NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:20 p.m.

REGULAR SESSION

SENATOR ANDREA STEWART-COUSINS, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT STEWART-COUSINS: The Senate will please come to order.

I ask everyone present to rise and recite with me the Pledge of Allegiance to our Flag.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT STEWART-COUSINS: In the absence of clergy, may we all bow our heads for a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT STEWART-COUSINS: Thank you.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Friday, February 27, the Senate met pursuant to adjournment. The Journal of Thursday, February 26, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT STEWART-COUSINS: Without objection, the Journal stands approved

as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Parker.

SENATOR PARKER: Madam President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. And that's Bill Number 1421.

ACTING PRESIDENT STEWART-COUSINS: So ordered.

SENATOR PARKER: Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein.

SENATOR KLEIN: Madam President, can we at this time go to the reading of the noncontroversial calendar, please.

I'm sorry, let's back up. Senator

Seward has a resolution at the desk. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT STEWART-COUSINS: The Secretary will read.

THE SECRETARY: By Senator Seward, Legislative Resolution Number 584, mourning the untimely death of Corporal Michael L. Mayne of Burlington Flats, New York, and paying tribute to his courageous actions as a member of the United States Army.

ACTING PRESIDENT STEWART-COUSINS: Senator Seward.

SENATOR SEWARD: Yes, thank you, Madam President. And thank you, Senator Klein.

I rise to mourn the loss of Army Corporal Michael L. Mayne, 21 years old, of Burlington Flats, which is a small community in my district, who died a week ago on Monday, February 23rd, due to injuries sustained in Iraq.

In his all-too-short life, Michael, Corporal Michael Mayne, accomplished a great

deal. He was an Eagle Scout, a high school athlete, high school scholar. And after graduation from high school at Edmeston Central School District, he joined the United States Army in July of 2006.

And Michael was a first-rate friend. He was a natural-born leader. He offered to everyone that he came in contact with his unique sense of humor and compassion for others.

For one so young, it is hard to imagine the diverse depths of this young man, Michael Mayne, be it his commitment to scouting as an Eagle Scout, commitment to his family and close friends, to God and country. In short, Madam President, Michael Mayne was a true hero.

And I appreciate the passage of this resolution today. And, Madam President, I would ask that you ask all members to go on this resolution because I know, during this very difficult time, that the expression of sympathy to this family, the Mayne family, will be a great comfort to them.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Seward.

Are there any other Senators who wish to be heard on the resolution?

The question is on the resolution. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT STEWART-COUSINS: Opposed, nay.

(No response.)

ACTING PRESIDENT STEWART-COUSINS: The resolution is adopted.

At the request of the sponsor, the resolution is open for multisponsorship by the entire house. Any member wishing not to be a multisponsor of the resolution should so inform the desk.

Senator Klein.

SENATOR KLEIN: Madam President, I believe there's a substitution at the desk. I ask that it be taken up at this time.

ACTING PRESIDENT STEWART-COUSINS:

The Secretary will read.

THE SECRETARY: On page 9, Senator Thompson moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 3483 and substitute it for the identical Senate Bill Number 1190, Third Reading Calendar 61.

ACTING PRESIDENT STEWART-COUSINS: Substitution ordered.

Senator Klein.

SENATOR KLEIN: Madam President, may we at this time go to the reading of the noncontroversial calendar.

ACTING PRESIDENT STEWART-COUSINS: The Secretary will read.

THE SECRETARY: Calendar Number 31, by Senator Savino, Senate Print 1407, an act to amend Chapter 695 of the Laws of 1994 amending the Civil Service Law.

ACTING PRESIDENT STEWART-COUSINS: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT STEWART-COUSINS:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

THE SECRETARY: Calendar Number 32, by Senator Savino, Senate Print 1409, an act to amend the Retirement and Social Security Law, in relation to the membership of police officers and firefighters.

ACTING PRESIDENT STEWART-COUSINS: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT STEWART-COUSINS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

THE SECRETARY: Calendar Number 37, by Senator Dilan, Senate Print 1554, an act to amend the Election Law, in relation to counting of affidavit ballots.

SENATOR LIBOUS: Lay it aside, please.

ACTING PRESIDENT STEWART-COUSINS: The bill is laid aside.

THE SECRETARY: Calendar Number 42, by Senator Stavisky, Senate Print 1550, an act to amend the Education Law, in relation to providing a program fee option for graduate students.

ACTING PRESIDENT STEWART-COUSINS: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT STEWART-COUSINS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

Senator Klein, that completes the noncontroversial reading of the calendar.

SENATOR KLEIN: Madam President, at this time can we move to the reading of the controversial calendar.

ACTING PRESIDENT STEWART-COUSINS: If the Secretary would please ring the bells. Members are asked to come to the chamber for the controversial reading of the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 37, by Senator Dilan, Senate Print 1554, an act to amend the Election Law.

SENATOR LIBOUS: Explanation, please.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, an explanation of Calendar 37 has been requested.

