

**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;

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,

Defendants.

CIVIL DIVISION

No. G.D. 24-003062

***BRIEF IN SUPPORT OF EMERGENCY
MOTION FOR PRELIMINARY
INJUNCTION***

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

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I. INTRODUCTION

This dispute arises out of Allegheny County (“County”) Executive Sara Innamorato (“Defendant Innamorato” or “County Executive”) overstepping her authority and unilaterally taking actions related to the upcoming 2024 Primary and General Elections without obtaining a majority vote of the Allegheny County Board of Elections (the “Board”), as required by law. Plaintiffs seek injunctive relief in this case to prevent the County Executive from usurping the powers of the Board, exceeding her authority as County Executive, and ignoring the longstanding law of Allegheny County and this Commonwealth. The County Executive’s decision to open “five (5) staffed absentee/mail-in ballot drop off locations” around the County (the “2024 Satellite Election Offices”), without obtaining a majority vote of the Board is a straightforward violation of

the Pennsylvania Election Code (“Election Code”), 25 P.S. §§ 2641-2643, and the Allegheny County Administrative Code (“Administrative Code”), § 5-211.02.

The Defendants have also failed to comply with the provisions of the Pennsylvania Sunshine Act, 65 Pa. C.S.A. § 701 *et seq.* (the “Sunshine Act”) by privately and improperly opening the 2024 Satellite Election Offices. The Sunshine Act provides the citizens of Pennsylvania with the right “to be present at all meetings of agencies and to witness the deliberation, policy formation and decision making of agencies.” 65 Pa. C.S.A. § 702(a). The County Executive privately made the decision to add the 2024 Satellite Election Offices on behalf of Allegheny County without first providing the citizens of the County with public notice and an opportunity for public comment as required by the Sunshine Act. *See id.*

The only effective remedy to correct Defendants’ violations of the Pennsylvania Election Code, the Administrative Code, and the Sunshine Act is to void the illegal acts. Plaintiffs, therefore, seek an injunction to prevent Defendants from opening the 2024 Satellite Election Offices without first obtaining a majority vote of the Allegheny County Board of Elections and without complying with the clear mandates of the Sunshine Act. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of the Defendants’ unlawful acts, omissions, policies, and practices unless this Court grants the relief requested.

II. STATEMENT OF THE CASE

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

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). Jurisdiction over the conduct of primaries and elections extends to determining whether to utilize drop-boxes for mail-in and absentee ballots. *See Pennsylvania Democratic Party v.*

Boockvar, 238 A.3d 345, 361 (Pa. 2020) (declaring that the Election Code permits county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes).

The Election Code further mandates how such boards of elections shall be comprised and states that “there shall be minority representation on the board.” 25 P.S. § 2641(b). Pursuant to the terms of the Allegheny County Administrative Code, Allegheny County’s Board of Elections is comprised of three members: the County Executive and the two at-large County Council Members. Administrative Code § 5-211.01.¹ The current Board members are the County Executive of Allegheny County Sara Innamorato, at-large Councilperson Samuel DeMarco III, and at-large Councilperson Bethany Hallam. The County Executive and Councilperson Hallam are each Democrats, and Plaintiff DeMarco is a Republican, making him the minority representative on the Board.

Pursuant to § 5-211.02 of the Administrative Code, the Board is authorized to exercise all the powers and perform all the duties of a board of elections as set forth in §2642 of the Election Code. The Election Code vests in each of the Commonwealth’s 67 county boards of elections the responsibility for implementing elections therein, including the power to take actions required to administer and conduct the election, such as opening ballot drop-off locations for collecting mail-in and absentee ballots. *Accord Boockvar*, 238 A.3d at 361. In this regard, the Election Code provides, in relevant part:

§ 2642. Powers and duties of county boards

The county boards of elections, within their respective counties, shall exercise, in the manner provided by this act, all powers granted to them by

¹ The Allegheny County Administrative Code was created 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.

this act, and shall perform all the duties imposed upon them by this act, which shall include the following:

...

- (c) To purchase, preserve, store and maintain primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and to procure ballots and all other supplies for elections.
- (d) To appoint their own employees, voting machine custodians, and machine inspectors.
- ...
- (f) To make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers and electors.
- (g) To instruct election officers in their duties, calling them together in meeting whenever deemed advisable, and to inspect systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted.
- (h) To prepare and publish, in the manner provided by this act, all notices and advertisements in connection with the conduct of primaries and elections, which may be required by law.

25 P.S. § 2642.

The Pennsylvania Election Code further expressly provides that “[a]ll actions of a county board **shall be decided by a majority vote of all the members[.]**” 25 P.S. § 2643(a) (emphasis added). The intent of this mandate is clear—that there can be no unilateral action taken, and at least two of the three Board members must agree before the Board can take action. In the words of Pennsylvania Supreme Court Justice Wecht, “shall means shall.” *In re Canvass of Absentee & Mail-in Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1084 (Pa. 2020) (Wecht, J., concurring in part and dissenting in part). Further, 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.

B. The Sunshine Act.

The Sunshine Act mandates that the deliberations of public agencies must be made in public, after public notice and subject to public comment. 65 Pa. C.S.A. § 701 *et seq.* In other words, the Act requires that government actions which impact the public must be made in the light of day, and subject to participation by the public, and not unilaterally taken behind closed doors.

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.A. § 702. The Sunshine Act defines “Agency” as “[t]he 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.A. § 703. As such, there can be no question that the Sunshine Act applies to the County and the Board.

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.* § 704. 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 under the Act as follows:

§ 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.

65 Pa. C.S.A. § 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 constitutes “official action” by Allegheny County and the Board. *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 (Lancaster C.P. May 13, 2022), a true and correct copy of which is attached hereto as **Exhibit F**; *see also Preston v. Saucon Valley School Dist.*, 666 A. 2d 1120, 1123 (Pa. Commw. 1995) (a school board hiring a superintendent constituted official action).

