



Advancement Project Public Comments
Submitted to the Presidential Commission on Election Administration
for its public meeting in Philadelphia, Pennsylvania on September 4, 2013

I. INTRODUCTION

Advancement Project¹, a national, non-partisan, civil rights and racial justice organization submits these public comments to the Presidential Commission on Election Administration (“Commission”) in connection with its public hearing scheduled for Philadelphia, Pennsylvania on September 4, 2013. Our comments relate to the following voting issues under consideration by the Commission as set forth in the President’s Executive Order: (i) the number, location, management, operation, and design of polling places; (ii) the training, recruitment, and number of poll workers; (iv) the efficient management of voter rolls and poll books; (vii) voting accessibility for individuals with disabilities, limited English proficiency, and other special needs; (viii) management of issuing and processing provisional ballots in the polling place on Election Day; and (ix) the issues presented by the administration of absentee ballot programs.² In Section II below, we discuss the problems faced by Pennsylvania voters in the recent 2012 Presidential Election and some of the history of voting obstacles in Pennsylvania. In Section III, we recommend specific reforms that are necessary, explain why such reforms would solve the observed problems and relate them to the areas under the Commission’s consideration.

Since 2004, we have worked closely on the ground with Pennsylvania citizens, community organizations, non-partisan coalitions and civic engagement groups to remove barriers to voting for voters of color. We were involved in 2012 protecting voters from efforts to make it harder for qualified Pennsylvanians to vote. We served as co-counsel in *Applewhite v. Commonwealth*, 330 M.D. 2012 (Commw. Ct) a suit seeking to declare Pennsylvania’s recently enacted restrictive voter ID law (“Act 18”) unconstitutional because the law as written will disenfranchise hundreds of thousands of validly registered voters. We also engaged in voter education and outreach, and provided our coalition partners with legal, policy and communications support on voter registration and election administration issues.

On Election Day in 2012, as it has for the past three Presidential elections, Advancement Project worked with more than 35 Pennsylvania non-partisan organizations, including the Committee of Seventy and ACLU-PA, and the Election Protection Coalition, monitoring polling

¹ Advancement Project is a next generation, multi-racial civil rights organization, founded in 1999 by a team of veteran civil rights lawyers. We exist to fulfill America’s promise of an inclusive and just democracy, rooted in the great human rights struggles for equality and justice. We use innovative tools and strategies to strengthen social movements and achieve high-impact policy change. Locally, we provide strategic policy, legal, and communications support to grassroots organizations, increasing their capacity to identify and address racial injustices in their communities. On the national level, we extend and replicate lessons learned on the ground, through the use of legal advocacy, networking, media outreach, and public education.

² Exec. Order No. 13639 § 3(a) (2013).

places and staffing voter hotlines. The Election Protection Coalition (“EP”) is a nationwide coalition of more than 100 partners formed to help all voters participate equally in the political process.³ As part of its mission, EP monitors elections, troubleshoots problems and collects information about voters’ experiences on Election Day to ensure that every eligible voter can vote. Advancement Project recognizes that improving election administration is a year-round effort and dedicates resources towards that goal in Pennsylvania.

At the national level, Advancement Project along with the Lawyers’ Committee for Civil Rights Under the Law released a report documenting the recent spate of new obstacles erected to prevent voters of color from voting and the efforts to fight back against those attempts to lock out voters. The report highlights the extensive efforts of the two civil rights organizations, from the courtroom to the streets, to combat restrictive voter ID laws, challenges at the polls, deception and intimidation, “show-me-your-papers” proof-of-citizenship practices, unacceptably long lines, and the troubling use of provisional ballots.⁴ The report demonstrates that many of the recent restrictions on the right to vote involve the topics that this Commission is charged with investigating and disproportionately impact African-American, Latino and Asian-American voters.

II. Recent History of Voting Problems in Pennsylvania

A. Pennsylvania Voters’ Experience During the November 2012 Elections

Advancement Project and other members of the Election Protection (EP) Coalition, including the Committee of Seventy and the ACLU of Pennsylvania, monitored the November 6, 2012 election across the Commonwealth. Pennsylvania received the second highest number of calls to the EP hotline, 9,171, second only to California, a number that is likely understated because some callers were unable to connect due to the volume of calls to the hotline.⁵ The most frequently reported problems involved photo ID, voters who thought they were registered having to vote by provisional ballot, difficulties for limited-English proficient voters, voter intimidation and polling place problems including confusion over the location of the proper polling place, machine failure, and long lines.⁶ Five of these areas are discussed in more detail below.

1. Confusion and Disenfranchisement Because of Photo ID (Commission Topic (ii) and (iv))

Our Election Day monitoring and numerous other reliable reports show that confusion over newly-enacted photo ID requirements was prevalent across Pennsylvania, even though many voters knew that the Commonwealth Court had enjoined implementation of

³ For more information see <http://www.866ourvote.org/about>

⁴ Daniels, G., *Lining Up: Ensuring Equal Access to the Right to Vote*, Joint Report of Advancement Project and The Lawyers’ Committee for Civil Rights Under the Law, (Aug. 2013) available at <http://www.advancementproject.org/resources/entry/LiningUp>.

⁵ Election Protection, *Our Broken Voting System and How to Repair It* at 48, 2012 Election Protection Full Report, Feb. 12, 2013, available at <http://www.866ourvote.org/newsroom/publications/the-2012-election-protection-report-our-broken-voting-system-and-how-to-repair-it>

⁶ *Id.*

Pennsylvania's voter ID law ("Act 18").⁷ The Commonwealth's own actions during the month of October in disseminating false advertisements and direct mail to voters exacerbated the confusion.⁸ More disturbing, poll workers in many locations were not properly trained on the requirements of the voter ID law and turned away voters who lacked photo ID or required them to vote by provisional ballot.⁹

The inconsistent application of the voter ID law occurred in all parts of the state. In York County, poll workers refused to let a long-time voter who lacked photo ID to vote a regular ballot and did not provide a private area for him to fill out a provisional ballot.¹⁰ Another long-time voter in Lehigh County was not permitted to vote until he retrieved his photo ID from home.¹¹ Upon returning to the polling place, a man who was speaking with the constable¹² taunted him, "You must be a Communist, because Communists don't want to show ID to vote!"¹³ In Hatboro, Montgomery County, a woman who was not permitted to vote without photo ID left the polling place without voting, planning to return after work.¹⁴ In Manchester Township, York County, only African-American voters were being asked for photo ID.¹⁵

An African-American woman who had been voting in the same polling place in York County for 12 years was initially denied the ability to vote because she did not have photo ID.¹⁶ After insisting that they look for her, poll workers located her name but, because she lacked a photo ID, required her to verify her address and date of birth, and routinely required that of every voter who lacked photo ID, contrary to any legal requirement.¹⁷

Also in Upper Darby, Delaware County, first-time voters who produced a Pennsylvania driver's license were required to produce a second form of ID showing their address if the driver's license address did not match the address in the poll book.¹⁸ This is not a current requirement under Pennsylvania's Election Code and is especially difficult for first-time voters who may have recently moved and have not been able to update their address on the driver's

⁷ Amanda Terkel and Luke Johnson, *Pennsylvania Election Day Plagued By Confusion Over Blocked Voter ID Law*, Huffington Post, Nov. 6, 2012, http://www.huffingtonpost.com/2012/11/06/2012-elections-polling-places_n_2036228.html#67_pennsylvania-election-day-plagued-by-confusion-over-states-blocked-voter-id-law.

