

Commonwealth Court of Pennsylvania.

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

v.

The **COMMONWEALTH** of Pennsylvania; Thomas W. Corbett, in his capacity as Governor; Carole Aichele, in her capacity as Secretary of the Commonwealth, Respondents.

Decided Jan. 17, 2014.

MEMORANDUM OPINION

McGINLEY, Judge.

Determination on Declaratory Relief and Permanent Injunction

*1 Before me is Petitioners' amended petition for review challenging provisions of the Act of March 14, 2012, P.L. 195, No. 18 (Act 18 or “Voter ID Law”) amending the Pennsylvania Election Code (Election Code) to require photographic identification for in-person voting. Upon review of the evidentiary record compiled from prior hearings and a full trial on the permanent injunction, and considering the parties' written submissions, the Court concludes declaratory and permanent injunctive relief is in order. This opinion is premised upon the findings of fact and conclusions of law attached as Appendices A and B respectively.

I. Background

A. Procedural Overview

This saga began when Petitioners filed their initial petition for preliminary injunction and complaint for declaratory relief against Respondents in March 2012. This Court held several days of hearings on the preliminary injunction, The Honorable Robert E. Simpson presiding. After the hearing, Judge Simpson denied Petitioners' request for a preliminary injunction, and issued an opinion in support. He concluded the alleged harm in the numerous obstacles to obtaining identification from the Pennsylvania Department of Transportation (PennDOT) in accordance with the Voter ID Law would be remedied by Respondents' creation of a new form of free compliant photo identification, the Department of State (DOS) ID. The more detailed history set forth in the PI Opinion 2012 is hereby incorporated by reference.

Petitioners appealed to our Supreme Court, prior to the November 2012 Presidential Election. The Supreme Court vacated this Court's denial of a preliminary injunction and advised that the opinion appeared to be predicated upon a "predictive judgment" that did not account for exigencies in implementation, including distribution of the DOS ID. *Applewhite v. Com.*, — Pa. —, 54 A.3d 1 (2012) (*per curiam*) (*Applewhite II*). The Supreme Court remanded for this Court to hold a hearing regarding Respondents' implementation of the Voter ID Law, to assess whether the creation of the DOS ID protected against disenfranchisement and satisfied the "liberal access" compelled by the statute.

On remand, this Court then granted a limited preliminary injunction, holding the limited availability of the DOS ID, and relatively few voting IDs furnished as of the end of September 2012, did not satisfy liberal access. See Supplemental Determination on Application for Preliminary Injunction (filed Oct. 2, 2012), (Remand Opinion). Petitioners asked this Court to "enforce" its order and enjoin Respondents' education and marketing of the Voter ID Law. This Court declined. See Determination on Petition for Supplemental Injunction (filed Nov. 1, 2012)

In February 2013, Petitioners filed a four-count Amended Petition for Review (Amended Petition) challenging the constitutionality of the photo ID provisions of the Voter ID Law as violating the right to vote and equal protection. Petitioners also claimed Respondents' implementation violated the statute. Respondents preliminarily objected, alleging failure to state a claim, and challenging the standing of each of the individual petitioners.

*2 This Court decided the preliminary objections, dismissing all but two of the individual petitioners for lack of standing. See Opinion on Preliminary Objections, (filed May 24, 2013) (single judge op., Simpson, J.). The Court also granted Respondents' [request] to [dismiss] Petitioners' claim arising under Article VII, Section 1 of the Pennsylvania Constitution, setting the criteria for all qualified electors.^{FN4} *Id.*

FN4. "Qualified electors" are Pennsylvanians who satisfy the voting qualifications (regarding age, residency, status) set forth in the Pennsylvania Constitution. PA. CONST. art. VII, § 1.

The undersigned presided over two weeks of trial on the permanent injunction. I then granted a preliminary injunction on August 16, 2013, which remains in effect until final disposition of Petitioners' claims on the merits.

Petitioners seek [a judicial declaration that the Voter ID law is unconstitutional] and a permanent injunction [forbidding implementation of] the photographic identification (photo ID) provisions of the Voter ID Law.

In Count I, Petitioners allege the implementation of the photo ID provisions for in-person voting under the Voter ID Law does not comport with the liberal access to a PennDOT-issued ID the statute requires. In Count II, Petitioners aver the Voter ID Law

unduly burdens the fundamental right to vote, violating Article I, Section 5 of the Pennsylvania Constitution. In Count III, Petitioners allege the Voter ID Law violates the equal protection guarantees in Sections 1 and 26 of Article I of the Pennsylvania Constitution.

B. Summary of Salient Facts

Before enactment of the Voter ID Law, the only photo ID requirements pertained to those electors voting for the first time in an election district (first-time voters). See former Sections 1210(a)(1)-(7) of the Election Code, 25 P.S. § 3050(a)(1)-(7).^{FN7} In lieu of photo ID, the prior statute permitted electors to present one of several specified forms of non-photo ID that contained the elector's name and address, including a utility bill, paycheck, or government check. *Id.* These forms of identification mirror those listed in the Help America Vote Act (HAVA), 42 U.S.C. §§ 15301, *et seq.* (2002).

Pursuant to the [new] Voter ID Law, however, each elector who appears to vote must first present “proof of identification,” newly defined to require display of one of the specified forms of compliant photo ID listed in the definition.^{FN8} See Sections 102(z.5) and 1210(a) of the Election Code, 25 P.S. §§ 2602(z.5), 3050(a).

FN8. “Proof of identification” is defined in pertinent part, for an elector who appears to cast a vote in person under Section 1210 of the Election Code, 25 P.S. § 3050(a), as 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.

Section 102(z.5)(2) of the Election Code, 25 P.S. § 2602(z.5)(2) (added by Act 18). Electors who have religious objections to being photographed must use valid non-photo IDs issued by PennDOT, See Section 102(z.5)(1) of the Election Code, 25 P.S. § 2602(z.5)(1).

1. Voter ID Options

A brief introduction to the voter IDs Respondents created to implement the Voter ED Law, as well as the “alternate IDs” listed among those accepted for voting purposes (student IDs, care facility IDs and military IDs), forms the foundation.

a. PennDOT [Department of Transportation] Secure IDs

The Voter ID Law imposes an express duty upon PennDOT to issue non-driver IDs under Section 1510(b) of the Vehicle Code, 75 Pa.C.S. § 1510(b), without a fee, to registered electors (PennDOT Voting ID). See Section 206(b) of the Election Code, 25 P.S. § 2626(b). Pursuant to its regulations, PennDOT requires applicants for PennDOT-issued IDs to provide a series of identifying records, including a birth certificate with a raised seal, a Social Security card, and two proofs of residency.

*3 Because applicants must submit “supporting documentation” to qualify for PennDOT-issued IDs, (either a driver's license or a non-driver ID) they are deemed “secure” forms of identification (collectively PennDOT Secure IDs). *Id.* Due to the “rigorous” documentation prerequisites enforced, our Supreme Court has previously determined that a secure PennDOT Voting ID does not comport with the liberal access compelled by the statute. *Applewhite II*, — Pa. at —, 54 A.3d at 4.

b. DOS [Department of State] ID: the Free ID for Voting Purposes

[T]he DOS ID was designed to provide liberal access under Section 2(b) of the Voter ID Law where the PennDOT Voting ID did not. The DOS ID, valid for 10 years, may be used for voting purposes only. F.F. No. 124.

Unlike the secure PennDOT Voting ID the Legislature intended, the DOS ID does not require rigorous supporting documentation. Currently, in order to qualify for a DOS ID, an applicant must complete an application, which requests a Social Security number (SSN), and an affirmation form created by DOS. DOS also confirms an applicant is a registered elector according the Statewide Uniform Registry of Electors database (“SURE Database”) (Verification Requirement).

The supporting documentation required to verify identity has evolved since Respondents introduced the DOS ID during the summer of 2012. DOS requires all photos to be taken at PennDOT photo centers ^{FN11} located in 71 drivers licensing centers (DLCs) across the Commonwealth (DLC Location Requirement).

FN11. PennDOT photo centers use facial recognition software.

c. **“Alternate IDs”**

The Voter ID Law lists alternate types of identification that comply with the new photo ID requirement. These include student IDs issued by a Pennsylvania college or university, and IDs issued by Pennsylvania care facilities (personal care homes, nursing facilities and assisted living facilities). The Legislature included these institutions in the Voter ID Law as authorized sources for compliant IDs to address, in part, the difficulties the student population (young) and care facility-bound population (elderly and disabled) face in obtaining compliant ID to vote. Although the Voter ID Law lists these alternate IDs amongst acceptable compliant photo IDs, the statute imposes no duty upon either Pennsylvania-licensed care facilities or Pennsylvania colleges and universities to issue them.^{FN12}

FN12. Evidence suggests few care facilities actually issue ID. Also, typically, student IDs do not comply with the statute because they lack an expiration date; some schools use stickers instead.

*4 Military IDs, which do not always contain an expiration date, are also alternate IDs to which only certain targeted groups have meaningful access based on qualifying status (*i.e.*, as a current/former member of the military).

2. Pertinent Evidence *[omitted]*

II. Discussion

In the year that elapsed since this Court issued the Remand Opinion, acknowledging the frailty of the then existing implementation system, not much has changed. The issue presented to this Court is essentially that posed by our Supreme Court a year ago: whether Respondents' implementation efforts suffice to ensure liberal access to compliant photo ID as provided in the Voter ID Law and do not infringe on the right to vote guaranteed by the Pennsylvania Constitution.

Before reaching the merits of Petitioners' claims, as a preliminary matter, this Court addresses Respondents' claims that Petitioners lack standing, necessitating the dismissal of this action.

A. Procedural Challenge: Petitioners' Standing

.... Because Petitioners have standing, this Court denies Respondents' motion for nonsuit, and proceeds to review the merits of this action through the lens of the Supreme Court's prior admonitions to this Court to focus on implementation.

B. Merits of Substantive Claims

Petitioners seek to reinstate the previous requirements for proof of identification at the polls, a burden of compliance that applied equally to all electors. Electors were able to satisfy the prior proof of identification requirement with their voter registration card, or other non-photo government-issued ID, as well as copies of a current utility bill, gun permit, bank statement or government check or paycheck, in addition to photo ID.^{FN17}

FN17. Previously, first time voters could use a valid employee identification card, and non-photo identification that showed an elector's name and address, including a firearm permit, utility bill, paycheck, bank statement or government check.

Petitioners assert the photo ID provisions in the Voter ID Law violate the Pennsylvania Constitution under the clauses that secure the right to vote and equal protection of the laws. Building upon the legal foundation laid (and found sound) in *Applewhite II*, Petitioners emphasize that Respondents' implementation of the Voter ID Law does not comport with the liberal access to ID the statute requires. Petitioners also argue Respondents have not satisfied statutory or constitutional prerequisites of accessibility via the **DOS ID**.

1. Count I: Agency Implementation & Authority

In Count I of their Amended Petition, Petitioners allege Respondents fail to implement the Voter ID Law to comport with the liberal access to a PennDOT ID required by the Voter ID Law. Additionally, Petitioners challenge DOS' authority to issue the DOS ID, and hence the validity and reliability of the DOS ID itself.

Before examining whether the implementation of the DOS ID comports with liberal access, the Court must consider the legitimacy of the DOS ID as an agency construct implemented purportedly pursuant to the Voter ID Law.

a. Agency Authority

*9 The intended statutory mechanism for ensuring liberal access, Section 2(b) of the Voter ID Law, pertaining to issuance of a "free" photo ID, is not being implemented according to its terms.

....[The] Penn[sylvania] D[eartment] O[f] T[ransportation] is not "issuing" the free ID. Instead, it is the portal from which [the Pennsylvania] D[eartment] O[f] S[tate] distributes the aptly named "DOS ID." Name aside, the evidence establishes that the DOS ID is a DOS construct, and not a substitute form of PennDOT ID.... :

Thus, DOS assumed PennDOT's role of providing the free ID the Legislature envisioned as liberally accessible in Section 2(b). Crucial to its legitimacy, and conspicuously absent, is any underlying statutory authority for the DOS ID....

....By the plain terms of the Voter ID Law, DOS is authorized and empowered to educate the public regarding the new statutory photo ID requirements. DOS, through the Secretary, is also authorized to prepare and distribute the simple two-point affirmation

the statute sets forth regarding lack of compliant ID.

By contrast, DOS is *not* authorized to create the identification to be issued at no cost to any registered elector as set forth in Section 2(b) above. The DOS ID is not a statutory creation authorized by the Voter ID Law. Rather, it is an administrative one. As such, it must be within the administrative authority of its creator: DOS.

***10** This Court agrees with Petitioners that DOS lacks the requisite authority to issue the DOS ID to fulfill PennDOT's duties under the Voter ID Law.

Agency authority is limited to the powers granted by legislative enactment, either explicitly conferred or necessarily implied....

....In essence, by performing PennDOT's issuance obligation, DOS has rewritten the statute and undertaken extra-statutory powers. By disregarding its statutory delegation, DOS overstepped legislative constraints....

b. Agency Implementation

Respondents are not implementing the Voter ID Law in accordance with its liberal access policy—a prerequisite to constitutionality—because they imposed extra-statutory criteria to qualify for DOS IDs and failed to accurately educate electors. Further exacerbating the ‘rub,’ they do so without any accurate notice to electors, or any statutory or regulatory check on agency discretion....

[most further detailed discussion of the basis behind this conclusion is omitted...]

(iii) DLC Location Requirement

In contrast to 9,300 polling places, to obtain an ID for voting purposes, a qualified elector must overcome the barrier of transport and travel to one of PennDOT's 71 [offices] that have limited hours of operation.

In order to obtain a DOS ID, a qualified elector must appear in person at a PennDOT [office]. Five of the 71 [offices] are located in Philadelphia. Notably, there are no [offices] that offer photo ID in...nine (9) counties.... [Offices] are open only one day a week in [another] nine (9) counties.... [Offices] are open only two days per week...in [another] 13 counties.... These are primarily rural counties with reduced public transportation options.

This leaves about half of Pennsylvania without [offices] for five days a week, imposing a significant barrier to accessing the “free ID”—the only ID to which voters are statutorily entitled. Requiring electors who lack compliant photo ID, (and thus have no driver's license), to get to a DLC that may not be in their county, and may be several miles away and unreachable by public transport, is untenable. Compound that barrier by physical limitations, preventing certain electors from traveling or waiting in line, the DLC

Location Requirement becomes insurmountable. That is certainly the case for a number of qualified, proud in-person voting electors.

DOS was aware that certain voters would have difficulties getting to PennDOT [office]s, and conceded as much during the hearings and at trial. Despite anticipating this problem in advance, DOS did not engage mobile units or expand the locations for obtaining a DOS ID beyond PennDOT [office]s. Many voters are not able to travel to a DLC due to physical constraints, caused by age or disability.

***15** Presuming applicants are able to get to a D[OT office], their ordeal is just beginning. In addition to the difficulties inherent in transport during such limited hours, and with limited physical capabilities, PennDOT does not have designated employees to serve customers who come for free photo IDs for voting purposes. Therefore, when a person travels to one of the qualifying DLCs during the appropriate hours of operation, they wait amongst other PennDOT customers who appear for a number of varied services. Wait times are an additional barrier that must be endured by electors, exceeding 30 minutes in many cases, and for which PennDOT does not necessarily offer any accommodation.

PennDOT staff, who perform many varied services as customer service representatives, are not specifically trained to handle DOS ID applications. As a consequence, PennDOT employees have occasionally turned away electors when they did not have the documentation required for PennDOT Secure IDs, and mistakenly charged them \$13.50. Essentially, communication breaks down when an elector does not precisely ask for the DOS ID....

Because PennDOT is merely the conduit through which DOS is issuing the DOS ID, there is no legitimate basis to restrict the locus of access to PennDOT [office]s when there are so few and far between across the Commonwealth. The DLC Requirement causes delays and denials (some inadvertent) in issuing DOS IDs. Coordination between PennDOT and DOS—essential to an effective process with few “exceptions”—is disjointed.

In sum, Respondents' criteria for the DOS ID do not comport with liberal access. Other than the DLC Location Requirement, DOS has changed the criteria for issuing DOS IDs since first offering it as an option. Further complicating the matter, Respondents did not clearly educate the electorate about these changes in criteria and supporting documentation needed for a free voting ID. Ultimately, these ever-changing criteria for the DOS ID have undermined DOS' education efforts and resulted in inaccurate messages that confuse voters.

(2) Education Component: Inaccurate Messaging

Respondents have not implemented the statute so as to ensure liberal access by employing the educational tools at their disposal. This Court repeatedly refused to enjoin education efforts to permit Respondents a chance to perform the educational com-

ponent of their statutory mandate. Despite this latitude, DOS has made no effort to counter its prior misinformation campaign, or to educate voters as to a consistent process for obtaining free photo ID for voting purposes.

***16** Respondents created a culture of misinformation by initially portraying the DOS ID as the “ID of last resort,” such that all qualified electors would need supporting documentation to first attempt to obtain a secure PennDOT Voting ID....

....The probable effect of the direct mailing campaign was that the registered voters who lack compliant ID believed they needed supporting documentation to get it. Despite its inaccuracy, DOS defended the educational and marketing campaign because the ads and the mail directed the recipients to “learn more.”

The Court is wholly unconvinced that the onus for correcting the effects of DOS' misinformation rests on the voters. The statute imposes a duty upon Respondents to educate, not a duty upon electors to research. Respondents' position on “shared responsibility” rings hollow after Respondents fed misinformation to electors on numerous occasions, and accurate information is difficult to find.

Indeed, because DOS continued to change the criteria for the DOS ID, it has not consistently educated the public and has failed to perform its educational mandate under the statute. The result is voter confusion over which message is correct—the direct mail with the registered elector's name on it, or a generic television or radio ad. Once a registered elector receives instructions from the government, they are unlikely to take it upon themselves to “learn more.” The Court finds it unacceptable for Respondents to advance that expectation under these circumstances.

....In light of the unfairness engendered by misinformation and the extra-statutory barriers erected, Respondents' implementation is not in accordance with liberal access. The DOS ID does not remedy or excuse PennDOT's refusal to follow statutory mandates, and fails to satisfy liberal access. For all the foregoing reasons, Petitioners' requested relief is granted as to Count I.

2. Count II: Facial Challenge to Constitutionality

Petitioners also challenge the Voter ID Law on its face, arguing that it disenfranchises hundreds of thousands of qualified electors in violation of their right to vote as established in the Pennsylvania Constitution. As in any constitutionality dispute, Petitioners bear the burden of overcoming the presumption of constitutionality. “[A] statute will not be declared unconstitutional unless it *clearly, palpably, and plainly* violates the Constitution.” *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Com.*, 583 Pa. 275, 292, 877 A.2d 383, 393 (2005) (emphasis in original).

***18**Reviewing the Voter ID Law on its face, it does not pass constitutional muster because there is no legal, non-burdensome provision of a compliant photo ID to all qualified electors. As a constitutional prerequisite, any voter ID law must contain a mecha-

nism for ensuring liberal access to compliant photo IDs so that the requirement of photo ID does not disenfranchise valid voters. In other words, a state cannot require (A) proof of identification, (photo ID), without also mandating (B), the government provide the new proof of identification. Further, our Supreme Court held the provision of photo ID must “comport with liberal access.” The Voter ID Law lacks this requisite mechanism.

