

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

Viviette Applewhite; Wilola Shinholtser Lee; Gloria Cuttino;	:	
Nadine Marsh; Bea Bookler; Joyce Block; Henrietta Kay	:	
Dickerson; Devra Mirel (“Asher”) Schor; League of Women	:	
Voters of Pennsylvania; National Association for the	:	
Advancement of Colored People, Pennsylvania State	:	
Conference; Homeless Advocacy Project,	:	
	:	
Petitioners/Appellants,	:	
	:	
v.	:	No. 71 MAP 2012
	:	
The Commonwealth of Pennsylvania; Thomas W. Corbett,	:	
in his capacity as Governor; Carol Aichele, in her capacity	:	
as Secretary of the Commonwealth,	:	
	:	
Respondents/Appellees.	:	

**RESPONSE TO SUGGESTION OF MOOTNESS**

Appellants Respond to Appellees’ September 6, 2011 Suggestion of Mootness as follows:

1. PennDOT granted a non-driver photo ID to Appellant Vivette Applewhite after the Commonwealth Court issued the decision now subject to appeal. It did so on what was at least her fourth visit to PennDOT. It did so notwithstanding the fact that she did not have either the required Social Security card or the proof of name change that PennDOT requires of others. *See* Brief of Appellants, dated Aug. 30, 2012, at 11-12 & n.9; Jessica Parks, *Lead plaintiff in Pa. voter ID case gets her photo ID*, THE PHILADELPHIA INQUIRER, Aug. 17, 2012, available at [http://articles.philly.com/2012-08-17/news/33233715\\_1\\_penndot-id-newvoter-identification-law-penndot-center](http://articles.philly.com/2012-08-17/news/33233715_1_penndot-id-newvoter-identification-law-penndot-center).
  
2. This Court has long recognized exceptions to the mootness doctrine even if a particular party’s claim has become moot: “Exceptions to this principle are made where the conduct complained of is capable of repetition yet likely to evade review, where the case

involves issues important to the public interest or where a party will suffer some detriment without the court's decision." *Commonwealth v. Cromwell Twp.*, 32 A.3d 639, 652 (Pa. 2011) (quoting *Pub. Defender's Office v. Venango Cnty. Court of Common Pleas*, 586 Pa. 317, 325, 893 A.2d 1275, 1279-80 (2006)). These exceptions have particular relevance in election matters because of their expedited nature. See *In re Nomination of Valenty*, 43 A.3d 464, 465 (Pa. 2012) (Castille, C.J., dissenting).

3. These exceptions apply to Ms. Applewhite; an appellant who was lucky enough to be able to obtain her identification card after so many attempts and at a time when she still did not have the documents required by PennDOT for other ID applicants. Her story suggests not mootness but a law being implemented inconsistently and unpredictably with only weeks remaining before the general election. See also Jessica Parks, *Pennsylvanians' Path to Voter ID not without Glitches*, THE PHILADELPHIA INQUIRER, September 5, 2012, available at [http://articles.philly.com/2012-09-05/news/33583171\\_1\\_penndot-ids-new-voter-state-id](http://articles.philly.com/2012-09-05/news/33583171_1_penndot-ids-new-voter-state-id).

4. The issue is capable of repetition yet evading review. See generally *In re Stevenson*, 40 A.3d 1212, 1219 (Pa. 2012) (noting that this exception applies with particular force "in the crucible of an election contest" and where the "matter presents a focused, and purely legal, issue"). The willingness of PennDOT to make an exception in one individual's case is hardly a guarantee it will be similarly accommodating to the large numbers of other voters unable to present all the documentation required when applying for a PennDOT ID. If Appellees could moot the challenge of any individual voter by issuing a one-off photo ID, no court would ever hear a challenge to the statute. Cf. *DeJohn v. Temple Univ.*, 537 F.3d 301, 309 (3d Cir. 2008) (declining to find plaintiff's claims moot when the court was "left with no assurance that [the defendant] will not reimplement its . . . policy, absent an injunction, after this litigation has

concluded” and particularly when the defendant “defended and continues to defend not only the constitutionality of its prior . . . policy, but also the need for the former policy”).

5. Cases concerning who will be able to vote or to hold public office are of undisputed importance to the public interest. *See, e.g., Commonwealth ex rel. Kearney v. Rambler*, 32 A.3d 658, 663 (Pa. 2011) (stating that case concerning an individual’s eligibility to serve as Mayor of Wrightsville, York County “appears to implicate [the] exception[] to the mootness doctrine for issues that are of great public importance”). At stake here is the ability to vote of as many as hundreds of thousands of Pennsylvania registered voters. This would be of great importance in any election cycle, and it is especially important in the context of this November’s quadrennial presidential election.

6. The Court should also be wary of any strategic attempts to moot a case through the voluntary cessation of offending conduct. *Cf. Pap’s A.M. v. City of Erie*, 571 Pa. 375, 391, 812 A.2d 591, 600 (2002) (noting “the potential for employing the mootness doctrine to manipulate jurisdiction”); *cf. also Ragsdale v. Turnock*, 841 F.2d 1358, 1365 (7th Cir. 1988) (“We note additionally that cessation of the allegedly illegal conduct by government officials has been treated with more solicitude by the courts than similar action by private parties.”).

7. In any event, it is not necessary for the Court to address this issue at all. Ms. Applewhite is joined in the case by three organizational appellants and seven other individual appellants.

Dated: September 7, 2012

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Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that I am this 7th day of September, 2012, serving the foregoing Response to Suggestion of Mootness, upon the persons and in the manner indicated below, which service satisfies the requirement of Pa. R.A.P. 121:

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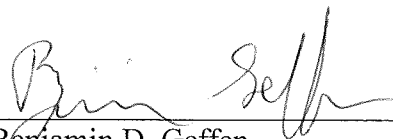
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