

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY,
PENNSYLVANIA

PENNSYLVANIA ALLIANCE
FOR RETIRED AMERICANS
605 Gander Circle
Bridgeville, PA 15017

CIVIL DIVISION

CI-24-03992

(Hon. Thomas Sponaugle)

Plaintiff,

v.

LANCASTER COUNTY BOARD
OF ELECTIONS
150 N. Queen Street, Suite 117
Lancaster, PA 17603,

Defendant.

ORDER OF COURT

AND NOW this ____ day of _____, 2024, upon consideration of Plaintiff's *Verified Motion for Preliminary Injunction*, the parties' briefing, and any oral arguments, and the Court being otherwise fully apprised, it is hereby **ORDERED** that the Motion is **GRANTED** and that Defendant Lancaster County Board of Elections shall be immediately preliminarily enjoined from rejecting otherwise valid mail-in and absentee ballots solely due to a voter's failure to fill in the last two digits of the year on the outer return envelope.

BY THE COURT:

Hon. Thomas Sponaugle

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**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY,
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Plaintiff,

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(Hon. Thomas Sponaugle)

VERIFIED MOTION FOR PRELIMINARY INJUNCTION

NOW COMES Plaintiff Pennsylvania Alliance for Retired Americans (“PARA” or “Plaintiff”) with the following Verified Motion for Preliminary Injunction and state in support thereof:

INTRODUCTION

1. Plaintiff seeks preliminary injunctive relief to protect against further direct, imminent harm arising from the Lancaster County Board of Elections’ (“Defendant” or “the Board”) unfounded policy to reject absentee and mail-in ballots because of an immaterial omission in the handwritten year. This novel issue first emerged in the April 2024 primary election, when some voters recorded the month and day on their return envelope but not the last two digits of the year.

2. Defendant has decided to reject such ballots for this omission alone.

3. For the reasons explained in Plaintiff’s supporting brief,¹ Defendant’s conduct contravenes the Department of State’s guidance and violates Pennsylvania’s Election Code and the non-discrimination provision enshrined in Pennsylvania’s Constitution.

4. Ballots that contain the month and day but lack the last two digits of the year after the preprinted “20” and ballots with “2024” filled in are equally identifiable as ballots signed and cast this year.

5. Defendant’s disparate treatment of these two groups of absentee and mail-in voters—who are similarly situated except that one did not write the last two digits of a year—compels judicial intervention to ensure that qualified Pennsylvania voters are not unlawfully denied the right to vote.

¹ Plaintiff’s Brief in Support of Motion for Preliminary Injunction is filed contemporaneously herewith.

6. For the reasons stated in Plaintiff's supporting brief, prompt judicial intervention is necessary to prevent further irreparable harm to Plaintiff and its members. Plaintiff respectfully requests that this Court preliminarily enjoin Defendant from perpetuating its current policy to reject otherwise valid mail-in and absentee ballots solely due to a voter's failure to fill in the last two digits of the year on the outer return envelope.

THE PARTIES

The Pennsylvania Alliance for Retired Americans

7. PARA is a Pennsylvania 501(c)(4) nonprofit, grassroots social welfare organization. Declaration of Michael Crossey ("Crossey Decl.") ¶¶ 5-6.² At present, PARA has 7,569 members in Lancaster County.

8. PARA's mission is to ensure social and economic justice and full civil rights for all citizens. *Id.* ¶ 9. One of PARA's primary objectives is to enroll and mobilize retired union members and other senior and community activists into a nationwide grassroots movement advocating for a political and social agenda that respects work and strengthens families. *Id.* PARA seeks to fulfill its mission and advance its primary objectives by working on four key issues: fair trade, Medicare, Medicaid, and Social Security. *Id.* PARA also engages in voter mobilization and education as elections approach. *Id.*

9. In pursuit of its mission, PARA devotes substantial time and resources educating its members on issues impacting seniors and working families and engages

² The Crossey Declaration is being filed contemporaneously herewith.

in the political process to protect and preserve programs vital to the health and economic security of older Americans. *Id.* ¶ 10.

10. In furthering these values, PARA works to: (i) build a strong organization in Pennsylvania of seniors with a viable structure, resources, and clear objectives compatible with that of the labor movement and community-based groups at local, state, and national levels; (ii) create programs and membership organizations designed to promote a commitment by retired workers and older persons to the concept of lifelong partnership in their unions, and in their community, political, and civic organizations; and (iii) encourage all segments of the senior population to act with unity on legislative, political, and policy issues of importance to retirees and their families to maximize their influence on federal, state, and local governments and on private organizations that affect their interests. *Id.* ¶ 11.

11. PARA also educates its members on issues and candidates in advance of elections including, but not limited to, preparing and sending members (i) weekly updates; (ii) voter guides; (iii) report cards on elected officials; and (iv) voting rules and procedures. *Id.* ¶ 12. In a recent election, PARA prepared and distributed vote-by-mail guides to its members. *Id.* In advance of the November 2024 general election, PARA will add an organizer to work on voter engagement, education, and mobilization. *Id.* PARA also holds monthly meetings with its members, and PARA's leaders travel the state presenting on topics and developments central to its mission and of import to its members. *Id.*

12. PARA represents the interests of its Lancaster County members in ensuring that every qualified voter, regardless of partisan alignment, can cast a ballot that counts. *Id.* ¶ 13. According to information available to PARA, the overwhelming majority of PARA’s members in Lancaster County are registered Pennsylvania voters. *Id.* Some number of PARA’s Lancaster County members timely vote by mail-in or absentee ballot, including in the April 2024 primary election, and at least some of them will do so again in the November 2024 general election. *Id.*

13. Defendant’s decision to reject mail-in and absentee ballots simply because the outer return envelope omits the last two digits of the year in the handwritten date frustrates and threatens PARA’s mission and its members’ fundamental right to vote.

14. PARA has a small staff and limited resources to engage in outreach to its potentially affected members to educate them on Defendant’s unlawful rejection of absentee and mail-in ballots that omit the last two digits of the year. *Id.* ¶ 14. As a direct result of the Board’s conduct, PARA has diverted—and absent injunctive relief, will continue to divert—money, time, and resources away from core mission activities to educate and warn its members, including those in Lancaster County, that their ballots will be rejected if they omit the last two digits of the year from the outer return envelope, even if they record the month and day. *Id.* ¶¶ 15-17.

15. Absent judicial intervention ordering Defendant to count ballots missing only the last two digits of “2024,” PARA intends to divert additional paid staff time, money, and other resources to educate and warn its members of this pitfall in the absentee and mail-in voting process by, for instance, traveling to Lancaster County

to educate its members, creating and sending direct educational literature, conducting mail surveys, conducting phone banking, and giving presentations. *Id.* ¶ 18. But for the unlawful rejection of this particular subset of absentee and mail-in ballots, PARA would not need to divert staff time, funds, and resources to these activities. *Id.* ¶ 19.

The Lancaster County Board of Elections

16. The Lancaster County Board of Elections is a local government agency that oversees and has “jurisdiction over the conduct of primaries and elections” in its county. 25 Pa. Stat. § 2641(a).

17. The Board’s powers and duties are set forth under the Election Code. *See id.* § 2642. These powers and duties include, but are not limited to: “receiv[ing] from district election officers the returns of all primaries and elections, to canvass and compute the same;” “certify[ing]” election results to the Secretary of the Commonwealth; “publicly announc[ing] by posting at its office the results of primaries and elections;” “provid[ing] the results to the Secretary of the Commonwealth;” and “issu[ing] certificates of election to the successful candidates for said office.” *Id.* § 2642(k), (l).

18. In connection with the April 23, 2024 primary election, the Board rejected mail-in and absentee ballots that omitted just the last two digits of the year on the return envelope, disenfranchising qualified voters.

19. Because the Board has adopted a policy to reject and not count such ballots, absentee and mail-in voters in Lancaster County, including members of PARA, who make this error in future elections are threatened with disenfranchisement.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Overview of Pennsylvania's Absentee and Mail-in Voting Procedures

20. Pennsylvania has long provided absentee ballot options for voters who cannot appear in person at a polling place on Election Day. *See* 25 P.S. §§ 3146.1–3146.9. In 2019, Pennsylvania enacted new mail-in voting provisions, which allow all registered, qualified voters to vote by mail-in ballot without any excuse or reason. Act of Oct. 31, 2019, P.L. 552, No. 77 (“Act 77”), § 8. Since then, millions of Pennsylvanians have voted by mail and, upon information and belief, millions will cast their ballot by mail-in or absentee ballot in this fall’s general election.³

21. Identical procedures govern how voters apply for, complete, and return both absentee and mail-in ballots. Once the county board of elections verifies the voter’s identity and eligibility, they send a mail-in or absentee ballot package that contains: (1) the ballot; (2) a “secrecy envelope” marked with the words “Official Election Ballot;” and (3) a pre-addressed outer return envelope that contains the voter declaration prescribed by law, which the voter must sign and date. 25 P.S. §§ 3146.4, 3150.14. At “any time” after receiving their mail-in or absentee ballot package, mail-

³ For example, in the last presidential election, approximately 2.7 million Pennsylvanians voted by absentee or mail-in ballot. Pa. Dep’t of State, *Report on the 2020 General Election* at 9 (May 14, 2021), available at: <https://www.dos.pa.gov/VotingElections/Documents/2020-General-Election-Report.pdf>.

in and absentee voters may mark their ballot, place it in the secrecy envelope, and then place the secrecy envelope in the outer return envelope. 25 P.S. §§ 3146.6(a), 3150.16(a). To complete the ballot, voters must “fill out, date and sign the declaration printed on [the outer return] envelope.” 25 P.S. §§ 3146.6(a) (absentee ballots), 3150.16(a) (mail-in ballots).

22. Timely mail-in and absentee ballots that the county boards of elections have verified consistent with the procedures set forth in 25 P.S. § 3146.8(g)(3), that have not been challenged, and for which there is no proof that the voter died prior to Election Day, are eligible to be counted and tallied in the election results. *Id.* §§ 3146.8(d), 3146.8(g)(4).

23. For the April 2024 primary election, the Lancaster County Board of Elections established that it would accept mail-in and absentee ballots dated March 7 through April 23.⁴

24. Nonetheless, qualified voters may have their timely mail-in and absentee ballots rejected if they fail to correctly complete their ballot, such as by failing to sign and date the outer return envelope. The Supreme Court of Pennsylvania has held that a ballot must be rejected if the date written on the outer return envelope falls outside a period of 50 days before the election for mail-in ballots

⁴ Lancaster County Election Board Meeting minutes, dated April 3, 2024, *available at*: https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/_04032024-3082.

or 70 days before the election for absentee ballots.⁵ *Ball v. Chapman*, 289 A.3d 1, 22–23 (Pa. 2023); *see* 25 P.S. §§ 3150.12a, 3146.2a, 3146.5.

25. In November 2023, the Department of State redesigned the outer return envelope and the instructions for mail-in and absentee voters to be used for the 2024 election cycle. The purpose of the redesign was to reduce voter confusion over the signature and date requirements.⁶

26. As part of the redesign, the return envelope was reformatted so that “20” would be preprinted as the first two digits of the year in the handwritten date field. *See* Ex. A.

27. The Department of State implemented this change to prompt voters to write the date they signed their declaration on the outer return envelope, not their birthdate. The mail-in ballot instructions now specifically state in bold: “Put today’s date—not your birthdate.” *See* Ex. B.

Some Absentee and Mail-In Ballot Voters Are Not Filling In the Last Two Digits of the Year, Resulting in Their Ballots’ Rejection

28. In response to inquiries from county boards of elections, on April 19, 2024, Deputy Secretary for Elections Jonathan Marks sent an email advising the county boards to count ballots that bear a month and day in the handwritten date

⁵ By contrast, for 2020, the Supreme Court of Pennsylvania, in the context of a fast-moving post-election lawsuit, concluded 3-1-3 that otherwise valid mail-in and absentee ballots contained in signed but undated return envelopes would be counted in that election. *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1062 (Pa. 2020).

⁶ Kim Lyons, *Pennsylvania redesigns its mail-in ballots for the 2024 election*, PENNSYLVANIA CAPITAL-STAR, (Nov. 29, 2023), <https://penncapital-star.com/voting/pennsylvania-redesigns-its-mail-in-ballots-for-the-2024-election/>.

field—even if the voter omitted the last two digits of the year—because an envelope containing the month and day can be “reasonably interpreted to be the day upon which [the voter] completed the declaration.” Ex. C (citing *Ball*, 289 A.3d at 23).

