

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

VIVIETTE APPLEWHITE, *et al.*,  
Petitioners,  
v.

Case No. 330 MD 2012

THE COMMONWEALTH OF  
PENNSYLVANIA, THOMAS CORBETT,  
Governor, and CAROL AICHELE,  
Secretary of the Commonwealth,  
Respondents.

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**BRIEF IN OPPOSITION TO PETITIONERS'  
APPLICATION FOR PRELIMINARY INJUNCTION**

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## INTRODUCTION

After many months of legislative process, the Governor signed Act 18 of 2012<sup>1</sup> (“Act 18” or “the Act”), into law on March 14, 2012. The Act amends the Election Code’s requirements relating to a voter’s proof of identification, such that all registered voters must establish their identity at polling places with certain forms of photo identification. Act 18 found support among the majority of the members of the General Assembly, the Governor, and, according to well-publicized public opinion polls, the people of Pennsylvania. Petitioners represent a dissatisfied and politically charged minority of the population that criticizes Act 18 as a “voter suppression” measure. Such a characterization is belied by the efforts of the Department of State to implement the Act.

In the short time since the enactment of Act 18, the Department of State and other agencies have examined and streamlined the processes and requirements associated with the acquisition of photo ID cards in Pennsylvania. A birth certificate with a raised seal has historically been a prerequisite to obtaining a photo ID from the Department of Transportation (“PennDOT”). Now, however, PennDOT and the Department of Health communicate directly with each other to certify the birth records of native Pennsylvanians seeking photo ID for voting purposes. Recognizing that some Pennsylvania voters may be unable to prove their identities in the manner required for PennDOT’s secure ID products, the Department of State will begin in August to issue photo ID cards for voting purposes upon a less demanding standard of proof. The Department of State has procured the services of media specialists to educate the voters of Pennsylvania about Act 18 and the forms of acceptable photo ID. This media campaign will

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<sup>1</sup> Act of March 14, 2012, P.L. 195, No. 18, 25 P.S. § 2602(z.5).

complement the Department's own extensive efforts to educate the public in the coming months to ensure that every person who wishes to vote in November will be equipped to do so.

As with any statute requiring a change in conduct statewide, the process of implementation takes time, but ample time remains to complete the implementation of Act 18 over the next three months. Respondents' significant progress so far demonstrates their commitment to ensuring that all eligible and interested voters will have the appropriate photo ID before the next election in November. Petitioners, meanwhile, cite to the number of individuals who may lack an acceptable ID at this time, but Petitioners can present no credible reason why such individuals will not be able to obtain an ID over the next three months. Petitioners instead criticize Act 18 for imposing even the slightest inconvenience on voters. Voting, like so many other constitutionally protected activities, does not occur without each person sharing the responsibility to exercise that right.

Petitioners request that this Court enjoin the implementation of Act 18. That request fails not only because there are valid reasons for photo ID legislation, but also because the efforts of the Department of State to make photo ID cards available will greatly minimize any burden on the electorate. Petitioners cannot satisfy their demanding burden with political talking points. Petitioners emphasize the absence of known instances of voter impersonation, ignoring that a statute passes constitutional muster if the legislature could have even conceived of a legitimate purpose for the legislation. Every individual Petitioner either possesses an acceptable photo ID under the Act or has the documents necessary to obtain one. Certain Petitioners complain – with PennDOT-issued photo ID in hand – only that they were charged a fee to obtain that ID. The requested preliminary injunction must be denied, because these Petitioners can show neither immediate and irreparable harm nor a likelihood of success on the merits of their claims.



### **STATEMENT OF JURISDICTION**

This Court has original jurisdiction of this action for declaratory and injunctive relief against the Commonwealth pursuant to 42 Pa.C.S. § 761.

## STATEMENT OF THE SCOPE AND THE STANDARD OF REVIEW

There is a strong presumption in this Commonwealth that legislative enactments do not violate the Pennsylvania Constitution. *Barrel of Monkeys, LLC v. Allegheny County*, 39 A.3d 559 (Pa. Cmwlth. 2012) (citing *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 583 Pa. 275, 292, 877 A.2d 383, 393 (2005)). “A party that challenges the constitutionality of a statute bears ‘a very heavy burden of persuasion’ to overcome this presumption.” *Id.* A statute will not be declared unconstitutional unless it “*clearly, palpably and plainly* violates the Constitution.” *Id.* (emphasis in original).

Petitioners bear the burden to establish the essential prerequisites to obtain preliminary injunctive relief. *Free Speech, LLC v. City of Philadelphia*, 884 A.2d 966, 970 (Pa. Cmwlth. 2006). These essential prerequisites are that: (1) the injunction is necessary to prevent immediate and irreparable harm; (2) greater injury would result from refusing an injunction than from granting it and that issuance of the injunction will not substantially harm other interested parties; (3) the injunction will restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) the right to relief is clear and the wrong is manifest (*i.e.*, Petitioners are likely to prevail on the merits); (5) the injunction is reasonably suited to abate the offending activity; and (6) the injunction will not adversely affect the public. *Id.* at 970. Because a “preliminary injunction is a harsh and extraordinary remedy, it is to be granted only when and if *each* criteria has been fully and completely established.” *Pennsylvania AFL-CIO v. Commonwealth of Pennsylvania*, 683 A.2d 691, 694 (Pa. Cmwlth. 1996); *Leonard v. Thornburgh*, 75 Pa. Cmwlth. 553, 563, 463 A.2d 77, 82 (1983) (if one of the requisite elements is lacking, a preliminary injunction cannot be issued).

### **STATEMENT OF QUESTION INVOLVED**

Whether Petitioners have satisfied their burden of demonstrating that they are entitled to a preliminary injunction barring Respondents from enforcing Act 18.

(Suggested answer in the negative).

## **STATEMENT OF THE CASE**

Petitioners commenced this original jurisdiction action by filing a petition for review on May 1, 2012. Petitioners are individuals who claim not to have a photo ID that is acceptable under the Act, as well as associations that claim that they must expend resources to ensure that their members will have acceptable photo ID to vote. Petitioners filed the application for preliminary injunction on the same day. The parties have conducted extensive discovery, including numerous depositions and the exchange of voluminous documents.

Respondents intend to file an answer to the petition for review and demonstrate that none of the Petitioners lacks acceptable photo ID or the documents necessary to obtain acceptable photo ID. At this point, however, this Court has scheduled a hearing on Petitioners' application to begin on July 25, 2012. Respondents file this brief to set forth their position with respect to the requests for preliminary injunctive relief. There is no prior judicial determination involving these parties or claims.

## FACTUAL BACKGROUND

The following facts are taken from the petition for review, the information revealed during discovery, and the legislative history, which is capable of judicial notice.<sup>2</sup>

### House Bill 934

The bill that became Act 18 was introduced as HB 934 and was debated extensively in the House of Representatives. During the floor debate on HB 934, the members of the House of Representatives considered a number of reasons for the legislation. The members considered that photo ID is commonly required in many facets of everyday life, including airport security, purchasing alcoholic beverages, and purchasing certain pharmaceutical products. *See* 2012 Legislative Journal – House, March 13, 2011 (Exhibit A). Given the importance of voting as the foundation of democracy, the members considered that photo ID should be required to ensure each voter gets one vote and that vote will not be diluted by the fraudulent voting of others. *Id.* The members specifically discussed that HB 934 was modeled after the photo ID legislation enacted in Indiana, which legislation was upheld as constitutional by the United States Supreme Court. *Id.* The members were mindful of the recommendations of the bi-partisan commission led by former President Jimmy Carter and James A. Baker, III, which called for a photo ID system for voters to ensure that each voter in a polling place is the same voter listed in the registry. *Id.*

The members of the House of Representatives considered the impact on certain segments of the population, including senior citizens. The members considered that the Social Security Administration requires photo ID to obtain benefits and such a photo ID must be maintained in

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<sup>2</sup> Trial depositions were conducted for those Petitioners who are unable to travel to Harrisburg for the hearing. The Court will be supplied with transcripts and videos of those trial depositions. Respondents have submitted with this brief the relevant portions of the legislative history.

the event that a claim is made. *See* 2012 Legislative Journal – House, June 20, 2011 (Exhibit B). The members considered that photo ID is increasingly required to use credit cards or to write a check. *Id.* Photo ID is required when filing for rebates under the Pharmaceutical Assistance Contract for the Elderly program. *Id.*

### Requirements of Act 18

The Governor signed this legislation into law on March 14, 2012. As enacted, the Act requires registered voters to confirm their identity as follows:

(z.5) The words “proof of identification” shall mean:

(1) In the case of an elector who has a religious objection to being photographed, a valid-without-photo driver’s license or a valid-without-photo identification card issued by the Department of Transportation.

