

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

RESPONDENTS' POST-HEARING BRIEF IN OPPOSITION TO  
PETITIONERS' REQUEST FOR PRELIMINARY INJUNCTION

ARGUMENT

THE REQUEST FOR A PRELIMINARY INJUNCTION SHOULD BE DENIED

We have already written and explained at length why petitioners have not met their heavy burden of proving that a presumptively valid law is unconstitutional such that they are entitled to preliminary injunctive relief. We write post-hearing to emphasize a few points.

1. Although the right to vote is certainly important, courts have not considered it a fundamental right for purposes of weighing equal protection challenges to laws that have to do

with the conduct of elections. Here, Act 18 does not disenfranchise anyone or change the constitutional qualifications of voters. All it does is to require all voters to show designated forms of acceptable photo identification when they appear in person to vote. Laws that have to do with the right to vote ought to be evaluated under no stricter scrutiny than the balancing test used by the United States Supreme Court in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), a test which Act 18 ought to pass since it was modeled on the Indiana statute upheld in *Crawford*. Indeed, the concurrence in *Crawford* says that the majority imposed too high a burden:

To evaluate a law respecting the right to vote – whether it governs voter qualifications, candidate selection, or the voting process – we use the approach set out in *Burdick v. Takushi*, 504 U.S. 428, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992). This calls for application of a deferential “important regulatory interests” standard for nonsevere, nondiscriminatory restrictions, reserving strict scrutiny for laws that severely restrict the right to vote. *Id.* at 433-434, 112 S.Ct. 2059 (internal quotation marks omitted). The lead opinion resists the import of *Burdick* by characterizing it as simply adopting “the balancing approach” of *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983) (majority opinion of STEVENS, J.). See *ante*, at 1617; see also *ante*, at 1617, n.8. Although *Burdick* liberally quoted *Anderson*, *Burdick* forged *Anderson*’s amorphous “flexible standard” into something resembling an administrable rule. See *Burdick*, *supra*, at 434, 112 S.Ct. 2059. Since *Burdick*, we have repeatedly reaffirmed the primary of its two track approach.

*Id.* at 205. Strict scrutiny, the concurrence said, is appropriate only if a burden is severe, and nominal effort, required of everyone, is not severe: “Burdens are severe if they go beyond the merely inconvenient.” *Id.* The burden here is not severe, applies to everyone, and consists only of showing some specified form of photo ID, though the impact of that burden may vary depending upon individual circumstances.

To be sure, although Pennsylvania courts look to federal cases for guidance in state equal protection cases, they are not bound by them. However, Pennsylvania law does not suggest a stricter standard than that used by the Court in *Crawford*. If anything, it is more in line with the

approach taken by the concurrence. This Court in *Mixon v. Commonwealth*, 759 A.2d 442 (2000) (en banc), *affirmed per curiam*, 566 Pa. 616, 783 A.2d 763 (2001), said that “Although every citizen has a general right to vote, states have broad powers to determine the conditions under which the right of suffrage may be exercised . . .”. *Id.* at 448. In *Mixon*, the Court cited *Winston v. Moore*, 244 Pa. 447, 91 A 520 (1914) in support of the proposition:

The power to regulate elections is legislative, and has always been exercised by the lawmaking branch of the government. Errors of judgment in the execution of the legislative power, or mistaken views as to the policy of the law, or the wisdom of the regulations, do not furnish grounds for declaring an election law invalid unless there is a plain violation of some constitutional requirement. . . . Legislation may be enacted which regulates the exercise of the elective franchise, and does not amount to a denial of the franchise itself.

*Winston v. Moore*, 244 Pa. at 454-55, 91 A. at 520. In *Mixon*, as in the earlier case of *Martin v. Haggerty*, 120 Pa. Cmwlth. 134, 548 A.2d 371 (1988), the court evaluated as against equal protection challenges, the constitutionality of state election laws that disenfranchised certain clauses of felons who were not disqualified from voting by the state constitution. The court did not apply strict scrutiny, but looked to see whether the law was rationally related to a legitimate state interest. Here, the law disenfranchises no one and it should not be subject to a more exacting standard.