29. County boards of elections across Pennsylvania discovered a number of voters statewide provided the month and day with their signed declaration but omitted the last two digits of the year.⁷ See Ex. E.

30. The county boards of elections for at least Allegheny, Berks, Centre, Delaware, Luzerne, Montgomery, and Philadelphia followed the Department of State’s guidance and counted such ballots.⁸ *Id.* Others, including Defendant, did not.⁹ See Exs. E and F.

31. On February 28, 2024, the Board declined to consider allowing Lancaster County voters to correct mail-in and absentee ballots with defective dates

⁷ Carter Walker, *Pennsylvania’s redesigned mail ballot envelopes trip up many voters who left date incomplete*, VOTEBEAT, Apr. 23, 2024, <https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>.

⁸ Carter Walker, *Pennsylvania’s redesigned mail ballot envelopes trip up many voters who left date incomplete*, VOTEBEAT, Apr. 23, 2024, <https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>; Mark Scolforo, *Pennsylvania redesigned its mail-in ballot envelopes amid litigation. Some voters still tripped up*, ASSOCIATED PRESS, Apr. 24, 2024, <https://why.org/articles/pennsylvania-redesigned-mail-in-ballot-envelope-some-voters-tripped-up/>.

⁹ Carter Walker, *Pennsylvania’s redesigned mail ballot envelopes trip up many voters who left date incomplete*, VOTEBEAT, Apr. 23, 2024, <https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>; see also Barbara Barr, *Lancaster County elections officials set aside hundreds of mail-in ballots with mistakes*, WGAL, Apr. 24, 2024, <https://www.wgal.com/article/lancaster-county-hundreds-of-mail-in-ballots-set-aside-due-to-mistakes/60595723>.

and signatures.¹⁰

32. Following the April 2024 primary election, the Lancaster County Election Chair, Ray D'Agostino, said 300 mail-in and absentee ballots were set aside due to "errors," including so-called "improper dates."¹¹ See Ex. F. Mr. D'Agostino confirmed that it would not follow the Department of State's guidance and would instead reject mail-in and absentee ballots bearing a month and day but lacking the last two digits of the year.¹² *Id.* The Board similarly informed Votebeat and Spotlight PA that it was rejecting and not counting mail-in and absentee ballots with this specific, partial omission.¹³ See Ex. E.

Procedural History

33. On June 7, 2024, PARA filed its Complaint against the Lancaster County Board of Elections, asserting claims for declaratory judgment and injunctive relief. Specifically, PARA alleges that the Board's rejection of mail-in and absentee ballots bearing a month and day but lacking the last two digits of the year violates

¹⁰ Lancaster County Election Board Meeting minutes, dated February 28, 2024, *available at*: https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/_02282024-3060.

¹¹ Barbara Barr, *Lancaster County elections officials set aside hundreds of mail-in ballots with mistakes*, WGAL, Apr. 24, 2024, <https://www.wgal.com/article/lancaster-county-hundreds-of-mail-in-ballots-set-aside-due-to-mistakes/60595723>; *see also* Lancaster County Election Board Meeting minutes, dated April 22, 2024, *available at*: https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/_04222024-3095.

¹² Barbara Barr, *Lancaster County elections officials set aside hundreds of mail-in ballots with mistakes*, WGAL, Apr. 24, 2024, <https://www.wgal.com/article/lancaster-county-hundreds-of-mail-in-ballots-set-aside-due-to-mistakes/60595723>.

¹³ Carter Walker, *Pennsylvania's redesigned mail ballot envelopes trip up many voters who left date incomplete*, VOTEBEAT, Apr. 23, 2024, <https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>.

25 P.S. §§ 3146.6(a) and 3150.16(a) and the non-discrimination provision of the Pennsylvania Constitution enshrined in Article 1, Section 26.

REQUEST FOR INJUNCTIVE RELIEF

34. Under Pennsylvania law, a party may obtain preliminary injunctive relief if it can demonstrate the following:

- (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;
- (2) 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) a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- (4) 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) the injunction it seeks is reasonably suited to abate the offending activity; and,
- (6) a preliminary injunction will not adversely affect the public interest.

Warehime v. Warehime, §60 A.2d 41, 46-47 (Pa. 2004); *see also Brayman Constr. Corp. v. Com. Dep't of Transp.*, 13 A.3d 925, 935 (Pa. 2011).

35. For the reasons stated below, and in greater detail in in PARA's supporting brief, PARA satisfies all six factors for the issuance of a preliminary injunction.

36. First, PARA has shown that it is likely to prevail on the merits. "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) (citing *Fischer v. Dep’t of Public Welfare*, 439 A.2d 1172, 1174-75 (Pa. 1982)). The Board’s disparate treatment of similarly situated voters (*i.e.*, those who include and those who omit the last two digits of the year) does not withstand scrutiny at any level.

a. Both sets of voters equally satisfy the date requirement for mail-in and absentee ballots reflected in 25 Pa. Stat. §§ 3146.6(a) and 3150.16(a).

b. The plain text of 25 P.S. §§ 3146.6(a) and 3150.6(a) is clear and unambiguous. *See* 1 Pa.C.S.A. § 1921(b). Both statutory sections command the voter to “fill out, date and sign the declaration printed on [the outer return] envelope.” 25 P.S. §§ 3146.6(a), 3150.16(a). Applied here, voters must “record” or “mark” when they signed their declaration. Recording the month and day does just that because the year is already constructively present.

c. Only if this Court finds that the text of 25 P.S. §§ 3146.6(a) and 3150.6(a) are ambiguous and “not explicit” may a court use the factors provided in 1 Pa.C.S. § 1921(c) to ascertain the legislature’s intent. Even then, the Board’s interpretation fails this multi-factor, functional analysis because it contravenes and does not “effectuate” the General Assembly’s purpose and, instead, creates absurd results. *See* 1 Pa.C.S.A. § 1921(a); *see also Clean Air Council v. Dep’t of Env’t Prot.*, 289 A.3d at 946 (rejecting a “formalistic” and “rigid application” of a statute that was “neither prescribed by nor compatible with [the statute’s] text or design”); *Cap. Acad. Charter Sch. v. Harrisburg Sch.*

Dist., 934 A.2d 189, 194 (Pa. Commw. Ct. 2007) (holding a court impermissibly creates an absurd result when its interpretation imposes “a hurdle that was not established by the General Assembly” and “creates more problems than it alleviates.”).

d. When evaluating election laws specifically, “[t]echnicalities should not be used to make the right of the voter insecure. No construction of a statute should be indulged that would disfranchise any voter if the law is reasonably susceptible of any other meaning.” *Appeal of James*, 105 A.2d 64, 66 (Pa. 1954) (citing 29 C.J.S., Elections, § 7, at 27). “The power to throw out a ballot for minor irregularities . . . must be exercised very sparingly . . . except for compelling reasons.” *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 202 A.2d 538, 540 (Pa. 1964).

e. For the reasons stated in PARA’s supporting brief, as applied here, Sections 3146.6(a) and 3150.16(a) should not be read to mandate a hyper-formalistic definition of “date” that would require voters to redundantly handwrite the last two digits of the year or else face disenfranchisement because:

- i. Voters who handwrite the month and day on their ballot’s return envelope cast valid votes, *see, e.g.*, Ex. D, Conclusions of Law, ¶ 3;
- ii. The Board’s hyper-technical interpretation and application of Pennsylvania’s mandatory “date” requirement is contrary to the self-

evident fact that the year is constructively present on *each and every* returned mail-in and absentee ballot; and

iii. It is indisputable that mail-in and absentee ballots returned in the April 2024 primary election with an outer return envelope bearing “20[]” were issued to voters and cast in 2024 because only ballot packages from 2024 have the first two digits of the year preprinted on the outer envelope.

f. As a constitutional matter, for the reasons stated in PARA’s supporting brief, the Board’s differential treatment of these two classes of voters fails under both rational basis and strict scrutiny analyses because both groups of voters’ ballots successfully convey the date on which they signed their declaration because the year is always present on the ballot, readily ascertainable and, in any event, beyond dispute, regardless of whether the last two digits of the year are omitted.

g. The Board’s policy of disenfranchising voters who fail to fill out the last two digits of the year, but nevertheless record the month and day, violates the non-discrimination clause of the Pennsylvania Constitution, Pa. Const. art. I, § 26.

h. The non-discrimination clause guarantees that “[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” Pa. Const. art. I, § 26. The constitutional rights

established by the non-discrimination clause afford Pennsylvanians broader protections than the Fourteenth Amendment. *Allegheny Reprod. Health Ctr. v. Penn. Dep't of Hum. Servs.*, 309 A.3d 808, 945 (Pa. 2024) (“Section 26 of [Pennsylvania’s] Charter affords broader protections than the federal Equal Protection Clause.”).

i. The Pennsylvania Supreme Court recognizes the right to vote as a fundamental right protected by the Pennsylvania Constitution. *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999). It is the “longstanding and overriding policy in this Commonwealth to protect the elective franchise.” *Petition of Cioppa*, 626 A.2d 146, 148 (Pa. 1993).

j. Where, as here, a government action “infringes upon a fundamental right, ‘to survive a due process or equal protection challenge, [it] must satisfy the constitutional standard known as strict scrutiny.’” *J. & S.O. v. C.H.*, 206 A.3d 1171, 1175 (Pa. Super. Ct. 2019); see *Allegheny Reprod. Health Ctr.*, 309 A.3d at 855, 918.

k. The Board’s practice of rejecting mail-in and absentee ballots because of a voter’s omission of the year’s last two digits—while counting mail-in and absentee ballots bearing the month, day, and all digits of the year—will not survive strict scrutiny review because the Board’s adoption of this practice is both unreasonable and unnecessary for “ensur[ing] honest and fair elections that proceed in an orderly and efficient manner.” *Banfield*, 110 A.3d at 176-77.

1. Even under the lower standard of rational basis review, PARA is still likely to succeed on the merits of its constitutional claim. *See Allegheny Reprod. Health Ctr.*, 309 A.3d at 855 (“[C]lassifications implicating neither suspect classes nor fundamental rights are reviewed under a rational basis test.”) (citing cases) (internal quotation omitted). Under the rational basis standard, the government action “need only be directed at the accomplishment of a legitimate government interest, and to do so in a manner which is not arbitrary or unreasonable.” *Id.* at 857 (internal quotation omitted). The Board’s treatment of those that omit the last two digits of the year differently from those that include the last two digits of the year is utterly arbitrary and irrational.

37. Second, an injunction is necessary to prevent immediate and irreparable harm that cannot be compensated by monetary damages.

a. “[W]here the offending conduct sought to be restrained through a preliminary injunction violates a statutory mandate, irreparable injury will have been established.” *SEIU Healthcare Pennsylvania*, 104 A.3d at 508–09. The deprivation of constitutional (as well as statutory) rights may constitute irreparable harm *per se*. *Cutler v. Chapman*, 289 A.3d 139, 155 (Pa. Commw. Ct. 2023), *see e.g. Middleton v. Lycoming Hous.*, No. 13-02729, 2014 WL 8853576, at *2 (Pa. Com. Pl. Feb. 12, 2014).

b. No amount of money can compensate a voter for a vote improperly rejected, and there is no way to estimate any such amount. Once an election is

over, there is no way to compensate an unlawfully disenfranchised voter. Here, PARA's Lancaster County members are immediately threatened with the injury of disenfranchisement due to the Board's violations of Pennsylvania's Election Code and Constitution.

c. It is not the initial violation that is evaluated for irreparable harm but rather "the threat of the unbridled continuation of the violation and the resultant incalculable damage . . . that constitutes the justification for equitable intervention." *John G. Bryant Co. v. Sling Testing & Repair, Inc.*, 369 A.2d 1164, 1167 (Pa. 1977).

d. If there is no injunction in place before the November 2024 general election, PARA's Lancaster County members will once again risk having their votes unlawfully rejected.

e. Moreover, the Board's policy and practice of disenfranchising mail-in and absentee voters over the omission of the last two digits of the year both frustrates PARA's core mission and forces PARA to divert its limited resources. PARA's core mission includes ensuring full civil rights for all citizens and engaging its members on its four key issues—a mission that is now threatened based on the Board's conduct. Separately, but for the Board's conduct, PARA would not need to divert its limited, finite resources to engage in direct outreach activities to educate its members on this specific threat facing mail-in and absentee voters.

