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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DOCKET NO. 330 M.D. 2012

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VIVETTE APPLEWHITE; WILOLA SHINHOLSTER LEE; GROVER FREELAND; GLORIA CUTTINO; NADINE MARSH; DOROTHY BARKSDALE; BEA BOOKLER; JOYCE BLOCK; HENRIETTA KAY DICKERSON; DEVRA MIREL ("ASHER") SCHOR; THE LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; PENNSYLVANIA STATE CONFERENCE; HOMELESS ADVOCACY PROJECT,

Petitioners,

Vs.

THE COMMONWEALTH OF PENNSYLVANIA; THOMAS W. CORBETT, IN HIS CAPACITY AS GOVERNOR; CAROL AICHELE, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH,

Respondents

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BRIEF OF AMICUS CURIAE, CHELSA WAGNER, ALLEGHENY COUNTY CONTROLLER, IN SUPPORT OF PETITIONERS' PETITION FOR REVIEW; AND APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY INJUNCTION

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## **I. STATEMENT OF INTEREST OF AMICUS CURIAE**

Amicus Curiae, Chelsa Wagner, the Allegheny County Controller, files this brief in support of the Petitioners' Petition for Review and Application for a Preliminary Injunction.

Chelsa Wagner is the duly elected Controller of Allegheny County. The Allegheny County Controller oversees and monitors the fiscal affairs of the County. The Controller serves the citizens of Allegheny County by ensuring that the County is achieving honest, efficient management and full accountability through every aspect of government. The Controller shares Petitioners' concerns regarding disenfranchisement of voters and the unconstitutional burdens that this Voter ID law places upon them. Additionally, as the overseer of fiscal affairs in the County, the Controller has significant concerns about how this unbudgeted for, and unfunded state mandate will financially affect the County leading up to, and after, the November 2012 election.

There are approximately 900,000 registered voters in Allegheny County who vote at 1,319 polling places throughout the County. In the 2008 presidential elections, Allegheny County had a turnout of 70%, which was approximately 630,000 ballots counted. On each election day, Allegheny County employs approximately 6,500 poll workers. The cost of these workers is borne almost exclusively by the taxpayers of Allegheny County, as is the cost of operating elections generally.

The Controller is not aware of any documented instances of impersonation voter fraud or any other type of voter fraud sought to be remedied by the Voter ID law having ever historically occurred in Allegheny County. Yet, in the absence of any problem, and without any rational basis for so doing, the Commonwealth of Pennsylvania has now mandated for poll workers within Allegheny County to verify the photo identification of all voters appearing at a polling

place. This mandate will create havoc at many polling locations, engender long lines, suppress voter participation and, most important from the fiscal perspective of the Controller, cause Allegheny County to incur significant costs in conducting the election because of the necessity of processing the anticipated large volumes of provisional ballots, which will be occasioned when voters show up at the polls this November without the requisite identification under the Voter ID Law. According to statistics promulgated by the Department of State and PennDOT, Allegheny County has approximately 100,000 voters whose names on the voter roll do not correspond with the PennDOT database. Even with a conservative estimate, Allegheny County faces the prospect of processing tens of thousands of provisional ballots. To put this figure in perspective, in 2008 Allegheny County handled approximately 2,800 provisional ballots. If the voter is casting a provisional ballot because of a lack of necessary identification, then that voter has only a six-day period to produce the requisite identification to the Department of Elections of Allegheny County. And, according to governing law, Allegheny County must certify the election results within 20-days after the election. Therefore, it is anticipated that Allegheny County will need to hire many additional workers to assist in the elections process to conduct an election in November 2012 that fully complies with state and federal law.

## II. ARGUMENT

### A. **Act 18 of 2012 (the “Voter ID Law”) Violates Article I, § 5, Article VII, § 1, and Article I, §§ 1 and 26 of the Pennsylvania Constitution.**

Petitioners have, in great detail, argued that Act 18 of 2012 (the “Voter ID Law”) violates Article I, § 5, Article VII, § 1, and Article I, §§ 1 and 26 of the Pennsylvania Constitution. *Amicus* hereby adopts those arguments and incorporates them by reference. See Petition for Review. In addition, *Amicus* has reviewed the *Amicus Curiae* briefs filed by the City of Philadelphia, Common Cause of Pennsylvania, the Democratic Caucus of the Pennsylvania

House of Representatives, the Senior Law Center, and the AFL-CIO, all of which are in support of the Petitioners. *Amicus* agrees with all of the arguments and information set forth in these briefs, and, rather than belabor the court with legal citation by repeating the same arguments, hereby incorporates them by reference. *Amicus* files this brief to lend support to the Petitioners as well as to show the Court how the Voter ID Law will negatively affect the taxpayers of Allegheny County who have a vested interest in elections that are efficiency and economically conducted according to the Constitution of this Commonwealth.

