

KATHLEEN G. KANE  
Attorney General  
TIMOTHY P. KEATING  
Senior Deputy Attorney General  
Office of the Attorney General  
Strawberry Square, 15th Floor  
Harrisburg, PA 17120  
(717) 705-8580  
tkeating@attorneygeneral.gov

Kevin P. Schmidt  
Deputy General Counsel  
Office of General Counsel  
333 Market Street, 17th Floor  
Harrisburg, PA 17101  
(717) 787-9348  
kevschmidt@pa.gov

*Attorneys for Respondents*

DRINKER BIDDLE & REATH LLP  
Alfred W. Putnam, Jr.  
D. Alicia Hickok  
Todd N. Hutchison  
One Logan Square, Suite 2000  
Philadelphia, PA 19103  
(215) 988-2700  
alfred.putnam@dbr.com  
alicia.hickok@dbr.com  
todd.hutchison@dbr.com

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

WILOLA SHINHOLSTER LEE; BEA  
BOOKLER; THE LEAGUE OF WOMEN  
VOTERS OF PENNSYLVANIA;  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE,  
PENNSYLVANIA STATE CONFERENCE;  
and HOMELESS ADVOCACY PROJECT,  
Petitioners,

v.

THOMAS W. CORBETT, in his capacity as  
Governor; and CAROL AICHELE, in her  
capacity as Secretary of the Commonwealth,  
Respondents.

Docket No. 330 M.D. 2012

RECEIVED & FILED  
COMMONWEALTH COURT  
OF PENNSYLVANIA  
2013 AUG 31 10 21 AM

---

**RESPONDENTS' PROPOSED FINDINGS OF FACT – PUBLIC VERSION**

---

Respondents Thomas W. Corbett, in his capacity as Governor, and Carol Aichele, in her capacity as Secretary of the Commonwealth, hereby submit the following proposed findings of fact. Respondents have contemporaneously filed and served proposed conclusions of law and a supporting brief.

## **I. Salient Facts About the Petitioners**

### **A. Individual Petitioners**

1. Bookler resides in a room at the Devon Senior Living location at 445 North Valley Forge Road in Devon, Pennsylvania. Pre.T. (Bookler) at 945: 1-3. Devon Senior Living Center is a personal care home that issues compliant ID under Act 18 to its residents. H.T. (Sweeney) at 1826:23-1827:3; R-87.

2. Bookler moved from Montgomery to Chester County in October 2008. Her move would have triggered the identification requirements under the prior statute.

3. Although she claims she cannot get to a PennDOT Driver Licensing Center (“DLC”), Bookler testified she occasionally travels with her daughter to a nearby restaurant for lunch. Pre.T. (Bookler) at 945: 16-17. Her daughter also drives her to her polling place to vote. *Id.* at 955:10-13.

4. Bookler had a valid Pennsylvania driver’s license but it is expired. Pre.T. (Bookler) at 949: 4-10. She had a driver’s license until approximately 8 years ago, when she began living at Devon Senior Living. *Id.* at 957:6-11. As such, she does not need documentation and may be able to surrender her license by mail. *See, e.g.,* H.T. (Rogoff) at 701:17-20.

5. Bookler learned about the Voter ID law by reading about it in the newspaper, seeing information on television and from her daughter, Wendy. Pre.T. (Bookler) at 952: 17-24). When she learned of it, she was furious about the law. *Id.* at 953:2.

6. After Act 18 was passed, Mrs. Bookler did nothing to get compliant photo ID. She was too angry about the law. Pre.T. (Bookler) at 953:9-13.

7. Bookler testified that she is participating in this lawsuit because she felt deprived that she could not vote. Pre.T. (Bookler) at 954: 9-11. She did, however, vote by absentee ballot in the November 6, 2012 general election. *See* H.T. (Marks) at 1659:20-1660:7.

8. Bookler knows her social security number. Pre.T. (Bookler) at 956: 15-17.

9. Wilola Lee was born on June 27, 1952 in McIntyre Georgia, and currently resides in the Germantown section of Philadelphia, Pennsylvania at 5860 Osceola Street. Pre.T. (Lee) at 71:7-15, 74:1.

10. Ms. Lee testified there is no reason why she would be unable to get to the polls on Election Day. Pre.T. (Lee) at 86: 7-9. Ms. Lee's polling place is one and one-half blocks away from her home. *Id.* 14-15.

11. As a result of this lawsuit, Ms. Lee is hoping to obtain Photo ID so that she will be able to travel and open her own bank account, amongst other things. Pre.T. (Lee) at 87: 17-23.

12. Ms. Lee currently has the following forms of identification: Voters' Registration Card, Welfare Photo ID (issued by DPW), Philadelphia Board of Education (issued 1997), Personal ID Card obtained from a check cashing company, Keystone Mercy (medical coverage), Pennsylvania Access Card (Medical Coverage and Food Stamps), Social Security Card, Free Library Card of Philadelphia and 2 proofs of residency. Pre.T. (Lee) at 76-82: 5; P-1.

13. The only document Ms. Lee lacks in order to obtain a PennDOT secure photo identification card is a valid birth certificate from the State of Georgia. Pre.T. (Lee) at 87: 19-20, 88: 23-89:5. She is eligible for and able to obtain a Department of State identification card for voting purposes (DOS ID). Am. Pet. for Review at ¶ 34.

14. Ms. Lee has not gone to PennDOT to obtain a compliant photo ID since March 2012. Ms. Lee states that she has no problem traveling in the City of Philadelphia and uses public transportation. Ms. Lee also testified that she is willing to go to PennDOT to get a photo ID to vote because voting is important to her. Pre.T. (Lee) at 90:20-91:22.

15. Despite that testimony, Ms. Lee pleaded in her unverified First Amended Petition for Review, but did not testify under oath at any hearing in this matter, that "the demands of caring for her 99-year-old grandmother . . . have prevented her from traveling to a PennDOT center to obtain the [DOS] ID." Am. Pet. for Review at ¶ 34.

16. Ms. Lee's grandmother is 98 years old and lives in Philadelphia. Pre.T. (Lee) at 86: 16-25. Ms. Lee's grandmother lives in her private residence and has Certified Nursing Assistants who care for her. *Id.* at 87:2-7.

17. Ms. Lee became aware of Act 18 by seeing advertisements on television and from her lawyer. Pre.T. (Lee) at 89: 24-90:15.

18. Ms. Lee considers herself indigent because she has a fixed income and receives disability benefits. Pre.T. (Lee) at 91:23-92:7. Accordingly, Ms. Lee could sign an indigency affirmation at the polls and vote, even if she did not make time to get an ID.

19. Ms. Lee lives in the Germantown section of Philadelphia which is approximately 2 miles from the PennDOT West Oak Lane Drivers Licensing center at 7121 Ogontz Avenue, Philadelphia, which has normal hours of operation every week from Tuesday through Saturday between 8:30 a.m. and 4:15 p.m. *See* P-25.

## **B. Organizational Petitioners**

### **1. Homeless Advocacy Project**

20. The Homeless Advocacy Project (“HAP”) is a free civil U.S. Services Program in Philadelphia that provides services for people who are homeless and imminently at risk of homelessness; it provides free legal services and information, advice and referrals through an outreach entity. Pre.T. (Levy – HAP) at 634:1 – 635:7.

21. Michele Levy is the managing attorney with HAP. Pre.T. (Levy – HAP) at 634: 22-24.

22. HAP services approximately 3,000 clients a year. Pre.T. (Levy – HAP) at 636: 5-10. HAP is involved in voter registration and is part of a coalition in Philadelphia called Vote for Homes which helps homeless people register to vote. Pre.T. (Levy – HAP) at 644: 2-8.

23. HAP’s mission and goal is to register people to vote, make sure they get to the polls if they need assistance doing so, and confirm that people are comfortable voting. Pre.T. (Levy – HAP) at 644:18-21.

24. Over the years HAP has delegated the effort and responsibility of its voter registration and education efforts to the homeless community. Pre.T. (Levy – HAP) at 645:1-10.

25. The most difficult issue for HAP clients in obtaining secure PennDOT identification is obtaining their birth certificates because they don’t have money or identification. Pre.T. (Levy – HAP) at 638:23-639:15, 640:11-643:9, 645:23-24, 646:2-3.<sup>1</sup>

26. All of HAP’s clients are indigent. Pre.T. (Levy – HAP) at 653:15-20; 660: 5-9; 664:1-8.

27. HAP was advising indigent people on how to comply with Act 18 but has stopped because the rules kept changing. Pre.T. (Levy – HAP) at 664:9-665:12.

28. Levy acknowledges that HAP’s indigent clients may qualify to vote via a provisional ballot. Pre.T. (Levy – HAP) at 665:10-666:6.

29. HAP is not familiar with and has not educated itself on how the provisional ballot process works for indigent voters under Act 18. Pre.T. (Levy – HAP) at 668: 10-22.

---

<sup>1</sup> At least two other organizations in Philadelphia provide similar birth certificate services: Face to Face Germantown and Philly Restart. H.T. (Bruckner – Philly Restart) at 474:18-20, 481:12-16.; Pre.T. (Ludt – Face to Face Germantown) at 204:7-205:20.

## 2. NAACP

30. John Jordan is the Director of Civic Engagement for the Pennsylvania NAACP. Pre. T (Jordan) at 1124:22-24.

31. The Pennsylvania NAACP advocates its mission to ensure the economic, political, social and educational equality of all people and to eliminate racial hatred and racial discrimination. There are 43 branches in Pennsylvania as well as chapters in colleges and universities and chapters in high schools across the Commonwealth. There are approximately 10,000 members in Pennsylvania. Pre. T (Jordan) at 1126:5-23.

32. The NAACP, AARP, Pennsylvania Voice and the American Civil Liberties Union organized a large group of petition signatories, 10,000, who expressed opposition to House Bill 938, the predecessor to Act 18. Pre. T (Jordan) at 1128:13-24.

33. After Act 18 was enacted, the NAACP, as part of its mission and educational efforts, began holding Voter ID clinics across the state to educate people about Act 18. Pre. T (Jordan) at 1129:13-24.

34. The Pennsylvania NAACP was one of the founding members of an organized group called the Pennsylvania Voter ID Coalition, which pooled their resources to train people to educate those about Act 18 and its requirements. Pre. T (Jordan) at 1129:22-1130:7. Mr. Jordan testified about the many efforts he has made to inform about Act 18; he has personally educated Asian communities, Latino communities, and he did a major education event with Elements, a gay, lesbian and transgender community group on Act 18. Pre. T (Jordan) at 1130:13-18.

35. As of July 31, 2012, the NAACP had set up a research team to learn about the Department of State identification card so it could educate its constituents. Pre. T (Jordan) at 1135:8-10.

36. The NAACP will not suffer any injury as a result of Act 18; they only needed to change their message slightly to educate eligible voters on both registering to vote and on the requirements of Act 18. Pre. T (Jordan) at 1142:22-1143:11. Mr. Jordan did not testify that the NAACP incurred any additional operating costs to educate its constituents on Act 18. What he did testify to was the organization's efforts to push education of Act 18 and to register voters.

37. Educating its constituents about Act 18 is part of the NAACP's mission objective. Mr. Jordan testified that the NAACP would continue to make tremendous efforts to educate its constituents about Act 18. Pre. T (Jordan) at 1142:14-1143:1. In fact, Mr. Jordan testified that Act 18 has prompted more people to register to vote through its education efforts. Pre. T (Jordan) at 1143:20-1144:8. The NAACP has continued to apply pressure at the county level to, for example, county commissioners in order to push more educational information out about Act 18. Pre. T (Jordan) at 1145:9-15.

38. Mr. Jordan was aware of many civil organizations doing voter ID education work such as the League of Women Voters, Penn Action, and Pennsylvania Choice, to name a few. Pre. T (Jordan) at 1145:16-1146:5.

39. The Pennsylvania NAACP website has an entire section dedicated to voting education that includes a section on a simplified method of obtaining Voter ID. Pre. T (Jordan) at 1147:11-22.

40. Mr. Jordan failed to identify any specific NAACP member who could not vote as a result of Act 18.

### **3. League of Women Voters**

41. Susan Carty, current President of the League of Woman Voters, testified that the League of Women Voters ("LWV") was a ninety-three year old organization dedicating itself to ensuring that all voters have the right to vote, with an educational mission that falls under voter services. The League's goal is to be sure that voters understand how to vote; they understand what they need to do to vote; what they need to be aware of when they vote; and how to go about finding the information they need to vote. H.T. (Carty) at 1176:9-1177:13.

42. Janice Horn, a member and officer of the League of Woman Voters for 45 years, testified that the League of Women Voters' mission is to promote education for citizenship, for voting. The League of Women Voters is a non-partisan organization that doesn't support or oppose any candidates or political parties. Pre.T. (Horn) at 1088:3-20.

#### **Janice Horn**

43. Janice Horn testified that the League of Women Voters publishes a newsletter three times a year. It has addressed the Voter ID Law by generally providing information about the law and noting that it was an unnecessary law. Pre.T. (Horn) at 1089:5-19.

44. Janice Horn also testified that all of the Chapter Presidents of the League of Women Voters were directed to inspect their local PennDOT drivers licensing centers to find out if information was available for the Voter ID Law. They were also charged with getting information out to citizens about Act 18, about what it entails and what is needed to do in order to have photo ID for voting. Pre.T. (Horn) at 1090:2-11.

45. The League of Women Voters was requested to inspect PennDOT drivers licensing centers by the Pennsylvania Budget Policy Center. Pre.T. (Horn) at 1090: 15-23. The Pennsylvania Budget and Policy request was flagged as urgent in an e-mail and therefore Ms. Horn volunteered to go the Clarion County PennDOT drivers licensing center on July 6. Pre.T. (Horn) at 1091:4-23.

46. Ms. Tosti-Vasey testified the Pennsylvania Budget Policy Center was an economic research group that provides information, usually budgetary information. They are associated with the Keystone Research Center and often work together. The League of Women

Voters were not directed in their urgent request from the Pennsylvania Budget Policy Center to inspect PennDOT driver licensing centers in an effort to gather any financial or economic information. Pre.T. (Vasey) at 1123: 9-19.

47. Ms. Horn testified that the Clarion Borough has a public bus that is free for elderly and is able to take them to the PennDOT drivers licensing center in Clarion County. Pre.T. (Horn) at 1092:18-1093: 3.

48. When Ms. Horn arrived at the PennDOT drivers licensing center she waited approximately five minutes before she received service from a center employee with Keystone Blind. Pre.T. (Horn) at 1095:9-15, 1096:7-9.

### **Joann Tosti-Vasey**

49. Ms. Tosti-Vasey, a lobbyist and member of the Women League of Voters, admitted she did advocacy opposing Act 18 both as a member of Pennsylvania Now, a civil rights organization for women in the United States, and personally after she stepped down from the organization. Her testimony lacks any credibility. She admitted intentionally misleading a poll worker when she offered her lobbyist badge to vote, an identification card she knew, according to her reading of Act 18, albeit incorrect, was not valid for voting purposes; she stated that the poll worker accepted it even though Act 18 was not fully implemented. Pre.T. (Vasey) at 1101:6-17, 21; 1102:2.

50. Vasey also inspected her local PennDOT Drivers licensing center at the request of The Pennsylvania Budget and Policy Center. Pre.T. (Vasey) at 1102:13-1103:16.

51. Ms. Tosti-Vasey visited the PennDOT drivers licensing center in Pleasant Gap, Centre County which took her approximately fifteen minutes to drive to in her vehicle. Pre.T. (Vasey) at 1103:21-22, 1104: 15-21.

52. During her visit, the PennDOT employee advised her about the law and voluntarily informed her that a free photographic ID was available. Pre.T. (Vasey) at 1111:20-1112:7.

53. She has been a member of the Democratic State Committee for eight years and also ran as a Democratic candidate for the General Assembly. Pre.T. (Vasey) at 1114:8-17.

54. Ms. Tosti-Vasey incorrectly believes her registered lobbyist identification issued by the Department of State was not an acceptable form of ID under Act 18 because she was unemployed. Pre.T. (Vasey) at 1115:6-1116:13.

55. According to Vasey the LWV inspections of PennDOT Drivers licensing centers were an organized effort also undertaken allegedly to assist non-members in obtaining photo identification in advance of the November 6, 2012 general election. Pre.T. (Vasey) at 1117:13-1118:1.

**Susan Carty**

56. At the 2013 League of Women Voters bi-annual convention, the local League of Women Voters chapters discussed their efforts and activities including seven hundred volunteer hours they spent pursuant to their mission educating the public on Act 18. H.T. (Carty) at 1177:20-21; 1180:3-1181: 18.

57. Ms. Carty testified about the League of Women Voters telephone log it maintains for calls it receives prior to and on Election Day. H.T. (Carty) at 1182:20-1183:17, 1185:17-18.

58. The League uses the call log in its efforts to educate its constituents, especially if they see recurring issues that can be directly addressed through communication, or their newsletter. H.T. (Carty) at 1187:25-1188:15.

59. The League received approximately ten calls about voter ID in November 2012. H.T. (Carty) at 1188: 25-1189: 2. The call log document, however, indicated in actuality only 1 call was received that raised an issue with Voter ID from the entire November general election voting population at the LWV's central call center serving the entire Commonwealth. H.T. (Carty) at 1198:7-1200:18; P-1750.

60. Ms. Carty took phone calls at a Philadelphia television station on Election Day, November 6, 2012 and stated that the calls were from a balance of representatives of the political parties. H.T. (Carty) at 1192:6-14, 1194:22-23.

61. Ms. Carty testified that the League of Women Voters education mission includes helping people understand how to vote, providing services and education people on Act 18, the Voter Identification Law. H.T. (Carty) at 1205:22-1206:3.

62. The League of Women Voters did not set up any new and/or different faculties in order to educate its constituents on Act 18 because it falls under the League of Women Voters' long standing mission of voter services. Accordingly, the League of Women Voters hasn't had to make any changes in their mission since Act 18 was enacted. H.T. (Carty) at 1205:25-1206:21.

63. Contrary to the testimony of Janice Horn and Madeline Rawley, the League has not assisted any elderly people in obtaining any photographic identification for voting purposes in an organized effort as previously testified to. In fact, the League refused to do so because of liability and costs, contrary to their mission. H.T. (Carty) at 1207:1-1209:20.

64. The LWV allegedly spent seven hundred volunteer hours visiting, amongst other places, senior centers and assisted living centers where elderly who commonly had expired driver's license were educated about Act 18. They also encountered family members there who they educated on Act 18 to assist their elderly loved ones, and also many



eligible voters who voted by absentee ballot because they were simply not well enough to visit the polls. H.T. (Carty) at 1210:7-1211: 18.

65. The League was asked by County Commissioners to assist their respective senior centers and assisted living centers. The League itself did not reach out to those facilities and offer assistance. People seeking assistance look to the League because part of its long standing mission is to educate voters about voting issues. That education was/is done in the normal course of the League's operations executing its mission. H.T. (Carty) at 1211:19-1213:6.

66. The League of Women Voters receives funding to execute its mission from membership dues, donations and grant programs that include grants issued by the Commonwealth of Pennsylvania. H.T. (Carty) at 1213:21-1214:8.

67. Membership funds are specifically dedicated to voter education. H.T. (Carty) at 1215:10-19.

68. Despite its claims in this lawsuit, Ms. Carty admitted it is contrary to the League's mission to make statements in opposition of Act 18. H.T. (Carty) at 1217:6-12.

#### **Madeline Rawley**

69. Madeline Rawley is an active member of the League of Women Voters. She works on the election committee and voting. Pre.T. (Rawley) at 1045:12-23.

70. The League was interested in the need to bring elderly people to a PennDOT drivers licensing center to obtain non-driver photo ID card if they did not have one. Pre.T. (Rawley) at 1047:15-18.

71. The League of Women Voters was aware as early as June, 2012 that persons seeking a free photo ID card for voting purposes had to visit a full service PennDOT driver's license center and not a stand-alone photo licensing center. As part of their mission the LWV was responsible for educating their constituents about how they could obtain PennDOT secure photo identification or non-drivers photo identification for voting purposes. Pre.T. (Rawley) at 1052:3-6.

72. As part of the LWV's organized effort to investigate PennDOT Drivers licensing centers at the request of the Pennsylvania Budget and Policy Center, Ms. Rawley visited the Dublin, Bucks County PennDOT driver licensing center on June 26, 2012. Pre.T. (Rawley) at 1054:3-15.

73. Her purpose of visiting was to do a trial run in order to bring elderly people there to obtain ID for voting purposes. Pre.T. (Rawley) at 1055:10-12.

74. On her visit, Ms. Rawley waited approximately twenty-five minutes at the PennDOT driver licensing center which had approximately thirty customers present. Pre.T. (Rawley) at 1058:23-1059:3.

75. Ms. Rawley became aware of the Department of State identification card prior to July 31, 2012, after reading a newspaper article on the topic. Pre.T. (Rawley) at 1063:14-20.

76. Ms. Rawley had a meeting in Bucks County as part of a League of Women Voters education advisory work group to provide information about the Department of State identification card. There were three meetings. At the second meeting, Megan Sweeney of the Department of State and Shannon Royer attended to offer assistance and provide information. Pre.T. (Rawley) at 1064:19-1065:5.

77. Ms. Rawley's credibility is questionable. She admitted in testimony that she was/is opposed to the Voter ID Law, and has been outspoken against it and against electronic voting machines. Pre.T. (Rawley) at 1071:20-1072: 2.

78. Despite her criticisms, Ms. Rawley will continue to advance the League of Women Voters' mission and educate those about Act 18 as it is her goal and the League's goal to have everyone who is eligible and registered to be able to vote Pre.T. (Rawley) at 1072:3-9.

79. As of July 31, 2012, Ms. Rawley had not brought , any elderly voters to PennDOT drivers licensing centers to obtain a photographic identification card. Pre.T. (Rawley) at 1074:11-14).

80. According to Susan Carty, as of July 23, 2013, the League of Women Voters has not organized any effort to take elderly voters to PennDOT driver licensing centers to obtain photographic identification. H.T. (Carty) at 1208:4-21.

## **II. Salient Facts About Pertinent Commonwealth Agencies**

### **A. Department of State**

81. The Department of State has 500 employees and 300 members of boards and commissions. H.T. (Royer) at 709:11-13.

82. In addition to oversight of the Bureau of Commissions, Elections and Legislation ("BCEL"), the Department operates the Bureau of Professional and Occupational Affairs; the Corporation and Charities Bureau regulates 2.6 million corporations and 11,000 charities; and the State Athletic Commission regulates wrestling, boxing, mixed martial arts, licensed sports agents and approximately 1500 athletes. H.T. (Royer) at 709:13-22.

83. The Bureau of Commissions, Elections and Legislation administers the State Election Code (including responsibility for SURE, elections, and voter registration),

maintains the filings of expenses for candidates and committees and lobbyist disclosures. It also oversees notaries, state government commissions and is the official record keeper for state legislation. H.T. (Royer) at 709:23-710:5; H.T. (Marks) at 1623:10-25.

84. The Department of State has worked with PennDOT on election-related issues dating back to the 1990s, including the Memoranda of Understanding dated June 10, 2002, R-2, which establishes electronic recordkeeping for voter registration applications; dated October 5, 2005, R-3, implementing the HAVA verification check; dated August 15, 2012, R-4, establishing the DOS ID card; dated September 24, 2012, R-5, amending the DOS ID process to eliminate the “exhaustion requirement.” H.T. (Royer) at 711:22-712:23, 713:1-17, 742:2-12.

85. Petitioners affirmatively plead that the Secretary of the Commonwealth has been charged with implementation of the Election Code and Act 18. Amended Petition for Review, ¶75. The Election Code itself delineates the role of the Secretary of the Commonwealth. *See* 25 P.S. §§ 2621-2626 (Article II of the Election Code).

86. The DOS ID is issued pursuant to the authority that the Secretary of the Commonwealth has and her responsibilities in administering the portion of the statute that contemplates a free, liberally accessible form of identification issued by PennDOT. H.T. (Royer) at 800:14-802:14; 803:23-804:1; 805:1-8; 807:2-9.

87. Jonathan Marks has been the Commissioner of BCEL since October 2011 and was the Chief of SURE from May 2008 until he became Commissioner. H.T. (Marks) at 504:5-505:2.

88. Megan Sweeney is a Special Assistant to the Secretary of the Commonwealth. H.T. (Sweeney) at 1807:7-14. She was given responsibility for the project plan for Act 18. *Id.* at 1810:8-15. In late March or early April 2012, she took over responsibility from Rebecca Oyler, who had been involved on behalf of the Department as the bill was in the legislative process. *Id.* at 1810:2-7; H.T. (Oyler) 1119:16-1120:14.

## **B. PennDOT**

89. PennDOT has approximately 12,000 employees. H.T. (Myers) at 1309:3-7.

90. Kurt Myers is the Deputy Secretary for Safety Administration at PennDOT. He has worked at PennDOT for fifteen years and has been Deputy Secretary since 2007. H.T. (Myers) at 1299:12-20; Rem.T. (Myers) at 103:21-24. He supervises approximately 10% of PennDOT’s staff. H.T. (Myers) at 1309:3-7.

91. PennDOT, among other responsibilities, is responsible for issuance of driver’s licenses, issuance of registration and titling, safety inspections, emissions inspections, insurance, and oversight of dealers. H.T. (Myers) at 1299:22-1300:2.

### **C. Department of Aging**

92. The mission of the Department of Aging is to enhance “the quality of life of all older Pennsylvanians by empowering diverse communities, the family and the individual.” Pennsylvania Department of Aging Website, *available at* [http://www.aging.state.pa.us/portal/server.pt/community/department\\_of\\_aging\\_home/18206](http://www.aging.state.pa.us/portal/server.pt/community/department_of_aging_home/18206) (last visited Aug. 27, 2013).

93. Kelly O’Donnell has been employed at the Pennsylvania Department of Aging (“PDA”) since 2011. She is currently the Director of the Operations and Management Office. She has held that position since March 2012. H.T. (O’Donnell) at 1253:25-1254:9. Ms. O’Donnell was PDA’s point person for Act 18. *Id.* at 1267:21-24.

94. The PDA oversees the health and wellness of older adults in Pennsylvania, which includes everyone over the age of 60. H.T. (O’Donnell) at 1254:10-25. PDA coordinates and administers programs and services that benefit the health and wellness and promote the independence of older adults. *Id.*

95. The Bravo Group, the company Department of State retained for community outreach, also reached out to senior citizens through the Department of Aging’s Area Agencies on Aging, and through senior centers with the United Way. R-261 at 89:1-4.

