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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Viviette Applewhite; Wilola Shinholster Lee; Grover
Freeland; Gloria Cuttino; Nadine Marsh; Dorothy
Barksdale; Bea Bookler; Joyce Block; Henrietta Kay
Dickerson; Devra Mirel (“Asher”) Schor; 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.

Docket No. _____

PETITION FOR REVIEW
ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

I. SUMMARY OF THE LAWSUIT

1. This lawsuit seeks to protect the fundamental right to vote guaranteed by the Pennsylvania Constitution. Under Act 18 (“the Photo ID Law”), signed into law on March 14, 2012 by Respondent Governor Thomas Corbett, large numbers of registered voters in

Pennsylvania will not have their votes counted on November 6, 2012 because they will be unable to present acceptable photo identification (“ID”) as required by the Photo ID Law. The Commonwealth estimates that 80,000-90,000 Pennsylvanians will need to obtain a new photo ID to vote on November 6, 2012. Other estimates suggest the number may be far greater. Many otherwise qualified voters will face great difficulty or be unable to obtain the necessary ID and will therefore be disenfranchised in the upcoming general election and future elections. As a result, far from protecting the integrity of Pennsylvania elections, the Photo ID Law will lead to elections that are no longer free and equal.

2. In contrast to the phantom claims of in-person voter fraud raised by the Commonwealth to justify the Photo ID Law — proponents of the law have failed to produce evidence of a single instance of in-person voter fraud in Pennsylvania — Petitioners include real-life examples of long-time voters who will be disenfranchised by the Photo ID Law: people like Viviette Applewhite, who marched for civil rights with Dr. Martin Luther King, Jr., and who has tried unsuccessfully for many years to obtain a photo ID; people like Wilola Shinholster Lee, Gloria Cuttino and Dorothy Barkdale, African-American women born in the Jim Crow South who do not have acceptable photo ID and who have been advised by their respective birth states that there is no record of their birth; people like Grover Freeland, who was drafted and served in the Army but who has had his request for a birth certificate denied by the state of New York and whose Veteran ID card is not acceptable for voting under the Photo ID Law; and people like Nadine Marsh, who has never driven a car and has been told by the Commonwealth of Pennsylvania that it does not have a record of her birth that she needs in order to obtain a Photo ID to vote.

3. For other Petitioners, the Photo ID Law erects such a burden that they are likely to lose their votes. People like Joyce Block, who has voted in nearly every election for 70 years but to whom the Pennsylvania Department of Transportation (“PennDOT”) refused to issue a photo ID because the only documentation of the change from her birth name to the married name on her voter registration is a marriage certificate in Hebrew, which they could not decipher; people like Bea Bookler, who also has voted regularly for nearly 70 years and who still takes great pride in using her walker to vote at the polling station next door but who is too frail to journey to the PennDOT Drivers’ License Center to obtain valid photo ID; and people like “Asher” Schor, a transgender (trans-masculine) man who is likely to be disenfranchised because he now both looks and presents like a man but has photo ID that depicts him as a woman.

4. Finally, the Commonwealth’s claim that photo IDs can be obtained for free — assuming a voter has the requisite paperwork — is a hollow promise for many voters. The Commonwealth has steadfastly refused to waive the \$10 fee for a birth certificate, an essential document for getting a valid voter ID for people who have never had a driver’s license. For people who are homeless or on a fixed income, even \$10 is an insurmountable barrier. For people like Petitioner Henrietta Kay Dickerson, who was refused a free voter photo ID and forced to pay the \$13.50 fee based on one of several oft-heard excuses from PennDOT about why a free ID is unavailable, the Photo ID Law is tantamount to a poll tax.

5. Beyond this already-certain impact on Petitioners, the true extent of the disenfranchisement wrought by the Photo ID Law will not become evident until election day. Voters will turn out to vote on election day either not knowing about the ID requirement or wrongly believing that the photo ID they do have will entitle them to vote. For instance, it has been publicized widely that photo IDs issued by accredited Pennsylvania colleges and

universities and IDs issued by the U.S. government or the Armed Services satisfy the Photo ID Law's requirements. In truth, however, the Law's fine print requires that these IDs have an expiration date, which means that most Pennsylvania college and university student IDs and all Veterans' benefits cards will not be accepted because they lack an expiration date. The uninformed or misguided voter who tries to vote on election day with one of these unacceptable forms of ID will almost certainly be denied the right of franchise because it will be virtually impossible for that person to get a valid ID within the six days allotted by the Law, two of which are a weekend on which government offices are closed. Furthermore, the additional time it will take poll officials to check ID and affirm that they have done so will add immeasurably to the long lines that plagued urban and suburban-area polling places in 2008. Confusion by poorly trained poll officials over what constitutes adequate ID and how to handle particular name and photo discrepancies will only compound the likelihood of voter disenfranchisement. Consequently, beyond the clear and irreparable harm visited on Petitioners by the Photo ID Law, the likelihood of much more widespread disenfranchisement is palpable if the Law is allowed to remain in effect for the November election.

6. The individual Petitioners, along with organizational Petitioners the League of Women Voters of Pennsylvania, NAACP Pennsylvania State Conference, and Homeless Advocacy Project, will demonstrate that the harm inflicted by the Photo ID Law is real and severe. For each of the individual Petitioners who would be disenfranchised by the Photo ID Law, there are countless other Pennsylvanians like them, who will lose the most cherished of all rights, the right to vote, unless the Photo ID Law is declared unconstitutional. Because of the difficulties in trying to obtain the necessary paperwork, the Photo ID Law especially burdens many persons who already face heavy obstacles in getting to the polls, such as the elderly, the

disabled, and indigent voters. The Photo ID Law also disproportionately burdens other persons, such as veterans and students whose regular ID cards are often not acceptable under the law, as well as persons who lack readily available forms of ID necessary to obtain acceptable photo ID, including disproportionately women and racial minorities.

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

8. The integrity of every election going forward will be called into question by the disenfranchisement of so many otherwise qualified voters. Among other things, elections will no longer be “free and equal” as required by Article I, Section 5 of the Pennsylvania Constitution because the photo identification requirement will “deny the franchise itself, or make it so difficult as to amount to a denial.” *Winston v. Moore*, 244 Pa. 447, 457, 91 A. 520, 523 (Pa. 1914). The requirement is particularly invidious because “the inconveniences” do not “bear upon all in the same way under similar circumstances.” *Id.* The Photo ID Law also violates Article VII, Section 1 of the Pennsylvania Constitution because it impermissibly adds a new voter eligibility requirement to the enumerated qualifications. The Commonwealth has identified no compelling, rational, or otherwise legitimate state interest served by the new requirement. Petitioners move this Court for an Order declaring the Photo ID Law unconstitutional on its face

and as applied to them. Petitioners also seek a preliminary and permanent injunction restraining enforcement of the Photo ID Law.

II. PARTIES

Viviette Applewhite

9. Petitioner Viviette Applewhite, a registered voter in Pennsylvania, is a 92-year-old African-American woman born in 1919 in Philadelphia. A graduate of Germantown High School, Ms. Applewhite worked as a welder during World War II in the Sun Shipyard in Chester, Pennsylvania. She thereafter worked in hotels in Chicago and Philadelphia. Ms. Applewhite married and raised a daughter who for decades worked for various federal, Pennsylvania, and municipal government agencies. Now a widow, Ms. Applewhite has lived in Philadelphia for much of her life, including the past twenty years, and enjoys five grandchildren, nine great grandchildren, and four great-great grandchildren.

10. Voting is extremely important to Ms. Applewhite, and she has voted in nearly every election since at least 1960. Ms. Applewhite marched to support civil rights for African-Americans with Dr. Martin Luther King, Jr. in Macon, Georgia, and traveled on several occasions to hear him preach in Atlanta's Ebenezer Baptist Church.

11. Ms. Applewhite has never driven a car and thus has never had a driver's license. Many years ago her purse, in which she carried her important documents, was stolen. She has attempted on at least three occasions to order a birth certificate from Pennsylvania's Division of Vital Records. Despite paying the fee to obtain a birth certificate, she has never received one. She recently engaged a lawyer, who is trying yet again to obtain her birth certificate from the Commonwealth of Pennsylvania.

12. Since Ms. Applewhite does not have and has been unable to obtain photo identification required by Pennsylvania's Photo ID Law, after voting in nearly every election for more than 50 years, she will no longer be able to vote beginning in November.

Wilola Shinholster Lee

13. Petitioner Wilola Shinholster Lee, a registered voter in Pennsylvania, is a 59-year-old African-American woman who was born in rural Wilkerson County, Georgia, in 1952. She was raised by her grandmother, who moved her to Philadelphia in 1957, where she has lived ever since. Ms. Lee finished the eleventh grade, married, and raised two children, one of whom is a former school principal and now works for the Pennsylvania state government. Ms. Lee worked for the Philadelphia Public Schools for many years, including work with special needs children. Her husband passed away six years ago.

