

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS**

----- X

In the matter of

ANDREW GOODMAN FOUNDATION,
ELECTION@BARD, SADIA SABA, ERIN CANNAN,
and LEO BOTSTEIN,

Index No. 2020/52737

Petitioners,

-against-

DUTCHESS COUNTY BOARD OF ELECTIONS,
ERIK J. HAIGHT, in his official capacity, and
ELIZABETH J. SOTO, in her official capacity,

Respondents.

----- X

**RESPONDENT ELECTION COMMISSIONER ERIK J. HAIGHT'S
MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S ORDER TO
SHOW CAUSE AND IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS**

I) INTRODUCTION

Students living on the campus of Bard College have better access to their designated polling place than do most other residents of Red Hook Election District 5. While the polling site may be 1.3 miles from the center of Bard's campus, it is only about 0.3 mile from the end of Bard's property. *See* Erik Haight Aff. at ¶ 18. Other voters in Election District 5 have to travel as far as 3.4 miles to reach St. John's Episcopal Church, the longstanding polling site for Election District 5. *See* Haight Aff. at ¶ 21. If the relief that Petitioners seek were to be granted, voters in Election District 5 would have to travel as far as 3.9 miles. *See* Haight Aff. at ¶ 21.

Of course, the question here is not whether or not the Court would conclude that Bard College is a "better" polling place than St. John's Church. Rather, it is whether the Petitioners have demonstrated that the designation of St. John's Church on March 13, 2020 was an abuse of

discretion, an inquiry that fundamentally looks to the considerations that existed on March 13, 2020. Yet, the vast bulk of Petitioners' claim ignores the considerations that were in front of the Board of Elections on March 13, and instead attempts to rely on declarations signed earlier this month that make new contentions. Obviously, this is unfair—the Board of Elections had no means of addressing these issues back in March. So it is no surprise that the well established rule of law is that Article 78 proceedings that seek to review discretionary decisions may look only to the considerations that were present at the time of the original decision. The substantial majority of Petitioners' contentions are accordingly not before the Court.

And as to the claims that are before the Court, it is manifest that they fail. As Commissioner Haight's affidavit shows, the Board of Elections based its designation of the polling place for Red Hook Election District 5 on considerations that arise directly from the Election Law, as well as on the desire to protect the voting franchise for all voters in the district, not just those who live on Bard's campus, and to avoid causing voter confusion and other problems associated with a changed polling place. There is no abuse of discretion, and accordingly, Petitioners' claims fail on their face. Moving beyond this, Petitioners have done nothing to identify or articulate a constitutional infirmity, and their scattershot allegation that unspecified "actions" by the Board of Elections have prevented them from voting—even though they concede they have not been prevented from voting—do not state any claim of a constitutional violation.

Finally, and all other issues aside, the balance of equities counsels strongly against granting the relief that Petitioners seek. Ordering a new polling place in the weeks before a scheduled election would manifestly be an abuse of discretion, as one of the cases that Petitioners rely upon shows.

II) THE ONLY ISSUE IS WHETHER THE BOARD OF ELECTIONS ACTED ARBITRARILY AND CAPRICIOUSLY WHEN IT DESIGNATED ST. JOHN'S EPISCOPAL CHURCH AS THE POLLING PLACE

A) Article 78 Codifies, and Replaces, the Common Law Writs of Mandamus, Prohibition and Certiorari

Article 78 of the Civil Practice Law and Rules both codifies and replaces the common law writs of mandamus, prohibition and certiorari. *See generally* CPLR §§ 7801, 7803; *New York City Health & Hospitals Corp. v. McBarnette*, 84 N.Y.2d 194, 204, 616 N.Y.S.2d 1 (1994); *De Milio v. Borghard*, 55 N.Y.2d 216, 219, 448 N.Y.S.2d 441 (1982). While Petitioner's claims concern the Election Law, no provision of Article 16 of the Election Law applies, and Article 16 provides no inherent authority to hear other matters. *See Lisa v. Bd. of Elections*, 54 A.D.2d 746, 746-47, 387 N.Y.S.2d 876 (2d Dep't 1976) (citations omitted). Thus, Article 78 is the *only* means of relief available to Petitioner.

B) The Referenced Provisions of Election Law § 4-104 are Directory, Not Mandatory

"Not all deviations from statutory procedures will justify vacatur of an administrative determination." *Syquia v. Bd. of Educ. of Harpusville Cent. Sch. Dist.*, 80 N.Y.2d 531, 535, 591 N.Y.S.2d 996 (1992). Specifically, when a statutory mandate is "directive," rather than "mandatory," a petitioner must "show that substantial prejudice resulted from the noncompliance." *Id.* (citations omitted). While "the line between mandatory and directory statutes cannot be drawn with precision," *People v. Carr*, 240 N.Y. 348, 351, 148 N.E. 546 (1925); *accord, e.g., King v. Carey*, 57 N.Y.2d 505, 513, 457 N.Y.S.2d 216 (1982), the situs of the line turns on "a consideration of the statutory scheme and objectives to determine whether the requirement . . . is . . . an 'unessential particular' or, on the other hand, relates to the essence and substance of the act to be performed and thus cannot be viewed as merely directory," *King*, 57 N.Y.2d at 513 (*quoting Carr*, 240 N.Y. at 351 (1925)) (other citations omitted).

Petitioners allege that the Board of Elections acted in contravention of Election § 4-104 in three respects. First, they contend that St. John's Church is not "accessible to citizens with disabilities and compl[iant] with the accessibility guidelines of the Americans with Disabilities Act of 1990," in violation of § 4-104(1-a). *See* Verified Petition at ¶ 73 (second cause of action). Second, they assert that the Board of Elections "violated" § 4-104(6-a) because St. John's is not "'situated directly on a public transportation route,'" but is instead "approximately 0.5 miles from" the nearest public transportation stop. *See id.* at ¶ 76 (third cause of action). And finally, Petitioners assert that the Board of Elections has failed to conduct an access survey "to review . . . changes to the Church and certify compliance" in contravention of § 4-104(1-b), and they also suggest that the Board of elections had an obligation to conduct an access survey on Bard's campus. *See id.* at ¶¶ 79-81.

The provisions of the Election Law that provide criteria for the location of polling places are plainly directory. Indeed, one of the Court of Appeals' holdings in *People ex rel. Lardner v. Carson*, 155 N.Y. 491, 50 N.E. 292 (1898), is that *even if* a polling place's location was unlawful, "it does not at all follow that votes cast . . . are void." *Id.* at 502. Rather, "prescriptions in regard to the time, form and mode of proceeding by public functionaries are generally directory, as they are not of the essence of the thing to be done, but are given simply with a view to secure system, uniformity and dispatch in the conduct of public business." *Dickinson v. Daines*, 15 N.Y.3d 571, 575, 915 N.Y.S.2d 200 (2010) (quotation and citations omitted). And, in the specific context of the Election Law, the Court of Appeals has ruled that while legal notice requirements can be mandatory, "directions intended to make the machinery of election more effective . . . are directory rather than mandatory." *D'Addario v. McNab*, 32 N.Y.2d 84, 88-89, 343 N.Y.S.2d 124 (1973).

There is no room for argument that the statement that “[e]ach polling place designated, whenever practicable, shall be situated directly on a public transportation route,” Election Law § 4-104(6-a), is directory. Likewise, the requirement that the Board of Elections complete access surveys when polling places are initially designated, or when they are changed, is directory because the lack of an access survey would not render election results void.¹ *See id.* § 4-104(1-b). And finally, technical defects under § 4-104’s direction to comply with the ADA are also directory. Without more, they would not invalidate election results.

C) Mandamus Does Not Apply

Relief in the form of mandamus is available when a “body or officer [has] failed to perform a duty enjoined upon it by law.” CPLR § 7803(1). This relief is unavailable here because “article 78 relief in the form of mandamus to compel may be granted only where a petitioner establishes a ‘*clear legal right*’ to the relief requested.” *Council of City of New York v. Bloomberg*, 6 N.Y.3d 380, 388, 813 N.Y.S.2d 3 (2006) (*quoting Brusco v. Braun*, 84 N.Y.2d 674, 679, 621 N.Y.S.2d 291 (1994)) (emphasis added). Mandamus is only appropriate where “the duty sought to be enjoined is performance of an act commanded to be performed by law and involving no exercise of discretion.” *Hamptons Hospital & Medical Center, Inc. v. Moore*, 52 N.Y.2d 88, 96, 436 N.Y.S.2d 239 (1981); *see also De Milio v. Borghard*, 55 N.Y.2d 216, 220, 448 N.Y.S.2d 441 (1982) (“the aggrievement does not arise from the final determination but from the refusal of the body or officer to act or to perform a duty enjoined by law” (quotation omitted)).

¹ Setting this aside, the contention is meritless. Petitioners’ own moving papers include copies of access surveys from 2010 and 2019. *See* ECF Doc. Nos. 13-14.

Petitioners do not have a “clear legal right” to any of the actions they seek the assistance of this Court to compel. First, Petitioners have no “right” to demand that Board of Elections further inspect or evaluate a polling place they happen to like. The Petitioners identify no statute or regulation that would require the Board of Elections to consider the matter further. And second, the ultimate designation of a particular location as the polling place is plainly not a ministerial action. To the contrary, it is one that turns on the exercise of judgment and discretion.

D) Prohibition Does Not Apply

A writ of prohibition is available when a “body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction.” CPLR § 7803(2). A petitioner must show “a clear legal right to relief.” *Chasm Hydro, Inc. v New York State Dep’t of Env’t Conservation*, 14 N.Y.3d 27, 31, 896 N.Y.S.2d 749 (2010).

The actions that Petitioners seeks to prohibit—using the lawfully designated polling place for the election that is (presently) six weeks away—does not run afoul of any provision of the Election Law. To the extent Petitioners think that the Board of Elections made a poor decision, relief is available by means of certiorari and/or mandamus to review—making review by means of prohibition inappropriate. *See id.* (quoting *Town of Huntington v New York State Div. of Human Rights*, 82 N.Y.2d 783, 786, 604 N.Y.S.2d 541 (1993)). “[P]rohibition does not lie against an administrative agency if another avenue of judicial review is available, absent a demonstration of irreparable injury to the applicant if he is relegated to such other course.” *City of Newburgh v Public Employment Relations Bd.*, 63 N.Y.2d 793, 795, 481 N.Y.S.2d 327 (1984).

III) THE BOARD OF ELECTIONS DID NOT ACT ARBITRARILY AND CAPRICIOUSLY WHEN, IN MARCH 2020, IT DESIGNATED ST. JOHN’S CHURCH, RATHER THAN FURTHER INVESTIGATING BARD COLLEGE

Because the determination at issue is one that did not require a quasi-judicial hearing, the only viable vehicle for review is “mandamus to review,” which “resembles” certiorari. *Scherbyn*

v. Boces, 77 N.Y.2d 753, 757, 570 N.Y.S.2d 474 (1991). “The standard of review in such a proceeding is whether the agency determination was arbitrary and capricious or affected by an error of law.” *Id.* at 758 (citations omitted).

