

Supreme Court of Pennsylvania

Court of Common Pleas
Civil Cover Sheet

Allegheny

County

For Prothonotary Use Only:

Docket No:

TIME STAMP

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint Writ of Summons Petition
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name:
Samuel DeMarco III

Lead Defendant's Name:
Sara Innamorato, in her official capacity

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a *Class Action Suit*? Yes No

Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: Kathleen A. Gallagher / Brian M. Adrian

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other:

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other

 Employment Dispute:
 Discrimination
 Employment Dispute: Other

 Other:

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other

 Zoning Board
 Other:

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other:

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other:

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations
 Restraining Order
 Quo Warranto
 Replevin
 Other:

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional:

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

SAMUEL DeMARCO III, in his official capacity as an At-Large Member of the Allegheny County Council and Allegheny County Board of Elections; DAVID J. MAJERNIK; TODD W. McCOLLUM; ROBERT C. HOWARD, JR.; and KAREN L. KRALIK;

CIVIL DIVISION

No. GD-24-003062

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiffs,

v.

SARA INNAMORATO, in her official capacity as County Executive and Member of the Allegheny County Board of Elections; ALLEGHENY COUNTY BOARD OF ELECTIONS; and ALLEGHENY COUNTY,

Filed on Behalf of Plaintiffs:

Samuel DeMarco III, in his official capacity as an At-Large Member of the Allegheny County Council and Allegheny County Board of Elections; David J. Majernik; Todd W. McCollum; Robert C. Howard, Jr.; and Karen L. Kralik

Defendants.

Counsel of Record for this Party:

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436 Seventh Avenue
Pittsburgh, PA 15219

412.308.5512 (Phone)
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ALLEGHENY COUNTY
CIVIL DIVISION
DEPT OF COURT RECORDS

2024 MAR 14 AM 9:20

FILED

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

SAMUEL DeMARCO III, in his official capacity as an At-Large Member of the Allegheny County Council and Allegheny County Board of Elections; DAVID J. MAJERNIK; TODD W. McCOLLUM; ROBERT C. HOWARD, JR.; and KAREN L. KRALIK;

CIVIL DIVISION

No. _____

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SARA INNAMORATO, in her official capacity as County Executive and Member of the Allegheny County Board of Elections; ALLEGHENY COUNTY BOARD OF ELECTIONS; and ALLEGHENY COUNTY,

Defendants.

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following papers, you must take action within twenty (20) days after this complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS FOR A REDUCED FEE OR NO FEE.

Lawyer Referral Service
Allegheny County Bar Association
11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 261-5555

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

SAMUEL DeMARCO III, in his official capacity as an At-Large Member of the Allegheny County Council and Allegheny County Board of Elections; DAVID J. MAJERNIK; TODD W. McCOLLUM; ROBERT C. HOWARD, JR.; and KAREN L. KRALIK;

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No. _____

Plaintiffs,

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SARA INNAMORATO, in her official capacity as County Executive and Member of the Allegheny County Board of Elections; ALLEGHENY COUNTY BOARD OF ELECTIONS; and ALLEGHENY COUNTY,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Samuel DeMarco III, in his official capacity as an At-Large Member of the Allegheny County Council and Member of the Allegheny County Board of Elections; David J. Majernik; Todd W. McCollum; Robert C. Howard, Jr.; and Karen L. Kralik (collectively "Plaintiffs"), by and through their undersigned counsel, The Gallagher Firm, LLC, bring this Complaint seeking declaratory and injunctive relief, and in support thereof state as follows:

INTRODUCTION

1. In 1644, the Reverend Samuel Rutherford published the book, *Lex, Rex*. The book is considered provocative because of the order of the words, with Lex—the law—being placed before Rex—the king. In the book, Rutherford argued that the king is not above the law. The principles espoused by Rutherford ultimately became one of the underpinnings for the rule of law

in the United States. Namely, no person or group is above the law, and justice cannot be administered based on any factor other than what the law says.

2. The instant controversy involves a textbook definition of political overreach by Defendant Allegheny County Executive Sara Innamorato (“Defendant Innamorato” or “County Executive”), an elected official who has apparently decided that she is above the law and/or that the laws of the Commonwealth of Pennsylvania do not apply to her.

3. In her position as the Allegheny County (“County”) County Executive, Innamorato is but one of three members of the County’s Board of Elections (the “Board”). The other two members are At-Large Councilpersons Samuel DeMarco III and Bethany Hallam. Allegheny County Administrative Code (“Administrative Code”) § 5-211.01. *See also* Declaration of Samuel DeMarco III (“DeMarco Decl.”), a true and correct copy of which is attached hereto as **Exhibit A**, ¶ 7.

4. The Pennsylvania Election Code provides that each county shall create a board of elections, which shall have jurisdiction over the conduct of primaries and elections in such county. 25 P.S. § 2641. The Allegheny County Board of Elections is governed by and vested with the powers set forth in § 2642 of the Pennsylvania Election Code (25 § P.S. 2642), including but not limited to the authority to determine how elections are administered in the County. Administrative Code, § 5-101.02.

5. The Election Code requires, however, that such decisions can only be made by a majority vote of the members of the Board. 25 P.S. § 2643.

6. The County Executive however ignored that requirement and, without even consultation with the Board, let alone the required public meeting and vote of the Board, unilaterally issued a press release on February 24, 2024 and announced that the Elections Division

of Allegheny County would be operating “five (5) staffed absentee/mail-in ballot drop off locations” around the county as part of the 2024 Primary and General Elections (the “2024 Satellite Election Offices”). DeMarco Decl., ¶ 19. The County Executive had no legal authority to do so.

7. The County Executive’s powers are set forth in the Administrative Code, and there is nothing contained therein that allows the County Executive to usurp the functions of the Board by permitting her to unilaterally authorize satellite offices, or to select their location and staffing. *See* Administrative Code § 1.5-502.

8. The Pennsylvania Election Code vests the Board with jurisdiction over the “conduct of elections” and only the Board can make such decisions through a majority vote. 25 P.S. §§ 2641, 2643. The County Executive is but one member of the three-person Board. Hence, her rights rise no higher than those of her fellow Board Members.

9. The County Executive’s actions therefore constitute an irrefutable violation of the Pennsylvania Election Code. Here, not only was there no vote—there was no involvement of the Board in any way. Rather, the County Executive simply chose to announce the 2024 Satellite Election Offices as if Allegheny County was her own personal fiefdom.

10. The County Executive’s unilateral action not only exceeded her authority and deprived her fellow Board Members of their vote, but it also deprived the public of their rights under the Pennsylvania Sunshine Act.

11. The Sunshine Act expressly gives Pennsylvanians the right to advance notice of the topics for discussion at any official public meeting. 65 Pa. C.S. § 701 *et seq.* The agenda must “include[] a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting.” See 65 Pa. C.S. § 709(c.1)(1)(i). This agenda must be posted on an agency’s publicly accessible Internet website no later than 24 hours in advance of

the start of the meeting, posted at the meeting location and main offices, and given to meeting attendees. *Id.* Defendants did not comply with this important requirement depriving Allegheny County residents, including Plaintiffs, of an opportunity to provide comment on the opening of such Satellite Election Offices.

12. Residents of Pennsylvania are afforded the right to attend government agency meetings which discuss matters of public importance and to comment on issues under consideration by their elective governmental officials. This is a vital portion of a functioning democracy, and a cornerstone for the creation of the Sunshine Act.

13. In order for Pennsylvanians to be afforded the opportunity to participate in matters of public concern, decisions which affect how local government is operated, must occur publicly, in the light of day, where the public can participate. In order to permit such participation, agencies must give notice not only of the meeting schedule, but also the topics planned for discussion. Those rights of participation and transparency are, in the words of the General Assembly, "vital to the enhancement and proper functioning of the democratic process," because "secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society." 65 Pa. C.S. § 702.

14. These important considerations cannot be satisfied, and the democratic process cannot function where decisions that affect the public are unilaterally made behind closed doors without **any** public involvement, and without the participation of the elected officials who are by law tasked with overseeing such issues under Pennsylvania law.

15. Plaintiffs include At-Large County Councilman and Board Member Samuel DeMarco III, as well as four Allegheny County residents, who bring this lawsuit to void the County

Executive's decision to open and operate the Satellite Election Offices as part of the 2024 Primary and General Elections without first complying with Pennsylvania law.

16. The County Executive did not comply with the mandates of § 2643 of the Election Code and acted unilaterally outside the Board with regard to this prominent issue. In doing so, she not only deprived her fellow Board members of their input and their right to cast a vote regarding the 2024 Satellite Election Offices, but she also deprived Allegheny County residents, including the Plaintiffs, of an opportunity to provide comment on the opening of the 2024 Satellite Election Offices.

17. The County Executive's actions constitute a threat to both the rule of law and the democratic process itself.

18. The consequences of the County Executive's blatant disregard of the mandates of the Election Code and her resultant usurpation of the authority of the Board are difficult to overstate. Not only did the County Executive violate the Election Code, but she has also violated the rights of the citizens of Allegheny County to participate in what should have been an open public process. Such actions are the antithesis of the democratic process.

19. The Court should restore transparency, fundamental fairness, and integrity to Allegheny County's election administration by—consistent with the plain text of the Election Code and the Sunshine Act—declaring that the County Executive's actions are illegal per se and hence void and may not be adopted absent compliance with the provisions of such laws.

JURISDICTION AND VENUE

20. This Court has original jurisdiction over this Complaint pursuant to 42 Pa. C.S. § 931(a)(1) and 65 Pa. C.S. § 715.

21. The Plaintiffs bring this action pursuant to the Declaratory Judgments Act, which empowers this Court “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” 42 Pa. C.S. § 7541(a). The Declaratory Judgments Act permits “[a]ny person ... whose rights, status, or other legal relations are affected by a statute” to “have determined any question of construction or validity arising under the ... statute” and to “obtain a declaration of rights, status, or other legal relations thereunder.” 42 Pa. C.S. § 7533.

22. All Defendants are located in this County and the Court can exercise personal jurisdiction over them. 42 Pa. C.S. § 5301.

23. Venue exists in this Court because this action arose in Allegheny County, and this is a suit against one or more political subdivisions located within Allegheny County. Pa. R.Civ.P. 1006, 2103. Venue also exists pursuant to 65 Pa. C.S. § 715.

PARTIES

24. Plaintiff Samuel DeMarco III is a resident of Allegheny County, a duly elected At-Large Member of the County Council, and a Member of the Board. DeMarco Decl., ¶ 4. In that capacity, he has the responsibility to ensure that the actions of the Board are legally compliant. Plaintiff DeMarco is also the Chair of the Republican Committee of Allegheny County, supports Republican candidates for public office throughout Allegheny County, and expends significant efforts to educate, mobilize, and assist Allegheny County electors in the voting process. *Id.* These efforts require a clear understanding, inter alia, of mail voting procedures adopted by the Board such as the availability of ballot drop locations. *Id.* He brings this litigation solely in his official capacity.

