



**“STRATEGIC LITIGATION:  
EXPERIENCE OF LAWYERS  
FROM U.S., EUROPE, and RUSSIA  
Ekaterinburg, September 16-20, 2014**

# General Concepts behind *strategic litigation*

- *End goal is not just winning a case;*
- *End goal is promoting human rights, environmental justice, etc., by achieving identified social change.*

# Litigation is one important tool among several advocacy tools.

- ***Litigation***
- ***Public education***
  - Written/recorded educational literature, videos, recordings, etc.
  - Traditional press (Russian independent media or foreign press)
  - Social media
- ***Community organizing/public outreach***
- ***Legislative advocacy (“Lobbying”)***

***Using all or multiple tools together  
– integrating them –  
is most effective!***

# 2 ways to use litigation *strategically*

- **Individual case – opportunistic**
  - Good client, good facts
  - Carpe diem
  - Think strategically to maximize impact
- **“Campaign” to achieve social change**
  - Integrated advocacy

# Strategic Planning Triangle



**For both individual case or  
campaign...**

**Think strategically about how to...**

**Maximize impact!**

**It may take years  
and many lawsuits...**

***e.g., Brown v. Board of Education***



# **U.S. Examples of Strategic Litigation**

- **Pennsylvania Voter ID**
- **New York Anti-death-penalty campaign**
- **Pittsburgh Police Reform**
- **Shortening NY Time between Arrest and Arraignment**
- **Briggs v. City of Norristown**



# *Caveat*

- Examples from U.S.A.
  - Different court system (independent, stronger)
  - Culturally, higher regard for rule of law
  - Separation of powers
  - Independent press
  - More freedoms
- Not all can or will work in Russia
- Share ideas about strategies and tactics you may try here.

# Pennsylvania Voter ID



# Problem?

- Not everyone has one of these ID's.
- About 10% (800,000) of voters don't have ID
- Only 67 places in entire state to get ID.
- People will have trouble getting ID.
- People without ID are disproportionately minorities and poor.
- **Violates fundamental right to vote.**

# Who can fix problem?

- The Pennsylvania General Assembly (legislature)
- The Governor
- The Courts

# Outline Strategy

- **Prepare lawsuit**
  - Build legal team
  - Fact investigation – who is impacted and why
  - Find plaintiffs
  - Legal research
- **Public education – change *narrative***
- **Prepare for loss**
- **All at same time**

# Building legal team

- **Assess landscape** – who likely to be involved
  - Other NGO's
  - Labor unions
  - Democratic party
- **Assess resources**
  - Need more money
  - Need more legal muscle
  - Need large law firm

# Finding plaintiffs

- Difficult population to reach
- Find as many as possible – then can choose
- Had idea of ideal voter profiles

**MAJOR EFFORT!**

# Organize information collection

## PENNSYLVANIA VOTER INTAKE SURVEY

Name \_\_\_\_\_ Date of birth \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (h) \_\_\_\_\_ (w) \_\_\_\_\_ (cell) \_\_\_\_\_

Email address \_\_\_\_\_

If none of above contact information is available, how can we reach you? \_\_\_\_\_

### If someone other than the voter filled out this form, please complete

Name: \_\_\_\_\_ Organization \_\_\_\_\_

Best Telephone # \_\_\_\_\_ Email \_\_\_\_\_

1. Are you registered to vote in Pennsylvania? Y

→If not, do you want to register to vote before the 2012 elections? Y

→If yes, when did you start to vote? \_\_\_\_\_

2. Do You Have Any of the Following Types of Photo ID (check all that apply)

A current Pennsylvania Driver's License

A current Pennsylvania photo ID card issued by the Department of Transportation

→If the above ID's are expired, did they expire after November 2011? Y N

A current U.S. Passport

A U.S. Military or Pennsylvania National Guard photo ID

A U.S. Government issued photo ID

A current employee photo ID issued by a Pennsylvania county, city, town or borough

A current student photo ID issued by a Pennsylvania college or university

→If yes, school name \_\_\_\_\_

→Does ID have expiration date? Y N

A current photo ID issued by a licensed nursing, personal care or assisted living facility

→If yes, facility name and location \_\_\_\_\_

→Does ID have expiration date? Y N

If you marked any of the ID's above, please answer the following:

→Does the photo on your ID look like you today? Y N

→Does name on photo ID match name on your voter registration card? Y N

→If you marked "no" for either of the above, explain the difference: \_\_\_\_\_

3. If you do not have one of the Photo ID's listed above, but you wish to vote in an upcoming election, you will need to present certain documents to get a Pennsylvania ID. Please check which of the following ORIGINAL DOCUMENTS (not photocopies) you have or can obtain easily.

