

IN THE SUPREME COURT OF PENNSYLVANIA

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No. 71 MAP 2012

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

Appellants,

V.

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

Appellees.

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BRIEF OF *AMICI CURIAE* REPRESENTATIVE DARYL METCALFE AND  
REPRESENTATIVES STEPHEN BARRAR, STEPHEN BLOOM, BRYAN CUTLER,  
GARY DAY, GEORGE DUNBAR, ELI EVANKOVICH, GARTH EVERETT, MARK  
GILLEN, SETH GROVE, ADAM HARRIS, SCOTT HUTCHINSON, ROB KAUFFMAN,  
TIM KRIEGER, RON MARSICO, MARK MUSTIO, DONNA OBERLANDER, KATHY  
RAPP, BRAD ROAE, AND ROSEMARIE SWANGER  
IN SUPPORT OF BRIEF OF APPELLEES

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Appeal from the August 15, 2012 Order of the  
Commonwealth Court of Pennsylvania, Docket No. 330 MD 2012

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## INTEREST OF AMICI CURIAE

On March 14, 2012, the Pennsylvania House of Representatives passed House Bill 934 with 104 members voting in support of the legislation.<sup>1</sup> Later that day, Governor Tom Corbett signed House Bill 934 into law, as the Act of March 14, 2012, P.L. 195, No. 18 (“Act 18”). Act 18 requires a qualified elector (i.e., registered voter) to provide evidence of his identity when he casts his ballot. In addition, Act 18 designates the various types of documents a qualified elector may provide when he casts his ballot. The various types of “proof of identification” are those that: (1) were issued by the United States, the Commonwealth of Pennsylvania, a municipality of the Commonwealth to an employee of that municipality, an accredited Pennsylvania institution of higher education, or a Pennsylvania care facility; and (2) generally contain the name and photograph of the qualified elector as well as an expiration date. Also, prior to an election, if a qualified elector does not have one of the acceptable documents, Act 18 requires the Pennsylvania Department of Transportation to provide an acceptable document to the qualified elector at no cost. Moreover, if a qualified elector does not have one of the various, acceptable types of documents needed to cast a ballot, Act 18 permits that qualified elector to cast a provisional ballot, which will be counted when the qualified elector affirms by affidavit within six calendar days that he was the individual who cast the provisional ballot. Finally, the law requires the Secretary of the Commonwealth to assist the public in complying with the new requirement for voting.

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<sup>1</sup> The Pennsylvania Senate passed an earlier version of House Bill 934 with amendments on March 7, 2012. The March 14, 2012 vote in the Pennsylvania House of Representatives passed House Bill 934 with the Senate’s amendments.

The *Amici* are Representative Daryl Metcalfe – the author of, and the driving force behind, Act 18 – and members of the Pennsylvania House of Representatives who voted in support of Act 18.<sup>2</sup> *Amici* therefore have a direct interest in this matter.

Appellants sought a preliminary injunction in the Commonwealth Court to prevent Act 18 from taking effect. In deciding whether to issue a preliminary injunction, the lower court considered the following factors: (1) whether the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by money damages; (2) whether greater injury would result from refusing the injunction than from granting it; (3) whether the injunction will restore the parties to their status as it existed prior to the alleged wrongful conduct; (4) whether Appellants are likely to prevail on the merits; (5) whether the injunction is reasonably suited to abate the offending activity; and (6) whether the injunction will not adversely affect the public interest. Determination on Application for Preliminary Injunction in *Applewhite v. Commonwealth*, 330 MD 2012 (PA. Commw. Ct.), dated August 15, 2012 (“Determination”) at 9 (citing *Bryaman Construction Corporation v. Department of Transportation*, 608 Pa. 584 (2011)). Following briefing and a preliminary injunction hearing, the Commonwealth Court found, in addition to other factors in support of Act 18, that Appellants were not likely to prevail on the merits.

