

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

* * * * *

VIVIETTE APPLEWHITE; *

WILOLA SHINHOSTER LEE; GROVER * Case No.

FREELAND; GLORIA CUTTINO; * 330 MD 2012

NADINE MARSH; DOROTHY BARKSDALE; *

BEA BOOKLER; JOYCE BLOCK; *

HENRIETTA KAY DICKERSON; DEVRA *

MIREL (ASHER) SCHOR; THE LEAGUE *

OF WOMEN VOTERS OF PENNSYLVANIA, *

NATIONAL ASSOCIATION FOR THE *

ADVANCEMENT OF COLORED PEOPLE, *

PENNSYLVANIA STATE CONFERENCE; *

HOMELESS ADVOCACY PROJECT,

Petitioners *

V S .

THE COMMONWEALTH OF *

PENNSYLVANIA, THOMAS W. CORBETT, *

in his capacity as Governor; *

August 2, 2012

Volume VII

24 Any reproduction of this transcript is prohibited
25 without authorization by the certifying agency.

1 CAROL AICHELE, in her capacity *
2 as Secretary of the Commonwealth,*
3 Respondents *
4 * * * * *

5
6 BEFORE: HONORABLE ROBERT SIMPSON

7
8 HEARING: Thursday, August 2, 2012
9 10:00 a.m.

10
11 LOCATION: PA Judicial Center
12 601 Commonwealth Avenue
13 Harrisburg, PA 17110

14
15 WITNESSES: None

16
17 Reporter: Nicole Montagano

18
19
20
21
22
23
24
25

1 A P P E A R A N C E S
2

3 MARIAN K. SCHNEIDER, ESQUIRE

4 Law Offices of Marian K. Schneider

5 295 East Swedesford Road, #348

6 Wayne, PA 19087

7 COUNSEL FOR PETITIONERS
8

9 DAVID P. GERSCH, ESQUIRE

10 MICHAEL A. RUBIN, ESQUIRE

11 RACHEL L. FRANKEL, ESQUIRE

12 DORIAN L. HURLEY, ESQUIRE

13 Arnold & Porter, LLP

14 555 Twelfth Street, NW

15 Washington, DC 20004-1206

16 COUNSEL FOR PETITIONERS
17

18 JENNIFER CLARKE, ESQUIRE

19 Public Interest Law Center of Philadelphia

20 United Way Building

21 1709 Benjamin Franklin Parkway, Second Floor

22 Philadelphia, PA 19103

23 COUNSEL FOR PETITIONERS
24

25

1 A P P E A R A N C E S (cont.)

2

3 WITOLD J. WALCZAK, ESQUIRE

4 American Civil Liberties Union of Pennsylvania

5 312 Atwood Street

6 Pittsburgh, PA 15213

7 COUNSEL FOR PETITIONERS

8

9 PATRICK S. CAWLEY, ESQUIRE

10 CALVIN R. KOONS, ESQUIRE

11 Office of Attorney General

12 Litigation Section

13 Strawberry Square, 15th Floor

14 Harrisburg, PA 17120

15 COUNSEL FOR RESPONDENTS

16

17 GREGORY E. DUNLAP, ESQUIRE

18 Deputy General Counsel

19 7th Floor Harristown II

20 333 Market Street

21 Harrisburg, PA 17101

22 COUNSEL FOR RESPONDENTS

23

24 ALSO PRESENT:

25 KELBY BALLENA

1	I N D E X	
2		
3	DISCUSSION AMONG PARTIES	1381 - 1383
4	CLOSING ARGUMENTS	
5	By Attorney Walczak	1383 - 1454
6	CLOSING ARGUMENTS	
7	By Attorney Cawley	1455 - 1483
8	DISCUSSION AMONG PARTIES	1483 - 1485
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 E X H I B I T S
2

3 Page

4 Number Description Offered5 Respondents:6 2 Department of State Outreach Efforts 1381
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 P R O C E E D I N G S
2 -----3 MR. TURNER:

4 Commonwealth Court is now in session.

5 Honorable Robert E. Simpson presiding.

6 JUDGE SIMPSON:7 Thank you. Please be seated. All
8 right. I have Defendants' --- or Respondents'
9 Exhibit Number Two. And do you rest?10 ATTORNEY CAWLEY:

11 Yes, Respondents rest.

12 JUDGE SIMPSON:13 Then the evidence is closed. We're
14 ready for closing arguments now. Closing arguments
15 are really an opportunity for the attorneys to
16 summarize everything that we've seen and heard, and
17 they can even go beyond the summary of the evidence
18 and make suggestions or invite me to consider
19 inferences that arise from the evidence. I listen
20 carefully to their --- as to what they have to say.
21 I'm frequently guided by it. But ultimately what
22 they say in a closing argument is not evidence and
23 I'm not bound by it.24 How much time do you think you'll need
25 for your closing?

1 ATTORNEY WALCZAK:

2 Your Honor, I'm thinking between 60 and
3 90 minutes.

4 JUDGE SIMPSON:

5 Now, you are --- this is a civil case,
6 so you're entitled to a brief rebuttal after
7 Respondents. By brief, I mean five minutes or less.

8 ATTORNEY WALCZAK:

9 Not another 60 or 90?

10 JUDGE SIMPSON:

11 No, not 60 or 90. I'll extend it ---.

12 ATTORNEY WALCZAK:

13 Yes, of course, Your Honor.

14 JUDGE SIMPSON:

15 And it's my intent that you have an
16 equal opportunity to make your closing. How much
17 time do you think you need?

18 ATTORNEY CAWLEY:

19 Thank you, Your Honor. No more than 30
20 minutes.

21 JUDGE SIMPSON:

22 Okay. All right. So it sounds like
23 --- I don't know that I want to take a break.
24 Continuous. I think I'm just going to go right
25 through and see where we end up after that. With

1 that orientation, please proceed.

2 ATTORNEY WALCZAK:

3 May it please the Court, my name is
4 Witold Walczak. I am the Legal Director for the
5 American Civil Liberties Service Union of
6 Pennsylvania. And before I launch into my argument,
7 I would like to extend some thanks. And I'm going to
8 go start with you, Your Honor. When we heard, the
9 first time we met, that you're a former trial lawyer,
10 a former trial judge, we said great. When Your Honor
11 said I'm going to go let you try your case, we said
12 great. And that's exactly what's happened. We very
13 much appreciate the opportunity for both parties to
14 be able to present their case.

15 I'd also like to tip my hat to Patrick
16 Cawley. This has been a very emotional, hard-fought,
17 intense piece of litigation, and we've exchanged
18 probably 100,000 pages of documents. It took a lot
19 of depositions in very short order under very extreme
20 time pressures. And Mr. Cawley could not have been
21 more professional at all times. We had our disputes,
22 but he is a credit to the Bar of Pennsylvania.
23 Patrick, thank you.

24 JUDGE SIMPSON:

25 We certainly didn't have any many

1 evidentiary objections.

2 ATTORNEY WALCZAK:

3 That's true, Your Honor.

4 JUDGE SIMPSON:

5 It makes it easy for me.

6 ATTORNEY WALCZAK:

7 And last but not least, I'm the guy who
8 got the short straw, which is why I'm up here. But I
9 am part of a team, and this was very much a team
10 effort. And we have a fabulous team. And let me
11 just acknowledge, representing the Advancement
12 Project is Marian Schneider. Representing Public
13 Interest Law Center of Philadelphia, commonly known
14 as PILCOP, is Jennifer Clarke. And last but not
15 least, David Gersch from the Law Firm of Arnold &
16 Porter. And let me just say that nobody here is
17 making any money. Some of us never expect to make
18 money. But Arnold & Porter is a large law firm.
19 They have not made a penny on this. And I can tell
20 you that they have spent many pennies. They have
21 taken no shortcuts. I certainly hope that the
22 Petitioners in this case feel like they've gotten
23 good representation. Arnold & Porter could not have
24 done a more fantastic job. David, thank you.

25 Your Honor, I'm going to review the

1 facts and the evidence in the context of the six-part
2 injunction test. But before I launch into that, what
3 I'd like to do is to summarize the five important
4 points that I think we have proved in this trial.

5 First of all, we are here because the
6 legislature, the Governor thought that we had a
7 problem with fraud in elections. The justification
8 for this law is some formulation of fraud, either
9 there's all this fraud going on at the polls or
10 people think there's fraud and so we have to give
11 them confidence, a derivation of fraud.

12 Your Honor, with this stipulation, that
13 has completely been taken off the table, so not only
14 has the Commonwealth stipulated in paragraphs one and
15 two that they are not aware of any instances of
16 fraud, they're not aware of any prosecutions of
17 fraud, but in fact, they have stipulated that they
18 will not even argue that in-person fraud is likely to
19 occur in November in the absence of the photo ID law.
20 What that means is that if this Court grants the
21 injunction, there's no harm to the Commonwealth.
22 That's completely off the table. So there's no good
23 reason why this law needs to be in effect in
24 November. And frankly, that could be the end of the
25 discussion because this is a balancing. Ultimately,

1 there's six parts to the test, but probably the most
2 important when it comes down to as long as we can
3 raise a substantial question about the merits, is
4 it's a balancing. It's a balancing of the equities.
5 And on the Commonwealth side, there is nothing. So
6 if there's anything, any harm on the Petitioners'
7 side, the injunction should issue.

8 Second point, there is a common belief
9 that everybody has ID. You hear you need ID to buy
10 everything, from beer to Sudafed, to get on an
11 airplane. It is widespread, it crosses party lines.
12 If there is one thing that should come through loud
13 and clear from the evidence is that not everybody in
14 this country has ID and not everybody in this county
15 without ID has the means to be able to get it. Your
16 Honor heard from 14 witnesses, half Petitioners, half
17 non-Petitioner witnesses. And every single one of
18 these people from a broad array of society, from all
19 walks of life, from different parts of the state, all
20 different circumstances, had a story about how they
21 didn't have the ID except for Asher Schor, who was in
22 a different situation. Everybody else didn't have ID
23 and had been unable to get ID, many because they
24 didn't have the right documents or because they
25 couldn't get to a place where you need to get the ID.

1 So not everybody has ID and not everybody can get it.
2 The third point, the number of people
3 without ID is large or a lot. Those are two terms
4 that this Court repeatedly heard. And those are
5 quite vague terms. The Commonwealth, frankly, really
6 has no idea how many people are out there without ID,
7 and they have not made a serious effort to try to
8 find out how many are out there and who it is. The
9 number that they put out there is 759,000,
10 approximately. They put that out without any
11 prompting in July. They've been trying to walk back
12 from that number during this trial. And Your Honor
13 heard evidence that, in fact, using their numbers,
14 the number of people who could not be matched with
15 PennDOT, in fact, may be as high as 1.45 million.
16 That's their numbers. Those are not scientific.
17 There is no clarity or transparency in how those
18 numbers were produced.

19 The only numbers that this Court has
20 heard from an expert who conducted a scientific
21 survey is from Professor Barreto. And Professor
22 Barreto's testimony is that there are about one
23 million registered voters in the Commonwealth of
24 Pennsylvania who don't have valid ID. And that's not
25 just PennDOT, that includes all types of ID. And it

1 disproportionately falls on the poor, the uneducated,
2 Latinos, women and people who live in urban areas,
3 primarily Pittsburgh and Philadelphia. And Professor
4 Barreto's testimony is unrebutted and unimpeached.
5 So either way, whichever set of figures we're talking
6 about, there are a lot of people who don't have valid
7 ID.

8 Fourth, Your Honor did not hear a
9 single Commonwealth witness guarantee that all of the
10 Petitioners and witnesses and everybody else who
11 doesn't have ID is going to have ID on election day.
12 There was testimony --- and I'm sure it will factor
13 heavily in Your Honor's opinion --- about this new
14 DOS ID, which I will talk about towards the close of
15 my comments. The DOS ID is not a magic bullet. The
16 details are unclear. The release is uncertain. And
17 it doesn't mean that automatically anybody can walk
18 in and get an ID. There is an exhaustion
19 requirement. You have to try to get that PennDOT ID
20 first. There are standards. It's not standard free.
21 And there are no written plans for how people are
22 going to get this ID, how they're going to educate
23 people, how it's going to be distributed.

24 Fifth point, while how this new ID is
25 going to work is uncertain, there is something that

1 is extremely certain. And that is that there will be
2 people on election day who will not have this ID.
3 And how do we know that? You heard Deputy Secretary
4 Myers from the Department of Transportation testify
5 on Friday that thus far they've issued about 3,200
6 IDs for voting purposes. That's in the four and a
7 half months that this law --- since this law was
8 passed in March. 3,200. And you heard Secretary
9 Myers, when pressed by Mr. Gersch about how many IDs
10 --- these DOS IDs they expected to issue, he
11 ultimately --- first, he said thousands, then less
12 than ten thousand. Every single Department of State
13 witness who testified said a few thousand. Based on
14 all of their analysis, a few thousand. So they've
15 issued 3,000. You add a few thousand more. You're
16 talking less than five figures. Maybe five figures.
17 When you compare that to the kind of numbers we're
18 talking about of people who do not have that kind of
19 ID, that gap is enormous. And that gap will not be
20 filled and the Commonwealth has no plan to fill that
21 gap and there is no expectation on the Commonwealth
22 that they would fill that gap.

23 So the net result is that when you're
24 doing this balancing, Your Honor, on the Commonwealth
25 side, there's nothing. On the Petitioners' side,

1 you've got these individuals --- and we'll talk about
2 some of these individual may be able to get the DOS
3 ID. Some of them clearly won't be able to get the
4 DOS ID. But you've got hundreds of thousands of
5 other people, and there is no assurance that they
6 will get it. Now, when you look at that scale right
7 now, it's a little bit like this (indicating), and
8 the evidence is overwhelming in favor of the
9 Petitioners.

10 So let me now go through this in a more
11 systematic fashion. The preliminary injunction test,
12 there's six elements. So you have a irreparable
13 harm. And Your Honor, we took the language directly
14 from your opening comments on the first day of
15 testimony, on page two of the trial transcript. So
16 you essentially have irreparable harm. Second, you
17 have a balancing of the equities. Third, you're
18 going to restore the parties to the status quo. Four
19 is likelihood to prevail on the merits. Five, the
20 injunction is reasonably suited to abate the
21 offending harm. And six is public interest. I'm
22 going to take these out of order. I will address all
23 six, but I'm going to take them out of order. There
24 are two that I think should be less controversial
25 than others.