25. Plaintiff David J. Majernik is a registered Republican who resides in Allegheny County. See Declaration of David J. Majernik attached hereto as **Exhibit B**, ¶¶ 2-3. Plaintiff

Majernik consistently votes in all primary and general elections. *Id.*, ¶ 3. Plaintiff Majernik is a committee member of the Republican Party of Pennsylvania and the Republican Committee of Allegheny County. *Id.*, ¶ 4. He expends significant efforts to educate, mobilize, and assist Allegheny County electors in the voting process. *Id.*, ¶ 5. These efforts require a clear understanding of, inter alia, mail voting procedures adopted by the Board such as the availability of ballot drop locations. *Id.*

26. Plaintiff Karen Kralik is a registered Republican who resides in Allegheny County. See Declaration of Karen Kralik attached hereto as **Exhibit C**, ¶¶ 2-3. Plaintiff Kralik consistently votes in all primary and general elections. *Id.*, ¶ 3. Plaintiff Kralik is a committee member of the Republican Party of Pennsylvania, a committee member of the Republican Committee of Allegheny County, and the Mt. Lebanon Republican Committee. *Id.*, ¶ 4. She expends significant efforts to educate, mobilize, and assist Allegheny County electors in the voting process. *Id.*, ¶ 5. These efforts require a clear understanding of, inter alia, mail voting procedures adopted by the Board such as the availability of ballot drop locations. *Id.*

27. Plaintiff Todd McCollum is a registered Republican who resides in Allegheny County. See Declaration of Todd McCollum attached hereto as **Exhibit D**, ¶¶ 2-3. Plaintiff McCollum consistently votes in all primary and general elections. *Id.*, ¶ 3. Plaintiff McCollum is the Chair of the City of Pittsburgh Republican Committee. *Id.*, ¶ 4. He expends significant efforts to educate, mobilize, and assist Allegheny County electors in the voting process. *Id.*, ¶ 5. These efforts require a clear understanding of, inter alia, mail voting procedures adopted by the Board such as the availability of ballot drop locations. *Id.*

28. Plaintiff Robert C. Howard is a registered Republican who resides in Allegheny County. See Declaration of Robert C. Howard attached hereto as **Exhibit E**, ¶¶ 2-3. Plaintiff

Howard consistently votes in all primary and general elections. Plaintiff Howard is a member of the Republican Committee of Allegheny County and Chair of the Marshall Township Republican Committee. *Id.*, ¶ 4. He expends significant efforts to educate, mobilize, and assist Allegheny County electors in the voting process. *Id.*, ¶ 5. These efforts require a clear understanding of, inter alia, mail voting procedures adopted by the Board such as the availability of ballot drop locations. *Id.*

29. Plaintiffs Majernik, Kralik, McCollum, and Howard, collectively the “Voter Plaintiffs,” each regularly vote in both primary and general elections and routinely participate in the election process. The Voter Plaintiffs participate in such process by monitoring and attending meetings where the Board makes decisions regarding the election administration process and would have appeared at a Board meeting on the 2024 Satellite Election Offices to ask questions and provide input. The County Executive deprived them of their right to participate.

30. Defendant Sara Innamorato is the County Executive for Allegheny County and is sued in her official capacity only. In that capacity, Defendant Innamorato is one of three members of the Allegheny County Board of Elections.

31. Defendant Allegheny County is a second-class county located in the Commonwealth of Pennsylvania. Pursuant to the Allegheny County Home Rule Charter which was adopted in 1998 and became effective on January 1, 2000, the County government is run by an elected county executive and 15-member county council, two of which are elected at large, with an appointed professional county manager. Allegheny County Home Rule Charter, § 1.13-1301, *et seq.*

32. Defendant Allegheny County Board of Elections is an agency of the County established pursuant to the Election Code and Administrative Code. See 25 P.S. § 2641;

Administrative Code § 1.10-1006. The Board of Elections is named as a defendant herein solely for purposes of the declaratory relief requested.

FACTUAL BACKGROUND

Allegheny County Election Administration and the Authority of the Board of Elections

33. The Administrative Code was created in order to set forth the details for the administration and operation of Allegheny County Government, consistent with the provisions of the Home Rule Charter of Allegheny County and all applicable laws of the Commonwealth of Pennsylvania. Administrative Code, § 5-101.02.

34. The Administrative Code provides for the creation of the Board, and further sets forth that the Board shall be comprised of three members, the County Executive and the two at-large County Council Members. Administrative Code, § 5-211.01; 25 P.S. § 2641.

35. Section 2641 of the Election Code expressly provides that each county shall create a board of elections which shall have jurisdiction over the conduct of primaries and elections in such county. 25 P.S. § 2641(a). The Election Code further mandates the composition of the Board and that, "there shall be minority representation on the board." 25 P.S. § 2641(b). The three members of the Allegheny County Board are the County Executive and Councilperson Hallam, each of whom are Democrats, and Plaintiff DeMarco who is a Republican, making him the minority representation on the Board. DeMarco Decl., ¶ 7.

36. The Board is authorized to exercise all of the powers and perform all of the duties of a board of elections as set forth in § 2642 of the Election Code. 25 P.S. § 2642.

37. Specifically, the Pennsylvania Election Code vests in each of the Commonwealth's 67 county boards of election the responsibility for implementing elections therein, including the

power to select and equip polling places that meet the requirements of the Act, as well as all other decisions required to implement the election. 25 P.S. §§ 2641, 2642.

38. In 2020, the Pennsylvania Supreme Court in *PA Democratic Party v. Boockvar* held that the Election Code should be interpreted to allow **county boards of election** to accept hand delivered mail-in ballots at locations other than their office addresses, including drop-boxes. *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020).

39. In that regard, the Secretary of the Commonwealth has issued Guidance that provides that County Boards of Elections may implement drop boxes. Pennsylvania Department of State, *Pennsylvania Absentee and Mail-in Ballot In-Person Return Guidance*, Version 2.0 at 2 (Sept. 25, 2023) (“Guidance”). Specifically, the Guidance states:

- “Locations for returning ballots in-person include each county election board’s primary office, as well as to other offices and locations designated by the board to receive ballots (hereinafter “Ballot Return Sites”). Guidance at 2.
- County boards of election may also establish, as a Ballot Return Site, secure ballot return receptacles (commonly referred to as “drop-boxes”). *Id.*
- “For each election, county boards of elections (“Boards”) should establish a plan and adopt procedures for how voters in their county may return their completed absentee and mail-in ballots.” *Id.*, at p. 3.
- “Boards may establish multiple Ballot Return Sites where voters may return their completed ballot.” *Id.*
- “When choosing a location, Boards should consider...” *Id.*
- “Boards may establish sites where voters can return their own completed ballot without concerns about post office delays.” *Id.*, at p. 4.

40. Given the mandate of the Pennsylvania Supreme Court in *PA Dems* and the Secretary’s Guidance that vests the Boards of Election with the authority to open ballot drop box

locations, § 2643 of the Election Code proscribes the means by which the Boards of Election may take such action.

41. In that regard, the Pennsylvania Election Code mandates that “All actions of a county board **shall be decided by a majority vote of all the members**, except as may be otherwise provided herein.” 25 P.S. § 2643(a) (emphasis added).

The Sunshine Act

42. The Sunshine Act mandates that the deliberations of public agencies must be made in public, after public notice, and subject to public comment. The Sunshine Act defines “Agency” as “The body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business, of all the following: ... or any State, municipal, township or school authority.” 65 Pa. C.S. § 703. As such, there is no question that the Sunshine Act applies to the County, and the Board.

43. The mandate of the Sunshine Act can be found in § 702, which clearly states:

§ 702. Legislative findings and declarations.

- (a) Findings. — The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.
- (b) Declarations. — The General Assembly hereby declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter.

65 Pa. C.S. § 702.

44. The Sunshine Act requires that whenever an agency takes any “official action” as defined by the Act, it must do so “at a meeting open to the public.” *Id.* at § 704. “Official action” is defined as “decisions on agency business made by an agency” and the “establishment of policy by an agency.” 65 Pa. C.S. § 703. The decision to open and operate Satellite Election Offices where mail-in and absentee ballots can be accepted, and the decision as to where such offices will be located, when they will be open to the public, and how they will be funded clearly constitutes “official action” by Allegheny County and the Board of Elections. *See e.g.*, Opinion and Order issued by the Court of Common Pleas of Lancaster County in the matter *Frey, et al. v. D’Agostino, et al.*, No. CI-22-02699 (May 13, 2022), a true and correct copy of which is attached hereto as **Exhibit F**.

45. The decision to implement the 2024 Satellite Election Offices, where voters would be permitted to drop off ballots, constitutes “official action” under the Sunshine Act, which is defined as:

§ 703. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Official action.”

- ...
- (1) Recommendations made by an agency pursuant to statute, ordinance or executive order.
 - (2) The establishment of policy by an agency.
 - (3) The decisions on agency business made by an agency.
 - (4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

Pa. C.S. § 703.

46. Under the Sunshine Act, agencies “shall provide a reasonable opportunity” for individuals “to comment on matters of concern, official action or deliberation which are or may

be before the board or council prior to taking official action.” *Id.* at § 710.1(a). Without advance notice of the matters that will be decided, the public is deprived of the opportunity to meaningfully participate in the government’s decision-making process.

47. Plaintiff Robert Howard routinely monitors and attends Board meetings and has spoken at Board meetings. Had a Board meeting been noticed, Mr. Howard would have attended the same, expressed his comments, and asked questions regarding, *inter alia*, the location and number of the proposed satellite election offices, the full purpose of the same, hours of operation, and the source of funding. Howard Decl., **Exhibit E**, ¶ 5. Plaintiffs Kralik, McCollum, and Majernik likewise would have attended any such Board meeting for similar reasons. See Declarations of Kralik, McCollum, and Majernik, **Exhibits C, D, and B**, ¶ 5.

Allegheny County Satellite Office Drop Box Policy for the 2020 General Election

48. The Pennsylvania General Assembly enacted Act 77 in 2019. Act 77 amended the Pennsylvania Election Code to permit any registered voter to vote by mail regardless of whether the elector is going to be absent from their municipality on Election Day. Act of June 3, 1937, P.L. 1333, as amended, 25 P.S. §§ 3150.11-3150.17. Article XIII-D was added by the Act of October 31, 2019, P.L. 552, No. 77 (Act 77).

49. As stated, on September 17, 2020, the Pennsylvania Supreme Court held that the Pennsylvania Election Code permitted county boards of election to offer secure ballot drop boxes for voters to drop off completed mail-in and absentee ballots. *See Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020).

50. As a result of the COVID pandemic and enactment of Act 77 in 2020, Allegheny County, like other counties throughout Pennsylvania, experienced a significant increase in the use of mail-in ballots.

51. In order to plan for this anticipated increased use of mail-in and absentee ballots for the 2020 Presidential election cycle, Allegheny County took steps to institute the use of satellite Election Division offices where ballots could be dropped off as part of the 2020 General Election.

52. At that time, the Board was comprised of Plaintiff DeMarco, Defendant Hallam, and then-County Executive Rich Fitzgerald. DeMarco Decl., ¶ 9.

53. In conjunction with the potential use of satellite Election Division offices where ballots could be dropped off and in compliance with the relevant provisions of the Election Code and the Sunshine Act, the Board published an Agenda for a meeting of the Board to be held on September 17, 2020.¹ A true and correct copy of the Agenda is attached to the DeMarco Decl. as **Exhibit 1**. The Board also provided notice to the public and invited comment via e-mail. *Id.*, ¶ 10.

54. The meeting was held on September 17, 2020, at which time the Board discussed the issue of opening additional what they call “Election Division offices” where ballots could be dropped off to assist with the return of mail-in/absentee ballots. *Id.*, ¶ 11. A true and correct copy of the Minutes of the September 17, 2020 Board of Elections Meeting Minutes are attached to the DeMarco Decl. as **Exhibit 2**. These Minutes reflect that the Board received 80 timely submitted comments in the form of emails, which were summarized by Assistant County Solicitor Allan J. Opsitnick. *Id.*

55. As part of the September 17, 2020 Board Meeting, the Board of Elections ultimately agreed via a majority vote of the Board to a resolution which authorized the use of five Election Division offices to receive mail-in and absentee ballots (“2020 Satellite Election Offices”). A true and correct copy of the Board of Elections Resolution from September 17, 2020 (The “Resolution”) is attached to the DeMarco Decl. as **Exhibit 3**, ¶ 12.