SENATOR DILAN: Madam President, the purpose of this bill is to require the Board of Elections --

SENATOR LIBOUS: Excuse me, Madam President. I can't hear Senator Dilan. It seems to be quite noisy in the back of the chamber.

ACTING PRESIDENT STEWART-COUSINS: Can we have order in the chamber, please. Thank you.

Senator Dilan.

SENATOR DILAN: Madam President, the purpose of this bill is to require the counting of ballots when voters appear at the correct polling site but at the wrong election district.

This bill merely codifies the existing case law in Panio v. Sunderland, and we're just looking to codify the law. And the Court of Appeals has ruled that in cases where voters are sent to the wrong election district by the Board of Elections, they can assume that it was a ministerial error by the Board of Elections and therefore their vote should be counted and not disenfranchised.

SENATOR LIBOUS: Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous.

SENATOR LIBOUS: Would Senator Dilan yield for a few questions?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, will you yield?

SENATOR DILAN: Yes, Madam President.

SENATOR LIBOUS: Thank you, Madam

President. I went over the bill in committee and certainly have some questions for Senator Dilan. And I certainly appreciate, Madam President, what he wants to do as far as counting votes.

But -- Madam President, through you -- Senator, would the bill allow people to vote in any election district within a given polling place? I mean, can someone come into any polling place where there might be three or four election districts and then just pick one and vote?

SENATOR DILAN: Well, a person would walk into their polling site and if for some reason they're steered to the wrong election district and their name does not appear in the voter records, they would vote on an affidavit ballot.

And I think that what you're asking with the question is if we have two Assembly districts within that same polling place and a person is allowed to vote in the wrong election district and they were not entitled to vote, for example, in that Assembly

district, would they be allowed to vote? Yes, they would be allowed to vote there.

However, when the Board of Elections would count the votes, the Board of Elections would only count those votes where the voter is eligible to vote in -- for example, Governor, Congressional district, State Senate district, any local election. But let's say if they're not eligible to vote in a particular election, that vote would not be counted by the Board of Elections.

SENATOR LIBOUS: Madam President, would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

ACTING PRESIDENT STEWART-COUSINS: The Senator continues to yield.

SENATOR LIBOUS: Thank you, Senator.

So you're saying that if there are several polling places in one particular building, that the bill that you're sponsoring

and is on the floor today would actually designate the race as to where that person could vote? Or does it designate -- I mean, how does one know if he's voting for, say, a State Assembly race and there's five different polling booths there for five different Assembly districts, how does one know under this legislation as to where the right one is?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan.

SENATOR DILAN: Yes, I'd like to respond to that.

Let's say, for example, that I walk into my own polling place where I usually vote and let's say for some reason -- or I just moved into a new area in a polling site where maybe I have never voted before, it's my first time voting at that site, and I am an eligible voter. I would go to one of the Board of Elections employees to direct me to the correct election district.

If they do indeed direct me to that election district, when they look my name up in the book, my name would be in the book and

I would sign.

However, if they direct me to the wrong election district, my name will not be in the book, but I know that I'm an eligible voter and I request an affidavit ballot. The Board of Elections would have to give me one. I would vote in that election on a paper ballot, seal it, return it. That would not be counted until such time that the Board of Elections is recanvassing or counting affidavit ballots.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous.

SENATOR LIBOUS: Thank you, Senator.

Would the Senator, Madam President, still continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Yes, he yields.

SENATOR LIBOUS: So if I

understand this correctly -- and I would ask, through you, Madam President, the Senator -- if there's a building and there's two polling places in that building and I would say that Senator DeFrancisco is on one of the ballots and, say, Senator Dilan, you're on the other ballot, and I come in as a voter and one who believes he's a registered voter and should be on, as you mentioned, the book somewhere -- and I come in and I don't appear on the book, what happens then?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan.

SENATOR DILAN: Well, when you vote on an affidavit ballot, first of all, you're signing an oath. Secondly, you're also placing your address where you are eligible to vote from.

And at that time when the Board of Elections opens up the affidavit ballot, they would be able to determine if you are indeed eligible to vote in Senator DeFrancisco's district or my own district. By voting in the wrong Senatorial district, then that vote

would be invalid.

SENATOR LIBOUS: Thank you, Senator.

Madam President, could I continue to ask the Senator to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

ACTING PRESIDENT STEWART-COUSINS: The Senator continues to yield.

SENATOR LIBOUS: So if I understand this -- and, Madam President, through you -- if I'm not on the books and I come in to vote and under your legislation I vote in the wrong election district and it turns out that they fill out an affidavit ballot and I vote for you but really I'm in Senator DeFrancisco's district, it's your interpretation that that vote should be counted?

SENATOR DILAN: Should not be counted.

SENATOR LIBOUS: Should not be

counted.

Would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR LIBOUS: Senator, I understand what you said, and I'm fully -- I don't disagree with your statement. But where is that in your bill? I don't seem to understand how that procedure follows suit in the legislation that's before the floor.

SENATOR DILAN: It's my understanding that that is already law. I don't have the exact section of law right now, but I'm sure we could find it and get it to you.

