

# **EXHIBIT C**

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

### **Declaration of Richard Garella**

I, Richard Garella, declare as follows:

1. I make this declaration of my own personal knowledge and, if called as a witness, could and would testify competently thereto.

2. I am a resident and registered voter in Philadelphia County. I am a Petitioner in this case. I am also a cofounder of Protect Our Vote Philly, which is a coalition working to bring accurate, accessible, and secure voting systems at a fair cost to Philadelphia.

#### **Spoiling a ballot**

3. On Election Day, November 5, 2019, I went to vote at Di Silvestro Recreation Center (Ward 36, Division 41) and used the ExpressVote XL voting machine.

4. After making my selections and printing my ballot card, I decided to change my selections.
5. I selected “Spoil Ballot” and a box came up saying “Vote Session Canceled” and the machine started chirping.
6. A male poll worker opened the curtain without announcing himself. He looked at the screen and asked me what I wanted to do. I explained that I wanted to change my vote. A female pollworker came into the booth to advise the male pollworker. They made no effort to shield my ballot card which was in plain sight of both of them.
7. The female pollworker typed in a security code which I could see (I could also read it off the tag hanging around a pollworker’s neck) and caused the machine to eject the card, which I barely caught. She took the card and seemed to hand it off to another pollworker outside the booth.
8. She handed me a new blank ballot from the open pack of blank ballot cards that was sitting on the table just a few feet away. As I went to insert it, I realized that she had given me two ballot cards. I handed one back to her and inserted the other.
9. I could hear the pollworkers discussing what to do with the spoiled ballot. I asked a female pollworker, still standing in the booth opening, what they would do with it and she said it would go in an envelope for spoiled ballots and go back to the commissioners.
10. At no time did they do anything to avoid being able to see my ballot selections. As I started to make my new selections, a pollworker called out “Who is that, Richard? Is that Richard?” from beyond the curtain, so all of the pollworkers knew the spoiled ballot card was created by me.

### **Regarding Post-Election Procedures**

11. On November 8, 2019, I went to the public meeting of the Philadelphia Board of Elections at 520 N Delaware Ave to deliver a letter on behalf of Protect Our Vote Philly to the three Board Members. A true and correct copy of this letter is attached as Exhibit A.

12. The letter pointed out that if the Board proceeded with its post-election procedures as scheduled, it would fail to meet requirements set by the Secretary of the Commonwealth for the conditional certification of the voting equipment in the Secretary's September 3, 2019 Report Concerning the Reexamination Results of Election Systems & Software's ExpressVote XL. The requirements were that "collection bins must be opened *in the presence of board of election members* and must be commingled *before canvass and storage.*" (Emphasis added)

13. I handed in copies of the letter just before the meeting. The meeting was delayed for nearly an hour while the three board members were in a side office with Deputy Solicitor Ben Field and another man. One of the deputy commissioners told me they were discussing the letter.

14. During public comments, I read the letter into the record. Board chair Giovanni Campbell acknowledged receipt of the letter and that he had received advice from counsel. He stated that he disagreed with that interpretation of the Election Code, and moved to continue with the process. The motion was seconded and carried.

15. The unsealing, commingling and storage of the ballot cards took the entirety of five working days, from November 8 to November 12, 2019, at 4700 Wissahickon Ave. Contrary to the Secretary's condition for certification, this was concurrent with the canvass taking place at 520 N Delaware Ave. I was at the commingling for large portions of that time and other members of Protect Our Vote Philly covered almost all of the remaining time. We also conferred with other observers who appeared, including some from the Republican Party of Pennsylvania.

16. Each worker would write down the seal number of a cartridge, cut the seal, and remove the stack of cards. He would then cut the stack into approximately 4 to 6 piles. Sometimes the cards were face down, other times face up. The worker would rearrange the piles. Different workers had different techniques for rearranging the order of the piles; some would pick up piles and place them on other piles, others would slide the piles around and then reassemble them.

17. Then the worker would wrap the reassembled stack in a rubber band, put the identifying card from the cartridge under the rubber band and put the stack into a zip-lock bag with one or more other stacks, presumably from the same division.

18. These bags were then placed atop one another in open white postal bins or black plastic milk crates. Completed bins were brought to a rear storeroom, but I saw that at the end of the day the bins in-progress were typically left out in the room.

19. During this process, workers came and went from the room through various entrances without any sign-in procedures or ID control. After workers left for the day there was no sign of any overnight security presence.