The law should survive scrutiny under the rational relation test or even the less deferential standard used by the Court in *Crawford*. That Court rejected many of the same arguments proffered here: that the law was invalid because there was no evidence of fraud, that it was the result of an improper political motive, and that it was irrational because of exceptions for absentee voters and nursing home residents.

The Court in *Crawford* similarly rejected arguments that the case presented a situation in which a substantial burden was imposed on the right to vote, even though some voters, as

petitioners argue here, would have difficulty assembling the necessary documents to obtain a photo ID. The dissent accepted that “Indiana’s ‘Voter ID law’ threatens to impose nontrivial burdens on the voting right of tens of thousands of the State’s citizens... and a significant percentage of those individuals are likely to be deterred from voting...” 553 U.S. at 209. The majority rejected this proposition.<sup>1</sup>

Petitioners in closing have suggested that the Court look for guidance to courts that analyzed similar voting laws on state constitutional grounds. In particular, they have directed this Court to decisions from Wisconsin and Missouri which have sustained challenges. The Court should also be instructed by those courts, state and federal, which have upheld Voter ID laws against constitutional challenges. Besides *Crawford*, these include *Democratic Party of Georgia, Inc. v. Perdue*, 288 Ga. 720, 707 S.E.2d 67 (2011), *League of Women Voters of Indiana, Inc. v. Rokita*, 929 N.E.2d 758 (Supreme Court of Indiana, 2010), *Common Cause/Georgia v. Billups*, 554 F.3d 1340(11<sup>th</sup> Cir. 2009), *The American Civil Liberties Union of New Mexico v. Santillanes*, 546 F.3d 1313(10<sup>th</sup> Cir. 2008).

2. Although petitioners say the Commonwealth has no interest to support requiring photo ID at the polls and denigrate it as an unnecessary measure, courts have recognized that the interest of the state is substantial. Even in the absence of identifiable voter fraud at any time in Indiana’s history, the court in *Crawford* observed that “There is no question about the legitimacy or importance of the State’s interest in counting only the votes of eligible voters.” *Id.* at 1620.

Besides *Crawford* itself and cases which followed it, the legislature had the benefit of the *Carter-Baker* report quoted in *Crawford*:

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<sup>1</sup> See the attached chart for a comparison of the identification requirements of various assistance programs.

A good registration list will ensure that citizens are only registered in one place, but election officials still need to make sure that the person arriving at a polling site is the same one that is named on the registration list. In the old days and in small towns where everyone knows each other, voters did not need to identify themselves. But in the United States, where 40 million people move each year, and in urban areas where some people do not even know the people living in their own apartment building let alone their precinct, some form of identification is needed.

There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election. The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters. Photo identification cards currently are needed to board a plane, enter federal buildings, and cash a check. Voting is equally important.” Building Confidence in U.S. Elections 2.5 (Sept. 2005), App. 136-137 (Carter-Baker Report)(footnote omitted).

*Id.* at 193-194. This is more than enough to support such a common sense measure, but there is much more. The House of Representatives’ State Government Committee took testimony on March 21, 2011.<sup>2</sup> Among the witnesses who testified in support of the law was Hans A. von Spakovsky, Senior Legal Fellow at the Heritage Foundation. Mr. von Spakovsky, whose testimony was discussed during the cross-examination of Dr. Minitte, told the committee that:

Guaranteeing the integrity of elections requires having security throughout the entire election process, from voter registration to the casting of votes to the counting of ballots at the end of the day when the polls have closed. For example, jurisdictions that use paper ballots seal their ballot boxes when all of the ballots have been deposited, and election officials have step-by-step procedures for securing election ballots and other materials throughout the election process.

