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

**Brian Frey and Jon Foley Sherman,**

**Plaintiffs,**

vs.

**Ray D'Agostino, Joshua G. Parsons, and  
John Trescot in their official capacities;  
the Lancaster County Board of Elections;  
and Lancaster County,**

**Defendants.**

**CIVIL DIVISION**

No. \_\_\_\_\_

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days, or within the time set by order of the court, after this petition for review and notice are served, by entering a written appearance personally or by attorney and filling in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LANCASTER BAR ASSOCIATION

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**CIVIL DIVISION**

**No. \_\_\_\_\_**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**I. INTRODUCTION**

1. Defendant Lancaster County Board of Commissioners, sitting as the Board of Elections (hereafter "Board"), took official action at their April 13, 2022, public meeting to remove the only "drop box" previously available to Lancaster County's voters that allowed them

to securely deposit their mail-in and absentee ballots, without providing the public advance notice that they would be considering the action.

2. The Sunshine Act expressly gives Pennsylvanians the right to advance notice of the topics for discussion at any official public meeting. 65 Pa. C.S. § 701 *et seq.* The agenda must “include[s] a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting.” *See* 65 Pa. C.S. § 709(c.1)(1)(i). This agenda must be posted on an agency’s publicly accessible Internet website no later than 24 hours in advance of the start of the meeting, posted at the meeting location and main offices, and given to meeting attendees. *Id.* Defendants did not comply with this important requirement depriving Lancaster county residents, including Plaintiffs, of an opportunity to provide comment on the retention or removal of the drop box.

3. Pennsylvania residents’ ability to attend government agency meetings that discuss public business and to comment on issues under consideration is vital to a functioning democracy. In order for Pennsylvanians to participate in such meetings, the agency must give notice not only of the meeting schedule, but also the topics planned for discussion. Those rights of participation and transparency are, in the words of the General Assembly, “vital to the enhancement and proper functioning of the democratic process,” because “secrecy in public affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.” 65 Pa. C.S. § 702.

4. Plaintiffs, two Lancaster County residents, bring this lawsuit against the Board, and its members, to void Defendants’ April 13 decision to remove Lancaster County’s lone drop box based on a clear violation of the Sunshine Act’s agenda-notification requirement, and to enjoin immediately the removal of the drop box until and unless Defendants cure the deficiency.

## II. JURISDICTION AND VENUE

5. This Court has original jurisdiction over this Complaint pursuant to 42 Pa. C.S. § 931(a)(1) and 65 Pa. C.S. § 715.

6. All Defendants are all located in this County and the Court can exercise personal jurisdiction over them.

7. Venue exists in this Court pursuant to Pennsylvania Rules of Civil Procedure 1006 and 2103 because this action arose in Lancaster County and this is a suit against one or more political subdivisions located within Lancaster County. Venue also exists pursuant to 65 Pa. C.S. § 715.

## III. PARTIES

8. Plaintiff Brian Frey is a lifelong resident of Lancaster County and currently lives in Ephrata, Pennsylvania. *See* Affidavit of Brian Frey, May 7, 2022 at ¶ 3, attached as Exhibit “1.” (“Frey Aff. at ¶ \_\_\_”). Mr. Frey is active in his community, currently serves as a member of the Board of the Ephrata Public Library and as a member of the Advisory Board of the Lancaster County Single County Authority. Frey Aff. at ¶ 4. As a member of a government body accountable to the public, Mr. Frey is well aware of the requirements of the Sunshine Act and the need to post timely and accurate notices of meeting dates and times that describe the matters that the body will or may discuss. Frey Aff. at ¶ 5. Although Mr. Frey likely would have been unable to attend a meeting at 9 a.m. on a Wednesday morning in person, if he had known that the Board was acting on the drop box policy he would have sent a comment to the Elections Board via email. Frey Aff. at ¶¶ 7-11.