But the Board of Elections knows that it's law. And if they're aware that I'm not in a particular district where I'm not eligible to vote, they are not going to count that vote, sir.

SENATOR LIBOUS: Madam President,

would the Senator please continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

ACTING PRESIDENT STEWART-COUSINS: The Senator continues to yield.

SENATOR LIBOUS: You've certainly made it to clear to me on a situation where if someone comes in and fills out an affidavit ballot. But if I could -- Madam President, through you -- to the Senator point out another situation, and maybe the Senator can clarify my mind on this issue.

Let's assume that I come into the polling place, and again we'll keep it the same, that you're on the ballot in one place, and Senator DeFrancisco. And let's say that the Board of Elections, the inspectors -- who work tirelessly, but work an awful lot of hours -- late in the day makes a mistake, Madam President, and sends me to Senator Dilan's district to vote, and for whatever reason they accept that.

I mean, what happens then? Is that

vote counted? Because I'm really in Senator DeFrancisco's district.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan.

SENATOR DILAN: I will repeat myself. That vote would not count if the person is not eligible to vote in that particular election.

SENATOR LIBOUS: I'm sorry, Madam President, I'm having difficulty hearing.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, would you repeat your answer?

SENATOR DILAN: If the person votes in my senatorial district and they're not eligible to vote in that senatorial district, that vote would not count.

ACTING PRESIDENT STEWART-COUSINS: The vote would not count, Senator.

SENATOR DILAN: And also I would just like to indicate, on the prior question, the section of the law is 9-209.2 where the Board of Elections would not count a vote if a person is not eligible to vote in that particular contest.

SENATOR LIBOUS: Madam President, if the Senator would continue to yield.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

ACTING PRESIDENT STEWART-COUSINS: The Senator continues to yield.

SENATOR LIBOUS: Senator Dilan, does that not hurt the integrity of our system, I mean, giving an individual an opportunity to vote because of a mistake made by the Board of Elections, because the person is indeed a registered voter but is sent to the wrong room or the wrong -- as we say, he's in the right church but in the wrong pew?

SENATOR DILAN: Madam President, that's the whole point of this legislation, is to codify a decision by the Court of Appeals.

And I'm going to read a quote of that court's decision by the Court of Appeals. It says: "We can reasonably infer that casting an affidavit ballot at the correct polling place but the wrong election district is 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 ballot without first verifying such voter's right to the vote in the election district."

SENATOR LIBOUS: Madam President, would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR LIBOUS: Madam President, so I heard the Court of Appeals ruling, and certainly I understand it. And I appreciate the Senator reading it.

I guess, does your bill put the onus on the Board of Elections to invalidate the vote that's cast, or is it on the individual? I'm a little confused as to the wording in the language in the legislation.

SENATOR DILAN: Well, the onus to determine whether the voter is eligible to vote in a particular election or not should be on the Board of Elections.

And as I previously mentioned, the

section of the law is 9-209.2.

SENATOR LIBOUS: Madam President, would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan yields.

SENATOR LIBOUS: Senator Dilan, your legislation is well-intended, and I think you want to give people a right to vote, and I certainly applaud you for that.

But again, the legislation is really not worded, I think, to do that. You reference in your legislation that the person "was entitled to vote at such election." Wouldn't it be better to word it that "entitled to vote for such office"? I mean, isn't this about voting for an office rather than a particular election?

SENATOR DILAN: Madam President, as I indicated before, the purpose of this bill is to codify existing law. And as I mentioned, there is a law already -- which

I've indicated twice -- that ensures that a voter votes in the correct elections and only gets to vote for those offices for which they're entitled to.

So I actually that think this is a very simple and clear bill. And I will move to have this bill adopted today.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous.

SENATOR LIBOUS: Thank you, Madam President. Thank you, Senator.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Little.

SENATOR LITTLE: Thank you, Madam President.

Would the sponsor yield for a question, please?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you yield?

SENATOR DILAN: Yes.

ACTING PRESIDENT STEWART-COUSINS: The sponsor yields.

SENATOR LITTLE: Thank you.

Senator Dilan, I understand that there is a law that if you go to the wrong polling place, you can do an affidavit ballot, and it may not be for the same people that you could have voted for in the correct one.

But I'll give you a situation that I have. In the Town of Ticonderoga, all six of the election districts are in the same location, they're at the firehouse. However, there are two Congressional seats. So we have Congressman A and Congressman B. Sometimes one side of the street votes for one and one votes for the other.

So you have a person coming into this busy place, and they see the six election districts. Because of this -- if this became law, they could just step up to any one of those, and they'd say, "Well, this isn't your right polling place, but here's your ballot, you can vote." So that person is voting for the wrong Congressperson.

Well, you're telling me that that will be thrown out. And yet I would have to question who and how long do they look at

these affidavit ballots. If there's only one person and one vote on the ballot, are they going to be able to catch every single one?

And secondly, the person -- you're taking away the person's right to vote for the Congressman that's going to represent them.

SENATOR DILAN: Well, I believe I've answered the question. But you did modify there at the end.