20. At no time did I see or hear anyone else report the presence of any member of the Board of Elections at the site.

21. Therefore I could see that the collection bins were not “opened in the presence of board of elections members” and, because the canvass ran on the same dates, they also were not “commingled before the canvass” as required by the Secretary’s Report Concerning Reexamination.

I declare under penalty of perjury under the law of the United States and the Commonwealth of Pennsylvania that the foregoing is true and correct.

Executed on December 19, 2019 in Philadelphia.

A handwritten signature in black ink, appearing to read "Richard Garella", with a long horizontal flourish extending to the right.

Richard Garella

# EXHIBIT A

# PROTECT OUR VOTE PHILLY

Citizens for Better Elections, Clean Money Squad PA, Huddle Up Philly, Indivisible Philadelphia, Indivisible NW Philly, March On Harrisburg, Philadelphia Neighborhood Networks, Philadelphia NOW, Represent Us Pennsylvania, Unitarian Universalist Pennsylvania Legislative Action Network

November 8, 2019

Board of Elections  
Philadelphia County  
(hand delivery)

To the Board Chair, Judge Giovanni Campbell  
and the Board Members, Commissioner Anthony Clark and Judge Vincent Furlong:

Protect Our Vote Philly expresses its concern as to the legal sufficiency of the procedures that the Board has created to meet conditions set on September 3, 2019 by the Pennsylvania Department of the Commonwealth for certification of the ES&S ExpressVote XL voting system. Specifically: “*Collection bins must be opened in the presence of board of election members and must be commingled before canvass and storage*” (in relevant part, at Part V, Section A).

**The presence of the Board members themselves is required.** The condition does not allow for the possibility of any designee to take on responsibility for the integrity of vote records. Even if it were possible to delegate authority to anyone else to fulfill this role, there has been no public meeting of the Board to do so. Under the Pennsylvania Sunshine Act, notice to the public would be required for such a meeting.

**The commingling must take place before the canvass.** Both of these processes require the Board members to be present. The condition requires that they occur sequentially, not simultaneously. The commingling must be completed before the canvass starts in order to meet the requirement.

These requirements are clearly and purposefully written. Meeting them is a condition for the certification of the election system. If they are not met, the election will have taken place on uncertified voting equipment, in violation of Election Code § 1105-A(c).

Respectfully,



Rich Garella for Protect Our Vote Philly  
POVPhilly@gmail.com

*Additional info: [Advocates win transparency improvements in Election Court arguments](#)*

# **EXHIBIT D**



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

**Declaration of Anne C. Hanna**

I, Anne C. Hanna, declare as follows:

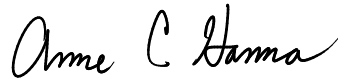
1. I make this declaration of my own personal knowledge and, if called as a witness, could and would testify competently thereto.
2. I am a resident and registered voter in the city of Philadelphia, in Philadelphia County, Pennsylvania. I am a plaintiff in this case.
3. On November 5, 2019, I voted in the general election at the Ward 31, Division 07 polling place, at the Maritime Academy Charter School, using an ExpressVote XL voting machine. I was accompanied by my husband, Raphael Y. Rubin ("Rafi").

4. There were two ExpressVote XL voting machines in the polling place. I voted on one and Rafi voted on the other.
5. When I finished making my voting selections, I had to tap the “print” button three times before it responded to my touch and allowed me to print my ballot.
6. Once my ballot card had printed and was visible in the glass window, I found the ballot card very difficult to review.
7. It was hard to read because the font on the ballot card was small and very difficult to read in the dim light.
8. The text was very dense and poorly formatted. Each voting choice was printed on the line after the corresponding office or question, with no blank space separating different offices/questions. This made it very difficult to match each response to the corresponding office/question, especially with the long sequences of yeses and nos for judicial retentions and ballot questions.
9. It was difficult to be certain that I had not missed a candidate or question because the format of the vote summary was so different from the format of the on-screen ballot as well as from my sample ballot.
10. I was concerned that I had no way to confirm that the bar code matched the (barely) human-readable vote summary on the card.
11. After Rafi and I left the polling place, he showed me two pictures he had taken of the access panel on top of his voting machine sitting wide open. Under the panel, a storage device inserted into the machine was visible and easily accessible.
12. Rafi had to leave immediately for work, so he sent copies of his photos to my cellular phone so that I could return to the polling place and show them to the pollworkers.

13. I showed the photos to Margaret Rzepski (“Peg”), the Democratic Ward leader in Ward 31, and a Democratic precinct committeeperson for Division 07, and asked her to come in with me to witness me asking them to fix it.
14. Peg and I entered the polling place, told the workers about the problem, and showed them the pictures. I suggested they might want to check the access cover in the other machine as well.
15. There were people voting on both machines, so the pollworkers could not correct the problem immediately. They assured us that they would secure the machines as soon as the current users were finished.

