

IN THE SUPREME COURT OF PENNSYLVANIA

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DOCKET NO.: 71 MAP 2012

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VIVIETTE APPLEWHITE, ET AL.

Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA

Appellee,

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BRIEF OF *AMICI CURIAE* SENIORLAW CENTER, AARP, PENNSYLVANIA  
ASSOCIATION OF AREA AGENCIES ON AGING, CENTER FOR ADVOCACY FOR  
THE RIGHTS AND INTERESTS OF THE ELDERLY, PENNSYLVANIA ALLIANCE  
FOR RETIRED AMERICANS, THE PENNSYLVANIA HOMECARE ASSOCIATION,  
ELDERNET OF LOWER MERION AND NARBERTH, THE INSTITUTE FOR  
LEADERSHIP EDUCATION, ADVANCEMENT AND DEVELOPMENT,  
INTERCOMMUNITY ACTION, INC. AND JEWISH SOCIAL POLICY ACTION  
NETWORK

IN SUPPORT OF THE APPELLANTS

[Act 18 of 2012 Violates Pennsylvania Constitution by Denying Franchise to  
Older Pennsylvanians]

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Appeal from the Order of the Commonwealth Court, dated August 15, 2012, at No. 330  
MD 2012, denying the Appellant's Application for Preliminary Injunction

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## INTEREST OF *AMICI CURIAE*

Pursuant to Rule 531 of the Pennsylvania Rules of Appellate Procedure, SeniorLAW Center, AARP, Pennsylvania Association of Area Agencies on Aging, Center for Advocacy for the Rights and Interests of the Elderly, Pennsylvania Alliance for Retired Americans, the Pennsylvania Homecare Association, ElderNet of Lower Merion and Narberth, the Institute for Leadership Education, Advancement and Development, Intercommunity Action, Inc., and Jewish Social Policy Action Network (collectively, "*Amici*") respectfully submit this brief as *amicus curiae* in support of the position of the Appellants, seeking judgment declaring unconstitutional the unnecessarily stringent identification requirement in Act 18 of 2012 ("Act 18").

*Amici* and their older clients, members, and constituents all have a strong stake in the outcome of this case and demonstrating the unconstitutionality of Act 18. Each of the *Amicus*<sup>1</sup> is a national, statewide, or local nonprofit organization that serves and protects older Pennsylvanians and the institutions that serve older Pennsylvanians. *Amici* together have many decades of experience serving and protecting the interests of older Pennsylvanians. This brief is submitted to assist the Court in identifying and assessing the substantial burdens on older Pennsylvanians that will be imposed as the result of Act 18. As *Amici* explain herein, older Pennsylvanians are disproportionately and adversely affected by the identification requirement in Act 18 and are at a great risk of losing their franchise.

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<sup>1</sup> *Amici* are identified in greater detail in the Appendix of *Amici Curiae* attached hereto as Schedule A.

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Certificate of Service

## I. INTRODUCTION

Early in his leadership of America's civil rights struggle, Dr. Martin Luther King, Jr. spoke from the steps of the Lincoln Memorial to emphasize the fundamental importance of voting rights: what he called the "sacred right" of suffrage in a democracy. He argued access to the ballot constitutes the foundation of democracy because it safeguards every other right. As Dr. King phrased it: "Give us the ballot, and we will no longer have to worry the federal government about our basic rights." *Id.* By contrast, he warned, "denial of this sacred right [of suffrage] is a tragic betrayal of the highest mandates of our democratic traditions and it is democracy turned upside down."<sup>2</sup>

Pennsylvania's Constitution recognizes the same fundamental tenets of democracy. It declares: "All power is inherent in the people, and all free governments are founded on their authority..." Pa. Const. art 1, § 2. To that end, it guarantees: "elections shall be free and equal, and no power, civil, or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. art 1, § 5. This Court has made clear that elections are "free and equal" *only* "when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial." *Winston v. Moore*, 244 Pa. 447, 457 (1914).

The Commonwealth Court's decision of August 15, 2012 ("Commw. Ct. Dec."), sustaining Act 18 of 2012 ("Act 18") in all respects, produces "democracy turned upside down," despite Dr. King's warning. The Commonwealth Court treated this case involving fundamental and "sacred" rights of individual Pennsylvanians as warranting extraordinary deference to the General Assembly. *Amici* respectfully submit that this was improper, and a "strict scrutiny" analysis instead is appropriate here, such as state courts in Wisconsin and Missouri have applied

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<sup>2</sup> "Give Us the Ballot" Address at the Prayer Pilgrimage for Freedom (May 17, 1957).

in their voter ID cases. See *Weinschenk v. State*, 203 S.W. 3d 201 (Mo.2006); *League of Women Voters of Wisconsin Educ. Network, Inc., v. Walker*, No. 11 CV 4669 (Wis. Cir. Mar. 12, 2012) (unreported) (appeal pending); *Milwaukee Branch of NAACP v. Walker*, No. 11 CV 5492 (Wis. Cir. Mar. 6, 2012) (same). Moreover, *Amici* further submit that Act 18 violates state constitutional standards even under the more deferential standard applied below. For these reasons, as set forth in greater detail below, *Amici* ask this Court to declare that Act 18's identification requirements unconstitutionally infringe the free exercise of the right of suffrage.

The Commonwealth Court also erred when it concluded that Act 18's "provisions . . . are non-discriminatory and apply uniformly to all voters." Commw. Ct. Dec. at 9. On the contrary, Act 18 requires photo ID for some, but not for all voters, and it places an undue burden on many Pennsylvanians, including disproportionate numbers of older voters. Indeed, the August 15 decision specifically acknowledged that Act 18 imposes a "heavier burden" for "the elderly and inform who have difficulty traveling," and for other groups. Commw. Ct. Dec. at 61. However, the Commonwealth Court evaded its duty to determine, as this Court has directed, whether and the extent to which an election regulation "den[ies] the franchise itself, *or make[s] it so difficult as to amount to a denial.*" *Winston*, 244 Pa. at 457 (emphasis added). For many older Pennsylvanians in particular, the burdens imposed by Act 18 will be insurmountable will amount to a denial of the franchise.

## **II. ACT 18'S IDENTIFICATION REQUIREMENT IMPOSES A HEAVY BURDEN ON PENNSYLVANIA'S SENIORS.**

A central premise of Act 18, in all its ever-evolving forms – *i.e.*, as originally enacted, and as subsequently and repeatedly modified by the Commonwealth, via administrative orders whose authority is unclear, whose specifics are vague, and whose future enforcement is uncertain

– is that registered voters currently without photo ID, and who hope to vote in-person in November, must find their way to a PennDOT center to secure a state-issued photo ID.

**A. Pennsylvania's seniors are disproportionately burdened by Act 18's identification requirements because seniors more so than any other demographic are without acceptable identification.**

While the number of people without identification was hotly contested by the parties, either party's estimation demonstrates the extensive impact of Act 18's identification requirements on Pennsylvania seniors and the need for relief in the instant action. Nearly 2 million (1,959,307 or 15.4% of all) Pennsylvanians are age 65<sup>3</sup> or older. This includes 305,676 Pennsylvanians age 85 years or older.<sup>4</sup> Applying this population figure to Judge Simpson's preliminary conclusion on the number of individuals without acceptable identification already demonstrates an alarming baseline: more than 1% (approximately 20,000 seniors age 65 or older) and less than 9% (approximately 175,000 seniors age 65 or older) are without acceptable identification. Commw. Ct. Dec. at 10, note 16.

