

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

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In the matter of

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

Index No. 2021/52777

Petitioners,

-against-

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

Respondents.

- - - - - X

**AFFIRMATION OF DAVID D. JENSEN, ESQ. IN SUPPORT OF  
RESPONDENT ERIK J. HAIGHT'S MOTION TO DISMISS**

DAVID D. JENSEN, an attorney being duly licensed to practice before the Courts of the State of New York, hereby affirms the following under the penalties of perjury:

1. I am an attorney practicing via David Jensen PLLC, a professional limited liability company organized under New York law. I represent Respondent Election Commissioner Erik J. Haight in this Article 78 proceeding. I submit this affirmation in support of Respondent Election Commissioner Haight's motion to dismiss the Petition pursuant to CPLR § 3211. Pursuant to CPLR § 406 and CPLR § 7804(f), Respondent notices this motion for the date included in Petitioners' Notice of Petition (i.e. August 17, 2021).

2. This affirmation explains that this action is untimely. The Board of Elections designated polling places at a public meeting held on February 25, 2021, and accordingly, the last day to file an Article 78 proceeding challenging that determination was June 25, 2021. The

statute of limitations is particularly important here, as polling place changes become increasingly undesirable with the passage of time. That aside, the Verified Petition fails to state a claim for several different reasons. First and foremost, there is no basis for mandamus to compel the Board of Elections to designate polling places because the Board of Elections has, in fact, already done so. Beyond that, Petitioners' constitutional claim is presented so vaguely it is impossible to respond to, and in any event, Petitioners never presented this claim to the Board of Elections. Finally, the provisions of the Election Law that concern "substantial compliance" with the Americans with Disabilities Act, and locating polling places on public transit routes when "practicable," are directory, not mandatory, and Petitioners' bare assertion that their own conclusions are superior to those of the Board of Elections does not state a claim on which relief can be granted.

**Initially, the Board of Elections Designated 2021 Polling Places on November 30, 2020**

3. For many years, the Board of Elections has designated St. John's Episcopal Church, located at 1114 River Road in Red Hook, New York, as the polling place for general elections in the Red Hook District 5 election district.

4. Last year, following litigation and an appeal, this Court entered a consent order providing, pertinently, that "the Bertelsmann Campus Center at Bard College . . . be made available . . . as an additional polling location for the Town of Red Hook Voting District 5, along with St. John's Episcopal Church. . . ." See Order (Doc. No. 71) in Andrew Goodman Foundation, et al. v. Dutchess County Board of Elections, et al., Index No. 2020-52737 (Supr. Ct., Dutchess Co., filed Sept. 4, 2020).

5. In accordance with the Court's order, the Board of Elections made the Bertelsmann Campus Center available as an additional polling place for Red Hook Election District 5 during the 2020 general election.

6. Thereafter, on November 30, 2020, Election Commissioners Erik Haight and Elizabeth Soto executed a resolution that designated polling places for the 2021 elections. A copy of this resolution is Exhibit 16 to the Verified Petition (Doc. No. 19). See Affidavit of Erik J. Haight (“Haight Aff.”) ¶ 3. In this resolution, the Board of Elections designated the Richard B. Fisher Center for the Performing Arts, which is located on the campus of Bard College, with the address 60 Manor Avenue, Annandale-on-Hudson, New York, as the polling place for Red Hook Election District 5.

**To Resolve Litigation, the Board of Elections Rescinded its November 30, 2020 Resolution and Instead Designated Polling Places at a Public Meeting Held on February 25, 2021**

7. On February 1, 2021, Respondent Election Commissioner Hannah Black commenced a special proceeding against Respondent Election Commissioner Erik Haight. Commissioner Black contended, pertinently, that the November 30, 2020 resolution was “void” because it “was adopted in contravention of the Open Meetings Law” in that “[n]either a public meeting was held nor was notice given to the public of such meeting.” See Verified Complaint-Petition (Doc. No. 1) ¶¶ 16-18 in Black v. Haight, et al., Index No. 2021-50401 (Supr. Ct., Dutchess Co., filed Feb. 1, 2021); see also Haight Aff. ¶ 4.

8. The intention of the Open Meetings Law is that “public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.” Public Officers Law § 100. The Open Meetings Law requires that “[e]very meeting of a public body shall be open to the general public,” id. § 103(a), and it requires a public body to provide advance notice of any such meetings, see id. § 104(1)-(2). The Open Meetings Law defines a “meeting” as “the official convening of a public body for the purpose of conducting public business.” Id. § 102(1). The Open Meetings Law does not define

the term “public business,” but the Second Department has ruled that the term includes “the entire decision-making process,” rather than just “the mere formal act of voting or the formal execution of an official document.” Orange Co. Pubs., Div. of Ottaway Newspapers, Inc. v. Council of City of Newburgh, 60 A.D.2d 409, 415, 401 N.Y.S.2d 84 (2d Dep’t 1978). “The purpose of the Open Meetings Law is to prevent municipal governments from debating and deciding in private what they are required to debate and decide in public.” Gernatt Asphalt Prods., Inc. v. Town of Sardinia, 87 N.Y.2d 668, 686, 642 N.Y.S.2d 164 (1996). “The Open Meetings Law is violated when a quorum of a public body holds a private meeting for the purpose of transacting public business, thus making unavailable for public scrutiny that body’s deliberative process.” MCI Telecomms. Corp. v. Pub. Serv. Comm’n, 231 A.D.2d 284, 290, 659 N.Y.S.2d 563 (3d Dep’t 1997) (citations omitted).

