

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS**

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In the matter of

Index No. 2021/52777

BARD COLLEGE, ELECTION@BARD, LEO BOTSTEIN,  
ERIN CANNAN, CYNTHIA DEANN AUSTIN  
CUNNINGHAM, MARIA ALEJANDRA RODRIGUEZ  
ORTIZ, SARINA JAQUELINE CULAJ and  
TOMAS S. FORMAN,

**AFFIDAVIT OF  
HANNAH BLACK**

Petitioners,

-against-

DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT, in his official capacity and  
HANNAH BLACK, in her official capacity,

Respondents.

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STATE OF NEW YORK     )  
                                  ) s.s.:  
COUNTY OF DUTCHESS    )

Hannah Black, being duly sworn, deposes and says:

1. I am one of the two Commissioners of the Dutchess County Board of Elections. I live in the Town of Hyde Park, New York. I am over 18 years of age and am competent to testify on my own behalf. I submit this affidavit based upon my own personal knowledge.
2. I submit this affidavit in opposition to the motion by Respondent Commissioner Erik J. Haight.
3. The Dutchess County Board of Elections is comprised of two Commissioners. I am one Commissioner, recommended for appointment by the Democratic County Committee and appointed by the Democratic caucus of the Dutchess County Legislature, and Erik J. Haight is the

other, recommended and appointed in the same manner but by the Republican Committee and caucus.

4. I was first recommended by the Dutchess County Democratic Committee at its meeting on November 23, 2020 and subsequently appointed by the Democratic caucus of the County Legislature for the term beginning on January 1, 2021.

5. The November 23, 2020 election meeting was contentious, in that I challenged the incumbent Democratic Commissioner of the Board of Elections, Elizabeth Soto, for the position.

6. Immediately following the aftermath of the election, on November 30, 2020, Commissioners Soto and Haight purported to adopt a prior resolution 01-2021, which purported to set poll sites for 2021 (hereinafter, the "Prior Resolution"). (Copy of prior resolution 01-2021 annexed hereto as "Exhibit A")

7. The Prior Resolution showed Commissioner Haight's intention, among other things, to set the poll site for Red Hook district 5 as the Richard B Fischer Center for the Performing Arts. (*see*, Exhibit A, page 4)

8. The Prior Resolution appeared to be a secret from the public, as it was adopted in violation of the open meetings law, and I did not discover its existence until I began my term as Commissioner of Elections.

9. On January 12, 2021, I served a letter upon Commissioner Haight demanding the rescission of, among another resolution, the Prior Resolution. (Copy of the January 12, 2021 demand letter is annexed hereto as "Exhibit B")

10. When Commissioner Haight refused, I filed suit on February 1, 2021. (Black v. Haight, Dutchess County Index Number 2021-50401)

11. As a partial settlement of that lawsuit, and as he says, following his consultation with counsel and the State Board of Elections, Commissioner Haight agreed to rescind the Prior Resolution, and on February 8, 2021, we executed Resolution Number 05-2021 which did so, and which set the date of a meeting where we could designate the 2021 polling places as February 25, 2021. (Copy of Resolution Number 05-2021 annexed hereto as “Exhibit C”)

12. As per the election law, there are two persons for each position – one Democrat and one Republican, by long standing tradition between the commissioners, the Democratic staff reports to the Democratic Commissioner, and vice versa.

13. One of Commissioner Haight’s staff members prepared minutes following the February 25, 2021 public meeting and sent them to me, and I did request that certain changes be made, but I never approved those minutes. (Email exchange annexed hereto as “Exhibit D”)

14. At the next public meeting we held on April 16, 2021, the prior minutes were not read or adopted (which isn’t our custom anyway – but complying with the Open Meetings Law has only begun since our February 2021 lawsuit), but as is our custom for when we agree upon the minutes, on April 20, 2021, I wrote “approved” signifying my consent to the minutes of the April 16, 2021 public meeting.<sup>1</sup> (copy of the minutes from such meeting together with the Email exchange is annexed hereto as “Exhibit E”)

15. Similarly, I did not approve the minutes from the February 25, 2021 meeting, for the reason that I did not agree with the conclusion that “Both motions failed so the pollsite reverts back to the 2019 pollsite location at St. John’s Episcopal Church.” (*see*, Exhibit E, page 2)

