

Expert Report Submitted on Behalf of Petitioners in Applewhite, et al. v. Commonwealth of Pennsylvania, et al., No 330 MD 2012, July 16, 2012

I, Amanda W. Bergson-Shilcock, of full age, hereby declare as follows:

I am the Director of Outreach and Program Evaluation at the nonprofit Welcoming Center for New Pennsylvanians, a position I have held for six years. I received a Bachelor of Arts degree in Social Science from the University of Pennsylvania, *magna cum laude*. My area of concentration for my degree was American Civilization and History. My resume is attached.

The Welcoming Center for New Pennsylvanians is a nonprofit economic development organization serving the five-county Southeastern Pennsylvania area. Each year, we place more than 300 work-authorized immigrants in employment, aid 200 American-born and immigrant entrepreneurs in launching or expanding their businesses, and provide English, citizenship, and GED classes to 200 American-born and immigrant students. We also host a monthly pro-bono legal clinic which serves over 150 individuals a year.

As a clearinghouse for immigration information, the Welcoming Center responds to more than 1,000 inquiries a year. Some inquiries come from journalists or researchers, while others come from social workers, teachers, and individual immigrants themselves. While many seek information only, others require advice or hands-on assistance in following the complex and often confusing path to obtaining the documents or resources they need. To date, we have assisted approximately 90-100 individuals in this process.

As a member of the Welcoming Center staff, I provide direct services to immigrants and other individuals who turn to our organization to obtain timely, accurate information and assistance on a wide range of immigration-related queries and problems. As a member of the Welcoming Center's senior Leadership Team, I handle some individual client cases personally, and provide assistance and oversight to colleagues for many others. I am particularly involved in unusual, complex, or difficult cases. I have related some client stories in this report. These are examples of the types of stories that support my conclusions.

Over the past six years, I have authored numerous Welcoming Center articles and publications on topics related to immigration. Relevant examples include a *Business Bulletin* which provides answers to employer questions about immigration issues, *Policy Alerts* about important changes in federal immigration policy and law, and *Fact Sheets* which provide straightforward guidance for members of the public and others who are trying to obtain immigration documents or understand policy changes.

I regularly provide training sessions and presentations for Welcoming Center staff, nonprofit colleagues, municipal employees, funders, educators, and others on issues related to immigration, state and local demographics, and the impact on immigrants on our economy.

In addition to my full-time position at the Welcoming Center, since 1990 I have worked as a part-time weekend reference library assistant for Lower Merion Township. Over the past 22 years, I have assisted countless individuals in obtaining prompt, accurate answers to reference queries on topics as diverse as identity documents, medical licensure, and genealogy.

Based on my substantive engagement with immigration policy and practice issues, as well as individual case examples, I conclude that there are significant barriers to getting acceptable photo identification as described by Act 18 for naturalized US citizens and Puerto Rican-born residents of Pennsylvania who are eligible to vote.

Moreover, these US citizens' ability to timely remedy their situation is severely constrained by the processes, cost, and delay associated with obtaining replacement immigration or identity documents via federal or territorial (in the case of Puerto Rico) authorities. These constraints mean that some voters will almost certainly be deprived of their ability to exercise the franchise in the upcoming November 2012 election.

I. Scope of the population potentially affected: Naturalized US citizens and Puerto Rican-born residents of Pennsylvania

Pennsylvania is home to approximately 345,000 naturalized US citizens – that is, people who were previously citizens of another country but have since become American citizens. Ninety-three percent (93%) of these citizens are over the age of 18.¹

Our Commonwealth is also home to approximately 120,000 people born in Puerto Rico.² These individuals are US citizens by birth and, upon reaching the age of 18, are eligible to register and vote.

At present, I am not aware of any data that could confirm the exact percentage of these individuals who may not have valid ID. At the time of this writing, the Commonwealth has just made public the list of approximately 750,000 registered voters who do *not* have a valid match in the PennDOT system, but this list has not yet been analyzed to attempt to determine what percentage may be Puerto Rican-born or naturalized US citizens.