However, in summary, *Amicus* does wish to emphasize that the right to vote is a fundamental right in the Commonwealth of Pennsylvania. The nature of this fundamental right can be traced to Article 1, Section 5 of the Pennsylvania Constitution. That section states: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." *See* Pa. Const. Art. 1, §5. The Voter ID Law patently impinges upon the free exercise of the right to vote. It requires individuals to obtain a photo identification before being permitted to exercise the right to suffrage. This requirement imposes a heavy burden on the fundamental right of otherwise qualified voters in Pennsylvania and it violates the Pennsylvania Constitution by preventing elections from being "free and equal" since, for numerous registered voters, the burdens imposed by the law (particularly in acquiring acceptable identification) will either deny the franchise itself or make it so difficult to do so that it amounts to a denial. What is more, no compelling state interest exists (indeed, there is no state interest that has been identified) to justify these new burdens imposed upon Pennsylvania voters.

Moreover, the Voter ID Law violates the equal protection guarantees of the Pennsylvania Constitution as found in Article 1, Section 26. The Voter ID Law imposes burdens on the right to vote that do not bear upon all voters equally under similar circumstances. In other words, the

Voter ID Law imposes an added burden upon voters that is irrational and not connected to any identifiable state interest.

**B. The Voter ID Law is an Unfunded Mandate That Imposes Financial Costs on the Taxpayers of Allegheny County Money While Causing Many of Those Same Taxpayers to Lose Their Fundamental Right to Vote.**

Petitioners' Petition for Review, as well as many of the *Amicus Curiae* briefs have pointed out that over 750,000 voters do not have the proper identification that would now be needed to cast their votes. In Allegheny County, alone, the conservative estimate is that 100,000 otherwise eligible voters will be adversely affected by the Voter ID Law. The practical effect of the Voter ID Law will be that these citizens, most of whom have been legally voting for years, will be unable to exercise their fundamental right to vote.

When enacting the Voter ID Law, the Commonwealth stated that the rationale was to minimize and prevent voter fraud. However, just prior to the start of this case, the Commonwealth stipulated to the fact that they have no evidence of voter fraud in Pennsylvania. The cost of implementing the Voter ID Law statewide has been estimated at more than \$10 million dollars, with no aid coming from the state. Essentially, the Commonwealth has created an unfunded, and unbudgeted for, mandate that will cost taxpayers millions of dollars to cure a problem that they admit does not exist. Adding insult to injury, the same citizens who will be disenfranchised regarding their vote, will have to pay for it through the County's expenditure of their tax money.

**C. The Commonwealth created an Unnecessary Burden on Allegheny County to Implement the Voter ID Law**

As the second-largest county in Pennsylvania, Allegheny County shoulders a huge financial burden in order to implement this law - the true extent of which cannot be known until election day. The County trains and supervises more than 7,000 poll workers for each election.

All of these workers would have to undergo additional training in the provisions of the new law. Also, due to the demands imposed by the new law, the fact that this November is a Presidential election with an expected higher than normal turnout, and the inevitable problems that will occur from voter confusion and the use of provisional ballots, the County will have to hire more staff and pay for increased office hours.

Based on its demographics and population size, Allegheny County shares many similarities with the City of Philadelphia, and therefore shares the same concerns laid out in the *Amici Curiae* brief filed by the City of Philadelphia. Allegheny County's high population of elderly, minority, student and urban voters would be harmed the most by the Voter ID Law. The explanations and arguments set forth in said brief are hereby adopted and incorporated herein, specifically as it relates to the burden of cost to the local government, the concerns of the effect on the persons likely to be disenfranchised by the law, and the concern that eligible voters will be unable to exercise their fundamental right to vote on election day.

### III. CONCLUSION

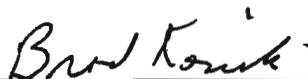
Urging the passage of the Voting Rights Act of 1965, President Lyndon Johnson observed "the vote is the most powerful instrument ever devised by man for breaking down injustice and destroying the terrible walls which imprison men because they are different from other men." Here, however, for thinly veiled reasons of which its supporters should be embarrassed and ashamed, the Commonwealth of Pennsylvania seeks to erect obstacles to prevent its own citizens from exercising the right to vote. In so doing, the Commonwealth blantly disregards long sacrosanct constitutional principles, as well as imposing fiscally



imprudent pressures on cash-strapped county governments to ensure enforcement of an unnecessary law.

The Commonwealth enacted this law with the stated purpose of curbing and preventing the perceived threat of voter fraud. Yet, when put to the question, the Commonwealth could not point to one instance of voter fraud in the state and admitted by stipulation that they had no evidence of voter fraud. Even more brazenly, the Commonwealth stipulated that voter fraud was not any more likely to occur in the absence of the Voter ID Law. In other words, the Commonwealth has stipulated that no rationale reason exists for the Voter ID Law. *Amicus Curiae* believes the Commonwealth is forcing its citizens to relinquish a valuable right in return for essentially nothing. The direct and collateral damage done to the citizens of the Commonwealth will be substantial and incapable of remediation should this law be enforced. For the reasons discussed in this brief as well as the other *Amicus Curiae* briefs previously filed in this case, Chelsa Wagner, the Allegheny County Controller, respectfully requests that this Court grant the Petitioners' Application for a Preliminary Injunction.

Respectfully Submitted,



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Dated: August 7, 2012

## CERTIFICATE OF SERVICE

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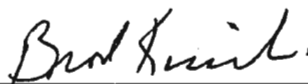
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