

January 13, 2021

By Email:

Alan S. Lewis, Esq.
Carter Ledyard & Milburn LLP
2 Wall Street
New York, NY 10005

Re: Threats by Election Systems & Software, LLC
Against SMART Elections

Dear Mr. Lewis:

We are counsel to SMART Elections (“SE”), a non-partisan project funded through a 501(c)(3) foundation. We write in response to your January 4, 2021 letter threatening to pursue “all remedies in law and equity” against SE because of their First Amendment-protected efforts to deter the New York State Board of Elections from certifying the Express Vote XL for use by local election boards.

Your letter is inappropriately intemperate. You should know quite well that anyone, even an aggressive company like Election Systems & Software (“ES&S”) cannot sue someone for expressing an opinion. You should also know quite well that under New York Civil Rights Law § 76-a, expressions of “fact” by a party, as part of an act of “public petition and participation,” are not actionable unless you can show “knowledge of its falsity or ... reckless disregard of whether it was false.”

If your client sues, we will not only invoke the NY anti-SLAPP law, we will seek sanctions.

Additionally, please be assured that I will make it clear to every election board official in the state that your client is, *in my opinion*, a thuggish operation which is not interested in selling its machines because of their merits, but wants to win approval through threats and intimidation.

**advocates
for justice**
chartered attorneys

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Set in the context of the shameful actions last week in our nation's capital, your effort to intimidate opponents, in order to win a vote at the Board of Elections, is disgraceful.

Very truly yours,

Arthur Z. Schwartz

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cc: Lulu Friesdat
Douglas Kellner, Esq.
Andrew Spano
Peter S. Kosinski
Anthony J. Casale
Todd D. Valentine
Robert A. Brehm