Supreme Court of the State of New York
Appellate Division: Second Judicial Department

LEAGUE OF WOMEN VOTERS OF THE MID- HUDSON REGION, TANEISHA MEANS, and MAGDALENA SHARFF,

Petitioners-Plaintiffs,

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS, ERIK J. HAIGHT in his capacity as Commissioner of the Dutchess County Board of Elections, and HANNAH BLACK in her capacity as Commissioner of the Dutchess County Board of Elections

Respondents-Defendants.

Notice of Cross-Motion

Appellate Division Docket No.: 2022-_____

Please take notice that upon the annexed affirmation of David D. Jensen, dated November 7, 2022, the Appendix, and all papers submitted in this case, the undersigned will move this court, at the courthouse thereof, located at 45 Monroe Place, Brooklyn, New York, 11201, on the 7th day of November, 2022, at 9:00 o'clock in the forenoon of that date, or as soon thereafter as counsel may be heard, for an order:

1. staying enforcement of the Decision, Judgment, and Order of the Supreme Court (D'Alessio, J.S.C.) dated November 3, 2022 pursuant to CPLR § 5519(c) and/or the inherent authority of the Court; and

2. granting such other and further relief as to the court may seem just and equitable.

Dated: Beacon, New York
November 7, 2022

/s/ David D. Jensen

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Supreme Court of the State of New York
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Affirmation of David D. Jensen, Esq.

Appellate Division Docket No.: 2022-_____

DAVID D. JENSEN, an attorney being duly licensed to practice before the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. I am an attorney practicing via David Jensen PLLC, a professional limited liability company organized under New York law. I represent Commissioner Erik Haight of the Dutchess County Board of Elections, who is the Appellant here and a Respondent-Defendant in the court below. I submit this Affirmation in opposition to the motion of Petitioners-Plaintiffs to lift a stay of enforcement, sought by order to show cause. Furthermore, and to the extent a cross-motion is necessary,

I submit this Affirmation in support of Commissioner Haight's cross-motion to stay enforcement of the decision, order and judgment of the court below pending a decision on the merits from this Court.

Introduction and Summary

2. This Affirmation shows that a stay is necessary to preserve the status quo and prevent irreparable injury for several reasons, which generally center on Petitioners' delay in commencing their proceeding. Appellant is entitled to reversal on the merits because Petitioners never served him with process in accordance with CPLR § 308—the apparent result of commencing the proceeding without time to properly secure service of process. Due to this delay, Appellant is also entitled to reversal on the basis of laches. And, Vassar College, the proposed location of the new polling place(s), is plainly a necessary party—presumably omitted because of the need to rush the case forward as quickly as possible. And setting all that aside, it is abundantly clear that the petition states no claim of mandamus, for the action at issue is not ministerial, but instead requires the weighing and selection of competing policy choices.

3. What may be more pertinent—at this juncture—is that the lower court's mandatory, status quo-altering injunction is causing irreparable injury in the form of voter confusion *right now*. According to Petitioners and Commissioner Black it was impossible to designate a new polling place after the morning of November 4, 2022. Now, less than 24 hours before the election, the new polling place(s) still has not been selected and no one living in the three election districts at issue knows where they are supposed to vote tomorrow. The only thing that will restore the status quo is a stay of the lower court's order, which will result in the election being back on-track for tomorrow—as it was scheduled until November 3, 2022.

4. The essential considerations governing the issuance of a stay—on the facts and circumstances presented here—are the merits of the appeal and the need to prevent irreparable injury. While the caselaw addressing stays under CPLR § 5519(c) is "sparse," a relatively recent Supreme Court decision points concludes that "the court's discretion is the guide and it will be influenced by any relevant factor, including the presumptive merits of the appeal and any exigency or hardship confronting any party.'" *Schaffer v. VSB Bancorp, Inc.*, 68

Misc. 3d 827, 834, 129 N.Y.S.3d 252 (Supr. Ct., Richmond Co. 2020) (quotations and alteration omitted); *cf. In re Terrence K.*, 135 A.D.2d 857, 857, 522 N.Y.S.2d 949 (2d Dep't 1987) (stay "may properly be denied where it is clearly shown that there is no merit to the appeal") (citations omitted). Decisions from this Court tie the Court's power to stay—whether pursuant to CPLR § 5519(c) or pursuant to its inherent authority—to the need "to maintain the status quo during the pendency of the appeal." *See Terrence K.*, 135 A.D.2d at 857; *see also Schwartz v. N.Y. City Housing Auth.*, 219 A.D.2d 47, 48, 641 N.Y.S.2d 885 (2d Dep't 1996) (citations omitted). A preliminary injunction, which is in some respects analogous, familiarly requires: "(1) a probability of success on the merits, (2) a danger of irreparable injury in the absence of an injunction, and (3) a balance of the equities in the movant's favor." *Grassfield v. JUPT, Inc.*, 208 A.D.3d 1219, 174 N.Y.S.3d 458 (2d Dep't 2022) (quotation and citations omitted).