I declare under penalty of perjury under the law of the United States and the Commonwealth of Pennsylvania that the foregoing is true and correct.

Executed on December 23, 2019 in Philadelphia, PA, USA.



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Anne C. Hanna

# **EXHIBIT E**

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

**Declaration of Tamira Morales**

I, Tamira Lanette Morales, declare as follows:

1. I make this declaration of my own personal knowledge and, if called as a witness, could and would testify competently thereto.
2. I reside in Easton, Pennsylvania, where I am a registered voter of Northampton County. I am unemployed and receive disability benefits due to medical conditions.
3. I have been diagnosed with Multiple Sclerosis and Type 2 Diabetes. As a result, I often experience vision problems, impaired coordination, weakness, and difficulty walking.
4. On November 5, 2019, I voted in the general election at my polling place in St. Paul's Lutheran Church (610 West Berwick Street, Easton) using the ExpressVote XL voting machine.

5. I had difficulty using the touch screen. For example, when I used the touch screen to vote for a particular candidate, another candidate in the same contest would light up instead. I had to press the screen many times until it changed to the proper choice.
6. 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.
7. I cast the ballot anyway, without being confident my votes were recorded correctly.
8. After I left the voting booth, I informed poll workers about these problems. They told me that other voters had reported problems too.

I declare under penalty of perjury under the law of the United States and the Commonwealth of Pennsylvania that the foregoing is true and correct.

Executed on December 22, 2019 in Easton, PA 18042.

  
Tamira Lanette Morales  
Tamira Lanette Morales

# **EXHIBIT F**

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

**Declaration of Matthew S. Munsey**

I, Matthew S. Munsey, declare as follows:

1. I make this declaration of my own personal knowledge and, if called as a witness, could and would testify competently thereto.
2. I reside in Easton, Pennsylvania, where I am a registered voter of Northampton County. I work as a freelance software consultant.
3. I serve as chair of the Northampton County Democratic Committee.

**Logic and Accuracy Testing**

4. On October 9, 2019, I observed the logic and accuracy testing of several ExpressVote XL voting machines at the county's voting machine warehouse.



5. The logic and accuracy testing of each voting machine consisted primarily of two parts. (1) The tester used a built-in software program to cast approximately 20 paperless ballots. (2) The tester put the machine into a “test mode”, inserted a single thermal paper card, made selections on the touchscreen, the machine printed on the ballot, and then the ballot was ejected. At the conclusion of the tests, the tester printed out a tape with the totals and put the printed ballot and results tape on the back of the machine.
6. I noted that the summary tape printed by machines showed very few votes for any candidates and mostly undervotes cast for every contest. In several instances, a candidate would have zero votes even though about 20 total ballots had been simulated on that machine. [See Exhibit A, photograph of Logic and Accuracy poll tape.]

### **Election Day**

7. On November 5, 2019, the day of the General Election, I was contacted by a number of voters and poll watchers about problems with the ExpressVote XL voting machines at a number of precincts.
8. I learned of at least six voting machines that did not start up in several precincts, causing lines to form and some voters to leave rather than wait.
9. I heard from numerous polling places that voters were experiencing inaccurate touchscreens, making it difficult or impossible to select their true choices on the screen.
10. President Judge Michael Koury Jr. sent me a text message stating that he and Judge Craig Dally, both candidates in the election, had gone to court because they were concerned that the ExpressVote XL was not correctly registering votes in their contests.
11. After polls closed that night, I received reports from a number of volunteers and at least one poll worker that Abe Kassis, a candidate for the Court of Common Pleas, and several other candidates had zero votes on the tallies printed by the machines.
12. I went to the County Courthouse around midnight, after a news report announced the ballots would be recounted overnight, and stayed until the recount was completed around 5 AM. A county official informed me the recount began around 10:30 PM.

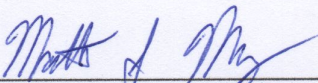
13. In one room, election workers were removing ballot containers from bags, cutting the seals to open each container, and placing each stack of ballot cards on folding tables.
14. Each stack of ballot cards was placed on a table exactly as it came out of the container, without any action or attempt to shuffle the order of cards.
15. Each stack of ballot cards was scanned through one of four central count scanners.
16. After scanning, each stack was placed into a large envelope which was then labeled with the precinct/machine, and those envelopes then packed away in bins.

