

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,
 ERIK J. HAIGHT in his capacity as Commissioner of the
 Dutchess County Board of Elections, and HANNAH
 BLACK in the capacity as Commissioner of the Dutchess
 County Board of Elections,

Respondents-Defendants.

Index No. 2022-53491

AFFIRMATION OF
RICHARD A. MEDINA IN
SUPPORT OF
EMERGENCY 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. On November 1, 2022, Petitioners filed a verified petition requesting that this Court compel Respondents, including Commissioner Erik J. Haight, (a) to designate and operate a polling place to be used on the day of the general election on November 8, 2022 on the campus of Vassar College; (b) to assign all voters **registered at a residential address on the Vassar College campus** to that on-campus polling place and (c) to publicize the new on-campus polling place and assignments to those voters who are assigned to the Vassar College on-campus polling place.

3. On November 3, 2022, this Court held a hearing on this matter at which Commissioner Haight personally appeared and in which his counsel fully participated.

4. At the hearing, this Court entered a Decision, Order, and Judgment granting the Verified Petition in its entirety, holding that “Election Law 4-104[5-a] specifically mandates the designation of a voting polling place on a college or university campus where, as here, the petitioner demonstrated that the college or university campus contains three hundred or more registrants to vote at an address on such college or university campus.” NYSCEF Doc. No. [21](#), ¶ 6 (the “November 3 Order”).

5. At 9:31 PM on November 3, Wesley Dixon, Special Assistant to the President of Vassar, sent an email to both Commissioners of the Board of Elections reiterating Vassar’s willingness to host a polling location on campus, and describing the site that it had set aside for this purpose—the Aula at Ely Hall. Mr. Dixon offered to host the Board of Elections for a site visit at the Aula at 3:00 p.m. on November 4. A true and correct copy of that email is attached hereto as Exhibit A.

6. Attached hereto as Exhibit B is, upon information and belief, a true and correct copy of Commissioner Black’s email correspondence with Commissioner Haight detailing her efforts to comply with this Court’s November 3 Order.

7. Contrary to Commissioner Haight’s suggestion, and as Commissioner Black testified at the hearing before this Court on November 3, the law does not require a public meeting to be held before a poll site can be designated.

8. Upon information and belief, the site visit at the Aula took place as planned, at 3:00 p.m. on November 4. Commissioner Black as well as Republican Board of Elections staff attended.

Commissioner Haight did not attend. Commissioner Black confirmed that the Aula satisfies all requirements for a polling location.

9. Attached to this affirmation as Exhibit C is an affidavit by Wesley Dixon of Vassar College confirming that Vassar is aware of this Court's November 3 Order, believes the Aula meets all requirements for designation as a polling location, supports designation of the Aula as a polling location, and is willing to immediately send out materials and post notices publicizing the site upon designation.

10. Yesterday evening at approximately 9:05 p.m., Commissioner Haight emailed Commissioner Black concerning parking at the Aula. *See* Exhibit B. Commissioner Haight's email wrongly says: "The court didn't authorize Vassar as a satellite location but rather **the** poll site for those election districts," suggesting that *all* voters from the three election districts that touch Vassar's campus must vote at the Vassar poll site. (emphasis added).

11. Commissioner Haight is incorrect. The November 3 Order granted the Verified Petition in its entirety. The Verified Petition specifically sought an order compelling Respondents "(a) to designate and operate **a** polling place to be used on the day of the general election on November 8, 2022 on the campus of Vassar College;" and (b) "to assign all voters **registered at a residential address on the Vassar College campus** to that on-campus polling place." (emphasis added).

12. Commissioner Haight continues to be intransigent, professing confusion as to his obligations under this Court's November 3 Order and N.Y. Elec. Law § 4-104 [5-a]. Accordingly, Petitioners hereby move this Court for clarification of the November 3 Order.

13. This Court has found that a polling place must be designated at Vassar College pursuant to New York Election Law § 4-104[5-a]. Time is of the essence given the imminence of Election Day.

14. This Court has equitable authority to fashion a remedy in this Article 78 mandamus action. See *Matter of Geller v. Veteran*, 49 A.D.2d 574, 574 (2d Dep't 1975) ("Although mandamus relief is classed as a legal remedy, equitable principles largely control its issuance."). This Court also has inherent authority to enforce its own orders. *Pastrana v. Cutler*, 115 A.D.3d 725, 727-28 (2d Dep't 2014) ("[T]he Supreme Court acted appropriately pursuant to its inherent plenary power to enforce compliance with its prior orders and to fashion a remedy for the proper administration of justice.")

15. Petitioners therefore respectfully request an order from this Court (a) designating the Aula at Ely Hall as an additional polling place to be available on the day of the general election on November 8, 2022 for all voters registered at a residential address on the Vassar College campus; (b) ordering Respondents to direct Board of Elections staff to begin making the necessary preparations for such additional polling place, and (c) ordering Respondents to publicize the new on-campus polling place to voters who are registered to vote at a residential address on Vassar College's campus.

16. 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.

17. 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. *See, e.g. Aarons v. Bd. of Elections in the City of N.Y.*, Index No. 507128/20, 2020 WL 2789911, at *2 (N.Y. Sup. Ct., May 29, 2020) (“The order to show cause provided for same day service on the Board via email, which was effectuated by Petitioner.”); *McGrath v. New Yorkers Together*, 55 Misc. 3d 204, 206-07 (N.Y. Sup. Ct. 2016) (“Justice Dillon directed that copies of the order to show cause, together with all of the ancillary papers upon which the order was granted, be served upon respondents in person, or alternatively, at the option of petitioner, served upon any party herein by electronic transmission on or before the close of business on November 7, 2016 at an email address or fax number maintained by such respondents.”). Indeed, the Saratoga County Supreme Court recently authorized electronic service of an order to show cause in a time-sensitive election matter in which Commissioner Haight was a plaintiff. *Amedure v. State of New York*, Saratoga County Index No. 20222145, Order to Show Cause, Doc. No. [6](#) (Sup. Ct. Oct. 6, 2022) (“at the option of the Petitioners, same may be served by electronic transmission thereof to the said Defendant-Respondents at an email or fax number maintained for such purposes.”).

18. I have made a good faith effort to contact Respondents. Specifically, I emailed Mr. Jensen, counsel for Commissioner Haight, copying all counsel of record, this morning at 9:02 a.m. In that email, I requested that Mr. Jensen, by 10:00 a.m.: (1) confirm that Commissioner Haight will comply with Justice D’Alessio’s order by designating the Aula at Ely Hall as an additional poll site for voters registered on Vassar’s campus and directing BOE staff to move forward with the necessary preparations, as requested by Commissioner Black, or (2) explain his basis for refusing to do so.

19. As of the time of filing, Mr. Jensen has not responded to my 9:02 a.m. email.

20. The undersigned is also available for a telephonic conference at the Court's convenience should the Court have any questions.

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

Dated: November 5, 2022



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