9. We are not aware of any legal authorities that address the question of whether the designation of polling places pursuant to Election Law § 4-104(1) is a matter of “public business” that the Open Meetings Law applies to. Obviously, the designation of polling places impacts the public at large because it determines where they must go to vote.

10. After consulting with counsel and the State Board of Elections, Respondent Commissioner Haight agreed to resolve the Black v. Haight matter by rescinding the November 30, 2020 resolution and scheduling a public meeting for the purpose of designating polling places. On February 8, 2021, Commissioner Haight and Commissioner Black executed a resolution that rescinded the prior resolution and scheduled a public meeting for February 25, 2021. A copy of this resolution is Exhibit 17 to the Verified Petition (Doc. No. 20). See Haight Aff. ¶ 5.

11. In advance of the public meeting, on February 19, 2021, Bard College submitted a 4-page letter to the Board of Elections urging it to consider designating the Bertelsmann Campus Center as a polling place. A copy of this letter is Exhibit 6 to the Verified Petition (Doc. No. 9).

12. Commissioner Haight and Commissioner Black held the referenced public meeting on February 25, 2021 and designated polling places for 2021. See Haight Aff. ¶ 6. Shortly after the meeting, both Commissioners prepared and approved minutes reflecting what had taken place. See id. ¶ 7. The minutes are Exhibit 1 to Erik Haight's affidavit, submitted herewith. See id. & Ex. 1.

13. At the meeting, as indicated in the minutes, Commissioner Haight moved to designate the Fisher Center as the polling place for Red Hook Election District 5. Commissioner Black opposed this motion and instead moved to designate the Bertelsmann Campus Center as the polling place. Commissioner Haight opposed this motion because:

He noted complaints from voters when it was an additional pollsite previously; not easy to find, only non-student voters were questioned regarding COVID, the interaction between the voters and the on campus security was an issue due to only non-student voters being stopped and questioned. Haight indicated that superenfranchising one group of voters and disenfranchising and establishing barriers with another group of voters from the same election district was improper.

As a result, “[b]oth motions failed so the pollsite reverts back to the 2019 pollsite location at St. John’s Episcopal Church.” See Haight Aff. ¶¶ 8-9 & Ex. 1.

14. Following the February 25, 2021 public meeting, on March 12, 2021, Bard College sent a 4-page letter that contended, among other things, that Commissioner Haight had “made several inaccurate and misleading statements at the February 25 meeting. . . .” A copy of this letter is Exhibit 8 to the Verified Petition (Doc. No. 11).

15. In accordance with the February 25, 2021 designations, the Board of Elections sent cards notifying all registered voters of their designated polling places in the latter part of

March 2021. A copy of one of these cards is Exhibit 20 to the Verified Petition (Doc. No. 23).

See Haight Aff. ¶ 17.

16. After Petitioners commenced this special proceeding, Respondent Commissioner Black emailed Chief Assistant County Attorney Christian Cullen and stated that she “believe[d] that the poll site should be at the Bertelsmann Campus Center. This was discussed thoroughly and made very clear during our February 25th public hearing.” See Haight Aff. ¶ 19 & Ex. 2. Commissioner Black requested separate counsel. See id.

### **The Statute of Limitations Mandates Dismissal of this Special Proceeding**

17. An Article 78 proceeding “must be commenced within four months after the determination to be reviewed becomes final and binding[.]” CPLR § 217(1).

18. The Board’s designation of polling places for Dutchess County became final and binding when the Board of Elections held its noticed public meeting and made the designations—on February 25, 2021. See, e.g., Paladino v. Bd. of Educ., 183 A.D.3d 1043, 1048, 124 N.Y.S.3d 409 (3d Dep’t 2020) (board’s decision became final and binding on date it held meeting and reached decision); Hartford Taxpayers for Honest Gov’t v. Town Bd. of the Town of Hartford, 252 A.D.2d 784, 786, 675 N.Y.S.2d 683 (3d Dep’t 1998).

19. As such, the last day to commence an Article 78 proceeding was 120 days from February 25, 2021, or June 25, 2021. Accordingly, the statute of limitations mandates the dismissal of this special proceeding, which Petitioners did not file until July 15, 2021.

### **Even if this Special Proceeding were Timely, Count I Would Fail to State a Cause of Action**

20. Petitioners’ first cause of action asserts that “[b]y their actions, the Respondents have burdened Petitioners with onerous requirements and have constructively denied the fundamental right to vote and right to equal protection as guaranteed by Article I, Section 1; Article I, Section 11; Article II Section 1 of the New York State Constitution.” Verified Petition

¶ 96. However, other than “repeat[ing] and reiterate[ing] each and every allegation contained in the preceding [91] paragraphs,” the Verified Petition does not articulate how the Respondents’ “actions . . . have burdened Petitioners . . . [or] constructively denied the fundamental right to vote and right to equal protection[.]”

21. Significantly, the Verified Petition does not assert that any of the Petitioners have been prevented from voting, but rather, that they have all been able to access the polling place:

- a. Leon Botstein “voted at the Center” in 2020, and “[i]n prior elections, he voted at the Church,” Verified Petition ¶ 22;
- b. Erin Cannan worked at the “polling site at the Center during the November 2020 election,” and previously, “she worked at the polling place located at the Church for ten years,” Verified Petition ¶ 23;
- c. Cynthia Deann Austin Cunningham and Maria Alejandro Rodriguez Ortiz both “voted at the Center” in 2020, Verified Petition ¶¶ 24-25; and
- d. Sarina Jaqueline Culaj and Tomas S. Forman both “voted absentee” in 2020, and in prior elections, “voted at the Church,” Verified Petition ¶¶ 26-27.