**Absentee and Provisional Ballots**

17. On November 14, I observed the examination and canvass of Northampton County's provisional ballots at the County Courthouse.
18. A Palmer Upper-Western precinct sent in seven machine-printed ballot cards that had been paperclipped to an email from the judge of elections. The email explained that machines seemed to "reject" some cards and spit them out at the voters' feet. She collected the ejected ballot cards after she had confirmed each of those voters had attempted to cast it, and returned them with the provisional ballot envelopes on election night. The seven ballots were deemed ineligible.
19. One Palmer Upper-Western voter cast a provisional ballot and attested that the machine had "moved to voted" (cast her paper card) before she had a chance to correct an error. Her provisional ballot was deemed ineligible.

I declare under penalty of perjury under the law of the United States and the Commonwealth of Pennsylvania that the foregoing is true and correct.

Executed on December 23, 2019 in Henderson Township, Jefferson County, PA.

  
Matthew S. Munsey

# EXHIBIT A

Northampton County  
2019 Municipal Election  
0120 PALMER - UPPER WESTERN/EASTON  
Election Date: November 05, 2019  
Poll Opened Date: October 09, 2019  
Poll Opened Time: 10:27 AM  
Poll Closed Date: October 09, 2019  
Poll Closed Time: 10:30 AM  
Public Count: 20

Protected Count: 27  
Poll Voting Report

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Total Ballots Processed: 20

Straight Party  
Number to Vote For 1  
  
Democratic 1  
Republican 0  
Libertarian 0  
No Affiliation 0  
Under Votes 19

Judge of Superior Court  
Number to Vote For 2

DEM Amanda Green-Hawkins 5  
DEM Daniel D. McCaffery 2  
REP Megan McCarthy King 0  
REP Christylee Peck 0  
Write-in 0  
Write-in 0  
Under Votes 33

Judge of the Court of Common Pleas  
Number to Vote For 2

DEM/REP John M. Morganeli 3  
DEM Abe Kassis 1  
REP Victor Scamilio 0  
Write-in 0  
Write-in 0  
Under Votes 36

District Attorney  
Number to Vote For 1

DEM Terry Houck 1  
REP Tom Carroll 0  
Write-in 0  
Under Votes 19

County Controller  
Number to Vote For 1

DEM Tony E. Bassil 3  
REP Hayden Phillips 0  
Write-in 0  
Under Votes 17

County Council District II  
Number to Vote For 1

DEM Kerry Myers 5  
REP James Fuller 0  
Write-in 0  
Under Votes 15

School Director Easton Area School District Regi  
on 1  
Number to Vote For 2

DEM Jodi Hess 5  
DEM/REP Bill Whitman 1  
REP Robert Fehnel 0  
Write-in 0  
Write-in 0  
Under Votes 34

Supervisor Township of Palmer  
Number to Vote For 2

DEM/REP Jeffrey A. Young 7  
DEM K. Michael Mitchell 2  
REP Charles Diefenderfer 0  
Write-in 0  
Write-in 0  
Under Votes 31

Auditor Township of Palmer  
Number to Vote For 1

DEM Stephen Colbeth 1  
Write-in 0  
Under Votes 19

Proposed Constitutional Amendment

Yes 6  
No 1  
Under Votes 13

Ann E. Lazarus

Yes 7  
No 2  
Under Votes 11

Judy Olson

Yes 8  
No 3  
Under Votes 9

Kevin Brobson

Yes 9  
No 4  
Under Votes 7

# **EXHIBIT G**

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.  
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KATHY BOOCKVAR, SECRETARY OF  
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COMMONWEALTH  
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ORIGINAL JURISDICTION

