



**MEMORANDUM OF SUPPORT – A.4962 (V. Lopez)/S.1554 (Dilan)  
March 30, 2009**

**TITLE:** AN ACT to amend the election law, in relation to the counting of affidavit ballots

**SUMMARY:**

Amends the Election Law to require the board of inspectors to canvass an affidavit ballot of an eligible voter if the voter appeared at the correct polling place but in the incorrect election district.

**STATEMENT OF SUPPORT:**

Citizens Union supports this bill because it would amend Election Law Section 9-209 to ensure that if a voter attempts to vote at the correct polling place, but at the incorrect election district, such voter would be permitted to cast an affidavit ballot which must be canvassed by the local board of election. The Senate passed the companion version of this bill on March 2, 2009.

Citizens Union of the City of New York is an independent, nonpartisan civic organization of New Yorkers that works to ensure fair elections, publicly financed campaigns, and open, effective government that is accountable to the citizens of New York. Citizens Union provides a voice for these issues and seeks to advance meaningful election reform at the state and local level.

Precedent for this bill's interpretation of the election law exists in the Court of Appeals case of Panio v. Sunderland, 4 N.Y.3d 123 (2005). The Court specifically held that it is reasonable to count those ballots that were cast in the correct polling site, but the wrong election district, especially if it was "the result of ministerial error on the part of a poll worker in failing to direct the voter to the correct table, and instead providing the voter with an affidavit without first properly verifying such voter's right to vote in the election district."

Citizens Union Foundation, the nonprofit research, education and advocacy organization affiliated with Citizens Union, has conducted research and issued reports on the need for improving pollworker training and recruitment in New York, which include analysis of how frequently poll workers improperly provided voters with affidavit ballots or denied them such ballots. Citizens Union Foundation in 2008 recruited over 5,000 applications from over 4,200 individuals, and while we have not finalized our report analyzing the experiences of these poll workers, our preliminary analysis indicates that thirty-seven percent of the respondents who worked on Election Day needed assistance to complete their responsibilities and were vaguely familiar or unfamiliar about how to fill out an affidavit ballot. We believe that unfamiliarity with election procedures may result in errors that could potentially send a voter to the wrong election district, and that voters should be given an opportunity to vote with affidavit ballots to correct any such errors.

Citizens Union believes that the Court correctly interpreted state election law in the Panio decision to find that voters in the "right church, but wrong pew" must be given an affidavit ballot and have their ballot canvassed. Citizens Union strongly supports A.4962/S.1554 and urges the Assembly to promptly pass this legislation to ensure that voters are not improperly denied access to cast an affidavit ballot and that their ballots are properly counted.