

STATE OF NEW YORK  
SUPREME COURT, COUNTY OF RENSSELAER

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 an Order Pursuant to N.Y. C.P.L.R. 7806 and 6301

– 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.

Index No.: \_\_\_\_\_

**VERIFIED PETITION**

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioner, People of the State of New York, by Letitia James, Attorney General of the State of New York, respectfully alleges:

1. In 2019, New York passed legislation giving voters the right to cast their ballots early for the first time in the State's history. The legislation sought to remove barriers impeding access to the franchise, and improve the State's turnout rate, which had been among the lowest in the country. To execute the aims of this historic measure, the law affords local Boards of Election ("BOEs") with discretion to determine the hours and location of early voting poll sites. Yet, the law makes clear that such discretion is not unfettered: it mandates minimum standards for early voting, including the requirement that BOEs designate sites in locations that ensure "adequate and

equitable access” to all voters within the county, based on enumerated statutory criteria the BOE must take into account.

2. Two years and several election cycles after the legislation’s enactment, the BOE in Rensselaer County, New York (the “County”) has continually violated this law, failing to designate early voting poll sites at locations that ensure adequate and equitable access for voters in Troy as it is legally required to do. The city of Troy holds one-third of the County’s population and a majority of its minority residents. As compared to the County at large, residents of Troy: (i) are more likely to have a lower income; (ii) are less likely to have access to a vehicle; and (iii) are less likely to turn out to vote. And, the areas surrounding the current early voting sites are wealthier, less diverse, less accessible by public transportation, and already enjoy higher rates of voter turnout.

3. To vote early, Troy voters, particularly those living in northern neighborhoods, must journey across town, passing centrally-located sites that could provide voters with their right to adequate and equitable access to early voting, and indeed, whose proprietors have made clear to the BOE that they are ready and willing to serve the community as an early voting site, if only the BOE would accept.

4. Since the inception of early voting in New York, advocacy, community and faith-based organizations in the County, and more recently the Office of the New York State Attorney General, have engaged the BOE to try and understand its decision-making process, and have offered additional or alternative sites that comply with the early voting law’s mandate. But despite countless opportunities, the BOE has failed to provide any rational basis for not placing an early voting poll site in a more accessible part of Troy, a decision it has now repeated for both the 2021 primary election, and 2021 general election. Furthermore, the BOE has failed to give

meaningful consideration to other sites that are clearly superior based on the criteria it was required by law to take into account. The BOE's disregard of these statutory factors, of its obligation to ensure adequate and equitable access, and of the rights of Troy voters is arbitrary and capricious and must be annulled.

### **NATURE OF ACTION**

5. This is a special proceeding brought under Article 78 of the New York Civil Practice Law & Rules, seeking relief against Respondents Jason Schofield, individually and in his capacity of Commissioner of the Rensselaer County BOE, Edward McDonough, individually and in his capacity of Commissioner of the Rensselaer County BOE, and the Rensselaer County BOE.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the parties and this proceeding pursuant to Article 78 of the New York Civil Practice Law & Rules.

7. Pursuant to New York Civil Practice Law & Rules 7804(b) and 506(b), venue in this proceeding lies in Rensselaer County, in the judicial district where Respondents' principal offices are located, at 1600 7th Avenue in Troy, New York.<sup>1</sup>

### **PARTIES**

8. Petitioner is the People of the State of New York, represented by and through its attorney, Letitia James, Attorney General of the State of New York (the "OAG"). The OAG is the State's chief law enforcement officer and is authorized to pursue this action pursuant to her *parens patriae* authority on behalf of New York voters. Where, as here, the interests, rights, and well-being of a substantial segment of people of the State are implicated, *see New York by Abrams v. 11*

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<sup>1</sup> See Rensselaer County Board of Elections, <https://www.rensco.com/departments/board-of-elections/> (last visited May 21, 2021).

*Cornwell Co.*, 695 F.2d 34, 40 (2d Cir. 1982), the OAG possesses *parens patriae* authority to commence legal action to protect the well-being of New Yorkers.

9. The OAG has a “unique status as the representative of the greater public good and [a] concomitant mandate to secure wide-ranging relief that will inure to the direct and indirect benefit of the broader community.” *New York by Schneiderman v. Utica City Sch. Dist.*, 177 F. Supp. 3d 739, 753–54 (N.D.N.Y. 2016). As such, the OAG has a quasi-sovereign interest in the health and well-being of New Yorkers. A fundamental component of that well-being is New Yorkers’ right to vote. The OAG’s interest in protecting its citizens’ fundamental voting rights warrants the employment of the OAG’s *parens patriae* authority. *See New York ex rel. Spitzer v. Cnty of Delaware*, 82 F. Supp. 2d 12, 13 n.1 (N.D.N.Y. 2000) (holding that the OAG has *parens patriae* authority to bring a suit to protect the voting rights of New Yorkers with disabilities); *New York ex rel. Spitzer v. Cty. of Schoharie*, 82 F. Supp. 2d 19, 21 n.1 (N.D.N.Y. 2000) (same).

10. Respondent Rensselaer County BOE is responsible for designating early voting sites within Rensselaer County. N.Y. Elec. Law § 8-600(2)(a) (McKinney 2021). The County BOE is comprised of two commissioners, each representing one of the two major political parties, and a full-time staff of equal party representation. The New York State Election Law mandates the Board’s responsibility of elections and related requirements. The Rensselaer County BOE is responsible for all federal, state, city and town elections in the County.

11. At all times relevant hereto, Respondent Jason Schofield is Republican Commissioner of the Rensselaer County BOE.

12. At all times relevant hereto, Respondent Edward McDonough is Democratic Commissioner of the Rensselaer County BOE.

## FACTS

### I. BACKGROUND

#### A. NEW YORK'S EARLY VOTING LAW

##### *i. The Passage of New York's Early Voting Law*

13. After a years-long effort by elected officials and advocacy organizations, New York's state legislature passed a host of ground-breaking election reforms in January 2019.

14. Prior to the passage of these reforms, New York's voting laws were, in many respects, restrictive and onerous. At the time, New York was one of just twelve states in the country with no form of early voting. New York was also the only state that held its federal and state primary elections on different days, making it more challenging and inconvenient for New Yorkers to participate in both elections.

15. Accordingly, New York had some of the lowest voter turnout rates in the United States, reflecting a trend dating back decades.<sup>2</sup> New York was among the states with the lowest turnout in both the 2016 and 2018 elections, in the latter election ranking near the very bottom, 42 out of 50.<sup>3</sup>

16. After years of poor voter engagement, New York passed new legislation to expand access to the franchise and address historically low turnout. The reforms, among other things, consolidated dates for state and federal primary elections, required the transfer of a voter's registration when the voter moved within the state, and permitted 16- and 17-year olds to preregister to vote.

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<sup>2</sup> United States Elections Project, Voter Turnout Data, National and State Turnout Rates, (showing low turnout in New York since at least 2000), <http://www.electproject.org/home/voter-turnout/voter-turnout-data>.

<sup>3</sup> In 2016, New York ranked 39th in voter turnout with 57.2% of voters exercising the franchise. See 2020 November General Election Turnout Rates and 2016 November General Election Turnout Rates, UNITED STATES ELECTION PROJECT, <http://www.electproject.org/2016g>.

17. At the same time, the State legislature also took steps to achieve other critical reforms that would further enhance ballot access in the future. Specifically, the legislature approved the presentation of two voter referendums that would amend the State constitution to authorize same-day voter-registration and no excuse absentee voting. New York voters will vote on these proposals during the 2021 general election.

18. The centerpiece of the legislature's 2019 election reforms was early voting, a measure that passed both legislative chambers with bipartisan support and established voters' right to cast their ballots in person before Election Day for the first time in the State's history. With the law's passage, New York joined the vast majority of states with similar schemes.

