

IN THE SUPREME COURT OF PENNSYLVANIA

No. 71 MAP 2012

VIVIETTE APPLEWHITE; WILOLA SHINHOLSTER LEE; GROVER
FREELAND; GLORIA CUTTINO; NADINE MARSH; DOROTHY
BARKSDALE; BEA BOOKLER; JOYCE BLOCK; HENRIETTA KAY
DICKERSON; DEVRA MIREL (“ASHER”) SCHOR; THE LEAGUE OF
WOMEN VOTERS OF PENNSYLVANIA; NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED PEOPLE, PENNSYLVANIA STATE
CONFERENCE; HOMELESS ADVOCACY PROJECT,

Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA; THOMAS W. CORBETT, IN
HIS CAPACITY AS GOVERNOR; CAROLE AICHELE, IN HER CAPACITY
AS SECRETARY OF THE COMMONWEALTH,

Respondents.

BRIEF OF *AMICI CURIAE* THE CITY OF PHILADELPHIA, CITY
COMMISSIONERS STEPHANIE SINGER AND ANTHONY CLARK,
AND THE PHILADELPHIA COMMISSION ON HUMAN RELATIONS
IN SUPPORT OF PETITIONERS

CITY OF PHILADELPHIA LAW DEPT.
Shelley R. Smith, City Solicitor

By: Elise Bruhl
Deputy City Solicitor, Appeals
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
(215) 683-5011
elise.bruhl@phila.gov
Attorney for City of Philadelphia *amici*

Dated: August 30, 2012

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i> THE CITY OF PHILADELPHIA, STEPHANIE SINGER, ANTHONY CLARK, AND THE PHILADELPHIA COMMISSION ON HUMAN RELATIONS	1
ARGUMENT	3
A. Petitioners Are Entitled to a Preliminary Injunction.	3
B. Election Day and Counting the Vote in the City.	3
1. Counting the Vote.....	6
2. Delays and Problems Increase at the Polls for a Presidential Election.	7
3. The Photo ID Law Already Has Created Problems and Delays at the Polls.....	8
C. The Photo ID Law Will Prevent Voters from Casting Their Votes on Election Day.....	9
1. Voters Who Wish to Vote by Absentee Ballot Will Also Be Prevented From Voting By the Photo ID Law.	14
D. Voters Who Cast Provisional or Absentee Ballots Will Be Prevented From Having Their Votes Counted by the Photo ID Law.	15
1. Voters Who Cast Provisional Ballots.	15
2. Voters Who Cast Absentee Ballots.	16
CONCLUSION.....	19

TABLE OF AUTHORITIES

Page(s)

CASES

<i>NAACP v. Cortes</i> , 591 F. Supp.2d 757 (E.D. Pa. 2008)	5, 10
--	-------

STATUTES

25 P.S. § 2602	15
25 P.S. § 3050	8, 9, 16, 17
25 P.S. § 3146.2b	15
25 P.S. § 3146.8	6, 7, 16, 17
Act 18 of 2012, March 14, <i>amending</i> Act of 1937, June 3, P.L. 1333 (the “Photo ID Law”)	1, 2, 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

HOME RULE CHARTER PROVISIONS, ORDINANCES AND RESOLUTIONS

Philadelphia Home Rule Charter § 11-03.....	1
Philadelphia Home Rule Charter § A-100.....	1
Philadelphia Home Rule Charter § 2-112.....	1

OTHER AUTHORITIES

2010 Census & American Community Survey.....	11
http://www.dmv.state.pa.us/pdotforms/voterid	14
http://www.dmv.state.pa.us/voter/voteridlaw.shtml	14

**INTEREST OF *AMICI CURIAE* THE CITY OF PHILADELPHIA,
STEPHANIE SINGER, ANTHONY CLARK, AND THE PHILADELPHIA
COMMISSION ON HUMAN RELATIONS**

The City of Philadelphia (“City”) is interested in this matter because all registered voters in the City are currently subject to the photo identification requirements of Act 18 of 2012, March 14, *amending* Act of 1937, June 3, P.L. 1333 (the “Photo ID Law”). The City believes that all of its residents, particularly its most vulnerable residents, should not face unconstitutional burdens on their fundamental right to vote. The City will suffer financially, politically, and in important matters of policy, if significant numbers of its residents are disenfranchised, and particularly if they are disenfranchised in numbers disproportionate to the City’s percentage of the state population.