⁸ See *Applewhite v. Com. of Penna.*, No. 330 MD 2012, Petitioners' Petition for Supplemental Injunction, available at <http://www.advancementproject.org/resources/entry/pa-voter-id-lawsuit-petition-for-supplemental-injunction>. The Department of State's misinformation program included misleading billboards, bus advertisements, incorrect website and direct mail sent to voters immediately before Election Day advising voters that they must show ID. These actions, coupled with incorrect signage at many polling places, muddied the waters about what exactly would be required on Election Day.

⁹ Amanda Terkel and Luke Johnson, *Pennsylvania Election Day Plagued By Confusion Over Blocked Voter ID Law*, Huffington Post, Nov. 6, 2012, http://www.huffingtonpost.com/2012/11/06/2012-elections-polling-places_n_2036228.html#67_pennsylvania-election-day-plagued-by-confusion-over-states-blocked-voter-id-law.

¹⁰ Advancement Project Staff Notes from Nov. 6, 2012 (notes on file with Advancement Project).

¹¹ *Id.*

¹² A constable is an elected official in Pennsylvania that has duties similar to county sheriffs and district attorneys. A constable's duties include, among others, preserving the peace at the polls during an election. See generally, 44 Pa. C.S. § 7152.

¹³ Advancement Project Staff Notes detailing conversation with voter from Nov. 6, 2012 (notes on file with Advancement Project).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Declaration of Michele K. Janmey (on file with Advancement Project)

license. Several voters had to leave without voting, go home and find another form of ID with their current address.¹⁹

The large number of problems observed on Election Day for voters attempting to navigate Pennsylvania's identification rules also point out the inconsistencies in poll worker education and training throughout the state. Because Pennsylvania's three primary poll workers, Judge of Elections, and Majority and Minority Inspector are elected officials, county and state elections officials do not have authority under Pennsylvania's Election Code to mandate training.²⁰ This inability to update poll workers on changes in the rules is a critical shortcoming in Pennsylvania's election administration. Moreover, Pennsylvania also suffers from the nationwide shortage of poll workers, so clerks who are recruited to serve at the eleventh hour likely will not receive training.²¹ While many poll workers conscientiously attend training, the 2012 election is evidence that not all do.

2. Failure to Properly Register Voters; Failure to Direct to Proper Polling Place (Commission Topics (i) and (ii))

Many voters across the Commonwealth reported that they believed they were registered but their names were not on the voting rolls when they went to vote. Many of these voters could look themselves up on the Department of State website using their smart phones yet were not in the poll book or on the supplemental pages at the polling place.²² In Philadelphia, voters who are not listed in the poll books must vote by provisional ballot.²³ Similarly, long-time voters found that their names were mysteriously left off the rolls. In Philadelphia, divisions encompassing Temple University in North Philadelphia and near the University of Pennsylvania in West Philadelphia had high rates of provisional ballots cast by voters who could not be found on the rolls.²⁴ Other voters were given the wrong information about the location of their polling places. In York County, a voter traveled from one polling place to another, only to be told that her registration was inactive. Poll workers denied her the ability both to vote normally (as required by law as long as the voter's address is updated) and by provisional ballot.²⁵

3. Nearly 50,000 Provisional Ballots because of Voter ID and registration problems (Commission Topics (iv) and (viii))

Improper photo ID requirements and voters not listed on the rolls contributed to a 48.15% increase in the number of provisional ballots cast on Election Day. Pennsylvania had 48,740

¹⁹ *Id.*

²⁰ Advancement Project Issue Brief, "Plight of the Poll worker" at 3-4, available at <http://www.supportthevoter.gov/materials-research/>

²¹ *Id.*

²² Election Protection, *Our Broken Voting System and How to Repair It* at 52, 2012 Election Protection Full Report, Feb. 12, 2013, available at <http://www.866ourvote.org/newsroom/publications/the-2012-election-protection-report-our-broken-voting-system-and-how-to-repair-it>

²³ See Philadelphia City Commissioners website, <http://phillyelection.com/provbal.htm> (voters may be given the opportunity to vote a provisional ballot if ". . . the individual's name does not appear on the general register and elections officials cannot determine his registration.") In other Pennsylvania counties, local elections officials may call the county voter registration office to confirm registration, and if the voter's registration is confirmed, the voter can vote a regular ballot.

²⁴ Advancement Project Staff Notes from Nov. 6, 2012 (notes on file).

²⁵ *Id.*

provisional ballots in 2012,²⁶ compared with 32,898 in 2008.²⁷ Philadelphia had more than 27,000 provisional ballots cast in the 2012 election, compared to approximately 12,000 in 2008. The most common reason for rejection was that the voter was not registered.²⁸ In Philadelphia, more than 14,000 voters were forced to vote by provisional ballot even though they were validly registered and were listed in the poll books or on the supplemental poll books. Even more disturbing, more than 5,000 validly registered Philadelphia voters were not listed in the poll books at the polling place,²⁹ but according to the Department of State, should have been listed in the supplemental poll books.³⁰ Finally, more than 7,000 Philadelphia voters had their provisional ballots rejected because their registration could not be confirmed.³¹

Fortunately for Philadelphia voters, 19,000 of the 27,000 provisional ballots were counted because the voters were validly registered.³² Several investigations of the causes of Philadelphia's increase have been published since November 2012,³³ and one sitting City Commissioner has detailed specific recommendations for ensuring that the problem does not recur in future elections.³⁴ Implementation of the recommended improvements is critical because unnecessary use of provisional ballots increases processing time at the check-in table, can lead to long wait times and possibly to voter disenfranchisement for voters who cannot wait and leave without voting.

4. Problems Experienced by Limited-English-speaking Voters (Commission Topic (vii))

In Hazelton, Luzerne County, Spanish-speaking voters reported visiting two or more polling places trying to find the correct one and being forced to vote by provisional ballot.³⁵ They also encountered a lack of interpreters to provide assistance and the denial of the right to have an assistor of choice interpret the ballot for them—indicating potential violations of

²⁶ Data provided by the Pennsylvania Department of State.

²⁷ United States Election Assistance Commission, *2008 Election Administration and Voting Survey, A Summary of Key Findings*, Nov. 2009 available at http://www.eac.gov/research/election_administration_and_voting_survey.aspx

²⁸ Data provided by the Pennsylvania Department of State, Bureau of, Commissions Elections and Legislation.

²⁹ Gregory Irving, *Report to the City Commissioners, General Election 2012*, Dec. 5. 2012, available at http://phillyelection.com/Report_to_the_City_Commissioners.pdf

³⁰ See Memo to Secy. Carol Aichele, from Deputy Secy. Shannon Royer, dated Jan. 16, 2013 re: Philadelphia Provisional Ballots, available at http://www.seventy.org/Elections_November_2012_Election_Probes.aspx. There is some disagreement about what caused the omission of these voters' names from the poll books. Compare Stephanie Singer, City Commissioner, "Improving Provisional Ballot Procedures in Philadelphia" (Dec. 18, 2012) available at <http://www.patransparency.org/index.php/blog/provisional-ballot-mystery-solved> with Richard Negrin, et. al., *Election Day Fact-Finding Report, June 21, 2013*, at 8-12, presented by Mayor Michael A. Nutter's Fact Finding Team, available at <http://cityofphiladelphia.wordpress.com/2013/06/19/mayors-election-day-fact-finding-team-releases-report/>

³¹ Gregory Irving, *Report to the City Commissioners, General Election 2012*, Dec. 5. 2012, available at http://phillyelection.com/Report_to_the_City_Commissioners.pdf

³² Stephanie Singer, City Commissioner, "Improving Provisional Ballot Procedures in Philadelphia," (Dec. 18, 2012) available at <http://www.patransparency.org/index.php/blog/provisional-ballot-mystery-solved>.

