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Legal Storytelling: The Murder¹ of Voter ID

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“The history of the right to vote in America . . . is a history of conflict, of struggle, for that right. Many people died trying to [obtain] that right. I was beaten and jailed because I stood up for it. For millions like me, the struggle . . . is not mere history, it is experience We must not step backward.”²

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1. The poetic term for a flock of crows is a murder. *Murder*, DICTIONARY.COM, <http://dictionary.reference.com/browse/murder?s=t> (last visited Oct. 19, 2015). Jim Crow, “[n]amed after a popular 19th-century minstrel song that stereotyped African Americans, came to personify the system of government-sanctioned racial oppression and segregation in the United States.” *The Rise and Fall of Jim Crow*, PBS, <http://www.pbs.org/wnet/jimcrow/> (last visited Oct. 19, 2015). I contend that the effective use of legal storytelling not only identified the 2012 Pennsylvania Voter ID law as a present day representation of a Jim Crow law, but also led to the law being struck down or murdered.

2. Representative John Lewis, *Address to U.S. Speaker of the House of Representatives, May 2011*, quoted in GARY MAY, *BENDING TOWARD JUSTICE: THE VOTING RIGHTS ACT AND THE TRANSFORMATION OF AMERICAN DEMOCRACY* 253 (Basic Books 2013). Representative John Lewis represents the 5th District of Georgia in the U.S. House of Representatives. Representative Lewis was an integral figure in the U.S. Civil Rights Movement. He served as chairman of the Student Nonviolent Coordinating Committee (SNCC) from 1963 to 1966, organizing student sit-ins, voter registration drives, and other student-led civil rights activism efforts. In 1964, Representative Lewis organized one of the most seminal civil rights moments by leading 600 peaceful protestors in a voting rights march across the Edmund Pettus Bridge in Selma, Alabama. Representative Lewis and several other protestors were brutally attacked by Alabama State Troopers in what has become known as “Bloody Sunday.” He has served in Congress from 1986 to the present. President Obama awarded Representative Lewis the Presidential Medal of Freedom in 2011. *Biography*, John Lewis, <http://johnlewis.house.gov>

I. INTRODUCTION

In 1929, Beatrice and Ruth Battle, ages eight and five respectively, accompanied their mother to a local store in Eufaula, Alabama to get some groceries. The two girls, with beautiful mahogany complexions and high cheek bones, watched the storekeeper prepare orders for his customers as their mother shopped and waited for her turn to be served. The girls quietly observed the storekeeper use a different system of weights and measures when preparing orders for Black customers than he did for White customers. The girls innocently and loudly protested the unfair practice that they witnessed.

Shocked at being exposed, the storekeeper immediately found their mother and threatened to kill the two meddling girls (most likely by lynching) if they did not leave Eufaula immediately. Ms. Battle quickly left the store with her girls and fled home. She contacted close friends and family to tell them what happened. It was immediately decided that her daughters would be sent on an 850-mile journey to Pittsburgh, Pennsylvania to live with her brother and sister-in-law. The girls' belongings were packed, and Beatrice and Ruth later met their Uncle Amos at the train station, where Ms. Battle handed her daughters over to her brother. She cried, kissed her daughters goodbye, and reminded them to mind their manners. It would be several years before Ms. Battle was able to join them in Pittsburgh.

When they arrived in Pittsburgh, they settled in at the home of Uncle Amos and Aunt Cherry Lee Battle. Neither Beatrice nor Ruth had birth certificates because they were born at home where their mother was assisted by a midwife.³ When it was time to enroll Beatrice and Ruth in school, Aunt Cherry Lee created new birthdays for the girls—day, month, and year. No one in the family is quite sure why, but it is widely believed that she did so in an attempt to protect their identity from the White store owner or anyone from Eufaula who intended to carry out his threats.

This is the story of my grandmother Beatrice Battle Wise and great-aunt Ruth Battle Summers. They did not discover their real

/john-lewis/biography (last visited Oct. 19, 2015).

3. A majority of rural southern Black mothers preferred to have their births conducted by midwives at home rather than in a hospital because they were able to avoid the prejudice and discrimination likely to be experienced in hospitals with White staff. Sheena M. Morrison & Elizabeth Fee, *Nothing to Work with but Cleanliness: The Training of the African American Traditional Midwives in the South*, 100[2] AM. J. PUB. HEALTH 238–239 (2010).

birthdays until they were sixty-two and fifty-nine years old. My grandmother passed away in 2007, and my Auntie Ruth will be ninety-three in September 2015, her biological birthday. My grandmother and great aunt are like hundreds of other seniors in the Commonwealth of Pennsylvania who do not have official birth certificates because they were either born at home or with a midwife, without a formal recording of their births. This has become a major obstacle for many individuals as most states across the country have enacted laws that require individuals to prove that they are who they claim to be in order to cast a valid ballot at the polls. Since 2003, a total of thirty-six states have passed legislation addressing voter identification standards (“Voter ID laws”).⁴ In March 2012, the Pennsylvania State Legislature passed such a law: Act 18,⁵ which significantly changed the requirements for residents of the Commonwealth of Pennsylvania to legally exercise their right to vote. From the time of its inception, the specific requirements of Act 18 changed as swiftly as my family’s flight from Eufaula.

As I examined the new Pennsylvania Voter ID legislation through the lens of my own family history, I began to wonder how others like my grandmother and great-aunt would be able to obtain the proper documentation and identification needed to vote? Who were these potential victims of voter disenfranchisement? What were their stories? It became apparent from the law’s constant changes that state

4. Wendy Underhill, *Voter Identification Requirements*, NAT’L CONFERENCE OF STATE LEGISLATURES (Oct. 6, 2015), <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>. Though the implementation of new voter ID laws has not occurred uniformly throughout the country, a clear national trend has developed over the last decade in favor of increased ID requirements. In 2003, new voter ID laws were passed in Alabama, Colorado, Montana, North Dakota and South Dakota. *Voter ID: An Overview*, NAT’L CONFERENCE OF STATE LEGISLATURES (Oct. 10, 2012), <http://www.ncsl.org/documents/LSSS/VoterIDdoc.pdf>. In 2005, Voter ID laws were passed in Indiana, Washington, and Georgia. *Id.* In 2006, Ohio passed a new voter ID law, and Georgia passed a law providing free state issued voter ID cards to registered voters who did not possess a driver’s license or state issued ID card. *Id.* The same year Missouri strengthened an existing voter ID law by requiring voters to have photo identification. *Id.* In 2008, New Mexico loosened the requirements of its voter ID law, and allowed voters to satisfy the ID requirement by stating his or her name, address (as registered), and year of birth. *Id.* Utah passed a new voter ID law in 2009. *Id.* In 2010, Idaho passed a new voter ID law and Oklahoma voters approved a voter ID proposal that was placed on the ballot by the legislature. *Id.* In 2011, several more states passed voter ID laws (Kansas, Mississippi, Rhode Island, and Wisconsin), and several states tightened the requirements of their existing voter ID laws (Alabama, South Carolina, Tennessee, and Texas). *Id.* There were also several governors that year who vetoed restrictive voter ID legislation (Minnesota, Missouri, Montana, New Hampshire, and North Carolina). *Id.* In 2012, the following states passed voter ID laws: Minnesota, New Hampshire, and Pennsylvania. *Id.*

5. Act of Mar. 14, 2012, Pa. Laws 195, No. 18.

legislators either had no familiarity with the “life literature” of their constituents, or they did, but nevertheless made deliberate efforts to stifle not only the voting rights of the elderly, but college students, veterans, the disabled, transgender persons, and other minorities.

In this article, I will examine how the presentation of stories from some of these individuals likely to be disenfranchised under the new law worked to transform the requirements of the Pennsylvania Voter ID law and eventually led to the law’s defeat. These modern-day stories revealed similarities between voter ID laws and historic Jim Crow laws⁶ that were designed and used as a form of racial apartheid to disenfranchise African Americans. The Pennsylvania Voter ID law was a stark reminder and realization that the segregated past many thought had been left behind was still present in a new package, with likely the same results.

II. THE PENNSYLVANIA VOTER ID LAW, ACT 18

The Pennsylvania legislature enacted a new voter ID law under Act 18,⁷ sponsored by Representative Daryl D. Metcalfe.⁸ The law, signed by Governor Tom Corbett on March 14, 2012,⁹ amended the language of the Pennsylvania Election Code (“Election Code”)¹⁰ requiring registered voters in the Commonwealth to present specific types of photo identification at their polling places in order to vote.¹¹ Prior to this amendment, a citizen could produce various forms of picture and non-picture identification to confirm his or her identity when voting at a polling place for the first time.¹²

6. Some examples of historic Jim Crow laws that have been used to disenfranchise African Americans include poll taxes, grandfather clauses, property tests, and literacy tests.

7. Act of Mar. 14, 2012, Pa. Laws 195, No. 18.

8. Daryl D. Metcalfe is a Republican member of the Pennsylvania House of Representatives, who has been in office since 1999 representing District 12 (a portion of Butler County). Daryl D. Metcalfe, *Biography*, PA. GEN. ASSEMBLY, http://www.legis.state.pa.us/cfdocs/legis/home/member_information/house_bio.cfm?id=13 (last visited Oct. 19, 2015).

9. *Bill Information: House Bill 934*, PA. GEN. ASSEMBLY, http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2011&sind=0&body=H&type=B&bn=934 (last visited Oct. 19, 2015).

10. Act of June 3, 1937, Pa. Laws 1333, No. 320 (codified as amended at 25 PA. CONS STAT. §§ 2600–3591).

11. See Act of Mar. 14, 2012, Pa. Laws 195, No. 18, § 102 et. seq.

12. Examples of acceptable identification included: Pennsylvania driver’s license or Pennsylvania Identification card issued by Pennsylvania Department of Transportation (PennDOT), identification issued by any other Commonwealth agency, identification issued by the U.S. government, U.S. passport, U.S. armed forces identification, student identification, em-

The Act 18 requirements for voter identification were more stringent because non-photo identification was no longer an option to prove one's identity.¹³ The "proof[s] of identification"¹⁴ that Act 18 permitted were very specific forms of identification.¹⁵ Act 18 required that an elector¹⁶ present one of the specific forms of identification listed at a polling place for examination of authenticity.¹⁷ After presentation, an affidavit would be signed confirming the validity of the identification.¹⁸ If electors were not able to present one of the forms of identification required under subsection 1210(a), they could present for examination one of seven alternative forms of identification bearing their name and address. These alternative identifications ranged from government-issued identification to a gun permit.¹⁹ Electors not able to produce any form of valid identification would be

ployee identification, voter identification card issued by the voter registration commission, non-photo identification issued by the Commonwealth, firearm permit, current utility bill, current bank statement, current paycheck, or government check.

13. Act of Mar. 14, 2012, Pa. Laws 195, No. 18, § 102(z.5)(2), ("For an elector who appears to vote under section 1210, a document that . . . (ii) shows a photograph of the individual to whom the document was issued.")

14. See 25 PA. CONS. STAT. ANN. § 2602(z.5) (West 2015).

15. Act 18 allowed a driver's license or identification card issued by the PennDOT. *Id.* § 1210(a)(1)–(2). The driver's license could be expired for one year prior to the date of the election. *Id.* § 102(z.5)(2)(iii)(A). An elector with religious beliefs that prohibited the taking of a photograph was permitted under the amended law to present a valid Commonwealth, Department of Transportation issued-without-photo driver's license or identification card. *Id.* § 102(z.5)(1). Act 18 allowed a valid identification card issued by any other agency of the Commonwealth. *Id.* § 1210(a)(2). An example of such identification would be a county government identification card issued to a county employee; however, a school district employee card was not found to be a valid form of identification for voting even if it contained a picture. Karen Langley, *Pennsylvania Judge Strikes Down State's Voter ID Law*, PITTSBURGH POST-GAZETTE (Jan. 17, 2014), <http://www.post-gazette.com/news/state/2014/01/17/AP-Pennsylvania-judge-strikes-down-state-s-voter-ID-law/stories/201401170131>. A valid identification card issued by the United States Government was another possibility. See Act of Mar. 14, 2012, Pa. Laws 195, No. 18, § 1210(a)(3). A United States passport could work. *Id.* § 1210(a)(4). A valid student identification card, valid employment identification card, or an armed forces of the United States identification card were also allowed. *Id.* § 1210(a)(1)–(7).

16. Neither the original Pennsylvania Election Code Act of June 3, 1937, Pa. Laws No. 1333 nor Act of Mar. 14, 2012, Pa. Laws 195, No. 18 provides a definition of elector. It can be assumed from the language of the Acts that "elector" can be defined as a voter.

17. This was a requirement for an elector appearing to vote at every primary and election. Act of Mar. 14, 2012, Pa. Laws 195, No. 18, § 1210(a).

18. *Id.* § 1210(a)(7).