96. For example, Bravo provided housing agencies and senior centers handouts and also spoke with residents at those facilities about how to obtain ID. R-261 at 89:9-21.

### **III. Structure of the Election Code and Election Law in General**

#### **A. Integration of Constitution/Federal/State/County Roles**

97. The Department of State does not have sole responsibility for administering elections in the Commonwealth. H.T. (Royer) at 715:21.

98. The Department of State partners with the 67 County Boards of Elections in administering elections. The County Boards of Elections are responsible for verifying voter registration forms, checking for duplicates, and entering social security numbers into the SURE database. H.T. (Royer) at 715:21-22; H.T. (Marks) at 538:1-17, 672:2-673:17.

99. Some County Boards of Elections, particularly for larger counties, have a lag time between the time an application for voter registration is received and the time that it is processed. Philadelphia is typically the most backlogged county. H.T. (Marks) at 568:10-569:16.

100. The Department of State is accountable to the federal government for compliance with certain election administration requirements. H.T. (Royer) at 715:23-25.

101. Pennsylvania complies with federal law in federal elections and most state elections. H.T. (Marks) at 1801:3-7.

102. Among the federal statutes that impact and have impacted Pennsylvania's conduct of elections are the National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg, *et seq.*, the Help America Vote Act ("HAVA"), 42 U.S.C. § 15301, *et seq.*, the Voting Accessibility for Elderly and Handicapped Act ("VAEH"), 42 U.S.C. § 1973ee-1, *et seq.*, the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq.*, and the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. § 1973ff, *et seq.*

103. If a person wishes to vote absentee, he or she must submit an application by 5:00 p.m. on the Tuesday before the election is held. An emergency application can be made until 5:00 the Friday before Election Day. After that, an absentee ballot is available only by court order. H.T. (Marks) at 526:3-527:4.

104. Alternative ballots are similar to absentee ballots, but are exclusively used to comply with federal law for persons 65 or older and for disabled voters who are assigned to an inaccessible polling place. H.T. (Marks) at 530:10-16. The VAEH requires accessible polling places and accessible voting machines. *Id.* at 1630:20-1631:4.

105. The Department's goal in administering elections is to ensure that people have confidence in elections and to encourage participation in the election process. H.T. (Royer) at 715:15-18.

106. Election turnouts vary. Turnout is higher in Presidential elections. For example, the General Election in November 2012 was a Presidential election with a turnout close to 68 percent. The turnout for the 2010 gubernatorial election was 46 percent, for the 2010 gubernatorial primary 22 percent, and for the most recent election – the May 21, 2013 primary – turnout was 11 percent. H.T. (Royer) at 717:11-21; *see* R-229.

107. Mr. Marks oversees the reports that are required to be provided under federal and state law. R-233 is the report sent to the U.S. Elections Assistance Commission after every federal election. It reports voter registration and activity for an election cycle. It is publicly available. It reports registration, methods of voting, including the types of absentee ballots, and provisional ballots. H.T. (Marks) at 1648:5-1649:4; *see* R-233.

108. Mr. Marks was involved in the preparation of R-235, the annual report to the General Assembly, available at the Department's website, containing voter registration data, including how voters are registering. H.T. (Marks) at 1649:20-1650:21.

109. R-243 is voter registration statistics, available at the Department's website, with demographic and party information. H.T. (Marks) at 1649:5-19.

110. The voter registration rolls are managed through list maintenance, which is a requirement of both federal and state law. List maintenance must be done annually. One example of an event triggering list maintenance is the national change of address program, which

prompts the county to send a letter requesting that the registration address be updated. Depending on the response, a voter may be placed in inactive status. If the voter still does not respond after the second general election for federal office, the voter will be cancelled. H.T. (Marks) at 588:16-590:11. Another aspect of list maintenance is a five-year mailing that is sent to anyone who has not voted or otherwise updated their record for five years. *Id.* at 591:10-593:4. If there is an affirmative response to show that the voter has moved out of the state or has died, the voter is cancelled; otherwise, two federal election cycles have to pass before the voter is cancelled. *Id.* at 593:5-14.

111. If a voter does not contact a county directly, the primary way a county is alerted that someone has moved is through the National Change of Address program. Counties receiving those notices are to send out notices to the voters. It is one of the list maintenance mailings. H.T. (Marks) at 1647:18-1648:4.

112. The SURE database was created as a single statewide uniform database. It contains data from the “legacy” voter registration systems used by each of the counties, and it currently contains approximately 15 million records, including cancelled voters – roughly 8 million registered voters. H.T. (Marks) at 658:10-13, 659:17:19.

113. The SURE database was deployed over three years, with Philadelphia the final county in December 2005. Each county maintained its data in its own way and those legacy systems were brought over. That introduced anomalies based on how the counties maintained their records. H.T. (Marks) at 1640:23-1641:24.

114. There are records in SURE dating back to the 1940s and 1950s and earlier. H.T. (Marks) at 1641:25-1642:18.

115. In one example a person had registered in 1944 using Mrs. and her husband’s name, but when she applied for her DOS ID she used her first name. The Department was able to resolve it eventually; in some instances, such issues required reaching out the counties or the voters. H.T. (Marks) at 1642:19-1644:1.

116. There are three general statuses in the SURE database: active, inactive, and cancelled. H.T. (Marks) 1662:20-1663:4.

117. Cancelled voters are invalid voters. They have moved out of the county or out of state or died. They do not show up on pollbooks. A person can also be cancelled if the person has not voted or updated registration in five years and has not responded to the notice the county sends; that person can be cancelled after two further federal elections – a nine-year process. H.T. (Marks) at 1644:25-1646:3.

118. Deceased voters are generally identified when local registrars have reported to the Department of Health that a person is deceased. The Department of Health records are backlogged by several months, which means by tens of thousands of records. The information comes in electronic batches, similar to the way motor voter applications come in, and then the counties would process it. H.T. (Marks) at 1646:4-1647:17.

119. In the SURE database, there are two first-time voter flags - a federal "must vote in person" flag and a state "must confirm identity" flag. H.T. at (Marks) 1662:2-19.

120. Mr. Marks credibly testified that maintaining an accurate SURE database is important to preserve the integrity of the election process and voter confidence in the status of their voter records. H.T. (Marks) at 1687:16-1689:9.

**B. The Goals Pursued by the Department and the General Assembly Predate Act 18 and are Goals Found in Federal and Other States' Election Laws.**

121. HAVA implemented a requirement for voters who register by mail to show identification the first time they vote in person or if they vote by mail. *See* 42 U.S.C. § 15483(b).

122. In furtherance of these purposes, 42 U.S.C. § 1973gg-6(c)-(e) and 42 U.S.C. § 15483(a)(2) set forth procedures for removal from the rolls.

123. Applications for voter registration may not be accepted or processed unless they contain either a current and valid driver's license number, the last four digits of the applicant's social security number, or the number assigned to the applicant if he or she has neither a driver's license nor a social security number; in addition, the information must be validated by the state in which the person has applied to register. 42 U.S.C. § 15483(a)(5)(A); H.T. (Marks) 507:7-508:4. Individuals can apply to register to vote even if they do not have a social security number. H.T. (Marks) at 507:17-508:4.

124. Under federal law, if a person has registered by mail and is voting for the first time in a jurisdiction and is voting in person, the person must present a current and valid photo identification, or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. 42 U.S.C. § 15483(b)(2)(A); H.T. (Marks) at 509:19-510:15. A person who does not bring such identification to the polls may cast a provisional ballot. 42 U.S.C. § 15483(b)(2)(B). Persons voting pursuant to the provisions of UOCAVA or VAEH are exempt. 42 U.S.C. § 15483(b)(3)(C).

125. To comply with the provisions of 42 U.S.C. § 15483(b)(2), the chief State election official and the official responsible for the motor vehicle authority were directed to enter into an agreement to match the information in the database of the motor vehicle authority and the voter registration database. 42 U.S.C. § 15483(a)(5)(B)(i).

126. In 2012, PennDOT provided information contemplated by 42 U.S.C. § 15483(a)(5)(B)(i) pursuant to a "match" of the roughly 8.2 million records in the SURE database against the approximately 9.5 million records of holders of PennDOT products. H.T. (Marks) at 667:16-24, 1747:17-21. The primary purpose of the match was to supply the drivers' license and social security number information that PennDOT maintained in its database to SURE, which was missing that information for a significant number of records. The information was important to have for use with the new absentee ballot provisions. As a result of the process, the

Department learned that approximately 759,000 of the persons in the SURE database could not be matched exactly to entries in the PennDOT database. H.T. (Royer) at 743:15-744:6; H.T. (Marks) at 536:8-537:3.

127. Respondents' Exhibit 43 is a copy of a letter that was sent to the 759,000 individuals who could not be said with certainty to have a PennDOT product, to notify them about Act 18 and the forms of identification that could be used for voting and to provide them with the website and telephone number where they could get more detailed information. H.T. 7/18/2013 (Royer) at 744:16-745:4.

128. Some of the individuals, including, *inter alia*, legislators and county commissioners, contacted the Department to thank it for the letter and to state that they already had identification. H.T. (Royer) at 745:5-24.

129. Approximately 150,000 of the letters were returned because the individual no longer lived at that address. H.T. (Royer) at 746:22-747:1.

130. The persons who contacted the Department had names that were entered differently between the two databases. H.T. (Royer) at 745:22-746:21.

131. There are currently 20 states that have enacted some form of photo identification law.<sup>2</sup> An additional 2 states – Hawaii and North Dakota – are considered by some to require photo ID, though the requirement is not apparent on the face of the statute.<sup>3</sup> In 2011, there were 15 states with photo identification requirements and 31 states that required all voters to show some form of identification at the polls. P- 2092.

132. Some, but not all, states have seen challenges similar to the ones brought against Act 18. The United States Supreme Court affirmed the constitutionality of Indiana's

---

<sup>2</sup> Alabama (2013 amendment to Ala. Code § 17-9-30); Arkansas (2013 amendment to Ark. Code Ann. § 7-1-101, *et seq.*); Florida (2011, Fla. Stat. Ann. § 101.043); Georgia (2005, Ga. Code Ann. §21-2-417); Idaho (2010, Idaho Code Ann. §§ 34-1106, 34-1113, 34-1114); Indiana (Ind. Code Ann. §§ 3-5-2-40.5, 3-10-1-7.2, 3-11-8-25.1 (2005, amended 2011)); Kansas (Kan. Stat. Ann. §§ 25-2908, 8-1324(g)(2) 2005 (amended 2011)); Louisiana (1997, La. Stat. Ann. §§ 18:562, 40:1321); Michigan (1997 (amended 2013), Mich. Comp. Laws Ann. § 168.523); Mississippi (2013, Miss. Code Ann. § 23-15-563); New Hampshire (2006, amended 2013, N.H. Rev. Stat. Ann. § 659:13); North Carolina (2013, N. Carolina Session Law 2013-381 (H.B. 589)); Pennsylvania (2012, 25 Pa. Stat. §§ 2602(z.5), 3050); Rhode Island (2012, R.I. Gen. Laws Ann. § 17-19-24.2); South Carolina (2011, S.C. Code Ann. § 7-13-710); South Dakota (2004, S.D. Cod. Laws, §§ 12-18-6.1, 12-18-6.2); Tennessee (2012, Tenn. Code Ann. § 2-7-112 (amended 2013)); Texas (2012, Tex. Elec. Code Ann. § 63.001, *et seq.*); Virginia (effective 2014, Va. Code Ann. § 24.2-643); and Wisconsin (2011, Wis. Stat. Ann. §§ 5.02, 6.79).

<sup>3</sup> Hawaii (Haw. Rev. Stat. § 11-136); North Dakota (N.D. Cent. Code Ann. § 16.1-05-07 (amended 2013 North Dakota Laws Ch. 167 (H.B. 1332))).



provisions in *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008), as did the Indiana Supreme Court in *League of Women Voters of Indiana, Inc. v. Rokita*, 929 N.E.2d 758 (Ind. 2010); the Court of Appeals for the Eleventh Circuit in *Common Cause/Georgia v. Billups*, 554 F.3d 1340 (11th Cir. 2009) (Georgia); the Tennessee Court of Appeals held its state's statute constitutional, *City of Memphis v. Hargett*, No. M2012-01241-COA-R3-CV, 2012 Tenn. App. LEXIS 742 (Tenn. Ct. App. Oct. 25, 2012); Michigan Supreme Court held Michigan's constitutional, *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 740 N.W.2d 444 (Mich. 2007). The Department of Justice tried unsuccessfully to block South Carolina's statute (*South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012) and is attempting to block Texas's statute (an earlier decision denying Texas pre-clearance was vacated, *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012), vacated by 133 S. Ct. 2886 (2013) (citing *Shelby County v. Holder*, 570 U.S. \_\_\_, 133 S. Ct. 2612 (2013))). A Wisconsin Court of Appeals reversed an injunction in *League of Women Voters of Wisconsin Education Network v. Walker*, 834 N.W.2d 393 (Wis. App. 2013), but another ruling is still pending appeal, *Milwaukee Branch of the NAACP v. Walker*.

133. The states have varying forms of proof of identification that are acceptable, ranging from very limited forms of primarily government identification to identification that is essentially undefined and subject to the review of election officers. *Compare* Ala. Code § 17-0-30 (both absentee and in-person voters must present with a ballot either (1) a valid Alabama driver's license or nondriver identification card; (2) a valid photographic voter identification card issued only to registered voters only to persons who do not have other statutorily-specified forms of photo identification and who supplies a sworn application containing full legal name, address on the voter registration record, date of birth, eye color, gender, height, weight, and such other information as the Secretary shall request; (3) a valid United States passport; (4) A valid employee photographic identification card issued by a branch, department, agency, or entity of the United States government, the state, a county, municipality, board, authority or other state entity; (5) student or employee photographic identification card issued by a public or private college, university, or postgraduate technical or professional school within the state; (6) a valid photographic United States military identification card; (7) a valid photographic tribal identification card), *with* La. Stat. Ann. § 18:562(A)(2) (Louisiana driver's license, Office of Motor Vehicles special identification card, or "other generally recognized picture identification card;" if no identification, must certify and stipulate and affix his or her signature to an affidavit in the presence of the commissioners and must then present his/her voter registration card, give his or her date of birth (supplying a birth certificate would suffice), and/or provide other information necessary for the precinct register); La. Atty. Gen. Op. No. 2002-0372, available at 2002 WL 31531690 ("The mere fact that a person who desires to vote must present reasonable and sufficient identification of himself to the commissioner's satisfaction before he is allowed to vote signifies the discretion as well as the authority vested in the commissioner to make determinations with respect to acceptable photo identification. The law expressly states the types of photo identification that are acceptable and what is necessary for one to still qualify to vote in the event that he does not have the specified types of identification. Since commissioners are statutorily required to uphold the election laws, it is upon them to decide if the photo identification qualifies under the law").

134. Consistent with HAVA, all list “driver’s license or non-driver” identification as the first form of acceptable identification, although states vary as to whether a driver’s license can be expired, and, if so, for how long. *Compare* Ark. Code Ann. § 7-1-101 (permitting IDs to be expired four years), Ga. Code Ann. § 21-2-417 (permitting use of expired driver’s license), *and* 25 Pa. Stat. § 2602(z.5) (permitting PennDOT IDs expired 12 months), *with* Kan. Stat. Ann. § 8-1324(g)(1) (requiring non-expired documents, unless voter is over 65 years of age) *and* S.C. Code Ann. § 7-13-710 (requiring “valid and current” photo identification); H.T. (Royer) at 712:22-25.

135. Since at least 1993, federal and state legislators have been pursuing the dual purposes of encouraging people to register and vote in elections and protecting the integrity of the electoral process and the voter registration rolls. *See* 42 USC § 1973gg(b); *see also* H. Rep. 107-329 (maintaining accurate lists pursuant to HAVA is to minimize opportunities for and incidence of fraud).

136. Act 18 is one of several federal and state statutes aimed at encouraging people to register to vote and vote and preserving the integrity of elections and voter registration rolls. The Pennsylvania General Assembly furthered these goals by enacting Act 18 with the purpose of providing a protective measure designed to deter, detect, and prevent in-person voter fraud, and to preserve public confidence in the election process. *See* P-1618.

137. In 2008, a nationwide survey was done that found that 1/10 of one percent identified voter fraud as a reason why a specific candidate won. H.T. (Mutz) at 923:4-924:2. More people were concerned that money has too much influence; that candidates lie; that a particular group of people had high turnout; and that those things make them reject the outcome of an election. *Id.* at 923:22-925:2; 954:12-19.

138. When Act 18 was passed, it contained several options for proofs of identification and represented the General Assembly’s balancing of the availability of certain ID cards against the security and integrity of the election process. H.T. (Oyler) at 1079:18-1080:5. Likewise, in determining to have PennDOT issue the cards, the General Assembly had to “balance benefits against other constituencies and against other concerns.” *Id.* at 1080:16-22.

139. The statute that Petitioners wish to reinstate required that *some* persons in each election and primary provide at the polls a proof of identification from a list that was set forth in the statute – a burden of compliance that applied on its face to all electors. *See* 25 P.S. § 3050(a) (2008); H.T. (Marks) at 1635:20-1636:3.

140. Because the prior requirement applied to persons voting for the first time in an election district, it necessarily impacted those who were more likely to have moved during an election cycle (including young persons, senior citizens, and those who do not own a home) than those whose residence remained stable across the span of several years. *See* Pre.T. (Ludt) at 226:23-227:13 (describing transient nature of the poorer population she works with); H.T. (Wecker) at 1528:5-14 (discussing mobility patterns); *see also* H.T. (Siskin) at 287:19 (discussing number of college students in Pennsylvania).

141. The list of forms of identification included some of the forms of identification that are in the current statute (such as drivers' licenses and passports), forms of identification that are incidental to home ownership or responsibility for home expenses (such as mortgage or utility statements), and one form of identification that relied on the efficiency of the County Boards of Elections and/or the ability of the individual elector to retain a proof of identification (the voter registration card). 25 P.S. § 3050(a) and (a.1) (2008); *see* H.T. (Marks) at 1636:19-1637:9.

142. The prior statute relied on the elector to be responsible to bring the proof of identification to the polls. 25 P.S. § 3050(a) (2008). If the elector could not produce a proof of identification that was accepted by the election officer and judge of elections, the elector was permitted to cast a provisional ballot. 25 P.S. § 3050(a.2), (a.4) (2008); *see* H.T. (Marks) at 1636:4-18.

143. The County Board of Elections was to determine which provisional ballots were challenged and which were not within seven calendar days of the election. 25 P.S. § 3050(a.4)(4) (2008); *see also* H.T. (Marks) at 1660:21-1661:25 (testifying that HAVA provides for provisional ballots).

140. The County Boards of Elections were required to examine the provisional ballot envelope and determine if the individual casting the ballot was entitled to vote in the election district. Representatives from the parties and the candidates were permitted to challenge the ballots. 25 P.S. § 3050(a.4) (2008).

141. The forms of proofs of identification set forth in 25 P.S. § 3050(a) generally correspond to but are somewhat broader than the forms of proofs of identification set forth in 42 U.S.C. § 15483(b)(2)(A).

142. The statute as it existed prior to Act 18 was approved on December 9, 2002 pursuant to Act 150.

143. The legislative history for Act 150 shows that in June 2002, the General Assembly was originally considering a list of forms of photo identification similar to that set forth in Act 18, but that once HAVA was enacted, the General Assembly determined to incorporate a list that more closely correlated to the list in 42 U.S.C. § 15483(b)(2)(A). 186 Pa. Legis. J. No. 52 at 1437-41 (June 25, 2002).

144. HAVA requires that the voter registration application ask about citizenship and ask for the drivers' license number or, if a person does not have a driver's license, the last four digits of the social security number. H.T. (Marks) at 1629:19-1630:10.

145. Some HAVA requirements were instituted in 2004, others in 2006. H.T. (Marks) at 1630:13-17.

146. Mr. Marks is not aware of any challenges that have been brought against Act 150. H.T. (Marks) at 511:23-25.

147. The General Assembly passed a bill altering the identification requirements in 2006, but it was vetoed by the Governor. P-2092.

148. When a person came to the polls, he or she would sign the poll book, and the signature was matched to the one on file. If the signature was challenged, the judge of elections would make a decision, and the person would vote by provisional ballot. H.T. (Marks) at 508:12-509:7.

### III. Act 18

149. In June 2011, HB 934 passed the House by a vote of 108-88. 195 Pa. Legis. J. No. 50 at 1474-75 (June 23, 2011).

150. In November 2011, the Department of State and Department of Aging jointly authored a memorandum to certain members of the staff of the Office of the Governor. See P-1562.

151. In that memorandum, the two departments explained that H.B. 934 required persons who lived in a care facility that also served as a polling place to (a) provide proof of identification the first time voting at that polling place, and then (b) be exempt from any proof of identification requirement going forward. P-1562. The two departments voiced concerns that the number of persons helped by that provision would be few but the costs of implementing and maintaining the system would be very high (\$300,000 or more just to upgrade the SURE system). *Id.* Accordingly, the two departments proposed that consideration be given to an alternative provision that would better meet the needs of voters who live in care facilities and who may accordingly be limited in their ability to get to PennDOT. *Id.* Two alternatives were discussed, one of which would expand the forms of identification available, and the other of which would amend the absentee ballot statute. *Id.* By expanding the forms of identification available, roughly 2000 facilities became eligible to issue identification to residents and employees. H.T. (Royer) at 723:6-19.

152. The Department of State testified at the hearing that the General Assembly's determination to expand the forms of identification available addressed the concerns expressed in the November 2011 memorandum. H.T. (Oyler) at 1123:13-1125:7, 1127:1-1129:2.

153. There were other key amendments as well. For example, the bill that passed the House permitted only schools in the state system of higher education to issue IDs, while the final Act included all accredited colleges and universities – both public and private. H.T. (Oyler) at 1127:16-1129:2. Prior to the passage of Act 18 it was amended to expand the type and number of IDs provided, extended the expiration date on PennDOT-issued ID cards by twelve months, and modified the requirement that a name conform to “substantially conform.” It was also amended to permit a person who forgot the identification to provide an affirmation and mail, fax, or email the copy of the ID after the election. It was amended to include a soft rollout at the first election. *Id.* at 1123:16-1125:19.

154. Act 18 was signed into law March 14, 2012. H.T. (Marks) at 506:13-16

155. The Act has not yet been fully in effect. H.T. (Marks) at 505:9-11.

156. The absentee provisions of Act 18 went into effect in the November 2012 General Election. H.T. (Marks) at 505:22-23.

157. Indiana's statute – upheld both by the Indiana Supreme Court and the United States Supreme Court – has a provision similar to the narrow provision in H.B. 934 prior to its amendment. *See* Ind. Code Ann. § 3-11-8-25.1(e) (“A voter who votes in person at a precinct polling place that is located at a state licensed care facility where the voter resides is not required to provide proof of identification before voting in an election.”).

158. Similarly, rather than provide for non-photo identification or permit execution of an indigency affirmation at the polls, the Indiana statute required at each election a “voter who is indigent or has a religious objection to being photographed may cast a provisional ballot that will be counted only if she executes an appropriate affidavit before the circuit court clerk within 10 days following the election.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 185 (2008).

159. At the same time, Act 18 provided for a provisional ballot – protection that the United States Supreme Court found to be an adequate remedy in *Crawford*. 553 U.S. at 197-98 (“For example, a voter may lose his photo identification, may have his wallet stolen on the way to the polls, or may not resemble the photo in the identification because he recently grew a beard. Burdens of that sort arising from life’s vagaries, however, are neither so serious nor so frequent as to raise any question about the constitutionality of SEA 483; the availability of the right to cast a provisional ballot provides an adequate remedy for problems of that character.”).

160. The indigency affirmation of Act 18 is a self-reporting affirmation, a factor that was considered by the District Court for the District of Columbia in reversing the denial of preclearance for the South Carolina photo identification statute. *South Carolina v. United States*, 898 F. Supp. 2d 30, 36-37 & n.5 (D.D.C. 2012) (“If the affidavit is challenged before the county board, the county board may not second-guess the reasonableness of the asserted reason, only its truthfulness” – an assessment that was not undermined by “[t]he ability of county boards to police the outermost boundaries of the expansive reasonable impediment provision in [a] commonsense way.”); H.T. (Royer) at 777:7-778:15; H.T. (Oyler) at 1095:25-1906:5 (“[U]ltimately the bill included an indigency exemption which would allow a person who would have to pay to get to a driver’s license center to vote and be exempt from the ID requirement.”); *id.* at 1098:10-1100:3. The indigency affirmation is to be made available at the polling places to make it easier for the voter. H.T. (Oyler) at 1105:6-1107:13.

161. Act 18 has two indigency provisions, contemplating two affirmations, but the counties have been instructed to have affirmations at the polling place instead of having people bring them to the counties later. Counties have instructions to place the affirmations with

the provisional ballot inside the envelope and marked in a special way. H.T. at (Marks) 1633:3-25.

162. Counties have been instructed to accept the indigency affirmations at face value. H.T. (Marks) at 1634:8-13, 1723:13-1724:4.

163. Indigency affirmations are subject to challenge. H.T. (Marks) at 1724:10-1725:13.

164. The fee contemplated by the indigency affirmation provision may include costs other than generation of the card, such as the cost of public transportation. H.T. (Marks) at 1801:14-1802:3.

165. R-141 is an FAQ about Act 18's requirements. The indigency affirmation can be used if the cost of transportation is too high for the person to get ID. H.T. at (Marks) 1637:10-1638:6.

166. Pursuant to Act 18, absentee ballots request the same information that is set forth in HAVA – a drivers' license number or the last four digits of a Social Security number; it is only if neither is available that a copy of a photographic identification is required. The County Board of Elections verifies the information provided and determines whether the person has provided adequate information for verification if, for example, a drivers' license number is not matched against the SURE database. Any decision by the County Board of Electors in this regard would be made in an open meeting and would be subject to appeal. H.T. (Marks) at 531:1-534:2; 537:4-13, 1639:23-1640:8.