I doubt anyone believes that it would be a good idea for a county to allow world-wide Internet access to the computer it uses in its election headquarters to tabulate ballots and count votes – we are a computer-literate generation and everyone understands that allowing that kind of outside access to the software used for counting votes would imperil the integrity of the election.

Requiring voters to authenticate their identity at the polling place is part and parcel of the same kind of security necessary to protect the integrity of elections

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<sup>2</sup> A complete transcript of the hearing can be found at the General Assembly’s official website [http://www.legis.state.pa.us/cfdocs/legis/transcripts/2011\\_00541.pdf](http://www.legis.state.pa.us/cfdocs/legis/transcripts/2011_00541.pdf)

and access to the voting process. Every illegal vote steals the vote of a legitimate voter. Voter ID can prevent:

- impersonation fraud at the polls;
- voting under fictitious voter registrations;
- double voting by individuals registered in more than one state or locality; and
- voting by illegal aliens.

Mr. von Spakovsky also told the committee that voter ID does NOT historically reduce turnout and concluded his remarks by saying:

We are one of the only democracies in the world that does not uniformly require voters to present photo ID when they vote. All of those 100 other countries administer such a requirement without any problems and without any reports that their citizens are in any way unable to vote. In fact, our southern neighbor Mexico, which has a much larger rate of poverty than Pennsylvania or the United States, requires both a photo ID and a thumbprint to vote – and turnout has increased in their elections since this requirement went into effect in the 1990's. It is also credited with greatly reducing the fraud that had prevailed in many Mexican elections.

Requiring voters to authenticate their identity is a perfectly reasonable and easily met requirement. It is supported by the vast majority of voters of all races and ethnic backgrounds. As the U.S. Supreme Court said, voter ID protects the integrity and reliability of the electoral process. Pennsylvania has a valid and legitimate state interest not only in deterring and detecting voter fraud, but in maintaining the confidence of its citizens in the security of its elections.

Respondent' exhibit 6. Petitioners disagree with Mr. von Spakovsky and question his academic credentials, but the fact is he does have practical experience in election matters, and did testify in support of Act 18.

Thus, despite petitioner's arguments that there were no valid governmental reasons to support the law, there certainly were, even absent direct evidence of fraud, these reasons have been recognized by the United States Supreme Court, and they have been the subject of the Carter-Baker Commission report (Respondents' exhibit 5), as well as testimony taken by the legislature. Petitioners may think the law a bad idea, but there were legitimate reasons in support

of it, and petitioners may not disprove those reasons in court. The legislature weighed the pros and cons of the law, and decided to enact it. Petitioners improperly seek to revisit that decision in court.

3. The Department of State is in the process of implementing Act 18 and neither its efforts nor those of the organizational petitioners to educate the public should be disrupted. It is clear that the aim of implementation is not to disenfranchise anyone, but to educate the public as to the law, and get Photo ID to every voter who asks for it. First, by law, the state ID for voting purposes is free. Already, individual mailings have been sent to individual voters whom the Department of State knows do not have a PennDOT ID card or drivers' license to inform them of the requirements of the new law and what they need to do to comply with it. Procedures for obtaining a PennDOT ID have been streamlined. For example, voters born in Pennsylvania no longer need present a birth certificate, as PennDOT can obtain that information directly from the Department of Health. On August 26, the Department of State is scheduled to issue a new photo ID, processed by PennDOT, for voting purposes to registered voters who cannot meet all the requirements for a secure ID. Shannon Royer, Deputy Secretary for the Commonwealth, testified that already the Department of State has provided direct information to the counties about the Voter ID law, has issued press releases and conducted press events about it, and to date has provided over 700,000 inserts concerning the law to be mailed by Commonwealth agencies to clients. The Department has reached out to community, statewide, and regional organizations (respondents' exhibit 2), including colleges and universities and organizations serving senior citizens and the military. Beyond this, the Department has planned an intense, \$5,000,000 television, radio and web campaign that will begin this summer and continue throughout the Fall. Letters about the law will be sent to every voter household in the state, to every poll worker, and

