

At a Term of the Supreme Court, held in and for the County of Rensselaer, in the City of Troy, New York, on the 7th day of June, 2021.

PRESENT: HON. ADAM W. SILVERMAN,
Acting Justice Supreme Court

SUPREME COURT
COUNTY OF RENSSELAER STATE OF NEW YORK

In the Matter of the Application of
PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
New York,

Petitioner,

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

DECISION AND ORDER
INDEX NO. EF2021-268959

-against-

JASON SCHOFIELD, individually and in his capacity of
Commissioner of the Rensselaer County Board of Elections,
EDWARD McDONOUGH, individually and in his capacity
of Commissioner of the Rensselaer County Board of Elections,
and RENSSELAER COUNTY BOARD OF ELECTIONS,

Respondents.

APPEARANCES: HON. LETITIA JAMES
Attorney General for the State of New York
Jessica Clarke, Civil Rights Bureau Chief
Lindsay McKenzie, Assistant Attorney General
Amanda Meyer, Assistant Attorney General
Attorneys for Petitioner

CARL J. KEMPF III, Rensselaer County Attorney
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Attorneys for Respondents

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ADAM W. SILVERMAN, A.J.S.C.

Before this Court is a case of first impression as no other court of this state has reviewed the early voting statute and its requirement of adequate and equitable access to the polls. In its brief two-year existence, the state Legislature has already responded to concerns with its implementation by modifying the statute multiple times, refining its charge to local boards of elections that voters must have equal access to polling locations. The record in this proceeding signals the need for further modifications to the law if the noble intentions of the legislation are to be achieved absent court intervention.

Here, the Attorney General of the State of New York, acting under her *parens patriae* authority on behalf of New York voters, brings this special proceeding asking the Court to review the determination of the Rensselaer County Board of Elections (hereinafter “Board of Elections”) in locating early voting polling sites. Unquestionably, “[v]oting is of the most fundamental significance under our constitutional structure” (*Matter of Walsh v Katz*, 17 NY3d 336, 343 [2011] [internal quotation marks, brackets, and citations omitted]). It is by this right that all other rights are preserved. With absolute appreciation of this fact, the Court is also mindful of its role in reviewing determinations made by agencies. The law requires that courts grant significant deference to agencies in their role of making factual determinations and the statute at issue specifically acknowledges the flexibility granted to local boards of elections in administering elections. The Attorney General brings this lawsuit solely to challenge Respondents’ compliance with the Election Law.

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Petitioner argues Respondents have failed to comply with Election Law, which requires local boards of elections to determine the location of early voting poll sites by considering the following factors: population density, travel time to the polling place, proximity to other early voting poll sites, public transportation routes, commuter traffic patterns and such other factors each board of elections deems appropriate. Petitioner asserts that, particularly in light of a community effort in support of alternative or additional early voting locations, Respondents have failed to make a determination consistent with these statutory factors and thereby committed arbitrary action that was without sound basis in reason and taken without regard to the facts.

Respondents challenge the Attorney General's standing and capacity to bring this special proceeding. Regardless, Respondents assert they had a rational basis in designating the three selected sites for early voting and they did so in accordance with the standard established under Election Law.

Procedural History

This special proceeding pursuant to CPLR article 78 was commenced by signed Order to Show Cause (Silverman, J.) on May 27, 2021. Respondents joined issue on June 2, 2021. Petitioner replied in further support of the Petition on June 3, 2021.

The Court held oral arguments on June 4, 2021. At oral arguments, counsel for all parties were present and further reiterated their positions as had been laid out in their submissions. The Court, upon hearing these arguments and upon consideration of all the papers submitted, issued an oral decision that the determination of Respondents was arbitrary and capricious. The Court noted the quickly approaching start of early voting and the need for clarity for voters. Therefore,

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upon consent of all parties, the Court agreed to hold in abeyance its ruling until June 7, 2021 to allow parties to consider if an agreement upon consent could be reached to resolve the matter (*see e.g. Matter of Kelleigh McKenzie v Ulster County Board of Elections*, Sup Ct, Ulster County, October 30, 2020, Fisher, J., index No. EF-2020-2716 [Ordering the extension of early voting hours on consent]). All parties were told, as part of this agreed upon hold, that if the parties failed to come to a consensus, the deadline for a new determination regarding early voting would be no later than June 9, 2021.

