

*Supreme Court of the State of New York*  
*Appellate Division: Second Judicial Department*

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LEAGUE OF WOMEN VOTERS OF THE  
MID- HUDSON REGION, TANEISHA  
MEANS, and MAGDALENA SHARFF,

Petitioners-Plaintiffs,

-against-

THE DUTCHESS COUNTY BOARD OF  
ELECTIONS, ERIK J. HAIGHT in his  
capacity as Commissioner of the Dutchess  
County Board of Elections, and HANNAH  
BLACK in her capacity as Commissioner  
of the Dutchess County Board of Elections

Respondents-Defendants.

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**Order to Show Cause**

Appellate Division Docket  
No.: 2022-\_\_\_\_\_

Upon the annexed affirmation of David Jensen, dated November  
7, 2022, and the papers annexed thereto,

LET PETITIONERS SHOW CAUSE BEFORE THIS COURT, at  
the courthouse thereof, located at 45 Monroe Place, Brooklyn, New  
York, 11201, on the \_\_\_\_ day of November, 2022, at \_\_\_\_ o'clock in the  
\_\_\_\_noon of that date or as soon thereafter as counsel may be heard,  
why an order should not be made and entered: (1) staying the lower  
court's decision, award and judgment dated November 3, 2022 pending  
a determination of the merits by this Court pursuant to CPLR 5519(c)

and/or the Court's inherent authority; and (2) granting such other and further relief as to the court may seem just and equitable.

SUFFICIENT CAUSE THEREFOR APPEARING, it is

ORDERED that pending the hearing and determination of this motion the Supreme Court's decision, order and judgment dated November 3, 2022 is stayed; and it is further

ORDERED that service of a copy of this order to show cause and the papers upon which it was made upon Petitioners and the other Respondents-Defendants by email to their counsel of record on or before November \_\_\_\_, 2022, shall be deemed sufficient service thereof shall be deemed good and sufficient service thereof.

Dated: Brooklyn, New York  
November \_\_, 2022

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Hon.

*Supreme Court of the State of New York*  
*Appellate Division: Second Judicial Department*

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**Affirmation of**  
**David D. Jensen, Esq.**

Appellate Division Docket  
No.: 2022-\_\_\_\_\_

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 Commissioner Erik Haight of the Dutchess County Board of  
Elections, who is the Appellant here and a Respondent-Defendant in  
the court below. I submit this Affirmation in support of Commissioner  
Haight's request for an order to show cause that would stay the  
decision, order and judgment of the court below.

## **Introduction and Summary**

2. The court below has now (in an order entered earlier this morning at 10:47 a.m.) clarified that its previous decision, order and judgment requires “the designation of a voting polling site on the Vassar College campus,” but does not require “replacement or removal of any other polling site.” *See* Exhibit 1 at p. 1. In light of this, as well as this Court’s ruling earlier today that disclaimed the existence of an automatic stay, Respondent Commissioner Haight has been attempting to comply with the order of the court below by designating a new polling place on Vassar’s company.

3. As of this writing, Respondent Commissioner Black has failed to respond to her counterpart, Appellant-Respondent Commissioner Haight, and his request to designate a new polling place on the Vassar Campus for tomorrow’s election. Notably, Petitioners’ proposed order to show cause had asked the court below to order that the polling place be located in “the Aula at Ely Hall,” but when the court below declined to sign the order to show cause, it likewise declined to order this specific relief. *See* Exhibit 1 at p. 2.



4. This Affirmation shows that a stay is necessary for two essential reasons. First, the decision below was manifestly wrong. Among other things, the court below did not have personal jurisdiction over Appellant, and further, the court below did not address Appellant's meritorious defenses grounded in laches, failure to join a necessary party and failure to state a claim. Moreover, the very nature of this action is outside the exclusive remedy dictated by the Election Law.

5. Second, and setting those issues aside, it has become impossible to create a new polling place and have it ready in time for tomorrow's election.

6. Significantly, Commissioner Black, in an affidavit submitted by Petitioners, testified that "[t]he last possible time that we can implement an on-campus poll site at Vassar College for the November 8, 2022 general election is the morning of November 4, 2022." (Appx31) And, Petitioners have testified that "the last possible time that the Board of Elections could implement an on-campus poll site at Vassar College for the November 8, 2022 general election is the morning of November 4, 2022." (Appx6) It is now the afternoon of November 7, 2022—well after that "last possible time"—and the new polling place

has not even been selected, the voters have not been assigned to the new polling place or notified of it, staff has not been recruited and assigned to the new polling place, and election equipment has not been deployed to the polling place. Finally, none of the statutorily required reviews of any of the several proposed polling places has taken place, nor has the Board of Elections surveyed the places to determine whether they comport with state and federal laws governing polling places (including but not limited to the Americans with Disabilities Act).

7. This highlights the existence of laches, and also serves to demonstrate that the apparent purpose of this lawsuit is to embarrass (Republican) Commissioner Haight.

8. The law on the location of polling places from this Department is clear. *See Krowe v. Westchester Co. Bd. of Elections*, 155 A.D.3d 672, 63 N.Y.S.3d 509 (2d Dep't 2017).

9. The purpose of a stay is to preserve the status quo ante. Here, each and every voter has received a notice instructing them as to where they should appear on election day.

10. We implore this Court to avoid the voter confusion that this new polling place—still unidentified—is all but certain to create, in addition to the impossible task that is being forced upon the Board of Elections. *See Hunter v. Orange Co. Bd. of Elections*, 55 A.D.3d 760, 866 N.Y.S.2d 265 (2d Dep’t), *rev’d*, 11 N.Y.3d 813, 868 N.Y.S.2d 588 (2008); *Pidot v. Macedo*, 141 A.D.3d 680, 36 N.Y.S.3d 188 (2d Dep’t 2018).

11. This makes a stay necessary to preserve the status quo and to prevent irreparable injury for several reasons, which generally center on Petitioners’ delay in commencing their proceeding. Appellant is entitled to reversal on the merits because Petitioners never served him with process in accordance with CPLR § 308—the apparent result of commencing the proceeding without time to properly secure service of process. Due to this delay, Appellant is also entitled to reversal on the basis of laches. And, Vassar College, the proposed location of the new polling place(s), is plainly a necessary party—presumably omitted because of the need to rush the case forward as quickly as possible. Setting all that aside, it is abundantly clear that the petition states no claim of mandamus, for the action at issue is not ministerial, but instead requires the weighing and selection of competing policy choices.

12. What may be more pertinent—at this juncture—is that the lower court’s mandatory, status quo-altering injunction is causing irreparable injury in the form of voter confusion *right now*. According to Petitioners and Commissioner Black it was impossible to designate a new polling place after the morning of November 4, 2022. Now, less than 18 hours before the election, the new polling place(s) still has not been selected and no one living in the three election districts at issue knows where they are supposed to vote tomorrow. The only thing that will restore the status quo is a stay of the lower court’s order, which will result in the election being back on-track for tomorrow—as it was scheduled up until November 3, 2022.

13. The essential considerations governing the issuance of a stay—on the facts and circumstances presented here—are the merits of the appeal and the need to prevent irreparable injury. While the caselaw addressing stays under CPLR § 5519(c) is “sparse,” a relatively recent Supreme Court decision points concludes that “the court’s discretion is the guide and it will be influenced by any relevant factor, including the presumptive merits of the appeal and any exigency or hardship confronting any party.” *Schaffer v. VSB Bancorp, Inc.*, 68

Misc. 3d 827, 834, 129 N.Y.S.3d 252 (Supr. Ct., Richmond Co. 2020) (quotations and alteration omitted); cf. *In re Terrence K.*, 135 A.D.2d 857, 857, 522 N.Y.S.2d 949 (2d Dep’t 1987) (stay “may properly be denied where it is clearly shown that there is no merit to the appeal”) (citations omitted). Decisions from this Court tie the Court’s power to stay—whether pursuant to CPLR § 5519(c) or pursuant to its inherent authority—to the need “to maintain the status quo during the pendency of the appeal.” See *Terrence K.*, 135 A.D.2d at 857; see also *Schwartz v. N.Y. City Housing Auth.*, 219 A.D.2d 47, 48, 641 N.Y.S.2d 885 (2d Dep’t 1996) (citations omitted). A preliminary injunction, which is in some respects analogous, familiarly requires: “(1) a probability of success on the merits, (2) a danger of irreparable injury in the absence of an injunction, and (3) a balance of the equities in the movant’s favor.” *Grassfield v. JUPT, Inc.*, 208 A.D.3d 1219, 174 N.Y.S.3d 458 (2d Dep’t 2022) (quotation and citations omitted).

### **Polling Place Requirements**

14. The Election Law directs boards of election to designate polling places “by March fifteenth, of each year,” and it provides that designations are “effective for one year thereafter.” Election Law § 4-

104(1). Election boards must notify all voters of their polling places between 65 and 70 days before the date of the primary election. *See id.* § 4-117(1). If a designated polling place “is subsequently found to be unsuitable or unsafe or should circumstances arise that make a designated polling place unsuitable or unsafe,” then a board of elections can “select an alternative meeting place.” *See id.* § 4-104(1). However, and significantly, if a board does this, then “it must, at least five days before the next election or day for registration, send by mail a written notice to each registered voter notifying him of the changed location of such polling place.” *Id.* § 4-104(2). If this is “not possible,” then a board “must provide for an alternative form of notice to be given to voters at the location of the previous polling place.” *Id.* Obviously, now—the day before the election—it is not possible to comply.

15. The Election Law provides a number of considerations that a board of elections should address when establishing polling places. Polling place locations should, “whenever practicable, . . . be situated on the main or ground floor,” and must be “of sufficient area to admit and comfortably accommodate voters.” *Id.* at § 4-104(6). Polling places must comply with Americans with Disabilities Act (“ADA”) requirements. *Id.*

§ 4-104(1-a). In that connection, boards must conduct access surveys and keep them on file. *See id.* § 4-104(1-a), (1-b). Beyond that, polling places should “whenever possible” be “situated directly on a public transportation route.” *Id.* § 4-104(6-a). Furthermore, a board of elections should select tax exempt buildings “whenever possible,” and the Election Law expressly authorizes the use of religious buildings. *Id.* § 4-104(3). An additional restriction is that a polling place must be located either in the election district or “in a contiguous district.” *Id.* § 4-104(4).

16. The Election Law provides that the board or body controlling “a publicly owned or leased building, other than a public school building . . . must make available a room or rooms” that are suitable, but it allows the board or body to “file[] a written request for cancellation of such designation” within 30 days of the designation, which a board of elections may (but need not) grant. *See id.* § 4-104(3). Beyond this, a person who “owns or operates” a designated polling place can seek a judicial order vacating the polling place determination. *See id.* § 16-115. Finally, the Election Law provides a cause of action by which a board of elections can compel an unwilling polling place to be made available. *See id.*

17. The legislature recently amended the Election Law to provide that when a contiguous college or university has 300 or more registered voters on campus, “the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections.” *Id.* § 4-104(5-a); see 2022 N.Y. Laws ch. 55, Part O, § 1. The legislation also directs election boundary districts to conform to college and university grounds, but this does not become effective until January 1, 2023, creating some problems in the short term. See 2022 N.Y. Laws ch. 55, Part O, §§ 2-3.

**The Merit of this Appeal is Overwhelming**

18. Appellant asserted four defenses to the court below: lack of personal jurisdiction; laches; failure to state a claim for mandamus; and failure to join a necessary party. (Appx213-17) Any one of these defenses, standing alone, would mandate reversal. However, the court below addressed only one—lack of jurisdiction. (Appx253-54) The court below refused to accept Appellant’s motion papers, although they were provided to the other parties at the hearing. (Appx212, 252) Appellant



filed his motion papers the following day, at the same time he filed his Notice of Appeal. (Appx141-53)

19. The Court Lacked Personal Jurisdiction. “Pursuant to CPLR 304 a special proceeding is commenced and *jurisdiction acquired* by service of a notice of petition or order to show cause.” *Bell v. State University of New York at Stony Brook*, 185 A.D.2d 925, 925, 587 N.Y.S.2d 388 (2d Dept 1992) (emphasis in source). Service of process in accordance with CPLR § 308 is a mandatory prerequisite to a court’s assertion of jurisdiction. *See, e.g., Machia v. Russo*, 67 N.Y.2d 592, 594-95, 505 N.Y.S.2d 591 (1986). “Notice received by means other than those authorized by statute does not bring a defendant within the jurisdiction of the court.” *Id.* at 595 (citations omitted). Here, Petitioners purported to serve Appellant “by emailing” the petition, order to show cause and other papers to Appellant. (Appx106) Petitioners did not serve Appellant by any other means. (Appx106)

20. CPLR § 308 authorizes a plaintiff to serve process in person or by leaving the process with “a person of suitable age and discretion” at the individual’s address. *See* CPLR § 308(1)-(2). Furthermore, if a plaintiff cannot “with due diligence” make service in one of these two

manners, then the plaintiff can effect “nail and mail” service by leaving the papers at the individual’s address and mailing them in accordance with the statute. *See id.* § 308(4). Finally, CPLR 308 allows for service “in such manner as the court, upon motion without notice, directs, if service is impracticable under” these other three provisions.” *Id.* § 308(5).

21. In order to serve process under CPLR § 308(5), Petitioners would have needed to show that, notwithstanding their diligence, they had been unable to effect service pursuant to CPLR 308(1), (2) or (4). *See Kozel v. Kozel*, 161 A.D.3d 700, 701, 78 N.Y.S.3d 68 (1st Dep’t 2018); *Snyder v. Alternate Energy Inc.*, 19 Misc. 3d 954, 959, 857 N.Y.S.2d 442 (Supr. Ct., New York Co. 2008). For example, in *Hollow v Hollow*, 193 Misc 2d 691, 747 N.Y.S.2d 704 (Supr. Ct., Oswego County 2002), the court authorized service by email in a case where the respondent husband was in a compound in Saudi Arabia, which had refused to allow a process server to enter, and the husband’s employer also would not accept service. *See id.* at 692. At an absolute minimum, Petitioners would have needed to demonstrate that service using a traditional method would be “futile.” *See Liebeskind v. Liebeskind*, 86 A.D.2d 207,

210, 449 N.Y.S.2d 226 (1st Dep't 1982), *aff'd*, 58 N.Y.2d 858, 460 N.Y.S.2d 526 (1983).

22. Neither the Verified Petition nor Petitioners' affirmation in support of the order to show cause make any attempt to demonstrate that service under CPLR § 308(1), (2) and (4) would be impracticable. (Appx1-11, 16-22) Furthermore, the Order to Show Cause reflects no such finding. (Appx94-96) Thus, while a court *can* order "personal service pursuant to CPLR 308 other than personal delivery pursuant to CPLR 308(1)," *Koyachman v. Paige Management & Consulting, LLC*, 121 A.D.3d 951, 951, 995 N.Y.S.2d 115 (2d Dep't 2014), the court below did not do so here, nor would there have been any basis for the court below to have done so.

23. The court below denied Appellant's motion to dismiss on the rationale that "given the exigency of the proceeding and the time constraints raised in the papers, the Court gained that the most expedient method of service was via e-mail and finds no prejudice resulting therefrom." (Appx253-54) The court further "note[d] that Commissioner Haight was present in court today, noted his appearance

on the record and his Counsel was present and participated in all of the proceedings.” (Appx254)

24. This was plainly wrong. The requirements of CPLR § 308 apply to proceedings that concern the Election Law and the conduct of elections, notwithstanding that such proceedings often present exigencies and are often initiated by means of orders to show cause. *See, e.g., See Hennesy v. DiCarlo*, 21 A.D.3d 505, 506, 800 N.Y.S.2d 576 (2d Dep’t 2005) (order to show cause directing personal service and service by mail did not dispense with requirement of “due diligence” to use “nail-and-mail” service under CPLR § 308(2)); *see also McGreevy v. Simon*, 220 A.D.2d 713, 713-14, 633 N.Y.S.2d 177 (2d Dep’t 1995) (two attempts at service was not “due diligence” so as to permit nail-and-mail service of order to show cause). There is no basis for judicially amending CPLR § 308(5) to dispense with the need to find, “upon motion,” that “service is impracticable under” one of the other permitted means.

25. Furthermore, Appellant’s appearance at the beginning of the order to show cause hearing, while waiting for his counsel to arrive from the airport, did not waive this jurisdictional defect. (Appx203-05)

To the contrary, a personal jurisdiction defense “is waived if a party moves on any of the grounds set forth in subdivision (a) [of CPLR § 3211] without raising such objection or if, having made no objection under subdivision (a), he or she does not raise such objection in the responsive pleading.” CPLR § 3211(e). Furthermore, a party’s appearance is not “equivalent to personal service . . . [if] an objection to jurisdiction under paragraph eight of subdivision (a) of rule 3211 is asserted by motion or in the answer.” *Id.* § 320(b). Here, Appellant’s first substantive statement to the court below, at the beginning of the order to show cause hearing, was that “we have a motion to dismiss. It is among other things, jurisdictional grounds, one of which, the first and foremost which is failure to effect service and process in accordance with CPLR 308.” (Appx205) Thus, Appellant indisputably did not waive his defense to service of process. And, “[w]hen the requirements for service of process have not been met, it is irrelevant that defendant may have actually received the documents.” *Raschel v. Rish*, 69 N.Y.2d 694, 697, 512 N.Y.S.2d 22 (1986) (citing *Macchia*, 67 N.Y.2d 592; *McDonald v. Ames Supply Co.*, 22 N.Y.2d 111, 115, 291 N.Y.S.2d 328 (1986)).

26. This consideration, standing alone, mandates reversal of the decision below.

27. Laches Also Mandates Dismissal of this Proceeding. “The doctrine of laches is an equitable doctrine which bars the enforcement of a right where there has been an unreasonable and inexcusable delay that results in prejudice to a party.” *Skrodelis v. Norbergs*, 272 A.D.2d 316, 316, 707 N.Y.S.2d 197 (2d Dep’t 2000) (citations omitted). The “prejudice” can lie in “showing of injury, change of position, loss of evidence, or some other disadvantage resulting from the delay.” *Id.* at 317 (citations omitted).

28. This Court has previously recognized that last-minute changes to polling places pose substantial risks of irreparable harm. In *Krowe v. Westchester County Board of Elections*, 155 A.D.3d 672, 63 N.Y.S.3d 509 (2d Dep’t 2017), “the Board made the determination to relocate the polling place less than three weeks before the election based only on a general advisement by an unnamed Town official that construction would be performed at the Town Hall on the day of the election,” *see id.* at 673. Seven days prior to the election (on October 31, 2017), the lower court denied a preliminary injunction against the

change, and five days prior to the election (on November 2, 2017), this Court reversed the lower court's order. *See id.* In finding a preliminary injunction to be appropriate, the Court ruled that “irreparable harm would result if the polling place were relocated, particularly at this late date, and that the balance of equities” was in favor of preliminary equitable relief. *See id.*

29. Two recent decisions from the Third Department are instructive on the application of laches to the facts presented here. In *League of Women Voters of New York State v. New York State Board of Elections*, 206 A.D.3d 1227, 170 N.Y.S.3d 639 (3d Dep't 2022), the petitioner had waited 16 days after the act complained of to seek relief (on May 20), and the relief they sought concerned the primary election to be held about five weeks later (on June 28), *see id.* at 1228-29. The Third Department concluded that “dismissal of the petition/complaint is required under the equitable doctrine of laches.” *Id.* at 1229. The petitioner had delayed “unduly,” and that “delay results in significant and immeasurable prejudice to voters and candidates for assembly and innumerable other offices.” *Id.* at 1229-30.

30. In the second case, *Amedure v. State*, No. CV-22-1955, 2022 WL 16568516 (3d Dep’t Nov. 1, 2022), the petitioners had commenced their constitutional challenge on September 29, “nine months after [the statute at issue] was enacted,” and about five weeks before the election, *id.* at \*3; *see Amedure v. State*, No. 2022-2145, 2022 WL 14731190, \*1 (Supr. Ct., Saratoga Co. Oct. 21, 2022). The Third Department found that laches mandated dismissal of the petition, observing that “granting petitioners the requested relief during an ongoing election would be extremely disruptive and profoundly destabilizing and prejudicial to candidates, voters and the State and local Boards of Elections.” *Amedure*, 2022 WL 16568516 at \*4 (citing *League of Women Voters*, 206 A.D.3d at 1230; *Quinn v. Cuomo*, 183 A.D.3d 928, 931, 125 N.Y.S.3d 120 (2d Dep’t 2020)).

31. A final instructive case is *Corso v. Albany County Bd. of Elections*, 90 A.D.2d 637, 456 N.Y.S.2d 206 (3d Dep’t 1982), where the Third Department disagreed with the trial court that certain municipalities had been necessary parties, but nevertheless declined to reach the merits of the petition because it was “unable to determine with certainty whether the requested relief is feasible or even possible



considering the few days remaining before the election,” *id.* at 638. The court also observed that “the existing polling places are located relatively close to the campus,” and accordingly, that it did not appear that any “voter will be disenfranchised if the relief sought herein is not granted.” *Id.*

32. Here, Petitioners’ claimed grievance is that the Dutchess County Board of Elections “did not designate a polling place on the Vassar College campus prior to August 1, 2022.” (Appx4) This means that Petitioners’ claim was cognizable on August 1, 2022—a full two months before they filed their petition on November 1, 2022. But what’s more significant is that this filing date was a mere seven days prior to the election that is at issue. If five weeks before the election was cutting it too close in *League of Women Voters* and *Amedure*, and three weeks was cutting it too close in *Krowe*, then surely *one week*—the amount of lead-time here—threatens irreparable injury in a way that could only be justified by the gravest extremes, like the literal destruction of a polling place.

33. Appellant raised this issue at the order to show cause hearing, and Petitioners and Commissioner Black addressed it,

including the *Amedure* decision. (Appx214-15, 218-19, 221-22) However, the Supreme Court did not address laches in its ruling. (Appx252-54)

34. Notably, the difficulties experienced in trying to carry out the lower court's ruling are themselves illustrative of the interests that the laches rule serves in the first place. There is no reason to risk these kinds of issues—particularly with something as important as the franchise of voting—when Petitioners could, and should, have brought their case two months ago.

35. The Verified Petition Fails to State a Claim for Mandamus.

The Election Law does not provide any cause of action for the Petitioners, as discussed previously. Rather, Petitioners rely on the common law writ of mandamus, now codified in CPLR Article 78. (Appx7-8) However, relief in the form of mandamus is available where “the duty sought to be enjoined is performance of an act commanded to be performed by law and involving no exercise of discretion.” *Hamptons Hospital & Medical Center, Inc. v. Moore*, 52 N.Y.2d 88, 96, 436 N.Y.S.2d 239 (1981). Indeed, most agency “decisions do not lend themselves to consideration on their merits under the provisions for mandamus to review, because they concern rational choices among

competing policy considerations and are thus not amenable to analysis under the ‘arbitrary and capricious’ standard.” *New York City Health & Hospitals Corp. v. McBarnette*, 84 N.Y.2d 194, 204-05, 616 N.Y.S.2d 1 (1994); *see also De Milio v. Borghard*, 55 N.Y.2d 216, 220, 448 N.Y.S.2d 441 (1982) (“the aggrievement does not arise from the final determination but from the refusal of the body or officer to act or to perform a duty enjoined by law” (quotation omitted)).

36. Appellant raised this argument in the court below, and Petitioners likewise addressed it. (Appx215-16, 219-21) Furthermore, at the hearing Commissioner Black testified that, among the various potential polling places Vassar College had identified, “[t]here was definitely one that stood out more than the others,” which was the Villard Room. (Appx243) The Villard Room is the only specific location the Verified Petition identifies. (Appx5)

37. In reaching her conclusion that the Villard Room was the best polling place, Commissioner Black testified that she considered various “criteria,” including “American [with] Disabilities Act requirements, as far as parking goes, getting into the building itself, getting into the area where they would be voting.” (Appx243-44) She

testified further that “[w]e absolutely need a certain number of outlets for our poll pads and our machines as well and a certain, a good space size to have the flow of voter traffic as well considered.” (Appx244) When asked to identify the next best alternative, Commissioner Black testified that “[o]nly the Villard room was really considered on my behalf, because they had stated that that was the number one through a phone call.” (Appx245) Notwithstanding this, the court below did not address this issue. (Appx252-54)

38. Notably, events following the issuance of the decision, order and judgment at issue serve to highlight the extent to which the selection of polling places is a discretionary decision that is outside the scope of mandamus. On November 5, 2020—two days after the court below’s ruling, and three days before the election—Petitioners filed an order to show cause seeking to “clarify[]” the courts previous order by designating “the Aula at Ely Hall . . . as an additional polling place,” to the apparent exclusion of the Villard Hall. (Appx166-67)

39. Petitioners Failed to Join Vassar College, a Necessary Party. “Necessary parties are those ‘who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or

who might be inequitably affected by a judgment in the action.” *Morgan v. de Blasio*, 29 N.Y.3d 559, 560, 60 N.Y.S.3d 106 (2017) (quoting CPLR 1001(a)). The failure to join a necessary party requires dismissal. *See Quis v. Putnam County Bd. of Elections*, 22 A.D.3d 585, 586, 802 N.Y.S.2d 709, (2d Dep’t 2005).

40. The statute at issue here requires the participation of the affected college or university. *See* Election Law § 4-104(5-A).

Furthermore, the relief sought by Petitioners could inequitably affect Vassar College because it would, pertinently, require them to make space available for a polling place and accommodate the attendant traffic. Thus, Vassar College is a necessary party, and the failure to include Vassar College as a party is yet another ground that mandates dismissal of the Petition.

41. Appellant raised this issue in the court below, and the other parties addressed it. (Appx216, 220-25) Among other things, Petitioners pointed to witnesses and affidavits showing their understanding of Vassar College’s views and actions with respect to the location of a polling place. (Appx30, 37, 220-21, 225, 243-45) But, other issues aside, this shows only Vassar College is a party that ought to be included to

accord complete relief to the parties, as well as that it could be inequitably affected by a judgment in the proceeding. Notwithstanding this, the court below did not address this issue. (Appx252-54)

**A Stay is Needed to Preserve the Status Quo and Prevent Irreparable Injury**

42. The Court Below Issued a Mandatory Injunction that Changes the Status Quo. The trial court “grant[ed] the petition in its entirety,” reasoning that Election Law § 4-104(5-A) “specifically mandates the designation of a voting polling place on a college or university campus . . .” (emphasis omitted). (Appx161, 254) The petition had sought an order that, pertinently, directed the respondents “to designate and operate a polling place . . . on the campus of Vassar College” and to “assign all voters registered at a residential address on the Vassar College campus to that on-campus polling place” and “publicize the new on-campus polling place and assignments.” (Appx10)

43. The court’s order was a mandatory injunction that commanded the parties to perform certain actions, vis-à-vis prohibiting the parties from taking certain actions. *See State v. Town of Haverstraw*, 219 A.D.2d 64, 65-66, 641 N.Y.S.2d 879 (2d Dep’t 1996). Mandatory injunctions “usually result in a change in the status quo”

because they “command[] the performance of some affirmative act.” *Id.* at 65. And that is certainly the case here. Prior to the ruling of the court below, the Board of Elections had designated polling places for all of the voters in the three election districts at issue, and further, it had sent them the statutory notices that advised them of their polling places. After the ruling of the court below, and as things stand right now—literally the day before the election—no one knows where they are supposed to vote. However, a stay of the decision below would resolve the status quo pretty much instantly: Everyone would vote at the designated polling places that the Board of Elections previously advised them to use.

44. It is Impossible to Designate a New Polling Place the Day Before the Election. Before the court below, the Petitioners relied on an affidavit from Commissioner Black to represent that “the last possible time that the Board of Elections could implement an on-campus poll site at Vassar College for the November 8, 2022 general election is the morning of November 4, 2022.” (Appx6) Commissioner Black, in an affidavit submitted by Petitioners, likewise testified that “[t]he last possible time that we can implement an on-campus poll site at Vassar

College for the November 8, 2022 general election is the morning of November 4, 2022.” (Appx31) Commissioner Black testified that the necessary preparations would “include[] assigning all voters who are registered to vote at a residential address on the Vassar College campus to the on-campus poll site,” as well as “program[ming] three electronic poll books to reflect the proper ballots for those election districts.” (Appx31) Commissioner Black’s further suggested that “[w]e *could* continue to maintain the polling places off-campus that currently serve both<sup>1</sup> Vassar election districts and voters off campus as well to ensure minimal disruption” (emphasis added). (Appx31)

45. However, actually designating a polling place in the immediate runup to an election proved more difficult. Petitioners looked at potential polling places on the Vassar campus not on the morning of November 4, 2022, but rather, beginning at 3:00 p.m. in the afternoon. (Appx170, 197) The only specific location the Verified Petition identified was the Villard Room, and this was also the location that Commissioner Black had testified was the most appropriate location on campus. (Appx5, 243, 245) But, by Saturday, November 5, 2022, the Villard

---

<sup>1</sup> There are actually three election districts included in Vassar’s grounds. (Appx234)



Room was no longer desirable, and further, it also wasn't clear whether some or all of the designated polling places were to move to Vassar's campus. Thus, Petitioners found themselves forced to file an emergency motion with the court below, seeking an order "clarifying" the court's previous order. (Appx166-67) Specifically, Petitioners now sought an order that specifically directed on additional polling place, and at the Aula at Ely Hall, rather than the Villard Room. (Appx166-67) This Court granted the proposed order to show cause on November 7, 2022. See Exhibit 2.

46. As of the time of this affirmation, the court below has clarified that Respondents should make an additional polling place available on campus, rather than closing or relocating an existing polling place. However, less than 18 hours before the election, the polling place has not been picked, and many voters in the three election districts accordingly do not know where to vote.

### **Conclusion**

47. The decision below was plainly wrong on its merits. But what's more, it was also a plainly improvident exercise of discretion—a conclusion borne out by the fact that it has now, the day before the

election, become all but impossible to comply with. Rather than leaving the voters in these three election districts wondering where they should vote tomorrow, the lower court's decision should be stayed.

Dated: Beacon, New York  
November 7, 2022

/s/ David D. Jensen

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At an I.A.S. part of the Supreme Court of the State of New York, held in and for the County of Dutchess, at 10 Market Street Poughkeepsie, NY 12601 on the 7th day of November 2022

PRESENT: HON. CHRISTIE L. D'ALESSIO, J.S.C.

LEAGUE OF WOMEN VOTERS OF THE MID-HUDSON REGION, TANEISHA MEANS, and MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS, ERIK J. HAIGHT in his capacity as Commissioner of the Dutchess County Board of Elections, and HANNAH BLACK in the capacity as Commissioner of the Dutchess County Board of Elections,

Respondents-Defendants

Index No. 2022-53491

**ORDER TO SHOW  
CAUSE WITH  
EMERGENCY INTERIM  
RELIEF**

**COURT ORDER - DECLINE TO SIGN:**

*The Court declines to sign this proposed Order to Show Cause (NYSCEF Doc. 30-34) insofar as this Court's decision, order and judgment dated 11/3/2022 (NYSCEF Doc. 21) explicitly granted Petitioner's requested relief in its entirety - specifically, the designation of a voting polling site on the Vassar College campus. There was no request for replacement or removal of any other polling site. There are no remaining requests for relief in the Petition or otherwise presented for this Court to adjudicate.*

Dated: 11/7/2022  
Poughkeepsie, N.Y.

SO ORDERED:

(10:40 am)

*[Signature]*  
HON. D'ALESSIO, J.S.C.

Upon the reading and filing of the Affirmation of Richard A. Medina, dated November 5, 2022, and the exhibits attached thereto; and upon all the papers and proceedings herein, it is hereby:

ORDERED, that the Respondents named above show cause before this Court at Part \_\_\_\_\_ to be held at the Courthouse located at 10 Market Street Poughkeepsie, NY 12601, on the \_\_\_\_\_ of November 2022 at \_\_\_\_\_ of that day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein clarifying that the Court's November 3, 2022 Order, which granted the Verified Petition in its

entirety, requires Respondents to designate an additional polling place at the location offered by Vassar College for voters registered to vote at a residential address on the Vassar campus and to publicize the new on-campus polling place to such voters.

IT IS FURTHER ORDERED that, pending the hearing and determination of this motion, (a) the Aula at Ely Hall shall be designated as an additional polling place to be available on the day of the general election on November 8, 2022 for all voters registered at a residential address on the Vassar College campus; (b) Respondents shall direct Board of Elections staff to begin making the necessary preparations for such additional polling place, and (c) Respondents shall publicize the new on-campus polling place to voters who are registered to vote at a residential address on Vassar College's campus. Sufficient reason appearing therefore,

IT IS FURTHER ORDERED that, pursuant to CPLR 308(5) and given the impracticability of personal service on all Respondents under CPLR 308(1), (2), and (4), electronic service of a copy of this Order to Show Cause, together with the papers upon which it is granted, upon Respondents-Defendants by email to their counsel of record and to the official government email addresses of the Board of Elections' two Commissioners, or by personal service upon a person of suitable age and discretion at the office of the Board of Elections on or before \_\_\_\_\_, 2022, at \_\_\_\_ shall be deemed good and sufficient service thereof.

IT IS FURTHER ORDERED that any requirement that the affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits shall be filed with the Clerk of the Part on the return date, and that because of the impracticability of personal service, pursuant to CPLR 308(5), substituted service need

not be preceded by due diligence attempt(s) at personal delivery upon Respondent-Defendant, and for the same reason, the ten day completion of service provision is not in effect.

ENTER:

\_\_\_\_\_  
J.S.C.

Dated: \_\_\_\_\_, New York  
November \_\_\_\_, 2022

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*Supreme Court of the State of New York*  
*Appellate Division: Second Department*

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APPELLATE DIVISION DOCKET NO. 2022-\_\_\_\_\_

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LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

*Petitioners-Plaintiffs,*

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT, in his capacity as Commissioner of  
the Dutchess County Board of Elections, and  
HANNAH BLACK, in her capacity as Commissioner of  
the Dutchess County Board of Elections,

*Respondents-Defendants.*

Dutchess County Index No. 2022-53491

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**APPENDIX**

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs,

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections,

Respondents-Defendants.

Index No. \_\_\_\_\_

**VERIFIED PETITION**

Petitioners respectfully allege, upon information and belief, as follows:

1. This is a hybrid special proceeding under CPLR Article 78 and declaratory judgment action under CPLR § 3001, seeking the designation of a polling location on the campus of Vassar College, which must have such a polling location under Election Law § 4-104 [5-a] (the “College Polling Place Law”). That provision provides: “Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections.”

2. The Dutchess County Board of Elections has failed to comply with this clear statute, refusing to designate an on-campus polling location for the November 8, 2022 general election on the Vassar College campus or at a nearby location recommended by the college. Vassar College has made available several sites that would be suitable for this purpose, but the Board of Elections has unreasonably and unlawfully refused to comply with the clear requirements of the

law. The nearest early voting sites to the Vassar College campus each require an hour's walk to reach and return, and are not accessible by public transportation from Vassar College. The refusal of the Board to designate an on-campus polling location for the November 8 general election not only violates New York law, but further abridges the voting rights of voters who reside on the Vassar College campus, including but not limited students, faculty, staff, and their families.

3. Petitioner League of Women Voters of the Mid-Hudson Valley (the "League") is a non-profit, non-partisan organization dedicated to promoting the informed and active participation of citizens in government. As part of its mission to empower citizens and strengthen public participation in democracy, the League works to increase voter turnout and encourages its members and the people of New York to exercise their right to vote as guaranteed by the Constitutions of the State of New York and of the United States. The League is a membership organization and its members include people who are registered to vote at residential addresses on the Vassar College campus, including Kirsten Menking and Lydia Murdoch.

4. Petitioner Taneisha Means is a Professor at Vassar and a registered voter in Dutchess County. Taneisha Means resides on the campus at Vassar College with her family. Taneisha Means is registered to vote at her residential address on campus. Taneisha Means has not yet voted in the November 8, 2022 general election.

5. Magdalena Sharff is a student at Vassar and a registered voter in Dutchess County. Magdalena Sharff resides on campus at Vassar College. Magdalena Sharff is registered to vote at her residential address on campus. Magdalena Sharff has not yet voted in the November 8, 2022 general election.

6. Respondent Dutchess County Board of Elections is the local board of elections for Dutchess County, responsible for administering voting sites in the County. *See* N.Y. Elec. Law § 4-104.

7. Election Law § 4-104 [5-a] provides: “Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections.”

8. The current text of Election Law § 4-104 [5-a] was adopted in Chapter 55 of the Laws of 2022, signed into law by the Governor on April 9, 2022.

9. Part O of Chapter 55 of the Laws of 2022, provide the effective date for Election Law § 4-104 [5-a]. Section 3 of Part O of the Laws of 2022 stated: “This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the deadline for boards of elections to designate polling places pursuant to this act shall be extended to August 1, 2022[.]” Section 4-104 [5-a] thus became effective on July 8, 2022 with the deadline to designate polling places on college campuses just over three weeks later.

10. Vassar College is an independent, coeducational, residential liberal arts college, located in Poughkeepsie, New York.

11. There are approximately 2,500 students enrolled at Vassar College.

12. Approximately 98% of Vassar students live on campus in residential housing or on-campus apartments. Many members of the Vassar faculty and administration also reside on campus.

13. According to publicly available voter registration records for Dutchess County, there are over 1,000 voters who are registered to vote at residential addresses on the campus of Vassar College.

14. There are two early voting sites in Poughkeepsie. Walking from the Vassar campus to either early voting site would be approximately a one-hour round trip. Neither site is available by public transportation from Vassar College.

15. There are three election districts that include voters with residential addresses on the Vassar College campus. One election district includes over 350 active registered voters with residential addresses on the Vassar College campus and those voters are assigned to a polling place at the United Methodist Church located at 2381 New Hackensack Rd, which is a 2.4 mile round-trip from campus and is not accessible by public transportation. Two election districts are assigned to a polling place at the Dutchess County Water and Wastewater Authority that is approximately a one-mile round trip walk. That polling place serves over 750 active registered voters with a residential address on the Vassar College campus.

16. The Dutchess County Board of Elections did not designate a polling place on the Vassar College campus prior to August 1, 2022.

17. In August 2022, Wesley Dixon, special assistant to the president of Vassar College, sent an email to the Dutchess County Board of Elections in which he requested a polling site for voters at Vassar College and provided a location on campus that could be used as a polling place. *See* Affidavit of Wesley Dixon (“Dixon Affidavit”), attached to the Affirmation of Richard A. Medina as Exhibit 3.

18. Dixon proposed that the on-campus polling place be located in the Villard Room, which is in the Main Building on campus. Dixon Affidavit ¶ 6. The college also suggested several other potential on-campus locations for a polling place.

19. The *Poughkeepsie Journal* has reported that Respondent Commissioner Erik Haight has resisted the attempts of Vassar College officials, which attempts were supported by Commissioner Hannah Black, to designate a polling location for Vassar College voters. *See Saba Ali, As Vassar seeks voting site under new law, Dutchess Board of Elections argues, Poughkeepsie Journal* (Oct. 19, 2022), <https://www.poughkeepsiejournal.com/story/news/politics/elections/2022/10/19/vassar-voting-site-delayed-dutchess-board-of-elections/69563348007/> (attached to the Affirmation of Richard A. Medina as Exhibit 1). The reporting in the *Poughkeepsie Journal* Article is confirmed by the Affidavit of Hannah Black (attached to the Affirmation of Richard A. Medina as Exhibit 2).

20. On October 25, 2022, a coalition of non-profits and student organizations sent a letter to, *inter alia*, the Commissioners of the Dutchess County Board of Elections (the “Demand Letter”) (attached to the Affirmation of Richard A. Medina as Exhibit 4). The letter identifies erroneous advice given by the Dutchess County Attorney’s office to the Board of Elections. In particular, the County Attorney’s office told the Board of Elections the wrong effective date for the College Polling Place Law and failed to inform the Board of Elections of the correct deadline to designate a polling place. The letter demanded County leadership insist that Commissioner Haight either (a) agree to a suitable polling location selected by Vassar College or (b) demonstrate at a public hearing that another location either on campus or nearby would be more suitable, by the end of the week, *i.e.*, Friday, October 29, 2022. Demand Letter at 6.