167. The last four digits of the SSN are used for the HAVA verification process to verify identity with either PennDOT or the SSA. Each county undertakes that process for each applicant for registration. If the county does not find a match, it will notify the applicant and place the applicant in pending status. Sometimes persons have been left in pending status for months – and even years. New procedures seek to obtain more information from the applicant to complete the process. If the county cannot make a determination after investigation, based on information received or otherwise, the system will remove that application from the verification process. H.T. (Marks) at 1638:6-1639:22.

168. Electors who qualify for alternative ballots under the VAEH and absentee ballots under UOCAVA are exempt from the identification requirements of Act 18, as are persons covered by Pennsylvania's UMOVA statutory provisions. H.T. (Oyler) at 1121:18-1122:25; 1134:14-1135:15.

169. UOCAVA is a federal law to protect voting rights of military voters and their spouses, dependents and overseas civilian voters. SURE identifies applications for absentee ballots under UOCAVA by MIL (military) or OCV (overseas civilian voter). H.T. (Marks) at 1632:15-19.

170. UMOVA is a state law that augments the UOCAVA protections by including hospitalized or bedridden veterans as covered persons. H.T. (Marks) at 1632:10-19.

171. The DOS ID card is one of three free proofs of identification issued by and available from PennDOT. H.T. (Myers) at 1331:21-25. PennDOT customers, who need ID for voting purposes, and can sign the oath/affirmation, can also obtain a non-driver's license photo identification card or the non-photo variation of the identification card for free. *Id.* at 1332:1-11, 1413:21-1414:2.

172. The primary difference between the secure non-driver identification card and the DOS ID card is that a person does not need any documentation to get a DOS ID card – only the name, date of birth, and last four digits of the Social Security number, information that PennDOT uses to confirm with the Department of State that the applicant is a registered voter. H.T. (Royer) at 715:10-14. The secure non-driver identification card requires the full panoply of documentation contemplated by 75 Pa.C.S. § 1510. H.T. (Myers) at 1322:1-4.

173. The changes since Act 18 took place were conveyed to the counties through official memoranda, email notifications, a conference call, and a summer conference. It was important to communicate the changes to them because they are the ones responsible for administering the elections. H.T. (Marks) at 1668:6-1669:7.

174. Communications to pollworkers are typically through the counties; R-78 was the first time they came directly from the Department. The goal was to provide a primer on Act 18 and an overview of the sorts of identification the pollworker might see. It was sent out prior to and in concert with training and addressed questions about “substantially conforming.” H.T. (Marks) 1634:14-1635:19, 1670:21-1672:24; *see* R-78.

175. The counties select polling places, train local elections officials, and are responsible for voting systems. They have general responsibility for the local election districts and polling locations. H.T. (Marks) at 1627:16-1628:6.

176. The voter registrar in each county is responsible for voter registration. H.T. (Marks) at 1628:9-10.

#### **IV. The Litigation**

177. The Petition for Review was filed on May 1, 2012, shortly after Act 18 was passed.

178. The Petition for Review was filed before the statute had been fully implemented.

179. The challenge raised in the Petition for Review was as to the amendment that requires electors attending the polls in person in every election – instead of only in some – to show proofs of identification and that alters the list of forms of identification that may be presented.

180. The Amended Petition for Review was filed on February 5, 2013.

181. The Amended Petition for Review was filed before the statute had been fully implemented.

182. The Amended Petition for Review likewise challenges the amendment that requires electors attending the polls in person in every election – instead of only in some – to show proofs of identification and that alters the list of forms of identification that may be presented.

## V. Implementation of Act 18

183. Before the DOS ID existed, the PennDOT secure identification card was expected to be the free product under Act 18. H.T. (Myers) at 1328:15-20.

184. PennDOT is able to rely on documents in its system to verify the identity of individuals who have obtained a PennDOT ID since 1990; PennDOT has already vetted those individuals' identity. These individuals would be issued ID and would not need to bring in the required documentation again. Pre.T. (Myers) at 737:4-739:10.

185. For any persons whose identification has *expired*, the Pennsylvania Vehicle Code entitles individuals with a driver's license to voluntarily surrender their driver's license in exchange for a free non-driver's license identification card. H.T. (Myers) at 1305:18-24; *see* 75 Pa.C.S. § 1510(b); 67 Pa. Code § 91.7(a)(1). The license can even be expired to complete this process. *Id.* at 1426:8. Individuals can do this by mail, without the need to visit a PennDOT location. *See* H.T. (Rogoff) at 693:2-8, 700:15-18.

186. Not all persons need to go to PennDOT to renew a PennDOT ID. PennDOT has approximately 38 million digital photos on file dating back to 1994, and that eases the burden on persons who want to exchange their drivers' license for a secure non-drivers' ID. H.T. (Myers) at 1345:12-1346:20.

187. In some circumstances, PennDOT uses those photos to exchange driver's licenses for identification cards so that individuals do not need to come in to a DLC and have their picture taken. H.T. (Myers) at 1345:12-1346:20; *see* H.T. (Rogoff) at 694:2-5 (describing PennDOT's confirmation that father-in-law would not need to come in because his photo was on file).

188. Because of the documentation requirements underlying the secure forms of identification PennDOT issued pursuant to 75 Pa.C.S. § 1510, Mr. Myers was concerned that there would be some people who would be unable to obtain a PennDOT secure ID. Pre.T. (Myers) at 698:4-699:5, 713:9-18. And PennDOT did not want to compromise the integrity of the secure IDs. *Id.* at 699:6-11.

189. As a result, the DOS ID was developed beginning in June 2012, eliminating only those requirements of 75 Pa.C.S. § 1510 that prevent the secure PennDOT IDs



from being available to everyone who needs them for voting purposes. H.T. (Myers) at 1329:1-14; *see also* 67 Pa. Code. § 91.4 (establishing application process for identification card, including documentation requirement to confirm birth date and identity).

190. Petitioners' Exhibit 1328 is a press release dated July 20, 2012. It was the public announcement of the DOS ID. H.T. (Marks) at 555:3-556:11; *see* P-1328. The press release informed the public that the DOS ID would be available at PennDOT centers the last week of August 2012. H.T. (Marks) at 556:12-22. The DOS ID became available on August 27, 2012. *See* Rem.T. (Myers) at 567:24-568:4.

191. PennDOT issues the secure product for free if the customer is able to sign the affirmation that they have no other form of identification and need the identification for voting purposes. The affirmation is a self-affirmation, with no checks or balances to independently verify the accuracy of the affirmation. H.T. (Myers) at 1328:1-14, 1336:8-1337:4, 1339:21-1340:1, 1413:14-1414:9, 1414:22-24.

192. The DOS ID is for voting purposes only. H.T. (Royer) at 713:18-714:21. If the customer wants ID for other purposes, such as to cash checks, then he or she will need a secure PennDOT ID. Many of the witnesses testified as to the reasons that they wanted a secure PennDOT identification card. Pre.T. (Lee) at 87:17-24 (explaining she also needs photo ID to travel and open a bank account); Pre.T. (Gonzalez) at 147:16-148:25 (explaining she also needs photo ID to obtain birth certificate from Puerto Rico, to board a plane, and to see doctors); Pre.T. (Ludt) at 250:11-251:14 (agreeing that clients need photo ID for purposes in addition to voting); Pre.T. (Cuttino) at 629:15-21, 632:1-7, 633:17-22 (testifying she needs photo ID to gain custody of her grandchildren, cash checks, and walk into government buildings); Pre.T. (Schor) at 675:12-676:25 (testifying he needs photo ID to patronize a bar and for work-related responsibilities, such as visiting prisons or attending court); Pre.T. (Rosa) at 866:17-21 (testifying he needs photo ID if he is stopped by the police); Pre.T. (Gray) at 1033:18-25 (explaining issues she has had without government-issued ID, including traveling and purchasing medication).

193. PennDOT is reimbursed from the General Fund to the Motor License Fund for each free ID issued for voting purposes. H.T. (Myers) at 1422:9-25.

194. To obtain the DOS ID, the customer must complete the application for initial issuance. *See* R-74. R-74 is the September 24, 2012 version of the application for initial issuance, which removes the requirement for gender identification from the original form. *See* Rem.T. (Myers) at 85:17-22. If the customer needs a replacement DOS ID, he or she must complete the application for replacement. *See* R-75. The customer must also complete an oath/affirmation. *See* R-76; H.T. (Myers) at 1338:7-1339:8.

195. The DOS ID does not require gender identification. H.T. (Myers) at 1337:19-1338:3. Although PennDOT IDs do have gender identification, an individual who has changed gender can request a gender change on his or her PennDOT identification. *See* R-128.

196. Between August 27, 2012 and September 25, 2012, PennDOT issued DOS IDs only after PennDOT determined that it was unable to issue the customer a secure PennDOT ID. Rem.T. (Myers) at 25:24-26:21. The process for the secure product required the customer to present a social security card, a birth certificate with a raised seal, and two forms of address verification. *Id.* at 26:22-27:1; H.T. (Marks) 558:24-560:17.

197. The birth certificate process was altered in 2012, so that PennDOT could contact the Pennsylvania Department of Health to verify the birth certificate for individuals born in Pennsylvania. Rem.T. (Myers) at 31:3-22; Pre.T. (Myers) at 690:17-25. If the customer did not have a birth certificate with a raised seal for his or her first visit to PennDOT, PennDOT would attempt to verify the birth records with the Department of Health. If the records were verified (usually within 7 to 10 days), PennDOT would send a letter to the customer asking the customer to return to PennDOT to complete the process. This process required a customer to visit the PennDOT location twice. Rem.T. (Myers) at 31:11-32:13. If the Department of Health could not verify the record, after August 27, 2012 (when the DOS ID became available), PennDOT sent the customer a letter advising the customer that he or she could return to PennDOT to obtain a DOS ID. *Id.* at 32:14-33:18.

198. On September 20, 2012, the birth certificate verification process changed, so that the customer service representation at the DLC could call PennDOT's central office, which has electronic access to Department of Health records to verify the birth record while the customer waited at the DLC. Rem. T. (Myers) at 34:22-38:15.

199. After September 25, 2012, and in recognition of the Pennsylvania Supreme Court's decision 10 days earlier, PennDOT and the Department of State eliminated the so-called "exhaustion" requirement. H.T. (Marks) at 562:25-564:5. After September 25, a customer could apply for a DOS ID without first exhausting the process for a secure PennDOT ID. As a result, a verified registered elector would be able to leave PennDOT with a DOS ID on the same day and would no longer be required to return on a second trip. Rem.T. (Myers) at 80:23-81:4; 83:21-23; *see also* P-225, R-74 (September 24, 2012 version of Application for Initial Issuance).

200. Between August 27, 2012 and September 25, 2012, the customer was required to supply two proofs of residence to obtain a DOS ID, though there was an alternative process for the homeless. Rem.T. (Myers) at 47:18-22; H.T. (Marks) at 560:18-562:1. The proofs-of-residence requirement was eliminated as of September 25, 2012. Rem.T. (Myers) at 83:24-84:6; H.T. (Marks) at 562:25-564:5; *see also* P-225 (September 24, 2012 version of Application for Initial Issuance).

201. PennDOT issues the DOS IDs and maintains the data on those IDs, including the data reported as to how many IDs issued. H.T. (Myers) at 1331:21-25, 1325:21-1327:2.

202. After a customer completes the application and oath/affirmation, the PennDOT customer service representative calls the Department of State SURE helpdesk to

verify that the customer is a registered elector eligible to receive a DOS ID. Rem.T. (Myers) at 40:11-20.

203. If the SURE helpdesk is able to verify the individual's identity as a registered elector in the SURE database, the SURE helpdesk attendant informs the PennDOT customer service representative, who issues the customer a DOS ID at that point in time. Rem.T. (Myers) at 46:17-22.

204. Before September 25, if the Department of State could not verify the customer's registration, PennDOT would not issue the DOS ID at that time, and the applicant would be sent home. Rem.T. (Marks) 195:21-196:3; H.T. (Marks) 562:3-24. The Department of State would follow up on the application, and once they were able to confirm that the applicant was registered, the applicant would be sent a letter informing him or her that he or she could return to PennDOT to obtain the DOS ID. Rem.T. (Marks) at 227:2-228:13; *see* Respondents' Remand Exhibit 8.

205. After September 25, when the customer visits the DLC to obtain a DOS ID, the PennDOT representative contacts the Department of State to confirm that the individual is registered to vote. If the Department of State cannot confirm the individual is registered, PennDOT asks the individual to complete an application to register to vote, takes the individual's picture, prints the DOS ID, and sends to the Department of State the DOS ID card, the application to register, the application for initial issuance, and the oath/affirmation. H.T. (Myers) at 1340:5-1343:15; H.T. (Marks) at 564:6-566:19.

206. As a result, customers no longer need to make a second trip. Rem.T. (Myers) at 87:5-18, 88:2-89:2, 89:7-22, 92:7-17; Rem.T. (Marks) at 196:4-197:5.

207. This is illustrated by the experience of Nadine Marsh who, had she first visited PennDOT after September 25, would have received a DOS ID on her first trip. *See* Rem.T. (Myers) at 522:6-523:8; P-2100 at 21:7-24:21, 32:22-33:8.

208. The only reason that Nadine Marsh had to return to PennDOT after her first visit is because her granddaughter relied on a non-PennDOT website for information about PennDOT's services and hours. *See* P-2100f ("DMV.org is a privately owned Website that is not owned or operated by any government agency."). She relied on the document even though it advised Ms. Marsh's granddaughter to "[p]lease note that the hours for the Photo License Center and the Driver License Center might differ even though they are located in the same building. . . . Please call to confirm your branch hours and services before visiting." *Id.* Ms. Marsh did not confirm that she or her granddaughter called as advised. *See generally* P-2100.

209. If PennDOT issues a DOS ID that it sends to the Department of State, the Department of State tracks the card through a Sharepoint database that automatically searches the SURE database each day to ascertain whether the applicant has become registered to vote. Using truncated name information, the database locates records that could be possible matches. In some instances there are multiple records that could be matches; in others, only one might be

found. If only one is found, the database would automatically show the status for voter registration as "True." H.T. (Marks) at 603:4-606:22.

210. After the database identifies potential matches, Department personnel review the potential matches to ascertain whether an applicant is registered. H.T. (Marks) at 610:14-25.

211. When the Department of State receives a DOS ID card and voter registration form from PennDOT, it holds the DOS ID for safekeeping until it can determine the person is qualified and registered to vote. Rem.T. (Marks) at 190:5-16. Department of State employees continue to search the SURE database on a daily basis for the individual until the registration is confirmed. *Id.* at 199:15-200:3, 200:13-201:2, 218:2-219:15, 489:23-490:10.

212. Once Department of State is able to verify the individual is registered to vote, the Department of State will send the individual his or her DOS ID via UPS ground delivery. This enables Department of State to track the package for delivery. H.T. (Marks) at 1677:16-1678:5.

213. The Sharepoint database was not intended to measure the number of persons receiving ID or applying for but not receiving DOS ID at the time of the visit to PennDOT. H.T. (Marks) at 619:22-620:8, 1765:4-14; *see also id.* at 1792:10-15.

214. The Sharepoint database was intended to track ID cards issued by PennDOT but not able to be delivered to the applicant because registration was at that point not confirmed. H.T. (Marks) at 619:22-620:16, 1762:11-1764:10, 1767:9-20.

215. It is improper and impossible to use a Department of State record to impute significance to a PennDOT process. It is equally improper and impossible to use a PennDOT record to impute significance to a Department of State process.

216. Any applicant for a DOS ID will have an application and a card transmitted to the Department and will have a record of the SURE verification call on Department call logs. H.T. (Marks) at 653:14-654:7, 1782:16-1783:5. They may also have a record on a shared drive among Commonwealth agencies. *Id.* at 1802:5-1803:23.

217. 

218. In an effort to have all information in one system, the 156 persons who applied under the process in place until September 25 were added to the Sharepoint database in May and June 2013. H.T. (Marks) at 596:19-23, 1765:10-14; *see* P-2071.

219. Because applicants under the old process were instructed to return to PennDOT once they had become registered, PennDOT had not issued a card when the applicant had come the first time, and there was thus no card to send to the Department of State. H.T. (Marks) at 611:4-612:8. The analysis discussed below is limited to the new process.

220. PennDOT is subject to federal and state law requirements to preserve the confidentiality of the information it collects from and about its customers. H.T. (Myers) at 1355:13-1356:2; *see also* 18 U.S.C. § 2721, *et seq.*; 75 Pa.C.S. § 6114.

221. In December 2012, Jonathan Marks realized that there were 194 persons for whom no follow-up applications or DOS IDs were received. As a result, he sent an email to Scott Shenk, a PennDOT employee, asking whether these persons had applied for DOS ID and why he had not received applications or cards. R-259. Mr. Shenk responded that 144 of the persons had not been applicants for a DOS ID, but he did not tell Mr. Marks which 144 of the 194 he had identified, because he considered the identifying data confidential. Mr. Marks accordingly did not know which of the entries in the Sharepoint database to delete, so he kept them all in Sharepoint. H.T. (Marks) at 650:7-653:9, 1681:19-1684:23.

222. Without ironclad evidence to the contrary, every person for whom the Department gets inadequate materials is treated as though the person is an exception. It would be irresponsible not to do so. H.T. (Marks) at 1685:12-1686:18

223. At the hearing, the Petitioners professed to be surprised to learn that there were persons listed in the Sharepoint database who had not applied for the DOS ID, even though R-259 was produced to Petitioners in April, during discovery. Petitioners never inquired about the e-mail in depositions. H.T. (Marks) at 614:10-24, 619:22-620:8, 624:11-625:25, 1769:9-14.

224. Petitioners assumed that the document that tracked the DOS ID cards sent to the Department of State (a) contained only persons who had applied for a DOS ID and not received one from PennDOT on the day of the visit; and (b) contained all information to understand when a person came to PennDOT. H.T. (Marks) at 619:18-620:16, 1788:18-1789:3. Those assumptions are inaccurate.

225. The Sharepoint database contained some persons who had not applied for a DOS ID (and had not been turned away by PennDOT). H.T. (Marks) at 1681:19-1685:11, 1776:21-1777:9; *see* Respondents' Answer to Motion to Exclude, Exhibit 4. In order to determine what date a person who did apply for a DOS ID without being able to get one came to PennDOT, the call logs must be used. H.T. (Marks) at 1782:16-1783:17, 1794:12-1795:4.

226. Petitioners are now saying that the December e-mail should not be credited unless the Department of State can demonstrate that a person had a valid alternate PennDOT ID at the time of the November 2012 General Election, even though that information was not within the Department of State's possession or access, and even though Mr. Marks had not asked Mr. Shenk that question. *See* H.T. (Marks) at 656:11-17, 1772:10-1775:17, 651:22-652:14.

227. Petitioners cannot gainsay the plain language of the exchange between Mr. Marks and Mr. Shenk, recorded contemporaneously on R-259.

228. The Sealed Exhibit provides insight into the reasons for Mr. Shenk's response in the December conversation. *See* Respondents' Answer to Motion to Exclude, Exhibit 4.

229. P-2071, on the other hand, was drafted without reference to the e-mail or the facts giving rise to the communications. *See* H.T. (Marks) at 619:22-620:8, 650:7-653:9, 1681:19-1684:23.

230. The email is about whether persons entered the exceptions process, H.T. (Marks) at 1681:19-1685:11. Petitioners argued instead that it was about persons who had ID,

[REDACTED]

231. In an attempt to answer the question that the email did not, at the Court's invitation, Respondents requested from PennDOT information about the 144 persons (Sealed Exhibit), a document which speaks for itself. *See* SEALED H.T. (Myers) at 1382:18-1396:17; *see also id.* at 1396:1-4.

232. Mr. Marks does not have rights to the PennDOT database. H.T. (Marks) at 656:11-17.

233. The information in the Sealed Exhibit is confidential under 18 U.S.C. § 2721, *et seq.*; 75 Pa.C.S. § 6114; *Advancement Project v. Pa. Dep't of Transp.*, 60 A.3d 891 (Pa. Cmwlth. 2013) (three-judge panel).

234. Mr. Marks has not seen the sealed exhibit that PennDOT generated about the issued cards. H.T. (Marks) at 1778:2-1780:6.

235. The Court can – but does not need to – look at the sealed exhibit and the testimony of Kurt Myers to credit Scott Shenk's comments in December 2012 and Mr. Marks's response to that information at the time.

236. [REDACTED]

[REDACTED]

237. [REDACTED]

[REDACTED]

[REDACTED]

238. [REDACTED]

239. The actions of the Department of State were a reasonable response to the December e-mail, and were not and could not have been a response to information that only PennDOT had then.

240. The exceptions process is reflected only in those individuals who applied for a DOS ID, generating a call log from PennDOT to the Department of State, and then were issued a card that was forwarded to the Department of State.

241. P-2071 includes a column, entitled "ID Received," which identifies (by a TRUE designation) the individuals for whom Department of State received a DOS ID issued by PennDOT. There are 307 such individuals.<sup>4</sup>

242. Petitioners contend that all persons in the database whose registration is marked "TRUE" is registered, but two of those persons, Sharepoint IDs 295 and 486, were persons who were identified by the computer as potential matches but were found not to have been registered when the staff reviewed those auto-populated fields each day. See [REDACTED]; see also H.T. (Marks) at 1674:24-1676:18, 1787:24-1788:6 (describing auto-population and review process).

243. [REDACTED]

244. [REDACTED]

<sup>4</sup>

[REDACTED]

An alternative estimate of 307 is derived from P-2071 by eliminating the number of old process cases and the 144 discussed in R-259. R-259 identifies several other customers in addition to the 144 for whom the Department of State would not have received a DOS ID issued by PennDOT. Respondents suggest that the most straightforward means of determining the number of individuals the Court should consider in its analysis is determined by counting the number of DOS IDs the Department of State received from PennDOT, which is 307. See H.T. (Marks) at 1785:17-22.

[REDACTED]

245. [REDACTED]

246. [REDACTED]  
[REDACTED] This lack of understanding undermines Mr. Niederberger's entire analysis.

247. [REDACTED]

248. Mr. Niederberger was not competent to determine whether an individual is a "valid voter."

249. Mr. Niederberger was not competent to testify whether a person listed in the Sharepoint database was seeking DOS ID at PennDOT.

250. Mr. Niederberger's opinions were not rendered to the requisite degree of certainty. [REDACTED]

251. P-2136 and P-2136a will be afforded no weight in the Court's analysis because they are not reliable or credible.

252. Sharepoint's attempts to match records are similar to the method that Dr. Siskin used to identify potential matches for later manual review. *See* H.T. (Wecker) at 1470:1-1471:3.

253. When P- 2071 was generated, the manual review had not yet been conducted. As a result, there were possible matches identified that were not in fact matches – just as Siskin found in reviewing his own data. [REDACTED]

254. The persons in Sharepoint whose registration has been verified and for whom the Department had cards have all had their IDs sent to them. H.T. (Marks) at 1677:16-1678:5.

255. Petitioners' examination of Mr. Marks relied on numbers that changed throughout the examination. *See, e.g.*, H.T. (Marks) at 618:7-619:21, 621:11-23, 632:8-14, 641:19-642:13, 645:7-20, 645:21-646:18, 1768:2-1769:8. This variation throughout the



examination caused confusion and demonstrated a lack of understanding of the Sharepoint database.

256. If a registration application is rejected, there would be no voter record, but there would be a SURE entry on the applications table that would show it as rejected. There have been rejections of some registration applications where people applied for a DOS ID and had entered the exceptions process. If a person's application is rejected, the person cannot vote. H.T. (Marks) at 1678:6-21.

257. Of the persons whose cards have not been delivered, SURE has confirmed that 8 had applications for registration rejected by the counties (Sharepoint ID Nos. 109, 152, 270, 276, 483, 485, 487, 501). H.T. (Marks) at 655:12-656:3.

258. Petitioners find fault with the Department of State for not being able to match persons who provided information in their applications for DOS ID that did not correlate with their information in SURE. Dr. Siskin would have undertaken a similar matching process but would have simply considered the person a non-match rather than undertaking the efforts that the Department of State took to match the person – efforts that included calling the counties and voters. See H.T. (Marks) at 1672:25-1673:20

259. Of the 307 persons for whom the Department of State received cards, 107 persons applied for and received their DOS IDs before November 13, 2013<sup>5</sup> (Sharepoint ID Nos. 6, 7, 9, 14, 21, 22, 23, 25, 28, 30, 34, 35, 36, 37, 38, 40, 41, 42, 43, 45, 46, 47, 49, 50, 51, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 68, 70, 71, 72, 73, 74, 76, 77, 82, 83, 85, 86, 87, 89, 90, 91, 92, 93, 94, 96, 99, 101, 104, 105, 106, 107, 108, 110, 113, 119, 125, 136, 141, 146, 150, 163, 169, 171, 174, 175, 176, 178, 179, 180, 181, 182, 183, 184, 185, 186, 195, 199, 200, 206, 207, 208, 209, 210, 211, 214, 215, 225, 226, 227, 229, 240, 355, 363, 365, 368, 402, 419).

260. Of the remaining 200 persons who had applied for a DOS ID before the November General Election:

- 120 had registered or applied to register to vote before October 9, 2013, but received their DOS ID after November 13, 2012 (Sharepoint ID Nos. 10, 12, 13, 15, 16, 27, 29, 32, 39, 44, 48, 54, 69, 78, 79, 81, 84, 97, 98, 111, 116, 118, 121, 127, 135, 137, 142, 143, 144, 145, 147, 149, 151, 153, 160, 162, 164, 165, 166, 167, 170, 172, 190, 191, 192, 193, 198, 201<sup>6</sup>, 205, 213, 220, 228, 230, 231, 233, 234, 235, 236, 238, 241, 242, 243, 244, 273, 274, 275, 277, 279, 283, 285, 286, 287, 290, 293, 294, 296, 300, 319, 320, 321, 322, 323, 327, 328, 329, 356, 357, 358, 359, 360, 361, 362, 364,

<sup>5</sup> November 13, 2013 is the appropriate date to use because any voter who received the DOS ID by November 13 could complete the provisional ballot process.

<sup>6</sup> P-2071 confirms that the DOS ID for Sharepoint ID No. 201 was sent on November 4, 2012, but no delivery date is noted in P-2071.

