

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Docket 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; CAROL AICHELE, IN HER CAPACITY AS
SECRETARY OF THE COMMONWEALTH,

Respondents.

BRIEF OF AMICUS CURIAE PENNSYLVANIA AFL-CIO IN SUPPORT OF
PETITIONERS' PETITION FOR REVIEW AND APPLICATION FOR SPECIAL RELIEF
IN THE NATURE OF A PRELIMINARY INJUNCTION

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TABLE OF CONTENTS

I. STATEMENT OF INTEREST OF AMICUS CURIAE	1
II. SUMMARY OF ARGUMENT	2
III. ARGUMENT	5
A. Introduction	5
B. This Court Must Engage in an Independent and Separate Analysis of the State Constitutional Provisions Allegedly Violated by the Voter ID Law.	14
1. Text and History of the Relevant Pennsylvania Constitutional Provisions	16
a. The Voter ID Law Violates Article I, Section 5 That Protects Every Pennsylvania Citizen's Right to Vote.	16
b. The Voter ID Law Violates Article VII, Section 1 as it Impermissibly Modifies the Pennsylvania Constitution's Enumeration of Who Is Qualified to Vote.	24
c. The Voter ID Law Violates Article I, Section 26 as it Constitutes a Violation of, or Discrimination Against, a Person's Civil Rights, Protected by the Provision.	29
C. Other State Decisions Support the Conclusion that the Voter ID Law Violates the Pennsylvania Constitution.	34
1. Missouri--Weinschenk v. State	35
a. Facts and Court's Holding	35
b. Applicability of Missouri Case to Pennsylvania's Voter ID Law	38
2. Wisconsin-- League of Women Voters of Wisconsin Education Network, Inc. v. Walker	39
a. Facts and Court's Holding	39
b. Applicability of Wisconsin Case to Pennsylvania's Voter ID Law	45
D. The Unique Political and Constitutional History of Pennsylvania Provides Further Support for Finding the Voter ID Law Unconstitutional.	46
IV. CONCLUSION	47

TABLE OF AUTHORITIES

Cases

<i>City Council of Bethlehem v. Marcinin</i> , 512 Pa. 1, 515 A.3d 1320 (1986)	18
<i>Commonwealth v. Edmunds</i> , 526 Pa. 374, 586 A.2d 887 (1987)	3, 14
<i>Commonwealth v. Sherwood</i> , 859 A.2d 807 (Pa. Super. 2004).....	33
<i>Crawford v. Marion County Election Bd.</i> , 553 U.S. 181 (2008)	46
<i>Dells v. Kennedy</i> , 49 Wis. 555, 6 N.W. 246 (1880).....	41
<i>Erfer v. Commonwealth</i> , 568 Pa. 128, 794 A.2d 325 (2002).....	29, 30
<i>Fischer v. Department of Public Welfare</i> , 509 Pa. 293, 502 A.2d 114 (1985).....	29, 30
<i>Harper v. Virginia State Bd. of Elections</i> , 383 U.S. 663 (1966).....	37
<i>Hartford Accident & Indemnity Co. v. Insurance Commissioner of Commonwealth</i> , 505 Pa.571, 482 A.2d 542 (1984)	30
<i>Hospital Utilization Project v. Commonwealth</i> , 507 Pa. 1, 487 A.2d 1306 (Pa. 1985) ...	25
<i>In re 1991 Pennsylvania Legislative Reapportionment Commission</i> , 530 Pa. 335 609 A.2d 132 (1992).....	18
<i>Kroger v. O'Hara Twp.</i> , 481 Pa. 101, 392 A.2d 266 (1979)	32
<i>League of Women Voters of Ind., Inc. v. Rotika</i> , 929 N.E.2d 758 (Ind. 2010).....	46
<i>League of Women Voters of Wisconsin Education Network, Inc. v. Walker, et al.</i> , No. 11 CV 4669, slip op. (Cir. Ct. Wis. Mar. 12, 2012).....	39, 44
<i>Love v. Borough of Stroudsburg</i> , 528 Pa. 320, 325, 597 A.2d 1137, 1139 (1991)...	29, 30
<i>Martin v. Haggerty</i> , 548 A.2d 371 (Pa. Cmwlt. 1988).....	27
<i>Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeal</i> , 44 A.3d 3 (Pa. 2012)	25, 27, 28
<i>Mixon v. Commonwealth</i> , 759 A.2d 442 (Pa. Cmwlt. 2000).....	27
<i>Pottstown School District v. Hill School</i> , 786 A.2d 312 (Pa. Cmwlt. 2001).....	26

<i>Ray v. Commonwealth</i> , 442 Pa. 606, 276 A.2d 509 (1971)	27
<i>Shankey v. Staisey</i> , 436 Pa. 65, 257 A.2d 897 (1969)	18
<i>State ex rel. Barber v. Circuit Court</i> , 178 Wis. 468, 190 N.W. 563 (1922)	42
<i>State ex rel. Frederick v. Zimmerman</i> , 254 Wis. 600 (1949)	42, 44
<i>State ex rel. McGrael v. Phelps</i> , 144 Wis. 1, 128 N.W. 1041 (1910)	42
<i>Stilp v. Commonwealth</i> , 588 Pa. 539, 905 A.2d 918 (Pa. 2006)	26
<i>Weinschenk v. State</i> , 203 S.W.3d 201 (Mo. 2006)	34, 35, 38, 39
<i>Winston v. Moore</i> , 244 Pa. 447, 91 A. 520 (1914)	12, 39
<i>Winston v. Moore</i> , 244 Pa. 447, 91 A. 520 (1914)	18

Statutes

10 P.S. §§ 371-385	25
25 P.S. § 291	8, 28
25 P.S. §§ 2600-3591	7
Act 18 of 2012, Act of March 12, 2012, P.L. 195, No. 1 ("Voter ID Law")	passim
Section 115, 427, 2006 Mo. Laws 728-32 ("S.B. 1014")	35-39
2011 Wisconsin Act 23 ("Act 23")	40, 44

Constitutional Provisions

Mo. Const. Art. I, § 2	35
Mo. Const. Art. I, § 25	35
Pa. Const. Art. I, § 1	31
Pa. Const. Art. I, § 5	16-24
Pa. Const. Art. I, § 26	13, 29-34
Pa. Const. Art. III, § 32	17

Pa. Const. Art. VII, § 1	12, 13, 24-28
Pa. Const. of 1776, Ch. 1, VII.....	5, 7
Pa. Const. of 1790, Art. IX, § V.....	7
Pa. Const. of 1838, Art. III, § 1.....	24
Pa. Const. of 1874, Art. I, § 5.....	17
Wis. Const. Art. III, § 1.....	39
Wis. Const. Art III, § 2	39-40

Other Authorities

Alexander Keyssar, <i>The Right to Vote: The Contested History of Democracy in the United States</i> , 329 (2000)	6
<i>Department of State and PennDOT Confirm Most Registered Voters Have Photo ID</i> , (July 3, 2012)	11
Ken Gormley, et al. <i>The Pennsylvania Constitution: A Treatise on Rights and Liberties</i> 216 (2004)	passim
Matthew J. Herrington, <i>Popular Sovereignty in Pennsylvania 1776-1791</i> , 67 Temp. L. Rev. 575, 588-592 (1993)	5, 6, 16
Pennsylvania Department of State, <i>Elections Information</i> , (April 24, 2012).....	21
R. Michael Alvarez, et al., <i>The Effect of Voter Identification Laws on Turnout</i> , California Institute of Technology, Social Science Working Paper, 21-22 (January 2000 rev.)	21
Robert F. Williams, <i>The State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and Its Influences on American Constitutionalism</i> , 62 Temp. L. Rev. 541, 548-561 (1989)	5
S. 161-210, Session of 2012 196 th of the General Assembly, No. 14, at 200 (Pa. 2012)	22
<i>Secretary of Commonwealth Announces Simplified Method to Obtain Photo ID for Pennsylvania-Born Voters</i> (May 23, 2012).....	10
<i>Secretary of Commonwealth Announces Simplified Process for Obtaining Voter ID, Reminds Voters Photo ID Not Required for April 24 Primary</i> (April 18, 2012).....	9

<i>The Casket, or Flowers of Literature, Wit and Sentiment</i> , Vol. 4, 181 (1828)	6
<i>Voter ID Honesty: Rep. Turzai’s Slip Unmasks the Republican Agenda</i> , (June 28, 2012)	11
<i>Voter ID Law May Affect More Pennsylvanians Than Previously Estimated</i> , (July 4, 2012)	20
<i>Wisconsin Supreme Court Refuses to Hear Voter ID Lawsuits</i> , (April 17, 2012)	44

I. STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Curiae, the Pennsylvania AFL-CIO, is a federation of labor organizations operating throughout Pennsylvania, whose affiliated local unions, district councils, regional councils, central labor councils and area labor federations represent in excess of 900,000 working men and women who reside in virtually every community in the Commonwealth and who, along with their families, comprise a very substantial portion of voting age Pennsylvania citizens. Those voting age citizens include individuals who (1) are elderly, infirm, mobility challenged, or partially disabled, (2) do not possess Pennsylvania Department of Transportation issued photo identification cards, (3) are matriculated college and university students, (4) do not operate a motor vehicle, (5) were born outside of the Commonwealth, (6) have recently married and modified their names and/or (7) are otherwise either not presently possessed of a statutorily acceptable voter identification ("ID") certification or lack the reasonable physical, practical and/or economic means of securing such ID despite being validly registered Pennsylvania electors and voters. Therefore, the Amicus Curiae has a direct and substantial interest in Plaintiffs' challenge to the Voter ID Law, and it files this brief in support of the Petitioners' Petition for Review and Application for Special Relief in the Nature of a Preliminary Injunction.

Additionally, members of organizations affiliated with the Pennsylvania AFL-CIO are employed by various Pennsylvania counties, assigned to work duties on behalf of various county boards of election and are assigned tasks associated with and are called upon to implement and/or administer election operations and activities on and

associated with primary and general elections throughout the Commonwealth's sixty-seven (67) counties. Among the goals of the Pennsylvania AFL-CIO is the protection, assurance and advancement of the cause of social and economic justice for the residents and citizens of our Commonwealth at the workplace, in civic affairs, in their Pennsylvania communities, in political participation and, significantly, in the unfettered exercise of their franchise right in their capacity as Pennsylvania citizens and voters.

Like Petitioners, the Amicus Curiae is interested in protecting the interests of eligible voters across the Commonwealth of Pennsylvania. Further, it has an interest in ensuring that otherwise eligible voters are not illegitimately disenfranchised by this law. The Amicus Curiae believes this Court will benefit from this brief because it provides an overview of the state constitutional issues at issue with this Voter ID Law, includes a discussion of other state court decisions that considered challenges to similar voter ID statutes, and explains the significant and irreversible effects this law will have on election day come November 2012.

I. SUMMARY OF ARGUMENT

Pennsylvania protects the right of its citizens to vote through three constitutional provisions: Article I, Section 5, Article VII, Section 1, and Article 1, Section 26. The Voter ID Law violates all three of these provisions as its purpose and effect is to disenfranchise duly registered and qualified voters in contravention of their state constitutional rights. The statute not only disenfranchises those voters who are unable to obtain the required photo ID, but also those who now face significant

bureaucratic hurdles in order to exercise their right to vote. Employing the required analysis for reviewing constitutional claims, as set forth in *Commonwealth v. Edmunds*, 526 Pa. 374, 389, 586 A.2d 887, 894 (1987), it is clear that the Voter ID Law violates all three state constitutional provisions.

First, the statute violates Article I, Section 5 which provides that elections shall be free and equal. Both the text and case law demonstrate that this provision protects voters against statutes or other regulations which result in the denial or the effective denial of their franchise. Thus, the Voter ID Law violates Article I, Section 5.

Second, the statute violates Article VII, Section 1, which outlines the age, citizenship, and residency qualifications for voters. The text and history of this provision demonstrates that these enumerated qualifications represent an exclusive list. Thus, the General Assembly may not amend these constitutionally-created qualifications through statutory enactment of additional requirements. Because the Voter ID Law adds another qualification for duly registered and qualified voters--a photo ID requirement--it violates Article VII, Section 1.

Third, the Voter ID Law violates Article 1, Section 26--a relatively recent amendment to the Pennsylvania Constitution that bars the Commonwealth from depriving Pennsylvanians of their civil rights or discriminating against them in the exercise of those civil rights. Because voting constitutes a civil right, and the Voter ID Law violates those rights, the statute violates Article 1, Section 26.

Beyond these impermissible violations of Pennsylvania's constitution, courts in Missouri and Wisconsin have reviewed similar voter ID statutes and found they violated their respective state constitutions. The Missouri Supreme Court held that the state's voter ID law violated a provision of their state constitution which is nearly identical to Article I, Section V of the Pennsylvania Constitution. Missouri's voter ID law was also very similar to Pennsylvania's statute. Additionally, a Wisconsin circuit court found that its voter ID statute violated its constitutional provision regarding the qualifications of voters. Both of these decisions serve as persuasive authority that Pennsylvania's Voter ID Law contravenes the three above-enumerated provisions.

Finally, the political and constitutional history of Pennsylvania provides additional support for the concept that the Voter ID Law violates the three noted state constitutional provisions. Pennsylvania's unique history of extending the franchise prior to most other States demonstrates its desire to firmly establish popular sovereignty, and the General Assembly may not undermine that foundation, enshrined in the state constitution.

For all these reasons, this Court should preliminarily enjoin the Voter ID Law as it violates Article I, Section 5, Article VII, Section 1, and Article I, Section 26. An injunction is necessary to prevent the demonstrated harm that Petitioners and other duly registered and qualified voters will otherwise endure should an injunction not be issued.

II. ARGUMENT

A. Introduction

Pennsylvania has a long and distinguished history of being among the first States to create meaningful popular sovereignty whereby the people select their elected officials. Ken Gormley, et al. *The Pennsylvania Constitution: A Treatise on Rights and Liberties* 216 (2004); Matthew J. Herrington, *Popular Sovereignty in Pennsylvania 1776-1791*, 67 Temp. L. Rev. 575, 588-592 (1993); Robert F. Williams, *The State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and Its Influences on American Constitutionalism*, 62 Temp. L. Rev. 541, 548-561 (1989). Pennsylvania's very first state constitution, the Pennsylvania Constitution of 1776 ("1776 Constitution"), represented a radical break from governance by elites to governance by the people: "The [supporters of the 1776 Constitution] intended to bring the entire government – legislature and executive – within the control of the people, whom they naturally identified with themselves." Herrington, *supra*, at 588. The whole purpose of the effort was to make significant strides toward what President Lincoln would later describe as "a government by the people, for the people, and of the people." *Id.* at 580.

Among the primary means by which the 1776 Constitution achieved this goal was to extend the franchise to an entire class of individuals who had otherwise been barred from voting. Gormley, *supra*, at 216; Herrington, *supra*, at 580; Williams, *The State Constitutions of the Founding Decade*, *supra*, at 557. In a remarkable break from Pennsylvania's past as well as that of other fledgling States in the Americas, the

1776 Constitution extended the franchise to the non-propertied—among the first States to do so. Gormley, *supra*, at 216; Herrington, *supra*, at 580. As stated by one legal scholar,

[the 1776 Constitution] undeniably lived up to its radical moniker . . . in the extension of the franchise. The dramatic reduction in property requirements brought thousands of farmers, artisans, and mechanics into the electorate for the first time and instigated the development of a new breed of politics and politicians. The masses were, suddenly, politically relevant.

Herrington, *supra*, at 580. Rather than limit the franchise to those who owned property, the 1776 Constitution allowed all freemen to vote, regardless of race, as long as they had paid taxes within the last year prior to the election. Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*, 329 (2000).

Benjamin Franklin, one of the drafters of the 1776 Constitution, later captured the reasoning behind abolishing property requirements for voting:

Today a man owns a jackass worth fifty dollars and he is entitled to vote; but before the next election the jackass dies. The man in the mean time has become more experienced, his knowledge of the principles of government, and his acquaintance with mankind, are more extensive, and he is therefore better qualified to make a proper selection of rulers—but the jackass is dead and the man cannot vote. Now gentlemen, pray inform me, in whom is the right of suffrage? In the man or in the jackass?

Id. at 3 (citing *The Casket, or Flowers of Literature, Wit and Sentiment*, vol. 4, 181 (1828)).

The 1776 Constitution also achieved greater participatory democracy through a provision that remains, although slightly modified, in our state constitution to this day. Gormley, *supra*, at 216-17. That provision stated: “That all elections ought to be free; and that all free men having a sufficient evident common interest with, and

attachment to the community, have a right to elect officers, or be elected into office.” *Id.* at 217 (citing Pa. Const. of 1776, Ch. I, VII). This provision “was drastically strengthened in the 1790 Pennsylvania Constitution [“1790 Constitution”], when much of the modifying language was removed and the present equality language was added as a requirement for elections.” *Id.* at 217. The 1790 Constitution declared “[t]hat elections shall be free and equal.” *Id.* at 217 (citing Pa. Const. of 1790, Art. IX, § V). All subsequent versions of the Pennsylvania Constitution not only contained this requirement of “free and equal” elections, but included other provisions ensuring that Pennsylvanian’s right to vote would be protected. *Id.* at 217-219.

Despite these provisions, on March 14, 2012, the Pennsylvania General Assembly (“General Assembly”) passed and Governor Thomas W. Corbett (“Governor”) signed a new law, Act 18 of 2012 (“Voter ID Law” or “Act 18”) that impermissibly attempts to reverse over two hundred years of Commonwealth history in which the franchise was expanded to include nearly all adult Pennsylvania citizens. Act of March 12, 2012, P.L. 195, No. 1 (amending Election Code, 25 P.S. §§ 2600-3591) (A copy of Act 18 is attached to this brief as Exhibit “A”.) A detailed description of the statute can be found in the Brief of the Amicus Curiae of the Democratic Caucus of the Pennsylvania House of Representatives filed on May 21, 2012 that Amicus Curiae Pennsylvania AFL-CIO incorporates by reference.

In summary, the Voter ID Law requires all duly registered and qualified voters to produce valid photo ID, including a U.S. passport, a Pennsylvania driver’s

license ("PA driver's license"), or a Pennsylvania non-driver's ID (PA non-driver's ID") before they will be permitted to cast their ballot, starting with the November 2012 general election. See Section 10(2). Those who do not have a U.S. passport or PA driver's license are required to go personally to a local PennDOT office in order to secure a valid PA non-driver's ID. See Sections 1210(a.2) and 1210(5)(a.4)(1).

Those who do not have the required photo ID on election day will be permitted to cast a provisional ballot. See Sections 102(z.5)(2)(i) and 1210 (a.2). However, such provisional ballots will be counted only if the affected voter provides an affidavit to his or her county board of election within six days after the election affirming who he or she is and (1) either submitting a copy of his photo ID that meets the statute's requirements or (2) stating he or she is indigent and cannot obtain the required photo ID. See Sections 1210(a.4)(5)(ii)(D) and (a.4)(5)(ii)(E). Similarly, those voters whose names on their photo ID do not "substantially conform" to those in the registration rolls may be challenged, and, if challenged, may only vote provisionally. See Sections 102(z.5)(2)(i) and 1210(a.2).

While creating a photo identification requirement for casting a ballot, the statute in no way changes, or purports to change, the requirements for registering to vote in Pennsylvania. See 25 P.S. § 291. In order to register to vote, a registrant is merely required to fill out an application answering whether he is a citizen of the United States and will be eighteen years of age on or before election day; providing his name, address, and party affiliation; and affirming under penalty of perjury that the information

provided is accurate. See *Pennsylvania Voter Registration Application*, attached to this brief as Exhibit “B.” Registrants are also asked if they have a Pennsylvania driver’s license or social security number, and asked to provide that information if they do. But that information is **not** required in order to register to vote. *Id.*

Since the enactment of the statute, the Pennsylvania Department of State has engaged in no official rulemaking regarding the Voter ID Law. Nor have officials from the Department of State met with the sixty-seven (67) county Boards of Elections to ensure a smooth implementation of the new law. However, without the Legislature enacting any subsequent amendments of the Voter ID Law or the Department of State promulgating any regulations, the latter has unilaterally announced multiple changes on how the statute will be implemented.

First, on April 18, 2012, the Department of State issued a press release stating that individuals who have expired PA driver’s licenses from 1990 on will not be required to bring a birth certificate or any other proof of ID or residence to secure a PA non-driver ID. Pennsylvania Department of State, *Secretary of Commonwealth Announces Simplified Process for Obtaining Voter ID, Reminds Voters Photo ID Not Required for April 24 Primary* at <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=1174114&parentname=ObjMgr&parentid=4&mode=2> (April 18, 2012) (hereinafter “April 18, 2012 Press Release”). (A copy of the April 18, 2012 Press Release is attached as Exhibit “C.”) In fact, the press release states that even driver’s licenses expired prior to 1990 may still be sufficient if they happen to remain in the

computer system of PennDOT. *Id.* Additionally, the press release indicates that [a]ccredited Pennsylvania public or private colleges and universities can also help their students by adding expiration dates to their ID cards. These institutions can issue stickers that can be affixed to the ID cards to meet the law's requirements, as long as the sticker has an expiration date, or notes that it is for an academic year or semester. *Id.*

Second, on May 23, 2012, the Department of State announced a "simplified process" for persons born in Pennsylvania to get a non-driver photo ID card for voting purposes if they lack an acceptable alternative ID. Pennsylvania Department of State, *Secretary of Commonwealth Announces Simplified Method to Obtain Photo ID for Pennsylvania-Born Voters* at <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=1174114&parentname=ObjMgr&parentid=4&mode=2> (May 23, 2012) (hereinafter May 23, 2012 Press Release). (A copy of the May 23, 2012 Press Release is attached to this brief as Exhibit "D.") Under the change, a person born in Pennsylvania will be able to obtain a non-driver's ID without providing PennDOT a birth certificate with a raised seal. *Id.* In order to take advantage of this change, the voter must go personally to PennDOT, submit certain undescribed information, and that information will be forwarded to the Pennsylvania Department of Health to verify the person's birth records. *Id.* Once the person's birth records are verified, PennDOT will notify the person to come back to PennDOT again to secure his or her PA non driver's ID. *Id.*

Even with such changes, subsequent revelations about the Voter ID Law place its constitutionality in serious doubt. On June 23, 2012, the Majority Leader of the Pennsylvania House of Representatives, Michael Turzai (“Majority Leader Turzai”), stated at a state party committee meeting that the Voter ID Law “is going to allow Governor Romney to win the state of Pennsylvania.” *Voter ID Honesty: Rep. Turzai’s Slip Unmasks the Republican Agenda*, at <http://www.post-gazette.com/stories/opinion/editorials/voter-id-honesty-rep-turzais-slip-unmasks-the-republican-agenda-642268/> (June 28, 2012) (hereinafter “Voter ID Honesty”). (A copy of the June 28, 2012 newspaper article is attached as Exhibit “E.”).

On July 3, 2012 Secretary of State Carol Aichele (“Secretary”) released a report, curiously titled *Department of State and PennDOT Confirm Most Registered Voters Have Photo ID*, revealing that 758,939 registered voters in the Commonwealth or 9.2% of all registered voters do not have a PA driver’s license or PA non-driver’s ID. Pennsylvania Department of State, *Department of State and PennDOT Confirm Most Registered Voters Have Photo ID*, at [http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us:80/portal/server.pt/gateway/PTARGS_0_879406_1265323_0_0_18/r/s-DOS-VoterIDConfirm-70312%20\(2\).pdf](http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us:80/portal/server.pt/gateway/PTARGS_0_879406_1265323_0_0_18/r/s-DOS-VoterIDConfirm-70312%20(2).pdf) (July 3, 2012). (A copy of the July 3, 2012 report is attached as Exhibit “F.”) (hereinafter “Secretary’s Report”). The Secretary’s Report also shows that 186,830 Philadelphians who are duly registered or 18% of registered voters in the city lack a PA driver’s license or PA non-driver’s ID. *Id.*

Because these facts demonstrate that both the intent and effect of the Voter ID Law is to prevent registered and qualified voters from casting a ballot in the upcoming election, the statute violates three provisions of the Pennsylvania Constitution designed to protect the right to vote. First, the Voter ID Law violates Article I, Section 5 of the Pennsylvania Constitution's guarantee to provide free and equal elections. See Pa. Const., Art. I, § 5. The purpose of this provision is to ensure that qualified voters may cast their ballots and have those ballots counted. *Winston v. Moore*, 244 Pa. 447, 457, 91 A. 520, 523 (1914). The recent revelation that over 750,000 qualified electors lack a PA driver's license or PA non-driver's ID demonstrates clearly that the practical effect of the statute is to disenfranchise large numbers of Pennsylvania voters--a clear violation of Article I, Section 5. *Id.* The state's House Majority Leader confirmed this fact through his public statement. Finally, the imposition of this new, sweeping election statute a mere eight months before a presidential election, when there is little time to prepare, train, and educate election officials and voters, will necessarily result in some voters never securing the necessary identification before the election, and other voters, on the day of the election, leaving their polling places in frustration before casting their ballots due to significant and serious delays.

Second, the Voter ID Law violates Article VII, Section 1 of the Pennsylvania Constitution by improperly adding another requirement for voting—a photo identification—that is not expressly enumerated as a qualification for the franchise. Pa. Const. Art. VII, § 1. Article VII, Section 1 states:

Every citizen 21 years of age, possessing the following qualifications, shall be entitled to vote at all elections subject,

however to such laws requiring and regulating the registration of electors as the General Assembly may enact.

1. He or she shall have been a citizen of the United States at least one month.
2. He or she shall have resided in the State 90 days immediately preceding the election.
3. He or she shall have resided in the election district where he or she shall offer to vote at least 60 days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within 60 days preceding the election.

Pa. Const. Art. VII, § 1. Nowhere does the provision include a requirement that qualified electors must have a photo ID. See Pa. Const. Art. VII, § 1. Of the hundreds of thousands of people who do not have the necessary photo ID required under the Voter ID Law, all are presumably duly registered and qualified voters who meet the requirements to vote enumerated in Article VII, Section 1. Nevertheless, under the Voter ID Law, they will be denied their right to vote by the General Assembly's imposition of an additional, statutorily-created voting requirement this is not enumerated in our state Constitution. Thus, this new qualification violates Article VII, Section 1 by seeking to amend that constitutional provision by a mere statute.

Third, and finally, the denial of the franchise for hundreds of thousands of Pennsylvanians constitutes a deprivation of their civil rights or discrimination against the exercise thereof, explicitly prohibited under Article I, Section 26 of the Pennsylvania Constitution. Pa. Const. Art. I, § 26. Article I, Section 26 states: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the

enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.” Pa. Const. Art. I, § 26. Voting is a civil right as recognized by our courts. *See Commonwealth v. Sherwood*, 2004 PA Super 370, 859 A.2d 807, 809 (Pa. Super. 2004). The history of the enactment of Article 26, Section 1 demonstrates that the people meant for this provision to provide a higher level of protection than that afforded by the Equal Protection Clause of the U.S. Constitution. *Gormley, supra*, at 743-47. The Voter ID Law violates that high standard of protection set forth in Article I, Section 26 to ensure that Pennsylvanians are neither deprived of their civil rights nor discriminated against in the exercise of those rights.

B. This Court Must Engage in an Independent and Separate Analysis of the State Constitutional Provisions Allegedly Violated by the Voter ID Law.

Our Supreme Court has long recognized that, “in interpreting a provision of the Pennsylvania Constitution, [the Court] is not bound by the decisions of the United States Supreme Court which interpret similar (yet distinct) federal constitutional provisions.” *Commonwealth v. Edmunds*, 374, 388, 586 A.2d 887, 894 (1987) (citations omitted). The U.S. Constitution establishes minimum levels of constitutional protections that may be meaningful when interpreting analogous state constitutional provisions. *Id.* “However, each state has the power to provide broader standards, and go beyond the minimum floor which is established by the federal Constitution.” *Id.* (citation omitted). Recognizing this power, our Supreme Court often engages in independent state constitutional analysis. *Id.* at 389, 586 A.2d at 894. While it may “accord weight to federal decisions where they ‘are found to be locally persuasive and well reasoned,

paying due regard to precedent and the policies underlying specific constitutional guarantees,' . . . "[the Pennsylvania Supreme Court is] free to reject the conclusions of the United States Supreme Court so long as we remain faithful to the minimum guarantees established by the United States Constitution." *Id.*, 586 A.2d at 895 (citations omitted).

Noting that state constitutional provisions demand a separate analysis by litigants in a case invoking protections under the Pennsylvania Constitution, our Supreme Court has outlined the following four factors that parties should address concerning the state constitutional provisions at issue:

- 1) text of the Pennsylvania constitutional provision;
- 2) history of the provision, including Pennsylvania case law;
- 3) related case-law from other states;
- 4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.

Id. "Depending upon the particular issue presented, an examination of related federal precedent may be useful as part of the state constitutional analysis, not as binding authority, but as one form of guidance. However, ***it is essential that courts in Pennsylvania undertake an independent analysis under the Pennsylvania Constitution.***" *Id.* at 390-91, 586 A.2d at 895 (emphasis added). Independent analyses of Article I, Section 5, Article VII, Section 1, and Article 1, Section 26 demonstrate that the Voter ID Law violates all of these constitutional provisions, the

purposes of which are, in whole or in part, to protect the right to vote. This conclusion is supported by the following *Edmunds* analysis.

1. Text and History of the Relevant Pennsylvania Constitutional Provisions

a. The Voter ID Law Violates Article I, Section 5 That Protects Every Pennsylvania Citizen's Right to Vote.

Article I, Section 5 of the Pennsylvania Constitution states: "Elections shall be free and equal; and no power, *civil* or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Pa. Const. Art. I, § 5 (emphasis added). There is no similar provision in the federal constitution. "Free and equal" elections were considered, by leaders of the Revolutionary era responsible for the creation of the first Pennsylvania Constitution, to be a cornerstone of the democratic republic created by the severance of the colonies from England." Gormley, *supra*, at 215. (A copy of the chapter on Article I, Section 5 from Gormley and his coauthors' treatise is attached to this brief as Exhibit "G.")

The 1776 Constitution represented a radical break in governance in Pennsylvania and America at large. Gormley, *supra*, at 215; Herrington, *supra*, at 580. Prior to its adoption, Pennsylvania, under the Frame of Government of Pennsylvania, only allowed persons to vote who were free males of at least twenty-one (21) years of age who owned either fifty (50) acres or were worth at least fifty (50) pounds. Gormley, *supra*, at 216. The Declaration of Rights in the 1776 Constitution greatly expanded the franchise with a provision that stated: "That all elections ought to be free; and that all

free men having a sufficient evident common interest with, and attachment to the community, have a right to elect officers, or to be elected into office.” Pa. Const. of 1776, Ch. I, § VIII.

The 1790 Constitution revised the provision to state: “That the general, great and essential principles of liberty and free government may be recognised and unalterably established, WE DECLARE . . . That elections shall be **free and equal**.” Pa. Const. of 1790, Art. IX, § V (emphasis added). This provision was modified in later constitutional conventions, but the requirement that elections be free and equal has remained. Gormley, *supra*, at 217 (citing Pa. Const. of 1790, Art. IX, § V) (emphasis added). During the 1837-1838 constitutional convention, an attempt to revise this provision failed, and the provision remained unaltered in the 1838 Constitution. *Id.* at 218.

At the 1872 constitutional convention, the delegates adopted a change to the provision to state that military and civil authorities may not interfere with the franchise: “Elections shall be free and equal; **and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage**.” *Id.* at 219; Pa. Const. of 1874, Art. I, § 5 (emphasis added). This provision, that further enhances the protections of Pennsylvanian’s right to vote as they existed prior to 1874, was approved by the people and remains in our state constitution to this day as Article I, Section 5. *Id.*; Pa. Const., Art. I, § 5. The Voter ID Law is an attempt by “civil

authorities,” the General Assembly and Governor, to “interfere to prevent the free exercise of the right of suffrage.”

The Pennsylvania Supreme Court has consistently defined “free and equal elections” to mean elections in which qualified voters are not denied the franchise. In *Winston v. Moore*, 244 Pa. 447, 91 A. 520 (1914), our Supreme Court declared:

In a general way it may be said that elections are free and equal within the meaning of the Constitution when they are public and open to all qualified electors alike: when every voter has the same right as any other voter; **when each voter under the law has the right to cast his ballot and have it honestly counted: when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial**; and when no constitutional right of the qualified elector is subverted or denied him.

244 Pa. at 457, 91 A.2d at 523 (emphasis added). The Supreme Court has quoted this language with approval on several occasions. *Shankey v. Staisey*, 436 Pa. 65, 69, 257 A.2d 897, 899 (1969); *City Council of Bethlehem v. Marcinin*, 512 Pa. 1, 8, 515 A.3d 1320, 1323 (1986); *In re 1991 Pennsylvania Legislative Reapportionment Commission*, 530 Pa. 335, 356, 609 A.2d 132, 142 (1992). Unmistakably, our Supreme Court has declared a statute that purports to regulate the voting process violates Article I, Section 5 if it denies Pennsylvanians the right to vote. *Id.*

The Voter ID Law represents an effort by the General Assembly to reduce the number of eligible voters in the upcoming Presidential election and all subsequent primary and general elections in contravention of the Pennsylvania Constitution. The General Assembly seeks to obtain that goal through the passage of among the most

restrictive voter ID laws of any state in the Union. National Conference on State Legislatures, "Voter Identification Requirements," at www.ncsl.org/legislatures-elections/elections/voter-id.aspx (last updated July 2, 2012) (listing Pennsylvania along with eight other States as having a "strict photo ID" requirement). (A copy of this study of voter ID requirements is attached to this brief as Exhibit "H.") Pennsylvania's statute is among the few that does not allow an alternative form of proof other than a photo ID. *Id.* It is among the few that requires that the acceptable photo ID must have an expiration date, effectively making most college and university identifications and otherwise potentially permissible public employee ID badges not acceptable. *Id.* It also is among the few that demands that the name on the photo ID "substantially conform" with the voter's name as listed in the voter registration rolls. *Id.* Not surprisingly, it results in a significant reduction in the number of qualified voters who will be permitted to cast a ballot.

In fact, the evidence demonstrates that the Voter ID Law, both in its effect and purpose, disenfranchises hundreds of thousands of duly registered and qualified voters. As the Secretary's Report reveals, over 758,939 duly registered voters in the Commonwealth do not have a PA driver's license or PA non-driver's photo ID. See *Secretary's Report, supra*. These registered voters without a PennDOT identification make up 9.2% of the total number of registered voters in the state. *Id.* In Philadelphia, the impact is far worse. *Id.* According to the report, 186,830 (or approximately 18% total) registered voters in Philadelphia do not have a PennDOT ID. *Id.* The number of registered voters without a PennDOT ID in the four counties surrounding Philadelphia is

nearly as high as those in the city. *Id.* There are 25,449 in Bucks County, 22,475 in Chester County, 40,547 in Delaware County, and 44,952 in Montgomery County-- for a total of 133,423. *Id.* There are an additional 99,218 in Allegheny County. *Id.* These statistics undermine the Secretary's original estimation asserted during the General Assembly's consideration of the statute that 99% of registered voters in Pennsylvania already had the required identification. Bob Warner, *Voter ID Law May Affect More Pennsylvanians Than Previously Estimated*, at http://www.philly.com/philly/news/politics/state/20120704_Voter_ID_law_may_affect_more_Pennsylvanians_than_previously_estimated.html (July 4, 2012). (A copy of Bob Warner's July 4, 2012 article is attached to this brief as Exhibit "I.") Given that all these individuals are already duly registered to vote, presumably they all meet the statutory and constitutional qualifications to cast a ballot. However, unless they secure an appropriate photo ID as required by the Voter ID Law, they simply will not be able to vote and be certain that their votes will be counted.

Similarly, the Voter ID Law will lead some voters to lose their right to vote due to the additional bureaucratic hurdle imposed upon duly registered and qualified voters. First, under the statute, every voter will be required to provide an appropriate photo ID. See Section 10(2). Given the time and cost of securing the necessary photo ID, there will be some duly registered and qualified voters who simply never obtain one, and, therefore, will be unable to cast a ballot and have it counted. In fact, one study has found that stricter voter ID requirements leads to lower turnout among less educated and lower income voters. See R. Michael Alvarez, et al., *The Effect of Voter*

Identification Laws on Turnout, California Institute of Technology, Social Science Working Paper, 21-22 (January 2000 rev.). (“[W]e do find that for registered voters with lower levels of educational attainment or lower income, stricter voter identification requirements do lead to lower turnout, for voters of all races.”) (A copy of this study is attached to this brief as Exhibit “J”).)

Second, even those voters who have the necessary photo ID will find themselves waiting in long lines as election officials attempt to enforce a newly-enacted statute that imposes significant changes in how Pennsylvanians vote. At this point in time, the Department of State has offered no guidance by proposing and promulgating any rulemaking on the implementation of the statute or meeting with the sixty-seven (67) county board of elections in order to prepare for the upcoming Presidential election. In fact, the Commonwealth apparently understands the hurdles imposed by the Voter ID Law, as the Department of State has taken the unprecedented step of unilaterally declaring it will relax some of the requirements of the statute as written. *See April 18, 2012 Press Release, supra; May 23, 2012 Press Release, supra.* Given that Presidential elections have notoriously the highest turnout in Pennsylvania, the new Voter ID Law procedures will lead to even longer delays than those experienced in 2008 as both voters and election officials will be faced with a large turnout while attempting to implement the new statute. Pennsylvania Department of State, *Elections Information*, at <http://www.electionreturns.state.pa.us/ElectionsInformation.aspx?FunctionID=0> (April 24, 2012) (showing the voting numbers for all statewide elections since 2000). In some cases, it will result in frustrated citizens who, because of limited time and other personal

obligations, leave the polls without voting because they cannot wait for hours to cast a ballot.

