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August 8, 2012

Michael F. Krimmel, Chief Clerk  
Commonwealth Court of Pennsylvania  
601 Commonwealth Avenue, Suite 2100  
P.O. Box 69185  
Harrisburg, PA 17106-9185

**Re: *Applewhite, et al. v. Commonwealth of Pennsylvania, et al.,  
No. 330 M.D. 2012***

Dear Mr. Krimmel,

This letter is submitted in order to correct errors contained in the August 7, 2012 Brief of Amici Curiae, State Senator Anthony Williams and 18 State Senators in Support of Petitioners ("Brief"). Enclosed is a copy of the corrected amicus brief, which addresses the following:

1. On the cover page of the Brief, it states "BRIEF OF AMICI CURIAE STATE REPRESENTATIVE ANTHONY H. WILLIAMS AND 18 PENNSYLVANIA STATE REPRESENTATIVES . . ." Rather, the enclosed corrected brief states, "BRIEF OF AMICI CURIAE STATE SENATOR ANTHONY H. WILLIAMS AND 18 PENNSYLVANIA STATE SENATORS . . ."
2. On page i, in the Table of Contents, "16" was changed to "15" in reference to the pagination of subheading "E."
3. Page 1 of the Brief, on lines 5 and 15, it mistakenly uses the term "Senator" before the names of the committees, which appear on both of those lines. Instead, it should be replaced with "Senate."
4. Page 2 of the Brief, on lines 2-3, states that "Their constituents are diverse and represent densely populated urban and suburban areas." It should be replaced with "Their constituents are diverse and represent urban, suburban and rural areas."
5. Page 2 of the Brief, footnote 1 was moved from line 16 to line 6 after "Act 18 of 2012."
6. Page 2 of the Brief, on line 16, "Photo ID Law" was changed to "Voter ID Law."
7. Page 2 of the Brief, heading III, A ("Act 18 Legislative History"), line 20, states that members of the legislative body voted strictly along partisan lines. In fact, three Republican members of the Senate voted in opposition to Act 18. Therefore, the phrase "with the exception of three Republican members of the Senate who voted in opposition to Act 18." has been added.
8. On page 3 of the Brief, line 13, the "g" in "government" was capitalized.
9. On page 3 of the Brief, on lines 14, 16 and 17, "PA" was changed to "Pennsylvania."
10. On page 6 of the Brief, lines 7-8, the citation for *Warehime v. Warehime* does not include the parallel citation. The enclosed corrected brief now includes that citation.
11. On page 6 of the Brief, on lines 16 and 20, "id" was changed to "ID."
12. Page 7 of the Brief, line 21 states "Article 18." Instead, the enclosed brief correctly refers to this as "Act 18."

13. Page 8 of the Brief, on line 12, "Republican Legislature" changed to "Republican-controlled Legislature."
14. Page 10 of the Brief, on line 3, "the" was deleted before "Act 18."
15. Page 13 of the Brief, line 5 cites to "§§Pa. Const. art. 1, 1 and 26." The correct citation is "Pa. Const., Art. I, Sections 1 and 26."
16. Page 21 of the Brief, on the Certificate of Service, "BRIEF OF AMICI CURIAE STATE REPRESENTATIVE ANTHONY H. WILLIAMS AND 18 PENNSYLVANIA STATE REPRESENTATIVES . . ." Rather, the enclosed corrected brief states, "BRIEF OF AMICI CURIAE STATE SENATOR ANTHONY H. WILLIAMS AND 18 PENNSYLVANIA STATE SENATORS . . ."

For convenience of the Court and Counsel, enclosed is a complete copy of the corrected reprinted brief. Thank you for your assistance in this matter.

Sincerely,



cc:

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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Docket No. 330 MD 2012

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GLORIA CUTTINO; NADINE MARSH; DOROTHY BARKSDALE; BEA BOOKLER;  
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SCHOR; THE LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA; NATIONAL  
ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,  
PENNSYLVANIA STATE CONFERENCE; HOMELESS ADVOCACY PROJECT,

PETITIONERS,

V.

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

RESPONDENTS.

