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*\*Motions for Admission Pro Hac Vice Forthcoming*

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Pennsylvania Alliance for Retired Americans*

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

**CIVIL DIVISION**

SEAN GILL, ROBERT SMITH, TIM RAMOS and  
JACKIE RIVERA,

Plaintiffs,

v.

LEHIGH COUNTY BOARD OF ELECTIONS,  
PHILLIPS ARMSTRONG, JENNIFER ALLEN,  
DENNIS NEMES, TIMOTHY A. BENYO and  
DIANE GORDIAN,

Defendants.

Case No. 2022-c-1849

**PETITION OF PENNSYLVANIA ALLIANCE FOR RETIRED AMERICANS FOR  
LEAVE TO INTERVENE**

The Pennsylvania Alliance for Retired Americans (the “Alliance”) submits this Petition for Leave to Intervene as co-Defendant in the above-captioned action pursuant to Pennsylvania Rules of Civil Procedure 2326 *et seq.*

**INTRODUCTION**

1. Voters in Lehigh County rely on secure, accessible drop boxes in order to exercise their right to vote by mail or absentee ballot (collectively referred to here as “mail ballots”). Opportunities to submit mail ballots are especially important for retired voters, who often face significant barriers to voting in person.

2. Plaintiffs seek to co-opt the authority of the Lehigh County Board of Elections to administer elections by asking this Court to adopt and enforce Plaintiffs’ own preferred drop box policies. Specifically, Plaintiffs request an injunction that would severely limit the availability of the drop box provided at the Lehigh County Government Center and require the Board to incur the expense of redirecting its personnel from assisting voters to physically monitoring all drop boxes in the County.

3. If adopted, Plaintiffs’ scheme could be ruinous for the Alliance and its members. The Alliance is a nonprofit organization that counts among its members hundreds of thousands of retired voters in the Commonwealth of Pennsylvania, including in Lehigh County. Plaintiffs’ requested relief would undermine the Alliance’s mission of ensuring that seniors are civically and politically engaged by making it harder—in some cases, prohibitively so—for the Alliance’s members to vote.

4. The Alliance seeks intervention in this suit to protect the right of its members, and all Lehigh County voters, to safely cast a ballot in the upcoming elections.

## PROPOSED INTERVENOR

5. The Alliance is a 501(c)(4) nonprofit, social welfare organization serving and representing over 335,000 members in the Commonwealth of Pennsylvania, including in Lehigh County. Its membership is composed of retirees, most of whom are over the age of 65, from public and private sector unions; community organizations; and individual activists. The Alliance is a chartered state affiliate of the Alliance for Retired Americans, which is one of the country's leading grassroots senior organizations and engages in important political efforts to protect and preserve programs vital to the health and economic security of older Americans.

6. The Alliance's mission is to ensure social and economic justice and to protect the civil rights of retirees after a lifetime of work. Plaintiffs' requested removal of voting opportunities threatens the Alliance's efforts to ensure its members have adequate access to the franchise. As such, the Alliance has a distinct interest in Lehigh County's election processes. That interest encompasses procedures affecting the delivery and submission of mail ballots, including the availability of drop boxes.

7. The Alliance alleges, upon information and belief, that many of its members reside in Lehigh County, intend to vote by depositing their mail ballot in a drop box, and not all are able to do so between the hours of 9 a.m. and 5 p.m. during the work week. For example, some retired voters may rely on transportation from a friend or family member who is only available outside of regular business hours. Plaintiffs' requested relief would imperil the right to vote of the Alliance's members who rely on accessible drop boxes—as voters over the age of 65 are especially likely to, given their disproportionate use of mail ballots.

8. Furthermore, if Plaintiffs' requested relief is granted, the Alliance would need to divert its limited resources to combat these harms, such as by shifting staff time and funding away from other projects towards devising and executing plans to educate the Alliance's membership

about the limited drop box availability and other (more burdensome) alternatives for submitting mail ballots.

### **FACTUAL AND PROCEDURAL BACKGROUND**

9. This litigation was initiated on September 1, 2022, by the filing of a “Complaint in Equity and Mandamus” (the “Complaint”).

10. Plaintiffs—four Allentown residents who allege an intention to vote in the upcoming election—seek an order enjoining the Lehigh County Board of Elections and county elections officials from using drop boxes unless the drop boxes are inside a building, accessible only between 9 a.m. and 5 p.m. Monday through Friday, and physically monitored in-person. Compl. ¶¶ 1-4, 11-12.

11. In previous elections, Lehigh County offered a drop box at the Lehigh County Government Center that was available 24 hours a day, seven days a week.

12. The Alliance files this Petition to intervene before any substantive briefing or argument in this case.

### **LEGAL STANDARD AND ANALYSIS**

13. Pennsylvania Rule of Civil Procedure 2327 allows a person not named as a party in an action to seek leave to intervene by filing a petition with the court.

14. That Rule states, in pertinent part:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if . . .

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pa. R.C.P. 2327.

15. The Alliance meets the requirements for intervention under Pennsylvania Rule of Civil Procedure 2327(4) because its “interests may be affected by a judgment.” *Appeal of Austerlitz*, 63 Pa. Cmwlth. 140, 142, 437 A.2d 804, 805 (1981) (citing Pa. R.C.P. No. 2327(4)).

