

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 330 MD 2012

VIVIETTE APPLEWHITE; WILOLA SHINHOLSTER LEE; GLORIA CUTTINO;
NADINE MARSH; BEA BOOKLER; JOYCE BLOCK; 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.

**PETITIONERS’ PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW,
AND OPPOSITION TO RESPONDENTS’ MOTION FOR COMPULSORY NONSUIT,
OR, IN THE ALTERNATIVE, FOR A DIRECTED VERDICT**

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INTRODUCTION

Hundreds of thousands of registered and otherwise qualified Pennsylvania voters lack the photo ID they would need to vote under the Act of March 14, 2012, P.L. 195, No. 18 (“Photo ID Law” or “Law”). Nothing guarantees those voters a right to obtain a compliant photo ID. The Photo ID Law therefore transforms the most fundamental right into a privilege that depends on the discretion of government employees to make available compliant photo IDs. That is not how constitutional rights work and requires that the Law be struck down on its face.

The Photo ID Law would further transform Pennsylvania’s electoral system from one in which every voter can cast an in-person ballot at one of 9,300 locally accessible polling places into one that would require a class of voters – those who lack compliant photo ID – to find their way to just 71 locations across the state if they want to cast an in-person ballot that is assured to be counted. This imposes an unnecessary and often insurmountable burden on many voters from society’s most vulnerable segments and also requires that the Law be struck down on its face.

Respondents have also refused to implement the Law as written and construed by the Supreme Court. They will not follow the statutory mandate to issue free Department of Transportation (“PennDOT”) non-driver IDs to any voter who can sign a simple two-point declaration. They tried to remedy that statutory and constitutional violation through a creation of their own – the Department of State ID (“DOS ID”) – but even that card has not been available such that all voters without ID have a right or ability to obtain one. Respondents also have failed to fulfill their educational obligations under the Law. Because Respondents have failed to implement even the most minimal protections built into the Law, the Law’s in-person photo ID requirement cannot be implemented constitutionally or consistent with the statute itself.

For each of these reasons and the other reasons discussed below, the Court should declare the Photo ID Law unconstitutional and permanently enjoin its in-person photo ID requirements.

PROPOSED FINDINGS OF FACT

A. The Photo ID Law Imposes New and More Restrictive ID Requirements

1. The Photo ID Law transforms Pennsylvania's voting system from one in which voters' identity was effectively verified through means that all registered and otherwise qualified voters could easily satisfy into one with new and far more restrictive identification requirements that large numbers of registered and otherwise qualified voters cannot satisfy. Respondents' witnesses readily acknowledged that the Photo ID Law imposes new, different, and more restrictive voter identification requirements than ever before in Pennsylvania. Hr'g Tr. 512, July 17, 2013 (J. Marks); Hr'g Tr. 995, July 22, 2013 (R. Oyler). Respondents erred in asserting that the single most important fact of this case "is this: Requiring voters to present identification at the polls is nothing new in Pennsylvania." Hr'g Tr. 46, July 15, 2013.

2. Before the Photo ID Law, there was no photo identification requirement to vote in Pennsylvania. Under the prior law, only first-time voters in a precinct were required to show identification, and both photo and non-photo forms of ID were acceptable. 25 P.S. § 1210(a.1) (amended 2012). A utility bill, bank statement, gun permit, paycheck, or government check would do, as would any non-photo ID issued by either the Commonwealth or the United States. *Id.* A voter could use his or her voter registration card, which, by definition, every voter receives for free, by mail, when they register, and which can be replaced for free, by mail, at any time. Hr'g Tr. 509-11, July 17, 2013 (J. Marks). Accordingly, as the Department of State's former Director of Policy, Rebecca Oyler, agreed, "every single registered voter under the prior law had access to at least one form of ID that would let them vote in person," simply "by virtue of being registered." Hr'g Tr. 995-97, July 22, 2013.

3. In addition to this requirement for first-time voters in a precinct, identification was effectively verified for all voters by requiring each voter to sign the poll book, and requiring

the poll worker to match that signature to the voter's signature in the district register. 25 P.S. § 3050(a.3) (amended 2012). All voters can easily satisfy this identification requirement, and it has worked well to safeguard the integrity of elections. Hr'g Tr. 569-72, July 27, 2012 (M. Wolosik, Allegheny County Election Division Manager since 1991 and election official since 1970). Jonathan Marks, the Department of State's top non-political election official, testified that he has "confidence in the integrity" of the November 2012 and May 2013 elections in Pennsylvania, even though the Photo ID Law's photo identification requirement was not in effect. Hr'g Tr. 505-06, July 17, 2013. And he has had confidence in the integrity of every election over the past 11 years, even before the Photo ID Law was enacted. *Id.* at 506.

4. The Photo ID Law made significant changes to the prior law by requiring, for the first time, that all in-person voters provide one of a few limited forms of photo identification in order to vote. To cast a regular ballot, the Photo ID Law requires each in-person voter to show poll workers a photo ID issued by 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, (4) an accredited Pennsylvania public or private institution of higher learning, or (5) a Pennsylvania care facility. 25 P.S. § 2602(z.5)(2)(iv).¹ The photo ID must show a name that "substantially conforms" to the name of the voter as it appears in voter registration records but the Law leaves it to poll workers to decide whether the name on an ID "substantially

¹ Voters with a religious objection to being photographed can show a valid-without-photo PennDOT driver's license or non-driver ID. 25 P.S. § 2602(z.5)(1). No other form of non-photo identification is acceptable. *Id.* A non-photo version of the Department of State ID is not acceptable for voting under the Law, and in any event no non-photo version of the DOS ID exists. Hr'g Tr. 1332, July 24, 2013 (J. Marks). Thus, Amish and other voters with a religious objection to being photographed must get to a PennDOT Driver License Center and must be able to satisfy the requirements for a secure PennDOT non-driver ID with no safeguard or safety net and no access even to a DOS ID.

conforms.” *Id.* § 2602(z.5)(2)(i). The photo ID also must contain an expiration date and, in most instances, must be unexpired, except that voters can show (1) an expired photo ID issued by PennDOT as long as it is not more than twelve months past its expiration date, or (2) a photo ID issued by an agency of the U.S. Armed Forces or their reserve components that (a) establishes that the voter is a current member or veteran of the Armed Forces or National Guard, and (b) includes a designation that the expiration date is indefinite. *Id.* § 2602(z.5)(2)(iii).

5. If a voter has no compliant photo ID at the polling place, the Photo ID Law provides that the voter may only submit a provisional ballot. 25 P.S. § 3050(a.2)(1). That ballot, like any other provisional ballot, will not be counted on election day. Hr’g Tr. 576, July 27, 2012 (M. Wolosik). Instead, within six calendar days, the voter must submit to his or her county election board either (1) a photo ID that would be acceptable for voting in person under the Law, or (2) an affirmation that the voter is (a) “indigent” and (b) “unable to obtain [a compliant photo ID] without the payment of a fee.” 25 P.S. § 3050(a.4)(5)(ii)(D), (E).

6. Respondents conceded that the six-day window for provisional voters to submit a compliant photo ID was likely too short to help unless a voter already had a compliant photo ID and simply left it at home on election day. Hr’g Tr. 468-69, July 26, 2012 (R. Oyler).

7. Likewise, the indigency affirmation does not meaningfully protect voters from being disenfranchised. The Photo ID Law does not define “indigent,” leaving it to each county to decide what “indigent” means. Hr’g Tr. 1098-99, July 22, 2013 (R. Oyler). Even if a voter were indigent, Mr. Marks of the Department of State agreed that it would be “very difficult” for any voter to sign the indigency affirmation based on the availability of free voter IDs at PennDOT, rendering the indigency provision a virtual dead-letter. Hr’g Tr. 521-22, July 17, 2013. The Department of State’s internal analysis of the Law expressed skepticism about the

utility of this affirmation: “how could an indigent elector sign the statement if he or she is able to obtain proof of identification free of charge?” Petr’s Ex. 1677 at 4; *see also* Hr’g Tr. 1096-1100, July 22, 2013 (R. Oyler). The Department privately speculated that it is “possible” a voter could sign the affirmation based on having to pay for transportation to get a photo ID, Petr’s Ex. 1677 at 4, but the Department’s handbook sent to poll workers in advance of the November 2012 election contained no such interpretation. Resp’ts’ Ex. 78 at 3. Nor did any of the Department’s other communications with county election officials. *See* Resp’ts’ Exs. 7-10, 12, 14-15, 21, 23, 27-32. Respondents’ advertising materials also failed to advise that indigent voters do not need photo ID to vote, or that transportation costs could count as a “fee” for obtaining photo ID. Hr’g Tr. 778-79, July 18, 2013 (S. Royer); *see also* Resp’ts’ Exs. 153-178, 180-199, 201-222. The only indication that transportation costs could count as a “fee” was buried in a September 2012 FAQ for Homeless Voters, but this document wrongly told homeless voters that the fee needed to be one that “they *cannot afford to pay*,” Resp’ts’ Ex. 141 at 4 (emphasis added), a concept that is not reflected anywhere in the Photo ID Law.

8. In any event, the individual counties are not required to comply with any suggestions that the Department of State may make as to the meaning of “indigent” or what it means to pay a “fee” to obtain photo ID, and it is unknown if some or all or none of the counties would follow any such suggestions. Hr’g Tr. 1098-1100, 1105, July 22, 2013 (R. Oyler) (“Sometimes they don’t . . . take our recommendations.”). For a voter who must decide whether to sign the indigency affirmation under penalty of perjury, an internal government document speculating that certain interpretations are “possible” is cold comfort.

9. Moreover, even if a voter submits a compliant photo ID or a signed indigency affirmation within six calendar days after failing to show a compliant photo ID at the polls, the

voter's provisional ballot is still subject to all of the pre-existing rules governing provisional ballots. This means that the voter's provisional ballot may be challenged and may not be counted for various reasons unrelated to the voter's lack of a compliant photo ID at the polls (such as the provisional ballot not including both a signed affidavit of the voter *and* the voter's signature on the front of the provisional ballot envelope, the signatures not appearing to match, the ballot being cast in the wrong district, or some other challenge raised by an observer working on behalf of a political party or a candidate). 25 P.S. § 3050(a.4)(5)(i), (ii); *see also* Hr'g Tr. 577-81, July 27, 2012 (M. Wolosik); Hr'g Tr. 1100-01, July 22, 2013 (R. Oyler). In 2010, the U.S. Election Assistance Commission reported that 18% of provisional ballots submitted in Pennsylvania were rejected for reasons unrelated to the voter's registration status, *i.e.*, for irregularities in the ballot envelope or some other problem. *See* U.S. Election Assistance Comm'n, 2010 Election Admin. and Voting Survey, Summary of Key Findings, Tables 34 and 35a (Dec. 2011), http://www.eac.gov/research/election_administration_and_voting_survey.aspx.

10. In the event of a challenge to a provisional ballot, the voter is not entitled to notice, which is given only "where possible." 25 P.S. § 3050(a.4)(4)(i). The county board of elections will decide whether to uphold or dismiss the challenge, and any "petitioner aggrieved by the decision" may appeal to the Court of Common Pleas within two days. *Id.* § 3050(a.4)(4)(v). None of the challenged provisional ballots will be finally counted until all appeals are completed. *Id.* § 3050(a.4)(4)(vi). In contrast to provisional ballots, "[t]here are no challenge provisions for casting a regular ballot," which is "guarantee[d]" to count once cast. Hr'g Tr. 1102, July 2013 (R. Oyler).

11. Indigent voters face even greater risks of being disenfranchised through challenges to their provisional ballots. Hr'g Tr. 1724-25, July 30, 2013 (J. Marks). The

Department of State's November 2012 poll worker guide stated that poll workers need not make judgments about whether a voter is "indigent" precisely because "a process is in place that allows for challenging of provisional ballots during the county's official canvass." Resp'ts' Ex. 78 at 3. Because the statute does not define "indigent," or clearly authorize voters to affirm that they were unable to obtain photo ID "without the payment of a fee" based on transportation or other indirect costs, 25 P.S. § 3050(a.4)(5)(ii)(D), (E), such challenges would be far from baseless and the right to vote would then depend on the discretionary decisions of 67 separate county election boards. Hr'g Tr. 1103-04, July 22, 2013 (R. Oyler) (agreeing that challenges to indigency affirmations are more likely because the DOS ID is free and Pennsylvania has waived the fees for birth certificates needed to obtain a free PennDOT non-driver ID for voting purposes). And those voters would receive notice of their potential disenfranchisement only "where possible." 25 P.S. § 3050(a.4)(4)(i).

12. A narrow group of voters may avoid the Photo ID Law's in-person photo identification requirement by voting absentee, but only if they otherwise meet the prerequisites to do so. The overwhelming majority of Pennsylvania voters do not meet those prerequisites even under the prior Pennsylvania absentee voting laws. To vote absentee in Pennsylvania, a voter must be (1) in military service; (2) away on election day to attend to "duties, occupation or business"; (3) unable to attend the polling place "because of illness or physical disability" (supported by a doctor's name and address); (4) "a county employee who cannot vote due to duties on election day relating to the conduct of the election"; (5) unable to attend the polling place "because of the observance of a religious holiday"; or (6) a "qualified war veteran elector who is bedridden or hospitalized due to illness or physical disability." 25 P.S. §§ 2602(w), 3146.1; *see also* Hr'g Tr. 527-29, July 17, 2013 (J. Marks). In the November 2012 general

election, only 282,822 voters voted absentee out of 5,783,621 total votes cast (approximately 5%). Resp'ts' Ex. 233; Hr'g Tr. 431, July 17, 2013 (D. Marker). Further, only about 12,000 voters are registered to vote by either permanent absentee or alternative ballot, Hr'g Tr. 1659, July 30, 2013 (J. Marks), meaning that the rest of the 282,822 absentee voters in November 2012 may or may not qualify to vote absentee in subsequent elections.²

13. In addition to the above restrictions on absentee voting, which remain in effect, the Photo ID Law made it more difficult to vote absentee in Pennsylvania by imposing, for the first time, identification requirements that must be verified before an absentee ballot can be counted. Previously, absentee ballots did not require identification, other than a signature match. Now, a voter who otherwise qualifies to vote absentee generally must submit a current and valid PennDOT driver's license number in order to have his or her absentee ballot counted. 25 P.S. § 2602(z.5)(3)(i), (ii). If the voter has no current and valid PennDOT driver's license, the voter must submit the last four digits of his or her Social Security number. *Id.* If a voter has neither a current and valid PennDOT driver's license number nor a Social Security number, the voter must submit a copy of a photo ID that would be compliant for voting in person under the Law (which of course is not helpful if the voter lacks such an ID). *Id.* County election officials are required to validate this information before counting any absentee ballot: "If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar

² Respondents repeatedly pointed to federal laws governing absentee ballots for military and overseas voters and alternative ballots for disabled voters whose voting places are inaccessible, but there was no suggestion that these laws protects any meaningful number of voters who otherwise would be disenfranchised by the Law. Hr'g Tr. 1713-16, July 30, 2013 (J. Marks); Hr'g Tr. 1132-33, July 22, 2013 (R. Oyler). And the number of inaccessible polling places is quickly diminishing, Hr'g Tr. 530, July 17, 2013 (J. Marks), rendering alternative ballots a temporary remedy at best.

day following the election, then the absentee ballot shall not be counted.” *Id.* § 3146.8(h)(3); *see also* Hr’g Tr. 1038-40, July 22, 2013 (R. Oyler).

14. This new absentee ballot requirement may be impossible to satisfy because the Department of State’s registration database, known as the Statewide Uniform Registry of Electors (“SURE”), contains at least 130,189 invalid driver’s license numbers, likely because of data input errors. Hr’g Tr. 907-09, July 30, 2012 (D. Burgess). In addition, the SURE database lacks Social Security numbers for approximately 748,000 registered voters. Hr’g Tr. 131, July 16, 2013 (B. Siskin); Pet’rs’ Ex. 1096a at 10 n.9. In total, almost 900,000 registered voters (more than 10%) may provide their driver’s license number or Social Security number in order to have their absentee ballots counted under the Photo ID Law, but county election officials will be unable to validate the numbers and thus will be required not to count their ballots.

15. In sum, the overwhelming majority of voters in Pennsylvania must vote in person, and under the Photo ID Law, they must show a compliant photo ID in order to do so, which effects a significant change to the prior law and imposes a far more restrictive identification requirement. Neither the provisional ballot nor absentee ballot process provides a guarantee that voters without a compliant photo ID will have their votes counted.

B. Respondents’ Own Analyses Confirm that the Law Makes It More Burdensome to Vote and Will Disenfranchise Voters

16. Respondents’ own analyses of the Photo ID Law confirm that the Law’s express terms will lead to undue burden and disenfranchisement. Respondents found that the Law would make it difficult or impossible for certain voters to exercise the franchise. In working closely together to draft the Law, Respondents and the General Assembly considered many changes that could have eased – but not eliminated – some of these obstacles to voting, but they almost invariably rejected such changes. *See, e.g.*, Pet’rs’ Exs. 1559, 1566, 2091, 2092, 2093; Hr’g Tr.

1037-65, July 22, 2013 (R. Oyler). Respondents and the General Assembly also compared the Photo ID Law to those of other states, found critical safety nets that exist in the laws of other states but did not adopt those safety nets into the Pennsylvania Law. Hr’g Tr. 1059-62, July 22, 2013 (R. Oyler); Pet’rs’ Ex. 2092.

17. Respondents and the General Assembly recognized that requiring expiration dates on otherwise compliant photo IDs, and not accepting most expired IDs, had the effect of increasing the number of people without a compliant photo ID and making it harder – especially for elderly and disabled voters – to vote. Hr’g Tr. 1041-42, 1049-52, July 22, 2013 (R. Oyler). For example, David Proctor, a disabled voter, has a U.S. Merchant Mariner’s Document issued by the U.S. Coast Guard, which can be used like a passport to leave or enter the United States on official maritime business,³ but which has no expiration date and therefore cannot be used to vote under the Law. Pet’rs’ Ex.1433; Hr’g Tr. 1716-19, July 30, 2013 (J. Marks). Many voters who testified at trial have expired driver’s licenses that would be adequate to prove their identity to a poll worker, but the Law does not permit their use for voting. Hr’g Tr. 57-58, July 15, 2013 (M. Baker); Hr’g Tr. 85, July 15, 2013 (M. Kanter-Pripstein); Pet’rs’ Ex. 1427 at 14-15 (C. Howell dep. designations). Petitioners’ statistics and database expert, Dr. Bernard Siskin, identified 259,536 voters who have expired IDs from PennDOT that could be used to vote but for the expiration date requirement in the Law. Hr’g Tr. 132-33, July 16, 2013; Pet’rs’ Exs. 2096a at 4-5, 2096b at Table 1.

³ U.S. Customs and Border Protection, U.S. Citizens – Documents needed for entry into U.S., https://help.cbp.gov/app/answers/detail/a_id/74/~/~us-citizens---documents-needed-for-entry-into-the-u.s.; U.S. Dep’t of Homeland Security, Western Hemisphere Travel Initiative: The Basics, <https://www.dhs.gov/western-hemisphere-travel-initiative-basics>.

18. No one at the Department of State had “strong feelings” that expiration dates were necessary to prove a voter’s identity at the polling place. Pet’rs’ Ex. 1559 at 2; *see also* Hr’g Tr. 1049-50, July 22, 2013 (R. Oyler). The Department of State’s then-Director of Policy acknowledged that expiration dates on IDs help prove a person’s current status as a student, driver, traveler, etc., but that expiration dates are not needed to prove the separate question of a person’s identity. Hr’g Tr. 1042, July 22, 2013 (R. Oyler). At trial, no witness offered *any* explanation as to the purpose served by requiring that an otherwise compliant photo ID contain an expiration date and not be expired, because these requirements serve no legitimate purpose. They are simply unnecessary requirements that make it more difficult or impossible for hundreds of thousands of voters to exercise the right of suffrage.

19. The Department of State proposed various changes to both the Governor and the General Assembly that would have relaxed or eliminated the expiration date requirements in the Photo ID Law, but those proposals were rejected. Pet’rs’ Exs. 1559, 1566, 2091, 2093; Hr’g Tr. 1037-65, July 22, 2013 (R. Oyler). There was discussion of allowing expired photo IDs, at a minimum, for any voter over the age of 65 because the Department of State recognized that as people get older, they stop driving but continue using their expired driver’s licenses to prove their identity. Pet’rs’ Exs. 2093, 1559, 2091; Hr’g Tr. 1041-42, July 22, 2013 (R. Oyler). They considered eliminating the expiration date requirement for college and university IDs because most college and university IDs did not have expiration dates. Pet’rs’ Exs. 2091, 2092 at 2 (“currently, no State System School ID card includes expiration date”); Hr’g Tr. 1061-62, July 22, 2013 (R. Oyler). Before a final agreement was reached on the types of photo IDs that could be used to vote under the Law, the expiration date requirement was initially relaxed but was

reinserted at the last minute by the Governor and General Assembly. Pet'rs' Ex. 1566; Hr'g Tr. 1064-65, July 22, 2013 (R. Oyler).

20. Respondents and the General Assembly also considered that Veterans IDs issued by the U.S. Department of Veterans Affairs generally do not have expiration dates. Pet'rs' Ex. 1559 at 2. Voters who served their country can use their Veterans IDs to obtain VA medical care and to access military bases to shop at military commissaries, but they cannot use those IDs to vote under the Photo ID Law. Hr'g Tr. 1051, July 22, 2013 (R. Oyler). As such, Danny Rosa, Stanley Garrett, and many others now face disenfranchisement because their Veterans IDs lack an expiration date. Hr'g Tr. 860, July 30, 2012 (D. Rosa) (testifying that his Veterans ID lacks an expiration date); Hr'g Tr. 158-59, July 25, 2012 (S. Garrett) (same).

21. Beyond the expiration date issue, Respondents and the General Assembly also considered adding a host of other forms of photo ID to ease the burdens of the Law. For example, they considered allowing photo IDs issued by municipalities, counties, and school districts, which alone would have added roughly 3,000 issuers of compliant photo ID who, by definition, would have been locally available to voters in every county, city, township, and borough in Pennsylvania. Pet'rs' Exs. 1562 at 3, 2092 at 2, 2093 at 2. They considered adding photo IDs issued by retirement homes (which are separate from licensed care facilities). Pet'rs' Ex. 1559 at 2. They considered adding private employee IDs. Pet'rs' Exs. 2091 at 1, 2093 at 2, 1559 at 2; Hr'g Tr. 1050, July 22, 2013 (R. Oyler). But none of these were added to the Law (except IDs issued by municipalities to their municipal employees).

22. The Departments of State and Aging also recognized that issuing voter IDs through PennDOT, combined with the restrictions on absentee voting, would specially burden elderly and disabled voters. In a November 2011 joint memorandum, the two Departments

explained that some elderly and disabled voters can get to their locally accessible polling place and thus cannot vote absentee, but are too ill, elderly, or disabled to travel to PennDOT to get a compliant photo ID for in-person voting. Pet'rs' Exs. 1562 at 3-4. The two Departments recognized that, under the Photo ID Law, such voters would be "disenfranchised through happenstance beyond the control of the elector." *Id.* at 4. The Department of State's formal bill analysis in December 2012 reiterated this problem for elderly and disabled voters. Pet'rs' Ex. 1677. They warned that if the Law were not modified to allow all such voters to vote absentee, those voters would be "deprived the right to vote" by virtue of the Photo ID Law. *Id.* at 3; *see also* Pet'rs' Ex. 1559. And Respondents knew that this problem was not limited to voters living in licensed care facilities. Hr'g Tr. 1073-75, 1086-87, July 22, 2013; Pet'rs' Ex. 1562 at 4. Witnesses like Marian Baker, Mina Kanter-Pripstein, David Proctor, Patricia Norton, Catherine Howell, and others are living examples of this disenfranchisement through no fault of the voter.

23. The only "good solution" to this problem identified by the Departments of State and Aging was to allow elderly and disabled voters in this situation to vote absentee. Pet'rs' Ex. 1562 at 4. But this was not done. Instead, Respondents' witnesses pointed out that the Law was changed to allow care facility IDs to be used for voting. Hr'g Tr. 1068-73, July 22, 2013 (R. Oyler). That proposal originated with the General Assembly, and was *not* endorsed by the Departments of State or Aging because "[w]e understand that it is not typical for care facilities in Pennsylvania to issue photo ID cards to their residents," and in any event not all elderly and disabled voters live in care facilities. Pet'rs' Ex. 1562 at 3-4. In its formal bill analysis, the Department of State reiterated this common-sense critique of the General Assembly's care facility IDs:

If care facilities do not issue an acceptable ID, an individual who lives in a care facility and whose license (or federal government

issued ID) has been expired for over a year may have problems trying to vote if he or she is not well enough to get a new ID, but his or her polling place is located in the care facility. Therefore, the elector could not claim that he or she could not make it to the polling place, because it is in the care facility. However, the elector may not be well enough to go to a PennDOT photo ID center to get a new ID. ***The individual may then claim that he or she has been deprived of the right to vote.***

Pet'rs' Ex. 1677 at 3 (emphasis added).

24. In sum, it has always been understood that most care facilities did not and still do not issue compliant photo IDs for voting under the Photo ID Law. Pet'rs' Exs. 1562 at 3, 1677 at 3; *see also infra* ¶¶ 30-33. The General Assembly did not adopt a “good solution” to avoid disenfranchisement and instead adopted a “solution” that for all practical purposes, does not exist and conceivably helps only those who happen to live at a small number of licensed care facilities that may actually issue compliant photo IDs.

C. Many Voters Cannot Meet the Requirements to Obtain a PennDOT ID

25. The only form of compliant photo ID under the Photo ID Law to which voters have a statutory entitlement is the PennDOT non-driver ID under Section 1510(b) of the Vehicle Code. But it is undisputed that PennDOT has refused to issue that ID in accordance with the Law, as it was construed by the Supreme Court. Many voters cannot meet the extra-legal requirements that PennDOT continues to impose on all applicants for the PennDOT non-driver ID, meaning that the only compliant photo ID to which voters are supposed to be entitled under the Law is inaccessible to large numbers of voters who need a compliant ID to vote.

26. Under the Photo ID Law, the “primary form of photo identification to be used by voters is a Department of Transportation (PennDOT) driver’s license or the non-driver equivalent provided under Section 1510(b) of the Vehicle Code, 75 Pa. C.S. § 1510(b).”

Applewhite v. Commonwealth (“*Applewhite II*”), 54 A.3d 3, 3 (2012); *see also* Hr’g Tr. 770-71,

July 30, 2012 (J. Marks); Hr'g Tr. 1012, July 31, 2012 (C. Aichele). This is because although several other forms of photo identification may be acceptable to vote under the Law, not all voters are eligible for, or have the means to obtain, one of those other photo IDs.

27. For example, a Commonwealth employee ID or military ID may be acceptable for voting under the Photo ID Law, provided it has an expiration date (which many do not have), but most voters are not Commonwealth employees or members of the military. Hr'g Tr. 771, July 30, 2012 (J. Marks). The work of Respondents' statistics expert, Dr. William Wecker, shows that military IDs will help only a small number of voters. When Dr. Wecker drew his 28-square-mile circles around Pennsylvania's military bases, he identified only 2,547 voters who lacked an ID from PennDOT. Hr'g Tr. 1583-84, July 25, 2013 (W. Wecker); Resp'ts' Ex. 224 ¶ 12.

28. Likewise, a college or university ID with an expiration date may be acceptable for voting under the Law, but most voters are not college students. Hr'g Tr. 771, July 30, 2012 (J. Marks). To the contrary, the parties' experts established that college students make up only a small number of those lacking a compliant photo ID. Dr. Siskin found only 37,128 voters without an ID from PennDOT who were between 18 and 22 years of age (*i.e.*, college aged). Hr'g Tr. 205, July 16, 2013; Pet'rs' Ex. 2096b at Table 4. Petitioners' survey expert, Dr. David Marker, similarly found that, among voters polled in 2012, very few of those without a compliant photo ID were college aged. Hr'g Tr. 408, July 17, 2013; Pet'rs' Ex. 2097a at 6. And Dr. Wecker found only 48,046 voters ages 18 to 28 who lacked an ID from PennDOT when he drew his 1-mile-radius circles around colleges or universities (including circles covering large swaths of Pittsburgh and Philadelphia). Hr'g Tr. 1537-38, July 25, 2013; Resp'ts' Ex. 224 ¶ 12.

29. When the Photo ID Law was enacted, most colleges and universities did not issue photo IDs with expiration dates. Hr'g Tr. 986, July 31, 2012 (C. Aichele) (“[W]e found that

fewer colleges in Pennsylvania used expiration dates than we expected. In fact, a small percentage used expiration dates.”); Pet’rs’ Ex. 2092 (“currently, no State System School ID card includes expiration date”). Nothing requires any college or university in Pennsylvania to begin issuing compliant photo IDs to students or otherwise, and Respondents have no authority to require any college or university to do so. Hr’g Tr. 515-16, July 17, 2013 (J. Marks). While a number of colleges have added expiration dates to their IDs, Respondents’ witnesses acknowledged that not all colleges and universities have done so, or will do so in the future. Hr’g Tr. 772, July 30, 2012 (J. Marks) (agreeing that “not all colleges are going to put [expiration date] stickers on their cards”); Hr’g Tr. 792-93, July 18, 2013 (S. Royer) (same). According to the Department of State’s most recent tracking chart, dated July 9, 2013, dozens of colleges and universities still do not issue photo IDs that can be used to vote under the Photo ID Law, including, among others, Bucknell University, Duquesne University, Carlow University, Grove City College, Haverford College, Lafayette College, Robert Morris University, St. Vincent College, Slippery Rock University, Villanova University, Washington & Jefferson College, and Widener University. Resp’ts’ Ex. 137; Hr’g Tr. 1705-09, July 30, 2013 (J. Marks).

30. The Photo ID Law also permits a voter to use a photo ID issued by certain types of licensed Pennsylvania care facilities, but not all elderly or disabled voters live in such a care facility. Hr’g Tr. 1271, July 24, 2013 (K. O’Donnell). And many senior living facilities for the elderly do not qualify to issue compliant photo IDs for voting under the Law, including the roughly 12,000 adult “day care” facilities and retirement homes. Hr’g Tr. 1257-58, July 24, 2013 (K. O’Donnell); Hr’g Tr. 1046, 1073-74, July 22, 2013 (R. Oyler). In addition, nothing requires any care facility to issue voter IDs to residents or otherwise, and voters have no right to demand that a care facility issue compliant photo ID for voting. Hr’g Tr. 1075-76, July 22, 2013

(R. Oyler). Respondents have no authority to require any care facility to issue compliant photo IDs under the Law. Hr'g Tr. 516, July 17, 2013 (J. Marks).

31. Before the Photo ID Law was enacted, Respondents knew that most care facilities did not issue photo IDs. Pet'rs' Ex. 1562 at 3 (“[I]t is not typical for care facilities in Pennsylvania to issue photo ID cards to their residents.”); Hr'g Tr. 1270-71, July 24, 2013 (K. O'Donnell) (“Q. Now, in this memo, at the time that this memo was written, you knew that most of the care facilities as you just defined them did not issue ID; isn't that right? A. At the time this memo was written, care facilities, to the best of my knowledge, weren't issuing photo IDs.”); Hr'g Tr. 1054, 1092, July 22, 2013 (R. Oyler) (“Q. And you learned through your research that few, if any, licensed care facilities were actually issuing ID cards to their residents; correct? A. Yes, that was true at the time.”); Pet'rs' Ex. 1677 at PA-00005428 (“The list of acceptable ID's includes an ID issued by a care facility. However, the Department has learned that most care facilities do not currently issue ID's.”).