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<sup>2</sup> Rep. Stephen Barrar, 160th Legislative District; Rep. Stephen Bloom, 199th Legislative District; Rep. Bryan Cutler, 100th Legislative District; Rep. Gary Day, 187th Legislative District; Rep. George Dunbar, 56th Legislative District; Rep. Eli Evankovich, 54th Legislative District; Rep. Garth Everett, 84th Legislative District; Rep. Mark Gillen, 128th Legislative District; Rep. Seth Grove, 196th Legislative District; Rep. Adam Harris, 82nd Legislative District; Rep. Scott Hutchinson, 64th Legislative District; Rep. Rob Kauffman, 89th Legislative District; Rep. Tim Krieger, 57th Legislative District; Rep. Ron Marsico, 105th Legislative District; Rep. Mark Mustio, 44th Legislative District; Rep. Donna Oberlander, 63rd Legislative District; Rep. Kathy Rapp, 65th Legislative District; Rep. Brad Roae, 6th Legislative District; and Rep. RoseMarie Swanger, 102nd Legislative District.

Appellants now appeal that ruling. Appellants' argument is twofold. First, they argue that under *Fischer v. Department of Public Welfare*, 497 Pa. 267 (1982), they were not required to satisfy each element of the preliminary injunction test because there is a substantial legal question to be resolved. Second, they argue that, even if they were required to satisfy each element of the preliminary injunction test, they have demonstrated that a preliminary injunction is warranted. Although *Amici* believe that, under either standard, none of the factors support an issuance of a preliminary injunction, this brief focuses solely on whether a substantial legal question exists and whether Appellants are likely to prevail on the merits of their case. This Court reviews such questions *de novo*. *Buffalo Township v. Jones*, 571 Pa. 637, 644 (2002).

Appellants' entire argument hinges on whether the Commonwealth Court should have applied strict scrutiny when it decided the merits of the case. However, Pennsylvania courts have always used the gross abuse standard when determining whether election laws violate the "free and equal" clause of the Pennsylvania Constitution. Therefore, *Amici* submit this brief to primarily help clarify the proper standard to be employed and to support the General Assembly's undoubted authority to pass commonsense legislation regulating elections.

### **SUMMARY OF THE ARGUMENT**

*Amici's* position is simple and straightforward. While the Pennsylvania Constitution requires elections to be free and equal, it does not provide the framework for how to secure this. This Court has recognized that a "system of laws regulating the elections is only the means of securing" free and equal elections. *Patterson v. Barlow*, 60 Pa. 54, 84 (1869). In addition, "this system of regulation is the subject of legislation over which the General Assembly exercises a sound discretion." *Id.* In passing Act 18, the General Assembly did no more than exercise its

sound discretion and create a commonsense regulatory scheme to secure free and equal elections. The General Assembly undoubtedly had such authority and used it accordingly.

In addition, because the General Assembly has the discretion to pass laws regulating elections, the courts must not overturn the policy choices of the legislative branch unless that branch acts with gross abuse. In this matter, the General Assembly used its undoubted authority to regulate elections. In using its authority, it has not caused anyone to be disenfranchised. Nor has it changed the qualifications set forth in the Pennsylvania Constitution. Rather, it has maintained and promoted free and equal elections. For these reasons, the Commonwealth Court correctly concluded that Act 18 should not be preliminarily enjoined.

### **ARGUMENT**

#### **I. Under the Pennsylvania Constitution, the General Assembly Possesses the Undoubted Authority To Regulate Elections.**

The Pennsylvania Constitution “appoints the time of the general election, prescribes the qualifications of voters, and enjoins the ballot.” *Patterson*, 60 Pa. at 75. In addition, it requires that elections “be free and equal.” It says nothing more. The Constitution does not establish any rules or provide any guides to ensure free and equal elections. *Id.* at 75. The manner in which elections are to be conducted is left solely to statute. *Id.* The General Assembly therefore must pass legislation to provide a framework for conducting elections. *Id.* (“[T]he power to regulate elections is a legislative one, which has always been exercised by the General Assembly since the foundation of the government.”).

