

BARD COLLEGE

A College of the Liberal Arts and Sciences

*Executive Vice President and Director
Center for Civic Engagement*

Commissioner Erik J. Haight
Commissioner Hannah Black
Dutchess County Board of Elections
47 Cannon Street
Poughkeepsie, New York 12601

Re: Board of Elections Ongoing Violation of Duty To Designate District 5 Polling Location

Dear Commissioner Haight and Commissioner Black:

Over the last three months, I have written to you repeatedly regarding the request of the Bard Center for Civic Engagement that the Board of Elections (the “Board”) designate the Bertelsmann Campus Center (the “Center”) as the polling location for District 5 in Red Hook, including.

- My February 19, 2021 letter in advance of the February 25, 2021 public meeting of the Board.
- My March 12, 2021 letter following the February 25, 2021 meeting.
- My April 1, 2021 letter following the expiration of the March 15 location-designation deadline with no explicit designation by the Board.

In these letters, I have laid out in detail the various misstatements of Commissioner Haight at the February 25 public meeting; the merits of the Center as a polling location, following its successful experience on November 3, 2020; and the continuing defects of the St. John’s Church in Barrytown (the “Church”) as a polling location. I have received no response from the Board.

Despite all of the factors referenced in my earlier letters—including the expiration of the deadline for designating polling locations--it appears the Board is on a course to attempt to retroactively designate the Church as the sole polling location for District 5 in Red Hook for 2021. Hence, this letter.

On November 3, 2020, District 5 voters voted at either the Center or the Church. They did so pursuant to Judge Rosa’s October 30, 2020 Order that the Center “be made available by the Dutchess County Board of Elections as an additional polling location.” That Order is the most recent legal designation of polling locations in District 5 because, as noted, the Board did not designate polling locations by the March 15 deadline, or since then.

Nevertheless, on or about April 20 the Board issued postcards to eligible voters in District 5 of Red Hook with the following language: “YOUR POLLING PLACE HAS BEEN CHANGED. YOU NOW VOTE AT: St. John’s Episcopal Church, 114 River Road, Red Hook NY 12571.” The Board

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had no authority to issue such postcards. Having failed to designate any polling location by the March 15 deadline, the Board could not have “changed” any polling place.

Furthermore, the postcards also say: “ATTENTION VOTER: If you still reside at the above address, you may continue to vote at the accessible polling place shown on this card.” “Continue” implies voting in the future at the same place you voted most recently. Thus, it is incorrect and confusing to tell someone who voted at the Center on November 3, 2020 that s/he “may **continue** to vote at the accessible polling place shown on this card” (i.e., the Church) when that person did not vote at the Church on November 3. For someone who voted at the Center on November 3, 2020, the only location to “continue” to vote is the Center.

Finally, it is also incorrect and misleading to refer to the Church as an “accessible polling place.” My earlier letters explain the Church’s inaccessibility in detail. This misdescription is an offense to District 5 voters with disabilities or mobility impairments, or persons who accompany such persons to the polls, who rely on such information in determining whether they must anticipate physical obstacles.

Absent a timely, unanimous Board designation, Judge Rosa’s Order remains the last legal designation of polling locations in District 5. As I said in my letter of March 12, “[i]f there is a ‘default’ position [i.e., in the absence of an agreement between the two Commissioners], it is that both the Church and the Campus Center be re-designated.”

To ensure that the Board understands Bard’s position, I am attaching a copy of that October 30, 2020 Order. Please note the relevant language:

ORDERED that the Bertelsmann Campus Center at Bard College...be made available by the Dutchess County Board of Elections...as an additional polling location of the Town of Red Hook Voting District 5, along with the St. John’s Episcopal Church....;

ORDERED that Dutchess County Board of Elections update its website to indicate that Bertelsmann Campus Center has been designated as an additional polling location for the Town of Red Hook Election District 5 as soon as possible....

Neither these nor any other paragraphs of the Order limit the designation of the Bertelsmann Campus Center to the election of November 3, 2020. Neither that Election Day nor any other is referenced in the Order. I note that, consistent with this Order, the Board of Elections’ website continues to (correctly) identify both the Bertelsmann Campus Center and the Church as polling locations for District 5 after the March 15 deadline.

The explicit language of the October 30, 2020 Order refutes Commissioner Haight’s unsupported, erroneous contention at the February 25 meeting that absent an agreement between the Commissioners the default position reverts to the Church as the sole 2021 polling location in District 5. Failing to recognize the Bertelsmann Campus Center as a polling location—after Judge Rosa’s *two* orders designating it and after the Center successfully hosted voting on November 3,

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2020--would be further evidence of discrimination against students, minorities, and disabled voters of District 5.

