



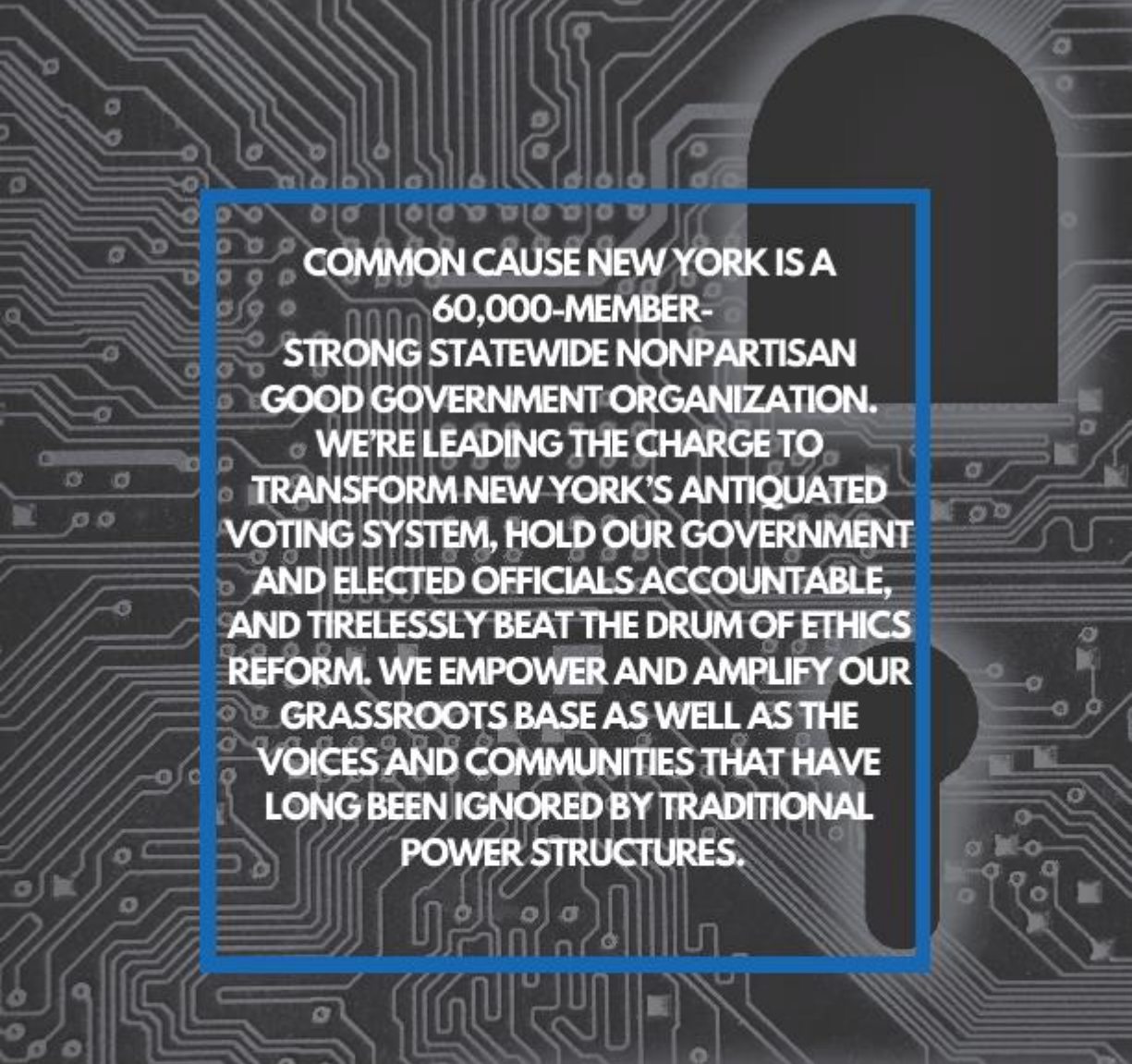
# The ExpressVote XL Voting Machine: Bad for New York's Elections