The Voter ID Law not only reduces the number of eligible voters, it does so for apparent partisan gain. Despite claims that the purpose of the statute is to prevent voter fraud, the Voter ID Law is really an effort by one political party to gain political advantage over the other in the upcoming Presidential election. As an initial matter, there is virtually no evidence of voter impersonation fraud in Pennsylvania. As stated by State Senator Larry Farnese during debate on the Voter ID Law:

The Secretary of the Commonwealth of Pennsylvania, in testimony before the Senate, actually said, and I do not know if it was before the Senate or the House, but during budget hearings, actually said that there have been no reports of voter fraud in that office in the last 10 years. In fact, since 2004, Mr. President, there have been more than 20 million votes cast in Pennsylvania, and only 4 convictions of voter fraud. Four. One, two, three, four. And for that, we have undertaken this costly and wasteful exercise designed to do one thing, and maybe people do not want to talk about it, but we are going to talk about it, but that is to disenfranchise people, to prevent them from casting a ballot that a lot of people's parents who are in this room went to war to protect. That is the ironic thing. People died for this. People died for the right to vote. There should be no obstacle. There should be no obstacle to exercise that right.

S. 161-210, Session of 2012 196th of the General Assembly, No. 14, at 200 (Pa. 2012).

In addition, Pennsylvania House of Representatives Majority Leader Turzai undermined the claim that the statute sought to cure an alleged problem with voter impersonation fraud when he asserted that the purpose of the law was to help his party's candidate for President win the state of Pennsylvania. *See Voter ID Honesty, supra*.

Because Pennsylvania is a “battleground state,” the party that wins Pennsylvania’s electoral votes might very well win the Presidency. Given that President Obama won Pennsylvania in 2008 by approximately 10% of the vote, a mere shift of 5% of the vote in the favor of his opponent may result in his losing the state and its twenty (20) electoral votes. Pennsylvania Department of State, *2008 General Election* at <http://www.electionreturns.state.pa.us/ElectionsInformation.aspx?FunctionID=12&ElectionID=28> (last updated July 16, 2012). Disenfranchising 9.2% of the electorate could easily have such an effect. Rather than allow all of the duly registered and qualified voters of our State to determine who should win our State’s electoral votes, as intended by Article I, Section 5, the General Assembly chose to place impediments in the path of over 750,000 of those voters, hindering their ability to exercise their constitutional right to select their leaders. In contravention of Article I, Section 5, which bars any governmental unit or political party from thwarting the citizen’s exercise of the franchise, the Voter ID Law undermines the constitutional right of duly registered and qualified voters to cast a ballot and have that ballot counted.

For all these reasons, the Voter ID Law violates Article I, Section 5, and this Court should preliminarily enjoin the application, implementation and enforcement of the statute.

b. The Voter ID Law Violates Article VII, Section 1 as it Impermissibly Modifies the Pennsylvania Constitution's Enumeration of Who Is Qualified to Vote.

Article VII, Section 1 enumerates the qualifications necessary to be able to vote in Pennsylvania. Under this provision, eligible voters must be at least twenty-one (21) years of age, have United States citizenship, and be residents within the voting district in which they intend to vote. It sets no other requirements.¹ As is the case with Article I, Section 5, there is no similar provision in the federal constitution. Provisions like Article VII, Section 1, however, did exist in the state constitution since 1776. The famous Section VII of the Declaration of Rights in the 1776 Constitution stated:

Every freemen of the full age of twenty-one Years, having resided in this state for the space of one whole Year next before the day of election for representatives, and paid public taxes during that time, shall enjoy the right of an elector: Provided always, that sons of freeholders of the age of twenty-one years shall be intitled to vote although they have not paid taxes.

Pa. Const. of 1776, Art. I, VII (spelling in original).² If the qualifications were not exclusive, why would the framers have included them in the Constitution rather than leaving them for the General Assembly to decide?

The Voter ID Law, however, effectively modifies the Article VII, Section 1 requirements by creating an additional condition, *i.e.*, that otherwise qualified voters be possessed of a statutorily limited photo ID. Thus, voters who do not have the

¹ Of course, with the adoption of the Twenty-Sixth Amendment to the U.S. Constitution on July 1, 1971, the franchise was extended to those eighteen (18) years old or older. U.S. Const. amend. 26.

² Pennsylvania's history of expanding the franchise is not without blemishes. First, the 1838 Constitution limited, for the first time, the right to vote to "White freeman." Pa. Const. of 1838, Art. III, § 1. The adoption of the Fifteenth Amendment of the U.S. Constitution restored their voting rights. U.S. Const., Art. XV. The 1874 Constitution removed the reference to "White freeman," and rewrote the provision so it stated "[e]very male citizen." Pa. Const. of 1874, Art. VIII, § 1. Second, unlike several other states, Pennsylvania never extended the franchise to women prior to the adoption of the Nineteenth Amendment of the U.S. Constitution. Keyssar, *supra*, at 388-390.

appropriate photo ID are barred from casting a ballot and having that ballot count toward the election outcome even though they meet the constitutionally-established qualifications to vote under Article VII, Section 1. Consequently, the Voter ID Law violates Article VII, Section 1.

In *Mesivtah Eitz Chaim of Bobov, Inc. v. Pike County Board of Assessment Appeal*, 44 A.3d 3 (Pa. 2012), our Supreme Court declared that the General Assembly may not attempt to change a state constitutional provision through enactment of a statute. In *Mesivtah*, the specific issue was whether the Legislature “may, by statute, influence the definition of [a] the constitutional phrase.” *Id.* at 8. The phrase in question was “purely public charity,” which appears at Article VIII, Section 2 of the Pennsylvania Constitution and allows the Legislature to exempt from taxation “institutions of purely public charity.” *Id.* at 10.

In a prior case, *Hospital Utilization Project v. Commonwealth*, 507 Pa. 1, 487 A.2d 1306 (Pa. 1985), the Supreme Court established a test, known as the *HUP* test, for determining whether an organization is a “purely public charity” and, thus, exempt from taxation *Id.* at 16, 487 A.2d at 1313. Later, the Legislature enacted the Institutions of Purely Public Charity Act, 10 P.S. §§ 371-385 (“Act 55”), which purportedly sought to further define the meaning of “purely public charity.” *Id.* at 4.

On appeal to the Supreme Court, *Mesivtah Eitz Chaim of Bobov, Inc.*, a not-for-profit religious entity, sought to overturn a lower court decision that it was not “a

purely public charity,” and, therefore, not exempt from taxation by Pike County. *Id.* at 2-6. The non-profit argued that it only needs to meet the requirements of Act 55 and not those of the *HUP* test. *Id.* at 6.

The Supreme Court rejected that argument, and, in doing so, explained the responsibility and authority that both the Judiciary and the Legislature have regarding interpretations of the Pennsylvania Constitution:

While the General Assembly necessarily must attempt to interpret the Constitution in carrying out its duties, the judiciary is not bound to the "legislative judgment concerning the proper interpretation of constitutional terms." *Alliance Home*, at 223 n.9 (quoting *Stilp v. Commonwealth*, 588 Pa. 539, 905 A.2d 918, 948 (Pa. 2006)). The General Assembly cannot displace our interpretation of the Constitution because "the ultimate power and authority to interpret the Pennsylvania Constitution rests with the Judiciary and in particular with this Court." *Stilp*, at 948; see also *Pottstown School District v. Hill School*, 786 A.2d 312, 319 (Pa. Cmwlth. 2001) (en banc) ("Nor can the General Assembly alter the Constitution by purporting to define its terms in a manner inconsistent with judicial construction; interpretation of the Constitution is the province of the courts."); THE FEDERALIST No. 78 (Alexander Hamilton) ("The interpretation of the laws is the proper and peculiar province of the courts.").

Id. at 8. The Supreme Court also rejected the argument, advanced by the non-profit, that it should defer to Act 55 as it was enacted with “laudable purposes.” “Good intentions,” the Supreme Court explained, “**do not excuse non-compliance with the Constitution.**” *Id.* at 12 (emphasis added).

The Voter ID Law is in clear violation of Article VII, Section 1 as it imposes an additional statutory requirement on voters who are duly registered and qualified to vote under the Pennsylvania Constitution—some of whom, in fact, have voted for

decades. Despite the fact that a voter meets the specific age, citizenship, and residency requirements enumerated in Article VII, Section 1, the Voter ID Law will, if not enjoined, prohibit her from casting a ballot and having that ballot count toward the election unless she also has the statutorily-required and imposed photo ID. See Section 10(2). The General Assembly, however, is not permitted to change constitutional provisions through statutory enactment. *Mesivtah*, 44 A.3d at 12. The only qualifications allowed for determining whether an individual is qualified to vote are those enumerated in Article VII, Section 1 or one of the other provisions of the state constitution. *Id.* These qualifications are exclusive. Since nowhere does the state constitution make a photo ID a requirement to vote, the Legislature may not create such a requirement statutorily. *Id.* To allow the Legislature to do so would render meaningless Article VII, Section 1—a provision that, as discussed above, was designed to ensure that adult, U.S. citizens, and residents of Pennsylvania could select their leaders.³ Furthermore, even if the Legislature had “laudable goals” or “good intentions”

³ Admittedly, the Pennsylvania Supreme Court has held that the Legislature has the authority to bar confined felons from voting. See *Ray v. Commonwealth*, 442 Pa. 606, 276 A.2d 509 (1971); *Mixon v. Commonwealth*, 759 A.2d 442 (Pa. Cmwlth. 2000). However, in neither *Ray* nor *Mixon* did the Supreme Court engage in any *Edmunds*-type analysis with respect to Article VII, Section 1. *Id.*

Ray is a four paragraph opinion which, while mentioning Article I, Section 5, never mentions Article VII, Section 1 or attempts to reconcile that provision with its claim that “the Legislature has the power to define ‘qualified voter’ in terms of age and residency requirements, so that it also has the power to except persons ‘confined in a penal institution’ from the class of ‘qualified voters.’” *Ray*, 442 Pa. 606, 609, 276 A.2d 509, 510. In support of this conclusion, *Ray* relies upon four federal court cases. Under the Fifteenth Amendment of the United States Constitution, States have the right to deny the franchise to persons who commit a crime. U.S. Const. amend. 15.

In *Mixon*, two of the six petitioners, who were registered to vote but confined in a penal institution, raised a challenge arguing, in part, that Article VII, Section 1 prohibited the Commonwealth from denying them the right to vote. The Court rejected that argument on *stare decisis* grounds, citing *Ray*. 759 A.2d at 447.

In *Martin v. Haggerty*, 548 A.2d 371, 374 (Pa. Cmwlth. 1988), the Commonwealth Court was faced with a constitutional challenge under Article VII, Section 1, but ultimately followed Supreme Court precedent, citing *Ray*.

Petitioners in this case are not convicted felons who are attempting to exercise the franchise. Instead, they are duly registered and qualified electors as defined by Article VII, Section 1, who will be denied their franchise through the implementation of the Voter ID Law, despite having voted for years.

in enacting the Voter ID Law, which the Amicus Curiae disputes in our argument above, that would not permit it to amend through statute a constitutional provision. *Id.* at 12.

Finally, to the extent that the Commonwealth argues that Article VII, Section 1 permits it to enact the Voter ID Law on the grounds that the provision expressly allows the Legislature to pass “such laws requiring and regulating the registration of electors,” it is clearly mistaken as to the applicability of that constitutional language in the context of the statute at issue in the instant matter. See Pa. Const., Art. VII, § 1. The registration of voters has a long history in the state of Pennsylvania and generally refers to the process by which individuals provide their local board of elections their name, address, and party affiliation so the County may keep an accurate accounting of all the eligible voters. See 25 P.S. § 291. This registration process is distinct from a statutory requirement that individuals must possess a specific type of photo identification in order to exercise their right to vote. Compare 25 P.S. § 291 to Act 18. The Voter ID Law simply does not, nor does it purport to, constitute a law concerning the registration of voters as referenced in Article VII, Section 1. Instead, it represents an unconstitutional attempt to statutorily amend the constitutionally specified voter qualifications outlined in that provision. This the Legislature cannot do. *Mesivtah*, 44 A.3d at 12.

For these reasons, the Voter ID Law violates Article VII, Section 1, and, therefore, it should be preliminarily enjoined by this Court.

For reasons explained above, the General Assembly’s actions in purporting to adopt the Voter ID law were constitutionally impermissible.

c. The Voter ID Law Violates Article I, Section 26 as it Constitutes a Violation of, or Discrimination Against, a Person's Civil Rights, Protected by the Provision.

In 1967, a mere forty-five (45) years ago, the Legislature and people of this Commonwealth adopted an addition to the Pennsylvania Declaration of Rights, Article I, Section 26 which states: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right." Pa. Const., Art. I, § 26. Like Article I, Section 5 and Article VII, Section 1, there is no similar provision in the federal constitution. By its very language, this provision is designed the Commonwealth and its subdivisions from depriving Pennsylvania citizens of their civil rights and/or discriminating against them in the exercise of their civil rights. Pa. Const., Art. I, § 26; *see also* Gormley, *supra*, at 743.

However, instead of asserting that this provision provides greater protection than that afforded by the federal equal protection provision, the Pennsylvania Supreme Court has found that Article I, Section 26 and the federal equal protection clause provide analogous constitutional protections. *See Erfer v. Commonwealth*, 568 Pa. 128, 138-39, 794 A.2d 325, 332 (2002) (contending that Article I, Section 26 "is conterminous" with the federal equal protection clause); *Love v. Borough of Stroudsburg*, 528 Pa. 320, 325, 597 A.2d 1137, 1139 (1991) (stating that a claim raised under Article I, Section 26 is analyzed under the equal protection standards of the federal constitution); *Fischer v. Department of Public Welfare*, 509 Pa. 293, 502 A.2d

114 (1985) (finding, for the first time, that the “most appropriate analysis [of a claim brought under Article I, Section 26] is that utilized by the United States Supreme Court” when reviewing a statute under the federal equal protection clause).

Nonetheless, as the Supreme Court noted with respect to the later-enacted equal rights amendment, Article 1, Section 26 is “a state constitutional amendment adopted by the Commonwealth as part of its organic law. The language of that enactment, not a test used to measure the extent of federal constitutional protections, is controlling.” *Hartford Accident & Indemnity Co. v. Insurance Commissioner of Commonwealth*, 505 Pa. 571, 586, 482 A.2d 542, 549 (1984). Later, in *Edmunds, supra*, the Supreme Court declared that “it is essential that courts in Pennsylvania undertake an independent analysis under the Pennsylvania Constitution.” 526 Pa. at 390-91, 586 A.2d at 895. Even after *Edmunds* was decided, the cases addressing Article I, Section 26 have not engaged in the appropriate analysis of Article I, Section 26. See *Erfer*, 568 Pa. at 138-39, 794 A.2d at 332; *Love*, 528 Pa. at 325, 597 A.2d at 1139; *Fischer*, 509 Pa. at 311, 502 A.2d at 123-24.

The lack of an *Edmunds* analysis is particularly striking given that “[t]he express ban on discrimination against persons in the exercise of their civil rights, in addition to prohibiting the denial of rights, provides a strong textual basis for extending such protection beyond the federal equal-protection doctrine.” Gormley, *supra*, at 743. Furthermore, “[t]he legislative history of the 1967 provision is sparse, but one conclusion clearly emerges: The protection of Section 26 was designed to reach beyond that

provided by the Fourteenth Amendment and beyond the existing equality provisions (Article I, Section 1⁴ and Article III, Section 32⁵) in the state Constitution.” *Id.* Now is the time for that *Edmunds* analysis.

In the seminal work on the Pennsylvania Constitution, *The Pennsylvania Constitution: A Treatise on Rights and Liberties*, Professor Gormley and his coauthors provide the most comprehensive history on the consideration and adoption of Article I, Section 26, which demonstrate that the provision is not the equivalent of the federal equal protection claim:

The predecessor of Article I, Section 26 originated as a 1963 proposal by the Committee on the Bill of Rights of the Pennsylvania Bar Association’s “Project Constitution.” The Committee proposed Article I, Section 26 at the same time it recommended redrafting Article I, Section 10 to include a separate “clause the wording of

⁴ Article I, Section 1 states:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

Pa. Const. Art. I, § 1.

⁵ Article III, Section 32 states:

The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General assembly shall not pass any local or special law.

1. Regulating the affairs of counties, cities, townships, wards, boroughs, or school districts.
2. Vacating roads, town plats, streets or alleys.
3. Locating or changing county seats, erecting new counties or changing county lines.
4. Erecting new townships or boroughs, changing township lines, borough limits or school districts.
5. Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury.
6. Exempting property from taxation.
7. regulating labor, trade, mining or manufacturing.
8. Creating corporations, or amending, renewing or extending the charters thereof.

Nor shall the General Assembly indirectly enact any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

Pa. Const., Art. 3, § 32.

which is copied, with the addition of an 'equal protection' clause, from the Federal Constitution."

The Governor's Commission on Constitutional Revision, however, did not include the proposed "equal protection" language, presumably because it duplicated the existing guarantees provided by Article I, Section 1 and by Article III, Section 32. By contrast, it proposed the adoption of Article 1, Section 26. Thus, at its inception, Article I, Section 26 was regarded as distinct from, and supplementary to, the existing equality guarantees in the state and federal constitutions. The existing provisions must have been viewed as not reaching far enough.

As introduced in the state Senate, in the form of Senate Bill 530 of 1965, Article 1, Section 26 prohibited discrimination on the ground of "race, color, or national origin." The bill was amended in the House to prohibit discrimination on the basis of "race, creed, color, sex, or national origin," an amendment that provoked the nonconcurrence of the Senate. The difference was resolved in conference committee by broader language that prohibited discrimination "against any person in the exercise of any civil right."

Article I, Section 26 was approved in this form by the legislature in December 1965 and ratified by the people on May 16, 1967. This approval was secured one hundred years after the Fourteenth Amendment prohibited states from denying persons the "equal protection of the laws," almost two hundred years after the adoption of Article I, Section 1, and almost one hundred years after the adoption of the predecessors of Article III, Section 32--the equal protection guarantees of the Pennsylvania Constitution.

Article I, Section 26, therefore, supplements the equal protection guarantees of Article I, Section 1 and Article III, Section 32 by specifically prohibiting *discrimination against*, as well as *denial of*, any civil right. In view of the legislative history of Section 26, clearly its language was not lightly chosen. Rather, as the Supreme Court of Pennsylvania noted in a similar situation concerning special laws. "[T]he language of the Pennsylvania Constitution is substantially different from the federal constitution. We are not free to treat that language as though it were not there. Because the framers of the Pennsylvania Constitution employed these words, the specific language in our constitution cannot be readily dismissed as superfluous. [*Kroger v. O'Hara Twp.*, 481 Pa. 101, 117, 392 A.2d 266, 274 (1979).]

Article I, Section 26 was a change of substance in the Declaration of Rights, and was voted on separately by the voters on May 16, 1967. It was not part of a broader package or revision of the State Constitution. By applying the previously mentioned interpretation approach, the concepts of “discriminate” and “civil rights,” therefore, cannot be construed to carry some obscure limitation of meaning: rather, the approach to interpretation should include the normal understanding of such words or concepts when they were ratified by the people of Pennsylvania, which here, reveal a clear mandate of neutrality and a prohibition of favoritism or partiality.

Id. (footnotes omitted). (A copy of the discussion of Article I, Section 26 by Professor Gormley and his coauthors, including their footnotes, is attached as Exhibit “K.”).

With this legislative history in mind, the Voter ID Law violates Article I, Section 26 as it clearly imperils one of the most basic and fundamental civil rights—the right to vote. Although Pennsylvania courts have not defined “civil rights” in the context of Article I, Section 26, they have recognized that the right to vote is one of the civil rights possessed by our citizens. *See Commonwealth v. Sherwood*, 859 A.2d 807, 809 (Pa. Super. 2004) (finding that the state must restore three civil rights—the right to vote, the right to hold public office, and the right to serve on a jury—before a convicted felon may legally own firearms under a federal statute); *Commonwealth v. Stiver*, 2012 Pa. Super LEXIS 1038, at *7-*8 (Pa. Super. 2012) (same).

In this case, through the enactment of the Voter ID Law, the Legislature has stripped the franchise from hundreds of thousands of Pennsylvanians who are duly registered and qualified to vote under the express provisions of Article VII, Section 1 of the Pennsylvania Constitution. Many of those Pennsylvanians have cast ballots in Pennsylvania elections for decades. Such a draconian action by the General Assembly

against these voters represents clear deprivation of, and/or discrimination against, their exercise of their civil rights.

Therefore, the Voter ID Law violates Article I, Section 26, and, for that reason, this Court should preliminarily enjoin the statute.⁶

C. Other State Decisions Support the Conclusion that the Voter ID Law Violates the Pennsylvania Constitution.

Other states have enacted Voter ID statutes similar, albeit less restrictive, to the one enacted by Pennsylvania, and some of those states have reviewed that legislation under their state constitutions. *See Voter Identification Requirements, supra*. In two states, Missouri and Wisconsin, their respective photo ID statutes were found unconstitutional under their respective state constitutions. *See Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006); *League of Women Voters of Wisconsin Education Network, Inc. v. Walker, et al.*, No. 11 CV 4669, slip op. (Cir. Ct. Wis. Mar. 12, 2012) (hereinafter *League of Women Voters of Wisconsin*). (A copy of the Wisconsin decision is attached to this Brief as Exhibit “L.”). *Weinschenk* is particularly relevant because it has a state constitutional provision that is nearly identical to Article I, § 5 of the Pennsylvania Constitution, and the Missouri ID statute was very similar to the

⁶ Prior declarations by the Pennsylvania Supreme Court stating that Article 1, Section 26 should be read “conterminous with [the U.S. Constitution’s Equal Protection Clause],” *Erfer*, 568 Pa. 128, 138, 794 A.2d 325, 331, are not binding precedent for later courts. Legal scholars have called this practice by some state courts “prospective lockstepping,” and cautioned against it: “When a court engages in prospective lockstepping, it not only looks back at the case before it and the existing, relevant legal materials, including federal doctrine, but it also purports to foresee, and to attempt to control, the *future*. In other words, it is not within the state judicial authority to receive, wholesale, the law of a different sovereign as part of its domestic law to be applied in the future.” Robert F. Williams, *The Law of American State Constitutions* 225 (2009) (emphasis in original). The Alaska Supreme Court has applied this principal in a case interpreting one of its state constitutional provisions. *Doe v. State*, 189 P.3d 999, 1005 (Alaska 2008).

Pennsylvania Voter ID Law. 203 S.W.3d at 211. In *League of Women Voters of Wisconsin*, while the state constitutional provisions at issue are different than those found in Pennsylvania, they specifically enumerate who is a qualified voter and, thereby, prohibit the legislature from statutorily adding additional qualifications to the right to vote. *League of Women Voters of Wisconsin*, No. 11 CV 4669, slip op. at 3 (Cir. Ct. Wis. Mar. 12, 2012).

1. Missouri--*Weinschenk v. State*

a. Facts and Court's Holding

Like Pennsylvania, the Missouri Constitution guarantees that “all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Mo. Const. Art. I, § 25. Further, the Missouri Constitution has established an exclusive list of qualifications necessary to vote in Missouri. “All citizens of the United States...over the age of eighteen who are residents of this state and of the political subdivision in which they offer to vote are entitled to vote at all elections by the people, if . . . they are registered within the time prescribed by law.” Mo. Const. Art. VIII, §. 2.

In 2006, despite these provisions, the Missouri Legislature enacted a voter ID statute, SB 1014, Section 115.427, 2006 Mo. Laws 728-32 (hereinafter “SB1014”). SB 1014 is similar to Pennsylvania's Voter ID Law. First, SB 1014 requires voters to present certain designated types of state or federally issued photo ID to cast a ballot. *Weinschenk v. State*, 203 S.W.3d at 205 (Mo. 2006). Second, large numbers of

registered voters—between approximately 170,000 to 240,000 Missourians—do not have the requisite photo ID legislatively required by SB 1014. *Id.* at 212-213. Third, SB 1014 allows voters who do not have a driver's license or U.S. passport to obtain a non-driver's ID for no charge. *Id.* at 206. However, in order to obtain a non-driver's ID, the voter must submit proper documentation, such as a social security card or birth certificate, which costs money. *Id.* at 207-08. Fourth, SB 1014 permits voters who do not have an appropriate photo ID to vote provisionally, but those votes will only be counted if they affirm that the reason they do not have the appropriate photo ID is "because of a disability or handicap, a sincerely held religious belief, or they were born on or before 1941. *Id.* at 206. Fifth, the purpose behind SB 1014 is alleged voter impersonation fraud of which there is little to no evidence of having occurred in Missouri. *Id.* at 217.

After the trial court found that the statute violated the equal protection provision of the Missouri constitution, the State of Missouri appealed to the Missouri Supreme Court. *Id.* at 204. As an initial matter, the Missouri Supreme Court found that the Missouri Constitution has an express provision that protects the right to vote. *Id.* at 211-12. Thus, the Court concluded that voting rights is an area where the Missouri Constitution provides greater protection than its federal counterpart. *Id.* at 212.

The Missouri Supreme Court found that SB 1014's photo ID requirement placed a burden on the right of Missourians to vote, which was more than *de minimis*. *Id.* at 213. In reaching this conclusion, the court noted that, although Missouri offered

non-driver's IDs for free, most citizens of Missouri who do not possess the required photo ID under SB 1014, with few exceptions, must still expend money to obtain the non-driver's ID. *Id.* This is so because a non-driver's ID is only obtainable by securing a copy of one's birth certificate or a U.S. passport—both of which cost money. *Id.* Applying *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966), in which the U.S. Supreme Court declared that poll taxes or other imposed fees constituted an unconstitutional burden on the right to vote, the court found that the fees imposed by SB 1014 on those without the necessary IDs constitutes a similar burden under the Missouri Constitution. *Id.* at 213-14. Additionally, the court found that the time and effort expended obtaining a birth certificate or U.S. passport in order to secure a voter identification card was a “cumbersome procedure.” *Id.* at 214-15. Thus, the court concluded that SB 1014 “represents a heavy and substantial burden on Missourians’ free exercise of the right of suffrage.” *Id.* at 215.

Given that SB 1014 represented a significant burden on the right to vote, the court subjected the statute to strict scrutiny to determine if the statute “serves a compelling state interest and whether it is necessary and narrowly tailored to accomplish that interest.” *Id.* at 216. The Court did recognize that the State of Missouri has compelling and significant interests in preserving the integrity of the elections process and combating voter fraud. *Id.* at 217. However, the Court rejected Missouri's argument that the statute was narrowly tailored to achieve that purpose. *Id.* at 219. First, the court noted that the only type of voter fraud that SB 1014 prevents is in-person voter impersonation fraud at the polling place. *Id.* at 217. It fails to address absentee

voter fraud or fraud in registration. *Id.* Additionally, the court noted, with approval, the trial court's finding that "[n]o evidence was presented that voter impersonation fraud exists to any substantial degree in Missouri. In fact, the evidence that was presented indicates that voter impersonation is not a problem in Missouri." *Id.* Thus, the court found that SB 1014 failed under the strict scrutiny test. The court concluded:

The Missouri Constitution provides a specific provision that enshrines the right to vote among certain enumerated constitutional rights of its citizens. Mo. Const. Art. I, sec. 25. SB 1014's Photo-ID Requirement creates a heavy burden on the right to vote and is not narrowly tailored to meet a compelling state interest, so it falls afoul of the Missouri Constitution's equal protection clause, Mo. Const. art I, sec. 2, and of Missourians' specific constitutional protection of the right to vote. Mo. Const. Art. I, sec. 25. For these reasons, the trial court judgment is affirmed.

Id. at 221-22.

b. Applicability of Missouri Case to Pennsylvania's Voter ID Law

Because there are so many similarities between *Weinschenk* and this case, the former acts as strong persuasive authority that Pennsylvania's Voter ID Law violates Article I, Section 5 of the Pennsylvania Constitution. First, Pennsylvania's Article I, Section 5 and Missouri's Article I, Section 25 are nearly identical. Second, Pennsylvania's Voter ID Law and SB 1014 are very similar. Both voter ID statutes impose additional fees on voters who do not have the necessary photo ID by requiring them to secure a birth certificate or U.S passport to acquire a non driver's ID. In addition, both ID statutes only seek to prevent voter impersonation fraud, of which there is scant evidence in either state. Finally, both result in hundreds of thousands of voters who meet each state's respective voting qualifications being denied the franchise.

All these similarities strongly support a finding that under our Article I, Section 5, just like SB 1014, the PA Voter ID Law is unconstitutional. Such a conclusion is supported by the Pennsylvania Supreme Court's definition of "free and equal" elections as ones in which

they are public and open to all qualified electors alike; when every voter had the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial and when no constitutional right of the qualified elector is subverted or denied him.

Winston, 244 Pa. at 457. As was true in *Weinschenk*, the Pennsylvania Voter ID Law places a substantial burden on duly registered and qualified voters, many of whom undoubtedly meet our Commonwealth's statutory regulation requirements and constitutional qualifications to vote.

2. Wisconsin-- *League of Women Voters of Wisconsin Education Network, Inc. v. Walker*

a. Facts and Court's Holding

The voter protection provisions in the Wisconsin Constitution differ from those in the Pennsylvania Constitution. Article III, Section 1 of the Wisconsin Constitution specifies who may vote in Wisconsin: "Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector in that district." Wi. Const. Art. III, § 1. Article III, Section 2 of the Wisconsin Constitution also allows the government to exclude from voting otherwise-eligible electors "(1) who have been convicted of a felony and whose civil rights have not been restored, or (2) those

adjudged by a court to be incompetent or partially incompetent, unless the judgment contains certain specifications.” Wi. Const. Art. III, § 2. It also provides that the Legislature may enact laws defining residency, providing for registration of electors, providing for absentee voting, and extending the right of suffrage to additional classes. *Id.*

In 2011, the Wisconsin Legislature passed 2011 Wisconsin Act 23 (“Act 23”). *League of Women Voters of Wisconsin*, at 2. Act 23 provides that qualified electors under the Wisconsin Constitution may not vote in an election unless they display acceptable government-sanctioned photo identification either at the polls or to election officials by 4:00 p.m. on the Friday following the election. *Id.* Plaintiffs sued defendants Governor Scott Walker and individuals of the Government Accountability Board (“GAB”) in a Wisconsin circuit court—the trial division in Wisconsin, seeking declaratory and injunctive relief under the Wisconsin Constitution. *Id.*

The court began its analysis by stating, in rather blunt terms:

Article III is unambiguous, and means exactly what it says. It creates both the necessary and sufficient requirements for qualified voters. **Every** United States citizen 18 years of age or older who resides in an election district in Wisconsin is a qualified elector in that district, unless excluded by duly enacted laws barring certain convicted felons or adjudicated incompetents/partially incompetents.

Id. at 2 (emphasis in original). Based on this unambiguous language, the Court stated that the government may not disqualify an elector who possesses the requisite

qualifications on the grounds that the voter does not satisfy additional statutorily-created qualifications not contained in Article III, such as possession of a photo ID. *Id.* at 3.

In support of its position, the court cited a passage from a Wisconsin Supreme Court case from 1880:

The elector possessing the qualifications prescribed by the constitution is invested with the constitutional right to vote at any election in this state. These qualifications are explicit, exclusive, and unqualified by any exceptions, provisos or conditions, and the constitution, either directly or by implication, confers no authority upon the legislature to change, impair, add to or abridge them in any respect.

Id. (quoting *Dells v. Kennedy*, 49 Wis. 555, 6 N.W. 246, 246-247 (1880)).

Based on the clear language of the state constitutional provision and prior precedent, the court concluded that requiring photo identification as a precondition to voting, was unconstitutional. *Id.* at 4. The court noted that the Wisconsin Constitution expressly empowers the legislature and governor to enact laws regulating elections. “The express authority is found in Article III, Section 2 and is limited to (1) defining residency, (2) providing for registration of electors, (3) providing for absentee voting, (4) excluding from the right of suffrage certain convicted felons and adjudicated incompetents/partially incompetents, and (5) extending the right of suffrage to additional classes of persons, subject to ratification by the electorate at a general election.” *Id.* The court found that the photo ID requirements of Act 23 do not fall within these five categories. *Id.*

The Court concluded that if the authority to enact the photo ID requirements exists, it must be found by implication or inference from the text of the Constitution, particularly Article IV, Section 1 referring to the plenary powers of the senate and assembly:

Herein lies the fatal flaw in defendant's legislative-authority-trumps-constitutional-qualifications argument. The people's fundamental right of suffrage preceded and gave birth to our Constitution (the sole source of the legislature's so-called "plenary authority"), not the other way around. Until the people's vote approved the Constitution, the legislature had no authority to regulate anything, let alone elections.

Id. at 4. The court then noted that although the legislature and governor have implicit authority to enact laws regulating elections, the Wisconsin Supreme Court has repeatedly admonished that those laws may not destroy or substantially impair a qualified elector's right to vote. *Id.* In support of this position, the court quoted a Wisconsin Supreme Court decision that found:

The right of a qualified elector to cast a ballot for the election of a public officer, which shall be free and equal, is one of the most important of the rights guaranteed to him by the constitution. If citizens are deprived of that right, which lies at the very basis of our Democracy, we will soon cease to be a Democracy. For that reason no right is more jealously guarded and protected by the departments of government under our constitutions, federal and state, than is the right of suffrage. It is a right which was enjoyed by the people before the adoption of the constitution and is one of the inherent rights which can be surrendered only by the people and subjected to limitation only by the fundamental law. *State ex rel. McGrael v. Phelps*, 1910, 144 Wis. 1, 128 N.W. 1041, 35 L.R.A., N.S., 353; *State ex rel. Barber v. Circuit Court*, 1922, 178 Wis. 468, 190 N.W. 563

Id. at 4-5 (quoting *State ex rel. Frederick v. Zimmerman*, 254 Wis. 600, 613-614 (1949)). The Wisconsin court, therefore, recognized equality rights in addition to the specific right to vote.

The court found that Act 23 is more than a mere regulation of elections because the photo identification requirements impermissibly eliminate the right to vote altogether for certain constitutionally qualified electors. *Id.* at 5. It provided an example of a individual who has undisputed proof at the polls that he/she is a qualified elector under Article III, but lacks the requisite photo identification then or by the following Friday, and, therefore, may not vote under Act 23. *Id.* The court concluded that Act 23's photo ID requirements are unconstitutional because they abridge the right to vote. *Id.* It noted that a regulation over voting may not deny the right of suffrage, either directly or indirectly. *Id.* at 5, 6. Sacrificing a qualified elector's right to vote is not a reasonable exercise of the government's authority to regulate elections. *Id.* at 6. "Our constitution is a line in the sand drawn by the sovereign authority of this state – the people of Wisconsin – that the legislature, governor, and the courts may not cross, particularly under the all-too-convenient guise of strained construction and attenuated inference." *Id.*

In finding that the photo ID requirements of Act 23 to be unconstitutional on their face, the court reflected on the insurmountable burdens facing many constitutionally-qualified electors if Act 23 stands, much like is the case in Pennsylvania. *Id.* The court noted that some of these disenfranchised citizens would be neighbors and relatives. *Id.* at 7. "Mostly they would consist of those struggling souls who, unlike the vast majority of Wisconsin voters, for whatever reason will lack the financial, physical, mental, or emotional resources to comply with Act 23, but are otherwise constitutionally

entitled to vote.” *Id.* The Court made clear that the right to vote belongs to all Wisconsin citizens who are qualified electors, not just the majority for whom Act 23 poses few problems at the polls. *Id.*

In conclusion, the court took notice of the fact that voter fraud undermines our form of government and that the legislature and governor may take aggressive action to prevent it. *Id.* ***“But voter fraud is no more poisonous to our democracy than voter suppression. Indeed, they are two heads on the same monster.”*** *Id.*

(emphasis added). The court added:

A government that undermines the very foundation of its existence – the people’s inherent, pre-constitutional right to vote – imperils its legitimacy as a government by the people, for the people, and especially of the people. It sows the seeds for its own demise as a democratic institution. See *State ex rel. Frederick v. Zimmerman, supra*. This is precisely what 2011 Wisconsin Act 23 does with its photo [identification] mandates.