(2) For an elector who appears to vote under section 1210, a document that:

(i) shows the name of the individual to whom the document was issued and the name substantially conforms to the name of the individual as it appears in the district register;

(ii) shows a photograph of the individual to whom the document was issued;

(iii) includes an expiration date and is not expired, except:

(A) for a document issued by the Department of Transportation which is not more than twelve (12) months past the expiration date; or

(B) in the case of a document from an agency of the Armed forces of the United States or their reserve components, including the Pennsylvania National Guard, establishing that the elector is a current member of or a veteran of the United States Armed Forces or National Guard which does not designate a specific date on which the document expires, but includes a designation that the expiration date is indefinite; and

(iv) was issued by one of the following:

(A) The United States Government.

(B) The Commonwealth of Pennsylvania;

(C) A municipality of this Commonwealth to an employee of that municipality.

(D) An accredited Pennsylvania public or private institution of higher learning.

(E) A Pennsylvania care facility.

(3) For a qualified absentee elector under section 1301:

- (i) in the case of an elector who has been issued a current and valid driver's license, the elector's driver's license number;
- (ii) in the case of an elector who has not been issued a current and valid driver's license, the last four digits of the elector's Social Security number;
- (iii) in the case of an elector who has a religious objection to being photographed, a copy of a document that satisfies paragraph (1); or
- (iv) in the case of an elector who has not been issued a current and valid driver's license or Social Security number, a copy of a document that satisfies paragraph (2).

25 P.S. § 2602(z.5).

In the event that a voter is unable to produce proof of identification at the polling place, or is unable to obtain such proof of identification because of indigence, the Act requires that the voter be able to cast a provisional ballot. 25 P.S. § 3050(a.2)(1). After casting a provisional ballot, the Act requires that such a voter deliver in person or by other means to the county board of elections within six calendar days after the election a copy of the voter's photo ID and an affirmation declaring that the voter is the same person who cast the provisional ballot. 25 P.S. § 3050(a.4)(5)(ii)(E). If the cause for the provisional ballot was the inability to obtain photo ID because of indigence, however, the voter need only supply within six calendar days the affirmation declaring that the voter is the same person who cast the provisional ballot and that the voter is in fact indigent. 25 P.S. § 3050(a.4)(5)(ii)(D). The Department of State will ensure that each county board of elections has copies of the affirmation relating to indigent voters at the polling places so that it will be unnecessary for indigent voters to appear a second time or send the affirmation by mail to the county board of elections.

The Act imposes certain requirements on the Secretary of the Commonwealth and the Department of Transportation. The Secretary of the Commonwealth must prepare and disseminate to the public information about the photo ID requirements in the Act. 25 P.S.

§ 2626(a). The Department of Transportation must issue photo ID cards free of charge to any registered voter who requests a photo ID card for voting purposes and who signs an affirmation that he or she does not possess an acceptable photo ID under the Act. 25 P.S. § 2626(b).

As Petitioners recognize, the Election Code required before Act 18 that first-time voters establish their identities by presenting a photo ID. (Petition for Review, ¶66). In the event that such first-time voters did not have an acceptable photo ID, the Election Code required such first-time voters to provide alternative forms of identification. *Id.*

#### PennDOT Driver Licenses and Non-Driver Photo ID Cards

PennDOT has for many years required certain documentation to confirm a person's identity before a driver license or non-driver photo ID card could be issued. Although the documents acceptable for this purpose have varied over the years, PennDOT has always worked on a case-by-case basis with customers to confirm their identity through alternative means, if necessary. In recent years, especially after the events of September 11, 2011, PennDOT has become subject to federal homeland security regulations that require heightened security with regard to photo ID cards that grant access to airports, federal facilities, and other secure locations. PennDOT, therefore requires for the issuance of a driver license or non-driver photo ID card that a customer provide a completed application with certain personal data; a birth certificate with raised seal, certificate of U.S. citizenship or naturalization, or a passport; such proofs of residency as tax records, lease or mortgage documents, a firearms permit, or utility bills; and a Social Security card.

Because the PennDOT databases have been maintained in their current form since 1990, PennDOT will issue a non-driver photo ID card for voting purposes without the documentation that is typically required to any person who possessed a driver license or non-driver photo ID



from 1990 to the present. Such persons have already been screened for the proof of their residency, and PennDOT's facial recognition software will confirm that the person is the same individual who previously possessed a valid PennDOT product.

In order to facilitate the delivery of photo ID products that are acceptable under Act 18, PennDOT has established a direct link with the Department of Health for the confirmation of birth records for people born in Pennsylvania. Contrary to the allegations in the petition for review, such Pennsylvania natives may obtain a photo ID for voting purposes from PennDOT free of charge without paying a fee or making a separate application to the Department of Health for a birth certificate with raised seal. In any event, PennDOT has since 2009 allowed an exception to the requirement that a birth certificate be produced for customers who are 70 years of age or older. For those customers, PennDOT will accept baptismal certificates, some type of government document (*e.g.*, tax records, military records, or Social Security documents), or medical records, as long as these documents list the customer's name and date of birth.

#### Department of State Efforts to Ensure that Voters Have Photo ID

In accordance with the statutory obligations imposed on the Secretary of the Commonwealth by Act 18, the Department of State is taking many steps to educate the public about Act 18 and the forms of acceptable photo ID that are available to interested and eligible voters. The Department is working with colleges and universities in Pennsylvania to ensure that their student ID cards have the required expiration date. Many universities, such as Penn State University and all of the member universities of the State System of Higher Education, have confirmed that their student ID cards will have expiration dates and comply with Act 18. The Department has advised care facilities with regard to the form in which acceptable photo ID cards from such facilities should take.

Beginning in August, 2012, the Department of State will begin issuing through PennDOT driver license centers a Department of State voter ID card ("DOS Voter ID"). Although some registered voters may not be able to locate or obtain the documentation required for the secure PennDOT products, the DOS Voter ID will be provided free of charge and for voting purposes only to any registered voter who does not have another acceptable form of photo ID. In order to obtain the DOS Voter ID, a person must know their Social Security number and provide at least two proofs of residency (*e.g.*, utility bills, lease or mortgage documents). The PennDOT driver license center will confirm that the person does not already have a PennDOT photo ID product. PennDOT will also confirm with a Department of State help desk, which will be open at any time that PennDOT driver license centers will be open, that the person is listed in the Statewide Uniform Registry of Electors ("SURE") as a registered voter. Persons qualifying for this DOS Voter ID will be able to obtain the product in a single visit to a PennDOT driver license center unless they lack the minimal proofs of identity or are not registered to vote. The DOS Voter ID will be available to the public during all of September, October, and all relevant portions of November, including the days after the general election when those casting provisional ballots may need to obtain a photo ID to ensure that their votes are counted.

Having these opportunities in place for eligible voters to obtain an acceptable photo ID, the Department of State has begun to educate the public about Act 18 and the acceptable forms of photo ID that are available. The Secretary of the Commonwealth and others within the Department have given interviews with various news media. The Department periodically updates a Web site devoted to voting issues and maintains a hotline for members of the public with questions about the requirements of Act 18. The Department of State and PennDOT conducted a comparison of the SURE database and PennDOT's driver license and photo ID

database to identify registered voters who lack a PennDOT product. This comparison found that 91% of registered voters in Pennsylvania have a PennDOT driver license or non-driver photo ID.<sup>3</sup> For the remaining 9% of registered voters, many of whom may possess one or more of the other acceptable forms of photo ID, the Secretary of the Commonwealth has sent letters to each voter to notify them of the requirements of Act 18 and the possibility that they do not have an acceptable form of photo ID.

