

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

---

No. 330 MD 2012

---

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

v.

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

---

BRIEF OF *AMICI CURIAE* THE CITY OF PHILADELPHIA AND STEPHANIE  
SINGER, CHAIR OF THE CITY COMMISSIONERS,  
IN SUPPORT OF PETITIONERS

---

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

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

Dated: July 16, 2012

## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
INTEREST OF AMICI CURIAE THE CITY OF PHILADELPHIA AND STEPHANIE SINGER .....	1
ARGUMENT .....	3
A.    The Photo ID Law Violates Article I, § 5, Article VII, § 1, and Article I, §§ 1 and 26 of the Pennsylvania Constitution.....	3
B.    Election Day in the City.....	3
C.    City Voters Should Not Be Required to Lose Their Fundamental Right to Vote on November 6, 2012.....	6
1.    City Residents Who Belong to a Racial or Ethnic Minority Group.....	7
2.    City Residents Born Outside of Pennsylvania. ....	7
3.    City Residents Who Live In Poverty.....	7
4.    City Residents Who Are Elderly. ....	8
CONCLUSION.....	11

**TABLE OF AUTHORITIES**

**Page(s)**

**CONSTITUTIONAL PROVISIONS**

Pennsylvania Constitution, Article I, §§ 1, 5, and 26 .....3  
Pennsylvania Constitution, Article VII, § 1.....3

**STATUTES**

Act 18 of 2012, March 14, *amending* Act of 1937, June 3, P.L. 1333 (the  
“Photo ID Law”).....1, 3, 9, 10

**HOME RULE CHARTER PROVISIONS, ORDINANCES AND RESOLUTIONS**

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

## **INTEREST OF AMICI CURIAE THE CITY OF PHILADELPHIA AND STEPHANIE SINGER**

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

The City’s concerns about its voters have been heightened by data recently released by the Office of the Secretary of State, which initially estimated that the Photo ID Law would affect only 80,000 Pennsylvania voters. Instead, the Secretary of State’s data demonstrates that 758,000 registered voters in Pennsylvania do not have photo identification from the Pennsylvania Department of Transportation (“PennDOT”). Of that total, 186,630 registered voters are in the City. The City now faces the prospect that 18% of the City’s registered voters may not have sufficient identification to cast their votes on Election Day.

The City is also concerned about the impact the Photo ID Law will have on City voters who do have photo identification. On November 6, 2012, is a Presidential election, so turnout, emotions, and stakes will be high. The delays and conflicts the Photo ID Law will create at the polls may impede or block the ability of City voters to cast their votes, regardless whether their identification passes

muster under that law.

Stephanie Singer is an elected official in the City, and Chair of the City Commissioners (“City Commissioners”).<sup>1</sup> The City Commissioners are the elected officials charged with administering the Election Code in the City and overseeing the administration of elections. As Chair, Commissioner Singer is the Commissioner charged with the responsibility for overall election administration and management. Her interest in this matter stems from her mission to serve City voters, a mission that includes protecting their fundamental right to vote.

---

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

## ARGUMENT

### **A. The Photo ID Law Violates Article I, § 5, Article VII, § 1, and Article I, §§ 1 and 26 of the Pennsylvania Constitution.**

As Petitioners have made plain, the Photo ID Law violates Article I, § 5, Article VII, § 1, and Article I, §§ 1 and 26 of the Pennsylvania Constitution. *Amici* hereby adopt those arguments and incorporate them by reference. *See* Petition for Review, Counts I, II, and III. *Amici* file this brief to offer this Court some additional context regarding the burdens the Photo ID Law creates for City residents who seek to exercise their fundamental right to vote. *See, e.g.*, Petition for Review, ¶ 97.

### **B. Election Day in the City.**

On Election Day, the City's registered voters head to 1,687 election divisions and precincts to exercise their fundamental right to vote. City voters do not drive to the polls, as voters in other areas of Pennsylvania do. They walk to polling places in their neighborhoods.

Each City voter's polling place is within five blocks of where that voter lives. As a result, City voters cast their votes in schools, churches, universities, and, at times, private homes, barbershops, and nightclubs.