9. Plaintiff Jon Foley Sherman has lived in Lancaster County for more than 10 years. *See* Affidavit of Jon Foley Sherman, May 7, 2022 at ¶ 3, attached as Exhibit “2.” (“Sherman Aff.

at ¶ \_\_”) He works as an in-patient experience advisor to integrate the patient experience in clinical care and improve patient outcomes Sherman Aff. at ¶ 4. Mr. Sherman participates in the civic life of his community. Sherman Aff. at ¶ 4. For example, Mr. Sherman has attended recent meetings of the Manheim Township School Board to provide public comment on matters before the Board. Sherman Aff. at ¶ 6. He served as a pollworker in the 2020 elections. Sherman Aff. at ¶ 5. If Mr. Sherman had known the Elections Board would be taking action to remove the secure drop box, Mr. Sherman would have attended the meeting to share his views with the Board during the public comment period. Sherman Aff. at ¶ 12. Mr. Sherman’s interest in this matter is to ensure that important government decisions are made openly and transparently, that the government’s deliberations occur in public and that affected individuals are given an opportunity for input into the Board’s decision making. Sherman Aff. at ¶ 14.

10. Defendant Ray D’Agostino is a Commissioner of the Lancaster County Board of Commissioners and Chair of the Board of Elections. He lives in Lancaster County and is sued only in his official capacity.

11. Defendant Joshua G. Parsons is a Commissioner of the Lancaster County Board of Commissioners and Vice- Chair of the Board of Elections. He lives in Lancaster County and is sued only in his official capacity.

12. Defendant John Trescot is a Commissioner of the Lancaster County Board of Commissioners and a member of the Board of Elections. He lives in Lancaster County and is sued only in his official capacity.

13. Defendant Lancaster County Board of Commissioners is composed of the three sitting Lancaster County Commissioners. 16 Pa. C.S. § 3503(a). The Board of Commissioners is an “agency” as that term is defined by the Sunshine Act. 65 Pa. C.S. § 703. A board of county

commissioners is empowered by the County Code to issue “resolutions and ordinances prescribing the manner in which powers of the county shall be carried out and generally regulating the affairs of the county,” 16 Pa. C.S. § 509(a), and serves as “the responsible managers and administrators of the fiscal affairs of their respective counties in accordance with the provisions of [the County Code] and other applicable law.” 16 Pa. C.S. § 1701.

14. The Pennsylvania Election Code establishes that the county board of elections consists of the county commissioners in all counties that have not adopted home rule charter, such as Lancaster County. 25 P.S. § 2641. The Election Code empowers the county boards of elections “[t]o make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of voting machine custodians, elections officers and electors,” including acceptable methods of returning mail and absentee ballots. 25 P.S. § 2642(f). The Lancaster County Board of Elections is composed of all three county commissioners.

15. Defendant Lancaster County is a second class county located in the Commonwealth of Pennsylvania.

#### **IV. FACTUAL BACKGROUND**

##### **The Sunshine Act**

16. The Sunshine Act requires that the deliberations of public agencies, such as the Lancaster County Board of Commissioners sitting as the Board of Elections, must be made in public, after public notice and subject to public comment. As the General Assembly explained in its findings supporting passage of the Sunshine Act, the “right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision-making of

agencies is vital to the enhancement and proper functioning of the democratic process [.]” 65 Pa. C.S. § 702(a).

17. The General Assembly further declared that it is the “public policy of this Commonwealth to insure [sic] the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter.” *Id.* at § 702(b).

18. Key to such a right of participation is advance notice of the business the agency will discuss at the next meetings. The meeting agenda must be advertised in advance. Indeed, as the Pennsylvania Supreme Court recognized in *Consumers Educ. and Protective Ass’n v. Nolan*, “[A]dequate notice to the public at large is an integral part of the public-meeting concept.” 368 A.2d 675, 681 n. 4 (Pa. 1977).

