

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of

ANDREW GOODMAN FOUNDATION,
ELECTION@BARD, SADIA SABA, ERIN CANNAN,
AND LEON BOTSTEIN,

VERIFIED PETITION

Petitioners,

-against-

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

Respondents,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules.

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PETITIONERS by their attorneys, VENABLE LLP and BROMBERG LAW LLC,
respectfully allege at all times mentioned herein as follows:

INTRODUCTION

1. This emergency action and filing is necessary to make certain that students, faculty and staff at Bard College (“Bard”), along with their families, and that voters generally in the 5th Legislative District in Dutchess County may easily and safely vote in the upcoming presidential election.

2. Pursuant to Governor Cuomo’s Executive Order 202.58 (Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency), issued on August 28, 2020, the Dutchess County Board of Elections must “send an information mailing to every registered voter by September 8, 2020” containing voter information for the general election, including “[i]nformation regarding . . . the voter’s election day polling place location.”

Accordingly, Petitioners request emergent relief to stay the issuance of this September 8, 2020 mailing, and ultimately for temporary and permanent relief to secure a polling place on the Bard College campus.

3. This Verified Petition is supported by the Memorandum of Law dated September 4, 2020 and Declarations of Petitioners Sadia Saba, Erin Cannan, and Leon Botstein, attached hereto as Exhibits 1 through 3, as well as Bard Director of Accessibility and Disability Erika van der Velden (Exhibit 4) and Bard College Professor of Biology Felicia Kessing (Exhibit 5).

4. The right to vote is a fundamental right of all Americans—including young voters. The right to vote free of age discrimination was secured in the United States Constitution nearly 50 years ago through the ratification of the Twenty-Sixth Amendment. This amendment is the quickest to be ratified in U.S. history, in large part due to unanimous cross-partisan recognition that young people serve a critical role in securing our democracy. The State of New York ratified the Twenty-Sixth Amendment on June 2, 1971.¹

5. Young voters face unique, persistent and sometimes thinly veiled attacks on their access to the franchise. Many localities and states target young voters with restrictive election laws, regulations, and practices. The structural obstacles that young people face due to voter restrictions is evident by their outsized reliance on provisional ballots: one in four Millennials voted provisionally during the last presidential cycle, compared to 6% of Baby Boomers and 2% of the Greatest Generation. In addition to this outsized reliance, provisional ballots cast by young voters are disproportionately rejected. One federal court observed that voters aged 18 to 21 had provisional ballots rejected at a rate more than four times higher the rejection rate for provisional

¹ See Yael Bromberg, *Youth Voting Rights and the Unfulfilled Promise of the Twenty-Sixth Amendment*, 21 U. Penn J. Const. Law, 1105 (May 2019), available at: <https://ssrn.com/abstract=3442198>.

ballots cast by voters between the age of 45 to 64.²

6. The currently designated polling place for the 5th Legislative District in Dutchess County is the Episcopal Church of St. John the Evangelist, located at 1114 River Road, Red Hook, New York 12571 (the “Church”).

7. The Church is inadequate as a polling place in every respect. As explained below, it is in a relatively remote location; is inaccessible by public transportation; has inadequate and difficult parking; is in violation of the Americans With Disabilities Act; and—more important than ever, in this pandemic—is simply too small to accommodate voters, persons waiting to vote, poll workers, check-in tables, scanners and printers in a fashion that will permit social distancing.

8. For these and other reasons, designation of the Church as a polling place violates the New York State Constitution and New York State Election Law, and disserves public health imperatives arising from the pandemic.

9. Petitioners have long and repeatedly requested that the Dutchess County Board of Elections (“Dutchess BOE”) designate Bard’s Bertelsmann Campus Center (the “Bard Location”) in lieu of or in addition to the Church as a polling place.

10. The Town of Red Hook Board unanimously supports this request, Ex. A (2020 Resolution), and has supported similar requests. Ex. B (2016 Resolutions).

11. Respondent Dutchess BOE Democratic Chair Elizabeth Soto supports this request. Ex. C (Letter dated March 3, 2020).

12. Despite this support, the BOE has not approved the Bard Location as a polling site, necessitating this petition.

PARTIES

² *Id.* at 1145-46.

13. Petitioners ANDREW GOODMAN FOUNDATION, INC. (“AGF”) and ELECTION@BARD are organizations focused on protecting voting rights.

14. AGF is a nonpartisan, non-profit organization with the mission of making young voices and votes a powerful force in democracy. In the summer of 1964, Andrew Goodman, AGF’s namesake, participated in Freedom Summer, a voter registration project aimed at registering African-American voters in Mississippi. On Andrew Goodman’s first day working on that project, June 21, 1964, he and his fellow civil rights advocates James Chaney and Michael Schwerner were kidnapped and murdered by members of the Ku Klux Klan. Today, AGF supports youth leadership development, voting accessibility, and social justice initiatives on campuses across the country, with training, mentoring, and mini-grants to select institutions as well as providing other financial assistance to students. AGF’s Vote Everywhere initiative is a national, nonpartisan, civic engagement movement of student leaders and university partners. The program provides extensive training and resources, as well as a peer network to support its Student Ambassadors while they work to register voters, remove voting barriers, organize Get Out The Vote activities, and tackle important social justice issues on their college campuses. Vote Everywhere is located on over 75 campuses in 25 states plus Washington, D.C., including on Bard College. To achieve its mission, AGF devotes substantial time, effort, and resources to training and supporting Student Ambassadors, including two to three at Bard College every year, who work with their home campuses to encourage voting, register voters, and advocate for the voting rights of their communities.

15. Petitioner ELECTION@BARD is a student-run organization at Bard located at 30 Campus Road, Annandale-on-Hudson, New York 12504. Bard is a private liberal arts college located in the 5th Legislative District of Dutchess County. Although 68% of the eligible voters in

its voting district reside on campus, the assigned polling location at the Church is miles from campus and inadequate to meet the needs of the community. The Election@Bard initiative facilitates voter registration for students, provides information about candidates, hosts forums in which candidates and students can meet, and protects the right of students to vote and have their votes counted. Students who run this organization are registered voters for the 5th Legislative District in Red Hook whose polling place would be St. John's Church.

16. Petitioner SADIA SABA is a student at Bard College residing in Red Hook, New York who is registered to vote in the 5th election district. She currently serves as an Andrew Goodman Foundation Student Ambassador. See Declaration of Sadia Saba, attached as Exhibit 1.

17. Petitioner ERIN CANNAN is the Vice President for Student Affairs at Bard College who has worked at the polling place located at St. John's Episcopal Church for ten (10) years, and who will again work the polls this November. She currently serves as an Andrew Goodman Foundation Vote Everywhere Campus Champion. See Declaration of Erin Cannan, attached as Exhibit 2.

18. Petitioner LEON BOTSTEIN is the President of Bard College, and has served in this role for forty-five (45) years since 1975. As an on-campus resident, he is also registered to vote in the 5th election district. See Declaration of Leon Botstein, attached as Exhibit 3.

19. Respondent DUTCHESS COUNTY BOARD OF ELECTIONS ("Dutchess BOE"), led by its commissioners, ERIK J. HAIGHT and ELIZABETH SOTO, is charged with designating polling places in accord with New York Election Law to be used during all elections. Respondent Dutchess BOE administers Local, State, and Federal Elections in the County of Dutchess and more specifically in the Town of Red Hook. The Dutchess BOE is comprised of two Commissioners and two Deputy Commissioners and exists pursuant to the Laws of the State of

New York.

20. Respondent ERIK J. HAIGHT is the Republican Commissioner of the Dutchess BOE.

21. Respondent ELIZABETH SOTO is the Democratic Commissioner of Dutchess BOE.

FACTS

22. On March 7, 2020, Governor Andrew Cuomo issued Executive Order 202, declaring a state of emergency amid a global health crisis after new cases of the coronavirus were confirmed in New York state.

23. On March 15, 2020, the Dutchess BOE designated the Church as the polling place for the 5th Legislative District, pursuant to New York Election Law § 4-104.

24. This designation is effective for one (1) year, making the Church the polling location for the General Election on November 3, 2020.

25. On August 28, 2020, Governor Andrew Cuomo issued Executive Order (“EO”) 202.58 that requires New York State BOEs to send a mailing to registered voters that contains information on (a) mail in voting, (b) early voting, and (c) where to vote in person. Ex. D (EO 202.58).

The Church Does Not Meet The Requirements for Voter Access Under the New York State Constitution and New York State Election Law

26. The Church fails to meet the requirements for voter access under the New York State Constitution and New York State Election Law.

The Church Is On A Treacherous Road That Is Not On A Public Transportation Route

27. River Road, where the Church is located, is an unlit, narrow, and winding country road.

28. Due to these safety concerns, Bard College explicitly prohibits Bard-authorized drivers from driving on River Road for any purpose other than shuttling students to the Church to vote. Ex. E (Bard College Van Operation Requirements).

29. River Road has no sidewalks or shoulders, making walking or biking perilous. It is particularly perilous for those many members of the Bard community, including students, faculty and staff, and their families, who walk the 1.3 mile stretch on River Road from the campus to the Church and back.

30. The Church is not accessible by public transportation.

The Church Lacks Adequate, Accessible Parking

31. The Church has limited parking, consisting of a lower lot and an upper lot. Ex. F (Church site key).

32. These lots require either walking up or down an incline to get to the Church's entrances, creating a challenge for mobility-impaired voters.

33. Neither lot has designated handicap parking spaces.

The Church Is Too Small To Accommodate Voting and Waiting to Vote

34. In the 2010 Dutchess BOE Polling Place Spatial Requirements Survey ("2010 Survey"), Aspinwall Hall measured 750.75 square feet (38.5 x 19.5). Ex. G (2010 Survey).

35. At that size, the Church has been cramped during voting hours.

36. Voters have had to wait in long lines outside the Church, because the limited space inside the Church allows only a few people to wait inside. See Declaration of Erin Cannan.

37. In the 2010 Survey, the Church did not respond to the question of how many people can fit on line in the polling area before the line reaches outside.

38. In the November 2018 election, voters waited outside in the rain for hours; some found cover in tents provided by Bard.

39. In 2019, a second survey was conducted (the “2019 Survey”) that showed that, at 750.75 square feet, Aspinwall Hall could accommodate only 4-5 standing voting booths. Ex. H (2019 Survey).

40. The 2010 Survey shows that all seven (7) voting booths historically were located on a single wall measuring 38.5 feet. Ex. G. The 2019 Survey does not show the location of voting booths. Ex. H.

41. With seven (7) voting booths against a single wall, there would be a maximum of 5.5 feet between voting booths—too little to permit social distancing this year. With only four (4) to five (5) voting booths, there would be too few booths for the number of voters.

42. In the 2019 Survey, Aspinwall Hall measured 731.5 square feet (38 ½ x 19). Ex. H. p. 1.

43. Upon information and belief, Aspinwall Hall has been undergoing construction and remains under construction. Bathrooms have been modified and closets installed, which has further reduced the square footage to approximately 700 square feet.

44. This Election Day will require seven (7) standing voting booths.

45. The 2019 Survey reports that Aspinwall Hall still can accommodate only “4-5” voting booths.

46. The Church also will not be able to accommodate six (6) poll workers, a handicap accessible ballot marking device, an optical scanner for completed ballots and registration table, as well as voters and those waiting to vote

47. Overall, the Church is simply too small to do what needs to be done, and to permit social distancing among those participating.

The Church Is In Violation of the Americans With Disabilities Act, and Thus In Violation of New York State Election Law.

48. New York State Election Law § 4-104(1)(a) requires that a polling location comply with the Americans With Disabilities Act.

49. The United States Department of Justice has published an “ADA Checklist for Polling Places,” available at <https://www.ada.gov/votingchecklist.pdf> (the “Checklist”).

50. The actual Checklist appears at pages 17-25.

51. The limited parking at the Church fails the following provisions of the Checklist:

- **A1: Is there at least one designated van accessible space with signage with the International Symbol of Accessibility and designated “van accessible”?** (§§208.2, 208.2.4, 502.6) No.
- **A4: Are designated accessible parking spaces and the access aisles serving them on a level surface, with slopes not exceeding 1:48 in all directions?** (Note: Curb ramps may not be part of an access aisle since they include slopes greater than 1:48.) (§502.4) No. Even if a van dropped off someone near the accessible ramp, that ramp is located on a slope.

52. The ramp at the Church’s main entrance on the western façade violates the following provisions of the Department of Justice Checklist:

- **G1: Is the running slope of the ramp no greater than 1:12?** (§405.2). No.
The slope not only does not meet the recommended standard of 1:20, it does

not meet the standard of 1:12, coming in at 1:7.5 (13 inches of rise per 8 feet of ramp).