¹ Due to the pandemic, this meeting was conducted via Microsoft Teams.

56. The Resolution by its very terms limited the 2020 Satellite Election Offices to the following specific dates and times during the 2020 General Election: Saturday, October 10 – Hours: 9 AM to 5 PM; Sunday, October 11 – Hours: 11AM to 7 PM; Saturday, October 17 – Hours: 9 AM to 5 PM; and Sunday, October 18 – Hours: 11 AM to 7 PM. See DeMarco Decl., **Exhibit 3**.

57. The Resolution provided no authorization for the Satellite Offices beyond the 2020 General Election.

58. Accordingly, after the 2020 General Election, the 2020 Satellite Election Offices have not been used again. Indeed, the County has had no Satellite Election Offices or drop boxes in the conduct of the 2021, 2022, or 2023 Elections. DeMarco Decl., ¶ 25.

Allegheny County Satellite Election Offices for the 2024 Primary Election

59. By press release dated February 22, 2024, the County Executive announced that the County would be operating the Satellite Election Offices in conjunction with the 2024 Elections, stating “County Executive Sara Innarato today announced expanded services for Allegheny County voters for the 2024 elections. In addition to ballot drop off and ‘over the counter’ voting services at the downtown County Office Building (542 Forbes Avenue), the Elections Division will also operate five staffed absentee/mail-in ballot drop off locations around the county.” See <https://www.alleghenycounty.us/News-articles/Return-of-Ballot-Drop-Off-Locations-for-2024-Elections>, a true and correct copy of which is attached to the DeMarco Decl. as **Exhibit 4**, ¶ 19.

60. Despite the County Executive’s announcement, the Board has held no public meetings nor taken a vote of its members regarding the implementation of the 2024 Satellite Election Offices to be used for receiving mail-in and absentee ballots in advance of the 2024

Primary Election. DeMarco Decl., ¶¶ 15-18. Indeed, as of the date of the filing of this litigation, the Board has not held a single meeting in 2024. *Id.*, **Exhibit 7**.

61. Per the County Executive's announcement, the County plans to open the 2024 Satellite Election Offices the two weekends before Election Day, Saturday, April 13 and April 20, 9:00 a.m. - 5:00 p.m.; and Sunday, April 14 and April 21, 11:00 a.m. - 7:00 p.m. DeMarco Decl., **Exhibit 4**. The 2024 Satellite Election Offices are to be located at: the Carnegie Public Library in Squirrel Hill; the South Park Ice Rink; the North Park Ice Rink; the Boyce Park Four Seasons Lodge; and the 911 Call Center in Moon. *Id.* These are not identical locations to those that were approved and used by the County as part of the 2020 General Election.

62. In addition, unlike in 2020, not all of these locations are County-owned properties. In 2020, all the satellite election offices were located on County-owned properties, so that election personnel staffing those offices could access the County's Statewide Registry of Electors ("SURE") database, confirm an individual's eligibility to vote by mail-in or absentee ballot, and allow a voter to apply for, receive and cast a mail-in ballot. DeMarco Decl., ¶ 13. In 2024, one of the announced Satellite Election Offices is to be located at Carnegie Library in the Squirrel Hill neighborhood of the City of Pittsburgh, which is not County-owned, and where election personnel will not be able to access the SURE database. Further, the text of the County Executive's Press Release further makes it clear that only completed ballots will be accepted at the 2024 Satellite Election Offices, and no "over the counter" services will be provided at same, unlike the 2020 Satellite Election Offices. DeMarco Decl., ¶ 21, and **Exhibit 4**.

63. The 2024 Satellite Election offices are vastly different from the 2020 authorized Satellite Election offices and are simply staffed drop box locations within the sole authority of the

Board as dictated by the Pennsylvania Supreme Court in *PA Dems. See Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020).

64. Plaintiff DeMarco, one of the three members of the Board, was not consulted regarding, nor asked to vote on the decision to implement the 2024 Satellite Election Offices. DeMarco Decl., ¶¶ 17-18.

65. Plaintiff DeMarco has had direct communications with Board Member Hallam, who confirmed that she had not been consulted regarding the decision to open the 2024 Satellite Election Offices before that decision was announced by the County Executive. *Id.*, ¶ 27.

66. Board Member Hallam has also publicly expressed her concerns over the County Executive's actions in a statement offered to the press, wherein she stated, "It's very clear from the Department of State guidance that this is a decision to be made by the Board of Elections, yet we haven't even met this year." Hallam went on to explain, "We absolutely need to be making that decision as a Board – not with one member of the board unilaterally making board decisions." See <https://www.wtae.com/article/allegheeny-county-ballot-drop-off-locations-2024-election/46912983>, a true and correct copy of which is attached to the DeMarco Decl. as **Exhibit 7**, ¶ 26.

67. Rather than seeking the required approval of the majority of the Board, the decision to announce the 2024 Satellite Election Offices was unilaterally made by the County Executive, without any participation or input from the other members of the Board or a vote of the majority of the same (DeMarco Decl., ¶ 15), in direct violation of the Pennsylvania Election Code. 25 P.S. § 2643.

68. Because the required vote of the Board did not take place, Plaintiff DeMarco was not involved in the decision to open the 2024 Satellite Election Offices, and he was thus deprived of his right to vote on same. DeMarco Decl., ¶ 28.

69. The County Executive's implementation of the 2024 Satellite Election Offices without approval of a majority of the Board is thus a patent violation of § 2643 of the Election Code and is hence unauthorized and void ab initio. See *Bank of New York Mellon v. Johnson*, 121 A.3d 1056, 1060 (Pa. Super. 2015) ("When a prothonotary enters judgment without authority, that judgment is void ab initio."); *Hempfield School Dist. v. Election Bd. of Lancaster County*, 574 A.2d 1190, 1191 (Pa. Commw. 1990) ("It is a *priori* that a governmental body such as an election board has only those powers expressly granted to it by the legislature.").

70. In addition to violating the Election Code, the County Executive unilaterally making this decision is also a clear violation of the Sunshine Act. 65 Pa. C.S. § 701, *et seq.* Courts in the Commonwealth have already addressed this issue and determined that the decision to open satellite offices where ballots can be dropped off is not "administrative" action, and instead constitutes official action under the Sunshine Act. See **Exhibit F** (*Frey, et al. v. D'Agostino, et al.*, No. CI-22-02699 (May 13, 2022 Opinion)).

71. The County Executive's unilateral and hence unauthorized decision to open the 2024 Satellite Election Offices was not noticed for any discussion at a meeting of the Board, nor was notice of same provided so the public could participate in the decision-making process. DeMarco Decl., ¶¶ 15-18.

72. Prior to the Press Release, this decision was not placed on the agenda for any meeting of the Board, nor was it addressed in any way during a public meeting of the Board. *Id.*

73. As noted above, Board Member Hallam, like Plaintiff DeMarco, has confirmed that she was not involved in the County Executive's decision to announce the 2024 Satellite Election Offices. *Id.*, ¶ 22.

74. After learning of the County Executive's decision to unilaterally announce the 2024 Satellite Election Offices, the Republican Committee of Allegheny County sent a letter to David R. Voye, Division Manager of the Allegheny County Elections Division, dated February 27, 2024. DeMarco Decl., ¶¶ 22-23. A true and correct copy of the February 27, 2024 letter is attached to the DeMarco Decl. as **Exhibit 5**.

75. In the February 27, 2024 letter, the Solicitor of the Republican Party of Allegheny County asked for guidance regarding the decision to open the 2024 Satellite Election Offices, as well as background concerning what steps were taken prior to making the decision. In this regard, the letter requested answers to the following questions:

1. What provision of the Pennsylvania Election Code or other law provides the County Executive and the Elections Division with the authority to operate five additional staffed absentee/mail-in ballot drop off locations in Allegheny County?
2. Did the County Executive and the Elections Division obtain the prior approval of the Allegheny County Board of Elections before making its announcement on February 22, 2024, and if not, why not?
3. Did the County Executive and the Elections Division submit its proposed plan and procedures for these additional staffed ballot drop off locations to the Pennsylvania Department of State's Bureau of Elections as stated in the attached September 25, 2023 "Pennsylvania Absentee and Mail-in Ballot In-Person Return Guidance" v. 2.0, and if not, why not?
4. What factors did the County Executive and the Elections Division consider when selecting the five locations for the additional ballot drop offs, and what other locations were considered but not selected and the reasons why they were not selected?

5. What will be the total cost to Allegheny County and the Elections Division for staffing these additional five ballot drop off locations, and where is Allegheny County and/or the Elections Division getting the funds, including without limitation any grants or discounts, to pay for these additional costs?

76. On March 11, 2024, Assistant County Solicitor Allan J. Opsitnick issued a letter on behalf of the County in response to the February 27, 2024 letter. A true and correct copy of the March 11, 2024 letter is attached to the DeMarco Decl. as **Exhibit 6**. Therein, the County responds that its plan to open the 2024 Satellite Election Offices is “consistent with prior operations, from 2020, including four elections in 2023.” *Id.* The letter further states, without context, that a meeting of the Board of Elections has been scheduled for March 20, 2024. *Id.*

77. Further, the allegation that the announced opening of the Unauthorized Satellite Election Offices is consistent with “four elections in 2023” is incorrect, as no satellite elections offices where ballots could be dropped off were opened in 2023. See DeMarco Decl., ¶ 25. To the contrary, the only time that satellite election offices have been used in Allegheny County occurred as part of the 2020 General Election and only after the appropriate public meeting of the Board and a majority vote approving the same. Every election held since then has been conducted without the use of such offices. *Id.*

COUNT I – DECLARATORY JUDGMENT

Defendant Innamorato’s Action in Unilaterally Implementing the 2024 Satellite Election Offices is a Violation of the Pennsylvania Election Code

78. Plaintiffs hereby incorporate and adopt the allegations set forth in Paragraphs 1 through 77 as if set forth herein in their entirety.

79. Under the Pennsylvania Election Code, each county shall create its own board of elections, which “shall have jurisdiction over the conduct of primaries and elections in such county....” 25 P.S. § 2641.

80. Allegheny County's Administrative Code provides that the Board "shall exercise all of the powers and perform all of the duties of a Board of Elections provided by § 2642 of the Pennsylvania Election Code." Administrative Code § 5-211.02. The Pennsylvania Election Code vests jurisdiction for the conduct of elections in each of the counties in the county boards of election. 25 P.S. § 2641.

81. On September 17, 2020, the Pennsylvania Supreme Court further clarified that the Pennsylvania Election Code permits **county boards of election** with the power to decide whether and how to offer secure ballot drop boxes for voters to drop off completed mail-in and absentee ballots. See *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020).

82. It would make little sense to read *Boockvar*'s authorization of satellite election offices to have empowered the County Executive to unilaterally opt to use them, site them, and staff them. The opinion clearly identifies the county boards as the locus of any such authority. *Id.* And that is because under 25 P.S. § 3151, it is a "county board of election"—not a county executive—that is empowered to designate one or more "place[s]" other than "its office" to receive election returns.

83. Further, a contrary conclusion would create a serious incongruity with 25 P.S. § 2642, which empowers the county boards of election to site polling locations. It would make little sense for the county boards of elections to have exclusive authority regarding where to receive votes cast in person but to allow county executives to cut them out of the process of deciding where to collect ballots. Under *Boockvar* these sites are nothing more than satellite offices of the county board itself.