22. Thus, the Verified Petition does not articulate any plausible claim of denial or constructive denial of the right to vote. To the extent it alleges a “burden,” it does not articulate any particular burden, leaving Respondents, and the Court, to guess.

23. Moreover, the Verified Petition does not identify any constitutional claim that was before the Board of Elections at the time it made its decision. Exhibit 6 to the Verified Petition, the letter that Bard submitted just prior to the February 25, 2021 public meeting, made reference to the 26th Amendment to the United States Constitution, but did not make any contentions about the provisions of the New York Constitution that the Verified Petition invokes in its first cause of action.

24. As the Court is aware, “in a CPLR article 78 proceeding, the Court’s review is limited to the arguments and record adduced before the agency.” Kaufman v. Inc. Vill. of Kings

Point, 52 A.D.3d 604, 607, 860 N.Y.S.2d 573 (2d Dep’t 2008). Even if the Petitioners had articulated a plausible claim of constitutional deprivation in their Verified Petition, that claim would be foreclosed because they did not present it to the Board of Elections.

25. Finally, to whatever extent that Petitioners articulate a challenge to state or local laws or rules, their claims are not before the Court, as they have not served the Attorney General with notice of a claim that the laws of the State are unconstitutional. See CPLR § 1012 (a court “shall not consider any challenge to the constitutionality of [a] state statute, local law, ordinance, rule or regulation unless proof of service” on the Attorney General “is filed with such court”); Executive Law § 71(3) (same). The requirement of serving the Attorney General “insures that all of the people of the State may be represented when the constitutionality of their laws is put in issue,” as well as “ensuring the development of an adequate record upon which the court may base its determination.” McGee v. Korman, 70 N.Y.2d 225, 231, 519 N.Y.S.2d 350 (1987). Thus, this claim “is not properly before th[e] Court.” People v. Mays, 54 A.D.3d 778, 778, 864 N.Y.S.2d 442 (2d Dep’t 2008); see also, e.g., Guidarelli v. Brassard, 88 A.D.3d 1147, 1149, 931 N.Y.S.2d 428 (3d Dep’t 2011) (constitutional challenges to Election Law provisions were not before the court); People v. Brown, 64 A.D.3d 611, 611, 881 N.Y.S.2d 329 (2d Dep’t 2009); Weinberg v. Omar E., 106 A.D.2d 448, 448, 482 N.Y.S.2d 540 (2d Dep’t 1984).

**Even if this Special Proceeding were Timely, Count II Would Fail on its Merits Because the Board of Elections Designated Polling Places on February 25, 2021**

26. Petitioners’ claim that “Respondents have failed to designate a polling location for District 5” is the premise of the second cause of action. Verified Petition ¶ 99. Petitioners claim that Respondents have accordingly “failed to perform a duty enjoined up them” and/or “acted in a manner that was arbitrary and capricious or an abuse of discretion.” Id. ¶ 100.



27. However, the fact is that the Board of Elections designated polling places at the public meeting held on February 25, 2021. As explained above, representatives of Bard College contacted the Board of Elections both before and after the February 25 hearing, and their communications expressly referenced the February 25 hearing.

28. A party moving to dismiss “may submit any evidence that could properly be considered on a motion for summary judgment,” and “the court, after adequate notice to the parties, may treat the motion as a motion for summary judgment. The court may, when appropriate for the expeditious disposition of the controversy, order immediate trial of the issues raised on the motion.” CPLR § 3211(c).

29. Because the Board of Elections designated polling places on February 25, 2021, Petitioners claim that the Board has failed to do so fails on its merits, and the second cause of action fails to state a claim upon which relief may be granted.

**Even if this Special Proceeding were Timely, Counts III and IV Would Fail to State Claims Because the Statutory Directives are Directory, Not Mandatory**

30. The Election Law provides that “[e]ach polling place shall be accessible to citizens with disabilities and comply with the accessibility guidelines of the Americans with Disabilities Act of 1990.” Election Law § 4-104(1-a). To that end, the Election Law directs the Board of Elections to “cause an access survey to be conducted for every polling site to verify substantial compliance[.]” Id. § 4-104(1-b). “Any polling place deemed not to meet the existing accessibility standards must make necessary changes and/or modifications, or be moved to a verified accessible polling place within six months.” Id.

31. In addition, the Election Law provides that polling places “whenever practicable, shall be situated directly on a public transportation route.” Election Law § 4-104(6-a).

32. The third cause of action is premised on Petitioners' claim that "[o]n information and belief" both "the limited parking at the Church" and "the ramp at the Church's main entrance . . . violate[] certain provisions of the [ADA] Checklist and [are] therefore not ADA compliant." Verified Petition ¶¶ 104-05. Petitioners also claim that there is a "lack of ADA-accessible restrooms," although they do not specify how the restrooms are not "ADA-accessible." See id. ¶ 107. Petitioners do not assert that these claimed deficiencies prevent them from voting.

33. Significantly, Petitioners concede that the Board of Elections has completed an access survey for the Church, and they include a copy of the survey as an exhibit. See Verified Petition ¶ 106 & Ex. 23 (Doc. No. 26).

34. The basis for the fourth cause of action is that "[o]n information and belief, the nearest public transportation stop is located approximately 1.7 miles from the Church," and accordingly, the designation of the Church as a polling place is both a "fail[ure] to perform a duty enjoined upon" the Board of Elections and "arbitrary and capricious or an abuse of discretion." See Verified Petition ¶¶ 111-12.