Stephanie Singer and Anthony Clark are City Commissioners.¹ The City Commissioners are the elected officials charged with administering the Election Code in the City and overseeing the administration of elections. Their interest in this matter stems from their mission to serve City voters, a mission that includes protecting their fundamental right to vote.

The Philadelphia Commission on Human Relations is the City agency charged with investigating and offering redress for claims of discrimination based on race, color, national origin, age, disability, gender, and source of income under the City’s civil rights laws. The Philadelphia Commission on Human Relations is

¹In the City, the City Commissioners oversee and administer the County Board of Elections. *See* Philadelphia Home Rule Charter §§ 2-112, 11-03, A-100. For ease of reference, the term “City Commissioners” will be used in this brief.

interested in this matter because of the disparate impact that the Photo ID Law has, and will have, on City residents for whom the fundamental right to vote serves as a means to protect against and prevent unlawful discrimination.

All of the City *amici* are interested in this matter because the Photo ID Law will have a greater impact on the City and its voters than it will in other areas of Pennsylvania. The Office of the Secretary of State initially estimated that the Photo ID Law would affect only 80,000 Pennsylvania voters. However, the Secretary of State's current data indicates that 186,630 of the City's registered voters have no form of PennDOT identification, and 175,000 registered voters have expired PennDOT identification that cannot be used at the polls on Election Day. Currently, approximately 361,000 of the City's 1,100,000 registered voters may not have sufficient identification to cast their votes on Election Day.

Further, November 6, 2012, is a Presidential election, so turnout, emotions, and stakes will be high. The delays and conflicts the Photo ID Law created at the polls in the primary election – a low turnout election – point toward the Photo ID Law impeding or blocking the ability of City voters to cast their votes in November, regardless whether their identification passes muster under that law.

Large numbers of City voters risk losing their fundamental right to vote on November 6, 2012. They should not have to do so.

ARGUMENT

A. Petitioners Are Entitled to a Preliminary Injunction.

Before the Commonwealth Court, Petitioners demonstrated that they were entitled to a preliminary injunction barring Respondents from enforcing or otherwise implementing the Photo ID Law. *Amici* hereby adopt Petitioners' arguments on their own behalf and incorporate them by reference.

Amici file this brief to explain the real and substantial effect that the Photo ID Law will have on City voters. Opinion at 18. In its opinion, Commonwealth Court stated that the availability of absentee ballots and provisional ballots mitigated concerns that voters who lacked photo identification would not be able to vote or have their votes counted in the general election. Opinion at 11.

However, prior City elections, including the 2012 primary election; the Department of State's own data; and the daily experience of the City Commissioners indicate otherwise. In other words, the Photo ID Law will prevent the casting and counting of votes in the November 6, 2012 election, and will cause irreparable harm to City voters. Opinion at 10. City *amici* respectfully request that this Court rule for Petitioners, and stop such harm from occurring.

B. Election Day and Counting the Vote in the City.

Election Day happens on a larger scale in the City than elsewhere in Pennsylvania: the City has 1,687 polling places. August 1 Transcript, Testimony of City witness Jorge Santana ("Aug. 1 Tr.") at 1209. To offer some context, this amounts to twenty percent of all of the polling places in Pennsylvania.

City voters do not drive to the polls, as voters in other areas of Pennsylvania

do. They walk to polling places in their neighborhoods. With few exceptions, each City voter's polling place is within five blocks of where that voter lives. As a result, City voters cast their votes in schools, churches, universities, and, at times, storefronts and garages. Aug. 1 Tr. at 1209.

The City has also combined multiple election divisions into one location to address accessibility requirements, lawsuit settlements, and other state and federal law requirements. Aug 1 Tr. at 1209, 1239-40. So, some City voters find themselves going to vote in a building that houses more than one polling place on Election Day. Aug 1 Tr. at 1209, 1239-40.