As this Court has stated, “Who makes the law? The General Assembly.” *Winston v. Moore*, 244 Pa. 447, 454 (1914). The question, therefore, becomes what laws the General Assembly has the authority to pass. This question too has been answered by the Court. The General Assembly may pass laws “to regulate elections” in an effort to “preserve the purity of

the ballot.” *Appeal of Cusick*, 136 Pa. 459, 467 (1890). Such regulations include “designat[ing] the evidence which shall identify and prove . . . the persons and the qualifications of the electors.” *Patterson*, 60 Pa. at 75; *see also id.* at 76 (It is the duty of the General Assembly “to secure freedom and equality by such regulations as will exclude the unqualified and allow the qualified to vote.”).

In sum, it has been settled for well over 100 years that the General Assembly has the authority to pass legislation that regulates elections. In 1890, this Court succinctly declared:

While the constitution has thus defined the rights of voters, it is silent in many respects as to how those rights shall be exercised. It prescribes very clearly the qualifications which a voter must possess, but it provides no machinery by which to ascertain whether a particular voter possesses such qualifications. All this has been wisely left to the General Assembly. It would be out of place in the fundamental law.

*Appeal of Cusick*, 136 Pa. at 466.

## **II. Pennsylvania Courts Apply a Gross Abuse Standard to Election Statutes.**

As stated above, laws regulating elections “have always been regarded as peculiarly within the province of the legislative branch of government.” *Winston*, 244 Pa. at 455.

Therefore, this Court has continuously held that such laws “should never be stricken down by the courts unless in plain violation of the fundamental law.” *Id.* “When the General Assembly possesses an undoubted authority to regulate . . . its discretion is not the subject of review.”

*Patterson*, 60 Pa. at 79. Similarly, the Court has explained that because the discretion belongs to the General Assembly, any laws regulating elections “cannot be reviewed by any other department of the government, except in a case of plain, palpable and clear abuse of the power which actually infringes the rights of the electors.” *Id.* at 75; *see also Mixon v. Commonwealth*, 759 A.2d 442, 447 (Pa. Commw. Ct. 2000), *aff’d*, 783 A.2d 763 (Pa. 2001) (“Any party



challenging a legislative enactment has a heavy burden, and legislation will not be invalidated unless it clearly, patently, and plainly violates the Constitution of this Commonwealth. Any doubts are to be resolved in favor of a finding of constitutionality.” (internal citations omitted)).

In addition, this Court has specifically defined the standard of review for laws regulating elections as follows:

In the absence of any express constitutional limitation upon the power of the General Assembly to make laws regulating elections and providing for an official ballot, nothing short of gross abuse would justify a court in striking down an election law demanded by the people, and passed by the law-making branch of government in the exercise of a power always recognized and frequently asserted.

*Winston*, 244 Pa. at 457. This gross abuse standard remains the standard to this day. The Commonwealth Court recently emphasized the long line of Pennsylvania authority dating back to at least as early as 1914 that establishes this standard:

From *Winston v. Moore*, we find that our Supreme Court has applied a “gross abuse” standard to determine whether election statutes violate the “free and equal” clause, thereby giving substantial deference to the judgment of the General Assembly. This stands in stark contrast to the standard utilized under the federal constitution, which employs a “balancing test.”

*In re Nomination Paper of Rogers*, 908 A.2d 948, 954 (Pa. Commw. Ct. 2006); *see also* Determination at 57-58. In other words, for at least 100 years, Pennsylvania courts have applied a gross abuse analysis when reviewing laws passed by the Pennsylvania General Assembly regulating elections under the Pennsylvania Constitution.