19. 1) Non-photo identification issued by the Commonwealth, or any agency thereof; 2) non-photo identification issued by the United States Government, or agency thereof; 3) a firearm permit; 4) a current utility bill; 5) a current bank statement; 6) a paycheck; 7) a government check. After presentation of this alternative form of identification, the election officer was required to sign an affidavit indicating that the identification was examined. *Id.* § 1210(a.1).

permitted under Act 18 to vote by provisional ballot.²⁰ This cumbersome and confusing new process did not garner unanimous support from Pennsylvanians. Many questioned the urgency of the law's implementation. Many believed the Pennsylvania Voter ID Law was the newest sibling of the Indiana Voter ID law, which was upheld as constitutional in 2008 by the United States Supreme Court.²¹

III. PUBLIC REACTION TO THE PENNSYLVANIA VOTER ID LAW

When requirements of the law were revealed to the public, many individuals and advocacy groups questioned the authenticity of the Voter ID law in Pennsylvania.²² Questions arose regarding the ability for Pennsylvania's most vulnerable citizens to meet the newly imposed standards in the mere eight months prior to the November 2012 presidential election.²³ Opponents of Act 18 alleged that the law was blatantly aimed to disenfranchise the poor, the homeless, racial minorities, the elderly, the disabled, and students as a modern form of Jim Crow.²⁴

20. *Id.* § 1210(a.2). "At all elections an individual who claims to be properly registered and eligible to vote at the election district but whose name does not appear on the district register and whose registration cannot be determined by the inspectors of election or the county election board shall be permitted to cast a provisional ballot. Individuals who [are voting for the first time at the election district] appear to vote shall be required to produce proof of identification [with a photograph as noted in 'Title 18]". *Id.* § 1210(a.4)(1). The right to vote by provisional ballot was deemed appropriate under two distinct circumstances: (1) where the elector is unable to produce proof of identification; and (2) where the elector's proof of identification is challenged by the judge of elections. *Id.* § 1210(a.2).

21. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008); see Representative Daryl Metcalfe, *Metcalfe Issues Statement on Governor's Decision Not to Appeal the Voter ID Law*, PA. HOUSE REPUBLICAN CAUCUS (May 9, 2014), <http://www.pahousegop.com/NewsItem.aspx?NewsID=20568>.

22. Bob Warner, *Voter ID Law May Hit More in Pa. Than Originally Estimated*, PHILLY.COM (July 4, 2012), http://articles.philly.com/2012-07-04/news/32524446_1_voter-id-new-voter-id-cards.

23. Since 2008, the year of the first election of President Obama, there have been nine states, including Pennsylvania, to enact strict voter identification laws. Scott Keys, *Pennsylvania Becomes First State in 2012 to Enact Voter ID Law*, THINK PROGRESS (Mar. 15, 2012), <http://thinkprogress.org/justice/2012/03/15/445047/pennsylvania-voter-id/>.

24. Jamel Rowe, *Pennsylvania Voter ID Bill: The Embodiment of Discrimination or Weapon Against Voter Fraud?*, STATE OF ELECTIONS: WILLIAM & MARY LAW SCHOOL (Dec. 21, 2011), <http://electls.blogs.wm.edu/2011/12/21/pa-voter-id-pennsylvania-voter-id-bill-the-embodiment-of-discrimination-or-weapon-against-voter-fraud/>; Suevon Lee, *Everything You've Ever Wanted to Know About Voter ID Laws*, PRO PUBLICA (Nov. 5, 2012), <http://www.propublica.org/article/everything-youve-ever-wanted-to-know-about-voter-id-laws>. Many of these voters have a history of disenfranchisement. Amy B. Dean, *When 'Patriots' Unite to Restrict Voting Rights*, ALJAZEERA AMERICA (May 13, 2014), <http://america.aljazeera.com/opinions/2014/5/tea-party-votingrightspatriots.html>.

Some national Voter ID laws have been explicitly labeled as Jim Crow revisited.²⁵ Voter suppression of African Americans and poor Whites was a key component of the original Jim Crow scheme implemented through the use of poll taxes,²⁶ literacy tests,²⁷ and grandfather clauses.²⁸ These policies effectively stifled the right to vote realized by African American men through the passage of the Fifteenth Amendment in 1870. Their suffrage was systematically dismantled through the use of schemes and violence (specifically lynchings).

The present-day remnants of voter suppression are no longer carried out through blatant use of physical violence, lynchings, and unreasonably “testing” to determine one’s merit to register to vote or exercise the right. Instead, voter suppression now takes the form of voter identification laws. Recently, two federal judges, U.S. District Court Judge Nelva Gonzales Ramos and U.S. Supreme Court Justice Ruth Bader Ginsberg criticized the Texas Voter ID law, S.B. 14 in the case of *Veasey v. Perry*,²⁹ as being analogous to a poll tax.³⁰ They

25. Jerry Mazza, *The New and Shameful Jim Crow Voter ID Laws*, INTREPID REPORT (Sept. 21, 2012), <http://www.intrepidreport.com/archives/7413>; Saki Knafo, *Voting Rights of Black Americans Trampled by ‘New Jim Crow,’ Civil Rights Advocates Say*, HUFFPOST BLACK VOICES (July 25, 2013), http://www.huffingtonpost.com/2013/07/25/black-america-2013_n_3647789.html; Jessica VanEgeren, *Effect of Wisconsin’s Voter ID Law Linked to Jim Crow Laws by Supreme Court Dissent*, THE CAP TIMES (July 31, 2014), http://host.madison.com/news/local/writers/jessica_vanegeren/effect-of-wisconsin-s-voter-id-law-linked-to-jim-crow/article_458b9226-18e8-11e4-9a2a-001a4bcf887a.html.

26. In a number of states, a poll tax was a prerequisite to registering to vote imposed on African American citizens and poor Whites. Booth Gunter, *Alabama Woman, at 94, Reflects on Poll Taxes, Literacy Tests and New Efforts to Limit Voting*, S. POVERTY LAW CENTER (Nov. 3, 2014), <https://www.splcenter.org/news/2014/11/03/alabama-woman-94-reflects-poll-taxes-literacy-tests-and-new-efforts-limit-voting-0>. Individuals that were not able to test or not able to pay the poll tax were not eligible to vote. *Id.*

27. Literacy tests were another tool used during Jim Crow to suppress the African American vote by preventing voter registration. *Id.* Typically an African American’s efforts to register to vote during the Jim Crow era would be thwarted by the presentation and requirement of passing a sham examination touted to prove one’s qualification to vote. Individuals that were illiterate and not able to take the literacy test were automatically disqualified to vote. *Id.* Some of these tests required individuals to recite a section from their state constitution or the U.S. Constitution. *The Rise and Fall of Jim Crow: 1965 Alabama Literacy Test*, PBS.ORG, http://www.pbs.org/wnet/jimcrow/literacy_popup.html (last visited Dec. 4, 2015).

28. Grandfather clauses typically granted a person the right to vote if their father or grandfather voted before 1867. This typically excluded African Americans from voting because practically no African Americans could vote before 1867 in the United States. Russell Brooker, *Voting Rights for Blacks and Poor Whites in the Jim Crow South*, AMERICA’S BLACK HOLOCAUST MUSEUM, <http://abhmuseum.org/2012/09/voting-rights-for-blacks-and-poor-whites-in-the-jim-crow-south/> (last visited Oct. 19, 2015).

29. See *Veasey v. Perry*, 135 S.Ct. 9 (Mem) (2014).

30. In her district court opinion, Judge Ramos found that ‘Texas’ “SB 14 imposes a poll tax in violation of the 24th and 14th Amendments.” See *Veasey v. Perry*, 71 F. Supp. 3d 627,

noted that the associated costs related to securing proper identification for voting purposes, no matter how slight, constituted a poll tax.³¹ The modern-day financial obstacles associated with the Pennsylvania voter identification law mirrored the concerns expressed by Judge Ramos and Justice Ginsberg. Those likely to be disenfranchised under Act 18 in Pennsylvania faced financial constraints related to transportation costs associated with travel to and from Pennsylvania Department of Motor Vehicle offices to obtain approved identification for voting,³² and costs associated with obtaining Pennsylvania or out-of-state certified birth certificates or other certified documents.

Prior to the law being enacted, several like-minded organizations, cognizant of stories decrying the legitimate need for Voter ID in the Commonwealth of Pennsylvania, assembled the Protect Our Vote Coalition.³³ The coalition began in 2011 with approximately thirty organizations and steadily grew to over forty organizations by the time the Voter ID law was passed in 2012. Some of the member organizations included the ACLU of Pennsylvania, the NAACP of Pennsylvania, AFL-CIO, SEIU State Council, and AARP of Pennsylvania.³⁴ The Protect Our Vote Coalition encompasses “civil rights

706 (S.D. Tex. 2014). Justice Ginsberg noted in her dissent on the Application to Vacate Stay of *Veasy v. Perry*, “The greatest threat to public confidence in elections in this case is the prospect of enforcing a purposefully discriminatory law, one that likely imposes an unconstitutional poll tax and risks denying the right to vote to hundreds of thousands of eligible voters. To prevent that disenfranchisement, I would vacate the Fifth Circuit’s stay of the permanent injunction ordered by the District Court.” *Veasey*, 135 S.Ct. at 12 (Mem) (2014) (Ginsburg, J., dissenting).

31. See *Veasey*, 71 F. Supp. 3d at 706; *Veasey*, 135 S.Ct. at 12 (Ginsburg, J., dissenting).

32. One must also consider that many individuals were required to take time off from work to visit the administrative agencies that disseminated the identifications or the documents necessary to secure identification for voting, since many operated only during normal business hours. See Atiba R. Ellis, *The Cost of the Vote: Poll Taxes, Voter Identification Laws, and the Price of Democracy*, 86 DENV. U.L. REV. 1023 (2009).

33. *PA House Votes to Disenfranchise U.S. Citizens, Says ACLU of PA*, AM. CIVIL LIBERTIES UNION OF PA. (June 23, 2011), <https://www.aclu.org/voting-rights/pa-house-votes-disenfranchise-us-citizens-says-aclu-pa>, [hereinafter *PA House Votes*].

34. *State Senate Passage of Voter ID Bill Will Disenfranchise Citizens, Says ACLU of PA*, AM. CIVIL LIBERTIES UNION OF PA. (Mar. 7, 2012), <http://www.aclupa.org/news/2012/03/07/state-senate-passage-of-voter-id-bill-will-disenfranchise-citizens-says-aclu-of-pa>. The 44 members of Protect our Vote coalition include The Advancement Project, American Civil Liberties Union of Pennsylvania, And Justice For All (AJFA), Black Political Empowerment Project (B-PEP), The Brennan Center, Coalition of Retirees for Economic and Social Justice, The Coalition for Voting Integrity, Common Cause PA, Democracia Inc., Demos, Dignity Housing, Disability Rights Network of PA, Fair Elections Legal Network, Homeless Advocacy Project, Housing Alliance of Pennsylvania, Human Rights Coalition, Keystone Progress, Lawyers’ Committee for Civil Rights Under Law, League of Women Voters of Pennsylvania, Mental

groups, government watchdogs, and advocates for specific communities, including persons with disabilities, seniors, and the homeless.”³⁵ The coalition strategized around grassroots efforts focused on educating individuals about the new law and identifying those likely to be disenfranchised. Voters were educated about the proposed changes to the Pennsylvania election law, and individuals likely to be disenfranchised under the Voter ID law were identified. A select group of individuals, with stories detailing unique challenges associated with the complexities of the new law, were approached to ascertain if they would be willing to participate in a lawsuit challenging the constitutionality of the Voter ID law in Pennsylvania.

IV. *APPLEWHITE V. COMMONWEALTH OF PENNSYLVANIA*

A lawsuit seeking a permanent injunction was filed on behalf of Viviette Applewhite and thirteen other named Petitioners³⁶ on May 1, 2012, in the Commonwealth Court of Pennsylvania against the Commonwealth of Pennsylvania, Tom W. Corbett in his capacity as Governor, and Carol Aichele in her capacity as Secretary of the Commonwealth.³⁷ Attorneys for the Petitioners included the ACLU of Pennsylvania, the Advancement Project, the Public Interest Law Center of Philadelphia, and the law firm of Arnold & Porter LLP (Washington, DC Office).³⁸

Health Association of Southeastern Pennsylvania, National Council of Jewish Women, PA Alliance for Retired Americans, Pathways to Housing PA, Penn Action, Pennsylvania Council of Churches, Pennsylvania Immigration & Citizenship Coalition, Pennsylvania NOW, Pennsylvania Prison Society, Pennsylvania State NAACP, Philadelphia Coalition of Labor Union Women, PRO ACT SEPA Public Policy, PRO ACT Veterans Helping Veterans, Project HOME, Public Interest Law Center of Philadelphia, Rock the Vote, SEIU Pennsylvania State Council, SeniorLAW Center, The Time Is Now To Make A Change, Vote for Homes!, Western PA Black Political Assembly, Why Not Prosper?, Women’s Law Project, WomenVote PA, and X-Offenders for Community Empowerment. Celeste Taylor, *Protect Our Vote Coalition Update: PA Voter ID, EVERYBODY VOTE* (Mar. 30, 2012), <http://everybodyvote.wordpress.com/2012/03/30/protect-our-vote-coalition-update-pa-voter-id/>.

35. *PA House Votes.*, *supra* note 33.

36. The thirteen other named petitioners were Wilola Shinholster Lee, Grover Freedland, Gloria Cuttino, Nadine Marsh, Dorothy Barksdale, Bea Bookler, Joyce Block, Henrietta Kay Dickerson, Devra Mirel (“Asher”) Schor, The League of Women Voters of Pennsylvania, National Association for the Advancement of Colored People, Pennsylvania State Conference, and Homeless Advocacy Project. Plaintiff’s Motion for Preliminary Injunction at 1, *Applewhite v. Commonwealth*, No. 330 M.D. 2012, (Pa. Commw. Ct., Aug. 15, 2012) 2012 WL 3332376.

37. *Id.*

38. *Applewhite, et al. v. Commonwealth of Pennsylvania, et al.*, AM. CIVIL LIBERTIES UNION OF PA. (last visited Oct. 19, 2015), <http://www.aclupa.org/our-work/legal/legaldocket/applewhite-et-al-v-commonwealth-pennsylvania-et-al/>.