The City's polling places and voting machines must be up and running by 7 a.m. and continue running until the close of polls at 8 p.m. Aug 1 Tr. at 1236-27. To make that happen, over 8,000 poll workers (such as Judges of Election, Inspectors, and interpreters) will be at the polls. Aug. 1 Tr. at 1209, 1211-14, 1225-26.

The City's poll workers are a cross-section of the City, its residents, and its neighborhoods. In many of the City's polling places, the poll workers have served as election officials for a number of years. Aug. 1 Tr. at 1226.

As a result, the City's poll workers usually spend an Election Day at a polling place a few blocks from their homes, along with other people (and voters) from their own neighborhoods, helping people they know cast their votes. Throughout the day, and into the evening, poll workers will be managing lines, machines, machine breakdowns, poll books, voting registers, interpreter requests, and voters. Aug 1 Tr. at 1227-30.

Meanwhile, staff at the City Commissioners will be answering questions from the public, poll workers, and the press; troubleshooting problems with machines over the phone and sending out teams to fix them; and managing all of the other problems that can occur both inside and outside a polling place. Aug 1 Tr. at 1236-37 (“There are instances where a polling place location has not opened on time and we have to make a decision whether to break open a door to actually open – run our election. Those cause dramatic delays.”)

Election Day cannot be done over. *See, e.g., NAACP v. Cortes*, 591 F. Supp.2d 757 (E.D. Pa. 2008) (granting preliminary injunction for use of emergency ballots if machine failures occurred at City polls for the 2008 presidential election). As the District Court noted in *Cortes*:

The polls are open for one day and one day only and then for only 13 hours. There is no rain date.

See id. at 764.

Given the stakes and the scale of elections in the City, even mundane aspects of Election Day require a great deal of effort and preparation: the City Commissioners must assemble 1,687 boxes of election materials that will be used at the polls for Election Day, and they must have staff on hand on Election Day to support those 8,000 poll workers. Aug. 1 Tr. at 1209, 1211, 1236-37.

1. Counting the Vote.

After the polls close, the Police Department will go to all 1,687 locations to collect the cassettes that register the votes cast at the voting machines. The Police Department will bring those cassettes to seven remote sites. At those sites, the cassettes will be inserted into card readers, and voting results sent over a dedicated line to the City Commissioners. Those results create the unofficial count, which will be posted in-house and on the Internet.

The Friday after Election Day, the official count starts. The cassettes are delivered from the remote sites to the City Commissioners; the cassettes are once again inserted into card readers; and data collected once again for the official count. It usually takes a few days for all of the provisional ballots to be collected, as some poll workers will store the provisional ballots in the voting machines themselves, or will put them in the vinyl bag with the cassettes that record the votes. The City Commissioners review and count provisional ballots and absentee ballots over the course of the days following the election for the official vote count.

In past City elections, it has been rare for voters to cast provisional ballots, even in presidential elections, and challenges to those ballots have been an even rarer occurrence. Aug. 1 Tr. at 1231, 1246.

Challenges to absentee ballots have occurred in past elections. After Election Day, the City Commissioners would canvass the absentee ballots; receive challenges to those ballots from representatives of candidates and parties; and rule on those challenges at a hearing. *See* 25 P.S. § 3146.8(g)(2). Voters were given notice “where possible” of such a hearing, and the City Commissioners’

determinations on those challenges could be appealed to the Court of Common Pleas. *See* 25 P.S. § 3146.8(g)(2) & (6).

2. Delays and Problems Increase at the Polls for a Presidential Election.

The efforts required to make Election Day happen in the City increase for a Presidential election. Aug. 1 Tr. at 1239. Presidential elections have the highest turnout of any election in a four year cycle. Aug. 1 Tr. at 1234. At any polling place, the increased turnout that occurs during a Presidential election creates longer lines and longer delays for voters. Aug. 1 Tr. at 1234. This is particularly the case between the hours of 7 and 9 a.m. and 5 and 8 p.m., the times when two-thirds of City voters try to cast their votes. Aug. 1 Tr. at 1234.

