

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Viviette Applewhite, Wilola Shinholster Lee;
Gloria Cuttino; Nadine Marsh; Bea Bookler;
Joyce Block; Henrietta Kay Dickerson; Devra Mirel (“Asher”)
Schor; League of Women Voters of Pennsylvania;
National Association for the Advancement of Colored People,
Pennsylvania State Conference; Homeless Advocacy Project,

Petitioners,

v.

The Commonwealth of Pennsylvania; Thomas W. Corbett,
in his capacity as Governor; Carol Aichele, in her capacity
as Secretary of the Commonwealth,

Respondents.

Docket No. 330 MD 2012

PETITIONERS’ APPLICATION FOR ENTRY OF PRELIMINARY INJUNCTION

WITHOUT AN EVIDENTIARY HEARING

Petitioners respectfully submit this Application for Entry of Preliminary Injunction Without an Evidentiary Hearing in the interests of judicial efficiency because the indisputable facts on a narrow issue, to wit, whether Respondents require “applicants for a [Department of State (“DOS”)] identification card [to] be initially vetted through the rigorous application process for a secure PennDOT identification card before being considered for a Department of State card. . . .”, oblige the Court to issue the preliminary injunction under the Supreme Court’s September 18, 2012 Per Curiam Order (“Order”), *Applewhite v. Commonwealth*, No. 71 MAP 2012, 2012 WL 4075899, at *2 (Pa. Sept. 18, 2012). To the extent the Court believes that the evidence submitted herewith is not sufficient to oblige the Court to issue the preliminary injunction without an evidentiary hearing, Petitioners respectfully submit that an evidentiary

hearing is then required to assess the “record in light of the experience since the time the [DOS identification] cards became available.” *Id.* at *3.

Summary of Argument

1. The Supreme Court has set a high standard for avoiding a preliminary injunction that Respondents have no possibility of meeting. Under the Supreme Court’s Order, this Court is “obliged to enter a preliminary injunction,” unless Respondents can prove *both*

a. that “the procedures being used for deployment of the [DOS identification cards] comport with the requirement of liberal access which the General Assembly attached to the issuance of PennDOT identification cards,” *Id.*; and

b. that, since the July hearing, 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 [Department of Transportation (“PennDOT”)] identification card, . . . [have been] sufficient to forestall the *possibility* of disenfranchisement” such that the Respondents can prove that “there will be *no* voter disenfranchisement” in November.

Id. (emphasis added).

2. This Application is directed at the first narrow, but dispositive, threshold question, which was discussed with the Court on our telephone conference of September 19, 2012. The Supreme Court expressly held that it would be “contrary to the [Photo ID] Law’s liberal access requirement” to force “applicants for a Department of State identification card [to] be initially vetted through the rigorous application process for a secure PennDOT identification card before being considered for a Department of State card. . . .” *Id.* at *2. The undisputed evidence from Respondents’ own public website establishes that Respondents have been doing precisely what the Supreme Court said would oblige this Court to issue a preliminary injunction.

3. Lest there be any doubt, at a hearing, Petitioners would offer additional reasons and evidence as to why Respondents' procedures for deploying the DOS identification card fail to comport with the liberal access requirements mandated by the General Assembly. Similarly, Petitioners would offer substantial evidence on the second ground – namely, that the Respondents' efforts since the July hearing have not and cannot “forestall the possibility of disenfranchisement” in November. *Id.* at *3. Although a hearing would reinforce Petitioners' argument that a preliminary injunction must be issued in accordance with the Supreme Court's Order, the Court need not address other evidence and other grounds for relief in light of Respondents' public statements about their procedures for deploying the DOS identification card in violation of the General Assembly's liberal access mandate. As such, the Court can and should grant the preliminary injunction without holding an evidentiary hearing.

Argument

4. The Supreme Court held that registered voters are entitled to get a free identification from PennDOT for voting simply by signing a declaration that “the elector [1] does not possess proof of identification . . . and [2] requires proof of identification for voting purposes.” *Id.* at * 1 (quoting Act of Mar. 14, 2012, P.L. 195, No. 18, § 2). The Supreme Court observed that at the July hearing, Respondents stated that they would deploy the DOS identification card only as a “safety net,” which would be “contrary to the Law's liberal access requirement.” *Id.* at *2. Specifically, the Supreme Court held that a preliminary injunction must be issued if the Respondents' procedures to date have required “applicants for a Department of State identification card [to] be initially vetted through the rigorous application process for a secure PennDOT identification card before being considered for a Department of State card. . . .” *Id.* Thus, the only question that the Court must decide before issuing the preliminary injunction is

whether Respondents' actual procedures have been what they said they would be. On this narrow issue, there is no dispute.¹ A preliminary injunction therefore can and should be issued without an evidentiary hearing.