### **III. There Is No Substantial Legal Question that Must Be Resolved.**

Although they failed to raise this issue in the Commonwealth Court, Appellants argue that they are not required to demonstrate all six factors of the preliminary injunction test. Specifically, they argue that, under *Fischer*, if “substantial legal questions must be resolved[,]”

they are only required to demonstrate that “the threat of immediate and irreparable harm is evident, that the injunction does no more than restore the status quo and that the greater injury would result by refusing the requested injunction than by granting it.” Brief of Appellants at 25. Regardless of whether Appellants are correct that, under *Fischer*, their burden is lessened, they are incorrect that, in this matter, a substantial legal question must be resolved.

Although Pennsylvania authority could not be more definitive, Appellants assert that the level of constitutional scrutiny to which Act 18 must be subjected raises a substantial question. Brief of Appellants at 27. Contrary to the long line of Pennsylvania cases explicitly applying a gross abuse analysis when reviewing laws passed by the Pennsylvania General Assembly regulating elections, Appellants argue that the proper analysis is strict scrutiny. Yet, Appellants fail to cite any Pennsylvania case which applies strict scrutiny in such an instance. Instead, they argue that, because voting is a fundamental right, Pennsylvania courts should apply strict scrutiny. In other words, because Appellants do not agree with the Commonwealth Court’s ruling, they are asking that this Court overturn a hundred years of precedent and be the first court to hold that strict scrutiny applies when reviewing laws passed by the Pennsylvania General Assembly regulating elections under the Pennsylvania Constitution.

There is no genuine dispute about whether voting is a sacred right. Brief of Appellants at 33; *Page v. Allen*, 58 Pa. 338, 347 (1868). Nor is it disputed that the right to vote must be protected. Brief of Appellants at 34; *In Re Nader*, 580 Pa. 22, 39 (2004). It is for these reasons that the Pennsylvania Constitution authorizes the General Assembly to pass legislation to regulate elections. As this Court has declared:

[An] election is free and equal where all of the qualified electors of the precinct are carefully distinguished from the unqualified, and are protected in the right to deposit their ballots in safety, and unprejudiced by fraud. That election is not free and equal where

the true electors are not separated from the false; where the ballot is not deposited in safety, or where it is supplanted by fraud. It is, therefore, the duty of the legislature to secure freedom and equality by such regulations as will exclude the unqualified, and allow the qualified only to vote. A free and equal election is the end, regulations to attain it are the means.

*Patterson*, 60 Pa. at 76. Qualified electors will only have confidence in the election process if the General Assembly passes legislation that ensures that elections are free and equal.

Because the General Assembly possesses the undoubted authority to regulate elections, Pennsylvania courts – including this Court – have recognized that regulations should not be struck down by the courts unless they are in plain violation of the right of qualified electors to vote. Act 18 does no more than regulate elections. Therefore, the lower court properly applied a gross abuse standard.

In addition, contrary to Appellants’ assertions (Appellants Brief at 38), Pennsylvania law does not require courts to apply strict scrutiny where a Pennsylvania fundamental right may be burdened. Appellants cite to the decisions of this Court in *James v. Southeastern Pennsylvania Transportation Authority*, 505 Pa. 137, 145 (1984) and *Schmehl v. Wegelin*, 592 Pa. 581, 585 (2007). Yet, in each of those cases, the Court was analyzing whether the challenged legislation burdened a fundamental right protected under the U.S. Constitution, specifically the Equal Protection Clause. *James*, 505 Pa. at 145 (“Under a typical fourteenth amendment analysis of governmental classifications, there are three different types of classifications calling for three different standards of judicial review. . . . In the second type of cases, where . . . a fundamental right has been burdened, another standard of review is applied: that of strict scrutiny); *Schmehl*, 592 Pa. 581 at 583 (“The question presented is whether Section 5312 of the Domestic Relations Code violates the Equal Protection Clause of the United States Constitution.”). This Court has not held that a strict scrutiny standard must be applied when reviewing Pennsylvania legislation

that may burden a Pennsylvania fundamental right. Instead, the Court has explicitly held that Pennsylvania courts should apply a gross abuse standard when reviewing laws passed by the Pennsylvania General Assembly regulating elections under the Pennsylvania Constitution. Therefore, there is no substantial legal question that must be resolved, and *Fischer* does not apply.

**IV. Appellants Did Not Demonstrate that They Are Likely to Prevail on the Merits.**

Because *Fischer* does not apply, Appellants must satisfy all six preliminary injunction factors, including a demonstration that they are likely to prevail on the merits. In challenging Act 18 prior to any qualified elector casting a vote or even before the Commonwealth has had an opportunity to fully implement Act 18, Appellants clearly brought a facial challenge. *See* Determination at 21. Because Appellants brought a facial challenge, their burden of demonstrating that they would likely prevail on the merits was even greater. Consequently, Appellants failed to demonstrate that Act 18 disenfranchised all qualified electors, that it made elections no longer free and equal, or that it changed the qualifications set forth in the Pennsylvania Constitution.

**A. Facial challenges are the most difficult challenges to successfully mount.**

As the Commonwealth Court properly noted, to bring a successful facial challenge, a plaintiff must satisfy an “extremely rigorous legal standard . . . requiring a demonstration that there are no set of circumstances under which the statute may be valid.” Determination at 21. In addition, this Court has recently recognized that a facial challenge “is the most difficult challenge to mount successfully.” *Clifton v. Allegheny County*, 600 Pa. 662, 703 (2009) (*quoting United States v. Salerno*, 481 U.S. 739, 745 (1987)).

A facial challenge is the most difficult challenge for a plaintiff to mount successfully for two reasons. First, such challenges generally are disfavored by the courts because they rest on speculation, run contrary to the fundamental principal of judicial restraint, and threaten to “short circuit” the democratic process. *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008). When a legislative enactment is attacked facially, a court is at a disadvantage because it does not know how the law will be applied or construed by an enforcing authority. As the U.S. Supreme Court has declared, “It is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop.” *Gonzalez v. Carhart*, 550 U.S. 124, 168 (2007). Instead of speculating about hypotheticals, courts typically prefer to wait until the law is construed “in the context of actual disputes.” *Washington State Grange*, 552 U.S. at 450. A court “must be careful not to go beyond the statute’s facial requirements and speculate about ‘hypothetical’ or ‘imaginary’ cases.” *Salerno*, 481 U.S. at 745.

Second, courts impose a “heavy burden” on a plaintiff who brings a facial challenge. *Id.* (“[T]he fact that [a statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid.”). A court cannot find a statute to be facially unconstitutional unless *every* reasonable interpretation of the statute would be unconstitutional. *Id.*; *see also City Council v. Taxpayers for Vincent*, 466 U.S. 789, 796-97 (1984). In other words, unlike an as applied challenge, in which a plaintiff applies specific facts to the challenged statute, a facial challenge must show that “*no set of circumstances exists under which the [statute] would be valid.*” *Washington State Grange*, 552 U.S. at 449 (emphasis added).

By seeking a preliminary injunction prior to any qualified elector seeking to vote in an election, Appellants asked the Commonwealth Court do precisely what this Court in *Clifton* warned against: prematurely interpreting and unnecessarily speculate on the constitutionality of Act 18 in a factual vacuum. The lower court properly rejected “speculation about hypothetical or imaginary cases” and found that “[n]one of these situations [is] evident on the face of Act 18. Moreover, if these situations actually arise, they can be remedied on an individual basis. Speculation about these situations does not support invalidation of all lawful applications of Act 18.” Determination at 21-22.

In fact, Appellants’ case highlights the reality that their facial challenge must fail. Regardless of whether an estimated 1% or 9% of qualified electors – at the time of the hearing<sup>3</sup> – did not have the requisite evidence needed to cast their ballots to ensure that they are who they say they are, it is undisputed that 91% to 99% of qualified electors already possess the requisite evidence to cast their ballots. In other words, in almost every instance, Act 18 can, and will, be constitutionally applied. *Clifton*, 600 Pa. at 706.