21. To date, the Dutchess County Board of Elections has not designated a poll site on the Vassar College campus.

22. The Dutchess County Board of Elections could easily designate and implement the use of an election day polling place on the Vassar College campus for the November 8, 2022 general election if ordered to do so before November 4, 2022. That includes assigning all voters who are registered to vote at a residential address on the Vassar College campus to the on-campus poll site. As explained in Commissioner Black's Affidavit, the last possible time that the Board of Elections could implement an on-campus poll site at Vassar College for the November 8, 2022 general election is the morning of November 4, 2022.

23. The preparations required for the Dutchess County Board of Elections to provide for a polling place on the Vassar College campus are minimal. The Dutchess County Board of Elections would need to program three electronic poll books for a polling place on the campus for those election districts and program two voting machines to reflect the proper ballot styles for those election districts. The Dutchess County Board of Elections could continue to maintain the polling places off-campus to continue to serve the off-campus voters assigned to those poll sites to ensure minimal disruption.

24. The Dutchess County Board of Elections has in the past designated Election Day polling locations within five days of Election Day pursuant to stipulated orders. *See Bard Coll. v. Dutchess Cnty. Bd. of Elections*, 198 A.D.3d 1014, 1017-18 (2d Dep't 2021) ("The Board most recently designated both the Campus Center and the Church as simultaneous polling locations for District 5 in accordance with a stipulated order of the Supreme Court dated October 30, 2020.")

25. Petitioners submit this Petition in support of their application for relief pursuant to CPLR § 6301, and declaratory judgment pursuant to CPLR § 3001 together with such other and further relief as this Honorable Court may deem just and proper.

**Venue**

26. Petitioners are registered voters who reside in Dutchess County and organizations whose members include registered voters who reside in Dutchess County. Respondents are the Dutchess County Board of Elections and one of its commissioners (in his official capacity), with an office located at 112 Delafield Street, Poughkeepsie, New York 12601.

**Undertaking Pursuant to CPLR § 6312**

27. Petitioners are prepared to satisfy any undertaking obligation the court may impose when granting the TRO. However, Petitioners submit to the court that the nature of this action deems an undertaking unnecessary.

**AS AND FOR FIRST CAUSE OF ACTION**  
**PETITION FOR WRIT OF MANDAMUS AGAINST RESPONDENTS**

**Failure to Fulfill Statutory Duties Under N.Y. Elec. Law § 4-104 [5-a]**

28. Petitioners reallege and reincorporate by reference all prior paragraphs of this Verified Petition as though fully set forth herein.

29. A writ of mandamus is available where a government “body or officer failed to perform a duty enjoined upon it by law.” CPLR § 7803(1). It has long been established that mandamus lies in an action to compel election commissioners to perform ministerial acts. *E.g. Matter of Mansfield v. Epstein*, 5 N.Y.2d 70, 73 (1958).

30. Respondents have failed to perform a duty enjoined upon them by Election Law § 4-104 [5-a].

31. Election Law § 4-104 [5-a] provides: “Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections.”

32. The Dutchess County Board Elections has failed to provide a polling place on the Vassar College campus to serve the registered voters whose residential addresses are on the Vassar College campus.

**AS AND FOR SECOND CAUSE OF ACTION**  
**REQUEST FOR TEMPORARY RESTRAINING ORDER (TRO) PURSUANT TO CPLR**  
**§ 6301**  
**Request for Temporary Restraining Order**

33. Under CPLR Article 63, a preliminary injunction may be granted when Petitioners demonstrate:

1. a likelihood of ultimate success on the merits;
2. the prospect of irreparable injury if the provisional relief is withheld; and
3. a balance of equities tipping in the moving party’s favor.

*See Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988). Petitioners meet this standard.

34. CPLR § 6301 states that “A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.”

35. Petitioners are likely to succeed on the merits. Election Law § 4-104 [5-a] clearly requires that Vassar College have a polling place on campus: “the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the



college or university and agreed to by the board of elections.” Respondents have not satisfied their mandatory obligation to provide a polling place on the Vassar College campus.

36. The prospect of irreparable injury is severe. The “predictable effect of government action,” i.e., failing to provide student voters access to an on-campus polling site as required by state law, is that some voters will be deterred from voting altogether. *Dep’t of Com. V. New York*, 139 S. Ct. 2551, 2566 (2019). Petitioners are merely a few of the Vassar College voters who risk irreparable harm in the form of disenfranchisement if they are unable to have access to a convenient polling place for Election Day voting. Courts routinely find disenfranchisement to constitute irreparable harm. *See Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (noting that student applicants “would certainly suffer irreparable harm if their right to vote were impinged upon”).

37. A balance of equities also tips in the Petitioners’ favor. New Yorkers’ interest in exercising their right to vote is substantial. “The right of suffrage is one of the most valuable and sacred rights which the Constitution has conferred upon the citizen of the state.” *People ex rel. Stapleton v. Bell*, 119 N.Y. 175, 178 (1889). It “shall be given the highest respect, especially by our courts, and shall not be compromised, or allowed to be diminished.” *Held v. Hall*, 190 Misc.2d 444, 459 (Sup. Ct. Westchester Co. 2002) (internal citations omitted) (noting where a preliminary injunction involves the disenfranchisement of voters, “the equities might weigh” in favor of upholding the right to vote). While there is a meaningful burden in failing to provide access to a convenient election day polling place, there is a barely a cognizable administrative burden in setting up a single election day polling place on the Vassar College campus. Indeed, half of the Dutchess County Board of Elections as well as Vassar College have already conceded that relief

is appropriate—and as set out in the affidavit of Commissioner Black filed concurrently herewith, the measures proposed here would place little additional cost on the Dutchess County Board of Elections or the College.

**AS AND FOR THIRD CAUSE OF ACTION**  
**DECLARATORY JUDGMENT PURSUANT TO CPLR § 3001**

38. Petitioners reiterate the facts and arguments set forth above and move this court for a declaratory judgment pursuant to CPLR § 3001 declaring Respondents have violated their obligations under Election Law § 4-104 [5-a].

39. No prior application has been made for the relief requested herein.

WHEREFORE, it is respectfully requested that the court issue an Order as follows:

- (i) Pursuant to CPLR § 3001, declaring Respondents have violated their obligations under Election Law § 4-104 [5-a] to provide a polling place on the campus of Vassar College, which has over 1,000 voters who are registered to vote at residential addresses located on the Vassar College campus.
- (ii) Pursuant to CPLR Article 78, Election Law § 4-104 [5-a], and CPLR § 6301, compelling Respondents: (a) to designate and operate a polling place to be used on the day of the general election on November 8, 2022 on the campus of Vassar College; (b) to assign all voters registered at a residential address on the Vassar College campus to that on-campus polling place and (c) to publicize the new on-campus polling place and assignments to those voters who are assigned to the Vassar College on-campus polling place.

DATED: November 1, 2022

Respectfully Submitted,

**DREYER BOYAJIAN LLP**

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*\*Pro hac vice application forthcoming*

ATTORNEY VERIFICATION

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

RICHARD A. MEDINA, an attorney duly admitted to practice in the Courts of the State of New York, states:

I am an attorney at ELIAS LAW GROUP LLP, the attorneys for the Petitioners herein. I have read the foregoing PETITION and know the contents thereof; the same is true to my own knowledge, except as to those matters therein alleged to be on information and belief and, that as to those matters, I believe them to be true.

The reason this verification is made by me and not by the Petitioners is that the Petitioners are presently outside the county in which I maintain my office.

The grounds of my belief as to all matters not stated upon my own knowledge are information, books, records, data and correspondence contained in deponent's file and conversations had with the Petitioners herein, as well as the affidavits filed concurrently herewith.

I affirm that the foregoing statements are true under the penalty of perjury.

Dated: November 1, 2022



Richard A. Medina

Sworn to before me this  
 1st day of November, 2022



Notary Public or Commissioner of Deeds



This remote notarial act involved the use of communication technology.

At a \_\_\_\_\_ part of the Supreme Court of the State of New York, held in and for the County of Dutchess, at 10 Market Street Poughkeepsie, NY 12601 on the \_\_\_\_\_ day of November 2022

PRESENT:

\_\_\_\_\_  
J.S.C.

LEAGUE OF WOMEN VOTERS OF THE MID-HUDSON REGION, TANEISHA MEANS, and MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS, and ERIK J. HAIGHT in his capacity as Commissioner of the Dutchess County Board of Elections,

Respondents-Defendants

Index No. \_\_\_\_\_

**ORDER TO SHOW**  
**CAUSE**

Upon the reading and filing of the Affirmation of Richard A. Medina, dated November 1, 2022, the annexed Verified Petition, duly verified on November 1, 2022; the Affidavits and Affirmations submitted herewith; and upon all the papers and proceedings herein, it is hereby:

ORDERED, that the Respondents named above show cause before this Court at Part \_\_\_\_\_ to be held at the Courthouse located at 10 Market Street Poughkeepsie, NY 12601, on the \_\_\_\_\_ of November 2022 at \_\_\_\_\_ of that day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein:

- (i) Pursuant to CPLR § 3001, declaring Respondents have violated their obligations under Election Law § 4-104 [5-a] to provide a polling place on the campus of Vassar College, which has over 1,000 voters who are registered to vote at residential addresses located on the Vassar College campus.
- (ii) Pursuant to CPLR Article 78, Election Law § 4-104 [5-a], and CPLR § 6301, compelling Respondents: (a) to designate and operate a polling place to be used on the day of the general election on November 8, 2022 on the campus of Vassar College; (b) to assign all voters registered at a residential address on the Vassar College campus to that on-campus polling place and (c) to publicize the new on-campus polling place and assignments to those voters who are assigned to the Vassar College on-campus polling place.

IT IS FURTHER ORDERED, that pursuant to Article 78 of the CPLR, Election Law § 4-104 [5-a] and CPLR § 6301, Respondents-Defendants are temporarily restrained and ordered, pending the hearing and determination of the Verified Petition: (a) to designate and operate a polling place to be used on the day of the general election on November 8, 2022 on the campus of Vassar College; (b) to assign all voters registered at a residential address on the Vassar College campus to that on-campus polling place and (c) to publicize the new on-campus polling place and assignments to those voters who are assigned to the Vassar College on-campus polling place.

IT IS FURTHER ORDERED that service of a copy of this Order to Show Cause and Verified Petition, together with the papers upon which it is granted, upon Respondents-Defendants by email to the official government email addresses of the Board of Elections'

two Commissioners, or by personal service upon a person of suitable age and discretion at the office of the Board of Elections, shall be deemed good and sufficient service thereof.

IT IS FURTHER ORDERED that any requirement that the affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits shall be filed with the Clerk of the Part on the return date, and that any requirement that substituted service be preceded by due diligence attempt(s) at personal delivery upon Respondent-Defendant be and is hereby waived, and that the ten day completion of service provision be and is hereby waived by this Order.

E N T E R:

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J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections,

Respondents-Defendants.

Index No. \_\_\_\_\_

**AFFIRMATION OF**  
**RICHARD A. MEDINA IN**  
**SUPPORT OF VERIFIED**  
**PETITION & ORDER TO**  
**SHOW CAUSE**

Richard Alexander Medina, an attorney admitted to practice law before the Courts of the State of New York, and not a party to the within action, affirms the following to be true under the penalties of perjury under CPLR § 2106:

1. I am an attorney for the Petitioners-Plaintiffs (“Petitioners”) in this proceeding, and as such I am fully familiar with the facts and circumstances contained herein. I make this Affirmation because the within Order to Show Cause should be deemed an emergency application.

2. The within application should be entertained forthwith, pursuant to CPLR Article 78 as an application for an order compelling Respondents to establish a polling place and/or pursuant to CPLR § 6301 as an application for a Temporary Restraining Order (TRO) requiring Respondents to designate a polling place on the Vassar College campus for the day of the November 8, 2022 general election.

3. Respondents have violated Election Law § 4-104 [5-a] (the “College Polling Place Law”), which provides: “Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property,



the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections.”

4. As more fully explained in the Verified Petition, upon information and belief, Respondents are aware that there are over 1,000 voters registered to vote in the State of New York at residential addresses located on the Vassar College campus. Notwithstanding that fact, Respondents have failed to designate and provide for a polling place on the Vassar College campus as required by the College Polling Place Law.

5. The failure of Respondents to designate a polling place on the Vassar College campus was publicized in a newspaper article in the Poughkeepsie Journal on October 19, 2022 (the “Poughkeepsie Journal Article”). A true and correct copy of the Poughkeepsie Journal Article is attached hereto as Exhibit 1. The Poughkeepsie Journal Article reported that Respondent Commissioner Erik Haight has resisted the attempts of Vassar College officials, which attempts were supported by Commissioner Hannah Black, to designate a polling location for Vassar College voters. The reporting in the Poughkeepsie Journal Article is confirmed by the Affidavit of Hannah Black, attached hereto as Exhibit 2 (the “Black Affidavit”) and the Affidavit of Wesley Dixon, attached hereto as Exhibit 3 (the “Dixon Affidavit”).

6. On October 25, 2022, a coalition of non-profits and student organizations sent a letter to, *inter alia*, the Commissioners of the Dutchess County Board of Elections (the “Demand Letter”). A true and correct copy of the Demand Letter, along with attached exhibits, is attached hereto as Exhibit 4. The Demand Letter identifies erroneous advice given by the Dutchess County Attorney’s office to the Board of Elections. In particular, the County Attorney’s office told the Board of Elections the wrong effective date for the College Polling Place Law and failed to inform

the Board of Elections of the correct deadline to designate a polling place.<sup>1</sup> The letter demanded County leadership insist that Commissioner Haight either (a) agree to a suitable polling location selected by Vassar College or (b) demonstrate at a public hearing that another location either on campus or nearby would be more suitable, by the end of the week, *i.e.*, Friday, October 29, 2022. Demand Letter at 6.

7. In an attempt to allow Respondents to comply with the law without the expense of public and judicial resources required by litigation, Petitioners-Plaintiffs gave Respondents until October 29, as provided in the letter, to designate a polling place on the Vassar College campus before bringing this Petition. However, as of the date of this Affirmation, the Board of Elections had still not designated a polling place on the Vassar College campus in accordance with Election Law § 4-104 [5-a]. This Petition is therefore timely. Respondents were allowed a full and fair opportunity to comply with the requirements of the College Polling Place Law and have failed to do so.

8. A writ of mandamus under Article 78 lies where a government “body or officer failed to perform a duty enjoined upon it by law.” CPLR § 7803. Petitioners must establish “‘a clear legal right to the relief demanded’ by demonstrating the ‘existence of a corresponding nondiscretionary duty’ on the part of the” relevant body. *Waite v. Town of Champion*, 106 N.E.3d 1167, 1171 (N.Y. 2018) (quoting *Scherbyn v. Wayne-Finger Lakes Bd. of Co-op. Educ. Servs.*, 573 N.E.2d 562 (N.Y. 1991)); *see also George F. Johnson Mem’l Libr. v. Springer*, 783 N.Y.S.2d 138, 139 (3d Dep’t 2004) (granting petition for mandamus under Article 78 because government official did not have “any discretion to refuse” to perform relevant duty); *League of Women Voters of N.Y. v. N.Y. State Bd. of Elec.*, No. 535511, 2022 WL 2070888, at \*2 (3d Dep’t June 9, 2022)

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<sup>1</sup> Specifically, the County Attorney wrongly told the Board of Elections that the College Polling Place Law would not take effect until 2024. Demand Letter at 4.

(indicating that petitioner could demonstrate “clear legal right to the relief demanded” and “corresponding nondiscretionary duty on the part of respondent” with “an express judicial order invalidating the [state] assembly map” (cleaned up)). “[T]o the extent that [petitioners] can establish that defendants are not satisfying nondiscretionary obligations to perform certain functions, they are entitled to orders directing defendants to discharge those duties.” *Klostermann v. Cuomo*, 463 N.E.2d 588, 596 (N.Y. 1984). It has long been established that mandamus lies in an action to compel election commissioners to perform ministerial acts. *E.g., Matter of Mansfield v. Epstein*, 5 N.Y.2d 70, 73 (1958).

9. Section 4-104 of the Election Law is written in mandatory terms. In Section 4-104, the legislature commands: “Every board of elections shall . . . designate the polling places in each election district.” N.Y. Elec. Law § 4-104 [1] (emphasis added). And § 4-104 [5-a] commands: “Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections.” (emphasis added).

10. “The use of the verb ‘shall’ throughout the pertinent provisions illustrates the mandatory nature of the duties contained therein.” *Nat. Res. Def. Council, Inc. v. N.Y.C. Dep’t of Sanitation*, 83 N.Y.2d 215, 220 (1994). And an action may be brought under Article 78 to “compel acts that officials are duty-bound to perform” by such mandatory statutory language. *Id.* at 221.

11. Respondents therefore *must* designate a polling place for individuals registered to vote on Vassar’s campus that is either (1) “on such contiguous property” (i.e., on campus), or (2)

“at a nearby location recommended by the college or university and agreed to by the board of elections.” N.Y. Elec. Law § 4-104 [5-a].

12. Petitioners seek emergency interim relief in the form of a preliminary injunction and temporary restraining order because time is of the essence. Under Section 6301 of the CPLR, “[a] preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual.” A temporary restraining order may be granted “where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.” *Id.* To obtain such preliminary relief, “a movant must establish (1) a probability of success on the merits, (2) a danger of irreparable injury in the absence of an injunction, and (3) a balance of the equities in the movant’s favor.” *Herczl v. Feinsilver*, 153 A.D.3d 1338, 1338 (2d Dep’t 2017).

13. Here, Petitioners’ right to relief on the merits is clear: Section 4-104 in unambiguous terms requires that a polling place be located on or near Vassar’s campus. Unless this Court intervenes, Respondents are poised to ignore that mandatory requirement. Petitioners therefore suffer an unacceptable risk of immediate and irreparable injury. If this Court does not act immediately, there will not be enough time for the Board of Elections to make the necessary arrangements to establish a polling place for residents of Vassar’s campus as required by law. *See* Black Affidavit ¶¶ 11-13.

14. For similar reasons, the balance of equities also tips in Petitioners’ favor. Respondents cannot credibly claim an interest in continuing to ignore clear provisions of the Election Law. And Vassar College students and faculty, particularly those who lack access to

automobiles, will face substantial barriers to voting without the on-campus (or near-campus) voting location guaranteed to them by statute. Undoubtedly, some will be disenfranchised altogether.

15. Because time is of the essence, Petitioners also request leave to effect service of a copy of the annexed Order to Show Cause, together with a copy of the papers upon which it is granted, upon Respondent as indicated in the accompanying Order to Show Cause: by email to the official government email addresses of the Board's two commissioners, including that of Respondent Haight, or by personal service upon a person of suitable age and discretion at the office of the Board of Elections.

16. In time-sensitive matters related to the administration of elections under the Election Law, courts routinely authorize alternative and expedited methods of service in accordance with the Election Law, the CPLR, and controlling case law.

17. I have made a good faith effort to contact Respondents. Specifically, I have emailed copies of these papers to both Commissioners of the Board of Elections, including Respondent Haight, at the email addresses published on the website of the Dutchess County Board of Elections. *See* Dutchess County Board of Elections, <https://elections.dutchessny.gov/> (last accessed October 31, 2022). Given the timeframe at issue, attempting to contact Respondents by mail would be futile.

18. Petitioners have no adequate remedy at law.

19. No prior application for the relief sought herein has been made to this or any other Court.

WHEREFORE, it is respectfully requested that this Court entertain this emergency Order to Show Cause, and grant the relief sought herein.

Dated: November 1, 2022



Richard Alexander Medina  
Elias Law Group LLP  
10 G St NE, Ste 600  
Washington, DC 20002  
Tel.: (202) 968-4490  
rmedina@elias.law

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# EXHIBIT 1

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# poughkeepsie journal

## ELECTIONS

# As Vassar seeks voting site under new law, Dutchess Board of Elections argues



**Saba Ali**

Poughkeepsie Journal

Published 5:16 a.m. ET Oct. 19, 2022

New York State this year passed a law that allows colleges the option of having an on-campus polling site where students and residents can vote.

Though Vassar College has made that request, the Dutchess County Board of Elections has yet to designate a site, with the Republican and Democrat commissioners in disagreement on how to proceed three weeks before the general election.

The law states when a "contiguous property of a college or university" has 300 or more registrants, who are registered at that address, the polling place must be provided on the site or at a location "recommended by the college and agreed to by the board of elections."

Vassar has roughly 1,080 registered voters, according to the county Board of Elections database. In August, the college emailed the BOE requesting a polling site and providing a suitable location on campus.

"Vassar is committed to doing whatever it can to make voting as accessible as possible for our students and others in our surrounding community," stated Wesley Dixon, special assistant to the president of Vassar College.

**Election 2022:** Crime, abortion, economy: We asked NY voters what's on their minds as elections near

**Governors race:** Kathy Hochul using fundraising advantage to attack Lee Zeldin's abortion stance

**Special election:** Pat Ryan defeats Marc Molinaro in 19th Congressional special election

While the college has not taken legal action to force a site to be created, students and voting rights organizations are trying to rally support. It's not clear what the state can do to enforce



the law before the November election.

"We are trying to get the word out that this is wrong. Our role is to raise awareness on the campus," said William Sorge, a junior at Vassar and the president of the campus' Democracy Matters group.

The state Board of Elections did not respond to the Journal's questions about what happens such situations and how the state can enforce its law.

The dispute comes in the wake of Bard, in recent years, winning the right to host a Red Hook polling site, following roughly a quarter-century of arguing and legal action with the BOE.

## What the commissioners say

For Vassar to get a polling site, both the Republican and Democrat commissioners of the BOE need to agree on the designation. Emails between the commissioners obtained by the Journal show both sides at a standstill as to how to approach the site's creation. What complicates the matter is that the campus is split among three election districts.

Republican Elections Commissioner Erik Haight wouldn't comment on if he supports the idea of allowing Vassar to host a polling site. In an email, Haight stated he is "open to a proposal" from his Democrat counterpart, but it's not clear what he is asking for in a proposal.

Meanwhile, Democrat Elections Commissioner Hannah Black said she has already suggested moving forward with having one polling site at Vassar programmed to include all districts, and keeping the existing off-campus poll locations open, as well. She said the BOE has never required a proposal to designate a polling site. She had also suggested holding a public hearing to discuss the matter to allow for transparency.

"It's premature to hold a public meeting when the mechanics for a Vassar campus would violate other areas of the election law. I'm open to a proposal for us to review," Haight said in a email sent to Black on Sept. 15.

"Stating there needs to be a proposal is just an excuse to drag this process out. I made the suggestion that we need to meet and have a larger discussion that includes Commissioner Haight's ideas because it's not only up to one commissioner," Black told the Journal.

Dutchess County's attorney, Christian Cullen, would not say whether the BOE would be in violation of state law if it does not come to a decision.

In April, Cullen emailed the county's BOE stating the provision would not go into effect until 2024, which Black refuted, saying the effective date was 90 days after the state budget passed. In another email to the BOE commissioners, he provided the law, highlighting the part that requires the commissioners to come to an agreement. The county would not say why Cullen was brought into the discussion regarding the polling site location.

Previously, Haight had fought to keep Bard from hosting a polling site. A court ultimately forced the BOE to designate the college as a site about a week before the 2020 election after a series of lawsuits and appeals.

Bard filed a complaint earlier this year after it said Haight shorted resources to its polling site. The college recently announced the site will be fully staffed with the required number of polling machines in November. It will be the only polling site for Red Hook's fifth district, after the BOE closed the site it previously maintained at St. John's Episcopal Church, which operated concurrently with the college the last two years.

## Voting at Vassar

The proposed Vassar site would be located in the Villard Room, which is in the Main Building on campus, according to a letter Dixon sent to the BOE. It's a large space with wood floors and sofas for students to lounge. The college also suggested other locations such as the Aula, Walker Field House and Gordon Commons.

Students were on a call last week with professors and attorneys, said Sorge, though what steps can be taken in time for election were not clear.

Bard has also offered their help, having litigated so that students would have easy access to voting. Yael Bromberg, who works as special counsel and strategic advisor to The Andrew Goodman Foundation, which assisted Bard, said she is providing students with support. The League of Women Voters of the Mid-Hudson Region has also been involved.

"We are working on a coalition and sharing information and knowledge across student voters in the county, and offering advice, including legal strategies, due to our past experiences," said Jonathan Becker, Bard's executive vice president.

Since Vassar is split between three voting districts, knowing where to vote and how to get there is sometimes challenging for students. While two of the district polling sites are in walking distance, one is not and requires students to coordinate transportation.

The deadline to designate a polling site was Aug. 1, though it is still possible for the BOE to decide on one and execute the logistics. It is unclear when Vassar first reached out to the BOE for a location designation, though the correspondences obtained by the Journal shows the request coming in after the deadline had passed.

"Vassar has numerous locations on campus that could be considered and evaluated as viable polling locations," Dixon said in a letter sent Oct. 5, inviting the elections commissioners to the campus to assess the locations.

Vassar would not respond to whether it would go as far as to file legal action against the BOE.

In 2018, former Democrat Commissioner Marco Caviglia, tried unsuccessfully to have the polling place relocated from Arthur S. May Elementary School on Dutchess Turnpike to Vassar College.

*Saba Ali: Sali1@poughkeepsiejournal.com: 845-451-4518: @MsSabaAli.*

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# EXHIBIT 2

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections,

Respondents-Defendants

Index No. \_\_\_\_\_

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

**AFFIDAVIT OF HANNAH BLACK**

I, Hannah Black, being duly sworn, say:

1. I am over 18 years old and a citizen of the United States.
2. I am the Democratic Elections Commissioner for the Dutchess County Board of Elections. As an elections commissioner, it is my responsibility to ensure that eligible voters in Dutchess County have access to the franchise guaranteed by the constitutions and laws of New York State and of the United States. As part of my job, I stay abreast of changes to the New York State Election Law to ensure that the Dutchess County Board of Elections is fulfilling its responsibilities to the voters.
3. Part of my job entails designating polling locations for election day voting.
4. I am aware that as of July 8, 2022, Election Law § 4-104 [5-a] requires Boards of Elections, including the Dutchess County Board of Elections, to designate a polling place on a

college campus or a recommended nearby location “[w]henver a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property.”

5. I am familiar with the computerized list of voter registration records of Dutchess County voters. I work with those records routinely as part of my job.

6. Based on my review of those records, there are over 1,000 registered voters in Dutchess County who have a residential address on the Vassar College campus.

7. In August, the Dutchess County Board of Elections received an e-mail from Wesley Dixon, special assistant to the president of Vassar College, which requested a polling site on the Vassar College campus and provided a location on campus that could be used as a polling place. Vassar College’s primary proposal for an on-campus polling place is the Villard Room, which is in the Main Building on campus. Vassar also has proposed alternate sites on campus.

8. On October 5, 2022, the Dutchess County Board of Elections received a follow-up e-mail from Wesley Dixon with a letter attached. The letter was addressed to the Dutchess County Board of Elections Commissioners. The letter reads in pertinent part as follows:

“My name is Wesley Dixon and I serve at Vassar as the Special Assistant to the President and Secretary of the Board of Trustees. I am writing to follow up on an email I sent to Commissioner Black in August regarding Vassar College’s willingness to serve as a polling site. As I shared with Commissioner Black, Vassar has numerous locations on campus that could be considered and evaluated as viable polling locations. The location considered the most heretofore is the Villard Room, in Main Building. In addition to the Villard Room, there are several other locations on campus that we believe could serve as viable polling locations (e.g. the Aula, Walker Field House, and Gordon Commons). We are happy to welcome you to campus to assess these potential spaces and select one that will serve as the on-campus polling location. If you would like to come to campus and view these spaces with a member of team, please do let me know.”

A true and correct copy of Mr. Dixon’s letter is enclosed as Exhibit 1.

9. I have made repeated efforts to have a polling place designated on the Vassar campus. Commissioner Haight has not agreed to have a poll site on the Vassar College campus.

10. To date, the Dutchess County Board of Elections has not designated a polling place on the Vassar College campus, notwithstanding our obligation to do so under Election Law § 4-104[5-a].

11. The Dutchess County Board of Elections could designate and implement the use of an election day polling place on the Vassar College campus for the November 8, 2022 general election if ordered to do so prior to November 4, 2022. That includes assigning all voters who are registered to vote at a residential address on the Vassar College campus to the on-campus poll site. The last possible time that we can implement an on-campus poll site at Vassar College for the November 8, 2022 general election is the morning of November 4, 2022.

12. We would need to program three electronic poll books for a polling place on the campus for those election districts. We would also need to program two voting machines to reflect the proper ballot styles for those election districts. We could continue to maintain the polling places off-campus that currently serve both Vassar election districts and voters off campus as well to ensure minimal disruption.

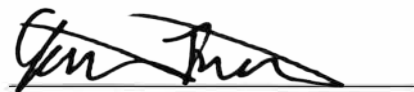
13. The Dutchess County Board of Elections has in the past designated Election Day polling locations within five days of Election Day pursuant to a stipulated order. *See Bard Coll. v Dutchess Cnty Bd. of Elections*, 198 A.D.3d 1014, 1017-18 (2d Dept 2021) (“The Board most recently designated both the Campus Center and the Church as simultaneous polling locations for District 5 in accordance with a stipulated order of the Supreme Court dated October 30, 2020.”).)



Hannah Black

Sworn to before me this

1st day of November, 2022

A handwritten signature in black ink, appearing to read "Jon Trattner", is written over a horizontal line.

This remote notarial act involved the use of communication technology.

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# Exhibit 1

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# VASSAR | OFFICE OF THE PRESIDENT

5 October 2022

Dear Dutchess County Board of Elections Commissioners,


My name is Wesley Dixon and I serve at Vassar as the Special Assistant to the President and Secretary of the Board of Trustees. I am writing to follow up on an email I sent to Commissioner Black in August regarding Vassar College's willingness to serve as a polling site.

As I shared with Commissioner Black, Vassar has numerous locations on campus that could be considered and evaluated as viable polling locations. The location considered the most heretofore is the Villard Room, in Main Building. In addition to the Villard Room, there are several other locations on campus that we believe could serve as viable polling locations (e.g. the Aula, Walker Field House, and Gordon Commons).

We are happy to welcome you to campus to assess these potential spaces and select one that will serve as the on-campus polling location. If you would like to come to campus and view these spaces with a member of team, please do let me know. I can be reached at [wdixon@vassar.edu](mailto:wdixon@vassar.edu) or (954) 655-2887.

Thanks,

Wesley Eugene Dixon



Special Assistant to the President and Secretary of the Board of Trustees



# EXHIBIT 3

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LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Index No. \_\_\_\_\_

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF  
ELECTIONS, and ERIK J. HAIGHT in his capacity as  
Commissioner of the Dutchess County Board of  
Elections,

Respondents-Defendants

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

### AFFIDAVIT OF WESLEY DIXON

I, Wesley Dixon, being duly sworn, say:

1. I am over 18 years old and a citizen of the United States.
2. I am the special assistant to the President of Vassar College.
3. As part of my job responsibilities, I have represented Vassar College in conversations with the Dutchess County Board of Elections to enable Vassar to host a polling place on campus to serve our students, faculty members, administration, and their families who are registered to vote at their on-campus residential address, consistent with the New York State Election Law.
4. Vassar is committed to doing whatever it can to make voting as accessible as possible for our students and others in our surrounding community.
5. My colleagues and I have identified several potential places on campus that could serve as a polling place on Election Day.

6. In August of this year, I sent a letter (sent via email) to the Dutchess County Board of Elections in which I requested an on-campus polling place for Vassar College. I offered several potential on-campus locations that could be used as a polling place on Election Day. One of those options was the Villard Room, which is in the Main Building on campus.

7. On October 5, 2022, I sent a follow-up e-mail to the Dutchess County Board of Elections re-stating Vassar College's request to have a polling place on campus as required by the Election Law. Again, I provided several suggestions for potential poll sites.

8. To date, the Dutchess County Board of Elections has not designated a polling place on the Vassar College campus.

9. Vassar College remains ready, willing, and able to designate a polling place on campus for the November 8, 2022 general election. If notified on or before November 4, 2022, Vassar College could make a location known as the Aula in Ely Hall available for use as a polling place on Election Day. Vassar College stands ready to work with the Dutchess County Board of Elections to ensure that registered voters on campus have access to the on-campus polling site required by law.



Wesley Dixon

Sworn to before me this

1 day of November, 2022



JONATHAN TRATTNER  
Notary Public - State of New York  
NO. 01TR6416407  
Qualified in Queens County  
My Commission Expires Apr 19, 2025

This remote notarial act involved the use of communication technology.

# EXHIBIT 4

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October 25, 2022

Marcus J. Molinaro,  
County Executive, Dutchess County  
Dutchess County Office Building  
22 Market Street, 6<sup>th</sup> Floor  
Poughkeepsie, New York 12601

*via electronic correspondence:* [countyexec@dutchessny.gov](mailto:countyexec@dutchessny.gov)

A. Gregg Pulver  
Chair, Dutchess County Legislature  
22 Market Street, 6<sup>th</sup> Floor  
Poughkeepsie NY 12601

*via electronic correspondence:* [gpulver@dutchessny.gov](mailto:gpulver@dutchessny.gov)

Dear Mr. Molinaro and Mr. Pulver:

We write on behalf of non-profit organizations and associated students and community members in Vassar College and Dutchess County – Democracy Matters, The League of Women Voters of the Mid-Hudson Region, Dutchess Student Voting Coalition, and The Andrew Goodman Foundation – collectively dedicated to democracy, good government, and protecting the franchise, including youth voting rights.

We are deeply concerned about the failure of the Dutchess County Board of Elections (BOE) to coordinate with Vassar College and reach an agreement to situate a polling place on the Vassar campus. Designed to stop practices that suppress student voting by making it difficult for college students to vote, newly enacted amendments to Election Law § 4-104 mandate the designation of a polling place on or nearby every college campus housing 300 or more registrants. The statutory deadline for the designation was August 1, 2022. Vassar qualifies for an on-campus polling place, but remains divided into three electoral districts with students struggling to access remote polling sites despite the fact that they comprise a geographically concentrated class. The BOE is in clear violation of the state election law.<sup>1</sup>

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<sup>1</sup> The text of the amendments is attached as Exhibit A.

We write to urge you to exert your leadership to cure this situation, and do so immediately. We note that Dutchess County taxpayers have already paid over \$100,000 in attorney fees related to the BOE's repeated, failed efforts to suppress student voting rights. The BOE must immediately take all the required steps to properly administer a lawful polling site before the coming election, just weeks away.

1. The Recalcitrance of Commissioner Haight

The law mandating the designation of a polling place on or near the college's campus, and setting the August 1 deadline for doing so, became effective in early July. After the law took effect, Vassar officials reached out to the Board of Elections in an effort to revive a previously made proposal to situate a polling place in the Vallard Room on the Vassar campus. (See Exhibit B, Aug. 8, 2022 Email Correspondence by Vassar College to BOE.)

Election Commissioner Hannah Black was receptive.

Election Commissioner Erik Haight was not.

Commissioner Haight declined to return Vassar's emails and text messages. He declined to acknowledge Vassar's proposal. And he declined to initiate any action that would lead to a designation such as arranging a visit to the campus and meeting with Vassar officials. (See Exhibit C, BOE Sept. 6, 2022 Correspondence; Exhibit D, BOE Sept. 15, 2022 Correspondences.)

When Commissioner Black sought to move the matter forward by scheduling a public hearing in mid-September – that is, over a month after the statutory deadline -- Commissioner Haight claimed, astonishingly, that a public hearing was “premature.” His justifications made no sense, and, worse, he seemed to be deliberately trying to delay the required designation beyond the coming election.

Haight simply asserted that “the mechanics for a Vassar campus would violate other areas of the election law.” He did not identify any of the “mechanics” or “other areas of the election law” to which he was referring; nor did he explain the purported violation. He also claimed to be “open to a proposal for us to review,” but, at the same time, he closed his eyes to Vassar's standing proposal. (*Id.*)

On October 5, 2022, the Vassar administration tried again, identifying four possible polling places on campus and urging the BOE Commissioners to visit the campus to assess them. Again, Commissioner Haight declined to act. He put the onus on Commissioner Black to formulate a proposal for his review and pointed to the fact that previously gerrymandered lines through the Vassar campus were an obstacle. (Exhibit E, Oct. 5, 2022 Correspondence by Vassar to BOE; Exhibit F, Oct. 6, 2022 BOE Response to Vassar.)

Whatever obstacle the lines through Vassar's campus pose, Commissioner Haight had since last April when the amendments to Election Law were signed into law to find a solution. He did nothing. He had since August following Vassar College's affirmative outreach to the BOE to designate an on-campus polling location. He again did nothing. He has not done his job.



More recently, Commissioner Black has proposed moving forward with a central polling site on Vassar College for the November 2022 election that offers voting access for the three existing districts, while keeping open the two existing off-campus polling locations.<sup>2</sup> **We write to endorse and advocate for this common-sense approach to election administration, in keeping with state statutory law and constitutional rights.**

Together, New York's Constitution and state Election Law not only guarantee and protect the right to vote, but also encourage the broadest possible voter participation. State and local boards of elections are tasked with making this vision a reality and, indeed, election officials' duties are taken so seriously that the dereliction of any duty by an election officer is a felony.<sup>3</sup>

Commissioner Haight's demonstrated lack of concern for the August 1 deadline to designate a Vassar polling place, and his utter lack of effort to facilitate the rights and electoral participation of Vassar voters, coupled with his well-documented years-long ongoing efforts to suppress the youth vote in Dutchess County, cannot be reconciled with this vision and promise of the "broadest possible voter participation."<sup>4</sup> Indeed, it is in part due to Commissioner Haight's past discriminatory actions that good governance groups proposed the approved amendments to the New York State Election Law to facilitate on-campus voting and forbid campus gerrymanders.<sup>5</sup>

## 2. The Erroneous Advice Provided by Chief Assistant County Attorney Christian Cullen

Unfortunately, the Board of Election's failure to meet the August 1 deadline for designating a polling place may also be partly attributed to erroneous legal advice regarding the amendments to Election Law Section 4-104 that Chief Assistant County Attorney Christian Cullen gave to the BOE Commissioners in April, June and August, 2022.

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<sup>2</sup> See Saba Ali, As Vassar seeks voting site under new law, Dutchess Board of Elections argues, Poughkeepsie Journal (Oct. 19, 2022), available at: [Vassar seeks voting site as Dutchess Board of Elections argues \(poughkeepsiejournal.com\)](https://www.poughkeepsiejournal.com/story/news/local/2022/10/19/vassar-seeks-voting-site-as-dutchess-board-of-elections-argues/6918144002/) (last accessed Oct. 20, 2022.)

<sup>3</sup> See State Constitution, Article 1, Section 1 ("No member of the State shall be disenfranchised, or deprived of any rights or privileges secured to any citizen thereof"); Election Law §§ 3-102 (14) (state board of elections shall have the power and duty "to encourage the broadest possible voter participation in elections"); 3-212 (4)(b)(1) (board of elections must provide annual report including "detailed description of existing programs to enhance voter registration" and work with college and universities to "implement voter education and registration programs to enhance electoral participation."); 17-106 ("Any election officer who... willfully neglects or refuses to perform any duty imposed on him by law... is guilty of a felony.")

<sup>4</sup> Id.

<sup>5</sup> Jonathan Becker, NY State can help overcome voter suppression of college students, WAMC Northeast Public Radio (Jan. 27, 2022), available at: <https://www.wamc.org/commentary-opinion/2022-01-27/ny-state-can-help-overcome-voter-suppression-of-college-students> (last accessed Oct. 20, 2022).

The amendments to the Election Law were set forth in Part O, sections 1 and 2 of a larger budget bill, NYS08005. Part O, section 3 provided that the amendments set forth in Part O sections 1 and 2 became effective “on the ninetieth day after [the budget bill] shall have become law, provided however, that the deadline for boards of elections to designate polling places pursuant to this act shall be extended to August 1, 2022.” (Exhibit A.) NYS08005 passed the Senate on April 9, 2022, and Governor Hochul signed it into law the same day.

Chief Assistant County Attorney Cullen purported to inform the Board of Elections Commissioners of the amendments to the Election Law in two emails he sent on April 15, 2022, with subject line “College polling places.” (Exhibit G, April 15, 2022 Correspondences by C. Cullen to BOE.) In these emails, Cullen made two substantial legal errors.

First, Cullen referred to and attached the wrong Senate bill. Cullen included S4658, an earlier version of the bill that was materially different from the bill that actually passed and was signed into law.

In the second email, Cullen told the commissioners the wrong effective date for the new amendments. In a bold and large font, he instructed:

**“This provision would take effect on January 1, 2024.”**

(Id., emphasis in original.)