the Department will also use automated phone call, mobile billboards, as well as advertising on busses in Harrisburg, Pittsburgh, Philadelphia, and the Lehigh Valley. In addition, witnesses from the organizational petitioners have testified that they have worked to educate the populations they serve and will continue their efforts. It is hard to see after all this how any voter would not be aware of the requirements of the new law, and if it were important to them to vote, to do what is necessary to get an acceptable form of photo ID by election day. It is true that the law places some responsibilities on voters to comply with a change in requirements, but any law will do this, and many election laws can be viewed as presenting obstacles to voting, even those as innocuous as setting hours for voting, or establishing polling places. One of the witnesses testified, for example, that she was unable to vote one year because her usual polling place had been changed, and she couldn't determine where she was supposed to vote. This hardly amounts to an unconstitutional restriction on the right to vote and neither does the Photo ID law.

Petitioners are ideologically opposed to the law, and view it as an unnecessary impediment to their right to vote, so no efforts to implement it will satisfy them. On the one hand, they view the law as Draconian, on the other they say that any exceptions to it are irrational. They also attempt to shift their heavy burden of showing unconstitutionality to the Commonwealth, by arguing that the law is unconstitutional because the state cannot guarantee that everyone who wants to vote will have an acceptable ID by election day. Not only does the law allow for the casting of a provisional ballot in the event that a voter appears at the polls without a photo ID, but also petitioners formulation places a burden on the Commonwealth that cannot possibly be satisfied. Each citizen bears for her and himself some responsibility for complying with the law, and the state cannot be responsible for freeing them from this responsibility.



The request for a preliminary injunction should be denied.

Respectfully submitted,

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Date: August 6, 2012



DPW PROGRAM NAME & DESCRIPTION	TYPES OF CLIENTS SERVED	FORM OF ID REQUIRED	SSN & OTHER INFORMATION REQUIRED	APPLICATION PROCESS (PAPER OR ON-LINE)	CLIENT MUST APPEAR IN OFFICE?	CITATIONS FOR REQUIREMENTS
Temporary Assistance for Needy Families(TANF)(cash assistance)	Low-income, low-asset families with children or who are pregnant	ID required, such as Social Security card, Driver's license; Selective Service card, Passport, Military discharge papers, Voter registration card if nothing else is available and cooperating with attempts to obtain additional verification, and any other document showing the person's signature, photograph or physical description as proof of identity.	Must provide SSN (which DPW verifies) or must apply for an SSN	Can apply by paper (in-person or by mail) or on-line	Face-to-face interview for each application, regardless of application method	ID - 62 P.S. § 432.4; 55 Pa. Code § 125.1(b) SSN - 62 P.S. § 432.2(b); 55 Pa. Code § 125.24(b) <b>Must appear</b> - 62 P.S. § 432.2(a); 55 Pa. Code § 125.24(a)
General Assistance (cash assistance) ending August 1	Low-income, low-asset individuals with a disability, individuals caring for a child or person who is ill or disabled, individuals undergoing drug or alcohol treatment, or victims of domestic violence	ID required, such as Social Security card, Driver's license; Selective Service card, Passport, Military discharge papers, Voter registration card if nothing else is available and cooperating with attempts to obtain additional verification, and any other document showing the person's signature, photograph	Must provide SSN or must apply for an SSN	Can apply by paper or on-line	Face-to-face interview for each application, regardless of application method	ID - 62 P.S. § 432.4; 55 Pa. Code § 125.1(b) SSN - 62 P.S. § 432.2(b); 55 Pa. Code § 125.24(b) <b>Must appear</b> - 62 P.S. § 432.2(a); 55 Pa. Code § 125.24(a)