This baseline, however, significantly underestimates the impact of Act 18's identification requirements on Pennsylvania seniors because seniors are disproportionately without acceptable identification. For example, a 2006 nationwide survey showed that 18% of individuals 65 years or older do not possess a government-issued photo identification while 11% of all voting-age individuals lack such ID.<sup>5</sup>

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<sup>3</sup> *Amici* generally elect to use 65 years or older as a benchmark for assessing the impact of Act 18 on older Pennsylvanians because of the convenience of available U.S. Census Bureau data. The impact of Act 18 discussed herein would be much larger in terms of the numbers and total share of Pennsylvanians affected if the definition of "older" voters also were to include some or all Pennsylvanians between the ages of 50 (or lower) and 65. The Pennsylvania Department of Aging and the federal Older Americans Act use the age of 60 to define "older" adults. Pennsylvanians become eligible for AARP membership at age 50.

<sup>4</sup> U.S. Census Bureau, 2010 U.S. Census, *DP-1, 2010 Demographic Profile Data for Pennsylvania*.

<sup>5</sup> Brennan Center for Justice, *Citizens without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, November 2006, p.3.

Older voters frequently are without the forms of identification that are acceptable under Act 18. Seniors age 65 or older are *more than 10 times more likely than* any other age group to relinquish their driver's licenses voluntarily for medical reasons.<sup>6</sup> More than a fifth (20.5%) of such seniors no longer drive.<sup>7</sup> Employee identification (municipal or otherwise) is even more rarely available to older voters, as 84.3% of Pennsylvanians 65 years or older are out of the labor force.<sup>8</sup> And only about 25% of Americans possess a valid U.S. passport.<sup>9</sup>

Even the special authority for "care facilities" to issue acceptable voter identification will have little impact on Pennsylvania seniors. These facilities are not in the business and have no legal obligation<sup>10</sup> to issue such identification. In fact, privacy rights, including those of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), the Nursing Home

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It is also meaningful to highlight the study's finding with regard to the impact on other population groups as the study also found that 25% of voting-age African Americans, 16% of voting-age Hispanics and 11% of voting-age individuals generally do not possess a photo identification. In addition, voting-age citizens earning less than \$35,000 are *more than twice as likely* to lack photo identification compared to voting-age citizens earning more than \$35,000. *Id.*

<sup>6</sup> Pa. Dep't of Transportation, License Control Division, Report on License Relinquishment, *Drivers Licenses: Statistics and Research on Relinquishing*, (data provided by Pa. Dep't of Aging to Amici upon request).

<sup>7</sup> AARP Public Policy Institute, *How the Travel Patterns of Older Adults are Changing*, 2011, p.4.

<sup>8</sup> U.S. Census Bureau, 2010 American Community Survey, *S0103: Population 65 Years and Over in Pennsylvania*.

<sup>9</sup> U.S. Dep't of State, *Passport Statistics*, available at [http://travel.state.gov/passport/ppi/stats/stats\\_890.html](http://travel.state.gov/passport/ppi/stats/stats_890.html) (visited on July 13, 2012).

<sup>10</sup> Letters from Pa. Department of Public Welfare and Pa. Department of Health to all personal care home and nursing home operators relating to Voter ID Law, (attached hereto as Schedule B).

Although the DPW letter attempts to caution that facilities may have to provide voter identification as a form of assistance with Activities of Daily Living ("ADL") and Instrumental Activities of Daily Living ("IADL"), the applicable regulations do not identify voting in its definitions of ADL or IADL as activities with which assistance must be provided. 55 Pa. Code § 2600.4



Reform Act,<sup>11</sup> and attendant "Patient Bill of Rights," as well as the recognition that care facilities are an individual's home are all factors against identifying residents to third parties.

By contrast, Act 18 does not permit voters to use the government-issued identification common and essential to seniors' daily lives as acceptable voter identification: *i.e.*, ID cards for (i) Social Security, the major source of income for older Americans (and sole income for 19% of older Americans),<sup>12</sup> (ii) Medicare (the national health care plan available to older Americans 65 years or older and disabled individuals),<sup>13</sup> (iii) Medicaid (the health and long-term care coverage program for low-income individuals, including seniors, that is jointly financed by states and the federal government),<sup>14</sup> (iv) PACE and PACENet (Pennsylvania's pharmaceutical assistance program for seniors 65 and older of low and modest incomes),<sup>15</sup> and (v) U.S. Department of Veterans Affairs medical programs, used by 470,000 Pennsylvania veterans 65 years or older.<sup>16</sup>

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<sup>11</sup> 42 C.F.R. § 483.10 (2011).

<sup>12</sup> National Academy of Social Insurance, *The Role of Benefits in Income and Poverty*, available at <http://www.nasi.org/learn/socialsecurity/benefits-role> (visited on July 13, 2012). About nine in 10 Americans aged 65 and older received Social Security in 2009. For two out of three of those beneficiaries (64 percent), Social Security was more than half their total income.

<sup>13</sup> U.S. Dep't of Health & Human Resources, *Medicare Eligibility Tool*, [Medicare.gov](http://www.medicare.gov/MedicareEligibility/home.asp?dest=NAV%7CHome%7CGeneralEnrollment%7CAboutCard&version=default&browser=IE%7C9%7CWindows+7&language=English), available at: <http://www.medicare.gov/MedicareEligibility/home.asp?dest=NAV%7CHome%7CGeneralEnrollment%7CAboutCard&version=default&browser=IE%7C9%7CWindows+7&language=English> (visited on July 13, 2012).

<sup>14</sup> In Pennsylvania, Medicaid cards are called ACCESS cards and issued by the Pennsylvania Department of Public Welfare. <http://www.dpw.state.pa.us/foradults/healthcaremedicalassistance/medicalassistanceusingtheaccesscardtoobtainmedicalservices/index.htm>.

<sup>15</sup> Pa. Legislative Budget and Finance Committee, *Pennsylvania Lottery Funding of Programs and Services for Older Pennsylvanians*, February 2012, p.S-4 (for fiscal year, 2010-2011, 145, 000 individuals were enrolled in PACE, and 215,000 individuals were enrolled in PACENet).

<sup>16</sup> U.S. Census Bureau, 2010 American Community Survey, *S0103: Population 65 Years and Over in Pennsylvania*. Many veterans only have their Veterans Identification Card as ID. Tom Murse, *Veterans IDs problem with Voter Measure*, Lancaster Online: An Edition of the Intelligencer Journal, May 12, 2012 available at [http://lancasteronline.com/article/local/603592\\_Veteran-IDs-problem-with-voter-measure.html](http://lancasteronline.com/article/local/603592_Veteran-IDs-problem-with-voter-measure.html) (visited on July 13, 2012). At least 1,400 of the civilian veterans residing in Pennsylvania are estimated to be homeless, a status that exacerbates every other challenge to obtaining acceptable voter ID. Tom Barnes, *State Urged to Help Homeless Veterans as their Ranks Grow*, Pittsburgh Post-Gazette, May 9, 2012

These cards do not designate an expiration date or contain (except for the VA ID Card) a photo of the cardholder, but still should be able to be used for identity verification purposes on Election Day by older Pennsylvanians. For instance, Act 18 establishes that social security identification numbers are used to verify the identity of absentee voters. *See* section IV.A, *infra* (the same identification number matching process used for absentee voters must be used for in-person, provisional voters under the "Free and Equal" Elections clause of the Pennsylvania Constitution). The same matching process could be and should be employed to verify the identity of absentee and in-person, provisional voters using identification numbers for any of these older-adult orientated programs, even assuming that such measures were warranted by a nonexistent history of fraud and the absence of any likelihood of fraud in the future.

