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May 3, 2012

Hon. Paul Innes, J.S.C.  
Superior Court of New Jersey, Chancery Division, General Equity  
Civil Courthouse  
175 S. Broad Street, P.O. Box 8068  
Trenton, New Jersey 08650-0068

Re: ACLU-NJ, et al. v. Raymond P. Martinez, et al.  
Civil Action No. \_\_\_\_\_

Brief in Support of Order to Show Cause with Temporary Restraints

Dear Honorable Judge Innes,

Kindly accept this letter-brief in lieu of a more formal brief in support of Plaintiffs' Order to Show Cause which seeks to immediately enjoin Defendants from implementing new rules for driver license applicants that were not passed pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. Defendants seek to implement the new rules beginning Monday, May 7, 2012.

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**PRELIMINARY STATEMENT**

Defendants seek to implement a new system of requirements for driver licenses, in contravention of the current “6-point ID” system codified in N.J.A.C. 13:21-8.2. In the words of the Defendants, the new system, entitled TRU ID, “will replace the existing 6 Point ID Verification document requirements” and “sets new standards for the issuance of driver licenses and identification cards.” *See*

<http://www.state.nj.us/mvc/Licenses/truid.htm>, Exhibit 3 to Complaint. Defendants seek to implement the new system by mere fiat rather than pursuant to the Administrative

Procedures Act (“APA”), N.J.S.A. 52:14B-1 et seq. In refusing to follow the existing 6 Point ID system (i.e., refusing to follow the current law) and, instead, imposing a new system that will substantially burden the ability of New Jerseyans to obtain a driver license, Defendant are clearly violating the APA.

Affected and interested organizations and individuals, such as Plaintiffs, have been denied the opportunity to review the new system and provide comment, as is their right under the laws of New Jersey. Yet, starting May 7, 2012, Defendants nevertheless intend to impose this new, unlawful system. Plaintiffs now sue to enjoin the enforcement of those invalid policies which are about to be imposed upon them in violation of their constitutional right to due process and in violation of the APA.

In short, Plaintiffs are herein seeking to simply force Defendants to abide by the existing regulations, unless and until regulations amending the current ones are properly passed in accordance with the laws of New Jersey.

### **STATEMENT OF FACTS**

For almost a decade, a person seeking a driver license in New Jersey has been required to adhere to the 6-Point System in proving his or her identity and address. The regulation implementing the 6-Point System is N.J.A.C. 13:21-8.2, which was properly passed pursuant to the Administrative Procedures Act. It is the existing and controlling regulation to this day.

Despite the codification of the 6-Point System in the administrative code and the lack of any recent amendments thereto, Defendants seek to ignore its governing regulations and to impose far more stringent standards on New Jersey driver license applicants. The proposed standard issued by the Motor Vehicle Commission (“MVC”) is

called “TRU ID.” See MVC publication entitled “TRU ID New Jersey: Show Us the Real U..., Federal Identity Requirements for Driver License, Non-Driver ID Card or Permit Applications,” Exhibit 2 to Verified Complaint.

MVC, on its website, acknowledges that TRU ID “sets *new standards* for the issuance of driver licenses and identification cards.” See <http://www.state.nj.us/mvc/Licenses/truid.htm> (emphasis added), Exhibit 3 to Complaint. As explained by the MVC’s website: “Beginning May 7, 2012, all Motor Vehicle Commission customers seeking to obtain, renew or change a driver license or non-driver ID will be required to follow the MVC’s TRU-ID document requirements. *These requirements will replace the existing 6 Point ID Verification document requirements.*” *Id.* (emphasis added).

The implementation of the more stringent regulations is being imposed by fiat, and not pursuant to the mandated procedures of APA. No proposed “TRU ID” restrictions were published in the New Jersey Register and they were not subject to review by the public, as New Jersey law mandates. N.J.S.A. 52:14B-3(3) and - 3(4).