14. Voting is very important to Ms. Lee, who has for decades voted regularly. She even worked as a poll official in the City of Philadelphia for several years.

15. Ms. Lee has over the years had a Philadelphia School District employee photo ID, Social Security card and voter registration card, but never an ID that is deemed acceptable under the Photo ID Law. She has been trying for nearly ten years to get a birth certificate that she will need to get a Photo ID to vote, but the State of Georgia has told her it has no record of her birth.

16. Ms. Lee does not have and has been unable to obtain photo identification required by Pennsylvania's Photo ID Law, and thus after voting in nearly every election for more than 30 years, she will be unable to do so in November.

Grover Freeland

17. Petitioner Grover Freeland, a registered voter in Pennsylvania, is a 72-year-old African-American man born in Buffalo, NY. Mr. Freeland is a U.S. Army Veteran who was drafted in 1964 and served two years stateside before being honorably discharged. He thereafter graduated with a Bachelor of Arts and a Masters degree from Philadelphia's University of the Arts. Mr. Freeland worked many jobs over the years, including in his own photography businesses and in the Philadelphia School District for ten years as an art teacher, until 2004, when he retired. He is formerly married and has five children.

18. Voting is important to Mr. Freeland. He believes that if a person is good enough to put his life on the line in the Army then he should be able to vote.

19. Mr. Freeland has not had a drivers' license since the 1980's. His only photo ID card is what is known as a "veterans card," which is issued by the U.S. Department of Veterans Affairs. While it contains encoded information on sensitive matters, like his medical records, Pennsylvania's Photo ID Law does not recognize the card. Mr. Freeland has tried unsuccessfully to retrieve his birth certificate, which he will need to get a Photo ID acceptable to vote, from the State of New York.

20. Consequently, come November this veteran of the U.S. Armed Services will be unable to show the requisite identification and will not be able to vote.

Gloria Cuttino

21. Petitioner Gloria Cuttino, a registered voter in Pennsylvania, is a 61-year-old African-American woman who was born in Summerville, South Carolina, in 1951. She moved

to Philadelphia at a young age. Ms. Cuttino's mother died when Ms. Cuttino was sixteen, leaving her alone to care for her three younger brothers and sisters. Forced by these circumstances to drop out of school, the teenage Ms. Cuttino rented a small efficiency apartment and began working at a commercial laundry to support the family. Thereafter she worked in the nursing and mental-health fields. Ms. Cuttino raised four children, one of whom is a Philadelphia police officer, and now has ten grandchildren. Suffering from arthritis, Ms. Cuttino is now on disability.

22. Civic engagement generally, and voting specifically, are important to Ms. Cuttino. She has over the years worked on behalf of local candidates for elected office. Ms. Cuttino very much wants to vote in this November's Presidential election.

23. Ms. Cuttino has never had a driver's license and has no other photo identification considered acceptable under Pennsylvania's Photo ID Law. She has been trying for over one year to get her birth certificate from South Carolina, which has told her it has no record of her birth. She has recently worked with a pro bono lawyer, who has determined that the only way to now get a "delayed" birth certificate is to seek census and other records, which will cost approximately \$100 and require a petition to the Court of Common Pleas of Philadelphia County.

24. Unless enforcement of the Photo ID Law is enjoined, Ms. Cuttino will not be able to cast a regular ballot for President of the United States, or any other candidate for office, on November 6, 2012.

Nadine Marsh

25. Petitioner Nadine Marsh, a registered voter in Pennsylvania, is an 84-year-old Caucasian woman who was born in suburban Pittsburgh in 1928. She was the second oldest of ten children and her father worked for Bethlehem Steel. She graduated from Moon High School in 1946. The following year she married her high school sweetheart and then devoted herself to raising three children.

26. Ms. Marsh never drove a car and thus has never had a driver's license. She and other family members have over the years tried to get her birth certificate that she will need to get a Photo ID, from the Commonwealth of Pennsylvania. They have gone in person to the Pittsburgh office of the Division of Vital Records, where they have obtained other family members' birth certificates, but have been told that a birth certificate does not exist for Ms. Marsh.

27. Ms. Marsh is a registered voter who wants to vote in the November 2012 election. Unfortunately, without an identification considered acceptable under Pennsylvania's Photo ID Law, or the ability to obtain one, Ms. Marsh will be prevented from voting in November.

Dorothy Barksdale

28. Petitioner Dorothy Barksdale, a registered voter in Pennsylvania, is an 86-year-old African-American woman delivered at home by a midwife in rural Halifax County, Virginia in 1926. She came to Pennsylvania as a teenager, first to Harrisburg and then to Philadelphia, where she still lives. She cleaned homes for many years to help raise two children, both of whom are now deceased.

29. Voting is very important to Ms. Barksdale. After Congress passed the Voting Rights Act of 1965, Ms. Barksdale worked as a poll official in Philadelphia. She has not missed voting in a single election since at least 2001.

30. But Ms. Barksdale has no photo ID acceptable under the Photo ID Law. She has never driven and thus has not needed a driver's license. She and her niece have tried for three years to obtain a birth certificate that she will need to get a Photo ID from the State of Virginia, which now has advised them that it has no birth record.

31. After living through an era that won her, as an African-American, the right to vote, she has now witnessed that right taken back away by Pennsylvania's Photo ID Law. Unless the Photo ID Law is declared unconstitutional and enforcement is enjoined, this November, the Photo ID Law will break Ms. Barksdale's unblemished record of voting in elections.

Bea Bookler

32. Petitioner Bea Bookler, a registered voter in Pennsylvania, is a 93-year-old Caucasian woman born in Philadelphia in 1918. Graduating from Philadelphia's Overbrook High School at the height of the Depression, Mrs. Bookler was forced to get a job to earn money and could not go to college. She worked as a secretary until she married a World War II veteran in 1945. She raised two children and now also has two grandchildren. She and her husband made politics a topic of daily discussion in their home and instilled in their children the belief that voting is both a right and an obligation of all Americans. Mrs. Bookler was widowed in 2006 and now lives in an assisted-living facility in Devon, Chester County.

33. Mrs. Bookler has voted in almost every election since casting her first ballot for Franklin Roosevelt in 1940. She has now grown frail with age. Going to the polls to vote twice a year is extremely difficult for Mrs. Bookler, but it is so important to her that these are two of only a handful of excursions away from her assisted-living facility that she has mustered the energy to take in recent years.

34. Mrs. Bookler does not presently have a photo ID acceptable under Pennsylvania's Photo ID Law. Both her passport and driver's license have expired. In order to get that ID, she would first have to obtain a certified copy of her birth certificate and then would have to go to the nearest PennDOT Driver's License Center about ten miles from her home. Doing so would require her to arrange transportation and would be an enormous physical hardship.

35. With help, Mrs. Bookler is hardy enough to use her walker to go next door to her polling place, and doing so is one of the remaining joys of her life. Unfortunately, because she neither has nor can obtain an ID acceptable under Pennsylvania's Photo ID Law, she will not be able to vote in November, an election she believes may be her last.

Joyce Block

36. Petitioner Joyce Block is an 89-year-old Caucasian woman born in Brooklyn, NY, in 1922. She became a professional chorus girl at age sixteen, and played, among many other roles, in the original Broadway cast of Rogers and Hammerstein's *Oklahoma!* At age twenty-one she married Carl Block, a lifelong musician who played in "Big Bands," and together they opened and ran several candy and ice-cream stores and raised six children while living in New York, New Jersey and, since 1973, in Bucks County, Pennsylvania. Now a widow, Ms. Block's six children have given her 14 grandchildren and 11 great grandchildren.

37. Ms. Block has voted in nearly every election since 1944, and has not missed a vote in at least the past ten years. She instilled a civic-mindedness in her children, all of whom are politically active, and voting is extremely important to the entire family.

38. Ms. Block has never driven or had a PennDOT-issued identification. After Respondent Corbett signed the Photo ID Law in March, Ms. Block and several family members went to the Bucks County Commissioners' meeting to complain and raise concerns that Ms. Block did not have valid photo ID. The chairman of the Bucks County Commissioners, Charles Martin, told Ms. Block she should just vote by absentee ballot because then she would not need a photo ID. Because Ms. Block is able to vote in person and does not otherwise qualify for an absentee ballot under Pennsylvania law, she is not legally eligible to cast an absentee ballot.