84. The Election Code expressly provides that each decision of a county board of election shall be decided **by a majority vote of all the members**. 25 P.S. § 2643. In Allegheny

County, this means that two of the three members of the Board must agree on decisions which impact how elections are to be conducted in the county, including the opening of satellite election offices where mail-in and absentee ballots can be dropped off in advance of the election.

85. The 2024 Satellite Election offices announced by the County Executive were not presented to, voted on or approved by a majority of the Board.

86. The County Executive's actions are thus a direct violation of § 2643 of the Election Code, and as they were unauthorized, they must be undone. See *Bank of New York Mellon v. Johnson*, 121 A.3d 1056, 1060 (Pa. Super. 2015); *Hempfield School Dist. v. Election Bd. of Lancaster County*, 574 A.2d 1190, 1191 (Pa. Commw. 1990).

87. Absent emergency injunctive relief, Plaintiff DeMarco will be irreparably harmed. Plaintiff DeMarco, as a Member of the Board, has unquestionably been deprived of his right to participate in the decision-making process to open the 2024 Satellite Election Offices as part of the 2024 Primary and General Elections. See *Commonwealth v. Coward*, 414 A.2d 91 (Pa. 1980) (a finding of irreparable harm is usually made by the court, where a statute proscribes certain activity all that need be done is for the court to make a finding that the illegal activity occurred; unlawful action taken by an Election Board per se constitutes immediate and irreparable harm).

WHEREFORE, Plaintiffs respectfully request this Honorable Court declare that the decision to open the 2024 Satellite Election Offices announced by the County Executive violates Pennsylvania law, is unauthorized and thus void ab initio, and further request that this Honorable Court prohibit Defendants Innamorato and Allegheny County from implementing or otherwise proceeding with the use of such 2024 Satellite Election Offices without first complying with the terms of the Pennsylvania Election Code and Sunshine Act.

COUNT II – DECLARATORY JUDGMENT

Defendant Innamorato’s Action in Unilaterally Implementing the 2024 Satellite Election Offices is a Violation of the Sunshine Act

88. Plaintiffs hereby incorporate and adopt the allegations set forth in Paragraphs 1 through 87 as if set forth herein in their entirety.

89. The Sunshine Act requires that whenever an agency takes an “official action,” it must do so “at a meeting open to the public” and that it must post an agenda, which includes a listing of each matter of agency business that will or may be “the subject of deliberation or official action at the meeting,” on its Internet website no later than 24 hours in advance of the time of the convening of the meeting. 65 Pa. C.S. §§ 704, 709(c.1).

90. The Sunshine Act further requires that agencies “*shall* provide a reasonable opportunity” for “comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.” 65 Pa. C.S. § 710.1(a) (emphasis added).

91. The County Executive violated the Sunshine Act by taking official action in unilaterally choosing to announce the decision to open and operate the 2024 Satellite Election Offices without properly noticing such actions. Accordingly, those actions are presumptively void, and voidable. *See e.g.*, 65 Pa. C.S. § 713 (Sunshine Act provides that business which is transacted at an unauthorized meeting is void).

92. Defendants should have been aware of their obligation under the Sunshine Act to take official action only at a properly noticed public meeting. Indeed, Defendants had previously addressed this very topic in connection with the 2020 General Election, at which time all the named Defendants—with the exception of Defendant Innamorato—conducted a public meeting of the Board after notice and receiving commentary and agreeing to a resolution to operate the

2020 Authorized Satellite Election Offices. Accordingly, the County has already considered such matters official agency business in the past.

93. Plaintiffs have no adequate remedy at law for the Defendants' Sunshine Act violations.

94. Absent emergency injunctive relief, Plaintiffs will be irreparably harmed. Voter Plaintiffs have been harmed, as an elected official acted contrary to law on an important matter without affording them, and other interested members of the public, an opportunity to comment and provide input. See *Commonwealth v. Coward*, 414 A.2d 91 (Pa. 1980) (a finding of irreparable harm is usually made by the court, where a statute proscribes certain activity all that need be done is for the court to make a finding that the illegal activity occurred; unlawful action taken by an Election Board per se constitutes immediate and irreparable harm). The underlying decision involves a matter of public importance, namely the means for Allegheny County voters to deliver their ballots at the upcoming 2024 Primary Election. Permitting a single elected official to unilaterally take such action with no public participation is an impermissible overreach and cannot be tolerated.

WHEREFORE, Plaintiffs respectfully request this Honorable Court declare that the announcement by Defendant Innamorato that the County would be opening the 2024 Satellite Election Offices violates Pennsylvania law and further request that this Honorable Court prohibit Defendants Innamorato and Allegheny County from implementing or otherwise proceeding with the 2024 Satellite Election Offices without first complying with the terms of the Pennsylvania Election Code and Sunshine Act.

PRAYER FOR RELIEF

The only effective remedy to correct the above-described Pennsylvania Election Code and Sunshine Act violations is to void the results of such illegal acts. Plaintiffs seek declaratory and injunctive relief, ordering Defendant Innamorato to comply with the terms of the Election Code, by requiring her to only proceed with decisions affecting election matters which have received a majority vote of the Allegheny County Board of Elections. Further, Defendant Innamorato should be ordered to comply with the Sunshine Act by giving proper notice and opportunity to provide input to the public before taking an official action as it relates to administering elections in Allegheny County. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of the unlawful acts, omissions, policies, and practices of the Defendants, as alleged herein, unless this Court grants the relief requested.

WHEREFORE, Plaintiffs request that this Honorable Court enter judgment in their favor and against Defendants and:

- a. Declare that Defendant Innamorato's unilateral action to implement the 2024 Satellite Election Offices as part of the 2024 Primary and General Elections absent a vote of the majority of the members of the Board approving the same is a violation of Section 2643 of the Election Code, is thus unauthorized and void ab initio.
- b. Declare that the failure to notice and hold a public meeting to discuss the proposed opening of the 2024 Satellite Election Offices as part of the 2024 Primary and General Elections is a violation of the Sunshine Act;
- c. Issue a preliminary injunction enjoining Defendants from opening the 2024 Satellite Election Offices as part of the 2024 Primary and General Elections without a majority vote of all members of the Allegheny County Board of Elections;
- d. Issue a preliminary injunction enjoining Defendants from opening the 2024 Satellite Election Offices as part of the 2024 Primary and General Elections without first complying with the Sunshine Act by providing notice and holding a meeting where the public can

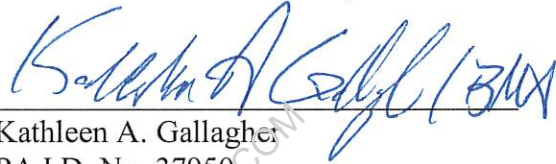
participate and comment on the proposal before a vote of the Board of Elections is taken;

- e. Award Plaintiffs attorneys' fees pursuant to 65 Pa. C.S. § 714.1; and
- f. Award Plaintiffs costs and such other and further relief that this Honorable Court deems just and appropriate.

Dated: March 14, 2024

Respectfully submitted,

THE GALLAGHER FIRM, LLC



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EXHIBIT A

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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

<p>SAMUEL DEMARCO III, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>SARA INNAMORATO, in her official capacity, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>CIVIL DIVISION</p> <p>No. _____</p>
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DECLARATION OF SAMUEL DEMARCO III

1. I, Samuel DeMarco III, am over the age of eighteen and am competent to testify as to the matters set forth below.
2. I reside in Allegheny County, Pennsylvania.
3. I am a registered Pennsylvania voter who consistently votes in each election. I have also voted by mail-in ballot, most recently in both the Primary and General Elections in 2023.
4. I am an elected member of the County Council for Allegheny County, a member of the Allegheny County Board of Elections (the "Board"), and Chairman of the Republican Committee of Allegheny County. In these roles, I have the responsibility to ensure that the actions of the Board of Elections are legally compliant. I also support Republican candidates for public office throughout Allegheny County and expend significant time to educate, mobilize, and assist Allegheny County electors in the voting process.
5. As a member of the Board, I am aware that the Pennsylvania Election Code vests each County Board of Elections with, "jurisdiction over the conduct of primaries and elections in such county, in accordance with the provisions of this act." 25 P.S. § 2641.

6. I have been an Allegheny County Council member since 2016 and have also served on the Board of Elections since 2016.

7. The three current members of the Allegheny County Board of Elections are County Executive Sara Innamorato, Council Member Bethany Hallam, and myself.

2020 General Election

8. In preparation for the 2020 General Election, and in furtherance of its jurisdiction over the administration of the 2020 General Election, the Board took steps to plan for an increase in mail-in and absentee ballots, as a result of the enactment of Act 77 and the pandemic.

9. At that time, the members of the Allegheny County Board of Elections were County Executive Rich Fitzgerald, Council Member Bethany Hallam, and myself.

10. In order to consider the administration of the 2020 General Election, the Board—in compliance with its obligations under the Sunshine Act—noticed a meeting to be held on September 17, 2020. The Board also prepared an Agenda for the September 17, 2020 meeting which indicated that the Board would address November 3, 2020 General Election Preparations and provided notice of same to the public. The Board further solicited comments on a proposal to open “Election Division offices” for the 2020 General Election. A true and correct copy of the Agenda for the September 17, 2020 Board of Elections meeting is attached hereto as **Exhibit 1**.

11. The Board of Elections held a meeting on September 17, 2020, at which time public comment was received on the proposal to open Election Division offices where ballots could be dropped off for the 2020 General Election. The public commentary—in the form of approximately eighty emails due to the pandemic—were read and categorized for the Board by Assistant County Solicitor Allan. J. Opsitnick. A true and correct copy of the Meeting Minutes from the September 17, 2020 Board Meeting is attached hereto as **Exhibit 2**.

12. After consideration by the Board of Elections, a Resolution was agreed to wherein the Board would permit the operation of five additional Election Division offices in the weeks leading up to the 2020 General Election. A true and correct copy of the Board of Elections Resolution is attached hereto as **Exhibit 3**.

13. The Resolution provides detailed information regarding the additional Election Division offices that were subsequently used as part of the 2020 General Election. Each of these offices was located on County-owned property. Resultantly, Election Division staff could answer voter questions, access the County's Statewide Uniform Registry of Electors ("SURE") database, confirm an individual's eligibility to vote by mail-in or absentee ballot, and allow a voter to actually apply for, receive, and cast a mail in ballot.

14. Allegheny County has had no satellite Election Division offices for any primary or general election since 2020.

2024 Primary Election

15. The Board of Elections has not had a single meeting in 2024. Resultantly, there has been no Board discussion regarding the 2024 primary or general elections.

16. I am unaware of any public commentary having been solicited on the issue of opening satellite Election Division offices prior to the date of County Executive Innamorato's announcement.

17. As a member of the Allegheny County Board of Elections, I have been involved in no discussion regarding any plans to open and operate satellite Election Division offices as part of the 2024 Primary Election, nor have I been asked to vote on any such proposal.

18. Notwithstanding the fact that any plans to open and operate satellite Election Division offices as part of the 2024 Elections fall under the purview of the Allegheny County

Board of Elections as part of its jurisdiction over the conduct of primary and general elections, I heard nothing on this issue until February 22, 2024.

19. On February 22, 2024, I was made aware of a press release issued by Allegheny County Executive Sara Innamorato where she announced that Allegheny County would be operating five staffed satellite Election Division offices (the “2024 Satellite Election Offices”) where voters can drop off absentee and mail-in ballots for the 2024 Elections (“Press Release”). A true and correct copy of the Press Release is attached hereto as **Exhibit 4**.