Polling Place Requirements

5. The Election Law directs boards of election to designate polling places "by March fifteenth, of each year," and it provides that designations are "effective for one year thereafter." Election Law § 4-

104(1). Election boards must notify all voters of their polling places between 65 and 70 days before the date of the primary election. *See id.* § 4-117(1). If a designated polling place "is subsequently found to be unsuitable or unsafe or should circumstances arise that make a designated polling place unsuitable or unsafe," then a board of elections can "select an alternative meeting place." *See id.* § 4-104(1). However, and significantly, it a board does this, then "it must, at least five days before the next election or day for registration, send by mail a written notice to each registered voter notifying him of the changed location of such polling place." *Id.* § 4-104(2). If this is "not possible," then a board "must provide for an alternative form of notice to be given to voters at the location of the previous polling place." *Id.* Obviously, now—the day before the election—it is not possible to comply.

6. The Election Law provides a number of considerations that a board of elections should address when establishing polling places. Polling place locations should, "whenever practicable, . . . be situated on the main or ground floor," and must be "of sufficient area to admit and comfortably accommodate voters." *Id.* at § 4-104(6). Polling places must comply with Americans with Disabilities Act ("ADA") requirements. *Id.*

§ 4-104(1-a). In that connection, boards must conduct access surveys and keep them on file. *See id.* § 4-104(1-a), (1-b). Beyond that, polling places should "whenever possible" be "situated directly on a public transportation route." *Id.* § 4-104(6-a). Furthermore, a board of elections should select tax exempt buildings "whenever possible," and the Election Law expressly authorizes the use of religious buildings. *Id.* § 4-104(3). An additional restriction is that a polling place must be located either in the election district or "in a contiguous district." *Id.* § 4-104(4).

7. The Election Law provides that the board or body controlling "a publicly owned or leased building, other than a public school building . . . must make available a room or rooms" that are suitable, but it allows the board or body to "file[] a written request for cancellation of such designation" within 30 days of the designation, which a board of elections may (but need not) grant. *See id.* § 4-104(3). Beyond this, a person who "owns or operates" a designated polling place can seek a judicial order vacating the polling place determination. *See id.* § 16-115. Finally, the Election Law provides a cause of action by which a board of elections can compel an unwilling polling place to be made available. *See id.*

8. The legislature recently amended the Election Law to provide that when a contiguous college or university has 300 or more registered voters on campus, "the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections." *Id.* § 4-104(5-a); *see* 2022 N.Y. Laws ch. 55, Part O, § 1. The legislation also directs election boundary districts to conform to college and university grounds, but this does not become effective until January 1, 2023, creating some problems in the short term. *See* 2022 N.Y. Laws ch. 55, Part O, §§ 2-3.

The Merit of this Appeal is Overwhelming

9. Appellant asserted four defenses to the court below: lack of personal jurisdiction; laches; failure to state a claim for mandamus; and failure to join a necessary party. (Appx213-17) Any one of these defenses, standing alone, would mandate reversal. However, the court below addressed only one—lack of jurisdiction. (Appx253-54) The court below refused to accept Appellant's motion papers, although they were provided to the other parties at the hearing. (Appx212, 252) Appellant

filed his motion papers the following day, at the same time he filed his Notice of Appeal. (Appx141-53)

10. The Court Lacked Personal Jurisdiction. "Pursuant to CPLR 304 a special proceeding is commenced and *jurisdiction acquired* by service of a notice of petition or order to show cause." *Bell v. State University of New York at Stony Brook*, 185 A.D.2d 925, 925, 587 N.Y.S.2d 388 (2d Dept 1992) (emphasis in source). Service of process in accordance with CPLR § 308 is a mandatory prerequisite to a court's assertion of jurisdiction. *See, e.g., Machia v. Russo*, 67 N.Y.2d 592, 594-95, 505 N.Y.S.2d 591 (1986). "Notice received by means other than those authorized by statute does not bring a defendant within the jurisdiction of the court." *Id.* at 595 (citations omitted). Here, Petitioners purported to serve Appellant "by emailing" the petition, order to show cause and other papers to Appellant. (Appx106) Petitioners did not serve Appellant by any other means. (Appx106)