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.” 65 Pa. C.S.A. § 710.l(a). But 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 to which it is entitled.

Therefore, the agenda the Board is required to post in advance 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.” *Id.* § 709(c). The agenda must be posted on the 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.* In order for Pennsylvanians to participate in such meetings, the agency must give notice not only of the meeting schedule, but also the topics planned for discussion. None of this happened with respect to the County Executive’s decision to open the 2024 Satellite Election Offices.

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

The fact that opening satellite election offices where ballots can be dropped off constitutes official action can further be demonstrated by the County’s previous handling of this very issue. In 2019, the Pennsylvania General Assembly enacted Act 77. Act 77 amended the Pennsylvania Election Code to permit any registered voter to vote by mail without need for any excuse. 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).

As a result of the COVID pandemic and enactment of Act 77, Allegheny County, like other counties throughout Pennsylvania, saw a significant increase in the use of mail-in ballots. Also, on September 17, 2020, the Pennsylvania Supreme Court held that the Pennsylvania Election Code permitted county boards of election to offer secure ballot drop-off boxes for voters to drop off completed mail-in and absentee ballots. *See Boockvar*, 238 A.3d 345, 361 (Pa. 2020) (declaring that Election Code permits county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes).

In order to plan for the anticipated increased use of mail-in and absentee ballots, 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. At that time, the Board was comprised of Plaintiff DeMarco, Council Member Hallam, and then-Allegheny County Executive Rich Fitzgerald. *See* Declaration of Samuel DeMarco III (“DeMarco Decl.”), a true and correct copy of which is attached hereto as **Exhibit A**, ¶ 9.

In clear acknowledgment that opening such offices constitutes official action of the Board, the Board took appropriate steps to comply with both the Election Code and the Sunshine Act. First, the Board published an Agenda for a meeting of the Board to be held on September 17, 2020.² 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.

The meeting was held on September 17, 2020, at which time the Board discussed the issue of opening additional “Election Division Offices” where ballots could be dropped off to assist with the return of mail-in/absentee ballots. 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.*

After receiving and considering the public comments, the Board ultimately agreed via a majority vote to a resolution which authorized the use of five Election Division offices to receive mail-in and absentee ballots (“2020 Authorized 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**. Having complied with the requirements of both the Election

² Due to the pandemic, this meeting was conducted via Microsoft Teams.

Code and the Sunshine Act, the County proceeded to open and operate the 2020 Authorized Satellite Election Offices as part of the 2020 General Election. The Resolution, however, was limited to establishing these 2020 Authorized Satellite Election Offices for the 2020 General Election; as per the express terms thereof, such offices were only authorized to be opened on October 10 and 11, and October 17 and 18, 2020. DeMarco Decl., **Exhibit 3**. The Resolution made no reference to future elections. The 2020 Authorized Satellite Election Offices were each located on County-owned property, where election personnel could access the County's Statewide Uniform Registry of Electors ("SURE") database in order to confirm an individual voter's eligibility to vote by mail-in ballot, and voters could apply for, receive and cast a mail-in ballot at those offices. DeMarco Decl., ¶ 13.

D. Allegheny County Satellite Election Offices for the 2024 Primary and General Elections.

By press release dated February 22, 2024, the County Executive unilaterally announced that the County would be operating the 2024 Satellite Election Offices in conjunction with the 2024 Primary and General Elections ("Press Release"). See February 22, 2024 Press Release at <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**. As the County Executive put it in no uncertain terms, "the Elections Division will also operate five staffed absentee/mail-in ballot drop off locations around the county" to supplement "voting services at the downtown County Office Building." *Id.*

The decision to operate the 2024 Satellite Election Offices was made solely by the County Executive. DeMarco Decl., ¶¶ 15-18. She did not submit the issue to the Board for a vote and, inherently, a majority vote was not taken. *Id.* The Board has held no public meeting(s), nor did it take 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 and General Elections. *Id.* Indeed, as of the date of the filing of this litigation, the Board has not held a single meeting in 2024. *Id.* Similarly, the County Executive did not provide the public with notice or the opportunity to comment on the addition of the 2024 Satellite Election Offices. *Id.*

Per the County Executive's announcement, the County plans to open the 2024 Satellite Election Offices the two weekends before the Primary Election: Saturday, April 13 and Saturday, April 20, 9:00 a.m. - 5:00 p.m.; and Sunday, April 14 and Sunday, April 21, 11:00 a.m. - 7:00 p.m. 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.*, ¶ 19, **Exhibit 4**. It bears noting that these locations are not identical to those that were approved and used by the County as part of the 2020 General Election.

Further, the purpose of and services provided at the 2024 Satellite Election Offices differs significantly from how the offices were operated in 2020. As noted above, the 2020 Authorized Satellite Election Offices were each located on County-owned property, where election personnel could access the County's SURE database in order to confirm an individual voter's eligibility to vote by mail-in ballot, and voters could apply for, receive, and cast a mail-in ballot at those offices. DeMarco Decl., ¶ 13. Conversely, a review of the announced 2024 Satellite Election Offices reveals that they are not all located on County-owned property. Specifically, the Carnegie Library office which is located in the Squirrel Hill neighborhood of the City of Pittsburgh is not County-owned. DeMarco Decl., **Exhibit 4**. As such, election personnel staffing that office will be unable to access the SURE database, and there will be no services provided to voters to apply for and complete a mail-in ballot. This fact is further supported by the text of the Press Release itself,

which specifies that “[w]eekend drop off locations accept completed ballots only. There are no provisions for ‘over the counter’ voting at these sites.” *Id.*

Plaintiff DeMarco, one of the Board’s three members, was not consulted, nor asked to vote on the decision to operate the 2024 Satellite Election Offices. DeMarco Decl., ¶ 20. Plaintiff DeMarco also had direct communications with Board Member Bethany Hallam who confirmed that she was also not consulted regarding nor asked to vote on the decision to open the 2024 Satellite Election Offices. *Id.*, ¶ 27. Board Member Hallam publicly expressed her concerns regarding the lack of Board involvement and the County Executive’s unilateral action. In a statement offered to the press, she stated, “[i]t’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, “[w]e 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.

