

BARD COLLEGE

A College of the Liberal Arts and Sciences

August 15, 2022

Enforcement Counsel
New York State Board of Elections
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Re: Violations of law in District 5, Town of Red Hook, Dutchess County

Dear Counsel:

We represent voters, poll workers, and poll watchers in District 5 in the Town of Red Hook, as well as the students, faculty and staff of Bard College (who comprise the majority of voters in the District) through the organization Election@Bard. We are writing to call your attention to the repeated violations of the state and federal law related to equal protection, the right to vote, youth voting rights, disability accessibility, and election law, that have occurred and continue to take place in Dutchess County, specifically in District 5. These violations by the Dutchess County Board of Elections (the “Dutchess Board”), particularly Election Commissioner Erik Haight, comprise an unmistakable pattern of depriving citizens of their right to vote and creating impediments to voting, particularly for youth and the disabled.

As a result of our two successful lawsuits against the Dutchess Board in 2020 and 2021, that Board is now designating two polling places for District 5: Bard’s Bertelsmann Campus Center (“Bertelsmann”) and the St. John’s Episcopal Church in Barrytown (the “Church”). We understand that both locations will serve as polling places for the upcoming August 23 special election and primary and the November 8 general election. However, we have grave concerns that Commissioner Haight will continue to violate the law and the constitutional rights of District 5 voters, as evidenced by his recent actions to deprive the Bertelsmann polling location of sufficient staffing and equipment.

Commissioner Haight’s violations are a matter of public record. He flouted the unanimous advisory opinion of the State Board of Elections in 2012 concerning student voting addresses, resulting in a federal settlement and consent decree that cost the taxpayers of Dutchess County more than \$60,000.¹ He has imposed arbitrary and capricious rules on the location of polling sites in Dutchess County, violating state law concerning handicap accessibility and access to public transportation. Those violations led to the two successful lawsuits by Bard and related plaintiffs over the past two years that have cost the county approximately \$70,000. During these lawsuits, a State Supreme Court Justice and a Justice of the Appellate Division explicitly chastised Commissioner Haight for making false representations to the court.²

¹ The 2012 advisory opinion is available at <https://www.elections.ny.gov/NYSBOE/News/MeetingMinutes/Approved10162012minutes.pdf>. The resulting settlement and consent decree are available at <https://www.nyclu.org/en/cases/pitcher-v-dutchess-county-board-elections-challenging-barriers-voter-registration-college> and https://cce.bard.edu/community/election/files/Voting_rights_settlement.pdf.

² In 2020, New York Supreme Court Justice Maria G. Rosa ordered the BOE to site a polling location on the campus of Bard College, reversing her earlier decision not to do so in large part because “[t]he basis for this court’s decision and order has now been eliminated since the primary factor identified by Commissioner Haight and relied upon by this court was simply untrue.” https://tools.bard.edu/wwwmedia/files/8850342/68/2020_52737_Andrew_Goodman_Foundat_v_Andrew_Goodman_Founda

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We ask that you take all available actions to enforce all applicable laws, curtail any arbitrary, capricious, and/or discriminatory actions of the Dutchess Board, and ensure that Dutchess County citizens' right to vote is preserved.

Our complaints stem from two distinct, but overlapping, categories of violations.

Complaint One: Insufficient Staffing and Equipment

For the June 28, 2022 primary election, the Board of Elections provided the Bertelsmann polling site— the only on-campus polling site available in the county – with fewer staff than all other polling sites in the Town of Red Hook or in Dutchess County. Several people have reported to us that this was purposeful. This understaffing created difficulties described in reports from poll workers. Without proper staffing, these difficulties will only get worse with larger turnouts in the upcoming elections in August and November.

We understand that on June 28, 2022 every polling site in Red Hook and in Dutchess County had at least two Republican and two Democratic poll workers, but Bertelsmann had only one Republican along with two Democrats. We are told that every election site in Dutchess County, with the exception of the Bertelsmann Campus Center and the Church, had two voting machines; they each have one.

New York State Election Law § 3–400 states that “Appointments to the offices of election inspector or poll clerk in each election district, shall be equally divided between the major political parties.” Commissioner Haight is violating this requirement. Indeed, the Dutchess Board’s own-materials emphasize the need for a bipartisan team of election inspectors to manage issues throughout the day, including upon arrival to open voting machines, in handling abandoned ballots, to implement emergency ballot procedures should a voting machine malfunction, and to ensure ballot security and sealing the machine. *See e.g.*, Machine Inspector Handbook, Dutchess Cnty. Bd. of Elections (2020), available at: <https://elections.dutchessny.gov/wp-content/uploads/2020/04/Machine-Manual-MASTER-VERSION.pdf>

We have been told that Commissioner Haight intentionally appointed only one Republican poll worker to Bertelsmann, despite the fact that others were available and ready to work. We have also been told that he intends to issue fewer staff and one less polling machine to the Bertelsmann site than to the other districts in Red Hook because he regards Bertelsmann as a “satellite” polling location (his word). It is not. Four court orders issued in 2020 and 2021 make clear that Bertelsmann is a full-fledged polling location, drawing no explicit or implicit distinction between Bertelsmann and any other polling location in District 5 or Dutchess County. Nor did either Commissioner ever argue that Bertelsmann, if designated along with the Church, would be anything other than a duly authorized polling place under the New York Election Law, let alone some sort of subordinate “satellite” location.

