

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

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

CIVIL DIVISION

No. GD-24-3062

v.

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

FILED ON BEHALF OF:

**SARA INNAMORATO, ALLEGHENY COUNTY
BOARD OF ELECTIONS AND COUNTY OF
ALLEGHENY**

Allan J. Opsitnick, Assistant County Solicitor
PA I.D. No. 28126

Lisa G. Michel, Assistant County Solicitor
Pa. I.D. No. 59997

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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,

v.

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RESPONSE TO EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

NOW, come Sara Innamorato, in her official capacity as County Executive, Allegheny County and the Allegheny County Board of Elections, by its attorneys, Allan J. Opsitnick, Assistant Solicitor and Lisa G. Michel, Assistant Solicitor, and aver as follows:

1. This paragraph states a conclusion of law to which no response is required.
2. This paragraph states a conclusion of law to which no response is required.
3. This paragraph state argument to which no response is required. To the extent that Plaintiffs are imputing facts, the Defendants deny this averment. To the contrary, the Department of Elections, consistent with past practice, has performed the ministerial task of investigating and developing a ballot return site plan consonant with the requisites of the Department of State guidance. The meeting of the Board of Elections has been scheduled for March 20, 2024. Plaintiff

DeMarco was aware of the meeting prior to the filing of the instant complaint as he was made aware of the correspondence sent to Ron Hicks, Complaint, Ex. 7, and because he received notification from David Voyer the elections manager. Moreover, the meeting was duly publicized earlier than prescribed by law as before the litigation was filed, the legal notice was scheduled for publication on March 14, 2024, in the Pittsburgh Post-Gazette and it was further published on the Allegheny County website on March 14, 2024, including the posting of the meeting agenda which expressly provides that the ballot return sites is an agenda item. Attached hereto are Exhibit A, email to board members from division manager David Voyer which includes the Agenda for the March 20, 2024, meeting of the Board of Elections (auto generated teams meeting code redacted); Exhibit B, email from David Voyer dated March 12, 2024 to Azzie Todd directing the publication of the Legal Notice of the March 20, 2024 meeting; Exhibit C: image of legal notice published in the Pittsburgh Post Gazette reflecting its publication on March 14, 2024; and Exhibit D, pertinent portion of the screen image of Board of Elections Website. The members of the Board will be fully informed about the plan and can vote thereon, and members of the public have more than the statutorily prescribed time period to submit comment online or to request to comment at the meeting.

4. This paragraph states opinion, argument, and legal conclusion to which no response is required. To the extent factual matter is averred, this paragraph is denied. Allegheny County has for all elections, including special elections since 2020 consistently provided for a ballot return site at the County Office Building on the Ross Street entry for the weekends preceding election days and provided for over the counter voting in the County Office Building lobby for intervals prior to each election. Defendants further incorporate their response to paragraph 3, herein by reference.

5. The averments of this paragraph state conclusions of law to which no response is required. The preceding paragraph 3, relating to the Pennsylvania Sunshine Act is expressly incorporated by reference. Further, defendants deny there has been any violation of neither the referenced provision of the Election Code nor the Allegheny County Administrative Code.

6. This paragraph states a conclusion of law to which no response is required.

7. This paragraph states a conclusion of law to which no response is required. To the extent factual matter is averred, it is expressly denied.

8. This paragraph states a conclusion of law to which no response is required. To the extent any factual matter is averred, it is expressly denied.

9. This paragraph states a conclusion of law to which no response is required. To the extent factual matter is averred, it is denied. A meeting of the Board of Elections is scheduled for March 20, 2024, at which time Mr. DeMarco may cast his vote. By way of further response, as is readily demonstrated by the Exhibits appended hereto, Mr. DeMarco was aware on March 14, 2024, when the instant litigation was filed, that the meeting was scheduled and had received the agenda, including the ballot return site agenda item.

10. This paragraph states a conclusion of law to which no response is required. To the extent factual matter is averred, it is denied.

11. This paragraph states a conclusion of law to which no response is required. To the extent factual matter is averred, it is expressly denied. The Allegheny County Elections Division has consistent with past practices exercised due diligence, in conformity with guidance from the Department of State and the experience of its professional staff to develop a secure plan for ballot return sites to serve residents throughout Allegheny County.

12. This paragraph states a conclusion of law to which no response is required. To the extent factual matter is averred, it is denied. A Board meeting has been scheduled and advertised and one Board member, particularly one who has publicly expressed his opposition to an agenda item, should not be permitted through extraordinary judicial intervention to circumvent the practices of Allegheny County and Board action with the instant litigation.

WHEREFORE, Defendants respectfully request this Honorable Court to deny the request for injunctive relief.

Respectfully submitted,

/s/ Allan J. Opsitnick

Allan J. Opsitnick, Assistant County Solicitor
Counsel for Defendants

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/s/Lisa G. Michel

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Subject: Board of Election Meeting
Location: Gold Room, Fourth Floor, Courthouse

Start: Wed 3/20/2024 11:30 AM
End: Wed 3/20/2024 12:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Voye, David
Required Attendees: Innamorato, Sara; Hallam, Bethany; DeMarco, Samuel; Garofolo, Jessica; Opsitnick, Alan; Michel, Lisa; Harhut, Chet; Davis, James W.
Optional Attendees: Gardner, Abigail; Rogers, Susan A.