A. Basis of the Lawsuit

The petitioners alleged that the Pennsylvania Photo ID Law violated the Pennsylvania Constitution because the law's requirements would result in substantial numbers of Commonwealth residents being deemed ineligible to vote because they did not possess appropriate and/or valid photo identification or did not have the necessary documents needed to obtain a Pennsylvania Voter ID.³⁹ The petitioners alleged that, "far from protecting the integrity of Pennsylvania elections, the Photo ID Law will lead to elections that are no longer free and equal."⁴⁰ This would result in numerous individuals being disenfranchised from the right to vote. The Petitioners cited language from the Pennsylvania Supreme Court in the matter of *In re Nomination Paper of Ralph Nader*, which quoted the Supreme Court in explaining that, "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."⁴¹ The Petitioners also focused on the Defendants' failure to offer one scintilla of evidence proving voter fraud within the Commonwealth or nation.⁴²

39. Petition for Review at 2, *Applewhite v. Commonwealth*, No. 330 M.D. 2012, (Pa. Commw. Ct., Aug. 15, 2012) 2012 WL 3332376.

40. *Id.*

41. Petitioner's Appeal for Special Relief in the Nature of Preliminary Injunction, *Applewhite v. Commonwealth*, (Pa. Commw. Ct., Aug. 15, 2012), No. 330 M.D. 2012, 2012 WL 3332376 (citing *In re Nomination Papers of Ralph Nader*, 858 A.2d 1167, 1180 (Pa. 2004) (quoting *Williams v. Rhodes*, 393 U.S. 23, 31 (1968))).

42. The Commonwealth signed a stipulated agreement that there would be no instances of voter fraud in the Commonwealth if the Voter ID law were not put in effect for the upcoming election. Jamelle Bouie, *Ahead of Trial, Pennsylvania Admits There is No Voter Fraud Problem*, WASH. POST (July 24, 2012), http://www.washingtonpost.com/blogs/plum-line/post/pennsylvania-admits-it-no-voterfraudproblem/2012/07/24/gJQAHNVt6W_blog.html. The stipulation stated: "There have been no investigations or prosecutions of in-person voter fraud in Pennsylvania; and the parties do not have direct personal knowledge of any such investigations or prosecutions in other states. The parties are not aware of any incidents of in-person voter fraud in Pennsylvania and do not have direct personal knowledge of in person voter fraud elsewhere. Respondents will not offer any evidence in this action that in-person voter fraud has in fact occurred in Pennsylvania or elsewhere. The sole rationale for the Photo ID law that will be introduced by Respondents is that contained in Respondents' Amended answer to Interrogatory 1, served June 7, 2012. Respondents will not offer any evidence or argument that in person voter fraud is likely to occur in November 2012 in the absence of the Photo ID law. Neither the Governor nor the Attorney General will testify at the hearing on this matter." Stipulation, *Applewhite v. Commonwealth*, 330 M.D. 2012 (Pa. Commw. Ct., July 12, 2012), http://democrats.oversight.house.gov/sites/democrats.oversight.house.gov/files/migrated/Pennsylvania_Stipulation.pdf.

To the contrary, the Petitioners presented the stories of nine individuals who would likely be disenfranchised by the implementation of the Voter ID Law.⁴³ Additionally, the Petitioners set out to show that the implementation of the Voter ID law would cause substantial burdens (physical, economic, and expenditure of time) for certain individuals that would surely result in their being disenfranchised.⁴⁴ Lastly, the lawsuit focused on the Commonwealth's assertion that free photo ID was available to all in need. The Petitioners countered the Defendants' proposed remedy of free ID with stories of individuals who received their *free* ID, but only by spending money.⁴⁵

B. Procedural History of Applewhite v. Commonwealth of Pennsylvania

Detailed stories of disenfranchisement were collected and included in the lawsuit opposing the Pennsylvania Voter ID law by individuals and organizations opposing the constitutionality of the law under the Pennsylvania Constitution on May 1, 2012. The Petitioners contended that the Voter ID law violated Article I, Section 5 of the Pennsylvania Constitution, which states that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”⁴⁶ The Petitioners also alleged that the new photo ID requirement illegally created additional qualifications for voting in the Commonwealth because Article VII, Section 1 of the Pennsylvania Constitution merely required that individuals be eighteen years of age, U.S. citizens, and residents of Pennsylvania within their voting district to be eligible to vote.⁴⁷

The Petitioners filed a motion for a preliminary injunction to stop the enforcement of the Voter ID law for the upcoming November 2012 presidential election. Commonwealth Court Judge Robert Simpson heard the motion for the preliminary injunction on July 25,

43. Petition for Review at 2–3, *Applewhite v. Commonwealth*, No. 330 M.D. 2012 (Pa. Commw. Ct., Aug. 15, 2012), 2012 WL 3332376.

44. *Id.* at 12, 14, 34.

45. *Id.* at 3, 15, 37.

46. PA. CONST. art. I, § 5, *Groups File Lawsuit in Commonwealth Court to Overturn the Pennsylvania's Unconstitutional Voter Photo ID Law*, AM. CIVIL LIBERTIES UNION OF PA (May 1, 2012), <http://www.aclupa.org/news/2012/05/01/groups-file-lawsuit-in-commonwealth-court-to-overturn-pennsylvanias-unconstitutional-voter-photo-id-law>.

47. *Applewhite v. Commonwealth*, No. 330 M.D.2012, 2012 WL 3332376 at *1 (Pa. Commw. Ct., Aug. 15, 2012); PA. CONST. art. VII, § 1.

2012.⁴⁸ On August 15, 2012, Judge Simpson filed a memorandum opinion denying the motion.⁴⁹ He found that the law was “merely an election regulation to verify a voter’s identity” as permitted under Article I, Section 5 of the Pennsylvania Constitution.⁵⁰

The Petitioners immediately filed a notice of appeal and a motion to expedite with the Pennsylvania Supreme Court on August 16, 2012. The supreme court granted the motion to expedite.⁵¹ The Appellants argued that the Commonwealth Court committed legal error by requiring that irreparable harm to Pennsylvania’s electors be *inevitable* when the correct standard is *immediate*.⁵² The appellants also argued that the Commonwealth Court erred as a matter of law in finding that the Appellants were not able to establish a likelihood of succeeding on the merits of their case. Lastly, they argued that the Court ultimately erred in finding that the Pennsylvania Voter ID law was not a violation of the right to vote under Article I, Section 5 and Article VII, Section 1 of the Pennsylvania Constitution.⁵³

The Pennsylvania Supreme Court heard argument on September 13, 2012, and five days later, the Pennsylvania Supreme Court issued an order, vacating the order of the Commonwealth Court and remanding the matter for reconsideration.⁵⁴ The court found that both parties agreed that the right to vote was fundamental.⁵⁵ The court also noted that the Voter ID law would be constitutionally implemented so long as there was (1) reasonable education to the Commonwealth’s residents about the new requirements of the Voter ID law; (2) appropriate opportunity for Commonwealth residents with to have a reasonable means to secure proper and appropriate identifica-

48. *Id.* at *2.

49. *Id.* The Judge found that the Petitioners failed to meet all the requirements necessary for the granting of a preliminary injunction. Specifically, he found that 1) relief was not necessary to prevent immediate and irreparable harm that could not be compensated by monetary damages, 2) that greater injury would not occur if the injunction was not granted, and 3) the Petitioners were not likely to prevail on the merits of their case. See generally *Applewhite*, 2012 WL 3332376.

50. *Id.* at *16.

51. The granting of this motion provided for an expedited and abbreviated briefing schedule with no reply brief. Brief of Appellants at 4, *Applewhite v. Commonwealth*, No. 71 MAP 2012 (Pa. Aug. 30, 2012), WL 8685078. The Court took into consideration the upcoming general election and the need for expediency to provide the citizens of the Commonwealth with clarity on the status of the Voter ID law.

52. *Id.* at 25 (emphasis added).

53. *Id.* at 31.

54. *Applewhite v. Commonwealth*, 54 A.3d 1 (Pa. 2012).

55. *Id.* at 3.

tion for voting purposes; and (3) a reasonable time for implementation of the Voter ID law.⁵⁶

Further, the court reasoned that if the implementation of a statute in the short term has an unconstitutional result, a facial challenge to that statute may be justified even if the statute can be constitutionally enforced at a later time.⁵⁷ The court noted that the immediate application of the Voter ID law would result in constitutional violations.⁵⁸ The court ordered the case remanded to assess the accurate availability of the Commonwealth identification cards for those voters in need of identification.⁵⁹ The supreme court instructed the Commonwealth Court to evaluate whether the proposed processes for dissemination of the free identification would be done by means of “liberal access” to any legitimate applicant, for voting purposes as intended in the Voter ID law for the upcoming election.⁶⁰

Two dissenting opinions were provided by Justices Todd and McCaffrey. Justice Todd noted that the Commonwealth has admitted that: “[T]he Law is not being implemented according to its terms,” and despite the majority’s concession that the “most judicious remedy” in such circumstances would be to grant an injunction, the majority nonetheless allows the Commonwealth to virtually ignore the election clock and try once again to defend its inexplicable need to rush this law into application by November 6, 2012.”⁶¹ Both Justices adamantly disagreed with the court’s failure to take the opportunity to remand the case with a directive to promptly grant the Appellant’s motion for a preliminary injunction.⁶²

On October 2, 2012, on remand to the Commonwealth Court, Judge Simpson issued a partial preliminary injunction allowing electors without valid ID to vote by regular ballot and not provisional ballot.⁶³

56. *Id.* at 5.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* Section 2(b) of Act 18 provides that [PennDOT] “shall issue an identification card . . . at no cost to any registered elector who has made application.” 25 PA. CONS. STAT. ANN § 2626(b).

61. *Applewhite*, 54 A.3d at 6.

62. *Id.* at 9.

63. *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2012 WL 4497211 at *1 (Pa. Commw. Ct., Oct. 2, 2012). Judge Simpson noted that the preliminary injunction would remain in place only until the November 2012 presidential election as ordered by the Supreme Court’s per curiam order. *See id.* at *8. The preliminary injunction was extended on Feb. 19,

Almost two years later and after several extensions of the partial preliminary injunction, the Commonwealth Court held a trial on the permanent injunction on July 15, 2013, before Judge Bernard McGinley.⁶⁴ On August 16, 2013, he granted a preliminary injunction that remained in effect until the final disposition of the permanent injunction.⁶⁵ Judge McGinley issued a final determination for declaratory and permanent injunction on January 17, 2014.⁶⁶ The relief was granted as to two of the Petitioners' three counts. As to the first count, the court held that the Respondent failed to implement the Voter ID law by a means able to comport with the requirements of liberal access to PennDOT IDs, as required by the Voter ID law.⁶⁷ Further, the court held that the Respondents failed to properly comply with the law by creating a Department of State ID (DOS ID) when the Department of State had no authority under the Voter ID law to create photo identification for voting purposes.⁶⁸

2013 to cover the May 21, 2013 primary elections. *Applewhite v. Commonwealth*, No. 330 M.D. 2012, at 2-3 (Pa. Commw. Ct., Aug. 16, 2013) (order granting preliminary injunction upon renewed application).

64. *Applewhite v. Commonwealth*, No 330 M.D., 2014 WL 184988, at *3 (Pa. Commw. Ct., Jan. 17, 2014) (Commonwealth Court Judge Bernard L. McGinley was assigned to preside over the trial on the permanent injunction). Judge Simpson had ruled on the preliminary injunctions on May 24, 2013 before the case was transferred to Judge McGinley. *Id.* at *1.

65. *Id.* at *2. Both Petitioners and Respondent agreed to a preliminary injunction due to time constraints related to the upcoming November 2013 election. Judge McGinley modified the requirements of the "soft rollout" under the Voter ID law to ensure that accurate information was disseminated to electors by poll workers. *Id.* at *28. The "soft rollout" is the term used by the Respondents describing the process where poll workers were permitted to ask voters for ID, but voters were not required to show any form of picture ID to vote. *Id.* See also Memorandum from Jonathan Marks, Comm'r, Commw. of Pa. Dep't of State, Bureau of Commissions, Elections and Legislation to all County Contacts for Elections (Oct. 10, 2012) (on file with author); Kate Giammarise, *Closing Arguments Mark Conclusion of Pennsylvania Voter ID Case*, PITTSBURGH POST-GAZETTE (Aug. 1, 2013), <http://www.post-gazette.com/news/politics-state/2013/08/01/Closing-arguments-mark-conclusion-of-Pennsylvania-voter-ID-case/stories/201308010388>. In the three consecutive elections following his decision, the preliminary injunction was in effect and poll workers utilized the "soft rollout" requirements. Voters were not required to show photo ID in order to vote and although this information was required to be disseminated under Section 10 of the Voter ID law, Judge McGinley reasoned, "[t]here is no value in inaccurate information, and the court does not deem inaccurate information 'educational.'" *Applewhite v. Commonwealth*, No. 330 M.D., 2012, at 7 (Pa. Commw. Ct., Aug. 16, 2013) (order granting preliminary injunction upon renewed application). The specific terms of the preliminary injunction enjoined poll workers from informing voters that they would be required to present photo ID in order to vote at future elections. *Id.* at 8.

66. *Applewhite v. Commonwealth*, No. 330 M.D., 2014 WL 184988 (Pa. Commw. Ct., Jan. 17, 2014).

67. *Id.* at *21.

68. *Id.* at *10. "By contrast, DOS is *not* authorized to create the identification to be issued at no cost to any registered elector as set forth in Section 2(b) above." *Id.* at 9 (emphasis in original).