19. Notably, a recent amendment to the Sunshine Act requires public agencies to publish a meeting agenda detailing the issues expected to be deliberated and voted on at public meetings on a publicly accessible Internet website no later than 24 hours in advance of the time of the convening of the meeting. *See* 65 Pa. C.S. § 709(c.1)(1)(i).

20. Whenever an agency takes any “official action” as defined by the Act, it must do so “at a meeting open to the public.” *Id.* at § 704. In addition, the agency “shall provide a reasonable opportunity” for individuals “to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.” *Id.* at § 710.1(a). Without advance notice of the matters that will be decided, the public is effectively deprived of the opportunity to meaningfully participate in the government’s decision-making process.



21. “Official action” as defined in the Sunshine Act includes “decisions on agency business made by an agency” and the “establishment of policy by an agency.” 65 Pa. C.S. § 703.

### **The Lancaster County Drop Box**

22. In 2019, the Pennsylvania General Assembly enacted Act 77, which allowed any registered voter to vote by mail regardless of whether the elector was going to be absent from their municipality on Election Day.

23. Because of the pandemic in 2020, Lancaster County experienced a large increase in the number of voters seeking to vote by mail, as did the rest of the Commonwealth.

24. On September 17, 2020, the Pennsylvania Supreme Court ruled that the Election Code permitted counties to offer secure ballot drop boxes for voters to drop off completed mail-in and absentee ballots. *See Pennsylvania Democratic Party v. Boockvar*, 238 A. 3d 345, 361 (Pa. 2020).

25. The Lancaster Board of Elections met on September 23, 2020, to discuss having at least one ballot drop box, like it did for the June 2, 2020, primary election.

26. At the September 23, 2020, meeting, the posted meeting agenda included an agenda item under “New Business” labeled “Drop Box” and “Extended Lobby Hours.” *See* Lancaster County Election Board Agenda, September 23, 2020, attached as Exhibit “3.”

27. According to news outlets, the Board discussed, permitted public comment and decided to install one ballot drop box location at the Lancaster County Government Center, 150 Queen Street. *See, e.g.,* <https://www.fox43.com/article/news/local/lancaster-county-to-have-one-ballot-drop-box-at-county-government-center/521-f8aba8e8-37ff-4503-80a0-d92600f53054>.

28. At the same meeting, the Board of Elections also directed that the lobby hours be extended and the doors open from 8:30 a.m. to 8:00 p.m., on weekdays in the week before the

election, except closing at 5:00 p.m. on the Friday before the election and opening only between 9:00 a.m. to 2:00 p.m. on the preceding Saturday.

29. As a result of this meeting, the Board directed the placement of a secure drop box at the Lancaster County Government Center, and made it available during the expanded hours discussed in the preceding paragraph.

30. The Lancaster County Board of Elections has deployed a drop box in the same location since the November 2020 election, including for the May 2021 primary and November 2021 general elections, during the same expanded hours.

#### **The April 13, 2022, Board of Elections Meeting**

31. The Lancaster County Election Board held a regularly scheduled public meeting on April 13, 2022. The county has posted video of the April 13, 2022 meeting here:

<https://vimeo.com/700551057>.

32. The County posted an agenda ahead of the meeting listing the following topics under “New Business”:

- a. **Resolution No. 3 of 2022 – Proposed Polling Place Changes**  
Christa Miller, Chief Clerk/Chief Registrar, Board of Elections
- b. **Update on the 2022 Primary Election**  
Christa Miller, Chief Clerk, Board of Elections

*See* Lancaster County Election Board Agenda, April 13, 2022, attached as Exhibit “4.”.

33. Several individuals in the County, including declarant Duncan Hopkins, had heard rumors that the majority of the Board of Elections was considering removing the drop box. *See* Affidavit of Duncan Hopkins, May 9, 2022 at ¶ , attached as Exhibit “5.” (“Hopkins Aff. at ¶

\_\_\_”) Accordingly, even though the Board had not announced that it would discuss the drop box, Mr. Hopkins and other Lancaster County residents attended the meeting to share during public comment their views in favor of continued and even expanded use of drop boxes. Hopkins Aff., at ¶ 9.

