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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Viviette Applewhite; Wilola Shinholster Lee; Grover Freeland;
Gloria Cuttino; Nadine Marsh; Dorothy Barksdale; Bea Bookler;
Joyce Block; Henrietta Kay Dickerson; Devra Mirel ("Asher")
Schor; League of Women Voters of Pennsylvania;
National Association for the Advancement of Colored People,
Pennsylvania State Conference; Homeless Advocacy Project,

Petitioners,

v.

The Commonwealth of Pennsylvania; Thomas W. Corbett,
in his capacity as Governor; Carol Aichele, in her capacity
as Secretary of the Commonwealth,

Respondents.

Docket No. _____

TO: Commonwealth of Pennsylvania
Ms. Linda Kelly
Attorney General
Strawberry Square
Harrisburg, PA 17120

Mr. Thomas W. Corbett
Governor's Office
225 Main Capitol Building
Harrisburg, PA 17120

Ms. Carol Aichele
Secretary of the Commonwealth
Commonwealth of Pennsylvania
Bureau of Commissions, Elections and Legislation
210 North Office Building
Harrisburg, PA 17120

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Application For Special Relief In The Nature Of A Preliminary Injunction; Application For Expedited Discovery, Briefing, And Hearing Schedule; And Request To Truncate Response Time within twenty (20) days, or within the time set by order of the court, of service hereof or a Judgment may be entered against you.

 ^{KSD}
Witold J. Walczak Esquire
Attorney for Petitioners

Date: May 1, 2012

**IN THE COMMONWEALTH COURT
OF PENNSYLVANIA**

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,)	
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Petitioners,)	
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v.)	
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The Commonwealth of Pennsylvania; Thomas)	
W. Corbett, in his capacity as Governor; Carol)	
Aichele, in her capacity as Secretary of the)	
Commonwealth,)	
)	
Respondents.)	
)	

**PETITIONERS' APPLICATION FOR SPECIAL RELIEF
IN THE NATURE OF A PRELIMINARY INJUNCTION; APPLICATION FOR
EXPEDITED DISCOVERY, BRIEFING, AND HEARING SCHEDULE;
AND REQUEST TO TRUNCATE RESPONSE TIME**

Petitioners, by counsel, hereby move pursuant to Rule 1531(a) of the Pennsylvania Rules of Civil Procedure for special relief in the form of a preliminary injunction enjoining the Respondents Commonwealth, Governor Thomas Corbett, and Secretary of the Commonwealth Carol Aichele from enforcing Act 18 ("the Photo ID Law"), signed into law on March 14, 2012 by Respondent Governor Thomas Corbett, until resolution of this litigation. In support of their application, Petitioners hereby incorporate the Verified Petition for Review filed in this action on May 1, 2012. Petitioners further state the following:

BACKGROUND

1. As set forth more fully in the Petition for Review, filed on May 1, 2012, Petitioners allege that the Photo ID Law violates the Pennsylvania Constitution.

2. The requirements of the Photo ID Law are described in more detail in the Verified Petition for Review, incorporated herein. In summary, beginning with the November 2012 general election, the Photo ID Law requires that in order to cast a regular ballot at a polling place, all voters will be required to present one of a limited number and specific forms of photo identification (“ID”). The Commonwealth estimates that 80,000-90,000 Pennsylvanian voters do not have the required photo identification. Many Pennsylvania voters also do not have the documentation (such as a birth certificate with a raised seal) that is necessary to obtain an acceptable form of identification. As a result, unless the Photo ID Law is enjoined, many qualified voters will be disenfranchised. Others will suffer unconstitutional burdens and expense to exercise their franchise. Still others who might have otherwise exercised their franchise will be discouraged from voting. The integrity of every election going forward will be called into question.

3. The individual Petitioners in this case have either been disenfranchised or severely burdened by the Photo ID Law. The organizational Petitioners have been injured independently because of the resources they have had to devote to educating their members and the public about the requirements of the Photo ID Law. They have also been injured by the law in that these organizations have a keen and sustained interest in encouraging their members and the public to register and exercise their right to vote. In addition, some of the organizational

Petitioners may have members whose right to vote has been impermissibly burdened by the Photo ID Law.