....Respondents candidly acknowledged that the Voter ID Law does not pass constitutional muster without the DOS ID....

Like a house of cards, everything rises and falls upon the legitimacy of the DOS ID. As analyzed above, the DOS ID is an unauthorized agency creation, and is difficult to obtain. Thus, the Voter ID Law does not contain, on its face, any valid non-burdensome means of providing compliant photo ID to qualified electors. Accordingly, the Voter ID Law is facially unconstitutional.

It is neither the task of this Court, nor of the administrative agencies charged with implementation to augment their authority in order to correct the Voter ID Law's obvious infirmities. Nevertheless, anticipating appellate review, taking a cue from our Supreme Court and presupposing validity of the DOS ID here found wanting, the Court assesses the constitutionality of the Voter ID Law.

a. Pennsylvanians' Right to Vote is Fundamental

The Commonwealth recognizes the right of suffrage as “fundamental” and “pervasive of other basic civil and political rights.” Pursuant to our state Constitution: “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” PA. CONST. art. I, § 5. Our Supreme Court has repeatedly held elections are free and equal under our Constitution:

***19** • when they are public and open to all **qualified electors** alike ... [;]

• when every voter has the same right as any other voter;

• when each voter under the law has the right to cast his ballot and have it honestly counted;

• when the regulation of the right to exercise the franchise does not deny the franchise itself[;] ... and[,]

• when no constitutional right of the **qualified elector** is subverted or denied....

In Pennsylvania, the right of qualified electors to vote is a fundamental one. At our democratic core, “the right of suffrage is the most treasured prerogative of citizenship” through which other rights flow, it “may not be impaired or infringed upon in any way except through the fault of the voter himself.”

Pennsylvania precedent does not permit regulation of the right to vote when such regulation denies the franchise, or “**make[s] it so difficult as to amount to a denial.**” (“The test is whether legislation denies the franchise, or renders its exercise so difficult and inconvenient as to amount to a denial”). Under the more lenient plainly legitimate sweep standard, Petitioners “need only demonstrate that a ‘substantial number’ of the challenged statute's potential applications are unconstitutional.” In the majority of its applications, the Voter ID Law renders Pennsylvania's fundamental right to vote so difficult to exercise as to cause *de facto* disenfranchisement.

To meet constitutional mandates, the Voter ID Law must not unnecessarily burden the franchise by requiring compliant photo ID. This means IDs must be reasonably accessible to qualified electors who attempt to obtain them. Rigorous supporting documentation requirements deny a minority of electors the means (photo ID) to vote. *Applewhite II*. Similarly, the [requirement to travel to a DOT office], entailing time, means of transport, and physical ability to travel to PennDOT, possibly on more than one occasion, where applicants may or may not receive a free voting ID, depending on agency lack of resources, burdens the franchise. These burdens are borne by all qualified electors who lack compliant photo ID.

***20** Hundreds of thousands of electors in Pennsylvania lack compliant photo ID. Alternate IDs do not alter these figures... These electors are subjected to the burdens Respondents erected to obtaining it at limited locations and during limited times, and run the real risk of improper denial of free voting ID given database inconsistencies and deficiencies. Enforcement of the Voter ID Law as to these electors has the effect of disenfranchising them through no fault of their own. Inescapably, the Voter ID Law infringes upon qualified electors' right to vote.

Accordingly, the Court analyzes the provisions of the Voter ID Law under strict scrutiny.^{FN25} Under a strict scrutiny analysis, “the burden is on the government to demonstrate that the law [infringing upon a fundamental right] is *narrowly tailored* to achieve a *compelling governmental interest.*” Respondents did not shoulder their heavy burden here.

FN25. Respondents assert strict scrutiny does not apply, citing Crawford v. Marion County Election Board, 553 U.S. 181 (2008). Crawford is inapposite to the facts and legal challenge here. In Crawford, the U.S. Supreme Court applied a rational basis test under the Equal Protection clause to the federal constitution, having determined that the statute did not jeopardize the right to vote. Also, there was insufficient evidence to indicate de facto disenfranchisement of qualified voters whereas the record here shows hundreds of thousands lack compliant photo ID.

Based on the comprehensive record before the Court, the provisions of the Voter ID Law as written would not in many respects survive rational basis review, i.e., expiration date, finite list of compliant IDs which excludes many photo IDs that the Commonwealth accepts as valid for other purpos-

es and programs, and suffice to confirm identity.

(1) Compelling State Interest

Respondents identified the integrity and reliability of the electoral process, and public confidence in the system as the state interest. Respondents stipulated that the reason was not predicated upon in-person voter fraud, and that there were no specific incidents of voter fraud underlying passage of the Voter ID Law....

Further, the Court credits Petitioners' expert in voter fraud that "in-person voter fraud in Pennsylvania is exceedingly rare."^{FN26} Certainly a vague concern about voter fraud does not rise to a level that justifies the burdens constructed here....

FN26. The Carter–Baker Report, which touches on voter fraud, recommended several types of identification, including non-photo IDs as in Section 1210(a) of the Election Code before Act 18 amended it.

Respondents' witnesses [only] testified as to their confidence in the integrity of the elections held to date, in which the photo ID requirement was not enforced. Thus, Respondents did not establish the compelling nature of this government interest. Lacking a compelling interest, Respondents are not able to successfully defend a statute that has the effect of disenfranchising those who lack compliant ID.

(2) Narrowly Tailored

***21** Respondents also failed to establish a nexus between photo identification—showing voters are who they say they are, and the integrity of elections—when prior elections accepted a number of types of proof to verify identity. The burdens the Voter ID Law entails are unnecessary and not narrowly tailored to serve a compelling governmental interest.^{FN27} And the record is rife with testimony from numerous Pennsylvania voters whose right to vote will be—and indeed already has been—denied or substantially and unnecessarily burdened by the Voter ID Law.

FN27. The statutory restriction mandating provision of free voting IDs only to registered as opposed to qualified electors also lacks a compelling justification.

The barriers to liberal access Respondents impose (Verification and [the r]equirement [to go to a Department of Transportation office]) and related logistical hurdles, also unreasonably burden the franchise. Again, these burdens preclude registered voters from obtaining compliant photo ID required (by in-person voting provisions of the Voter ID Law) for in-person voting, thus exacting disenfranchisement due to data entry error, incompatible information, communication break downs and inadequate transport, through no fault of the voter.

The Voter ID Law requires voters without driver's licenses to find a way to get to PennDOT [offices] when compliant photo IDs could feasibly be distributed at many other locations. Since PennDOT is not actually issuing the PennDOT Voting ID per Section

2(b) of the Voter ID Law, it is unreasonable to maintain [DOT office] exclusivity. Similarly, the Verification Requirement, which duplicates the DOS affirmation that PennDOT relies upon for its Voting ID, is unnecessary. Consequently, these burdens and inconveniences are not narrowly tailored to a state interest.

b. Unreasonable Restrictions

The Voter ID Law also unnecessarily restricts types of compliant photo ID to preclude IDs the Commonwealth and other government entities accept as proofs of identity. For example, employee IDs for school districts are not among the compliant photo IDs listed in the Voter ID Law. Neither are welfare cards (*id.*), or bus passes containing a picture. Gun permits are also not acceptable. Neither are drivers' licenses issued by another state, although they are current and valid to drive in Pennsylvania. These omissions show the Voter ID Law is unreasonable as enacted.

The alternate IDs are not a sufficient bandage to repair the shortfalls in the Voter ID Law. First, they are offered to discrete groups, students and the elderly. Second, the IDs, to the extent they are issued, are not necessarily compliant. The majority of Pennsylvania colleges and universities do not issue compliant IDs because student IDs generally lack expiration dates. To address this omission, for which the Voter ID Law did not allow, DOS urged colleges and universities to employ a sticker indicating an expiration date. Only some schools are issuing stickers, and some, including Penn State University, only issue the expiration sticker to new students, not the entire student body.

*22 With regard to care facility identification, the record evidence is scant. Respondents' witnesses admit they have not tracked the number of care facilities that issue photo ID. In fact, Respondents admitted the majority of care facilities do not issue photo IDs. *Id.*

Significantly, the Voter ID Law does not require any of these institutions to issue IDs to qualified electors, it only lists these types of IDs as among those that would be deemed acceptable at the polls (provided they have an expiration date).

To the extent the Voter ID Law requires photo ID to identify in-person voters at the polls, there is no reasonable basis for the ED to contain an expiration date. The photo on an expired ID would allow a poll worker to verify identification and ensure voters are who they say they are, so the expiration date seems obviously unnecessarily restrictive. Respondents concede the expiration date requirement is completely unrelated to confirming a voter's identity. This expiration date requirement alone rendered invalid over 250,000 PennDOT-issued ID cards of registered electors.

The Voter ID Law as written suggests a legislative disconnect from reality. For example, student IDs do not usually contain an expiration date. Retired military IDs also do not contain an expiration date, and Veteran's IDs do not indicate expiration. There is no need for them to do so.

Commonwealth IDs issued to state employees in the Executive and Judicial branch do not contain expiration dates; yet, they are acceptable and show that qualified voters are who they say they are. Expired government photo IDs still show voters are who they say they are. Thus, this restriction stated on the face of the Voter ID Law is unreasonable and unconnected to any legitimate state purpose.

c. No Safety Net or Adequate Patch for Vulnerable Populations

This litigation illuminated a significant problem for which there is no proffered adequate solution: the photo ID provisions of the Voter ID Law *de facto* disenfranchise hundreds of thousands of valid voters. Although Respondents attempted valiantly to develop a means of providing liberal access to compliant ID, the statute does not authorize one. The DOS ID, as explained above, is not in practice provided to all registered electors who affirm a need for it. Thus, a number of electors fall through this as purported “safety net.”

Inclusion of alternate IDs does not remediate the problem. Aside from being available only to specific populations, they are not guaranteed or actually available in practice. The only way these alternate IDs begin to address the unique needs and impairments attendant to populations young and old is if the institutions actually issue compliant photo IDs. The evidence shows that in the majority of cases, they either do not issue IDs at all, or issue them without an expiration date. Despite that only those care facilities licensed by DPW or DOH are authorized sources of ID, there was no evidence of coordination among agencies in the executive branch to mandate that care facilities create compliant IDs for their residents.

***23** In addition, the Voter ID Law, both as drafted and as implemented, does not cast a wide safety net, unlike sister states.... For example, Indiana permits electors to affirm registered status at the polls and cast a regular ballot based on the affirmation. Such a safety net prevents disenfranchisement.

Disenfranchising voters “through [no] fault of the voter himself” is plainly unconstitutional. Were the Voter ID Law in effect during the most recent November election, witnesses and registered electors Marian Baker, Mina Kanter–Pripstein, Patricia Norton and Catherine Howell, would not have been able to cast regular ballots.

Neither provisional nor absentee voting provisions protect the electors disenfranchised by the photo ID provisions. The provisional voting process fails to ensure the franchise to electors who lack photo ID unless they are also “indigent.” Indigence is a difficult, if not impossible status to profess, much less affirm under criminal penalties, when Respondents ostensibly provide “free” compliant photo ID. Absentee voting provisions, here unchallenged, also remain restricted to specific circumstances that do not apply to all electors lacking compliant photo ID.

Provisional votes are subject to challenge, unlike regular in-person votes cast. The right to vote embodied in our Constitution entitles every vote to be counted. Because

they are not counted on Election Day, and are subject to challenge, the ability for those without compliant photo IDs to cast provisional votes does not patch the problem presented by a photo ID requirement. Moreover, the provisional voting process is itself cumbersome.

***24**At the outset, Respondents asked this Court to start with the foundation that everyone who wants to get to PennDOT can, and anyone who wants ID can get it—that photo ID is commonplace and a fact of life. As the developed record shows the contrary, the Court rejects Respondents' predicate. This litigation concerns a right to vote to which every qualified Pennsylvanian elector, regardless of age, employment or socio-economic status, is entitled. The statute as intended assures entitlement to ID so that no one will be disenfranchised if they complete a simple, two-point self-effectuating affirmation. The statute as implemented, imperfectly and inaccurately, does not assure the franchise, it *de facto* denies it.

Thus, this Court holds that the photo ID provisions in the Voter ID Law violate the fundamental right to vote and unnecessarily burden the hundreds of thousands of electors who lack compliant photo ID. As the photo ID provisions are here determined to be invalid and constitutionally infirm on their face, it is unnecessary to address the as applied challenges.

For the above reasons, this Court permanently enjoins enforcement of the photo ID provisions, as to in-person voting as further set forth in the attached order. This Court also declares the photo ID provisions unconstitutional. Accordingly, the Court grants Petitioners' relief as to Count II.

3. Count III: Equal Protection Claim

Petitioners also claim the Voter ID Law violates the equal protection afforded by the Pennsylvania Constitution to all citizens of the Commonwealth. PA. CONST. art. I, §§ 1, 26.^{FN32}

FN32. Section 1, "Inherent rights of mankind," provides:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

PA. CONST. art. I, § 1. Section 26 (relating to discrimination) provides:

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

PA. CONST. art. I, § 26.

Equal protection under the Pennsylvania Constitution is coextensive with the Equal Protection Clause in the United States Constitution. "The equal protection provisions of

the Pennsylvania Constitution are analyzed ... under the same standards used by the United States Supreme Court when reviewing equal protection claims under the Fourteenth Amendment to the United States Constitution.”

....To substantiate an equal protection claim, Petitioners must show that a class of individuals received treatment different from other similarly-situated individuals, and that the disparate treatment is because of membership in a particular class. To warrant strict scrutiny analysis, they must also show intentional discrimination as to members of a protected class, and the “[a]ssertions of intentional disparate treatment must be supported by specific factual allegations.”

***25**There is little dispute that the burdens the Voter ID Law imposes weigh most heavily on the most vulnerable members of society. The statute itself recognizes the difficulties of certain groups attempting to obtain the requisite photo identification, indeed our Supreme Court acknowledged as much: “the elderly, disabled members of [the] community, and the financially disadvantaged.” *Applewhite II*, — Pa. at —, 54 A.3d at 4.

....Petitioners did not submit any evidence that all of the individuals lacking compliant ID belong to specially protected classes, or are singled out as subjects of discrimination other than for lacking ID. While the inherent statutory and constitutional flaws in the Voter ID Law, which are grounds for its invalidation as explained above, and may have disproportionate impact on particular groups, “that impact must be traceable to purposeful discrimination in order to be constitutionally invalid.” The Court has been presented with ^{FN33} and finds no evidence of such purposeful discrimination.

FN33. The House Majority Leader's unfortunate comments notwithstanding, (Note from Prof. Smith, this refers to the statement of _____), there is no evidence that the purpose behind the Voter ID Law was to disenfranchise minorities or persons who, along party lines, may be more inclined to vote for Democratic candidates.

***26**Petitioners assert there is no defensible rationale for distinguishing between qualified electors who have compliant photo ID and qualified electors who lack it, and thus suffer the burdens of obtaining it. However, federal case law applies as to an equal protection claim, *Erfer*, whereas it does not apply to a purely state constitutional claim as in Count II. Under federal precedent, the distinction between voters who lack compliant photo ID and those who have it commands only rational basis review, and does not violate equal protection. *Crawford*.

Therefore, the Court denies Petitioners the relief sought in Count III.

II. Conclusion & Verdict

Voting laws are designed to assure a free and fair election; the Voter ID Law does not further this goal. Further, a substantial threat still exists to the franchise of hundreds of thousands of registered electors, and uncounted qualified electors, despite Respondents' unfettered ability to continue, strengthen, and clarify voter education efforts and to

provide compliant ID to the hundreds of thousands of electors who lack it.

Petitioners established a clear right to relief from enforcement of the photo ID provisions in the Voter ID Law. The right to vote, fundamental in Pennsylvania, is irreplaceable, necessitating its protection before any deprivation occurs. Deprivation of the franchise is neither compensable nor reparable by after-the-fact legal remedies, necessitating injunctive and declaratory relief.

Petitioners also established “greater injury will result from refusing rather than granting the relief requested.” *Kuznik*, 902 A.2d at 504. Enjoining the provisions in the Voter ID Law that are seemingly incapable of being administered without resulting in *de facto* disenfranchisement preserves the integrity of our elections. By contrast, denying the requested relief would only add to the chaos in implementation and inaccurate messaging that has ensued since the statute's enactment and Respondents' inconsistent implementation.

Petitioners' request for permanent injunctive and declaratory relief is granted as to Counts I and II, and denied as to Count III in the Amended Petition. Based on the foregoing, this Court declares the Voter ID Law photo ID provisions and related implementation invalid, and enjoins these provisions.

[NOTE FROM PROFESSOR SMITH: The following extensive appendix of factual findings and legal conclusions is included so that you can, by skimming this, get a “bird’s eye view” of the length and detail of such predicates to trial judge decision making. YOU ARE NOT ASSIGNED TO READ THESE IN ANY DETAIL...]

APPENDIX A:

Findings of Fact

Background

1. The Act of March 14, 2012, P.L. 195, No. 18, (Act 18 or the Voter ID Law) amended the Election Code, requiring for the first time, with limited exception, that *all* qualified electors present one of the limited forms of compliant photographic identification (photo IDs) specified therein for in-person voting.

2. The Voter ID Law limits compliant “proof of identification” to photo IDs displaying an expiration date, that were issued by one of the following: (1) the U.S. Government, (2) the Commonwealth of Pennsylvania, (3) a municipality of Pennsylvania to an employee of that municipality, (4) an accredited Pennsylvania public or private institution of higher learning, or (5) a Pennsylvania licensed care facility. 25 P.S. § 2602(z.5)(2)(iv). To comply, the photo ID must show a name that “substantially conforms” to the name of the voter as it appears in voter registration records. 25 P.S. § 2602(z.5)(2)(i).

*28 3. These compliant photo IDs must also be valid with an expiration date that is unexpired, with the exception for photo identification issued by the Pennsylvania Department of Transportation (PennDOT), which may be expired for no more than 12 months by the time a qualified elector presents it.

4. Before enactment of the Voter ID Law, Pennsylvania did not require photo ID to vote. Voters signed the poll book, and generally were not required to show proof of identification to cast a vote in person. 25 P.S. § 3050(a.3)(amended 2012). Under the prior law, only electors voting for the first time in a new election district (first-time voters) were required to show identification, and both photo and non-photo forms of ID were acceptable. 25 P.S. § 1210(a.1) (amended 2012).

5. Non-photo IDs previously accepted included a utility bill, bank statement, gun permit, paycheck, or government check and any non-photo ID issued by either the Commonwealth or the United States, *id.*, mirroring federal law. A voter could also use her voter registration card, which every qualified elector who registers receives for free by mail, and which card can be replaced for free, by mail, at any time. Hr'g Tr., 7/17/13, at 509–11 (Marks).

6. As of 2002, the federal Help America Vote Act requires first-time voters to present these same proofs of identification, or other government document that shows a voter's name and address, in addition to current valid photo ID, with limited exemptions. See 42 U.S.C. § 15483(b).