Given the Commonwealth's failure to show any actual – as opposed to symbolic, or theoretical – benefit attributable to photo ID, *Amici* respectfully submit that Act 18's unwarranted imposition of barriers to the franchise – both in absolute and relative terms – is especially egregious in its overall impact on older voters.

**B. Pennsylvania's seniors face a disproportionate risk of losing their franchise due to serious mobility- and access-related challenges impeding their ability to visit a PennDOT center.**

As the Court below recognized, Act 18 imposes a "heavier burden" on Pennsylvania's seniors. Commw. Ct. Dec. at 61. This "heavier burden" is the result of numerous challenges that Pennsylvania's seniors without acceptable identification will have to overcome to obtain acceptable voter identification from the Commonwealth. As a result of these compounding challenges, it should be plain that Act 18 imposes burdens on a significant minority of

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available at <http://www.post-gazette.com/stories/local/state/state-urged-to-help-homeless-veterans-as-their-ranks-grow-85945/#ixzz20XQpTwvd> (visited on July 13, 2012).

Pennsylvania voters that cannot be justified as rationally connected with the Commonwealth's articulated goal of "reducing" or "preventing" in-person vote fraud.

*Disability Challenges.* More than a third (35.9%) of non-institutionalized Pennsylvanians 65 years or older – approximately 677,300 in all – are disabled in one form or another.<sup>17</sup> Moreover, disability rates increase with age: 56% of persons over 80 live with a severe disability.<sup>18</sup>

*Access to a Vehicle.* Of approximately 2.6 million older Pennsylvanians age 60 or older, 11% – well over a quarter million – live in a household without access to a vehicle.<sup>19</sup> The poorest seniors face transportation challenges roughly three times as great: more than a third (37%) of older Pennsylvanians with incomes below the poverty level live in a household without a vehicle.<sup>20</sup>

*Financial Challenges.* Financial challenges further restrict many older Pennsylvanians' mobility, and thus impedes their ability to overcome disability-related limits on access to means of transportation. Roughly a quarter of Pennsylvanians 65 years or older (whether they rent or are paying a mortgage) spend *fifty* percent or more of their income just on housing.<sup>21</sup> Overall,

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<sup>17</sup> U.S. Census Bureau, 2010 American Community Survey, *S0103: Population 65 Years and Over in Pennsylvania*.

<sup>18</sup> U.S. Administration on Aging, *A Profile of Older Americans: 2011 – Disability and Activity Limitations*, available at [http://www.aoa.gov/AOARoot/Aging\\_Statistics/Profile/2011/16.aspx](http://www.aoa.gov/AOARoot/Aging_Statistics/Profile/2011/16.aspx) (visited on July 13, 2012).

<sup>19</sup> U.S. Census Bureau, 2010 American Community Survey, available from Steven Ruggles, *et. al*, Integrated Public Use Microdata Series: Version 5.0, Minneapolis: University of Minnesota, 2010, <http://usa.ipums.org/usa/index.shtml>.

<sup>20</sup> *Id.*

<sup>21</sup> Approximately half of Pennsylvanians 65 years or older spend at least thirty percent or more of their income on housing. U.S. Census Bureau, 2010 American Community Survey, *S0103: Population 65 Years and Over in Pennsylvania*; AARP Public Policy Institute, *Pennsylvania State Housing Profile 2011*.

11.9% of Pennsylvanians 65 years or older live at or below 150% of the poverty line.<sup>22</sup> A 2009 study by the AARP Public Policy Institute found that median household income for Pennsylvanians 65 years or older ranks 40<sup>th</sup> among all U.S. states.<sup>23</sup>

*Rural Challenges.* Due to a lack of public transportation, fewer and more expensive private transport options, and the challenges of sheer distance and isolation, many older Pennsylvanians in rural areas of Pennsylvania face even greater obstacles in meeting the new stringent standards of Act 18 than their counterparts residing in suburban or urban areas. Pennsylvania has one of the largest rural populations in the United States. Of Pennsylvania's 67 counties, 48 are rural as determined by a population density of less than 284 people per square mile.<sup>24</sup> Those 48 counties are home to 3.5 million Pennsylvanians, 17% of whom – or approximately 595,000 – are 65 years or older.<sup>25</sup>

*Distance to PennDOT Centers.* For older Pennsylvanians, constraints due to geographic isolation, limited mobility, physical disability and low income loom even greater as barriers to exercising the franchise due to the relative remoteness of PennDOT centers, where voters must go to seek a photo ID. Travelling to a PennDOT center at least once to obtain acceptable photo ID will be a substantial burden for many Pennsylvanians, and especially for older voters; each additional trip required will exacerbate the extent to which lack of mobility prevents older

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<sup>22</sup> U.S. Census Bureau, 2010 American Community Survey, *S0103: Population 65 Years and Over in Pennsylvania*.

<sup>23</sup> AARP Public Policy Institute, *Across the States: Profiles of Long-Term Care and Independent Living*, Ari Houser et al., 8<sup>th</sup> ed. (2009). The amount of such income was \$28,937.

<sup>24</sup> Pa. Department of Aging, *Draft State Plan on Aging 2012-16*, p. 7, available at [http://www.portal.state.pa.us/portal/server.pt/document/1260205/draft\\_state\\_plan\\_\\_pdf](http://www.portal.state.pa.us/portal/server.pt/document/1260205/draft_state_plan__pdf).

<sup>25</sup> The Center for Rural Pennsylvania, *Demographics – About Rural PA*, available at [http://www.rural.palegislature.us/demographics\\_about\\_rural\\_pa.html](http://www.rural.palegislature.us/demographics_about_rural_pa.html) (visited on July 13, 2012) (The Center for Rural Pennsylvania is a legislative agency of the Pennsylvania General Assembly).

Pennsylvanians from exercising their sacred right of suffrage. Trips to PennDOT centers generally will be far more difficult than a trip to vote in-person because of the limited number and hours of the PennDOT centers. Pennsylvania has more than 9,000 polling places statewide<sup>26</sup> each serving a *maximum of 1,200 registered electors*. 25 P.S. § 2702. In stark contrast, there are only 71 PennDOT centers statewide able to issue photo ID, only 50 of which are open at least 4 days per week.<sup>27</sup> The 71 centers each must serve an *average of 176,351 Pennsylvanians*, more than 14 times as many persons as each polling place. This translates into much greater travel distances, and much long longer lines upon arrival. Nearly one-quarter of all Pennsylvanians (24% or roughly 2,273,960) live more than 10 linear miles from a PennDOT center; and 21 of those centers may be open only two or three two days per week.<sup>28</sup> Nine Pennsylvania counties are completely without a state office with the ability to issue photo ID to registered voters.<sup>29</sup>

*Information Challenges.* A key – and highly questionable – premise of Act 18 and the decision of the Commonwealth Court is that voters without acceptable voter identification, including an estimated 352,675 eligible voters 65 years or older, will learn of the new identification requirements in Act 18 in time to obtain photo ID and understand the steps they need to take. Yet, poverty, language barriers, limited education and lack of access to information technology will isolate many older Pennsylvanians (especially members of minority groups), and

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<sup>26</sup> Pa. Legislative Budget and Finance Committee, *Feasibility of Limiting Polling Places to Handicap Accessible Schools and Government Buildings*, February 2008, p.2.

<sup>27</sup> Pa. Dep't of Transportation, Driver & Vehicle Services, *Locations Info Center*, <https://www.dot33.state.pa.us/locator/locator.jsp#top?20120713102533820=20120713102533820> (For Step 1, select Yes for "(C.) Search the entire state?"; for Step 2, select "Photo ID Card" and "Photo ID Card Duplicate/Replacement") (visited on July 13, 2012).