19. State Senator Zellnor Myrie, who introduced the early voting bill in the State Senate, underscored the law's core goal of providing "accessibility, equity, and efficiency," by "mak[ing] it less burdensome for New Yorkers to access the polls and exercise their civic obligation to vote."<sup>4</sup> Furthermore, Senator Myrie noted that the law takes into account the "wide variation in characteristics of different counties throughout the state," by giving BOEs "flexibility to establish locations and hours for early voting."<sup>5</sup> However, he observed that the law balances this flexibility with critical "minimum standards that would ensure that all voters have a meaningful opportunity to vote early."<sup>6</sup>

20. Upon signing the bill, Governor Cuomo remarked that enabling New Yorkers to vote early would be "transformative for the system."

21. The legislation became effective immediately, but provided that early voting would take place for the first time during the 2019 general election.<sup>7</sup>

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<sup>4</sup> S.1102 Sponsor Memo, 2019-2020 Leg. Sess. (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/s1102>.

<sup>5</sup> N.Y. S1102, <https://www.nysenate.gov/legislation/bills/2019/s1102>.

<sup>6</sup> *Id.*

<sup>7</sup> A780/S1102, 2019-2020 Leg. Sess. (N.Y. 2019), <https://www.nysenate.gov/legislation/bills/2019/s1102>.

ii. *The Requirements of New York's Early Voting Law*

22. New York's Early Voting Law, N.Y. Elec. Law § 8-600 *et seq.*, is designed to expand access to the franchise by ensuring a robust early voting scheme in every county across the State. The law imposes various requirements on local BOEs, including establishing the minimum required number of poll sites, setting the hours of operation for poll sites, ensuring "adequate and equitable access" to early voting for all voters in the County, and explaining BOEs' obligation to proactively inform voters of their early voting options.

23. Section 8-600 establishes nine days of early voting, from the tenth day prior to Election Day, until two days before Election Day. N.Y. Elec. Law § 8-600(1). Accordingly, for the June 2021 primary elections, early voting in New York will take place from June 12 through June 20. For the November 2021 general elections, early voting in New York will take place from October 23 through October 31.

24. Section 8-600 provides that every county must maintain at least one early voting site, and that "[t]here shall be . . . at least one early voting polling place for every full increment of fifty thousand registered voters in each county."<sup>8</sup> N.Y. Elec. Law § 8-600(2)(a). Furthermore, while the law caps the maximum required number of polling sites, *id.*, BOEs are permitted to "establish additional polling places for early voting in excess of the minimum number required . . . for the convenience of eligible voters," *id.* § (2)(c).

25. The law states that BOEs must select locations for early voting polling places "so that voters in the county have adequate and equitable access." *Id.* § (2)(e). In determining whether the location of polling sites provides for "adequate and equitable access," BOEs "shall . .

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<sup>8</sup> The law also permits BOEs to deviate from the minimum required number of early voting poll sites if a majority of the BOE determines that "a lesser number of sites is sufficient to meet the needs of early voters." N.Y. Elec. Law § 8-600(2)(c).

. tak[e] 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.” *Id.*

26. As further discussed below, the law was subsequently amended, effective January 1, 2021, to require “that the municipality with the highest population in each county . . . 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.” *Id.* § (2)(a).

27. Except in circumstances not present in Rensselaer County, “[a]ny voter may vote at any polling place for early voting.”<sup>9</sup> *Id.* § (3).

28. Moreover, “[a]ll voters in each county shall have one or more polling places at which they are eligible to vote throughout the early voting period on a substantially equal basis.” *Id.*

29. During early voting, polls must remain open for at least eight hours between 7 A.M. and 8 P.M., each week day during the early voting period. *Id.* § (4)(a). At least one early voting polling place must remain open until 8 P.M. on at least two weekdays during each week of the early voting period. *Id.* § (4)(b). On weekends, early voting polls must remain open for at least five hours between 9 A.M. and 6 P.M. *Id.* § (4)(c). BOEs are free to establish a greater number of hours for early voting beyond the required minimums. *Id.* § (4)(d).

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<sup>9</sup> A BOE may choose to assign voters residing in certain election districts to particular poll sites, if it determines that (1) providing all early voting ballots for the county at one poll site is “impractical,” or (2) it cannot adequately protect against voters casting multiple ballots in separate locations. N.Y. Election Law § 8-600(3). On information and belief, Rensselaer County has not previously assigned election districts to particular early voting poll sites, and will not do so for any 2021 elections.



30. BOEs are required to designate early voting locations for the general election, along with their hours of operation, by May 1 of each year. *Id.* § (4)(e). Separately, for any primary election, BOEs must designate early voting locations, along with their hours of operation, not later than forty-six days before a primary or special election. N.Y. Comp. Codes R. & Regs. tit. 9, § 6211.1.

31. For the upcoming 2021 elections, the Rensselaer County BOE has made two separate designation determinations: (1) early voting poll site designations for the 2021 primary elections, and (2) early voting poll site designations for the 2021 general elections. In both instances, the BOE selected Schodack Town Hall, Brunswick Office Building, and Holy Cross Armenian Church.

32. Finally, to ensure voters are made aware of their rights, BOEs are required to create a “communication plan to inform eligible voters of the opportunity to vote early,” which plan “may utilize any and all media outlets, including social media, and shall publicize,” *inter alia*, “the location and dates and hours of operation of all polling places for early voting,” and “an indication of whether each polling place is accessible to voters with physical disabilities.” N.Y. Elec. Law § 8-600(5).

B. RENSSELAER COUNTY

33. Rensselaer County (the “County”) is a county within New York state. The County has a total area of approximately 652 square miles, and is geographically situated on the State’s eastern border, bordering the states of Vermont and Massachusetts.<sup>10</sup>

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<sup>10</sup> United States Census Bureau, Rensselaer County, New York, <https://data.census.gov/cedsci/profile?g=0500000US36083>.

34. Rensselaer County has a total population of approximately 159,000,<sup>11</sup> and approximately 103,000 actively enrolled voters.<sup>12</sup>

35. The County is approximately 83.2% white, 6% Black, 4.9% Latinx and 2.7% Asian.<sup>13</sup>

36. For the upcoming primary and general elections, Rensselaer County will hold elections for County Executive, County Clerk and several County Legislator seats.<sup>14</sup>

37. The “seat,” or administrative center, of Rensselaer County is the city of Troy, located on the western edge of Rensselaer County, bordered to the south by the town of North Greenbush, and to the north by the town of Schaghticoke.

38. A wide array of Rensselaer County’s governmental offices are located in Troy, including the offices of the BOE, County Executive, County Attorney, Sherriff, and others.<sup>15</sup>

39. Troy is Rensselaer County’s most populous municipality, with approximately 49,000 residents.<sup>16</sup> Troy’s population, nearly one-third of Rensselaer County’s total population, is substantially denser than the rest of the County.<sup>17</sup>

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<sup>11</sup> Barber Aff. ¶ 10.

<sup>12</sup> *Id.* ¶ 47.

<sup>13</sup> United States Census Bureau, American Community Survey, 2019: ACS 5-Year Estimates Data Profiles, Table ID DP05, Rensselaer County, New York; Troy city, New York, [https://data.census.gov/cedsci/table?q=DP05&g=0500000US36083\\_1600000US3675484&tid=ACSDP5Y2019.DP05&hidePreview=false](https://data.census.gov/cedsci/table?q=DP05&g=0500000US36083_1600000US3675484&tid=ACSDP5Y2019.DP05&hidePreview=false)

<sup>14</sup> 2021 Contested List, <https://www.rensco.com/wp-content/uploads/2020/11/2021-Contested-List.pdf>.

<sup>15</sup> Rensselaer County Departments, <https://www.rensco.com/departments/>.

<sup>16</sup> Barber Aff. ¶ 10.

<sup>17</sup> *Id.* ¶ 44.

