

The Washington Post

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Selling votes is common type of election fraud

By David A. Fahrenthold, Published: October 1

The price of one bona fide, registered American vote varies from place to place. But it is rarely more than a tank of gas.

Indeed, as a rising furor over voter fraud has prodded some states to mount extensive efforts against illegal voters, election-fraud cases more often involve citizens who sell their votes, usually remarkably cheaply. In West Virginia over the past decade, the cost was as low as \$10. Last year in West Memphis, Ark., a statehouse candidate used \$2 half-pints of vodka.

At the high end, corrupt candidates in Clay County, Ky., once paid \$100. But that was probably too much: It attracted one woman who already had sold her vote. The man who bought it first was outraged, and he beat up the man who bought it second.

It may still be possible to steal an American election, if you know the right way to go about it. Recent court cases, from Appalachia to the Miami suburbs, have revealed the tricks of an underground trade: Conspirators allegedly bought off absentee voters, faked absentee ballots, and bribed people heading to the polls to vote one way or another.

What they didn't do, for the most part, was send people into voting booths pretending to be somebody else. That little-used tactic has been targeted by new voter-ID laws, including the one in Pennsylvania, which will face a crucial legal test Tuesday.

In real life, recent fraudsters tended not to bother with impersonating voters at the polls. Instead, they

often found real voters to do their bidding.

"I was in town one day at a local convenience store, and someone asked me if I wanted to make a little money on that day," Charles Russell of Jackson, Ky., testified about how he agreed to sell his vote in a local primary election in 2010. "And I said, 'Yeah.' "

Russell was eventually promised \$45 and given a slip of paper with names.

Voter fraud, by any method, is still rare. A study by News21 — a consortium of journalism schools — found 867 cases since 2000 in which someone had admitted guilt or been convicted of a voter-fraud offense. That was out of about 146 million registered voters.

But some kinds of fraud seem rarer than others. Just seven of these cases involved "voter impersonation" at the polls.

Still, nine states have passed strict laws that require photo identification to vote. Four of the measures are held up by legal challenges, including the one in Pennsylvania. A state judge is expected to rule Tuesday on its fate. Supporters say these laws are a good idea, even if they might not have stopped much recent large-scale fraud.

"If we can bring an additional layer of reasonable security measures that most people want, then why wouldn't we do it?" said Catherine Engelbrecht, president of a Houston-based group called True the Vote. Her group has tried to find people using absentee ballots to vote in two states. "It is hard to quantify the scope of the problem [of voter impersonation], because our system is not designed to detect it."

In the past three years, six legal cases have laid out, step by step, ways that elections can be stolen. All involved local races, for positions such as magistrate, county clerk, mayor and state representative.

Four took place in a traditional heartland of American vote-buying: Appalachia.

"The first votes I ever bought, I paid a half a pint or a pint of liquor, whatever it was, for it. And then as time went on, \$5 a vote, \$10 a vote. I have paid as high as \$800 a vote," said Kenneth Day, a methamphetamine user and convicted criminal who was involved in a long-running vote-buying operation in eastern Kentucky. Wearing prison orange, he was testifying in a 2010 trial that sent eight others to prison.

"Election after election, day in and day out," Day told the court. "Every election I ever worked, it went on." The \$800 payment came, he said, when two factions engaged in an impromptu auction for one man's vote.

In the majority of these six recent cases, the fraud relied on absentee ballots, which can be filled out away from the prying eyes of election officials. The News21 database found 250 cases in which someone was convicted or admitted guilt in a case involving absentee ballots.

In West Memphis last year, prosecutors said Hudson Hallum, a Democrat running for the state legislature, paid absentee voters with cash, whiskey and vodka and at least one with a chicken dinner. Hallum won his primary by eight votes, after taking 85 percent of the absentee ballots, and went on to win the general election.

But it looked fishy, and it didn't last. Hallum pleaded guilty and resigned his new seat in the state legislature last month. "While I ran for office for all the right reasons," Hallum, 29, said in a statement, "in order to win the election, I made awful decisions."

In other cases, it wasn't even necessary to pay.

In 2010, for instance, Jerry Bowman, the sheriff of Lincoln County, W.Va., simply showed up at people's homes and told them whom to vote for in local Democratic primary races. In some cases, he just filled out the ballot, according to a "stipulation of facts" that Bowman signed.

Bowman didn't pay a cent, prosecutors say. Apparently, having the sheriff in one's home was motivation enough for many voters.

"You can't go into the voting booth with them, to see how they voted," said Booth Goodwin, the U.S. attorney for southern West Virginia. "But in this one, you could sit right at their kitchen table" and be sure, he said.

Bowman was trailing after the polls closed on Election Day but won after absentee ballots poured in. The plan began to unravel when investigators noticed that 100 absentee voters seemed to have the same handwriting.

Bowman pleaded guilty in January. His attorney did not return phone messages.

One recent case of alleged absentee-ballot fraud happened this past summer in Hialeah, Fla., outside Miami. Police say they were trailing a woman suspected of ballot fraud and saw her enter a nursing-home room.

The patient inside was too ill to write, speak or comprehend what was said to her. But somehow, police said, the worker left her room with a completed absentee ballot.

In the worker's purse, they said, was a business card that hinted at a sideline filling out strangers' absentee ballots. "When the ballot arrives," it said in Spanish, "call me." The worker pleaded not guilty to felony vote fraud. Prosecutors have not said which candidate she was working for.

Absentee voting is allowed in all states, and 27 of them do not require a reason, such as illness or a trip out of state.

Now, just four states — Kansas, Ohio, Pennsylvania and Wisconsin — have passed an ID requirement that applies to absentee voters. Often, these laws require absentee voters to submit something like a driver's license number or a photocopy of a license.

Absentee ballots are not the only way to fraudulently win an election.

In Clay County, Ky., the vast fraud operation used poll workers, who told voters to leave their booths after one pass through the ballot. What the voters didn't know is that there was a "review screen" that would allow them to change their choices.

The poll workers scurried in and did that.

Other fraudsters have used one of the oldest tricks in the book: bribing voters on their way to the polls.

These conspiracies are still probably easier to pull off than voter-impersonation fraud, the kind feared by supporters of voter-ID laws. That's because the bought voters, in these cases, are still real voters. There are no worries about election workers sniffing out fakes.

But even with that advantage, it's still not easy to steal an election.

Take Charles Russell, the Kentucky voter who said he sold his vote for \$45 in 2010. When Russell got into the voting booth, he realized he couldn't vote for the man he was supposed to — a candidate for magistrate. Russell didn't live in the right district.

But he pretended. So afterward, he said, he still received an envelope containing cash.

"You didn't vote for him?" a prosecutor said, as Russell explained all this in court.

"No," Russell said.

"But he wouldn't have known that?"

"No."

The candidate, Michael Salyers, testified that he spent close to \$500 buying votes. He lost.

Alice Crites contributed to this report.

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Federal court blocks Texas voter ID law

Thu, Aug 30 2012

By Drew Singer

WASHINGTON (Reuters) - A federal court on Thursday blocked a Texas law that would require voters to show photo identification before casting ballots, saying the measure would likely curtail the ability of minorities to vote in the November 6 presidential election.

Evidence showed the law did the most harm to African Americans and Hispanics, who are more likely to live in poverty, Circuit Judge David Tatel wrote for a three-judge panel of the U.S. District Court in Washington.

Those without the underlying documents to obtain ID would have to purchase them, discouraging poor voters, he wrote. During the July trial, lawyers from the U.S. Department of Justice equated that purchase to an illegal poll tax.

Texas Attorney General Greg Abbott, a Republican, said he would appeal the decision directly to the U.S. Supreme Court.

"Today's decision is wrong on the law and improperly prevents Texas from implementing the same type of ballot integrity safeguards that are employed by Georgia and Indiana, and were upheld by the Supreme Court," he said.

Texas had the legal burden to prove its requirement did not harm minority voters. Judge Tatel's opinion called all the state's evidence "unpersuasive, invalid, or both."

The requirement was adopted in 2011 by the Republican-dominated Texas legislature. Voters would have had to present one of six forms of photo ID before casting their ballots.

1965 ACT AT STAKE

Supporters said the requirement would discourage fraud at the polls, but opponents called it a guise to suppress minority voters more likely to support Democratic candidates.

"Chalk up another victory for fraud," Texas Gov. Rick Perry, a Republican, said in a statement.

But Elise Boddie, director of litigation for the NAACP Legal Defense Fund, said: "The whole point of our democracy is to make sure that voters have the opportunity to vote, and that's what today's ruling does."

In March, the Obama administration blocked the requirement using the 1965 Voting Rights Act, a law designed to protect the voting rights of minorities, primarily blacks in Southern states.

Texas sued the U.S. government, arguing that it would be easy for a person without an ID to obtain one before the November 6 election. Texas lawyers said most voters already had IDs, and those who did not could get IDs for free if they had the underlying documents.

Since the 2010 election, in which Republicans gained control of many state and local governments, 11 U.S. states have passed voter ID laws, among other election rule changes.

The Obama administration has used the Voting Rights Act to counter the new wave of Republican measures that include voter ID requirements, redistricting maps and new ballot formats. Since the 2010 election, there have been more lawsuits under the Voting Rights Act than in the previous 45 years combined.

SUPREME COURT REVIEW

The challenges are building toward a possible U.S. Supreme Court review of the part of the Voting Rights Act that allows the federal government to block rule changes in certain states.

Two challenges reached the Supreme Court on July 20. If the court agrees to hear those cases during the term starting in October, it will weigh whether the key provision of the civil rights-era law is still necessary.

Any review of the Texas decision would focus only on the state's requirement itself and not the constitutionality of the Voting Rights Act.

With the presidential election little more than two months away, states are scrambling to try to implement voter ID laws that face challenges in state and federal courts.



Thursday's Texas decision came midway through a Voting Rights Act trial challenging a similar voter ID requirement in South Carolina. On Wednesday, a U.S. district judge lifted restrictions on third-party voter registration drives in Florida, previously put in place under a new state election law backed by the state's Republican governor.

Earlier this week, a different panel of the same Washington federal court blocked Texas' redistricting maps under the Voting Rights Act, saying they discriminated against blacks and Hispanics. Texas will likely use interim maps drawn up by a San Antonio federal court for the November elections.

Texas State Rep. Trey Martinez Fischer, head of the Mexican American Legislative Caucus, said rulings on the state's redistricting and voter ID laws were proof that the entire Voting Rights Act was still necessary.