20. As a member of the Allegheny County Board of Elections, I was not consulted or otherwise given notice of any of the facts addressed in the Press Release, and my knowledge of the 2024 Satellite Election Offices is limited to the information contained in the Press Release.

21. My understanding from reading the Press Release is that the announced 2024 Satellite Election Offices, unlike the 2020 satellite election offices, are not all located on County-owned property. Specifically, one of the announced locations is the Carnegie Library located in the Squirrel Hill section of the City of Pittsburgh. I have been provided no information as to the arrangements between Allegheny County and the Carnegie Library for the use of the library space for election administration purposes. As the Carnegie Library is not County-owned property, County workers who will staff that site will not have access to the SURE database. From the text of the Press Release, it is my understanding that 2024 Satellite Election Offices will only be accepting already completed absentee and mail-in ballots and will not be offering any “over the counter” services as were authorized by the Board in 2020. This is a significant distinction from the manner in which the Board administered the 2020 election.

22. I am aware that subsequent to the issuance of the Press Release, a letter was sent by the Solicitor of the Republican Party of Allegheny County to David R. Voye, Division Manager

of the Allegheny County Elections Division, on February 27, 2024 (“February 27th Letter”). A true and correct copy of the February 27 Letter is attached hereto as **Exhibit 5**.

23. The February 27 Letter requested information regarding County Executive Innamorato’s announcement regarding the decision to open the 2024 Satellite Election Offices, as well as background concerning what steps were taken prior to making the decision.

24. I learned that on March 11, 2024, Assistant County Solicitor Allan J. Opsitnick issued a letter on behalf of the County in response to the February 27 Letter. A true and correct copy of the March 11, 2024 letter is attached hereto as **Exhibit 6**.

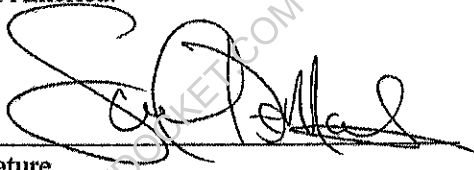
25. The March 11, 2024 letter from Mr. Opsitnick states that the County’s plan to open the 2024 Satellite Election Offices is “consistent with prior operations, from 2020, including four elections in 2023.” To my knowledge, as a member of the Board this statement is inaccurate. My understanding is that the County has only opened satellite Election Division offices to accept absentee and mail-in ballots once, as part of the 2020 General Election. To my knowledge, every election since has been conducted without the use of satellite Election Division offices.

26. I am aware that the third member of the Board of Elections, Bethany Hallam, has also provided a statement to the press indicating that she was not involved in the decision to open the Satellite Election Offices, which she agrees was a matter that should have been deliberated on, and voted on, by the Board. See <https://www.wtae.com/article/alleggheny-county-ballot-drop-off-locations-2024-election/46912983>, a true and correct copy of which is attached hereto as **Exhibit 7**.

27. I have also had direct communications with Council Member Hallam, in which she confirmed to me that she likewise was not consulted by Chief Executive Innamorato as part of the County’s decision to open the Satellite Election Offices as part of the 2024 Elections.

28. As neither Ms. Hallam nor I were engaged in any discussions regarding opening Satellite Election Offices for the 2024 Elections, County Executive Innamorato acted unilaterally in announcing such a decision. Her actions in doing so deprived me of my right and obligation as a member of the Board to have input into and a vote regarding how the County will conduct the 2024 Elections.

Signed on the 12th day of March 2024, at Pittsburgh, Pennsylvania
Allegheny County, Pennsylvania, United States of America.


Signature

Samuel DeMarco III
Printed Name

EXHIBIT 1

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A G E N D A
MEETING OF THE ALLEGHENY COUNTY
BOARD OF ELECTIONS

THURSDAY, SEPTEMBER 17, 2020, 2:00 P.M., VIA MICROSOFT TEAMS

BOARD MEMBERS: HON. RICH FITZGERALD
 HON. BETHANY HALLAM
 HON. SAM DEMARCO

IN ATTENDANCE: JERRY TYSKIEWICZ- DIRECTOR, DEPT.OF ADMIN. SERVICES
 DAVID VOYE- MANAGER, DIVISION OF ELECTIONS
 CHET HARHUT- DEPUTY MANAGER, DIVISION OF ELECTIONS
 ALLAN J. OPSITNICK- ASST. COUNTY SOLICITOR, LAW DEPT.

- I. CALL TO ORDER
- II. PUBLIC COMMENT
- III. NOVEMBER 3, 2020 GENERAL ELECTION PREPARATIONS
- IV. ADDITIONAL ELECTION OFFICES
- V. ELECTION OFFICER PAY
- VI. APPROVAL OF MINUTES -- 6-22-2020 MEETING
- VII. NEW BUSINESS
- VIII. ADJOURNMENT

EXHIBIT 2

RETRIEVED FROM DEMOCRACYDOCKET.COM

MINUTES
MEETING OF THE ALLEGHENY COUNTY
BOARD OF ELECTIONS

THURSDAY, SEPTEMBER 17, 2020, 2:00 P.M., PUBLIC MEETING-VIRTUAL MEETING VIA
MICROSOFT TEAMS, PITTSBURGH, PENNSYLVANIA.

BOARD MEMBERS: HONORABLE RICH FITZGERALD, CHAIR-present
HONORABLE BETHANY HALLAM, MEMBER-present
HONORABLE SAM DEMARCO, MEMBER-present

IN ATTENDANCE: ANDY SZEFI-COUNTY SOLICITOR
JERRY TYSKIEWICZ – DIRECTOR, DEPT. OF ADMINISTRATIVE
SERVICES
DAVID VOYE – MANAGER, DIVISION OF ELECTIONS
ALLAN J. OPSITNICK - ASST. COUNTY SOLICITOR, LAW DEPT.
CHET HARHUT-DEPUTY MANAGER, DIVISION OF ELECTIONS

I. **CALL TO ORDER** – The meeting of the Allegheny County Board of Elections commenced at 2:00 PM. Meeting called to order by Mr. Opsitnick.

II. **PUBLIC COMMENT**

As this meeting was virtual, public comment consisted of approximately 80 timely submitted emails, all of which will be attached to these minutes. Additionally, a few late received emails will be attached.

Mr. Opsitnick categorized the public comment emails as follows:

- a. Approximately 64 emails were in favor of the proposed resolution regarding Elections branch offices. One email was opposed to the proposed email regarding Elections branch offices;
- b. 6 emails express concerns regarding handling the tabulation of ballots;
- c. Approximately 10 emails raised other, miscellaneous concerns;
- d. There were 2 emails requests to speak at this meeting. As that could not occur, those requests will be attached to and incorporated into the Minutes.

III. **NOVEMBER 3, 2020 GENERAL ELECTION PREPARATIONS**

Mr. Tyskiewicz indicated that 271,680 mail in/absentee applications have been processed online. There is a high level of duplication in these mail in requests. As the online application backlog has been handled, the paper requests will be processed more quickly and the paper requests were being processed generally on the same day that they were received.

EXHIBIT 3

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**RESOLUTION OF THE BOARD OF ELECTIONS OF
ALLEGHENY COUNTY, PENNSYLVANIA**

WHEREAS, Pennsylvania law permits the Allegheny County Board of Elections, through its Division of Elections, to have multiple offices for the operation and conduct of election matters throughout Allegheny County; and

WHEREAS, the Allegheny County Division of Elections, in conjunction with the Department of Administrative Services and IT Department, has developed a plan to provide for additional Election Division offices with each office having the necessary technology and security for registered electors to both vote at that location (over the counter) and to return already voted mail-in/absentee ballots; and

WHEREAS, the Allegheny County Board of Elections finds that adoption of the plan to provide for additional Elections Division offices is necessary to make voter participation in the upcoming election more convenient and safer.

NOW, THEREFORE, BE IT RESOLVED by the Allegheny County Board of Elections as follows:

1. To make in-person return of already voted mail-in/absentee ballots as convenient and safe as possible, the following additional Election Division offices with the schedule of locations, dates and hours of operation listed below are hereby established:

Saturday, October 10 – Hours: 9 AM
to 5 PM

1. County Office Building
2. North Park Ice Rink
3. South Park Ice Rink
4. DPW Garage # 2 (Carnegie)
5. CCAC Homewood

Sunday, October 11 – Hours: 11 AM
to 7 PM

1. County Office Building
2. North Park Ice Rink
3. South Park Ice Rink
4. DPW Garage # 2 (Carnegie)
5. CCAC Homewood

Saturday, October 17 – Hours: 9 AM
to 5 PM

1. County Office Building

Sunday, October 18 – Hours: 11 AM
to 7 PM

1. County Office Building

EXHIBIT 4

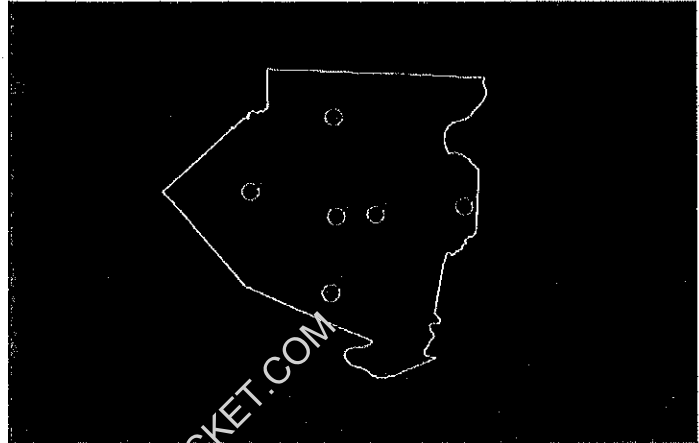
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Return of Ballot Drop Off Locations for 2024 Elections

Published on February 22, 2024

County Executive Innamorato Announces the Return of Ballot Drop Off Locations for 2024 Elections

(PITTSBURGH) - County Executive Sara Innamorato today announced expanded services for Allegheny County voters for the 2024 elections. In addition to ballot drop off and "over the counter" voting services at the downtown County Office Building (542 Forbes Avenue), the Elections Division will also operate five staffed absentee/mail-in ballot drop off locations around the county.



"Expanding access to voting, while maintaining the safety and security of our elections, is critically important to my administration and for protecting our democracy," said Innamorato. "I'm proud to announce that the Elections Division will be staffing five additional ballot drop off locations so voters across Allegheny County have expanded, secure options for voting in the lead up to the April 23rd primary Election Day."

The additional five drop off locations will be open the two weekends before Election Day: Saturday, April 13 and April 20, 9:00 am - 5:00 pm; and Sunday, April 14 and April 21, 11:00 am - 7:00 pm. The five locations are distributed geographically across the county to give all voters easier access to a secure ballot drop off location.

An important reminder: each voter may only return their own ballot unless they have completed authorization forms to turn in a ballot on behalf of someone who physically is unable to vote. If a voter requires assistance in voting or returning a ballot, they should call [412-350-4500](tel:412-350-4500) (tel:4123504500) for further information. Weekend drop off locations accept completed ballots only. There are no provisions for "over the counter" voting at these sites.