40. Troy also has more higher educational institutions than any municipality in the County, home to Rensselaer Polytechnical Institute, Russel Sage College, and Hudson Valley Community College. These institutions have a combined population of over 19,000 students.<sup>18</sup>

41. Troy has a total of approximately 24,000<sup>19</sup> actively enrolled voters, over 20% of Rensselaer County's total actively enrolled voters.<sup>20</sup>

42. Of Troy's 49,000 residents, 63.5% are white, 16.1% are Black, 9.6% are Latinx, and 4.8% Asian.<sup>21</sup>

43. Troy's residents make up the majority of minority residents in Rensselaer County.<sup>22</sup>

44. Troy's median household income<sup>23</sup> is lower than the median household income of Rensselaer County.<sup>24</sup>

45. Troy's residents are more likely to face mobility challenges: they are more likely to commute to work by public transportation (rather than car);<sup>25</sup> and Troy households are approximately two times more likely than Rensselaer County households to lack access to a vehicle.<sup>26</sup>

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<sup>18</sup> Rensselaer Polytechnic Institute, Quick Facts, <https://info.rpi.edu/quick-facts> (listing 7,569 total students); Russel Sage College, Fast Facts, <https://www.sage.edu/about/fast-facts/> (2,345 total enrolled students); Hudson Valley Community College, <https://www.suny.edu/campuses/hudsonvalley/> (9,300 students).

<sup>19</sup> Barber Aff. ¶ 48.

<sup>20</sup> *Id.* ¶¶ 47-48.

<sup>21</sup> [https://data.census.gov/cedsci/table?q=DP05&g=0500000US36083\\_1600000US3675484&tid=ACSDP5Y2019.DP05&hidePreview=false](https://data.census.gov/cedsci/table?q=DP05&g=0500000US36083_1600000US3675484&tid=ACSDP5Y2019.DP05&hidePreview=false).

<sup>22</sup> Barber Aff. ¶¶ 11-12.

<sup>23</sup> *Id.* ¶ 29.

<sup>24</sup> *Id.* ¶ 28.

<sup>25</sup> *Id.* ¶ 18.

<sup>26</sup> *Id.* ¶¶ 22-23.

46. Voter turnout rates in Troy also tend to be lower than the rest of Rensselaer County.<sup>27</sup>

47. For the upcoming 2021 primary and general elections, in addition to the County-wide elections noted above, Troy will hold elections for various seats on its City Council.<sup>28</sup>

C. THE RENSSELAER COUNTY BOE'S INITIAL DESIGNATION OF EARLY VOTING SITES

48. Pursuant to New York's Early Voting Law, the Rensselaer County BOE, like all local BOEs across the State, was required to designate early voting poll sites for the 2019 general election by May 1, 2019.<sup>29</sup> N.Y. Comp. Codes R. & Regs. tit. 9, § 6211.1. The BOE was required to designate at least two early voting poll sites in light of its population of over 100,000 registered voters. N.Y. Comp. Codes R. & Regs. tit. 9, § 6211.1(b)(ii). The BOE was also required to ensure that its sites provide "adequate and equitable access" to early voting for all County voters, taking into account the required statutory factors. N.Y. Elec. Law § 8-600(2)(e).

49. In March of 2019, members of the League of Women Voters met with BOE Commissioners Schofield and McDonough to discuss how the League could be of assistance as the BOE implemented the recently-passed early voting legislation. After discussing potential sites and their suitability, Commissioner McDonough mentioned the possibility of using Schodack Town Hall for early voting because it satisfied parking and requirements for accessibility for people with disabilities.

50. At no point during the meeting did either BOE Commissioner discuss any of the enumerated factors in the Early Voting Law—i.e., the population density surrounding Schodack

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<sup>27</sup> *Id.* ¶¶ 51-52.

<sup>28</sup> 2021 Contested List, <https://www.rensco.com/wp-content/uploads/2020/11/2021-Contested-List.pdf>.

<sup>29</sup> The law did not require BOEs to establish early voting for the 2019 primary election.

Town Hall; the time it would take voters in Troy (who represent a significant proportion of Rensselaer County voters) to get there; the fact that it not easily accessible by public transportation; or whether it was consistent with prevailing commuter traffic patterns in the Rensselaer County area.

51. In May of 2019, the BOE announced the designation of Schodack Town Hall as an early voting site.<sup>30</sup>

*i. Schodack Town Hall*

52. Schodack Town Hall is a multi-purpose government building located at 265 Schuurman Road, in the southern village of Castleton-on-Hudson.

53. Schodack Town Hall is approximately 14 miles from Troy's border, and a 60 to 90-minute bus ride from Troy. As further discussed below, a review of the statutory factors the BOE was required to consider in selecting early voting poll sites makes clear that Schodack Town Hall does not provide adequate and equitable access to voters in Troy.

54. On May 23, 2019, the leadership of the Rensselaer County chapter of the League of Women Voters contacted Commissioners Schofield and McDonough by email, informing them that Rensselaer County's voting population required two, not one, early voting poll sites, and to express concerns that Schodack Town Hall does not provide adequate and equitable access for Troy voters.<sup>31</sup> The email "urge[d] the County Board of Elections to provide a second early voting site in or very close to the City of Troy."<sup>32</sup>

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<sup>30</sup> McKee Aff. ¶ 8.

<sup>31</sup> *Id.* ¶ 9, Ex. A.

<sup>32</sup> *Id.* ¶ 9, Ex. A.

55. That same day, Commissioner Schofield responded by email to the League of Women Voters, stating that “[a] second site has been determined for future elections and it will be Brunswick Town Offices.”<sup>33</sup>

*ii. Brunswick Office Building*

56. Brunswick Office Building, a government office building, is located at 336 Town Office Road in the town of Brunswick.

57. Brunswick Office Building is approximately 5 miles outside of Troy, and would require a commuter coming from Troy to take a bus to the last stop and walk almost an additional two miles. As further discussed below, a review of the statutory factors the BOE was required to consider in selecting early voting poll sites makes clear that Brunswick Office Building, coupled with Schodack Town Hall, does not provide adequate and equitable access to voters in Troy.

58. Commissioner Schofield erroneously maintained to the League of Women Voters that the BOE’s new planned early voting program provided sufficient access, stating: “The Board of Election Office will have 4 nights of extended hours, and will be open Saturday and Sunday the 2 weekends prior to the Election for any voter in the County who is going to be out of town, or will be unable to get to their polling place between 6 a.m. and 9 p.m. on Election day so they can vote by Absentee Ballot.”<sup>34</sup>

59. Neither extended hours nor the reference to absentee ballots complied with, or addressed, the BOEs legal obligations in selecting early voting sites.

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<sup>33</sup> *Id.* ¶ 10, Ex. A.

<sup>34</sup> *Id.* ¶ 10, Ex. A.

D. TROY GOES WITHOUT AN EARLY VOTING SITE IN NEW YORK'S FIRST-EVER ELECTION WITH EARLY VOTING

60. Following the designation of Schodack Town Hall and Brunswick Office Building as Rensselaer County's only two early voting sites for the 2019 general election, Troy, the most densely populated area of the County and its County seat, had no early voting site in the November 2019 election.

61. Individuals and groups across Rensselaer County continued to express serious concerns that the BOE's chosen sites did not ensure adequate and equitable access to Troy voters. But the BOE either ignored requests to reconsider or offered rationalizations that failed to coherently explain its decision, let alone how such decision was consistent with the statutory factors the BOE was required to consider.

62. For example, by letter dated July 22, 2019, a broad coalition of community, advocacy, educational and faith-based organizations, including local chapters of the New York Civil Liberties Union, League of Women Voters, and National Association for the Advancement of Colored People (the "Coalition"), urged the BOE to adopt an early voting site in Troy to comply with its obligation to designate sites that ensure adequate and equitable access.<sup>35</sup>

63. The letter "request[ed] the courtesy of a response concerning whether and when the [BOE] will provide additional early voting poll sites in the City of Troy," and "[i]f the [BOE] will not provide additional early voting poll sites," the Coalition "request[ed] to know the reasons why the Commissioners and staff believe voters in the City of Troy should not receive equal access to the ballot on par with other New Yorkers."<sup>36</sup> The BOE did not respond to the letter.

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<sup>35</sup> *Id.* ¶¶ 17, 18.

<sup>36</sup> Burke Aff. ¶ 14, Ex. A.