4. The Pennsylvania Supreme Court has recognized that “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *In re Nomination Papers of Ralph Nader*, 580 Pa. 22, 44, 858 A.2d 1167, 1180 (Pa. 2004) (internal citations and quotation marks omitted). Unless the Court acts to block the enforcement of the new photo identification requirement, many of Pennsylvania’s good citizens will have this most precious right unduly burdened and, in many cases, effectively denied.

5. The Photo ID Law violates the “free and equal” elections clause of Article I, Section 5 of the Pennsylvania Constitution because the photo identification requirement will “deny the franchise itself, or make it so difficult as to amount to a denial.” *Winston v. Moore*, 244 Pa. 447, 457, 91 A. 520, 523 (Pa. 1914). The photo ID requirement also does not pass constitutional muster under the “free and equal” clause because “the inconveniences” of the new law do not “bear upon all in the same way under similar circumstances.” *Id.*

6. The Photo ID Law also violates Article VII, Section 1 of the Pennsylvania Constitution, which establishes the necessary qualifications to vote in Pennsylvania. The Photo ID Law impermissibly adds an additional qualification: the ability to obtain an acceptable photo ID.

7. The Commonwealth has identified no compelling, rational, or otherwise legitimate state interest that the new photo ID requirement serves, and it has not shown that the

new requirement is narrowly tailored to serve any state interest. To the contrary, in the name of guarding against the entirely speculative possibility of someone impersonating a registered voter in order to vote in person, the new law will disenfranchise large numbers of registered and otherwise qualified voters, including individual Petitioners, and unduly burden the rest. This large scale disenfranchisement will cast doubt on the integrity of Pennsylvania's election results. With no evidence of any meaningful in-person voter fraud, the Photo ID Law is a cure in search of a non-existent disease. But the supposed cure itself threatens to kill the patient — namely, the integrity of elections in Pennsylvania.

INJUNCTIVE RELIEF

8. Petitioners move this Court for an Order declaring the Photo ID Law unconstitutional. To effectuate that ruling, Petitioners now seek a preliminary injunction restraining enforcement and implementation of the Photo ID Law pending final determination of the case.

9. Pursuant to Pa. R. A.P. 1532(a), this Court may order special relief, including a preliminary or special injunction “in the interest of justice and consistent with the usages and principles of law.” The standard for obtaining a preliminary injunction under this rule is the same as that for a grant of a preliminary injunction pursuant to the Pennsylvania Rules of Civil Procedure. *Shenango Valley Osteopathic Hosp. v. Dep’t of Health*, 499 Pa. 39, 51, 451 A.2d 434, 441 (Pa. 1982); *Commonwealth ex rel. Pappert v. Coy*, 860 A.2d 1201, 1204 (Pa. Commw. Ct. 2004). Preliminary injunctive relief may be granted at any time following the filing of a Petition for Review. *See* Pa. R. A.P. 1532(a).

10. The factors for the Court to consider before issuing a preliminary injunction are as follows: (1) whether the injunction is necessary to prevent immediate and irreparable harm that

cannot be adequately compensated by damages; (2) whether greater injury would result from refusing the injunction than from granting it; (3) whether the injunction will restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) whether plaintiffs are likely to prevail on the merits; (5) whether the injunction is reasonably suited to abate the offending activity; and (6) whether the injunction will not adversely affect the public interest.

Free Speech LLC v. Philadelphia, 884 A.2d 966, 970 (Pa. Commw. Ct. 2005); *Kessler v. Broder, et al.*, 2004 PA Super 200, 851 A.2d 944, 946 (Pa. Super. Ct. 2004) (citing *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mt., Inc.*, 573 Pa. 637, 646, 828 A.2d 995, 1001 (Pa. 2003)).