7. Petitioners seek to reinstate the prior provisions of the Election Code that allow electors to use one of many types of proofs of identification previously permitted, only one of which is photo ID.

8. To date, the photo ID provisions of the Voter ID Law have not been enforced at the polls, Hr'g Tr., 7/17/13, at 505–06 (Marks); instead, there have been four “soft roll-outs” of the Voter ID Law: the May 2012 primary election, the November 2012 general election, the May 2013 primary election and the November 2013 general election. Hr'g Tr., 7/18/13, at 728 (Royer).

9. In the soft-rollouts, poll workers have been permitted to *ask* qualified electors to show compliant photo ID before casting a vote in person. See Supplemental Preliminary Injunction Order dated 10/2/2012 (2012 PI); Preliminary Injunction Order dated 8/16/13 (2013 PI).

10. The absentee provisions of Act 18 went into effect in November 2012, Hr'g Tr., 7/17/13, at 505 (Marks), and are not challenged by Petitioners.

11. In order to vote absentee, a qualified elector must be (1) in military service; (2) away on election day to attend to “duties, occupation or business”; (3) unable to attend the polling place “because of illness or physical disability” (supported by a doctor's name and address); (4) “a county employee who cannot vote due to duties on election

day relating to the conduct of the election;” (5) unable to attend the polling place “because of the observance of a religious holiday;” or (6) a “qualified war veteran elector who is bedridden or hospitalized due to illness or physical disability.” 25 P.S. §§ 2602(w), 3146.1; see also Hr’g Tr., 7/17/13, at 527–29 (Marks). A voter must submit an application to vote absentee by 5:00 p.m. on the Tuesday before the election is held. An emergency application can be filed until 5:00 p.m. the Friday before Election Day. After that, an absentee ballot is available only by court order. Hr’g Tr., 7/17/13, at 526–27 (Marks).

*29 12. When a qualified elector does not bring compliant photo ID to the polls, she may only submit a provisional ballot, 25 P.S. § 3050(a.2)(1), which is not counted on Election Day. Hr’g Tr., 7/12/12, at 576 (Wolosik). Provisional ballots are subject to challenge, and may not be counted for varied reasons unrelated to lack of compliant photo ID, including signatures that do not appear to match. *Id.*

13. Within six calendar days, to have a provisional ballot counted, a qualified elector must submit to the county election board either (1) a photo ID that would be acceptable for voting in person under the Voter ID Law, or (2) an affirmation that the voter is (a) “indigent” **and** (b) “unable to obtain [a compliant photo ID] without the payment of a fee.” 25 P.S. § 3050(a.4)(5)(ii)(D), (E) (emphasis added) (provisional voting indigency affirmation).

14. Neither the provisional ballot nor the absentee ballot process provides a guarantee that voters without a compliant photo ID will have their votes counted. Hr’g Tr., 7/22/13, at 1106–07 (Oyler).

15. The burden of compliance engendered by the prior and the current “proof of identification” requirements applies equally on its face to all electors. Hr’g Tr., 7/25/13, at 1635–36 (Marks).

16. The **only** form of compliant photo ID under the Voter ID Law to which voters are **entitled** by statute is the PennDOT non-driver ID under Section 1510(b) of the Vehicle Code, 75 Pa.C.S. § 1510(b) (PennDOT Voting ID).

17. Nothing in the Voter ID Law requires any college or university or care facility in Pennsylvania to begin issuing compliant photo IDs to students or otherwise, so voters have no right to demand these alternate IDs, Hr’g Tr., 7/22/13, at 1075–76 (Oyler), and DOS has no authority to require any care facility or any college or university to issue compliant photo IDs under the statute. Hr’g Tr., 7/17/13, at 515–16 (Marks).

Parties

Petitioners & Standing

18. Petitioners are comprised of individual petitioners, Bea Bookler and Wilola Shinholster Lee (Individual Petitioners), and organizations, the League of Women Voters of Pennsylvania (LWV), the National Association for the Advancement of Colored People, Pennsylvania State Conference, (NAACP) and the Homeless Advocacy Project

(HAP) (collectively, Organizational Petitioners).

19. One of the primary goals of each of the Organizational Petitioners is voter education, and assisting qualified electors in obtaining appropriate identification for voting purposes.

20. Members of the LWV and the NAACP testified regarding the diversion and waste of resources in voter education programs based on changing and inaccurate messaging regarding the types of compliant photo IDs, and requirements to obtain same. *See, e.g.*, Hr'g Tr., 8/1/12, at 1176, 1178–80 (Thorne).

21. Before enactment of the Voter ID Law, the Civic Engagement Project within the NAACP planned to focus “strictly on voter registration, voter mobilization [,] voter protection ... [and] voter education,” with a goal of registering 25,000 Pennsylvanians. Hr'g Tr., 7/31/12, at 1127 (Jordan). Registration was its primary focus, particularly in a Presidential Election year.

***30** 22. The Voter ID Law required the NAACP to undertake a variety of activities such that it diverted significant resources toward educating the public on the statute, including by conducting clinics and working with colleges and universities. *Id.* at 1135 (Jordan). This diversion of resources was exacerbated by Respondents' constant evolution of criteria for the PennDOT Voting ID and other compliant IDs, which caused confusion and misinformation. *Id.* at 1131–32 (“by the time we get something printed up we have to go back to the drawing board and print it up, but that original information is still out there”).

23. The mission of LWV is to assist people in being informed citizens and active participants in the voting process. Hr'g Tr., 8/1/12, at 1168–69 (Thorne).

24. The Voter ID Law required the LWV to undertake a variety of activities in order to fulfill its organizational mission. The LWV's voter services activities in response to the Law have “consumed much more time and effort and more extensive outreach than [the LWV] normally do[es] on a given day.” Hr'g Tr., 7/23/13, at 1206 (Carry). As a result of the Voter ID Law, the LWV wasted valuable resources marketing and educating on the requirements for compliant photo ID, which turned out to be inaccurate, and impairing its reputation for voter outreach. Hr'g Tr., 8/1/12, at 1182–83 (Thorne).

25. Individual Petitioners are registered electors who lack compliant photo ID to vote in person and experience barriers to obtaining compliant photo ID from PennDOT. Both Individual Petitioners can access their polling places that are relatively close, but would have difficulty getting to PennDOT. Hr'g Tr., 7/25/12, at 75–76, 86(Lee); Hr'g Tr., 7/30/12, at 949–53, 955 (Bookler).

26. Petitioner Lee, born out of state, never had a PennDOT ID; she has attempted to obtain an original birth certificate to obtain a PennDOT ID for 12 years without success, at considerable effort and expense. Hr'g Tr., 7/25/12, at 82(Lee). She has had a number

of photo IDs, including one from the Department of Public Welfare used to obtain welfare benefits and one issued by the Philadelphia Board of Education for serving on the board, none of which satisfy the Voter ID Law. *Id.* at 78.

27. Petitioner Lee's plight in obtaining documentation necessary for a secure PennDOT Voting ID is representative of former petitioners and other qualified electors for whom obtaining a birth certificate and a Social Security card is arduous. See, e.g., Ana Gonzalez, Pet'rs' Ex. 6; Stanley Garrett, Pet'rs' Ex. 8.

28. Bea Bookler is elderly, frail, with very limited mobility, significantly impairing her ability to get to PennDOT. Hr'g Tr., 7/30/12, at 949–53 (Bookler). She does not possess the requisite documentation to obtain a PennDOT Voting ED. *Id.*

29. The Court finds that many elderly qualified electors share the same plight as Petitioner Bookler, who is representative of the barriers the Voter ID Law imposes on the elderly and infirm who are unable to travel to PennDOT, and have no other available reliable means of obtaining compliant photo ID from PennDOT. See transcript references in F.F. No. 30 *infra*.

*31 30. This Court finds Petitioners' fact witnesses credible regarding the difficulty in obtaining compliant photo ID from PennDOT locations as elderly and disabled qualified electors. Hr'g Tr., 7/15/13, at 80–82, 88 (cannot drive, trouble walking, does not use public transport as her leg may collapse) (Pripstein); at 55, 61 (uses walker, not usually leave home, cannot get to PennDOT or use public transportation because she cannot stand in lines, and cannot walk to or from bus stop) (Baker); Hr'g Tr., 7/16/13, at 224 (directed to wrong PennDOT, PennDOT DLC over an hour away) (Pennington); Pet'rs' 1430a, Dep. Tr., 6/26/13, at 6–8, 14–17 (Norton) (uses wheelchair, does not travel often, physical disabilities prevent her from driving); Pet'rs' Ex. 1427, Dep. Tr., 6/27/13, at 6–10 (Howell) (cannot drive, uses a wheelchair or walker, and travel is difficult). Specifically, this Court finds Marian Baker, Mina Kanter–Pripstein, Margaret Pennington, David Proctor, Patricia Norton, and Catherine Howell credible and reliable. However, unlike these other witnesses, since David Proctor admitted resistance to obtaining photo ID from PennDOT, this Court cannot find he did not have a role in his potential disenfranchisement. Hr'g Tr., 7/22/13, at 984 (Proctor).

31. There is no competent evidence that Petitioner Bookler resides in a licensed care facility that issues a compliant photo ID that would obviate the necessity of her traveling to, and waiting in customer lines at a PennDOT location.

32. Not all elderly electors are able to vote absentee because unlike other states, (e.g., Georgia), voting absentee is not allowed to all seniors. Voters may prefer to vote in person to assure their vote is counted. See, e.g., Hr'g Tr., 7/15/13, at 57 (Baker).

Respondent Witnesses & Agencies

33. The Bureau of Commissions, Elections and Legislation (BCEL) is a division of the Department of State (DOS) that administers the Election Code, and the Statewide

Uniform Registry of Electors (“SURE”) database, elections, and voter registration. Hr’g Tr., 7/25/13, at 1623–25 (Marks).

34. The Secretary of the Commonwealth, Carol Aichele (Secretary), has been charged with implementation of the Election Code and the Voter ID Law. Amended Petition for Review, ¶ 75. The Governor directs DOS and other Commonwealth agencies in his jurisdiction, including PDA, DPW, DOH and Department of Labor & Industry on photo ID. Hr’g Tr., 7/31/12, at 1026 (Aichele).

35. Jonathan Marks (Marks) has been the Commissioner of BCEL since October 2011, and was the Chief of the SURE Database System from May 2008 until he became Commissioner. Hr’g Tr., 7/17/13, at 504–05 (Marks).

36. David Burgess, Deputy Secretary for Planning and Service Delivery at DOS, oversees DOS’ technology including the SURE Database. Hr’g Tr., 7/30/12, at 895–96 (Burgess). Primarily, his testimony pertained to the data elements in SURE and DOS’ intention for implementation as of summer 2012. *Id.* at 899–912.

*32 37. Megan Sweeney (Sweeney) a Special Assistant to the Secretary responsible for the project plan in implementing Act 18. Hr’g Tr., 7/30/13, at 1807, 1810 (Sweeney). In spring 2012, Sweeney took over this role from Rebecca Oyler (Oyler), former Policy Director, who was the prior point person for voter ID on behalf of DOS as the bill proceeded through the legislative process and a liaison to the Governor’s office. *Id.* at 1810; Hr’g Tr., 7/22/13, at 1119–20 (Oyler).

38. Primarily, Sweeney’s testimony concerned efforts to educate the public regarding the new requirements under the Voter ID Law, and her role in coordinating with other state agencies and community organizations to promote education. Hr’g Tr., 7/30/13, at 1811–12 (Sweeney).

39. The Court finds the testimony of the Secretary, Marks, Burgess, Sweeney, and Oyler credible. This Court credits the testimony of Marks and Oyler based on their knowledge and demeanor to the extent any testimony conflicts.

40. The Court did not entirely credit the testimony of Shannon Royer, (Royer), Deputy Secretary for DOS, given his demeanor. In the event of conflicts in testimony, the Court deferred to other witnesses.

41. PennDOT is responsible for issuance of driver’s licenses, registrations, titling, safety and emissions inspections, insurance, and oversight of dealers. Hr’g Tr., 7/24/13, at 1299–1300 (Myers).

42. DOS has coordinated with PennDOT as to election-related issues since the 1990s; most of these efforts are documented through various memoranda of understanding. Hr’g Tr., 7/18/13, at 711–12 (Royer); Resp’ts’ Ex. 4 (MOU 8/15/12).

43. DOS does not exercise control over PennDOT, and has no independent access to PennDOT information, including information PennDOT obtains through its ID programs; DOS must request identifying information. Hr'g Tr., 7/30/12, at 917 (Burgess).

44. Significant to this case, PennDOT issues driver's licenses and non-drivers' identification cards (collectively, PennDOT Secure IDs) in accordance with its duties under 75 Pa.C.S. § 1510(b). To obtain PennDOT Secure IDs, applicants are required to provide thorough "supporting documentation," including a birth certificate with a raised seal, a Social Security card, and two proofs of residency. Hr'g Tr., 7/24/13, at 1319–21 (Myers); Hr'g Tr., 9/27/12, at 543 (Myers); Hr'g Tr., 7/27/12, at 728–29 (Myers).

45. Section 2(b) of the Voter ID Law requires PennDOT to issue a PennDOT non-driver ID "at no cost" to "any registered elector" who signs an affirmation "that [1] the elector does not possess proof of identification as defined in [the Voter ID Law] and [2] requires proof of identification for voting purposes." Section 206(b) of the Election Code, 25 P.S. § 2626(b). If a voter signs this affirmation, PennDOT must give the voter the free PennDOT Voting ID, "[n]otwithstanding" that under Section 1510(b) of the Vehicle Code, PennDOT normally requires applicants to provide certain supporting documentation and pay a fee of \$13.50. *Applewhite v. Com.*, —Pa. —, —, 54 A.3d 1, 4 (2012) (*per curiam*) (*Applewhite II*).

*33 46. Although Section 2(b) of the Voter ID Law requires PennDOT to issue compliant photo ID to all qualified electors for free, when a registered elector affirms she does not have identification and needs it for voting purposes, PennDOT is not implementing the statute by its terms, and requires additional documentation. Hr'g Tr., 7/30/12, at 770–71 (Marks); Hr'g Tr., 7/31/12, at 1012 (Aichele).

47. Kurt Myers (Myers) is the Deputy Secretary for the Safety Administration at PennDOT. Meyers has worked at PennDOT for fifteen years and has served as Deputy Secretary since 2007. Hr'g Tr., 7/24/13, at 1299 (Myers); Hr'g Tr., 9/25/12, at 103 (Myers).

48. Laverne Collins (Collins), the Director of Bureau of Public Transport for six years, and a 30–year PennDOT employee, testified regarding the ShareRide Program and Shared Ride Service that is administered by local public transportation.

49. Unless otherwise indicated, the Court finds the testimony of Myers and Collins credible. Scott Shenk, Director of Driver Licensing who maintains the PennDOT databases that contain driver and non-driver information, and researched PennDOT databases at DOS' request for certain information, Hr'g Tr., 7/24/13, at 1353, 1362–66 (Myers), and conveyed errors or glitches in the process to DOS, Hr'g Tr., 9/25/12, at 43–45 (Myers), did not testify.

Scope of Need

50. PennDOT data reflects there are approximately 8.8 million current licensed drivers in Pennsylvania. Hr'g Tr., 7/24/13, at 1300 (Myers). In addition, PennDOT has is-

sued approximately one million current non-driver's identification cards in Pennsylvania, for a total of approximately 9.8 million current PennDOT Secure IDs. *Id.* at 1300–01.

51. In 2012, PennDOT provided identifying information, including dates of birth, Social Security numbers, (SSNs), and addresses, to DOS so that it could “match” the roughly 8.2 million records in the SURE database against the approximately 9.5 million records of holders of PennDOT IDs. Hr'g Tr. 7/18/13, at 667; 7/30/13, at 1747 (Marks).

52. Respondents represented the primary purpose of the match was to supply the drivers' license and SSNs in PennDOT's database to the SURE Database which lacked that information for a significant number of records. Hr'g Tr., 7/18/13, at 743–44 (Royer); Hr'g Tr., 7/25/13, at 1640 (Marks); Hr'g Tr. 7/30/12 at 897 (Burgess) (less than half of registered electors). These identifiers are used in the absentee voting provisions for identification.

53. In June 2012, DOS used the information PennDOT provided and conducted a computerized match of the PennDOT and SURE databases and identified more than **1.4 million** registered voters with no compliant photo ID from PennDOT valid for voting under the Voter ID Law in the November 2012 election. Hr'g Tr. 7/17/13, at 536–39 (Marks); Hr'g Tr. 7/30/12, at 899, 910–11 (Burgess).

54. This total included almost **759,000** voters with no ID from PennDOT, (a 9% non-match rate which indicates 9% of registered electors lack a PennDOT ID) and another 574,630 voters with an ID from PennDOT that was expired or would be expired beyond the 12-month timeframe permitted for in-person voting on Election Day in November 2012 (2012 Database Match). Hr'g Tr. 7/30/12, at 775–77 (Marks); Hr'g Tr. 7/30/12, at 909–10 (Burgess).

***34** 55. DOS' 2012 Database Match identified another 130,189 voters in the SURE database with PennDOT ID numbers that did not match the PennDOT ID numbers in the PennDOT database, indicating data discrepancies. Hr'g Tr. 7/30/12, at 907–08 (Burgess).

56. Although data back-filling was the stated purpose of the 2012 Database Match, DOS used the match results to govern its action and outreach to the approximately 759,000 registered electors (9%) who did not appear to have PennDOT Secure IDs. Resp'ts' Ex. 43; Hr'g Tr. 7/18/13, at 746–47 (Royer).

57. At a February 25, 2013 hearing before the Senate Appropriations Committee, Secretary Aichele similarly testified that while Respondents have no estimate of their own, an “interesting study” recently found that 3.5% of actual in-person voters at the November 2012 election in Philadelphia had no compliant photo ID under the Voter ID Law. Hr'g Tr. 7/22/13, at 1137–38; Pet'rs' Ex. 1529 (video of C. Aichele).

58. Based on the 5.5 million total in-person voters in that presidential election year, (see Resp'ts' Ex. 233, excel spreadsheet), extrapolating that 3.5% statewide indicates

that 192,000 in-person voters, who appeared at the polls, would not have had compliant photo ID.

59. As part of her legislative analysis of the Voter ID Law prior to its enactment, then Policy Director for DOS, Rebecca Oyler, performed a rough estimate, within 24 hours, to assess the budget impact of issuing free IDs. Hr'g Tr., 7/26/12, at 480–81 (Oyler); Pet'rs' Ex. 21. She estimated the number of registered electors who lacked compliant photo ID constituted about 1%, which equated to 89,000 registered electors who would not have had valid ID to vote in November 2012.

60. In her more recent testimony, Oyler estimated that the number exceeds her initial estimate, and is more likely between 4–5% of registered electors who lack compliant photo ID, putting the number at between 320,000–400,000. Hr'g Tr., 7/22/13, at 1020–21 (Oyler).

61. This Court credits the accuracy of the more updated estimate over Oyler's initial estimate.

62. In part, DOS declined to perform another database match between the SURE and PennDOT databases in 2013 for the trial because it was expected the updated comparison “would yield a similar result” as the June 2012 match. Hr'g Tr., 7/18/13, at 788–89 (Royer).