35. Neither of these causes of action states a claim for relief because the grievances they raise concern matters that—even if they were true—would be directory, not mandatory. "Not all deviations from statutory procedures will justify vacatur of an administrative determination." Syquia v. Bd. of Educ. of Harpusville Cent. Sch. Dist., 80 N.Y.2d 531, 535, 591 N.Y.S.2d 996 (1992). Specifically, when a mandate is "directive," rather than "mandatory," a petitioner must "show that substantial prejudice resulted from the noncompliance." Id. (citations omitted). While "the line between mandatory and directory statutes cannot be drawn with precision," People v. Carr, 240 N.Y. 348, 351 (1925); accord, e.g., King v. Carey, 57 N.Y.2d 505, 513, 457 N.Y.S.2d 216 (1982), the situs of the line turns on "a consideration of the statutory

scheme and objectives to determine whether the requirement . . . is . . . an ‘unessential particular’ or, on the other hand, relates to the essence and substance of the act to be performed and thus cannot be viewed as merely directory,” King, 57 N.Y.2d at 513 (quoting Carr, 240 N.Y. at 351) (other citations omitted).

36. The Election Law’s provisions regarding the location of polling places are plainly directory. One of the Court of Appeals’ holdings in People ex rel. Lardner v. Carson, 155 N.Y. 491 (1898), was that *even if* a polling place’s location had been unlawful, “it does not at all follow that votes cast . . . are void,” id. at 502. Indeed, “prescriptions in regard to the time, form and mode of proceeding by public functionaries are generally directory, as they are not of the essence of the thing to be done, but are given simply with a view to secure system, uniformity and dispatch in the conduct of public business.” Dickinson v. Daines, 15 N.Y.3d 571, 575, 915 N.Y.S.2d 200 (2010) (quotation and citations omitted). In the specific context of the Election Law, the Court of Appeals has ruled that while legal notice requirements can be mandatory, “directions intended to make the machinery of election more effective . . . are directory rather than mandatory.” D’Addario v. McNab, 32 N.Y.2d 84, 88-89, 343 N.Y.S.2d 124 (1973).

37. The requirement to conduct an ADA access survey *might* be mandatory, but there is no dispute that the Board of Elections has done this. Rather, Petitioners’ claim is about their disagreement with the conclusion that the polling place is in substantial compliance—a finding that is inherently based on the exercise of discretion.

38. Moreover, it is significant that the only support the Petitioners offer to justify their own, contrary conclusion is their own averment in the Verified Petition (verified by counsel) and the checklist they attach as an exhibit. This circular proffer falls far short of showing that the Board of Elections was arbitrary and capricious when it re-designated the Church as the polling

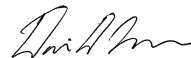
place—and that is particularly so when the statute contemplates “substantial compliance” and provides that in the event of non-compliance, there are six months to resolve the problem. Ultimately, Count III seeks to upend this statutory framework based on nothing more than Petitioners’ own assertion that the Board should have exercised its discretion differently.

39. Just the same, the express terms of Election Law § 4-104(6-a) indicate that it is directory, as it calls for polling places to be located “directly on” public transportation routes “whenever practicable.” Whether something is “practicable” is inherently a question of judgment. And here, particularly, where none of the potential polling places addressed in the parties’ papers are actually located “directly on” a public transportation route, see Haight Aff. ¶ 15, the question of what site would be best, all things considered, is one on which reasonable minds can differ—territory that is quintessentially directive.

### Conclusion

40. The statute of limitations mandates dismissal of this special proceeding. And even if it did not, the Verified Petition would not state any claims upon which relief could be granted. As such, the Court should grant Respondent Erik Haight’s motion to dismiss.

Dated: Beacon, New York  
August 2, 2021



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Attorney for Respondent  
Election Commissioner Erik J. Haight

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

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In the matter of

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

Index No. 2021/52777

Petitioners,

**NOTICE OF MOTION**

-against-

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

Respondents.

- - - - - X

**PLEASE TAKE NOTICE** that upon the annexed affidavit of Erik J. Haight, sworn to on the 2nd day of August, 2021, and the exhibits annexed thereto, and annexed affirmation of David D. Jensen, sworn to on the 2nd day of August, 2021, and upon all the prior pleadings and proceedings had herein, Respondent Erik J. Haight will move this Court located at 10 Market Street, Poughkeepsie, New York 12601, on the 17th day of August, 2021, at 9:30 o'clock in the morning, or as soon thereafter as counsel can be heard, for an Order dismissing the Verified Petition, and for such other relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that these papers have been served on you at least sixteen days before the motion is scheduled to be heard. You must serve your answering papers and any notice of cross-motion with supporting papers, if any, at least seven days before such time. Reply or responding affidavits shall be served at least one day before such time.

Dated: Beacon, New York  
August 2, 2021



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Attorney for Respondent  
Election Commissioner Erik J. Haight

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111 JOHN STREET, SUITE 420  
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2 August 2021

Attn. Clerk  
Supreme Court of the State of New York  
County of Dutchess  
22 Market Street  
Poughkeepsie, New York 12601  
***Electronically Filed***

Re: *Bard College, et al. v. Dutchess County Board of Elections, et al.*  
Index No. 2021/52777

Dear Sir or Maam:

I represented Erik J. Haight in his official capacity as Election Commissioner of Dutchess County. I submit this “No Fee Authorization Letter” because Commissioner Haight exempt from fees pursuant to § 8017(a) of the Civil Practice Law and Rules.

Please don’t hesitate to contact me with any questions or concerns.

Respectfully submitted,

**DAVID JENSEN PLLC**



David D. Jensen

**DAVID JENSEN PLLC**

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- The baseline for the pollsite locations is from 2019.
- The pollsites were discussed in alphabetical order by town.