It is clear that rather than proceeding by a properly noticed public meeting and the required majority approval of the Board, the decision to open the 2024 Satellite Election Offices was unilaterally made by the County Executive. DeMarco Decl., ¶¶ 15-20. 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 the same. *Id.* ¶¶ 17, 28.

The County Executive’s implementation of the 2024 Satellite Election Offices without approval of a majority of the Board is 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.”).

In addition to violating the Election Code, the County Executive caused the County to violate the Sunshine Act by unilaterally making this decision. 65 Pa. C.S.A § 701, *et seq.* Courts in the Commonwealth have already addressed this issue and determined that the decision to open satellite offices where voters can return ballots 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 (Lancaster C.P. May 13, 2022)). This is further supported by a review of how the County has addressed this issue in the past, where it considered opening such offices as being official action of the Board and did so only after first complying with the terms of the Election Code and the Sunshine Act. It should also be noted that while such offices were authorized and opened in connection with the 2020 General Election, they have not been used since. DeMarco Decl., ¶ 25.

When the County Executive announced the opening of such offices for the 2024 Primary and General Elections, she also unilaterally chose to staff the 2024 Satellite Election Offices, chose when they would operate, what services would be offered, and where the offices would be located, some of which are in different locations other than those that were properly approved in 2020. As previously mentioned, not all of the 2024 Satellite Election Offices are located on County-owned property. These are all policy decisions with significant implications, including financial implications, for the County.

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. A true and correct copy of the February 27, 2024 letter is attached to the DeMarco Decl. as **Exhibit 5**.

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?

Id.

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 that a meeting of the Board of Elections has been scheduled for March 20, 2024. *Id.* Notably, the letter provides no indication that there will be a vote of the Board taken regarding the 2024 Satellite Election Offices at such meeting, nor is an agenda provided. Nor does the March 11, 2024 letter acknowledge that the County Executive’s public announcement of the County’s plans to open the 2024 Satellite Election Offices represents a violation of the Election Code. The letter does not make any reference to providing notice to the public and an opportunity to be heard on this issue as required by the Sunshine Act.

Finally, it should be noted that the allegation set out in the County’s March 11 letter that the announced opening of the 2024 Satellite Election Offices is consistent with “four elections in 2023” is incorrect. No satellite elections offices where ballots could be dropped off were opened in 2023, or at any time since 2020. DeMarco Decl., ¶ 25. The only time that satellite election offices have been used in Allegheny County occurred as part of the 2020 General Election. *Id.* Every election held since then has been conducted without the use of such offices. *Id.* Accordingly, to the extent the County plans to argue that its repeated use of satellite election offices in the past somehow justifies announcing their use in the 2024 Primary and General Elections without first complying with the Election Code and the Sunshine Act, such an argument is doomed to fail.

III. LEGAL STANDARD

Pennsylvania Rule of Civil Procedure 1531 enables courts to issue preliminary injunctions. Pa. R.C.P. 1531(a). “The party seeking an injunction must show (1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits; (5) that the injunction it seeks is reasonably suited to abate the offending activity; and, (6) that a preliminary injunction will not adversely affect the public interest.” *Warehime v. Warehime*, 860 A.2d 41 (Pa. 2004).

IV. ARGUMENT

A. A Preliminary Injunction Is Necessary to Prevent Immediate and Irreparable Harm.

Absent emergency injunctive relief, Plaintiffs 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 Elections. As one of the three members of the Board, DeMarco was deprived of his right to vote on whether the addition of the 2024 Satellite Election Offices should be implemented, as expressly required by the Election Code. *See Commonwealth v. Coward*, 414 A.2d 91, 98 (Pa. 1980) (a finding of irreparable harm is usually made by the court; where a statute proscribes certain activity, all that needs to be done is for the court to make a finding that the illegal activity occurred, as unlawful action taken by an Election Board per se constitutes immediate and irreparable harm).

Indeed, Mr. DeMarco was not involved in any discussions regarding plans to open the 2024 Satellite Election Offices and was not asked to vote on the issue. DeMarco Decl., ¶ 17.

An injunction is also needed to prevent immediate and irreparable harm to the citizens of Allegheny County by depriving them of their right to participate in the process of determining whether the 2024 Satellite Election Offices should be added in advance of the 2024 Primary and General Elections. 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). Here, the citizens were not offered the opportunity to participate in any way, the decision was made behind closed doors, and the public had no opportunity to question such decision or offer any commentary regarding where and when such offices should be used, if at all.

Specifically, Plaintiffs Majernik, Kralik, McCollum, and Howard (collectively the “Voter Plaintiffs”) were deprived of their rights to receive notice and have the opportunity to comment on the opening of the 2024 Satellite Election Offices. For instance, Plaintiff Kralik testified that she is interested in issues relating to the election process and wants to participate in the process for determining whether to open any election division offices and where and when such offices are to be opened. Kralik Decl. attached hereto as **Exhibit C**, ¶ 5. Ms. Kralik further testified that she regularly follows the Board of Elections meetings on Zoom in order to follow issues of public importance. *Id.*

Similarly, Plaintiff Howard testified that he “is actively involved in political issues and has an interest in issues relating to the election process . . . [and wishes] to participate in the process for determining whether to open satellite election offices and if so, where and when such offices

are to be opened.” Howard Declaration attached hereto as **Exhibit E**, ¶ 5; *see also* Declarations of Plaintiffs David J. Majernik and Todd McCollum attached hereto as **Exhibits B** and **D**.