What *can* be confirmed is that many of Pennsylvania's naturalized citizens first came to our state 20, 30, or even 40 years ago, and thus are likely to have naturalized in an era where records were kept solely in paper form. Census data indicate that 130,000 such individuals first came to Pennsylvania in 1979 or earlier, and another 80,000 arrived during the 1980s.³

¹ US Census Bureau, American Community Survey 2006-10 (Data element S0501, Selected Characteristics of the Native and Foreign-Born Populations.)

² US Census Bureau, American Community Survey 2006-10.

³ US Census Bureau, American Community Survey 2006-10 (Data element B05005 Year of Entry by Citizenship Status in the United States). The data shows only when people arrived in the United States, not when they were naturalized. However it is reasonable to assume that most were naturalized five to ten years after they arrived.

In addition, a significant percentage of naturalized US citizens have low incomes. Among naturalized US citizens Pennsylvania age 16 and older who are full-time, year-round workers, 20% earn less than \$25,000 per year. That represents approximately 28,000 individuals, but the number is actually higher because this calculation does *not* include the 132,000 naturalized US citizens age 16 and older who are not in the labor force or who are unemployed.⁴ It also does *not* include those who are working part-time.⁵

II. Citizenship and identity document requirements

Under Act 18, Pennsylvania citizens must possess valid photo identification in order to vote. The most frequently-used of these are government-issued documents: A Pennsylvania driver's license, Pennsylvania state ID, or US passport.

To obtain any of these documents, naturalized US citizens are in turn required to prove their identity and US citizenship.⁶ Such citizenship documents are a valid US passport,⁷ a certificate of naturalization, or a certificate of citizenship. The certificate of naturalization is a document received by each newly minted American which has a photograph but, as noted above, is *not* by itself a valid identification document for voting.

It is important to note that these documents are required by PennDOT *regardless of whether the applicant has previously obtained a driver's license in another US state or territory*. That is, a person who moves from Connecticut to Pennsylvania, who possesses a valid Connecticut driver's license, must present to PennDOT the same proof of Pennsylvania residence and proof of identity and immigration/citizenship status as all other applicants. *In addition, applicants in those cases must relinquish their out-of-state driver's license.*

III. Proof of US citizenship for people born in Puerto Rico

Residents of Puerto Rico, which is a US territory, are US citizens by birth.⁸

⁴ *Ibid.*

⁵ US Census Bureau, American Community Survey 2006-10, (Data element : S0501 Selected Characteristics of the Native and Foreign-born Populations)

⁶ The Pennsylvania Department of Transportation (PennDOT) official Identity and Residency Requirements for US Citizens are viewable at:
http://www.dmv.state.pa.us/pdotforms/fact_sheets/pub195us.pdf.

⁷ If a naturalized citizen wishes to obtain a US passport, he or she must provide the US State Department with proof of identity and citizenship via a certificate of naturalization or citizenship.

⁸ See 8 USC § 1402 – “Persons born in Puerto Rico on or after April 11, 1899,” viewable at <http://www.law.cornell.edu/uscode/text/8/1402>

However, while most if not all Puerto Ricans were issued a birth certificate at birth, in 2009 the Puerto Rican legislature *invalidated* all existing birth certificates.⁹ This extraordinary step was taken as part of a process of upgrading the security and anti-fraud features of Puerto Rican birth certificates.

As a result, as of July 1, 2010, Puerto Rican-born residents of Pennsylvania must apply for a replacement birth certificate in order to satisfy the proof of citizenship requirements necessary to obtain a US passport or Pennsylvania driver's license or state ID. This process is described in more detail below.

IV. Reasons that a naturalized US citizen or a person born in Puerto Rico might lack proof of identity or US citizenship

There are a variety of reasons that a naturalized US citizen or person born in Puerto Rico might lack proof of identity or citizenship. It is particularly important to note that some of these issues cannot be foreseen. Thus, a person who has acceptable voter photo ID in March may no longer have it in July, and due to the length of time necessary to obtain replacement documents, he or she may not be able to obtain valid ID in time for the November election.