Understaffing and under-equipping the Bertelsmann location places tremendous stress on the polling site and in turn threatens the capacity of voters—particularly persons with disabilities—to participate. Voting machines inevitably break, which is why every other poll site in Dutchess County outside of District 5 in

[ATTACHMENT TO COURT 55-1.pdf](#). During the hearing before the Appellate Division of Commissioner Haight’s appeal from that decision, Justice Austin put it succinctly to Commissioner Haight’s lawyer: “I think the problem was the judge felt that your side was lying to her.” New York State Appellate Court Hearing, October 29, 2020, [https://wowza.nycourts.gov/vod/vod.php?source=ad2&video=VGA.1603897300.External%20\(Public\).mp4](https://wowza.nycourts.gov/vod/vod.php?source=ad2&video=VGA.1603897300.External%20(Public).mp4)

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machines inevitably break, which is why every other poll site in Dutchess County outside of District 5 in Red Hook has two. The process of installing the handicap accessible machinery on a voting machine is complex and takes time. Doing so during an election day will force other voters to wait, as indicated in the Dutchess Board's Machine Inspector Handbook. *See id* at 14-18. Moreover, sometimes poll workers become ill, and all poll workers need breaks during the 15-hour day. If the one Republican poll worker must leave for any reason, the poll site would have to shut down. If only one bipartisan pair of poll workers remains at the polling location due to understaffing, then those two workers would bear the full burden of managing the entire site, including both intake and voting machine maintenance. Under either scenario, the process is disrupted and the voters are burdened by either long lines or having to travel to another location.

We have written multiple times to Commissioners Haight and Black seeking assurance that there will be two voting machines and a minimum of four poll workers (two from each party), and have yet to receive an affirmative response from Commissioner Haight. Therefore, we request this Board's intervention to ensure that Bertelsmann be properly staffed and resourced in advance of the August 23 special election and primary and the November general election.

Complaint Two: Handicap Inaccessibility, ADA Violations

District 5 did not have a handicap accessible voting machine in the November 2021 or November 2020 elections. Despite our several inquiries, there is no indication that Commissioner Haight has agreed to place a handicap accessible machine in the district for the August 23, 2022 special election or the November 8, 2022 general election. Indeed, Bertelsmann is the only polling location in District 5 that is handicap accessible and compliant with the Americans With Disabilities Act; a 2022 ADA survey commissioned by the County Executive concluded that the Church is not ADA-compliant and that specific measures must be implemented in order for it to function as a polling site.³ The survey (despite missing some additional ADA violations that we have documented in the past) confirms what Bard and others have been protesting for years and what Commissioner Haight has tried to suppress: the Church is not handicap accessible and is not ADA compliant.⁴

This is, unfortunately, part of a pattern of Commissioner Haight failing to meet the needs of voters with disabilities. Before Fall 2020, for many years the Church was the only polling site in District 5. Numerous complaints were lodged over time about its accessibility, but went unaddressed by the Dutchess Board.⁵ Indeed, in 2019 staff members of the Board of Elections completed, and the two commissioners accepted, a fatally flawed ADA survey in which nearly half of the relevant questions, including several critical issues, were labeled "not/applicable." For example, an obviously non-compliant ramp at the Church was totally ignored: the report did not even acknowledge its existence, let alone document its non-compliance. The

³ Although the surveys of all Dutchess County polling locations were conducted in or about January 2022, the results were only made public earlier this month. A copy of the report is [attached](#). Notably, the survey was conducted after we argued that the Church was not ADA-compliant in the 2020 and 2021 lawsuits.

⁴ The surveyor opined that it may be possible to make the Church compliant were some unnamed entity to add a temporary ramp to the front entrance of the Church *and* prop fully open its two front doors during the 15 hour period of voting. We are aware of no such plans.

⁵ For example, in 2016, when confronted with public accusations that the Church was not handicap accessible, Commissioner Haight insisted wrongly in the Poughkeepsie *Journal* that the Church is "fully Americans with Disabilities Act compliant." <https://www.poughkeepsiejournal.com/story/opinion/valley-views/2016/05/28/commissioner-haight-set-record-straight-facts/84920538/>

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2022 survey, however, confirms that the Church has numerous violations, including the lack of an accessible ramp, and therefore does not meet ADA requirements (attached, see pages 3-5).