1 So I want to look at the first factor,
2 after saying I'm going to take them out of order,
3 irreparable harm. Your Honor, we're dealing here
4 with the right to vote. And you've got individuals
5 who may not be able to cast that vote in November.
6 If they are not able to cast that vote, there's no
7 amount of money that's going to replace that. There
8 are no do-overs. This is a one-shot deal. We've got
9 to get it right. This is clearly irreparable harm.

10 The next factor --- so we can check
11 that factor off. The next factor I would look at is
12 the third factor and the injunction will restore the
13 parties to their status quo as it existed before the
14 alleged conduct. That's exactly what we're asking
15 the Court to do. We want to go back to before March
16 the 14th, when this law was in effect. And I think
17 it's important to note that we're not asking this
18 Court to go back to Hobbes' state of nature,
19 completely unregulated elections. All right. People
20 are still going to have to come in. They're going to
21 sign the poll books. If they're first-time voters,
22 they'd have to present the ID. And by all accounts,
23 that system has worked well. It has not produced any
24 fraud that the Commonwealth could testify to, so that
25 should not be a big deal. All right. The bad news

1 is that those are the only two that should be
2 straightforward. I'm going to devote substantially
3 more time to the rest of the factors here.

4 So the next factor I want to go to is
5 actually the fourth one. And I want to talk about
6 the likelihood to prevail on the merits. Now, it's
7 important to know that for a preliminary injunction,
8 we don't have to prove with absolute certainty that
9 at the end of the day we're going to win. What the
10 Supreme Court has said is that we need only show that
11 substantial legal questions must be resolved to
12 determine the rights of the respective parties. I
13 submit to you, as I will discuss now, that we have,
14 at a minimum, done that. And I think we have shown
15 that we will, at the end of the day, prevail.

16 The one legal question, Your Honor,
17 raised in the opening that you were interested in
18 hearing something about was the legal standard that
19 applies here, and so I certainly want to address
20 that. The tests for the free and equal provision and
21 for the equal protection claims is certainly
22 overlapping and interrelated. But at the end of the
23 day, strict scrutiny applies. But ultimately, it
24 doesn't matter which standard the Court applies in
25 terms of the result because even if your Court

1 applied minimum scrutiny --- and there's no way
2 minimum scrutiny applies. It's either strict or
3 intermediate. It's not minimal. But even if minimal
4 scrutiny applied, this law is so irrational, as I
5 will explain, that it could not survive under minimal
6 scrutiny, but strict scrutiny is the test.

7 Now, let's look at the Commonwealth's
8 argument. This is from page 23 of their brief. And
9 their argument is that the right to vote is not a
10 fundamental right. That's offensive, and more
11 importantly, it's dead wrong. Just from a historical
12 perspective, Your Honor, and just if you want to
13 think about this in practical terms, when you read
14 today's newspaper, there are people who are being
15 killed in Syria. What are they fighting over?
16 They're fighting over the right to elect their
17 officials. What's happened in the Middle East? What
18 are --- those thousands of people who died in Tahrir
19 Square in Cairo last year was over the right to vote.
20 What's going on in Russia now? There's unrest
21 because people are concerned that the vote is not
22 fair, that votes are being suppressed. Votes are not
23 being counted.

24 And even in this country, the American
25 Revolution, there was a slogan No Taxation Without

1 Representation. We didn't fight that war because we
2 didn't want to be taxed. Those people wanted a say
3 in who was taxing them and how much. It was about
4 the right to vote. And if you look at all of the
5 historical struggles we've had in this country, they
6 have involved the right to vote. Five of the 17
7 Amendments to the Constitution since the Bill of
8 Rights was passed involve voting, different aspects
9 of voters, women's suffrage, no discrimination
10 against African-Americans, votes for DC residents,
11 eliminating poll taxes, making 18 the voting age.
12 The right to vote is not only fundamental, it is
13 foundational. Without the right to vote, all other
14 rights are imperiled.

15 And Pennsylvania case law reflects that
16 recognition of the importance of the right to vote.
17 There's a couple of 1860's cases right after the
18 Civil War decided by the Supreme Court that are
19 extremely important in this case. One is Page versus
20 Allen. And what the Court there said voting is a,
21 quote, sacred right whose enjoyment must not be
22 impaired by regulation. Page versus Allen, that's a
23 case that the Wisconsin Court recently cited in
24 striking down or blocking Wisconsin's voter ID law.

25 The other case is the Guyer case

1 decided in 1869. And I'm going to read this quote
2 because it has wonderful applicability to what is
3 going on in this case. Quote, when a citizen goes to
4 the polls on an election day with the Constitution in
5 his hand and presents it as giving him a right to
6 vote, can he be told true, you have every
7 qualification that instrument requires, it declares
8 you entitled to the right of an elector, but an act
9 of assembly forbids your vote and therefore cannot be
10 received? If so, the legislative power is superior
11 to the organic law of the state. And the
12 legislature, instead of being controlled by it, may
13 mold the Constitution at their pleasure, such is not
14 the law. A right conferred by the Constitution is
15 beyond the reach of legislative interference, end
16 quote. Your Honor, that is the situation here.

17 You heard Secretary Aichele testify
18 that the qualifications to vote in Article VII,
19 Section I are that you're a citizen, you're 18 years
20 old and you have lived in this state for 30 days.
21 But now there is another one. These Petitioners, all
22 of these other people, nobody is disputing that they
23 meet those qualifications and yet come election day,
24 they may not be able to vote.

25 Now, there are cases out there where

1 the Court has not applied strict scrutiny. Those
2 cases do not involve the franchise. Those cases
3 involve ballot access, nominations and voter
4 registration where the Court's tend to give more
5 deference. Your Honor, I would recommend to your
6 reading, if you have not already read, the brief
7 filed by the AFL-CIO, which has an extensive
8 description and analysis of the history of
9 Pennsylvania law around the vote and talking about
10 how it truly is recognized as fundamental. They do
11 the Edmonds' analysis. And it is a terrific
12 explication of just why Pennsylvania is the right to
13 vote --- I'm sorry, Pennsylvania's right to vote is
14 fundamental.

15 Now, let's come back to the
16 Commonwealth's argument. So what is the
17 Commonwealth's argument? They cite one case. And
18 here is the case that they cite, it's Commonwealth
19 versus Mixon. And here's the relevant passage, and
20 it's actually the same passage they cite in the
21 brief. The right of felons to vote is not a
22 fundamental right. Of felons. It doesn't says that
23 the right to vote is not fundamental. It says the
24 right of felons to vote is not fundamental. That
25 follows a long line of law, both in the federal

1 courts and in the Pennsylvania courts, that felons
2 have forfeited their right of the franchise by virtue
3 of what they did. That is completely different. Ms.
4 Applewhite, Ms. Marsh, Taylor Floria, these people
5 are not felons and they should not be treated as such
6 or held in that standard. There is no other case
7 that the Commonwealth points to for the proposition
8 that voting is not a fundamental right. So if we
9 have a fundamental right, the Court can and should
10 apply strict scrutiny. What does strict scrutiny
11 mean? You have to have a compelling interest that's
12 narrowly tailored. Now, you can't just make up some
13 compelling interest. That compelling interest, when
14 it has an intrusion on constitutional rights, must
15 affect its purpose. And I'm quoting here from
16 Denoncourt and Stenger, two cases we've cited in our
17 brief. If the intrusion does not affect the state's
18 purpose, it is a gratuitous intrusion, not a
19 purposeful one, and it cannot stand.

20 Now, what is the Commonwealth's
21 interest here? Not a single witness for the
22 Commonwealth took that stand and testified as to why
23 we need this law. It's so important because? There
24 had been zero testimony about that. And pursuant to
25 the stipulation, which we showed earlier, the only

1 evidence of why they need this law is the answer to
2 Interrogatory One, which Professor Minnite went over
3 yesterday. Put it up. But this essentially says
4 it's either because we've got fraud. We've heard
5 reports of fraud or people don't have confidence
6 because there is fraud. Profess Minnite testified,
7 and unrebutted testimony, that fraud generally or the
8 kind of fraud addressed by voting --- by voter ID
9 card is exceedingly rare. But we have this
10 stipulation, Your Honor, which takes fraud off the
11 table. So not only does the Commonwealth not have a
12 compelling interest, not only does the Commonwealth
13 have a legitimate interest, it has no interest. And
14 I feel like saying at that point, done, and a tip of
15 the cap to our colleague across the way.

16 So while there is no evidence of any
17 lawful interest, there is some evidence of an elicit
18 interest.

19 AUDIO RECORDING PLAYED

20 REPRESENTATIVE TURZAI:

21 We are focused on making sure that we
22 meet our obligations that we've talked about for
23 years. Pro-Second Amendment, the Castle Doctrine,
24 done. The first pro-life legislation, abortion
25 facility regulations in 22 years, done. Voter ID,

1 which is going to allow Governor Romney to win the
2 State of Pennsylvania, done.

3 AUDIO RECORDING ENDED

4 ATTORNEY WALCZAK:

5 This isn't anybody, Your Honor. This
6 is the Majority Leader in the House of
7 Representatives. This is an individual who
8 championed and shepherded this law. This is a law
9 that was passed entirely on a party line vote. Some
10 Republicans voted against it, but otherwise, it was
11 entirely supported by one party. Every voter ID law
12 that's been passed in the country has been passed by
13 the same party. Your Honor, that tape suggests that
14 both in terms of intent and effect, there is partisan
15 gain at issue. Now, I want to be very clear that
16 Your Honor need not find that there is an elicit
17 intent in order for Petitioners to prevail here. But
18 there is certainly enough in the record to draw that
19 inference, if the Court chooses to go there.

20 Now, I want to make quick mention of a
21 case we expect the Commonwealth is going to rely on,
22 and that's Crawford versus Marion County cited by the
23 United States Supreme Court. Crawford then applying
24 --- Crawford was decided under the United States
25 Constitution. There are no federal claims here.

1 This case was brought exclusively under the
2 Pennsylvania Constitution. It's not a situation
3 where you're looking at parallel provisions.
4 Pennsylvania has two separate and distinct
5 constitutional provisions that protect the right to
6 vote. Beyond that, Crawford never said that voting
7 is not fundamental. What the Crawford Court said is
8 that Plaintiffs have not met their burden. They did
9 not present evidence of people who would be
10 disenfranchised. They did not do a good job of
11 showing how many people were going to be affected. I
12 will take a little pride in saying that our team has
13 done a far better job and that we have put on an
14 overwhelming record, not only in terms of showing
15 individuals who are going to have difficulty or under
16 any circumstances are not going to be able to vote in
17 November, and that those numbers are very, very
18 large.

19 The other thing I would just say about
20 Crawford is that the Pennsylvania Supreme Court
21 instructed in Jubelirer versus Rendell that when the
22 Court is looking at these kind of unique State Court
23 provisions that don't have a federal counterpart,
24 that the Court should look to what other states have
25 done where they do have similar provisions.

1 And there is guidance from two State
2 Courts in the voter ID context. One is the
3 Weinschenk case in Missouri, which was decided in
4 2006. That litigation is still going on, or it's
5 never let the voter ID still take affect in Missouri.
6 And what is particularly significant about Weinschenk
7 is that the constitutional provisions, the two
8 provisions, the free and equal and the qualifications
9 provision, they are almost identical, word for word
10 to Pennsylvania's constitutional provisions. And in
11 Weinschenk the Court said that voting is fundamental.
12 The Federal Constitution doesn't apply. They applied
13 strict scrutiny, and they stopped the law.
14 Wisconsin's constitutional language is a little bit
15 different, but again, the same analysis. The Court
16 said we're not bound by Crawford. We have our own
17 Constitution. They applied strict scrutiny, and they
18 enjoined. They haven't actually struck down the
19 Wisconsin law yet. But they have enjoined the
20 Wisconsin law. So, Your Honor, the bottom line here
21 is strict scrutiny applies. There shouldn't be any
22 doubt about it. Mixon is not a case that counsels
23 that we go the other way.

24 Now, I want to take this opportunity to
25 turn back to the law and talk about the irrationality

1 of this law, because even if this Court were applying
2 the Mixon standard, all right, it's got to be
3 rational. This law could not stand. Now, just a
4 reminder of what Mixon said. Mixon was a situation
5 where the Commonwealth passed a law that said if you
6 are released from a felony, you cannot register to
7 vote for five years. The net effect of that law was
8 that if you committed your --- if you registered
9 before you committed a felony, as soon as you got out
10 of jail, you could vote. If you didn't bother to
11 register before you committed your felony, then you
12 were barred from voting for five years. And the
13 Court looked at that and applying minimum
14 rationality, because you're talking about the rights
15 of felons not just the right to vote, that's still
16 irrational and struck that down. There's no earthly
17 reason to have that distinction. You have two
18 symptom similarly situated people, and just because
19 it comes down to when they decide to register, that
20 that's going to impact whether they lose their right
21 makes absolutely no sense. So let's use that
22 framework to look at how the Pennsylvania law
23 operates.

24 So first of all, this law is passed
25 because we need to impose these identification,

1 rigorous identification, requirements on everybody
2 because we got to fight fraud, because that's such a
3 big problem. And so everybody's got to show some
4 form of ID. And if they don't have some form of ID,
5 they have to go and get a secure ID. All right. One
6 that has very onerous requirements, raised seal birth
7 certificate, Social Security card and two proofs of
8 residence. Very difficult, if not impossible for
9 some people to meet that. But we're not going to
10 apply that to everybody. So if you're voting
11 absentee, you don't need that ID. You can just put
12 down the last four digits of your Social Security
13 number. Or you can lie that you need to vote
14 absentee.

15 Pennsylvania is not a no-reason
16 absentee ballot state. You got to have a reason,
17 you're away on business, you have medical excuse.
18 Like the Commissioner in Bucks County told Joyce
19 Block when she said she didn't have an ID, just vote
20 absentee. Or Ms. Applewhite or Ms. Marsh could
21 probably go to the doctor and say can you sign a note
22 saying that I could vote absentee, because I can't
23 get to the polls. But they don't want to do that.
24 But what's the difference between them and somebody
25 who happens to be out of town on business? That is

1 completely irrational. So except for absentee
2 voters, you need to have an ID or except if you live
3 in a personal care home.