11. CPLR § 308 authorizes a plaintiff to serve process in person or by leaving the process with "a person of suitable age and discretion" at the individual's address. *See* CPLR § 308(1)-(2). Furthermore, if a plaintiff cannot "with due diligence" make service in one of these two

manners, then the plaintiff can effect "nail and mail" service by leaving the papers at the individual's address and mailing them in accordance with the statute. *See id.* § 308(4). Finally, CPLR 308 allows for service "in such manner as the court, upon motion without notice, directs, if service is impracticable under" these other three provisions." *Id.* § 308(5).

12. In order to serve process under CPLR § 308(5), Petitioners would have needed to show that, notwithstanding their diligence, they had been unable to effect service pursuant to CPLR 308(1), (2) or (4). *See Kozel v. Kozel*, 161 A.D.3d 700, 701, 78 N.Y.S.3d 68 (1st Dep't 2018); *Snyder v. Alternate Energy Inc.*, 19 Misc. 3d 954, 959, 857 N.Y.S.2d 442 (Supr. Ct., New York Co. 2008). For example, in *Hollow v Hollow*, 193 Misc 2d 691, 747 N.Y.S.2d 704 (Supr. Ct., Oswego County 2002), the court authorized service by email in a case where the respondent husband was in a compound in Saudi Arabia, which had refused to allow a process server to enter, and the husband's employer also would not accept service. *See id.* at 692. At an absolute minimum, Petitioners would have needed to demonstrate that service using a traditional method would be "futile." *See Liebeskind v. Liebeskind*, 86 A.D.2d 207,

210, 449 N.Y.S.2d 226 (1st Dep't 1982), *aff'd*, 58 N.Y.2d 858, 460 N.Y.S.2d 526 (1983).

13. Neither the Verified Petition nor Petitioners' affirmation in support of the order to show cause make any attempt to demonstrate that service under CPLR § 308(1), (2) and (4) would be impracticable. (Appx1-11, 16-22) Furthermore, the Order to Show Cause reflects no such finding. (Appx94-96) Thus, while a court *can* order "personal service pursuant to CPLR 308 other than personal delivery pursuant to CPLR 308(1)," *Koyachman v. Paige Management & Consulting, LLC*, 121 A.D.3d 951, 951, 995 N.Y.S.2d 115 (2d Dep't 2014), the court below did not do so here, nor would there have been any basis for the court below to have done so.

14. The court below denied Appellant's motion to dismiss on the rationale that "given the exigency of the proceeding and the time constraints raised in the papers, the Court gained that the most expedient method of service was via e-mail and finds no prejudice resulting therefrom." (Appx253-54) The court further "note[d] that Commissioner Haight was present in court today, noted his appearance

on the record and his Counsel was present and participated in all of the proceedings." (Appx254)

15. This was plainly wrong. The requirements of CPLR § 308 apply to proceedings that concern the Election Law and the conduct of elections, notwithstanding that such proceedings often present exigencies and are often initiated by means of orders to show cause. *See, e.g., See Hennesy v. DiCarlo*, 21 A.D.3d 505, 506, 800 N.Y.S.2d 576 (2d Dep't 2005) (order to show cause directing personal service and service by mail did not dispense with requirement of "due diligence" to use "nail-and-mail" service under CPLR § 308(2)); *see also McGreevy v. Simon*, 220 A.D.2d 713, 713-14, 633 N.Y.S.2d 177 (2d Dep't 1995) (two attempts at service was not "due diligence" so as to permit nail-and-mail service of order to show cause). There is no basis for judicially amending CPLR § 308(5) to dispense with the need to find, "upon motion," that "service is impractible under" one of the other permitted means.

