

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

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In the Matter of the Application of

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

DECISION AND ORDER  
ON MOTION FOR LEAVE  
TO REARGUE AND RENEW

Petitioners,

Index No. 52737/20

-against-

DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT, in his official capacity, and  
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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The following papers were read on this motion by the Petitioners:

NOTICE OF MOTION  
AFFIRMATION IN SUPPORT  
EXHIBITS A

AFFIRMATION IN OPPOSITION  
EXHIBIT 1

REPLY AFFIRMATION  
EXHIBITS A - C

On October 13, 2020 this court denied Petitioner's application per CPLR Article 78 finding that the Board of Elections' (the "Board") determination in March of 2020 to designate the St. John's

Episcopal Church in Red Hook, N.Y. (the “Church”) as the polling place for Red Hook District 5 voters, and its denial of a request to move it, was not arbitrary and capricious or an abuse of discretion. The Petitioners sought to move the polling place to the Bertelsmann Campus Center at Bard College in Red Hook, N.Y.

On September 4, 2020 Petitioners commenced this proceeding. They had sent a letter to the Board’s Commissioners on February 28, 2020 and again in late summer 2020 asking that the polling place be relocated to Bard College. The Vicar and Treasurer of the Church made that request citing the “inability to provide an adequately safe environment for the poll workers as well as the voters...our space is too small to support much-needed social distancing...”

Although the Board of Elections must designate polling places by March 15<sup>th</sup> of each year it has the discretion to later select an alternate polling location if the initially designated polling place is subsequently found to be unsuitable or unsafe. As stated in this court’s October 13, 2020 decision and order, per CPLR Section 7804 the only relevant question before this court was whether the Board’s determination was arbitrary and capricious or an abuse of discretion. The court’s role in reviewing an agency’s action “is not to determine if the agency action was correct or to substitute its judgment for that of the agency, but rather to determine if the action taken by the agency was reasonable.” Hill v. State Bd. of Elections, 120 AD2d 55 (2<sup>nd</sup> Dept 1986).

In considering the Petitioners’ arguments, the court recognized their claims, as supported by the Church, that the current polling site is too small to safely accommodate voters and poll workers in light of the COVID-19 pandemic. Petitioners underscored that the proposed Bard College location is large enough to enable social distancing for voters and poll workers. This is supported by the affidavit of Felicia Keesing, a professor with expertise in the transmission of infectious diseases stating that the proposed polling place at Bard College is a safer option based upon the smaller size and layout of St. John’s Episcopal Church.

In opposition to the petition Elections Commissioner Eric Haight submitted an affidavit stating that the election was too close in time to enable a change in the polling site that would be fair to all voters in the 5<sup>th</sup> District including by giving them timely and effective notice of the change. This court relied upon Commissioner Haight’s assertions in this regard including that notification of a new polling place at this late date would likely cause voter confusion and result in voters going to the wrong polling place. As stated in the decision and order, it was largely on this basis that the court found that the determination not to move the polling place was based in reason and not arbitrary and capricious or an abuse of discretion. However, as pointed out in the motion now before this court, one day after the court’s decision and order Commissioners Haight and Soto moved two other polling places in Red Hook. Districts 7 and 8’s polling place was moved from the Red Hook Town Hall to the Linden Avenue Middle School “for safety reasons” related to COVID-19. Those 2 districts combined have approximately the same number of active voters as District 5 requiring notice to a similar number of voters.

On October 15, 2020, two days after this court’s decision and order, The Red Hook Town

Supervisor announced that the polling location for Districts 7 and 8 had been moved. The announcement states (in part): “Due to the expected number of voters, the limited space in the Town Hall meeting room, and the ongoing pandemic, the Dutchess County Board of Elections has made this change” citing the same reasons the Petitioners and the church seek to move the District 5 polling place.

The basis for this court’s decision and order has now been eliminated since the primary factor identified by Commissioner Haight and relied upon by this court was simply untrue. Apparently there was, and is, time to move the polling place for District 5 in Red Hook. The court notes that Commissioner Haight submitted no affidavit in opposition to this motion. Only his attorney’s affirmation was provided. On the basis of all of the above, it is hereby

**ORDERED** that Petitioners’ motion for leave to reargue is denied. It is further

**ORDERED** that Petitioners’ motion for leave to renew is granted. Upon renewal this court modifies its prior determination. The District 5 polling place shall be moved from the St. John’s Episcopal Church in Red Hook, N.Y. to the Bertelsmann Campus Center at Bard College in Red Hook, N.Y. in time for in-person voting on November 3, 2020 from 6:00 a.m. to 9:00 p.m.

This court notes the Respondents’ claims as to Bard’s rules regarding COVID-19 and Bard’s response and also notes Bard’s apparent ability to create a safe environment for voters particularly given its stated record of zero cases of COVID as of October 16, 2020 out of 4,417 tested students and employees.

Dated: October 23, 2020  
Poughkeepsie, New York

ENTER:

s/ *Maria G Rosa*

MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.