

WRITTEN COMMENT FROM COMMON CAUSE/NY TO THE NEW YORK STATE BOARD OF ELECTIONS IN OPPOSITION TO CERTIFICATION OF EXPRESSVOTE XL

Common Cause/NY, by its executive Director Susan Lerner, submits this comment opposing the certification of ES&S' ExpressVote XL hybrid voting machine by the New York State Board of Elections.

The expensive, hard to transport ExpressVote XL has numerous flaws, in addition to being very expensive. It uses the widely discredited touchscreen technology. The "summary ballot" it produces is very difficult to read, being small and behind glass, with the relevant portion, i.e., the barcode, not human-readable. It is guaranteed to produce long waiting lines, as only 1 person can use it at a time. If any part of the machine breaks down, then it is completely out of commission and there is no work-around, as it only reads special ballots printed by ES&S, the ExpressVote XL vendor, not regular hand-marked or emergency ballots. This is only the barest beginning of a description of the things that are objectionable with this machine.

We oppose certification on multiple grounds, as detailed below. We believe that certifying these controversial machines which are widely regarded as insecure and have engendered significant public opposition will undercut public confidence in the security and accuracy of our elections at a time when such confidence badly needs reenforcing. Numerous counties in New York, including New York City, utilize the most secure and up to date voting technology already - paper ballots hand or machine marked by the voters, human-readable and inserted by the voter directly into an optical scanner. The State Board should not be encouraging counties to desert this proven and familiar system and certainly not for the expensive and insecure ExpressVote XL machine.

The ExpressVote XL system does not satisfy the requirements of New York law.

In order to be certified for purchase by county boards of elections and used for elections in New York, voting equipment must satisfy the requirements of New York law as set forth in Election Law Sec. 7-202. ExpressVote XL fails to satisfy two provisions of that section. In the first instance, the ExpressVote XL fails to "provide the voter an opportunity to ...independently verify votes selected..." as required by 7-202(1)(e). The ExpressVote XL produces a barcode instead of a printout of the voter's selections, the voter has no way to *independently* verify that the readable summary provided on the paper "trail" accurately reflects the votes actually selected, rendering the summary meaningless for verification.

Computer experts find the ExpressVote XL unacceptably vulnerable to hacking.

In an article published online this week, Princeton University computer science professor and noted computer security expert, Andrew Appel had this to say about the ExpressVote XL:

- **The ExpressVote XL, if adopted, will deteriorate our security and our ability to have confidence in our elections, and indeed it is a bad voting machine. And expensive, too!**
- It's been clearly explained in the peer-reviewed literature *how* touch-screen voting machines—even the ones like the XL that print out paper ballots—can (if hacked) alter votes; and how most voters won't

notice; and how even if some voters do notice, there's no way to correct the election result. And it's been explained why machines like the ExpressVote XL are particularly insecure –as I said, [see section 8 of this paper](#)* (citing * [Ballot-Marking Devices Cannot Assure the Will of the Voters](#), by Andrew W. Appel, Richard A. DeMillo, and Philip B. Stark. *Election Law Journal*, vol. 19 no. 3, pp. 432-450, September 2020. [Non-paywall version, differs in formatting and pagination.](#)) [Emphasis in original]¹

- Professor Appel is not the only computer security expert to reject the ExpressVote XL on the grounds that it poses a security risk. See, e.g., the testimony of Kevin Skogland to the Committee on Governmental Operations of the New York City Council, April 30, 2019.²

The Board should not certify machines which are obsolete before they are even certified or purchased.

With unmitigated chutzpah, ES&S is asking the State Board to certify its ExpressVote XL machine even though it runs on a Windows 7 operating system. Microsoft stopped supporting Windows 7 in January 2020, meaning that it no longer provides software or security updates to address known security deficiencies in the operating system. ES&S obtained a special support license for its machines through the 2020 election cycle. We believe that the license is no longer operative. On its website, Microsoft states: "Support for Windows 7 ended on January 14, 2020. If you are still using Windows 7, your PC may become more vulnerable to security risks."³ The security of our voting systems must be a paramount concern in assessing the acceptability and certification of any voting system of machine.

Certification of the ExpressVote XL would put New York at further disadvantage, as pending Congressional legislation, [HR 1](#), would make the machine in violation of future federal law as well. HR 1 defines what constitutes a permissible voter-verified paper ballot which would be "a paper ballot marked by the voter by hand or a paper ballot marked through the use of a non-tabulating ballot marking device or system, so long as the voter shall have the option to mark his or her ballot by hand."⁴ The ExpressVote XL would not meet the new federal standard and would therefore make the machines unusable for elections.

There is no common sense or legal justification for permitting taxpayer money to be spent to purchase outmoded voting machines with known security issues and vulnerable to new security risks. Computers, like the ExpressVote XL which run elderly, long-superseded operating systems or software, are truly outmoded before they are even purchased.

**COMMON CAUSE/NY CALLS ON THE STATE BOARD
TO DENY CERTIFICATION TO THE EXPRESSVOTE XL.**

¹ Appel, Andrew; ESS Voting Machine Company Sends Threats, Freedom-To-Tinker, January 11, 2021, <https://freedom-to-tinker.com/2021/01/11/ess-voting-machine-company-sends-threats/>

² <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3908102&GUID=36C23C20-635D-48C1-8EF0-ADD656F126A0&Options=&Search=>

³ <https://www.microsoft.com/en-us/microsoft-365/windows/end-of-windows-7-support> (Accessed January 12, 2021)

⁴ [HR 1](#)