32. Yet, 16 months later, Respondents do not know how many care facilities issue compliant photo IDs for voting today, because they have done no work to figure it out. Hr'g Tr. 516-17, 543, July 17, 2013 (J. Marks) (“Q. But as you sit here today, you cannot tell me how many of the care facilities in the State of Pennsylvania have issued compliant photo IDs that can be used for voting? A. I cannot.”); Hr'g Tr. 1055, July 22, 2013 (R. Oyler) (“Q. And the Department [of State] hasn't done any survey of all the care facilities to determine if they all are, some of them are, most are or very few are issuing IDs to the residents; isn't that right? A. They haven't that I'm aware of. Q. And you're not aware of anyone else doing that type of survey; correct? A. Not that I'm aware of.”); Hr'g Tr. 1271, July 24, 2013 (K. O'Donnell) (“Q. Okay. So, and since the time this memo was written, you haven't done any work to determine how

many care facilities are issuing ID; have you? A. I personally have not, no. Q. Okay. You have done no work to identify how many voters have received a care facility ID, have you? A. I have not, no.”); Hr’g Tr. 1850, July 30, 2013 (M. Sweeney) (“Q. And I believe the Court asked or was getting at the question of how many of the care facilities are issuing photo IDs right now that are acceptable for voting. You don’t know that number, do you? A. I don’t have a hard number now.”).⁴

33. At trial, Respondents presented documents listing almost 2,000 licensed care facilities that are *eligible* to issue compliant photo IDs for voting under the Photo ID Law. Resp’ts’ Exs. 83, 85, 87. But Respondents’ witnesses and counsel identified, at most, only three licensed care facilities that may actually be issuing compliant photo IDs to residents. *See* Hr’g Tr. 1556, July 25, 2013 (W. Wecker); Hr’g Tr. 1826, July 30, 2013 (M. Sweeney); Hr’g Tr. 707, July 18, 2013 (A. Rogoff).⁵ Even those assertions were based on hearsay and were not corroborated by any witness with personal knowledge of what those care facilities are or are not doing. Respondents did not call a single witness from a care facility, a trade association for care facilities, or either of the Commonwealth agencies that license and regulate those care facilities (the Departments of Health or Public Welfare). The only competent evidence in the record is Respondents’ own analyses that recognized “most” care facilities do not issue photo IDs that could be used to vote. Pet’rs’ Exs. 1562, 1677.

⁴ During closing, Respondents’ counsel asserted that the number of care facilities issuing voter IDs was tracked by the Departments of Aging, Health and/or Public Welfare. Hr’g Tr. 2024, Aug. 1, 2013. But the record contains no evidence of any such tracking.

⁵ Mr. Rogoff testified that there was a sign about getting ID in his father-in-law’s care facility (the Watermark House), *not* that the facility was issuing the IDs. Hr’g Tr. 707, July 18, 2013. Respondents did not present evidence that the facility was actually issuing IDs; Mr. Myers testified only that PennDOT did outreach with the facility. Hr’g Tr. 1344, July 24, 2013.

34. By contrast, as construed by the Supreme Court, the Photo ID Law provides that every voter is supposed to be able to obtain the PennDOT non-driver ID in order to be able to vote. Section 206(b) of the Law requires PennDOT to issue a PennDOT non-driver ID “at no cost” to “any registered elector” who signs an affirmation “that [1] the elector does not possess proof of identification as defined in [the Photo ID Law] and [2] requires proof of identification for voting purposes.” *Applewhite II*, 54 A.3d at 3 (quoting 25 P.S. § 2626(b)). If a voter signs this affirmation, PennDOT must give the voter the free PennDOT non-driver ID for voting purposes, “[n]otwithstanding” that under Section 1510(b) of the Vehicle Code, PennDOT normally requires applicants to provide certain supporting documentation and pay a fee of \$13.50. *Id.* (quoting same). The Supreme Court termed this “a policy of liberal access to Section 1510(b) identification cards,” *i.e.*, Section 1510(b) PennDOT non-driver IDs. *Id.*⁶

35. It is undisputed that “the Law is not being implemented according to its terms.” *Applewhite II*, 54 A.3d at 3. This is because “PennDOT will not implement the Law as written.” *Id.* Citing security concerns, PennDOT will not relax the documentation requirements for voters to obtain a free PennDOT non-driver ID for voting purposes, as Section 206(b) of the Photo ID Law mandates. *Id.* Instead, PennDOT continues to vet all applicants for a PennDOT ID through

⁶ Respondents’ counsel argued in closing that Section 206(b) of the Law refers to the DOS ID and not the PennDOT non-driver ID under Section 1510(b) of the Vehicle Code. Hr’g Tr. 2029-30, Aug. 1, 2013. Respondents’ position is wholly groundless. The relevant statutory language expressly refers *only* to the Section 1510(b) PennDOT non-driver ID: “the Department of Transportation shall issue an identification card described in 75 Pa. C.S. § 1510(b) at no cost.” 25 P.S. § 2626(b). The Law makes no mention of the DOS ID, which did not even exist when the Law was enacted. Construing this unambiguous statutory language, the Supreme Court held that the Law “contemplates that the primary form of photo identification to be used by voters is a [PennDOT] driver’s license or the non-driver equivalent provided under Section 1510(b) of the Vehicle Code.” *Applewhite II*, 54 A.3d at 3-4. Respondents pointed to the “notwithstanding” clause in Section 206(b), but that refers to the fact that under Section 1510(b), there is ordinarily a cost (\$13.50) and other documentation requirements for the PennDOT non-driver ID, whereas Section 206(b) mandates that it be issued “at no cost” and without other supporting documents.

a “rigorous” application process, which generally “requires the applicant to present a birth certificate with a raised seal (or a document considered to be an equivalent), a social security card, and two forms of documentation showing current residency. *Id.*; *see also* Hr’g Tr. 689-90, 699, 713-14, July 27, 2012 (K. Myers). The Supreme Court accepted PennDOT’s security concerns, which are unrelated to voting, as a “good reason” for PennDOT not to comply with the Law’s mandate of “liberal access” to a free PennDOT non-driver ID for voting purposes. *Applewhite II*, 54 A.3d at 3. However, because PennDOT refuses to provide “liberal access” to a free PennDOT non-driver ID for voting purposes, those “critical terms of statute have themselves become irrelevant.” *Applewhite II*, 54 A.3d at 4.

36. It is undisputed that many voters cannot meet the documentation requirements that PennDOT continues to impose for a free PennDOT non-driver ID for voting purposes. *Applewhite II*, 54 A.3d at 3 (“[B]oth state agencies involved appreciate that some registered voters have been and will be unable to comply with the requirements maintained by PennDOT to obtain an identification card under Section 1510(b).”). Respondents’ witnesses conceded that they knew, even before the Law was enacted, that many voters are unable to obtain a PennDOT ID. Hr’g Tr. 698-99, July 27, 2012 (K. Myers) (“Q. There are some people who are unable to obtain either a PennDOT driver’s license or a PennDOT photo identification card? A. That is correct. . . . Q. And you’ve known that basically the whole time you’ve held this job? A. Yes.”); *id.* at 713 (“[A]t the end of the day there will be people who will not be able to qualify for a driver’s license or a PennDOT ID card.”); Hr’g Tr. 772, July 30, 2012 (J. Marks) (“Q. Now, even though the PennDOT ID is supposed to be the universal form of identification, in fact, there are people who have great difficulty or are unable to get a PennDOT ID? A. That’s correct.”). In June 2012, the Department of State identified specific groups of voters who “may not be able to

obtain the free non-driver's license photo ID from [PennDOT]." Pet'rs' Ex. 20 at PA-00081226 (06/12/12 Email from K. Kotula to S. Royer et al.); Hr'g Tr. 549-54, July 17, 2013 (J. Marks).

37. Numerous voters testified that they cannot obtain a free PennDOT non-driver ID for voting purposes based on the documentation requirements that PennDOT continues to impose. Viviette Applewhite, a 93-year-old voter and former Petitioner, tried unsuccessfully for years to obtain an ID from PennDOT. Hr'g Tr. 95, 100-01, 108, July 25, 2012. She obtained a Pennsylvania birth certificate with a lawyer's assistance, but she does not have a Social Security card and her birth certificate is in her birth name, Viviette Virene Brooks, while her Social Security records and proofs of residency are in the name Viviette Applewhite, which she acquired decades ago in Mississippi via an adoption process. *Id.* at 109-10, 112.⁷ Petitioner Wilola Shinholster Lee, a registered voter born in rural Georgia in 1952, has spent more than 12 years trying to obtain a PennDOT ID, but she has not been able to obtain her Georgia birth certificate and has been told that Georgia has no record of her birth. Hr'g Tr. 71, 76, 82-85, July 25, 2012. Leila Stones, a registered voter born at home in Virginia in 1959, was similarly unable to obtain her Virginia birth certificate and was told that Virginia has no record of her birth. Hr'g Tr. 167, 169, 171-73, July 25, 2012. After learning of the Photo ID Law, Ms. Stones called the Department of State, but was given "the run around" and was not given information about how to obtain a compliant photo ID for voting. *Id.* at 175-76. Ana Gonzalez, a registered voter born

⁷ After the July 2012 hearing, PennDOT employees gave Ms. Applewhite a PennDOT non-driver ID even though she still did not possess the required documentation. *See* Jessica Parks, Lead plaintiff in Pa. voter ID case gets her photo ID, *The Philadelphia Inquirer*, Aug. 17, 2012, *available at* http://articles.philly.com/2012-08-17/news/33233715_1_penndot-id-new-voteridentification-law-penndot-center. This is consistent with Respondents' practice of breaking their own rules and legal requirements to issue compliant photo IDs to voters who participate in this case in order then to argue that no voter is unable to get a compliant photo ID.

in Puerto Rico in 1949 and later adopted, cannot obtain a PennDOT ID because, in order to obtain a birth certificate from Puerto Rico, she needs a photo ID and the names of her birth parents, which she does not know. Hr’g Tr. 138-41, 144-48, July 25, 2012. Danny Rosa, a registered voter and veteran, was born in New York City in 1949 as Danny Guerra, but took the name Rosa from his stepfather. Hr’g Tr. 853, 854-55, 859-60, July 30, 2012. After learning about the Photo ID Law, Mr. Rosa went to PennDOT twice, but was denied an ID both times because the name on his birth certificate is Guerra, while his Social Security card and voter registration record are in the name he has used virtually his entire life, Rosa. *Id.* at 862-66; Pet’rs’ Ex. 32. The record is filled with other similar stories.⁸

38. Expert witnesses Veronica Ludt and Michele Levy also testified that many voters, particularly the homeless and financially disadvantaged, face significant burdens trying to obtain a PennDOT driver’s license or non-driver ID. Hr’g Tr. 207-15, 219, 225-26, 249, July 25, 2012 (V. Ludt); Hr’g Tr. 645-56, July 27, 2012 (M. Levy). Ms. Ludt, the legal center director of Face to Face, Inc., and Ms. Levy, the managing attorney for the Homeless Advocacy Project, routinely assist low-income individuals in trying to obtain identification. Hr’g Tr. 200-01, 204-05, July 25, 2012 (V. Ludt); Hr’g Tr. 634, 640-41, July 27, 2012 (M. Levy). They explained why obtaining the necessary documentation for a PennDOT non-driver ID can be a confusing process that costs money, takes years, is difficult even for lawyers to navigate, and is often unsuccessful.

⁸ See, e.g., Hr’g Tr. 622-24, 630-31, July 27, 2012 (G. Cuttino) (discussing unsuccessful attempts to get birth certificate from South Carolina and inability to get PennDOT ID without a birth certificate); Hr’g Tr. 160-62, July 25, 2012 (S. Garrett) (discussing unsuccessful attempt to get birth certificate from North Carolina in order to get a photo ID for voting from PennDOT), Hr’g Tr. 836-44, July 30, 2012 (T. Sutter) (discussing repeated unsuccessful attempts to get birth certificate and Social Security card in order to get a photo ID for voting from PennDOT); Hr’g Tr. 1032-33, 1035, July 31, 2012 (L. Gray) (discussing difficulty in getting consular birth certificate and Social Security card in order to get a photo ID for voting).

Hr'g Tr. 208-11, 219, 225-26, 249, July 25, 2012 (V. Ludt); Hr'g Tr. 651, July 27, 2012 (M. Levy). In particular, many individuals have difficulty obtaining a raised-seal birth certificate, Social Security card or replacement card, and proofs of residency. Hr'g Tr. 205-15, 219-24, July 25, 2012 (V. Ludt); Hr'g Tr. 645-58, July 27, 2012 (M. Levy).

39. The un rebutted testimony of Petitioners and their fact and expert witnesses, as well as Respondents' own witnesses, dispelled the myth, repeated by Respondents' counsel throughout this case, that virtually everyone who is eligible to vote already has a compliant photo ID because photo ID is now required for everyday purposes such as boarding a plane (which it is not, *see infra* ¶ 185), buying prescription drugs, obtaining medical care, getting a job, buying alcohol, etc. The reality is that many members of society exist day-to-day without these and other privileges that those with photo ID take for granted. Hr'g Tr. 206-08, July 25, 2012 (V. Ludt); Hr'g Tr. 640-43, July 27, 2012 (M. Levy); *see also* Hr'g Tr. 464-66, July 17, 2013 (A. Bruckner) (explaining how hundreds of people line up every Monday for assistance getting ID).

40. In sum, there is no basis to justify disenfranchising some of the most vulnerable members of society because they cannot qualify for a secure PennDOT non-driver ID. Respondents have conceded that these rigorous security requirements are entirely unnecessary for voting. Hr'g Tr. 781, July 27, 2012 (J. Marks); Hr'g Tr. 994-95, Aug. 1, 2012 (C. Aichele).

D. The Department of State ID Does Not Adequately Protect the Right to Vote

41. The DOS ID is a discretionary creation of Respondents to which no voter has any entitlement. For voters with no other compliant photo ID, their right to vote now depends on how Department of State and PennDOT employees choose on a case-by-case basis to exercise their discretion in issuing DOS IDs, and depends on the broader discretion of the Department of State in continuing to offer the DOS ID and setting its requirements. The Department of State has exercised this discretion time and again to make it impossible, or at least unduly and

unnecessarily difficult, for voters to obtain a DOS ID, or simply to deny the DOS ID to qualified applicants. No voter has a right under the Photo ID Law or any other legal authority (a) to obtain a DOS ID, (b) to contest any denial of a DOS ID, or (c) to challenge any change to the requirements for, or the elimination of, the DOS ID. *See Applewhite II*, 54 A.3d at 6-7 (McCaffery, J., dissenting) (The DOS ID is “unmoored from the actual text of [the Photo ID Law] and without benefit of governing regulation.”).

42. In response to this lawsuit, which demonstrated that not all voters can obtain a PennDOT non-driver ID to be able to vote under the Photo ID Law, Respondents announced on the eve of the July 2012 hearing that the following month they would begin offering “a new, non-secure Department of State identification card [“DOS ID”] . . . at PennDOT driver license centers.” *Applewhite II*, 54 A.3d at 4; *see also* Hr’g Tr. 552-57, July 17, 2013 (J. Marks); Hr’g Tr. 1329-30, July 24, 2013 (K. Myers); Resp’ts’ Ex. 120 (07/20/12 press release).

43. The DOS ID is a discretionary, litigation-driven creation of the Executive Branch. Hr’g Tr. 556-57, 574-76, July 17, 2013 (J. Marks); Hr’g Tr. 783-84, July 30, 2012 (J. Marks). Neither the Photo ID Law nor any other Pennsylvania law requires the creation of the DOS ID or otherwise mentions it in any fashion. Hr’g Tr. 574-75, July 17, 2013 (J. Marks). Department of State officials, in their discretion, decide the requirements for voters to obtain a DOS ID. *Id.* at 575-76. Department of State officials likewise can decide at any time to change those requirements. *Id.* at 576. Department of State officials also could decide at any time to eliminate the DOS ID altogether. *Id.* In addition, nothing requires PennDOT to offer the DOS ID. Hr’g Tr. 1330, July 24, 2013 (K. Myers) (“Q. Do you know whether PennDOT was required under the Act [to] issue a Department of State ID? A. The – from the standpoint of being required to issue a Department of State ID, no, I don’t think that the Department is required to issue a Department

of State ID.”). Members of the House of Representatives, including Daryl Metcalfe, the sponsor and key proponent of the Photo ID Law, have questioned the Department of State’s authority to create the DOS ID and expressed opposition to the card’s existence. Pet’rs’ Exs. 1446 (03/06/13 email from Rep. D. Metcalfe to J. Marks and others: “The greater question is why is this being pursued when no statutory authority exists for the id card?”), 1447 (03/06/13 email from Rep. S. Barrar to Rep. D. Metcalfe, J. Marks, and others: “Maybe you need to call the Sec. of State to a meeting with your committee. I think this is a bad idea, or at least require it to be notarized.”).

44. Since the DOS ID was first deployed on August 27, 2012, the Department of State repeatedly has changed the requirements for voters to obtain a DOS ID. Hr’g Tr. 1329, July 24, 2013 (K. Myers) (“Well, the process really evolved over time, and there were changes made from the standpoint of what was originally required to later on changes as to what was required for the – to receive the DOS ID, just the process itself. Those were decisions that were made by the Department of State. . . . [T]he decisions from the standpoint of the form, the affirmation, what the application form would look like, those were all decisions that were the Department of State’s, including what would be accepted as far as information is concerned. . . . [U]ltimately the decision and the ability to make that decision was the Department of State’s from the standpoint of what the requirements would be for the card.”).

45. It is undisputed that “from the time of initial deployment on August 27, 2012, until the first day of the hearing, September 25, 2012,” Respondents imposed an “exhaustion” requirement on applicants seeking a DOS ID to be able to vote under the Photo ID Law. *Applewhite v. Commonwealth* (“*Applewhite III*”), No. 330 MD 2012, 2012 WL 4497211, at *1 (Pa. Commw. Ct. Oct. 2, 2012); *see also* Hr’g Tr. 558-60, July 17, 2013 (J. Marks); Hr’g Tr. 709, July 27, 2012 (K. Myers). During that period, Respondents offered the DOS ID only “as a

‘last resort’ when all other options have been exhausted and then only when customers cannot be issued a PennDOT SECURE Photo ID.” Pet’rs’ Ex. 107; *see also* Hr’g Tr. 25-28, Sept. 25, 2012 (K. Myers). To apply for a DOS ID, voters were required to sign an affirmation declaring under penalty of perjury that “I am unable to obtain a [PennDOT ID card] because I do not possess all of the documentation required to obtain a PennDOT ID card and cannot obtain the needed documentation, or cannot obtain the documentation without payment of a fee.” Pet’rs’ Ex. 220 (08/14/12 DOS Initial ID Form). If a voter could not truthfully sign that affirmation, the voter was sent home with no DOS ID and told to retrieve (or obtain) the supporting documentation required for a PennDOT non-driver ID. Hr’g Tr. 559, July 17, 2013 (J. Marks).

46. Until September 25, 2012, Respondents also required applicants for a DOS ID to provide two proofs of residency. Pet’rs’ Ex. 220.

47. In addition, since August 27, 2012, and still today, PennDOT will not give a DOS ID to an applicant at a Driver License Center unless a Department of State employee manning a telephone helpdesk first can verify that the applicant’s name appears in the Department of State’s registration database, known as SURE. Hr’g Tr. 562, 564-65, July 17, 2013 (J. Marks).

48. As a result of each of these requirements, numerous voters went to PennDOT between August 27 and September 25, 2012 but were denied a DOS ID, even though they were willing and able to sign the two-point declaration set out in the Photo ID Law (stating that they had no compliant ID and needed ID to vote). *See, e.g.*, Hr’g Tr. 315-18, Sept. 27, 2012 (D. Clark) (denied a DOS ID despite having Social Security number and two proofs of residency); Hr’g Tr. 385-90, Sept. 27, 2012 (D. Bellisle) (testifying about people who were unable to obtain a DOS ID at PennDOT); Hr’g Tr. 406-08, Sept. 27, 2012 (J. Hockenbury) (same); Hr’g Tr. 333-42, Sept. 27, 2012 (L. Pannell) (denied a DOS ID because Department of State could not verify

her voter registration); Decl. of B. Bodie-Palmer, Sept. 22, 2012 (same); Decl. of R. Hartle, Sept. 21, 2012 (same); Decl. of E. Stillabower, Sept. 21, 2012 (denied DOS ID and informed by PennDOT he could not obtain DOS ID until he was registered to vote).

49. On September 25, 2012, with the Supreme Court's decision in hand, Respondents attempted to do the bare minimum by eliminating the "exhaustion" requirement that the Supreme Court specifically identified as unlawful as well as the requirement to show two proofs of residency that also unlawfully went beyond the two-point affirmation requirement. *Applewhite III*, 2012 WL 4497211, at *1; *see also* Hr'g Tr. 563-64, July 17, 2013 (J. Marks); Hr'g Tr. 83-84, Sept. 25, 2012 (K. Myers).

50. Notwithstanding these changes, since September 25, 2012, the DOS ID still has not been accessible to all voters who go to PennDOT and sign the simple, two-point declaration set out in the Photo ID Law. This is primarily because PennDOT still will not give a DOS ID to an applicant unless the Department of State first can verify that the applicant's name appears in the SURE database. Hr'g Tr. 564-65, July 17, 2013 (J. Marks). Rather than eliminate this inaccurate and unworkable "verification" requirement, Respondents changed their procedures on September 25, 2012, so that if a Department of State employee manning the helpdesk is unable to locate a DOS ID applicant in the SURE database, PennDOT is supposed to (1) take the applicant's photo and create their DOS ID card, (2) have the applicant fill out a voter registration mail application, and (3) mail the DOS ID and registration application, along with an "exceptions form" describing the problem, to the Department of State. *Id.* at 570-72. Upon receiving these materials, the Department of State is supposed to conduct a further investigation to confirm the applicant's registration, then mail the DOS ID to the applicant at some point in the future. *Id.*

51. Applying the “verification” requirement, the Department of State and PennDOT have regularly denied DOS IDs to recently registered voters, because the process of entering a voter’s name and other information in the SURE database can take about two to three weeks (and sometimes longer), depending on the county and how busy they are processing registrations. Hr’g Tr. 566-69, July 17, 2013 (J. Marks); Hr’g Tr. 482-83, 501, 503, Sept. 27, 2012 (J. Marks). For two reasons, this will always be an especially significant problem in presidential election years. First, the much larger volume of registrations before a presidential election consistently leads to longer delays in the counties processing registrations and entering voters in the SURE database. Hr’g Tr. 566-69, July 17, 2013 (J. Marks). Second, third-party voter registration drives often collect registrations and submit them to the counties in large batches, leading to further delay between the time when a voter fills out a registration form at a drive and when the county eventually processes the registration and enters the voter in the SURE database. *Id.* Even in non-presidential election years, there is always a delay between when a voter registers to vote and when his or her name appears in the SURE database. Hr’g Tr. 1730-32, July 30, 2013 (J. Marks). As such, voters in every election cycle will always face this problem in trying to get a DOS ID. And, as Mr. Marks testified, the problem of delayed data entry is far more pronounced in Pennsylvania’s two most populous jurisdictions, Philadelphia County and Allegheny County, Hr’g Tr. 568-69, July 17, 2013, thereby jeopardizing voters’ ability to vote in the largest urban areas more than those in the Commonwealth’s rural districts.

52. In addition to recently registered voters, many longtime registered voters likewise have been turned away by PennDOT without a DOS ID because the Department of State could not verify their registration in the SURE database, even though upon subsequent and closer

scrutiny, the voter was in the SURE database all along. Hr’g Tr. 633-38, July 17, 2013 (J. Marks); *see also, e.g.*, Hr’g Tr. 333-42, Sept. 27, 2012 (L. Pannell).

53. While there was much quibbling at trial over the precise number of voters who were wrongfully denied a DOS ID at PennDOT based on the Department of State’s “verification” requirement, the exact number is immaterial. By any measure, PennDOT has turned away a significant percentage of the voters who traveled to PennDOT and applied for a DOS ID, even after Respondents implemented new and supposedly streamlined procedures for issuing DOS IDs on September 25, 2012. This is because the Department of State’s “verification” requirement using the SURE database is inaccurate, ineffective, and unworkable.

54. The Department of State maintains a SharePoint database to keep track of all the voters who went to PennDOT and applied for a DOS ID but were not given a DOS ID while there, referred to as “exceptions.” Hr’g Tr. 596-97, July 18, 2013 (J. Marks); Pet’rs’ Ex. 2071 (spreadsheet exported from SharePoint database). On the one hand, accepting the Department of State’s SharePoint database on its face as a log of DOS ID “exceptions,” roughly 20% of applicants have been unable to obtain a DOS ID at PennDOT since September 25, 2012. Hr’g Tr. 615-16, July 18, 2013 (J. Marks) (roughly 506 “exceptions” out of roughly 2,530 applicants); Pet’rs’ Ex. 2136 ¶ 1. This failure rate reflects, at best, a moderate improvement over Respondents’ old procedures from before September 25, 2012, when PennDOT was turning away as many as 25% of applicants with no DOS ID based on the “verification” requirement. Pet’rs’ Ex. 149. As the Department of State’s top non-political election official, Jonathan Marks, testified at the September 2012 hearing, this is an “inordinate amount of exceptions.” Hr’g Tr. 215, Sept. 25, 2012 (J. Marks).

55. On the other hand, even accepting all arguments and inferences in favor of Respondents by excluding all of their mysterious 144 voters from the Department of State's SharePoint database (which, as discussed below, is unwarranted by the evidence), roughly 13% of DOS ID applicants – more than one in eight – have been unable to obtain a DOS ID at PennDOT since September 25, 2012. Pet'rs' Ex. 2136 ¶ 5 (330 “exceptions” out of about 2,530 applicants). Nearly a third of these “exception” applicants still have not received a DOS ID, either because PennDOT did not mail the ID to the Department of State, the Department of State has not mailed the ID to the voter, or the ID was eventually mailed to the voter (often several months later) but was returned as undeliverable. *Id.* ¶ 5.a; *see also* Pet'rs' Ex. 2071. In addition, after September 25, 2012, the Department of State sent letters to at least 26 applicants (and likely more) instructing them to return to PennDOT for a DOS ID, even though this burdensome practice was supposed to have been eliminated as of September 25, 2012. Pet'rs' Ex. 2136 ¶ 7; Hr'g Tr. 1949-52, July 31, 2013 (B. Niederberger); *see also* Hr'g Tr. 629-30, July 18, 2013 (J. Marks) (“So, even under the simplified process, a third of the folks who couldn't get the [DOS] ID, couldn't be verified right away, were told they have to go back and make another trip to PennDOT. A. Yeah, if they – Q. Is that right? A. If they had not received an ID card at that point, they would be able to go back and obtain one at PennDOT.”).

56. Most importantly, Respondents concede that if the Photo ID Law had been in effect for the November 2012 election, a number of duly registered voters would have been disenfranchised because they were wrongfully refused a DOS ID at PennDOT. Hr'g Tr. 2015, Aug. 1, 2013 (Respondents' counsel stating “yes, there are records that it took time to find, ways that it took effort to validate; and yes, some of those crossed over the time period of the November election”). Depending on the accuracy of the SharePoint database, somewhere from

56 to 128 valid voters (*i.e.*, registered in time to vote in November 2012) went to PennDOT to get a DOS ID *before* the November 2012 election, but received the ID either *after* election day or not at all. Pet’rs’ Ex. 2136 ¶¶ 6, 10. As Mr. Marks agreed, “if the photo ID law had in fact been in effect last year, those . . . duly registered voters would not have been able to cast a regular ballot on Election Day.” Hr’g Tr. 646, July 18, 2013.⁹

57. One of those voters is Helen, a 94-year-old Schuylkill County voter who applied for a DOS ID at PennDOT more than a month before the November 2012 election. Hr’g Tr. 637-38, July 18, 2013 (J. Marks) (discussing Pet’rs’ Ex. 2071, ID # 12). Helen has been registered to vote in Pennsylvania since 1944, but PennDOT refused to give her a DOS ID because the Department of State could not verify her registration in the SURE database and thus – in the discretion of the Department of State employee who answered the phone – decided that she did not deserve the ID she needed to vote. *Id.* To explain this error, Respondents pointed to the fact that during World War II, Helen registered using “Mrs.” plus her husband’s first name, as was common for women at that time. *Id.* at 657-58, 680-81. As a result, the Department of State did not send Helen her DOS ID until March 9, 2013, with delivery confirmed on March 14, four months after the election (and five months after she had applied). Pet’rs’ Ex. 2071. If the Photo ID Law had been in effect in November 2012, Helen would have been disenfranchised,

⁹ Respondents’ only response was to ask Mr. Marks to speculate that somehow the Department of State might learn that one of these voters had voted provisionally and would then send the DOS ID to a county board of elections within six calendar days after the election to allow the provisional ballot to be counted. Hr’g Tr. 666-67, 675-77, July 18, 2013. Mr. Marks did not explain whether any process exists for the Department of State even to learn that a DOS ID “exception” applicant had voted provisionally, or why the Department of State would send the DOS ID to which they did not believe the voter was entitled to a county board of elections. Nor did he explain why it would make sense to refuse the DOS ID to the voter but then send a copy to a county board of elections to allow the voter’s provisional ballot to be counted. And neither Mr. Marks nor anyone else on behalf of Respondents explained why a voter denied a DOS ID would even try to vote on election day knowing they had no compliant photo ID.

even though she followed all the rules and did everything Respondents asked her to do. Hr’g Tr. 637-38, July 18, 2013 (J. Marks). That there is an explanation for why Helen was denied a DOS ID under the Department of State’s overly complex procedures would not have excused or justified her disenfranchisement had the Law been in effect in November 2012.

58. Even now that Helen has a DOS ID, she is still at substantial risk of being turned away at the polls if the Photo ID Law is allowed to take effect. This is because, as Mr. Marks explained, the name on her DOS ID (“Helen”) likely does not substantially conform to the name in the SURE database (“Mrs.” plus her husband’s first name). Hr’g Tr. 1797-98, July 30, 2013. Thus, by the terms of the Photo ID Law, a poll worker is required to deny her the right to cast a regular ballot if the poll worker determines that the name on her DOS ID does not substantially conform. *Id.*; *see also* 25 P.S. § 2602(z.5).

59. As noted above, Respondents’ witnesses and counsel asserted at trial that the Department of State’s SharePoint database for tracking DOS ID “exceptions” is wrong with respect to as many as 144 people who supposedly may already have had a compliant photo ID from PennDOT and perhaps never applied for a DOS ID, but were mistakenly treated as DOS ID “exceptions” based on some miscommunication between PennDOT and the Department of State. Hr’g Tr. 614-15, 624, July 18, 2013 (J. Marks); Hr’g Tr. 1349-50, July 24, 2013 (K. Myers). Given the much larger total number of “exceptions,” any dispute over the 144 is relevant only insofar as it underscores the dysfunction in Respondents’ procedures for issuing DOS IDs. Respondents are not even capable of keeping track of who has and has not applied for a DOS ID, much less assure that each applicant receives the ID they would need to vote under the Law.