The increases in turnout, and the high stakes of a Presidential election, result in increased pressure on poll workers, the City Commissioners, and voters. Aug 1 Tr. at 1239. Problems with broken machines, long lines, missing interpreters, and provisional ballots, to name a few, become more numerous, more fractious, and more difficult to manage on the Election Day of a presidential election. Aug. 1 Tr. at 1234, 1236, 1250.

One of those sources of delay occurs when voters cast provisional ballots. Aug. 1 Tr. at 1233. If a voter must cast a provisional ballot, an election official (a Judge of Elections, or one of the other four to six poll workers at a polling place) must show the voter how to fill out the provisional ballot and find space for the voter to fill out such a ballot. Aug. 1 Tr. at 1233. Once that is done, the ballot is put into a separate envelope by the Judge of Elections and set aside to be counted

after Election Day. Aug. 1 Tr. at 1233. A provisional ballot is time consuming for the voter who casts it and the poll workers who must administer the ballot; and provisional ballots cause delays for the other persons in line waiting to vote. Aug. 1 Tr. at 1233.

Provisional ballots caused delays at the polls during the 2008 presidential election. Aug. 1 Tr. at 1233. This was so even though only slightly more than 8,300 provisional ballots were cast at the polls in the City on November 4, 2008. Aug. 1 Tr. at 1231.

3. The Photo ID Law Already Has Created Problems and Delays at the Polls.

The Photo ID Law creates a “sea[] change” at the 1,687 polls in the City, and at polling places throughout Pennsylvania. Aug. 1 Tr. at 1227. Under the Photo ID Law, poll workers now must do the following before any voter can cast a vote at the polls:

- examine each voter’s proof of identification;
- sign an affidavit for each voter;
- have each voter sign a voter certificate;
- call out the voter’s name and compare the voter’s signature with the signature in the register; and
- write his or her signature of initials over each voter’s signature.

See 25 P.S. § 3050.

If all of these requirements are met – and the Judge of Elections does not

reject the voter's proof of identification – only then may a voter proceed to cast a vote at a voting machine. *See id.* That is the best case scenario, and even that best case scenario will take up time on November 6, 2012. Aug. 1 Tr. at 1239.

The Photo ID Law had a “soft rollout” during the 2012 primary, but this advisory application of the law did not go well. Aug. 1 Tr. at 1241. During the 2012 primary, poll workers were supposed to ask voters if they had photo identification, but still allow voters to cast their vote even if they did not show such identification. Aug. 1 Tr. at 1241. Even having to ask for photo identification from all prospective voters created delays, confusion, and conflicts at the polls. Aug. 1 Tr. at 1241-42.

C. The Photo ID Law Will Prevent Voters from Casting Their Votes on Election Day.

Simply put, the Photo ID Law will create “a mess” at the polls on Election Day, due to the additional delays, problems, and conflicts created by the Photo ID Law. Aug. 1 Tr. at 1239-40. These delays will include those occasioned by increased numbers of voters having to cast provisional ballots, whether those voters do so because they do not have photo identification; they cannot afford to obtain photo identification; or their identification is found wanting in some manner. *See* 25 P.S. § 3050; Aug. 1 Tr. at 1239-42.

In other words, the problems created by the Photo ID Law will amount to more than mere inconvenience on November 6, 2012, both for the voters who lack photo identification, and for those who do have such identification, and will prevent voters from casting their votes:

[T]here can come a point when the burden of standing in a queue ceases to be an inconvenience or annoyance and becomes a constitutional violation because it, in effect, denies a person the right to exercise his or her franchise. . . .

Even in the best of circumstances, voters can expect and must tolerate more delay than usual [on the Election Day of a presidential election]. Nonetheless, we would be blind to reality if we did not recognize that many individuals [in the City] have a limited window of opportunity to go to the polls due to their jobs, child care and family responsibilities, or other weighty commitments. Life does not stop on election day. Many must vote early or in the evening if they are to vote at all.

See Cortes, 591 F. Supp.2d at 764.

The City Commissioners have ordered 211,000 provisional ballots for the polls on November 6, 2012. The City Commissioners did so having “seen the numbers” of City registered voters who lack the type of identification needed to vote, and having witnessed the problems that City voters have experienced in trying to obtain sufficient photo identification in order to vote. Aug. 1 Tr. at 1238-39.