11. Petitioners meet all of the elements for the entering of a preliminary injunction in this case. *See id.*

12. **First**, an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. The Photo ID Law threatens such harm by impermissibly burdening the fundamental right to vote and thereby disenfranchising Petitioners and many other Pennsylvania voters.

13. **Second**, greater injury would result from allowing the Photo ID Law to be implemented than from issuing the requested injunctive relief. The Commonwealth has not identified actual instances of in-person voter identification fraud that would be addressed by the Photo ID Law. By contrast, that law would disenfranchise actual voters and impermissibly burden others.

14. **Third**, granting injunctive relief preserves a time-tested status quo election process in Pennsylvania pending a final determination by this Honorable Court. The voter registration and verification requirements already in effect in Pennsylvania would continue to be

in effect and elections would be conducted under the same laws and regulations that have applied before the Photo ID Law.

15. **Fourth**, Petitioners are likely to prevail on the merits of the underlying claims in this case. By disenfranchising qualified registered voters and impermissibly burdening others, the Photo ID Law violates express provisions of the Pennsylvania Constitution. The fundamental right to vote cannot be abridged absent the most compelling state interest. Here, the state has no rational basis, much less a compelling interest that would suffice to uphold the Photo ID Law. In any event, the test for a preliminary injunction is not whether Petitioners are “guaranteed to prevail,” but instead is whether there is sufficient evidence to show that “substantial legal questions must be resolved to determine the rights of the respective parties.” *Ambrogi v. Reber*, 2007 PA Super 278, 932 A.2d 969, 980 (Pa. Super. Ct. 2007). The fact that the Photo ID Law would disenfranchise individual Petitioners in this case demonstrates that there are substantial legal questions that must be resolved before the upcoming election. Moreover, it is evident that many more voters in addition to the named Petitioners would be disenfranchised or impermissibly burdened by the Photo ID Law.

16. **Fifth**, the requested injunctive relief is reasonably suited to abate the offending activity in this case. Enjoining the Photo ID Law will relieve Petitioners, and the additional voters they serve and represent, of the substantial burden of obtaining documents and, in some cases, paying fees for obtaining the ID (and underlying documents need to obtain the ID) solely for the purpose of being able to vote. For the Petitioners completely disenfranchised by the Photo ID Law, an order enjoining enforcement of the law is the only way to restore their fundamental right to vote, because it is impossible for them to obtain the documents required to obtain appropriate photo ID under the Photo ID Law.

17. *Finally*, the requested injunctive relief will not adversely affect the interests of the public. The public's most important interest is assuring that the upcoming election is conducted in accordance with the Pennsylvania Constitution. There is no evidence that the voter fraud will occur in the upcoming election if enforcement of the Photo ID Law is enjoined. In contrast, there is substantial evidence that large numbers of voters will be disenfranchised under the new law, which will undermine the public's confidence in any election result. The public's interests (including its interest in election integrity) would be harmed by the implementation of the Photo ID Law before its constitutionality can be resolved.

EXPEDITED TIMING

18. The next general election date in the Commonwealth is November 6, 2012. Petitioners respectfully submit that the interests of all parties as well as the general public will be best served by a schedule that (i) allows this Court to resolve Petitioners' Application for a preliminary injunction in an orderly and thoughtful way; (ii) permits time for the Pennsylvania Supreme Court to consider any appeals; and (iii) does so in time for any final ruling to be implemented in a timely manner in advance of the next election.

19. Petitioners request that this Honorable Court therefore set an expedited schedule for discovery, briefing, and hearing in this Application. Petitioners propose the following schedule:

Status conference on or before Friday, May 4, 2012;

Respondents file responsive pleading no later than Friday, May 11, 2012;

Parties exchange initial discovery requests no later than Friday, May 11, 2012, and all discovery responses to be served within 10 calendar days of service;

Parties conclude discovery no later than Thursday, May 31, 2012;

Petitioners file Brief in support of Preliminary Injunction no later than Friday, June 8, 2012;

Respondents file Brief in Opposition to Preliminary Injunction no later than Thursday, June 14, 2012;

Preliminary Injunction Hearing before this Court from Monday, June 18, 2012 - Tuesday, June 26, 2012;

Parties file post-hearing proposed findings of fact no later than Friday, June 29, 2012.