"In the span of three days, we have had Texas' dirty laundry aired on a national stage. A history that we are not very proud of. A history that we have all claimed that we have overcome, and we have been told, in the year 2012, no longer exists," Fischer told Reuters.

The case is Texas v. Holder, U.S. District Court, District of Columbia, No. 12-cr-00128.

(Additional reporting by Nate Raymond and Jonathan Stempel in New York and Jim Forsyth in San Antonio, Texas; Editing by Howard Goller and Todd Eastham)

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The New York Times

August 15, 2012

Pennsylvania Judge Keeps Voter ID Law Intact on Its Way to Higher Court

By **ETHAN BRONNER**

A Pennsylvania judge on Wednesday declined to block a new state law requiring specific kinds of photo identification to vote. Liberal groups, arguing that minorities and the poor would be disproportionately deprived of the ballot, said they would appeal to the State Supreme Court to stop the law before the November elections.

The groups said the law, like those recently passed in 10 other states, was a Republican attempt to suppress participation of the less privileged, who tend to vote for Democrats. The laws' backers said they were seeking to preserve the integrity of the electoral process.

Both parties acknowledge that voter turnout could play a crucial role in what many predict will be a tight race between President Obama and Mitt Romney, the presumptive Republican nominee, especially in battleground states like Pennsylvania. Other court cases under way include federal inquiries into voter ID laws in Texas and South Carolina and a state challenge in Wisconsin. In Ohio, a dispute over rules for early voting ended on Wednesday when the secretary of state set uniform hours statewide.

In his ruling on Wednesday, Judge Robert Simpson of Pennsylvania, a Republican, said that there might have been a partisan motive behind the law and that it might indeed cause difficulties for tens of thousands of voters on Nov. 6. But neither matter is enough to stop it, he concluded, because judgments from both the state and federal Supreme Courts give legislatures leeway to regulate voting unless done in a clearly discriminatory or burdensome way. The Pennsylvania law, he said, passed muster.

"Thus the photo ID requirement of Act 18 is a reasonable, nondiscriminatory, nonsevere burden when viewed in the broader context of the widespread use of photo ID in daily life," he wrote. "The commonwealth's asserted interest in protecting public confidence in elections is a relevant and legitimate state interest sufficiently weighty to justify the burden."

The suit sought a preliminary injunction of the law, which is to take effect next month. It was filed on behalf of 10 Pennsylvanians facing difficulties obtaining the proper ID, including a

93-year-old woman who lost her only form of identification when her purse was stolen. Their lawyers said it was disturbing that Judge Simpson did not recognize the constitutional right to vote as sufficiently fundamental, especially because the state acknowledged that it had no evidence of voter fraud at polling stations.

“We feel this is a blow to democracy,” said Penda Hair, co-director of the Advancement Project and one of the litigators. “The court seemed to say that putting enormous hurdles in front of voters is constitutional even when you have no more than a theoretical possibility of fraud.”

She said that courts in Missouri and Wisconsin had applied a stricter standard against infringements on voting rights, and that the Pennsylvania Supreme Court should do the same when it gets the appeal. That court currently consists of three Republicans and three Democrats. Voter ID cases around the country have generally divided along party lines, even among judges. A tie vote at the Pennsylvania Supreme Court would allow the law to go into effect.

Judge Simpson noted in his ruling that if he had applied a strict standard, which he considered inappropriate given state and federal precedent, his decision might have come out differently.

He said he took at face value promises by state officials that they would get ID cards into the hands of the vast majority of residents who needed them by Election Day, that they would carry out a broad outreach campaign and that those with manifest difficulties would be able to vote through a provisional or an absentee ballot.

Lawyers for the American Civil Liberties Union and other groups opposed to the law said the judge was taking too much on faith. Forms for alternate identification have not been finalized, and staffing of public agencies dealing with such things has not been increased. They also said absentee-ballot rules in Pennsylvania are stricter than Judge Simpson implied.

Jennifer R. Clarke of the Public Interest Law Center of Philadelphia told reporters on a conference call that the appeal to the State Supreme Court would be filed on Thursday, with a request for expedited consideration. She said the court could hear arguments and announce its decision within a month. A reversal of Judge Simpson’s ruling, she said, would depend on the higher court’s applying a strict scrutiny analysis to the right to vote based on Pennsylvania’s Constitution.

Richard L. Hasen, a law professor at the University of California, Irvine, and a specialist in election law, said he doubted the State Supreme Court would overturn the ruling, which he called “careful and well written.” But he said he disagreed with it because the goal of ending voter fraud, which has been rare, did not merit, in his view, the burden imposed by the Pennsylvania law.

“These laws have been favored almost exclusively by Republican legislators, likely out of the belief that it will cause a modest decline in Democratic turnout,” he said.

The case was argued on state constitutional grounds, but the Department of Justice has asked Pennsylvania for information on the law to make sure it does not violate federal laws against discrimination. That investigation continues.

The New York Times

September 18, 2012

Judge Is Told to Examine Effect of Law on Voter ID

By **ETHAN BRONNER**

The Pennsylvania Supreme Court on Tuesday sent back to a state judge his ruling upholding a new voter identification law and gave him two weeks to determine whether the state was doing enough to provide voters who lack the required photo IDs with alternative forms of identification. If not, the court said, he must bar the law from taking effect.

Liberal-leaning groups, which say poor people and members of minority groups are adversely affected by the law, praised the decision. They predicted that the judge, Robert Simpson, would be unable to meet the standard the court had set for him — to show “no voter disenfranchisement” from the new policy — and that the law would not be put into effect for the November election.

“The Supreme Court was sufficiently nervous about whether all voters would in fact have ID on Election Day that they asked the Commonwealth Court to review the matter again,” said Witold Walczak, legal director of the American Civil Liberties Union of Pennsylvania. “The majority stressed that the court cannot rely just on government officials’ assurances and that evidence of any voter disenfranchisement obliges the Commonwealth Court to block the law.”

Pennsylvania is one of 11 states that have passed voter ID requirements. Conservatives say the laws ensure the integrity of the election process, and liberals say they suppress votes from minority groups and the poor, who tend to vote for Democrats. The state’s 20 electoral votes could be significant in the race between President Obama and Mitt Romney, the Republican candidate.

The State Supreme Court voted 4 to 2 to send the case back to the lower court to determine whether the state’s assurances on “liberal access” to alternative identity cards were reliable.

“Upon review, we find that the disconnect between what the law prescribes and how it is being implemented has created a number of conceptual difficulties in addressing the legal

issues raised,” the majority said in the case, *Applewhite v. Commonwealth of Pennsylvania* (71 MAP 2012 Supreme Court of Pennsylvania).

It said that in principle voter ID is constitutional as long as it is implemented properly. Judge Simpson has until Oct. 2 to issue an opinion on the implementation. Lawyers said they assumed Judge Simpson would order more hearings on how the state had been distributing the alternative IDs.

The two dissenting Supreme Court justices, both Democrats, complained that the state’s assurances were being violated and said an injunction against the law should have been issued. The majority was composed of three Republicans and a Democrat.

Penda D. Hair, co-director of the Advancement Project, one of the groups opposed to voter ID, said, “There is still a lot of chaos and confusion, and these IDs are still not liberally available.”

A spokesman for Pennsylvania’s Department of State, Matthew Keeler, disagreed. He said procedures were being sped up and all who needed identification would have it by Election Day.

Court cases in other states on elements of voter activity were moving ahead. In Florida on Tuesday, a federal judge allowed a case to move forward against Gov. Rick Scott, challenging his methods of seeking to purge noncitizens from voter rolls.

The New York Times

October 2, 2012

Pennsylvania Judge Puts Voter ID Law on Hold for Election

By **ETHAN BRONNER**

A Pennsylvania judge on Tuesday delayed full implementation of a highly contested state law requiring strict photographic identification to vote in next month's election, saying that the authorities had not done enough to ensure that potential voters had access to the new documents.

The judge, Robert Simpson, who upheld the law in August when it was challenged by liberal and civil rights groups, was instructed by the state's Supreme Court two weeks ago to hold further hearings. He was told to focus on the question of whether enough had been done to ensure "liberal access" to the picture ID cards or alternatives.

Judge Simpson said in his Tuesday ruling that for the presidential election of Nov. 6, voters in Pennsylvania could be asked to produce the newly required photo IDs, but if they did not have them could still go ahead and vote. The decision could still be appealed to the state Supreme Court.

"While we're happy that voters in Pennsylvania will not be turned away if they do not have an ID, we are concerned that the ruling will allow election workers to ask for ID at the polls and this could cause confusion," said Penda D. Hair, co-director of Advancement Project, one of the groups that challenged the law. "This injunction serves as a mere Band-Aid for the law's inherent problems, not an effective remedy."

The Pennsylvania law, passed in the spring without any Democratic support, is one of 11 similar laws around the country passed by Republican-dominated legislatures. The laws' backers say they are trying to ensure the integrity of the electoral process by preventing fraud. But Democrats accuse them of seeking to suppress the votes of the poor and members of minority groups who tend to have neither the needed ID nor the means to go to state offices and obtain one and who tend to vote Democratic.

In opinion surveys, substantial majorities of Americans back the voter ID requirements despite the fact that repeated efforts to demonstrate the existence of in-person voter fraud have shown there to be very little of it.

Pennsylvania is one of a number of swing states that could make the difference in the presidential race between President Obama and Mitt Romney, the Republican candidate, especially if the count is close. Increasingly, however, Mr. Obama, who won Pennsylvania in 2008, has been pulling far ahead of Mr. Romney in key states. A Quinnipiac/New York Times/CBS News poll last week showed Mr. Obama ahead in Pennsylvania by 12 points.

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By ETHAN BRONNER

Published: October 2, 2012 128 Comments

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Nick Metrowsky Longmont Colorado

So far, the only fraud going on, is a GOP backed group creating fake voter registrations in Florida, among other places.

While having a picture ID to vote should not be an issue, the way the ID laws, and state/federal laws, getting an ID difficult is the problem here. Laws passed by a GOP dominated Congress and state legislatures. If one has a different name than on their birth certificate, and did not update their state record, they will have problems getting an ID. How could this happen

1. A person gets married, takes their husband's name
2. A person was not given a middle name until baptism.
3. A person changes their name and starts using it as their legal name. Something like W. Mitt Romney; not use Wilfred).

And it costs money, and possibly legal assistance, to finally go through the red tape required. Perfectly legal, as it does not violate the Civil rights Act of 1965, per se. However, it puts both a financial and emotional burden on the citizen.