38. Third, greater injury results by refusing the injunction than from granting it.

a. The Board will suffer no injury if this Court issues an injunction requiring the Board to count these ballots.

b. By contrast, and for the reasons discussed in PARA's supporting brief, the harm to PARA and its members is clear, concrete, and irreparable—*i.e.*, disenfranchisement, diversion of resources, and frustration of core mission.

39. Fourth, a preliminary injunction is necessary to immediately pause the Board's wrongful conduct.

a. For the first time, in the April 2024 primary election, the Board adopted a policy that required mail-in and absentee voters to specifically handwrite the last two digits of the year on the return envelope, even though the year is already constructively present and indisputable.

b. In so doing, the Board subjects two similarly situated groups of voters—those who record the month and day but omit the last two digits of the year and those who include the last two digits of the year—to differential treatment.

c. A preliminary injunction is necessary to return the parties to their respective positions before the Board adopted its policy. Such relief will eliminate the *de facto* classifications created by Defendant's irrational enforcement of the date requirement, thereby resetting the status quo prior to the Board's decision to reject this specific group of ballots.

40. Fifth, the injunction that PARA seeks is reasonably suited to abate the Board's offending activity. Namely, PARA seeks only to enjoin the Board from rejecting mail-in and absentee ballots signed and returned by qualified voters that include the month and day, but not the last two digits of the year, on the return envelope's declaration.

41. Sixth, a preliminary injunction will serve the public interest—namely, by safeguarding the fundamental right to vote and ensuring that every qualified vote is counted.

a. “[R]emedying an unconstitutional practice is always in the public interest.” *Kim v. Hanlon*, 99 F.4th 140, 160 (3d Cir. 2024); *see also* *ACLU v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003), *aff'd*, 542 U.S. 656 (2004) (noting that the public interest is “not served by the enforcement of an unconstitutional law”). Especially in cases “where the continued presence of barriers to equal protection in the political process is strongly evident, the public interest commands all appropriate relief necessary to effect the immediate and complete removal of these barriers.” *Berks Cnty., Pa.*, 250 F. Supp. at 541 (internal citation omitted).

b. By enjoining the Board's unlawful conduct before another election is held, the public interest will be preserved and protected by “reinforcing the core principles of our democracy.”

WHEREFORE, Plaintiff respectfully requests that this Court grant its Verified Motion for Preliminary Injunction and enter an Order in the form submitted with this Motion.

Respectfully submitted,

Dated: June 25, 2024

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VERIFICATION

I, Michael Crossey, individually and on behalf of the Pennsylvania Alliance for Retired Americans, hereby state, subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, that the facts set forth in the foregoing *Verified Motion for Preliminary Injunction* are true and correct to the best of my knowledge, information, and belief.

Dated: June 25, 2024



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

PENNSYLVANIA ALLIANCE
FOR RETIRED AMERICANS

Plaintiff,

v.

LANCASTER COUNTY BOARD
OF ELECTIONS,

Defendant.

CIVIL DIVISION

CI-24-03992

(Hon. Thomas Sponaugle)

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

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Plaintiff Pennsylvania Alliance for Retired Americans (“PARA” or “Plaintiff”) submits this Brief in Support of its Verified Motion for Preliminary Injunction, stating in support thereof as follows:

I. QUESTION PRESENTED

Whether Defendant should be preliminarily enjoined from rejecting timely mail-in and absentee ballots cast by eligible voters that bear the month and day in the handwritten date field on the outer return envelope but omit the last two digits of the year.

II. INTRODUCTION

PARA seeks preliminary injunctive relief to protect against further direct, imminent harm arising from the Lancaster County Board of Elections’ (“Defendant” or “the Board”) unfounded policy to reject absentee and mail-in ballots because of an immaterial omission in the handwritten year. This novel issue first emerged in the April 2024 primary election, when some voters recorded the month and day on their return envelope but not the last two digits of the year. The Board has decided to reject such ballots for this omission alone.

The Board’s conduct contravenes the Department of State’s guidance and violates Pennsylvania’s Election Code and the non-discrimination provision enshrined in Pennsylvania’s Constitution. Any perceived deficiency in the handwritten date requirement is illusory because the year is *always* conclusively and irrefutably established on the face of the enclosed ballot. Ballots that contain the month and day but lack the last two digits of the year after the preprinted “20” and ballots with “2024” filled in are equally identifiable as ballots signed and cast this

year. The Board's disparate treatment of these two groups of absentee and mail-in voters—who are similarly situated except that one did not write the last two digits of a year—compels judicial intervention to ensure that qualified Pennsylvania voters are not unlawfully denied the right to vote.

To prevent further irreparable harm in the November general election, PARA requests that this Court preliminarily enjoin the Board from perpetuating its current policy to reject otherwise valid mail-in and absentee ballots solely due to a voter's failure to fill in the last two digits of the year on the outer return envelope. This Court is likely to find that a voter's recording of a month and day effectively "date[s]" the declaration on a mail-in or absentee ballot's outer return envelope within the meaning of 25 P.S. §§ 3146.6(a) and 3150.16(a), notwithstanding the voter's omission of the last two digits of the year. Furthermore, PARA is also likely to succeed on the merits of its constitutional claim that the Board's rejection of otherwise valid mail-in and absentee ballots merely due to a voter's failure to fill in the last two digits of the year violates the Pennsylvania Constitution's non-discrimination clause in Pa. Const. art. I, § 26. Injunctive relief is necessary and appropriate here because PARA and its members will continue to suffer immediate and irreparable injury as a direct result of the Board's conduct—namely, the threatened disenfranchisement of PARA's members, frustration of PARA's mission, and diversion of PARA's limited resources.

III. THE PARTIES

A. **Pennsylvania Alliance for Retired Americans**

Established in May 2004, PARA is a Pennsylvania 501(c)(4) nonprofit, grassroots social welfare organization. Declaration of Michael Crossey (“Crossey Decl.”) ¶¶ 5-6. At present, PARA has 7,569 members in Lancaster County. *Id.* ¶ 7. PARA’s members are retirees from all walks of life, including former teachers, auto workers, state and federal government workers, construction workers, and community leaders. *Id.* ¶ 8.

PARA’s mission is to ensure social and economic justice and full civil rights for all citizens. *Id.* ¶ 9. One of PARA’s primary objectives is to enroll and mobilize retired union members and other senior and community activists into a nationwide grassroots movement advocating for a political and social agenda that respects work and strengthens families. *Id.* PARA seeks to fulfill its mission and advance its primary objectives by working on four key issues: fair trade, Medicare, Medicaid, and Social Security. *Id.* PARA also engages in voter mobilization and education as elections approach. *Id.*

In pursuit of its mission, PARA devotes substantial time and resources educating its members on issues impacting seniors and working families and engages in the political process to protect and preserve programs vital to the health and economic security of older Americans. *Id.* ¶ 10. In furthering these values, PARA works to: (i) build a strong organization in Pennsylvania of seniors with a viable structure, resources, and clear objectives compatible with that of the labor movement

and community-based groups at local, state, and national levels; (ii) create programs and membership organizations designed to promote a commitment by retired workers and older persons to the concept of lifelong partnership in their unions, and in their community, political, and civic organizations; and (iii) encourage all segments of the senior population to act with unity on legislative, political, and policy issues of importance to retirees and their families to maximize their influence on federal, state, and local governments and on private organizations that affect their interests. *Id.* ¶ 11.

PARA also educates its members on issues and candidates in advance of elections including, but not limited to, preparing and sending members (i) weekly updates; (ii) voter guides; (iii) report cards on elected officials; and (iv) voting rules and procedures. *Id.* ¶ 12. In a recent election, PARA prepared and distributed vote-by-mail guides to its members. *Id.* In advance of the November 2024 general election, PARA will add an organizer to work on voter engagement, education, and mobilization. *Id.* PARA also holds monthly meetings with its members, and PARA's leaders travel the state presenting on topics and developments central to its mission and of import to its members. *Id.*

PARA represents the interests of its Lancaster County members in ensuring that every qualified voter, regardless of partisan alignment, can cast a ballot that counts. *Id.* ¶ 13. According to information available to PARA, the overwhelming majority of PARA's members in Lancaster County are registered Pennsylvania voters. *Id.* Some number of PARA's Lancaster County members timely vote by mail-in or

absentee ballot, including in the April 2024 primary election, and at least some of them will do so again in the November 2024 general election. *Id.*

As discussed herein, the Board's decision to reject mail-in and absentee ballots simply because the outer return envelope omits the last two digits of the year in the handwritten date frustrates and threatens PARA's mission and its members' fundamental right to vote. PARA has a small staff and limited resources to engage in outreach to its potentially affected members to educate them on the Board's unlawful rejection of absentee and mail-in ballots that omit the last two digits of the year. *Id.*

¶ 14. As a direct result of the Board's conduct, PARA has diverted—and absent injunctive relief, will continue to divert—money, time, and resources away from core mission activities to educate and warn its members, including those in Lancaster County, that their ballots will be rejected if they omit the last two digits of the year from the outer return envelope, even if they record the month and day. *Id.* ¶¶ 15-17.

Absent judicial intervention ordering the Board to count ballots missing only the last two digits of "2024," PARA intends to divert additional paid staff time, money, and other resources to educate and warn its members of this pitfall in the absentee and mail-in voting process by, for instance, traveling to Lancaster County to educate its members, creating and sending direct educational literature, conducting mail surveys, conducting phone banking, and giving presentations. *Id.* ¶ 18. But for the unlawful rejection of this particular subset of absentee and mail-in ballots, PARA would not need to divert staff time, funds, and resources to these activities. *Id.* ¶ 19.

B. Lancaster County Board of Elections

The Lancaster County Board of Elections is a local government agency that oversees and has “jurisdiction over the conduct of primaries and elections” in its county. 25 Pa. Stat. § 2641(a). The Board’s powers and duties are set forth under the Election Code. *See id.* § 2642. These powers and duties include, but are not limited to: “receiv[ing] from district election officers the returns of all primaries and elections, to canvass and compute the same;” “certify[ing]” election results to the Secretary of the Commonwealth; “publicly announc[ing] by posting at its office the results of primaries and elections;” “provid[ing] the results to the Secretary of the Commonwealth;” and “issu[ing] certificates of election to the successful candidates for said office.” *Id.* § 2642(k), (l).

In connection with the April 23, 2024 primary election, the Board rejected mail-in and absentee ballots that omitted just the last two digits of the year on the return envelope, disenfranchising qualified voters. Because the Board has adopted a policy to reject and not count such ballots, absentee and mail-in voters in Lancaster County, including members of PARA, who make this error in future elections are threatened with disenfranchisement.

IV. FACTUAL BACKGROUND AND PROCEDURAL HISTORY¹

A. Overview of Pennsylvania’s Absentee and Mail-In Voting Procedures

Pennsylvania has long provided absentee ballot options for voters who cannot

¹ On June 7, 2024, PARA filed the above-captioned action against Lancaster County Board of Elections. PARA incorporates by reference the allegations set forth in its Complaint as if fully set forth herein.

appear in person at a polling place on Election Day. *See* 25 P.S. §§ 3146.1–3146.9. In 2019, Pennsylvania enacted new mail-in voting provisions, which allow all registered, qualified voters to vote by mail-in ballot without any excuse or reason. Act of Oct. 31, 2019, P.L. 552, No. 77 (“Act 77”), § 8. Since then, millions of Pennsylvanians have voted by mail and, upon information and belief, millions will cast their ballot by mail-in or absentee ballot in this fall’s general election.²

Identical procedures govern how voters apply for, complete, and return both absentee and mail-in ballots. Once the county board of elections verifies the voter’s identity and eligibility, they send a mail-in or absentee ballot package that contains: (1) the ballot; (2) a “secrecy envelope” marked with the words “Official Election Ballot;” and (3) a pre-addressed outer return envelope that contains the voter declaration prescribed by law, which the voter must sign and date. 25 P.S. §§ 3146.4, 3150.14. At “any time” after receiving their mail-in or absentee ballot package, mail-in and absentee voters may mark their ballot, place it in the secrecy envelope, and then place the secrecy envelope in the outer return envelope. 25 P.S. §§ 3146.6(a), 3150.16(a). To complete the ballot, voters must “fill out, date and sign the declaration printed on [the outer return] envelope.” 25 P.S. §§ 3146.6(a)(absentee ballots), 3150.16(a) (mail-in ballots).