- **G4: Is the ramp, measured between handrails, at least 36” wide? (§405.5)**

No. There is a handrail on only one side of the ramp. There are handrails on stairs leading to the other side of the ramp (see G8 and G9 below) and on those the space is 28.4”, considerably less than the prescribed 36”.

- **G5: Does the ramp have a level landing that is at least 60” long, at the top and bottom of each ramp section? (§405.7)**

No. The landing area at the bottom is not level and the landing area is less than 60 inches long. Note that both of the landing areas (at the bottom of the ramp and the top of the ramp) are also less than 25 square feet as prescribed by the ADA.

- **G8: If the rise of the ramp is greater than 6”, are handrails provided that are between 34” and 38” above the ramp surface? (§§405.8, 505.4)**

No. There are rails on only one side of the ramp (though there are stairs with rails: see below and the handrails on the stairs are 28.4” apart and not 36” apart as noted in G4).

- **G9: If the rise of the ramp is greater than 6” and the ramp or landing has a vertical drop-off on either side of the ramp, is edge protection**

provided? (§405.9) No. There are handrails on one side and an edge on the other, but the top landing of the ramp has an opening for stairs, meaning that someone in a wheelchair or other wheeled device could roll off the ramp and down the stairs if they proceeded up the (too steep) ramp too quickly.

53. This noncompliant ramp discharges into Breck Hall, which has an unevenly surfaced floor that voters must traverse on their way to Aspinall Hall.

54. The 2019 Survey Form failed to answer entire sections of questions regarding ramp compliance, ADA access and overall accessibility. Ex. H. Inexplicably, the 2019 Survey Form simply lists “N/A” for the entire ramp compliance section, although the ramp is the only way to enter the building.

55. Other violations of the ADA at the Church include the lack of ADA-accessible restrooms.

The Bard Location Is Superior To The Church In Every Respect, And Fully Satisfies The New York State Constitution and New York Election Law

The Bard Location Is Easily Accessible to Non-Drivers

56. Members of the Bard community, including students, faculty and staff, and their families, can walk to the Bard Location.

57. Non-drivers in the rest of the community can use the Dutchess County Loop Bus Loop C route, which runs to the campus.

The Bard Location Offers Ample, Easy Parking

58. The Bard Location offers ample parking, all of flat terrain.

59. Parking at the Bard Location complies with the Americans With Disabilities Act.

60. There are several handicapped parking spots that provide easy access to the front door of the Multi-Purpose Room that would be the actual voting location.

The Bard Location is Spacious and ADA Compliant, Enabling Social Distancing of Voters, Those Waiting to Vote, and those Working in the Polling Location

61. The Bard Location's Multi-Purpose Room measures approximately 2,260.44 square feet, over three times the size of the Church.
62. The Multi-Purpose Room has high ceilings and multiple entrances and exits that will permit social distancing of those coming, waiting and going.
63. The Multi-Purpose room is compliant with the Americans With Disabilities Act and is fully accessible to those with disabilities.
64. The Multi-Purpose Room will easily accommodate this year's requirement of six (6) poll workers, as well as seven (7) standing voting booths, a handicap accessible ballot marking device, an optical scanner for completed ballots, and registration table.
65. The Multi-Purpose Room has the space to position voting booths more than six (6) feet apart, allowing for social distancing while voting. Ex. I (photos of Bard location, attached as Exhibit I).
66. The Multipurpose Room has wide, spacious hallways that will enable people waiting to vote to do so inside, sheltered from the elements, and in a social distant fashion.
67. The Multipurpose Room has multiple handicapped accessible bathrooms.

FIRST CAUSE OF ACTION
VIOLATION OF THE NEW YORK STATE CONSTITUTION

68. The Petitioners repeat and reiterate each and every allegation contained in the preceding paragraphs, with the same force and effect as if herein fully set forth at length.
69. The New York State Constitution provides in relevant part:

Article I Section 1 [Rights, privileges and franchise secured; uncontested primary elections]

No member of this state shall be disenfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or

judgment of his or her peers, except that the legislature may provide that there shall be no primary election held to nominate candidates for public office or elect persons to party positions for any political party or parties in any unit of representation of the state from which such candidates or persons are nominated or elected whenever there is no contest or contests for such nominations or election as may be prescribed by general law.

70. The New York State Constitution provides in relevant part:

Article II Section 1 [Qualifications of voters]

Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election.

71. By its actions, the Respondents have burdened Petitioners with onerous requirements and have constructively denied their right to vote as guaranteed by Article I, Section 1 and Article II Section 1 of the New York State Constitution.

SECOND CAUSE OF ACTION
VIOLATION OF NEW YORK ELECTION LAW – ADA COMPLIANCE

72. The Petitioners repeat and reiterate each and every allegation contained in preceding paragraphs, inclusive of this Petition, with the same force and effect as if herein fully set forth at length.

73. New York Election Law § 4-104(1)(a) requires each polling place to be accessible to citizens with disabilities and comply with the accessibility guidelines of the Americans with Disabilities Act of 1990.

74. By selecting the Church as the polling site, Respondents failed to perform a duty enjoined by New York State Election Law and acted arbitrarily, capriciously, and in abuse of Respondents' discretion.

THIRD CAUSE OF ACTION

VIOLATION OF NEW YORK ELECTION LAW – PUBLIC TRANSIT

75. The Petitioners repeat and reiterate each and every allegation contained in the foregoing, inclusive of this Petition, with the same force and effect as if herein fully set forth at length.

76. New York Election Law § 4-104(6)(a) states that “Each polling place designated, whenever practicable, shall be situated directly on a public transportation route.” The nearest public transportation stop is located approximately 0.5 miles from the current polling site in violation of this provision.

77. Respondents have violated New York State Election Law by failing to provide a polling location with access to public transportation when such a polling location is available.

FOURTH CAUSE OF ACTION **VIOLATION OF NEW YORK ELECTION LAW – CONSTRUCTION SURVEY**

78. The Petitioners repeat and reiterate each and every allegation contained in the foregoing paragraphs, inclusive of this Petition, with the same force and effect as if herein fully set forth at length.

79. New York Election Law § 4-104(1)(b) requires the county BOE to cause an access survey to be conducted for every polling site to verify substantial compliance with accessibility standards. Each polling site shall be evaluated prior to its designation, “...or upon changes to the facility.” [emphasis added].

80. Aspinwall Hall is currently undergoing construction and has not been re-surveyed as a polling place.

81. Respondents have failed to review the changes to the Church and certify compliance of the changes to the facility in violation of New York State Election Law is a failure of Respondents' duty enjoined by law.

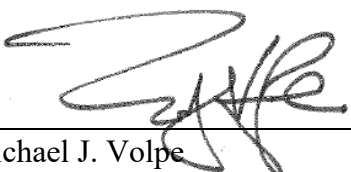
82. The Petitioners have not previously sought the relief requested herein.

PRAYER FOR RELIEF

WHEREFORE, Petitioner pray that this Court:

- a. Directing that the Dutchess County Board of Elections change the polling place for the 5th Legislative District of Dutchess County from St John's Episcopal Church located at 1114 River Road, Red Hook, New York 12571 to the Bertelsmann Campus Center at Bard College, 30 Campus Road, Annandale-on-Hudson, New York 12504 or make the latter location a supplemental location providing notice of same to all voters in the election district;
- b. Stay issuance of polling guidance in accordance with the Executive Order to impacted voters, and/or to the extent same has issued provide polling guidance indicating to all voters in the election district that the polling location has been moved to or supplemented by a location at Bard College; and
- c. Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 4 , 2020

By: 
Michael J. Volpe

Venable LLP
1270 Avenue of the Americas, 23rd Fl.
New York, New York 10017



By:

Yael Bromberg, Esq.
BROMBERG LAW LLC
43 West 43rd Street, Suite 32
New York, NY 10036-7424
T: (212) 859-5083
F: (201) 586-0427
ybromberg@bromberglawllc.com


Attorneys for Petitioners

VERIFICATION

[illegible]

The undersigned being one of the attorneys for the Petitioner herein, hereby affirms under penalties of perjury and pursuant to CPLR § 2106 that he has read the foregoing verified Petition and knows the contents thereof to be true to deponent's own knowledge except as to those matters which are alleged upon information and belief and as to them deponent believes them to be true. The source of your affirment's information and belief are oral statements, books and records furnished by the Petitioner, its agent and/or employees and material contained in the office files. This affirmation is made by Petitioner's counsel pursuant to RPAPL § 741. The attorney's signature below is also pursuant to section 130-1.1-a of the Rules of the Chief Administrator (22 NYCRR).

Date: New York, New York
September _____, 2020


Michael J. Volpe, Esq.

Michael J. Volpe, Esq.
Venable LLP
Attorneys for Petitioner
1270 Avenue of the Americas, 23rd Floor
New York, New York 10020

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of

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PETITIONER'S MEMORANDUM OF LAW

VENABLE LLP
1270 Avenue of the Americas, 24th Floor
New York, New York 10020
(212) 808 – 5676
By: Michael Volpe
Joshua Rothman
Hilary Atzrott
Megan Hynes
John Walsh

BROMBERG LAW
Yael Bromberg, Esq.
43 West 43rd Street, Suite 32
New York, NY 10036-7424
(212) 859-5083
ybromberg@bromberglawllc.com

Attorneys for Petitioners

PRELIMINARY STATEMENT

It cannot be said too often that voting is an established fundamental right. Two provisions of the New York State Constitution explicitly protect that right. New York State Election Law further protects the right of New Yorkers to participate in our electoral process. When, as here, a county Board of Elections impermissibly designates a polling place that violates applicable law, the rights of voters are violated, necessitating judicial relief.

Petitioners ANDREW GOODMAN FOUNDATION (“AGF”), ELECTION@BARD, SADIA SABA, ERIN CANNAN, and LEON BOTSTEIN, respectfully submit this memorandum of law in support of their Petition for relief made pursuant to Section §§ 7801(1) and 7803(3) of the New York Civil Practice Law and Rules (“CPLR”). Petitioners challenge the designation by Respondents DUTCHESS COUNTY BOARD OF ELECTION (“Dutchess BOE”), and Dutchess BOE commissioners in their official capacities ERIK J. HAIGHT (“Commissioner Haight”) and ELIZABETH SOTO (“Commissioner Soto”) (Commissioner Haight and Commissioner Soto collectively referred to as “the Commissioners”) of the Episcopal Church of St. John the Evangelist, 1114 River Road, Barrytown, New York 10257 (the “Church”) as the sole polling place for Dutchess County’s 5th Legislative District (the “5th District”), and the Dutchess BOE’s refusal to designate a proposed location on the campus of Bard College, as arbitrary, capricious, and erroneous as a matter of law.

STATEMENT OF FACTS

Petitioners repeat and reiterate all facts in the Verified Petition dated September 3, 2020 (the “Petition”).¹ In summary, the essential facts are:

The Church is an inadequate polling location in every respect. It is in a relatively remote location; it is inaccessible by public transportation; it has inadequate and difficult parking; it is in violation of the Americans With Disabilities Act; and—more important than ever, in this pandemic—it is simply too small to accommodate voters, persons waiting to vote, poll workers, check-in tables, scanners and printers in a fashion that will permit social distancing. Petition at ¶¶7 and 30, 41, 48-55.

The Bard Location is a superior polling location in every respect. It is closer to most voters in the 5th District; it is accessible by public transportation; it has ample, easy parking; it complies with the Americans With Disabilities Act; and it is spacious, enabling social distancing among voters, persons waiting to vote and poll workers amidst voting booths, check-in tables, scanners and printers. Petition at ¶¶56-67.

ARGUMENT

I. PETITIONER'S CLAIMS ARE APPROPRIATELY ADDRESSED BY AN ARTICLE 78 PROCEEDING

CPLR Article 78 authorizes a petitioner to seek judicial relief from a final determination of an agency or officer that is "made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" or when an agency or officer fails to act upon a duty required by law. NY CLS CPLR §§ 7801, 7803(3) (2012). The reviewing Court in an Article 78 proceeding “exercises a genuine judicial function”

¹ Terms capitalized but not otherwise defined herein shall have the meaning ascribed in the Petition.

and does not simply confirm a determination because it was rendered by an administrative agency. See *300 Gramatan Ave. Associates v. State Div. of Human Rights*, 45 N.Y.2d 176, 379 N.E.2d 1183 (1978). An agency determination must be overturned if (i) not supported by substantial evidence, (ii) it is arbitrary and capricious, and/or (iii) it is otherwise unlawful. See, e.g., *Save America's Clocks Inc. v. City of New York*, 52 Misc. 3d 282, 28 NYS3d 571) An arbitrary and capricious determination is one made "without sound basis in reason or regard to the facts." *Matter of Peckham v. Calogero*, 12 N.Y.3d 424, 911 N.E.2d 813 (2009).