Voters may [drop off mail-in or absentee ballots at these five locations](https://www.alleghenycounty.us/Government/Elections/Mail-in-and-Absentee-Voting/Ballot-Drop-Off-Locations)

(<https://www.alleghenycounty.us/Government/Elections/Mail-in-and-Absentee-Voting/Ballot-Drop-Off-Locations>):

East End: Carnegie Public Library of Squirrel Hill
5801 Forbes Avenue
Pittsburgh, PA 15217

South: South Park Ice Rink
30 Corrigan Drive
Bethel Park, PA 15102

North: North Park Ice Rink
1200 Pearce Mill Road
Wexford, PA 15090

East: Boyce Park Four Seasons Lodge
901 Centerview Drive
Plum, PA 15239

West: 911 Call Center
150 Hookstown Grade Road
Moon, PA 15108

As in recent past elections, the County Office Building will be open for voters to apply for mail-in or absentee ballots and vote in person ("over the counter voting"), as well as drop off completed mail-in ballots. Over the counter voting is available on the first floor of the County Office Building at the corner of Forbes Avenue and Ross Street as soon as ballots are ready, approximately 30 days prior Election Day. Further announcements will be made when they are available.

Additionally, completed mail-in and absentee ballots may be dropped off at the Ross Street entrance of the County Office Building Monday, April 15 - Thursday, April 18 from 8:30 am - 4:30 pm; Friday, April 19 from 8:30 am - 8:00 pm; Saturday, April 20 from 9:00 am - 5:00 pm; Sunday, April 21 from 11:00 am - 7:00 pm; the day before Election Day, Monday, April 22 from 8:30 am - 8:00 pm; and Election Day drop off hours are the same as the polling hours, 7:00 am - 8:00 pm. Voters using the Ross Street drop off may park briefly using the lane closest to the County Office Building while returning their ballot.

Additional important dates for the Primary 2024 Election include the April 8 deadline to register to vote, and the April 16 deadline for applying for an absentee or mail-in ballot. All ballots must be received by 8:00 pm on Election Day, April 23.

###

Media inquiries may be directed to the Communications Office.

For contact information, including email addresses and telephone numbers, visit the [office website](https://www.alleghenycounty.us/Government/Departments-and-Offices/Department-Directory/Communications) (<https://www.alleghenycounty.us/Government/Departments-and-Offices/Department-Directory/Communications>).

EXHIBIT 5

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NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

Ronald L. Hicks, Jr.
T: 412.730.3092
ronald.hicks@nelsonmullins.com

Six PPG Place, Suite 700
Pittsburgh, PA 15222
T: 412.730.4050 F: 412.667.9241
nelsonmullins.com

February 27, 2024

Via E-mail and Regular Mail

Mr. David R. Voyer, Division Manager
Allegheny County Elections Division
County Office Building
542 Forbes Avenue, Room 312
Pittsburgh PA 15219

RE: Additional Ballot Drop Off Locations

Dear Mr. Voyer:

As Solicitor of the Republican Committee of Allegheny County, I am writing to request information and clarification about the Elections Division's recent announcement that it is operating five additional staffed ballot drop off locations as stated in the enclosed February 22, 2024, Press Release from County Executive Sara Innamorato. Specifically, I would like to know the answers to the following questions:

1. What provision of the Pennsylvania Election Code or other law provides the County Executive and the Elections Division with the authority to operate five additional staffed absentee/mail-in ballot drop off locations in Allegheny County?
2. Did the County Executive and the Elections Division obtain the prior approval of the Allegheny County Board of Elections before making its announcement on February 22, 2024, and if not, why not?
3. Did the County Executive and the Elections Division submit its proposed plan and procedures for these additional staffed ballot drop off locations to the Pennsylvania Department of State's Bureau of Elections as stated in the attached September 25, 2023 "Pennsylvania Absentee and Mail-in Ballot In-Person Return Guidance" v. 2.0, and if not, why not?
4. What factors did the County Executive and the Elections Division consider when selecting the five locations for the additional ballot drop offs, and what

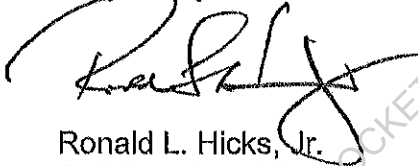
Mr. David R. Voyer, Division Manager
February 27, 2024
Page 2

other locations were considered but not selected and the reasons why they were not selected?

5. What will be the total cost to Allegheny County and the Elections Division for staffing these additional five ballot drop off locations, and where is Allegheny County and/or the Elections Division getting the funds, including without limitation any grants or discounts, to pay for these additional costs?

Your prompt response to this letter is much appreciated.

Very truly yours,



Ronald L. Hicks, Jr.
Solicitor, Republican Committee of Allegheny County

RLH:rk

Enclosures

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SARA INNAMORATO
COUNTY EXECUTIVE

COUNTY OF ALLEGHENY

DEPARTMENT OF LAW

445 FORT PITT BOULEVARD • SUITE 300
PITTSBURGH, PA 15219
PHONE (412) 350-1053 • FAX (412) 350-1174
WWW.ALLEGHENYCOUNTY.US
WRITER'S DIRECT DIAL: (412) 391-3299
AOPSITNICK@OPSITNICKSLAW.COM

ROSALYN GUY-
McCORKLE
SOLICITOR

ALLAN J. OPSITNICK
ASSISTANT COUNTY
SOLICITOR

March 11, 2024

Ronald L. Hicks, Jr. Esq.
Nelson Mullins
Six PPG Place, Suite 700
Pittsburgh PA 15222

By Email: Ronald.hicks@nelsonmullins.com

Re: Ballot Return Sites

Dear Mr. Hicks,

In response to your inquiry to Mr. Voye, please be advised that the plan proposed by Allegheny County is consistent with prior operations, from 2020, including four elections in 2023. The plan for 2024 was submitted to the Department of State and was approved. The goal of the plan is to maximize voter convenience as well as technological security.

Be further advised that a meeting of the Board of Elections is scheduled for March 20, 2024, at 11:30 A.M.

Should you have additional questions, please contact me at your convenience.

Sincerely,

/s/ Allan J. Opsitnick
Allan J. Opsitnick
Assistant Solicitor

C: Board of Elections Members
Jennifer Liptak, Manager
Roselyn Guy- McCorkle, Solicitor
Lisa Michel, Assistant Solicitor
Jessica Garofolo, Administrative Services Director
David Voye, Elections Division Manager

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Allegheny County announces ballot drop-off locations for April 23 primary election

Updated: 11:36 PM EST Feb 22, 2024

Infinite Scroll Enabled



Mike Valente 

Reporter

PITTSBURGH — Allegheny County will offer five staffed locations for voters in the 2024 elections to drop off absentee and mail-in ballots, County Executive Sara Innamorato announced Thursday.

Those locations (*listed below*) are in addition to drop-off and "over-the-counter" voting that will be available at the county office building at 542 Forbes Ave. in downtown Pittsburgh.

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"Expanding access to voting, while maintaining the safety and security of our elections, is critically important to my administration and for protecting our democracy," Innamorato said in a statement. "I'm proud to announce that the Elections Division will be staffing five additional ballot drop off locations so voters across Allegheny County have expanded, secure options for voting in the lead up to the April 23rd primary Election Day."

Shortly after Innamorato made the announcement, county councilman Sam DeMarco — who is also chairman of the Republican Committee of Allegheny County — denounced the decision that he characterized as an "expansion of 'Drop Boxes.'"

Innamorato's announcement never mentioned 'Drop Boxes,' a point she reiterated later in an interview with Pittsburgh's Action News 4.

"[DeMarco] should be armed with correct information," Innamorato said. "These are drop-off locations."

The locations, which will have security, are part of a plan that has already been approved by Pennsylvania's Department of State.

When asked in an interview Thursday if he would acknowledge that drop boxes were not part of Innamorato's plan, DeMarco said, "I can't acknowledge what it is because she's not consulted with us at all."

DeMarco lamented the fact that neither he nor county councilwoman Bethany Hallam (D) — who also sits on the Board of Elections — were consulted by Innamorato before making the decision.

"This was an arbitrarily unilateral decision that was made without consultation," DeMarco said.

Although she supports the expansion of satellite ballot drop-off locations, Hallam agreed with DeMarco in claiming that Innamorato should have brought her idea to the board.

"It's very clear from the Department of State guidance that this is a decision to be made by the Board of Elections, yet we haven't even met this year," Hallam said in a statement. "We absolutely need to be making that decision as a Board – not with one member of the board unilaterally making board decisions."

In a September 2023 **document from the Department of State**, guidance about ballot collection and chain of custody procedures includes language like "The county board of elections should..."

Innamorato defended the process Thursday, claiming that this was an "administrative function."

Her office later elaborated, arguing that her decision was an extension of a Board of Elections decision to expand drop-off locations in 2020. Notably, though, Innamorato was not the county executive at the time, and her predecessor had since scaled back the number of drop-off locations to just one: the county office building.

The newly added drop-off locations will be open the two weekends before Election Day: Saturday, April 13 and April 20, 9 a.m. to 5 p.m., and Sunday, April 14 and April 21, 11 a.m. to 7 p.m.

Below is a list of the ballot drop-off sites.

Carnegie Public Library of Squirrel Hill

5801 Forbes Ave.

Pittsburgh, PA 15217

South Park Ice Rink

30 Corrigan Dr.

Bethel Park, PA 15102

North Park Ice Rink

1200 Pearce Mill Rd.
Wexford, PA 15090

Boyce Park Four Seasons Lodge

901 Centerview Dr.
Plum, PA 15239

911 Call Center

150 Hookstown Grade Rd.
Moon, PA 15108

The county reminds voters that they may only return their own ballot unless they have completed authorization forms to turn one in for someone who physically is unable to vote. Anyone who requires assistance in voting or returning a ballot should call 412-350-4500 for more information.

Weekend drop-off locations will only accept completed ballots. There is no "over-the-counter" voting at those sites.

Completed mail-in and absentee ballots may also be dropped off at the Ross Street entrance of the county office building at the following times:

- April 15 to April 18 from 8:30 a.m. to 4:30 p.m.
- April 19 from 8:30 a.m. to 8 p.m.
- April 20 from 9 a.m. to 5 p.m.
- April 21 from 11 a.m. to 7 p.m.
- April 22 from 8:30 a.m. to 8 p.m.
- Election Day from 7 a.m. to 8 p.m.

April 8 is the deadline to register to vote in the April 23 primary election, and April 16 is the deadline for applying for an absentee or mail-in ballot.

All ballots must be received by 8 p.m. on election day.

To learn more about what to do on election day, [click here](#).



Pennsylvania Primary: What to know, How to Register, and Where to Go



US appeals court to decide if Pennsylvania mail-in ballots with wrong date still count



Pennsylvania's 2024 primary election will feature contests for attorney general and Congress

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EXHIBIT B

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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

<p>SAMUEL DEMARCO III, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>SARA INNAMORATO, in her official capacity, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	
--	--

DECLARATION OF DAVID J. MAJERNIK

1. I, David J. Majernik, am over the age of eighteen and am competent to testify as to the matters set forth below.

2. I reside in Allegheny County, Pennsylvania.

3. I am a registered Pennsylvania voter who consistently votes in each election. I plan to vote in the upcoming 2024 Primary Election.

4. I am a state GOP Committee member and a member of the County GOP Committee.

5. I am actively involved in political issues and have an interest in issues relating to the election process. As such, I expend significant effort to educate, mobilize, and assist Allegheny County electors in the voting process. I wish to participate in the process for determining whether to open satellite Election Division offices, and if so, where and when such offices are to be opened. I am also interested in learning how such staffed offices will be funded by Allegheny County.

Signed on the 9th day of March, 2024, at 2:50 pm, Allegheny County,
Pennsylvania, United States of America.

David J. Majornik
Signature

David J. Majornik
Printed Name

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EXHIBIT C

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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

<p>SAMUEL DEMARCO III, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>SARA INNAMORATO, in her official capacity, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	
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DECLARATION OF KAREN KRALIK

1. I, Karen Kralik, am over the age of eighteen and am competent to testify as to the matters set forth below.

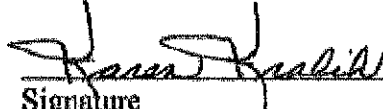
2. I reside in Allegheny County, Pennsylvania.