Pursuant to TRU ID, the standards and requirements for obtaining a license have changed significantly. First, the 6-point system will be abandoned. Instead, certain categories of personal documents are now required of drivers. For example, in contrast to the 6-point system, TRU ID requires each applicant to turn over to MVC a document detailing his or her full 9-digit Social Security number (“SSN”). See “TRU ID New Jersey: Show Us the Real U..., Federal Identity Requirements for Driver License, Non-Drive ID Card or Permit Applications,” Exhibit 2 to Verified Complaint. MVC has limited the universe of acceptable SSN documents to four: Social Security card, pay stub,

W-2 or 1099. *Id.* Additionally, the 6-point ID systems' categorization of primary and secondary documents has been abolished. *Id.* Further, certain documents that were delineated as primary documents under the 6-point system are now wholly excluded for proving identification. For example, a recently-expired passport is no longer permitted as a primary identification document; a high-school or college student can no longer provide a transcript or report card as proof of address. *Id.* Additionally, TRU ID requires all documents (including presumably birth certificates from other countries) to be in English. *Id.*

MVC acknowledges that the TRU ID system "places more stringent standards and procedures on the issuance of driver licenses and IDs." *See* <http://www.state.nj.us/mvc/PressReleases/archives/2012/040212.htm>, Exhibit 4 to Complaint. Indeed, licenses obtained under the 6-point system are no longer simply renewed by mail as they were before because, under TRU ID, "MVC must essentially re-credential every driver." *Id.*

Further, given that TRU ID is New Jersey's program to "implement the federal REAL ID Act and the accompanying regulations," (*see* Letter from Joseph F. Bruno dated April 24, 2012, in response to ACLU-NJ OPRA request, Exhibit 2 to Complaint), it means that MVC will not only require applicants to present documents, but MVC will now copy all documents and maintain them in a government database in paper form, digital form, or both. *See* Section 202, subparts (d)(1) and (d)(2) of The REAL ID Act of 2005, Pub.L. 109-13, 119 Stat. 302; *see also* 6 C.F.R. §37.31 (requiring retention of source documents in paper, microfiche or digital form).<sup>1</sup> There are no written training

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<sup>1</sup> The REAL ID Act created standards for state-issued identification that would make such identification valid (and, in fact, required) to enter into federal buildings or board commercial airplanes. However, the

materials for MVC employees on how to maintain and protect such documents. *See* Letter from Joseph F. Bruno dated April 24, 2012, in response to ACLU-NJ OPRA request, Exhibit 2.

Defendants' efforts to comply with the REAL ID Act, which have apparently all occurred without issuance of new regulations or notice to the public, includes what Defendants term as "the Enhanced Digital Driver License (EDDL). The EDDL contains over 20 overt and covert features that not only protect personal information but also help the state to meet the guidelines established by the federal REAL ID law." *See* <http://www.state.nj.us/mvc/PressReleases/archives/2012/040212.htm>, Exhibit 4 to Verified Complaint. However, given that no proposed regulations have been presented to the public for comment, it is unclear what those features are, how much they cost, or how they might protect or undermine privacy.

As noted, states that adopt the REAL ID standards are required to maintain copies of birth certificates, Social Security cards, passports, and any other documents that individuals present when they apply for a license. *See* Section 202, subparts (d)(1) and (d)(2) of The REAL ID Act of 2005, Pub.L. 109-13, 119 Stat. 302; *see also* 6 C.F.R. §37.31 (requiring retention of source documents in paper, microfiche or digital form). It also mandates a nationally standardized "machine-readable zone" that will let bars, merchants and other private parties scan personal data off licenses with greater ease than ever before, putting all that information into even greater circulation. *Id.* at section

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restrictions on entering federal buildings and boarding commercial flights have not been implemented. Further, the REAL ID Act has been rejected by at least 15 states that have passed statutes barring implementation of REAL ID. *See* Verified Complaint, para. 5, for list of states. Following numerous states' expressions of refusal to adopt the REAL ID standards, extensions for compliance for states have been granted by the federal government several times. *See, e.g.,* "States get more time to comply with Real ID," Washington Post, December 19, 2009 (which can be viewed online at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/18/AR2009121804208.html?hpid=topnews>).

202(b)(9); *see also* 6 C.F.R. §37.19 (mandating machine readable technology on driver's license or identification card). Given that TRU ID is designed to "implement the federal REAL ID Act and the accompanying regulations," (*see* Letter from Joseph F. Bruno dated April 24, 2012, in response to ACLU-NJ OPRA request, Exhibit 2 to Complaint), then it, in conjunction with the Enhanced Digital Driver License, presumably complies with those provisions of REAL ID as well. Because regulations have not been promulgated, it is unknown whether the system does in fact meet – or possibly exceed – the federal mandates.

