

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

P. Benjamin Duke

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By Email

August 6, 2020

Commissioner Louise Vandemark
Commissioner Courtney Canfield
Orange County Board of Elections
75 Webster Avenue
Goshen, NY 10924
elections@orangecountygov.com

**Re: Failure to Comply With New York Election Law
Early Voting Requirements**

Dear Commissioners Vandemark and Canfield:

We represent VoteEarlyNY and certain eligible voters registered in New York, including in Orange County, in the above matter. In addition, the Lawyers' Committee for Civil Rights Under Law and Common Cause New York join in this letter.

VoteEarlyNY and our individual clients, joined by the other organizations mentioned above, hereby demand that the Orange County Board of Elections (the "Board") immediately comply with the requirements of the county-wide access provisions of New York's early voting statute, N.Y. Elec. Law § 8-600(3). The Board's actions to date violate the law's mandate by failing to implement a program allowing all Orange County registered voters to vote at any early voting poll site, regardless of where within the county such voters reside.

I. The Board Must Provide County-Wide Voting at All Early Voting Poll Sites.

The Election Law provides that "all voters in the county must be able to vote at any poll site for early voting in the county." N.Y. Elec. Law § 8-600(3). The Board is in violation of this statutory provision because it restricts voters to a *single* assigned early voting poll site, rather than allowing them to vote at *any* such site.

The Board's Early Voting Information webpage states this violation plainly: "Voters are directed to vote at their designated site by their Town/City location."¹ And, in a February 20, 2020 response to a Freedom of Information Law ("FOIL") request submitted by voting rights

¹ Orange County, Early Voting Information, <https://www.orangecountygov.com/1953/Early-Voting-Information>.

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organizations including VoteEarlyNY, the Board confirmed this violation by providing a list of the Board's seven early voting poll sites and "the cities and towns assigned to each site."²

There is no legal justification for the Board's failure to implement county-wide early voting as required by § 8-600(3). Compliance with § 8-600(3) is mandatory, not discretionary. Moreover, the Board has failed even to consider whether any practical hurdles exist that could justify deviating from the mandatory requirement of county-wide access, let alone "agree[d] by majority vote" to invoke either of the two statutory exceptions to the required implementation of § 8-600(3). In response to our FOIL request, the Board admitted that it does not have *any* records of meetings or hearings discussing its plans for early voting for an election in 2020; *any* documents showing its rationale for not allowing county-wide voting at early voting poll sites; or *any* documents on which it relied to determine that a statutory exception applied. Ex. A.

In any event, even if the Board had considered it, there was and is no legitimate basis to invoke either of the narrow exceptions under § 8-600(3). Orange County has and uses on-demand ballot printers that can produce the appropriate ballot for each voter in the county, making it feasible for all county voters to vote at each poll site.³ Moreover, Orange County has adopted electronic poll books that can reconcile, in real time, who has voted, preventing voters from voting more than once in the same election.⁴ Consequently, failure to provide county-wide early voting in Orange County could not be justified on either of the limited grounds available under § 8-600(3).⁵

Indeed, other counties have not faced significant administrative or election integrity issues when providing county-wide early voting poll sites. In the October 2019 and June 2020 elections, 54 of New York's 58 boards of elections successfully provided county-wide early voting poll sites. These include boards that use the same Dominion equipment as Orange County and have significantly more registered voters, such as Monroe, Onondaga, and Suffolk Counties, or are comparably sized and in the region, such as Ulster and Dutchess Counties.

We therefore demand that the Board fully comply with § 8-600(3) by implementing a system for county-wide early voting in Orange County and informing the public that *all*

² Ex. A (David Green, response to FOIL request to the Orange County Board of Elections (Feb. 20, 2020)).

³ Chris McKenna, *Early NY voting ready to launch in the region*, Times Herald-Record (Oct. 14, 2019), <https://www.recordonline.com/news/20191014/early-ny-voting-ready-to-launch-in-region>.

⁴ *Id.*

⁵ The statutory exceptions may be invoked only by majority agreement of the full Board and are limited to two narrow circumstances: (1) impracticality of providing each polling site with "all of the election district ballots," and (2) impracticality of ensuring that a voter has not already voted in the same election. N.Y. Elec. Law § 8-600(3).

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registered voters in Orange County can vote early at any of the early voting sites in Orange County, regardless of where within the county voters reside.

II. Demand for Immediate Compliance With N.Y. Elec. Law § 8-600

In light of the above, we hereby demand that the Board comply with the Election Law by:

1. implementing a program under § 8-600(3) guaranteeing the opportunity of all Orange County voters to vote early county-wide in the upcoming November 2020 elections, including (a) confirming that such a program will be immediately implemented, and (b) stating the implementation steps that the Board will take and the dates(s) by which such steps will be completed; and
2. amending the Board's communication plan under § 8-600(5) and all related public materials to inform both the public and media outlets that all Orange County voters may vote at any early voting poll site in the 2020 elections.