As no consent agreement has been presented to the Court by the agreed upon deadline, the Court now issues its ruling and Order.

Facts**2019 Early Voting Law**

In 2019, to expand the availability of voting opportunities to “meet contemporary standards for accessibility, equity, and efficiency,” the State of New York joined thirty-seven states and the District of Columbia by passing legislation that offers early voting (Sponsor’s Mem, Bill Jacket, L 2019, ch 6). In order to effectuate the law’s intent of “designat[ing] polling places in locations that maximize accessibility for eligible voters” (Sponsor’s Mem, Bill Jacket, L 2019, ch 6), the legislation relies upon local county boards of elections. In so doing, the law “takes into account the wide variation in characteristics of different counties throughout the state, by providing county boards of elections with flexibility,” however “[t]his flexibility is balanced by minimum standards that . . . ensure that all voters have a meaningful opportunity to vote early” (Sponsor’s Mem, Bill Jacket, L 2019, ch 6).

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County boards of elections have broad authority to designate polling places (*see* Election Law § 4-104). The early voting law explicitly requires “at least one early voting polling place for every full increment of fifty thousand registered voters in each county” (Election Law § 8-600 [2] [a]). Each county board is further authorized to add additional sites (*see* Election Law § 8-600 [2] [b]). Election Law § 8-600 (e) provides, in relevant part, that “Polling places for early voting shall be located so that voters in the county have adequate and equitable access, taking into consideration population density, travel time to the polling place, proximity to other early voting poll sites, public transportation routes, commuter traffic patterns and such other factors the board of elections deems appropriate” (*see also* 9 NYCRR 6211.1). These sites are subject to the same accessibility requirements as Election Day polling sites (*see* Election Law § 8-600 [2] [e]; *see generally* Election Law § 4-104).

2019 Rensselaer County Polling Site Selection

In support of their determination, Respondents Jason Schofield and Edward McDonough, Commissioners of the Rensselaer County Board of Elections (hereinafter “commissioners”) swear that they “looked at and studied a map of Rensselaer County” and then considered the statutory factors based on their “working knowledge” [Schofield Aff ¶ 13; McDonough Aff ¶ 13]. This review coupled with their “working knowledge” allegedly enabled them to determine the County should be divided into a northern and southern half. The commissioners then swear that they considered a “site in the Town of East Greenbush, the most populous town in the County” [Schofield Aff ¶ 13; McDonough Aff ¶ 13]. Because the East Greenbush library holds a fundraising event during the early voting period, the commissioners decided against that location

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[Schofield Aff ¶ 14; McDonough Aff ¶ 14]. Likewise, the commissioners ruled out the use of schools because “school officials would not be receptive” to the disruption [Schofield Aff ¶ 13; McDonough Aff ¶ 13]. The commissioners then chose to use the second floor of the Schodack Town Hall based upon its parking lot and location on Routes 9 & 20, which they identify as major thoroughfares for the County [Schofield Aff ¶ 15; McDonough Aff ¶ 15].

As relates to the City of Troy, the commissioners swear they first considered the County Office Building but found its parking inadequate during normal business days [Schofield Aff ¶ 16; McDonough Aff ¶ 16]. They further considered the other fifteen polling sites and ruled out churches as it would be “disruptive to religious services on weekends,” and schools because it would “be problematic for schools [because of]. . . student safety, . . . security reasons and school staffing costs” [Schofield Aff ¶ 16; McDonough Aff ¶ 16]. They then determined the location should be outside of the City of Troy and in the adjoining Town of Brunswick [Schofield Aff ¶ 17; McDonough Aff ¶ 17]. The Brunswick Town Hall is located on Route 7, a “heavily used commuter road” [Schofield Aff ¶ 17; McDonough Aff ¶ 17].

The commissioners then swear that during this period of time, they met with “a number of individuals and community groups about an early voting site in Troy, [including] representatives from the League of Women Voters, and the NAACP” [Schofield Aff ¶ 18; McDonough Aff ¶ 18]. The commissioners characterize these meetings as “not required by law,” despite an explicit regulatory requirement that boards of elections conduct communications outreach regarding early voting and report to the State Board of Elections the community based groups that were involved in the development of the plan (*see* 9 NYCRR 6211.7 [b]). The

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commissioners confirm that this outreach informed them of “concern that there was no early voting site in Troy” [Schofield Aff ¶ 18; McDonough Aff ¶ 18].

