

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

In the Matter of the Application of

BARD COLLEGE, ELECTION@BARD, LEON BOTSTEIN,
ERIN CANNAN, CYNTHIA DEANN AUSTIN CUNNINGHAM,
MARIA ALEJANDRA RODRIGUEZ ORTIZ,
SARINA JACQUELINE CULAJ and THOMAS F. FORMAN,

Petitioners,

DECISION, ORDER
AND JUDGMENT

-against-

Index No. 52777/21

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

Respondents,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules.

The following papers were read and considered on this petition for an order designating the polling place or places for the 5th Legislative District for the Town of Red Hook in the County of Dutchess, State of New York ("District 5").

NOTICE OF PETITION
PETITION
EXHIBITS 1 - 23

NOTICE OF MOTION
AFFIRMATION OF DAVID D. JENSEN, ESQ.
AFFIDAVIT OF ERIK J. HAIGHT
EXHIBITS 1 - 3

AFFIRMATION IN OPPOSITION OF MICHAEL TREYBICH, ESQ.
AFFIDAVIT OF HANNAH BLACK
EXHIBITS A - H
AFFIRMATION OF MICHAEL DONOFRIO, ESQ.
EXHIBITS 1 - 4
AFFIDAVIT OF JONATHAN BECKER

VERIFIED ANSWER WITH CROSS-CLAIMS BY RESPONDENT DUTCHESS COUNTY
BOARD OF ELECTIONS COMMISSIONER HANNAH BLACK

SUPPLEMENTAL AFFIRMATION OF MICHAEL DONOFRIO, ESQ.

AFFIRMATION IN REPLY OF DAVID D. JENSEN, ESQ.
REPLY AFFIDAVIT OF ERIK J. HAIGHT
EXHIBITS 1 - 4

The petitioners move to designate the Bertelsmann Campus Center (“the Center”) as the polling place for District 5 in the Town of Red Hook, County of Dutchess, State of New York for the year 2021 and forward. Last year, as a result of applications to this court and the Appellate Division, the polling site remained the Church of St. John the Evangelist in Barrytown (“the Church” or “the St. John’s Episcopal Church”), and the Center was added so that there were two polling places. This was done as an accommodation to the petitioners, the respondents, and the residents of District 5, and in consideration of COVID-19. As pointed out in the moving papers, Church members attempted to withdraw the Church as a polling place explaining that it could not provide an adequately safe environment for poll workers and voters since it was too small to support the required social distancing. In addition there were expressed concerns about accessibility for handicapped voters.

The issue is before this court this year as the parties, and in particular the Commissioners of the Dutchess County Board of Elections, are again unable to agree. The petitioners argue that the Center has now been tested and tried as a polling site and was successful as such, that it is only eight hundred feet from a bus stop, and only 75 yards from the parking lot, that it provides handicapped parking and handicapped accessibility, and that it is large enough to accommodate voters and poll workers even in consideration of the COVID-19 social distancing recommendations and requirements.

On November 30, 2020 Election Commissioner Erik Haight and then Commissioner Elizabeth Soto executed a resolution designating the Richard B. Fisher Center for the Performing Arts located on the Bard College campus as the polling place for Red Hook Election District 5. The Board of Elections then rescinded that resolution on the basis that it was adopted in contravention of the Open Meetings Law and scheduled the issue to be heard at a public meeting that was held on February 25, 2021. At the February 25, 2021 meeting, Commissioner Haight moved to designate the Fisher Center as the polling place for Election District 5 in Red Hook but Commissioner Black opposed that and moved instead to designate the Bertelsmann Campus Center as the polling place. Commissioner Haight concluded that since no new agreement could be reached the poll site was to revert back to the 2019 location, the St. John’s Episcopal Church.

Although Commissioner Haight initially suggested the Fisher Center as the polling place, opposition to that included that there is a bar in the Fisher Center at which alcoholic beverages are served when performances or other events are taking place, that alcohol is not permitted to be served

where an election is taking place, and that even though Petitioners would be willing to agree to prohibit the service of alcohol on any days during which an election were taking place, there is simply no advantage to the Fisher Center over the Bertelsmann Campus Center. Ultimately, Commissioner Haight retreated from his suggestion of the Fisher Center and instead asks the court to dismiss the petition and declare that the Church be designated as the only polling place for the voters in District 5.

On behalf of Commissioner Haight and the Board of Elections, Attorney Jensen argues in favor of dismissal claiming that the petition pursuant to Article 78 is untimely since it had to be made within 120 days from February 25, 2021, or by June 25, 2021, and was not filed until July 15, 2021. This court disagrees. The four month (not 120 day) statute of limitations in an Article 78 proceeding runs from the date of the final determination (CPLR section 217). There was no determination made at the February 25, 2021 meeting. Since the Board failed to act on February 25, 2021, and since the Board is required by Election Law 4-104 to designate polling places by March 15th of each year, and did not designate a polling place for District 5 in Red Hook other than Commissioner Haight's unilateral determination to revert to the 2019 polling place, it was then that the four month statute began to run. Therefore, the petition was timely filed, albeit on the last day, 4 months later on July 15, 2021. Therefore, it is hereby

ORDERED that the motion to dismiss is denied.

At a settlement conference before this court on August 25, 2021, it was suggested that the gymnasium at the Bard campus be used as the voting location as it has sufficient space, including for social distancing, handicapped access and convenient parking. However, none of the parties moved for that designation or for designation of the Fisher Center in any petition or motion before this court. In an effort to resolve this matter, the parties scheduled a visit to the Bard campus to view all three possible locations but were still unable to reach an agreement. The only choice at the Bard College campus presented to the court in the applications before it is the Bertelsmann Campus Center.

In reviewing the exhibits, and the Board of Elections website which sets forth the polling places in every district in every town and city in the county, the court notes that no other district in the county has two polling places. At the August 25, 2021 conference this court asked what the additional cost was to maintain both polling places and was told it was close to \$2,000.00.

The reversion to the 2019 polling place was arbitrary and capricious. The reversion instead must be to the prior year, 2020, in which the Board did reach an agreement and in which there were two polling places, the Center and the Church. Although the court can discern no legitimate basis for having two polling places in District 5, and while it seems to this court superfluous, and a waste of funds, the court cannot substitute its judgment for that of the Board. (CPLR Article 78). Therefore, it is this court's finding and it is hereby

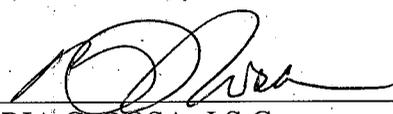
ORDERED AND ADJUDGED that since a determination was not made by the Board of

Elections by March 15, 2021 as required by the Election Law, the polling places revert to those which were used in 2020, that is, to both the Bertelsmann Campus Center and the St. John's Episcopal Church.

The foregoing constitutes the decision, order and judgment of the Court.

Dated: September 22, 2021
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §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.

Stris & Maher LLP
28 Elm Street
Montpelier, VT 05602

Bromberg Law LLC
43 West 43rd Street; Suite 32
New York, NY 10036

David Jensen PLLC
33 Henry Street
Beacon, NY 12508

Treybich Law, P.C.
420 Lexington Avenue, Room 300
New York, NY 10170