34. The Board of Elections deliberated and voted on the notices of proposed polling place changes.

35. Following that vote, the Board heard a report from Christa Miller, Chief Clerk of Elections of Lancaster County, but took no action on anything she discussed.

36. During her report, Ms. Miller noted that there were 345,569 registered voters in Lancaster County and that they had received 22,352 mail-in and absentee ballot applications. Hopkins Aff. at ¶ 15.

37. Immediately thereafter, the Board opened the meeting to public comment. (Election Board 4-13-22,00:17:15). Sixteen individuals rose to speak about elections. Hopkins Aff. at ¶ 16. Many of the speakers described their experience with, and support of, mail-in voting. *Id.* All of the speakers expressed support for the lone drop box in the County building, and many also encouraged the Board to install additional drop boxes around the county. *Id.*

38. At the conclusion of public comment period, the Commissioners questioned Ms. Miller. (Election Board 4-13-22,01:07:01).

39. Defendant Trescot asked Ms. Miller how many ballots were deposited in the drop box during an election. Ms. Miller stated “more than a thousand came in on Election Day,” but she was unsure about the total number and agreed that “several thousand” was a good estimate. (Election Board 4-13-22,01:07:20-37). Mr. Trescott also inquired about the impact on Ms. Miller’s staff if the drop box were removed. She stated that she would need to deploy one person

just to collect dropped off ballots on Election Day and that person would likely need to be a temporary staffer. (Election Board 4-13-22,01:07:56). She also noted that her office has very little room for voters to stand in line while waiting to drop off a ballot. (Election Board 4-13-22,01:08:58).

40. Defendant Trescot asked how the decision to remove the drop box would be made. (Election Board 4-13-22,01:09:23). Defendant D'Agostino interrupted and stated that's not a question for Ms. Miller but for the Board. When Defendant Trescot asked if the Board would take a vote, Defendant D'Agostino flatly stated, "No, we don't take a vote." (Election Board 4-13-22,01:09:28). Defendant D'Agostino likened the decision to "moving furniture." (Election Board 4-13-22,01:09:40).

41. Ms. Miller indicated that the Board would send its "directive" to the department to which it pertained. (Election Board 4-13-22,01:09:56).

42. Both Defendant D'Agostino and Defendant Parsons claimed that the decision to install the drop box in 2020 was an "administrative decision," and there was no vote. (Election Board 4-13-22,01:10:10).

43. Defendant D'Agostino stated that he was not in favor of having the drop box and Defendant Parsons was not in favor and that constituted a "consensus" but the Board did not take a vote. (Election Board 4-13-22, 01:29:40).

44. At the conclusion of the meeting, Defendant D'Agostino responded to a news reporter's question that the Board had decided "administratively" that they did not want to "see" a drop box. (Election Board 4-13-22,01:37:25).

45. In sum, the Board decided at an official public meeting on April 13 to remove the County's sole drop box. The decision reversed official action taken by the Board on September

23, 2020, when it authorized the drop box and directed the expanded lobby hours. The Board acted without giving the public advance notice of its action and without formally voting.

46. Regardless how Defendants D'Agostino and Parsons wish to characterize what they did, the Board took action to undo the Board's earlier official action, which under the plain language of the Sunshine Act cannot be dismissed as "administrative action" exempt for statutory notice, comment and voting requirements.

47. Without the requisite advance-public notice that the Board would be discussing and deciding on the retention or removal of the secure ballot drop box, Plaintiffs did not know the discussion would occur and, thus, did not attend or participate. Sherman Aff., at ¶¶10-11; Frey Aff., at ¶¶ 8-9. If they had notice of the discussion, they would have attended, or at least submitted written comments, to voice their perspectives. Sherman Aff., at ¶ 12; Frey Aff., at ¶ 10-11.

