

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

Petitioners,

v.

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

Respondents.

Docket No. 330 MD 12

ORDER

AND NOW, on this ___ Day of _____, 2014, upon consideration of
Respondents’ Application for Argument Before an *En Banc* Panel, and Petitioners’ Opposition
thereto, it is hereby ORDERED that the Application is DENIED.

BY THE COURT:

J.

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**PETITIONERS’ OPPOSITION TO RESPONDENTS’
APPLICATION FOR ARGUMENT BEFORE AN *EN BANC* PANEL**

Petitioners here state the grounds for their opposition to Respondents’ Application for Argument Before an *En Banc* Panel.

1. The Court entered an Order & Verdict on January 17, 2014, permanently enjoining Respondents from enforcing certain provisions of Act 18. Respondents filed a post-trial motion on January 27, 2014.
2. Respondents filed an “Application for Argument Before an *En Banc* Panel” on February 3, 2014 “pursuant to Pennsylvania Rules of Appellate Procedure 123 and 3713 . . . and in accordance with the Court’s Internal Operating Procedures at §§ 111 and 112.”

Application at 1.¹

¹ Respondents have not explained why they waited to file their application until after the expiration of the ten days permitted for motions for post-trial relief by Rule of Civil Procedure 227.1(c)(2). See *Utica Mut. Ins. Co. v. Dep’t of Labor & Indus.*, 566 A.2d 911 (Pa. Commw. Ct.

3. Respondents cite examples of cases this Court has considered *en banc* at the preliminary objections and summary relief stages. Application at ¶ 7. Such pretrial matters can be referred to an *en banc* panel pursuant to Internal Operating Procedure 311. This case, by contrast, has proceeded to the stage of a verdict after trial.
4. Respondents' invocation of Rules of Appellate Procedure 123 and 3713 is misguided. This is an original-jurisdiction matter governed by the Rules of Civil Procedure. *See Utica Mut. Ins. Co. v. Dep't of Labor & Indus.*, 566 A.2d 911, 912-13 (Pa. Commw. Ct. 1989).²
5. The governing rule is Rule of Civil Procedure 227.2, which states in relevant part: "All post-trial motions and other post-trial matters shall be heard and decided by the trial judge unless the trial judge orders that the matter be heard by a court *en banc* of which the trial judge shall be a member. . . . No more than three judges shall constitute the court *en banc*."
6. Petitioners concur with Respondents that "[t]his matter is of tremendous public importance." Application at ¶ 2. After this Court enters a final appealable judgment, appeal will lie *as of right* to the Supreme Court of Pennsylvania. PA. CONST. art. V, § 9;

1989) (denying as untimely a motion for reargument filed fourteen days after the decision of a single judge of the Commonwealth Court in an original-jurisdiction matter).

² Even if the Rules of Appellate Procedure controlled, the Application would nevertheless be untimely, because it was not filed within fourteen days of the Order & Verdict as would be required by Rule 3723. The Application is styled as seeking "argument," but the proper term would be "*reargument*": this case has already been argued, via the oral closing arguments of counsel at the end of the permanent injunction trial and the parties' written post-trial submissions. *See* Order & Verdict ("AND NOW, this 17th day of January, 2014, after a full trial and upon consideration of the arguments of counsel . . ."). Accordingly, the governing Rule of Appellate Procedure would not be Rule 3713 ("Argument *En Banc* or Before a Panel") and instead would be Rule 3723 ("Application for *Reargument en Banc*"). Rule 3723 applications must be filed within fourteen days of the order in question, *see* R.A.P. 2542(a)(1), and should be granted "only for compelling and persuasive reasons."

42 Pa. Cons. Stat. §§ 723(a), 724(a). Accordingly, any party to this matter desiring further review will be guaranteed such opportunity by Pennsylvania's highest court after this Court's entry of judgment. There is simply no reason to delay the final resolution of this case and waste the parties' and the Court's resources by invoking an *en banc* panel of the Commonwealth Court before proceeding to the Supreme Court.

7. Elections are held in Pennsylvania at least once every six months. Delay in the final consideration of this matter by the Supreme Court—the ultimate arbiter of the Constitution of Pennsylvania—will prolong the uncertainty that hovers over many affected individuals. These individuals include voters who may need to make a special trip to obtain a photo ID (including individual Petitioners in this case), advocacy groups that must plan how to allocate their scarce resources (including organizational Petitioners in this case), officials of the Commonwealth who must decide what to communicate to voters and to county election officials, and county officials who in turn must make decisions about pollworker training and what those workers should tell voters in preparation for upcoming elections.
8. The Court has held some twenty-one days of hearings at the initial preliminary injunction, remanded preliminary injunction, and permanent injunction stages. In view of the size and complexity of the trial record, the Judge who presided over the permanent injunction trial would appear to be in the best position speedily to resolve Respondents' post-trial motion in order to prepare the case for final decision by the Pennsylvania Supreme Court.

For the above reasons, Petitioners respectfully submit that the Application should be denied.

Dated: February 6, 2014

Respectfully submitted,

/s/ Benjamin D. Geffen

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