		or physical description as proof of identity.				
State Blind Pension	Low-income, low-asset blind people	Yes, same as TANF and General Assistance	Yes, same as TANF and General Assistance	Can apply by paper or on-line	Policy is that client does not have to appear in-person and can have someone apply or appear.	<b>ID</b> - 62 P.S. § 432.4; 55 Pa. Code § 125.1(b) <b>SSN</b> - 62 P.S. § 432.2(b); 55 Pa. Code § 125.24(b)
Supplemental Nutrition Assistance Program (formerly food stamps)	Low-income households	ID required, such as: Birth certificate, Social Security card, Driver's license, Pay stubs, Selective Service card, Voter registration card, Student identification card, Employee identification card, Library card, Passport, Mail delivered by the U.S. Postal Service, State ID issued in place of a driver's license, ID issued by a public housing authority, ID issued by a social welfare agency, photo ID previously issued by a public welfare agency, contact with a third party who can identify the client.	Must provide SSN or must apply for an SSN	Can apply by paper or on-line	Client does not have to appear for a face-to-face interview if a telephone interview is conducted and the face-to-face interview is waived.	<b>ID</b> - 7 CFR § 273.2(f)(1)(vii) <b>SSN</b> - 7 CFR § 273.2(f)(1)(v) <b>Office interviews</b> - 7 CFR § 273.2(e)
Medical Assistance	Low-income aged, blind, disabled, SSI recipients, breast and cervical cancer	Must verify identity with one of the documents listed in 42 CFR § 435.407	Must provide SSN or must apply for an SSN	Can apply by paper or on-line	A face-to-face interview is required, but the policy is	<b>ID</b> - 42 U.S.C. 1396b(x); 42 CFR § 435.406; 42 CFR § 435.407; 55 Pa.

	patients, children-only cases, pregnant, TANF recipients and those who would be otherwise eligible for TANF except denied for income or resources, General Assistance recipients and those who would be otherwise eligible for General Assistance except denied for income or resources				client does not have to appear if everything needed has been provided.	Code § 125.1b SSN- 42 C.F.R. § 435.910 <b>Interview- 55 Pa Code § 125.84 (c)</b>
Low-Income Home Energy Assistance Program	Low-income individuals with home heating responsibility	ID is not required, but SSN and documentation of responsibility for the payment of home heating at the address are required.	Must provide SSN, which DPW verifies	Can apply by paper or on-line	Client does not have to appear for an interview	<b>ID- 55 Pa. Code § 601.21</b> <b>SSN- 55 Pa. Code § 601.106;</b> <b>LIHEAP State Plan § 601.106</b>
State Supplemental Payment	SSI recipients (aged, blind disabled) or those who would be otherwise eligible for SSI except denied for income or resources	No, verified by Social Security Administration.	No, verified by Social Security Administration.	Can apply by paper or on-line, or automatic opening	Client does not have to appear for an interview.	Agreement with Social Security Administration and 55 Pa. Code chapter 299

## Social Security Benefits (SSA website)

### **You Can Apply**

- Online - [Use our Social Security Retirement Benefit Application.](#)
- By phone - Call us at **1-800-772-1213**. If you are deaf or hard of hearing, you can call us at TTY **1-800-325-0778**.
- In person - Visit [your local Social Security office](#). (Call first to make an appointment.)

### **When You Apply**

Please be ready to supply the information we need to approve your application for these benefits:

## Retirement or Medicare

### **Documents you may need to provide**

We may ask you to provide documents to show that you are eligible, such as:

- Birth certificate or other proof of birth;
- Proof of U.S. citizenship or lawful alien status if you were not born in the United States [\[more info\]](#);
- U.S. military discharge paper(s) if you had military service before 1968;
- W-2 forms(s) and/or self-employment tax returns for last year.

### **Important**

We accept photocopies of W-2 forms, self-employment tax returns or medical documents, but we must see the original of most other documents, such as your birth certificate. (We will return them to you.)