64. During this period, the BOE Commissioners also made public statements purporting to explain their decision-making process. In May of 2019, Commissioner McDonough reportedly stated that the BOE selected early voting locations that “would handle driving distance for everybody,” and that “[t]he longest distance that anybody is going to have in these locations that we pick is probably going to be a 15-20-minute drive.”<sup>37</sup>

65. Commissioner McDonough’s statements reflect a disregard of both the Early Voting Law’s requirement that BOEs consider public transportation routes when designating early voting sites, N.Y. Elec. Law § 8-600(2)(e), and arbitrarily the rights of voters who lack access to a vehicle.

66. As the 2019 general election and first-ever early voting program in the County drew nearer, elected officials in Troy spoke with BOE representatives about the lack of early voting access in the City during a meeting in the summer of 2019.<sup>38</sup> At the meeting, Commissioner McDonough cited financial costs as a reason why a third site, placed in Troy, would not be feasible.<sup>39</sup>

67. Following the meeting, the Troy City Council unanimously passed a resolution allocating \$7,500 for an early voting site in Troy, contingent on the allocation of \$7,500 from the Rensselaer County Legislature to cover what the City Council understood to be the remaining cost of the site.<sup>40</sup> The City Council strongly urged the site be placed in the North Central area of

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<sup>37</sup> Melissa Steininger, *League of Women Voters: Early Ballot Locations Aren’t Very Accessible*, SPECTRUM NEWS 1 (May 30, 2019), <https://spectrumlocalnews.com/nys/capital-region/politics/2019/05/30/rensselaer-county-early-voting-locations>.

<sup>38</sup> Bissemer Aff. ¶ 8.

<sup>39</sup> *Id.* ¶ 9.

<sup>40</sup> *Id.* ¶ 11, Ex. B.



District 2.<sup>41</sup> The City Council recommended District 2 because it is one of the more impoverished areas of Troy, where more people need the flexibility that early voting provides.<sup>42</sup>

68. The County Legislature did not approve a matching allocation of \$7,500, and the City Council received no response or communication on the resolution from the County Legislature or the BOE.<sup>43</sup>

69. On September 19, 2019, following its initial resolution proposing to pay for half the cost of an early voting site, the City Council unanimously passed a second resolution, offering to pay the entire \$15,000 for an early voting site in Troy.<sup>44</sup> Neither the BOE nor the County Legislature contacted the City Council about the resolution, or otherwise made efforts to access the \$15,000 the Council allocated for an early voting site in Troy.<sup>45</sup>

70. The Coalition sent another letter to the BOE on September 11, 2019, recommending Unity House, a human service agency located in the heart of Troy, as an early voting site.<sup>46</sup> The Coalition also “invite[d] the Commissioners and staff of the [BOE] to visit Unity House to inspect the premises at their earliest convenience.”<sup>47</sup> The BOE did not respond to the letter.

71. Despite these efforts by the City and Coalition, the BOE, arbitrarily and contrary to statutory factors, refused to designate an early voting site in Troy for the November 2019 general election.

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* ¶ 12.

<sup>43</sup> *Id.* ¶ 15.

<sup>44</sup> *Id.* ¶ 16.

<sup>45</sup> *Id.* ¶ 19.

<sup>46</sup> Burke Aff. ¶¶ 19-20, Ex. B.

<sup>47</sup> Burke Aff. ¶¶ 22-23, Ex. B.

E. THE BOE'S FAILURES PROMPT THE INTRODUCTION OF AN AMENDMENT TO THE EARLY VOTING LAW

72. In October 2019, after the BOE's steadfast refusal to designate additional or alternative early voting sites for the 2019 general election became clear, State Senator Neil Breslin, whose district includes parts of Rensselaer County, announced his intention to introduce a legislative amendment to the Early Voting law.

73. The amendment proposed a requirement that BOEs designate an early voting poll site in a county's most populous municipality, and to the extent practicable, if the municipality has public transportation routes, that the polling place be situated along such routes.<sup>48</sup>

74. The amendment was aimed directly at the Rensselaer County BOE's arbitrary and illegal disregard of the Early Voting Law's "adequate and equitable access" mandate. The proposed amendment was announced at Unity House, the same site the Coalition had proposed to the BOE.

75. Legislative history further reflects clear indications that the amendment was intended to address the BOE's refusal to designate an early voting site in Troy. For example, during a floor debate on the amendment, State Assembly Member John T. McDonald III, whose district includes Rensselaer County, and who sponsored the bill in the State Assembly, stated: "This bill emanates from last year's first trial run of early voting where in Rensselaer County, the City of Troy—over 50,000 people—45 percent of the population of the county somehow wasn't suitable to be used for an early voting site. Instead, two rural areas were included. The intent of

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<sup>48</sup> 2020 N.Y. Sess. Law Ch. 344 (S. 8782) (McKinney) (codified as and amending existing language in N.Y. Elec. Law § 8-600(2)(a) (McKinney 2021).

this bill is to make sure that everybody has the opportunity to vote early. That's the intention, plain and simple.”<sup>49</sup>

76. In addition, the amendment's justification memo offered in the Senate by Senator Neil Breslin, referred to the circumstances in Rensselaer County and its failure to provide voters with adequate and equitable early voting options. The memo stated: “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.”<sup>50</sup>

77. The amendment passed the legislature, was signed by Governor Cuomo in December 2020, and took effect on January 1, 2021.

F. THE RENSSELAER COUNTY BOE'S THIRD SITE DESIGNATION

78. In May 2020, while the legislative amendment was pending, the BOE announced the designation of a third early voting site and its first within Troy city limits: Holy Cross Armenian Church.

79. Holy Cross Armenian Church is an Apostolic Church located at 255 Spring Avenue, in the southeastern region of Troy.

80. As further discussed below, a review of the statutory factors the BOE was required to consider in selecting early voting poll sites makes clear that Holy Cross Armenian

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<sup>49</sup> Transcript of New York State Assembly Session (Jul. 23, 2020) at 343 (discussion and vote on A8610 at 339-345), <https://www2.assembly.state.ny.us/write/upload/transcripts/2019/7-23-20.html>.

<sup>50</sup> See S8782 Sponsor Memo, 2019-2020 Leg. Sess. (N.Y. 2020), <https://www.nysenate.gov/legislation/bills/2019/s8782>.

Church, along with Schodack Town Hall and Brunswick Office Building, does not provide adequate and equitable access to voters in Troy, as required by the Early Voting Law.

81. After the Holy Cross Armenian Church was announced as an early voting polling place, League of Women Voters Board Member Noreen McKee called Commissioner McDonough to ask him what criteria the BOE used in selecting the site.<sup>51</sup>

82. Commissioner McDonough stated that the BOE looked at all fifteen Election Day polling sites in Troy, considering accessibility for voters with disabilities, and adequate parking.<sup>52</sup> Commissioner McDonough further stated that the BOE wanted a site where there is little or no other activity in the building during the nine days of early voting.<sup>53</sup>

83. When Ms. McKee asked why Unity House had never been considered, Commissioner McDonough responded that he “never even knew that Unity House offered itself as a polling site.”<sup>54</sup>

84. Ms. McKee informed Commissioner McDonough that she was a current Board Member and volunteer of Unity House, and a Board Member of the League of Women Voters, part of the coalition that sent the BOE two letters, one of which explicitly offered Unity House as an early voting site.<sup>55</sup>

85. Commissioner McDonough stated that he never saw the letter, and only vaguely remembered it when Ms. McKee mentioned that it was on New York Civil Liberties Union letterhead.<sup>56</sup>

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<sup>51</sup> McKee Aff. ¶ 21.

<sup>52</sup> *Id.* ¶ 22.

<sup>53</sup> *Id.* ¶ 23.

<sup>54</sup> *Id.* ¶ 28.

<sup>55</sup> *Id.* ¶ 29.

<sup>56</sup> *Id.* ¶¶ 30–31.

86. The conversation concluded with no resolution to designate a site in a more densely populated area of Troy.

87. By letter dated July 28, 2020, the Coalition again contacted the BOE, expressing concerns regarding the location of the third early voting site, and providing an analysis of the factors set forth in N.Y. Elec. Law § 8-600(2)(e).<sup>57</sup> The Coalition again strongly urged the BOE to adopt a site more centrally located within Troy, and again “invite[d] the Commissioners and staff of the [BOE] to visit Unity House to inspect the premises at their earliest convenience.”<sup>58</sup> The BOE did not respond to the letter.