39. Since then, Ms. Block has encountered difficulties obtaining a free PennDOT voter ID. When Ms. Block's daughter recently drove her to the nearest PennDOT Driver's License Center that issues Photo ID, about a twenty-five minute drive, PennDOT officials advised her that she could not get a photo ID card because her birth certificate and social security card were in her maiden name while her voter registration was in her married name, and the mismatch precluded issuance of an ID. Ms. Block's only documentation of marriage, which she brought with her, is a marriage certificate written in Hebrew. The DMV clerks could not understand the certificate and refused to accept it as proof of her name change. Ms. Block and her family were despondent, believing that after voting for nearly seventy years, she would no longer be able to vote.

40. Unlike many other Pennsylvania voters who do not have and cannot obtain voter ID, Ms. Block is fortunate to have strong family and community support. She and her family

members know most of their elected officials personally. Her grandson happens to have office space adjacent to their local state Senator, who voted for the Photo ID Law. After PennDOT refused to issue Ms. Block a photo ID because she did not have the requisite documents to reconcile the disparity between her birth certificate and her voter-registration card, which is in her married name, the Block's implored her Senator for assistance. The Senator expressed a heartfelt apology for the difficulty and promised to correct the problem. A week later the Senator's staff advised Ms. Block that the problem should be taken care of and that they should simply advise the Senator when they will be returning to get the ID so that the Senator can contact the supervisor in the Licensing Office to assist Ms. Block in processing her application. Last week, after giving the Senator notice of their intent to return, the Blocks again made the twenty-five-minute drive to the Licensing Center. The DMV clerk handling the ID request initially refused to issue the ID because the names did not match. The supervisor, who had just been contacted by the Senator's staff, instructed the clerk to disregard the problem and issue the ID. Despite still not having the documents necessary to prove that she is the same person identified in her birth certificate, Joyce Block was given a temporary Voter ID. Petitioner Block is left to worry that her temporary Voter ID will eventually be challenged and that her vote will not be counted.

41. Other Petitioners, without a valid ID who have been unable to obtain one because they do not have the required documents, have neither the financial wherewithal nor the connections to overcome the Photo ID Law's documentation requirements and will not be able to vote in November.

Henrietta Kay Dickerson

42. Petitioner Henrietta Kay Dickerson, a registered voter in Pennsylvania, is a 75-year-old African-American woman born in Chatham, Louisiana, in 1936. Her mother brought her to Pittsburgh when she was an infant. Ms. Dickerson has been a lifelong resident of the city's Hill District. She has a son and two grandsons. Ms. Dickerson worked for more than forty years as a nurse at Pittsburgh's Magee Women's Hospital. She was forced to retire several years ago after sustaining a knee injury and is now on a fixed income.

43. Ms. Dickerson has been voting her entire adult life, missing elections only when she has been very sick. She has not missed voting in an election for more than a decade.

44. Ms. Dickerson does not drive and has never had a Pennsylvania driver's license. She did have a PennDOT-issued non-driver photo ID, but it expired on May 31, 2011. Not needing the ID for any other reason, she did not renew it.

45. After hearing about the new Photo ID Law, Ms. Dickerson realized she would need to renew her PennDOT ID. She spent several hours gathering necessary documents for a trip to a PennDOT Driver's License Center in downtown Pittsburgh on April 18, 2012. Despite the respondents' promise that under the Photo ID Law people could get photo ID cards *free* for voting purposes, the personnel at the DMV refused to give Ms. Dickerson a free card, insisting that she pay \$13.50, which she did. They told her that she could not get a free ID because her old one had not been expired for more than a year, even though it would not be valid on election day in November. Since Ms. Dickerson does not need the ID for any reason but to vote, the fee is tantamount to a poll tax.

Devra Mirel (“Asher”) Schor

46. Petitioner Devra Mirel (“Asher”) Schor, a registered voter in Pennsylvania, is a transgender man (trans-masculine or female to male) who was born and bred in Pittsburgh, Pennsylvania. He received a Bachelor of Arts degree in 2011 from Sarah Lawrence College in New York. He works as a paralegal for a public interest law firm that provides civil rights assistance to Pennsylvania prisoners. Assigned a female sex at birth, Mr. Schor began medical transition with a bi-lateral mastectomy in December 2010. He has been undergoing hormone therapy (testosterone) since October 2011. He does not currently plan to have more surgery, but the hormone therapy will continue indefinitely. Mr. Schor expects to formally change his name and gender identity after the transitioning process is further along, which will not be before the November election.

47. Mr. Schor has two forms of photo ID acceptable under the new Photo ID Law – a current U.S. passport and a Pennsylvania driver’s license – but in both he looks like a woman and is identified as “female.” He now looks and presents like a man. He already has significant facial hair, having grown sideburns, and with the ongoing hormonal therapy will, by election day in November, have even more facial and body hair, his voice will deepen significantly, and his body weight will continue to re-distribute. His license and passport not only have a photo of someone who looks significantly different, but these documents indicate that this person, who now looks like a man, is a woman and thus the legitimacy of his identification is likely to be challenged. Given the stark and obvious difference in appearance and gender designation between Mr. Schor’s identification documents and his current appearance, Mr. Schor has a very real and legitimate concern that poll workers will refuse to allow him to vote on election day in

November when the person in his ID photos looks so different from the person who comes to vote.

League of Women Voters

48. The League of Women Voters of Pennsylvania (“LWV”), a nonpartisan political organization, encourages the informed and active participation of citizens in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The League supports full voting rights for all eligible Commonwealth citizens and opposes efforts to build barriers to exercise this right, including the newly enacted Photo ID law. Enactment of the Photo ID Law has created an additional burden that has forced the League and its 36 local Leagues across Pennsylvania to re-allocate limited funds and volunteer resources to defend the fundamental right to vote.

National Association for the Advancement of Colored People

49. The National Association for the Advancement of Colored People (“NAACP”), founded in 1909, is the country’s longest-standing national civil rights organization. The Pennsylvania State Conference was founded in 1934 and supports the goals and objectives of the national office. The NAACP works to improve the political, educational, social and economic rights of all persons, to raise awareness of the adverse effects of racial discrimination, and to take lawful actions to eliminate such discrimination. The NAACP and its branches have litigated hundreds of voting rights cases to guarantee full voting rights for African-American citizens and to outlaw electoral devices which unduly burden, deny, dilute or suppress the right to vote.

50. Through its support of the local branches, the Pennsylvania State Conference works to protect voting rights and improve voter registration across the Commonwealth. The Conference has been involved in voting rights litigation in the Commonwealth and has sought to prevent efforts to suppress or disenfranchise African-American voters. It also engages in voter registration and voter turnout activities in the African-American community.

51. Because of the Photo ID Law, the NAACP has helped pay costs incurred by some senior citizens who need to obtain out-of-state birth certificates and arranged educational forums for its members. For example, NAACP staff have traveled around the state to at least a dozen localities to apprise church, community and other NAACP groups about the law, and the NAACP has already spent significant money to publicize the law statewide. As such, the Law will injure both the NAACP's members, who will face unreasonable burdens on their right of suffrage, and the NAACP itself, which will have to divert substantial resources away from traditional voter registration and get out the vote efforts in order to educate and assist voters in obtaining photo ID that is compliant with the Law.

Homeless Advocacy Project

52. The Homeless Advocacy Project ("HAP") is a Pennsylvania not-for-profit organization in good standing, which may sue or be sued in its own name. HAP is a legal services organization that exists to meet the legal and advocacy needs of homeless individuals and families in Philadelphia. HAP employs a staff of attorneys, paralegals and other professionals and relies on volunteer attorneys to meet its mission. Over the course of its 22-year history, HAP's staff and volunteers have served more than 27,000 homeless individuals and families.

53. HAP engages in direct outreach to homeless individuals in need of legal services. As part of its mission, HAP conducts legal clinics to assist homeless individuals in obtaining birth certificates and subsequently, photo ID. The individuals served by HAP do not usually have photo ID and thus are unable to request a birth certificate on their own. HAP provides legal representation for the purpose of requesting birth certificates. The process is time-consuming, requires the payment of fees and sometimes individuals need to retain out-of-state attorneys to file suit to have a birth certificate issued.

54. HAP devotes significant resources in assisting its homeless clients with the process of obtaining birth certificates, a necessary prerequisite to obtaining photo ID. These include holding birth certificate clinics, requesting the certificates on behalf of clients who are ineligible to request them because they lack photo ID, and arranging for the payment of fees, postage and return postage. At the most recent clinic HAP held for assisting people to acquire birth certificates, an unprecedented number of people, approximately 200, showed up seeking birth certificates. As a result of the passage of the Photo ID Law, HAP has increased the number and frequency of its clinics, scheduling one for June and one for September 2012. The September clinic is timed specifically to assist homeless individuals with voting. Upon information and belief, passage of the Photo ID Law will significantly increase demand for HAP's birth certificate services.