The Department of State has procured the services of media professionals and a public education campaign will commence closer in time to the November election to maximize its effectiveness. The public education campaign will target specific geographic regions and demographics. The campaign will educate eligible voters about Act 18 and what voters must do to obtain an acceptable photo ID. This public education campaign will complement the efforts of many community organizations to ensure that no eligible voters are unaware of Act 18 or the manner in which to obtain an acceptable photo ID.

Finally, the Department of State has been and will continue to be in constant communication with county boards of election about the requirements of Act 18. An annual conference will take place in August during which the Department of State will provide detailed instruction on the forms of photo ID that are acceptable under Act 18. The Department has obtained the names and addresses of all poll workers and will be sending these poll workers a packet of information about the acceptable forms of photo ID under Act 18.

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<sup>3</sup> This figure represents the percentage of registered voters for whom a statistically reliable match could be confirmed. Because the data in the SURE database and the PennDOT databases were gathered and stored in different ways, a reliable match could not be obtained for all registered voters who do in fact possess a PennDOT product.

## SUMMARY OF ARGUMENT

Petitioners cannot satisfy their substantial burden to obtain a preliminary injunction. The petition for review contains allegations of harm that are purely speculative and, in many instances, amenable to resolution by some form of compensation. Even if Petitioners could demonstrate immediate and irreparable harm, they cannot show a clear right to relief.

It is well established in this Commonwealth that the General Assembly has the exclusive power and broad discretion to regulate the conduct of elections. Act 18 is a valid exercise of that power and discretion. The Act neither violates the principle of “free and clear” elections, nor does it impose new voter eligibility requirements. Petitioners cannot show that the Act is devoid of any conceivable purpose that is legitimate or important, or that the provisions of Act 18 are insufficiently tailored to achieving that purpose. To the contrary, the valid rationale for photo ID legislation in elections has been recognized by the United States Supreme Court and other courts across the country. Act 18 achieves its important purpose in a manner that is rational. The executive agencies that are implementing Act have taken significant steps to ensure that eligible and interested voters will be able to obtain a photo ID card to vote in the next election.

Even if Petitioners could establish cognizable legal claims, the factual record would not support the claims for relief. Each of the individual Petitioners either possesses an acceptable photo ID or the documents necessary to obtain one, especially with the creation of the DOS Voter ID. Although voting is appropriately protected by the Pennsylvania Constitution, that protection is not without conditions and does not excuse interested and eligible voters from sharing in the responsibility of complying with the law. There is ample time before the next election in which interested and eligible voters can obtain a photo ID. The executive agencies of the Commonwealth have taken significant steps to remove any barrier to obtaining photo ID.

Because mere inconvenience does not give rise to a constitutional claim, Petitioners are unlikely to succeed on the merits of their claims.

## ARGUMENT

“The burden is on the party seeking injunctive relief to establish the essential prerequisites necessary for the grant of such relief.” *Free Speech, LLC v. City of Philadelphia*, 884 A.2d 966, 970 (Pa. Cmwlth. 2005) (citing *Warehime v. Warehime*, 580 Pa. 201, 860 A.2d 41 (2004); *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 828 A.2d 995 (2003)). Since a preliminary injunction is “a harsh and extraordinary remedy, it is to be granted only when and if *each* criteria has been fully and completely established.” *Pennsylvania AFL-CIO v. Commonwealth of Pennsylvania*, 683 A.2d 691, 694 (Pa. Cmwlth. 1996) (emphasis in original).

Petitioners, therefore, must demonstrate the following essential prerequisites: (1) the preliminary injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) greater injury will result from refusing the injunction than from granting it and that issuing the injunction will not substantially harm other interested parties; (3) the preliminary injunction will properly restore the parties to their status immediately prior to the alleged wrongful conduct; (4) the right to relief is clear and the wrong is manifest -- that it is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and (6) the preliminary injunction will not adversely affect the public interest. *Free Speech*, 884 A.2d at 970.

Failure to demonstrate any of these prerequisites requires denial of the preliminary injunction. Indeed, this Court has explained as follows:

In addition, in *County of Allegheny v. Commonwealth*, 518 Pa. 556, 560, 544 A.2d 1305, 1307 (1988), the Supreme Court was unequivocal when it held: “For a preliminary injunction to issue, every one of these prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others.”

*Reed v. Harrisburg City Council*, 927 A.2d 698, 703 (Pa. Cmwlth. 2007). See also *AFL-CIO*, 683 A.2d at 694 (noting that preliminary injunction should be issued only where each element has been fully and completely established); *Leonard v. Thornburgh*, 75 Pa. Cmwlth. 533, 563, 463 A.2d 77, 82 (1983) (same).

**A. No Immediate and Irreparable Harm**

Petitioners cannot establish harm that is immediate and irreparable. This Court has addressed the quantum of proof needed to establish irreparable harm. In *Reed v. Harrisburg City Council*, this Court canvassed previous opinions on this topic and noted the following:

In reversing the preliminary injunction issued in *Novak v. Commonwealth*, 514 Pa. 190, 523 A.2d 318 (1987), against the Department of Revenue and vacating the judgment against it, the Supreme Court rejected the speculative nature of irreparable harm allegedly suffered by the appellees, lottery employees who were furloughed during collective bargaining grievance proceedings. In reviewing the sole question of the propriety of the preliminary injunction issued in *Samerica Corp. v. Market Street v. Goss*, 448 Pa. 497, 295 A.2d 277 (1972), to prohibit the appellant's use of a name alleged to be similar to the appellee's name, the Supreme Court held that the appellee failed to show irreparable injury, that it made no showing of economic loss and that its proof of injury in the nature of loss of goodwill was too speculative and conjectural to support the injunction. The court reaffirmed the principle that speculative considerations cannot form the basis for a preliminary injunction.

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As for the essential prerequisites, the Supreme Court noted in *New Castle Orthopedic Assocs. v. Burns*, 481 Pa. 460, 392 A.2d 1383 (1978), that [*Herman v. Dixon*, 393 Pa. 33, 141 A.2d 576 (1958)] states the threshold evidentiary requirement to be met before a preliminary injunction may issue, *i.e.*, actual proof of irreparable harm.

*Reed*, 927 A.2d at 704.

The petition for review contains several allegations of harm that are too speculative to qualify for injunctive relief. Petitioners claim, for example, that the additional time that it will take for poll officials to check photo ID cards “will add immeasurably to the long lines that

plagued urban and suburban-area polling places in 2008.” (Petition for Review, ¶5). Petitioners assume that poll officials will be confused and poorly trained with regard to the acceptable forms of photo ID and that voter disenfranchisement will necessarily result. *Id.* It is entirely possible that photo ID cards will make it easier for poll officials to locate each person’s name in the poll book. The petition for review does not include any facts to support its conclusion that poll workers will be poorly trained, and the efforts of the Department of State suggest that poll workers will know exactly which forms of photo ID are acceptable.

Even where Petitioners identify specific harms, the harms are in many instances easily compensable by damages. Individual Petitioners, such as Henrietta Dickerson, have obtained a PennDOT photo ID and complain only about a fee that was charged. The associational Petitioners complain that Act 18 has forced them to “re-allocate limited funds and volunteer resources . . .” (Petition for Review, ¶¶48, 51, 53-54). Not only does this seem to be the purpose for which these organizations exist, but such claims can plainly be reduced to specific monetary values.

Because Petitioners cannot establish an immediate need for the relief sought or show that irreparable harm will occur in the absence of relief, they cannot satisfy this element and their application for preliminary injunction must be denied.