#### G. THE OAG’S INITIAL INQUIRIES

88. After receiving complaints regarding early voting accessibility in Rensselaer County, the OAG, by letter dated October 8, 2020, contacted the BOE.<sup>59</sup> The letter noted, *inter alia*, the OAG’s concerns regarding adequate and equitable access to early voting in Troy, where much of the County’s minority residents live, and “urge[d] the Board to consider adding an early voting poll site in an area that is more centrally-located within Troy, and more accessible by public transportation, particularly to voters in minority communities.”<sup>60</sup>

89. Commissioner Schofield responded to the letter by calling the OAG’s offices, indicating his belief that the early voting sites complied with the law, and declining to take action, citing the proximity to the November 2020 general election.

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<sup>57</sup> Burke Aff. ¶ 25, Ex. C.

<sup>58</sup> *Id.*

<sup>59</sup> McKenzie Aff., Ex. 10.

<sup>60</sup> *Id.*

90. Following the 2020 general election, the OAG followed up by letter dated November 24, 2020.<sup>61</sup> The letter reiterated prior concerns regarding early and equitable access, and requested that the BOE provide by December 11, 2020: (1) “All documents . . . concerning the location of early voting poll sites in Rensselaer County, including requests for, or consideration of, additional or alternative sites,” and (2) “All documents . . . concerning the number of early voting poll sites in Rensselaer County.”<sup>62</sup>

91. On or around December 21, 2020, Commissioner McDonough responded to the OAG’s letter, stating that the BOE did not have any responsive documents.

92. Meanwhile, the Coalition of organizations submitted to the BOE a request pursuant to New York’s Freedom of Information Law (“FOIL”) dated December 1, 2020.<sup>63</sup> The FOIL request sought records relevant to the BOE’s decision-making process in designating the current early voting sites.<sup>64</sup>

93. On December 24, 2020, the OAG sent another letter to the BOE. The letter noted that the OAG “has reason to believe that the Board is in fact in possession of documents responsive to our requests.”<sup>65</sup>

94. The BOE responded by letter dated January 13, 2021, producing the FOIL request submitted by the Coalition.<sup>66</sup>

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<sup>61</sup> *Id.*, Ex. 11.

<sup>62</sup> *Id.*

<sup>63</sup> Grossman Aff. ¶ 3, Ex. A.

<sup>64</sup> *Id.* ¶ 4, Ex. A.

<sup>65</sup> McKenzie Aff., Ex. 12.

<sup>66</sup> *Id.*, Ex. 13.

95. On January 20, 2021, Commissioner Schofield responded by email to the Coalition's FOIL request, stating that "[t]here are no documents, maps, drawing, photos, lists or any other materials" responsive to the request.<sup>67</sup>

**II. THE BOE'S ARBITRARY DISREGARD OF THE STATUTORY FACTORS AND ITS FAILURE TO PROVIDE TROY VOTERS WITH ADEQUATE AND EQUITABLE ACCESS TO EARLY VOTING**

96. New York Election Law requires local BOEs 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 the board of elections deems appropriate."

97. Despite countless opportunities, the BOE has failed to put forth a coherent rationale explaining how consideration of these factors led to its selection of the current early voting sites. Moreover, the BOE's failures have been further highlighted by its refusal to give serious consideration to sites recommended by the Coalition (the "Proposed Sites"). These include Unity House (a human service agency), and Bethel Baptist Church (a church in downtown Troy), both of which satisfy the statutory criteria better than the current sites, and both of which have expressed willingness to become early voting sites.

98. A review of the statutory factors underscores the arbitrary and illegal nature of the BOE's decision.

*Population Density.*

99. Any serious consideration of population density would have led the BOE to focus its attention on the west side of Troy, where the County's population is most dense.

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<sup>67</sup> Grossman Aff. ¶ 6, Ex. A.

100. More specifically, the population density of central and downtown Troy, where the Proposed Sites, including Unity House and Bethel Baptist Church, are located, is substantially greater than the population density of the area surrounding Holy Cross Armenian Church, Schodack Town Hall and Brunswick Office Building.<sup>68</sup>

<u>Location</u>	<u>Population Density</u>
Brunswick Office Building	537 <sup>69</sup>
Schodack Town Hall	192
Holy Cross Armenian Church	2, 994
Unity House	6,343
Bethel Baptist Church	7,579

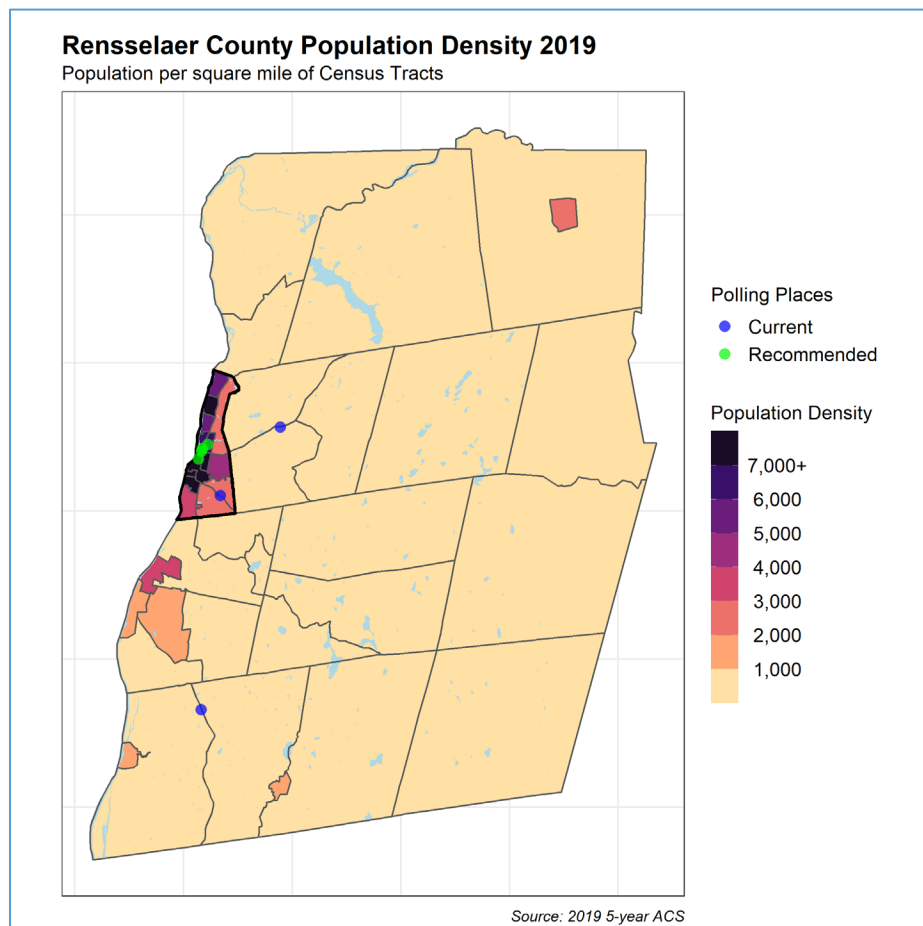
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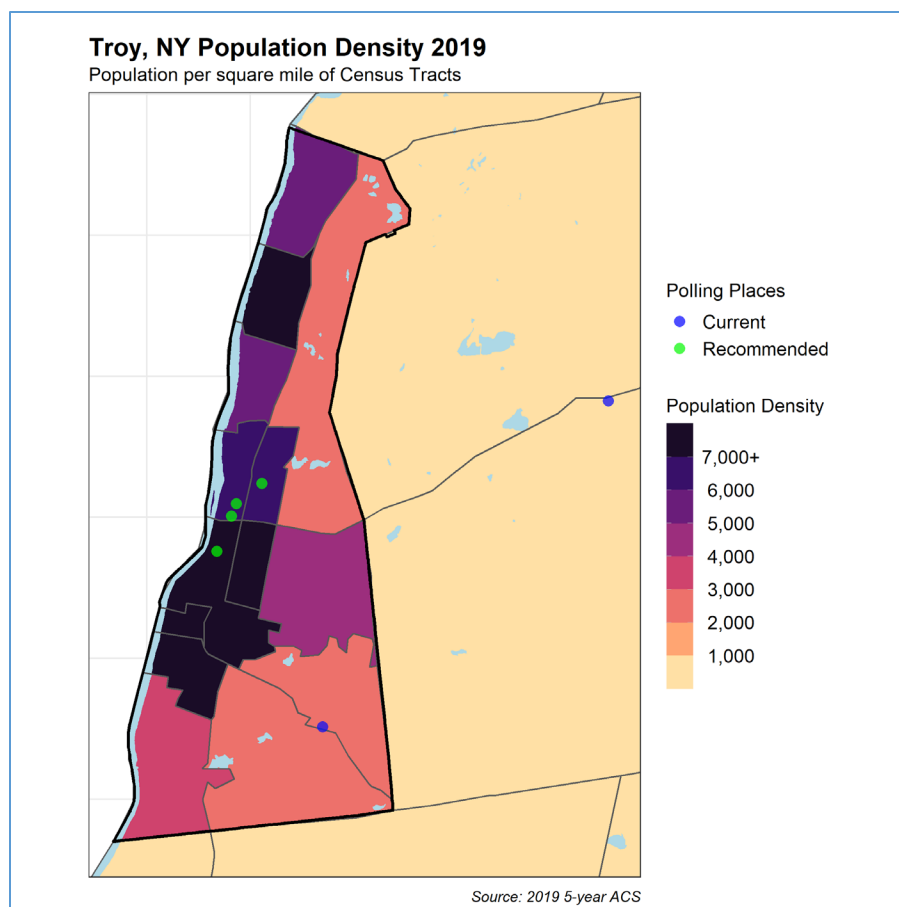
<sup>68</sup> Barber Aff. ¶ 60.