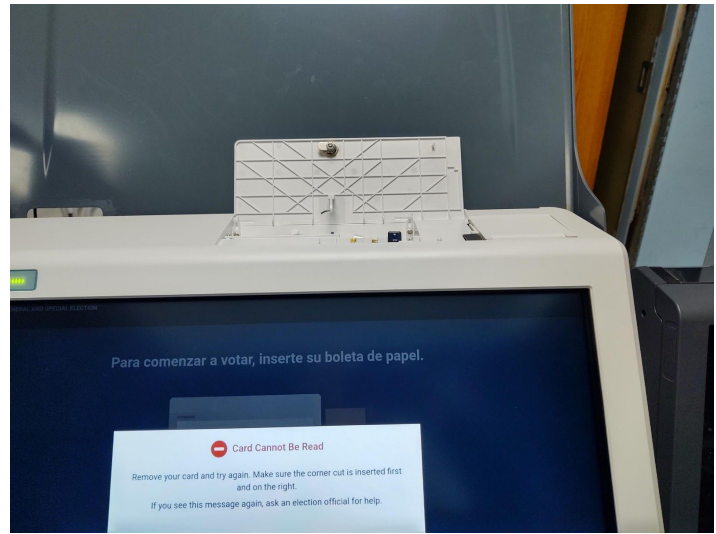
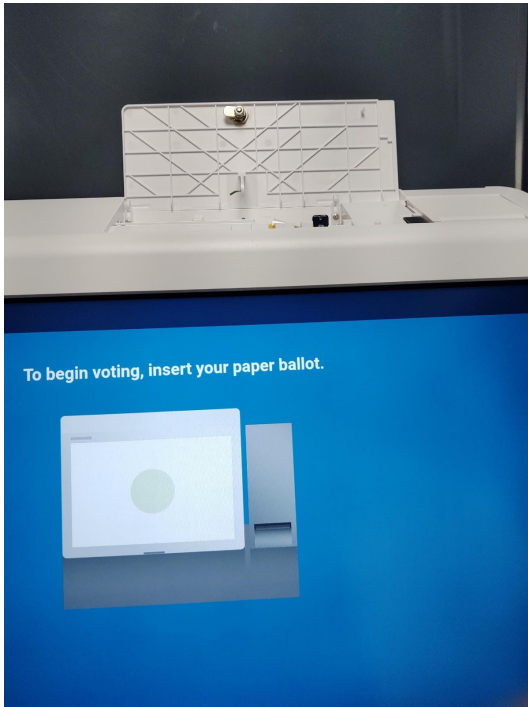
Docket No. 674-MD-2019

### **Declaration of Raphael Y. Rubin**

I, Raphael Y. Rubin, declare as follows:

1. I make this declaration of my own personal knowledge and, if called as a witness, could and would testify competently thereto.
2. I am a resident and registered voter in the city of Philadelphia, in Philadelphia County, Pennsylvania. I am a plaintiff in this case.
3. On November 5, 2019, I voted in the general election at the Ward 31, Division 07 polling place, at the Maritime Academy Charter School, using an ExpressVote XL voting machine. I was accompanied by my wife, Anne C. Hanna.

4. There were two ExpressVote XL voting machines in the polling place. I voted on one and Anne voted on the other.
5. I had difficulty inserting the ballot card into the machine and had to ask for assistance. A pollworker entered the privacy booth to insert the ballot card for me and then departed before I voted.
6. When my ballot card was printed, I was troubled by the dual printouts on my ballot card. Because I could not read the bar code, I was unable to confirm that it matched the human-readable summary text, and thus could not verify that my vote was recorded correctly.
7. While in the booth, I observed that the access panel on the top of the machine was wide open. Under the panel, a storage device inserted in the machine was visible and physically accessible to me or any other voter who entered the booth.
8. A small dark object, like a grocery bag twist tie, appeared to have been inserted into a protrusion on the panel in order to prevent the door from being completely closed. I did not touch the panel or anything under it, or attempt to close the door myself.
9. As a computer scientist, I recognized this as a serious security issue, so I used my cellular phone to take two photos of the open access panel to document the situation.



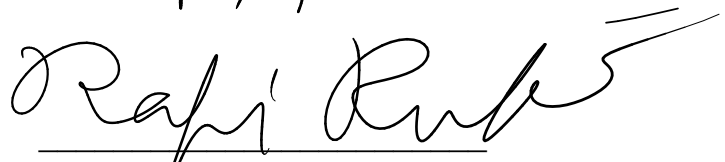
10. The photographs I took appear above.

11. I did not report the open access panel to a pollworker because I was in a hurry to get to work.

12. After we left the polling place, I showed the photos to Anne. I sent copies to her phone so she could return to the polling place and report the problem.

I declare under penalty of perjury under the law of the United States and the Commonwealth of Pennsylvania that the foregoing is true and correct.

Executed on December 24, 2019 in Philadelphia, PA, USA.

  
Raphael Y. Rubin



# EXHIBIT H

NATIONAL ELECTION DEFENSE  
COALITION, CITIZENS FOR BETTER  
ELECTIONS, RICH GARELLA,  
RACHEL A. MURPHY, CAROLINE  
LEOPOLD, STEPHEN STRAHS,  
KATHLEEN BLANFORD, SHARON  
STRAUSS, ANNE C. HANNA,  
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WERNER, THOMAS P. BRUNO, JR.,  
ROGER DREISBACH-WILLIAMS, and  
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THE COMMONWEALTH,

Respondent.