Id. at 8. Reiterating that Act 23’s photo ID requirements are unconstitutional to the extent they serve as statutorily-created addition to the constitutional qualifications for voting, the Court permanently enjoined defendants from any further implementation or enforcement of the photo identification provisions. *Id.* It then concluded that disqualification of constitutionally qualified electors from casting votes where they do not timely produce photo identifications satisfying Act 23’s requirements violates Article II, Sections 1 and 2 of the Wisconsin Constitution. *Id.*⁷

⁷ Upon the filing of appeals to the decision, two divisions of the Wisconsin Court of Appeals filed Petitions to Certify to the Wisconsin Supreme Court, stating the importance of the issue given the May 8, 2012 primary. Jurist, “Wisconsin Supreme Court Refuses to Hear Voter ID Lawsuits,” at <http://jurist.org/paperchase/2012/04/wisconsin-supreme-court-refuses-to-consider-voter-id-lawsuits.php> (April 17, 2012). On April 16, 2012, the Wisconsin Supreme Court denied the petition. *League of Women Voters of Wisconsin Education Network, Inc. v. Walker*, 2012 WI 45, 340 Wis. 2d 546, 811 N.W. 2d 821 (2012).

b. Applicability of Wisconsin Case to Pennsylvania's Voter ID Law

While the constitutional provisions in the Wisconsin Constitution differ from those found in the Pennsylvania and Missouri Constitutions, the Wisconsin Supreme Court in *League of Women Voters of Wisconsin* provides powerful arguments for why the Pennsylvania Voter ID Law is unconstitutional. First, like Article VII, Section 1 of the Pennsylvania Constitution, Article III, Section 1 of the Wisconsin Constitution specifically enumerates the qualifications of voters. Since the Wisconsin circuit court found that Act 23's photo ID requirements violated Article III, Section 1 of the Wisconsin Constitution by adding a qualification beyond those enumerated in the state constitution, that constitutes persuasive authority that Pennsylvania's Voter ID Law violates Article VII, Section 1 of the Pennsylvania Constitution for precisely the same reason.

Second, the Wisconsin Supreme Court argued that "[t]he people's fundamental right of suffrage preceded and gave birth to our Constitution (the sole source of the legislature's so-called 'plenary authority'), not the other way around. Until the people's vote approved the Constitution, the legislature had no authority to regulate anything, let alone elections." *League of Women Voters of Wisconsin* at 2. Such an argument is particularly salient in this case because Pennsylvania adopted its first state constitution and all subsequent constitutions in a historically unprecedented effort to place the Commonwealth's sovereignty in the hands of the people. The idea that the General Assembly could effectively dilute (or possibly destroy) popular sovereignty,

recognized in and advanced through Article I, Section 5, Article VII, Section 1, and Article I, Section 26 is an absurdity.

Thus, the arguments advanced by the Wisconsin circuit court have equal validity to the case at hand, and serve as persuasive authority that the Voter ID Law violates the Pennsylvania Constitution.⁸

D. The Unique Political and Constitutional History of Pennsylvania Provides Further Support for Finding the Voter ID Law Unconstitutional.

As discussed at length previously in this brief, Pennsylvania has a unique place in the political history of our country. The 1776 Constitution represented a radical break from Pennsylvania's past, and the first major step toward the creation of popular sovereignty in the Americas. Pennsylvanians achieved this remarkable achievement by adoption of a constitution that mandated that elections be "free" and providing that "every freeman" could vote. Pa. Const. of 1776, Ch. 1, VII. Modified versions of those provisions have remained in our state constitution to this day, along with others that ensured our right to vote. Today, those provisions include Article I, Section 5, Article VII,

⁸ To the extent that the Commonwealth Respondents argue that U.S. Supreme Court case in *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008) and the Indiana Supreme Court case in *League of Women Voters of Ind., Inc. v. Rotika*, 929 N.E.2d 758 (Ind. 2010) ("League of Women Voters of Indiana") support their position, they are mistaken. While both cases involve an Indiana photo identification statute upheld under federal law by the U.S. Supreme Court, and then under state law by the Indiana Supreme Court, the cases are distinguishable from the Missouri and Wisconsin cases and this one. First, *Crawford* was a case decided under the Equal Protection Clause of the U.S. Constitution. As discussed at length above, the claims raised in the Missouri and Wisconsin cases and in this case involve state constitutional claims, and the merits of such claims must be determined through a consideration of the respective constitutional provisions at issue. *Edmunds, supra*, 526 Pa. at 390-91, 586 A.2d at 895. Second, *League of Women Voters of Indiana* involved state constitutional provisions that are different from those at issue in the Missouri and Wisconsin cases as well as this one. Third, and finally, both *Crawford* and *League of Women Voters of Indiana*, involved a facial challenge to the constitutionality of the statute. In neither case was there evidence that specific litigants, or any Indiana residents for that matter, would be harmed by the photo identification requirement. In contrast, in both the Missouri case and this case, the plaintiffs presented evidence that specific individuals would lose their voting rights through implementation of each state's respective photo identification statute.

Section 1, and Article I, Section 26. The same constitution that created a government responsive to the popular will also created the General Assembly.

Now the General Assembly has taken the abhorrent step of enacting a statute which attempts to reverse over two hundred years of Pennsylvania political and constitutional history and whose effect and purpose is to disenfranchise hundreds of thousands of Pennsylvanians. The notion that a Legislature, created through the sovereign will of the people by the adoption of a state constitution, could turn around and diminish the people's right to vote is preposterous. *League of Women Voters of Wisconsin* at 6-7. It assumes that a Legislature may destroy the very thing that made its existence possible, and that it may amend the state constitution by a mere statute. *Id.*

It is this rich tradition of popular sovereignty in our Commonwealth that should guide this Court to the conclusion that the Pennsylvania Constitution does not permit what the Legislature with the Governor's signature sought to achieve. All the elements of the *Edmunds* analysis point inexorably to this conclusion.

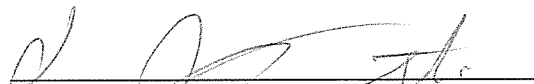
Therefore, the Voter ID Law should be preliminarily enjoined as a violation of our most treasured constitutional principles.

III. CONCLUSION

For the reasons set forth above, Amicus Curiae has demonstrated the likelihood that the Voter ID Law violates Article 1, Section 5, Article VII, Section 1, and

Article I, Section 26 of the Pennsylvania Constitution. They also have shown the Petitioners and other duly registered and qualified voters will be harmed by such violations. Therefore, this Court should preliminarily enjoin the Commonwealth Defendants from enforcing the provisions of the statute.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'R. Teti', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Ralph Teti, Esquire, hereby certify that on **July 18, 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:

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EXHIBIT A

PENNSYLVANIA ELECTION CODE - OMNIBUS AMENDMENTS

Act of Mar. 14, 2012, P.L. 195, No. 18

Cl. 25

Session of 2012

No. 2012-18

HB 934

AN ACT

Amending the act of June 3, 1937 (P.L.1333, No.320), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," in preliminary provisions, defining "proof of identification"; in the Secretary of the Commonwealth, providing for requirements relating to voter identification; in preparation for and conduct of primaries and elections, further providing for manner of applying to vote, persons entitled to vote, voter's certificates, entries to be made in district register, numbered lists of voters and challenges; in voting by qualified absentee electors, further providing for applications for official absentee ballots, for approval of application for absentee ballot, for delivering or mailing ballots, for canvassing of official absentee ballots and for public records; and providing for enforcement and for a special procedure at certain elections.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, is amended by adding a definition to read:

Section 102. Definitions.--The following words, when used in this act, shall have the following meanings, unless otherwise clearly apparent from the context:

* * *

(z.5) The words "proof of identification" shall mean:

(1) In the case of an elector who has a religious objection to being photographed, a valid-without-photo driver's license or a valid-without-photo identification card issued by the Department of Transportation.

(2) For an elector who appears to vote under section 1210, a document that:

(i) shows the name of the individual to whom the document was issued and the name substantially conforms to the name of the individual as it appears in the district register;

(ii) shows a photograph of the individual to whom the document was issued;

(iii) includes an expiration date and is not expired, except:

(A) for a document issued by the Department of Transportation which is not more than twelve (12) months past the expiration date; or

(B) in the case of a document from an agency of the Armed forces of the United States or their reserve components, including the Pennsylvania National Guard, establishing that the elector is a current member of or a veteran of the United States Armed Forces or National Guard which does not designate a specific date on which the document expires, but includes a designation that the expiration date is indefinite; and

(iv) was issued by one of the following:

(A) The United States Government.

(B) The Commonwealth of Pennsylvania.

(C) A municipality of this Commonwealth to an employee of that municipality.

(D) An accredited Pennsylvania public or private institution of higher learning.

(E) A Pennsylvania care facility.

(3) For a qualified absentee elector under section 1301:

(i) in the case of an elector who has been issued a current and valid driver's license, the elector's driver's license number;

(ii) in the case of an elector who has not been issued a current and valid driver's license, the last four digits of the elector's Social Security number;

(iii) in the case of an elector who has a religious objection to being photographed, a copy of a document that satisfies paragraph (1); or

(iv) in the case of an elector who has not been issued a current and valid driver's license or Social Security number, a copy of a document that satisfies paragraph (2).

Section 2. The act is amended by adding a section to read:

Section 206. Requirements Relating to Voter Identification.--

(a) The Secretary of the Commonwealth shall prepare and disseminate information to the public regarding the proof of identification requirements established under sections 1210 and 1302.

(b) Notwithstanding the provisions of 75 Pa.C.S. § 1510(b) (relating to issuance and content of driver's license) to the contrary, the Department of Transportation shall issue an identification card described in 75 Pa.C.S. § 1510(b) at no cost to any registered elector who has made application therefor and has included with the completed application a statement signed by the elector declaring under oath or affirmation that the elector does not possess proof of identification as defined in section 102 (z.5)(2) and requires proof of identification for voting purposes.

(c) The Secretary of the Commonwealth shall prepare the form of the statement described in subsection (b) and shall distribute the form to the counties and the Department of Transportation. The Secretary of the Commonwealth, the Secretary of Transportation and the county boards of election shall disseminate information to the public regarding the availability of identification cards under subsection (b).

Section 3. Section 1210(a), (a.1), (a.2), (a.3) and (a.4)(1) and (5) of the act, amended October 8, 2004 (P.L.807, No.97) and May 12, 2006 (P.L.178, No.45), are amended and the section is amended by adding a subsection to read:

Section 1210. Manner of Applying to Vote; Persons Entitled to Vote; Voter's Certificates; Entries to Be Made in District Register; Numbered Lists of Voters; Challenges.--(a) At every

primary and election each elector who appears to vote [in that election district for the first time] and who desires to vote shall first present to an election officer [one of the following forms of photo identification:

- (1) a valid driver's license or identification card issued by the Department of Transportation;
- (2) a valid identification card issued by any other agency of the Commonwealth;
- (3) a valid identification card issued by the United States Government;
- (4) a valid United States passport;
- (5) a valid student identification card;
- (6) a valid employe identification card; or
- (7) a valid armed forces of the United States identification card]

proof of identification.

The election officer shall examine the **proof of identification** presented by the elector and sign an affidavit stating that this has been done.

[(a.1) Where the elector does not have a photo identification as provided for in subsection (a), the elector shall present for examination one of the following forms of identification that shows the name and address of the elector:

- (1) nonphoto identification issued by the Commonwealth, or any agency thereof;
- (2) nonphoto identification issued by the United States Government, or agency thereof;
- (3) a firearm permit;
- (4) a current utility bill;
- (5) a current bank statement;
- (6) a paycheck;
- (7) a government check.

The election officer shall examine the identification presented by the elector and sign an affidavit stating that this has been done.]

(a.2) [If the elector is unable to produce identification or the elector's identification is challenged by the judge of elections, the elector shall be permitted to cast a provisional ballot in accordance with subsection (a.4).] If any of the following apply, the elector shall be permitted to cast a provisional ballot in accordance with subsection (a.4):

- (1) The elector is unable to produce proof of identification:
 - (i) on the grounds that the elector is indigent and unable to obtain proof of identification without the payment of a fee; or
 - (ii) on any other grounds.
- (2) The elector's proof of identification is challenged by the judge of elections.

(a.3) (1) All electors, including any elector that shows **proof of identification** pursuant to subsection (a), shall subsequently sign a voter's certificate in blue, black or blue-black ink with a fountain pen or ball point pen, and, unless he is a State or Federal employe who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register.

(2) Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon

such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section.

(3) When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks.

(4) As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register.

(5) As each voter votes, his name in the order of voting shall be recorded in two (2) numbered lists of voters provided for that purpose, with the addition of a note of each voter's party enrollment after his name at primaries.

(a.4) (1) At all elections an individual who claims to be properly registered and eligible to vote at the election district but whose name does not appear on the district register and whose registration cannot be determined by the inspectors of election or the county election board shall be permitted to cast a provisional ballot. Individuals who [are voting for the first time at the election district] **appear to vote** shall be required to produce **proof of** identification pursuant to subsection (a) [or (a.1)] and if unable to do so shall be permitted to cast a provisional ballot. An individual presenting a judicial order to vote shall be permitted to cast a provisional ballot.

* * *

(5) (i) Except as provided in subclause (ii), if it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector's registration form and, if the signatures are determined to be genuine, shall count the ballot if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election.

(ii) A provisional ballot shall not be counted if:

(A) either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual;

(B) the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual; [or]

(C) a provisional ballot envelope does not contain a secrecy envelope;

(D) in the case of a provisional ballot that was cast under subsection (a.2)(1)(i), within six calendar days following the election the elector fails to appear before the county board of elections to execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot and that the elector is indigent and unable to obtain proof of identification without the payment of a fee; or

(E) in the case of a provisional ballot that was cast under subsection (a.2)(1)(ii), within six calendar days following the election, the elector fails to appear before the county board of elections to present proof of identification and execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of the proof of identification and an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot.

(iii) One authorized representative of each candidate in an election and one representative from each party shall be permitted to remain in the room in which deliberation or determination of subclause (ii) is being made.

* * *

(f) As used in this section, "care facility" means any of the following:

(1) A long-term care nursing facility as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act."

(2) An assisted living residence or a personal care home as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code."

Section 4. Section 1302(e) and (e.2) of the act, amended February 13, 1998 (P.L.72, No.18), are amended and the section is amended by adding a subsection to read:

Section 1302. Applications for Official Absentee Ballots.--* *

(e) Any qualified bedridden or hospitalized veteran absent from the municipality of his residence and unable to attend his polling place because of such illness or physical disability, regardless of whether he is registered or enrolled, may apply at any time before any primary or election for an official absentee ballot on any official county board of election form addressed to the Secretary of the Commonwealth of Pennsylvania or the county board of elections of the county in which his voting residence is located.

The application shall contain the following information: Residence at the time of becoming bedridden or hospitalized, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident in voting district, voting district if known, party choice in case of primary, name and address of present residence or hospital at which hospitalized. When such application is received by the Secretary

of the Commonwealth, it shall be forwarded to the proper county board of elections.

The application for an official absentee ballot for any primary or election shall be made on information supplied over the signature of the bedridden or hospitalized veteran as required in the preceding subsection. Any qualified registered elector, including a spouse or dependent referred to in subsection (1) of section 1301, who expects to be or is absent from the municipality of his residence because his duties, occupation or business require him to be elsewhere on the day of any primary or election and any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or physical disability and any qualified registered bedridden or hospitalized veteran in the county of residence, or in the case of a county employe who cannot vote due to duties on election day relating to the conduct of the election, or in the case of a person who will not attend a polling place because of the observance of a religious holiday, may apply to the county board of elections of the county in which his voting residence is located for an Official Absentee Ballot. Such application shall be made upon an official application form supplied by the county board of elections. Such official application form shall be determined and prescribed by the Secretary of the Commonwealth of Pennsylvania.

(1) The application of any qualified registered elector, including spouse or dependent referred to in subsection (1) of section 1301, who expects to be or is absent from the municipality of his residence because his duties, occupation or business require him to be elsewhere on the day of any primary or election, or in the case of a county employe who cannot vote due to duties on election day relating to the conduct of the election, or in the case of a person who will not attend a polling place because of the observance of a religious holiday, shall be signed by the applicant and shall include the surname and given name or names of the applicant, **proof of identification**, his occupation, date of birth, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed, the reason for his absence, and such other information as shall make clear to the county board of elections the applicant's right to an official absentee ballot.

(2) The application of any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or physical disability and the application of any qualified registered bedridden or hospitalized veteran in the county of residence shall be signed by the applicant and shall include surname and given name or names of the applicant, **proof of identification**, his occupation, date of birth, residence at the time of becoming bedridden or hospitalized, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed, and such other information as shall make clear to the county board of elections the applicant's right to an official ballot. In addition, the application of such electors shall include a declaration stating the nature of their disability or illness, and the name, office address and office telephone number of their attending physician: Provided, however, That in the event any elector entitled to an absentee ballot under this subsection be unable to sign his application because of illness or physical disability, he shall be excused from signing upon making a

statement which shall be witnessed by one adult person in substantially the following form: I hereby state that I am unable to sign my application for an absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or have received assistance in making my mark in lieu of my signature.

(Mark)

(Date)

(Complete Address of Witness)

(Signature of Witness)

* * *

(e.2) Notwithstanding the other provisions of this act any qualified elector who expects to be or is absent from the municipality of his residence because his duties, occupation or business require him to be elsewhere on the day of any election or a county employe who cannot vote due to duties on election day relating to the conduct of the election or a person who will not attend a polling place because of the observance of a religious holiday may make an application for an absentee ballot by mail by sending a letter to the county board of elections in the county in which his voting residence is located. The letter shall be signed by the applicant and contain his name [and], place of residence and proof of identification.

* * *

(j) Notwithstanding the provisions of this section requiring proof of identification, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).

Section 5. Section 1302.2(c) and (d) of the act, amended December 11, 1968 (P.L.1183, No.375), are amended and the section is amended by adding a subsection to read:

Section 1302.2. Approval of Application for Absentee Ballot.--

* * *

(c) The county board of elections, upon receipt of any application of a qualified elector required to be registered under the provisions of preceding section 1301, shall determine the qualifications of such applicant by **verifying the proof of identification** and comparing the information set forth on such application with the information contained on the applicant's permanent registration card. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding, except that challenges may be made only on the ground that the applicant did not possess the qualifications of an absentee elector. Such challenges must be made to the county board of elections prior to 5:00 o'clock P. M. on the first Friday prior to the election. When so approved, the registration commission shall cause an absentee voter's temporary registration card to be inserted in the district register on top of and along with the permanent registration card. The absentee

voter's temporary registration card shall be in the color and form prescribed in subsection (e) of this section:

Provided, however, That the duties of the county boards of elections and the registration commissions with respect to the insertion of the absentee voter's temporary registration card of any elector from the district register as set forth in section 1302.2 shall include only such applications and emergency applications as are received on or before the first Tuesday prior to the primary or election. In all cases where applications are received after the first Tuesday prior to the primary or election and before five o'clock P. M. on the first Friday prior to the primary or election, the county board of elections shall determine the qualifications of such applicant by **verifying the proof of identification** and comparing the information set forth on such application with the information contained on the applicant's duplicate registration card on file in the General Register (also referred to as the Master File) in the office of the Registration Commission and shall cause the name and residence (and at primaries, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3, subsection (b). In addition, the local district boards of elections shall, upon canvassing the official absentee ballots under section 1308, examine the voting check list of the election district of said elector's residence and satisfy itself that such elector did not cast any ballot other than the one properly issued to him under his absentee ballot application. In all cases where the examination of the local district board of elections discloses that an elector did vote a ballot other than the one properly issued to him under the absentee ballot application, the local district board of elections shall thereupon cancel said absentee ballot and said elector shall be subject to the penalties as hereinafter set forth.

(d) In the event that any application for an official absentee ballot is not approved by the county board of elections, the elector shall be notified immediately to that effect with a statement by the county board of the reasons for the disapproval. For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector with the absentee ballot requiring the elector to provide proof of identification with the absentee ballot or the ballot will not be counted.

* * *

(f) Notwithstanding the provisions of this section, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).

Section 6. Section 1305 of the act, amended August 13, 1963 (P.L.707, No.379) and December 17, 1990 (P.L.681, No.169), is amended to read:

Section 1305. Delivering or Mailing Ballots.--

(a) The county board of elections upon receipt and approval of an application filed by any elector qualified in accordance with the provisions of section 1301, subsections (a) to (h), inclusive, shall not later than fifty days prior to the day of the primary or not later than seventy days prior to the day of the election

commence to deliver or mail to such elector who has included with said application a statement that he or she is unable to vote during the regular absentee balloting period by reason of living or performing military service in an extremely remote or isolated area of the world, and not later than forty-five days prior to the day of the primary or election commence to deliver or mail to all other such electors as provided for in section 1301, subsections (a) to (h), inclusive, official absentee ballots or special write-in absentee ballots as prescribed by subsection (d) of section 1303 when official absentee ballots are not yet printed; as additional applications of such electors are received, the board shall deliver or mail official absentee ballots or special write-in absentee ballots when official absentee ballots are not yet printed to such additional electors within forty-eight hours after approval of their application. If the calling of a special election would make it impossible to comply with the forty-five day delivery or mailing requirement of this section, then the county board of elections shall mail absentee ballots or special write-in absentee ballots within five days of the county board's receipt of the information necessary to prepare said ballots.

(b) The county board of elections upon receipt and approval of an application filed by any elector qualified in accordance with the provisions of section 1301, subsections (i) to (l), inclusive, shall commence to deliver or mail official absentee ballots on the second Tuesday prior to the primary or election. For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2(d) with the absentee ballot. As additional applications are received and approved, the board shall deliver or mail official absentee ballots to such additional electors within forty-eight hours.

(c) Notwithstanding the provisions of this section, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).

Section 7. Section 1308(g)(2) and (3) of the act, added May 12, 2006 (P.L.178, No.45), are amended and the section is amended by adding subsections to read:

Section 1308. Canvassing of Official Absentee Ballots.--* * *

(g) * * *

(2) The county board of elections shall meet on the eighth day following the election to canvass the absentee ballots received under this subsection and subsection (h)(2). One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots are canvassed. Representatives shall be permitted to challenge any absentee elector in accordance with the provisions of paragraph (3).

(3) When the county board meets to canvass absentee ballots under paragraph (2), the board shall examine the declaration on the envelope of each ballot not set aside under subsection (d) and shall compare the information thereon with that contained in the "Registered Absentee Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File," whichever is applicable. If the county board has verified the proof of identification as required under this act,

is satisfied that the declaration is sufficient and the information contained in the "Registered Absentee Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File" verifies his right to vote, the county board shall announce the name of the elector and shall give any candidate representative or party representative present an opportunity to challenge any absentee elector upon the ground or grounds: (i) that the absentee elector is not a qualified elector; or (ii) that the absentee elector was within the municipality of his residence on the day of the primary or election during the period the polls were open, except where he was in the military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or (iii) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, as set forth herein, the board shall mark "challenged" on the envelope together with the reasons therefor, and the same shall be set aside unopened pending final determination of the challenge according to the procedure described in paragraph (5).

* * *

(h) For those absentee ballots for which proof of identification has not been received or could not be verified:

(1) If the proof of identification is received and verified by the county board of elections prior to the distribution of the absentee ballots to the local election districts, then the county shall distribute the absentee ballots for which proof of identification is received and verified, along with the other absentee ballots, to the absentee voter's respective election district. If the county board of elections does not receive or is not able to verify the proof of identification for an elector prior to the absentee ballots' being sent to the appropriate local election districts, the county board shall keep the absentee ballot and follow the procedures set forth in paragraph (2) or (3), whichever is applicable.

(2) If the proof of identification is received and verified after the absentee ballots have been distributed to the appropriate local election districts, but prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots under this subsection in accordance with subsection (g)(2), unless the elector appeared to vote at the proper polling place for the purpose of casting a ballot, then the absentee ballot cast by that elector shall be declared void.

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot shall not be counted.

(i) Notwithstanding the provisions of this section, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).

Section 8. Section 1309 of the act, amended August 13, 1963 (P.L.707, No.379), is amended to read:

Section 1309. Public Records.--All official absentee ballots, files, applications for such ballots and envelopes on which the executed declarations appear, and all information and lists are hereby designated and declared to be public records and shall be safely kept for a period of two years, except that no **proof of identification shall be made public, nor shall** information concerning a military elector [shall] be made public which is expressly forbidden by the [War] Department of Defense because of military security.

Section 9. The act is amended by adding a section to read:

Section 1854. Enforcement.--(a) The Attorney General shall have prosecutorial jurisdiction over all violations committed under this act.

(b) The district attorney of any county in which a violation has occurred shall have concurrent powers and responsibilities with the Attorney General over violations committed under this act.

Section 10. The following shall apply to elections held after January 1, 2012, and prior to September 17, 2012:

(1) (i) Except as provided under subparagraph (ii) and notwithstanding any law, election officials at the polling place at an election held after January 1, 2012, shall request that every elector show proof of identification.

(ii) Notwithstanding subparagraph (i), prior to September 17, 2012, if the elector does not provide proof of identification and the elector is otherwise qualified, the elector may cast a ballot that shall be counted without the necessity of presenting proof of identification and without the necessity of casting a provisional ballot, except as required by the act.

(2) Beginning January 1, 2012, if any elector votes at a polling place at an election and does not provide proof of identification and will be required to provide proof of identification beginning September 17, 2012, the election official that requested the proof of identification shall provide to the elector written information prescribed by the Secretary of the Commonwealth briefly describing the voter identification requirement created by this act and inform the elector that he or she will be required to comply with that requirement when voting at future elections beginning September 17, 2012, unless an exemption applies.

Section 11. The amendment of sections 102, 1210, 1302, 1302.2, 1305, 1308 and 1309 of the act shall apply to elections held after September 17, 2012.

Section 12. This act shall take effect immediately.

APPROVED--The 14th day of March, A.D. 2012.

TOM CORBETT

EXHIBIT B



Pennsylvania Voter Registration Application Form General Instructions

1. Please provide all information on the application as required. Read all instructions carefully before you fill out the application.
2. If you are currently registered, you do not need to re-register unless you have moved or changed your name since you last registered to vote.
3. In order to vote at the next election, this application must be received by your county voter registration office 30 days before the election, or postmarked no later than the thirtieth day before the election. Military electors may apply at any time.
4. Print out, fill in completely, sign and date the form. Place completed application in an envelope addressed to your local county voter registration office (addresses are available on the web at www.dos.state.pa.us) and affix the proper postage.
5. You are not registered to vote until your application has been processed and accepted by the county voter registration office. If accepted, the county voter registration office will send you, via nonforwardable mail, a Voter Identification Card. If you do not receive a Voter Identification Card within 14 days of the date you submit this application, contact your county voter registration office.
6. If you decline to register to vote, your decision will remain confidential. If you register to vote, the office at which you register will remain confidential.

IDENTIFICATION WHEN YOU VOTE

Pennsylvania law requires that registered voters who appear to vote for the first time in an election district after December 9, 2003 must present a form of identification. If this is the first election in which you are voting in your election district, and you intend to vote by absentee ballot in an election after January 1, 2004, you may include a form of identification with this voter registration application form rather than include it with your application for an absentee ballot. A list of the acceptable forms of identification may be obtained from your county voter registration office or from the Pennsylvania Department of State at its website, www.dos.state.pa.us

INSTRUCTIONS FOR FILLING OUT THIS FORM (PLEASE READ CAREFULLY)

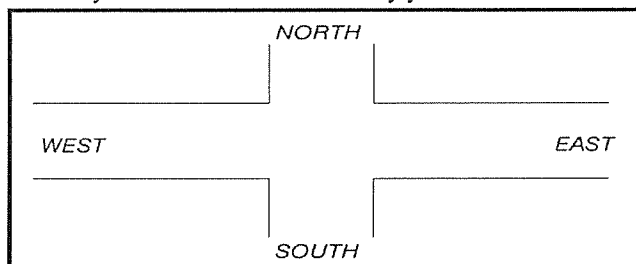
Box 1. Citizenship and Age: If the answer to either question is "No," do not complete this form because you are not eligible to register to vote.

Box 2. Application Type: Please check the appropriate box. If you are a Federal or State employee and wish to retain your voting residence in the county where you last resided, please check the appropriate box.

Box 3. Name, Driver's License and Social Security Number: Print your last name, first name and middle name or initial. Circle Jr., Sr., II, III, IV *if applicable*. You must supply a Driver's License Number if you have one. If you do not have a Driver's License Number, you must supply the last four digits of your Social Security Number. If you do not have a Social Security Number, please write None in the boxes.

Box 4: 4a. Address of Residence: Fill in your complete address of residence. **P.O. boxes may not be used here unless there is no physical address.** Print street address, city and zip code. (If the residence is only a portion of the house, include the location or number of the room, apartment or floor, which is occupied.) In **Box 4b** include your telephone number (Optional).

In **Box 4c** fill in the name of the municipality (**city, borough or township**) and county where you live. Use the map in the box below if you cannot otherwise identify your address.



If your address of residence listed in Box 4a has no street number or street name (for example, Schoolhouse Road or RR2 Box 3) use the box above to draw a map of where you live. Include landmarks and roads.

Box 5. Mailing Address: Fill in your mailing address, *if different* from Box 4a.

Box 6. Date of Birth: Fill in the month, day and year of your birth.

Box 7. Race: Fill in your race (Optional).

Box 8. Prior Registration: If you were registered before, fill in the name used on previous registration in **Box 8a** and address, **county** and year of previous registration in **Box 8b**.

Box 9. Political Party: Check block for political party or no affiliation. *You must register with a party if you want to take part in that party's primary.*

Box 10. If you were assigned a Voter Identification Number, which appears on your Voter Identification Card, place that Identification Number here. If you are applying to register to vote for the first time, leave this box blank.

Box 11. Registration Declaration: You must be a citizen of the United States to register to vote in the Commonwealth of Pennsylvania. Please read the registration declaration carefully. Please sign and print your name and date the application.

PENALTY FOR FALSIFYING REGISTRATION

DECLARATION. WARNING: If a person signs an official registration application knowing a statement declared in the application to be false, makes a false registration, or furnishes false information, the person commits perjury. Perjury is punishable, upon conviction, by a term of imprisonment not exceeding seven years, or a fine not exceeding \$15,000, or both, at the discretion of the court. Submitting an application containing false information may also subject a person to other penalties, including loss of the right of suffrage, under state or federal law.

Box 12. Name of Assistant: If the applicant is unable to sign the application, the person who assisted the applicant must provide his or her name, address and telephone number.

DO NOT WRITE IN SHADED AREAS

NAME _____

EXHIBIT C



News for Immediate Release

April 18, 2012

Secretary of Commonwealth Announces Simplified Process for Obtaining Voter ID, Reminds Voters Photo ID Not Required for April 24 Primary

Harrisburg – Secretary of the Commonwealth Carol Aichele today announced a simplified process for many voters, especially senior citizens with expired driver's licenses, to obtain a non-driver license photo ID if they need one to vote under Pennsylvania's new Voter ID law.

"If you had a Pennsylvania driver's license, or a non-driver license photo ID, in most cases you will not be required to bring a birth certificate, or any other proof of identification or residence, to request a non-driver photo ID for voting purposes," Aichele said.

"You won't even need your expired license if you no longer have it," Aichele added. "You'll only need to give your name at a PennDOT driver license center, and once you are verified as being in the system, PennDOT will provide you with a non-driver license photo ID, which you can use to vote."

For licenses that expired prior to 1990, call PennDOT's Customer Care Center, at 1-800-932-4600, to verify that your information is still in the system.

This process will particularly help senior citizens who no longer drive and whose licenses have expired, Aichele said. People applying for the non-driver license photo ID will still need to fill out the application form for this ID. Individuals will also have to sign an affirmation they have no other acceptable form of photo ID for voting purposes to receive the non-driver license photo ID free of charge.

Pennsylvania care facilities, including long-term care facilities, assisted living residences, or personal care homes can create their own photo IDs for residents, as long as the document includes the name of the facility, the name and photo of the voter, and an expiration date.

"Accredited Pennsylvania public or private colleges and universities can also help their students by adding expiration dates to their ID cards. These institutions can issue stickers that can be affixed to the ID cards to meet the law's requirements, as long as the sticker has an expiration date, or notes that it is for an academic year or a semester," Aichele added, strongly encouraging all colleges and universities to take this step to benefit their students.

Starting with the November election, all photo IDs must be current and contain an expiration date, unless otherwise noted. Acceptable IDs include:

- Photo IDs issued by the U.S. federal government or the Commonwealth of Pennsylvania;
- Pennsylvania driver's license or non-driver's license photo ID (IDs are valid for voting purposes 12 months past expiration date);
- Valid U.S. passport;
- U.S. military ID - active duty and retired military (a military or veteran's ID must designate an expiration date or designate that the expiration date is indefinite). Military dependents' ID must contain an expiration date;
- Employee photo ID issued by federal, Pennsylvania state, or a Pennsylvania county or municipal government;
- Photo ID cards from an accredited public or private Pennsylvania college or university; or
- Photo ID cards issued by a Pennsylvania care facility, including long-term care facilities, assisted living residences or personal care homes.

"No one legally entitled to vote will be denied that right," Aichele said. "If a voter does not have a photo ID at the polls this November, he or she may vote with a provisional ballot, and will then have six days to provide a photo ID to the county election office."

This ID may be provided in person, by mail, e-mail, or fax.

Pennsylvania voters will be asked to show photo ID at the polls in the April 24 primary election, but will not be required to produce the photo ID until November's general election. Voters not having an acceptable ID will be given a handout by poll workers, listing the acceptable IDs and where to get more information.

Current election law, remaining in effect for the primary, requires first-time voters and people voting for the first time at a new polling place to show ID, though it need not be a photo ID. Acceptable ID for first-time voters for this primary election can be a photo ID, or a proof of residence, such as a tax or utility bill.

For more information on the Voter ID law, or to find out where to get a photo ID and what documents you need to get a photo ID, visit www.VotesPA.com, or call 1-877-VOTESPA (1-877-868-3772).

Media contact: Ron Ruman, 717-783-1621

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EXHIBIT D



News for Immediate Release

May 23, 2012

Secretary of Commonwealth Announces Simplified Method to Obtain Photo ID for Pennsylvania-Born Voters

Harrisburg – Secretary of the Commonwealth Carol Aichele today announced a new, simplified process for people born in Pennsylvania to get a non-driver photo ID card for voting purposes if they lack an acceptable alternative ID.

This innovative system, now in place, can certify the birth records of Pennsylvania natives without the need for them to purchase a duplicate birth certificate with a raised seal.

"At Governor Corbett's direction, we continue working on quicker and easier ways for eligible voters to obtain photo IDs," said Aichele, whose department oversees elections in Pennsylvania. "Working in collaboration with PennDOT and the Department of Health, we have developed an alternative, secure system for verifying the birth records of people born in Pennsylvania to help them obtain a photo ID for voting."

Individuals must visit a PennDOT drivers license center and submit the necessary information. The information will then be forwarded to the Department of Health, which maintains birth records.

Once it is verified that the individual's birth record is on file, applicants will be notified by mail when to pick up the non-driver photo ID card for voting purposes. The process, which is free, is expected to take about 10 days.

"The security measures protect the privacy of the person applying for the photo ID, and uphold the purpose of the voter ID law and help poll workers accurately verify the identity of every voter," Aichele said.

Aichele commended the Department of Health and PennDOT for cooperating with the Department of State to develop this method of securely verifying birth records.

"Our voter ID law is intended to allow all eligible voters to cast ballots, but prevent those votes from being cancelled by illegally cast ballots," Aichele added.

Anyone who purchased a Pennsylvania birth certificate for voter ID purposes after March 14, 2012, can apply for a refund by visiting one of the Pennsylvania Department of Health's six regional offices. For more information, visit the www.health.state.pa.us, under the "Birth and Death Certificates" tab.

To be eligible for a refund, you must show proof that a birth certificate was purchased after the date the Voter ID law went into effect, as well as the photo ID obtained from PennDOT.

Anyone who holds a Pennsylvania driver's license or non-driver photo ID that has expired since 1990 does not need any proof of ID or residence to get a photo ID for voting. People need only give their name to a PennDOT customer service representative and indicate they have an expired license.

For identification issues, call PennDOT's customer care center at 1-800-932-4600.

Information on the voter ID law is available at www.votesPA.com, or by calling 1-877-VOTESPA (1-877-868-3772).

Media contact: Ron Ruman, 717-783-1621

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EXHIBIT E



Voter ID honesty: Rep. Turzai's slip unmasks the Republican agenda

June 28, 2012 12:00 am
/ Pittsburgh Post-Gazette

Politicians have to get comfortable before they can get honest.

Though never truly transparent, they will allow themselves to run at the mouth briefly for partisan audiences. Sometimes, they even do the unthinkable like forget that a camera may be rolling and that their words will be heard far beyond their partisan bubble.

That seems to be what happened to state House Majority Leader Mike Turzai, R-Bradford Woods. On Saturday, Mr. Turzai addressed a meeting of the Republican State Committee in Hershey in which he listed the accomplishments of the GOP majority for a crowd that loves its red meat.

Mr. Turzai dutifully listed the Castle Doctrine and stricter regulations on facilities where abortions are performed as major accomplishments of the ruling caucus in this state. That's boilerplate Republicanism, which is to be expected when addressing a crowd of fiscal and social conservatives. He ended each citation with a self-congratulatory "done." It's what he said next which constitutes letting the cat out of the proverbial bag:

"Voter ID, which is going to allow Gov. [Mitt] Romney to win the state of Pennsylvania, done."