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

The City's poll workers are a cross-section of the City, its residents, and its

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

Meanwhile, staff at the City Commissioners will be answering questions from the public, poll workers, and the press; helping people cast votes at City Hall; troubleshooting problems with machines over the phone and sending out teams to fix them; and managing all of the other problems that can occur both inside and outside a polling place, such as problems with interpreters, missing poll workers, disgruntled voters, or disputes among the persons assigned to work at a particular polling place.

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

The day after Election Day, the official count starts. The cassettes are delivered from the remote sites to the City Commissioners; the cassettes are once again inserted into card readers; and data collected once again for the official

count. The City Commissioners also review and count provisional ballots and absentee ballots over the course of the days following the election for the official vote count.

Election Day cannot be done over, and Election Day happens on a larger scale in the City than elsewhere in Pennsylvania. Twenty percent of all of the polling places in Pennsylvania are in the City. Even mundane aspects of Election Day require a great deal of effort and preparation: the City Commissioners must assemble 1,700 boxes of election materials that will be used at the polls for Election Day; the City Commissioners must have training in place for 8,000 poll workers; and they must have staff on hand on Election Day to support those 8,000 poll workers.

The efforts required to make Election Day happen in the City increase for a Presidential election. Presidential elections have the highest turnout of any election in a four year cycle. The most dramatic increases in turnout are likely to occur at colleges and universities, where only twenty-five voters may appear at a polling place for a primary election, but several hundred voters may appear at that same polling place for a Presidential election.

At any polling place, the increased turnout that occurs during a Presidential election creates longer lines and longer delays for voters. This is particularly the case between the hours of 7 and 9 a.m. and 5 and 8 p.m., the times when two-thirds of City voters try to cast their votes.

The increases in turnout, and the high stakes of a Presidential election, result in increased pressure on poll workers, Commission staff, and voters. Problems

with broken machines, long lines, missing interpreters, and provisional ballots, to name a few, become more numerous, more fractious, and more difficult to manage on the Election Day of a presidential election.

November 6, 2012, is a Presidential election. It is also the first election where the Photo ID Law will be mandatory for all City voters. Due to the Photo ID Law, City voters who lack photo identification, as well as City voters who have photo identification, risk losing their fundamental right to vote on that day. They should not have to do so.

**C. City Voters Should Not Be Required to Lose Their Fundamental Right to Vote on November 6, 2012.**

The Photo ID Law will have a greater impact on the City and its voters than it will in other areas of Pennsylvania. Both large-scale numbers and the small-scale daily experience of the City Commissioners indicate that City voters are at risk of losing their fundamental right to vote on November 6, 2012.

At the outset, the Secretary of State's own figures indicate that 758,939 voters in Pennsylvania do not have PennDOT identification. The City has the highest number of voters affected: about a quarter of the overall total, or 186,830 registered City voters. Of those registered voters, 136,182 voters are considered "active" voters who have voted in elections in the past five years. These figures alone create cause for concern about the effect the Photo ID Law will have on the ability of City voters to exercise their fundamental right to vote.

These concerns are compounded by the demographics of the City itself. As Petitioners' accounts demonstrate, the persons likely to be disenfranchised by the

Photo ID Law are: members of a racial or ethnic minority group; born outside of Pennsylvania; poor; or elderly. *See* Petition for Review, ¶¶ 9-12 (Applewhite), 13-16 (Lee), 17-20 (Freeland), 21-24 (Cuttino), 25-27 (Marsh), 28-31 (Barksdale), 32-35 (Bookler), 36-41 (Block), 42-45 (Dickerson).

**1. City Residents Who Belong to a Racial or Ethnic Minority Group.**

Of the City's 1,526,006 residents, 661,839 are African-American, 187,611 are Hispanic or Latino, and 96,405 are Asian. *See* 2010 Census, City of Philadelphia.

**2. City Residents Born Outside of Pennsylvania.**

The Secretary of State has announced that persons born in Pennsylvania do not have to obtain a birth certificate to obtain photo identification from PennDOT. Voters born outside of Pennsylvania do, and large numbers of City residents were born outside of Pennsylvania: 253,336 City residents (16.7%) were born outside of Pennsylvania. 172,952 City residents (11.4%) were born in foreign countries; and 46,540 City residents (3.1%) were born in Puerto Rico. *See* 2010 Census American Community Survey, 3 year estimates.