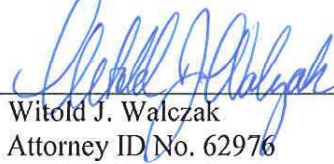
19. In crafting the foregoing schedule, we have aimed to achieve a final resolution by this Court and by the Supreme Court approximately 60 days in advance of the election, or by early September. This would leave two months, July and August, for this Court's decision and for the disposition of any appeals by the Supreme Court.

WHEREFORE, for all of the foregoing reasons and those alleged in the Petition for Review, Petitioners respectfully request that this Honorable Court grant their Application for Special Relief in the Nature of a Preliminary Injunction and enter an order enjoining Respondents, their agents, servants, and officers, and others from implementing, enforcing, or taking any steps toward implementing or enforcing the Photo ID Law and provide any ancillary relief needed to effectuate the Court's order.

FURTHERMORE, Petitioners respectfully request that this Honorable Court (a) shorten the time for Respondents' Answer to said Application pursuant to Pa. R. A.P. 123(b), and (b) set

a schedule for expedited discovery, briefing, and hearing on this Application and the underlying Petition for Review, in accordance with the proposed order that is submitted with this Application.

Dated: May 1, 2012



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Respectfully submitted,

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Attorneys for Petitioners

**IN THE COMMONWEALTH COURT
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) 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,)) <div style="text-align: center;">Petitioners,</div>)) <div style="text-align: center;">v.</div>)) The Commonwealth of Pennsylvania; Thomas) W. Corbett, in his capacity as Governor; Carol) Aichele, in her capacity as Secretary of the) Commonwealth,)) <div style="text-align: center;">Respondents.</div>)))	Docket No. _____
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CERTIFICATE OF SERVICE

I certify that I am this day of May 1, 2012, serving the foregoing Petitioners’ Application For Special Relief In The Nature Of A Preliminary Injunction; Application For Expedited Discovery, Briefing, And Hearing Schedule; And Request To Truncate Response Time, upon the persons and in the manner indicated below, which satisfies the requirement of Pa. R. A.P. 121:


Service by hand delivery addressed as follows:

Commonwealth of Pennsylvania
 Ms. Linda Kelly
 Attorney General
 Strawberry Square
 Harrisburg, PA 17120

Mr. Thomas W. Corbett
 Governor’s Office

225 Main Capitol Building
Harrisburg, PA 17120

Ms. Carol Aichele
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Respondents.)	
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**ORDER GRANTING APPLICATION FOR
EXPEDITED DISCOVERY, BRIEFING, AND HEARING SCHEDULE,
AND TRUNCATING RESPONSE TIME**

AND NOW, this _____ day of _____, 2012, upon consideration of
Petitioners' Petition for Review and Application for Special Relief in the Nature of a
Preliminary, it is hereby **ORDERED** that the parties proceed pursuant to the following schedule
for discovery, briefing, and hearing in this case:

The Court shall hold a status conference on May ____, 2012;

Respondents shall file their Answer or Other Response no later than Friday, May 11,
2012;

Parties shall exchange initial discovery requests no later than Friday, May 11, 2012, and all discovery responses shall be served within 10 calendar days of service;

Parties shall conclude discovery no later than Thursday, May 31, 2012;

Petitioners shall file Brief in Support of Preliminary Injunction no later than Friday, June 8, 2012;

Respondents shall file Brief in Opposition to Preliminary Injunction no later than Thursday, June 14, 2012;

This matter shall be scheduled for a hearing on Petitioners' Application for a Preliminary Injunction beginning on Monday, June 18, 2012, and concluding on or before Tuesday, June 26, 2012;

Parties shall file post-hearing proposed findings of fact no later than Friday, June 29, 2012.

BY THE COURT:
