

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

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

Petitioners-Plaintiffs

-against-

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

Respondents-Defendants.

Index No. _____

AFFIRMATION OF
RICHARD A. MEDINA IN
SUPPORT OF VERIFIED
PETITION & ORDER TO
SHOW CAUSE

Richard Alexander Medina, an attorney admitted to practice law before the Courts of the State of New York, and not a party to the within action, affirms the following to be true under the penalties of perjury under CPLR § 2106:

1. I am an attorney for the Petitioners-Plaintiffs (“Petitioners”) in this proceeding, and as such I am fully familiar with the facts and circumstances contained herein. I make this Affirmation because the within Order to Show Cause should be deemed an emergency application.

2. The within application should be entertained forthwith, pursuant to CPLR Article 78 as an application for an order compelling Respondents to establish a polling place and/or pursuant to CPLR § 6301 as an application for a Temporary Restraining Order (TRO) requiring Respondents to designate a polling place on the Vassar College campus for the day of the November 8, 2022 general election.

3. Respondents have violated Election Law § 4-104 [5-a] (the “College Polling Place Law”), which provides: “Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property,

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.”

4. As more fully explained in the Verified Petition, upon information and belief, Respondents are aware that there are over 1,000 voters registered to vote in the State of New York at residential addresses located on the Vassar College campus. Notwithstanding that fact, Respondents have failed to designate and provide for a polling place on the Vassar College campus as required by the College Polling Place Law.

5. The failure of Respondents to designate a polling place on the Vassar College campus was publicized in a newspaper article in the Poughkeepsie Journal on October 19, 2022 (the “Poughkeepsie Journal Article”). A true and correct copy of the Poughkeepsie Journal Article is attached hereto as Exhibit 1. The Poughkeepsie Journal Article reported that Respondent Commissioner Erik Haight has resisted the attempts of Vassar College officials, which attempts were supported by Commissioner Hannah Black, to designate a polling location for Vassar College voters. The reporting in the Poughkeepsie Journal Article is confirmed by the Affidavit of Hannah Black, attached hereto as Exhibit 2 (the “Black Affidavit”) and the Affidavit of Wesley Dixon, attached hereto as Exhibit 3 (the “Dixon Affidavit”).

6. On October 25, 2022, a coalition of non-profits and student organizations sent a letter to, *inter alia*, the Commissioners of the Dutchess County Board of Elections (the “Demand Letter”). A true and correct copy of the Demand Letter, along with attached exhibits, is attached hereto as Exhibit 4. The Demand Letter identifies erroneous advice given by the Dutchess County Attorney’s office to the Board of Elections. In particular, the County Attorney’s office told the Board of Elections the wrong effective date for the College Polling Place Law and failed to inform

the Board of Elections of the correct deadline to designate a polling place.¹ The letter demanded County leadership insist that Commissioner Haight either (a) agree to a suitable polling location selected by Vassar College or (b) demonstrate at a public hearing that another location either on campus or nearby would be more suitable, by the end of the week, *i.e.*, Friday, October 29, 2022. Demand Letter at 6.

7. In an attempt to allow Respondents to comply with the law without the expense of public and judicial resources required by litigation, Petitioners-Plaintiffs gave Respondents until October 29, as provided in the letter, to designate a polling place on the Vassar College campus before bringing this Petition. However, as of the date of this Affirmation, the Board of Elections had still not designated a polling place on the Vassar College campus in accordance with Election Law § 4-104 [5-a]. This Petition is therefore timely. Respondents were allowed a full and fair opportunity to comply with the requirements of the College Polling Place Law and have failed to do so.

8. A writ of mandamus under Article 78 lies where a government “body or officer failed to perform a duty enjoined upon it by law.” CPLR § 7803. Petitioners must establish “‘a clear legal right to the relief demanded’ by demonstrating the ‘existence of a corresponding nondiscretionary duty’ on the part of the” relevant body. *Waite v. Town of Champion*, 106 N.E.3d 1167, 1171 (N.Y. 2018) (quoting *Scherbyn v. Wayne-Finger Lakes Bd. of Co-op. Educ. Servs.*, 573 N.E.2d 562 (N.Y. 1991)); *see also George F. Johnson Mem’l Libr. v. Springer*, 783 N.Y.S.2d 138, 139 (3d Dep’t 2004) (granting petition for mandamus under Article 78 because government official did not have “any discretion to refuse” to perform relevant duty); *League of Women Voters of N.Y. v. N.Y. State Bd. of Elec.*, No. 535511, 2022 WL 2070888, at *2 (3d Dep’t June 9, 2022)

¹ Specifically, the County Attorney wrongly told the Board of Elections that the College Polling Place Law would not take effect until 2024. Demand Letter at 4.

