idiot-proofs” the system from the input error that occurred this past election by requiring the data that designates the vote be consistent throughout the ballot.

However, the ExpressVote XL permits the labels for vote selections on the touchscreen face, the ballot summary card, and tally reports to be programmed inconsistently. That not only violates the EAC's voting system certification standards, but also introduces serious security issues. This failure could be exploited to record votes incorrectly in the barcode and tally reports, while providing labels in printed text that appear to be correct to the voter.

We respectfully urge you to raise this matter with the Department of State and to petition for a re-examination because the ExpressVote XLs “can no longer be used safely by voters at elections as provided in this act” (Election Code 1105-A(c)). Similarly, we strongly urge you to alert the EAC to this malfunction and apparent violation of the VVSG 1.0. We also encourage you to review ES&S' contractual obligations and representations to determine if ES&S violated its terms with Northampton County.

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<sup>2</sup> <https://www.vote.pa.gov/About-Elections/Pages/New-Voting-Systems.aspx>

<sup>3</sup> Election Assistance Comm'n, *Voluntary Voting System Guidelines Volume I* (2005), [https://www.eac.gov/sites/default/files/eac\\_assets/1/28/VVSG.1.0\\_Volume\\_1.PDF](https://www.eac.gov/sites/default/files/eac_assets/1/28/VVSG.1.0_Volume_1.PDF).

We hope this information may be helpful. We welcome the opportunity to answer any further questions or provide additional information. We would also be available to meet with you and/or provide further information to the Council at a future meeting.

Thank you very much for your time and attention to this important matter.

Sincerely,

Susan Greenhalgh  
Senior Advisor on Election Security  
[Free Speech For People](#)  
Susan@FreeSpeechForPeople.org

Rich Garella  
on behalf of [Protect Our Vote Philly](#)  
rich@povphilly.org

cc. Northampton County Election Commission Board  
Sharon Gavin-Levy, Chair  
Daniel Lopresti, Vice-Chair  
Margie DeRenzis  
Scott Hough  
Vicki Evert

Matthew Munsey  
Glenn Geissinger