60. As Respondents apparently recognize, their assertions about the 144 are at least partially incorrect. The supplemental information Respondents’ counsel provided during trial

shows at least 7 of those 144 people conclusively did not have other compliant photo ID from PennDOT. *See* Ex. 4 to Resp'ts' Answer to Pet'rs' Mot. to Exclude Evidence (July 24, 2013) (sealed, and never admitted into evidence). Moreover, accepting the unverified representations of Respondents' counsel at face value, for more than a third of the 144, there is no information suggesting that they had a compliant photo ID or that they went to PennDOT before the November 2012 election for any reason other than to get a DOS ID. *Id.*; Pet'rs' Ex. 2136 at 3.

61. Respondents' solution to the supposed mix-up over the 144 highlights the extreme dysfunction in their DOS ID process. Based on supposed confidentiality concerns, PennDOT refused to release the identities of these individuals even to its sister agency, and the Department of State chose to send letters in April 2013 to all 144 individuals instructing them to return to PennDOT to get the DOS ID. Hr'g Tr. 624, July 18, 2013 (J. Marks); Pet'rs' Ex. 2071. Stated another way, Respondents have asked this Court to assume without any competent evidence that these individuals did not want or need a DOS ID to vote, but the Department of State – when faced with the same choice – sent letters telling these voters to return to go get their DOS ID.

62. Until February 2013, Respondents also imposed another unreasonable obstacle to obtaining a DOS ID. If a voter had a PennDOT driver's license or PennDOT non-driver ID that was expired less than a year, but that would be expired more than a year by the date of the next election (and thus noncompliant under the Photo ID Law), PennDOT would not give the voter a DOS ID on the absurd theory he or she still had an ID that could be used to vote *if an election were being held on the day of the visit to PennDOT*. Hr'g Tr. 573-74, July 17, 2013 (J. Marks). These voters were required to wait until their ID was expired more than a year and then return to PennDOT. *Id.* This practice punished proactive voters who took steps to ensure that they would have a compliant photo ID for purposes of the next election. For example, Preston Cobb is a

wheelchair-bound voter suffering from cerebral palsy whose PennDOT non-driver ID expired October 31, 2011, and thus would not be valid to vote in November 2012. Hr’g Tr. 364-75, Sept. 27, 2012 (P. Cobb). He spent nearly three-and-a-half hours at PennDOT in late September 2012 to get a free voter ID but was refused because his existing ID was not expired more than a year. *Id.* at 370-73. While Respondents finally eliminated this absurd practice in February 2013, it nonetheless reflects their restrictive and burdensome approach to issuing voter IDs and already unduly burdened voters like Mr. Cobb. Hr’g Tr. 574, July 17, 2013 (J. Marks).

63. To put the experience to date in context, all of these problems occurred under Respondents’ *new* procedures, in effect since September 25, 2012, during which only about 2,530 voters applied for a DOS ID at PennDOT. And Respondents have known since the Photo ID Law was enacted that they were in the “red zone,” and that their every action would be scrutinized under the microscope of this lawsuit. Hr’g Tr. 678-79, July, 18, 2013 (J. Marks); *see also* Hr’g Tr. 1108, July 22, 2013 (R. Oyler). Yet, even with a minimal number of applicants and this Court’s attention focused on the DOS ID process, Respondents’ procedures for issuing DOS IDs remain far from “seamless” and come nowhere close to what would be required to assure “no disenfranchisement.” *Applewhite II*, 54 A.3d at 5.

64. Given all of these problems with the “verification” process, there is no requirement under the Photo ID Law or otherwise for PennDOT or the Department of State to verify that a voter is in the SURE database before issuing a DOS ID for voting purposes. As discussed above, the DOS ID is an entirely discretionary creation of the Department of State, which controls all the rules for its issuance. Nothing prevented the Department of State from instructing PennDOT to give a DOS ID to anyone who showed up saying they needed photo ID to vote. In fact, PennDOT issues the free PennDOT non-driver ID for voting purposes *without*

verifying a voter's registration status in the SURE database; PennDOT simply accepts the two-point declaration required by the Law, as construed by the Supreme Court. Hr'g Tr. 1727-28, July 30, 2013 (J. Marks) (confirming that, unlike the DOS ID, applicants for a PennDOT non-driver ID "would just need to affirm," and "there's no SURE database registration check done"); Hr'g Tr. 1413-14, July 24, 2013 (K. Myers) (confirming that an applicant for PennDOT non-driver ID can sign the affirmation and receive a photo ID "no questions asked"); Hr'g Tr. 732-35, July 27, 2012 (K. Myers) (confirming that a voter would need only to sign the affirmation and produce the required documents to receive a free PennDOT non-driver ID). That PennDOT issues the free PennDOT non-driver ID without verifying an applicant's registration status belies any suggestion by Respondents that somehow the verification process is required by law for the DOS ID; it is simply another unnecessary hurdle imposed by Respondents in their discretion.

E. PennDOT Is a Burdensome and Ineffective Network for Issuing Voter IDs

65. The problems described above affected voters who were actually able to get to PennDOT to try to obtain a voter ID. Numerous other voters face substantial and often insurmountable obstacles even getting to PennDOT in the first instance. For those who lack a compliant photo ID under the Photo ID Law, the statutory framework of issuing such IDs through PennDOT effectively transforms a voting system in which a voter had to get to one of 9,300 locally accessible polling places into one where the voter must first get to one of 71 locations statewide to get an ID before being able to cast an in-person ballot. This distribution system is and always will be an undue and unnecessary burden and obstacle to voting. And, as Mr. Marks aptly observed, it will be a "bad day" if "registered voters don't get to vote because they can't get to PennDOT." Hr'g Tr. 802-03, July 30, 2012.

66. PennDOT IDs and DOS IDs are available only at PennDOT Driver License Centers. Hr'g Tr. 1426-27, July 24, 2013 (K. Myers) ; Hr'g Tr. 803, 807, July 18, 2013 (S.

Royer); Hr'g Tr. 556, July 17, 2013 (J. Marks). When the Driver License Center and distinct Photo Center share the same facility, both must be open at the same time for a voter to obtain a PennDOT ID or DOS ID. Hr'g Tr. 555-59, Sept. 27, 2012 (K. Myers). PennDOT also operates about 28 or 29 standalone Photo Centers, but those facilities do not have the capacity to issue PennDOT IDs or DOS IDs. Hr'g Tr. 1426-27, July 24, 2013 (K. Myers); Hr'g Tr. 702, July 27, 2012 (K. Myers). As discussed below, this distinction caused significant confusion and was the source of much misinformation distributed by Commonwealth officials to voters regarding where they can obtain a compliant photo ID to vote under the Photo ID Law.

67. It is undisputed that there are only 71 PennDOT Driver License Centers statewide where voters can obtain a PennDOT ID or DOS ID. Pet'rs' Ex. 25 (07/25/12 Stipulation). Nine counties in Pennsylvania have no Driver License Center. *Id.* Another 13 counties have a Center that is open only one day a week. *Id.* Another nine counties have a Center that is open two days a week. *Id.*; Hr'g Tr. 1305-06, 1400-01, July 24, 2013 (K. Myers). Fewer than half of the Centers are open five days per week; and even for those Centers that are open five days a week, some do not have the capacity to issue photo IDs on each day. Pet'rs' Ex. 25; Hr'g Tr. 705, July 27, 2012 (K. Myers); Hr'g Tr. 558-59, Sept. 27, 2012 (K. Myers). In the months preceding the November 2012 election, PennDOT extended the hours of operation at its five Driver License Centers in Philadelphia, but those extended hours ended after the election. *Compare* Hr'g Tr. 107, Sept. 25, 2012 (K. Myers), *with* Hr'g Tr. 1411-12, July 24, 2013 (K. Myers).

68. In contrast, there are almost 9,300 polling places where voters in every city, town, and borough in Pennsylvania can cast their ballots. Resp'ts' Ex. 152; Hr'g Tr. 1692, July 30, 2013 (J. Marks). The nine counties with no PennDOT Driver License Center have from nine to 33 polling places. Hr'g Tr. 1693-97, July 30, 2013 (J. Marks).

69. Many voters must travel a substantial distance to get to the nearest PennDOT Driver License Center, in many instances needing to leave the county where they live. Pet'rs' Ex. 2096b. For registered voters without a compliant PennDOT driver's license, PennDOT non-driver ID, or DOS ID for voting, the average driving distance to a Driver License Center is 14.11 miles. *Id.*; Hr'g Tr. 211-12, July 16, 2013 (B. Siskin). More than one in five of these voters must travel more than 20 miles to get to a Driver License Center, and more than one in ten must travel more than 30 miles. Pet'rs' Ex. 2096b; Hr'g Tr. 213-14, July 16, 2013 (B. Siskin).

70. The Department of State itself realized that, for many voters, getting to PennDOT would be a "burden." Pet'rs' Ex. 1559 at 2; *see also* Pet'rs' Ex. 1562 at 4 (concluding that certain voters would be unable to get to PennDOT because of "illness or disability"); Pet'rs' Ex. 1677 at 3 (concluding that some "elector[s] may not be well enough to go to PennDOT . . . to get a new ID" and would be "deprived the right to vote"). They also concluded that "some people may not be able to get an ID without significant costs to get to a [PennDOT] center." Pet'rs' Ex. 1677 at 3; *see also* Hr'g Tr. 1095-96, July 22, 2013 (R. Oyler); Hr'g Tr. 2017-18, Aug. 1, 2013 (Respondents' closing statement).

71. Getting to a PennDOT Driver License Center is a particular burden for voters seeking a voter ID because these individuals, by definition, do not have a driver's license. The Court heard from many voters who simply lack the mobility to make the trip to PennDOT. Petitioner Bea Bookler, a registered voter who was born in Philadelphia in 1918, seldom leaves the senior living facility where she lives because she lacks the energy to do so. Hr'g Tr. 945-46, July 30, 2012. Although she could vote in person at the polling place next door to her living facility, she explained that traveling to PennDOT is "not in [her] realm of possibility," as she

“get[s] dizzy and I’m shaky and I can’t manage without my walker, and even with my walker, I’m limited because I don’t have that much energy.” *Id.* at 945, 953-54, 958.

72. Mina Kanter-Pripstein is 92 years old and cannot drive to PennDOT, nor is she able to take public transportation. Hr’g Tr. 88-89, 91-92, July 15, 2013 (describing difficulties with traveling to her doctor’s office and the various obstacles to traveling to PennDOT, including her inability to walk from the bus stop). She testified that if she had to get to PennDOT in order to get an ID to vote, she would probably just not be able to vote. *Id.* at 92. She is able to reach her polling place because it is downstairs in her apartment building, but she would not be able to vote because she is unable to travel to PennDOT. *Id.* at 82.

73. Similarly, Marian Baker, a retired grandmother in Reading, uses a walker and is unable to stand in line for long periods of time. Hr’g Tr. 53, 60, July 15, 2013. She testified that the line at the PennDOT near her house usually stretches down the block, such that she had to wait in line for several hours the last time she went to the facility. *Id.* at 59. When she called after the November 2012 election to ask if PennDOT would make special accommodations for her to get a voter ID, since she would not be able to stand in a long line, she was told she would have to come and stand in line like everyone else. *Id.* at 60. As a result, she has not even attempted to go to PennDOT because she knows she cannot stand in that line: “I’m never going to be able to go there and stand.” *Id.* at 51, 53, 55, 60, 70-71. Her polling place, by comparison, rarely has more than a 20 minute wait, and offers chairs and other accessibility measures that make it possible for Mrs. Baker to vote in person. *Id.* at 56.

74. Similarly, Theresa Kukowski, a 62-year-old registered voter who suffers from multiple sclerosis and is wheelchair bound, can get the one-and-a-half blocks to her polling place with her husband pushing her, but she cannot travel the two miles necessary to get to her nearest

PennDOT, because traveling by vehicle is “very difficult” and her husband is not physically able to push her wheelchair that far. Decl. of T. Kukowski, Sept. 26, 2012.

75. For Taylor Floria, a 19-year-old high school student with autism and other disabilities, traveling to the nearest PennDOT, located 35 miles from his house, is extremely difficult. Hr’g Tr. 604-605, July 27, 2012. When Mr. Floria previously traveled to PennDOT to try to get a compliant photo ID for voting, the experience was too overwhelming and he was forced to leave without an ID from PennDOT. *Id.* at 604.

76. Other voters – and the friends and family who drive them – have to take days off work and school to get to PennDOT during its limited hours of operation. For example, Margaret Pennington testified that she would have to get a ride from her daughter to PennDOT, which was more than an hour away. Hr’g Tr. 225, July 16, 2013. However, Mrs. Pennington’s daughter owns a retail store, and she would have to close the store or pay someone to operate it for an afternoon in order to drive Mrs. Pennington to PennDOT. *Id.* at 226. By comparison, Mrs. Pennington can walk to her polling place, which is only a block from her home. *Id.* at 228. As discussed below, Nadine Marsh likewise required the repeated help of her daughter and grand-daughter to finally obtain ID from PennDOT. *See infra* ¶ 88.

77. Mr. Marks of the Department of State exemplifies the burdens faced by those who live in rural counties, many of which lack any PennDOT Driver License Center. He lives in Perry County, which has 32 polling places, but no PennDOT Driver License Center. Hr’g Tr. 1696-97, July 30, 2013. Mr. Marks lives about “a city block” from his polling place, but he would need to drive almost an hour to the nearest PennDOT in Elizabethtown, or else take “a ferry.” *Id.* at 1701-05. And he would need to go on a Thursday, because that is the only day that the Elizabethtown PennDOT issues voter IDs. *Id.* at 1703. The ferry that Mr. Marks mentioned

is an old-fashioned paddle-wheeler that runs only from May through October and “do[es] not run on a set schedule, but as traffic warrants and water levels allow also as per wind and weather conditions.” *See* Millersburg Ferry Ass’n, Operating Schedule, <http://www.millersburgferry.org/2136/2199.html>. Similarly, at Mr. Mark’s former house in a different part of Perry County, he lived about “a mile or maybe mile-and-a-half” from his polling place, but to get to the nearest PennDOT, he would have had to drive almost half an hour “over a mountain.” Hr’g Tr. 1697-1701, July 30, 2013.

78. Mass transit options for getting to PennDOT Driver License Centers are limited or nonexistent in some locations, especially rural areas. Hr’g Tr. 1080, July 31, 2012 (S. Jarrell); Hr’g Tr. 1092-93, July 31, 2012 (J. Horn); Hr’g Tr. 1104-06, July 31, 2012 (J. Tosti-Vasey). Even where mass transit options are available, many elderly and disabled voters are unable to take public transportation from their home to PennDOT. Mina Kanter-Pripstein, a 92-year-old registered voter, is afraid her leg will collapse when boarding or exiting a bus. Hr’g Tr. 89, July 15, 2013. Catherine Howell, a registered voter with Parkinson’s disease, similarly testified that she is not physically able to board and exit a city bus to travel to PennDOT. Pet’rs’ Ex. 1427 at 34 (video). Patricia Norton, who has pins in her back and encounters difficulty sitting or standing, also is unable to take a bus to PennDOT. Pet’rs’ Ex. 1430a at 26-26 (video). David Proctor, a 67-year-old registered voter who is disabled and walks with a cane, cannot take mass transit from his home to PennDOT to obtain a photo ID. Hr’g Tr. 979-80, July 22, 2013. Nor can Mr. Proctor walk the two miles down the river to the nearest PennDOT Driver License Center. *Id.* at 973-74.

79. The Shared Ride Service, a door-to-door transportation service open to the general public, is an inadequate solution for voters who cannot use public transportation to get to

PennDOT. The Shared Ride Service is not available every day and may not travel outside of a designated geographic area. Hr’g Tr. 1161-63, July 23, 2013 (L. Collins). In addition, the rider generally must pay at least some portion of the fare for using the service. *Id.* at 1162-68. Kelly O’Donnell of the Department of Aging admitted that the Shared Ride Service in Pennsylvania is inadequate, especially in rural areas. Hr’g Tr. 1281-83, July 24, 2013. She also acknowledged there was a “glitch” or “Catch 22” where voters were first required to show an ID to receive a discount for using the service to get to PennDOT for a voter ID. *Id.* at 1272-73 (discussing Pet’rs’ Ex. 1592). In any event, the Department of State has never advertised the Shared Ride Service as a way for voters to get to PennDOT for a voter ID. Hr’g Tr. 1114, July 22, 2013 (R. Oyler); Hr’g Tr. 1859-60, July 30, 2013 (M. Sweeney).

80. Nor has PennDOT created any mobile ID units or made other plans to get elderly, disabled, or financially disadvantaged voters to a PennDOT Driver License Center without the payment of a fee. Hr’g Tr. 750, July 27, 2012 (K. Myers); Hr’g Tr. 72-75, 113-14, Sept. 25, 2012 (K. Myers); Hr’g Tr. 1412-13, July 24, 2013 (K. Myers). The Secretary of the Commonwealth, Respondent Carol Aichele, testified that in 2012 the Department of State asked PennDOT to create a mobile ID center that could travel to voters without a compliant photo ID, but PennDOT refused. Hr’g Tr. 997-98, July 31, 2012.

81. When voters arrive at PennDOT, they face notoriously long lines and wait times. Pet’rs’ Ex. 1460. At least one transportation service for the elderly refused to take voters to PennDOT to get IDs for voting because it was impossible to know how long they would have to wait. Hr’g Tr. 1222-23, July 23, 2013 (S. Carty). Numerous witnesses testified about the lines and wait times. Hr’g Tr. 332, Sept. 27, 2012 (L. Pannell) (three-and-a-half- to four-hour wait); Hr’g Tr. 473, 475, Sept. 27, 2012 (A. Maxton) (nine hours waiting in two trips); Hr’g Tr. 371,

Sept. 27, 2012 (P. Cobb) (two-hour wait); Hr’g Tr. 391-92, Sept. 27, 2012 (D. Bellisle) (observed two-hour wait time and testified that “people left because [the wait] was too long”); Hr’g Tr. 348-49, Sept. 27, 2012 (L. Purdie) (observed two-hour wait time); Hr’g Tr. 315, 317, Sept. 27, 2012 (D. Clark) (hour to hour-and-a-half wait); Hr’g Tr. 1110, July 31, 2012 (J. Tosti-Vasey) (hour wait); Decl. of C. Moore, Sept. 22, 2012 (four-hour wait); Decl. of J. Sharp, Sept. 21, 2012 (six-hour wait, recounting that “[w]hile I was waiting, I saw other people that just up and left because of the long wait time”). And, as discussed above, Marian Baker testified that the last time she went to PennDOT, she had to wait for hours in a line that snaked outside the building, and that she regularly sees similar lines out the door every time she passes the same PennDOT location. Hr’g Tr. 59-60, July 15, 2013 (M. Baker).¹⁰

82. At the September 2012 hearing, PennDOT’s Deputy Secretary Kurt Myers promised that the wait times would improve, but Mr. Myers acknowledged at trial – and concrete data shows – that they only got worse. *Compare* Hr’g Tr. 539-40, 550-51, 553-54, Sept. 27, 2012, *with* Hr’g Tr. 1409-11, July 24, 2013. As the November 2012 election approached, PennDOT’s records show dramatic increases in the percentage of customers waiting more than 30 minutes to be serviced at key PennDOT locations. Pet’rs’ Ex. 1460.

¹⁰ Respondents dismissed Mrs. Baker’s testimony by pointing to supposed PennDOT statistics on wait times at its facilities. Hr’g Tr. 1356-58, July 24, 2013 (K. Myers). But Mr. Myers notably failed to explain how those wait times are calculated. Other witnesses have explained that when you arrive at a PennDOT location, you need to take a ticket from the kiosk in the waiting room before PennDOT even knows you are waiting for help. Hr’g Tr. 1055-56, July 31, 2012 (M. Rawley). It is only once a customer takes one of those tickets that PennDOT has any way to start its clock running. For someone like Mrs. Baker who is forced to wait for hours in a line before even entering the small waiting room at her PennDOT facility, PennDOT’s statistics simply ignore her time waiting even to get into the building and reach the kiosk. In short, Mr. Myers’s effort to explain away the real world experiences of Mrs. Baker and other witnesses – from his perspective as a Deputy Secretary sitting in Harrisburg – is not helpful or believable.

83. Respondents' witnesses also readily acknowledged that the issuance of voter IDs through PennDOT Driver License Centers has been far from seamless. Hr'g Tr. 1416-17, July 24, 2013 (K. Myers) ("We make mistakes."); *id.* at 1427 ("I think there were certainly some misinformation that was sent out."); Hr'g Tr. 79, Sept. 25, 2012 (K. Myers) (describing "concerns that were being expressed"); Hr'g Tr. 193, Sept. 25, 2012 (J. Marks) ("We have had complaints."); *id.* at 231 (describing "bumps in the road").

84. Signage, brochures, and other information about the Photo ID Law were non-existent in some PennDOT locations and difficult to locate in others, and PennDOT employees were consistently unequipped to answer questions about obtaining free ID for voting under the Law. *See, e.g.*, Hr'g Tr. 1055-58, July 31, 2012 (M. Rawley) (no information booth or signage about the Law at PennDOT); Hr'g Tr. 1094, July 31, 2012 (J. Horn) (same); Hr'g Tr. 1107, July 31, 2012 (J. Tosti-Levy) (same); Hr'g Tr. 1081, July 31, 2012 (S. Jarrell) (same); Hr'g Tr. 393-94, Sept. 27, 2012 (D. Bellisle) (recounting that PennDOT employee, after looking at identification documents, stated "now I don't know which ID I'm supposed to issue you").

85. The record is filled with evidence of confusion and misinformation among PennDOT employees responsible for issuing photo IDs to voters long after any learning curve should have been overcome. *See, e.g.*, Hr'g Tr. 1083, July 31, 2012 (S. Jarrell) (told by PennDOT employee that "you only received the free photo ID if you had never had a photo ID in the State of Pennsylvania before"); Hr'g Tr. 407, Sept. 27, 2012 (J. Hockenbury) (told by PennDOT employee that PennDOT was no longer issuing DOS IDs); Decl. of D. Dobkin, Sept. 21, 2012 (denied photo ID because she brought only the "bottom portion" of her Social Security card, explaining that PennDOT employee "refused to look at the other documents I had brought to prove my identity"); Decl. of J. Foreman, Sept. 21, 2012 (told by PennDOT employee that she

needed a birth certificate to obtain DOS ID); Decl. of M. Sudler, Sept. 21, 2012 (after waiting five hours on August 28, 2012, told by PennDOT employee to complete a form to verify her birth and not offered a DOS ID); Decl. of E. Stillabower, Sept. 21, 2012 (when asked about the affidavit for free voter ID, PennDOT employee stated he had no knowledge of such an affidavit).

86. Voters have also been wrongfully forced to pay for a voter ID at PennDOT that should have been provided at no charge. Secretary Aichele acknowledged that there have been reports of PennDOT requiring people to pay for a voter ID. Hr'g Tr. 998-99, July 31, 2012. Adam Bruckner, who runs a non-profit helping the homeless and others get IDs, stopped telling his clients to go to PennDOT for free voter IDs because so many of them returned to him after having been told that they would need to pay. Hr'g Tr. 467-70, July 17, 2013. Patricia Norton likewise was told she had to pay for a voter ID, which she could not do because PennDOT only accepts check or money order, and she had only cash. Pet'rs' Ex. 1430a at 18-19. These voters' experience of being wrongfully charged by PennDOT for what should have been a free voter ID is hardly unique. *See, e.g.*, Hr'g Tr. 371-72, Sept. 27, 2012 (P. Cobb) (told by PennDOT had to pay for a voter ID); Hr'g Tr. 882-83, July 30, 2012 (J. Block) (same); Hr'g Tr. 1052-53, July 31, 2012 (M. Rawley) (same); Hr'g Tr. 1082-84, July 31, 2012 (S. Jarrell) (same); Hr'g Tr. 1108-09, July 31, 2012 (J. Tosti-Vasey) (same); Hr'g Tr. 350, Sept. 27, 2012 (L. Purdie) (observing instances when people asked for free ID for voting and other reasons and PennDOT told them they must pay); Hr'g Tr. 443-44, Sept. 27, 2012 (A. Thompson) (same); Hr'g Tr. 458-61, Sept. 27, 2012 (D. Curry) (same).

87. When voters have called the phone number on the PennDOT website, they have received conflicting, inconsistent information about voter ID. Andrew Rogoff, an attorney who spent six months trying to obtain a replacement PennDOT non-driver ID for his father-in-law

and World War II veteran, Herbert Ginensky, testified that when he called the 1-800 number from PennDOT's forms and website to obtain information on the status of his application, he was "put on hold" or given inconsistent information and "different stories." Hr'g Tr. 689, 691, 699-701, July 18, 2013; *see also* Decl. of S. Levine, Sept. 24, 2012 (called the PennDOT customer service number on September 19, 2012, but there was no prompt to speak to a human).

88. The experience of Nadine Marsh, an 84-year-old voter and former Petitioner, perhaps best illustrates the burdens of getting to and interacting with PennDOT. Before the July 2012 hearing, Mrs. Marsh tried in vain to get an ID but was refused because Pennsylvania has no record of her birth. Hr'g Tr. 191-92, July 25, 2012. In the end, with the help of her daughter and adult granddaughter, she had to travel about an hour each way, on three separate occasions, before the Rochester PennDOT finally broke down and gave her a DOS ID. Pet'rs' Ex. 2100 (video and deposition transcript). On her first visit, Mrs. Marsh and her family waited half an hour before being told that the facility could not issue voter IDs that day (Monday). *Id.* at 17-19. On her second visit, she and her family waited an hour and a half before being told that the staff "just did not know what [she was] even talking about" regarding a voter ID; they instructed her to "fill out a form" and wait to "hear from Harrisburg." *Id.* at 19-22. Finally, on her third visit, after her story was highlighted at the September 2012 hearing, PennDOT apparently was expecting Mrs. Marsh, and a manager came out to ensure that she would not leave without a DOS ID. *Id.* at 22-25. In all, Mrs. Marsh spent about six hours traveling to and from PennDOT and at least two more hours waiting inside.

89. Not all voters are capable of Mrs. Marsh's Herculean effort to get a voter ID from PennDOT. And requiring them to do so will surely cause many voters to give up without ID

because they must get to work, care for children, or attend to other obligations of life. *See supra* ¶¶ 71-76 (summarizing testimony about voters leaving PennDOT without ID).

90. Contrary to repeated suggestions of Respondents' counsel during trial and in written submissions, PennDOT generally has refused to provide reasonable accommodations to elderly or disabled individuals who are not physically able to stand in line or wait an extended period at a Driver License Center. When Marian Baker, who has physical disabilities, called PennDOT to request an accommodation so that she could renew her license without standing in a line, she was told that she must "stand in line like everybody else." Hr'g Tr. 60, 71, July 15, 2013 (M. Baker). Likewise, PennDOT rarely makes exceptions to its processes, and Mr. Myers admitted that "99.9%" of voters must go to PennDOT in person to obtain ID. Hr'g Tr. 1423, July 24, 2013 (K. Myers). Even worse, Mr. Myers admitted that even the existence of potential accommodations are purposefully not publicized, Hr'g Tr. 697-98, July 27, 2012; instead, they are left to the discretion of individual PennDOT employees. As such, virtually all voters without a compliant photo ID will face the undue and unnecessary burden of trying to get an ID from PennDOT in person, and this burden will prevent many from voting.

91. The stories this Court has heard from voters about their extensive problems getting to and interacting with PennDOT are just the tip of the iceberg, or in the Court's words, "symbolic of the situation" faced by countless other voters. Status Conf. Tr. 18, Dec. 13, 2012.

F. Respondents' Efforts to "Educate" the Public about Voter ID Were Deficient

92. In 2012, the Department of State spent \$5 million of federal funds on an "education" campaign about the Photo ID Law. Hr'g Tr. 765-766, July 18, 2013 (S Royer). Respondents devoted a substantial portion of that budget to distributing reams of inaccurate information to voters throughout the Commonwealth. As this Court stated, "[t]here is no value in inaccurate information, and the Court does not deem inaccurate information 'educational.' It

is not a matter of confusion – it is a matter of accuracy.” Determination on Renewed Appl. for Prelim. Inj. at 7 (Aug. 16, 2013).

93. When Respondents were not distributing inaccurate information to the electorate, they were ignoring their obligation to tell voters about how to get free photo ID for voting purposes and otherwise confusing voters with mixed and incomplete messages. As such, Respondents’ education campaign precludes their repeated suggestions that any voter who lacks a compliant photo ID today somehow has made a choice not to get one and thus not to vote. And the myriad deficiencies in the campaign compel the conclusion that Respondents have failed in their statutory obligation to educate voters about the Law and about how to get compliant ID.

94. Section 206(a) of the Photo ID Law requires the Department of State to “prepare and disseminate information to the public regarding the proof of identification requirements” generally. 25 P.S. § 2626(a). Section 206(c) requires both the Department of State and PennDOT (as well as the county election boards) to “disseminate information to the public regarding the availability of identification cards under subsection (b)” – *i.e.*, the free PennDOT non-driver ID under Section 1510(b) of the Vehicle Code. *Id.* § 2626(c).

95. PennDOT’s Deputy Secretary, Kurt Myers, readily acknowledged that PennDOT has done nothing to educate voters about the availability of free PennDOT non-driver IDs for voting purposes. Hr’g Tr. 1405, July 24, 2013. This is understandable, albeit contrary to Section 206(c), because PennDOT also has refused to comply with Section 206(b) governing the availability of those free PennDOT non-driver IDs. Stated differently, it makes no sense for PennDOT to educate voters about a component of the Law that PennDOT is disregarding. While Respondents have held up the DOS ID as a supposed substitute for the PennDOT non-driver ID (which it is not), PennDOT also has done nothing to educate voters about the DOS ID, instead

relying on the Department of State. *Id.* at 1405-06. PennDOT has spent no money to advertise the existence of free voter IDs, and has no budget in 2013 for doing so. *Id.*

96. Deputy Secretary Shannon Royer acknowledged that the Department of State deliberately chose not to educate voters about the DOS ID. Hr’g Tr. 780, July 18, 2013. The Department of State’s decision not to educate voters about the DOS ID was based on a fear that voters unfamiliar with the DOS ID would be “confused” if they were told about a new, supposedly easier-to-obtain option. *Id.* Most of Respondents’ advertisements and other educational materials therefore make no mention whatsoever of the DOS ID. *Id.*; Hr’g Tr. 1858, 1861-62, July 30, 2013 (M. Sweeney) (discussing Resp’ts’ Exs. 48 and 67). This includes both pre- and post-injunction television, radio, online, and bus ads, as well as billboards, direct mailings, and other materials. *See, e.g.*, Resp’ts’ Exs. 48, 67, 68, 153-159, 168-178, 180-190, 202-218, and 220-222.