3. I am a registered Pennsylvania voter who consistently votes in each election. I plan to vote in the upcoming 2024 Primary Election.

4. I am a committee member of the Republican Party of Pennsylvania, a committee member of the Republican Committee of Allegheny County, and a member of the Mt. Lebanon Republican Committee.

5. I am actively involved in political issues and have an interest in issues relating to the election process. As such, I expend significant effort to educate, mobilize, and assist Allegheny County electors in the voting process. I wish to participate in the process for determining whether to open satellite Election Division offices, and if so, where and when such offices are to be opened. I am also interested in learning how such staffed offices will be funded by Allegheny County. I regularly follow Allegheny County Board of Commissioners meetings on Zoom in order to follow issues of public importance.

Signed on the 9th day of March, 2024, at Mt. Lebanon Allegheny County,
Pennsylvania, United States of America.



Signature

KAREN KRALIK

Printed Name

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EXHIBIT D

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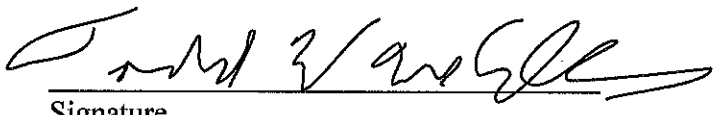
**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

<p>SAMUEL DEMARCO III, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>SARA INNAMORATO, in her official capacity, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	
--	--

DECLARATION OF TODD MCCOLLUM

1. I, Todd McCollum, am over the age of eighteen and am competent to testify as to the matters set forth below.
2. I reside in Allegheny County, Pennsylvania.
3. I am a registered Pennsylvania voter who consistently votes in each election. I plan to vote in the upcoming 2024 Primary Election.
4. I am Chairman of the City of Pittsburgh Republican Committee.
5. I am actively involved in political issues and have an interest in issues relating to the election process. As such, I wish to participate in the process for determining whether to open satellite Election Division offices, and if so, where and when such offices are to be opened. I am also interested in learning how such staffed offices will be funded by Allegheny County. I have regularly attended Allegheny County Board of Election meetings in order to follow issues of public importance.

Signed on the 9th day of March, 2024, at Pittsburgh, Allegheny County,
Pennsylvania, United States of America.



Signature

Todd W. McCollum

Printed Name

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EXHIBIT E

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**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

<p>SAMUEL DEMARCO, III, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>SARA INNAMORATO, in her official capacity, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	
---	--

DECLARATION OF ROBERT C. HOWARD

1. I, Robert C. Howard, am over the age of eighteen and am competent to testify as to the matters set forth below.

2. I reside in Allegheny County, Pennsylvania.

3. I am a registered Pennsylvania voter who consistently votes in each election. I plan to vote in the upcoming 2024 Primary Election. I have also voted via mail-in ballot in the past, and have firsthand experience in completing the application process, completing, and submitting a mail-in ballot, and confirming that my ballot has been received and tabulated.

4. I am member of the Republican Committee of Allegheny County and Chair of the Marshall Township Republican Committee.

5. I am actively involved in political issues and have an interest in issues relating to the election process. As such, I expend significant effort to educate, mobilize, and assist Allegheny County electors in the voting process. I wish to participate in the process for determining whether to open satellite Election Division offices, and if so, where and when such offices are to be opened. I am also interested in learning how such staffed offices will be funded by Allegheny County. I

Publicly available and a full Board of Directors meeting, and speak on issues of importance to

the

signed by the State of Alaska Department of Health and Social Services Alaska 2007
Professional, United States of America

[Signature]
Signature

[Signature]
Signature

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EXHIBIT F

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IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION – CIVIL

BRIAN FREY and JON FOLEY SHERMAN, :
Plaintiffs, :
v. : No. CI-22-02699
RAY D'AGOSTINO, JOSHUA G. :
PARSONS, and JOHN TRESKOT in their :
official capacities; THE LANCASTER :
COUNTY BOARD OF ELECTIONS; and :
LANCASTER COUNTY, :
Defendants. :

OPINION

This case is about Pennsylvania’s Sunshine Act and whether the Lancaster County Board of Elections (“the Board”) followed it when notifying the public of the Board’s April 13, 2022 meeting. This case is not about election integrity or voter suppression. For the reasons stated below, plaintiffs’ request for a preliminary injunction will be granted in part and denied in part.

In 1644, the Reverend Samuel Rutherford published the provocative book, *Lex, Rex*. The book was provocative because of the order of the words, with *Lex*—the law—being placed before *Rex*—the king. Throughout his book, Rutherford argued that the king is not above the law. The principles espoused by Rutherford became one of the underpinnings for the rule of law in the United States. No person or group is above the law, and justice cannot be administered based on any factor other than what the law says.

Pennsylvania’s 1998 Sunshine Act, 65 Pa. C.S.A. § 701 et seq., is the progeny of the ideas expressed by Rutherford in 1644. One does not have to guess at the intent of the legislature in passing the Sunshine Act because Section 702 clearly expresses their intent. The citizens of Pennsylvania have the right “to be present at all meetings of agencies and to witness the deliberation, policy formation and decisionmaking of agencies.” § 702. The legislature explained

that “secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.” Id. (emphasis added).

I. BACKGROUND

On September 23, 2020, the Lancaster County Board of Elections met to discuss and invite comment on whether to install a ballot drop box at the Lancaster County Government Center. Prior to the meeting, the Board posted a public agenda listing “Drop Box” and “Extended Lobby Hours” as agenda items up for discussion. The Board ultimately reached a consensus: three Board members ordered a secure drop box be placed in the Government Center and made available to the public for extended hours leading up to the November 2020 election.¹

The Board used the drop box, along with extended drop-off hours, for the November 2020, May 2021, and November 2021 elections.

The Board provided notice of the agenda and a meeting scheduled for April 13, 2022. There was no information included under Old Business and only two matters listed under New Business. Listed under New Business were “Resolution No 3 of 2022 – Proposed Polling Place Changes” and “Update on the 2022 Primary Election.” The meeting occurred on April 13, 2022 and lasted approximately one hour and forty minutes. Much of this time was taken up in comments by the Board members and citizens addressing removal of the drop box placed in the Lancaster County Government Center in 2020.²

On May 10, 2022, plaintiffs filed a complaint seeking declaratory and injunctive relief alleging, among other things, that the failure of the Board to notify the public that it would consider the drop box at its April 13, 2022 meeting violated the Sunshine Act.

¹ The minutes of this meeting reflect agreement between the Board members and officers of both political parties who spoke at the meeting that a drop box be placed in the Lancaster County Government Center.

² The court watched the entire meeting and compliments the Board and all participants on their demeanor and professionalism in discussing an emotionally charged issue.

II. LEGAL STANDARD

A petitioner must establish six elements to obtain a preliminary objection: (1) a clear right to relief; (2) immediate and irreparable harm in the absence of an injunction; (3) restoration of the status quo; (4) no adequate remedy at law exists and the injunction is appropriate to abate the alleged harm; (5) greater injury will result by not granting than by granting the injunction; and (6) the preliminary injunction will not adversely affect the public interest. See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995, 1001 (Pa. 2003).

III. DISCUSSION

A. *Clear Right to Relief*

The basic question here is whether the agenda for the meeting on April 13, 2022 should have included the ballot drop box³ so that the public was on notice that the Board intended to address the issue. The Board asserts that notice was unnecessary as the removal of the drop box was an administrative action and not an official action. There is no dispute that at this meeting the Board of Elections made a decision to remove the drop box. According to the evidence presented at the hearing, this decision was not made by formal vote but by what the Board members referred to as “consensus,”⁴ even though one Board member was opposed to the removal.

The Board asserts that action by consensus underscores the fact that the Board is merely taking an administrative action. The Sunshine Act defines an administrative action as:

³ While plaintiffs ask that the court enjoin defendants from changing the extended hours to access the lobby during election day, this issue was not addressed during the April 13, 2022 meeting, any of the comments, or in the action taken by the Board.

⁴ It is unclear to the court the parameters of “rule by consensus” in a three-person board as most government agencies comply with Robert’s Rules of Order where formal motions and votes are taken to give a clear record of the agency’s action. Robert’s Rules do recognize actions by unanimous consent (sometimes referred to as common consent), but there was not unanimous consent at the April 13, 2022 meeting. See Robert’s Rules of Order Newly Revised, 11th edition, pp. 54-56.

The *execution of policies* relating to persons or things as *previously authorized or required by official action of the agency adopted at an open meeting of the agency*. The term does not, however, include the deliberation of agency business.

65 Pa. C.S.A. § 703. (emphasis added). In essence, an administrative act is one that executes a prior official action by the Board.

An official action is:

- (1) Recommendations made by an agency pursuant to statute, ordinance or executive order.
- (2) The establishment of policy by an agency.
- (3) The decisions on agency business made by an agency.
- (4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

Id. (emphasis added). The Board contends that the official action it is undertaking is the broadly stated action of administering elections. Following the Board's logic, the official action it is undertaking is administering elections pursuant to hundreds of pages of statutes and rules. But the definition of official action does not support the Board's position. Official action, as it relates to statutes, involves recommendations made by the Board pursuant to the statute, not the simple (or complex) adherence to the Election Code. Official action cannot mean merely following a statute and thereby regulating all other actions to administrative in nature. Any time an agency like the Board establishes a policy or makes a decision on agency business, it is official action as defined by the Sunshine Act.

No party disputes that on September 23, 2020, the Board listed on its agenda "Drop Box" along with "Extended Lobby Hours" and approval of absentee and mail-in ballot instructions. The minutes of the meeting reflect a true "consensus" as all three Board members agreed to the placement of a drop box. The Board made this decision on agency business and as such, the

decision constitutes an official action. The drop box has been available for every election since the election of November 2020.

At a Board meeting on April 13, 2022, without a vote or the agreement of all Board members, the drop box for the upcoming election was removed. Board Member Parsons stated that the drop box matter was “a matter of public interest.” Board Member D’Agostino commented that the removal of the drop box was an administrative action. Board Member Trescot disagreed with removal of the drop box. Regardless, Board Member D’Agostino declared a consensus existed to remove the drop box. Like its decision in 2020 to act on agency business, the Board’s decision to remove the drop box was an official, not an administrative, action because it clearly meets the definition of official action and does not meet the definition of administrative action.⁵

Section 712.1 provides exceptions to the public notice requirement. If an exception is not met, “an agency may not take official action on a matter of agency business at a meeting if the matter was not included in the notification required under section 709(c.1).” The Board argues that Section 712.1(d) is the safe harbor for its failure to comply with the notice requirement.

Section 712.1(d) provides:

(d) Business arising during meeting.--If, during the conduct of a meeting, a resident or taxpayer brings a matter of agency business that is not listed on the meeting agenda to the attention of the agency, the agency may take official action to refer the matter to staff, if applicable, for the purpose of researching the matter for inclusion on the agenda of a future meeting, or, if the matter is de minimis in nature and does not involve the expenditure of funds or entering into a contract or agreement, the agency may take official action on the matter.

⁵ The Board may contend that the Pennsylvania Supreme Court stated boards of election “may” establish the use of drop boxes, which is correct. However, by taking official action to establish the use of a drop box it cannot remove that same drop box by calling it an administrative action, thereby avoiding the necessity of complying with Section 709(c.1) of the Sunshine Act.