366, 367, 383, 407, 418, 440, 441, 446, 448, 452, 453, 455, 459, 464, 465, 466, 467, 469, 470, 471, 472, 473, 479, 480, 492, 503, 504);

- 25 persons applied to register to vote after October 9, 2012 (Sharepoint ID Nos. 8, 80, 100, 102, 103, 117, 130, 132, 134, 173, 219, 291, 292, 444, 445, 476, 478, 484, 488, 493, 495, 496, 497, 499, 643); and accordingly would not have been eligible to vote in the November 2012 General Election; and
- 55 persons have not been registered (Sharepoint ID Nos. 17, 31, 33, 52, 67, 88, 109, 114, 120, 122, 133, 138, 139, 148, 152, 161, 168, 177, 187, 188, 189, 194, 212, 222, 223, 224, 232, 239, 270, 276, 284, 288, 289, 295, 299, 442, 443, 454, 468, 474, 475, 477, 481, 482, 483, 485, 486, 487, 489, 494, 500, 501, 502, 642, 644).

261. Hurricane Sandy occurred the week before the November General Election and impacted the deadlines for absentee ballots. As a result there were three Executive Orders extending deadlines. H.T. (Marks) at 1678:22-1680:5.

262. Hurricane Sandy also impacted the processing of voter registration applications, and it worsened the delay in counties like Philadelphia. H.T. (Marks) at 1680:6-18.

263. HAVA verification is one of the processes that can lead to a pending status. H.T. (Marks) at 1680:19-1681:1.

264. Some applicants for the DOS ID were delayed in the approval of the registration application because of HAVA pending status and delays from the hurricane. Once registration was approved, the card was sent to the voters. H.T. (Marks) at 1681:2-18.

265. As Mr. Marks credibly testified, any person with an open application at the time of the General Election would have had materials sent to the County Boards of Elections for consideration if the injunction had not been in effect. H.T. (Marks) at 666:25-667:15.

266. Since January 2013, 166 DOS IDs have been issued but only 4 or 5 individuals are being tracked through Sharepoint. H.T. (Marks) at 1674:12-23.

267. Department of State has adjusted its search processes to handle the phone calls from PennDOT. They changed the Tier 1 process to make the searches broader, and established a strict search protocol for Tier 2 to find information that can help to match beyond that provided by the applicant. H.T. at (Marks) 1672:25-1674:11.

268. Department of State maintains custody of approximately 50 DOS IDs pending voter registration. This number fluctuates as Department of State receives and mails IDs. *See* H.T. (Marks) at 655:2-4, 1677:13-15.

269. Act 18 specifies that free proof of identification be issued to registered voters. H.T. (Royer) at 715:8-14.

270. Birth certificates, original social security cards, and proofs of residence are not required to obtain a DOS ID. Rem.T. (Royer) at 163:1-164:4, 164:5-165:4. The forms necessary for obtaining voter ID have been translated from English to 10 additional languages, including Spanish and Chinese. Rem.T. (Myers) at 115:3-17. PennDOT also offers translation services. *Id.* at 115:18-23.

271. The Department of State's public materials that advertised Act 18 were written in many languages, including Spanish, Russian, Korean, Vietnamese, traditional Chinese, amongst others. H.T. (Sweeney) at 1844:17-1845:1.

272. PennDOT customers can apply to register to vote at PennDOT locations either electronically or in paper. H.T. (Myers) at 1313:12-1314:4. When a person applies for a PennDOT secure product, he or she can complete an electronic voter registration form. When a person applies for a DOS ID, the application must be completed on a paper form. Rem.T. (Myers) at 100:5-101:24; *see also* H.T. (Marks) at 1628:25-1629:7.

273. Motor voter applications are transmitted from PennDOT to the Department of State, which disseminates to the counties' in batches. When they log on to SURE, they see how many applications are in their work flow.

274. H.T. (Marks) at 1644:4-15.

275. R-129 is the VRMA (mail) voter registration form. H.T. (Marks) at 1628:14-24.

276. The map on the voter registration application form allows a person without a street address to identify where he lives by marking it on a map. A DOS ID applicant can do the same thing. A homeless person may mark the map to show where he can be found. H.T. (Marks) at 1629:11-18, 1630:20-1631:4.

277. The paper forms are sent to the Department and then forwarded to the counties. H.T. (Marks) at 1644:16-20.

278. The counties process the electronic applications faster. H.T. (Marks) 1644:16-20.

279. Since September 25, 2012, Department of State verifies the identity of the person appearing at the PennDOT location through the registration verification process. Rem.T. (Myers) at 90:23-91:11; Rem.T. (Marks) at 187:13-188:20; Pre.T. (Myers) at 729:21-730:1. Department of State compares the last four digits of the individual's social security number, first name, last name, and date of birth with the Social Security Administration's database. Rem.T. (Marks) at 207:3-19. This is an automatic process. *Id.* If a person is registered to vote in the SURE database, it is because the counties have verified the applicant's social security number or

driver's license number pursuant to HAVA. *Id.* at 222:18-223:1. If the person cannot be verified, he or she will have the opportunity to register to vote. *Id.* at 221:16-24.

280. Mr. Marks testified that if a person comes to PennDOT for an identification card, the HAVA verification has already been completed because PennDOT has verified the information through the requirement for supporting documentation. H.T. (Marks) at 1728:24-1729:8, 1730:5-12, 1730:13-17.

281. The Department of State has continued to work with PennDOT – even after the October 2 injunction was entered – to see that people have access to DOS IDs. H.T. (Marks) 558:1-20. The DOS ID was available for just over a month before the injunction was entered.

282. R-76 is the February 14, 2013 version of the oath/affirmation, which changes language regarding the expiration date of the PennDOT product. Prior to this revision, a customer with PennDOT ID that had not been expired for twelve months before he or she visited the DLC, but would be expired for more than 12 months before the next election, would not have been able to sign the oath/affirmation. Rem.T. (Myers) at 53:12-55:9. After the revision, a customer can now sign the oath/affirmation and obtain a DOS ID if his or her PennDOT ID will be expired for twelve months as of the next election (as opposed to the day he or she comes to the DLC). *See* R-76; *see also* H.T. (Marks) 572:25-574:11, 1725:9-1727:12.

283. The Department of State and PennDOT are discussing ways in which PennDOT can have access to the SURE database directly. H.T. (Marks) at 572:13-20.

## **VI. General Accessibility of Photo ID**

284. There are approximately 8.8 million licensed drivers in Pennsylvania with current ID. H.T. (Myers) at 1300:8-10. In addition, PennDOT has issued approximately 1 million current non-driver's license identification cards in Pennsylvania, a total of approximately 9.8 million current PennDOT IDs. *Id.* at 1300:24-25, 1301:12-15. Approximately 2,000 driver's licenses and 4,000 identification cards are photo exempt. *Id.* at 1332:1-18. The photo exempt cards may be used for the same purposes as the secure cards that bear a photograph and were developed to address the needs of persons who have religious objections to photographs, including primarily the Amish in central Pennsylvania. H.T. (Marks) at 514:16-515:6; *see* H.T. (Myers) at 1320:5-1321:9 & Pre.T. (Myers) at 689:11-24 (describing confidence in identity); H.T. (Myers) at 1332:1-11 (discussing exceptions for religious objections).

285. Driver's licenses and identification cards are secure products. H.T. (Myers) at 1300:20-21. These products have become a trusted form of identification across the country to prove that the person is who they say they are. *Id.* at 1301:18-1302:14. For that reason, PennDOT requires certain documentation to establish sufficient confidence that the person is who they say they are; otherwise, secure products could be used for fraudulent purposes. *Id.* at 1319:23-1321:9; Rem.T. (Myers) at 543:10-24; Pre.T. (Myers) at 728:17-729:14. This requirement applies to both the driver's license and the non-driver's license identification card. H.T. (Myers) at 1322:1-4.

286. PennDOT also issues approximately 6,000 lead and asbestos identification cards per year and issues identification cards to authorized messengers. H.T. (Myers) at 1322:15-21.

287. As an additional level of security, PennDOT also employs facial recognition software to deter fraud, such as a person applying for ID under a different name. Pre.T. (Myers) at 730:18-732:8.

288. PennDOT works with the Department of Corrections to issue photo identification to prisoners being released from state prisons. This identification is critical to those being released to get a job, apply for services, or find shelter. The program became mandatory in May or June 2012 so that every inmate being released into probation or who has completed his or her sentence can obtain an identification card. Since it became mandatory, PennDOT has issued approximately 8,600 IDs to released inmates. PennDOT is considering expanding the program to federal prisons in Pennsylvania and the Philadelphia County prison system. H.T. (Myers) at 1322:22-1324:25.

289. PennDOT has 71 driver's license centers ("DLCs") throughout the Commonwealth, which are located based on demographics and where the population of Pennsylvania resides. H.T. (Myers) at 1305:25-1307:2. PennDOT also considers whether the location will be standalone or part of a strip mall, whether the location is modern or antiquated, and whether the location is accessible to public transportation. *Id.* at 1307:3-1308:11. Locations are not defined by county borders. *Id.* at 1306:14-1307:2.

290. Mr. Myers credibly testified that he has not received complaints suggesting PennDOT should have more locations in Pennsylvania. (H.T. Myers) at 1361:10-13. All locations were built to ADA requirements. *Id.* at 1309:8-11. All locations have seats, though modern locations have more seats than older locations. *Id.* at 1358:5-12.

291. Every DLC has a photo center. H.T. (Myers) at 1311:4-7, 1427:2-4. When the DLC is open, the photo center is open; but some photo centers are open longer or different hours than the DLC. *Id.* at 1311:11-18. PennDOT also has 28 or 29 stand-alone photo centers that can take pictures for renewals. *Id.* at 1311:14-1312:2, 1427:2-4. Mr. Myers credibly testified that PennDOT made efforts to correct information about the services at these different types of centers if incorrect information was disseminated. *Id.* at 1428:13-1431:4.

292. For PennDOT driver's license centers that are open five days a week, the centers are generally open Tuesday through Saturday, to accommodate individuals who work Monday through Friday, and to maintain the 40-hour work week available to PennDOT. H.T. (Myers) at 1309:24-1310:21.

293. There are 5 DLC locations in Philadelphia alone. *See* P-25, Ex. B.

294. Prior to and through the Thursday after the November 2012 General Election, PennDOT extended the hours at all 5 of these locations. H.T. (Myers) at 1407:13-18, 1411:19-1412:6; Rem.T. (Myers) at 539:11-539:7.

295. PennDOT tracks the numbers of transactions at each location. H.T. (Myers) at 1308:12-15; *see* P-139, P-1460.

296. The Arch Street location in Philadelphia is the busiest DLC.. H.T. (Myers) at 1406:22-1407:9.

297. In 2011, the Arch Street location served nearly 121,000 customers, and served over 100,000 in every year from 2006 through 2011. P-139.

298. Mr. Myers testified that August can be a busy month at the Arch Street location in particular because of the number of college students coming to Philadelphia at that time and visiting a DLC for identification. Rem.T. (Myers) at 105:6-106:2, 550:6-10.

299. Prior to the November 2012 election, the Bravo Group subcontracted an individual to staff a Philadelphia PennDOT driver license center full time in order to provide information about obtaining a free voter ID. R-261 at 96:2-14.

300. The individual was also educated on and answered questions about how to obtain a free Department of State voter ID card. R-261 at 97:5-12.

301. The staffer spoke with hundreds of people throughout the course of any given day at the PennDOT facility and she provided those voters with information about the Department of State ID card. R-261 at 98:7-13).

302. The inference that persons without currently valid PennDOT ID cannot get a PennDOT ID is unreasonable.

303. The ready availability of PennDOT products is apparent from the number of proofs of identification issued.

304. PennDOT issues approximately 17,000-45,000 new PennDOT IDs each month to individuals of voting age. Rem.T. (Myers) at 66:22-68:18; *see also* P-136. Every year, PennDOT renews approximately 2.2 million driver's licenses and 200,000 non-driver's license identification cards. H.T. (Myers) at 1311:19-22.

305. The number of IDs issued includes both the free secure ID and DOS ID. H.T. (Myers) at 1325:21-1326:21.

306. PennDOT has issued 12,981 free PennDOT identification cards and 3,830 DOS IDs since Act 18 went into effect through early July 2013.<sup>7</sup> P-2072; H.T. (Myers) at 1325:4-1327:2.

---

<sup>7</sup> DOS IDs have been available since August 27, 2012.

307. PennDOT processes approximately 31 million of pieces of mail, in and out, per year. H.T. (Myers) at 1348:2-10.

308. Mr. Myers credibly testified that PennDOT's customer service representatives are instructed to ask customers what they need an ID for in order to ensure the customer receives the appropriate product. If that person is able to sign the oath/affirmation, PennDOT will issue the appropriate product for free. H.T. (Myers) at 1413:14-1418:6.

309. Mr. Myers credibly testified that if an individual was mistakenly charged for a product that should have been free because it was for voting purposes and the individual could have signed the oath/affirmation, PennDOT has issued and will issue refunds to those customers. H.T. (Myers) at 1416:23-1417:5; Rem.T. (Myers) at 55:14-56:21, 58:21-59:21; Pre.T. (Myers) 742:18-743:15. PennDOT incurs no cost for issuing the IDs for free for voting purposes. PennDOT is reimbursed from the General Fund to the Motor License Fund for each free ID issued for voting purposes. H.T. (Myers) at 1422:9-25.

310. Although Petitioners complain that there are not as many PennDOT centers as there are polling places, people are permitted to choose the center and day for a trip to PennDOT, whereas each elector voting in person has only one polling place and one day on which a vote must be cast. H.T. (Marks) at 1627:2-15.

311. In rural areas, there may be a single polling place within a municipality that draws from the rural area around it. Sometimes people may have to drive to the polling place, and it may be a drive of several miles. H.T. (Marks) at 1626:5-1627:1.

312. Polling places are established pursuant to the Pennsylvania Election Code. H.T. (Marks) at 1624:3-14; *see* 25 Pa. Stat. §§ 2726-2731.

313. Polling places are established according to priority, beginning with municipal or public buildings within the municipality, then schools, and then private establishments. H.T. (Marks) at 1624:18-1625:6.

314. If necessary, a polling place may be located outside the voting precinct or election district in an adjacent election district. H.T. (Marks) at 1624:22-1625:2.

315. Polling places need to be accessible in size, number of entrances, and compliance with the ADA. H.T. at (Marks) at 1625:9-25.

316. Although Petitioners urge that there be mobile PennDOT options, PennDOT had at one time utilized mobile units, but the practice was terminated in 2008 during the Rendell administration. The administration decided that the cost of making mobile units available was not justified in light of the few transactions that were performed. Rem.T. (Myers) at 113:10-114:8. Utilizing mobile units also presents concerns about the security of individuals' confidential information. *Id.* at 114:9-115:2.

317. LaVerne Collins testified about two public transportation programs in Pennsylvania – the Shared-Ride Service and the Shared-Ride Program. H.T. (Collins) at 1161:10-19. The Shared-Ride Service is a door-to-door transportation service that is available to the general public. *Id.* at 1161:20-23.

318. The Shared-Ride Program provides discounts for the Service's fares. H.T. (Collins) at 1162:3-10. Participants are eligible for an 85% discount, and a sponsoring agency may cover the remaining 15%. *See id.* at 1164:11-16, 1167:7, 1167:22-1168:10, 1172:5-24. Individuals over the age of 65 and the disabled are eligible to participate in the Program. *Id.* at 1165:11-14, 1166:20-1167:2.

319. Riders do not need to present photo identification to use the Service. H.T. (Collins) at 1172:25-1173:4; H.T. (O'Donnell) at 1297:13-1298:7; Rem.T. (Myers) at 542:8-15. Riders need proof-of-age or proof-of-disability documentation to participate in the Program. H.T. (Collins) at 1166:12-15, 1167:18-20.

320. The Service is provided by local transportation providers; PennDOT does not own the vehicles. H.T. (Collins) at 1168:24-1169:7. Providers establish their own hours and days of operation, and the extent to which drivers will physically assist riders in and out of the vehicle. *Id.* at 1163:1-7, 1164:17-1165:2.

321. In order to be eligible for reimbursement, the providers must follow PennDOT policies and rules. H.T. (Collins) at 1169:8-13. One of those policies is that providers are not to deny a trip to a rider seeking a trip to PennDOT to obtain ID for voting purposes. *Id.* at 1170:11-19. Megan Sweeney of the Department of State worked with PennDOT to ensure riders would not be refused rides to the nearest DLC, even across county lines. H.T. (Sweeney) at 1841:20-1842:15; Rem.T. (Myers) at 74:18-75:5.

322. The Department of State provided information regarding organizations offering free rides to PennDOT locations through its 1-877-VotesPA phone line. H.T. (Sweeney) at 1840:14-1841:19; *see, e.g.*, R-109.

323. The Pennsylvania Department of Aging also provides information about the Program to the Area Agencies for Aging to disseminate to older adults. H.T. (O'Donnell) at 1269:8-21.

324. Transportation representatives, like RideShare programs attended Bravo Group events and were provided information. R-261 at 92:21-23.

325. RideShare program attendees also gave information to the event attendees about the Ride Share programs available in that particular area. R-261 at 93:11-15.

326. The statutory options for alternative forms of identification or for voting absentee or with the indigency affirmation are available in addition to the PennDOT products and address the needs of those that cannot get to PennDOT, either because they cannot afford to do so or because of an illness or disability.



## **VII. Education About Act 18**

### **A. Outreach to and through other agencies.**

327. Ms. Sweeney was charged with helping conduct education outreach and assisting on the day-to-day activities to ensure that anybody that needed information about Act 18 was provided it. H.T. (Sweeney) at 1810:10-15.

328. Dr. Mutz testified that opportunities for personal interactions are good, especially if people were well-informed. H.T. (Mutz) at 942:12-943:1.

329. Ms. Sweeney logged conference calls, press calls and outreach activities to record any questions and confirm they were answered. H.T. (Sweeney) at 1810:23-1811: 6.

330. Ms. Sweeney also reached out to other agencies including the Department of Public Welfare, Department of Health, Department of Aging and Department of Education to make sure they were educating their constituencies about the new law. Her efforts also included the Governor's Commission on Latino Affairs, Asian American Affairs, African American Affairs, Department of Community and Economic Development and the Bravo Group. H.T. (Sweeney) at 1811:11-22.

331. Ms. Sweeney also did community outreach and worked with community organizations including minority groups and homeless organizations. H.T. (Sweeney) at 1812:3-5.

332. Ms. Sweeney reached out to counties and county election officials to establish voter ID task forces. H.T. (Sweeney) at 1812:15-23.

333. Ms. Sweeney personally attended approximately forty to fifty voter ID events across all parts of the state. H.T. (Sweeney) at 1814:20-22.

334. These events included participation with the League of Women Voters. H.T. (Sweeney) at 1815:13-17.

335. Ms. Sweeney spoke with individuals at events and provided them information about the Voter ID Law. H.T. (Sweeney) at 1816:1-2, 19-24.

336. The Department of State reached out to institutions of higher learning and colleges, to determine if they were issuing IDs with name, photo and expiration date. H.T. (Sweeney) at 1817:19-23; R-137.

337. Ms. Sweeney began reaching out to the colleges and universities in early spring, 2012. H.T. (Sweeney) at 1818:1-2.

338. Temple University and Penn State added expiration dates to their IDs so their students would have acceptable forms of identification for voting. H.T. (Sweeney) at 1818:3-16. Penn State provides that acceptable identification on all of its campuses. *Id.* at 1819:4-6.

339. Ms. Sweeney also reached out to the Pennsylvania Association of State Systems of Higher Education, the Association of Independent Colleges and Universities of Pennsylvania and the Community College organizations. H.T. (Sweeney) at 1820:22-1821:3.

340. Personal care homes, assisted living residences, and long term care facilities are eligible under Act 18 to issue compliant identification. H.T. (Sweeney) at 1822:8-11). Ms. Sweeney made efforts to reach out to senior organizations like Leading Age Pennsylvania and the Association of Directors of Nursing Home Administrators to determine if these facilities were issuing compliant photo identification. *Id.* at 1822:12-21). The Department of State outreach was documented in Exhibit 51. *Id.* at 1824:16-19; R-51.

341. Although few licensed care facilities were issuing compliant ID cards to their residents at the time Act 18 became law, the Department did extensive outreach – in concert with the three agencies involved in licensing the care facilities – helping them to comply with the requirements for issuing IDs to the voters who might need them. H.T. (Oyler) at 1054:10-18; 1076:1-6.

342. Care facilities maintain photographic identification of their residents. H.T. (Sweeney) at 1826:2-6. Personal care homes and assisted living facilities are required to maintain photographs of their residents on file. *Id.* at 1826:2-22; *see also* 55 Pa. Code §§ 2600.252(3), 2800.252(3) (requiring photograph “no more than 2 years old”).

343. Ms. Sweeney verified that Devon Senior Living, where Petitioner Bea Bookler resides, is issuing compliant ID under Act 18. H.T. (Sweeney) at 1826:23-1826:3.

344. Ms. Sweeney attended a health and safety fair in April, 2013, before the May 2013 primary election, where she handed out information on the Voter ID Law and advised people that they would be asked, but not be required to show photographic identification at the upcoming election. H.T. (Sweeney) at 1828:13-23.

345. Ms. Sweeney identified Respondents Exhibits 52, 53 and 54 which were listings of events Bravo attended, people they contacted and sections of the Bravo project plan that called for outreach and events. H.T. (Sweeney) at 1830:15-22; R-52, R-53, R-54.

346. Ms. Sweeney identified Exhibit 55 as a list of material requests that the Department of State received about voter ID from organizations and representatives. H.T. (Sweeney) at 1831:4-6, 16-19). All the requesters were supplied with post cards, posters and information from the Department of State. *Id.* at 1831:11-13, 1831:20-22; R-55.

347. The Department of State handed out voluminous materials, including rush orders for posters, 10,000 at a time and, for example, in one instance issued 20,000 post cards to two food banks. H.T. (Sweeney) at 1847:18-25.

348. The Department of State reached out to the Department of Military and Veteran Affairs and had the Bravo Group contact them at the county level. H.T. (Sweeney) at 1832: 15-20.

349. The Department of State wanted to make sure that active and retired military were aware their military and veteran cards were acceptable under Act 18 for voting purposes. H.T. (Sweeney) at 1832:23-1833:2.

350. The Department of Military and Veteran Affairs put the voter ID information provided by Department of State on its website. H.T. (Sweeney) at 1834:8-10.

351. All of the different counties that the Department of State visited to conduct educational events are listed in the project plan. H.T. (Sweeney) at 1835:20-22; R-51.

352. At an educational event in a rural area Ms. Sweeney attended, members of the Amish community had no voter ID questions. H.T. (Sweeney) at 1836:8-10.

353. The Department of State did specific Voter ID outreach to the homeless. H.T. (Sweeney) at 1836:13-25.

354. Ms. Sweeney monitors and updates the frequently asked questions (FAQ's) section on the Department of State's website about Act 18. H.T. (Sweeney) at 1837:19-1838:4; R-144-151.

355. Ms. Sweeney worked with the Bravo Group to establish social media, including a Facebook Page and Twitter feed under the Votes PA website. H.T. (Sweeney) at 1839:19-23; R-261 at 85:14-16.

356. It was the Department of State's policy to do events with any organization that requested them. If the Homeless Advocacy Project requested the Department of State conduct or assist in an educational event, the Department of State would have been happy to do it. H.T. (Sweeney) at 1863:9-16.

#### **B. In-person and committed group outreach**

357. The Bravo Group was retained by the Department of State to do community outreach and public relations relating to the Voter ID project. The lead at the Bravo Group was Jennifer Riley. R-261 at 8:23-9:6.

358. The Bravo Group was to educate the community and perform community relations in order to educate all eligible voters in Pennsylvania on how to vote in the election using proper identification and how to obtain the proper identification. R-261 at 12:6-11.

359. As part of the education process, the Bravo Group was briefed and provided information from the Department of State about the Department of State identification card for voting purposes. R-261 at 13:7-15.

360. As part of its education and outreach effort, the Bravo Group subcontracted with the Skylar Group who had expertise in minority outreach. R-261 at 18:18-19: 1).

361. A sampling of the community relations work performed by Skylar and Bravo included attending special events, speaking engagements, hosting or manning tables at expositions, amongst other things such as one on one meetings, webinars, teleconferences, and other outings with the sole purpose of educating communities and their constituency about Act 18. R-261 at 19:6-25.

362. Bravo and Skylar's public relations included media relations, press conferences, reporter briefings, copy writing and copy editing for media purposes, prepping for meeting interviews, coordinating with public officials and other community officials to speak at special events and to the media. R-261 at 21:1-9.

363. In order to execute its charge, Bravo first met with Department of State officials including Shannon Royer, Ron Ruman and Megan Sweeney to begin outlining priorities of their work. R-261 at 25:9-17.

364. Bravo did presentations to voters that consisted of detailing the law, what was required of voters on Election Day and discussing different forms of identification that were listed under the law and how to obtain photographic identification. R-261 at 34:18-35:1.

365. When meeting with voters, Bravo utilized Department of State information located on its website as well as its own internally generated handbook that was approved by Department of State and that included details on the Voter ID Law. R-261 at 35:2-23.

366. Bravo also used posters and post cards provided by the Department of State in addition to PowerPoint presentations approved by the Department of State that were available on the Department of State's website. R-261 at 36:17-37:14; R-261f.

367. The PowerPoint included information on how an individual would obtain a Department of State voter identification card. R-261 at 43:9-11; R-261f.

368. As the law changed throughout the course of litigation, Bravo Group made multiple revisions to the PowerPoint that included the Department of State card. R-261 at 45:17-20.

369. The Bravo Group employees attended speaking events, other events and set up events for the Department of State. R-261 at 45:21-46:10.

370. There were multiple events a week and sometimes multiple events a day. R-261 at 46:16-21.

371. Bravo Group tracked its efforts by creating a master events list, a master material request list and a master outreach list which showed all of the events that Bravo Group and Skylar Group attended on behalf of the Department of State, the request for posters and post cards that Bravo collected during community outreach for the Department of State to fulfill. R-261 at 52:3-53:4; R-261g.

372. At every event which the Bravo Group and/or Jennifer Riley attended after August 27, 2012, they informed the voters about the Department of State identification card. R-261 at 55:14-18.

373. At events attended by Jennifer Riley no one ever advised her that they did not know about the law. R-261 at 58:7-14.