<sup>28</sup> Brennan Center for Justice, *The Challenge of Obtaining Voter Identification*, Keesha Gaskins et al., July 2012.

<sup>29</sup> These counties are Cameron, Clinton, Forest, Fulton, Juniata, Montour, Perry, Sullivan, and Union counties.

hinder their ability to learn of the new identification requirements. In particular, education may be an issue for the 21.7% of Pennsylvanians 65 years or older – approximately 426,500 – with less than a high school degree.<sup>30</sup>

The foreseeable, serious, cumulative impact of these mobility- and access-related challenges for many Pennsylvania's seniors demonstrates that for these voters, the changes wrought by Act 18 are anything but "minor" as blithely asserted by the Commonwealth Court. Commw. Ct. Dec. at 5. Moreover, there is no basis for that Court's further conclusion – in particular with respect to Pennsylvania older voters of low income, with various mobility challenges – that the burden of compliance with Act 18 is no greater than that of voting itself. On the contrary, even one trip to a remote PennDOT center is virtually certain to be far more onerous than appearing at a nearby polling place. The likely necessity of multiple trips to PennDOT centers, each of which is responsible for many more voters than a polling place, and most of which have limited hours, makes the task of securing photo ID all the more burdensome, especially for older Pennsylvanians.

**C. Older Pennsylvanians face additional barriers to voting at the polls under the provisions of Act 18.**

Act 18's identification requirements present additional legal barriers for older voters desiring to vote on Election Day. As set forth in Schedule B, the Commonwealth instructed the special nongovernmental institutions authorized to issue acceptable voter identification on preparing their identification: issuing supposedly secure photo identification by "attach[ing]" a photo on 8 ½ x 11 piece of over-the-counter printer paper that may or may not be printed on the

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<sup>30</sup> U.S. Census Bureau, 2010 American Community Survey, *S0103: Population 65 Years and Over in Pennsylvania*.

facility's letterhead.<sup>31</sup> Undefined in any formal or informal instructions, "attach" can be interpreted by facilities to include scotch-taping or stapling photos to the front of pieces of printer paper as more technologically advanced solutions will undoubtedly be cost prohibitive. Any notion that these forms of identification would be free from challenge by judges of election is absurd and unreasonable. Pennsylvania's seniors will undoubtedly be the most affected by the fury of legal challenges over these forms of identification.

Moreover, the kitchen-table appearance of these forms of nongovernmental identification will be compounded because election officials cannot possibly know every single university, personal care home, assisted living residence and long-term nursing facilities in the Commonwealth. Optimistically, election officials will consult the 66-page list of all such institutions<sup>32</sup> each time a voter presents a "Foxdale Village" photo ID or other such nongovernmental institution to make sure institution is indeed authorized to issue acceptable voter identification. However, the rush of a presidential election and the limited training of election officials will undoubtedly lead to even more challenges to voters' identification.

In the event a voter's identification is challenged (or a voter without acceptable identification votes provisionally), the voter will have to demonstrate indigence and the inability to obtain identification in an uncertain legal proceeding. There is no reasonable expectation that judges of elections are legally trained to determine whether an individual is indigent, particularly in the complete absence of any definition or standard in Act 18. Therefore, in place of uniform

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<sup>31</sup> Letters from Pa. Department of Public Welfare and Pa. Department of Health to all personal care home and nursing home operators, *supra*.

<sup>32</sup> Pa. Department of State, VotesPA, available at: <http://www.votespa.com/portal/server.pt?open=514&objID=1174192&parentname=ObjMgr&parentid=1&mode=2>.

and equal application of the Election Code, the judges of elections and County Board of Elections will be applying widely disparate rules for provisional balloting.

**III. THE COURT BELOW ERRED BY CONCLUDING THERE WOULD BE OTHER RELIEF FOR THOSE BURDENED BY ACT 18.**

Even though the Commonwealth Court concluded that many would be presented with hardships by Act 18's identification requirements, the lower court erroneously relied on three very limited measures as providing relief to those affected by Act 18 – specifically, absentee voting, provisional voting and judicial relief. Commw. Ct. Dec. at 11, 65-68. However, for the reasons that follow, these measures will not provide the relief expected by the lower court. To the contrary, a preliminary injunction is necessary to ensure that the broad swaths of people affected – particularly Pennsylvania's seniors – are not disenfranchised.

**A. Absentee voting is only available to those that demonstrate a special eligibility to voting by absentee ballot.**

Under Pennsylvania law and unlike most other jurisdictions, absentee voting is not generally available as an option for voters wishing to vote early or simply avoid the rush on Election Day.<sup>33</sup> Absentee voting is restricted to those that qualify to vote on the basis of one of a few different statutorily-specified justifications, i.e. being out of the county on election day on business and either illness or disability. If voters do not qualify, then they must vote in person. Voting by absentee when one does not qualify for an absentee ballot would be a violation of the Election Code. 25 P.S. § 3146.1.

These restrictions in the availability of absentee balloting – being out of the county on election day on business or being either ill or disabled – preclude absentee ballots from offering

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<sup>33</sup> In this regard, Act 18 is a significantly heavier burden for Pennsylvania's seniors than the Indiana photo ID law reviewed by the U.S. Supreme Court in *Crawford*, under which all Indiana seniors could vote by absentee ballot without restriction.



any relief for voters unable to obtain acceptable in-person voter identification.<sup>34</sup> Out of the county on election day is not an option for those mobility-challenged and unable to reach a PennDOT center. Also, illnesses and disabilities will present much greater challenges for travelling to a PennDOT center than a voter's polling place because of the respective proximity of each. In section II.B, *Amici* addressed above the remarkably disparate proximities of Pennsylvania's 71 PennDOT centers serving an average of 176,351 Pennsylvanians and Pennsylvania's more than 9,000 polling places statewide serving a maximum of 1,200 registered electors. It follows from the disparate proximity of PennDOT centers and polling places that many seniors will be too infirm to travel to a PennDOT center but can manage a single trip to his or her polling place, particularly since the County Board of Elections have endeavored to place polling places as conveniently as possible for Pennsylvania's vulnerable seniors – including inside senior living communities. There is simply no basis for absentee voting to be accepted as a panacea for the ills created by Act 18's identification requirements.

To our knowledge as advocates for seniors and/or members of the nonpartisan Pennsylvania Voter ID Coalition, the Department of State has not issued any recommendation or directive to waive the strict statutory restrictions on issuing absentee ballots. In fact, on the same day Judge Simpson issued his decision denying Appellant's relief to enjoin Act 18, the Commonwealth abandoned plans to expedite the absentee ballot application process, shutting down the online absentee application tool for the November election and the opportunity to register online to vote.<sup>35</sup>

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<sup>34</sup> This, of course, merely side-steps the absurd requirement that in-person voters are subject to a more difficult standard for verifying their identity than absentee voters.

<sup>35</sup> Amy Worden, *Pa. Drops Plans For 2 Online Initiatives To Boost Voting*, *Philadelphia Inquirer*, August 18, 2012, [http://articles.philly.com/2012-08-18/news/33249252\\_1\\_absentee-ballots-voter-id-requirements-county-elections-officials..](http://articles.philly.com/2012-08-18/news/33249252_1_absentee-ballots-voter-id-requirements-county-elections-officials..)