Good afternoon, Board Members,

In preparation for next week, attached you will find the agenda for the Board of Elections meeting scheduled for next Wednesday. Prior to that though, I did want to provide an update on where the Elections Division is at with mail-in/absentee ballot requests, polling place changes and poll workers. As of today, we've received 103,000 requests for mail-in and absentee ballots. We've also had 52 polling places change locations due to various reasons. A list of all polling places and changes can be found at [Candidate and Municipality Resources - Allegheny County, PA](#) I have good news to share as well; we have over 6,500 poll workers scheduled to work on April 23rd. We will also begin sending out weekly elections-related Allegheny E News to subscribers. This newsletter will be archived online as well.

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting

Passcode:

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MEETING OF THE ALLEGHENY COUNTY BOARD OF ELECTIONS

WEDNESDAY, MARCH 20, 2024, 11:30 A.M., IN THE GOLD ROOM, FOURTH FLOOR
COURTHOUSE, PITTSBURGH, PENNSYLVANIA 15219.

BOARD MEMBERS: HON. SARA INNAMORATO
 HON. BETHANY HALLAM
 HON. SAM DEMARCO

IN ATTENDANCE: JESSICA GAROFOLO - DIRECTOR, DEPT. OF ADMIN SERVICES
 JAMES DAVIS- DEPUTY 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.
 LISA MICHEL- ASST. COUNTY SOLICITOR, LAW DEPT.

- I. CALL TO ORDER
- II. BOARD RE-ORGANIZATION
- III. APPROVAL OF MINUTES 11-27-2023 MEETING
- IV. PUBLIC COMMENT
- V. 2024 GENERAL PRIMARY PREPARATIONS
- VI. BALLOT RETURN SITES.
- VII. NEW BUSINESS
- VIII. ADJOURNMENT

Michel, Lisa

From: Voye, David
Sent: Tuesday, March 12, 2024 2:44 PM
To: Todd, Azzie
Cc: Garofolo, Jessica; Opsitnick, Alan; Michel, Lisa
Subject: Emailing: 3-20-2024 Legal Ad.doc
Attachments: 3-20-2024 Legal Ad.doc

Azzie,
Please schedule this to run this Thursday, March 14, in both printed and on-line editions of the Post-Gazette,

Your message is ready to be sent with the following file or link attachments:

3-20-2024 Legal Ad.doc

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

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ELECTION NOTICE

The Allegheny County Board of Elections shall convene at 11:30 a.m. on Wednesday, March 20, 2024, in the Gold Room, County Courthouse, Fourth Floor, 436 Grant Street, Pittsburgh, PA 15219 to discuss the 2024 General Primary preparations and general business. The meeting will be streamed on the county's Facebook page.

Anyone wishing to submit written comments should do so by 11:30 a.m. on Tuesday, March 19, to BOE@alleghenycounty.us. Written comments will be summarized at the meeting and entered into the record. Anyone wishing to address the board in person should register by 11:30 a.m. on Tuesday, March 19, by emailing their name, address and that they wish to speak in-person to BOE@alleghenycounty.us. Remarks will be limited to three (3) minutes.

ALLEGHENY COUNTY ELECTIONS DIVISION

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ELECTION NOTICE The Allegheny ...

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ALLEGHENY COUNTY ELECTIONS DIVISION

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Board of Elections

Allegheny Votes

Allegheny County Election Resources

The Board of Elections is made up of three members – the County Executive and the two at-large County Council Members, pursuant to the PA Election Code, Home Rule Charter (<https://ecode360.com/8453490>), and the Allegheny County Administrative Code (<https://ecode360.com/8716925>). The Board is provided with all of the power and duties conferred under the Board of Elections before the Charter. Currently, the three board members are County Executive Sara Innamorato, Council Member Sam DeMarco, and Council Member Bethany Hallam.

If a member of the Board of Elections becomes a candidate for any nomination or election to any office, the member shall not act as a member of the Board of Elections. The President Judge of the Court of Common Pleas shall appoint a voter of the county who has the same political party affiliation as the member to serve while the member is a candidate.

Board Meetings

The Board of Elections typically meets 14 days prior to and 20 days after primary, general, and special elections, although variations to that schedule can occur. Other meetings may be scheduled at the call of the chair, as appropriate, and are announced and advertised



accordingly. When announced, those dates are also added to the list below.

Board Meeting Information

All meetings will be held in person in the Gold Room, 4th floor of the Allegheny County Courthouse, unless otherwise noted. Meetings will also be streamed on the [Allegheny County Facebook Page](https://www.facebook.com/AlleghenyCounty) (<https://www.facebook.com/AlleghenyCounty>).

2024

Wednesday, March 20 - 11:30 am

- [03-20-2024 Agenda](#)
([/files/assets/county/v/1/government/elections/documents/board-of-elections/03-20-2024-boe-agenda.pdf](https://www.alleghenycounty.us/files/assets/county/v/1/government/elections/documents/board-of-elections/03-20-2024-boe-agenda.pdf))

Tuesday, April 9, 2024 - 3:00 pm

Monday, May 13, 2024 - 10:00 am

Tuesday, October 22, 2024 - 3:00 pm

Monday, November 25, 2024 - 10:00 am

2023

Tuesday, February 21 - 9:00 am

- [02-21-2023 Agenda](#)
(<https://www.alleghenycounty.us/files/assets/county/v/1/government/elections/documents/board-of-elections/02-21-2023-boe-agenda.pdf>)

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ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2024, it is hereby ORDERED and DECREED, that the Emergency Motion for Injunctive Relief is denied.

BY THE COURT:

_____ J.