COMMONWEALTH  
COURT OF  
PENNSYLVANIA

ORIGINAL JURISDICTION

Docket No. 674-MD-2019

**DECLARATION OF LESLEY M. GROSSBERG**

I, Lesley M. Grossberg, am an attorney for Petitioners in this matter, and have personal knowledge of the facts herein. In support of Petitioners' Application for Special Injunctive Relief, I declare as follows:

1. Attached as Exhibit 1 is a true and correct copy of a news article, Tom Shortell, "No confidence: Northampton County election board 'extremely disappointed' in machines it selected," *The Morning Call* (Dec. 19, 2019), available at

<https://www.mcall.com/news/local/mc-nws--20191220-xrkqrrrokfrgzlc3lglpn5nf5fe-story.html> (last visited January 10, 2020).

2. Attached as Exhibit 2 is a true and correct copy of the Declaration of Dean C. Baumert in Support of Defendants' Opposition to Plaintiffs' Motion to Enforce the Settlement Agreement in *Stein v. Boockvar*, E.D. Pa. Civ. No. 2:16-cv-6287 (ECF No. 123-5).

3. Attached as Exhibit 3 is a true and correct printout of a description of the ExpressVote XL voting process from the website VerifiedVoting.org, available at <https://www.verifiedvoting.org/resources/voting-equipment/ess/expressvote-xl/> (last visited January 10, 2020).

4. Attached as Exhibit 4 is a true and correct copy of 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>

5. Attached as Exhibit 5 is a true and correct copy of Appel, DeMillo and Stark, "Ballot-Marking Devices (BMDs) Cannot Assure the Will of Voters," April 21, 2019 (available at <https://ssrn.com/abstract=3375755>).

6. Attached as Exhibit 6 is a true and correct copy of the July 16, 2019 Request and Petition for Reexamination of the ES&S ExpressVote XL electronic voting machine from Free Speech for People, National Election Defense Coalition, and Citizens for Better Elections to Secretary Boockvar ("Petition").

7. *Report Concerning the Reexamination Results of Election Systems and Software ExpressVote XL*, issued by Secretary Boockvar on September 3, 2019 (“Reexamination Report”).

8. Attached as Exhibit 8 is a true and correct copy of the publicly available redacted Provider Agreement between City of Philadelphia Procurement Department and Election Systems & Software, LLC, dated May 13, 2019, available from the Office of the Philadelphia City Commissioners,  
<https://www.philadelphiavotes.com/en/home/item/1438-contracts-and-rfp-responses-for-new-voting-system-and-electronic-poll-books>, at  
[https://files7.philadelphiavotes.com/announcements/ESS\\_Redacted\\_Contract.pdf#\\_ga=2.69928789.412394962.1577469325-634751383.1572893685](https://files7.philadelphiavotes.com/announcements/ESS_Redacted_Contract.pdf#_ga=2.69928789.412394962.1577469325-634751383.1572893685) (last visited Dec. 27, 2019).

9. Attached as Exhibit 9 is a true and correct copy of a news article, Emily Previti, “Northampton officials unanimously vote ‘no confidence’ in ExpressVote XL voting machine,” *PA Post*, Dec. 20, 2019.

10. Attached as Exhibit 10 is a true and correct copy of the transcript of proceedings in the Court of Common Pleas of Northampton County before the Honorable F. P. Kimberly McFadden in *In re 2019 Municipal Election*, Nov. 5, 2019.

11. Attached as Exhibit 11 is a true and correct printout of a news article, 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), available at <https://www.mcall.com/news/elections/mc-nws-northampton-county-elections-complaints-20191227-rlm547dt7raszogqwxxyenu2sh4-story.html>.

12. Attached as Exhibit 12 is a true and correct copy of the transcript of proceedings in the Court of Common Pleas of Northampton County before the Honorable Stephen G. Baratta in *In re 2019 Municipal Election*, Nov. 5, 2019.

13. Attached as Exhibit 13 is a true and correct copy of a news article, Emily Previti, “Human Error and Sensitive Touchscreens Blamed for Northampton Co. Election Problems, *PA Post* (Dec. 12, 2019), available at <https://papost.org/2019/12/12/human-error-and-sensitive-touchscreens-blamed-for-northampton-co-election-problems/> (last visited Dec. 27, 2019).

14. Attached as Exhibit 14 is a blog post, John Cole, “HD190: Special Election Set for February 25,” *Politics PA* (Dec. 17, 2019), available at <https://www.politicspa.com/hd190-special-election-set-for-february-25/93123/> (last visited Dec. 27, 2019).

