

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY,  
PENNSYLVANIA

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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:

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Hon. Thomas Sponaugle

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Plaintiff,

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**CIVIL DIVISION**

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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,<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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.<sup>3</sup>

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-

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<sup>3</sup> 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.<sup>4</sup>

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

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<sup>4</sup> Lancaster County Election Board Meeting minutes, dated April 3, 2024, *available at*: [https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/\\_04032024-3082](https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/_04032024-3082).

or 70 days before the election for absentee ballots.<sup>5</sup> *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.<sup>6</sup>

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

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<sup>5</sup> 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).

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> *Id.* Others, including Defendant, did not.<sup>9</sup> 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

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<sup>7</sup> 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/>.

<sup>8</sup> 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/>.

<sup>9</sup> 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.<sup>10</sup>

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."<sup>11</sup> 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.<sup>12</sup> *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.<sup>13</sup> 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

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<sup>10</sup> Lancaster County Election Board Meeting minutes, dated February 28, 2024, available at: [https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/\\_02282024-3060](https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/_02282024-3060).

<sup>11</sup> 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](https://co.lancaster.pa.us/AgendaCenter/ViewFile/Minutes/_04222024-3095).

<sup>12</sup> 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>.

<sup>13</sup> 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*, 560 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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*Counsel for Plaintiff Pennsylvania Alliance  
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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



Michael Crossey, President, Pennsylvania Alliance  
for Retired Americans

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*Counsel for Plaintiff*

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

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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**