Certainly there needs to be improvement in identifying voters. But, if the State Department will accept a birth certificate and a social security card to get a passport, then the states should not require any more than that. Also, a student ID or employee ID should also be valid, as the person has had a background check to determine their identity.

Oct. 2, 2012 at 9:25 a.m. REPLY RECOMMEND 16

grinning fibber OKieland

Another "swing state" not stolen.

Oct. 2, 2012 at 9:18 a.m. REPLY RECOMMEND 25



fraenkelfred Miami Florida

what are you people talking about? you need a photo id to drive a car which is significantly lesser privelege than that of voting. the concept that this controls who votes rather than eliminates voter fraud is a much more manipulative tactic than passing laws. THE PUBLIC IS NOT STUPID, that's why the vast majority of Americans regardless of party favor having a photo id to vote.

Oct. 2, 2012 at 9:16 a.m. REPLY RECOMMEND 3

Bill Charlottesville

You and others need to stop calling voting a privilege. It's a RIGHT.

Oct. 2, 2012 at 9:31 a.m. RECOMMEND 11

Siobhan New York

Every citizen has a right to vote, regardless of whether they drive a car.

Oct. 2, 2012 at 9:31 a.m. RECOMMEND 13



dmessina NY

This is a partial victory for Democracy in one state.

The sad part is that most people support these laws. My feeling is that the support for these laws, among others than Republicans, is rooted in xenophobia.

People, stop worrying, immigrants aren't looking to vote, they are too busy repairing our roofs, cleaning our toilets and mowing our lawns.

Oct. 2, 2012 at 9:16 a.m. REPLY RECOMMEND 26

djb New York, NY

Great news! At least for this year, the forces of darkness will not prevail in PA. Voter fraud was never the issue -- this law was specifically designed to suppress the legitimate vote so as to give Romney a chance to win PA (not that he had much of a chance anyway). Now it's time to get the word out and make



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sure all PA citizens know they won't be turned away at the polls. A high turnout in PA will no doubt help Obama.

Oct. 2, 2012 at 9:16 a.m. [REPLY](#) [RECOMMEND](#) 15

SteveR Philadelphia

This never had anything to do with voter fraud. It was an effort by Republicans to suppress voter turnout of citizens more likely to vote for a Democrat. No time was given. No adequate instruction was provided. No support for people who could not afford to pay for an ID or had no ability to get one on their own. At the very least, this law should have been extended beyond 2012. At the very best, the people who tried to steal an election by denying citizens the right to vote, will be dealt with in the next election.

Oct. 2, 2012 at 9:16 a.m. [REPLY](#) [RECOMMEND](#) 22

Sarah Strohmeier Vermont

Over the summer, our daughter, a senior at Bryn Mawr College and registered Pennsylvania voter, received a letter from the Pennsylvania Secretary of State's office notifying her of the voter ID requirements. That was great except the letter was sent to Vermont and our daughter lives in Philadelphia.

Just one snafu. I assume among many.

Oct. 2, 2012 at 9:16 a.m. [REPLY](#) [RECOMMEND](#) 11

TB Philadelphia

This ruling appears to be very well thought out. By requiring people without ID to use provisional ballot, there will be a record created of every single voter who still needs an ID.

With that record created, voting rights groups, registrars and hopefully the state can work cooperatively to make sure everyone who needs an id can get one in time for the next election.

This law is highly likely to stick in the long term. There is probably no constitutional avenue in state or federal law for striking down ID laws.

The problem has been the short term. The Pa. law and laws like it were passed in a hurry, obviously with the intent of depressing minority and urban turnout and gaming the 2012 general election. It was a dastardly move, unforgivable, and hopefully it will cost the GOP some votes among those thousands of elderly folks who have had to waste their days waiting in line at the Pa. DMV this fall.

This ruling, which is clearly in line with what the Pa. Supreme Court was aiming for, nullifies the GOP's attempt to game the election. Hopefully the courts have served notice that if the Pa. secretary of state continues its shenanigans and incompetence, they will be hauled back into court next year.

If everyone who needs an ID can get one, then Voter ID won't disenfranchise elderly and minority voters. And if that's the case, Voter ID is no great danger to democracy -- though it remains a foolish bit of bureaucratic hassle from the self-processed party of less government.

Oct. 2, 2012 at 9:16 a.m. [REPLY](#) [RECOMMEND](#) 5

Jim OH

There has been little evidence of voter fraud. This whole thing is engineered by the Republicans to keep democrats from voting. Another reason why the nick fits Romney. "Tricky Mitt"

It costs money to get a passport Mare. Not everyone has that luxury. Groceries for the month or a passport. Hmm.

Oct. 2, 2012 at 9:16 a.m. [REPLY](#) [RECOMMEND](#) 11

digitalblog New York City

Bravo to Pennsylvania Judge !

"Minorities, poor people and seniors are less likely than other Americans to have government-issued identification such as a driver's license -- and more likely, for various reasons, to have difficulty obtaining an acceptable ID. They might live far from the nearest motor vehicles department office, for example, and lack transportation. In the case of some older African Americans born in the South under Jim Crow segregation, they might not even have a proper birth certificate of the kind needed to obtain a driver's license or state ID card."

MORE IN U.S. (1 OF 33 ARTICLES)

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"We cannot let anyone discourage us from casting our ballots," the first lady said Saturday. We cannot let anyone make us feel unwelcome in the voting booth. It is up to us to make sure that in every election, every voice is heard and every vote is counted."

"Indeed, it is up to us. Get registered. Get out and vote. "

<http://www.washingtonpost.com/opinions/eugene-robinson-voter-fraud-is-an...>

Oct 2, 2012 at 9:16 a.m. [REPLY](#) [RECOMMEND](#) 7

GPS Pennsylvania

A few weeks ago, my next door neighbor called me, and asked me to drive her so that she might obtain her photo ID. We are in rural Pennsylvania. She's 96, sharp as a tack, had voted in every election since 1937, but had given up driving a few years ago. What I thought would be an easy errand turned into a three hour ordeal, including a long drive each way to the nearest center, and nearly an hour wait at the PenDOT DMV. They didn't even take a new photo -- they used the 8 year old picture from the expired license. No decent person would throw up barriers between this woman and her right to vote. I guess if you can't win elections on ideas, and if the demographics seem to be lining up against you, you cheat. Republican House Leader Mike Turzai let the cat out of the bag when, listing legislative accomplishments, he said to a Republican dinner, "Voter ID, which is going to allow Governor Romney to win the State of Pennsylvania: Done!" This law was an unconscionable political ploy. The courts should throw it out for all time.

Oct 2, 2012 at 9:14 a.m. [REPLY](#) [RECOMMEND](#) 50



Margaret Meyers Merion Station, PA

This voter ID law was just another example of the kind of quality legislation backed by ALEC. ALEC has a lot of friends in the Pennsylvania state legislature.

The only Voter Fraud Pennsylvanians had to fear was the kind of mass disenfranchisement laws like this result in.

Oct 2, 2012 at 9:03 a.m. [REPLY](#) [RECOMMEND](#) 31

kas new york

I don't understand how it's constitutional to require a picture ID - doesn't the "right" to vote mean that it has to be free? If it's not free to get something one needs to vote, doesn't it violate our rights?

Oct 2, 2012 at 9:03 a.m. [REPLY](#) [RECOMMEND](#) 22

selfstarter 10123

The right to vote cost people their lives! so no, it's not free to be an American, you have to really want it and be willing to work for it!

Oct 2, 2012 at 9:31 a.m. [RECOMMEND](#)

LongGone SanFran

We now see in Florida and other swing states that voter fraud is in fact wide spread... in the RNC. Maybe we need photo ID only for Republicans.

Oct 2, 2012 at 9:03 a.m. [REPLY](#) [RECOMMEND](#) 35

Floretta NY

Would it not be sensible to require that NO change in voter registration or ID be allowed in an election year at least at the federal level?

Oct 2, 2012 at 9:03 a.m. [REPLY](#) [RECOMMEND](#) 16

Chris California

It's remarkable that any fair-minded person would not see the proliferation of laws by GOP legislatures as anything other than bald-face voter suppression efforts.

I would also note there have been NO instances of similar laws passed by Democratic legislatures. None. These hateful laws are GOP contrivances.

The bottom line: The GOP knows they can't win with their extremist agenda and candidates, so they resort to trying to limit the ability of traditionally Democratic voters to cast their votes. It's shameful and disgraceful.

MORE IN U.S. (1 OF 33 ARTICLES)

Hey, @SeattlePD: What's the Latest?

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I don't know how these GOP partisans responsible for these shenanigans can look themselves in the mirror. I really don't. As I said, it's a disgrace.

Oct. 2, 2012 at 9:03 a.m. [REPLY](#) [RECOMMEND](#) 40

msmaya philadelphia

As a concerned Pennsylvanian, many thanks to PA State Senator Daylin Leach for his committed opposition and fight against this devious law!

Oct. 2, 2012 at 9:03 a.m. [REPLY](#) [RECOMMEND](#) 23

concerned scheneclady

Voter ID laws do NOT suppress legitimate voting and are needed to reduce voter fraud. People claiming they are racist (there you go again) should google "John Fund on CSPAN" and click the first line. You will see Linda Killian's interview of Fund and Hans Von Spakovsky. Killian asks all the questions being raised by opponents of voter ID. Fund and Von Spakovsky answer them.

Oct. 2, 2012 at 9:03 a.m. [REPLY](#) [RECOMMEND](#)

[READ ALL 4 REPLIES](#)

JB NY

But how many (verified) actual instances of "voter fraud" were there in Pennsylvania? Or elsewhere?

Since there are very, very few, WHY all the hoopla to urgently change the regulations for voting?

Oct. 2, 2012 at 9:31 a.m. [RECOMMEND](#)

Mark T. Henderson, NV

Your voter fraud argument has been refuted time and time again. There IS NO VOTER FRAUD worth considering. Stop watching Fox News and open your ears. The only voter registration fraud reported was reported yesterday, and was reported against the Republican National Committee. Read the paper.

Oct. 2, 2012 at 9:31 a.m. [RECOMMEND](#) 1

Eve S. UWS

I've been doing voter registration and canvassing in PA. I've talked to dozens of elderly people in retirement homes--all dedicated voters, all legitimate citizens. They don't have driver's licenses. They don't have passports. They don't have a home lease or property title. They do have veteran's ID's but those are not accepted under the PA law. You bet their votes were being suppressed - and how!

Oct. 2, 2012 at 9:34 a.m. [RECOMMEND](#) 2

Realist Long Island

Failure of Pennsylvania and other states to perform even minimal safeguards against voting fraud, destroys the credibility of the entire election. Let's hope this gets reversed ASAP so that we can be assured that the candidate who "wins" in November is in fact that legitimate winner.

In 1962 three Chicago election workers served prison sentences for fraud committed during the 1960 election. Of course, there were thousands of fraud complaints involving millions of votes, in this election alone.

As far as the poll cited, it is inaccurate because of the Bradley effect, failure to screen out unregistered/undocumented respondents, and non-response bias.

Oct. 2, 2012 at 9:03 a.m. [REPLY](#) [RECOMMEND](#)

Support Occupy Wall Street Manhattan, N.Y.

Republicans need to stick to their tried and true ways of stealing elections (garbage dumpsters for Democratic votes, racist and lying robo-calls), voter ID was just too obvious and too much to swallow.

Oct. 2, 2012 at 9:03 a.m. [REPLY](#) [RECOMMEND](#) 15

Lisa CT

Thankful for an ounce of sense, however I'm fearful of the 'over zealous' poll worker who asks for an ID and the subsequently scares off a voter who's uninformed.

Wish I could believe this won't happen.

Oct. 2, 2012 at 9:03 a.m. [REPLY](#) [RECOMMEND](#) 13

[MORE IN U.S. \(1 OF 33 ARTICLES\)](#)

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VIVIETTE APPLEWHITE; WILOLA : No. 71 MAP 2012
SHINHOLSTER LEE; GROVER :
FREELAND; GLORIA CUTTINO; NADINE : Appeal from the Order of the
MARSH; DOROTHY BARKSDALE; BEA : Commonwealth Court dated 8/15/12 at
BOOKLER; JOYCE BLOCK; HENRIETTA : No. 330 MD 2012, denying Appellant's
KAY DICKERSON; DEVRA MIREL : Application for Preliminary Injunction
("ASHER") SCHOR; THE LEAGUE OF :
WOMEN VOTERS OF PENNSYLVANIA; :
NATIONAL ASSOCIATION FOR THE : ARGUED: September 13, 2012
ADVANCEMENT OF COLORED :
PEOPLE; PENNSYLVANIA STATE :
CONFERENCE; HOMELESS ADVOCACY :
PROJECT :

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

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

ORDER

PER CURIAM

DECIDED: September 18, 2012

Before this Court is a direct appeal from a single-judge order of the Commonwealth Court denying preliminary injunctive relief to various individuals and organizations who filed a Petition for Review challenging the constitutional validity of Act 18 of 2012, also known as the Voter ID Law. Appellate courts review an order granting or denying a preliminary injunction for an abuse of discretion. See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc., 828 A.2d 995, 1000 (Pa. 2003).

The Declaration of Rights set forth in the Pennsylvania Constitution prescribes that elections must 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.” PA. CONST. art. 1, § 5. The parties to this litigation have agreed that the right to vote in Pennsylvania, as vested in eligible, qualified voters, is a fundamental one.

The Voter ID Law was signed into law by the Governor of Pennsylvania in March of this year. For the General Election this November, and for succeeding elections, the legislation generally requires presentation of a photo identification card as a prerequisite to the casting of ballots by most registered voters.

In this regard, the Law contemplates that the primary form of photo identification to be used by voters is a Department of Transportation (PennDOT) driver’s license or the non-driver equivalent provided under Section 1510(b) of the Vehicle Code, 75 Pa.C.S. § 1510(b). See N.T. at 770-71. Furthermore, the Law specifically requires that – notwithstanding provisions of Section 1510(b) relating to the issuance and content of the cards – PennDOT shall issue them at no cost:

to any registered elector who has made application therefor and has included with the completed application a statement signed by the elector

declaring under oath or affirmation that the elector does not possess proof of identification . . . and requires proof of identification for voting purposes.

Act of Mar. 14, 2012, P.L. 195, No. 18, § 2; see 25 P.S. § 2626(b). As such, the Law establishes a policy of liberal access to Section 1510(b) identification cards.

However, as implementation of the Law has proceeded, PennDOT – apparently for good reason – has refused to allow such liberal access. Instead, the Department continues to vet applicants for Section 1510(b) cards through an identification process that Commonwealth officials appear to acknowledge is a rigorous one. See N.T. at 690, 994. Generally, the process requires the applicant to present a birth certificate with a raised seal (or a document considered to be an equivalent), a social security card, and two forms of documentation showing current residency. See N.T. at 467, 690, 793.¹ The reason why PennDOT will not implement the Law as written is that the Section 1510(b) driver's license equivalent is a secure form of identification, which may be used, for example, to board commercial aircraft. See N.T. at 699-700, 728-30, 780.

The Department of State has realized, and the Commonwealth parties have candidly conceded, that the Law is not being implemented according to its terms. See, e.g., N.T. at 1010 (testimony of the Secretary of the Commonwealth that “[t]he law does not require those kinds of – the kind of identification that is now required by PennDOT for PennDOT IDs, and it’s the Homeland Security issues”). Furthermore, both state agencies involved appreciate that some registered voters have been and will be unable to comply with the requirements maintained by PennDOT to obtain an identification card under Section 1510(b). See N.T. at 713 (testimony from a deputy secretary for PennDOT that “at the end of the day there will be people who will not be able to qualify for a driver's license or a PennDOT ID card”), 749, 772, 810, 995. It is also clear to

¹ Applicants whose information is already in PennDOT's database may be exempted from these requirements. See N.T. at 466.

state officials that, if the Law is enforced in a manner that prevents qualified and eligible electors from voting, the integrity of the upcoming General Election will be impaired. See, e.g. N.T. at 480.

Faced with the above circumstances and the present litigation asserting that the Law will impinge on the right of suffrage, representatives of the state agencies have testified under oath that they are in the process of implementing several remedial measures on an expedited basis. Of these, the primary avenue lies in the issuance of a new, non-secure Department of State identification card, which is to be made available at PennDOT driver license centers. However, preparations for the issuance of Department of State identification cards were still underway as of the time of the evidentiary hearing in the Commonwealth Court in this case, and the cards were not slated to be made available until approximately two months before the November election. N.T. at 534, 555, 706, 784, 993. Moreover, still contrary to the Law's liberal access requirement, applicants for a Department of State identification card may be initially vetted through the rigorous application process for a secure PennDOT identification card before being considered for a Department of State card, the latter of which is considered to be only a "safety net." N.T. at 709, 711, 791-95 (testimony from the Commissioner of the Bureau of Commissions, Elections and Legislation that applicants who are unable to procure a PennDOT identification card will be given a telephone number to contact the Department of State to begin the process of obtaining the alternative card); see also N.T. at 993.

In the above landscape, Appellants have asserted a facial constitutional challenge to the Law and seek to preliminarily enjoin its implementation. They contend, most particularly, that a number of qualified members of the Pennsylvania voting public will be disenfranchised in the upcoming General Election, because – given their

personal circumstances and the limitations associated with the infrastructure through which the Commonwealth is issuing identification cards – these voters will not have had an adequate opportunity to become educated about the Law’s requirements and obtain the necessary identification cards. While there is a debate over the number of affected voters, given the substantial overlap between voter rolls and PennDOT’s existing ID driver/cardholder database, it is readily understood that a minority of the population is affected by the access issue. Nevertheless, there is little disagreement with Appellants’ observation that the population involved includes members of some of the most vulnerable segments of our society (the elderly, disabled members of our community, and the financially disadvantaged).

On its review, the Commonwealth Court has made a predictive judgment that the Commonwealth’s efforts to educate the voting public, coupled with the remedial efforts being made to compensate for the constraints on the issuance of a PennDOT identification card, will ultimately be sufficient to forestall the possibility of disenfranchisement. This judgment runs through the Commonwealth Court’s opinion, touching on all material elements of the legal analysis by which the court determined that Appellants are not entitled to the relief they seek.

As a final element of the background, at oral argument before this Court, counsel for Appellants acknowledged that there is no constitutional impediment to the Commonwealth’s implementation of a voter identification requirement, at least in the abstract. Given reasonable voter education efforts, reasonably available means for procuring identification, and reasonable time allowed for implementation, the Appellants apparently would accept that the State may require the presentation of an identification card as a precondition to casting a ballot. The gravamen of their challenge at this juncture lies solely in the implementation.

Upon review, we find that the disconnect between what the Law prescribes and how it is being implemented has created a number of conceptual difficulties in addressing the legal issues raised. Initially, the focus on short-term implementation, which has become necessary given that critical terms of the statute have themselves become irrelevant, is in tension with the framing of Appellants' challenge to the Law as a facial one (or one contesting the Law's application across the widest range of circumstances). In this regard, however, we agree with Appellants' essential position that if a statute violates constitutional norms in the short term, a facial challenge may be sustainable even though the statute might validly be enforced at some time in the future. Indeed, the most judicious remedy, in such a circumstance, is the entry of a preliminary injunction, which may moot further controversy as the constitutional impediments dissipate.

Overall, we are confronted with an ambitious effort on the part of the General Assembly to bring the new identification procedure into effect within a relatively short timeframe and an implementation process which has by no means been seamless in light of the serious operational constraints faced by the executive branch. Given this state of affairs, we are not satisfied with a mere predictive judgment based primarily on the assurances of government officials, even though we have no doubt they are proceeding in good faith.

Thus, we will return the matter to the Commonwealth Court to make a present assessment of the actual availability of the alternate identification cards on a developed record in light of the experience since the time the cards became available. In this regard, the court is to consider whether the procedures being used for deployment of the cards comport with the requirement of liberal access which the General Assembly attached to the issuance of PennDOT identification cards. If they do not, or if the

Commonwealth Court is not still convinced in its predictive judgment that there will be no voter disenfranchisement arising out of the Commonwealth's implementation of a voter identification requirement for purposes of the upcoming election, that court is obliged to enter a preliminary injunction.

Accordingly, the order of the Commonwealth Court is VACATED, and the matter is returned to the Commonwealth Court for further proceedings consistent with this Order. The Commonwealth Court is to file its supplemental opinion on or before October 2, 2012. Any further appeals will be administered on an expedited basis.

Jurisdiction is relinquished.

Madame Justice Todd files a Dissenting Statement which Mr. Justice McCaffery joins.