16. Further, the new proposed “Resolution Number 01-2021: Designating Poll Sites for 2021” was circulated on or about February 27, 2021, and it included “St John’s Episcopal Church”

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<sup>1</sup> Erin Reverri is Commissioner Haight’s deputy and Diane Nash is my deputy.

as the polling place for the 5<sup>th</sup> district in the Town of Red Hook. (Copy of the new Resolution 01-2021 is attached hereto as “Exhibit F”)

17. For that reason, I declined to approve or signify my approval by signing the resolution, only Commissioner Haight’s signature appears on the proposed resolution, and it looks like he signed it on April 27, 2021, though it purports to be effective “March 1, 2021 to February 29, 2022”. (*see*, Exhibit F, pages 1 and 2)

18. Clearly, the Prior Resolution was the action by the Board of Elections which set the polling places, and it took a lawsuit to rescind it by another resolution by the Commissioners.

19. Commissioner Haight’s contention in his motion to dismiss, that it was the February 25, 2021 meeting or the minutes from that meeting which constituted the “action” by the Board of Elections, is wrong.

20. The Election Law requires both Election Commissioners to agree to an action for a Board of Elections to take action.

21. At the February 25, 2021 public meeting, Commissioner Haight and I clearly did not agree on the location of a poll site for Red Hook District 5. (The video of the February 25, 2021 public meeting is Exhibit G<sup>2</sup>)

22. Second, following the circulation of minutes of that meeting, I did not approve those minutes.

23. Third, a hard copy of the new Resolution 01-2021, which was clearly intended to set poll sites, was circulated sometime during March or early April, and it begs the question: why did Commissioner Haight’s staff circulate a resolution to designate polling places, which he

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<sup>2</sup> The link to the video is [here](#), the portion of the public meeting dealing with Red Hook District 5 is from 15:06 – 21:08

signed, if the polling places were in fact (as he argues) designated at the February 25, 2021 meeting or by the unapproved minutes of that meeting?

24. Simply put, the Board of Elections in Dutchess County failed to designate poll sites, and due to longstanding tradition and course of dealing, when such happens, any particular poll site falls back to the prior location.

25. The only except to this, was for those poll sites which Commissioner Haight and former-Commissioner Soto agreed to move during the 2020 elections due to covid-19 recommendations by the New York State Board of Elections, such as Interfaith Towers in the City of Poughkeepsie, which is a senior living residence, and whose poll site was temporarily moved to Poughkeepsie City Hall. For any of the poll sites which we were unable to agree upon for 2021, if they had been moved during 2020 due solely to covid-19 considerations, then such poll sites defaulted to the 2019 locations. (See copy of New York State Board of Elections recommendations annexed hereto as “Exhibit H”)

26. The prior location for the Red Hook District 5 poll site during the 2020 General Election was set by prior order of this Court on October 30, 2020, for the Bertelsmann Campus Center at Bard College, upon consent of the Board of Elections (which consent would have required the approval of both Commissioner Haight, and then-Commissioner Soto). (*see*, Exhibit 3 to Petitioners’ Verified Petition)

27. I had several telephone conversations with Jonathan Becker from Bard College during February and March, 2021 due to his interest in the location of the poll site for Red Hook District 5, which contains the Bard College campus.

28. I conveyed my understanding to Mr. Becker, including following the February 25, 2021 meeting, that no poll site had been designated this year for Red Hook District 5.

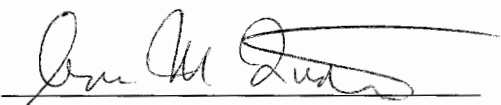
29. Thus, by tradition of the Dutchess County Board of Elections, because we failed to set a new polling site for Red Hook District 5, the polling site reverted to the prior polling site, which was both the Bertelsmann Campus Center at Bard College and St. John’s Episcopal Church.

30. To the extent that the mail check cards were sent out and contained the wrong information regarding poll sites, the mail check cards are not the instrument by which the Board of Elections designates poll sites, and they never have been.

**WHEREFORE**, the motion of co-respondent Commissioner Erik J. Haight should be denied, and the Petition of the petitioners should be granted, and the Board of Elections should be ordered to designate the Bertelsmann Campus Center of Bard College as the poll site for Red Hook District 5, as was and is required by the October 30, 2020 order of the Honorable Maria G. Rosa, Justice of the Supreme Court, and operated in conjunction with such order.