Particularly troubling is the Board's continued indifference to the American with Disabilities Act and to the interests of District 5 voters who are persons with disabilities or mobility impairments generally. The most recent evidence of this indifference comes from the response I received to a recent FOIL request. On March 10, 2021 at 9:26AM, Commissioner Black emailed Commissioner Haight: "It has come to my attention that St. John's Episcopal Church is not ADA compliant and requires another review. Can we set up a date and time with someone from your side to be available to set up doing this survey?" Commissioner Haight responded six minutes later: "Says who?" That response—"says who?"—speaks volumes. A Board that takes seriously its obligation to ensure that polling locations are ADA-compliant would *welcome* input from the community about such concerns. More important, such a Board would conduct real ADA surveys (as opposed to the sham 2019 Survey that was the supposed basis of the designation of the Church in the past) and would conduct the post-construction ADA survey required by the recent construction at the Church (as the Board has failed to do).

My earlier letters provide a detailed history of the Board's derelictions regarding the ADA. In summary:

A) The March 11, 2019, "ADA Checklist for Polling Places Survey Form" (found on page 73 of our filing: <https://tools.bard.edu/wwwmedia/files/8850342/79/FullFiling.pdf>), that the Board purportedly used in previously designating the Church is a sham. "N/A" is the response to 17 of the 37 survey questions. The ramp compliance section is ignored entirely, despite the fact that the ramp is the only way for voters to enter the building. In a separate letter to County Executive Marcus Molinaro (attached), I have urged him to hold the Board accountable and demand answers to questions such as:

- Who reviewed this "Survey?"
- Who authorized the surveyors to ignore the 17 questions left "N/A?"
- Who advised the Board that these questions need not be answered?
- What training did the surveyors have regarding the applicable requirements of the ADA?
- Did the Board ask the surveyors why they felt those 17 questions were "N/A?" If not, why not? If so, what did the surveyors say?
- Did the surveyors review the "ADA Checklist for Polling Places" published by the U.S. Department of Justice in preparing the Survey? <https://www.ada.gov/votingchecklist.pdf>
- Did the Board review this ADA Checklist after receiving the Survey?
- How did the Board determine that the Church is ADA-compliant upon a review of the Survey?

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- What has the Board done to ensure that future ADA surveys will not be similarly flawed?
- Having been placed on notice of the severe insufficiencies of the Survey, what steps has the Board taken to confirm whether the Church is ADA compliant in connection with its recent issuance of Voting Cards informing District 5 voters that their polling place has been changed to the Church?

B) The Board's continued insistence upon the Church as a polling location reflects the Board's indifference to its ADA-related obligations under New York State election law. We detailed the Church's non-compliance in court filings in our lawsuit last fall (<https://tools.bard.edu/wwwmedia/files/8850342/78/ADAReport.pdf>). You can also see a film vividly outlining the non-compliance here (<https://www.youtube.com/watch?v=jbp69ILmCG8&t=4s>), and see a press conference concerning disability issues and District 5 hosted by Caring Majority Rising here (<https://www.youtube.com/watch?v=Zfp2C8bU7S0&t=2s>).

C) The Board has repeatedly ignored complaints about the Church's inaccessibility. Such documentation has appeared in numerous letters and documents and images submitted in cases before the New York State Supreme and Appellate Courts to which Commissioner Haight was party, as well as in images and documents easily available to the public (<https://cce.bard.edu/community/election/voting-rights/>).

D) The Board is aware that, after this 2019 "Survey," the Church underwent significant renovations. Such renovations require a new ADA survey that the Board has failed to conduct despite being placed on notice repeatedly of its obligation to do so.

For all of these reasons, we ask the Board to acknowledge the Bard College Campus Center as the polling location for the 5th District, or one of two such locations as required by Judge Rosa's Order. In addition to its proven track record, the Campus Center complies with the NYS Election Law. Specifically:

- the Campus Center is in close proximity to the Dutchess County LOOP bus stop (a .2- .3-mile, 4-minute walk on well-lit sidewalks);
- the Campus Center is accessible for those with disabilities and has satisfied the ADA-compliance survey required under the Election Law;
- the Campus Center is in the heart of the Bard campus, and thus is within easy walking distance to the majority of voters in District 5, who live or work on campus;
- the Campus Center provides a large quantity of parking – including several designated accessible parking places – within the immediate vicinity of the Campus Center;

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- the Campus Center has large, open spaces which allow for socially-distant polling and adequate queuing as we continue to battle the COVID-19 pandemic; and
- the Campus Center allows for queuing inside the building, mitigating the impacts of inclement weather on elections.

On February 9, 2021, the Red Hook Town Board unanimously reaffirmed previous (unanimously approved) resolutions (including two from 2020) supporting the Campus Center as the polling site for District 5. The Town Board's input is critical, because state election law mandates consultation with the Town in this process.