16. Furthermore, Appellant's appearance at the beginning of the order to show cause hearing, while waiting for his counsel to arrive from the airport, did not waive this jurisdictional defect. (Appx203-05)

To the contrary, a personal jurisdiction defense "is waived if a party moves on any of the grounds set forth in subdivision (a) [of CPLR § 3211] without raising such objection or if, having made no objection under subdivision (a), he or she does not raise such objection in the responsive pleading." CPLR § 3211(e). Furthermore, a party's appearance is not "equivalent to personal service . . .[if] an objection to jurisdiction under paragraph eight of subdivision (a) of rule 3211 is asserted by motion or in the answer." *Id.* § 320(b). Here, Appellant's first substantive statement to the court below, at the beginning of the order to show cause hearing, was that "we have a motion to dismiss. It is among other things, jurisdictional grounds, one of which, the first and foremost which is failure to effect service and process in accordance with CPLR 308." (Appx205) Thus, Appellant indisputably did not waive his defense to service of process. And, "[w]hen the requirements for service of process have not been met, it is irrelevant that defendant may have actually received the documents." *Raschel v. Rish*, 69 N.Y.2d 694, 697, 512 N.Y.S.2d 22 (1986) (citing *Macchia*, 67 N.Y.2d 592; *McDonald v. Ames Supply Co.*, 22 N.Y.2d 111, 115, 291 N.Y.S.2d 328 (1986)).

17. This consideration, standing alone, mandates reversal of the decision below.

18. Laches Also Mandates Dismissal of this Proceeding. "The doctrine of laches is an equitable doctrine which bars the enforcement of a right where there has been an unreasonable and inexcusable delay that results in prejudice to a party." *Skrodelis v. Norbergs*, 272 A.D.2d 316, 316, 707 N.Y.S.2d 197 (2d Dep't 2000) (citations omitted). The "prejudice" can lie in "showing of injury, change of position, loss of evidence, or some other disadvantage resulting from the delay." *Id.* at 317 (citations omitted).

19. This Court has previously recognized that last-minute changes to polling places pose substantial risks of irreparable harm. In *Krowe v. Westchester County Board of Elections*, 155 A.D.3d 672, 63 N.Y.S.3d 509 (2d Dep't 2017), "the Board made the determination to relocate the polling place less than three weeks before the 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," *see id.* at 673. Seven days prior to the election (on October 31, 2017), the lower court denied a preliminary injunction against the

change, and five days prior to the election (on November 2, 2017), this Court reversed the lower court's order. *See id.* In finding a preliminary injunction to be appropriate, the Court ruled that "irreparable harm would result if the polling place were relocated, particularly at this late date, and that the balance of equities" was in favor of preliminary equitable relief. *See id.*

20. Two recent decisions from the Third Department are instructive on the application of laches to the facts presented here. In *League of Women Voters of New York State v. New York State Board of Elections*, 206 A.D.3d 1227, 170 N.Y.S.3d 639 (3d Dep't 2022), the petitioner had waited 16 days after the act complained of to seek relief (on May 20), and the relief they sought concerned the primary election to be held about five weeks later (on June 28), *see id.* at 1228-29. The Third Department concluded that "dismissal of the petition/complaint is required under the equitable doctrine of laches." *Id.* at 1229. The petitioner had delayed "unduly," and that "delay results in significant and immeasurable prejudice to voters and candidates for assembly and innumerable other offices." *Id.* at 1229-30.

21. In the second case, *Amedure v. State*, No. CV-22-1955, 2022 WL 16568516 (3d Dep't Nov. 1, 2022), the petitioners had commenced their constitutional challenge on September 29, "nine months after [the statute at issue] was enacted," and about five weeks before the election, *id.* at *3; *see Amedure v. State*, No. 2022-2145, 2022 WL 14731190, *1 (Supr. Ct., Saratoga Co. Oct. 21, 2022). The Third Department found that laches mandated dismissal of the petition, observing that "granting petitioners the requested relief during an ongoing election would be extremely disruptive and profoundly destabilizing and prejudicial to candidates, voters and the State and local Boards of Elections." *Amedure*, 2022 WL 16568516 at *4 (citing *League of Women Voters*, 206 A.D.3d at 1230; *Quinn v. Cuomo*, 183 A.D.3d 928, 931, 125 N.Y.S.3d 120 (2d Dep't 2020)).

22. A final instructive case is *Corso v. Albany County Bd. of Elections*, 90 A.D.2d 637, 456 N.Y.S.2d 206 (3d Dep't 1982), where the Third Department disagreed with the trial court that certain municipalities had been necessary parties, but nevertheless declined to reach the merits of the petition because it was "unable to determine with certainty whether the requested relief is feasible or even possible

considering the few days remaining before the election," *id.* at 638. The court also observed that "the existing polling places are located relatively close to the campus," and accordingly, that it did not appear that any "voter will be disenfranchised if the relief sought herein is not granted." *Id.*

23. Here, Petitioners' claimed grievance is that the Dutchess County Board of Elections "did not designate a polling place on the Vassar College campus prior to August 1, 2022." (Appx4) This means that Petitioners' claim was cognizable on August 1, 2022—a full two months before they filed their petition on November 1, 2022. But what's more significant is that this filing date was a mere seven days prior to the election that is at issue. If five weeks before the election was cutting it too close in *League of Women Voters* and *Amedure*, and three weeks was cutting it too close in *Krowe*, then surely *one week*—the amount of lead-time here—threatens irreparable injury in a way that could only be justified by the gravest extremes, like the literal destruction of a polling place.