374. At an event, if a voter approached Jennifer Riley and informed her that they did not have an ID, she would speak to them personally about what forms of identification they did have and then give them recommendations on how to obtain a proper identification for voting purposes if they did not have one. R-261 at 59:20-25.

375. The Bravo Group contacted numerous food pantries, food banks, homeless shelters and everyone who had requested their presence. They were informed that Bravo Group was available if they required information. R-261 at 69:10-14.

376. The Bravo Group also conducted outreach to homeless through homeless shelters and organizations that serve the homeless population. The staff at each was provided with information on Voter ID. Bravo Group employees, including Jennifer Riley, visited homeless shelters and spoke with many homeless individuals. R-261 at 70:3-10, 70:15-19.

377. The Bravo Group reached out to many groups and in one instance, for example, they delivered ten thousand voter identification information cards from the Department of State to food pantries, churches and shelters with the voter identification information. R-261 at 63:25-64:5; R-261h.

378. The post cards described what IDs were accessible and acceptable, and explained details regarding the law. R-261 at 66:23-25.

379. The post cards informed eligible voters that they could obtain a free ID by stating "you can get one free of charge with supporting documentation at a PennDOT driver's license center." R-261 at 67:9-13; R-261h, R-261i.

380. The card also informed people about voting via absentee ballot and provided information on the Votes PA website and the toll free 1-800 number for people to call with additional questions. R-261 at 68:5-8; R-261h, R-261i.

381. The techniques the Bravo Group used to conduct its community outreach and public relations were/are techniques widely accepted in the industry and implemented throughout the country in similar ways by organizations like Bravo Group. R-261 at 71:8-17.

382. In an effort to target its audience, including minorities, the Bravo Group became aware of the percentage of the voting population in Pennsylvania that was minority and mapped their locations to reach them. That was also done with senior citizens and young eligible voters. R-261 at 73:17-21.

383. Ms. Riley testified that the Bravo Group did get the voter ID message out and the message was clearly understood by the people she spoke with. R-261 at 76:24-25, 77:5-7.

384. During community outreach events, Bravo Group forwarded an effective message. In the course of the outreach with individuals and groups, Bravo had question and answer sessions where they answered many questions and made sure that the people understood the message they were describing about voter ID. R-261 at 78:13-21.

385. The Department of State specifically asked Bravo Group to focus on three groups in its education efforts; Bravo's charge was stated as "the Bravo Group will work with various local and regional organizations to educate the voting public of the new voter ID requirements, specifically focusing on populations that may not have ID, young people, senior citizens and minorities." R-261 at 80:5-11, 21-23.

386. The Bravo Group reached out to many minority community groups partnering with them on disseminating information and doing train the trainer type of events where they would educate staff on requirements about voter ID which could then be provided to their constituents. Some groups included the Black Clergy of Philadelphia and other churches from around the state to educate their congregants, the Governor's Commission on African affairs to name a few. They also reached out to Hispanic groups and utilized Bravo employees who were Spanish speaking. R-261 at 81:2-25.

387. Bravo worked with the Governor's Commission on Latino Affairs to identify radio stations to reach these voters. R-261 at 82:4-8.

388. The Bravo Group also reached out to colleges and college students and offered to speak or set up information tables in student union buildings on campus. R-261 at 84:22-24.

389. The Bravo Group also reached out to different organizations like Pennsylvania Young Democrats and Young Republicans. R-261 at 85:4-6.

390. Ms. Riley believed that the Bravo Group campaign for the Department of State was outstanding and successful. R-261 at 106:16-25).

### **C. Soft Roll-Outs**

391. There have been three soft roll-outs of Act 18 – at the spring 2012 primary, the November 2012 General Election, and the May 2013 primary election. H.T. (Royer) at 728:1-6.

392. Poll workers and county election members asked individuals appearing at the polls to show their IDs. If the individuals did not have ID, poll workers and county election members provided written information regarding Act 18 as part of the education process. H.T. (Royer) at 728:7-20.

393. Act 18 contemplated one soft rollout election; subsequent elections have been soft rollouts as set forth in the order granting a preliminary injunction entered in October 2012 and extended by stipulation in February 2013 in this action. *See* Determination on Application for Preliminary Injunction at 12-14 (Pa. Cmwlth. Oct. 2, 2012) (*Applewhite III*); February 14, 2013 Stipulation.

394. Mr. Royer credibly testified that there were no election-day incident reports directed to the Department about the soft rollouts of Act 18 during the last three elections. H.T. (Royer) at 726:17-728:6, 760:23-761:8, 807:14-810:22.

### **D. The Advertising Reinforced the Department's Messages**

395. Gloria Blint (“Blint”) was designated by Red House Communications (“Red House”) to testify on behalf of Red House concerning topics relating to this lawsuit. P-1468 at 5:10-25.

396. Blint graduated *summa cum laude* with a bachelor's degree in Fine Arts in communication/graphics in 1980 from Edinboro University. P-1468 at 12:1-10.

397. Blint worked for a small graphic design agency and then worked for a larger agency in marketing account services. P-1468 at 12:9-16.

398. In 1993, she incorporated Red House Communications, where she's been working ever since. P-1468 at 12:22-13:3.

399. Red House responded to a request for a proposal from the Department of State, 2012-4, in 2012 for the Voter Education Media Campaign. P-1468 at 10:17-24; 11:14-19, Exhibit 5.

400. In response to a request for proposal, Red House submitted an example to demonstrate their expertise and experience in the area of consumer education, which was the

M2M Project. P-1468 at 14:10-15:16.

401. The goal of the M2M Project was to educate and motivate individuals at high risk HIV to enroll in the project where they could receive counseling and testing specifically related to HIV, and they were trying to get information to take this to get high risk HIV individuals to take action. P-1468 at 15:25-16:14.

402. The target audience of the M2M Project was African American men and other minority men, who are having sex with men between the ages of 16 and 40. P-1468 at 17:4-8.

403. Red House spent 30 days researching secondary sources and interviewing members of the M2M community as part of the project to get a better understanding of the topic, although such steps are not necessarily done with regularity across all projects done by Red House. P-1468 at 17:10-18:7.

404. Blint has 20 years of experience in communicating to consumer groups and has gained insight and experience as to how to do that effectively and was hired for that reason. P-1468 at 19:1-7.

405. It is not uncommon for advertisers using advertising campaigns to not do a measurement at the end of the project on how successful it was. P-1468 at 22:21-24.

406. One of the reasons it was easy to get feedback on the M2M Project is that the scope and universe of people they were trying to reach with their text message was extremely small. P-1468 at 28:3-21.

407. The RFP from DOS was a request for an integrated marketing communications plan and implementation of the Voter ID education campaign. P-1468 at 33:20-25.

408. The goal of the RFP was to develop a multi-media advertising public relations and community outreach campaign that would inform every eligible voter in the state of Pennsylvania about the new Voter ID law and voter ID requirements associated with it and to tell them that and the law is new and encourage them to make sure they had a voter ID on election day. P-1468 at 34:12-21.

409. The campaign was also to direct citizens to VotesPA.com website. P-1468 at 34:22-25.

410. The target audience of the Voter ID campaign was all voters, with a specific, extra emphasis on the elderly, the young, and minorities. P-1468 at 35:2-12.

411. There were two RFQs from the Department of State. One was a request for advertising and public relations and community outreach. The second was only for



advertising. P-1468 at 38:22-39:10.

412. Red House does public relations and advertising but does not typically engage in community outreach. P-1468 at 39:13-15.

413. One purpose of the campaign was to direct voters how to obtain acceptable voter identification if they do not have it by directing them to a website and a phone number. P-1468 at 42:21-43:10.

414. Red House has an in-house research initiative to make sure it understood who the eligible voters were in Pennsylvania, where they were, and what their ages were in order to construct Red House's response to the request for proposal by the Department of State. P-1468 at 45:9-22.

415. Research was done on eligible voters likely to not have acceptable voter ID by Red House, but Blint did not personally supervise the research that was done in this respect by Red House and does not recall whether she personally saw data on research on eligible voters likely to not have acceptable voter ID. P-1468 at 46:23-47:13.

416. Blint did not have recollection of any specific discussions concerning measurement of the Voter ID Project, but she has a high degree of certainty that they spoke about it in terms of the way the money would be spent and the outcome the Department of State expected as a result of it. P-1468 at 57:21-58:7.

417. Although both the message and medium are important components of a campaign, even a horrible message can produce phenomenal results. P-1468 at 61:8-18.

418. Measuring quantitatively is the best way to evaluate the effectiveness of a campaign; however, effectiveness can be determined by a general awareness as to how many people know about it. P-1468 at 62:8-22.

419. In Red House's interviews with Department of State, Harmelin, and Bravo, Red House did not ask about the messages because that is not why Red House was hired. Red House did have conversations with Harmelin regarding the outlets and rationale that they were going to use to reach those audiences. P-1468 at 80:1-13.

420. After looking at the available budget and specific preferences of media in the RFQ, an ad agency concluded how to shape an effective ad campaign, which is what Red House did. P-1468 at 85:4-10.

421. In reaching its conclusion on the appropriateness of the different media identified in the RFQ, Red House did an analysis concerning the scientific background behind media buying television and radio and determined that television is the most pervasive tool for reaching maximum audiences and therefore, television was the medium of choice. P-1468 at 85:12-22.

422. Given the DOS budget and the fact they were trying to reach a demographic of 18 and older in the far reaches of the state of Pennsylvania, television was the number one media tool. P-1468 at 85:22-25.

423. Because Red House has a media department and monitors media ratings, it knew that television is an excellent medium to reach seniors and the elderly, especially the audience that may be homebound as they get older, such as over the age of 70. P-1468 at 90:5-13.

424. Television is an ideal medium for the elderly because they watch television often, and they are less physically active than the rest of the population. P-1468 at 90:16-20.

425. For a younger target audience and Spanish voters, radio is a more appropriate medium because they listen to the radio more and drive more than the elderly. P-1468 at 90:20-91:6.

426. The message goals were simple and three-fold: engage, educate and motivate. P-1468 at 92:21-24.

427. Because of the diverse audience segments, the creative direction had to be clear, memorable and appealing to all. P-1468 at 92:24-93:2.

428. To Red House, clarity means using a bold, simple headline and visual that would communicate the law with a quick glance and not require anyone to spend any degree of time because consumers are not known to spend much time reviewing pieces of advertising. P-1468 at 93:2-11.

429. There is not one predominant goal with the Voter ID campaign. There were three goals. P-1468 at 95:9-11.

430. The goals were to inform voters of the state of Pennsylvania that there was a new law that required voters to show ID, to motivate them to find out more information, and to get them to go to votespa.com or a toll-free line where they could get more in-depth information about answers to questions they may have. P-1468 at 95:10-20.

431. Red House developed an ad campaign. The campaign had to communicate a message and generally speaking, it had to have a way to get into that message to introduce the idea to the viewer or the reader. P-1468 at 96:5-9.

432. In the Voter ID case, Red House said it would quickly communicate that voters must have an id to vote in Pennsylvania, and therefore, that's what the target audience was going to read quickly and clearly; hopefully, they would discover that piece of information or read a little further about their options to get more information and more details about types of

ids. P-1468 at 96:10-19.

433. The fundamental formula that advertising is based on is headline, visual, communicate the idea, and get the individual to read a little further. P-1468 at 96:20-23.

434. Telling an individual that they could get a photo id is not effective if they haven't been told they actually need one first. P-1468 at 97:13-16.

435. Red House's first message was to make it clear that voters need to have a photo id, and secondly, that if someone did not have an id, here are ways to find out how to get one. Otherwise, the ad campaign would be backwards. P-1468 at 97:13-23.

436. The Red House campaign was telling voters clearly to take it at face value that they had to show an id and additionally, they should care about showing an id and be motivated and go out and show their id because it's important as a citizen. P-1468 at 98:7-19.

437. Red House produced both an English and Spanish version of the television ads. P-1468 at 99:6-8.

438. Blint testified that in the end, the product differed a little bit from the proposal which was submitted. The television ads were multi-lingual, instead of just showing elderly persons in the commercial they showed all age segments, and they were shown in different languages. P-1468 at 98:21-99:15.

439. Relative to the scope of the request from the Department of State for their proposal, it was not within their scope to measure the effectiveness of the message in motivating people to get id if they didn't have one. P-1468 at 105:13-19.

440. In addressing audience barriers to accessing information, such as cultural language and socio-economic differences, Red House sought out imagery of young people who would be able to relate in terms of their age to get out the message so that there was some connection to the younger voters; as well they included minorities in order to bridge any possible cultural barriers. P-1468 at 115:15-116:3.

441. Although there is no specific measure to know how attractive or effective the ads were in reaching the target audiences in developing the materials, Red House based it upon the specific knowledge that it has about effective advertising, such as, for example, that a person in an ad looking directly at a viewer generates a higher engagement rate. P-1468 at 116:4-15.

442. Red House was also aware of Starch Roper, which is a company that does readability and effective studies, and with that information, it knew what the best practices were and how to use such tools in employing the materials. Red House did. P-1468 at 116:15-22.

443. In radio ads, the ads did clarify and illustrate to the listener there were all

different types of IDs that can be presented, such as PennDOT issued id, student id, or passport. P-1468 at 142:9-19.

444. In print ads, it was stated that the PennDOT issued a free ID. P-1468 at 142:23-143:1.

445. Red House created an ad banner on the website, of two different types. One was stationary or static, and comes up when you click on the website. The other ran a video when you clicked on it. Both of them provided information concerning voter ID. P-1468 at 159:17-160:4.

446. Based on Blint's professional experience and experience in consumer education campaigns, as well as that of Red House, it was their belief that the message which was constructed for the Voter ID campaign was an effective message. P-1468 at 180:15-21.

447. In the professional judgment of Blint and Red House, the creative materials that were developed and produced were effective in communicating the points that Red House was asked to communicate under the RFQ, and if a consumer read the materials produced by Red House, he or she would understand that there was a new Voter ID law that would require them to have a photo id on the day of the election and that there were two specific places they could go to get additional information. Red House met its objective as requested by the Department of States' request for proposal. P-1468 at 181:3-20.

448. Mr. Royer identified and verified the advertisements utilized in the campaign. H.T. (Royer) at 732:20-741:20; *see* R-153-174, R-176-222.

449. Lyn Strickler is the Executive Vice President of Harmelin Media and oversees all the Commonwealth of Pennsylvania business that Harmelin works on. P-1476 at 9:16-21.

450. Strickler has been with Harmelin for 25 years. P-1476 at 9:22-23.

451. Since 2005, Harmelin has worked with all of the state departments and agencies under the governor's jurisdiction, handling the media planning and buying component of the advertising equation on behalf of the Commonwealth. P-1476 at 10:20-24.

452. Harmelin is the vendor for media and planning for the Commonwealth, which entails working with the client to determine what the client's goals are, what the budget is, and the target audience. P-1476 at 11:16-24.

453. Harmelin is not involved in developing the message that the agency is trying to convey. It is strictly involved with getting the message out to the target audience and setting up a plan relative to that. P-1476 at 12:8-25.

454. Harmelin's responsibilities are two-fold: planning the type of media to be used and buying the media. P-1476 at 12:8-13.

455. The client tells Harmelin what the client's goals are and Harmelin will then work with the client to determine the target audience in order to meet those goals. P-1476 at 13:11-14:10.

456. Harmelin subscribes to marketing research companies, such as Nielsen's for television ratings, Arbitron for radio ratings, as well as Scarborough that does qualitative information, and other companies for demographic and qualitative information on income, education, and other types of data. P-1476 at 14:11-22.

457. This type of information from their marketing research helps Harmelin to decide what media they want to recommend to be used to the client to use. P-1476 at 14:23-15:2.

458. Once a client accepts the recommendation of Harmelin, the way that Harmelin knows that the message is reaching the target audience is through research, such as Nielsen research for television spots, because it uses demographics for projected audiences in determining that it reaches those targets. In determining whether the message is reaching the targeted audience, Harmelin takes into account that the same demographic audience watches the same types of programs over the course of time and then it takes the rating of the commercial and looks at it as an aggregate over the length of time and the different stations that it is played. P-1476 at 16:17-17:11.

459. Harmelin also takes into account that people watch different shows, and therefore, you may reach a certain number of people a certain number of times, which is called reach and frequency. P-1476 at 17:12-16.

460. Using this method, Harmelin can determine approximately how many people have seen an ad on an average of how many times. P-1476 at 17:24-18:4.

461. Harmelin's role in the Voter ID campaign was the same media planning and buying Harmelin does for other agencies. P-1476 at 20:1-9.

462. Harmelin began working on the Voter ID campaign for the Department of State in April or May 2012. P-1476 at 21:5-13.

463. The Department of State was interested in reaching ethnic audiences, older audiences, and younger audiences, which was a focus of the media targeting to reach these constituents. P-1476 at 23:11-25.

464. The Department of State also wanted to reach different nationalities using different languages. P-1476 at 25:1-17.

465. The general audience they were trying to reach was adults 18-plus. P-1476 at 26:11-24.

466. Harmelin looks to cover everybody of the target audience that the Department of State wants under an umbrella campaign and then pick out specific niche audiences to reach within that umbrella through radio, television, newspaper and other media. P-1476 at 27:1-7.

467. Harmelin does not give recommendations for a media plan for the state agencies unless it's ineffective given the budget they were given to work with, but as a general proposition, the agency tells Harmelin their budget and Harmelin can determine what can they accomplish with the budget and what's appropriate and what's not. P-1476 at 31:20-32:21.

468. The budget for the ad campaign, which was around 2.5 million, was a sufficient budget for what Harmelin needed to do. P-1476 at 32:22-33:5.

469. Department of State has a budget for an additional of \$2,056,000 for the Act 18 education effort in 2013. H.T. (Royer) at 764:4-765:2; *see* R-33, R-230. The budget request, which was granted, was based on Mr. Royer's consultation with Harmelin. H.T. (Royer) at 763:7-23.

470. When the injunction came out that put the Voter ID Law on hold, Harmelin immediately began to pull down their ads. P-1476 at 35:14-20.

471. Harmelin does not do a specific analysis to figure out which television ads reach target audience, they look at the whole campaign to see if they reached every adult over 18-plus to cover every inch of the state with some type of media. P-1476 at 46:22-47:8.

472. There are ways to measure the campaign in terms of success, but no real way to determine what specific percentage that the target audience has been hit. P-1476 at 47:21-25.

473. It is not really possible to specifically determine whether people are actually sitting in front of their television when ads are aired. Relative to the whole campaign, Harmelin did look to make sure they were covering all audiences, such as the older people for the television ads, the younger audience for college newspapers and radio. P-1476 at 48:4-49:12.

474. Harmelin did look, and specifically made sure, that they were covering all audiences that had been identified by the Department of State. P-1476 at 49:13-15.

475. Media outreach relative to buying radio ads was more easily ethnically targeted and can be focused on minorities, such as Spanish and African-American, based on the station's format. P-1476 at 59:1-60:5.

476. Although there was no specific discussion between Harmelin and the Department of State whether particular subgroups of the population may be more or less likely to have id already, there would be no reason for the Department of State to mention it because they would only need to tell them what different ethnic audiences Department of State needed to target. P-1476 at 62:20-63:11.

477. It is easier to target subgroups of the population using radio as opposed to television because there's not really television ratings data for Hispanics, African-Americans, as opposed to rating station formats. P-1476 at 64:24-65:21.

478. Harmelin also used the radio to target audiences through news stations and different markets, such as KYW in Philadelphia and KDKA in Pittsburgh, which are good outlets for messages about voting because they're in a radio news format. P-1476 at 66:7-21.

479. Harmelin has a special department that just does web ads because it is very complicated and ever-changing, but they use pop-up ads on the website and utilize networks that have the demographics for a target audience. P-1476 at 70:9-71:3.

480. Harmelin did a search campaign with a huge list of key words so any of those key words in an ad would pop up and a viewer would see that ad and click on it and learn about it. P-1476 at 70:23-71:12.

481. Online ads are generally used for younger audiences, but that has dissipated over the last five years because a wider range of demographics use the web nowadays regardless of their age. P-1476 at 71:13-20.

482. Website ads are not necessarily geared to audiences, but it is measurable because you know how many clicks specifically hit on a website ad. P-1476 at 71:21-72:3.

483. Harmelin also placed ads on mass transit on the sides and backs of buses and targeted them to African-American and Hispanic neighborhoods, especially bus routes that went into these ethnic neighborhoods; it also used different Spanish, as well as English, ads. P-1476 at 73:2-9; P-1476 at 73:15-25. The main places for ads on buses in this respect were Philadelphia and Pittsburgh. P-1476 at 74:1-4.

484. Harmelin also did mobile billboards, which is a billboard placed on the back of a truck that can go to different festivals or different places where people gather. P-1476 at 75:14-76:6.

485. Harmelin also used 30 sheet posters, which are kind of a billboard, comprised of 30 sheets of pieces of paper as opposed to digital billboards, which were put in north Philadelphia targeting the Latino population, and in Pittsburgh targeting African-Americans, and in Fulton and Tioga counties targeting the general market. P-1476 at 77:1-25.

486. Harmelin was aware of how the locations were selected because they went to ethnic locations, including Hispanic market in Philadelphia. They went to counties which do not receive television from Pennsylvania. P-1476 at 78:1-23.

487. Because Tioga county and Fulton county receive their television stations from outside Pennsylvania, Harmelin chose to use billboards in these two rural counties. P-1476 at 78:24-79:1.

488. Harmelin had planned on using robocalls, but when the injunction was entered and the message had to be changed, the robocalls were cancelled and the money was used to change the other media commercials that had already been provided. P-1476 at 79:9-80:5.

489. Media cannot be aggregated into a combined joint effort. For example, the different media cannot be aggregated to know that television campaign reached a certain amount of viewers and the radio campaign reached a certain amount of viewers and aggregate the two of them, especially with ethnic media, like the outreach done in the radio format. P-1476 at 85:4-21.

490. Relative to newspaper ads, you can tell what the circulation of the newspaper is, but you cannot determine exactly how many people saw the ads placed therein. P-1476 at 85:21-86:1.

491. For display advertising, such television impressions, Harmelin can use the Nielsen ratings for television, and for websites, there is something called comScores for digital media, which measures how many people are looking at a particular website. P-1476 at 95:7-17.

492. Relative to impressions between the two media of televisions and websites, they can compare across media strata. P-1476 at 95:13-22.

493. For the purposes of display advertising on websites, for example, if there are 2,496 clicks registered, it means that someone has clicked on the ad 2,496 times. And for the purposes of the ad on the website for Voter ID, because it started on September 10, Harmelin could tell that the ad on the website was clicked on 2,496 times within a ten-day period. P-1476 at 95:23-96:13.

494. Had the Department of State told Harmelin that there was a second objective, which was to tell people who didn't have id they could obtain it, it would not affect the manner in which Harmelin would have targeted their audience, because it would have been the same audience that they were trying to reach out to for either of the messages that the Department of State was trying to get across. P-1476 at 99:8-18.

495. Harmelin would not have recommended doing more specific targeting of specific populations if the Department of State had told them there was a second objective, because Harmelin's bailiwick is setting up the media outlets in which to get the messages across, not necessarily the specific message the client is trying to target. P-1476 at 99:19-101:8.

496. Harmelin explains the difference between "online display" and "online video" is that an online display is an ad that is contained within the screen of the website that you are visiting, whereas an online video is a short ad video prior to a video that someone wants to watch, that you must watch and cannot click out of, if you want to watch the secondary video. P-1476 at 116:13-117:15.



497. Online videos are used as a mechanism to advertise whether the viewer actually watched the entire video or not, and in Harmelin's case, there were 1.8 million impressions generated for the campaign relative to this manner of media utilized. P-1476 at 118:12-119:14.

498. In addition to the television ads that were placed that were paid for with the budget, there were also free ads. P-1476 at 122:2-5.

499. If someone from the Department of State starts a new campaign for the year 2013, they would have spoken to Ms. Strickler or Ms. Melissa from Harmelin Media. P-1476 at 122:6-14.

500. The metrics utilized by Harmelin in measuring the campaign are standard in the industry. P-1476 at 122:15-17.

501. While it was hard to measure whether the campaign media plan provided by Harmelin met the goal, the campaign did achieve what Harmelin wanted to achieve, although it does not have specific measures to prove that conclusively. P-1476 at 122:25-123:13.

502. Petitioners and their witnesses had heard about the voter ID requirement. For instance:

- Petitioner Lee saw an advertisement on television. Pre.T. (Lee) at 90:4-12.
- Petitioner Bookler read about it in a newspaper and saw it on television. Pre.T. at 952:17-24.
- LaKeisha Pannell heard a radio advertisement, and knew she needed to contact PennDOT. Rem.T. (Pannell) at 329:2-16.
- Marian Baker saw it on "TV and in the newspaper and everything." H.T. (Baker) at 63:9-14.
- Patricia Norton saw television advertisements. P-1430a at 20:10-23.
- Nadine Marsh learned about the DOS ID in July 2012 and knew she needed to go to PennDOT to obtain one. P-2100 at 6:12-7:4.
- Catherine Howell heard about the requirement before the November 2012 General Election. P-1427 at 14:3-9.

**E. Dr. Mutz's Testimony and Opinions Are Not Credible**

503. Professor Mutz worked briefly in advertising several years ago. In that capacity, she ran focus groups when needed. H.T. (Mutz) at 831:18-833:3. When asked about

her marketing background, she mentioned only that some of her students work in marketing. *Id.* at 833:3-11.

504. Professor Mutz considered the “media and education campaign” to have two goals: *first*, to ensure that every eligible voter knows that they need a certain type of ID to vote, and *second*, to ensure that every eligible voter has photo ID on Election Day and is eligible to cast a vote. H.T. (Mutz) at 839:12-840:16; 851:16-22.

505. Mr. Royer credibly testified that the media campaign in 2012 had multiple purposes: to promote public awareness of Act 18, to direct persons where to go to get more information about the law and how to obtain ID if they did not have it for voting purposes, and to encourage citizens to vote. That has been a mission of the agency for a long time. H.T. (Royer) 719:1-9.

506. Act 18 requires the Secretary to “prepare and disseminate information to the public regarding the proof of identification requirements established under sections 1210 and 1302.” In addition, the Secretary, the Department of Transportation, and the County Boards of Elections are to “disseminate information to the public regarding the availability of identification cards under subsection (b).” In addition, a person not providing identification during a soft rollout is to be given educational information instructing on the requirements and how to meet them. H.T. (Mutz) at 936:21-942:6. To the extent that the soft rollouts provided opportunities for personal interactions, which would be good, especially if people were well-informed. H.T. (Mutz) at 942:12-943:1.