#### **B. Petitioners Are Not Likely To Succeed On The Merits**

Petitioners bear a heavy burden to demonstrate that they are likely to succeed on the merits of their challenge. If Petitioners fail to demonstrate this element, their requested relief must be denied. *Reed*, 927 A.2d at 703 (“[e]ven more essential, however, is the determination that the activity sought to be restrained is actionable, and that the injunction issued is reasonably suited to abate such activity....[a]nd unless the plaintiff’s right is clear and the wrong is manifest,



a preliminary injunction will not generally be awarded”) (citations omitted). Here, Petitioners cannot satisfy this element and their application must be denied.<sup>4</sup>

### **1. The Commonwealth and the Governor as Improper Parties**

Petitioners cannot establish any claim against the Commonwealth of Pennsylvania or the Governor, because these Respondents are improper parties to this action. “It is well-settled that the Commonwealth government and its various agencies are separate parties, and merely naming the Commonwealth is insufficient to state a claim against a Commonwealth agency.” *Ballroom, LLC v. Commonwealth of Pa.*, 984 A.2d 582, 587 (Pa. Cmwlth. 2009) (citing *Tork-Hiis v. Commonwealth*, 735 A.2d 1256 (Pa. 1999); *Piehl v. City of Phila.*, 930 A.2d 607 (Pa. Cmwlth. 2007); *Glover v. SEPTA*, 794 A.2d 410 (Pa. Cmwlth. 2002)). This Court has jurisdiction over actions such as this one against the Commonwealth government under Section 761(a) of the Judicial Code, 42 Pa.C.S. § 761(a). The Court has this jurisdiction, however, only when the Commonwealth is an indispensable party to the action. *Ballroom*, 984 A.2d at 587-88 (citing *Vil. Charter School v. Chester Upland School Dist.*, 813 A.2d 20 (Pa. Cmwlth. 2002); *Annenberg v. Commonwealth*, 686 A.2d 1380 (Pa. Cmwlth. 1996)).

The “Commonwealth itself, as an entity separate and apart from its agencies and officers,” does not have an interest in the determination of whether a given statute violates its Constitution. *Ballroom*, 984 A.2d at 588-89; *Pennsylvania School Bds. Ass’n, Inc. v. Commonwealth Ass’n of School Administrators*, 696 A.2d 859, 867 (Pa. Cmwlth. 1997). It is

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<sup>4</sup> As noted, Respondents intend to address the merits of Petitioners’ claims by filing an answer and new matter to the petitions for review. In order to aid this Court in resolving the pending application, however, Respondents present the following arguments. Respondents do not waive any objection or argument relating to the deficiencies -- procedural or substantive -- of the petition for review.

well established that the Commonwealth of Pennsylvania is an inappropriate party to an action challenging the constitutionality of a statute.

In order for the Governor to be an indispensable party, and therefore subject to the jurisdiction of this Court, he must have power or a duty to enforce, implement, or administer the statute being challenged. *Pennsylvania School Bds.*, 696 A.2d at 867-68. With respect to Act 18, the Governor has no powers or duties with regard to the administration or enforcement of the photo ID provisions of the Election Code or the operations of government involving the issuance of proof of identification. To the extent that Petitioners named the Governor as a Respondent simply because the Governor signed Act 18 into law,<sup>5</sup> it has been well established for over a decade in this Commonwealth that the “mere fact that he gave final approval to [a challenged statute] by signing it into law does not give him any interest that would be affected by the declaration [that the statute is unconstitutional], nor does it prevent the granting of the requested relief in his absence. [Otherwise,] the Governor would become an indispensable party to every action challenging the constitutionality of legislation.” *Pennsylvania School Bds.*, 696 A.2d at 868.

Petitioners cannot, therefore, demonstrate any likelihood of success on the merits of their challenge with regard to the Commonwealth of Pennsylvania or the Governor.

## **2. Article I, Section 5 of the Pennsylvania Constitution**

Petitioners claim that Act 18 violates Article I, Section 5 of the Pennsylvania Constitution, which states that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

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<sup>5</sup> See Petition for Review, ¶160.

Petitioners have no clear right to relief under Article I, Section 5, and they are unlikely to succeed on the merits of this claim.

Although it is true that the Constitution by its terms guarantees the right to vote to all qualified electors, it is also black letter law that the General Assembly may enact laws that regulate the conduct of elections, *see* *Mixon v. Commonwealth*, 759 A.2d 442, 450 (Pa. Cmwlth. 2000) (en banc), *affirmed, per curiam*, 566 Pa. 616, 783 A.2d 763 (2001), and that is all that the Act does. By its terms it disenfranchises no one, and it simply requires with certain exceptions that a particular and reasonable form of identification be offered by the voter at the polling place. Surely this is within the power of the legislature, and Petitioners may not insist on their preferred form of identification.

The petition for review cites repeatedly to the Pennsylvania Supreme Court's decision in *Winston v. Moore*, 244 Pa. 447, 91 A. 520 (1914), which involved a challenge to the Nonpartisan Ballot Law, Act of July 24, 1913 (P.L. 1001). The Court recognized in *Winston* that the Constitution provides no clear rule or guide to determine how the freedom and equality of elections may be enforced, and the legislature, therefore, has "a wide field for the exercise of its discretion in the framing of facts to meet changed conditions and to provide new remedies for such abuses as may arise from time to time." *Winston*, 244 Pa. at 455. Although Petitioners seem to assume that any legislation affecting the manner in which elections are conducted necessarily violates Article I, Section 5, the Supreme Court observed that "[l]egislation may be enacted which regulates the exercise of the elective franchise, and does not amount to a denial of the franchise itself." *Id.* (citing *Cusick's Election*, 136 Pa. 459, 20 A. 574; *DeWalt v. Bartley*, 146 Pa. 529, 24 A. 185). The Court made clear in *Winston* that the courts of Pennsylvania never sought "to impale legislative power on points of sharp distinction in the enactment of laws

intended to safeguard the ballot and to regulate the holding of elections.” *Id.* Because election laws are inherently within the province of the legislative branch of government, “nothing short of gross abuse would justify a court in striking down an election law demanded by the people, and passed by the lawmaking branch of government in the exercise of a power always recognized and frequently asserted.” *Id.* at 457.

Act 18 sets forth identification requirements that apply to all voters, and the Act does not explicitly create disproportionately more burdensome rules for certain groups of people. Even such explicit distinctions do not, however, necessarily violate the “free and equal” provision of Article I, Section 5. In *Martin v. Haggerty*, 120 Pa. Cmwlth. 134, 548 A.2d 371 (1988), a class of state prison inmates challenged the portion of the Election Code that excluded prisoners from the definition of “qualified electors.” This Court held that those statutory provisions, which explicitly and systematically disenfranchised an entire swath of the population, did not violate the Pennsylvania Constitution. *Id.*, 120 Pa. Cmwlth. At 144, 548 A.2d at 376.

Not only is *Winston* decidedly unsupportive of Petitioners’ claim under Article I, Section 5, but the petition for review itself recognizes that election laws may impose lawful requirements that might be construed as imposing responsibilities that affect voters differently. The application for preliminary injunction asks this Court to maintain the state of the Election Code before the enactment of Act 18. Petitioners recognize that, before Act 18, first-time voters were required to provide photo ID to confirm their identities. (Petition for Review, ¶66). In the event that such first-time voters did not have an acceptable photo ID, the Election Code required such first-time voters to provide alternative forms of identification. *Id.* The crux of Petitioners’ argument to this Court is that the practical implementation of Act 18 results in disproportionate burdens on certain segments of the voting population. It is entirely unclear why Petitioners’

argument would not apply with equal force to the requirement of proof of identity for first-time voters before Act 18.

The *Winston* decision makes clear that the General Assembly may enact legislation to safeguard the election process during changing conditions. Pennsylvania courts have no basis to invalidate the provisions of Act 18, which aims to safeguard elections in the same way that other aspects of modern life are made more secure by the requirement of photo ID to confirm identity. The plain language of the Act applies its provisions to all voters, and no single group is identified for unequal treatment that could be characterized as “gross abuse” of discretion by the General Assembly. Because Petitioners cannot show a likelihood of success on the merits of this claim, no preliminary injunction may issue under Count I of the petition for review.

### **3. Equal Protection under Article I, Sections 1 and 26 of the Pennsylvania Constitution**

Petitioners assert an equal protection challenge under Article I, Sections 1 and 26 of the Pennsylvania Constitution. The petition for review limits the scope of this challenge, claiming that Act 18 imposes different burdens on voters whose legal names differ from the names on their birth certificates and voters who may need to produce different documents in order to obtain a photo ID than others. (Petition for Review, ¶¶148-49). Petitioners do not claim in Count II of the petition for review that suspect classes of people are differentially burdened by the Act, nor would the plain language of the Act permit such a construction.