Moreover, Commissioner Haight has actively thwarted efforts from both within and outside the Dutchess Board to address the Church's non-compliance with the ADA. During the 2020 litigation, he was provided ample documentary evidence of non-compliance and flaws with the false survey, including images submitted as a part of court filings by accessibility experts and videos posted on the web, but he refused to commission a new survey.⁶ During the 2020 litigation, he represented to the court under oath that a survey would be conducted in early 2021⁷ but then failed to do so and blocked efforts for such a survey. When Commissioner Hannah Black, who joined the Dutchess Board beginning in 2021, asked in March of 2021 for a new ADA survey, citing well established concerns over handicap accessibility, he brushed off her request by saying, "Says who," and refused to assign a staff member to conduct a new survey, making it impossible.⁸

In light of the above, we ask that this Board instruct the Dutchess Board to provide accessible machines, as required by law, to both District 5 polling sites, and to ensure that the Church, if it is to serve as a polling location, be made ADA-compliant in conformity with the survey report.

Additional Procedural Violations

In addition to these pressing issues, we also seek the Board's intervention in guiding the Dutchess Board in terms of appropriate compliance with state laws concerning freedom of information and open meetings.

Commissioner Haight has refused for the past eight months to provide responses to FOIL requests under Article 6 New York State's Public Officer's Law. In spite of repeated requests made since last January, including in January, February and March of 2022 (and subsequent reminders), he has not provided requested documents nor adequate justification for why the documents cannot be provided. We appealed to the County Executive to intervene, but he has refused to assist, indicating that issues regarding Boards of Elections are exclusively the purview of the State Board of Elections; thus we are appealing to you.

⁶ For the flawed ADA report filed by the Dutchess Board, go to:

<https://tools.bard.edu/wwwmedia/files/8850342/77/FalseBoardReport.pdf>. For an ADA compliance report submitted by experts to Judge Rosa see: <https://tools.bard.edu/wwwmedia/files/8850342/78/ADAREport.pdf>. For the full filing to Judge Rosa, go to: <https://tools.bard.edu/wwwmedia/files/8850342/79/FullFiling.pdf>. For a video concerning non-compliance, go to: <https://www.youtube.com/watch?v=jbp69lLmCG8>. Full documentation can be found here: <https://cce.bard.edu/community/election/voting-rights/>.

⁷ Commissioner Haight explicitly assured Judge Maria Rosa, under oath, that the Dutchess Board would conduct a new survey: "Now that the issue of ADA compliance has been raised, the [Dutchess] Board of Elections will inspect St. John's and address any ADA issues that may be found to exist. However, given the current demands on our personnel (dealing with issues in the leadup to the election) this likely [sic] will not occur until early next year [i.e., 2021]." Sept. 21, 2020 Haight Aff. ¶28 (Doc. 27, *Andrew Goodman Found. et al. v. Dutchess County Bd. of Elections et al.*, Index No. 2020-52737).

⁸ 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?" See Letter to Commissioners Haight and Black, April 30, 2021,

<https://tools.bard.edu/wwwmedia/files/8850342/85/BOECommissionersletterApril302021.pdf>

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The Dutchess Board has also repeatedly violated New York State's Open Meetings Law. For example, we were unable to find any public notice concerning the meetings held on February 25, 2021 and September 3, 2021, neither on the Board's website, nor through internet searches using standard search tools. these failures violate the §104 of the New York State Open Meeting Law, which requires that "notice of the time and place of a meeting...shall also be conspicuously posted on the public body's internet website" and that public bodies like the Board must "inform the public of the internet address of the website streaming such meeting."

Finally, the Dutchess Board has also violated Section §106 of the Open Public Meetings Law's meeting minutes requirements. Specifically, the Board has failed to publish any minutes of meetings on its website, let alone "within two weeks" as prescribed by law. It also has not posted recordings of the meeting on its website as prescribed by law.

Please confirm receipt of this letter. Time is of the essence with the August elections around the corner. We look forward to your response and to resolving this matter quickly and efficiently.

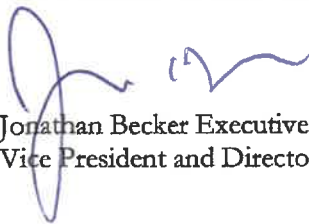
Sincerely,



Leon Botstein
President, Bard College



Erin Cannan
Vice President for Civic Engagement, Bard College



Jonathan Becker Executive
Vice President and Director, Bard Center for Civic Engagement

cc: Yael Bromberg, Esq., Bromberg Law LLC
Mike Donofrio, Esq., Stris & Maher LLP

Attachment: 1/25/22 Survey of St. John's Episcopal, Z3 Consultants and 2019 Board of Elections Survey

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