63. A year after DOS conducted its database match, Petitioners' statistics expert, Dr. Bernard Siskin, performed a more extensive (but far more conservative) analysis than that conducted in 2012 to compare the records in the SURE and PennDOT databases to determine how many people who were registered to vote either lacked a PennDOT ID or had a PennDOT ID that had expired as of November 5, 2012 (2013 Database Match). Hr'g Tr., 7/16/13, at 116–17 (Siskin).

64. Since the 2012 Database Match, Respondents did not engage an expert to conduct another database match, or to otherwise approximate the number or percentage of registered electors who lack compliant photo ID.

*35 65. After getting the same 91% match/9% non-match rate as Respondents from his first three matching steps, Dr. Siskin added 9 additional matching steps to very conservatively identify **511,415** registered voters with no compliant ID from PennDOT. Hr'g Tr., 7/16/13, at 132 (Siskin); Pet'rs' Exs.2096a at 5, 2096b at Table 1. This includes 251,879 voters with no ID from PennDOT, and an additional 259,536 voters with an ID from PennDOT that will be more than 12 months expired (and thus noncompliant) in November 2013. Hr'g Tr., 7/16/13, at 132–133 (Siskin); Pet'rs' Ex.2096a at 4–5; 2096b at Table 1. Among these 511,415 voters, 143,046 voted in the November 2012 election. Hr'g Tr., 7/16/13, at 140 (Siskin); Pet'rs' Ex.2096b at 6. Based on these findings, Dr. Siskin concluded that “hundreds of thousands” of registered voters lack a compliant photo ID from PennDOT for voting. Pet'rs' Ex.2096a at 4.

66. Dr. Siskin further performed a human audit of the results of the 2013 Database Match, which involved manually searching for both false matches (voters for whom the computerized search said there is a match when in fact there really is not a match) and false non-matches (voters for whom the computerized search said there is not a match but there really is a match). Hr'g Tr., 7/16/13, at 152–62, 260–61 (Siskin); Pet'rs' Ex.2096e. Based on this audit, Dr. Siskin's computerized match produced more false matches than false non-matches, indicating that Dr. Siskin's estimate of 511,415 registered electors with no compliant ID from PennDOT is likely understated. *Id.* at 162; Pet'rs' Ex.2096e.

67. Dr. Siskin identified 259,536 voters who have expired IDs from PennDOT that could be used to vote but for the expiration date requirement in the Voter ID Law. Hr'g Tr., 7/16/13, at 132–33; Pet'rs' Exs.2096a at 4–5, 2096b at Table 1.

68. This Court finds Dr. Siskin competent and credible to offer testimony regarding the gap between the registered electors who possess compliant photo ID in the form of PennDOT Secure IDs for voting or DOS IDs, (which are captured in PennDOT's database), and those who lack these types of compliant photo ID.

69. The 2012 Database Match and 2013 Database Match are necessarily limited to *registered* electors, not qualified electors who meet the constitutional criteria for voting in Article VII, Section 1 of the Pennsylvania Constitution.

70. Exclusively to rebut Dr. Siskin's analysis, Respondents proffered Dr. William Wecker as their expert. Hr'g Tr., 7/25/13, at 1444–48 (Wecker). Dr. Wecker was asked only to refute Dr. Siskin's work; he was never asked to estimate the number of people who lack compliant photo ID. *Id.* at 1488, 1498.

71. Dr. Wecker's methodology, which relied on the varied distances from colleges/universities, care facilities and military bases, is not competent or relevant to show the number of persons who may obtain alternate IDs to those available at PennDOT. There is no indication that Dr. Wecker's circle drawing method is generally accepted in the industry. Hr'g Tr., 7/16/13, at 177, 181–83 (Siskin). Indeed, this Court finds that such locations do not correlate to individuals who qualify for alternate IDs listed in the Voter ID Law (military, student or care facility IDs). Dr. Wecker did not account for the restrictions inherent in these alternate IDs that are reserved to qualifying populations.

*36 72. Based on his flawed and assumption-laden methodology, which this Court rejects, Dr. Wecker claimed to identify 18,217 voters aged 65 and over living in the area of a care facility eligible to issue compliant photo ID, 48,046 voters aged 18 to 28 living in the area of a college or university eligible to issue compliant photo ID, and 2,547 voters living in the area of a military base where supposedly photo ID is required. Resp'ts' Ex. 224a at 5–6; Hr'g Tr., 7/25/13, at 1537, 1562–63, 1582 (Wecker). Assuming all 68,810 of those voters were unique voters and actually correlate to a college/university, care facility, or military base that issues compliant photo ID for voting under the statute (which assumptions are unwarranted), that leaves **442,605** voters (out of the 511,415

identified by Dr. Siskin) without any form of compliant photo ID for the November 2012 election.

73. In sum, this Court is persuaded by Dr. Siskin's testimony that "the disparity that we are seeing from the [PennDOT] IDs is not reasonably going to be explainable or attributable to [the] likelihood that people have [these alternate] IDs." Hr'g Tr., 7/16/13, at 188 (Siskin).

74. Professor Matthew Barreto performed a telephone survey in the summer of 2012 to assess public knowledge and possession of compliant photo IDs. The survey was conducted prior to introduction of the DOS ID or the marketing blitz after Labor Day 2012, and thus does not account for issuance of voting IDs since the summer of 2012. This Court raised concerns about the survey methodology and corresponding results, particularly in light of the response rate.

75. Dr. David Marker, an expert for Petitioners in surveys and statistics used in public policy, evaluated Professor Barreto's work to address methodological concerns raised in the Court's August 15, 2012 decision initially denying a preliminary injunction. Hr'g Tr., 7/17/13, at 383–84 (Marker); Pet'rs' Ex.2097a at 2. He is employed by Westat, one of the largest data collectors for the federal government, using statistical sampling and representative surveys to extrapolate to a larger group. *Id.* at 368. His research is relied upon for making policy decisions. He explained it is fairly standard in the field to review other experts' surveys to assess whether they are well-designed or well-executed. Hr'g Tr., 7/17/13, at 378. Dr. Marker did not assess Professor Barreto's questionnaire. *Id.* at 433.

76. Dr. David Marker's testimony assuaged this Court's concerns regarding survey design and methodology, and Professor Barreto's survey is to that extent rehabilitated. Dr. Marker concluded that Professor Barreto's survey was reasonably designed and conducted according to the reasonable standards and procedures of a public opinion survey. Hr'g Tr., 7/17/13, at 386 (Marker). Accordingly, Dr. Marker had a high degree of confidence in Professor Barreto's survey results and that those results further corroborate that hundreds of thousands of voters lack a compliant ID. *Id.* at 412; Pet'rs' Ex.2097a at 6–7.

*37 77. Dr. Marker explained that the survey techniques, including the survey's response rates, oversampling, and stratification adjustments, are the hallmarks of a well-designed and reliable survey. *Id.* at 405. Professor Barreto's use of those techniques is not a basis to doubt the survey results.

78. The survey found that only about **0.6% of registered voters**, or about 49,462 voters, do not have an ID from PennDOT but have some alternate form of compliant photo ID for voting. Hr'g Tr., 7/26/12, at 356 (Barreto); Pet'rs' Ex. 18 at 37. The survey results showed 89.3% have valid PennDOT IDs, 8.8% of which are expired; however, the percentage falls when considering name conformity. Dr. Marker testified that the fact that additional colleges may have started issuing compliant photo IDs for voting since

the time of Professor Barreto's survey has little impact on the number of registered voters with a compliant photo ID. Hr'g Tr., 7/17/13, at 409–410 (Marker); Pet'rs' Ex.2097a at 6. Based on his analysis of the U.S. National Center for Education Statistics and the raw survey data from Professor Barreto, Dr. Marker concluded that the survey's findings continue to establish “that the vast majority of voters who lack a PennDOT ID also lack another form of acceptable ID.” Pet'rs' Ex.2097a at 7.

79. Dr. Marker concluded that “probably about between 600[,000] and 800,000” lack compliant ID, including student IDs. Hr'g Tr., 7/17/13, at 405–06 (Marker). However, as a rough estimate, it is afforded little weight.

80. Dr. Markers' testimony is credited and he is accepted as an expert to the extent he rehabilitated Professor Barreto's survey, and rendered his own analysis using the raw survey data.

81. The estimated percentage of registered electors who lack a PennDOT ID is important because it shows that not all electors who are registered (and thus have an interest in and right to vote), have compliant ID, and thus would need a viable mechanism for obtaining compliant ID. These numbers roughly represent the audience that DOS and PennDOT would need to target with education efforts and to whom PennDOT would be statutorily mandated to provide free compliant photo ID. However, these figures do not capture the full picture because registered electors do not equate to “qualified” electors who have not yet registered.

82. Given the relative consistency between Dr. Marker's results and those of Dr. Wecker (without crediting his methods), the Court is confident that the availability of alternate IDs (student ID, care facility ID, military) does not meet the need for compliant photo ID in Pennsylvania.

83. Alternate IDs are only capable of satisfying compliant photo ID needs of discrete populations for whom they are designed. Hr'g Tr., 7/31/12, at 1012 (Aichele).

84. It is not typical for care facilities in Pennsylvania to issue photo IDs to their residents, Pet'rs' Ex. 1562 at 3–4; Hr'g Tr., 7/24/13, at 1270–71 (O'Donnell), and in any event not all elderly and disabled voters live in care facilities. *Id.* at 1271. Respondents have not tracked how many care facilities issue ID. Hr'g Tr., 7/22/13, at 1115 (Oyler); Hr'g Tr., 7/30/13, at 1850 (Sweeney).

***38** 85. Dozens of colleges and universities still do not issue photo IDs that are valid to cast an in-person vote under the Voter ID Law. Resp'ts' Ex. 137 (showing student IDs lack expiration dates; some use stickers); Hr'g Tr., 7/31/12, at 986 (Aichele) (“fewer colleges in Pennsylvania used expiration dates than we expected. In fact, a small percentage used expiration dates”).

SURE Database Reliability

86. The SURE Database contains data from the “legacy” voter registration systems used by each of the 67 counties. Comprised of approximately 15 million records, including cancelled voters, it contains more than 8 million registered voters. Hr'g Tr., 7/18/13, at 658–59 (Marks).

87. Records in the SURE Database go back to the 1940s and 1950s, and reflect each county's different data recording practices. That each county maintained its own data produced anomalies based on how the counties maintained their records. Hr'g Tr., 7/25/13, at 1640–42 (Marks). This presents an obstacle to the uniformity of data collection sought to be achieved in SURE Database.

88. There are three general statuses in the SURE Database: active, inactive, and cancelled. Hr'g Tr., 7/30/13, at 1662–63 (Marks).

89. Voter registration rolls reflected in the SURE Database are managed through annual list maintenance, required by both federal and state law.

90. Status changes may be triggered notices of address changes through the National Change of Address program. Counties that receive such notices are required to mail out notices to the voters requesting an updated address. H.T. (Marks) at 1647–48. Depending on the response, a voter may be placed in inactive status. If the voter still does not respond after the second general election for federal office, the voter is “cancelled.” Hr'g Tr., 7/18/13, at 588–90 (Marks). A five-year mailing, sent to anyone who has not voted or otherwise updated their registration record for five years, also triggers status changes. *Id.* at 591–93. If an affirmative response shows that the voter has moved out of state or has died, the voter is cancelled; otherwise, two federal election cycles have to pass before the voter is cancelled, a nine-year process. Hr'g Tr., 7/25/13, at 1644–46 (Marks).

91. Cancelled voters are “invalid” and do not appear in poll books. *Id.*

92. Deceased voters are generally identified when reported to the Department of Health (DOH). DOH records of deceased voters are backlogged by several months which can total tens of thousands of records. The information comes in electronic batches. *Id.*

93. The County Boards of Elections are responsible for verifying voter registration forms, checking for duplicates, and entering SSNs into the SURE Database. Hr'g Tr., 7/18/13, at 715 (Royer); Hr'g Tr., 7/17/13, at 538 (Marks).

94. There is a lag time for some County Boards of Elections, especially the larger counties, between the time an application for voter registration is received and the time that it is processed. Hr'g Tr., 7/17/13, at 568–569 (Marks).

***39** 95. Registration backlogs, of two to three weeks, and more, are more pronounced in election years and in Pennsylvania's most populous counties, Philadelphia

and Allegheny. Hr'g Tr., 7/17/13, at 568–69 (Marks).

96. PennDOT customers can apply to register to vote at PennDOT locations either electronically or in paper. Hr'g Tr., 7/24/13, at 1313–14 (Myers). When applying for a PennDOT Secure product, an applicant can complete an electronic voter registration form. However, when applying for a DOS ID, the application must be completed on a paper form which results in delays and possible data entry errors. Hr'g Tr., 9/25/12, at 100–01 (Myers); see also Hr'g Tr., 7/25/13, at 1628–29 (Marks).

97. These applications called “motor voter applications” are transmitted from PennDOT to the DOS which are disseminated to the counties in batches so county employees may enter the data into the SURE Database. Hr'g Tr., 7/25/13, at 1644 (Marks). As DOS employees do not enter the data, the transmission of the applications to the counties adds to their delayed data-entry. *Id.*

98. The SURE Database contains at least 130,189 invalid driver's license numbers, likely due to data entry errors. Hr'g Tr., 7/30/12, at 907–09 (Burgess). Also, SSNs are missing for approximately 748,000 registered voters. Hr'g Tr., 7/16/13, at 131 (Siskin); Pet'rs' Ex.2096a at 10 n.9.

99. Dr. Wecker testified it is erroneous to rely on the SURE Database because it does not actually correspond to real Pennsylvania voters for the following reasons: (1) information obtained from the DOH, Vital Statistics is back-logged so information regarding deceased voters is outdated; (2) Database is not current as to out-of-state migration; and, (3) many records are missing data. Hr'g Tr. 7/25/13, at 1454–63 (Wecker).

Agency Roles and Responsibility

100. DOS does not have sole responsibility for administering elections in the Commonwealth, Hr'g Tr., 7/18/13, at 715 (Royer); DOS cooperates with the 67 County Boards of Elections in administering elections.

101. DOS generally has no authority over the counties or local election officials. Hr'g Tr., 7/30/13, at 1722 (Marks); Hr'g Tr., 7/22/13, at 1000–01 (Oyler) (counties are inconsistent in following DOS “requests”); 7/26/12, at 460 (Oyler) (DOS lacks authority to define substantially conforms for counties).

102. The counties select polling places, train local elections officials, and are responsible for voting systems. Counties have general responsibility for the local election districts and polling locations, and are responsible for the voting systems. Hr'g Tr., 7/25/13, at 1627–1628 (Marks).

103. Although county poll workers are “the ones administering the election on the election day in the field,” they are not required to attend any training to perform their functions. Hr'g Tr., 7/27/12, at 549–50 (Royer)

104. Generally, communications to poll workers originate from the counties. For the

first time, before the 2012 election, DOS sent a poll worker's education guide (Resp'ts' Ex. 78), directly to county poll workers. *Id.* The goal was to provide a primer on the Voter ID Law and to indicate the sorts of identification the poll worker might see. Hr'g Tr., 7/25/13, at 1634–35, 1670–72 (Marks).

*40 105. DOS must comply with the federal government on certain election administration requirements, Hr'g Tr., 7/18/13, at 715 (Royer), and federal statutes have impacted Pennsylvania's course of elections, including the National Voter Registration Act (“NVRA”), 42 U.S.C. § 1973gg, *et seq.*, the Help America Vote Act (“HAVA”), 42 U.S.C. § 15301, *et seq.*, the Voting Accessibility for Elderly and Handicapped Act (“VAEH”), 42 U.S.C. § 1973ee-1, *et seq.*, the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*, and the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. § 1973ff, *et seq.*

106. Alternative ballots are exclusively used to comply with federal law for persons that are 65 and disabled voters who are assigned to an inaccessible polling place. Hr'g Tr., 7/17/13, at 530 (Marks). The VAEH requires accessible polling places and accessible voting machines. *Id.* at 1630–1631.

107. In the Voter ID Law, absentee ballots request the same information that is set forth in HAVA—a drivers' license number or the last four digits of a SSN. If neither is available, a copy of photo ID is required.

108. UOCAVA is a federal law enacted to protect voting rights of military voters and their spouses, dependents and overseas civilian voters. The SURE Database identifies applications for absentee ballots under UOCAVA as MIL (military) or OCV (overseas civilian voter). Hr'g Tr., 7/25/13, at 1632 (Marks).

109. UMOVA is a state law that augments the UOCAVA protections by including hospitalized or bedridden veterans as covered persons. *Id.*

110. The Voter ID Law has two indigency provisions which require two separate affirmations. Counties have been instructed to have the affirmations at the polling place so voters do not need to bring them; counties have been instructed to place the affirmations with the provisional ballot inside the envelope and marked accordingly. Hr'g Tr., 7/25/13, at 1633 (Marks).

111. Counties have been instructed to accept indigency affirmations, which are self-reporting, at face value. Hr'g Tr., 7/25/13, at 1634 (Marks); 7/30/13, at 1723–24 (Marks). However, indigency affirmations are subject to challenge. *Id.* That voting IDs are available for “free” impairs an elector's ability to affirm he cannot obtain photo ID without payment of a fee. Hr'g Tr., 7/17/13, at 521–22 (Marks) (“very difficult” to sign indigency affirmation).

112. Because the terms “indigent” and “substantially conforms” are not defined in the Voter ID Law, it is left to the counties' discretion to apply those terms. Hr'g Tr. 7/22/13,

at 1098–99 (Oyler).

Implementation: 2 Parts

113. Under the Voter ID Law, DOS' role is limited to education regarding the statute and compliant identification thereunder. Sections 2(a) and 2(c) of the Voter ID Law.

114. However, because PennDOT refused to implement Section 2(b) of the Voter ID Law in accordance with its terms, in July 2012 Respondents developed “a new, non-secure Department of State identification card [(DOS ID)],” intended to be universally available, only at PennDOT DLCs without the rigorous supporting documentation requirements applicable to PennDOT Secure IDs. *Applewhite II*, 617 Pa. 563, 54 A.3d at 4; see also Hr'g Tr., 7/17/13, at 552–57 (Marks); Hr'g Tr. 7/24/13, at 1329–30 (Myers); Resp'ts' Ex. 120; Pet'rs' Ex. 20.

(1) Issuance of IDs

*41 115. The DOS ID is a DOS creation, issued by DOS through PennDOT DLCs. Hr'g Tr. 7/24/13, at 1329–30 (Myers); Hr'g Tr. 7/30/12, at 825–26 (Marks) (DOS can change criteria for DOS ID at any time); Hr'g Tr. 7/31/12, at 994 (Aichele) (PennDOT wanted DOS to issue DOS ID because it is not a “secure” ID).

PennDOT Secure IDs

116. PennDOT Secure IDs are not liberally accessible because the process requires documentation certain qualified electors do not have and, particularly when born out of state, are unable to obtain. Hr'g Tr., 7/25/12, at 82(Lee); Hr'g Tr., 7/25/12, at 205 (Ludt); see also *Applewhite II*.