State Republicans have steadfastly maintained that the recently instituted voter ID laws in Pennsylvania are not motivated by a partisan attempt to suppress part of the Democratic turnout in November. The people who would be most adversely affected by the law -- students, minorities, some of the elderly -- tend to vote Democratic. The Republicans have resorted to shameful heights of sophistry on this point, insisting that their only concern is the integrity of the ballot box.

Mr. Turzai's spokesman wasted no time in reiterating the GOP's official story that it is only interested in a "fairer playing field for all candidates."

Mr. Turzai should be commended for his brief moment of honesty. The comments that necessarily follow such candor are just politics and obfuscation. Taking the intelligence of the Pennsylvania electorate for granted? Done.

First Published 2012-06-28 00:27:54

EXHIBIT F



News for Immediate Release

July 3, 2012

Department of State and PennDOT Confirm Most Registered Voters Have Photo ID

Harrisburg – The vast majority of registered voters in Pennsylvania have identification that can be used for voting, according to recent a comparison of the Department of State’s voter registration rolls and PennDOT ID databases.

“This thorough comparison of databases confirms that most Pennsylvanians have acceptable photo ID for voting this November,” Secretary of the Commonwealth Carol Aichele said. “This comparison takes into account only voters with PennDOT IDs, and does not include voters who may have any of the other various acceptable forms of ID.”

All voters identified as not having a PennDOT ID number will be contacted by letter this summer, reminding them of the new voter ID law, what IDs are acceptable for voting purposes, and how to get a free ID if they don’t have one.

County election directors will also be provided with the names and addresses of voters in their counties who did not match any record in the PennDOT database.

The database comparison shows:

- 91 percent of Pennsylvania’s 8,232,928 registered voters have PennDOT ID numbers
- Of the 758,939 voters who could not be matched between the Department of State and PennDOT databases, 22 percent, or 167,566, are inactive voters, most of whom have not voted since 2007.

One of the reasons a voter can be put on “inactive” status is if he or she has not voted in five years. A notice must be sent asking if the voter is still at the listed address. If the voter does not respond to this notice, the voter is placed on “inactive” status. Federal and state law require keeping an “inactive voter” on the registration list until he or she has not voted in two consecutive general elections for federal office after the date of the notice.

“Even though many voters identified in this comparison as not having PennDOT IDs are ‘inactive voters’, most of whom have not voted since 2007, we will err on the side of caution and include them in this mailing,” Aichele said.

Other registered voters may not have matched PennDOT’s list due to a variation in names between the voter registration and PennDOT databases.

For example, an individual who is registered to vote as Jon Smith but whose driver's license name is Jonathan Smith, would not show as a match, and be reported as not having a PennDOT ID number.

This list also does not take into account voters without PennDOT identification who have other acceptable forms of identification. Such other acceptable forms include identification from accredited Pennsylvania colleges or universities, Pennsylvania care facilities, military identification, valid U.S. passports, other photo identification issued by the federal or Pennsylvania government, or employee identification issued by the federal, Pennsylvania, or a county or municipal government.

All identification used for voting must have an expiration date and be current, except for Pennsylvania driver's licenses or non-driver photo identification, which are valid for voting purposes one year past their expiration. Retired military identification with an indefinite expiration date is also valid for voting purposes.

Voters who do not have an acceptable form of photo identification for voting can get one for free at any PennDOT driver license center.

"We are committed to helping any eligible voter who does not have an acceptable ID get one to be able to vote in November," Aichele said. "We are continuing our outreach to get the word to voters about this law. The goal of this law is to allow every legal voter to cast a ballot, but detect and deter anyone attempting to vote illegally."

To find the driver license center nearest you or get more information on the voter ID law, visit www.VotesPA.com or call 1-877-VOTESPA (1-877-868-3772).

Media contact: Ron Ruman, 717-783-1621

Editor's Note: Following is a by-county list of registered voters who did not match as having a PennDOT ID number.

County	Active	Inactive	Total
ADAMS	2,526	395	2,921
ALLEGHENY	73,791	25,427	99,218
ARMSTRONG	2,351	377	2,728
BEAVER	8,820	1,445	10,265
BEDFORD	1,807	419	2,226
BERKS	10,573	1,778	12,351
BLAIR	3,744	3,422	7,166
BRADFORD	1,214	1,282	2,496
BUCKS	22,678	2,771	25,449
BUTLER	6,276	1,169	7,445
CAMBRIA	5,590	617	6,207
CAMERON	290	162	452

CARBON	2,180	106	2,286
CENTRE	10,384	1,058	11,442
CHESTER	17,928	4,547	22,475
CLARION	1,449	361	1,810
CLEARFIELD	2,458	1,435	3,893
CLINTON	1,368	734	2,102
COLUMBIA	2,999	196	3,195
CRAWFORD	4,077	930	5,007
CUMBERLAND	16,155	2,322	18,477
DAUPHIN	9,345	1,746	11,091
DELAWARE	33,130	7,417	40,547
ELK	1,511	214	1,725
ERIE	9,790	1,123	10,913
FAYETTE	5,015	3,440	8,455
FOREST	151	3	154
FRANKLIN	2,820	435	3,255
FULTON	447	139	586
GREENE	1,056	181	1,237
HUNTINGDON	899	843	1,742
INDIANA	2,908	1,663	4,571
JEFFERSON	1,632	726	2,358
JUNIATA	273	90	363
LACKAWANNA	13,990	2,933	16,923
LANCASTER	15,289	4,765	20,054
LAWRENCE	4,180	2,221	6,401
LEBANON	2,814	494	3,308
LEHIGH	9,873	3,152	13,025
LUZERNE	15,293	1,576	16,869
LYCOMING	3,142	495	3,637
McKEAN	1,518	610	2,128
MERCER	4,798	1,002	5,800
MIFFLIN	945	201	1,146
MONROE	4,949	1,329	6,278
MONTGOMERY	37,645	7,307	44,952
MONTOUR	898	572	1,470
NORTHAMPTON	12,094	5,968	18,062
NORTHUMBERLAND	3,786	60	3,846
PERRY	803	45	848
PHILADELPHIA	136,182	50,648	186,830
PIKE	1,805	447	2,252
POTTER	672	72	744
SCHUYLKILL	7,322	832	8,154
SNYDER	771	204	975
SOMERSET	2,953	1,585	4,538
SULLIVAN	173	0	173
SUSQUEHANNA	715	231	946
TIOGA	1,232	196	1,428
UNION	2,195	240	2,435

VENANGO	1,729	200	1,929
WARREN	1,021	809	1,830
WASHINGTON	7,723	3,523	11,246
WAYNE	1,189	281	1,470
WESTMORELAND	11,138	1,738	12,876
WYOMING	975	20	995
YORK	13,926	4,837	18,763
Statewide Total	591,373	167,566	758,939

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EXHIBIT G

Chapter 8

ELECTIONS

Article I, Section 5

AMY ELIZABETH MCCALL*

- § 8.1. Introduction
 - § 8.2. Text and History
 - § 8.3. Pennsylvania Case Law
 - § 8.3[a]. Uniformity of Election Laws
 - § 8.3[b]. Ballots
 - § 8.3[c]. Nominations
 - § 8.3[d]. Candidates
 - § 8.3[e]. Apportionment
 - § 8.3[f]. Voter Qualifications
 - § 8.4. Related Case Law from Other States
 - § 8.5. Policy Considerations and Conclusion
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§ 8.1. INTRODUCTION

Article I, Section 5 of the Pennsylvania Constitution, relating to “Elections” provides as follows:

“Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”¹

“Free and equal” elections were considered, by those leaders of the Revolutionary era responsible for the creation of the first Pennsylvania Constitution, to be a cornerstone of the democratic republic created by the severance of the colonies from England.² Although some of the more radical ideas instituted in that first Constitution for the Commonwealth have been eliminated through later Constitutional overhauls, “free and equal” elec-

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1. PA. CONST. art. I, §5.

2. Free and equal elections had long been the law of the territory, but the definition of free and equal had been amorphous. THOMAS RAEBURN WHITE, COMMENTARIES ON THE CONSTITUTION OF PENNSYLVANIA 349 (1907). CHARLES R. BUCKALEW, AN EXAMINATION OF THE CONSTITUTION OF PENNSYLVANIA 9 (1883).

tions are still considered to be a cornerstone of the democratic republic. The right to such elections is explicitly protected in Pennsylvania's Constitution by Article I, § 5 of the Declaration of Rights.

This chapter will provide guidance to a litigant wishing to perform an *Edmunds* analysis³ of the free elections clause in Article I, § 5 of the Pennsylvania Constitution. Thus, Part I will cover the text and history of Article I, § 5. Part II will discuss Pennsylvania case law regarding the elections provision. Part III will introduce related case law from sister states. Because there is no federal equivalent of the elections clause, there will be no analysis of federal precedent regarding the elections clause. Finally, Part IV will offer a summary and discuss any policy considerations that may be considered when a court is determining the effect of Article I, § 5 of the Pennsylvania Constitution on a specific issue.

§ 8.2. TEXT AND HISTORY

Pennsylvania's 1776 constitution was a victory for those seeking a radical democratic government.⁴ One of the changes that early Pennsylvania leaders agreed was necessary to give citizens a more democratic system was greater popular participation in government than had existed previously. Under the Frame of Government of Pennsylvania of 1696,⁵ for a person to vote in an election, that person was required to be a free male of at least 21 years of age, have fifty acres of land with at least ten being cleared, or "be otherwise worth fifty pounds" and have been a resident of the province for at least two years.⁶ During the revolutionary era, a religious and geographic schism in politics allowed those who had previously been denied the franchise to come into power.⁷ To ensure that broader participation in

3. *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991).

4. Robert F. Williams, "The State Constitutions of the Founding Decade: Pennsylvania's Radical 1776 Constitution and Its Influences on American Constitutionalism," 62 TEMP. L. REV. 541 (1989). The radical changes included a unicameral legislature and an executive committee. These were changes that did not last and the 1790 Pennsylvania Constitution instituted a more traditional two-house legislature and single executive. ROSALIND L. BRANNING, PENNSYLVANIA CONSTITUTIONAL DEVELOPMENT 18 (1960).

5. The Frame of Government of the Province of Pennsylvania, and the territories thereunto belonging, passed by

Governor Markham, November 1, 1696, available at: <http://www.yale.edu/lawweb/avalon/states/pa05.htm>.

6. *Id.* "That no inhabitant of this province or territories, shall have right of electing, or being elected as aforesaid [Council and Assembly], unless they be free denizens of this government, and are of the age of twenty-one years, or upwards, and have fifty acres of land, ten acres whereof being seated and cleared, or be otherwise worth fifty pounds, lawful money of this government, clear estate, and have been resident within this government for the space of two years next before such election." *Id.*

7. BRANNING, *supra* § note 4, at 11-13.

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government was possible, and that those who had gained power could maintain that power, the Declaration of Rights, which occupied a separate section of the 1776 Pennsylvania Constitution, included the following language in section VII: "That all elections ought to be free; and that all free men having a sufficient evident common interest with, and attachment to the community, have a right to elect officers, or to be elected into office."⁸ This sweeping language, based on the Virginia Bill of Rights, left certain questions ambiguous regarding exactly which citizens could exercise the franchise.⁹ For example, how exactly could it be determined whether a citizen had an "attachment to the community" or a "sufficient evident common interest with" the community?

This weak language was drastically strengthened in the 1790 Pennsylvania Constitution, when much of the modifying language was removed and the present equality language was added as a requirement for elections. When combined with the preamble to the Declaration of Rights, the new provision in Article IX of the revised constitution read: "That the general, great and essential principles of liberty and free government may be recognised and unalterably established, WE DECLARE . . . That elections shall be free and equal."¹⁰ The minutes of the 1789-1790 proceedings give no insight into the reasons the convention chose to remove the modifying language, but clearly, this new wording granted broader rights to Pennsylvania citizens.¹¹

When another convention to amend the Constitution was held in 1837-38, section five of the ninth article, dealing with elections, sparked lively debate.¹² Earlier in that same convention, the same issues were raised and argued for several days. Over 50 pages of the record dealt with a discussion of Article III, § I.¹³ The issue that caused such dissension was the inclusion of

8. Pa. Const. of 1776, Ch. I, VII.

9. ROBERT E. WOODSIDE, PENNSYLVANIA CONSTITUTIONAL LAW 569 (1985). The Virginia Bill of Rights, adopted on June 12, 1776, included property issues in the same section as the elections clause. Section 6 of the Virginia Bill of Rights said, "That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any

law to which they have not, in like manner, assembled, for the public good." Va. Const. of 1776.

10. Pa. Const. of 1790, Art. IX, § V.

11. Matthew C. Jones, "Fraud and the Franchise: The Pennsylvania Constitution's 'Free and Equal Election' Clause as an Independent Basis for State and Local Election Challenges," 68 TEMP. L. REV. 1473, 1477 (1995).

12. PROCEEDINGS AND DEBATES OF THE CONVENTION OF THE COMMONWEALTH OF PENNSYLVANIA TO PROPOSE AMENDMENTS TO THE CONSTITUTION COMMENCED AT HARRISBURG, MAY 2, 1838, Volume XI, pg. 249.

13. *Id.* at Volume III, pp. 29-81.

ELECTIONS

language such as that proposed to be inserted in Article IX, § V of the Declaration of Rights: "The election laws shall be uniform throughout the state and no greater or other restrictions shall be imposed on the electors in any city, country or district than are imposed on the electors of every other city, county or district."¹⁴ This addition was defeated and the language of Article IX, § V remained unchanged, i.e. "Elections shall be free and equal."¹⁵

In 1872, a convention to once again amend the Pennsylvania Constitution was convened in Harrisburg.¹⁶ Section five of the proposed new Declaration of Rights read: "That the elections shall be free and equal, and no power, civil or military, shall, at any time, interfere with the free exercise of the right of suffrage" reflecting additional language proposed by the committee.¹⁷ There was a fractious debate regarding events in a Philadelphia election several years before the convention, with some sides claiming that the federal military was properly called in to preserve order and others claiming the federal military prevented a fair election.¹⁸ A motion to have the elections clause remain exactly as it had been (i.e. "That elections shall

14. *Id.* at Volume XI, pg. 249. Similar language was proposed to be inserted into Article III, § I, "... The election laws shall be equal throughout the State, and no greater or other restrictions shall be imposed on the electors in any city, county, or district, than are imposed on the electors of every other city, county, or district." *Id.* note 16, pg. 29. These proposals were a response to the Registry Law which provided for separate rules for Philadelphia voters to exercise their franchise rights than those rules provided for the remainder of the state. This is further discussed *infra* in the discussion of *Patterson et al. v. Barlow et al.*, 60 Pa. 54 (1869).

15. PROCEEDINGS AND DEBATES OF THE CONVENTION OF THE COMMONWEALTH OF PENNSYLVANIA TO PROPOSE AMENDMENTS TO THE CONSTITUTION COMMENCED AT HARRISBURG, MAY 2, 1838, Volume XI, pg. 251. However, note that virtually identical language was inserted into Article VIII, § 7 in the 1901 Constitution:

All laws regulating the holding of elections by the citizens or for the registration of electors shall be uniform throughout the state; but laws regulating and requiring the regis-

tration of electors may be enacted to apply to cities only, provided that such laws be uniform for cities in the same class.

Thomas White notes that:

This is the only express provision in the constitution recognizing the power of the Legislature to classify cities for purposes of legislation. Laws relating to elections, other than registration laws, must apply to the whole state, and not merely to a class of cities; this is because of the usual rule of interpretation, that the exception marks the limit of the power.

THOMAS RAEBURN WHITE, COMMENTARIES ON THE CONSTITUTION OF PENNSYLVANIA 357 (1907). The language of the 1901 Constitution has been added to and the provision has been moved to Article VII, § 6, but the provision remains the constitutional law of Pennsylvania.

16. DEBATES OF THE CONVENTION TO AMEND THE CONSTITUTION OF PENNSYLVANIA CONVENED AT HARRISBURG, NOVEMBER 12, 1872 (1873).

17. *Id.* at 670.

18. *Id.* at 670-6.

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be free and equal") was defeated by a vote of thirty-six to thirty-eight.¹⁹ Mr. Ainey, from Lehigh County, suggested changing the proposed wording so that the word "with" after the word "interfere" would be changed to "to prevent."²⁰ Ainey urged that this would better address those abuses that concerned the delegates to the convention.²¹ This proposed change was accepted, and since the 1874 addition of that language—"and no power civil or military, shall, at any time, interfere to prevent the free exercise of the right of suffrage"—the wording of the elections section of the Declaration of Rights has remained unchanged. The 1874 Constitution also moved the Declaration of Rights back to Article I to underscore its importance.

A wide range of issues has been discussed under the Elections Clause of the Declaration of Rights over the past two centuries. New cases still arise under this constitutional clause with regularity. The framers of Pennsylvania's original 1776 Constitution were correct in anticipating that a citizens' right to "free and equal" elections would remain a cornerstone of a healthy democratic state.

§ 8.3. PENNSYLVANIA CASE LAW

One of the earliest cases decided under the Article I, § 5 of the Pennsylvania Constitution gave meaning to the words in that clause. In 1874, the Pennsylvania Supreme Court decided a case regarding the 1873 constitutional convention, *Wood's Appeal*.²² In that case, a portion of the delegates to the convention was elected by the majority of the voters, and a lesser portion of those delegates was reserved to represent the minority of the voters in the election.²³ This minority representation was challenged as a violation of the standards of republican government and a violation of the "free and equal" elections clause.²⁴ The court rejected this argument stating that the "free and equal" elections clause was "nothing more than a declaration, that elections shall be public, and open to all duly qualified alike, without discrimination as to individuals or classes."²⁵ Charles Buckalew, in his seminal 1883 work on the Pennsylvania Constitution,²⁶ found this statement to be far too narrow an interpretation of the elections clause.²⁷ In general, as the

19. *Id.* at 676.

20. *Id.* at 672.

21. *Id.*

22. *Wood's Appeal*, 75 Pa. 59 (1874).

23. *Id.* at 60.

24. *Id.*

25. *Id.* at 67.

26. CHARLES R. BUCKALEW, AN EXAMINATION OF THE CONSTITUTION OF PENNSYLVANIA (1883).

27. *Id.* at 10. Buckalew wrote, "The words 'free and equal' . . . strike not only at privacy and partiality in popular elections, but also at corruption, compulsion, and other undue influences by which elections may be assailed; at all regulations of law which shall impair the right of suffrage rather than facilitate or reasonably direct the manner of its exercise, and at all

ELECTIONS

cases that follow demonstrate, modern courts have tended to agree with him.

§ 8.3[a]. UNIFORMITY OF ELECTION LAWS

The earliest case decided under Article I, § 5 of the Pennsylvania Constitution listed in Buckalew's treatise was *Patterson v. Barlow*.²⁸ In *Patterson*, the Pennsylvania Supreme Court, with extensive discussion, determined that free and equal elections did not require that laws be uniform across the state.²⁹

At issue in *Patterson* was an act passed April 17, 1869, entitled "An act further supplementary to the act relative to the elections of this Commonwealth" which created two separate systems for elections in the state: one for Philadelphia and the other for the remainder of the state.³⁰ The trial judge ruled that the act was unconstitutional because it violated the constitutional requirement of free and equal elections.³¹ On appeal before the full Supreme Court, Justice Daniel Agnew, writing for the majority, noted that since the requirement for uniformity had been raised at the Constitutional Convention of 1838 and had been rejected by that body, it would make no sense for the court to read uniformity into the current provision.³² The court decided that "free and equal" elections did not require absolutely uniform regulations, merely reasonably equal opportunities to vote.³³ It should be noted that this case was decided before the enactment of the 1901 constitutional amendment requiring uniformity of election laws (see note 19). That amended clause, now located in Article VII, § 6, takes uniformity of election laws out of the domain of the "free and equal" elections provision in Article I, § 5.

§ 8.3[b]. BALLOTS

The majority of the earliest cases brought under Article I, § 5 of the Pennsylvania Constitution concerned ballots and nominations. In 1884, the Chester County Reports published a Philadelphia case, *In re Clothier's Application*,³⁴ regarding whether the ballot could be denied to an otherwise

limitations, unproclaimed by the Constitution upon the eligibility of the electors for office.

28. *Patterson v. Barlow*, 60 Pa. 54 (1869).

29. *Id.* at 84-5. The opinions in *Patterson* span over 50 pages. But see *supra* note 15.

30. *Id.* at 74. Section 18 of the Act states that "None of the foregoing provisions of this act shall apply to the City of

Philadelphia, excepting sections 12 and 13." Sections 12 and 13 related to naturalization of citizens. The remainder of the act applies almost exclusively to the City of Philadelphia.

31. *Id.* at 42-43.

32. *Id.* at 84-85.

33. *Id.*

34. *In re Clothier's Application*, 2 Chest. Co. 355 (1884).

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35. *Id.*
36. D
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37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*

§ 8.3[b]

qualified voter who had made a wager as to the result of the election. The court declared that additional qualifications could not be placed on voters in a "free and equal" election. Moreover, a rule against wagering on the result of the election would constitute such an unconstitutional additional qualification.³⁵

At issue before the Pennsylvania Supreme Court in *Dewalt et al. v. Bartley et al.*³⁶ was whether new ballots, that included a box to check in order to cast a vote for all the candidates proposed by one of the majority parties, were unconstitutional. In this 1892 case, plaintiffs contended that such an electoral device resulted in an unequal election, where electors voting for minority parties were required to write in their candidates' names within a limited time, while those voting for all the candidates of a single major party could simply check a box.³⁷ Plaintiffs argued that the constitutional provision prohibited the legislature from passing "any law which shall give, directly or indirectly, an advantage to some voters which will not equally apply to all voters."³⁸ The court disagreed, however, stating that the nomination process was part of the elections process and that no voter was inhibited from freely voting for the candidate of his choice.³⁹ The challenged provisions, the court concluded, did not impede "free and equal" elections.⁴⁰

*Oughton v. Black*⁴¹ was brought under similar circumstances. That challenge involved the request for an injunction to restrain the city commissioners from printing ballots that incorporated a box to check to vote for all of the members of a specific party represented on the ballot.⁴² Plaintiff-Appellants claimed that "these provisions giving to voters who wish to vote for all the candidates of one political party the special privilege of doing so by a single cross . . . are also unconstitutional, as authorizing a method of voting for political parties, not for men."⁴³ The court therefore considered the issue: "[D]oes the manner in which an elector is permitted by the statute to designate the ticket for which he wishes to vote interfere with the freedom and equality of elections?"⁴⁴ The court determined that inequality did not result when a voter was required to expend a small amount of extra time in the voting process.⁴⁵ The *Oughton* court also recognized that the ability to cast write-in votes was necessary to promote equal elections for those electors unsatisfied with their chosen candidates.⁴⁶

35. *Id.*

36. *DeWalt v. Bartley*, 24 A. 185 (Pa. 1892).

37. *Id.* at 187.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Oughton v. Black*, 61 A. 346 (Pa. 1905).

42. *Id.*

43. *Id.* at 347.

44. *Id.*

45. *Id.*

46. *Id.* at 348.

In *Commonwealth ex rel. v. Martin*,⁴⁷ presiding officers of the Philadelphia Democratic convention challenged a statute that forbade ballots which contained the same name in more than one place. Both the Democratic and the Republican nominating conventions for Philadelphia nominated the same slate of judges, and the Secretary of State placed the names only in the Republican portion of the ballot per the challenged statute.⁴⁸ The Democratic officers asserted that this violated the guarantee of free and equal elections.⁴⁹ The court agreed, granting a peremptory mandamus action ordering the names to appear on both sections of the ballot.⁵⁰

The Court of Common Pleas of Lancaster County in *In re Certificate of Nomination of Jeremiah Rife*,⁵¹ declared regarding Article I, § 5: "Any tampering by election officers with the purity of the ballot . . . affects society in a most serious and destructive manner. Its tendency is to prevent the expression of the voice and will of the people in the choice of their officers and rulers. . . ."⁵² In this case, the court waded through allegations of severe election board misconduct, permitting both sides to call most of the voters in the district as witnesses, and found that the misconduct did not affect the outcome of the election.⁵³ The court commended the petitioner for his efforts to maintain the constitutional ideal of free and equal elections, while denying petitioner's request to set aside the election.⁵⁴

In 1928, the Borough of New Britain was created from parts of the townships of Doylestown and New Britain.⁵⁵ At the time, the school code provided that each newly created division of this sort should constitute its own school district unless the district formed would be of the fourth class, in which case no new school district would be created without state Board of Education approval.⁵⁶ A new fourth-class district was formed without such approval, and the constitutionality of the act requiring state approval was at issue in this case.⁵⁷ The central concern in *New Britain Borough School District* was citizens' ability to vote for school directors.⁵⁸ Without a new school district, students in the new borough would attend the school that they had previously attended.⁵⁹ However, the new borough was made up of pieces of two separate school districts but only one voting district.⁶⁰ The voting district could have only one ballot, but voters located in the different school

47. *Commonwealth ex rel. v. Martin*, 20 C.C.R. 117 (1897).

48. *Id.* at 118-19.

49. *Id.* at 119.

50. *Id.* at 122-23. See *Wilson v. Philadelphia County*, *infra* note 64.

51. *In re Certificate of Jeremiah Rife*, XVI Lanc. L. Rev. 185 (C.P. of Lanc. County 1899).

52. *Id.* at 190.

53. *Id.* at 188-90.

54. *Id.* at 191.

55. *New Britain Borough School District*, 145 A. 597 (Pa. 1929).

56. *Id.*

57. *Id.* at 598.

58. *Id.* at 598-99.

59. *Id.* at 599.

60. *Id.*

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§ 8.3[c]

districts should be voting for separate school board directors. Thus, the single voting district precluded the placement of the appropriate candidates' names on the correct ballots.⁶¹ The court noted that although there existed no constitutional mandate that citizens be able to vote for school board members, Article I, § 5 required that if citizens in fourth class school districts were generally allowed to vote for the board of directors for their school (as they were), then all citizens in fourth class districts had to be able to do so.⁶² Therefore, the court declared that the portion of the act giving veto power in the creation of new districts to the state was void and unconstitutional.⁶³

Generally, Pennsylvania courts have found that ballot innovations are constitutional as long as ease of voting, not inequality, is the result of the innovation. Ballots that encourage clarity and ease of voting have been found to promote free elections.

§ 8.3[c]. NOMINATIONS

Statutes and regulations regarding the method that candidates are required to use to have their names placed on the ballots is another question that courts have considered with regularity. *Wilson v. Philadelphia County*⁶⁴ challenged the Act of June 14, 1935, commonly known as the Party Raiding Act. That Act prohibited candidates from being listed on multiple parties' primary ballots, unless the candidate was running for judge of a court of record.⁶⁵ The Pennsylvania Supreme Court found that this provision did not deprive voters from electing their candidate of choice, since citizens could vote for a candidate of the other party at the general election.⁶⁶

*Rowe ex rel. Schwartz v. Lloyd*⁶⁷ challenged a requirement that every candidate who was nominated in the primary election by write-in votes (as op-

61. *Id.*

62. *Id.*

63. *Id.*

64. *Wilson v. Philadelphia County*, 179 A. 553 (Pa. 1935). See *Krull et al. v. City and County of Philadelphia et al.*, 2 Pa. D. & C. 2d 181 (1955) (action in County Court with similar facts to *Wilson*).

65. *Wilson*, 179 A. at 554. See discussion of *Commonwealth ex rel. v. Martin*, *supra* note 47.

66. *Id.* On a similar note, in *Urik Election*, where the petitioner wished to cumulate the votes cast for him under

two different versions of his name listed under both the Democratic and the Republican parties, the Allegheny County court ruled that "The right to vote is the very cornerstone of democracy, and this right should be jealously protected by the courts by uniformly administering the laws passed to protect this right . . . we must strictly construe the Election Code of 1937, *supra*, and deny petitioner the right to cumulate the votes in an issue." *Urik Election*, 80 D. & C. 200 (1952).

67. *Rowe ex rel. Schwartz v. Lloyd*, 36 A.2d 317 (Pa. 1944).

ELECTIONS

posed to nominated by a party) had to pay the fee that was required for candidates to be placed on the primary ballot. The court found that after accepting the nomination of the voters, the candidate was simply required to put himself on equal footing with the other candidates who had already paid the fee.⁶⁸ Thus, this regulation was found to promote equality of elections, and was upheld.⁶⁹

In 1969, the issue of the constitutionality of a nomination provision under Article I, § 5 of the Pennsylvania Constitution arose again in *Shankey v. Staisey*.⁷⁰ *Shankey* challenged a requirement that, for a candidate to appear on the general election ballot, that candidate had to demonstrate the support of a set number of eligible voters, either by primary election or by petition.⁷¹ The Pennsylvania Supreme Court, in upholding the law, quoted the rule for determining whether elections were free and equal that was originally stated in 1914 in *Winston v. Moore*,⁷² as follows:

In a general way it may be said that elections are free and equal within the meaning of the Constitution when they are public and open to all qualified electors alike; when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him.⁷³

Applying that rule, the court found that equality was preserved because all candidates were required to meet the same conditions and therefore the statute did not violate the Elections Clause of the Pennsylvania Declaration of Rights.⁷⁴

Requirements placed on nominations have thus been found constitutional where those requirements promote, or at least do not truly hinder, equality. The courts have suggested that a candidate's access to the ballot is not as strictly protected under constitutional jurisprudence as citizens' access to voting.⁷⁵

68. *Id.* at 318-19.

69. *Id.*

70. *Shankey v. Staisey*, 257 A.2d 897 (Pa. 1969).

71. *Id.* at 898.

72. *Winston v. Moore*, 91 A. 520 (Pa. 1914).

73. *Id.* at 523; see also *Shankey v. Staisey*, 257 A.2d at 899. This rule, first

stated in *Winston v. Moore*, is repeated throughout the caselaw arising on this issue.

74. *Shankey*, 257 A.2d at 899.

75. See *Sweeney v. Tucker*, 375 A.2d 698 (Pa. 1977), in which the court declared that an incumbent candidate's interest in a particular office was "highly circumscribed." *Id.* at 524.

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78. *Id.*

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§ 8.3[d]. CANDIDATES

In addition to nominations, Pennsylvania courts have addressed several other issues affecting candidates for elected office. In *Winston v. Moore*, the court refused to pass on whether a primary election falls within Article I, § 5, but instead operated under a broad assumption that such constitutional provisions would apply.⁷⁶ The court found that the legislature had broad powers to dictate the mode and method by which citizens would be able to exercise their constitutional right to free elections.⁷⁷ Provisions placing requirements on candidates before those candidates could be placed on the ballot were not violative of the free and equal elections clause, the court concluded, as long as those requirements are administered equally.⁷⁸

In 1979, in *Snider v. Shapp*,⁷⁹ the Commonwealth Court of Pennsylvania held that the guaranty of "free and equal" elections encompassed suffrage, and ethical requirements, placed on individual candidates, did not impede suffrage in a manner that would violate that guaranty.

In 1986, the Pennsylvania Supreme Court found that term limits were merely a restriction on the candidate, and did not inhibit the right of the people to vote freely.⁸⁰

Once again, the legislature may place reasonable requirements on candidates without violating the "free and equal" elections clause. Thus, reasonable restrictions on which candidates' names are placed on the ballot, as well as ethical requirements and term limits, have all been found to be constitutional restrictions on candidates.

§ 8.3[e]. APPORTIONMENT

Adjudication of reapportionment plans has been a troublesome issue in the history of the Article I, § 5 elections clause in the courts of the Commonwealth. Almost two centuries before reapportionment became an important national issue in the midst of the civil rights movement, Pennsylvania included regular reapportionment in the 1776 Constitution as a means of ensuring equal weight of voters' ballots, protecting those citizens in the rapidly growing western portions of the state.⁸¹

76. *Winston v. Moore*, 91 A. 520 (Pa. 1914).

77. *Id.* See *Burdick v. Takushi*, 504 U.S. 428 (1992) ("... as a practical matter, and if elections are to be fair and honest, there must be regulation to bring order to the democratic process.").

78. *Id.* at 523.

79. *Snider v. Shapp*, 405 A.2d 602 (Pa. Cmwlth. 1979).

80. *City Council of the City of Bethlehem v. Marcincin*, 515 A.2d 1320 (Pa. 1986).

81. Constitution of Pennsylvania, September 28, 1776, Section 17. In pertinent part, this provided:

ELECTIONS

In 1938, Pennsylvania's senatorial and representative apportionment plans were challenged in the courts. *Lyme v. Lawrence*⁸² challenged the senatorial apportionment and *Shoemaker v. Lawrence*⁸³ challenged the apportionment of the Commonwealth into representative districts. In both cases, it was found that districts were formed of noncontiguous or highly irregularly shaped areas.⁸⁴ There were even areas that were not included in any voting district.⁸⁵ Both cases quoted *Patterson v. Barlow*, which stated that elections shall be made equal "by laws which shall arrange all the qualified electors into suitable districts, and make their votes equally potent in the election; so that some shall not have more votes than others, and that all shall have an equal share in filling the offices of the Commonwealth."⁸⁶ The court went on to find that the challenged apportionment schemes were invalid as violative of the "free and equal" elections clause.⁸⁷

In the 1959 decision of *Butcher v. Rice*,⁸⁸ the Pennsylvania Supreme Court changed its practice, for the time, of reviewing apportionment schemes. In *Butcher*, the senatorial apportionment was challenged as violating the requirement of equality as well as the requirement stated in Article II, § 16 of the Pennsylvania Constitution, which required that senatorial districts be "as nearly equal in population as may be."⁸⁹ The court concluded that it lacked jurisdiction to issue an injunction to restrain an election.⁹⁰ There was a strong dissent by Justice John Bell indicating that although the majority ostensibly relied on United States Supreme Court precedent, that precedent merely indicated an unwillingness to involve the federal courts in state issues.⁹¹ Therefore, Justice Bell argued, the states were perfectly free to review, examine, and implement election schemes.

... But as representation in proportion to the number of taxable inhabitants is the only principle which can at all times secure liberty, and make the voice of a majority of the people the law of the land; therefore the general assembly shall [have lists of taxable inhabitants made] . . . [and use such lists to] appoint a representation . . . in proportion to the number of taxables in such returns; which representation shall continue for the next seven years afterwards at the end of which [new lists shall be made and new apportionment accomplished].

82. *Lyme v. Lawrence*, 45 Dauph. 322 (1938).

83. *Shoemaker v. Lawrence*, 31 D. & C. 681 (1938).

84. *Lyme*, 45 Dauph. 322; and *Shoemaker*, 31 D. & C. 681.

85. *Lyme*, 45 Dauph. at 324; *Shoemaker*, 31 D. & C. at 684.

86. *Shoemaker*, 31 D. & C. 681, 686, (quoting *Patterson v. Barlow*, 60 Pa. 54, 75).

87. *Lyme v. Lawrence*, 45 Dauph. 322, 328-9; *Shoemaker v. Lawrence*, 31 D. & C. 681, 691-2.

88. *Butcher v. Rice*, 153 A.2d 869 (Pa. 1959).

89. *Id.* at 870.

90. *Id.* at 873.

91. *Id.* at 886. This dissent also relied heavily on Pennsylvania's mandate of free and equal elections, although the majority decision ignored that issue.

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The United States Supreme Court's decision in *Reynolds v. Sims*,⁹² changed the court's practice regarding apportionment proceedings. Thus, in 1964, when the Pennsylvania court decided *Butcher v. Bloom*⁹³ on facts similar to the previous *Butcher* case, although regarding a newly implemented apportionment plan, it had a mandate from the United States Supreme Court to decide this apportionment case. *Butcher v. Bloom* did not reach any free and equal elections issues, but the Pennsylvania Supreme Court did maintain jurisdiction over a reapportionment matter, demonstrating the mandated change in policy.

In *In re 1991 Pennsylvania Legislative Reapportionment Commission*,⁹⁴ twenty-five appellants challenged the 1991 apportionment scheme on various grounds. The challenge under Article I, § 5 raised issues about a candidate's interest in a specific office when that candidate's residence was no longer within the district in which he intended to run for office.⁹⁵ The court concluded that a candidate had a right to run only for an office for which he was qualified.⁹⁶ The legislature was not required to "tailor its plan around the residences of political aspirants who seek to challenge a specific incumbent."⁹⁷ Therefore, the court found that the apportionment was valid as to this issue.⁹⁸

In 2002, voters challenged the Commonwealth's post-2000 congressional redistricting plan as Republican gerrymandering under three separate sections of Pennsylvania's Declaration of Rights, including Article I, § 5.⁹⁹ In *Erfer v. Commonwealth*,¹⁰⁰ petitioner-voters filed suit in the Commonwealth Court, which initially scheduled the hearing of the case for a date after nomination petitions were due for the 2002 elections.¹⁰¹ The voters directly petitioned the Pennsylvania Supreme Court for redress.¹⁰² The Pennsylvania Supreme Court granted plenary jurisdiction and required the

92. *Reynolds v. Sims*, 377 U.S. 533 (1964).

93. *Butcher v. Bloom*, 203 A.2d 556 (Pa. 1964).

94. *In re 1991 Pennsylvania Legislative Reapportionment Commission*, 609 A.2d 132 (Pa. 1992); see also KEN GORMLEY, *THE PENNSYLVANIA LEGISLATIVE REAPPORTIONMENT OF 1991* (1994).