Mr. Justice McCaffery files a Dissenting Statement which Madame Justice Todd joins.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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.	:	No. 330 M.D. 2012
	:	
The Commonwealth of Pennsylvania;	:	HEARD: September 25, 2012
Thomas W. Corbett, in his capacity	:	
as Governor; Carole Aichele, in her	:	
capacity as Secretary of the	:	
Commonwealth,	:	
Respondents	:	

BEFORE: HONORABLE ROBERT SIMPSON, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: October 2, 2012

SUPPLEMENTAL DETERMINATION
on APPLICATION for PRELIMINARY INJUNCTION

This request to enjoin enforcement of the Act of March 14, 2012, P.L. 195, No. 18 (Act 18), returns to me from the Supreme Court for expedited consideration of the following directive:

Thus, we will return the matter to the Commonwealth Court to make a present assessment of the actual availability of the alternate identification cards on a developed record in light of the experience since the time the cards became available. In this regard, the court is to consider whether the procedures being used for deployment of the cards comport with the requirement of liberal access which the General Assembly attached to the issuance of PennDOT identification cards. If they do not, or if the Commonwealth Court is not still convinced in its predictive judgment that there will be no voter disenfranchisement arising out of the Commonwealth's implementation of a voter identification requirement for purposes of the upcoming election, that court is obliged to enter a preliminary injunction.

Applewhite v. Commonwealth, ___ Pa. ___, ___, ___ A.3d ___, ___ (Pa., No. 71 MAP 2012, filed September 18, 2012) (per curiam), slip op. at 6-7. Thus, I am to preliminarily determine: 1) whether the procedures being used for deployment of the Department of State identification cards (DOS IDs) comport with the requirement of liberal access which the General Assembly attached to the issuance of PennDOT identification cards; and 2) whether I am still convinced that there will be no voter disenfranchisement arising out of the Commonwealth's implementation of a voter identification requirement for purposes of the upcoming election.

After several phone conferences with counsel, additional discovery consisting of substantial document production, and submission of pre-hearing memoranda, I presided over an additional hearing beginning September 25, 2012. Thereafter, I received excellent post-hearing memoranda. Based on these proceedings, I make the following supplemental preliminary determinations.

Liberal Access

From the time of initial deployment on August 27, 2012, until the first day of the hearing, September 25, 2012, the DOS ID was issued as a “safety net,” that is, it was issued only when the more rigorous procedures for secure PennDOT IDs could not be satisfied. The Supreme Court, however, described this situation as “still contrary to the Law’s liberal access requirement” Applewhite, ___ Pa. at ___, ___ A.3d at ___; slip op. at 4.

The new procedure proposed the first day of the hearing will cure this deficiency if implemented as described. As believably explained by Kurt Myers, Deputy Secretary for Transportation, the new procedure will eliminate the so-called “exhaustion” requirement, will eliminate the requirement for two proofs of residency, and will result in the DOS ID no longer being a “safety net” product. Additional proposed changes credibly described by Shannon Royer, Deputy Secretary for the Commonwealth, will obviate the necessity for a second trip to a PennDOT Drivers Licensing Center to obtain the DOS ID.

I have three problems with the testimony regarding the proposed changes. First and foremost, the evidence is similar in kind to the prospective “assurances of government officials” testimony which the Supreme Court found an unsatisfactory basis for a “predictive judgment.” Id. at ___, ___ A.3d at ___, slip op. at 6. Second, the proposed changes are to occur about five weeks before the general election, and I question whether sufficient time now remains to attain the goal of liberal access. Third, the proposed changes are accompanied by candid admissions by government officials that any new deployment will reveal

unforeseen problems which impede implementation. These admissions were corroborated by anecdotal evidence offered by Petitioners regarding the initial roll-out of the DOS IDs in August. For these reasons, I cannot conclude the proposed changes cure the deficiency in liberal access identified by the Supreme Court.

Nevertheless, acknowledgement should be made of improvements in system design by government officials since initial deployment of the DOS ID. These include a more streamlined procedure for validating birth dates, improved scheduling of individuals manning the DOS Help Desk, a more structured referral system for complex Help Desk inquiries, and some extended hours at PennDOT Drivers Licensing Centers, to name a few. Outreach and voter education efforts by PennDOT and DOS, believably described by Deputy Secretaries Myers and Royer, are extensive, surpassing predictions made in the earlier hearing. These existing structural improvements, together with the proposed enhanced access to the DOS ID and additional time, will place the Commonwealth in a better position going forward.

Disenfranchisement

After the first hearing, I made the following preliminary determination:

Although not necessary for preliminary injunction purposes, my estimate of the percentage of registered voters who did not have photo ID as of June, 2012, is somewhat more than 1% and significantly less than 9%, based on the testimony of Rebecca K. Oyler and inferences favorable to Respondents. I rejected Petitioners' attempts to inflate the numbers in various ways.

Applewhite v. Commonwealth, No. 330 M.D. 2012, 2012 WL 3332376, at *3, n.16 (Pa. Cmwlth. Aug. 15, 2012) (unreported).

As of the most recent hearing, between 9300 and 9500 PennDOT IDs for voting have been issued. Also, between 1300 and 1350 DOS IDs have been issued. Further, PennDOT statistics for issuance of initial drivers' licenses and initial photo IDs for the period March, 2012, through September, 2012, show a slight increase over the same period in 2011. Pet'rs' Ex. 136. The increase is in the magnitude of 1000 to 2000 a month. Id.

I expected more photo IDs to have been issued by this time. For this reason, I accept Petitioners' argument that in the remaining five weeks before the general election, the gap between the photo IDs issued and the estimated need will not be closed. I reject Respondents' argument that my initial estimate was overblown.

Consequently, I am not still convinced in my predictive judgment that there will be no voter disenfranchisement arising out of the Commonwealth's implementation of a voter identification requirement for purposes of the upcoming election. Under these circumstances, I am obliged to enter a preliminary injunction. Applewhite, ___ Pa. at ___, ___ A.3d at ___, slip op. at 7.

Form of Preliminary Injunction

At my invitation, the parties offered argument on the form of a preliminary injunction. Importantly, Petitioners concede that parts of Act 18

(relating to proof of identification for absentee voting) do not cause injury and may be implemented. Therefore, they no longer seek a total ban on implementation of Act 18. Also, Respondents concede that procedures for deployment of the DOS IDs did not conform to the liberal access requirement as explained by the Supreme Court and that some injunction relating to that activity is appropriate. Respondents highlight changes already made and others recently proposed.

A preliminary injunction must be crafted so as to be no broader than is necessary for the petitioner's interim protection. Santoro v. Morse, 781 A.2d 1220 (Pa. Super. 2001); Anchel v. Shea, 762 A.2d 346 (Pa. Super. 2000); Langston v. Nat'l Media Corp., 617 A.2d 354 (Pa. Super. 1992); Three Cnty. Servs., Inc. v. Phila. Inquirer, 486 A.2d 997 (Pa. Super. 1985); see 15 STANDARD PENNSYLVANIA PRACTICE 2D §83:7 at 32 (2010 ed.) See also Crowe ex rel. Crowe v. Sch. Dist. of Pittsburgh, 805 A.2d 691, 694 (Pa. Cmwlth. 2002) (preliminary injunction must be "narrowly tailored to address the wrong plead [sic] and proven."). "Even if the essential prerequisites of an injunction are satisfied, the court must fashion a remedy 'reasonably suited to abate [the harm].'" The Woods at Wayne Homeowners Ass'n v. Gambone Bros. Constr. Co., Inc., 893 A.2d 196, 207 (Pa. Cmwlth. 2006) (quoting John G. Bryant Co., Inc. v. Sling Testing & Repair Inc., 471 Pa. 1, 7, 369 A.2d 1164, 1167 (1977)); see also Big Bass Lake Cmty. Ass'n v. Warren, 950 A.2d 1137 (Pa. Cmwlth. 2008) (court must narrowly tailor its remedy to abate the injury).

Our Supreme Court identified the possibly offending conduct which is the focus of my current attention: procedures for deployment of the DOS IDs which fail to comport with the requirement of liberal access found in Section 206(b) of the Pennsylvania Election Code (Election Code),¹ 25 P.S. §2626(b); and voter disenfranchisement. Applewhite, ___ Pa. at ___, ___ A.3d at ___, slip op. at 2-3, 6-7. Consistent with this Court's responsibility to narrowly tailor the remedy to abate the harm, I will enter a preliminary injunction addressing the conduct identified by the Supreme Court.

Regarding the liberal access requirement, I adopt most of the language proposed by Respondents.

For several reasons, I reject Petitioners' request to enjoin all outreach and education efforts required by Section 206(a) of the Election Code, 25 P.S. §2626(a). Petitioners assert that those efforts will mislead the public if election officials are enjoined from asking for photo ID at the polls.

First, as discussed below, I reject the premise upon which Petitioners' argument is based. That is, I reject the underlying assertion that the offending activity is the request to produce photo ID; instead, I conclude that the salient offending conduct is voter disenfranchisement. As a result, I will not restrain election officials from asking for photo ID at the polls; rather, I will enjoin enforcement of those parts of Act 18 which directly result in disenfranchisement.

¹ Act of June 3, 1937, P.L. 1333, as amended. Section 206 was added by the Act of March 14, 2012, P.L. 195, No. 18.

Second, Petitioners' outreach/education request is aimed at a different statutory provision, Section 206(a) of the Election Code, which was not cited by the Supreme Court and was not clearly part of its "liberal access" analysis.

Finally, Petitioners' request is made without reference to the General Assembly's express intent that during the transition into full implementation of Act 18, education efforts at the polls continue. This is set forth in Section 10(2) of Act 18, 25 P.S. §3050 (Historical and Statutory Notes), quoted below.

As to voter disenfranchisement, I carefully reviewed the language of the Election Code after amendment by Act 18. The language of disenfranchisement is found in the part of the Election Code dealing with provisional ballots: "A provisional ballot shall not be counted if" Section 1210(a.4)(5)(ii), 25 P.S. §3050(a.4)(5)(ii). This language pre-existed Act 18, but Act 18 added two new circumstances when a provisional vote will not be counted. Both of these new circumstances relate to electors who are unable to produce proof of identification.

More specifically, the relevant subsection of Section 1210 of the Election Code, 25 P.S. §3050(a.4)(5)(ii), provides as follows (with deletions and additions by Act 18 highlighted by strikethrough and underline, respectively):

(ii) A provisional ballot shall not be counted if:

(A) either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual;

(B) the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual; ~~or~~

(C) a provisional ballot envelope does not contain a secrecy envelope;

(D) in the case of a provisional ballot that was cast under subsection (a.2)(1)(i), within six calendar days following the election the elector fails to appear before the county board of elections to execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot and that the elector is indigent and unable to obtain proof of identification without the payment of a fee; or

(E) in the case of a provisional ballot that was cast under subsection (a.2)(1)(ii), within six calendar days following the election, the elector fails to appear before the county board of elections to present proof of identification and execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of the proof of identification and an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot.