Commissioner Black twice sought to correct Cullen. She told counsel that he was relying on a version of the bill that did not become law, and that he had provided the wrong effective date. She did so first in a pair of emails she sent to Cullen and Haight dated June 23, 2022 (to which neither Cullen nor Haight apparently responded), and then again in an email dated August 21, 2022, in which she asked Cullen to “respond accordingly.” (Id.; Exhibit H, Aug. 21, 2022 Correspondence by BOE to C. Cullen.)

Two days later, on August 23, 2022, Cullen sent the commissioners an “FYI” email with the subject “NY Election Law Section 4-104.” He advised: “NY Election Law Section 4-104 was revised effective July 8, 2022 to provide as follows: 5-a Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections” – with the last eight words (“and agreed to by the board of elections”) highlighted in yellow. (Exhibit I, Aug. 23, 2022 Correspondence by C. Cullen to BOE.) Cullen’s advice still fell short.

Cullen highlighted the phrase “and agreed to by the board of elections,” but, significantly, he did not explain the import of the highlight; he provided no advice or explanation as to the responsibilities of the commissioners in connection with the designation of an on-campus polling place; and, most egregiously, Cullen said nothing at all about the August 1, 2022 deadline for a college campus designation, a deadline that had already passed weeks before, although he was sure to emphasize a later effective date (albeit erroneously) in prior communications. (Cullen also attached a version of McKinney’s Election Law § 4-104, but this too did not include the August 1 deadline set forth in NYS08005, Part O Section 3.)

Without reference to the August 1 deadline, the highlighted portion standing alone seemed to signal that, so long as there was no agreement between Vassar and the commissioners, or no agreement between the commissioners, there was no requirement for a designation recommended by the college or university on “contiguous [campus] property or at a nearby location.” And Commissioner Haight seems to have gotten that message to shirk his statutory and constitutional duties. It is incumbent upon County Leadership to correct this error.

### The Time For Leadership Is Now

While the Chief Assistant County Attorney’s errors may have exacerbated the current problem, they are, of course, no excuse for continuing to delay any longer. Regardless of Cullen’s mistakes, there is no justification for Commissioner Haight’s continuing recalcitrance.<sup>6</sup> Corrective action must be taken immediately.

Much needs to be done before Election Day on November 8. A centrally accessible polling site must be designated on or near Vassar’s campus. Registered voters must receive notice of the polling place. Necessary equipment and staffing must be arranged.

We urge you, therefore, to use your good offices and leadership to demand cooperation of the Commissioners with each other and with Vassar College, so that an acceptable polling place can be agreed upon, and so that voting by the Vassar community is encouraged as it should be, and not suppressed.

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<sup>6</sup> As set forth in an August 15, 2022 letter to Enforcement Counsel of the New York State Board of Elections by Bard College President Leon Botstein; Erin Cannan, Bard College Vice President for Civic Engagement; and Jonathan Becker, Bard College Executive Vice President and Director of the Center for Civic Engagement, setting out violations of law in District 5 in connection with the conduct of Commissioner Haight:

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. 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 Justice of the Appellate Division explicitly chastised Commissioner Haight for making false representations to the court.

(Exhibit J, Aug. 15 letter by Bard College to New York State Board of Elections Enforcement Counsel, footnotes omitted, *also available*: [here](#).)

**Commissioner Haight serves at the pleasure of the county legislature. County leadership should insist that, by end of week, Haight either agree to a) a suitable polling location selected by Vassar College, or b) demonstrate at a public hearing that another location either on campus or nearby would encourage greater voting participation while taking into account the needs of protected communities such as students and disabled voters, as compared to the on-campus locations recommended by Vassar. If no suitable on-campus polling location is designated, other action may result to compel compliance with the law and to hold Commissioner Haight accountable for violating his duty.**

As it stands now, confusion reigns. With two different polling sites that change from year to year as students change their housing, a faraway inaccessible location that is unsafe to navigate by foot, and inadequate public transportation, students are discouraged rather than encouraged to vote.

The recent legislation, promulgated to end these kinds of impediments, is groundbreaking for New York State and the nation, and serves as an example for other states to take similar action. The eyes of voting advocacy groups all over the state and the country are watching to see how the new law is put into practice, particularly in Dutchess County which informed the change in state law due to decades of malfeasance.

Fifty-one years ago, the nation came together across partisan lines to ratify the Twenty-Sixth Amendment to lower the voting age to 18 and outlaw age discrimination in access to the ballot. The Amendment enjoyed nearly unanimous cross-partisan approval based on the premise that youth enfranchisement is critical for protecting democracy. We should be proud to improve voter accessibility in New York State, not embarrassed by the slow walking of the Board of Elections, and one of its two Commissioners in particular.



Yael Bromberg, Esq.  
BROMBERG LAW LLC  
Special Counsel & Strategic Advisor  
to the CEO/President,  
The Andrew Goodman Foundation



Jane Simkin Smith, Esq.  
Of Counsel

**cc:** Michael L. Johnson, Chief Enforcement Counsel, New York State Board of Elections,  
*via electronic correspondence:* [Michael.Johnson@elections.ny.gov](mailto:Michael.Johnson@elections.ny.gov)

Jessica Clarke, Bureau Chief, Civil Rights Bureau, Attorney General of the State of New York,  
*via electronic correspondence:* [jessica.clarke@ag.ny.gov](mailto:jessica.clarke@ag.ny.gov)

Commissioners Hannah Black and Erik J. Haight, Dutchess County Board of Elections,  
*via electronic correspondence:* [dutchesselections@dutchessny.gov](mailto:dutchesselections@dutchessny.gov)

William Truitt, Majority Leader, Dutchess County Legislature, *via electronic correspondence*: [wtruitt@dutchessny.gov](mailto:wtruitt@dutchessny.gov)

Yvette Valdes Smith, Minority Leader, Dutchess County Legislature, *via electronic correspondence*: [yvaldessmith@dutchessny.gov](mailto:yvaldessmith@dutchessny.gov)

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## Exhibit A

RETRIEVED FROM DEMOCRACYDOCKET.COM

Section 1. Section 4-104 of the election law is amended by adding a new subdivision 5-a to read as follows:

5-A. WHENEVER A CONTIGUOUS PROPERTY OF A COLLEGE OR UNIVERSITY CONTAINS THREE HUNDRED OR MORE REGISTRANTS WHO ARE REGISTERED TO VOTE AT ANY ADDRESS ON SUCH CONTIGUOUS PROPERTY, THE POLLING PLACE DESIGNATED FOR SUCH REGISTRANTS SHALL BE ON SUCH CONTIGUOUS PROPERTY OR AT A NEARBY LOCATION RECOMMENDED BY THE COLLEGE OR UNIVERSITY AND AGREED TO BY THE BOARD OF ELECTIONS.

§ 2. Paragraph a of subdivision 3 of section 4-100 of the election law, as amended by chapter 260 of the laws of 2021, is amended to read as follows:

a. Each election district shall be in compact form and may not be partly within and partly without a ward, town, city, a village which has five thousand or more inhabitants and is wholly within one town, THE CONTIGUOUS PROPERTY OF A COLLEGE OR UNIVERSITY WHICH CONTAINS THREE HUNDRED OR MORE REGISTRANTS WHO ARE REGISTERED TO VOTE AT ANY ADDRESS ON SUCH CONTIGUOUS PROPERTY, or a county legislative, assembly, senatorial or congressional district. Except as provided in paragraph b of this subdivision, election district boundaries, other than those boundaries which are coterminous with the boundaries of those political subdivisions AND COLLEGE OR UNIVERSITY PROPERTIES mentioned in this paragraph, must be streets, rivers, railroad lines or other permanent characteristics of the landscape which are clearly visible to any person without the need to use any technical or mechanical device. An election district shall contain not more than nine hundred fifty registrants (excluding registrants in inactive status) or, with the approval of the county board of elections, not more than two thousand registrants (excluding registrants in inactive status), but any election district may be divided for the convenience of the voters.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that the deadline for boards of elections to designate polling places pursuant to this act shall be extended to August 1, 2022; provided, further, that section two of this act shall take effect January 1, 2023.

## **Exhibit B**

RETRIEVED FROM DEMOCRACYDOCKET.COM



**From:** Black, Hannah hblack@dutchessny.gov  
**Subject:** FW: Vassar Polling Location  
**Date:** September 15, 2022 at 11:02 AM  
**To:** Jonathan Becker jbecker@bard.edu

HB

FOIL request correspondence below.

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)

**From:** Wesley Dixon <wdixon@vassar.edu>  
**Sent:** Monday, August 8, 2022 1:00 PM  
**To:** Black, Hannah <hblack@dutchessny.gov>  
**Subject:** Vassar Polling Location

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Dear Hannah,

I hope this email finds you well. I am writing to follow-up on our phone call last week. Vassar College would be interested in having a polling site on campus in November. Based on previous assessments, we would likely have voting take place on the 2nd Floor of Main Building in the Villard Room and/or adjoining parlors near the Villard Room.

Please let me know if you have any other questions and what the rest of the process would look like.

Thanks,

Wes

--

Wesley Eugene Dixon • Special Assistant to the President and Secretary of the Board of Trustees  
Vassar College • Box 1 • 124 Raymond Ave • Poughkeepsie, NY 12604  
phone: (954) 655-2887

**VASSAR COLLEGE**

## Exhibit C

RETRIEVED FROM DEMOCRACYDOCKET.COM

**From:** Black, Hannah hblack@dutchessny.gov  
**Subject:** RE: Confirmation  
**Date:** September 6, 2022 at 9:06 AM  
**To:** Jonathan Becker jbecker@bard.edu

HB

Hi Jonathan,

I can confirm that there has been no poll site designated at Vassar College as I have attempted to do without acknowledgement from Commissioner Haight.

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)

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**From:** Jonathan Becker <jbecker@bard.edu>  
**Sent:** Thursday, September 1, 2022 9:45 AM  
**To:** Black, Hannah <hblack@dutchessny.gov>  
**Subject:** Confirmation

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

I am writing to confirm that there has been no poll site assigned to Vassar College in spite of the August 1 deadline. Can you confirm that.

best  
Jonathan

\*\*\* Please set up appointments through [vpaa@bard.edu](mailto:vpaa@bard.edu)\*\*\*

**Bard**

**Jonathan Becker**

Executive Vice President and Vice President for Academic Affairs  
Director, Center for Civic Engagement  
Ward Manor Gate House  
PO Box 5000  
Annandale-on-Hudson NY, 12504  
Phone: 845-758-7378 Fax: 845-758-7185  
[jbecker@bard.edu](mailto:jbecker@bard.edu)  
[cce.bard.edu](http://cce.bard.edu)  
<http://www.facebook.com/Bard.Civic.Engagement>  
(preferred pronouns: he/him/his)



## Exhibit D

RETRIEVED FROM DEMOCRACYDOCKET.COM

HB

**From:** Black, Hannah hblack@dutchessny.gov  
**Subject:** FW: NY Election Law Section 4-104  
**Date:** September 15, 2022 at 10:59 AM  
**To:** Jonathan Becker jbecker@bard.edu

Good morning,

Here is part of the response to your FOIL request.

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)

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**From:** Haight, Erik <ehaight@dutchessny.gov>  
**Sent:** Thursday, September 15, 2022 10:56 AM  
**To:** Black, Hannah <hblack@dutchessny.gov>  
**Cc:** Cullen, Christian <ccullen@dutchessny.gov>; Reverri, Erin <ereverri@dutchessny.gov>  
**Subject:** RE: NY Election Law Section 4-104

It's premature to hold a public meeting when the mechanics for a Vassar campus would violate other areas of the election law. I'm open to a proposal for us to review. Thanks,

Erik J. Haight  
Republican Commissioner of Elections  
Dutchess County Board of Elections  
O (845) 486-2475  
D (845) 486-2482  
M (845) 392-2881  
Fax: (845) 486-2485  
[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)  
<http://www.elections.dutchessny.gov/>

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**From:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
**Sent:** Thursday, September 15, 2022 10:51 AM  
**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>  
**Cc:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>  
**Subject:** RE: NY Election Law Section 4-104

Good morning Commissioner,

I would like to propose holding a public meeting to designate a poll site on Vassar College campus on September 22<sup>nd</sup> at 11am. If this does not work for you, please propose some dates and times that do.

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)

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**From:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>

**Sent:** Tuesday, August 23, 2022 4:11 PM

**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>; Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Subject:** NY Election Law Section 4-104

FYI—

NY Election Law Section 4-104 was revised effective July 8, 2022 to provide as follows:

5-a. Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections.

**Effective: July 8, 2022**

McKinney's **Election** Law § 4-104

§ 4-104. Registration and polling places; designation of

1. Every board of **elections** shall, in consultation with each city, town and village, designate the polling places in each **election** district in which the meetings for the registration of voters, and for any **election** may be held. The board of trustees of each village in which general and special village **elections** conducted by the board of **elections** are held at a time other than the time of a

village **elections** conducted by the board of **elections** are held at a time other than the time of a general **election** shall submit such a list of polling places for such village **elections** to the board of **elections**. A polling place may be located in a building owned by a religious organization or used by it as a place of worship. If such a building is designated as a polling place, it shall not be required to be open for voter registration on any Saturday if this is contrary to the religious beliefs of the religious organization. In such a situation, the board of **elections** shall designate an alternate location to be used for voter registration. Such polling places must be designated by March fifteenth, of each year, and shall be effective for one year thereafter. Such a list required to be submitted by a village board of trustees must be submitted at least four months before each general village **election** and shall be effective until four months before the subsequent general village **election**. No place in which a business licensed to sell alcoholic beverages for on premises consumption is conducted on any day of local registration or of voting shall be so designated. If, within the discretion of the board of **elections** a particular polling place so designated is subsequently found to be unsuitable or unsafe or should circumstances arise that make a designated polling place unsuitable or unsafe, then the board of **elections** is empowered to select an alternative meeting place. In the city of New York, the board of **elections** shall designate such polling places and alternate registration places if the polling place cannot be used for voter registration on Saturdays.

1-a. Each polling place shall be accessible to citizens with disabilities and comply with the accessibility guidelines of the Americans with Disabilities Act of 1990. The state board of **elections** shall publish and distribute to each board of **elections** with the power to designate poll sites, a concise, non-technical guide describing standards for poll site accessibility, including a polling site access survey instrument, in accordance with the Americans with Disabilities Act accessibility guidelines (ADAAG) and methods to comply with such standards. Such guide and procedures shall be developed in consultation with persons, groups or entities with knowledge about public access as the state board of **elections** shall determine appropriate.

1-b. The county board of **elections** shall cause an access survey to be conducted for every polling site to verify substantial compliance with the accessibility standards cited in this section. Completed surveys shall be submitted to the state board of **elections** and kept on file as a public record by each county. Each polling site shall be evaluated prior to its designation or upon changes to the facility. A site designated as a polling place prior to the effective date of this subdivision shall be evaluated within two years of the effective date of this subdivision by an individual qualified to determine whether or not such site meets the existing state and federal accessibility standards. 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.

1-c. The state board of **elections** shall promulgate any rules and regulations necessary to implement the provisions of this section.

2. If the board of **elections**, after designating a polling place, and after sending written notice of such polling place to each registered voter, designates an alternative polling place, it must, at least five days before the next **election** or day for registration, send by mail a written notice to each registered voter notifying him of the changed location of such polling place. If such notice is not possible the board of **elections** must provide for an alternative form of notice to be given to voters at the location of the previous polling place.

3. A building exempt from taxation shall be used whenever possible as a polling place if it is situated in the same or a contiguous **election** district, and may contain as many distinctly separate polling places as public convenience may require. The expense, if any, incidental to its use, shall be paid like the expense of other places of registration and voting. If a board or body

empowered to designate polling places chooses a public school building for such purpose, the board or agency which controls such building must make available a room or rooms in such building which are suitable for registration and voting and which are as close as possible to a convenient entrance to such building and must make available any such room or rooms which the board or body designating such building determines are accessible to physically disabled voters as provided in subdivision one-a. Notwithstanding the provisions of any general, special or local law, if a board or body empowered to designate polling places chooses a publicly owned or leased building, other than a public school building, for such purposes the board or body which controls such building must make available a room or rooms in such building which are suitable for registration and voting and which are as close as possible to a convenient entrance to such building, and must make available any such room or rooms which the board or body designating such building determines are accessible to physically disabled voters unless, not later than thirty days after notice of its designation as a polling place, the board or body controlling such building, files a written request for a cancellation of such designation with the board or body empowered to designate polling places on such form as shall be provided by the board or body making such designation. The board or body empowered to so designate shall, within twenty days after such request is filed, determine whether the use of such building as a polling place would unreasonably interfere with the usual activities conducted in such building and upon such determination, may cancel such designation.

3-a. Any person or entity which controls a building for which a tax exemption, tax abatement, subsidy, grant or loan for construction, renovation, rehabilitation or operation has been provided by any agency of the state or any political subdivision thereof on or after the effective date of this subdivision shall agree to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters and are as close as possible to a convenient entrance to such building. Notwithstanding any other provision of law, any agency of the state or any political subdivision thereof may deny a tax exemption, tax abatement, subsidy, grant or loan for construction, renovation, rehabilitation or operation to a building which is otherwise eligible for such exemption, abatement, subsidy, grant or loan if the person or entity which controls such building refuses to agree to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters and are as close as possible to a convenient entrance to such building. The provisions of this subdivision shall not apply to buildings used solely for residential purposes which contain twenty-five dwelling units or less.

3-b. Any person or entity conducting any program, activity or service for which a loan, grant, contract, subsidy or reimbursement has been provided by any agency of the state or a political subdivision thereof on or after the effective date of this subdivision shall make available for registration and voting purposes the room or rooms under the control of such person or entity in a building in which such program, activity or service is conducted which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters and are as close as possible to a convenient entrance to such building. Any such person, organization or entity shall agree to facilitate the use of such room or rooms, to the maximum extent possible, by making efforts to obtain the permission and cooperation of any person or entity which controls the building in which such room or rooms are located. Notwithstanding any other provision of law, any agency of the state or any political subdivision thereof may deny a loan, grant, contract, subsidy or reimbursement to any such person or entity otherwise eligible for such loan, grant, contract, subsidy or reimbursement.



person or entity otherwise eligible for such loan, grant, contract, subsidy or reimbursement unless such person or entity agrees to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters as provided in subdivision one-a of this section and are as close as possible to a convenient entrance to such building and agrees to facilitate the use of such room or rooms, to the maximum extent possible, by making efforts to obtain the permission and cooperation of any person or entity which controls the building in which such room or rooms are located.

3-c. Notwithstanding the provisions of subdivisions three-a and three-b of this section, no person, board, agency, body or entity shall be required to make available for registration or voting by persons other than the residents of such building, any room or rooms in a building, other than a publicly owned building, which contains correctional, health, mental hygiene, day care, drug or addiction treatment, or emergency services or other services for the public safety, or in a building used for religious services.

3-d. Notwithstanding any inconsistent provision of [section 3-506](#) or [section 4-134](#) of this chapter, and in the absence of a specific written agreement to the contrary, if the board or body empowered to designate polling places has authorized the use of a portable ramp, or ramp and platform, at a polling site for purposes of compliance with subdivision one-a of this section, the person or entity in control of a building or portion thereof in which such polling site is designated shall install, remove, store, and safeguard each such ramp, or ramp and platform, at such times and dates as may be required by the board or body empowered to designate polling places.

4. Where an **election** district is so situated or the only facilities available therein are such that public convenience would be served by establishing a polling place outside such district, the board or body empowered by this chapter to establish **election** districts may designate a polling place in a contiguous district.

4-a. Notwithstanding any conflicting provisions of this section, the common council of the city of Little Falls may adopt a resolution determining that there is no building within an **election** district within such city available and suitable for the meetings for the registration of voters or for any **election**, or that for reasons of efficiency or economy it is desirable to consolidate the polling places for two or more, or all, districts, in such city, in one place, regardless of whether or not such district adjoins the district to which such meeting or polling place is moved, and there may be as many distinctly separate **election** districts lawfully located in the same building as public convenience may require. Such a resolution shall be subject to the approval of the county board of **elections**. Every such building chosen shall meet all other requirements of this section and all federal requirements for accessibility for the elderly and the disabled.

5. (a) Whenever the number of voters eligible to vote in an **election** in any **election** district is less than one hundred, the polling place designated for such district may be the polling place of any other district which could properly be designated as the polling place of the first mentioned district pursuant to the provisions of this chapter, except that the polling place designated for any such district may be the polling place of any other district in such city or town provided that the distance from such first mentioned district to the polling place for such other district is not unreasonable pursuant to rules or regulations prescribed by the state board of **elections** and provided that the total number of persons eligible to vote in such other district in such **election**, including the persons eligible to vote in such first mentioned districts, is not more than five hundred. The inspectors of **election** and poll clerks, if any, of such other **election** district shall also act in all respects as the **election** officers for such first mentioned districts and no other inspectors shall be appointed to serve in or for such first mentioned districts. A separate poll ledger or computer generated registration list, separate voting machine or ballots and separate

canvass of results shall be provided for such first mentioned districts, except that if the candidates and ballot proposals to be voted on by the voters of such districts are the same, the **election** districts shall be combined and shall constitute a single **election** district for that **election**. However, if the first mentioned district contains fewer than ten voters eligible to vote in such **election**, there shall be no limitation on the total number of persons eligible to vote in such combined district. If the polling place for any **election** district is moved for any **election**, pursuant to the provisions of this subdivision, the board of **elections** shall, not later than ten nor more than fifteen days before such **election**, mail, by first class mail, to each voter eligible to vote in such **election** district at such **election**, a notice setting forth the location of the polling place for such **election** and specifying that such location is for such **election** only.

(b) Whenever the total number of voters eligible to vote in any primary or special **election**, in any two **election** districts whose polling places are regularly located in the same building, is less than four hundred, the board of **elections** may assign the inspectors of **election** of the **election** district which contains the greater number of such voters, to act also, in all respects, as the **election** officers of the other such **election** district and no other **election** officers shall be appointed to serve in or for such other **election** district at such primary or special **election**. A separate poll ledger or computer generated registration list, separate voting machine or ballots and separate canvass of results shall be provided for each such **election** district.

(c) Whenever all the candidates to be voted upon at a primary **election**, except a primary **election** in the city of New York, or all the candidates and ballot proposals to be voted upon at a special **election**, or at a school board **election** conducted by the board of **elections**, or at a general **election** in the city of New York in a year in which there is no **election** for electors of president and vice-president of the United States or governor of the state or mayor of such city, by the voters of any two or more **election** districts whose polling places are regularly located in the same building are identical, the board of **elections** may combine such **election** districts for that **election**, provided that the total number of voters eligible to vote in any such combined **election** district does not exceed one thousand two hundred in a primary **election** or does not exceed two thousand in a special **election** or a general **election** in the city of New York.

(d) Notwithstanding any other provision of this section, polling places designated for any one such **election** district that will be utilizing any voting machine or system certified for use in New York state pursuant to chapter one hundred eighty-one of the laws of two thousand five, may be the polling place of any other contiguous district or districts, provided the voting system used in such polling place produces separate and distinct vote totals for each **election** district voting in such polling place on such voting machine or system.

5-a. Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of **elections**.

6. Each polling place designated, whenever practicable, shall be situated on the main or ground floor of the premises selected. It shall be of sufficient area to admit and comfortably accommodate voters in numbers consistent with the deployment of voting systems and privacy booths, pursuant to [9 NYCRR 6210.19](#). Such deployment of voting systems, **election** workers and **election** resources shall be in a sufficient number to accommodate the numbers of voters eligible to vote in such polling place.

6-a. Each polling place designated, whenever practicable, shall be situated directly on a public transportation route.

7. No polling place shall be located on premises owned or leased by a person holding public office

or who is a candidate for public office at a primary or general **election**.

8. Whenever the board of **elections** shall determine that there is no building within an **election** district available and suitable for the meetings for the registration of voters or for any **election**, or that for reasons of efficiency or economy it is desirable to consolidate such meetings of one or more districts in one place, such board may designate a building for such purpose in an adjoining district in the same village, city or town and there may be as many distinctly separate meetings or polling places lawfully located in the same building as public convenience may require. Wherever possible, public schools, fire houses, municipal buildings or other buildings exempt from taxation shall be designated for such meetings and polling places. Such a determination shall be made only after notice to the chairpersons of the county committees of all political parties and reasonable opportunity for them to be heard.

9. Renumbered as 8 by [L.2016, c. 43, § 1](#).

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**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

Cell Phone: (845) 240-5704

Email: [ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)

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

## **Exhibit E**

RETRIEVED FROM DEMOCRACYDOCKET.COM



5 October 2022

Dear Dutchess County Board of Elections Commissioners,

My name is Wesley Dixon and I serve at Vassar as the Special Assistant to the President and Secretary of the Board of Trustees. I am writing to follow up on an email I sent to Commissioner Black in August regarding Vassar College's willingness to serve as a polling site.

As I shared with Commissioner Black, Vassar has numerous locations on campus that could be considered and evaluated as viable polling locations. The location considered the most heretofore is the Villard Room, in Main Building. In addition to the Villard Room, there are several other locations on campus that we believe could serve as viable polling locations (e.g. the Aula, Walker Field House, and Gordon Commons).

We are happy to welcome you to campus to assess these potential spaces and select one that will serve as the on-campus polling location. If you would like to come to campus and view these spaces with a member of team, please do let me know. I can be reached at [wdixon@vassar.edu](mailto:wdixon@vassar.edu) or (954) 655-2887.

Thanks,

Wesley Eugene Dixon

Special Assistant to the President and Secretary of the Board of Trustees



## **Exhibit F**

RETRIEVED FROM DEMOCRACYDOCKET.COM

**From:** Haight, Erik ehaight@dutchessny.gov  
**Subject:** RE: Polling Location at Vassar College  
**Date:** October 6, 2022 at 12:38 PM  
**To:** Wesley Dixon wdixon@vassar.edu, Black, Hannah hblack@dutchessny.gov

EH

Wes,

Thank you for the letter. I'm waiting on a proposal from Commissioner Black to review that is consistent with all applicable statutes in the Election Law. I believe she is attempting to put something together but there are challenges relating to the 3 county legislative districts and 2 Town of Poughkeepsie Ward lines that currently go through the campus. Thank you,

Erik J. Haight  
Republican Commissioner of Elections  
Dutchess County Board of Elections  
O (845) 486-2475  
D (845) 486-2482  
M (845) 392-2881  
Fax: (845) 486-2485  
[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)  
<https://www.elections.dutchessny.gov/>

---

**From:** Wesley Dixon <wdixon@vassar.edu>  
**Sent:** Wednesday, October 5, 2022 6:01 PM  
**To:** Black, Hannah <hblack@dutchessny.gov>; Haight, Erik <ehaight@dutchessny.gov>  
**Subject:** Polling Location at Vassar College

*ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.*

Dear Commissioners Black and Haight,

I hope this email finds you well. Please see the attached letter from me on behalf of Vassar College. Please let me know if you have any questions.

Have a great evening,

Wes

--

Wesley Eugene Dixon • Special Assistant to the President and Secretary of the Board of Trustees  
Vassar College • Box 1 • 124 Raymond Ave • Poughkeepsie, NY 12604  
phone: (954) 655-2887

**VASSAR COLLEGE**

## Exhibit G

RETRIEVED FROM DEMOCRACYDOCKET.COM



HB

**From:** Black, Hannah hblack@dutchessny.gov  
**Subject:** FW: College polling places  
**Date:** September 15, 2022 at 11:00 AM  
**To:** Jonathan Becker jbecker@bard.edu

Please see the below emails as part of your FOIL request.

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)

---

**From:** Black, Hannah  
**Sent:** Thursday, June 23, 2022 11:08 AM  
**To:** Cullen, Christian <ccullen@dutchessny.gov>; Erik Haight <erikhaight@yahoo.com>  
**Cc:** Reverri, Erin <ereverri@dutchessny.gov>; Nash, Diane <dnash@dutchessny.gov>  
**Subject:** RE: College polling places

Please see Part O: <https://www.nysenate.gov/legislation/bills/2021/S8005>

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)

---

**From:** Black, Hannah  
**Sent:** Thursday, June 23, 2022 9:07 AM  
**To:** Cullen, Christian <ccullen@dutchessny.gov>; Erik Haight <erikhaight@yahoo.com>  
**Cc:** Reverri, Erin <ereverri@dutchessny.gov>; Nash, Diane <dnash@dutchessny.gov>  
**Subject:** RE: College polling places

Good Morning,

According to the Governor's budget that was passed, the effective date as to when this takes places is 90 days after the budget passing. That said, the effective date is July 8<sup>th</sup>, 2022.

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)

---

**From:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>  
**Sent:** Friday, April 15, 2022 5:03 PM  
**To:** Erik Haight <[erikhaight@yahoo.com](mailto:erikhaight@yahoo.com)>; Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
**Cc:** Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>; Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>  
**Subject:** RE: College polling places

Elections College Campus Polling Locations

In instances where a college/ university campus has 300 or more students registered to vote, then the polling place designated within that election district will be located at the college/university or at an alternative location approved by the college/university. **This provision would take effect January 1, 2024.**

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**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  
Cell Phone: (845) 240-5704  
Email: [ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)

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

---

**From:** Cullen, Christian

**Sent:** Friday, April 15, 2022 4:53 PM

**To:** Erik Haight <[erikhaight@yahoo.com](mailto:erikhaight@yahoo.com)>; Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Cc:** Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>; Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>

**Subject:** College polling places

S4658 (ACTIVE) - SUMMARY

---

Provides that whenever a contiguous property of a college or university contains three hundred or more registrants, the polling place designated for such election district shall be on such contiguous property or at a location approved by the college or university.

S4658 (ACTIVE) - SPONSOR MEMO

---

BILL NUMBER: S4658

SPONSOR: PARKER

TITLE OF BILL:

An act to amend the election law, in relation to the boundaries of election districts and the designation of polling places

PURPOSE:

This bill would provide that election districts shall not be drawn in such a way that they are partly on and partly off a college or university campus or other contiguous college or university property with 300 or more registered voters, excluding inactive voters. It would also require that the poll sites for election districts serving such concentrations of college or university voters shall be on the campus or college or university property, or, at a site approved by the college or university.

## SUMMARY OF PROVISIONS:

•

VIEW MORE (59 LINES)

S4658 (ACTIVE) - BILL TEXT [DOWNLOAD PDF](#)

## S T A T E O F N E W Y O R K

4658

2021-2022 Regular Sessions

I N S E N A T E

February 8, 2021

Introduced by Sens. PARKER, BRESLIN, GAUGHRAN,  
GIANARIS, LIU, MAY,

PERSAUD, STAVISKY -- read twice and ordered printed, and  
when printed

to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to the  
boundaries of

election districts and the designation of polling places

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE  
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 4-104 of the election law is amended  
by adding a  
new subdivision 5-a to read as follows:

5-A. WHENEVER A CONTIGUOUS PROPERTY OF A COLLEGE  
OR UNIVERSITY  
CONTAINS THREE HUNDRED OR MORE REGISTRANTS (EXCLUDING  
REGISTRANTS IN  
INACTIVE STATUS) WHO ARE REGISTERED TO VOTE AT AN  
ADDRESS ON SUCH  
CONTIGUOUS PROPERTY, THE POLLING PLACE DESIGNATED FOR SUCH  
REGISTRANTS  
SHALL BE ON SUCH CONTIGUOUS PROPERTY OR AT A LOCATION  
APPROVED BY THE  
COLLEGE OR UNIVERSITY

COLLEGE OR UNIVERSITY.

§ 2. Paragraph a of subdivision 3 of section 4-100 of the election law, as amended by chapter 659 of the laws of 1994, is amended to read as follows:

a. Each election district shall be in compact form and may not be partly within and partly without a ward, town, city, a village which has five thousand or more inhabitants and is wholly within one town, THE CONTIGUOUS PROPERTY OF A COLLEGE OR UNIVERSITY WHICH CONTAINS THREE HUNDRED OR MORE REGISTRANTS (EXCLUDING REGISTRANTS IN INACTIVE STATUS) WHO ARE REGISTERED TO VOTE AT AN ADDRESS ON SUCH CONTIGUOUS PROPERTY, or a county legislative, assembly, senatorial or congressional district. Except as provided in paragraph b of this subdivision, election district boundaries, other than those boundaries which are coterminous with the boundaries of those political subdivisions AND COLLEGE OR UNIVERSITY PROPERTIES mentioned in this paragraph, must be streets, rivers, rail-road lines or other permanent characteristics of the landscape which are clearly visible to any person without the need to use any technical or

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets

[ ] is old law to be omitted.

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**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

Cell Phone: (845) 240-5704

Email: [ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)

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

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## Exhibit H

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HB

**From:** Black, Hannah hblack@dutchessny.gov  
**Subject:** FW: College polling places  
**Date:** September 15, 2022 at 11:01 AM  
**To:** Jonathan Becker jbecker@bard.edu

---

More for the FOIL request.

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)

---

**From:** Black, Hannah  
**Sent:** Sunday, August 21, 2022 4:48 PM  
**To:** Cullen, Christian <ccullen@dutchessny.gov>  
**Cc:** Haight, Erik <ehaight@dutchessny.gov>; Reverri, Erin <ereverri@dutchessny.gov>; Nash, Diane <dnash@dutchessny.gov>  
**Subject:** RE: College polling places

Good afternoon Mr. Cullen,

I am sure that you are aware that you looked up the wrong version of the bill, specifically you are referring to S4658/A454A which did not become law.

I am referring to the law which was signed by the Governor, Chapter 55 of the Laws of 2022 (previously S8005-C/A9005-C). That law required us to set these poll sites no later than August 1, 2022. Please respond appropriately.

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)

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**From:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>



**Sent:** Friday, April 15, 2022 5:03 PM

**To:** Erik Haight <[erikhaight@yahoo.com](mailto:erikhaight@yahoo.com)>; Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Cc:** Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>; Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>

**Subject:** RE: College polling places

## Elections College Campus Polling Locations

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**From:** Cullen, Christian

**Sent:** Friday, April 15, 2022 4:53 PM

**To:** Erik Haight <[erikhaight@yahoo.com](mailto:erikhaight@yahoo.com)>; Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Cc:** Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>; Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>

**Subject:** College polling places

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SUMMARY OF PROVISIONS:

- 

[VIEW MORE \(59 LINES\)](#)

S4658 (ACTIVE) - BILL TEXT [DOWNLOAD PDF](#)

---

S T A T E O F N E W Y O R K

---

4658

2021-2022 Regular Sessions

2021 2022 Regular Sessions

I N S E N A T E

February 8, 2021

Introduced by Sens. PARKER, BRESLIN, GAUGHRAN,  
GIANARIS, LIU, MAY,  
PERSAUD, STAVISKY -- read twice and ordered printed, and  
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to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to the  
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OR UNIVERSITY  
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INACTIVE STATUS) WHO ARE REGISTERED TO VOTE AT AN  
ADDRESS ON SUCH  
CONTIGUOUS PROPERTY, THE POLLING PLACE DESIGNATED FOR SUCH  
REGISTRANTS  
SHALL BE ON SUCH CONTIGUOUS PROPERTY OR AT A LOCATION  
APPROVED BY THE  
COLLEGE OR UNIVERSITY.

§ 2. Paragraph a of subdivision 3 of section 4-100 of  
the election  
law, as amended by chapter 659 of the laws of 1994, is  
amended to read  
as follows:

a. Each election district shall be in compact form  
and may not be  
partly within and partly without a ward, town, city, a  
village which has  
five thousand or more inhabitants and is wholly within one  
town, THE  
CONTIGUOUS PROPERTY OF A COLLEGE OR UNIVERSITY WHICH  
CONTAINS THREE

HUNDRED OR MORE REGISTRANTS (EXCLUDING REGISTRANTS IN INACTIVE STATUS) WHO ARE REGISTERED TO VOTE AT AN ADDRESS ON SUCH CONTIGUOUS PROPERTY, or a county legislative, assembly, senatorial or congressional district. Except as provided in paragraph b of this subdivision, election district boundaries, other than those boundaries which are coterminous with the boundaries of those political subdivisions AND COLLEGE OR UNIVERSITY PROPERTIES mentioned in this paragraph, must be streets, rivers, rail-road lines or other permanent characteristics of the landscape which are clearly visible to any person without the need to use any technical or

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets

[ ] is old law to be omitted.

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**Christian Robert Cullen**  
**Chief Assistant County Attorney**  
**Dutchess County Department of Law**  
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Poughkeepsie, NY 12601  
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## **Exhibit I**

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HB

**From:** Black, Hannah hblack@dutchessny.gov  
**Subject:** FW: NY Election Law Section 4-104  
**Date:** September 15, 2022 at 10:59 AM  
**To:** Jonathan Becker jbecker@bard.edu

Good morning,

Here is part of the response to your FOIL request.

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)

---

**From:** Haight, Erik <ehaight@dutchessny.gov>  
**Sent:** Thursday, September 15, 2022 10:56 AM  
**To:** Black, Hannah <hblack@dutchessny.gov>  
**Cc:** Cullen, Christian <ccullen@dutchessny.gov>; Reverri, Erin <ereverri@dutchessny.gov>  
**Subject:** RE: NY Election Law Section 4-104

It's premature to hold a public meeting when the mechanics for a Vassar campus would violate other areas of the election law. I'm open to a proposal for us to review. Thanks,

Erik J. Haight  
Republican Commissioner of Elections  
Dutchess County Board of Elections  
O (845) 486-2475  
D (845) 486-2482  
M (845) 392-2881  
Fax: (845) 486-2485  
[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)  
<http://www.elections.dutchessny.gov/>

---

**From:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
**Sent:** Thursday, September 15, 2022 10:51 AM  
**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>  
**Cc:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>  
**Subject:** RE: NY Election Law Section 4-104

Good morning Commissioner,

I would like to propose holding a public meeting to designate a poll site on Vassar College campus on September 22<sup>nd</sup> at 11am. If this does not work for you, please propose some dates and times that do.

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)

---

**From:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>

**Sent:** Tuesday, August 23, 2022 4:11 PM

**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>; Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Subject:** NY Election Law Section 4-104

FYI—

NY Election Law Section 4-104 was revised effective July 8, 2022 to provide as follows:

5-a. Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections.

**Effective: July 8, 2022**

McKinney's **Election** Law § 4-104

§ 4-104. Registration and polling places; designation of

1. Every board of **elections** shall, in consultation with each city, town and village, designate the polling places in each **election** district in which the meetings for the registration of voters, and for any **election** may be held. The board of trustees of each village in which general and special village **elections** conducted by the board of **elections** are held at a time other than the time of a

village **elections** conducted by the board of **elections** are held at a time other than the time of a general **election** shall submit such a list of polling places for such village **elections** to the board of **elections**. A polling place may be located in a building owned by a religious organization or used by it as a place of worship. If such a building is designated as a polling place, it shall not be required to be open for voter registration on any Saturday if this is contrary to the religious beliefs of the religious organization. In such a situation, the board of **elections** shall designate an alternate location to be used for voter registration. Such polling places must be designated by March fifteenth, of each year, and shall be effective for one year thereafter. Such a list required to be submitted by a village board of trustees must be submitted at least four months before each general village **election** and shall be effective until four months before the subsequent general village **election**. No place in which a business licensed to sell alcoholic beverages for on premises consumption is conducted on any day of local registration or of voting shall be so designated. If, within the discretion of the board of **elections** a particular polling place so designated is subsequently found to be unsuitable or unsafe or should circumstances arise that make a designated polling place unsuitable or unsafe, then the board of **elections** is empowered to select an alternative meeting place. In the city of New York, the board of **elections** shall designate such polling places and alternate registration places if the polling place cannot be used for voter registration on Saturdays.

1-a. Each polling place shall be accessible to citizens with disabilities and comply with the accessibility guidelines of the Americans with Disabilities Act of 1990. The state board of **elections** shall publish and distribute to each board of **elections** with the power to designate poll sites, a concise, non-technical guide describing standards for poll site accessibility, including a polling site access survey instrument, in accordance with the Americans with Disabilities Act accessibility guidelines (ADAAG) and methods to comply with such standards. Such guide and procedures shall be developed in consultation with persons, groups or entities with knowledge about public access as the state board of **elections** shall determine appropriate.