97. In the very few Department of State materials that do mention the DOS ID, it is in small print and the materials say nothing about what the DOS ID is, that it is supposed to be easier to obtain, or that voters can obtain a *Department of State ID* only at a different agency, *PennDOT*. The materials also fail to explain that voters can obtain a DOS ID without supporting documentation and even if they were previously denied an ID by PennDOT. Resp’ts’ Exs. 160-67, 179, 191-201. Numerous voters testified that they had never heard of the DOS ID. *See, e.g.*, Hr’g Tr. 76, July 15, 2013 (M. Baker); Hr’g Tr. 93, July 15, 2013 (M. Kanter-Pripstein).

98. Much of the information that Respondents distributed ended up being inaccurate. For example, Respondents’ advertisements and other educational materials from before September 25, 2012 said that voters needed “supporting documentation” to obtain a free voter ID at PennDOT. *See, e.g.*, Resp’ts’ Exs. 43, 68, 160, 162, 164, 179. While this information was

true at the time, it turned out to be inaccurate, because as of September 25, 2012, PennDOT eliminated the “exhaustion” and proofs of residency requirements for a DOS ID. *See supra* ¶ 49. Before then, however, this misinformation reached Pennsylvania voters and was never corrected.

99. In June 2012, Secretary Aichele sent a letter directly to the 759,000 registered voters who, based on Respondents’ database match, had no ID from PennDOT. Resp’ts’ Ex. 43; Hr’g Tr. 746-47, July 18, 2013 (S. Royer). The letters stated (incorrectly, as it turns out): “If you have never had a Pennsylvania driver’s license or PennDOT photo ID, you may also need further documentation such as a birth certificate, social security card and two proofs of residency.” Resp’ts’ Ex. 43.

100. In September 2012, Respondents sent a postcard to 5.9 million households – every household in the Commonwealth with a registered voter – stating (again, ultimately incorrectly) that voters could get a free voter ID at PennDOT only “with supporting documentation.” Resp’ts’ Ex. 179.

101. In May 2012, Respondents began distributing mailing inserts through other Commonwealth agencies advising voters that they could get a free ID at PennDOT “with supporting documentation.” Resp’ts’ Ex. 68. The same insert telling voters that free ID was available only “with supporting documentation” was sent to hundreds of thousands of voters through the end of September 2012 without any revisions to reflect that the DOS ID was available without “supporting documentation.” Hr’g Tr. 1858, July 30, 2013 (M. Sweeney); Hr’g Tr. 1289-92, July 24, 2013 (K. O’Donnell).

102. Respondents’ pre-September 25, 2012 newspaper advertisements also said that voters needed “supporting documentation” to get a free voter ID at PennDOT. Resp’ts’ Exs. 160-167.

103. Likewise, almost all of the materials that Respondents sent to third-party organizations as part of their education campaign were created and distributed while the supporting documentation requirement for the DOS ID was still in effect. Hr’g Tr. 1851, July 30, 2013 (M. Sweeney) (discussing Resp’ts’ Ex. 55).

104. Despite having told voters time and again that they needed “supporting documentation” to obtain a free voter ID, Respondents have no plans to reach back out to those voters to correct this critical misinformation. Resp’ts’ Ex. 33 (noting no plans for statewide mailings, paid public relations efforts, newspaper ads, bus ads, or targeted letters).

105. Moreover, Respondents’ advertisements and other educational materials from before October 2, 2012 said that voters would be “required” to show photo ID at the polls in November 2012, including in the postcard mailed to 5.9 million households (Resp’ts’ Ex. 179), an insert sent to as many as 700,000 elderly Pennsylvanians (Pet’rs’ Ex. 2067; Hr’g Tr. 876-77, July 19, 2013 (D. Mutz)), and television, radio, newspaper, magazine, and bus advertisements. Resp’ts’ Exs. 217, 218, 213, 214, 160, 155, and 157. Again, while true at the time, this instruction turned out to be false in light of the Court’s preliminary injunction. But again, Respondents did not tell voters that their instructions over the prior seven months had been inaccurate. Instead, Respondents modified their educational materials in such subtle ways that many voters likely could not recognize the difference. Hr’g Tr. 866, 922, July 19, 2013 (D. Mutz); *compare, e.g.*, Resp’ts’ Ex. 160 (pre-injunction) *with* Resp’ts’ Ex. 195 (post-injunction).

106. Respondents also misinformed voters about where to get a compliant photo ID. To deliver the message to elderly voters, the Department of State enlisted the help of the Department of Aging, whose point person, Kelly O’Donnell, erroneously believed and thus erroneously advised voters that they could get photo ID for voting at a PennDOT Photo Center,

in addition to a Driver License Center. Pet'rs' Ex. 1591. Even on the witness stand, Ms. O'Donnell did not know that the information she had been conveying for the past 16 months was wrong. Hr'g Tr. 1277, July 24, 2013. The truth is that only the 71 Driver License Centers, not the separate standalone Photo Centers, issue voter IDs. *See supra* ¶ 67.

107. Even the Department of State itself erroneously directed voters seeking voter IDs to PennDOT Photo Centers. Resp'ts' Ex. 20 (internal Department of State email dated August 23, 2012, stating that "DOS has been contacted by PennDOT concerning voters being misdirected to PennDOT Driver's License Photo Centers for obtaining a free ID for voting purposes. . . . When checking the PennDOT website for locations, please be sure that you are directing voters to the PennDOT Driver's License Centers." (emphasis in original)).

108. Mr. Myers of PennDOT admitted that "there was clearly some confusion on the part of not only customers, but others as to the difference between a driver's licensing center and a photo center," and "there were certainly some misinformation that was sent out based upon that." Hr'g Tr. 1427, July 24, 2013. In other words, Mr. Myers explained, "people did go and give bad information as to, you know, where they should be going to get ID." *Id.* at 1428; *see also id.* at 1429 ("[C]ertainly there shouldn't be misinformation that's being put out by state agencies."); *id.* at 1429-30 ("[I]t's a fact that there were times when misinformation went out as this process evolved . . ."); *id.* at 1430-31 ("I do not like the idea that there's – when there's information that goes out that's incorrect. I totally agree that that's an issue.").

109. Thus, when 90-year-old registered voter Margaret Pennington went to the PennDOT facility in Oxford (not a Driver License Center), she was told that they do not issue voter IDs, and that she would have to travel another hour to the Driver License Center in Frazer. Hr'g Tr. 223-25, July 16, 2013. This is not feasible for Mrs. Pennington, so she has no

compliant photo ID. *Id.* at 223-24. If the Photo ID Law is allowed to take effect, she will not be able to vote, even though she lives only a block from her polling place. *Id.* at 228.

110. In addition to disseminating all of this inaccurate and misleading information to voters, Respondents' \$5 million effort was confusing and ineffective. As described by Petitioners' political communications expert, Dr. Diana Mutz, the campaign was mired in mixed messages and moving goalposts. Pet'rs' Ex. 2099.

111. Respondents' advertisements centered on a double entendre ("Show It") designed to be clever in instructing people both to show their patriotism and enthusiasm by voting, and to bring a compliant photo ID so they will not be turned away at the polls. Pet'rs' Ex. 1468 at 97-98 (deposition of Red House Communications); Hr'g Tr. 854, July 19, 2013 (D. Mutz). The trouble with using a double entendre to convey complex information to the public is that a double entendre, by definition, has two meanings. Hr'g Tr. 854, July 19, 2013 (D. Mutz). Because Respondents did not follow the standard practice of pre-testing or formative evaluation of the message, there is no evidence that people understood the "Show It" slogan. *Id.*

112. Respondents' "Show It" campaign focused almost exclusively on telling voters that they will not be allowed to vote without a photo ID, and did virtually nothing to tell voters how to get a compliant ID if they do not already have one. Hr'g Tr. 840, July 19, 2013 (D. Mutz). The campaign materials simply told voters to "learn more" by calling a toll-free hotline or visiting VotesPA.com, without telling them *why* they should do so; the materials did not tell people that they could learn where and how to obtain free voter ID by calling or going online. *See, e.g.,* Resp'ts's Ex. 217; Hr'g Tr. 861, July 19, 2013 (D. Mutz).

113. In any event, the toll-free hotline and VotesPA.com website are not user-friendly. The hotline is only open during business hours, and voters who call at other times hear a

recording from the “Bureau of Commissions, Elections, and Legislation,” and cannot leave a message. Hr’g Tr. 884, July 19, 2013 (D. Mutz). The recording does not mention voter ID at all. *Id.* Voters who call back during regular business hours need to navigate through three automated telephone menus before being able to speak to a human. *Id.* at 885.

114. Voters testified about their difficulties calling the toll-free hotline and the inaccurate information that they received from Department of State employees. For example, Madeline Rawley called the hotline in June 2012, but no one there could give her even basic information about how to get a photo ID. Hr’g Tr. 1046-1049, July 31, 2012. Her first call, on June 8, 2012, was to find out where voters could go to get photo ID, because she had heard that voters needed to go to a specific kind of PennDOT office. *Id.* at 1046-47. The person who answered the hotline was not able to answer Ms. Rawley’s question, and instead instructed Ms. Rawley to call PennDOT. *Id.* at 1047-48. Ms. Rawley tried and failed to get in touch with someone at PennDOT, so she tried calling the Department of State hotline again. *Id.* at 1048. The person who answered the phone the second time was still unable to tell Ms. Rawley where voters should go to get ID. *Id.* Ms. Rawley also asked that person whether information about the photo ID law might be available at her local library, and she was told that there would not be any information in public libraries until the end of the summer. *Id.* at 1048-49. When Ms. Rawley expressed her concern that end of summer would be too late for people who had to get out-of-state birth certificates to obtain a PennDOT non-driver ID for voting purposes, the Department of State employee on the hotline said that was not his fault. *Id.* at 1049.

115. The VotesPA.com website was equally difficult for voters to navigate. Voters who understandably typed “votespa.gov” or “votespa.org” would get error messages or

advertisements for hot tubs, and would not find the VotesPA.com website. Hr’g Tr. 889-90, July 19, 2013 (D. Mutz); Pet’rs’ Exs. 2074c and 2074b (votespa.gov and votespa.org screenshots).¹¹

116. Voters who did land correctly on VotesPA.com would have to navigate through multiple links and scroll down through web pages to locate information about the DOS ID, which stated, inaccurately, that they could obtain a voter ID for free “with supporting documentation,” despite the fact that supporting documentation has not been required for the DOS ID since September 25, 2012. Hr’g Tr. 900-01, July 19, 2013 (D. Mutz). Only if the voter found and downloaded a DOS ID Frequently Asked Questions PDF to their computer would they learn accurate information about the DOS ID. *Id.* at 896-97.

117. Voters testified about their difficulties finding information on the VotesPA.com website. Former Petitioner Nadine Marsh testified that she and her daughter could not tell from the website what documents would qualify as valid proofs of residency. Hr’g Tr. 257-58, Sept. 25, 2012. Specifically, they needed to see a full list of the acceptable proofs of residency, but they were not able to locate one on the website. *Id.* Likewise, Madeline Rawley testified that when the DOS ID card was announced, she went to the website to try to locate information about it. Hr’g Tr. 1064, July 31, 2012. She downloaded the press release issued by the Department of State, but it left her feeling confused and raised even more questions for her. *Id.*

118. Respondents also claimed that they made information about the Photo ID Law accessible to voters at public libraries by working with the Pennsylvania Library Association to provide a Voter ID “button” that libraries could put on the home pages of publicly accessible computers that would take voters to the VotesPA.com website. Hr’g Tr. 749, July 18, 2013 (S.

¹¹ As of the filing of this brief, the VotesPA.com website had been taken down and completely unavailable for at least a week.

Royer). Respondents also provided electronic materials to the Pennsylvania Library Association in the hope that member libraries would print out the materials and make them available to the public. Pet'rs' Ex. 1593 at 128 (R. Ruman deposition). However, Respondents concede that no one ever followed up with the libraries to determine whether they actually took any of these steps. *Id.* at 130. In fact, one witness explained that she went to the Malvern Public Library in Chester County and looked for voter ID information on the publicly accessible computers, but none appeared. Hr'g Tr. 1195-97, July 23, 2013 (S. Carty). Another witness recounted that when he went to the Ludington Public Library in Bryn Mawr and the Central Library of the Free Library of Philadelphia, neither location was able to provide him with any pamphlets, brochures, or other printed material about the Photo ID Law. Hr'g Tr. 702-03, July 18, 2013 (A. Rogoff).

119. Respondents' own communications vendor, Red House Communications, acknowledged that the only way to know whether an education campaign achieves its goals is to take steps to measure its effectiveness. Pet'rs' Ex. 1468 at 62. Yet, Respondents took no meaningful steps to evaluate the effectiveness of their education campaign, despite Deputy Secretary Royer's commitment last fall to conduct some measurement "at the end of [the] campaign, not during [the] campaign. We still have six weeks to go until Election Day." *Compare* Hr'g Tr. 156, Sept. 25, 2012, *with* Hr'g Tr. 795, July 18, 2013. As Dr. Mutz testified, Respondents should have "let people like Red House do what they often do, which is measure effectiveness." Hr'g Tr. 955, July 19, 2013.

120. It is clear that many voters were confused by the "Show It" campaign and the desired message did not get through to voters. The most prominent imagery from the campaign was of voters holding out their driver's licenses, which in and of itself likely caused some voters wrongly to conclude that a driver's license is now required to vote. Hr'g Tr. 865-66, July 19,

2013 (D. Mutz). But despite this prominent imagery, the Department of State's Megan Sweeney found that the most common question from voters was whether they could use a driver's license to vote. Hr'g Tr. 1817, July 30, 2013 (M. Sweeney). As late as April 2013, voters were still asking Ms. Sweeney this question. *Id.* at 1856. Thus, after millions of dollars were spent on advertising focusing mostly on the fact that a driver's license could be used to vote, Ms. Sweeney agreed that "as of April, at least, there were still voters who were not sure if they could use their driver's license to vote." *Id.*

121. Respondents have a new \$2 million budget to do more advertising before the November 2013 and May 2014 elections, but they plan to use the same ineffective "Show It" materials that caused tremendous confusion last year. Hr'g Tr. 762-63, July 18, 2013 (S. Royer); Resp'ts' Ex. 33. Respondents have no plans to reach out directly to voters to correct the misstatements and inaccuracies of their previous mass mailings, advertisements, and other educational materials distributed to voters. Resp'ts' Ex. 33. The results of any further education efforts by Respondents thus can only be expected to be the same: inaccurate and confusing.

122. Mr. Marks agreed that it would be a "bad day" if registered voters could not vote on election day because Commonwealth agencies had not gotten the word out as to what a person needs to vote or did so in a confusing manner. Hr'g Tr. 802, July 30, 2012 (J. Marks). The overwhelming evidence shows that the past 17 months have been nothing but bad days for voters in Pennsylvania who have tried to learn about the Law from Respondents and other Commonwealth agencies, only to be confused at best and far too often misled. After spending \$5 million on a campaign that largely conveyed inaccurate information, the Court cannot credit any suggestion that going forward the information will be accurate. Indeed, Respondents offered

no explanation of how they would un-educate voters from the inaccurate information they have received and then re-educate them going forward.

G. Hundreds of Thousands of Registered Voters Still Lack Compliant Photo ID

123. The record in this case is filled with scores of voters who have been and will be burdened and disenfranchised by the Photo ID Law. They speak for the hundreds of thousands of other voters just like them who face the threat of disenfranchisement if this Law is enforced. Although there may be some reasonable debate as to the exact number of voters who face disenfranchisement, all of the evidence submitted during two evidentiary hearings and a full trial on the merits shows that hundreds of thousands of voters lack a compliant photo ID to vote.

124. The Court previously estimated that “the percentage of registered voters who did not have photo ID as of June, 2012, is somewhat more than 1% and significantly less than 9%.” *Applewhite III*, 2012 WL 4497211, at *2. This estimate equated to somewhere from roughly 89,000 to 801,000 voters without a compliant ID. Hr’g Tr. 1751-52, July 30, 2013 (J. Marks).

125. At the time of the September 2012 hearing, Respondents had issued fewer than 11,000 voter IDs, including “between 9300 and 9500 PennDOT IDs” and “between 1300 and 1350 DOS IDs.” *Applewhite III*, 2012 WL 4497211, at *2. The Court “expected more photo IDs to have been issued by [that] time,” and found that “the gap between the photo IDs issued and the estimated need will not be closed” by the time of the November 2012 election. *Id.*

126. Almost a year later, the “gap” remains effectively just as large, and there is no reason to believe that it will ever “be closed.” Since the September 2012 hearing, Respondents have issued only about 6,130 voter IDs, including roughly 3,600 free PennDOT non-driver IDs for voting and 2,530 DOS IDs. Hr’g Tr. 615-16, July 18, 2013 (J. Marks); Pet’rs’ Ex. 2072. Since the November 2012 election, the issuance of voter IDs has dwindled to fewer than 150 per month, including fewer than 100 free PennDOT non-driver IDs and 50 DOS IDs. Pet’rs’ Ex.

2072.¹² In June 2013, Respondents issued 37 free PennDOT non-driver IDs and 19 DOS IDs. *Id.* Mr. Marks testified that he expects only a small number of additional voter IDs will be issued between now and the November 2013 election. Hr’g Tr. 548-49, July 17, 2013. In all, since the Photo ID Law was enacted, Respondents have issued fewer than 17,000 voter IDs, including 12,981 free PennDOT non-driver IDs for voting purposes and 3,830 DOS IDs. Pet’rs’ Ex. 2072.

127. In contrast, while there is some quibbling at the margins, the evidence unequivocally establishes that hundreds of thousands of registered Pennsylvania voters still lack a photo ID that can be used to vote under the Photo ID Law.

128. In June 2011, Ms. Oyler of the Department of State did a back-of-the-envelope calculation for budget purposes and estimated that at least 1% of voters lack a compliant photo ID from PennDOT to vote under the Photo ID Law. Hr’g Tr. 480-81, 484-85, July 26, 2012. However, Ms. Oyler now understands that about 4-5% of registered voters (roughly 328,000 to 410,000) lack a compliant ID from PennDOT. Hr’g Tr. 1020-21, July 22, 2013.

129. At a February 25, 2013 hearing before the Senate Appropriations Committee, Secretary Aichele similarly testified that while Respondents have no estimate of their own, an “interesting study” recently found that 3.5% of actual in-person voters at the November 2012 election in Philadelphia (roughly 192,000 statewide based on 5.5 million total in-person voters, *see* Resp’ts’ Ex. 233) had no compliant photo ID under the Photo ID Law. Hr’g Tr. 1137-38, July 22, 2013; Pet’rs’ Ex. 1529 (video).

¹² It is important to note that Dr. Siskin looked at the PennDOT database as of late May 2013 and as such his work accounts for most of these DOS IDs and PennDOT non-driver IDs. Hr’g Tr. 126, July 16, 2013 (B. Siskin).

130. In June 2012, the Department of State conducted a computerized match of the PennDOT and SURE databases and identified more than 1.4 million registered voters with no compliant photo ID from PennDOT to vote under the Photo ID Law in the November 2012 election. Hr’g Tr. 536-39, July 17, 2013 (J. Marks); Hr’g Tr. 899, 910-11, July 30, 2012 (D. Burgess). This included 758,939 voters with no ID from PennDOT, and another 574,630 voters with an ID from PennDOT that would be more than 12 months expired (and thus noncompliant) in November 2012. Hr’g Tr. 775-77, July 30, 2012 (J. Marks); Hr’g Tr. 909-10, July 30, 2012 (D. Burgess). The Department of State’s database match identified another 130,189 voters in the SURE database with PennDOT ID numbers that did not match in the PennDOT database. Hr’g Tr. 907-08, July 30, 2012 (D. Burgess). The Department of State sent letters to the 758,939 voters advising that they may not have a compliant photo ID for voting under the Law; only about 150,000 were returned as undeliverable; leaving approximately 610,000 as delivered to the addressee. Hr’g Tr. 746-47, July 18, 2013 (S. Royer).

131. In response to Respondents’ criticisms of their own database matching efforts, Petitioners’ statistics expert, Dr. Bernard Siskin, conducted a similar (but far more conservative) database match in May and June 2013. After getting the same 91% match rate as Respondents from his first three matching steps, Dr. Siskin added 9 additional matching steps to very conservatively identify 511,415 registered voters with no compliant ID from PennDOT. Hr’g Tr. 132, July 16, 2013; Pet’rs’ Exs. 2096a at 5, 2096b at Table 1. This includes 251,879 voters with no ID from PennDOT, and an additional 259,536 voters with an ID from PennDOT that will be more than 12 months expired (and thus noncompliant) in November 2013. Hr’g Tr. 132-133, July 16, 2013; Pet’rs’ Ex. 2096a at 4-5; 2096b at Table 1. Among these 511,415 voters, 143,046 voted in the November 2012 election. Hr’g Tr. 140, July 16, 2013; Pet’rs’ Ex. 2096b at 6.

Based on these findings, Dr. Siskin concluded that hundreds of thousands of registered voters lack a compliant photo ID from PennDOT for voting. Pet'rs' Ex. 2096a at 4.

132. Dr. Siskin's methodology was reliable and his conclusions reasonable and conservative. As Dr. Siskin explained, his techniques are widely used and generally accepted, and ones that he has used in his other work involving database matches. Hr'g Tr. 119, 146, 157, 189, 193, 215, July 16, 2013. To be conservative, Dr. Siskin employed 12 progressively looser computerized steps to match voters in the SURE database with records in the PennDOT database. Hr'g Tr. 134, July 16, 2013; Pet'rs' Ex. 2096c. For example, Respondents criticized their own matching efforts from the summer of 2012 for failing to account for spaces, apostrophes, and hyphens. Hr'g Tr. 489-90, July 26, 2012 (R. Oyler). Dr. Siskin responded by using multiple, generally accepted "fuzzy" name matching methods to account for these and other differences between databases. Hr'g Tr. 145-48, July 16, 2013 (B. Siskin). He relaxed the name matching requirements further to account for potential maiden and divorced name matching issues. *Id.* at 149-50. In his last matching step, Dr. Siskin removed names entirely and focused solely on matching on date of birth and Social Security Numbers. *Id.* at 150. As a result, Dr. Siskin treated many registered voters in the SURE database as "matching" an entry in the PennDOT database even though a poll worker likely would deem the names not to substantially conform and thus declare the ID unacceptable for voting. 25 P.S. § 2602(z.5)(2)(i).

133. To be even more conservative, when multiple registered voters in the SURE database matched the same PennDOT record, Dr. Siskin treated each separate voter as having ID, and this accounts for 70,000 of his "matches" even though it is likely that many of those are false matches. *Id.* at 151, 189-90.

134. Dr. Siskin further performed a human audit of the results of his computerized database match, which involved manually searching for both false matches (voters for whom the computerized search said there is a match when in fact there really is not a match) and false non-matches (voters for whom the computerized search said there is not a match but there really is a match). Hr’g Tr. 152-62, 260-61, July 16, 2013; Pet’rs’ Ex. 2096e. Based on this audit, Dr. Siskin’s computerized match produced more false matches than false non-matches, indicating that Dr. Siskin’s estimate of 511,415 voters with no compliant ID from PennDOT is likely understated. Hr’g Tr. 162, July 16, 2013; Pet’rs’ Ex. 2096e.

135. In response to Dr. Siskin’s careful and conservative analysis, Respondents proffered Dr. William Wecker, who does not appear to have any actual experience matching multiple databases. Hr’g Tr. 1444-48, July 25, 2013 (W. Wecker); *compare* Hr’g Tr. 146, July 16, 2013 (B. Siskin). Respondents withheld from Dr. Wecker all of the various studies and data that were consistent with and corroborated Dr. Siskin’s results. Hr’g Tr. 1489-93, July 25, 2013. He was asked only to come up with criticisms of Dr. Siskin’s work. *Id.* at 1488. He was never asked to estimate the number of people who lack a compliant photo ID. *Id.* at 1488, 1498. And when he wanted to interview some of the voters he claimed had other forms of ID, he was inexplicably told by Respondents’ counsel that such contact would be unlawful. *Id.* at 1493-98.

136. Aside from not being provided all the relevant evidence and being asked not to do any real work, Dr. Wecker’s analysis started with the faulty premise that somehow it is irrelevant how many voters lack an ID from PennDOT, *id.* at 1485, even though everyone else in this case, including the Supreme Court, recognizes that the IDs from PennDOT are the “primary form of photo identification to be used by voters.” *Applewhite II*, 54 A.3d at 3; *see also* Hr’g Tr. 770-71, July 30, 2012 (J. Marks); Hr’g Tr. 1012, July 31, 2012 (C. Aichele). To the extent he did

anything, he succeeded in establishing a point that is not in serious dispute – that only a small number of voters who lack an ID from PennDOT have another form of compliant ID or may be able to vote in a way that does not require photo ID. Hr’g Tr. 186-88, July 16, 2013 (B. Siskin).

137. In any event, Dr. Wecker’s methodology was wholly discredited at trial. As Dr. Siskin explained, and as Dr. Wecker appears not to seriously dispute, Dr. Wecker’s circle drawing methodology does not come close to being generally accepted. Hr’g Tr. 177, 181-82, 183, July 16, 2013 (B. Siskin). Specifically, to identify voters who might have another form of compliant photo ID, Dr. Wecker drew circles of varying radii around colleges and universities, care facilities, and military bases in Pennsylvania. Hr’g Tr. 1475-79, 1583-84, July 25, 2013. However, Dr. Wecker testified that his “circle drawing methodology” or “circle method” was a non-complicated “first cut,” “starting point,” and “crude method” for identifying individuals who may have these other forms of ID. *Id.* at 1543, 1547-48, 1550-51, 1568, 1583-88. Dr. Wecker acknowledged that at least some of the voters in each of his circles will not have access to an alternative form of compliant ID. *Id.* at 1554-55, 1559, 1562-64, 1587-90, 1592. Dr. Wecker also agreed that he was not “accurately counting residents using the circle method.” *Id.* at 1574.

138. For example, Dr. Wecker declared that all 18-28 year olds living within one mile of a college or university were living “at” that college or university and thus had access to a compliant photo ID, even though his circles covered most of Center City, North and West Philadelphia and West Pittsburgh and Pittsburgh proper, and included colleges and universities that, according to the Department of State’s records, are not issuing compliant photo IDs for voting. Pet’rs’ Exs. 2114, 2114a, 2113, 2113a. He did the same thing for military bases, except he expanded his circles to cover more than 28 square miles around each base. Pet’rs’ Exs. 2118, 2119. Dr. Wecker’s circle drawing methodology is admittedly unreliable, and there was no

suggestion that it is a generally accepted way of identifying people who actually have, or even who are likely to have, a compliant ID from a college or university, care facility, or the military.

139. Even accepting all of Dr. Wecker's numbers (which would be inappropriate), he established, at most, an upper bound on how many of Dr. Siskin's 511,415 voters could conceivably have a compliant photo ID from a source other than PennDOT. By doing so, Dr. Wecker bolstered Dr. Siskin's conclusion that hundreds of thousands of voters lack a compliant photo ID and corroborate the findings by Professor Barreto and Dr. Marker (discussed below) that most voters who lack an ID from PennDOT do not have another form of compliant photo ID. Dr. Wecker claimed to identify 18,217 voters aged 65 and over living in the area of a care facility eligible to issue compliant photo ID, 48,046 voters aged 18 to 28 living in the area of a college or university eligible to issue compliant photo ID, and 2,547 voters living in the area of a military base where supposedly photo ID is required. Resp'ts' Ex. 224a at 5-6; Hr'g Tr. 1537, 1562-63, 1582, July 25, 2013. Assuming all 68,810 of those voters were unique voters and actually live at a college or university, care facility, or military base that issues compliant photo ID for voting under the Law (which assumptions are entirely unwarranted),¹³ that leaves 442,605 voters (out of the 511,415 identified by Dr. Siskin) without any form of compliant photo ID for voting in the November 2013 election.

140. Dr. Wecker opined that in addition to these supposed 68,810 voters who may have another compliant photo ID, another 75,655 voters may not need photo ID to vote under the Photo ID Law in November 2013. That includes 56,437 voters who voted absentee in the last

¹³ In fact, Dr. Wecker double or triple counted voters as, for example, living at a college or university while also supposedly living at a military base as well. Hr'g Tr. 169-70, July 16, 2013 (B. Siskin); Pet'rs' Ex. 2118 (3-mile radius circle surrounding U.S. Army War College also captured Dickinson College).

election in which they voted, 17,924 voters marked deceased in the PennDOT database but not in the SURE database, and 1,294 voters living in the area of a correctional center. Resp'ts' Ex. 224a at 5-6; Hr'g Tr. 1516, 1574, 1595, July 25, 2013. To identify voters living "at" a correctional center, Dr. Wecker drew a one-tenth-of-a-mile circle around the Region 1 correctional facilities in the southeastern part of Pennsylvania (primarily urban Philadelphia). Pet'rs' Ex. 2120; Hr'g Tr. 1595, July 25, 2013. Dr. Wecker testified that inside these circles is "a good place to go looking for felons," but acknowledged that the circles are "bound to have other people who are not full felons in there, too." Hr'g Tr. 1600, July 25, 2013.¹⁴ In any event, even assuming all 75,655 of the voters identified by Dr. Wecker were unique voters and would supposedly not need a compliant photo ID for voting purposes,¹⁵ that still leaves 366,950 voters who would need, but do not have, a compliant photo ID to vote in November 2013.

141. In reality, when accounting for Dr. Wecker's double- and triple-counting of voters, there are only 129,463 unique voters in Dr. Wecker's paragraph 12 and that leaves at least 381,952 voters with no compliant photo ID. Hr'g Tr. 170, July 16, 2013 (B. Siskin). In sum, as Dr. Siskin testified, "the disparity that we are seeing from the Department of Transportation PennDOT IDs is not reasonably going to be explainable or attributable to [the] likelihood that people have other IDs." Hr'g Tr. 188, July 16, 2013. Dr. Wecker's work is not credible, reliable, reasonable, or generally accepted. To the extent it has any relevance at all, it

¹⁴ Dr. Wecker drew circles around correctional facilities that do not house inmates (like the Regional Administrative Office) and that assist non-felons (like Hannah's House), and in any event his circle method mostly captured addresses other than those of the correctional facilities. Hr'g 1606-09, July 25, 2013 (W. Wecker).

¹⁵ Again, Dr. Wecker's numbers are not mutually exclusive because some of the absentee voters were also deceased voters and some also supposedly lived at a care facility. Hr'g Tr. 169-70, July 16, 2013 (B. Siskin).

serves only to corroborate, not refute, Dr. Siskin's conclusions that there are hundreds of thousands of voters who lack a compliant photo ID to vote.

142. In mid-2012, Professor Matt Barreto, a political scientist and survey expert for Petitioners, oversaw a survey of over 2,300 eligible voters in Pennsylvania, including approximately 1,100 registered voters. Hr'g Tr. 304, July 26, 2012. Based on the results of that survey, Professor Barreto estimated that 717,207 registered voters lack a compliant photo ID to vote under the Photo ID Law, without accounting for the fact that the names on some voters' IDs will not "substantially conform" to names in the voter rolls. Pet'rs' Ex. 18 at 37, 38. If an exact name match were required between the ID and the voter rolls, Professor Barreto estimated that just over 1 million registered voters lack a compliant photo ID to vote under the Law. *Id.* at 36; Hr'g Tr. 343-46, July 26, 2012.