² For example, in the last presidential election, approximately 2.7 million Pennsylvanians voted by absentee or mail-in ballot. Pa. Dep’t of State, *Report on the 2020 General Election* at 9 (May 14, 2021), available at: <https://www.dos.pa.gov/VotingElections/Documents/2020-General-Election-Report.pdf>.

Timely mail-in and absentee ballots that the county boards of elections have verified consistent with the procedures set forth in 25 P.S. § 3146.8(g)(3), that have not been challenged, and for which there is no proof that the voter died prior to Election Day, are eligible to be counted and tallied in the election results. *Id.* §§ 3146.8(d), 3146.8(g)(4). For the April 2024 primary election, the Lancaster County Board of Elections established that it would accept mail-in and absentee ballots dated March 7 through April 23.³

Nonetheless, qualified voters may have their timely mail-in and absentee ballots rejected if they fail to correctly complete their ballot, such as by failing to sign and date the outer return envelope. The Supreme Court of Pennsylvania has held that a ballot must be rejected if the date written on the outer return envelope falls outside a period of 50 days before the election for mail-in ballots or 70 days before the election for absentee ballots.⁴ *Ball v. Chapman*, 289 A.3d 1, 22–23 (Pa. 2023); *see* 25 P.S. §§ 3150.12a, 3146.2a, 3146.5.

In November 2023, the Department of State redesigned the outer return envelope and the instructions for mail-in and absentee voters to be used for the 2024 election cycle. The purpose of the redesign was to reduce voter confusion over the

³ Lancaster County Election Board Meeting minutes, dated April 3, 2024, *available at*: https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/_04032024-3082.

⁴ By contrast, for 2020, the Supreme Court of Pennsylvania, in the context of a fast-moving post-election lawsuit, concluded 3-1-3 that otherwise valid mail-in and absentee ballots contained in signed but undated return envelopes would be counted in that election. *In re Canvass of Absentee and Mail-In Ballots of Nov. 3, 2020 Gen. Election*, 241 A.3d 1058, 1062 (Pa. 2020).

signature and date requirements.⁵ As part of the redesign, the return envelope was reformatted so that “20” would be preprinted as the first two digits of the year in the handwritten date field. *See* Mot., Ex. A. The Department of State implemented this change to prompt voters to write the date they signed their declaration on the outer return envelope, not their birthdate. The mail-in ballot instructions now specifically state in bold: “Put today’s date—not your birthdate.” *See* Mot., Ex. B.

B. Some Absentee and Mail-In Ballot Voters Are Not Filling In the Last Two Digits of the Year, Resulting in Their Ballots’ Rejection

In response to inquiries from county boards of elections, on April 19, 2024, Deputy Secretary for Elections Jonathan Marks sent an email advising the county boards to count ballots that bear a month and day in the handwritten date field—even if the voter omitted the last two digits of the year—because an envelope containing the month and day can be “reasonably interpreted to be the day upon which [the voter] completed the declaration.” *See* Mot., Ex. C (citing *Ball*, 289 A.3d at 23). County boards of elections across Pennsylvania discovered a number of voters statewide provided the month and day with their signed declaration but omitted the last two digits of the year.⁶ *See* Mot., Ex. E.

⁵ Kim Lyons, *Pennsylvania redesigns its mail-in ballots for the 2024 election*, PENNSYLVANIA CAPITAL-STAR, (Nov. 29, 2023), <https://penncapital-star.com/voting/pennsylvania-redesigns-its-mail-in-ballots-for-the-2024-election/>.

⁶ Carter Walker, *Pennsylvania’s redesigned mail ballot envelopes trip up many voters who left date incomplete*, VOTEBEAT, Apr. 23, 2024, <https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>.

Ultimately, the county boards of elections for at least Allegheny, Berks, Centre, Delaware, Luzerne, Montgomery, and Philadelphia followed the Department of State's guidance and counted such ballots.⁷ *Id.* Others, including Defendant, did not.⁸ See Mot., Exs. E and F.

Defendant laid the groundwork for its decision in the months and weeks leading up to the April 2024 primary election. On February 28, 2024, the Board declined to consider allowing Lancaster County voters to correct mail-in and absentee ballots with defective dates and signatures.⁹ Following the April 2024 primary election, the Lancaster County Election Chair, Ray D'Agostino, said 300 mail-in and absentee ballots were set aside due to "errors," including so-called "improper dates."¹⁰

⁷ Carter Walker, *Pennsylvania's redesigned mail ballot envelopes trip up many voters who left date incomplete*, VOTEBEAT, Apr. 23, 2024, <https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>; Mark Scolforo, *Pennsylvania redesigned its mail-in ballot envelopes amid litigation. Some voters still tripped up*, ASSOCIATED PRESS, Apr. 24, 2024, <https://whyy.org/articles/pennsylvania-redesigned-mail-in-ballot-envelope-some-voters-tripped-up/>.

⁸ Carter Walker, *Pennsylvania's redesigned mail ballot envelopes trip up many voters who left date incomplete*, VOTEBEAT, Apr. 23, 2024, <https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>; see also Barbara Barr, *Lancaster County elections officials set aside hundreds of mail-in ballots with mistakes*, WGAL, Apr. 24, 2024, <https://www.wgal.com/article/lancaster-county-hundreds-of-mail-in-ballots-set-aside-due-to-mistakes/60595723>.

⁹ Lancaster County Election Board Meeting minutes, dated February 28, 2024, available at: https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/_02282024-3060.

¹⁰ Barbara Barr, *Lancaster County elections officials set aside hundreds of mail-in ballots with mistakes*, WGAL, Apr. 24, 2024, <https://www.wgal.com/article/lancaster-county-hundreds-of-mail-in-ballots-set-aside-due-to-mistakes/60595723>; see also Lancaster County Election Board Meeting minutes, dated April 22, 2024, available at: https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/_04222024-3095.

See Mot., Ex. F. Mr. D'Agostino confirmed that it would not follow the Department of State's guidance and would instead reject mail-in and absentee ballots bearing a month and day but lacking the last two digits of the year.¹¹ *Id.* The Board similarly informed Votebeat and Spotlight PA that it was rejecting and not counting mail-in and absentee ballots with this specific, partial omission.¹² See Mot., Ex. E.

C. Procedural History

On June 7, 2024, PARA filed its Complaint against the Lancaster County Board of Elections, asserting claims for declaratory judgment and injunctive relief. Specifically, PARA alleges that the Board's rejection of mail-in and absentee ballots bearing a month and day but lacking the last two digits of the year violates 25 P.S. §§ 3146.6(a) and 3150.16(a) and the non-discrimination provision of the Pennsylvania Constitution enshrined in Article 1, Section 26.

V. ARGUMENT

A. Standard for preliminary injunctive relief

Under Pennsylvania law, a party may obtain preliminary injunctive relief if it can demonstrate the following:

- (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages;

¹¹ Barbara Barr, *Lancaster County elections officials set aside hundreds of mail-in ballots with mistakes*, WGAL, Apr. 24, 2024, <https://www.wgal.com/article/lancaster-county-hundreds-of-mail-in-ballots-set-aside-due-to-mistakes/60595723>.

¹² Carter Walker, *Pennsylvania's redesigned mail ballot envelopes trip up many voters who left date incomplete*, VOTEBEAT, Apr. 23, 2024, <https://www.votebeat.org/pennsylvania/2024/04/23/primary-mail-ballot-rejections-incomplete-year-election-2024/>.

- (2) 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) a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct;
- (4) 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) the injunction it seeks is reasonably suited to abate the offending activity; and,
- (6) a preliminary injunction will not adversely affect the public interest.

Warehime v. Warehime, 860 A.2d 41, 46-47 (Pa. 2004); *see also Brayman Constr. Corp. v. Com. Dep't of Transp.*, 13 A.3d 925, 935 (Pa. 2011).

B. PARA has demonstrated a need for preliminary injunctive relief.

For the reasons discussed herein, PARA satisfies all six factors for the issuance of a preliminary injunction. The Board's rejection of mail-in and absentee ballots based on an inconsequential technical omission has already caused and, absent judicial intervention, will continue to cause the unreasonable and irrational disenfranchisement of Lancaster County voters, including PARA's members. The Board's decision is inconsistent with the Department of State's guidance, is unsupported by Pennsylvania law, and undermines the public's trust by rejecting valid, timely cast ballots.

1. **PARA has shown that it is likely to prevail on the merits.**

The activity PARA seeks to enjoin is actionable; its right to relief is clear; and the wrong is manifest. In other words, PARA is likely to prevail on the merits. “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) (citing *Fischer v. Dep’t of Public Welfare*, 439 A.2d 1172, 1174-75 (Pa. 1982)). “According to the Supreme Court’s formulation of the ‘clear right’ requirement in *Fischer*, if the other elements of a preliminary injunction are present, and the underlying claim raises important legal questions, the plaintiff’s right to relief is clear. Therefore, the ‘clear right to relief’ element does not require [a judge] to determine the merits of the controversy at the preliminary injunction state; rather, [a judge] need only determine, in addition to the other criteria, that the claim raises substantial legal questions.” *T.W. Phillips Gas and Oil Co. v. Peoples Natural Gas Co.*, 492 A.2d 776, 781 (Pa. Commw. Ct. 1985). PARA addresses its statutory and constitutional claims in turn.

a. ***Defendant’s rejection of mail-in and absentee ballots solely due to the omission of the last two digits of the year violates Pennsylvania statutes.***

The Board is violating 25 P.S. §§ 3146.6(a) and 3150.16(a) by rejecting timely returned, signed, and dated mail-in and absentee ballots simply because a voter omitted the last two digits of the year on the outer return envelope.

When engaging in statutory interpretation, the court’s main objective is to “ascertain and effectuate the intention of the General Assembly. Every statute shall

be construed, if possible, to give effect to all its provisions.” 1 Pa.C.S.A. § 1921(a). “When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” *Id.* § 1921(b). The text is “presumed to be the best indication of legislative intent.” *Hannaberry HVAC v. W.C.A.B. (Snyder, Jr.)*, 834 A.2d 524, 531 (Pa. 2003) (internal citation omitted); *Bowling v. Office of Open Records*, 75 A.3d 453, 466 (Pa. 2013). Courts may not use interpretation to add “a requirement which the legislature did not see fit to include.” *Shafer Elec. & Const. v. Mantia*, 96 A.3d 989, 994 (Pa. 2014) (internal citation omitted).

The plain text of 25 P.S. §§ 3146.6(a) and 3150.6(a) is clear and unambiguous. *See* 1 Pa.C.S.A. § 1921(b). Both statutory sections command the voter to “fill out, date and sign the declaration printed on [the outer return] envelope.” 25 P.S. §§ 3146.6(a), 3150.16(a). Notably, both use “date” as a verb, not a noun—and, as a verb, “date” means “to record the time of the execution or making of: mark with the date.”¹³ Applied here, voters must “record” or “mark” when they signed their declaration. Recording the month and day does just that because the year is already constructively present. Stated another way, a voter need not write the full year *again* when the year is indisputably known to the Board and is otherwise conveyed on the face of the ballot. This common-sense, plain language interpretation is supported by the Department

¹³ *See Date*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/date#dictionary-entry-3> (last visited June 24, 2024). By contrast, when used as a noun, “date” means “the time at which an event occurs.” *Id.*

of State's understanding that an envelope containing the month and day can be "reasonably interpreted to be the day upon which [the voter] completed the declaration." *See* Mot., Ex. C. Thus, based on a plain language interpretation of the governing statutes, recording the month and day satisfies the "date" requirement.

Only if this Court finds that the text of 25 P.S. §§ 3146.6(a) and 3150.6(a) are ambiguous and "not explicit" may a court use the factors provided in 1 Pa.C.S. § 1921(c) to ascertain the legislature's intent. *Chanceford Aviation Properties, L.L.P. v. Chanceford Twp. Bd. of Supervisors*, 923 A.2d 1099, 1104 (Pa. 2007). Pursuant to § 1921(c), the court should consider the following, among other matters: (1) the occasion and necessity for the statute; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other statutes upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of such statute. 1 Pa.C.S.A. § 1921(c). In considering the General Assembly's intent, the court should presume that the General Assembly "does not intend a result that is absurd, impossible of execution or unreasonable" and "does not intend to violate the Constitution of the United States or of this Commonwealth." 1 Pa.C.S.A. §§ 1922(1), 1922(3).