New York courts have recognized that Article 78 proceedings are appropriate for challenging the designation of a polling site. A court may overturn a designation if it is so arbitrary, unreasonable, and capricious as to constitute a plain abuse of discretion. *Koeppel v. Southard*, 30 Misc. 2d 463, 223 N.Y.S.2d 723 (Sup. Ct. Nassau Co. 1961) provides a helpful contrast. There, the court upheld the Board of Election's long-time polling place selection that had parking and other facilities, noting that there was no "evidence...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." Here, there is plentiful evidence of the Church's inadequacy as a voting location. Petition ¶¶27-55. In *Matter of Krowe v. Westchester Cty. Bd. of Elections*, 155 A.D.3d 672, 63 N.Y.S.3d 509 (N.Y. App. Div. 2017), the court found the Board of Elections abused its discretion in relocating a voting site three weeks before an 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," with "no indication that the Board was informed or inquired as to the ... 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." Here, the converse is true: the Board is fully aware of the objective

inadequacies of the Church and the demonstrable advantages of the Bard Location. Such determinations must be made while fully informed and in sound reason, or Article 78 will have been violated.

On March 7, 2020, Governor Andrew Cuomo issued Executive Order 202, declaring a disaster emergency in the State of New York due to COVID-19. On March 15, 2020 Respondents' designated the Church as the 5th District's sole polling place. In accordance with the directive of the Chief Judge of the State to limit court operations during COVID-19, statutes of limitations were tolled until April 19, 2020. Subsequently, Executive Orders 202.14, 202.28, 202.38, and 202.55 extended the tolling period through September 4, 2020. Thus, Petitioners' case is timely.

II. RESPONDENTS' DESIGNATION OF THE CHURCH AS THE SOLE POLLING LOCATION IN DISTRICT 5 VIOLATES THE NEW YORK CONSTITUTION AND STATE LAW

A. The BOE's Polling Location places an undue burden on Petitioners and all registered voters within District 5 which constructively denies their right to vote in violation of the New York State Constitution.

All voters within New York State shall have equal, easy, and unrestricted opportunities to vote. *Callaghan v. Voorhis*, 252 NY 14, 17 (1929). Article I, Section 1 of the New York State Constitution states:

No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or judgment of his or her peers, except that the legislature may provide that there shall be no primary election held to nominate candidates for public office or elect persons to party positions for any political party or parties in any unit of representation of the state from which such candidates or persons are nominated or elected whenever there is no contest or contests for such nominations or election as may be prescribed by general law.

N.Y. Const. art. I, § 1.

Article II, Section 1 of the New York State Constitution states:

Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election.

N.Y. Const. art. II § 2.

Any system of election which unnecessarily prevents a person from voting violates the New York State Constitution. See *Hopper v. Britt*, 203 NY 144, 150 (1911)(“Inequality in the facilities afforded the electors in casting their votes may defeat the will of the people as thoroughly as restrictions which the Courts would hold to operate as disenfranchisement of voters.”)

New York State Election Law declares that the Board of Elections “shall have the power and duty to . . . take all appropriate steps to encourage the broadest possible voter participation in elections” NY CLS Elec § 3-102 [14]. See *Board of Elections in the City of New York v Mostofi*, 65 Misc. 3d 876, 108 N.Y.S.3d 819 (2019)(the addition of an interpretation program at polling sites for those with limited English proficiency was consistent with Election Law’s policy encouraging broad voter participation.)

Respondents’ designation of the Church violates the New York State Constitution and New York Election Law. It constrains the ability of the vast majority of eligible voters within the 5th District – residents of the Bard campus, most of whom are young voters – to vote. The Dutchess BOE’s designation requires Bard campus residents to either (i) walk on unsafe public roads, without sidewalks or lighting, to the Church or (ii) to have access to a vehicle, although even that presents an issue because most students do not keep a car on campus, and even if they

did, there are limited parking options at the Church. Both options unacceptably constrain their franchise, in violation of the New York State Constitution and New York Election Law. In *In re Village of Harrison*, 80 Misc. 2d 543, 363 N.Y.S.2d 205 (Sup. Ct. 1974), the court held that the designation of a polling place in the population center of a town—like the Bard campus—as opposed to the geographic center, was adequate because it was convenient for most voters.

This 1974 holding in *In re Village of Harrison* is consistent with the constitutional history at the time. The Twenty-Sixth Amendment had recently been ratified – the quickest Amendment to be ratified in U.S. history, in large part due to nearly unanimous cross-partisan support for the principle that young people serve a critical function in the practice of democracy. See Yael Bromberg, *Youth Voting Rights and the Unfulfilled Promise of the Twenty-Sixth Amendment*, 21 U. Penn J. Const. Law, 1105 (May 2019), available at: <https://ssrn.com/abstract=3442198>. New York ratified the Twenty-Sixth Amendment on June 2, 1971. Of pertinence here, the Senate Report accompanying the Senate Joint Resolution that was ultimately ratified by the states as the Twenty-Sixth Amendment, provides:

[F]orcing young voters to undertake special burdens . . . [such as] *traveling to one centralized location in each city*, for example – in order to exercise their right to vote might well serve to dissuade them from participating in the election. This result, and the election procedures that create it, are at least inconsistent with the purpose of the Voting Rights Act, which sought to encourage greater political participation on the part of the young; such segregation might even amount to a denial of their 14th Amendment right to equal protection of the laws in the exercise of the franchise.

S. Rep. No. 92-26, at 14 (1971) (emphasis added) (accompanying S.J. Res. 7, 92d Cong. (1971)).

Republican President Richard Nixon ceremoniously signed the Twenty-Sixth Amendment into law, summarizing many of the themes that captured the nation's attention in support for this nearly unanimous measure. Nixon explained that young people serve a critical role in the democratic process, infusing the practice of democracy with "some idealism, some courage, some stamina, some high moral purpose that this Nation always needs, because a country, throughout history, we find, goes through ebbs and flows of idealism." Richard Nixon, U.S. President, Remarks at the Ceremony Marking the Certification of the 26th Amendment to the Constitution (Jul. 5, 1971). These themes continue to ring true today, as youth voting rates are on the rise, and as young leaders such as Petitioner Sadia Saba and her peers diligently engaging the Bard community in the democratic process.

Further, requiring people to vote at the Church in the midst of the pandemic puts immunocompromised and mobility-impaired people unnecessarily at risk, in violation of the New York State Constitution. The prospect of enduring harsh weather while waiting in line outside the Church is a disincentive to all, particularly the disabled and the elderly. The cramped Church quarters, which is not ADA-compliant, will preclude social distancing and lead to longer lines outside. In sum, the Church is unsustainable as a polling site for the 5th District.

In contrast, relocating the polling place to Bard would encourage the broadest possible voter participation of young and old, the disabled, drivers and non-drivers, on and off-campus residents. A voting location on the campus would be in the population center of the voting district, thereby enhancing the right to vote of the most people.

B. Respondents' acted arbitrarily because designating the Church as a polling location is contrary to New York State Election Law Sections 1-a.

New York State Election Law Section 1-a states:

1-a. Each polling place shall be accessible to citizens with disabilities and comply with the accessibility guidelines of the Americans with Disabilities Act of 1990. The state board of elections shall publish and distribute to each board of elections with the power to designate poll sites, a concise, non-technical guide describing standards for poll site accessibility, including a polling site access survey instrument, in accordance with the Americans with Disabilities Act accessibility guidelines (ADAAG) and methods to comply with such standards. Such guide and procedures shall be developed in consultation with persons, groups or entities with knowledge about public access as the state board of elections shall determine appropriate.

New York Election Law § 4-104(1)(a)

The Church violates the public accommodations requirements of the Americans With Disabilities Act. Petition ¶¶ 31-33 (no designated handicap parking); 52 (inappropriately sloped ramp), 52, no flat area to access ramp); 52 (missing handrails on sections of ramp) 55 (no compliant rest room) and Exhibits _____. See also Decl. of Erika van der Velden. Thus, Respondents violated Section 1-a quoted above by selecting the Church as the polling place, and thus acted arbitrarily. Designating the Church despite the blatant facial deficiencies of the 2019 Survey is particularly egregious, because there is simply no justifiable reason why the ramp – *which is required to enter the building* – would be indicated as “N/A” on the form, while Bard Director of Disability and Accessibility has attested that the ramp is not ADA Compliant. Compare Ex. H (numerous sections left blank as supposedly “not applicable”) and Decl. of Erika van der Velden.

These violations directly impede the right to vote.

C. Respondents acted arbitrarily because designating the Church as a polling location is contrary to New York State Election Law Sections 1-b.

New York State Election Law Section 1-b states:

1-b. The county board of elections shall cause an access survey to be conducted for every polling site to verify substantial compliance with

the accessibility standards cited in this section. Completed surveys shall be submitted to the state board of elections and kept on file as a public record by each county. ***Each polling site shall be evaluated prior to its designation or upon changes to the facility.*** A site designated as a polling place prior to the effective date of this subdivision shall be evaluated within two years of the effective date of this subdivision by an individual qualified to determine whether or not such site meets the existing state and federal accessibility standards. ***Any polling place deemed not to meet the existing accessibility standards must make necessary changes and/or modifications, or be moved to a verified accessible polling place within six months.***

New York Election Law § 4-104(1)(b) [*emphasis added*]

The Church is undergoing renovations, albeit renovations that will not cure its ADA violations, and will even further reduce the size of the voting space. Respondents violated Section 1-b by failing to evaluate the Church “upon changes to the facility.” Additionally, the BOE is taking an unnecessary risk by designating the polling place in a location that is undergoing construction that may not be completed before the election.

D. Respondents acted arbitrarily because designating the Church as a polling location is contrary to New York State Election Law Sections 6-a.

New York State Election Law Section 6 states:

Each polling place designated, whenever practicable, shall be situated on the main or ground floor of the premises selected. It shall be of sufficient area to admit and comfortably accommodate voters in numbers consistent with the deployment of voting systems and privacy booths, pursuant to 9 NYCRR 6210.19. Such deployment of voting systems, election workers and election resources shall be in a sufficient number to accommodate the numbers of voters eligible to vote in such polling place

N.Y. Elec. Law § 4-104(6)(a) (McKinney)

Subsection 6-a was enacted in August 2010 to ensure that all persons who wish to vote are able to do so.² To promote that objective, when feasible, polling stations are to be located on public transportation routes so the elderly, those with physical disabilities, senior

² See Ltr from Assemblywoman Amy R. Paulin, New York Bill Jacket, 2010 A.B. 7850, Ch. 432.

citizens, low income individuals, and others without their own transportation would more easily get to and from polling places.³ The language, “whenever practicable,” was included to, “... provide[s] local boards of elections with the flexibility necessary to designate polling places in locations that are logical for the community as a whole, while ensuring that the needs of individuals who rely on public transportation are considered.”⁴

Respondents’ selection of the Church violates the plain language and the intent of Section 6(a). The 5th District is well served by the Dutchess County LOOP bus system. The LOOP bus stops directly at the entrance to Bard’s campus, but does not stop anywhere near the Church. From the LOOP bus stop, voters need only walk 0.3 miles (approximately 5 minutes) on well-lit sidewalks to the designated polling building at Bard’s campus. Voters who drive by their own vehicles would have more and easier parking than at the Church. The Bard Location satisfies Section 4-104(6) and 6(a); the Church does not. This is true independent of the COVID-19 pandemic, although social distancing and other health and safety requirements related to the public health crisis should cause alarm about the public health impact the Church designation risks absent the relief requested of this Court. (See e.g., Decls. of Felicia Kessing and Leon Botstein.)

CONCLUSION

The Petitioners have not previously sought the relief requested herein. Based on the foregoing, the Petitioners respectfully request that the Court grant the following relief:

- a. Directing that the Dutchess County Board of Elections change the polling place for the 5th Legislative District of Dutchess County from St John’s Episcopal Church located at 1114 River Road, Red Hook, New York 12571 to the

³ See Ltr from Senator Joseph P. Addabbo, Jr. New York Bill Jacket, 2010 A.B. 7850, Ch. 432.

⁴ See Ltr from Assemblywoman Amy R. Paulin, New York Bill Jacket, 2010 A.B. 7850, Ch. 432.