1-b. The county board of **elections** shall cause an access survey to be conducted for every polling site to verify substantial compliance with the accessibility standards cited in this section. Completed surveys shall be submitted to the state board of **elections** and kept on file as a public record by each county. Each polling site shall be evaluated prior to its designation or upon changes to the facility. A site designated as a polling place prior to the effective date of this subdivision shall be evaluated within two years of the effective date of this subdivision by an individual qualified to determine whether or not such site meets the existing state and federal accessibility standards. 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.

1-c. The state board of **elections** shall promulgate any rules and regulations necessary to implement the provisions of this section.

2. If the board of **elections**, after designating a polling place, and after sending written notice of such polling place to each registered voter, designates an alternative polling place, it must, at least five days before the next **election** or day for registration, send by mail a written notice to each registered voter notifying him of the changed location of such polling place. If such notice is not possible the board of **elections** must provide for an alternative form of notice to be given to voters at the location of the previous polling place.

3. A building exempt from taxation shall be used whenever possible as a polling place if it is situated in the same or a contiguous **election** district, and may contain as many distinctly separate polling places as public convenience may require. The expense, if any, incidental to its use, shall be paid like the expense of other places of registration and voting. If a board or body



empowered to designate polling places chooses a public school building for such purpose, the board or agency which controls such building must make available a room or rooms in such building which are suitable for registration and voting and which are as close as possible to a convenient entrance to such building and must make available any such room or rooms which the board or body designating such building determines are accessible to physically disabled voters as provided in subdivision one-a. Notwithstanding the provisions of any general, special or local law, if a board or body empowered to designate polling places chooses a publicly owned or leased building, other than a public school building, for such purposes the board or body which controls such building must make available a room or rooms in such building which are suitable for registration and voting and which are as close as possible to a convenient entrance to such building, and must make available any such room or rooms which the board or body designating such building determines are accessible to physically disabled voters unless, not later than thirty days after notice of its designation as a polling place, the board or body controlling such building, files a written request for a cancellation of such designation with the board or body empowered to designate polling places on such form as shall be provided by the board or body making such designation. The board or body empowered to so designate shall, within twenty days after such request is filed, determine whether the use of such building as a polling place would unreasonably interfere with the usual activities conducted in such building and upon such determination, may cancel such designation.

3-a. Any person or entity which controls a building for which a tax exemption, tax abatement, subsidy, grant or loan for construction, renovation, rehabilitation or operation has been provided by any agency of the state or any political subdivision thereof on or after the effective date of this subdivision shall agree to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters and are as close as possible to a convenient entrance to such building. Notwithstanding any other provision of law, any agency of the state or any political subdivision thereof may deny a tax exemption, tax abatement, subsidy, grant or loan for construction, renovation, rehabilitation or operation to a building which is otherwise eligible for such exemption, abatement, subsidy, grant or loan if the person or entity which controls such building refuses to agree to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters and are as close as possible to a convenient entrance to such building. The provisions of this subdivision shall not apply to buildings used solely for residential purposes which contain twenty-five dwelling units or less.

3-b. Any person or entity conducting any program, activity or service for which a loan, grant, contract, subsidy or reimbursement has been provided by any agency of the state or a political subdivision thereof on or after the effective date of this subdivision shall make available for registration and voting purposes the room or rooms under the control of such person or entity in a building in which such program, activity or service is conducted which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters and are as close as possible to a convenient entrance to such building. Any such person, organization or entity shall agree to facilitate the use of such room or rooms, to the maximum extent possible, by making efforts to obtain the permission and cooperation of any person or entity which controls the building in which such room or rooms are located. Notwithstanding any other provision of law, any agency of the state or any political subdivision thereof may deny a loan, grant, contract, subsidy or reimbursement to any such person or entity otherwise eligible for such loan, grant, contract, subsidy or reimbursement.

person or entity otherwise eligible for such loan, grant, contract, subsidy or reimbursement unless such person or entity agrees to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters as provided in subdivision one-a of this section and are as close as possible to a convenient entrance to such building and agrees to facilitate the use of such room or rooms, to the maximum extent possible, by making efforts to obtain the permission and cooperation of any person or entity which controls the building in which such room or rooms are located.

3-c. Notwithstanding the provisions of subdivisions three-a and three-b of this section, no person, board, agency, body or entity shall be required to make available for registration or voting by persons other than the residents of such building, any room or rooms in a building, other than a publicly owned building, which contains correctional, health, mental hygiene, day care, drug or addiction treatment, or emergency services or other services for the public safety, or in a building used for religious services.

3-d. Notwithstanding any inconsistent provision of [section 3-506](#) or [section 4-134](#) of this chapter, and in the absence of a specific written agreement to the contrary, if the board or body empowered to designate polling places has authorized the use of a portable ramp, or ramp and platform, at a polling site for purposes of compliance with subdivision one-a of this section, the person or entity in control of a building or portion thereof in which such polling site is designated shall install, remove, store, and safeguard each such ramp, or ramp and platform, at such times and dates as may be required by the board or body empowered to designate polling places.

4. Where an **election** district is so situated or the only facilities available therein are such that public convenience would be served by establishing a polling place outside such district, the board or body empowered by this chapter to establish **election** districts may designate a polling place in a contiguous district.

4-a. Notwithstanding any conflicting provisions of this section, the common council of the city of Little Falls may adopt a resolution determining that there is no building within an **election** district within such city available and suitable for the meetings for the registration of voters or for any **election**, or that for reasons of efficiency or economy it is desirable to consolidate the polling places for two or more, or all, districts, in such city, in one place, regardless of whether or not such district adjoins the district to which such meeting or polling place is moved, and there may be as many distinctly separate **election** districts lawfully located in the same building as public convenience may require. Such a resolution shall be subject to the approval of the county board of **elections**. Every such building chosen shall meet all other requirements of this section and all federal requirements for accessibility for the elderly and the disabled.

5. (a) Whenever the number of voters eligible to vote in an **election** in any **election** district is less than one hundred, the polling place designated for such district may be the polling place of any other district which could properly be designated as the polling place of the first mentioned district pursuant to the provisions of this chapter, except that the polling place designated for any such district may be the polling place of any other district in such city or town provided that the distance from such first mentioned district to the polling place for such other district is not unreasonable pursuant to rules or regulations prescribed by the state board of **elections** and provided that the total number of persons eligible to vote in such other district in such **election**, including the persons eligible to vote in such first mentioned districts, is not more than five hundred. The inspectors of **election** and poll clerks, if any, of such other **election** district shall also act in all respects as the **election** officers for such first mentioned districts and no other inspectors shall be appointed to serve in or for such first mentioned districts. A separate poll ledger or computer generated registration list, separate voting machine or ballots and separate

canvass of results shall be provided for such first mentioned districts, except that if the candidates and ballot proposals to be voted on by the voters of such districts are the same, the **election** districts shall be combined and shall constitute a single **election** district for that **election**. However, if the first mentioned district contains fewer than ten voters eligible to vote in such **election**, there shall be no limitation on the total number of persons eligible to vote in such combined district. If the polling place for any **election** district is moved for any **election**, pursuant to the provisions of this subdivision, the board of **elections** shall, not later than ten nor more than fifteen days before such **election**, mail, by first class mail, to each voter eligible to vote in such **election** district at such **election**, a notice setting forth the location of the polling place for such **election** and specifying that such location is for such **election** only.

(b) Whenever the total number of voters eligible to vote in any primary or special **election**, in any two **election** districts whose polling places are regularly located in the same building, is less than four hundred, the board of **elections** may assign the inspectors of **election** of the **election** district which contains the greater number of such voters, to act also, in all respects, as the **election** officers of the other such **election** district and no other **election** officers shall be appointed to serve in or for such other **election** district at such primary or special **election**. A separate poll ledger or computer generated registration list, separate voting machine or ballots and separate canvass of results shall be provided for each such **election** district.

(c) Whenever all the candidates to be voted upon at a primary **election**, except a primary **election** in the city of New York, or all the candidates and ballot proposals to be voted upon at a special **election**, or at a school board **election** conducted by the board of **elections**, or at a general **election** in the city of New York in a year in which there is no **election** for electors of president and vice-president of the United States or governor of the state or mayor of such city, by the voters of any two or more **election** districts whose polling places are regularly located in the same building are identical, the board of **elections** may combine such **election** districts for that **election**, provided that the total number of voters eligible to vote in any such combined **election** district does not exceed one thousand two hundred in a primary **election** or does not exceed two thousand in a special **election** or a general **election** in the city of New York.

(d) Notwithstanding any other provision of this section, polling places designated for any one such **election** district that will be utilizing any voting machine or system certified for use in New York state pursuant to chapter one hundred eighty-one of the laws of two thousand five, may be the polling place of any other contiguous district or districts, provided the voting system used in such polling place produces separate and distinct vote totals for each **election** district voting in such polling place on such voting machine or system.

5-a. Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of **elections**.

6. Each polling place designated, whenever practicable, shall be situated on the main or ground floor of the premises selected. It shall be of sufficient area to admit and comfortably accommodate voters in numbers consistent with the deployment of voting systems and privacy booths, pursuant to [9 NYCRR 6210.19](#). Such deployment of voting systems, **election** workers and **election** resources shall be in a sufficient number to accommodate the numbers of voters eligible to vote in such polling place.

6-a. Each polling place designated, whenever practicable, shall be situated directly on a public transportation route.

7. No polling place shall be located on premises owned or leased by a person holding public office

or who is a candidate for public office at a primary or general **election**.

8. Whenever the board of **elections** shall determine that there is no building within an **election** district available and suitable for the meetings for the registration of voters or for any **election**, or that for reasons of efficiency or economy it is desirable to consolidate such meetings of one or more districts in one place, such board may designate a building for such purpose in an adjoining district in the same village, city or town and there may be as many distinctly separate meetings or polling places lawfully located in the same building as public convenience may require. Wherever possible, public schools, fire houses, municipal buildings or other buildings exempt from taxation shall be designated for such meetings and polling places. Such a determination shall be made only after notice to the chairpersons of the county committees of all political parties and reasonable opportunity for them to be heard.

9. Renumbered as 8 by [L.2016, c. 43, § 1](#).

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**Christian Robert Cullen**

**Chief Assistant County Attorney**

**Dutchess County Department of Law**

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## **Exhibit J**

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# BARD COLLEGE

*A College of the Liberal Arts and Sciences*

August 15, 2022

Enforcement Counsel  
New York State Board of Elections  
40 North Pearl Street, Suite 5  
Albany, NY 12207  
[enforcement@elections.ny.gov](mailto:enforcement@elections.ny.gov)  
tel: (518) 486-7858

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.<sup>1</sup> 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.<sup>2</sup>

<sup>1</sup> 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](https://cce.bard.edu/community/election/files/Voting_rights_settlement.pdf).

<sup>2</sup> 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](https://tools.bard.edu/wwwmedia/files/8850342/68/2020_52737_Andrew_Goodman_Foundat_v_Andrew_Goodman_Founda)



# BARD COLLEGE

*A College of the Liberal Arts and Sciences*

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)

PO Box 5000, Annandale-on-Hudson, New York 12504-5000 Phone: (845) 758-7378 Fax: (845) 758-7185

E-mail: jbecker@bard.edu

# BARD COLLEGE

*A College of the Liberal Arts and Sciences*

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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/>



# BARD COLLEGE

*A College of the Liberal Arts and Sciences*

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.<sup>6</sup> During the 2020 litigation, he represented to the court under oath that a survey would be conducted in early 2021<sup>7</sup> 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.<sup>8</sup>

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.

<sup>6</sup> 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=jbp69ILmCG8>. Full documentation can be found here: <https://cce.bard.edu/community/election/voting-rights/>.

<sup>7</sup> 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).

<sup>8</sup> 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>

PO Box 5000, Annandale-on-Hudson, New York 12504-5000 Phone: (845) 758-7378 Fax: (845) 758-7185  
E-mail: [jbecker@bard.edu](mailto:jbecker@bard.edu)

# BARD COLLEGE

*A College of the Liberal Arts and Sciences*

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.

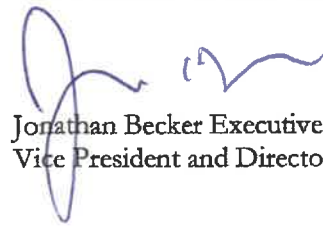
Sincerely,



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

PO.Box 5000, Annandale-on-Hudson, New York 12504-5000 Phone: (845) 758-7378 Fax: (845) 758-7185  
E-mail: jbecker@bard.edu



## REQUEST FOR JUDICIAL INTERVENTION

Supreme COURT, COUNTY OF Dutchess

Index No: \_\_\_\_\_ Date Index Issued: \_\_\_\_\_

For Court Use Only:

<b>CAPTION</b> Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.	IAS Entry Date
LEAGUE OF WOMEN VOTERS OF THE MID-HUDSON REGION, TANEISHA MEANS, MAGDALENA SHARFF	
Plaintiff(s)/Petitioner(s)	Judge Assigned
-against-	
THE DUTCHESS COUNTY BOARD OF ELECTIONS, ERIK J. HAIGHT in his capacity as Commissioner of the Dutchess County Board of Elections	RJI Filed Date
Defendant(s)/Respondent(s)	

**NATURE OF ACTION OR PROCEEDING:** Check only one box and specify where indicated.**COMMERCIAL**

- ☐ Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
- ☐ Contract
- ☐ Insurance (where insurance company is a party, except arbitration)
- ☐ UCC (includes sales and negotiable instruments)
- ☐ Other Commercial (specify): \_\_\_\_\_

**NOTE:** For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the **COMMERCIAL DIVISION RJI ADDENDUM (UCS-840C)**.

**TORTS**

- ☐ Asbestos
- ☐ Child Victims Act
- ☐ Environmental (specify): \_\_\_\_\_
- ☐ Medical, Dental or Podiatric Malpractice
- ☐ Motor Vehicle
- ☐ Products Liability (specify): \_\_\_\_\_
- ☐ Other Negligence (specify): \_\_\_\_\_
- ☐ Other Professional Malpractice (specify): \_\_\_\_\_
- ☐ Other Tort (specify): \_\_\_\_\_

**SPECIAL PROCEEDINGS**

- ☐ Child-Parent Security Act (specify): ☐ Assisted Reproduction ☐ Surrogacy Agreement
- ☐ CPLR Article 75 - Arbitration [see **NOTE** in **COMMERCIAL** section]
- ☒ CPLR Article 78 - Proceeding against a Body or Officer
- ☐ Election Law
- ☐ Extreme Risk Protection Order
- ☐ MHL Article 9.60 - Kendra's Law
- ☐ MHL Article 10 - Sex Offender Confinement (specify): ☒ Initial ☐ Review
- ☐ MHL Article 81 (Guardianship)
- ☐ Other Mental Hygiene (specify): \_\_\_\_\_
- ☐ Other Special Proceeding (specify): \_\_\_\_\_

**MATRIMONIAL**

- ☐ Contested
- NOTE:** If there are children under the age of 18, complete and attach the **MATRIMONIAL RJI Addendum (UCS-840M)**.
- For Uncontested Matrimonial actions, use the Uncontested Divorce RJI (**UD-13**).

**REAL PROPERTY** Specify how many properties the application includes: \_\_\_\_\_

- ☐ Condemnation
- ☐ Mortgage Foreclosure (specify): ☐ Residential ☐ Commercial

Property Address: \_\_\_\_\_

**NOTE:** For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the **FORECLOSURE RJI ADDENDUM (UCS-840F)**.

☐ Partition**NOTE:** Complete and attach the **PARTITION RJI ADDENDUM (UCS-840P)**.

- ☐ Tax Certiorari (specify): Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_
- ☐ Tax Foreclosure
- ☐ Other Real Property (specify): \_\_\_\_\_

**OTHER MATTERS**

- ☐ Certificate of Incorporation/Dissolution [see **NOTE** in **COMMERCIAL** section]
- ☐ Emergency Medical Treatment
- ☐ Habeas Corpus
- ☐ Local Court Appeal
- ☐ Mechanic's Lien
- ☐ Name Change/Sex Designation Change
- ☐ Pistol Permit Revocation Hearing
- ☐ Sale or Finance of Religious/Not-for-Profit Property
- ☐ Other (specify): \_\_\_\_\_

**STATUS OF ACTION OR PROCEEDING** Answer YES or NO for every question and enter additional information where indicated.

YES NO

- Has a summons and complaint or summons with notice been filed? ☐ YES ☒ NO If yes, date filed: \_\_\_\_\_
- Has a summons and complaint or summons with notice been served? ☐ YES ☒ NO If yes, date served: \_\_\_\_\_
- Is this action/proceeding being filed post-judgment? ☐ YES ☒ NO If yes, judgment date: \_\_\_\_\_

**NATURE OF JUDICIAL INTERVENTION** Check one box only and enter additional information where indicated.

<input type="checkbox"/> Infant's Compromise		
<input type="checkbox"/> Extreme Risk Protection Order Application		
<input type="checkbox"/> Note of Issue/Certificate of Readiness		
<input type="checkbox"/> Notice of Medical, Dental or Podiatric Malpractice	Date Issue Joined: _____	
<input type="checkbox"/> Notice of Motion	Relief Requested: _____	Return Date: _____
<input type="checkbox"/> Notice of Petition	Relief Requested: _____	Return Date: _____
<input checked="" type="checkbox"/> Order to Show Cause	Relief Requested: Article 78 (Body or Officer)	Return Date: _____
<input type="checkbox"/> Other Ex Parte Application	Relief Requested: _____	
<input type="checkbox"/> Partition Settlement Conference		
<input type="checkbox"/> Poor Person Application		
<input type="checkbox"/> Request for Preliminary Conference		
<input type="checkbox"/> Residential Mortgage Foreclosure Settlement Conference		
<input type="checkbox"/> Writ of Habeas Corpus		
<input type="checkbox"/> Other (specify): _____		

RELATED CASES				
List any related actions. For Matrimonial cases, list any related criminal or Family Court cases. If none, leave blank. If additional space is required, complete and attach the <b>RJI Addendum (UCS-840A)</b> .				
Case Title	Index/Case Number	Court	Judge (if assigned)	Relationship to instant case

PARTIES				
For parties without an attorney, check the "Un-Rep" box and enter the party's address, phone number and email in the space provided. If additional space is required, complete and attach the <b>RJI Addendum (UCS-840A)</b> .				
Un-Rep	Parties	Attorneys and Unrepresented Litigants	Issue Joined	Insurance Carriers
	List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 <sup>rd</sup> party plaintiff, etc.)	For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	For each defendant, indicate if issue has been joined.	For each defendant, indicate insurance carrier, if applicable.
<input type="checkbox"/>	Name: LEAGUE OF WOMEN VOTERS OF THE MID-HUDSON REGION Role(s): Plaintiff/Petitioner	JAMES PELUSO, Dreyer Boyajian LLP, 75 Columbia Street , Albany, NY 12210, 518-463-7784, jpeluso@dblawny.com	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input type="checkbox"/>	Name: TANEISHA MEANS Role(s): Plaintiff/Petitioner	JAMES PELUSO, Dreyer Boyajian LLP, 75 Columbia Street , Albany, NY 12210, 518-463-7784, jpeluso@dblawny.com	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input type="checkbox"/>	Name: MAGDALENA SHARFF Role(s): Plaintiff/Petitioner	JAMES PELUSO, Dreyer Boyajian LLP, 75 Columbia Street , Albany, NY 12210, 518-463-7784, jpeluso@dblawny.com	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input checked="" type="checkbox"/>	Name: THE DUTCHESS COUNTY BOARD OF ELECTIONS Role(s): Defendant/Respondent	12 Delafield Street, Poughkeepsie, NY 12601	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input checked="" type="checkbox"/>	Name: ERIK J. HAIGHT in his capacity as Commissioner of the Dutchess... Role(s): Defendant/Respondent	12 Delafield Street, Poughkeepsie, NY 12601	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
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<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/>	Name: Role(s):		<input type="checkbox"/> YES <input type="checkbox"/> NO	

**I AFFIRM UNDER THE PENALTY OF PERJURY THAT, UPON INFORMATION AND BELIEF, THERE ARE NO OTHER RELATED ACTIONS OR PROCEEDINGS, EXCEPT AS NOTED ABOVE, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION BEEN PREVIOUSLY FILED IN THIS ACTION OR PROCEEDING.**

Dated: 11/01/2022

JAMES R. PELUSO

Signature

3933553

JAMES R. PELUSO

Print Name

Attorney Registration Number

This form was generated by NYSCEF

**Request for Judicial Intervention Addendum**

Supreme COURT, COUNTY OF Dutchess

**Index No:****For use when additional space is needed to provide party or related case information.****PARTIES:** For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.

Un-Rep	Parties	Attorneys and Unrepresented Litigants	Issue Joined	Insurance Carriers
	List parties in same order as listed in the caption and indicate roles (e.g., plaintiff, defendant, 3 <sup>rd</sup> party plaintiff, etc.)	For represented parties, provide attorney's name, firm name, address, phone and email. For unrepresented parties, provide party's address, phone and email.	For each defendant, indicate if issue has been joined.	For each defendant, indicate insurance carrier, if applicable.
<input checked="" type="checkbox"/>	Name: ERIK J. HAIGHT in his capacity as Commissioner of the Dutchess County Board of Elections Role(s): Defendant/Respondent	12 Delafield Street, Poughkeepsie, NY 12601	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	

**RELATED CASES:** List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.

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**CAUSE**

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OMITTED:

J.S.C.

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by no later than November 2, 2022 at 10:00a  
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IT IS FURTHER ORDERED that Respondent-Defendant shall file any written oppositor  
by November 2, 2022 by no later than 3:00p.m.