95. *In re 1999 Pennsylvania Legislative Reapportionment Commission*, 609 A.2d 132 (Pa. 1992). Appellants claimed that they had planned to run for specific offices against specific incumbent candidates prior to the reapportionment. After the reapportionment, their residences were no longer in those districts. The court found that because these ap-

pellants lacked "any evidence of their being part of an identifiable group suffering a history of disenfranchisement or lack of political power" and because a candidate's interest in a particular political office is not a strong interest, Article I, § 5 was not violated. *Id.* at 142.

96. *Id.*

97. *Id.*

98. *Id.* The entire plan of the Reapportionment Commission was found to be valid and all challenges failed. *Id.* at 147.

99. *Erfer v. Commonwealth*, 794 A.2d 325 (2002). The additional sections were PA. CONST. art. I, §§ 1 and 26.

100. *Id.*

101. *Id.* at 328.

102. *Id.*

Commonwealth Court to issue findings of fact on an expedited schedule.¹⁰³ The findings of fact from Judge Pellegrini of the Commonwealth Court pointed out that this was the first case to address whether Article I, § 5 of the Pennsylvania Constitution applies to the congressional redistricting process.¹⁰⁴ The Supreme Court, ruling upon the findings of fact from the Commonwealth Court, denied both respondent-Commonwealth's suggestion that because the U.S. Constitution provided for reapportionment, it precluded the Pennsylvania Constitution from applying as well,¹⁰⁵ and petitioners' request that the Court find that the "free and equal elections clause provides further protections to the right to vote than does the Equal Protections Clause" of the Federal Constitution.¹⁰⁶ The defendants also attempted to have the Court limit the application of the elections clause to offices of the Commonwealth, but the Court summarily rejected this argument.¹⁰⁷ The petitioners constitutional claims, including their Article I, § 5 claim, were thus denied.

Thus, after a brief time when Pennsylvania courts refused to enter the fray surrounding reapportionment, courts now routinely decide apportionment issues. Although many of the controversies arise under other sections of the Pennsylvania Constitution, Article I, § 5 provides constitutional support to a litigant's claim that reapportionment plans must serve to maintain free and equal elections.¹⁰⁸

103. *Id.*

104. *Id.* at 354.

105. *Id.* at 321. The Court stated:

It is true that the U.S. Constitution has granted our legislature the power to craft congressional reapportionment plans. Yet, we see no indication that such a grant of power simultaneously suspended the Constitution of our Commonwealth *vis-à-vis* congressional reapportionment. Without clear support for the radical conclusion that our Commonwealth's Constitution is nullified in challenges to congressional reapportionment plans, it would be highly inappropriate for us to so circumscribe the operation of the organic legal document of our Commonwealth.

106. *Id.* at 332.

107. *Id.* at 331.

108. Cases challenging reapportionment plans are often brought under Ar-

ticle II, § 16, which mandates equal senatorial and representative districts:

The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

PA. CONST. art. II, § 16. See, e.g., *Butcher v. Bloom*, *supra* note 93; In re 1991 Pennsylvania Reapportionment Commission, *supra* note 99. Additional claims are sometimes brought under Article I §§ 1 and 26, the equal protection guarantee. See, e.g., *Erfer v. Commonwealth*, *supra* note 99.

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111. *Id.*

112. M
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113. *Id.*

114. *Id.*

115. *Id.*

§ 8.3[f]. VOTER QUALIFICATIONS

Courts have concluded that the legislature has the power to define the term “qualified elector” within constitutional limitations. In 1890, the Pennsylvania Supreme Court found that the identification and registration of qualified voters did not impede free and equal elections.¹⁰⁹ This was reiterated in 1971 in *Ray v. Commonwealth*,¹¹⁰ where plaintiff claimed that the fact that he was prohibited from voting because he was confined to a penal institution violated the Article I, § 5 requirement of “free and equal” elections. The court found that Article VII, § 14’s mention of “qualified electors” mandated that the legislature must have the ability to determine the meaning of “qualified elector” without violating Article I, § 5.¹¹¹

In 2000, the Commonwealth Court, in *Mixon v. Commonwealth*,¹¹² considered the question of felons’ voting rights once again. Here the plaintiffs were divided into four groups: (1) two men who were incarcerated and registered to vote; (2) two men who were incarcerated and had not previously been registered to vote; (3) two men who had been previously convicted and were now released but not registered to vote; and (4) a single female who was registered to vote and claimed the lack of ability of the other groups to vote hampered her ability to vote.¹¹³ The court found, first, that the female lacked standing on this issue, because any injury she may have received was “too remote and speculative to afford her standing.”¹¹⁴ The court then conducted its own *Edmunds* analysis, and based on *Patterson v. Barlow*, found that the opportunity to vote in free and equal elections was one possessed only by “qualified” voters.¹¹⁵ Moreover, the legislature had the power to determine which electors were “qualified.”¹¹⁶

The *Mixon* court therefore concluded that the legislature had the right to proscribe voting by incarcerated felons as part of its ability to define “qualified electors.”¹¹⁷ However, because the voter registration system prevented convicted felons from *registering to vote* for five years after their release, but not from *voting* after their release if they had previously been registered, the Commonwealth Court found that portion of the voter registration act lacked a rational basis and therefore was unconstitutional.¹¹⁸

109. *Cusick’s Election*, 20 A. 574 (Pa. 1890).

110. *Ray v. Commonwealth*, 276 A.2d 509 (Pa. 1971).

111. *Id.* at 510.

112. *Mixon v. Commonwealth*, 759 A.2d 442 (Pa. 2000).

113. *Id.* at 444.

114. *Id.* at 443.

115. *Id.* at 450.

116. *Id.* See *Ray v. Commonwealth*, 276 A.2d 509 (Pa. 1971).

117. *Mixon*, 759 A.2d at 450.

118. *Id.* The Court based this decision on the Supreme Court’s pronouncement in *Gray v. Sanders*, which said “that while minors, felons, and other classes of citizens may be excluded from voting, once the body of voters is determined, and their qualifications specified, there is no constitutional way by which equality of

Pennsylvania's "free and equal" elections clause has been used as the basis for a considerable number of complaints against legislative action that citizens contend violates their access to those "free and equal elections." In general, the results of these challenges have been to find that the legislature must have the ability to "facilitate" and "reasonably direct the manner of" elections as well as to determine the status of a qualified elector.¹¹⁹ However, the legislature must be careful to maintain strict equality and freedom of elections in this process.

§ 8.4. RELATED CASE LAW FROM OTHER STATES

When determining the constitutionality of a statute under the Pennsylvania Constitution, in addition to the Commonwealth's caselaw, courts may also consider the caselaw of other states. There are at least twenty-four other states in the United States with elections clauses similar to Pennsylvania's "free and equal" elections provision in their constitutions.¹²⁰ Of those states, five have no cases recorded as brought under the state constitution elections clause,¹²¹ while many of the other states have had only a limited number of challenges brought under their elections provisions.¹²² Still others have witnessed extensive court challenges under these provisions, as has Pennsylvania.¹²³ These elections clauses, which are very similar to that of Pennsylvania, have been the subject of widely disparate interpretations and have had varying impacts upon the maintenance of freedom of elections in other states.¹²⁴

voting power may be evaded.' " *Mixon v. Commonwealth*, 759 A.2d 442, 451 (quoting *Gray v. Sanders*, 372 U.S. 368, 380-1 (1963)).

119. BUCKALEW, *supra* note 2 at 10.

120. ARK. CONST. art. 3, § 2 ("free and equal"); ARIZ. CONST. art. 2, § 21 ("free and equal"); COLO. CONST. art. II, § 5 ("free and open"); DEL. CONST. art. I, § 3 ("free and equal"); ILLINOIS CONST., art. 3, § 3 ("free and equal"); IND. CONST. art. 2, § 1 ("free and equal"); KY. CONST. § 6 ("free and equal"); MD. DEC. OF R. art. 7 ("free and frequent"); MASS. CONST. ANN. Pt. 1, art. IX ("free"); MO. CONST. art. 1, § 25 ("free and open"); MONT. CONST., art. II § 13 ("free and open"); NEB. CONST. art. 1, § 22 ("free"); N.H. CONST. Pt. 1, art. 11 ("free"); N.M. CONST. art. II, § 8 ("free and open"); N.C. CONST. art. I, § 10 ("free"); OK. CONST. art. III, § 5 ("free and equal"); S.C. CONST. art. I, § 5 ("free and open"); S.D. CONST. art. VI, § 19

("free and equal"); TENN. CONST. art. I, § 5 ("free and equal"); UTAH CONST. art. I, § 17 ("free"); VERMONT CONST. art. 8 ("free and without corruption"); VA. CONST. art. I, § 6 ("free"); WASH. CONST. art. I, § 19 ("free and equal"); WYO. CONST. art. 1, § 27 ("open, free and equal").

121. Arizona, Delaware, Nebraska, Oklahoma, and Virginia.

122. States with limited caselaw regarding their elections provisions include Missouri, Montana, New Mexico, North Carolina, South Carolina, Utah, and Wyoming.

123. States with relatively extensive caselaw regarding their elections provisions include Illinois, Kentucky, Massachusetts, and New Hampshire.

124. For a discussion of the use of states' election clauses as a basis for a challenge to an election based on fraud, see Jones, *supra* note 11.

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For instance, in the area of ballots and nominations, a Colorado court has held that reasonable, nondiscriminatory restrictions on the rights of voters are justified by the state's need to encourage voting and democracy.¹²⁵ The Colorado Supreme Court has stated that the constitutionality of ballot access restrictions will be decided with a balancing test, balancing the injury to the voter against the precise interest of the state.¹²⁶ The Federal District Court for the Eastern District of North Carolina has ruled that a requirement that candidates have the signatures of ten percent of the registered voters before having their names placed on the ballot was over burdensome and therefore an unconstitutional restriction on access to the ballot required by the North Carolina Constitution.¹²⁷

Likewise, in the area of apportionment, the Seventh Circuit found in 1992 that the use of a voting plan that would temporarily delay implementation of the new census every 20 years did not violate Illinois' "free and equal" elections clause.¹²⁸ The Indiana Supreme Court in 1982 ruled that its "free and equal" elections clause required redistricting to maintain the "equality of the force of each vote."¹²⁹ Similarly, the Kentucky Supreme Court found in 1962 that the duty of courts to maintain "free and equal" elections outweighed the courts' "traditional reluctance to enter the political thicket."¹³⁰

The area of voter qualification has generated quite a bit of controversy. In 1950, the Tennessee Supreme Court held that the "legislature generally has the right to determine the qualifications of the voters and regulate the conduct of the election. . . ." ¹³¹ While this is generally true in most states, the qualification of convicted felons to vote has been a regularly contested issue in many states. In the 1980's, the District Court for the Western District of Tennessee found that there was no constitutional mandate prohibiting the exclusion of some or all felons from the voter rolls.¹³² In 2000, the New Hampshire Supreme Court ruled that felon disenfranchisement statutes were a valid exercise of the legislature's ability to define qualified voters.¹³³ However, in 1983, the Massachusetts Supreme Judicial Court held that "prisoners domiciled in Massachusetts who are unable to register to

125. *Bruce v. City of Colo. Springs*, 971 P.2d 679 (Colo. App. 1998).

126. *Libertarian Party v. Secretary of State*, 817 P.2d 998 (Colo. 1991).

127. *Obie v. North Carolina State Board of Elections*, 762 F.Supp. 119 (E.D.N.C. 1991).

128. *Political Action Conference v. Daley*, 976 F.2d 335 (7th Cir. 1992).

129. *State Election Bd. v. Bartolomei*, 434 N.E. 2d 74 (Ind. 1982).

130. *Watts v. Carter*, 355 S.W. 2d 657, 658 (Ky. 1962).

131. *Trotter et al. v. City of Maryville et al.*, 235 S.W.2d 13 (Tenn. 1950), citing *Cook v. State*, 90 Tenn. 407 (1891).

132. *Tate v. Collins*, 496 F. Supp. 205 (W.D. Tenn. 1980), *Tate v. Collins*, 622 F.Supp. 1409 (W.D. Tenn. 1985).

133. *Fischer v. Governor*, 145 N.H. 28 (2000).

ELECTIONS

vote in person due to incarceration must be provided an opportunity to register to vote by absentee ballot."¹³⁴

Some states have stated that the right to vote is a fundamental one. The New Mexico Supreme Court, when discussing the elections clause in its state constitution, declared that "the supreme right guaranteed by the state constitution is the right of a citizen to vote at public elections."¹³⁵

§ 8.5. POLICY CONSIDERATIONS AND CONCLUSION

As initially stated, Pennsylvania has a long tradition of placing an emphasis on free and equal elections. Long before apportionment was considered a necessary part of maintaining equality of voter impact nationally, reapportionment was written into the original state constitution.¹³⁶ Although this priority on "free and equal" elections has not always been maintained, each time the legislature has ignored these important provisions, the courts have eventually brought statutes back in line with the constitutional mandates. Thus, Article I, § 5 continues to provide fertile ground for state constitutional decisions, as Pennsylvania Constitutional jurisprudence enters a new century.

134. *Cepulonis v. Secretary of Commonwealth*, 452 N.E.2d 1137 (Mass. 1983).

135. *State ex rel. Walker v. Bridges*, 27 N.M. 169 (1921). The United States Supreme Court has even declared that

the right to vote is fundamental because exercising that right preserves all other rights in *Harmon v. Forssenius*, 380 U.S. 528, 537 (1965).

136. *See supra* note 81.

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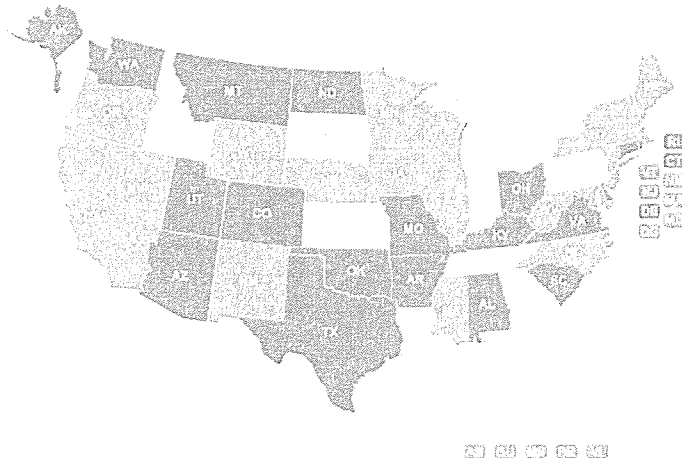
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Voter Identification Requirements



Voter ID Requirements Currently in Effect

Strict Photo	Photo	Non-Photo	No Voter ID Law
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Contents

[State Requirements for Voter ID](#)
[2012 Legislative Action](#)
[2011 Legislative Action](#)
[Legislative Action, 2003-2010](#)
[Recent Litigation](#)
[Details of Voter ID Requirements](#)
[For More Information](#)

PLEASE NOTE: IF YOU ARE UNABLE TO SEE THE INTERACTIVE MAP, PLEASE REFER TO THE [DETAILED TABLE BELOW](#).

PLEASE NOTE:

Alabama will become a photo ID state in 2014 if its new law receives pre-clearance under Section 5 of the Voting Rights Act.

Mississippi, South Carolina and Texas have new strict photo ID laws which may take effect before November 2012 if they receive pre-clearance under Section 5 of the Voting Rights Act.

New Hampshire passed a new voter ID law in 2012. However, it will not take effect until it receives pre-clearance under Section 5 of the Voting Rights Act.

Wisconsin's new strict photo ID law was held unconstitutional on March 12, 2012. It could take effect before November 2012 if that ruling is reversed by a higher court.

Updated July 2, 2012

Latest News

June 27, 2012: The New Hampshire General Court overrode a gubernatorial veto of a voter ID bill. The state is subject to Section 5 of the Voting Rights Act, so the new voter ID law cannot take effect unless preclearance is granted. It should be noted that New Hampshire's new voter ID law differs in several important ways from the South Carolina and Texas laws rejected by the U.S. Department of Justice in recent months. One important difference is that voters who are unable to present photo ID at the polls will still be allowed to vote after signing an affidavit of identity.

June 7, 2012: The New Hampshire General Court sent a voter ID bill to the governor late yesterday. It would require voters to show a photo ID before voting, but it is not of the "strict" variety passed in other states over the past two years. A voter without ID would be permitted to vote after executing an affidavit of identity. The secretary of state would be required to send a letter to each voter who executed an affidavit in lieu of showing ID, asking the person to confirm that s/he did in fact vote. Any such letters returned as undeliverable, or returned by people saying they did not vote, would be turned over to the Attorney General for investigation of voter fraud.

May 22, 2012: Late last week, governors in **Mississippi** and **Virginia** signed voter ID legislation. The Mississippi legislation spells out the details necessary to implement the constitutional amendment approved by voters in November 2011. Virginia's new law expands the types of ID that are permissible for voting purposes (including adding some that do not bear a photo of the voter), but also moves Virginia into the "strict" camp by requiring voters who fail to bring ID to the polls to vote a provisional ballot and present ID within the few days following the election in order to have their ballot counted. Both laws require pre-clearance under Section 5 of the Voting Rights Act before they can take effect.

May 1, 2012: The American Civil Liberties Union filed suit against **Pennsylvania's** new strict photo voter ID law. Press releases and legal documents are available [here](#).

May 1, 2012: The **Mississippi** Legislature sent a voter ID bill to the governor. The bill lays out the specific details necessary to implement the citizen initiative approved by voters in November 2011. If the governor signs the bill, it must be pre-cleared under Section 5 of the Voting Rights Act before it may be implemented.

April 18, 2012: The **Virginia** General Assembly has returned voter ID legislation to the governor. The legislation reflects some, but not all, of the changes requested by the governor.

April 10, 2012: **Virginia** Governor Bob McDonnell has sent voter ID legislation back to the General Assembly with recommendations for changes. Among the changes he suggests are allowing a voter to be identified through a signature match in lieu of ID, allowing community college IDs for voting, and extending from one to three days the time period during which voters who failed to show ID on Election Day can return to election officials to show ID. View the governor's [recommendations](#).

April 5, 2012: The **Minnesota** legislature approved HF 2738, sending a constitutional amendment to the November 2012 ballot that will allow voters to approve or reject voter ID.

March 14, 2012: The governor signed voter ID legislation in **Pennsylvania**.

March 12, 2012: A state judge ruled **Wisconsin's** voter ID law unconstitutional (read the [opinion](#)). Unless the state succeeds in obtaining an injunction blocking this order, Wisconsin's new strict photo ID law will not be in effect for the April 3 presidential primary. Another state judge had issued a temporary stay in a separate case earlier in March (read the [order](#)).

March 12, 2012: The U.S. Department of Justice has denied pre-clearance for **Texas's** new voter ID law, passed in 2011. Texas also filed suit with a three-judge panel seeking pre-clearance; a hearing on that should happen this Wednesday. Read [more](#).

Feb. 9, 2012: **South Carolina** has filed for reconsideration of the U.S. Department of Justice's denial of preclearance for its new voter ID law. The DOJ denied South Carolina's request for pre-clearance in December 2012. The DOJ found the law discriminatory because the state's minority voters are 20 percent more likely than white voters to lack a photo ID that meets the standard for voting.

Introduction

Thirty states presently have laws in place that will require all voters to show ID at the polls this November. That number could rise; a total of thirty-three states have passed voter ID laws. Mississippi, New Hampshire and Wisconsin presently have no voter ID requirement in place, even though laws have been enacted in all three states. In Mississippi's case, the strict photo ID amendment passed by citizen initiative in November 2011 requires both implementing legislation and pre-clearance under Section 5 of the Voting Rights Act before it can be implemented. New Hampshire also requires pre-clearance before their newly-enacted voter ID law can take effect. Wisconsin's new strict photo ID law, passed by the legislature in 2011, was briefly in effect in early 2012, but it was declared unconstitutional by a state judge on March 12, 2012. The state is barred from enforcing the law unless an appeal overturns the March 12 ruling.

In Alabama, South Carolina and Texas, less-strict voter ID laws that pre-date the strict new laws passed in 2011 remain in effect for now. Alabama's new voter ID law has a 2014 effective date, and requires Section 5 pre-clearance. Texas and South Carolina were denied pre-clearance for their new voter ID laws by the U.S. Department of Justice; as in Alabama, older, non-photo ID laws remain in effect while both states seek a reconsideration of pre-clearance from a federal court.

The 33 voter ID laws that have been enacted vary in their details. Two key distinctions are whether a law is *strict* or not, and whether or not the ID must include a photo.

Strict vs. Non-Strict: In the "strict" states, a voter cannot cast a valid ballot without first presenting ID. Voters who are unable to show ID at the polls are given a provisional ballot. Those provisional ballots are kept separate from the regular ballots. If the voter returns to election officials within a short period of time after the election (generally a few days) and presents acceptable ID, the provisional ballot is counted. If the voter does not come back to show ID, that provisional ballot is never counted.

Photo vs. Non-Photo: Seventeen states require that the ID presented at the polls must show a photo of the voter. Some of these are "strict" voter ID laws, in that voters who fail to show photo ID are given a provisional ballot and must eventually show photo ID in order to get that provisional ballot counted. Others are "non-strict," and voters without ID have other options for casting a regular ballot. They may be permitted to sign an affidavit of identity, or poll workers may be able to vouch for them if they know them personally. In these "non-strict" states, voters who fail to bring ID on Election Day aren't required to return to election officials and show ID in order to have their ballot counted. In the other 16 voter ID states, there is a wide array of IDs that are acceptable for voting purposes, some of which do not include a photo of the voter. Again, some of these states are "strict" in the sense that a voter who fails to bring ID on Election Day will be required to vote a provisional ballot, and that provisional ballot will be counted only if the voter returns to election officials within a few days to show acceptable ID.

For specifics on what forms of identification are acceptable and the options available to voters who cannot present identification, see [Table 2](#).

States that Have Enacted Voter ID Laws

Not all of the laws listed below have taken effect. Please see the footnotes for detailed information.

<i>Table 1. State Requirements for Voter Identification</i>			
States that Request or Require <i>Photo ID</i>		States that Require ID (Photo Not Required)	
Strict Photo ID	Photo ID	Strict Non-Photo ID	Non-Strict Non-Photo ID
Georgia	**Alabama (1), (5)	Arizona	Alaska
Indiana	Florida	Ohio	Arkansas
Kansas	Hawaii	**Virginia (8)	Colorado
*Mississippi (6)	Idaho		Connecticut
Pennsylvania	Louisiana		Delaware
**South Carolina (1)	Michigan		Kentucky
Tennessee	*New Hampshire (7)		Missouri
**Texas (1)	South Dakota		Montana
*Wisconsin (2)			North Dakota
			Oklahoma (3)
			Rhode Island (4)
			Utah
			Washington

* New voter ID law has not yet been implemented; state presently has no voter ID law in effect.

** New voter ID law has not yet been implemented; an older voter ID law remains in effect.

- (1) In Alabama, South Carolina and Texas, current non-photo voter ID laws stay in effect for the time being. The new *photo* voter ID requirements will take effect after receiving preclearance under [Section 5 of the Voting Rights Act](#). South Carolina and Texas were denied pre-clearance in December 2011 and March 2012, respectively. Alabama's new photo ID law has a 2014 effective date, and the state has not yet applied for pre-clearance.
- (2) Wisconsin's voter ID law was declared unconstitutional on March 12, 2012. Dane County Circuit Judge Richard Niess issued a permanent injunction barring enforcement of the law, which the state has said it will appeal.
- (3) There are some who prefer to call Oklahoma a *photo* voter ID state, because most voters will show a photo ID before voting. However, Oklahoma law also permits a voter registration card issued by the appropriate county elections board to serve as proof of identity in lieu of photo ID.
- (4) Rhode Island's voter ID law takes effect in two stages. The first stage, requiring a non-photo ID, took effect on January 1, 2012. On January 1, 2014, a photo ID requirement will replace the non-photo ID law.
- (5) Alabama's new photo ID requirement takes effect with the 2014 statewide primary election. The new law also requires preclearance. The delayed implementation date was intended to ensure that the timing of preclearance did not occur between the primary and general elections of 2012, thus creating voter confusion.
- (6) Mississippi's new voter ID law was passed via the citizen initiative process. It takes effect 30 days after the certification of results, a date that will likely fall in late December 2011 or early January 2012. However, the language in constitutional amendment passed by MS voters on Nov. 8 is very general, and implementing legislation will be required before the amendment can take effect. The MS provision will also require pre-clearance under Section 5 of the Voting Rights Act before it can take effect.
- (7) New Hampshire's new voter ID law requires preclearance under [Section 5 of the Voting Rights Act](#) before it can be implemented.
- (8) Virginia amended its existing voter ID in 2012, but the changes are subject to preclearance under Section 5 of the Voting Rights Act and are therefore not currently in effect. The changes include the addition of several new forms of ID for voting purposes, and a "strict" requirement that any voter who fails to show ID at the polls must vote a provisional ballot that will be counted only if the voter submits acceptable ID within three days after the election. Pending preclearance, Virginia's older voter ID law remains in effect. See [Table 2](#) below for details on both the old and the new voter ID laws.

2012 Legislative Action

Voter ID continues to be a high-profile issue in many state legislatures this year. This year, legislation is pending in 32 states so far. That includes new voter ID proposals in 14 states, proposals to strengthen existing voter ID laws in ten states, and bills in nine states to amend the new voter ID laws passed in 2011. The governor signed a new voter ID bill on March 14 in **Pennsylvania**, and the Virginia General Assembly has sent a new voter ID bill to the governor. Learn more about [voter ID legislation introduced in 2012](#).

2011 Legislative Action

Voter ID was the hottest topic of legislation in the field of elections in 2011, with legislation introduced in 34 states. There were just three states--Oregon, Vermont and Wyoming--that didn't have a voter ID law and didn't consider voter ID legislation that year. The voter ID legislation under consideration fell into two general categories: proposals for new voter ID laws in states that didn't already require voter ID at the polls (considered in 20 states), and proposals to strengthen existing voter ID requirements in order to require *photo* ID at the polls (considered in 14 states). Learn more about [voter ID legislation introduced in 2011](#).

2003-2010 Legislative Action

Voter ID has been a hot topic in state legislatures over the past decade. Since 2001, nearly 1,000 bills have been introduced in a total of 46 states. Twenty-one states have passed major legislation during the period 2003-2011, and those bills are summarized in the timeline below.

- 2003: New voter ID laws were passed in **Alabama, Colorado, Montana, North Dakota and South Dakota**
- 2005: New voter ID laws were passed in **Indiana, New Mexico and Washington**; **Georgia** tightened an existing voter ID law to require photo ID
- 2006: New voter ID law passed in **Ohio**; **Georgia** passed a law providing for the issuance of voter ID cards at no cost to registered voters who do not have a driver's license or state-issued ID card; Missouri tightened an existing voter ID law to require photo ID
- 2008: **New Mexico** relaxed an existing voter ID law, and now allows a voter to satisfy the ID requirement by stating his/her name, address as registered, and year of birth
- 2009: New voter ID law passed in **Utah**
- 2010: New voter ID law passed in **Idaho**; **Oklahoma** voters approved a voter ID proposal placed on the ballot by the Legislature
- 2011: New voter ID laws passed in **Kansas, Mississippi, Rhode Island and Wisconsin**. **Alabama, South Carolina, Tennessee and Texas** tightened existing voter ID laws to require photo ID (new laws in Texas and South Carolina are on hold pending USDOJ preclearance). Governors in **Minnesota, Missouri, Montana, New Hampshire and North Carolina** vetoed strict new photo ID laws in 2011.

Recent Litigation

Arizona: On October 20, 2006, the U.S. Supreme Court vacated an October 6, 2006 9th Circuit Court of Appeals decision that suspended Arizona's requirements pending further litigation. The ID law was in effect for Arizona's 2006 election, and remained in effect in 2008.

Georgia: On October 27, 2006, the 11th U.S. Circuit Court of Appeals upheld an injunction barring Georgia from enforcing its photo ID law. The injunction was issued a week earlier by a U.S. District Court judge. Georgia's voter ID requirement was reinstated by a federal judge in mid-2007.

Indiana: Photo ID law was upheld by 7th Circuit U.S. Court of Appeals on January 4, 2007. The U.S. Supreme Court upheld the ruling on appeal in April 2008.

Michigan: The Michigan Supreme Court ruled July 18, 2007 that a voter ID law originally passed in 1996 (but never implemented due to a ruling by the state's Attorney General) is constitutional and enforceable.

Missouri: On October 16, 2006, the Missouri State Supreme Court struck down the state's photo ID requirement. ID is still required to vote, but the list of acceptable forms of ID is much broader and includes some forms without a photo.

Ohio: On November 1, 2006, the secretary of state issued an order suspending the requirement that voters present photo ID at the polls for the November 2006 election. The order did not apply to future elections, and voter ID requirements were in effect for 2008.

Wisconsin: A state judge ruled the voter ID law unconstitutional on March 12, 2012. An appeal is expected.

Details of Voter Identification Requirements

Table 2: Details of Voter Identification Requirements

State	Requirement	Acceptable Forms of ID	Voters Without ID
<p><u>Alabama</u> §17-9-30</p> <p><i>NOTE: AL's new photo ID law is scheduled to take effect for the 2014 primary election. It also requires preclearance by the USDOJ.</i></p>	<p><i>Existing Law:</i></p> <p>Each elector shall provide identification to an appropriate election official prior to voting.</p> <p><i>New Law:</i></p> <p>Each elector shall provide valid photo identification to an appropriate election official prior to voting.</p>	<p><i>Existing Law:</i></p> <p>Government-issued photo ID U.S. passport U.S. military ID Employee ID card with photo Alabama college/university ID with photo Alabama hunting or fishing license Alabama gun permit FAA-issued pilot's license Birth certificate (certified copy) Social security card Naturalization document Court record of adoption or name change Medicaid or Medicare card Electronic benefits transfer card Utility bill, bank statement, government check, paycheck or government document showing name and address of voter</p> <p><i>New Law:</i></p> <p>Valid Alabama driver's license or non-driver ID card Valid photo voter ID card or other valid ID card issued by any state or the federal government, as long as it contains a photo Valid U.S. passport Valid government employee ID card with a photo Valid student or employee ID card issued by a college or university in the state, provided it includes a photo Valid U.S. military ID card containing a photo Valid tribal ID card containing a photo</p>	<p><i>Existing Law:</i></p> <p>Vote a challenged or provisional ballot or vote, if s/he is identified by two poll workers as an eligible voter on the poll list, and both poll workers sign the voting sign-in register by the voter's name.</p> <p><i>New Law:</i></p> <p>Vote a provisional ballot or vote a regular ballot if s/he is identified by two election officials as an eligible voter on the poll list, and both election workers sign a sworn affidavit so stating.</p>
<p><u>Alaska</u> §15.15.225</p>	<p>Before being allowed to vote, each voter shall exhibit to an election official one form of identification.</p>	<p>Official voter registration card Driver's license Birth certificate Passport Hunting or fishing license Current utility bill, bank statement, paycheck, government check or other government document with the voter's name and address</p>	<p>An election official may waive the identification requirement if the election official knows the identity of the voter. A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot.</p>
<p><u>Arizona</u> §16-579(A)</p>	<p>Every qualified elector shall present one form of identification that bears the name, address and photograph of the elector or two different forms of identification that bear the name and address of the elector.</p>	<p>Valid Arizona driver's license Valid Arizona non-driver identification Tribal enrollment card or other form of tribal identification Valid U.S. federal, state or local government issued identification Utility bill dated within 90 days of the election Bank or credit union statement dated within 90 days of the election Valid Arizona vehicle registration Indian census card Property tax statement Vehicle insurance card</p>	<p>An elector who does not provide the required identification shall receive a provisional ballot. Provisional ballots are counted only if the elector provides identification to the county recorder by 5pm on the fifth business day after a general election that includes an election for federal office, or by 5pm on the third business day after any other election.</p>

		Recorder's Certificate	
<u>Arkansas</u> §7-5-305	Election officials shall request the voter to provide identification	Current and valid photo ID Copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter	If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification. Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney, who may investigate possible voter fraud.
<u>Colorado</u> §1-1-104(19.5) and 1-7-110	Any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104 (19.5).	Colorado driver's license CO Dept. of Revenue ID card U.S. passport Employee ID card with photo issued by the U.S. government, CO state government, or political subdivision of CO Pilot's license U.S. military ID with photo A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector Medicare or Medicaid card Certified copy of birth certificate Certified documentation of naturalization	An eligible elector who is unable to produce identification may cast a provisional ballot. The designated election official shall attempt to verify that an elector who cast a provisional ballot is eligible to vote. The designated election official or designee shall complete the preliminary verification of the elector's eligibility to vote before the ballot is counted. (§1-8.5-105)
<u>Connecticut</u> §9-261	Each elector shall present identification	Social security card Any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph	Elector shall, on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist.
<u>Delaware</u> Tit. 15, §4937	A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity	Photo ID Utility bill Paycheck Any government document with voter's name and address	In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record.
<u>Florida</u> §101.043	The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in s. 97.0535(3)(a). If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required.	Florida driver's license Florida ID card issued by the Dept. of Highway Safety and Motor Vehicles U.S. passport Debit or credit card Military identification Student identification Retirement center identification Neighborhood association ID Public assistance identification	If the elector fails to furnish the required identification, the elector shall be allowed to vote a provisional ballot. The canvassing board shall determine the validity of the ballot by determining whether the elector is entitled to vote at the precinct where the ballot was cast and that the elector had not already cast a ballot in the election. Florida uses signature matching: the voter signs the provisional ballot envelope. That signature is compared to the signature in the voter registration records. If they match, the ballot is counted.
<u>Georgia</u> §21-2-417	Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to	Georgia driver's license, even if expired ID card issued by the state of Georgia or the federal government	If you show up to vote and you do not have one of the acceptable forms of photo identification, you can still vote a provisional ballot. You will have up to three days after

	the enclosed space at such polling place.	Free voter ID card issued by the state or county U.S. passport Valid employee ID card containing a photograph from any branch, department, agency, or entity of the U.S. Government, Georgia, or any county, municipality, board, authority or other entity of this state Valid U.S. military identification card Valid tribal photo ID	the election to present appropriate photo identification at your county registrar's office in order for your provisional ballot to be counted.
Hawaii §11-136	Every person shall provide identification if so requested by a precinct official.	Pollworkers request photo ID with a signature. Acceptable types of ID are not specified by law.	If the voter has no identification, the voter will be asked to recite his/her date of birth and residence address to corroborate the information provided in the poll book.
<u>Idaho</u> §34-1106(2), 34-1113, 34-1114	Each elector shall show a valid photo identification or personal identification affidavit.	Idaho driver's license Idaho ID card Passport ID card, including a photo, issued by an agency of the U.S. government Tribal ID card, including a photograph Student ID card, including a photograph, issued by a high school or accredited institution of higher education within the state of Idaho	A voter may complete an affidavit in lieu of the personal identification. The affidavit shall be on a form prescribed by the secretary of state and shall require the voter to provide the voter's name and address. The voter shall sign the affidavit. Any person who knowingly provides false, erroneous or inaccurate information on such affidavit shall be guilty of a felony.
<u>Indiana</u> §3-5-2-40.5, 3-10-1-7.2 and 3-11-8-25.1	A voter who desires to vote an official ballot at an election shall provide proof of identification. A voter who votes in person at a precinct polling place that is located at a state licensed care facility where the voter resides is not required to provide proof of identification before voting in an election.	Specific forms of ID are not listed in statute. ID must be issued by the state of Indiana or the U.S. government and must show the following: Name of individual to whom it was issued, which must conform to the individual's registration record Photo of the person to whom it was issued Expiration date (if it is expired, it must have an expiration date after the most recent general election; military IDs are exempted from the requirement that ID bear an expiration date) Must be issued by the United States or the state of Indiana	Voters who are unable or decline to produce proof of identification may vote a provisional ballot. The ballot is counted only if (1) the voter returns to the election board by noon on the Monday after the election and: (A) produces proof of identification; or (B) executes an affidavit stating that the voter cannot obtain proof of identification, because the voter: (i) is indigent; or (ii) has a religious objection to being photographed; and (2) the voter has not been challenged or required to vote a provisional ballot for any other reason.
<u>Kansas</u> §25-2908, 25-1122, 25-3002, and 8-1324 (g)(2)	Each person desiring to vote shall provide a valid form of identification. The following are exempted from the ID requirement: persons with a permanent physical disability that makes it impossible for them to travel to obtain voting identification and who have permanent advance voting status members of the merchant marine and uniformed service members who are on active duty and absent from the county on election day, as well as their spouses and dependents any voter whose religious beliefs prohibit photographic identification	The following forms of identification are valid if they contain the name and photograph of the voter and have not expired. Expired documents are valid if the bearer is aged 65 or older. Driver's license issued by Kansas or another state State identification card Government-issued concealed carry handgun or weapon license U.S. passport Employee badge or identification document issued by a government office or agency Military ID Student ID issued by an accredited postsecondary institution in Kansas	A voter who is unable or refuses to provide current and valid identification may vote a provisional ballot. In order to have his or her ballot counted, the voter must provide a valid form of identification to the county election officer in person or provide a copy by mail or electronic means before the meeting of the county board of canvassers.