**3. City Residents Who Live In Poverty.**

The City estimates that 366,400 of its residents are living in poverty. *See* 2010 Census American Community Survey. The poorer a City resident of voting age (18+) is, the less likely it is that resident has access to an automobile and the

convenience and mobility that an automobile provides. Over half of City residents (56%) with incomes below the poverty level live in households without an available automobile. *See* 2010 Census American Community Survey. When a City resident's income goes above over the poverty level, that number drops to 22%. *See* 2010 Census American Community Survey.

#### **4. City Residents Who Are Elderly.**

The Mayor's Office of Aging estimates that 22% of the City's population is over the age of 60, and 8,000 members of that group receive nursing care in their own homes. The Mayor's Office of Aging also estimates that 10,518 members of that group live in nursing home settings and 4,360 in group homes. *See* 2010 Census American Community Survey.

In sum, whether the City looks to the Secretary of State's own figures, or to its own demographics, it faces the prospect of large numbers of voters who are unable to obtain the photo identification required by the Photo ID Law, and thereby losing the right to vote.

Furthermore, on an everyday scale, the City Commissioners are already witnessing the problems that the Photo ID Law has created for City voters. Since March, on a daily basis, members of the public have contacted Commission staff, or have walked into the City Commissioners' offices to ask for help with obtaining photo identification. Given historical patterns, these sorts of requests will only increase after Labor Day, as voter interest in the upcoming election increases, and voter queries, visits to Commission offices, and registration and ballot applications

increase as well. Commission staff have assisted these voters as best they can, but for voters who face the obstacles to obtaining photo identification that poverty, lack of mobility, lack of transportation, and bureaucratic delay create, the best efforts of Commission staff may not be enough.

The Photo ID Law will harm City voters who do not have photo identification, which is troubling to the City in and of itself. But the Photo ID Law also poses risks of disenfranchisement to City voters who do have photo identification, due to delays and other obstacles to voting that the Photo ID Law will create.

Under the Photo ID Law, election officers now must do the following before any voter can cast a vote at the polls:

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

*See* 25 P.S. § 3050.

If all of these requirements are met – and none of the election officials challenge the voter's identification or identity – only then may a voter proceed to cast a vote at a voting machine. *See id.* That is the best case scenario, and that best case scenario will take up time on November 6, 2012.

That delay will be increased by:

- the number of City voters (potentially over six figures worth) arriving at the polls without photo identification;
- voters who arrive with photo identification that is deemed not to meet the requirements of the Photo ID Law, because that identification does not “substantially conform” with the name of the voter as it appears in the voting register at the polls;
- voters whose “identities” are challenged during the Photo ID Law process by an election official, for whatever reason; and
- voters casting provisional ballots due to the Photo ID Law, and election officials having to create space and time for such voters to cast those ballots.

*See* 25 P.S. § 2602(z.5)(2)(i); 25 P.S. § 3050(a.2) & (a.3).

In other words, the Photo ID Law will make the voting process of a Presidential election that is congested, slow, and contentious even more so. As such, City voters with photo identification face the risk of delays and long lines that will effectively block them from casting their votes on November 6, 2012.

The City and the City Commissioners cannot know the ultimate cost of the Photo ID Law, whether to City voters or to the City’s future, until well after Election Day. But the loss of the fundamental right to vote is a cost that the City and its voters should not have to bear.

## CONCLUSION

For the foregoing reasons, the City of Philadelphia respectfully requests that this Court rule in favor of Petitioners and grant the relief requested in their Motion for a Preliminary Injunction and Petition for Review.

Respectfully submitted,

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

/s Elise Bruhl

---

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

Dated: July 16, 2012

## CERTIFICATE OF SERVICE

I, Elise Bruhl, hereby certify that on **July 16, 2012**, I caused to be served **two** true and correct copies of the foregoing Brief upon the persons listed below by first class mail, postage prepaid:

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

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

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

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

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

David Vincent Vitale, Esq.  
For: Office of Chief Counsel  
PA House of Representatives  
Democratic Caucus  
620 Main Capitol Bldg.  
Harrisburg, PA 17120-3002  
**Attorneys for Amicus Curiae  
Democratic Caucus  
PA House of Representatives**

Howard Israel Langer, Esq.  
For: Langer Grogan & Diver, P.C  
1717 Arch St. Suite 4130  
Philadelphia, PA 19103  
**Attorneys for Amicus Curiae  
Common Cause**

/s Elise Bruhl

---

Elise Bruhl  
Deputy City Solicitor, Appeals