- The following town pollsites were unanimously agreed upon:

City of Beacon (remaining at the Memorial Building in the 4<sup>th</sup> Ward)

Clinton

Dover

East Fishkill

Hyde Park

Lagrange

Milan

North East

Pawling

Pine Plains

Pleasant Valley

Rhinebeck

Stanford

Union Vale

Wappinger

Washington

- Amenia:
  - o Commissioner Black motioned to have the District 3 pollsite moved from the VFW Harlem Valley Post to the Wassaic Fire House to be combined with District 2.
  - o Commissioner Haight voted no to the move. He explained this idea has been brought up in the past. However, the consensus has been the drive was too far for the District 3 voters to drive to the Wassaic Fire House.
  - o The motion failed and no changes were made.
- Beekman
  - o Districts 3 – 9: No changes
  - o Commissioner Haight motioned to have Districts 1 and 2 moved to the Beekman Town Hall. Commissioner Black agreed.
  - o The motion passed.
- City of Poughkeepsie:
  - o Wards 2 – 7: No Changes
  - o Ward 1
    - Commissioner Haight motioned to have the pollsite at the Poughkeepsie City Hall.
    - Commissioner Black denied that location motioned to have pollsite at Interfaith Towers.
    - Both motions failed so the pollsite reverts back to the 2019 pollsite location at Interfaith Towers.
- Fishkill
  - o Districts 1-16: No changes
  - o District 17 was recently formed. Our Savior Lutheran Church has been designated as the pollsite for this District because the alternative site, the Community Room at the Condo Complex, has been non responsive. It was agreed the Community Room is the preferred location.



- Town of Poughkeepsie
  - o Wards 1 – Ward 6 District 6: No changes
  - o Ward 6 District 7 was recently formed. The Poughkeepsie United Methodist Church was designated as the pollsite. Both Commissioners agree with the location as a pollsite.
- Red Hook
  - o Districts 1 – 4 and 6-8: No changes.
  - o District 5
    - Commissioner Haight motioned to have the pollsite at the Richard B. Fisher Center for the Performing Arts.
    - Commissioner Black denied that location and motioned to have the pollsite at the Bertelsmann Campus Center. She referenced a letter that was sent to the Commissioners requesting the Campus Center as the pollsite. She agreed with their statements and supported the letter. Haight indicated he had read the letter several times and gave the content significant consideration in addition to reviewing pertinent documents from 2020 as well along with observations and reports from the 2020 election cycle. Black mentioned that the main Campus Center has better handicap parking (3) spots.
    - It is a substance free building
    - The Red Hook Town Board passed a resolution supporting the poll site be located at the main Campus Center.
    - Commissioner Haight denied the Campus Center as the pollsite. He noted complaints from voters when it was an additional pollsite previously; not easy to find, only non-student voters were questioned regarding COVID, the interaction between the voters and the on campus security was an issue due to only non-student voters being stopped and questioned. Haight indicated that disenfranchising one group of voters and disenfranchising and establishing barriers with another group of voters from the same election district was improper.
    - Commissioner Black discussed the Performing Arts location is an issue because at times alcohol is served in the building. Haight rejected Black's characterization that the Performing Arts Center was a bar that actively sold alcohol and that the liquor license applies to the entire campus and not just one building. Black indicated that this could result in litigation and Haight agreed that could occur but that the compromise he offered was being rejected would be the true cause of litigation
    - Both motions failed so the pollsite reverts back to the 2019 pollsite location at St. John's Episcopal Church.

### **Early Voting Pollsites**

- The following town pollsites were unanimously agreed upon:
  - Fishkill Town Hall
  - Rhinbeck Town Hall
  - Cornell Cooperative Extension
- City of Poughkeepsie Location
  - o Commissioner Haight motioned to have the pollsite at the Poughkeepsie City Hall.
  - o Commissioner Black motioned to have the pollsite at the Family Partnership Center. She discussed the location being accessible to transportation, publicly used building, and has free parking.

- The suggestion was a new premise to Commissioner Haight. He requested to have more time to look into the location.
  - Both motions failed so the location pollsite reverts back to the 2019 pollsite location at the Board of Elections.
- Town of Poughkeepsie Location
  - Commissioner Haight motioned to have the pollsite at the Town of Pougheepsie Community Room.
  - Commissioner Black denied that location and motioned to have the pollsite at the Boardman Road Library.
  - Commissioner Haight dropped his motion and seconded Commissioner Black's motion.
  - The motion passed. The Town of Poughkeepsie Early Voting pollsite will be the Boardman Road Library.

**From:** Haight, Erik ehaight@dutchessny.gov  
**Subject:** FW: Bard lawsuit attached  
**Date:** July 23, 2021 at 1:27 PM  
**To:** David Jensen david@djensenpllc.com

EH

Erik J. Haight  
Republican Commissioner of Elections  
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<https://www.elections.dutchessny.gov/>

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**From:** Cullen, Christian <ccullen@dutchessny.gov>  
**Sent:** Friday, July 23, 2021 10:01 AM  
**To:** Black, Hannah <hblack@dutchessny.gov>  
**Cc:** Nash, Diane <dnash@dutchessny.gov>; Haight, Erik <ehaight@dutchessny.gov>;  
Morano, Susan <smorano@dutchessny.gov>  
**Subject:** RE: Bard lawsuit attached

Please see attached letter.