A) The Only Issue is Whether the Board of Elections Acted Arbitrarily and Capriciously When it Designated St. John’s Episcopal Church as the Polling Place in March 2020

It is well established that a court reviewing an agency’s determination “must judge the propriety of such action solely by the grounds invoked by the agency.” *Montauk Improvement, Inc. v. Proccacino*, 41 N.Y.2d 913, 913, 394 N.Y.S.2d 619 (1977) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)) (other citation omitted); accord *Scherbyn*, 77 N.Y.2d at 758. This means that the Court cannot consider grounds that are raised after the decision, such as grounds that are raised for the first time in pleadings. See *Scherbyn*, 77 N.Y.2d at 759.

Here, in the case at bar, the substantial majority of Petitioners’ contentions—such as their claims that the polling place does not comply with the ADA, that River Road is “dangerous” and “treacherous,” or that the polling places presents undue Covid-19 risks—were not raised when the Board of Elections was designating polling places in March. And it is this decision, from March, that Petitioners have invoked the Court’s jurisdiction to review. Their Verified Petition identifies March 13, 2020 as the date on which the decision at issue was made,² and the essential relief it seeks is an order “[d]irecting that the Dutchess County Board of Elections change the polling place . . . to the Bertelsmann Campus Center at Bard College[.]” See Verified Petition at ¶¶ 23, Prayer (a). The Verified Petition does not identify any other decision that the Board of Elections made. It does not, for example, assert that the Petitioners contacted the Board and requested that it consider a new polling place because of Covid-19 developments, or ADA

² The Verified Petition cites the incorrect date of March 15, 2020, which was a Sunday.

issues, or problems with a dangerous road. And significantly, the Board of Elections has the authority to change a designated polling place “[i]f, within the discretion of the board of elections a particular polling place . . . is subsequently found to be unsuitable or unsafe or should circumstances arise that make a designated polling place unsuitable or unsafe.” Election Law § 4-104(1). As Commissioner Haight attests, the Board of Elections has indeed changed several polling places in order to address Covid-19 concerns. *See* Haight Aff. ¶¶ 30-31.

B) The Board’s Designation of St. John’s Episcopal Church Was Not Arbitrary and Capricious, and it is Not Affected by an Error of Law

When the Board of Elections addressed the issue of the polling place for the 2020 election season, and specifically in the context of Red Hook Election District 5, it considered whether the polling place would be able to admit and comfortably accommodate voters, whether it would comply with the Americans with Disabilities Act (“ADA”), whether the polling places were in tax exempt buildings, whether facilities were located on the main floor, and whether there was access to public transportation. *See* Haight Aff. ¶ 8. These considerations come directly from Election Law § 4-104.

The Board of Elections also considered the issues that were raised in the letter it received on March 2, 2020, to wit: (1) the lack of a sidewalk on River Road; (2) access to public transportation; and (3) “ensur[ing] that voters are not disenfranchised and deprived of their state and federal rights to participate in the election process.” *See* Haight Aff. ¶¶ 13-14, 17-20. The lack of a sidewalk did not appear to be a substantial issue because—with regard to the Bard College students that the letter concerned—Bard already provided a free shuttle to St. John’s Church. *See* Haight Aff. ¶ 18. Moreover, the actual distance from Bard’s campus to the polling place is significantly less than the distance from the shuttle stop on Bard’s campus to the polling place. Specifically, while it is about 1.3 miles from the shuttle stop to the polling site, *see*

Verified Petition ¶ 29, Bard's actual property comes to within about 0.3 mile of St. John's Church, *see* Haight Aff. ¶ 18. So, whether the distance is considered 0.3 mile or 1.3 miles, the reality is that St. John's Church is located in closer proximity to Bard campus voters than it is to almost all other voters in Election District 5, who must travel as much as 3.4 miles to reach St. John's Church. *See* Haight Aff. ¶ 21. On the other hand, moving the polling place to Bard College would do little to alleviate issues with sidewalks and lighting that would arise for any non-Bard voters who walked to the polling place, given that Election District 5 is largely rural. *See* Haight Aff. ¶ 18. Moreover, granting the relief that Petitioners seek would require some voters in the district to travel *further*—from as far as 3.9 miles away. *See* Haight Aff. ¶ 21.

It did appear that Bard presented a *slight* advantage over St. John's Church with respect to public transportation access, because there is a Dutchess LOOP stop on campus, but even so, it appeared that individuals using public transportation would need to walk from the bus stop to the polling place regardless of whether that polling place was sited at either location. *See* Haight Aff. ¶ 19. Suitable buildings on Bard's campus do not appear to be located immediately adjacent to the bus stop. *See* Haight Aff. ¶ 19. And, s Petitioners concede, the walk from the nearest public transportation line to St. John's Church is only about 0.5 mile. *See* Verified Petition ¶ 76.

Finally, the concern with preventing voter disenfranchisement and facilitating participation actually weighed against locating the polling place on Bard's campus. *See* Haight Aff. ¶ 20. While the campus would almost certainly be at least somewhat more convenient for Bard's students, there are a number of voters in the election district that do not attend (or work at) Bard—and for them, Commissioner Haight felt that “voters in Election District 5 who are not associated with Bard's would be less likely to vote if doing so required them to enter and navigate the campus.” Haight Aff. ¶ 20. Commissioner Haight felt that the “interest in keeping

polling sites neutral generally weighs against using college campuses as polling sites” and pointed out that “[c]ollege students are often vocal about political issues, and it would be difficult or impossible to prevent political signs and other acts of political expression from taking place in the windows of dorm rooms.” Haight Aff. ¶ 20. The Election Law reflects a desire to keep polling places neutral, as it (among other things) prohibits “electioneering” within a 100 foot perimeter of polling places. *See* Election Law § 8-104(1).

The Court’s role here is not to weigh the various considerations and come to its own conclusion, as though it were standing in the shoes of the Dutchess County Board of Elections. *See, e.g., Diocese of Rochester v. Planning Bd.*, 1 N.Y.2d 508, 520, 154 N.Y.S.2d 849 (1956) (“It is well settled that a court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion.” (citations omitted)). Rather, the issue before the Court is “whether the agency determination was arbitrary and capricious or affected by an error of law.” *Scherbyn*, 77 N.Y.2d at 758 (citations omitted). An agency’s decision is arbitrary and capricious when it “is without sound basis in reason and is generally taken without regard to the facts.” *Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833 (1974). But when a decisionmaker “has not acted in excess of his jurisdiction, in violation of lawful procedure, arbitrarily, or in abuse of his discretionary power, . . . the courts have no alternative but to confirm his determination.” *Id.* (citation omitted).

Here, the Board of Elections considered the criteria set forth in Election Law § 4-104, as well as the larger question of whether changing the proposed polling place would be likely to increase or decrease participation in the election. The Board did not act in excess of its jurisdiction, or in violation of lawful procedure. Rather, the Board’s decision was based on the factual information before it, and it considered the request that some of the Petitioners had made

to change the polling place to Bard College. The fact that Petitioners do not like the decision that the Board of Elections ultimately reached does not mean that the decision was arbitrary and capricious. To the contrary, the record shows that the Board of Elections considered pertinent factors and based its decision on those pertinent facts. There is no basis for overturning this decision.

C) Petitioners' Remaining Contentions Are Not Before the Court—and in Any Event, They Lack Merit

While the claims that Petitioners raise for the first time in their supporting affidavits are not before the Court—and should *not* be considered—out of an abundance of caution, and also to “clear the air” about the true state of affairs, Respondent addresses these contentions in brief.

First are Petitioner's claims about Covid-19 risks. Preliminarily, voters throughout the State of New York can apply for absentee ballots merely by citing the risk of Covid-19, and they can even apply online. *See* Exec. Order No. 202.15. As a result, there has been an “exponential” increase in absentee ballot applications. *See* Haight Aff. ¶ 33. In light of this, it makes little sense to move a polling place at the last moment in order to protect people from Covid-19. But setting this aside, the fact is that Respondents' contentions about Covid-19 are largely a matter of supposition. Professor Felicia Keesing identifies herself as an expert and asserts that, because St. John's Church is “estimated at 500 square feet,” while “the larger space available at Bard” is “estimated at 1500 square feet,” she has determined that there is a 4 times greater risk of transmission at St. John's Church. *See* Keesing Dec. ¶ 6. She says this conclusion is “[b]ased solely on the sizes of the two facilities, and given the specific characteristics of the virus that causes covid-19.” *See* Keesing Dec. ¶ 6. This is quite a conclusion to reach based on thumbnail estimates! The most recent access survey establishes the size of St. John's Church at 731.5 square feet (*i.e.* 38.5 feet by 19 feet) so it's unclear why this proffered expert is using an

“estimate” that is 32% low. It’s also unclear why she did not incorporate actual measurements from “the larger space available at Bard,” whatever that is. In any event, after Petitioners raised this issue for the first time in this action, Commissioner Haight contacted the Commissioner of Behavioral and Community Health for Dutchess County and asked for his opinion. (Even though this claim is not before the Court, the Board of Elections has an obvious interest in protecting both voters and its own employees from Covid-19 infection.) Dr. Vaidan told him that St. John’s Church would be preferable to Bard College because, among other things, of the heightened disease transmission risk among college students, many of whom are asymptomatic if infected. *See* Haight Aff. ¶ 32 & Exhibit 8. So, even if there were jurisdiction to review the Board’s ongoing decision to not relocate the polling place in light of Covid-19—and for emphasis, there is not—it is clear that there is a substantial basis for the Board’s current decision.

Next consider Petitioners’ claim that River Road (which runs through Bard’s campus) is “windy,” “treacherous” and “dangerous.” Petitioners do not provide any evidence whatsoever to support this claim. They do not, for example, provide accident statistics or information from the Department of Highways. If River Road actually is so dangerous, then these supports would be available. Instead, they point to Bard’s policy against using Bard vehicles on River Road for certain trips and suggest that this shows that River Road is unreasonable dangerous. But, in fact, Bard’s policy focuses largely on “allow[ing] us to maintain good relationships with our neighbors not encouraging increased traffic on a road built decades ago as a scenic bypass.” ECF Doc. No. 11.

And finally, there is Petitioners’ claim that the polling place is outside ADA compliance, based in part on the incorrect assertion that an access survey has not been completed. In support of this contention, Petitioners point to a “study” that Bard faculty completed on September 2,

2020—two days before they filed suit—as well as the “professional opinion” of a Bard administrator, signed the day before Petitioners filed suit. Suffice it to say that the issues raised by Bard’s employees are ones that intrinsically require a close assessment of the facts. Sure, it’s *possible* that there is a technical ADA issue that the Board of Elections has not yet noticed at a designated polling place, but how is the Court supposed to pass on this when Petitioners have not raised this claim with the Board of Elections? And more significantly, how do these self-serving suppositions indicate there is any actual danger to voters or threat to the franchise of voting? Certainly, after being used as a polling place for at least a decade, one would expect to have specific examples of disabled voters who couldn’t access the site, not generic statements about “elderly voters and mobility-impaired voters hav[ing] had a particularly difficult time navigating the Church when casting their votes” or “elderly voters nearly fall[ing].” Dec. of Erin Cannan, ECF Doc. No. 3 at ¶ 10. These sorts of generic contentions, even if they were properly before the Court, would not justify the extraordinary remedy that Petitioners seek.