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BRIEF OF AMICI CURIAE STATE SENATOR ANTHONY H. WILLIAMS AND 18  
PENNSYLVANIA STATE SENATORS IN SUPPORT OF PETITIONERS’  
APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY  
INJUNCTION

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## **I. LISTING OF AMICI CURIAE**

Amici Curiae, Senator Jay Costa, Democratic Leader of the Senate of Pennsylvania; Senator Anthony H. Williams, Democratic Whip; Senator Vincent J. Hughes, Democratic Chairman of the Senate Appropriations Committee; Senator Shirley M. Kitchen, Democratic Chairman of the Senate Public Health and Welfare Committee; Senator Daylin Leach, Democratic Chairman of the Senate Judiciary Committee; Senator Christine M. Tartaglione, Democratic Caucus Secretary; Senator Richard A. Kasunic, Democratic Caucus Chairman; Senator Lisa M. Boscola, Democratic Caucus Policy Chairman; Senator Wayne D. Fontana, Democratic Caucus Administrator; Senator LeAnna Washington, Democratic Chairman of the Senate Aging and Youth Committee; Senator John P. Blake, Democratic Chairman of the Senate Local Government Committee and the Senate Intergovernmental Operations Committee; Senator James Brewster, Democratic Chairman of the Senate Urban Affairs and Housing Committee; Senator Andrew Dinniman, Democratic Chairman of the Senate Education Committee; Senator Lawrence M. Farnese Jr., Democratic Chairman of the Senate Communications and Technology Committee; Senator Jim Ferlo, Democratic Chairman of the Senate Law and Justice Committee; Senator Judith Schwank, Democratic Chairman of the Senate Agriculture and Rural Affairs Committee; Senator Michael J. Stack, Democratic Chairman of the Senate Banking and Insurance Committee; Senator John N. Wozniak, Democratic Chairman of the Senate Finance Committee and the Senate Transportation Committee; and Senator John T. Yudichak, Democratic Chairman of the Senate Environmental Resources and Energy Committee (hereinafter "Senate Democratic Caucus"), file this brief in support of Petitioners.

The Senate Democratic Caucus consists of members who represent the entire demographic of Pennsylvania. Their constituents are diverse and represent urban, suburban and rural areas.

## **II. STATEMENT OF AMICI INTEREST**

The individuals listed here as amici are individual members of the Senate Democratic Caucus. They all have voiced their opposition to Act 18 of 2012<sup>1</sup> (hereinafter Act 18) during its drafting and debate. Each member represents a constituency with large numbers of persons who are likely to be adversely affected by its implementation. They also have a significant interest in maintaining an election system that produces results that reflect the will of all eligible voters. These members have worked to assure that the Commonwealth's citizens are able to exercise their right to vote without limitation. In addition, they agree that the implications of this statute on the electorate seriously threaten their ability as constitutional officers to advocate for policies that benefit the citizens that they serve. The Senate Democratic Caucus believes that the Court will find the arguments contained herein beneficial to its deliberations. The Senate Democratic Caucus submits this brief in support of the Petitioners.

## **III. FACTUAL BACKGROUND**

### **A. Act 18 Legislative History**

The "Voter ID Law" under Act 18 was approved by the Pennsylvania Senate on March 7, 2012 by a vote of 26-23. On March 14, 2012, the Pennsylvania House of Representatives voted to pass the measure by 104 to 88. In both instances, members of the legislative body voted strictly along partisan lines with the exception of three Republican members of the Senate who voted in opposition to Act 18. Governor Tom Corbett signed Act 18 on March 14, 2012. Prior

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<sup>1</sup> Full citation: Act of Mar. 14, 2012, P.L. 195, No. 18.



to Act 18, first time voters established their identity by photo or non-photo identification (“ID”), including bank statements and utility bills. All other voters were required to sign in at their respective polling places. Election officials compared the individual's signature on record to prevent fraud.

The Photo ID Law now requires all Pennsylvania registered voters to produce specific types of photo ID before being permitted to vote in any election. The requisite photo ID must satisfy the following conditions:

- Show the name of the individual, and substantially conform to the individual's name on the precinct register;
- Contain a photograph of the individual to whom it was issued;
- Include an expiration date and cannot be expired<sup>2</sup>;
- Issued from one of the following:
  - U.S. Government,
  - Commonwealth of Pennsylvania,
  - A municipality of the Commonwealth to an employee of the municipality,
  - An accredited Pennsylvania private or public institution of higher learning, or
  - A licensed Pennsylvania care facility.

Although the law's requirements are rigid, and considered one of the most restrictive in the country, some limited exceptions were created. For example, a voter who is indigent, and therefore cannot afford to obtain ID without any payment or fee, may vote via a provisional ballot. Within six calendar days after the election, the indigent individual must appear in person

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<sup>2</sup> There is an exception for a military ID with an indication that it has an indefinite expiration date or a PA driver's license or non-driver ID card that is not more than 12 months past the expiration date

at the county board of elections to complete an affirmation acknowledging the inability to get an ID due to financial means.

The provisional ballot exception may also be invoked by individuals who otherwise were unable to obtain ID on Election Day. In order for the provisional ballot to be counted, within six calendar days of the election the individual must appear in person at the county board of elections to complete the affirmation and present proof of identification or submit an electronic or paper copy of the affirmation and the proof of identification.

### **B. Modifications to Act 18**

Since the implementation of the Photo ID law, Pennsylvania has adopted several new standards for obtaining ID, as well as creating a new form of identification. On April 24, 2012 the "Secretary of the Commonwealth, Carol Aichele, announced a simplified process for many voters, especially senior citizens with expired driver's licenses, to obtain a non-driver license photo ID."<sup>3</sup> "If [the individual has a] Pennsylvania driver's license, or a non-driver license photo ID, in most cases [they] will not be required to bring a birth certificate, or any other proof of identification or residence, to request a non-driver photo ID for voting purposes . . . [One] only needs to give [their] name at a PennDOT driver license center, and PennDOT will provide you with a non-driver license photo ID, which you can use to vote."<sup>4</sup>

The Commonwealth has also "introduced the creation of a new card that can be issued to voters who need photo identification under Pennsylvania's voter ID law."<sup>5</sup> The new voter ID card will be available to registered voters who are not able to provide all of the documents they would normally need to obtain a photo ID from PennDOT, such as a birth certificate.

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<sup>3</sup><http://www.votespa.com/portal/server.pt?open=514&objID=1174114&parentname=ObjMgr&parentid=4&mode=2>

<sup>4</sup> Id.

<sup>5</sup> Id.

Many of Commonwealth's efforts to streamline obtaining Photo ID have been implemented because new data shows that substantially more individuals will be impacted by this law. Initially the Department of State estimated that only one percent of voters, 80,000 Pennsylvanians, did not have proper ID. However, on July 3, 2012 the Department of State reported that nine percent of registered voters, 759,000 Pennsylvanians, do not have a PennDOT identification.<sup>6</sup> Additionally, there are nearly 600,000 additional Pennsylvanians with expired IDs raising the total number of individuals without proper identification to nearly 1.5 million.<sup>7</sup>

### **C. Relief Sought**

The petitioners seek, pursuant to Rule 1531(a) of the Pennsylvania Rules of Civil Procedure, for special relief in the form of a preliminary injunction enjoining the Respondents, Commonwealth Governor Thomas Corbett, and Secretary of the Commonwealth Carol Aichele from enforcing Act 18. Although granting a preliminary injunction is an extraordinary remedy, it is the appropriate choice in light of the facts. No rational or compelling reason exists for the Commonwealth to potentially disenfranchise approximately 1.5 million people. Additionally, the Commonwealth's constant modifications to Act 18 demonstrate its lack of preparedness and need for additional time to ensure that Pennsylvania's eligible citizens can enjoy the opportunity to participate in the electoral process.

## **IV. ARGUMENT**

In order to grant a preliminary injunction, Petitioners must demonstrate the existence of the following requirements:

- 1) "that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages";

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<sup>6</sup> <http://www.abc27.com/story/19058756/outreach-and-outrage-continue-over-voter-id-law>

<sup>7</sup> <http://aclupa.blogspot.com/2012/07/voter-id-trial-day-4-state-really-has.html>

2) "that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings";

3) "that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct";

4) "that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits";

5) "that the injunction it seeks is reasonably suited to abate the offending activity"; and,

6) "that a preliminary injunction will not adversely affect the public interest."

*Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount Inc.*, 573 Pa. 637, 828 A.2d 995, 1000 (Pa. 2003). The burden is on the party who requested injunctive relief. *Warehime v. Warehime*, 580 Pa. 201, 209, 860 A.2d 41 (Pa. 2004). This amici curae brief demonstrates that Petitioners have met the required burden and are entitled to injunctive relief. The Pennsylvania Senate Democratic Caucus maintains that irreparable injury will occur unless Pennsylvania's voter ID law is enjoined. Its initial attempts at implementation have proven quite difficult and insurmountable for tens of thousands of Pennsylvanians in violation of their constitutionally protected right to vote. This brief will demonstrate that the Petitioners have met their burden and the citizens of Pennsylvania should be afforded the opportunity to freely participate in the electoral process without the unconstitutional impediment of a restrictive voter ID law.

#### **A. An Injunction is Necessary to Prevent Immediate and Irreparable Harm**

The Pennsylvania Constitution holds the right to vote in high esteem, recognizing the need to ensure that access to the ballot box is unimpeded and open to all its citizens. Article 1, § 5 declares, "[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Indeed, Pennsylvania, as well as the United States Supreme Court has found the right to vote, fundamental. The right to vote is

fundamental because it preserves all other rights. *Yick Wo v. Hopkins*, 118 U.D. 356, 370 (1886). If the right to vote is “undermined” then “other rights even the most basic are illusory. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). In *Reynolds v. Sims*, 377 U.S. 533, 554 (1964), the United States Supreme Court stated the following:

Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote....

*Reynolds*, 377 U.S. 533, 554 (1964).

Without question, citizens are entitled as a matter of right under state law to exercise the franchise. The Pennsylvania Supreme Court has interpreted the term “free and equal” to mean when elections “are public and open to all qualified electors alike; when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself, or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied... *Winston v. Moore*, 244 Pa. 447, 457, 91 A. 520, 523 (Pa. 1914). In *McGreevy v. County Commissioners*, the court argued that “free and equal” elections could only occur when all who possess the requisite qualifications are afforded a reasonable opportunity to vote. *McGreevy v. County Com'rs*, 42 Pa. D. & C. 143, 147 (Com. Pl. 1941).

In Article VII, § 1 of the Pennsylvania Constitution in order to qualify to vote, a person needs to be a citizen, who has lived in the Commonwealth at least ninety days before the election and lived in the area of the polling place at least 90 days before the election. Act 18 changes the

qualifications of electors and denies eligible citizens the opportunity to freely and equally participate in the electoral system.

The right to vote preserves all other rights in the democracy. When the right to vote is manipulated and disenfranchises eligible voters, the harm is irreparable. Unlike other injuries where money may compensate for a loss, the right to vote once denied cannot be replaced. The election is over, the winning candidates are sworn in, and policies are enacted. For many eligible and registered voters, this outcome is precisely what is contemplated by Act 18.

It is important to note that the requirements for actually casting a ballot are different for a person to become a qualified elector. Pennsylvania Constitution Article VII, Section 1 states: Accordingly, while the Pennsylvania constitution has found that a person of suitable age and residency should have the ability to cast a ballot. Act 18 represents an unmistakable message from the Republican-controlled Legislature that more is needed than what is outlined in the Constitution.

Act 18, although passed during the last legislative session, would be applied during the November 2012 Presidential election. At trial, Dept of State's (DOS) David Burgess testified regarding his experience in overseeing all technology services for DOS, including the Statewide Uniform Registered Electors (SURE) database. Burgess explained the "backfill project," in which DOS matched SURE records with those at PennDOT. Petitioners introduced a summary of the results of the project, which yielded the (as publicly released) 758,939 number of registered voters without any acceptable ID for voting purposes. However, as Burgess explained, two groups of citizens were excluded from that figure. DOS found an additional 130,189 voters who were registered to vote, but offered a PennDOT number that did not match

information found in their SURE or PennDOT's system. Another 574,630 registered voters were at risk because they had a PennDOT ID that would expire prior to the November election. In truth, then, the total number of affected registered voters by DOS's own analysis is 1,463,758. Surely, 1.5 million registered voters without sufficient identification to satisfy the voter id law creates an alarming injury and harm that cannot be repaired in the few days before the November 2012 election.

To appreciate the full impact of this law, it is instructive to compare the 1.5 million registered voters without ID to the number of persons who cast ballots in Pennsylvania during the 2008 Presidential election. According to the Pennsylvania Department of Elections website<sup>8</sup>, in 2008, 8.7 million of approximately 9.6 million voting age Pennsylvanians (or about 90%) were registered to vote. Six million of these voters (70% of eligible voters) cast a ballot for President of the United States. Contrast that to the impact the new voter ID bill will have based on the Department of State's own account. Approximately 1.5 million of registered voters lack the requisite voter ID needed under the passed legislation scheduled to go into effect for the 2012 Presidential election.

Act 18 has the capacity to reduce the size of Pennsylvania's qualified electorate by approximately 15%. This size of this population exceeds the margin of the statewide voting totals for the candidates for U.S. President. While the Pennsylvania Department of State will argue that "[e]veryone who needs an ID will be able to get one..." the evidence does not support such an assertion. The constant changes in implementation and regulations issued from the Department of State only serve to confuse and dissuade eligible voters. Moreover, it has

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<sup>8</sup> [http://www.portal.state.pa.us/portal/server.pt/community/voter\\_registration\\_statistics/12725](http://www.portal.state.pa.us/portal/server.pt/community/voter_registration_statistics/12725)

demonstrated the lack of its capacity to identify and service the tens of thousands, now by its own admission more than one million citizens without an ID.

Clearly, allowing Act 18 to take effect for the November 2012 election would cause immediate and irreparable harm such that this Court should grant the Petitioners' injunction.

**B. An Injunction is Necessary to Prevent Greater Injury.**

If the Commonwealth Court determines that an injunction is not warranted and denies Petitioners' request, approximately 1.5 million people who are currently registered to vote would be banned from participating in elections because they lack the requisite funds. Although these would satisfy the Pennsylvania Constitution's requirement for the qualifications for electors, the new and unconstitutionally burdensome requirement would bar an inordinate number of electors from voting. The Pennsylvania Supreme Court has found that "voting is of the most fundamental significance under our constitutional structure." *Petition of Berg*, 552 Pa. 126, 133, 713 A.2d 1106, 1109 (1998). While the harm to the individual and their loss of the opportunity to participate is serious, the damage to the democratic process and constitutional order is immeasurable.

The inability of countless Pennsylvanians to vote, because of a requirement instituted by a highly partisan legislature, destroys the electorate's confidence in their power to direct the democratic process. It is well settled that the right to vote in this country is guaranteed, *Reynolds*, 377 U.S. 533, and free of discrimination. U.S. CONST. amend. XV, §§ 1-2<sup>9</sup>. A

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<sup>9</sup> The Fifteenth Amendment of the United States Constitution states: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude. The Congress shall have power to enforce this article by appropriate legislation."



universal agreement also exists that the right to vote must be protected.<sup>10</sup> Academics have argued for empirical data<sup>11</sup> and Voter Impact Statements<sup>12</sup> as a means to ensure that the legislature implements measures that would cause the least amount of harm to the right to vote.

An order enjoining Act 18 would provide the Commonwealth with additional time to assess the restrictive photo ID requirements and minimize the impact on voters. No need exists to implement this law during the 2012 Presidential election, save political posturing and perceived partisan advantage.<sup>13</sup> In fact, the Department of State since the passage of this bill has made several changes in an effort to correct its many flaws. These hurried and unstudied adjustments merely serve to confuse and discourage voters even further. Consequently, the Commonwealth would not suffer any injury if the Act is enjoined.

Almost fifty years ago, the Supreme Court found that "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964). Clearly, Act 18 seeks to quiet the voices of eligible citizens in the Commonwealth and undermine their right to vote, without a compelling reason to do so.

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<sup>10</sup> See, e.g., Stephen Ansolabehere, *Access Versus Integrity in Voter Identification Requirements*, 63 N.Y.U. Ann. Surv. Am. L. 613, 613 (2007).

<sup>11</sup> See, Spencer Overton, *Voter Identification*, 105 MICH. L. REV. 631, 653-63 (2007) (arguing for more reliable data and empirical studies in voter id legislation).

<sup>12</sup> See, Gilda R. Daniels, *A Vote Delayed Is A Vote Denied: A Proactive Approach to Eliminating Election Administration Legislation that Disenfranchises Unwanted Voters*, 47 U. LOUISVILLE L. REV. 57 (2008) (arguing for the use of voter impact statements prior to passage of legislation that effects the right to vote).

<sup>13</sup> See, Senator Rep. Mike Turzai's statement about voter ID allowing Gov. Romney to win PA, which was introduced into evidence at the preliminary injunction hearing.

**C. A Preliminary Injunction will “Restore” the Petitioners and the Commonwealth to Their Constitutional Status prior to the Passage of Act 18.**

Act 18 effectively strips eligible citizens, including those who are now registered to vote, of the chance to participate in the upcoming November election. The problems of compliance are too massive to rely on time to resolve them. In 2008, 90% of Pennsylvania’s voting age population was registered to vote. Under the voter ID law, a significant share of these registered persons would not be allowed to vote unless they possessed the restrictive ID that the law requires. The voter ID law would immediately disqualify approximately 15% of registered voters from eligibility. By granting the injunction, this court would assure that those who already meet the Commonwealth’s requirements to vote would be allowed to freely and equally participate in the electoral process. An injunction would therefore restore the registered qualified electors and grant them the opportunity to participate in the electoral process.

