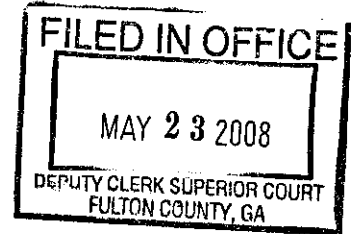


IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



DEMOCRATIC PARTY OF GEORGIA, )  
INC., a non-profit corporation )  
organized and existing under Georgia )  
law, )

Plaintiff, )

v. )

CIVIL ACTION

FILE NO. 2008CV151081

SONNY PERDUE, in his )  
official capacity as Governor; )  
KAREN HANDEL, in her official )  
capacity as Secretary of State and Chief )  
Election Official of Georgia; )  
STATE ELECTION BOARD; and, )  
MS. GLORIA CHAMPION, Superintendent )  
of Elections for Fulton County, Georgia )  
MS. JUANITA MARSHALL EBER, )  
Chair of the Fulton County Board of )  
Registration and Elections; MRS. )  
CYNTHIA J. WILLIAMS, MR. HARRY )  
W. MCDONALD, MR. FRANK B. )  
STRICKLAND, and MR. SAMUEL P. )  
WESTMORELAND, )

Defendants. )

**VERIFIED COMPLAINT FOR**  
**DECLARATORY AND INJUNCTIVE RELIEF**

This action is brought exclusively under the Georgia Constitution to have the 2006 amendment to O.C.G.A. § 21-2-417 (SB 84, as amended) ("the 2006 Photo ID Act") declared unconstitutional, both on its face and as applied, and to enjoin the enforcement of the Photo ID requirement as a condition of voting in person on election day, and to have the citizens of Georgia vote as they have done for over two centuries. Count One alleges that the act is unconstitutional because it imposes an unauthorized additional condition on the fundamental

right to vote of hundreds of thousands of registered Georgia voters without Georgia driver's licenses, passports, or other official forms of Photo ID in violation of Art. II, § I, ¶ II of the Georgia Constitution, or imposes an additional ground for denying the right to vote of a citizen of Georgia who is lawfully registered in violation of Art. II, § I, ¶ III of the Georgia Constitution. Count Two alleges that the act is unconstitutional because it discriminates against African-American voters in particular by preventing them from voting in person if they do not have a Georgia driver's license in violation of the due process (Ga. Const. Art. I, § I, ¶ I), and equal protection (Ga. Const. Art. I, § I, ¶ II) paragraphs in the Bill of Rights to the Georgia Constitution, including the provision that declares it to be the primary duty of government to be impartial in its treatment of its citizens. Count Three alleges that the act is also unconstitutional under certain provisions of Georgia's Bill of Rights because the law (a) is a "retroactive law" that violates Ga. Const. Art. I, § I, ¶ X in that it applies to citizens of Georgia who were lawfully registered before the effective date of the act to vote, and (b) imposes an unnecessary burden on the right of citizens of Georgia to vote in violation of Ga. Const. Art. I, § I, ¶ I (due process), Ga. Const. Art. I, § I, ¶ II (equal protection), Ga. Const. Art. I, § I, ¶ VII (privileges and immunities of citizenship). This Complaint asserts no claims that arise under the Constitution, laws or treaties of the United States.

### Parties

1.

**Plaintiff Democratic Party of Georgia, Inc.**, is a non-profit corporation organized and existing under Georgia law.

(a) The Democratic Party of Georgia (DPG) is a Political Party operating pursuant the laws of Georgia. As part of its fundamental mission, the DPG fields

candidates for elective offices in Georgia, engages in activities aimed at supporting those Democratic candidates, and attempts to maximize the number of Democratic candidates being elected in Georgia.

(b) The 2006 Photo ID Act injures the DPG because, as a proximate result of the Act, the Party will be compelled to devote resources to identifying and counteracting the effects of the Act on the Democratic Party's supporters. Because of the Act, these resources will be expended, *inter alia*, identifying those of its supporters who are affected by the Act, assisting those supporters in obtaining Photo IDs and getting to the polls those of its supporters who would otherwise be discouraged by the new law from voting. If not for the 2006 Photo ID Act, these resources would be devoted to other activities consonant with the DPG's mission.

2.

The Democratic Party of Georgia has standing to bring the claims asserted in this complaint.

3.

**The Defendants are:**

- (a) **SONNY PERDUE** who is sued in his official capacity as the Governor of the State of Georgia;
- (b) **KAREN HANDEL** who is sued in her official capacity as Secretary of State and Chief Election Official;
- (c) **THE STATE ELECTION BOARD** which is charged by state law to supervise and coordinate the work of the office of the Secretary of State, superintendents,

registrars, deputy registrars, poll officers, and other officials so as to obtain uniformity in their practices and proceedings and legality and purity in all primaries and elections.