Although the petition for review questions the Respondents’ “compelling interest” in the photo ID requirement, the right to vote is not a fundamental one, and Respondents must show merely a “rational relationship” between the Act’s provisions and its legitimate purpose. In *Mixon*, this Court considered a statute that disenfranchised certain convicted felons. This Court observed that “the right of felons to vote is not a fundamental right” for purposes of equal

protection analysis, so the Commonwealth was under no obligation to advance a compelling state interest. *Mixon*, 759 A.2d at 451. Here, the right to vote without a photo ID is not a fundamental one.

Laws that do not create a suspect classification are presumed valid and the challenger must establish that the legislative classification does not have a valid state purpose. *Marie C. Donato, A. P. Donato Funeral Home, Inc. v. State Board of Funeral Directors*, 168 Pa. Cmwlth. 177, 181-82, 649 A.2d 207, 209 (Pa. 1995); *Pennsylvania Funeral Directors Association v. State Board of Funeral Directors*, 90 Pa. Cmwlth. 175, 184 n.5, 494 A.2d 67, 71 n.5 (1985), *aff'd*, 510 Pa. 602, 511 A.2d 763 (1986) (“[t]o withstand an equal protection challenge to a non-suspect class a law need only be rational and not arbitrary”). *See also Hahn v. United States*, 757 F.2d 581, 593-94 (3d Cir. 1985) (noting “the ‘heavy burden’ of overcoming a presumption of rationality ‘by a clear showing of arbitrariness and irrationality’”) (quoting *Hodel v. Indiana*, 452 U.S. 314, 332-33 (1981)).

Indeed, there is a heavy “burden...on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record.” *Heller v. Doe*, 509 U.S. 312, 320-21 (1994); *Schmehl v. Wegelin*, 592 Pa. 581, 587, 927 A.2d 183, 185 (2007) (“[p]art[ies] seeking to overcome the presumption of validity ha[ve] a heavy burden of persuasion”), *cert. denied*, 128 S.Ct. 619 (2007). In fact, the party defending the statute need not even advance reasons to establish its rational basis. *Beach*, 508 U.S. at 313 (legislative choices are not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data); *Harrisburg School District v. Zogby*, 574 Pa. 121, 137-38, 828 A.2d 1079, 1088, 1089 (2003) (even a discriminatory statute

will be upheld “if any state of facts reasonably can be conceived to sustain it” and a “reviewing court is free to hypothesize reasons the legislature might have had for the classification”).

The Pennsylvania “Supreme Court has ruled that for purposes of equal protection claims the content of the Pennsylvania Constitution is not significantly different from that of the Federal Constitution.” *White v. W.C.A.B. (City of Pittsburgh)*, 38 A.3d 1031, 1034 n.11 (Pa. Cmwlth. 2011) (quoting *Latella v. Unemployment Compensation Bd. of Review*, 74 Pa. Cmwlth. 14, 459 A.2d 464, 468 n.7 (1983)). The United States Supreme Court recently examined almost identical legislation in Indiana that requires photo ID to confirm identity at the polls. In *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), the Court had no difficulty recognizing the valid purpose behind the requirement of photo ID in elections. The Court examined the reasons cited by the State of Indiana, including the state’s interest in detecting and deterring voter fraud, the interest in participating in a nationwide effort to improve and modernize election procedures that have been criticized as “antiquated and inefficient,” and the interest in safeguarding voter confidence. *Crawford*, 553 U.S. at 191.

Despite the absence of any evidence of in-person voter fraud occurring,<sup>6</sup> the Court explained as follows:

There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process. While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear.

*Id.* at 196. A number of factors led the Court to its conclusion that there are valid and important reasons for requiring photo ID in elections. With regard to the detection and deterrence of voter

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<sup>6</sup> The Court, however, cites to publicized reports of in-person voter fraud across the country and historical instances of voter fraud that are commonly known. *Crawford*, 553 U.S. at 195.

fraud, the Court noted that, as a consequence of the National Voter Registration Act of 1993, 42 U.S.C. §§ 1973gg, *et seq.*, voter registration lists in the states are inflated by the presence of registered voters who are no longer living or no longer reside in the state.<sup>7</sup> *Id.* at 192. The presence of names on the voter registration list that do not correspond to actual voters in the state clearly provides an opportunity for voter impersonation. The Court observed that the Help America Vote Act (“HAVA”) evinced the intent of Congress that photo ID be used as an effective method by which to establish a voter’s qualifications to vote. *Id.* at 196.

The Court in *Crawford* explained that “public confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process.” *Id.* at 197. The Court found persuasive the findings and recommendations of the Commission on Election Reform (also known as the “Carter-Baker Commission”) chaired by former President Jimmy Carter and former Secretary of State James A. Baker, III. *Id.* at 193-194. The Carter-Baker Commission wholeheartedly endorsed the requirement of photo IDs to confirm the identity of each voter and thereby achieve the interests cited by the Court.

The Supreme Court noted that a photo ID requirement “imposes some burdens on voters that other methods of identification do not share.” *Id.* at 197. The Court nonetheless concluded that aspects of the photo ID statute mitigated those burdens. The Indiana statute required photo IDs to be provided for free to those who do not already possess them. *Id.* at 198. Even where the photo ID requirement may impose a “somewhat heavier burden” on those born out of state and those whose economic and other personal limitations make it more difficult to obtain photo ID, the Court determined that such burdens are mitigated by the allowance that voters may cast a

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<sup>7</sup> This consequence of the protections afforded by the NVRA also explain why the Department of State’s estimate of the percentage of registered voters without a PennDOT photo ID almost certainly includes voters who remain on the list of registered voters but who do not have a PennDOT product because they no longer live in Pennsylvania.



provisional ballot and return to the county office within ten days to execute a required affidavit. *Id.* at 199. Significantly, the Court opined that “[i]t is unlikely that such a requirement [of returning to the county office after casting a provisional ballot] would pose a constitutional problem unless it is wholly unjustified” and even if it is in fact unjustified as to a few voters. *Id.*

The law is clear in Pennsylvania that in equal protection challenges the Commonwealth need not provide actual instances of conduct to justify a statute that addresses such conduct. The proper analysis asks whether the legislature could have rationally conceived of a legitimate interest to support the statute. The *Crawford* decision reflects a number of valid reasons that could support the validity of Act 18, and the decision rejects the very same arguments made in this case by Petitioners. The *Crawford* decision and the Carter-Baker Commission report were specifically discussed on the floor of the House of Representatives during debate over HB 934. See Exhibit A. Undeterred, Petitioners advance the same arguments as the challengers in *Crawford* and ask this Court to disagree with the reasoning of the United States Supreme Court. Particularly with the creation of the DOS Voter ID, any burden imposed by Act 18 on interested and eligible voters is reduced to mere inconvenience in the form of traveling to a PennDOT driver license center to obtain the free photo ID. As the Supreme Court observed, “[f]or most voters who need them, the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.” *Crawford*, 553 U.S. at 198.

Given that Act 18 is almost identical to the Indiana statute at issue in *Crawford*, it is unlikely that Petitioners can show that Act 18 “clearly, palpably, and plainly” violates Article I, Sections 1 and 26 of the Pennsylvania Constitution. The language of the Act creates no suspect

classifications, nor do Petitioners allege that it does. There are rational reasons for requiring each form of photo identification. The logic of allowing PennDOT products to be used is obvious; their products comply with federal homeland security regulations and are processed using facial recognition software that would detect a person attempting to acquire multiple photo IDs. Care facilities and institutions of higher learning have a relationship with the members of their communities. It is rational to expect that these institutions maintain extensive personal data on each person who would seek and use photo IDs. The same is true of government employers who issue photo IDs to their employees. Petitioners suggest that Act 18 could be less restrictive if it permitted voters without photo ID to simply sign an affirmation stating that they are the person listed in the voter registry. (Petition for Review, ¶98). This option was specifically considered and rejected by the General Assembly. See Exhibit C. It is rational to disallow such an exception that would swallow the rule and eliminate any incentive to comply with the law.