24. Appellant raised this issue at the order to show cause hearing, and Petitioners and Commissioner Black addressed it,

including the *Amedure* decision. (Appx214-15, 218-19, 221-22) However, the Supreme Court did not address laches in its ruling. (Appx252-54)

25. Notably, the difficulties experienced in trying to carry out the lower court's ruling are themselves illustrative of the interests that the laches rule serves in the first place. There is no reason to risk these kinds of issues—particularly with something as important as the franchise of voting—when Petitioners could, and should, have brought their case two months ago.

26. The Verified Petition Fails to State a Claim for Mandamus. The Election Law does not provide any cause of action for the Petitioners, as discussed previously. Rather, Petitioners rely on the common law writ of mandamus, now codified in CPLR Article 78. (Appx7-8) However, relief in the form of mandamus is available where "the duty sought to be enjoined is performance of an act commanded to be performed by law and involving no exercise of discretion." *Hamptons Hospital & Medical Center, Inc. v. Moore*, 52 N.Y.2d 88, 96, 436 N.Y.S.2d 239 (1981). Indeed, most agency "decisions do not lend themselves to consideration on their merits under the provisions for mandamus to review, because they concern rational choices among

competing policy considerations and are thus not amenable to analysis under the 'arbitrary and capricious' standard." *New York City Health & Hospitals Corp. v. McBarnette*, 84 N.Y.2d 194, 204-05, 616 N.Y.S.2d 1 (1994); *see also De Milio v. Borghard*, 55 N.Y.2d 216, 220, 448 N.Y.S.2d 441 (1982) ("the aggrievement does not arise from the final determination but from the refusal of the body or officer to act or to perform a duty enjoined by law" (quotation omitted)).

27. Appellant raised this argument in the court below, and Petitioners likewise addressed it. (Appx215-16, 219-21) Furthermore, at the hearing Commissioner Black testified that, among the various potential polling places Vassar College had identified, "[t]here was definitely one that stood out more than the others," which was the Villard Room. (Appx243) The Villard Room is the only specific location the Verified Petition identifies. (Appx5)

28. In reaching her conclusion that the Villard Room was the best polling place, Commissioner Black testified that she considered various "criteria," including "American [with] Disabilities Act requirements, as far as parking goes, getting into the building itself, getting into the area where they would be voting." (Appx243-44) She

testified further that "[w]e absolutely need a certain number of outlets for our poll pads and our machines as well and a certain, a good space size to have the flow of voter traffic as well considered." (Appx244) When asked to identify the next best alternative, Commissioner Black testified that "[o]nly the Villard room was really considered on my behalf, because they had stated that that was the number one through a phone call." (Appx245) Notwithstanding this, the court below did not address this issue. (Appx252-54)

29. Notably, events following the issuance of the decision, order and judgment at issue serve to highlight the extent to which the selection of polling places is a discretionary decision that is outside the scope of mandamus. On November 5, 2020—two days after the court below's ruling, and three days before the election—Petitioners filed an order to show cause seeking to "clarify[]" the courts previous order by designating "the Aula at Ely Hall . . . as an additional polling place," to the apparent exclusion of the Villard Hall. (Appx166-67)

30. Petitioners Failed to Join Vassar College, a Necessary Party. "Necessary parties are those 'who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or

who might be inequitably affected by a judgment in the action.'" *Morgan v. de Blasio*, 29 N.Y.3d 559, 560, 60 N.Y.S.3d 106 (2017) (quoting CPLR 1001(a)). The failure to join a necessary party requires dismissal. *See Quis v. Putnam County Bd. of Elections*, 22 A.D.3d 585, 586, 802 N.Y.S.2d 709, (2d Dep't 2005).

31. The statute at issue here requires the participation of the affected college or university. *See* Election Law § 4-104(5-A). Furthermore, the relief sought by Petitioners could inequitably affect Vassar College because it would, pertinently, require them to make space available for a polling place and accommodate the attendant traffic. Thus, Vassar College is a necessary party, and the failure to include Vassar College as a party is yet another ground that mandates dismissal of the Petition.