Noreen McKee, a Board Member and volunteer at Unity House, a Board Member of the Rensselaer County Chapter of the League of Women Voters, a Board Member and Officer of the Justice Center of Rensselaer County, swears that she and Judy Meyer, Co-President of the League of Women Voters, met with the commissioners in March of 2019 [McKee Aff ¶ 2, 5-7]. She states that the commissioners told her about their plans to designate Schodack Town Hall based on parking and requirements for accessibility for people with disabilities, but discuss no other factors, including population density and public transportation [McKee Aff ¶ 6-7]. McKee further swears that she traveled to the Brunswick Office Building by bus from downtown Troy to vote, a journey that, after a 30-40 minute bus ride, included a 1.8-mile walk along a highway with only intermittent sidewalks [McKee Aff ¶ 15]. McKee further notes various letters that were sent to the Board of Elections urging the addition of a Troy location and specifically the recommendation of Unity House [McKee Aff ¶ 17-18].

Chris Burke, Chief Executive Officer of Unity House, further swears to the willingness of his organization to host a polling site [Burke Aff ¶ 13-24]. In a September 2019 letter, the Board of Elections was presented with information that Unity House was more centrally located than the current sites, was ADA compliant, had sufficient parking, and had people willing to work as poll workers [Burke Aff, Ex B].

Additionally in 2019, David Bissember, a then-member of the City Council of the City of Troy wrote to the Board of Elections expressing concern about the lack of an early voting site in

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Troy [Bissember Aff, Ex A]. After consulting with Commissioner McDonough, it was his understanding that a lack of funding was the hurdle [Bissember Aff ¶ 8-10]. The Troy City Council responded by passing a resolution offering to match up to \$7,500 of County funding [Bissember Aff, Ex B]. The County opted not to provide funding so the City Council again took action by offering to provide the full \$15,000 in funding [Bissember Aff, Ex C].

A press conference was held in front of Unity House where members of the state legislature proposed amending the Election Law to require each county to locate early voting sites in their largest municipalities [Burke Aff ¶ 24]. Despite this press conference and outreach from Burke, Bissember, and others, the Board of Elections chose not to visit Unity House in 2019 [Burke Aff ¶ 23].

Addition of Holy Cross Armenian Church as an Early Voting Site

In response to the potential state legislation requiring early voting sites in each county's largest municipality, the commissioners began a search for an appropriate location in Troy [Schofield Aff ¶ 19; McDonough Aff ¶ 19]. They swear they considered "existing polling sites in the City of Troy" and identified The Holy Cross Armenian Church, which had been a polling site since 2016 [Schofield Aff ¶ 20; McDonough Aff ¶ 20]. They offer no explanation as to why they did not identify this as a site during their first review of existing polling sites. They further offer no explanation as to why they did not visit Unity House, despite the community requests.

In July 2020, several community organizations again wrote to the Board of Elections requesting consideration of Unity House [Burke Aff, Ex C]. Similarly to the 2019 letter, the Board of Elections was again informed that Unity House was more centrally located than the

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previously selected sites, including the Armenian Church, was ADA compliant, had sufficient parking, and had people willing to work as poll workers [Burke Aff, Ex C].

2020 Amendment to the Early Voting Law

Following the 2019 election, the state Legislature amended the early voting statute to require that “the municipality with the highest population in each county based on the latest federal decennial census shall have at least one polling place designated for early voting, and to the extent practicable if such municipality has public transportation routes, such polling place shall be situated along such transportation routes” (L 2020, ch 344). While avoiding explicitly naming the county, the sponsor’s memo makes clear that the intent of the amendment was to prevent what happened in Rensselaer County in 2019. The memo explains:

“It has come to the attention of the sponsor that in at least one county in the state, the intent of these provisions has been disregarded, with polling locations being sited outside the county's largest municipality and urban center. The sites of the polling locations do not lend adequate and equitable access to the polls for the county's urban voters, as they are located a significant distance outside the county's largest city. Many urban voters, due to population density, utilize public transportation and will not have adequate and equitable access to the polling locations established in such county; these voters are effectively being disenfranchised from New York's early voting system” (Sponsor's Mem, L 2020, ch 344).