³³ The Department of State, Stephanie Singer, Philadelphia City Commissioner, Philadelphia Mayor Michael A. Nutter and Alan Butkovitz, Philadelphia City Controller have published reports on these problems, available at http://www.seventy.org/Elections_November_2012_Election_Probes.aspx.

³⁴ Stephanie Singer, City Commissioner, "Improving Provisional Ballot Procedures in Philadelphia" at 7-8 (Dec. 18, 2012) available at <http://www.patransparency.org/index.php/blog/provisional-ballot-mystery-solved>

³⁵ Volunteer notes, Common Cause of Pennsylvania (on file with Common Cause).

Sections 4(e) and 208 of the federal Voting Rights Act.³⁶ One elderly Spanish-speaking voter in Hazelton erroneously selected the straight party option and could not receive assistance to correct it. He ended up voting for the opposite party of his choice.³⁷ A coalition of Latino community groups in Philadelphia also documented the lack of Spanish-language resources in letters to the Mayor, the City Commissioners and the City Controller, which similarly indicate violations of the Voting Rights Act.³⁸ Similarly, Vietnamese voters in South Philadelphia reported that polling places with large numbers of Asian-speaking voters did not enough have translators available and voters were turned away at the polls.³⁹

5. Some Pennsylvania Voters waited in Long Lines to Vote (Commission Topic (i))

The long lines that plagued voters across the country spawned this Commission. News outlets reported that voters waited two hours to vote in Ohio,⁴⁰ five hours in Virginia and South Carolina,⁴¹ and up to six hours in Florida.⁴² Long lines prevent eligible voters from voting because some voters either fail to join the line and others leave without voting.⁴³ Although the existence of long lines is not universal, regrettably, voters of color and urban voters experienced significantly longer wait times than white voters.⁴⁴ Advancement Project previously submitted to the Commission a report analyzing election administration data that confirmed, at least as to Florida, that voters of color waited longer than white voters.⁴⁵

Pennsylvania was not immune from this phenomenon: One news report found that Pennsylvania voters waited in line an average of 50 minutes.⁴⁶ Confusion over voter ID laws

³⁶ See 42 USC § 1973b(e) and 42 USC § 1973aa-6; Jamilah King, *Pennsylvania's Spanish-Speaking Voters Face Barriers at the Polls*, Nov. 6, 2012 available at http://colorlines.com/archives/2012/11/pennsylvanias_spanish-speaking_voters_face_barriers_at_the_polls.html

³⁷ Volunteer notes, Common Cause of Pennsylvania (on file with Common Cause).

³⁸ See Letter from Will Gonzalez, Exec. Dir. CEIBA to Philadelphia City Commissioners, Jan. 11, 2013 (on file with Advancement Project).

³⁹ *Asian Americans Report Voting Barriers and Discrimination at Poll Sites Across USA*, Press Release, Nov. 6, 2012, Asian American Legal Defense Fund, available at <http://aaldef.org/press-releases/press-release/asian-americans-report-voting-barriers-and-discrimination-at-poll-sites-across-usa.html>

⁴⁰ Douglas Belkin, *At Ohio State, Students Wait in Long Lines to Vote*, Wall Street Journal, Nov. 6, 2012, <http://blogs.wsj.com/washwire/2012/11/06/at-ohio-state-students-wait-in-long-lines-to-vote>

⁴¹ Greg Gordon and Tony Pugh, *Voters endure delays, lines and misinformation to cast ballots*, McClatchy, Nov. 6, 2012, <http://www.mcclatchydc.com/2012/11/06/173871/voters-endure-delays-lines-and.html>.

⁴² Kathleen McCrory, Curtin Morgan and Gay Weaver, *Across South Florida, long lines, glitches make for exhausting Election Day*, Miami Herald, Nov. 7, 2012, <http://www.miamiherald.com/2012/11/06/3085322/across-south-florida-long-lines.html>

⁴³ See, e.g., Benjamin Highton, *Long Lines, Voting Machine Availability, and Turnout: the Case of Franklin County, Ohio in the 2004 Presidential Election*, 39 PS: POL. SCI. & POLS. 65 (2006), available at <http://faculty.psdomain.ucdavis.edu/bhighton/pubs-and-papers/contents.html>

⁴⁴ Stewart III, Charles, *Waiting to Vote in 2012* (April 1, 2013). Journal of Law and Politics, Forthcoming; MIT Political Science Department Research Paper No. 2013-6 at 19, available at SSRN: <http://ssrn.com/abstract=2243630> or <http://dx.doi.org/10.2139/ssrn.2243630>

⁴⁵ Michael C. Herron and Daniel A. Smith, *Congestion at the Polls: A Study of Florida Precincts in the 2012 General Election*, A Report Commissioned by the Advancement Project, (June 1, 2013) available at <http://www.advancementproject.org/resources/entry/congestion-at-the-polls-a-study-of-florida-precincts-in-the-2012-general-el>

⁴⁶ While photo ID and provisional ballot complaints dominated the EP hotline, at least one news outlet reported that Pennsylvania had an average wait time of 50 minutes. Benjamin Jackson, *Which State's Voters Had To Wait the Longest, According to Their Tweets?* Slate.com, Nov. 6, 2012 available at

and the record number of provisional ballots were among the causes of long lines in Pennsylvania.⁴⁷ Long lines and delays are not surprising. Pennsylvania law forces the majority of voters to vote during a 13-hour period on a single weekday. Similarly, the Pennsylvania Election Code limits absentee voting to voters who will be unable to attend their polling place because of a few specified reasons.⁴⁸ The large number of people arriving for a given transaction at any one time is a pressure point that causes long lines at the polling place.⁴⁹ Moreover, locations that historically have had long lines continue to do so unless changes in election administration occur, such as ensuring appropriate polling locations and adequate polling place resources.⁵⁰

B. Historically, Pennsylvania Voters have waited in Long Lines: Lincoln University Case (Commission Topic (i)).

2012 was not the only election that voters waited in long lines. In 2008, African-American voters, including students at Lincoln University, waited more than 6 hours and some waited 8 hours to cast their ballots. Lincoln University, one of the nation's oldest historically black universities, is located in Lower Oxford Township, approximately one hour from Center City, Philadelphia. Lower Oxford Township has two election districts, East and West. From 1982 until 1992, Lincoln University hosted the Lower Oxford East polling place on campus.⁵¹ After an African-American faculty member was elected to the local school board, however, the polling place was moved off-campus to a small community building that was not walking distance to the campus.⁵² During the 2008 primary, local election officials observed inordinately long lines. Fearing disaster, they sought to move the polling place to a larger space on the Lincoln University campus before the 2008 general election.⁵³ Lincoln University offered the use of one of its gymnasiums for that purpose.⁵⁴

In September 2008, the Chester County Board of Elections, (which at the time included Carol Aichele, currently Pennsylvania's Secretary of State and top election official) voted along party lines *not* to move the polling place to more spacious quarters on the Lincoln University campus.⁵⁵ As predicted, on Election Day in 2008, lines started forming immediately and did not clear the entire day.⁵⁶ The combination of an inadequately-sized polling place, unlawful challenges, failure of Voter Services to provide an up-to-date poll book and lack of other polling place resources created a perfect storm of long lines and disenfranchised voters.⁵⁷

http://www.slate.com/blogs/future_tense/2012/11/06/voting_wait_times_which_state_s_voters_faced_the_longest_lines.html. CNN posted a photo Penn State students in a rather long line at

<http://www.cnn.com/2012/11/06/politics/election-voting/index.html>.