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IT IS FURTHER ORDERED that  
a virtual (remote) pre-hearing conference  
with the Judge's Principal Court Attorney  
is scheduled for November 2, 2022 at 4:00p.m.

~~~~~

JK-KOK-----  
HON. CHRISTIE L. D'ALESSIO, J.S

The virtual (remote) pre-hearing conference  
log in/access information will be provided shortly  
by separate court notice filed to NYSCEF.



**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS  
JUDGE D'ALESSIO, CHRISTIE**



**LEAGUE OF WOMEN VOTERS OF THE MID-HUDSON  
REGION et al**

**- v. -**

**THE DUTCHESS COUNTY BOARD OF ELECTIONS et al**

Index No. 2022-53491

**COURT NOTICE**

Pursuant to the Order to Show Cause dated November 1, 2022 below is the Microsoft Teams link to participate in the Pre-Hearing Conference with the Judge's Principal court Attorney scheduled for today, November 2, 2022 at 4:00 p.m.

This link will also be emailed to Plaintiff's counsel. Plaintiff's counsel is directed to serve a copy of this Court Notice upon the Defendants by email to the official government addresses of the Board of Elections' two Commissioners, at the office of the Board of Elections by 10:00 a.m. today, November 2, 2022.

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Microsoft Teams meeting  
Join on your computer, mobile app or room device  
Click here to join the meeting  
Meeting ID: 277 263 619 711  
Passcode: VZDkAM  
Download Teams | Join on the web  
Or call in (audio only)  
+1 347-378-4143,,228515170#  
United States, New York City  
(833) 262-7886,,228515170#  
United States (Toll-free)  
Phone Conference ID: 228 515 170#  
Find a local number | Reset PIN

You are prohibited from recording video or audio, or taking photos or screenshots (22 NYCRR Parts 29, 131)  
Learn More | Help | Meeting options | Legal

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Thank you,

Chambers of the Hon. Christie L. D'Alessio

DATED 11/02/2022

FILED By Robyn A. Henke

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

-----X  
LEAGUE OF WOMEN VOTERS OF THE MID-HUDSON  
REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Index No. 2022-53491

**VERIFIED ANSWER**

Petitioners,

-against-

DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT, in his capacity as Commissioner  
of the Dutchess County Board of Elections,

Respondents-Defendants.

-----X

Respondent-Defendant proposed intervenor, Hannah Black, as Commissioner of the Dutchess County Board of Elections, which pursuant to Election Law §3-200 (2) is comprised of Commissioners Hannah Black together with Respondent-Defendant Erik J. Haight, (hereinafter, the “Respondent”) does hereby set forth the following as and for her VERIFIED ANSWER to the allegations contained in the Verified Petition:

1. The Respondent admits the allegations of fact contained in the paragraphs of the Verified Petition therein numbered 1, 6, 15, 30, 31, 32, 35 and 37, and refers all questions of law contained in said paragraphs to the Honorable Court.

2. The Respondent admits the allegations of fact contained in the paragraphs of the Verified Petition therein numbered 2 and 14, refers all questions of law contained in said paragraphs to the Honorable Court, and denies the relevance of the early voting sites to the question posed by this special proceeding, as the designation of such early voting sites are covered by different sections of the election law than that which is the subject of this proceeding.

3. The Respondent denies having sufficient knowledge or information upon which to form a belief as to those allegations of fact contained in the paragraphs of the Verified Petition therein numbered 3, 4, 5, 10, 11, 12, and 19.

4. The Respondent admits the allegations of fact contained in the paragraphs of the Verified Petition therein numbered 6, 7, 8, 9, 15, 30, 31, 32, 35 and 37, and refers all questions of law contained in said paragraphs to the Honorable Court.

5. With reference to paragraph 13 of the Verified Petition, the Respondent denies having sufficient knowledge or information upon which to form a belief as to the information contained in the “publicly available voter registration records for Dutchess County”, however, admits that the voter registration records for the Dutchess County Board of Elections show that as of November 2, 2022, at least 1,100 voters are registered to vote from the campus of Vassar College.

6. The Respondent admits the allegations of fact contained in the paragraphs of the Verified Petition therein numbered 16, 21, 23 and 24.

7. The Respondent admits the receipt of the correspondence identified in the paragraphs of the Verified Petition therein numbered 17, 18 and 20, and denies having sufficient knowledge or information upon which to form a belief as to the remaining allegations contained therein, and refers the Honorable Court to the content of the correspondence identified therein.

8. The Respondent admits the allegations contained in paragraph 22 of the Verified Petition, except deny that such undertaking would be “easy”, with the caveat however, that it would be possible if we are ordered to do so by the morning of November 4, 2022.

9. The Respondent denies having sufficient knowledge or information upon which to form a belief as to those allegations of fact contained in the paragraphs of the Verified Petition

therein numbered 25, 27, 29, 33, 34, 36 and 39, and refers all questions of law contained in said paragraphs to the Honorable Court.

10. With reference to paragraph 26 of the Verified Petition, the Respondent denies having sufficient knowledge or information upon which to form a belief as to whether the Petitioners are registered voters and organizations whose members include registered voters who reside in Dutchess County, admits the identities and capacities of the Respondents, and further requests intervention as a Respondent-Defendant in her capacity of Commissioner of the Dutchess County Board of Elections.

11. With reference to paragraphs 28 and 38 of the Verified Petition, Respondent realleges and reincorporates her responses to the prior paragraphs of the Verified Petition as though fully set forth herein. Further, with respect to paragraph 38, Petitioner refers the allegations of law not requiring an answer to the Honorable Court.

### **REQUESTS FOR RELIEF**

12. The Respondent seeks intervention and a declaration pursuant to Dutchess County Local Law No. 4 of 1988 that she is entitled to be reimbursed for her attorney fees from the County.

13. Pursuant to CPLR 7802(d), the Respondent requests an order directing the Petitioner to provide notice of this special proceeding to the Respondent as a necessary party pursuant to Election Law §3-200(2), and granting leave for Respondent to intervene as an interested person pursuant to CPLR 401 and CPLR 7802(d), and deeming this verified answer served.

14. Specifically, pursuant to Election Law §3-200(2), each county board of elections (there are exceptions which do not apply to Dutchess County) is comprised of two election commissioners.

15. One election commissioner does not have standing or capacity to assert a position or bring an action or proceeding on behalf of a board of elections except in certain narrow circumstances. (*see*, Graziano v. County of Albany, 3 NY3d 475 [2004])

16. Thus, by bringing this proceeding against the Dutchess County Board of Elections and against only one of the two commissioners, the Petitioners may have inadvertently given the reins (so to speak) to one commissioner only, to assert a position on behalf of the Dutchess County Board of Elections.

17. The Dutchess County Attorney's office, has accepted the existence of a split between the commissioners, and as a result, has declared that it has a conflict of interest in representing the Board of Elections, and thus has permitted Republican Commissioner Erik J. Haight only to hire independent counsel at the County's expense.

18. However, the Dutchess County Attorney's office has, in what can only be deemed a blatantly partisan display, discriminated against Democratic Commissioner Hannah Black in denying her request to hire independent counsel to represent her interests in this matter.

19. Upon information and belief, such position is also a punishment for Commissioner Black providing an affidavit to the Petitioners as she agrees with the express statutory requirement to place a poll site upon the campus of Vassar College.

20. Commissioner Black is a necessary party, as her consent would be required for any settlement of the claims against the Dutchess County Board of Elections, as Commissioner Haight lacks capacity to bind such Board of Elections on his own.

21. Further, in denying her request for counsel to represent her, the Dutchess County Attorney is violating the New York State Constitutional and statutory framework that requires equal representation, staffing and funding for each of the two major parties with commissioners making up each county board of elections. (*see*, Graziano, 3 NY3d at 479-481)

22. There has been no previous application for the relief sought herein.

**WHEREFORE**, Respondent respectfully request orders:

- I. Pursuant to CPLR 7802(d), declaring Elections Commissioner Hannah Black a necessary party to this special proceeding, and ordering the Petitioner to provide notice of this special proceeding to Commissioner Black;
- II. Granting leave for Commissioner Black to intervene as an interested person pursuant to CPLR 401 and CPLR 7802(d), and deeming this verified answer served;
- III. Declaring that if Commissioner Haight's attorney fees are paid by Dutchess County, that Commissioner Black's attorney fees shall be paid by Dutchess County as well;
- IV. Granting the relief requested in the Verified Petition of the Petitioners viz a viz Petitioners' request for an order requiring that a poll site be placed upon the campus of Vassar College;
- V. Such other and further relief as the Court deems necessary and proper.

Dated: Poughkeepsie, New York  
November 2, 2022

Respectfully submitted,

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

Michael Treybich  
Treybich Law, P.C.  
*Attorney for Respondent Hannah Black*  
272 Mill Street  
Poughkeepsie, New York 12601  
(845) 554-5295



**VERIFICATION**

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

I, HANNAH BLACK, being duly sworn, depose and state, that I am one of two Commissioners comprising the Respondent-Defendant Dutchess County Board of Elections in the within proceeding. I have read the foregoing Verified Answer and know the contents thereof, and the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief and that, as to those matters, I believe them to be true.

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

Sworn to before me this  
2<sup>nd</sup> day of November, 2022



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

**MICHAEL TREYBICH**  
Notary Public - New York  
Registration No. 02TR6205816  
Qualified In Dutchess County  
Commission Expires 5/11/2025

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections,

Respondents-Defendants

Index No. 2022-53491

**AFFIRMATION OF**  
**SERVICE**

RICHARD ALEXANDER MEDINA, an attorney admitted to practice in the courts of this State, and not a party to the within action, affirms the following to be true under the penalties of perjury pursuant to CPLR § 2106:

1. I am an attorney duly admitted to practice law in New York and am an associate with the law firm Elias Law Group LLP, counsel for the Petitioners in the above-captioned action.
2. On the 2nd day of November, 2022 at approximately 9:41 a.m., pursuant to this Court's Order to Show Cause (Doc. 10), I served NYSCEF-stamped copies of the following papers on Respondents by emailing them to Commissioner Erik Haight (ehaight@dutchessny.gov), Commissioner Hannah Black (hblack@dutchessny.gov), and County Attorney Caroline Blackburn (cblackburn@duthcesscountyny.gov): (1) the Verified Petition (Doc. 1), (2) the Proposed Order to Show Cause (Doc. 2); (3) the Affirmation of Richard A. Medina (Doc. 3), with attached Exhibits 1, 2, 3, and 4 (Docs. 4–7); (5) the Request for Judicial Intervention (Doc. 8); (6) the addendum to the Request for

Notice with the details of the video conference scheduled for November 2 at 4:00 p.m.

(Doc. 11).

Dated: November 2, 2022

By:

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

Richard Alexander Medina



COUNTY OF DUTCHESS  
DEPARTMENT OF LAW

November 2, 2022

Hon. Christie L. D'Alessio  
New York State Supreme Court  
Dutchess County Chambers  
10 Market Street  
Poughkeepsie, NY 12601

RE: League of Women Voters of the Mid-Hudson Region, et al, v. Dutchess County Board of Elections, et al.; **Index No. 2022-53491**

Your Honor:

The Dutchess County Attorney is the exclusive legal counsel to the Dutchess County Board of Elections, however, I write to respectfully request the Court's approval to be excused as counsel for the Board in this matter on the basis that a conflict of interest prevents such representation.

Pursuant to Election Law 3-200(2), the Dutchess County Board of Elections is comprised of two election commissioners. Election Law 3-212(2) requires that all actions of the Board require a majority vote of the Board. Commissioner Haight has been named as a Respondent in the above-referenced action, and Commissioner Black has offered an Affidavit in support of the Verified Petition. The County Attorney is therefore unable to represent the Board as a body because there is an irreconcilable division between the Commissioners in this matter.

I am in receipt of a Verified Answer offered by Respondent-Defendant proposed intervenor, Hannah Black, as Commissioner of the Dutchess County Board of Elections. The County Attorney's Office does not object to, and takes no position on, Respondent-Defendant proposed intervenor Black's Verified Answer to the extent that it seeks a declaration that Commissioner Black is a necessary party and further to the extent that it seeks leave of Court for Commissioner Black to intervene as an interested person. Further, if the Court declares that Respondent-Defendant proposed intervenor Black is a necessary party who may intervene as an interested person, then the County Attorney has no objection to the County's payment of attorney fees associated with private representation of Commissioner Black as a Respondent-Defendant, to the extent such fees are in accord with Dutchess County Local Law No. 4 of 1988.

It is well-settled that an attorney may not be compensated for services rendered a municipal officer unless he has been retained in accordance with statutory authority. *Cahn v. Town of Huntington*, 29 NY2d 451 (1972). Such statutory authority must be express. However, in the absence of specific statutory authority, a municipal board or officer may have implied authority to

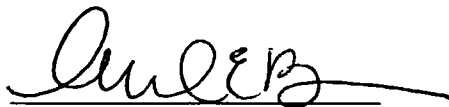
retain private counsel, but only if they are involved “in good faith in the prosecution or defense of an action undertaken in the public interest, and in conjunction with its or his official duties where the municipal attorney refused to act, or was incapable of, or was disqualified from, acting.” *Id.*

Dutchess County Local Law No. 4 of 1988, enclosed herewith, is the statutory mechanism by which the County provides legal and financial protection to County employees sued as a result of actions taken in performance of their official duties. Section 75-21 requires that legal action must be taken “against them.” Further, Section 375-23(B) states that when the County Attorney determines, upon investigation of the matter, that representation by the County Attorney would be inappropriate, or where a Court determines that a conflict of interest exists, then a County officer or employee may be represented by private counsel of his/her choice. Given that Commissioner Haight was named as a Respondent and his interests are adverse to Commissioner Black, on both of their admissions, the County Attorney authorized Commissioner Haight to secure private counsel at the expense of the County, within the confines of Local Law No. 4 of 1988. Commissioner Black was not named as either a Petitioner or Respondent-Defendant in this action, and thus, no legal action was taken “against her” in line with Dutchess County Local Law or *Cahn*, and as such, Commissioner Black’s request for private legal representation, paid for by Dutchess County, was denied. Further, Commissioner Black cannot alone represent the interests of the Board of Elections to the extent the Board is named as a Respondent.

The determination was made solely upon the aforementioned and on no other grounds. If the Court grants Commissioner Black’s application to be named as a necessary party and to intervene, I have no objection to Commissioner Black securing private counsel at county expense, in line with Local Law No. 4 of 1988, because the County Attorney has a conflict of interest and Commissioner Black would then be named in a civil proceeding “against her” and will directly participate in the “prosecution or defense of an action ... in conjunction with [her] official duties.” *Cahn*, 29 NY2d at 456.

Lastly, the conflict of the County Attorney’s Office prohibits me from taking any position as it concerns the Respondent-Defendant proposed intervenor Black’s Verified Answer’s request for “granting the relief requested in the Verified Petition of the Petitioners viz a vie Petitioners’ request for an order requiring that a poll site be placed upon the campus of Vassar College [or] such other an further relief as the Court deems necessary and proper.”

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Caroline E. Blackburn', written over a horizontal line.

CAROLINE E. BLACKBURN, ESQ.  
Dutchess County Attorney  
22 Market Street, 5<sup>th</sup> Floor  
Poughkeepsie, New York 12601

*Dutchess County, NY  
Wednesday, November 2, 2022*

## Chapter 75. Officers and Employees

### Article V. Defense and Indemnification

[Adopted 7-11-1988 by L.L. No. 4-1988]

#### § 75-21. Findings and intent.

The purpose of this article is to provide legal and financial protection for those individuals serving the County of Dutchess from losses which may be brought against them in their individual capacity for actions taken while in the performance of their official duties and responsibilities. In enacting this article, the County Legislature of Dutchess County finds that the State of New York has enacted similar provisions for the legal and financial security of its officers and employees and further finds that such security is also required for local personnel. By enactment of this article, the County Legislature of Dutchess County does not intend to limit or otherwise abrogate any existing right or responsibility of the County of Dutchess or its employees with regard to indemnification or legal defense. It is solely the intent of this article to provide similar coverage for local employees as is presently provided for state employees, so as to continue to attract qualified individuals to local government service.

#### § 75-22. Definitions.

[Amended 5-13-1991 by L.L. No. 6-1991]

As used in this article, the following terms shall have the meanings indicated:

##### **EMPLOYEE**

Any person holding a position by election, appointment or employment in the service of the County of Dutchess, whether or not compensated, or a volunteer expressly authorized to participate in a County-sponsored volunteer program, but shall not include an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative and shall also include an officer, director or employee of the Dutchess County Industrial Development Agency and a member of any board or agency appointed by the County Executive and/or the Dutchess County Legislature.

#### § 75-23. Duty to provide for defense; legal representation.

- A. Upon compliance by the employee with the provisions of § 75-25 of this article, the County of Dutchess, through the office of the County Attorney or by means of any applicable insurance program maintained by the County, shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties, or which is brought to enforce a provision of Title 42 of the United States Code. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the County of Dutchess.

- B. Subject to the conditions set forth in Subsection A of this section, the employee shall be entitled to be represented by the County Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his/her choice in any civil judicial proceeding whenever the County Attorney determines, based upon his/her investigation and review of the facts and circumstances of the case, that representation by the County Attorney would be inappropriate, or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his/her choice. The County Attorney shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel of his/her choice. The County Attorney may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this section, the County Attorney shall so certify to the County Legislature. Reasonable attorney's fees and litigation expenses shall be paid by the County to such private counsel from time to time during the pendency of the civil action or proceeding, subject to certification by the County Attorney as provided herein. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorney's fees shall be resolved by the court upon motion or by way of a special proceeding.
- C. Where the employee delivers process and a request for a defense to the County Attorney as required by § 75-25 of this article, the County Attorney shall take the necessary steps, including the retention of private counsel where necessary as provided in Subsection B herein, on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

## § 75-24. Scope of indemnification; proposed settlements.

- A. The County of Dutchess shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his/her public employment or duties. The duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee and shall not be applicable to an award for punitive damages.
- B. The determination of an issue of whether or not an employee was acting within the scope of his/her public employment or duties at the time of the occurrence, act or omission giving rise to a claim shall be made in the first instance, with regard to employees within the Executive Branch, by the County Executive, on advice from the County Attorney, and, with regard to employees within the Legislative Branch, by the Chair of the Legislature, subject to the entire Legislature, also upon advice from the County Attorney. Any such determination shall be subject to review by a court of competent jurisdiction in the manner prescribed by law.
- C. An employee represented by private counsel shall cause to be submitted to the County Legislature, any proposed settlement which may be subject to indemnification by the County of Dutchess. The County Attorney shall review such proposed settlement as to form and amount and submit a favorable recommendation if, in his/her judgment, the settlement is in the best interest of the County. Nothing in this subsection shall be construed to authorize the County to indemnify or hold harmless an employee with respect to any settlement not so reviewed and approved by the County Attorney.
- D. Upon entry of a final judgment against the employee, or upon the settlement of the claim after approval by the Legislature as provided in Subsection C hereof, the employee shall cause to be served on the County Attorney, personally or by certified or registered mail, a copy of such judgment or settlement within 30 days of the date of entry or settlement. If not inconsistent with

the provisions of this section, such judgment or settlement shall be certified for payment by the County Attorney.

## § 75-25. Conditions for defense or indemnification.

The duty to defend or indemnify and save harmless provided by this article shall be conditioned upon the following:

- A. Delivery by the employee to the County Attorney, or his/her assistant, at his/her office, of the original or a copy of any summons, complaint, process, notice, demand or pleading within 10 days after service on the employee. Such delivery shall be deemed a request by the employee that the County Attorney provide for his defense pursuant to this article.<sup>[1]</sup>

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

- B. The full cooperation of the employee in the defense of such action or proceeding and in the defense of any action or proceeding brought against the County based on the same act or omission, and in the prosecution of any appeal.

## § 75-26. Effect on other coverage.

The benefits of this article shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party, nor shall any provision of this article be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

## § 75-27. Liability of insurers.

The provisions of this article shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

## § 75-28. Applicability.

The provisions of this article shall apply to all actions and proceedings pending upon the effective date hereof or thereafter instituted.

## § 75-29. Limitations on liability.

Except as otherwise specifically provided in this article, the provisions of this article shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the County of Dutchess, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of any other provision of state or federal statutory or common law.



Hon. Christie L. D'Alessio, J.S.C.  
Dutchess County Supreme Court  
10 Market Street  
Poughkeepsie, NY 12601

November 2, 2022

RE: *League of Women Voters of the Mid-Hudson Region et al v. Dutchess County Board of Elections et al*

Dutchess County Index No. 2022-53491

Dear Justice D'Alessio,

Commissioner Hannah Black has filed a verified answer as a Proposed Intervenor Respondent-Defendant in this matter. (Doc. 16). As discussed during the November 2, 2022 pre-hearing conference, Petitioners consent to Commissioner Hannah Black's intervention as a Respondent-Defendant in this matter.

Respectfully Submitted,

**DREYER BOYAJIAN LLP**

By: /s/ James R. Peluso

James R. Peluso  
75 Columbia Street  
Albany, NY 12210  
Tel.: (518) 463-7784  
jpeluso@dblawny.com

**ELIAS LAW GROUP LLP**

By: /s/ Richard Alexander Medina

Aria C. Branch\*  
Justin Baxenberg\*\*  
Richard Alexander Medina  
Renata O'Donnell  
10 G St NE, Ste 600  
Washington, DC 20002  
Tel.: (202) 968-4490  
abbranch@elias.law

jbaxenberg@elias.law  
rmedina@elias.law  
rodonnell@elias.law

*\*Pro hac vice application forthcoming*  
*\*\* Pro hac vice application pending*

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

**PRESENT: HON. CHRISTIE L. D'ALESSIO, J.S.C.**

-----X

LEAGUE OF WOMEN VOTERS OF THE  
MID-HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

**DECISION, ORDER,  
AND JUDGMENT**  
**Index No. 2022-53491**

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections,

Respondents-Defendants.

-----X

The following papers were read on the petition filed in connection with this hybrid special proceeding under CPLR Article 78 and declaratory judgment action under CPLR § 3001, seeking, inter alia, the designation of a polling location on the campus of Vassar College in accordance with Election Law § 4-104 [5-a]: NYSCEF Documents no. 1-19.

Upon review of the petition filed by Order to Show Cause, all other written submissions filed to NYSCEF, and upon due consideration of the arguments, testimony and exhibits presented on the record in court on November 3, 2022, by the parties and/or their respective counsel, it is hereby

1. ORDERED that, upon application of the proposed intervenor, Hannah Black in the capacity as a Commissioner of Dutchess County Board of Elections, and with the written consent of petitioner, this case caption is amended to include the proposed intervenor as a named Respondent-Defendant. It is further

2. ORDERED that, the case caption is amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----X  
LEAGUE OF WOMEN VOTERS OF THE  
MID-HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections, and  
HANNAH BLACK in the capacity as Commissioner of the  
Dutchess County Board of Elections,

Respondents-Defendants.  
-----X

3. ORDERED that, this Court grants Dutchess County Attorney's unopposed application to recuse itself from representing either or both named Commissioners of the Board of Elections based upon the conflict arising from each Commissioner's adverse position on the merits of the petition. It is further
4. ORDERED that, insofar as the proposed Intervenor's application included a request for reimbursement of attorney fees associated with private representation incurred as a result of the aforementioned conflict, the Dutchess County Attorney's letter submission dated November 2, 2022 states that "County Attorney has no objection to the County's payment of attorney fees associated with private representation of Commissioner Black as a Respondent-Defendant, to the extent such fees are in accord with Dutchess County Local Law No. 4 of 1988". Private counsel may follow the appropriate protocols to submit any such request to the County. That issue is resolved accordingly. It is further
5. ORDERED that, the oral application of counsel for Respondent/Defendant Erik J. Haight in his capacity as Commissioner of the Dutchess County Board of Elections for dismissal of this matter is denied. It is further
6. ORDERED that, this Court grants the petition in its entirety. The plain language of Election Law § 4-104[5-a] which includes the word "shall" (as opposed to "may" or "should") *specifically mandates* the designation of a voting polling place on a college or university campus where, as here, the petitioner demonstrated that the college or university campus contains three hundred or more registrants to vote at an address on such college or university campus.

Any other applications for further relief not specifically granted herein are denied.

The foregoing constitutes the decision, order and judgment of this court.

Dated: November 3, 2022  
Poughkeepsie, New York

ENTERED :



HON. CHRISTIE L. D'ALESSIO, J.S.C.

TO:

Filed to NYSCEF

Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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

-----X

LEAGUE OF WOMEN VOTERS OF THE MID-HUDSON  
REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Index No. 2022-53491

**NOTICE OF ENTRY OF  
DECISION, ORDER,  
AND JUDGMENT**

Petitioners,

-against-

DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT, in his capacity as Commissioner  
of the Dutchess County Board of Elections, and  
HANNAH BLACK, in the capacity as Commissioner  
of the Dutchess County Board of Elections,

Respondents-Defendants.

-----X

**PLEASE TAKE NOTICE** that the annexed document is a copy of the Decision, Order and  
Judgment duly entered in the above-captioned action and filed in the office of the Clerk of this Court on  
November 3, 2022.

Dated: Poughkeepsie, New York  
November 3, 2022



Michael Treybich, Esq.  
TREYBICH LAW, P.C.  
Attorneys for Respondent-Defendant Hannah Black  
272 Mill Street  
Poughkeepsie, NY 12601  
(845) 554-5295

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

**PRESENT: HON. CHRISTIE L. D'ALESSIO, J.S.C.**

-----X  
LEAGUE OF WOMEN VOTERS OF THE  
MID-HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections,

Respondents-Defendants.  
-----X

**DECISION, ORDER,  
AND JUDGMENT**  
**Index No. 2022-53491**

The following papers were read on the petition filed in connection with this hybrid special proceeding under CPLR Article 78 and declaratory judgment action under CPLR § 3001, seeking, inter alia, the designation of a polling location on the campus of Vassar College in accordance with Election Law § 4-104 [5-a]: NYSCEF Documents no. 1-19.

Upon review of the petition filed by Order to Show Cause, all other written submissions filed to NYSCEF, and upon due consideration of the arguments, testimony and exhibits presented on the record in court on November 3, 2022, by the parties and/or their respective counsel, it is hereby

1. ORDERED that, upon application of the proposed intervenor, Hannah Black in the capacity as a Commissioner of Dutchess County Board of Elections, and with the written consent of petitioner, this case caption is amended to include the proposed intervenor as a named Respondent-Defendant. It is further

2. ORDERED that, the case caption is amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----X  
LEAGUE OF WOMEN VOTERS OF THE  
MID-HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections, and  
HANNAH BLACK in the capacity as Commissioner of the  
Dutchess County Board of Elections,

Respondents-Defendants.  
-----X

3. ORDERED that, this Court grants Dutchess County Attorney's unopposed application to recuse itself from representing either or both named Commissioners of the Board of Elections based upon the conflict arising from each Commissioner's adverse position on the merits of the petition. It is further
4. ORDERED that, insofar as the proposed Intervenor's application included a request for reimbursement of attorney fees associated with private representation incurred as a result of the aforementioned conflict, the Dutchess County Attorney's letter submission dated November 2, 2022 states that "County Attorney has no objection to the County's payment of attorney fees associated with private representation of Commissioner Black as a Respondent-Defendant, to the extent such fees are in accord with Dutchess County Local Law No. 4 of 1988". Private counsel may follow the appropriate protocols to submit any such request to the County. That issue is resolved accordingly. It is further
5. ORDERED that, the oral application of counsel for Respondent/Defendant Erik J. Haight in his capacity as Commissioner of the Dutchess County Board of Elections for dismissal of this matter is denied. It is further
6. ORDERED that, this Court grants the petition in its entirety. The plain language of Election Law § 4-104[5-a] which includes the word "shall" (as opposed to "may" or "should") *specifically mandates* the designation of a voting polling place on a college or university campus where, as here, the petitioner demonstrated that the college or university campus contains three hundred or more registrants to vote at an address on such college or university campus.

Any other applications for further relief not specifically granted herein are denied.



The foregoing constitutes the decision, order and judgment of this court.

Dated: November 3, 2022  
Poughkeepsie, New York

ENTERED :



HON. CHRISTIE L. D'ALESSIO, J.S.C.

TO:

Filed to NYSCEF

Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT in his capacity as Commissioner of the  
Dutchess County Board of Elections, and HANNAH  
BLACK in her capacity as Commissioner of the Dutchess  
County Board of Elections

Respondents-Defendants.

Index No. 2022-53491

**NOTICE OF ENTRY OF  
DECISION, ORDER, AND  
JUDGMENT**

PLEASE TAKE NOTICE that the annexed document is a copy of the Decision, Order,  
and Judgment duly entered in the above-captioned action and filed in the office of the Clerk of  
this Court on November 3, 2022.

Dated: November 4, 2022

**ELIAS LAW GROUP LLP**

By: 

Aria C. Branch\*  
Justin Baxenberg\*\*  
Richard Alexander Medina  
Renata O'Donnell  
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*\*Pro hac vice application forthcoming*

*\*\* Admitted pro hac vice*

**DREYER BOYAJIAN LLP**

James R. Peluso  
75 Columbia Street  
Albany, NY 12210  
Tel.: (518) 463-7784  
jpeluso@dblawnny.com

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

**PRESENT: HON. CHRISTIE L. D'ALESSIO, J.S.C.**

-----X  
LEAGUE OF WOMEN VOTERS OF THE  
MID-HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections,

Respondents-Defendants.  
-----X

**DECISION, ORDER,  
AND JUDGMENT**  
**Index No. 2022-53491**

The following papers were read on the petition filed in connection with this hybrid special proceeding under CPLR Article 78 and declaratory judgment action under CPLR § 3001, seeking, inter alia, the designation of a polling location on the campus of Vassar College in accordance with Election Law § 4-104 [5-a]: NYSCEF Documents no. 1-19.

Upon review of the petition filed by Order to Show Cause, all other written submissions filed to NYSCEF, and upon due consideration of the arguments, testimony and exhibits presented on the record in court on November 3, 2022, by the parties and/or their respective counsel, it is hereby

1. ORDERED that, upon application of the proposed intervenor, Hannah Black in the capacity as a Commissioner of Dutchess County Board of Elections, and with the written consent of petitioner, this case caption is amended to include the proposed intervenor as a named Respondent-Defendant. It is further

2. ORDERED that, the case caption is amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----X  
LEAGUE OF WOMEN VOTERS OF THE  
MID-HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections, and  
HANNAH BLACK in the capacity as Commissioner of the  
Dutchess County Board of Elections,

Respondents-Defendants.  
-----X

3. ORDERED that, this Court grants Dutchess County Attorney's unopposed application to recuse itself from representing either or both named Commissioners of the Board of Elections based upon the conflict arising from each Commissioner's adverse position on the merits of the petition. It is further
4. ORDERED that, insofar as the proposed Intervenor's application included a request for reimbursement of attorney fees associated with private representation incurred as a result of the aforementioned conflict, the Dutchess County Attorney's letter submission dated November 2, 2022 states that "County Attorney has no objection to the County's payment of attorney fees associated with private representation of Commissioner Black as a Respondent-Defendant, to the extent such fees are in accord with Dutchess County Local Law No. 4 of 1988". Private counsel may follow the appropriate protocols to submit any such request to the County. That issue is resolved accordingly. It is further
5. ORDERED that, the oral application of counsel for Respondent/Defendant Erik J. Haight in his capacity as Commissioner of the Dutchess County Board of Elections for dismissal of this matter is denied. It is further
6. ORDERED that, this Court grants the petition in its entirety. The plain language of Election Law § 4-104[5-a] which includes the word "shall" (as opposed to "may" or "should") *specifically mandates* the designation of a voting polling place on a college or university campus where, as here, the petitioner demonstrated that the college or university campus contains three hundred or more registrants to vote at an address on such college or university campus.

Any other applications for further relief not specifically granted herein are denied.

The foregoing constitutes the decision, order and judgment of this court.

Dated: November 3, 2022  
Poughkeepsie, New York

ENTERED :



HON. CHRISTIE L. D'ALESSIO, J.S.C.

TO:

Filed to NYSCEF

Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

November 4, 2022

Hon. Christie L. D'Alessio, J.S.C.  
Dutchess County Supreme Court  
10 Market Street  
Poughkeepsie, NY 12601

**BY EMAIL**

*Re: League of Women Voters of the Mid-Hudson Region et al. v. The Dutchess County Board of Elections et al.*, Index No. 2022-53491

Dear Justice D'Alessio,

We write to update the Court regarding the status of compliance with its Order of November 3, 2022 requiring a polling location on the Vassar College campus. We understand that there will be a site visit to the Aula Room at Ely Hall, on the Vassar College campus, starting today at 3pm. Commissioner Haight has been invited to participate. We also attach the latest correspondence we are aware of from Commissioner Erik Haight regarding his intent to comply with the Court's Order, and from Vassar regarding available space.

Given the need to designate a polling location as soon as possible to have one in place for the November 8, 2022 election, we will keep the Court apprised of further developments in this matter.

Please let us know if you would like us to file this letter on the docket.

Respectfully Submitted,

**ELIAS LAW GROUP LLP**

By: /s/ Richard Alexander Medina

Aria C. Branch\*

Justin Baxenberg\*\*

Richard Alexander Medina

Renata O'Donnell

10 G St NE, Ste 600

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**DREYER BOYAJIAN LLP**

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Albany, NY 12210  
Tel.: (518) 463-7784  
jpeluso@dblawny.com

*\*Pro hac vice application forthcoming*

*\*\* Admitted pro hac vice*

Cc: All Counsel of Record



**From:** [Michael Treybich](#)  
**To:** [Rich Medina](#)  
**Subject:** Fwd: FW: NY Election Law Section 4-104  
**Date:** Friday, November 4, 2022 12:28:41 PM  
**Attachments:** [2022\\_53491\\_LEAGUE\\_OF\\_WOMEN\\_VOTERS\\_v\\_LEAGUE\\_OF\\_WOMEN\\_VOTERS\\_NOTICE\\_OF\\_ENTRY\\_22.pdf](#)

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----- Forwarded message -----

**From:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
**Date:** Fri, Nov 4, 2022, 12:24 PM  
**Subject:** FW: NY Election Law Section 4-104  
**To:** Michael Treybich <[michael@treymbichlaw.com](mailto:michael@treymbichlaw.com)>

---

**From:** Black, Hannah  
**Sent:** Friday, November 4, 2022 10:43 AM  
**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>  
**Cc:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>; Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>; 'Todd Valentine' <[Todd.Valentine@elections.ny.gov](mailto:Todd.Valentine@elections.ny.gov)>; Zebrowski.Stavisky, Kristen (ELECTIONS) <[Kristen.Zebrowski.Stavisky@elections.ny.gov](mailto:Kristen.Zebrowski.Stavisky@elections.ny.gov)>; Lovullo, Brendan (ELECTIONS) <[Brendan.Lovullo@elections.ny.gov](mailto:Brendan.Lovullo@elections.ny.gov)>; [Thomas.Connolly@elections.ny.gov](mailto:Thomas.Connolly@elections.ny.gov); Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>; Blackburn, Caroline <[cblackburn@dutchessny.gov](mailto:cblackburn@dutchessny.gov)>  
**Subject:** RE: NY Election Law Section 4-104

Commissioner Haight,

As you're well aware, I suggested there be a public hearing 7 weeks ago. The court order is clear. The court order and the truncated timeframe obviate the need for a public hearing. It is our charge to **comply** with the court order and the election law and designate a poll site on Vassar College campus. As you know, there is a site visit today at Vassar College at 3pm, please confirm who from the Republican side will be attending.

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)

---

**From:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>

**Sent:** Friday, November 4, 2022 9:47 AM

**To:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Cc:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>; Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>; 'Todd Valentine' <[Todd.Valentine@elections.ny.gov](mailto:Todd.Valentine@elections.ny.gov)>; Zebrowski, Kristen (ELECTIONS) <[Kristen.Zebrowski.Stavisky@elections.ny.gov](mailto:Kristen.Zebrowski.Stavisky@elections.ny.gov)>; Lovullo, Brendan (ELECTIONS) <[Brendan.Lovullo@elections.ny.gov](mailto:Brendan.Lovullo@elections.ny.gov)>; [Thomas.Connolly@elections.ny.gov](mailto:Thomas.Connolly@elections.ny.gov); Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>; Blackburn, Caroline <[cblackburn@dutchessny.gov](mailto:cblackburn@dutchessny.gov)>

**Subject:** RE: NY Election Law Section 4-104

**Importance:** High

Commissioner,

You already disclosed this privileged correspondence to the press and your democratic cohorts without my consent so there is no additional harm by including additional colleagues. You have been adamant during your tenure here that the designation of poll sites profoundly effects the public and as a result the determinations of where people vote is subject to the Open Meetings Laws. You have been successfully persuasive on this subject and I have conceded this step is necessary since we have comprised the Board of Elections. Based on the Open Meetings Laws, when would you like to hold a public meeting to designate a poll site(s) on the Vassar College Campus? We should review Public Officers Law (100-111), Article 7 for guidance on the soonest we can legally meet. The hasty decision made by Judge D'Alessio which ignores the CPLR, the case law and common sense also provides zero guidance to us as administrators of the election law as to where to designate the poll sites for the 3 election districts that encompass this particular campus. Once we have an agreement, we also need to review the laws regarding changes to poll sites, the notices we need to provide to the effected voters, and the timelines for these notices prescribed by the law. I've not seen the transcript or alleged bench decision but once it's filed with the County Clerk I would be eager to comply with it.

Are there any other administrative processes I'm missing to adhere with this vague court

order?

Thank you,

Erik J. Haight

Republican Commissioner of Elections

Dutchess County Board of Elections

O (845) 486-2475

D (845) 486-2482

M (845) 392-2881

Fax: (845) 486-2485

[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)

<https://www.elections.dutchessny.gov/>

---

**From:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Sent:** Thursday, September 15, 2022 10:51 AM

**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>

**Cc:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>

**Subject:** RE: NY Election Law Section 4-104

Good morning Commissioner,

I would like to propose holding a public meeting to designate a poll site on Vassar College campus on September 22<sup>nd</sup> at 11am. If this does not work for you, please propose some dates and times that do.

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)

---

**From:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>

**Sent:** Tuesday, August 23, 2022 4:11 PM

**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>; Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Subject:** NY Election Law Section 4-104

FYI—

NY Election Law Section 4-104 was revised effective July 8, 2022 to provide as follows:

5-a. Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections.

**Effective: July 8, 2022**

**McKinney's Election Law § 4-104**

**§ 4-104.** Registration and polling places; designation of

1. Every board of **elections** shall, in consultation with each city, town and village, designate the polling places in each **election** district in which the meetings for the registration of voters, and for any **election** may be held. The board of trustees of each village in which general and special village **elections** conducted by the board of **elections** are held at a time other than the time of a general **election** shall submit such a list of polling places for such village **elections** to the board of **elections**. A polling place may be located in a building owned by a religious organization or used by it as a place of worship. If such a building is designated as a polling place, it shall not be required to be open for voter registration on any Saturday if this is contrary to the religious beliefs of the religious organization. In such a situation, the board of **elections** shall designate an alternate location to be used for voter registration. Such polling places must be designated by March fifteenth, of each year, and shall be effective for one year thereafter. Such a list required to be submitted by a village board of trustees must be submitted at least four months before each general village **election** and shall be effective until four months before the subsequent general village **election**. No place in which a business licensed to sell alcoholic beverages for on premises consumption is conducted on any day of local registration or of voting shall be so designated. If, within the discretion of the board of **elections** a particular polling place so designated is subsequently found to be unsuitable or unsafe or should circumstances arise that make a designated polling place unsuitable or unsafe, then the board of **elections** is empowered to select an alternative meeting place. In the city of New York, the board of **elections** shall designate such polling places and alternate registration places if the polling place cannot be used for voter registration on Saturdays.

1-a. Each polling place shall be accessible to citizens with disabilities and comply with the accessibility guidelines of the Americans with Disabilities Act of 1990. The state board of **elections** shall publish and distribute to each board of **elections** with the power to designate poll sites, a concise, non-technical guide describing standards for poll site accessibility, including a polling site access survey instrument, in accordance with the Americans with Disabilities Act accessibility guidelines (ADAAG) and methods to comply with such standards. Such guide and procedures shall be developed in consultation with persons, groups or entities with knowledge about public access as the state board of **elections** shall determine appropriate.

1-b. The county board of **elections** shall cause an access survey to be conducted for every polling site to verify substantial compliance with the accessibility standards cited in this section. Completed surveys shall be submitted to the state board of **elections** and kept on file as a public record by each county. Each polling site shall be evaluated prior to its designation or upon changes to the facility. A site designated as a polling place prior to the effective date of this subdivision shall be evaluated within two years of the effective date of this subdivision by an individual qualified to determine whether or not such site meets the existing state and federal accessibility standards. 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.

1-c. The state board of **elections** shall promulgate any rules and regulations necessary to implement the provisions of this section.

2. If the board of **elections**, after designating a polling place, and after sending written notice of such polling place to each registered voter, designates an alternative polling place, it must, at least five days before the next **election** or day for registration, send by mail a written notice to each registered voter notifying him of the changed location of such polling place. If such notice is not possible the board of **elections** must provide for an alternative form of notice to be given to voters at the location of the previous polling place.

3. A building exempt from taxation shall be used whenever possible as a polling place if it is situated in the same or a contiguous **election** district, and may contain as many distinctly separate polling places as public convenience may require. The expense, if any, incidental to its use, shall be paid like the expense of other places of registration and voting. If a board or body empowered to designate polling places chooses a public school building for such purpose, the board or agency which controls such building must make available a room or rooms in such building which are suitable for registration and voting and which are as close as possible to a convenient entrance to such building and must make available any such room or rooms which the board or body designating such building determines are accessible to physically disabled voters as provided in subdivision one-a. Notwithstanding the provisions of any general, special or local law, if a board or body empowered to designate polling places chooses a publicly owned or leased building, other than a public school building, for such purposes the board or body which controls such building must make available a room or rooms in such building which are suitable for registration and voting and which are as close as possible to a convenient entrance to such building, and must make available any such room or rooms which the board or body designating such building determines are accessible to physically disabled voters unless, not later than thirty days after notice of its designation as a polling place, the board or body controlling such building, files a written request for a cancellation of such designation with the board or body empowered to designate polling places on such form as shall be provided by the board or body making such designation. The board or body empowered to so designate shall, within twenty days after such request is filed, determine whether the use of such building as a polling place would unreasonably interfere with the usual activities conducted in such building and upon such determination, may cancel such designation.

3-a. Any person or entity which controls a building for which a tax exemption, tax abatement, subsidy, grant or loan for construction, renovation, rehabilitation or operation has been provided by any agency of the state or any political subdivision thereof on or after the effective date of this subdivision shall agree to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters and are as close as possible to a convenient entrance to such building. Notwithstanding any other provision of law, any agency of the state or any political subdivision thereof may deny a tax exemption, tax abatement, subsidy, grant or loan for construction, renovation, rehabilitation or operation to a building which is otherwise eligible for such exemption, abatement, subsidy, grant or loan if the person or entity which controls such building refuses to agree to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters

and are as close as possible to a convenient entrance to such building. The provisions of this subdivision shall not apply to buildings used solely for residential purposes which contain twenty-five dwelling units or less.

3-b. Any person or entity conducting any program, activity or service for which a loan, grant, contract, subsidy or reimbursement has been provided by any agency of the state or a political subdivision thereof on or after the effective date of this subdivision shall make available for registration and voting purposes the room or rooms under the control of such person or entity in a building in which such program, activity or service is conducted which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters and are as close as possible to a convenient entrance to such building. Any such person, organization or entity shall agree to facilitate the use of such room or rooms, to the maximum extent possible, by making efforts to obtain the permission and cooperation of any person or entity which controls the building in which such room or rooms are located. Notwithstanding any other provision of law, any agency of the state or any political subdivision thereof may deny a loan, grant, contract, subsidy or reimbursement to any such person or entity otherwise eligible for such loan, grant, contract, subsidy or reimbursement unless such person or entity agrees to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters as provided in subdivision one-a of this section and are as close as possible to a convenient entrance to such building and agrees to facilitate the use of such room or rooms, to the maximum extent possible, by making efforts to obtain the permission and cooperation of any person or entity which controls the building in which such room or rooms are located.