117. Veronica Ludt, Legal Director of Face-to-Face, low income human services organization supervised by HAP, explained voters are placed in a catch-22 where they need photo ID in order to obtain an original birth certificate or Social Security card, which they need for PennDOT Secure ID. Hr'g Tr., 7/27/12 at 207, 209 (Ludt). The Court accepted Attorney Ludt's testimony as an “expert in barriers affecting low-income people's ability to obtain legal identification .” *Id.* at 205.

118. Obtaining a raised seal birth certificate limits access for out-of-state born qualified electors, and also adds potentially significant cost. These barriers are inconsistent with the legislative intent that the ID for voting purposes be liberally accessible.

119. For native-born Pennsylvanians, PennDOT communicates with DOH to confirm a birth record, so the original need not be produced. However, this process requires an applicant to make two trips to a DLC. Hr'g Tr., 7/27/12, at 692–93 (Myers); Hr'g Tr., 9/25/12, at 32 (Myers) (delay of 7–10 days).

120. Until February 2013, PennDOT strictly applied the “expired for less than a year” requirement for PennDOT Secure IDs as of the date of an application for a DOS ID, not the date of an upcoming election. That means, if a voter had a PennDOT Secure ID that was expired less than a year, but that would be expired *more* than a year by the date of

the next election, PennDOT refused to process an application for a DOS ID. Hr'g Tr., 7/17/13, at 573–74 (Marks). Thus, qualified electors were required to wait until their ID was expired more than a year and then return to PennDOT. For example, Preston Cobb, a wheelchair-bound voter with cerebral palsy whose PennDOT non-driver ID expired October 31, 2011, (and thus would not be valid to vote in November 2012), spent nearly 3 1/2 hours at PennDOT in late September 2012 to get a free voter ID but was refused because his existing ID was not expired more than a year. Hr'g Tr., 9/27/12, at 364–75 (Cobb).

121. PennDOT issues PennDOT Voting IDs to applicants without supporting documentation provided they appear in the PennDOT database, which generally goes back to 1990. Hr'g Tr., 7/26/12, at 466 (Oyler).

122. PennDOT erroneously charged electors who wanted a free voting ID \$13.50 for a PennDOT Secure ID, which resulted in some refunds. Hr'g Tr., 9/25/12, at 55–56 (Myers). Electors need to specify they want an ID for voting or otherwise indicate that it should be free because PennDOT employees do not ask that precise question. Hr'g Tr., 7/24/13, at 1417–23 (Myers) (“shared responsibility” rather than onus on PennDOT to provide proper product). Similar miscommunications occurred as to the DOS ID.

DOS ID

*42 123. DOS IDs are good for 10 years and are valid for voting purposes only. Hr'g Tr., 7/27/12, at 553 (Royer); see Resp'ts' Ex. 3, 5, 19(FAQ); 20 (Kotula memo).

124. DOS officials, in their discretion, decide the requirements for voters to obtain a DOS ID, including the application process, its content and its distribution to only confirmed registered electors. Hr'g Tr., 7/24/13, at 1329 (Myers).

125. Nothing in the Voter ID Law requires PennDOT to offer the DOS ID, and Respondents submitted no evidence establishing that DOS controls PennDOT's activities in that regard. *Id.* at 1330.

126. DOS passed no regulations regarding the process for obtaining the DOS ID, Hr'g Tr., 7/18/13, at 576 (Myers), and DOS could change the rules for issuance at any time. Hr'g Tr., 7/30/12, at 825–26 (Marks).

127. Since first deployed on August 27, 2012, DOS has repeatedly changed the process for obtaining a DOS ID. Hr'g Tr., 7/24/13, at 1329 (Myers). DOS made the decisions regarding the process, criteria, the form, and the affirmation. *Id.* Each time, DOS has reduced the supporting documentation criteria to lessen the barrier. However, the DOS ID has always been available only at PennDOT DLCs (DLC Location Requirement) as Respondents believe the statute requires it. Hr'g Tr. 7/22/13, at 1007 (Oyler) (“statute clearly references PennDOT as the provider”).

Prior Process: Exhaustion Requirement

128. Initially, the DOS ID was the ID of last resort, and applicants for DOS ID had to

first submit all of the necessary supporting documentation and attempt to qualify for a PennDOT Secure ID before PennDOT would begin the DOS ID application process. Hr'g Tr., 9/25/12, at 25–27 (Myers). The process for the Secure ID required the customer to present supporting documentation, (Social Security card, a raised-seal birth certificate, and two forms of address verification). This is referred to as the “exhaustion requirement.” *Id.* at 26–27; Hr'g Tr., 7/17/13, at 558–560 (Marks). The prior process required customers who did not have a confirmed birth certificate in Pennsylvania, or raised-seal birth certificate to visit a PennDOT DLC twice. Hr'g Tr., 9/25/12, at 31–32 (Myers).

129. After our Supreme Court held this process did not comport with the liberal access the statute required, DOS amended the DOS ID process in order to eliminate the “exhaustion requirement.” Hr'g Tr., 7/18/13, at 711–712, 713, 742 (Royer); Hr'g Tr., 7/17/12, at 558–60 (Marks); Hr'g Tr., 7/27/13, at 709 (Myers).

130. For prior applicants, who unsuccessfully attempted to obtain compliant photo ID because they lacked a raised-seal birth certificate, PennDOT sent letters instructing them to return to PennDOT to obtain a DOS ID. Hr'g Tr., 9/25/12, at 32–33 (Myers).

131. Until September 25, 2012, Respondents also required applicants for a DOS ID to provide two proofs of residency. Hr'g Tr., 9/25/12, at 47 (Myers); Hr'g Tr., 7/17/13, at 560–62 (Marks).

Current Process: Verification Requirement

*43 132. After eliminating the exhaustion requirement, on September 25, 2012, DOS began implementing a new process that did not require electors to bring supporting documentation. Theoretically, the new process would allow a qualified elector, whose registration was “verified” to leave PennDOT with a DOS ID on the same day the applicant made the trip to the DLC for that purpose. Hr'g Tr., 9/25/12, at 80–81, 83 (Myers); see also Pet'rs' 225, Resp'ts' Ex. 74 (September 24, 2012 version of Application for Initial Issuance).

133. As of the close of evidence, PennDOT was required to contact DOS by telephone so DOS “help-desk” staff could verify that an applicant's name appears in the SURE Database (Verification Requirement) as a requisite to obtaining a DOS ID. Hr'g Tr., 7/17/13, at 564–65 (Marks). DOS' “help-desk” is staffed by 4–5 employees who handle inquiries from 67 counties by telephone and email, Hr'g Tr., 7/30/12, at 918 (Burgess). DOS deemed a staff of 5 sufficient “since the [DOS] card is [the] card of last resort.” *Id.* at 938.

134. Because PennDOT employees do not have access to the SURE Database, they need to telephone DOS employees and wait for help-desk staff to become available. Hr'g Tr., 7/30/12, at 917 (Burgess). Although in 2012 DOS planned for PennDOT to connect directly to the SURE Database electronically, *id.* at 922, this did not transpire as of a year later, see Hr'g Tr., 7/24/13, at 1402 (Myers). An electronic process to confirm registration for a DOS ID, as opposed to the current manual one, is still desired because

the hours of operation between the two agencies differ, as PennDOT has some DLCs open past regular business hours. *Id.* at 1402–03.

135. As part of the verification process, DOS compares the last four digits of the individual's Social Security number, first and last name, and date of birth with the Social Security Administration's database. Hr'g Tr., 9/25/12, at 207 (Marks). If there was no match, further investigation may be required.

136. For voters who registered since HAVA came into effect in 2002, the counties have verified the applicant's Social Security number or driver's license number pursuant to HAVA. Hr'g Tr., 9/25/12, at 222–23 (Marks). Before 2002, more than half of the registered electors lacked a SSN or driver's license number in the SURE Database. Hr'g Tr., 7/30/12, at 897 (Burgess).

137. Respondents changed their procedures on September 25, 2012 for applicants whose registration could not be verified in the SURE Database: PennDOT is supposed to (1) take the applicant's photo and create their DOS ID card; (2) have the applicant fill out a voter registration mail application; and, (3) mail the DOS ID and registration application, along with an “exceptions form” describing the problem to DOS. Hr'g Tr., 7/17/13, at 570–72 (Marks).

138. DOS and PennDOT share a database to track the voters who traveled to a proper PennDOT location and applied for a DOS ID but were not given a DOS ID while there, referred to as “exceptions.” Hr'g Tr., 7/18/13, at 596–97 (Marks); Pet'rs' Ex. 2136 (excel sheet showing Sharepoint Database).

***44** 139. The Sharepoint Database was intended to track ID cards issued by PennDOT but not delivered because registration was not yet verified on an applicant's first trip to PennDOT. Hr'g Tr., 7/18/13, at 619–20; 7/30/13, at 1762–64, 1767 (Marks). The reason for the exception is often, but not always, stated in Sharepoint. See Pet'rs Ex. 2136.

140. PennDOT turned away a significant percentage of voters who traveled to PennDOT and applied for a DOS ID once it became available in September 2012, in part due to flaws in the verification process. Hr'g Tr., 7/18/13, at 615–16 (Marks); see *also* Sharepoint Database. Based on the Sharepoint Database, “exceptions,” between 13% and 22% of applicants have been unable to obtain a DOS ID at PennDOT since September 25, 2012. Hr'g Tr., 7/18/13, at 615–16 (Marks). The number of “exceptions” recorded was 507 or 508 (out of 2,255 DOS IDs), *id.* at 619, showing the Verification Requirement effectively delays, if not denies, ID issuance, and illustrates that issuance of DOS IDs under the DLC Location Requirement unnecessarily complicates the process for more than 1/5 of applicants.

141. The Verification Requirement is flawed in assuring the registered status of electors because it presumes the accuracy and completeness of the information in the SURE Database.

142. Respondents' evidence shows the information in the SURE Database does not reflect the current registration status of qualified electors: information is backlogged, as registrations are not recorded timely; information is not accurate and/or consistent with regard to elector status, addresses, and death records; and, the information is incomplete as certain information is missing, see F.F. Nos. 92, 94–96, 98, 99 above (*e.g.*, 130,189 invalid driver's license numbers).

143. The SURE Database also has acknowledged inherent limitations as far as currentness and non-conformity of names and identifying numbers, some of which may be data-entry related, as far as backlogs and typos. Hr'g Tr. 7/25/13, at 1454–63 (Wecker); Hr'g Tr., 7/30/12, at 897, 930 (Burgess) (fat-fingering); see F.F. No. 98.

144. Despite these acknowledged limitations and inaccuracies, Respondents defend their additional Verification Requirement as an appropriate means of determining entitlement, and potentially denying access, to a DOS ID.

145. Respondents conceded that if the Voter ID Law had been in effect for the November 2012 election, a number of duly registered voters would have been disenfranchised because they were wrongfully refused a DOS ID at PennDOT. Hr'g Tr., 8/1/13, at 2015 (Respondents' counsel representation). Depending on the accuracy of the Sharepoint Database, somewhere from 56 to 128 valid voters (*i.e.*, registered in time to vote in November 2012) went to PennDOT to get a DOS ID before the November 2012 election, but received the ID either after election day or not at all. Pet'rs' Ex. 2136 ¶¶ 6, 10. “[I]f the [Voter] ID Law had in fact been in effect last year, those ... duly registered voters would not have been able to cast a regular ballot on Election Day.” Hr'g Tr., 7/18/13, at 646 (Marks).

***45** 146. During trial, it became clear that a number of the “exceptions” recorded in Sharepoint appear there by mistake, based on some miscommunication between PennDOT and DOS, or PennDOT staff errors. Hr'g Tr., 7/18/13, at 614–15, 624 (Marks); Hr'g Tr., 7/24/13, at 1349–50 (Myers). PennDOT advised DOS that 50 of 194 exceptions properly represented applicants for DOS IDs, whereas 144 did not pertain to voting IDs. The Court concludes that 144 of those 500+ recorded, more likely than not, should not have been put in Sharepoint in the first instance, and reflect PennDOT's staff's errors and misunderstanding about the DOS ID issuance process. Given the total number of exceptions, any dispute over the precise number of erroneously recorded exceptions is relevant only insofar as it underscores the dysfunction in Respondents' procedures for issuing DOS IDs and the likelihood of miscommunication when the process is undertaken by two agencies that do not share access to the same information.

147. Because DOS could not identify which electors appeared on Sharepoint erroneously, (as they were not properly in the DOS ID process), in an abundance of caution, it issued letters instructing applicants to return to PennDOT to get the DOS ID, in some cases as many as five months later. Hr'g Tr., 7/18/13, at 624–26 (Marks). This resulted in some electors receiving inaccurate instructions. After September 25, 2012, DOS sent

letters to at least 26 applicants instructing them to return to PennDOT for a DOS ID, even though this burden was to have been eliminated as of September 25, 2012. Pet'rs' Ex. 2136 ¶ 7; Hr'g Tr., 7/18/13, at 629–30 (Marks) (confirming that under the current process, a third of the applicants who could not be verified right away, were told they were required to return, necessitating another trip to PennDOT).

148. These problems occurred during Respondents' current implementation, in effect since September 25, 2012, during which time only about **2,530 voters** applied for a DOS ID at PennDOT. Respondents' procedures for issuing DOS IDs remain far from “seamless” and do not assure “no voter disenfranchisement,” or “liberal access” as our Supreme Court directed. *Applewhite II*.

149. The DOS ID sent to DOS results in a search by Sharepoint that automatically searches the SURE Database each day to ascertain whether the applicant has become registered to vote. Using truncated name information, Sharepoint locates records that could be possible matches. In some instances there are multiple records that are possible matches; in others, only one might be found. If only one is found, the database would automatically show the status for voter registration as “True.” Hr'g Tr., 7/18/13, at 603–06 (Marks). If one is not found, Sharepoint notes the status as “False,” which requires more investigation. *Id.*

150. After the Sharepoint Database identifies potential matches, DOS staff review the potential matches to ascertain whether an applicant is registered. Hr'g Tr., 7/18/13, at 610 (Marks). Some applicants require additional research for a number of reasons, including discrepancies in surnames (e.g., maiden name). DOS undertakes this investigation into the voter record, which may involve contacting the applicant. There is no timeframe within which an investigation must be completed, and some have taken months such that electors would not have been able to vote in November 2012 had the Voter ID Law photo ID provisions been enforced. *Id.* at 621 (52% of those in Sharepoint, which recorded DOS ID applications since September 2012, had not received a DOS ID); see Pet'rs' Ex. 2136 (delivery dates).

*46 151. Once DOS is able to verify an applicant is registered to vote, DOS sends the applicant a DOS ID via UPS ground delivery so it can track the package. Hr'g Tr., 7/30/13, at 1677–78 (Marks).

152. For registered electors who lack compliant photo ID, their right to vote now depends on how DOS and PennDOT employees choose on a case-by-case basis to exercise their discretion in issuing DOS IDs, and depends on the broader discretion of DOS in continuing to offer the DOS ID and setting its requirements.

153. No voter has a legal entitlement (a) to obtain a DOS ID, (b) to contest any denial of a DOS ID, or (c) to challenge any change to the requirements for, or the elimination of, the DOS ID. *Applewhite II*, 617 Pa. 563, 54 A.3d at 6–7 (McCaffery, J., dissenting op.); Hr'g Tr., 7/17/13 at 556–57, 574–76 (Marks).

154. As a result of these requirements, (exhaustion, residency, verification) numerous qualified electors who were able to sign the two-point declaration set forth in the Voter ID Law were denied a DOS ID. These requirements contradict liberal access and are barriers to obtaining a free ID for voting purposes.

155. The Verification Requirement exceeds the two-point affirmation set forth in the Voter ID Law, and is unnecessary given the affirmation content.

156. That PennDOT relies on the two-point affirmation required by the statute to confirm registered status to issue a secure PennDOT Voting ID, Hr'g Tr., 7/30/13, at 1727–28 (Marks), underscores the lack of necessity for the Verification Requirement for the DOS ID.

157. Verifying registration through the SURE Database is not reliable and frustrates the liberal access to which qualified electors are entitled.

158. The requirement to show two proofs of residency also exceeded the two-point affirmation requirement. *Applewhite II*; Hr'g Tr., 7/17/13, at 563–64 (Marks); Hr'g Tr., 9/25/12, at 83–84 (Myers).

159. DOS' implementation of the DOS ID, which imposes requirements beyond the statutory two-point affirmation, does not satisfy “liberal access,” and thus does not serve its purpose. Hr'g Tr., 7/18/13, at 622 (Marks).

PennDOT DLC Requirement

160. To obtain a DOS ID, a qualified elector must appear in person at a PennDOT DLC that has a photo center. Hr'g Tr. 7/24/13, at 1311 (Myers).

161. Although PennDOT also has 28 or 29 standalone photo centers capable of taking photos for renewals, *Id.* at 1311–12, 1427, standalone photo centers, do not have the capacity to issue IDs. Hr'g Tr. 7/24/13, at 1426–27 (Myers); Hr'g Tr. 7/27/12, at 702 (Myers).

162. There are 71 DLCs, with varying hours of operation. See Pet'rs' Ex. 25 (PennDOT DLC Stipulation). Locations are not defined by county borders. Hr'g Tr. 7/24/13, at 1306–07 (Myers); Pet'rs' Ex. 26 (map depiction of DLCs).

163. Five DLCs are located in Philadelphia. See Pet'rs' Ex. 25, at B.

164. Notably, there are *no* DLCs that offer photo ID in the following nine (9) counties: Cameron, Clinton, Forest, Fulton, Juniata, Montour, Perry, Sullivan and Union. *DLCs are open only one day a week* in the following 13 counties: Columbia, Clarion, Wayne, Huntingdon, Carbon, Mifflin, Pike, Bradford, Susquehanna, Northumberland, Wyoming, Greene and Tioga. *DLCs are only open two days per week* in the following nine (9) counties: Armstrong, Potter, Bedford, McKean, Indiana Jefferson, Venango, Elk and Warren. See PennDOT DLC Stipulation; Hr'g Tr., 7/24/13, at 1399–1401 (Myers).

*47 165. The areas with the fewest DLCs, that are open infrequently, are primarily located in rural counties with reduced public transportation options. Hr'g Tr., 7/31/12, at 1080 (Jarrell); Hr'g Tr., 7/31/12, at 1092–93 (Horn); Hr'g Tr., 7/31/12, at 1104–06 (Tosti-Vasey).

166. In contrast, there are almost 9,300 polling places where voters in every city, town, and borough in Pennsylvania can cast their ballots. Resp'ts' Ex. 152; Hr'g Tr., 7/30/13, at 1692 (Marks). The nine counties with no PennPOT DLC have from nine to 33 polling places. *Id.* at 1693–97.

167. Polling places are established pursuant to the Election Code, 25 P.S. §§ 2726–2731, and according to priority: municipal or public buildings within the municipality; schools; and private establishments. Hr'g Tr., 7/30/13, at 1624–25 (Marks).