Pursuant to the terms of the Sunshine Act, Pennsylvanians, including the Voter Plaintiffs, have a right to attend agency meetings and to “witness the deliberation, policy formation and decision making of the agencies.” 65 Pa. C.S.A. § 702. Here, there is no question that the Voter Plaintiffs were not notified of any meetings to discuss the 2024 Satellite Election Offices. The inability of Voter Plaintiffs to participate in the democratic process caused irreparable damage because they cannot be adequately compensated by money damages. *See Frey v. D’Agostino*, No. CI-22-02699 at 8 (Lancaster C.P. May 13, 2022) (“The damage to one’s ability to participate in the democratic process is not quantifiable and cannot be compensated.”). Furthermore, unlawful action by a Board “per se constitutes immediate and irreparable harm.” *Hempfield Sch. Dist.*, 574 A.2d at 1193. Therefore, immediate and irreparable harm will result to Plaintiffs as well as Allegheny County voters at large if Defendants are not enjoined from unilaterally opening the 2024 Satellite Election Offices in advance of the 2024 Primary and General Elections.

B. Greater Injury Would Result from Refusing Than from Granting the Injunction.

To obtain an injunction, Plaintiffs must also show that greater injury would result by refusing the injunction rather than granting it. *Pa. Orthopedic Soc. v. Indep. Blue Cross*, 885 A.2d 542, 547 (Pa. Super. 2005); *Frey* at 9. Here, denying an injunction would permit the County Executive to unilaterally make election decisions that the Election Code and Administrative Code vest with the Board, without affording the members of the Board the opportunity to vote on the issue.

Denying an injunction would also permit the County Executive to enact policies and procedures without providing the public with notice and the opportunity to comment, denying

citizens the right to participate in the democratic process. A violation of law cannot be considered a benefit to the public. *Coward*, 414 A.2d at 98 (quoting *Pa. P.U.C. v. Israel*, 52 A.2d 317, 321 (Pa. 1947)) (“The argument that a violation of law can be a benefit to the public is without merit.”). Accordingly, a greater injury would result to the citizens of Allegheny County, and to the other members of the Board of Elections, if an injunction is not granted.

Conversely, if an injunction were granted, the harm would be non-existent. An injunction would simply prohibit Defendants from moving forward with opening the 2024 Satellite Election Offices without first complying with the Election Code and the Sunshine Act. This does not mean that no satellite offices can be used as part of the 2024 Primary and General Elections. Indeed, there is no reason that Defendants cannot institute the use of satellite election offices in conjunction with the 2024 Primary and General Elections. All they are required to do is properly notice a meeting to address same, solicit comment and participation from the public, and take a vote of the Board to approve the use of such offices, in accordance with Pennsylvania law. The law requires nothing less and the County Executive is not above the law.

Finally, it should also be noted that even if Defendants refuse to take such appropriate action to justify the use of opening satellite election offices, voters in the Commonwealth are still able to vote via mail-in and absentee ballot. They can still return such ballots via mail, or by returning them directly to the main Election Division office. Granting an injunction in this matter will do nothing to change this and will have no adverse effects on the public’s ability to vote by mail.

C. A Preliminary Injunction Will Properly Restore the Parties to Their Statuses as They Existed Immediately Prior to the Alleged Wrongful Conduct.

Plaintiffs’ requested injunction seeks only to preserve the status quo. *See City of Phila. v. Commonwealth*, 837 A.2d 591, 604 (Pa. Commw. 2003) (granting preliminary injunctive relief

and noting that “the public interest lies in favor of maintaining the status quo” pending resolution of the case’s merits). As the Pennsylvania Supreme Court explained, “[t]he 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); *see also Frey* at 8. The status quo may be maintained in two ways: by enjoining the action that changes the status quo (prohibitory injunction) or by ordering a party to take action to preserve the status quo (mandatory injunction). *See Frey* at 8.

Here, a prohibitory injunction (which is the more frequently utilized option of the two) to prevent the opening of the 2024 Satellite Election Office is necessary to preserve the status quo. *Id.* The status quo is to hold the election under the same conditions that existed as part of the 2023 elections, where no satellite offices were used for accepting mail-in and absentee ballots. DeMarco Decl., ¶ 25. Unless and until the matter can be properly advertised, heard, and voted on in a public meeting before the Board in accordance with the Sunshine Act and Election Code, Defendants should be enjoined from opening the 2024 Satellite Election Offices in advance of the 2024 Primary and General Elections.

D. Plaintiffs Are Likely to Prevail on The Merits.

Plaintiffs are likely to prevail on the merits of this case because Defendants violated the Election Code, the Allegheny County Charter, and the Allegheny County Administrative Code in taking unilateral action that usurped the powers of the Board of Elections. In doing so, Defendants also violated the Sunshine Act which prescribes the measures that agencies are required to take when conducting “official action.”

In order to establish a clear right to relief, “the party seeking an injunction need not prove the merits of the underlying claim, but need only demonstrate that substantial legal questions must be resolved to determine the rights of the parties.” *SEIU Healthcare Pennsylvania v.*

Commonwealth, 104 A.3d 495, 506 (Pa. 2014). In other words, this requirement for injunctive relief is not the equivalent of stating that no factual disputes exist between the parties. *All-Pak, Inc. v. Johnston*, 694 A.2d 347, 350 (Pa. Super. 1997). Rather, “[t]he party seeking an injunction need not prove the merits of the underlying claim, but need only show that substantial legal questions must be resolved to determine the rights of the respective parties.” *Chmura v. Deegan*, 581 A.2d 592, 593 (Pa. Super. 1990) (citing *Fischer v. Dep’t of Public Welfare*, 439 A.2d 1172, 1174 (Pa. 1982)).