  
\_\_\_\_\_  
Hannah Black

Sworn to and subscribed before  
me this 9<sup>th</sup> day of August, 2021

  
\_\_\_\_\_  
NOTARY PUBLIC

**ANNA M. QUINTERO**  
Notary Public, State of New York  
Qualified in Dutchess County  
Lic. #01005062100  
Commission Expires Oct. 26, 20...22

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS**

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In the matter of

Index No. 2021/52777

BARD COLLEGE, ELECTION@BARD, LEO BOTSTEIN,  
ERIN CANNAN, CYNTHIA DEANN AUSTIN  
CUNNINGHAM, MARIA ALEJANDRA RODRIGUEZ  
ORTIZ, SARINA JAQUELINE CULAJ and  
TOMAS S. FORMAN,

**AFFIRMATION OF  
MICHAEL TREYBICH**

Petitioners,

-against-

DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT, in his official capacity and  
HANNAH BLACK, in her official capacity,

Respondents.

-----X

Michael Treybich, an attorney at law duly admitted to practice before the courts of the State of New York, and not a party to this action, hereby affirms the following under penalty of perjury:

1. I am the principal attorney of Treybich Law, P.C., attorneys for the Respondent, Commissioner of Elections Hannah Black, in the above-captioned special proceeding, my statements herein are based on my review of the file maintained by this office and by my firsthand knowledge.

2. I submit this affirmation in opposition to the motion of the co-respondent, Commissioner of Elections Erik J. Haight.

3. I previously represented Commissioner Hannah Black in her lawsuit against Commissioner Erik Haight, which lawsuit was based upon Commissioner Haight's attempt to circumvent the powers and interfere with the prerogatives granted to Commissioner Black by the

election law, which he did by conspiring with the prior Democratic Commissioner, in the last weeks of her term. (Black v. Haight, Dutchess Index Number 2021-50401)

4. Specifically, and with reference to this special proceeding, Commissioner Haight and prior-Commissioner Soto, adopted Resolution 01-2021 on November 30, 2020, which purported to set poll sites throughout Dutchess County in contravention of the election law, and specifically set the poll site for Red Hook District 5 as the Richard B Fisher Center for the Performing Arts. (*see*, [Document 2/Exhibit 1 to verified petition under Index Number 2021-50401](#))<sup>1</sup>; (Exhibit A)

5. Commissioner Haight seems to agree that this resolution was improper, in that in his affidavit, he states: “[a]fter consulting with counsel and with the State Board of Elections, I agreed to rescind the resolution and to instead designate polling places at a noticed public meeting.”

6. The November 30, 2020 resolution, which Commissioner Haight states was the document which set the poll sites, was rescinded by the action of yet another resolution signed by both commissioners, as admitted to by Commissioner Haight in his affidavit: “The document attached to the Verified Petition as Exhibit 17 is a copy of the resolution that Commissioner Black and I both executed on February 8, 2021 that rescinded the prior designations in favor of a public meeting to be held on February 25, 2021.” (Exhibit 17 to the Petition, also Exhibit C); (Haight Affd. ¶5); (Black Affd. ¶11)

7. On February 25, 2021, Commissioners Black and Haight held a public meeting pursuant to the February 8, 2021 resolution. ([Exhibit G](#))

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<sup>1</sup> Pursuant to CPLR 2214(c), reference to exhibits that have been previously electronically filed with the Court are made by reference to the NYSCEF document number. Further, for the convenience of the Court, counsel has added a hyperlink which is linked to the cited document’s location on the NYSCEF website, and which may be accessed by clicking on the underlined word.