The TRU ID system raises issues of concern to numerous constituencies across the political spectrum, including citizens who are concerned about privacy, those who care about budgetary matters, and members of vulnerable populations. For example, the new system significantly impacts individual privacy, as numerous documents (including those that contain Social Security numbers, home addresses, birth information, familial relationships, and other personal information) must not only be presented to the government, but will be copied and maintained in a government database. This is of special concern given that MVC acknowledges it has no training manual for employees regarding how to adequately safeguard such information (and in fact has no training manual on TRU ID implementation whatsoever). *See* Letter from Joseph F. Bruno dated April 24, 2012, in response to ACLU-NJ OPRA request, Exhibit 2. Additionally, information will be maintained on a machine-readable data strip within the license itself, *see* 6 C.F.R. §37.19 (mandating machine readable technology on driver's license or identification card), which raises concern regarding identity thieves' ability to decipher that information if the license is stolen or compromised.

Implementing the TRU ID system will also likely pose substantial costs to New Jersey taxpayers in multiple ways, including technology upgrades, employee training and information technology specialists to help with implementation. In response to the ACLU-NJ's records request, the only significant costs MVC has thus far disclosed relates to the printing of Verification ID flyers. *See* Agency Purchase Orders included in Exhibit 2 to Complaint.

MVC has also not indicated what provisions will be put in place for securing personal information for individuals in potential danger. The "Address Confidentiality Program," N.J.S.A. 47:4-1 et seq., allows victims of domestic violence to use an alternate address for all state and local governmental purposes, including driver's licenses and registration, professional licensing, banking and insurance records, welfare, etc. New Jersey laws also enable victims of domestic violence to vote without revealing their addresses, N.J.S.A. 19:31-3.2. Victims of sexual assault and stalking are further permitted to use an alternate address on their driver's license and registration. N.J.S.A. 39:3-4. Because the regulations for TRU ID were never published and subjected to the required notice and comment period, advocates for domestic violence victims (including the ACLU-NJ) have not been able to assess whether TRU ID will continue to protect domestic violence victims' rights, and to comment on the new regulations before their implementation.

It is further unknown how MVC will ensure that persons who are homeless will be able to maintain a driver's license or non-driver's ID under TRU ID, given their lack of documentation regarding a current address or potential lack of acceptable documentation with a Social Security number. Similarly, the new system also makes it



significantly harder for legal permanent residents or American citizens who were born in other countries to obtain a driver's license or non-driver's ID.

Because regulations for TRU ID were never published and subjected to the required notice and comment period, advocates (including the ACLU-NJ) for privacy rights, for fiscal responsibility, for domestic violence victims, for people who are homeless or for residents who were born in other countries have not been able to review and comment on the new regulations before their implementation.

Indeed, because the regulations and rules have never been published, the public remains unaware of all that the TRU ID system entails.

Despite the fact that the training materials for employees as to how to implement the TRU ID system are not yet completed, the TRU ID system is nevertheless to be implemented on May 7, 2012. *See* Exhibit 3 to Verified Complaint.

Plaintiffs now seek temporary restraints to ensure that New Jersey residents (including Plaintiff Jacobs and members of Plaintiff ACLU-NJ) are permitted to obtain their driver's licenses pursuant to the 6-point ID system that remains the law of New Jersey, that they are not required to have their highly-sensitive documents copied and maintained in a government database and, generally, that they are not subjected to onerous restrictions that conflict with current law and that were never properly adopted.

## **ARGUMENT**

To be entitled to interim relief pursuant to Rule 4:52-1, a party must show (a) that the restraint is necessary to prevent irreparable harm, *i.e.*, that the injury suffered cannot be adequately addressed by money damages, which may be inadequate because of the

nature of the right affected; (b) that the party seeking the injunction has a likelihood of success on the merits; (c) that the relative hardship favors the party seeking the restraint; and (d) that the restraint does not alter the *status quo ante*. *Crowe v. DeGoia*, 90 N.J. 126, 132-136 (1982). Plaintiffs satisfy these requirements.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THEIR CLAIMS, AS DEFENDANTS' IMPOSITION OF UNLAWFUL RESTRICTIONS UPON PLAINTIFFS' RIGHT TO OBTAIN A DRIVER'S LICENSE PURSUANT TO N.J.A.C. 13:21-8.2 VIOLATES THE ADMINISTRATIVE PROCEDURES ACT AND THE NEW JERSEY CONSTITUTION.