143. Dr. David Marker, an expert for Petitioners in surveys and statistics used in public policy, evaluated Professor Barreto's work to address the methodological concerns raised in the Court's August 15, 2012 decision initially denying a preliminary injunction. Hr'g Tr. 383-84, July 17, 2013; Pet'rs' Ex. 2097a at 2. Dr. Marker concluded that Professor Barreto's survey was reasonably designed and conducted according to the reasonable standards and procedures of a public opinion survey. Hr'g Tr. 386, July 17, 2013. Accordingly, Dr. Marker had a high degree of confidence in Professor Barreto's survey results and that those results further corroborate that hundreds of thousands of voters lack a compliant ID. *Id.* at 412; Pet'rs' Ex. 2097a at 6-7.

144. Dr. Marker explained that the Court's methodological concerns from August 2012 were not a basis to discount the survey's findings. Hr'g Tr. 393-405, July 17, 2013. To the contrary, Dr. Marker explained that the survey techniques, including the survey's response rates, oversampling, and stratification adjustments, are the hallmarks of a well designed and reliable

survey. *Id.* at 405. Professor Barreto’s use of those techniques is not a basis to doubt the survey, but rather “a very positive sign about the survey.” *Id.* at 400; *see also Texas v. Holder*, 888 F. Supp. 2d 113, 136 (D.D.C. 2012) (agreeing with Dr. Marker that reliable surveys must utilize these well accepted techniques, including oversampling and stratification analysis), *vacated and remanded on other grounds*, 133 S. Ct. 2886 (June 27, 2013).

145. Dr. Marker also benchmarked Professor Barreto’s 24% response rate against industry standards and found that this response rate is consistent with well-designed and well-executed public opinion surveys. Hr’g Tr. 386-89, July 17, 2013. Dr. Marker went further and conducted his own analyses of the impact of any potential bias for the survey’s response rate. *Id.* at 389-95. He assumed that the 76% of people who did not respond were – as suggested by Respondents – on vacation without cell phone access, and further assumed that these voters lacked compliant photo ID at half the rate of the responders. *Id.* at 393-95. The result of these “extreme” assumptions was that 7.9% of registered voters lack ID (660,000 registered voters). *Id.* at 394-95. But in reality, people who do not respond to surveys like this are more likely (*not* less likely) to lack ID, which means that the survey’s findings may be understated. *Id.* at 408-09.

146. The survey also found that only about 0.6% of registered voters, or about 49,462 voters, do not have an ID from PennDOT but have some other form of compliant photo ID for voting. Hr’g Tr. 356, July 26, 2012; Pet’rs’ Ex. 18 at 37. Dr. Marker testified that the fact that additional colleges may have started issuing compliant photo IDs for voting since the time of Professor Barreto’s survey will have little impact on the number of registered voters with a compliant photo ID. Hr’g Tr. 409-410, July 17, 2013; Pet’rs’ Ex. 2097a at 6. Based on his analysis of the U.S. National Center for Education Statistics and the raw survey data from Professor Barreto, Dr. Marker concluded that the survey’s findings continue to establish “that the

vast majority of voters who lack a PennDOT ID also lack another form of acceptable ID.”
Pet’rs’ Ex. 2097a at 7.

147. Finally, Respondents suggested in passing but without any evidentiary support that U.S. passports may partially close the ID gap. Hr’g Tr. 1486, July 25, 2013 (W. Wecker); Hr’g Tr. 166, July 16, 2013 (B. Siskin). But Respondents’ witnesses acknowledged that a photo ID is generally required to obtain a passport. Hr’g Tr. 1025, July 22, 2013 (R. Oyler); Hr’g Tr. 1523, July 25, 2013 (W. Wecker). Putting aside this Catch-22, Ms. Oyler agreed that no “meaningful conclusions” could be drawn from data on passports issued to Pennsylvania residents. *Id.* at 1024-25. There is simply no evidence to support Respondents’ speculation about passports, and it defies common sense that a photo ID that requires a photo ID can meaningfully help voters who lack a photo ID.

148. Since their June 2012 database match, Respondents have deliberately chosen to undertake no further efforts to estimate the number of voters without a compliant photo ID. After the November 2012 election, Secretary Aichele promised another database match would be performed, but this was not done because Deputy Secretary Royer told her that a new match “would yield a similar result” as the Department’s June 2012 match. Hr’g Tr. 788-89, July 18, 2013 (S. Royer). The Court can and should draw reasonable inferences from this decision.

H. The Photo ID Law Disproportionately Burdens Certain Groups

149. The uncontroverted data presented at trial and concessions of Respondents’ own witnesses demonstrate that the Photo ID Law disproportionately burdens certain groups of voters, including the elderly, disabled, financially disadvantaged, minorities, non-English speakers, students, and certain women.

150. The Supreme Court has already found that the Photo ID Law disproportionately burdens some of “the most vulnerable segments of our society (the elderly, disabled members of our community, and the financially disadvantaged).” *Applewhite II*, 54 A.3d at 4.

151. Elderly voters are less likely to have compliant photo ID due to their declining need or ability to drive, and for whom traveling to a PennDOT Driver License Center may be difficult or impossible. *See supra* ¶¶ 22, 71-74, 76, 78, 80-81, 88, 90. Professor Barreto found that registered voters ages 75 and older lack compliant photo ID at significantly higher rates than registered voters ages 18 to 74. Hr’g Tr. 378, July 26, 2012; Pet’rs’ Ex. 18 at 48 (finding 17.2% of registered voters ages 75 and older lack compliant ID compared to 13.25% of registered voters ages 18 to 34, 9.9% of registered voters ages 35 to 54, and 12.4% of registered voters ages 35 to 75). Dr. Siskin’s results corroborate those findings. Hr’g Tr. 204, July 16, 2013; Pet’rs’ Ex. 2096b at Table 4 (finding that 40.58% of registered voters who are 90+ years old lack compliant ID from PennDOT and 11.86% of registered voters who are 80-89 years old lack compliant ID from PennDOT, as compared to, for example, the 3.21% of registered voters who are 50-69 years old). Respondents did not contend otherwise.

152. The Photo ID Law also disproportionately burdens people with disabilities. Before the Law was enacted, the Department of State recognized that voters who suffer from illness or disability “may encounter difficulties complying with the photo ID requirements of the bill if they do not already have a qualified ID and cannot get to a PennDOT photo center.” Pet’rs’ Ex. 1568 at 3; *see supra* ¶¶ 71-76, 90. This finding is undisputed as well.

153. The Photo ID Law also disproportionately burdens low-income and homeless voters, who are less likely to have a compliant ID, and for whom traveling to a PennDOT Driver License Center may be especially burdensome. *See supra* ¶¶ 38-39. Professor Barreto found

that registered voters living in a household with less than \$20,000 of annual income lack compliant photo ID at significantly higher levels than registered voters in households with higher annual incomes. Hr’g Tr. 379-80, July 26, 2012; *see also* Pet’rs’ Ex. 18 at 54. Low-income voters are also among those least likely to know about the new requirements in time to obtain a compliant ID before the next election. Pet’rs’ Ex. 18 at 62 (showing lower percentage of voters with knowledge of Law in households with less annual income). No one refuted this finding.

154. The Photo ID Law also places a disproportionate burden on racial/ethnic minority voters. Registered minority voters, including African-Americans and Latinos, are almost twice as likely not to have compliant photo ID. Pet’rs’ Ex. 2096(b) at Tables 2 & 2a; Hr’g Tr. 191-202, July 16, 2013 (B. Siskin). Again, no witness contested Dr. Siskin’s finding.

155. Although not as dramatic as the racial/ethnic disparity, registered female voters are also statistically significantly more likely to lack a compliant ID than men. Pet’rs’ Ex. 2096(b) at Tables 5 & 5a; Hr’g Tr. 206-208, July 16, 2013 (B. Siskin); Pet’rs Ex.18, Table 10; Hr’g Tr. 375-76, July 26, 2012 (M. Barreto). This is not surprising because certain female voters are more likely to have changed their names upon marriage or divorce and therefore face particular difficulties obtaining a compliant photo ID. For example, Joyce Block, a registered voter born in 1923, testified that, at birth, her name was Joyce Altman and she took the name Block upon marriage, but she only has her Jewish marriage contract (ketubah) in Hebrew as proof of her marriage. Hr’g Tr. 872-73, July 30, 2012. After the Law was passed, Ms. Block went to PennDOT to get a photo ID, but she was rejected because her birth certificate and Social Security card were in her maiden name while her voter registration was in her married name, and

PennDOT refused to accept her non-English ketubah as proof of name change.¹⁶ *Id.* at 877, 881-82. Helen, discussed above, also was unable to obtain a DOS ID in time for the November 2012 election because she had registered using “Mrs.” plus her husband’s name. *See supra* ¶ 57.

Again, no witness disputed that women face greater obstacles under the Law than men.

156. For a Law that was passed on a completely party-line vote and signed by a Republican Governor, it is relevant that Dr. Siskin found registered voters lacking a PennDOT driver’s license, PennDOT non-driver ID, or DOS ID were twice as likely to be registered as a Democrat than to be registered as a Republican. Pet’rs’ Ex. 2096b at Tables 3 & 3a.

157. Finally, Respondents’ witnesses themselves understood and agreed that this Law would disproportionately burden certain groups. Ms. Oyler of the Department of State was responsible for researching how similar laws have been implemented in other states and what effects they have had on voters. Hr’g Tr. 1010, July 22, 2013. Based on her research and work and her general understanding of Pennsylvania voters, she concluded that there is valid concern that certain groups would “have a harder time finding IDs than others.” *Id.* at 1025-27. These groups include minority populations, non-English speaking populations, certain socioeconomic groups who may not have access to certain provisions that would allow them to easily get a compliant IDs, elderly voters, disabled voters, and college students. *Id.* at 1026-27.

¹⁶ Ultimately, a family member contacted State Senator Charles T. McIlhinney, Chair of the State Government Committee, who made phone calls to PennDOT on Ms. Block’s behalf and arranged for her to receive a PennDOT non-driver ID after a second trip to PennDOT, notwithstanding that PennDOT should not have issued the ID under its own policies. Hr’g Tr. 883-84, July 30, 2012 (J. Block).

I. Voters Without Photo ID Have Not “Chosen” to Stay Home From the Polls

158. Respondents repeatedly suggested through argument and questioning of witnesses that citizens who have not gotten ID have done so by choice. That suggestion cannot stand in the face of the testimony that this Court has heard from actual voters about what voting means to them. No one listening to these voters should be able to suggest, as Respondents have, that voters have “chosen” to stay home from the polls. Witness after witness explained, with passion and eloquence, why voting is vitally important to them and why they want to continue voting.

159. Patricia Norton, a longtime registered voter from Berks County, testified that voting is “important to all of us. We all have a stake in what’s going on in our life, and we need to respect the people who went before us and went through all kinds of grief to give us that right.” Pet’rs’ Ex. 1430a at 23.

160. Marian Baker, who has voted in every election since 1960 (except May 2013, after she was told at the polls in November 2012 that she would need a photo ID going forward), testified that “if you want a say in your government, you should be voting. You should let them know what you want and how you feel about things.” Hr’g Tr. 64, July 15, 2013.

161. Mina Kanter-Pripstein, a 92-year-old lifelong Pennsylvanian who cast her first ballot for Franklin Roosevelt, testified that she is not ready to give up voting: “It’s what the country is based on, being able to vote. . . . [I]t is a part of my life, and it’s one of the few things I thought I would always do.” Hr’g Tr. 93-94, July 15, 2013.

162. Viviette Applewhite, a 94-year-old voter who marched for civil rights with Dr. Martin Luther King, Jr., testified that voting “gives me my right to do and say things I want to say and to do things I want to do and try and to help other people as well as myself.” Hr’g Tr. 102, July 25, 2012.

163. Gloria Cuttino, a Philadelphia County voter, testified that she wants to vote “[b]ecause I want to be a part of society. I have my rights. I have a right to decide who’s in office and who’s not in office and what I need, whether I need this or that and that’s why.” Hr’g Tr. 628, July 27, 2012.

164. Danny Rosa, a longtime voter who served as a sergeant in the U.S. Air Force, explained why voting is important to him: “I served in the service for four years and I don’t do it just for kicks, you know. I don’t know how anybody else feels about it, but it’s about the only real – it means something special to me, you know. . . . I think it should be important for anybody.” Hr’g Tr. 861-62, July 30, 2012.

165. Slava Lipowicz, who assisted her 87-year-old mother to obtain a photo ID, explained that: “My mother was born in Ukraine under the Communists, so she had no – she was too young anyway – but she doesn’t know freedom from there. Then she was taken to Germany by the Nazis, and she had no freedom there. So when she came to this country, she all of a sudden had a voice and a chance to vote and to become a citizen. And every Thanksgiving, when we go around the table for what we’re grateful for, she’ll sing God bless America and say it’s the best country on Earth. So she always votes.” Hr’g Tr. 454, Sept. 27, 2012.

166. Bea Bookler has voted “regularly, compulsively, [and] happily” for more than seven decades. Hr’g Tr. 951, July 30, 2012. Mrs. Bookler testified that “in my family we were very patriotic, and I was taught that voting was a privilege and an obligation. And not only that, but to me it was a great pleasure. I loved going to vote and all of my family felt that way. It was like a great thing that you did, that we have this wonderful country and we can participate in it.” *Id.* When Mrs. Bookler learned about the Photo ID Law, she was “furious”: “Considering how I feel about voting and how proud I am that I live in a country that is a real democracy, I think that

anything that prevents people from voting is taking away from our democracy. It's only real if we all participate." *Id.* at 952-53.

J. Respondents' Justifications for the Photo ID Law Amount to Empty Rhetoric

167. Respondents stipulated that the sole rationale they would introduce in this action for the Photo ID Law is as follows:

[R]equiring a photo ID improves the security and integrity of elections in Pennsylvania in a manner that is in keeping with the photo ID requirements of many other secure institutions and processes. Respondents are aware of reports indicating that lists of registered voters contain the names of persons who are deceased, no longer residents of Pennsylvania, or no longer residents of the locations at which their names appear on the list of registered electors. Respondents are aware of reports indicating that votes have been cast in the name of registered electors who are deceased, who no longer reside in Pennsylvania, or who no longer reside in the jurisdiction where the vote is cast. Absent proof of identification presented to elections officials at the polling place, there is a risk that votes may be cast in the names of registered electors who are dead or have left the Commonwealth or jurisdiction of the election district by a person other than the registered elector. Respondents are aware of reports questioning the integrity of elections based on a variety of incidents. Requiring a photo ID is one way to ensure that every elector who presents himself to vote at a polling place is in fact a registered elector and the person that he purports to be, and to ensure that the public has confidence in the electoral process. The requirement of a photo ID is a tool to detect and deter voter fraud.

Pet'rs' Ex. 46 (Respondents' Amended Answer to Interrogatory 1, served June 7, 2012); *see also* Pet'rs' Ex. 15 ¶ 4 (stipulating that "[t]he sole rationale for the Photo ID law that will be introduced by Respondents is that contained in Respondents' Amended answer to Interrogatory 1, served June 7, 2012").

168. No evidence supports Respondents' proffered justifications. To the contrary, the evidence contradicts those proffered justifications.

169. The only type of voter fraud that the Photo ID Law could detect, deter, or otherwise address is in-person voter impersonation fraud, whereby a person appears at a polling place and attempts to vote for another person. Hr'g Tr. 1326, Aug. 1, 2012 (L. Minnite). The Photo ID Law does not address other types of voter fraud, such as absentee ballot fraud or voter registration fraud. *Id.* at 1329-32. Nor does the Photo ID Law address other types of election fraud, such as fraud that could be committed only by election officials or computer hackers. *Id.* at 1287-89.

170. With respect to the existence or prevalence of in-person voter fraud that the Photo ID Law could potentially address, Respondents stipulated as follows:

1. There have been no investigations or prosecutions of in-person voter fraud in Pennsylvania; and the parties do not have direct personal knowledge of any such investigations or prosecutions in other states;
2. The parties are not aware of any incidents of in-person voter fraud in Pennsylvania and do not have direct personal knowledge of in person voter fraud elsewhere;
3. Respondents will not offer any evidence in this action that in-person voter fraud has in fact occurred in Pennsylvania or elsewhere;
- ...
5. Respondents will not offer any evidence or argument that in person voter fraud is likely to occur in November 2012 in the absence of the Photo ID law.

Pet'rs' Ex. 15.

171. Mr. Marks, the Department of State's top non-political election official, testified that he has "confidence in the integrity" of the November 2012 and May 2013 elections in Pennsylvania, even though the Photo ID Law's photo identification requirement was not in

effect. Hr’g Tr. 505-06, July 17, 2013. Mr. Marks also has confidence in the integrity of every election over the past 11 years, even before the Photo ID Law was enacted. *Id.* at 506.

172. Lorraine Minnite, Ph.D., an associate professor in the Department of Public Policy at Rutgers University-Camden who literally wrote the book on the *Myth of Voter Fraud*, testified as an expert for Petitioners on the incidence and effect of voter fraud in American elections. Hr’g Tr. 1262, 1277-78, Aug. 1, 2012; Pet’rs’ Ex. 49.

173. Even absent a photo ID requirement, there are severe legal penalties for in-person voter fraud. Hr’g Tr. 1312, Aug. 1, 2012 (L. Minnite); 25 P.S. § 3527 (penalty of \$15,000 and/or not more than seven years imprisonment for state elections); 42 U.S.C. §§ 1973i(c), 1973gg(10-2) (penalty of fines and not more than five years imprisonment for federal elections). “[T]rying to vote more than once or falsifying who you are is very, very unlikely to result in changing the outcome of the elections as an individual” Hr’g Tr. 1313, Aug. 1, 2012 (L. Minnite). As such, for a person contemplating in-person voter fraud, the costs greatly outweigh the benefits, even absent a photo identification requirement. *Id.* at 1311-13.

174. In 2001, under direction from President George W. Bush, the United States Department of Justice launched the Ballot Access and Voting Integrity Initiative (“BAVII”), a nationwide program – and top Department of Justice priority – to help government attorneys recognize election fraud and to provide their services to voters to receive complaints of the same. Hr’g Tr. 1290-91, 1362, Aug. 1, 2012 (L. Minnite); Pet’rs’ Ex. 50 at 12. Over three years from 2002 to 2005, BAVII resulted in the indictments of 40 voters, 26 of whom were eventually convicted. Hr’g Tr. 1292-93, Aug. 1, 2012; Pet’rs’ Ex. 50 at 13. Out of those 26 cases, zero involved voter impersonation. Hr’g Tr. 1293-99, Aug. 1, 2012.

175. The incidence of in-person voter fraud in elections in America, including Pennsylvania, is therefore exceedingly rare. Hr’g Tr. 1304, 1323, Aug. 1, 2012 (L. Minnite). For example, in the two federal elections that occurred during the period covered by the BAVII statistics (*i.e.*, the 2002 and 2004 elections), there were about 197 million votes cast, and zero federal convictions for voter impersonation. *Id.* at 1293.

176. Public officials in Pennsylvania who have looked for examples of voter impersonation have found none. For example, the Executive Director of County Commissioners Association of Pennsylvania wrote that “we find no evidence – substantiated by a search of case records and anecdotal information from the counties – that [fraudulent voting] is an issue. And so we believe a requirement to present ID at all elections is a solution to a problem that does not exist.” Pet’rs’ Ex. 51 at 1; *see also* Hr’g Tr. 1321, Aug. 1, 2012 (L. Minnite) (explaining that the County Commissioners Association consists of “the people who essentially administer elections at the local level”). And when Petitioners subpoenaed records of each county District Attorney in Pennsylvania relating to voter fraud, more than half responded, and not one of them reported a single case of voter fraud. Hr’g Tr. 1321-22, Aug. 1, 2012 (L. Minnite).

177. The absence of even a single prosecution, much less a conviction, for in-person voter fraud demonstrates the rarity with which such activity occurs, if at all. Although the perpetrators of any type of fraud try to avoid detection, prosecutors and other officials can and do uncover such misconduct that the perpetrator hopes to go undetected, including citizenship fraud, wire fraud, and tax evasion. Hr’g Tr. 1309-10, Aug. 1, 2012 (L. Minnite). Detecting voter fraud has long been a high priority for prosecutors and other law-enforcement officials. *Id.* at 1310-11, 1360-62. As a result, the absence of evidence truly is evidence of absence, especially when

compared to the innumerable examples of fraud prosecutions outside of voting when those perpetrators were equally incentivized to keep their fraud hidden from prosecutors.

178. Respondents offered no evidence to substantiate the claims in their interrogatory response, Pet'rs' Ex. 46, that they were "aware of reports" touching on in-person voter fraud; to the contrary, they stipulated that they were aware of no such incidents, Pet'rs' Ex. 15.

179. The presence of inaccuracies in voter registration lists, such as the names of deceased people or the former addresses of people who have moved, are not the same as in-person voter fraud and could not be remedied by the Photo ID Law. Hr'g Tr. 1327-30, Aug. 1, 2012 (L. Minnite). The remedies for these inaccuracies are improved maintenance of the voter registration lists, a task that Pennsylvania is already actively undertaking. Hr'g Tr. 768-69, July 30, 2012 (J. Marks); Hr'g Tr. 588-94, July 18, 2013 (J. Marks). The evidence shows that between December 31, 2012 and May 2013, approximately 300,000 registered voters were removed from the active voter rolls. *Compare* Resp'ts' Ex. 235 at 2 (8.5 million registered voters as of December 31, 2012) *with* Pet'rs' Ex. 2096(b) at Table 1 (8.2 million registered voters in SURE database as of May 2013).

180. The Photo ID Law would not prevent a person from moving and voting in his former polling place. A person who has the required form of identification could still present himself at his former polling place and cast a vote. *See, e.g.*, Hr'g Tr. 1362, Aug. 1, 2012 (L. Minnite) (noting that a photo identification requirement would not prevent someone from registering and voting in two states simultaneously); *id.* at 1298 (describing real-world example).

181. Allegations of in-person voter impersonation fraud are "used to create the impression that this is a major problem that requires a public policy response, and one that has the potential to affect voting rights of individual citizens." Hr'g Tr. 1314, Aug. 1, 2012 (L.

Minnite). Such allegations “play[] into a kind of cynicism, a general vague cynicism about political corruption.” *Id.* at 1317.

182. The 2005 Report of the Commission on Federal Election Reform (the “Carter-Baker Report”) recommended, among other things, that electoral systems include “[v]oter identification, tied directly to voter registration, that enhances ballot integrity *without introducing new barriers to voting*, including the casting and counting of ballots” Resp’ts’ Ex. 5 at 14 (emphasis added). The Carter-Baker Report expressed “concern[] that the different approaches to identification cards might prove to be a serious impediment to voting,” *id.* at 26, and recommended that any ID requirement be, at a minimum, phased in over two biennial federal elections, *id.* at 27. As the Report specifically noted, “[t]he introduction of voter ID requirements has raised concerns that they may present a barrier to voting, particularly by traditionally marginalized groups, such as the poor and minorities, some of whom lack a government-issued photo ID. They may also create obstacles for highly mobile groups of citizens.” *Id.* at 28. The Report further recommended “that states play an affirmative role in reaching out with mobile offices to individuals who do not have a driver’s license or other government-issued photo ID to help them register to vote and obtain an ID card.” *Id.*; *see also* Hr’g Tr. 1363-65, Aug. 1, 2012 (L. Minnite). As discussed above, Respondents have followed virtually none of the safeguards recommended by the Carter-Baker Report.

183. In contrast to Respondents’ unsubstantiated assertion that voters in Pennsylvania have concerns about in-person voter impersonation fraud necessitating an in-person photo ID requirement, Dr. Mutz has actually studied people’s confidence in the integrity of elections. Hr’g Tr. 922, July 19, 2013. The public does not perceive voter fraud as a major factor in the outcome of elections. *Id.* at 923. In a 2008 study, only 0.1% of 12,000 survey respondents cited

voter fraud as the reason their side lost the election. *Id.* at 925; Pet'rs' Ex. 2099 at 36. Instead, people's biggest concerns about elections are the influence of money, the truthfulness of candidates, voter turnout, and long lines at polling places. Hr'g Tr. 924, July 19, 2013.

184. In contrast to Dr. Mutz's testimony, Respondents presented no evidence to support any claim that there is a public perception problem that the Photo ID Law needed to address. Nor have Respondents explained how turning away large numbers of voters who are constitutionally qualified to vote will enhance the integrity of any election. In fact, Respondents' witnesses testified that disenfranchising voters will undermine the integrity of elections, Hr'g Tr. 480, July 26, 2012 (R. Oyler); Hr'g Tr. 1107-08, July 22, 2013 (R. Oyler); Hr'g Tr. 802-03, July 30, 2012 (J. Marks), and the publicity surrounding voters being turned away from the polls will certainly undermine public perceptions concerning the integrity of elections.

185. Respondents argued that photo ID is necessary to vote because it is required to fly, but Photo ID is not needed to fly. The Court may take judicial notice of the following statement from the website of the Transportation Security Administration: "Not having an ID, does not necessarily mean a passenger won't be allowed to fly. If passengers are willing to provide additional information, we have other means of substantiating someone's identity, like using publicly available databases." Transportation Security Administration (May 9, 2013), <http://www.tsa.gov/traveler-information/acceptable-ids>.

186. Pennsylvania House Majority Leader Representative Mike Turzai (R-Allegheny) stated the following at Republican State Committee meetings on or about June 23, 2012: "We are focused on making sure that we meet our obligations that we've talked about for years. Pro-Second Amendment, the Castle Doctrine, done. The first pro-life legislation, abortion facility regulations in 22 years, done. *Voter ID, which is going to allow Governor Romney to win the*

State of Pennsylvania, done.” Pet’rs’ Ex. 42 (video of Rep. Turzai’s remarks) (emphasis added); accord Hr’g Tr. 964-65, July 30, 2012.

187. As Dr. Siskin’s work demonstrates, “many thousands of minority, Democrat, Female, and young and older Registered Voters face a higher risk of not being allowed to vote under the Photo ID Law.” Pet’rs’ Ex. 2096 at 16. “Democrats were . . . about twice as likely not to have a valid ID as Republicans.” Hr’g Tr. 202, July 16, 2013 (B. Siskin). Specifically, for actual voters during the November 2012 election without a valid PennDOT driver’s license, PennDOT non-driver ID, or DOS ID, roughly 85,000 were registered as Democrats (3.01%), versus 37,000 registered Republicans (1.62%). *Id.* at 203; Pet’rs’ Ex. 2096b at Table 3A.

188. Moreover, if the Law were enforced, voters in Philadelphia and Pittsburgh, where large numbers of minorities and Democrats reside, are more likely to have difficulty getting a DOS ID because, as Mr. Marks testified, so many registrations come in at the deadline that they may not be entered into the SURE database until “days” before the election, meaning the voter is likely to be denied a DOS ID because his or her registration could not be verified at PennDOT and the ID will not wind its way through the Department of State’s “exceptions” process in time for Election Day. *See supra* ¶¶ 51, 56. Respondents failed to explain how disenfranchising such voters could enhance anyone’s perception regarding the integrity of elections.

K. Respondents Presented Almost No Evidence on Which This Court Can Rely

189. Respondents submitted en masse a number of exhibits, including (a) press releases, Resp’ts’ Exs. 113-114, 116-118, 120, 123-125; (b) emails from the Department of State to county election officials, Resp’ts’ Exs. 7-10, 12, 14-15, 21, 23, 25, 27-32; and (c) advertisements and other “educational” materials, Resp’ts’ Exs. 153-178, 180-199, 201-222. Virtually none of these documents were discussed in detail by any witness, and witnesses generally did not explain why they were probative of any material issue. Almost invariably these

documents remain unverified missives from Harrisburg about how the world *should* work without any competent evidence about how the world *actually* operates. As such, the vast majority of the “evidence” presented by Respondents at trial provides no valid basis for the Court to reach any findings of fact.

190. Many of Respondents’ press releases have been shown to be false. For example, Respondents asserted that libraries are making information available about voter ID because the Department of State issued a press release claiming that was happening. Resp’ts’ Ex. 118. As discussed above, no employee validated that libraries actually followed through, and the unrefuted evidence shows that they largely have not done so. *See supra* ¶ 118. Similarly, Respondents issued a press release in September 2012 claiming that Penn State would be making its IDs compliant for voting, but Respondents’ July 2013 “sticker tracker” shows that the IDs of current Penn State students were not acceptable for voting and they offered no evidence to resolve this conflict. *Compare* Resp’ts’ Ex. 123 *with* Resp’ts’ Ex. 137. In short, a press release issued from Harrisburg is only evidence that the Department of State issued a press release making a claim; it is not competent evidence that the claims in the press release reflect reality.

191. Likewise, Respondents submitted into evidence many emails from Jonathan Marks to county election officials. Resp’ts’ Exs. 7-10, 12, 14-15, 21, 23, 25, 27-32. However, Mr. Marks admitted that the Department of State generally has no authority over local election officials. Hr’g Tr. 1722, July 30, 2013. For example, Respondents claimed that the Department of State recommended that county election officials provide indigency affirmations at each polling location and that the local officials accept such affirmations at face value. Hr’g Tr. 1633-34, July 25, 2013 (J. Marks). But they offered no evidence whether all, many, some or any

county officials intend to follow those recommendations, let alone that they will be consistently implemented at 9,300 polling places.

192. Deputy Secretary Royer offered broad conclusory assertions about Respondents' education campaign that he oversaw and then identified and authenticated a large pile of advertisements and other materials. Hr'g Tr. 733-41, July 18, 2013; Resp'ts' Exs. 153-78, 180-99, 201-22. He offered no explanation as to why he believed these materials would effectively educate the voting public. And his testimony was completely devoid of any expertise in public education campaigns that would allow this Court to give his conclusions any weight, especially when they were all so roundly refuted by a true expert, Dr. Diana Mutz.

193. Kurt Myers's testimony was similar in that he offered many broad statements about Harrisburg policy, goals, and aspirations as to what PennDOT employees should be doing. *See, e.g.*, Hr'g Tr. 1335-1337, July 24, 2013 (describing how employees are instructed to respond if someone asks for ID at a Driver License Center). But none of his broad claims were corroborated by any evidence from the field about how things actually work, which is an especially glaring gap in light of the overwhelming evidence about actual voter interactions with PennDOT employees. *See supra* ¶¶ 83-91.

194. The Department of Aging's Kelly O'Donnell testified about her well-meaning efforts to help older Pennsylvania citizens understand the Law, but she conceded that some of the most critical information she was conveying (*i.e.*, where to get ID) was false. *See supra* ¶ 106.

195. Likewise, Megan Sweeney offered much testimony about all the places she visited and people with whom she spoke, but did not offer any evidence that these were people who actually needed ID. Hr'g Tr. 1811-14, July 30, 2013. The only concrete testimony she offered was that she helped a couple of voters one-on-one. Hr'g Tr. 1860, July 30, 2013. She

acknowledged that at the one event she has attended since the November 2012 election, no one asked her about free ID and she did not help anyone obtain it. Hr’g Tr. 1856-57, July 30, 2012.