4 So if you live in a personal care home,
5 you can just make up an ID. So this is from an
6 e-mail sent to personal care homes, and this is the
7 attachment. These are the instructions on how if you
8 are a personal or nursing homeowner, you can create
9 an ID that will be acceptable on election day. So
10 insert your name, put a photo, name of the voter and
11 then the expiration. It doesn't even have to be a
12 card, could be a piece of paper. Anybody who's got a
13 computer and an inkjet printer can do this. Any
14 child could do this in about five minutes. And as
15 Your Honor heard, both Mr. Marks and Mrs. Aichele
16 testified this is not a secure ID. And what is this?
17 Not only is not a secure ID, but let's say you have
18 the Shady Grove Nursing Home. They decide that
19 they're going to get their inkjet printers out,
20 they're going to buy a ream of paper and they're
21 going to go print out these IDs for everybody. All
22 those people are going to have IDs that they can vote
23 on. Now, while Shady Grove is going to print IDs,
24 Shady Acres across the street says times are a little
25 tough, you know, we really can't do that. We don't

1 see a need to do that. The people who live at Shady
2 Acres, they're not going to have the ID. How is that
3 rational? What if Bea Bookler, who testified that
4 her nursing home does not have an ID, they could just
5 as easily print one. They've chosen not to. She
6 wouldn't be able to vote. It is completely
7 irrational. It is at the whim of the nursing home,
8 and it has absolutely nothing to do with security.

9 The same holds true for colleges and
10 universities. Again, you heard Mr. Marks and
11 Secretary Aichele testify that these are not secure.
12 Now, we don't have in the record testimony of which
13 schools have expiration dates and which ones don't.
14 You heard Ms. Thorne testify yesterday that there's a
15 couple, Delaware County Community College and Drexel.
16 But what's the difference between a student, just by
17 way of example, who goes to Muhlenberg, which may
18 decide they're going to put a sticker on the ID and a
19 student who goes to Bucknell which may decide that
20 they're not going to put a sticker on the ID? These
21 are people who were similarly situated. It is
22 totally up to circumstance. It has nothing to do
23 with security. And one student's going to have the
24 ID and another student is not going to have the ID.

25 Government employees. This is mind

1 boggling. I'm sorry. So there is 89,000 state
2 employees. They don't have expiration dates on their
3 IDs. You heard Secretary Aichele testify that now
4 they realize that these IDs were not valid, so
5 anybody who needs one can get a sticker. Now, why a
6 sticker magically makes the ID secure is a mystery.
7 And it's something that is easily forged.

8 But what about Podunk Borough? They
9 have five employees and the dog catcher. They only
10 have five employees, but they have stray dog problem
11 there, so they have a dog catcher. They're a
12 municipality. They decide that they're going to give
13 photo IDs to all of their people. So you've got the
14 dog catcher, who's got an ID with a photo and an
15 expiration date and a name on there. That ID works.
16 But you've got Mr. Rosa, you've got Mr. Garrett, who
17 served in the United States Military in this country,
18 who have veterans cards put out by the United States
19 Department of Veterans Affairs. These are very thick
20 plastic cards. They have a photo. They have a name.
21 They're used for benefits. They're used for
22 healthcare. They don't have an expiration date,
23 which makes sense. If you're a veteran, you're
24 always a veteran. That's not going to expire until
25 you die. They cannot use those cards to vote, but

1 the dog catcher in Podunk Borough can use that card
2 to vote. That is completely irrational.

3 Now, so as if there weren't enough
4 irrationalities built into this law at the outset,
5 the Commonwealth has made a series of exceptions to
6 try to streamline the process, to make it easier for
7 some people to get IDs. And in some ways it has made
8 it easier, but it's also made the law that much more
9 irrational. So the first change they made was that
10 if you are in the PennDOT system since 1990, you
11 don't need to bring in any papers, no birth
12 certificate, no Social Security card, no proof of
13 residence, nothing. All you got to do is come in and
14 give them your name, they look in there, if it's in
15 there, then they give you an ID.

16 You heard Mr. Myers testify that prior
17 September 11th, 2001 that PennDOT did not require
18 that people present a birth certificate. They did
19 not require that people present Social Security
20 cards. In fact, there's a list in the regulations of
21 about 12 different documents, including just a
22 marriage certificate, that you could present in order
23 to be able to get your driver's license. So anybody
24 who has --- was is in the system before 2001 never
25 had to present any of those kinds of IDs.

1 And if there's one exception here that
2 is directly on all fours with Mixon, it's this one
3 because it comes down to when you happen to apply for
4 that PennDOT ID. If you happen to apply before this
5 law went into effect or you happen to apply before
6 the stringent document requirements went in, you're
7 golden. But if you're like Ms. Applewhite who didn't
8 need ID, then she lost all of her IDs several years
9 ago, and now she realizes she needs to get one in
10 order to vote, she is held to this much higher
11 standard. A standard that she has not been able to
12 meet. That is irrational.

13 The next change that they made is that
14 if you are born in Pennsylvania, you don't need to
15 have a raised seal birth certificate. Now, that's
16 nice. That's a good thing. That will help some
17 people. But how is that rational and more secure
18 when you've got folks like Wilola Lee, Gloria
19 Cuttino, Stanley Garrett, Leila Stones, who are born
20 in other states, Anna Gonzalez, who was born in
21 Puerto Rico, or Lisa Gray, who is trying to get her
22 consular birth certificate? They can't meet that
23 standard. You are setting up a dual standard. And,
24 as Your Honor heard from Professor Barreto, there is
25 a disproportionate effect by creating this exception.

1 So 80 percent of white people are born in
2 Pennsylvania, but only 66 percent of
3 African-Americans and only 20 percent of Latinos. So
4 by creating this exception, not only is it
5 discriminatory against people who happen to have been
6 born elsewhere, but it raises some serious concerns
7 under the Voting Rights Act case --- Voting Rights
8 Act that's not anything for Your Honor to consider,
9 but it is something that's out there.

10 So in all of these situations, when you
11 think about it, you have to have secure ID unless
12 some circumstances that have nothing to do with
13 security, some circumstances that are beyond your
14 control allow you to not have secure ID, because
15 you're in a college that gives it or you're in a
16 nursing home that gives it or you're in Podunk
17 Borough, as opposed to being a veteran. And all of
18 that is completely irrational.

19 Now, let's talk about the DOS card.
20 Because this really just sort of blows the
21 irrationality up or magnifies the irrationality of
22 all this. So this DOS card drops the pretense that
23 you need all of these documents in order to vote. At
24 the end of the day, you can get this DOS card without
25 a raised seal birth certificate, without a

1 certification from the Department of Health for the
2 birth certificate and without a Social Security card.
3 You don't even need a Social Security number to get
4 this card. The only thing you need, according to the
5 testimony, is there's --- Your Honor's looking
6 quizzical. And we'll go over this. They say if you
7 don't, they will make up a unique identifier I
8 believe is what Secretary Myers testified, if you
9 don't have that Social Security card. So the only
10 thing you need are two proofs of residence on there.
11 And so at the end of the day, all of these document
12 requirements that the Commonwealth concedes are
13 really not necessary to vote. But we're not going to
14 give you that card unless you try. Unless you
15 exhaust your remedies, your attempts to get a PennDOT
16 secure ID, you don't qualify. You cannot qualify for
17 that DOS ID unless you have tried to get the secure
18 one.

19 Why? What's the justification for
20 that? Heard Secretary Aichele say it would be better
21 for people, better for them to have a secure ID. I'm
22 sure every single one of our Petitioners would agree
23 that it would better. They would love to have a
24 secure ID, but they can't get one. They haven't
25 qualified for one. And Secretary Aichele and the

1 Commonwealth does not have the authority and the
2 power to tell people that they need to get something,
3 that it would be better for them, especially by
4 conditioning it on the right to vote. So this entire
5 scheme, especially with this DOS ID put in here, is
6 completely irrational.

7 So while strict scrutiny applies and
8 strict scrutiny in this, as in most cases, is fatal
9 for the Commonwealth, even if this Court were to
10 apply Mixon --- and there's absolutely no support for
11 applying Mixon. But even if this Court were to apply
12 Mixon, this law is so irrational that it could not
13 withstand scrutiny under minimum rationality.

14 Now, two minutes on Article VII,
15 Section I. This is the qualifications clause. Your
16 Honor heard from Secretary Aichele, and she kind of
17 voluntarily added this on a question. She said for
18 purposes of voting in Pennsylvania, you only need to
19 be a resident 18 years of age or older or a citizen.
20 And then Mr. Gersch attempts to ask a question right,
21 so you don't need --- and then she adds and now you
22 need a photo ID because of the new law. I don't
23 think six lines could more clearly demonstrate that
24 Pennsylvania has created a new qualification for
25 people to be able to vote. So that's the likelihood

1 of success on the merits, Your Honor. We think that
2 it is really quite clear.

3 Let's talk about the harm. This is the
4 second factor, so the test is greater injury will
5 occur from refusing to grant the injunction and for
6 bringing greater harm. All right. We've already
7 talked about the harms to the Commonwealth. Because
8 of the stipulation, there isn't any. There's no
9 harm. So I said at the outset what we proven in
10 terms of the Petitioners is that there really can be
11 no doubt that there are a lot of people who don't
12 have ID and who don't have the documents or the means
13 to get them. Your Honor heard from these people. I
14 would submit that some of them were extremely moving.
15 All very different. All unique personalities. All
16 walks of life. These are not hypotheticals. This is
17 not maybe there is going to be fraud that's going to
18 dilute your vote. These are real victims. These are
19 real victims of this law.

20 And beyond these Petitioners, Your
21 Honor heard from two experts, Veronica, Niki Ludt,
22 and Michele Levy, who work with either homeless or
23 low-income populations. And they testified just how
24 difficult it is to get these documents. Your Honor
25 heard about numidents and costly census records and

1 elementary school records and delayed birth
2 certificates and name changes. This is so difficult.
3 As Ms. Ludt testified, that she's got volunteer
4 lawyers, members of the Bar, who cannot navigate this
5 process. It is difficult for lawyers. It's
6 something that can take years. And some of the
7 people at the end of the day, they have not been able
8 to get the documents in order to get the IDs. And in
9 just their little geographic areas, they testified
10 about hundreds of people who don't have these IDs.
11 That's in just those little geographic areas. Now,
12 that alone, just the Petitioners, just the testimony
13 about hundreds others like them, puts something on
14 the side of the Petitioners' side of the scale. So
15 it's already tilted in favor of the Petitioners, but
16 we're not going to go stop there.

17 You heard a lot about numbers, Your
18 Honor. The only testimony that the Court heard from
19 an expert who presented evidence based on a survey
20 conducted with scientific vigor, he testified to
21 exactly how it was done, who the population was. It
22 was clear the methodology is transparent. It was
23 done with scientific vigor. There is a statistical
24 error rate on there. And most importantly, it was
25 unrefuted. Those are the only numbers that are in

1 the record that are reliable. And what is it that
2 Professor Barreto found? Now, I know Your Honor was
3 a little bit peeved with me for how much detail we
4 went into on this.

5 JUDGE SIMPSON:

6 I wasn't peeved, but you took your
7 time.

8 ATTORNEY WALCZAK:

9 We're going to go substantially faster.
10 I think some of Professor Barreto's findings are
11 important to get into the record or are an important
12 part of this analysis. So this is from table one.
13 This is the number of people in Pennsylvania who
14 don't have ID, and it's broken down by eligible
15 voters. And eligible voters are anybody who's 18, a
16 citizen and lived here for 30 days. They're not
17 necessarily registered, but they're certainly
18 eligible to register. And as we heard from Mr.
19 Wolosik, we heard from Mr. Marks, there are a lot of
20 people --- I think Mr. Marks said over a half a
21 million people who register in Presidential elections
22 years. A lot of them register very late in the
23 process. Some number, maybe more than a half a
24 million of those eligible voters are going to become
25 registered voters by election day in November. Then

1 you have a column for registered voters and then you
2 have 2008 voters. And you can say those are your
3 super voters. They've already voted. We know they
4 voted. They voted in the Presidential election in
5 2008. And what was Professor Barreto's findings?
6 That in Pennsylvania, the registered voters, there
7 are 1.36 million who don't have a valid form of ID in
8 order to vote. When you look at --- did I do that
9 right? Yes. When you look at ---.

10 JUDGE SIMPSON:

11 You didn't do it right.

12 ATTORNEY WALCZAK:

13 I didn't do it right?

14 JUDGE SIMPSON:

15 You're talking eligible voters. You've
16 got your highlight on the eligible.

17 ATTORNEY WALCZAK:

18 Right. I'm saying I'm not looking ---
19 I'm sorry. Registered voters, the number is 1.05
20 million who don't have valid ID. And then when you
21 look at the people who voted in 2008 Presidential
22 election, 757,000 people.

23 Now, let's go to the next set of tables
24 here. Okay. Now, this is a breakdown of who's got
25 what kind of ID. And here's --- what I want to show

1 here is that the number of people who don't have a
2 PennDOT ID, but have one of the other accepted forms
3 of ID under the law is extremely small. So it's .6
4 percent across the board, whether it's eligible
5 voters, registered voters or 2008 voters. And if you
6 go down to table five, it shows you how many people
7 that is. So it's 56,000 eligible voters, 49,000
8 registered voters, 36,000 2008 voters. All right.
9 So there's been some suggestion from the Commonwealth
10 that this is only PennDOT voters that we can't match
11 up. They may have some other ID. But who's got
12 passports? Do poor people have passports? No. It's
13 people who are likely to have driver's licenses, and
14 same for the others. So the number of people who are
15 not relying on a PennDOT ID is extremely small.

16 Now, let's go to the next set of
17 tables. All right. Here is what I'm going to show
18 with this. So you've got to have a valid ID. You
19 got it. It's got to have an expiration date, and the
20 name has to substantially confirm. Okay. Professor
21 Barreto testified that trying to measure that third
22 factor was extremely difficult. You can't ask
23 somebody does your name substantially conform,
24 because everybody's going to have a different answer.
25 It's not an empirically sound way to measure that.

1 So he had to ask, does your name match. And clearly
2 some of those people are going to be able to vote.
3 One can assume if your name is James and your ID says
4 Jim, is the poll worker likely to let you vote
5 because your name substantially conforms? Probably
6 some percentage of those people will vote. But then
7 you have people who got married and Jane Smith
8 becomes Jane Voycovich (phonetic). All right.
9 They're not going to be allowed to vote.

10 So let's look at --- just in the
11 interest of precision, so let's look at how many
12 people fall out from that name category. So again,
13 if you look at the second row, it has no driver's
14 license or any other form of IDs. So let's just take
15 registered voters. There's 90,000 people there.
16 Okay. And then they have an ID, but it's expired.
17 So that's 626,000 people. All right. So you would
18 add those two together, so there are now --- that's
19 up to 716,000 people who don't have --- registered
20 voters who don't have some kind of ID.

21 And then the next row, that's the name
22 conforming. All right. So those are fairly large
23 numbers. All right. Now, some percentage of those
24 folks are going to be allowed to vote. Clearly some
25 aren't. We don't know what it is, but the safe

1 number here is that it's going to be somewhere north
2 of the sum of these two numbers. So you're looking
3 at in excess of 710,000 registered voters, and it
4 could be as high there as over a million registered
5 voters who are not going to have valid ID in order to
6 be able to vote.