Without authority to do so, Defendants are poised to abandon New Jersey's existing system of driver license identification (i.e., the 6-point system codified in N.J.A.C. 13:21-8.2) and replace it with a more onerous and invasive system. They intend to do so without following the mandates of the Administrative Procedures Act.

Article 5, Section 4, Paragraph 6 of the New Jersey Constitution explicitly states: "No rule or regulation made by any department, officer, agency or authority of this state . . . shall take effect until it is filed either with the Secretary of State or in such other manner as may be provided by law." The Legislature implemented this requirement through the enactment of the Administrative Procedures Act, N.J.S.A. 52:14B-1 *et seq.*, thereby setting the requirements of due process for administrative rulemaking. The requirements include providing notice to the public and an opportunity for individuals to submit comments, prior to final adoption of any regulation. N.J.S.A. 52:14B-4(a). As explained by the New Jersey Supreme Court: "The purpose of the APA rulemaking procedures is 'to give those affected by the proposed rule an opportunity to participate in the process, both to ensure fairness and also to inform regulators of consequences which they may not have anticipated.'" *In re Provision of Basic Generation Service for Period*

*Beginning June 1 2008*, 205 N.J. 339, 349 (2011), quoting *In re Adoption of 2003 Low Income Hous. Tax Credit Qualified Allocation Plan*, 369 N.J.Super. 2, 43 (App.Div.), certif. denied, 182 N.J. 141 (2004).

N.J.A.C. 13:21-8.2 contains the properly-passed regulations that all New Jersey drivers must follow to obtain a driver's license. The provisions of that regulation set forth a 6-point ID system for applicants to follow. Each applicant must show at least one "primary" document and at least one "secondary" document, and must provide at least six "points" worth of documents. There is no provision allowing MVC to make copies of those documents, to maintain them in paper form, or to scan them to be maintained in digital form. There is no requirement that documents, such as birth certificates issued outside the United States, be in English.

Defendants are now on the verge of doing away with the 6-point system without following the procedure required to lawfully do so. In its stead, they are imposing a system which, in their own words, is designed to "replace the existing 6 Point ID Verification document requirements" and "sets *new standards* for the issuance of driver licenses and identification cards." See <http://www.state.nj.us/mvc/Licenses/truid.htm>, Exhibit 3 to Complaint (emphasis added). Unlike the 6-point system, documents no longer have point values attached. Rather, there are now three separate categories of documents that must be provided. While two of those categories somewhat (but not completely) mimic the 6-point system, a third category now requires applicants to provide one of four specified documents that contains the applicant's full Social Security number. See Exhibit 2 to Complaint ("TRU ID New Jersey: Show Us the Real U..., Federal Identity Requirements for Driver License, Non-Drive ID Card or Permit

Applications”). Further, in contrast to the existing 6-point ID regulation, the TRU ID system will mandate two proofs of principle residence. *Id.* Finally, given that the TRU ID system is intended to meet “federal identity requirements,” *id.*, the highly-sensitive documents presented by applicants will be copied and maintained by MVC in paper form, digital form, or both. *See* Section 202, subparts (d)(1) and (d)(2) of The REAL ID Act of 2005, Pub.L. 109-13, 119 Stat. 302; *see also* 6 C.F.R. §37.31. The copying and maintenance of documents has never occur under the 6-point system and is not authorized by any existing regulation or statute.

Rules of the sort encapsulated by TRU ID “can be promulgated only on notice and in compliance with *N.J.S.A.* 52:14B-4 [i.e., the Administrative Procedures Act].” *Woodland Private Study Group*, 109 N.J. at 65. Indeed, “whenever the authority of an agency to act without conforming to the formal rulemaking requirements is questioned” as it is here, the court must assess whether the agency action constituted “rulemaking” and thus falls under the APA. *Doe v. Poritz*, 142 N.J. 1, 97 (1995). If it does, and if the agency failed to follow the strict requirements of the APA, the action is invalid and unenforceable. *Woodland Private Study Group*, 109 N.J. at 66.

The replacement of the 6-point system with new standards for obtaining driver’s licenses clearly meets the definition of “rulemaking.” The new standards sought to be imposed are thus invalid unless and until promulgated and passed pursuant to the APA.