196. Former Policy Director Rebecca Oyler’s offer personally to take Mrs. Pripstein to PennDOT was gracious, Hr’g Tr. 1118, July 22, 2013, but served only to highlight the fact that Respondents offered no evidence that any employee took even a single voter to PennDOT to get ID in the past 16 months since the Photo ID Law was enacted.

L. The Photo ID Law Harms the Organizational and Individual Petitioners

197. The mission of Petitioner the National Association for the Advancement of Colored People, Pennsylvania State Conference (“NAACP”), is “to ensure the economic, political, social and education equality of all people and to eliminate racial hatred and racial discrimination.” Hr’g Tr. 1126, July 31, 2012 (J. Jordan).

198. Before the Photo ID Law was enacted, the Civic Engagement Project within the NAACP planned to focus “strictly on voter registration, voter mobilization[,] voter protection . . . [and] voter education,” with a goal of registering 25,000 Pennsylvanians. Hr’g Tr. 1127, July 31, 2012 (J. Jordan). “The primary focus was registration, registration, registration.” *Id.*

199. The passage of the Photo ID Law has required the NAACP, including its Civic Engagement Project, to undertake a variety of activities in order to fulfill its organizational mission. As a result of the Law, the NAACP has diverted significant resources toward educating the public on the Law, including by conducting clinics and working with colleges and universities, with the Director of Civic Engagement, John Jordan, spending 50 hours a week on these activities. Hr’g Tr. 1135, July 31, 2012 (J. Jordan). The Law put “an extra burden” on the NAACP, separate from “the most important issues” of “registering people to vote, mobilizing them to the polls and educating them about the candidates.” *Id.* at 1143. Teams that would

otherwise have focused on voter registration have had to focus instead of educating citizens about the new Photo ID Law. *Id.* at 1139-40. Mr. Jordan's job responsibilities changed "immensely" after the Law was enacted, *id.* at 1128-29, and the NAACP "brought three people on board to help us out because it was just getting to be a bit overwhelming," *id.* at 1131.

200. The NAACP has been forced repeatedly to revise and reprint its informational materials as a result of "constant changes" in Respondents' implementation of the Photo ID Law. Hr'g Tr. 1132, July 31, 2012 (J. Jordan).

201. The NAACP has had to expend resources to persuade universities to issue photo IDs that can be used to vote under the Photo ID Law. Hr'g Tr. 1136, July 31, 2012 (J. Jordan).

202. The NAACP has expended resources by participating with the Department of State in voter-education events. Hr'g Tr. 752-54, July 18, 2013 (S. Royer); Hr'g Tr. 1811-12, 1863, July 30, 2013 (M. Sweeney). The NAACP events took place as late as the September 2012 hearing. Resp'ts' Ex. 51 at 26.

203. The mission of Petitioner the League of Women Voters of Pennsylvania ("LWV") is to assist people in being informed and active citizens and participants in the government and voting process. Hr'g Tr. 1168-69, Aug. 1, 2012 (O. Thorne).

204. The passage of the Photo ID Law has required the LWV to undertake a variety of activities in order to fulfill its organizational mission. The LWV's voter services activities in response to the Law have "consumed much more time and effort and more extensive outreach than [the LWV] normally do[es] on a given day." Hr'g Tr. 1206, July 23, 2013 (S. Carty).

205. Before the Photo ID Law was enacted, the LWV had planned to work on updating its website, creating a charitable gift annuity, conducting education surrounding Marcellus Shale issues, and updating a civic education book, but it had to slow or postpone these activities

because of the diversion of resources in response to the Law. Hr’g Tr. 1182-83, Aug. 1, 2012 (O. Thorne). As a result of the resources it had to spend on issues relating to the Photo ID Law, the LWV was unable to further this other planned work. *Id.* at 1182.

206. The LWV diverted significant resources toward researching and publishing a brochure that would educate the public on the Photo ID Law. The LWV spent at least 600 hours and some \$2,000 to create and distribute this document, significantly more than the organization usually spends on projects. Hr’g Tr. 1180-81, Aug. 1, 2012 (O. Thorne). Every time the LWV updates this brochure to reflect changes in Respondents’ implementation of the Law, it must expend additional time and money. *Id.* at 1176.

207. LWV chapters around the Commonwealth have expended resources by participating with the Department of State in voter-education events, including a panel discussion in Susquehanna County. Hr’g Tr. 753-54, July 18, 2013 (S. Royer); Hr’g Tr. 1815, 1863, July 30, 2013 (M. Sweeney). The LWV events continued to take place as late as October 9, 2012, after the Court’s entry of the 2012 preliminary injunction. Resp’ts’ Ex. 51 at 27.

208. The Chester County chapter of the LWV diverted some 700 volunteer hours from its other activities to address issues relating to the Photo ID Law, including by visiting every senior center in Chester County, distributing materials to churches, attending farmers’ markets and fairs, and speaking at the Coatesville Veterans Hospital. Hr’g Tr. 1180-81, July 23, 2013 (S. Carty). The Chester County chapter also established a Voter ID Subcommittee, because “[w]hen the voter ID bill became apparent to us to be a [source of] concern and confusion, we felt that we needed more focus, more people working in the voter services committee.” *Id.* at 1215.

209. The mission of Petitioner the Homeless Advocacy Project (“HAP”) is to provide free legal services, advice, and referrals to the homeless and nearly homeless populations. Hr’g Tr. 635, July 27, 2012 (M. Levy).

210. The passage of the Photo ID Law has required the HAP to undertake a variety of activities in order to fulfill its organizational mission.

211. Before the Photo ID Law was enacted, the HAP had decided to redirect its resources and to focus less on its work assisting people in obtaining their birth certificates. Hr’g Tr. 666-67, July 27, 2012 (M. Levy). But after the Law was enacted, the HAP had to change the focus of its work and not only re-start its program assisting people in obtaining their birth certificates, but also expand that project, because “we can’t encourage people to register to vote just to leave them nowhere.” *Id.* The HAP was not able to work on its planned expungement project in order to assist its clients in obtaining public housing and employment, because it was too busy helping clients obtain birth certificates. *Id.*

212. The HAP printed and distributed fliers about how to comply with the Photo ID Law, but discontinued that practice because of Respondents’ shifting implementation of the Law. Hr’g Tr. 664-65, July 27, 2012 (M. Levy).

213. Petitioner Wilola Shinholster Lee lacks a compliant photo ID under the Photo ID Law. Hr’g Tr. 75-76, July 25, 2012. Ms. Lee’s polling place is one-and-a-half blocks from her home, and she routinely votes there in person. *Id.* at 86. Ms. Lee cares for her grandmother, who is nearly 100 years old. *Id.* at 86-87. This responsibility restricts her ability to risk a potentially lengthy trip to PennDOT for a photo ID. *Id.* Ms. Lee relies on public transportation, *id.* at 91, and the transit-accessible PennDOT Driver License Center in downtown Philadelphia has among the longest wait times of any Driver License Center statewide. Pet’rs’ Ex. 1460; Hr’g

Tr. 1406-12, Jul 24, 2013 (K. Myers) (testifying that the Philadelphia Centers have among the highest volumes and longest wait times in the Commonwealth).

214. Petitioner Bea Bookler lacks a compliant photo ID under the Photo ID Law. Hr’g Tr. 949-50, July 30, 2012. Mrs. Bookler is elderly, frail, and very limited in her mobility. *Id.* at 945-46, 953. She “doesn’t think [she] could” manage to go to PennDOT to get a photo ID. *Id.* at 953-54, 958-60. Mrs. Bookler’s polling place is next door to the building where she lives, and she has typically gone next door with her daughter’s assistance on election days to vote in person. *Id.* at 945, 955. Mrs. Bookler voted by absentee ballot in one recent election but otherwise has consistently cast a ballot in person. Hr’g Tr. 1660, July 30, 2013 (J. Marks).

215. In addition to the individual Petitioners, this Court has heard from many other voters who lack a compliant photo ID under the Law and could have joined this lawsuit. To do so would have involved a late amendment to the Amended Petition for Review and was unnecessary, as this Court had advised that the voices of non-petitioner voters would be heard. Mem. Op. 6 (May 24, 2013). And even more voters *could* have been called to testify at trial, but the Court expressly requested Petitioners to limit the number of voters who were called as fact witnesses to avoid cumulative testimony. Status Conf. Tr. 18, Dec. 13, 2012 (“May I encourage you to consider – as far as the individual people coming in and testifying, I’m not sure I need as many as I heard already. You know, a couple of them who are sort of symbolic of the situation are totally appropriate. But I think I know what they’re going to say already, so I’m not sure I need to hear as many people on that topic.”).

PROPOSED CONCLUSIONS OF LAW

I. The Photo ID Law Is Unconstitutional on Its Face

216. The Photo ID Law is unconstitutional on its face because it can never be implemented by its terms in a way that does not disenfranchise large numbers of voters who

come, primarily, from society's most vulnerable segments. Even for voters not actually disenfranchised because they may take on the undue burden of obtaining unnecessary photo identification, their fundamental right to vote will be unconstitutionally burdened if the Law is not enjoined.

A. Voting Is a Fundamental Right

217. The Supreme Court and this Court have recognized in this case that “the right to vote in Pennsylvania, as vested in eligible, qualified voters, is a fundamental one.” Determination on Renewed Appl. for Prelim. Inj. at 6 (Aug. 16, 2013) (quoting *Applewhite II*, 54 A.3d at 3); see also *Kuznik v. Westmoreland Cnty. Bd. of Comm’rs*, 588 Pa. 95, 116, 902 A.2d 476, 488 (2006) (regulation of voting machine issue involved the fundamental right to vote). “No 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 Nader*, 580 Pa. 22, 44, 858 A.2d 1167, 1180 (2004) (citation omitted). Respondents, who initially argued that voting was not a fundamental right, now concede this issue. Compare Resp’ts’ Br. in Opp’n to Pet’rs’ Appl. for Prelim. Inj. at 23 (July 18, 2012) (“[T]he right to vote is not a fundamental one.”), with *Applewhite II*, 54 A.3d at 3 (“The parties to this litigation have agreed that the right to vote in Pennsylvania, as vested in eligible, qualified voters, is a fundamental one.”).

218. Two provisions of the Pennsylvania Constitution expressly secure the right to vote. Article I, Section 5 provides that “[e]lections shall be free and equal,” and that without exception, “no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Pa. Const. Art. I, § 5. Article VII, Section 1 sets forth exactly who is constitutionally entitled to vote: a person “shall be entitled to vote” if he or she is a citizen of the

United States, over the age of eighteen, a resident of the Commonwealth of Pennsylvania, and a resident of the election district in which the person appears to vote. Pa. Const. Art. VII , § 1.

219. Because the right to vote is fundamental, the legislature lacks the power to enact election regulations that have the effect of denying the franchise to eligible voters. For at least a century, the Pennsylvania Supreme Court has held that “elections are free and equal within the meaning of the Constitution . . . 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 (1914). This is because voting is a “sacred right” whose “enjoyment . . . must not be impaired by . . . regulation.” *Page v. Allen*, 58 Pa. 338, 347 (1868). Stated differently, “the right of suffrage is the most treasured prerogative of citizenship” and “may not be impaired or infringed upon in any way except through the fault of the voter himself.” *Norwood Election Contest Case*, 382 Pa. 547, 549, 116 A.2d 552, 553 (1955).¹⁷

220. A law is facially unconstitutional when “a ‘substantial number’ of its applications are unconstitutional, ‘judged in relation to the statute’s plainly legitimate sweep.’” *Clifton v. Allegheny Cnty.*, 600 Pa. 662, 704 n.35, 969 A.2d 1197, 1222 n.35 (2009) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 n.6 (2008)); *see also id.* at 704, 969 A.2d at 1222 (to establish a facial challenge, “the invalid applications of a statute must be real and substantial, and are judged in relation to the statute’s plainly legitimate sweep” (citations and internal quotation marks omitted)). “Under the more lenient ‘plainly legitimate sweep’ standard,

¹⁷ In *Independence Party Nomination*, 208 Pa. 108, 57 A. 344 (1904), cited by the Court in its initial decision denying a preliminary injunction, *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2012 WL 3332376, at *10 n.20 (Pa. Commw. Ct. Aug. 15, 2012) (“*Applewhite I*”), the Supreme Court cautioned that “anything beyond this [details of time, place, manner etc.] is not regulation but unconstitutional restriction.” 208 Pa. at 112, 57 A. at 345.

the challenger need only demonstrate that a ‘substantial number’ of the challenged statute’s potential applications are unconstitutional.” *Id.* at 705 n.36, 969 A.2d at 1223 n.36.¹⁸

221. Denying eligible voters the franchise is facially unconstitutional, even in cases involving a relatively small fraction of voters. The Pennsylvania Supreme Court long has held that “[t]he disfranchisement of even one person validly exercising his right to vote is an extremely serious matter.” *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 415 Pa. 154, 158, 202 A.2d 538, 540 (1964). The Court further has held that “[t]he disfranchisement of 5,506 citizens . . . would be unconscionable.” *In re Canvass of Absentee Ballots of 1967 Gen. Election*, 431 Pa. 165, 172, 245 A.2d 258, 262 (1968).

222. Similarly, in *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), the U.S. Supreme Court facially invalidated a state statute that imposed a poll tax of \$1.50 as “a prerequisite to voting” *id.* at 669, even though many voters presumably could afford to pay that amount without any difficulty. *See id.* at 668 (finding it irrelevant “whether the citizen, otherwise qualified to vote, has \$1.50 in his pocket or nothing at all, pays the fee or fails to pay it”). And in *Dunn v. Blumstein*, 405 U.S. 330 (1972), the Court struck down on facial grounds a state’s “durational residence requirement” because it “bar[red] newly arrived residents from the

¹⁸ Respondents mistakenly have relied on a different standard suggested in the U.S. Supreme Court’s 1987 decision in *United States v. Salerno*, 481 U.S. 739 (1987). *Compare Clifton*, 600 Pa. at 705 n.36, 969 A.2d at 1223 n.36 (“Under the *Salerno* standard, the challenger must establish that there is no set of circumstances under which the Act would be valid.”), *with* Resp’ts’ Mem. of Law in Supp. of Prelim. Objections to the Am. Pet. for Review at 11 (Apr. 22, 2013) (“A statute is facially unconstitutional only where no set of circumstances exist under which the statute would be valid.”). As the Pennsylvania Supreme Court recognized in 2009, “[r]ecently . . . the [U.S. Supreme] Court seems to have settled on the ‘plainly legitimate sweep’ standard,” and has not applied the *Salerno* standard to evaluate facial challenges. *Clifton*, 600 Pa. at 705, 969 A.2d at 1223.

franchise,” *id.* at 345, even though the requirement likely impacted no more than roughly three to six percent of the population, *id.* at 335 n.5.

223. Here, the evidence unequivocally establishes that hundreds of thousands of registered and otherwise qualified voters in Pennsylvania lack a compliant photo ID and will therefore be unconstitutionally impacted by the Photo ID Law. *See supra* ¶¶ 123-48. Petitioners have more than satisfied their burden of proof, and Respondents failed to come forward with any evidence to contradict Petitioners’ extensive and persuasive showing as to the number of voters who lack a compliant photo ID. *See Sch. Dist. of Phila. v. Dep’t of Educ.*, 45 A.3d 457, 459 (Pa. Commw. Ct. 2012) (“In every lawsuit, . . . the plaintiff is the first to begin, and if he does nothing he fails. If he makes a prima facie case, and nothing is done by the other side to answer it, the defendant fails.”) (quoting *500 James Hance Court v. Pa. Prevailing Wage Appeals Bd.*, 613 Pa. 238, 272, 33 A.3d 555, 575-76 (2011)).

224. The Photo ID Law cannot be saved by simply labeling it an “election regulation.” Going back to the early “election regulation” cases, the Pennsylvania Supreme Court carefully analyzed whether the regulations in those cases could – as a factual matter – easily be complied with at the polls by otherwise qualified voters. *See, e.g., Cusick’s Election*, 136 Pa. 459, 20 A. 574 (1890); *De Walt v. Bartley*, 146 Pa. 529, 24 A. 185 (1892). For example, in *Cusick’s Election*, the Court analyzed at length each of the requirements for the election-day affidavit required of voters who had not pre-registered, and found that all qualified voters could easily and without burden truthfully sign the required affidavit at the polls. 136 Pa. at 470-75, 20 A. at 576-78. Nothing in *Cusick* suggests that the General Assembly has the constitutional power to impose requirements that cannot easily be satisfied by otherwise qualified voters.

225. Similarly, in *De Walt*, the Court upheld the legislature’s power to “regulate elections . . . so long as it merely regulates the exercise of the elective franchise, and does not deny the franchise itself.” 145 Pa. at 540, 24 A. at 186 (internal quotations and citations omitted). The Court explained that “[t]he test is whether such legislation denies the franchise, or renders its exercise so difficult and inconvenient as to amount to a denial.” *Id.* *De Walt* involved regulations designed to guarantee the right to a secret ballot without voter intimidation and thus were intended to expand and protect the franchise. *Id.* Nothing in *De Walt* authorizes the legislature to “regulate” elections in a way that threatens to disenfranchise qualified voters. To the contrary, the Supreme Court upheld the regulation in *De Walt* precisely because it “carefully preserves the right of every citizen to vote for any candidate whose name is not on the official ballot [by writing in the name or using a sticker], and this is done in a manner which does not impose any unnecessary inconvenience upon the voter.” *Id.* at 543, 24 A. at 187-88.

226. As discussed below, the Photo ID Law is not a statute that “carefully preserves the right of every citizen to vote” and “does not impose any unnecessary inconvenience upon the voter.” *De Walt*, 145 Pa. at 543, 24 A. at 187-88. Because “implementation of Act 18 will result in disenfranchisement,” Mem. Op. at 8 (May 24, 2013), the Law violates the fundamental right to vote and cannot stand.

B. The Photo ID Law’s Express Terms Violate the Fundamental Right to Vote

227. The evidence establishes that, by its express terms, the Photo ID Law inevitably will lead to disenfranchisement. Evidence about how the Law has been implemented in accordance with its terms further shows that the Law will unavoidably lead to a substantial number of unconstitutional applications and is thus facially unconstitutional.

1. The Photo ID Law Does Not Guarantee Voters a Right to a Compliant Photo ID Needed to Vote

228. The Photo ID Law violates the fundamental right to vote by requiring that voters show a compliant photo ID as a condition of voting while simultaneously failing to provide a form of compliant photo ID that all voters are guaranteed to be able actually to obtain.

229. As construed by the Supreme Court, Section 206(b) of the Photo ID Law would permit any voter to obtain without charge the PennDOT non-driver ID authorized by 75 Pa. Cons. Stat. § 1510(b) based on a simple, two-point affirmation that the voter lacks a compliant photo ID and requires one to vote. *Applewhite II*, 54 A.3d at 3 (discussing 25 P.S. § 2626(b)). The Supreme Court characterized this as “liberal access” to PennDOT IDs. *Id.* PennDOT, however, cannot comply with the statute because of security concerns, and instead continues to vet all applicants for a PennDOT non-driver ID through a “rigorous” application process that many voters cannot satisfy. *Id.* The Supreme Court accepted PennDOT’s security concerns as a “good reason” for PennDOT not to comply with the Photo ID Law’s requirement, *id.*, but Respondents concede that these security concerns have nothing to do with verifying identity for voting purposes, *supra* ¶ 40, and PennDOT’s insistence on them results in the Law having no guarantee of a compliant photo identification that all voters can actually obtain.

230. It cannot be seriously disputed that this is a facial violation of the fundamental right to vote secured by Article I, Section 5 and Article VII, Section 1 of the Pennsylvania Constitution. Respondents conceded the point earlier this year, saying that “[i]f proof of identification is not liberally available to registered voters . . . , the Voter ID Law cannot be administered . . . consistently with constitutional requirements.” Resp’ts’ Resp. to Pet’rs’ Status Report of May 22, 2013, Concerning Discovery Issues at 11 (May 24, 2013) (“Resp’ts’ Discovery Resp.”). And in denying Respondents’ preliminary objections, this Court held that

Petitioners had properly stated a facial constitutional challenge by “aver[ring] that the implementation of Act 18 does not comport with the liberal access to a Pennsylvania Department of Transportation ID required by Act 18.” Mem. Op. at 4 (May 24, 2013).

231. Having conceded that this is a constitutional defect, Respondents defend the Law by promising that they will provide voters who need a compliant photo ID to vote with a DOS ID card that is neither required by nor identified in the Photo ID Law or any other law. Executive Branch officials created the DOS ID in response to this litigation; they have repeatedly changed the requirements for voters to obtain a DOS ID and can do so again at any time; and, as Mr. Marks acknowledged, Executive Branch officials could eliminate the DOS ID altogether. *See supra* ¶ 43. Voters with no compliant photo ID accordingly are forced to depend on the discretion of Executive Branch officials as to whether they will or will not be able to obtain a compliant photo ID necessary to exercise the franchise. This wholly misunderstands the point of constitutional rights. It is in the very nature of constitutional rights that they safeguard citizens *against* the Government. To say, as Respondents now do, that the fundamental right to vote should depend on the discretion of government officials would turn the Constitution on its head.

232. The U.S. Supreme Court’s recent decision in *United States v. Stevens*, 559 U.S. 460 (2010), illustrates this principle. There, the Court considered a facial challenge to the constitutionality of a federal criminal statute prohibiting the creation, sale, or possession of depictions of animal cruelty. *Id.* at 465. The Court concluded that the statute was facially overbroad because it “applies to common depictions of ordinary and lawful activities,” such as hunting, fishing, and livestock slaughter. *Id.* at 473, 475-76. In defending the statute, the government took the position that it would not prosecute offenders under the statute outside the context of certain “specific types of ‘extreme’ material.” *Id.* at 473.

233. Writing for the Court in an 8-1 opinion, Chief Justice Roberts rejected the notion that the government could save the facially unconstitutional statute by promising only to implement it in a constitutional manner: “Not to worry, the Government says: The Executive Branch construes [the statute] to reach only extreme cruelty, and it neither has brought nor will bring a prosecution for anything less.” *Id.* at 480 (citations and internal quotation marks omitted). The Chief Justice explained that the government’s position misconceived the notion of constitutional rights, ruling that “the First Amendment protects *against* the Government; it does not leave us at the mercy of *noblesse oblige*. We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.” *Id.* (emphasis added).

234. The Third Circuit likewise recently held that “a promise by the government that it will interpret statutory language in a narrow, constitutional manner cannot, without more, save a potentially unconstitutionally overbroad statute.” *Free Speech Coalition, Inc. v. Attorney Gen.*, 677 F.3d 519, 539 n.15 (3d Cir. 2012); *see also Commonwealth v. Omar*, 602 Pa. 595, 608, 981 A.2d 179, 187 (2009) (facially unconstitutional statute could not be saved by proposed amendment to statute until the proposed amendment was enacted into law).

235. The unremarkable principle of these decisions is that the Commonwealth cannot immunize an unconstitutional statute from challenge by executive pronouncement. The DOS ID, which is nothing more than a litigation-driven, discretionary creation of Respondents, does not alter the basic unconstitutionality of the Law. The voters of Pennsylvania are not required to depend on the unbridled discretion of state agencies to exercise their right to vote.

236. This case already illustrates Respondents’ capricious position. Initially, when the Law was passed, there was no DOS ID, or even the thought of a DOS ID. Respondents’ initial position was that voters had to try to obtain the PennDOT non-driver ID, even though many

could not do so, and even though that ID had rigorous security requirements that Respondents conceded were entirely unnecessary for voting. *See supra* ¶ 40. When, as a result of this lawsuit, Respondents decided to create the DOS ID card, they did so only with the unnecessary restriction that voters must first demonstrate that they could not obtain a PennDOT non-driver ID. *See supra* ¶ 45-46. Only after the Supreme Court made clear that Respondents’ approach was unduly restrictive, did Respondents discover what they now say is their “committed position,” Resp’ts’ Discovery Resp. at 11, to make the DOS ID available without an exhaustion requirement or proofs of residency. *See supra* ¶ 49. Respondents’ historical position in this matter underscores exactly why the exercise of Constitutional rights is not, and cannot be, left to the discretion of executive agencies. Even now, Respondents insist on the “verification” requirement for the DOS ID that serves only to make it harder for voters to obtain ID.

237. The tenuous nature of the DOS ID card is further confirmed by the fact that members of the General Assembly, and key proponents of the Photo ID Law, are now on record saying Respondents should never have created the DOS ID, that they should eliminate it altogether, and that there is no statutory authority for issuing the card to voters. *See supra* ¶ 43.

238. The discretion of executive agencies does not end with the rules surrounding, or continued existence of, the DOS ID. Whether a voter is issued a DOS ID depends on the discretion of the Department of State and PennDOT employees who process the voter’s application. Those employees have regularly exercised their discretion to deny eligible, qualified voters the ID necessary to vote under the Photo ID Law, including longtime registered voters who have been voting for years in Pennsylvania. *See supra* ¶¶ 51-52, 56-57.

239. Pennsylvania’s Constitution guarantees its citizens the right to vote and intentionally puts the right beyond the reach of any “power, civil or military.” The right to vote

is too important and too fundamental to depend on the whim of Respondents or other government officials. It is worth repeating, as Chief Justice Roberts aptly put it in *Stevens*, the point of a constitutional right is that it “protects *against* the Government; it does not leave us at the mercy of *noblesse oblige*.” 559 U.S. at 480 (emphasis added). The Court cannot uphold the unconstitutional Photo ID Law “merely because the Government promise[s] to use it responsibly.” *Id.* at 1591.

240. Respondents’ latest wrinkle was to invite the Court to issue some sort of unspecified “judicial declaration” in the form of a mandatory injunction that the Photo ID Law would be unconstitutional in the absence of “the DOS ID program (or its functional equivalent).” Resp’ts’ Discovery Resp. at 11. This naked invitation for the Court to invade the legislature’s province and rewrite the Law is impermissible as a basic matter of separation of powers. Respondents cite no support for the Court’s authority to rewrite the law in this manner, and none exists. The Pennsylvania Supreme Court long has held that courts “have no power to . . . rewrite Legislative Acts or Charters, desirable as that sometimes would be.” *Mt. Lebanon v. Cnty. Bd. of Elections of Allegheny Cnty.*, 470 Pa. 317, 321, 368 A.2d 648, 649-50 (1977) (quoting *Cali v. Philadelphia*, 406 Pa. 290, 312, 177 A.2d 824, 835 (1962)). This is because “under our basic form and system of Constitutional Government the power and duty of [the courts] is interpretative, not legislative.” *Id.* at 321, 368 A.2d at 649 (quoting *Cali*, 406 Pa. at 312, 177 A.2d at 835). The Supreme Court’s decision in *Heller v. Frankston*, 504 Pa. 528, 475 A.2d 1291 (1984), illustrates this basic principle. There, the Court refused the invitation to salvage a law found to be unconstitutional. The Court concluded: “it is not the role of this Court to design an alternative scheme which may pass constitutional muster.” *Id.* at 537, 475 A.2d at 1296.

241. Moreover, as discussed in the next section, an order requiring the DOS ID to continue in existence would do nothing to forestall the constitutional infirmities of the Law because far too many voters cannot obtain even that ID. And the Court would find itself supervising indefinitely how the ID was being implemented.

2. Even if the DOS ID Could Theoretically Suffice, Which it Cannot, Respondents Still Have Never Provided the Voters Who Can Get to PennDOT with Even the Bare Minimum of “Liberal Access”

242. Even if, *arguendo*, the DOS ID theoretically could suffice, the DOS ID cannot satisfy constitutional requirements for the additional reason that Respondents have never provided a process that assures that voters who are able to get to PennDOT are assured of being able to obtain the DOS ID. As stated above, Respondents concede that “[i]f proof of identification is not liberally available to registered voters . . . , the Voter ID Law cannot be administered . . . consistently with constitutional requirements.” Resp’ts’ Discovery Resp. at 11.

243. Contrary to Respondents’ contention, access to the DOS ID is not, and never has been, liberally available, meaning available to all voters who get to PennDOT and sign the simple, two-point declaration set out in the Photo ID Law that the voter lacks a compliant photo ID and needs a compliant photo ID to vote. *See Applewhite II*, 54 A.3d at 3 (construing 25 P.S. § 2626(b)). The Supreme Court made clear in its decision that the Law cannot possibly survive if this minimal access is not provided.

244. It is undisputed that Respondents did not provide such guaranteed access to the DOS ID from its initial deployment on August 27, 2012 until the morning of September 25, 2012. *See supra* ¶¶ 45-49. Even after September 25, 2012, the DOS ID still has not been accessible to all voters who get to PennDOT and sign the simple declaration set out in the Photo ID Law. Indeed, this Court already has found that “the evidentiary record has not changed”

since the September 2012 hearing, when Respondents indisputably had not provided “liberal access” to the DOS ID. Determination on Renewed Appl. for Prelim. Inj. at 4 (Aug. 16, 2013).

245. The record clearly establishes that Respondents have never distributed the DOS ID in a way to “forestall the possibility of disenfranchisement,” such that “there will be no voter disenfranchisement” in future elections. *Applewhite II*, 54 A.3d at 4, 5. This is primarily because Respondents, to this day, impose a significant obstacle for voters who get to PennDOT seeking a DOS ID: the “verification” requirement, which will unavoidably lead to disenfranchisement of registered and otherwise qualified voters. *See supra* ¶¶ 50-57. There is no excuse for disenfranchising voters, such as 94-year-old Helen, *see supra* ¶ 57, who follow all the rules and do everything Respondents ask of them, including getting to PennDOT for ID before an election. *See, e.g., Norwood Election Contest*, 382 Pa. at 549, 116 A.2d at 553 (The right to vote “may not be impaired or infringed upon in any way except through the fault of the voter himself.”).

246. The “verification” requirement is simply unnecessary, as every applicant for a DOS ID already must affirm under penalty of perjury that he or she is registered to vote or has applied to register. PennDOT does not impose the “verification” requirement on applicants for a PennDOT non-driver ID for voting purposes. *See supra* ¶ 64. That PennDOT does not require verification for the card actually required by Section 206(b) belies any suggestion that the Photo ID Law itself somehow mandates the imposition of an unworkable threshold requirement before a DOS ID can be issued. The Supreme Court’s decision stands for the straightforward proposition that voters are supposed to be guaranteed a compliant photo ID on the basis of the affirmation; Respondents are not to impose additional requirements that go beyond the affirmation. *See Applewhite II*, 54 A.3d at 3. This includes the inaccurate, ineffective, and

unworkable “verification” requirement. This requirement for the DOS ID is nothing more than an “unnecessary inconvenience upon the voter” that does not “carefully preserve[] the right of every citizen to vote” and the Law therefore cannot stand. *De Walt*, 14 Pa. at 543, 24 A. at 187.

247. Because Respondents have never provided “liberal access” to the DOS ID (or the PennDOT non-driver ID), by their own concession, the Photo ID Law “cannot be administered . . . consistently with constitutional requirements.” Resp’ts’ Discovery Resp. at 11.