As to the second count, the court found that the Petitioners presented a valid facial challenge to the Voter ID law. The Court found that the Petitioners presented ample evidence to substantiate claims of disenfranchisement beyond “mere speculation.”⁶⁹ Lastly, the Court held that the Voter ID law failed to “provide a non-burdensome means of obtaining compliant photo ID.”⁷⁰

The Respondents filed a post-trial motion with the Commonwealth Court seeking to set aside the permanent injunction. The motion was denied and judgment in favor of the Petitioners was entered, ordering the permanent injunction.⁷¹ On May 8, 2014, Governor Tom Corbett announced that the Commonwealth would not seek an appeal of the ruling holding the Pennsylvania Voter ID law unconstitutional.⁷²

The evidence presented throughout these legal proceedings, in the form of legal stories, clearly detailed the potential for disenfranchisement and resulted in a favorable decision in the matter of *Applewhite v. Commonwealth*, in contrast to the decision in the seminal U.S. Supreme Court Voter ID case from the state of Indiana, *Crawford v. Marion County Election Board*.⁷³ The Petitioners in *Crawford* failed to present stories from any individuals likely to be disenfranchised under the Indiana law in the federal court appeal. The absence of stories from those claiming to be marginalized by the law hindered the judges in the making an informed decision.

V. STORYTELLING STRATEGIES

Both sides of the Voter ID litigation presented stories to the public advocating their positions on the Pennsylvania Voter ID law. The stories were broad, varied, and typically followed a partisan slant that

69. *Id.* at *17.

70. *Id.* at *18.

71. *Applewhite v. Commonwealth*, No. 330 M.D., 2012, at 7 (Pa. Commw. Ct., Apr. 28, 2014) (order denying respondent’s post-trial motion).

72. Niraj Chokshi, *Gov. Corbett Says He Won’t Fight In Court for Pennsylvania’s Voter ID Requirement*, WASH. POST (May 8, 2012), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/05/08/gov-corbett-says-he-wont-fight-in-court-for-pennsylvanias-voter-id-requirement/>. Pennsylvania House State Representative, Daryl Metcalfe, lead sponsor of the Voter ID Law, issued a statement regarding his disappointment with Governor Corbett’s decision not to appeal the Voter ID case. Press Release, Daryl Metcalfe, Metcalfe Issues Statement on Governor’s Decision Not to Appeal the Voter ID Law (May 9, 2014), <http://www.pahousegop.com/NewsItem.aspx?NewsID=20568>.

73. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 204 (2008).

either supported or denounced the need for a Voter ID law in Pennsylvania.

A. Stories Supporting Voter ID

The impetus for Voter ID in the Commonwealth of Pennsylvania began with stories detailing the law as a necessary means to protect the integrity of the election process from in-person voter fraud. Pennsylvania State Representative Daryl Metcalfe (R), sponsor of the Voter ID bill, was the quintessential spokesperson who delivered stories highlighting the immediate need for Voter ID in Pennsylvania. Representative Metcalfe appeared on a news show in September 2011, six months after he introduced the Voter ID bill, and explained why it was imperative that Voter ID become law in the Commonwealth.⁷⁴ Representative Metcalfe noted that it is “common sense practice” for people to have photo identification when they fly or obtain a library card and that now was the appropriate time to require individuals to present photo identification to “prove they are who they claim to be, to prevent fraud that’s occurred in [the] election process.”⁷⁵ He noted that Voter ID was imperative to protect the voting process from fraud and referenced two instances of voter fraud. Representative Metcalfe spoke about a 2009 case involving ACORN workers prosecuted in an FBI investigation related to the processing of fraudulent voter registrations and another case involving thousands of forged voter registration forms.⁷⁶ It is important to note that these stories of voter fraud are not examples of *in-person* voter fraud, the asserted motivation for the Pennsylvania Voter ID law.

Representative Metcalfe repeatedly conveyed the “it’s an easy process to get ID in Pennsylvania” story.⁷⁷ During an interview on KDKA radio, Representative Metcalfe was asked if the proposed implementation of the Voter ID law would allow *all* legitimate registered voters the opportunity to vote and not be disenfranchised.⁷⁸ Representative Metcalfe responded:

74. RepMetcalfe, *Rep. Metcalfe Discusses Voter ID on Comcast Newsmakers*, YOUTUBE (Sept. 22, 2011), <https://www.youtube.com/watch?v=GWu7o7c4KsM>.

75. *Id.*

76. *Id.*

77. Pennsylvania Democrats, *Rep. Daryl Metcalfe Says People Without Proper ID Are Lazy*, YOUTUBE (Sept. 19, 2012), <https://www.youtube.com/watch?v=MsUGD8oEujk>.

78. *Id.*

[A]s Mitt Romney said, we have forty-some percent of the people that are living off the public dole, living off of their neighbor's hard work, and we have a lot of people out there that are too lazy to get off, and to get up and get out there and get the ID they need. So, I mean, if individuals are too lazy, the state can't fix that, but the process is put in place to get an ID card. There is a free ID available if somebody needs one. Um, there is a process they have to go through. They have to present certain documents. That's the way it should be.⁷⁹

This same meme⁸⁰ was often repeated by other members of the GOP, who nationally touted the benefits and need for strict Voter ID laws in their respective districts.⁸¹ Former GOP Executive Committee member and Buncombe County, North Carolina precinct chairman⁸² Don Yelton commented in an interview with Aasif Mandvi, field correspondent for *The Daily*, that the North Carolina Voter ID law was going to “kick the Democrats in the butt.”⁸³ He further explained that if the law “hurts a bunch of college kids too *lazy* to get off their bowhwnkers [sic] and to go and get a photo ID, so be it. If it hurts the Whites, so be it. If it hurts a bunch of *lazy* blacks, that want the government to give them everything, so be it.”⁸⁴ He later acknowledged that some of the people mentioned typically vote Democratic.⁸⁵ This same partisan Democratic suppression sentiment was voiced by Pennsylvania House Majority Leader Mike Turzai during a Republican State Committee Meeting.⁸⁶ Going through a checklist, Representative Turzai said “[v]oter ID, which is gonna allow Governor Romney to win the state of Pennsylvania, done.”⁸⁷

79. *Id.*

80. See Atiba R. Ellis, *The Meme of Voter Fraud*, 63 CATH. U. L. REV. 879, 899–903 (2014).

81. *Suppressing the Vote*, THE DAILY SHOW WITH JON STEWART (Oct. 23, 2013), <http://thedailyshow.cc.com/videos/dxhtvk/suppressing-the-vote>.

82. Joe Gandelman, *The “Lazy Black People” Daily Show Interview That Cost a North Carolina GOPer His Party Job (Video)*, THE MODERATE VOICE (Oct. 24, 2013), <http://themoderatevoice.com/187990/the-lazy-black-people-daily-show-interview-that-north-carolina-goper-his-party-job-video/>.

83. *Suppressing the Vote*, *supra* note 81.

84. *Id.* (emphasis added).

85. *Id.*

86. Kelly Cernetich, *Turzai: Voter ID Means Romney Can Win PA*, POLITICS PA (June 25, 2012), <http://www.politicspa.com/turzai-voter-id-law-means-romney-can-win-pa/37153/>.

87. *Id.*; see also, *Pa. House Video, Turzai: Voter ID Law Will Allow Romney to Win Pa.*, YOUTUBE (June 25, 2012), <https://www.youtube.com/watch?v=EuOT1bRYdK8>.

B. Stories Against Voter ID

The storytelling techniques utilized by the grass roots organizations and counsel for the Petitioners focused on presenting the Pennsylvania Voter ID law as an unjustified law. The stories relayed that the law, if implemented as written, would disenfranchise numerous voters who lacked the identification or documentation necessary to secure proper identification and that the law was passed for partisan reasons.⁸⁸ Opponents of the Pennsylvania Voter ID law engaged in grassroots efforts to identify individuals who would likely be disenfranchised under the law. “Know Your Rights” and Voter ID training seminars were convened throughout the Commonwealth at community centers, churches, rotary clubs, nursing homes, colleges, universities, and various other locations to educate constituents on the intricacies of the new law.⁸⁹ Some individuals present at these seminars explained the extreme difficulty experienced while trying to obtain photo identification or the documents necessary to obtain photo identification. Protect Our Vote Coalition member organizations retold these stories to relate with, and identified others facing similar conundrums.

Mere word of mouth was not the only means used to tell these stories. The stories were disseminated through social media,⁹⁰ traditional media (print and television),⁹¹ and community forums. YouTube videos of the Petitioners were posted on the websites of Protect Our Vote Coalition members. The lead Petitioner, Viviette Applewhite, ninety-three years old at the time, became the face of Voter ID suppression for the nation.⁹² The ACLU of Pennsylvania

88. Christopher Keehy, *Block the Vote, ACLU-PA's Battle Against Voter Suppression in Pennsylvania*, AM. CIVIL LIBERTIES UNION OF PA. FREE FOR ALL, Fall/Winter 2012, at 3.

89. *Id.* at 4.

90. ACLUPA, *Gloria Cuttino*, YOUTUBE (May 1, 2012), <https://www.youtube.com/watch?v=zOassrpm-mw>; ACLUPA, *Wilola Lee*, YOUTUBE (May 1, 2012), <https://www.youtube.com/watch?v=9CVWBHRmQH8>; *Marian Baker*, YOUTUBE (July 16, 2013), <https://www.youtube.com/watch?v=i3-wl0kkFj4>; ACLUPA, *Nadine Marsh*, YOUTUBE (July 23, 2013), <https://www.youtube.com/watch?v=mMdfNxdIAY>; *PAVoterIDCoalition*, <https://www.facebook.com/pages/PAVoterIDCoalition/403831659629393>, (last visited Sept. 9, 2015); *Think Getting “Free” ID Is Easy? Think Again*, ELECTION PROTECTION, <http://www.866ourvote.org/pages/think-getting-free-id-is-easy-think-again>, (last visited Oct. 6, 2015).

91. Janice Crompton, *Will Voter ID Law Keep Balloters Away From the Polls?* PITTSBURGH POST-GAZETTE (September 13, 2012), <http://www.post-gazette.com/local/south/2012/09/13/Will-voter-ID-law-keep-balloters-away-from-the-polls/stories/201209130251>.

92. *The Face of the ‘War on Voting’*, THE RACHEL MADDOW SHOW (Aug. 17, 2012), <http://www.msnbc.com/rachel-maddow-show/the-face-the-war-voting>.

video, which detailed her struggle to obtain photo identification because she lacked the necessary documents, went viral.⁹³ The stories of Mrs. Applewhite and others were not nebulous tales of theoretical problems that people *could* encounter when trying to acquire valid photo identification; these were verified stories from identified individuals. These stories provided life and breath to the Petitioners' arguments and justified the injunction of the PA Voter ID law.

MRS. VIVIETTE APPLEWHITE—Mrs. Applewhite is a ninety-six-year-old African American woman born in Philadelphia, Pennsylvania. Mrs. Applewhite was employed as a welder at Sun Shipyard in Chester, Pennsylvania, during World War II.⁹⁴ Mrs. Applewhite later worked as a hotel housekeeper.⁹⁵ She eventually married and returned to Philadelphia with her husband and daughter. Mrs. Applewhite is now widowed and still resides in Philadelphia, Pennsylvania. She has voted in almost every election since 1960 and was active in the civil rights movement. Mrs. Applewhite traveled to Georgia on several occasions to witness Dr. Martin Luther King Jr. preach and march with him.⁹⁶ When Mrs. Applewhite discovered that under the Pennsylvania Voter ID law she did not have the necessary photo identification needed to vote in 2012, she was very upset. She was absolutely devastated when she further realized that she did not have the other necessary documents needed to obtain the free Voter ID from the Commonwealth so she could vote. Mrs. Applewhite did not have a Social Security card, because she lost it when her purse was stolen years ago and was not able to replace it. Mrs. Applewhite also had several other factors that complicated her ability to secure the documentation necessary to obtain appropriate identification. She had been adopted and was married twice, making the issue of her several name changes a stumbling block to secure new documentation needed for identification.⁹⁷ Because Mrs. Applewhite did not have the requisite documentation to obtain a Voter ID, she was effectively dis-

93. *Voter ID Client Videos*, AM. CIVIL LIBERTIES UNION OF PA., <http://www.aclupa.org/our-work/legal/legaldocket/applewhite-et-al-v-commonwealth-pennsylvania-et-al/voter-id-client-videos/> (last visited Oct. 16, 2015).

94. *Voter ID Client Bios*, AM. CIVIL LIBERTIES UNION OF PA., <http://www.aclupa.org/our-work/legal/legaldocket/applewhite-et-al-v-commonwealth-pennsylvania-et-al/voter-id-clients/> (last visited Oct. 16, 2015).

95. Ethan Bronner, *Legal Battles Erupt Over Tough Voter ID Laws*, N.Y. TIMES, July 19, 2012, http://www.nytimes.com/2012/07/20/us/politics/tougher-voter-id-laws-set-off-court-battles.html?pagewanted=all&_r=0 (last visited Oct. 16, 2015).

96. *Voter ID Client Bios*, *supra* note 94.

97. Bronner, *supra* note 95.

enfranchised.