(indicating that petitioner could demonstrate “clear legal right to the relief demanded” and “corresponding nondiscretionary duty on the part of respondent” with “an express judicial order invalidating the [state] assembly map” (cleaned up)). “[T]o the extent that [petitioners] can establish that defendants are not satisfying nondiscretionary obligations to perform certain functions, they are entitled to orders directing defendants to discharge those duties.” *Klostermann v. Cuomo*, 463 N.E.2d 588, 596 (N.Y. 1984). It has long been established that mandamus lies in an action to compel election commissioners to perform ministerial acts. *E.g., Matter of Mansfield v. Epstein*, 5 N.Y.2d 70, 73 (1958).

9. Section 4-104 of the Election Law is written in mandatory terms. In Section 4-104, the legislature commands: “Every board of elections shall . . . designate the polling places in each election district.” N.Y. Elec. Law § 4-104 [1] (emphasis added). And § 4-104 [5-a] commands: “Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, 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.” (emphasis added).

10. “The use of the verb ‘shall’ throughout the pertinent provisions illustrates the mandatory nature of the duties contained therein.” *Nat. Res. Def. Council, Inc. v. N.Y.C. Dep’t of Sanitation*, 83 N.Y.2d 215, 220 (1994). And an action may be brought under Article 78 to “compel acts that officials are duty-bound to perform” by such mandatory statutory language. *Id.* at 221.

11. Respondents therefore *must* designate a polling place for individuals registered to vote on Vassar’s campus that is either (1) “on such contiguous property” (i.e., on campus), or (2)

“at a nearby location recommended by the college or university and agreed to by the board of elections.” N.Y. Elec. Law § 4-104 [5-a].

12. Petitioners seek emergency interim relief in the form of a preliminary injunction and temporary restraining order because time is of the essence. Under Section 6301 of the CPLR, “[a] preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual.” A temporary restraining order may be granted “where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.” *Id.* To obtain such preliminary relief, “a movant must establish (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.” *Herczl v. Feinsilver*, 153 A.D.3d 1338, 1338 (2d Dep’t 2017).

13. Here, Petitioners’ right to relief on the merits is clear: Section 4-104 in unambiguous terms requires that a polling place be located on or near Vassar’s campus. Unless this Court intervenes, Respondents are poised to ignore that mandatory requirement. Petitioners therefore suffer an unacceptable risk of immediate and irreparable injury. If this Court does not act immediately, there will not be enough time for the Board of Elections to make the necessary arrangements to establish a polling place for residents of Vassar’s campus as required by law. *See* Black Affidavit ¶¶ 11-13.

14. For similar reasons, the balance of equities also tips in Petitioners’ favor. Respondents cannot credibly claim an interest in continuing to ignore clear provisions of the Election Law. And Vassar College students and faculty, particularly those who lack access to

automobiles, will face substantial barriers to voting without the on-campus (or near-campus) voting location guaranteed to them by statute. Undoubtedly, some will be disenfranchised altogether.

15. Because time is of the essence, Petitioners also request leave to effect service of a copy of the annexed Order to Show Cause, together with a copy of the papers upon which it is granted, upon Respondent as indicated in the accompanying Order to Show Cause: by email to the official government email addresses of the Board's two commissioners, including that of Respondent Haight, or by personal service upon a person of suitable age and discretion at the office of the Board of Elections.

16. In time-sensitive matters related to the administration of elections under the Election Law, courts routinely authorize alternative and expedited methods of service in accordance with the Election Law, the CPLR, and controlling case law.

17. I have made a good faith effort to contact Respondents. Specifically, I have emailed copies of these papers to both Commissioners of the Board of Elections, including Respondent Haight, at the email addresses published on the website of the Dutchess County Board of Elections. *See* Dutchess County Board of Elections, <https://elections.dutchessny.gov/> (last accessed October 31, 2022). Given the timeframe at issue, attempting to contact Respondents by mail would be futile.

18. Petitioners have no adequate remedy at law.

19. No prior application for the relief sought herein has been made to this or any other Court.

WHEREFORE, it is respectfully requested that this Court entertain this emergency Order to Show Cause, and grant the relief sought herein.

Dated: November 1, 2022



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