3-c. Notwithstanding the provisions of subdivisions three-a and three-b of this section, no person, board, agency, body or entity shall be required to make available for registration or voting by persons other than the residents of such building, any room or rooms in a building, other than a publicly owned building, which contains correctional, health, mental hygiene, day care, drug or addiction treatment, or emergency services or other services for the public safety, or in a building used for religious services.

3-d. Notwithstanding any inconsistent provision of [section 3-506](#) or [section 4-134](#) of this chapter, and in the absence of a specific written agreement to the contrary, if the board or body empowered to designate polling places has authorized the use of a portable ramp, or ramp and platform, at a polling site for purposes of compliance with subdivision one-a of this section, the person or entity in control of a building or portion thereof in which such polling site is designated shall install, remove, store, and safeguard each such ramp, or ramp and platform, at such times and dates as may be required by the board or body empowered to designate polling places.

4. Where an **election** district is so situated or the only facilities available therein are such that public convenience would be served by establishing a polling place outside such district, the board or body empowered by this chapter to establish **election** districts may designate a polling place in a contiguous district.

4-a. Notwithstanding any conflicting provisions of this section, the common council of the city of Little Falls may adopt a resolution determining that there is no building within an **election** district within such city available and suitable for the meetings for the registration of voters or for any **election**, or that for reasons of efficiency or economy it is desirable to

consolidate the polling places for two or more, or all districts, in such city, in one place, regardless of whether or not such district adjoins the district to which such meeting or polling place is moved, and there may be as many distinctly separate **election** districts lawfully located in the same building as public convenience may require. Such a resolution shall be subject to the approval of the county board of **elections**. Every such building chosen shall meet all other requirements of this section and all federal requirements for accessibility for the elderly and the disabled.

5. (a) Whenever the number of voters eligible to vote in an **election** in any **election** district is less than one hundred, the polling place designated for such district may be the polling place of any other district which could properly be designated as the polling place of the first mentioned district pursuant to the provisions of this chapter, except that the polling place designated for any such district may be the polling place of any other district in such city or town provided that the distance from such first mentioned district to the polling place for such other district is not unreasonable pursuant to rules or regulations prescribed by the state board of **elections** and provided that the total number of persons eligible to vote in such other district in such **election**, including the persons eligible to vote in such first mentioned districts, is not more than five hundred. The inspectors of **election** and poll clerks, if any, of such other **election** district shall also act in all respects as the **election** officers for such first mentioned districts and no other inspectors shall be appointed to serve in or for such first mentioned districts. A separate poll ledger or computer generated registration list, separate voting machine or ballots and separate canvass of results shall be provided for such first mentioned districts, except that if the candidates and ballot proposals to be voted on by the voters of such districts are the same, the **election** districts shall be combined and shall constitute a single **election** district for that **election**. However, if the first mentioned district contains fewer than ten voters eligible to vote in such **election**, there shall be no limitation on the total number of persons eligible to vote in such combined district. If the polling place for any **election** district is moved for any **election**, pursuant to the provisions of this subdivision, the board of **elections** shall, not later than ten nor more than fifteen days before such **election**, mail, by first class mail, to each voter eligible to vote in such **election** district at such **election**, a notice setting forth the location of the polling place for such **election** and specifying that such location is for such **election** only.

(b) Whenever the total number of voters eligible to vote in any primary or special **election**, in any two **election** districts whose polling places are regularly located in the same building, is less than four hundred, the board of **elections** may assign the inspectors of **election** of the **election** district which contains the greater number of such voters, to act also, in all respects, as the **election** officers of the other such **election** district and no other **election** officers shall be appointed to serve in or for such other **election** district at such primary or special **election**. A separate poll ledger or computer generated registration list, separate voting machine or ballots and separate canvass of results shall be provided for each such **election** district.

(c) Whenever all the candidates to be voted upon at a primary **election**, except a primary **election** in the city of New York, or all the candidates and ballot proposals to be voted upon at a special **election**, or at a school board **election** conducted by the board of **elections**, or at a general **election** in the city of New York in a year in which there is no **election** for electors of president and vice-president of the United States or governor of the state or mayor of such city, by the voters of any two or more **election** districts whose polling places are regularly located in the same building are identical, the board of **elections** may combine such **election** districts for that **election**, provided that the total number of voters eligible to



vote in any such combined **election** district does not exceed one thousand two hundred in a primary **election** or does not exceed two thousand in a special **election** or a general **election** in the city of New York.

(d) Notwithstanding any other provision of this section, polling places designated for any one such **election** district that will be utilizing any voting machine or system certified for use in New York state pursuant to chapter one hundred eighty-one of the laws of two thousand five, may be the polling place of any other contiguous district or districts, provided the voting system used in such polling place produces separate and distinct vote totals for each **election** district voting in such polling place on such voting machine or system.

5-a. Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of **elections**.

6. Each polling place designated, whenever practicable, shall be situated on the main or ground floor of the premises selected. It shall be of sufficient area to admit and comfortably accommodate voters in numbers consistent with the deployment of voting systems and privacy booths, pursuant to [9 NYCRR 6210.19](#). Such deployment of voting systems, **election** workers and **election** resources shall be in a sufficient number to accommodate the numbers of voters eligible to vote in such polling place.

6-a. Each polling place designated, whenever practicable, shall be situated directly on a public transportation route.

7. No polling place shall be located on premises owned or leased by a person holding public office or who is a candidate for public office at a primary or general **election**.

8. Whenever the board of **elections** shall determine that there is no building within an **election** district available and suitable for the meetings for the registration of voters or for any **election**, or that for reasons of efficiency or economy it is desirable to consolidate such meetings of one or more districts in one place, such board may designate a building for such purpose in an adjoining district in the same village, city or town and there may be as many distinctly separate meetings or polling places lawfully located in the same building as public convenience may require. Wherever possible, public schools, fire houses, municipal buildings or other buildings exempt from taxation shall be designated for such meetings and polling places. Such a determination shall be made only after notice to the chairpersons of the county committees of all political parties and reasonable opportunity for them to be heard.

9. Renumbered as 8 by [L.2016, c. 43, § 1](#).

Please be advised that the Dutchess County Department of Law rejects any attempted service (excluding DCFS Legal Unit) via facsimile and e-mail correspondence. The Dutchess County Department of Law's use of facsimile and e-mail, and receipt of courtesy copies via facsimile and e-mail, is not a waiver of this policy.

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**

**Cell Phone: (845) 240-5704**

**Email: [ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)**

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

**From:** [Wesley Dixon](#)  
**To:** [Renata O'Donnell](#)  
**Subject:** Fwd: Polling Site at Vassar College  
**Date:** Friday, November 4, 2022 11:16:23 AM

---

----- Forwarded message -----

From: **Wesley Dixon** <[wdixon@vassar.edu](mailto:wdixon@vassar.edu)>  
Date: Thu, Nov 3, 2022 at 9:31 PM  
Subject: Polling Site at Vassar College  
To: Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>, Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

Dear Commissioners Haight and Black,

I am writing to follow-up on the hearing today regarding the lawsuit filed by the League of Women Voters of the Mid-Hudson Region. My understanding is that the hearing resulted in the judge mandating that the Dutchess BOE establish a polling site at Vassar for the election on Tuesday, November 8th, 2022. Vassar is willing and prepared to respond appropriately to this ruling.

Earlier this evening, I was in communication with Commissioner Black and she informed me that she and others would like to see the space on campus that was reserved in the event that a polling site was established at Vassar. We agreed to meet on campus at 3:00pm tomorrow (November 4th). The designated space is the Aula in Ely Hall.

In advance of tomorrow's site visit, I wanted to give you some background on the space:

1. Standing room capacity of 300; sitting room capacity of 150
2. Three separate entrances into the space
3. ADA accessible and compliant
4. Attached kitchen space
5. Bathrooms nearby
6. Several electrical outlets throughout
7. Tables and chairs to use as you see appropriate
8. Parking for about 15-20 outside

Please let me know if there is anything else the College can do to support the efforts of the Dutchess BOE.

Thanks,

Wes

--

Wesley Eugene Dixon • Special Assistant to the President and Secretary of the Board of Trustees

Vassar College • Box 1 • 124 Raymond Ave • Poughkeepsie, NY 12604

phone: (954) 655-2887

**VASSAR COLLEGE**

--

Wesley Eugene Dixon • Special Assistant to the President and Secretary of the Board of Trustees

Vassar College • Box 1 • 124 Raymond Ave • Poughkeepsie, NY 12604

phone: (954) 655-2887

**VASSAR COLLEGE**

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

----- X  
LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Index No. 2022/53491

Petitioners-Plaintiffs,

-against-

**NOTICE OF MOTION**

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections,

Respondents-Defendants.

----- X  
**PLEASE TAKE NOTICE** that, upon the annexed memorandum of law, and upon all the  
papers and prior proceedings had herein, Respondent Erik Haight will move this Court, at 2:00  
p.m. on the 3rd day of November, 2022, or as soon thereafter as counsel can be heard, at the  
Courthouse located at 10 Market Street, Poughkeepsie, New York 12601, before the Hon.  
Christie L. D'Alessio, JSC for an Order dismissing this proceeding due to:

- 1) Lack of jurisdiction over the person of Respondent pursuant to CPLR 3211(a)(8) due to failure to serve the Verified Petition and Order to Show Cause in compliance with CPLR 308, as Petitioners did not demonstrate, and the Court did not find, that service under CPLR 308(1), (2) or (4) is "impracticable";
- 2) Laches pursuant to CPLR 404(a) and CPLR 7804(f), as Petitioners have waited until literally one week before the scheduled November 8, 2022 election to commence this proceeding and the relief they seek would be prejudicial to Respondent as well as to the Board of Elections, voters and non-party Vassar College;
- 3) Failure to state a claim upon which relief may be granted pursuant to CPLR 3211(a)(7), in that the relief Petitioners seek is not ministerial and nondiscretionary, making mandamus unavailable;
- 4) Failure to join Vassar College, a necessary party, pursuant to CPLR 3211(a)(10); and
- 5) Failure to join Election Commissioner Hannah Black, a necessary party, pursuant to CPLR 3211(a)(10).

Dated: Beacon, New York  
November 3, 2022



---

David D. Jensen  
DAVID JENSEN PLLC  
33 Main Street  
Beacon, New York 12508  
(212) 380-6615 phone  
david@djensenpllc.com

**DAVID JENSEN PLLC**  
BEACON ◊ MANHATTAN

33 HENRY STREET  
BEACON, NEW YORK 12508

111 JOHN STREET, SUITE 420  
NEW YORK, NEW YORK 10038

4 November 2022

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

Re: *League of Women Voters of the Mid-Hudson Region, et al. v. Dutchess County Board of Elections, et al.*  
Index No. 2022/53491

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**

ATTORNEY AND COUNSELOR AT LAW  
NEW YORK PROFESSIONAL LIMITED LIABILITY COMPANY  
ADMITTED TO PRACTICE IN NEW JERSEY AND NEW YORK

+ 1.212.380.6615 TEL  
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Appx143

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

----- X  
LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Index No. 2022/53491

Petitioners-Plaintiffs,

-against-

**AFFIRMATION OF  
SERVICE**

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT in his capacity as Commissioner of the  
Dutchess County Board of Elections, and HANNAH  
BLACK in her capacity as Commissioner of the Dutchess  
County Board of Elections

Respondents-Defendants.

----- X  
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.

2. On the 4th day of November, 2022, I served true copies of the annexed Notice of  
Motion by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office  
or official depository of the U.S. Postal Service within the State of New York, addressed to the  
last known addressee(s) as indicated below:

James R. Peluso  
Dreyer Boyajian LLP  
75 Columbia Street  
Albany, NY 12210



Aria C. Branch  
Justin Baxenberg  
Richard Alexander Medina  
Renata O'Donnell  
Elias Law Group LLP  
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Washington, DC 20002

Michael Treybich  
Treybich Law, P.C.  
272 Mill Street  
Poughkeepsie, New York 12601

Caroline Blackburn  
Dutchess County Department of Law  
22 Market Street  
Poughkeepsie, NY 12601

3. In addition, on the 3rd day of November, 2022, I served true copies of the annexed Notice of Motion on the foregoing individuals by handing them copies during a hearing held at the courthouse at 10 Market Street in Poughkeepsie, New York.

Dated: Beacon, New York  
November 4, 2022



---

David D. Jensen  
DAVID JENSEN PLLC  
33 Main Street  
Beacon, New York 12508  
(212) 380-6615 phone

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

----- X  
LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Index No. 2022/53491

Petitioners-Plaintiffs,

-against-

**MEMORANDUM OF LAW**

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections,

Respondents-Defendants.

----- X  
There are multiple defects in this special proceeding, many of which result directly from  
Petitioners' decision to commence this action on November 1, 2022, one week prior to the  
election at issue, even though the controversy they have raised is one that became cognizable  
nearly two months prior, on August 2, 2022.

**D) THE COURT LACKS JURISDICTION BECAUSE PETITIONERS HAVE  
NOT SERVED RESPONDENT IN ACCORDANCE WITH CPLR 308**

"Pursuant to CPLR 304 a special proceeding is commenced and *jurisdiction acquired* by  
service of a notice of petition or order to show cause." *Bell v. State University of New York at  
Stony Brook*, 185 A.D.2d 925, 925, 587 N.Y.S.2d 388 (2d Dept 1992) (emphasis in source). The  
Civil Practice Law and Rules authorize a court to issue an Order to Show Cause that directs  
service "at a time and in a manner specified therein." CPLR 403(d). However, service must still  
comport with the Civil Practice Law and Rules. *See Hennesy v. DiCarlo*, 21 A.D.3d 505, 506,  
800 N.Y.S.2d 576 (2d Dep't 2005) (order to show cause directing personal service and service  
by mail did not dispense with requirement of "due diligence" to use "nail-and-mail" service  
under CPLR 308(2)); *see also McGreevy v. Simon*, 220 A.D.2d 713, 713-14, 633 N.Y.S.2d 177

(2d Dep't 1995) (two attempts at service was not "due diligence" so as to permit nail-and-mail service of order to show cause). Furthermore, Respondent's receipt of actual notice of this proceeding does not overcome this jurisdictional defect, as "[n]otice received in a manner other than that authorized by statute does not confer jurisdiction." *Macchia v. Russo*, 67 N.Y.2d 592, 505 N.Y.S.2d 591 (1986) (citing *Feinstein v. Bergner*, 48 N.Y.2d 234, 241, 422 N.Y.S.2d 356 (1979); *McDonald v. Ames Supply Co.*, 22 N.Y.2d 111, 115, 291 N.Y.S.2d 328 (1968)).

Petitioners' affirmation of service (NYSCEF Doc. No. 17) asserts that Petitioners have effected service of the order to show cause and related papers "by emailing them." The affirmation of service make no claim that Petitioners have otherwise served them personally. In an appropriate case, a party can serve process by email under CPLR 308(5), but this requires an application to the Court and a showing that

Neither the Verified Petition nor Petitioners' affirmation make any attempt to demonstrate that service under CPLR 308(1), (2) and (4) would be impracticable. Furthermore, the Order to Show Cause reflects no such finding. Thus, while a court *can* order "personal service pursuant to CPLR 308 other than personal delivery pursuant to CPLR 308(1)," *Koyachman v. Paige Management & Consulting, LLC*, 121 A.D.3d 951, 951, 995 N.Y.S.2d 115 (2d Dep't 2014), the Court did not do so here, nor would there have been any basis for doing so. In order to obtain this relief, Petitioners would have needed to show that, notwithstanding their diligence, they had been unable to effect service pursuant to CPLR 308(1), (2) or (4). *See Kozel v. Kozel*, 161 A.D.3d 700, 701, 78 N.Y.S.3d 68 (1st Dep't 2018); *Snyder v. Alternate Energy Inc.*, 19 Misc. 3d 954, 959, 857 N.Y.S.2d 442 (Supr. Ct., New York Co. 2008). For example, in *Hollow v Hollow*, 193 Misc 2d 691, 747 N.Y.S.2d 704 (Supr. Ct., Oswego County 2002), the respondent husband was in a compound in Saudi Arabia, the compound had refused to allow a

process server to enter, and the husband's employer also would not accept service. *See id.* at 692.

At an absolute minimum, Petitioners would have needed to demonstrate that service using a traditional method would be "futile." *See Liebeskind v. Liebeskind*, 86 A.D.2d 207, 210, 449 N.Y.S.2d 226 (1st Dep't 1982), *aff'd*, 58 N.Y.2d 858, 460 N.Y.S.2d 526 (1983).

The Court's order to show cause made no finding that service under CPLR 308(1), (2) or (4) would have been impracticable, and accordingly, Petitioners' failure to effect service under CPLR 308(1), (2) or (4) is a fatal jurisdictional error that mandates dismissal.

## II) OTHER ISSUES ASIDE, THE DOCTRINE OF LACHES BARS PETITIONERS' CLAIMS

"Laches is 'an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party.'" *League of Women Voters of N.Y. State v. New York State Bd. of Elections*, 206 A.D.3d 1227, 1229 (3d Dep't 2022) (quoting *Saratoga County Chamber of Commerce v Pataki*, 100 N.Y.2d 801, 816, 766 N.Y.S.2d 654 (2003); other citation omitted). "The essential element . . . is delay prejudicial to the opposing party." *Id.* (quoting *In re Barabash*, 31 N.Y.2d 76, 81, 334 N.Y.S.2d 890 (1972); other citations omitted). Here, Petitioners' claimed grievance is that Respondents "did not designate a polling place on the Vassar College campus prior to August 1, 2022." Verified Petition (NYSCEF Doc. No. 1) at ¶ 16. This means that Petitioners' claim has been cognizable for nearly two months, since August 2, 2022. There is no excuse for waiting until a week prior to the election to seek relief.

Two recent decisions from the Third Department are instructive. In *League of Women Voters*, cited above, the petitioner had waited 16 days after the act complained of to seek relief (on May 20), and the relief they sought concerned the primary election to be held about five weeks later (on June 28). *See League of Women Voters*, 206 A.D.3d at 1228-29. The Third Department concluded that "dismissal of the petition/complaint is required under the equitable

doctrine of laches.” *Id.* at 1229. The petitioner had delayed “unduly,” and that “delay results in significant and immeasurable prejudice to voters and candidates for assembly and innumerable other offices.” *Id.* at 1229-30. In *Amedure v. State*, No. CV-22-1955, 2022 WL 16568516 (3d Dep’t Nov. 1, 2022), the petitioners had commenced their constitutional challenge on September 29, “nine months after [the statute at issue] was enacted.” *Id.* at \*3; *see Amedure v. State*, No. 2022-2145, 2022 WL 14731190, \*1 (Supr. Ct., Saratoga Co. Oct. 21, 2022). The Third Department found that laches mandated dismissal of the petition, observing that “granting petitioners the requested relief during an ongoing election would be extremely disruptive and profoundly destabilizing and prejudicial to candidates, voters and the State and local Boards of Elections.” *Amedure*, 2022 WL 16568516 at \*4 (citing *League of Women Voters*, 206 A.D.3d at 1230; *Quinn v. Cuomo*, 183 A.D.3d 928, 931, 125 N.Y.S.3d 120 (2d Dep’t 2020)).

A final instructive case is *Corso v. Albany County Bd. of Elections*, 90 A.D.2d 637, 456 N.Y.S.2d 206 (3d Dep’t 1982), where the Third Department disagreed with the trial court that certain municipalities had been necessary parties, but nevertheless declined to reach the merits of the petition because “unable to determine with certainty whether the requested relief is feasible or even possible considering the few days remaining before the election.” *Id.* at 638. The court also observed that “the existing polling places are located relatively close to the campus,” and accordingly, that it did not appear that any “voter will be disenfranchised if the relief sought herein is not granted.” *Id.*

Here, Petitioners waited nearly two months and filed their action a mere one week before the election at issue. It would be extremely difficult or impossible to designate new polling places at this juncture, and there is no reason for Petitioners’ delay. Notably, Election Law § 4-104(2) requires the Board of Elections to notify voters of any polling place changes “at least five

days before the next election,” and it is already impossible to comply with this directive.

**III) RELIEF IN THE FORM OF MANDAMUS IS UNAVAILABLE, AND  
ACCORDINGLY, THE PETITION FAILS TO STATE A CLAIM**

Relief in the form of mandamus is available when a “body or officer [has] failed to perform a duty enjoined upon it by law.” CPLR § 7803(1). This relief is unavailable because “article 78 relief in the form of mandamus to compel may be granted only where a petitioner establishes a ‘*clear legal right*’ to the relief requested.” *Council of City of New York v. Bloomberg*, 6 N.Y.3d 380, 388 (2006) (quoting *Brusco v. Braun*, 84 N.Y.2d 674, 679 (1994)) (emphasis added). Mandamus is only appropriate where “the duty sought to be enjoined is performance of an act commanded to be performed by law and involving no exercise of discretion.” *Hamptons Hospital & Medical Center, Inc. v. Moore*, 52 N.Y.2d 88, 96 (1981). Indeed, most agency “decisions do not lend themselves to consideration on their merits under the provisions for mandamus to review, because they concern rational choices among competing policy considerations and are thus not amenable to analysis under the ‘arbitrary and capricious’ standard.” *New York City Health & Hospitals Corp. v. McBarnette*, 84 N.Y.2d 194, 204-05 (1994); *see also De Milio v. Borghard*, 55 N.Y.2d 216, 220 (1982) (“the aggrievement does not arise from the final determination but from the refusal of the body or officer to act or to perform a duty enjoined by law” (quotation omitted)).

By its very nature, the relief Petitioners seek—the designation of a polling place—is one that concerns the making of rational choices between competing alternatives. Notably, one of the affidavits offered in support of the Petition states that there are “several potential places on campus” that could potentially be designated. Because the conduct at issue is conduct that requires the exercise of discretion, mandamus is unavailable, and the Petition accordingly fails to state a claim.

**IV) VASSAR COLLEGE IS A NECESSARY PARTY BECAUSE ELECTION LAW § 4-104(5-A) REQUIRES ITS INVOLVEMENT**

“Necessary parties are those ‘who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action.’” *Morgan v. de Blasio*, 29 N.Y.3d 559, 560, 60 N.Y.S.3d 106 (2017). (quoting CPLR 1001(a)). The failure to join a necessary party requires dismissal. *See Quis v. Putnam County Bd. of Elections*, 22 A.D.3d 585, 586, 802 N.Y.S.2d 709, (2d Dep’t 2005).

The statute at issue here requires the participation of the affected college or university. *See* Election Law § 4-104(5-A). Furthermore, the relief sought by Petitioners could inequitably affect Vassar College because it would, pertinently, require them to make space available for a polling place and accommodate the attendant traffic. Thus, Vassar College is a necessary party, and the failure to include Vassar College as a party is yet another ground that mandates dismissal of the Petition.

Dated: Beacon, New York  
November 2, 2022



---

DAVID D. JENSEN

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

- - - - - X

LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Index No. 2022/53491

Petitioners-Plaintiffs,

-against-

**AFFIRMATION OF  
SERVICE**

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT in his capacity as Commissioner of the  
Dutchess County Board of Elections, and HANNAH  
BLACK in her capacity as Commissioner of the Dutchess  
County Board of Elections

Respondents-Defendants.

- - - - - X

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.

2. On the 4th day of November, 2022, I served true copies of the annexed  
Memorandum of Law by mailing the same in a sealed envelope, with postage prepaid thereon, in  
a post office or official depository of the U.S. Postal Service within the State of New York,  
addressed to the last known addressee(s) as indicated below:

James R. Peluso  
Dreyer Boyajian LLP  
75 Columbia Street  
Albany, NY 12210



Aria C. Branch  
Justin Baxenberg  
Richard Alexander Medina  
Renata O'Donnell  
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10 G St NE, Ste 600  
Washington, DC 20002

Michael Treybich  
Treybich Law, P.C.  
272 Mill Street  
Poughkeepsie, New York 12601

Caroline Blackburn  
Dutchess County Department of Law  
22 Market Street  
Poughkeepsie, NY 12601

4. In addition, on the 3rd day of November, 2022, I served true copies of the annexed Memorandum of Law on the foregoing individuals by handing them copies during a hearing held at the courthouse at 10 Market Street in Poughkeepsie, New York.

Dated: Beacon, New York  
November 4, 2022



David D. Jensen  
DAVID JENSEN PLLC  
33 Main Street  
Beacon, New York 12508  
(212) 380-6615 phone

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

----- X  
LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Index No. 2022/53491

Petitioners-Plaintiffs,

-against-

**NOTICE OF APPEAL**

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT in his capacity as Commissioner of the  
Dutchess County Board of Elections, and HANNAH  
BLACK in her capacity as Commissioner of the Dutchess  
County Board of Elections

Respondents-Defendants.

----- X  
**PLEASE TAKE NOTICE** that Respondent Erik J. Haight does hereby appeal from the  
decision, order and judgment of the Supreme Court, D'Alessio, J., in the above-captioned matter  
entered on or about November 3, 2022, which granted relief on Petitioners' Article 78 claim.  
This appeal is from each and every portion thereof which ruled adversely to Respondent or by  
which Respondent Erik Haight is aggrieved, and is to the Appellate Division, Second  
Department, of the Supreme Court of the State of New York.

Dated: Beacon, New York  
November 4, 2022



---

David D. Jensen  
DAVID JENSEN PLLC  
33 Main Street  
Beacon, New York 12508  
(212) 380-6615 phone

TO:

***SERVED BY MAIL***

James R. Peluso  
Dreyer Boyajian LLP  
75 Columbia Street  
Albany, NY 12210

Aria C. Branch  
Justin Baxenberg  
Richard Alexander Medina  
Renata O'Donnell  
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Caroline Blackburn  
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Poughkeepsie, NY 12601

# Supreme Court of the State of New York

## Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

LEAGUE OF WOMEN VOTERS OF THE MID.HUDSON REGION,  
TANEISHA MEANS, and MAGDALENA SHARFF.

- against -

THE DUTCHESS COUNTY BOARD OF ELECTIONS, ERIK J. HAIGHT in  
his capacity as Commissioner of the Dutchess County Board of Elections,  
and HANNAH BLACK in the capacity as Commissioner of the Dutchess

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

### Case Type

- |                                                            |                                                                |
|------------------------------------------------------------|----------------------------------------------------------------|
| <input type="checkbox"/> Civil Action                      | <input checked="" type="checkbox"/> CPLR article 78 Proceeding |
| <input type="checkbox"/> CPLR article 75 Arbitration       | <input type="checkbox"/> Special Proceeding Other              |
| <input type="checkbox"/> Action Commenced under CPLR 214-g | <input type="checkbox"/> Habeas Corpus Proceeding              |

### Filing Type

- |                                                       |                                                 |
|-------------------------------------------------------|-------------------------------------------------|
| <input checked="" type="checkbox"/> Appeal            | <input type="checkbox"/> Transferred Proceeding |
| <input type="checkbox"/> Original Proceedings         | <input type="checkbox"/> CPLR Article 78        |
| <input type="checkbox"/> CPLR Article 78              | <input type="checkbox"/> Executive Law § 298    |
| <input type="checkbox"/> Eminent Domain               | <input type="checkbox"/> CPLR 5704 Review       |
| <input type="checkbox"/> Labor Law 220 or 220-b       |                                                 |
| <input type="checkbox"/> Public Officers Law § 36     |                                                 |
| <input type="checkbox"/> Real Property Tax Law § 1278 |                                                 |

**Nature of Suit:** Check up to three of the following categories which best reflect the nature of the case.

|                                                                    |                                                 |                                                  |                                                       |
|--------------------------------------------------------------------|-------------------------------------------------|--------------------------------------------------|-------------------------------------------------------|
| <input type="checkbox"/> Administrative Review                     | <input type="checkbox"/> Business Relationships | <input type="checkbox"/> Commercial              | <input type="checkbox"/> Contracts                    |
| <input type="checkbox"/> Declaratory Judgment                      | <input type="checkbox"/> Domestic Relations     | <input checked="" type="checkbox"/> Election Law | <input type="checkbox"/> Estate Matters               |
| <input type="checkbox"/> Family Court                              | <input type="checkbox"/> Mortgage Foreclosure   | <input type="checkbox"/> Miscellaneous           | <input type="checkbox"/> Prisoner Discipline & Parole |
| <input type="checkbox"/> Real Property<br>(other than foreclosure) | <input type="checkbox"/> Statutory              | <input type="checkbox"/> Taxation                | <input type="checkbox"/> Torts                        |

| Appeal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Paper Appealed From (Check one only):                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                | If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper. |                                                                                                                          |
| <input type="checkbox"/> Amended Decree<br><input type="checkbox"/> Amended Judgement<br><input type="checkbox"/> Amended Order<br><input type="checkbox"/> Decision<br><input type="checkbox"/> Decree                                                                                                                                                                                                                                                                                                                                                                                                                                  | <input type="checkbox"/> Determination<br><input type="checkbox"/> Finding<br><input type="checkbox"/> Interlocutory Decree<br><input type="checkbox"/> Interlocutory Judgment<br><input checked="" type="checkbox"/> Judgment | <input type="checkbox"/> Order<br><input type="checkbox"/> Order & Judgment<br><input type="checkbox"/> Partial Decree<br><input type="checkbox"/> Resettled Decree<br><input type="checkbox"/> Resettled Judgment         | <input type="checkbox"/> Resettled Order<br><input type="checkbox"/> Ruling<br><input type="checkbox"/> Other (specify): |
| Court: <b>Supreme Court</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                | County: <b>Choose County</b>                                                                                                                                                                                               |                                                                                                                          |
| Dated: <b>11/3/2022</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                | Entered:                                                                                                                                                                                                                   |                                                                                                                          |
| Judge (name in full): <b>Christie L. D'Alessio</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                | Index No.:                                                                                                                                                                                                                 |                                                                                                                          |
| Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                | Trial: <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury                                                                                    |                                                                                                                          |
| Prior Unperfected Appeal and Related Case Information                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                          |
| <p>Are any appeals arising in the same action or proceeding currently pending in the court? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.</p> <p>Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:</p> <p><b>Not applicable</b></p>                                                                                                                                    |                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                          |
| Original Proceeding                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                          |
| Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                |                                                                                                                                                                                                                            | Date Filed:                                                                                                              |
| Statute authorizing commencement of proceeding in the Appellate Division:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                          |
| Proceeding Transferred Pursuant to CPLR 7804(g)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                          |
| Court: <b>Choose Court</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                | County: <b>Choose County</b>                                                                                                                                                                                               |                                                                                                                          |
| Judge (name in full):                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                | Order of Transfer Date:                                                                                                                                                                                                    |                                                                                                                          |
| CPLR 5704 Review of Ex Parte Order:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                          |
| Court: <b>Choose Court</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                | County: <b>Choose County</b>                                                                                                                                                                                               |                                                                                                                          |
| Judge (name in full):                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                | Dated:                                                                                                                                                                                                                     |                                                                                                                          |
| Description of Appeal, Proceeding or Application and Statement of Issues                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                          |
| <p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p> <p><b>Appellant Erik Haight appeals from a final decision, order and judgment entered on November 2, 2022 and every part of the order or judgment from which the appealing party is aggrieved.</b></p> |                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                          |

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

The Supreme Court erred in granting the petition, and in denying Appellant's motion to dismiss, because:

- (1) The purported service of papers on Appellant by email was defective and the Supreme Court lacked jurisdiction;
- (2) The doctrine of laches mandated dismissal of this proceeding due its filing on November 1, 2022, one week prior to the election at issue;
- (3) The Petition failed to state a claim for mandamus because the act complained of (the selection and designation of polling places) is not a ministerial action; and
- (4) A necessary party (Vassar College, which owns the property at issue) was not joined.

### Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

| No. | Party Name                                      | Original Status | Appellate Division Status |
|-----|-------------------------------------------------|-----------------|---------------------------|
| 1   | League of Women Voters of the Mid-Hudson Region | Petitioner      | Respondent                |
| 2   | Taneisha Means                                  | Petitioner      | Respondent                |
| 3   | Magdalena Sharff                                | Petitioner      | Respondent                |
| 4   | Erik Haight                                     | Respondent      | Appellant                 |
| 5   | Hannah Black                                    | Intervenor      | None                      |
| 6   | Dutchess County Board of Elections              | Respondent      | None                      |
| 7   |                                                 |                 |                           |
| 8   |                                                 |                 |                           |
| 9   |                                                 |                 |                           |
| 10  |                                                 |                 |                           |
| 11  |                                                 |                 |                           |
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| 18  |                                                 |                 |                           |
| 19  |                                                 |                 |                           |
| 20  |                                                 |                 |                           |

## Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: David Jensen/David Jensen PLLC

Address: 33 Henry Street

City: Beacon

State: NY

Zip: 12508

Telephone No: 212-380-6615

E-mail Address: david@djensenpllc.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above) Erik Haight

Attorney/Firm Name: James Peluso/Dreyer Boyajian LLP

Address: 75 Columbia Street

City: Albany

State: NY

Zip: 12210

Telephone No: 518-463-7784

E-mail Address: jpeluso@dblawny.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: Michael Treybich/Treybich Law, P.C.

Address: 272 Mill Street

City: Poughkeepsie

State: NY

Zip: 12601

Telephone No: 845-554-5295

E-mail Address: michael@trebichlaw.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above) Hannah Black

Attorney/Firm Name: Caroline Blackburn/Dutchess County Department of Law

Address: 60 Market Street

City: Poughkeepsie

State: NY

Zip: 12601

Telephone No: 845-486-3051

E-mail Address: cblackburn@dutchessny.gov

Attorney Type: ☐ Retained ☐ Assigned ☒ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above) Dutchess County Board of Elections

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No:

E-mail Address:

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

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

**PRESENT: HON. CHRISTIE L. D'ALESSIO, J.S.C.**

LEAGUE OF WOMEN VOTERS OF THE  
MID-HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections,

Respondents-Defendants.

**DECISION, ORDER,  
AND JUDGMENT**  
Index No. 2022-53491

The following papers were read on the petition filed in connection with this hybrid special proceeding under CPLR Article 78 and declaratory judgment action under CPLR § 3001, seeking, inter alia, the designation of a polling location on the campus of Vassar College in accordance with Election Law § 4-104 [5-a]; NYSCEF Documents no. 1-19.

Upon review of the petition filed by Order to Show Cause, all other written submissions filed to NYSCEF, and upon due consideration of the arguments, testimony and exhibits presented on the record in court on November 3, 2022, by the parties and/or their respective counsel, it is hereby

1. ORDERED that, upon application of the proposed intervenor, Hannah Black in the capacity as a Commissioner of Dutchess County Board of Elections, and with the written consent of petitioner, this case caption is amended to include the proposed intervenor as a named Respondent-Defendant. It is further



2. ORDERED that, the case caption is amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----X  
LEAGUE OF WOMEN VOTERS OF THE  
MID-HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections, and  
HANNAH BLACK in the capacity as Commissioner of the  
Dutchess County Board of Elections,

Respondents-Defendants.  
-----X

3. ORDERED that, this Court grants Dutchess County Attorney's unopposed application to recuse itself from representing either or both named Commissioners of the Board of Elections based upon the conflict arising from each Commissioner's adverse position on the merits of the petition. It is further
4. ORDERED that, insofar as the proposed Intervenor's application included a request for reimbursement of attorney fees associated with private representation incurred as a result of the aforementioned conflict, the Dutchess County Attorney's letter submission dated November 2, 2022 states that "County Attorney has no objection to the County's payment of attorney fees associated with private representation of Commissioner Black as a Respondent-Defendant, to the extent such fees are in accord with Dutchess County Local Law No. 4 of 1988". Private counsel may follow the appropriate protocols to submit any such request to the County. That issue is resolved accordingly. It is further
5. ORDERED that, the oral application of counsel for Respondent/Defendant Erik J. Haight in his capacity as Commissioner of the Dutchess County Board of Elections for dismissal of this matter is denied. It is further
6. ORDERED that, this Court grants the petition in its entirety. The plain language of Election Law § 4-104[5-a] which includes the word "shall" (as opposed to "may" or "should") *specifically mandates* the designation of a voting polling place on a college or university campus where, as here, the petitioner demonstrated that the college or university campus contains three hundred or more registrants to vote at an address on such college or university campus.

Any other applications for further relief not specifically granted herein are denied.

The foregoing constitutes the decision, order and judgment of this court.

Dated: November 3, 2022  
Poughkeepsie, New York

ENTERED:

  
HON. CHRISTIE L. D'ALESSIO, J.S.C.

TO:

Filed to NYSCEF

Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

**DAVID JENSEN PLLC**

BEACON ♦ MANHATTAN

33 HENRY STREET  
BEACON, NEW YORK 12508

111 JOHN STREET, SUITE 420  
NEW YORK, NEW YORK 10038

4 November 2022

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

Re: *League of Women Voters of the Mid-Hudson Region, et al. v. Dutchess County Board of Elections, et al.*  
Index No. 2022/53491

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**

ATTORNEY AND COUNSELOR AT LAW  
NEW YORK PROFESSIONAL LIMITED LIABILITY COMPANY  
ADMITTED TO PRACTICE IN NEW JERSEY AND NEW YORK

+ 1.212.380.6615 TEL  
+ 1.917.591.1318 FAX  
david@djensenpllc.com

Appx163

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

- - - - - X

LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Index No. 2022/53491

Petitioners-Plaintiffs,

-against-

**AFFIRMATION OF  
SERVICE**

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT in his capacity as Commissioner of the  
Dutchess County Board of Elections, and HANNAH  
BLACK in her capacity as Commissioner of the Dutchess  
County Board of Elections

Respondents-Defendants.

- - - - - X

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.

2. On the 4th day of November, 2022, I served true copies of the annexed Notice of  
Appeal by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office  
or official depository of the U.S. Postal Service within the State of New York, addressed to the  
last known addressee(s) as indicated below:

James R. Peluso  
Dreyer Boyajian LLP  
75 Columbia Street  
Albany, NY 12210

Aria C. Branch  
Justin Baxenberg  
Richard Alexander Medina  
Renata O'Donnell  
Elias Law Group LLP  
10 G St NE, Ste 600  
Washington, DC 20002

Michael Treybich  
Treybich Law, P.C.  
272 Mill Street  
Poughkeepsie, New York 12601

Caroline Blackburn  
Dutchess County Department of Law  
22 Market Street  
Poughkeepsie, NY 12601

Dated: Beacon, New York  
November 4, 2022



---

David D. Jensen  
DAVID JENSEN PLLC  
33 Main Street  
Beacon, New York 12508  
(212) 380-6615 phone

At a \_\_\_\_\_ part of the Supreme Court of the State of New York, held in and for the County of Dutchess, at 10 Market Street Poughkeepsie, NY 12601 on the \_\_\_\_\_ day of November 2022

PRESENT:

LEAGUE OF WOMEN VOTERS OF THE MID-HUDSON REGION, TANEISHA MEANS, and MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS, ERIK J. HAIGHT in his capacity as Commissioner of the Dutchess County Board of Elections, and HANNAH BLACK in the capacity as Commissioner of the Dutchess County Board of Elections,

Respondents-Defendants

Index No. 2022-53491

**ORDER TO SHOW**  
**CAUSE WITH**  
**EMERGENCY INTERIM**  
**RELIEF**

Upon the reading and filing of the Affirmation of Richard A. Medina, dated November 5, 2022, and the exhibits attached thereto; and upon all the papers and proceedings herein, it is hereby:

ORDERED, that the Respondents named above show cause before this Court at Part \_\_\_\_\_ to be held at the Courthouse located at 10 Market Street Poughkeepsie, NY 12601, on the \_\_\_\_\_ of November 2022 at \_\_\_\_\_ of that day, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein clarifying that the Court's November 3, 2022 Order, which granted the Verified Petition in its

entirety, requires Respondents to designate an additional polling place at the location offered by Vassar College for voters registered to vote at a residential address on the Vassar campus and to publicize the new on-campus polling place to such voters.

IT IS FURTHER ORDERED that, pending the hearing and determination of this motion, (a) the Aula at Ely Hall shall be designated as an additional polling place to be available on the day of the general election on November 8, 2022 for all voters registered at a residential address on the Vassar College campus; (b) Respondents shall direct Board of Elections staff to begin making the necessary preparations for such additional polling place, and (c) Respondents shall publicize the new on-campus polling place to voters who are registered to vote at a residential address on Vassar College's campus. Sufficient reason appearing therefore,

IT IS FURTHER ORDERED that, pursuant to CPLR 308(5) and given the impracticability of personal service on all Respondents under CPLR 308(1), (2), and (4), electronic service of a copy of this Order to Show Cause, together with the papers upon which it is granted, upon Respondents-Defendants by email to their counsel of record and to the official government email addresses of the Board of Elections' two Commissioners, or by personal service upon a person of suitable age and discretion at the office of the Board of Elections on or before \_\_\_\_\_, 2022, at \_\_\_\_ shall be deemed good and sufficient service thereof.

IT IS FURTHER ORDERED that any requirement that the affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits shall be filed with the Clerk of the Part on the return date, and that because of the impracticability of personal service, pursuant to CPLR 308(5), substituted service need

not be preceded by due diligence attempt(s) at personal delivery upon Respondent-Defendant, and for the same reason, the ten day completion of service provision is not in effect.

E N T E R:

---

J.S.C.

Dated: \_\_\_\_\_, New York  
November \_\_\_\_, 2022



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
ERIK J. HAIGHT in his capacity as Commissioner of the  
Dutchess County Board of Elections, and HANNAH  
BLACK in the capacity as Commissioner of the Dutchess  
County Board of Elections,

Respondents-Defendants.

Index No. 2022-53491

**AFFIRMATION OF**  
**RICHARD A. MEDINA IN**  
**SUPPORT OF**  
**EMERGENCY ORDER TO**  
**SHOW CAUSE**

Richard Alexander Medina, an attorney admitted to practice law before the Courts of the State of New York, and not a party to the within action, affirms the following to be true under the penalties of perjury under CPLR § 2106:

1. I am an attorney for the Petitioners-Plaintiffs (“Petitioners”) in this proceeding, and as such I am fully familiar with the facts and circumstances contained herein. I make this Affirmation because the within Order to Show Cause should be deemed an emergency application.

2. On November 1, 2022, Petitioners filed a verified petition requesting that this Court compel Respondents, including Commissioner Erik J. Haight, (a) to designate and operate a polling place to be used on the day of the general election on November 8, 2022 on the campus of Vassar College; (b) to assign all voters **registered at a residential address on the Vassar College campus** to that on-campus polling place and (c) to publicize the new on-campus polling place and assignments to those voters who are assigned to the Vassar College on-campus polling place.

3. On November 3, 2022, this Court held a hearing on this matter at which Commissioner Haight personally appeared and in which his counsel fully participated.