⁴⁷ Election Protection Full Report at 53, *supra* n. 3.

⁴⁸ See 25 Pa Stat. 3146.1; The Pennsylvania Constitution also specifies the reasons for absentee voting, see Art. VII, § 14.

⁴⁹ Levitt, Justin, 'Fixing That': *Lines at the Polling Place* (Mar. 15, 2013). Loyola-LA Legal Studies Paper No. 2013-14 at 4, *Journal of Law and Politics*, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=2246973>

⁵⁰ *Id.* at 17

⁵¹ For the complete factual history, see Complaint, *English v. Chester County*, No. 2:10-cv-00244 (E.D. Pa) available at <http://www.aclupa.org/legal/legaldocket/englishetalvchestercounty.htm>

⁵² *Id.*, ¶ 22-24.

⁵³ *Id.*, ¶ 22.

⁵⁴ *Id.*, ¶ 30.

⁵⁵ *Id.*, ¶ 34.

⁵⁶ *Id.*, ¶¶ 35-36.

⁵⁷ See generally, Complaint, ¶¶ 35-46

Lower Oxford East had more than 2000 registered voters.⁵⁸ The polling place was so tiny that it could not hold any extra privacy booths for voters to mark ballots or an additional scanner.⁵⁹ The challenges of almost every Lincoln University student slowed the line down.⁶⁰ Many voters were not in the poll books, because Chester County Voter services inexplicably did not send an up-to-date poll book, and processing the provisional ballots also slowed things down.⁶¹ Voters had nowhere to fill out provisional ballots. Although many voters stayed in line to cast their vote, others left without voting and some, knowing that the lines were long, decided not to go.⁶² Some voters waited 6-8 hours to vote.⁶³ The final voter voted around 11:30 p.m. after the presidential race had been called.⁶⁴

After the election, hundreds of voters petitioned the Chester County Board of Elections to move the polling place to a larger space.⁶⁵ Instead of moving it to the Lincoln University campus, the Board moved it to the Lower Oxford Township building.⁶⁶ That building is farther away from campus than the community center, with no ability for students to walk there from the campus.⁶⁷

In 2008, Lower Oxford East had the lowest turnout percentage of any precinct in Chester County and the highest number of African-American voters.⁶⁸ Given the Chester County Board of Elections' refusal to move the polling place to larger quarters at the request of the local election officials because of their accurate prediction that it was inadequate to handle the number of voters, several groups filed suit under Section 2 of the Voting Rights Act on behalf of voters who were disenfranchised or had to wait in long lines.⁶⁹ Shortly after the suit was filed, the parties settled, the County Board of Elections agreed to move the polling place to the Lincoln University campus and the plaintiffs agreed to allow the county to redraw the precinct lines to try to equalize the number of registered voters between Lower Oxford East and West.⁷⁰

⁵⁸ *Id.*, ¶ 20.

⁵⁹ *Id.*, ¶ 40.

⁶⁰ *Id.*, ¶ 44.

⁶¹ *Id.*, ¶ 39. Inexplicably, Chester County Voter Services did not provide the most up-to-date poll book to the precinct until very late in the day.

⁶² *Id.*, ¶¶ 50-80.

⁶³ *Id.*, ¶ 11-12.

⁶⁴ *Id.*, ¶ 58.

⁶⁵ *Id.*, ¶ 87.

⁶⁶ *Id.*, ¶ 89.

⁶⁷ *Id.*, ¶¶ 90-91.

⁶⁸ *Id.*, ¶¶ 11, 83.

⁶⁹ See Press Release, "Civil Rights Groups File Lawsuit Charging Racial Discrimination In Chester County Vote" ACLU-PA, available at <http://www.aclupa.org/pressroom/civilrightsgroupsfilelawsu.htm>

⁷⁰ See Settlement Agreement, *English v. Chester County*, No. 2:10-cv-00244 (E.D. Pa) available at <http://www.aclupa.org/legal/legaldocket/englishetalvchestercounty.htm>

III. Recommendations for Improving Election Administration in Pennsylvania

A. Prohibit Restrictive Voter ID Laws that disenfranchise voters. (Commission Topic (iv)).

Pennsylvania's newly enacted photo ID law, Act 18, if enacted as written, will disenfranchise hundreds of thousands of Pennsylvania voters.⁷¹ As the Commonwealth recognized in the *Applewhite v. Commonwealth* case, the legislative justification for Act 18, in-person voter fraud, does not exist and is not a threat.⁷² Act 18 has the potential to disenfranchise hundreds of thousands of voters because the kinds of IDs permitted by law are very limited and not every voter has one of them.⁷³ The Department of State's "fix," the new "just-for voting" ID is not mandated by the statute and could be revoked at any time.⁷⁴ Because requirements for obtaining the DOS ID are minimal,⁷⁵ forcing voters to go to PennDOT to get one is burdensome when the same information could be presented at the polling place through affirmation. The Election Protection Coalition received numerous calls from voters who were turned away at the polls because of Act 18's flawed implementation.⁷⁶ Pennsylvania needs to repeal this restrictive measure and revert to existing law that, by the Commonwealth's own admission, prevented in-person voter impersonation at the polls.⁷⁷

Existing law in Pennsylvania, which is as broad as the identification requirements under the Help America Vote Act,⁷⁸ has prevented in-person fraud as evidenced by the Commonwealth's stipulation in the *Applewhite* case that they have no evidence of that type of fraud.⁷⁹ Clearly, identification requirements that limit the acceptable forms of ID, and have the effect of disenfranchising hundreds of thousands of voters, have no place in a just democracy.

B. Uniform Procedures for Early Voting (Commission Topic (i))

The problems that occurred in Pennsylvania in 2012 create an environment that makes it harder for voters to vote. Early voting is one step that could alleviate these problems, especially when implemented sensibly along with other improvements to the election process.

⁷¹ Petitioners and organizations, represented by Advancement Project, have argued that Act 18 is unconstitutional, see Petitioners' Proposed Findings of Fact and Conclusions of Law, *Applewhite v. Commonwealth*, No. 330 MD 2012, (Pa. Commw Ct.) available at <http://www.advancementproject.org/resources/entry/petitioners-proposed-findings-of-fact-and-conclusions-of-law-in-pennsylvania>.

⁷² See Stipulation dated June 12, 2012 in *Applewhite v. Commonwealth*, No. 330 MD 2012, (Pa. Commw. Ct.) available at <http://www.advancementproject.org/resources/entry/pennsylvania-voter-id-lawsuit-testimony-applewhite-stipulation>

⁷³ See Petitioners Proposed Findings of Fact, supra n. 64, at 4, ¶

⁷⁴ *Id.*, ¶ 43.

⁷⁵ Learn About Pennsylvania's Voter ID Law

<http://www.votespa.com/portal/server.pt?open=514&objID=1174114&parentname=ObjMgr&parentid=4&mode=2>. The votespa.com website has been disabled since August 19, 2013 and is not available as of this writing.

⁷⁶ See, supra, n. 5.

⁷⁷ See Stipulation dated June 12, 2012 in *Applewhite v. Commonwealth*, No. 330 MD 2012, (Pa. Commw. Ct.) available at <http://www.advancementproject.org/resources/entry/pennsylvania-voter-id-lawsuit-testimony-applewhite-stipulation>

⁷⁸ 42 U.S.C. § 15483(b)(2)

⁷⁹ See supra, n. 65.

1. Early Voting across the Nation

Early voting has proven to be enormously popular among voters and election officials in the states – the majority-- that offer it. In 32 states and the District of Columbia, voters may cast a ballot in-person at designated early voting locations and do not need to provide a reason for not voting on Election Day.⁸⁰ Twenty-seven states do not require an excuse or justification for mailing an absentee ballot.⁸¹

Americans have embraced the opportunity to vote in advance of Election Day. Since 2000, the percentage of voters who cast their vote early has steadily increased, more than 15% of voters did so in 2000, 21% in 2004⁸² and 30.2% of all votes cast in 2008 were early votes.⁸³ These aggregate rates track all forms of early voting: in states with no excuse in-person early voting and no excuse absentee ballots, the numbers are much higher, approaching 50%.⁸⁴ In 2012, more than half of Colorado’s voters and nearly half of Nevada’s voters voted early; 40% of North Carolina’s voters, 35% of Florida’s voters, 30% of Iowa’s voters and 20% of Ohio voters cast early votes.⁸⁵ Some estimate that more than thirty-two million Americans voted before Election Day last year, comprising more than a quarter of the total vote,⁸⁶ while others estimate the number at close to 40%.⁸⁷

Early voting encompasses both in-person casting of a ballot before Election Day and voting by absentee ballot that is mailed or delivered to the jurisdiction.⁸⁸ Implementation can vary, but several states provide for centrally located early voting centers at which all voters registered in the county may vote. Some states set up satellite locations within the county at places such as shopping malls, community centers or churches.⁸⁹ Early voting is embraced by all voters, but voters of color are more likely to vote early during popular programs, such as “Souls to the Polls” that encourages voters to vote on the Sunday before Election Day.⁹⁰ In 2012, African-Americans in North Carolina used Sunday voting twice as much as white voters.⁹¹ One study of turnout in Florida on the Sunday before the 2008 presidential elections found that black voters accounted for 32% of the daily early vote turnout.⁹²

⁸⁰ National Conference of State Legislatures, Absentee and Early Voting, <http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx>. Washington and Oregon conduct elections entirely by mail.

⁸¹ *Id.* Twenty-six of these states also have early voting. New Jersey has no excuse absentee voting but does not have early voting.

⁸² Gronke, et al., *Early Voting and Turnout*, October 2007 PS: Journal of Political Science and Politics at 642.

⁸³ United States Elections Project, 2008 Early Voting Statistics, http://elections.gmu.edu/early_vote_2012.html

⁸⁴ See e.g., Alvarez et al., *2008 Survey of the Performance of American Elections* at 32. (2009)

⁸⁵ Pew Center on the States, “Early Voting in Battleground States,” Nov. 6, 2012, available at <http://www.pewstates.org/research/analysis/early-voting-in-battleground-states-85899428345>

⁸⁶ United States Elections Project, 2012 Early Voting Statistics, http://elections.gmu.edu/early_vote_2012.html.

⁸⁷ Gronke and Stewart, *Early Voting in Florida*, at 4 MIT Political Science Department Research Paper No. 2013-12 available at: <http://ssrn.com/abstract=2247144> (citing 2012 Cooperative Congressional Election Study (CCES))

⁸⁸ Gronke, et al., *Early Voting and Turnout*, October 2007 PS: Journal of Political Science and Politics at 639.

⁸⁹ *Id.*

⁹⁰ See e.g. ACLU, “Take Your Souls to the Polls: Voting Early in Ohio,” <http://www.aclu.org/voting-rights/take-your-souls-polls-voting-early-ohio>; Democracy North Carolina, “Souls to the Polls,” <http://www.democracy-nc.org/get-involved/souls-to-the-polls/North-Carolina>.

⁹¹ North Carolina State Board of Elections Data.

⁹² “New election law may disparately affect black voters,” Associated Press, June 14, 2011, citing study by Michael McDonald, professor of government and politics at George Mason University, showing that on the final Sunday before the 2008 presidential elections, black voters (who represent 13 % of voters) accounted for 32% of the daily early vote turnout in Florida. Similarly, Latino voters (who represent 11% of the electorate, were 25% of the

Pennsylvania is one of only 15 states who have neither early voting nor no-excuse absentee voting.⁹³ Currently, Pennsylvania law only permits absentee voting for specific absences from the voter's municipality. In the case of voters who are ill or disabled, the law requires disclosure of the nature of the illness or disability and the name of the voter's doctor.⁹⁴ As a result of this, only 5.3% of Pennsylvania voters cast votes in advance of Election Day in 2012.⁹⁵

2. Benefits of Early Voting (Topic (i) and (x)).

Early voting will alleviate some of the difficulties that Pennsylvania voters experienced on Election Day. The most obvious benefit is that early voting significantly stems the tide of voters who must vote within the 13-hour window on Election Day. If voter behavior from other states that have adopted early voting is any guide, 30-40% of Pennsylvania voters could cast their ballot in advance of Election Day. That decrease in the number of voters could reduce long lines at the polling place. Fewer voters in the polling place also prevents the inevitable problems that occur at the polling place from snowballing at overly crowded precincts. Further, by allowing all voters in the jurisdiction to vote at one or more centralized voting centers, no early voter will be disenfranchised because she tried to vote at the wrong precinct. Fewer provisional ballots on Election Day also means speedier processing at the polling place.

The option of voting early also helps voters plan ahead to avoid last minute problems such as "Superstorm" Sandy. Neither New Jersey nor New York, the states most severely affected by Sandy, had in-person early voting.⁹⁶ If they had, voters could have voted in advance of the storm (which hit October 29, one week before the election) and the fallout from Sandy of extremely long lines, and utter chaos on Election Day would have been lessened, if not avoided altogether. As it was, many voters were unable to go to their local polling places, many polling places were inoperable and admirable attempts to carry out an election under extreme circumstances simply weren't enough.⁹⁷

Early voting, when implemented as part of a broader reform of election administration, can boost voter turnout.⁹⁸ At least one study has concluded that the combination of early voting and the ability to register at the same time increases turnout.⁹⁹ North Carolina, a state that allows voters to register and vote at the same time during early voting, has seen significant improvements in voter participation. The state had a 65.2% turnout rate in 2012 and ranked 11th

early voters on the final Sunday before the elections in Florida).

<http://www.ocala.com/article/20110614/WIRE/110619889?p=1&tc=pg>.

⁹³ National Conference of State Legislatures, Absentee and Early Voting, <http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx>. Six states, Arkansas, Indiana, Louisiana, Tennessee, Texas and West Virginia require an excuse for absentee voting but have in-person early voting that does not require an excuse.

⁹⁴ See 25 P.S. § 3146.1.

⁹⁵ United States Elections Project, 2012 Early Voting Statistics, http://elections.gmu.edu/early_vote_2012.html.

United States Elections Project, 2012 Turnout, http://elections.gmu.edu/voter_turnout.htm.