IV) PETITIONERS’ CONSTITUTIONAL CLAIM IS NOT STATED WITH ANY SPECIFICITY AND DOES NOT IDENTIFY OR DESCRIBE ANY ACTUAL CONSTITUTIONAL INFIRMITY

Petitioners’ constitutional claim has not been stated with any specificity. Rather, the Verified Petition asserts various factual claims—most of which are not before the Court, for the reasons previously provided—and then makes the conclusory statement that “[b]y its actions, Respondents have burdened Petitioners with onerous requirements and have constructively denied their right to vote[.]” Verified Petition at ¶ 71. They assert this even though *none of the Petitioners alleges that they have been prevented from voting*. Aside from not identifying any particular aspect of the Board’s “actions,” they do not provide any explanation of how this action(s) has imposed an undue burden. They do not even state whether their claim of unconstitutionality is facial or as-applied.

Perhaps not surprisingly, the decisions that Petitioners cite have no particular pertinence to the claim they attempt present. The Court of Appeals did make general pronouncements about the importance of voting in *Callaghan v. Voorhis*, 252 N.Y. 14, 168 N.E. 447 (1929), and *Hopper v. Britt*, 203 N.Y. 144, 96 N.E. 371 (1911), but these cases have virtually no bearing on the claim the Petitioners assert here. (Both of those cases concerned the placement of candidates on party lines on ballots, substantively ruling that candidates should appear on all party lines for which they had been nominated, even if they are named on the ballot more than once. *See Callaghan*, 252 N.Y. at 18; *Hopper*, 203 N.Y. at 147-48, 152.) The decision in *Board of Elections v. Mostofi*, 65 Misc. 3d 876, 108 N.Y.S.3d 819 (Supr. Ct., Kings Co. 2019), upheld the City of New York’s ability to provide foreign language assistance at polling places, but its only constitutional pronouncement about polling places was that “the mere specter of partisanship in the administration of the program, in and of itself, does not render the program an unconstitutional intrusion into the Board’s functions.” *Id.* at 886-87. In other words, this decision had to do with preemption, not allegedly unconstitutional burdens on the right to vote. It is apples and oranges from the claim alleged here.

The only decision Petitioners cite that is remotely pertinent is *In re Village of Harrison*, 80 Misc. 2d 543, 363 N.Y.S.2d 205 (Supr. Ct., Westchester Co. 1974), which concerned a multi-faceted challenge to the results of an election. *See id.* at 544-45. One of the claims was that “the polling place was not located in a convenient location within the territory proposed to be incorporated.” *Id.* at 545. In rejecting this claim, the Supreme Court reasoned that “[t]he designation of a polling place in the population center of a town is not an arbitrary, capricious and unreasonable act which constitutes an abuse of discretion, nor is there evidence that the polling place was so inconvenient as to impede or restrain any qualified voter from casting a

ballot.” *Id.* at 547 (citing *Koeppel v. Southard*, 30 Misc. 2d 463, 223 N.Y.S.2d 723 (Supr. Ct., Nassau Co. 1961)). The court did not address whether this was unconstitutional, and indeed, the word “constitution” does not even appear in the decision. The decision in *Koeppel v. Southard*, which the court in *Village of Harrison* cited, also does not address anything related to the constitutionality of polling place decisions. Rather, the court there ruled that designating a “firehouse, which has been used as a polling place for a great many years and which has parking and other facilities, is not so arbitrary, unreasonable or capricious as to compel a conclusion that the commissioners have been guilty of an abuse of discretion in selecting it, nor is there any evidence, as distinguished from argument, that the location of the polling place is so inconvenient or unsuitable as to have impeded or restrained any eligible voter from casting his ballot.” *Koeppel*, 30 Misc. 2d at 464. This is also the case here.

Petitioners have the burden of persuasion. Aside from failing to articulate a constitutional claim with any specificity, and certainly with enough specificity to enable the Board of Elections to respond or the Court to rule, they have failed to cite any legal authority that would indicate that the designation amounts to an unconstitutional burden on their ability to vote. Moreover, they have failed to provide any specific evidence, instead relying on generalized statements and speculations. Most of their claims, as stated previously, are not even before the Court. And as to the claims that are before the Court, suffice it to say that having to walk without the benefit of a sidewalk for 0.5 mile from a bus stop is not an undue burden on the ability to vote, nor is having to travel 0.3 mile or 1.3 miles from one’s residence. If these were undue burdens, then there would be unconstitutional polling places all over the State of New York.

Finally, and in this connection, it should be noted that while Petitioners suggest that the Board of Elections is free to designate a second polling place on Bard’s campus, Election Law §

4-104 does not authorize the designation of multiple polling places for a single election district. Rather, § 4-104 authorizes boards of election to: (1) consolidate polling places for multiple election districts in a single location “for reasons of efficiency or economy”; and (2) designate a polling place in a contiguous election district when “the only facilities available [in the district] are such that public convenience would be served by establishing a polling place outside such district.” See Election Law § 4-104(4), (8). Thus, to the extent that Petitioners claim that the Board of Elections should designate a *second* polling place for Election District 5 on Bard’s campus, there is simply no statutory authorization for this relief. And, to the extent that Petitioners challenge this lack of statutory authorization as unconstitutional, their claims are not before the Court, as they have not served the Attorney General with notice of a claim that the laws of the State are unconstitutional. See CPLR § 1012 (a court “shall not consider any challenge to the constitutionality of [a] state statute, local law, ordinance, rule or regulation unless proof of service” on the Attorney General “is filed with such court”); Executive Law § 71(3) (same). The requirement of serving the Attorney General “insures that all of the people of the State may be represented when the constitutionality of their laws is put in issue,” as well as “ensuring the development of an adequate record upon which the court may base its determination.” *McGee v. Korman*, 70 N.Y.2d 225, 231, 519 N.Y.S.2d 350 (1987). Thus, this claim “is not properly before th[e] Court.” *People v. Mays*, 54 A.D.3d 778, 778, 864 N.Y.S.2d 442 (2d Dep’t 2008); see also, e.g., *Guidarelli v. Brassard*, 88 A.D.3d 1147, 1149, 931 N.Y.S.2d 428 (3d Dep’t 2011) (constitutional challenges to Election Law provisions were not before the court); *People v. Brown*, 64 A.D.3d 611, 611, 881 N.Y.S.2d 329 (2d Dep’t 2009); *Weinberg v. Omar E.*, 106 A.D.2d 448, 448, 482 N.Y.S.2d 540 (2d Dep’t 1984).

V) THE BALANCE OF EQUITIES WEIGHS HEAVILY AND DECISIVELY AGAINST PETITIONERS

An injunction “is an extraordinary remedy” that is available “only when irreparable injury is threatened, and the law does not afford an adequate remedy for the contemplated wrong.” *Kane v. Walsh*, 295 N.Y. 198, 205-06, 66 N.E.2d 53 (1946) (*quoting Thomas v. Musical Mut. Protective Union*, 121 N.Y. 45, 52, 24 N.E. 24 (1890)); *see also, e.g., Sun-Brite Car Wash, Inc. v. Bd. of Zoning & Appeals*, 69 N.Y.2d 406, 416, 515 N.Y.S.2d 418 (1987). An “irreparable” injury is generally one “for which money damages are insufficient.” *Klein, Wagner & Morris v. Lawrence A. Klein, P.C.*, 186 A.D.2d 631, 633, 588 N.Y.S.2d 424 (2d Dep’t 1992) (*citing Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979)).

Petitioners have not identified an irreparable injury. Not one Petitioner alleges that the current polling place has prevented him or her from voting. To be sure, a problem with a polling place *that resulted in a substantial interference with the right to vote* would stand as an irreparable injury. *See Krowe v. Westchester Co. Bd. of Elections*, 155 A.D.3d 672, 673, 873 N.Y.S.2d 319 (2d Dep’t 2017); *see also, e.g., Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986). But that simply is not what Petitioners aver. Rather, the most that Petitioners provide is the supposition that more students *might* vote if the polling place was even closer to them than it already is. This does not show an imminent, irreparable injury—and especially this year, where there has been an explosion in absentee ballots because people need only assert that Covid-19 concerns would keep them from voting at their designated polling place. *See Haight Aff.* ¶ 33; *see also* N.Y. Exec. Order No. 202.15 (absentee ballots available for “temporary illness and shall include the potential for contraction of the COVID-19 virus”).

But even if Petitioners did articulate a threatened irreparable injury, the much more pressing concern is the balance of equities, which must support the grant of an injunction for this

relief to issue. *See Elow v. Svenningsen*, 58 A.D.3d 674, 675, 873 N.Y.S.2d 319 (2d Dep't 2009). This requires the Court to consider "exactly what practicalities and procedures would be entailed if the relief sought were granted." *Corso v. Albany Co. Bd. of Elections*, 90 A.D.2d 637, 638 (3d Dep't), *aff'd*, 57 N.Y.2d 950 (1982). In the absence of such detailed information, inaction may be preferable "where the existing polling places are located relatively close" and it appears that "no voter will be disenfranchised if the relief sought herein is not granted." *Id.*

Although Petitioners have ignored this issue, the fact is that ordering a new polling place less than two months before a scheduled general election would be nearly certain to lead to voter confusion and to raise a host of practical problems. Voter confusion results whenever a polling place is changed and is generally a factor that weighs against changing polling places. *See Haight Aff.* ¶ 11. Among other things, voters often travel to the old polling place, and the result is at best additional burden—and at worse, people deciding not to vote. *See Haight Aff.* ¶ 11. When inspectors go to the wrong polling place, the result is that the polling place opens late—which, again, can lead to voter disenfranchisement. *See Haight Aff.* ¶ 11. But these issues are particularly problematic when changes are made at the last minute. Many voters will disregard, or not even receive, an updated notice from the Board of Elections that specifies a new polling place. *See Haight Aff.* ¶ 12. And, because the layout and access plans are being devised at the last moment, unforeseen problems are more likely to arise. *See Haight Aff.* ¶ 12. Thus, last minute polling place changes are a last resort. *See Haight Aff.* ¶ 12.

One of the decisions that Petitioners rely upon, *Krowe v. Westchester Co. Board of Elections*, is particularly pertinent. In that case, the Westchester County Board of Elections changed a polling place about three weeks before the date of the general election "based only on a general advisement by an unnamed Town official that construction would be performed at the

Town Hall on the day of the election.” *Krowe*, 155 A.D.3d at 673. The Supreme Court declined to order the Board of Elections to move the polling place back to its original location, but the Second Department reversed. *See id.* It was significant that the board of elections had not been “informed or inquired as to the extent of the construction, the hours during which it would be performed, the extent to which the construction prevented access to the building, or the feasibility of halting construction on the day of the election.” *Id.* Thus, the Supreme Court should have issued an injunction to prevent the last-minute polling place change. *See id.* The circumstances presented here are analogous. The Petitioners assert that the polling place is inadequate for reasons that are somewhat generalized and nonspecific, like their claims that River Road is unreasonably “dangerous,” or that people may have to stand in a line while it is raining. In both instances, the relief sought would cause significant interruption, and a significant interruption that does not appear to be justified by any concern that is truly substantial and imminent. And in both instances, the balance of equities weighs decisively against relief. While Petitioners point to the largely speculative *possibility* that some student voters will choose not to vote, the relief they seek is *likely* to cause actual disenfranchisement.