Thus, disenfranchisement expressly occurs during the provisional ballot part of the in-person voting process, which is addressed in subsections (a.2)² and (a.4) of

² This subsection of the Election Code, 25 P.S. §3050(a.2), provides as follows (with deletions and additions by Act 18 highlighted by strikethrough and underline, respectively):

(a.2) ~~If the elector is unable to produce identification or the elector's identification is challenged by the judge of elections, the~~

(Footnote continued on next page...)

Section 1210. It is this part of the process which must be enjoined to prevent disenfranchisement.

The public policy of this Commonwealth favors severability. PPG Indus., Inc. v. Bd. of Finance & Revenue, 567 Pa. 580, 790 A.2d 261 (2001); Lebanon Valley Farmers Bank v. Commonwealth, 27 A.3d 288 (Pa. Cmwlth. 2011).

The provisions of every statute shall be severable. Section 1925 of the Statutory Construction Act of 1972, 1 Pa. C.S. §1925. Further,

If any provision of any statute or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the statute are so essentially and inseparably connected with, and so depend upon, the void

(continued...)

~~elector shall be permitted to cast a provisional ballot in accordance with subsection (a.4).~~ If any of the following apply, the elector shall be permitted to cast a provisional ballot in accordance with subsection (a.4):

(1) The elector is unable to produce proof of identification:

(i) on the grounds that the elector is indigent and unable to obtain proof of identification without the payment of a fee; or

(ii) on any other grounds.

(2) The elector's proof of identification is challenged by the judge of elections.

provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Id.

As our Supreme Court explains:

In addition to applying to ‘every’ statute and employing mandatory terms, Section 1925 is notable because it is not merely boilerplate. Thus, Section 1925 does not mandate severance in all instances, but only in those circumstances where a statute can stand alone absent the invalid provision. Section 1925 sets forth a specific, cogent standard, one which both emphasizes the logical and essential interrelationship of the void and valid provisions, and also recognizes the essential role of the Judiciary in undertaking the required analysis.

Stilp v. Commonwealth, 588 Pa. 539, 626-27, 905 A.2d 918, 970 (2006) (citation omitted).

Significant for current purposes, Section 103(a) of the Election Code, 25 P.S. §2603(a), provides (with emphasis added):

The provisions of this act are severable, and if any article, section or clause of this act, or part thereof, is held to be unconstitutional, the decision shall not be construed to affect or invalidate any other provisions of this act, or the act as a whole. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein.

Although not addressed by the parties, the General Assembly expressed its intentions about how Act 18 was to operate during its initial implementation, described as the “soft run” during the first hearing. In Section 10 of Act 18, the General Assembly explained that during the first elections after its passage, an otherwise qualified elector who does not provide proof of identification may cast a ballot that shall be counted without the necessity of casting a provisional ballot.

In particular, Section 10 of Act 18, which appears as a note to 25 P.S. §3050, provides in its entirety (with emphasis added):

Section 10. The following shall apply to elections held after January 1, 2012, and prior to September 17, 2012:

(1)(i) Except as provided under subparagraph (ii) and notwithstanding any law, election officials at the polling place at an election held after January 1, 2012, shall request that every elector show proof of identification.

(ii) Notwithstanding subparagraph (i), prior to September 17, 2012, if the elector does not provide proof of identification and the elector is otherwise qualified, the elector may cast a ballot that shall be counted without the necessity of presenting proof of identification and without the necessity of casting a provisional ballot, except as required by the act.

(2) Beginning January 1, 2012, if any elector votes at a polling place at an election and does not provide proof of identification and will be required to provide proof of identification beginning September 17, 2012, the election official that requested the proof of identification shall provide to the elector written information prescribed by the Secretary of the Commonwealth briefly describing the voter identification

requirement created by this act and inform the elector that he or she will be required to comply with that requirement when voting at future elections beginning September 17, 2012, unless an exemption applies.

Consistent with this expressed intent, and consistent with principles of severability, I will enjoin enforcement of those provisions of Act 18 which amend the provisional ballot procedures of the Election Code and cause disenfranchisement based on failure to present photo ID for in-person voting. The injunction will have the effect of extending the express transition provisions of Act 18 through the general election.

For several reasons, I decline Petitioners' post-hearing invitation to enjoin Act 18's requirement that election officials request that an in-person voter show photo ID. First, Petitioner's invitation is made without reference to the General Assembly's express intent that during the transition period a request for photo ID be made even though the vote will be counted regardless of compliance with the request.

Second, I disagree with Petitioners' premise for their invitation. They assert that the "offending activity is the Commonwealth's attempt to impose on voters a photo ID requirement without providing liberal access to photo ID that can be used to vote." Pet'rs' Post-Hearing Br. at 15. This assertion is not consistent with that part of our Supreme Court's direction that I revisit my prior predictive judgment "that there will be no voter disenfranchisement" Applewhite, ___ Pa. at ___, ___ A.3d at ___, slip op. at 7. I understand the Supreme Court's language to identify the essential offending activity as voter disenfranchisement, not a

request to produce photo ID. The injunction is tailored to address that offending activity.

Third, the cases cited by Petitioners do not compel the result they seek. I reviewed the decisions in Common Cause/Georgia v. Billups, 406 F. Supp. 2d 1326 (N.D. Ga. 2005) (Billups 2005), Weinschenk v. State, 203 S.W.3d 201 (Mo. 2006), and Milwaukee Branch of NAACP v. Walker et al., No. 11 CV 5492 (Wis. Cir. Ct. Mar. 6, 2012) (unpublished), cert. denied, 811 N.W.2d 821 (Wis. 2012), cited by Petitioners in their post-hearing brief. I also reviewed the decision in Common Cause/Georgia, League of Women Voters of Georgia, Inc. v. Billups, 439 F. Supp.2d 1294 (N.D. Ga. 2006) (Billups 2006). However, these decisions do not alter my analysis. None of them provide a legal basis for me to ignore our Supreme Court's language of "no voter disenfranchisement," or the General Assembly's description of procedures to be used during the transition to full implementation of Act 18. Moreover, a careful reading of the entire injunctions in Billups 2005 and Billups 2006 reveals that the district court's primary focus was on voter disenfranchisement rather than on a request to show photo ID.

Similarly, I reject the Respondents' post-hearing argument that a possible remedy is to enjoin only operation of the disenfranchisement language added by Act 18 to Section 1210(a.4)(5)(ii) of the Election Code, discussed above. Thus, Respondents suggest that a qualified elector be asked to produce proof of identification, but be allowed to cast a provisional ballot. This argument fails to acknowledge the General Assembly's express intent that during the transition into

full implementation of Act 18, an otherwise qualified elector need not cast a provisional ballot.

Normally, a preliminary injunction will remain in place until a decision is reached on a permanent injunction. However, the Supreme Court's per curiam order directed me to reassess my "predictive judgment that there will be no voter disenfranchisement ... for purposes of the upcoming election" Applewhite, ___ Pa. at ___, ___ A.3d at ___, slip op. at 7. Based on this language, the duration of the current preliminary injunction is limited to the upcoming election. This is consistent with an injunction entered by another court in a photo ID challenge. Billups 2006.

Permanent Injunction

Petitioners' preserve their facial challenge to Act 18 because the statute contains no right to a non-burdensome means of obtaining the required identification. Pet'rs' Post-Hearing Br. at 5, n.5. Thus, I will begin planning for trial on a permanent injunction.

In this regard, my understanding of the Supreme Court's per curiam order is that I was to address certain discrete aspects of the case on remand, not that the burden of proof shifted to the Commonwealth. The parties have strongly divergent views on this point. If my understanding is incorrect, the Court's guidance will be needed.

Relatedly, the Supreme Court's reference to "no voter disenfranchisement ... for purposes of the upcoming election," Applewhite, ___ Pa. at ___, ___ A.3d at ___, slip op. at 7, has sparked debate between the parties. I understand the phrase to be focused on the preliminary injunction for purposes of the upcoming election. I do not understand the phrase to define the test for a facial validity challenge in the context of a permanent injunction. If that understanding is not correct, the Court's guidance will be necessary.

For all these reasons, I enter the following order.

ROBERT SIMPSON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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.	:	No. 330 M.D. 2012
	:	
The Commonwealth of Pennsylvania;	:	
Thomas W. Corbett, in his capacity	:	
as Governor; Carole Aichele, in her	:	
capacity as Secretary of the	:	
Commonwealth,	:	
Respondents	:	

ORDER

AND NOW, this 2nd day of October, 2012, after supplemental hearing and after consideration of the oral and written arguments of counsel, it is **ORDERED** and **DECREED** as follows:

Petitioners' Application for Preliminary Injunction is **GRANTED in part**. Based on the foregoing Supplemental Determination, the Respondents and their agents, servants and officers are hereby **PRELIMINARILY ENJOINED** from:

1) Requiring that a registered elector must apply for a PennDOT product prior to the elector's seeking issuance of a free DOS ID; and

2) Implementing or enforcing that part of Act 18 which amends Section 1210(a.2) of the Election Code, 25 P.S. §3050(a.2), and Section 1210(a.4)(5)(ii) of the Election Code, 25 P.S. §3050(a.4), for the general election of November 6, 2012. It is the intent of this Preliminary Injunction to extend the transition procedures described in Section 10(1) of Act 18 beyond September 17, 2012, and through the general election of November 6, 2012. Nothing in this Preliminary Injunction shall preclude the Commonwealth from following transition procedures described in Section 10(2) of Act 18 (relating to additional education efforts to those not showing proof of identification for in-person voting) for the general election of November 6, 2012. All other provisions of Act 18 remain in effect.

The Court shall conduct a status conference with counsel on Thursday, December 13, 2012, at 10:00 a.m. in Courtroom 3001, third floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania. Petitioners shall arrange for a court reporter to be present. After the conference, the Court shall issue a scheduling order pertaining to the close of pleadings, completion of discovery, and trial on the application for a permanent injunction.