3. The Photo ID Law’s Requirement of Getting to PennDOT Will Disenfranchise Voters and Otherwise Impose Undue Costs and Burdens on the Right to Vote

248. Wholly apart from the failure to mandate a form of compliant photo ID that all voters can actually obtain, the Photo ID Law also fails to make compliant photo ID available at locations that are not “unnecessar[ily] inconven[ient]” for voters. *De Walt*, 14 Pa. at 543, 24 A. at 187. The PennDOT Section 1510(b) non-driver ID that the Law contemplates as the universally available ID – and the DOS ID that Respondents say will take the place of Section 1510(b) identification – is available only at PennDOT’s 71 Driver License Centers on some days that they are open. The evidence overwhelmingly demonstrates that the Law’s facial requirement to get to PennDOT in order to get ID unduly infringes on the right to vote.

249. Nine counties have no PennDOT Driver License Centers. And 22 counties have a Center that is open only one or two days a week. Hours are also often limited. Restricting the locations for obtaining ID necessary to vote in this manner is unnecessary and unrelated to any legitimate – let alone compelling – governmental objective. If one were trying to design a way to give voters the ID needed to vote, it is inconceivable that one would require voters to leave the county where they live or try to get to an often remote location when they, by definition, have no driver’s license.

250. Likewise, Respondents agree that requiring the elderly, disabled and ill to obtain a compliant photo ID from the limited PennDOT locations will invariably lead to disenfranchisement. After analyzing the Law's facial requirements, Respondents internally concluded that there would inevitably be countless voters like Petitioner Bea Bookler and voters Marian Baker, Mina Kanter-Pripstein, and so many others, who *can* get to one of the 9,300+ locally accessible polling places (and thus cannot vote absentee), but whose "illness or disability prevent[s] him/her from obtaining necessary proof of ID" from one of PennDOT's limited, often distant and inaccessible Driver License Centers. Pet'rs' Ex. 1562 at 4. According to the Departments of State and Aging, such voters would unavoidably be "disenfranchise[d] through happenstance beyond the control of the elector." *Id.* To alleviate this disenfranchisement, the Departments of State and Aging proposed as "a good solution" allowing voters who could not get to PennDOT because of illness or disability to vote by absentee ballot. *Id.* But the Law was not changed. As a result, these voters and many others will be disenfranchised by the facial operation of the Photo ID Law.

251. Further, the record shows that, even for voters who are able to get to a PennDOT Driver License Center during its hours of operation, their experience trying to obtain a voter ID has been far from "seamless." *Applewhite II*, 54 A.3d at 5. The long lines, extended wait times, confusion, and misinformation at PennDOT effectively assure that a substantial number of voters will face severe and even insurmountable burdens trying to get a voter ID as envisioned by the Law. *See supra* ¶¶ 81-88. Disenfranchising voters "through [no] fault of the voter himself" is plainly unconstitutional. *Norwood Election Contest*, 382 Pa. at 549, 116 A.2d at 553.

252. Respondents also readily acknowledge that getting to PennDOT almost invariably involves costs, such as public transportation, Shared Ride fees, other transportation costs, time

off of work, and other very real costs. *See supra* ¶¶ 70, 79. Under Respondents’ theory, it apparently is okay to impose costs on the right to vote as long as the voter has the resources to bear those costs. Resp’ts’ Ex. 141 (asserting that an indigency affirmation is available only if the voter “cannot afford to pay” a fee for ID); *see supra* ¶ 7. But that is not the law. *See, e.g., Harper*, 383 U.S. at 668-69 (finding it irrelevant “whether the citizen, otherwise qualified to vote, has \$1.50 in his pocket or nothing at all, pays the fee or fails to pay it”). The Pennsylvania Constitution provides that elections shall be “free and equal” for all voters, including those who could afford to pay to get to PennDOT for a compliant photo ID. By acknowledging that the requirement to get to PennDOT imposes costs on voters, Respondents have effectively conceded that the Photo ID Law on its face creates a system in which elections are no longer “free and equal” for all voters who lack a compliant photo ID.

4. The Photo ID Law’s Facial Limitations on Compliant Photo ID Will Disenfranchise Voters

253. The Photo ID Law facially limits the forms of compliant ID to exclude many forms of identification that people use every day. Respondents acknowledge that by narrowing the list of acceptable forms of identification, the General Assembly increased the number of voters who lack the identification needed to vote under the Law. By so strictly limiting the forms of compliant photo ID, the Photo ID Law increased the level of disenfranchisement and otherwise made it unnecessarily hard for many voters to exercise the franchise.

254. For example, the Photo ID Law unnecessarily excludes otherwise compliant photo IDs issued by more than 3,000 municipalities (to non-employees) and other Pennsylvania government entities such as school districts to issue compliant IDs for voting, and private employee IDs. *See supra* ¶ 21. Respondents presented no evidence to justify why these types of ID used every day to prove identity are not acceptable to provide identity at the polls.

255. Most egregiously, the Photo ID Law provides that an otherwise compliant ID can be used to vote only if it has an expiration date and is not expired (with the exception of a 12-month grace period for PennDOT-issued IDs and certain U.S. military IDs). These requirements facially eliminate large numbers of photo IDs that do not have expiration dates, such as Veterans IDs issued by the U.S. Department of Veterans Affairs, many college student IDs, and even many Commonwealth employee IDs, among others. *See supra* ¶¶ 16-20. The expiration date requirements also eliminated virtually any expired ID, including expired passports and driver's licenses that many witnesses have in their possession to prove their identity.

256. Respondents concede that expiration dates are wholly unnecessary to the supposed purpose of requiring identification at the polls – to prove that voters are who they say they are. *See supra* ¶ 18. As long as the voter looks like the person on the ID card, the name substantially conforms to the voting rolls, and the voter's signature matches the signature in the poll book, the supposed purpose of requiring identification is served. It is entirely irrelevant that a card may no longer be valid to drive, travel, or eat in a college dining hall. The *only* conceivable effect of this statutory requirement is to limit acceptable identification, increase burdens on voters, and inevitably disenfranchise voters by declaring numerous forms of photo identification noncompliant for voting. And Respondents' witnesses agreed that this burden falls heavily on the elderly, who are more likely to allow their driver's licenses to expire (because they no longer drive). *See supra* ¶¶ 17, 19, 22-23. This restriction alone invalidates hundreds of thousands of otherwise compliant photo IDs. *See supra* ¶ 17, 131.

257. The exclusion of so many photo IDs and imposition of the expiration date requirements are precisely the type of unnecessary restrictions that demonstrates how the Law

does not “carefully preserves the right of every citizen to vote,” *De Walt*, 145 Pa. at 543, 24 A. at 187, rendering the Law unconstitutional on its face.

5. The Law Contains No Safety Net Against Disenfranchisement

258. The Photo ID Law lacks the basic safety nets that exist in other states where identification requirements have been upheld. Respondents analyzed these critical differences before the Law was enacted, but no effective safety net was included in the Law. *See supra* ¶ 16. The absence of any meaningful safety net for voters who otherwise lack a compliant photo ID to vote inevitably will lead to disenfranchisement based on the express terms of the Photo ID Law.

259. Unlike other states where photo identification requirements have been upheld, Pennsylvania severely restricts who can vote by absentee ballot. *See supra* ¶ 12. New Mexico and Georgia, for instance, have “no-excuse” absentee voting whereby **all** registered voters can vote absentee without photo ID. *See ACLU of N.M. v. Santillanes*, 546 F.3d 1313 (10th Cir. 2008) (upholding law in part based on no-excuse absentee voting without identification); *Democratic Party of Ga., Inc. v. Perdue*, 707 S.E.2d 67 (Ga. 2011) (same); Hr’g Tr. 525-30, July 17, 2013 (J. Marks) (discussing differences between Pennsylvania requirements and no-excuse voting in other states such as Georgia). In Indiana, whose law was upheld in the *Crawford* case discussed below, all **disabled** voters and all **voters 65 and older** are automatically qualified to vote by absentee ballot without any photo identification requirement. Ind. Code § 3-11-10-24.

260. Rather than relax the restrictions on absentee voting to provide a safety net for voters in Pennsylvania, the Photo ID Law actually imposed new and more restrictive requirements for absentee voting. *See supra* ¶ 13. Absentee ballots are not counted if the identification cannot be verified. 25 P.S. § 3146.8(h)(3). These stricter requirements for voting absentee in Pennsylvania, combined with the Law’s narrow list of acceptable forms of

identification and expiration date requirements, make the Photo ID Law one of the harshest in the nation and invariably will lead to disenfranchisement.

261. In Michigan, Florida and Arizona, voters who lack the required identification can cast a regular ballot by signing a simple affidavit at the polls. *See In re Request for Advisory Op.*, 740 N.W.2d 444, 456-57 (2007) (noting that the Michigan statute does not impose a severe burden on voters because it “explicitly provides that an elector without photo identification need only sign an affidavit in the presence of an election inspector before being ‘allowed to vote’”); Fla. Stat. §§ 101.043, 101.048 (same); Ariz. Rev. Stat. Ann. § 16-584 (same). The Photo ID Law has no comparable provision to avoid disenfranchisement.

262. In Virginia, compliant photo ID was automatically issued to every registered voter when the state’s photo identification law was enacted. *See* Va. Exec. Order No. 45 (May 18, 2012) (Executive Order implementing Virginia voter identification law).¹⁹ Nothing like this was done in Pennsylvania. Instead, Respondents sent a letter to 759,000 registered voters who they believed likely had no compliant photo ID and a postcard to 5.9 million Pennsylvania households instructing voters (inaccurately, as it turns out) that they would need “supporting documentation” to obtain a voter ID at PennDOT. *See supra* ¶¶ 98-100 (discussing Resp’ts’ Exs. 43 and 179).

263. In Georgia, free identification is available in every county in the state at convenient times and places, including the motor vehicle departments and every county board of registrars, assuring that every county has at least one place to get free voter ID. *See* O.C. Ga. § 21-2-417.1; *Democratic Party of Ga.*, 707 S.E.2d at 72-73. As shown above, that is far from the case in Pennsylvania.

¹⁹ The Virginia voter ID law also allows for a broader selection of ID to be used for voting, including voter registration cards without photographs. Va. Code Ann. § 24.2-643.

264. Many states with photo identification requirements for voting accept various forms of ID that cannot be used to vote under the Photo ID Law, including expired driver's licenses and other expired photo IDs, photo IDs issued by other states, student IDs, and gun permits. Pet'rs' Ex. 2092 at 1; Hr'g Tr. 1060-62, July 22, 2013 (R. Oyler).

265. In contrast to the above protections that exist in other states, the Photo ID Law contains no safety net to avoid large-scale disenfranchisement. Respondents knew that the in-person photo ID requirement would impose special burdens on elderly and disabled voters, young people, and the financially disadvantaged, among others. *See supra* ¶¶ 16-24, 149-57. Yet, for the reasons described in the Proposed Findings of Fact above, allowing care facility IDs to be used for voting is not a solution for elderly and disabled voters both because (1) most care facilities did not and do not issue such IDs, and (2) many elderly and disabled voters do not live in licensed care facilities. *See supra* ¶¶ 23-24, 30-33. Likewise, many voters who lack photo ID are not college or university students, so IDs from those institutions are not a solution. Many schools still are not issuing compliant photo IDs, and potential college students make up only a small number of those who lack photo ID. *See supra* ¶¶ 28-29.

266. Similarly, the "indigency" provision in the Law is a wholly inadequate solution. The indigency affirmation requires voters to affirm that they cannot obtain a compliant photo ID without the "payment of a fee," but the DOS ID and PennDOT non-driver ID have no fees, and even the fees on Pennsylvania birth certificates have been eliminated if needed for voting purposes. *See supra* ¶¶ 7-8, 11. The Law also does not define "indigent," leaving it to each county to decide in the first instance without any meaningful protection to assure a voter's vote will actually count. *See supra* ¶¶ 7-8. Respondents conceded at trial and in their instructions to

poll workers that provisional ballots cast by indigent voters are especially subject to challenge, with little or no notice to voters that their ballots may not be counted. *See supra* ¶¶ 9-11.

267. Regardless of the reason, relegating voters without a compliant photo ID to provisional ballots does not protect the fundamental right to vote. *See supra* ¶¶ 5-6, 9-10. Unlike regular ballots that are guaranteed to count once cast, “the whole point of provisional balloting is that the vote may be cast but ultimately may or may not count.” *Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1081 (N.D. Fla. 2004). In short, nothing about the Photo ID Law “carefully preserves the right of every citizen to vote,” *De Walt*, 145 Pa. at 543, 24 A. at 187, and the Law therefore is unconstitutional.

C. The Burdens Imposed by the Photo ID Law Are Unnecessary and Are Not Narrowly Tailored to Serve Any Compelling Governmental Interest

268. Legislative incursions upon fundamental rights may be upheld only upon the strictest scrutiny. *See James v. SEPTA*, 505 Pa. 137, 145, 477 A.2d 1302, 1305-06 (1984) (“[W]here . . . a fundamental right has been burdened, another standard of review is applied: that of strict scrutiny.”); *Schmehl v. Wegelin*, 592 Pa. 581, 585, 927 A.2d 183, 185, 188-89 (2007) (applying strict scrutiny to law that “burdened a parent’s fundamental right to make decisions regarding the upbringing of his or her children” by providing for mandatory grandparent visitation); *Pa. Bar Ass’n v. Commonwealth*, 147 Pa. Cmwlth. 351, 366, 607 A.2d 850, 857 (1992) (applying strict scrutiny to law “impos[ing] a burden upon” attorneys’ “reputation” rights by providing for the maintenance of reports that would damage the reputations of attorneys listed). As the Supreme Court explained in *Perles*, “either an individual voter or a group of voters are not to be disenfranchised at an election except for *compelling* reasons.” 415 Pa. at 159, 202 A.2d at 540 (emphasis added) (citation omitted). The disenfranchisement of voters that will occur because of the Photo ID Law is not justified by any “compelling reasons.”

269. To justify an incursion on a fundamental right, the government “must do more than simply posit the existence of the disease sought to be cured. It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.” *United States v. Nat’l Treasury Emps. Union*, 513 U.S. 454, 475 (1995). “Whether there is a significant state interest will depend, in part, on whether the state’s intrusion will effect its purpose; for if the intrusion does not effect the state’s purpose, it is a gratuitous intrusion, not a purposeful one.” *Denoncourt v. Commonwealth, State Ethics Comm’n*, 504 Pa. 191, 200, 470 A.2d 945, 949 (1983); *see also Stenger v. Lehigh Valley Hosp. Ctr.*, 530 Pa. 426, 438, 609 A.2d 796, 802 (1992) (same); *In re Nader*, 580 Pa. at 45, 858 A.2d at 1180 (striking down election law that excluded some candidates from the ballot based on “the complete absence of evidence with respect to the state’s interest here”).

270. The Photo ID Law cannot be justified as a response to actual voter fraud; Respondents have stipulated that there is no evidence of voter fraud that would be prevented by the Law. Pet’rs’ Ex. 15 ¶¶ 1-3. Nor was the Photo ID Law a response to a likelihood of fraud in the November 2012 election; Respondents again stipulated that there was no such likelihood. Pet’rs’ Ex. 15 ¶ 5. And Respondents have confirmed that there is no evidence of actual fraud that would have been prevented by the Photo ID Law during the November 2012 or May 2013 elections. Pet’rs’ Ex. 1618 at 2.

271. Respondents now try to justify the Photo ID Law on the ground that such fraud “*might* occur in a *future* election,” and the in-person photo ID requirement is a “more effective protective tool. . . than the system in place before the Photo ID Law was enacted.” Pet’rs’ Ex. 1618 at 3 (emphasis in original). But there is no evidence that the safeguards in prior elections

were insufficient. Hr’g Tr. 570, 573-74, July 27, 2012 (M. Wolosik).²⁰ To the contrary, Mr. Marks testified that he has confidence in the integrity of the November 2012 and May 2013 elections, as well as every other election over the past 11 years. Hr’g Tr. 505-06, July 17, 2013. Nor is there *any* evidence that the prior safeguards will become ineffective in the future, making this justification entirely speculative.

272. Speculation about what might occur in the future without *any* evidence of past problems cannot sustain an election requirement that burdens the fundamental right to vote and unavoidably disenfranchises registered and otherwise qualified voters. For example, in *Cusick’s Election*, 136 Pa. at 467, 20 A. at 574 (citing *Page*, 58 Pa. 338), the election regulation was necessitated by concrete, actual evidence of election problems that the General Assembly was trying to address. The court observed that “[o]ur books are full of [contested election] cases where such fraud has been developed” and was “fully convinced that the election laws were utterly insufficient in preventing fraud” *Id.* at 467, 20 A. at 574.²¹ Likewise, in *De Walt*, the legislature’s secret ballot law was intended to ensure that “each voter shall be permitted to cast a free and unintimidated ballot” and the specific regulation was “absolutely necessary” to achieve that goal. 146 Pa. at 540, 543, 24 A. at 186, 187. Here, there is no evidence of actual fraud showing that the prior law was insufficient in any way. And there is certainly no basis to suggest that imposing a requirement that will disenfranchise large numbers of voters is “absolutely necessary” to any legitimate – let alone compelling – goal.

²⁰ The Supreme Court has previously “afford[ed] great deference to . . . testimony” about Pennsylvania’s electoral process when offered by Mr. Wolosik. *Kuznik*, 588 Pa. at 148, 902 A.2d at 507.

²¹ The fraud at issue in the contested election cases from the 1800s is not the type of in-person voter impersonation fraud that the Photo ID Law could theoretically address.

273. Respondents are left to try to justify the Photo ID Law based on purported “concerns about *public confidence* in the integrity of the election system and that *citizens of the Commonwealth . . .* do not have confidence that the voting system, absent a Photo ID Law, includes adequate measures to reliably assure that those who cast ballots in the Commonwealth’s polling places are who they say they are.” Pet’rs’ Ex. 1618 at 3 (emphasis in original). This is the thinnest of reeds upon which to rest a law that disenfranchises or significantly burdens voters. Fundamental constitutional rights cannot be trampled because of supposed public fear. We would not allow the police to invade our homes without a warrant because the public lacks confidence in law enforcement’s ability to fight crime. The same applies to voting.

274. In striking down Missouri’s voter ID law, the Missouri Supreme Court considered an identical argument that “the State has a compelling interest in combating perceptions of voter fraud.” *Weinschenk v. State*, 203 S.W.3d 201, 218 (Mo. 2006). The state high court explained:

[W]here the fundamental rights of Missouri citizens are at stake, more than mere perception is required for their abridgement. Perceptions are malleable. . . . [I]f this Court were to approve the placement of severe restrictions on Missourians’ fundamental rights owing to the mere perception of a problem in this instance, then the tactic of shaping public misperception could be used in the future as a mechanism for further burdening the right to vote or other fundamental rights. . . . The protection of our most precious state constitutional rights must not founder in the tumultuous tides of public misperception.

Id. at 218-19. The same is true in Pennsylvania.

275. In any event, Respondents presented no evidence of a problem with public confidence in Pennsylvania elections based on in-person voter impersonation fraud. *See supra* ¶ 184. Nor did they identify any evidence of a public confidence problem considered by the General Assembly. To the extent such a public confidence problem exists, Respondents’ stipulation regarding the absence of in-person voter impersonation fraud means that it is not

grounded in reality. Respondents' witnesses further concede that disenfranchising voters will *undermine* the integrity of elections. *See id.* And publicly turning away large numbers of registered and otherwise qualified voters at the polls – especially the poor, elderly, disabled, and minorities – can serve only to undermine public perceptions of Pennsylvania's elections.

276. As worst, the true rationale behind the Photo ID Law – and the reason it was enacted on a pure party-line vote – is reflected in House Majority Leader Mike Turzai's disturbing, tendentious remark that the Photo ID Law was “gonna allow Governor Romney to win the state of Pennsylvania.” Pet'rs' Ex. 42; *see also Applewhite I*, 2012 WL 3332376, at *28.

277. Even if, *arguendo*, there were some compelling governmental interest to be advanced by *some* kind of voter ID law, *this* Law is not narrowly tailored to serve that interest. Unlike voting “regulations” that have been upheld by the Supreme Court, the Photo ID Law is not narrowly tailored to “carefully preserve[] the right of every citizen to vote” without “impos[ing] any unnecessary inconvenience upon the voter.” *De Walt*, 145 Pa. at 543, 24 A. at 187. Whether compared to voter ID laws in other states or the safeguards that were considered but rejected in Pennsylvania, *see supra* ¶¶ 16, 19, this Law is not narrowly tailored to verify voter identity without disenfranchising large numbers of qualified voters. Perhaps most egregious is the expiration date requirement, which Respondents concede has nothing to do with proving identity and serves only to render scores of other compliant photo IDs unacceptable for voting including those of employees, veterans, students, elderly and disabled voters, and many others. This requirement alone rendered invalid for voting over 250,000 PennDOT-issued ID cards of registered voters. *See supra* ¶ 17. The Department of State saw no utility in the expiration date requirement, and none was proffered at trial despite Petitioners squarely raising the issue. *See Sch. Dist. Of Phila.*, 45 A.3d at 459 (holding that a defendant has a burden of

production of a defendant when a plaintiff has squarely joined an issue and holding that if “nothing is done by the other side to answer it, the defendant fails”).

278. Likewise, unlike other states and unlike the “good solution” to disenfranchisement of the ill, elderly and disabled proposed by the Departments of State and Aging, the Law does not safeguard the right to vote through expansive absentee voting rights. *See supra* ¶¶ 12-14, 22-23. And in comparison to the Laws of other states and what the Respondents and General Assembly considered during the drafting of the Law, Pennsylvania excluded scores of IDs that people use every day to prove their identity, issued by literally thousands of entities around the Commonwealth that are noncompliant under the Law. *See supra* ¶¶ 19-21. And the Law requires most voters without driver’s licenses to find a way to get to PennDOT when IDs could easily be distributed at many other locations. *See supra* ¶¶ 66-67.

279. In short, regardless of whether a narrowly tailored voter ID law could, in the abstract, pass constitutional muster, *this* Law is facially unconstitutional.

D. *Crawford* Is Inapposite

280. Respondents place great weight on the U.S. Supreme Court’s decision in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). Hr’g Tr. 46, 48-49, July 15, 2013 (discussing *Crawford* in opening statement); Hr’g Tr. 2034-36, Aug. 1, 2013 (discussing *Crawford* in closing argument); *see also Applewhite I*, 2012 WL 3332376, at *16-20 (relying in large part on *Crawford* to deny a preliminary injunction). For multiple reasons, however, *Crawford* is irrelevant and distinguishable here.

281. As an initial matter, *Crawford* dealt with the Equal Protection Clause of the U.S. Constitution. That clause contains no express protection of the right to vote; it simply ensures that all persons are given the same rights as other persons. This case is grounded in the Pennsylvania Constitution, the provisions of which expressly guarantee the right to vote. Last

year, amicus curiae Pennsylvania AFL-CIO submitted to this Court a brief reviewing the history and background of Article I, Section 5 of the Pennsylvania Constitution, which has no counterpart in the U.S. Constitution. As the AFL-CIO explained, under *Commonwealth v. Edmunds*, 526 Pa. 374, 586 A.2d 887 (1997), courts in Pennsylvania must undertake an independent analysis of the Pennsylvania Constitution. AFL-CIO Amicus Br. at 14 (Aug. 30, 2012) (quoting *Edmunds*). The Pennsylvania Supreme Court has forged its own path construing the Pennsylvania Constitution, independent of federal constitutional law. *DePaul v. Commonwealth*, 600 Pa. 573, 589, 969 A.2d 536, 546 (2009) (“Article I, Section 7 provides broader protections of expression than the related First Amendment guarantee in a number of different contexts.”); *Nixon v. Commonwealth*, 576 Pa. 385, 399-400, 839 A.2d 277, 286-87 (2003); *Pa. State Bd. of Pharm. v. Pastor*, 441 Pa. 186, 191, 272 A.2d 487, 490 (1971) (Pennsylvania “has scrutinized regulatory legislation perhaps more closely than would the Supreme Court of the United States.”). In addition, Article VII, Section 1 sets forth exactly who is constitutionally entitled to vote and expressly secures the right to vote.

282. Because voting is a fundamental, expressly-guaranteed right under the Pennsylvania Constitution, and because the Pennsylvania Supreme Court historically applies more exacting scrutiny than the U.S. Supreme Court in assessing impairments of an equivalent right (to free expression), the decision in *Crawford* is irrelevant here. See *Weinschenk*, 203 S.W.3d at 211 (striking down Missouri’s voter ID law on state constitutional grounds, in part because “[t]he express constitutional protection of the right to vote differentiates the Missouri constitution from its federal counterpart”); *id.* at 216 (“Here, the issue is constitutionality under Missouri’s Constitution, not under the United States Constitution.”).

283. *Crawford* is also distinguishable because the Supreme Court’s decision was explicitly based on the lack of a factual record in that case. The three-judge plurality held only that “the evidence in the record is not sufficient to support a facial attack on the validity of the entire statute” *Id.* at 189; *see also id.* at 202 (denying relief “on the basis of the record that has been made in this litigation”). Specifically, the district court “found that petitioners had ‘not introduced evidence of a single, individual Indiana resident who will be unable to vote as a result of SEA 483 or who will have his or her right to vote unduly burdened by its requirements.’” *Id.* at 187 (quoting district court); *see also id.* at 201 (“[T]he deposition evidence presented in the District Court does not provide any concrete evidence of the burden imposed on voters who currently lack photo identification.”).

284. The Supreme Court further explained that “the evidence in the record does not provide us with the number of registered voters without photo identification; [the district judge] found petitioners’ expert’s report to be ‘utterly incredible and unreliable.’ Much of the argument about the numbers of such voters comes from extrarecord, postjudgment studies, the accuracy of which has not been tested in the trial court.” *Id.* at 200 (quoting district court) (citation omitted). And the record in *Crawford* told the Court “nothing about the number of free photo identification cards issued since” Indiana’s voter ID law was enacted. *Id.* at 202 n.20.

285. By contrast, this case involves an extensive factual record that was fully developed at two evidentiary hearings and a full trial on the merits. The factual record in this case overwhelmingly supports Petitioners’ claim that the Photo ID Law unconstitutionally infringes the fundamental right to vote under the Pennsylvania Constitution. With respect to the specific evidence that the Supreme Court identified as notably absent in *Crawford*, the record here unequivocally establishes that hundreds of thousands of Pennsylvania voters lack a

compliant photo ID to vote under Pennsylvania’s Photo ID Law. The record shows that Respondents have issued fewer than 17,000 voter IDs since the Law was enacted in March 2012. And the record is full of testimony from numerous Pennsylvania voters whose right to vote will be – and indeed already has been – denied or substantially and unnecessarily burdened by the Photo ID Law. Based on the extensive factual record in this case, the Photo ID Law would fail even under the federal Equal Protection standard applied in *Crawford*.

286. Beyond the different type of legal challenge and lack of a factual record in *Crawford*, the Indiana voter ID law at issue in that case was fundamentally different from the Pennsylvania Photo ID Law at issue here. **First**, Indiana’s law provided an exception to the in-person photo ID requirement for all “persons living and voting in a state-licensed facility such as a nursing home.” *Crawford*, 553 U.S. at 186 (citing Ind. Code Ann. § 3-11-8-25.1(e)). **Second**, “[a]t the same time that the Indiana Legislature enacted [the state’s voter ID law], it also directed the Bureau of Motor Vehicles (BMV) to remove all fees for state-issued photo identification for individuals without a driver’s license who are at least 18 years old.” *Id.* at 186 n.4; *see also id.* at 186 (Indiana “offers free photo identification to qualified voters able to establish their residence and identity.”) (citing Ind. Code Ann. § 9-24-16-10(b)). And compared to Pennsylvania, Indiana has almost twice as many license centers where voters can obtain a compliant photo ID to vote (136²²) and roughly half the number of registered voters (4,554, 289²³). **Finally and perhaps most importantly**, under Indiana law, all voters over age 65 and all disabled voters qualify to

²² See Bureau of Motor Vehicle Branch Locator, <http://www.in.gov/bmv/2337.htm> (listing all BMW License Branches); <http://www.in.gov/sos/elections/2625.htm> (instructing Indiana voters to “obtain a free ID card for voting purposes from any BMV license branch”).

²³ See <http://www.in.gov/sos/elections/2393.htm> (last visited Aug. 26, 2013).

vote absentee without photo ID and without the necessity of providing a doctor's name and address. Ind. Code Ann. § 3-11-10-24(a)(4), (5); *see also Crawford*, 553 U.S. at 201 (“[A]lthough it may not be a completely acceptable alternative, the elderly in Indiana are able to vote absentee without presenting photo identification.”). This contrasts sharply with Pennsylvania’s restrictive absentee voting laws, which provide no comparable protection for elderly and disabled voters who cannot get to PennDOT to get a compliant photo ID. *See supra* ¶ 12-14, 22-23. None of these protections afforded to voters under the Indiana voter ID law exists under Pennsylvania’s different and far more restrictive Photo ID Law.

287. In sum, the U.S. Supreme Court’s decision in *Crawford* provides no support for Respondents’ position in this case.

II. The Photo ID Law Violates the Guarantee of Equal Protection Under the Pennsylvania Constitution

288. The Pennsylvania Constitution guarantees that elections be “free and equal” under Article I, Section 5, and that all laws afford equal protection to Pennsylvania citizens under Article I, Section 1 and Section 26. The Supreme Court has already held that the Photo ID Law *does* impose burdens on voters who lack identification and that those burdens *do* fall most heavily on society’s most vulnerable: “the elderly, disabled members of [the] community, and the financially disadvantaged.” *Applewhite II*, 54 A.3d at 4. Based on all of her research, Ms. Oyler, formerly of the Department of State, agrees that these groups as well as others “have a harder time finding IDs than others.” *See supra* ¶ 157. These other groups include minority populations, non-English speaking populations, and college students. *See supra* ¶ 157. Her conclusions are supported by Dr. Siskin’s concrete data. *See supra* ¶¶ 151-55, 187.

289. As discussed above, the Departments of State and Aging knew that the Photo ID Law – unless changed – would inevitably disenfranchise elderly, disabled, and ill voters. These

voters disproportionately face an unconstitutional choice not faced by other voters. They must choose between their right to vote and the unnecessary and, for many, insurmountable burden of trying to obtain a compliant photo ID. Imposing extra, unnecessary, and often insurmountable burdens or limitations on a group of voters based solely on the vagaries of life is analogous to *Mixon v. Commonwealth*, 759 A.2d 442, 451 (Pa. Commw. Ct. 2000), *aff'd per curiam*, 566 Pa. 616, 783 A.2d 763 (2001). In that case, the Court invalidated a law requiring that felons, who had not been registered to vote when incarcerated, must wait five years after their release from prison before registering to vote, finding this to constitute an irrational distinction from those felons who happened to have been lucky enough to have registered to vote prior to incarceration and thus could vote immediately upon release. *Id.*²⁴

290. Here, voters who happened to have had a compliant photo ID when the Photo ID Law was enacted are generally not burdened, but those who lacked a compliant photo ID (and newly registered voters who lack a compliant photo ID) face new and unnecessary burdens unrelated to their eligibility to vote. In Respondents' own words, such voters will be disenfranchised due to "happenstance beyond the control of the elector." Pet'rs' Ex. 1562. There is no rational, important, or compelling justification for drawing such distinctions among voters. As such, the Photo ID Law violates the equal prong of the "free and equal" guarantee in Article I, Section 5 of the Pennsylvania Constitution. And because the Law, by Respondents' own admission, disproportionately burdens the voting rights of minorities, non-English speakers,

²⁴ The *Mixon* court also held, citing a long line of authority restricting the vote for convicted felons, that "the right of *felons* to vote is not a fundamental right." *Mixon*, 759 A.2d at 451 (emphasis added). That reasoning is not applicable here, however, as the Photo ID Law does not disenfranchise individuals on the basis of felony status and the Supreme Court and this Court have now held that the right to vote *is* a fundamental right. *Applewhite II*, 54 A.3d at 3.

and the elderly (among others), it denies equal protection in violation of Article I, Section 1 and Section 26.