NOTICE TO RECIPIENT: THIS E-MAIL IS MEANT FOR ONLY THE INTENDED RECIPIENT OF THE TRANSMISSION, AND MAY BE A COMMUNICATION PRIVILEGED BY LAW. IF YOU RECEIVED THIS E-MAIL IN ERROR, ANY REVIEW, USE, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS E-MAIL IS STRICTLY PROHIBITED. PLEASE NOTIFY US IMMEDIATELY OF THE ERROR BY RETURN E-MAIL AND PLEASE DELETE THIS MESSAGE FROM YOUR SYSTEM. THANK YOU IN ADVANCE FOR YOUR COOPERATION.

**Christian Robert Cullen**  
**Chief Assistant County Attorney**  
**Dutchess County Department of Law**  
22 Market Street  
Poughkeepsie, NY 12601  
Phone: (845) 486-2110 Fax: (845) 486-2002  
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Email: [ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)

[www.dutchessny.gov](http://www.dutchessny.gov)

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**From:** Cullen, Christian  
**Sent:** Friday, July 23, 2021 9:59 AM  
**To:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
**Cc:** Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>; Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>;  
Morano, Susan <[smorano@dutchessny.gov](mailto:smorano@dutchessny.gov)>  
**Subject:** Bard lawsuit attached

Hannah,

Please see attached letter in response to your written request.

NOTICE TO RECIPIENT: THIS E-MAIL IS MEANT FOR ONLY THE INTENDED RECIPIENT OF THE TRANSMISSION, AND MAY BE A COMMUNICATION PRIVILEGED BY LAW. IF YOU RECEIVED THIS E-MAIL IN ERROR, ANY REVIEW, USE, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS E-MAIL IS STRICTLY PROHIBITED. PLEASE NOTIFY US IMMEDIATELY OF THE ERROR BY RETURN E-MAIL AND PLEASE DELETE THIS MESSAGE FROM YOUR SYSTEM. THANK YOU IN ADVANCE FOR YOUR COOPERATION.

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**From:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
**Sent:** Thursday, July 22, 2021 2:24 PM  
**To:** Blackburn, Caroline <[cblackburn@dutchessny.gov](mailto:cblackburn@dutchessny.gov)>; Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>  
**Cc:** Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>  
**Subject:** Bard lawsuit attached

Good Afternoon Caroline and Chris,

Attached is the stamped-in lawsuit from Bard. As the lawsuit documents state, I believe that the poll site should be at the Bertelsmann Campus Center. This was discussed thoroughly and made very clear during our February 25<sup>th</sup> public hearing. I am requesting separate legal counsel as Commissioner Haight and I are split on this lawsuit.

Thank you,

Hannah Black  
Democratic Board of Elections Commissioner  
Dutchess County Board of Elections  
Office: (845) 486-2480  
[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)  
[www.elections.dutchessny.gov](http://www.elections.dutchessny.gov)

MARCUS J. MOLINARO  
COUNTY EXECUTIVE



CAROLINE E. BLACKBURN  
COUNTY ATTORNEY

COUNTY OF DUTCHESS

COUNTY OF DUTCHESS  
DEPARTMENT OF LAW

July 22, 2021

Ms. Hannah Black, Commissioner  
Dutchess County Board of Elections  
112 Delafield Street  
Poughkeepsie, NY 12601

RE: Request for Authorization for outside counsel:  
Matter of Bard College, et al. v. Dutchess County Board of Elections; Erik Haight  
and Hannah Black as Commissioners  
CA File No. L-6173

Dear Commissioner Black:

I am in receipt of your July 22, 2021 e-mail requesting authorization to retain outside counsel to represent your interests in the above referenced matter, in accordance with Local Law No. 4 of 1988, which provides "legal and financial protection for those individuals serving the County of Dutchess from losses which may be brought against them ...".

You and the Board were served with legal proceedings in this matter on July 22, 2021. As is my charge, I have reviewed the facts and circumstances of this case and determined that representation of Commissioner Black by outside counsel is necessitated by a conflict of interest on the part of the County Attorney.

I further find that any request for reimbursement of legal fees shall be governed by Local Law No. 4 of 1988, a copy of which is enclosed herewith. More specifically, services rendered must be necessary and the fee must be reasonable under the circumstances, and your full cooperation in the defense of the action is required.