So, to the extent relief is appropriate—and to be clear, it is not—the Court has “broad discretion in fashioning appropriate equitable relief.” *Hill v. New York City Bd. of Elections*, 120 A.D.2d 55, 57, 507 N.Y.S.2d 674 (2d Dep’t 1986) (citing *Newman v. Sherbar Dev. Co.*, 47 A.D.2d 648 (2d Dep’t 1975)). Indeed, any relief the Court may find it appropriate to grant would need to abide with the “obligation to go no further than necessary to protect the rights of the petitioners/plaintiffs.” *Zutt v. State of New York*, 99 A.D.3d 85, 106, 949 N.Y.S.2d 402 (2d Dep’t 2012). “Judicial restraint” is particularly appropriate when claims against a board of elections “to some extent involve matters of administrative judgment, discretion and allocation of resources

and priorities.” *Hill*, 120 A.D.2d at 57 (citations omitted). Put simply, Petitioners have not identified an imminent irreparable injury, so any relief would go beyond what is necessary to protect their rights—and it would do so in the context of inherently discretionary decisions made by the agency charged by law with making them.

VI) CONCLUSION

Petitioners are not entitled to relief in the form of mandamus, prohibition or certiorari, and their unarticulated constitutional claim is not properly before the Court. To whatever extent Petitioners have a claim for mandamus to review, it is abundantly clear that the Board of Elections did not act arbitrarily and capriciously. Rather, the Board considered pertinent factors based on both the Election Law and the general desire to protect meaningful participation by *all* voters in the election district. The mere fact that Petitioners would like the Board to make a different decision does not state a claim for relief, and in any event, the Petitioners are not entitled to relief on the circumstances presented here.

Dated: Beacon, New York
21 September 2020



David D. Jensen
DAVID JENSEN PLLC
33 Henry Street
Beacon, New York 12508
(212) 380-6615

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS**

----- X
In the matter of

ANDREW GOODMAN FOUNDATION,
ELECTION@BARD, SADIA SABA, ERIN CANNAN,
and LEO BOTSTEIN,

Index No. 2020/52737

Petitioners,

-against-

**AFFIDAVIT OF
TIMOTHY MALET**

DUTCHESS COUNTY BOARD OF ELECTIONS,
ERIK J. HAIGHT, in his official capacity, and
ELIZABETH J. SOTO, in her official capacity,

Respondents.

----- X

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

TIMOTHY MALET, being duly sworn, deposes and says:

1. I work for the Dutchess County Board of Elections. I am over 18 years of age and am competent to testify on my own behalf. I submit this affidavit based on my own personal knowledge.

2. My current position at the Board of Elections is that of Machine Coordinator. In the past, I have also held the positions of Elections Specialist and Senior Elections Specialist. I have worked at the Board of Elections since July, 2013.

3. I am familiar with the manner in which the Board of Elections maintains records of registered voters, including what information is kept on file, and how, and the manner in which voter registration records are created, modified and removed.

4. As of the date of this affidavit, the records of the Board of Elections reflect that there are 1,035 individuals registered to vote in Election District 5 in the Town of Red Hook. Of those registrations, 670 registrations have addresses in Annandale, New York at either 30 Campus Road or on Faculty Circle, which I understand are both on the campus of Bard College. By all indications, these 670 registrations are for individuals who reside on Bard's campus, and I refer to these voters as the "Campus Voters." I refer to the remaining 365 voter registrations, for individuals who do not have addresses on Bard's campus, as the "Non-Campus Voters."

5. The Non-Campus Voters reside throughout Election District 5 as follows:

- a. 17 have addresses in Annandale (zip code 12504);
- b. 133 have addresses in Barrytown (zip code 12507);
- c. 166 have addresses in Red Hook (zip code 12571);
- d. 9 have addresses in Rhinebeck (zip code 12572); and
- e. 40 have addresses in Tivoli (zip code 12583).

6. I also examined the voter registry as it existed in May 2020. (This is as close as I was able to get to March 2020.) As of May 2020, there were 1,069 registered voters, of which 748 had one of the two addresses listed above as being on Bard's campus and 321 did not.

7. When registered voters move out of Dutchess County, they remain in our records as registered voters unless they notify the Board of Elections of their move, which they often do not do. The result is that our records will often overstate the number of people who are eligible to vote. This is particularly a problem with college student voters, as they often reside in the area for a relatively short time and move after graduation.

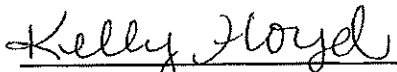
8. If the Board of Elections has not received notice of a move, then our records will not provide a means of conclusively determining whether or not a particular registered voter has

moved out of an election district. However, one metric that is probative is voter turnout. All things being equal, if one group has a lower rate of voter turnout than another, this suggest that the first group may have a larger number of "stale" voter registrations.

9. Looking to the registry as it existed in May, 468 of the 748 Campus Voters, or 62.5%, have voted since the year 2017. In contrast, 221 (68.8%) of the 321 Non-Campus Voters (68.8%) have voted since the year 2017. This suggests that there are a larger number of "stale" voter registrations among the Campus Voters.


TIMOTHY MALET

Sworn to before me this
21 day of September, 2020


Notary Public

KELLY FLOYD
Notary Public, State of New York
No. 01FL6388519
Qualified in Dutchess County
Commission Expires March 11, 2023

17

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS**

----- X

In the matter of

ANDREW GOODMAN FOUNDATION,
ELECTION@BARD, SADIA SABA, ERIN CANNAN,
and LEO BOTSTEIN,

Index No. 2020/52737

Petitioners,

-against-

**AFFIDAVIT OF
ERIK J. HAIGHT**

DUTCHESS COUNTY BOARD OF ELECTIONS,
ERIK J. HAIGHT, in his official capacity, and
ELIZABETH J. SOTO, in her official capacity,

Respondents.

----- X

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

ERIK J. HAIGHT, being duly sworn, deposes and says:

1. I am one of the two Commissioners of the Dutchess County Board of Elections. I live in the Town of Poughkeepsie, New York. I am over 18 years of age and am competent to testify on my own behalf. I submit this affidavit based on my own personal knowledge.

2. The Board of Elections is comprised of two Commissioners. I am one Commissioner, appointed by the Republican Party, and Elizabeth J. Soto is the other, appointed by the Democratic Party.

3. Every year, the Board of Elections designates polling places for each election district within Dutchess County. State law directs the Board of Elections to make these designations by March 15.

4. In the normal course, both Commissioners work together to make joint decisions about matters that fall within the discretion of the Board of Elections, including decisions related to the location of polling places.

5. Attached as Exhibit 1 is a copy of the designation of polling places that the Board of Elections made for the year 2020. As indicated on Exhibit 1, both Commissioner Soto and I executed this designation on March 13, 2020. As further indicated on Exhibit 1, the Board of Elections designated St. John's Episcopal Church, located at 1114 River Road in Barrytown, New York, as the polling place for Election District 5 in the Town of Red Hook.

6. I have been one of the two Commissioners of the Board of Election since January 2011. As far back as I can recall, St. John's Episcopal Church has been the polling place for this election district.

7. Attached as Exhibit 2 is the current map of election districts in the Town of Red Hook. This is a document that the Board of Elections prepares and makes available to the public. Generally stated, Election District 5 lies to the north of State Route 199, to the west of State Route 9G and to the south of a line that runs from Route 9G (just south of Abby Lane) westward to Kidd Lane (just south of Public Works Drive) and then further west through the Tivoli Bays Wildlife Management Area ("WMU"). The western boundary of Election District 5 is in the Hudson River. To my knowledge, no people reside in either the Tivoli Bays WMU or the areas of Election District 5 that are in the Hudson River. Excluding the Hudson River, Election District 5 is between about 5.3 and 5.5 miles "tall" and between about 1.4 and 1.7 miles "wide."

8. There are a number of different considerations when the Board of Elections designates polling places. State law provides, among other things, that polling places need to be able to admit and comfortably accommodate voters and to comply with the Americans with

Disabilities Act ("ADA") requirements. State law provides a strong preference for using tax exempt buildings should be used whenever possible, and it expressly authorizes the use of religious buildings. There is a preference for facilities located on the main floor, and there is a preference for facilities that are located on public transportation routes. (This is not an exhaustive list of requirements.)

9. Before a new polling place is designated, the Board of Elections must conduct an access survey to ensure compliance with ADA requirements. Furthermore, the Board of Elections also conducts access surveys whenever there are changes at a polling site, and otherwise, it seeks to conduct access surveys every 3 years. If a polling place is out of compliance, it must be brought into compliance within 6 months or be moved.

10. Before each election, the Board of Elections sends all registered voters a notice that provides pertinent information, including the location of their polling place. The Board of Elections has already sent these notices to all registered voters in Dutchess County. A copy of one notice sent to voters in Red Hook Election District 5 is attached as Exhibit 3. Were a polling place to now be changed, at this point in time, the Board of Elections would need to send a new notice to each registered voter in the election district.

11. In my experience as an Election Commissioner, I have seen that polling place changes often disrupt and interfere with the conduct of elections. Among other things, voters go to the old polling place and then call the Board of Elections to ascertain the location of the new one. Inspectors will also travel to the old polling place, with the result that the polls are not able to open on time. Otherwise, unforeseen traffic and parking issues can arise. As a general proposition, my view is that polling places should generally not be changed unless there is a

good reason for doing so. Having said that, the Board of Elections does change polling places when circumstances dictate.

12. Polling place changes that occur shortly before elections, after the Board of Elections has sent out election notices that identify the old polling place, are particularly disruptive and problematic. Many voters disregard the new card or do not look closely at it, or they may not receive it in time if they are out of town. Polling place workers have to devise layout and access plans at the last moment, and unforeseen problems of all sorts are more likely to arise. Last minute polling place changes are a last resort.

13. Before the Board of Elections designated polling places for the year 2020, attorneys representing the Andrew Goodman Foundation and Election@Bard sent a letter to the Board of Elections. The document filed by Petitioners, attached as Exhibit 4, is a copy of that letter. As indicated on Exhibit 4, the Board of Elections received this letter on March 2, 2020, which was 11 days before the date on which it needed to finalize polling place designations. (Because March 15, 2020 fell on a Sunday, the effective deadline was the preceding Friday.)

14. The letter (Exhibit 4) "requested that a new designated polling location for the Town of Red Hook's Voting District 5 be set on the Bard campus." The letter requested that the Board of Elections contact Bard officials "to establish a suitable campus location." The letter cited three specific concerns that this would address:

1) allow pedestrian accessibility that is currently lacking (no sidewalks and poor street lighting near the current location for the voting district), 2) provide access to the designated location via a public transit route, and 3) ensure that voters are not disenfranchised and deprived of their state and federal rights to participate in the election process.

15. Preliminarily, state law does not authorize the Board of Elections to designate more than one polling place for an election district. Even were this not the case, it would be

essentially impossible to have more than one polling place for an election district. First and foremost, considerations of fairness and equity demand that all voters within an election district vote under the same conditions.

16. Other than the letter attached as Exhibit 4, I am not aware of any requests that the Board of Elections received to change the Election District 5 polling place in connection with the 2020 polling place designations.

17. I discussed the letter attached as Exhibit 4 with Commissioner Soto in early March 2020, shortly after its receipt, but before the Board of Elections designated the 2020 polling places. Commissioner Soto was in favor of taking further action to see whether a suitable polling place could be located at Bard College, but I was not for several reasons.