5. First, the "FAQ - Department of State Identification Card" issued by the Governor and Secretary of State and currently available on the DOS website (last accessed at 11:19 p.m. on September 19, 2012 and attached hereto as Exhibit A²) explains:

Only registered voters who do not have another photo ID acceptable for voting, who do not possess all of the documentation required to obtain the FREE PENNDOT PHOTO ID and cannot obtain the needed documentation, or cannot obtain the documentation without the payment of a fee will be eligible for a FREE Department of State photo ID card. Examples of missing documents include a certified copy of a birth certificate or Social Security card. All other eligible voters will be given a FREE PENNDOT PHOTO ID.

* * *

Only registered voters who do not have another photo ID acceptable for voting, who do not possess all of the documentation required to obtain the FREE PENNDOT PHOTO ID and cannot obtain the needed documentation, or cannot obtain the documentation without the payment of a fee will be eligible for a FREE Department of State photo ID card.

* * *

When a PennDOT customer service representative determines that a registered voter does not have the necessary documentation to receive a FREE PENNDOT PHOTO ID, the PennDOT employee will then begin the process of issuing a FREE DEPARTMENT OF STATE PHOTO ID for voting.

¹ Petitioners raised the possibility of a stipulation of fact with Respondents, but Respondents declined.

² Pa. Dep't of State, FAQ - Department of State Identification Card, *available at* http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us/portal/server.pt/gateway/PTAR_GS_0_160329_1276395_0_0_18/PAVoterIDLAW-DOSVoterIDFAQ.pdf (last visited September 19, 2012).

6. Second, the application form for the new ID that PennDOT and DOS have used to date and that is currently available on the DOS website (last accessed at 11:19 p.m. on September 19, 2012 and attached hereto as Exhibit B³), which is entitled, “Request For Initial Issuance Of Pennsylvania Department Of State ID For Voting Purposes,” requires that the applicant certify under oath that they do not have and cannot get the underlying documents for a secure PennDOT ID:

I am requesting a Pennsylvania Department of State ID for voting purposes because I am unable to obtain a non-driver’s license photo identification card issued by the Pennsylvania Department of Transportation (PennDOT ID card) because I do not possess all of the documentation required to obtain a PennDOT ID card and cannot obtain the needed documentation, or cannot obtain the documentation without the payment of a fee.

7. The applicant must also provide his or her Social Security Number if the voter has ever been issued a Social Security Number,⁴ and further:

(2) Authorize the Pennsylvania Department of Transportation and the Pennsylvania Department of State to exchange information, including information concerning my Social Security Number, for purposes of confirming my Social Security Number and that I am a registered voter; and

(3) Authorize the Pennsylvania Department of State to verify any information given, including verification with the Social Security Administration or the appropriate county board of elections, in order to issue me the Pennsylvania Department of State ID for voting purposes.

8. The Applicant must then present two (2) different documents to “verify the NAME and CURRENT ADDRESS of the voter,” which the PennDOT clerk must check. The PennDOT

³Request for Initial Issuance of Pa. Dep’t of State ID for Voting Purposes, *available at* http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us;80/portal/server.pt/gateway/PTARGS_0_891811_1280562_0_0_18/ApplicationforDepartmentofStateVoterIDCard.pdf (last visited September 19, 2012).

⁴ There is presently no option on the application for a voter having been issued a Social Security Number but not currently knowing the number.

clerk must then certify: “Based on the documentation and information provided, the voter identified above cannot be issued a PennDOT ID card.”

9. No Pennsylvania-born voter will be able to sign this Application under penalty of perjury because, as discussed at the July hearing and currently explained on the DOS website, PennDOT is directly connected to the Department of Health and therefore can attempt to obtain verification of a birth record for Pennsylvania-born voters who do not qualify for a PennDOT secure identification for want of a raised-seal birth certificate. According to the website (last accessed at 11:19 p.m. on September 19, 2012 and attached as Exhibit C⁵), this procedure requires applicants to leave PennDOT for up to 10 days before returning to complete the application process:

Individuals must visit a PennDOT drivers license center and submit the necessary information. The information will then be forwarded to the Department of Health, which maintains birth records.

