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How Lobbyists Killed a Bill to Protect New York Elections, With An Assist from the NAACP

Posted By Sam Mellins On June 16 @ 1:20 pm In Electoral Politics, New York State, Reporting |



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New York's elections could soon be at risk of getting hacked.

That's because the state Board of Elections may soon approve certain voting machines that experts say are particularly vulnerable to cyberattacks. A [bill](#) that would have banned those machines passed the state Senate last month, but it died in the state Assembly after the elections committee chair refused to let it come to a vote.

After passing the Senate on May 31, the bill, sponsored by state Senator Zellnor Myrie (D-Brooklyn) and Assemblymember Amy Paulin (D-Westchester), seemed like a solid bet for passage in the Assembly, since it was sponsored by nearly half of the Assembly's Democrats, as well as several Republicans.

But it never got a vote. It was blocked by a team of opponents including Assemblymember Latrice Walker (D-Brooklyn), who chairs the chamber's Election Law Committee, lobbyists for the voting machine company Election Systems & Software, and—perhaps unexpectedly—the New York State chapter of the National Association for the Advancement of Colored People, or NAACP, which used language taken directly from a lobbyist's memo to successfully pressure key lawmakers to kill it.

“New York is going backwards”

When voters in New York go to the polls, they follow the same basic procedure in [every county](#): poll workers hand out paper ballots, then voters select their choices using a pen and run the ballots through a scanning machine, which tabulates the results.

This is the voting method used by [most of the country](#), and has been the status quo in New York for decades. It's also the voting method that's [least susceptible](#) to hacking or manipulation, according to election security experts. That's because the counting machines prevent human error in the tabulation of ballots, but if they malfunction or are hacked, the hand-marked ballots leave a “paper trail” that can be manually and independently verified.

Though this procedure is currently used statewide, it's not mandatory according to New York law. And it could soon be replaced, in some counties, by a far less secure method of voting: ballot marking machines, where voters select their choices on a screen, and the machine prints ballots pre-filled with the voter's choices. Such machines are currently in limited use primarily for voters who are unable to fill out paper ballots.

Myrie and Paulin's bill would mandate that voters be allowed to use hand-marked ballots and would ban many of the major ballot marking machines.

Election Systems & Software, the voting machine company that lobbied against the bill, is currently seeking state approval for the ExpressVote XL, a ballot marking machine it manufactures. The machine encodes voters' choices in barcodes, rather than the traditional filled-in bubbles next to the candidates' names. Since humans can't read barcodes, it's impossible for voters to check whether their selections have been correctly recorded once the machine prints their ballot. The voting machine company Dominion Voting Systems is also seeking state approval for the ImageCast X voting machine, which functions very similarly to the ExpressVote XL.



Hazel Dukes, president of the New York State chapter of the NAACP, speaks at the 82nd Annual NAACP New York State Convention on Friday Oct. 5, 2018 in Colonie, NY. (John Carl D'Annibale/Times Union)

Election security experts are overwhelmingly critical of the ExpressVote XL and similarly designed machines, arguing that they are [easier to hack](#) and harder to verify in case of a recount, since there's no independent record of voters' choices. They also take longer to use, potentially exacerbating lines at polling places, and are [more expensive](#) per voter than hand-marked ballots and ballot scanning machines.

"We cannot entirely trust the computer to be the sole arbiter of counting the vote. We need marks on paper made by people and viewable by people," said Doug Jones, an elections security expert and retired computer science professor at the University of Iowa.

"Until somebody hacks the voting machine, it will reasonably accurately count the votes. But it will leave [New York] open for a countywide or statewide hack," Princeton computer science professor Andrew Appel said of the machines.

Katina Granger, a spokesperson for Election Systems & Software, pushed back against these criticisms. "The ExpressVote XL is the latest in paper-based election technology and it's been proven through testing and through real world elections to be secure and accurate," Granger said, noting that nearly 6 million voters have used it since 2019 without any reports of it being hacked or otherwise compromised.

Because of the potential pitfalls of ballot marking machines, many states that had adopted them over the past two decades have since [returned](#) to using hand-marked paper ballots. But bucking this trend, the New York State elections board has [indicated](#) that it may soon approve ballot marking machines such as the ExpressVote XL. That would allow local election boards to purchase the machines, as the New York City elections board has already [expressed interested](#) in doing.