The Board's interpretation fails this multi-factor, functional analysis because it contravenes and does not "effectuate" the General Assembly's purpose and, instead, creates absurd results. *See* 1 Pa.C.S.A. § 1921(a) (courts must "effectuate the intention of the General Assembly" when conducting statutory interpretation); *id.* §

1921(c)(6) (requiring courts to consider “consequences of a particular interpretation” when ascertaining the intent of the General Assembly); *see also Clean Air Council v. Dep’t of Env’t Prot.*, 289 A.3d 928, 946 (Pa. 2023) (rejecting a “formalistic” and “rigid application” of a statute that was “neither prescribed by nor compatible with [the statute’s] text or design”). A court impermissibly creates an absurd result when its interpretation imposes “a hurdle that was not established by the General Assembly” and “creates more problems than it alleviates.” *Cap. Acad. Charter Sch. v. Harrisburg Sch. Dist.*, 934 A.2d 189, 194 (Pa. Commw. Ct. 2007) (refusing to infer a “personal knowledge requirement” when the inclusion of such a requirement would “frustrate the purpose of the statute”); *see also Summit Sch., Inc. v. Com., Dep’t of Educ.*, 108 A.3d 192, 199 (Pa. Commw. Ct. 2015) (rejecting an interpretation that would result in two different reimbursement rates for the same educational services based on a factor that was not included in the text of the statute).

Importantly, when evaluating election laws specifically, “[t]echnicalities should not be used to make the right of the voter insecure. No construction of a statute should be indulged that would disfranchise any voter if the law is reasonably susceptible of any other meaning.” *Appeal of James*, 105 A.2d 64, 66 (Pa. 1954) (citing 29 C.J.S., Elections, § 7, at 27). “The power to throw out a ballot for minor irregularities . . . must be exercised very sparingly . . . except for compelling reasons.” *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 202 A.2d 538, 540 (Pa. 1964); *see also Shambach v. Bickhart*, 845 A.2d 793, 798, 802 (Pa. 2004) (holding that Election Code must be liberally construed in favor of right to vote and to protect voters’ rights

to participate). Courts also may not impose a restrictive interpretation when it is “neither prescribed by nor compatible with the [statute’s] text or design.” *Clean Air Council v. Dep’t of Env’t Prot.*, 289 A.3d at 946.

As applied here, Sections 3146.6(a) and 3150.16(a) should not be read to mandate a hyper-formalistic definition of “date” that would require voters to redundantly handwrite the last two digits of the year or else face disenfranchisement. *First*, no statute or court mandates that any specific date component(s) be present on the envelope—only that the envelope must have a date falling within the acceptable period. *Ball*, 289 A.3d at 22–23 (holding that date recorded on outer envelope’s declaration must be the “day upon which” voter filled out and signed declaration); *see also* 25 P.S. §§ 3146.6(a), 3150.16(a). Voters who handwrite the month and day on their ballot’s return envelope satisfy *Ball v. Chapman*’s command and, thus, cast valid votes. At least one other Court of Common Pleas has held as such: “Mail in ballots which contained handwritten dates which were within the permissible range and provided the month, date and signature but excluded the year constitute valid votes.” Mot. Ex. D, Conclusions of Law, ¶ 3. This Court may not “add . . . a requirement which the legislature did not see fit to include,” *Shafer Elec. & Const.*, 96 A.3d at 994, or erect “a hurdle that was not established by the General Assembly,” *Cap. Acad. Charter Sch.*, 934 A.2d at 195.

Second, the Board’s hyper-technical interpretation and application of Pennsylvania’s mandatory “date” requirement is contrary to the self-evident fact that the year is constructively present on *each and every* returned mail-in and absentee

ballot. All ballots submitted in this year's April primary election were issued to voters, cast, and returned in 2024. It is indisputable that ballots returned in any given year *always* bear the full date of the election (including the year) at the top of the ballots themselves because that is required by Pennsylvania statutes. 25 P.S. § 2962 (prescribing form of official primary ballots, including requirement that day, month, and year of election be included on ballot); 25 P.S. § 2963 (same for general elections). For instance, mail-in and absentee ballots cast and returned in the April primary election had "April 23, 2024" printed on them.¹⁴ The same will be true for the upcoming November general election. Along similar lines, the specific races and candidates on any absentee or mail-in ballot are unique to a specific election in a specific year.

Third—and uniquely—it is indisputable that mail-in and absentee ballots returned in the April 2024 primary election with an outer return envelope bearing "20[]" were issued to voters and cast in 2024 because only ballot packages from 2024 have the first two digits of the year preprinted on the outer envelope. To put a finer point on it, the mere presence of the preprinted "20" in the date field effectively identifies the year that a voter filled out, signed, and dated their ballot as 2024—a fact that Defendant cannot ignore.

¹⁴ See, e.g., the Lancaster County Official Republican Ballot, available at: <https://vr.co.lancaster.pa.us/sampleballots/ViewBallot.aspx>; see also e.g., the Bucks County Official Democratic Ballot, available at: <https://www.buckscounty.gov/DocumentCenter/View/17727/BEDMINSTER-TWP-EAST-Democrat?bidId=>.

Hence, to satisfy the statutory “date” requirement for mail-in and absentee ballots reflected in 25 P.S. §§ 3146.6(a) and 3150.16(a), voters need only handwrite the month and day on the outer return envelope. Pennsylvania statutes cannot be construed so irrationally and severely as to place greater value on an immaterial formalistic requirement than the fundamental right to vote; such an outcome would be absurd. *See Appeal of James*, 105 A.2d at 66; 1 Pa.C.S.A. § 1921(c) (requiring courts to consider “consequences of a particular interpretation” when conducting statutory interpretation); *see also Cap. Acad. Charter Sch.*, 934 A.2d at 195 (absurd results must be “avoided in deference to the canons of statutory interpretation.”). To do otherwise threatens to—and, in fact did—needlessly disenfranchise voters in Lancaster County on a technicality. So long as the month and day fall within the acceptable period for a given election, the Board knows the date on which the voter completed the declaration. *See id.* There is no scenario in which the Board could not ascertain the corresponding year. Disenfranchising voters who fail to fill out the last two digits of the year when the full year is self-evident produces an absurd and unreasonable outcome, contravenes well-established Pennsylvania law, and erodes public trust in Pennsylvania’s elections. *See* 1 Pa.C.S.A. §§ 1921, 1922.

b. *Defendant’s rejection of mail-in and absentee ballots solely due to the omission of the last two digits of the year violates the Pennsylvania Constitution.*

PARA is also likely to succeed on its claim that the Lancaster County Board of Elections has violated its members’ fundamental constitutional right to vote by rejecting ballots due to voters’ omission of the last two digits of the year on the return

envelope. This practice violates the Pennsylvania Constitution's non-discrimination provision, Pa. Const. art. I, § 26, which requires a compelling state interest—and at a bare minimum, a rational basis—to treat two groups of similarly situated voters differently in the exercise of a fundamental right. Those two groups are (1) those voters who record the month and day on their ballot envelope but omit the last two digits of the year; and (2) those who fill in the last two digits of the year. And because of this practice, PARA and its members have both previously suffered harm and face future harm unless this disenfranchising policy is enjoined before the upcoming presidential election.

PARA's constitutional challenge is appropriate for review under the Declaratory Judgment Act. *See* 42 Pa. C.S.A. §§ 7531-7541. The Declaratory Judgment Act is properly invoked during challenges—particularly constitutional challenges—to the validity of a statute or to the scope of a governmental body's action taken pursuant to statutory authority, regardless of whether an alternative remedy exists. *Southeastern Pennsylvania Transp. Auth. v. City of Philadelphia*, 20 A.3d 558, 560–61 (Pa. Commw. Ct. 2011), *abrogated on other grounds*, 101 A.3d 79 (Pa. 2014); *P.J.S. v. Pennsylvania State Ethics Comm'n*, 669 A.2d 1105, 1109 (Pa. Commw. Ct. 1996); *see Pennsylvania Sch. Boards Ass'n, Inc. v. Zogby*, 802 A.2d 6, 16 (Pa. Commw. Ct. 2002) (Smith-Ribner, J., concurring in part and dissenting in part) (“A declaratory judgment action may be filed to obtain a declaration of the state of existing law on a particular issue or scope of a governmental body's actions pursuant to statutory authority.”).

PARA is likely to succeed in obtaining a judgment that the Board's policy of disenfranchising voters who fail to fill out the last two digits of the year, but nevertheless record the month and day, violates the non-discrimination clause¹⁵ of the Pennsylvania Constitution, Pa. Const. art. I, § 26. The non-discrimination clause guarantees that "[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right." Pa. Const. art. I, § 26. Although the basic elements of non-discrimination claims have evolved in parallel with federal Fourteenth Amendment equal protection claims, *see, e.g.,* *Mixon v. Commonwealth*, 759 A.2d 442, 455 n.2 (Pa. Commw. Ct. 2000) (Ledbetter, J., concurring in part and dissenting in part), *aff'd*, 783 A.2d 763 (2001), the constitutional rights established by the non-discrimination clause afford Pennsylvanians broader protections than the Fourteenth Amendment. *Allegheny Reprod. Health Ctr. v. Penn. Dep't of Hum. Servs.*, 309 A.3d 808, 945 (Pa. 2024) ("Section 26 of [Pennsylvania's] Charter affords broader protections than the federal Equal Protection Clause.").

One such key difference is that the Pennsylvania Supreme Court recognizes the right to vote as a fundamental right protected by the Pennsylvania Constitution. *Bergdoll v. Kane*, 731 A.2d 1261, 1269 (Pa. 1999); *Banfield v. Cortes*, 110 A.3d 155, 176 (Pa. 2015). It is the "longstanding and overriding policy in this Commonwealth to protect the elective franchise." *Petition of Cioppa*, 626 A.2d 146, 148 (Pa. 1993). The Court acknowledges that

¹⁵ This is also commonly referred to as Pennsylvania's non-discrimination provision.

[t]he right to vote in any election is a personal and individual right, to be exercised in a free and unimpaired manner, in accordance with our Constitution and laws. The right is pervasive of other basic civil and political rights, and is the bedrock of our free political system. . . . This right is a right, not of force, but of sovereignty. It is every elector's portion of sovereign power to vote. . . . Since the right of suffrage is a fundamental matter, any alleged restriction or infringement of that right strikes at the heart of orderly constitutional government, and must be carefully and meticulously scrutinized.

Bergdoll, 731 A.2d at 1269 (quoting *Moore v. Shanahan*, 468 P.2d 506 (Kan. 1971)).

And because “[t]he disfranchisement of even one person validly exercising his right to vote is an extremely serious matter,” the Court carefully scrutinizes regulations or practices that restrict the elective franchise. *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 202 A.2d 538, 540 (Pa. 1964).

Consequently, this Court must apply strict scrutiny to Plaintiff's constitutional claim. Where, as here, a government action “infringes upon a fundamental right, ‘to survive a due process or equal protection challenge, [it] must satisfy the constitutional standard known as strict scrutiny.’” *J. & S.O. v. C.H.*, 206 A.3d 1171, 1175 (Pa. Super. Ct. 2019); see *Allegheny Reprod. Health Ctr.*, 309 A.3d at 855, 918. Under this heightened level of scrutiny, a state law or action that treats similarly situated groups differently in their exercise of a fundamental right will only be upheld if it is (1) necessary to promote a compelling state interest; and (2) narrowly tailored, meaning there are no less intrusive means to advance the state's compelling interest. See *Allegheny Reprod. Health Ctr.*, 309 A.3d at 938; *Banfield*, 110 A.3d at 176 n.15. And, specifically, Pennsylvania courts apply strict scrutiny when a government action discriminates against people in the exercise of a fundamental right in violation of

Article I, Section 26. *Id.* at 855, 918 (citing cases). Section 26 “commands that the government will not ‘discriminate against any person in the exercise of any civil right.’ . . . If the [implicated] right is one that is fundamental, then only evidence of a compelling government interest and a finding that there are no less intrusive means to advance the interest will save the government action.” *Id.* at 938. In accord with this heightened standard, courts recognize that “[t]he power to throw out a ballot for minor irregularities . . . must be exercised very sparingly and with the idea in mind that either an individual voter or a group of voters are not to be disfranchised at an election *except for compelling reasons.*” *Perles*, 202 A.2d at 540 (emphasis added).