2021 Early Voting Polling Sites

By letter dated November 24, 2020, the Office of the New York State Attorney General requested:

1. All documents including communications, plans, reports, studies, maps, publications, memoranda, and other materials containing information within the Board's possession concerning the location of early voting poll sites in Rensselaer County, including requests for, or consideration of, additional or alternative sites, from January 1, 2019 through the present; and

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2. All documents, including communications, plans, reports, studies, maps, publications, memoranda, and other materials containing information within the Board's possession concerning the number of early voting poll sites in Rensselaer County, from January 1, 2019 through the present. [McKenzie Aff, Ex 11].

In December 2020, a group of community organizations submitted a Freedom of Information Law request for:

1. Records of any plans, maps, demographic profiles, drawings, photographs, GIS records, shapefiles, electronic files, lists, or other description of Rensselaer County's proposed early voting locations and early voting districts generated since March 2019.
2. Any reports, analyses, spreadsheets, maps, and studies generated by the Board or for consideration by the Board in the identification or selection of early voting locations in Rensselaer County, including any accessibility surveys.
3. Any records prepared by, provided to or considered by the Board regarding the consideration of locating any early voting sites in the City of Troy such as, for purposes of illustration, potential sites at Unity House of Troy (located at 2341 Sixth Ave in Troy) or Johnstone Supply (2600 Sixth Ave in Troy).
4. All documents and communications reflecting consideration by the Board of demographic data concerning the racial, ethnic, or language minority status of residents or voters in the identification or selection or rejection of any actual or potential polling places for early voting under Election Law § 8-600 in Rensselaer County since January 1, 2019. [Burke Aff, Ex D].

The Attorney General's request was repeated in a December 24, 2020 letter [McKenzie Aff, Ex 12]. The Board of Elections replied on January 13, 2021 that the only document responsive to the information request was the community organization's December 2020 Freedom of Information request [McKenzie Ex 13]. A week after the letter to the Attorney General's Office, Respondent Commissioner Jason Schofield replied to the community organization's Freedom of Information request stating: "There are no documents, maps, drawing, photos, lists or any other materials that you have requested in your 4 requests in our office" [Grossman Aff, Ex B].

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In a letter dated April 9, 2021, the NYCLU, the League of Women Voters of Rensselaer County, Unity House of Troy, the NAACP Troy Branch, the Troy Area United Ministries, The Justice Center of Rensselaer County, the Troy Coalition of Black Leaders, Rensselaer County Women for Change, the Oakwood Community Center, and Troy 4 Black Lives wrote to the Board of Elections requesting consideration of four proposed sites [Burke Aff, Ex E]. Because the Board of Elections' information request response confirmed the BOE had no information relevant to the consideration of the statutory factors, the community groups provided their own detailed analysis based on the statutory factors and additional information they believed relevant to the four proposed sites compared to the three previously selected and used sites [Burke Aff. Ex E]. For example, the letter showed that each of the proposed sites had at least twice the population density, as measured by population per square mile, compared to the existing sites [Burke Aff, Ex E]. The letter also showed that persons living around the proposed sites were at least twice as likely to not exclusively rely on cars for commuting and ten times as likely to use public transportation [Burke Aff, Ex E].

Board of Elections Review of Proposed Sites

The commissioners provide no explanation regarding why they did not respond to the first three letters, but swear that based on the April 9, 2021 letter they conducted a review of the four proposed sites [Schofield Aff ¶ 23; McDonough Aff ¶ 23].

Troy School #2 and Johnstone Supply

Commissioner Schofield telephoned John Carmello, Superintendent of the Troy City School District [Schofield Aff ¶ 23; McDonough Aff ¶ 23]. Superintendent Carmello wrote to

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Commissioner Schofield stating that there was “no way for [the School District] to accommodate that request” [Respondents’ Ex A]. While the commissioners note that the Superintendent was “not amendable” and the Superintendent’s email describes the inquiry as a “request” while citing expenses and cleaning difficulties, the record does not make clear whether the Board of Elections considered the location beyond this discussion considering its statutory authority “to designate polling places [in] a public school building” and the requirement that “the board or agency which controls such building *must* make available a room or rooms in such building which are suitable for registration and voting and which are as close as possible to a convenient entrance to such building” (Election Law § 4-104 [3] [emphasis added]).