“State after state has moved from touch screen machines to hand-marked paper ballots,” said Lulu Friesdat, executive director of SMART Legislation, a non-partisan group that lobbied for the bill. “New York is going backwards.”

That’s despite the fact that the head of the state elections board supports the bill that would ban the machines. “Ideally it makes more sense to separate the two functions of the ballot marking device and the [ballot] scanner,” said Board of Elections co-chair Douglas Kellner in an [interview](#) earlier this month, echoing another common objection of election security experts. “I do support the bill.”

But under current law, if a voting machine meets New York’s standards for use, the Board isn’t allowed to reject it. A separate [bill](#) that would give the Board of Elections authority to reject voting machines if it finds that they aren’t secure also passed the Senate but died in Walker’s committee, meeting the same fate as Myrie and Paulin’s bill.

How to kill a bill

Why didn’t the bill get even a committee vote in the Assembly?

An individual involved in negotiations over the issue supplied New York Focus with documents reflecting internal legislative processes, on the condition that New York Focus not publish or quote from the documents. The documents indicate that Walker, the chair of the Election Law Committee, cited the NAACP’s opposition as a reason for not giving it a vote. Committee chairs generally have control over what bills get votes, though Assembly leadership can sometimes overrule them.

In a statement, Walker said that she “listened to many voices, including those of her colleagues in the Assembly, as well as respected civil rights leader and NAACP icon Hazel Dukes,” the president of the New York State NAACP. She did not answer New York Focus’ questions on which arguments against the bill she found convincing.

The NAACP, however, explained its opposition in public. On June 1, just days before the end of New York’s January-June legislative session and the day after the bill passed the Senate, Dukes sent a [letter](#) to Assembly Speaker Carl Heastie in opposition to the bill. The letter warned that if the bill passed, it would make it more difficult for people of color, disabled people, and non-English speakers to vote, specifically calling attention to the ExpressVote XL offering voters the choice of a “plethora of languages.”

New York law limits the number of languages on printed ballots to three. But for non-English speakers, there are other [voting machines](#) that do not have the vulnerabilities of the ExpressVote XL, that can offer voters over a dozen languages to choose from.

Asked about the letter’s other claims, Jones, the elections security expert, said that he wasn’t aware of any evidence supporting them.

Whether or not the arguments in Dukes’ letter were true, they weren’t original to her. Several sentences and phrases were copied verbatim from a [memo](#) to legislators written by lobbyists for the firm Davidoff Hutcher & Citron, whose clients include Election Systems & Software.

Davidoff Hutcher & Citron, LLP April 28, 2022	Hazel Dukes, NAACP New York State Conference June 1, 2022
<p>"Black and Brown voters, in particular, still face significant hurdles in accessing the right to vote since the passage of the 15th Amendment."</p> <p>"The ExpressVote XL is currently used in the entire state of Delaware, much of New Jersey, and in major cities such as Philadelphia. More than 100,00 ExpressVote products were deployed in the 2020 Presidential election."</p> <p>"This equipment has not only been tested extensively in real elections; it's also been independently examined under the lens of several rigorous potential threat scenarios."</p> <p>"If S309B and A1115C were to become law, New York would be taking unprecedented action based on misinformation and malinformation that ultimately harms the voters of New York. S309B and A1115C would drive a selection process for voting equipment that is artificial, unfair, and lacking in qualifications that New Yorkers deserve, such as the highest standards of security and accessibility."</p>	<p>"Today Black and Brown voters still face significant hurdles in accessing the right to vote."</p> <p>"The ExpressVote XL is currently used in the entire state of Delaware, much of New Jersey, and in major cities, such as Philadelphia. More than 100,000 ExpressVote products were deployed in the 2020 Presidential election."</p> <p>"This equipment has not only performed well and been tested extensively in real elections, but it has been independently examined by the Rochester Institute of Technology under the lens of several rigorous, real world, and threat scenarios."</p> <p>"If S309B and A1115C were to become law, New York would be taking a huge leap backwards, falling behind dozens of other states that recognize that voters deserve the highest standards of security and accessibility."</p>

Emma Jay/New York Focus

One argument that both the letter and the memo used in favor of the ExpressVote XL was that a study by researchers at the Rochester Institute of Technology study found “zero attacks that could alter or manipulate a voter’s choices,” in the words of the Davidoff Hutcher & Citron memo.