1. The Allegheny County Executive Does Not Have the Power to Unilaterally Open the 2024 Satellite Election Offices Without a Majority Vote of the Allegheny County Board of Elections.

Plaintiffs’ right to relief is clear because the County Executive plainly exercised powers belonging not to the County Executive of Allegheny County, but to the Board. The County Executive’s unilateral decision to open additional ballot drop-off locations throughout the county—a power that the Election Code unquestionably vests in the Board—is, in effect, a nullity that cries out for injunctive relief.

Pursuant to § 2641 of the Election Code, the Board has “jurisdiction over the conduct of primaries and elections” in Allegheny County. 25 P.S. § 2641. The Pennsylvania Supreme Court has found that the Board’s jurisdiction over the conduct of primaries and elections extends to determining whether to utilize drop-boxes for mail-in and absentee ballots. *See Boockvar*, 238 A.3d at 361 (declaring that Election Code permits county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes).

In addition, the Election Code specifically enumerates certain powers and duties that are vested with the Board in determining the conduct of primaries and elections, including, in relevant part: (1) purchasing, preserving, storing, and maintaining primary and election equipment of all kinds, including voting booths, ballot boxes and voting machines, and to procure ballots and all

other supplies for elections; (2) appointing employees, voting machine custodians, and machine inspectors; (3) making and issuing rules, regulations, and instructions they deem necessary for the guidance of voting machine custodians, elections officers and electors; (4) making and issuing such rules, regulations, and instructions, as may be necessary for the guidance of voting machine custodians, elections officers and electors; and/or (5) instructing election officers in their duties, calling them together in meeting whenever deemed advisable, and inspecting systematically and thoroughly the conduct of primaries and elections in the several election districts of the county to the end that primaries and elections may be honestly, efficiently, and uniformly conducted. 25 P.S. § 2642.

Determining whether to open the 2024 Satellite Election Offices is a power that is plainly vested with the Board, consistent with the Pennsylvania Supreme Court's ruling in *Boockvar*. 238 A.3d at 361. Indeed, 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. Further, a contrary conclusion would create a serious incongruity with 25 P.S. § 2642(b), which empowers the county boards of election to site polling locations. It would make little sense for the county boards of election 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. Indeed, under *Boockvar* these sites are nothing more than satellite offices of the county board itself.

In addition, the decision to open additional ballot drop-off locations falls within the statutorily delineated powers of the Board because, *inter alia*, ballot drop-off boxes constitute “election equipment of all kinds” within the meaning of the Election Code. *See* 25 P.S. § 2642(c). In the absence of a properly noticed public meeting on the issue of the Board’s use of satellite election offices for drop box locations, it is unknown if the drop boxes have to be purchased, the cost of same, or the manner in which the drop boxes and the ballots deposited therein are properly preserved. Likewise, the appointment of any employees, custodians and/or inspectors at these 2024 Satellite Election Offices, as well as the establishment of any rules, regulations, or instructions to guide those individuals, which are surely attendant upon the establishment and operation of such offices, are powers reserved for the Board under the Election Code and the Administrative Code. 25 P.S. § 2642(d), (f). In the end, opening and operating the 2024 Satellite Election Offices are powers clearly vested with the Board under the Election Code.

Nowhere in the Election Code does it allow for the County Executive of a county to act unilaterally with respect to those matters that fall within the purview of the board of elections. To the contrary, § 2643 of the Election Code explicitly contemplates that “[a]ll actions of [the Board] *shall* be decided by a *majority vote* of *all* the members[.]” 25 P.S. § 2643 (emphasis added). Here, there was no vote at all, let alone one rendered by a majority of the Board.

There is likewise nothing in the Administrative Code’s enumeration of the County Executive’s powers that allows the County Executive to usurp the functions of the Board. *See* Administrative Code § 1.5-502. This Court has previously held that the County Executive of Allegheny County may not exercise powers that are not explicitly granted to them by the Home Rule Charter, and any exercise of such powers results in a nullity. *See Roddey v. County Council of County of Allegheny*, 841 A.2d 1087, 1093 (Pa. Commw. 2004) (holding Allegheny County

Home Rule Charter did not grant to the county executive the power to reduce amounts appropriated for individual line items in a budget resolution). Nothing in the Home Rule Act authorizes the County Executive's unilateral conduct here.

Injunctive relief may be granted against a public official who, as here, has gone outside of the sphere of her authority and attempted to do something beyond the range of her delegated power. *See Mazeika v. American Oil Co.*, 118 A.2d 142, 144 (Pa. 1955) (reversing court's exercise of jurisdiction in equity over zoning appeal where such exercise exceeded court's statutorily mandated jurisdiction); *Brass Rail Restaurant Co. v. Pennsylvania Labor Relations Bd.*, 100 A.2d 80, 82 (Pa. 1953) (noting court's power to restrain an administrative agency of the State from exercising or attempting to exercise powers not conferred upon it).

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

The Pennsylvania Department of State has issued comprehensive guidance on absentee and mail-in ballot in-person return to county-designated locations ("Guidance"). Pennsylvania Department of State, *Pennsylvania Absentee and Mail-in Ballot In-Person Return Guidance*, Version 2.0 at 2 (Sept. 25, 2023); *see also Boockvar*, 238 A.3d at 361 n. 15 (in finding that Election Code permits county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses, including drop-boxes, the Supreme Court cited for support a prior version of the same Guidance).