The petition for review alleges that Act 18 will have a disproportionately negative effect on the ability of minority and elderly voters to cast a ballot in November. With regard to the elderly, every individual Petitioner testified during depositions that they have no problem arranging transportation with family members and friends. Even if *Crawford* left this alleged burden on the table in equal protection analysis, the facts of this case simply do not support it. Even if Petitioners can get beyond pure speculation and conjecture with regard to the alleged impact on minority voters, the creation of the DOS Voter ID breaks down significant barriers to the acquisition of a photo ID to vote. It enables those voters born out of state and those who cannot locate a birth certificate to obtain photo ID. Each of the individual Petitioners has a Social Security number and supporting documents that show their name and address. If elderly and minority voters do not obtain a photo ID during the entire months of August, September, and

October, or during the first two weeks of November, they simply cannot claim that Act 18 foreclosed them from doing so.

Because Act 18 serves legitimate and important purposes and imposes requirements that are rationally related to achieving those purposes, Petitioners cannot demonstrate a likelihood of success on the merits of their equal protection claim. No preliminary injunction may, therefore, be issued on the basis of Count II of the petition for review.

#### **4. Article VII, Section 1 of the Pennsylvania Constitution**

Petitioners claim in Count III of the petition for review that Act 18 imposes a qualification on voters that is not listed in Article VII, Section 1 of the Pennsylvania Constitution. This claim is flawed for a number of reasons.

As discussed with regard to Article I, Section 5 of the Pennsylvania Constitution, the regulation of the elections is peculiarly within the province of the legislature, and the legislature has extensive discretion in how to do so. There is no restriction in the plain language of Article VII, Section 1 on how the General Assembly may confirm or enforce the qualifications listed in that constitutional provision. The flimsy logic advanced by Petitioners in Count III would, for example, preclude the legislature from establishing a procedure of voter registration, because the list of qualifications in Article VII, Section 1 is silent with regard to that process or any other mechanism of enforcement. The prisoner-plaintiffs in *Martin* would, under Petitioners' logic, be permitted to vote in Pennsylvania, because Article VII, Section 1 contains no qualification that a person must "not be incarcerated." To read Article VII, Section 1 as a restriction on the General Assembly's power to determine who may vote and under what circumstances would be completely at odds with the well-established principle that the General Assembly uniquely has the authority and wide discretion to regulate elections.

The qualifications listed in Article VII, Section 1 involve personal characteristics or attributes. The photo ID requirement does not add a qualification, but simply confirms each voter's existing qualifications. Act 18 is a valid exercise by the General Assembly of its power and discretion to regulate the conduct of elections. Petitioners, therefore, cannot demonstrate a likelihood of success on the merits of Count III and no preliminary injunction may be issued on the basis of that claim.

## **EVIDENCE TO BE PRESENTED**

In accordance with Rule 212.2 of the Pennsylvania Rules of Civil Procedure and this Court's order dated May 25, 2012, Respondents list the following witnesses who may be called and the exhibits that may be identified during the hearing. This list of exhibits does not include those that may be necessary for impeachment.

### Witnesses

1. Carol Aichele
2. Shannon Royer
3. David Burgess
4. Jonathan Marks
5. Ian Harlow
6. Rebecca Oyler
7. Ronald Ruman
8. Kurt Myers
9. Bryan Kendro
10. Marina Matthew

### Exhibits

1. PennDOT Requirements for Secure ID
2. PennDOT Form DL-54A
3. Affirmation for Free PennDOT Photo ID
4. Sample DOS Voter ID Card
5. Voter Registration Mail Application

6. Request Form for DOS Voter ID

7. Petitioners' Responses to Respondents' Requests for Production

## CONCLUSION

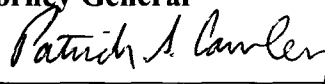
For each of these reasons, Petitioners cannot satisfy their heavy burden to obtain a preliminary injunction, and Respondents respectfully request that this Court deny Petitioners' application.

Respectfully submitted,

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Date: July 18, 2012

# Exhibit A



On that question, the Speaker recognizes the gentleman from Allegheny County, Mr. Turzai.

Mr. TURZAI. Okay, that is a little difficult to follow my good friend from Philadelphia County, who gave really quite outstanding remarks in support of this legislation.

I think it is important to recognize a few simple points. First of all, this is about photo identification. Mr. Speaker, when I go to the gym, which is not very often, I have to present a photo ID. If you buy Sudafed from a drugstore, they ask you for photo ID. I have had people come up to tell me that when they buy spray paint or particular glues from Michaels or Walmart, they are asked to present a photo ID. My grocery store actually has one of those places where you can buy a six-pack of beer. I went to get some; I had to present a photo ID.

The fact of the matter is, when you go to the airport to check into security – I am always running. I am there at the last second and I have to reach into my wallet, find my ticket, and present photo ID. I want to go and get a permit for my county with respect to carrying a firearm; guess what? You present a photo ID. Today it is a society that is moving more and more to making sure that you are the individual you purport to be. This is really not much in terms of substance. It is just saying, hey, when you come to vote, can you present a photo ID? And the reality is, this legislation is trying to make it very accommodating with respect to being able to show photo ID. Number one, you can present your driver's license, and if you do not have a drivers license, you can get one for free. You can also use a U.S. passport, a U.S. military ID, an ID card from a college or university, an ID card issued by a Pennsylvania care facility, or an employee photo ID issued by a government entity, including municipal and county governments. So HB 934 is an important piece of legislation, but it is also a very simple, straightforward piece of legislation: Hey, can you present a photo ID?

Now, there is a good reason for presenting photo ID. What is the foundation of a democracy? Your vote. And it is one person, one vote. And to make sure that your individual vote matters means that somebody else cannot be abusing the system to be voting for somebody who has passed away and on a roll or somebody is doing impersonation. We cannot have those types of frauds for which we have examples of. Whether it is once or over a thousand times, any time that it occurs devalues each and every one of your votes and each and every one of our constituent's votes at the polls. One person, one vote is the crux of a functioning democracy; the crux.

Now, I would agree with many of my colleagues on the other side of the aisle that America has been about the expansion of enfranchisement – about the expansion. The Civil War was fought about citizenry for our citizens and the freedom from slavery, and that came about with the 13th, 14th, and 15th Amendments, which made it clear that each and every citizen was entitled to due process and the rights completely afforded by this country and the ability to vote. And in 1920 the right to vote was expanded to women in this country, who long had not had that opportunity. And in the seventies while we were fighting in the Vietnam war, again we expanded voter enfranchisement to those who are 18 and older, because if you can go to war and fight for this country, you should be able to vote. And we eliminated, I agree, property holding requirements, absolutely. And the key here is this: A voter ID is just saying that every citizen who is entitled to vote should be able to vote, and every citizen who votes should be sure that

their vote has not been diluted by somebody else's fraud.

Now, the Indiana law was upheld by the United States Supreme Court in a 6-to-3 decision. Justice Stevens – Justice Stevens, who many would contend was certainly not a conservative on the bench – but Justice Stevens' opinion said this: "There is no question about the legitimacy or importance of a State's interest in counting only eligible voters' votes." And we cannot conclude that the statute imposes burdensome requirements on any class of voters. The decision cited the finding of a district judge that plaintiffs had not introduced evidence of a single individual Indiana resident who will be unable to vote as a result of this law. And, Mr. Speaker, in 2005, after the contested election for President, there was a building confidence in United States elections and the report of the Commission on Federal Election Reform, and its leaders were former President Jimmy Carter and James A. Baker, III. A quote from the letter from the cochairs: "We are recommending a photo ID system for voters designed to increase registration with a more affirmative and aggressive role for states in finding new voters and providing free IDs for those without driver's licenses." The executive summary said, "...to make sure that a person arriving at a polling site is the same one who is named on the list, we propose a uniform system of voter identification based on the 'REAL ID card' or an equivalent for people without a driver's license. To prevent the ID from being a barrier to voting, we recommend that states use the registration and ID process to enfranchise more voters than ever. States should play an affirmative role in reaching out to non-drivers...and provide photo IDs free of charge. There is likely to be less discrimination against minorities if there is a single, uniform ID, than if poll workers can apply multiple standards. In addition, we suggest procedural and institutional safeguards to make sure that the rights of citizens are not abused...." And they do propose the use of "...a provisional ballot that would be counted if their signature is verified." These are all component parts of this straightforward HB 934, based in significant part on the State of Indiana's statute.