MRS. WILOLA LEE—Mrs. Lee is a sixty-year-old African American woman who lives in Philadelphia, Pennsylvania. She was born in Wilkerson County, Georgia, and moved to Philadelphia in 1957 where she was raised by her grandmother.⁹⁸ After completing the eleventh grade, Mrs. Lee married (though now a recent widow) and reared two children.⁹⁹ She worked in the Philadelphia Public School system for years.¹⁰⁰ She was a regular voter and also served as a poll worker in Philadelphia for years.¹⁰¹ Although Mrs. Lee was gainfully employed and exercised her civic duty by voting, one thing she did not possess was her birth certificate, which she lost in a house fire.¹⁰² Mrs. Lee had made numerous attempts over approximately ten years to obtain a copy of her birth certificate from the state of Georgia.¹⁰³ She contacted the department of vital records, as she was instructed to do, but was informed that they had no record of her birth, because her birth record, along with many others, was destroyed in a fire.¹⁰⁴ The lack of a birth certificate hindered Mrs. Lee's efforts to obtain the type of photo identification needed to vote in Pennsylvania.¹⁰⁵

MRS. JOYCE BLOCK—Mrs. Block, known as Ma Joyce,¹⁰⁶ was eighty-nine years old when she joined the lawsuit. Born Joyce Altman in Brooklyn, New York, she grew up to be a dancer and appeared in several Broadway shows.¹⁰⁷ She met her husband Carl Block, a musician, and they eventually married in 1943. They lived in several states before finally settling in Bucks County, Pennsylvania in 1973 where they reared six children.¹⁰⁸ Mrs. Block voted in nearly every election

98. *Voter ID Client Bios*, *supra* note 94.

99. *Id.*

100. *Id.*

101. *Id.*

102. Bronner, *supra* note 95.

103. *Voter ID Client Bios*, *supra* note 94.

104. Bronner, *supra* note 95.

105. *Voter ID Client Bios*, *supra* note 94.

106. *Joyce Block (Altman)*, JOSEPH A. FLUEHR III FUNERAL HOME INC., <http://www.fluehr.com/obituaries/obituary/646/> (last visited Oct. 16, 2015). Mrs. Joyce Block (Altman) passed away on Apr. 21, 2013 at the age of 90. *Id.* Her obituary notes, "Joyce was an activist until the end. She was among the first to call attention to voter ID regulations, and proud to participate in the lawsuit to reverse the bill." *Id.* Mrs. Block signed the verification for the Petition for Review filed in *Applewhite v. Commonwealth*, Petition for Review, AM. CIVIL LIBERTIES UNION OF PA. 54, http://www.aclupa.org/download_file/view_inline/890/624/ (last visited Dec. 5, 2015).

107. *Voter ID Client Bios*, *supra* note 94.

108. *Id.*

since 1944 and had not missed an election from 2002 to 2012.¹⁰⁹ She never drove, as she relied upon her husband and children to take her places, so she never had a PennDOT issued driver's license or identification.¹¹⁰ After Act 18 was passed, Mrs. Block went to a PennDOT center to obtain her free photo ID card for voting. She was informed by PennDOT staff that she was not eligible to receive a free photo ID card because her birth certificate and Social Security card listed her maiden name while her voter registration listed her married name.¹¹¹ Mrs. Block returned to the PennDOT driver's license center with a copy of her ketuba (marriage license), but the PennDOT clerks refused to accept it as proof of her name change because it was written in Hebrew, and they could not read Hebrew.¹¹² Mrs. Block did not give up, and she was fortunate to have an ally in politics. Her family reached out to her state senator for assistance, and his office worked with PennDOT to obtain a Voter ID for Mrs. Block.¹¹³

MR. GROVER FREELAND—Mr. Freeland is a seventy-five-year-old African American man who was born in Buffalo, New York, and now resides in Philadelphia, Pennsylvania.¹¹⁴ He was drafted into the U.S. Army in 1964 and served two years before receiving an honorable discharge.¹¹⁵ Mr. Freeland settled in Philadelphia where he received his Bachelor of Arts and a Master's degree from Philadelphia's University of the Arts.¹¹⁶ He worked for several years and retired from his own photography businesses in 2004.¹¹⁷ Mr. Freeland stopped driving sometime in the 1980s and did not maintain a valid driver's license.¹¹⁸ The only photo identification he possessed was his veterans card, issued by the U.S. Department of Veterans Affairs.¹¹⁹ Although his veterans card contained encoded information of his military and medical records and his picture, under Act 18, this identification card was not recognized as valid for voting purposes because it

109. *Id.*

110. *Id.*

111. *Id.*

112. Lee Chottiner, *Social Justice Forum Educates Voters on Controversial Voter ID Law*, THE JEWISH CHRON., <http://thejewishchronicle.net/bookmark/19570206-Social-justice-forum-educates-voters-on-controversial-voter-ID-law> (last visited Oct. 7, 2015).

113. *Voter ID Client Bios*, *supra* note 94.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

did not have an expiration date.¹²⁰ Mr. Freeland tried to obtain a copy of his birth certificate from New York, but was not able to do so.¹²¹

MRS. BEA BOOKLER—Mrs. Booker, a White female, was born in Philadelphia, Pennsylvania, in 1918, and worked as a secretary until she married in 1945.¹²² Mrs. Bookler was widowed in 2006, and she now lives in an assisted living facility in Chester County, Pennsylvania.¹²³ Due to frailty and her use of a walker, she does not often leave her assisted living facility.¹²⁴ Mrs. Bookler's past trips to vote at her polling place next door to her residence were physically difficult, but she made the sacrifice because voting was important to her.¹²⁵ She had been a regular voter since she began voting in 1940 for Franklin Roosevelt.¹²⁶ Mrs. Bookler was concerned that she would not be able to vote in the 2012 election, because she did not have any type of photo identification that was valid under the Pennsylvania Voter ID law.¹²⁷ Although she possessed the necessary documents needed to obtain the free Pennsylvania Voter ID, she was still required to present the necessary documents in person at a PennDOT driver's license center.¹²⁸ The closest PennDOT center to Mrs. Bookler was approximately ten miles away.¹²⁹ She would have had to arrange for transportation and take the physically grueling trip. Mrs. Bookler, who uses a walker, noted, "How would I get there and how would I manage to stand in a line?"¹³⁰ Mrs. Bookler was physically not able to make the trip to the PennDOT center; therefore, she believed that she would not be able to vote in the November 2012 election.¹³¹

MR. "ASHER" SCHOR—Mr. Schor is a twenty-two-year-old transgender male (female to male) from Pittsburgh, Pennsylvania,

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. Petition for Review at 12, *Applewhite v. Commonwealth*, (Pa. Commw. Ct., Aug. 15, 2012) (No. 330 M.D. 2012), 2012 WL 3332376.

125. Pam Fessler, *Study: Many Could Face Obstacles in Voter ID Laws*, NPR (July 18, 2012, 12:01 AM), <http://www.npr.org/2012/07/18/156935624/study-many-could-face-obstacles-in-voter-id-laws>.

126. *Voter ID Client Bios*, *supra* note 94.

127. *Id.*; see also, Paula Reid (@PaulaReidCBS), TWITTER (Aug. 15, 2012, 3:18 PM), <https://twitter.com/paulareidcbs/status/235863042217353216> (discussing Mrs. Bookler's voting difficulties due to the Voter ID law).

128. *Voter ID Client Bios*, *supra* note 94.

129. *Id.*

130. Fessler, *supra* note 125.

131. *Voter ID Client Bios*, *supra* note 94.

who works as a paralegal for a public interest law firm in Pittsburgh.¹³² Mr. Schor has taken advanced steps towards his transition.¹³³ In December 2010, he underwent a bilateral mastectomy and has been undergoing testosterone hormone therapy since October 2011.¹³⁴ Mr. Schor planned on formally changing his name and birth identity after his transition process was farther along, but not prior to the November 2012 election.¹³⁵ Mr. Schor was concerned that he would encounter difficulty at his polling place if he were to present his two valid Voter ID law forms of identification.¹³⁶ Mr. Schor's U.S. passport and Pennsylvania driver's license both pictured him as a female and provided his "female" name, both of which were remarkably different from Mr. Schor's physical presentation.¹³⁷

C. Stories of Institutions and Organizations

Besides affecting individuals, the requirements of the Voter ID Act had a direct impact on certain institutions and organizations. After the enactment of the law, many colleges, universities, and nursing homes were forced into the responsibility of creating compliant forms of identification for their students and residents. Stories from college students, nursing home residents, and administrators described the difficulties they encountered as a result of the Voter ID law.

1. Students/colleges & universities

The strict requirements of the Voter ID Act created complications for some institutions and organizations that were suddenly charged with providing a form of valid identification for voting. Under Act 18, Pennsylvania's accredited colleges and universities were unexpectedly authorized and expected to create and issue such identi-

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*; see also Patrick DePoy, *Voter Suppression is an LGBT Rights Issue – Just Ask Asher*, AM. CIVIL LIBERTIES UNION (June 8, 2012, 11:05 AM), <https://www.aclu.org/blog/lgbt-rights-voting-rights/voter-suppression-lgbt-rights-issue-just-ask-asher> (discussing voter identification issues for individuals undergoing gender transformation).

fication.¹³⁸ Under the law, the ID had to have the following features for voting purposes: first, the identification card must have been issued from an accredited Pennsylvania college or university;¹³⁹ second, it had to list the name of the student to whom the identification card was issued;¹⁴⁰ third, it had to have a photograph of the student to whom the card was issued;¹⁴¹ and fourth, there had to be an expiration date on the ID which had not yet been reached.¹⁴²

College and university administrators and students expressed concerns that students would be disenfranchised because most student identification cards were non-compliant.¹⁴³ In April 2012, the public interest research group PennPIRG released results from a survey of Pennsylvania's colleges and universities finding that the majority had non-compliant student IDs for voting purposes.¹⁴⁴ This prolific nonconformance with the law was not intentional on the part of the institutions, but was due to the fact that most colleges and universities did not issue student IDs with expiration dates printed on the cards.¹⁴⁵ Of the 110 Pennsylvania schools¹⁴⁶ surveyed in 2012, only fifteen schools were compliant because their student IDs satisfied the law's requirements by presenting an expiration date on the card.¹⁴⁷

138. 25 PA. CONS. STAT. ANN § 2602(z.5)(2)(iv)(D) (West 2012).

139. *Id.* § 2602(z.5)(2)(iv)(D).

140. *Id.* § 2602(z.5)(2)(i).

141. *Id.* § 2602(z.5)(2)(ii).

142. *Id.* § 2602(z.5)(2)(iii).

143. Scott Kraus & John L. Micek, *Most College Identification Cards Fail Voter ID Test*, THE MORNING CALL (Mar. 30, 2012), http://articles.mcall.com/2012-03-30/news/mc-pa-college-voter-id-20120330_1_ids-expiration-dates-college-students.

144. *Survey of Student IDs at Colleges and Universities in Pennsylvania*, PENNPIRG (2012), http://pennpirg.org/sites/pirg/files/resources/PA_Colleges_Voter_ID.pdf (last visited Oct. 15, 2015).

145. *Id.*

146. *Id.* The 110 schools surveyed included both public and private colleges and universities throughout the Commonwealth of Pennsylvania.

147. The fourteen schools listed as having compliant student IDs were Carlow College, Carnegie Mellon University, Chatham College, Community College of Beaver County, Computer Learning Network–Camp Hill, Franklin & Marshall College, Geneva College–Beaver Falls, Lehigh University, Susquehanna University, Swarthmore College, Thomas Jefferson University, University of Pennsylvania, University of Pennsylvania–School of Nursing, and University of Pittsburgh. *Id.* Four schools were partially compliant with certain exceptions: Lebanon Valley College (Current IDs did not have an expiration date, however, the college was including an expiration date on newly issued IDs.), La Roche College (IDs had a sticker presenting the semester of the students' enrollment.), Marywood College (IDs had an expiration date if the students lived in a residence hall.), and University of Scranton (Undergraduate IDs had the students' graduation date printed on the card and served as an expiration date.). *Id.* Ninety-one schools were non-compliant because their identification cards had no expiration date. *Id.* Those schools were the following: Albright College, Allegheny College, DeSales Uni-

In an effort to correct problems created by the new Voter ID law, college and university administrators across the state examined the logistics and costs associated with creating and distributing thousands of new identification cards.¹⁴⁸ For instance, administrators from Kutztown University contemplated whether to issue new identification cards to all students, or whether to create a sticker with an expiration date that could be affixed to the current university identification card.¹⁴⁹ If that sticker was permissible, how long should it be valid?¹⁵⁰ Pennsylvania State Representative Daryl Metcalfe noted, “It was a conscious decision we made. If a university wants to issue an ID

versity, Alvernia College, Baptist Bible College and Seminary, Arcadia University, Berks Technical Institute, Bloomsburg University, Bryn Mawr College, Bucknell University, Bucks County Community College, Butler County Community College, Cabrini College, California University of Pennsylvania, Pennsylvania Highlands Community College, Cedar Crest College, Cheyney University, Clarion University, College Misericordia, Community College of Allegheny County, Community College of Philadelphia, Computer Learning Network–Altoona, Delaware County Community College, Dickinson College, Drexel University, Duquesne University, East Stroudsburg University, Eastern College, Edinboro University, Elizabethtown College, Gannon University, Gettysburg College, Grove City College, Gwynedd Mercy College, Harrisburg Area Community College, Haverford College, Immaculata College, Indiana University of Pennsylvania, Juniata College, Keystone College, King’s College, Kutztown University, La Salle University, Lafayette College, Lehigh Carbon Community College, Lincoln University, Lock Haven University, Lycoming College, Mansfield University, Mercyhurst University, Messiah College, Millersville University, Montgomery County Community College, Moore College of Art & Design, Moravian College, Muhlenberg College–Allentown, Neumann College–Aston, Northampton Community College, Pennsylvania College of Technology, Pennsylvania Institute of Technology, Pennsylvania State System of Higher Education–Harrisburg, Pennsylvania State University, Pennsylvania State University–Behrend College–Erie, Pennsylvania State University–Schuylkill Campus, Philadelphia College of Bible, Point Park College, Reading Area Community College, Robert Morris College, Saint Francis College, Saint Joseph’s University, Seton Hill College, Shippensburg University, Slippery Rock University, St. Vincent College, Temple University, Thaddeus Stevens State School of Technology, Thiel College, University of Pittsburgh at Johnstown, University of the Arts, Ursinus College, Valley Forge Military College, Villanova University, Washington and Jefferson College, Waynesburg College, West Chester University, Westminster College, Westminster Theological Seminary, Westmoreland County Community College, Widener University, Wilkes University, and York College. *Id.* Fourteen of the non-compliant colleges and universities in the Commonwealth were part of the Pennsylvania State System of Higher Education (PSSHE). Dara McBride, *Pennsylvania Colleges Rush to Make School IDs Voter-Acceptable*, GOVERNING THE STATES AND LOCALITIES (June 22, 2012), <http://www.governing.com/news/state/mct-pennsylvania-colleges-rush-to-make-school-ids-voter-acceptable.html>. The PSSHE schools are Bloomsburg University, California University of Pennsylvania, Cheyney University, Clarion University, East Stroudsburg University, Edinboro University, Indiana University of Pennsylvania, Kutztown University, Lock Haven University, Mansfield University, Millersville University, Shippensburg University, Slippery Rock University, and West Chester University. See PA.’S STATE SYS. OF HIGHER EDUC., <http://www.passhe.edu/Pages/map.aspx> (last visited Oct. 15, 2015).