<sup>69</sup> *Id.*



101. The maps below reflect this fact:





*Travel time to the polling place and public transportation routes.*

102. Because Troy residents are more likely than the County at large to lack access to a vehicle or commute by public transportation,<sup>70</sup> public transit accessibility with reasonable travel times is critical to ensure adequate and equitable access to early voting. Traveling from Troy on public transportation, the current early voting sites range from minimally accessible by public transportation, to completely out of reach.

<sup>70</sup> Barber Aff. ¶¶ 18-19, 22-23.

103. Traveling from Troy to Schodack Town Hall by bus takes approximately 60 to 90 minutes one-way, on a route that travels through Albany and back into Rensselaer County.<sup>71</sup>

104. Brunswick Office Building has no public transportation within nearly two miles;<sup>72</sup> a commuter would have to take a bus from Troy to its last stop, and walk the rest of the way on a highway with only intermittent sidewalks.<sup>73</sup>

105. Finally, Troy voters are burdened by traveling to Holy Cross Armenian Church, located in a more affluent neighborhood on the southeastern outskirts of Troy, particularly those traveling from Northern Troy, which takes approximately one hour and requires a bus transfer.<sup>74</sup>

106. By contrast, the Proposed Sites, including both Unity House and Bethel Baptist Church, are located in more centrally-accessible neighborhoods in Troy, in close proximity to several bus lines running in multiple directions, and closer to institutions of higher education with large employee and student bodies.

Commuter traffic patterns.

107. Because Rensselaer County residents typically commute into Troy or across the Hudson River to Albany County or Schenectady County, the current sites require many residents to travel east, against prevailing traffic patterns.<sup>75</sup>

108. By contrast, Unity House is located right off Route 7, and consistent with commuter patterns traveling from east to west.<sup>76</sup>

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<sup>71</sup> McKee Aff. ¶ 16.

<sup>72</sup> *Id.* ¶ 15.

<sup>73</sup> *Id.*

<sup>74</sup> Marquez Benbow Aff. ¶ 7; Ferguson Aff. ¶ 18.

<sup>75</sup> NYCLU Ltr. dated Apr. 9, 2021 at 2.

<sup>76</sup> Burke Aff. ¶ 6.

Parking.

109. Unity House has ample parking available, including 23 spaces on site and two dedicated for people with disabilities.<sup>77</sup> Moreover, Unity House also has access to a public parking lot across the street, and parking spaces available on the streets close by. Bethel Baptist Church also has a dedicated parking lot and street parking.<sup>78</sup>

Accessibility for Voters with Disabilities.

110. Both Unity House and Bethel Baptist Church are fully accessible for voters with disabilities.<sup>79</sup>

Other Factors Relevant to Adequate and Equitable Access.

111. The current early voting sites also fail to provide adequate and equitable access based on a host of other key considerations.

112. *Disproportionate Impact on Minority Residents.* Troy residents make up approximately 68% of the County's minority residents.<sup>80</sup> The current early voting sites disproportionately impact minorities in Rensselaer County because they are located in areas of the County that are far less diverse than the areas surrounding the Proposed Sites.<sup>81</sup>

113. *Disproportionate Impact on Low-Income Residents.* Twenty-four percent of Troy residents have incomes at or below the poverty level,<sup>82</sup> two times that of the poverty level of residents of Rensselaer County at large.<sup>83</sup> The current early voting sites disproportionately impact

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<sup>77</sup> *Id.* ¶ 11.

<sup>78</sup> Burke Aff. ¶ 27 & Ex. E, at 2-3

<sup>79</sup> NYCLU Ltr. dated Apr. 9, 2021 at 2.

<sup>80</sup> Barber Aff. ¶ 13.

<sup>81</sup> *Id.* ¶ 14.

<sup>82</sup> *Id.* ¶ 35.

<sup>83</sup> *Id.* ¶ 36.

low-income residents, as they are located in areas more affluent than the areas surrounding the Proposed Sites.<sup>84</sup>

114. *Disproportionate Impact on Residents Without Access to a Vehicle.* Troy residents are more likely to lack access to a vehicle than residents in other parts of the County.<sup>85</sup> Approximately 66% of the County's residents who do not have access to a vehicle live in the most densely populated sections of Troy along the west side and must rely on public transportation.<sup>86</sup> People who live in the areas surrounding the current early voting sites are much more likely to have access to a vehicle than people who live in the areas surrounding the Proposed Sites.<sup>87</sup>

115. *Voter Turnout.* Turnout rates in Troy tend to be lower than the rest of Rensselaer County.<sup>88</sup> Voter turnout rates for the November 2020 general election in the Census Tracts around Unity House and Bethel Baptist Church were much lower as compared to the current early voting sites.<sup>89</sup> The BOE's designation of sites in areas where voters are already casting ballots at higher rates ignores a key aim of New York's early voting legislation and misses a clear opportunity to encourage participation in the political process for voters who have not previously been engaged.

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<sup>84</sup> *Id.* ¶ 31.

<sup>85</sup> *Id.* ¶¶ 22-24.

<sup>86</sup> *Id.* ¶ 24.

<sup>87</sup> *Id.* ¶ 25.

<sup>88</sup> *Id.* ¶¶ 51-52.

<sup>89</sup> *Id.* ¶¶ 53-55.

**III. THE BOE’S FAILURE TO ENSURE ADEQUATE AND EQUITABLE ACCESS HAS HARMED, AND WILL CONTINUE TO HARM, VOTERS IN TROY, AND REQUIRE COMMUNITY LEADERS AND GROUPS TO FILL THE GAPS**

116. The BOE’s arbitrary decision-making and failure to provide adequate and equitable access to early voting has harmed Troy voters, who are more likely than other County residents to be racial minorities,<sup>90</sup> lower-income,<sup>91</sup> rely on public transportation and lack access to a vehicle.<sup>92</sup>

117. As a result, a patchwork of individuals and community organizations have had to fill the gaps caused by the BOE’s failures, donating their time, labor, and their money so that Troy voters can have meaningful access to early voting.