Similarly, Commissioner Schofield met with George Bejian, owner of Johnstone Supply, a private business that is used as a Primary Day and Election Day polling site [Schofield Aff ¶ 29-31; McDonough Aff ¶ 29-31]. While Mr. Bejian had previously expressed interest in serving as an early voting site, upon learning from Commissioner Schofield that it would require his business to be open for nine days, including nights and weekends, he no longer wished to participate [Schofield Aff ¶ 30; McDonough Aff ¶ 30]. Subsequently, Mr. Bejian wrote to Commissioner Schofield stating, “[a]fter considering the amount of days and the times needed for the early voting program I feel that this would be more difficult than initially anticipated” [Respondents’ Ex B].

Bethel Baptist Church

Both commissioners made a personal visit to Bethel Baptist Church, together with Kevin O’Malley, the registrar who oversees the Board of Elections’ polling sites [Schofield Aff ¶ 24;

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McDonough Aff ¶ 24]. The church is in the middle of its block, but its parking is located separately from the church [Schofield Aff ¶ 24; McDonough Aff ¶ 24]. The street on which the church is located has parking restrictions and the bus stop is several blocks from the church [Schofield Aff ¶ 24; McDonough Aff ¶ 24]. The commissioners do not explain why a separation of several blocks from the public transportation stop to the polling site is now a critical factor when in 2019 they selected a polling site that required people to travel 1.8 miles without sidewalks from the nearest public transportation stop. Additionally, in reply Petitioner provides an affidavit from Troy Mayor Wm. Patrick Madden, who swears he “would do everything in [his] power as Mayor to address those concerns, including by reserving street parking as accessible parking spots for the full nine days of the early voting period” [Madden Aff ¶ 7].

Unity House

Both commissioners also visited Unity House [Schofield Aff ¶ 25; McDonough Aff ¶ 25]. After being refused admission when they arrived without prior notice and while the building was closed, the commissioners returned for a tour with Executive Director Burke [Schofield Aff ¶ 26-27; McDonough Aff ¶ 26-27]. The commissioners swear they were offered two separate locations on the first floor [Schofield Aff ¶ 27; McDonough Aff ¶ 27]. The commissioners determined the first space was insufficient for the necessary equipment and tables [Schofield Aff ¶ 27; McDonough Aff ¶ 27]. The second room had sufficient size, but a narrow doorway, and there was only one way in and one way out [Schofield Aff ¶ 28; McDonough Aff ¶ 28]. The commissioners found that this would be problematical to have people entering and exiting through this narrow doorway, particularly with peoples’ concerns about COVID [Schofield Aff ¶

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28; McDonough Aff ¶ 28]. Notably, in reply, Petitioner provides a supplemental affidavit from Chris Burke challenging the commissioners' finding that the doorway is narrow and swearing "there are two entrances . . . [and both] are wide double doors that automatically open when someone pushes a button on the outside of the building" [Burke Supplemental Aff ¶ 8-9].

Law

As a threshold issue, Respondents contest the Attorney General's standing to bring this special proceeding. "In order to maintain [*parens patriae* standing], the State must articulate an interest apart from the interests of particular private parties, i.e., the State must be more than a nominal party [and t]he State must express a quasi-sovereign interest" (*Alfred L. Snapp & Son, Inc. v Puerto Rico ex rel. Barez*, 458 US 592, 607 [1982]; *see New York by Schneiderman v Utica City School Dist.*, 177 F Supp 3d 739, 748 [NDNY 2016] ["A state may invoke the doctrine of *parens patriae* if it: (1) articulates a 'quasi-sovereign interest' apart from the interests of particular private parties; (2) alleges a concrete injury to a substantial segment of its population; and (3) demonstrates that complete relief from that injury could not be obtained by individuals in a private lawsuit"]; *see generally People of the State of NY by Abrams v 11 Cornwell Co.*, 695 F2d 34, 38–39 [2d Cir 1982], *mod on other grounds*, 718 F2d 22 [1983]; *Support Ministries For Persons With AIDS, Inc. v Vil. of Waterford, NY*, 799 F Supp 272, 277-278 [NDNY 1992]).