48. The failure of notice further deprived Plaintiffs of the opportunity to inform and enlist other County residents of the impending action, to further publicize the matter, and to take other steps to voice comments, questions, and concerns about the matter Sherman Aff., at ¶ 13; Frey Aff., at ¶ 12.

## COUNT I

### **Violation Of The Sunshine Act For Failure To Properly Notice The April 13, 2022, Board of Elections Meeting, Failure to Allow Public Comment In Advance Of Official Action And Failure To Record A Vote Of Official Action (against Defendants Lancaster County, D'Agostino, Parsons, Trescot and the Lancaster County Board of Elections)**

49. Plaintiffs hereby incorporate and adopt the allegations set forth in the foregoing paragraphs of the Complaint.

50. The Sunshine Act requires that whenever an agency takes an “official action,” it must do so “at a meeting open to the public” and that it must post an agenda, which includes a listing of each matter of agency business that will or may be “the subject of deliberation or official action at the meeting,” on its Internet website no later than 24 hours in advance of the time of the convening of the meeting. 65 Pa. C.S. §§ 704, 709(c.1).

51. The Sunshine Act further requires that agencies “*shall* provide a reasonable opportunity” for “comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.” 65 Pa. C.S. § 710.1(a) (emphasis added).

52. Defendants violated the Sunshine Act by taking official action to remove the drop box and eliminate extended lobby hours for deposit of mail-in and absentee ballots without properly noticing these actions. Accordingly, those actions are presumptively void, and voidable, pursuant to 65 Pa. C. S. § 713.

53. Defendants were aware of their obligation under the Sunshine Act to take official action only at a meeting open to the public which was properly noticed. Defendants had previously listed drop box and extended lobby hours in an agenda for their September 23, 2020, meeting and therefore had considered such matters official agency business in the past.

54. Changing or rescinding past official action cannot be considered “administrative action” exempt from Sunshine Act strictures, including advance notice. Defendants violated the Sunshine Act by taking this unlawful action.

55. Absent emergency injunctive relief, Plaintiffs will be irreparably harmed because their elected officials took action contrary to law on an important matter without affording Plaintiffs, and other interested members of the public, an opportunity to comment and provide

input. The underlying decision involves cancellation of an important and lawful means for Lancaster County voters to deliver their ballots at the upcoming May 17 primary election. Plaintiffs have no adequate remedy at law for the Board's Sunshine Act violations.

### **PRAYER FOR RELIEF**

The only effective remedy to correct the Sunshine Act violation and allow Plaintiffs, and other Lancaster residents, to provide legally required public input prior to official Board action is to void the results of Defendants' illegal acts. *See* 65 Pa. C.S. § 713. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of the unlawful acts, omissions, policies, and practices of Defendants, as alleged herein, unless this Court grants the relief requested.

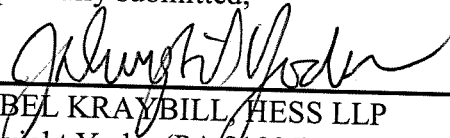
**WHEREFORE**, Plaintiffs request that this Honorable Court enter judgment in their favor and against Defendants and:

- a. Declare that the failure to list the fate of the drop box as an agenda item for the April 13, 2022, public meeting violated the Sunshine Act;
- b. Declare that the official action to remove the secure drop box from the Lancaster County Government Service Center and to stop extended lobby hours for voters to drop off ballots are void;
- c. Issue a preliminary injunction enjoining Defendants from removing the drop box and limiting extended lobby hours;
- d. Issue an injunction directing the Defendants to re-install the secure drop box;
- e. Issue a permanent injunction to enjoin the Lancaster County Board of Commissioners from removing the secure drop box and curtailing extended lobby

hours until and unless they comply with all Sunshine Act requirements, including the requirement to provide advance notice of this topic on the agenda;

- f. Award Plaintiffs attorneys' fees pursuant to 65 Pa. C.S. § 714.1; and
- g. Award Plaintiffs costs and such other and further relief that this Honorable Court deems just and appropriate.