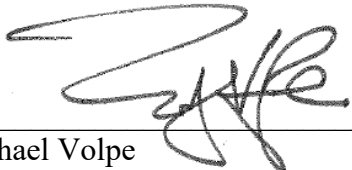
Bertelsmann Campus Center at Bard College, 30 Campus Road, Annandale-on-Hudson, New York 12504 or make the latter location a supplemental location providing notice of same to all voters in the election district;

- b. Stay issuance of polling guidance in accordance with the Executive Order to impacted voters, and/or to the extent same has issued provide polling guidance indicating to all voters in the election district that the polling location has been moved to or supplemented by a location at Bard College; and
- c. Grant Petitioners such other equitable and legal relief as the Court deems just, proper, and appropriate.

Dated: New York, New York

September 4, 2020

VENABLE LLP

By: 
Michael Volpe
1270 Avenue of the Americas
New York, New York 10020
(212) 808 - 5676


BROMBERG LAW LLC
Yael Bromberg, Esq.
43 West 43rd Street, Suite 32
New York, NY 10036-7424
(212) 859-5083
ybromberg@bromberglawllc.com

Attorneys for Petitioners

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of

ANDREW GOODMAN FOUNDATION,
ELECTION@BARD, SADIA SABA, ERIN CANNAN,
AND LEON BOTSTEIN,

Petitioners,

-against-

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

Respondents,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules.

-----X

**DECLARATION OF SADIA SABA IN SUPPORT OF PETITIONER'S APPLICATION
FOR EMERGENT AND PERMANENT RELIEF**

I, Sadia Saba, declare as follows:

1. My name is Sadia Saba. I am a Bard College student and an on-campus resident and District 5 voter.
2. I am a Global and International Studies major, and a member of the Class of 2021.
Having been born in 1999, my peers and I were born during the turn of the new Century.
We are the future.
3. I am currently an Andrew Goodman Foundation Vote Everywhere Student Ambassador at Bard College. Since my first semester at Bard, I have been a student leader focused on registering my peers to vote.

4. Voter registration is one of my favorite things to do because voting is the baseline of civic engagement and political activism. There are many issues in the world that can be overwhelming to younger voters. However, voting is the most accessible way of making an impact. When I am registering my peers to vote, I feel like I am doing my part, and that I am helping others do their part.
5. When I first arrived on campus as a freshman, I initially joined the Bard Democrats group. I then realized I wanted to engage more broadly with my peers, and I was drawn to Election@Bard because of its non-partisan focus.
6. I am drawn to this work as a student of comparative politics. People in other countries are currently risking their lives for fair elections. In America, we have won the right to vote, in large part due to struggles and sacrifice, such as in the assassination of Andrew Goodman, whose legacy the Andrew Goodman Foundation and student leaders such as myself carry on. Now that we have won the right to vote in this country, we must use it.
7. As a District 5 resident, my assigned polling place for the 2018 general election was St. John's Episcopal Church. To get to the polling location, I had to take a small shuttle bus offered by Bard College.
8. The Bard shuttle is like a mini-van, and it seats about six students at a time. I went to vote in the evening, which is a popular time for students to vote because it is after classes. The shuttle was full as a result, and there was a line when I arrived at the polling place. The church was very crowded and uncomfortable because there were so many people present.
9. After I finished voting, I discovered that the shuttle left without me. I was a little freaked out and scared. I was in the dark by myself. The street where the church is located is very dark, winding, not well-lit, and not populated. There is nothing around in the vicinity. It

felt like I was in the middle of nowhere. I assured myself by rationalizing that it is OK that this happened to me because I am a student leader. However, I was worried that this might happen to other students too, including the more apolitical and apathetic voters who I work hard to get to the polls.

10. I was able to catch the next shuttle bus to campus, but the entire process took more than twice the time it should have because of congestion at the church and the need to use the shuttle bus.

11. I turned eighteen years old in 2017, and the 2018 midterm election was one of my first times voting.

12. The alternate proposed polling location on Bard College is the Multi-Purpose Room. It is one of the largest communal spaces on campus, is centrally located, and is used for a range of student activities. For example, the Multi-Purpose Room has been a skating room, a space for movie screenings, and a space for bowling nights.

13. The Bard College location has parking, is handicap accessible, and has two floors with bathrooms on both floors. It has a lot of space. Voters at Bard who are waiting to vote will always have a roof over their heads, unlike the church location where they are forced to stand outside in the rain.

14. I regularly see community-members on campus. They come to panels and discussions held on campus, which are open to community members. They come to engage in the life-long learning institute, which is a program for senior citizens to take classes at Bard. Children and parents swim at the pool. I was even the only student in my old spin-cycling class; everyone else in the class was a community member.

15. I can't imagine that students will be eager to travel off-campus to vote at the church during the COVID-19 pandemic. It is just not safe. So many students would just choose to stay in their dorms, and it would be much harder to convince them to vote in-person on Election Day.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 3, 2020

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sadia Saba".

Sadia Saba

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of

ANDREW GOODMAN FOUNDATION,
ELECTION@BARD, SADIA SABA, ERIN CANNAN,
AND LEON BOTSTEIN,

Petitioners,

-against-

DUTCHESS COUNTY BOARD OF ELECTIONS,
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Respondents,

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**DECLARATION OF ERIN CANNAN IN SUPPORT OF PETITIONER'S APPLICATION
FOR EMERGENT AND PERMANENT RELIEF**

I, Erin Cannan, declare as follows:

1. My name is Erin Cannan. I am the Vice President for Student Affairs and the Dean of Civic Engagement at Bard College.
2. I also serve as the Andrew Goodman Foundation Vote Everywhere Campus Champion for Bard College.
3. I have also volunteered as a poll worker in the 5th Election District for the past ten (10) years. For the past ten (10) years, I have been assigned to work at the polling place for the

5th Legislative District in Dutchess County, the Episcopal Church of St. John the Evangelist, located at 1114 River Road, Red Hook, New York 12571(the "Church").

4. In my ten years of experience, I have observed the Church to be a chaotic and oftentimes confusing place for voters to cast their ballots in an election.
5. In order to get to the Church, voters must drive on a dangerous, winding road. The road is so dangerous that Bard College's Transportation Office only allows its drivers to use this road for Election Day voting.
6. Once a voter arrives at the Church, there are a limited amount of parking spots available. No matter which parking spot a voter occupies, they will climb up a hill or down a hill to reach the entrance to the Church. This has been particularly problematic for elderly voters or mobility-impaired voters who use the Church to vote.
7. Inside of the Church, poll workers are forced to set up the check in table ten (10) feet into the room. This leaves little space for voters to stand in line to check in. As a result, if there are more than ten (10) voters at the Church, voters must wait in line outside. These lines are especially long during peak voting hours, from 3:00 pm until the polls close. There have been several times throughout the years where voters have been forced to wait outside in the cold or in the rain.
8. Given the constraints of the space, poll workers and voters are often crammed into a room that cannot accommodate many people. The privacy booths barely fit within the room, causing most voters and workers to be well within 3-4 feet of each other.
9. Machine Operators are approximately ten (10) feet behind the check in table instructing voters on how to submit their ballot while the check-in table is verifying voter

registrations. Additionally, if there any issues with a voter (i.e. they are not in the roll), the voter must wait behind the check-in table while a volunteer calls the Board of Elections. These conditions lead to a bottleneck of volunteers and voters which creates a loud, chaotic environment which is not conducive to voting in a safe and efficient manner.

10. From my experience, elderly voters and mobility-impaired voters have had a particularly difficult time navigating the Church when casting their votes. I have witnessed several elderly voters struggle to hear valuable instructions because the Church was so noisy. Additionally, I have seen elderly voters nearly fall while entering the Church since they have to climb up some stairs to enter. Many times, volunteers have had to step in and escort the elderly voter into the Church to make sure they do not injure themselves – something that would be especially challenging this year in light of social distancing guidelines and COVID-19.
11. Additionally, mobility-impaired voters must enter through the accessible entrance which leaves them behind the check-in table. In order to get into line to check in, mobility-impaired voters must first navigate past the voting machines and then traverse the length of the room often passing very close to voters within the privacy booths.
12. During an average year, the Church is an inadequate space for holding an election. Given the precautions in place due to COVID-19, it will be impossible for poll workers to socially distance, let alone voters. This year we will need to have an additional two (2) volunteers in the room for required cleaning, and we have repeatedly had political


observers come to watch the polling place. As a result, poll workers, political observers, and voters will be on top of each other clearly in violation of social distancing guidelines.

13. The large number of poll workers within the Church will limit the number of voters permitted in the Church at any one time, exacerbating crowding and long wait times.
14. The alternate proposed polling location on Bard College is the Bard Campus Center. It is not only one of the largest communal spaces on campus but in the Town of Red Hook, is centrally located, and is used for a range of student activities and public events.
15. The Bard College location has parking, is handicap accessible, and has two floors with bathrooms on both floors and a large space to accommodate long lines. It has a lot of space. This would be a far safer place to hold elections both during the COVID-19 pandemic and going forward. Using the Bard Campus Center would allow elderly and mobility-impaired voters a safer place to cast their vote while also serving as a centrally located room accessible to students and community-members alike.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 3, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Erin Cannan', written over a horizontal line.

Erin Cannan

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of

ANDREW GOODMAN FOUNDATION,
ELECTION@BARD, SADIA SABA, ERIN CANNAN,
AND LEON BOTSTEIN,

Petitioners,

-against-

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

Respondents,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules.

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**DECLARATION OF LEON BOTSTEIN IN SUPPORT OF PETITIONER'S
APPLICATION FOR EMERGENT AND PERMANENT RELIEF**

I, Leon Botstein, declare as follows:

1. My name is Leon Botstein.
2. In addition to serving as President of Bard College, I am an on-campus resident and a District 5 voter.
3. I make this declaration based upon my personal knowledge, and in support of the application for emergent and permanent relief in the above-captioned matter.
4. I have served as President of Bard College since 1975. My forty-five year tenure as a college president is one of the longest in the nation. During my tenure, Bard has considerably expanded regionally, nationally, and internationally. Bard's campus on the Hudson River, in District 5, has grown from 600 to 1000 acres. Its enrollment within

District 5 has grown from 600 to 2000. It has established eight graduate programs, and operates eight public high school early colleges—three in New York State. Bard, whose worldwide enrollment is 6000, has also emerged as a regional and national leader in the arts.

5. The growth in the college and the campus and its facilities and programs have expanded the college's contributions to the local community.
6. Bard regularly hosts more than 300 additional older learners through its Lifetime Learning Institute.
7. Bard boasts a state-of-the-art recreation center including an indoor pool which is popular with local families; miles of trails for hiking, biking, and cross-country skiing; world-class Frank Gehry designed Performing Arts Center, a Museum and it hosts productions, exhibits and public lectures on a range of topics.
8. Not only are local and regional community members invited to and enjoy our public facilities, but Bard's exhibition and performance spaces have strengthened Bard's status as a major tourist attraction, employer and economic contributor to the region.
9. Bard College is a secular and non-denominational institution, with chaplains from the major religions including Christianity, Judaism, Buddhism, and Islam.
10. Bard has a historic and ongoing relationship with the Episcopal Church. With our indispensable financial support, Bard's Episcopal Chaplain serves a dual role as rector for the St. John's Episcopal Church.
11. I am grateful to our friends for hosting a polling station in the 19th Century American gothic-revival church. The church is quaint and small. The refreshments that are offered by community members to voters at this polling station are a welcome and kind gesture.

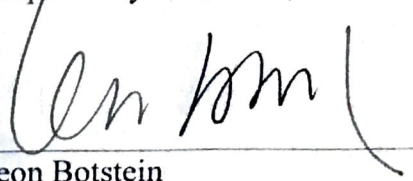
12. However, we now face unprecedented times that demand novel and sustainable solutions.
13. The possible spacious and accessible polling locations available at Bard College are an example of how we ought to combat the staggeringly low voting rates in the United States, particularly among young voters, that threaten the health of our democracy.
14. The demographic composition of voters in District 5 overwhelmingly comes from the Bard Campus, and many are young. Bard College's academic mission is to function in the public interest, and ensure that young voters are civically engaged in the practice of democracy.
15. The facilities available at Bard College can easily accommodate both on-campus and community voters. Dutchess County Road 103 runs through the campus. 50 thousand visitors come to campus each year to enjoy Bard's recreational, cultural, and academic offerings. Our mission, facilities, and parking promote this attendance. St. John's Episcopal Church in Barrytown, albeit beautiful, is cramped, old and not accommodating to non-drivers and those with mobility impairments, and thus simply cannot properly accommodate the full range of needs voters have.
16. Even before the COVID-19 pandemic, voters at the church were forced to stand in torrential rain without a roof over their heads because of the very limited space inside the church.
17. Bard College can provide a roof over voters' heads, literally and figuratively and adhere to the social distancing and ventilation requirements now in place. Voters will no longer have to stand in the rain as they did during the 2018 midterm election. Voters can be assured an ADA compliant facility at Bard. There are extensive and ample parking facilities, something lacking at St. John's.