Don't delay filing your claim just because you don't have all the documents. We'll help you get them.

### **What We will ask you**

We will ask you:

- Your name, gender and Social Security number;
- Your name at birth (if different);
- Your date of birth and place of birth (State or foreign country);
- Whether a public or religious record was made of your birth before age 5;
- Your citizenship status;
- Whether you or anyone else has ever filed for Social Security benefits, Medicare or Supplemental Security Income on your behalf (if so, we will also ask for information on whose Social Security record you applied);
- Whether you have used any other Social Security number;

- Whether you became unable to work because of illnesses, injuries or conditions at any time within the past 14 months. If "Yes," we will also ask the date you became unable to work;
- Whether you were ever in the active military service before 1968 and, if so, the dates of service and whether you have ever been eligible to receive a monthly benefit from a military or Federal civilian agency;
- Whether you or your spouse have ever worked for the railroad industry;
- Whether you have earned Social Security credits under another country's social security system;
- Whether you qualified for or expect to receive a pension or annuity based on your own employment with the Federal government of the United States or one of its States or local subdivisions;
- Whether you are currently married and, if so, your spouse's name, date of birth (or age) and Social Security number (if known);
- The names, dates of birth (or age) and Social Security numbers (if known) of any former spouses;
- The dates and places of each of your marriages and, for marriages that have ended, how and when they ended;
- The names of any unmarried children under 18, 18-19 and in secondary school or disabled before age 22;
- The name(s) of your employer(s) and/or information about your self-employment and the amount of your earnings for this year, last year and next year;
- Whether we may contact your employers for wage information;
- The month you want your benefits to begin; and
- If you are within 3 months of age 65, whether you want to enroll in Medical Insurance (Part B of Medicare).

## Spouse's or Divorced Spouse's

### **Documents you may need to provide**

We may ask you to provide documents to show that you are eligible, such as:

- Birth certificate or other proof of birth;
- Proof of U.S. citizenship or lawful alien status if you were not born in the United States;
- U.S. military discharge paper(s) if you had military service before 1968;
- W-2 forms(s) and/or self-employment tax returns for last year.
- Final divorce decree, if applying as a divorced spouse; and
- Marriage certificate.

### **Important**

We accept photocopies of W-2 forms, self-employment tax returns or medical documents, but we must see the original of most other documents, such as your birth certificate. (We will return them to you.)

Do not delay applying for benefits because you do not have all the documents. We will help you get them.

### **What We will ask you**

We will ask you:

- Your name, gender and Social Security number;
- Your name at birth (if different);



- Your date of birth and place of birth (State or foreign country);
- Whether a public or religious record was made of your birth before age 5;
- Your citizenship status;
- Whether you or anyone else has ever filed for Social Security benefits, Medicare or Supplemental Security Income on your behalf (if so, we will also ask for information on whose Social Security record you applied);
- Whether you have used any other Social Security number;
- Whether you became unable to work because of illnesses, injuries or conditions at any time within the past 14 months. If "Yes," we will also ask the date you became unable to work;
- Whether you were ever in the active military service before 1968 and, if so, the dates of service and whether you have ever been eligible to receive a monthly benefit from a military or Federal civilian agency;
- Whether you or your spouse have ever worked for the railroad industry;
- Whether you have earned Social Security credits under another country's social security system;
- Whether you qualified for or expect to receive a pension or annuity based on your own employment with the Federal government of the United States or one of its States or local subdivisions;
- Whether you are currently married and, if so, your spouse's name, date of birth (or age) and Social Security number (if known).
- The names, dates of birth (or age) and Social Security numbers (if known) of any former spouses;
- The dates and places of each of your marriages and, for marriages that have ended, how and when they ended;
- The names of any unmarried children under 18, 18-19 and in secondary school or disabled before age 22;
- The name(s) of your employer(s) and/or information about your self-employment and the amount of your earnings for this year, last year and next year;
- Whether we may contact your employers for wage information;
- The month you want your benefits to begin; and
- If you are within 3 months of age 65, whether you want to enroll in Medical Insurance (Part B of Medicare).