168. For registered qualified electors without a compliant PennDOT driver's license, PennDOT non-driver IP, or DOS IP for voting, the average driving distance to a DLC is 14.11 miles. Pet'rs' Ex.2096b; Hr'g Tr., 7/16/13, at 211–12 (Siskin). More than one in five of these voters must travel more than 20 miles to get to a DLC and more than one in 10 must travel more than 30 miles. *Id.* at 213–14.

169. The difficulty imposed in requiring qualified electors to travel to one of PennDOT's 71 DLCs versus one of 9,300 polling places is illustrated by the hypothetical Petitioners' counsel presented using Jonathan Marks. He lives in Perry County that has no DLCs, but lives a city block from his polling place. The requirement of visiting a PennDOT DLC in order to apply for a DOS IP is to drive an hour to Elizabethtown (the closest DLC to his residence), or take a ferry, on Thursday, the only day that DLC issues IDs.

170. The Court recognizes that this hypothetical illustrates potential barriers the DLC Location Requirement imposes, but offers an incomplete picture since Marks has a driver's license, no physical infirmity or disability impeding travel, and thus would be able to transport himself the hour in travel time there, and the hour back, to and from the DLC. Many individuals do not have driving privileges, and so would be presented with more than the burden of travel and wait times. See F.F. No. 30 *supra*; see, e.g., Video Dep. Hr'g Tr., 6/26/13, at 23 (Patricia Norton video testimony played during 7/15/13 hearing).

171. This Court finds the travel barriers and wait times at PennDOT DLCs impose a burden on the franchise and frustrate liberal access.

172. DOS conceded travel to PennDOT constitutes a burden. Hr'g Tr., 7/31/12, (Aichele) (transportation is an issue); Pet'rs' Ex. 1559 at 2; see also Pet'rs' Ex. 1562 at 4 (concluding that certain voters would be unable to get to PennDOT because of “illness or disability”); Pet'rs' Ex. 1677 at 3 (concluding that some “elector[s] may not be well enough to go to PennDOT ... to get a new ID” and would be “deprived the right to vote”). They also concluded that “some people may not be able to get an ID without significant

costs to get to a [PennDOT] center.” Pet’rs’ Ex. 1677 at 3; Hr’g Tr., 7/22/13, at 1095–96 (Oyler).

***48** 173. Getting to a PennDOT DLC particularly burdens qualified electors seeking voter ID because these electors, by definition, do not have a driver’s license.

174. Respondents’ theory that qualified electors who are interested in voting will find a means of getting themselves to a DLC during finite timeframes during the day, and have access to family and friends for transport is unpersuasive, and a wholly inadequate proposal as it does not account for the exigent circumstances of many electors who are among our vulnerable populations.

175. The Shared Ride Service, a door-to-door transportation service open to the general public, is an inadequate solution for voters who do not have access to, and/or are unable to use public transportation to get to PennDOT. The Shared Ride Service is not available every day and may not travel outside of a designated geographic area, which may be limited to a county. Hr’g Tr., 7/23/13, at 1161–63 (Collins). In addition, the rider generally must pay at least some portion of the fare for using the service, *id.* at 1162–68, and the reduced fare is only available to riders who present photo ID. Pet’rs’ Ex. 1592. Further, DOS never advertised the Shared Ride Service as a way for voters to get to PennDOT for a voter ID. Hr’g Tr., 7/22/13, at 1114 (Oyler); Hr’g Tr., 7/30/13, at 1859–60 (Sweeney).

176. DOS did not engage mobile units, advising they were not approved. Hr’g Tr., 7/31/12, at 997 (Aichele). Nor has PennDOT created any mobile ID units or made other plans to get elderly, disabled, or financially disadvantaged voters to a PennDOT DLC without the payment of a fee. Hr’g Tr., 7/27/12, at 750 (Myers); Hr’g Tr., 9/25/12, at 72–75, 113–14 (Myers); Hr’g Tr., 7/24/13, at 1412–13 (Myers). PennDOT refused to set up mobile units. Hr’g Tr., 7/31/12, at 998 (Aichele).

177. Long lines and wait times also frustrate access, particularly for disabled voters who are unable to wait. Hr’g Tr., 9/27/12, at 332 (Pannell) (three-and-a-half to four-hour wait); Hr’g Tr., 9/27/12, at 473, 475 (Maxton) (nine hours waiting in two trips); Hr’g Tr., 9/27/12, at 371 (Cobb) (two-hour wait); Hr’g Tr., 9/27/12, at 391–92 (Bellisle) (observed two-hour wait; “people left because [the wait] was too long”); Hr’g Tr., 9/27/12, at 348–49 (Purdie); Hr’g Tr., 9/27/12, at 315, 317 (Clark) (60–90 minute wait); Hr’g Tr., 7/31/12, at 1110 (Tosti–Vasey) (hour wait). The Court finds the testimony regarding wait times credible.

178. Wait times, particularly in Philadelphia, often exceeds 30 minutes. Pet’rs’ Ex. 1460; Hr’g Tr., 7/24/13, at 1407–08 (Myers). Wait times attributable to voting IDs specifically cannot be determined because customers wait in line at PennDOT for a number of different purposes, as PennDOT has no designated staff to assist with voting IDs. *Id.* PennDOT services over 2.5 million customers a year, who 15–20% of whom generally wait more than 30 minutes for services. Hr’g Tr., 7/24/13, at 1410, 1416–17 (Myers).

*49 179. One example highlights the barriers in combination, relating in part to the evolving criteria for a free ID for voting purposes. Before Respondents developed the DOS ID, one qualified elector attempted to obtain an ID but was refused because Pennsylvania has no record of her birth. Hr'g Tr., 7/25/12, at 191–92 (Marsh). She had to travel about an hour each way, on three separate occasions, to obtain a DOS ID. Pet'rs' Ex. 2100 (video and deposition transcript, N. Marsh). On her first visit, Marsh and her family waited half an hour before being told that the facility could not issue voter IDs that day (Monday). On her second visit, she and her family waited an hour and a half before being told that the staff “just did not know what [she was] even talking about” as to a voter ID; they instructed her to “fill out a form” and wait to “hear from Harrisburg.” *Id.* at 19–22. Finally, on her third visit, after her story was highlighted at the September 2012 remand hearing, PennDOT seemed to be expecting Marsh, and a PennDOT manager came out to ensure that she would not leave without a DOS ID.

180. Voters have also been mistakenly forced to pay for a voter ID at PennDOT that should have been provided at no charge. Hr'g Tr., 9/27/12, at 371–72 (Cobb) (told by PennDOT had to pay for a voter ID); Hr'g Tr., 7/30/12, at 882–83 (Block) (same); Hr'g Tr., 7/31/12, at 1052–53 (Rawley) (same); Hr'g Tr., 7/31/12, at 1082–84 (Jarrell) (same); Hr'g Tr., 7/31/12, at 1108–09 (Tosti–Vasey) (same). This erroneous implementation started in late summer of 2012, and has continued. Secretary Aichele acknowledged that there have been reports of PennDOT requiring people to pay for a voter ID. Hr'g Tr., 7/31/12, at 998–99 (Aichele). Adam Bruckner, who runs a non-profit helping the homeless and others get IDs, stopped telling his clients to go to PennDOT for free voter IDs because so many of them returned to him after having been told that they would need to pay. Hr'g Tr., 7/17/13, at 467–70 (Bruckner). Patricia Norton likewise was told she had to pay for a voter ID, which she could not do because PennDOT only accepts check or money order, and she had only cash. Pet'rs' Ex. 1430a at 18–19.

181. The DLC Location Requirement poses a barrier to access because it forces all qualified electors to travel to a DLC, sometimes more than once.

182. PennDOT does not publicize potential accommodations to customers to assist disabled or elderly customers who are not equipped to wait in line. Hr'g Tr., 7/27/12, at 697–98 (Myers). Instead, accommodations, if any, are left to the discretion of individual PennDOT employees. See, e.g., Hr'g Tr., 7/15/13, at 60, 71 (Marian Baker called PennDOT to request an accommodation for her physical disabilities and was told she must “stand in line like everybody else.”).

183. The miscommunications and errors resulting from PennDOT serving as the distribution point for the DOS ID demonstrates the implementation of the issuance of IDs, and coordination with DOS, is far from seamless.

(2) Education

*50 184. The Voter ID Law requires DOS to prepare and disseminate information regarding the requirements for proof of identification under the Voter ID Law generally, and as to the availability of the free IDs to which voters are entitled under Section

206(b) of the Election Code, 25 P.S. § 2626(b), that PennDOT “shall issue.”

185. Although the education mandate applies to both DOS and PennDOT, there is no evidence that DOS disseminated accurate information as to how to obtain DOS ID. PennDOT is not educating voters about the free PennDOT Voting ID, spent no funds toward education or advertising, and has no budget to do so for 2013. Hr’g Tr., 7/24/13, at 1405 (Myers).

186. Respondents did not tell voters about how to get free photo ID for voting purposes and otherwise confused voters with mixed and incomplete messages. Hr’g Tr., 7/19/13, at 839, 854 (Mutz).

187. DOS deliberately chose not to educate voters about the DOS ID. DOS’ decision not to educate voters about the DOS ID was based on a fear that voters unfamiliar with the DOS ID would be “confused” if they were told about a new, supposedly easier-to-obtain option. Hr’g Tr., 7/18/13, at 780 (Royer).

188. Most of Respondents’ advertisements and other educational materials do not mention the DOS ID and do not explain that supporting documentation is no longer necessary. *Id.*; Hr’g Tr., 7/30/13, at 1858, 1861–62 (Sweeney).

189. Respondents acknowledged the education and media campaign “Show It” did not address the DOS ID directly; rather, it relied upon the audience to take the initiative and learn more themselves by either going to VotesPA.com or to call a toll-free line. Pet’rs’ Ex. 1468 at 95. Hr’g Tr., 7/22/13, at 1002, 1005 (Oyler); Hr’g Tr., 7/18/13, at 739 (Royer) (voters could click banner on on-line ad to “learn more”).

190. As a result, there are some qualified electors who have no familiarity with the DOS ID. Hr’g Tr., 7/15/13, at 76 (Baker) and 93 (Pripstein).

191. In the few DOS materials that mention the DQS ID, it is in small print and the materials do not explain what the DOS ID is or that the DOS ID can only be obtained at the location of a different agency, PennDOT. The materials also fail to explain that qualified electors can obtain a DOS ID without supporting documentation even if they were previously denied an ID by PennDOT. Resp’ts’ Exs. 160–167, 179, 191–201.

192. Much of the information that Respondents distributed ended up being inaccurate. For example, Respondents’ advertisements and other educational materials from before September 25, 2012 said that voters needed “supporting documentation” to obtain a free voter ID at PennDOT. See, e.g., Resp’ts’ Exs. 43, 68, 160, 162, 164, 179.

193. In June 2012, Secretary Aichele sent a letter directly to the approximately 759,000 registered voters (9%) who, based on Respondents’ 2012 Database Match, had no ID from PennDOT. Resp’ts’ Ex. 43; Hr’g Tr., 7/18/13, at 746–47 (Royer). The letters stated: **“If you have never had a Pennsylvania driver’s license or PennDOT photo ID, you may also need further documentation such as a birth certificate,**

social security card and two proofs of residency.” Resp'ts' Ex. 43 (emphasis added).

*51 194. Approximately 150,000 of the letters were returned because the individual no longer lived at that address, leaving almost 610,000 registered qualified electors who did not appear in the PennDOT database, and lack PennDOT Secure ID, who received the DOS letter. Hr'g Tr., 7/18/13, at 746–47 (Royer).

195. In September 2012, at significant cost, (id at 766–67), Respondents sent a postcard to 5.9 million households—every household in the Commonwealth with a registered voter—stating that voters could get a free voter ID at PennDOT **only “with supporting documentation.”** Resp'ts' Ex. 179 (emphasis added).

196. Both of these direct mail campaigns, one of which was sent to a targeted group that lacked PennDOT Secure IDs, conveyed inaccurate information.

197. Respondents' pre-September 25, 2012 newspaper advertisements also stated that voters needed **“supporting documentation”** to get a free voter ID at PennDOT. Resp'ts' Exs. 160–167 (emphasis added).

198. After September 2012, Respondents did not tell voters that the instructions over the prior seven months were inaccurate. Instead, Respondents modified their educational materials in such subtle ways that many voters likely could not recognize the change. Hr'g Tr., 7/19/13, at 866, 922 (Mutz).

199. DOS never corrected previously inaccurate information from any of its marketing materials or direct mail campaigns.

200. Respondents have no plans to reach out directly to voters to correct the misstatements and inaccuracies of their prior mass mailings, advertisements, and other educational materials distributed to voters. Resp'ts' Ex. 33. During the hearing on the preliminary injunction, DOS represented it would conduct a comprehensive media campaign and that another mailing would be sent to the approximately 759,000 qualified electors who received the erroneous letter regarding supporting documentation. Hr'g Tr., 7/27/12, at 530 (Royer). This did not come to pass.

201. Respondents coordinated the education efforts with agencies that directly serve Pennsylvanians, including Department of Labor & Industry (L & I), Department of Public Welfare (DPW), Pennsylvania Department of Aging (PDA), which included providing inserts to accompany mailings. Hr'g Tr., 7/27/12, at 510 (Royer). Some of these mailings (PACE letter, Ex.2067) contained inaccurate information. Hr'g Tr., 7/24/13, at 1297 (Myers).

202. PDA oversees the health and wellness of older adults (sixty and over) in Pennsylvania. Hr'g Tr., 7/24/13, at 1254 (O'Donnell).

203. Kelly O'Donnell (O'Donnell) has been employed at the PDA since 2011, and has served as its Director of the Operations and Management Office since March 2012. H.T. (O'Donnell) at 1253–54. O'Donnell was PDA's point person for the Voter ID Law. *Id.* at 1267.

204. DOS and the PDA were confused about the difference between a standalone photo center and a DLC, and that the former was not equipped to issue IDs. O'Donnell provided inaccurate information regarding the process for obtaining the DOS ID when she stated it was available at any photo center, including standalone centers. See Pet'rs' Ex.2016 (PDA memo distributed to 52 county agencies on aging). The Court credits O'Donnell's testimony in which she concedes the error, and communication of inaccurate information.

*52 205. The changes in criteria for obtaining a complaint photo ID for voting purposes undermined DOS' educational efforts, and the efforts of other organizations that relied upon the material DOS distributed regarding supporting documentation requirements. Hr'g Tr., 8/1/12, at 1766–80 (Thorne).

206. DOS admitted it was not within the marketing scope to measure the effectiveness of the message in motivating people to get compliant photo ID if they did not have one. Pet'rs' Ex. 1468 at 105.

207. Professor Diana Mutz, who received a Master's degree and a Ph.D from Stanford in political communication, and is currently on staff at the University of Pennsylvania, considered the DOS “media and education campaign” to have two goals: first, to ensure that every eligible voter knows that they need a certain type of ID to vote, and second, to ensure that every eligible voter has photo ID on Election Day and is eligible to cast a vote. Hr'g Tr., 7/19/13, at 839–40; 851 (Mutz).

208. Professor Mutz opined, within a reasonable degree of professional certainty, that the media and education campaigns failed to achieve those goals.

209. This Court accepted her as an expert in the field of public relations and finds her testimony competent and credible.

210. Professor Mutz explained that the audience of voter ID events is more informed than the average voter because attendees are already politically involved. As a result, these events are not the best way to reach the lesser informed electors. Professor Mutz stated that events, such as street fairs, reached a more diverse population. Hr'g Tr., 7/19/13, at 915–916 (Mutz).

211. Respondents' “Show It” campaign focused almost exclusively on telling voters that they will not be allowed to vote without a photo ID; it did not directly inform voters how to get a compliant ID if they did not already have one. Hr'g Tr., 7/19/13, at 840 (Mutz). The campaign materials simply told voters to “**learn more**” by calling a toll-free hotline or visiting VotesPA.com, without telling them why they should do so; the materi-

als did not tell people that they could learn where and how to obtain free voter ID by calling or going online. See, e.g., Resp'ts' Ex. 217; Hr'g Tr., 7/19/13, at 861 (Mutz); the print ads did not actually say "learn more," see, e.g., Resp'ts' Ex. 67.

212. The toll-free hotline and VotesPA.com website are not user-friendly and do not provide clear answers. The hotline is only open during business hours; voters who call at other times hear a recording from the "Bureau of Commissions, Elections, and Legislation," and cannot leave a message. Hr'g Tr., 7/19/13, at 884 (Mutz). The recording does not mention voter ID at all. *Id.* Voters who call again during regular business hours need to navigate through three automated telephone menus before being able to speak to a human. *Id.* at 885.

213. Voters who did successfully reach VotesPA.com would have to navigate through multiple links and scroll down through web pages to locate information about the DOS ID, which stated, inaccurately, that they could obtain a voter ID for free "with supporting documentation," despite the fact that supporting documentation has not been required for the DOS ID since September 25, 2012. Hr'g Tr., 7/19/13, at 900–01 (Mutz). Only if the voter found and downloaded a DOS ID Frequently Asked Questions PDF to their computer would they learn accurate information about the DOS ID. *Id.*, at 896–97.

*53 214. This Court rejects Respondents' position that their education efforts were effective by putting the onus on the qualified elector to "learn more" by using VotesPA.com or calling the 1–800 number. See cites in F.F. No. 189.

215. The "learn more" technique will be particularly ineffective as to low income and homeless qualified voters who typically do not have computers or data-unlimited telephone plans, if they have phones at all. Hr'g Tr., 7/25/12, at 217 (Ludt) (regarding clients' access to marketing media).

216. In general, DOS did not educate voters about how to get to PennDOT DLCs, Hr'g Tr., 7/22/13, at 1114 (Oyler), and PDA sent inaccurate information.

217. Professor Mutz opined that the ad campaign should have focused on the DOS ID and the changes in the documentation requirements. Hr'g Tr., 7/19/13, at 872–73. Respondents did not communicate changes in documentation requirements, so voters did not understand that it was a "new ball game" and did not know that the DOS ID was available without supporting documentation. *Id.* at 917. Also, the "Show It" campaign most often prominently depicted a Pennsylvania drivers' license, suggesting *that* specific ID was required, thus confusing voters. Hr'g Tr., 7/19/13, at 865–66 (Mutz).

218. Professor Mutz recognized the direct mailing that the DOS sent to the 759,000 registered voters whose SURE record did not have a corresponding match in the PennDOT database could be more effective than other advertising attempts. Hr'g Tr., 7/19/13, at 875 (Mutz).

219. Respondents took no meaningful steps to evaluate the effectiveness of their

education campaign, despite Deputy Secretary Royer's commitment last fall to conduct some measurement of its effectiveness, and that its marketing firm typically performs such effectiveness measures. *Compare* Hr'g Tr., 9/25/12, at 156 (Royer) with Hr'g Tr., 7/18/13, at 795 (Royer).

220. The only effectiveness measure available, since Respondents did not perform pretesting or an effectiveness matrix, is the number of voting IDs issued (17,000); this shows low effectiveness. Hr'g Tr., 7/19/13, at 840–41 (Mutz).