18. Signage for Bard on the roads is ample so voters who need to drive will not need to scramble to find the polls and the several hundred resident voters on the campus, including students, faculty, and staff, can walk to the polls. Bard students generally do not bring cars to campus.
19. County Road 103 leading to the church is not well-lit; it is not well-paved, and has proven to be dangerous. Indeed, college drivers and students are instructed not to drive down that winding road during the other 364 days of the year. Why would we ask them to do so on Election Day, a day of national importance? The Bard portion of County Road 103 is far better lit and maintained, at the college's expense.
20. The pandemic has made the need for a polling place at Bard very clear. Bard can accommodate, indoors, the social distancing demands of COVID-19, and provides a safer alternative for everyone at the polling place – poll-workers, voters, youth and elderly alike, and the disabled.
21. I am concerned about the public health risks that not only the Bard community but all voters would be exposed to, should St. John's Episcopal Church continue to serve as the assigned polling location during this pandemic.
22. Bard College is prepared to take on the important public service task of hosting a polling location in 2020, during COVID and thereafter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 3, 2020

Respectfully submitted,



Leon Botstein

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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In the Matter of the Application of

ANDREW GOODMAN FOUNDATION,
ELECTION@BARD, SADIA SABA, ERIN CANNAN,
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Petitioners,

-against-

DUTCHESS COUNTY BOARD OF ELECTIONS,
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Respondents,

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Practice Law and Rules.

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**DECLARATION OF ERIKA VAN DER VELDEN IN SUPPORT OF PETITIONER'S
APPLICATION FOR EMERGENT AND PERMANENT RELIEF**

I, Erika van der Velden, declare as follows:

1. My name is Erika van der Velden. I am the Director of Accessibility and Disability Resources at Bard College.
2. I am also a 2004 graduate of Bard College and have personal knowledge of the campus, culture, and community based on my time as a student and current role as an administrator.
3. On September 2, 2020, my colleagues Jonathan Becker and Randy Clum visited St. John's Church in Barrytown, NY (the "Church") to collect measurements for me to review and analyze for Americans with Disability Act ("ADA") compliance.

4. I have reviewed a September 2 report (the “Report”), annexed to this Declaration, to determine, based on the measurements and observations, whether the Church complies with the ADA and, additionally, to flag any areas of particular concern for Bard students with disabilities.
5. I have also reviewed a 2010 polling place survey of the Church (the “2010 Survey”) and a 2019 ADA compliance survey (the “2019 Survey”).
6. Based on the Report, 2010 Survey, and 2019 Survey, in my professional opinion, it is apparent that key ADA access measures are missing at the Church. First, there is no public transportation which stops at or in the immediate vicinity of the Church, a service that those with disabilities often rely upon to get from point A to point B. If a disabled student obtained transportation or could transport themselves, the Church parking lot fails to have designated handicap parking spaces.
7. Once exiting a parking lot, a disabled student would be unable to enter the facility. Many of our disabled students have disabilities that impact mobility, balance, and stability. In order to independently access a space, these students need to utilize ramps and railings as stairs are treacherous. The Report clearly indicates that the ramp at the Church lacks a railing, which is a hindrance to our students who want to vote at the Church.
8. If a student was able to navigate the ramp, uneven floors at the top of the ramp create an additional hindrance to those who struggle with balance.
9. The Church also lacks ADA-accessible restroom facilities. The ability to independently use the restroom is a key concern, especially for young people with a disability. This lack of ADA-accessible restroom may, in and of itself, keep a student from voting at the Church, especially based on the history of long lines in order to vote.

10. Bard, on the other hand, has an ADA-accessible campus center that would allow both disabled Bard students and disabled members of the public to vote in a safe, dignified manner.
11. Bard's campus center is located adjacent to a level parking lot with designated handicap and van parking spaces. From the parking lot, one can utilize a curb cut to a sidewalk that leads directly to the campus center.
12. At the door, one can push a button to have the doors open and provide ADA-compliant access.
13. Once in the campus center, there are multiple ADA-compliant restroom facilities, seating areas, and room for handicap-accessible voting booths.
14. In my professional opinion, the Church is not ADA-compliant and poses an obstacle for disabled people to navigate. Utilization of the Bard campus center would provide enhanced, ADA-compliant access for voters.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 3, 2020

Respectfully submitted,



Erika van der Velden

Report on visit to Barrytown Polling Site: Red Hook D5

Jonathan Becker
September 2, 2020

I visited the polling site today together with Randy Clum, a member of Bard's Building and Grounds who implements accessibility mandates under the ADA. It is clear that access to St. John's Barrytown violates the American with Disabilities Act, and thus US and Federal Voting law, in several ways. Here I am referring to questions posed in the US Department of Justice Civil Rights Division ADA Checklist for Polling Places: <https://www.ada.gov/votingchecklist.pdf>

First, there are NO marked handicap accessible parking and the accessibility ramp is on a slope so people cannot be dropped off there. In response the USDOJ checklist, it fails in the following areas:

- **A1: Is there at least one designated van accessible space with signage with the International Symbol of Accessibility and designated "van accessible"? (§§208.2, 208.2.4, 502.6)** No.
- **A4: Are designated accessible parking spaces and the access aisles serving them on a level surface, with slopes not exceeding 1:48 in all directions? (Note: Curb ramps may not be part of an access aisle since they include slopes greater than 1:48.) (§502.4)** No: even if a van dropped off someone near the accessible ramp, that ramp is located on a slope.

Second, the ramp violates the law in several ways. Under Section G of the checklist, page 23, we see:

- **G1: Is the running slope of the ramp no greater than 1:12? (§405.2).** No. The slope not only does not meet the recommended standard of 1:20, it does not meet the standard of 1:12, coming in at 1:7.5 (13 inches of rise per 8 feet of ramp).
- **G4 Is the ramp, measured between handrails, at least 36" wide? (§405.5)** No. There is a handrail on only one side of the ramp. There are handrails on stairs leading to the other side of the ramp (see G8 and G9 below) and on those the space is 28.4", considerably less than the prescribed 36".
- **G5: Does the ramp have a level landing that is at least 60" long, at the top and bottom of each ramp section? (§405.7)** No. The landing area at the bottom is not level and the landing area is less than 60 inches long. Note that both of the landing areas (at the bottom of the ramp and the top of the ramp) are also less than 25 square feet as prescribed by the ADA.
- **G8 If the rise of the ramp is greater than 6", are handrails provided that are between 34" and 38" above the ramp surface? (§§405.8, 505.4)** No. There are rails on only one side of the ramp (though there are stairs with rails: see below and the handrails on the stairs are 28.4" apart and not 36" apart as noted in G4).
- **G9: If the rise of the ramp is greater than 6" and the ramp or landing has a vertical drop-off on either side of the ramp, is edge protection provided? (§405.9)** No. There are handrails on one side and an edge on the other, but the top landing of the ramp has an opening for stairs, meaning that someone in a wheelchair or other wheeled device could roll off the ramp and down the stairs if they proceeded up the (too steep) ramp too quickly.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X

In the Matter of the Application of

ANDREW GOODMAN FOUNDATION,
ELECTION@BARD, SADIA SABA, ERIN CANNAN,
AND LEON BOTSTEIN,

Petitioners,

-against-

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

Respondents,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules.

-----X

**DECLARATION OF FELICIA KEESING IN SUPPORT OF PETITIONER'S
APPLICATION FOR EMERGENT AND PERMANENT RELIEF**

I, Felicia Keesing, declare as follows:

1. My name is Felicia Keesing.
2. In addition to being a Professor of Biology at Bard College, I am a resident of Tivoli and a Dutchess County voter.
3. I make this declaration based upon my personal knowledge, and in support of the application for emergent and permanent relief in the above-captioned matter.
4. I have served as a Professor of Biology at Bard College since 2000. My expertise is in the transmission of infectious diseases. With research support from the US National Science

Foundation, I have been studying the spread of covid-19 in small institutions, including liberal arts colleges like Bard.

5. Based on the characteristics of the virus that causes covid-19, the polling location available at Bard College is clearly a safer option for all voters during the covid-19 pandemic than the polling station available at St. John's Episcopal Church.
6. I have used a standard model of covid-19 transmission by aerosols (virus particles in microscopic liquid droplets that float in air) to estimate the risk of transmission at the Barrytown station compared to the larger polling station available at Bard College. Based solely on the sizes of the two facilities, and given the specific characteristics of the virus that causes covid-19, the risk of transmission at the polling station in Barrytown (estimated at 500 square feet) is approximately four times higher than the risk of transmission in the larger space available at Bard (estimated at 1500 square feet).
7. This estimate does not take into account the additional risk of transmission that would be incurred by students who take a Bard shuttle van in order to get to the polling station in Barrytown. Public transportation such as a shuttle van has an elevated risk compared to arrival by foot or in a private car. Thus, the risk at St. John's Episcopal Church compared to Bard is likely even greater than what the model estimated.
8. If an even larger space were used at Bard, the risk would decline even further. Based on my model's calculations, the risk of transmission in the Stevenson Gymnasium at Bard College is 80 times lower than the risk at the Barrytown polling station, all else being equal.

9. I am concerned of the public health risks that the Bard and Barrytown communities would be exposed to should St. John's Episcopal Church continue to serve as the assigned polling location during this pandemic.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 3, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Felicia Keesing", written over a horizontal line.

Felicia Keesing

**TOWN OF RED HOOK
RESOLUTION NO. ____
DATED AUGUST 26, 2020**

RESOLUTION REGARDING ELECTION DISTRICT NO. 5

WHEREAS, on April 12, 2016, the Town Board passed Resolution No. 29 resolved that the Town Board communicate the need to locate a polling site at Bard College in order to provide safe, convenient access by the registered voters of Election District 5 (the “2016 Resolution”); and

WHEREAS, at the time of the 2016 Resolution, Election District 5 had more than the recommended number of registered voters (1,124 vs. 950) for a single district; and

WHEREAS, the overwhelming majority of voters resided at or adjacent to the Bard Campus and NYS Election Law states that the polling site should be located where the majority of voters live; and

WHEREAS, despite the Town Board’s unanimous approval of the 2016 Resolution, the polling place remained at St. John’s Church of Barrytown; and

WHEREAS, at the present time, the number of registered voters remains over the recommend number of registered voters (1,036 vs. 950);

WHEREAS, the overwhelming majority of voters still resided at or adjacent to the Bard Campus; and

WHEREAS, the Bard Campus is served by the Dutchess County Loop Bus System and NYS Election Law states that the polling site should be located on a public transportation route when possible; and

WHEREAS, the Bard Campus center is handicap accessible, providing fair access to all voters;

WHEREAS, the COVID-19 pandemic has created an additional and urgent need to provide a polling location which is large enough to accommodate the number of registered voters within Election District 5 with adequate social distancing measures and enhanced safety precautions;

WHEREAS, the Bard Campus has a student center which can accommodate a substantially larger number of voters with adequate social distancing, including, but not limited to, the ability to have a delineated entrance and exit to avoid cross-contact of voters, a substantially larger number of restroom facilities, and a larger room to space voting booths six feet apart;

WHEREAS, utilization of the Bard Campus would create a safer, more efficient voting experience;

WHEREAS, Bard College has previously, and continues to offer use of its facilities for voting purposes;

WHEREAS, sufficient space exists at Bard College to provide a safer voting experience and the ability to increase voter participation for all voters within Election District 5;

NOW THEREFORE BE IT RESOLVED, that the Town Board of the Town of Red Hook communicate the need to locate a polling site at Bard College for safe, convenient access by the registered voters of Election District 5.

EXTRACT OF MINUTES

A regular meeting of the Town Board of the Town of Red Hook, Dutchess County, New York was convened in public session at the Town Hall, 7340 South Broadway, Red Hook on April 12, 2016 at 7:30 p.m., local time.