16. As a federal court in Pennsylvania recognized just two years ago by granting intervention to the Alliance in a similar challenge to “unmanned” drop boxes, the Alliance has a keen interest in protecting its members’ ability to use drop boxes to the full extent that county boards intend to offer them. *See Order, Donald J. Trump for President, Inc. v. Boockvar*, 2:20-cv-00966-NR (W.D. Pa. Aug. 3, 2020).

17. Accessible drop-boxes facilitate the use of mail ballots during the COVID-19 pandemic and provide safeguards that are necessary to protect against disenfranchisement. Drop boxes are critical for voters—including the Alliance’s members and constituents—who are unable to vote in person because of disability, scheduling conflicts, lack of transportation, or other hardship, and who cast their ballot too late to rely on postal delivery. It is critical that these drop boxes be available outside of regular business hours because many of the same obstacles that prevent voters from casting a ballot in person often prevent them from depositing a mail ballot between 9 a.m. and 5 p.m.

18. Limiting the accessibility of drop boxes would undermine the Alliance’s mission of ensuring that seniors are civically engaged and have a voice in shaping public policy. Plaintiffs’ requested relief would also require the Alliance to redirect its limited resources from other programs to address the law’s impact on its members who rely on drop boxes to vote. This will include diverting staff and funds away from existing programs to educate its members about the limited hours and accessibility of drop box locations, assisting members in determining whether

they remain able to vote via a drop box, and providing transportation to a drop box location when possible.

19. “[A] grant of intervention is mandatory where the intervenor satisfies one of the four bases set forth in Rule No. 2327 unless there exists a basis for refusal under Rule No. 2329.” *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep’t of Hum. Servs.*, 225 A.3d 902, 908 (Pa. Cmwlth. 2020).

20. Pennsylvania Rule of Civil Procedure 2329 allows a petition for intervention to be rejected only if: (1) the petitioner’s claim or defense “is not in subordination to and in recognition of the propriety of the action”; (2) the petitioner’s interest is already adequately represented; or (3) “the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” None of these exceptions apply in this case.

21. The Alliance’s defenses are in subordination to and in recognition of the propriety of the action.

22. The Alliance’s interests are not adequately represented by Defendants, whose stake in this lawsuit is defined solely by their statutory duties to conduct elections.

23. Defendants are responsible for administering elections but do not represent the Alliance’s interests in maintaining its current resource allocations or ensuring that retirees are able vote by their method of choice.

24. Here, the Alliance seek to ensure access to safe and reliable means to submit mail ballots, given the Alliance’s members’ advanced age and heightened vulnerability to COVID-19, and oppose any attempt to limit ballot drop-off hours or locations. Defendants, on the other hand,

may find that providing drop-off locations is not an essential component of their duty to administer elections.

25. Where an original party to the suit is a government entity, whose position is “necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it,” the burden of establishing inadequacy of representation by existing parties is “comparatively light.” *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation L. Found. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992), and *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)); *see also D.G.A. v. Dep’t of Human Servs.*, No. 1059 C.D. 2018, 2020 WL 283885, at \*7 (Pa. Cmwlt. Jan. 21, 2020) (reversing denial of intervention where intervenors were aligned with the government’s litigation position but possessed unique and personal interests not adequately represented by government respondents); *Larock* at 314 (Pa. Cmwlt. 1999) (similar).

26. Finally, the Alliance has promptly applied to intervene and its intervention will neither delay the resolution of this matter nor prejudice any party. Plaintiffs filed their action only a week ago, and Defendants have yet to file a response or otherwise meaningfully litigate this case. The Alliance’s participation will not unduly prejudice any party, but rather will aid the Court in understanding the factual and legal issues involved. The Alliance will abide by the deadlines set by this Court and is fully prepared to participate in the hearing scheduled for September 12.

27. Because the Alliance satisfies Pennsylvania Rule of Civil Procedure 2327 and none of the exceptions of Pennsylvania Rule of Civil Procedure 2329 apply, intervention *must* be granted.

28. Even if this Court were to find present any of the grounds for refusal of intervention enumerated in in Rule 2329, it can—and should—exercise its discretion to permit the Alliance to

intervene for the reasons stated above. *MarkWest Liberty Midstream & Res., LLC v. Cecil Twp. Zoning Hearing Bd.*, No. 904 C.D. 2016, 2018 WL 357337, at \*4 (Pa. Cmwlth. Jan. 11, 2018) (“A trial court's determination of whether an application for intervention may be denied pursuant to [Rule] 2329 is discretionary.”).

### CONCLUSION

29. For these reasons, the Alliance has a right to intervene in this case.

30. Pursuant to Pennsylvania Rule of Civil Procedure 2328, the Alliance is attaching a copy of the pleading that it will file in the action if permitted to intervene.

31. The Alliance requests a Hearing on this Petition if deemed necessary.

WHEREFORE, the Alliance respectfully requests that this Honorable Court grant its Petition to Intervene in this matter, and accept its Answer to Plaintiffs' Complaint in Equity and Mandamus attached hereto as its first filing.

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Dated: September 9, 2022

Respectfully submitted,

By: /s/ Timothy J. Ford

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