**B. Provisional voting also does not offer voters any relief from the burdens of Act 18's identification requirements.**

Provisional voting is not a remedy for those Pennsylvania voters who do not have photo ID at the time of the election (as opposed to those who simply forget to bring it to the polls). A provisional vote is a conditional vote. It is not counted unless specific additional events occur and the voter takes additional steps. As discussed in detail in section IV.A, *infra*, an in-person voter who does not possess acceptable photo identification must satisfy arbitrarily more difficult obstacles: a second trip or effort to vote, this time to the office of the County Board of Elections, demonstrate "indigen[ce]" (an undefined term in Act 18), and demonstrate that he or she cannot obtain identification without payment of a fee. Act 18, § 1, 3, 4, and 5. Without any clear guidance on the thresholds for these two burdens of proof, there is absolutely no assurance that any provisional voter without acceptable voter identification would have their vote counted even if they go to the trouble of the trip to the Board of Elections. Such dubious standards will undoubtedly have a substantial chilling effect on provisional balloting and voter turnout.

The second trip to the County Board of Elections is, of course, another substantial burden for mobility- and access-restricted seniors in Pennsylvania. *Amici* addressed above in section II.B the burdens that seniors faced when forced to travel to a PennDOT center to obtain identification. The same burdens will preclude many seniors from making a second trip to the Boards of Elections.

**C. Judicial relief is not the solution that the Commonwealth Court envisioned and risk overwhelming the election courts.**

Finally, the court below also incorrectly points to "judicial relief" as a potential form of relief for those most heavily burdened by Act 18. Commw. Ct. Dec. at 67-68. Expecting individual voters, particularly those who are elderly, frail or disabled, to pursue individual legal actions to have their vote counted is simply unrealistic and an unduly burdensome proposed

solution to the disproportionate and unconstitutional impact and burdens imposed on these voters. *See* Section II.B, *supra* (relating to the numerous obstacles that will preclude many seniors from travelling to a PennDOT center).

Moreover, there is no judicial relief to override the identification requirements of Act 18. The Commonwealth Court cites to 25 P.S. § 3046 but such provision only permits the election court to issue orders to allow provisional balloting, conditional votes that are unlikely to be counted. It does not authorize the counting of these conditional votes.

Judicial relief is a proposed solution that underscores the problem: that Act 18 will indeed lead to a myriad of legal challenges that will slow down election officials at the polling place and overwhelm the election courts with assertions of the right to vote.

**IV. ACT 18'S IDENTIFICATION REQUIREMENTS IMPOSE IRRATIONAL DOUBLE STANDARDS FOR VOTERS AND THUS VIOLATE THE STATE CONSTITUTIONAL GUARANTEE OF "FREE AND EQUAL" ELECTIONS UNDER ANY LEVEL OF SCRUTINY.**

Pennsylvania's Constitution guarantees that elections must be "free and equal" and that "no power, civil, or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. art I, § 5. For elections to be "free and equal," "every voter [must have] the same right as any other voter" and the "inconveniences [of the election regulation must] bear upon all in the same way under similar circumstances." *Winston v. Moore*, 244 Pa. at 457.

The burdens (or "inconveniences") created by Act 18's identification requirements quite simply do not bear upon all voters in the same way under similar circumstances. The definition of "proof of identification" itself has different meanings for different voters and establishes special standing for only certain nongovernmental institutions. These inequities certainly cannot satisfy "strict scrutiny," which as Appellants demonstrate, is the standard that should apply in this case. However, even under the lower standard of review embraced by the Commonwealth Court, the Commonwealth can offer no rational justification to substantiate these classifications.

**A. Absentee voters are favored over all other voters, particularly voters who cast provisional ballots.**

All voters – whether they vote in-person or by absentee ballot – are asked to verify their identity prior to voting. However, Act 18 establishes dramatically different methods to verify the identity of absentee voters and in-person voters – the method for absentee voters being substantially less burdensome than the method for in-person voters. Act 18, §§ 1, 4, and 5. Absentee voters verify their identity by an identification number matching process: they supply either their driver's license number or the last four digits of their social security number when they request an absentee ballot, and election officials then match the number provided with the number contained in government records associated with the voter. *Id.*

The same identification number matching process employed for absentee voters easily could be employed for provisional in-person voters.<sup>36</sup> An in-person voter who does not have acceptable photo identification would be given a provisional ballot and form affidavit to submit the same driver's license number and/or last four digits of their social security number, and election officials could then match the number provided with the number contained in government records associated with the voter. As this identification number matching process more than adequately verifies the identity of absentee voters, it can also verify the identity of in-person voters submitting a provisional ballot.

*Importantly, verifying the identity of an absentee or provisional voter after the ballot is cast represents the fundamental difference between the voting process and any other daily activity that requires photo identification, such as airport security. A voter can be allowed to vote absentee or provisionally with their vote automatically counted on the condition that their*

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<sup>36</sup> This is not to suggest that any of Act 18's identity verification measures are necessary for absentee or in-person voters as there is no meaningful history of voter impersonation fraud in the Commonwealth.

identity is verified after the ballot is cast. In contrast, an airport traveller's identity must be verified before boarding the plane.

Instead of this simple, convenient identification number matching process that would ensure that all voters are treated equally, Act 18 imposes arbitrary additional burdens on the in-person voter. In-person voters must have or obtain acceptable photo identification in order to vote. *Id.* If an in-person voter does not have acceptable photo identification, the voter must submit a provisional ballot that is only counted if he or she makes a second trip to vote, this time to the office of the County Board of Elections. At the Board of Elections, the voter still must present acceptable photo identification or otherwise, demonstrate that he or she is "indigent" and that he or she cannot obtain identification without payment of a fee. Act 18, § 1, 3, 4, and 5. There is simply no rationale to impose these additional, *arbitrary* burdens on provisional ballot voters. *Thus, the Commonwealth must employ the same identification number matching process for absentee voters and in-person, provisional voters to meet the standards of the Pennsylvania Constitution.*

**B. Certain nongovernmental institutions and the voters associated therewith are favored over other institutions and voters.**

The rights of absentee voters versus provisional voters is not the only divergence in Act 18 that defies reason. Act 18 also differentiates among nongovernmental institutions by allowing for special treatment – the right to issue acceptable voter identification – to universities, personal care homes, assisted living residences and long-term nursing facilities. Act 18, §§ 1 and 3. Permitting these, and only these, favored nongovernmental institutions authority to issue acceptable voter identification arbitrarily differentiates among nongovernmental institutions in two fatal respects. The effect is not only special treatment for those institutions but also special

treatment for voters associated with such institutions who have unique and more convenient access to acceptable voter identification.

First, Act 18 arbitrarily restricts which forms of employee identification are acceptable for voting. Prior to Act 18, photo identification issued by any private sector employee to its employees was acceptable voter identification. Act 18 restricts that authority to issue acceptable photo identification to the four categories of preferred institutions. There is no asserted justification – nor can there be – for why the other forms of private employee identification are no longer acceptable while these limited forms of employee identification are acceptable. *Thus, the Commonwealth must continue to accept photo identification issued by any private sector employee to its employees as acceptable voter identification.*

Second, the definition of "care facility" in Act 18 – personal care homes, assisted living residences, and long-term nursing facilities – arbitrarily differentiates among state-licensed facilities. Act 18, § 3. There are numerous other facilities licensed by the Department of Aging (i.e., older adult daily living centers), the Department of Public Welfare (i.e., adult training facilities and family centers), the Department of Health (i.e. hospitals, outpatient facilities, and drug and alcohol treatment facilities), and the Department of Insurance (i.e., continuing care retirement communities). There is no asserted justification – nor can there be – for the classification among all of these state-licensed facilities and the voters associated with each. *Thus, the Commonwealth must accept photo identification issued by all state-licensed facilities as acceptable voter identification.*

This arbitrary distinction among state-licensed facilities is even more irrational when applied to the many senior living communities that offer different levels of care in different parts of the same complex. For example, one senior living community may offer unlicensed

independent living units in one wing, adult day care in another wing, and personal care in a third wing. Under Act 18, the personal care home in the third wing qualifies for special treatment but the other two wings in the same complex do not. Nonetheless, it would be the same complex issuing such identification (if any is issued at all) to all of the seniors in the community.