The meeting was called to order by Supervisor McKeon, and, upon roll being called, the following members were:

PRESENT:

Supervisor Sue Crane
Councilman William O'Neill
Councilman Harry Colgan
Councilwoman Sarah Imboden
~~Councilman James Ross~~

ABSENT: Councilman James Ross

The following persons were ALSO PRESENT:

Christine M. Chale, Esq., Attorney for the Town

The following resolution was offered by Councilman O'Neill, seconded by Councilman Colgan, to wit;

RESOLUTION NO. 29
DATED APRIL 12, 2016

RESOLUTION REGARDING ELECTION DISTRICT NO. 5

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

Supervisor Robert McKeon	VOTING <u>Aye</u>
Councilman William O'Neill	VOTING <u>Aye</u>
Councilman Harry Colgan	VOTING <u>Aye</u>
Councilwoman Sarah Imboden	VOTING <u>Aye</u>
Councilman James M. Ross	VOTING <u>Absent</u>

The foregoing resolution was thereupon declared duly adopted.

CERTIFICATE OF RECORDING OFFICER

The undersigned hereby certifies that:

(1) She is the duly qualified and acting Clerk of the Town of Red Hook, Dutchess County, New York (hereinafter called the "Town") and the custodian of the records of the Town, including the minutes of the proceedings of the Town Board, and is duly authorized to execute this certificate.

(2) Attached hereto is a true and correct copy of a resolution duly adopted at a meeting of the Town Board held on the 12th day of April, 2016 and entitled:

RESOLUTION NO. 29
DATED APRIL 12, 2016

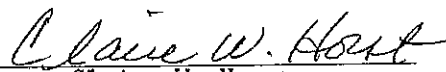
RESOLUTION REGARDING ELECTION DISTRICT NO. 5

(3) Said meeting was duly convened and held and said resolution was duly adopted in all respects in accordance with law and the regulations of the Town. To the extent required by law or said regulations, due and proper notice of said meeting was given. A legal quorum of members of the Board was present throughout said meeting, and a legally sufficient number of members voted in the proper manner for the adoption of the resolution. All other requirements and proceedings under law, said regulations or otherwise incident to said meeting and the adoption of the resolution, including any publication, if required by law, have been duly fulfilled, carried out and otherwise observed.

(4) The seal appearing below constitutes the official seal of the Town and was duly affixed by the undersigned at the time this certificate was signed.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand this 13 day of
April 2016.

-SEAL-


~~Sue McCann~~ Claire W. Horst
~~Town Clerk~~ Deputy Town Clerk



NYCLU

NEW YORK CIVIL LIBERTIES UNION

LOWER HUDSON VALLEY CHAPTER
297 Knollwood Road, Suite 217
White Plains, NY 10607
914.997.7479
lowerhudsonvalley@nyclu.org
www.nyclu.org

April 11, 2016

Dutchess County Board of Elections
47 Cannon Street
Poughkeepsie, New York 12601

Dear Commissioner Haight:

The NYCLU Lower Hudson Valley Chapter is writing in support of the Bard students request for a polling place on the campus of Bard College. As noted in the Election@Bard campaign materials over 68% of voters in District 5 reside on Bard College property and the current polling place is difficult to access for students. Additionally, it is concerning that the current location is inaccessible by mass transit.

Voter participation rates in our country are troubling and in New York State voter turnout is dismal. The EAC (US Election Assistance Committee) 2014 Election Administration and Voting Survey Comprehensive Report notes that voter turnout in NYS is 47th out of the 50 states. NYS is unfortunately one of the lowest states to turn out voters.

Additionally, the report notes that in-person voting on Election Day is the most popular form of voting with over half American voters casting ballots in person. Clearly, it would be a good idea to have a more accessible polling place for the voters in District 5.

Institutions of higher education are ideal locations for polling places. The education experience prepares youth with the skills needed to fulfill their role as citizens and this an ideal time to establish regular voting patterns for our younger citizens. In a democratic society, civic participation ensures fair and responsive governing that meets the needs of society. Younger generations are the future of our country and should be actively encouraged to participate in government. The importance of voting is paramount to that participation.

It is our sincere hope that you will thoughtfully consider and grant the request of the Election@Bard campaign to relocate at a polling place to the Bard College campus.

Respectfully submitted,

Shannon Wong
Shannon Wong
Chapter Director

TOWN OF RED HOOK

7340 SOUTH BROADWAY, RED HOOK, N. Y. 12571
Tel:(845) 758-4600 • Fax:(845) 758-5313 • www.redhook.org

SUPERVISOR

ROBERT P. MCKEON

COUNCIL MEMBERS

HARRY P. COLGAN

SARAH IMBODEN

WILLIAM J. O'NEILL

JAMES M. ROSS

TOWN JUSTICES

JEFFREY C. MARTIN

JONAH TRIEBWASSER

TOWN CLERK

SUSAN MCCANN

ASSESSOR

JENNIFER S. WARBURTON

SUPT. OF HIGHWAYS

THERESA BURKE

April 18, 2016

Dutchess County Board of Elections
47 Cannon Street
Poughkeepsie, New York 12601

Dear Commissioners Haight & Caviglia:

At the direction of the Red Hook Town Board, I write to you to request that a polling site be located at Bard College for Election District 5. Enclosed is the Resolution passed at our April 12, 2016, Town Board Meeting.


New York State Election Law is clear as it relates to locating polls: near public transportation, conducive to accommodating persons with physical challenges and proximity to the majority of the registered voters. The current site is inadequate to handle the potential activity that exists during this Presidential election year. My understanding is as of last week 1,124 registered voters were on record for District 5.

With the possibility of a repeat voter registration increase such as the one this winter (approximately 600 new registrants) a new fall semester class could cause the number of voters in District 5 to be nearly twice the limit of 950/district.

Furthermore, asking a population that largely does not possess public or other transportation to travel by foot or bicycle on River Road from Annandale is a dangerous proposition. The Red Hook and Bard Community have endured too much tragedy on our roadways.

For these reasons and more, we respectfully ask that you add a polling site to Bard College prior to the general election of 2016.

Sincerely,



Robert McKeon
Town Supervisor

enc.

cc: Town Board
Sue McCann
Christine Chale

DUTCHESS COUNTY
BOARD OF ELECTIONS

2016 APR 21 P 2:49 PM

RECEIVED

TOWN OF RED HOOK
RESOLUTION NO. 29
DATED APRIL 12, 2016

RESOLUTION REGARDING ELECTION DISTRICT NO. 5

WHEREAS, Election District 5 currently has more than the recommended number of registered voters (1,124 vs. 950) for a single district; and

WHEREAS, the overwhelming majority of voters reside at or adjacent to the Bard Campus and NYS Election Law states that the polling site should be located where the majority of voters live; and

WHEREAS, Election Law states that polling sites should be located near public transportation; and

WHEREAS, many of the residents of Election District 5 do not have access to public or their own transportation and River Road is neither safe or convenient for travel by foot or bicycle; and

WHEREAS, sufficient space exists at Bard College and the college has offered use of its facilities for such convenience;

NOW THEREFORE BE IT RESOLVED, that the Town Board of the Town of Red Hook communicate the need to locate a polling site at Bard College for safe, convenient access by the registered voters of Election District 5.

RECEIVED
2016 APR 21 P 2:49
DUTCHESS COUNTY
BOARD OF ELECTIONS

EXTRACT OF MINUTES

A regular meeting of the Town Board of the Town of Red Hook, Dutchess County, New York was convened in public session at the Town Hall, 7340 South Broadway, Red Hook on April 12, 2016 at 7:30 p.m., local time.

The meeting was called to order by Supervisor McKeon, and, upon roll being called, the following members were:

PRESENT:

Supervisor Sue Crane
Councilman William O'Neill
Councilman Harry Colgan
Councilwoman Sarah Imboden
~~Councilman James Ross~~

ABSENT: Councilman James Ross

RECEIVED
2016 APR 21 P 2:49 PM
DUTCHESS COUNTY
BOARD OF ELECTIONS

The following persons were ALSO PRESENT:

Christine M. Chale, Esq., Attorney for the Town

The following resolution was offered by Councilman O'Neill, seconded by Councilman Colgan, to wit;

RESOLUTION NO. 29
DATED APRIL 12, 2016

RESOLUTION REGARDING ELECTION DISTRICT NO. 5

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

Supervisor Robert McKeon	VOTING <u>Aye</u>
Councilman William O'Neill	VOTING <u>Aye</u>
Councilman Harry Colgan	VOTING <u>Aye</u>
Councilwoman Sarah Imboden	VOTING <u>Aye</u>
Councilman James M. Ross	VOTING <u>Absent</u>

The foregoing resolution was thereupon declared duly adopted.

CERTIFICATE OF RECORDING OFFICER

The undersigned hereby certifies that:

(1) She is the duly qualified and acting Clerk of the Town of Red Hook, Dutchess County, New York (hereinafter called the "Town") and the custodian of the records of the Town, including the minutes of the proceedings of the Town Board, and is duly authorized to execute this certificate.

(2) Attached hereto is a true and correct copy of a resolution duly adopted at a meeting of the Town Board held on the 12th day of April, 2016 and entitled:

RESOLUTION NO. 29
DATED APRIL 12, 2016

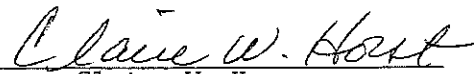
RESOLUTION REGARDING ELECTION DISTRICT NO. 5

(3) Said meeting was duly convened and held and said resolution was duly adopted in all respects in accordance with law and the regulations of the Town. To the extent required by law or said regulations, due and proper notice of said meeting was given. A legal quorum of members of the Board was present throughout said meeting, and a legally sufficient number of members voted in the proper manner for the adoption of the resolution. All other requirements and proceedings under law, said regulations or otherwise incident to said meeting and the adoption of the resolution, including any publication, if required by law, have been duly fulfilled, carried out and otherwise observed.

(4) The seal appearing below constitutes the official seal of the Town and was duly affixed by the undersigned at the time this certificate was signed.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand this 13 day of
April 2016.

-SEAL-


~~XXXXXXXXXX~~ Claire W. Horst
~~XXXXXXXXXX~~ Deputy Town Clerk
~~TOWN CLERK~~

RECEIVED
2016 APR 21 P 2:50
DUTCHESS COUNTY
BOARD OF ELECTIONS



DUTCHESS COUNTY
BOARD OF ELECTIONS
47 Cannon Street
Poughkeepsie, NY 12601-3270
(845) 486-2473 (845) 486-3768 (fax)
www.dutchesselections.com

DEMOCRATIC
COMMISSIONER

Marco Caviglia

To: Erik Haight
Republican Commissioner

Dear Erik,


As discussed at the Commissioner's meeting this morning, we are at an impasse concerning the certification of the District 5 poll site in Red Hook. The reasons that I cannot agree to the continued use of the site as proposed include, but are not necessarily limited to, the reasons set forth in the letter dated May 4, 2016 from Bard College to us, concerning this issue. Those concerns are, not necessarily in order of importance, the unanimously approved resolution by the Town of Red Hook Board to move the poll site to the Bard campus, better accessibility for as many as 7 out of 10 registered voters in that district if moved to the campus, the huge size of the number of registered voters of approximately 1125 voters, if not more, which is tantamount to the number requiring mandatory election district realignment under EL 4-100(4), the demonstrated danger to Bard students seeking to vote when walking to the poll site (you will recall the relatively recent vehicular-related deaths of one or more Bard students when walking on such roads), and the lack of public transportation for students to ride to the poll site.

In addition, although not mentioned in the letter, I have further concerns about the disproportionate effect under these circumstances upon minority voters. On information and belief, the Town of Red Hook, per the 2000 census, has a 5.8% minority population. The Bard student composition has a 27.06% minority population. The majority of minority voters in Red Hook, and certainly within that particular district, are placed at a distinct disadvantage in terms of ease, safety,

and ability to vote. I see this as a *de facto* disenfranchisement of minorities in regard to their fundamental constitutional right to vote.

As the other proposed poll sites needing certification are not at issue, I shall certify all of them as proposed *except* the subject poll site for the upcoming elections. This will eliminate any uncertainty or confusion for those municipalities and voters, and comply with the statutory mandate concerning such certification overall.

Sincerely,



Marco Caviglia
Democratic Commissioner



Elizabeth A. Soto
Democratic Commissioner

Ira Margulies
Deputy Commissioner

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

March 3, 2020

Mr. Michael J. Volpe
Venable LLP
Rockefeller Center
1270 Avenue of the Americas, 24th
New York, New York 10020

RE: St. John's Episcopal Church Polling Site

Dear Mr. Volpe:

I am in receipt of your letter, dated February 28, 2020, regarding establishing a Red Hook District 5 poll site on the Bard College Campus. Per your request, I am enclosing a time stamped copy of your letter evidencing such receipt.