That Guidance reflects the Election Code’s delegation of authority to the Board of Elections (as a whole) as the entity empowered to make decisions about the opening and administration of ballot drop-off locations in the county. Such Guidance in no way states, or intimates, that a County Executive can unilaterally make decisions regarding opening offices to accept return of absentee and mail-in ballots. Rather, such power is expressly vested in the Board, as noted in the Guidance as follows:

- “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 (emphasis added).
- **County boards of election may also establish**, as a Ballot Return Site, secure ballot return receptacles (commonly referred to as “drop-boxes”). *Id.* (emphasis added).
- “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 3 (emphasis added).
- “**Boards** may establish multiple Ballot Return Sites where voters may return their completed ballot.” *Id.* (emphasis added).
- “When choosing a location, **Boards** should consider....” *Id.* (emphasis added).
- “**Boards** may establish sites where voters can return their own completed ballot without concerns about post office delays.” *Id.* at 4 (emphasis added).

In addition, the Guidance explicitly contemplates that each county’s board of elections “determine the receptacle size [for drop-boxes] based on the use and needs of the location.” *Id.* at 5. With respect to signage at ballot return sites, the Board is to “design them in such a way that they appear official and are secure.” *Id.* It is the responsibility of the Board to ensure that Ballot Return Sites are accessible to voters with disabilities. *Id.* at 6. Likewise, the Department of State specifically delineates a list of security measures that “boards of election must ensure [are in place]

when establishing Ballot Return Sites.” *Id.* Note that “[o]nly personnel authorized *by the county board of elections* should have access to the completed ballots” that are returned to a Ballot Return Site. *Id.* at 7 (emphasis added). Here, again, the Board of Elections has not had the opportunity to exercise *any* of these functions with respect to the 2024 Satellite Election Offices that the County Executive unilaterally announced that the County would be opening and staffing as part of the 2024 Elections.

Notably, the Board of Elections did follow the Election Code and the Allegheny County Administrative Code in 2020 when opening the 2020 Authorized Satellite Election Offices in advance of that year’s elections. *See* Sept. 17, 2020 Minutes of the Allegheny County Board of Elections (approving, by 3-0 vote, resolution to open multiple election branch offices in Allegheny County to receive mail-in and absentee ballots); Sept. 17, 2020 Resolution of the Board of Elections of Allegheny County, Pennsylvania. DeMarco Decl., **Exhibits 2** and **3**, respectively.

Similarly, other county boards of election have followed the clear procedures of the Election Code in opening ballot drop-off locations in their respective counties. For example, the Montgomery County Board of Elections voted, in accordance with the Election Code, to install 12 ballot drop-off boxes throughout the county in 2023. *See* Montgomery County, PA, *County Announces 12 Secure Ballot Drop-Off Box Locations & Satellite Offices for May 16* (Apr. 25, 2023), <https://www.montgomerycountypa.gov/CivicAlerts.aspx?AID=4113>.

In addition to the plain language of § 2642 of the Election Code and the language from the Guidance cited above, Pennsylvania courts have also recognized that the power to open or close a ballot drop box location lies with the county’s board of elections. *See, e.g., Frey* at 10 (explaining, in granting preliminary injunction in dispute over the Pennsylvania Sunshine Act, that “[w]hether or not the Board determines to have a drop box is solely the Board’s decision.”).

Plaintiffs' right to relief is, therefore, clear. Unlike in 2020, the County Executive failed to comply with the clear terms of the Election Code; instead issuing a unilateral press release in which the County Executive, acting on behalf of the County, announced that the County would be operating the 2024 Satellite Election Offices in advance of the 2024 Primary and General Elections. DeMarco Decl., **Exhibit 3**. This decision was not one for the County Executive of the County to make, nor one that the County itself could simply rubber stamp. It was one that required a majority vote of the Board and that vote never occurred, in clear violation of the Election Code and the Allegheny County Administrative Code. The County Executive exceeded the authority of her office, usurped the powers of the Board, and should, accordingly, be enjoined from opening these additional ballot drop-off locations.

2. Defendants' Clandestine Opening of the 2024 Satellite Election Offices Plainly Violates the Pennsylvania Sunshine Act.

Plaintiffs' right to relief under the Sunshine Act is likewise clear. The decision to open the 2024 Satellite Election Office constitutes "official action" under the Sunshine Act and, as such, must have been made in public, after public notice, and subject to public comment. The County Executive's decision to usurp the Board of Elections and open these additional ballot drop-off locations without advance warning to the public constitutes a plain violation of the Sunshine Act and should be enjoined.

Pennsylvania's Sunshine Act requires that the deliberations of public agencies, such as those of the Board, be made in public, after public notice, and subject to public comment. 65 Pa. C.S.A. § 701 *et seq.* As the General Assembly explained in its findings supporting passage of the Sunshine Act, "the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formation and decision-making of agencies is vital to the enhancement and proper functioning of the democratic process[.]" *Id.* § 702(a). The General Assembly further

declared that it is 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.” *Id.* § 702(b).

As the Supreme Court of Pennsylvania recognized in *Consumers Educ. And Protective Ass’n v. Nolan*, “adequate notice to the public at large is an integral part of the public-meeting concept.” 368 A.2d 675, 681 n.4 (Pa. 1977). The ability of Pennsylvania residents to attend government agency meetings that discuss public business and to comment on issues under consideration is vital to a functioning democracy. As the Lancaster County Court of Common Pleas found in granting a preliminary injunction where a board of elections violated the Act, “[t]he damage to one’s ability to participate in the democratic process is not quantifiable and cannot be compensated.” *Frey* at 8.

In order for Pennsylvanians to participate in such meetings, the agency must give notice not only of the meeting schedule, but also the topics planned for discussion. Therefore, the Sunshine Act requires agencies with publicly accessible Internet websites, to “post the agenda, which includes a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting, on the website no later than 24 hours in advance of the time of the convening of the meeting.” 65 Pa. C.S.A. § 709(c.1)(1)(i). No such agenda was posted in this case, in clear violation of the Sunshine Act.