**B. Act 18 does not disenfranchise qualified electors.**

*Amici* dispute as a factual matter that Act 18 places onerous burdens on qualified electors. Act 18 only requires a qualified elector to present one of several types of documents when he casts his ballot. If a qualified elector does not have an acceptable document, the Pennsylvania Department of Transportation will provide one to the qualified elector at no cost. In addition,

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<sup>3</sup> As has been widely reported by the news media, the lead Petitioner, Viviette Applewhite, after the conclusion of the preliminary injunction hearing, received one of the various types of documents she may provide when she casts her ballot. Since Ms. Applewhite is a registered elector, Act 18 therefore will not prevent her from casting a ballot. Jessica Parks, *Lead Plaintiff in Pennsylvania voter ID case gets her photo ID*, Philly.com (Aug. 18, 2012), available at [http://articles.philly.com/2012-08-18/news/33249335\\_1\\_penndot-id-new-voter-identification-law-penndot-center](http://articles.philly.com/2012-08-18/news/33249335_1_penndot-id-new-voter-identification-law-penndot-center).

executive agencies have sought to decrease any bureaucratic inconveniences that may be associated with obtaining an acceptable document. *See* Determination at 60-61. Because Act 18 does no more than designate various documents that may be presented when a qualified elector casts his ballot, *Amici* dispute that the law places a heavy burden on the process of voting.

In addition, Pennsylvania courts have recognized that “hardship is not the test of the constitutionality of a law.” *Patterson*, 60 Pa. at 83. Courts should not declare laws regulating elections to be unconstitutional “on grounds of mere hardship, or for defects of regulation, which are not clear and palpable violations of the letter or very spirit of the Constitution.” *Id.* at 85. A law can only be pronounced unconstitutional “when the law itself subverts the true electors’ rights.” *Id.*

Appellants do not assert that the law itself disenfranchises qualified electors. Appellants assert instead that the General Assembly’s policy decision to require a qualified elector to submit evidence of his identity when he casts his ballot may burden a qualified elector. However, laws requiring a qualified elector to demonstrate his identity are nothing new. For example, a first-time qualified elector or a qualified elector voting for the first time at a new polling place must provide a form of identification, such as a document containing a photograph or a Pennsylvania tax bill. In other words, laws that some qualified electors may find burdensome already exist and are constitutional. Inherent in any requirement that evidence be presented is the fact that some individuals may have difficulty satisfying the requirement. However, that is not a legitimate reason to overturn a commonsense policy choice of the General Assembly. As the Commonwealth Court stated, “Because under the plain language of Act 18 the photo IDs are free, and under new procedures birth certificates with raised seals are no longer required for those born in Pennsylvania, the inconvenience of going to PennDOT, gathering required

documents, and posing for a photograph does not qualify as a substantial burden on the vast supermajority of registered voters.” Determination at 60. In sum, Appellants failed to demonstrate that Act 18 itself disenfranchises any qualified electors.

**C. Act 18 secures “free and equal” elections.**

The “free and equal” provision of the Pennsylvania Constitution does not require uniformity. *Patterson*, 60 Pa. at 75 (“[The Constitution] has not said that the regulations to effect this shall be uniform.”). As this Court has explained:

If uniformity of regulation be unsuited to different localities, the end must be attained by diversity. If in one part of the state a system secures to electors a free and equal election, but fails to secure it in another part because of the difference of circumstances, what principle of constitutional law makes it unlawful to pass other provisions to counteract the circumstances, and secure the true purpose of the Constitution? Good sense, good order and sound morality require this diversity of regulation when it secures the end; and it is a great fallacy to substitute uniformity of regulation for a free and equal election.