**C. The residency documentation requirements for the DOS ID are an arbitrary burden serving no purpose under Act 18.**

Commonwealth witnesses testified at trial that the Department of State intends to offer special photo identification that will be valid-for-voting only. At the outset, it should be clear that this new identification procedure is a transparent effort to rescue Act 18 from the inevitable conclusion that for voters without a birth certificate, Act 18 undeniably and unavoidably denies them their right to vote. Nonetheless, this new identification procedure still imposes an arbitrary and indefensible burden on the right to vote in the form of requiring residency documentation.

The only ostensible purpose for Act 18's identification requirements is *identity verification*. House J., June 21, 2011, p.1359 (Rep. Cutler) and p. 1362 (Rep. Metcalfe). Moreover, Act 18 requires voter identification include just (i) name, (ii) photo, and (iii) expiration date; it does not require an address. Act 18, § 1.

There is no rational reason to require DOS IDs to include an address when it is not required for any other voter, particularly when it presents a significant hardship to older Pennsylvanians, who are frequently no longer the head of their own household<sup>37</sup> and therefore will not have residency documentation in their own name. *Thus, the Commonwealth must eliminate the residency documentation requirements for DOS IDs.*

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<sup>37</sup> According to the 2010 American Community Survey, there are approximately 188,700 Pennsylvanians 65 years or older who are no longer heads of their own household. U.S. Census Bureau, *S0103: Population 65 Years and Over in Pennsylvania*.

**V. CONCLUSION**

As Appellant Bea Bookler testified in the hearing below about complying with Act 18's photo ID requirements, for many seniors, "It's too hard." Comm. Ct. Transcript 7/30/12 Volume IV p. 959. The Commonwealth Court essentially agreed, recognizing that "the elderly and inform who have difficulty traveling" face a "heavier burden" to comply with Act 18. Commw. Ct. Dec. at 61. The result of Act 18 is that for most elderly voters without photo ID their right to vote is substantially burdened and they will have substantial trouble complying with its requirements.

For the many reasons set forth above, the photo identification requirements in Act 18 will make exercising the franchise "so difficult as to amount to a denial" for many other older Pennsylvanians. Act 18 is therefore an unconstitutional exercise of the civil power in that it interferes with the free exercise of the right of suffrage and violates the constitutional guarantee of free and equal elections. *Amici* respectfully request that this Court enjoin enforcement of Act 18 to preserve the "sacred right" of suffrage for all Pennsylvanians, including Appellants.

Dated: August 30, 2012

Respectfully submitted,



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## TABLE OF CITATIONS

### **Pennsylvania Constitution**

Pa. Const. art 1, § 2

Pa. Const. art 1, § 5

### **Statutes, Regulations and Legislative History**

Act 18 of 2012

25 P.S. § 3046

25 P.S. § 3146.1

House Journal, June 21, 2011

55 Pa. Code § 2600.4

42 C.F.R. § 483.10 (2011).

### **Federal and State Cases**

*League of Women Voters of Wisconsin Educ. Network, Inc., v. Walker*, No. 11 CV 4669 (Wis. Cir. Mar. 12, 2012) (unreported) (appeal pending)

*Milwaukee Branch of NAACP v. Walker*, No. 11 CV 5492 (Wis. Cir. Mar. 6, 2012)

*Winston v. Moore*, 244 Pa. 447 (1914)

*Weinschenk v. State*, 203 S.W. 3d 201 (Mo.2006)

### **Federal Government Studies and Resources**

U.S. Census Bureau, 2010 U.S. Census, *DP-1, 2010 Demographic Profile Data for Pennsylvania*

U.S. Census Bureau, 2010 American Community Survey, *S0103: Population 65 Years and Over in Pennsylvania*

U.S. Census Bureau, 2010 American Community Survey, available from Steven Ruggles, et. al, Integrated Public Use Microdata Series: Version 5.0, Minneapolis: University of Minnesota, 2010, <http://usa.ipums.org/usa/index.shtml>

U.S. Administration on Aging, *A Profile of Older Americans: 2011 – Disability and Activity Limitations*, available at [http://www.aoa.gov/AOARoot/Aging\\_Statistics/Profile/2011/16.aspx](http://www.aoa.gov/AOARoot/Aging_Statistics/Profile/2011/16.aspx) (visited on July 13, 2012)

U.S. Dep't of Health & Human Resources, *Medicare Eligibility Tool*, <http://www.medicare.gov/MedicareEligibility/home.asp?dest=NAV%7CHome%7CGeneralEnrollment%7CAboutCard&version=default&browser=IE%7C9%7CWindows+7&language=English> (visited on July 13, 2012)

U.S. Dep't of State, *Passport Statistics*, available at [http://travel.state.gov/passport/ppi/stats/stats\\_890.html](http://travel.state.gov/passport/ppi/stats/stats_890.html) (visited on July 13, 2012)

### **Commonwealth of Pennsylvania Studies and Resources**

Letters from Pa. Department of Public Welfare and Pa. Department of Health to all personal care home and nursing home operators relating to Voter ID Law (also attached as Schedule B)

Pa. Dep't of Aging, *Draft State Plan on Aging 2012-16*, available at [http://www.portal.state.pa.us/portal/server.pt/document/1260205/draft\\_state\\_plan\\_\\_pdf](http://www.portal.state.pa.us/portal/server.pt/document/1260205/draft_state_plan__pdf)

Pa. Dep't of State, VotesPA, available at: <http://www.votespa.com/portal/server.pt?open=514&objID=1174192&parentname=ObjMgr&parentid=1&mode=2>

Pa. Dep't of Transportation, License Control Division, Report on License Relinquishment, *Drivers Licenses: Statistics and Research on Relinquishing*, (data provided by Pa. Dep't of Aging to *Amici* upon request)

Pa. Dep't of Transportation, Driver & Vehicle Services, *Locations Info Center*, <https://www.dot33.state.pa.us/locator/locator.jsp#top?20120713102533820=20120713102533820> (For Step 1, select Yes for "(C.) Search the entire state?"; for Step 2, select "Photo ID Card" and "Photo ID Card Duplicate/Replacement") (visited on July 13, 2012)

Pa. Legislative Budget and Finance Committee, *Feasibility of Limiting Polling Places to Handicap Accessible Schools and Government Buildings*, February 2008

Pa. Legislative Budget and Finance Committee, *Pennsylvania Lottery Funding of Programs and Services for Older Pennsylvanians*, February 2012

The Center for Rural Pennsylvania, *Demographics – About Rural PA*, available at [http://www.rural.palegislature.us/demographics\\_about\\_rural\\_pa.html](http://www.rural.palegislature.us/demographics_about_rural_pa.html) (visited on July 13, 2012) (The Center for Rural Pennsylvania is a legislative agency of the Pennsylvania General Assembly)

## Secondary Sources

AARP Public Policy Institute, *Pennsylvania State Housing Profile 2011*

AARP Public Policy Institute, *Across the States: Profiles of Long-Term Care and Independent Living*, Ari Houser et al., 8<sup>th</sup> ed. (2009)

AARP Public Policy Institute, *How the Travel Patterns of Older Adults are Changing*, 2011

Brennan Center for Justice, *Citizens without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, November 2006

Brennan Center for Justice, *The Challenge of Obtaining Voter Identification*, Keesha Gaskins et al., July 2012.

National Academy of Social Insurance, *The Role of Benefits in Income and Poverty*, available at <http://www.nasi.org/learn/socialsecurity/benefits-role> (visited on July 13, 2012).