Unless the Board complies with the Election Law, we will have no choice but to seek court relief. If the Board does not respond to this letter by **Thursday, August 13, 2020**, we will deem that lack of response as an admission that the Board does not intend to comply with the Election Law. Thank you for your prompt attention to this urgent matter.

Sincerely,

/s/ P. Benjamin Duke

P. Benjamin Duke

cc: Langdon C. Chapman, County Attorney
LChapman@orangecountygov.com

EXHIBIT A



Jarret Berg <jarret.berg@voteearlyny.org>

FOIL request to the Orange County Board of Elections

Green, David <dgreen@orangecountygov.com>

Thu, Feb 20, 2020 at 3:27 PM

To: John Powers <jpowers@lawyerscommittee.org>, "Vandemark, Louise" <LVandemark@orangecountygov.com>

Cc: Jarret Berg <jarret.berg@voteearlyny.org>, Ajay Saini <asaini@lawyerscommittee.org>, Perry Grossman <pgrossman@nyclu.org>, Susan Lerner <slerner@commoncause.org>

Dear Mr. Powers,

In regards to your FOIL of February 18, 2020 please find our answer to your request for records.

1. Attached is the document pertaining to the plan of the plan of the Orange County Board of Elections indicating the hours of early voting and voting sites for the 2020 Primaries and General Election. The list of seven early voting polling centers identify the cities and towns assigned to each site. The request for the shape file of the County of Orange that delineate the towns and cities will be provided under separate email as soon as that file becomes available to the Board.
2. No such studies, analyses, or other documents the Board relied on to determine (a) what early voting locations to use for elections in 2020 and (b) what election districts or towns to assign to particular poll sites exist.
3. The Board has no such minutes, notices, recordings, or other records from meetings or hearings in which the its plans for early voting for an election in 2020 are discussed.
4. The Board has no such documents to show its rationale for assigning election districts or towns to particular early voting poll sites rather than allowing county-wide voting for any election in 2020.
5. The Board has no such document that it relied upon to determine that it was impractical to make all of the county's ballots available at each early voting polling place for any election in 2020.
6. The Board has no such document that it relied upon to determine that by allowing any voter to vote at any early voting polling place in the county at any election in 2020, the Board could not prevent voters from voting more than once.
7. Attached is the copy of the sole affidavit ballot cast during the period of early voting for the 2019 General Election that was not opened due to the voter voting at the incorrect early voting poll site.

Sincerely,

David C. Green and Louise B. Vandemark

Commissioners of Elections

Orange County Board of Elections

From: John Powers <jpowers@lawyerscommittee.org>

Sent: Tuesday, February 18, 2020 6:52 PM

To: Green, David <dgreen@orangecountygov.com>; Vandemark, Louise <LVandemark@orangecountygov.com>

Cc: Jarret Berg <jarret.berg@voteearlyny.org>; Ajay Saini <asaini@lawyerscommittee.org>; Perry Grossman <pgrossman@nyclu.org>; Susan Lerner <slerner@commoncause.org>

Subject: RE: FOIL request to the Orange County Board of Elections

Mr. Green and Ms. Vandemark:

I'm attaching the correct version of the FOIL request.

Thanks, John

John Powers

Counsel

Voting Rights Project

Lawyers' Committee for Civil Rights Under Law

1500 K Street NW, Suite 900

Washington, DC 20005

Telephone: (202) 662-8389

General Fax: (202) 783-0857

jpowers@lawyerscommittee.org



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From: John Powers

Sent: Tuesday, February 18, 2020 6:34 PM

To: dgreen@orangecountygov.com; lvandemark@orangecountygov.com

Cc: Jarret Berg <jarret.berg@voteearlyny.org>; Ajay Saini <asaini@lawyerscommittee.org>; Perry Grossman <pgrossman@nyclu.org>

Subject: FOIL request to the Orange County Board of Elections

Dear Mr. Green and Ms. Vandemark:

Please see the attached FOIL request to the Orange County Board of Elections. I would greatly appreciate it if you can confirm receipt of this request and that you are the appropriate record access officers for the Orange County Board of Elections. Please feel free to email me or call me at the number below.

Many thanks, John

John Powers

Counsel

Voting Rights Project

Lawyers' Committee for Civil Rights Under Law

1500 K Street NW, Suite 900

Washington, DC 20005

Telephone: (202) 662-8389

General Fax: (202) 783-0857

jpowers@lawyerscommittee.org



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2 attachments

 **Early Voting Absentee - Not Opened.pdf**
405K

 **Orange County - Early Voting Hours & Locations 2020.pdf**
73K

HOURS AND DATES FOR EARLY VOTING
ORANGE COUNTY
2020

Day One – Saturday	Noon to 5 PM
Day Two – Sunday	10 AM to 4 PM
Day Three – Monday	Noon to 8 PM
Day Four – Tuesday	7 AM to 3 PM
Day Five – Wednesday	Noon to 8 PM
Day Six – Thursday	7 AM to 3 PM
Day Seven – Friday	Noon to 8 PM
Day Eight – Saturday	10 AM to 3 PM
Day Nine – Sunday	10 AM to 4 PM

