



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

September 3, 2019

Ronald A. Fein, Legal Director
John C. Bonifaz, President
Free Speech For People
1320 Centre St. #405
Newton, MA 02459

Re: Petition to Reexamine ES&S ExpressVote XL

Dear Messrs. Fein and Bonifaz:

This letter will serve as a response to your letter dated July 16, 2019 enclosing a petition to reexamine the ES&S ExpressVote XL voting device. As you know, Section 1105-A of the Election Code requires that, "[u]pon receipt of a request for [] reexamination of an electronic voting system," the Acting Secretary of the Commonwealth, "examine the electronic voting system and shall make and file . . . [a] report . . . stating whether, in [her] opinion, the system so examined can be safely used by voters at elections as provided in this act and meets all of the *requirements hereinafter set forth.*" 25 P.S. § 3031.5(b) (emphasis added). The requirements referenced by Section 1105-A refer to those set-out at length in Section 1107-A of the Election Code, 25. P.S. § 3031.7. Section 1107-A mandates that an electronic voting system meet seventeen distinct requirements before the Acting Secretary may approve it for use. *See id.* In addition to these state-law requirements, the EAC's certification of the voting system considered compliance with certain federal laws, including the Help America Vote Act of 2002 (HAVA), 52 U.S.C. §§ 20901-21145.

After a careful and considered review of your petition, the Acting Secretary determined that claims numbered one, two and eight were germane to the reexamination and certification of the ExpressVote XL device. Kindly find the reexamination results attached hereto. The remaining claims (three through seven, nine and ten) constitute legal arguments which do not apply to reexamination or certification of an electronic voting system.

Sincerely,

Timothy E. Gates
Chief Counsel

Enclosure

cc: Susan Greenhalgh, National Election Defense Coalition
Kevin Skoglund, Citizens for Better Elections

DEPARTMENT OF STATE | OFFICE OF CHIEF COUNSEL
306 NORTH OFFICE BUILDING | HARRISBURG, PA 17120
Phone: 717-783-0736 | Fax: 717-214-9899 | www.dos.state.pa.us