JANUARY 2020



**Common Cause**

New York



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## **THE EXPRESSVOTE XL: BAD FOR NEW YORK'S ELECTIONS**

### *Common Cause/NY Policy Brief on the ES&S ExpressVote XL Voting Machine*

New York has long held the dubious distinction of consistently problematic election administration. However, one of the rare bright spots in New York's election administration has been the widespread implementation and use of voter-marked paper ballots. **New York is among the "36 states and D.C. .... that use voter-marked, machine-scanned paper ballots that security experts consider the gold standard"<sup>1</sup> for election security. That is why Common Cause/NY is alarmed to see the New York State Board of Elections move in a direction that would undermine the security of our elections.**

Currently, the New York State Board of Elections (NYSBOE) is in the final stage of potentially certifying Election Systems & Software's (ES&S) ExpressVote XL voting machine for use in New York elections. The ExpressVote XL<sup>2</sup> is a new touch screen voting machine that would allow voters to mark their ballot electronically instead of on the traditional voter-marked paper ballots. It also functions as a 2-in-1 machine by marking ballots and then tabulating votes. Election security experts almost universally pan these types of ballot-marking devices<sup>3</sup> (BMDs) and have serious concerns regarding their security and reliability. Our preliminary analysis shows:

- **New York would be one of the only states transitioning to a less secure form of voting.**
  - The 2016 election catalyzed a renewed sense of urgency to improve election security. The 14 states that rely on ballot-marking devices have mostly started to phase out these machines.<sup>4</sup>
- **The ExpressVote XL is a waste of taxpayer money.**
  - National experts question the wisdom of spending millions on something "to perform the same task as a pen."<sup>5</sup>
- **The ExpressVote XL has lost the confidence of voters and election administrators.**
  - In the few counties that have used the ExpressVote XL, the problems have been so widespread lawsuits have been filed to decertify the machine.

As the state grapples with key decisions on how to deal with the replacement of aging voting machines, it is vital that it occurs under the singular framework of ensuring our elections are

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<sup>1</sup> Politico, "[The Scramble to Secure America's Voting Machines](#)," August 6th, 2019.

<sup>2</sup> To view images and an explainer video of the ExpressVote XL proceed to the Addendum.

<sup>3</sup> [The Brennan Center for Justice](#) defines a ballot-marking device as a voting machine which "produce(s) a marked ballot (usually paper) that is the result of voter interaction with visual or audio prompts provided by a computerized interface."

<sup>4</sup> Politico, "[The Scramble to Secure America's Voting Machines](#)," August 6th, 2019.

<sup>5</sup> National Election Defense Coalition and FreedomWorks, "[Letter to the Secure, Accessible and Fair Elections Commission](#)," December 12th, 2018.

free, fair and secure. ES&S, whose machines serve the majority of New York voters,<sup>6</sup> has spent \$615,000 lobbying<sup>7</sup> New York state officials over the last 8 years. The vast majority, nearly \$600,000, was specifically spent on lobbying New York officials regarding the purchase of new voting machines.

Common Cause/NY vehemently opposes the certification of the ExpressVote XL and strongly urges the New York State Board of Elections to act in the best interests of New Yorkers and our elections.

## **A VERY BRIEF OVERVIEW OF NEW YORK'S VOTING MACHINE CERTIFICATION PROCESS**

New York tests and certifies voting machines in accordance with state law and uses the Election Assistance Commission's [2005 Voluntary Voting System Guidelines](#) for minimum standards. Voting machine standards establish minimum guidelines for security, functionality, privacy, usability, and accessibility.<sup>8</sup>

Before a voting machine can be used in New York elections, the machine must be certified by the NYSBOE. Voting machines are tested in an independent testing laboratory and are subject to usability testing and a public demonstration before a final certification decision is made.<sup>9</sup> Once a voting machine is certified for use, local boards of elections can purchase these machines directly from the vendor.

## **CERTIFYING THE EXPRESSVOTE XL DEFIES ELECTION SECURITY EXPERTS RECOMMENDATIONS**<sup>10 11</sup>

There has been a marked shift in the thinking of cybersecurity election experts over the last decade. Given the heightened security risks of foreign interference in US elections, many states are moving towards voter-marked paper ballots to create a voter-verified, secure paper trail instead of using ballot-marking devices (BMDs). New York currently uses voter-marked paper ballots, but has BMDs at poll sites for voters with disabilities. The concerns are real:

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<sup>6</sup> Dominion Voting, [New York: Case Study](#), June 21, 2012.