Here, the Attorney General asserts that minority residents, low-income residents, and those with disabilities are disproportionately facing a higher burden in early voting due to the arbitrary and capricious determination of Respondents [Petition ¶ 112-113; McKenzie Ex 1 ¶

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42]. The issue of capacity is less clear. Still, this Court is troubled by the record in this proceeding which implicates the potential infringement upon the fundamental nature of our right to vote which is both alone of paramount important and is critical as a protection for all other rights. There is also scarce appellate authority relating to the capacity of the Attorney General to bring a special proceeding to protect voting rights. Faced with this, the Court refuses to dismiss the proceeding without addressing the merits and finds the Attorney General has standing to protect the rights of these potential voters (*see People of New York ex rel. Spitzer v County of Delaware*, 82 F Supp 2d 12, 14 n 1 [NDNY 2000]; *People of New York ex rel. Spitzer v County of Schoharie*, 82 F Supp 2d 19, 21 n 1 [NDNY 2000]).

“Where, as here, petitioner challenges an administrative determination made where a hearing is not required, [judicial] review is limited to whether the determination lacks a rational basis and is, thus, arbitrary and capricious” (*Matter of Fuller v New York State Dept. of Health*, 127 AD3d 1447, 1448 [3d Dept 2015] [citations omitted]; *see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231 [1974]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*Matter of Murphy v New York State Div. of Hous. and Community Renewal*, 21 NY3d 649, 652 [2013] [internal quotation marks, brackets, and citations omitted]).

“Judicial restraint is required where . . . the litigated issues to some extent involve matters of administrative judgment, discretion and allocation of resources and priorities” (*Hill v State Bd. of Elections*, 120 AD2d 55, 57 [2d Dept 1986]). “[T]he court may not substitute its judgment for

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that of the agency responsible for making the determination" (*Matter of Beer v New York State Dept. of Envtl. Conservation*, 189 AD3d 1916, 1918 [3d Dept 2020]). "[O]nce it has been determined that an agency's conclusion has a 'sound basis in reason'[,] the judicial function is at an end" (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 428 [1st Dept 2007] [[internal quotation marks and citations omitted], *affd* 11 NY3d 859 [2008]]).

However, the Court's "review is limited to the grounds invoked by the agency and the failure of the agency to set forth an adequate statement of the factual basis for the determination forecloses the possibility of fair judicial review and deprives the petitioner of his or her statutory right to such review" (*Matter of Buffalo Teachers Fedn., Inc. v Elia*, 162 AD3d 1169, 1172-1173 [3d Dept 2018] [internal quotation marks, brackets, and citations omitted], *lv denied* 32 NY3d 915 [2019]). "Absent a predicate in the proof to be found in the record, an unsupported determination must be set aside as without rational basis and wholly arbitrary" (*Metropolitan Taxicab Bd. of Trade v New York City Taxi & Limousine Commn.*, 18 NY3d 329, 334 [2011] [internal quotation marks, brackets, ellipsis and citations omitted]).

Discussion

Respondents fail to provide a rational justification for their determination. The repeated conclusive assertion in their affidavits that they considered the relevant statutory factors, by employing a "rigorous process" informed by their "working knowledge of travel times, proximity, transportation routes, traffic patterns, population density, and other factors" is

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insufficient. They provide no facts supporting this assertion and, more importantly, the basis of their “working knowledge.”

An agency cannot ignore data presented to it, exclusively rely on one data point that supports its determination without considering anything else, and then blindly adopt that position. (*see Matter of Metropolitan Movers Assn., Inc. v Liu*, 95 AD3d 596, 599 [1st Dept 2012] [Holding the Comptroller’s “blindly adopting” rates and “exclusively” relying on one data point was “arbitrary and capricious”]). Further, an agency may not simply rely on conclusory claims such as its own knowledge (*see Metropolitan Taxicab Bd. of Trade v New York City Taxi & Limousine Commn.*, 18 NY3d at 333 [Holding an agency’s determination arbitrary and capricious where it was provided in conclusory terms and had “no record support”]).