4. At the hearing, this Court entered a Decision, Order, and Judgment granting the Verified Petition in its entirety, holding that “Election Law 4-104[5-a] specifically mandates the designation of a voting polling place on a college or university campus where, as here, the petitioner demonstrated that the college or university campus contains three hundred or more registrants to vote at an address on such college or university campus.” NYSCEF Doc. No. [21](#), ¶ 6 (the “November 3 Order”).

5. At 9:31 PM on November 3, Wesley Dixon, Special Assistant to the President of Vassar, sent an email to both Commissioners of the Board of Elections reiterating Vassar’s willingness to host a polling location on campus, and describing the site that it had set aside for this purpose—the Aula at Ely Hall. Mr. Dixon offered to host the Board of Elections for a site visit at the Aula at 3:00 p.m. on November 4. A true and correct copy of that email is attached hereto as Exhibit A.

6. Attached hereto as Exhibit B is, upon information and belief, a true and correct copy of Commissioner Black’s email correspondence with Commissioner Haight detailing her efforts to comply with this Court’s November 3 Order.

7. Contrary to Commissioner Haight’s suggestion, and as Commissioner Black testified at the hearing before this Court on November 3, the law does not require a public meeting to be held before a poll site can be designated.

8. Upon information and belief, the site visit at the Aula took place as planned, at 3:00 p.m. on November 4. Commissioner Black as well as Republican Board of Elections staff attended.

Commissioner Haight did not attend. Commissioner Black confirmed that the Aula satisfies all requirements for a polling location.

9. Attached to this affirmation as Exhibit C is an affidavit by Wesley Dixon of Vassar College confirming that Vassar is aware of this Court's November 3 Order, believes the Aula meets all requirements for designation as a polling location, supports designation of the Aula as a polling location, and is willing to immediately send out materials and post notices publicizing the site upon designation.

10. Yesterday evening at approximately 9:05 p.m., Commissioner Haight emailed Commissioner Black concerning parking at the Aula. *See* Exhibit B. Commissioner Haight's email wrongly says: "The court didn't authorize Vassar as a satellite location but rather the poll site for those election districts," suggesting that *all* voters from the three election districts that touch Vassar's campus must vote at the Vassar poll site. (emphasis added).

11. Commissioner Haight is incorrect. The November 3 Order granted the Verified Petition in its entirety. The Verified Petition specifically sought an order compelling Respondents "(a) to designate and operate a polling place to be used on the day of the general election on November 8, 2022 on the campus of Vassar College;" and (b) "to assign all voters registered at a residential address on the Vassar College campus to that on-campus polling place." (emphasis added).

12. Commissioner Haight continues to be intransigent, professing confusion as to his obligations under this Court's November 3 Order and N.Y. Elec. Law § 4-104 [5-a]. Accordingly, Petitioners hereby move this Court for clarification of the November 3 Order.

13. This Court has found that a polling place must be designated at Vassar College pursuant to New York Election Law § 4-104[5-a]. Time is of the essence given the imminence of Election Day.

14. This Court has equitable authority to fashion a remedy in this Article 78 mandamus action. *See Matter of Geller v. Veteran*, 49 A.D.2d 574, 574 (2d Dep’t 1975) (“Although mandamus relief is classed as a legal remedy, equitable principles largely control its issuance.”). This Court also has inherent authority to enforce its own orders. *Pastrana v. Cutler*, 115 A.D.3d 725, 727-28 (2d Dep’t 2014) (“[T]he Supreme Court acted appropriately pursuant to its inherent plenary power to enforce compliance with its prior orders and to fashion a remedy for the proper administration of justice.”)

15. Petitioners therefore respectfully request an order from this Court (a) designating the Aula at Ely Hall as an additional polling place to be available on the day of the general election on November 8, 2022 for all voters registered at a residential address on the Vassar College campus; (b) ordering Respondents to direct Board of Elections staff to begin making the necessary preparations for such additional polling place, and (c) ordering Respondents to publicize the new on-campus polling place to voters who are registered to vote at a residential address on Vassar College’s campus.

16. Because time is of the essence, Petitioners also request leave to effect service of a copy of the annexed Order to Show Cause, together with a copy of the papers upon which it is granted, upon Respondent as indicated in the accompanying Order to Show Cause: by email to the official government email addresses of the Board’s two commissioners, including that of Respondent Haight, or by personal service upon a person of suitable age and discretion at the office of the Board of Elections.

17. In time-sensitive matters related to the administration of elections under the Election Law, courts routinely authorize alternative and expedited methods of service in accordance with the Election Law, the CPLR, and controlling case law. *See, e.g. Aarons v. Bd. of Elections in the City of N.Y.*, Index No. 507128/20, 2020 WL 2789911, at \*2 (N.Y. Sup. Ct., May 29, 2020) (“The order to show cause provided for same day service on the Board via email, which was effectuated by Petitioner.”); *McGrath v. New Yorkers Together*, 55 Misc. 3d 204, 206-07 (N.Y. Sup. Ct. 2016) (“Justice Dillon directed that copies of the order to show cause, together with all of the ancillary papers upon which the order was granted, be served upon respondents in person, or alternatively, at the option of petitioner, served upon any party herein by electronic transmission on or before the close of business on November 7, 2016 at an email address or fax number maintained by such respondents.”). Indeed, the Saratoga County Supreme Court recently authorized electronic service of an order to show cause in a time-sensitive election matter in which Commissioner Haight was a plaintiff. *Amedure v. State of New York*, Saratoga County Index No. 20222145, Order to Show Cause, Doc. No. [6](#) (Sup. Ct. Oct. 6, 2022) (“at the option of the Petitioners, same may be served by electronic transmission thereof to the said Defendant-Respondents at an email or fax number maintained for such purposes.”).

18. I have made a good faith effort to contact Respondents. Specifically, I emailed Mr. Jensen, counsel for Commissioner Haight, copying all counsel of record, this morning at 9:02 a.m. In that email, I requested that Mr. Jensen, by 10:00 a.m.: (1) confirm that Commissioner Haight will comply with Justice D’Alessio’s order by designating the Aula at Ely Hall as an additional poll site for voters registered on Vassar’s campus and directing BOE staff to move forward with the necessary preparations, as requested by Commissioner Black, or (2) explain his basis for refusing to do so.

19. As of the time of filing, Mr. Jensen has not responded to my 9:02 a.m. email.

20. The undersigned is also available for a telephonic conference at the Court's convenience should the Court have any questions.

WHEREFORE, it is respectfully requested that this Court entertain this emergency Order to Show Cause, and grant the relief sought herein.

Dated: November 5, 2022



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Richard Alexander Medina  
Elias Law Group LLP  
10 G St NE, Ste 600  
Washington, DC 20002  
Tel.: (202) 968-4490  
rmedina@elias.law

# Exhibit A

**From:** [Wesley Dixon](#)  
**To:** [Renata O'Donnell](#)  
**Subject:** Fwd: Polling Site at Vassar College  
**Date:** Friday, November 4, 2022 11:16:23 AM

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----- Forwarded message -----

From: **Wesley Dixon** <[wdixon@vassar.edu](mailto:wdixon@vassar.edu)>  
Date: Thu, Nov 3, 2022 at 9:31 PM  
Subject: Polling Site at Vassar College  
To: Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>, Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

Dear Commissioners Haight and Black,

I am writing to follow-up on the hearing today regarding the lawsuit filed by the League of Women Voters of the Mid-Hudson Region. My understanding is that the hearing resulted in the judge mandating that the Dutchess BOE establish a polling site at Vassar for the election on Tuesday, November 8th, 2022. Vassar is willing and prepared to respond appropriately to this ruling.

Earlier this evening, I was in communication with Commissioner Black and she informed me that she and others would like to see the space on campus that was reserved in the event that a polling site was established at Vassar. We agreed to meet on campus at 3:00pm tomorrow (November 4th). The designated space is the Aula in Ely Hall.

In advance of tomorrow's site visit, I wanted to give you some background on the space:

1. Standing room capacity of 300; sitting room capacity of 150
2. Three separate entrances into the space
3. ADA accessible and compliant
4. Attached kitchen space
5. Bathrooms nearby
6. Several electrical outlets throughout
7. Tables and chairs to use as you see appropriate
8. Parking for about 15-20 outside

Please let me know if there is anything else the College can do to support the efforts of the Dutchess BOE.

Thanks,

Wes

--

Wesley Eugene Dixon • Special Assistant to the President and Secretary of the Board of Trustees

Vassar College • Box 1 • 124 Raymond Ave • Poughkeepsie, NY 12604

phone: (954) 655-2887



**VASSAR COLLEGE**

--

Wesley Eugene Dixon • Special Assistant to the President and Secretary of the Board of Trustees

Vassar College • Box 1 • 124 Raymond Ave • Poughkeepsie, NY 12604

phone: (954) 655-2887

**VASSAR COLLEGE**

# Exhibit B

**From:** [Michael Treybich](#)  
**To:** [Rich Medina](#)  
**Subject:** Fwd: Aula room at Vassar College  
**Date:** Saturday, November 5, 2022 12:41:28 PM

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----- Forwarded message -----

From: **Black, Hannah** <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
Date: Sat, Nov 5, 2022, 12:38 PM  
Subject: Aula room at Vassar College  
To: Michael Treybich <[michael@treybichlaw.com](mailto:michael@treybichlaw.com)>

See below.

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**From:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>  
**Sent:** Friday, November 4, 2022 9:05 PM  
**To:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>; Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>;  
Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>; Ptasnick, Jessica <[jptasnick@dutchessny.gov](mailto:jptasnick@dutchessny.gov)>;  
Tkazyik, John <[jtkazyik@dutchessny.gov](mailto:jtkazyik@dutchessny.gov)>  
**Subject:** RE: Aula room at Vassar College

Hannah,

Are you certain there's enough parking? I'm expecting 1,800 voters throughout the course of the day on Tuesday. The court didn't authorize Vassar as a satellite location but rather the poll site for those election districts.

Erik

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**From:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
**Sent:** Friday, November 4, 2022 5:04 PM  
**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>; Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>;  
Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>; Ptasnick, Jessica <[jptasnick@dutchessny.gov](mailto:jptasnick@dutchessny.gov)>;  
Tkazyik, John <[jtkazyik@dutchessny.gov](mailto:jtkazyik@dutchessny.gov)>

**Subject:** Aula room at Vassar College

Good afternoon Commissioner,

After today's site visit, I would like to propose the Aula room in Ely Hall as the designated poll site for Vassar College campus. The room was all on one level making it easier for voters to navigate, it had a good wheelchair ramp with accessible door, plenty of outlets for the machines and poll pads, a large space with kitchen and ADA compliant bathrooms along with parking that would be strictly used for voters. Vassar College campus has given our needs for a poll site into great consideration and the Aula room certainly meets those needs.

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)

**From:** [Michael Treybich](#)  
**To:** [Rich Medina](#)  
**Subject:** Fwd: Poll pads and machines  
**Date:** Saturday, November 5, 2022 12:41:02 PM

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----- Forwarded message -----

**From:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
**Date:** Sat, Nov 5, 2022, 12:39 PM  
**Subject:** Poll pads and machines  
**To:** Michael Treybich <[michael@treybichlaw.com](mailto:michael@treybichlaw.com)>

See below.

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**From:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>  
**Sent:** Friday, November 4, 2022 8:01 PM  
**To:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>; Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>; Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>  
**Subject:** RE: Poll pads and machines

That's likely to be premature and also an incomplete plan. Please fill in the gaps. Thank you,  
Erik

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**From:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
**Sent:** Friday, November 4, 2022 4:41 PM  
**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>; Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>; Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>  
**Subject:** Poll pads and machines

Good afternoon,

To move forward on the Vassar College campus site- Jen, Tim, Shannon and Eli can get together the items for the Vassar poll site tomorrow. This would include burning the machine cards and keys, testing the machines, programming the poll pads, and getting together the other ancillary equipment (cones, signs, booths). Can we move forward with this plan?

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)

**From:** [Michael Treybich](#)  
**To:** [Rich Medina](#)  
**Subject:** Fwd: FW: NY Election Law Section 4-104  
**Date:** Friday, November 4, 2022 12:28:41 PM  
**Attachments:** [2022\\_53491\\_LEAGUE\\_OF\\_WOMEN\\_VOTERS\\_v\\_LEAGUE\\_OF\\_WOMEN\\_VOTERS\\_NOTICE\\_OF\\_ENTRY\\_22.pdf](#)

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----- Forwarded message -----

**From:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>  
**Date:** Fri, Nov 4, 2022, 12:24 PM  
**Subject:** FW: NY Election Law Section 4-104  
**To:** Michael Treybich <[michael@treybichlaw.com](mailto:michael@treybichlaw.com)>

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**From:** Black, Hannah  
**Sent:** Friday, November 4, 2022 10:43 AM  
**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>  
**Cc:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>; Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>; 'Todd Valentine' <[Todd.Valentine@elections.ny.gov](mailto:Todd.Valentine@elections.ny.gov)>; Zebrowski.Stavisky, Kristen (ELECTIONS) <[Kristen.Zebrowski.Stavisky@elections.ny.gov](mailto:Kristen.Zebrowski.Stavisky@elections.ny.gov)>; Lovullo, Brendan (ELECTIONS) <[Brendan.Lovullo@elections.ny.gov](mailto:Brendan.Lovullo@elections.ny.gov)>; [Thomas.Connolly@elections.ny.gov](mailto:Thomas.Connolly@elections.ny.gov); Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>; Blackburn, Caroline <[cblackburn@dutchessny.gov](mailto:cblackburn@dutchessny.gov)>  
**Subject:** RE: NY Election Law Section 4-104

Commissioner Haight,

As you're well aware, I suggested there be a public hearing 7 weeks ago. The court order is clear. The court order and the truncated timeframe obviate the need for a public hearing. It is our charge to **comply** with the court order and the election law and designate a poll site on Vassar College campus. As you know, there is a site visit today at Vassar College at 3pm, please confirm who from the Republican side will be attending.

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)

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**From:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>

**Sent:** Friday, November 4, 2022 9:47 AM

**To:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Cc:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>; Reverri, Erin <[ereverri@dutchessny.gov](mailto:ereverri@dutchessny.gov)>; 'Todd Valentine' <[Todd.Valentine@elections.ny.gov](mailto:Todd.Valentine@elections.ny.gov)>; Zebrowski, Kristen (ELECTIONS) <[Kristen.Zebrowski.Stavisky@elections.ny.gov](mailto:Kristen.Zebrowski.Stavisky@elections.ny.gov)>; Lovullo, Brendan (ELECTIONS) <[Brendan.Lovullo@elections.ny.gov](mailto:Brendan.Lovullo@elections.ny.gov)>; [Thomas.Connolly@elections.ny.gov](mailto:Thomas.Connolly@elections.ny.gov); Nash, Diane <[dnash@dutchessny.gov](mailto:dnash@dutchessny.gov)>; Blackburn, Caroline <[cblackburn@dutchessny.gov](mailto:cblackburn@dutchessny.gov)>

**Subject:** RE: NY Election Law Section 4-104

**Importance:** High

Commissioner,

You already disclosed this privileged correspondence to the press and your democratic cohorts without my consent so there is no additional harm by including additional colleagues. You have been adamant during your tenure here that the designation of poll sites profoundly effects the public and as a result the determinations of where people vote is subject to the Open Meetings Laws. You have been successfully persuasive on this subject and I have conceded this step is necessary since we have comprised the Board of Elections. Based on the Open Meetings Laws, when would you like to hold a public meeting to designate a poll site(s) on the Vassar College Campus? We should review Public Officers Law (100-111), Article 7 for guidance on the soonest we can legally meet. The hasty decision made by Judge D'Alessio which ignores the CPLR, the case law and common sense also provides zero guidance to us as administrators of the election law as to where to designate the poll sites for the 3 election districts that encompass this particular campus. Once we have an agreement, we also need to review the laws regarding changes to poll sites, the notices we need to provide to the effected voters, and the timelines for these notices prescribed by the law. I've not seen the transcript or alleged bench decision but once it's filed with the County Clerk I would be eager to comply with it.

Are there any other administrative processes I'm missing to adhere with this vague court



order?

Thank you,

Erik J. Haight

Republican Commissioner of Elections

Dutchess County Board of Elections

O (845) 486-2475

D (845) 486-2482

M (845) 392-2881

Fax: (845) 486-2485

[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)

<https://www.elections.dutchessny.gov/>

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**From:** Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Sent:** Thursday, September 15, 2022 10:51 AM

**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>

**Cc:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>

**Subject:** RE: NY Election Law Section 4-104

Good morning Commissioner,

I would like to propose holding a public meeting to designate a poll site on Vassar College campus on September 22<sup>nd</sup> at 11am. If this does not work for you, please propose some dates and times that do.

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)

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**From:** Cullen, Christian <[ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)>

**Sent:** Tuesday, August 23, 2022 4:11 PM

**To:** Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>; Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

**Subject:** NY Election Law Section 4-104

FYI—

NY Election Law Section 4-104 was revised effective July 8, 2022 to provide as follows:

5-a. Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of elections.

**Effective: July 8, 2022**

McKinney's **Election** Law § 4-104

§ 4-104. Registration and polling places; designation of

1. Every board of **elections** shall, in consultation with each city, town and village, designate the polling places in each **election** district in which the meetings for the registration of voters, and for any **election** may be held. The board of trustees of each village in which general and special village **elections** conducted by the board of **elections** are held at a time other than the time of a general **election** shall submit such a list of polling places for such village **elections** to the board of **elections**. A polling place may be located in a building owned by a religious organization or used by it as a place of worship. If such a building is designated as a polling place, it shall not be required to be open for voter registration on any Saturday if this is contrary to the religious beliefs of the religious organization. In such a situation, the board of **elections** shall designate an alternate location to be used for voter registration. Such polling places must be designated by March fifteenth, of each year, and shall be effective for one year thereafter. Such a list required to be submitted by a village board of trustees must be submitted at least four months before each general village **election** and shall be effective until four months before the subsequent general village **election**. No place in which a business licensed to sell alcoholic beverages for on premises consumption is conducted on any day of local registration or of voting shall be so designated. If, within the discretion of the board of **elections** a particular polling place so designated is subsequently found to be unsuitable or unsafe or should circumstances arise that make a designated polling place unsuitable or unsafe, then the board of **elections** is empowered to select an alternative meeting place. In the city of New York, the board of **elections** shall designate such polling places and alternate registration places if the polling place cannot be used for voter registration on Saturdays.

1-a. Each polling place shall be accessible to citizens with disabilities and comply with the accessibility guidelines of the Americans with Disabilities Act of 1990. The state board of **elections** shall publish and distribute to each board of **elections** with the power to designate poll sites, a concise, non-technical guide describing standards for poll site accessibility, including a polling site access survey instrument, in accordance with the Americans with Disabilities Act accessibility guidelines (ADAAG) and methods to comply with such standards. Such guide and procedures shall be developed in consultation with persons, groups or entities with knowledge about public access as the state board of **elections** shall determine appropriate.

1-b. The county board of **elections** shall cause an access survey to be conducted for every polling site to verify substantial compliance with the accessibility standards cited in this section. Completed surveys shall be submitted to the state board of **elections** and kept on file as a public record by each county. Each polling site shall be evaluated prior to its designation or upon changes to the facility. A site designated as a polling place prior to the effective date of this subdivision shall be evaluated within two years of the effective date of this subdivision by an individual qualified to determine whether or not such site meets the existing state and federal accessibility standards. 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.

1-c. The state board of **elections** shall promulgate any rules and regulations necessary to implement the provisions of this section.

2. If the board of **elections**, after designating a polling place, and after sending written notice of such polling place to each registered voter, designates an alternative polling place, it must, at least five days before the next **election** or day for registration, send by mail a written notice to each registered voter notifying him of the changed location of such polling place. If such notice is not possible the board of **elections** must provide for an alternative form of notice to be given to voters at the location of the previous polling place.

3. A building exempt from taxation shall be used whenever possible as a polling place if it is situated in the same or a contiguous **election** district, and may contain as many distinctly separate polling places as public convenience may require. The expense, if any, incidental to its use, shall be paid like the expense of other places of registration and voting. If a board or body empowered to designate polling places chooses a public school building for such purpose, the board or agency which controls such building must make available a room or rooms in such building which are suitable for registration and voting and which are as close as possible to a convenient entrance to such building and must make available any such room or rooms which the board or body designating such building determines are accessible to physically disabled voters as provided in subdivision one-a. Notwithstanding the provisions of any general, special or local law, if a board or body empowered to designate polling places chooses a publicly owned or leased building, other than a public school building, for such purposes the board or body which controls such building must make available a room or rooms in such building which are suitable for registration and voting and which are as close as possible to a convenient entrance to such building, and must make available any such room or rooms which the board or body designating such building determines are accessible to physically disabled voters unless, not later than thirty days after notice of its designation as a polling place, the board or body controlling such building, files a written request for a cancellation of such designation with the board or body empowered to designate polling places on such form as shall be provided by the board or body making such designation. The board or body empowered to so designate shall, within twenty days after such request is filed, determine whether the use of such building as a polling place would unreasonably interfere with the usual activities conducted in such building and upon such determination, may cancel such designation.

3-a. Any person or entity which controls a building for which a tax exemption, tax abatement, subsidy, grant or loan for construction, renovation, rehabilitation or operation has been provided by any agency of the state or any political subdivision thereof on or after the effective date of this subdivision shall agree to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters and are as close as possible to a convenient entrance to such building. Notwithstanding any other provision of law, any agency of the state or any political subdivision thereof may deny a tax exemption, tax abatement, subsidy, grant or loan for construction, renovation, rehabilitation or operation to a building which is otherwise eligible for such exemption, abatement, subsidy, grant or loan if the person or entity which controls such building refuses to agree to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters

and are as close as possible to a convenient entrance to such building. The provisions of this subdivision shall not apply to buildings used solely for residential purposes which contain twenty-five dwelling units or less.

3-b. Any person or entity conducting any program, activity or service for which a loan, grant, contract, subsidy or reimbursement has been provided by any agency of the state or a political subdivision thereof on or after the effective date of this subdivision shall make available for registration and voting purposes the room or rooms under the control of such person or entity in a building in which such program, activity or service is conducted which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters and are as close as possible to a convenient entrance to such building. Any such person, organization or entity shall agree to facilitate the use of such room or rooms, to the maximum extent possible, by making efforts to obtain the permission and cooperation of any person or entity which controls the building in which such room or rooms are located. Notwithstanding any other provision of law, any agency of the state or any political subdivision thereof may deny a loan, grant, contract, subsidy or reimbursement to any such person or entity otherwise eligible for such loan, grant, contract, subsidy or reimbursement unless such person or entity agrees to make available for registration and voting purposes the room or rooms in such building which the board or body empowered to designate polling places determines are suitable for registration and voting, are accessible to physically disabled voters as provided in subdivision one-a of this section and are as close as possible to a convenient entrance to such building and agrees to facilitate the use of such room or rooms, to the maximum extent possible, by making efforts to obtain the permission and cooperation of any person or entity which controls the building in which such room or rooms are located.

3-c. Notwithstanding the provisions of subdivisions three-a and three-b of this section, no person, board, agency, body or entity shall be required to make available for registration or voting by persons other than the residents of such building, any room or rooms in a building, other than a publicly owned building, which contains correctional, health, mental hygiene, day care, drug or addiction treatment, or emergency services or other services for the public safety, or in a building used for religious services.

3-d. Notwithstanding any inconsistent provision of [section 3-506](#) or [section 4-134](#) of this chapter, and in the absence of a specific written agreement to the contrary, if the board or body empowered to designate polling places has authorized the use of a portable ramp, or ramp and platform, at a polling site for purposes of compliance with subdivision one-a of this section, the person or entity in control of a building or portion thereof in which such polling site is designated shall install, remove, store, and safeguard each such ramp, or ramp and platform, at such times and dates as may be required by the board or body empowered to designate polling places.

4. Where an **election** district is so situated or the only facilities available therein are such that public convenience would be served by establishing a polling place outside such district, the board or body empowered by this chapter to establish **election** districts may designate a polling place in a contiguous district.

4-a. Notwithstanding any conflicting provisions of this section, the common council of the city of Little Falls may adopt a resolution determining that there is no building within an **election** district within such city available and suitable for the meetings for the registration of voters or for any **election**, or that for reasons of efficiency or economy it is desirable to

consolidate the polling places for two or more, or all districts, in such city, in one place, regardless of whether or not such district adjoins the district to which such meeting or polling place is moved, and there may be as many distinctly separate **election** districts lawfully located in the same building as public convenience may require. Such a resolution shall be subject to the approval of the county board of **elections**. Every such building chosen shall meet all other requirements of this section and all federal requirements for accessibility for the elderly and the disabled.

5. (a) Whenever the number of voters eligible to vote in an **election** in any **election** district is less than one hundred, the polling place designated for such district may be the polling place of any other district which could properly be designated as the polling place of the first mentioned district pursuant to the provisions of this chapter, except that the polling place designated for any such district may be the polling place of any other district in such city or town provided that the distance from such first mentioned district to the polling place for such other district is not unreasonable pursuant to rules or regulations prescribed by the state board of **elections** and provided that the total number of persons eligible to vote in such other district in such **election**, including the persons eligible to vote in such first mentioned districts, is not more than five hundred. The inspectors of **election** and poll clerks, if any, of such other **election** district shall also act in all respects as the **election** officers for such first mentioned districts and no other inspectors shall be appointed to serve in or for such first mentioned districts. A separate poll ledger or computer generated registration list, separate voting machine or ballots and separate canvass of results shall be provided for such first mentioned districts, except that if the candidates and ballot proposals to be voted on by the voters of such districts are the same, the **election** districts shall be combined and shall constitute a single **election** district for that **election**. However, if the first mentioned district contains fewer than ten voters eligible to vote in such **election**, there shall be no limitation on the total number of persons eligible to vote in such combined district. If the polling place for any **election** district is moved for any **election**, pursuant to the provisions of this subdivision, the board of **elections** shall, not later than ten nor more than fifteen days before such **election**, mail, by first class mail, to each voter eligible to vote in such **election** district at such **election**, a notice setting forth the location of the polling place for such **election** and specifying that such location is for such **election** only.

(b) Whenever the total number of voters eligible to vote in any primary or special **election**, in any two **election** districts whose polling places are regularly located in the same building, is less than four hundred, the board of **elections** may assign the inspectors of **election** of the **election** district which contains the greater number of such voters, to act also, in all respects, as the **election** officers of the other such **election** district and no other **election** officers shall be appointed to serve in or for such other **election** district at such primary or special **election**. A separate poll ledger or computer generated registration list, separate voting machine or ballots and separate canvass of results shall be provided for each such **election** district.

(c) Whenever all the candidates to be voted upon at a primary **election**, except a primary **election** in the city of New York, or all the candidates and ballot proposals to be voted upon at a special **election**, or at a school board **election** conducted by the board of **elections**, or at a general **election** in the city of New York in a year in which there is no **election** for electors of president and vice-president of the United States or governor of the state or mayor of such city, by the voters of any two or more **election** districts whose polling places are regularly located in the same building are identical, the board of **elections** may combine such **election** districts for that **election**, provided that the total number of voters eligible to

vote in any such combined **election** district does not exceed one thousand two hundred in a primary **election** or does not exceed two thousand in a special **election** or a general **election** in the city of New York.

(d) Notwithstanding any other provision of this section, polling places designated for any one such **election** district that will be utilizing any voting machine or system certified for use in New York state pursuant to chapter one hundred eighty-one of the laws of two thousand five, may be the polling place of any other contiguous district or districts, provided the voting system used in such polling place produces separate and distinct vote totals for each **election** district voting in such polling place on such voting machine or system.

5-a. Whenever a contiguous property of a college or university contains three hundred or more registrants who are registered to vote at any address on such contiguous property, the polling place designated for such registrants shall be on such contiguous property or at a nearby location recommended by the college or university and agreed to by the board of **elections**.

6. Each polling place designated, whenever practicable, shall be situated on the main or ground floor of the premises selected. It shall be of sufficient area to admit and comfortably accommodate voters in numbers consistent with the deployment of voting systems and privacy booths, pursuant to [9 NYCRR 62.10.19](#). Such deployment of voting systems, **election** workers and **election** resources shall be in a sufficient number to accommodate the numbers of voters eligible to vote in such polling place.

6-a. Each polling place designated, whenever practicable, shall be situated directly on a public transportation route.

7. No polling place shall be located on premises owned or leased by a person holding public office or who is a candidate for public office at a primary or general **election**.

8. Whenever the board of **elections** shall determine that there is no building within an **election** district available and suitable for the meetings for the registration of voters or for any **election**, or that for reasons of efficiency or economy it is desirable to consolidate such meetings of one or more districts in one place, such board may designate a building for such purpose in an adjoining district in the same village, city or town and there may be as many distinctly separate meetings or polling places lawfully located in the same building as public convenience may require. Wherever possible, public schools, fire houses, municipal buildings or other buildings exempt from taxation shall be designated for such meetings and polling places. Such a determination shall be made only after notice to the chairpersons of the county committees of all political parties and reasonable opportunity for them to be heard.

9. Renumbered as 8 by [L.2016, c. 43, § 1](#).

Please be advised that the Dutchess County Department of Law rejects any attempted service (excluding DCFS Legal Unit) via facsimile and e-mail correspondence. The Dutchess County Department of Law's use of facsimile and e-mail, and receipt of courtesy copies via facsimile and e-mail, is not a waiver of this policy.

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**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**

**Cell Phone: (845) 240-5704**

**Email: [ccullen@dutchessny.gov](mailto:ccullen@dutchessny.gov)**

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



**From:** [Wesley Dixon](#)  
**To:** [Renata O'Donnell](#)  
**Subject:** Fwd: Polling Site at Vassar College  
**Date:** Friday, November 4, 2022 11:16:23 AM

---

----- Forwarded message -----

From: **Wesley Dixon** <[wdixon@vassar.edu](mailto:wdixon@vassar.edu)>  
Date: Thu, Nov 3, 2022 at 9:31 PM  
Subject: Polling Site at Vassar College  
To: Haight, Erik <[ehaight@dutchessny.gov](mailto:ehaight@dutchessny.gov)>, Black, Hannah <[hblack@dutchessny.gov](mailto:hblack@dutchessny.gov)>

Dear Commissioners Haight and Black,

I am writing to follow-up on the hearing today regarding the lawsuit filed by the League of Women Voters of the Mid-Hudson Region. My understanding is that the hearing resulted in the judge mandating that the Dutchess BOE establish a polling site at Vassar for the election on Tuesday, November 8th, 2022. Vassar is willing and prepared to respond appropriately to this ruling.

Earlier this evening, I was in communication with Commissioner Black and she informed me that she and others would like to see the space on campus that was reserved in the event that a polling site was established at Vassar. We agreed to meet on campus at 3:00pm tomorrow (November 4th). The designated space is the Aula in Ely Hall.

In advance of tomorrow's site visit, I wanted to give you some background on the space:

1. Standing room capacity of 300; sitting room capacity of 150
2. Three separate entrances into the space
3. ADA accessible and compliant
4. Attached kitchen space
5. Bathrooms nearby
6. Several electrical outlets throughout
7. Tables and chairs to use as you see appropriate
8. Parking for about 15-20 outside

Please let me know if there is anything else the College can do to support the efforts of the Dutchess BOE.

Thanks,

Wes

--

Wesley Eugene Dixon • Special Assistant to the President and Secretary of the Board of Trustees

Vassar College • Box 1 • 124 Raymond Ave • Poughkeepsie, NY 12604

phone: (954) 655-2887

**VASSAR COLLEGE**

--

Wesley Eugene Dixon • Special Assistant to the President and Secretary of the Board of Trustees

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**VASSAR COLLEGE**

# Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs

-against-

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as Commissioner of  
the Dutchess County Board of Elections, and HANNAH  
BLACK in her capacity as Commissioner of the Dutchess  
County Board of Elections,

Respondents-Defendants

Index No. 2022-53491

Hon. Christie D'Alessio

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

**AFFIDAVIT OF WESLEY DIXON**

I, Wesley Dixon, being duly sworn, say:

1. I am over 18 years old and a citizen of the United States.
2. I am the special assistant to the President of Vassar College.
3. As part of my job responsibilities, I have represented Vassar College in conversations with the Dutchess County Board of Elections to enable Vassar to host a polling place on campus to serve our students, faculty members, administration, and their families who are registered to vote at their on-campus residential address, consistent with the New York State Election Law.
4. After this Court issued its Order on November 3, 2022, I emailed Commissioners Haight and Black at 9:31 PM. A true and correct copy of my e-mail is enclosed as Exhibit 1. In the email, I stated that I understood that the hearing resulted in this Court mandating that the

Dutchess County Board of Elections establish a polling site at Vassar for the election and that Vassar is ready to establish the polling site.

5. Vassar has already reserved a properly equipped space to serve as the polling site.

This space is the Aula in Ely Hall. As I told the Commissioners in my email, this space offers

- a. Standing room capacity of 300; sitting room capacity of 150
- b. Three separate entrances into the space
- c. ADA accessible and compliant
- d. Attached kitchen space
- e. Bathrooms nearby
- f. Several electrical outlets throughout
- g. Tables and chairs to use as you see appropriate
- h. Parking for about 15-20 outside

6. In my email, I invited both Commissioners to meet me on campus today, November 4, at 3:00 PM so that they could see the space.

7. Vassar stands prepared to do anything it can to support the efforts of the Dutchess County Board of Elections in establishing a polling site on Vassar's campus.

8. Vassar has already prepared an email that will go to the entire Vassar community to publicize the location and accessibility of the polling site.



Wesley Dixon

Sworn to before me this

4 day of Novem, 2022



This remote notarial act involved the use of communication technology.

# Exhibit 1

**From:** [Wesley Dixon](#)  
**To:** [Renata O'Donnell](#)  
**Subject:** Fwd: Polling Site at Vassar College  
**Date:** Friday, November 4, 2022 11:16:23 AM

---

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Please let me know if there is anything else the College can do to support the efforts of the Dutchess BOE.

Thanks,

Wes

--

Wesley Eugene Dixon • Special Assistant to the President and Secretary of the Board of Trustees

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--

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**VASSAR COLLEGE**



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----  
LEAGUE OF WOMEN VOTERS OF THE MID-  
HUDSON REGION, TANEISHA MEANS, and  
MAGDALENA SHARFF,

Petitioners-Plaintiffs,

-against-

Index No.  
2022-53491

THE DUTCHESS COUNTY BOARD OF ELECTIONS,  
and ERIK J. HAIGHT in his capacity as  
COMMISSIONER OF THE DUTCHESS COUNTY  
BOARD OF ELECTIONS,

Respondents-Defendants.

-----  
Dutchess County Courthouse  
10 Market Street  
Poughkeepsie, New York  
November 3, 2022

BEFORE: HON. CHRISTIE L. D'ALESSIO  
Supreme Court Justice

APPEARANCES:

ELIAS LAW GROUP LLP  
Attorneys for Petitioners-Plaintiffs  
10 G Street NE, Suite 600  
Washington, D.C. 20002  
BY: RICHARD MEDINA, ESQ.  
AND: JUSTIN BAXENBERG, ESQ.

DAVID JENSEN PLLC  
Attorney for Respondent-Defendant Erik J. Haight  
33 Henry Street  
Beacon, New York 12508-3006  
BY: DAVID JENSEN, ESQ.

(Cont.)

APPEARANCES: (Cont.)

DUTCHESS COUNTY ATTORNEY  
Attorneys for the Dutchess County  
Board of Elections  
22 Market Street, 5th Floor  
Poughkeepsie, New York 12601  
BY: CAROLINE E. BLACKBURN, ESQ.

TREYBICH LAW, P.C.  
Attorney for Hannah Black  
272 Mill Street  
Poughkeepsie, New York 12601  
BY: MICHAEL TREYBICH, ESQ.

ALSO PRESENT:

Hannah Black, Commissioner of Board  
of Elections

Angela DiBiasi, Court Attorney

Jennifer Cea  
Senior Court Reporter

1 THE CLERK: Now calling number 12 on our  
2 calendar, League of Women Voters of the Mid-Hudson  
3 Region, et al. versus Dutchess County Board of  
4 Elections, index number 2022-53491. Can we have  
5 appearances, please, starting with Counsel for the  
6 Plaintiff.

7 MR. MEDINA: Good afternoon, Your Honor. My  
8 name is Richard Medina from Elias Law Group LLP  
9 representing Plaintiffs.

10 MR. BAXENBERG: Justin Baxenberg, also from  
11 Elias Law Group.

12 MS. BLACKBURN: Caroline Blackburn, Dutchess  
13 County attorney on behalf of the Dutchess County Board  
14 of Elections.

15 MR. TREYBICH: Michael Treybich, Treybich Law,  
16 P.C., on behalf of intervening proposed Respondent-  
17 Defendant, Commissioner Hannah Black, Commissioner of  
18 Board of Elections.

19 MS. BLACK: I'm Hannah Black, Commissioner of  
20 the Board of Elections.

21 THE COURT: Nice to see you. Okay, be seated  
22 everyone. How are you. And you, sir?

23 MR. HAIGHT: Commissioner Erik Haight, Board  
24 of Elections. My attorney is on his way.

25 THE COURT: I think we need him. He's an

1 important part of this, so we'll have to wait for him to  
2 get here. Do we expect he will be here soon?

3 MR. HAIGHT: Yes.

4 THE COURT: Okay. Sit tight, folks. We're  
5 just going to give the commissioner's counselor a few  
6 minutes to get here, so you can talk among yourselves  
7 and I'll be right back. Thank you.

8 (SHORT RECESS)

9 THE COURT: You can stay seated everyone.  
10 Okay.

11 THE CLERK: Recalling number 12 on our  
12 afternoon calendar, League of Women Voters of the Mid-  
13 Hudson Region versus Dutchess County Board of Elections,  
14 index number 2022-53491. Can we have appearances again,  
15 please, starting with Counsel for the Plaintiff or  
16 Petitioner, I apologize.

17 MR. MEDINA: Good afternoon. My name is  
18 Richard Medina, Elias Law Group LLP appearing for  
19 Petitioner-Plaintiffs.

20 MR. BAXENBERG: Justin Baxenberg for  
21 Petitioner-Plaintiffs.

22 MS. BLACKBURN: Caroline Blackburn, county  
23 attorney.

24 MR. TREYBICH: Michael Treybich, Treybich Law,  
25 P.C. on behalf of proposed intervenor Respondent

1 Commissioner of the Dutchess County Board of Elections,  
2 Hannah Black.

3 MS. BLACK: Hannah Black, Dutchess County  
4 Board of Elections Commissioner.

5 THE COURT: Sir?

6 MR. JENSEN: David Jensen, Counsel for Erik  
7 Haight.

8 THE COURT: Mr. Jensen, thank you for the  
9 phone call. I understand you were running behind; we  
10 appreciate that. Your client was here earlier. Do we  
11 know where he is? I do not see him in the courtroom.

12 MR. JENSEN: Yeah, so as I had indicated by  
13 phone, the video yesterday, as a sidenote you'll note  
14 I'm wearing the same clothes as yesterday. I took a red  
15 eye back and here I am.

16 THE COURT: I wasn't on the conference. I  
17 don't know what you were wearing yesterday, but I'm glad  
18 you're here with us today. So my question is your  
19 client, is the Commissioner rejoining us?

20 MR. JENSEN: Not at this time. As I had  
21 indicated yesterday during the video conference, we have  
22 a motion to dismiss. It is among other things,  
23 jurisdictional grounds, one of which, the first and  
24 foremost which is failure to effect service and process  
25 in accordance with CPLR 308 and I don't want them to try

1 to cure that jurisdictional defect by handing him  
2 process in here. So if the Court will enter an order  
3 that they can't serve him with process on the way to the  
4 courtroom or in the courtroom, I'll call him and tell  
5 him to come back, otherwise this is something that  
6 should have been done at the time of commencement of the  
7 action.

8 THE COURT: Okay. As I understand it -- you  
9 can be seated. Thank you for that. As I understand it,  
10 this Court signed an order to show cause as this is a  
11 hybrid proceeding that came in, it required personal  
12 appearances today at 2:00. Everyone is here except your  
13 client. It also required a pre-hearing conference,  
14 which did occur yesterday with my court attorney and it  
15 also required an answer, and I believe that answer or  
16 motion has not been filed. I just checked NYSCEF, I  
17 have not seen anything filed.

18 MR. JENSEN: I brought the motion with me.  
19 The only stop I made on the way back from the airport  
20 was my office to print out the papers.

21 THE COURT: Okay. So let's go over a couple  
22 of things before we continue. First is, I think I have  
23 an application for admission pro hac vice of Justin  
24 Baxenberg. I know Mr. Baxenberg is here today. He has  
25 filed supporting documents. It is on NYSCEF under index

1       number 2022-53491 as sequence motion number two. Does  
2       anyone have any objection to Mr. Baxenberg appearing pro  
3       hac vice? As I understand, it is on consent; is that  
4       right? No objection by anyone?

5               MR. JENSEN: We have no objection to any pro  
6       hac vice application.

7               THE COURT: I am granting that. I am signing  
8       that order. That is the first thing, okay.

9               I would like to hear from the county attorney, if  
10       you could. I know you filed some letters, so if you can  
11       just, before we hear any arguments, let me know your  
12       position, please. Thank you.

13              MS. BLACKBURN: Yes, Your Honor. In  
14       consideration for the Court's time, we know that there's  
15       much to discuss today, I filed a letter last night to  
16       place this Court on notice and the parties on notice as  
17       soon as possible of the county's position that  
18       notwithstanding our general obligation to represent the  
19       Dutchess County Board of Elections as legal Counsel, the  
20       county attorney is unable to do so in this case given  
21       that there is a conflict between the Commissioners of  
22       the Board of Elections which prohibits representation of  
23       them as a body and I am seeking the Court's approval to  
24       be excused as Counsel for the Board.

25              THE COURT: Okay. And I know there was some

1 reference to payment of attorney's fees, so if it is in  
2 fact granted that the proposed intervenor is admitted  
3 and deemed a necessary party, then what is your  
4 position?

5 MS. BLACKBURN: The county attorney's position  
6 is that Commissioner Black may make an application for  
7 reimbursement of attorney's fees pursuant to local law  
8 number 4 of 1988 and generally speaking, I have no  
9 objection to her -- the reimbursement of fees so long as  
10 the application is in line with the terms of the local  
11 law.

12 THE COURT: Excellent. Okay. So as I  
13 understand, there is also an application, a proposed  
14 intervenor Hannah Black, Commissioner Black filed also  
15 some documents and I believe is here with Counsel, so I  
16 would like to hear Counsel with regard to that  
17 application.

18 MR. TREYBICH: Yes, Your Honor. So there is  
19 some technicalities and there is some generals and there  
20 is some legalities involved here. Technically the  
21 Dutchess County Board of Elections could have been named  
22 as the sole Respondent-Defendant, however in the absence  
23 of the two commissioners agreeing on a defense or on an  
24 answer, it would be unable to answer, and so in this  
25 case the Petitioners named the Dutchess County Board of



1 Elections and they named Commissioner Erik Haight alone  
2 as the two Defendants here, however because there is a  
3 split, the Dutchess County Board of Elections is unable  
4 to answer and so the only way to avoid default by the  
5 principal Respondent here is to have both commissioners  
6 named as parties, and I would like to just point out  
7 that Commissioner Black's proposed answer was filed  
8 before Your Honor's deadline of three p.m. yesterday. I  
9 believe it was 2:50; we made it by ten minutes.

10 THE COURT: It was and we acknowledge receipt  
11 and appreciate that.

12 MR. TREYBICH: Thank you. I do have a working  
13 copy if Your Honor requires it.

14 THE COURT: I have it. Thank you. We  
15 reviewed it. Okay, anything else?

16 MR. TREYBICH: There are other --

17 THE COURT: Aside from the other legal issues,  
18 anything else?

19 MR. TREYBICH: There's other theoretical  
20 issues. For example, in order to achieve full relief  
21 under the petition, if Commissioner Black is not named  
22 in her individual capacity, for example, and Your Honor  
23 were to order the Dutchess County Board of Elections and  
24 Commissioner Haight to do something under this petition,  
25 Commissioner Black may not be bound, at least as far as

1 a criminal contempt citation would be required. In  
2 other words, she is a necessary party.

3 THE COURT: Understood. Okay. And my  
4 understanding -- what is the Petitioner's position on  
5 that application?

6 MR. BAXENBERG: We are fine with the  
7 application. We consent to them being a party here  
8 under the circumstances where the county board cannot  
9 appear because of the split, I think my colleague over  
10 here has ably stated.

11 THE COURT: So you consent?

12 MR. BAXENBERG: Yes.

13 THE COURT: Okay. Mr. Jensen, do you want to  
14 be heard as to the application?

15 MR. JENSEN: We don't take a position on it.

16 THE COURT: All right. So then that  