Although the courts generally consider the Commonwealth’s interest in ensuring election integrity a compelling state interest for regulating elections through the Election Code (25 P.S. §§ 701—3519), *Banfield*, 110 A.3d at 177, such regulations must be tailored narrowly so that they are “[1] reasonable, [2] non-discriminatory restrictions [3] to ensure honest and fair elections that proceed in an orderly and efficient manner.” *Id.* at 176-77 (citations omitted). It is indisputable that the Board’s practice of rejecting ballots due to a voter’s failure to fill in the last two digits of the year on the outer return envelope is a restriction on the right to vote. When a qualified voter’s mail-in or absentee ballot is rejected because of a technical error, that voter is denied their fundamental right to vote. *See Perles*, 202 A.2d at 540. Therefore, the Board’s practice of rejecting ballots for this technical error—against the State Department’s guidance—is subject to strict scrutiny.

Under strict scrutiny, the Board’s practice of rejecting mail-in and absentee ballots because of a voter’s omission of the year’s last two digits—while counting mail-in and absentee ballots bearing the month, day, and all digits of the year—will not survive review. The Board’s adoption of this practice is both wholly unreasonable and wholly unnecessary for “ensur[ing] honest and fair elections that proceed in an orderly and efficient manner.” *Banfield*, 110 A.3d at 176-77. As discussed previously, the year of a ballot is constructively present on *each and every* returned mail-in and absentee ballot irrespective of whether the voter recorded the last two digits of the year. It is indisputable that ballots returned in any given year—including those cast in this year’s primary and to be cast in the November general election¹⁶—*always* bear the year of the election as required by Pennsylvania statutes. 25 P.S. §§ 2962, 2963. The same will be true for the upcoming November general election. Moreover, the races and candidates on any absentee or mail-in ballot are unique to the election day and easily establish the year a voter completed their ballot. Further still, the Board’s decision to reject such ballots conflicts with Department of State guidance to count absentee and mail-in ballots missing the last two digits of the year.

Finally, it is indisputable that mail-in and absentee ballots returned with an outer return envelope bearing “20[] []” were issued to voters and cast in 2024 because only ballot packages from 2024 have the first two digits of the year preprinted on the

¹⁶ See, e.g., the Lancaster County Official Republican Ballot, available at: <https://vr.co.lancaster.pa.us/sampleballots/ViewBallot.aspx>; see also e.g., the Bucks County Official Democratic Ballot, available at: <https://www.buckscounty.gov/DocumentCenter/View/17727/BEDMINSTER-TWP-EAST-Democrat?bidId=>.

outer envelope. This was true of mail-in and absentee ballots cast in the April primary, and it will be true for such ballots during the November general election. For these reasons, there is *no scenario* in which the Board will be unable to ascertain the corresponding year in which a voter cast their absentee or mail-in ballot. Thus, the Board's disenfranchisement of this population of voters¹⁷ is wholly unsupported by any compelling interest, let alone narrowly tailored to one, under strict scrutiny.

Even under the lower standard of rational basis review, PARA is still likely to succeed on the merits of its constitutional claim. If a government action does not implicate the exercise of a fundamental right or a suspect class, the court applies the rational basis test. *Allegheny Reprod. Health Ctr.*, 309 A.3d at 855 (“[C]lassifications implicating neither suspect classes nor fundamental rights are reviewed under a rational basis test.”) (citing cases) (internal quotation omitted). Under the rational basis standard, the government action “need only be directed at the accomplishment of a legitimate government interest, and to do so in a manner which is not arbitrary or unreasonable.” *Id.* at 857 (internal quotation omitted).

Here, the Board's treatment of those that omit the last two digits of the year differently from those that include the last two digits of the year is utterly arbitrary

¹⁷ At least one independent analysis of the 2022 midterm election found that “older adults were more likely to get their ballots rejected for clerical mistakes”—specifically, “60 percent of the voters who failed to properly sign and date their mail-in ballots were 65 or older.” Tom Lisi, *Voters over 65 took the brunt of mail-in ballot rejections in November election*, LNP|LANCASTERONLINE, Dec. 18, 2022, https://lancasteronline.com/news/local/voters-over-65-took-the-brunt-of-mail-in-ballot-rejections-in-november-election-lancaster/article_1974d694-7cd2-11ed-8bcd-1b40cd5cefdd.html.

and irrational. As discussed previously, ballots that contain the preprinted “20” but omit the last two digits of the year and ballots with “2024” filled in are equally identifiable as ballots signed and cast this year. First, the year of a ballot is present on each returned mail-in and absentee ballot and, therefore, constructively present on the outer envelope, irrespective of whether the voter handwrote the last two digits of the year. Second, the specific races and candidates on any absentee or mail-in ballot are unique to the particular election day and conclusively establish the ballot’s year. Third, it is indisputable mail-in and absentee ballots bearing “20[]” were issued to voters and cast in 2024 because ballot packages from 2024 were the first to have the first two digits of the year preprinted on the outer envelope. Fourth and finally, the Board’s decision to reject these ballots conflicts with Department of State guidance. Thus, the Board’s disenfranchisement of this population of voters is wholly unjustifiable under strict scrutiny and even under the lower standards of rational basis review. Accordingly, there is a strong likelihood that PARA will prevail on the merits and that this Court will permanently enjoin the Board’s unreasonable practice of disenfranchising voters who record the month and day but not the last two digits of the year.

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The Board’s disparate treatment of similarly situated voters (*i.e.*, those who include and those who omit the last two digits of the year) does not withstand scrutiny at any level. As a matter of Pennsylvania statutes, both sets of voters equally satisfy the date requirement for mail-in and absentee ballots reflected in 25 Pa. Stat. §§

3146.6(a) and 3150.16(a). Additionally, as a constitutional matter, the Board's differential treatment of these two classes of voters fails under both rational basis and strict scrutiny analyses. Both groups of voters' ballots successfully convey the date on which they signed their declaration because the year is always present on the ballot, readily ascertainable and, in any event, beyond dispute, regardless of whether the last two digits of the year are omitted. Hence, there is a strong likelihood on the merits that the Court will permanently enjoin the Board's unreasonable practice of disenfranchising voters who fail to handwrite the last two digits of the year.

2. An injunction is necessary to prevent immediate and irreparable harm that cannot be compensated by monetary damages.

Injunctive relief is necessary to prevent immediate and irreparable harm to PARA and its members. As discussed herein, the Board's decision to reject mail-in and absentee ballots simply because the outer return envelope omits the last two digits of the year in the handwritten date frustrates and threatens PARA's mission and its members' fundamental right to vote.

"[W]here the offending conduct sought to be restrained through a preliminary injunction violates a statutory mandate, irreparable injury will have been established." *SEIU Healthcare Pennsylvania*, 104 A.3d at 508–09 (holding that executive action was in "direct contravention of the plain language of [the statute]" and immediate and irreparable harm had been demonstrated). Moreover, the deprivation of constitutional (as well as statutory) rights may constitute irreparable harm *per se*. *Cutler v. Chapman*, 289 A.3d 139, 155 (Pa. Commw. Ct. 2023), *see e.g. Middleton v. Lycoming Hous.*, No. 13-02729, 2014 WL 8853576, at *2 (Pa. Com. Pl.

Feb. 12, 2014) (“Irreparable harm may also occur upon the violation of one’s constitutional rights.”). Harm is irreparable and cannot be remedied by damages when such damages “can be estimated only by conjecture and not by an accurate pecuniary standard.” *Sovereign Bank v. Harper*, 674 A.2d 1085, 1093 (Pa. Super. Ct. 1996).

The right to vote is priceless. No amount of money can compensate a voter for a vote improperly rejected, and there is no way to estimate any such amount. Once an election is over, there is no way to compensate an unlawfully disenfranchised voter. Here, PARA’s Lancaster County members are immediately threatened with the injury of disenfranchisement due to the Board’s violations of Pennsylvania’s Election Code and Constitution. The Board’s draconian and indefensible application of the handwritten date requirement ignores the undeniable fact that all ballots submitted this year were issued to voters and cast in 2024 and that the ballots themselves bear the four-digit year.

Importantly, it is not the initial violation that is evaluated for irreparable harm but rather “the threat of the unbridled continuation of the violation and the resultant incalculable damage . . . that constitutes the justification for equitable intervention.” *John G. Bryant Co. v. Sling Testing & Repair, Inc.*, 369 A.2d 1164, 1167 (Pa. 1977). If there is no injunction in place before the November 2024 general election, PARA’s Lancaster County members will once again risk having their votes unlawfully rejected. In future elections and years, absent a permanent injunction, Lancaster County will continue to reject ballots missing the last two digits of the year, even

where the year is plainly at the top of the ballot and the races and candidates appearing on the ballot are unique to a specific election in a specific year.

Moreover, the Board's policy and practice of disenfranchising mail-in and absentee voters over the omission of the last two digits of the year both frustrates PARA's core mission and forces PARA to divert its limited resources. PARA's core mission includes ensuring full civil rights for all citizens and engaging its members on its four key issues—a mission that is now threatened based on the Board's conduct. *See Crossey Decl.* ¶¶ 9, 13-17. Separately, but for the Board's conduct, PARA would not need to divert its limited, finite resources to engage in direct outreach activities to educate its members on this specific threat facing mail-in and absentee voters.

Thus, absent injunctive relief, PARA and its members will be immediately and irreparably harmed.

3. Greater injury results by refusing the injunction than from granting it.

The Board will suffer no injury if this Court issues an injunction requiring the Board to count these ballots. Counting lawfully cast, timely submitted ballots cannot be categorized as a harm to the Board because these are ballots that the Board is legally obligated to count. Ensuring that ballots are properly canvassed and computed is part of the Board's core functions. *See* 25 P.S. §§ 2642(k), 2642(l). Even if the Board incurred some nominal harm in the form of increased administrative expenses, such injury is far outweighed by the injury facing PARA and its members if the Board perpetuates its policy and practice of disenfranchising voters based on an inconsequential technicality. *See United States v. Berks Cnty., Pa.*, 250 F. Supp. 2d

525, 541 (E.D. Pa. 2003) (“Although these reforms may result in some administrative expenses for Defendants, such expenses are likely to be minimal and are far outweighed by the fundamental right [to vote] at issue.”). Arguably, the Board will *benefit* from a preliminary injunction—granting the injunction well in advance of the November election will ensure that Lancaster County election officials have ample time to train their staff on the proper handling of such ballots. By contrast, the harm to PARA and its members is clear, concrete, and irreparable. *See supra* at Sections III.A. and V.B.

4. A preliminary injunction is necessary to immediately pause the Board’s wrongful conduct.

A preliminary injunction should “restore[] the parties to the status quo that existed prior to the alleged wrongful conduct.” *Wolk v. Sch. Dist. of Lower Merion*, 228 A.3d 595, 611 (Pa. Commw. Ct. 2020). The status quo to be maintained by a preliminary injunction “is the last actual, peaceable (and, we may add, lawful) noncontested status which preceded the pending controversy.” *Commonwealth v. Coward*, 414 A.2d 91, 99 (Pa. 1980) (internal citations omitted).

For the first time, in the April 2024 primary election, the Board adopted a policy that required mail-in and absentee voters to specifically handwrite the last two digits of the year on the return envelope, even though the year is already constructively present and indisputable. The Board further refused to allow voters to cure this particular, perceived deficiency—an issue that arose for the first time in April 2024—and simply rejected these ballots. In so doing, the Board subjects two similarly situated groups of voters—those who record the month and day but omit

the last two digits of the year and those who include the last two digits of the year—to differential treatment. These two de facto classifications created by Defendant’s unreasonable interpretation of the handwritten date requirement only came into existence two months ago.

A preliminary injunction is necessary to return the parties to their respective positions before the Board undertook its unlawful, unconstitutional, and discriminatory conduct. Such relief will eliminate the de facto classifications created by Defendant’s irrational enforcement of the date requirement, thereby resetting the status quo prior to the Board’s decision to reject this specific group of ballots.

5. The injunction that PARA seeks is reasonably suited to abate Defendant’s offending activity.

The injunction PARA seeks is narrow and reasonably suited to abate the Board’s offending activity. See *SEIU Healthcare Pennsylvania*, 104 A.3d at 509 (affirming the issuance of an injunction that was “reasonably tailored” to stop the offending conduct); *Commonwealth ex rel. Corbett v. Snyder*, 977 A.2d 28, 48 (Pa. Commw. Ct. 2009). Importantly, PARA seeks only to enjoin the Board from rejecting mail-in and absentee ballots signed and returned by qualified voters that include the month and day, but not the last two digits of the year, on the return envelope’s declaration. PARA does *not* ask this Court to enjoin the Board from rejecting ballots that omit the month and day as well; nor does PARA challenge Pennsylvania’s mandatory date requirement on its face. Further, PARA does not request that this Court enjoin Defendant from rejecting ballots cast by voters who fill in the last two digits of the year incorrectly. Enjoining the Board from perpetuating this specific

unlawful policy is narrowly aimed at remedying the rejection of a limited subset of absentee and mail-in ballots. It is therefore reasonably suited to achieve the goal of abating Defendant's unlawful conduct.