18. First, I did not think that the letter's cited concern with pedestrian access, sidewalks and street lights was particularly substantial. With regard to students at Bard, St. John's Episcopal Church is already very close to campus. According to Google Maps, the distance from the orchards that lie at the south part of campus to St. John's is 0.3 mile, and the distance from the Annandale Hotel, which in the southern part of the main campus, is 0.7 mile. (I determined ownership of the land by consulting the ParcelAccess system that the Dutchess County Clerk maintains.) This area of River Road consists of farmland, and while there is no sidewalk, there is a shoulder, and there is relatively little traffic. Furthermore, an alleviating consideration is that Bard operates a shuttle that transports students directly to the polling place. On the other hand, with regard to voters who are not Bard students, much of Election District 5 is rural and does not have sidewalks or street lights, so these individuals will still need to contend with these issues if they walk to the polling site.

19. Second, with regard to the availability of public transit services, I thought Bard's campus would likely present an advantage over St. John's, but not one that was especially large. Dutchess County Public Transit has only one route in Election District 5, which is Loop C. Exhibit 5 is a copy of the Loop C route map. This route comes within about 0.8 mile of the current polling place (at the intersection of River Road and Annandale Road, near the Annandale Hotel), but it has a stop within Bard's campus at the Kline Bus Stop. An individual who exited a public bus at the Kline Bus Stop would then need to walk to whatever building was designated as a polling place. According to Google Maps, the Campus Center is a 0.3 mile walk from the Kline Bus Stop. While 0.3 mile is less than 0.8 mile, neither location would be directly situated on a public transportation route.

20. Third, with regard to the interest in preventing voter disenfranchisement and facilitating meaningful participation, my conclusion was that this consideration weighed in favor of keeping the polling place at its present location at St. John's. Small liberal arts colleges are somewhat insular environments, and I was concerned that voters in Election District 5 who are not associated with Bard's would be less likely to vote if doing so required them to enter and navigate the campus. Furthermore, the interest in keeping polling sites neutral generally weighs against using college campuses as polling sites. College students are often vocal about political issues, and it would be difficult or impossible to prevent political signs and other acts of political expression from taking place in the windows of dorm rooms. There is also a greater risk of a disruptive protest at a college campus than there is at a church. And, as stated previously, the very act of changing an established polling place is something that increases the risk of disenfranchisement.

21. I also felt that other considerations weighed in favor of keeping St. John's as the polling place. Relative to Bard, St. John's is somewhat more centered in the district. The distance from St. John's to the furthest (land) corner of the district (to the northeast) is about 3.4 miles. The distance from Bard to the furthest (land) corner of the district (to the southwest) is about 3.9 miles. Overall, St. John's was the more central location.

22. I agree that a polling place on campus would be more convenient for Bard students, and if that were the only consideration, then I would likely have been in favor of taking further action to look for potential polling places on campus. However, when I take of the voters in Election District 5 who are not associated with Bard, I reach the conclusion that St. John's is the more appropriate polling place.

23. Finally, and setting other issues aside, when we received the Exhibit 4 letter on March 2, 2020, I did not think there was enough time to inspect potential facilities on campus, select one (if appropriate) and complete access surveys before the deadline for designating polling places, which was effectively 11 days later. The Board of Elections still needed to complete access surveys at new polling places that had actually been selected for designation.

24. I have reviewed the declarations submitted by Sadia Saba, Erin Cannan and Leon Botstein, which raise the contention that River Road is inordinately "dangerous" so as to render St. John's Episcopal Church unsuitable as a polling place. This issue was not raised at the time the Board of Elections was designating polling places in March 2020. I do not ever recall anyone contending that River Road was unreasonably dangerous before reviewing the declarations that were filed with the Court in this manner. I am somewhat skeptical of this claim, given that River Road enters onto and crosses Bard's property less than half a mile from the polling place, but in any event, it was not an issue that was raised in connection with the 2020 designations.

25. I have also seen the contention in the declaration submitted by Erika van der Velden that, in her opinion, St. John's Episcopal Church does not comply with ADA requirements. This issue was not raised at the time the Board of Elections was designating polling places in March 2020, and I do not recall anyone contending that the polling place did not comply with ADA guidelines before I reviewed Ms. van der Velden's declaration. I do not recall receiving any complaints about individuals not being able to access the St. John's in order to vote.

26. The most recent access survey that the Board of Elections conducted at St. John's was on March 11, 2019, and a copy of that access survey is attached as Exhibit 6. As indicated, this access survey did not identify any areas of ADA non-compliance. Among other things, the access survey indicates that the polling place is 38.5 feet by 19 feet.

27. One contention in Ms. Van der Velden's declaration is that a ramp leading to the door of the church does not have a rail. I can see in the picture submitted to the Court as Exhibit F that a rail is in fact present.

28. Now that the issue of ADA compliance has been raised, the Board of Elections will inspect St. John's and address any ADA issues that may be found to exist. However, given the current demands on our personnel (dealing with issues in the leadup to the election) this likely will not occur until early next year.

29. I have read the contention in the declarations of Leon Botstein and Felicia Keesing that concerns arising from the COVID-19 pandemic would make a location on Bard's campus preferable to St. John's Episcopal Church. This issue was not raised at the time the Board of Elections was designating polling places in March 2020, and I do not recall anyone making this contention before I reviewed the papers submitted to the Court.

30. Last summer, after the polling place designations had been made, Commissioner Soto and I made the decision to move six polling places in order to address COVID-19 concerns. All six of these locations were located in nursing homes, and we both agreed that these polling places should be moved in order to minimize the extent to which vulnerable populations were exposed to others. This took place before the election notices (e.g. Exhibit 3) were sent out. St. John's Episcopal Church was not a part of these discussions.

31. Notably, the efforts that we took to minimize the risk of COVID-19 transmission at polling places was reported in national media. Attached as Exhibit 7 is an article published by CNN that discusses actions taken by the Board of Elections to address COVID-19. The essential point is that both Commissioner Soto and I have taken COVID-19 very seriously.

32. After reviewing the papers submitted to the Court, I contacted Anil Vaidan, MD MPH, who is the Commissioner of Behavioral and Community Health for Dutchess County, and asked for his opinion. Attached as Exhibit 8 is an email that I received from Dr. Vaidan on September 16, 2020. In that email, Dr. Vaidan advised me that "having a poll location on Bard College campus may increase the potential for community transmission of COVID-19." Among other issues, Dr. Vaidan pointed out that COVID-19 infections are surging among college populations, many of whom are asymptomatic. Based on the information that has been presented to me to date, my view is that the Board of Elections should follow the advice of Dr. Vaidan.

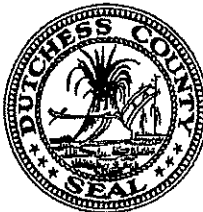
33. Finally, I must note that there has been an exponential increase in applications for absentee ballots this year. Executive orders have made these much more readily available, with the only real requirement being that a voter state that their concerns with Covid-19 would keep them from using a designated polling place.


ERIK J. HAIGHT

Sworn to before me this
21 day of September, 2020

Amy L. Tanner
Notary Public

AMY L. TANNER
Notary Public, State of New York
Qualified in Dutchess County
Reg. No. 01TA6323442
Commission Expires April 20, 2023



Erik J. Haight
Commissioner

Elizabeth A. Soto
Commissioner

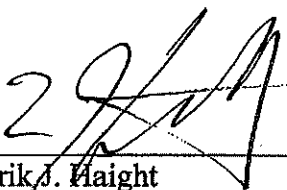
DUTCHESS COUNTY BOARD of ELECTIONS
47 Cannon Street, Poughkeepsie, New York 12601
845-486-2473/845-486-2483 fax
www.dutchesselections.com

Resolution Number 07-2020: Designating Poll Sites for 2020

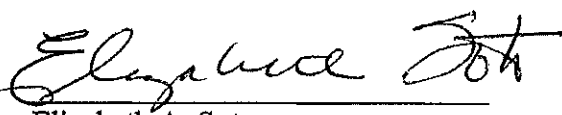
Whereas, New York State Election Law Section 4-104 requires the Dutchess County Board of Elections to designate polling places,

Now, therefore, be it

Resolved, the Dutchess County Board of Elections designates the attached list of polling places for 2020.



Erik J. Haight
Commissioner



Elizabeth A. Soto
Commissioner

Dated: 3/13/20

DUTCHESS COUNTY POLLING SITES 2020 - 2021

Effective: March 1, 2020 to February 29, 2021

AMENIA

1st Dist. Immaculate Conception-St. Patrick Parish, 11 Lavelle Road, Amenia
 2nd Dist. Wassaic Fire House, 27 Firehouse Road, Wassaic
 3rd Dist. V.F.W. Harlem Valley Post #5444, 3422 Route 22, Dover Plains

BEEKMAN

1st Dist. Beekman Library, 11 Town Center Boulevard, Poughquag
 2nd Dist. Beekman Library, 11 Town Center Boulevard, Poughquag
 3rd Dist. Beekman Community Center, 31 Recreation Center Road, Poughquag
 4th Dist. Beekman Elementary School, 201 Lime Ridge Road, Poughquag
 5th Dist. Beekman Fire House, 316 Beekman-Poughquag Road, Poughquag
 6th Dist. Beekman Elementary School, 201 Lime Ridge Road, Poughquag
 7th Dist. Beekman Elementary School, 201 Lime Ridge Road, Poughquag
 8th Dist. Beekman Fire House, 316 Beekman-Poughquag Road, Poughquag
 9th Dist. Beekman Community Center, 31 Recreation Center Road, Poughquag

CLINTON

1st Dist. Clinton Town Hall, 1215 Centre Road, Clinton Corners
 2nd Dist. Valley Community Church, 2260 Salt Point Turnpike, Clinton Corners
 3rd Dist. West Clinton Fire House, Station #1, 219 Hollow Road, Staatsburg