ROBERT SIMPSON, Judge

PENNSYLVANIA ELECTION CODE - OMNIBUS AMENDMENTS

Act of Mar. 14, 2012, P.L. 195, No. 18

Cl. 25

Session of 2012

No. 2012-18

HB 934

AN ACT

Amending the act of June 3, 1937 (P.L.1333, No.320), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," in preliminary provisions, defining "proof of identification"; in the Secretary of the Commonwealth, providing for requirements relating to voter identification; in preparation for and conduct of primaries and elections, further providing for manner of applying to vote, persons entitled to vote, voter's certificates, entries to be made in district register, numbered lists of voters and challenges; in voting by qualified absentee electors, further providing for applications for official absentee ballots, for approval of application for absentee ballot, for delivering or mailing ballots, for canvassing of official absentee ballots and for public records; and providing for enforcement and for a special procedure at certain elections.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 102 of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, is amended by adding a definition to read:

Section 102. Definitions.--The following words, when used in this act, shall have the following meanings, unless otherwise clearly apparent from the context:

* * *

(z.5) The words "proof of identification" shall mean:

(1) In the case of an elector who has a religious objection to being photographed, a valid-without-photo driver's license or a valid-without-photo identification card issued by the Department of Transportation.

(2) For an elector who appears to vote under section 1210, a document that:

(i) shows the name of the individual to whom the document was issued and the name substantially conforms to the name of the individual as it appears in the district register;

(ii) shows a photograph of the individual to whom the document was issued;

(iii) includes an expiration date and is not expired, except:

(A) for a document issued by the Department of Transportation which is not more than twelve (12) months past the expiration date; or

(B) in the case of a document from an agency of the Armed forces of the United States or their reserve components, including the Pennsylvania National Guard, establishing that the elector is a current member of or a veteran of the United States Armed Forces or National Guard which does not designate a specific date on which the document expires, but includes a designation that the expiration date is indefinite; and

(iv) was issued by one of the following:

(A) The United States Government.

(B) The Commonwealth of Pennsylvania.

(C) A municipality of this Commonwealth to an employee of that municipality.

(D) An accredited Pennsylvania public or private institution of higher learning.

(E) A Pennsylvania care facility.

(3) For a qualified absentee elector under section 1301:

(i) in the case of an elector who has been issued a current and valid driver's license, the elector's driver's license number;

(ii) in the case of an elector who has not been issued a current and valid driver's license, the last four digits of the elector's Social Security number;

(iii) in the case of an elector who has a religious objection to being photographed, a copy of a document that satisfies paragraph (1); or

(iv) in the case of an elector who has not been issued a current and valid driver's license or Social Security number, a copy of a document that satisfies paragraph (2).

Section 2. The act is amended by adding a section to read:

Section 206. Requirements Relating to Voter Identification.--

(a) The Secretary of the Commonwealth shall prepare and disseminate information to the public regarding the proof of identification requirements established under sections 1210 and 1302.

(b) Notwithstanding the provisions of 75 Pa.C.S. § 1510(b) (relating to issuance and content of driver's license) to the contrary, the Department of Transportation shall issue an identification card described in 75 Pa.C.S. § 1510(b) at no cost to any registered elector who has made application therefor and has included with the completed application a statement signed by the elector declaring under oath or affirmation that the elector does not possess proof of identification as defined in section 102 (z.5) (2) and requires proof of identification for voting purposes.

(c) The Secretary of the Commonwealth shall prepare the form of the statement described in subsection (b) and shall distribute the form to the counties and the Department of Transportation. The Secretary of the Commonwealth, the Secretary of Transportation and the county boards of election shall disseminate information to the public regarding the availability of identification cards under subsection (b).

Section 3. Section 1210(a), (a.1), (a.2), (a.3) and (a.4)(1) and (5) of the act, amended October 8, 2004 (P.L.807, No.97) and May 12, 2006 (P.L.178, No.45), are amended and the section is amended by adding a subsection to read:

Section 1210. Manner of Applying to Vote; Persons Entitled to Vote; Voter's Certificates; Entries to Be Made in District Register; Numbered Lists of Voters; Challenges.--(a) At every

primary and election each elector who appears to vote [in that election district for the first time] and who desires to vote shall first present to an election officer [one of the following forms of photo identification:

- (1) a valid driver's license or identification card issued by the Department of Transportation;
- (2) a valid identification card issued by any other agency of the Commonwealth;
- (3) a valid identification card issued by the United States Government;
- (4) a valid United States passport;
- (5) a valid student identification card;
- (6) a valid employee identification card; or
- (7) a valid armed forces of the United States identification card]

proof of identification.

The election officer shall examine the **proof of** identification presented by the elector and sign an affidavit stating that this has been done.

[(a.1) Where the elector does not have a photo identification as provided for in subsection (a), the elector shall present for examination one of the following forms of identification that shows the name and address of the elector:

- (1) nonphoto identification issued by the Commonwealth, or any agency thereof;
- (2) nonphoto identification issued by the United States Government, or agency thereof;
- (3) a firearm permit;
- (4) a current utility bill;
- (5) a current bank statement;
- (6) a paycheck;
- (7) a government check.

The election officer shall examine the identification presented by the elector and sign an affidavit stating that this has been done.]

(a.2) [If the elector is unable to produce identification or the elector's identification is challenged by the judge of elections, the elector shall be permitted to cast a provisional ballot in accordance with subsection (a.4).] **If any of the following apply, the elector shall be permitted to cast a provisional ballot in accordance with subsection (a.4):**

- (1) **The elector is unable to produce proof of identification:**
 - (i) on the grounds that the elector is indigent and unable to obtain proof of identification without the payment of a fee; or
 - (ii) on any other grounds.
- (2) **The elector's proof of identification is challenged by the judge of elections.**

(a.3) (1) All electors, including any elector that shows **proof of** identification pursuant to subsection (a), shall subsequently sign a voter's certificate in blue, black or blue-black ink with a fountain pen or ball point pen, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register.

(2) Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon

such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section.

(3) When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks.

(4) As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register.

(5) As each voter votes, his name in the order of voting shall be recorded in two (2) numbered lists of voters provided for that purpose, with the addition of a note of each voter's party enrollment after his name at primaries.

(a.4) (1) At all elections an individual who claims to be properly registered and eligible to vote at the election district but whose name does not appear on the district register and whose registration cannot be determined by the inspectors of election or the county election board shall be permitted to cast a provisional ballot. Individuals who [are voting for the first time at the election district] **appear to vote** shall be required to produce **proof of** identification pursuant to subsection (a) [or (a.1)] and if unable to do so shall be permitted to cast a provisional ballot. An individual presenting a judicial order to vote shall be permitted to cast a provisional ballot.

* * *

(5) (i) Except as provided in subclause (ii), if it is determined that the individual was registered and entitled to vote at the election district where the ballot was cast, the county board of elections shall compare the signature on the provisional ballot envelope with the signature on the elector's registration form and, if the signatures are determined to be genuine, shall count the ballot if the county board of elections confirms that the individual did not cast any other ballot, including an absentee ballot, in the election.

(ii) A provisional ballot shall not be counted if:

(A) either the provisional ballot envelope under clause (3) or the affidavit under clause (2) is not signed by the individual;

(B) the signature required under clause (3) and the signature required under clause (2) are either not genuine or are not executed by the same individual; [or]

(C) a provisional ballot envelope does not contain a secrecy envelope;

(D) in the case of a provisional ballot that was cast under subsection (a.2)(1)(i), within six calendar days following the election the elector fails to appear before the county board of elections to execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot and that the elector is indigent and unable to obtain proof of identification without the payment of a fee; or

(E) in the case of a provisional ballot that was cast under subsection (a.2)(1)(ii), within six calendar days following the election, the elector fails to appear before the county board of elections to present proof of identification and execute an affirmation or the county board of elections does not receive an electronic, facsimile or paper copy of the proof of identification and an affirmation affirming, under penalty of perjury, that the elector is the same individual who personally appeared before the district election board on the day of the election and cast a provisional ballot.

(iii) One authorized representative of each candidate in an election and one representative from each party shall be permitted to remain in the room in which deliberation or determination of subclause (ii) is being made.

* * *

(f) As used in this section, "care facility" means any of the following:

(1) A long-term care nursing facility as defined in section 802.1 of the act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act."

(2) An assisted living residence or a personal care home as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the "Public Welfare Code."

Section 4. Section 1302(e) and (e.2) of the act, amended February 13, 1998 (P.L.72, No.18), are amended and the section is amended by adding a subsection to read:

Section 1302. Applications for Official Absentee Ballots.--* *

(e) Any qualified bedridden or hospitalized veteran absent from the municipality of his residence and unable to attend his polling place because of such illness or physical disability, regardless of whether he is registered or enrolled, may apply at any time before any primary or election for an official absentee ballot on any official county board of election form addressed to the Secretary of the Commonwealth of Pennsylvania or the county board of elections of the county in which his voting residence is located.

The application shall contain the following information: Residence at the time of becoming bedridden or hospitalized, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident in voting district, voting district if known, party choice in case of primary, name and address of present residence or hospital at which hospitalized. When such application is received by the Secretary

of the Commonwealth, it shall be forwarded to the proper county board of elections.

The application for an official absentee ballot for any primary or election shall be made on information supplied over the signature of the bedridden or hospitalized veteran as required in the preceding subsection. Any qualified registered elector, including a spouse or dependent referred to in subsection (1) of section 1301, who expects to be or is absent from the municipality of his residence because his duties, occupation or business require him to be elsewhere on the day of any primary or election and any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or physical disability and any qualified registered bedridden or hospitalized veteran in the county of residence, or in the case of a county employee who cannot vote due to duties on election day relating to the conduct of the election, or in the case of a person who will not attend a polling place because of the observance of a religious holiday, may apply to the county board of elections of the county in which his voting residence is located for an Official Absentee Ballot. Such application shall be made upon an official application form supplied by the county board of elections. Such official application form shall be determined and prescribed by the Secretary of the Commonwealth of Pennsylvania.

(1) The application of any qualified registered elector, including spouse or dependent referred to in subsection (1) of section 1301, who expects to be or is absent from the municipality of his residence because his duties, occupation or business require him to be elsewhere on the day of any primary or election, or in the case of a county employee who cannot vote due to duties on election day relating to the conduct of the election, or in the case of a person who will not attend a polling place because of the observance of a religious holiday, shall be signed by the applicant and shall include the surname and given name or names of the applicant, **proof of identification**, his occupation, date of birth, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed, the reason for his absence, and such other information as shall make clear to the county board of elections the applicant's right to an official absentee ballot.