Amy Worden, *Pa. Drops Plans For 2 Online Initiatives To Boost Voting*, Philadelphia Inquirer, August 18, 2012, [http://articles.philly.com/2012-08-18/news/33249252\\_1\\_absentee-ballots-voter-id-requirements-county-elections-officials](http://articles.philly.com/2012-08-18/news/33249252_1_absentee-ballots-voter-id-requirements-county-elections-officials)

Tom Barnes, *State Urged to Help Homeless Veterans as their Ranks Grow*, Pittsburgh Post-Gazette, May 9, 2012 available at <http://www.post-gazette.com/stories/local/state/state-urged-to-help-homeless-veterans-as-their-ranks-grow-85945/#ixzz20XQpTwvd> (visited on July 13, 2012)

Tom Murse, *Veterans IDs problem with Voter Measure*, Lancaster Online: An Edition of the Intelligencer Journal, May 12, 2012 available at [http://lancasteronline.com/article/local/603592\\_Veteran-IDs-problem-with-voter-measure.html](http://lancasteronline.com/article/local/603592_Veteran-IDs-problem-with-voter-measure.html) (visited on July 13, 2012)

## SCHEDULE A

### Appendix of *Amici Curiae*

*Amicus SeniorLAW Center* is an independent nonprofit organization which improves the lives of older Pennsylvanians and protects their rights through legal representation, education and advocacy. Founded in 1978, SeniorLAW Center has served more than 300,000 seniors through its many diverse programs, including its statewide SeniorLAW HelpLine which serves seniors in all 67 counties of Pennsylvania. Through its staff of attorneys and advocates and vibrant pro bono volunteer programs, SeniorLAW Center addresses critical legal issues affecting the lives of seniors, including housing and shelter, elder abuse, consumer protection, health care, advance planning, family law, and civil and voting rights. SeniorLAW Center works in partnership with well over 100 local, regional and national aging, legal, health and human services organizations, including diverse pro bono legal partners, to promote the safety, independence and dignity of Pennsylvania seniors.

At the invitation of leaders of the Pennsylvania House State Government Committee, SeniorLAW Center testified at the original March 2011 hearing on Act 18 (then House Bill 934), expressing concerns regarding the impact of the law and the disenfranchisement of older voters. SeniorLAW Center has authored numerous articles on the challenges facing Pennsylvania seniors under Act 18, and continues to provide education, outreach and legal assistance to older Pennsylvanians throughout the Commonwealth to help protect their right of suffrage.

*Amicus AARP* is a nonpartisan, nonprofit organization dedicated to assuring that older Americans have independence, choice and control in ways beneficial and affordable to them and to society as a whole. AARP advocates, including in state and federal courts, for adoption and implementation of public policies of benefit to older Americans. Such policies

include measures designed to encourage electoral participation among all voters, including older voters, while assuring the integrity of the electoral process.

AARP believes that states should not impose unreasonable identification requirements that discourage or prevent citizens from voting. Accordingly, as an *amicus curiae*, AARP has opposed "photo ID" voting laws enacted in Missouri, Michigan and Indiana. AARP Foundation Litigation attorneys, acting as co-counsel for plaintiffs, also have challenged such laws enacted in Georgia and Arizona. In AARP's view and experience, such laws undermine and discourage electoral participation, while failing to contribute in any meaningful way to the integrity of in-person voting.

Act 18, which if not enjoined or struck down, will be in effect for the elections scheduled for November 6, 2012 – like "photo ID" voting laws in the other states identified above – threatens to undermine longstanding AARP policies to the detriment of many voters and of electoral democracy in the Commonwealth of Pennsylvania. Persons likely to be harmed include many older voters, including a significant share of AARP members living in Pennsylvania.

*Amicus Pennsylvania Association of Area Agencies on Aging's* mission is to act as an advocate for aging – promoting the continued physical, social, and economic self-sufficiency of Pennsylvania's seniors. Founded in 1977, the Association pursues elders' right to choice and dignity in daily living; and strives to furnish its Members with the essential informational and educational resources to deliver quality service toward this end. The Association has come to represent both the best interests of older Pennsylvanians and its Area Agency on Aging Membership by fostering collaboration in areas of advocacy, leadership, training and policy.

By virtue of its Membership structure, the Association affords Pennsylvania's 52 Area Agencies on Aging the opportunity to have direct input into broad issues of statewide and national import, while retaining responsiveness to the character and unique needs of each local community. In this forum, the Association's Members benefit from the knowledge and capabilities of others throughout the Commonwealth – allowing them to evolve quality standards and procedure reflecting contemporary statewide thinking and demonstrated best practice.

*Amicus Center for Advocacy for the Rights and Interests of the Elderly* ("CARIE") is a non-profit organization providing free education, consultation and problem-solving services for older adults and family caregivers, as well as systemic advocacy on behalf of vulnerable elders since 1977. CARIE fulfills its core mission, "to improve the well-being, rights and autonomy of older persons through advocacy, education, and action," each year by helping several thousand older Pennsylvanians understand benefits and rights, assess options and access services to improve their health and meet their needs. CARIE works with older adults who live alone, with family, and in various long term care settings such as nursing homes. These consumers often have multiple health problems and are of limited means. CARIE has encountered many older Pennsylvanians who are confused or unaware about Act 18.

*Amicus Pennsylvania Alliance for Retired Americans* is a 501(c)(4) organization with approximately 300,000 members whose mission is to ensure social and economic justice and full civil rights for all citizens so that they may enjoy dignity, personal fulfillment and family security as senior citizens. The Alliance endeavors to give older and retired persons the opportunity to strive to create a society that incorporates these goals and rights during their retirement, allowing them to pursue new and expanded activities with their unions, civic organizations and their communities. By educating their peers in the community

and advocating to decision-makers on issues that affect the quality of life for retirees, Alliance members strive to be an asset to all current and future retirees in every community across Pennsylvania. Among the top priorities for this advocacy are strengthening Social Security, preserving and improving Medicare for future generations, increasing the quality and access to health care for both Medicare and pre-Medicare retirees, and protecting every senior citizen's right to vote.

*Amicus* **the Pennsylvania Homecare Association ("PHA")** is a statewide association representing more than 500 home health, hospice and private duty providers that care for and support nearly 1 million older Pennsylvanians each year. PHA's member organizations provide services and supports to our state's most vulnerable seniors and adults with disabilities so that they can remain in their own homes and communities living as independently as possible. As such, PHA is committed to advocating on behalf of the people we serve – seniors and individuals with disabilities who are among the groups hit hardest by Act 18.

*Amicus* **ElderNet of Lower Merion and Narberth** is a not for profit, 501(c)3 organization that was founded in 1976 by representatives of community, religious and governmental representatives to serve at-risk elderly and younger disabled residents of Lower Merion and Narberth Borough (Montgomery County, PA). ElderNet helps frail older and disabled younger adults remain living independently and safely in their homes by providing free practical volunteer and social work services. ElderNet has approximately 150 active volunteers who are escort drivers (for frail elderly/disabled residents who need assistance getting to the doctor or to other necessary appointments), shop for/with the clients, provide telephone reassurance, odd jobs, friendly visiting and help with bills and mail. ElderNet's staff of trained professionals supervise volunteers, deal with complex client issues, and provide information and

referral services to any callers, regardless of age, income or locality. ElderNet also has a food cupboard for those in need. ElderNet has a vital Advocacy Committee, comprised of community members and agencies as well as ElderNet volunteers and staff.