221. Royer is not competent to refute Professor Mutz's opinions regarding marketing or public relations; nor are Respondents' media vendors (Lyn Strickler, Harmelin/ Gloria Blint, Red House Communications). His testimony authenticating ads used and press releases issued did not attest to the accuracy of their content.

222. Professor Barreto conducted a survey to measure voter knowledge of the requirements for complying with the Voter ID Law in June and July of 2012. Although Dr. Marker rehabilitated the survey design, because the results of the survey regarding knowledge (as opposed to ID possession) were outdated, occurring prior to introduction of the DOS ID, and before the major marketing campaign post-Labor Day 2012, the results regarding voter knowledge have limited relevance today, and are given less weight accordingly.

Disparity and Disenfranchisement

*54 223. Uncontested evidence submitted during two evidentiary hearings and a full trial on the merits shows that “hundreds of thousands” of registered voters lack a compliant photo ID. Pet'rs' Ex.2096a; see F.F. Nos. 60, 65, 67, 72, 78.

224. Since the November 2012 election, the issuance of voter IDs has dwindled to fewer than 150 per month, including fewer than 100 free PennDOT non-driver IDs and 50 DOS IDs. Pet'rs' Ex.2072. In June 2013, Respondents issued 37 free PennDOT non-driver IDs and 19 DOS IDs. *Id.* It was expected that only a small number of additional voter IDs would be issued between the close of the trial in August and the November 2013 election. Hr'g Tr., 7/17/13, at 548–49 (Marks).

225. In total, since the Voter ID Law was enacted, Respondents have issued **fewer than 17,000 voter IDs**, including 12,981 secure PennDOT Voting IDs and 3,830 DOS IDs. Pet'rs' Ex.2072; Hr'g Tr., 7/24/13, at 1325–1327 (Myers). Of these, since the remand hearing, 2,530 DOS IDs have been issued.

226. This is compared to the approximately 9,500 PennDOT Voting IDs issued between March and September 2012, and 1,300 DOS IDs issued between August and September 2012. Hr'g Tr., 9/25/12, at 57 (Myers). The Court “expected more photo IDs to have been issued by [that] time,” and found that “the gap between the photo IDs issued and the estimated need will not be closed” by the time of the November 2012 election. *Applewhite HI*, Supplemental Determination on Preliminary Injunction, (Remand Opinion), slip op. at 5.

227. This Court finds the gap between the unmet need for compliant photo ID (hundreds of thousands) and the issuance of voter IDs (less than 17,000) has not appreciably narrowed since filing of the Remand Opinion, and Respondents' implementation is insufficient to close the gap.

Vulnerable Populations

228. The Voter ID Law disproportionately burdens some of “the most vulnerable segments of our society (the elderly, disabled members of our community, and the financially disadvantaged).” *Applewhite II*, — Pa. at —, 54 A.3d at 4.

229. **Elderly voters** are less likely to have compliant photo ID due to their declining need or ability to drive, and for whom traveling to a PennDOT Driver License Center may be difficult or impossible. See Para. 28 *supra*.

230. Registered voters ages 75 and older lack compliant photo ID at significantly higher rates than registered voters ages 18 to 74. Hr'g Tr., 7/16/13, at 204 (Siskin); Pet'rs' Ex.2096b at Table 4 (finding that 40.58% of registered voters who are 90+ years old lack compliant ID from PennDOT and 11.86% of registered voters who are 80–89 years old lack compliant ID from PennDOT, as compared to, for example, the 3.21% of registered voters who are 50–69 years old). Respondents did not contend otherwise.

231. Using census data, as Siskin did, the number of persons over the age of 65 in Pennsylvania is 2,042,166. Hr'g Tr., 7/16/13, at 126 (Siskin). Respondents' witness testified the number of persons over the age of 60 in Pennsylvania was 2.7 million. Hr'g Tr., 7/24/13, at 1255 (O'Donnell).

*55 232. Approximately 1.7 million individuals over the age of 65 have an active Pennsylvania driver's license. Approximately 200,000 individuals over the age of 65 have an active Pennsylvania non-driver's license identification card. Hr'g Tr., 7/24/13, at 1304–05 (Myers). Using census data, this leaves approximately 142,000 elderly (ages over 65) who lack PennDOT Secure IDs.

233. Three types of care facilities may issue compliant photo ID: long-term care facilities, personal care homes, and assisted living facilities. Approximately 81,000 senior citizens live in long-term care facilities. Hr'g Tr., 7/24/13, at 1257 (O'Donnell). Approximately 46,000 live in personal care homes. *Id.* at 1296. Approximately 1,200 live in assisted living facilities. *Id.* at 1257.

234. Presuming no overlap between the elderly who lack PennDOT Secure IDs and the facility-bound population, and presuming care facilities issued compliant IDs (which they do not) thousands of elderly are burdened with finding a means of transport, traveling to a PennDOT DLC, and waiting in line, for a voting ID.

235. DOS recognized that voters who suffer from **illness or disability** “may encounter difficulties complying with the photo ID requirements of the bill if they do not already

have a qualified ID and cannot get to a PennDOT photo center.” Pet’rs’ Ex. 1568 at 3.

236. DOS and PDA also recognized that distributing voter IDs through PennDOT specially burdens elderly and disabled voters. Pet’rs’ Ex. 1562 at 3–4. The two agencies recognized that, under the Voter ID Law, such voters would be “disenfranchised through happenstance beyond the control of the elector.” *Id.* at 4.

237. The Voter ID Law also disproportionately burdens **low-income** and homeless voters, who are less likely to have a compliant ID, and for whom traveling to a PennDOT DLC may be especially burdensome. See F.F. No. 238 *infra*. Professor Barreto found that registered voters living in a household with less than \$20,000 of annual income lack compliant photo ID at significantly higher levels than registered voters in households with higher annual incomes. Hr’g Tr., 7/26/12, at 379–80 (Barreto); see also Pet’rs’ Ex. 18 at 54.

238. The Court credits and finds competent the testimony of expert witnesses Veronica Ludt and Michele Levy that many voters, particularly the homeless and financially disadvantaged, face significant burdens trying to obtain PennDOT Secure IDs, including the PennDOT Voting ID. Hr’g Tr., 7/25/12, at 207–15, 219, 225–26, 249 (Ludt); Hr’g Tr., 7/27/12, at 645–56 (Levy). Ludt, the legal center director of Face to Face, Inc., and Levy, the managing attorney for HAP, routinely assist low-income individuals in trying to obtain identification. Hr’g Tr., 7/25/12, at 200–01, 204–05 (Ludt); Hr’g Tr., 7/27/12, at 634, 640–41 (Levy). They explained obtaining the necessary documentation for a PennDOT Secure ID can be a confusing process that costs money, takes years, is difficult even for lawyers to navigate, and is often unsuccessful. Hr’g Tr., 7/25/12, at 208–11, 219, 225–26, 249 (Ludt); Hr’g Tr., 7/27/12, at 651 (Levy). In particular, many individuals have difficulty obtaining a raised-seal birth certificate, Social Security card or replacement card, and proofs of residency. Hr’g Tr., 7/25/12, at 205–15, 219–24 (Ludt); Hr’g Tr., 7/27/12, at 645–58 (Levy).

***56** 239. The evidence on the whole reflects that many members of society exist day-to-day without these and other privileges that those with photo ID take for granted. Hr’g Tr., 7/25/12, at 206–08 (Ludt); Hr’g Tr., 7/27/12, at 640–43 (Levy); see also Hr’g Tr., 7/17/13, at 464–66 (Bruckner) (explaining how hundreds of people line up every Monday for assistance getting ID).

240. Registered minority voters, including African–Americans and Latinos, are almost twice as likely not to have compliant photo ID. Pet’rs’ Ex.2096(b) at Tables 2 & 2a; Hr’g Tr., 7/16/13, at 191–202 (Siskin).

Constitutionality

241. Petitioners establish a facial challenge to the photo ID provisions in the Voter ID Law related to in-person voting.

242. Respondents impose burdens on the fundamental right to vote, which are unreasonable and are not narrowly tailored to serve a state interest.

243. The Voter ID Law, as Respondents construe it, does not provide a non-burdensome means of accessing compliant photo ID. The Verification and DLC Requirements effectively deny, delay and inconvenience exercise of the franchise.

244. On its face, the Voter ID Law provides a mechanism to provide compliant free voting ID (Section 2(b), Section 206(b) of the Election Code), to only registered electors when the right to vote resides in all qualified eligible electors. *Applewhite II*.

Identified State Interest

245. Respondents stipulated that the sole rationale they would introduce in this action for the Voter ID Law is as follows:

[R]equiring a photo ID improves the security and integrity of elections in Pennsylvania in a manner that is in keeping with the photo ID requirements of many other secure institutions and processes. Respondents are aware of reports indicating that lists of registered voters contain the names of persons who are deceased, no longer residents of Pennsylvania, or no longer residents of the locations at which their names appear on the list of registered electors. Respondents are aware of reports indicating that votes have been cast in the name of registered electors who are deceased, who no longer reside in Pennsylvania, or who no longer reside in the jurisdiction where the vote is cast. Absent proof of identification presented to elections officials at the polling place, there is a risk that votes may be cast in the names of registered electors who are dead or have left the Commonwealth or jurisdiction of the election district by a person other than the registered elector. Respondents are aware of reports questioning the integrity of elections based on a variety of incidents. Requiring a photo ID is one way to ensure that every elector who presents himself to vote at a polling place is in fact a registered elector and the person that he purports to be, and to ensure that the public has confidence in the electoral process. The requirement of a photo ID is a tool to detect and deter voter fraud.

Pet'rs' Ex. 46 (Respondents' Amended Answer to Interrogatory 1, served June 7, 2012); see also Pet'rs' Ex. 15 ¶ 4 (stipulating that “[t]he sole rationale for the [Voter] ID law that will be introduced by Respondents is that contained in Respondents' Amended answer to Interrogatory 1, served June 7, 2012”).

*57 246. Lorraine Minnite, Ph.D., an associate professor in the Department of Public Policy at Rutgers University–Camden, author of “The Myth of Voter Fraud,” testified as an expert for Petitioners on the incidence and effect of voter fraud in American elections. Hr'g Tr., 8/1/12, at 1262, 1277–78 (Minnite); Pet'rs' Ex. 49.

247. The only type of voter fraud that the Voter ID Law could detect, deter, or otherwise address is in-person voter impersonation fraud, whereby a person appears at a polling place and attempts to vote for another person. Hr'g Tr., 8/1/12, at 1326 (Minnite). Professor Minnite opined that “voter fraud is exceedingly rare in Pennsylvania.” *Id.* at 1323.

248. This Court finds Professor Minnite's opinions competent and credible and accepts her as an expert on voter fraud issues, and her testimony is weighted to the extent Respondents maintain voter fraud as the identified interest the photo ID provisions of the Voter ID Law are designed to serve.

249. Respondents did not present evidence of voter fraud and their stipulation (Pet'rs' Ex. 15, signed by counsel July 12, 2012) undermines it as the purpose for the statute.

250. With respect to in-person voter fraud that the Voter ID Law could potentially address, Respondents stipulated as follows:

1. There have been no investigations or prosecutions of in-person voter fraud in Pennsylvania; and the parties do not have direct personal knowledge of any such investigations or prosecutions in other states;

2. The parties are not aware of any incidents of in-person voter fraud in Pennsylvania and do not have direct personal knowledge of in person voter fraud elsewhere;

3. Respondents will not offer any evidence in this action that in-person voter fraud has in fact occurred in Pennsylvania or elsewhere;

[...]

5. Respondents will not offer any evidence or argument that in person voter fraud is likely to occur in future elections in the absence of the Voter ID Law.

See Pet'rs' Ex. 15 (Stipulation regarding voter fraud).

251. Respondents' implementation of the Voter ID Law in a manner that disenfranchises qualified electors will undermine the integrity of elections. See Hr'g Tr., 7/26/12, at 480 (Oyler); Hr'g Tr., 7/22/13, at 1107–08 (Oyler); Hr'g Tr., 7/30/12, at 802–03 (Marks), and publicity surrounding voters being turned away from the polls will certainly undermine public perception of electoral integrity. Respondents' witnesses testified to having confidence in the elections held to date. Hr'g Tr. 7/17/13, at 505–06 (Marks).

252. Respondents did not substantiate either voter fraud or integrity in elections as a compelling or legitimate state interest for the Voter ID Law.

253. Respondents also did not support a reasonable basis for the statute's exclusion of many types of IDs the Commonwealth recognizes. (*E.g.*, IDs issued by school districts, non-employee IDs issued by municipalities, IDs issued by municipal authorities, SEPTA, out of state drivers' licenses, Commonwealth IDs, Veterans IDs and student IDs lacking an expiration date).

***58** 254. The 2005 Report of the Commission on Federal Election Reform (the “Carter–Baker Report”) recommended, among other things, that electoral systems include “[v]oter identification, tied directly to voter registration, that enhances ballot integrity without introducing new barriers to voting, including the casting and counting of ballots....” Resp’ts’ Ex. 5 at 14 (emphasis added). The Carter–Baker Report expressed “concern[] that the different approaches to identification cards might prove to be a serious impediment to voting.” *Id.* at 26. As the Report specifically noted, “[t]he introduction of voter ID requirements has raised concerns that they may present a barrier to voting, particularly by traditionally marginalized groups, such as the poor and minorities, some of whom lack a government-issued photo ID.” *Id.* at 28. The Report further **recommended “that states play an affirmative role in reaching out with mobile offices to individuals who do not have a driver’s license or other government-issued photo ID to help them register to vote and obtain an ID card.”** *Id.* (emphasis added); see also Hr’g Tr., 8/1/12, at 1363–65 (Minnite).

Means of Attaining Identified Interest

255. The effect of the Voter ID Law is *de facto* disenfranchisement of all qualified electors who lack a compliant photo ID enumerated in the statute.

256. The expiration date requirement does not relate to ensuring a voter’s identity, Hr’g Tr., 7/22/13, at 1042 (Oyler), and is unreasonable because some valid IDs contain no expiration date because the type of ID renders a date unnecessary (student IDs, veterans or military IDs). Further, Commonwealth employee IDs also do not generally have expiration dates, and do not comply. Hr’g Tr., 7/31/12, at 988 (Aichele).

257. Veterans IDs generally do not comply with the Voter ID Law expiration date requirement, (Pet’rs’ Ex. 1559 at 2; Hr’g Tr., 7/22/13, at 1051 (Oyler), e.g., Pet’rs’ Ex. 7, (Garrett Veteran’s ID), and military and veterans cards for active and retired military and military dependent cards are compliant ID only if they state on the face of the card that expiration of the card is indefinite. Hr’g Tr., 7/30/13, at 1832–34 (Sweeney).

258. As Policy Director, Oyler researched how similar voter ID laws were implemented in other states and how they affected voters. Hr’g Tr., 7/22/13, at 1010 (Oyler). Based on her research, experience and general understanding of Pennsylvania voters, she concluded that there is valid concern that certain groups would “have a harder time finding IDs than others.” *Id.* at 1025–27. These groups include **minority populations**, non-English speaking populations, certain socioeconomic groups who have limited access and transport, **elderly voters**, disabled voters, and **college students**. *Id.* at 1026–27.

259. Unlike voter ID laws in other states, the Voter ID Law does not contain a safety net provision that provides access to all voters over a certain age, like senior voters, or permitting voters age 65 and over to cast an absentee ballot.

***59** 260. The Voter ID Law does not contain a safety net allowing voters who appear in poll books to sign an affidavit at the polls and cast a regular ballot.

261. DOS provided a crudely replicated template for compliant photo ID to licensed care facilities. Hr'g Tr., 7/30/13, at 1825 (Sweeney). The template was a sheet of paper with areas for a photograph, a name, an expiration date, and the name of the facility. *Id.*; see Pet'rs' Ex. 43.

262. The care facility ID form DOS provided does not contain any indicia of reliability, and does not instill confidence in the legitimacy of the ID as it appears anyone could replicate it, and is not limited to the facility residents. Hr'g Tr., 7/2/13, at 1069 (intended for residents), 1127 (not limited to residents) (Oyler).

263. Election turnout is higher in Presidential elections as opposed to state elections. (For example, the General Election in November 2012 was a Presidential election with a turnout close to 68 percent. The turnout for the 2010 gubernatorial election was 46 percent, for the 2010 gubernatorial primary 22 percent, and for the most recent election—the May 21, 2013 primary—turnout was 11 percent). Hr'g Tr., 7/18/13, at 717 (Royer); see Resp'ts' 229.

264. In the November 2012 general election, only 282,822 voters voted absentee out of 5,783,621 total votes cast (approximately 5%). Resp'ts' Ex. 233; Hr'g Tr., 7/17/13, at 431 (Marker).

The 144 Disputed Sharepoint Entries

265. In December 2012, Jonathan Marks realized that there were 194 persons with no follow-up applications or indication that DOS IDs were received. As a result, he sent an email to Scott Shenk, a PennDOT employee, asking whether these persons had applied for DOS ID and why he had not received applications or cards. Resp'ts' Ex. 259. Shenk responded that 144 of the persons had not been applicants for a DOS ID, but he did not advise Marks which 144 of the 194 he had identified, because he considered the identifying data confidential. As a result, Marks did not know which of the entries in the Sharepoint Database to delete, so he kept them all in an abundance of caution. Hr'g Tr., 7/18/13, at 650–53; 7/30/13, at 1681–84 (Marks).

266. When he testified, Marks had not seen the sealed exhibit that PennDOT generated about the issued cards. Hr'g Tr., 7/30/13, at 1778–80 (Marks). Each of the persons in Sharepoint is given a unique identifier, so specific names did not need to be used. Hr'g Tr., 7/18/13, at 598 (Marks).

267. In order to explain the significance of the 194 exceptions, 144 of which are represented to not relate to the DOS ID, and thus on Sharepoint in error, Petitioners called a rebuttal witness, Bryan Neiderberger, who was a colleague of Petitioners' primary statistical expert, Dr. Siskin.

268. Niederberger's testimony is neither competent nor reliable concerning his search of the PennDOT database and his conclusions regarding whether the 144 lacked or had valid PennDOT ID are not given any weight. The Court relies upon Re-

spondents' witnesses' explanation for the discrepancy.

APPENDIX B:

Conclusions of Law

APPENDIX B: Conclusions of Law^{FN1}

FN1. These conclusions adopt the abbreviations and short forms used in Appendix A.

***60** 1. The Voter ID Law imposes new proof of identification requirements mandating that qualified electors present one of the limited types of photo ID listed to cast an in-person ballot at the polls and ensure that vote is counted.

2. The photo ID provisions of the Voter ID Law, as to in-person voting,^{FN2} burden a minority of qualified electors who have a right to vote because not all qualified electors have or are able to obtain compliant photo ID.

FN2. Section 1210(a)(1–7) of the Election Code, 25 P.S. § 3050(a)(1–7); see also Section 102(z.5)(2) of the Election Code, 25 P.S. § 2602(z.5)(2) (defining “proof of identification for in-person voting”).

Parties

3. The Secretary of the Commonwealth oversees DOS and is responsible for the agency's activities.

4. The Governor exercises authority over Commonwealth agencies in the executive branch, including DOS, PennDOT, and the Pennsylvania Departments of Aging, Public Welfare and Health, which all fall under his jurisdiction.