Whenever an agency takes any “official action” as defined in the Act, it must do so “at a meeting open to the public.” *Id.* § 704. Moreover, the agency “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.* § 710.1(a) (emphasis added). Here, no meeting was held and inherently was not open to the public. Likewise,

the public was not provided with a reasonable opportunity to comment on the potential additional ballot drop-off locations in advance of the decision.

The term “official action” under the Sunshine Act is defined as:

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.

The Commonwealth Court has interpreted “official action” to include decisions concerning an agency’s business made by the agency and, specifically, action “on a matter that commits the agency to a course of conduct.” *Morning Call, Inc. v. Bd. of School Directors of Southern Lehigh Dist.*, 642 A.2d 619, 623 (Pa. Commw. 1994); *see also Preston v. Saucon Valley School Dist.*, 666 A.2d 1120, 1123 (Pa. Commw. 1995) (school board hiring superintendent constituted official action).

Further, as the Court found in *Frey*, the decision of a board of elections to open or close a ballot drop-off location is an “official action” that is subject to the requirements of the Sunshine Act. *Frey*, **Exhibit F** at 8. There, “[t]he decision by [the board of elections] to remove the drop box from the County Government ‘commits the agency to a course of conduct,’ [] and is thus subject to Sunshine Act strictures, including advance notice to the public and vote by the Board.” *Id.* The same rationale applies here with respect to opening additional locations in Allegheny County, which likewise require adherence to the Sunshine Act. Finally, a review of Allegheny County’s actions as part of the 2020 General Election further demonstrates that it has already concluded that this very action should be considered “official action” under the Sunshine Act,

which requires compliance with the Act's provisions. Therefore, Plaintiffs' right to relief is clear and they are likely to prevail on the merits.

Contrary to what the County Executive may suggest, her null decision to open the 2024 Satellite Election Offices is not "administrative action." An administrative action is one which executes "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." 65 Pa. C.S.A. § 703. Here, the only action related to opening satellite offices to accept mail-in and absentee ballots in the County that has ever been previously authorized applied *only* to the 2020 General Election, and such offices have not been used since. DeMarco Decl., ¶ 25.

The Board's Resolution to open the 2020 Authorized Satellite Election Offices as part of the 2020 General Election was expressly limited to opening the five specified offices on October 10-11 and 17-18, 2020. DeMarco Decl., **Exhibit 3**. In this regard, the Resolution stated, "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..." *Id.* By including specific dates, the Resolution, on its face, plainly limits the establishment of additional Election Division offices to those listed in the Resolution, at the given locations, and only during the specified timeframes for the 2020 General Election. The Resolution neither anticipated nor authorized such offices operating during any elections beyond the 2020 General Election, which is borne out by the fact that these locations have not been used since. Therefore, opening the 2024 Satellite Election Offices cannot credibly be described as a continuation of the Resolution or any other policy. Rather, the Resolution expired after the dates listed in 2020 and there was never any further

enabling authorization by the Board to extend the use of the additional locations. It follows also that if it was necessary for the Board to issue a resolution to establish additional Election Division offices in 2020 that it is likewise necessary for the Board to issue a similar resolution in 2024 if it wishes to open additional locations for the elections this year.

Note also that the 2020 Authorized Satellite Elections Offices that the Board established in 2020 included only three of the five locations that the County Executive seeks to unilaterally re-establish in advance of the 2024 Elections. *See* DeMarco Decl., **Exhibit 3** and **4**. Further, the way that such offices were used in 2020 differs significantly from how they are apparently intended to be used in 2024. In 2020, all such offices had access to the County's SURE database, and voters were provided over the counter services where employees could research a particular voter's eligibility to vote via mail-in ballot. DeMarco Decl., ¶ 13. Further, voters could request, complete and submit a ballot at such offices in 2020. *Id.* Per the Press Release, in 2024 the County envisions only operating the 2024 Satellite Election Offices as staffed ballot drop off locations, and the County has expressly stated that only completed ballots will be accepted and no over-the-counter services will be available to voters. *Id.*, ¶ 21. In short, the decision to once again use satellite election offices that were only authorized and used once in 2020 and were never used again amounts to official, rather than administrative, action which was for the Board to make, not for the County Executive to unilaterally decide. Moreover, there can be no question that choosing the two never-before-used locations (the Carnegie Public Library of Squirrel Hill and 911 Call Center in Moon), which have not been vetted by or approved by a majority vote of the Board, and opening those locations cannot be deemed "administrative" action under any possible reading of the 2020 Resolution. Again, the County Executive's enumerated powers under the Allegheny County Home Rule Charter and Administrative Code do not include any power that would permit usurping the

role of the Board in this way. Therefore, Plaintiffs' right to relief is clear and they are likely to prevail on the merits.

E. The Requested Injunction is Reasonably Suited to Abate the Offending Activity.

The requested injunction is reasonably suited to abate the offending activity insofar as the relief sought by Plaintiffs is narrowly tailored. Plaintiffs only seek to enforce the requirements of the Sunshine Act and Election Code by prohibiting Defendants from exercising powers they do not have and, in turn, ensuring that the Board of Elections vote on whether to open the 2024 Satellite Election Offices, and comply with the Sunshine Act in doing so. It is the "public policy of this Commonwealth to insure [sic] 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 P.S. § 702(b).

Plaintiffs' request for an injunction has no impact on the Board's ability to open additional election division offices if properly voted on and approved by a majority of the Board of Elections (as it did previously in 2020) and if properly advertised to the public in accordance with the terms of the Sunshine Act. Granting the requested injunction will merely permit the issue to be properly advertised, discussed, and voted on in accordance with Pennsylvania law.