Again, if the person votes in the wrong Congressional district, they're not entitled to vote in that district, so that vote does not count. And here we're talking about ministerial error of the Board of Elections or Board of Elections employee. So it was really, in a sense, the board who sent the person to the wrong place.

That person may lose their vote in the Congressional race. However, they are indeed entitled to vote in all the other contests that they are eligible to vote in.

SENATOR LITTLE: Thank you.

Would the sponsor yield to another question, please?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR LITTLE: So supposing I go into the election district, there are six polling places, and I go up to Number 2. And say, "I'm supposed to be able to vote here." And they say, "Well, you're not listed here," so then they just give me the affidavit.

There's nobody directing the person. Isn't that person under some obligation to look it up and say, "No, you should be at Polling District number 5"? Is there an obligation for them?

SENATOR DILAN: I would believe that it would be the obligation of the Board of Elections to indeed verify.

However, as Senator Libous indicated earlier, in some cases Board of Elections employees are working 12, 15 hours in one day, and there are chances that errors are made. Therefore, that voter should not be disenfranchised to vote in those contests that they are eligible to vote in.

SENATOR LITTLE: Well, another question, may I, please?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Little.

SENATOR LITTLE: I'm just saying, Senator Dilan, supposing the person doesn't ask which one I should go to, they just decide to go to the shorter polling place because they're in a hurry. And the person says, "Well, you're not registered here, but go ahead, you can vote." And they vote for the wrong Congressional candidate, and they're out of there.

Aren't you making it more accessible for people to vote in the wrong district?

SENATOR DILAN: You know, the Court of Appeals has ruled on this matter -- and I'll just read a small portion of it again. It says, "We can reasonably infer that casting an affidavit ballot at the correct

polling place but the wrong election district is the result of ministerial error" of the Board of Elections.

And if an inspector at the Board of Elections does not find your name in the election books of the election district that they're working in, maybe it should be their responsibility to look up in a Street Finder and direct you to the correct polling site.

SENATOR LITTLE: One more question, if I may.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Last question.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan indicates this is his last question to answer.

SENATOR LITTLE: So I should make it good.

SENATOR DILAN: Make it good.

SENATOR LITTLE: But is it their responsibility, when they see that the person has stepped up to the wrong polling place, to tell them the right one to go to? I just --

my fear is I don't think that happens. And I don't think that everyone that walks into a big polling place asks which one they should go to.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan.

SENATOR DILAN: The inspector is an employee of the Board of Elections. That's what they get paid to do. And I believe that their responsibility is to ensure that the enfranchisement of that individual happens. And I believe it should be their responsibility to direct the person to the correct election district should they not find the name in the book.

SENATOR LITTLE: Thank you, Senator Dilan.

On the bill, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Little, on the bill.

SENATOR LITTLE: I just believe that this type of bill is actually making it easier to vote in the wrong election district. And what you're doing is saying to someone

that the right to vote is so important, but it's okay if you mess up and you vote for the wrong candidates and it won't count.

So I think there should be more attention paid to directing the person to the right one, or at least, when they get to the wrong one, having it more of a responsibility of the inspector to send them to the correct polling place.

And because of that, I will vote against this bill.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, would Senator Dilan yield to a question or two?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, will you yield for a question?

SENATOR DILAN: Yes.

ACTING PRESIDENT STEWART-COUSINS: The Senator yields.

SENATOR DeFRANCISCO: Senator Dilan, is it true that in New York City that there's optical scanning as far as the way votes are counted?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan.

SENATOR DILAN: Is there optical scanning?

SENATOR DeFRANCISCO: Of paper ballots.

SENATOR DILAN: Paper ballots? Yes.

SENATOR DeFRANCISCO: And also --

ACTING PRESIDENT STEWART-COUSINS: Are you asking the Senator to continue to yield?

SENATOR DeFRANCISCO: I'm just about ready to ask you if you would yield to another question. Senator Dilan, will you yield to another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, will you continue to yield?

SENATOR DILAN: Yes. Yes.

ACTING PRESIDENT STEWART-COUSINS: He yields.

SENATOR DeFRANCISCO: So, Senator Dilan, once the ballot, the affidavit ballot is submitted, the initial event that will

happen is that it will be scanned as a correct vote for candidates in the correct district; is that not correct?

SENATOR DILAN: Well, my understanding is that if it's scanned and it's the wrong election district, it would be rejected by the scanner as not valid.

And, you know, also I'd like to go further. If we're talking about a close election, I would believe that if you're talking a close election of maybe under a hundred votes or less, or even a little higher than that, I would believe that both sides would be represented at these events and both sides would have a chance to object or appeal any decision that's made by the board.

SENATOR DeFRANCISCO: On the bill. I may have a couple of other questions in a moment, but --

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: Right.

The court in this decision -- and I've read the decision -- talks about how

there's a presumption that there was a ministerial error.

And the court can interpret laws however they think they should interpret them, but it seems to me the more logical presumption is that someone who's registered to vote went someplace they weren't supposed to go and they made a mistake.