Respectfully submitted,



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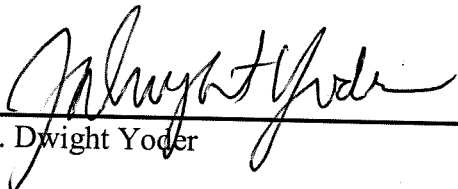
*Counsel for Plaintiffs*



## CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: May 10, 2022

  
\_\_\_\_\_  
J. Dwight Yoder  
*Counsel for Plaintiffs*

**Exhibit 1**

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA

**Brian Frey and Jon Foley Sherman,**

**Plaintiffs,**

**vs.**

**Ray D'Agostino, Joshua G. Parsons, and  
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the Lancaster County Board of Elections;  
and Lancaster County,**

**Defendants.**

**CIVIL DIVISION**

**No.** \_\_\_\_\_

**AFFIDAVIT of BRIAN FREY**

I, Brian Frey, hereby declare as follows:

1. I make this declaration in connection with the above-captioned lawsuit. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am over eighteen years of age and am otherwise competent to testify.
3. I live in Ephrata, Pennsylvania. I am a lifelong resident of the Lancaster County.
4. I am active in my community and currently serve as a member of the Board of the Ephrata Public Library and as a member of the Advisory Board of the Lancaster County Single County Authority.
5. Because of my membership on a public body governed by the Sunshine Act, I am well aware of the need to post timely and accurate notices of meeting dates and times that describe the matters that will be discussed before the body.
6. The Lancaster County Board of Elections was scheduled to meet on April 13, 2022.

7. The posted agenda for the April 13, 2022 meeting did not contain an agenda item relating to the removal of the secure drop box at the Lancaster County Government Center.
8. I was unaware that the Lancaster County Board of Elections was planning to announce a decision to remove the secure drop box at the April 13, 2022 meeting.
9. I did not attend the April 13, 2022, meeting of the Lancaster County Board of Elections.
10. If I had known that the Board was acting on the drop box policy, I would have made every effort to attend the meeting.
11. Even if I were unable to attend a meeting on a Wednesday morning, I would have sent comments to the Board in writing via email.
12. If I had known that the Board was considering removing the secure drop box, I would have informed other residents of Lancaster County who likely would have attended the meeting and voiced comments.

The statements made in this Declaration are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Executed on May 7, 2022, in Ephrata, Pennsylvania



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Brian Frey

**Exhibit 2**

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA

**Brian Frey and Jon Foley Sherman,**

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vs.

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and Lancaster County,**

**Defendants.**

CIVIL DIVISION

No. \_\_\_\_\_

**AFFIDAVIT of JON FOLEY SHERMAN**

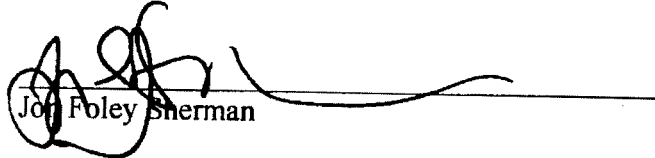
I, Jon Foley Sherman, hereby declare as follows:

1. I make this declaration in connection with the above-captioned lawsuit. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am over eighteen years of age and am otherwise competent to testify.
3. I live in Manheim Township, Pennsylvania. I have lived in Lancaster County for the past 11 years.
4. I work as an in-patient experience advisor to integrate the patient experience in clinical care and improve patient outcomes.
5. I participate in the civic life Lancaster County. I served as a poll worker in the 2020 General Election.
6. I have attended recent meetings of the Manheim Township School Board to provide public comment on matters before the Board.