F. The Requested Injunction Will Not Adversely Affect the Public Interest.

The party seeking an injunction must show that the injunction will not adversely affect the public interest. *Frey*, **Exhibit F** at 9. The public interest is not served by allowing one member of the Board to act unilaterally, without regard for the law and without a majority vote of the members.

Similarly, the public interest is not served by depriving voters of their rights to participate in the process of determining whether to open additional election division offices. There is a

“strong public interest in the right of Pennsylvanians to attend and engage in agencies’ deliberative processes.” *Id.* Requiring advance notice from the Board before it makes important policy decisions promotes democratic debate and holds government agencies accountable to the rule of law. *Id.* at 10. A ruling to the contrary would only further diminish Pennsylvania voters’ confidence in the election system as a result of the secretive and inconsistent application of the election procedures in direct contradiction to the Election Code.

V. CONCLUSION

The County Executive’s blatant disregard for the mandates of the Election Code and her resultant usurpation of the authority of the Board are illegal per se and hence void. 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 constitute a threat to the rule of law and are antithetical to the democratic process itself.

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—issuing a preliminary injunction enjoining Defendants from opening the 2024 Satellite Election Offices as part of the 2024 Primary and General Elections without (1) a majority vote of all members of the Allegheny County Board of Elections; and (2) 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.

Dated: March 18, 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**

SAMUEL DEMARCO III, <i>et al.</i> , Plaintiffs, v. SARA INNAMORATO, in her official capacity, <i>et al.</i> , Defendants.	CIVIL DIVISION No. _____
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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. Voyer, 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

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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

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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

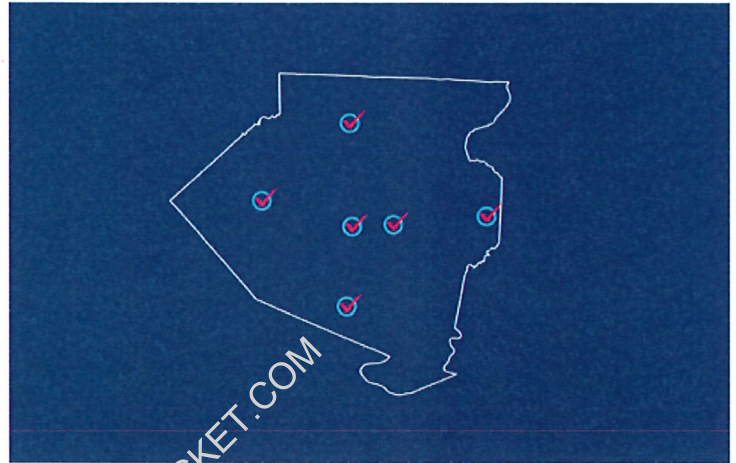
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Return of Ballot Drop Off Locations for 2024 Elections

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 \(tel:4123504500\)](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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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: 412.567.9241
nelsonmullins.com

February 27, 2024

Via E-mail and Regular Mail

Mr. David R. Voye, 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. Voye:

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

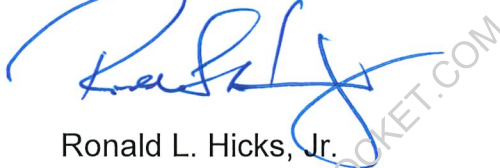
Mr. David R. Voyer, Division Manager
February 27, 2024
Page 2

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,

A handwritten signature in blue ink, appearing to read "Ronald L. Hicks, Jr.", is written over a diagonal watermark that reads "RETRIEVED FROM DEMOCRACYDOCKET.COM".

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

RLH:rk

Enclosures

EXHIBIT 6

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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
Rosalyn Guy- McCorkle, Solicitor
Lisa Michel, Assistant Solicitor
Jessica Garofolo, Administrative Services Director
David Voye, Elections Division Manager

EXHIBIT 7

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

Updated: 11:36 PM EST Feb 22, 2024

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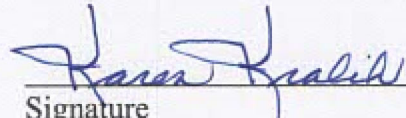
**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

<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>	
--	--

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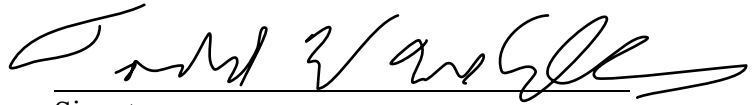
**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA**

<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>	
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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.

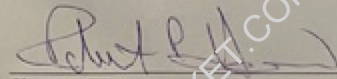
3. I am a registered Pennsylvania voter who consistently votes in each election. I plan to vote in the upcoming 2024 Primary Election. I have also voted via mail-in ballot in the past, and have firsthand experience in completing the application process, completing, and submitting a mail-in ballot, and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

routinely monitor and attend Board of Elections meetings, and speak on issues of importance to me.

Signed on the 8th day of March, 2024, at Marshall Twp., Allegheny County, Pennsylvania, United States of America.


Signature

Robert C Howard
Printed Name

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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 injunction: (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 TRESCOT 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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SARA INNAMORATO
COUNTY EXECUTIVE

COUNTY OF ALLEGHENY

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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

**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 18, 2024

Respectfully submitted,
THE GALLAGHER FIRM, LLC

/s/ Brian M. Adrian

Kathleen A. Gallagher
Brian M. Adrian

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the within ***BRIEF IN SUPPORT OF EMERGENCY MOTION FOR PRELIMINARY INJUNCTION*** has been served on all counsel of record listed below via email this 18th day of March 2024:

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(Counsel for Defendants)

THE GALLAGHER FIRM, LLC

/s/ Brian M. Adrian

Brian M. Adrian

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