To suggest that some Board of Elections person said "No, you go to that district over there, not this district over here," or to assume that an affidavit is prepared supposedly with an address and that the address is looked at by the Board of Elections person and the person still is directed to the wrong election district, sounds like unreasonable presumptions.

Secondly, and if the presumption is unreasonable, it seems to me that the law should reflect what reasonable presumptions are; and namely, the onus should be on the voter. If you're a voter and you decide that you want to vote, it seems not very difficult to determine what election district you're

voting in. And also it doesn't seem very difficult for you to figure out, if there's 10 machines, to ask somebody "What machine do I vote in?"

So what we're doing by encouraging voter negligence, what we're really encouraging is that votes are going to be cast at the wrong election district -- sometimes for wrong candidates, if there's two separate Senate districts in the same building, for example, if they're voting on it, or two Assembly districts in the same building. And we shouldn't be encouraging that.

And secondly, Senator Dilan, it seems also to me that we shouldn't be encouraging lawsuits to determine who wins an election, lawsuits that result in a Senator being seated two months after the start of election -- or the next year that that person is supposed to serve, and therefore leaving his or her constituents unrepresented for two months.

So I don't think it's too much of a burden on voters to figure out where they're

supposed to vote, and if they vote at the wrong election district, as the law generally provides right now, before this court decision, that it's not going to count. Then there's no scanning of votes and a false sense of who's winning an election -- or let's look at election fraud.

Let's look at election fraud. Let's suppose, for example, that someone is not as pure as we would hope people are, but that a candidate or a campaign decides they want to bus in a bunch of people, and they're going to sign whatever affidavits have to be signed in order for a specific candidate to win. And don't think for a moment that election fraud does not take place and that this doesn't take place.

So now the presumption is that the people that are brought in claiming they're living in the district and write a false address down, that vote is being counted unless it's either found by the Board of Elections inspectors -- which is less likely if it's going to be scanned in a scanning-type

account -- or the onus is on the other candidate to go out and prove that someone else is being fraudulent when these things happen.

So I would suggest that the fault of this bill, really the fault is that you've got the presumption on the wrong, wrong party. We want voters -- conscientious voters, voters that are going to vote in good faith, not fraudulently. And if some conscientious voter decides they're going to vote and they really want to vote, they'll find what booth they're supposed to go to. They're going to find it.

And if they don't, they made a mistake, and in fact they're notified that they made a mistake if their name isn't the voter's journal. They know they made a mistake.

So let's figure out what we've got to do about it rather than, Okay, here's an affidavit ballot, fill this out, we'll worry about it later.

With all that said, I think this bill is a very bad bill and should be voted

against by -- I will vote against it, and I'm urging that --

ACTING PRESIDENT STEWART-COUSINS: Senator Onorato, why do you rise?

SENATOR ONORATO: Senator, would you yield to a question?

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, do you yield?

SENATOR DeFRANCISCO: Sure.

SENATOR ONORATO: Senator DeFrancisco, have you ever run across the situation which I have many, many times, working as a district captain, when we enroll voters there -- and a lot of people get enrolled by mail, and they get an acknowledgment from the Board of Elections, including the voting card that you're now in Assembly District 36, Election District Number 12.

And you go there, and you present your card, and the name is not in the book because the Board of Elections failed to upgrade the books. They may have been at the very last minute and they didn't place the

name in the book.

Now, they had two options. They either gave them the affidavit ballot to vote on, to acknowledge it, or they were allowed to go down because on Election Day they have a special judge hearing any kind of cases that can adjudicate the situation. They bring them down there, and the hearing judge listens to what they are saying and gives them a slip that actually allows them to go in and vote on the machines.

Are you aware of that particular situation?

SENATOR DeFRANCISCO: Yes, I am.

SENATOR ONORATO: Wouldn't that be almost the same thing that we're discussing right now?

ACTING PRESIDENT STEWART-COUSINS: Senator, I would appreciate it if you would direct the conversation through me.

SENATOR DeFRANCISCO: My answer is it would not be -- it would be nowhere near the same thing, not only not almost the same thing. Because you're getting a court

involved. A judge could -- you'd at least have someone going before a judge swearing to where they're supposed to be voting for.

And there's always, I assume, the Board of Elections -- the Board of Elections, is it open on Election Day? Does anyone have phones available, either the individual who's sitting at the Board of Elections at the polling booth, or a computer available to find out whether there's a mistake or not?

And if that's a serious problem, then it's pretty easy to rectify it by having some system at Election Day to verify where this person is supposed to be voting, rather than a system where we're encouraging people to go to wherever they want to go and we'll worry about it later in court.

And I think that there is alternatives. And at least with a judge involved, there's at least some review. And I think someone who's going to act fraudulently is less likely to go before a judge and swear falsely than that person might be able to get away with a system that's being encouraged by

this bill.

I was just reminded, the judge holds court or sits at the Board of Elections. So there's avenues available for that judge to check out whether this is correct or not.

ACTING PRESIDENT STEWART-COUSINS: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. On the bill, Madam President.