In fact, “the numbers” are the Secretary of State’s own estimates. The Secretary of State initially estimated that only 80,000 registered voters in Pennsylvania would be affected by the Photo ID Law. Recently issued data indicates that 758,939 voters in Pennsylvania do not have PennDOT identification, and of the voters who do have PennDOT identification, 575,000 voters have expired PennDOT identification that cannot be used to vote on Election Day. Aug. 1 Tr. at 1215, 1217. Of those totals, 186,630 registered City voters have no PennDOT identification, and approximately 175,000 registered City voters have

expired PennDOT identification that cannot be used at the polls.

Moreover, the City Commissioners' concerns about the Secretary of State's numbers are compounded by the City's own numbers – its demographics. The persons most likely to be disenfranchised by the Photo ID Law are members of a racial or ethnic minority group, poor, or elderly.

The City is a large, diverse city, and as such, large numbers of its residents are at risk of disenfranchisement from the Photo ID Law. Of the City's 1,526,006 residents:

- 661,839 are African-American;
- 187,611 are Hispanic or Latino;
- 96,405 are Asian;
- 366,400 of City residents are living in poverty; and
- 22% of the City's population is over the age of 60, and 8,000 members of that group currently receive nursing care in their own homes.

See 2010 Census & American Community Survey.

Indeed, the City Commissioners have already witnessed the problems that the Photo ID Law has created for City voters. Since March, on a daily basis, members of the public have contacted the City Commissioners' offices, or have walked into the City Commissioners' offices to ask for help with obtaining social security cards, birth certificates, or the other kinds of documents required by PennDOT to obtain photo identification to vote. Aug. 1 Tr. at 1220-21, 1249-50. Given historical patterns, these sorts of requests will only increase after Labor Day,

as voter interest in the upcoming election increases, and voter queries, visits to the Commissioners' offices, and registration and ballot applications increase as well. Aug. 1 Tr. at 1220-21, 1250-51.

Commonwealth Court found that a recently announced Department of State identification card, which will not require a raised birth certificate prior to issuance, will "mitigate" the burden on voters who have encountered difficulties in obtaining identification that will meet the requirements of the Photo ID Law. Opinion at 61. However, such a card will not alleviate the queries, burdens, and problems that the City Commissioners and City voters have encountered, and will encounter, prior to Election Day.

Voters who are elderly, infirm, or homeless face a heavier burden at the outset to obtaining any such identification, because it is difficult for them even to get to a PennDOT license center. Opinion at 61. In addition, low income voters face similar burdens with regard to mobility, time, and transportation that persons with ready access to income and automobiles do not encounter.²

²The poorer a City resident of voting age (18+) is, the less likely it is for that resident to have access to an automobile. Over half of City residents (56%) with incomes below the poverty level live in households without an available automobile. *See* 2010 Census American Community Survey. When a City resident's income goes above over the poverty level that number drops to 22%. *See* 2010 Census American Community Survey.

Once at the PennDOT center, more hurdles remain:

- The card is only available to registered voters (the voter is allowed to “check a box” if that voter has registered in the last thirty days);
- Voters must first apply for the “secure” PennDOT voting card, which requires: 1) a social security card; 2) a certificate of citizenship or naturalization, valid United States passport, or birth certificate with raised seal; and 3) two proofs of residency;
- If PennDOT determines that the voter’s documentation is not sufficient for a “secure card,” the voter may then apply for the Department of State card;
- If the voter is allowed to apply for the Department of State card, the voter must sign an oath affirming that the voter does not have any of the forms of identification listed in the Photo ID Law, and that the voter’s affirmation is made “subject to the penalties . . . which may include punishment of a fine of at least \$1,000, at term of imprisonment of not more than two years, or both”;
- The voter must also provide two proofs of residency, defined as lease agreements, current utility bills, mortgage documents, W-2 forms, or tax records;
- Voters who do not have any bills, leases, or mortgage documents in their names may bring the person with whom they are living along with them to a PennDOT center as *one* proof of residence, but must still provide a second proof of residence;
- Voters who are homeless, and are living in a shelter, may use the address of a shelter as their residence, but must visit a PennDOT License Center with an employee from the shelter. Further, that employee must have photo identification issued by the shelter and a letter on the shelter's letterhead stating that the homeless individual resides at the shelter;
- The voter must then be verified as to identity and registration by the Department of State while the voter is at the PennDOT center; and

- If all of these requirements are met, a Department of State voter identification card will be issued to the voter.