17 application is granted, okay.

18 MR. TREYBICH: Thank you, Your Honor.

19 THE COURT: I do believe that the Commissioner  
20 is a necessary party, so the caption will be amended  
21 appropriately to reflect that as well.

22 Okay, all right, so let's get to the actual  
23 application. We are here, I know there's an application  
24 for a preliminary injunction, so it is Petitioner's  
25 application, so why don't you start, and we can hear the

1 other arguments with regard to service and jurisdiction  
2 and I'll give you an opportunity to respond.

3 MR. MEDINA: Thank you. Good afternoon, Your  
4 Honor. Richard Medina, Elias Law Group appearing for  
5 the Petitioners. Our view is that this is a very  
6 straightforward matter of statutory interpretation that  
7 can be resolved as a matter of law. The statute is very  
8 clear. New York Election Law 4-104 sub 5-a provides  
9 whenever a contiguous property of a college or  
10 university contains 300 or more registrants who are  
11 registered to vote at any address on such contiguous  
12 property, the polling place designated for such  
13 residence -- excuse me, registrants shall be on such  
14 contiguous property or at a nearby location recommended  
15 by the college or university and agreed to by the Board  
16 of Elections. There is, I believe, no factual dispute  
17 that the contiguous property of Vassar College contains  
18 300 or more registrants. I believe there is no factual  
19 dispute that there is no polling place currently  
20 designated on Vassar's campus, and under the clear terms  
21 of the statute, the Board is required to put a polling  
22 place on the campus. We think it is as simple as that,  
23 Your Honor.

24 We also have submitted evidence through the  
25 affidavit of Commissioner Black and also through an

1 affidavit of a representative of Vassar College making  
2 clear that even at this late stage it is still possible  
3 to designate a polling place on Vassar's campus. Vassar  
4 stands ready, willing and able to provide space. They  
5 set aside space. It satisfies all of the criteria for a  
6 polling place and they're ready. Commissioner Black has  
7 submitted an affidavit saying that all they have to do  
8 is program poll books and get the voting machines and  
9 they're ready to go. And so there really should be no  
10 factual or legal obstacle to this Court simply ordering  
11 that relief at this stage, and if the Court has any  
12 questions, I'm happy to address them.

13 THE COURT: Okay. Very good. Okay.

14 Mr. Jensen?

15 MR. JENSEN: Yes, Your Honor. Well, as I  
16 stated, I have a motion to dismiss. I don't know if you  
17 want me to walk it up there and hand it up or --

18 THE COURT: That is not normally how -- things  
19 are usually uploaded to NYSCEF, filed. There was a  
20 deadline in this case to file some things, so I would  
21 like to hear -- time is of the essence, as you know.  
22 These are expedited proceedings and that is why the  
23 Court set short time frames and we held a conference to  
24 make sure everything was sort of set up for today. So  
25 why don't you go ahead and make your arguments with

1       regard to your motion.

2               MR. JENSEN: Okay. So the first and foremost  
3       issue is that we have not -- service of process has not  
4       been secured of my client, meaning the Court does not  
5       have jurisdiction over this matter since, as previously  
6       discussed, the election commissioners are what compose  
7       the Board of Elections and they are both necessary  
8       parties in order for this Court to grant relief.

9               Now, the reason that service of process has not  
10      been completed is that while the order to show cause  
11      says that service process by e-mail is sufficient,  
12      meaning that the service process by e-mail must take  
13      place as a jurisdictional matter, there is nothing in  
14      the order to show cause that makes a finding that  
15      service under 308 subparts one, two or four would be  
16      impractical. The only way that service by e-mail is  
17      permissible is if a showing is made that personal  
18      service, either in person service, service on a person  
19      of suitable age or discretion or nail and mail service  
20      is impractical that normally requires a showing of  
21      efforts that have been undertaken to secure service of  
22      process. In one case, for example, it was a divorce.  
23      The husband was living in Saudi Arabia. They filed  
24      Hague Convention Request for assistance with service of  
25      process and the place where the husband lived in Saudi

1 Arabia would not allow the process server into the  
2 compound. The only exception I know of that is in a  
3 case out of the First Department providing that a  
4 Plaintiff can potentially show that service would be  
5 futile under 308-1, two or four. Obviously that is not  
6 the case here since we are talking about someone who  
7 both lives and has an office in Dutchess County. I have  
8 further case law in support of what I just said in my  
9 submission and I would also note since we haven't been  
10 served, I don't see -- setting aside the fact that quite  
11 frankly as a matter of fairness we need at least enough  
12 time to evaluate the matter and formulate a defense and  
13 I don't think three and a half hours is enough time. We  
14 haven't been served in the first place, and in all due  
15 respect, that should be the beginning of the end of this  
16 matter.

17 There are additional grounds I have gone through  
18 in this motion. First and foremost is laches. There  
19 have been two recent decisions, actually three recent  
20 decisions out of the Third Department with respect to  
21 this election cycle, and the most recent one dated  
22 November 1, as in yesterday, the Petitioner's Counsel  
23 was Counsel in that case and in that case it was arguing  
24 successfully that a petition filed on September 29 was  
25 too late because it was too close to the election.

1 Certainly based on that rationale, a petition filed one  
2 week before the election is way way way too late and  
3 that is especially the case where the basis for making  
4 this motion would have been apparent, according to their  
5 framing of the issue on August 2. And I note that  
6 before this Court is even conducting this video  
7 conference on the hearing, local newspapers are already  
8 coming out with stories talking about all the details  
9 about this, meaning somebody told them what was going on  
10 and that was apparently a higher priority in the case  
11 actually filed.

12 Beyond the issue of laches, there is also the fact  
13 that while Counsel is asserting that this is a  
14 ministerial non-discretionary duty, their own exhibits  
15 are talking about how there are a number of different  
16 polling places on campus that could be appropriate  
17 locations and is just ignoring the issue of, okay, so  
18 which would be the appropriate location. What this  
19 relates to is that because it is not a strictly  
20 ministerial duty, for example if a new polling place was  
21 designated and under Election Law 4-104 subpart two, the  
22 Board of Elections would need to give notice to all  
23 voters five days in advance of the election, which  
24 obviously it is already impossible to comply with. If a  
25 new polling place was designated, the failure to send

1 out that notice, what I think would be something subject  
2 to mandamus because there would basically be no  
3 reasonable grounds for dispute about how this is  
4 undertaken. You print out the cards and mail them out.  
5 With this, there's all sorts of decisions, discretionary  
6 decisions that would need to be made along with  
7 designated polling sites. How many machines, the  
8 location, the parking, what is the signage that needs.  
9 What are we going to do with the poll workers? All the  
10 poll workers have been hired. As we stand here right  
11 now, election equipment is currently being dispatched to  
12 all these sites throughout Dutchess County. Beyond  
13 that, Vassar College is a necessary party. Section  
14 4-104 (5-a) says that this determination is supposed to  
15 be made in consultation with Vassar College, and I will  
16 further tell you that were we to proceed to the merits,  
17 I would want to call the president of Vassar College as  
18 a witness because it is my understanding there is a  
19 conversation that took place with her recently that is  
20 at odds with the affidavit that has been submitted to  
21 this Court.

22 And finally, while one of the grounds I raised was  
23 failure to join Commissioner Black, that has now been  
24 taken care of so I don't see any point in wasting the  
25 Court's time with it, but I will say that any of those



1 grounds independently basically mandates dismissal of  
2 this petition and the service of process issue is  
3 jurisdictional and this is Black Letter Law.

4 THE COURT: Do you have -- are you prepared to  
5 present anyone here, despite the jurisdictional  
6 argument, are you ready to call witnesses to testify  
7 today?

8 MR. JENSEN: If I can get the order from the  
9 Court allowing Commissioner Haight to come in here  
10 without getting served with process, at a minimum I  
11 would call him. I'm not sure whether I can get the  
12 Vassar College president in here or not on this short of  
13 notice.

14 THE COURT: Okay. All right. Thank you.  
15 Okay, did you want to respond to that? I'll give the  
16 Petitioner an opportunity to respond to the  
17 jurisdictional issues and then I will give you an  
18 opportunity as well, Commissioner. Go ahead.

19 MR. MEDINA: Thank you, Your Honor. Yes, I  
20 would like to respond. On the service issue, as Your  
21 Honor pointed out, there is an order to show cause  
22 signed in this case which Your Honor signed which  
23 specifically provides that service by e-mail to  
24 commissioners at their official government e-mail  
25 addresses shall constitute sufficient service. I note

1       that the proposed order to show cause that Petitioner  
2       submitted actually contained a provision providing for  
3       personal service at the Board of Elections offices in  
4       the alternative and that was stricken by the Court, so  
5       in reliance on the Court's order, of course as  
6       appropriate, we served -- excuse me, we served the  
7       Respondents by e-mail that is good and effective service  
8       under this Court's order and this Court has  
9       jurisdiction.

10               Would Your Honor like me to address the merit  
11       issues, the laches?

12               THE COURT:   Sure, go ahead.

13               MR. MEDINA:   With regard to laches, this case  
14       was readily distinguishable from the recent cases  
15       referred by Mr. Jensen, in particular the Amadore  
16       (phonetic) case that was just decided in the Third  
17       Department.   In that case they were talking about  
18       potentially stopping the counting of absentee ballots,  
19       changing the way absentee ballots are counted, changing  
20       the way that eligibility for absentee ballot is  
21       determined weeks before the election, while a ballot  
22       counting was going on.   Here we're not talking about  
23       early voting.   We're not talking about absentee ballots.  
24       We're talking about Election Day and one of the elements  
25       of laches is prejudice.   There is no showing of

1 prejudice here. Election Day is November 8. We stand  
2 here on November 3. Commissioner Black has submitted an  
3 affidavit attesting that they can do that turnaround, no  
4 problem. And in fact, they have. As recently as 2020,  
5 Justice Rosa entered an order on October 30, the Friday  
6 before the Tuesday Election Day directing the Board of  
7 Elections, the same Respondents here to set up an  
8 additional polling place on the campus of Bard College,  
9 also in this county. There is no reason why they would  
10 be able to do it for Bard College in 2020 and not be  
11 able to do it for Vassar here, and frankly, Your Honor,  
12 the reason we're here at this late date is because of  
13 Commissioner Height's -- Commissioner Haight's, excuse  
14 me, intransigence. There has been, since August, an  
15 ongoing effort to avoid the expense of litigation. The  
16 taxpayer's expense of litigation by making sure  
17 Commissioner Haight himself, coming from Commissioner  
18 Black, coming from voters, coming from Vassar College,  
19 all of those are rejected to the point where eventually  
20 a group of community organizations, including my  
21 clients, League of Women Voters, send a demand letter to  
22 the county legislature and the county executive pleading  
23 with them to please direct Commissioner Haight discharge  
24 his non-discretionary mandatory duty. All of that has  
25 been met with silence and now here we are just a week

1 before election and it is crunch time. We frankly have  
2 no choice but to seek this Court's intervention.

3 On the discretionary duty point, Mr. Jensen is  
4 correct that mandamus simply only lies for a  
5 non-discretionary ministerial duty, but there is a  
6 difference between having a non-discretionary mandatory  
7 duty to act and having discretion in how you carry out  
8 that act and I would cite to this Court the Court of  
9 Appeals decision in *Klostermann v. Cuomo* 61 N.Y.2d 525  
10 at 540, it is a 1984 Court of Appeals case which  
11 explains in some detail that mandamus lies to compel  
12 acts that are -- that officials are duty bound to  
13 perform regardless of whether they may exercise their  
14 discretion in doing so, and so while the Board has some  
15 discretion and there's some back and forth that needs to  
16 happen with the college in terms of designating a site,  
17 they cannot simply ignore their statutory duty, clear  
18 mandatory duty to engage in that process and to select a  
19 site. We have evidence in the record that on multiple  
20 occasions, one in August, at least once in October  
21 Vassar College reached out to the Board and said we're  
22 ready and willing, please give us a polling location and  
23 they were met with silence, and so to say they are a  
24 necessary party here, I think it is clear in the record  
25 that Vassar College has made itself available and the

1       only act that needs to be compelled here is the act of  
2       the Board.

3               Does Your Honor have any further questions?

4               THE COURT: No, not yet. Thank you. You can  
5       continue if you were going to address any other point.

6               MR. MEDINA: I think that covers it, Your  
7       Honor. And for these reasons, we ask Your Honor to  
8       enter the relief we requested.

9               THE COURT: Sure. Okay. Mr. Treybich?

10              MR. TREYBICH: Thank you, Your Honor. Just a  
11       couple of items that very capable Counsel for the  
12       Petitioner did not cover. In Election Law matters of  
13       which this is one of them, it is common and in fact it  
14       is customary and there's case law in this which again I  
15       haven't seen Co-Respondent's motion, I don't know what  
16       is supporting it. I don't know if there is an affidavit  
17       in there or from who, I don't know what cases are cited  
18       and so off the cuff there is case law and I have seen  
19       case law permitting in Election Law matters a relaxation  
20       of service of process, mostly because of the tight time  
21       line that is required by the CPLR or by Election Law.

22              Further, laches is an equitable defense which  
23       requires that the person asserting that defense come to  
24       the court with unclean hands. In this situation,  
25       Commissioner Haight could have triggered this lawsuit

1 back in August if he had said no, I am not going to  
2 agree to a poll site pursuant to this law. Instead,  
3 silence. Multiple requests were made by my client, the  
4 Commissioner, by outside parties requesting that  
5 Commissioner Haight comply with the law and they were  
6 met with silence and that is part of the issue here why  
7 this is coming so late.

8 And finally, Counselor Jensen had mentioned that  
9 Election Law 4-104 requires consultation with Vassar  
10 College, however I just read that statute again, or re-  
11 read the statute and it does not appear to require  
12 consultation. It only requires consultation in the  
13 situation where the poll site is not on the college  
14 campus or in a location off campus recommended by the  
15 college or university. The initial paragraph of that  
16 section deals with consultation with the town or  
17 village. It doesn't mention colleges or universities.  
18 And so I would say that that argument doesn't apply  
19 here.

20 THE COURT: Okay.

21 MR. TREYBICH: Thank you.

22 THE COURT: Thank you. Anything else from any  
23 of the attorneys?

24 MR. JENSEN: Your Honor, several things.

25 THE COURT: Sure.

1           MR. JENSEN: First and foremost, we're talking  
2 about this Bard College case, that was not a petition  
3 for mandamus, that was a petition for certiorari, not  
4 filed on October 30, it was filed significantly before  
5 then. It was still frankly rather late, but no where  
6 near as late as what we are talking about here. Here it  
7 is already impossible to comply with the statutory  
8 directive requiring notice five days in advance. It  
9 would be somewhere between difficult and impossible to  
10 get an appeal noticed and briefed over the upcoming  
11 weekend and have it decided in time to make any  
12 difference in the election.

13           And with regard to Vassar. First, Vassar is the  
14 one that is supposed to propose polling locations.  
15 Secondly, setting that aside, there are two prongs to  
16 necessary parties. One is that the party needs to be  
17 present in the case in order to afford relief which I  
18 think does apply here, but that aside, if a decision by  
19 the Court would have the potential to adversely effect  
20 the parties' interest, they're a necessary party, the  
21 decision is being sought here is an order directing a  
22 polling place on the property of that party. That very  
23 clearly affects their interest and it should be noted  
24 when the Board of Elections designates polling places,  
25 normally the designated polling place is told we have

1       decided to make you a polling place and then under 4-104  
2       of the Election Law, as well as I think it is 16-115 of  
3       the Election Law, I would have to double check that,  
4       there is a procedure in place where the proposed polling  
5       site can object to their designation and if they can't  
6       resolve it with the Board of Elections, they can seek  
7       judicial review, and conversely, I was actually hired by  
8       the Dutchess County Board of Elections to do this once,  
9       if the polling place refuses to be a polling place, the  
10      Board of Elections can sue them and get an order  
11      directing them to do it.  Though, the whole point of  
12      this is that very clearly the designation of a place as  
13      a polling site has an impact on the person that controls  
14      that place and the Election Law recognizes that that  
15      person needs to be heard and have input on that, which  
16      goes back to their necessary party, but I really would  
17      circle back and emphasize because the order to show  
18      cause does not have a finding that service under sub  
19      parts one, two or four of CPLR 308 would be impractical,  
20      service by e-mail was not authorized under the CPLR and  
21      that is Black Letter Law.  In all seriousness, we should  
22      not be going any further than that.

23               THE COURT:  Okay.

24               MR. JENSEN:  Thank you.

25               THE COURT:  Thank you.  Anything else from any



1 of the attorneys?

2 MR. MEDINA: I want to point out a couple of  
3 things, Your Honor. First of all, Vassar College is not  
4 in the situation where the Board of Elections is  
5 imposing a polling location on it. Vassar College is  
6 asking for a polling location. That is in the record.  
7 The letters from Mr. Dixon are in the record. The  
8 affidavit from Mr. Dixon is in the record. Also in the  
9 record is evidence about the various locations they made  
10 available, so we're not in a situation where the Board  
11 of Elections has to go to Court to get an order to  
12 compel Vassar to propose a polling location.

13 With respect to service, Your Honor, as  
14 Mr. Treybich pointed out, the service requirements are  
15 regularly relaxed on Election Law cases. Your Honor  
16 implicitly made that finding by ordering e-mail service.  
17 I'll note in fact that Mr. Haight does in fact appear to  
18 have actual notice, as he appeared earlier today in this  
19 courtroom and is here represented by Counsel, although  
20 Mr. Haight himself is not in the courtroom right now.  
21 So there's really not a notice or process issue here.

22 THE COURT: Okay. Anything else, Counselor?

23 MR. TREYBICH: No, thank you, Your Honor.

24 THE COURT: All right. Just give us a few  
25 minutes, okay. Thank you.

1 (SHORT RECESS)

2 THE COURT: We are back on the record. I  
3 would like to hear a little bit more. I know we have  
4 Commissioner Black here with us who is present. I would  
5 like to hear a little bit more about the interactions  
6 with Vassar College and the number of registered voters  
7 and anything else you deem appropriate to this  
8 proceeding.

9 MR. TREYBICH: Do you want to swear in  
10 Commissioner Black?

11 THE COURT: Sure. And Commissioner, you can,  
12 if you would like, if you are comfortable to come up so  
13 it is easier if there is some cross-examination or other  
14 questions, it is just easier. Thank you.

15 Raise your right hand for me, please. Do you  
16 swear or affirm to tell the truth, the whole truth,  
17 nothing but the truth so help you God?

18 THE WITNESS: I do.

19 THE COURT: Great. Please have a seat. Make  
20 yourself comfortable. Tell me your first and last name  
21 and by whom you are employed.

22 THE WITNESS: Hannah Black. I'm employed  
23 by Dutchess County Board of Elections.

24 THE COURT: Okay. In what capacity?

25 THE WITNESS: As, I serve as Commissioner, the

1 Democratic Commissioner.

2 THE COURT: How long have you been with the  
3 department?

4 THE WITNESS: I have been there since January  
5 1, 2021.

6 THE COURT: Very good. Okay. Thank you.

7 MR. TREYBICH: Thank you, Your Honor. Your  
8 Honor, I would like to mark a document as Respondent's  
9 Exhibit A for Identification.

10 (RESPONDENT BLACK'S EXHIBIT A MARKED FOR IDENTIFICATION)

11 THE COURT: Okay. If you can show the  
12 documents to Counsel.

13 MR. TREYBICH: I have copies for Counsel.

14 THE COURT: Great. Have them take a look at  
15 it, give them an opportunity. Counsel, have you had an  
16 opportunity to review what is marked as Respondent's 1  
17 for Identification?

18 MR. BAXENBERG: Yes, Your Honor.

19 MR. MEDINA: Yes.

20 THE COURT: Thank you. Just noting it is  
21 Respondent's A for Identification.

22 MR. TREYBICH: I hand this to Commissioner  
23 Black.

24 DIRECT EXAMINATION

25 BY MR. TREYBICH:

1 Q. Do you recognize that document?

2 A. Yes, I do.

3 Q. What is it?

4 A. It is the voter registration list for Vassar  
5 College.

6 Q. And who created this document?

7 A. My Deputy Commissioner Diane Nash and myself.

8 Q. And is it a record of the Dutchess County Board of  
9 Elections?

10 A. Yes, it is.

11 Q. And is it the, for lack of a better term, the  
12 business of the Dutchess County Board of Elections to create  
13 documents of this type, or at least in part?

14 A. Yes, it is.

15 MR. TREYBICH: Your Honor, I move this in  
16 evidence as Respondent's Exhibit A as a business record  
17 of the Board.

18 THE COURT: Is it a true and accurate copy of  
19 the actual record that you created?

20 THE WITNESS: No. It is a copy of the  
21 original, so..

22 THE COURT: Okay.

23 THE WITNESS: So, yes, in that sense.

24 THE COURT: Okay. Great. Any other  
25 questions?

1 MR. BAXENBERG: (Shaking head.)

2 THE COURT: Okay. Any objection? Hearing no  
3 objection, it is moved in as Respondent's Exhibit A in  
4 evidence.

5 (RESPONDENT BLACK'S EXHIBIT A RECEIVED IN EVIDENCE)

6 MR. TREYBICH: Can I hand that document back  
7 to the witness?

8 THE COURT: Sure.

9 MR. TREYBICH:

10 Q. Okay. Commissioner Black, this record of the  
11 Board of Elections, how many voters does it show that are  
12 registered to vote from the campus of Vassar College?

13 A. So you go to the last page and the run totals is  
14 1,100 voters reported.

15 MR. TREYBICH: Your Honor, I don't have any  
16 further questions for this witness.

17 THE COURT: Okay.

18 MR. TREYBICH: The document is in evidence.  
19 It speaks for itself. The Commissioner has confirmed  
20 what the document states.

21 THE COURT: Okay. Any cross, Petitioner?

22 MR. BAXENBERG: Just one question, Your Honor.

23 THE COURT: Sure. Go ahead.

24 CROSS-EXAMINATION

25 BY MR. BAXENBERG:

1           Q.     To the best of your knowledge, would it still be  
2 possible at this point to establish a poll location at  
3 Vassar?

4           A.     To the best of my knowledge, yes, I have consulted  
5 with my staff and we have gone over what needs to be done  
6 and as far as what dates would need to be done, the  
7 uploading of poll pad information and the uploading of the  
8 cards to the machines and they feel as though it can be  
9 done.

10          Q.     Are you aware of any objection from Vassar to  
11 having a polling site on campus?

12          A.     No, I am not.

13                   MR. BAXENBERG: I have no other questions,  
14 Judge.

15                   THE COURT: Okay. Mr. Jensen?

16                   MR. JENSEN: Thank you, Your Honor.

17                   THE COURT: Sure.

18                   MR. JENSEN: I would like to begin by marking  
19 a document for Identification. I'm not sure what number  
20 we should use or letter. Does the Court want us to  
21 number the exhibits using the convention that has  
22 already been used, by letter, this would be B?

23                   THE COURT: Sure.

24                   MR. JENSEN: Let's mark this as Exhibit B.

25 (RESPONDENT HAIGHT'S EXHIBIT B MARKED FOR IDENTIFICATION)

1 THE COURT: Has Counsel had an opportunity to  
2 review what is marked as Respondent's B marked right now  
3 for Identification?

4 MR. TREYBICH: Yes, Your Honor.

5 MR. BAXENBERG: Yes, Your Honor.

6 MR. TREYBICH: Your Honor --

7 THE COURT: Yes, sir?

8 MR. TREYBICH: I'll wait for a question. I  
9 apologize, I was jumping the gun.

10 THE COURT: Okay.

11 CROSS-EXAMINATION

12 BY MR. JENSEN:

13 Q. Okay. Ms. Black, I would like you to take a look  
14 at this document we marked as Exhibit B. First of all, tell  
15 us if you recognize it?

16 A. I do.

17 Q. Okay. And not the part directed to me, but below  
18 that, this is an e-mail Commissioner Haight sent in which  
19 you were a party; is that right?

20 A. Yes, my name is on it with the e-mail address.

21 Q. And is it your understanding that this is  
22 responding to an October 17 letter from the Office of the  
23 Attorney General asking about the designation of polling  
24 places on Vassar campus?

25 MR. TREYBICH: Objection, Your Honor. The

1 document is not in evidence. Mr. Jensen appears to be  
2 reading from a document which is not in evidence and if  
3 he moves it into evidence, I will be making objections  
4 on the basis of hearsay and that there is no one who  
5 created these documents here to move them in.

6 THE COURT: Understood. Overruled. Go ahead.  
7 Do you remember the question?

8 A. Sorry. Please repeat the question.

9 MR. JENSEN:

10 Q. I'm not sure I can repeat exactly, but to spare  
11 this court reporter, I'll try. Is it your understanding  
12 that this e-mail is Commissioner Haight responding to a  
13 letter that has been sent by the Office of the Attorney  
14 General to the Dutchess County Board of Elections?

15 A. Yes.

16 Q. And does the Dutchess County Board of Elections  
17 normally use e-mails to transact business?

18 A. Sometimes yes. Sometimes no. It is not always.

19 Q. Okay. Do you recall seeing this letter that is  
20 attached to the e-mail previously?

21 THE COURT: When you say this letter, you're  
22 referring to, it appears to be the third page of  
23 Respondent's 2 that is marked -- or Respondent's B  
24 rather that is marked for Identification?

25 MR. JENSEN: Yes, Your Honor.



1 THE COURT: Is it a three page document?

2 MR. JENSEN: Four pages in total, but the last  
3 page is just a signature.

4 THE COURT: Okay. Thank you.

5 A. Yes. I have seen this.

6 MR. JENSEN:

7 Q. What is it?

8 A. It is a letter from the office of the New York  
9 State Attorney General to both of us commissioners.

10 Q. And does the Board of Elections have a copy of  
11 this letter in its files?

12 A. That I don't know. It depends on if it was  
13 stamped in or not.

14 Q. Is there any conceivable way you would have seen  
15 this letter before and it is not part of the Board of  
16 Elections' files?

17 A. Well, via e-mail. That is how I saw the letter.

18 Q. Okay. And this was your e-mail address at  
19 Dutchess County Board of Elections?

20 A. Yes.

21 Q. And that is used for conducting business for the  
22 Dutchess County Board of Elections?

23 A. Yes.

24 Q. Do you keep copies of your e-mails?

25 A. Yes.

1           Q.     Are these records of regularly conducted  
2 activities?

3           A.     Yes.

4                   MR. JENSEN:   Your Honor, we move this exhibit  
5 into evidence.

6                   MR. TREYBICH:  I object, Your Honor.  Hearsay.  
7 None of the elements for a business record exception to  
8 hearsay have been met or any other exception to hearsay,  
9 specifically the record had to have been created by the  
10 witness in order for that witness to certify and to  
11 create the exception to hearsay.

12                  THE COURT:   Okay.  Can I see a copy, please,  
13 of the exhibit since I haven't seen it.  Thank you.  
14 Okay, I am going to allow it in.

15                  (RESPONDENT HAIGHT'S EXHIBIT B RECEIVED IN EVIDENCE)

16 MR. JENSEN:

17           Q.     Okay.  Now, Ms. Black, if I could direct your  
18 attention to the body of this e-mail, the first page, there  
19 is a sentence that begins, The challenge is that the Vassar  
20 campus is split between two wards and three county  
21 legislative districts.  Do you see that?

22           A.     I do.

23           Q.     Is that correct?

24           A.     It is split between three election districts.  
25 There are -- it is split also between two wards and three

1 county legislative districts, however those don't come into,  
2 what is the word I want to use -- they don't apply to this  
3 year and they would apply to next year, election district-  
4 wise.

5 Q. And you're aware that there are other provisions  
6 of the Election Law that put restrictions on where polling  
7 places can be located such as a requirement they be in  
8 contiguous districts; correct?

9 A. Yes, that it is -- well, that was a second part of  
10 the law that was to take place next year, not this year.

11 Q. The requirement that polling places be located in  
12 election districts or contiguous election districts is a new  
13 enactment, is that what you are testifying to?

14 A. No. The new law that the, that was passed in the  
15 governor's budget, Part O, stated in the second part that it  
16 be contiguous; that the first part that we were supposed to  
17 put a -- designate a polling site on campus regardless of it  
18 being contiguous or not. We were supposed to address the --  
19 the part of it being contiguous in the following year.

20 Q. And do you have any understanding of what is going  
21 to be happening to the election districts that are currently  
22 crisscrossing Vassar campus next year?

23 A. We have not re-districted those yet, so I can't  
24 answer that.

25 Q. Okay. But you do have knowledge that they are

1 going to be re-districted; correct?

2 A. Yes.

3 Q. And have you heard anything about them, all of  
4 Vassar being in the same election district next year?

5 A. I have heard, but haven't seen that they would be.

6 Q. Okay. Now, the previous sentence here says, I  
7 have asked Commissioner Black for a proposal to comply with  
8 the section of the law that doesn't violate other sections  
9 of the Election Law.

10 THE COURT: Counsel, please tell me what page  
11 you are referring to with regard to Respondent's B in  
12 evidence?

13 MR. JENSEN: The first page.

14 THE COURT: Okay. And about halfway through  
15 the page, you're pointing?

16 MR. JENSEN: Yes. This is -- it is halfway  
17 through the page, but that is the only substantive  
18 communication on the page.

19 THE COURT: Thank you.

20 A. So what is the question?

21 MR. JENSEN:

22 Q. So you see the sentence where it says, I have  
23 asked Commissioner Black for proposal to comply with the  
24 section of the law that doesn't violate other sections of  
25 the Election Law?

1           A.       The problem with that statement is he never, he  
2 never cites what part of the Election Law it violates. And  
3 I did put forward a proposal in which when we designate poll  
4 sites, we don't put forward proposals on our own necessarily  
5 that have to be -- they don't -- not one commissioner has  
6 full onus of a proposal, so it takes two commissioners to  
7 make a proposal happen. That said, in this e-mail, what  
8 he's doing is putting it all on me instead of taking some of  
9 the responsibility upon himself.

10          Q.       So you're saying that -- first of all, do you  
11 agree that he asked you for a proposal to comply with this  
12 section of law that doesn't violate other sections of the  
13 law?

14                   MR. TREYBICH: Objection.

15                   THE COURT: Objection is sustained. Go ahead,  
16 next question, Counsel.

17           MR. JENSEN:

18          Q.       Did you in fact then, is it your testimony,  
19 provide a proposal for a polling place that would comply  
20 with subpart 5A of Election Law 4-104 as well as other  
21 sections of the Election Law?

22          A.       Yes, my understanding I did put forward a  
23 proposal, again, he did not, he did not cite which Election  
24 Law it was in violation of and continued not to cite it and  
25 continued to delay.

1 Q. What was your proposal?

2 A. My proposal was to put three election -- the three  
3 election districts, 6-2, 6-3 and 6-4 into the Vassar College  
4 poll site, campus as a poll site and then in keeping 6-2,  
5 6-3 and 6-4, 6-2 keeping at New Hackensack United Methodist  
6 Church and in 6-3 and 6-4, keeping at Dutchess County Water  
7 and Waste Water Authority so that way it was the same thing  
8 as we had done with Bard in the past.

9 Q. And are you aware of any authority in the  
10 Election Law for having more than one polling place for an  
11 election district?

12 MR. TREYBICH: Objection, Your Honor. She's  
13 not an attorney. She is not an expert.

14 MR. JENSEN: She's the election commissioner.

15 THE COURT: Hold on. Overruled. If you know  
16 and if you can answer the question.

17 A. No, I am not aware of that.

18 MR. JENSEN:

19 Q. You're not aware of that?

20 THE COURT: She answered she is not aware of  
21 that. Next question, please.

22 MR. JENSEN:

23 Q. Did the proposal that you made that you just  
24 outlined call for a polling place in an election district in  
25 which the other two campus election districts were

1 contiguous as in touching?

2 A. Well, the poll site that I had called for was on  
3 Vassar College campus, which is contiguous with 6-2, 6-3 and  
4 6-4. They all do touch on a map if you look at them and  
5 outline it.

6 MR. JENSEN: Another document I would like to  
7 mark for Identification.

8 THE COURT: Show it to Counsel, please.  
9 Counsel, have you had an opportunity to review it?

10 MR. BAXENBERG: Yes, Your Honor.

11 MR. TREYBICH: Yes, Your Honor.

12 THE COURT: Any objection?

13 MR. BAXENBERG: No, Your Honor.

14 MR. TREYBICH: No objection, Your Honor.

15 THE COURT: Okay. So we will mark Exhibit C,  
16 just to keep the record clear, it will be Respondent  
17 Haight's Exhibit C. How many pages, Counselor?

18 MR. JENSEN: It is an e-mail with an attached  
19 three page document, so five pages.

20 THE COURT: Five page document, it is in  
21 evidence on consent.

22 (RESPONDENT HAIGHT'S EXHIBIT C RECEIVED IN EVIDENCE)

23 THE COURT: Commissioner, when you're ready,  
24 let us know.

25 THE WITNESS: Sure. I'm ready.

1 THE COURT: Great. Thank you.

2 MR. JENSEN:

3 Q. Do you recognize this document?

4 A. Yes.

5 Q. And can you tell us what it is, please?

6 A. It is a document from the State Board of Elections  
7 guidance as far as college, on college poll site designation  
8 for 2022.

9 Q. And am I correct that the State Board of Elections  
10 sent this to the Dutchess County Board of Elections by  
11 e-mail?

12 A. Yes.

13 Q. Is that a way that the State Board of Elections  
14 normally communicates with the County Board of Elections?

15 A. Often, yes.

16 Q. Did you receive this e-mail?

17 A. Yes.

18 Q. Do you have a copy of it in your files?

19 A. Yes.

20 Q. And like the other e-mail, this is a record,  
21 regularly conducted activity?

22 A. Yes.

23 MR. JENSEN: Your Honor, we would also move  
24 this into evidence.

25 THE COURT: It is in on consent, Counselor.



1 MR. JENSEN: Oh, it is. I didn't catch that.

2 My apologies.

3 Q. Ms. Black, I want to turn your attention to, if we  
4 go to page three of this, which is the first page of the New  
5 York State Board of Elections document, under the heading  
6 General Description of Legislation there is three  
7 paragraphs, do you see that?

8 A. Yes.

9 Q. So the third paragraph is talking about amendment  
10 to the contiguous property requirement, do you see that?

11 A. Yes.

12 Q. And correct me if I am wrong here, by your  
13 understanding, as one of the election commissioners, is it  
14 your understanding that this is saying that the current  
15 restriction requiring polling places to be in contiguous  
16 districts is going to be statutorily relaxed effective  
17 January 1, 2023?

18 MR. TREYBICH: Objection, Your Honor. The  
19 document is in evidence. It speaks for itself. Again,  
20 the witness is not an attorney and she is being asked  
21 for her legal opinion.

22 THE COURT: I'm going to sustain it as to  
23 form. You can ask a different question. The document  
24 is in evidence, but ask it another way, Counsel, please.

25 MR. JENSEN: Okay.

1           Q.     Okay, so do you see this final sentence of the  
2     third paragraph that says, This provision of the new law  
3     does not take effect until January 1, 2023?

4           A.     Yes, but that is --

5           Q.     Go ahead.

6           A.     That is the second part of the law that talks  
7     about when you would need to make the property contiguous.  
8     It doesn't apply to the first -- the first part of the law  
9     had to be put in place this year in 2022, so it is not  
10    giving the full picture of the law that we are in violation  
11    of.

12          Q.     How is it not giving the full picture of the law?

13          A.     Because it is not -- it doesn't state that the  
14    second, the second part of the law in Part O is for  
15    addressing the property to be contiguous, and the property  
16    is contiguous anyway because all the election districts  
17    meet. If you look at a map, you draw the lines, you will  
18    see that all the election districts meet.

19                 THE COURT:   That's at Vassar?

20                 THE WITNESS:  Yes, at Vassar College campus.

21                 THE COURT:  Okay. Any other questions,  
22    Counselor?

23                 MR. JENSEN:  One minute, Your Honor.

24                 THE COURT:  Sure.

25    MR. JENSEN:

1           Q.     To your knowledge, has Vassar College identified  
2 potential locations that could be used as polling places?

3           A.     Yes, they have.

4           Q.     How many?

5           A.     I would have to look at the letter again to see  
6 it. I think it was at least three places.

7           Q.     Okay.

8           A.     There was definitely one that stood out more than  
9 the others.

10          Q.     Why did you think that stood out more than the  
11 others?

12          A.     Because they had looked at what our needs were and  
13 requirements were as far as being a polling site and that  
14 specific site that they mentioned, which I believe was the  
15 Villard room met the criteria that we would need for it to  
16 be a poll site.

17          Q.     In your opinion, the Villard room of the various  
18 options would be the best decision to make?

19          A.     At this point, yes.

20          Q.     Could you just give us an idea of, you just said  
21 that it fit your criteria the best, if I am recalling this  
22 correctly. Can you explain what criteria you were looking  
23 at in making that determination?

24          A.     Sure. ADA access, American Disabilities Act  
25 requirements, as far as parking goes, getting into the

1 building itself, getting into the area where they would be  
2 voting. We absolutely need a certain number of outlets for  
3 our poll pads and our machines as well and a certain, a good  
4 space size to have the flow of voter traffic as well  
5 considered.

6 Q. What do you think the second best option would be?

7 A. I would have to look at the letter to see what  
8 those options were.

9 MR. JENSEN: Let me go ahead and mark this for  
10 Identification.

11 THE COURT: Counselors, take a look, please,  
12 let me know if you consent.

13 MR. TREYBICH: I consent, Your Honor.

14 THE COURT: Counselor, do you consent as well?

15 MR. BAXENBERG: Yes.

16 THE COURT: We'll mark this Haight Exhibit D  
17 in evidence on consent.

18 (RESPONDENT HAIGHT'S EXHIBIT D RECEIVED IN EVIDENCE)

19 THE COURT: When you're ready, Commissioner,  
20 just look up.

21 THE WITNESS: Okay.

22 MR. JENSEN:

23 Q. Is this letter that we're looking at that is  
24 marked as Exhibit D the letter that you're referring to from  
25 Vassar College?

1 A. Yes.

2 Q. So does this refresh your recollection about how  
3 many rooms they identified at least in this letter?

4 A. Yes.

5 Q. And that was four rooms, right?

6 A. Yes.

7 Q. So then the question is just after the Villard  
8 room, what would be the next best option for a polling place  
9 in your opinion?

10 THE COURT: According to who, her opinion?

11 MR. JENSEN: Her opinion.

12 A. Only the Villard room was really considered on my  
13 behalf, because they had stated that that was the number one  
14 through a phone call, that they had stated that that was the  
15 number one place spot that they felt was best for a poll  
16 site on campus, because it is in the -- it is in the main  
17 building on campus.

18 MR. JENSEN: Okay. I think that is it.

19 Nothing further, Your Honor.

20 THE COURT: Thank you. Anything else?

21 MR. TREYBICH: Re-direct, Your Honor.

22 THE COURT: Sure.

23 MR. TREYBICH: Thank you.

24 RE-DIRECT EXAMINATION

25 BY MR. TREYBICH:

1 Q. Did Commissioner Haight ever propose a poll site  
2 on Vassar College campus?

3 A. No, never.

4 Q. Did you ask Commissioner Haight to set a poll site  
5 on Vassar College campus?

6 A. I did. I asked him for a public hearing so that  
7 we can designate a pole site and be transparent. We don't  
8 have to have a public hearing, but for transparency reasons  
9 I asked for one to designate a poll site on Vassar College  
10 campus.

11 Q. What was his response?

12 A. That it was premature to have a public hearing and  
13 that I needed to submit a plan, a proposal.

14 Q. Were you asked to submit a plan or proposal for  
15 any other poll sites this year?

16 A. No.

17 Q. Only for Vassar College?

18 A. Yes.

19 Q. Are you able to call a public hearing of the Board  
20 of Elections on your own?

21 A. No.

22 Q. And so if Commissioner Haight doesn't agree, you  
23 cannot have a public hearing?

24 A. Correct.

25 MR. TREYBICH: Okay. No further questions,

1 Your Honor.

2 THE COURT: Any questions?

3 MR. BAXENBERG: Yes, Your Honor.

4 RE-CROSS EXAMINATION

5 BY MR. BAXENBERG:

6 Q. I'll just direct you to Respondent's C here. I  
7 want to go back to this guidance on college poll site  
8 designation that we discussed earlier. Just let me know --  
9 you have it in front of you there?

10 A. I have it.

11 Q. Can I just direct you, I know we looked at the  
12 first heading. Can you tell us what the second heading  
13 there says?

14 THE COURT: What page, Counselor?

15 MR. BAXENBERG: This is on page, it looks like  
16 three, this is the first page of the Board of Elections  
17 guidance on college poll site designation 2022.

18 A. So application in 2022?

19 Q. Yes. And can you just briefly review that and  
20 read to us the second sentence of the first paragraph?

21 A. (Reading) Accordingly, Boards of Elections are  
22 required to designate poll sites in accordance with this law  
23 in 2022.

24 Q. Can we go on in the next paragraph.

25 A. To continue?

1 Q. Yes.

2 A. Okay. (Reading) Because election districts have  
3 not been redrawn to conform the rule college campuses cannot  
4 generally be divided between election districts, boards  
5 should at least assign election districts to a poll site on  
6 the relevant college campus or nearby location recommended  
7 by the college and approved by the Board of Elections when  
8 existing election district meets two criteria. One,  
9 the election district includes contiguous college property,  
10 and two, there are 300 or more registrants in the election  
11 district with an address on such college property.

12 Q. Does Vassar meet those two criteria?

13 A. Yes.

14 Q. Has the Board of Elections designated a poll site  
15 on the campus of Vassar College?

16 A. No.

17 MR. BAXENBERG: No further questions, Your  
18 Honor.

19 THE COURT: Okay. I do have a question. What  
20 is your understanding of Vassar's position with regard  
21 to the polling place on the campus?

22 THE WITNESS: So my understanding is that they  
23 want it. I spoke with Leslie Dixon on the phone and via  
24 text message as well. He wanted to know how we could  
25 get a poll site on campus. His concern was that many of



1       their students and faculty that live on campus don't  
2       turn out to vote and would be able to turn out to vote  
3       if there was an on campus poll site, and the fact that  
4       it was new law set into place that we should be in  
5       compliance with it, and he liked the idea of the --  
6       basically the separate election districts, not having to  
7       go outside of, you know, going into a mile, almost a  
8       mile and a half away without bus transportation to the  
9       New Hackensack site, for instance, was one of his main  
10      concerns. So they wanted it.

11               THE COURT: Okay. Good. Just describe to me  
12      briefly what it entails to get set up there? I know you  
13      need some polling books. Do you bring in a couple of  
14      machines, just so I have a better understanding, and how  
15      long does that take?

16               THE WITNESS: So it would require three poll  
17      books, poll pads is what we use now instead of poll  
18      books and -- for the three election districts and two  
19      machines. One would be for election district 6-2 for  
20      the New Hackensack site and the other one would be  
21      programmed for 6-3 and 6-4 because they both share  
22      district -- poll site at Dutchess County Waste Water  
23      Authority. So basically it would take programing of  
24      those which could happen in a day and then getting the  
25      machines out there, which we do have, we do have a

1 county van that can bring the machines out and we have  
2 done it in the past. We did it with Bard. We did it  
3 four days last year with Bard was through the -- after  
4 the Appellate Court decision, it was only three or  
5 four days beforehand, so we were able to do it and we  
6 got it done.

7 THE COURT: Okay. Very good. Thank you,  
8 Commissioner. You can step down.

9 MR. JENSEN: I would like to re-direct on  
10 something she just said or re-cross rather.

11 THE COURT: Okay. One, please. Keep it  
12 limited because time -- it is to that time.

13 MR. JENSEN: Absolutely.

14 RE-CROSS EXAMINATION

15 BY MR. JENSEN:

16 Q. So that the two -- is it your understanding that  
17 there are two registered voters who are petitioners in this  
18 case?

19 A. Yes.

20 Q. And you were talking previously about how far  
21 people have to go to vote; right?

22 A. Yes.

23 Q. What election district are those two petitioners  
24 located in?

25 A. I don't know.

1           Q.     You don't know. So you don't know how far they  
2 need to go to vote?

3           A.     I know that they either have to go 1.2 miles or a  
4 half mile to the Dutchess County Water and Waste Water  
5 Authority, and depending on where they live on campus, that  
6 could be further than a half mile, so...

7           Q.     Was it maybe like a block off campus?

8                   MR. TREYBICH: Objection, Your Honor.

9                   THE COURT: Sustained. She answered she  
10 didn't know. Any other questions, Counselor?

11                  MR. JENSEN: No, Your Honor.

12                  THE COURT: Okay. All right. Thank you,  
13 Commissioner. You can step down. The Court is going  
14 into recess for a little bit. I expect everyone to  
15 stand by, please. Thank you, okay.

16                  MS. BLACKBURN: Pardon me if I missed it, but  
17 I didn't know if the Court was going to rule on our  
18 application to be excused on behalf of the Board of  
19 Elections.

20                  THE COURT: I don't think there was any  
21 objection. We can go on the record, but if you need to  
22 leave, Counselor, now, is that what you are asking?

23                  MS. BLACKBURN: No, Your Honor.

24                  THE COURT: We'll rule on it. Just give us a  
25 few minutes. I didn't know if you had to leave.

1 MS. BLACKBURN: No.

2 THE COURT: Okay. Very good.

3 (SHORT RECESS)

4 THE COURT: Counsel?

5 MR. TREYBICH: I just wanted to add, Your  
6 Honor, during the intermission, Counselor Jensen had  
7 handed to me, and presumably to other Counsel, his  
8 notice of motion memorandum of law.

9 THE COURT: Okay.

10 MR. TREYBICH: And after looking at it, I do  
11 have a couple more comments if Your Honor wants to  
12 entertain.

13 THE COURT: No. The hearing is closed, so I  
14 appreciate that, but I'm --

15 MR. TREYBICH: Thank you, Your Honor.

16 THE COURT: I'm ready to rule.

17 Okay, upon review of the petition filed by order  
18 to show cause, all other written submissions filed to  
19 NYSCEF, to be certain, documents numbered one through  
20 19, and upon due consideration of the arguments,  
21 testimony and exhibits presented on the record in court  
22 today, November 3, 2022 by the parties and/or their  
23 respective Counsel, it is hereby ordered that upon  
24 application of the proposed intervenor, Hannah Black, in  
25 the capacity of the Commissioner of Dutchess County

1 Board of Elections and with the written consent of  
2 Petitioner, this case caption has been amended to  
3 include the proposed intervenor as a named Respondent-  
4 Defendant.

5 It is ordered that this Court grants Dutchess  
6 County attorneys unopposed application to recuse itself  
7 from representing either or both named commissioners of  
8 the Board of Elections based upon a conflict arising  
9 from each commissioner's adverse position on the merits  
10 of the petition.

11 It is further ordered that, insofar as the  
12 proposed intervenor's application included a request for  
13 reimbursement of attorney's fees associated with private  
14 representation incurred as a result of the  
15 aforementioned conflict, the Dutchess County attorney's  
16 letter submission dated November 2, 2022 states that the  
17 county attorney has no objection to the county's payment  
18 of attorney fees associated with private representation  
19 of Commissioner Black as a Respondent-Defendant to the  
20 extent such fees are in accord with Dutchess County  
21 Local Law number 4 of 1988. Private Counsel may follow  
22 the appropriate protocol to submit any such request to  
23 the county. That issue is resolved accordingly.

24 It is further ordered that the oral application of  
25 Counsel for Respondent-Defendant Erik J. Haight in his

1 capacity as Commissioner of the Dutchess County Board of  
2 Elections for dismissal of this matter is denied given  
3 the exigency of the proceeding and the time constraints  
4 raised in the papers, the Court gained that the most  
5 expedient method of service was via e-mail and finds no  
6 prejudice resulting therefrom. The Court notes that  
7 Commissioner Haight was present in court today, noted  
8 his appearance on the record and his Counsel was present  
9 and participated in all of the proceedings.

10 It is further ordered that this Court grants the  
11 petition in its entirety. The plain language of  
12 Election Law Section 4-104 (5-a) which includes the word  
13 shall as opposed to may or should specifically mandates  
14 the designation of a voting polling place in a college  
15 or university campus where, as here, the Petitioner  
16 demonstrated that the college or university campus  
17 contains 300 or more registrants to vote at an address  
18 on such college or university campus.

19 Any other applications for further relief not  
20 specifically granted herein are denied.

21 The foregoing constitutes the decision, order and  
22 judgment of this Court. I am signing it. Please stand  
23 by for a copy. Thank you.

24 (Continued on next page to include certification)  
25

1 MR. TREYBICH: Thank you, Your Honor.

2 THE COURT: Thank you.

3 REPORTER'S CERTIFICATION

4  
5 I hereby certify that the foregoing is a  
6 true and accurate copy of the proceedings  
7 recorded by me and reduced to transcript form.  
8  
9  
10

11  
12 A handwritten signature in cursive script, reading "Jennifer Cea", is written over a horizontal line.

13  
14 JENNIFER CEA  
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