8. Clearly from the video of the public meeting, no resolution was reached on the poll site for Red Hook District 5, i.e., the Board of Elections failed to designate a poll site for that District, so clearly, Commissioner Haight's argument that the Board of Elections "acted" on February 25, 2021 is erroneous. ([Exhibit G](#), time stamp 15:06-21:08)

9. Further, following the February 25, 2021 public meeting, proposed minutes of the meeting were circulated, which were not approved by Commissioner Black, and which in any event, clearly do not reflect what transpired at the meeting, since the words "[b]oth motions failed so the pollsite reverts back to the 2019 pollsite location at St. John's Episcopal Church" appear in the unapproved minutes, but were never uttered in relation to Red Hook District 5. (*compare*, [Exhibit G](#), time stamp 15:06-21:08, Exhibit 1 to Haight Affidavit)

10. Finally, a proposed resolution was circulated amongst the Commissioners, which if adopted, would have set the poll site for Red Hook District 5 (assuming that it does not violate the October 30, 2020 order of this Court), as St. John's Episcopal Church, and it appears that Commissioner Haight signed it on April 27, 2021 but that Commissioner Black's signature does not appear on it. (Exhibit F)

## **ARGUMENT**

### **This Matter is Ripe for Resolution before This Court**

11. Commissioner Haight argues that the verified petition of the Bard Petitioners should be dismissed because the statute of limitations has expired.

12. The statute of limitations for a "proceeding against body or officer", is governed by CPLR 217(1), which requires that:

"1. Unless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner or the

person whom he represents in law or in fact, or after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty; or with leave of the court where the petitioner or the person whom he represents, at the time such determination became final and binding upon him or at the time of such refusal, was under a disability specified in section 208, within two years after such time.”

13. There are three possibilities for when the statute of limitations accrued here, and Commissioner Haight argues two of them.

14. Commissioner Haight claims that the Board of Elections acted, in that it designated poll sites for Red Hook District 5 at the February 25, 2021 meeting, or in the alternative, that the Board of Elections acted when minutes of that meeting were “approved” by both of the Commissioners of Elections.

15. However, a video recording of the public meeting is available to watch, and it is clear that the Commissioners did not “act” at the public meeting insofar as Red Hook District 5 is concerned. ([Exhibit G](#), time stamp 15:06-21:08)

16. Further, the proposed minutes were not approved by Commissioner Black. (Black Affd. ¶¶13-15, 22); (Exhibit D)

17. Even if such minutes were “approved” by both Commissioners (there is no evidence in the record beyond the self-serving and conclusory affidavit by Commissioner Haight that he approved those minutes at the time), such minutes could not be considered the action of the Board of Elections, as they reflect purported activity which did not occur during the public meeting (or at all), in that the minutes contain the paragraph “[b]oth motions failed so the pollsite reverts back to the 2019 pollsite location at St. John’s Episcopal Church”, and because such minutes were not circulated to the public and do not reflect the public meeting, they would

violate the Open Meetings Law if they constitute the action by the Board of Elections in setting the poll site for Red Hook District 5. (*see*, Exhibit 1 to Haight Affidavit)

18. Finally, the fact that Commissioner Haight's staff circulated a proposed resolution sometime in March or April which, if enacted, would have set the poll sites throughout Dutchess County, vitiates Commissioner Haight's argument that the Board of Elections acted during either the public meeting or via the minutes, because if the unapproved minutes constituted action by the Board of Elections, why circulate a proposed resolution? (Exhibit F)

19. This is even more profound in the context of all of the prior actions by the Board of Elections relating to setting poll sites were done by resolutions signed by both Commissioners, or in the case of Red Hook District 5, by consent order. (*see*, Exhibit A, Exhibit C, Exhibit F, Exhibit 3 to Petition)

20. Thus, Commissioner Haight is incorrect in that the four month statute of limitations did not accrue on February 25, 2021.

21. Instead, because the Board of Elections failed to perform its ministerial duty to designate a poll site, which is statutorily required to be done by March 15 of each year, when the Board of Elections failed to perform such duty on or before March 15, 2021, the statute of limitations accrued on March 16, 2021. (Election law 4-104[1] – "Such polling places must be designated by March fifteenth, of each year, and shall be effective for one year thereafter")

22. Thus, the statute of limitations would have expired on July 16, 2021, had the petitioners not filed their verified petition on July 15, 2021.

23. Therefore, the co-Respondent Commissioner Erik J. Haight's motion to dismiss should be denied.

**WHEREFORE**, it is respectfully requested that this Court deny the co-Respondent's motion in its entirety.

Dated: Poughkeepsie, New York  
August 10, 2021

A handwritten signature in black ink, appearing to read 'M. Treybich', written over a horizontal line.

Michael Treybich, Esq.