		Government-issued public assistance ID card	
<u>Kentucky</u> §117.227	Election officers shall confirm the identity of each voter by personal acquaintance or by a document.	Driver's license Social Security card Credit card	When the officers of an election disagree as to the qualifications of a voter or if his right to vote is disputed by a challenger, the voter shall sign a written oath as to his qualifications before he is permitted to vote.
<u>Louisiana</u> §18:562	Each applicant shall identify himself, in the presence and view of the bystanders, and present identification to the commissioners.	Louisiana driver's license Louisiana special ID card Other generally recognized picture identification	If the applicant does not have identification, s/he shall sign an affidavit to that effect before the commissioners, and the applicant shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in R.S. 18:565.
<u>Michigan</u> §168.523	Each voter must show a photo ID or sign an affidavit attesting that he or she is not in possession of photo identification.	Michigan driver's license Michigan personal identification card A voter who does not possess either of the above may show any of the following, as long as they are current: Driver's license or personal identification card issued by another state Federal or state government-issued photo ID U.S. passport Military ID with photo Student ID with photo -- from a high school or accredited institution of higher education Tribal ID with photo	An individual who does not possess, or did not bring to the polls, photo ID, may sign an affidavit and vote a regular ballot.
<u>Mississippi</u> <i>Mississippi's voter ID law requires USDOJ pre-clearance before it can take effect.</i>	An elector who votes in person in a primary or general election shall present government-issued photo identification before being allowed to vote. Voters who live and vote in a state-licensed care facility are exempt.	Mississippi's new constitutional amendment simply says "government-issued photo identification." Implementing legislation and/or administrative rules will be necessary to define precisely what this means.	An individual without ID can cast an affidavit ballot which will be counted if the individual returns to the appropriate circuit clerk within five days after the election and shows government-issued photo ID. Voters with a religious objection to being photographed may vote an affidavit ballot, which will be counted if the voter returns to the appropriate circuit clerk within five days after the election and executes an affidavit that the religious exemption applies.
<u>Missouri</u> §115-427	Before receiving a ballot, voters shall establish their identity and eligibility to vote at the polling place by presenting a form of personal identification.	Identification issued by the federal government, state of Missouri, an agency of the state, or a local election authority; Identification issued by Missouri institution of higher education, including a university, college, vocational and technical school; A copy of a current utility bill, bank statement, paycheck, government check or other	If an individual does not possess any of these forms of identification, s/he may still cast a ballot if two supervising election judges, one from each major political party, attest they know the person.

		government document that contains the name and address of the voter; Driver's license or state identification card issued by another state.	
<u>Montana</u> §13-13-114	<p>Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification the elector shall present one of several specified documents showing the elector's name and current address.</p>	<p>Driver's license School district or postsecondary education photo identification Tribal photo identification Current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address</p>	<p>If the identification presented is insufficient to verify the elector's identity and eligibility to vote or if the elector's name does not appear in the precinct register, the elector may sign the precinct register and cast a provisional ballot.</p> <p>Montana uses signature verification to verify the eligibility of provisional ballots. If the voter's signature on the provisional ballot affirmation matches the signature on the voter's registration record, the ballot is counted. (§13-15-107 (2))</p>
<u>New Hampshire</u> §659:13 <i>New Hampshire's voter ID law requires USDOJ pre-clearance before it can take effect.</i>	<p>The ballot clerk shall request that the voter present a valid photo identification. If the voter does not have a valid photo identification, the ballot clerk shall inform the voter that he or she may execute a qualified voter affidavit.</p>	<p>A driver's license from NH or any other state, regardless of expiration date A photo ID card issued by the NH director of motor vehicles A U.S. armed services photo ID card A U.S. passport, regardless of expiration date Any other valid photo ID issued by federal, state, county or municipal government A valid student ID card Any other photo ID that is determined to be legitimate by the supervisors of the checklist, the moderator, or the town or city clerk, provided that if any person authorized to challenge a voter under RSA 659:27 objects to the use of such photo identification, the voter shall be required to execute a qualified voter affidavit as if no identification was presented.</p>	<p>A person's identity may be verified by a moderator or supervisor of the checklist or the town or city clerk, but if any person authorized to challenge a voter under RSA 659:27 objects to such verification, the voter shall be required to execute a challenged voter affidavit.</p> <p>If a voter does not have a valid photo identification, the ballot clerk shall inform the voter that he or she may execute a qualified voter affidavit.</p> <p>Within 60 days after the election, the secretary of state is required to mail a non-forwardable letter to each voter who executed a qualified voter affidavit, notifying the person that a person who did not present valid photo identification voted using his or her name and address and instruct the person to return the letter within 90 days with a written confirmation that the person voted or to contact the attorney general immediately if he or she did not vote. Any such letters returned as undeliverable must be turned over to the attorney general, who shall investigate for voter fraud. Notice from any voter receiving such a letter that s/he did not vote is also forwarded to the attorney general for investigation. The secretary must also turn over to the attorney general a list of all voters who fail to respond to the letter to confirm that they voted.</p>
<u>North Dakota</u> §16.1-05-07	<p>Before delivering a ballot to an individual, the poll clerks shall request the individual to show identification.</p>	<p>Valid driver's license or state ID card Valid passport or federal agency ID card Valid government-issued tribal ID card Valid student ID card Valid U.S. military ID card Utility bill dated 30 days prior to election day with name and residential address</p>	<p>If an individual offering to vote does not have or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged if a pollworker is able to vouch for the voter's identity and address. Otherwise, the individual may vote as a challenged voter by executing an affidavit that the</p>

		Change of address verification letter from U.S. Postal Service	challenged individual is a legally qualified elector of the precinct.
Ohio §3503.16(B)(1)(a) and 3505.18(A)(1)	All voters must provide to election officials at the polling place on the day of an election proof of the voter's identity. Also applies to voters requesting and voting an absentee ballot.	Current and valid photo identification, defined as a document that shows the individual's name and current address, includes a photograph, includes an expiration date that has not passed, and was issued by the U.S. government or the state of Ohio Current utility bill Current bank statement Current government check, paycheck or other government document	A voter who has but declines to provide identification may cast a provisional ballot upon providing a social security number or the last four digits of a social security number. A voter who has neither identification nor a social security number may execute an affidavit to that effect and vote a provisional ballot. A voter who declines to sign the affidavit may still vote a provisional ballot. Voters who cast a provisional ballot because they did not provide acceptable proof of identity must appear in person at the board of elections to provide such proof within the 10 days immediately following Election Day. (see the Ohio Secretary of State's FAQ on provisional voting)
Oklahoma 26 O.S. 2001, §7-114	Each person appearing to vote shall provide proof of identity.	"Proof of identity" shall mean a document that satisfies the following: Shows a name that substantially conforms to the name in the precinct registry Shows a photograph Includes an expiration date that is after the date of the election Was issued by the United States, state of Oklahoma, or a federally recognized Indian tribe or nation A voter registration card issued by the appropriate county elections board may serve as proof of identity without meeting all of the above requirements.	A person who declines or is unable to produce proof of identity may sign a statement under oath swearing or affirming that the person is the person identified on the precinct registry and cast a provisional ballot. Information provided by a person who votes a provisional ballot shall be investigated by the secretary of the county election board after the election. A provisional ballot shall be counted only if it is cast in the precinct of the voter's residence and if evidence of the provisional voter's valid voter registration, or of the voter's identity, is found. (§26-7-116.1) From the State Election Board's website : After election day, County Election Board officials will investigate the information provided by the voter on the affidavit and either will approve the provisional ballot for counting or will reject it based on the outcome of that investigation. In order for a provisional ballot to be approved for counting, the information on the affidavit must match the information in the voter's registration record.
Pennsylvania	Each elector who appears to vote and desires to vote shall present proof of identification.	Identification must satisfy the following: Shows the name of the individual, which must substantially conform to the individual's name on the precinct register Show a photograph of the individual to whom it was issued Be issued by the U.S. government, Commonwealth of PA, a municipality of the Commonwealth to an employee of the municipality, an accredited PA private or public institution of higher learning or a PA care facility	A voter who is indigent an unable to obtain ID without any payment or fee, or who is otherwise unable to obtain ID, may vote a provisional ballot. A voter who casts a provisional ballot because he or she is unable to provide proof of identification must execute an affirmation that he or she is the same person who appeared to vote on election day and do one of the following within six calendar days after the election: Appear in person at the county board of elections to complete

		<p>Include an expiration date and not be expired (exception for a military ID with an indication that it has an indefinite expiration date or a PA driver's license or non-driver ID card that is not more than 12 months past the expiration date)</p>	<p>the affirmation and present proof of identification; Submit an electronic, facsimile or paper copy of the affirmation and the proof of identification.</p> <p>A voter who is indigent and unable to obtain proof of identification without payment of a fee must submit an affirmation that he or she is the same person who appeared to vote on election day and that he or she is indigent in the same time frame and manner as described above.</p>
<p><u>Rhode Island</u> §17-19-24.2 <i>NOTE: RI's new voter ID law takes effect in two stages. The first stage took effect on Jan. 1, 2012. The second stage will require photo ID beginning Jan. 1, 2014.</i></p>	<p>Any person claiming to be a registered and eligible voter who desires to vote at a primary, special or general election shall provide proof of identity.</p>	<p>Effective January 1, 2012:</p> <p>A valid and current document showing a photo of the person to whom it was issued, including:</p> <ul style="list-style-type: none"> RI driver's license RI voter identification card U.S. passport Identification card issued by a U.S. educational institution U.S. military identification card Identification card issued by the U.S. government or state of RI Government-issued medical card <p>The following forms of ID will be acceptable until January 1, 2014, when only the photo IDs listed above will be accepted for voting.</p> <p>A valid and current document without a photograph, including:</p> <ul style="list-style-type: none"> Birth certificate Social security card Government-issued medical card 	<p>If the person claiming to be a registered and eligible voter is unable to provide proof of identity as required, the person shall be allowed to vote a provisional ballot pursuant to section 17-19-24.2. The local board shall determine the validity of the provisional ballot pursuant to section 17-19-24.3.</p> <p>Summary of section 17-19-24.3:</p> <p>The local board shall examine each provisional ballot application to determine if the signature matches the signature on the voter's registration. If the signatures match, the provisional ballot shall count. If the signatures do not match, the ballot shall not count and shall be rejected as illegal.</p>
<p><u>South Carolina</u> §7-13-710 <i>NOTE: SC's new photo ID law takes effect after preclearance by the USDOJ. Preclearance was denied on Dec. 23, 2011, and the state has applied for reconsideration from the Federal District Court of Washington, D.C.</i></p>	<p>Existing law:</p> <p>When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration.</p> <p>New law:</p> <p>When a person presents himself to vote, he shall produce a valid and current ID.</p>	<p>Existing law:</p> <p>Voter registration certificate South Carolina driver's license South Carolina Dept. of Motor Vehicles photo ID card</p> <p>New law:</p> <p>South Carolina driver's license Other form of photo ID issued by the SC Dept. of Motor Vehicles Passport Military ID bearing a photo issued by the federal government South Carolina voter registration card with a photo</p>	<p>Existing law:</p> <p>Voters without ID may be permitted to vote a provisional ballot. This varies from county to county. Whether the provisional ballot is counted is at the discretion of the county commissioners at the provisional ballot hearing.</p> <p>New law:</p> <p>If the elector cannot produce identification, he may cast a provisional ballot that is counted only if the elector brings a valid and current photograph identification to the county board of registration and elections before certification of the election by the county board of canvassers.</p>
<p><u>South Dakota</u> §12-18-6.1 and 6.2</p>	<p>When a voter is requesting a ballot, the voter shall present a valid form of personal identification.</p>	<p>South Dakota driver's license or nondriver identification card U.S. passport Photo ID issued by an agency of the U.S. government Tribal ID card, including a photo Student ID card, including a photo, issued by an accredited South Dakota school</p>	<p>If a voter is not able to present a form of personal identification as required, the voter may complete an affidavit in lieu of the personal identification. The affidavit shall require the voter to provide his or her name and address. The voter shall sign the affidavit under penalty of perjury.</p>

<p><u>Tennessee</u> §2-7-112</p>	<p>Each voter shall present to the precinct registrar one form of identification that bears the name and photograph of the voter.</p>	<p>TN driver's license Valid photo ID card issued by any state Valid photo ID license issued by TN Dept. of Safety Valid U.S. passport Valid U.S. military ID with photo</p>	<p>If a voter is unable to present the proper evidence of identification, then the voter will be entitled to vote by provisional ballot in the manner detailed in the bill. The provisional ballot will only be counted if the voter provides the proper evidence of identification to the administrator of elections or the administrator's designee by the close of business on the second business day after the election.</p>
<p><u>Texas</u> Election Code §63.001 et seq. <i>NOTE: TX's new photo ID law takes effect after preclearance by the USDOJ. Pre-clearance was denied on March 13, 2012, and the state is expected to apply for reconsideration from the Federal District Court of Washington, D.C.</i></p>	<p>Existing law: On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place. New law: On offering to vote, a voter must present to an election officer at the polling place one form of identification.</p>	<p>Existing law: Voter registration certificate Driver's license Department of Public Safety ID card A form of ID containing the person's photo that establishes the person's identity A birth certificate or other document confirming birth that is admissible in a court of law and establishes the person's identity U.S. citizenship papers A U.S. passport Official mail addressed to the person, by name, from a governmental entity A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the person's name and address Any other form of ID prescribed by the secretary of state New law: Driver's license Election identification certificate Dept. of Public Safety personal ID card U.S. military ID U.S. citizenship certificate U.S. passport License to carry a concealed handgun issued by the Dept. of Public Safety All of the above must include a photo of the voter. With the exception of the certificate of citizenship, these forms of ID cannot be expired, or cannot have expired more than 60 days before the election.</p>	<p>Existing law: A voter who does not present a voter registration certificate when offering to vote, but whose name is on the list of registered voters for the precinct in which the voter is offering to vote, shall be accepted for voting if the voter executes an affidavit stating that the voter does not have the voter's voter registration certificate in the voter's possession and the voter presents other proof of identification. A voter who does not present a voter registration certificate and cannot present other identification may vote a provisional ballot. A voter who does not present a voter registration certificate and whose name is not on the list of registered voters may vote a provisional ballot. New law: A voter who fails to present the required identification may cast a provisional ballot. The voter must present, not later than the sixth day after the date of the election, the required form of identification to the voter registrar for examination OR the voter may execute, in the presence of the voter registrar, an affidavit under penalty of perjury stating that the voter has a religious objection to being photographed or that the voter does not have identification as a result of a natural disaster declared by the president or the governor which occurred not earlier than 45 days before the date the ballot was cast.</p>
<p><u>Utah</u> §20A-1-102(76), 20A-3-104</p>	<p>A voter shall present valid voter identification to one of the poll workers.</p>	<p>Current valid UT driver's license Current valid identification card issued by the state or federal government UT concealed weapon permit U.S. passport Current valid U.S. military ID card Bureau of Indian Affairs card Tribal treaty card Tribal ID card OR Two forms of ID that bear the name of the voter and provide</p>	<p>The voter may cast a provisional ballot as provided by §20A-3-105.5 §20A-4-107 states that a county clerk may verify the identity and residence of a voter who fails to provide valid voter identification "through some other means."</p>

		evidence that the voter resides in the precinct	
<p><u>Virginia</u></p> <p>§24.2-643(B)</p> <p><i>NOTE: Virginia substantially amended its existing voter ID law during the 2012 legislative session. However, the new provisions cannot take effect until they receive pre-clearance under Section 5 of the Voting Rights Act.</i></p>	<p>The officer shall ask the voter to present any one of the specified forms of identification.</p>	<p><i>Current law:</i></p> <p>Virginia voter registration card Social Security card Valid Virginia driver's license Any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States Employee identification card containing a photograph</p> <p><i>New law:</i></p> <p>All of the above is retained, and the following additional forms of ID are added to the list:</p> <p>Any valid student ID card issued by any institution of higher education located in Virginia</p> <p>Copy of a current utility bill, bank statement, government check or paycheck that shows the name and address of the voter</p> <p>Concealed handgun permit</p>	<p><i>Current law:</i></p> <p>If a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements, that he is the named registered voter who he claims to be.</p> <p><i>New law:</i></p> <p>Any voter who does not show one of the forms of identification specified in this subsection shall be offered a provisional ballot marked ID-ONLY that requires no follow-up action by the registrar or electoral board other than matching submitted identification documents from the voter for the electoral board to make a determination on whether to count the ballot. In order to have his or her ballot counted, the voter must submit a copy of one of the forms of identification to the electoral board by facsimile, electronic mail, in-person submission, or timely United States Postal Service or commercial mail delivery, to be received by the electoral board no later than noon on the third day after the election.</p>
<p>Washington</p> <p>§29A.44.205</p>	<p>Any person desiring to vote at any primary or election is required to provide identification to the election officer before signing the poll book.</p>	<p>Valid photo identification, such as a driver's license or state identification card, student identification card, or tribal identification card A voter identification issued by a county elections officer, or A copy of a current utility bill, bank statement, paycheck, or government check or other government document</p>	<p>Any individual who desires to vote in person but cannot provide identification as required by this section shall be issued a provisional ballot.</p>
<p>Wisconsin</p> <p>§5.02(6m) and 6.79 (2)(a)</p> <p><i>NOTE: Wisconsin's voter ID law was held unconstitutional on March 12, 2012 by a state judge. It is not currently in effect.</i></p>	<p>Each elector shall be required to present identification.</p>	<p>Wisconsin driver's license ID card issued by a U.S. uniformed service Wisconsin non-driver ID U.S. Passport Certificate of naturalization issued not more than 2 years before the election ID card issued by a federally recognized Indian tribe in WI Student ID card with a signature, an issue date, and an expiration date no later than 2 years after the election</p> <p>All of the above must include a photo and a name that conforms to the poll list.</p> <p>If the ID presented is not proof of residence, the elector shall also present proof of residence.</p>	<p>An elector who appears to vote at a polling place and does not have statutory ID shall be offered the opportunity to vote a provisional ballot.</p> <p>An elector who votes a provisional ballot may furnish statutory ID to the election inspectors before the polls close or to the municipal clerk no later than 4 pm on the Friday following Election Day.</p>

For More Information

For more information on the issue of voter identification, [contact NCSL's elections staff](#).

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EXHIBIT I

Voter ID law may affect more Pennsylvanians than previously estimated

July 05, 2012|By Bob Warner, Inquirer Staff Writer

More than 758,000 registered voters in Pennsylvania do not have photo identification cards from the state Transportation Department, putting their voting rights at risk in the November election, according to data released Tuesday by state election officials.

The figures - representing 9.2 percent of the state's 8.2 million voters - are significantly higher than prior estimates by the Corbett administration. Secretary of the Commonwealth Carol Aichele has repeatedly said that 99 percent of Pennsylvania's voters already had the photo ID they will need at the polls in November.

The new numbers, based on a comparison of voter registration rolls with PennDot ID databases, shows the potential problem is much bigger, particularly in Philadelphia, where 186,830 registered voters - 18 percent of the city's total registration - do not have PennDot ID.

Under Pennsylvania's new voter ID law, various other forms of photo identification will be accepted at voting places in November, including U.S. passports, student identification cards with expiration dates, current military identification, and ID cards issued to government employees.

But for most voters, the Pennsylvania driver's license is the standard photo ID. The disclosure that 9 percent of the state's registered voters don't have one - or an alternative, nondriver PennDot photo ID - provides a clearer picture of the hurdle set up by the state's new voter ID requirement.

Republican lawmakers pushed the bill through the legislature in March and it was signed into law by Gov. Corbett, over protests from Democrats that the measure would disenfranchise thousands of voters, disproportionately affecting those without driver's licenses - the poor, the elderly, and the young.

House Republican leader Mike Turzai acknowledged the law's political implications at a Republican State Committee meeting last month.

"Voter ID - which is going to allow Gov. Romney to win the state of Pennsylvania - done," Turzai told the crowd, which burst into applause, as he listed legislative accomplishments under GOP control.

The law still faces a legal challenge as a possible violation of the state constitution. Commonwealth Court Judge Robert Simpson scheduled a July 25 hearing and his decision is likely to reach the state Supreme Court before November.

Aichele's department issued the figures Tuesday without mentioning her past estimates.

"This thorough comparison of databases confirms that most Pennsylvanians have acceptable photo ID for voting this November," she said in a news release. "This comparison takes into account only voters with PennDot IDs, and does not include voters who may have any of the other various acceptable forms of ID."

A Department of State spokesman, Ron Ruman, noted that 167,566 of the registered voters without PennDot ID were classified as "inactive," not having voted in the last four years. "Our experience is, a lot of these people are former college students who don't live here anymore," he said in an interview.

He said the methodology used by PennDot and the Department of State - a match of first names, last names and birth dates - may also have missed some voters who have PennDot ID.

For example, if someone named Anna Nicole Jones registered to vote as Anna Jones but got her driver's license as Nicole Jones, she would be listed as a non-match, Ruman said.

Philadelphia's top election official, City Commission Chair Stephanie Singer, said the figures reinforced her view that the state's new law was designed to suppress voter turnout in the predominantly Democratic city.

With 18 percent of voters not having PennDot ID, she said, "Philadelphia is hit much harder by this than any of the other counties."

Singer had sought to obtain PennDot's data directly and set up a telephone call last month to speak to PennDot Secretary Barry J. Schoch.

But Aichele's office found out about the call and canceled it on the ground that the Department of State was supposed to be the point agency for all matters involving voter ID.

Singer said she now was anxious to receive the state data including names and addresses for those without PennDot ID - data that the state initially promised to send her office in May, Singer said.

Ruman said the state planned to distribute the lists to county election boards by next week. In addition, he said, the state intends to send letters this summer to all voters without PennDot ID telling them of the new law, the types of ID that will be necessary to vote in November, and how to obtain suitable ID if they need it.

Behind Philadelphia's 18 percent, nine other counties - Allegheny, Cameron, Centre, Cumberland, Delaware, Lackawanna, Lawrence, Montour, and Union - were reported to have 10 percent to 12 percent of their voters without PennDot ID. In the other 57 counties, more than 90 percent of voters reportedly had driver's licenses or nondriver ID, according to the state data.

More information on the voter ID law is available on a state website at www.VotesPA.com or by calling 1-877-VOTESPA (1-877-868-3772) during business hours.

Contact Bob Warner at 215-854-5885 or warnerb@phillynews.com.

EXHIBIT J

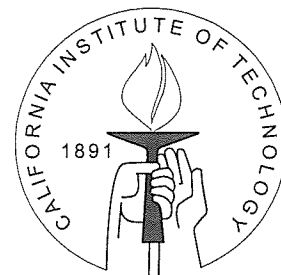
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THE EFFECT OF VOTER IDENTIFICATION LAWS ON TURNOUT

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SOCIAL SCIENCE WORKING PAPER 1267R

October 2007
Revised January 2008

The Effect of Voter Identification Laws on Turnout*

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Abstract

Since the passage of the “Help America Vote Act” in 2002, nearly half of the states have adopted a variety of new identification requirements for voter registration and participation by the 2006 general election. There has been little analysis of whether these requirements reduce voter participation, especially among certain classes of voters. In this paper we document the effect of voter identification requirements on registered voters as they were imposed in states in the 2000 and 2004 presidential elections, and in the 2002 and 2006 midterm elections. Looking first at trends in the aggregate data, we find no evidence that voter identification requirements reduce participation. Using individual-level data from the Current Population Survey across these elections, however, we find that the strictest forms of voter identification requirements — combination requirements of presenting an identification card and positively matching one’s signature with a signature either on file or on the identification card, as well as requirements to show picture identification — have a negative impact on the participation of registered voters relative to the weakest requirement, stating one’s name. We also find evidence that the stricter voter identification requirements depress turnout to a greater extent for less educated and lower income populations, for both minorities and non-minorities.

*This paper replaces an earlier version with the same title that was distributed October, 2007. Previous versions of this paper were presented at the 2007 Summer Methods Meeting, The Society for Political Methodology, Pennsylvania State University; the 2007 Annual Meeting of the American Political Science Association, Chicago, Illinois; and at the Second Annual Conference on Empirical Legal Studies, New York University Law School. We thank Shigeo Hirano, Thad Hall, and Andrew Martin who provided comments at each conference respectively, as well as conference participants. We also thank Clark Benson, Andrew Gelman, Sam Hirsch, and Nate Persily for helpful comments and conversations. We thank the Carnegie Corporation of New York and the John S. and James L. Knight Foundation for their support of our research through grants to the Caltech/MIT Voting Technology Project. The analysis presented here, and the interpretations of our analysis, are those of the authors and not of the Caltech/MIT Voting Technology Project, nor the foundations supporting this research. Please note that Katz has served as an expert witness in two lawsuits involving voter identification requirements, however the research presented here was neither funded by any interested party to those lawsuits nor discussed in court testimony.

1. INTRODUCTION

That election rules and procedures have been used historically to deny the right to vote to potential participants in democracies is no surprise to any student of elections. There has been a great deal of research showing how election rules and procedures have systematically denied suffrage to women, racial and ethnic minorities, and other groups, especially in the United States (see Kousser 1974; Keyssar 2001 for summaries and analysis). Another line of research on voter participation in the United States has looked at the modern period, and focused on possibly less pernicious, but still potentially problematic, procedures and laws that are argued to make voter registration and turnout more onerous: voter registration deadlines, inaccessible registration and voting processes, and the availability of polling places. This line of research was sparked by the seminal work of Wolfinger and Rosenstone (1978) and their research has been followed by a vast array of studies that mainly focus on the effects of registration laws on voter participation (see Highton 2004 for summaries), though recent research has begun to look directly at how aspects of the voting experience, like the availability of voting machines, might affect participation (e.g., Highton 2006, Mebane 2005).

In recent years, especially in the wake of the disputed 2000 presidential election, there has been much debate about imposing what some see as important safeguards of electoral integrity, but what others see as additional barriers to participation — new requirements for voter identification. The debates about voter identification became central during the legislative maneuvering prior to the passage of the Help America Vote Act (2002), and since passage of HAVA, these arguments have been front and center in the public discussion of election reform. HAVA addressed one aspect of the voter identification debate, as HAVA's Section 303 required that all new registrants must show an identification or provide proof of identification, either with their by-mail application or the first time they show up to vote.

But since the passage of HAVA, many states have pushed for additional identification requirements, in particular, requiring that all voters show identification before they are allowed to obtain and cast a ballot in any election. The justification for the expansion of these identification requirements is to prevent election fraud and to thus improve the integrity of the electoral process, despite some who argue that there is scant evidence that without identification requirements there are significant levels of double voting or voting by non-eligible individuals (Fund 2004; Overton 2006a). As of just prior to the 2006 general election, roughly half of the states required some form of voter identification from all voters (Electionline 2006).

There is little research on the effect that voter identification requirements, of any form, have on the participation of registered voters. Thus, while both HAVA and nearly half of the states have implemented a variety of new identification requirements for voter registration and participation by the 2006 general election, there is little understanding about whether these requirements reduce voter participation, and whether they reduce

the participation rates of certain classes of voters. This is the central task of our paper: documenting the effect of voter identification requirements on registered voters as they were imposed in states in the 2000 and 2004 presidential elections, and in the 2002 and 2006 midterm elections. Using four election cycles and individual responses to the Current Population Surveys allows us to isolate the effect of voter identification requirements on voter turnout. The state-level panel data allows us to control for changes in the electoral environment both across states and across time — which we could not do with only one year of data — and the individual-level data allows us to answer questions about whether certain sub-populations are disproportionately effected by these regulations — which is not possible using aggregate data.¹

Looking first at trends in the aggregate data, there is no evidence that voter identification requirements reduce participation. Once we turn to the individual-level data, however, we find that the strictest forms of voter identification requirements — combination requirements of presenting an identification card and positively matching one's signature with a signature either on file or on the identification card, as well as requirements to show picture identification — have a negative impact on the participation of registered voters relative to the weakest requirement, stating one's name. In general, there does not seem to be a discriminatory impact of the requirements on some sub-populations of registered voters, in particular minority registered voters; however we do find evidence that the stricter voter identification requirements do depress turnout to a greater extent for less educated and lower income populations, regardless of race. In the next section we discuss the substantive problem of voter identification requirements in more detail, and the relevant research. We then turn to a discussion of our methodology, the data we use (the 2000-2006 Current Population Survey Voter Supplements, from the U.S. Census Bureau), and our results. Our paper concludes with a discussion of the implications of our work, and with our suggestions for future research.

2. IDENTIFICATION REQUIREMENTS AND VOTER PARTICIPATION

Despite much attention in the popular literature, the impact of voter identification requirements on participation in the United States has, to-date, received little academic attention.² For example, in 2005 the Commission on Federal Election Reform, after months of hearings and deliberations, released a report recommending that all voters present photographic identification before they could cast their ballot. But, writing in the *Michigan Law Review*, Spencer Overton (a member of the Commission, though a member who dissented from the voter photographic identification requirement recom-

¹For methodological specifics and details about the analysis, please see Alvarez, Bailey and Katz (2008).

²Recently there has been some controversy regarding a study that the U.S. Election Assistance Commission sponsored regarding voter identification laws, including a study of the effects of voter identification laws on voter participation. We discuss the specifics of the latter study below, and later we compare our results to theirs. Additional information regarding the EAC's voter identification study can be found at http://www.eac.gov/eac_voter_id_fraud.htm.

mentation) noted that there was little research on either the basic rationale for voter photo identification requirements (reducing election fraud) or on the effect of these requirements on voter participation: “Rather than continuing to rely on unsubstantiated factual assumptions, election law scholars and policy-makers should look to empirical data to weight the costs and benefits of various types of election regulations” (Overton 2006b, 681).

Unfortunately, few scholars have so far answered Overton’s call for research in this area. We are aware of only a handful of recent studies on this subject. One group of scholars has looked recently at the implementation of voter identification laws, using New Mexico in 2006 as their laboratory (Atkeson et al. 2007; Alvarez, Atkeson and Hall 2007). Despite much debate in New Mexico, in 2006 the voter identification law there allowed a broad range of methods of identifying voters, including a simple written or verbal statement of the voter’s basic identifying information (Atkeson et al. 2007). But as these studies have shown, how this was implemented in polling places throughout the state in the 2006 general election varied considerably, and these studies provide evidence that Hispanics were more likely to provide some form of identification than non-Hispanics (Atkeson et al. 2007).

Other scholars have asked whether minority voters are less likely to possess potential forms of identification, than non-minority voters. Barreto, Nuño, and Sanchez (2007) utilize exit polls from the 2006 elections in California, New Mexico, and Washington — all states with signature requirements — to ask voters whether they would be able to provide several different forms of identification, such as a birth certificate or recent bank statement, if required. The study finds that “controlling for age, income, and education, ... immigrant and minority voters are significantly less likely to be able to provide multiple forms of identification” (Barreto, Nuño, and Sanchez 2007, 1).

Another recent study is Lott’s analysis of county-level data, for general and primary elections, from 1996 through 2004. His analysis of the aggregated data does not find that voter photo identification requirements in place during this period decreased voter participation rates, noting that “it is still too early to evaluate any possible impact of mandatory photo IDs on U.S. elections” (Lott 2006, 11). Similarly, Milyo (2007) also uses county-level data, but only for the state of Indiana. His study finds no decrease in turnout after the adoption of a photo identification requirement. Further, Milyo (2007) claims that there is an increase in turnout after the adoption of the in those counties with greater percentage of minorities or families in poverty. However, we must be concerned about any claims regarding the impact on particular sub-populations, such as minorities, from any study that uses only aggregate-level data. As is well known, these ecological studies suffer from aggregation bias that can lead to wildly incorrect inferences (see Goodman 1959 and King 1997).

In a different analysis — more like the one we develop and focus on below — Vercellotti and Anderson (2006) analyze the 2004 Current Population Survey’s (CPS) Voter Supplement to study the effect of voter identification requirements in the 2004 presidential

election. Vercellotti and Anderson study both aggregate and individual-level data, and reach a number of conclusions that differ significantly from Lott's analysis. Vercellotti and Anderson find in their aggregate-level analysis that some forms of identification requirements (signature matches and non-photo identification provision) did reduce voter participation, and that in their individual-level analysis of the CPS survey data they found that the deleterious effects of identification requirements were more substantial for non-Whites than for Whites. Their study, however, is methodologically flawed.

Our study is similar to Vercellotti and Anderson's in two ways: first, we employ the same basic data source as they did (the Census CPS Voter Supplement data), and second, we employ a similar theoretical framework. We use the CPS Voter Supplement data for the same reasons as Vercellotti and Anderson: these survey data provide a relatively large sample of the American voting population, sufficiently large so that we can attempt to estimate the effects of voter identification requirements for sub-populations of the electorate (racial and ethnic minorities), and so that we can get variation in the requirements themselves across states. Furthermore, the CPS Voter Supplement data are about as close to a canonical dataset as political scientists have; most of the important studies of political participation, going back to Wolfinger and Rosenstone's seminal contribution (1978) have used the CPS data.³ But unlike Vercellotti and Anderson's study, we use a much broader array of CPS Voter Supplement data, from four federal elections, 2000, 2002, 2004, and 2006. By employing four federal elections instead of the single election that Vercellotti and Anderson used we are able to correctly estimate the causal effect of voter identification requirements by utilizing the differences between states that changed their requirements and those that did not. Also with much larger sample sizes we can obtain a much more precise estimate of the effects of voter identification requirements on participation.

In another recent analysis, Mycoff, Wagner, and Wilson (2007) utilize the 2000, 2002, 2004, and 2006 American National Election Studies (NES) to measure the effect of voter identification requirements on turnout in federal elections. Mycoff, Wagner, and Wilson examine both aggregate and individual-level data, and suggest, like Lott, that voter identification requirements have no effect on turnout. Although the authors utilize data from the same four recent federal elections as we do, they analyze each year separately, and in doing so, fail to isolate the causal effect of the institutional change in requirements. Furthermore, as has been noted by others, the CPS data are seen as superior for studying voter turnout, because the NES has much smaller samples and hence much less sample coverage, because the NES has a much lower response rate than the CPS, and the NES post-election interviewing can often run well into December following an election while the

³There are, of course, exceptions. Like Lott's study cited in the text, there are other aggregate-level studies of voter participation rates, for example, Knack's (2001) study of the effect of the implementation of election-day voter registration on turnout rates across states. Another prominent exception is the study by Verba, Schlozman and Brady (1995), as they collected their own survey data to study civic engagement and participation. But the CPS Voter Supplement data provide extensive cross-sectional data, comparable over time, and thus are well-suited to our analysis. The CPS Voter Supplement data do pose some problems for the study of voter turnout, especially misreporting of voter turnout; this is an issue we return to in our conclusion.

CPS is typically completed in November (Highton 2005). Additionally, the overreporting of turnout in the NES is commonly seen as higher than what the CPS routinely reports.⁴

We use the same theoretical premise as the Vercellotti and Anderson study, and the Mycoff, Wagner, and Wilson study, which is the theoretical basis for most work on voter participation: the cost-benefit calculus of voter turnout articulated in early work on rational choice (Downs 1957; Riker and Ordeshook 1968). The key assumptions of this calculus of voter turnout are that voters are rational, that they are aware of the costs and benefits of participating in an election, and they behave according to the relative comparison of the costs and benefits. Thus, if it is too costly for them to participate — if for example the barriers to participation are high relative to the returns, with the barriers being such things as registration requirements, long lines at polling places, inaccessible voting locations, and other similar factors — they will not cast a ballot on election day. Like these previous two studies, we assume that the more restrictive a state’s voter identification requirements, the more likely they are to constitute a hurdle for registered voters, and thus that more restrictive voter identification requirements are likely to be associated with a reduction in the likelihood that an individual registered voter turns out to vote.

It is also instructive to think about how this basic calculus of voting works for different categories of voters, as well. For example, the basic question about whether or not eligible citizens with lower levels of educational attainment are less likely to vote because the barriers to participation, even at the margin, are greater for them than for highly educated voters, has received attention in the research literature (see Wolfinger and Rosenstone 1978; Nagler 1991). But instead of focusing only on the interaction between education and potential barriers to the exercise of the franchise, we are interested below in the interaction between race or ethnicity and barriers to the franchise, especially voter identification requirements. We see this latter interaction as important to study because of the potential legal ramifications of finding that the effects of voter identification requirements are differential across racial or ethnic groups (Overton 2006a), not to mention the normative implications if we find racial or ethnic differences in the effects of voter identification requirements on participation.

Thus, our critical hypotheses, which we test below, flow clearly from the theoretical literature on participation, and are closely linked to decades of applied research on the effects of barriers to voting on participation. First, we hypothesize that where states have imposed more restrictive identification requirements for registered voters, their participation rates should be lower, *ceteris paribus*, than in states which have less restrictive

⁴The U.S. Census Bureau’s official report on the 2000 voter supplement data stated: “Significant discrepancies occur each election between the CPS estimates and the official numbers. In the November 2000 CPS, 111 million of the 203 million people of voting age in the civilian noninstitutional population reported that they voted in the 2000 election. Official counts showed 105.6 million votes cast, a difference of about five million votes (5 percent) between the two sources” (U.S. Census Bureau, 2000, page 11). McDonald estimates the NES voter turnout rate in the 2000 presidential election as 72.7%, with his “Reconciled-VAP” turnout rate of 55.2%, that is an overreporting rate of 17.5% (McDonald 2003; see original data at http://elections.gmu.edu/NES_Bias.htm).

identification requirements for voting. Second, we also hypothesize that these effects of more restrictive voter identification requirements should be stronger for black and Hispanic registered voters than for White eligible voters, *ceteris paribus*, following arguments that minority voters may be less likely to have appropriate government-issued identification, or that they may be less willing to provide that identification in order to vote (Overton 2006a). Similarly, we hypothesize that the effects of identification requirements on voters with lower levels of education and income will be disproportionately negative.