6. A preliminary injunction is in the public interest.

A preliminary injunction will serve the public interest—namely, by safeguarding the fundamental right to vote and ensuring that every qualified vote is counted. “[R]emediating an unconstitutional practice is always in the public interest.” *Kim v. Hanlon*, 99 F.4th 140, 160 (3d Cir. 2024); *see also ACLU v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003), *aff'd*, 542 U.S. 656 (2004) (noting that the public interest is “not served by the enforcement of an unconstitutional law”). Especially in cases “where the continued presence of barriers to equal protection in the political process is strongly evident, the public interest commands all appropriate relief necessary to effect the immediate and complete removal of these barriers.” *Berks Cnty., Pa.*, 250 F. Supp. at 541 (internal citation omitted). By enjoining the Board's unlawful conduct before another election is held, the public interest will be preserved and protected by “reinforcing the core principles of our democracy.” *Id.* Conversely, rejecting properly cast mail-in and absentee ballots due to an utterly inconsequential omission compromises the integrity of and threatens the public's trust in Pennsylvania's elections. Voters would understandably lose confidence in their election officials and the election system overall if votes were rejected due to such a technical omission where the missing information is neither unknown nor in dispute. Thus, the requested injunctive relief would only serve the public interest.

VI. CONCLUSION

For all the foregoing reasons, Plaintiff requests that this Court grant the preliminary injunctive relief requested in its Motion and issue the Order in the form submitted with the Motion.

Respectfully submitted,

Dated: June 25, 2024

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**Pro Hac Vice applications pending*

*Counsel for Plaintiff Pennsylvania Alliance
for Retired Americans*

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA

PENNSYLVANIA ALLIANCE FOR
RETIRED AMERICANS

Plaintiff,

v.

LANCASTER COUNTY BOARD OF
ELECTIONS,

Defendant.

CIVIL DIVISION

CI-24-03992

(Hon. Thomas Sponaugle)

DECLARATION OF MICHAEL CROSSEY

I, Michael Crossey, being first duly sworn, under oath, hereby declares as follows:

1. I am over the age of 18. I make this Declaration on personal knowledge of the facts and circumstances set forth herein, and in support of Plaintiff's Verified Motion for Preliminary Injunction.

2. I am the President of the Pennsylvania Alliance for Retired Americans ("PARA"). In that capacity, I am familiar with PARA's history, core mission, membership, and work.

3. Harriet Ellenberger is PARA's Executive Director. Ms. Ellenberger receives a monthly salary of \$500.

4. All paid staff and unpaid volunteers are eligible for reimbursement by PARA of out-of-pocket expenses incurred in performing their duties.

5. PARA was established in May 2004 and is incorporated in Pennsylvania as

a 501(c)(4) nonprofit social welfare organization.

6. PARA is a grassroots organization with approximately 300,513 current members and 14 local affiliate members across Pennsylvania. It is one of 39 chartered state affiliates of the national Alliance for Retired Americans, a coalition of approximately 4.4 million members nationwide.

7. PARA has members in each of the 67 counties in the state, including 7,569 members in Lancaster County.

8. PARA's members are retirees from all walks of life, including former teachers, auto workers, state and federal government workers, construction workers, and community leaders.

9. PARA's mission is to ensure social and economic justice and full civil rights for all citizens. One of our primary objectives is to enroll and mobilize retired union members and other senior and community activists into a nationwide grassroots movement advocating for a political and social agenda that respects work and strengthens families. We seek to fulfill this mission and advance our primary objectives by working on four key issues: fair trade, Medicare, Medicaid, and Social Security. We also engage in voter mobilization and education as elections approach.

10. In pursuit of its mission, PARA devotes substantial time and resources educating its members on issues impacting seniors and working families and engages in the political process to protect and preserve programs vital to the health and economic security of retired, older Americans.

11. In furthering these values, PARA works to: (i) build a strong organization in Pennsylvania of seniors with a viable structure, resources, and clear objectives

compatible with that of the labor movement and community-based groups at local, state, and national levels; (ii) create programs and membership organizations designed to promote a commitment by retired workers and older persons to the concept of lifelong partnership in their unions, and in their community, political, and civic organizations; and (iii) encourage all segments of the senior population to act with unity on legislative, political, and policy issues of importance to retirees and their families to maximize their influence on federal, state, and local governments, as well as private organizations, that affect their interests.

12. PARA also educates its members on issues and candidates in advance of elections including, but not limited to, preparing and sending members (i) weekly updates; (ii) voter guides; (iii) report cards on elected officials; and (iv) voting rules and procedures. In a recent election, PARA prepared and distributed vote-by-mail guides to its members. In advance of the November 2024 general election, PARA will add an organizer to work on voter engagement, education, and mobilization. PARA also holds monthly meetings with its members, and PARA's leaders travel the state presenting on topics and developments central to its mission and of import to its members.

13. PARA represents the interests of its Lancaster County members in ensuring that every qualified voter, regardless of partisan alignment, can cast a ballot that counts. The overwhelming majority of our members in Lancaster County are registered Pennsylvania voters. Some number of our Lancaster County members timely vote by mail-in or absentee ballot, including in the April 2024 primary election, and at least some of them will do so again in the November 2024 general election.

14. The Lancaster County Board of Elections' ("the Board") decision to reject

mail-in and absentee ballots simply because the outer return envelope omits the last two digits of the year in the handwritten date undermines our mission and our members' right to vote. We have a small staff and limited resources to engage in outreach to potentially affected members to educate them on the Board's rejection of these ballots. All paid staff time and resources devoted to education, training, messaging, and mobilizing on this specific absentee voting issue cannot be devoted to core mission activities.

15. As a direct result of the Board's conduct, PARA has diverted and will continue to divert some amount of money, time, and resources away from core mission activities to educate and warn our members, including those in Lancaster County, that their ballots will be rejected if they omit the last two digits of the year from the outer return envelope, even if they record the month and day.

16. For example, on or around May 11, 2024, PARA leadership sent members an alert concerning the rejection of mail-in and absentee ballots due to the absence of a completed year on the return envelope. On May 23, 2024, we held a member meeting, during which we took time to discuss this specific issue impacting absentee and mail-in voters.

17. Additionally, Ms. Ellenberger has diverted her paid time educating PARA's members on this issue.

18. Unless the Board is ordered to count ballots missing only the last two digits of "2024," PARA will continue to waste additional paid staff time, money, and other resources educating and warning our members of this pitfall in the absentee and mail-in voting process by, for example, traveling to Lancaster County to educate our members residing there, creating and sending direct educational literature, conducting mail

surveys, conducting phone banking, and giving presentations.

19. If the Board were not rejecting this particular subset of absentee and mail-in ballots, PARA would not need to divert staff time, funds, and resources to these activities.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Dated: June 25, 2024



Michael Crossey, President, Pennsylvania Alliance
for Retired Americans

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Exhibit A

Before you complete this side!

1. Seal your ballot in the yellow envelope that says "Official Election Ballot."
2. Then seal that envelope inside this envelope.

Voter's declaration

I am qualified to vote the enclosed ballot and I have not already voted in this election.

If I am unable to sign without help because I have an illness or physical disability, I have made my mark or somebody has helped me make my mark.

Sign and date



Sign or mark here (REQUIRED)					
X					
Today's date here (REQUIRED)					
			2	0	
<i>Month</i>		<i>Day</i>		<i>Year</i>	

For your witness only

If you have an illness or physical disability that prevents you from signing, have your witness complete this section.

Witness, sign here

Witness address

Street _____

City _____ Zip _____

For county election use only

Exhibit B



Instructions – How to Pack Your Ballot

For your ballot to count, you must follow all of these steps.



1. Mark your ballot in **pencil, or black or blue ink**, and put it in the the envelope that says “Official Election Ballot.”

Put your ballot in the yellow envelope that says “Official Election Ballot” and seal it. This keeps your ballot secret.

Do not write your name, sign, or put any other type of mark on this envelope.



2. Put the yellow envelope that says “Official Election Ballot” in the return envelope with **purple** coloring.

Put the envelope that says “Official Election Ballot” (with your ballot in it) in the return envelope with the **purple** coloring.



3. Sign inside the box and put today’s date on the return envelope.

- Sign your name inside the box.
- Put today’s date—not your birthdate.

If you have an illness or disability that prevents you from signing, make a mark inside the box and have your witness complete the witness section.



4. Return your ballot right away.

- By mail – Put a stamp on it. / No postage necessary.
- In person – Bring your ballot to your county board of elections, or another official drop-off location. Check the county website for times and locations.

Deadline – Your ballot must be received by your county board of elections by 8 p.m. on **[INSERT ELECTION DATE]**.

Track your ballot at Vote.pa.gov/MailBallotStatus

- ✓ If you deliver your ballot in person, you must deliver it yourself. If you have a disability that prevents you from delivering your ballot yourself, contact us at the phone number below.
- ✓ If you lose your ballot or make a mistake, contact us at the phone number below.
- ✓ If you receive an absentee or mail-in ballot and return your voted ballot by the deadline, you cannot vote at your polling place on election day. If you are unable to return your voted absentee or mail-in ballot by the deadline, you can only vote a provisional ballot at your polling place on election day. But if you bring your absentee or mail-in ballot and the return envelope with you to your polling place, you can give up your mail ballot and vote in-person.

EXHIBIT C

From: ST, Elections <RA-Elections@pa.gov>
Sent: Friday, April 19, 2024 12:23 PM
Cc: Marks, Jonathan
Subject: DOS Email: Department Response to Inquiries on Ballot Envelope Dates

Sent on behalf of Deputy Secretary Marks

Dear County Election Official:

The Department has received questions from several county boards of elections about the handwritten date on the redesigned mail ballot return. Specifically, counties have asked whether they should consider certain handwritten dates to be "incorrect" under the Supreme Court's decision in *Ball v. Chapman*.^[1]

It is the Department's view that, if the date written on the ballot can reasonably be interpreted to be "the day upon which [the voter] completed the declaration,"^[2] the ballot should not be rejected as having an "incorrect" date or being "undated."

Therefore, the following would not justify rejecting a ballot as having an "incorrect" date or being "undated":

- If the voter entered the month and day but did not write "24" in the year field.
- Use of the European dating convention (D/M/Y)
- Use of slashes in empty boxes (for example, "/4-17-2024" or "4/-17-2024")

This list is not intended to be exhaustive, but is based on examples provided by county boards of elections.

As always, you should consult your solicitor on these matters.

^[1] 289 A.3d 1 (Pa. 2023).

^[2] *Ball*, 289 A.3d at 23.

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY,
PENNSYLVANIA

IN RE: SIX BALLOTS IN THE 2024
GENERAL PRIMARY ELECTION

:

:

No. 04970 of 2024

PROTHONOTARY LUZERNE COUNTY
FILED MAR 24 PM 2:13


ORDER

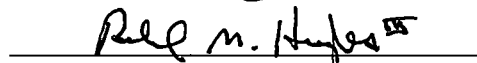
AND NOW, this 8th day of May, 2024, following a hearing in the above captioned matter, it is hereby ORDERED as follows:

1. The Petition for Review seeking to set aside the six (6) mail in ballots and not compute those ballots in the final election results is **DENIED**.

BY THE COURT:


 TINA POLACHEK GARTLEY, J.


 LESA S. GELB, J.


 RICHARD M. HUGHES, III, J.

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

IN RE: SIX BALLOTS IN THE 2024 :
GENERAL PRIMARY ELECTION :
: No. 04970 of 2024

FINDINGS OF FACT

1. Pennsylvania held its 2024 General Primary Election on Tuesday, April 23, 2024.
2. The Luzerne County Board of Elections held a special meeting for the adjudication of the April 2024 General Primary Election commencing on Friday, April 26, 2024.
3. On Thursday, May 2, 2024, James Walsh filed an appeal from the decision of the Luzerne County Board of Elections to canvass and compute six (6) mail in ballots in the 2024 General Primary Election.
4. On May 6, 2024, a hearing was held before a panel of Luzerne County Judges including the Honorable Tina Polachek Gartley, the Honorable Lesa Gelb and the Honorable Richard M. Hughes, III.
5. During the hearing, counsel for the Luzerne County Election Board made an oral motion to dismiss the petition as being untimely.
6. Denise Williams, chair of the Luzerne County Election Board, testified very credibly at the hearing.
7. One hundred and eleven (111) mail in ballots were pulled for inspection by the Luzerne County Election Board as the ballots contained a date which included handwritten month and day but not the year. The six (6) mail in ballots which are the subject of this appeal were included in the one hundred and eleven (111) ballots inspected by the Luzerne County Election Board.