148. See Kraus & Micek, *supra* note 143.

149. *Id.*

150. *Id.*

that can be used for voting, they will issue an ID with an expiration date[.]”¹⁵¹ The costs associated with the creation and reissuing of new university identification cards made this a non-viable option for some institutions.¹⁵²

Some students wondered if they would have access to any suitable form of identification for voting. Pennsylvania has the highest number of out-of-state students enrolled in its colleges and universities, with 27,675 out-of-state students enrolled as freshmen.¹⁵³ These students were faced with the dilemma of surrendering their home-state issued identification in order to vote in Pennsylvania. Imagine, a student from a small town in New Jersey applied to a university in Pennsylvania and was accepted. The student moved into the dorm in late August and was excited to be eighteen years old and on her own for the first time. One of the first “adult” things the student planned to do was vote in the 2012 presidential election. The student never intended to vote by absentee ballot, but planned to vote in person in Pennsylvania, using her dorm address as her place of residence. The student was informed she could do this when she attended a voter registration drive and registered with her dorm address. She was prepared to show their college ID at the polls if asked. Suddenly, her plans to vote came to a halt when she learned that she would not be permitted to vote in Pennsylvania because the university ID was not compliant with the Voter ID law.

This was a familiar story for many out-of-state students attending Pennsylvania schools.¹⁵⁴ For example, Muhlenberg College student Erin Wexler learned that neither her college ID nor her New Jersey driver’s license would be valid for her to vote in Pennsylvania for the November 2012 election.¹⁵⁵

Stories detailing confusion and inconvenience relating to the

151. *Pennsylvania Colleges and Universities Face Difficulty Providing Students with Proper Voting IDs*, ASSOC. OF PA. STATE COLL. & UNIV. FACULTIES (July 12, 2012, 2:50 PM), <http://www.apscuf.org/blog/item/185-pennsylvania-colleges-and-universities-face-difficulty-providing-students-with-proper-voting-ids> (citing Kraus & Micek, *supra* note 143).

152. Dara Mcbride, *Pennsylvania Colleges Rush to Make School IDs Voter-Acceptable*, GOVERNING THE STATES AND LOCALITIES (June 22, 2012), <http://www.governing.com/news/state/mct-pennsylvania-colleges-rush-to-make-school-ids-voter-acceptable.html>.

153. In 2011, the U.S. Education Department reported that 27,675 students from out-of-state were enrolled as freshmen in Pennsylvania’s institutions of higher learning. *Where Does Your Freshman Class Come From?*, CHRON. OF HIGHER EDUC. (Oct. 29, 2011), <http://chronicle.com/article/List-Freshman-Class/129559/>.

154. See Kraus & Micek, *supra* note 143.

155. *Id.*

Voter ID law from students and college and university administrators made their way to social media, television, print, and radio. The Commonwealth responded to these stories by adjusting the requirements for college and university IDs.¹⁵⁶ The Commonwealth conceded that colleges and universities could prepare new identification cards for their students, or they could affix a mere sticker to their current cards bearing an expiration date.¹⁵⁷ Mr. Ron Ruman, press secretary for the Pennsylvania Department of State, announced that the Commonwealth had been “fairly flexible” in allowing for colleges and universities to use expiration stickers on its IDs.¹⁵⁸ This flexibility went so far as to allow each college and university to establish its own guidelines for expiration. The Commonwealth provided no guidance or “consistent rules for what information had to be printed on expiration stickers.”¹⁵⁹ Ellie Esmond, co-director of Civic Engagement Office at Bryn Mawr College, expressed concern that inconsistent interpretations from the Commonwealth and from varying colleges and universities would result in confusion at the polls.¹⁶⁰ Adam Boyer, Governmental Affairs Chairman of the University Park Undergraduate Association at Penn State said, “If we don’t change, we are disenfranchising all of them It’s just a small change to exercise students’ democratic rights to vote.”¹⁶¹ The absence of direction, consistency, and deliberation on the part of the Commonwealth regarding the use of college and university IDs as proof of identification at polling places weakened the argument that an ID was needed to prevent in-person voter fraud. The Commonwealth’s concession use *expiration stickers* for the validation of ID for voting purposes appeared to be disingenuous.

2. *Nursing homes/assisted living facilities and their residents*

Act 18 also provided that an elector could provide an ID issued

156. See Sarah Smith, *Some Colleges to Assist Students with Valid Voter ID*, THE DAILY PENNSYLVANIAN (Aug. 28, 2012, 7:50 PM), <http://www.thedp.com/article/2012/08/some-colleges-to-assist-students-with-valid-voter-id>.

157. Pa. Dep’t. of State, *Pennsylvania’s Voter ID Law*, <http://www.muhenberg.edu/main/campuslife/community-service/PAVoterLaw1.pdf> (last visited Oct. 15, 2015).

158. Smith, *supra* note 156.

159. *Id.*

160. *Id.*

161. Wenqian Zhu, *Penn State to Change Student ID to Meet with New Voter ID Law*, DAILY COLLEGIAN (Apr. 18, 2012, 12:00 AM), http://www.collegian.psu.edu/archives/article_e563838f-5ae2-5cef-8c98-9f3bb3459de6.html.

from “[a] Pennsylvania care facility” as proof of identification for voting purposes.¹⁶² The problem with this provision was that most care facilities did not have ID provisions for their residents.¹⁶³ To complicate matters further, there was confusion regarding what type of facility constituted a “Pennsylvania care facility” as referenced in Act 18.¹⁶⁴ As of June 30, 2013, there were 710 licensed nursing homes in Pennsylvania.¹⁶⁵ Both residents and administrators of facilities questioned whether they would be required to provide picture identification for their residents to vote.

Although most residents of senior care facilities voted by absentee ballot, there were some residents who wanted to vote in person, and therefore under the Voter ID law, they were required to have proper picture identification.¹⁶⁶ A large portion of the Commonwealth’s senior citizens did not have valid photo identification, or the documents necessary to secure photo identification as required under the new law.¹⁶⁷ Many seniors surrendered their driver’s licenses because they decided, or were informed, that they no longer needed to, or should drive.¹⁶⁸ Other seniors did not have the necessary documentation needed to secure picture identification, such as a birth certificate. Difficulty obtaining birth certificates was a chief deterrent for many seniors who tried to obtain picture identification.¹⁶⁹ This was a familiar problem for many seniors born by midwives who were not issued official government birth certificates.¹⁷⁰

162. 25 PA. CONS. STAT § 2602(z.5)(2)(iv)(E).

163. See Jean C. Hemphill & Michael D. Fabius, *Facilities May Have a Duty to Issue Photo Identification To Comply with PA Voter ID Law*, BALLARD SPAHR LLP (July 26, 2012), <http://www.ballardspahr.com/alertspublications/legalalerts/2012-07-26-facilities-may-have-duty-to-issue-photo-ids-in-wake-of-new-pa-voter-id-law.aspx>.

164. Under the PA Voter ID, law there were three types of facilities that were defined as a “PA care facility.” Those facilities were long-term care facilities or nursing homes, personal care homes, and assisted living residences. *Be Prepared to Vote on November 6! A Special Q&A on Pennsylvania’s New Voter ID Law*, COMM. OF SEVENTY (June 8, 2012), <http://map.seventy.org/Downloads/Voter%20ID%20for%20Seniors%206%207%2012.pdf>.

165. *Report of the Quality Assurance Programs, July 1, 2013–June 30, 2014*, PA. DEPT. OF STATE 17, <http://www.health.pa.gov/facilities/Documents/General%20Assembly%20Report%202013-2014%20FINAL.pdf> (last visited Oct. 15, 2015).

166. Scott Kraus, *A Drive to Help Nursing Home Residents Vote*, THE MORNING CALL (Sept. 24, 2012), http://articles.mcall.com/2012-09-24/news/mc-pa-voter-id-hursing-homes-20120914_1_voter-id-law-home-administrator-personal-care-homes.

167. *Seniors Hit Hard by Voter ID Law*, THE PA. TRIB. (April 22, 2012, 12:00 AM), <http://phillytrib.com/news/item/3784-seniors-hit-hard-by-voter-id-law.html>.

168. See *id.*

169. *Id.*

170. *Id.* This issue affected a majority of African American seniors who were born at home

While the Voter ID law did not mandate that Pennsylvania care facilities produce identification for their residents, “they are required by law—55 Pa Code 2600.23(b)¹⁷¹—to help residents with their needs.”¹⁷² This assistance came by way of care facilities creating their own forms of identification for their residents. Unfortunately some residents were charged a fee by their care facility to produce the identification, but it appears that the majority were not.¹⁷³ The collection of a monetary fee from residents for this identification contradicted the notion of providing free identification for any Commonwealth resident who needed such for voting purposes. The Commonwealth eventually established relaxed standards for the creation of voter identification for care facility residents. Commonwealth Secretary of State Carol Aichele explained that facilities could create new identification papers for their residents that would be acceptable for voting.¹⁷⁴ This identification paper merely consisted of a standard eight and one-half by eleven inch sheet of paper, containing the resident’s photo, his or her name, the name of the facility, and an expiration date.¹⁷⁵ Just like the Commonwealth’s allowance for expiration stickers for college and university IDs to establish validity, the creation of a mere paper photo identification sheet for assisted care facility residents does not appear to be a secure form of voter identification levelled at preventing in-person voter fraud.

in the South when births of African Americans were not accurately recorded. *Id.* The lack of birth certificates also affected seniors in general. Jim Cramer (host of CNBC show *Mad Money*) tweeted about his ninety-year-old father, Ken Cramer: “I have a problem. My dad, a vet, won’t be allowed to vote in Pa. because he does not drive, he is elderly, and can’t prove his citizenship.” Karen Langley, *Voter ID and Jim Cramer’s Dad*, EARLY RETURNS: POST-GAZETTE.COM (Sept. 12, 2012, 1:50 PM), <http://earlyreturns.post-gazette.com/home/early-returns-posts/4796-voter-id-twitter-and-jim-cramer-s-dad>. Cramer’s telling of his father’s story via a tweet garnered a swift, seven-hour resolution of his voter ID dilemma by PennDOT. Ryan J. Reilly, *How Jim Cramer Solved His Dad’s Voter ID Mess in 7 Hours*, TPM (Sept. 12, 2012, 2:13 AM), <http://talkingpointsmemo.com/muckraker/how-jim-cramer-solved-his-dad-s-voter-id-mess-in-7-hours>.

171. See 55 PA. CODE § 2600.23(b) (2005).

172. Cherri Gregg, *Pa. Officials Urge Nursing Homes to Provide Residents with Voter ID Cards*, CBS PHILLY (June 8, 2012, 4:20 PM), <http://philadelphia.cbslocal.com/2012/06/08/pa-officials-urge-nursing-homes-to-provide-residents-with-voter-id-cards/>.

173. See *id.*

174. Pete Bannan, *PA. Secretary of State Unveils Voter IDs for Nursing Home Residents*, MAINLINE (May 8, 2012), http://www.mainlinemedianews.com/articles/2012/05/08/main_line_suburban_life/news/doc4fa9e1c2057c6717669766.txt.