Where, as here, in the specific context of a polling site determination by a county board of elections, the result is clear; a court must set aside a determination that is based on vague information or contrary to the procedure required by law (*see Matter of Krowe v Westchester County Bd. of Elections*, 155 AD3d 672, 673 [2d Dept 2017] [Ordering a polling site reopened]; *Sutton v Howe*, 67 Misc 3d 1232 [A] [Sup Ct, Cortland County 2020, Masler, J.] [Ordering the reopening of a polling site where the Board of Elections had failed to comply with the statute]; *Matter of Andrew Goodman Foundation v Dutchess County Board of Elections*, Sup Ct, Dutchess County, October 23, 2020, Rosa, J., index No. 52737/20 [Moving a polling site]).

Respondents have twice denied that they have *any* records providing a basis for their determination. Despite the broad power of a board of elections to designate sites (*see generally* Election Law § 4-104 [Granting boards of elections authority to designate “a building exempt

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from taxation,” “a public school building,” “a building for which a tax exemption, tax abatement, subsidy, grant or loan for construction, renovation, rehabilitation or operation has been provided by any agency of the state or any political subdivision thereof,” or to use a “room or rooms under the control of” “any person or entity conducting any program, activity or service for which a loan, grant, contract, subsidy or reimbursement has been provided by any agency of the state or a political subdivision thereof’]), Respondents concede that for two years they failed to review any sites except those fifteen already designated polling sites within the City of Troy. Likewise, the record offers no support for a requirement of little to no activity from sites in the City of Troy (as shown by requiring The Holy Cross Armenian Church’s services to be moved and rejecting the County Office Building), but a willingness to use occupied sites in the Towns (two town municipal office buildings).

While the Election Law, even in its most recently amended form, requires neither a written record of the work done by a BOE’s commissioners in selecting sites nor a comprehensive analysis of the kind provided by Petitioner to Respondents, the record makes clear that their determination was arbitrary and capricious and must be set aside.

Accordingly, it is

ORDERED that the Petition is hereby granted and the Court hereby annuls as arbitrary and capricious Respondents’ determination that the early voting poll site locations for both the 2021 primary and general elections provide adequate and equitable access to all voters in Rensselaer County; and it is further

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ORDERED that no later than June 9, 2021, Respondents shall select early voting poll site locations for the 2021 primary election that provide adequate and equitable access for all voters in Rensselaer County, including voters in the City of Troy and otherwise comply with New York's Early Voting Law, N.Y. Election Law §8-600 *et seq.*; and it is further

ORDERED that by the earliest date practicable, Respondents shall select early voting poll site locations for the 2021 general election that provide adequate and equitable access for all voters in Rensselaer County, including voters in the City of Troy and otherwise comply with New York's Early Voting Law, N.Y. Election Law §8-600 *et seq.*

The Court has uploaded the original Decision/Order to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the Rensselaer County Clerk.

Counsel for the Petitioners is not relieved from the applicable provisions of CPLR 2220 and 202.5b (h) (2) of the Uniform Rules of Supreme and County Courts insofar as it relates to service and notice of entry of the filed document upon all other parties to the action/proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

SO ORDERED AND ADJUDGED

ENTER.

Dated: June 7, 2021
Troy, New York


ADAM W. SILVERMAN
Acting Supreme Court Justice

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INDEX NO. EF2021-268959**Papers Considered:**

The following e-filed documents, listed by NYSCEF document number 1-2, 4, 9, 14-24, including:

1. Signed Order to Show Cause (Silverman, J.) dated May 27, 2021.
2. Verified Petition dated May 27, 2021; Memorandum of Law dated May 27, 2021; Attorney Affirmation, Annexed Exhibits 1-11 (inclusive of sub-exhibits).
3. Answer dated June 2, 2021; Affidavit of Jason Schofield sworn June 2, 2021; Affidavit of Edward McDonough sworn June 2, 2021, Annexed Exhibits A-B; Memorandum of Law dated
4. Petitioner's Memorandum of Law in Reply dated June 3, 2021; Attorney Affirmation, Annexed Exhibits 1-2.