8. The Election Board reviewed each of the one hundred and eleven (111) mail in ballots and upon motion voted four (4) to one (1) to accept the ballots as properly dated.
9. The Board then reviewed the one hundred and eleven (111) mail in ballots for any irregularities and, finding none, concluded that the ballots should be counted.
10. The ballots were then scanned in and counted as votes.
11. Emily Cook, acting Director for the Luzerne County Bureau of Elections, testified at the hearing very credibly.
12. Emily Cook was present at the Election Board meeting held on Friday, April 26, 2024 and confirmed that it was the decision of the Board to accept and count the mail in ballots which contained a handwritten date within the permissible range from April 1, 2024 through April 23, 2024 even though the ballots contained a handwritten date containing the month and day without the year.
13. On April 19, 2024, by email, Emily Cook received guidance from the Deputy Secretary for Elections and Commissions indicating that a ballot where a voter entered the month and day but did not write the year should not be rejected.
14. The envelopes on which voters placed their signatures and dates were specifically produced for the 2024 General Primary Election.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear the Petition for Review of James Walsh.
2. The Election Board of Luzerne County made a decision, by vote, to accept the one hundred and eleven (111) mail in ballots which contained a handwritten date within the permissible range of April 1, 2024 through April 23, 2024 which contained a date for the month and day but not the year.

3. Mail in ballots which contained handwritten dates which were within the permissible range and provided the month, date and signature but excluded the year constitute valid votes.
4. The Luzerne County Election Board properly accepted the one hundred and eleven (111) mail in ballots. To do otherwise would disenfranchise these Pennsylvania voters.

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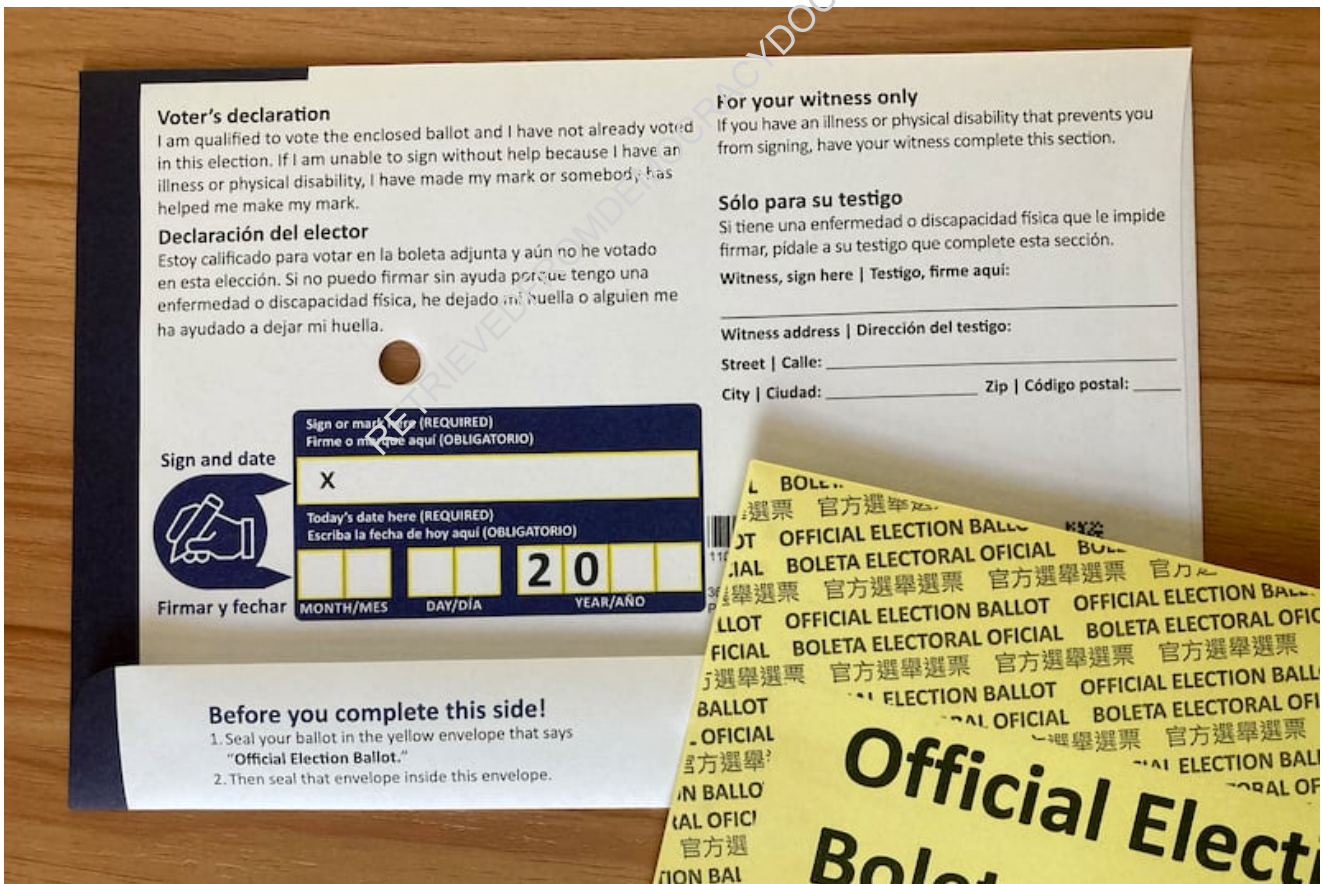
Pennsylvania’s redesigned mail ballot envelopes trip up many voters who left date incomplete

Some counties are rejecting primary mail ballots that are missing the last two digits of the year, despite the Department of State’s advice to count them.

By

Carter Walker

| April 23, 2024, 9:47pm UTC



A Pennsylvania mail ballot for the 2024 primary election (Lauren Aguirre / Votebeat)

Votebeat is a nonprofit news organization reporting on voting access and election administration across the U.S. [Sign up for our free newsletters here.](#)

A design change Pennsylvania officials made to prevent voters from making a disqualifying error on their mail ballots appears to have backfired.

The issue — voters failing to write the final two digits of the year on the return envelope — is leading some counties to reject ballots in the primary, despite the state's new advice to count them.

Last fall, the Pennsylvania Department of State announced it was redesigning the state's mail ballot return envelope, in part to reduce the number of ballots rejected for lacking a proper date, which is required by law. This year's envelope has "20" prefilled in the year line and leaves spaces for the voters to fill in the last two digits.

One election director said a "significant" number of voters who returned flawed ballots had not filled in the last two digits of the year, and other election officials around the state echoed that observation.

On the Friday before the election, Deputy Secretary for Elections Jonathan Marks sent an email to counties advising them to count ballots even if the envelope lacks the last two digits of the year.

"It is the Department's view that, if the date written on the ballot can reasonably be interpreted to be 'the day upon which [the voter] completed the declaration,' the ballot should not be rejected as having an 'incorrect' date or being 'undated,'" Marks wrote, citing a 2022 Pennsylvania Supreme Court case.

But the department's emailed advice does not carry the force of law, and counties are making different decisions about whether to count the ballots. Votebeat and Spotlight PA contacted eight counties and found that Philadelphia, Allegheny, and Delaware counties are counting the ballots, while York, Lycoming, Lancaster, and Snyder counties are rejecting them. Montgomery County said it would make a decision next week.

It's unclear exactly how many voters will be affected by rejections. Philadelphia said those figures would not be available until Thursday. In Snyder County, 10 of the 21 ballots rejected for dating issues were properly dated except for the last two digits of the year, Election Director Devin Rhoads said.

In Allegheny County, home to Pittsburgh, spokesperson Abigail Gardner said ballots with dating errors were the majority of the county's mail ballots at risk of rejection, and this specific dating error was an "overwhelming" majority of those. Gardner said that until Friday, Allegheny County had been marking these ballots as improperly dated but changed that determination after receiving Marks' email.

Lycoming County Election Director Forrest Lehman ~~said his county will reject ballots that lack~~ the final two digits. He added that such ballots make up a “significant” number of the ones his staff was rejecting, though he did not have exact figures.

Reacting to the Department of State’s advice, Lehman said, “I don’t know what they’re basing it on or why they decided to say it at the last minute.”

As part of the 2022 case Marks cited, Ball v. Chapman, the state Supreme Court issued an order on what a proper date for a ballot was. That order defined a proper date by setting a date range with the full, four-digit year. Lehman said he thinks counties will look at that as a signal that all four digits must be included.

Asked about this contradiction with the Ball case, Amy Gulli, director of communications for the Department of State, said Marks’ email “speaks for itself.”

The email also appears to run afoul of Secretary of the Commonwealth Al Schmidt’s promise not to issue any new election-policy guidance to counties within 45 days of an election.

The department said the email did not violate the secretary’s promise, as it was not full guidance but rather an email in response to multiple questions from counties.

Asked if the state would be redesigning the envelopes in response to the problem, Gulli said the department is “continually looking for ways to improve election administration” and “will follow up with the counties on their experience after the primary.”

Whether voters should even be required to write the date on ballot return envelopes has been a subject of debate and litigation since 2020, when Pennsylvania’s mail voting law, Act 77, went into effect. The NAACP, which along with other voting rights organizations being represented by the ACLU of Pennsylvania, is currently seeking to invalidate the requirement in federal court based on a provision from the 1964 Civil Rights Act.

Marian Schneider, senior voting rights policy counsel at the ACLU of Pennsylvania, said the email from the department was a good attempt to keep voters from being disenfranchised.

“If someone wrote 4/17 and didn’t write the year, there’s only one year it possibly could have been written because we know when counties mailed the ballots and when the counties received them,” she said. “What Jonathan is writing is common sense guidance.”

Carter Walker is a reporter for Votebeat in partnership with Spotlight PA. Contact Carter at cwalker@votebeat.org.

Lancaster County officials set aside hundreds of mail in ballots

[8 wgal.com/article/lancaster-county-hundreds-of-mail-in-ballots-set-aside-due-to-mistakes/60595723](https://www.wgal.com/article/lancaster-county-hundreds-of-mail-in-ballots-set-aside-due-to-mistakes/60595723)

Barbara Barr

April 24, 2024



Lancaster County elections officials set aside hundreds of mail-in ballots with mistakes

WGAL 8

Updated: 5:27 PM EDT Apr 24, 2024

Barbara Barr
Reporter

Lancaster County elections officials set aside hundreds of mail-in ballots with mistakes

LANCASTER, Pa. —

Lancaster County Elections Chair Ray D'Agostino says 300 mail-in ballots were set aside from Tuesday's primary due to errors, out of nearly 21,000 received. He says the errors ranged from improper dates to no signatures.

The Pennsylvania Department of State issued ~~suggested guidance regarding ballots without~~ the year 24 on them or using the European dating method or slashes, suggesting counties count them.

D'Agostino said, "That runs contrary to law and recent court rulings." They aren't being counted in Lancaster and he said, "The Department of State should know better. Dates matter."

He hopes continued efforts to educate voters on properly filling out ballots will eventually cut down on mistakes so all votes are counted.

D'Agostino said the election overall went well with turnout at 29%.

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IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY,
PENNSYLVANIA

PENNSYLVANIA ALLIANCE
FOR RETIRED AMERICANS

CIVIL ACTION

Plaintiff,

NO.: CI-24-03992

LANCASTER COUNTY BOARD OF
ELECTIONS,

Defendant.

PROOF OF SERVICE

I, Jonathan L. Cochran, hereby certify that on June 25, 2024, I caused the foregoing *Verified Motion for Preliminary Injunction together with Brief, Declaration, and Exhibits in Support Thereof* to be served upon the persons and in the manner indicated below:

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james@zimolonglaw.com, with agreement of:

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James J. Fitzpatrick
Zimolong, LLC
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Attorneys for Defendant, Lancaster County Board of Elections

/s/ Jonathan L. Cochran

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