175. *Id.*

3. *The cost of a voter ID*

If a registered voter did not possess one of the specified forms of identification, he or she was eligible to receive a *free*¹⁷⁶ non-driver photo identification card from a PennDOT driver's license center according to the Commonwealth.¹⁷⁷ In order to receive this *free* non-driver photo identification, an individual was required to sign an oath swearing and confirming that he or she was a registered voter and did not possess photo ID valid for voting purposes. There were many concerns raised by voters needing the free ID, particularly that this free ID was not really *free* when consequential and associated costs to secure the ID were taken into consideration.¹⁷⁸ As mentioned previously, many individuals incurred expenses related to travel to PennDOT driver's license centers.¹⁷⁹ There is a total of sixty-seven counties in Pennsylvania, nine of which are rural and do not have a PennDOT driver's license center.¹⁸⁰ There are just over seventy PennDOT centers in total across the Commonwealth that have the

176. KEESHA GASKINS & SUNDEEP IYER, *THE CHALLENGE OF OBTAINING VOTER IDENTIFICATION*, BRENNAN CENTER FOR JUSTICE 14 (2012), <http://www.brennancenter.org/publication/challenge-obtaining-voter-identification>. In states that have restrictive ID requirements, the costs of a *free* voting ID are often hidden. See *id.* For example, many of such states require supporting documentation, such as birth certificates, passports, or marriage licenses to obtain the voting ID. This documentation can cost anywhere from \$5 to \$135. *Id.*

177. As of March 13, 2014, there are 72 PennDOT Driver's License Centers within the Commonwealth that have the capability to produce voter ID. See PA. DEP'T OF TRANSP., <http://www.dot33.state.pa.us/centers/locationsCenter.shtml> (last visited Oct. 15, 2015). These license centers service fifty-eight counties, leaving nine counties without any license center location. *Id.* Furthermore, the hours of operation and service capabilities of these license centers are not uniform. *Id.* Fifty eight photo license centers are closed at least one day during the work week, twenty-six are closed at least two days, and twenty-one are closed three days or more. *Id.* The confusion, delay, and inconvenience of having to acquire a voter ID from this patchwork of service locations scattered throughout the Commonwealth pose a significant obstacle to many without the required ID, particularly for those living in counties lacking a license center location.

178. Richard Sobel, *The High Cost of "Free" Voter Identification Cards*, HARV. L. SCH. INST. FOR RACE AND JUST. (June 2013), <http://www.charleshamiltonhouston.org/wp-content/uploads/2013/06/Final-Executive-Summary-and-Tables-June-25-20131.pdf>. The true cost of obtaining a voter ID includes the following considerations: (1) time spent learning about the requirements of the new voter ID law; (2) cost of other validating documents, such as a birth certificate or marriage license; (3) cost of travel expenses; and (4) cost of travel time and wait time at the voter ID center. *Id.* at 2. Ultimately, the true cost of a voter ID averages between \$75 and \$368 dollars. *Id.* at 2-3.

179. *Id.*

180. Sharon Ward, *Pennsylvania's Identity Crisis: Rushed Implementation of Voter ID Law Putting Voting Rights at Risk*, PA. BUDGET AND POL'Y CENTER 5 (Aug. 2012), <http://pennbpc.org/sites/pennbpc.org/files/Final-VoterID-Report.pdf>.

capability to produce and issue driver's licenses or photo identification cards, yet there are approximately 9,300 polling places across the Commonwealth where individuals vote.¹⁸¹ These circumstances required certain residents to travel substantial distances to access a PennDOT license center in neighboring counties.¹⁸² Additionally, many of the PennDOT centers had irregular hours of operation, thereby exacerbating the difficulty individuals faced in acquiring the necessary ID.¹⁸³

The expressed criticisms and frustrations from voters and voting rights organizations about the complex and burdensome requirements of the Pennsylvania Voter ID law needed to be gathered and articulated as one united voice. The strategic application of legal storytelling provided the perfect platform upon which to present these collective stories to the courts effectively.

VI. LEGAL STORYTELLING THROUGH GRASSROOTS ORGANIZING AND SOCIAL MEDIA

A. What is Legal Storytelling?

Legal storytelling is a powerful tool used by lawyers to gain the attention of the judge, jury, and public. Telling a compelling story is important to fervent and effective advocacy. "Every argument, in court or out . . . can be reduced to a story The strongest structure for any argument is *story*."¹⁸⁴

Storytelling in the realm of academic scholarship has been disregarded by some as having lesser pedagogical relevancy and value;¹⁸⁵ however, practitioners find value in the tool of legal storytelling.¹⁸⁶ As a clinical professor teaching students how to practice civil rights litigation through real-world experiences, with real-life clients, it is im-

181. *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at *46-47 (Pa. Commw. Ct. Jan. 17, 2014).

182. *See id.* at *47, *65.

183. *See id.* at *65.

184. Erin C. Asborno, *How to Tell a Compelling Story in Any Case*, AMERICAN BAR ASSOCIATION (2012), http://www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac_2012/39-1_how_to_tell_a_compelling_story_in_any_case_authcheckdam.pdf (emphasis in original) (quoting GERRY SPENCE, *HOW TO ARGUE AND WIN EVERY TIME: AT HOME, AT WORK, IN COURT, EVERYWHERE, EVERYDAY* 13 (1995)).

185. Bernie D. Jones, *Critical Race Theory: New Strategies for Civil Rights in the New Millennium?*, 18 HARV. BLACKLETTER L.J. 4 (2002).

186. *Id.*

perative that my students learn the art of legal storytelling.¹⁸⁷ Our clients rely on their student attorneys to convey their stories of discrimination to the administrative agencies, mediators, judges or juries. The clients are trusting that the student attorney can convey all of the hurt, pain, embarrassment, and utter despair they felt when they experienced discrimination. The client wants the person sitting across the table from them to feel what they felt, to empathize with them, and to make the appropriate decision to bring them vindication.

“Both stories and lawsuits have characters, conflict, and resolution.”¹⁸⁸ The attorney’s objective is to present the characters and the conflict in a way to implore the listeners to agree with the desired resolution.

Counsel for the Petitioners in *Applewhite* surmounted the tremendous task of presenting the stories of their clients through grassroots and social media efforts to develop and perfect the “Government against Man”¹⁸⁹ conflict model. The “Davids” of our society were facing the “Goliath”¹⁹⁰ government in an effort to exercise their right to vote. The Davids of the Pennsylvania Voter ID case were represented by the elderly, racial minorities including African Americans and Latinos, women, young adults, the poor, the homeless, and veterans.

The Declaration of Rights in the Pennsylvania Constitution, Article I, Section 5 provides that “[e]lections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”¹⁹¹ The stories presented outside and inside the court exemplified the Petitioners’ claims that the Pennsylvania Voter ID law was in violation of the Pennsylvania Constitution because it would prevent the free and equal “exercise of the

187. The importance of storytelling in clinical legal education is evidenced by the designation of a chapter on this topic in the new textbook, *The Clinic Seminar*. See DEBORAH EPSTEIN, JANE H. AIKEN & WALLACE J. MLYNIEC, *THE CLINIC SEMINAR* 283–370 (West Academic Publishing, 2014).

188. Asborno., *supra* note 184, at 4.

189. “Conflicts in stories can be classified in [any] one of the following categories: Man against Man, Man against Self, Man against Nature, Man against Society, Man against Machine, Man against God, God against Everybody; or alternatively, ‘Man against Institution,’ ‘Man against Leader,’ ‘Man against Powerful Entity.’” *Id.*

190. For reference to the biblical story of David versus Goliath, see 1 *Samuel* 17:1–58.

191. PA. CONST. art. I, § 5. Article VII, Section 1 of the Pennsylvania Constitution also provides age and residency qualifications needed for a citizen to vote within the Commonwealth and nothing more. See PA. CONST. art. VII, § 1.

right of suffrage” by all citizens meeting the qualifications to vote. These illuminating stories detailed the real threat of disenfranchisement. They were gathered through the efforts of many organizations and individuals who engaged with and sought out individuals likely to be harmed by the law. These efforts were undertaken through a very organized and strategic model.

B. Story Gathering

The varied organizations encompassing the Protect Our Vote Coalition used grassroots efforts to gather information from individuals likely to be affected by the new Voter ID law.¹⁹² Outreach campaigns were organized to educate citizens about the new Voter ID law that would be in place for the 2012 presidential election.¹⁹³ Advertisements for Voter ID education sessions were disseminated through traditional grassroots efforts,¹⁹⁴ and the coalition also utilized numerous social media avenues to deliver information about the new Voter ID law throughout the Commonwealth.¹⁹⁵ This method successfully identified some of the Petitioners named in the lawsuit and others who served as witnesses. Their stories, in video format, were posted on Facebook and YouTube and forwarded as email attachments. These easily accessible presentations allowed people to view and share the stories, thereby facilitating the plan for mass education of the Voter ID law.

The Petitioners’ use of social media in this case mirrored the techniques outlined in the book *The Dragonfly Effect: Quick, Effective,*

192. Joey LeMay, *Grassroots Efforts Look to Limit Impact of Voter ID Legislation*, MINTPRESS NEWS (Oct. 30, 2012), <http://www.mintpressnews.com/grassroots-efforts-look-to-limit-impact-of-voter-id-legislation/39661/>.

193. See *Voter ID Law Upheld: New Focus on Outreach*, NEW PITTSBURGH COURIER (August 22, 2012) <http://newpittsburghcourieronline.com/2012/08/22/voter-id-law-upheld-new-focus-on-outreach/>.

194. See Tony Pugh, *Voter Identification Laws*, RYOT NEWS, <http://www.ryot.org/voter-identification-laws/5555>, (last visited Oct. 20, 2015). Information was disseminated via rallying, canvassing, speeches at churches, synagogues, and family gatherings.

195. See Doug Foote, *Governor Corbett Finally Pulls the Plug on ALEC Voter ID Law in Pennsylvania*, MAIN STREET, A PROJECT OF WORKING AM. (May 12, 2014, 9:45 AM), <http://blog.workingamerica.org/2014/05/12/governor-corbett-finally-pulls-the-plug-on-alec-voter-id-law-in-pennsylvania/> (“In 2012, Working America [Community Affiliate of the AFL-CIO, member of the Voting Rights Coalition] members made educating their communities about the potential new voting restrictions a top priority. Through canvassing, radio, social media, and simple conversations with friends and family, we educated an estimated 425,000 Pennsylvanians before the law was enjoined.”).

and Powerful Ways to Use Social Media to Drive Social Change.¹⁹⁶ To establish a social media campaign focused on social change, the “Dragonfly Model” requires that there be a *focus* that identifies a single measure or goal.¹⁹⁷ After establishing the focus, the next step is to *grab the attention* of your audience. This can be accomplished by presenting something “personal, unexpected, visceral, and visual.”¹⁹⁸ Next, the individual must be *engaged* through a “personal connection” presented in story format.¹⁹⁹ The story should be one that invokes empathy and interest. The individual must then be enabled to *take action* for social change.²⁰⁰

Examining this technique for social change in relation to the efforts in the *Applewhite* case, the *focus* was proving that the Voter ID law was unconstitutional. Grabbing the attention of the public required the use of *personal stories* of individuals who were likely to be disenfranchised if the law were to be implemented as enacted.²⁰¹ Some of these stories provided the audience with *unexpected* facts and details.²⁰² For example, it was not expected that a ninety-two-year-old woman who marched with Dr. Martin Luther King, Jr. to fight for voting rights for all U.S. citizens, Viviette Applewhite, would not be able to vote in Pennsylvania in 2012 because she did not have proper identification. Her story elicited a *visceral* reaction from both sides of the Voter ID debate. Some people were outraged by the fact that this elderly woman who marched for the right to vote would not be able to vote in the Commonwealth. For others, her story elicited feelings of dismay and criticism as to why she and others did not have photo identification, which was necessary for everyday life activities such as travel. Lastly, the story of Mrs. Applewhite and the other named Petitioners were posted on numerous social media websites in the *visual* format of video. These videos portrayed the stories of those most vulnerable Commonwealth citizens who were likely to be disenfranchised.²⁰³

196. JENNIFER AAKER, ANDY SMITH & CARLYE ADLER, *THE DRAGONFLY EFFECT: QUICK, EFFECTIVE, AND POWERFUL WAYS TO USE SOCIAL MEDIA TO DRIVE SOCIAL CHANGE* (2010).

197. *Id.* at 9.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 66.

202. *Id.*

203. *See Voter ID Client Videos*, AM. CIVIL LIBERTIES UNION OF PA.,

As stories of individuals who either did not possess or were not able to secure identification for voting purposes circulated through YouTube videos, television reports, Facebook posts, tweets, newspaper articles, opinion pieces, website postings, canvassing materials, and by word-of-mouth, the Pennsylvania legislature took notice and responded. The Pennsylvania Voter ID law went through several metamorphoses in an attempt to correct the legislative oversights that would lead to disenfranchisement.

After the law was passed, numerous missteps were discovered in the law that would prevent or make it extremely difficult for some citizens to secure appropriate identification. “State officials modified the law at least a half-dozen times throughout the trials.”²⁰⁴ As previously discussed, even though the Voter ID law only provided PennDOT with the power to create and distribute identification for voting purposes, the law also allowed citizens to present identification from nursing homes, and colleges and universities for voting purposes. These institutions did not routinely create IDs (in the case of nursing homes and assisted living facilities) or meet the requirements to be accepted as a valid form of photo identification for voting purposes because it lacked an expiration date (in the case of college and university identifications). The Commonwealth responded to these shortcomings in the legislation by sanctioning nursing homes to create their own picture identification on an eight and one-half by eleven inch standard sheet of paper²⁰⁵ and colleges and universities to affix expiration stickers on their identification cards.²⁰⁶

In May 2012, the Commonwealth *changed* the requirements for citizens born in Pennsylvania to obtain a PennDOT Voter ID. Citizens were no longer required to secure a copy of their Pennsylvania

<http://www.aclupa.org/our-work/legal/legaldoCKET/applewhite-et-al-v-commonwealth-pennsylvania-et-al/voter-id-client-videos/> (last visited Oct. 20, 2015); *Video Witnesses 2013*, AM. CIVIL LIBERTIES UNION OF PA., <http://www.aclupa.org/our-work/legal/legaldoCKET/applewhite-et-al-v-commonwealth-pennsylvania-et-al/2013-video-witnesses/> (last visited Oct. 20, 2015); *Voter ID: Applewhite v. Commonwealth*, PUB. INTEREST LAW CTR. OF PHILA., <http://www.pilcop.org/applewhite-v-commonwealth/#sthash.Pvp8Oon0.dpbs> (Scroll down and click the arrow next to “Video Profiles of Plaintiffs & Witness Testimony” to reveal the links to the videos) (last visited Oct. 20, 2015).