291. Relying on *Meggett v. Pennsylvania Department of Corrections*, 892 A.2d 872 (Pa. Commw. Ct. 2006), which involved an equal protection challenge to prison rules restricting inmates' hairstyles, Respondents argued that "disparate impact has no place in a constitutional equal protection analysis." Hr'g Tr. 2033, Aug. 1, 2013 (Respondents' closing argument); *see also Meggett*, 892 A.2d at 887 n.31 (citing *Washington v. Davis*, 426 U.S. 220 (1976)).²⁵ In the context of voting rights, however, the U.S. Supreme Court repeatedly has struck down facially neutral election laws that disproportionately burdened certain groups of voters' ability to exercise the franchise, holding that such laws violate the federal Equal Protection Clause.

292. For example, in *Harper*, the Court facially invalidated Virginia's poll tax, even though it applied to all voters, rich and poor alike. 383 U.S. at 664 n.1 ("Section 173 of Virginia's Constitution directs the General Assembly to levy an annual poll tax not exceeding \$1.50 on *every* resident of the State 21 years of age and over (with exceptions not relevant here) (emphasis added). The Court explained: "The degree of the discrimination is irrelevant. In this context – that is, as a condition of obtaining a ballot – the requirement of fee paying causes an invidious discrimination that runs afoul of the Equal Protection Clause." *Id.* at 668 (citation and internal quotation marks omitted). Similarly, the Court in *Dunn v. Blumstein* struck down Tennessee's durational residence law, which provided that "a would-be voter must have been a resident for a year in the State and three months in the county." 405 U.S. at 334. In holding that

²⁵ In their closing argument, Respondents also pointed to the dissent and concurrence in *Mixon*. Hr'g Tr. 2033-34, Aug. 1, 2013. But, as explained immediately above, the majority in *Mixon* held that the ban on felons registered for five years after their release violates the constitutional guarantee of equal protection.

durational residence laws violated federal Equal Protection, the Court explained: “Such laws divide residents into two classes, old residents and new residents, and discriminate against the latter to the extent of totally denying them the opportunity to vote.” *Id.* at 334-35.

293. Likewise, here, the Photo ID Law divides registered and otherwise qualified voters into two classes – those who have a compliant photo ID and those who do not – and leads to disenfranchisement and unnecessary burden of the latter. Respondents cannot and do not seriously dispute that the Photo ID Law disproportionately burdens and disenfranchise certain groups of voters. *See supra* ¶ 157. That is why they are compelled to argue that it is *lawful* to impose disparate burdens on different groups of voters - just as they previously argued that voting is not a fundamental right. House Majority Leader Turzai’s statement indicates the invidious nature of this discrimination, as the groups burdened most were thought to lean Democratic in the November 2012 Presidential election. *See supra* ¶ 187. In these circumstances, the Law causes an invidious discrimination that runs afoul of the guarantee of equal protection in the Pennsylvania Constitution.

III. The Photo Identification Requirement Should Be Permanently Enjoined

A. The Court Should Permanently Enjoin the Photo Identification Requirement as Facially Unconstitutional

294. Pursuant to Pennsylvania Rule of Civil Procedure 1531, Petitioners are entitled to a permanent injunction against the enforcement of the in-person photo identification requirement because that requirement is facially unconstitutional. For the reasons discussed above, Petitioners have established that (1) the right to relief is clear, (2) the injunction is necessary to avoid an injury that cannot be compensated by damages, and (3) greater injury will result if the court does not grant the injunction than if it does. *Doe v. Zappala*, 987 A.2d 190, 193 n.2 (Pa. Commw. Ct. 2009).

295. Here, the right to relief is clear because, *inter alia*, Respondents themselves recognize that they cannot forestall the possibility of disenfranchisement based on how the Photo ID Law is written. For voters who will be disenfranchised, there are no “do overs” and no way for money damages to compensate for the loss of the right to vote. And the injury to voters (and the integrity of elections) from disenfranchisement far outweighs the complete lack of any harm if the Law is not enforced. Accordingly, Petitioners are entitled to a permanent injunction.

296. As to the scope of the permanent injunction, it should fully bar any and all enforcement of Section 3 of the Photo ID Law, which requires all in-person voters to show a compliant photo ID in order to cast a regular ballot, and provides that voters who fail to show a compliant photo ID may cast a provisional ballot, which will not be counted unless the voter within six calendar days submits to his or her county board of elections either a compliant photo ID under the Law or a signed indigency affirmation.

297. The absentee ballot provisions in Sections 4 through 8 of the Law are severable from the in-person photo identification requirement in Section 3. The absentee ballot provisions are not challenged here and therefore need not be enjoined at this time.²⁶

298. Multiple other provisions of the Law are necessary for the effectuation of the absentee ballot provisions and therefore must remain in effect. The Court, however, should make clear that those provisions remain in effect solely with respect to the new absentee ballot requirements, and not the enjoined in-person photo ID requirement. Specifically, Section 1 of the Law defines “proof of identification” for both in-person and absentee voters, but the entire section must remain in effect because the definition for absentee voters incorporates the

²⁶ Petitioners, however, do not agree that these provisions are lawful. By not challenging the provisions here, Petitioners do not waive any right they have to challenge them separately.

definition for in-person voters. However, under the permanent injunction, the prior law's definitions of acceptable forms of photo and non-photo identification would apply to first-time voters in a precinct. Section 2 of the Law requires PennDOT to issue a free Section 1510(b) PennDOT non-driver ID for voting purposes to any voter who signs the simple, two-point declaration; this provision should remain in effect because voters will need identification to vote absentee under the Law's new absentee ballot identification requirements. Section 2 also requires education about the photo identification requirement generally and the availability of the free PennDOT non-driver ID for voting purposes; those provisions must remain in effect solely with respect to the absentee ballot requirements. Section 9 of the Law provides for concurrent prosecutorial jurisdiction by the Attorney General and the local district attorney in any county in which a violation occurs; this provision must remain in effect solely with respect to the absentee ballot requirements in Sections 4 through 8 and related provisions in Sections 1 and 2.

299. Finally, it is unnecessary to permanently enjoin the transitional procedures under Section 10 of the Law, which already have expired by their terms. *See* Section 10 of Act 18, 25 P.S. § 3050 (Historical and Statutory Notes) (“The following [transitional procedures] shall apply to elections held after January 1, 2012, and prior to September 17, 2012: . . .”). The Court, however, should make clear for the benefit of both voters and poll workers that its preliminary injunction extending those transitional procedures until a final decision is no longer in effect. The Pennsylvania electorate, and everyone who works on Pennsylvania elections, is entitled to a clear statement that photo ID will no longer be requested *or* required from in-person voters.

B. Alternatively, the Court Has Tools to Enjoin the Photo Identification Requirement on More Limited Grounds

300. Facial invalidation of the Photo ID Law is required by the express protections for voting in the Pennsylvania Constitution. If *arguendo* the Court declines to do so, the Court

nonetheless has several alternative tools to prevent the disenfranchisement that will result if the Law is enforced: (1) issue an as-applied injunction, (2) issue an injunction on purely statutory grounds, and (3) issue an injunction until such time as there will be no disenfranchisement.

1. The Court Can Enjoin the Photo ID Requirement on As-Applied Grounds

301. Pennsylvania courts have long recognized the importance of enjoining unconstitutional applications of state statutes. *See, e.g., Pa. R.R. Co. v. Phila. Cnty.*, 220 Pa. 100, 112-13, 68 A. 676, 678 (1908) (finding a state statute unconstitutional as-applied and upholding an injunction preventing the statutory rate regulations from being applied to the plaintiff); *Johnson v. Allegheny Intermediate Unit*, 59 A.3d 10, 22-23 (Pa. Commw. Ct. 2012) (granting a permanent injunction to the plaintiff after holding that a prohibition against certain types of employment by those convicted of specified crimes was unconstitutional as-applied to the plaintiff).

302. In crafting the scope of an “as-applied” declaratory judgment and resulting “as applied” injunction, the Court can and should extend the remedy to a broader group of individuals than just the named Petitioners before the Court. For example, in *Tennessee v. Garner*, 471 U.S. 1 (1985), the U.S. Supreme Court declared unconstitutional a state statute allowing the use of deadly force against any felony suspect likely to escape, as applied to the plaintiff, an unarmed minor who was shot and killed while fleeing the scene of a burglary. Even though this constitutional determination was made in the context of the plaintiff’s individual Section 1983 suit seeking monetary damages for harm caused by a specific incident, the Court declared the law unconstitutional as to all similarly situated persons “insofar as [the law] authorizes the use of deadly force against [unarmed, nondangerous] fleeing suspects.” *Id.* at 11.

303. Likewise, the Pennsylvania Supreme Court struck down a statewide tax assessment statute as unconstitutional as applied to the four individual plaintiffs and then granted broad prospective relief in the form of a requirement that Allegheny County conduct a county-wide reassessment of all properties rather than limiting any remedy to the named plaintiffs. *Clifton*, 600 Pa. at 705-06, 969 A.2d at 1223-24.

304. Even in *Crawford*, six Justices of the U.S. Supreme Court believed that some relief was warranted. The three-judge plurality of Justices Stevens and Kennedy and Chief Justice Roberts affirmed the denial of facial relief, but indicated the possibility of as-applied challenges brought by certain groups of voters, including the elderly, the financially disadvantaged, and the homeless. *Crawford*, 553 U.S. at 199. The three dissenting judges would have struck down the Indiana law on facial grounds even with the less developed evidentiary record than exists here. *Id.* at 209 (Souter, Ginsburg, JJ., dissenting); *id.* at 237 (Breyer, J., dissenting). Only the concurrence by Justice Scalia, joined by Justices Thomas and Alito, concluded that Indiana's voter ID should be upheld against any challenge. *Id.* at 204 (Scalia, Thomas, and Alito, JJ., concurring).

305. Similarly, in *League of Women Voters of Indiana, Inc. v. Rokita*, 929 N.E.2d 758, 767 (Ind. 2010), where the Indiana high court rejected a facial challenge to Indiana's voter ID law under state law, the court cautioned that the results would be different in an as-applied challenge "if a claim were presented and proven that reasonable government assistance was not actually available to adequately relieve either the cost or hardship of obtaining photo ID." *Id.* at 769. In Pennsylvania, the evidence is overwhelming that there is no reasonable government assistance to relieve the cost and hardships of obtaining photo ID.

306. Here, an “as-applied” declaratory judgment and injunction would prohibit, at a minimum, the enforcement of the photo identification requirement for in-person voters who lack identification. Petitioners respectfully submit that it is not wise to create a dual system for voting in which some voters are required to show identification if they have it, but other voters are permitted to vote even if they do not. *See, e.g., Dunn*, 405 U.S. at 335 n.2, 345 (striking down on facial grounds voting law that affected only 3-5% of voters); *Harper*, 383 U.S. at 668-69 (striking down on facial grounds voting law for all voters regardless of whether the voter “\$1.50 in his pocket or nothing at all, pays the fee or fails to pay it”). That system would have no benefit and only cause confusion for voters and poll workers. *See Kuznik*, 588 Pa. at 146-48, 902 A.2d at 506-07 (reversing permanent injunction because, *inter alia*, it would have create a dual system of voting that would cause voter and poll worker confusion). Moreover, it would cross the line from judging into legislating. *Mt. Lebanon*, 470 Pa. at 321, 368 A.2d at 649-50 (courts “have no power to . . . rewrite Legislative Acts or Charters, desirable as that sometimes would be”). But, between permitting the Law to be enforced against all voters (and thus disenfranchising many) and creating some confusion in regard to who needs identification, Petitioners submit that an “as-applied” declaratory judgment and injunction is the least harmful option if the Court does not enjoin the in-person photo ID requirements for all voters.

2. The Court Can Enjoin the Photo ID Requirement on Purely Statutory Grounds

307. The Court can also enjoin the photo identification requirement without reaching the constitutional questions. It is undisputed that Respondents have not tried to implement the “critical terms of the statute” set forth in Sections 206(b) and 206(c) of the Photo ID Law through which the General Assembly sought to ease (but could not eliminate) the burdens on

voters who lacked identification. *See Applewhite II*, 54 A.3d at 3-5. Respondents also failed adequately to implement Section 206(a) of the Law.

308. Contrary to Section 206(b) of the Law, PennDOT has not provided the free PennDOT non-driver ID for voting purposes based on the simple two-point declaration, but rather continues to impose the same rigorous documentation requirements on all applicants for a PennDOT non-driver ID, meaning many voters are unable to obtain one. The DOS ID is a discretionary, litigation-driven creation of Respondents to which no voter has any entitlement. But in any event, Respondents have never provided “liberal access” to the DOS ID either, but instead continue to impose the inaccurate, ineffective, and unworkable “verification” requirement, which inevitably leads to disenfranchisement, for the reasons described above.

309. Respondents concede that “[i]f proof of identification is not liberally available to registered electors . . . , the Voter ID Law cannot be administered as required by the statute itself, or consistently with constitutional requirements.” Resp’ts’ Discovery Resp. at 11. Because they failed to implement the Law in a way that “comport[s] with the requirement of liberal access which the General Assembly attached to the issuance of the PennDOT identification cards, . . . the court is obliged to enter [an] . . . injunction.” *Applewhite II*, 54 A.3d at 5.

310. Contrary to Section 206(c) of the Photo ID Law, both PennDOT and the Department of State ignored their obligation to educate voters with accurate information about the free PennDOT non-driver ID for voting purposes that is supposed to be available with no “supporting documentation” and based only on a simple declaration. They likewise deliberately chose not to educate voters about the DOS ID. *See* Determination on Renewed Appl. for Prelim. Inj. at 7-8 (Aug. 16, 2013).

311. Respondents spent \$5 million of federal funds on an education campaign under Section 206(a) of the Photo ID Law. But, as described above, that education campaign disseminated far too much inaccurate information and was generally much too confusing to have any meaningful “educational” value.

312. Respondents implemented the Photo ID Law in a way that affirmatively undermined the General Assembly’s minimal promise of a free PennDOT non-driver ID to voters in Section 206(b), ignored the General Assembly’s mandate to publicly advertise the availability of the free PennDOT non-driver ID in Section 206(b), and distributed reams of misinformation in response to the General Assembly’s instruction to educate the public about the Law. These aspects of Respondents’ implementation of the Law, individually and collectively, will lead to disenfranchisement of voters. In these circumstances, allowing the photo identification requirement to be enforced against voters “would mutilate the [Law] and would be contrary to the intent of the General Assembly.” *Indianapolis Power & Light Co. v. Pa. Pub. Util. Comm’n*, 711 A.2d 1071, 1087 (Pa. Commw. Ct. 1998). As such, if this Court does not want to reach the constitutional questions, it can enter a permanent injunction based solely on statutory grounds.

IV. Petitioners Have Standing

A. Both the Organizational and Individual Petitioners Have Standing

313. A party has standing when “it has a substantial, direct and immediate interest in the claim sought to be litigated.” *Pa. Med. Soc’y v. Dep’t of Pub. Welfare*, 614 Pa. 574, 591, 39 A.3d 267, 278 (2012).

314. “[A] ‘substantial’ interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law” *Pa. Med. Soc’y*, 614 Pa. at 591, 39 A.3d at 278. Here, Act 18 has forced each of the three Organizational

Petitioners (the League of Women Voters of Pennsylvania; the National Association for the Advancement of Colored People, Pennsylvania State Conference; and the Homeless Advocacy Project) to divert significant time and money from its other activities, and it would disenfranchise both of the Individual Petitioners (Bea Bookler and Wilola Shinholster Lee). Accordingly, each Petitioner has a “substantial” interest in the outcome of the litigation.

315. “[A] ‘direct’ interest requires a showing that the matter complained of caused harm to the party’s interest” *Pa. Med. Soc’y*, 614 Pa. at 591, 39 A.3d at 278. Here, each of the Organizational Petitioners has had to spend extra money and redirect staff and volunteer activities to respond to the Law, at the expense of different activities the organizations would otherwise have undertaken. The Individual Petitioners are harmed by the loss of their suffrage. Accordingly, each Petitioner has a “direct” interest in the outcome of the litigation.

316. “[A]n ‘immediate’ interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it, and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question.” *Pa. Med. Soc’y*, 614 Pa. at 591, 39 A.3d at 278. The Organizational Petitioners would not have diverted the resources at issue but for the Law. The Individual Petitioners would be able to vote but for the Law’s requirement that they travel to a PennDOT Driver License Center. Accordingly, each Petitioner has an “immediate” interest in the outcome of the litigation.

317. In ruling on Respondents’ preliminary objections, this Court refused to dismiss the claims of Individual Petitioners Bea Bookler and Wilola Shinholster Lee because “these Petitioners do not have the ID required under Act 18.” *Mem. Op.* at 7 (May 24, 2013). Nothing has changed to justify a different ruling.

318. Likewise, as this Court has routinely recognized, when a corporate person such as a nonprofit organization has sustained injury to itself, it has standing. *E.g.*, *Washington v. Dep't of Pub. Welfare*, --- A.3d ---, 2013 WL 3155373, at *10-11 (Pa. Commw. Ct. June 24, 2013) (en banc); *Friends of the Atglen-Susquehanna Trail Inc. v. Pa. PUC*, 717 A.2d 581, 585 (Pa. Commw. Ct. 1998) (en banc); *Pittsburgh Trust for Cultural Res. v. Zoning Bd. of Adjustments*, 604 A.2d 298, 304 (Pa. Commw. Ct. 1992). This is consistent with federal courts' recognition "that organizations are entitled to sue on their own behalf for injuries they have sustained." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.19 (1982) (citing *Warth v. Seldin*, 422 U.S. 490, 511 (1975)); *see also id.* at 379 (holding that "concrete and demonstrable injury to [an] organization's activities – with the consequent drain on the organization's resources – constitutes far more than simply a setback to the organization's abstract social interests" and confers standing on the organization in its own right); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009) ("Because it will divert resources from its regular activities to educate voters about the requirement of a photo identification and assist voters in obtaining free identification cards, the NAACP established an injury sufficient to confer standing to challenge the statute."); *Addiction Specialists, Inc. v. Twp. of Hampton*, 411 F.3d 399, 406-07 (3d Cir. 2005) (finding standing when "the corporation itself suffered injuries based on the Township's alleged violations of its own rights"); *Robinson v. Block*, 869 F.2d 202, 207, 210 n.9 (3d Cir. 1989) (finding standing under *Havens* for an organization of welfare recipients that "has been forced to expend time, money and resources advocating on behalf of recipients denied or threatened with denial of benefits").

319. Respondents cite only one case in their Motion for Compulsory Nonsuit, or, in the Alternative, for a Directed Verdict ("Resp'ts' Mot."): *Clapper v. Amnesty Int'l USA*, 133 S. Ct.

1138 (2013). *Clapper* has no relevance to this case. The organizational plaintiffs in *Clapper* undertook expensive and burdensome countermeasures to avoid what they feared would be National Security Agency (“NSA”) surveillance of their telephone and email correspondence, including paying costly international airfare for in-person meetings. *Id.* at 1145-46. *Clapper* held that the plaintiffs “cannot manufacture standing by choosing to make expenditures based on hypothetical future harm that is not certainly impending.” *Id.* at 1143.²⁷ Respondents analogize this holding of *Clapper* by arguing that the Organizational Petitioners have not “shown that it is likely, as opposed to merely speculative, that the injury would be redressed by a favorable decision.” Resp’ts’ Mot. ¶¶ 18, 25, 30. The injury here, however, is not at all speculative: if the Law goes into effect, it is certain that people without the required identification will not be permitted to cast in-person ballots. This is the opposite of hypothetical harm; indeed, Respondents have spent millions of dollars to advertise the fact that under the Law, Pennsylvanians will no longer be allowed to cast in-person ballots without showing photo ID. And, here, before the Court’s October 2012 preliminary injunction, the Law was in effect and the Organizational Petitioners responded in kind and would do so again if the Law were enforced.

320. Respondents’ other argument under *Clapper* is also unavailing. The *Clapper* Court held that “even before [the 2008 NSA statute] was enacted, [plaintiffs] had a similar incentive to engage in many of the countermeasures that they are now taking,” because the 1978 version of the statute also authorized certain types of eavesdropping by the NSA. 133 S. Ct. at 1152. Respondents argue that “Act 18 did not provide any different incentive for the [Organizational Petitioners] to engage in [voter education or birth certificate] efforts, which [are]

²⁷ *Clapper* predated the recent public disclosures about the NSA’s surveillance programs.

similar to an existing incentive.” Resp’ts’ Mot. ¶¶ 19, 26, 31. This is incorrect. The Organizational Petitioners’ activities to assist people in securing the identification necessary to vote are quite different from the activities they planned to take; indeed, all three had to divert financial and personnel resources from activities ranging from voter registration drives to website redesigns in order to help citizens obtain something no Pennsylvanian had ever needed before: photo ID for voting purposes. *See supra* ¶¶ 197-212.

321. All three Organizational Petitioners and both Individual Petitioners established their standing with testimony in 2012.

322. Respondents now suggest that Petitioners should have *re*-proved their standing at the 2013 trial. Resp’ts’ Mot. ¶¶ 7, 12, 19, 31. Respondents cite no legal authority for the time-wasting proposition that each Petitioner must re-prove her standing every time the court holds an evidentiary hearing.

323. During the 2013 trial, Respondents offered no evidence suggesting that any of the Petitioners had ceased to have standing in the intervening time. To the extent the parties presented evidence on the issue of standing in 2013, all the evidence supported the Petitioners’ ongoing standing. Susan Carty’s testimony during both direct and cross examination enhanced the factual record supporting LWV’s standing. *See supra* ¶¶ 204, 208. In 2013, Respondents also further established the standing of both the LWV and the NAACP through their direct examinations of Shannon Royer and Megan Sweeney. *See supra* ¶ 207.

324. Mrs. Bookler’s having voted by absentee ballot in one recent election in no way indicates that she will *never* again vote in person. Losing her right to vote because she gets better is an odd “get well” wish indeed.

B. This Court Should Decide the Merits Even If No Petitioner Has Standing

325. Even if, *arguendo*, none of the Organizational or Individual Petitioners any longer presented an actual case or controversy, “the fact that a party lacks standing does not by itself deprive this Court of jurisdiction over the action, as it necessarily would under Article III of the federal Constitution.” *Housing Auth. v. Pa. State Civ. Serv. Comm’n*, 556 Pa. 621, 632, 730 A.2d 935, 941 (1999) (citations omitted). In particular, Pennsylvania courts recognize three exceptions to the principle that moot claims should be dismissed: “[1] where the conduct complained of is capable of repetition yet likely to evade review, [2] where the case involves issues important to the public interest or [3] where a party will suffer some detriment without the court’s decision.” *Pub. Defender’s Office v. Venango Cnty. Court of Common Pleas*, 586 Pa. 317, 325, 893 A.2d 1275, 1279-80 (2006) (quoting *Sierra Club v. Pa. PUC*, 702 A.2d 1131, 1134 (Pa. Commw. Ct. 1997) (en banc)). These exceptions have particular relevance in election matters because of their expedited nature. *See generally In re Stevenson*, 615 Pa. 50, 40 A.3d 1212, 1219 (2012) (noting that these exceptions apply with particular force “in the crucible of an election contest” and where the “matter presents a focused, and purely legal, issue”).

326. The first exception – for conduct “capable of repetition yet likely to evade review” – applies here. Respondents could moot any individual voter’s claim challenging the Law simply by giving her an acceptable ID, even contrary to Respondents’ own policies and procedures, as occurred repeatedly here. If Respondents could moot the challenge of any individual voter by issuing a one-off photo ID, no court might ever hear a challenge to the statute. *Cf. DeJohn v. Temple Univ.*, 537 F.3d 301, 309 (3d Cir. 2008) (declining to find plaintiff’s claims moot when the court was “left with no assurance that [the defendant] will not reimplement its . . . policy, absent an injunction, after this litigation has concluded” and

particularly when the defendant “defended and continues to defend not only the constitutionality of its prior . . . policy, but also the need for the former policy”).

327. The United States Supreme Court’s decision in *Dunn v. Blumstein*, 405 U.S. 330 (1972), is on point. There, an individual plaintiff filed suit challenging a Tennessee statute that “authorize[d] the registration of only those persons who, at the time of the next election, will have been residents of the State for a year and residents of the county for three months.” *Id.* at 331. Within one month after moving to Nashville to teach at Vanderbilt University, the plaintiff had attempted to register to vote, but he was denied registration on the ground he would not have lived in Tennessee for a year by the time of the next election. *Id.* By the time the case was argued in the Supreme Court, however, the plaintiff had lived in Tennessee for more than a year and thus could register and vote. The Supreme Court nonetheless rejected any “mootness argument” and reached the merits, because “[a]lthough [the plaintiff] now can vote, the problem to voters posed by the Tennessee residence requirements is ‘capable of repetition, yet evading review.’” *Id.* at 333 n.2 (quoting, *inter alia*, *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969)). The Court further explained that “the laws in question remain on the books, and [the plaintiff] has standing to challenge them as a member of the class of people affected by the presently written statute.” *Id.* The same is true here. Even if the Individual Petitioners theoretically could obtain a photo ID needed to vote, the Law remains on the books, and the problem to voters posed by the Law is capable of repetition yet evading review. *See Musheno v. Dep’t of Pub. Welfare*, 829 A.2d 1228 (Pa. Commw. Ct. 2003).

328. The second exception to mootness – for issues important to the public interest – also applies here. Pennsylvania courts have held that cases concerning who will be able to vote or hold public office are of undisputed importance to the public interest. *See, e.g.,*

Commonwealth ex rel. Kearney v. Rambler, 613 Pa. 32, 40, 32 A.3d 658, 663 (2011) (stating that case concerning an individual’s eligibility to serve as Mayor of Wrightsville, York County “appears to implicate [the] exception[] to the mootness doctrine for issues that are of great public importance.”). At stake in this case is the fundamental right to vote guaranteed by the Pennsylvania Constitution – a right of now greater importance because all other rights depend upon it. *Applewhite II*, 54 A.3d at 3 (Pa. 2012). And in ruling on Respondents’ preliminary objections, this Court “agree[d] with Petitioners that the issues raised here are important,” and declined to apply this exception to standing doctrine solely because “the remaining Petitioners [Mrs. Bookler and Ms. Lee] will have an opportunity to fully litigate these issues.” Mem. Op. at 6 n.3 (May 24, 2013).

329. The third exception to mootness – for parties who will suffer some detriment without the court’s decision – also applies. Individuals’ ability to receive the supposed ID of last resort, the DOS ID, remains uncertain and ephemeral. It depends upon an administrative system that, as proved at trial, is flawed, resulting in people being unable to vote. *See supra* ¶¶ 41-64, 65-91. Moreover, the DOS ID is solely an invention of the Department of State, created under the pressure of litigation, with rules, procedures, and its very existence dependent upon the discretion of agency officials. *See supra* ¶¶ 41-44.

CONCLUSION

Petitioners respectfully request that the Court enter judgment declaring the Photo ID Law unconstitutional and permanently enjoin Section 3 of the Law and all other provisions of the Law insofar as they relate to in-person voting. In addition, Respondents’ Motion for Compulsory Nonsuit, or, in the Alternative, for a Directed Verdict should be denied.

Dated: August 30, 2013

Respectfully submitted,



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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Viviette Applewhite; Wilola Shinholster Lee; Gloria
Cuttino; Nadine Marsh; Bea Bookler; Joyce Block; 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. 330 MD 12

CERTIFICATE OF SERVICE

I certify that I am this 30th day of August, 2013, serving the foregoing *Petitioners’ Post-Trial Proposed Findings of Fact and Conclusions of Law, and Opposition to Respondents’ Motion for Compulsory Nonsuit, or, in the Alternative, for a Directed Verdict* upon the persons and in the manner indicated below, which service satisfies the requirement of Pa. R.A.P. 121:

Service by email per agreement with Respondents’ Counsel as follows:

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Dated: August 30, 2013



Dana Peterson, Counsel for Petitioners

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Respondents

Docket No. 330 MD 12

PROPOSED FINAL JUDGMENT AND PERMANENT INJUNCTION

AND NOW, this ____ day of _____, 2013, upon consideration of the evidence, argument, and briefing on Petitioners’ First Amended Petition for Review Addressed to the Court’s Original Jurisdiction, Respondents’ Motion for Compulsory Nonsuit, or, in the Alternative, for a Directed Verdict and Petitioners’ opposition thereto, and the parties’ pre-trial and post-trial submissions, including their post-trial proposed findings of fact and conclusions of law, it is hereby **ORDERED** that the First Amended Petition for Review is **GRANTED**.

Respondents’ Motion for Compulsory Nonsuit, or, in the Alternative, for a Directed Verdict is hereby **DENIED**.

It is hereby **DECLARED** that:

1. The photo identification requirements for in-person voters in the Act of March 14, 2012, P.L. 195, No. 18 (“Photo ID Law” or “Law”) violate the fundamental right to vote secured

by Article I, Section 5 and Article VII, Section 1 of the Pennsylvania Constitution, and are therefore invalid, unconstitutional, ineffective, and without the force of law;

2. The photo identification requirements for in-person voters in the Law violate the guarantee of equal protection secured by Article I, Sections 1, 5, and 26 of the Pennsylvania Constitution, and are therefore invalid, unconstitutional, ineffective, and without the force of law;

3. Respondents' implementation of the Photo ID Law violates the fundamental right to vote and the equal protection guarantee secured by the Pennsylvania Constitution, as well as the terms of the Photo ID Law itself, including 25 P.S. §§ 2626(b) and 2626(c).

Respondents are hereby **PERMANENTLY ENJOINED** from implementing, enforcing, or taking any steps to implement or enforce the Photo ID Law's photo identification requirements for in-person voters, including, but not limited to the following:

1. Respondents shall not enforce Section 3 of the Photo ID Law relating to photo identification requirements for in-person voters;
2. Sections 4 through 8 of the Law relating to absentee ballot requirements are severable, are not challenged here, and are not enjoined;
3. Sections 1, 2, and 9 of the Law are not enjoined to the extent those sections relate to the Law's absentee ballot requirements, and are enjoined only to the extent those sections relate to the Law's photo identification requirements for in-person voters;
4. Section 10 of the Photo ID Law, which specified transitional procedures for the May 2012 primary election, has expired by its terms, and this Court's Preliminary

Injunction dated August 16, 2013 extending the transitional procedures under Section 10 is superseded by this Final Judgment and Permanent Injunction.

It is the intention of this Final Judgment and Permanent Injunction that in-person voters will no longer be asked or required to show compliant photo identification under the Photo ID Law in order to cast a regular ballot.

IT IS SO ORDERED

BY THE COURT

Hon. Bernard L. McGinley, Judge