### IDENTITY DOCUMENTS (Need 1)

Social security card (original, not copy)

Birth certificate (must have a raised seal; photocopies or hospital certificates won't work)

U.S. Citizenship Certificate (INS form N-560)

Naturalization Certificate (INS Form N-550 or N-570)

Valid U.S. Passport

### PROOF OF RESIDENCY (Need 2)

Tax records

W-2 Form

Lease Agreement

Current Gun/Firearm Permit

Mortgage Documents

Current Utility bill

If you answered yes to any of the "Identity Documents" above,

→Does the name match your current name, e.g., it hasn't changed because of marriage or some other reason? Y N →If you answered "No," please explain how the names differ \_\_\_\_\_

If you answered "No" to all of the "Identity Documents" listed above, please answer the following:

→State and county (or country) of birth \_\_\_\_\_

→Have you ever tried to get a copy of your birth certificate? Y N

→If "Yes," did you get it and if not why not? \_\_\_\_\_

→Do you think you could get your birth certificate? Explain why or why not: \_\_\_\_\_

→Birth Certificates cost between \$10 and \$45, depending on your birth state. Could you afford that fee, and if not why not? \_\_\_\_\_

If you answered "Yes" to less than two of the above "Proof of Residency" documents, how hard would it be for you to get two, and please explain the difficulty: \_\_\_\_\_

\*Today's date \_\_\_\_\_



- Organized interns/volunteers to do “intake”
- Special hotline telephone number (toll free)
- Recruit volunteers to do outreach
  - Nursing homes
  - Community meetings
  - Advertise availability of speakers

# Publicize information gathering effort

- Media appearances
- Internet
- Community outreach
- Organizations,  
churches
- Word of mouth

## KNOW YOUR VOTING RIGHTS

★ PENNSYLVANIA ★

*Election Day is Tuesday, November 6, 2012*

### What You Need to Know About PA's **New Voter ID Law**

Starting with the November 6, 2012, election, you will be **required to show photo ID to vote**, even if you have voted for years in the same precinct.

Only some types of photo ID will be accepted:

- Pennsylvania driver's license
- PennDOT non-driver photo ID
- U.S. passport
- U.S. government-issued photo ID
- Commonwealth of Pennsylvania-issued photo ID
- U.S. military or Pennsylvania National Guard photo ID
- Pennsylvania municipality-issued photo ID
- Accredited Pennsylvania college- or university-issued photo ID
- Pennsylvania nursing/personal-care facility photo ID

**Check carefully that:**

- (1) your photo ID is current **and** includes an expiration date. Driver's licenses and PennDOT non-driver photo IDs can be expired by one year or less. Military IDs can say expiration date is indefinite.
- (2) **AND** the name on your photo ID closely matches your name in the voter registry.

If your photo ID doesn't meet these two conditions it will **not** be accepted.

**LET ME VOTE**  
COOPERATION • PARTICIPATION • PROGRESS

**ACLU**  
AMERICAN CIVIL LIBERTIES UNION

# Prepare lawsuit

- Build around people that found
- Humanize
- Develop narrative for both lawsuit and public education
- Public education program complements lawsuit

# Lawsuit filed

## May 1, 2012

David P. Gersch\*  
Arnold & Porter LLP  
555 Twelfth Street, NW  
Washington, DC 20004-1206  
\* Not admitted in Pennsylvania,  
admitted in the District of Columbia.  
Pro hac vice motion to be filed.

Witold J. Walczak  
Attorney ID No. 62976  
ACLU of Pennsylvania  
313 Atwood Street  
Pittsburgh, PA 15213

Jennifer R. Clarke  
Attorney ID No. 49836  
Public Interest Law Center of Philadelphia  
1709 Benjamin Franklin Parkway, 2nd Floor  
Philadelphia, PA 19103

Marian K. Schneider  
Attorney ID No. 50337  
Advancement Project  
1220 L Street, NW, Suite 8  
Washington, DC 20005

Counsel for Petitioners; Additional Counsel Appear on Signature Page

### IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Viviette Applewhite; Wilola Shinholster Lee; Grover Freeland; 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; Homeless Advocacy Project,

Petitioners,

v.

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

Respondents.

### PETITION FOR REVIEW ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

#### I. SUMMARY OF THE LAWSUIT

1. This lawsuit seeks to protect the fundamental right to vote guaranteed by the


### PETITION FOR REVIEW ADDRESSED TO THE COURT'S ORIGINAL JURISDICTION

#### I. SUMMARY OF THE LAWSUIT

1. This lawsuit seeks to protect the fundamental right to vote guaranteed by the Pennsylvania Constitution. Under Act 18 ("the Photo ID Law"), signed into law on March 14, 2012 by Respondent Governor Thomas Corbett, large numbers of registered voters in Pennsylvania will not have their votes counted on November 6, 2012 because they will be unable to present acceptable photo identification ("ID") as required by the Photo ID Law. The Commonwealth estimates that 80,000-90,000 Pennsylvanians will need to obtain a new photo ID to vote on November 6, 2012. Other estimates suggest the number may be far greater. Many otherwise qualified voters will face great difficulty or be unable to obtain the necessary ID and will therefore be disenfranchised in the upcoming general election and future elections. As a result, far from protecting the integrity of Pennsylvania elections, the Photo ID Law will lead to elections that are no longer free and equal.