204. Brentin Mock, *The Weakening Case for Voter ID in Pennsylvania*, DEMOS (Jan. 31, 2014), <http://www.demos.org/blog/1/31/14/weakening-case-voter-id-pennsylvania>.

205. See Pete Bannan, *PA Secretary of State Unveils Voter IDs for Nursing Home Residents*, MAINLINE (May 8, 2012), http://www.mainlinemedianews.com/articles/2012/05/08/main_line_suburban_life/news/doc4fa9e1c2057c6717669766.txt (scroll down to *Voter IDs for Nursing Home*, video (May 7, 2015)).

206. See *id.*

birth certificate with a raised seal to obtain a PennDOT Voter ID card.²⁰⁷ The state agreed to confirm births with the Pennsylvania Department of State. This change came in response to stories detailing the onerous task of obtaining a birth certificate with a raised seal from Pennsylvania and other states for the purpose of securing voter identification.²⁰⁸

As more stories were told regarding the lack of voter fraud cases, the Commonwealth conceded that it did not have any evidence of voter fraud within the Commonwealth. In July 2012, on the eve of the trial for the preliminary injunction, the Commonwealth's story changed. A stipulation was signed agreeing that there "have been no investigations or prosecutions of in-person voter fraud in Pennsylvania; and the parties did not have direct personal knowledge of any such investigations or prosecutions in other states."²⁰⁹

By the time the Voter ID case went before the Pennsylvania Supreme Court on appeal, the nation was well-versed on stories detailing the burdensome steps required to obtain valid identification in Pennsylvania for voting, the dearth of evidence of in-person voter fraud, and the number of people who were certain to be disenfranchised under the law. The argument presented by the Petitioners before the Pennsylvania Supreme Court confirmed the unpreparedness of the Commonwealth to finalize the process to provide free and liberal access to voter identification for those in need. In a per curiam opinion, the supreme court found that PennDOT was required to provide citizens of the Commonwealth with voter identification through a *liberal access* process but had failed to do so.²¹⁰ The stories of individuals not able to meet the rigorous requirements to secure a Pennsylvania Voter ID were recognized by the supreme court in their decision. The Court noted that both the Department of State and PennDOT acknowledged that "some registered voters have been and will be unable to comply with the requirements maintained by

207. Jay Costa, *Need a Photo ID? I Can Help!*, STATE SENATOR JAY COSTA, <http://www.senatorcosta.com/need-a-photo-id-i-can-help> (last visited Oct. 20, 2015).

208. See, e.g., Alfred Lubrano, *For Many Americans, Obtaining a Birth Certificate Proves Challenging*, PHILLY.COM (March 28, 2014), http://articles.philly.com/2014-03-28/news/48634147_1_certificate-viviette-applewhite-south-carolina.

209. *Applewhite v. Commonwealth*, No. 330 MD 12 2012, (Pa. Commw. Ct.) signed Stipulation, July 12, 2012, http://democrats.oversight.house.gov/sites/democrats.oversight.house.gov/files/migrated/Pennsylvania_Stipulation.pdf.

210. *Id.* at 3.

PennDOT to obtain an identification card.”²¹¹ The decision also identified the Commonwealth’s planned modifications to the Voter ID law, specifically the offering of the alternative non-secure Department of State ID.²¹² The Supreme Court noted that although the Commonwealth had plans to distribute the Department of State IDs, the cards would not be available until the two months prior to the November election, thereby failing to comply with the liberal access requirement under the law.²¹³

The Commonwealth’s concessions and reactions clearly demonstrate that the stories of the Petitioners and thousands of other citizens undoubtedly influenced how the Commonwealth and the courts responded. The stories presented by the Petitioners were persuasive enough that the Pennsylvania Supreme Court included some of these stories in the opinion.

It is my contention that the outcome of the decisions in the Pennsylvania Voter ID case and the Indiana Voter ID case differed in part due to the lack of stories presented by and about those likely to be disenfranchised in Indiana. It is widely believed that the Pennsylvania Voter ID law is the younger sibling of the Indiana Voter ID law, both children of the American Legislative Exchange Council (ALEC).²¹⁴ ALEC describes itself as “[a] nonpartisan membership association for state lawmakers who share[] a common belief in limited government, free markets, federalism, and individual liberty.”²¹⁵ Of the sixty-two state bills on Voter ID laws introduced during the 2011 and 2012 legislative sessions in thirty-seven states across the nation, over half of these bills were sponsored by ALEC conference attendees and members.²¹⁶ Although the Indiana and Pennsylvania laws were very similar on their face, the judicial outcomes to the legal

211. *Id.* at 4.

212. *Id.*

213. *Id.* at 3. This identification card was created by the Commonwealth as a remedial measure for citizens who were unable to secure a PennDOT identification card.

214. TV NEWS ARCHIVES, MELISSA HARRIS-PERRY, (Sept. 9, 2012) https://archive.org/details/MSNBC_20120909_200000_Melissa_Harris-Perry#start/180/end/240. It is believed that both the Indiana and the Pennsylvania voter identification laws were model legislation drafted by ALEC for their legislative members, in both states. Ethan Magoc, *Many States’ Voter-ID Laws, Including Pennsylvania’s, Appear To Have Tie to Same U.S. Group*, PHILLY.COM (Aug. 15, 2012), http://articles.philly.com/2012-08-15/news/33201719_1_voter-id-laws-acceptable-photo-strict-photo-id.

215. *History*, AM. LEGISLATIVE EXCH. COUNCIL, <http://www.alec.org/about-alec/history/> (last visited Oct. 20, 2015).

216. Ethan Magoc, *Flurry of Photo ID Laws Tied to Conservative Washington Group*, NEWS21 (Aug. 12, 2012 10:48 AM), <http://votingrights.news21.com/article/movement/>.

challenges were strikingly different.

The *Crawford* case was filed in federal court in Indiana challenging the constitutionality of the Voter ID law as a violation of the Fourteenth Amendment of the U.S. Constitution. The case was appealed to the U.S. Court of Appeals for the 7th Circuit.²¹⁷ Oral argument was held before a three judge panel comprised of Judges Posner, Evans, and Sykes.²¹⁸ During oral argument, Judge Posner asked counsel for the Appellant whether there were any individual plaintiffs present in the courtroom who had tried and failed to secure voter identification.²¹⁹ Counsel for the Appellant answered in the negative and noted that none of the plaintiffs lacked identification necessary for voting.²²⁰ He went on to explain that the plaintiff organizations, such as the NAACP, had tried to assist individuals in obtaining identification and provided education on the new voter identification law.²²¹ Judge Posner responded that it would have been beneficial if the Appellant had presented the story of one individual from Indiana who did not have appropriate identification for voting nor the documentation needed to obtain that identification.²²² He noted that the absence of this line of stories did not convey to the court the presence or threat of substantial voter disenfranchisement.²²³ Because the Appellant failed to provide a plaintiff who could present their individual story of burden related to the obstacles associated with securing identification for voting, it appears that Judge Posner assumed that any individual who did not possess identification was simply not motivated to vote.²²⁴ This erroneous plot assumption could not be countered because the Appellant presented not one individual to tell their story. Judge Posner wrote the majority opinion and noted that the plaintiffs who do not have identification, *but have not* indicated that they would vote if they had appropriate identification, left the court with no choice but to assume that they would not

217. *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008).

218. *Id.* at 950.

219. Oral Argument at 23:37, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008) (Nos. 07-21,07-25), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/X90VP0NK.mp3>.

220. *Id.* at 23:42.

221. *Id.*

222. *Id.* at 24:04.

223. *Id.* at 23:49.

224. *Id.* at 24:31.

be affected by the law.²²⁵

In Judge Posner's recent book *Reflections on Judging*,²²⁶ one sentence created national controversy over the *Crawford* case.²²⁷ Judge Posner wrote, "I plead guilty to having written the majority opinion (affirmed by the Supreme Court) upholding Indiana's requirement that prospective voters prove their identity with a photo ID—a type of law now widely regarded as a means of voter suppression rather than of fraud prevention."²²⁸ Judge Posner has vacillated in his explanation of this sentence. In one interview, he admitted that he and the court got the opinion wrong.²²⁹ Yet in another commentary he contends that this sentence was not an admission of an erroneous decision in the case, but explained that he was not "confident that it was right" since he did not have a full understanding of the electoral process.²³⁰ Although Judge Posner's justifications for the sentence in his book diverge, he has been consistent in noting that the court was not provided with sufficient information from the parties to make its decision. Judge Posner stated, "[W]e judges weren't given, in *Crawford*, the data we would have needed to balance the good and bad effects of the Indiana law."²³¹ This statement seems to indicate that Judge Posner did not have specific detailed information needed to make the *right* decision in *Crawford*. First, Judge Posner specifically noted that the empirical evidence presented by the plaintiffs to show the number of individuals who would be disenfranchised was found to be unreliable by the district court judge.²³² Therefore, the panel did not have any empirical data to reference. Secondly, the panel did not have the

225. *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951–52 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008).

226. RICHARD A. POSNER, *REFLECTIONS ON JUDGING* (2013).

227. See e.g., John Nichols, *Judge Who Framed Voter ID As Constitutional Says He Got It Wrong*, THE NATION (Oct. 15, 2013), <http://www.thenation.com/blog/176641/judge-who-framed-voter-id-laws-constitutional-says-he-got-it-wrong#>; Ed Whelan, *More on Judge Posner's (Now Disavowed?) Mea Culpa on Voter ID Laws*, NAT'L REV. ONLINE (Oct. 28, 2013), <http://www.nationalreview.com/bench-memos/362352/more-judge-posners-now-disavowed-mea-culpa-voter-id-laws-ed-whelan>.

228. POSNER, *supra* note 226 at 84–85 (footnote omitted).

229. Mike Sacks, *Interview of Judge Richard Posner*, HUFFPOST LIVE (Oct. 11, 2013), <http://live.huffingtonpost.com/r/segment/judge-richard-posner-live-interview/524ced9502a76017d900006a>.

230. Richard Posner, *I Did Not 'Recant' On Voter ID Laws: Richard A. Posner on Judges, Data, and Consequences*, NEW REPUBLIC (Oct. 27, 2013), <http://www.newrepublic.com/article/115363/richard-posner-i-did-not-recant-my-opinion-voter-id>.

231. *Id.*

232. *Id.*

benefit of stories from individuals who were likely to be disenfranchised under the law. Based upon this lack of information, Judge Posner and Judge Sykes held that the Indiana Voter ID law was constitutionally valid.

In contrast, the promotion and presentation of stories from the plaintiffs and others in the Pennsylvania Voter ID case distinguished the decisions. The use of stories created an image of the “invisible voter”²³³ who would be affected by the new Voter ID law in Pennsylvania. The stories from these individuals made these unknown, potentially disenfranchised voters real, instead of illusory. The judges saw the tangible likelihood that many individuals would be disenfranchised if the law were implemented in the timeframe proposed by the Commonwealth. The efforts of the Protect Our Vote Coalition and counsel for the petitioners opened the dusty covers of the story books that many Pennsylvania citizens had never shared with the public. Their stories explained why many citizens did not have the identification required to vote. These stories provided the information necessary to murder the Pennsylvania Voter ID law.

VII. CONCLUSION

Reflecting on the 50th anniversary of the signing of the Voting Rights Act (VRA) it is clear that the protections created under the Act in 1965 are still needed today in 2015. The vestiges of the 19th and 20th century voter suppression remain today through new and innovative systems and procedures.

The impediments and barriers confronted by individuals exercising their right to vote today are certainly not the same violent brute force opposition and preconditions that minority and indigent voters once faced. There are no longer bombings, physical violence, or lynchings of individuals attempting to register to vote or vote. Gone are the prerequisites of literacy tests to pass, grandfather clauses to meet, or poll taxes to pay. There are no more voter registration classes to prepare individuals for the opposition and testing they would endure at county clerks’ offices when attempting to register to vote. All of these impediments have been replaced with new systems of voter reform.

The stories presented by advocates for the new forms of voter

233. Nathaniel Persily, *Voter ID Cases: Invisible Voter v. Imaginary Fraud*, CNN OPINION (Aug. 31, 2012), <http://www.cnn.com/2012/08/31/opinion/persily-voter-id-laws/>.

qualification seemed innocuous upon first glance. The new regime of voter protection through Voter ID laws merely required individuals to proffer some form of identification to prove that the correct person was voting. Requesting some form of identification was not burdensome, because all individuals have some form of ID to live in society today.

The stories from individuals facing the new identification standards revealed the likelihood of disenfranchisement. These stories detailed how past discriminations carried forward to prevent and deter their ability to meet the new requirements of voter identification. The voices of the individuals changed the landscape of the law. Their stories could not be ignored by Commonwealth officials or the judges presiding over the lawsuit. The power of legal storytelling altered the outcome of the Pennsylvania Voter ID law and reminded us that the historic need for protection from voter suppression found in the Voting Rights Act is not that far removed. The stories of the past that describe the violence, the pain, and the deaths that occurred as individuals fought for the right to vote must continue to be told. The new stories related to the barriers created by Voter ID laws must be told to create the timeline for understanding and legitimacy.

These stories presented in this paper foretell of the continuing fight for equality for individuals merely wanting to exercise their most basic democratic right, the right to vote in the United States of America.²³⁴

234. This references a line from Justice Scalia's opinion in *Whitman v. Am. Trucking Associations*: "Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." 531 U.S. 457, 468 (2001).