In the end, while the hypotheses we will test below are similar to those tested by previous scholars, our methodology is much more appropriate for this substantive problem. Our multilevel model combines the approaches of both these previous studies of the 2004 presidential election, but by incorporating data going back to 2000, we are able to better identify and estimate critical parameters in our model, especially the direct effect of voter identification requirements on voter participation, as well as the indirect effects of these requirements on racial minorities, and those on the lower rungs of the socioeconomic scale. Thus, we argue that our framework presents an important contribution over earlier work in this area methodologically, and more importantly, allows us to more confidently answer questions about the potential of voter identification requirements to disenfranchise. In subsequent sections we present our methodological argument in more detail.

3. VOTER IDENTIFICATION LAWS IN THE STATES

As a starting point for our analysis, we develop a classification scheme for the different voter identification regimes that exist in the United States. Since the enactment of HAVA, there are eight basic types of requirements to vote *at the polls*. They are listed in order of increasing stringency:

1. Voter must state his/her name.
2. Voter must sign his/her name in a poll-book.
3. Voter must sign his/her name in a poll-book and it must match a signature on file.
4. Voter is requested to present proof of identification or voter registration card.⁵
5. Voter must present proof of identification or voter registration card.⁶
6. Voter must present proof of identification and his/her signature must match the signature on the identification provided.
7. Voter is requested to present photo identification.⁷

⁵An affidavit may be signed in lieu of presenting identification and a regular (non-provisional) ballot may still be cast.

⁶The range of acceptable proof of identification ranges across the states, but in addition to a form of government-issued photo identification, other acceptable pieces of identification include utility bills, social security cards, student identification cards, paychecks, and bank statements, as well as hunting and fishing licenses and gun permits.

⁷An affidavit may be signed in lieu of presenting photo identification and a regular (non-provisional) ballot may still be cast.

8. Voter is required to present photo identification.

Combinations of the above requirements are often in place, such as requiring a voter to both state *and* sign his/her name. In our analysis, cases are coded at the level of requirement that is more stringent. In this example, the case would be coded as a signature requirement. Most states in 2004 required that first-time voters who registered by mail to present identification (per HAVA requirements), but here we are interested in the effect of requirements on all registered voters.

Thus, we want to measure the extent to which voter identification requirements affected voter participation at the polls, but this is a difficult methodological problem for several reasons. First, the requirements are not binary. As is apparent from the listing of the types of regimes, it is not the case that a state either requires identification to vote, or does not. States require many different levels of identification from simply stating one's name to showing a picture identification. This further complicates the question, as we must determine not just one effect but several potentially incremental effects. Second, states may differ in their implementation of similar requirements. While one state may consider a student identification card or discount club membership card to be valid photo identification, another state may only recognize government-issued photo identification cards. Third, the data we have to answer this question is relatively sparse. That is, since the changes in voter identification requirements have really only started since the passage of HAVA in 2002 and the law we are most interested in — photo identification requirements — was only implemented in 2006, we have only a small amount of information in the available data about how each type of voter identification requirement might affect participation. Finally, identification requirements are not randomly assigned across states. This is a problem if states with historically lower turnout also tend to adopt stricter identification requirements, then we will have trouble isolating whether the low level of turnout is due to the identification requirement or to other factors that lead a given state to have lower turnout rates.

Figure 1 presents the geographical distribution of voter identification requirements across states over the period 2000 to 2006.⁸ The lightest shade represents the “state name” requirement, while the darkest shade represents the requirement for a photo identification card. In 2000, nine states had the weakest identification requirement, 18 states required a signature to vote, nine states required a matching signature, four states requested an identification card, eight states required an identification card and three states required that the voter's signature match that on the identification card. In 2006, seven states only required voters to state their name at the polls, ten states required a signature, seven states required a matching signature, two optionally required identification, 20 required some form of identification card, three requested a photo identification card and two required that the identification be photo. In Florida, the photo identification allowed ranged from government-issued cards to discount club cards with photos. In

⁸In order to save space only the Continental states are included. Alaska required government-issued identification cards in all elections covered here. Hawaii requested identification in 2000 and 2002, required identification in 2004 and requested photo identification in 2006.



Figure 1: *Voter Identification Laws, 2000-2006.* Darker shades correspond to more stringent authentication requirements. In general, identification requirements became stricter between 2000 and 2006.

Indiana, only government-issued photo identification and student identification from Indiana state universities were accepted. In addition to the differences between states in any particular year, many states strengthened their identification requirements between 2000 and 2006 and only one state weakened their requirements as can be seen by the darkening of the figure.⁹

The change in requirements over time and across states will allow us to identify and estimate the causal impact of the voter identification requirements. That is, we can compare changes in turnout rates in states that altered their requirements to those

⁹South Carolina is the only state to have reduced its requirements during this time frame. It required both an identification card and a matching signature in 2000 and 2002. In 2004, South Carolina requested photo identification, but in 2006 returned to only requiring some form of identification or a voter registration card.



Figure 2: Estimated Turnout of Registered Voters by Region, 1974-2004. Estimates from United States Election Project (<http://elections.gmu.edu/>).

that did not, and we can attribute any changes to the change in requirements. It is not possible to estimate the causal impact without utilizing both state and temporal variation. Therefore, observation studies using only one state or one year of data can not correctly estimate the casual impact of the adoption of stricter voter identification requirements on turnout.

The critical methodological problem can be seen in Figure 1, which clearly shows non-random “treatment assignment” — i.e., states do not randomly choose which voter identification requirement to use. Close examination of the figure shows that states in the Southern and Western regions are more likely than states in the Northeast to have strengthened their voter identification requirements over our study period. As can be seen in Figure 2 turnout in both the South and West is historically lower than that of states in the Northeastern and Midwestern regions. The combination of these two factors in these regions of the United States raises the problem of non-random assignment, an issue that complicates the analysis of the effect of identification requirements on voters.

For example, if we were to look at only 2004, we might conclude that stricter voter identification requirements cause voters to turnout at lower rates because of the correlation between regional turnout rates and likelihood of adopting a more stringent identification requirement. Similarly, if we were to look at one state over time, we might make the same false inferences because of the cyclical turnout rates apparent in the graph. Consider, for example, if we were to compare a state that adopted more stringent requirement in 2002. If we compare 2000 to 2002, we would incorrectly conclude that the decline was caused by the change in identification requirements, but all states saw a drop in turnout because 2002 was a midterm election. Again, this is a critical flaw in earlier studies — by focusing solely on single presidential elections, they are confusing voter identification requirements with other causal factors that cannot be separated in the use

of only a single election in their analysis.¹⁰

Our estimation strategy exploits the temporal and geographic variability in voter identification requirements to sidestep the problem on non-random assignment. This is referred to as a difference-in-differences estimator and our analysis is built on a generalization of this procedure. In particular, we use a multilevel model — also referred to as a random effects model — to assess how voter identification requirements affect participation by registered voters, using data from four years of recent CPS Voter Supplement data. While multilevel models have seen many applications in fields outside of political science, only in relatively recent years have we seen the use of multilevel models in political science applications and journals (e.g., Steenbergen and Jones 2002; Raudenbush and Bryk 2002; Western 1998).¹¹ The multilevel model allows us to control for the constant factors that cause turnout rates to vary within states and for the cyclical changes in turnout over time.

In addition to using a much richer dataset than previous studies with a generalization of a difference-in-differences estimator to minimize the problem of non-random assignment, we also attempt handle the sparse and ordinal nature of the data. The data is sparse because with eight different types of identification requirements and only fifty states, we do not observe that many elections under a given type of procedure. The standard approach around this problem is to assume some sort of linear (or other parametric) effect. That is, if we consider our list presented at the beginning of the section, we would assume that the effect of a signature match was three times that of merely stating one's name on an individual's probability of voting, since it is third on the list. While the ordering of the list seems plausible, the linear growth (or dose-response curve) is a very strong assumption that seems implausible. We, instead, leverage the ordinal nature of the data to allow for deviations for this linear effect insofar as the data suggest via a Bayesian shrinkage estimator.

In the next section, we present the results from the aggregate component of our multilevel model, examining how voter identification requirements may affect voter participation at the state level. That is followed by a presentation of the results from our individual-level model of participation.

4. ESTIMATES FROM AGGREGATE LEVEL DATA

In addition to the unobservable effects on voter turnout, such as regional trends or yearly shocks, we want to control for any observable characteristics that might affect turnout as well. There are two approaches we consider — aggregate and individual-level

¹⁰In general, it is only possible to identify a causal effect in a single cross-section (i.e., one year's data) with random assignment or with an instrumental variable approach (Moffitt 1991).

¹¹More recently, a special issue of *Political Analysis* was devoted to the topic of multilevel modeling in political methodology, with applications to a wide variety of important substantive problems (Kedar and Shively 2005).

data — and our model allows us to consider both levels of data simultaneously. Aggregate data can be a useful source of information about voter turnout mainly because there is no concern that survey respondents are “incorrectly remembering” turning out to vote. We know from surveys that have validated turnout of survey respondents using public voting records, misreporting occurs between five and ten percent of validated cases.¹² The use of aggregated data to study individual behavior, however, also raises concerns about aggregation bias. That is, it is not possible to draw conclusions about individual voter’s decisions based solely on the analysis of aggregate data. Further, we are also interested in the impact of these identification requirements on sub-populations, such as racial and ethnic minorities and seniors. Given the coarse nature of state level data, we can not say anything about these populations of interest.

For the aggregate analysis, following the previous literature on turnout, we gathered data on demographic variables at the state-level, such as the percentage of the population who have graduated from high school, the percentage of the population who are minorities, the unemployment rate and per capita income. The specific empirical model of voter identification requirements on state-level turnout rates for this data is:

$$\ln(\text{turnout rate}) = \alpha ID_{st} + \beta^0 + \beta^1 X_{st} + \epsilon_{st}; \quad s = 1, \dots, 51; \quad t = 1, \dots, 4;$$

where s indexes states and t indexes years. That is, the logarithm of the turnout rate is a linear function of observable regressors.

The turnout rate is measured relative to registered voters in the state, and the variable of interest, ID_{st} , is coded as an ordinal variable ranging from zero (state name) to seven (photo identification).¹³ The vector of covariates, X_{st} , includes the following:

- % HS Grad*: the percent of high school graduates in state s at year t , according to the Census Bureau;
- Per capita income*: the per capita income in state s at year t according to the Bureau of Economic Analysis;
- Unemp rate*: the unemployment rate in state s at year t according to the Bureau of Economic Analysis;
- South*: an indicator equal to one if the state is southern and zero otherwise;¹⁴
- % Non-White*: the percent of individuals in state s at year t that are reportedly not White, according to the Census Bureau.

As the level of turnout in a state may vary due to yearly shocks or regional trends

¹²There are an array of published studies that have looked at the validated turnout data. See, for example, the early studies by Abramson and Claggett (1984, 1986, 1989, 1991 and 1992), or the more recent analyses by Bernstein, Chadha and Montjoy (2001) or Cassel (2004).

¹³Given the limited amount of state-level observations, it is not possible to do much more than a linear treatment specification. When we turn to the individual level specification with much more data we can relax this assumption.

¹⁴The states of the South in this study are: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia.

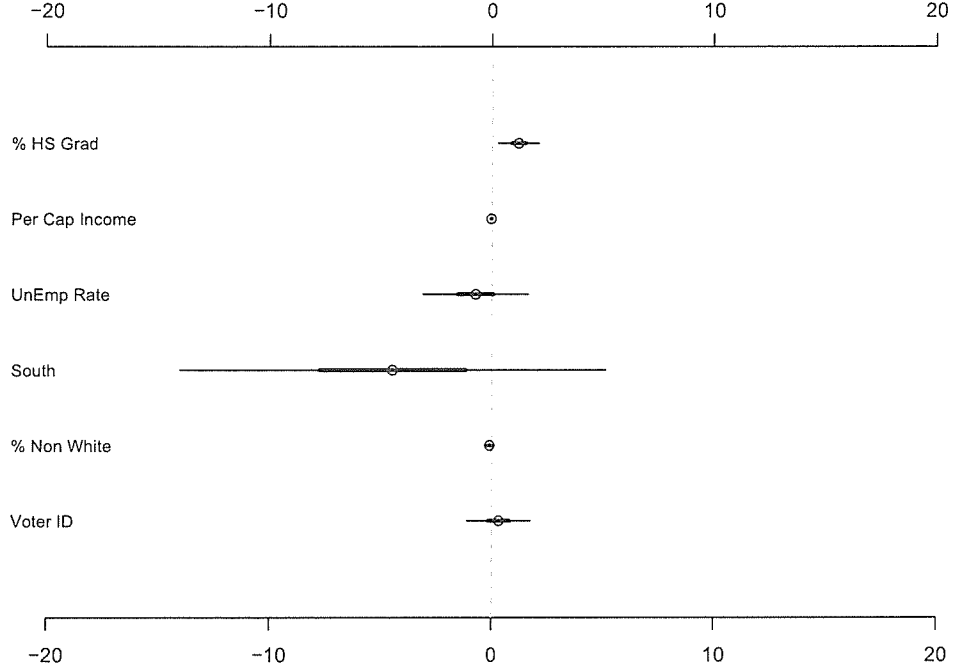


Figure 3: *Estimates of the determinants of state level turnout of registered voters, 2000-2006. The graph shows the result of regression of $\log(\text{turnout})$ on the covariates, including state and year effects. The center dots correspond to the point estimates, the thicker lines to the 50% confidence interval, and the thinner lines to 95% confidence interval.*

(see Figure 2), random effects are included for state and year.

$$\begin{aligned}
\beta^0 &= \gamma_s^0 + \gamma_t^1; \\
\gamma_s^0 &\stackrel{\text{iid}}{\sim} N(0, \sigma_{\gamma_s}); \\
\gamma_t^0 &\stackrel{\text{iid}}{\sim} N(0, \sigma_{\gamma_t}); \\
&\text{for } s = 1, \dots, S \text{ and } t = 1, \dots, T.
\end{aligned}$$

Our results from the aggregate model can be found in Figure 4. The figure displays the estimated percentage change in turnout among registered voters at the state-level, for voter identification requirements and other contributing factors to aggregate turnout. The circles represent the point estimates, the heavy black lines denote the 50% confidence interval, and the thin black lines denote the 95% confidence interval.

As can be seen from the figure, the only state characteristic that has an effect on the rate of turnout in a state is the percentage of high school graduates. As the percentage of high school graduates in a state increases by one unit, the rate of turnout in that

state increases about two percent. The coefficient on the rate of unemployment has the expected sign — increasing the unemployment rate one point has a negative impact on turnout — but it is not statistically significant. The other variables in the model — per capita income, percent of the population non-White, whether the state is in the south, and interestingly voter identification — have no discernible impact on statewide turnout rates. Thus, our analysis of our critical hypothesis at the aggregate level yields no support for the claim that voter identification requirements have any effect on the turnout decisions of registered voters.

5. ESTIMATES FROM INDIVIDUAL LEVEL DATA

The aggregate data pose two problems. First, with only 50 states and four years of data, there is very little information available to inform us about the effects of voter identification requirements. Second, answering questions about voter identification laws effects on subgroups is not possible. Because we are most interested in the effect of voter identification laws on individual subgroups of voters — not on state-wide trends — and we would like to be able to more precisely identify these effects, we turn to individual responses from the Current Population Survey in 2000, 2002, 2004 and 2006.

The CPS has a very large sample size (120,000 per year), which affords us good coverage of both states and populations of interest. We do need to worry about overreporting of turnout, an issue we return to in our discussion of future research. In addition to answering questions about voter registration and turnout, respondents to the CPS provide basic demographic information, such as their education level, age, income, sex, and race. Not only do we use these demographic questions to control for varying propensities of turnout based on individual characteristics, we also are able to determine whether voter identification requirements are affecting certain groups disproportionately after controlling for other factors.

As mentioned previously, an additional complication arises because of the non-binary nature of the voter identification requirement. We could not do much about this in the aggregate level model, but with the greater number of respondents in the individual-level data we have some flexibility estimating the effects of the varying identification requirements. But given the sparseness of the data, precisely estimating individual effects for each of the eight identification requirements is difficult. This would involve coding each voter identification regime as a binary indicator variable in our model, but the concern then is that we simply will have too little information for some of the less-used regimes to identify (let alone precisely estimate) the effects of each voter identification requirement relative to the others. On the other hand, we could assume that the effect is linear across the eight requirements, as we did in the aggregate level model. That is, the effect on the probability that a voter turns out is the *same* if we change the requirement from stating one's name to signing one's name as if we change the requirement from

merely requesting a photo identification card to requiring a photo identification card.¹⁵ This is a strict assumption. As a compromise we, in effect, compute a weighted average these two approaches with the weights being proportional to the amount of information in the data about that particular identification regime.¹⁶

Specifically, we start with a logistic model of turnout from the CPS. Because we are interested in the effect of identification requirements *at the polls* and not the various unobserved barriers to voting associated with the registration process, the estimation is conditioned on the subset of respondents who are registered to vote. Our logistic model takes the form:

$$\Pr(Y_{it} = 1) = \text{logit}^{-1}(\alpha_{j[i]} + \beta^0 + \beta^1 X_{it}),$$

for $j = 1, \dots, 8$; $i = 1, \dots, N$; and $t = 1, \dots, 4$;

where j indexes identification regime, i indexes the respondents, and t indexes years. The variable Y_{it} is binary and equal to one if the respondent reported voting in that year's election. The variable β^0 is an intercept term. The vector of covariates, X_{it} , includes the following:

- South*: an indicator equal to unity if the respondent resides in a southern state;
- Female*: an indicator equal to unity if the respondent is female;
- Education*: a ordinal variable indicating the reported level of education — ‘some high school,’ ‘high school graduate,’ ‘some college,’ or ‘college graduate’;
- Education*²: the squared value of *Education*;
- Age*: the respondent's age in years;
- Age*²: the squared value of *Age*;
- Income*: an ordinal variable indicating the reported level of household family income that takes on 13 values — ranging from ‘Less than \$5,000’ to ‘More than \$75,000’;
- Non-White*: an indicator equal to unity if the respondent reported a race other than White.

This covariate vector replicates what we consider to be the canonical model of voter turnout in the literature that uses CPS Voter Supplement data (e.g., Nagler 1991).

As the level of turnout in a state may vary due to yearly shocks or regional trends, random effects are included for state and year.

$$\begin{aligned}\beta^0 &= \gamma_{s[i]}^0 + \gamma_{t[i]}^1; \\ \gamma_{s[i]}^0 &\stackrel{\text{iid}}{\sim} N(0, \sigma_{\gamma_s}); \\ \gamma_{t[i]}^0 &\stackrel{\text{iid}}{\sim} N(0, \sigma_{\gamma_t}); \\ &\text{for } s = 1, \dots, S \text{ and } t = 1, \dots, T.\end{aligned}$$

¹⁵Recall that requesting a photo identification card allows the voter the option of signing an affidavit swearing their identity and then casting a *regular* ballot, whereas requiring a photo ID only allows the voter the option of casting a *provisional* ballot.

¹⁶The particular analysis we use, a Bayesian shrinkage estimator, is documented in Alvarez, Bailey and Katz (2008).

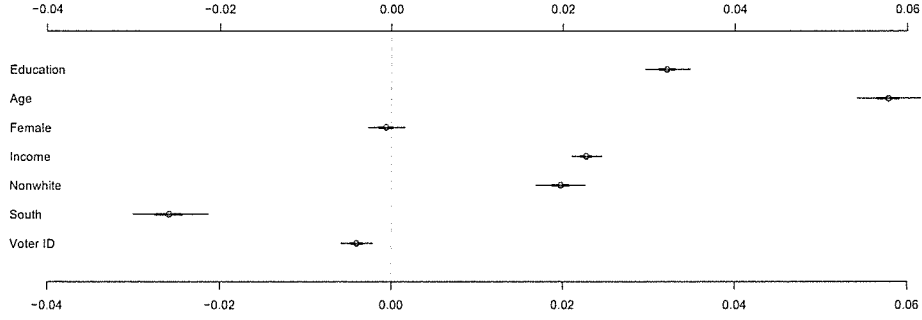


Figure 4: *Estimates of the determinants of individual level turnout of registered voters, 2000-2006. The graph shows the result of logistic regression of the probability of voting on the covariates, including state and year effects. The center dots correspond to the point estimates, the thicker lines to the 50% confidence interval, and the thinner lines to 95% confidence interval.*

That is, each individual i in state s and year t share a common intercept term, with each level of intercepts pooled toward zero and with common variance.

As noted above, we could model the impact of the variable of interest, ID , as an unpooled additive effect (e.g., indicator variables for each regime), or alternatively, constrain the effect to be linear. Rather than commit to either extreme, we effectively combine the first two approaches into a sort of weighted average, where the weighting variable is determined by the data:

$$\alpha_{j[i]} = \alpha^0 + \alpha^1 ID_{it} + \nu_j,$$

$$\nu_j \stackrel{\text{iid}}{\sim} N(0, \sigma_\alpha).$$

That is, for each identification requirement level, j , the estimated impact on turnout is a random intercept term, ν_j , and is pooled toward a group linear impact, $\alpha^0 + \alpha^1 ID_{it}$.¹⁷

Our results for the individual model can be found in Figure 5. The figure displays the estimated percentage change in the probability of turning out to vote, conditional upon being registered, for voter identification requirements and demographic control variables. The circles represent the point estimates, the heavy black lines denote the 50% confidence interval, and the thin black lines denote the 95% confidence interval.

Living in the South decreases the odds that an individual in our sample votes, while being older, more educated and wealthier increases the odds an individual turns out to

¹⁷A final consideration in the third model is interpretation of the α^0 and α^1 parameters. These parameters are partially unidentified between the linear trend in the ν_j parameters. The identification is partial, as the ν_j parameters are pooled toward zero, but with only $J = 8$ groups, converging the algorithm is time consuming. To correct for this problem, after estimation, the data is “post-processed” to obtain finite population slope parameters based on the regression of α_j on ID_j . This is equivalent to constraining the ν_j parameters to have mean zero and slope zero (Gelman and Hill, 2006).

vote. In our sample, being female does not effect the probability of voting, but being a minority increases the probability of turning out to vote, conditional on being registered to vote. These effects are all consistent with the previous literature on turnout, lending credence to our model’s specification (e.g., Nagler 1991). Increasing the strength of voter identification requirements, on average, decreases the probability of turning out to vote. We examine the deviations from this linear trend below.

Figure 5 plots the average marginal effect of voter identification regimes on the probability that a respondent turns out to vote. The horizontal axis represents the voter identification requirements. The vertical axis plots the probability of turning out to vote. We note that the estimated probabilities are high, but recall we are looking at registered voter only and not eligible citizens, as is often done. Turnout rates about among eligible citizens is well below a half in recent elections, but in our sample of registered voters nearly 80% report turning out to vote. The line represents the probability of voting for a mean respondent in our sample, for each identification requirement being in place. The points on the graph denote the deviation from the linear trend estimated for each requirement and the vertical bars denote the 95% intervals of uncertainty around each. Interestingly, we see that the requirements for signature matching, requiring an identification card and requiring a photo identification card have a more negative effect on participation than suggested by the simple linear model. Requesting identification cards and requesting photo identification cards is less strict than suggested by the linear trend. These estimates first indicate that indeed, voter identification requirements do not have a simple linear effect on the likelihood that a voter participates. In addition, we see that the stricter requirements — requirements more than merely presenting a non-photo identification card — are significant negative burdens on voters, relative to a weaker requirement, such as merely signing a poll-book.

Previous studies that we are aware of, however, did not use multiple election cycles in their analysis; thus those studies have likely confused the possible effects of new voter identification requirements with the cross-sectional correlations we discussed earlier. Recall in Figures 1 and 2 we showed that states with low turnout were also states which had imposed strict voter identification requirements in 2004. Here, as we have data that varies by state and time, we are able to separately identify and estimate the effects of voter identification requirements on voter turnout, that is, separately from the confounding effects of past voter participation rates and voter identification regimes.

Next, we turn to the critical question of the possible interaction between the various voter identification regimes and the racial identity of registered voters in the CPS samples: do voter identification requirements, especially the stricter ones, depress the likelihood of turnout more for non-White registered voters than for White registered voters? To answer this question, we estimated a slight variant of the model used above, which includes interaction terms for voter identification requirements and the racial identity of the voters in the CPS samples. This model includes both the shrinkage estimator and in our linear term an interaction between the voter identification regimes and the racial identity of each registered voter. These results from this analysis are given in Figure 6.

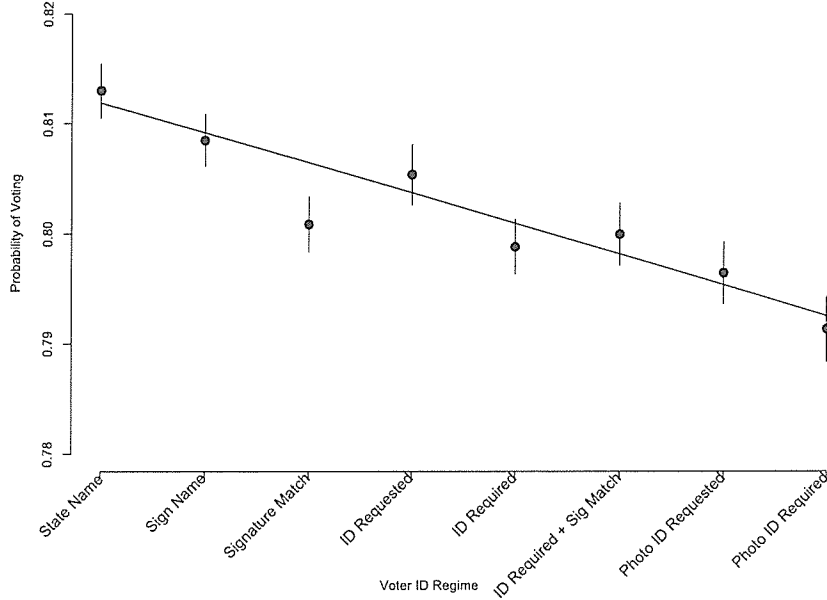


Figure 5: *Average estimated probability of voting by identification requirement. The graph plots the average impact from our sample of registered voters from the Current Population Survey (2000-2006). The estimates come from a logistic regression of the probability of voting controlling for demographic characteristics. The solid line is the linear trend that the identification effects are shrunk towards. The dots are the point estimates and the bars represent the 95% confidence intervals for the effect.*

In the left panel we give the results of the voter identification regimes for White registered voters, and in the right panel of Figure 6 the results for non-White registered voters. It is clear from comparison of the two graphs that we can reject the hypothesis that there is a substantial racial difference in the impact of voter identification requirements. First off, we see that the slopes differ in the two panels, and in fact, the line for White registered voters is more strongly negative than for non-White registered voters. Also, when we look at some of the specific regimes, especially the most restrictive ones, our analysis here indicates that they have a more strongly negative effect on the participation of White, relative to non-White voters, all other variables held constant in our model. This is an important result. Controlling for the factors usually seen in models of voter participation, especially education and income, we see no evidence that strict voter identification requirements are racially discriminatory.

We note that not controlling for socioeconomic status in our analysis would likely show a “significant”, but incorrect, racial effect since race is highly, but not perfectly correlated with socioeconomic status.¹⁸ As a matter of good statistical practice to estimate a causal

¹⁸More formally, if one does a principal component analysis between race, education, and income from

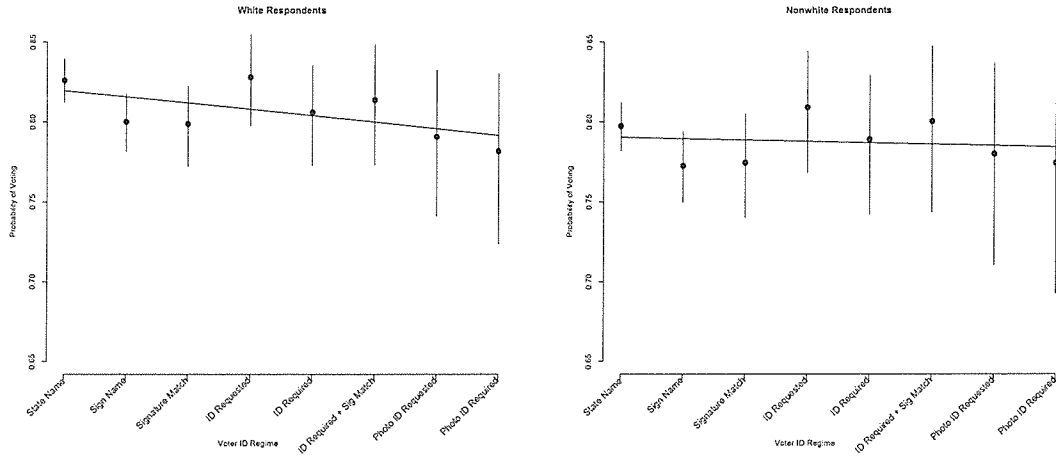


Figure 6: *Estimated probability of voting by identification requirement and race. The graphs plot the impact for an average registered voter from the Current Population Survey (2000-2006) for Whites and Non-Whites. The estimates come from a logistic regression of the probability of voting controlling for demographic characteristics. The solid line is the linear trend that the identification effects are shrunk towards. The dots are the point estimates and the bars represent the 95% confidence intervals for the effect.*

impact in observational studies, we need to control for observable factors that we know alter the probability of voting. Further, we are able to independently estimate the impact of race because in the CPS sample there are both low socioeconomic status Whites and high socioeconomic status non-Whites. What the estimator is doing is looking at a fixed socioeconomic level and comparing the probability of voting under different voter identification policies to see if White and non-White registered voters turnout at different rates.

Next we turn to three other important socio-demographic variables in our turnout model: education, age and income. We are interested here in seeing whether these variables have any interactive effect with identification requirements. In particular, there is reason to believe that registered voters who are of lower educational attainment, lower income, or who are younger may be more likely to be deterred from voting as identification requirements increase. These next figures plot the probability of voting conditional on being a mean respondent under each identification regime, tracing out the likelihood for voting as education, age, and income levels vary. The estimated models include an interaction term between the demographic variable of interest and identification type. The dashed lines are the confidence intervals for the random effects term only, and do not include the uncertainty in the estimate; these are provided for convenience only and should not be used for direct inference.

our data, only one of the eigenvalues has an absolute value greater than one, suggesting that there is only one underlying dimension being tapped by these three variables.

Beginning with the interactive effect between voter identification regime and educational attainment in Figure 7, we see that there is a slight, but significant, interaction between these two variables, controlling for everything else in our model. As we move from the less to more restrictive voter identification requirements, we do see that registered voters at the lower end of the educational attainment scale are less likely to participate. For example, in states that require only that a registered voter provide their name, or sign their names, relative to states that require that a registered voter produce a photographic identification, registered voters with only some high school are significantly less likely to vote, whether the registered voter is White or non-White.

Next, in Figure 8, we see little interaction between voter identification requirements and age. In particular, we expected to see that younger voters would be significantly less likely to vote in states with more restrictive identification regimes in place; we see little evidence in this figure to support that hypothesis. Nor do we see older voters being deterred more.

Finally, we show the interaction between the other measure of socioeconomic status and voter identification regimes in Figure 9. The various panels show the different voter identification regime effects for the various levels of household family income. As we have seen in the graph in Figure 7 for education, we do see evidence of an interactive effect, even after controlling for all of the other variables in our model. This is not surprising given that household income and education levels are highly correlated. As expected, voters with lower levels of income are less likely to vote under the more restrictive voter identification regimes; comparing again the extremes of states that simply require the voter provide their name, to those states that require a photographic identification from the registered voter in order to cast a ballot, we see that lower income registered voters in both racial categories in the latter type of state are significantly less likely to vote.

In conclusion, our analysis of the individual-level component of our multi-year and multilevel model, we have found a number of significant results. First, we see that there is evidence to support the claim that the most restrictive forms of voter identification requirements do lead to lower levels of participation by registered voters. However, we find no evidence to support the hypothesis that this effect is more profound for non-White registered voters, controlling for other variables, especially income and education. Yet we find that these other socioeconomic status variables, especially education and income, do show a significant interactive effect with stricter identification requirements. In particular, we find that registered voters with low levels of educational attainment or lower levels of income of all racial/ethnic groups are less likely to vote the more restrictive the voter identification regime.

6. DISCUSSION

In general, there is scant research on the effect that voter identification requirements, of any form, have on the participation of registered voters. In an attempt to understand

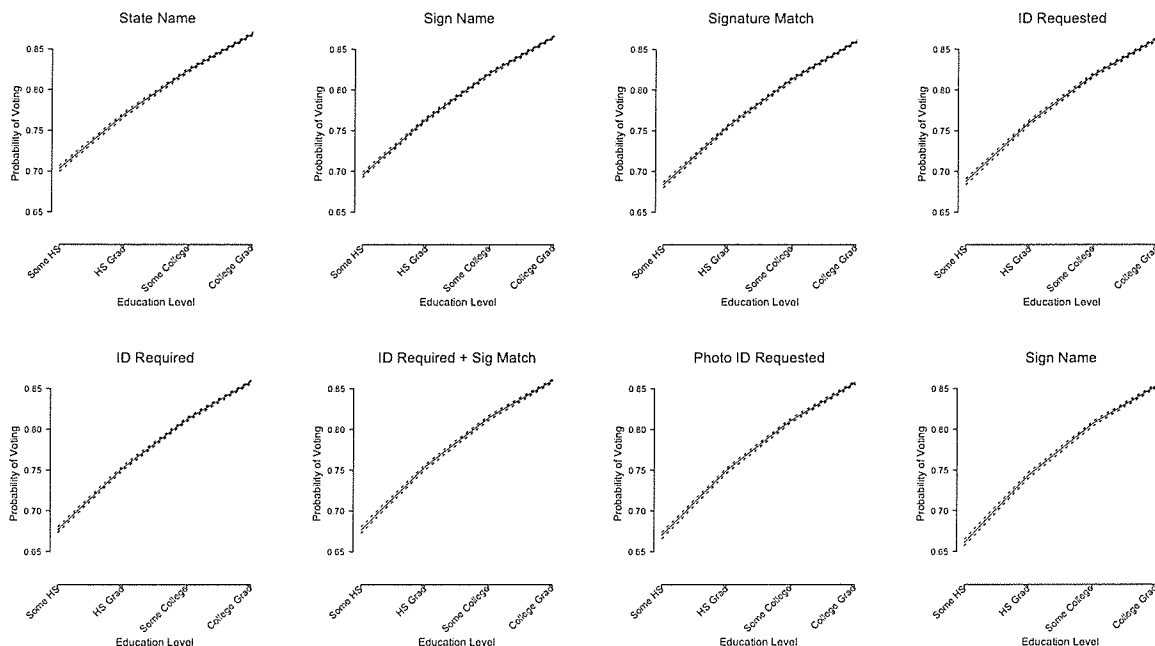


Figure 7: *Estimated probability of voting by identification requirement and education level. The graphs plot the average estimated probability of voting by registered voter respondent from the Current Population Survey (2000-2006) given different voter identification regimes as education levels vary. The estimates come from a logistic regression of the probability of voting controlling for demographic characteristics. The dashed lines are the confidence intervals for the random effects term only, and do not include the uncertainty in the estimate; these are provided for convenience only.*

whether the requirements imposed by both HAVA and nearly half the states reduce registered voter participation, we used a novel methodology to study the effects of voter identification requirements on the likelihood that voters participate in these two presidential elections, a multilevel binary logit model that allows us to appropriately model how covariates from both the individual and state level, and their interaction, affect the decision to participate (Gelman and Hill 2006). In addition, we use a random effects model of the ordinal voter identification treatment variable, a substantially better specification of this important variable relative to other studies. By combining these two approaches we are able to simultaneously get the most out of sparse data to answer important policy questions, particularly about subgroups, and to address concerns about properly modeling the ordinal treatment variable. We find no evidence that voter identification requirements reduce participation at the aggregate level. At the individual level, voter identification requirements of the strictest forms — combination requirements of presenting identification and matching signatures, as well as photo identification requirements — have a negative impact on voter participation relative to the weakest requirement of stating one’s name. In general, there does not seem to be a discriminatory impact of the requirements for some subgroups, such as non-White registered voters. However, we

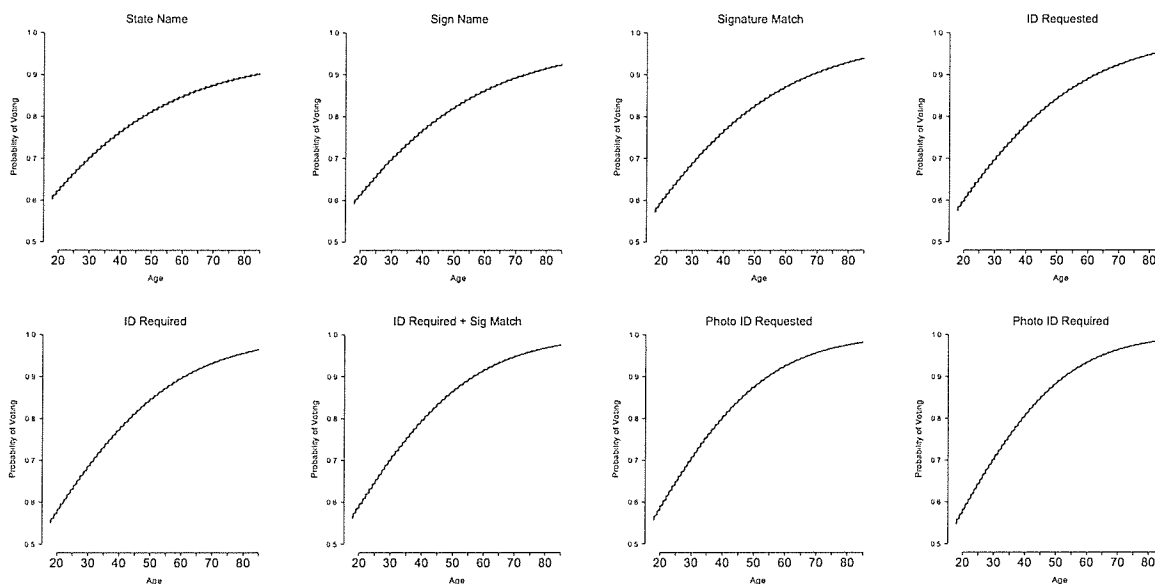


Figure 8: *Estimated probability of voting by identification requirement and age. The graphs plot the average estimated probability of voting by registered voter respondent from the Current Population Survey (2000-2006) given different voter identification regimes as education levels vary. The estimates come from a logistic regression of the probability of voting controlling for demographic characteristics. The dashed lines are the confidence intervals for the random effects term only, and do not include the uncertainty in the estimate; these are provided for convenience only.*

do find that for registered voters with lower levels of educational attainment or lower income, stricter voter identification requirements do lead to lower turnout, for voters of all races.