The Board can do one of two things with business that arises during a meeting: (1) take official action to refer the matter for inclusion on the agenda of a future meeting; or (2) take official action if the matter is *de minimis*. By relying on this exception, the Board is admitting it took official action as that is the only outcome possible under the exception. “Official action” includes making recommendations based on statute or ordinance, establishing agency policy, and making decisions regarding agency business. 65 Pa. C.S.A. § 703. Generally, an agency cannot take official action to frame, prepare, make, or enact laws, policies or regulations unless it notifies the public in advance. § 712.1(a), § 703 (defining “agency business”). However, agencies can take official action on matters that arise during the meeting which are “*de minimis* in nature.” § 712.1(d).

De minimis means “lacking significance or importance: so minor as to merit disregard.” Merriam-Webster, <https://www.merriam-webster.com/dictionary/de%20minimis> (accessed May 12, 2022). Because Section 712.1 of the Sunshine Act is a new amendment added in 2021, there is no case law exploring “*de minimis*” matters in this context. But in the land use context, a *de minimis* variance is one where the requested change is so minor that “rigid compliance is not necessary to protect the public policy concerns of the ordinance.” Lench v. Zoning Bd. Of Adjustment of City of Pitt., 13 A.3d 576, 581 (Pa. Commw. 2011); see also Hawk v. City of Pitt. Zoning Bd. Of Adjustment, 38 A.3d 1061, 1066 (Pa. Commw. 2012) (cleaned up) (no standard for *de minimis* variances, which are granted or denied based on the facts of each case). The number of public comments related to the drop box and the amount of time the Board itself spent discussing the issue establishes to the satisfaction of the court that the removal of a ballot drop box is not “so minor as to merit disregard” and accordingly is not *de minimis*. Notably, Board Member D’Agostino suggested at the April 13, 2022 meeting that the matter of the drop box be

addressed at a Board meeting the following week, which would have likely satisfied the requirements of Section 712.1(d); however, Board Member Parsons suggested that a consensus existed, and the matter was finalized without a vote.

Finally, the Board offered testimony that people in the community were aware that the drop box would be discussed because of the number of public comments on the topic. There is no exception to Section 709's notice provision excusing notice when general knowledge may exist within the community that a topic may be addressed at a public meeting. Furthermore, plaintiff Jon Foley Sherman credibly testified that he was not aware that the Board would take action on the drop box and, if he had been aware of it, he would have attended the meeting.

The court does not find the Board's arguments persuasive. The placement of a drop box approved by the Board on September 23, 2020 was not an administrative action but was a decision "on agency business made by an agency" neatly meeting the definition of an official action. The reversal of an agency decision is not administrative and such a topic must be included in the public notice provided pursuant to Section 709 of the Sunshine Act.

B. *Irreparable Harm*

Irreparable harm is irreversible harm that cannot be adequately compensated by money damages because it "can be estimated only by conjecture and not by an accurate pecuniary standard." Sovereign Bank v. Harper, 674 A.2d 1085, 1091, 1093 (Pa. Super. 1996). The Sunshine Act gives citizens the right to "have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon" 65 Pa. C.S.A. § 702.

Plaintiff Jon Foley Sherman testified about finding it important to engage civically in a democratic society. A habitual meeting attendee, Mr. Sherman relies on the posted agenda, email alerts, and friends to know when interesting items are on agency agendas and if he should attend

a meeting. He said he did not attend the April 13, 2022 meeting because the status of the drop box was not on the agenda and he received no alert that the issue could arise. According to Mr. Sherman, the Board's decision "robbed me of my voice in front of my elected officials."

Although the Board asserted Mr. Sherman suffered no irreparable harm because he left a disapproving message for the Board after learning of its decision, the Sunshine Act conveys a broader right than simply having one's voice heard by elected representatives. Pennsylvanians have a right to attend agency meetings and to "witness the deliberation, policy formation and decisionmaking of agencies." § 702. This right encourages faith in the government decisions by ensuring citizens can fully participate in the democratic process. *See id.* The damage to one's ability to participate in the democratic process is not quantifiable and cannot be compensated.

C. Restoring the Status Quo

The goal of a preliminary injunction is to maintain the status quo until the court can finally determine the parties' rights. New Castle Orthopedic Assocs. v. Burns, 392 A.2d 1383, 1385 (Pa. 1978). "The status quo to be maintained by a preliminary injunction is the last actual, peaceable and lawful non-contested status which preceded the pending controversy." Valley Forge Hist. Soc. v. Wash. Mem'l Chapel, 426 A.2d 1123, 1129 (Pa. 1981). It may be maintained in two ways: by enjoining an action that changes the status quo (prohibitory injunction) or by ordering a party to take action to preserve the status quo (mandatory injunction). *See Mazzie v. Commonwealth*, 432 A.2d 985, 988 (Pa. 1981). Mandatory injunctions should be issued less frequently and only when a plaintiff establishes a clear right to relief. *See id.* .

Here, the status quo is the presence of a ballot drop box in the Lancaster County Government Center leading up to and during election day. This has been the standard practice since the Board unanimously decided to install the ballot drop box in 2020. A preliminary

injunction would preserve the status quo by enjoining the removal of the ballot drop box until the matter could be heard with the required notice to the public.

D. *No Adequate Remedy*

“Irreparable injury” is the antithesis of “an adequate remedy at law.” Stuart v. Gimbel Bros., 131 A. 728, 730 (Pa. 1926). An “adequate remedy” is one that is “full, perfect, and complete.” Pa. State Chamber of Commerce v. Torquato, 125 A.2d 755, 766 (Pa. 1956) (internal quotations omitted). Damages cannot compensate the plaintiffs, who lost the ability to attend, participate, and witness local policy formation and agency decisionmaking on an important issue.

E. *The Greater Harm*

“[T]he party seeking to enjoin certain conduct must demonstrate that greater injury would result by refusing the injunction than by granting it.” Pa. Orthopaedic Soc. v. Indep. Blue Cross, 885 A.2d 542, 547 (Pa. Super. 2005). Plaintiffs demonstrated the greater harm in this case. Denying an injunction would permit a government agency to make important election decisions without providing prior notice to the public, thus depriving county residents of the right to participate in the democratic process. Granting an injunction, as both parties concede, simply means the Board must schedule a new hearing and list the “Drop Box” as an agenda item before making an ultimate decision on its removal.

F. *In the Public Interest*

“[T]he party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.” Summit Towne Ctr., Inc., 828 A.2d at 1001. As the language of the Sunshine Act explains, a strong public interest exists in the right of Pennsylvanians to attend and engage in agencies’ deliberative processes. The court disagrees with the Board that granting an injunction would create a dangerous chilling effect on public

agencies and prevent elected officials from engaging with the public or discussing matters with the public at meetings. To the contrary, requiring advance notice from the Board before it makes important policy decisions will only increase democratic debate and hold the government agencies accountable to the rule of law. Board Member D'Agostino implicitly recognized this when he suggested that the matter of the drop box be discussed at the Election Board meeting the following week.

IV. CONCLUSION

Whether or not the Board determines to have a drop box is solely the Board's decision. However, the Board must include notice of the discussion of the ballot drop box in a notification required under 65 Pa. C.S.A. § 709(c.1). Because the Board did not provide notice of potential agency action on the ballot drop box yet took official action at the meeting to remove the drop box instead of listing the matter on the agenda of a future meeting, plaintiffs have established a reasonable likelihood of success on the merits and met the other requirements to receive a preliminary injunction. An appropriate order follows.

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION – CIVIL

BRIAN FREY and JON FOLEY SHERMAN, :
Plaintiffs, :
v. : No. CI-22-02699
RAY D'AGOSTINO, JOSHUA G. :
PARSONS, and JOHN TRESKOT in their :
official capacities; THE LANCASTER :
COUNTY BOARD OF ELECTIONS; and :
LANCASTER COUNTY, :
Defendants. :

ORDER

AND NOW, this 13th day of May 2022, after a hearing on plaintiffs' motion for preliminary injunction and argument, it is ORDERED that plaintiffs' request for a preliminary injunction is GRANTED IN PART. Defendants are ENJOINED from removing the ballot drop box unless and until such time as defendants include notice of the discussion of the drop box in a notification required by 65 Pa. C.S.A. §709(c.1). Plaintiffs' request for an injunction regarding a change in extended hours to access the lobby is DENIED. Plaintiffs shall post a bond of one thousand five hundred dollars (\$1,500) for this injunction to take effect.

BY THE COURT:

LEONARD G. BROWN, III, JUDGE

ATTEST:

Copies: J. Dwight Yoder, Esq.
Jacquelyn E. Pfursich, Esq.

EXHIBIT G

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COUNTY EXECUTIVE

COUNTY OF ALLEGHENY

DEPARTMENT OF LAW

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ALLAN J. OPSITNICK
ASSISTANT COUNTY
SOLICITOR

March 11, 2024

Ronald L. Hicks, Jr. Esq.
Nelson Mullins
Six PPG Place, Suite 700
Pittsburgh PA 15222

By Email: Ronald.hicks@nelsonmullins.com

Re: Ballot Return Sites

Dear Mr. Hicks,

In response to your inquiry to Mr. Voye, please be advised that the plan proposed by Allegheny County is consistent with prior operations, from 2020, including four elections in 2023. The plan for 2024 was submitted to the Department of State and was approved. The goal of the plan is to maximize voter convenience as well as technological security.

Be further advised that a meeting of the Board of Elections is scheduled for March 20, 2024, at 11:30 A.M.

Should you have additional questions, please contact me at your convenience.

Sincerely,

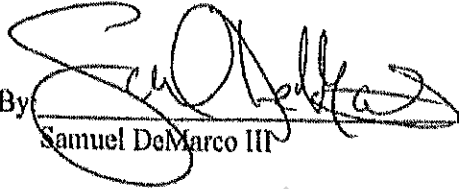
/s/ Allan J. Opsitnick

Allan J. Opsitnick
Assistant Solicitor

C: Board of Elections Members
Jennifer Liptak, Manager
Rosalyn Guy- McCorkle, Solicitor
Lisa Michel, Assistant Solicitor
Jessica Garofolo, Administrative Services Director
David Voye, Elections Division Manager

VERIFICATION


I hereby aver that the statements of fact contained in the attached **Complaint for Declaratory and Injunctive Relief** are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

By 
Samuel DeMarco III

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VERIFICATION

I hereby aver that the statements of fact contained in the attached Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. C.S. § 4903 relating to unsworn falsification to authorities.



Robert G. Howard

RETRIEVED FROM DEEDS TRACKING SYSTEM

VERIFICATION

I hereby aver that the statements of fact contained in the attached **Complaint for Declaratory and Injunctive Relief** are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Date: MARCH 9, 2024

By: 
Karen Kralik

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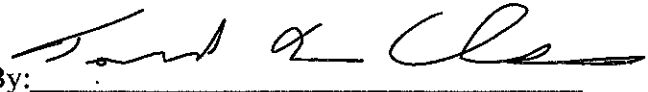
I hereby aver that the statements of fact contained in the attached **Complaint for Declaratory and Injunctive Relief** are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

By: David J. Majernik
David J. Majernik

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VERIFICATION

I hereby aver that the statements of fact contained in the attached **Complaint for Declaratory and Injunctive Relief** are true and correct to the best of my knowledge and belief and are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

By: 

Todd McCollum

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**CERTIFICATE OF COMPLIANCE
WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: March 14, 2024

THE GALLAGHER FIRM LLC

A handwritten signature in blue ink, appearing to read "Kathleen A. Gallagher, BNA". The signature is written over a horizontal line.

Kathleen A. Gallagher
Brian M. Adrian

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