You know, my colleagues point out an interesting point. It would be great if we had a perfect Board of Elections anywhere in the state or in any one of our locales. It would be great if we had a computer at every polling site that anyone could look up their information. And I would endorse that, having a computer where you could cross-check your information. But we don't have that.

I have to take exception to the concept of voter negligence. No one goes to vote and then wants to not be able to vote for the people that they came out to vote for. What they find, and I have seen in election after election, they go to their polling site.

There aren't Street Finders that can look up what their ED and AD are.

In my city, I can have one polling site with 14 or 15 EDs in it. And a line lines up on the street, and they try to get to the one table with the books that will be able to help them figure out what their correct pew in that church is.

And if it was November 2008, people stood on the streets at 5:00 in the morning, lining up to vote for President of the United States. They stood outside their polling sites for up to two hours. They got in, and one table with books listing where their site would be -- which of the many tables? There was chaos. There shouldn't have been. We should have an election system that would ensure that people would get the right information.

Nobody doesn't want to vote if they've gone to vote for their congressman or their senator or their assemblymember or the judges in their area. They make a mistake and they can't find out the right information.

You're right, maybe we should have a system where they have a phone system where you can call in. They don't have one. At least in New York City, when you try to call the Board of Election on Election Day, you might get to them three days afterwards.

I stood on the streets in November outside the polling sites, 5:00, 6:00, 7:00, 8:00, 9:00, 10:00 in the morning, just looking up people's correct election district for them. But they didn't have the information. And if they had tried to wait when they got into the polling site, they could have been there all day.

So they were told, "We don't know which one, try that table." You go to the table where you believe your election district is. The person says, "You're not in the book." And then when they were told, "Well, now what do I do?" Because each table doesn't have a full listing, they just have their books. And they were told, "Get back in the line." Get back in the line? It took them three hours to get through that line. They

weren't able to get back in the line. So they would ask for an affidavit ballot.

If that affidavit -- if they're not a correct, eligible voter, as Senator Dilan said, Madam President, then their vote is not going to count. If, unfortunately, they got a ballot that had the right senator but the wrong Assembly district or the wrong congressperson, unfortunately they lost their right to vote for those elections. I think that's terrible.

So I agree that we should try to improve our Board of Elections. But we have to make sure our priority is letting every legal eligible voter vote. So this is not a perfect system. This is an attempt to fix a problem with our entire system. And so it's one step forward, that's all. One step forward.

We should take any number of steps that were proposed today to make sure that nobody's right to vote is ever taken away from them. And, in this case, make sure that their right to vote for every election that day is

upheld.

Do you know, I even know of an election, Madam President, where the street guides were missing from specific polling sites so there was nobody at those polling sites -- I believe it was in Yonkers, as a matter of fact, Madam President, where no one who came to vote that day could get access to the information of what the right church and right pew was. How frustrating for everybody that day.

And there's no risk of voter fraud here, because in fact if you're not found to be registered and eligible to vote, no one is counting that affidavit ballot. That is a Board of Election responsibility, and that is tracked. And if that ballot is not from a legitimate registered voter, that ballot is not going to be counted, affidavit or no affidavit.

So I believe it is clear the courts were right when they made the decision they made. And we are right to take the step today of ensuring that everyone who is eligible to

vote, even if they are given bad information or misinformation by the Board of Election, even if the Board of Election makes a mistake, that they should have the right to vote.

In fact, an election in an overlapping area of Tom Duane and mine, there was a polling site -- I think it was two elections ago -- well, some of the books got to the wrong polling site. So when people tried to look up at the correct ED/AD, they were at the right pew and the right church, but guess what, they didn't have the right book.

It was a Board of Election error. But for the first three hours of that Election Day, if you showed up, you were told you weren't in the book because the books weren't there.

So there are so many human errors that can take place in voting, and we should work to fix all of them. But right now, in our flawed, imperfect system, we have to make sure if you show up to vote, even if we've made a mistake, even if we can't fix our

errors, we make sure you have the right to vote, and we recognize that in law.

So I vote aye, Madam President. Thank you very much.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Krueger. I seem to recall that Yonkers vote.

Senator Perkins.

SENATOR PERKINS: Thank you, Madam President.

Let me first -- this bill, I want to commend Senator Dilan for it. I think it really helps fix an occasional problem that is innocently made but nevertheless tries not to deny the legitimate voter the opportunity to be counted. And of course if they're not entitled to be counted, then their vote won't count, as was pointed out.

Too often, you know, voters go to vote and, like many of us, don't know their real election district. And they may -- which is that particular polling site or particular voting machine where you're supposed to actually vote. And when you go, the inspector

might say "What is your name," and they'll look you up in the book, and you're not in the book because, frankly, you shouldn't be there.

But they nevertheless give you the opportunity to vote on an affidavit ballot, under the assumption that perhaps there's a mistake. And in fact, by law, you're entitled to do it. So you vote on it, and later on the Board of Election checks it out and determines that you are or you're not entitled to vote at that particular voting booth for those particular candidates and only counts those that you're entitled to.

But this is actually a mistake that the voters make. This is not about any conspiracy for voter fraud or any organized effort to effectuate the outcome of an election. This is a simple mistake that often occurs with inspectors who are then required to provide the voter with an affidavit opportunity to have their vote considered by the Board of Elections and be counted if in fact they're there.

So I think that there should be a

concern about the kind of fraud that some folks are concerned about. This is not a facilitator or in any way related to that. This is something that actually corrects a problem that very often happens even when you are entitled to vote at the particular site where your name doesn't appear because the books are not up-to-date for one reason or another.

So I this is a good piece of legislation. I think it's encouraging that we're moving on this today. And I think that of course where there is voter fraud, you know, efforts should be made to weed that out as well. But this is not one that in any way facilitates or contributes to that; quite the opposite. What it contributes to is the opportunity for people to have a real vote and not be counted if they're not entitled to have that vote.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you,

Madam President. I'll be very brief.

This is an excellent bill. And I would caution all of my colleagues, if you want to make a statement about other problems or concerns about the Board of Elections, this is a simply a bill that would allow the most people possible who are eligible to vote to cast a ballot.

This is a quintessentially, essentially and fundamentally American bill. I thank Senator Dilan for putting it on the floor today. We should do everything in our power to see that the American tradition of everyone who is eligible to vote getting a chance to vote is carried on. And by voting for this bill, you are standing firmly for that American tradition.

I urge everyone to vote yes.

ACTING PRESIDENT STEWART-COUSINS: Are there any other Senators wishing to be heard on the bill before us?

Hearing none, the debate is closed.

The Secretary will please ring the bells.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT STEWART-COUSINS: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT STEWART-COUSINS: Senator Adams, to explain his vote.

SENATOR ADAMS: Yes, thank you, Madam President.

I think there's one dynamic that people often don't understand and they ignore in the process that I see time and time again. The process is extremely intimidating to the average public.

We walk into governmental buildings, we walk into the polling machines, and to us, we're used to it. It's common ground. But the average member of the public who's afraid of the process, they look to the Board of Election to give them direction.

And I've noticed that many of the voter sites, particularly when we have a large number of new voters, that when they go to the

Board of Election they're looking for them to guide them to the right place. And if they guide them to the wrong place, it's intimidating to keep moving around the location.

We have the responsibility as government, that being the Board of Election, they have a responsibility to do their due diligence, not to put that responsibility on the public. The process itself is intimidating. And I know in many communities it may not seem intimidating to all of us, but it is intimidating to the average person.

I think this bill is one of the many attempts we would try to do to address and to increase our voter rolls. It is despicable that in this great country we have such a lack of participation from the average voter because those intimidating barriers are in place, and this is one of those barriers I believe we can remove.

I am voting aye, and I encourage my colleagues also to do so.

ACTING PRESIDENT STEWART-COUSINS:

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, thank you, Madam President.

Just briefly, I want to thank my colleague for this legislation. This is extremely important, especially to my constituents and I think constituents and New Yorkers across this state, because we should not be raising any barrier to people being able to walk into a polling site on Election Day who are already registered at that polling site and, because they went to the wrong table, we take away their vote. That is absolutely not what we want to be about in this state.

So you have corrected that. Because we know that people, certainly people in my district have complained year after year. They go to the polling site, they are voting at the wrong table, and their vote is not counted. That is wrong. As long as you're in the right polling site, you should be able to vote.

So I am adamantly in favor of this,

and I hope that all of my colleagues will vote yes on this bill, because this is the right thing to do. We are encouraging people and removing barriers to people being able to vote.

I vote aye, Madam Chair.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: First of all, what Senator Montgomery just spoke about is exactly what happens now if you happen to be voting for the right offices. You may be directed to the wrong booth or you may go to the wrong booth on your own volition; you can do an affidavit right now, and it counts so long as you're voting for the right offices.

The problem here -- maybe I didn't explain it -- is that if you have this bill in place, what happens is you can end up with an affidavit ballot in a race that you're not even registered in the district for. You may be voting for the wrong assemblyperson, and automatically that vote is going to be counted. And it's going to be counted in the

wrong race, for the wrong office.

So Senator Valesky may get votes from me or vice versa, if that could possibly happen. Or it's more prevalent in the city because of the closer Senate and Assembly districts. That's the problem.

And the question is, if that's a potential problem, how do you deal with it? You deal with it by making sure the Board of Elections does what they're supposed to do and have enough information to direct people to the right polling place so they're not voting for the wrong office. Or do you just count them all and hope that maybe it will all sort out at the end when there's a lawsuit? And I'm a lawyer, but I'm not so sure you want to encourage lawsuits on every contested election.

So if this bill had said -- instead of "if the Board of Elections determines that a person is entitled to vote at such election," it should simply say "the Board of Election finds that the voter was entitled to vote for such office," and then you might be

able to correct the situation.

As far as Senator Schneiderman said, it's true, we want everybody to vote, but we don't want people to vote for the wrong offices if they're not entitled to.

