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February 4, 2021

Ms. Elisa Sumner
Dutchess County Democratic Committee
P.O. Box 578
Pleasant Valley, N.Y. 12569

Dear Ms. Sumner:

I am in receipt of your letter and attachments dated January 25, 2021 and received on January 26, 2021. In it you request that this office open an investigation to determine whether a perjury charge or others sanctions are warranted against Board of Elections Commissioner Erik Haight for his role in conjunction with an Article 78 proceeding assigned to Dutchess County Supreme Court Judge Maria Rosa. The Article 78 proceeding involved the siting of Red Hook polling District 5 for the November 3rd, 2020 election.

We have reviewed the record in that proceeding including the affidavit of Commissioner Haight, the Decisions and Orders issued by Judge Rosa, the video of the Appellate Division 2nd Department argument which took place on October 28, 2020, as well as various exhibits and other items.

A review of the record indicates that the Petitioners, Andrew Goodman Foundation and Election@Bard commenced this Article 78 proceeding on September 4, 2020. The Petition was returnable on September 28, 2020. The basis of the Petition challenged the Board of Election's designation of St. John's Episcopal Church as the polling place for District 5 in Red Hook, a designation which had been made on March 13, 2020.

The Supreme Court found that the designation of St. John's Episcopal Church was not arbitrary and capricious. The Court further found that it was too close in time to enable a change that would be fair to all voters including giving them timely and effective notice. This latter finding was based on all the paper submitted including Commissioner Haight's affidavit. The Court also noted that for nearly six months Petitioners failed to challenge this designation which led to this controversy happening so close to election day (P.2 Judge Rosa October 13, 2020 decision).

Shortly after this decision, on October 14, 2020, Commissioner Haight in agreement with Commissioner Soto, who is the other Elections Commissioner, moved the polling place for Districts 7 & 8 in Red Hook.

Following the movement of Districts 7 & 8 in Red Hook the Petitioners brought a motion to Reargue and Renew which was filed with the Court on October 15, 2020. Judge Rosa issued a subsequent decision on October 23, 2020 denying the Petitioners' application to Reargue but granting their application to Renew. The Court Order modified its prior determination of October 13, 2020, by directing that the polling place in Red Hook District 5 be moved to Bard College. The Court's Order and modification was appealed to the Appellate Division 2nd Department on October 26, 2020.

The appeal was argued before the Appellate Division 2nd Department on October 28, 2020. Following the argument, by stipulation of the parties the appeal was withdrawn. A proposed Order was submitted to Judge Rosa on the same day which set forth the agreement of the parties to resolve the issue of the Red Hook District 5 polling site. The parties agreed to supplement the Red Hook District 5 polling place by adding an additional polling location at Bard.

The Court's Order, dated October 30, 2020, approved the agreement of the parties following the withdrawal of the appeal. The content of this Order was an implicit recognition by both sides that legitimate issues had been raised by both sides and a compromise was appropriate due to the risk each confronted. That risk assessment was based on the submissions from all parties which includes the Haight affidavit.

The litigants in the proceedings outlined in the preceding paragraphs had a full and fair opportunity to address the issues, seek sanctions and raise the issue of perjury for allegedly false information provided to the Court in any manner. The Petitioners sought no such action.

Further, there is specific authority holding that when a record suggests that perjury has been committed, the Court may, in its sound discretion, refer the matter to the District Attorney for investigation. No such referral was made.

Finally, and of primary importance, the Haight affidavit, which is the foundation of your request for a fair, impartial, and thorough investigation, sets forth the **opinion** of the Election Commissioner. A review of this matter must be considered in context with all the papers submitted in this proceeding.

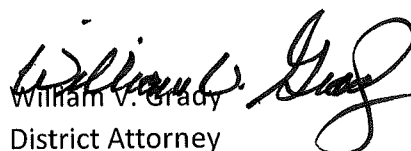
The Haight affidavit states in the Commissioner's **opinion** the difficulties that could arise if the Red Hook District 5 polling site was changed following the designation of the site on March 13, 2020 and after notices of the location had already been sent to voters in Red Hook District 5. The opposing affidavit of Commissioner Soto reached a starkly different conclusion based on a different **opinion**.

Commissioner Haight's affidavit in paragraphs 10-23 states that the difficulties outlined are based on his experience, what he has seen and what he felt in considering all the issues. These paragraphs outline a litany of things that in the **opinion** of Commissioner Haight would be disruptive and problematic and therefore weigh against any change in the polling site.

Notwithstanding, the last sentence in paragraph 11 of the Haight affidavit states, "Having said that, the Board of Elections does change polling places when circumstances dictate," explicitly acknowledging that the Board of Elections has and can change polling places even when such change is close to Election Day. As previously noted, none of the parties to this action sought any investigation or other remedies that would be available had they believed perjury was committed.

"Opinion" is not perjury. A statement that is opinion even if ambiguous or nonresponsive cannot be perjury. Moreover, perjury is not committed by failing to submit an affidavit, no matter how relevant or material such statement, if made, might be to the subject matter at hand.

Therefore, no justiciable fact or facts exist which would provide the basis for any type of criminal prosecution or sanction. There is no evidence of perjury in any degree committed in these proceedings.


William V. Grady
District Attorney

cc: Erik J. Haight