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## A Small Change to Save Thousands of Votes

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# A small change to save thousands of votes

By Jarret Berg and Rachel Landy  
New York Daily News • May 25, 2021, at 9:45 am



People vote at the Brooklyn Museum polling station in Brooklyn. (ANGELA WEISS/AFP via Getty Images)

In 2004, then-County Legislator Andrea Stewart-Cousins faced off against the nine-term incumbent Nick Spano in an election for state Senate. The race was extremely close, certified in Spano’s favor by 18 votes.

The outcome hinged on 620 ballots from registered voters who could not be found in the local paper list of voters when they arrived at the polls. Staff directed them to vote provisionally by affidavit ballot and they did. Officials later determined that some walked into their assigned poll site but then checked in at an incorrect table, while others voted at a different Westchester poll site than the one assigned.

For 163 voters who voted at their assigned sites, New York’s highest court [ordered](#) the ballots counted to redress the poll workers’ error of “failing to direct the voter to the correct table, and instead providing the voter with an affidavit.” But 457 voters who walked into an incorrect poll site (a.k.a. the “wrong church”) had their ballots *entirely* discounted.

This baby-splitting precedent continues to suppress New York votes. State lawmakers codified it in 2009 but also [required](#) poll workers to direct lost

voters to the correct location so their ballots would count. [In Ohio](#), courts set a similar rule. But a new [report released by VoteEarlyNY](#) reveals that this technicality disqualified more than 13,800 ballots cast in the correct county in Election 2020 — the largest source of disqualified affidavit ballots from duly registered voters. While nearly 1,000 were disqualified in or around Buffalo, a disproportionate majority (69%) were cast in New York City, where approximately one in 187 Bronx voters cast a ballot at another Bronx site.

In New York and in [many U.S. battleground states](#), ballots cast at any poll site other than the one assigned are automatically disqualified. This even includes the votes for statewide contests all voters may participate in, like president, senator or governor and the congressional, legislative and local races most impacted voters remain eligible for.

In 2020, Rep. Anthony Brindisi faced off against Claudia Tenney in a Congressional race in Central New York. The close contest triggered a Department of Justice investigation into mass [disenfranchisement](#) that led to [bipartisan resignations](#). At times, 12 votes separated the candidates with [litigation](#) over 17 categories of [disputed ballots](#). Brindisi identified 128 “wrong church” ballots cast by registered NY-22 voters in the correct county with help and direction from poll workers. Tenney shrugged that these voters were mailed their poll assignments.

Apart from precedent, courts often defer to coequal branches. Disqualifying all 128 ballots, the court explained that the Legislature had maintained the restriction despite [recent voting reforms](#). This alone suppressed more registered constituents than the 109 vote margin between the candidates.

We can do better. Several states like [California](#), [Utah](#) and [New Jersey](#) have rules to protect civil rights by preventing full disqualification of these ballots. Instead, officials count the votes for all contests a voter would have been entitled to vote for at their assigned site. Even [Georgia](#) still saves some ballots cast after 5 p.m. by lost voters.

These ballot-saving laws reveal that full disqualification is a false all-or-nothing tradeoff that offends due process, punishing voters. In Albany, the Senate has passed [legislation](#) to count ballots cast in the correct county for races the voter is entitled to participate in. The [governor](#) and some election officials have [supported such a safeguard](#).

Federally, the Supreme Court is reviewing a Voting Rights Act challenge to a similar Arizona restriction. In a [decision striking down the law](#), the Ninth Circuit found discriminatory impact on Arizona's minority communities. Experts identified three factors that make it more likely these voters turn out at incorrect locations: frequent poll site changes, confusing placement of assigned sites, and high rates of renters and residential mobility.

Confusion after moving a short distance in an urban area leads to more wrong church ballots. Impacted Arizonans "were not directed to their proper polling place and were never told that their vote would not be counted if cast out of precinct."

These factors operate in many of New York City's majority-minority communities where thousands of voters were directed to complete affidavit ballots under a mistaken understanding they would count. Voters in the city's 20 most impacted Assembly districts had nearly as many ballots disqualified as in all 57 counties outside the City.

Against this backdrop, having officials tabulate the eligible votes on ballots they are already canvassing will significantly reduce disenfranchisement of registered voters, ensuring more accurate election results.

In Arizona, impact litigation may be the only option. But here in new York, lawmakers can and must reform a failed policy that has suppressed voters and confused poll workers since Nick Spano edged out Stewart-Cousins back in 2004.

*Berg is a co-founder of VoteEarlyNY. Landy is a voting rights advocate.*