Further research is necessary, however, as there is little information in the current data on photo identification requirements — and only with the passage of time will we build up larger databases with more information on the behavior of registered voters in states with different voter identification requirements. Our analysis, using all of the available CPS Voter Supplement data from 2000 through 2006, demonstrates the methodological and substantive importance of examining how voter identification requirements affect voter behavior, as some states move to implement new voter identification requirements and others do not. Additionally, our methodological innovation in this paper, utilizing a multilevel model to study voter participation, is an important advance in the field. While our focus here has been on a new substantive problem, our model did provide important new estimates for the canonical questions about voter participation that have existed in the research literature for the past few decades. We believe that this multilevel approach towards studying the question of voter participation, as well as many other questions of voting behavior that involve data measured at multiple levels, will represent an important advance in the study of this important substantive question.

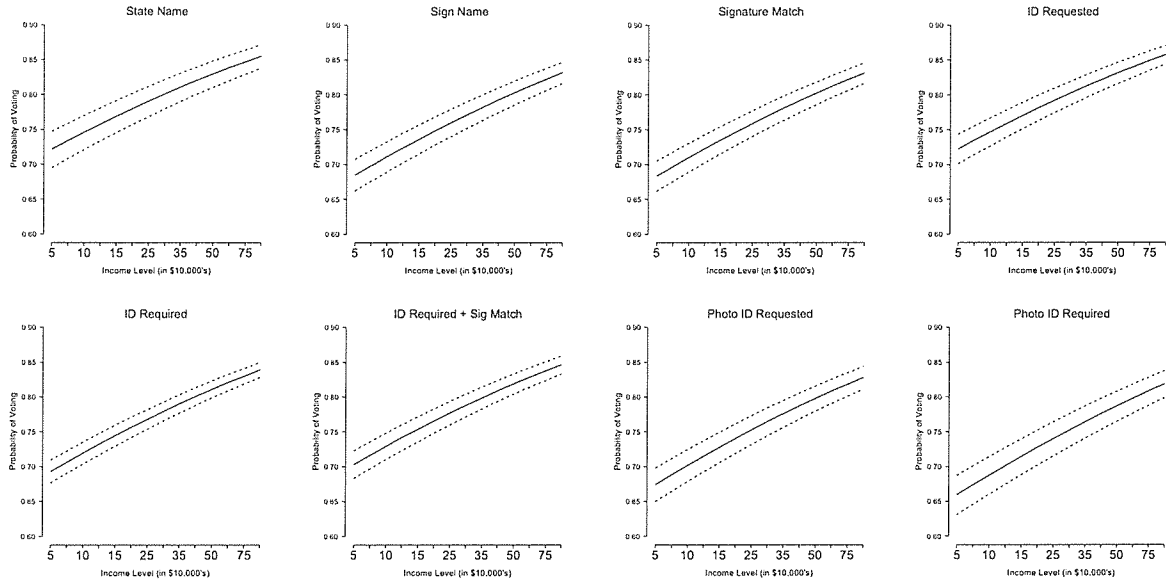


Figure 9: *Estimated probability of voting by identification requirement and income level. The graphs plot the average estimated probability of voting by registered voter respondent from the Current Population Survey (2000-2006) given different voter identification regimes as education levels vary. The estimates come from a logistic regression of the probability of voting controlling for demographic characteristics. The dashed lines are the confidence intervals for the random effects term only, and do not include the uncertainty in the estimate; these are provided for convenience only.*

However, one methodological issue will need to be addressed in the next round of our research, and that will be to incorporate a correction in the model for the misreporting of turnout. While the misreporting of turnout in the CPS Voter Supplement is not as severe as that noted for other surveys of voter behavior (for example, the American National Election Survey as studied in past research, e.g., Burden 2000). The 2004 CPS Voter Supplement reports a discrepancy of 3% between the CPS estimate of turnout and the official count of the Clerk of the House of Representatives; historically, the disparity has ranged between 4 and 12%.¹⁹ Given that research has shown that misreporting of turnout is systematically related to demographic attributes like education, and also varies by race and ethnicity, clearly adjusting for misreporting of turnout in models of participation is an important methodological step towards obtaining consistent estimates of how factors like identification requirements affect turnout.²⁰

Finally, we need to bring other data to bear as we seek to answer research questions

¹⁹See the report of the U.S. Census Bureau, “Voting and Registration in the Election of November 2004”, PS 20-556, March 2006, <http://www.census.gov/prod/2006pubs/p20-556.pdf>.

²⁰As we noted earlier, there has been much research on the attributes of voters who misreport turnout, for example Abramson and Claggett 1984, 1986, and 1991; Bernstein, Chadha and Montjoy 2001; Claussen 1968; Hill and Hurley 1984; Katosh and Traugott 1981; Sigelman 1982; Silver, Anderson and Abramson 1986; Traugott and Katosh 1979.

regarding voter identification laws. Our analysis, and others like it using CPS Voter Supplement data, focuses on what we know of voter identification laws across states and how those laws, if implemented as written, might influence the behavior of registered voters. We cannot not easily study, however, the extent to which these laws are not being implemented as written; for example, it might be the case that in some places registered voters (or just some registered voters) are being asked to provide photographic identification when they try to vote, when that is not current state law, or that in other places registered voters (or again just some registered voters) are not being asked for identification when that should be required under state law. Additional research should focus on implementation of voter identification laws, both in states with such requirements and those without, to determine the extent to which they are being correctly applied, and if incorrectly applied, whether that is affecting the ability of potential voters to exercise their franchise effectively (Alvarez, Atkeson and Hall, 2007; Atkeson et al. 2007). Furthermore, future research should also look at the requirement identifications now in place, as required by HAVA, and whether those additional identification requirements are imposing additional hurdles for eligible citizens as they seek to register to vote.

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EXHIBIT K

§ 31.6. ARTICLE I, SECTION 26:
THE 1967 ANTIDISCRIMINATION PROVISION

In 1967, the legislature proposed and the people of Pennsylvania adopted, via referendum, Article I, Section 26 as an addition to the Declaration of Rights. Section 26 provides: "Neither the Commonwealth nor any political subdivision thereof shall *deny* to any person the enjoyment of any civil right, *nor discriminate* against any person in the exercise of any civil right."⁶⁶

Similar provisions in other states typically limit the proscription to discrimination on the basis of race, color, or national origin.⁶⁷ Pennsylvania's provision is, by contrast, more open-ended. The express ban on *discrimination* against persons in the exercise of their civil rights, in addition to prohibiting the *denial* of rights, provides a strong textual basis for extending such protection beyond the federal equal-protection doctrine.

The legislative history of the 1967 provision is sparse, but one conclusion clearly emerges: The protection of Section 26 was designed to reach beyond that provided by the Fourteenth Amendment and beyond the existing equality provisions (Article I, Section 1 and Article III, Section 32) in the state Constitution. The predecessor of Article I, Section 26 originated as a 1963 proposal by the Committee on the Bill of Rights of the Pennsylvania Bar Association's "Project Constitution."⁶⁸ The Committee proposed Article I, Section 26 at the same time it recommended redrafting Article I,

Our Public Schools, 24 CONN. L. REV. 675 (1992) (considering recent and potential future directions in school finance litigation); *Symposium, Investing in Our Children's Future: School Finance Reform in the 90's*, 28 HARV. J. ON LEGIS. 293 (1991) (stating that interest in school financing reform has increased because of recent state constitutional cases).

66. PA. CONST. art. I, § 26 (emphasis added); cf. N.Y. CONST. art. I, § 11 (earlier version of this type of provision). For a discussion of similar provisions in other state constitutions, see Albert L. Sturm, *The Development of American State Constitutions*, 12 *Publius: The Journal of Federalism* 57, 87-88 (1982); ALBERT L. STURM & KAYE M. WRIGHT, CIVIL LIBERTIES IN REVISED STATE CONSTITUTIONS, IN CIVIL LIBERTIES: POLICY AND POLICY MAKING 179, 182-83 (S. Wasby ed., 1976). See Chapter

28, discussing Article I, Section 26 earlier in this volume.

67. See, e.g., N.J. CONST. art. I, para. 5. The Pennsylvania legislature specifically eliminated such a limitation from its provision. See 149 Pa. Legis. J., House, 2771-72 (1965) (conference committee report on resolution leading to Article I, Section 26 of the Pennsylvania Constitution); *infra* notes 72-75 and accompanying text.

68. See *Constitutional Report, A Revised Constitution for Pennsylvania* ("Project Constitution"), 34 PA. BAR ASS'N Q. 147, 247, 249 (1963). The text accompanying notes is based on a section of the brief in *Fischer v. Department of Pub. Welfare*, 502 A.2d 114 (Pa. 1985), written by Kathryn Kolbert and Seth Kreimer, with whom the author served as co-counsel. See *infra* text accompanying notes.

PENNSYLVANIA'S EQUALITY PROVISIONS

Section 10 to include a separate "clause the wording of which is copied, *with the addition of an 'equal protection' clause, from the Federal Constitution.*"⁶⁹

The Governor's Commission on Constitutional Revision, however, did not include the proposed "equal protection" language, presumably because it duplicated the existing guarantees provided by Article I, Section 1 and by Article III, Section 32.⁷⁰ By contrast, it proposed the adoption of Article I, Section 26.⁷¹ Thus, at its inception, Article I, Section 26 was regarded as distinct from, and supplementary to, the existing equality guarantees in the state and federal constitutions. The existing provisions must have been viewed as not reaching far enough.

As introduced in the state Senate, in the form of Senate Bill 530 of 1965, Article I, Section 26 prohibited discrimination on the ground of "race, color, or national origin."⁷² The bill was amended in the House to prohibit discrimination on the basis of "race, creed, color, sex, or national origin,"⁷³ an amendment that provoked the nonconcurrence of the Senate.⁷⁴ The difference was resolved in conference committee by broader language that prohibited discrimination "against any person in the exercise of any civil right."⁷⁵

Article I, Section 26 was approved in this form by the legislature in December 1965 and ratified by the people on May 16, 1967. This approval was secured one hundred years after the Fourteenth Amendment prohibited states from denying persons the "equal protection of the laws," almost two hundred years after the adoption of Article I, Section 1, and almost one hundred years after the adoption of the predecessor of Article III, Section 32, the other equality guarantee of the Pennsylvania Constitution.

Article I, Section 26, therefore, supplements the other equality guarantees of Article I, Section 1 and Article III, Section 32 by specifically pro-

69. *Id.* at 247 (emphasis added).

70. *See, e.g.,* *Baltimore & O.R.R. v. Commonwealth, Dep't of Labor & Indus.*, 334 A.2d 636, 643 (Pa. 1975) (holding that the contents of Article III, Section 32 and the Federal Equal Protection Clause are "not significantly different").

71. *See* Report of Governor's Commission on Constitutional Revision ix, 5 (1964).

72. S.B. 530, printer no. 551, at 2, 149th Gen. Ass. (1965).

73. S.B. 530, printer no. 1281, at 2, 149th Gen. Ass. (1965).

74. 149 Pa. Legis. J., Senate, 937-38 (1965).

75. 149 Pa. Legis. J., House, 2771-72 (1965); *see* Pennsylvania Bar Association, *Pennsylvania Constitutional Revision: 1966 Handbook* 17 ("The Governor's Commission on Constitutional Revision . . . felt that there should be added to the Declaration of Rights a section prohibiting discrimination by any governmental agency against any person in the exercise of his or her civil rights. Accordingly, it proposed a new Section 26 which the Legislature broadened in its scope." (emphasis added)). *See* note, *supra*.

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hibiting *discrimination against*, as well as *denial of*, any civil right. In view of the legislative history of Section 26, clearly its language was not lightly chosen. Rather, as the Supreme Court of Pennsylvania noted in a similar situation concerning special laws: "[T]he language of the Pennsylvania Constitution is substantially different from the federal constitution. We are not free to treat that language as though it was not there. Because the Framers of the Pennsylvania Constitution employed these words, the specific language in our constitution cannot be readily dismissed as superfluous."⁷⁶

Article I, Section 26 was a change of substance in the Declaration of Rights, and was voted on separately by the voters on May 16, 1967. It was not part of a broader package or revision of the state Constitution. By applying the previously mentioned interpretation approach, the concepts of "discriminate" and "civil rights," therefore, cannot be construed to carry some obscure limitation of meaning; rather, the approach to interpretation should include the normal understanding of such words or concepts when they were ratified by the people of Pennsylvania, which, here, reveal a clear mandate of neutrality and a prohibition of favoritism or partiality.

The potential reach of a modern, nondiscrimination provision such as Article I, Section 26 was tested in the Pennsylvania courts when the use of Medicaid funds for abortions for poor women was banned except to save the life of the mother. Challengers to this statute sought, and were granted, a preliminary injunction in an original action before the Pennsylvania Commonwealth Court in August of 1981. On interlocutory appeal, the Supreme Court of Pennsylvania upheld the preliminary injunction.⁷⁷ On remand to the Commonwealth Court, the Commonwealth filed preliminary objections in the nature of a demurrer. These were overruled by an evenly divided commonwealth court.⁷⁸ Eventually, Judge John A. MacPhail, sitting as a Chancellor, declared the statute unconstitutional and issued a permanent injunction against its enforcement.⁷⁹

With respect to the Article I, Section 26 argument, however, Judge MacPhail stated:

Although Petitioners have argued that Article I, Section 26 of the Pennsylvania Constitution provides greater equal protection guarantees than Article III, Section 32, our research has failed to disclose any significant or substantive difference in the treatment of these provisions by Pennsylvania courts. We also have not discovered any movement by

76. *Kroger Co. v. O'Hara Township*, 392 A.2d 266, 274 (Pa. 1979).

77. *Fischer v. Department of Pub. Welfare*, 439 A.2d 1172 (Pa. 1982).

78. *Fischer v. Commonwealth*, Dep't

of Pub. Welfare, 444 A.2d 774 (Pa. Cmwlth. 1982).

79. *Fischer v. Commonwealth*, Dep't of Pub. Welfare, 482 A.2d 1137 (Pa. Cmwlth. 1984).

PENNSYLVANIA'S EQUALITY PROVISIONS

the courts to employ Article I, Section 26 as a vehicle to broaden equal protection guarantees under the Pennsylvania Constitution. . . . We, accordingly, will address all of the equal protection challenges as a unit.⁸⁰

Under this view, all of the efforts described above to amend the Pennsylvania Constitution, stretching from 1963 to 1967, were a futile exercise.

The Commonwealth excepted to Judge MacPhail's decision, and the case was heard en banc by the Commonwealth Court, which reversed by a five-to-two vote.⁸¹ President Judge James Crumlish's majority opinion did not even mention Article I, Section 26, but rather, referred only to Article III, Section 32 (special laws), which he referred to as "the Commonwealth's equal protection clause."⁸²

The Supreme Court of Pennsylvania upheld the Commonwealth Court in a seven-to-zero decision. Justice James McDermott's unanimous opinion rejected the basic equal protection challenges to the ban on Medicaid funding for abortions.⁸³ He continued:

Although we have not previously embraced a mode of analyzing claims under Article I § 26, we think that the most appropriate analysis is that utilized by the United States Supreme Court. . . . This has sometimes been referred to as the "penalty" analysis, whereby the focus is whether a person has been somehow penalized for the exercise of a constitutional freedom. However, as the Majority noted in *Maher v. Roe*, that analysis does not warrant relief in a situation such as here where a state merely seeks to encourage behavior by offering incentives, as distinct from where a state refuses to subsidize a person's exercise of a constitutional right.

. . .

Therefore, we hold that since the Commonwealth here has not otherwise penalized appellants for exercising their right to choose, but has merely decided not to fund that choice in favor of an alternative social policy, that the Commonwealth's actions are not

80. *Id.* at 1143 n.12 (citations omitted).

81. *Fischer v. Commonwealth*, Dep't of Pub. Welfare, 482 A.2d 1148 (Pa. Cmwlth. 1984), *aff'd*, 502 A.2d 114 (Pa. 1985).

82. *Id.* at 1151; *see also id.* at 1156 n.23 (noting that although the language of the Federal Equal Protection Clause and

Pennsylvania's Article III, Section 32 differ, the "substantive application is not significantly different insofar as traditional equal protection is concerned"). *See also* *Small v. Horn*, 722 A.2d 664, 772 n. 13 (Pa. 1998); *Commonwealth v. Albert*, 758 A.2d 1149, 1151-52 (Pa. 2000).

83. *Fischer v. Department of Pub. Welfare*, 502 A.2d 114 (Pa. 1985).

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offensive to the Constitutional guarantees protected under Article I § 26.⁸⁴

Thus, the Supreme Court of Pennsylvania became the first and, until 1992,⁸⁵ the only state supreme court to *follow* the United States Supreme Court's 1980 decision in *Harris v. McRae*.⁸⁶ In doing so it essentially considered Article I, Section 26 simply to be another version of existing equality provisions.

§ 31.7. THE 1971 PENNSYLVANIA STATE EQUAL RIGHTS AMENDMENT

Adopted in 1971, the Pennsylvania Equal Rights Amendment (ERA), Article I, Section 28 of the Pennsylvania Constitution provides: "Equality of rights under the law shall not be abridged in the Commonwealth of Pennsylvania because of the sex of the individual."⁸⁷ Even though it was stricken from an early draft of Article I, Section 26 by the legislature in 1965,⁸⁸ the specific focus on sex discrimination was made part of the state constitution only a few years later.

In 1984, Chief Justice Robert Nix noted that the Equal Rights Amendment is "a state constitutional amendment adopted by the Commonwealth

84. *Id.* at 123-24 (citations omitted). In a footnote, Justice McDermott stated: In *Harris v. McRae* . . . the Majority's comments on the breadth of the equal protection clause are analogous. "The guarantee of equal protection under the Fifth Amendment is not a source of substantive rights or liberties, but rather a right to be free from invidious discrimination in statutory classification and other government activity."

Id. at 123 n.15 (citations omitted) (quoting *Harris v. McRae*, 448 U.S. 297, 322 (1980)).

85. The Supreme Court of Michigan upheld a state ban on Medicaid funds for abortion. *Doe v. Department of Social Serv.*, 487 N.W.2d 166 (Mich. 1992). The *Doe* opinion provided a much more searching and independent analysis of Michigan's equality provisions than the Supreme Court of Pennsylvania provided

in *Fischer v. Department of Pub. Welfare*, 502 A.2d 114 (Pa. 1985). See generally Louis D. Bilionis, *Liberty, the "Law of the Land," and Abortion in North Carolina*, 71 N.C. L. REV. 1839 (1993) (contending that the Declaration of Rights of the North Carolina Constitution should provide the basis for a woman's right of choice); Kathryn Kolbert & David Gans, *Responding to Planned Parenthood v. Casey: Establishing Neutrality Principles in State Constitutional Law*, 66 TEMP. L. REV. 1151 (1993); Edward R. Alexander, Note, *The Right of Privacy and the New York State Constitution: An Analytical Framework*, 8 TOURO. L. REV. 725 (1992).

86. *Harris v. McRae*, 448 U.S. 297 (1980).

87. PA. CONST. art. I, § 28. See discussion of Article I, Section 28 earlier in this volume in Chapter 30.

88. See *supra* text accompanying notes 73-75.

EXHIBIT L

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 9

DANE COUNTY

LEAGUE OF WOMEN VOTERS
OF WISCONSIN EDUCATION
NETWORK, INC. and
MELANIE G. RAMEY.

Plaintiffs,

v.

Case No. 11 CV 4669

SCOTT WALKER,
THOMAS BARLAND,
GERALD C. NICHOL,
MICHAEL BRENNAN,
THOMAS CANE,
DAVID G. DEININGER, and
TIMOTHY VOCKE,

Defendants.

**DECISION AND ORDER GRANTING SUMMARY DECLARATORY JUDGMENT
AND PERMANENT INJUNCTION**

STATEMENT OF THE CASE

Article III, Section 1 of the Wisconsin Constitution specifies who may vote in Wisconsin:

Section 1. Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district.

Article III, Section 2, ¶ (4) of the Wisconsin Constitution authorizes the government to exclude from voting those otherwise-eligible electors (1) who have been convicted of a felony and whose civil rights have not been restored, or (2) those adjudged by a court to be incompetent or partially incompetent, unless the judgment contains certain specifications. In its entirety, Article III, Section 2 reads:

Section 2. Laws may be enacted:

- (1) Defining residency.
- (2) Providing for registration of electors.
- (3) Providing for absentee voting.
- (4) Excluding from the right of suffrage persons:
 - (a) Convicted of a felony, unless restored to civil rights.
 - (b) Adjudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside.
- (5) Subject to ratification by the people at a general election, extending the right of suffrage to additional classes.

2011 Wisconsin Act 23, effective June 10, 2011, now provides that qualified electors under the Wisconsin Constitution may not vote in an election unless they also satisfy the additional requirement that they display acceptable government-sanctioned photo identification either at the polls or to election officials by 4:00 p.m. on the Friday following the election. See §§ 6.79, *et seq.*, Stats.

Plaintiffs League of Women Voters of Wisconsin Education Network, Inc. ("League of Women Voters") and Melanie G. Ramey sue defendants Governor Scott Walker and individual members of the Government Accountability Board ("GAB")¹, in their official capacities, for a declaration under § 806.04, Stats., that those portions of 2011 Wisconsin Act 23 relating to photo ID requirements violate the Wisconsin Constitution, Article III, Sections 1 and 2. They also seek to enjoin the further implementation and enforcement of Act 23's photo ID provisions.

Before the court is plaintiffs' motion for summary judgment, which has been fully briefed and argued. The motion documents reveal no disputed issue of material fact requiring further evidentiary proceedings. They present a purely legal issue ripe for decision. Because plaintiffs are entitled to judgment as a matter of law, their motion is GRANTED as follows.

ANALYSIS AND DECISION

I.

Article III is unambiguous, and means exactly what it says. It creates both necessary and sufficient requirements for qualified voters. Every United States citizen 18 years of age or older who resides in an election district in Wisconsin is a qualified elector in that district, unless excluded by duly enacted laws barring certain convicted felons or adjudicated incompetents/partially incompetents.

¹ Thomas Barland, Gerald C. Nichol, Michael Brennan, Thomas Cane, David G. Deininger, and Timothy Vocke.

The government may not disqualify an elector who possesses those qualifications on the grounds that the voter does not satisfy additionally-created qualifications not contained in Article III, such as a photo ID. As our Supreme Court stated 132 years ago:

The elector possessing the qualifications prescribed by the constitution is invested with the constitutional right to vote at any election in this state. These qualifications are explicit, exclusive, and unqualified by any exceptions, provisos or conditions, and the constitution, either directly or by implication, confers no authority upon the legislature to change, impair, add to or abridge them in any respect. In the language of the chief justice, in *Page v. Allen*, 58 Pa. St. 346: "These are the constitutional qualifications necessary to be an elector. They are defined, fixed and enumerated in that instrument. In those who possess them is vested a high, and, to a freeman, sacred right, of which they cannot be divested by any but the power which establishes them, viz., the people, in their direct legislative capacity. This will not be disputed. For the orderly exercise of the right resulting from these qualifications it is admitted that the legislature must prescribe necessary regulations as to the places, mode and manner, and whatever else may be required to insure its full and free exercise. But this duty and right inherently imply that such regulations are to be subordinate to the enjoyment of the right, the exercise of which is regulated. The right must not be impaired by the regulation. It must be regulation purely, not destruction. If this were not an immutable principle, elements essential to the right itself might be invaded, frittered away, or entirely excised, under the name or pretence of regulation, and thus would the natural order of things be subverted by making the principle subordinate to the accessory. To state is to prove this position. As a corollary of this, no constitutional qualification of an elector can in the least be abridged, added to, or altered, by legislation or the pretence of legislation. Any such action would be necessarily absolutely void and of no effect."

...

No registry law can be sustained which prescribes qualifications of an elector *additional* to those named in the constitution, and a registry law can be sustained only, if at all, as providing a reasonable mode or method by which the constitutional qualifications of an elector may be ascertained and determined, or as regulating reasonably the exercise of the constitutional right to vote at an election. If the mode or method, or regulations, prescribed by law for such purpose, and to such end, deprive a fully qualified elector of his right to vote at an election, without his fault and against his will, and require of him what is impracticable or impossible, and make his right to vote depend upon a condition which he is unable to perform, they are as destructive of his constitutional right, and make the law itself as void, as if it directly and arbitrarily disfranchised him without any pretended cause or reason, or required of an elector qualifications additional to those named in the constitution. It would be attempting to do indirectly what no one would claim could be done directly.

Dells v. Kennedy, 49 Wis. 555, 6 N.W. 246, 246-247 (1880) (spelling in original).

II.

By enacting Act 23's photo ID requirements as a precondition to voting, the legislature and governor have exceeded their constitutional authority.

To be sure, the Wisconsin Constitution empowers the legislature and governor to enact laws regulating elections, both expressly and by implication. The *express authority* is found in Article III, Section 2 and is limited to (1) defining residency, (2) providing for registration of electors, (3) providing for absentee voting, (4) excluding from the right of suffrage certain convicted felons and adjudicated incompetents/partially incompetents, and (5) extending the right of suffrage to additional classes of persons, subject to ratification by the electorate at a general election.

Act 23's photo ID requirements do not fall within any of these five categories.

Accordingly, if it exists, the authority to enact photo ID requirements as a qualification² to vote must be found by *implication or inference* from the text of the Constitution, particularly Article IV, Section 1 relating to the plenary powers of the senate and assembly. See e.g. *State ex rel. LaFollette v. Kohler*, 200 Wis. 518, 228 N.W. 895, 905-906 (1930).³

Herein lies the fatal flaw in defendants' legislative-authority-trumps-constitutional-qualifications argument. The people's fundamental right of suffrage preceded and gave birth to our Constitution (the sole source of the legislature's so-called "plenary authority"), not the other way around. Until the people's vote approved the Constitution, the legislature had no authority to regulate anything, let alone elections. Thus, voting rights hold primacy over implicit legislative authority to regulate elections. In other words, defendants' argument that the fundamental right to vote must yield to legislative fiat turns our constitutional scheme of democratic government squarely on its head.

This is why, over the years, although recognizing that the legislature and governor are accorded implicit authority to enact laws regulating elections, our Supreme Court has repeatedly admonished that such laws cannot destroy or substantially impair a qualified elector's right to vote. On this point, for example, our Supreme Court has held:

The right of a qualified elector to cast a ballot for the election of a public officer, which shall be free and equal, is one of the most important of the rights guaranteed to him by the constitution. If citizens are deprived of

² Defendants unsuccessfully attempt to masquerade the photo ID mandate as merely an election regulation requirement, not a qualification for voting, which is a distinction without a difference. However one wishes to parse the English language, a qualified elector without a photo ID is disqualified from voting under Act 23,

³ Defendants conceded this point at oral argument.

that right, which lies at the very basis of our Democracy, we will soon cease to be a Democracy. For that reason no right is more jealously guarded and protected by the departments of government under our constitutions, federal and state, than is the right of suffrage. It is a right which was enjoyed by the people before the adoption of the constitution and is one of the inherent rights which can be surrendered only by the people and subjected to limitation only by the fundamental law. *State ex rel. McGrael v. Phelps*, 1910, 144 Wis. 1, 128 N.W. 1041, 35 L.R.A.,N.S., 353; *State ex rel. Barber v. Circuit Court*, 1922, 178 Wis. 468, 190 N.W. 563

While the right of the citizen to vote in elections for public officers is inherent, it is a right nevertheless subject to reasonable regulation by the legislature. *State ex rel. McGrael v. Phelps*, supra; *State ex rel. La Follette v. Kohler*, 1930, 200 Wis. 518, 228 N.W. 895, 69 A.L.R. 348, and cases cited.

It is true that the right of a qualified elector to cast his ballot for the person of his choice cannot be destroyed or substantially impaired. However, the legislature has the constitutional power to say how, when and where his ballot shall be cast for a justice of the supreme court.

Legislation regulating the exercise of the elective franchise is subject to at least five tests:

- (a) The express and implied inhibitions of class legislation;
- (b) The recognized existence and inviolability of inherent rights;
- (c) The constitutionally declared purposes of government;
- (d) The express guaranty of the right to vote, and
- (e) The regulation must be reasonable.

State ex rel. Frederick v. Zimmerman, 254 Wis. 600, 613-614 (1949).

However, Act 23 goes beyond mere regulation of elections. Its photo ID requirements impermissibly eliminate the right of suffrage altogether for certain constitutionally qualified electors. As just one example, an individual who has incontrovertible and even undisputed proof at the polls that he/she is a qualified elector under Article III, but lacks statutorily acceptable photo ID then or by the following Friday, may not vote under Act 23.

Thus, Act 23's photo ID requirements are unconstitutional because they abridge the right to vote. *State ex rel. McGrael v. Phelps*, 144 Wis. 1, 128 N.W. 1041, 1047 (1910). Regulation may not deny the right of suffrage, either directly or indirectly. *Barber v. Circuit Court for Marathon County*, 178 Wis. 468, 190 N.W. 562, 566 (1922). This has been the law of Wisconsin since its birth:

an act of the legislature which deprives a person of the right to vote, although he has every qualification which the constitution makes necessary, cannot be sustained.

State ex rel. Knowlton v. Williams, 5 Wis. 308, 316 (1856). See also *State ex rel Wood v. Baker*, 38 Wis. 71, 86 *et seq.* (1875).

Worded differently, as a matter of law under the Wisconsin Constitution, sacrificing a qualified elector's right to vote is not a reasonable exercise of the government's prerogative to regulate elections. See, e.g. *Dells v. Kennedy* and *State ex rel. McGrauel v. Phelps*, *supra*.

Finally, on this point, we cannot ignore the proper role of the courts in constitutional litigation. Because the Wisconsin Constitution is the people's bulwark against government overreach⁴, courts must reject every opportunity to contort its language into implicitly providing what it explicitly does not: license to enact laws that, for any citizen, cancel or substantially burden a constitutionally-guaranteed sacred right⁵, such as the right to vote.⁶ Otherwise we stray into judicial activism at its most insidious. Our Constitution is a line in the sand drawn by the sovereign authority in this state – the people of Wisconsin⁷ – that the legislature, governor, and the courts may not cross, particularly under the all-too-convenient guise of strained construction and attenuated inference.

III.

Affidavits have been submitted by *amici curiae* Wisconsin Democracy Campaign and Dane County demonstrating the very real disenfranchising effects of Act 23's photo ID requirements. They show that many constitutionally qualified electors from all walks of life will be blocked from voting at the polls by Act 23, involuntarily and occasionally through no fault of their own. Governor Walker and the GAB correctly observe that this court may not rely on this evidence in deciding plaintiffs' purely facial challenge to Act 23's constitutionality. Indeed, it is not necessary to consider the human cost of photo ID requirements in order to expose their constitutional deficiencies. As seen above, they are unconstitutional on their face.

Still, there is no harm in pausing to reflect on the insurmountable burdens facing many of our fellow constitutionally qualified electors should Act 23 hold sway. These disenfranchised citizens would certainly include some of our friends,

⁴ "As often said and always conceded, our state Constitution is not so much a grant as a limitation of powers...". *State ex rel. Binner v. Buer*, 174 Wis. 120, 182 N.W. 855, 857 (1921).

⁵ "The constitutional right of an elector to have any reasonable expression of his intention in voting given effect is of the most sacred character...". *State v. Anderson*, 191 Wis. 538 (1928).

⁶ Tellingly, in contrast to the very limited, specific authority to deny the right of suffrage to only two classes of individuals otherwise qualified to vote under Article III (certain convicted felons and adjudicated incompetents/partial incompetents), Section 2 provides the government with virtually unlimited authority to extend the right of suffrage to additional classes of people, provided that the people of this state agree at a general election. Far-fetched is the notion that, in adopting Section 2, the people of this state chose to retain strict oversight over the expansion of the voter rolls, but simultaneously chose to grant the state silent, implicit authority to disenfranchise qualified electors without any direct oversight.

⁷ *State ex rel. LaFollette v. Kohler*, 200 Wis. 518, 228 N.W. 895, 905 (1930) ("In theory, the sovereign political power of the state rests in the people...").

neighbors and relatives. Mostly they would consist of those struggling souls who, unlike the vast majority of Wisconsin voters, for whatever reason will lack the financial, physical, mental, or emotional resources to comply with Act 23, but are otherwise constitutionally entitled to vote. Where does the Wisconsin Constitution say that the government we, the people,⁸ created can simply cast aside the inherent suffrage rights of any qualified elector on the wish and promise – even the guarantee – that doing so serves to prevent some unqualified individuals from voting?⁹

It doesn't. In fact, it unequivocally says the opposite. The right to vote belongs to all Wisconsin citizens who are qualified electors, not just the fortunate majority for whom Act 23 poses little obstacle at the polls.

Accordingly, while the legislature and governor are constitutionally accorded broad authority to police fraud in elections, including through criminal and civil penalties, their power, like all police power, ends at the precise point where it transgresses the fundamental voting rights of Wisconsin citizens:

It has become elementary that constitutional inhibitions of legislative interference with a right, including the right to vote and rights incidental thereto, leaves, yet, a field of legislative activity in respect thereto circumscribed by the police power. That activity appertains to conservation, prevention of abuse and promotion of efficiency. Therefore, as in all other fields of police regulation, it does not extend beyond what is reasonable. Regulation which impairs or destroys rather than preserves and promotes, is within condemnation of constitutional guarantees. So it follows that, if the law in question trespasses upon the forbidden field, it is only law in form.

State ex rel. McGrauel v. Phelps, 144 Wis. 1, 128 N.W. 1041, 1047 (1910).

CONCLUSION AND ORDER

Without question, where it exists, voter fraud corrupts elections and undermines our form of government. The legislature and governor may certainly take aggressive action to prevent its occurrence. But voter fraud is no more poisonous to our democracy than voter suppression. Indeed, they are two heads on the same monster.

A government that undermines the very foundation of its existence – the people's inherent, pre-constitutional right to vote – imperils its legitimacy as a government by the people, for the people, and especially of the people. It sows the seeds for its own demise as a democratic institution. See *State ex rel.*

⁸ Wisconsin Constitution, Preamble.

⁹ Whether photo ID at the polls is a good idea or bad, effective as a means of stifling voter fraud or not, is beside the point of this decision and order. The sole issue before the court is the constitutionality of Act 23's photo ID requirements. Questions regarding the merits of photo ID as a pre-requisite to voting are appropriately addressed only to the electorate in the form of a constitutional amendment.

Frederick v. Zimmerman, supra. This is precisely what 2011 Wisconsin Act 23 does with its photo ID mandates.

Judgment is rendered declaring 2011 Wisconsin Act 23's photo ID requirements unconstitutional to the extent they serve as a condition for voting at the polls. Moreover, defendants are permanently enjoined forthwith from any further implementation or enforcement of those provisions.

To be clear, this court does not hold that photo ID requirements under all circumstances and in all forms are unconstitutional *per se*. Rather, the holding is simply that the disqualification of qualified electors from casting votes in any election where they do not timely produce photo ID's satisfying Act 23's requirements violates Article III, Sections 1 and 2 the Wisconsin Constitution.

This order is FINAL for purposes of appeal.

Dated this ____ day of _____, 2012.

BY THE COURT:

Richard G. Niess
Circuit Judge

CC: Attorneys Susan M. Crawford/Lester A. Pines/Tamara B. Packard
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