Immigration and identity documents can be lost or damaged in a fire, flood, or other natural disaster. They can be misplaced or lost during a move or other transition, or stolen in a burglary or robbery.

In addition, due to the tremendous importance placed on immigration and identity documents, they are significant targets for destruction or confiscation by a family member or ex-spouse as part of a domestic dispute.

Alternatively, an individual may lack such documents because they became citizens as minors when their parent naturalized, and never applied for or possessed an individual certificate of citizenship or US passport.

The Welcoming Center has experience in assisting individuals in each of the situations described above, except the flood. One example from our past work illustrates the Catch-22 in which individuals may find themselves. An immigrant from the Bahamas had become a naturalized citizen in 1979. He had been working for the same company for 19 years. During a routine review of employee documents, it was discovered that the birthdate on his Pennsylvania driver's license was wrong – two digits had been *transposed*.

When he applied to PennDOT to correct the error, he was asked to provide proof of citizenship. Unfortunately, his certificate had been lost at some point in the 32 years since his naturalization ceremony, and he had never had a US passport. He filed Form N-565 with the US Citizenship and Immigration Service to request a replacement certificate of citizenship, but at the time he

⁹ This legislative change is detailed in the US State Department announcement "New Requirement for Puerto Rican Birth Certificates," viewable at www.travel.state.gov/passport/passport_4807.html

contacted us it had been several months since the process began and he was in danger of losing his job.

As this individual's story shows, for naturalized citizens the process of obtaining government-issued photo identification can be especially lengthy and challenging. The details of this process are described below.

V. Process and costs for obtaining replacement proof of US citizenship

Naturalized US citizens who need to obtain replacement proof of their US citizenship face high costs and substantial, months-long delays.

To obtain a replacement certificate of naturalization, individuals must file Form N-565 with the US Citizenship and Immigration Services. The cost is \$345 and the processing time is presently listed as 6 months.¹⁰

To obtain a US passport for the first time, individuals must file Form DS-11 with the US State Department and provide evidence of US citizenship. The acceptable evidence of US citizenship for a naturalized citizen is a certificate of naturalization or citizenship issued by the US Citizenship and Immigration Services.¹¹ The acceptable evidence of US citizenship for a person born in Puerto Rico is a valid Puerto Rican birth certificate. The cost of obtaining a passport for the first time is \$135 and the standard processing time is currently 4-6 weeks.

Other specific costs associated with replacement documents are:

- Replacement US passport (for those who had a passport before): \$110
- Record check for US State Department to verify citizenship of an applicant via historical passport records or a Consular Record of Birth Abroad: \$150
- New certificate of citizenship (for those naturalized as minor children when their parent(s) naturalized): \$600

Often, there are additional costs and delays incurred in obtaining proof of citizenship and identity documents. Applicants may be required to obtain certified copy of a marriage license, divorce papers, and/or court ordered verifying a name change. Applicants may even need to obtain a re-issued birth certificate with their parents' full names, as the US State Department now requires this documentation to issue a passport.¹²

VI. Process for obtaining replacement proof of birth in Puerto Rico

¹⁰ Pennsylvania applicants must file with the Texas Service Center. As of July 2012, the Texas Service Center processing time for Form N-565 was listed on the USCIS website as 6 months. See: <https://egov.uscis.gov/cris/processTimesDisplayInit.do>

¹¹ (Individuals who claim US citizenship through birth to or adoption by US citizen parent(s), who claim US citizenship by virtue of their foreign-born parents having naturalized when the individual was a minor, may present alternative documentation which is detailed on Form DS-11.)

¹² The policy is described at: http://travel.state.gov/passport/passport_5401.html

Individuals who possess a Puerto Rican birth certificate issued prior to July 1, 2010, or who no longer possess their Puerto Rican birth certificates, may apply for a replacement birth certificate through the Puerto Rican Department of Health.¹³

To apply, a person must submit an application form and a copy of a government-issued photo ID. There are several mechanisms by which a person can submit this application: By phone, online, or by postal mail.