## Child's

### **Documents you may need to provide**

We may ask you to provide documents to determine if you may be eligible for benefits for having the child in your care:

- Birth certificate or other proof of birth;
- Naturalization papers;
- U.S. military discharge paper(s);
- For disability benefits for adult children disabled before age 22, the two forms ([SSA-3368](#) and [SSA-827](#)) that describe your medical condition and authorize disclosure of information to us; and
- W-2 forms(s) and/or self-employment tax returns for last year.

### **Important**

We accept photocopies of W-2 forms, self-employment tax returns or medical documents, but we must see the original of most other documents, such as your birth certificate. We will return the documents to you.

Do not delay applying for benefits because you do not have all the documents. We will help you get them.



## What we will ask you

We will ask you:

- Your name and Social Security number;
- The worker's name and Social Security number;
- The date of birth, Social Security number and relationship to the worker (i.e., legitimate child, adopted child, stepchild, dependent grandchild, other) of each child listed on the application;
- The child's citizenship status;
- Whether any child 17 years of age or older is a student or is disabled;
- If any child is the worker's stepchild, the date the worker and the child's parent married;
- Whether you are the child's natural or adoptive parent;
- Whether any child has a legal guardian;
- Whether any child has been adopted by someone other than the worker;
- Whether the children live with you and whether they lived with the worker during each of the last 13 months;
- Whether any child has ever been married and, if so, the dates of the marriages and how and when they ended;
- Whether you or anyone else has ever filed for Social Security benefits, Medicare or Supplemental Security Income on behalf of the child(ren). (If so, we will also ask for information on whose Social Security record you applied);
- The amount of each child's earnings for this year, last year and next year;
- The dates of adoption for any children adopted by the worker;
- Whether you have ever been convicted of a felony;
- Whether a child age 13 or older has any unsatisfied felony warrants for their arrest or unsatisfied Federal or State warrants for their arrest for any violations of the conditions of their parole or probation; and
- Whether you ever served as a representative payee for someone's Social Security benefits.

If the worker is deceased, we will also ask you:

- The worker's date of birth and his or her name at birth (if different);
- The worker's date of death and the place of death;
- The State or foreign country of the worker's fixed permanent residence at the time of death;
- Whether the worker was unable to work because of illnesses, injuries or conditions at any time during the 14 months before his or her death. (If "Yes," we will also ask you for the date he or she became unable to work.);
- Whether the worker was in the active military service before 1968 or ever worked for the railroad industry. (If so, we will ask you for the dates of service and whether he or she ever received a pension from a military or Federal civilian agency.);
- Whether the worker earned Social Security credits under another country's Social Security system;
- Whether the worker was employed or self-employed in all years from 1978 through last year;
- How much the worker earned in the year of death and the year before death;
- Whether the worker ever filed for Social Security benefits, Medicare or Supplemental Security Income. (If so, we will ask for information on whose Social Security record he or she applied.); and
- Whether each child was living with the worker at the time of death.

## **CERTIFICATE OF SERVICE**

I, Lisa L. Sheidy, Assistant to Calvin R. Koons, Senior Deputy Attorney General, do hereby certify that on August 6, 2012, I caused to be served the foregoing **RESPONDENTS' POST-HEARING BRIEF IN OPPOSITION TO PETITIONERS' REQUEST FOR PRELIMINARY INJUNCTION** by depositing a copy of the same in the United States mail, first class, postage prepaid, and via e-mail transmission to the following:

Counsel for Petitioners:

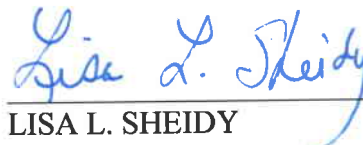
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