Now, a recent article in Capitolwire even cited certain strategists from the other party that indicated that it really would not change things that much and that, yes, it is true most voters would be required to show a photo ID, but that this could be easily accommodated. In fact, according to PENNDOT, 9,788,000 citizens have either a State-issued driver's license or a State-issued photo ID. Census data indicates that there are 9,910,000 in Pennsylvania that are 18 and older. Right now there is only a gap of a little over 100,000 folks that we need to go reach out to and make sure they have either a driver's license ID or a nondriver's license photo ID. That can be accomplished over the summer.

Mr. Speaker, this is a commonsense approach. It is not overreaching. It is not designed to suppress voter turnout. In fact, study after study has shown that it has not suppressed any voter turnout. A good friend and colleague of mine on our side of the aisle specifically pointed out that in Indiana, the President, incumbent President won the State of Indiana after voter ID was implemented. The fact of the matter is, this is real reform. It is commonsense reform, and I reach out to all my colleagues on both sides of the aisle. I actually believe we share a common goal, a similar purpose, an objective that every citizen has the right to vote once and each and every time in every election. One person, one vote: the foundation of a functioning democracy. Thank you very much.

# Exhibit B

Mr. Speaker, I cannot believe that we are standing here today talking about disenfranchising the seniors from voting in this State. That is exactly what the majority is proposing here. If you vote against this amendment, you are saying that it is okay to vote against seniors. The reality of the situation is, and we all have this, as you know, in our districts, some seniors, they have their driver's license taken away because they are no longer capable of driving, whether it is eyesight or whatever it may be, and they have to relinquish their driver's license. I go through this all the time trying to get some of our seniors identification because they need it for others things and it becomes a problem at times, especially if mobility is an issue.

So I would ask everybody today, please vote for this, because we are asking our seniors — we are actually putting a roadblock, Mr. Speaker, in front of the seniors to go and vote, and that is absolutely the wrong thing to do here. Again, if you vote against this, you are disenfranchising seniors. You are saying, seniors, we are going to put an extra roadblock in front of you.

Mr. Speaker, I would ask everybody today to please stand up and do the right thing here for our seniors and vote "yes" for this amendment, because it is the right thing to do. Thank you, sir.

The SPEAKER. The question is, will the House agree to the amendment?

On that question, the Speaker recognizes the gentleman from York, Mr. Saylor.

Mr. SAYLOR. Mr. Speaker, I find it amazing that everybody keeps talking about their district offices, and if they were in contact with their district offices, they would realize that the Social Security Administration requires photo ID. Whether you file at 62 years of age, early, or whether you file at 65, or for some people it is 66 and so many months, you are required to bring a photo ID in to show for Social Security. You must maintain that if there is ever a claim that comes up. Today, no matter where you go, you need photo ID to use credit cards, to write a check, whatever it is.

To stand up and say on this House floor that we are disenfranchising senior citizens is a slap in the face to those seniors who know better. It is absolutely wrong, because every day in my district offices, as it is in everybody else's here, seniors are filing for PACE rebates — or PACE (Pharmaceutical Assistance Contract for the Elderly program) applications, property tax rent rebates and the department requires photo ID. Now, to sit here today and say that is not true is just wrong. Nobody here is disenfranchising senior citizens. If you do not know what is going on in your district office, that is up to you, but I am telling you that the staffs know, your district staff, if they are helping fill out PACE or a property tax rent rebate, your district staff knows it requires photo ID when you are filing those applications.

This is about making sure the right people, the right people are getting their opportunity to vote. My seniors have challenged me at the polls when I am in there voting: Why have we not passed the ID requirement?

And it is time for this State to make sure that legitimate people who are voting are not having their vote canceled out by those who are not legitimate. This is not anything about disenfranchising any voter let alone senior citizens. The senior citizens, I would argue, are the most responsible voters we have in this State, because they will vote when there is 3 feet of snow on the ground where other people, a lot of times, will use the

excuse it is good weather or it is bad weather not to vote. Our seniors are better than we give them credit for, and I think we are doing a disservice to them by sitting here and saying they are not smart enough to follow this law.

Thank you, Mr. Speaker. I ask for a "no" vote.

The SPEAKER. The question is, will the House agree with the amendment?

On that question, the Speaker recognizes the gentleman from Allegheny County, Mr. Dermody, on the amendment.

Mr. DERMODY. Thank you, Mr. Speaker.

Mr. Speaker, the slap in the face here is to senior citizens who are having their constitutional right to vote taken away by this bill.

All this amendment does is give our senior citizens the ability to vote in the precinct they voted at for years. When they walk in the room, they walk in the door, they know everybody in the room, yet we are proposing if they do not have a driver's license or an ID, we are going to send them down to the county courthouse.

There is one reason this bill is here today, it is to suppress turnout; it is to keep registered voters exercising their constitutional right to vote from having that right honored. This amendment protects our senior citizens and it protects their right to vote. That is what we are supposed to be about doing here in this House, not taking away people's rights but making sure those rights are protected and preserved. Vote for the Samuelson amendment.

The SPEAKER. The question is, will the House agree with the amendment?

On that question, the Speaker recognizes the gentleman from Philadelphia, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I, too, rise in support of the Samuelson amendment.

Nobody here is saying that every single senior citizen in the State of Pennsylvania is going to be denied the right to vote as a result of this legislation; that is not what is going to happen. But here and there throughout the State, probably in every polling place, some senior citizens are not going to be able to vote because they lack the ID.

As I get older and my family gets older and some of my friends get older, I have spent more and more time in the world of senior citizens. My mother will be 94, and she lives in the senior citizens apartment house in Representative Josephs' district. I have spent a fair amount of time in that house, and I have learned that the aging process affects some people very severely and some people are almost totally unaffected by it. But for those who are affected severely by the aging process, this bill takes away their right to vote, and the Samuelson amendment restores the right to vote for those people who are affected by the aging process. For many people, opening an envelope or paying a bill is a very difficult thing to do. This does not mean they did not do heroic things earlier in their lifetimes. It means that the effects of aging are severe for some people at some time in their life.

The Samuelson amendment says that those people, just like others, shall fully be able to vote in Pennsylvania elections. This is a wise amendment. It goes to the heart of this bill. The vast majority of people who will be disenfranchised under this bill, as now written, are senior citizens. Mr. Samuelson restores their vote. I strongly urge support of this amendment.

**Exhibit C**

NOT VOTING—0

EXCUSED—5

Deasy  
Gerber

O'Brien, D.

Perry

Wagner

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,  
Will the House agree to the bill on second consideration?

Mr. **PASHINSKI** offered the following amendment  
No. **A02067**:

Amend Bill, page 3, by inserting between lines 14 and 15

(d) The Secretary of Transportation shall establish a mobile unit to take photographs of people with disabilities who need assistance in obtaining photographs of themselves for proof of identification under this act.

On the question,  
Will the House agree to the amendment?

AMENDMENT WITHDRAWN

The SPEAKER. On that question, the Speaker recognizes the gentleman, Mr. Pashinski.

Mr. PASHINSKI. Thank you, Mr. Speaker.

After the results of the last amendment, considering the due course of conversations that I had with my colleagues on the other side of the aisle that encouraged me to put that provision in, I am going to withdraw this particular amendment, sir.

The SPEAKER. The Speaker thanks the gentleman.

Mr. PASHINSKI. Thank you.

On the question recurring,  
Will the House agree to the bill on second consideration?

Mr. **BRIGGS** offered the following amendment  
No. **A02102**:

Amend Bill, page 3, line 17, by striking out "is" and inserting  
are

Amend Bill, page 3, line 18, by striking out "A SUBSECTION"  
and inserting  
subsections

Amend Bill, page 9, by inserting between lines 7 and 8

(a.5) Notwithstanding any other provision of this section, an elector, other than an elector who appears to vote in that election district for the first time, who does not possess proof of identification satisfies the requirements of subsection (a) by, on a form prescribed by the Secretary of the Commonwealth, writing the elector's residential address and date of birth, printing the elector's name and signing an affidavit that the elector is the elector whose name appears in the district register. The county board of elections shall supply each election district with a sufficient supply of such forms.