⁹⁶ See Norden, Lawrence, *How to fix Long Lines*, at 4, Brennan Center For Justice, Feb. 4, 2013, available at <http://www.brennancenter.org/publication/how-fix-long-lines>

⁹⁷ *Id.*

⁹⁸ Bill Turque, "The Real Impact of Early Voting," *Washington Post*, Oct. 1, 2012, available at www.washingtonpost.com/blogs/post-politics/wp/2012/10/01/the-real-impact-of-early-voting/

⁹⁹ *Id.*

overall.¹⁰⁰ Since 2007, when North Carolina adopted this reform, the state saw the largest increase in voter turnout among all states from 2004 to 2008.¹⁰¹ In 2012, more than half of North Carolinians used early voting, including 70% of the state's African-American voters.¹⁰² After North Carolina adopted its "one-stop" voting program, the use of provisional ballots declined by 50% between 2006 and 2010.¹⁰³ Ironically, despite the data demonstrating the success of its election reforms, in 2013 the North Carolina legislature passed and the Governor signed, legislation that, among other things, severely cut back early voting and eliminated "same-day" registration during the early voting period.¹⁰⁴

North Carolina was not alone. Despite the popularity and apparent success of early voting, some states attempted to cut back on early voting days, hours and locations in 2012. In Florida, for example, the curtailing of early voting caused extremely long lines during both early voting and Election Day. In some cases voters waited as long as eight hours.¹⁰⁵ In some Florida counties, voting on early voting days and Election Day lasted well past midnight.¹⁰⁶ One study found that more than 200,000 voters were deterred from voting in Florida due to long lines caused by cuts to early voting.¹⁰⁷ One study found that racial minorities were disproportionately impacted by cuts to early voting and the long lines that followed in 2012.¹⁰⁸ Notably, nationwide in 2012, African-American and Latino voters were more likely to have to wait to vote for a longer period of time than white voters.¹⁰⁹ Thus, the 2012 election established the strong correlation between the lack of early voting opportunities and the presence of long lines.

¹⁰⁰ *Id.*

¹⁰¹ Demos, *Small Investment, High Yields: A Cost Study of Same Day Registration in Iowa and North Carolina* at 1, Feb. 2012, <http://www.demos.org/sites/default/files/publications/SDR-CostStudy-Final.pdf>.

¹⁰² Comparing Mail-in Absentee, Early Voting & Same Day Registration, Democracy North Carolina (on file with Advancement Project)

¹⁰³ Demos, *Small Investment, High Yields: A Cost Study of Same Day Registration in Iowa and North Carolina* at 1, Feb. 2012, <http://www.demos.org/sites/default/files/publications/SDR-CostStudy-Final.pdf>.

¹⁰⁴ H.B. 451, 2013-2014 Sess. (N.C. 2013), S.B. 428, 2013-2014 Sess. (N.C. 2013) S.B. 666, 2013-2014 Sess. (N.C. 2013) S.B. 721, 2013-2014 Sess. (N.C. 2013), available at <http://www.ncleg.net/>

¹⁰⁵ Renee Montagne and Greg Allen, "Disputes Over Early Voting Ignite in Florida," NPR.ORG, available at <http://www.npr.org/2012/11/05/164314546/disputes-over-early-voting-ignite-in-florida>; Deborah Charles, "Election System Needs an Overhaul, But It's Not That Easy," *Reuters*, Nov. 8, 2012, available at <http://www.reuters.com/article/2012/11/08/us-usa-campaign-voting-idUSBRE8A71F820121108>; Amanda Terkel, "Florida Early Voting Fiasco: Voters Wait for Hours at Polls As Rick Scott Refuses to Budge," *The Huffington Post*, Nov. 4, 2012, available at http://www.huffingtonpost.com/2012/11/04/florida-early-voting_n_2073119.html.

¹⁰⁶ See "Early Voting Ends With Long Lines, Long Waits," *CBS News Report*, Nov. 4, 2012, available at <http://miami.cbslocal.com/2012/11/04/early-voting-ends-with-long-lines-long-waits>; "Another election, another legal tangle in Florida," *Sun Sentinel*, Nov. 5, 2012, available at http://www.sun-sentinel.com/news/broward/fl-florida-votingmess-20121105_0_6901020_full_story; Greg Gordon and Tony Pugh, "Voters Endure Long Waits, Irregularities in Some States," *The Seattle Times*, Nov. 6, 2012, available at http://seattletimes.com/html/nationworld/2019621099_elexvoting07.html.

¹⁰⁷ Scott Powers and David Damron, "Analysis: 201,000 in Florida Didn't Vote Because of Long Lines," *Orlando Sentinel*, Jan. 23, 2013, available at http://articles.orlandosentinel.com/2013-01-23/business/os-voter-linesstatewide-20130118_1_long-lines-sentinel-analysis-state-ken-detzner.

¹⁰⁸ Michael C. Herron & Daniel A. Smith, "Early Voting in Florida in 2012," Nov. 7, 2012 <http://www.dartmouth.edu/~herron/HerronSmithFloridaEarly2012.pdf>. The report reviewed 67 county early voting files made public by the Florida Department of State, and disaggregated the 2.4 million early votes cast by race and ethnicity. The report concluded: "Insofar as the longest early voting lines appear to have occurred on the day in which minority voter turnout was the greatest, it appears that minority voters, and in particular black voters, have borne heavily the burden of House Bill 1355."

¹⁰⁹ Stewart III, Charles, *Waiting to Vote in 2012*, Apr. 1, 2013, *Journal of Law and Politics*, Forthcoming; MIT Political Science Department Research Paper No. 2013-6 at 19, available at SSRN: <http://ssrn.com/abstract=2243630> or <http://dx.doi.org/10.2139/ssrn.2243630>

Moreover, when early voting is restricted, the brunt of the harm is borne by voters of color because those voters are more likely to vote early.¹¹⁰

C. Improve the Voter Registration Process (Topic iv)

Pennsylvania has approximately 9.9 million people of voting age,¹¹¹ but only 8.5 million people are actually registered,¹¹² and only 5.7 million Pennsylvanians actually voted in 2012.¹¹³ Nationwide, nearly twenty-five percent of eligible Americans, at least fifty-one million potential voters, are not registered.¹¹⁴ The avalanche of provisional ballots in Pennsylvania in 2012 was directly related to breakdowns in Pennsylvania's voter registration system. Provisional ballots are just that, "provisional," meaning that they may not be counted, in whole or in part, and may be challenged by candidates and parties.¹¹⁵ Moreover, provisional ballots slow down the check-in process at the polling place. An excessive number of provisional ballot caused, perhaps by voters who lack ID, can create long waiting times for voters. More than 74% of rejected provisional ballots were rejected because the voter was not registered.¹¹⁶ We can, and we must, do better.

Pennsylvania, among other states, simply needs to improve its voter registration process. Reforms should focus on making it easier to register, ensuring the accuracy of the voter registration rolls and diminishing, if not obliterating, disenfranchisement *because of lack of registration*. Voters may not be registered on election day for a variety of reasons, such as the voter missed or was unaware of the deadline, (in Pennsylvania 30 days before the election), or the registrar failed to add the voter to the rolls in a timely fashion, or because of discrimination against certain classes of voters.

1. Election Day or "Same Day" Registration (Topic iv)

Many problems that occur on Election Day and cause disenfranchisement of voters involve problems with registration. Election Day registration, also called "same day" registration, eliminates those problems altogether. The term refers to the ability of a voter to register and vote on the "same day." "Same day" registration could occur either during the early voting period before Election Day, or it could occur on Election Day. In either case, the voter need not have registered in advance in order to cast a regular ballot.

¹¹⁰ See *supra*, notes 36-38.