32. Appellant raised this issue in the court below, and the other parties addressed it. (Appx216, 220-25) Among other things, Petitioners pointed to witnesses and affidavits showing their understanding of Vassar College's views and actions with respect to the location of a polling place. (Appx30, 37, 220-21, 225, 243-45) But, other issues aside, this shows only Vassar College is a party that ought to be included to

accord complete relief to the parties, as well as that it could be inequitably affected by a judgment in the proceeding. Notwithstanding this, the court below did not address this issue. (Appx252-54)

A Stay is Needed to Preserve the Status Quo and Prevent Irreparable Injury

33. The Court Below Issued a Mandatory Injunction that Changes the Status Quo. The trial court "grant[ed] the petition in its entirety," reasoning that Election Law § 4-104(5-A) "specifically mandates the designation of a voting polling place on a college or university campus . . ." (emphasis omitted). (Appx161, 254) The petition had sought an order that, pertinently, directed the respondents "to designate and operate a polling place . . . on the campus of Vassar College" and to "assign all voters registered at a residential address on the Vassar College campus to that on-campus polling place" and "publicize the new on-campus polling place and assignments." (Appx10)

34. The court's order was a mandatory injunction that commanded the parties to perform certain actions, vis-à-vis prohibiting the parties from taking certain actions. *See State v. Town of Haverstraw*, 219 A.D.2d 64, 65-66, 641 N.Y.S.2d 879 (2d Dep't 1996). Mandatory injunctions "usually result in a change in the status quo"

because they "command[] the performance of some affirmative act." *Id.* at 65. And that is certainly the case here. Prior to the ruling of the court below, the Board of Elections had designated polling places for all of the voters in the three election districts at issue, and further, it had sent them the statutory notices that advised them of their polling places. After the ruling of the court below, and as things stand right now—literally the day before the election—no one knows where they are supposed to vote. However, a stay of the decision below would resolve the status quo pretty much instantly: Everyone would vote at the designated polling places that the Board of Elections previously advised them to use.

35. <u>It is Impossible to Designate a New Polling Place the Day Before the Election.</u> Before the court below, the Petitioners relied on an affidavit from Commissioner Black to represent that "the last possible time that the Board of Elections could implement an on-campus poll site at Vassar College for the November 8, 2022 general election is the morning of November 4, 2022." (Appx6) Commissioner Black, in an affidavit submitted by Petitioners, likewise testified that "[t]he last possible time that we can implement an on-campus poll site at Vassar

College for the November 8, 2022 general election is the morning of November 4, 2022." (Appx31) Commissioner Black testified that the necessary preparations would "include[] assigning all voters who are registered to vote at a residential address on the Vassar College campus to the on-campus poll site," as well as "program[ming] three electronic poll books to reflect the proper ballots for those election districts." (Appx31) Commissioner Black's further suggested that "[w]e *could* continue to maintain the polling places off-campus that currently serve both[1] Vassar election districts and voters off campus as well to ensure minimal disruption" (emphasis added). (Appx31)

36. However, actually designating a polling place in the immediate runup to an election proved more difficult. Petitioners looked at potential polling places on the Vassar campus not on the morning of November 4, 2022, but rather, beginning at 3:00 p.m. in the afternoon. (Appx170, 197) The only specific location the Verified Petition identified was the Villard Room, and this was also the location that Commissioner Black had testified was the most appropriate location on campus. (Appx5, 243, 245) But, by Saturday, November 5, 2022, the Villard

[1] There are actually three election districts included in Vassar's grounds. (Appx234)

Room was no longer desirable, and further, it also wasn't clear whether some or all of the designated polling places were to move to Vassar's campus. Thus, Petitioners found themselves forced to file an emergency motion with the court below, seeking an order "clarifying" the court's previous order. (Appx166-67) Specifically, Petitioners now sought an order that specifically directed on additional polling place, and at the Aula at Ely Hall, rather than the Villard Room. (Appx166-67)

37. As of the time of this affirmation, Petitioners' motion for clarification remains pending. Less than 24 hours before the date of the election, voters in three election districts do not know where to vote.

Conclusion

38. The decision below was plainly wrong on its merits. But what's more, it was also a plainly improvident exercise of discretion—a conclusion borne out by the fact that it has now, the day before the election, become all but impossible to comply with. Rather than leaving the voters in these three election districts wondering where they should vote tomorrow, the lower court's decision should be stayed.

Dated: Beacon, New York
November 7, 2022

/s/ David D. Jensen

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