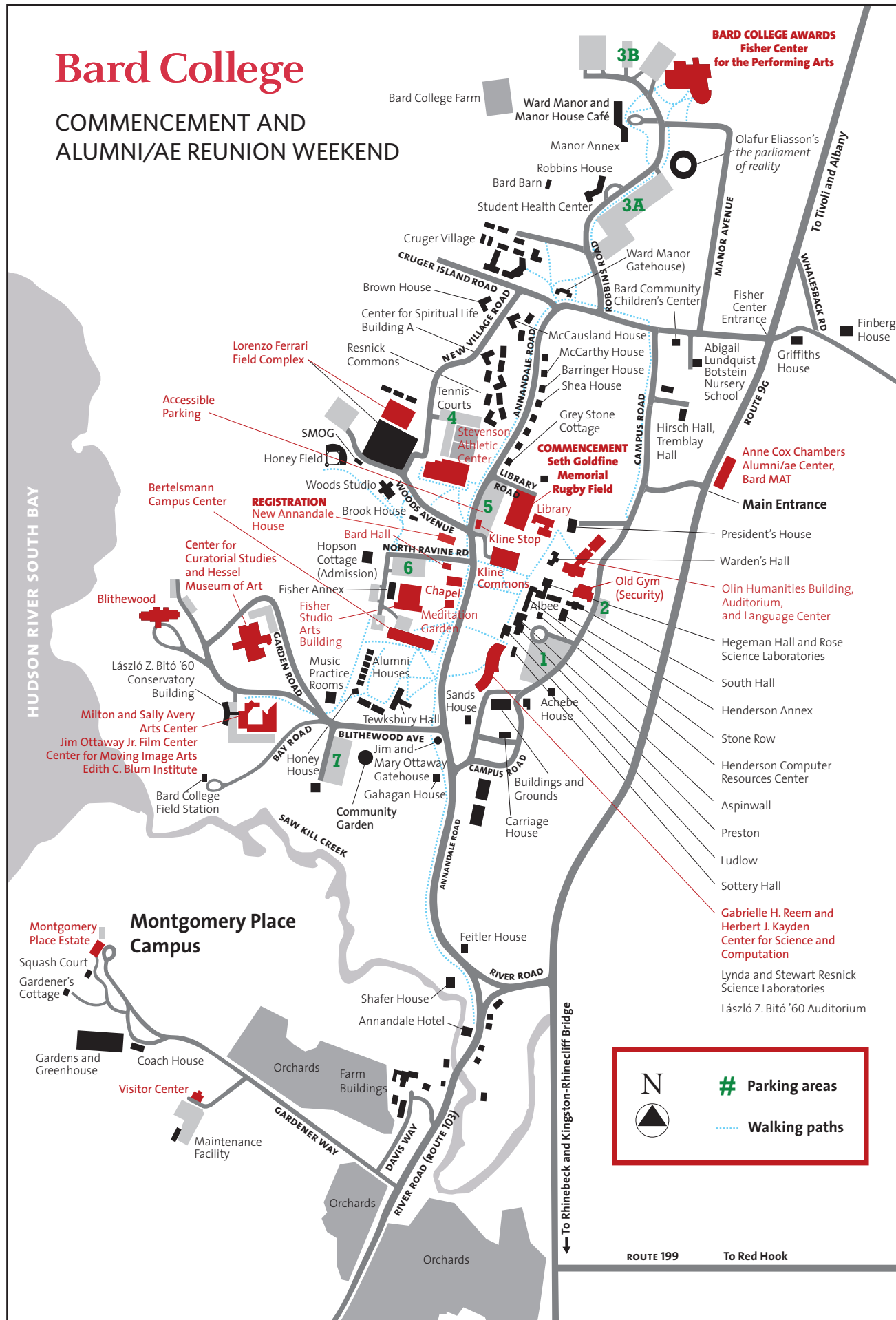
Very truly yours,



CHRISTIAN R. CULLEN  
Chief Assistant County Attorney

CRC/sjm

cc: Erik J. Haight, Commissioner  
Christopher Baiano, Assistant County Executive



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

----- X

In the matter of

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

Index No. 2021/52777

Petitioners,

**AFFIDAVIT OF  
ERIK J. HAIGHT**

-against-

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

Respondents.

----- X

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

ERIK J. HAIGHT, 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 Poughkeepsie, New York. I am over 18 years of age and am competent to testify on my own behalf. I submit this affidavit based on my own personal knowledge.

2.     The Board of Elections is comprised of two Commissioners. I am one Commissioner, appointed by the Republican Party, and Hannah Black is the other, appointed by the Democratic Party. During the year 2020, Elizabeth J. Soto was the Commissioner for the Democratic Party, but I was the Commissioner for the Republican Party.

3. On November 30, 2020, Commissioner Soto and I executed a resolution that designated polling places for the year 2021. A copy of that resolution is attached to the Verified Petition as Exhibit 16.

4. After Commissioner Black assumed her position as the Commissioner for the Democratic Party, she filed a lawsuit challenging (among other things) the polling place resolution on the ground that the Board of Elections had not complied with the Open Meetings Law by making the designations by resolution, rather than at a properly noticed meeting that was open to the public.

5. After 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. 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.

6. The Board of Elections held the public meeting at 10:00 a.m. on February 25, 2021, as scheduled. Prior to the meeting, the Board notified the Poughkeepsie Journal and Southern Dutchess News of the meeting by email, and it posted public notices on the Board's website. Approximately 30 people attended the public meeting by video or telephone.

7. On February 25, 2021, shortly after the public meeting had concluded, the Board prepared minutes of what had transpired at the meeting. Commissioner Black reviewed the minutes and requested a couple revisions, and then both she and I approved them. A copy of the minutes is attached as Exhibit 1.

8. As indicated in the minutes attached as Exhibit 1, I moved to designate the Richard B. Fisher Center for the Performing Arts, located on the campus of Bard College, as the



polling place for Red Hook Election District 5. Commissioner Black opposed that motion.

Because the motion did not have the support of a majority of the Commissioners, it did not pass.

9. As further indicated on Exhibit 1, Commissioner Black moved to designate the Bertelsmann Campus Center as the polling place for Red Hook Election District 5. I opposed the motion. The motion did not have the support of a majority, so it did not pass.

10. A Board of Elections normally acts on the basis of the Commissioners' majority vote. For a two-Commissioner Board such as ours, this means that both Commissioners must agree. If they do not both agree, then no action is taken and the status quo remains. In the specific context of polling place designations, the practice in Dutchess County when the Commissioners have not agreed on the designation of a new polling place has been to use the last designated polling place. Thus, because both motions to change the designated polling place for Red Hook Election District 5 failed, the polling place remained St. John's Episcopal Church, located at 1114 River Road in Red Hook, New York (the "Church"), as this was the last polling place that the Board of Elections had designated.