¹¹¹ Pennsylvania Quick Facts, United States Census Bureau, <http://quickfacts.census.gov/qfd/states/42000.html>. Some estimate Pennsylvania's "voting eligible population" at 9,674,379, see e.g., United States Elections Project, 2012 General Election Turnout Rate, *available at* elections.gmu.edu/Turnout_2012G.html;

¹¹² Commonwealth of Pennsylvania, Department of State, Voter Registration Statistics *available at* http://www.dos.state.pa.us/portal/server.pt/community/voter_registration_statistics/12725

¹¹³ Commonwealth of Pennsylvania, Department of State, 2012 General Election, Official Returns, *available at* <http://www.electionreturns.state.pa.us/>

¹¹⁴ Pew Center on the States, *Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade* (2012), *available at* http://www.pewtrusts.org/our_work_report_detail.aspx?id=85899370677.

¹¹⁵ See 25 P.S. § 3050(a.4)(4)

¹¹⁶ Data provided by the Pennsylvania Department of State, Bureau of, Commissions Elections and Legislation.

A new study of the 2012 turnout from Nonprofit Vote concludes that states with Election Day Registration have significantly higher turnout than states that do not.¹¹⁷ The following states with Election Day Registration turned out voters in the noted percentages: Idaho (60.9%), Iowa (70.2%), Maine (69.2%), Minnesota (76.1%), Montana (63.6%), New Hampshire (70.9%), Wisconsin (73.2%), Wyoming (59.3%), and the District of Columbia (63.3%). North Dakota has no registration requirement at all and had a 61.1% voter turnout.¹¹⁸ These are higher than the 58.7% national average turnout. However, Nonprofit Vote also concludes that the 10 “swing states” had higher turnout rates as well, so New Hampshire, Wisconsin and Iowa may also have benefitted from the increased attention of the Presidential Election.¹¹⁹

Election Day, or “same day” registration cures numerous ills: It reduces, if not eliminates, the necessity of voting by provisional ballot, and thus also reduces the time needed for poll workers to process provisional ballots; it allows all eligible voters to cast a ballot, even if they missed the deadline for registering in advance of the election; it eliminates discrimination against certain classes of voters who do not become validly registered before Election Day; and it provides a valuable safety net for voters who tried to register in advance but whose registration, for whatever reason, was not recorded on the rolls.

2. Online Voter Registration (Topic (iv))

Nationwide, nearly twenty-five percent of eligible Americans, at least fifty-one million potential voters, are not registered.¹²⁰ Online voter registration is one tool that could increase the rate of registration. Twelve states have implemented programs that allow voters to register or modify their registration online: Arizona, California, Colorado, Indiana, Kansas, Louisiana, Maryland, Nevada, New York, Oregon, South Carolina, Utah and Washington.¹²¹ Some of these states report increases in the number of registrations received and increases over time in the proportion of electronic vs. paper registrations.¹²² Recently, six more states have passed legislation enabling online voter registration but have not implemented it, namely, Connecticut, Georgia, Hawaii, Illinois, Virginia and West Virginia.¹²³ Finally, four states, Delaware, New York, New Mexico and Ohio have limited online voter registration or non-web-based electronic registration.¹²⁴ Although Pennsylvania’s Department of State promised to implement online voter registration, it has yet to do so. A bill authorizing the Department to proceed with online registration passed unanimously in the Pennsylvania Senate but languishes in the House State Government Committee. Advancement Project recommends that the legislation progress to passage and that the Department of State implement the program swiftly.

¹¹⁷ Pillsbury, George, *America Goes to the Polls 2012*, Nonprofit Vote, Mar. 2013, available at <http://www.nonprofitvote.org/>

¹¹⁸ *Id.* at 7.

¹¹⁹ *Id.* at 9.

¹²⁰ Pew Center on the States, *Inaccurate, Costly, and Inefficient: Evidence That America’s Voter Registration System Needs an Upgrade* (2012), available at http://www.pewtrusts.org/our_work_report_detail.aspx?id=85899370677.

¹²¹ National Conference of State Legislatures, Electronic (or Online) Voter Registration, <http://www.ncsl.org/legislatures-elections/elections/electronic-or-online-voter-registration.aspx>.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

In California, more than 700,000 registrants used California's new online voter registration system in 2012,¹²⁵ and a recent study concludes that young voters were more likely to use the online system.¹²⁶ Not only did younger voters register online, but those that did were more likely to actually vote.¹²⁷

The Pew Center on the States commissioned the only comprehensive study of online voter registration implementation that currently exists.¹²⁸ That study examined online voter registration in Washington and Arizona including the relative use of online registration by various demographic groups. In Washington, where online voter registration had been available only one year at the time of the study, the investigators found that online registrants were more likely to be young, urban, less educated, lower income and more likely to be white, Latino or Asian-American.¹²⁹ Washington voters embraced the online system and 54% of all registrations received in 2008 were submitted through an online or paperless electronic process at the department of motor vehicles.¹³⁰

Arizona was the first state to adopt online voting in 2002. Voters can register directly through the website or by going to the Motor Vehicle Division and complete an electronic process either with the clerk or at a kiosk.¹³¹ More than half of all registrations received in 2008 were online registrations and more than 70% of registrations were submitted online in 2007.¹³² Arizona now reports that 70% of registrations were submitted online.¹³³ The overwhelming number of online registrants in Arizona were younger than 40 and lived in Maricopa County which includes the city of Phoenix.¹³⁴ The Pew study found that 5.4% of online registrants in Arizona were African-American voters even though African Americans make up only 2.2% of registered voters.¹³⁵ Latino and Asian-American voters used the online system in about the same proportion as those groups are represented in the voter population.

The benefits of online voter registration include 1) costs savings for counties associated with the fewer number of paper registrations that need processing and manual data entry; 2)

¹²⁵ Patrick McGreevy and Evan Halper, *Number Of California Voters Reaches Record Levels*, Los Angeles Times, Oct. 31, 2012 available at <http://articles.latimes.com/2012/oct/31/local/la-me-voters-20121101>

¹²⁶ *California's 2012 Electorate: The Impact Of Youth And Online Voter Registration*, California Civic Engagement Project, Policy Brief Issue 3, Dec. 2012, available at <http://www.pewstates.org/research/analysis/online-voter-registration-in-california-85899444554>.

¹²⁷ Romero, Mindy and Fox, Jonathan, *Unpacking California Voter Registration and Turnout Trends*, UC Davis Center for Regional Change, Jan. 24, 2013 at 32.

¹²⁸ Matt A. Barreto, Ph.D., et al., *Online Voter Registration (OLVR) Systems In Arizona And Washington: Evaluating Usage, Public Confidence And Implementation Processes, A Joint Research Project of the Washington Institute of the Study of Ethnicity and Race (WISER) University of Washington, Seattle and the Election Administration Research Center (EARC) University of California Berkeley* Apr. 1, 2010, ("WISER Study") available at <http://www.pewstates.org/research/reports/online-voter-registration-85899378469>.

¹²⁹ *Id.* at 14.

¹³⁰ *Id.* at 108.

¹³¹ *Id.* at 37.

¹³² *Id.* at 76. The authors concluded that the increase in campaign activity and third-party voter registration drives during the Presidential election cycle caused the share of online registrations to decrease in 2008 because those other registration efforts were mainly paper transactions.

¹³³ National Conference of State Legislatures, *Electronic (or Online) Voter Registration*, <http://www.ncsl.org/legislatures-elections/elections/electronic-or-online-voter-registration.aspx>

¹³⁴ See WISER Study, *supra*, n.116 at 38.