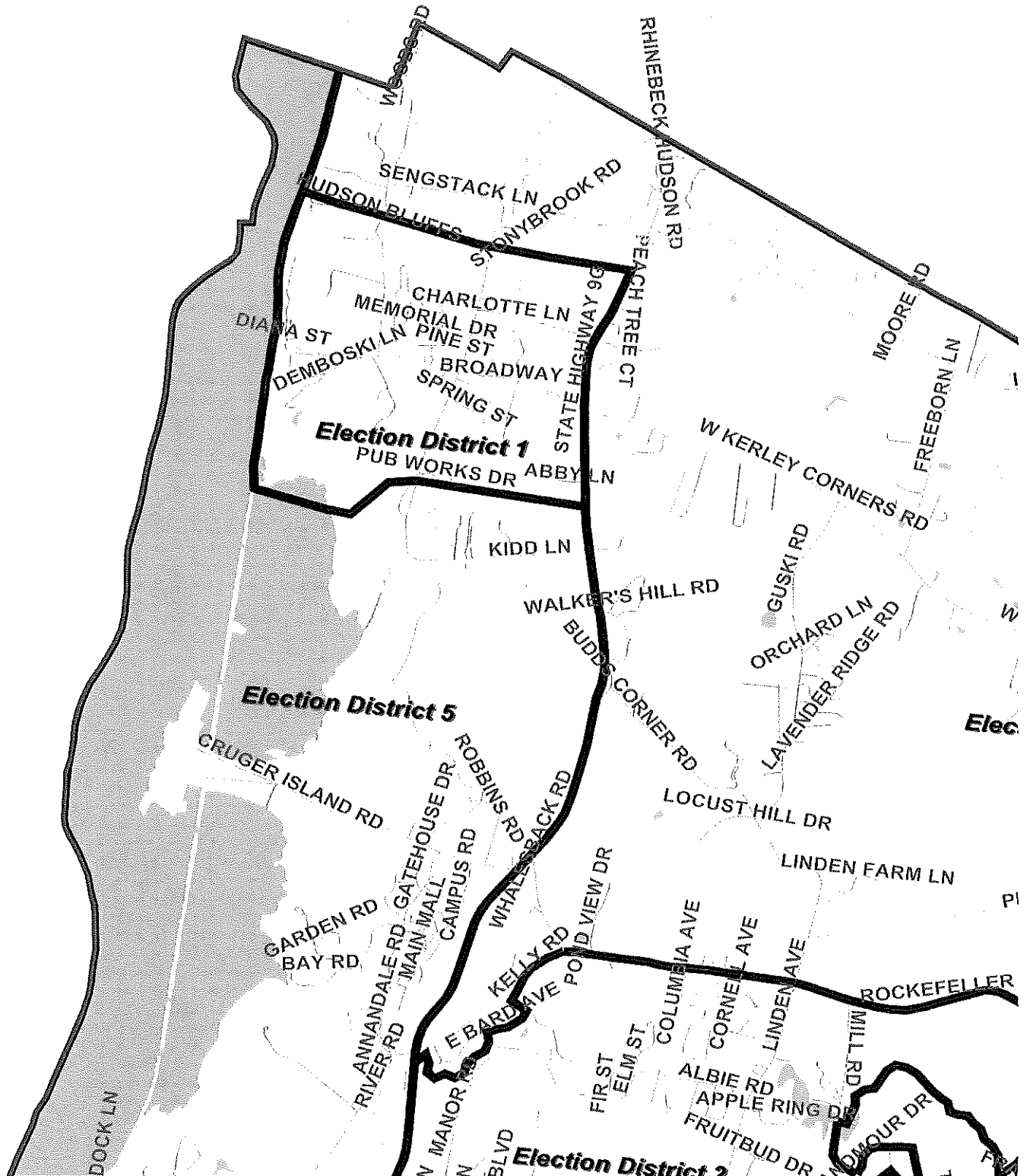
DOVER

1st Dist. Dover Town Hall, 126 East Duncan Hill Road, Dover Plains
 2nd Dist. Dover Town Hall, 126 East Duncan Hill Road, Dover Plains
 3rd Dist. Dover Town Hall, 126 East Duncan Hill Road, Dover Plains
 4th Dist. Dover Middle School, 2368 Route 22, Dover Plains
 5th Dist. Dover Middle School, 2368 Route 22, Dover Plains
 6th Dist. Dover Middle School, 2368 Route 22, Dover Plains

EAST FISHKILL

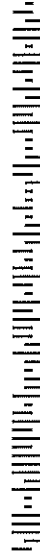
1st Dist. Hillside Lake Fire House #3, 207 Hillside Lake Road, Wappingers Falls
 2nd Dist. East Fishkill Community Center, 888 Route 82, Hopewell Junction
 3rd Dist. Stormville Fire House, 112 Old Route 52, Stormville
 4th Dist. Stormville Fire District Substation, 26 Mountain Top Road, Stormville
 5th Dist. Stormville Fire District Substation, 26 Mountain Top Road, Stormville
 6th Dist. East Fishkill Town Hall, 330 Route 376, Hopewell Junction
 7th Dist. East Fishkill Community Library, 348 Route 376, Hopewell Junction
 8th Dist. Fishkill Plains Elementary School, 17 Lake Walton Road, Wappingers Falls
 9th Dist. Hillside Lake Fire House #3, 207 Hillside Lake Road, Wappingers Falls
 10th Dist. Fishkill Plains Elementary School, 17 Lake Walton Road, Wappingers Falls
 11th Dist. Fishkill Plains Elementary School, 17 Lake Walton Road, Wappingers Falls
 12th Dist. East Fishkill Community Center, 888 Route 82, Hopewell Junction
 13th Dist. Wiccopee Fire House, 6 West Hook Rd, Hopewell Junction
 14th Dist. Wiccopee Fire House, 6 West Hook Rd, Hopewell Junction
 15th Dist. East Fishkill Fire Training Center, 2502 Route 52, Hopewell Junction
 16th Dist. Stormville Fire District Substation, 26 Mountain Top Road, Stormville
 17th Dist. Stormville Fire House, 112 Old Route 52, Stormville
 18th Dist. East Fishkill Town Hall, 330 Route 376, Hopewell Junction
 19th Dist. East Fishkill Community Library, 348 Route 376, Hopewell Junction
 20th Dist. East Fishkill Community Center, 888 Route 82, Hopewell Junction
 21st Dist. East Fishkill Fire Training Center, 2502 Route 52, Hopewell Junction

Town of Red I



**PRESORTED STD
U.S. POSTAGE
PAID
ALBANY, NY
PERMIT # 1132**

**For More Information Visit Our Website
elections.dutchessny.gov**



1 *****AUTO**5-DIGIT 12504 T1 P1

BARD COLLEGE
30 CAMPUS RD
ANNANDALE, NY 12504-9800

There are 3 ways to VOTE in this Year's General Election

Please read carefully to ensure that you are able to vote on time and the way you prefer.



MAIL-IN VOTING

Anyone wishing to vote with an absentee ballot may do so by requesting an application via: Phone: 845-486-2473 Fax: 845-486-2483

Website: absenteeballot.elections.ny.gov

Applications can be sent by mail or dropped off in person at your local board of elections. You may apply in person up to November 2, 2020.

Request Absentee Ballot by October 27, 2020*

Applications can be sent by mail or dropped off in person at your local board of elections. You may apply in person up to November 2, 2020.

*Please be warned that despite this deadline, the Post Office has advised they cannot guarantee timely delivery of ballots applied for less than 15 days before an election (October 12, 2020)



EARLY VOTING

Early Voting Period is October 24, 2020 - November 1, 2020

LOCATION	ADDRESS
Rhinebeck Town Hall	80 East Market Street, Rhinebeck
Millbrook Fire House	20 Front Street, Millbrook
DC Board of Elections	47 Cannon Street, Poughkeepsie
Boardman Road Library	141 Boardman Road, Poughkeepsie
Fishkill Town Hall	807 Route 52, Fishkill

GENERAL ELECTION

Sat. Oct. 24 - 12 pm to 5 pm	Wed. Oct. 28 - 9 am to 5 pm
Sun. Oct. 25 - 12 pm to 5 pm	Thurs. Oct. 29 - 12 pm to 8 pm
Mon. Oct. 26 - 9 am to 5 pm	Fri. Oct. 30 - 9 am to 5 pm
Tues. Oct. 27 - 12 pm to 8 pm	Sat. Oct. 31 - 9 am to 4 pm
	Sun. Nov. 1 - 12 pm to 5 pm



ELECTION DAY VOTING

2020 General Election: All Polling Places are open from 6 AM to 9 PM on November 3, 2020

Your Polling Place is:

St. John's Episcopal Church
1114 River Road
Barrytown, NY 12507

If you are unsure if you are registered to vote, check your status here: (<http://voterlookup.elections.ny.gov>)
Any questions please call your local Board of Elections (see above).

VENABLE LLP

ROCKEFELLER CENTER
1270 AVENUE OF THE AMERICAS, 24TH FLOOR
NEW YORK, NY 10020
T 212.307.5500 F 212.307.5598 www.Venable.com

Michael J. Volpe

T 212.808.5676
F 212.307.5598
mjvolpe@venable.com

February 28, 2020

**VIA HAND DELIVERY &
OVERNIGHT MAIL**

Commissioner Erik J. Haight
Commissioner Elizabeth Soto
Dutchess County Board of Elections
47 Cannon Street
Poughkeepsie, New York 12601

RECEIVED
2018-2 APR 31 5
DUTCHESS COUNTY
BOARD OF ELECTIONS

Dear Commissioner Haight and Commissioner Soto:

This law firm represents the Andrew Goodman Foundation and Election@Bard, a student organization at Bard College in Allendale on Hudson, New York.

We write to request that a new designated polling location for the Town of Red Hook's Voting District 5 be set on the Bard College campus. Please confirm that a suitable on-campus location will be immediately designated. We can provide you with names of campus officials to establish a suitable campus location.

As you know, New York State law requires that all polling locations be designated by March 15, 2020. 2020 is a busy, critical election year (Presidential primary on April 28th, federal and statewide primaries on June 23rd and the general federal and state elections on November 3, 2020). Given this schedule, coupled with unprecedented youth engagement rates this crucial election cycle, it is imperative that a polling location be located on campus to: 1) allow pedestrian accessibility that is currently lacking (no sidewalks and poor street lighting near the current location for the voting district), 2) provide access to the designated location via a public transit route, and 3) ensure that voters are not disenfranchised and deprived of their state and federal rights to participate in the election process.

The students of Bard College and residents in the voting district have advocated for a change from the polling location designated for this voting district, which is currently St. John's Episcopal Church, located at 1114 River Road, Barrytown, New York 10257. We understand this has been the subject of much discussion over the years, and particularly applaud the efforts of the students. We encourage you to immediately select a polling location that complies in all respects with the requirements of the New York State Election Law and applicable federal law.

VENABLE LLP

Commissioner Erik J. Haight
Commissioner Elizabeth Soto
February 28, 2020
Page 2

On behalf of our clients we reserve the right to pursue all available legal remedies in state and/or federal court leading up to this important election cycle. Of course, we would prefer to avoid litigation, and welcome your input and cooperation toward that end.

Please date stamp the enclosed copy, and return it to me in the enclosed self-addressed stamped envelope. Thank you for your anticipated cooperation, and we look forward to your response.