55. Each of the individual Petitioners is a United States citizen, a Pennsylvania resident, and over age eighteen, and thus duly qualified under current law to vote in local, state, and national elections in Pennsylvania. All are registered voters, and all desire to vote in future elections, including the upcoming November 2012 election.

56. Each of the organizational Petitioners is a non-profit, tax-exempt organization registered with the Commonwealth of Pennsylvania and in good standing, each has members or clients that are adversely affected by the Photo ID Law, or each will be required to divert resources from its mission to respond to the Photo ID Law. Each organizational Petitioner, as part of its core mission, defends the right to vote and encourages its exercise. LWV was born out of the women's suffrage movement in the 1920s and is dedicated to protecting the right to vote for all Americans. One of the NAACP's focuses is on protecting the hard-earned right to vote of African-Americans. HAP focuses on the rights of the homeless and provides services to the homeless.

57. Petitioners collectively have standing to challenge the constitutionality of the referenced provisions of Photo ID Law because they will suffer irreparable injury-in-fact if the provisions are not enjoined.

58. Petitioners collectively are entitled to bring this action for declaratory judgment because there is a justiciable controversy that is concrete and ripe for judicial resolution, and no adequate remedy at law exists.

59. Respondent Commonwealth of Pennsylvania has its capital located in Harrisburg, Pennsylvania.

60. Respondent Thomas Corbett is Governor of the Commonwealth and is sued in his official capacity only. As Governor, Respondent Corbett is the chief executive officer of the Commonwealth who signed the Photo ID Law into law, and who, pursuant to Article IV Section 2 of the Pennsylvania Constitution, is responsible for the faithful execution of the Photo ID Law.

61. Respondent Carol Aichele is the Secretary of the Commonwealth and is sued in her official capacity only. In that capacity, she is charged with the general supervision and administration of Pennsylvania's election laws, including the implementation of the Photo ID Law.

III. JURISDICTION

62. The Court has original jurisdiction over this Verified Petition for Review pursuant to 42 Pa.C.S. §§ 761(a) and 764(2).

IV. THE PHOTO ID LAW WILL EFFECTIVELY DENY THE FRANCHISE TO MANY OTHERWISE QUALIFIED PENNSYLVANIA VOTERS

63. Beginning with the November 2012 general election, the Photo ID Law obstructs, interferes with, and burdens the fundamental right to vote. The prohibition on casting a regular ballot without producing an acceptable photo ID will make it so difficult for many registered voters to vote as to amount to an unconstitutional denial of the franchise.

A. Photo ID Law Requirements

64. The Photo ID Law requires that in order to cast a regular ballot at a polling place, virtually all voters must present one of a limited number and specific forms of photo ID. This works a substantial change in the law.

65. Before the Photo ID Law, the Election Code contained a simple, yet effective means for poll workers to ascertain that the person appearing to vote was, in fact, the registered voter: voters were required to sign in and the poll workers compared the signature to the

signature in the district register that the county voter registration office had on file when the voter registered.

66. Before the Photo ID Law, first-time voters who registered by mail had to establish their identity by presenting either a photo ID or a non-photo ID. Acceptable photo IDs included: a Pennsylvania driver's license, PennDOT photo ID card, ID card issued by any Commonwealth agency, ID card issued by the U.S. Government, U.S. passport, U.S. Armed Forces ID card, student ID card, or employee ID card. *See* former Section 1210(a.1) of the Pennsylvania Election Code. Those first-time voters without one of the above forms of Photo ID could prove their identity by presenting a non-photo ID showing name and address, such as: an ID issued by the County Voter Registration Office or the U.S. Government, a firearm permit, current utility bill, current bank statement, current paycheck, or government check. *See id.* First-time voters were also required to sign the district register so that their signature could be compared with the signature that the county voter registration office had on file when the voter registered.

67. These time-tested safeguards and procedures have proven sufficient to protect the integrity of elections while assuring that qualified voters were able to vote and have their votes properly counted.

68. The Commonwealth has identified no instances of in-person voter fraud occurring under the law as it stood before the Photo ID Law. Upon information and belief, in-person voter fraud was not a cognizable problem before the Photo ID Law, it did not occur, and the Commonwealth's legislators were aware of no such in-person voter fraud.

69. With the passage of the Photo ID Law, voters in Pennsylvania will for the first time be required, every time they vote, to produce a current photo ID issued by only one of the

following: (1) the U.S. Government, (2) the Commonwealth of Pennsylvania, (3) a municipality of Pennsylvania to an employee of that municipality, (3) an accredited Pennsylvania public or private institution of higher learning, or (4) a Pennsylvania care facility. *See* Sections 102(z.5)(2)(iii) and (iv). Non-photo proof of identity is no longer permitted unless the voter has a religious objection.

70. Moreover, many regularly used and otherwise valid photo IDs are no longer acceptable, including many student, employee, municipal employee, and veteran IDs, because the Photo ID Law further limits acceptable photo identifications to those that include an expiration date and that are current. The only exceptions are for (1) a Pennsylvania driver's license or PennDOT photo ID that is not more than 12 months past the expiration date, or (2) an active duty or reserve U.S. Armed Forces or National Guard ID that designates the expiration date as indefinite. *See* Section 102(z.5)(2)(iii). This expiration date requirement will have the practical effect of disenfranchising many voters with an otherwise valid ID issued by a Pennsylvania institution of higher learning, the U.S. Armed Forces, the Veterans Administration, a place of employment, or a nursing home, because those IDs frequently lack expiration dates, and veteran's IDs do not state on their face that the expiration date is indefinite. Student IDs — even with an expiration date — issued by a college or university outside of Pennsylvania are no longer acceptable.

71. The Photo ID Law also requires that a photo ID display a name that matches the name of the individual as it appears in the district register. *See* Section 102(z.5)(2)(i). This requirement will disenfranchise many voters — especially women, like Ms. Block — who have changed their legal names because, for example, they took a husband's last name, adopted a hyphenated name, or divorced and resumed use of a maiden name. This will make it even more

difficult for women to obtain a photo ID than other groups because frequently birth certificates do not match the names on the voter registration rolls, requiring many women — but rarely men — to obtain acceptable proof of their legal name change. Such proof is often not readily available. Registered voters who were adopted and thereby changed their names in childhood but not on their birth certificates also will face burdens not faced by other registered voters.

72. Registered voters who fail to present any photo ID at the polls will be relegated to a provisional ballot. *See* Section 1210(a.2)(1)(ii).

73. The Photo ID Law's strict photo ID requirements also create ample opportunity for election officials to challenge the photo IDs presented by registered voters and thereby relegate them to provisional ballots. If the judge of elections challenges a voter's photo ID, then that voter may cast only a provisional ballot. *See* Section 1210(a.2)(2). This challenge provision may be applied arbitrarily and result in the disenfranchisement of registered voters who present a photo ID in compliance with the Photo ID Law. This provision significantly changes existing law by making it impossible for a duly registered voter, whose name appears in the district register and who has otherwise acceptable ID to obtain a regular ballot at the polls.

74. In order for provisional ballots to be counted, voters must present to the county board of elections within six calendar days (including Saturday and Sunday when government offices are closed) both (1) an acceptable photo ID and (2) an affirmation, under penalty of perjury, that the voter is the same individual who personally voted on election day. *See* Section 1210(a.4)(5)(ii)(E). As such, voters relegated to provisional ballots will not know on election day whether their votes will ever be counted even if they are able to submit the necessary documentation after the election. Moreover, to have their votes counted, provisional ballot voters

will have to undertake burdens not required of other voters and will have to be sufficiently motivated to do so after the election results have already been announced. The practical effect of such provisional ballots will be that many, if not most, voters relegated to provisional ballots because of the Photo ID Law will not have their votes counted.

B. Obtaining a PennDOT Photo ID

75. The Photo ID Law permits a voter who does not have a Pennsylvania driver's license to seek a PennDOT non-driver's photo ID, but the bureaucratic, time-consuming, and, in some cases, expensive process required to obtain a PennDOT photo ID is so difficult for many registered voters as to amount to a denial of the franchise. Indeed, for many voters (including most of the individual Petitioners), it will be impossible to satisfy PennDOT's requirements.

76. First, a voter must collect the required supporting documentation, including all of the following:

- a. a completed Application for Initial Photo Identification Card;
- b. a Social Security Card (which can be obtained only upon presentation of a formal application supported by specific documentation to the Social Security Administration);
- c. a certificate of U.S. citizenship (which, to obtain, requires a formal application to the U.S. Department of Homeland Security, costs as much as \$345, and can take anywhere from six months to two years to receive);
certificate of naturalization (which, to obtain, requires a formal application to the U.S. Department of Homeland Security, costs as much as \$345, and

can take anywhere from six months to two years to receive); valid U.S. passport (which, to obtain, requires a formal application to the U.S. State Department, costs as much as \$135, and takes 4 to 6 weeks unless an additional expediting fee of \$60 is paid); or a birth certificate with a raised seal (which, to obtain, requires a formal application and costs \$10 if the voter was born in Pennsylvania, can cost more than \$50 if the voter was born in another state, and for many registered voters may not be available at all); and

- d. two proofs of residency (which can include a lease agreement, current utility bill, mortgage documents, W-2 form, tax records, current weapons permit, or a college room assignment together with a bill that has the dorm room address on it).