¹³⁵ See WISER Study, *supra*, n.116, at 39.

increased registration rates of voters and increased voter participation; 3) more accurate voter lists because of fewer data entry errors;¹³⁶ and 4) convenience and ease of use for voters.¹³⁷

Advancement Project recommends that future online registration reforms include all voters, regardless of whether the voter has a digital image of her signature on file with the motor vehicle licensing agency. Current implementation is limited primarily to people who already have a driver's license or non-driver photo ID issued by the state in which they wish to register.¹³⁸ Of the twelve states listed above that have implemented a web-based voter registration system, eleven of them require the voter to have a driver's license or other state-issued ID so that the voter's signature can be captured and sent to the local registrar. These systems import the digital image of the voter's signature that is already captured in the driver's licensing agency records. California implemented its online voter registration system in 2012. Voters who do not have a signature on file with the state driver's license bureau can still use the online system but those voters need to print, sign and mail the registration form.¹³⁹ In practice, the voters without driver's licenses are able to electronically submit their information and the county registrar sends out a post card to capture the signature.

A close cousin of online registration is the electronic transmission of voter registration data from state agencies covered by the National Voter Registration Act ("NVRA"). The NVRA and the Help America Vote Act ("HAVA") have paved the way for states to meet their registration obligations through paperless registrations but not all states have invested in the infrastructure to achieve this. Such electronic transmissions are not web based, voter-driven online registration but accomplish several objectives: reaching low income voters who do not drive, reducing errors caused by data entry from paper forms, and reducing the costs of processing voter registrations.¹⁴⁰ Pennsylvania has implemented paperless electronic registration through PennDOT, but should expand the practice to other agencies covered by the NVRA.

Finally, Pennsylvania should also allow registered voters who have moved to vote at their new polling location as long as they update their address, and automatically register all voters whose provisional ballots were rejected because the voter was not found on the registration rolls.¹⁴¹ These simple fixes will go a long way towards improving the experience of the citizens of Pennsylvania when they seek to exercise their fundamental voting rights.

D. Ending Discrimination Towards Limited-English Voters (Topic (vii)).

Pennsylvania has a shameful history of violating the Voting Rights Act's requirements for language access. The failure to comply with this important federal law unfairly blocks access to understanding of the ballot for citizens whose first language is not English. The Justice

¹³⁶ Ponoroff, Christopher; *Voter Registration in a Digital Age*, Brennan Center for Justice, July 13, 2010, p. 13, available at, http://brennan.3cdn.net/806ab5ea23fde7c261_n1m6b1s4z.pdf.

¹³⁷ Barreto, et al., *supra*, at 2.

¹³⁸ National Conference of State Legislatures, Electronic (or Online) Voter Registration, <http://www.ncsl.org/legislatures-elections/elections/electronic-or-online-voter-registration.aspx>.

¹³⁹ California Elections Code, Ch. 2.5 § 2196-97 available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=elec&group=02001-03000&file=2196-2197>

¹⁴⁰ Project Vote, *Fact Sheet, Paperless Registration Benefits*, available at <http://www.projectvote.org/component/content/category/251-Voter%20Registration.html>

¹⁴¹ Since Pennsylvania does not delete voter registration records in its SURE database, voters whose registrations were cancelled and who filed a provisional ballot could easily be re-activated on the voter registration rolls.

Department had to sue Philadelphia and Berks Counties to ensure the most basic compliance with Sections 203 and 4(e) of the Voting Rights Act.¹⁴² As described above, the 2012 Election revealed that Philadelphia and various other counties in Eastern Pennsylvania with large Puerto Rican populations continue to disobey federal law. Puerto Ricans are U.S. citizens by birth, yet the many Puerto Ricans living in Pennsylvania were educated under the American flag in Puerto Rican schools, in Spanish. English proficiency is not a prerequisite to citizenship. Thus, English-only ballots and elections severely hamper the voting rights of many thousands of Puerto Ricans in Eastern Pennsylvania counties. These counties must provide bilingual ballots and poll workers, or they may be in violation of Section 4(e).¹⁴³

Similarly, Asian-American voters experienced problems in Philadelphia, despite Philadelphia's assurances that interpreters would be provided in election divisions with large populations of Asian language speakers.¹⁴⁴ Section 208 of the Voting Rights Act protects against the equivalent of literacy tests, by providing that every voter can receive assistance from their assistor of choice.¹⁴⁵ This permits Asian-American voters to ask for language assistance from poll workers or to call on groups such as the Asian American Legal Defense Fund (AALDEF), or to bring a friend or family member, to help them understand the ballot.

Advancement Project recommends providing counties with the tools they need to combat language access discrimination, such as training materials, and bilingual ballots and instructions. Pennsylvania could even follow the lead of New York, which, after the Department of Justice obtained a consent decree requiring Orange County to implement a comprehensive language access program for its Puerto Rican residents,¹⁴⁶ ordered ten other counties to also institute similar programs.¹⁴⁷ Pennsylvania already has the example of Berks and Philadelphia counties. We recommend a coordinated effort to comply with federal laws regarding language access.

IV. CONCLUSION

The problems faced by Pennsylvania voters show that we have much more work to do in Pennsylvania even beyond legislative fixes. Instead of squandering precious resources on restrictive measures such as photo ID, which do not solve the very real problems faced by voters, the Commonwealth could re-direct such resources to making it easier for Pennsylvanians to vote.

The comments and recommendations presented above apply specifically to Pennsylvania based on the reports collected from voters in the 2012 Presidential Election. These recommendations would also benefit voters in other states with problems similar to

¹⁴² *United States v. City of Philadelphia, PA*, No. 06-4592 (E.D. Pa. 2006).

http://www.justice.gov/crt/about/vot/sec_203/documents/phila_amend.pdf; *United States v. Berks County* No. 03-CV-1030 (E.D. Pa. 2003), http://www.justice.gov/crt/about/vot/sec_2/berks_order.php.

¹⁴³ 42 U.S.C. §1973b(4)(e).

¹⁴⁴ *Asian Americans Report Voting Barriers and Discrimination at Poll Sites Across USA*, Press Release, Nov. 6, 2012, Asian American Legal Defense Fund, available at <http://aaldef.org/press-releases/press-release/asian-americans-report-voting-barriers-and-discrimination-at-poll-sites-across-usa.html>.

¹⁴⁵ 42 U.S.C. §1973aa-6. Voters may not have assistance from their employer or union representative to prevent intimidation.

¹⁴⁶ *United States v. Orange County, NY* No. 12 CIV 3071, (S.D.N.Y. 2012) available at http://www.justice.gov/crt/about/vot/sec_203/documents/orange_cd_ny.pdf.

¹⁴⁷ *State attorney general tells 10 NY counties to help bilingual voters*, Associated Press, Aug. 20, 2012, http://www.syracuse.com/news/index.ssf/2012/08/state_attorney_general_tells_1.html.

Pennsylvania's. Moreover, comprehensive election reforms, not specifically discussed here, would help Pennsylvania's voters. We direct the Commission's attention to the list of recommendations Advancement Project submitted with its public comments relating to Florida and incorporate them here by reference. Advancement Project has noted here, and in its other submissions to the Commission, that its recommendations will have the salutary effect of reducing, if not eliminating entirely, the disparate impact of restrictive election regulations on African –American, Latino and Asian-American voters. Every American deserves to participate in free, fair and accessible elections because the ballot box is one place in which everyone is supposed to be equal.

Advancement Project appreciates the opportunity to submit these public comments. Please do not hesitate to contact Marian K. Schneider, Pennsylvania attorney (mschneider@advancementproject.org), 610-644-1255(v) with any questions or if you require further information about Advancement Project's recommendations in Pennsylvania.

Respectfully submitted,

Advancement Project.