Once it is verified that the individual’s birth record is on file, applicants will be notified by mail when to pick up the non-driver photo ID card for voting purposes. The process, which is free, is expected to take about 10 days.

In other words, Pennsylvania-born voters cannot sign the DOS identification application declaring they cannot obtain the necessary documentation for a PennDOT secure identification until they (1) go to PennDOT, (2) apply for a birth certificate verification, (3) go back home to wait for the results, and (4) return to PennDOT to try again to get an identification card for voting.

⁵ Press Release, Pa. Dep’t of State, “Secretary of Commonwealth Announces Simplified Method to Obtain Photo ID for Pennsylvania-Born Voters,” May 23, 2012, at http://www.portal.state.pa.us;80/portal/server.pt/gateway/PTARGS_0_879406_1259092_0_0_18/rls-DOS-VoterIDupdate-052312.pdf (last visited September 19, 2012).

10. The above procedures do not comport with the Photo ID Law's liberal access mandate found by the Supreme Court. In summary, since the deployment of the DOS identification card, Respondents' procedures have required that voters first try for a PennDOT secure identification card before a PennDOT customer service representative will even begin the process of issuing a DOS identification card. This alone obligates the Court to issue the preliminary injunction. *See Applewhite*, 2012 WL 4075899, at *2-3. Moreover, Pennsylvania-born voters who cannot get a PennDOT identification card for want of a birth certificate have been required to leave PennDOT and wait for "about 10 days" before returning. Similarly, a registered voter who *could* obtain the necessary documentation, but would prefer to exercise his or her right to the General Assembly's liberal access mandate, has been denied entirely the ability to apply for a DOS identification card. And, once a voter is finally permitted to apply for a DOS identification, they must do more than sign the narrow declaration described by the Supreme Court. *See id.* Instead, they must also provide a Social Security Number, authorize various searches to be run against that Social Security Number, and produce two documents to verify both the name and current address of the voter.

11. All of these convoluted, unnecessary, and unauthorized procedures go beyond the liberal access mandated by the General Assembly and now ordered by the Supreme Court. Even if the Commonwealth were to assure the Court that the procedures that have been in place since August 27 will be liberalized, the preliminary injunction must issue because the Supreme Court was not satisfied that "a mere predictive judgment based primarily on the assurances of government officials" would be enough to avoid the entry of a preliminary injunction. *Id.* at *3. Respondents' continued failure to follow the Photo ID Law since the July hearing leaves no discretion under the Supreme Court's Order and the preliminary injunction must issue. This

Court therefore can and should immediately issue the preliminary injunction without an evidentiary hearing.

Conclusion

In the interests of judicial efficiency, Petitioners respectfully request that the Court order Respondents to respond by 10:00 a.m. on Friday, September 21, 2012 and that the Court convene a telephone conference, on the record, during the afternoon on Friday, September 21, 2012⁶ to decide whether a preliminary injunction will be issued immediately or whether an evidentiary hearing is required.

⁶ Petitioners will arrange for a court reporter to participate.

Dated: September 20, 2012

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I am this 20th day of September 2012, serving the foregoing Petitioners’
Application for Entry of Preliminary Injunction Without an Evidentiary Hearing upon the
persons and in the manner indicated below, which satisfies the requirement of Pa. R. A. P. 121:
Service by email per agreement with Respondents’ Counsel as follows:

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Dated: September 20, 2012



Michael A. Rubin

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ORDER

AND NOW, this ____ day of September, 2012, it is hereby **ORDERED** that Respondents shall file a response to Petitioners’ Application for Entry of Preliminary Injunction Without An Evidentiary Hearing on or before 10:00 A.M., Friday, September 21, 2012. **IT IS FURTHER ORDERED** that a telephonic hearing on Petitioners’ Application is fixed for Friday, September 21, 2012, at _____ P.M. Petitioners shall provide a court reporter to participate telephonically at said hearing.

BY THE COURT.

Robert Simpson, Judge

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as Secretary of the Commonwealth,

Respondents.

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ORDER

AND NOW, this ____ day of _____, 2012, upon consideration of Petitioners’
Application for Entry of Preliminary Injunction Without an Evidentiary Hearing, it is hereby
ORDERED that said Application is **GRANTED**.