**D. The Right to Vote is a Clearly Established Right Whose Restrictions Merit Scrutiny**

As mentioned above, few principles in our ordered system of government are more precious and guarded than the right to the electoral franchise, which starts with the ability to determine who should govern. See, e.g., *Reynolds* 377 U.S. at 555 (1964) (“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society”); *Wesberry v. Sanders*, 376 U.S. at 17-18 (1964) (“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live”).

The Pennsylvania Constitution entrenches the right to vote even more expressly. *In re Pennsylvania Legislative Reapportionment Commission*, 530 Pa. 335, 356, 609 A.2d 132, 142 (1992). Because the right to vote in Pennsylvania is fundamental and because the text commits

only a limited power to regulate elections to the legislature, the courts have viewed with great caution statutes that exceed basic ordering of an election. *Winston v. Moore*, 244 Pa. at 457. This is especially true where restrictions on the franchise result in the unequal burdens on identifiable classes, which raises equal protection problems. See Pa. Const. Art. 1, §1 and §26. Such limiting legislation that enjoys neither a pressing nor present need merit the court's scrutiny, and the severe burdens of disenfranchisement for large segments of the population even more heavily support the finding of a violation.

In this case, the stated purpose of Act 18 is to respond to voter fraud. However, the state has produced no supporting record evidence to establish that the articulated threat is real. Similar election-related crimes with present and even recent cases of violations have not led to such legislative action – including official misconduct, campaign finance fraud. In the absence of any actual instance presented in the legislature (or since that time) showing problems with voter fraud, one cannot escape the finding that this statute cannot survive scrutiny and has a very questionable claim for a rational legislative interest in an effort to regulate a fundamental right.

Act 18 is also constitutionally invalid because of the uneven demands on certain groups of voters. As the Petitioners have demonstrated, the excluded groups would include even those persons already registered as well as those with a long history of legally casting ballots. The evidence presented at trial makes clear that the negative effect of this demand on these groups (defined by age, race, and geography) is broad. This discriminatory impact alone merits close judicial scrutiny, especially in light of the flimsy factual foundation for legislative intent.

And the statutory scheme is not at all salvaged by the hastily-devised and poorly managed alternative PennDOT card system. The process, which requires payment to qualify, substitutes one method of vote denial with a poll tax– another unwarranted burden. To obtain for

this “free” card, a citizen must appear at a licensing center in person and produce a social security card, along with a raised-seal birth certificate and two additional proofs of residency.

The burdens on the public to comply with this system are manifold. First, there is the Kafka-esque dimension to paying for the documentation to apply for a “free” ID card. On its own, the cost of requesting an official birth certificate in Pennsylvania (just one of the required documents) is more than \$20. Put differently, the cost of casting a ballot for this group would exceed the cost of activities in Pennsylvania like gun ownership or fishing. This affordability barrier has been rejected as an unconstitutional limitation on the franchise. *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 668 (1966) (“Wealth, like race, creed or color, is not germane to one’s ability to participate intelligently in the electoral process”). Means-testing for access to a ballot is impermissible, yet Act 18’s application process places the franchise out of reach for the poorest of citizens in Pennsylvania.

Further, this system imposes a burden on voters by forcing them into a dizzying maze of bureaucracy. Citizens who do not currently hold a photo ID like a driver’s license are part of a group for whom the task of visiting licensing agencies is difficult. Many live in urban areas without cars, some have serious physical mobility issues, and several live long distances from the licensing agencies. For all of them, making an in-person appearance to produce those documents is prohibitive. The Act imposes a general burden to deal with multiple visits to government offices, delay, dysfunctional computer systems, misinformation, and a significant investment of time to avoid being turned away at the ballot box. Already, the press has catalogued several access problems in this process for groups ranging from the Amish to the elderly.<sup>14</sup> The state has vainly struggled to design a system to make access real for these citizens.