*Id.* at 75-76. The General Assembly passed a commonsense regulatory scheme to secure free and equal elections. By designating numerous types of acceptable documents, Act 18 attempts to ensure that all qualified electors, if they so desire, have the opportunity and ability to cast a ballot. Although allowing for the possibility that qualified electors will provide different evidence to prove their identity is not “equal” in its means, the scheme passed by the General Assembly seeks to ensure that each vote cast by a qualified elector is counted. In other words, the law, in the end, secures free and equal elections. Act 18 therefore is constitutional under the Court’s holding in *Patterson*. In addition, the Commonwealth Court concluded the same. Determination at 64-65.



**D. Act 18 does not impose any additional qualifications to vote.**

Act 18 creates a framework in which a qualified elector who casts a ballot presents evidence that he, in fact, is the qualified elector he claims to be. The evidence as determined by the General Assembly is a document that: (1) was issued by the United States, the Commonwealth of Pennsylvania, a municipality of the Commonwealth to an employee of that municipality, an accredited Pennsylvania institution of higher education, or a Pennsylvania care facility; and (2) generally contains the name and photograph of the qualified elector as well as an expiration date. In addition, if a qualified elector does not have one of the various, acceptable types of documents needed to cast a ballot, Act 18 permits that qualified elector to cast a provisional ballot, which will be counted when the qualified elector affirms by affidavit within six calendar days that he was the individual who cast the provisional ballot.

In other words, Act 18 “designates . . . the evidence which shall identify and prove . . . the persons and the qualifications of the electors.” *Patterson*, 60 Pa. at 75. It does not entitle individuals to vote who are not qualified electors. Nor does it preclude individuals who are qualified electors from being entitled to vote. Act 18 simply seeks to ensure that only qualified electors participate in elections. Importantly, the Commonwealth Court could have not agreed any more. Determination at 65 (The Commonwealth Court stated that Appellants claim that Act 18 improperly adds a qualification to vote “has no merit whatsoever.”).

**CONCLUSION**

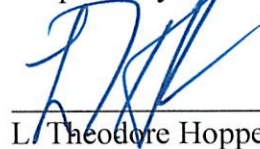
As this Court has previously declared, “The power to regulate elections is legislative, and has always been exercised by the law-making branch of the government.” *Winston*, 244 Pa. at 454. To promote voter confidence in the election process, the General Assembly decided that a qualified elector must provide evidence of his identity when he casts his ballot. In addition, it

designated the various types of documents a qualified elector may provide when he casts his ballot. In other words, the General Assembly did no more than use its undoubted authority to pass legislation that regulates elections.

Importantly, the Commonwealth Court agreed. The court found Act 18 to be no more than a law regulating elections and well within the General Assembly's authority to regulate elections. Specifically, the lower court held, "Act 18 does not attempt to alter or amend the Pennsylvania Constitution's substantive voter qualifications, but rather is merely an election regulation to verify a voter's identity." Determination at 35-36. In addition, the court concluded, "Act 18 does not attempt to alter the state constitution's substantive voter qualifications. Instead it is an election regulation designed to verify a voter's identity." *Id.* at 36. Simply put, the commonsense policy choice of the General Assembly was not a gross abuse of its authority. Therefore, for the foregoing reasons, *Amici* respectfully requests that this Court affirm the lower court's ruling.

Dated: September 6, 2012

Respectfully Submitted,



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**IN THE SUPREME COURT OF PENNSYLVANIA**

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

Docket No. 71 map 2012

Appellants,

v.

THE COMMONWEALTH OF PENNSYLVANIA; )  
THOMAS W. CORBETT, In His Capacity As )  
Governor; CAROL AICHELE, In Her Capacity As )  
Secretary Of The Commonwealth, )

Appellees.

**CERTIFICATE OF SERVICE**

I certify that I am this day, September 6, 2012, serving the foregoing **BRIEF OF AMICI CURIAE** upon the persons below via first-class, U.S. mail, postage prepaid, which service satisfies the requirement of Pa. R.A.P. 121:

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