And as far as Senator Onorato, his example didn't even apply to what we're talking about in this bill.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, how do you vote?

SENATOR DeFRANCISCO: I vote no. But you knew that.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Squadron, to explain his vote.

SENATOR SQUADRON: Thank you, Madam Chair.

You know, in my district, and I'm sure in all of the 62 Senate districts in the state, people are busy. They've got a lot going on. And when they come out to vote -- you know, a lot of them came out to vote this November. But this September, many fewer of

them came out to vote; something like less than 20 percent in the race I ran in. I know in a lot of primaries you don't get a lot of people coming out to vote.

In race after race across this state, we don't have enough people participating. And I understand why. They're busy. Sometimes we don't give them any reason, sometimes we don't inspire them to come out.

And what this bill does -- and I really want to commend Senator Dilan for carrying it forward and expanding democracy in this state, because what this bill does is it says if, despite the fact that you're busy, despite the fact that so often the political process fails you, if you come out to vote, we're going to do everything we can to count your vote.

To me, it is perverse in the extreme to say despite all of the reasons you wouldn't vote, if you come out to vote, if you do your best, if you get misdirected, we're going to throw your vote in the garbage. We

don't want it. We don't want you to vote.

It seems to me the only reason to oppose this bill would be because of a belief that only the most rarefied class, those who know their election district by heart -- and I have to admit something here on the floor of the State Senate, I don't know my election district by heart -- only those who know their election districts by heart can be guaranteed that if they make the effort to go and vote, their vote will be counted. I think that is anti-democratic. It's perverse, as I said.

And the fact that we are now codifying in the law a correction and expansion is a great honor for me. I vote aye with great pride and again commend Senator Dilan for moving this forward.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan.

SENATOR DILAN: To explain my vote, Madam President.

I rise to urge all my colleagues to vote in favor of this bill, which merely just

codifies existing case law and would only enfranchise eligible voters with their proper right to vote.

I also believe that this bill would not increase lawsuits or have the courts deciding elections, but I would think it would do the exact opposite, prevent that, and have elections be decided where they should be, and that is by the voters and the Board of Elections.

However, I also just want to indicate for the record the legislative history of this particular bill. In the 2007-2008 session of this body, under a bill known as S1503, where I was also the prime sponsor of the bill, this same bill was reported out of committee on May 22, 2007. Republican Senators Griffo, Hannon, Rath, Winner and Morahan all voted yes on this bill at that time. In 2009, in committee this year on February 10, 2009, Senator Griffo voted yes.

So thank you very much, and I urge my colleagues to vote yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein.

SENATOR KLEIN: Thank you, Madam President.

I too want to commend my colleague Senator Dilan for what I think is a very important bill. I mean, we all talk about the fact that we want to encourage more and more people to take part in the electoral process.

And I don't know what all the debate and the concern is about, because this is clearly a bill that has a stopgap measure. If someone shows up at the polls, they're a duly registered voter, they attempt to vote at the election district that they feel they're registered in and we find out that at the end of the day they're not registered, that vote is not counted.

On the other hand, if after they have their paper ballot that they fill out and they find that they were in the right polling place but the wrong election district, their vote is going to count if it's checked by the Board of Elections.

So I don't think we're allowing anyone to vote who shouldn't be voting by having this legislation take place.

And also, by the way, we're just codifying a Court of Appeals decision, the Panio decision -- which Madam President knows well -- which was decided in 2005. The only thing that bothers me, it took us four long years to finally codify this into law. That's why Senator Dilan's bill is so important.

The only thing I can say, Madam President, I'm hopeful that this bill, the bill that Senator Addabbo did the other day, are two of many bills that we're going to be doing in this legislative session to ensure that as many people who want to vote will have their opportunity to do so.

I vote yes, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Klein.

Will the Secretary announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 37 are

Senators Alesi, Bonacic, DeFrancisco, Farley, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, Leibell, Libous, Little, Maziarz, McDonald, Morahan, Nozzolio, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Excused from voting: Senators Flanagan, LaValle, Marcellino and Padavan.

Ayes, 32. Nays, 26.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

Senator Klein, that completes the controversial reading of the calendar.

SENATOR KLEIN: Madam President, can we please recognize Senator Ruth Hassell-Thompson for an announcement.

ACTING PRESIDENT STEWART-COUSINS: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

At the close of session there will be an immediate meeting of -- well, no, not so immediate. At 6 o'clock there will be a meeting of the Majority conference in

Room 332. Please be on time.

ACTING PRESIDENT STEWART-COUSINS: There will be a meeting of the Majority conference at 6 o'clock this evening in the Majority Conference Room, 332.

Senator Klein.

SENATOR KLEIN: Madam President, is there any further business at the desk?

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, the desk is clear.

SENATOR KLEIN: There being none, I move that we adjourn until Tuesday, March 3rd, at 3:00 p.m.

ACTING PRESIDENT STEWART-COUSINS: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Tuesday, March 3rd, at 3:00 p.m.

(Whereupon, at 4:23 p.m., the Senate adjourned.)