See Department of State Voter ID FAQ, PA Voter ID Law-DOS Voter ID FAQ-1.PDF; *see also* PennDOT <http://www.dmv.state.pa.us/voter/voteridlaw.shtml>; PennDOT <http://www.dmv.state.pa.us/pdotforms/voterid>.

Therefore, mindful of the Secretary of State's own numbers, the City's demographics, and the obstacles City voters have faced, and will face, to obtaining identification under the Photo ID Law, the City Commissioners have ordered 211,000 provisional ballots. Aug. 1 Tr. at 1224. In sum, the Photo ID Law will prevent City voters from casting their votes on Election Day, and the increased need to cast and administer provisional ballots will only increase that number.

1. Voters Who Wish to Vote by Absentee Ballot Will Also Be Prevented From Voting By the Photo ID Law.

In its opinion, Commonwealth Court indicated that persons who were too ill or infirm to bring themselves to the polls on Election Day would be qualified to cast an absentee ballot, and because such ballots were available, those voters would not be prevented from voting by the Photo ID Law. Opinion at 12. However, persons who seek to vote by absentee ballot are not exempt from the Photo ID Law's requirements, and, if they lack sufficient identification, will be prevented from casting their vote.

Under the Photo ID Law, a voter who wishes to vote by absentee ballot must still provide proof of identification with an application for such a ballot: a PennDOT driver's license number; the last four digits of a social security number;

or a copy of another form of identification that will be accepted at the polls on Election Day. *See* 25 P.S. §§ 2602(z.5), 3146.2(e)(1). The City Commissioners must verify that information for that absentee ballot to be cast and counted. *See* 25 P.S. § 3146.2b(d).

If the voter does not provide proof of identification with the application for the absentee ballot, or the City Commissioners cannot verify that information, the City Commissioner will send notice to the voter with the absentee ballot. *See* 25 P.S. § 3146.2b(d). The notice will tell the voter that sufficient proof of identification must be provided with the absentee ballot, or the ballot will not be counted. *See* 25 P.S. § 3146.2b(d). As a result, voters who lack such identification may well be able to cast a ballot, but will not be able to vote.

D. Voters Who Cast Provisional or Absentee Ballots Will Be Prevented From Having Their Votes Counted by the Photo ID Law.

Voters who cast provisional or absentee ballots will also be prevented from having their votes counted by the Photo ID Law. Here too, the Photo ID Law creates hurdles and roadblocks for City voters, thereby preventing them from exercising their right to vote.

1. Voters Who Cast Provisional Ballots.

If a City voter has cast a provisional ballot on the basis of indigency, that voter must provide an affidavit to the City Commissioners stating that the voter is indigent and unable to obtain proof of identification without payment of a fee

within six calendar days of the election, or that provisional ballot will not be counted. *See* 25 P.S. § 3050(a.4)(5)(ii)(D).

If a City voter casts a provisional ballot due to an inability to provide identification, for whatever reason, or because the Judge of Elections rejects that voter's identification, that voter must, within six calendar days, execute an affidavit and a copy of some form of identification that suffices under the Photo ID Law, or that provisional ballot will not be counted. *See* 25 P.S. § 3050(a.4)(5)(ii)(E).

Even if the City voter is able to meet these requirements within six calendar days of the election, that provisional ballot can still be challenged, and the vote not counted. *See* 25 P.S. § 3050(a.4)(5)(iii).

2. Voters Who Cast Absentee Ballots.

If an absentee voter has received notice from the City Commissioners that proof of identification must be received with the absentee ballot, and the voter does not provide such identification, that absentee ballot will not be counted. *See* 25 P.S. § 3146.8(h)(3). Or, if an absentee voter's proof of identification cannot be verified by the City Commissioners by the sixth calendar day following the election, that voter's absentee ballot will not be counted. *See* 25 P.S. § 3146.8(h)(3).