To file by phone, applicants may contact VitalChek at 866-842-6765. The cost is \$5 plus shipping. Applicants must have a major credit card (Visa Mastercard, etc.) to complete the purchase.

To file online, a person makes the request directly through the Puerto Rican government. The cost is \$5 plus shipping and handling. Or a person may request through Lexis/Nexus's VitalChek service, which costs \$12 plus shipping and handling.

To file by mail, a person submits the same form as the online application, but does so through the US mail.

The official form that applicants must submit is viewable here:

<https://serviciosonlinea.gobierno.pr/Salud/Solicitud-nac.pdf>. The form states that a photocopy of an official government-issued photo ID is required in order to obtain a birth certificate. The categories of ID that are listed as acceptable are: Driver's license, State ID, Passport, Public assistance, and Other.¹⁴

If the applicant does not have government issued photo ID, he or she can try to submit another kind of ID, but it is subject to approval by the Puerto Rican Department of Health.

In all cases, if the applicant's name has changed since birth, he or she is required to supply a copy of the marriage license or other document certifying the change.

The Puerto Rican government provides conflicting guidance on the length of time that applications take to be processed. Depending on the mechanism used to submit the application, the government website lists 5-10 working days, 12-14 working days, or an

¹³ The process is described on the Puerto Rican government website at: <https://serviciosonlinea.gobierno.pr/SALUD/Servicios.aspx?goto=nacimiento>. Note: Page is available in both English and Spanish.

¹⁴ However, Pennsylvania's state-issued "public assistance" identification cards for widely used programs do not include photos.

unspecified period of time. In addition, the site contains the following disclaimer: “Please keep in mind that due to the high volume of applications that are currently being submitted, applicants should expect considerable wait times in the processing of their application.”¹⁵

In the cases with which the Welcoming Center is familiar, the process took about one month.

VII. Barriers to obtaining proof of US citizenship

There are a number of factors that can impede, delay, or prevent an individual from being able to obtain new or replacement identity or citizenship documents in a timely fashion. A non-exhaustive list follows.

Availability and access of immigration files.

The majority of immigration case files are stored in paper form by the US Citizenship and Immigration Services (USCIS), the federal agency charged with adjudicating, processing, and retaining records of citizenship and naturalization.

USCIS is currently engaged in a years-long project known as the Transformation Initiative, which is expected to eventually transition the agency’s paper-based system into an electronic one. (At present, just one of the agency’s many forms may be filed online, and it is not relevant to the present discussion.)¹⁶

In the meantime, records are stored across the US in a range of locations, including four major service centers (Texas, Nebraska, California, and Vermont) as numerous district offices, of which Philadelphia is one. This wide dispersal of records slows the process required to verify an applicant’s immigration status, as the paper file for an individual applicant must be located and reviewed before the requested certificate of naturalization or citizenship can be issued.

In addition, some records are not held by USCIS. These include some naturalization records from decades past. For example, the Welcoming Center served one client in her 90s, who needed to obtain proof of her citizenship in order to confirm Medicare eligibility.

After an extensive search in which USCIS was unable to locate any record of her citizenship, the Welcoming Center finally located the record in the National Archives in Philadelphia, where it had been placed after a 1920s-era naturalization ceremony held in

¹⁵ The page is viewable at: <https://serviciosonlinea.gobierno.pr/SALUD/Servicios.aspx?goto=nacimiento>

¹⁶ For more information on the Transformation Initiative, see: <http://www.uscis.gov/uscis-elis>

federal district court, at which her father had been naturalized. She – as a minor child – was named on his naturalization certificate.

Processing delays.

Unlike many federal agencies, which receive their funding via Congressional appropriations, USCIS is primarily a fee-funded agency. Its spending ability and operational capacity are thus vulnerable to external factors in the US and world economy, which affect the number and type of immigration applications the agency receives.