Please note that I am in full agreement that the Red Hook District 5 poll site should be moved from its current location at the St. John's Episcopal Church in Barrytown to a suitable on-campus location at Bard College. Having said that, as you may know, I am only one of two Dutchess County Board of Elections Commissioners. Please understand that I cannot unilaterally approve the move of the District 5 poll site, but must secure the agreement of Erik Haight, my Republican counterpart, for such a move. As of the writing of this letter, Mr. Haight has not agreed to move the District 5 poll site from the current St. John's location.

You indicated in your communication that, absent the Dutchess County Board of Elections' cooperation, your clients reserve the right to pursue all available legal remedies to establish a poll site on the Bard Campus during this critical election year. Please know that if you must litigate this matter, you will have my full cooperation in establishing that the community will be well-served by having a poll site on the Bard College campus.

Elizabeth A. Soto
Democratic Commissioner

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
20 MAR -2 A 10:31.5
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.

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
20 MAR -2 A 10:31 J
DUTCHESS COUNTY
BOARD OF ELECTIONS



State of New York

Executive Chamber

No. 202.58

EXECUTIVE ORDER

Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency

WHEREAS, on March 7, 2020, I issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York; and

WHEREAS, both travel-related cases and community contact transmission of COVID-19 have been documented in New York State and are expected to continue; and

WHEREAS, the expectation is that community contact transmission could increase this fall; and

WHEREAS, the need to ensure the safety and security of the electoral process is paramount, and voters must have confidence that they can cast their ballot and have it be counted in a manner of their choosing based on the relevant state laws; and

WHEREAS, these suspensions and modifications are intended to ensure that all voters have the opportunity to vote statewide;

NOW THEREFORE, I, Andrew M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency or if necessary to assist or aid in coping with such disaster, do hereby suspend or modify the following through September 23, 2020:

- Sections 15-120 and 15-122 of the Election Law, Sections 2018-a and 2018-b of the Education Law, and Section 84-a of the Town Law, as well as any provision of law related to a special district election taking place prior to November 3, 2020, and not administered by the County Board of Elections to the extent necessary to include the potential for contraction of the COVID-19 virus as an illness for purposes of request or receipt of an absentee ballot;
- Section 8-400 and any provision of Article 9 of the Election Law, in order to provide that every voter that is in active and inactive status and is eligible to vote in any election on or before November 3, 2020, may be able to request an absentee ballot via phone or internet or electronically; and if such voter requests an absentee ballot, such voter shall be sent an absentee ballot, provided however each voter shall not be sent more than one ballot pursuant to a phone request, and shall not be required to complete an application either prior to or simultaneously to receiving the ballot. Further, the board of elections receiving the telephone request shall maintain a record of such telephone request for an absentee ballot, and may complete the absentee ballot application as such record on behalf of the voter requesting the absentee ballot, provided that no ballot shall be deemed invalid for lack of a complete absentee ballot application for any reason;
- Section 9-209(3) of the Election Law related to curing deficiencies in absentee ballots is modified to the extent necessary to require that a board of elections shall provide a five day cure period for any eligible deficiency instead of seven if such absentee ballot is received after November 3, 2020; and further modified to require that a board of election shall first notify any voter of any eligible

deficiency within 24 hours of identifying the deficiency by phone or email, if available and shall only mail such notification to the voter if notice to the voter by phone or email is not possible; and

- Article 16 of the Election Law is modified to the extent necessary to provide that no cause of action shall be maintained against a board of elections if, for the general election taking place on November 3, 2020, notice is not able to be made within the time period set forth in section 9-209(3) after a good faith effort, and through no fault of the board of elections.
- Sections 103 and 104-b of the General Municipal Law, to the extent necessary to allow a board of elections to procure and provide absentee ballot applications, absentee ballots, envelopes, mail notification cards pursuant to this executive order, or any other means of transmitting an absentee ballot application or absentee ballot to voters in accordance with the timeframes set forth in Executive Order 202 or any subsequent Executive Order;

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to issue any directive during a disaster emergency necessary to cope with the disaster, I do hereby issue the following directives through September 23, 2020:

- All county Boards of Elections and the City of New York Board of Elections shall send an informational mailing to every registered voter by September 8, 2020, containing the following information:
 - The dates, hours, and locations for early voting in such voter's county, including the early voting location for which the voter is assigned, if applicable.
 - Information regarding how to apply for an absentee ballot, including the opportunity to apply online or by phone, and including the deadline for requesting an absentee ballot.
 - Information regarding the date and hours for the November 3, 2020 general election, and the voter's election day polling place location.
 - Information regarding how the voter can look up their registration status.
 - An explicit reminder or communication of the opportunities to vote prior to Election Day, including application for an absentee ballot and early voting options.
 - Expected mail times, if a voter chooses to request an absentee ballot.
- All county Boards of Elections and the City of New York Board of Elections must submit staffing plans and any staffing needs for early voting and election day poll site operations, as well as post-election canvass of results, to the state Board of Elections no later than September 20, 2020, to provide adequate time for the state Board of Elections to assist as feasible.
- All county Boards of Elections and the City of New York Board of Elections shall take all steps possible to count ballots as soon as possible, including reviewing absentee or military ballot envelopes prior to Election Day to ensure efficient and timely canvassing of ballots, including establishing objections by the Board to ballot envelopes prior to Election Day, any reporting of affidavit ballots by counties to the state board to compare against absentee ballots must be completed 48 hours after the election.
- The State Board of Elections must develop a uniform envelope for absentee ballots for use by local Boards of Elections by September 8, 2020. Such envelope shall establish where a voter must sign to be valid. All local county Boards of Elections and the City of New York Board of Elections must use such uniform envelope for absentee ballots developed by the State Board of Elections.



GIVEN under my hand and the Privy Seal of the
State in the City of Albany this
twenty-fourth of August in the year
two thousand twenty.

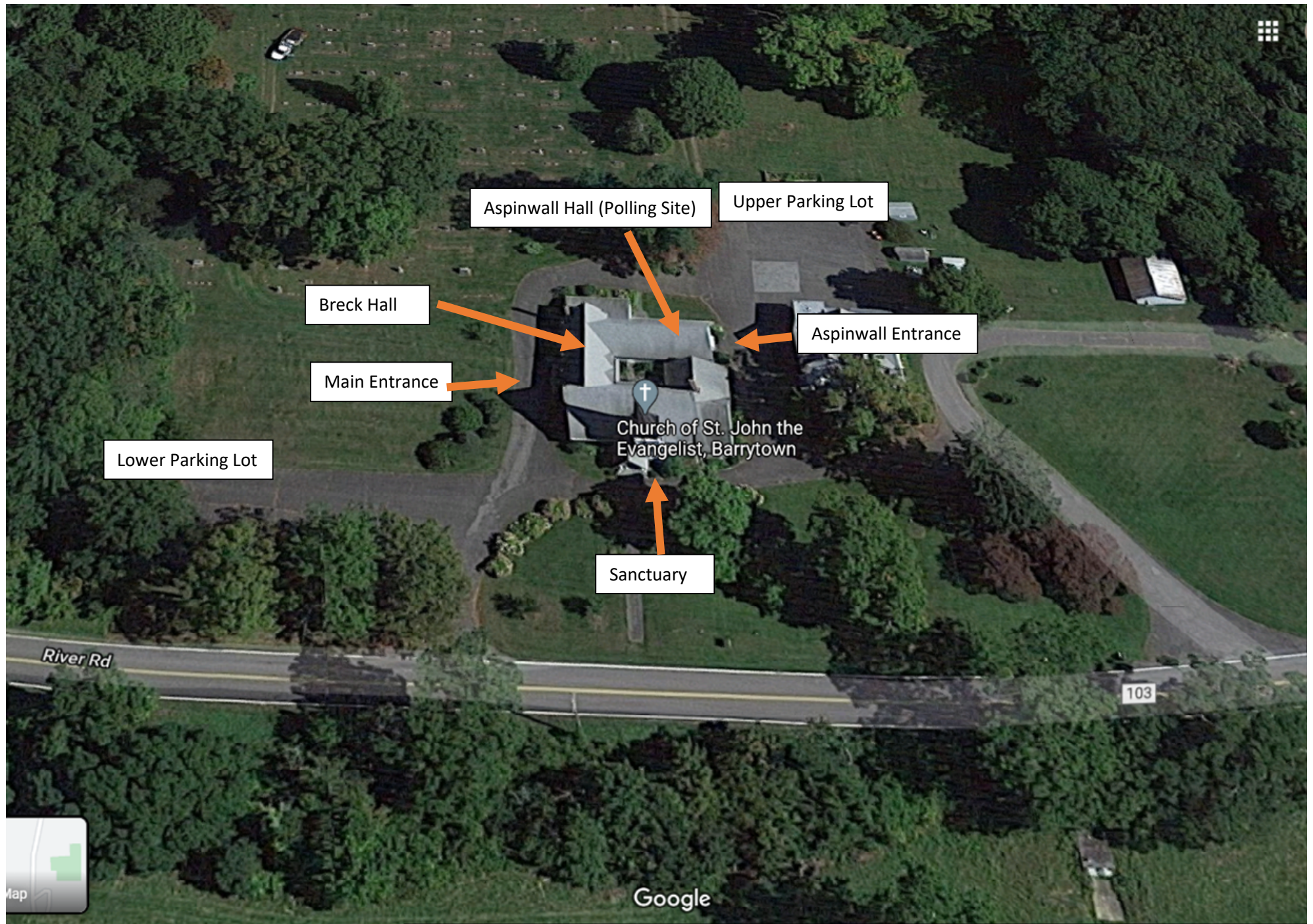
BY THE GOVERNOR

Secretary to the Governor

Dear Sarah,

Every Bard approved driver must agree to the Rules of the Road for safety and coordination of expected driving behaviors. The document gives specific direction: "Do not use River Road to or from the Rhinecliff Station, Rhinebeck, or the Kingston-Rhinecliff Bridge. Please use 9G/9/Rhinecliff Road to access Rhinecliff or Rhinebeck, and 9G/199 to the KRB." We insist that all drivers use the main thoroughfare Rt 9G in place of Rt103 (River Road) as this road has many winding curves, large overhanging trees, stone walls, deer and blind spots in addition to being a county road with residential homes. Using the main road of 9G allows us to maintain good relationships with our neighbors not encouraging increased traffic on a road built decades ago as a scenic bypass.

Jeffery Smith
Manager of Transportation Services
Bard College
845-464-5120
jsmith1@bard.edu



Aspinwall Hall (Polling Site)

Upper Parking Lot

Breck Hall

Aspinwall Entrance

Main Entrance

Lower Parking Lot

Church of St. John the
Evangelist, Barrytown

Sanctuary

River Rd

103

Google

Map



Non-Complying Ramp at Church's Main Entrance



The Church Location – Entrance into Aspinwall Hall with steps



Aspinwall Hall – Under Construction

Polling Place Spatial Requirements Survey

Polling Site: St Johns Episcopal Town/City: _____

Ward/ED: _____

Address: 1114 River Rd, Red Hook (Barrytown)

Polling Site Contact: Rev Chilton chilton@barcl.edu

Type of Facility:

- | | |
|---|--|
| <input type="checkbox"/> Apartment | <input type="checkbox"/> Library |
| <input type="checkbox"/> Business | <input type="checkbox"/> Mobile Home Park Facility |
| <input checked="" type="checkbox"/> Church | <input type="checkbox"/> Private Residence |
| <input type="checkbox"/> Club/Lodge/Association | <input type="checkbox"/> School |
| <input type="checkbox"/> Fire Station | <input type="checkbox"/> Senior Citizen Facility |
| <input type="checkbox"/> Garage | <input type="checkbox"/> Historical Building |
| <input type="checkbox"/> Other: Non-Public Building (specify) | |
| <input type="checkbox"/> Other: Public Building (specify) | |

+ Peter Sipperly
876 - 3408

General Requirements:

- 1) Take measurements of the poll site's dimensions – length x width:
Length 38'2" Width 19'2"
- 2) On the grid paper provided, draw a basic layout of the floor plan, noting entrances, unusable space, etc.
- 3) Number of Election Districts 1
Number of BMD 1
Number of Optical Scanners only 1
Number of Voting Booths 7

Optical Scanners:

- 4) Is there sufficient space for all of the Optical Scanners? Yes
- 5) Is an electrical outlet available for the Optical Scanners? (Yes/No)
a. If No, is there another room/area in the building with an outlet? Is it big enough to match the needs of this poll site? _____
- 6) Is there enough clearance near the outlet for the Optical Scanner/BMD?
We should have a 6'x6' space for the machine, voter, and inspectors. yes

Voting Booths:

- 7) Based on the dimensions of the room, is there enough space for each voting booth, plus tables and chairs for election inspectors? yes

Inspectors Tables:

- 8) Is there enough room for tables and chairs for all EDs yes

Contingency:

- 9) Does the building have a larger space (with outlets) if the current space is not sufficient? (Yes No) NA
a. If Yes, where is it in relation to the current space? _____
b. If Yes, what is the larger space used for? _____

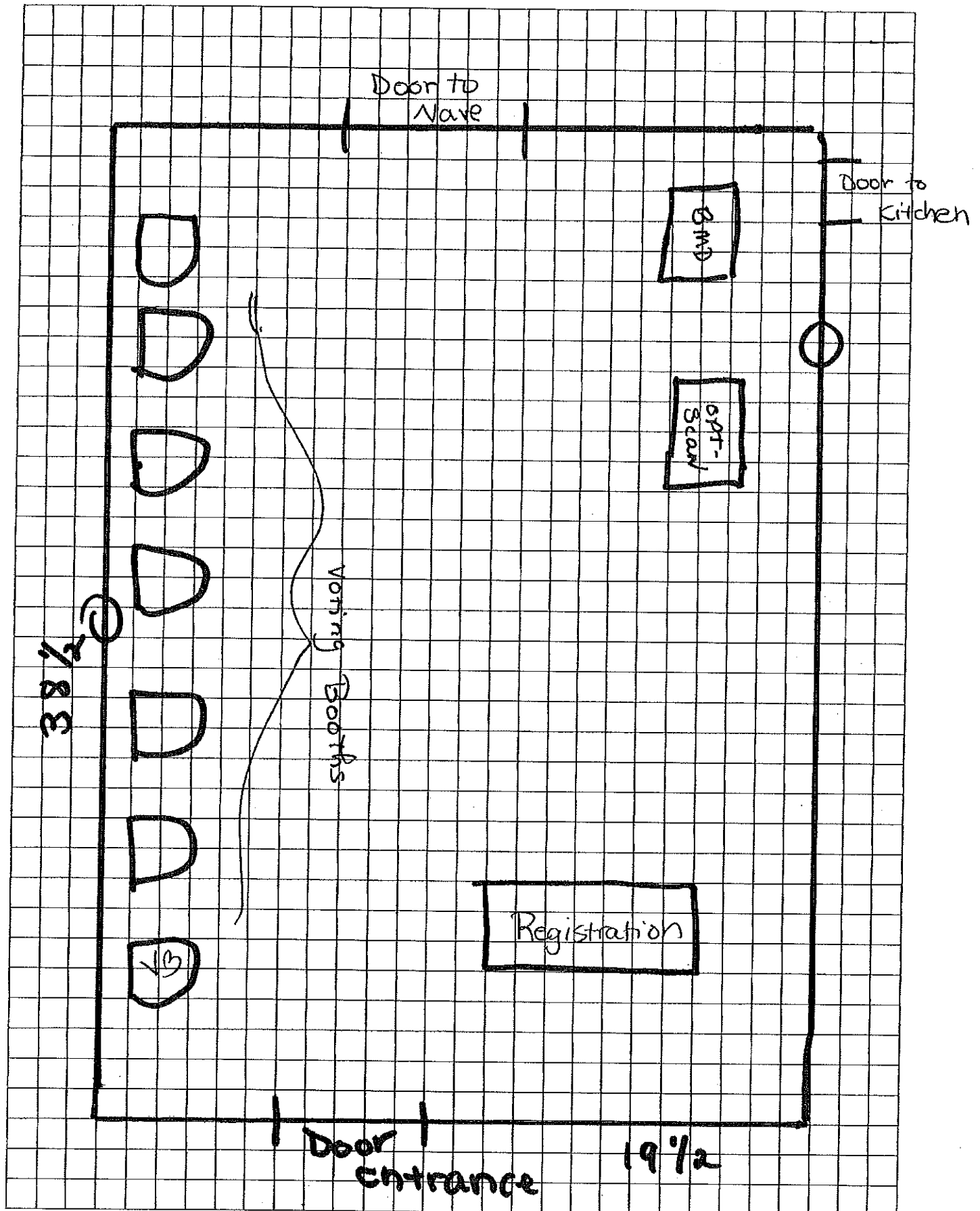
Voters:

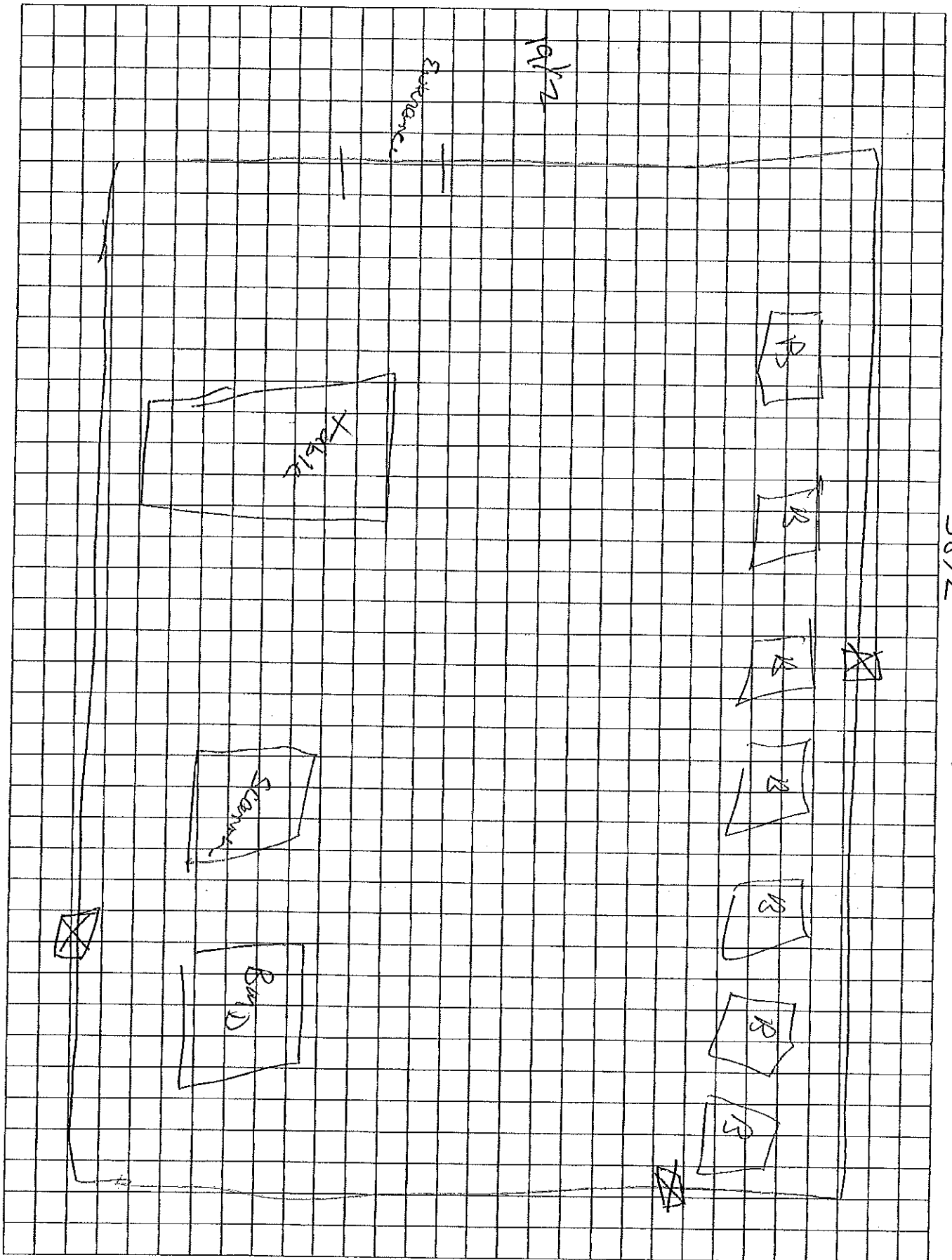
- 10) Estimate the number of people who can fit on line inside the polling area before the line reaches outside. _____

Person(s) completing this form: Donna & Steve
Date Completed: 12/4/10

*They will remove benches, coat racks, Round table,
Stack of chairs away from wall to
make more room.*

St. John's - Barrytown





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 curbs*
 - 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 NA

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 ½ 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

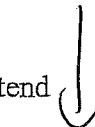
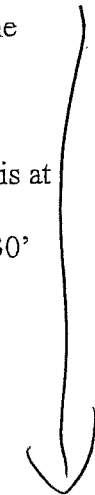
If the ramp or landing has a vertical drop-off on either side of the ramp, is edge protection provided? Yes No

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

9. Are all objects that hang over the pedestrian routes 80" or more above the route? Yes No

NA



N/A

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 3/4 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 1/2 inch (level changes between 1/4" and 1/2" 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

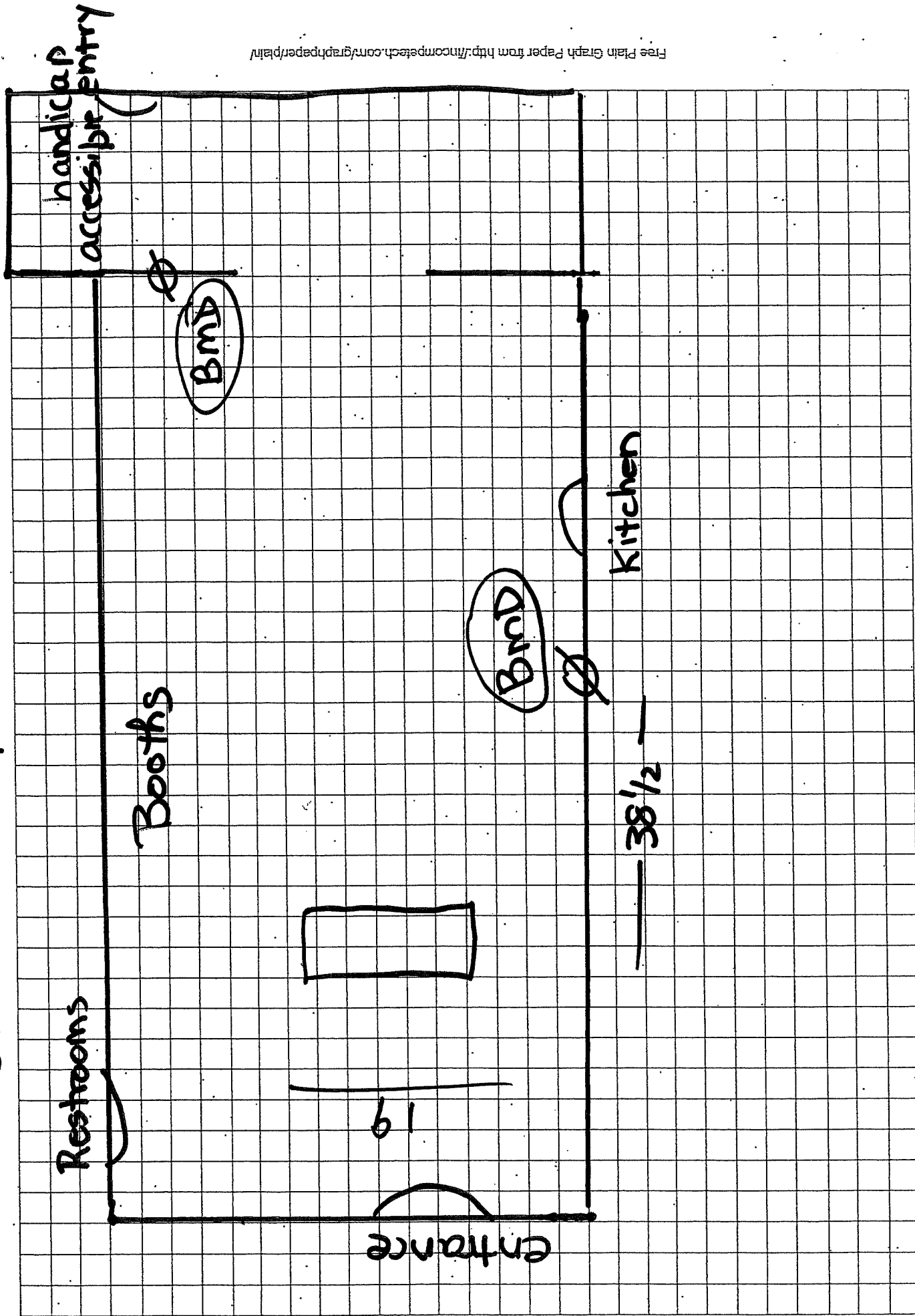
1. Is there an accessible entrance to the voting area? Yes ☒ No _____

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





Long, spacious hallways inside the Bard Location



The Main Room for Voting at Bard