



New Lawsuit Challenges Insecure, Unreliable Voting Machines in Pennsylvania

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COALITION OF ADVOCACY GROUPS AND VOTERS FILE LAWSUIT AGAINST PENNSYLVANIA SECRETARY OF THE COMMONWEALTH ALLEGING THE ILLEGALITY OF THE EXPRESSVOTE XL VOTING MACHINES

PHILADELPHIA, PA (Friday, Dec. 13) – A coalition of advocacy groups and voters has filed a **lawsuit** [<https://freespeechforpeople.org/wp-content/uploads/2019/12/Petition-for-Review-court-filed-copy.pdf>] against Pennsylvania Secretary of the Commonwealth Kathy Boockvar alleging that the state’s use of the ExpressVote XL voting machines violates the Election Code and the Pennsylvania Constitution. The plaintiffs in the lawsuit include the National Election Defense Coalition (NEDC), the Pennsylvania-based Citizens for Better Elections (CBE), and individual Pennsylvania voters. The public interest group Free Speech For People and the BakerHostetler law firm serve as counsel for the plaintiffs.

“The ExpressVote XL voting machine is insecure, unreliable, and inaccessible to many users with disabilities,” said Ron Fein, constitutional lawyer and legal director for Free Speech For People. “In 2020, voters in Pennsylvania have a right to free and fair elections, and that means dumping the ExpressVote XL.”

The lawsuit alleges that the ExpressVote XL machines, which Secretary Boockvar certified for statewide use in 2018, feature four major sets of flaws: (a) they lack adequate security measures to ensure that each vote cast is properly counted so that each elector’s right to vote is protected; (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 disabilities, (d) and they fail to use ballot cards that are consistent with the form mandates laid out in the Election Code.

“The Pennsylvania Constitution and the Pennsylvania Election Code both guarantee that an elector’s vote is protected and given equal weight regardless of the polling place where he or she votes. The ExpressVote XL cannot guarantee these basic freedoms to the affected voting population and thus the Secretary should have never certified its use in the first place,” said Jeanne-Michele Mariani,

attorney at BakerHostetler. She, along with partner John Murphy and counsel Lesley Grossberg, are co-counsel with Free Speech For People in the case.

“Pennsylvania is rightly scrapping its insecure and untrustworthy voting machines to move to paper ballots, but unless the vote selections on the paper are reliably verified, the paper provides zero protections against miscounts or hacking,” said Susan Greenhalgh, vice president of programs and policy for NEDC. “The Secretary’s own analysis found that the votes on the XL paper summary can’t be verified. In other words, Pennsylvania’s voters are paying tens of millions of dollars for new voting machines that don’t solve the problem.”

In July 2019, in coordination with NEDC, CBE, and about 200 Pennsylvania voters, Free Speech For People submitted a petition to Boockvar to re-examine and decertify the ES&S ExpressVote XL voting machine for failing to comply with a significant number of provisions of the Pennsylvania Election Code. The Secretary’s report declined to address seven of the ten grounds, and it dismissed one concern as possible but unlikely. While accepting the remaining two grounds, Boockvar proposed to remedy them through training and procedures that the Secretary’s office cannot legally mandate or enforce.

“The ExpressVote XL failed Pennsylvania’s voters in the recent November election. There were widespread problems with the touchscreens, and voters had difficulty reading their printed ballots,” said Kevin Skoglund, chief technologist for Citizens for Better Elections. “It also failed at all three of the most fundamental requirements of a voting machine: counting all votes accurately, protecting every voter’s right to a secret ballot, and producing reliable evidence of the will of the voters. Voters should not be asked to trust it again.”

The lawsuit is seeking a declaration that Pennsylvania’s use of the ES&S ExpressVote XL machines violates the Election Code and the Pennsylvania Constitution, and an injunction to the Secretary to decertify them. The plaintiffs aim to ensure that more secure and reliable voting methods can be used for Pennsylvania’s April 28, 2020 primary election.

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