77. Certain voters must also submit additional documentation to obtain a PennDOT photo ID. For example, if the name on an original document such as a birth certificate differs from a voter's current name, that voter must provide an original Marriage Certificate, Divorce Decree, or Court Order document. *See* PennDOT, Form DL-54A, Application for Initial Photo Identification Card (*available at* <http://www.dmv.state.pa.us/voter/voteridlaw.shtml>).

78. Once the voter has assembled the appropriate documentation, that voter — who is applying for a PennDOT photo ID because he or she lacks a Pennsylvania driver's license — must travel to one of a limited number of PennDOT Driver's License Centers capable of issuing photo ID to submit those documents and must pay a fee of \$13.50 unless the voter declares that

he or she is a registered voter and does not otherwise have an acceptable form of ID for voting purposes.

79. The Commonwealth announced for the first time on April 18, 2012 that if a voter had a Pennsylvania driver's license that expired after 1990 and the voter is in the PennDOT database, PennDOT will issue a photo ID without requiring a Social Security Card, certificate of citizenship or naturalization or a U.S. passport or birth certificate, and two proofs of residency.

80. The Commonwealth's new policy creates a new favored class of people who happen to have received a driver's license from PennDOT between 1990 and 2010 (when, upon information and belief, the identity requirements for a driver's license were changed) who will be able to vote in November 2012 without ever having presented to the Commonwealth a birth certificate, passport, or a social security card.

C. Unequal Exceptions to the Photo ID Requirement

81. The Photo ID Law on its face imposes different burdens on different groups of voters by providing three exceptions to the requirement that all voters present a specific form of photo ID: (1) voters who meet strict absentee voting requirements may cast an absentee ballot without presenting a photo ID; (2) voters who cast a provisional ballot may eventually have their ballots counted if they follow even more burdensome procedures that include, among other things, affirming to county board of elections within six days of election day that they are indigent and cannot afford a photo ID and; (3) voters who have a religious objection to being photographed may present a valid without-photo Pennsylvania driver's license or without-photo PennDOT ID after answering detailed and invasive questions about their faith.

Absentee Ballots

82. Registered voters who are eligible to vote absentee and who lack a PennDOT ID may do so by providing only the last four digits of their Social Security Number and without producing a photo ID.

83. Unlike many other states, Pennsylvania does not have what is commonly known as “no excuse” absentee voting or any other type of general early voting. In order to cast an absentee ballot in Pennsylvania, a registered voter must satisfy one of a limited number of conditions. He or she must be:

1. In service in the military or United States Merchant Marines, including spouses and dependents residing with or accompanying those in military or Merchant Marine Service;
2. Absent from the municipality of residence because such voter’s duties or occupation require such voter to be elsewhere during the period in which the polls are open. This includes voters who are outside the territorial limits of the United States because their duties or occupations require them to be absent during the period in which the polls are open, including spouses or dependents residing with or accompanying those who are outside the territorial limits of the United States;
3. A war veteran who is bedridden or hospitalized due to illness or physical disability;
4. Unable, because of illness or physical disability, to attend the polling place or operate a voting machine;
5. A county employee who cannot vote due to duties on election day;

6. Unable to attend a polling place because of the observance of a religious holiday;
or
7. Entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act or the Voting Accessibility for the Elderly and Handicapped Act.

See Sections 102(z.5)(3), 1302(j) of the Pennsylvania Election Code.

84. A Pennsylvania voter cannot simply vote absentee because it is more convenient or to avoid the Photo ID Law requirement to show a valid photo ID at the polls.

85. The Commonwealth has offered no compelling, rational, or otherwise legitimate interest that is served by imposing different voter identification burdens on those electors who must vote in person compared to the limited group of electors who are authorized to vote absentee without presenting a photo ID.

Provisional Ballots for Indigent Voters

86. The Photo ID Law provides that registered voters may, under certain circumstances, submit a provisional ballot and then have that provisional ballot counted without presenting a photo ID if and only if they are “indigent.” In order for a provisional ballot to be counted without a photo ID, an “indigent” voter without a photo ID must affirm, under penalty of perjury, to the county board of elections within six calendar days of the election (including Saturday and Sunday when government offices are closed) that the voter is (1) the same individual who personally voted on election day and (2) indigent and therefore unable to obtain an acceptable photo ID. *See* Section 1210(a.4)(5)(ii)(D). The Photo ID Law does not define “indigent,” and appears to leave this to each local board of elections to interpret and enforce.

87. Thus, to have a provisional vote count, an indigent voter must appear twice in person or find a means to transmit the necessary documentation electronically or by mail when other voters must appear just once to have their votes count. Indigent voters are likely to find it more difficult than most voters to satisfy these additional burdens to have their votes counted.

Religious Objections

88. In order to qualify for a valid without-photo ID, voters with religious objections to being photographed must answer a series of intrusive and sensitive questions about their lives and religious faith. For example, religious objectors are asked to describe their religion generally, the process for coming into their religion, the religious practices they observe, and religious beliefs held by their family members. Many registered voters (such as registered Amish voters, for whom traveling to faraway offices may present particular hardships) will be disenfranchised simply from the burden of completing and filing the necessary additional application. Moreover, such voters will be permitted to vote only by subjecting themselves to the burden of invasive probing about their faith that is not required of other registered voters.

V. NO COMPELLING, RATIONAL, OR OTHERWISE LEGITIMATE STATE INTEREST IS SERVED BY THE PHOTO ID LAW

89. The Commonwealth of Pennsylvania has not identified any compelling, rational, or otherwise legitimate state interest that is served by the Photo ID Law.

90. The Commonwealth has identified no evidence of voter fraud addressed by the new photo ID requirements.

91. To the contrary, the requirements of the new law will undermine the integrity of elections by disenfranchising otherwise qualified voters, such as Petitioners in this action, by

illegally burdening qualified voters who are unable to meet the law's new and unnecessary requirements without difficulty and/or expense, and by discouraging otherwise qualified voters who might eventually be able to meet the new requirements imposed by the Photo ID Law but who fail to do so because of the expense and burden involved. The new requirements imposed by the Commonwealth will do more to disenfranchise qualified voters than the (non-existent) harm the Commonwealth is seeking to cure.

92. The Photo ID Law also creates the irrational situation in which one of the most likely sources of voter fraud — absentee voting — is given preferential treatment over in-person voting because qualified absentee voters with a Social Security number can vote absentee without a photo ID. The Commonwealth of Pennsylvania has not identified any compelling, rational, or otherwise legitimate state interest that is served by favoring this limited subset of qualified absentee voters over similar registered voters who must vote in person with a photo ID.

93. The Photo ID Law also creates an irrational distinction between those who obtained PennDOT photo IDs before 2010 and those who try to obtain them now, and imposes disparate burdens on women and others for whom there is a mismatch between their names on their birth certificates and their legal names under which they are registered to vote.

94. The Commonwealth has also not identified any compelling, rational, or otherwise legitimate state interest that is served by subjecting a subset of registered voters (chiefly, registered Amish voters) to invasive questioning about their religious beliefs in order to obtain a non-photo ID in order to vote.

95. The Commonwealth has also not identified any compelling, rational, or otherwise legitimate state interest that is served by imposing a new qualification to vote in person that will

not be felt equally by all Pennsylvanians and will most adversely burden those who already face the greatest obstacles to voting, such as the elderly, disabled, homeless, racial minorities, and indigent.

96. The new requirements are also likely to impose significant new burdens on Pennsylvania's already overtaxed election system, including by significantly increasing the number of provisional ballots that must later be addressed.

97. Some county elections officials responsible for administering elections have already raised concerns that the Photo ID Law's requirements will significantly exacerbate the already-long lines at the polls that occurred during the 2008 Presidential election, confuse poll workers because of the new complex rules regarding which IDs are valid and whether photos and names sufficiently resemble the voter to permit them to cast a regular ballot, and generally will lead to many qualified voters being forced to vote provisionally, which means many of them will not be counted. Long lines at the polls on election day have historically disenfranchised otherwise eligible voters who are unable to wait in line to vote and leave. These new burdens will undermine the efficiency of Pennsylvania elections and degrade the public's trust in the integrity of elections. The Commonwealth has not identified any compelling, rational, or otherwise legitimate state interest that is served by adopting requirements that will increase the number of provisional ballots, which are less likely to ever be counted and otherwise undermine Pennsylvania's time-tested election system.