<sup>7</sup> [New York State Joint Commission on Public Ethics](#) (JCOPE) lobbying reports were accessed on 12/20/2019.

<sup>8</sup> New York Codes, Rules and Regulations, [Title 9 Executive Department, Subtitle V State Board of Elections, Part 6209 Voting Systems Standards, 6209.2 Polling place voting system requirements.](#)

<sup>9</sup> New York Codes, Rules and Regulations, [Title 9 Executive Department, Subtitle V State Board of Elections, Part 6209 Voting Systems Standards, 6209.6 Examination criteria.](#)

<sup>10</sup> Verified Voting's [Statement on Hand-Marked paper Ballots as Primary Voting Method](#), January 4th, 2019.

<sup>11</sup> National Election Defense Coalition and FreedomWorks, [Letter to the Secure, Accessible and Fair Elections Commission](#), December 12th, 2018.

- The 14 states that do not use voter-marked paper ballots have mostly made efforts to start the phase out of ballot-marking devices.<sup>12</sup>

### **THE EXPRESSVOTE XL IS A WASTE OF TAXPAYER MONEY**

The ExpressVote XL would replace paper ballots and scanners driving up costs for local boards of elections. The ExpressVote XL costs \$8,250 per unit,<sup>13</sup> far exceeding the costs of other voting machines. And because the machine both marks ballots and tabulates votes, municipalities will need to purchase enough to accommodate the additional time it will take to vote as a result. The voter-marked ballot and scanner system can handle a high volume of voters as the number of voting stations for voter-marked paper ballots is only limited by the physical capacity of polling stations.

New York State is facing a projected \$6.1 billion budget gap in 2020. It is therefore highly unlikely local boards of elections will receive much, if any, state funding for the purchase of new voting machines. Counties will have to shoulder the high costs themselves.

### **THE EXPRESSVOTE XL HAS LOST THE CONFIDENCE OF VOTERS AND ELECTION ADMINISTRATORS**

The ExpressVote XL has major design flaws that trouble election administrators. It makes day-of election administration more difficult and, if used, will only cast doubt on the accuracy of election results. The user-end design flaws penalize voters by increasing wait time and voter confusion.

#### **The ExpressVote XL will make day-of election administration more difficult**

The ExpressVote XL presents numerous challenges on election day for election administrators:

- *Touchscreen problems:* Touchscreens are finicky and prone to malfunction. Voters have already experienced difficulties when trying to mark their ballot such as an inability to vote for a specific candidate or a ballot is incorrectly marked because the screen was not responsive to the intended selection.
- *Ballot scanning:* The ExpressVote XL does not have the capacity to scan different sized ballots. This makes scanning provisional ballots, ballots that are used when a voter is not on the voter rolls and are verified after the election, impossible. The ballot scanners currently in use in New York, [the DS200](#), have the capability to scan multiple ballot types.

All of this ultimately penalizes voters. The ExpressVote XL has:

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<sup>12</sup> Politico, "[The Scramble to Secure America's Voting Machines](#)," August 6th, 2019.

<sup>13</sup> [Contract between ES&S and Gloucester County, New Jersey](#) dated October 17th, 2018.

- *Produced long lines* and therefore increased wait time for voters. In Maryland, where they transitioned to voter-marked paper ballots in 2016, all but one county preferred their use because it saves time and money.<sup>14</sup>
- *Made vote verification difficult:* Voters are able to review their ballot on a slip of paper which is behind a plastic barrier before vote tabulation. However, voters have reported an inability to see the paper ballot clearly due to small font size, light printing, and the opacity of the plastic barrier.<sup>15</sup>

### **The ExpressVote XL has lost the faith of local boards of elections and voters**

Given the election administration challenges of the ExpressVote XL, it is perhaps no surprise to see considerable pushback from election officials and voters. While the machines have only been in use in a few counties around the country, there have been widespread reports of machine failure and inaccurate vote counts. As of December 2019, Pennsylvania's Northampton County Election Commission Board **announced a unanimous and bipartisan vote of no confidence in the ExpressVote XL machines** after widespread problems in the November 2019 general election.<sup>16</sup>