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<sup>14</sup> See “Voter ID law would cause extra red tape for Amish” (June 26, 2012). <http://www.timesleader.com/stories/Voter-ID-law-would-cause-extra-red-tape-for-Amish,104449>

Finally, there is strong reason for belief that the underlying claim on the merits should prevail. Foremost is the clear statement about the right to vote contained in the Pennsylvania Constitution. No party disputes the absence of evidence showing any pattern – or an individual case -- of voter fraud in the Commonwealth. Throughout the legislative hearings, none of the proponents could produce information to establish that voter fraud is a present danger in Pennsylvania’s elections.

However, there is ample record evidence (some even from the State’s witnesses) that a significant portion of the electorate does not possess the necessary documents to qualify under the new law. And there is also ample evidence, including complications due to bureaucracy, widespread confusion, and lack of resources, to show that the chances of satisfying the requirement in time for the upcoming election are low.

The likelihood of success on the merits is also confirmed by the judicial analysis offered in other states that have reviewed circumstances quite analogous to those at issue here. The Missouri Supreme Court, for example, found that the voter ID requirement was a violation of the state constitution’s right to vote. See *Weinschenk v State*, 203 SW3d 201 (Mo. 2006). That state’s constitutional right to vote, like that of the Commonwealth, exceeds the federal constitutional guarantees of the franchise. It expressly states that elections that are “free and open” and also enumerates a limited set of elector qualifications that show with “unmistakable clarity” that this right is fundamental. *Id.* 211-12.

Thus, this court should find on the merits that the evidence showing the effect of this measure on the Petitioners and similarly situated persons is an unwarranted infringement on their right to vote.

**E. A Court Injunction Would Preserve the Franchise of a Significant Share of Pennsylvania’s Electorate**

As mentioned above, the challenged legislation in this case would deny the exercise of a fundamental right to a significant portion of Pennsylvania's voters. By the state's own estimates, the size of this group exceeds the margin of the statewide victory for the winning Presidential candidate in 2008.

If this court decides to enjoin Act 18, such an order would leave the public's pre-existing level of access to the ballot undisturbed. The Court would save the directly affected citizens and an entire electorate from the manifest difficulties with hastily applying an ill-considered and discriminatory system. Since this measure has not yet been fully implemented in a live election, the decision would essentially preserve the long-held understandings that registration is sufficient to participate. In essence, the decision would maintain a rule that every registered citizen in otherwise good standing has a right to cast a ballot.

**F. The Court's Order Enjoining the Voter ID Statute Would Only Enhance the Public Interest**

A court order to enjoin the enforcement of Act 18 requirement would not be adverse to the public interest. In fact, amici contend that the very opposite is true. Such an order from the court would actually vindicate and advance the public interest in assuring an election system with robust public participation, where every citizen's fundamental right to vote is confirmed.

To date, the State has only asserted in defense of this statute the need to prevent voter fraud. The underlying reasoning seems to be that Act 18 aids public confidence in an election system remaining free from widespread corruption. While we do not dispute the concept that public confidence is a legitimate concern, we strongly dispute the extent to which Act 18 is a necessary or even a reasonable means to achieve that goal under the present circumstances.

All evidence indicates that the deterrent effect of these provisions is quite sufficient. None of the prosecutors in the Commonwealth have reported convictions of voter fraud or impersonation, as the State itself concedes. Additionally, investigations have yielded not a single prosecution in the entire state for these offenses. Without more evidence than has been presented on the present record, the only reasonable interpretation is no such widespread incidents of fraud exist. In other words, this measure is a solution designed to address a completely illusory problem. There is simply no basis for legislative action— particularly when there are such severe consequences to fundamental rights.

Even if there were marginal evidence that this statute might shore up public confidence, we urge this court to take close account of the interests for the Pennsylvania voters who would be denied access by this measure. Public confidence is a legitimate concern, but this value is actually threatened by implementing this statute. One clear result of its application to date is widespread distrust in the communities where the devastating impact of this bill would be most heavily felt. Social science studies help to confirm that legislative measures like this one that transform the ballot box into a place subject to policing and exclusion, encourage negative perceptions of government normally associated with the “carceral” state.<sup>15</sup> One cannot escape the conclusion that the harm to voters is real, present, and widespread.