15. Attached as Exhibit 15 is a true and correct copy of the Declaration of J. Alex Halderman in Support of Plaintiffs’ Motion to Enforce the Settlement Agreement, filed on November 26, 2019 in *Stein v. Boockvar*, Civ. No. 2:16-cv-6287 (ECF No. 112-2).

16. Attached as Exhibit 16 is a true and correct copy of The Blue Ribbon Commission on Pennsylvania’s Election Security: Study and Recommendations, 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) (last visited January 10, 2020).

17. Attached as Exhibit 17 is a true and correct copy of the EAC Certification Test Report – Modification for the Election Systems & Software system EVS 6.0.4.0

18. Attached as Exhibit 18 is a true and correct copy of the Pennsylvania Secretary of State’s “Report Concerning the Examination Results of Election Systems and Software EVS 6021 With DS200 Precinct Scanner, DS450 and DS850 Central Scanners, Expressvote HW 2.1 Marker and Tabulator, ExpressVote EX Tabulator and Electionware EMS,” issued by Robert Torres, Acting Secretary of the Commonwealth, dated November 30, 2018 and available at

<https://www.dos.pa.gov/VotingElections/Documents/Voting%20Systems/ESS%20EVS%206021/EVS%206021%20Secretary%27s%20Report%20Signed%20->

[Including%20Attachments.pdf](https://www.dos.pa.gov/VotingElections/Documents/Voting%20Systems/ESS%20EVS%206021/EVS%206021%20Secretary%27s%20Report%20Signed%20-%20Including%20Attachments.pdf) (“Original Certification Report” and annexes including Attachment A, EAC Certification Scope; Attachment B – Accessibility Examination Findings and Recommendations; Attachment C – Implementation Attestation; Attachment D – Minimum Training Requirements; and Attachment E, Source Code Escrow Obligations for ES&S).

19. Attached as Exhibit 19 is a true and correct copy of the Testimony of Acting Secretary Kathy Boockvar to the Pennsylvania State Senate regarding SB 48, March 26, 2019, at 9 (accessed from and available at <https://stategovernment.pasenategop.com/wp-content/uploads/sites/30/2019/03/boockvar.pdf>) (last visited December 27, 2019).

20. Attached as Exhibit 20 is a true and correct copy of a news article, Joe Nixon, "County: It's Sequoia by a Landslide: With Lone Holdout, Council Picks New Voting Machine vendor," *The Morning Call* (Jan. 18, 2008) (accessed from and available at <https://www.mcall.com/news/mc-xpm-2008-01-18-3961611-story.html>) (last visited January 9, 2020).

21. Attached as Exhibit 21 is a true and correct copy of a printout of Ballotpedia: Pennsylvania House of Representatives District 190, available at [https://ballotpedia.org/Pennsylvania\\_House\\_of\\_Representatives\\_District\\_190](https://ballotpedia.org/Pennsylvania_House_of_Representatives_District_190) (last visited Jan. 10, 2020).

I declare under penalty of perjury under the law of the United States and the Commonwealth of Pennsylvania that the foregoing is true and correct.

Executed on January 10, 2020 in Philadelphia, Pennsylvania.



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Lesley M. Grossberg

# **EXHIBIT 1**



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# No confidence: Northampton County election board 'extremely disappointed' in machines it selected

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By **TOM SHORTELL**  
THE MORNING CALL | DEC 19, 2019



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Richard Kessler, Northampton County Voter Registration employee, demonstrates the ExpressVote XL voting machine in August 2018. In March 2019, the county's election commission voted 3-2 to use the machines in future elections. (Tom Shortell / Morning Call file photo)

**A month after widespread problems plagued the general election, the Northampton County Election Commission Board voted 4-0 to express no confidence in its new election machines.**

**At the same meeting Thursday evening, representatives of the county's Democratic and Republican committees called on the county to move away from the machines and perform an independent analysis of the results.**

“We believe the problems the machines exhibited this year will make it virtually impossible to restore voters’ confidence heading into 2020. We’d recommend avoiding that by not using them again,” said Democratic Chair Matthew Munsey.

Despite the bipartisan condemnation of the machines, it’s unclear how county residents will cast their vote in the upcoming presidential elections. Richard Santee, the board’s solicitor, said the decision to reject these machines must be made in conjunction with Northampton County Council and Executive Lamont McClure. Some council members have demanded a refund on the machines, though McClure has continued to stand by them.

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Even if there was universal agreement, it would be logistically difficult to swap systems in time for the April 28 primary. The board, council and McClure's administration would have to reach a consensus on getting rid of the machines, selecting a new system, purchasing it, training staff and delivering the machines to the polls in less than four months.

