[J-114-2012]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

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	:	No. 71 MAP 2012 Appeal from the Order of the Commonwealth Court dated August 15, 2012 at No. 330 M.D. 2012, denying Appellant's Application for Preliminary Injunction ARGUED: September 13, 2012
v.	:	
THE COMMONWEALTH OF PENNSYLVANIA; THOMAS W. CORBETT, IN HIS CAPACITY AS GOVERNOR; CAROLE AICHELE, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH	:	
APPEAL OF: VIVIETTE APPLEWHITE; WILOLA SHINHOLSTER LEE; GLORIA CUTTINO; NADINE MARSH; 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	:	

DISSENTING STATEMENT

MADAME JUSTICE TODD **FILED: September 18, 2012**

I respectfully dissent.

By its Per Curiam Order today, this Court remands this matter for further hearings so that the lower court may attempt to predict — again — whether the Commonwealth can implement this new law without disenfranchising a substantial number of voters in November. In my view, the time for prediction is over.

Forty-nine days before a Presidential election, the question no longer is whether the Commonwealth *can* constitutionally implement this law, but whether it *has* constitutionally implemented it. Despite impending near-certain loss of voting rights, despite the Commonwealth's admitted inability thus far to fully implement Act 18 and its acceptance that, presently, "the Law is not being implemented according to its terms," and despite the majority's concession that the "most judicious remedy" in such circumstances would be to grant an injunction, the majority nonetheless allows the Commonwealth to virtually ignore the election clock and try once again to defend its inexplicable need to rush this law into application by November 6, 2012.

The majority correctly sets forth the standard of review that we, as the appellate court, are to apply in reviewing a lower court's order granting or denying a preliminary injunction. We review for an abuse of discretion. Yet, the majority utterly fails to apply that standard to this appeal. My application of the required standard leads me to the inescapable conclusion that the lower court indeed abused its discretion in failing to find that irreparable harm of constitutional magnitude — the disenfranchisement of a substantial number of eligible, qualified, registered voters, many of whom have been

proudly voting for decades — was likely to occur based on the present structure, timing, and implementation of Act 18; in my assessment, the lower court should have granted a preliminary injunction. Therefore, I would reverse.

Like the majority, I am not "satisfied with a mere predictive judgment based primarily on the assurances of government officials." But, unlike the majority, I have heard enough about the Commonwealth's scramble to meet this law's requirements. There is ample evidence of disarray in the record, and I would not allow chaos to beget chaos. The stated underpinnings of Act 18 — election integrity and voter confidence — are undermined, not advanced, by this Court's chosen course. Seven weeks before an election, the voters are entitled to know the rules.

By remanding to the Commonwealth Court, at this late date, and at this most critical civic moment, in my view, this Court abdicates its duty to emphatically decide a legal controversy vitally important to the citizens of this Commonwealth. The eyes of the nation are upon us, and this Court has chosen to punt rather than to act. I will have no part of it.

Mr. Justice McCaffery joins this dissenting statement.