98. The Photo ID Law is not narrowly tailored to serve any state interest, let alone a compelling state interest. For example, in contrast to Pennsylvania, Florida and Arizona adopted voter ID laws that require a photo ID to vote, but still permit those without a photo ID to sign a

declaration at the polls as to their identity and vote a regular ballot. These other voter ID laws demonstrate that a state's interest in election integrity can be achieved without imposing the Photo ID Law's draconian requirements that will disenfranchise large numbers of registered voters and thereby call into question the legitimacy of Pennsylvania election results.

VI. THE PHOTO ID LAW SEVERELY BURDENS THE RIGHT TO VOTE OF MANY QUALIFIED PENNSYLVANIA VOTERS

99. The Commonwealth estimates that 80,000-90,000 Pennsylvanians do not have acceptable photo IDs to vote. Other academic estimates place this figure at ten times that number. The burdens imposed by the Photo ID Law are so difficult to overcome that for many registered voters, the Photo ID Law amounts to a denial of the fundamental right to suffrage guaranteed by the Pennsylvania Constitution. For each of the named petitioners, there are countless other Pennsylvania citizens who also will be disenfranchised. For example, the Photo ID Law creates a heavy burden for those citizens who already face the greatest obstacles in getting to the polls, such as elderly, disabled, indigent, or homeless voters. The Photo ID Law will also disproportionately disenfranchise female, minority, veteran, and student voters.

A. Burden of Documentation

100. Many of the registered voters who lack acceptable photo ID are unable to obtain the documentation necessary for a photo ID or are able to obtain the documentation only with a significant investment of time and money. Petitioners Applewhite, Lee, Freeland, Cuttino, Marsh, and Barksdale are examples of long-time voters who will be disenfranchised because they cannot obtain the documents necessary to get a photo ID that is recognized under the Law.

101. At the very least, registered voters without an acceptable photo ID will be required to make trips to the PennDOT and, in many cases, to the Pennsylvania Department of Health Division of Vital Records, a Social Security office, and other government offices in order to obtain the underlying documentation needed for a photo ID. For many registered voters — especially the elderly, disabled, and poor — these trips alone are so burdensome as to disenfranchise them. Petitioner Bookler is a prime example of someone who can vote at her next-door polling place but for whom travelling to a more distant driver licensing center is beyond her physical ability.

102. Registered voters without an acceptable photo ID are required to bear substantial costs that other registered voters do not, including expenditures of time and money for the birth certificates, replacement photo IDs, marriage certificates, divorce decrees, transportation, lost wages, and other incidental expenses.

103. Collecting the underlying documents necessary to obtain a photo ID is a time-consuming and costly process that disproportionately burdens those groups who are less likely to have photo IDs. In particular, most registered voters will have to get a birth certificate to obtain an acceptable photo ID.

104. Registered voters without photo ID who mail a birth certificate application to the Division of Vital Records must also submit another form entitled, “Statement from Requestors Not Possessing an Acceptable Government Issued Photo-ID,” along with two copies of documents such as utility bills or bank statements verifying the applicant’s address. *See* Pennsylvania Department of Health, Statement from Requestors Not Possessing an Acceptable Government Issued Photo-ID, (*available at*

http://www.portal.state.pa.us/portal/server.pt/community/birth_certificates/14121/birth_records_-_by_mail/556813). Since many registered voters do not have copy machines in their homes, this process requires them to travel to a vendor to make and pay for copies.

105. Moreover, the Division of Vital Records takes approximately fourteen weeks from the date of receipt to process mail requests. This means that registered voters requesting a birth certificate by mail in order to vote must begin the application process months in advance of the election, which may be before they have become aware of the new requirement. This will be particularly true for those who do not vote in primaries (*e.g.*, because they are not registered with a particular party) and thus did not participate in the soft roll out during the April 23, 2012 primary elections. Indeed, upon information and belief, turnout at this recent primary was exceptionally low, which diminishes any educational or notice value served by the primary's soft roll out.

106. A birth certificate can be obtained in person at only six locations in the entire Commonwealth. Because there are only six offices in all of Pennsylvania that provide birth certificates, this option is impractical for registered voters without a driver's license or other means of transportation. The limited availability of birth certificates is yet another way in which the Law will disproportionately burden elderly, disabled, and poor voters.

107. For registered voters who were born in Pennsylvania, birth certificates cost \$10 for a request sent by mail, plus postage.

108. Expediting via an online order is even more expensive, costing \$20 for regular delivery and an *additional* fee of \$18 for UPS Air delivery. This is yet another example of how the Law disadvantages people of modest means.

109. For registered voters born outside the Commonwealth, the cost of a birth certificate varies, but, upon information and belief, can cost more than \$50. In addition, obtaining an out-of-state birth certificate may cost even more time and money, particularly if a registered voter must travel out of state. Indeed, more than a third of states, such as Alaska, require that a government-issued photo ID accompany every application for a copy of a birth certificate, which creates an absurd Catch-22 for Pennsylvania voters who need the birth certificates in order to obtain a government-issued photo ID in order to vote. Petitioners Lee, Cuttino, and Barksdale have already spent significant sums in attempting, unsuccessfully, to obtain their birth certificates from other states.

B. Burden of Travel

110. Registered voters who do not possess a valid Pennsylvania driver's license or other acceptable photo ID must travel to a PennDOT Driver's License Center to apply for a photo ID. This can mean time off work, lost income, lengthy commutes, and transportation costs. Other registered voters do not have to bear these burdens solely for the purpose of voting.

111. Such travel presents a disproportionate burden on the right to vote of, for example, the elderly, disabled, and poor, as well as those residing in rural areas.

112. Upon information and belief, each of the approximately 70 PennDOT Driver's License Centers that offers photo ID services maintains its own schedule. Several of these centers are open only from 8:30 a.m. to 4:15 p.m. on Tuesdays through Saturdays. There are nine counties that have no Driver's License Center, another eleven counties in which photo ID services are only available two days a week, and another ten counties with photo ID services

only three days a week. The population of the counties with no photo ID center that is open more than four days a week totals over 1.2 million.

113. Despite these irregular schedules and the number of people without a PennDOT Driver's License Center in their counties, upon information and belief, the State has not arranged to deploy any mobile units to low-income, elderly, or rural neighborhoods to assist in providing photo IDs to registered voters who lack them.

C. Burden of Bureaucracy

114. The burden on voters seeking photo IDs is heightened by the fact that inconsistent practices at PennDOT can lead to inconsistent results and costs. For example, the Photo ID Law states that PennDOT shall issue a photo ID card at no cost "to any registered elector who has made application therefor." However, upon information and belief, PennDOT workers repeatedly have failed to waive the fee for a photo ID unless a registered voter specifically requests a free ID, and at times have refused to provide an ID for free even when requested, which is what happened to Petitioner Dickerson. Additionally, PennDOT has denied fee waivers if a registered voter was previously issued an ID that has not yet expired, including a stolen or lost ID, or has an ID that expired in the last 12 months but would not be valid in November, or has outstanding fines or child support. PennDOT has flatly refused to serve applicants for other reasons, including that the applicant was not the "right age," that the applicant had outstanding fines, that advocates are available to help, that the applicant had an expired ID, or for no reason at all. None of these excuses is a lawful basis to effectively deny the right to vote. PennDOT's refusals to serve large numbers of people has discouraged others from trying. Even if PennDOT provides additional training between now and election day so that its employees follow consistent practices, the past experience of being improperly denied a photo ID may deter some

registered voters from re-applying and may deter others from even trying, which means the damage has already been done by the Commonwealth. These registered voters will be disenfranchised as a result of the burden of dealing with Pennsylvania's bureaucracy.

115. The Photo ID Law also does not define what it means to be "indigent" and therefore eligible to have a provisional ballot counted without presenting a photo ID. Registered voters who are unable to obtain a photo ID may not know whether they qualify as "indigent." They may not even try to vote because of a lack of knowledge of the "indigent" exception. Moreover, the Photo ID Law will permit individual boards of election to assess the adequacy of affirmations that a voter who cast a provisional ballot is indigent.

116. The uncertainties surrounding the Photo ID Law will likely cause other delays and errors on election day. Election officials are not full-time Commonwealth employees and, upon information and belief, receive even less training than PennDOT employees. Administration of the Photo ID Law on election day may therefore result in considerable confusion, delay, and error.