118. Ahead of the 2020 general election, community leaders, like Jerry Ford, a Deacon at United Ordained Church, knew that the addition of Holy Cross Armenian Church would not improve access and equity for the many Troy voters who do not have cars, particularly those living in northern neighborhoods.<sup>93</sup> In light of this, several individuals and organizations in Troy resolved to create a non-partisan initiative, “Souls to the Polls,” to shuttle voters by private bus from churches and public housing sites in Troy to Holy Cross Armenian Church, so that they could exercise their right to vote early.<sup>94</sup>

119. Souls to the Polls ran for several days during the early voting period. The buses were contracted with a private company for approximately \$14,000, financed by Noreen McKee and others from the Troy community, and supported by many other individuals and

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<sup>90</sup> *Id.* ¶ 13.

<sup>91</sup> *Id.* ¶ 36.

<sup>92</sup> *Id.* ¶¶ 18, 42.

<sup>93</sup> Ford Aff. ¶ 13.

<sup>94</sup> *Id.* ¶ 15.

organizations.<sup>95</sup> Before the early voting period started, Troy 4 Black Lives paid to have the Souls to the Polls promotional materials translated into Spanish and Arabic to better reach the Latinx and Muslim American communities in Troy.<sup>96</sup> Efforts to assist voters were also supported by unpaid volunteers who promoted the initiative.<sup>97</sup>

120. Yet such substantial community efforts required additional support to ensure that as many voters as possible were reached, particularly those in northern neighborhoods—for example, in Corliss Park, a housing project in Troy.

121. Sharon Ferguson, an African-American older woman, has lived in Corliss Park for 17 years.<sup>98</sup> Ms. Ferguson has been a registered voter for over 50 years, but does not own a car.<sup>99</sup>

122. During last year's primary election, Ms. Ferguson attempted to vote at her local polling place on Election Day. Because of confusion regarding a relocation, Ms. Ferguson was not able to vote for the first time in 17 years.<sup>100</sup>

123. To travel from Corliss Park to Holy Cross Armenian Church takes over an hour and two buses, each way.<sup>101</sup> Some members of the Troy community were interested in voting early, but unfamiliar with Holy Cross Armenian Church or the surrounding area.<sup>102</sup>

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<sup>95</sup> McKee Aff. ¶¶ 36-37.

<sup>96</sup> Marquez Benbow Aff. ¶ 9.

<sup>97</sup> Ford Aff. ¶ 19.

<sup>98</sup> Ferguson Aff. ¶ 1.

<sup>99</sup> *Id.* ¶¶ 3, 5.

<sup>100</sup> *Id.* ¶¶ 7-10.

<sup>101</sup> *Id.* ¶ 18.

<sup>102</sup> Ford Aff. ¶ 21.

124. The great distance and unfamiliarity was part of the reason Luz Marquez Benbow, a Troy resident and founding member of Troy 4 Black Lives, personally drove to Corliss Park before early voting commenced, to identify other residents like Ms. Ferguson, further promote Souls to the Polls, and offer to drive people down to a pick-up site to catch the private bus to Holy Cross Armenian Church.<sup>103</sup>

125. While focusing her efforts in Corliss Park, Ms. Marquez Benbow spoke with a number of Corliss Park residents were not aware of the option to vote early.<sup>104</sup> Others expressed that they were not interested in traveling such a great distance, even by car.<sup>105</sup>

126. However, one voter expressed interest in voting early, but did not have a car and did not want to travel over two hours round-trip by public transportation to Holy Cross Armenian Church and back.<sup>106</sup> Rather than drive the voter to the Souls to the Polls pick-up point, Ms. Marquez Benbow and another elder in the community drove the voter straight to Holy Cross Armenian Church, waited for the voter to cast their ballot, then drove back to Corliss Park.<sup>107</sup>

127. Ms. Ferguson, the Corliss Park resident, learned of Souls to the Polls from a friend and member of her Church (Bethel Baptist), who told her that she could catch a private bus at her church that would take her to the closest early voting polling place, so that Ms. Ferguson could vote early for the first time in her life.<sup>108</sup>

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<sup>103</sup> Marquez Benbow Aff. ¶ 8.

<sup>104</sup> *Id.* ¶ 10.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* ¶ 11.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* ¶ 12.



128. Ms. Ferguson got on the bus, but when she arrived, she was met by a long line and large crowd.<sup>109</sup> As an older woman who cannot stand or walk for long periods of time, Ms. Ferguson turned around and went back to her Church.<sup>110</sup>

129. Throughout the 2020 general election, Souls to the Polls and supporting efforts helped around 50 Troy voters gain access to early voting in Rensselaer County.<sup>111</sup> Without these efforts, it would have been difficult or impossible for many Troy residents to access early voting.<sup>112</sup>

130. But, as seen in the experience of Ms. Ferguson, such herculean efforts cannot fully overcome the illegal conduct of the BOE. Moreover such efforts cannot be sustained every election cycle, and indeed, should not have to be, as they stem from a clear violation of law.

131. While Ms. Ferguson has plans to vote in both the 2021 primary and general elections, she does not have a car and does not intend to take the city bus to the early voting poll site.<sup>113</sup>

132. Ms. Ferguson has not heard of another opportunity to receive free transportation to an early voting poll site.<sup>114</sup> Unless she is offered such transportation or can go to a more convenient early voting site, she will not be able to exercise her right to vote early.<sup>115</sup>

133. With the 2021 primary election imminent and no specific plan in place to duplicate another massive undertaking like Souls to the Polls, the BOE's failures—if not

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<sup>109</sup> *Id.* ¶ 13.

<sup>110</sup> *Id.* ¶ 14.

<sup>111</sup> McKee Aff. ¶¶ 36, 40; Marquez Benbow Aff. ¶ 5.

<sup>112</sup> Ford Aff. ¶ 23.

<sup>113</sup> *Id.* ¶¶ 17–18.

<sup>114</sup> *Id.* ¶ 19.

<sup>115</sup> *Id.* ¶ 20.

remediated by this Court—may once again deny voters in Troy their right to adequate and equitable access to early voting.

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134. On April 19, 2021, OAG sent a letter to the BOE, “shar[ing] the concerns” conveyed in an April 9, 2021 letter from the Coalition, proposing recommended sites.<sup>116</sup> The OAG further noted that “[d]espite continued correspondence with the Board on this issue, it remains unclear how the Board assessed the required statutory factors under New York Election Law 8-600 to select the current early voting poll sites,” and that it “also remains unclear why none of the proposed early voting poll sites could serve as a viable addition or substitute to the Board’s current early voting plan.”<sup>117</sup>

135. The OAG’s letter therefore requested “a written response outlining the Board’s position on the Proposed Sites by April 26, 2021, including whether it intends to select any of those sites.”<sup>118</sup> The OAG also specifically requested that “[t]o the extent the Board declines to modify its early voting plan to make poll sites more accessible,” it included in its written response “an analysis of how the current sites comport with the required statutory factors under New York Election Law 8-600(2)(d).”<sup>119</sup>

136. Before completing inspection of the Proposed Sites and discussing their suitability with the site directors, the BOE “cast doubt on the viability of the suggested locations” and

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<sup>116</sup> McKenzie Aff., Ex. 14.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

indicated that it “does not foresee any change in early voting locations.”<sup>120</sup> As reported by the press, Commissioner Schofield stated: “There’s a lot that goes into to having a site. You have to find a place that’s going to take you for 10 days. You have to buy the equipment. So there’s not just like we’re not trying to be more open . . . it’s just finding the workers, finding the locations. We had a lot to do to find a location in the City of Troy. We are losing polling locations constantly. Especially with COVID it’s even worse.”<sup>121</sup>

137. At the time, nor at any point during the BOE’s correspondence with the OAG, did the BOE identify which sites in Troy the BOE lost due to COVID, nor did it state that the BOE could not adopt a site in Troy specifically due to a lack of equipment or poll workers.

