



mazzoni center

LGBT HEALTH & WELL-BEING
LEGAL SERVICES

Toll Free: (866) LGBT-LAW

Telephone: (215) 563-0657

Facsimile: (215) 563-0748

legalservices@mazzonicenter.org

September 13, 2012

Carol Aichele, Secretary of the Commonwealth
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
302 North Office Building
Harrisburg, Pa 17120

Re: Voter Identification questions

Dear Secretary Aichele:

As organizations that assist the lesbian, gay, bisexual, and transgender (LGBT) community across Pennsylvania, we are writing to you to seek clarification of the new voter identification law.

We are aware that there are a number of legal challenges and questions regarding access to the required identification, but our separate questions are more narrowly tailored to members of the transgender community. As you may know, the term "transgender" refers to individuals who may have been born one gender but identify as another, or who otherwise do not conform to traditional notions of gender presentation. Specifically, we want to ensure that Pennsylvania residents are afforded the opportunity to vote in the upcoming general election, so long as they have photo identification that satisfies the provisions of the new law.

In reading the language of the amended law, we understand the requirements that the voter's identification must include a name that "substantially conforms" to the name of the individual as it appears in the district register. Section 102(z.5)(2)(i). This standard, coupled with the informative Poll Worker Guide issued by your office, helps us to educate and inform members of the community that they need to ensure their name satisfies the requirements of the new law.

In contrast to the clearly articulated standard regarding names, however, is a question unique to the transgender community. Neither the law, nor its legislative history, nor the Guide defines what constitutes a valid photo. While this may seem obvious for a majority of voters, some voters who identify as transgender may look different from their photos, particularly if they have undergone hormone therapy or other treatments related

MAIN | 21 South 12th Street | Philadelphia, PA 19107 | Ph: (215) 563-0652

MEDICAL | 809 Locust Street | Philadelphia, PA 19107 | Ph: (215) 563-0658

WASHINGTON WEST | 1201 Locust Street | Philadelphia, PA 19107 | Ph: (215) 985-9206

www.mazzonicenter.org

An Affiliate of United Way of Southeastern Pennsylvania Donor #2304 and United Way of Delaware Donor #7951

to their gender transition. Similarly, though individuals may opt to change their gender markers on their state-issued identification (via PennDOT Form DL-32) with or without changing their names, the new voter identification law makes no reference to gender markers in any way.

In order to assist you with clarifying the standard for establishing whether a photo ID is indeed the person appearing at the polling place, we looked to both the legislative history of the new law, as well as comparable Pennsylvania statutes for guidance. Obviously, the purpose of Act 18's photo identification requirement is to assure the validity of the voter's identity. It was not implemented to be a strict, invasion inquiry into the gender of the potential voter. The legislative history speaks to the amount of scrutiny that poll examiners should apply in verifying a voter's ID, alluding to a "common sense" standard that examiners should use in making determinations. See PA H.R. Jour., 2012 Reg. Sess. No. 16, Pennsylvania House Journal, 2012 Reg. Sess. No. 16.

This is similar to other Pennsylvania statutes containing photo identification requirements which have minimally invasive inspection standards. For example, the Pennsylvania hotel and inn statute requires guests to provide a driver's license or other photo ID to register for a room. See 37 Pa. Stat. Ann. § 105(b)(West). Similar to Act 18, this statute is silent as to what constitutes valid photo identification, requiring it only to be "satisfactory to the innkeeper." Id. Moreover, the Pennsylvania Taxicab statute requires every applicant for a license to furnish with his or her application two photographs of "fair likeness." See 53 Pa. Stat. Ann. § 25294 (West).

Given the minimally invasive intent of Act 18's photo identification requirement, a voter's appearance or gender should be of no import when poll examiners make their determinations. Given that the legislature repeatedly asserted during the debates that poll workers should use "common sense" in making their determinations, it would be inconsistent to then vest them with the power and discretion to forbid transgender individuals from voting based on their appearance or perceived gender. Furthermore, any heightened standard would be inconsistent with other Pennsylvania statutes requiring photo identification, whether it be related to business enterprises like driving a taxi, or everyday commerce (e.g. renting a hotel room).

While we understand that the legislature certainly did not contemplate the impact of the law on transgender individuals, we are reaching out to you to seek clarification in advance to avoid any complications on Election Day. Accordingly, we would like some guidance from your office regarding the following issues:

- 1) If a transgender individual has legally changed his or her name via a court order pursuant to the Pennsylvania name change statute (54 Pa.C.S. § 701), but has not updated their name on the voter rolls, can they bring the court order as proof that they are the same individual in order to vote? Does it matter when the court order was entered (i.e., individuals whose names were legally changed after the October 9th registration deadline, but prior to Election Day, may find themselves in a

- "catch-22" since they cannot amend their name in the voter rolls until their name has been legally changed).
- 2) What is the standard that a poll worker should use to confirm that an individual's identification includes a valid photograph? Since the statute is silent on any specific criteria, should the poll worker use common sense to confirm that the photo identification is a valid photo of the voter, as compared to a heightened level of scrutiny that is outside the expertise of the poll worker. It seems that such clarification could be useful even in the non-transgender situation; for example, in instances where a voter has changed her hairstyle, grown facial hair, wears glasses or contact lens, or even if they have vitiligo.
 - 3) Since the law is silent about gender markers entirely, is it correct to assume that the poll workers will not be making any determinations based on what he or she may believe to be an inconsistent gender marker based on a voter's presentation? Even if gender is indicated in the voter rolls themselves, the plain language of the statutes would suggest that any comparison would be wholly irrelevant to whether the identification matches the voter rolls.

We hope that by seeking this kind of guidance and clarification from you prior to the election, we can better understand how to advise our clients and constituents in enough time to ensure that they are afforded the opportunity to vote without complication on Election Day. Thank you for taking the time to address these issues for an overlooked minority in order to ensure that the new law can be implemented in a fair and consistent manner.

Most sincerely,



David M. Rosenblum
Legal Director
Mazzoni Center