7 Now, let's go to the next. This is ---
8 Professor Barreto also looked at the people who don't
9 have the underlying documents to get the ID and the
10 only information here that I think is important are
11 people who don't have an ID, what percentage of those
12 people don't have the documents in order to get it?
13 And that is the last column up there. And so what
14 Professor Barreto found is that ultimately the number
15 of people who don't have at least one of the forms of
16 required documentation, who don't have any other kind
17 of ID, valid ID, you're talking about 366,000 people
18 who don't have ID and don't have the documents to get
19 it. So regardless of whether they can get themselves
20 to PennDOT or they know that they have to get
21 themselves to PennDOT to get the ID, they're going to
22 have trouble because they don't have the particular
23 documentation.

24 Now, I want to point out another number
25 on here, which is particularly significant because of

1 the DOS card. There are close to 80,000 people who
2 do not have proof of address. Now, obviously, that's
3 much smaller than the people who don't have Social
4 Security card and that don't have a birth
5 certificate, but it's still a substantial number of
6 people who will have trouble proving their address.
7 You heard Ms. Ludt testify about the man that she was
8 helping who was given a space in a commercial
9 building's basement in exchange for sweeping it out.
10 That person can't prove their ID, but they have every
11 right to vote. That's the last of the tables I'll
12 show. I hope that wasn't as grueling as Professor
13 Barreto's examination.

14 But let me just highlight some of the
15 demographic findings that Professor Barreto made
16 because I think they're important, because it does
17 show that this law does not fall with equal weight on
18 all individuals. So there's certainly a correlation
19 with income. People who make less than \$22,000 ---
20 less than \$20,000, 22 percent of them do not have ID,
21 versus people who make in the \$60,000 to \$80,000
22 range, there's only seven percent. Twenty-two (22)
23 and 7. When you look at education, it's even more
24 startling. So if you don't have a high school
25 degree, 41 percent of those people don't have an ID.

1 If you're just a high school graduate, it comes down
2 to 21.5 percent. But if you're a college grad, it's
3 13.3 percent. It's a huge disparity in terms of
4 educational levels.

5 Age is another one which is very large
6 and it affects the very young and it affects the very
7 old. If you are between 18 and 34, 17.9 percent of
8 the people don't have ID. If you're over 75, it's
9 17.8 percent of the people. But if you're 35 to 54,
10 it's 10.3 percent. So the difference there is almost
11 18 percent and 10 percent. That's a huge difference.
12 If you are Latino, the rate of not having an ID is
13 18.3 percent, compared to 14 percent for whites.
14 Women, huge disparity with men, 17.2 percent of women
15 don't have the ID. 11.5 percent of men don't have
16 the ID. And Professor Barreto testified that he
17 believes that's because so many women change their
18 names when they get married. But that's 17 percent
19 to 11 percent. It's a significant --- as Professor
20 Barreto testified, statistically significant
21 difference.

22 Two more. People without access to a
23 car lack ID at a rate of 29.7 percent. And people
24 who lack access to transportation, as I may recall,
25 not only do they not have access to a car, they don't

1 have access to mass transit. They don't have a bike.
2 These are truly the people who can't get around.
3 41.6 percent of them don't have an ID. And then
4 last, if you live in one of Pennsylvania's two urban
5 areas, Pittsburgh or Philadelphia, you are much less
6 likely to have that ID. So the highest rate of not
7 having an ID is in Allegheny County, 18.7 percent.
8 That's nearly one in five people. In Philadelphia,
9 it's slightly lower, 17.8 percent compared to the
10 rest of the state. So those numbers presented by an
11 expert, unrebutted good numbers.

12 Now, let's quickly just talk about the
13 state's numbers. And it's hard to pin them down
14 exactly where they are. But what we do know is that
15 on July the 3rd --- and I'll note that was the day
16 before a holiday, and this came out late in the
17 afternoon. Secretary Aichele issues a press release
18 that's titled Department of State and PennDOT Confirm
19 That --- Confirm Most Registered Voters Have Photo
20 ID. That's great. And it's not surprising that most
21 voters have photo ID. And then when you read down,
22 it says 91 percent of Pennsylvania registered voters
23 have PennDOT ID numbers. Ninety-one (91) percent,
24 that means 9 percent don't. The Commonwealth
25 suggests 758,939. Now, to be fair, they're not

1 saying they don't have it. They're saying there's no
2 match. But there's a real question about whether
3 they've got the ID. You cannot verify, there is no
4 assurance that these individuals have the ID. So
5 that's one number.

6 Now, they have tried, during the course
7 of this trial, to minimize that number. You heard
8 them talk about approximately 170,000 inactive
9 voters. But as Mr. Burgess testified, inactive
10 voters doesn't mean they don't live here. It doesn't
11 mean they're ineligible to vote. These are people
12 who are registered and there are all different
13 reasons why they are considered inactive. It's
14 largely regulated by federal law. Some of those
15 inactive voters actually voted in 2008. So it's not
16 necessarily a valid subtraction. But beyond that,
17 what you heard is what's not included in that 759,000
18 are two numbers. One is 130,000, and that is based
19 on, as Mr. Burgess testified, an assumption of a fat
20 finger problem. And what that means is he's saying
21 data entry errors. But if you listen closely to what
22 he and Mr. Marks described as the process and how the
23 matching was, the first matching was you matched on
24 driver's license number and the first two letters of
25 the last name. That's going to pick up a lot of

1 people. It picks up the driver's license number.
2 And if that didn't match, they matched the name and
3 the date of birth. If that didn't match, they
4 matched the name and the Social Security number. And
5 so these are people where they couldn't find a match
6 on any of those. And yet, they didn't consider them
7 to be at risk. They didn't say these are people who
8 might not have the ID.

9 Now, there's some quibbling about that,
10 but there's zero quibbling about the other number.
11 There's another 574,000 people whose driver's
12 licenses or PennDOT IDs expired in November or
13 October, late end of October, 2011. And so what does
14 that mean? They ran this query in June. That means
15 these are people who have had an expired ID for eight
16 months and they have not yet renewed. And there can
17 be no question that those --- at least as of that
18 date, those are people who do not have a valid
19 PennDOT ID. There can be no quibbling with that.
20 And again, that's not a number that's included in
21 that 759,000. So when you add all of those up, it's
22 not really 759,000. It's 1.45 million in people,
23 according to the state's own estimate. So the
24 numbers that you have are, from the expert, a million
25 registered voters, scientific methodology. The

1 numbers, the nonscientific numbers that you have from
2 the Commonwealth are somewhere between mid hundreds
3 of thousands, 500,000, I'm sort of guessing because
4 we couldn't get a number, as high as 1.45 million.
5 But any way you slice it or dice it, these are big
6 numbers. It's a lot of people. And regardless what
7 it is, it's a whole lot more than zero, which is what
8 is on the Commonwealth side of the scale.

9 But that's not all the harm that
10 Petitioners presented to put on their side of the
11 scale. This law will create harm on election day.
12 Your Honor heard from two witnesses, from Mark
13 Wolosik, who's been at the Division of Elections in
14 Allegheny County for 41 years, and you heard from
15 Jorge Santana, who's a Deputy Commissioner in
16 Philadelphia. What did they testify to? Your Honor
17 heard Mr. Wolosik say that in 2008, they issued a
18 press release on the eve of elections and we're
19 expecting long lines and that try not to vote at peak
20 hours, 7:00 to 9:00 or 5:00 to 8:00, when most people
21 who have jobs or other obligations are actually able
22 to vote. So they warned people. And they, in fact,
23 did have long lines there. Mr. Santana testified
24 they had long lines in Philadelphia. And what did
25 both of them say that this ID law was going to do,

1 it's going to create longer lines. It's going to
2 increase wait times because when somebody comes up,
3 and I think Mr. Wolosik may have been the clearest
4 here, you have a single-file line. There's only five
5 people at the polling place. You have a single-file
6 line, so the person comes up. They give --- they ask
7 you your name. Okay. Now, they have to hand you
8 that ID. Now, if it's a driver's license, that's
9 going to take five seconds. If it's a nursing home
10 ID or it's a college, they may have to consult the
11 list with hundreds of different names on there to see
12 if it's acceptable. As the day goes on, they're
13 going to learn University of Pittsburgh, yeah, fine.
14 That's acceptable. Kid's coming home from college
15 visiting, he's still registered at home. Oh, I'm not
16 sure what Muhlenberg does. You're going to have to
17 search the list.

18 But the problem is going to come when
19 those 10 to 14 percent of the population who don't
20 have IDs show up. And they say --- I think Mr.
21 Wolosik described this in great detail, what do you
22 mean ID? Why do I need ID? I voted here for 50
23 years and I've never had ID. You know me, we played
24 golf together. I'm sorry. I can't let you vote.
25 Mr. Wolosik testified that you're not allowed to let

1 anybody, even if you know, vote, if they don't have
2 that ID. Or what if somebody comes and says here's
3 my ID, and they say, oh, that's not good enough. It
4 doesn't have an expiration date. It's not the kind
5 of valid ID that's allowed under the law. That is
6 going to slow down the line. That person's going to
7 argue. They're not going to want to move.
8 Eventually, they're going to move and they're going
9 to have to go fill out a provisional ballot. Now,
10 before we get to that, just those interactions, all
11 of that could add substantial time to those lines.
12 And people are busy, and if they come and they have
13 to wait an hour, they may do that. If those lines
14 become two hours and three hours, some of those
15 people are not going to vote. And why are those
16 lines that long? For a requirement that is
17 essentially not necessary.

18 Now, let's talk about provisional
19 ballots. So in Allegheny County, they had 2,800
20 ballots 2008. Wolosik is estimating conservatively
21 now 35,000. In Philly, it's 8,300 in 2008. Now
22 they're estimating over 200,000. Now, the important
23 thing to recognize about provisional ballots is that
24 they don't all count. All right. In the press
25 releases, the Commonwealth says don't worry, if you

1 don't have ID, you can still vote by provisional
2 ballot. But it is undisputed that that vote will not
3 count unless you come and present a valid form of ID.
4 So if you couldn't get a valid form of ID before,
5 you're going to have difficulty getting it afterward.
6 And beyond that, you can get --- you can waive that
7 ID requirement if you sign an indigence form.

8 We haven't seen this indigence form.

9 The Commonwealth hasn't produced an indigence form,
10 despite our requests. The indigence form doesn't
11 exist. It hasn't been drafted yet, which is going to
12 be a theme in the rest of my comments about we don't
13 really know what's going on. The Commonwealth
14 doesn't really know what's going on. But what's very
15 clear under the law is that in order to sign this
16 indigence form, you have to affirm not only that
17 you're indigent but that you cannot afford the fees
18 to get the ID.

19 Now, there's a huge problem with that.

20 There are no fees if you're born in Pennsylvania.
21 The ID is free or at least it's supposed to be free
22 under the law. Now, there's the certification with
23 the Department of Health where you don't need the
24 birth certificate, and it's all done for free.
25 Nobody born in Pennsylvania can honestly affirm that

1 they cannot afford to pay zero. And you heard Ms.
2 Oyler testify when she was asked about that, she
3 didn't have an answer. Her answer was, well, maybe
4 she would get fined by her employer, and that might
5 be the fee. So this indigence exception is not going
6 to allow people to vote.

7 Beyond that at the polls, there's
8 always discretion. Your Honor heard how not all poll
9 workers actually get training. In fact, Mr. Wolosik
10 testified that he's had polling places, because of
11 last minute replacements, where there was not a
12 single official in that particular polling place
13 who's had training. Mr. Marks admitted this is a
14 substantial change and these people have to exercise
15 all sorts of discretion in deciding who's going to
16 get to vote. All right. They already have to
17 exercise discretion and matching signatures. All
18 right. That's what's allowed. That's one thing they
19 have to compare under current law. And you heard Mr.
20 Wolosik testify that twice he got called on that,
21 because the particular poll worker decided that he
22 didn't think the signatures matched. Well, now
23 you're introducing more discretion into that. Now,
24 you have to decide whether the names substantially
25 conform. And again, you heard Mr. Wolosik testify

1 that that's going to depend on the poll workers.
2 Some of them are going to have stringent
3 requirements, others are going to have less stringent
4 requirements. And that discretion, who knows how
5 that's going to affect somebody like Asher Schor. I
6 think Asher said it best, when most people look at
7 me, they're just confused. But when Asher shows up
8 at the polls, depending on who the poll worker is,
9 they're going to look and say, boy, it says female,
10 it says Devra. I heard you talking to your friend
11 and you used the name Asher and you got sideburns.
12 You got a lot of facial hair. You don't have any
13 breasts that I can tell. You're short. Your weight
14 is being distributed. Your voice is kind of weird.
15 Are you Devra's brother? Is this one of those cases
16 of impersonation fraud? We don't know. I would be
17 the last person to sit here and assure you, Your
18 Honor, that Mr. Schor is not going to be able to vote
19 in November. But nor can the Commonwealth come in
20 and assure us that whoever that poll worker is
21 looking at that ID and looking at that person who is
22 continuing to change in appearance is going to be
23 able to vote. As Mr. Santana said, what's all this
24 mean for election day? It's going to be a mess.
25 It's going to create a chaotic environment and not

1 much good typically comes from chaos.

2 So Your Honor, on the harm, what we
3 have shown on the Petitioners' side of the scale is
4 not only individuals, numbers of hundreds of
5 thousands, maybe a million people under this law.
6 Plus the mess, the chaos on election day. And why?
7 Why? For a law that we don't really need because
8 even if the Court issues the injunction, the
9 Commonwealth has stipulated that it will not increase
10 the danger of fraud.

11 All right. Let me turn to the DOS ID,
12 Department of State identification. Now, we suspect
13 that the Commonwealth will come in and say this is
14 the magic bullet. Yes, there's all these problems.
15 There's all these irrationalities, but this is going
16 to get us out of the soup. There's a lot of problems
17 with that. Mr. Cawley said in his opening, page 56,
18 lines 2 through 11, you will hear how the voters may
19 obtain this Department of State voter ID by providing
20 proof of their ID that is less stringent than is what
21 --- than is what's required to secure a PennDOT
22 product. Okay. He didn't say everybody is going to
23 get this ID or be able to get this ID. He said it's
24 a less stringent standard than what Mr. Myers kept
25 referring to as the secure PennDOT product. But Your

1 Honor has not heard from a single Commonwealth
2 witness who could give assurance that every voter in
3 the State of Pennsylvania, everybody who meets those
4 Article VII, Section I qualifications is going to be
5 able to vote on election day. Nobody has given you
6 that assurance and nobody could give you that
7 assurance. The most telling reason why they can't
8 give you that assurance and won't give you that
9 assurance is the mismatch in numbers. So we've got
10 these estimates of people without IDs in the hundreds
11 of thousands or a million. You heard Secretary Myers
12 testify, as of last Friday, he had just checked, I
13 think he said about 3,200 IDs have been issued since
14 this law was passed in March. 3,200 or thereabouts.
15 And then Mr. Myers was asked about --- and he's in
16 charge of distributing all the IDs through PennDOT
17 and will be in charge of distributing the DOS IDs.
18 He was asked several times by Mr. Gersch whether ---
19 how many IDs of these DOS IDs they expect to give
20 out. And ultimately he ended up saying less than
21 10,000. And that was based on looking at how many
22 they had given out and other things, but less than
23 10,000. All of the DOS people, Mr. Marks, Secretary
24 Aichele, Mr. Royer, Mr. Burgess, all of them said a
25 few thousand, a few thousand. Now, that's a huge gap

1 between 10,000 or a few thousand and the kinds of
2 numbers that we have evidence of about people not
3 having ID. I think even Ms. Clarke could do the math
4 on that, and show that those numbers --- I'm sorry,
5 Jenny, couldn't resist --- that those numbers just
6 don't match up. And what does that mean? The
7 Commonwealth, itself, is not planning to issue those
8 IDs. They're not projecting to issue those IDs.
9 They're not prepared to issue those IDs. There is
10 that huge gap that cannot be overcome and that
11 prevents the Commonwealth or anybody else from giving
12 assurance to this Court that every voter who is
13 registered and qualified to vote is going to have
14 that ID in November.

15 Now, you haven't gotten assurance that
16 every voter is going to get the ID because the plans
17 aren't finalized. As we sit here today, we don't
18 have a card. We don't. The card is not out there.
19 It's not available. You heard Ms. Oyler testify that
20 this was originally supposed to come out July 24th,
21 that was the original release date, the day before
22 the trial started. Not saying it may just be
23 coincidence. But that date, quote, slipped back to
24 August 26th. No assurance that this ID is going to
25 come out August 26th. We don't doubt that the

1 Commonwealth is going to issue an ID, but we don't
2 know when. We don't know it's going to be August
3 26th. And you heard Mr. Myers, I believe, admit that
4 there's no deadline in the contract for production of
5 the card. There's no penalty for producing it late.
6 We don't know, as we sit here, that that ID is going
7 to be issued on August 26th, which is a Sunday, so
8 it'd be available on August the 27th. There is no
9 written plan for how they're going to deliver all of
10 this information to the millions of people out there
11 who may not know about the law or who don't have ID.

12 You heard Mr. Royer, who I think is in
13 charge of advertising, testify that they have
14 advisories and all sorts of things. And he was very
15 proud of the fact that they're going to have scrolls
16 on the TV. And I've been trying to think how these
17 scrolls are going to work. All right. All voters
18 now need ID. All right. If you need an ID, you have
19 to try to get a PennDOT ID, so you need to bring a
20 raised sealed birth certificate, Social Security
21 card, two proofs of ID. And if you've tried and
22 don't have those, then you can get the DOS ID. If
23 you need the DOS ID, then you can go to any of your
24 licensing bureaus, but be careful because some
25 counties don't have them and some counties are only

1 open one day a week. How is that going to work on a
2 scroll to fully inform people of what they have to do
3 and how they have to do it in order to get this ID
4 while the Steelers or the Eagles are playing on TV?
5 And people are going to learn from that kind of
6 scroll that if they don't have the right kind of ID,
7 that they have to go get it.

8 You didn't hear assurances that
9 everybody's going to have the ID, because they can't
10 give that assurance because this ID is not
11 automatically going to be given to everybody. There
12 is an exhaustion requirement. And I use that term
13 imperfectly because it's got a nice double entendre
14 here. As lawyers we all know the concept of
15 exhaustion of remedies or exhaustion. And that's
16 exactly what's going on here. You have to try to get
17 the PennDOT ID and only if you failed, can you get
18 this DOS ID. But it's also exhaustion in the sense
19 that it will be exhausting for many voters to have to
20 go through and jump through these hoops in order to
21 be able to get the ID. And again, nothing here is
22 fully final about how it's going to work.

23 So just very recently we got a copy of
24 the certification that people are going to have to
25 fill out in order to get this DOS ID. And Your Honor

1 will note that the date on the bottom is July the
2 20th, all right, so that's ten days ago. And the
3 watermark across this says confidential, internal
4 draft only. What is this? We're still in draft.
5 And I believe there was testimony saying this is it,
6 but it still says draft on here. Now, at the top of
7 this page --- boy, my eyes are bad. At the top of
8 this page, it's quite clear that it says I'm
9 requesting the Pennsylvania Department of State ID
10 for voting purposes because I am unable to obtain a
11 non-driver's license photo identification card issued
12 by Pennsylvania Department of Transportation, because
13 I do not possess all the documentation required to
14 obtain it and cannot obtain the needed documentation
15 or cannot obtain the needed documentation without a
16 fee. So it's not like the voter is going to hear
17 that you need a photo ID, you can go get the DOS
18 photo ID and just show up even if you can get to a
19 licensing center. You're going to show up, and
20 you're going to go say I need an ID to vote, give me
21 the DOS ID. Uh-uh (no). You first got to exhaust
22 your remedies. You got to try to get that ID.

23 So you heard both Mr. Marks and Deputy
24 Secretary Myers --- it's Commissioner Marks, I'm
25 sorry, testify that if you show up and you want that

1 DOS, D-O-S, ID that --- and you're born in
2 Pennsylvania, you have to go through that
3 Pennsylvania process. All right. What's the
4 Pennsylvania exception if you're born in Pennsylvania
5 and don't have that birth certificate? Well, they
6 will do it electronically with the Department of
7 Health. All right. But what does that mean? You go
8 home, and then seven to ten days later, you come
9 back. All right. So you're already talking about
10 two trips before you can qualify. If you're out of
11 state, you heard both Marks and Myers testify, that
12 unless you come in and say, yeah, I've tried and I
13 can't get a fee (sic), that they're going to send you
14 out, they're going to send you home and they're going
15 to say, well, you got to try, you're going to try to
16 get that birth certificate, you got to try to get
17 that Social Security card, you got to try to get
18 those proofs of residence. Either way, you go to
19 PennDOT. And if you don't have all the documents,
20 you go home.

21 Now, yesterday, yesterday for the first
22 time, around noon, we got the reverse side of this
23 draft form. Who knew? Who knew there's a reverse
24 side to this draft form? So let's take a look at
25 this reverse side. So to be completed by

1 Pennsylvania Department of Transportation. Okay. So
2 this is before it gets to the Department of State.
3 All right. This is because you got to go through
4 that PennDOT process. And so it says a Department of
5 State ID for voting purposes could not be issued to
6 the applicant because, and then there's a series of
7 checks. And the first one is because you're not a
8 registered voter. All right. Well, as you heard Mr.
9 Wolosik and Commissioner Marks testify, a huge number
10 of people register, huge number of registrations
11 right before the deadline and the registration
12 deadline is 30 days before the election, so that puts
13 you at, what, October the 7th. All right. When they
14 get those huge number of registrations, they don't
15 get entered into the computer immediately. It takes
16 some time. So if you show up on the same day that
17 you register, you're not going to show up in the
18 system as being registered. So not a registered
19 voter. Well, you're going to have to come back after
20 you're registered and we have --- we can verify that
21 you're registered.

22 The next box proofs of residence. You
23 got those 80,000 people, Professor Barreto testified,
24 who don't have proof of residence. Well, what if you
25 show up and you don't have your proofs of residence

1 because you saw the scroll on the Eagles' game and it
2 didn't tell you that you had to bring proofs of
3 residence? What if you only have one? You're not
4 going to be able to get the ID.

5 Social Security number could not be
6 verified. What happens when Christine Sutter comes
7 in or Viviette Applewhite and they bring their birth
8 certificates and they show them the birth
9 certificates and they have a different name and they
10 try to match them up and --- with Social Security and
11 it comes out with a different name? Are they going
12 to be able to verify that Social Security number?

13 Next one, date of birth did not match.
14 You heard Gloria Cuttino, Your Honor, testify that
15 she's actually not even sure whether she was born in
16 1951 or '52. The documents that she's got have
17 different dates on there. She's not going to be
18 eligible for that DOS card and then there's another.
19 What does that mean? What are the other reasons why
20 you can't get this?

21 Your Honor, the state cannot give this
22 Court assurances that every voter is going to get
23 these --- one of these IDs because they just don't
24 know that everybody is going to be able to get one of
25 these IDs. The Commonwealth cannot give assurances

1 that everybody is going to get one or be able to get
2 one of these IDs, because they don't know how PennDOT
3 is going to process all of this. You heard Secretary
4 Aichele yesterday admit that there are problems at
5 PennDOT. She is encouraging PennDOT to put their
6 front line employees and hope that they step up to
7 the plate and do a good job. And why is she saying
8 that? Because there are a lot of problems. Your
9 Honor heard a lot of testimony from Taylor Floria and
10 his mother, from Danny Rosa. These are folks who
11 went to PennDOT, tried to get ID, were unable to get
12 ID. Your Honor heard from the four testers, Ms.
13 Rawley, Ms. Horn, Mr. Jarrell and Ms. Tosti-Vasey,
14 who testified about their trips to PennDOT. Despite
15 very clear instructions from the bosses at PennDOT
16 and DOS, all PennDOT workers must tell people that
17 voter ID is free, Your Honor heard testimony that,
18 and with some small exceptions, most of the workers
19 not only didn't tell people that the ID was free but
20 sometimes gave misinformation and said no, no, no,
21 you have to pay or there was an excuse why this did
22 not qualify for a particular fee waiver.

23 And what assurance is there that when
24 this new DOS ID goes in place and you're trying to
25 figure out whether somebody meets all the

1 requirements that those PennDOT workers are going to
2 get it right? You heard from Ms. Thorne from the
3 League of Women Voters yesterday when she was asking
4 about the person who was born in the south and didn't
5 have a birth certificate, and what was the answer she
6 got from the PennDOT worker about whether she's going
7 to be able to vote. And the answer was, quote, her
8 tough luck, she won't be able to vote.

9 Commonwealth cannot give assurances
10 that every voter is going to be able to navigate that
11 PennDOT process even if they can get there, because
12 they don't have assurance that all of these PennDOT
13 workers are going to handle this well. And even if
14 the PennDOT workers handle it well, are people going
15 to be able to get to these centers? There are only
16 71 DMVs that process these licenses and these IDs
17 across the Commonwealth. There are nine counties
18 that do not have a single licensing office in those
19 counties. And if Your Honor recalls that map, it's
20 mostly the rural counties. There are long distances.
21 There are 13 counties that are only open one day. So
22 if this DOS ID comes out on August 27th, that leaves
23 ten weeks until election day. That means those
24 offices are only open ten days between when this ID
25 comes out and when people have to vote. And boy, you

1 better hope that those people don't have to work on
2 those days, they don't have childcare
3 responsibilities or they don't get sick because
4 they're not going to be able to go. And then there
5 are ten more counties where it's only open two days.
6 And what's the Commonwealth's response? Both Myers
7 and Marks said there's no plan to increase the days,
8 there's no plans to increase the hours, there's no
9 plans to expand the number of locations, there's no
10 plans to use mobile units to try to get out to
11 people.

12 You also heard testimony about the long
13 distances that people have to travel to get to these
14 license locations in some places. You heard
15 testimony about 35 miles. You heard Mr. Rosa say it
16 took an hour to get there. You had other people
17 talking about 20 minutes or more to get to these
18 places. And you heard from the testers that mass
19 transit is extremely limited in the rural areas and
20 where it is available, you got to pay for it. And we
21 know for sure that there are some people who cannot
22 get to and complete --- cannot get to PennDOT and
23 complete the process. Your Honor heard from Bea
24 Bookler who said it's just too hard. Now, she can go
25 next door to vote because it's so important to her

1 that's --- she's going to do that. But to get to a
2 PennDOT further away, it's just too hard for her to
3 do that.

4 And Your Honor heard from Taylor
5 Floria. Bless this young man who got himself
6 together and came here and testified. He had to come
7 here, spend the night because it's just so difficult
8 because of his disability. And you heard testimony
9 from Taylor and his mom, Sandra Carroll, that they
10 tried, they really tried. They made the long drive
11 to PennDOT to go. They went inside, and because of
12 the environment, it was chaotic, the lights, all sort
13 of stimuli, people talking all over the place, and
14 they had to leave. Taylor could not complete the
15 process. Now, no matter how easy it is to get that
16 ID, if you can't go to PennDOT, if you can't complete
17 the process, you're not going to be able to get that
18 ID.

19 Now, the irrationality of this is
20 crazy. If Taylor didn't have his disability at age
21 19, he might now be in college. And if he went to
22 college, he might have an ID depending on the whim of
23 the school, whether they're going to put a sticker on
24 their ID or not. And there are many Bea Booklers and
25 many Taylor Florias who have difficulty moving around

1 and getting to PennDOT or who have disabilities that
2 will prevent them from being able to complete the
3 process.

4 There is no assurances from the
5 Commonwealth that everybody, every voter will have
6 the ID because there are a huge number of voters who
7 don't even know about this law and there's a huge
8 number of people who are mistaken in having the right
9 kind of ID.

10 Let me put up the last chart from
11 Professor Barreto. Please don't cringe, Your Honor.
12 Table two, this is the public knowledge chart. What
13 did Professor Barreto find? He found that of
14 registered voters, 34 percent didn't even know
15 Pennsylvania had an ID requirement. Now, this poll
16 was done in June, in late June. And you heard
17 several of the Commonwealth witnesses testify that
18 they had done extensive education around the passage
19 of the law and since passage of the law, they're
20 going to do a lot more, but there's already been a
21 lot of publicity. There's been --- they've made
22 appearances in the community. They're getting the
23 word out. And still in late June, more than a third
24 of the people in this Commonwealth didn't know that
25 the state had a photo ID requirement to vote, and

1 this is a substantial change. Somebody who's been
2 voting for 40 years is not used to giving any kind of
3 ID. They're not automatically thinking they need to
4 bring the ID.