*Amicus* **the Institute for Leadership Education, Advancement and Development ("I-LEAD")** is a nonpartisan, statewide Pennsylvania nonprofit school headquartered in Valley Forge, Pennsylvania, with a mission to liberate human potential in challenged communities through leadership development and higher education. Founded in 1995, I-LEAD's programs and services have included leadership training, workforce development and civic and community engagement programs that serve low income neighborhoods across Pennsylvania, including a longstanding focus on major Latino communities in Pennsylvania's 222 corridor extending from Easton to Allentown, Bethlehem, Reading, Lancaster and York. I-LEAD's history includes special service to elderly Latino Pennsylvanians through projects conducted with the Pennsylvania Departments of Aging, Health, Labor and Industry, and Community and Economic Development as well as multiple Area Agencies on Aging located in Central Pennsylvania. This work has included development and implementation of nurse aide and community health worker training programs, tobacco cessation projects and technology training initiatives designed to overcome the severe economic, linguistic and cultural barriers that confront Latino senior citizens.

*Amicus* **Intercommunity Action, Inc.** is a nonprofit organization formed in 1969 and now serves 6,000 individuals annually and provides high quality services to older adults and to adults and children with behavioral health needs or intellectual disabilities. Intercommunity Action's Aging Services division, called Journey's Way: Resources and Programs for People 55+, serves approximately 4,000 older adults each year in Philadelphia and the near surrounding



suburbs. Journey's Way ("JW") helps older adults living in the community at all points in their journey of aging and provides critically needed resources so they are better able to age in their homes. The agency's senior center, the Center at Journey's Way, is a focal point for services including health and wellness, nutrition programs, housing counseling, help with benefits and entitlements, life-long learning programs, and social engagement. Other programs that assist older adults include JW's Housing Counseling program, Neighbor to Neighbor community volunteer program supporting older residents, the Adult Day Services Center prevents premature institutionalization by providing care for older men and women who cannot remain home alone, a nationally recognized geriatric mental health program, and affordable housing for older adults. Act 18 is a significant impediment to the right to vote of the older Pennsylvanians and people of disabilities who Intercommunity Action serves, a right that most older voters take seriously.

*Amicus* the **Jewish Social Policy Action Network ("JSPAN")** is a nonprofit organization of American Jews dedicated to protecting the Constitutional liberties and civil rights of Jews, other minorities, and the vulnerable in our society, with a Policy Center focusing on the rights of the elderly. Based in Philadelphia, JSPAN has a national reach, having filed amicus briefs before the U.S. Supreme Court and federal and state courts from California to Massachusetts. JSPAN's interest in this case arises from the overlap of two areas of critical interest to the Jewish community and thus, to JSPAN's members. Jews traditionally have the highest percentage voter turnout of any ethnic group, but will be significantly impeded by Act 18 because Jews are older than other demographic groups, tend to live in urban areas and thus have a lesser need for a driver's license, the most common form of photo identification, and consist of a significant percentage of immigrants who do not have easy access to their birth certificates. JSPAN presented testimony to the Pennsylvania Secretary of Aging on the 2008-2012 and 2012-

2016 Draft State Plans on Aging. JSPAN has long maintained a bipartisan Policy Center on election law issues and has provided continuing legal educational programs, legislative testimony and testimony to the Pennsylvania Bar Association Constitutional Reform Commission on voting rights issues.

## **SCHEDULE B**

### **Commonwealth of Pennsylvania Template for Voter Identification**

Sources: Letters from Pa. Department of Public Welfare and Department of Health to all personal care home and nursing home operators, June 1, 2012

(attached)



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE  
PO BOX 2675  
HARRISBURG, PENNSYLVANIA 17105-2675

ADULT RESIDENTIAL LICENSING

PHONE: (717) 783-3670  
FAX: (717) 783-5662

**JUN 01 2012**

Dear Personal Care Home Operator:

Act 18 of 2012 (the Voter ID Law) requires voters to show an acceptable photo ID to vote at the polls starting with the November 2012 general election. The Voter ID Law permits "care facilities" to create photo identification documents for residents. "Care facility" means a long-term care nursing facility, an assisted living residence or a personal care home. As a personal care home operator, you are permitted to produce photo IDs for your residents who wish to vote.

The Pennsylvania Departments of Public Welfare and State have collaborated to assist you in producing acceptable photo IDs. A template photo ID is enclosed with this letter. You may use this template to generate photo IDs for residents of your personal care home. An electronic, editable version of the template is available upon request. Also enclosed are question-and-answer documents produced by the Department of State relating to the Voter ID Law.

While there is no specific regulatory requirement relating to the production of photo IDs, you are reminded that failure to assist a resident who wishes to vote to do so (including failure to produce a photo ID for a resident who requires an ID) may result in a violation of 55 Pa.Code § 2600.23(b) (relating to activities).

If you have any questions about producing a photo ID in accordance with the Voter ID Law, please contact the Department's Operator Support Hotline at 1-866-503-3926 or via electronic mail at [pw-arlheadquarters@pa.gov](mailto:pw-arlheadquarters@pa.gov).

Sincerely,

A handwritten signature in black ink, appearing to be "R. Melusky".

Ronald Melusky  
Director

Insert the name and address of your personal care home in this box.  
You may also paste your personal care home's letterhead here.

Attach a photo of the resident here. You may use the photo from the resident's record that is required by 55 Pa.Code § 2600.252(3) (relating to content of resident records), or any other photograph. Remember – if you use the photo from the resident's record, the photo must be returned to the record after the resident votes. You may insert the entire photo ID into the record after the resident votes and still be in compliance with § 2600.252(3)

Insert the resident's full name in this box.

**Expiration Date =**

Insert the ID's expiration date here. Since the Voter ID Law does not specify when an ID must expire, you may select any date you wish, as long as it is after the election in which the resident wishes to vote



July 3, 2012

Dear Nursing Home Administrator:

Act 18 of 2012 (the Voter ID Law) requires voters to show an acceptable photo ID to vote at the polls starting with the November 2012 general election. The Voter ID Law permits "care facilities" to create photo identification documents for residents. A "care facility" is a long-term care nursing facility, an assisted living residence, or a personal care home. The Pennsylvania Department of State has also announced that care facilities are permitted to create photo identification documents for their employees. Therefore, as a long-term care nursing facility administrator, you are permitted to produce photo IDs for your residents and employees who wish to vote.

The Departments of Health and State have collaborated to assist you in producing acceptable photo IDs. A template photo ID is enclosed with this letter. You may use this template to produce general photo IDs for residents and employees of your long-term care nursing facility. Also enclosed are question-and-answer documents produced by the Department of State providing information about the Voter ID Law. This template and the Q&A documents are available on the Department of Health's Facility Message Board. In addition, the Q&As, as well as other informative documents about Pennsylvania's Voter ID Law, are available on the Department of State's website, at [www.VotesPA.com](http://www.VotesPA.com).

While there is no specific regulatory requirement relating to the production of photo IDs, you are reminded that failure to assist a resident or employee to obtain a photo ID in order to vote may result in a violation of the Voter ID Law.

If you have any questions about producing a photo ID in accordance with the Voter ID Law, please contact my office at (717) 787-1816 or email me at [suswilliam@pa.gov](mailto:suswilliam@pa.gov).

Sincerely,

A handwritten signature in cursive script that reads "Susan Y. Williamson".

Susan Y. Williamson, Director  
Division of Nursing Care Facilities  
Bureau of Facility Licensure and Certification

INSERT NAME OF PENNSYLVANIA CARE FACILITY OR  
LETTERHEAD OF CARE FACILITY HERE

INSERT  
PHOTO  
HERE

INSERT NAME OF VOTER

INSERT EXPIRATION DATE OF  
IDENTIFICATION DOCUMENT  
HERE