7. I am also a frequent contributor to the opinion pages of our local news outlets, where I write letters to the editor about matters of public concern, such as the actions of our elected officials.
8. The Lancaster County Board of Elections was scheduled to meet on April 13, 2022.
9. The posted agenda for the April 13, 2022, meeting did not contain an agenda item relating to the removal of the secure drop box at the Lancaster County Government Center.
10. I was unaware that the Lancaster County Board of Elections was planning to announce a decision to remove the secure drop box at the April 13, 2022 meeting.
11. I did not attend the April 13, 2022, meeting of the Lancaster County Board of Elections.
12. If I had known that the Board was acting on the drop box policy, I would have attended the meeting to express comments regarding that decision.
13. If I had known that the Board was considering removing the secure drop box, I would have informed other residents of Lancaster County who likely would have attended the meeting and voiced comments.
14. I am concerned about the Board of Elections' actions because it's important that government decisions are made openly and transparently, that the government's deliberations occur in public and that affected individuals are given an opportunity for input into the Board's decision making.

The statements made in this Declaration are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Executed on May 8, 2022, in Manheim, Pennsylvania

  
Jon Foley Sherman



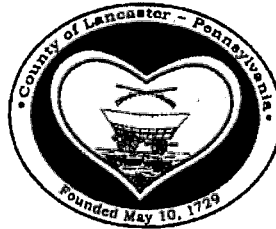
# Exhibit 3

**LANCASTER COUNTY ELECTION BOARD**

**AGENDA**

**Wednesday, September 23, 2020**

**Conference Room #701, 7<sup>th</sup> Floor**

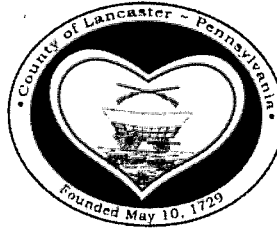


1. Meeting Called to Order: This morning's meeting will be conducted by Commissioner Ray D'Agostino.
2. Minutes as Distributed: Postpone approval of the August 26, 2020 Election Board Meeting Minutes.
3. New Business:
  - a. Review of Recent Court Rulings
  - b. Drop Box
  - c. Extended Lobby Hours
  - d. Final Approval of Absentee and Mail-in Ballot Instructional Sheet
  - e. Mail-in and Absentee Ballot Pre-canvassing and Canvassing
4. Business from Guests
5. Adjourn

**Exhibit 4**

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**LANCASTER COUNTY ELECTION BOARD AGENDA**  
**APRIL 13, 2022**  
**Conference Room #701, 7<sup>th</sup> Floor**



1. Meeting Called to Order: This morning's meeting will be conducted by Commissioner Ray D'Agostino.
2. Minutes as Distributed:
  - a. Postpone approval of the April 6, 2022 Election Board Minutes.
3. Old Business:
4. New Business:
  - a. **Resolution No. 3 of 2022 – Proposed Polling Place Changes**  
Christa Miller, Chief Clerk/Chief Registrar, Board of Elections
  - b. **Update on the 2022 Primary Election**  
Christa Miller, Chief Clerk, Board of Elections
5. Business from Guests
6. Adjourn

**Exhibit 5**

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA

**Brian Frey and Jon Foley Sherman,**

**Plaintiffs,**

**vs.**

**Ray D'Agostino, Joshua G. Parsons, and  
John Trescot in their official capacities;  
the Lancaster County Board of Elections;  
and Lancaster County,**

**Defendants.**

**CIVIL DIVISION**

No. \_\_\_\_\_

**AFFIDAVIT of DUNCAN HOPKINS**

I, Duncan Hopkins, hereby declare as follows:

1. I make this declaration in connection with the above-captioned lawsuit. I have personal knowledge of the matters in this declaration and this is what I would testify to if called as a witness in Court.
2. I am over eighteen years of age and am otherwise competent to testify.
3. I live in Lancaster City, Pennsylvania. I am a lifelong resident of Lancaster County where I was born and raised.
4. I currently work as a Local Organizer for Lancaster Stands Up, a Lancaster-based nonprofit grassroots organization dedicated to being a vehicle for the working class to have a political voice.
5. I have been regularly attending the scheduled meetings of both the Lancaster County Board of Commissioners and Board of Elections since the beginning of March 2022.
6. In the past 9 weeks, I have attended six Board of Commissioners' meetings and four Board of Elections' meetings.