5 The bigger problem, the bigger problem
6 than people not knowing about the law is that 12
7 percent of the people, 12 percent of registered
8 voters, 11.8 percent of the people who voted in 2008,
9 they have photo ID, they have some form of photo ID,
10 but it doesn't work. It may not be the right kind.
11 It may not have an expiration date or the name may
12 not conform. You heard Professor Barreto testify
13 that this is a group of people who is going to be
14 particularly difficult to reach. And just think
15 about it. These are people, you tell them that
16 Pennsylvania has a voter ID requirement, when you
17 show up at the polls, you got to be sure to bring
18 photo ID and then whatever else they're going to tell
19 you. That person could be paying attention. At that
20 point, they say I got photo ID, they go to the
21 kitchen and grab a beer and then they come back and
22 watch the rest of the ball game. Those people are
23 particularly difficult to reach. And if you're
24 talking about 12 percent of the voters, if you got
25 nine million voters, you're talking about a million

1 people who have ID, it's just the wrong kind. These
2 people are completely resistant to education and the
3 problem is none of those people are here in the
4 courtroom, nor could they be in the courtroom. They
5 don't even realize that there's a problem. And when
6 are they going to realize? On election day when they
7 show up at the polls and the poll worker tells them,
8 you need ID. I didn't know. Or they tell them,
9 yeah, thanks, but that one doesn't work and then
10 there's a fight, they slow down the lines. And then
11 that individual has six days, if they left their ID
12 at home, you heard Ms. Oyler testify, yeah, those
13 people are going to be okay. But if you don't have
14 ID and you have to go get ID and start from scratch,
15 it's virtually impossible. Some of these DMV places
16 are only open one day, so that means between election
17 day and when you have to turn in that ID, because you
18 got to turn in some kind of ID in order for that vote
19 to count, you're going to have one day and you better
20 hope that you can get off of work or you don't have
21 childcare responsibilities or that you're not sick on
22 that particular day, or you're not going to be able
23 to get it. And even if you do get it and you show up
24 and you say, well, I'm born in Pennsylvania. Well,
25 have you tried to get your birth certificate? No.

1 Well, we got to do a certification process. Come
2 back. You heard Mr. Marks testify they're talking
3 --- I think it was --- maybe it was Mr. Myers.
4 They're talking to the Department of Health, but they
5 haven't worked that out. There's no assurance that
6 they're going to do an instant --- be able to do an
7 instant check. And if you don't live (sic) in
8 Pennsylvania, well, we got this exhaustion
9 requirement. You're going to have to go and try to
10 get your birth certificate from South Carolina or
11 Georgia or New York or wherever you are. These
12 people who don't know about the law or are mistaken
13 are not going to get it until election day and by
14 then, it's going to be too late.

15 So Your Honor, you have not heard any
16 assurances from the Commonwealth that these hundreds
17 of thousands of voters without ID are all going to
18 have ID. The fact that they're not planning to issue
19 that many, there's no projections to issue that many,
20 there's no infrastructure to issue that many assures
21 that every voter in Pennsylvania who's eligible to
22 vote is going to have one of those IDs and, in fact,
23 they are not. This DOS ID is not a silver bullet.
24 It's a fix that is entirely speculative. And the
25 stakes are too high here to put faith in something

1 this speculative, this uncertain where there's this
2 much evidence of the impossibility that it's not
3 going to disenfranchise at least some people because
4 we're talking about that foundational right to vote.

5 I'm almost done here, Your Honor. I
6 want to make one last point about Georgia and about
7 the Carter-Baker report. You heard Mr. Royer testify
8 that they looked at Georgia and suggested that
9 Pennsylvania is like Georgia, but there's some
10 significant differences. If you look at the Georgia
11 law, there was two years between the time of passage
12 and when it was first implemented. It's a huge
13 difference, huge difference, allowing that lead time.

14 And you heard Mr. Cawley try to impeach
15 Professor Minnite with the Carter-Baker report, where
16 they talk about an ID. And they do talk about how it
17 would be useful to have ID, but what they didn't ---
18 what Professor --- Mr. Cawley omitted was the fact
19 that in the Carter-Baker report, there is substantial
20 concern not even by the decenters, but by the
21 majority of disenfranchising people, of making sure
22 that you can get the IDs to everybody, of having
23 mobile units. And in Georgia, the counties are
24 directed to issue these IDs. It's not the state.
25 It's done at the county level. If you look at it,

1 there are four times the number of outlets for these
2 various IDs. And most importantly, if you look at
3 the Georgia Court Decision upholding the law, the key
4 there was that they have no-reason absentee voting,
5 unlike Pennsylvania which is restricted. You got to
6 have a reason that you're not going to be available
7 on election day to vote, anybody in Georgia can vote
8 absentee. And what that means is nobody is
9 disenfranchised. You may like to go to the polls and
10 you can't go to the polls, that's too bad. But at
11 the end of the day, you can still vote because if you
12 don't have the ID, just vote absentee where you don't
13 need to show ID. That's not the case in
14 Pennsylvania. That can't happen here. These million
15 people who don't have the ID, a large number of them,
16 nobody knows how many, but a large number of them,
17 are not going to be able to vote.

18 So Your Honor, when it comes to
19 balancing of the equities, I'm not sure I can stretch
20 far enough to depict the scale and how much evidence
21 is on the Petitioners' side and weigh it against the
22 zero evidence on the Commonwealth side.

23 Now, let me quickly go to the last two
24 factors, the fifth factor, the injunction is
25 reasonably suited to abate the offending activity.

1 Your Honor, there is no severability clause in this
2 statute. Given the number of people that are
3 injured, given all of the irrational distinctions
4 that this law draws, we don't see any remedy that
5 would be effective that's short of enjoining the
6 entire law so the request is reasonably suited to the
7 harm here.

8 And the last factor is the public
9 interest. Now, the way the test is worded in
10 Pennsylvania is the public interest will not be
11 harmed if the injunction is granted. Well, the
12 Commonwealth has already stipulated that if the
13 injunction is granted, they will not argue that
14 there's going to be a problem with voter fraud. So
15 the public interest also weighs in favor of the
16 Petitioners.

17 Now, I want to address quickly the
18 question Your Honor asked Mr. Marks about the problem
19 of reversals if the Court makes a decision one way
20 and then the Supreme Court down the road reverses,
21 which would be worse. And I think what Mr. Marks
22 testified --- and either way it's a problem,
23 certainly. But then he said, quote, I think
24 ultimately in either circumstance, we would find a
25 way to comply. But given that one of the factors for

1 granting injunction is whether you go back to the
2 status quo, I think there is a bias built into the
3 system that if you got down --- if you've got
4 irreparable harm, if you've got the balancing of the
5 equities, it's in favor of granting that injunction
6 and going back to the status quo until the Court can
7 fully work everything out.

8 All right. Let me close with just a
9 couple of last remarks. What we know is that there
10 are registered voters who will not be able to vote in
11 November under this law. There are two people who
12 testified, either by video or in person in this
13 Court, who definitely will not be able to vote,
14 Taylor Floria and Bea Bookler. Ms. Cuttino is not
15 going to qualify for a DOS ID, because there is a
16 mismatch in her birth dates. Not clear what's going
17 to happen with Ms. Applewhite. Ms. Sutter and Mr.
18 Rosa who've got mismatched names between their birth
19 certificates and their Social Security numbers. What
20 we do know is that the Commonwealth hasn't and can't
21 assure us that every single one of the Petitioners is
22 going to have an ID and be able to vote on election
23 day. God forbid one of these people could get sick
24 tomorrow and be hospitalized and not be released
25 until the weekend before the election. PennDOT's

1 closed on the Saturday before election day. They're
2 closed on Mondays. You can't get it. Those people
3 may qualify. They may have means, but they're not
4 going to have ID on election day. And what we also
5 know is that these Petitioners are the tip of the
6 iceberg. And that iceberg is very big. That
7 scientific sonar that's been used here by Professor
8 Barreto which really measures this to a degree --- a
9 high degree of accuracy shows that it is an iceberg
10 that includes about a million registered voters. The
11 Commonwealth's unscientific sonar said, ah, it's
12 pretty big, anywhere from maybe half a million to one
13 and a half million. It is an extremely large number.
14 We also know that this is a Presidential election
15 year. Pennsylvania is a battleground state. The
16 margin of victory in Pennsylvania was 600,000 in
17 2008. The number of voters who might not be able to
18 vote could easily exceed that amount. This is an
19 important election in a swing state.

20 Now, you heard Ms. Applewhite and Ms.
21 Bookler testify that they have voted in every
22 election since President Roosevelt. Ms. Bookler ----
23 or Ms. Applewhite missed one election because they
24 moved her polling place and she spent the day trying
25 to find that polling place and wasn't able to find

1 it, and she was mad. But every other Presidential
2 election since Roosevelt, these two women have voted.
3 Your Honor, I want to play one last clip. And I want
4 to play this not because this is the most articulate,
5 the best, each Petitioner in their own way described
6 what voting means to them. Some are more committed
7 than others, but all of them have the same right.
8 But we happen to have this on video and I thought
9 this would be a fitting way to close our comments.

10 AUDIO RECORDING PLAYED

11 ATTORNEY SCHNEIDER:

12 What did you think about it when you
13 first heard about it, about the voter ID law?

14 AUDIO RECORDING ENDED

15 ATTORNEY WALCZAK:

16 Let's stop. Can you get that? Sorry,
17 Your Honor.

18 AUDIO RECORDING PLAYED

19 ATTORNEY SCHNEIDER:

20 What did you think about it when you
21 first heard about it, about the voter ID law?

22 MS. BOOKLER:

23 I was furious.

24 ATTORNEY SCHNEIDER:

25 And tell me why you were furious.

1 MS. BOOKLER:

2 Considering how I feel about voting and
3 how proud I am that I live in a country that is a
4 real democracy, I just think that anything that
5 prevents people from voting is taking away from our
6 democracy. It's only real if we all participate.

7 AUDIO RECORDING ENDS

8 ATTORNEY WALCZAK:

9 Your Honor, Plaintiffs ask that this
10 Court allow Ms. Bookler, Ms. Applewhite and all of
11 the registered voters of Pennsylvania to participate
12 in this November's election. And the only way that
13 we can have assurance of that happening is if Your
14 Honor enjoins Act 18, the Voter Photo ID Law. We
15 would also ask that the Court override the automatic
16 Supersedeas that would ordinarily attach. Now, if
17 the Pennsylvania Supreme Court has concerns about the
18 decision, the Court in short order certainly before
19 it decides the merits could then reverse that
20 overriding Supersedeas and reinstate it. But we
21 think that equities ---.

22 JUDGE SIMPSON:

23 I don't think there's automatic
24 Supersedeas.

25 ATTORNEY WALCZAK:

1 There is not automatic Supersedeas.

2 JUDGE SIMPSON:

3 Well, I think that I retain
4 jurisdiction. And this is an Interlocutory --- this
5 is an appeal of rights.

6 ATTORNEY WALCZAK:

7 Right.

8 JUDGE SIMPSON:

9 But it's an Interlocutory appeal as of
10 rights. So jurisdiction remains in this Court. I
11 was going to go address that to you as soon as you
12 were finished making your arguments. But I'm not
13 sure that there's an automatic Supersedeas.

14 ATTORNEY WALCZAK:

15 And I certainly would defer to Your
16 Honor on that, but we would ask that they're not be a
17 Supersedeas order entered. And of course, the
18 Supreme Court would have the prerogative upon
19 application to stay the decision if they had some
20 concerns about the order. And with that, Your Honor,
21 I close and I thank you for your patience and your
22 attention.

23 JUDGE SIMPSON:

24 Mr. Cawley, he only ran over about 18
25 or 20 minutes. Do you want to go ahead now or do you

1 want to break?

2 ATTORNEY CAWLEY:

3 I'll defer to Your Honor. A short
4 break would be fine with me, if you're inclined to do
5 that.

6 JUDGE SIMPSON:

7 By short break, I mean a short break.
8 It's not going to be a half-hour break. It's not
9 going to be something where everybody can go down to
10 the press room and contact people, probably won't
11 even be enough time for everybody to get to the
12 restrooms. I'm talking 15 minutes, max.

13 ATTORNEY CAWLEY:

14 That's fine with me, Your Honor.

15 JUDGE SIMPSON:

16 We'll take a 15-minute recess.

17 MR. TURNER:

18 Commonwealth Court is now in recess.

19 RECESS TAKEN

20 MR. TURNER:

21 Commonwealth Court is now in session.

22 You may be seated.

23 JUDGE SIMPSON:

24 Please proceed.

25 ATTORNEY CAWLEY:

1 Thank you, Your Honor. As I said
2 during my opening statement, this hearing is about
3 the prevalence of photo ID cards. Testimony provided
4 during this hearing has revealed the variety of photo
5 ID cards that are available to Pennsylvania voters
6 free of charge. Act 18 requires a photo ID of all
7 voters and its language does not impose any special
8 burden on any class of voters. To the contrary, Act
9 18 lightens the burden on the indigent and it expands
10 the options of photo ID available to students and
11 those who live in a care facility. In short, this is
12 a neutral nondiscriminatory statute of general
13 applicability, and the Petitioners may not challenge
14 it simply by raising practical issues that arise in
15 seeking a photo ID for some voters.

16 To hear the Petitioners' argument, you
17 would think that the Respondents have a burden to
18 produce some evidence or even a lot of evidence to
19 tip scales. In a preliminary injunction hearing, the
20 Petitioners bear that heavy burden and they failed to
21 carry it.

22 I'll turn first to Count 1 of the
23 Petition to Review. The Petitioners first contend in
24 Count 1 that Act 18 violates the free and equal
25 provision of Article I, Section V of the Pennsylvania

1 Constitution. The petition, itself, cites to the
2 Pennsylvania Supreme Court's Decision in Winston v.
3 Moore, a Decision that could not be any clearer in
4 its explanation that the legislature has wide
5 discretion when it comes to regulating elections. As
6 Judge Posner of the 7th Circuit observed in Crawford,
7 that principal of free and equal cuts both ways.
8 Just as Petitioners claim a right to free and equal
9 opportunities to vote, every other voter has the
10 right to a free and equal election in which their
11 legitimate votes are not diluted by fraudulent ones.

12 It is crucial to recognize for all
13 three counts of the Petition for Review that the
14 plain language of Act 18 does not impose burdens on
15 any one group of voters. The same legitimate
16 requirement of photo ID applies to all voters in
17 Pennsylvania regardless of their race, ethnicity,
18 socioeconomic status or political party affiliation.
19 As far back as Winston, the Pennsylvania Supreme
20 Court emphasized that only gross abuse by the
21 legislature would violate Article I, Section V of the
22 Pennsylvania Constitution.