Even if the absentee voter provides the requisite proof of identification, and that identification is verified within six calendar days of the election, that absentee

ballot can still be challenged, and the vote not counted. *See* 25 P.S. § 3146.8(g)(2-5).

In its opinion, the Commonwealth Court indicated that the availability of an appeal to the Court of Common Pleas counseled against finding that the Photo ID Law posed a risk of preventing voters from having their votes cast and counted. Opinion at 67. The possibility that a voter can file an appeal does not mean that they will be aware that their vote was not counted, or that they will be able to file such an appeal. For example, a voter who casts a provisional ballot is supposed to learn whether that ballot was counted through a web site and toll-free number: those sources will not have such information until at a minimum, the City Commissioners estimate, two weeks after Election Day, given numbers, requirements for challenges, and the need for hearings on those challenges. *See* 25 P.S. § 3050(a.4)(5)(ii)(11). As for voters whose absentee ballot has been challenged, they are to be given notice “where possible” to attend a hearing on that challenge before the City Commissioners; so, if those voters receive notice and can attend the hearing, they can try to defend their vote. *See* 25 P.S. § 3146.8(5).

Even if such a voter files an appeal, or contemplates filing a complaint in the Court of Common Pleas, it is unlikely that voters who are unable to obtain identification will also be able to afford court fees, counsel, or the time to make such a challenge. In other words, in practical terms, the right to appeal is remote at best, and the Photo ID Law will operate to deprive the City’s most vulnerable voters of the right to vote.

Currently, the City and the City Commissioners are trying to “prepare for the worst” for Election Day, but respectfully, they should not have to do so. Aug. 1 Tr. at 1249. If a preliminary injunction were entered against enforcement and implementation of the Photo ID Law, that injunctive relief would “relieve a lot of pressure” on the City, the City Commissioners, and 8,000 poll workers who are trying to prepare for the November 6, 2012, election. Aug. 1 Tr. at 1249. More importantly, such injunctive relief would prevent and alleviate the harm that the Photo ID Law creates, and will create, for large numbers of City voters.

CONCLUSION

For the foregoing reasons, *amici* the City of Philadelphia, City Commissioners Stephanie Singer and Anthony Clark, and the Philadelphia Commission on Human Relations respectfully request that this Court reverse the Order of the Commonwealth Court, rule in favor of Petitioners, and grant the relief requested in their Motion for a Preliminary Injunction and Petition for Review.

Respectfully submitted,

CITY OF PHILADELPHIA LAW DEPT.
Shelley R. Smith, City Solicitor

/s Elise Bruhl

By: Elise Bruhl
Deputy City Solicitor, Appeals
I.D. No. 78723
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
(215) 683-5011
elise.bruhl@phila.gov
Attorney for *Amici* the City of Philadelphia,
Stephanie Singer and Anthony Clark, and
the Philadelphia Commission on Human
Relations

Dated: August 30, 2012

CERTIFICATE OF SERVICE

I, Elise Bruhl, hereby certify that on **August 30, 2012**, I caused to be served **two** true and correct copies of the foregoing Brief upon the persons listed below by first class mail, postage prepaid:

Witold J. Walczak, Esq.
ACLU of Pennsylvania
313 Atwood St.
Pittsburgh, PA 15213

Jennifer R. Clarke, Esq.
For: PILCOP
1709 Benjamin Franklin Parkway
2nd Floor
Philadelphia, PA 19103
Marian Karen Schneider, Esq.
295 E Swedesford Rd #348
Wayne, PA 19087

Dorian Hurley, Esq.
For: Arnold & Porter
555 Twelfth Street NW
Washington, DC 20004-1206
Attorneys for Petitioners

Patrick Schaffner Cawley, Esq.
For: Office of Attorney General
Strawberry Sq. 15th Floor
Harrisburg, PA 17120

Kevin Patrick Schmidt,
333 Market St., 17th Fl.
Harrisburg, PA 17101
Attorneys for Respondents

/s Elise Bruhl

Elise Bruhl
Deputy City Solicitor, Appeals