As a result, the agency's processing times for various forms and services can vary substantially. For example, after a fee increase was announced in 2007, the agency saw an unprecedented surge in naturalization applications. Processing times for these prospective new citizens more than tripled, from 4-6 months to as long as 15-18 months.

In the present discussion, the relevant measurement is processing time for the issuance of a replacement naturalization certificate. As of July 2012, the US district office has a publicly posted processing time of 6 months for such documents.¹⁷

Lack of expedited services.

Unlike the US State Department's services for expedited passport processing, USCIS does *not* have a mechanism by which applicants can pay for expedited processing of requests for naturalization or citizenship certificates.

In the Welcoming Center's experience, the factors which affect processing times are sufficiently complex that there is effectively *no* external factor – including a call from a US Senator's office -- which can cause them to move more expeditiously.

Financial cost.

Individuals who are indigent, on a fixed income, or otherwise not easily able to afford the cost of **replacement** documents can find it prohibitively expensive to obtain the documents needed to verify identity and/or citizenship. Additional discussion of this issue can be found below.

Lack of access to the Internet or web.

Individuals who have limited access to the web and broadband Internet – whether due to rural dwelling, limited income, or mobile-only Internet access -- can find it difficult to obtain the information and blank forms necessary to apply for the documents they need.

¹⁷ Pennsylvania applicants must file with the Texas Service Center. As of July 2012, the Texas Service Center processing time for Form N-565 was listed on the USCIS website as 6 months. See: <https://egov.uscis.gov/cris/processTimesDisplayInit.do>

Alternative solutions, such as visiting a public library or calling the federal agency for information and assistance, nevertheless require additional time and sometimes expense.

Death or incapacitation of relevant parties.

In some instances, the parties who have or had knowledge of key elements about an individual's naturalization or birth are deceased or cognitively incapable of providing information. For example, in the case of the 90-year-old woman cited above, one of her adult daughters had suffered a neurological impairment and was unable to provide her sister with relevant family historical information about the place and time of their mother's naturalization. This hampered the Welcoming Center's search for her records.

Missing documents.

As detailed above, many immigration and naturalization records are kept solely in paper form. As a result, despite the best efforts and duly diligent care of US government agencies, they are vulnerable to loss, damage, or simply temporary mis-filing. Any of these factors can result in a delay of the agency's ability to confirm citizenship or identity.

VIII. Lack of information available to this population from the PA Dept. of State

The Pennsylvania Department of State maintains a website at www.votespa.com for Pennsylvania citizens who have questions about the voting process. However, the site does not include information for naturalized US citizens or Puerto Rican-born Pennsylvanians.

As of this writing, the front page of the site lists a menu of services for Pennsylvanians with unique voting needs. ("I am a...College Student, Member of the Military, Older Pennsylvanian," etc.) Naturalized US citizens and Puerto Ricans are *not* included among these categories.

In addition, the category "Person Who Has Recently Moved" includes information only for people who have moved *within Pennsylvania*.

The Resource Center on the site includes several FAQ documents but none with specific advice for these populations.¹⁸ There is no "Search" function within the website and thus I am unable to fully confirm that there is no specific information for naturalized citizens or Puerto Rican-born residents, but in an extensive search of the site I was not able to find anything.

Spanish-speaking voters who attempt to obtain information from the VotesPA website may also meet with frustration. As of July 11, 2012, a key Spanish-language page on the VotesPA website read, in its entirety, "Hola" ("Hello"). Even as of this writing, the

¹⁸ The Voter ID FAQ does mention that if you need to obtain photo ID from PennDOT, you must provide a US birth certificate, certificate of naturalization, or certificate of citizenship, but does not include information on how to obtain a replacement certificate of naturalization or citizenship if necessary.

Spanish-language sections of the site simply repeat the English language site pages, which as noted above do not include key information for naturalized citizens and Puerto Rican-born voters.

Finally, it should be noted that no information whatsoever is available from VotesPA in languages other than English and Spanish.