In *Metromedia v. Division of Taxation*, 97 N.J. 313 (1984), the New Jersey Supreme Court set forth six factors to consider in determining whether agency action constitutes rulemaking which must conform to the APA. *Id.* at 331-32. “All six of the *Metromedia* factors need not be present to characterize agency action as rulemaking....”

*In re Solid Waste Util. Customer Lists*, 106 N.J. 508, 518 (1987). The six factors the court must consider are whether the agency action:

(1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.

*Metromedia*, 97 N.J. at 331-32.

In the present case, all six factors undoubtedly establish that the rules sought to be implemented by Defendants constitute rulemaking. As to the first two *Metromedia* factors, there can be no doubt that the TRU ID system creates rules that are “intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group” and are “intended to be applied generally and uniformly to all similarly situated persons.” Indeed, the new system is meant to apply to all residents who seek a New Jersey driver license or state identification card.

It is further clear that the TRU ID system is “designed to operate... prospectively.” The rules can have no retroactive application and do not negate the validity of previously-issued licenses. It applies to those who seek to renew or obtain licenses from this point forward. Thus, the third factor also favors a finding of agency action.

As to the fourth factor, the new ID system clearly “prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable

from the enabling statutory authorization.” Indeed, not only is TRU ID not “obviously inferable” from enabling authorization, it is directly at odds with the existing regulations that were properly promulgated under enabling statutory authorization. There has been no New Jersey statute or regulation since the passage of the 6-point system that does away with that system in favor of TRU ID.

Defendants may claim that a provision within the 6-point regulatory scheme, namely N.J.A.C. 13:21-8.2(a)(9), permits them to institute TRU ID. In short, it does not. N.J.A.C. 13:21-8.2(a)(9) is very limited. It allows the MVC to “make changes to the list of acceptable documents” under the 6-point system. It does not authorize MVC to do away with the 6-point system altogether. It does not authorize MVC to create a new category of document (specifically, documents containing one’s full Social Security number) that TRU ID would mandate but the 6-point system does not. It does not authorize the MVC to demand two residency proofs when the 6-point system demanded only one such document. It also does not grant the MVC authority to scan and maintain the highly-sensitive documents that TRU ID would require, when no statute or regulation has ever authorized that before.<sup>2</sup>

As explained above, since the new, more onerous TRU ID rules did not previously exist, the fifth factor also favors a finding of requiring adherence to the APA.

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<sup>2</sup> Indeed, while N.J.A.C. 13:21-8.2(a)(9) does not authorize what Defendants seek to do, even if a more broad “catch-all” existed that intended to allow for a complete overhaul of a properly-passed regulation while by-passing the requirements of the APA, such a provision would itself be violative of the APA, as an agency cannot “regulate away” the mandates of the APA, the New Jersey Constitution, and the New Jersey Supreme Court’s decision in *Metromedia*. As explained by a unanimous New Jersey Supreme Court in *In the Matter of the Provision of Basic Generation Service for the Period Beginning June 1 2008*, 205 N.J. 339 (March 10, 2011), “[t]he APA’s entire thrust works to avoid an abrogation of ‘the value of the original notice of rule-making.’” *Id.*, quoting *In re Adoption of Regulations Governing Volatile Organic Substances in Consumer Prods.*, N.J.A.C. 7:27-23, 239 N.J.Super. 407, 414 (App.Div.1990). The Court further warned against a “process that would permit gamesmanship. . . .” *Id.* at 360. Relying the limited discretion maintained under N.J.A.C. 13:21-8.2(a)(9) to institute a complete overhaul of the 6-point system would do just that and worse.

The TRU ID provisions were “not previously expressed in any official and explicit agency determination, adjudication or rule” and “constitutes a material and significant change from a clear, past agency position on the identical subject matter.” Indeed, the Defendants admit that the TRU ID system is meant to “replace” the current 6-point system. And the right of the government to maintain a database of its citizens’ highly-sensitive documents has never been previously expressed or authorized.

Finally, a decision on what system should be implemented in order for applicants to obtain a driver license “reflects a decision on administrative regulatory policy in the nature of the interpretation of...general policy” and, thus, the sixth factor favors a finding of agency rulemaking as well.

All of the *Metromedia* factors therefore favor a finding that the TRU ID rules, which replace the existing 6-point system codified in current law, constitutes “agency rulemaking” that required conformity with the APA.