IT IS FURTHER ORDERED that Respondents and their agents, servants, and officers and
others are hereby **ENJOINED** from implementing, enforcing, or taking any steps to implement
or enforce the Photo ID Law that is the subject of Petitioners’ Petition for Relief and Application
for Special Relief in the Nature of a Preliminary Injunction.

IT IS FURTHER ORDERED that any appeal of this order shall not act as an automatic
supersedeas in favor of the Commonwealth under Rule 1736(b) of the Appellate Rules.

IT IS SO ORDERED.

BY THE COURT.

Robert Simpson, Judge

EXHIBIT A

Tom Corbett, Governor
Carol Aichele, Secretary of the Commonwealth

FAQ – DEPARTMENT OF STATE IDENTIFICATION CARD

<p>What is a FREE DEPARTMENT OF STATE PHOTO ID CARD?</p>	<ul style="list-style-type: none"> ➤ Beginning in the end of August, 2012, PennDOT will begin issuing FREE Department of State photo ID cards that registered voters can use to vote at the polls.
<p>Who is eligible for a FREE DEPARTMENT OF STATE PHOTO ID CARD?</p>	<ul style="list-style-type: none"> ➤ Only registered voters who do not have another photo ID acceptable for voting, who do not possess all of the documentation required to obtain the FREE PENNDOT PHOTO ID and cannot obtain the needed documentation, or cannot obtain the documentation without the payment of a fee will be eligible for a FREE Department of State photo ID card. Examples of missing documents include a certified copy of a birth certificate or Social Security card. All other eligible voters will be given a FREE PENNDOT PHOTO ID.
<p>Where will a voter be able to receive a FREE DEPARTMENT OF STATE ID CARD?</p>	<ul style="list-style-type: none"> ➤ Registered voters who cannot obtain the proper documentation needed for a FREE PENNDOT PHOTO ID card will be able to obtain a FREE DEPARTMENT OF STATE ID CARD at their local PennDOT Driver's License Center. PennDOT Driver's License Center locations can be found on the web at www.dot.state.pa.us or by phone through PennDOT's CUSTOMER CALL CENTER at 1-800-932-4600.
<p>What is the process for obtaining a FREE DEPARTMENT OF STATE PHOTO ID for voting?</p>	<ul style="list-style-type: none"> ➤ All registered voters seeking to obtain a FREE Department of State ID for voting purposes must first apply for a FREE PENNDOT PHOTO ID for voting. ➤ When a PennDOT customer service representative determines that a registered voter does not have the necessary documentation to receive a FREE PENNDOT PHOTO ID, the PennDOT employee will then begin the process of issuing a FREE DEPARTMENT OF STATE PHOTO ID for voting. ➤ In order for a registered voter to obtain a FREE DEPARTMENT OF STATE ID for voting, a registered voter must complete an Oath/Affirmation form affirming they have no other acceptable identification and a <u>Request For Initial Issuance Of Pennsylvania Department Of State ID For Voting Purposes form</u>. <p style="text-align: center;">✓ Information requested will include:</p>

Tom Corbett, Governor
Carol Aichele, Secretary of the Commonwealth

- A name
- Address
- Social Security Number
- Proof(s) of residence
- County
- Previous name and/or address if changed within the past 12 months

✓ **Voters who have registered within the past 30 days** will be able to indicate that by marking a box on the form.

➤ After confirming the voter's identity and voter registration with the Department of State, the registered voter will then be issued a FREE DEPARTMENT OF STATE PHOTO ID Card.

EXHIBIT B

**REQUEST FOR INITIAL ISSUANCE OF
PENNSYLVANIA DEPARTMENT OF STATE ID
FOR VOTING PURPOSES**

I am requesting a Pennsylvania Department of State ID for voting purposes because I am unable to obtain a non-driver's license photo identification card issued by the Pennsylvania Department of Transportation (PennDOT ID card) because I do not possess all of the documentation required to obtain a PennDOT ID card and cannot obtain the needed documentation, or cannot obtain the documentation without the payment of a fee.

Last Name:		First Name:		Middle Initial:	Suffix: <input type="checkbox"/> Jr. <input type="checkbox"/> Sr. <input type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV	
Date of Birth:	Sex: <input type="checkbox"/> M <input type="checkbox"/> F	Social Security Number:		<input type="checkbox"/> I HAVE NEVER been issued a Social Security Number.		
Street Address:			City:	State: PA	Zip Code:	
County Where You Live:			Mailing Address (if different than street address):			
Telephone Number:		Email Address:				

If your ADDRESS has changed within the last 12 months, please provide your PREVIOUS ADDRESS below.