11. Notably, and as indicated in the minutes, there were three other polling places that remained the same because while one Commissioner favored designating a new location, the other did not. Specifically:

- a. in Election District 2 in the Town of Amenia, Commissioner Black moved to designate the Wassaic Fire House as the polling place, but I opposed the motion, so the polling place remained at the VFW hall, which was the last designated polling place;
- b. in Ward 1 in the City of Poughkeepsie, I moved to designate the Poughkeepsie City Hall as the polling place, but Commissioner Black opposed the motion, so the polling place remained Interfaith Towers because that was the last designated polling place; and
- c. for the early voting site in the City of Poughkeepsie, I moved to change the polling place to Poughkeepsie City Hall, but Commissioner Black opposed the motion and instead moved to change the polling place to the Family

Partnership Center, which I opposed. As a result, the polling place was the Board's headquarters, as this was the last designated polling place.

12. The minutes reflect my basic reasons for being in favor of changing the polling place for Red Hook Election District 5 to the Fisher Center, but not to the Bertelsmann Campus Center. The Fisher Center is on the perimeter of Bard's campus, directly adjacent to several parking lots, and voters can access that location without going through the central part of campus, going through the main security gate or having to travel by student housing. Bard's campus can be confusing for someone who is not familiar with it, and during the 2020 election there were issues with Bard's security stopping and questioning individuals who were not Bard students. Bard set up a security checkpoint during the 2020 election, and I actually had to contact the Sheriff's Department to get them to remove it, although I understand that Bard put the security checkpoint back in place after the Sheriff's Deputies had left. Bard is perceived as being a left-wing school, and one of my concerns is that Republican and conservative voters will be discouraged from voting if they have to come to Bard's campus to do so. The Fisher Center appeared to be a good compromise that addressed many of the concerns that Bard's representatives had raised, while still being a "neutral" location that would be less likely to discourage Republican and conservative voters.

13. Exhibit 2 is a map showing Bard's campus. A person seeking to access the Bertelsmann Center would normally go through the main security gate, then turn either left or right on Campus Drive and circle the central part of campus. After driving by 4-5 intersecting roads (depending on whether they had turned left or right on Campus Drive), they would then turn onto Annandale Road, drive further, and after locating the Bertelsmann Center, find a parking lot near it. It is essentially unavoidable that they would have to go by a number of student dormitories and much of the central part of campus. Normally, colleges do not require

their students to take down political signs from dorm room windows. In contrast, a person seeking to access the Fisher Center would enter at the Fisher Center Entrance and turn right on Manor Avenue, which they would follow a comparatively short distance to the Fisher Center. They would then need to park in one of the parking lots that are adjacent to the Fisher Center. The route does not involve traveling by student dormitories or through the center of campus.

14. Exhibit 2 shows the parking lots on Bard's campus and identifies them by green-colored numbers. As indicated, lot 3B is a complex of parking spots that is adjacent and connected to the Fisher Center. In contrast, lot 6 is separated from the Bertlesmann Center by the Fisher Studio Arts Building, and lot 5 is several buildings away, on the other side of Annandale Road. Although not indicated on Exhibit 2, there are small number of parking spots immediately adjacent to the Bertelsmann Center, but those parking spots are for handicapped individuals. The bottom line is that it would be significantly easier for someone who is not familiar with Bard's campus to park in the parking lots next to the Fisher Center and then find the Fisher Center than it would be for that same person to park in one of the parking lots that is somewhat near the Bertelsmann Center and then find and walk to the Bertelsmann Center.

15. In both instances, the nearest bus stop is the Kline Stop, which located in parking lot 5, as indicated on Exhibit 2. A person getting off the bus at the Kline Stop would need to travel through Bard's campus to access either location, although the Bertlesmann Center is closer to the Kline Stop than is the Fisher Center. At the same time, I do not consider the additional distance to travel the Fisher Center to be prohibitive.

16. The Church has been the designated polling place for Red Hook Election District 5 for as long as I have been an Election Commissioner (more than 10 years). Election District 5 is over 5 miles "tall" and about 1.5 miles "wide." The Church is a relatively central location

within the Election District. Moreover, the Church is located only about 0.3 mile from the southern edge of Bard's property, meaning that it is closer to Bard's campus voters than it is to almost all other voters in the Election District. That aside, I know that Bard provides a shuttle for campus voters who do not wish to walk. I recognize that a location on Bard's campus would be more convenient for Bard's campus voters, but I do not think that super-enfranchising one group of voters should be at the expense of another group of voters. I understand that affidavits I submitted to the Court last year have been re-submitted to the Court, so I will otherwise part defer to those affidavits for an explanation of the rationale and reasoning that underlies the original designation of the Church as a polling place.

17. In the latter part of March 2021, the Board of Elections sent cards to all registered voters in Dutchess County. Those cards notified voters of the polling places that had been designated at the February 25, 2021 meeting. Before the cards were sent, both Commissioner Black and I reviewed and approved the proposed mailing.

18. I saw that the Verified Petition included a list of polling places from the 2020 election as Exhibit 21, which was apparently downloaded from the Board's web page in June 11, 2021. Shortly before the June 22, 2021 primary election, I became aware that the list of 2020 polling places was still up on the Board's website, so I took the list down to avoid confusion with the polling place cards that had been sent. Notably, for the June primary election, all of the Red Hook election districts were consolidated at Red Hook Town Hall. During primary elections, we commonly consolidate election districts.

19. After this proceeding began, Commissioner Black emailed Chief Assistant County Attorney Christian Cullen and requested authorization to appoint separate counsel. A copy of her email is attached as Exhibit 3.

  
\_\_\_\_\_  
ERIK J. HAIGHT

Sworn to before me this  
2<sup>nd</sup> day of August, 2021

\_\_\_\_\_  
Notary Public



Donna L. Shea  
Notary Public, State of New York  
No. 01SH6297837  
Qualified in Dutchess County  
Commission Expires March 3, 2022