507. Because the Department works with the County Boards of Elections; it provides them with guidance and information about the Act and the soft rollout. It also provides information to the public and conducts voter education efforts. H.T. (Royer) at 719:12-22. It began providing them information as soon as the law passed. *Id.* at 721:12-16.

508. The General Assembly did not instruct the Department of State to ensure that everyone get a specific form of identification or to convince people to register to vote or to come to the polls. H.T. (Mutz) at 943:3-14.

509. The Supreme Court recognized that the Department’s dissemination of information was to be measured by a standard of reasonableness. “Given reasonable voter education efforts, reasonably available means for procuring identification, and reasonable time allowed for implementation, the Appellants apparently would accept that the State may require the presentation of an identification card as a precondition to casting a ballot.” *Applewhite II*, 54 A.3d 1, 5 (Pa. 2012).

510. As part of the education process of the soft rollouts, the Department provided materials to all 67 counties with the sorts of identification that complied with Act 18. H.T. (Royer) at 728:4-20. In addition, since April 2012, the voter registration cards have educated people about the law; these cards are also distributed by the counties and that directs them to the hotline and the website, and provides them with the email address. R-79, H.T. (Royer) at 729:4-13, 742:13-24, 756:19-24.

511. Reasonable voter education efforts do not require an assessment of the “effectiveness” of a media campaign – which Professor Mutz defined as knowing “how many people got the message, how many people understood it, how many people responded the way that, you know, they had hoped and went and called or went to the website and so forth.” H.T. (Mutz) at 840:18-23. She considered Blint to have measured effectiveness with the HIV campaign by reporting how many calls were made to the hotline. *Id.* at 908:10-12.

512. If she were designing the campaign, she would have measured the calls that came in on the hotline. H.T. (Mutz) at 916:16-21.

513. During the months prior to the November 2012 General Election, there were several thousand calls to the hotline in some weeks and over a million hits on the VotesPa.com website, with visitors looking at an average of three pages. R-42; H.T. (Mutz) at 949:1-17; H.T. (Royer) at 725:25-726:6. The website had a way for persons to email questions; the Department assigns persons to respond to the emails. H.T. (Royer) at 724:24-725:7. The VotesPA number had been in effect before the November 2012 election cycle. *Id.* at 725:8-11. Extra personnel were hired to handle the phone calls and emails. *Id.* at 725:25:726:12.

514. R-42 was reviewed by Professor Mutz; it shows the number of unique visitors to the website, the number of pages viewed per visit, and the time spent on the site. H.T. (Mutz) at 928:11, 929:17-931:14. It is an overview of the outreach initiatives of the Department of State and identifies the groups that were targeted for outreach, including minorities, the elderly, young persons, were given special attention, because they might not be in tune with traditional media but might need a product to vote. H.T. (Royer) at 721:17-724:21. It showed the Department’s work with other agencies, including Labor & Industry, Aging, and DPW, as well as showing that handouts were produced in English and Spanish. *Id.* at 724:6-24.

515. R-40 is a detailed recap of Harmelin’s work related to Voter ID during 2012, including the television campaign, radio advertising, print materials in multiple languages and targeted to various populations, all on the advice of Harmelin. H.T. (Royer) at 729:14-732:19. R-153-174, R-179-199, R-202-222 are examples of the various types of advertising that were disseminated throughout the Commonwealth.

516. The Department engaged in social media outreach through Facebook and Twitter, as well as the website. H.T. (Royer) at 732:1-7.

517. Although 22 percent of Pennsylvanians do not have internet access at home or work, that does not measure the numbers of people who can access the internet through the public library. H.T. (Mutz) at 931:20-932:9.

518. Professor Mutz measured effectiveness by the number of IDs issued for voting purposes, which included both the DOS ID and the non-drivers’ ID, when that ID was for voting purposes. H.T. (Mutz) at 949:18-951:16.

519. Region frequency is used to assess the impact of cable. H.T. (Mutz) at 953:21-23.

520. Professor Mutz admitted that she could not assess whether people were informed about the law from the advertising campaign, although she found the “show it” message to be ambiguous. She did not “see” the information about how to get compliant ID emphasized in the media campaign and thus concluded that it had not been done. H.T. (Mutz) at 853:21-854:8. She also admitted, however, that the ads emphasized that if a person had identification in his or her wallet, that person should bring the wallet to the polls, and it communicated that message. *Id.* at 946:7-14.

521. In 2008, the Department launched a “Ready, Set, Vote” campaign, using HAVA funding. Harmelin Communications was used for that campaign because it is the sole source media buyer for the Commonwealth, and has been since the Rendell administration. H.T. (Royer) at 718:17-22.

522. Using agencies such as the Departments of Aging, Health, and Public Welfare to communicate about care facility ID and colleges and universities about student ID is an effective way of communicating to the issuing facilities and to the people who need the ID. H.T. (Mutz) at 947:3-25. The Department provided them with inserts and worked with them. H.T. (Royer) at 719:24-721:7.

523. Professor Mutz recognized that given the complexity of the message, it was common and is not a problem to send people to a secondary source – which the Department did with sending people to the VotesPA hotline and website. H.T. (Mutz) at 861:9-11; 883:22-884:1.

524. When Professor Mutz called the hotline, she was on hold less than a minute and then was connected to a person who got her the answer to the question she asked (whether college students needed to surrender a drivers’ license to get a DOS ID). H.T. (Mutz) at 885:17-886:13.

525. Professor Mutz wanted the Department to use the television ads to tell people to get a free ID without documentation by going to the website or calling the number. H.T. (Mutz) at 861:11-14; *see also id.* at 863:14-18 (radio).

526. Professor Mutz considered the radio ad to be better than the television ad, because it incorporated more information about the types of ID available. H.T. (Mutz) at 862:6-9.

527. A way to get people to adopt healthier behaviors is to convey that it is a popular thing to do. H.T. (Mutz) at 936:13-17. In a substance use prevention ad, the more ads one was exposed to, the more prevalent a viewer perceived drug use to be. By the same rationale, bringing a form of identification to the polls would be reinforced through ads saying that behavior was normative and acceptable. *Id.* at 956:10-24.

528. Mr. Royer credibly testified that he and the Secretary spent a great deal of time traveling around the Commonwealth in 2011 and 2012, visiting senior facilities, churches, community centers and township buildings – even a funeral parlor. H.T. (Royer) at 753:1-21.

As many as 300 people attended these events, some of which were co-sponsored by legislators. *Id.* at 753:13-17. Others were held in conjunction with well-known civic organizations. *Id.* at 753:23-756:14. At least one was recorded and later shown on an in-house cable channel. *Id.* at 756:12-14.

529. Professor Mutz agreed that it was good to attend events; her concerns that the people who attend voter ID – oriented events already know what they need to know because they are already highly politically involved were contradicted by Mr. Royer’s testimony as to the high profile of some of the persons attending the events, the large attendance, and the broad range of locations for the events. She conceded that the other events – such as attending street fairs – reached a more diverse population, although she was unclear how many people were spoken with. H.T. (Mutz) at 915:1-916:5.

530. Professor Mutz opined that the ad campaign should have focused on the DOS ID and the changes in the documentation requirements. H.T. (Mutz) at 872:12-873:23; 917:10-20.

531. Professor Mutz recognized that direct mail – such as the letter that the Department of State sent to the 759,000 registered voters whose SURE record did not have an exact corresponding match in the PennDOT database – can be more effective than other sorts of advertising. H.T. (Mutz) at 875:21-23. The letter is R43. The responses to the letter were very positive, with most people informing the Department that they appreciated the letter and had ID. H.T. (Royer) at 744:16-21. Approximately 150,000 letters were returned as undeliverable. *Id.* at 746:22-747:1.

532. In the letter, the Department had advised persons that they might need further documentation, such as a birth certificate, two proofs of residency, and Social Security, information she viewed as “ultimately . . . inaccurate,” observing that the information in the letter was not in the long run information accurate. H.T. (Mutz) at 875:5-20. Professor Mutz identified ads that advised persons that they could get identification for free at a PennDOT drivers’ license center, with supporting documentation. *Id.* at 880:2-5; 881:19-21.

533. Depending on the type of ID a person applied for in July 2012, they might need further documentation such as a birth certificate, two proofs of residency and a Social Security number.

534. Earned media is the coverage that results from press releases; press releases are often ignored, and it is competitive and harder to get earned media spots now than it was 30 years ago. H.T. (Mutz) at 918:14-919:1. Professor Mutz could not locate recent press releases in local newspapers. *Id.* at 919:16-920:25. However, Mr. Royer credibly testified that press releases were sometimes picked up by AP or other wires and got wider dissemination. H.T. (Royer) at 747:2-752:24. Moreover, there was significant press interest in the Voter ID law, and in 2012, approximately 240 press calls came in. R-54; H.T. (Royer) at 757:12-19.

535. Professor Mutz agrees that it would be difficult to explain the DOS ID, because she does not think “most average people in Pennsylvania” know what the Department of State is. H.T. (Mutz) at 881:10-18.

536. This was consistent with the Department’s statement that it would evaluate the success of the initiative by the number of impressions from each form of communication. H.T. (Mutz) at 909:16-19.

537. Professor Mutz believes that too much is asked of voters, including registration requirements and asking them to evaluate and vote on individual candidates and issues. H.T. (Mutz) at 963:13-24. That distrust of voters’ ability to take steps to exercise the right to vote has colored her perspective on whether voters are capable of responding to the educational messages from the Department of State.

538. Such cynicism about voters is not credible, and her conclusion that comes from that assessment – that the Department is responsible to ensure that people “got the message, how many people understood it, how many people responded the way that, you know, they had hoped” – is inconsistent with the statute and with the assessment of citizens as reasonable persons capable of taking steps to exercise their rights. H.T. (Mutz) at 840:18-23. Mr. Royer credibly testified that from his personal experience and observations as he has worked to increase awareness, he does not think that the people of the Commonwealth are unaware of the law, unaware of what it requires, or incapable of fulfilling its requirements. H.T. (Royer) at 767:13-23.

## **VIII. Testimony Petitioners Claim Show Persons Who Lack Compliant ID**

### **A. 2011**

539. Prior to Act 18’s passage, the Department undertook a legislative bill analysis. At a high level, the number of persons lacking a PennDOT ID was estimated using only the voting age population and the number of people possessing PennDOT products. That estimate was provided by Rebecca Oyler, who projected that 1 percent, or approximately 89,000 persons might be affected by the bill. H.T. (Oyler) at 1020:4-8; H.T. (Marks) at 535:4-11.

540. In his August 15, 2012 Memorandum, Judge Simpson credited Ms. Oyler’s one percent estimate as the low estimate it heard during the preliminary injunction hearing. *See Applewhite I v. Commonwealth*, No. 330 MD 2012, 2012 Pa. Commw. Unpub. LEXIS 757, at \*12 n.16 (Aug. 15, 2012).

541. Currently, she believes between 96 and 97 percent of registered voters have PennDOT ID cards. H.T. (Oyler) at 1021:1-7.

542. Although other assessments of the numbers of PennDOT products suggest that her estimates of persons without PennDOT products are too high, the numbers of persons covered by other statutory provisions, including forms of identification issued by care facilities, colleges and universities, and other statutory sources, as well as persons who vote by absentee

and alternative ballots or who will use the indigency affirmation and thus do not need photo identification still exceeds her estimate of persons currently lacking a PennDOT photo identification.

**B. June 2012 – Dr. Barreto’s Testimony**

543. In his August 15, 2012 Memorandum, Judge Simpson found Professor Barreto not credible.

Also, I considered testimony by Matt A. Barreto, Ph.D., whose testimony was offered by Petitioners. Parts of this testimony were believable. For the most part, however, his opinions were not credible or were given only little weight. There were numerous reasons for this, including demeanor, bias (see Pet'rs' Ex. 16), and lack of knowledge of Pennsylvania case law regarding name conformity. In addition, I had doubts about his survey design: name-conformity inquiry; oversampling; post-stratification weighting, especially with regard to age and gender; and, overarching design for "eligible" voters, as opposed to "registered" voters. Also, I had doubts about the survey execution: response rate; and timing (June 21 through July 2, 2012).

In particular, to the extent the witness offered testimony on the immediacy or inevitability of his estimated impact of Act 18 in the general election, the evidence was rejected. Further, to the extent the witness offered testimony regarding the ineffectiveness of planned efforts for public outreach and education, the evidence was rejected. Additionally, to the extent the witness offered opinions on "Public Knowledge of Voter ID Law in Pennsylvania," (see Pet'rs' Ex. 18, Table 2), the opinions were determined to be not credible. On this last point, Dr. Barreto's opinions were contrary to testimony by most, perhaps all, of the lay witnesses who testified for Petitioners. They explained that they have been aware of Act 18 and have some idea whether their current IDs will meet the requirements of the new law.

It is also noteworthy that Dr. Barreto’s survey would be of little practical use to those charged with implementing Act 18. This is because his survey is incapable of identifying individuals who need to be contacted for public outreach and education purposes, beyond the survey’s 2300 respondents. For this important reason, his approach was given significantly less weight than the approach employed by the DOS and PennDOT.

*Applewhite I*, 2012 Pa. Commw. Unpub. LEXIS 757, at \*16-18. The following facts support Judge Simpson's findings:

544. Because Petitioners chose not to bring back Professor Barreto, there is no basis on which to reevaluate Professor Barreto's demeanor, bias, or lack of candor in testifying – all of which are factors in determining the weight and credibility to accord to his findings. Dr. Marker expressly stated that he did not make any assessment of Professor Barreto's demeanor or credibility. H.T. (Marker) at 388:5-7.

545. At the preliminary injunction hearing, Professor Barreto testified that he had participated in eight surveys focused on “voter identification laws, rights to possession, lack of possession of obtaining photo identification.” Pre.T. (Barreto) at 281:21-23. Likewise, the only other case Dr. Marker has testified in was a case, *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012), *vacated and remanded*, 133 S. Ct. 2886 (2013), in which he was reviewing a survey supporting a challenge to a voter ID law. Pre.T. (Marker) at 413:22-414:9.

546. There is no reason to revisit Judge Simpson's finding of bias.

547. Dr. Marker was not asked to assess the details of Professor Barreto's questionnaire. H.T. (Marker) at 456:12-14. Dr. Marker looked only at the specific areas of concern he was asked to address. *Id.* at 433:5-15. Accordingly, he could not explain why Professor Barreto designed his questions as he did.

548. Dr. Barreto observed, “In designing the questionnaire researchers should follow best practices established by existing social science research, as well as groups such as the American Association of Public Opinion Research (AAPOR).” *See* Barreto Report at 15 (filed with court on July 16, 2012); Pre.T. (Barreto) at 292:15-294:22.

549. The Best Practices advise that the specific content of questions, the “manner in which questions are asked, as well as the specific response categories provided, can greatly affect the results of a survey. Concepts should be clearly defined and questions unambiguously phrased. Question wording should be carefully examined for special sensitivity or bias.” *See* AAPOR, *Best Practices*, available at [http://www.aapor.org/Best\\_Practices1.htm](http://www.aapor.org/Best_Practices1.htm) (last visited Aug. 29, 2013).

550. Professor Barreto stated in his report: “It is important that questions are direct, objective, and neutral, and not meant to lead respondents to give one particular answer over another and respondents should have an appropriate range of available answer choices. With modern survey technology, questionnaires should always be programmed to rotate question wording, randomize answer choices, rotate options forward-to-back and more, to ensure that no priming takes place whereby respondents lean towards one type of answer because it is always read as the first option.” Barreto Report at 15.



551. Other of Petitioners' experts agree. Professor Mutz cautioned about sending messages that encourage a person to act in a certain way (there, teenage drug use). H.T. (Mutz) at 844:14-20.

552. In developing his questions, Professor Barreto drafted questions that consistently linked not having ID to what other people had said and done. For example, several questions from his survey associate the common behavior with a lack of compliant ID. See P-17, Report Appendix B.

- Question 7A (“Is the expiration date after November 6, 2011, or **like some people we’ve talked to**, did it expire before November 6, 2011?”);
- Question 7B (“And is your passport still current, or **like some people we’ve talked to**, has your passport expired?”);
- Question 7C (“Does your military ID have an expiration date on it, and it is [sic] current, or, does your military ID state that the expiration date is indefinite, or **like some people we’ve talked to**, is your military ID expired?”);
- Question 8A (“If you can, take your official photo ID out real quick and check the expiration date? Does it have an expiration date printed on it, and is it currently up to date and not expired, or **like some people we’ve talked to**, is your photo ID expired?”);
- Question 9 (“**A lot of people go by** a nickname or change their name when they get married. Is the name that is printed on your {driver’s license/official photo ID} your full legal name, exactly as it would appear on the Pennsylvania voter registration record, or is there a difference?”);
- Question 13 (“Think about the last time you had to use or show your birth certificate? **Some of the people we’ve talked to** have lost or misplaced their official birth certificate. How about you? Do you have an official copy – NOT A PHOTOCOPY – of your birth certificate with you, or at your home that has a raised seal – or **like some people**, do you NOT have a certified copy of your birth certificate?”);
- Question 17 (“It’s hard to vote in every single election, and **some people we’ve talked to** say they didn’t vote in some recent elections. Thinking back to the 2008 presidential election on November 4th 2008, try to remember as accurately as possible if you voted in the 2008 presidential election here in Pennsylvania. Did you vote in the

November 2008 election or not?"). Question 17 also added in a question whether persons voted **in Pennsylvania** in 2008, even though there were survey respondents who had not lived in Pennsylvania long enough to have been eligible to vote in Pennsylvania in 2008. This had to give rise to confusion: if a person voted in the 2008 election, but not in Pennsylvania, what answer would have been correct?

553. Dr. Marker assumed that Professor Barreto “match[ed] the specific nuances of the Pennsylvania law.” H.T. (Marker) at 423:22-424:12.

554. Although Act 18 does not describe any form of identification as “official,” Professor Barreto inserted the word “official” into the description of alternate forms of identification – except for that issued by colleges or universities, which Dr. Marker admitted on cross-examination. *See* P-17, Baretto Report Appendix B, at Question 7C; H.T. (Marker) at 426:6-20.

555. Dr. Marker has no way of knowing what the impact of adding the word “official.” H.T. (Marker) at 421:10-422:11, 422:25-423:6, 424:1-12, 425:14-428:3.

556. In order to test whether Professor Barreto’s addition of the word “official” had an impact, the sample size would have needed to increase and questions to test people’s responses with and without the word “official” designed. H.T. (Marker) at 427:7-20.

557. Professor Mutz explained that in order to get accurate responses in surveys, it is important to ask questions that break down information and reduce cognitive demands on people. People are accurate when asked what programs they watch regularly, but are not accurate at all in telling how much television they watch. H.T. (Mutz) at 960:10-961:23.

558. Professor Barreto’s survey questions were of the sort that Professor Mutz said would lead to answers that were not accurate at all, because they required persons to “think back” to whether they voted four years ago and to the last time they used certain documents, in addition to asking them to assess whether they possessed “official” identification and whether their identification was current.

559. Dr. Marker testified that it was important to report all answers and provide underlying data to the Court. H.T. (Marker) at 415:1-7, 418:16-19, 420:9-19.

560. Dr. Marker assumed that the Court had access to the partial underlying dataset that he had requested from counsel, but he did not know. H.T. (Marker) at 415:1-7, 418:16-19, 420:9-19.

561. Dr. Marker did not read Act 18; he looked only at the portions cited in Judge Simpson’s opinion on the preliminary injunction petition. H.T. (Marker) at 421:6-422:11.

562. Although Professor Barreto claimed to have asked about all aspects of the statute, he did not take into account the provision for an indigency affirmation when preparing his demographic breakdown. H.T. (Marker) at 428:4-22.

563. Although Professor Barreto asked whether persons had voted absentee occasionally or permanently, he had not backed out those persons as not subject to the photo identification provisions of Act 18. H.T. (Marker) at 428:23-432:8. Accordingly, he could have overstated the number of persons subject to the photo identification requirement.

564. Dr. Marker assumed that the impact of the indigency exception and absentee ballot provisions was small but he had no data on which to base that assumption. H.T. (Marker) at 432:3-433:3.

565. Looking at Professor Barreto's reporting of those who did not have any other form of ID, roughly 10,000-20,000 would be permanent absentee voters. H.T. (Marker) at 433:1-3, 460:8-461:6.

566. When asked why he concluded that people who had an expired license were unable to renew them, Dr. Barreto said: "It's possible that people who have an expired ID could return and go through the process to renew it. In my opinion, it's extremely unlikely. That's not something that is common practice that people are going to be doing." Pre.T. (Barreto) at 437:3-23; *see also* Pre.T. (Barreto) at 436:6-22. He went on to say, "typically we always see about the same rate within a population which carries an expired ID card." Pre.T. (Barreto) at 437:3-23.

567. According to PennDOT data, there are approximately 8.8 million current licensed drivers in Pennsylvania. H.T. (Myers) at 1300:8-10. In addition, PennDOT has issued approximately 1 million current non-driver's license identification cards in Pennsylvania, for a total of approximately 9.8 million current PennDOT IDs. *Id.* at 1300:23-25, 1301:12-15.

568. Professor Barreto considers "unexpired" to include PennDOT ID that had been expired for less than a year as of the November 2012 General Election. *See* P-18, Table 1. Accordingly, he should have *more* drivers' licenses and non-drivers' licenses than PennDOT does. Instead, he has only 8,461,380 roughly *1.4 million less* than actually unexpired IDs issued.

569. Professor Barreto's estimate is unreasonable given the actual data. The survey inquired only whether persons possessed an actual physical copy of their Social Security card, not whether they knew the number. His explanation was, "But my inclination would be that most people who don't have a card are less likely to know their Social Security number." Pre.T. (Barreto) at 453:3-17.

570. Although several of Petitioners' witnesses had testified at the Preliminary Injunction Hearing that they did not have a physical copy of their Social Security cards, they also testified that they knew their Social Security numbers. *E.g.*, Pre.T. (Applewhite) at 126:18-127:14; Pre.T. (Stones) at 178:4-10; Pre.T. (Cuttino) at 631:7-11.

571. The timing of Professor Barreto's survey renders it irrelevant to the questions before the Court. Professor Barreto conducted his survey in late June and early July of 2012, before the DOS ID card was issued, before the education campaign, and before the November General Election. H.T. (Marker) at 434:5-435:5. The reason he gave was that the DOS ID was "not relevant to the question of did they at the time." *Id.* at 435:3-5. Some of Barreto's observations – such as his observations on whether persons might have difficulty gathering certain sorts of documents – are thus of no relevance to the Court.

572. The timing of Barreto's survey understates the knowledge base of the public about Act 18, and Dr. Marker's explanation does not merit crediting Dr. Barreto's June 2012 estimate.

573. The Court criticized Professor Barreto for estimating how many people were ignorant of the law. H.T. (Marker) at 410:15-411:12.

574. The DOS ID had not been implemented – or even announced – at the time of the survey (Petitioners' Exhibit 1328 is a press release dated July 20, 2012, publicly announcing the DOS ID and its availability in August 2012, H.T. (Marks) at 555:3-556:22). In addition, other forms of identification, such as those available from care facilities and from colleges and universities, *increased* over time. *See, e.g.*, R-113 (Temple University), R-123 (Pennsylvania State University).

575. Dr. Marker hoped that the education campaign and DOS ID card would cause an uptick in the number of persons having ID, but he said he was not asked to address that question. H.T. (Marker) at 435:16-438:23.

576. He acknowledged that it is Petitioners' burden to show the lack of available ID, but said that there has been no consideration to whether the survey should be redone – although it could be redone – to take into account the changes that have occurred. H.T. (Marker) at 439:12-440:4.

577. At numerous points, Dr. Marker recognized that Professor Barreto had made errors but sought to downplay the significance of those and couched the effects in hedging and probabilistic terms, rather than expressing an opinion to a reasonable degree of certainty. *E.g.*, H.T. (Marker) at 391:1-392:20 (Professor Barreto did not need the level of accuracy a government standard would demand); *id.* at 393:13-395:2 (reducing the non-responders to the rate of the wealthy responders reduces the overall rate of lacking ID from 12.8 percent to 7.9 percent); *id.* at 398:2-400:13 (ranking adjustment – which did not "change the estimates much" – was important to the design of the survey); *id.* at 395:3-397:24 ("some" of the 4.1 percent that Professor Barreto found to be without ID because he had determined the name did not substantially conform would in fact have non-conforming names); *id.* at 397:13-16 (even if the affected persons were all removed, there would still be half a million persons lacking any form of ID).

578. Dr. Marker stated that oversampling is commonly done, and is acceptable so long as it is weighted properly. He did not testify that Professor Barreto had weighted it properly. H.T. (Marker) at 400:14-403:22.

579. To account for Professor Barreto's estimate that only 0.6 percent of persons who did not have PennDOT ID had some other form of ID, in light of the fact that more colleges and universities were now issuing compliant ID, Dr. Marker opined that only 3 percent of the persons lacking ID were 18-25 year olds – with another 10 percent who did not state their age. He concluded that the ID available to the roughly 800,000 college students would not "ameliorate the problem." "[I]t's quite possible that Dr. Barreto's survey has overrepresented the people who are likely to have an ID," so that overall, "it might be a 1% reduction. You know, so, instead of 10% without, there's 9% without. Those kinds of numbers. The Court -- changing that to people, that might be 100,000 of a million." H.T. (Marker) at 407:9-410:14.

580. Professor Barreto emphasized eligible voters as opposed to registered voters. Judge Simpson criticized Professor Barreto's approach because, by using eligible voter numbers, the number of people who purportedly lack ID was inflated to 1.4 million. *Applewhite I*, 2012 Pa. Commw. Unpub. LEXIS 757, at \*16-18. Dr. Marker tried to minimize Judge Simpson's concern by suggesting that there was little difference in the rates of registered and eligible voters surveyed who lack ID, and that the data were reported separately. H.T. (Marker) at 403:23-405:10. Similarity in rates of people surveyed does not address the concern about Professor Barreto's inflated and incredible estimate.

581. Despite the numerous unaddressed errors, Dr. Marker concluded that "probably about between 600 and 800,000" lack ID. H.T. (Marker) at 405:11-406:25.

