

Prepared by the Court:

JACQUELINE M. VIGILANTE, as Chair,
Gloucester County Republican Party,
CARMET DINOVI, JR. and DAVID
FERRUCCI, as Commissioners of the
Gloucester County Board of Elections,

Plaintiffs,

GLOUCESTER COUNTY BOARD OF
ELECTIONS, STEPHANIE SALVATORE,
as Superintendent of Elections, MARK
HARRIS, as Director of Elections Operations,
CHRIS POWELL, MIKE MILAM, as
Commissioner of Gloucester County, Board
of Elections, JAME HOGAN, as Clerk of
Gloucester County

Defendants.

Superior Court of New Jersey
County of Gloucester
Law Division

Docket No. GLO-L-1005-20

**ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

THIS MATTER is before the court on Plaintiffs' application seeking declaratory and injunctive relief against Defendants. For the reasons that follow, Plaintiff's request for immediate injunctive relief is **DENIED**. The temporary restraints in the order dated September 22, 2020 are **DISSOLVED**.

II. FACTS

On September 17, 2020, the present complaint and an Order to Show Cause were filed with the court by Jacqueline M. Vigilante, Carmen DiNovi, Jr., and David Ferrucci (collectively "Plaintiffs") against the Gloucester County Board of Elections, Stephanie Salvatore, Mark Harris, Chris Powell, Mike Milam, and James Hogan (collectively "Defendants"). Plaintiffs seek a declaration, as well as related injunctive relief, alleging that the Defendants acted unlawfully and *ultra vires* in selecting, advertising and placing ballot drop boxes in locations in addition to

selecting and advertising polling places, not selected or approved by the Gloucester County Board of Election. Plaintiffs also sought to restrain Defendants Salvatore and Harris from publishing or promoting the locations of polling places or ballot drop boxes for the November general election.

The court was advised by counsel on September 24, 2020 that the parties had reached an agreement as to the locations for the secure ballot drop boxes in Gloucester County.¹ Therefore, this issue is moot and has not been addressed by the court.

The following facts have been presented to the court by verified complaint. On September 8, 2015, a public County Board of Elections (“BOE”) meeting was held for the purpose of voting on the locations of the polling places and ballot drop boxes for the general election in November. Defendants Salvatore and Harris were also in attendance at this meeting and proposed a plan to open one large voting venue per municipality for the general election. The proposal provided for twenty-four (24) polling places, primarily consisting of high schools within the municipalities. The BOE was tied (2-2) as to whether to proceed with the proposal. Therefore, the meeting ended with no approved plan for the locations of the polling places or the ballot drop boxes.

Plaintiffs argue that pursuant to EO 177, the locations of the polling places are to be determined by the BOE. Plaintiff Ferruci asserted that he made several good faith efforts beginning on August 18th to organize a BOE meeting regarding these locations but was largely ignored by Defendant Powell. Plaintiffs allege that they were informed by Ms. Heather Pool,

¹ Executive Order 177 indicates, to the extent possible, each county shall have at least ten (10) secure ballot drop boxes based on geographic location and population density. Counsel represents that Gloucester County will have thirteen (13) secure ballot drop boxes at agreed upon locations.

Deputy Clerk of Gloucester County, at the September 15th meeting that Defendant Hogan had already ordered a printed notice to the electorate which included the list of the twenty-four polling places proposed by Defendants Salvatore and Harris. Ms. Pool allegedly advised Plaintiffs that the money had already been spent to discourage Plaintiffs from objecting to the proposed plan or voting against it. Plaintiffs concede that pursuant to N.J.S.A. 19:8-2 Defendant Hogan has the authority to step in and designate the polling locations but argue that this authority does not exist until September 30, 2020.

Defendants argue that the Board of Elections did hold a public meeting at which time a vote was held as to the placement of polling locations. Therefore, Defendant Hogan is permitted under N.J.S.A. 19:8-2 to make a determination as to the location of the polling places because this vote was deadlocked. Defendants argue that any action by the court would be premature as Defendant Hogan has not made a final determination as to the polling locations.

III. LAW & ANALYSIS

On August 14, 2020, Governor Murphy issued Executive Order 177 (“EO 177”), which declared that the November 3, 2020 General Election would be held “primarily via vote-by-mail ballots.” EO 177 also provided guidance as to opening polling locations and placement of secure ballot drop boxes during the COVID-19 pandemic. The order provided that “[e]ach county shall open a minimum of at least one (1) polling place in each municipality.”² It also provided that “[e]ach county shall open a minimum of fifty (50) percent of its regularly used polling places and may open more than the minimum number of its regularly used polling places.” In the event that a county is unable to achieve fifty (50) percent of its regularly used polling places, the order provides

² Gloucester County has twenty-four municipalities.

that “the county Board of Elections must utilize schools or other large facilities to serve as large voting centers, which will accommodate more voting districts in one polling place.” The Board of Education is to select these polling locations, to the best of their ability, “based on geographic location and population density to best serve the voters of each municipality.” EO 177 also requires that all active voters are to be sent a notice by the Superintendent of Elections which advises the voter of his or her polling place and the locations of the ballot drop boxes.

EO 177 vests the determination as to placement of the polling locations in the County Board of Elections. In the event that the BOE is unable to reach a consensus as to the polling locations, N.J.S.A. 19:8-2 vests the authority to do so with the County Clerk. Pursuant to N.J.S.A. 19:8-2 “[w]here the county board shall fail to agree as to the selection of the polling place or places for any election district, within five days of an election, the county clerk shall select and designate the polling place or places in any such election district.”

By statute, Defendant Hogan has the authority as the County Clerk to determine the location of the polling places if the BOE is unable to reach an agreement. The BOE has met several times and has been unable to resolve the issue. The court is not persuaded by the argument that Defendant Hogan should be enjoined because he does not have authority until September 30, 2020. EO 177 recognizes that election officials require flexibility and sufficient lead time to adapt their infrastructure to the safety risks of COVID-19. This includes not only mailing ballots and choosing polling locations, but also ensuring proper infection control practices. The ballots must contain the locations of the polling places and the ballot drop boxes. They must be printed and mailed to all the active voters in Gloucester County by October 5, 2020. Given the pandemic constraints and the heightened need to vote by mail, allowing five days to establish polling places and print

and mail ballots to thousands of Gloucester County voters risks uncertainty and confusion in an already uncertain time.³

The court recognizes that this election poses unprecedented challenges. The goal is to allow all voters the opportunity to safely cast their vote. The BOE has agreed on thirteen county-wide locations for ballot drop boxes. Unfortunately, they are at an impasse over the location of the polling places. As a practical matter, time is running out. Given the circumstances and the impasse on the BOE, Defendant Hogan, as County Clerk, is statutorily vested with the authority to select the polling places. There is no credible evidence at this time that his plan will be contrary to the requirements of EO 177.

While the court encourages the BOE to reach an agreement regarding the polling locations, the court cannot order the BOE to do so. There is a statutory remedy to address the stalemate. As the BOE has not been able to reach a consensus, the responsibility for the selection of the polling places defaults to the County Clerk to select locations in compliance with EO177.

IV. CONCLUSION

Therefore, this court finds that Plaintiffs have not presented the court with a sufficient basis to grant injunctive relief. As such, Plaintiff's request is **DENIED** and the temporary restraints are **DISSOLVED**.

September 25, 2020

Mary Beth Kramer

Hon. Mary Beth Kramer, J.S.C.

³ In the 2019 General Election, Gloucester County had 213,475 registered voters. State.nj.us/state/election-information-ballots-cast.shtml