Sincerely,


Michael J. Volpe

Yael Bromberg
Chief Counsel for Voting Rights,
The Andrew Goodman Foundation

cc: Honorable Marcus J. Molinaro, County Executive-Dutchess County

Honorable Kevin A. Cahill, Assembly Member, Assembly District 103

Honorable Sue Serino, State Senator, Senate District 41

Honorable Kristofer Munn, County Legislator

Honorable Robert McKeon, Supervisor, Town of Red Hook

New York State Board of Elections, Co-Chairs Peter S. Kosinski and Douglas A. Kellner;
Commissioner Andrew J. Spano

(All via Fedex)

RECEIVED
2019-2 AUG 31 11
COUNTY CLERK'S
OFFICE

ADA Checklist for Polling Places Survey Form

Checklist Survey for Accessible Polling Places

County: Dutchess Election District(s): 5th
 Surveyed on: 3/11/19 Surveyed by: Karen Bucher and Jill Fieldstein
 Polling Place: St. John's Episcopal
 Address: 1114 River Road City: Barrytown State: NY Zip: _____
 City/Town: Red Hook
 Contact Person: John Ferguson
 Telephone #: 705 4529 TTY #: _____ Fax #: _____
 E-mail: _____

Information

Quality of Location: <input type="checkbox"/> Excellent <input checked="" type="checkbox"/> Good <input type="checkbox"/> Fair <input type="checkbox"/> Poor	Location of Polling Entrance: <input type="checkbox"/> Front <input type="checkbox"/> Back <input checked="" type="checkbox"/> Right Side <input checked="" type="checkbox"/> Left Side <input type="checkbox"/> _____
Location of Accessible Entrance: <u>Left side</u>	Voting Space Location: <u>Meeting Room</u>
Terrain Around Polling Place: <input type="checkbox"/> Flat <input checked="" type="checkbox"/> Hilly <input type="checkbox"/> Grassy <input type="checkbox"/> Gravel <input type="checkbox"/> _____	Type of Building: <input type="checkbox"/> Business <input type="checkbox"/> School <input type="checkbox"/> Senior Center <input type="checkbox"/> Government Building <input checked="" type="checkbox"/> Church <input type="checkbox"/> _____
<input checked="" type="checkbox"/> Accessible Tables Available? How Many: _____	# of Electrical Outlets Available in Voting Space: <u>enough</u>
<input checked="" type="checkbox"/> Accessible Chairs Available? How Many: _____	<input type="checkbox"/> A Phone is Provided for Use on Election Day.
Voting Space Size: <u>38</u> ft. x <u>19</u> ft.	Maximum # of Voting Booths: <u>45</u>

Parking

1. Are all accessible parking spaces, including the aisle, relatively level (2%) in all directions? Yes ☒ No ☐
2. Does each accessible parking space have a sign with the symbol of accessibility that is visible when a vehicle is parked in the space? Yes ☐ No ☒
3. If there is a curb between the access aisle and the accessible route to the building, is there a curb ramp that meets the following requirements:
 - a. Is the ramp surface at least 36" wide, excluding flared sides? Yes ☐ No ☐ *No curb*
 - b. Is the slope no more than 1:12? Yes ☐ No ☐
4. Are the accessible parking spaces serving the voting area on the shortest accessible route to the accessible entrance? Yes ☒ No ☐
5. Does each access aisle connect to an accessible route from the parking area to the accessible building entrance? Yes ☒ No ☐

Passenger Drop-Off Areas (If provided)

1. Is a relatively level (1:50 or 2% max slope) access aisle provided adjacent and parallel to the side of the vehicle pull-up area? Yes ☐ No ☐ *N/A*
2. Is the vehicle space relatively level (2% max) Yes ☐ No ☐
3. Is the area for the access aisle at least 5 feet wide and 20 feet long? Yes ☐ No ☐
4. Is the vertical height for the vehicle route to the loading zone, the drop off area, and the exit at least 114" (9' 6") in height? Yes ☐ No ☐
5. Is a curb ramp provided between the vehicle pull up area and the access aisle or the access aisle and the accessible route to the accessible entrance? Yes ☐ No ☐
6. If a curb ramp is provided, is the slope of the ramp surface no more than 1:12? Yes ☐ No ☐
7. Is the width of the curb ramp surface at least 36"? Yes ☐ No ☐
8. Does an accessible route connect the curb ramp to the accessible entrance? Yes ☐ No ☐

Sidewalks & Walkways

1. Is an accessible route provided from accessible parking spaces to the accessible entrance of the building? Yes ☒ No ☐
2. Is an accessible route provided from public sidewalks and public transportation stops on the polling site (if provided) to the accessible entrance of the building? Yes ☐ No ☒ *N/A*
3. Is the accessible route at least 36 inches wide? Yes ☐ No ☐
4. Is the accessible route free of steps and abrupt level changes over 1/2 inch? Yes ☐ No ☐
5. Where an accessible route crosses a curb-is a curb ramp provided? Yes ☐ No ☐
 If so,
 Is the ramp surface at least 36" wide? Yes ☐ No ☐
 Is the slope no more than 1:12? Yes ☐ No ☐
6. If the slope of part of the accessible route is greater than 1:20, does this part meet the following requirements for an accessible ramp? Yes ☐ No ☐
 Is the slope no greater than 1:12? Yes ☐ No ☐
 Is the ramp width at least 36"? Yes ☐ No ☐
 Does the ramp have a level landing at the top and bottom of each ramp section that is at least 60 inches long? Yes ☐ No ☐
 If a ramp is more than 30' long, is a level landing at least 60" long provided every 30' of horizontal length? Yes ☐ No ☐
 Is a level landing, at least 60 x 60, provided where a ramp changes direction? Yes ☐ No ☐
 Are the handrails mounted between 34 & 35" above the ramp surface? Yes ☐ No ☐
 If the ramp or landing has a vertical drop-off on either side of the ramp, is edge protection provided? Yes ☐ No ☐
7. Are all sidewalks and walkways to the voting area free of any objects with bottom edges that are higher than 27 inches but less than 80 inches above the walkway and that extend more than 4 inches into the sidewalk or walkway? Yes ☐ No ☐
8. Are the undersides of exterior stairs enclosed or protected with a cane-detectable barrier so that people who are blind or have low vision will not hit their heads on the underside? Yes ☐ No ☐ *N/A*
9. Are all objects that hang over the pedestrian routes 80" or more above the route? Yes ☐ No ☐ *N/A*

Building Entrance

1. Is there at least one accessible entrance connected to an accessible route? Yes ☒ No ☐
2. Does at least one door or one side of a double leaf door at the accessible entrance provide at least 32 inches clear passage width when the door is open 90 degrees? Yes ☒ No ☐
3. Is the door hardware (e.g., lever, pull, panic bar) usable with one hand without tight grasping, pinching, or twisting of the wrist? Yes ☒ No ☐
4. On the pull side of the door, is there at least 18" clearance provided to the side of the latch if the door is not automatic? Yes ☒ No ☐
5. If there is a raised threshold, is it no higher than ¼ inch at the door and beveled on both sides? Yes ☒ No ☐
6. If an entry has a vestibule, is there a 30" x 48" clear floor space inside the vestibule where a wheelchair or scooter user can be outside the swing of a hinged door? Yes ☒ No ☐

Hallways and Corridors

1. Is there an accessible route, at least 36" wide that connects the accessible entrance to the voting area? (2' length can be 32") Yes ☒ No ☐
 2. Is the accessible route free of steps and abrupt level changes over ½ inch (level changes between ¼" and ½" should be beveled)? Yes ☒ No ☒
 3. Does the route from the accessible entrance to the voting area change levels using a ramp, lift or elevator? Yes ☐ No ☐
 - If yes, is a **ramp** or sloped hallway provided? Yes ☐ No ☐
 - Is the slope no greater than 1:12? Yes ☐ No ☐
 - Is the ramp width at least 36 inches? Yes ☐ No ☐
 - Are the handrails 34 & 38" above surface? Yes ☐ No ☐
- For **elevators**, are the call buttons mounted in an accessible location with the centerlines at 42" above the floor? Yes ☐ No ☐
- Does the floor area of the elevator car provide space for wheelchair users to enter, reach the controls and exit the car? Yes ☐ No ☐
- Are raised letters and Braille characters used to identify each floor button and each control? Yes ☐ No ☐
- Is the elevator equipped with audible tones or bells or verbal annunciators that announce each floor as it is passed? Yes ☐ No ☐

For lifts, is the change in level from the floor to the lift surface ramped or beveled

Yes _____ No _____

Is there at least a 30" x 48" clear floor space on the wheel chair lift?

Yes _____ No _____

Does the lift allow a wheelchair user unassisted entry, operation and exit?

Yes _____ No _____

Are the controls and operating mechanisms mounted no more than 54" above the floor for a side reach or 48" for a forward reach?

Yes _____ No _____

Are the controls and operating mechanisms usable with one hand without tight grasping, pinching or twisting?

Yes _____ No _____

4. At each location on the way to the voting area where the accessible route passes through a door(s), does at least one door meet the following requirements?

Is the clear width for the door opening at least 32" when the door is open 90 degrees?

Yes ☒ No _____

Is the door hardware usable with one hand without tight grasping, pinching or twisting?

Yes ☒ No _____

Is there clear maneuvering floor space in front of each accessible door, and on the pull side, is there at least 18" clear floor space beyond latch side?

Yes ☒ No _____

Is no more than 5 pounds force needed to push or pull open the accessible door?

Yes ☒ No _____

If the answer to those above 4 questions is "no", can the door be propped open to provide an accessible route on election day?

Yes ☒ No _____

5. For voters who are blind/have low vision, are pedestrian routes free of objects that protrude from the side more than 4" into the route with the bottom of the object more than 27" above the floor?

Yes ☒ No _____

Are interior stairs built so that people who are blind cannot hit their heads on the underside?

Yes _____ No _____

N/A

Voting Area

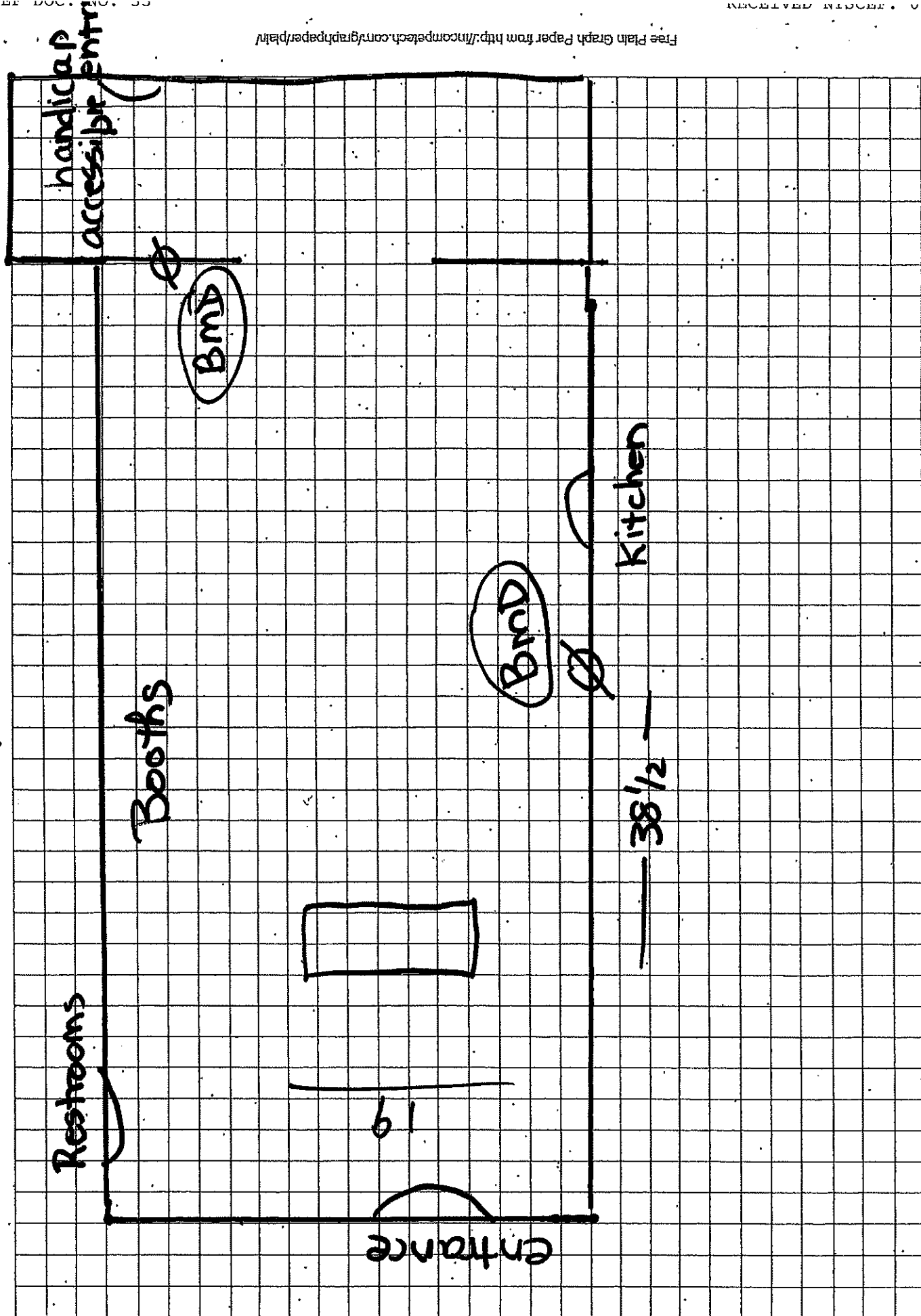
1. Is there an accessible entrance to the voting area? Yes ☒ No _____