Standing

5. As qualified electors who do not possess compliant photo ID required by the Voter ID Law, Individual Petitioners have “a substantial, direct and immediate interest in the claim ... to be litigated.” *Pa. Med. Soc’y v. Dep’t of Pub. Welfare*, 614 Pa. 574, 591, 39 A.3d 267, 278 (2012).

6. Individual Petitioners have standing to challenge the constitutionality and enforcement of the photo ED provisions of the Voter ID Law since they would be able to exercise their right to vote but for the statute and Respondents' implementation thereof. *Van Doren v. Mazurkiewicz*, 695 A.2d 967 (Pa.Cmwlt. 1997).

7. Likewise, Organizational Petitioners established a “substantial,” “direct,” and “immediate” interest as membership organizations, and on behalf of their members, because their core missions are to consistently educate voters about voting requirements, including explaining how to obtain compliant photo ID.

8. Respondents' implementation of the Voter ID Law, and changing criteria for compliant photo ED since enactment, caused Organizational Petitioners to waste resources

in attempting to fulfill the educational components of their missions.

9. Regardless, as Respondents failed to challenge the standing of Organizational Petitioners in their preliminary objections, the issue is waived. See *Bergdoll v. Kane*, 557 Pa. 72, 731 A.2d 1261 (1999); *Maxson v. McElhinney*, 370 Pa. 622, 624, 88 A.2d 747, 749 (1952) (“the defense of lack of capacity to sue is waived by a responsive answer”); see also *Mixon v. Com.*, 759 A.2d 442, 452 (Pa.Cmwlth.2000) (“standing, in Pennsylvania, is a waivable issue.”).

Expert Evidence

10. The testimony of Petitioners' experts (Victoria Ludt, Lorraine Minnite, Dr. Bernard Siskin, Dr. David Marker, and Professor Diana Mutz) is competent and reliable, and the Court accepts them as experts in their respective fields.

11. The Court concludes Dr. Marker's opinion rehabilitated the testimony of Professor Matthew Barreto as to his survey methodology.

12. The rebuttal testimony of Dr. Bryan Neiderberger is not credited as cross-examination revealed his incomplete understanding of the figures in his report.

*61 13. The Court concludes the testimony of Respondents' expert, Dr. William Wecker, is not competent or reliable because he did not use an accepted methodology to criticize Dr. Siskin's findings, or to make any of his own.

Agency Implementation & Authority

14. The Voter ID Law, in regards to the compliant photo ID requirement, is not being implemented according to its terms, requiring a free ID to be issued through PennDOT in accordance with Section 1510(b) of the Vehicle Code, 75 Pa.C.S. § 1510(b), with a simple self-proclaimed affirmation.

15. PennDOT has not provided the free PennDOT Voting ID based on only the simple two-point declaration as set forth in Section 2(b) of the Voter ID Law, instead requiring rigorous supporting documentation to obtain a PennDOT-issued ID pursuant to its regulations, 67 Pa.Code § 91.4.

16. The Voter ID Law expressly grants DOS only the authority to educate the electorate regarding the statute and the availability of compliant photo IDs thereunder, and to create and roll-out the two-part affirmation. 25 P.S. § 2626(a), (c).

17. DOS exceeded its administrative authority when it created the DOS ID as a means of fulfilling PennDOT's duty under Section 2(b) of the Voter ID Law. *Nw. Youth Servs., Inc. v. Dep't of Pub. Welfare, Pa.*, 66 A.3d 301 (2013) (agencies are confined to those powers expressly conferred by statute). The DOS ID is an *ultra vires* executive agency creation, unchecked by administrative regulations, such that DOS' fluctuating requirements and interpretations of the issuance mandated in Section 2(b) are not entitled to deference. *Id.*

18. The Voter ID Law requires compliant photo ID outlined in Section 2(b) to be available in accordance with liberal access. *Applewhite II*. Nothing in the Voter ID Law requires alternate IDs (student, care facility, military) to be issued.

19. DOS' prerequisites for a DOS ID, including the exhaustion requirement, the residency requirement, the Verification Requirement and the DLC Location Requirement, fail to implement the Voter ID Law by its terms, and impose several burdens on qualified electors that frustrate liberal access.

20. By imposing the Verification Requirement that predicates issuance of a DOS ID upon a voter's registration being recorded and found in DOS's SURE Database, Respondents create a barrier to obtaining free compliant ID. This is unreasonable, unnecessary, and duplicative of the statutory affirmation. DOS' Verification Requirement is unreasonable because it presumes the accuracy and completeness of the information in the SURE Database; it is duplicative because DOS ID applicants must affirm under penalty of perjury that they are registered to vote or have applied to register.

21. The DLC Location Requirement DOS imposed is contrary to liberal access because voters lacking compliant ID, (and thereby lack a valid Pennsylvania driver's license), may only obtain compliant ID by traveling to one of PennDOT's 71 DLCs, with limited hours of operation, without a guarantee of leaving with compliant photo ID on the first trip despite current qualified or registered status.

*62 22. The Voter ID Law requires DOS to "prepare and disseminate information ... regarding the proof of identification requirements," relegating DOS' role to education about, *not issuance of*, compliant ID. 25 P.S. § 2626(a).

23. Respondents breached their statutory duty to accurately educate the electorate regarding compliant photo ID, and their failure to clarify prior inaccurate messaging about a supporting documentation requirement frustrated and continues to frustrate liberal access. See Determ. on Renewed Appl. for Prelim. Inj. at 7–8.

24. Because DOS failed to perform the educational component of its implementation of the Voter ID Law, qualified electors neither have adequate nor sufficient notice of the new photo ID criteria being imposed upon them. An accurately educated electorate is essential to the democratic process. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 37, 93 S.Ct. 1278, 36 L.Ed.2d 16 (1973) ("The electoral process, if reality is to conform to the democratic ideal, depends on an informed electorate.").

25. Neither "indigency" nor "substantially conforms" are defined in the Voter ID Law, leaving those terms open to interpretation, and attendant abuses of discretion, by county poll workers from which electors have no adequate redress.

26. The indigency provision in the Voter ID Law does not protect the franchise of the financially disadvantaged because its application depends on various county poll work-

ers' interpretation of "fee" for compliant ID, which is distinct from costs incurred in the process Respondents developed to obtain one.

Constitutional Right to Vote

27. Petitioners support a facial constitutional challenge to the Voter ID Law, (photo ID-related provisions), by its terms and effect.

28. "[T]he right to vote in Pennsylvania, as vested in eligible, qualified voters, is a fundamental one" secured by the Pennsylvania Constitution, Article I, Section 5 ("[e]lections shall be free and equal"). *Applewhite II*, Pa., 617 Pa. 563, 54 A.3d 1, 3 (2012); see also *Kuznik v. Westmoreland Cnty. Bd. of Comm'rs*, 588 Pa. 95, 902 A.2d 476 (2006).

29. The legislature may not regulate the franchise when the regulation in effect denies the franchise itself, "or make[s] it so difficult as to amount to a denial." *Winston v. Moore*, 244 Pa. 447, 457, 91 A. 520, 523 (1914); *DeWalt v. Bartley*, 146 Pa. 529, 54324 A. 185 (1892).

30. Section 2(b) of Act 18, as drafted, requires qualified electors to obtain a secure ID from PennDOT, entailing rigorous supporting documentation that some electors do not and cannot meet. *Applewhite II*.

31. The rigorous documentation requirement PennDOT imposes for issuance of its secure IDs disenfranchises qualified electors, and is facially unconstitutional. *Id.*; *Perles v. Cnty. Return Bd. of Northumberland Cnty.*, 415 Pa. 154, 202 A.2d 538 (1964).

32. Incursions on fundamental rights may be upheld only upon the strictest scrutiny. *James v. SEPTA*, 505 Pa. 137, 477 A.2d 1302 (1984); *Perles*.

*63 33. Respondents bear the burden of showing the photo ID provisions contained in the Voter ID Law are narrowly tailored to meet a compelling state interest. *Petition of Berg*, 712 A.2d 340 (Pa.Cmwlt.1998).

34. The intrusion upon the franchise by the photo ID provisions of the Voter ID Law, and Respondents' implementation thereof, is gratuitous because the barriers to exercising the right to vote neither further integrity of elections nor public confidence. *Denoncourt v. State Ethics Comm'n*, 504 Pa. 191, 200, 470 A.2d 945, 949 (1983) ("Whether there is a significant state interest will depend, in part, on whether the state's intrusion will effect its purpose; for if the intrusion does not effect the state's purpose, it is a gratuitous intrusion, not a purposeful one."); see *Stenger v. Lehigh Valley Hosp. Ctr.*, 530 Pa. 426, 609 A.2d 796 (1992).

35. Respondents have not identified a sufficient state interest to justify the Voter ID Law's incursion into the fundamental right to vote, since a speculative harm, (voter fraud) for which there is no evidence, does not suffice. *Id.*; *Consol. Edison Co. of N.Y. v. Pub. Serv. Comm'n of NY*, 447 U.S. 530, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980); ac-

cord Weinschenk v. State, 203 S.W.3d 201, 218–19 (Mo.2006).

36. Respondents' stipulation shows voter fraud is not a state interest for the Voter ID Law; the sole interest Respondents put forth is electoral integrity, which was undermined by the credited testimony. See Hr'g Tr., 7/26/12, at 480 (Oyler); Hr'g Tr., 7/22/13, at 1107–08 (Oyler); Hr'g Tr. 7/30/12, at 802–03 (Marks).

37. Even assuming *arguendo*, there was a compelling state interest to be advanced by some type of voter identification statute, the Voter ID Law is not narrowly tailored to serve such an interest because it imposes an “unnecessary inconvenience upon the voter.” *DeWalt*, 146 Pa. at 543, 24 A. at 187.

38. The implementation of the photo ID provisions (issuance and education) in the Voter ID Law renders the requirements for photo ID unconstitutional. See Preliminary Objection Op. at 8 (filed May 24, 2013) (single judge) (“implementation of Act 18 will result in disenfranchisement ...”).

39. The barriers to obtaining compliant photo ID that Respondents erected under the Voter ID Law unreasonably burden the right to vote.

40. The record reflects a substantial number of applications as to the qualified electors to whom the new requirements are directed (*i.e.*, those lacking compliant photo ID) have a disenfranchising effect, rendering the photo ID provisions of the statute unconstitutional. *Clifton v. Allegheny Cnty.*, 600 Pa. 662, 704 n. 35, 969 A.2d 1197, 1222 n. 35 (2009) (a law is facially unconstitutional when “a ‘substantial number’ of its applications are unconstitutional, ‘judged in relation to the statute’s plainly legitimate sweep.’”) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 n. 6, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008)).

41. The photo ID provisions in the Voter ID Law arbitrarily deny the franchise in effect because the majority of its applications burden electors who lack compliant photo ID.

***64** 42. The credited record evidence here establishes that hundreds of thousands of registered voters in Pennsylvania lack photo ID compliant with the Voter ID Law; however, denying eligible qualified voters the franchise is unconstitutional, regardless of the number of voters who are so deprived. See *Perles*, 415 Pa. at 158, 202 A.2d at 540 (“The disfranchisement of even one person validly exercising his right to vote is an extremely serious matter.”); *In re Canvass of Absentee Ballots of 1967 Gen. Election*, 431 Pa. 165, 172, 245 A.2d 258, 262 (1968) (“[t]he disfranchisement of 5,506 citizens ... would be unconscionable.”).

43. The *de facto* disenfranchisement caused by the Voter ID Law will undermine electoral integrity and impair public confidence in the electoral process.

44. The Voter ID Law is not an election regulation with which all qualified electors

could comply at the polls. *Applewhite II* (recognizing Respondents conceded not all qualified electors have the requisite supporting documentation to obtain compliant ID).

45. Because Respondents have never provided liberal access to the DOS ID (or the PennDOT Voting ID), the Voter ID Law “cannot be administered ... consistently with constitutional requirements.” See Resp'ts' Response to Pet'rs' Status Report Concerning Discovery Issues, (filed May 24, 2013) at 11.

46. The United States Supreme Court's decision in *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008), does not control because it did not concern or pertain to Pennsylvania's recognized fundamental right to vote guaranteed by Article I, Section 5 of the Pennsylvania Constitution.

47. In contrast to the record before the U.S. Supreme Court in *Crawford*, which revealed “nothing about the number of free photo identification cards issued since” Indiana's voter ID law was enacted, *id.* at 202 n. 20, the developed record here shows the gap in access to photo identification is not being filled, and that hundreds of thousands of qualified electors remain without compliant photo ID.

48. Restricting the locations for obtaining ID necessary to vote to only PennDOT DLCs, which have limited hours of operation is unnecessary and unrelated to any legitimate—much less compelling—governmental objective.

49. Without a rational basis to any demonstrated legitimate state interest, the Voter ID Law facially limits the forms of compliant ID to exclude many forms of identification recognized by the Commonwealth, such as photo IDs issued by more than 3,000 municipalities to non-employees, and other Pennsylvania governmental entities such as school districts, as well as gun permits, benefits cards and out-of-state drivers' licenses. See generally *Mixon* (rational basis test requires a rational relationship of restriction to legitimate state interest).

50. Expiration dates are wholly unnecessary to the supposed purpose of requiring identification at the polls—to prove that voters are who they say they are—and thus lacks any rational basis, much less a legitimate or necessary one. See Pet'rs' Ex. 1559; *Friedman v. Corbett*, — Pa. —, 72 A.3d 255 (2013) (date restrictions must reasonably relate to legitimate purpose to pass rational basis test.)

*65 51. The Voter ID Law does not provide Pennsylvania voters, particularly the elderly and disabled who lack compliant photo ID, with a safety net to ensure against disenfranchisement, such as by absentee voting. See 25 P.S. § 3146.8(h)(3) (absentee ballots are not counted if identification cannot be verified). Unlike other states where photo ID requirements were upheld, Pennsylvania does not permit a qualified elector to vote by absentee ballot unless he or she provides specific, limited justifications affirming inaccessibility of the polls. See 25 P.S. §§ 2602(w), 3136.1; *contra ACLU of N. M. v. Santillanes*, 546 F.3d 1313 (10th Cir.2008) (upholding New Mexico law in part based on no-excuse absentee voting without identification); *Democratic Party of Ga., Inc. v. Per-*

due, 288 Ga. 720, 707 S.E.2d 67 (Ga.2011) (upholding Georgia law based on same); Ind.Code § 3–11–10–24 (all disabled voters and all voters 65 and older automatically qualify to vote by absentee ballot). Similarly, provisional voting does not protect the franchise as provisional votes are subject to challenge and may not be counted, and are available only to the “indigent.”

52. The list of acceptable IDs for voting contained in the Voter ID Law, which includes “alternate IDs” issued by Pennsylvania colleges and universities and agency-licensed care facilities, does not cover all the classes of individuals who lack PennDOT IDs, and thus does not alleviate the statute’s disenfranchising effect.

53. Despite the foreknowledge that the Voter ID Law in-person photo ID requirement would burden elderly and disabled voters, young voters and the financially disadvantaged, resulting in their potential disenfranchisement, the statute does not require governmental or government-licensed institutions to issue compliant photo ID to these qualifying populations, and these alternate IDs are insufficient to satisfy the unmet need for compliant photo ID in Pennsylvania.

54. In combination, the barriers presented by requiring qualified electors to obtain compliant photo ID at PennDOT DLCs (travel time, distance, wait times, facility limitations, limited hours of operation), Respondents’ additional extra-statutory measures throughout the implementation (*e.g.*, exhaustion requirement, residency requirement, Verification Requirement), and that the measures changed without warning or notice, and were rarely correctly or consistently publicized, constitutes an unreasonable and unnecessary barrier to the franchise that does not resemble a narrowly tailored means to accomplish a demonstrated state interest.

55. To the extent Petitioners’ challenge is deemed as applied rather than facial, the same analysis renders the photo ID provisions of the Voter ID Law unconstitutional as applied to all qualified electors who lack compliant photo ID.

Equal Protection

56. The Voter ID Law does not facially violate the Pennsylvania Constitution’s guarantee that all laws afford equal protection to Pennsylvania citizens, which guarantee is coextensive with that in the 14th Amendment to the Constitution of the United States. See PA. CONST. art. I, §§ 1, 26; *Erfer v. Commonwealth*, 568 Pa. 128, 794 A.2d 325 (2002) (Pennsylvania courts follow federal case law interpreting the equal protection clause of the federal constitution in construing the extent of Pennsylvania’s constitutional protection); *accord Crawford*.

*66 57. The Voter ID Law is facially neutral despite its disenfranchising effect on those who lack compliant photo ID. *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524 (3d Cir.2011). Although Petitioners argue the Voter ID Law disproportionately burdens minorities, non-English speakers, the young and the elderly, the record does not evince an equal protection violation as to these classes.

Legal Standards

58. Petitioners are entitled to declaratory relief and a permanent injunction precluding enforcement of Section 3 of the Act 18, (and the associated application of the proof of identification definition), which requires all in-person voters to show compliant photo ID in order to cast a regular ballot at the polls.

59. Petitioners' right to relief is clear because the challenged in-person voting provisions of the Voter ID Law unnecessarily, and without compelling justification, burden the fundamental right to vote.

60. Declaratory relief is appropriate here where Petitioners challenge the validity of the acts of administrative agencies, for which administrative remedies are unavailable. *Lehman v. Pa. State Police*, 576 Pa. 365, 839 A.2d 265 (2003).

61. Because the harm alleged here is *de facto* disenfranchisement of hundreds of thousands of voters who lack compliant photo ID, deprivation of that right constitutes a wrong that cannot be compensated by damages and for which there is no adequate redress at law. *Pa. Gaming Control Bd. v. City Council of Phila.*, 593 Pa. 241, 928 A.2d 1255 (2007).

62. The injury to voters' electoral integrity from disenfranchisement resulting from the photo ID provisions of the Voter ID Law far outweighs the harm alleged to result if the in-person photo ID provisions are enjoined. *Harding v. Stickman*, 823 A.2d 1110 (Pa.Cmwlth.2003) (permanent injunction is appropriate when injury from denying injunction outweighs injury from granting it).

Relief & Severability

63. This permanent injunction shall only apply as to the enforcement of the in-person photo ID requirement (Section 3 of Act 18), related implementation provisions in Section 2 of Act 18, and application of the proof of identification definition as to in-person voting; the other provisions of the Voter ID Law shall remain in effect as needed as to the absentee ballot provisions in Sections 4 through 8, which are not here challenged. Section 103(a) of the Election Code, 25 P.S. § 2603(a) (severability); *see also* 1 Pa.C.S. § 1925; *PPG Indus., Inc. v. Bd. of Finance & Revenue*, 567 Pa. 580, 790 A.2d 261 (2001) (severability is consistent with public policy and the principles of statutory construction).

64. Petitioners did not establish a claim for attorneys' fees, and they are not recoverable here. *Merlino v. Delaware Cnty.*, 556 Pa. 422, 728 A.2d 949 (1999) (attorneys' fees are not recoverable absent express statutory authorization, clear agreement by the parties or another established exception).