IX. Conclusion

Naturalized US citizens and Pennsylvania residents born in Puerto Rico must comply with a dense, intricate web of identity and citizenship requirements in order to obtain documents that will meet the Commonwealth's requirements for voter identification.

A substantial percentage of the nearly 500,000 Pennsylvania residents who fall into these categories have low incomes and may be especially challenged in paying the costs associated with obtaining necessary documents.

Barriers such as limited access to technology, limited access to credit cards (which would allow applicants to pay for identity documents when ordering by phone or online), limited literacy skills, and limited English proficiency can also restrict eligible individuals' ability to obtain the documents they need to be allowed to vote.

Natural disasters, major life events such as marriage or divorce, bureaucratic timelines and processes, and federal regulatory or statutory requirements can also affect individuals' ability to obtain critical documents in a timely manner.

As described in the case examples above, the Welcoming Center has assisted individuals who have found themselves in a difficult predicament when their identification and/or citizenship documents were lost or contained errors. Like these individuals, many other Pennsylvanians may this year find themselves in the difficult position of facing months-long delays and high costs in obtaining the documents necessary to exercise their constitutionally guaranteed right to vote.

Finally, a postscript: As I was preparing this testimony, I decided to verify my own voter registration to ensure that it was in order. Using the Commonwealth's own VotesPA.com website, I entered my name, county, and birthdate as instructed. My record did not appear.


Since my name has been the same since birth, and I have been voting in the same location since 2008, I was very concerned. I tried numerous alternate versions of my name but was unable to find it. I placed a call to my county voter registration office, and learned that the voter registration system *does not use hyphens*. Instead, voters with hyphenated names are recorded on the rolls with a space in between the two names.

This practice has broad implications for the thousands of other Pennsylvania residents like me who may seek out confirmation of their voter registration in advance of November. Particularly

for people with Hispanic surnames, who often use both parents' names, and for people who have hyphenated names due to marriage, this additional wrinkle will doubtless sow confusion.

I am not being compensated for my time in connection with my Declaration and testimony in this matter.

(signed)


Amanda W. Bergson-Shilcock

7/16/12
Date

Amanda W. Bergson-Shilcock
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EMPLOYMENT

Welcoming Center for New Pennsylvanians **2006 to present**

Director of Outreach and Program Evaluation

- Conduct public presentations and respond to media inquiries
- Supervise communications and outreach efforts, volunteer coordination, and Project Bridging Cultures activities
- Oversee data collection for agency's five program areas
- Develop evaluation tools and train staff in their use
- Manage information technology needs and supervise IT consultants
- Write and edit reports, policy briefs, and op-eds

OMG Center for Collaborative Learning, Philadelphia, PA **2000 to 2006**

Program Coordinator (2003 to 2006)

- Design, conduct, and analyze surveys, interviews, and focus groups
- Develop, revise, test, and disseminate evaluation tools to be used by and for nonprofit human service agencies
- Conduct research and literature review for social services data
- Write and edit reports, articles, presentations, and proposals
- Supervise program interns and administrative staff
- Review, recommend and manage grants to health and human services agencies

Program Assistant (2000-2003)

- (Activities similar to above position)
- Coordinate and manage special events
- Administrative duties

Ludington Public Library & Information Center, Bryn Mawr, PA **1990-1997;**
Library Assistant **1998-present**
(part-time)

- Formal and informal tutorials for patrons and staff regarding use of databases, search techniques, etc.
- Extensive direct patron contact in both circulation and reference departments
- Knowledge of specialized computer software for use in circulation of materials and cataloguing

Freelance Writer/Editor of University of Pennsylvania newsletter **1999-2002**

Andrews Publications, Wayne, PA **1997-1999**
Office Manager/Assistant to the Controller/Acting Circulation Manager

EDUCATION

B.A., *magna cum laude*, University of Pennsylvania, 1999

Major: Social Science (extensive course work in American Civilization, including Afro-American Studies, Native American Studies, and Asian American Studies)