The aforementioned evidence presented at trial confirms this point. The court has heard witnesses who have provided statistical analyses showing the sizable portion of the public that does not have any of the proposed documents. The effect of this statute threatens to exclude more than a tenth of the eligible voters in some parts of the state. Those general trends are given specific voice in the stories of the brave citizens who have sought relief as Petitioners in this

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<sup>15</sup> See Weaver and Lerner, “Political Consequences of the Carceral State” *Amer. Pol. Sci. Rev.* 104(04), 817-833 (2010).

case. They represent thousands of other Pennsylvanians who ask this court to vindicate the rights the Pennsylvania constitution grants them. Thus, the weight of the harm to these citizens from this law far exceeds any potential benefit that might follow from its enforcement.

Added to these points is the public interest in avoiding confusion about the election system. Foremost, the court should take notice of the testimony that a significant share of the public mistakenly believes that they possess the needed documents to comply with the new law. Their confusion is compounded by the state's own confused efforts to inform the public. The state claims to be marshaling its resources for public education, but the testimony offered by their own officials indicates that even they do not know the true size of the target population or, in at least one case, what documents are necessary to comply with the statute.

Public confidence is knowledge that all eligible ballots were cast and counted based on the rules. Yet problems like voter confusion, which seems rampant under this law, can pose a major hurdle to election management. Several documented cases in the press show that citizens were confused by the demands of the new law. In fact, even the Governor admitted he did not understand the various ways that a citizen could comply with the law.<sup>16</sup>

Applying this statute in a preliminary fashion during a low-turnout primary led to confusion among voters. With a much higher level of turnout anticipated in the upcoming presidential contest, the likelihood of confusion is even greater. A great many of the disputes about voter identification will likely be resolved by forcing citizens to cast provisional ballots – a further infringement on the right to vote.

The benefit of an order would be enjoyed both by the members of the voting public who do not currently have the documents at issue, as well as the broader electorate. The public has

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<sup>16</sup> See Dan Denvir, "Gov. Corbett says he doesn't know what forms of ID are acceptable under the Voter ID law he signed" Philadelphia City Paper (July 26, 2012).



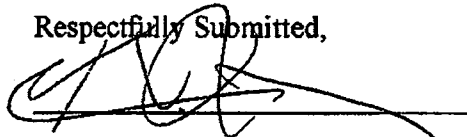
an interest in maintaining an election system that yields a reliable result. The above information shows the potential for fraud (by the state's own admission) is quite low while we have amply shown that the likely harms to voters with this new law are real and demonstrable. Given the closeness of the upcoming contest, it is of paramount importance to avoid a situation in which the outcome hinges on reviewing large numbers of ballots challenged by the ID rule.

## V. CONCLUSION

For these reasons, the Pennsylvania Senate Democratic Caucus urges this court to grant Petitioners' preliminary injunction. The irreparable harm that would result far outweighs any interest the Commonwealth may have had in passing Act 18. By the Commonwealth's own admission, no voter fraud exists. Yet, millions of eligible citizens will lose their right to vote if the Act is enacted. The Commonwealth cannot articulate or support a rational nor compelling reason to implement Act 18 that would offset the blow to the citizens' of Pennsylvania's constitutional and fundamental right to vote. Accordingly, this Court should grant Petitioners' preliminary injunction to enjoin Act 18.

Dated: August 7, 2012

Respectfully Submitted,



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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**Docket No. 330 MD 2012**

**VIVIETTE APPLEWHITE; WILOLA SHINHOLSTER LEE; GROVER FREELAND; GLORIA CUTTINO; NADINE MARSH; DOROTHY BARKSDALE; BEA BOOKLER; JOYCE BLOCK; HENRIETTA KAY DICKERSON; DEVRA MIREL ("ASHER") SCHOR; THE LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, PENNSYLVANIA STATE CONFERENCE; HOMELESS ADVOCACY PROJECT,**  
**PETITIONERS,**  
**V.**  
**THE COMMONWEALTH OF PENNSYLVANIA; THOMAS W. CORBETT, IN HIS CAPACITY AS GOVERNOR; CAROL AICHELE, IN HER CAPACITY AS SECRETARY OF THE COMMONWEALTH,**  
**RESPONDENTS.**

**BRIEF OF AMICI CURIAE STATE SENATOR ANTHONY WILLIAMS AND 18 PENNSYLVANIA STATE SENATORS IN SUPPORT OF PETITIONERS' APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF A PRELIMINARY INJUNCTION**

**CERTIFICATE OF SERVICE**

I certify that I am this day, August 7, 2012, serving the foregoing **BRIEF OF AMICI CURIAE** upon the persons below via first-class, U.S. mail, postage prepaid, which service satisfies the requirement Pa. R.A.P. 121:

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