2. Within the voting area, is adequate space available on the accessible level for check-in tables and accessible voting station? Yes ☒ No _____

3. Is the voting area free of objects that protrude from the side more than 4" into the route with the bottom of the object more than 27" above the floor? Yes ☒ No _____

4. Is the voting area free of overhead objects that voters may pass under with the bottom edge lower than 80 inches above the floor? Yes ☒ No _____

St. John's Episcopal



Officials turn pizzerias into polling

CNN politics
out

LIVE TV @ ≡



By Lauren Dezenski, CNN

Updated 6:01 AM ET, Thu September 3, 2020



People wait in line to vote in Georgia's primary election on June 9, 2020 in Atlanta, Georgia.

(CNN) — The pandemic has created yet another hurdle for officials trying to plan November's election: Places that typically serve as reliable polling stations are now off the table because of Covid-19.

Facilities like senior centers, schools or even private businesses are no longer options over fears that welcoming voters will increase infection risk for others.

Millions of Americans will vote by mail this year, in part to avoid going to in-person voting locations, but that isn't helping city and county clerks who are facing Centers for Disease Control and Prevention guidance to maintain or even increase the number of polling places they staff on Election Day to maintain social distancing. The guidance explicitly states: "Unless there is no other option, do not increase the number of potential registered voters assigned to each polling place."

This all creates yet another burden for election officials already struggling with the weight of pulling off an election during a pandemic.

"It feels like you are the plague itself for asking for space," said Maribeth Witzel-Behl, city clerk for Madison, Wisconsin. "People are just saying 'No, no, we can't.' It was really almost an impossible task."

Madison had a team of up to four people working for a month to identify new polling locations ahead of the state's partisan primary in August, yet continuously hit roadblocks.

"There were a lot of large buildings that we thought would have been available to us, especially as we offered \$75 for each location, but we were turned down again and again and again," Witzel-Behl said.

Then, the team made a breakthrough: They were able to convince Ian's Pizza, a local restaurant near the University of Wisconsin-Madison, to host a low-traffic polling site.

"Even though they didn't have the optimal space, they at least were able to let us inside and were willing to do so," said Witzel-Behl.

Ian's Pizza owner Nick Martin said it wasn't an automatic yes. He cleared the decision with his leadership team and staff before giving the OK to the city.

"Business right now is a little more low-key than it usually is, but we knew it wouldn't be incredibly intrusive because we don't have a whole lot of volume coming through the doors right now," Martin said.

But that luck ran out in other precincts. The team's last-ditch option? Pitching a tent in a local park.

"There was one location where we ended up having to set up a tent in a park. And that was our only option. That was our Plan B for everything. We'll just find a park where we can throw up a tent," Witzel-Behl said.

Witzel-Behl added that it's entirely possible more Madison voting locations could be housed in tents this November if businesses don't step up.

Photos of a polling location at Ian's Pizza in Madison, Wisconsin during Wisconsin's August primary voting.

"I am not as concerned about it in November as I am looking ahead to next February," Witzel-Behl said of the state's spring primary in February 2021. "There's a decent chance it will be 20 below zero and voting in tents is not even going to be a feasible option."

Added cost

Fulton County, Georgia, which includes Atlanta, is hearing plenty of no's, too. So the state's most populous county is trying to entice participation by offering to pay to decontaminate the location after voting is complete. But that comes at a cost.

"Generally we pay anything from zero to \$2,000 to rent a polling place for Election Day, but now with the decontamination fees, it's going to be significantly more money to rent these facilities," said Richard Barron, Fulton County's director of registration and elections.

Some potential locations are charging so much to rent for Election Day that the county has to say no. "Those facilities, the amount of money they want to charge us is so great that we probably won't use them," Barron said.

Fulton County hired a contractor whose sole job is to identify new polling locations. The county plans on having a minimum of 210 locations in November and as many as 240 -- important for Georgia's only county with more than 1 million residents.

"I know it's unique for us to do this," Barron said of the contractor. "We've always been able to recruit polling locations and then retain them. But now, we're having to add so many and do it in a short amount of time that we had to add outside help to make sure this is done on time."

So much uncertainty

Traditionally, planning for elections happens months in advance. Back in March, when election officials in Dutchess County, New York, saw coronavirus deaths in nursing homes in Washington state, they made an executive decision: No voting locations in nursing homes.

"We decided very early on, prior to any executive orders, that we were not going to send voters into our nursing homes poll sites, because it was just too dangerous for that vulnerable age group," said Elizabeth Soto, the Democratic election commissioner in Dutchess County. "We did not go in for the primary and we have no intention of opening the poll sites in nursing homes for November."

That meant five polling locations were now off the table, though Soto and her Republican counterpart Erik Haight say relocation has so far gone smoothly.

Every state's approach to securing polling locations is different. Generally, if the polling place is located in a privately owned building, the owner must grant permission to use the facilities to process voters, according to the federal Election Assistance Commission. Sometimes there are contracts, and sometimes these facilities charge money.

In New York, state law allows elections to be held in any tax-exempt space, which has helped Dutchess County lure up new locations.

"We try to work as amicably with our poll site partners as we can, but if we determine that that's going to be a problem site, they lack the authority to say no to us," said Haight. "It's essentially their civic duty because they don't pay taxes."

Closures complicate

A good polling location usually requires accessibility, like parking for voters, a drop off or loading area, an entrance to the polling place, and pedestrian routes (both exterior and interior) that voters use to get to the voter check-in and voting area, according to the EAC. And now, it should also allow social distancing.

In Dutchess County, if schools are closed on November 3 due to the pandemic, it frees up even more space for the election.

"Not only are there no students around, but it frees up parking," Haight said. "Having schools closed Election Day is very convenient for us."

In Fulton County, closed libraries meant more room for officials to spread out during August voting.

Looking ahead to November, space from potentially empty colleges and universities is also an option.

"With most higher education institutions at least beginning remotely this semester, that community colleges and universities can and should be using their facilities for voting this November," California Secretary of State Alex Padilla told CNN. California has also announced a number of sports stadiums that will serve as voting centers.

"We're trying to get creative and innovative. If they have space for physical distancing and plenty of parking, it's a way to do good," Padilla said.

The uncertainty around school openings also leads to complications, like in Madison. Schools were closed in August, which made them available as safe polling locations in the primary. The district is beginning the year online, but may bring students back to the classroom on the first day of the second quarter -- which also happens to be Election Day.

"That's hanging over us right now. It's hard to know what to plan because so much can change so quickly," Witzel Behl said. "As we've seen with the pandemic, we might think it's looking like we'll be able to be in the schools and then the data that's provided through public health means that the schools will open on November 3 and suddenly we're out on the street."

Search CNN...



US
World
Politics
Business
Opinion
Health

Entertainment

Tech

Style

Travel

Sports

Videos

Coupons

More

Weather



FOLLOW CNN POLITICS



[Terms of Use](#) [Privacy Policy](#) [Do Not Sell My Personal Information](#) [AdChoices](#) [About Us](#) [CNN Studio Tours](#)

[CNN Store](#) [Newsletters](#) [Transcripts](#) [License Footage](#) [CNN Newsource](#) [Sitemap](#)

© 2020 Cable News Network. A Warner Media Company. All Rights Reserved.

CNN Sans™ & © 2016 Cable News Network.

From: Haight, Erik ehaight@dutchessny.gov
Subject: FW: Bard College as a Poll Site
Date: September 16, 2020 at 1:03 PM
To: David Jensen david@djensenpllc.com



Erik J. Haight
Republican Commissioner of Elections
Dutchess County Board of Elections
O (845) 486-2475
D (845) 486-2482
M (845) 392-2881
Fax: (845) 486-2485
ehaight@dutchessny.gov
<https://www.elections.dutchessny.gov/>

From: Vaidian, Anil <avaidian@dutchessny.gov>
Sent: Wednesday, September 16, 2020 12:55 PM
To: Haight, Erik <ehaight@dutchessny.gov>
Cc: Cady, Wendy <wcady@dutchessny.gov>; Tegtmeier, Catherine <ctegtmeier@dutchessny.gov>
Subject: RE: Bard College as a Poll Site

Erik,

I apologize for the delay.

As per our previous conversation, I believe having a poll location on Bard College campus may increase the potential for community transmission of COVID-19. The following reasoning buttresses my above statement:

- The college age population through out the country is currently seeing a surge in cases. In fact, the highest case rates in the country are found in college town/communities.
- Most of the cases on college campuses will be asymptomatic to mild thereby increasing the likelihood of transmission. Many of the colleges do not have regular surveillance testing.
- The campus population should be cohorted and not be allowed to mix with the community as much as possible if there are cases on campus. It is reasonable to assume that there will be cases and transmission on campuses that will not be identified.
- Most of the poll workers are elderly and are at high risk for morbidity and mortality.
- We are heading into influenza season which will undoubtedly complicated the identification and management of COVID-19 cases.

While I understand the convenience and benefit of having a polling location on campus, I feel the public health risks exceed any benefit.

With regards,

AK Vaidian, MD MPH

From: Haight, Erik <ehaight@dutchessny.gov>
Sent: Wednesday, September 16, 2020 12:21 PM
To: Vaidian, Anil <avaidian@dutchessny.gov>
Subject: RE: Bard College as a Poll Site

Doctor,

Have you had a chance to memorialize our conversation yet? Thank you,

Erik J. Haight
Republican Commissioner of Elections
Dutchess County Board of Elections
O (845) 486-2475
D (845) 486-2482
M (845) 392-2881
Fax: (845) 486-2485
ehaight@dutchessny.gov
<https://www.elections.dutchessny.gov/>

From: Haight, Erik
Sent: Friday, September 11, 2020 4:19 PM
To: Vaidian, Anil <avaidian@dutchessny.gov>
Subject: Bard College as a Poll Site

Dr. Vaidian,

Some students and Faculty have expressed their desire for me to move a poll site onto campus. Red Hook Election District 5 is composed of student and non-student member of the public and doing so would intermingle them along with Election Day workers from off campus. Can you provide me with your opinion on this subject with a focus on the timing of this with Election Day being November 3rd. Thank you,

Erik J. Haight
Republican Commissioner of Elections
Dutchess County Board of Elections
(845) 486-2475
Fax: (845) 486-2485
ehaight@dutchessny.gov