- At least 30% of the machines had flawed touchscreens which did not allow voters to select candidates based on their screen placement.
- Equally troubling, the machines undercounted votes for candidates. The most egregious instance occurred when a candidate was recorded as having 164 votes on election night, but after a manual recount the candidate had over 26,000 votes and won the race.<sup>17</sup>

Meanwhile Pennsylvania voters and election security organizations have sued the State of Pennsylvania to decertify the machine for use in Pennsylvania elections.<sup>18</sup>

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<sup>14</sup> As noted in [a letter \(9/19/2017\) from Chief Election Judge Rebecca Wilson](#) to election administrators in Georgia narrating the transition to voter-marked ballots which highlighted its numerous advantages.

<sup>15</sup> In a post-election survey of 150 Philadelphia voters, half reported they had difficulty reviewing the printed ballot. Data cited in the petition dated December 12th, 2019 *National Election Defense Coalition v. Kathy Boockvar, Secretary of the Commonwealth*.

<sup>16</sup> The Morning Call, "[No Confidence: Northampton County Election Board 'Extremely Disappointed' in Machines it Selected](#)," December 19th, 2019.

<sup>17</sup> The Morning Call, "[Northampton County Voting Machine Problems Extended to Other Races, Court Records Show](#)," November 6th, 2019.

<sup>18</sup> Chicago Tribune, "[Another Lawsuit Targets Philadelphia's Voting Machines](#)," December 16th, 2019.

## **THE EXPRESSVOTE XL IS BAD FOR NEW YORK'S ELECTIONS**

New York cannot risk jeopardizing its elections by certifying a voting machine that moves the security of our elections in the wrong direction. Even in its very limited roll-out, local boards of elections and voters were deeply dissatisfied with its performance on Election Day.

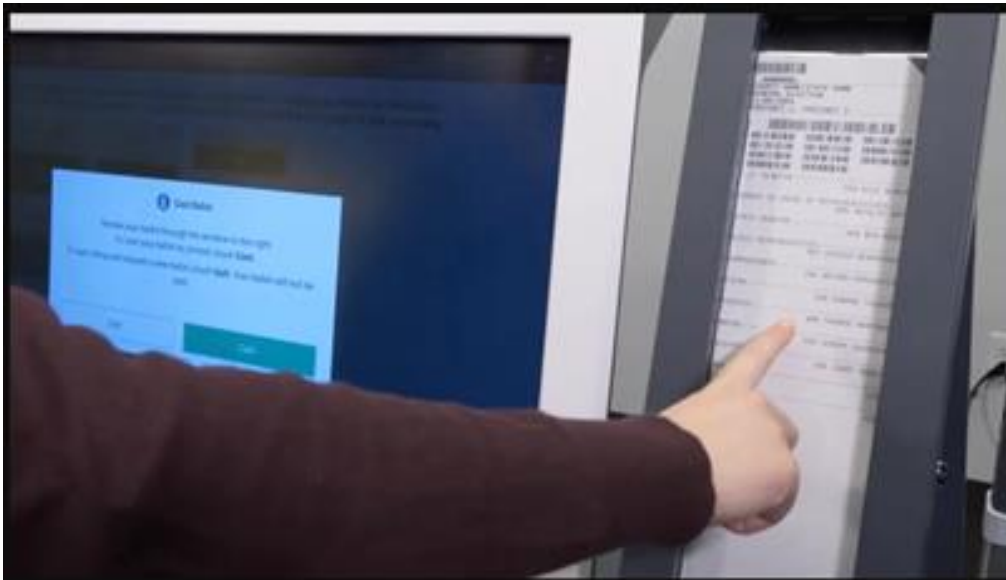
As of last year, New York made tremendous gains reforming our antiquated election laws. New York's elections are finally beginning to modernize and catch-up with the rest of the country. It would be a grave misstep to undermine the security of our elections by certifying the ExpressVote XL, which would only serve to undercut New York's progress towards free, fair and secure elections.

## ADDENDUM

### A. Photo of the ExpressVote XL



### B. Photo of the ExpressVote XL touch screen and ballot



### C. [ES&S's 2 minute ExpressVote XL explainer video](#)