582. Dr. Marker's estimate should not be given any weight.

583. For all of the reasons set forth above, Marker's opinion that "a survey was conducted according to the reasonable standards of a public opinion survey following reasonable procedures," H.T. (Marker) at 386:23-25, is rejected as not credible.

### **C. July 2012 – PennDOT Provided Additional HAVA Data for SURE**

584. In 2012, PennDOT provided the information contemplated by 42 U.S.C. § 15483(5)(b)(2)(B) pursuant to a "match" of the roughly 8.2 million records in the SURE database against the approximately 9.5 million records of holders of PennDOT products. *See* H.T. (Marks) at 667:16-24. The primary purpose of the match was to supply the drivers' license and social security number information that PennDOT maintained in its database to SURE, which was missing that information for a significant number of records. H.T. (Royer) at 743:15-744:6; H.T. (Marks) at 1640:9-22.

585. As a result of the process, the Department learned that approximately 759,000 of the persons in the SURE database could not be matched exactly to entries in the PennDOT database. H.T. (Royer) at 743:15-744:6; H.T. (Marks) at 536:8-537:3.

586. The Department of State sent each such person a letter. *See* R-43. Approximately 150,000 of the letters were returned because the individual no longer lived at that address. H.T. (Royer) at 746:22-747:1.

587. The second largest group was persons whose names did not match, including because they did not use their legal names. H.T. (Aichele) at 1144:3-17. Some of the individuals whose names did not match, including, *inter alia*, legislators and county commissioners, contacted the Department to thank it for the letter and to state that they already had identification. H.T. (Royer) at 745:5-746:21.

588. The next largest group was persons (primarily students) who do not have Pennsylvania licenses because they grew up somewhere else. H.T. (Aichele) at 1144:3-17.

589. 25 P.S. § 2814 sets forth the rules for establishing a residence, including, *inter alia*, that it be the fixed place of habitation to which a person intends to return whenever absent; that coming into a place for temporary purposes only, without the intention of making that election district one's permanent place of abode, does not establish residence; if one intends to stay in another state an indefinite period of time, the person's residence is in that state, even if the person intends to return at some point; and a person who votes in another state while there is considered to have lost his or her resident status in Pennsylvania. It is unlawful to be registered in two locations. H.T. (Marks) at 667:25-669:1.

590. While students from out of state can become residents of Pennsylvania, there is insufficient evidence of record whether any of them – and if so, how many – actually intended to do so.

591. The match conducted by PennDOT and the Department of State was not undertaken to define how many persons who would vote in person at the polls lack a form of identification that conforms to Act 18's requirements.

592. The number of non-matches derived from this process, approximately 759,000, constituted approximately 9% of registered voters at the time of the match.

593. In his August 15, 2012 Memorandum, Judge Simpson found that the number of people allegedly without compliant ID was "significantly less" than the 9%:

Although not necessary for preliminary injunction purposes, my estimate of the percentage of registered voters who did not have photo ID as of June, 2012, is somewhat more than 1% and significantly less than 9%, based on the testimony of Rebecca K. Oyler and inferences favorable to Respondents. I rejected Petitioners' attempts to inflate the numbers in various ways.

*Applewhite I*, 2012 Pa. Commw. Unpub. LEXIS 757, at \*12 n.16.

**D. February 2013 – Secretary Aichele**

594. At the hearing, counsel for Petitioners played a brief excerpt of a video recorded on February 25, 2013, during which Secretary Aichele said:

Well, we've looked at the numbers in the Department of State. And an interesting study came out, because most of the concern – a great deal of the concern was centered on the City of Philadelphia; and independently, The Committee of Seventy did a study on their own and found that 96.5 percent of registered voters in Philadelphia have valid photo IDs.

H.T. (Aichele) at 1137:23-1138:7.

595. The survey to which the Secretary was alluding was conducted “during the November 6, 2012 general election” and stated on the cover: “The results of this unscientific survey should not be used to draw any conclusions about how the voter ID law would impact Philadelphians in future elections or how many Philadelphians are with, or without, photo identification. Committee of Seventy, *Voter ID: Philadelphia County Election Day Survey (2013)*, [http://www.seventy.org/Downloads/Election\\_Report/Voter\\_ID\\_Exit\\_Survey\\_1\\_22\\_13.pdf](http://www.seventy.org/Downloads/Election_Report/Voter_ID_Exit_Survey_1_22_13.pdf) (“Committee of Seventy Survey”).

596. The survey asked those of the registered voters in certain geographic areas of Philadelphia who voted between 7 am and 11 am and who agreed to complete the survey after voting whether they currently had a photo identification that met the requirements of Act 18.

597. The Fact Sheet, Appendix C, instructed voters that they would need to show identification that is current and valid to vote, issued by federal state, county or city government or the military, or by a college or university or a care facility. The actual question, however, asked whether the voter had a PA driver's license, PennDOT ID, Voter ID card, Photo ID from a college or university, or a photo ID from a PA care facility or nursing home.

598. The survey question excluded several forms of compliant ID listed in Act 18. *See* Committee of Seventy Survey, Appendix A, [http://www.seventy.org/Downloads/Election\\_Report/Voter\\_ID\\_Exit\\_Poll\\_Survey.pdf](http://www.seventy.org/Downloads/Election_Report/Voter_ID_Exit_Poll_Survey.pdf).

599. 690,776 of the 1,096,197 registered voters in Philadelphia voted in the November 6, 2012 General Election. 4,757 voters participated in the survey. *See* Committee of Seventy Survey at 2.

600. The responses were consistent across ages and ethnic groups. Committee of Seventy Survey at 7.

601. 96.5 percent (4,591) stated that they had one of the acceptable forms of identification, and another 1.7 percent (81) said that they had photographic identification but were not sure if it met Act 18's requirements (based on the truncated list in the survey). 1.6

percent (76) said that they did not have current or valid photographic identification. Committee of Seventy Survey at 2, 7.

602. There was testimony at the hearing about why Philadelphia is unique among counties.

- a. Philadelphia's County Board of Elections typically has the longest lag time between the time an application for voter registration is received and the time that it is processed. H.T. (Marks) at 568:10-569:16, 1735:2-6, 1735:15-1736:3; H.T. (Myers) at 1323:25-1324:5.
- b. Of the 48,711 persons who voted provisionally statewide in November 2012, 26,953 (55 percent) were in Philadelphia. R-233, Tab EAC-E.
- c. Although the SURE database is supposed to reflect persons who cannot vote because they are incarcerated felons, there are currently *no* felons on hold from Philadelphia. *See* R-225; H.T. (Marks) at 1664:4-1665:6.
- d. Jorge Santana, Deputy Commissioner in Philadelphia, presented testimony at the preliminary injunction hearing estimating that 36 percent of Philadelphia's registered voters either lacked PennDOT ID or held an expired PennDOT ID. Pre.T. (Santana) at 1217:17-1218:14.
- e. Because of Philadelphia's size, there have been instances when a polling place did not open on time and a decision needed to be made whether to break down the door to run the election. Pre.T. (Santana) at 1236:5-13.

603. Secretary Aichele's response was understandable given the above statistic, and given that some of the 76 persons may have understood the question to ask whether they had current and valid photographic identification with them at the polls (and were presented with a truncated list of compliant ID), and given that Philadelphia is in a unique position among the counties, Secretary Aichele's response to the survey was understandable.

604. Given the limitations on the survey's design, structure, and execution – and the number of times the authors themselves cautioned against extrapolations of the data – no other conclusions can be drawn from Secretary Aichele's response.

#### **E. July 2013 – Dr. Siskin**

605. The SURE database Siskin used was as of May 6, 2013. It contained names, birth dates, the last four digits of the Social Security numbers, the address, and any drivers' license associated with the name. H.T. (Siskin) at 126:15-127:8.

606. The database also indicated whether a voter was active or inactive, whether they were valid to vote, whether they had been removed from the list or were dead, pending dead, or possibly dead. It also contained a vote history. Siskin did not look at all of the



codes. Although Siskin looked to see whether a voter was valid to vote, he did not look at why. H.T. (Siskin) at 126:18-127:20, 128:18-20.

607. The PennDOT database Siskin used was as of May 6, 2013 as to certain data agreed to by Petitioners, and as of May 30, 2013 for additional data requested by Petitioners after later clarification. H.T. (Siskin) at 127:23-128:2 The PennDOT database contained records dating back to 1990, with names, birth dates, last four digits of the Social Security number, addresses, type of identification, number, and expiration date. *Id.* at 128:3-8, 129:4-19, 131:23-132:1

608. Siskin also received a Full Voter Export database that was not used for any analysis, but that was used to communicate information to counsel. H.T. (Siskin) at 128:23-129:3

609. Siskin averred that statisticians “really just look at data and tell you what the data says. They don’t have to make opinions.” H.T. (Siskin) at 123:7-11. As Dr. Wecker pointed out, the ways that Siskin looked at and reported the data were not objective reports but discretionary decisions that colored what the Court heard. *See, e.g.*, H.T. (Wecker) at 1462:12-21, 1468:11-1469:23, 1485:24-1487:17. Some of Siskin’s statements were false and misleading. *See, e.g.*, H.T. (Wecker) at 1485:1-20.

610. Siskin described his assignment as “fairly simple and direct.” He was asked only to compare the records in the SURE and PennDOT databases to determine how many people who were registered to vote either were lacking a PennDOT ID or had a PennDOT ID that had expired as of November 5, 2012. H.T. (Siskin) at 116: 22-117:14.

611. Siskin’s matching process was something like the process that PennDOT had undertaken in the summer of 2012, when it filled in data on the SURE database, except that Siskin applied a matching methodology that employed 12 steps, the first of which was matching drivers’ license numbers across the two databases. *See* H.T. (Siskin) at 134:3-10.

612. When Siskin undertook his match, he found that 83.1 percent of the registered voters’ records in SURE had drivers’ license numbers that matched the PennDOT record. H.T. (Siskin) at 132:11-133:18. This was a match that he explained would not have false positives. H.T. (Siskin) at 151:23-24.

613. Dr. Siskin found that of the persons he did not match after applying the remaining steps, 14 percent were false negatives according to what he called a “manual” review. H.T. (Siskin) at 152:5-21.

614. As Dr. Wecker credibly explained, the review could not in fact be manual because there were too many records for a person to compare manually. H.T. (Wecker) at 1468:11-1470:4. As Dr. Wecker credibly explained, computer programs introduce levels of error in their searching. H.T. (Wecker) at 1470:24-1471:3.

615. According to Siskin's testimony, the matches left 16.9 percent of the 8.2 million records he considered to be valid to review his samples against as possible mismatches. H.T. (Siskin) at 151:12-24 (affirming he identified exact matches for 83.1 percent of the SURE records); P-2096a at 9-10; P-2096c at Appendix A-1. This would have meant reviewing approximately 1,385,800 records against his samples. It follows that his statement that he determined the rate of error by means of manual searching was necessarily a false statement. *See* H.T. (Wecker) at 1468:11-1471:9. Indeed, counsel admitted as much. H.T. (Wecker) at 1512:3-8 (“[W]hat he called a manual search, it was a human being sitting in front of the computer . . . running searches . . .”); *see id.* at 1512:9-1513:12.

616. Dr. Siskin did not account for his 14 percent false negatives because he concluded that 14 percent of those he matched were also wrong. As a result, 28 percent of the records were mischaracterized. *See* H.T. (Siskin) at 154:4-162:18, 162:19-25; *see also* P-2096e.

617. The only way to determine whether a person in fact lacks a PennDOT ID is to analyze the possible non-matches by creating circles around the areas in which groups of possible non-matches are found. Rather than rely on distance, the next step would be to examine those records to see if there are apparent or factual (such as students living on campus) explanations that should be used to remove groups of records from the possible non-matches. From that narrowing, a person would need to interview possible non-matches. H.T. (Wecker) at 1476:2-19, 1477:7-1479:6, 1479:22-1482:7. That is the only way to understand whether a person has PennDOT ID but database programming (such as naming conventions, birthdate markers, or something else) led to a mismatch when there should have been a match, or whether a person lacks PennDOT ID because he or she does not need it, given the other forms of ID that are available and given that a person might vote absentee.

618. As Dr. Wecker explained, those subsequent steps would be problematic in this case, because of the restrictions on the use of both the confidential SURE database and the highly confidential PennDOT database. H.T. (Wecker) at 1481:24-17. Dr. Wecker further explained that the information provided using the Full Voter Export database necessarily relied on an analysis of confidential data. *Id.* at 1495:25-1497:3 (“That seems like a charade. You are really using the original list of – the confidential list.”).

619. Dr. Wecker also explained that there is recognition by Siskin that narrowing and interviews are the next step in the process. H.T. (Wecker) at 1482:18-1483:2.

620. Section VI of Dr. Siskin's report states in its entirety:

Petitioners' Counsel asked that I use the public Full Voter Export file to provide them with a list of voters who may lack valid PennDOT or DOS ID. I subsequently was asked to confirm whether the following Registered Voters, who may testify at trial, lack valid PennDOT or DOS ID: Mina Pripstein, Mary Toadvin, Catherine Howell, Patricia Norton, Marion Baker, Theresa Kukowski, Margaret Pennington, and David Proctor. Based on my

matching efforts, I have conveyed that information to Petitioners' counsel. To assure compliance with the protective order, I have not included those results here, but understand that Petitioners' counsel will convey that information orally to counsel for Respondents.

Siskin Report, P-2096a at 24-25.

621. During the course of trial, it became apparent that although Section VI purports to have reported on persons whom Siskin has said "lack valid PennDOT or DOS ID" identified through his "**matching efforts**," Siskin has identified only persons with *expired PennDOT ID*; they were identified not because the 12 steps correctly identified persons lacking ID, but based on only the expiration date on a PennDOT ID.

622. Each of the witnesses Siskin identified who testified at the Hearing on the Merits was an older adult who possessed a PennDOT ID that had expired. *Compare* P-2096a at 24-25, *with* FOF 666, 669-674, *infra*.

623. What Siskin did is significant for three reasons.

a. *First*, Siskin has asked the Court to accept an analysis that is flawed on its face – and that apparently could not work well enough in practice to identify a single witness who *lacked* any PennDOT ID – and asks the Court to accept these statistics in the face of (a) Dr. Wecker's criticisms, and (b) the sheer numbers that show that large numbers of persons have PennDOT ID, and that the "mismatch" is largely a function of the fact that the database reflects only a snapshot of a moment in time and the internal inconsistencies between the two databases. *See* H.T. (Siskin) at 247:3-248:11; H.T. (Wecker) at 1481:10-15, 1463:6-1464:5.

i. Given the unreliability of the matching, it is not credible to conclude that 251,879 records in the SURE database Siskin did not "match" a record in the PennDOT database. *See* H.T. (Siskin) at 154:4-162:18, 162:19-25; *see also* P-2096e.

ii. The form of truncation that Siskin used is similar to the truncation that was used to find registered voters whose registration was unable to be verified when the applicant submitted paperwork at PennDOT. H.T. (Marks) at 1675:3-12. The first few letters of each name are searched, so that Rob, Robert, and Roberts will all return matches. *See* H.T. (Siskin) at 135:3-136:7. As a result, Siskin would have been unable to locate via computer the same persons as the Department of State (for example, being unable to locate Mrs. Carl when searching for an applicant named Helen). *See* H.T. (Marks) at 657:5-659:1.

iii. Unlike the Department of State, however, Siskin did not contact the County Boards of Elections or the elector to determine how to overcome the non-match. *See* H.T. (Marks) at 658:25-659:1

iv. In his matching process Siskin also encountered records where a person with a truncated name (such as Robert from Roberts) had the same birth date and last four digits of the Social Security number. H.T. (Siskin) at 135:16-136:7 Although he testified that that he then considered all three people to have matched, Dr. Wecker credibly testified that Dr. Siskin in fact had persons that matched every criterion but that were listed as a non-match in one instance and a match in another. H.T. (Wecker) at 1466:20-1467:6, 1534:4-10. This impacted a significant number of records, given that Siskin testified that he found 70,000 duplicates. H.T. (Siskin) at 151:6-9.

v. Siskin's understanding of the database was inaccurate, because he testified that counting those persons as matched was "very conservative, because if it was one of them, then it wasn't one of the other two." H.T. (Siskin) at 135:22-25. Records that match will at times give rise to duplicates – or even triplicates – as they are updated. H.T. (Wecker) at 1466:11-18, 1535:5-1536:5.

vi. Siskin is correct, however, that the number of mismatches should be reduced once the number of duplicates and triplicates is accounted for. H.T. (Siskin) at 136:11-12. Dr. Wecker testified that he found 41,190 duplicate and 206 triplicates in the database. H.T. (Wecker) at 1535:5-1536:5.

vii. As Dr. Wecker explained, Dr. Siskin did not examine the numbers of persons on his "non-match" list who resided at a location that either (a) was a location at which persons would have (or would have ready access to) an alternative statutorily compliant ID and could readily get to PennDOT; or (b) was a location at which significant numbers of persons would be ineligible to vote in person at the polls, and, perhaps, to register to vote at all. H.T. (Wecker) at 1472:25-1479:4.

viii. Among the locations that Dr. Siskin ignored are (a) colleges and universities; (b) military bases; and (c) correctional centers. H.T. (Wecker) at 1472:25-1479:4. By drawing circles around a pinpointed address, Dr. Wecker was able to identify numerous persons whose addresses showed, for instance, a college postal location as their mailing address. *Id.* at 1478:1-22.

b. *Second*, because Siskin's analysis is so error prone, the 259,536 whom Siskin found did match between the SURE and PennDOT databases but held expired ID is not credible.

i. Dr. Wecker testified that many of the records identified by Siskin had been expired for decades – in some cases for four decades. H.T. (Wecker) at 1457:22-1458:5.

ii. As Kurt Myers credibly testified, only 38 other states report the new issuances to Pennsylvania, and that is a practice, not a requirement. H.T. (Myers) at 1333:22-1334:21.

iii. From 2006-2010, Pennsylvania reported deaths each year of 124,460, 123,967, 126,332, 123,924 and 123,473, respectively. Commonwealth Department of Health, Health Statistics and Research, Resident Deaths by Age, Sex, Race, and Single Year State Total, 2006-2010, *available at* <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=596038&mode=2> (last visited Aug. 29, 2013).

iv. PennDOT is supposed to receive information from the Pennsylvania Department of Health regarding PennDOT customers who are now deceased. PennDOT does not receive this data on a regular basis. In fact, the Department of Health recently informed PennDOT that approximately 38,000 additional individuals died in 2010, 2011, and 2012 that had not been previously reported and, therefore, were not designated as deceased in PennDOT's database. H.T. (Myers) at 1334:22-1335:17. PennDOT has not received any death data for 2013. *Id.* If, as a result, the death data are essentially a year behind in reporting, there would be roughly 125,000 records that had not been reported as dead but were; those should have been excluded from Dr. Siskin's report. *See* H.T. (Wecker) at 1455:3-1456:2, 1457:3-9.

v. In his report, Siskin did not take into account even those persons who had been reported by the Department of Health, identified by PennDOT as deceased by means of a database code. He admitted that he should have deducted those persons from his calculations. H.T. (Siskin) at 175:5-176:8. Dr. Wecker identified 17,924 persons who should have been excluded from Siskin's calculations because they were deceased. R-224a at ¶ 12. Dr. Wecker recognized, however, that the number was understated. H.T. (Wecker) at 1456:22-1457:2.

vi. Because deceased persons are not in a position to renew their drivers' licenses and are not qualified to vote, the serious undercalculation of deceased persons undermines the reliability of looking at expired drivers' licenses as an indicator of eligible voters who are lacking an ID for voting purposes. *See* (Wecker) H.T. at 1457:16-1558:5. Moreover, a deceased person is not in a position to learn about a mismatch or to update or correct records, thereby overstating the number of mismatched records.

vii. Because persons who have moved out of state are no longer residents and are accordingly not qualified to vote, the failure to use commonly available statistics to determine how many persons leave the state each year seriously undermines the reliability of looking at expired drivers' licenses as an indicator of eligible voters who are lacking an ID for voting purposes. H.T. (Wecker) at 1459:2-1460:15 (noting 250,000 people move out of Pennsylvania annually). Moreover, a nonresident has no reason to update or correct records in Pennsylvania, thereby overstating the number of mismatched records.

viii. PennDOT maintains a database for suspended licenses. If the license expires during the suspension, it cannot be renewed until the suspension is fully served. So a suspended license could continue to appear as expired when in reality it has been renewed. H.T. (Myers) at 1332:23-1333:21.

ix. Felons are ineligible to vote while incarcerated. Misdemeanants are eligible to vote while incarcerated, but they must vote absentee. Persons who are incarcerated are likely to have expired or no proof of identification. (H.T.) Marks at 1665:14-1668:5. R-245 discusses registration status for felons and misdemeanants. H.T. (Marks) at 1665:7-12; *see also* R-245.

x. In recognition of this, PennDOT already works with the Department of Corrections to issue photo identification to prisoners being released from state prisons. Proof of identification is critical for those being released to get a job, apply for services, or find shelter. H.T. (Myers) at 1322:22-1324:25.

xi. Although the SURE database has a felon on hold status, felons are not being reported: indeed, Philadelphia is shown as having no felons on hold. *See* R-225; H.T. (Marks) at 1664:4-1665:6. R-255 was prepared at Mr. Marks's direction. H.T. (Marks) at 1664:14-19.

xii. The Department of Corrections program became mandatory in 2012; every inmate being released into probation or who has completed his or her sentence can obtain proof of identification. PennDOT has issued approximately 8,600 IDs to released inmates since the program became mandatory. H.T. (Myers) at 1322:22-1324:7.

xiii. PennDOT has been asked about expanding the program to federal prisons in Pennsylvania and to Philadelphia County. H.T. (Myers) at 1324:8-25.

xiv. 4.49 percent of the electors voting in the November 2012 General Election voted absentee, R-233, Tab EAC-C, but according to Siskin's data 30.3 percent of the electors with an expired license were voted absentee in 2012.

xv. Dr. Siskin thus identified 24,339 persons who voted absentee in 2012 and who did not match or had expired licenses. H.T. (Siskin) at 139:13-140:17; P-2096a at 6; P-2096b, Table 1. Given that 18,018 persons voted absentee pursuant to UOCAVA – a group of persons likely to have expired licenses – it is unreasonable to infer that the 24,339 persons Siskin identified were persons who needed ID or needed to renew their license to vote. *See* R-233, Tab EAC-B.

xvi. There were 157,966 other persons who had been reported as having an expired PennDOT drivers' license, but who had exchanged a PennDOT drivers' license for an out-of-state drivers' license. H.T. (Siskin) at 133:5-15; P-2096b at Table 1. Accordingly, Dr. Siskin properly excluded the 157,966 from his analysis. That number understated the persons who had moved. *See* H.T. (Wecker) at 1459:2-1460:15; H.T. (Myers) at 1333:22-1334:21 (testifying only 38 states inform Pennsylvania if a former Pennsylvania resident exchanges ID).

c. *Third*, Petitioners' argument that they did not use any confidential data but only publicly available data is not credible.

624. Of the persons voting in the November 2012 General Election for whom Siskin did not find matches: 79,322 voted at the polls, 8,197 voted absentee, and 2,231 voted provisionally. H.T. (Siskin) at 138:20-22. Of the persons Siskin considered to have had an expired license (259,536), 53,293 voted in the November 2012 General Election, 36,456 voted at the polls, 16,142 voted absentee, and 698 voted provisionally. P-2096b at Table 1; H.T. (Siskin) at 139:16-25. Added together, 115,778 voted at the polls, 24,339 voted absentee, and 2,929 voted provisionally. H.T. (Siskin) 140:16-17; P-2096b at Table 1.

625. Dr. Siskin's projected numbers do not correlate to actual numbers. Where voter turnout in the 2012 General Election was nearly 68 percent, H.T. (Royer) at 717:11-12; *see* R-229, only 35.6 percent of the supposedly mismatched persons voted in the 2012 General Election (89,753 divided by 251,879), and only 20.5 percent of persons supposedly eligible to vote but possessing an expired license voted in the 2012 General Election (53,293 divided by 259,536). *See* P-2096b at Table 1.

626. Taken together with the small numbers of persons voting in the 2012 General Election from Siskin's identified persons, the most reasonable inference is that significant portions of the persons Siskin identifies are persons who in fact are *ineligible* to vote – because they died, moved, or became incarcerated. This is substantiated by the misproportions: if 68 percent of the 511,415 had voted (as happened among all registered voters), H.T. (Royer) at 717:11-12; *see* R-229, Siskin would have been expected to find 347,762 persons who were not matched to current identification and voted in the November 2012 General Election. Instead, he found only 143,046, which would correspond to 28 percent turnout. *See* P-2096b at Table 1.

627. Dr. Siskin acknowledged that 24,339 of the 143,046 persons voted absentee. H.T. (Siskin) at 140:15-17. Subtracting those numbers, and according to Dr. Siskin's own analysis, only 118,707 persons who voted in the General Election would have had to have one of the other statutorily compliant IDs, or would have needed to get a PennDOT-issued ID.

628. Dr. Siskin looked at the persons whom he determined not to have valid PennDOT IDs (a combination of non-matched and expired licenses) to see if there was a disparity by race, by political party, by age, or by gender. He also looked at how far persons who lacked a valid PennDOT ID needed to travel to get one. H.T. (Siskin) at 117:24-118:10.

629. Dr. Siskin acknowledged that certain naming conventions are challenging to report consistently across databases and that those conventions are associated with certain ethnicities. H.T. (Siskin) at 257:18-259:4. The inference that those ethnicities lack ID disproportionately is unreasonable. *See* H.T. (Wecker) at 1467:11-24.

630. All of the errors identified above affect not only the overall numbers but the demographic analysis. H.T. (Wecker) at 1485:1-20.

631. Dr. Siskin's numbers and his estimates of impact are unreliable and not credible.

## **IX. Availability**

### **A. "Vulnerable" Groups**

632. Using census data, as Siskin did, H.T. (Siskin) 126:5-8 (explaining that Appendix D to the Siskin Report was prepared using the United States Census Bureau's current population survey), the number of persons over the age of 65 in Pennsylvania is 2,042,166.

633. Approximately 1.7 million individuals over the age of 65 have an active Pennsylvania driver's license. Approximately 200,000 individuals over the age of 65 have an active Pennsylvania non-driver's license identification card. H.T. (Myers) at 1304:10-1305:1.