The problem with that argument? The RIT “study” wasn’t a peer reviewed scientific paper, but rather an article written by the RIT communications department describing a class project by undergraduate and masters cybersecurity students. Appel, the Princeton professor, said that the memo presenting the study as the work of RIT itself was a “gross distortion.”

“But that’s all that they’ve got. There is no respectable scientific study that claims that this machine is secure,” he added.

An assist from the NAACP

Election Systems & Software had good reason to oppose the bill: it would ban the use of the ExpressVote XL, one of their flagship products. But why would a storied civil rights organization oppose a bill to bolster election security?

Some observers floated one possible answer: Former Assemblymember Keith Wright, a top lobbyist at Davidoff Hutcher & Citron, is [a longtime Dukes ally](#).

Neither the New York NAACP nor the national organization responded to questions for this article. Nor did Davidoff Hutcher & Citron.

Duke's position is at odds with those of other civil rights groups that have weighed in on the bill—and even other chapters of the NAACP.

Two years ago, the North Carolina NAACP sued nearly two dozen counties in the state in an attempt to stop them from using Election Systems & Software's ExpressVote, a similar machine to the ExpressVote XL, in the 2020 election.

The [suit](#) alleged that the ExpressVote is an “insecure, unreliable, and unverifiable machine that threatens the integrity of North Carolina's elections,” and argued that voters forced to use them would be at higher risk of having their votes miscounted than voters who used hand-marked ballots.

The suit was later voluntarily withdrawn at the request of the national NAACP organization, who worried that it could appear to lend credence to former President Donald Trump's claims that the presidential election was stolen, according to Rev. T. Anthony Spearman, who was president of the North Carolina NAACP when the suit was filed.

But Spearman, who now runs a [social services nonprofit](#), remains opposed to the ExpressVote XL machines, he told New York Focus.

“I was very concerned when I heard that Ms. [Hazel] Dukes over in New York had done what she did” in support of the ExpressVote XL machines, he said.

“I agree wholeheartedly with those who have scientific evidence that these machines are not secure, and I think that it's appalling that some folks who are out there as civil rights warriors would fail to see that,” he added.

During the final days of the legislative session, other civil rights groups publicly expressed support for the bill, like the Center for Law and Social Justice, a Black civic engagement organization based out of Medgar Evers College in Brooklyn.

“Our concern is ensuring the interests of Black voters and that’s why we supported this legislation,” Lurie Daniel Favors, the executive director of the Center, told New York Focus. “Black voters in particular are targeted with disinformation campaigns to an extraordinary degree. It is vitally important that our communities have access and the ability to vote on machines that they can be confident in.”

But support from the Center and other racial justice groups, like the Center For Common Ground, wasn’t enough to overcome the NAACP’s opposition. As long as the NAACP remained opposed, Walker was unwilling to let the bill move forward, the documents reviewed by New York Focus showed.

When it became clear to supporters that Walker was unlikely to allow the bill to move forward, they tried to route the bill through a different committee. This is a [common Albany strategy](#): when a bill isn’t advancing, legislators or advocates can ask the Assembly speaker to send the bill to the Ways and Means or Rules Committees instead.

On May 27, five members of the Election Law committee had sent the speaker a [letter](#) reiterating their support for the bill, and asking him to reroute it through the Rules Committee. “The integrity of elections in the United States, and New York, can accommodate no room for error,” the letter read, warning that failing to pass the bill could lead to unsecure voting machines being “used for many years to come in subsequent elections.”

But the documents reviewed by New York Focus indicate that without Walker’s support, Heastie was unwilling to bring the bill to the floor. The legislative session ended in early June, and with it, all realistic hope of the bill passing into law this year.

This bill wasn’t the only one to languish in the Assembly Election Law committee during this year’s legislative session. The Assembly also [failed to advance](#) a package of bills to professionalize the [scandal](#)– and [nepotism](#)–plagued New York City Board of Elections, most of which passed the full Senate with large majorities in support, but then died in Walker’s committee without receiving a vote.

This article has been corrected to note that nearly half, not a majority, of Assembly Democrats were sponsors of an election security bill.

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