23 Given that election laws explicitly
24 disenfranchising those in prison pass muster under
25 this Constitutional provision in Martin v. Haggerty,

1 the Petitioners do not present a claim under Article
2 I, Section V that the neutral language of Act 18
3 deprives them of free and equal elections. The same
4 allegations that we hear in this case against ---
5 there is discrimination inherent in the law against
6 the poor and minorities could certainly be made in
7 the context of disenfranchised prisoners, but such
8 claims do no more to advance the Petitioners' claims
9 here in Count 1 than they did for the prisoners in
10 Martin.

11 In Count 3 of the Petition for Review,
12 the Petitioners argue that Act 18 imposes an
13 additional qualification not permitted by Article
14 VII, Section I of the Pennsylvania Constitution.
15 Despite the hot political rhetoric surrounding this
16 case and claims that Act 18 amounts to a poll tax,
17 the requirement that voters confirm their identify by
18 showing a photo ID is directly related to existing
19 qualifications. The U.S. Supreme Court struck down
20 poll taxes because the payment of a fee had no
21 relation whatsoever to a person's age, citizenship or
22 residency. A photo ID, on the other hand, simply
23 confirms that a voter meets these qualifications. To
24 suggest that the General Assembly may not enact any
25 statute affecting the franchise beyond the bare bones

1 provisions of Article VII, Section I is to ignore the
2 clear message of Winston that the legislature is
3 uniquely qualified to regulate elections and has wide
4 discretion when doing so.

5 With regard to the Petitioners' equal
6 protection claim, the Respondents are certainly
7 sympathetic toward the difficulties that some
8 segments of the voting population have encountered in
9 trying to obtain photo ID. But again, the neutral
10 and nondiscriminatory language of the statutes
11 applies its requirement equally across the board.
12 And the Petitioners' argument of differential burdens
13 does not support an equal protection challenge. The
14 voter ID law serves an important state interest and
15 there are no undue burdens imposed by the law.

16 It is well established in this
17 Commonwealth that our equal protection analysis is
18 the same as the analysis by the Federal Courts under
19 the 14th Amendment. Certainly Pennsylvania Courts
20 could provide greater protection, but our Courts have
21 not done so, as evidenced by the Court's Decision in
22 Mixon. In their prehearing brief, the Petitioners
23 cite to a number of Pennsylvania Court Decisions for
24 the proposition that the right to vote is
25 fundamental. A review of these cases, however,

1 reveals that the word fundamental is used in the
2 absence of any equal protection analysis and it
3 simply reflects a commonly understood feeling about
4 the importance of that right.

5 Petitioners cite, for example, to the
6 Pennsylvania Supreme Court's Decision in Kuznik
7 versus Westmoreland County Board of Commissioners.
8 There is no equal protection claim or strict scrutiny
9 analysis in that case. And what's more, Petitioners
10 neglect to mention that the Supreme Court in Kuznik
11 reversed this Court's Order granting a preliminary
12 injunction.

13 The Petitioners cite to the substantive
14 due process analysis in Mixon versus Commonwealth,
15 but the Supreme Court explained in that case at
16 Footnote 15 that such challenges are subject to a
17 rational basis test. And deference is given to the
18 General Assembly.

19 Incredibly, the Petitioners argue that
20 the U.S. Supreme Court's Decision in Crawford does
21 not apply to this case, because they brought this
22 case in State Court under this State Constitution,
23 but the law is clear that we in Pennsylvania follow
24 the federal standard when it comes to equal
25 protection analysis. The most apt equal protection

1 analysis for Act 18 comes from the Supreme Court's
2 Decision in Crawford, which analyzed a strikingly
3 similar statute in Indiana.

4 And in fact, the legislative history to
5 Act 18 shows that the General Assembly was modeling
6 Act 18 after the Indiana statute. The U.S. Supreme
7 Court held in that case that a state has a valid and
8 important interest in detecting and deterring voter
9 fraud. The Court recognized the state's valid and
10 important interest in joining a nationwide effort to
11 modernize and improve elections by implementing the
12 requirement of the photo ID, which is so much a part
13 of our everyday life at this point in our history.

14 The Supreme Court noted that the
15 National Voter Registration Act resulted in swollen
16 voter registration rolls in the states. Millions of
17 people move each year and poll workers do not
18 generally know every voter who appears at the polls.
19 Voter rolls, as a result, contain many people who no
20 longer live in that given state. The Supreme Court
21 recognized a long history in this country of voter
22 fraud and discussed the kinds of incidents that
23 Professor Minnite also agreed have been part of the
24 political experience in this nation. The Court in
25 Crawford credited the Bipartisan Commission led by

1 former President Jimmy Carter and former Secretary of
2 State James A. Baker, III, which reasoned that even
3 in the absence of evidence of widespread voter
4 impersonation or multiple voting, such conduct does
5 occur and can affect the outcome of a close election.

6 The Supreme Court in Crawford credited
7 the Cater-Baker Commission's conclusion that public
8 confidence in elections suffers in the absence of
9 safeguards to deter and detect fraud or to confirm
10 the identity of voters.

11 At this point, it is important to note
12 that the Petitioners misplaced reliance on the
13 Respondents answers in Discovery, about their
14 understanding of the purpose of the Act and about the
15 stipulation regarding voter fraud. The Discovery and
16 stipulation that are before this Court pertain to
17 what the Respondents understand about voter fraud and
18 the reason that the Respondents believe are the
19 support or rationale for the law. Pennsylvania law
20 makes very clear that the Petitioners in any
21 constitutional challenge, such as this one, must
22 eliminate any and all legitimate interests that the
23 legislature may have had when it enacted the
24 challenged statute.

25 The Petitioners have not said one word

1 about the that legitimate state interest in
2 modernizing elections or enhancing public confidence
3 in elections. In fact, they have not directed their
4 challenge at all at what the legislature did consider
5 or might have considered. They are hung up instead
6 on this notion that the Commonwealth includes all
7 branches of government, includes everyone. They're
8 hung up on what the Governor and the Secretary of the
9 Commonwealth answered in Discovery and stipulated to
10 as to their understanding of what the legislature was
11 doing when they enacted this statute. The
12 Respondents' answers about the purpose of this law
13 and a stipulation that they don't know of evidence of
14 voter fraud is irrelevant to the standard before this
15 Court, and certainly does not affect the preliminary
16 injunction analysis as to harm in the way that the
17 Petitioners suggest.

18 We do know from the evidence before
19 this Court that the House State Government Committee
20 heard testimony from Mr. von Spakovsky, an expert
21 attorney and experienced in elections administration
22 who served as a Commissioner on the Federal Election
23 Committee. Mr. von Spakovsky identified incidents of
24 voter fraud and he urged the General Assembly to
25 enact a photo ID requirement.

1 It is clear under Crawford that the
2 General Assembly has a valid and important state
3 interest in addressing such concerns about the
4 integrity of elections. The Supreme Court in
5 Crawford next made clear the standard for equal
6 protection challenges to the laws affecting voting.
7 Pointing to its earlier Decisions in Burdick and
8 Anderson, the Court made clear that strict scrutiny
9 does not apply to laws imposing requirements for
10 voting. You know, Your Honor, that that means that
11 voting is not a, quote, fundamental right for equal
12 protection analysis. That might not jive with the
13 patriotic imagery that Mr. Walczak provided with
14 regard to soldiers serving overseas and it might not
15 make sense to the layman who might consider voting to
16 be the most important right that they know of, but it
17 has legal significance to this Court. If strict
18 scrutiny does not apply and if voting is not a
19 fundamental right, that greatly impacts the equal
20 protection claims brought by these Petitioners.

21 It's clear after Crawford, because
22 strict scrutiny does not apply, that this Court
23 should balance the state's interest in enacting the
24 requirements of Act 18 and the law and any burdens
25 imposed by those requirements. When that balance is

1 done, an equal protection is violated only where the
2 requirements create burdens that far outweigh the
3 state's interest. The Supreme Court held that,
4 quote, for most voters who need them, the
5 inconvenience of making a trip to the DMV, gathering
6 the required documents and posing for a photograph
7 does not qualify as a substantial burden on the right
8 to vote or even represent a significant increase over
9 the usual burdens of voting, closed quote. The
10 Court, therefore, in Crawford recognized that for a
11 relatively small number of voters, such as those who
12 are elderly or who have trouble obtaining a birth
13 certificate, the burden of a photo ID requirement may
14 be greater. But that burden is insufficient to
15 support a facial challenge to invalidate the entire
16 statute.

17 The Supreme Court considered the very
18 arguments that are being presented here today by the
19 Petitioners. The concurrence in that case reminds us
20 that any change in the administration of elections
21 will inconvenience some people, but an equal
22 protection challenge to a neutral and facially
23 nondiscriminatory election statute cannot be
24 supported by claims that certain individuals will
25 bear a special burden under the law. There will

1 always be those people. No Court examining the right
2 to vote has held that strict scrutiny applies. None
3 of the Federal Courts in Crawford applied strict
4 scrutiny. The descending Judge in the 7th Circuit
5 only went so far as to suggest what he called strict
6 scrutiny light. The claims of the Petitioners must,
7 therefore, be analyzed with the understanding that
8 they do not have a fundamental right that is subject
9 to strict scrutiny. We must also be mindful of this
10 Court's repeated observation that equal protection of
11 law does not require that everyone be treated
12 identically.

13 Keeping in mind the standard for equal
14 protection challenges, as well as the demanding
15 burden that Petitioners have in seeking the
16 extraordinary relief of a preliminary injunction and
17 the strong presumption of constitutionality that
18 Courts apply in these challenges, I will turn to the
19 evidence presented by the individual Petitioners.
20 The evidence does not support the Petitioners' equal
21 protection claim. The testimony and exhibits offered
22 to this Court show the following about the individual
23 Petitioners. Three of the individual Petitioners
24 have a PennDOT non-driver photo ID that will allow
25 them to vote. We watched the testimony of Joyce

1 Block who obtained her non-driver photo ID and seems
2 only to complain that she had to make a second trip
3 to PennDOT and get assistance from her state senator.
4 Asher Schor has a valid non-driver photo ID and
5 admitted that he was speculating about whether his
6 changing appearance will present any problem in
7 November when he shows that ID at the polls. He has
8 never voted before, so he cannot testify from that
9 experience. The experience about which he could
10 testify involved going into state prisons as part of
11 his job and into a Federal Courthouse, as well as to
12 bars and other places that require a photo ID for
13 admission. In all of these places, he was never once
14 denied admission on the basis that he did not look
15 like the person on his photo ID card. Indeed, he has
16 not changed the gender designation on his ID yet,
17 because he feels that he does not pass yet as a man.
18 In other words, his ID accurately reflects his
19 appearance and it will enable him to vote in
20 November.

21 The Petitioners presented no evidence
22 to support the claims of Petitioner Henrietta
23 Dickerson, and on that basis her request for
24 preliminary injunctive relief should be denied. In
25 any event, Ms. Dickerson also obtained a PennDOT

1 photo ID. Of the remaining individual Petitioners,
2 two of them, Petitioners Barksdale and Freeland,
3 withdrew their claims in this case. Petitioners Lee,
4 Marsh, Applewhite, Bookler and Cuttino each testified
5 that they lack either a birth certificate or a Social
6 Security card, which are, of course, required to
7 obtain a PennDOT ID. They all testified, however,
8 that they know their Social Security numbers, that
9 they have proofs of residence in the form of
10 government benefits or utility bills and they have no
11 trouble getting transportation to a PennDOT driver's
12 license center. For these Petitioners, the
13 Department of State voter ID card will be available
14 and will allow them to vote.

15 Petitioner Beatrice Bookler who was
16 featured at the end of Petitioners' closing argument
17 testified also that she had a PennDOT driver's
18 license in the last seven years. She is, therefore,
19 in the PennDOT database and need only show up and
20 have her photograph taken. She indicated that she
21 does not believe she should have to do that. To be
22 sure Ms. Bookler's advanced age and physical
23 condition present a challenges to her ability to
24 travel anywhere. However, standing in line or
25 sitting in a wheelchair in line at a PennDOT driver's

1 license center imposes no greater burden than waiting
2 in line at the polls, especially during a
3 Presidential election year. To the extent that
4 Beatrice Bookler or Taylor Floria find it impossible
5 to endure those experiences, the law continues to
6 allow them to cast an absentee ballot on the basis
7 that their disabilities prevent them from attending
8 their polling place on election day. Of course, an
9 absentee ballot does not require a photo ID.

10 Respondents understand and sympathize
11 with those voters for whom transportation to a
12 PennDOT driver's license center is an issue. This
13 issue raises two important points in the content of
14 equal protection claims. First, the ability to find
15 transportation or the status of not having a car has
16 no relation to any suspect class and does not raise
17 any inference of invidious discrimination. In the
18 absence of a fundamental right, therefore, there
19 would be no equal protection claim on that basis.

20 Second, as the concurrence in Crawford
21 noted, this burden is no different than the burden
22 involved in voting generally. Tia Sutter and Lisa
23 Gray were no clearer on how they would get to the
24 polls on election day than they were about how they
25 would get to a PennDOT driver's license center to

1 obtain a photo ID. And in any event, Deputy
2 Secretary Kurt Myers from PennDOT testified about
3 efforts at the Shared-Ride Program, encouraging them
4 to take people across county lines if necessary to
5 get people to the driver's license centers.

6 The organizational Petitioners have
7 done no better to provide concrete evidence that Act
8 18 will deprive anyone of equal protection of law.
9 We heard testimony about the problems that the
10 indigent and the homeless experience when they try to
11 obtain photo ID. The attorney witnesses testified
12 about fees imposed and procedures to get records from
13 a variety of different states. First, again
14 indigence is not a suspect class for equal protection
15 analysis. And second, the plain language of Act 18
16 imposes no special burden on the poor or the
17 homeless. The requirement of the photo ID applies to
18 all voters. The trouble that poor residents of the
19 Commonwealth experience in trying to obtain an ID is
20 not at issue that is unique to voting for this
21 segment of the population. You heard testimony by
22 the Petitioners themselves and their witnesses and
23 their testimony made clear that in this day in age
24 these indigent residents of the Commonwealth are
25 facing photo ID requirements to obtain government

benefits, to enter certain buildings and to apply for jobs.

Petitioners seem to suggest that there
is no guidance in Act 18 as to who qualifies as
indigent, but that is not a basis for invalidating a
statute. That simply means that no poll worker will
have any reason to deny an indigent voter the
opportunity to cast a ballot. Even if they seek a
PennDOT photo ID to use at the polls, indigent voters
may obtain that ID free of charge. And if they're
Pennsylvania natives, their birth record will be
confirmed without a fee. The Department of State's

1 voter ID is the option available to all such voters
2 for whom obtaining birth records is not an option.