7. The Lancaster County Board of Elections was scheduled to meet on April 13, 2022.
8. I had heard rumors, before the April 13, 2022 meeting that the Board of Elections was considering removing the drop box.
9. I informed other residents of those rumors. I attended the meeting to share during public comment my views in favor of continued and even expanded use of drop boxes.
10. I attended the April 13, 2022 Board of Elections meeting and the County Commissioners work session meeting held on April 12, 2022.
11. The posted agenda for the April 13, 2022 meeting did not contain an agenda item relating to the removal of the secure drop box at the Lancaster County Government Center.
12. The County posted an agenda for the meeting listing the following topics under "New Business":
  - a. **Resolution No. 3 of 2022 – Proposed Polling Place Changes**  
Christa Miller, Chief Clerk/Chief Registrar, Board of Elections
  - b. **Update on the 2022 Primary Election**  
Christa Miller, Chief Clerk, Board of Elections
13. The Board of Elections proceeded to consider and vote on posting the proposed polling place changes.
14. Following that vote, the Board heard a report from Christa Miller, Chief Clerk of Elections of Lancaster County, for which no action was noticed or taken.
15. During her report, Ms. Miller noted that there were 345,569 registered voters in Lancaster County and that they had received 22,352 mail-in and absentee ballot applications.

16. During the public comment period, sixteen individuals rose to provide comment about elections to the Board including expressing support for retaining the secure drop box, and for installing additional secure drop boxes around the county.

17. At the conclusion of public comment period, the Commissioners asked questions of Ms. Miller.

18. Ms. Miller stated that her office did not track how many ballots were deposited in the drop box but she estimated it to be "several thousand." She noted that more than one thousand were deposited on Election Day alone in November, 2021.

19. Ms. Miller informed the Board that she would need to deploy one staff person, likely a temporary staffer, to collect dropped off ballots on election day if the Board directed removal of the drop box.

20. Defendant Trescot asked how the decision to remove the drop box would be made. Defendant D'Agostino told him that it was an administrative action and did not require a vote. Defendant Trescot supported retention of the drop box.

21. Ms. Miller indicated that the Board would send its "directive" to the department to which it pertained.

22. Towards the end of the meeting, a news reporter asked whether the Board had made a decision. Defendant D'Agostino responded that the Board had decided "administratively" that they did not want to "see" a drop box.

23. The Board of Elections announced the decision to remove the secure drop box without calling the question for a vote and without recording the votes as cast.

24. The county has posted video of the April 13, 2022 meeting here:

<https://vimeo.com/700551057>



The statements made in this Declaration are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Executed on May 9, 2022, in Lancaster City, Pennsylvania

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line and a vertical stroke that extends downwards.

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Duncan Hopkins

## VERIFICATION

I verify that the statements made in this Complaint are true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Dated: May 8, 2022

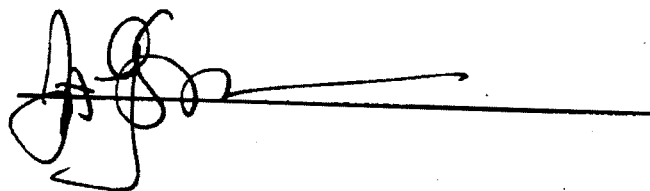
A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

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## VERIFICATION

I verify that the statements made in this Complaint are true and correct to the best of my knowledge and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Dated: May 8, 2022

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.