634. Kelly O'Donnell testified that the numbers of persons over the age of 60 was 2.7 million. H.T. (O'Donnell) at 1255:11-14.

635. Approximately 81,000 senior citizens live in long-term care facilities. *Id.* at 1257:13-19. Approximately 46,000 live in personal care homes. *Id.* at 1296:5-7. Approximately 1,200 live in assisted living facilities. *Id.* at 1257:20-23.

636. Therefore, approximately 130,000 older adults in Pennsylvania live at a care facility eligible to issue Act 18-compliant ID. This number does not include other individuals to whom care facilities may issue compliant ID within the facilities' discretion. *See, e.g.,* R-149 (confirming that *anyone* issued a compliant ID from a care facility may use it for voting purposes). There are roughly 2000 such facilities in Pennsylvania. H.T. (Royer) at 723:6-8.

637. The population of the care facilities does not include the employees or persons whom the facilities serve – all of whom may be issued compliant ID by the care facilities. H.T. (Oyler) at 1125:20-1127:10. In a Continuing Care Community, for instance, services are provided to persons living independently on campus, and, accordingly, even though those persons are not residents of a care facility, they are persons eligible to receive the care center's identification. H.T. (Royer) at 755:13-756:5. In addition, long-term care facilities are required to issue photo identification badges to their employees that contain the facility name and the employee's title and status. *See, e.g.,* 28 Pa. Code § 53.3. The facilities must update the photographs every four years. *Id.* § 53.3(c). Including an expiration date on the ID badge would comply with Act 18 and signal the statutory time of renewal.

638. Although few licensed care facilities were issuing compliant ID cards to their residents at the time Act 18 became law, the Department did extensive outreach – in concert with other agencies – to help them comply with the requirements for issuing IDs and to help the facilities issue ID to the voters who might need them. H.T. (Oyler) at 1054:10-18, 1076:1-6.



639. Personal care homes and assisted living facilities are licensed by the Department of Public Welfare. H.T. (O'Donnell) at 1256:21-23, 1268:7-21. The Department of Health licenses long-term care facilities. *Id.* at 1255:24-1256:3, 1256:24-1257:1.

640. If care facilities are not issuing compliant IDs, residents can bring it to PDA's attention. *Id.* at 1296:10-23. Ms. O'Donnell credibly testified that she has not received any such complaints. *Id.* at 1296:24-25.

641. Some other care facilities that are not yet issuing compliant IDs are awaiting the outcome of this action before determining whether to issue compliant ID. H.T. (Sweeney) at 1825:19-1826:1.

642. The Department of State has provided a template for compliant ID to care facilities. H.T. (Sweeney) at 1825:4-18. The template was a sheet of paper with areas for a photograph, a name, an expiration date, and the name of the facility. *Id.*

643. PDA works with 52 Area Agencies on Aging ("AAAs"), which coordinate services for and provide information to older adults in Pennsylvania. H.T. (O'Donnell) at 1259:18-1260:22.

644. PDA communicated with the AAAs regarding Pennsylvania's Voter ID Law, including a September 28, 2012 email following the change in process to obtain a DOS ID. H.T. (O'Donnell) at 1264:9-22; *see* R-260. PDA also coordinated efforts with DOS and PennDOT. H.T. (O'Donnell) at 1264:23-1265:2; *see* R-260. PDA informed the AAAs that an individual voter can obtain a DOS ID card at a DLC with "name, date of birth, social security number (NOT card), and address (proof of residency is NOT required)." R-260. PDA also suggested best practices to ensure older Pennsylvanians obtain compliant ID, such as scheduling in advance group trips to DLCs and coordinating transportation to DLCs. *See* R-260.

645. PDA disseminated information about Act 18 through AAAs, including DOS Frequently Asked Questions ("FAQ") sheets, and completed a mailing to approximately 750,000 elderly Pennsylvanians. H.T. (O'Donnell) at 1265:13-1266:14. PDA also disseminated information about the DOS ID through the AAAs and PDA's website. *Id.* at 1266:22-1267:10.

646. PDA receives and handles a variety of complaints from older adults in Pennsylvania, which PDA receives by phone, its website, email, or handwritten letter. H.T. (O'Donnell) at 1262:10-1263:2. Kelly O'Donnell would have received any complaints to PDA about Act 18. *Id.* at 1267:13-24. Ms. O'Donnell credibly testified that she has not received any complaints about the lack of information available about getting to PennDOT to obtain compliant ID. *Id.* at 1267:25-1268:4.

647. P-2016 was prepared prior to the April 2012 primary election, before the DOS ID existed. *See* H.T. (O'Donnell) at 1286:5-7, 1293:1-1294:10.

648. P-2067 includes a mailing insert that identifies the forms of ID acceptable for voting, including “Photo IDs issued by . . . the Commonwealth of Pennsylvania.” *See* P-2067; *see also* R-48, R-67.

649. Ms. Sweeney also addressed questions and monitored progress as people worked to implement Act 18. As one aspect of that, she compiled information from Pennsylvania institutions of higher learning to confirm whether the institutions were issuing Act 18-compliant ID. H.T. (Sweeney) at 1817:13-5. Ms. Sweeney contacted the institutions and confirmed whether the institution was issuing IDs with name, photo, and an expiration date. *Id.* at 1819:12-16. If the institution did not, Ms. Sweeney would also inquire whether the institution had any plans to do so. *Id.* R-137 reflects Ms. Sweeney’s efforts in this regard.

650. There are approximately 835,000 students attending Pennsylvania colleges or universities. H.T. (Wecker) at 1572:9-23.

651. Temple University and Pennsylvania State University (at all campuses) began issuing compliant IDs or expiration date stickers to affix to existing IDs after Act 18 was enacted. *See* R-113, R-123; H.T. (Sweeney) at 1818:6-1819:6. More than 90,000 students attend Pennsylvania State University. *See* R-123; H.T. (Sweeney) at 1819:7-11. A school ID with an expiration date affixed by sticker is Act 18-compliant ID. H.T. (Sweeney) at 1818:20-1819:3.

652. Ms. Sweeney and Bravo communicated with veterans’ affairs groups across Pennsylvania to make them aware that Veterans Administration IDs do not comply with Act 18, but that military and veterans cards for active and retired military and military dependent cards are compliant ID. H.T. (Sweeney) at 1832:5-1834:13.

653. Statutes such as 35 P.S. § 10225.503 (which precludes a care facility from hiring or retaining an employee convicted of certain enumerated offenses) demonstrate a commitment to ensuring the safety and security of senior citizens.

654. Statutes such as 18 P.S. § 20.303 require the establishment and dissemination of policies on such matters as “Policy regarding access to institutional facilities and programs by students, employees, guests and other individuals” and “Policies concerning the identification and admission of visitors in student housing facilities.”

655. Accordingly, adding a “sticker” to show an expiration date was consistent with these preexisting obligations and many schools began issuing compliant IDs soon after the law passed. H.T. (Sweeney) at 1818:20-1819:3; *see, e.g.*, R-113, R-123, R-137.

656. According to the EAC Report, 5,783,621 persons voted in the November 2012 General Election, 5,488,684 (94.9 percent) of whom voted in person. Election Assistance Commission Report, Exhibit R-233, Tab EAC-F. 241,656 cast domestic civilian absentee ballots, and 18,018 cast overseas ballots under UOCAVA, for a total of 259,674 or 4.49 percent. 48,711 voted provisionally statewide, 26,953 of who were in Philadelphia. R-233, Tabs EAC-B, EAC-C, EAC-E.

657. In addition, there are approximately 12,000 persons who are permanent absentee or permanent alternative voters who receive ballots automatically for four years. H.T. (Marks) at 1659:15-19.

658. PennDOT has worked – and continues to work – to meet the needs of any persons who lack a PennDOT ID and needs one of the products – whether a drivers' license, non-drivers' license, or DOS ID. H.T. (Myers) at 1418:24-1419:6; Rem.T. (Myers) at 72:24-74:4.

659. PennDOT customer service representatives are trained to help customers as necessary, including the handicapped,<sup>8</sup> elderly, and financially disadvantaged. Mr. Myers testified about one experience when an elderly, frail woman was brought to PennDOT by a friend and the PennDOT staff person went to the car, collected the paperwork, processed the paperwork, helped wheel the customer into line to have her picture taken, and then helped get her back to the car. Another staff person, on a day off, went to an assisted living center to gather paperwork from the residents, process it at his PennDOT location, and return the materials to the center. Rem.T. (Myers) at 72:24-74:4. PennDOT does similar outreach to other centers and nursing homes. *Id.* at 74:5-17.

660. PennDOT works with organizations to assist the organizations' efforts to help individuals obtain ID for voting purposes. PennDOT has helped prescreen documents, answer questions, and set up appointments for groups to come in to DLCs. These efforts included coordinating with Generations of Indian Valley and the Watermark in Philadelphia, among others. *See* H.T. (Myers) 1343:16-1345:11; H.T. (O'Donnell) 1294:11-1295:8; Rem.T. (Myers) at 115:21-116:20; *see also* P-1591.

661. Indeed, PennDOT has made arrangements – including staffing DLCs with Spanish-fluent representatives on their days off – to assist organizations who expressed an intention to bring in groups of people, only to have those organizations not show up at the DLC. Rem.T. (Myers) at 75:17-76:15.

662. Rebecca Oyler credibly testified that the General Assembly was concerned about and expressly addressed in the statute minorities, non-English speaking people, socioeconomic groups, the elderly, the disabled, and college students. H.T. (Oyler) at 1026:21-1027:16.

663. Of those groups, the testimony at the Hearing on the Merits focused almost exclusively on the circumstances of the elderly. FOF 666, 669-674, *infra*.

---

<sup>8</sup> Although Taylor Floria has the supporting documentation for a non-driver's license identification card or could pursue a DOS ID card, his mother, Sandra Carroll, testified that she did not seek any accommodations due to her son's disability from PennDOT when visiting a DLC. Pre.T. (Carroll) at 616:2-10; *see also id.* at 611:11-612:12.

## B. Petitioners' Fact Witnesses

664. Testimony regarding Petitioners' or witnesses' efforts to obtain supporting documentation, including a birth certificate or social security card, is irrelevant to the issues presently before the Court. *See, e.g.*, Pre.T. (Lee) at 82:7-86:6; Pre.T. (Applewhite) at 108:4-113:6; Pre.T. (Gonzalez) at 138:17-18, 144:23-145:2, 145:19-148:3; Pre.T. (Garrett) at 160:7-162:16; Pre.T. (Stones) at 168:4-171:12, 173:19-176:9; Pre.T. (Marsh) at 191:6-195:13; Pre.T. (Ludt) at 204:7-205:20, 207:17-224:1, 230:20-247:19; Pre.T. (Cuttino) at 621:9-627:4; Pre.T. (Levy) at 645:19-664:8; Pre.T. (Sutter) at 836:11-844:21; Pre.T. (Rosa) at 854:8-855:21, 865:5-10; Pre.T. (Block) at 871:10-16, 879:3-883:4; Pre.T. (Bookler) at 944:18-25, 950:17-23, 955:16-956:14; Pre.T. (Gray) at 1029:14-1030:6, 1032:14-1033:4, 1035:8-1036:5.

665. In addition, any testimony regarding experiences at DLCs before the DOS ID became available on August 27, 2012 is also irrelevant to the issues presently before the Court. *See, e.g.*, Pre.T. (Jarrell) at 1079:16-1084:6; Pre.T. (Tosti-Vasey) at 1102:14-1104:7.

666. Herbert Ginensky had a Pennsylvania driver's license that expired in April 2013. H.T. (Rogoff) at 691:9-20. Although Mr. Ginensky lived in a building issuing compliant ID, he surrendered his driver's license for a Pennsylvania non-driver's license identification card. *Id.* at 700:15-18. Mr. Rogoff, Mr. Ginensky's father-in-law, simply printed the form, filled it out, and mailed it in. *Id.* at 693:2-8. The card that was initially sent out did not reach him, but he did receive the ID card just after the May 2013 primary election. *Id.* at 700:19-21, 705:3-12.

667. The Watermark is a long-term care facility eligible to issue Act 18-compliant ID. *See* R-85. Andrew Rogoff's father-in-law, Herbert Ginensky, resided at the Watermark from late 2011 or early 2012 until June 2013. H.T. (Rogoff) at 689:14-20, 701:1-2. Mr. Rogoff testified that the Watermark posted a sign encouraging senior citizens who did not have IDs to come get them and that there was something available at the residence, but that he never looked into it and never asked any questions about it. *Id.* at 707:7-17.

668. PennDOT has photos on file for Mina Pripstein, Catherine Howell, and Margaret Pennington that could be used for the purposes of issuing ID, *id.* at 1348:11-1349:16, and each of those individuals testified that she would be willing to attempt to renew their expired PennDOT ID by mail, *see* H.T. (Pripstein) at 95:21-96:21; H.T. (Pennington) at 231:24-232:1; P-1427 at 27:21-28:13; *see also* H.T. (Baker) at 77:11-19.

669. Mina Pripstein's Pennsylvania driver's license expired in September 2012. H.T. (Pripstein) at 86:4-87:1. Mina Pripstein is an older adult in Pennsylvania and testified she is able use taxi cabs or other means to get around Philadelphia. *Id.* at 81:14-16, 89:14-90:5, 93:23-94:7, 106:14-107:21. Her testimony revealed that she is able to get to a DLC.

670. Catherine Howell had a Pennsylvania driver's license that expired on January 15, 2012. P-1427 at 12:9-13:3. Catherine Howell is an older adult in Pennsylvania and testified that would be able to sign an affidavit that she is physically unable to get to her polling place and would be willing to vote by absentee ballot. *Id.* at 9:23-10:10, 10:19-11:5, 11:9-11:14,

30:8-17. She also testified that she is able to travel to Bensalem, where a DLC is located. *Id.* at 16:2-25, 18:13-21:13, 33:15-34:6, 35:10-15.

671. Patricia Norton had a Pennsylvania driver's license that expired in 1995. P-1430a at 13:20-14:2. Patricia Norton is an older adult in Pennsylvania and her testimony revealed that she is able to get to a DLC. *Id.* at 14:8-15:9, 22:4-14, 31:16-32:9.

672. Marian Baker's Pennsylvania non-driver's license identification card expired in 2011. H.T. (Baker) at 58:10-23. Marian Baker is an older adult in Pennsylvania and her testimony revealed that she is able to get to a DLC. *Id.* at 73:9-13.

673. Margaret Pennington's Pennsylvania driver's license expired in approximately 2006. H.T. (Pennington) at 223:18-22. Margaret Pennington is an older adult in Pennsylvania and her testimony revealed that she is able to get to a DLC. *Id.* at 221:6-7, 224:9-23. She also testified that she was willing to go to PennDOT on the day she testified in this action. *Id.* at 235:4-23, 241:3-10. She would not be able to go alone, and would not be able to attend her polling place alone either. *Id.* at 229:3-8. She no longer has her voter registration card. *Id.* at 236:2-18.

674. David Proctor had a Pennsylvania driver's license that expired in approximately 1995. H.T. (Proctor) at 977:13-20, 986:14-25. David Proctor, as a matter of personal choice, has decided not to obtain Act 18-compliant photo identification. *Id.* at 984:7-18. Mr. Proctor is an older adult in Pennsylvania who is eligible to use, and has used, the Shared Ride Service. His testimony revealed that he is able to get to a DLC. *Id.* at 980:2-23, 989:16-18.

675. Former Petitioner Viviette Applewhite is an older adult in Pennsylvania and testified that she is able to get to a DLC. Pre.T. (Applewhite) at 95:5-10, 131:19-132:11. Ms. Applewhite was dismissed from this lawsuit because she obtained Act 18-compliant ID and, therefore, her claims were moot. Order Sustaining in Part and Overruling in Part Respondents' Preliminary Objections at 5, 6 n.3 (Pa. Cmwlth. May 24, 2013) (*Applewhite VI*).

676. Former Petitioner Joyce Block is an older adult in Pennsylvania and testified that she was able to get to a DLC. Pre.T. (Block) at 870:16-17, 879:3-5. Ms. Block was dismissed from this lawsuit because she obtained Act 18-compliant ID and, therefore, her claims were moot. *Id.* at 883:5-20, 887:1-17; *Applewhite VI*, at 5, 6 n.3.

677. Former Petitioner Nadine Marsh is an older adult in Pennsylvania and testified that she was able to get to a DLC and obtained a DOS ID. P-2100 at 16:18-17:24, 19:25-20:5, 23:5-24:21, 36:21-24; Pre.T. (Marsh) at 182:8-9. Ms. Marsh was dismissed from this lawsuit because she obtained Act 18-compliant ID and, therefore, her claims were moot. *Applewhite VI*, at 5, 6 n.3.

678. Former Petitioner Gloria Cuttino is an older adult in Pennsylvania and testified that she was able to get to a DLC. Pre.T. (Cuttino) at 619:17-18, 630:11-20. Ms. Cuttino was dismissed from this lawsuit because she obtained Act 18-compliant ID and, therefore, her claims were moot. *Applewhite VI*, at 5, 6 n.3.

679. Former Petitioner Asher Schor was dismissed from this lawsuit because he obtained Act 18-compliant ID and, therefore, his claims were moot. *Applewhite VI*, at 5, 6 n.3.

680. Ana Gonzalez is an older adult in Pennsylvania and her testimony revealed that she is able to get to a DLC. Pre.T. (Gonzalez) at 138:9-10, 149:24-150:2.

681. Stanley Garrett is an older adult in Pennsylvania and his testimony revealed that he is able to get to a DLC. Pre.T. (Garrett) at 153:11-14, 163:20-24.

682. Tia Sutter is an older adult in Pennsylvania and her testimony revealed that she is able to get to a DLC – she testified that she was able to get from East Falls in Philadelphia to the Social Security Administration office in downtown Philadelphia. Pre.T. (Sutter) at 829:25-830:5, 841:2-5.

683. Danny Rosa is an older adult in Pennsylvania and his testimony revealed that he was able to get to a DLC. Pre.T. (Rosa) at 854:1-2, 862:25-865:2.

684. Margaret Macarone obtained a photo ID. Rem.T. (Myers) at 531:18-532:4.

685. Milton Goldson obtained a non-driver's license identification card by completing the medical surrender process described with regard to Herbert Ginensky. Rem.T. (Myers) at 532:5-533:12. Therefore, Mr. Goldson obtained the photo ID for free. *Id.*

686. The testimony of Doris Clark regarding her experiences at PennDOT is irrelevant to the issues presently before the Court because the experiences predate the Department of State policy changes on September 25, 2012. Rem.T. (Clark) at 311:22-312:2. The testimony is further irrelevant because Ms. Clark was able to obtain a DOS ID. *Id.* at 321:10-15. Ms. Clark is an older adult in Pennsylvania who was able to get to a DLC to obtain photo ID. *Id.* at 306:19-20, 311:22-312:2.

687. The testimony of Lakeisha Pannell regarding her experiences at PennDOT is irrelevant to the issues presently before the Court because the experiences predate the Department of State policy changes on September 25, 2012. The testimony is further irrelevant because Ms. Pannell was able to obtain a DOS ID after the Department of State resolved a discrepancy in the spelling of her name. Rem.T. (Pannell) at 343:21-344:3; Rem.T. (Marks) at 487:19-488:17.

688. The testimony of LaRell Purdie regarding her observations at PennDOT locations is irrelevant to the issues presently before the Court because the experiences predate the Department of State policy changes on September 25, 2012. Rem.T. (Purdie) at 345:20-23, 357:6-12. Ms. Purdie's attempt to track the wait times at the PennDOT locations she observed was selective and unreliable. *Id.* at 360:21-361:18. Ms. Purdie's testimony regarding Ms. Pannell is cumulative. *Id.* at 351:24-356:23. Ms. Purdie's testimony is also based extensively on inadmissible hearsay.

689. The testimony of Preston Cobb regarding his experiences at PennDOT is irrelevant to the issues presently before the Court because the experiences predate the Department of State policy changes effective February 14, 2013. Rem.T. (Cobb) 372:3-9. Mr. Cobb is disabled and was able to get to a DLC. Mr. Cobb's testimony confirms that he could not have signed the oath/affirmation to obtain the non-driver's license identification card for free because he needed the ID for reasons in addition to voting. *Id.* at 373:4-7.

690. The testimony of Dylan Bellisle regarding his observations at PennDOT locations is irrelevant to the issues presently before the Court because the experiences predate the Department of State policy changes on September 25, 2012. Rem.T. (Bellisle) at 384:12-390:22, 401:1-8, 402:13-20. Mr. Bellisle's testimony regarding Benny Scott is irrelevant because Mr. Scott was able to obtain a DOS ID. *Id.* at 389:23-390:22. The testimony of Mr. Bellisle is further irrelevant because he is not a resident of Pennsylvania and, therefore, is not qualified to vote in Pennsylvania. *Id.* at 383:8-12. Mr. Bellisle's testimony was unreliable because he failed to maintain the documentation he was required to complete for each PennDOT location he visited. *Id.* at 399:2-16. Mr. Bellisle's testimony is also based extensively on inadmissible hearsay.

691. The testimony of Jessica Hockenbury regarding her experiences at PennDOT is irrelevant to the issues presently before the Court because the experiences predate the Department of State policy changes on September 25, 2012. The testimony is further irrelevant because Ms. Hockenbury was able to obtain a DOS ID, which was the form of ID she requested. Rem.T. (Hockenbury) at 405:10-14, 408:21-24, 414:3-7, 416:6-10. Ms. Hockenbury's testimony is also based extensively on inadmissible hearsay.

692. The testimony of Alice Thompson regarding her observations at PennDOT is irrelevant to the issues presently before the Court because the experiences predate the Department of State policy changes on September 25, 2012. The testimony of Ms. Thompson is unreliable because she had access to, but did not initially offer, a form that Ms. Hockenbury needed at the time and was not able to identify the people with whom she spoke at the DLC. *Id.* at 412:9-21, 435:13-18, 445:8-446:9. The testimony of Ms. Thompson regarding Ms. Hockenbury is cumulative. *Id.* at 426:18-438:24. Ms. Thompson's testimony is also based extensively on inadmissible hearsay.

693. The testimony of Slava Lipowicz regarding her and her mother's, Eugenia Zwier, experiences at PennDOT is irrelevant to the issues presently before the Court because the experiences predate the Department of State policy changes on September 25, 2012. Rem.T. (Lipowicz) at 450:1-23. The testimony is further irrelevant because Ms. Zwier was able to obtain a photo ID. *Id.* at 453:10-12. Ms. Zwier is an older, disabled adult in Pennsylvania who was able to get to a DLC to obtain photo ID. Ms. Lipowicz testified that her mother would be able to sign an affidavit that she is physically unable to get to her polling place.<sup>9</sup> *Id.* at 449:3-10.

---

<sup>9</sup> There may have been some confusion about some aspect of this testimony. *See* Rem.T. (Lipowicz) at 449:13-17.

694. The testimony of Daniel Curry regarding his observations at PennDOT locations is irrelevant to the issues presently before the Court because the experiences predate the Department of State policy changes on September 25, 2012. Rem.T. (Curry) at 457:15-461:15, 463:19-464:1. The testimony of Mr. Curry is further irrelevant because he is not a resident of Pennsylvania and, therefore, is not qualified to vote in Pennsylvania. *Id.* at 456:13-19. Mr. Curry's testimony is also based extensively on inadmissible hearsay.

695. The testimony of Ashindi Maxton regarding her observations at PennDOT locations is irrelevant to the issues presently before the Court because the experiences predate the Department of State policy changes on September 25, 2012. Rem.T. (Maxton) at 470:2-474:5. Her testimony regarding James Sharp is irrelevant because Mr. Sharp obtained photo ID. *Id.* at 472:16-473:22. Ms. Maxton's testimony regarding Harry Ricketts, Jr. and Joyce Early is speculative. *Id.* at 474:2-475:8. The testimony of Ms. Maxton is further irrelevant because she is not a resident of Pennsylvania and, therefore, is not qualified to vote in Pennsylvania, and because she is not familiar with the voter registration process in Pennsylvania. *Id.* at 469:9-15, 477:13-20. Ms. Maxton's testimony is also based extensively on inadmissible hearsay.

696. Leila Stones's testimony revealed that she is able to get to a DLC. Pre.T. (Stones) at 177:21-178:3.


Dated: August 30, 2013

Respectfully submitted,

KATHLEEN G. KANE  
Attorney General

DRINKER BIDDLE & REATH LLP  
Alfred W. Putnam, Jr.  
D. Alicia Hickok  
Todd N. Hutchison  
One Logan Square, Suite 2000  
Philadelphia, PA 19103  
(215) 988-2700 (telephone)  
(215) 988-2757 (facsimile)  
alfred.putnam@dbr.com  
alicia.hickok@dbr.com  
todd.hutchison@dbr.com

By:

  
TIMOTHY P. KEATING  
Senior Deputy Attorney General  
Office of the Attorney General  
Strawberry Square, 15th Floor  
Harrisburg, PA 17120  
(717) 705-8580  
tkeating@attorneygeneral.gov

Kevin P. Schmidt  
Deputy General Counsel  
Office of General Counsel  
333 Market Street, 17th Floor  
Harrisburg, PA 17101  
(717) 787-9348  
kevschmidt@pa.gov



## PROOF OF SERVICE

I, Timothy Keating, certify that I am this day serving by electronic mail (by agreement of the parties), the foregoing Respondents' Proposed Findings of Fact – Public Version, which service satisfies the requirements of Pa.R.A.P. 121.

Witold J. Walczak, Esq.  
American Civil Liberties Union of Pennsylvania  
313 Atwood Street  
Pittsburgh, PA 15213

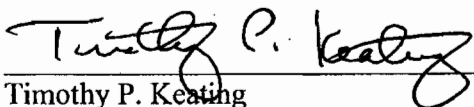
Jennifer R. Clarke, Esq.  
Public Interest Law Center of Philadelphia  
1709 Benjamin Franklin Parkway, 2d Floor  
Philadelphia, PA 19103

David P. Gersch, Esq.  
Dorian Hurley, Esq.  
Arnold & Porter LLP  
555 Twelfth St. NW  
Washington, DC 20004-1206

Marian R. Schneider, Esq.  
Advancement Project  
295 E. Swedesford Road, No. 348  
Wayne, PA 19087

*Attorneys for Petitioners*

Date: August 30, 2013

  
Timothy P. Keating