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On the question,  
Will the House agree to the amendment?

The SPEAKER. On that question, the Speaker recognizes the gentleman, Mr. Briggs.

Mr. BRIGGS. Thank you, Mr. Speaker.

I am introducing amendment 2102 to fix a problem that I believe may occur. The first time a voter would participate on an election day, they would have to provide a photo license. But on any further voting occasion they would have, if they were not to have their photo ID, they could simply fill out an affidavit with their date of birth and signature and address, and that would suffice, which would alleviate a return trip to the county board of elections within 6 days to present their photo ID.

I ask the members for their support for amendment 2102.

The SPEAKER. The question is, will the House agree to the amendment?

On that question, the Speaker recognizes the gentleman, Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Speaker.

Mr. Speaker, I rise in opposition to amendment 2102.

Mr. Speaker, it is common knowledge that an individual's name and date of birth is within the public record of the voter registration information that is available to anybody to glean from those records, and then to show up to vote, have memorized that date of birth and that name, be able to write that down, sign that affidavit, and after having voted leave, because they did not prove that they were who they actually claim to be, and disappear into the masses, to not be held accountable for even effectuating that affidavit.

So this certainly would undermine the intent of the legislation to require that voters actually prove that they are there to vote, as they say they are, in person, and I would ask for a negative vote on A2102.

Thank you, Mr. Speaker.

The SPEAKER. The question is, will the House agree to the amendment?

On that question, the Speaker recognizes the lady from Philadelphia, Ms. Josephs.

Ms. JOSEPHS. Thank you, Mr. Speaker.

I rise to ask for a positive vote, an affirmative vote for this amendment from the good gentleman from Montgomery County.

First of all, this kind of voter fraud does not happen, but hypothetically, let us say it does. Let us say somebody goes to all the trouble of meeting with someone, memorizing a birth date and a name and this not-so-secret middle initial or whatever it is, and there is a fraud perpetuated; unlikely, as likely as getting — less likely than getting struck by lightning, less likely, but let us say it happens. There are severe penalties for this kind of behavior. That is why people do not do it. That is why people do not engage in this kind of behavior. That is why these kinds of requirements are nothing but a barrier.

The good gentleman from Montgomery County is trying to make it a little bit simpler for seniors and American citizens who deserve the right to vote to cast their right to vote, and those of you who care about citizens voting will be voting with the gentleman from Montgomery County, as I will be.

Thank you, Mr. Speaker.

Mr. PASHINSKI. Thank you, sir.

Mr. Speaker, there have been times where countless people go to vote and do not have their proper identification. This particular provision would allow for a person to write, to sign a provisional ballot. The following day the individual would present a notarized affidavit to the proper officials to prove the identification was indeed correct. Countless times this has occurred, sir, and I would appreciate a "yes" vote on this.

The SPEAKER. The question is, will the House agree to the amendment?

On the question, the Speaker recognizes the gentleman from Butler, Mr. Metcalfe.

Mr. METCALFE. Thank you, Mr. Speaker.

Mr. Speaker, I oppose amendment 2064. Something similar, a similar amendment, was considered by the State Government Committee of which we did not adopt the amendment. The author is back today to take another shot at it, but we drafted this legislation specifically to follow along the same parallel lines as the Indiana legislation has progressed to require voter ID, a photo ID by voters, which has been upheld by the U.S. Supreme Court, and we want to keep our legislation in line with what has been tested through the Supreme Court to ensure that it withstands any potential challenges down the road. So I would object to amendment 2064.

Thank you, Mr. Speaker.

The SPEAKER. The question is, will the House agree to the amendment?

On that question, the Speaker recognizes the lady from Philadelphia, Ms. Josephs.

The lady waives off.

Will the House agree to the amendment?

On that question, the Speaker recognizes the gentleman, Mr. Pashinski, for the second time.

Mr. PASHINSKI. Thank you, Mr. Speaker.

Mr. Speaker, it is true that a similar amendment was proposed by myself during the State Government meeting, and after due consideration with members on both sides of the aisle, I was encouraged to reoffer this with the provision that we would notarize the affidavit. During the conversation with the State Government Committee, members of the other side of the aisle said that it made sense to do what I was suggesting, and by notarizing it, it would guarantee the complete authority of the individual relative to their identification. For this reason, I have repropounded this with that added provision.

Based upon the conversations that I have had with members on the other side of the aisle, I would ask that they reconsider it and please support it.

Thank you, Mr. Speaker.

The SPEAKER. The question is, will the House agree to the amendment?

On that question, the Speaker recognizes the gentleman from York County, Mr. Saylor.

Mr. SAYLOR. Thank you, Mr. Speaker.

I rise to ask for a negative vote on the Pashinski amendment. Thank you, Mr. Speaker.

On the question recurring,

Will the House agree to the amendment?

(Members proceeded to vote.)

## LEAVE OF ABSENCE

The SPEAKER. The Speaker returns to leaves of absence and recognizes the majority whip, who requests a leave of absence for the gentleman, Mr. Denny O'BRIEN, from Philadelphia for the remainder of the day. Without objection, the leave will be granted.

## CONSIDERATION OF HB 934 CONTINUED

On the question recurring,

Will the House agree to the amendment?

The following roll call was recorded:

### YEAS—88

Barbin	DeLissio	Kavulich	Petrarca
Bishop	DeLuca	Keller, W.	Preston
Boyle, B.	DePasquale	Kirkland	Ravenstahl
Boyle, K.	Dermody	Kortz	Readshaw
Bradford	DeWeese	Kotik	Roebuck
Brennan	Donatucci	Kula	Sabatina
Briggs	Evans, D.	Longietti	Sainato
Brown, V.	Fabrizio	Mahoney	Samuelson
Brownlee	Frankel	Mann	Santarsiero
Burns	Freeman	Markosek	Santoni
Buxton	Galloway	Matzie	Shapiro
Caltagirone	George	McGeehan	Smith, K.
Carroll	Gergely	Mirabito	Smith, M.
Cohen	Gibbons	Mullery	Staback
Conklin	Goodman	Mundy	Sturla
Costa, D.	Haluska	Murphy	Thomas
Costa, P.	Hanna	Myers	Vitali
Cruz	Harhai	Neuman	Waters
Curry	Harkins	O'Brien, M.	Wheatley
Daley	Hornaman	Parker	White
Davidson	Johnson	Pashinski	Williams
Davis	Josephs	Payton	Youngblood

### NAYS—110

Adolph	Farry	Lawrence	Reese
Aument	Fleck	Maher	Reichley
Baker	Gabler	Major	Roae
Barrar	Geist	Maloney	Rock
Bear	Gillen	Marshall	Ross
Benninghoff	Gillespie	Marsico	Saccone
Bloom	Gingrich	Masser	Saylor
Boback	Godshall	Metcalfe	Scavello
Boyd	Grell	Metzgar	Schroder
Brooks	Grove	Miccarelli	Simmons
Brown, R.	Hackett	Micozzie	Sonney
Causar	Hahn	Millard	Stephens
Christiana	Harhart	Miller	Stern
Clymer	Harper	Milne	Stevenson
Cox	Harris	Moul	Swanger
Creighton	Heffley	Murt	Tallman
Culver	Helm	Mustio	Taylor
Cutler	Hennessey	O'Neill	Tobash
Day	Hess	Oberlander	Toepel
Delozier	Hickernell	Payne	Toohil
Denlinger	Hutchinson	Peifer	Truitt
DiGirolamo	Kampf	Petri	Turzai
Dunbar	Kauffman	Pickett	Vereb
Ellis	Keller, F.	Pyle	Vulakovich
Emrick	Keller, M.K.	Quigley	Watson
Evankovich	Killion	Quinn	
Evans, J.	Knowles	Rapp	Smith, S.,
Everett	Krieger	Reed	Speaker

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**CERTIFICATE OF SERVICE**

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I, Patrick S. Cawley, Senior Deputy Attorney General, hereby certify that on July 18, 2012, I caused to be served the foregoing brief in opposition to Petitioners' application for preliminary injunction by emailing and depositing the same in the United States Mail, first-class, postage prepaid, in Harrisburg, Pennsylvania, upon the following individuals:

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