(2) The application of any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or physical disability and the application of any qualified registered bedridden or hospitalized veteran in the county of residence shall be signed by the applicant and shall include surname and given name or names of the applicant, **proof of identification**, his occupation, date of birth, residence at the time of becoming bedridden or hospitalized, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed, and such other information as shall make clear to the county board of elections the applicant's right to an official ballot. In addition, the application of such electors shall include a declaration stating the nature of their disability or illness, and the name, office address and office telephone number of their attending physician: Provided, however, That in the event any elector entitled to an absentee ballot under this subsection be unable to sign his application because of illness or physical disability, he shall be excused from signing upon making a

statement which shall be witnessed by one adult person in substantially the following form: I hereby state that I am unable to sign my application for an absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or have received assistance in making my mark in lieu of my signature.

(Mark)

(Date)

(Complete Address of Witness)

(Signature of Witness)

* * *

(e.2) Notwithstanding the other provisions of this act any qualified elector who expects to be or is absent from the municipality of his residence because his duties, occupation or business require him to be elsewhere on the day of any election or a county employe who cannot vote due to duties on election day relating to the conduct of the election or a person who will not attend a polling place because of the observance of a religious holiday may make an application for an absentee ballot by mail by sending a letter to the county board of elections in the county in which his voting residence is located. The letter shall be signed by the applicant and contain his name [and], place of residence **and proof of identification.**

* * *

(j) Notwithstanding the provisions of this section requiring proof of identification, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).

Section 5. Section 1302.2(c) and (d) of the act, amended December 11, 1968 (P.L.1183, No.375), are amended and the section is amended by adding a subsection to read:

Section 1302.2. Approval of Application for Absentee Ballot.--

* * *

(c) The county board of elections, upon receipt of any application of a qualified elector required to be registered under the provisions of preceding section 1301, shall determine the qualifications of such applicant by **verifying the proof of identification** and comparing the information set forth on such application with the information contained on the applicant's permanent registration card. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding, except that challenges may be made only on the ground that the applicant did not possess the qualifications of an absentee elector. Such challenges must be made to the county board of elections prior to 5:00 o'clock P. M. on the first Friday prior to the election. When so approved, the registration commission shall cause an absentee voter's temporary registration card to be inserted in the district register on top of and along with the permanent registration card. The absentee

voter's temporary registration card shall be in the color and form prescribed in subsection (e) of this section:

Provided, however, That the duties of the county boards of elections and the registration commissions with respect to the insertion of the absentee voter's temporary registration card of any elector from the district register as set forth in section 1302.2 shall include only such applications and emergency applications as are received on or before the first Tuesday prior to the primary or election. In all cases where applications are received after the first Tuesday prior to the primary or election and before five o'clock P. M. on the first Friday prior to the primary or election, the county board of elections shall determine the qualifications of such applicant by **verifying the proof of identification** and comparing the information set forth on such application with the information contained on the applicant's duplicate registration card on file in the General Register (also referred to as the Master File) in the office of the Registration Commission and shall cause the name and residence (and at primaries, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3, subsection (b). In addition, the local district boards of elections shall, upon canvassing the official absentee ballots under section 1308, examine the voting check list of the election district of said elector's residence and satisfy itself that such elector did not cast any ballot other than the one properly issued to him under his absentee ballot application. In all cases where the examination of the local district board of elections discloses that an elector did vote a ballot other than the one properly issued to him under the absentee ballot application, the local district board of elections shall thereupon cancel said absentee ballot and said elector shall be subject to the penalties as hereinafter set forth.

(d) In the event that any application for an official absentee ballot is not approved by the county board of elections, the elector shall be notified immediately to that effect with a statement by the county board of the reasons for the disapproval. **For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send notice to the elector with the absentee ballot requiring the elector to provide proof of identification with the absentee ballot or the ballot will not be counted.**

* * *

(f) Notwithstanding the provisions of this section, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).

Section 6. Section 1305 of the act, amended August 13, 1963 (P.L.707, No.379) and December 17, 1990 (P.L.681, No.169), is amended to read:

Section 1305. Delivering or Mailing Ballots.--

(a) The county board of elections upon receipt and approval of an application filed by any elector qualified in accordance with the provisions of section 1301, subsections (a) to (h), inclusive, shall not later than fifty days prior to the day of the primary or not later than seventy days prior to the day of the election

commence to deliver or mail to such elector who has included with said application a statement that he or she is unable to vote during the regular absentee balloting period by reason of living or performing military service in an extremely remote or isolated area of the world, and not later than forty-five days prior to the day of the primary or election commence to deliver or mail to all other such electors as provided for in section 1301, subsections (a) to (h), inclusive, official absentee ballots or special write-in absentee ballots as prescribed by subsection (d) of section 1303 when official absentee ballots are not yet printed; as additional applications of such electors are received, the board shall deliver or mail official absentee ballots or special write-in absentee ballots when official absentee ballots are not yet printed to such additional electors within forty-eight hours after approval of their application. If the calling of a special election would make it impossible to comply with the forty-five day delivery or mailing requirement of this section, then the county board of elections shall mail absentee ballots or special write-in absentee ballots within five days of the county board's receipt of the information necessary to prepare said ballots.

(b) The county board of elections upon receipt and approval of an application filed by any elector qualified in accordance with the provisions of section 1301, subsections (i) to (l), inclusive, shall commence to deliver or mail official absentee ballots on the second Tuesday prior to the primary or election. **For those applicants whose proof of identification was not provided with the application or could not be verified by the board, the board shall send the notice required under section 1302.2(d) with the absentee ballot.** As additional applications are received and approved, the board shall deliver or mail official absentee ballots to such additional electors within forty-eight hours.

(c) **Notwithstanding the provisions of this section, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).**

Section 7. Section 1308(g)(2) and (3) of the act, added May 12, 2006 (P.L.178, No.45), are amended and the section is amended by adding subsections to read:

Section 1308. Canvassing of Official Absentee Ballots.--* * *

(g) * * *

(2) The county board of elections shall meet on the eighth day following the election to canvass the absentee ballots received under this subsection **and subsection (h) (2)**. One authorized representative of each candidate in an election and one representative from each political party shall be permitted to remain in the room in which the absentee ballots are canvassed. Representatives shall be permitted to challenge any absentee elector in accordance with the provisions of paragraph (3).

(3) When the county board meets to canvass absentee ballots under paragraph (2), the board shall examine the declaration on the envelope of each ballot not set aside under subsection (d) and shall compare the information thereon with that contained in the "Registered Absentee Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File," whichever is applicable. If the county board **has verified the proof of identification as required under this act,**

is satisfied that the declaration is sufficient and the information contained in the "Registered Absentee Voters File," the absentee voters' list and/or the "Military Veterans and Emergency Civilians Absentee Voters File" verifies his right to vote, the county board shall announce the name of the elector and shall give any candidate representative or party representative present an opportunity to challenge any absentee elector upon the ground or grounds: (i) that the absentee elector is not a qualified elector; or (ii) that the absentee elector was within the municipality of his residence on the day of the primary or election during the period the polls were open, except where he was in the military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or (iii) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, as set forth herein, the board shall mark "challenged" on the envelope together with the reasons therefor, and the same shall be set aside unopened pending final determination of the challenge according to the procedure described in paragraph (5).

* * *

(h) For those absentee ballots for which proof of identification has not been received or could not be verified:

(1) If the proof of identification is received and verified by the county board of elections prior to the distribution of the absentee ballots to the local election districts, then the county shall distribute the absentee ballots for which proof of identification is received and verified, along with the other absentee ballots, to the absentee voter's respective election district. If the county board of elections does not receive or is not able to verify the proof of identification for an elector prior to the absentee ballots' being sent to the appropriate local election districts, the county board shall keep the absentee ballot and follow the procedures set forth in paragraph (2) or (3), whichever is applicable.

(2) If the proof of identification is received and verified after the absentee ballots have been distributed to the appropriate local election districts, but prior to the sixth calendar day following the election, then the county board of elections shall canvass the absentee ballots under this subsection in accordance with subsection (g) (2), unless the elector appeared to vote at the proper polling place for the purpose of casting a ballot, then the absentee ballot cast by that elector shall be declared void.

(3) If an elector fails to provide proof of identification that can be verified by the county board of elections by the sixth calendar day following the election, then the absentee ballot shall not be counted.

(i) Notwithstanding the provisions of this section, a qualified absentee elector shall not be required to provide proof of identification if the elector is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (Public Law 99-410, 100 Stat. 924) or by an alternative ballot under the Voting Accessibility for the Elderly and Handicapped Act (Public Law 98-435, 98 Stat. 1678).

Section 8. Section 1309 of the act, amended August 13, 1963 (P.L.707, No.379), is amended to read:

Section 1309. Public Records.--All official absentee ballots, files, applications for such ballots and envelopes on which the executed declarations appear, and all information and lists are hereby designated and declared to be public records and shall be safely kept for a period of two years, except that no **proof of identification shall be made public, nor shall** information concerning a military elector [shall] be made public which is expressly forbidden by the [War] Department **of Defense** because of military security.

Section 9. The act is amended by adding a section to read:

Section 1854. Enforcement.--(a) The Attorney General shall have prosecutorial jurisdiction over all violations committed under this act.

(b) The district attorney of any county in which a violation has occurred shall have concurrent powers and responsibilities with the Attorney General over violations committed under this act.

Section 10. The following shall apply to elections held after January 1, 2012, and prior to September 17, 2012:

(1) (i) Except as provided under subparagraph (ii) and notwithstanding any law, election officials at the polling place at an election held after January 1, 2012, shall request that every elector show proof of identification.

(ii) Notwithstanding subparagraph (i), prior to September 17, 2012, if the elector does not provide proof of identification and the elector is otherwise qualified, the elector may cast a ballot that shall be counted without the necessity of presenting proof of identification and without the necessity of casting a provisional ballot, except as required by the act.

(2) Beginning January 1, 2012, if any elector votes at a polling place at an election and does not provide proof of identification and will be required to provide proof of identification beginning September 17, 2012, the election official that requested the proof of identification shall provide to the elector written information prescribed by the Secretary of the Commonwealth briefly describing the voter identification requirement created by this act and inform the elector that he or she will be required to comply with that requirement when voting at future elections beginning September 17, 2012, unless an exemption applies.

Section 11. The amendment of sections 102, 1210, 1302, 1302.2, 1305, 1308 and 1309 of the act shall apply to elections held after September 17, 2012.

Section 12. This act shall take effect immediately.

APPROVED--The 14th day of March, A.D. 2012.

TOM CORBETT