D. Burden of Provisional Ballots

117. The Photo ID Law will relegate many registered and qualified voters to provisional ballots and thereby will damage the public's faith in the integrity of the voting process because many properly qualified voters will not know on election day whether their votes will ever be counted. Indeed, in 2008, 44.2 percent of provisional ballots in Pennsylvania were not counted. U.S. Election Assistance Commission, *The 2008 Election Administration and Voting Survey: A Summary of Key Findings* (November 2009). Given the increased number of voters who likely will be forced to use provisional ballots under the Photo ID Law, that number

can be expected to increase. Even if a registered voter would be able to prove up his or her provisional ballot after election day, the additional burden will likely discourage many voters from following through because doing so will require significant time, effort, and expense (e.g., having to take time off from work or school; be away from young children; travel to the county election bureau, which may be a significant distance; etc.). It is not reasonable to expect voters to undertake these added burdens, especially after the election results have been announced. As a result, forcing so many registered voters to vote by provisional ballots that will never be counted will harm the Pennsylvania election system and the public at large by undermining the integrity and efficiency of Pennsylvania elections and destroying the public's confidence in the election results.

E. Disenfranchisement of Groups of Persons

118. The Photo ID Law will burden large numbers of Pennsylvania citizens. The impact will be disproportionately heavy on persons who are less likely to already possess an acceptable photo ID.

119. The elderly — who are less likely to have photo ID due to declining need or ability to drive — disproportionately bear such burdens, which, in many cases, amount to a denial of the right to vote. Pennsylvania has one of the highest percentages of elderly residents in the nation. *See* 2010 Census Briefs: The Older Population 2010, Nov. 2011, *available at* <http://2010.census.gov/2010census/>. Eighteen percent of the elderly do not have government-issued photo IDs. Brennan Center, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (2006). For registered elderly voters who do not have an acceptable photo ID, obtaining a birth certificate can be especially challenging, for example, if they were born before birth records were consistently maintained in

their birth state, if they were born at home and no official record of their birth was filed, or if they were adopted and lived under a different name. Petitioners Applewhite, Lee, Cuttino, Marsh, and Barksdale vividly illustrate this problem. As stated above, the costs and effort involved with obtaining the underlying documents needed to comply with the photo ID requirement are high and, for many registered voters, effectively insurmountable.

120. There are approximately 2 million people in Pennsylvania with disabilities, representing more than 20 percent of potential voters. *Photo ID Law, Hearing before the Pennsylvania House Democratic Policy Committee* (April 11, 2012) (statement of Keith Williams, Northeast Pennsylvania Center for Independent Living). People with disabilities are twice as likely as other citizens not to have a driver's license. As a result, many registered voters with disabilities will have to use public transportation or seek special assistance in order to make the required trips to PennDOT and other government offices. Like the elderly, these voters may be able to get a ride to a neighborhood polling location (especially with the help of voter-turnout organizations), but the additional travel and costs for obtaining the photo ID may be so burdensome that they are unable to fulfill the photo ID requirements to vote.

121. Low-income and homeless voters without photo ID also face particularly harsh burdens under the Photo ID Law. Registered low-income voters who do not travel internationally or drive are less likely to have a qualifying photo ID. Such voters are also less likely to possess the required documentation for obtaining a photo ID (such as two proofs of residency) and are therefore disparately impacted by the burdens imposed by the Photo ID Law. They may also be among those least likely to know about the new requirements in time to obtain a photo ID before election day. As discussed above, these voters also face the uncertainty of

what it means to be indigent and the added burden of following post-election procedures in order to have a provisional ballot counted under the indigent exception to the photo ID requirement.

122. Registered minority voters, including African-Americans and Latinos, are less likely to have photo ID and therefore will face a disparately higher burden on their right to vote due to the Photo ID Law. Upon information and belief, the difficulty in obtaining a birth certificate is particularly burdensome on African-American voters who are more likely to have been born at home or in rural areas, such as Petitioners Lee, Cuttino, and Barksdale. In addition, Philadelphia and Pittsburgh, among other urban centers, are home to a vast number of African-Americans who moved from the Jim Crow-era South as a part of the Great Migration and lack birth records, such as Petitioners Lee, Cuttino, and Barksdale. According to a report by the Brennan Center for Justice, only 75 percent of African-American and 84 percent of Latino adults in the United States possess state-issued photo identification, compared with 92 percent of white adults in the United States. Upon information and belief, the numbers in the Commonwealth are likely to be similar. Brennan Center, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (2006).

123. Registered female voters will also be disproportionately burdened by the Photo ID Law because the vast majority of women who have married have changed their names at least once during their lifetimes; for those who divorce and/or remarry, they may change their names multiple times. Studies have shown that only 66 percent of voting-age women in the United States have ready access to proof of citizenship that has their current legal name. Brennan Center, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (2006). Upon information and belief, the numbers in the Commonwealth are likely to be similar. The Photo ID Law requires that a voter's name on her

photo ID must “substantially conform” with the name under which she is registered to vote.

When a female voter has a photo ID with a name that has changed since registration, election officials are required to challenge the woman’s identity and provide only a provisional ballot. As discussed, a provisional ballot will only be counted if the voter proves her identity within six days at the county board of elections. This often will be impossible given the requirements to obtain necessary documentation of the name change (which for many may have occurred decades ago and in other states, or even in other countries that do not issue English-language marriage certificates). Moreover, such voters are unlikely to undertake this additional burden to have their votes count when the results of the election have already been announced. For women without any photo ID, obtaining the additional documentation needed to obtain a photo ID is a burden that is likely further to lead to unequal treatment between male and female voters and disenfranchisement of a large number of women. And in some cases the burden will be impossible to meet, as in Petitioner Block’s case, since she had only a piece of paper written by her Rabbi in Hebrew. But, unlike Ms. Block, most women will not have the means or connections to overcome this insurmountable obstacle.

124. Although the Photo ID Law nominally permits the use of Armed Forces and student IDs, the Law’s expiration date requirement often precludes the use of such IDs and places additional burdens on the registered voters who possess them. While many IDs issued by the United States Department of Veterans Affairs include a picture, many do not include the required expiration date or designation of no expiration, rendering them useless at the polls. Petitioner Freeland, for instance, has such a veteran’s card, which he can use to receive healthcare and other important benefits, but which Pennsylvania will not recognize for purposes of voting.

125. Students are also burdened despite having student photo IDs. Of the approximately 120 accredited colleges and universities in Pennsylvania, more than half do not issue student IDs bearing expiration dates. The Secretary of State has indicated that accredited institutions may affix stickers bearing expiration dates to school-issued IDs and that those will be considered valid for voting purposes, but she left the costs and implementation of tens of thousands of student ID changes to the colleges. As a result, the Photo ID Law will disenfranchise many registered voters who have lived and studied in Pennsylvania for years.

126. The Photo ID Law does not allow a student who is attending a college or university outside of Pennsylvania to vote in Pennsylvania with his or her out-of-state ID even if it has the necessary expiration date.

127. Transgender individuals, who will be in varying stages of transitioning from one gender to another and will not yet have taken steps legally to reflect the change, such as Petitioner Schor, may have trouble voting because their present appearance is not reflected by the image or gender designation on their ID. Petitioner Schor now wears a beard, dresses like a man, and is developing a husky voice from hormone therapy, which will at minimum cause confusion at the polls on election day as to whether he sufficiently resembles his ID and may very well result in his being denied a regular ballot.

128. The religious exception in the Photo ID Law adds a burden on the fundamental right to vote of those who have religious objections to photographs. Pennsylvania is home to 61,000 Amish citizens. Although the law allows voters with religious objections to use a non-photo ID issued by the Commonwealth, the process to obtain the non-photo ID is difficult and invasive. To qualify for this non-photo ID, religious objectors must answer 18 questions about

their religion, ranging from how many members there are to whether family members hold the same religious beliefs. Failure to answer a question can result in the application being denied and the voter being deemed ineligible to exercise his or her right to vote. Having to answer invasive questions about one's religious faith as a cost to exercise the right to vote is a significant and discriminatory burden and may deter many registered voters from using this exception and thereby lead to the disenfranchisement of such voters. Moreover, this is a burden of voting that falls improperly only on those with a religious objection to photographs.

129. As registered voters who lack photo ID learn of the obstacles to obtaining a photo ID, they may be deterred and discouraged from securing the proof of identity necessary to vote on election day. Other registered voters, such as Petitioner Bookler, may simply be unable to take the needed trips to obtain the proper documentation and photo ID, even though such voters may be able to get to their neighborhood polls with assistance on election day.

130. Most significantly, there are registered voters in the groups listed above who have never had a Pennsylvania driver's license and will find it simply impossible to obtain an acceptable photo ID for voting purposes, such as Petitioners Applewhite, Lee, Cuttino, Marsh, and Barksdale. Unlike the voter ID laws in Florida and Arizona, and unlike the process for obtaining a U.S. Passport or Social Security card, the Pennsylvania Photo ID Law provides no mechanism by which registered voters without the required documentation can cast a regular ballot. As a result, Pennsylvania is disenfranchising those voters. Other registered voters ultimately able to obtain an acceptable photo ID will only be able to cast a regular ballot after overcoming burdens that similarly situated voters do not face. Thus, in the name of supposedly defending the integrity of elections in Pennsylvania, the Photo ID Law will forever cast doubt on the integrity of those elections starting in November.