Street Address:	City:	State:	Zip Code:
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If your NAME has changed within the last 12 months, please provide your PREVIOUS NAME below.

Last Name:	First Name:	Middle Initial:	Suffix: <input type="checkbox"/> Jr. <input type="checkbox"/> Sr. <input type="checkbox"/> II <input type="checkbox"/> III <input type="checkbox"/> IV
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Please check here if you registered to vote or changed your voter registration within the last 30 days.

By my signature below, I hereby:

- (1) State that I am the person whom I represent myself to be herein, and affirm that the information given on this form is true and accurate and made subject to the criminal penalties imposed by law for violation of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities);
- (2) Authorize the Pennsylvania Department of Transportation and the Pennsylvania Department of State to exchange information, including information concerning my Social Security Number, for purposes of confirming my Social Security Number and that I am a registered voter; and
- (3) Authorize the Pennsylvania Department of State to verify any information given, including verification with the Social Security Administration or the appropriate county board of elections, in order to issue me the Pennsylvania Department of State ID for voting purposes.

Date of Signing: _____ Signature of Voter: _____

OFFICIAL USE ONLY BELOW THIS LINE

DLC Site Number: _____

DLC Examiner Number: _____

SURE Registration Verified By: _____

Record Number Created: _____

SURE Voter ID Number: _____

Please check the TWO documents presented, which verify the NAME and CURRENT ADDRESS of the voter from the list below.

- Current Utility Bill Current Bank Statement Paycheck Government Check Tax Records W-2 Form
 Lease Agreement Mortgage Document Other

BASED ON THE DOCUMENTATION AND INFORMATION PROVIDED, THE VOTER IDENTIFIED ABOVE CANNOT BE ISSUED A PENNDOT ID CARD.

Date Processed: _____

By: _____

EXHIBIT C



News for Immediate Release

May 23, 2012

Secretary of Commonwealth Announces Simplified Method to Obtain Photo ID for Pennsylvania-Born Voters

Harrisburg – Secretary of the Commonwealth Carol Aichele today announced a new, simplified process for people born in Pennsylvania to get a non-driver photo ID card for voting purposes if they lack an acceptable alternative ID.

This innovative system, now in place, can certify the birth records of Pennsylvania natives without the need for them to purchase a duplicate birth certificate with a raised seal.

“At Governor Corbett’s direction, we continue working on quicker and easier ways for eligible voters to obtain photo IDs,” said Aichele, whose department oversees elections in Pennsylvania. “Working in collaboration with PennDOT and the Department of Health, we have developed an alternative, secure system for verifying the birth records of people born in Pennsylvania to help them obtain a photo ID for voting.”

Individuals must visit a PennDOT drivers license center and submit the necessary information. The information will then be forwarded to the Department of Health, which maintains birth records.

Once it is verified that the individual’s birth record is on file, applicants will be notified by mail when to pick up the non-driver photo ID card for voting purposes. The process, which is free, is expected to take about 10 days.

“The security measures protect the privacy of the person applying for the photo ID, and uphold the purpose of the voter ID law and help poll workers accurately verify the identity of every voter,” Aichele said.

Aichele commended the Department of Health and PennDOT for cooperating with the Department of State to develop this method of securely verifying birth records.

“Our voter ID law is intended to allow all eligible voters to cast ballots, but prevent those votes from being cancelled by illegally cast ballots,” Aichele added.

Anyone who purchased a Pennsylvania birth certificate for voter ID purposes after March 14, 2012, can apply for a refund by visiting one of the Pennsylvania Department of Health’s six regional offices. For more information, visit the www.health.state.pa.us, under the “Birth and Death Certificates” tab.

To be eligible for a refund, you must show proof that a birth certificate was purchased after the date the Voter ID law went into effect, as well as the photo ID obtained from PennDOT.

Anyone who holds a Pennsylvania driver's license or non-driver photo ID that has expired since 1990 does not need any proof of ID or residence to get a photo ID for voting. People need only give their name to a PennDOT customer service representative and indicate they have an expired license.

For identification issues, call PennDOT's customer care center at 1-800-932-4600.

Information on the voter ID law is available at www.votesPA.com, or by calling 1-877-VOTESPA (1-877-868-3772).

Media contact: Ron Ruman, 717-783-1621

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