Presidential Primary	April 18 – April 26
Primary Election	June 13 – June 21
General Election	October 24 – November 1

*Steven
A. Wandersman*

ORANGE COUNTY EARLY VOTING CENTERS

2020

SITE #1

City of Newburgh Activity Center
401 Washington St., Newburgh, NY
City of Newburgh
Town of Newburgh
New Windsor

SITE #2

Cornwall Ambulance Building
1 Clinton St, Cornwall, NY
Cornwall
Highlands
Woodbury
Blooming Grove

SITE #3

Warwick Town Hall
132 Kings HWY, Warwick
Warwick
Goshen
Chester
Tuxedo

ORANGE COUNTY EARLY VOTING CENTERS
2020

SITE #4

Middletown Sr Center
62-70 W Main St, Middletown
Middletown
Wawayanda
Wallkill

SITE #5

Village of Montgomery Senior Center
36 Bridge St, Montgomery
Montgomery
Crawford
Hamptonburgh

SITE #6

Engine Company #2
22 Hammond St, Port Jervis
Port Jervis
Deerpark
Greenville
Mount Hope
Minisink

SITE #7

Monroe Town Hall
1465 Orange Tpke., Monroe NY
Monroe
Palm Tree



A handwritten signature in cursive script, appearing to read "D. H. ...", is written above the printed name "D. H. ...". The signature is written in dark ink on a white background.

Affidavit Oath

This envelope is NOT to be opened at the Polls.
Return all Affidavit Ballots to the Board of Elections so that they may be verified and counted.
County of Orange - State of New York

88364
Orange County

A Please provide the following required information

Your name *5.26* Last name **Boyle** Suffix _____
 First name **John** Middle Initial **J**

The address where you live Address (not P.O. box) **48 VALLEY DRIVE**
 Apt. Number _____ Zip code **12577**
 City/Town/Village **SALISBURY MILLS**
 New York State County **ORANGE**

Date of birth **08/14/1959** Party enrollment **Republican**

B Please check each box that applies to you and fill in the appropriate blanks

- I have been informed by the inspectors that my registration record is not available to them, however I have duly registered to vote in this election district from the address given above, and I remain a duly qualified voter in this district.
- I have moved within New York State since my last registration and have lived at the address listed above for at least 30 days before the date of the election. My previous address was: **1266 UNION AVE NEWBURGH 12550**
- I was required to present identification when I voted today, but I did not do so.
- I have not voted in this election, but the records of the Board indicate that I have already voted.
- For Primary Elections Only: I am enrolled in the political party stated in the section above, but the poll book does not reflect my correct enrollment.

C Additional information to register to vote in the event that you do not have a valid voter registration on file

Are you a citizen of the U.S.? Yes No
 If you answer No, you cannot register to vote.

Will you be 18 years of age or older on or before election day? Yes No
 If you answer No, you cannot register to vote unless you will be 18 by the end of the year.

More information Telephone (optional) **845-857-2764** Gender (optional) **Male**
 Email (optional) **JBoyle7834@gmail.com**

The address where you receive mail Address or P.O. Box **48 VALLEY DRIVE**
 P.O. Box _____ Zip code **12577**
 City/Town/Village **SALISBURY MILLS**

Voting history Have you voted before? Yes No What year? **2018**

Voting information that has changed Your name was _____
 Your address was **1266 UNION AVENUE NEWBURGH**
 Your previous state or New York State County was **ORANGE 12550**

Identification You must make 1 selection
 New York State DMV number **236269071**
 Last four digits of your Social Security number **x x x - x x - 7929**
 I do not have a New York State driver's license or a Social Security number.

Political party You must make 1 selection **2**
 Democratic party Working Families party Independence party
 Republican party Green party SAM party
 Conservative party Libertarian party Other _____
 No party

D All voters must date and sign the oath below

It is a crime to procure a false registration or to furnish false information to the Board of Elections

Affidavit: I swear or affirm that

- I am a citizen of the United States.
- I will have lived in the county, city or village for at least 30 days before the election.
- I meet all requirements to register to vote in New York State.
- This is my signature or mark in the box to the right.
- The above information is true, I understand that if it is not true, I can be convicted and fined up to \$5,000 and/or jailed for up to four years.

Sign *[Signature]* Date **11/03/2019**

NW5
BOARD USE ONLY:
 TO BE OPENED
 REGISTRATION DATE **6/30/03**
 TRANSFER FROM **NW12** TO **NW5**
 INACTIVE
 CORRECT POLLING PLACE WRONG ED
 NAME IN BOOK, DID NOT SIGN
 CORRECT PARTY (Primary Only)
 OTHER/REMARKS _____

NOT TO BE OPENED
 REGISTERED TOO LATE DATE _____
 NOT REGISTERED
 INCORRECT POLLING PLACE **NBC Activity CR**
 NAME IN BOOK, SIGNED BOOK PUBLIC COUNTER # _____
 WRONG PARTY (Primary Only)
 CANCELLED REGISTRATION

OTHER/REMARKS

 Researcher Name *[Signature]*
 Commissioners' Initials *[Signature]*

COUNTED: Yes No