

July 14, 2023

Peter S. Kosinski, Co-Chair
Douglas A. Kellner, Co-Chair
Andrew J. Spano, Commissioner
Anthony J. Casale, Commissioner

New York State Board of Elections
40 North Pearl Street, Suite 5
Albany, NY 12207-2729
Submitted via email

Re: ExpressVote XL / EVS 6.3.0.1

Dear Commissioners:

On behalf of Verified Voting, I write to reiterate our opposition to approving the ES&S ExpressVote XL voting machine (a component of the EVS 6.3.0.1 voting system currently under review) for use in New York elections. Verified Voting is a non-profit organization whose mission is to strengthen democracy for all voters by promoting the responsible use of technology in elections. In that role, we reaffirm our [2021 conclusion](#) that the ExpressVote XL suffers from fundamental design flaws, particularly with respect to voter verification, that cannot be readily resolved.¹ New York election law § 7–201(1) charges the state board with making a determination of whether a voting machine or system “can safely and properly be used by voters and local boards of elections at elections....”² We would answer that question in the negative.

In our view, for a voting system to be safely used in elections, not only must it resist subversion and count votes accurately, but it must be able to convince voters that it did so. Thus, we focus on the question: how can New Yorkers be assured that election results reflect voters’ choices? For the foreseeable future, voter-verified paper ballots or records provide the bridge from voter intent to election outcomes. First, each voter can confirm that their paper ballot³ accurately records their preferences. Then, post-election tabulation audits and recounts can ensure that election outcomes match the paper ballots. When appropriately implemented and checked, voter-verified paper ballots provide the best response to concerns about voting system security: “We know the results are right because we checked.”

¹ Verified Voting, *Opposition to certifying ES&S ExpressVote XL voting system* (Jan. 12, 2021), <https://verifiedvoting.org/opposition-to-certifying-ess-expressvote-xl-voting-system/>.

² N.Y. Elec. L. § 7–201 (1).

³ We use “paper ballot” to describe an authoritative record used in recounts, a broader meaning than in much of New York election law.

For paper ballots to provide this crucial assurance, at a bare minimum, voters must be confident that the paper ballots are accurate. Cybersecurity experts vary in their views of how stringent voter verification must be to protect elections, but they broadly agree that the mere existence of a nominally voter-verifiable paper trail is not protective.⁴ Election administrators must consider not only security threats to voting systems themselves, but attacks upon public confidence in those systems. In the current threat environment, marked by rampant mis- and disinformation about election cyberhacks, voter verification is paramount.

We understand that, in some ways, the ExpressVote XL may be an advancement for voters with disabilities and non-English language voters. Unfortunately, any useful features it offers for marking a ballot do not compensate for its treatment of voter verification as an afterthought, retreading the “paper trail retrofit” approach adopted by some voting machines two decades ago. The paper record literally is placed off to the side, behind a window, for voters to verify if they work at it—and if they can. A voter who cannot verify text through a window must go through the steps to “Quit” voting, verify their ballot manually, and then seek help from a poll worker to cast it. Similarly, any voter who spots a discrepancy on their ballot through the window must “Quit” voting and request a fresh ballot. These design features discourage voters from undertaking a simple, crucial step to support public confidence in elections.

Circa 2005, placing a paper trail behind a window could be construed as an improvement for otherwise completely unverifiable electronic voting machines. In 2023, it is an unfortunate anachronism. We believe that polling places should provide a combination of hand-markable paper ballots, digital scanners, and well-designed ballot marking devices that make it easy for all voters to check their ballots. Currently available ballot marking devices, and systems nearing federal certification, offer a variety of better approaches to voter verification.

We regard the ExpressVote XL as wholly unsuitable for universal use by all voters at a polling place, and gravely flawed as an “accessible” system. We urge the state board not to approve it—or other systems that obstruct voters from verifying their ballots—for use in New York.

Respectfully submitted,

Mark Lindeman
Policy & Strategy Director

⁴ See Verified Voting et al., *Letter to Indiana Senate Elections Committee opposing the use of voter-verified paper audit trails in HB 1116 instead of paper ballots* (Feb. 10, 2022), <https://verifiedvoting.org/letter-indiana-hb1116/>.