The Bard College administration also endorses the Campus Center as the best polling place on campus. It is far preferable to the Performing Arts Center, which was briefly designated as a polling site in the now-rescinded resolution of November 30, 2020, because:

- The Campus Center is much closer to public transport than the Performing Arts Center.
- The Campus Center is at the center of the campus; the Performing Arts Center is nearly a mile from the center of campus, situated at the northern-most edge of a 600-acre main campus;
- The Campus Center has more proximate access to parking, including handicap parking, than the Performing Arts Center.
- The Campus Center has far better handicap accessibility and more and better situated handicap parking than other potential sites, like the Stevenson Gymnasium, which has little adjacent handicap parking and whose main floor is not on the same level of any entrance and thus requires the use of stairs or a single seated lift to access a polling location.
- The Campus Center is not regularly used as a core teaching facility and thus using it for polling is less disruptive to the day-to-day educational activities of the College than the Performing Arts Center, which regularly holds classes, rehearsals and student and public performances.
- The Campus Center is a substance-free building and has no liquor license, so alcohol is not sold or served there.
- The Campus Center, like other Bard facilities, is regularly used by the public: it contains a fully functioning United States Postal Service post office and hosts regular public events, including regular annual meetings of Bard's senior learners in its Lifetime Learning Institute.¹

¹ At some point during our prior advocacy efforts for an on-campus polling place, Commissioner Haight raised a concern about the adequacy of the Bertelsmann Campus Center due to the supposed placement of political signs in the environs. Having surveyed the area and then consulted Bard Security, student life staff, and staff at Bard's Center for Civic Engagement, we found no such evidence.

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The Campus Center is also a far better location than St. John's Episcopal in Barrytown, the previous exclusive polling site in District 5, because:

- To support youth voters, who comprise 65-70% of the registered voters in District 5, it is important that the polling site be viewed as safe and accessible. These youth voters include a large number of Bard students from underrepresented communities, representing the largest concentration of youth voters and voters of color in Red Hook
- A polling place must be located on a public transportation route when practicable. The Church is not. A significant majority of District 5 voters live near the center of the Bard campus, within easy walking distance of the Campus Center. St. John's is not accessible by foot, because it is situated on a dangerous windy and unlit county road with no sidewalk or walkable verge. Notably, Bard prohibits Bard-operated transportation from using this county road due to the dangerous driving conditions.
- A polling place must be ADA-accessible. The Church is not.
- The Church has no designated ADA-accessible parking.
- The Campus Center is close to the Dutchess County LOOP bus stop; St. John's is not.
- The Campus Center has ample parking. St. John's has limited parking, consisting of two small lots that require either walking up or down an incline to get to the Church's entrances, creating a challenge for mobility-impaired voters.
- The Campus Center has handicap accessible parking. Neither of St. John's two small lots have designated handicap parking spaces.
- St. John's is not handicap accessible and fails to meet Americans with Disability Act guidelines for access (contrary to the erroneous conclusions of the Board of Elections' previous incomplete ADA assessment).
- The Campus Center is spacious; St. John's is too small for social distancing.
- The Campus Center has ample space for queuing inside the building, whereas the que at St. John's has forced voters to stand out in the pouring rain.
- An accessibility survey must be conducted after construction. The Church underwent reconstruction in fall 2020, but no survey has been conducted.

In 2000 a bipartisan county legislative committee, on which current-County Executive Mark Molinaro served, was asked to review relevant legislation when Bard students, and students across the county, were systematically denied voting rights across the county by then Election Commissioner William Paroli Sr. The committee concluded unanimously that not only do students have the right to vote locally, but “[t]he Dutchess County Board of Elections should encourage the use of voting franchise among students.” Our request that you designate the Campus Center as the polling location for District 5 is in that spirit.

Our request is in the spirit of this year, which marks the 50th anniversary of the 26th Amendment to

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the U.S. Constitution. That amendment provides: “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.” Of note, in ratifying the 26th Amendment, Congress explicitly contemplated the unconstitutionality of forcing students to undertake special burdens such as travelling off-campus to vote. The 26th Amendment is one of many steps taken to extend voting rights since the founding of the republic. These extensions have removed barriers to voting for previously disenfranchised communities, including African Americans, women, and non-property owners.

It is well documented, if less well known, that youth voters have long been subjected to such barriers as well. Sadly, these barriers have existed in Dutchess County, as evidenced by the lawsuits that Bard students have had to pursue (successfully) over several decades. We write in the hope that this year the Board of Elections will designate the Campus Center, a polling site that comports with state and federal law, complies with the wishes of the Town of Red Hook, and which, most importantly, promotes youth voter participation.

Thank you for your consideration of this important matter.

Yours sincerely,



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cc:

New York State Board of Elections, Chief Enforcement Counsel
Honorable Marcus J. Molinaro, County Executive-Dutchess County
Honorable Kevin A. Cahill, Assembly Member, Assembly District 103
Honorable Sue Serino, State Senator, Senate District 41
Honorable Kristofer Munn, County Legislator
Honorable Robert McKeon, Supervisor, Town of Red Hook
New York State Board of Elections, Co-Chairs Peter S. Kosinski and Douglas A. Kellner;
Commissioner Andrew J. Spano; Commissioner Anthony J. Casale
Michael Volpe, Esq., Venable LLP