# Public education/media

- Press briefing announcement
- Prepared written materials, e.g., FAQ, press release describing case and Plaintiffs.



## Frequently Asked Questions (FAQ) About Pennsylvania's New Voter ID Law

*The information below reflects announcements made by the Department of State up to 5/24/12. Please check back regularly for updates as the Department of State continues to announce changes.*

### HOW THE NEW LAW WORKS

**When does this new photo ID requirement start?** Beginning with the November 2012 election, voters will need to show an accepted form of photo ID in order to cast a ballot.

**Does this photo ID requirement apply to absolutely everyone?** No, there are three exceptions. One is for people who have a religious objection to having their picture taken. Religious objectors can still vote by presenting a valid non-photo driver's license or other non-photo ID issued by the PA Department of Transportation (known as PennDOT). Also, people who are allowed to vote by alternative or absentee ballot do not have to show photo ID (more about this below).

**Even if I have voted for many years at the same precinct, will the new voter ID law require me to show photo ID now?** Yes.

**Poll workers know me at my polling place, so won't they just let me vote even if I don't have the right photo ID?** No. They cannot. The law says that poll workers "shall examine the proof of identification presented by the elector and sign an affidavit stating that this has been done." So poll workers open themselves up to a perjury prosecution if they let people vote without proper ID. In the legislative debates over the law, it was said that poll workers couldn't let even family members vote if they didn't have the right photo ID.

### ACCEPTABLE PHOTO IDs

**Under the new law, is any photo ID acceptable?** No. Only some photo IDs are approved under the law, and if you don't have one from the approved list you will not be allowed to cast a regular ballot. So, for instance, a valid driver's license with your picture on it from another state will not be accepted.

**What are the approved types of photo ID?** Here's the list, but pay very careful attention because there are some restrictions.

- A current *Pennsylvania* driver's license, or one that expired after November 2011;
- A current non-driver *Pennsylvania* photo ID card issued by PennDOT, or one that expired after November 2011;
- A current U.S. passport;

# Press Conference May 1, 2012



**Viviette Applewhite**

**THE Videotapes**

# Constant communication

- Web updates, press announcements, facebook, twitter, blogs
- Became premier place for accurate information about
  - How law applied
  - Recent changes to law
  - Status of lawsuit
  - Latest developments in lawsuit



# Discovery

- Supremely important tool
- Test government's claims and arguments
- Learn that concerned about certain voters not being able to get ID
- No evidence or history of fraud

# 3-week trail in July



# Trial media

- Press briefing on eve of trial (by phone)
- Make clients/witnesses available for interviews (prepped)
- Post-trial press briefings by lawyer(s)
- Daily blog

# Loss

## August 15, 2012

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Viviette Applewhite; Wilola  
Shinholster Lee; Grover  
Freeland; 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;  
Homeless Advocacy Project,  
Petitioners

v.

State of Pennsylvania;  
Robert A. Aichele, in his capacity  
as Secretary of the

Respondents

No. 330 M.D. 2012

HEARD: July 25, 2012

HONORABLE ROBERT SIMPSON, Judge

REPORTED

UNIM OPINION  
REPORTED

FILED: August 15, 2012

**DETERMINATION on APPLICATION**  
**for PRELIMINARY INJUNCTION**

Presently before this Court is a request for preliminary injunctive relief on behalf of several individuals<sup>1</sup> and organizations<sup>2</sup> (collectively, Petitioners),

\_\_\_\_\_ Petitioners filed their complaint, the individual Petitioners were Viviette Applewhite, a Shinholster Lee, Grover Freeland, 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, Homeless Advocacy Project, and the State of Pennsylvania, Robert A. Aichele, in his capacity as Secretary of the Department of Transportation. (Petitioners' Complaint, filed 8/15/12, at 1-2.)  
**Continued on next page...**

### VII. Summary

Petitioners' counsel did an excellent job of "putting a face" to those burdened by the voter ID requirement. At the end of the day, however, I do not have the luxury of deciding this issue based on my sympathy for the witnesses or my esteem for counsel. Rather, I must analyze the law, and apply it to evidence of facial unconstitutionality brought forth in the courtroom, tested by our adversarial system.

For the foregoing reasons, I am constrained to deny the application for preliminary injunction, without prejudice to future particularized "as applied" claims. See Rokita.

  
\_\_\_\_\_  
ROBERT SIMPSON, Judge

# Procedural history

- Emergency Appeal to Pennsylvania Supreme Court
- Vacate and remand (September 18, 2012)
- Emergency remand trial (September 25, 2012)
- Injunction granted (October 2, 2012)
- Election Day (November 6, 2012)
- Trial (July 15-August 1, 2013)
- Trial court win (January 17, 2014)
- Governor announces no appeal (May 9, 2014)

*Victory!*

# Captured narrative!

## Newspaper editorial pages

- FROM, need to stop fraud and ID's easy to get;
- TO, type of fraud prevented by ID very rare and unfortunately not everyone can get ID, and voting too important for this to happen.