138. With regard to Unity House, Commissioner Schofield’s statements to the press suggested that it is unsuitable because it is “right next door to the Conifer Park [R]ehab [C]enter, where people [who] go in for treatment for substances abuse, will be waiting outside. You’re going to have people lining up and staring at them as they go into their Anonymous meetings.”<sup>122</sup>

139. In May of 2021, over one and a half years after the initial invitation, Commissioners Schofield and McDonough visited Unity House.<sup>123</sup>

140. But rather than arrange to meet with Unity House’s Chief Executive Officer Chris Burke, a signatory to the four letters from the Coalition, to inspect the site, the Commissioners went to the site without notifying him, spoke with a person who supervises a thrift store on the

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<sup>120</sup> Lucas Willard, *NY Attorney General’s Office Pressures Rensselaer County To Expand Early Voting In Troy*, WAMC (Apr. 23, 2021), <https://www.wamc.org/post/ny-attorney-generals-office-p pressures-rensselaer-county-expand-early-voting-troy>.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Burke Aff. ¶ 36.

first floor of the building, and thereafter determined that Unity House was not a suitable location based on those conversations.<sup>124</sup>

141. When Mr. Burke learned of the meeting, he contacted the Commissioners and arranged a formal tour.<sup>125</sup>

142. During the tour, the Commissioners raised concerns about the availability of parking.<sup>126</sup> Mr. Burke assured them that he could arrange to designate the parking lot for only voters during the entire early voting period, to ensure there is ample space available.<sup>127</sup>

143. The Commissioners also mentioned Conifer Park Rehab Center, the drug and alcohol treatment program Commissioner Schofield referenced to the press. The Commissioners expressed concern that individuals sometimes line up in front of the program, and that it may make individuals in the program uncomfortable to the extent that individuals lining up for early voting would see them and potentially stare.<sup>128</sup> Mr. Burke assured the Commissioners that he could arrange to have the individuals in the program line up in a different location so as to avoid any contact with voters.<sup>129</sup>

144. Finally, the Commissioners expressed concern that if early voting were to take place on the second floor, the elevator may break and therefore not provide adequate access to individuals with disabilities.<sup>130</sup> Mr. Burke assured the Commissioners that they could conduct

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<sup>124</sup> *Id.* ¶ 38.

<sup>125</sup> *Id.* ¶ 40.

<sup>126</sup> *Id.* ¶ 43.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* ¶ 44.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* ¶ 45.

early voting on the first floor of the building, and provided a tour of a first floor area that the Commissioners confirmed would be sufficient.<sup>131</sup>

145. Mr. Burke answered all of the Commissioners' questions and addressed all the concerns they raised.<sup>132</sup>

146. Despite this, Mr. Burke has not to date heard back from the Commissioners regarding the potential for Unity House to serve as an early voting location.<sup>133</sup>

147. Sometime in the spring of 2021, a BOE representative similarly visited Bethel Baptist Church, another one of the Proposed Sites, to assess its suitability as an early voting site.<sup>134</sup>

148. The BOE representative did a "walk-through" with an administrative assistant of the Church, who addressed all of the representative's questions and concerns.<sup>135</sup>

149. Thereafter, Pastor Byron Williams, Bethel Baptist Church's Pastor, spoke by telephone with BOE Commissioner McDonough.<sup>136</sup> Commissioner McDonough informed Pastor Williams that if an early voting site would be needed for Rensselaer County in the future, Bethel Baptist would be at "the top of the list."<sup>137</sup>

150. Although Pastor Williams ended the conversation with the impression that Bethel Baptist would be a suitable early voting site, he has not been contacted further by the BOE.<sup>138</sup>

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<sup>131</sup> *Id.* ¶ 46.

<sup>132</sup> *Id.* ¶ 47.

<sup>133</sup> *Id.* ¶ 48.

<sup>134</sup> Williams Aff. ¶ 14.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* ¶ 16.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* ¶ 17.

151. By letter dated May 5, 2021, the BOE responded to the OAG's April 19, 2021 letter, writing that it had considered the four Proposed Sites, and "met with representatives from all sites to determine availability and whether they met all of the required specifications."<sup>139</sup> The BOE stated that "[a]t this present time, we believe our current location meets all State and Federal guidelines set forth in section 8-600 of the Election Law and continues to be the best option for all residents of Rensselaer County."<sup>140</sup> The BOE's letter did not contain, as requested by the OAG's letter, any explanation of why the Proposed Sites were not viable, nor did it contain any "analysis of how the current sites comport with the required statutory factors."<sup>141</sup> The letter was stamped received by OAG's Civil Rights Bureau on May 12, 2021.

152. Meanwhile, having not yet received the BOE's letter response, the OAG followed up with the BOE by email dated May 6, 2021.<sup>142</sup> The OAG requested a discussion on "the current [early voting] plan and how the five required statutory factors under N.Y. Elec. Law § 8-600(2)(d) were assessed to select the current sites."<sup>143</sup> The email further indicated a desire to "try and reach a resolution" on the issue. The OAG received no response to its email.

153. The BOE was required to designate its early voting poll sites for the 2021 general and primary elections on May 1, 2021, and May 8, 2021, respectively. N.Y. Elec. Law § 8-600(4)(e); N.Y. Comp. Codes R. & Regs. tit. 9, § 6211.1.

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<sup>139</sup> McKenzie Aff., Ex. 15.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* Ex. 14.

<sup>142</sup> *Id.* Ex. 16.

<sup>143</sup> *Id.*

154. In every election since early voting has taken place in the State, the BOE's early voting poll site designations have been posted on the BOE's website, which listed all early voting sites and their addresses.

155. However, for the first time, the BOE has not posted any of the early voting poll sites it has designated for the upcoming primary or general elections. Rather, the BOE has directed voters to the New York State Board of Elections' Voter Lookup database to ascertain their nearest poll site.

156. Based on the BOE's letter dated May 5, 2021 and searches on the Voter Lookup database, it is clear that the BOE has designated the same three early voting sites as it has done in recent prior elections: Schodack Town Hall, Brunswick Office Building, and Holy Cross Armenian Church. The BOE has done this for both the 2021 primary election, and 2021 general election.

**AS AND FOR FIRST CAUSE OF ACTION**  
**ARBITRARY AND CAPRICIOUS**  
**ADMINISTRATIVE AGENCY**  
**DETERMINATION**  
**2021 PRIMARY ELECTION**

157. Petitioner re-alleges and incorporates all preceding paragraphs as if set forth fully herein.

158. New York Election Law § 8-600(2)(e) reflects a mandatory legal requirement that polling places for early voting "shall" be located so that voters 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.

159. In designating Schodack Town Hall, Brunswick Office Building and Holy Cross

Armenian Church as the early voting polling locations for the 2021 primary election, Respondents have failed to make a determination consistent with these statutory factors and thereby committed “[a]rbitrary action” that was “without sound basis in reason” and “taken without regard to the facts.” *Natasha W. v. New York State Office of Children & Family Servs.*, 32 N.Y.3d 982, 984 (2018).

**AS AND FOR SECOND CAUSE OF ACTION**  
**ARBITRARY AND CAPRICIOUS**  
**ADMINISTRATIVE AGENCY**  
**DETERMINATION**  
**2021 GENERAL ELECTION**

160. Petitioner re-alleges and incorporates all preceding paragraphs as if set forth fully herein.

161. New York Election Law § 8-600(2)(e) reflects a mandatory legal requirement that polling places for early voting “shall” be located so that voters 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.

162. In designating Schodack Town Hall, Brunswick Office Building and Holy Cross Armenian Church as the early voting polling locations for the 2021 general election, Respondents have failed to make a determination consistent with these statutory factors and thereby committed “[a]rbitrary action” that was “without sound basis in reason” and “taken without regard to the facts.” *Natasha W. v. New York State Office of Children & Family Servs.*, 32 N.Y.3d 982, 984 (2018).



Respectfully submitted,

Dated: May 26, 2021  
New York, New York

LETITIA JAMES  
New York Attorney General

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**VERIFICATION**

Lindsay McKenzie, an Attorney admitted to the Bar of this State, hereby affirms and certifies that:

I am an attorney in the Office of Letitia James, Attorney General of the State of New York, who appears on behalf of the People of the State of New York as Petitioner in this proceeding. I am duly authorized to make this verification.

I have read the annexed verified petition, know the contents thereof, and state that the same are true to my knowledge, except for those matters alleged to be upon information and belief, and as to those matters I believe them to be true.

Dated: New York, New York  
May 26, 2020

/s/ Lindsay McKenzie  
Lindsay McKenzie