COUNT I

The Fundamental Right to Vote is Unduly Burdened by the Photo ID Law

131. Petitioners hereby incorporate and adopt each and every allegation set forth in Paragraphs 1 through 130 of the Verified Petition for Review.

132. The right to vote is a fundamental right in the Commonwealth of Pennsylvania. The fundamental nature of the right to vote can be traced to Article I, Section 5 of the Pennsylvania Constitution. That section 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.

133. Elections are “free and equal” only 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.” *Winston v. Moore*, 244 Pa. 447, 457, 91 A. 520, 523 (Pa. 1914).

134. Elections are also “free and equal” only when “the inconveniences [of voting regulations] if any bear upon all in the same way under similar circumstances.” *Id.*

135. The Photo ID Law impinges on the free exercise of the right to vote. It requires individuals to obtain a photo ID before being permitted to exercise the right to suffrage. This requirement imposes a heavy burden on the fundamental right of qualified electors in Pennsylvania to vote, and it violates the Pennsylvania Constitution by preventing elections from being “free and equal” because, for many registered voters, these burdens will either deny the franchise itself or make it so difficult as to amount to a denial.

136. The Photo ID Law impermissibly burdens the fundamental right to suffrage in some cases by denying registered voters the franchise and in other cases by imposing onerous burdens in terms of time, effort, travel, and expense, which penalize registered voters who ultimately obtain the requisite photo ID and discourage others from trying to exercise the franchise.

137. No compelling state interest exists to justify the new burdens imposed on Pennsylvania voters.

138. The Photo ID Law is not narrowly tailored to any demonstrated compelling state interest to justify the heavy burden placed on qualified Pennsylvania electors' exercise of the fundamental right to vote.

139. No legitimate state interest exists to which the requirements of the Photo ID Law are even rationally related. Accordingly, the Photo ID Law poses an undue burden on the fundamental right to vote, and it violates the guarantee of "free and equal" elections under the Pennsylvania Constitution.

COUNT II

Discrimination Between Voters in Violation of the Equal Protection Guarantees (Article I, Sections 1 and 26) of the Pennsylvania State Constitution

140. Petitioners hereby incorporate and adopt each and every allegation set forth in Paragraphs 1 through 139 of the Verified Petition for Review.

141. Article I, Section 1 of the Pennsylvania Constitution provides:

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.

142. Article I, Section 26 of the Pennsylvania Constitution 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.

143. With respect to elections, Article I, Section 5 of the Pennsylvania Constitution provides:

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.

144. Together, these constitutional provisions provide a guarantee of equal protection to all and, with respect to elections, assure that any “inconveniences” on the right to vote must “bear upon all in the same way under similar circumstances.” *Winston v. Moore*, 244 Pa. 447, 457, 91 A. 520, 523 (Pa. 1914).

145. The Photo ID Law imposes burdens on the right to vote that do not bear upon all voters equally under similar circumstances. As shown above, at least 80,000-90,000 Pennsylvanians without a photo ID now face a hurdle to voting that is not faced by the rest of Pennsylvania’s voters.

146. For example, a registered voter in Pennsylvania may obtain an absentee ballot if such voter expects to be unable to go to the polls on election day for a limited number of reasons. *See* Sections 102(z.5)(3), 1302(j) of the Pennsylvania Election Code. This unique group of qualified voters may vote without providing photo ID prior to voting. Instead, they are required only to provide the last four digits of their Social Security number if they do not have a PennDOT-issued ID. As such, absentee ballot voters are not subjected to the undue burden imposed by the Photo ID Law on similarly situated in person voters. This added burden on in-person voters, but not on absentee voters, is particularly irrational and not tied to any identifiable

state interest, given that voter fraud — the purported justification for the Photo ID Law — is more likely to occur in connection with absentee voting than in-person voting.

147. The Commonwealth has not offered — and cannot offer — a justification for not requiring a photo ID from qualified absentee electors when one is required from qualified electors who must vote in person.

148. The Photo ID Law imposes different burdens on voters to obtain the necessary photo ID depending on whether the registered voter happened to have had a PennDOT identification between 1990 and 2010. Those lucky registered voters will not face the same burdens of producing birth certificates and other necessary documentation to obtain a new PennDOT photo ID as compared to those who seek a PennDOT photo ID for the first time.

149. The Photo ID Law improperly poses greater burdens on registered voters whose current legal names do not match their birth certificates due to marriage, divorce, adoption or otherwise.

150. The Photo ID Law, therefore, improperly deprives those voters who face these increased burdens of the equal protection of the laws, guaranteed by Article I, Sections 1 and 26 of the Pennsylvania Constitution, and the promise of “free and equal” elections guaranteed by Article I, Section 5 of the Pennsylvania Constitution.

151. No state interest in the integrity of elections or otherwise is served by imposing different burdens on different categories of voters, because any such benefits will be outweighed by the harm to the integrity of elections caused by the disenfranchisement of so many qualified voters.

COUNT III

Improper Additional Qualification to Vote in Violation of Article VII, Section 1 of the Pennsylvania Constitution

152. Petitioners hereby incorporate and adopt each and every allegation set forth in Paragraphs 1 through 151 of the Verified Petition for Review.

153. Article VII, Section 1 of the Pennsylvania Constitution provides:

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.

- He or she shall have been a citizen of the United States at least one month.
- He or she shall have resided in the State ninety (90) days immediately preceding the election.
- He or she shall have resided in the election district where he or she shall offer to vote at least sixty (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 sixty (60) days preceding the election.

154. Article VII, Section 1 sets forth the exclusive list of qualifications to vote in Pennsylvania. Those are:

- Citizen of the United States;
- Over the age of eighteen (as modified by the Twenty-Sixth Amendment to the United States Constitution);
- Resident of the Commonwealth of Pennsylvania;
- Resident of the election district in which the person offers to vote.

155. The Photo ID Law now requires that registered voters present a photo ID before being issued a ballot. This requirement adds a fifth qualification – possessing a photo ID – not enumerated in the list of qualifications contained in Article VII, Section 1. “A right conferred by

the Constitution is beyond the reach of legislative interference.” *McCafferty v. Guyer*, 59 Pa. 109, 111, 9 P.F. Smith 109, 111 (Pa. 1868).

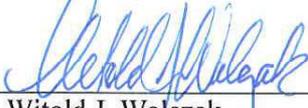
156. The Photo ID Law therefore imposes an unconstitutional qualification to vote. Petitioners and all otherwise qualified voters without acceptable photo ID cannot satisfy this requirement, and would therefore be irreparably injured by the Photo ID Law.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Honorable Court enter judgment in their favor and against the Commonwealth, Governor, and Secretary, and:

- a. Declare that the photo ID requirement in Pennsylvania’s Photo ID Law violates Article I, Sections 1, 5, and 26 and Article VII, Section 7 of the Pennsylvania Constitution, and is therefore invalid, unconstitutional, ineffective, and without the force of law;
- b. Preliminarily and permanently enjoin Respondents, their agents, servants, officers, and others from acting in concert with them (including all local election authorities) from enforcing or otherwise implementing the photo ID requirement of the Photo ID Law; and
- c. Award Petitioners reasonable attorneys fees and costs and such other and further relief that this Honorable Court deems just and appropriate.

Dated: May 1, 2012



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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Viviette Applewhite; Wilola Shinholster Lee; Grover Freeland; Gloria Cuttino; Nadine Marsh; Dorothy Barksdale; Bea Bookler; Joyce Block; Henrietta Kay Dickerson; Devra Mirel (“Asher”) Schor; 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

Docket No. _____

CERTIFICATE OF SERVICE

I certify that I am this day of May 1, 2012, serving the foregoing Verified Petition for Review and Notice to Plead, upon the persons and in the manner indicated below, which service satisfies the requirement of Pa. R. A.P. 121:

Service by hand delivery addressed as follows:

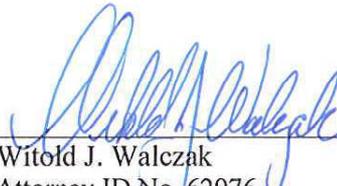
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Ms. Carol Aichele
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Dated: May 1, 2012



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VERIFICATION

I state that I am a Petitioner in this matter, and that the factual averments set forth in the foregoing Petition for Review, as they relate to me personally, are true and correct to the best of my knowledge, information, and belief.

I understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A., § 4904 relating to unsworn falsification to authorities.

DATED: April 30 / 12

+ Joyce Block
(Signature)
Joyce Block
(Printed Name)