



Citizens for Voting
Integrity New York

<https://citizensvotingny.org/>

August 9, 2020

Dear Governor Cuomo:

We urge you to take immediate executive action to ban in New York State the use of the Dominion ICE and other hybrid ballot-marking-device (BMD)-scanners that, if hacked, can print over ballots after they are cast.

We also ask that you hold accountable the Westchester Election Commissioners who engineered an avoidable disaster on Primary Day, then blamed and threatened legislators to pressure them to purchase still more of these dangerous hybrid voting machines that will seriously undermine the integrity and transparency of our elections.

As election integrity activists, we applauded your decisive action on election reform – especially the establishment, at last, of a path for New York State to 100% hand recounts in very close elections.

Unfortunately, this significant achievement is undermined by the purchase and deployment around the state of Dominion ICE voting machines that will, when hacked or when malfunctioning, be able to print over ballots after they are cast, invalidating ballots for any post-election audits or recounts.

Election security experts, computer scientists and community advocates have repeatedly, strongly and publicly opposed the certification and purchase of these conveyor-belt hybrids, because they have a dangerous mechanical security-design flaw: the path of a ballot after the voter reviews and casts it runs under the printer before the ballot is scanned and deposited in the ballot box. This makes it possible for the device, if hacked or rigged, to be programmed to print extra marks on ballots after they are cast. The marks made by the printer look just like a wide variety of typical hand marks. This legitimately protects the privacy of voters with disabilities using the BMD function; unfortunately, it also invalidates the ballots as an indication of voter intent for the purpose of audits and recounts.

Worse, the direction of the conveyor belt is reversible. Benignly, this allows for voter review of under- or over-marked ballots. Unfortunately, it also gives malefactors the ability to:

- 1) program the scanner to review the ballot not only for over- or under-votes, but also for ink color matching the printer's, blank candidate lines, or votes for particular candidates;
- 2) reroute the ballot under the printer, either (or both)
 - a. on an occasional ballot (so as not to call attention to an excessive number of over-votes in the audit), placing marks on circles next to opponents of targeted candidates to create "overvotes" that invalidate voter intent; and/or
 - b. placing marks on circles the voter intended to leave blank; then
- 3) officially scan and deposit the ballot - with no opportunity for the voter to review computer-generated revisions. (See www.freedom-to-tinker.com/2018/10/16/design-flaw-in-dominion-imagecast-evolution-voting-machine/, and

<https://www.stat.berkeley.edu/~stark/Preprints/appelStark20.pdf>, “Evidence-based Elections: Create a Meaningful Paper Trail, Then Audit.”)

Acknowledging this risk, the New York State Board of Elections has required mitigating actions such as having poll workers reconcile the number of voters who used the BMD with the number of times the printer self-records its use, or asking election inspectors to listen for unusual printer sounds. The latter is absurd; inspectors are already busy all day. The former is also pointless, since a hacked printer could also be programmed not to record its own criminal behavior.

The decision by Westchester legislators on Monday, August 3rd, to allow the Board of Elections to purchase more Dominion ICE devices, appears to have been made under duress. Aware of the security flaw of the device and the availability in storage of 1000 ICP scanners and 420 BMD's, all still certified, the legislators had refused before the June primary to purchase more ICE devices, of which the County had already bought 40 for Early Voting last November. Election Commissioners Lafayette and Colety refused to accept No for an answer. They used a federal grant to buy 120 more, and threatened to blame legislators if the primary went awry. Despite all their new voting machines, they then made a mess of Primary Day and did, indeed, subsequently blame the legislators. *Before the primary*, the Commissioners told legislators that *lack of election inspectors* required them to consolidate polling places. (The Commissioners subtracted 301 polling places, leaving open only 62. And they phoned many dozens of trained, certified election inspectors – the Board of Elections has not revealed the exact number -- and told them their services were not needed.) *After the primary*, the Commissioners blamed long lines at polling places on the legislators' refusal to purchase still more ICE scanners (along with pandemic-related factors such as a barrage of new State regulations), rather than their own refusal to continue to use the ICP scanners and BMD's successfully deployed in November, 2019.

Many other counties around the state, including relatively large ones like Onondaga, held successful Early Voting, Election Days and Primary Days without buying any new equipment, with no long lines and no excessively long start-up times, so our Commissioners' claims that the ICP BMD's cannot read multiple ballot faces, or are so slow to set up that election inspectors would have had to arrive for setup at 1:00 or 2:00 a.m., have proven bogus. In addition, with only one BMD required in New York per polling site, of which Westchester has 363; and with 963 election districts, the Board of Elections surely has over a decade of experience successfully setting up our ICP BMD's to recognize at least several ballot faces per polling place.

The Westchester Primary was a disaster. Many voters received late or no absentee ballots, or were sent postcards with the wrong polling locations. The Commissioners seemed to focus all their energy on persuading the legislature to buy more Dominion ICE. Particularly hard hit was Mamaroneck - the home of Catherine Parker, the legislator who had most strongly opposed approving any more Dominion ICE. Mamaroneck voters were still online waiting to vote after 1:00 a.m. The Commissioners claimed that no one had complained, so they “had no idea” that there were problems. Yet Commissioner Lafayette also boasted at the June 29th Board of Legislators meeting that they had assigned Board of Election employees all day to help inspectors at all 62 polling locations.

Lest the warning implicit in the disaster in his opponent's district be lost on legislators, Commissioner Lafayette closed his pitch to legislators with a blatant and barely veiled threat: "If you lose your seat, it only hurts for a day."

This overt, corrupt reference to his power as Democratic Party Chair to sabotage re-election campaigns adds weight to the argument that New York ought to forbid Election Commissioners' serving simultaneously as top officers in political parties.

In light of the above, we urge you to:

- 1) Encourage passage of S6733/A8597 or by executive order immediately de-certify the Dominion ICE and ban use of hybrid voting machines mechanically able to print over cast ballots. The expense would be minimal: Westchester and many other counties in the state that bought or are buying the Dominion ICE have on hand many other scanners and BMD's (the ES&S D200 or Dominion ICP), which have proved in most counties their ability to handle the extra demands of Early Voting and would therefore work for pandemic-necessitated consolidation of polling locations.
- 2) Hold Westchester County Election Commissioners accountable, whether by investigating the extent of malfeasance in the primary, or removal. We view their performance as so abysmal, and their priorities for the county so out of sync with security professionals' warnings and community needs, that they should be replaced with more technically and administratively proficient election-management experts.
- 3) Throw your weight behind legislation that will prevent, or by Executive action bar. Election Commissioners from holding party offices or overseeing any election in which they are candidates. The revival of Tammany Hall-style pressure on legislators by Election Commissioners is unbecoming of election officials in a democracy.

Thank you for your consideration.

Sincerely,

Julie Weiner, MS