3 The attorney witnesses confirm that
4 their clients tend to know their Social Security
5 numbers. So on this point, it should be noted that
6 the Petitioners never miss an opportunity to
7 characterize as discriminatory the efforts by the
8 Commonwealth agencies to make it easier for voters to
9 obtain voter ID. The Department of Transportation
10 established a direct link with the Department of
11 Health to verify birth records free of charge without
12 any separate trip.

13 And Petitioners assert that this
14 service will help white voters more than it will help
15 minority voters. The Department of Transportation
16 will supply a free non-driver photo ID to be used for
17 voting purposes to any person who is in their
18 database who lacks another acceptable form of ID.
19 This free photo ID card may be obtained without a
20 birth certificate and without a Social Security card.
21 But Petitioners argue that this treats people who
22 have obtained their driver's licenses after 9/11
23 differently because the documents required to obtain
24 a driver's license are more extensive now than they
25 used to be. This argument is a stretch under any

1 analysis, but it highlights how there's nothing that
2 can be done by the Respondents to satisfy the
3 Petitioners in this case.

4 The testimony provided by the
5 organizational Petitioners is clearly speculative
6 and, therefore, not deserving of injunctive relief
7 when it comes to the troubles that may arise at
8 PennDOT with PennDOT workers carrying out their
9 charge to provide free photo IDs for voting purposes.

10 This Court heard the testimony of
11 people who are vocally opposed to the voter ID law
12 and always have been and who organized for the
13 specific purpose of seeing if they could catch
14 PennDOT in the act of making mistakes.
15 Significantly, not one of them testified about actual
16 voters being denied a free photo ID for use at the
17 polls. Kurt Myers testified about receiving positive
18 feedback from elderly voters who obtained a photo ID
19 and who are pleased with the customer service at
20 PennDOT. But a parade of witnesses to share their
21 subjective experiences at the driver's license center
22 is unhelpful to this Court's equal protection
23 analysis, especially where it does not establish that
24 certain protective classes of voters are being denied
25 the requisite photo ID.

1 The Petitioners' witnesses were equally
2 speculative when they opined that there is much
3 confusion about Act 18 among voters and among poll
4 workers. Each of the organizational Petitioners is,
5 by their own testimony, engaging in aggressive
6 outreach efforts to educate voters about the
7 requirement of photo ID and the specific kinds of
8 photo ID that will be acceptable under Act 18. The
9 Department of State is also engaging in outreach and
10 education, not only by speaking directly to a wide
11 range of voters and groups, but also by procuring the
12 services of media professionals to ensure that no one
13 will be ignorant of the law's requirements by
14 election day.

15 Shannon Royer, Deputy Secretary at the
16 Department of State, testified about the specific
17 requirement during the procurement process that his
18 vendors be able to reach minority voters, elderly
19 voters and others for whom obtaining photo ID may
20 require some additional effort. The Department of
21 State will be sending information directly to the
22 home addresses of every single poll worker. They may
23 not be required to attend training, but they will not
24 be able to avoid that information. The Department of
25 State will further educate judges of election at a

1 conference this month ensuring that they will be able
2 to guide their polling places in the administration
3 of elections under the photo ID requirement.

4 Every witness claiming that there is
5 confusion also emphasized their commitment to
6 educating voters about this law. The Respondents
7 should be allowed to continue their efforts at
8 implementation, because injunctive relief will only
9 disrupt the educational message that is being sent by
10 the Respondents and by the organizational
11 Petitioners, themselves. That disruption of the
12 message and the waste of resources that would result
13 from an injunction would not only harm the public,
14 but it would also harm the Petitioners and the
15 Respondents. The test for a preliminary injunction
16 specifically bars that relief when this is the case.

17 It may be tempting to err on the side
18 of protecting the right to vote when certain
19 opponents of Act 18 perceive there to be difficulties
20 in implementation, but the law requires more than
21 speculation and the efforts that all interested
22 parties have undertaken will achieve their intended
23 purpose over the course of August, September and
24 October. Unanswered questions will be resolved as
25 both government and nongovernmental organizations

1 work on implementing this law during the next three
2 months.

3 If the greatest burden that an
4 organizational Petitioner experiences is that they
5 have to revise a pamphlet to reflect the Department
6 of State voter ID card, that is a small price to pay
7 for the opportunities that it will provide to vote
8 for many residents of the Commonwealth.

9 As I have stated, the Petitioners bear
10 the burden to eliminate every imaginable valid
11 purpose that the legislature may have had when it
12 enacted Act 18. The Petitioners have presented no
13 evidence with regard to the nationwide effort to
14 modernize elections or the effective photo ID
15 requirements on public confidence in elections. They
16 have focused entirely on the prevention and detection
17 of voter fraud, which is, of course, a valid purpose,
18 an important purpose recognized by the United States
19 Supreme Court.

20 Professor Minnite shared her belief
21 that voter impersonation and multiple voting occur
22 rarely. The Supreme Court and the Carter-Baker
23 Commission reached the same conclusion, but they also
24 recognized, as does Professor Minnite, to some
25 extent, that such conduct does happen and could

1 affect the outcome of a close election. It is simply
2 unconvincing to suggest that Act 18 might be
3 unconstitutional because the actual incidents, known
4 incidents, of voter impersonation and multiple voting
5 are rare.

6 Professor Minnite assumes that the
7 statistics relating to voter fraud prosecutions
8 should be as available as they are for tax evasion,
9 internet and mail scams and other types of fraud.
10 Those crimes, however, rise to the top of any
11 prosecutor's priority list because there is money
12 involved and identifiable victims. When it comes to
13 voter fraud, there's no blood on the sidewalk and
14 there are no vulnerable victims to show to a jury.

15 More important, voter impersonation can
16 be carried out by simply signing a name in a poll
17 book. We require witnesses in a court, such as this
18 one, who are examining handwriting to have
19 credentials, expert credentials. But the Petitioners
20 would have the security of elections rely on
21 uncredentialed handwriting experts who are
22 volunteering at the polling places. Mark Wolosik of
23 Allegheny County illustrated how his driver's license
24 was the only way to resolve such an unreliable method
25 of confirming identity. He was told that his

1 signature did not match and only when he produced his
2 driver's license, did they agree that he was who he
3 purported to be and allowed him to vote.

4 A photo ID is widely available and
5 required in so many facets of our modern life. It is
6 uniquely tailored to the prevention and detection of
7 voter impersonation. And it works just as well to
8 prevent multiple voting. If New York had a photo ID
9 requirement, I suspect that Professor Minnите would
10 have a good deal of trouble voting there with her
11 brand new New Jersey driver's license.

12 We heard testimony about the numbers of
13 people who, as of June, could even be affected by Act
14 18 because they lack a photo ID. You heard Deputy
15 Secretary Burgess of the Department of State discuss
16 how numbers from the actual databases of registered
17 voters and PennDOT ID holders were examined and how
18 they were matched up, and an exact match and a
19 statistically reliable match was made to a certain
20 extent. Professor Barreto, on the other hand, favors
21 a survey approach because it avoids the problems that
22 will eventually happen with matching different data
23 sets. But the numbers confirmed by the Department of
24 State and the Department of Transportation were exact
25 matches or extremely reliable matches, to a point

1 that went beyond the numbers in Professor Barreto's
2 survey. That is they didn't encounter any matching
3 problems until they got to a point where they already
4 accounted for more voters with ID than Professor
5 Barreto says there are in Pennsylvania. And that's
6 just PennDOT IDs. The analysis by the Department of
7 State and the Department of Transportation did not
8 even include passports, military IDs, college and
9 university IDs, government employer IDs or care
10 facility IDs. And of course, the numbers that were
11 reached by the Department of State and the Department
12 of Transportation still --- those are still lower
13 numbers than Professor Barreto, before we even get to
14 the reasons why a match might be difficult make in
15 certain cases.

16 We heard about the characters and
17 spacing being different in the PennDOT database from
18 in the Department of State database. We heard about
19 people who use a slightly different name on their
20 voter registration card than they do on their photo
21 ID. We heard about people calling in after they
22 received a letter, again, direct outreach from the
23 Secretary of the Commonwealth, and saying, hey, I
24 have a PennDOT ID, why am I getting this letter.

25 The number of people who can possibly

1 be affected by this --- by Act 18 is far lower than
2 the 759,000 that the Department of State and the
3 Department of Transportation match-up revealed. The
4 Petitioners want to add classes of voters on top of
5 that number who indicated at the time of their voter
6 registration that they have PennDOT ID and they also
7 want to add those who had a PennDOT ID at some point
8 and are still in the PennDOT database. The
9 Commonwealth agencies working on implementation of
10 Act 18 have made it very easy for all of those voters
11 to obtain the ID that they need at some point in the
12 next three months.

13 Professor Barreto depends on the
14 answers given by people over the phone during 11 days
15 in June and July. He did not even look at the actual
16 data of registered voters and of driver's license
17 holders. Even if we assume that this is a reliable
18 methodology that is capable of producing a
19 representative sample of Pennsylvania voters,
20 Professor Barreto suggested every change in the law
21 must include a several-year transition period because
22 people just won't pay attention to the change in the
23 law. They won't know about it. They won't do what
24 they need to do to comply with the law. This is
25 insulting to the voters and it ignores the standard

1 for equal protection analysis. It cannot be the law
2 in this Commonwealth that every statute will be
3 invalidated if a few people come forward and claim a
4 burden under it. It cannot --- this Court cannot
5 adopt a standard that effectively creates massive
6 judicial supervision of the voting process, including
7 polling hours and places, because those, too, will
8 inconvenience voters.

9 Your Honor, the most telling and
10 important aspect of Professor Barreto's testimony is
11 what he did not say. Professor Barreto works with
12 the ACLU and the Brennan Center. He has consulted
13 with them. He has testified for them on a number of
14 occasions and in opposition to photo ID requirements
15 in other states. Professor Barreto is not a neutral
16 unbiased academic. He is a co-founder of Latino
17 Decisions and he comes to this Court to say that Act
18 18 keeps the greatest burden on Hispanic voters. If
19 widespread disenfranchisement had actually occurred
20 in the states that have had photo ID requirements,
21 like the one before this Court, since 2005, Professor
22 Barreto would have told this Court about it. He did
23 not. Because there has been no widespread
24 disenfranchisement because of photo ID requirements.
25 What that should indicate to this Court is that it is

1 highly unlikely that widespread disenfranchisement
2 will occur in November. It hasn't happened
3 elsewhere. It won't happen here.

4 The efforts of the Department of
5 Transportation and the Department of Health make it
6 easier to get a photo ID. If it is simply impossible
7 for voters to obtain a birth certificate or a Social
8 Security card, the Department of State will provide a
9 free ID for voting purposes. A Social Security
10 number and two proofs of residence in the form of
11 utility bills or other government mail are all that
12 is required. To be sure, voters do share some
13 responsibility to obtain an ID and to get themselves
14 to the polls. The law does not require the
15 Department of State to eliminate all inconveniences
16 in the voting process.

17 Your Honor, there is no clear right to
18 relief for the Petitioners in this case because a
19 photo ID is not only widely required in our society,
20 but it's also widely available. Their request for a
21 preliminary injunction is certainly not tailored in
22 any fashion and for the vast majority of voters in
23 Pennsylvania, the law presents no problem. At this
24 stage of the implementation of Act 18 it is clear
25 that the Department of State and the organizational

1 Petitioners, themselves, along with numerous other
2 community organizations are educating the voters
3 about the photo ID requirement and an injunction will
4 harm the public interest by disrupting that message
5 and creating more confusion than any that the
6 Petitioners perceive to exist before. The
7 Petitioners and the Department of State alike will
8 continue to work on hammering out the implementation
9 of Act 18 through all of August, all of September,
10 all of October and the beginning of November. The
11 Petitioners may make an emotional appeal that may
12 play well to the cameras or those untrained in the
13 law. Pennsylvania law, however, does not support
14 their request for a preliminary injunction, and their
15 request must be denied. Thank you, Your Honor.

16 JUDGE SIMPSON:

17 You may have brief rebuttal.

18 ATTORNEY WALCZAK:

19 I think I can do it in less than an
20 hour, Your Honor. No, Plaintiffs have nothing
21 further. Thank you.

22 JUDGE SIMPSON:

23 Thank you. Whatever I render --- and I
24 won't render a decision until the week of the 13th.
25 Sometime that week I will render a decision. I would

1 imagine that it will be immediately posted on the
2 AOPC website, exactly where a court order is posted,
3 so it should be available to everybody on the
4 internet pretty quickly. They usually post first
5 thing in the morning, so that's when I would check.
6 As I said before, it is an appealable order. No
7 matter what I do it's an appealable order. But being
8 that it's an Interlocutory appeal, the Court retains
9 jurisdiction and can proceed. But given the nature
10 of this and whatever work is going to be --- whatever
11 legal work is going to be entailed in an appeal, I'm
12 not going to burden Counsel with any proceedings here
13 unless somebody files a praecipe asking me to do so.
14 So I'll wait to hear from you before I schedule
15 anything, but I have jurisdiction to deal with
16 whatever problems you may have. As we've said from
17 the very beginning, the intent was to get this in a
18 position for the Supreme Court to give us a ruling
19 well in advance of the general election, and I think
20 we'll be able to do that.

21 One of the things that I did mention at
22 the very beginning of the case is that what your
23 expectation should be of me. Let me just ask
24 Petitioners do, you --- Counsel for Petitioners, do
25 you and your clients feel that you have had a full

1 and fair opportunity to make your case?

2 ATTORNEY WALCZAK:

3 Absolutely, Your Honor.

4 JUDGE SIMPSON:

5 Counsel for Respondents, do you and
6 your clients feel that you had a full and fair
7 opportunity to make your case?

8 ATTORNEY CAWLEY:

9 Yes, Your Honor.

10 JUDGE SIMPSON:

11 Well, then my work here is done. So
12 let me --- if there being nothing further to --- if
13 there be nothing further to come before the Court, we
14 stand adjourned until the next call of the crier.

15 MR. TURNER:

16 Commonwealth Court is now adjourned.

17 * * * * *

18 HEARING CONCLUDED AT 12:45 P.M.

19 * * * * *

20

21

22

23

24

25

1

2 CERTIFICATE

3

4 I hereby certify, as the stenographic reporter,
5 that the foregoing proceedings were taken
6 stenographically by me, and thereafter reduced to
7 typewriting by me or under my direction; and that
8 this transcript is a true and accurate record to the
9 best of my ability.

10

11



13

14

15

16

17

18

19

20

21

22

23

24

25