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"I can't imagine what we are going to do between now and April," said Council President Ron Heckman, who attended the meeting as a member of the public. "What's the alternative?"

As many as 30% of Northampton County's ExpressVote XL voting machines had flawed touch screens that prevented voters from selecting candidates listed on the edge of the ballot. At the same time, machines failed to electronically count any votes for some candidates in cross-filed races. The most prominent example was county judicial candidate Abe Kassis, whose digital votes were undercounted by tens of thousands.

The county wound up relying on paper backups produced by the voting machines to tally the results. An analysis by Election Systems & Software,

the machine's manufacturer, found the paper ballots accurately recorded the votes.

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Adam Carbullido, a senior vice president with ES&S, apologized to the members of the commission, saying the company failed to properly configure the touch screens and the ballot. The problems should have been caught during pre-election testing, but company employees failed to provide thorough training to the county and failed to catch the mistake themselves. [Carbullido made a similar apology to County Council and the public last week.](#)

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That was little consolation to members of the board, which selected the ExpressVote XL by a 3-2 vote in March. Maudeania Hornik, a Republican, said she still likes the concept of the machines but questioned how the county could rely on them now.

"I fought for your machines. Now I'm extremely disappointed. I feel like I've been played," said Hornik, the only member of the board who will be returning next year.

Board member Deb Hunter, a Democrat, challenged Carbullido on the methods used to test the machines before the vote. Under the county's previous system, someone cast a vote for every candidate on every machine as part of a controlled test before the election. This year, however, ES&S used automated and manual testing; not every candidate's button on every machine was checked as a result.

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“If every machine was tested by hand, I don’t see how this would have happened. It would have set off alarm bells,” she said.

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Hunter’s barbs weren’t saved just for Carbullido. She raised old criticisms of the McClure administration, saying it limited the board’s work by narrowing its choices down to two machines. Months before the commission met to review their options, [McClure identified the ExpressVote XL as his recommended choice](#). The board exists so politicians and elected officials do not have too much control in how their constituents cast their votes.

“It was clearly communicated to us that this was the machine. None of the commission members were even informed” they could go to down to Harrisburg to review the various machines on the market, Hunter said.

She sparred throughout the night with Charles Dertinger, the county’s director of administration, who argued the machines worked because of the paper backups, a feature that was unavailable under the old machines. Counties that relied on systems where voters cast paper ballots, including Lehigh County, experienced long lines and privacy issues, he said.

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“Had we been one of those counties, we would be on the other side of making this argument. Had we only gone with this other voting system, this wouldn't have happened,” Dertinger said.

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Some of Dertinger's comments raised the board's concerns in basic functions of county operations. Some precincts, he said, could not be informed of the machine problems on Election Day because election workers did not own cellphones or did not answer calls.

“We do not have a phone number for anyone in each polling place,” Dertinger said.

When asked after the meeting if the administration had any comment on the no confidence vote, Dertinger said. “We are going to have to work to restore confidence. That's it.”

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Tom Shortell



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Tom Shortell covers transportation and county government in the Lehigh Valley for The Morning Call. He's previously covered the Slate Belt, Northampton County Court, Jersey City, NJ and the Jersey Shore. A graduate of St. Bonaventure University, Shortell will gladly pay you Tuesday for a hamburger today.

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# **EXHIBIT 2**



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. One example of such voting technology is the ExpressVote XL.

3. The ExpressVote XL is a ballot marking device that incorporates into a single unit the printing of a voter's selections as a paper voter-verifiable record and tabulation scanning.

4. A publicly available video demonstration of the ExpressVote XL is available at <https://essvote-1.wistia.com/medias/4xu5p0uq14>.

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

5. 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.

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

7. 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**

8. 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 XL is no exception.

9. 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.

10. 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.

11. The ExpressVote XL has been state certified in California, Delaware, Mississippi, New Jersey, Pennsylvania and Texas.

12. The ExpressVote XL has undergone thousands of hours of testing, including usability testing; has been certified by the EAC; and has passed certification and extensive testing by the Pennsylvania Department of State on two separate occasions.

13. The EVS 6.0.0.0 voting system release includes ES&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 that include the ExpressVote XL. As part of this certification, the ExpressVote XL was 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.

14. 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.

15. 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, 6.0.4.0 and 6.1.0.0. 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 December 10, 2019).

**b. Pennsylvania Certification**

16. ES&S submitted its first request for certification of the EVS 6.0.0.0 voting system by the Pennsylvania Department of State on May 16, 2018.

17. 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)