As can be seen in the administrative code itself, MVC has clearly recognized the need for such rulemaking in the past. As noted, the 6-point system (which altered the prior-existing rules for driver license identification) was properly passed pursuant to the APA. *See* N.J.A.C. 13:21-8.2. Now, the destruction of the 6-point system and replacement with a new identification system requires the same process.

## II. PLAINTIFFS EASILY MEET THE REMAINING STANDARDS FOR GRANTING TEMPORARY RESTRAINTS.

### A. Restraints are necessary to prevent irreparable harm.

As explained above, the State is on the verge of imposing onerous, unlawful restrictions on Plaintiffs and on all residents of New Jersey who will be renewing or

obtaining driver licenses or state-issued ID cards. It is also about to embark on a massive project to collect and store highly personal documents that contain sensitive information. As explained above, these proposed actions are unauthorized and unlawful. Yet, if the TRU ID system is implemented, Plaintiffs<sup>3</sup> and others will be required to submit to these unlawful actions or forego their right to obtain or renew a driver license or other identification and, thus, forego their ability to lawfully drive a car.

This injury is irreparable. Plaintiffs and other residents will be forced to go through the time and expense of obtaining the newly-required documents. Moreover, once these documents are collected and stored by the state (either in paper form, in a digital database, or both), residents will have no control over how the state maintains their confidential information. Further, for those who choose not to submit to the unlawful rules and thereby cannot obtain a license under the 6 point system (as is their right), they will be burdened every day in a way that is irreparable as they will not be able to transport themselves or their families.

B. The relative hardship favors entering injunctive relief

The hardship on driver license applicants, including Plaintiffs, would be significant. As explained above, the TRU ID system requires documents that are not required under existing law, including documents that contain highly sensitive personal information. Domestic violence victims may have their identity and whereabouts pierced. People who are homeless or people who were born in a non-English-speaking country may not be able to meet TRU ID's requirements, or may incur significant expenses to do so. Further, documents containing highly sensitive information must not only be presented to Defendants, but for the first time ever will be copied and maintained

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<sup>3</sup> Plaintiff Jacobs has already received her driver license renewal notice. Verified Complaint, para 8.



in a government database. This will all be done without MVC employees having any written manual or training materials to guide them as to how to handle and safeguard the sensitive documents. *See* Letter from Joseph F. Bruno dated April 24, 2012, in response to ACLU-NJ OPRA request, Exhibit 2.

There will be no hardship to Defendants to force them to simply *abide by existing law*. To date, the 6-point system has been in existence for years and Defendants and their employees have been implementing it. Plaintiffs simply seek to ensure that, unless and until regulations are properly passed that replace it, Defendants continue to implement the current regulations as they have for years.

Clearly, the balance of hardships supports immediate injunctive relief.

C. The restraint does not alter the *status quo ante*

As noted, the *status quo* is the 6-point ID system codified in N.J.A.C. 13:21-8.2. Defendants seek to alter the *status quo*, and seek to do so unlawfully.

D. The public interest requires entering injunctive relief

It is frequently said that in determining whether to order immediate injunctive relief, the public interest must be considered. Indeed, “courts, in the exercise of their equitable powers, ‘may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.’” *Waste Mgmt. of New Jersey, Inc. v. Union County Utilities Auth.*, 399 N.J. Super. 508, 520-21 (App. Div. 2008) quoting *Yakus v. United States*, 321 U.S. 414, 441 (1944).

Here the public interest requires injunctive relief. Administrative officials simply are not free to declare law or regulation by edict.

An injunction enforcing this core prohibition against rule by proclamation is therefore imbued with the deepest public interest, especially when the result is to prevent the hindrance of citizens' exercise of their right to obtain a driver license under current law. The Administrative Procedures Act ensures that government is held accountable and that the public's right to "participate in the [rule-making] process" is adhered to. *In re Provision of Basic Generation Service for Period Beginning June 1 2008*, 205 N.J. at 349. Denial of an injunction in this case would impose great injury upon the public's interest in preserving the New Jersey Constitution's and New Jersey Legislature's dedication to due process. The public interest therefore requires the entry of immediate injunctive relief.

### CONCLUSION

For the reasons set forth above, Plaintiffs request that their Order to Show Cause be granted, including immediate restraints against implementation of the TRU ID system.

Dated: May 3, 2012



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