(d) The following defendants are sued in their official capacities as superintendents or members of their respective county board of elections:

(i) **MS. GLORIA CHAMPION**, who is sued in her official capacity as the Superintendent of Elections for the Board of Elections and Voter Registration for Fulton County, Georgia, in which capacity she is charged by O.C.G.A. §§ 21-2-70 & 21-2-70.1 with the duty of conducting elections in Fulton County, Georgia; and

(ii) **MS. JUANITA MARSHALL EBER, MRS. CYNTHIA J. WILLIAMS, MR. HARRY W. MCDONALD, MR. FRANK B. STRICKLAND, MR. SAMUEL P. WESTMORELAND**, who are sued in their official capacities as Members of Board of Registration and Elections for Fulton County, Georgia, in which capacities they are charged by O.C.G.A. § 21-2-70 with the duty of conducting elections in Fulton County, Georgia.

#### **Jurisdiction and Venue**

4.

This case arises exclusively under the Constitution and laws of the State of Georgia. This Court has jurisdiction to grant both declaratory and injunctive relief under O.C.G.A. §§ 9-4-2 and 9-4-9.

5.

Venue in this Court is proper under O.C.G.A. § 9-10-30 because Fulton County is the county of residence of at least one of the defendants against whom substantial equitable relief is prayed.

**The Right to Vote Under the Georgia Constitution**

6.

The Georgia Constitution sets forth an exclusive list of the *qualifications* of voters in Art. II, § I, ¶ II. This list of voter qualifications may not be modified by the General Assembly.

7.

Art. II, § I, ¶ II provides:

**Right to register and vote.**

**Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people. The General Assembly shall provide by law for the registration of electors.**

Georgia Const., Art. II, § I, ¶ II (emphasis added).

8.

Art. II, § I, ¶ III of the Georgia Constitution sets forth an exclusive list of the grounds on which a citizen of Georgia may be denied the right to vote. This exclusive list of disqualifications may not be modified by the General Assembly.

9.

Art. II, § I, ¶ III of the Georgia Constitution provides:

**Exceptions to Right to Register and Vote**

- (a) No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote upon completion of the sentence.
- (b) No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

**Voter identification requirements in Georgia prior to 2005**

10.

Prior to the 1998 elections, voters in Georgia were not required to present any form of identification as a condition of voting.

11.

In 1997, the General Assembly adopted O.C.G.A. § 21-2-417, which required registered voters in Georgia to identify themselves by presenting one of seventeen forms of identification to election officials as a condition of being admitted to, and allowed to vote at the polls (former O.C.G.A. § 21-2-417), or by signing an Elector's Certificate under oath affirming the correctness of the voter's name and address. Former O.C.G.A. § 21-2-417(b).

12.

Under O.C.G.A. § 21-2-417, as it existed prior to its amendment in 2005, registered voters were permitted, but were not required, to present a Georgia driver's license or other form of official photographic identification as a method of identification allowing admission to the polls to vote. Voters also had the right, however, to use any of eight other methods of identification, including a birth certificate, a social security card, a copy of a current utility bill, a government check, a payroll check, or a bank statement that showed the name and address of the voter. Former O.C.G.A. § 21-2-417(1)(10), (11), (14), (15), (16).

13.

The 1997 voter identification statute also had a "fail safe provision" (former O.C.G.A.

§ 21-2-417(b)), that guaranteed the right to vote at the polls of any registered voter who did not have or was unable to find one of the 17 forms of photographic or non-photographic identification specified in former O.C.G.A. § 21-2-417(a). If a person did not have one of the 17 forms of identification listed in former O.C.G.A. § 21-2-417, that person could sign a statement under oath swearing or affirming that he or she is the person identified on the elector's certificate. Former O.C.G.A. § 21-2-417(b).

14.

This fail-safe provision ensured that no voter who possessed the qualifications specified in the Georgia Constitution, and who had not been disenfranchised for one of the two reasons stated in the Georgia Constitution, would be allowed to vote, even if the voter did not have one of the 17 forms of approved identification specified in the statute. This provision avoided a conflict between the constitutional right to vote and the 1997 voter identification statute.

15.

According to an August 25, 2005, "Section 5 Recommendation Memorandum" of the Voting Rights Section of the Department of Justice career staff (attached hereto as Exhibit A), the 1997 Georgia voter identification statute was granted pre-clearance under Section 5 of the Voting Rights Act "based on two main factors: (1) the fail-safe procedure ensured that voters were not turned away for lack of authorized identification, and (2) minority contacts [*i.e.* African-Americans in Georgia] did not urge an objection, primarily because no voters would be turned away if they did not have proper identification." *Id.* at 19.

#### **The 2005 Photo ID Act**

16.

In 2005, the General Assembly of Georgia enacted HB 244 (Act 53, § 59) (referred to

herein as “the 2005 Photo ID Act”), which amended O.C.G.A. § 21-2-417, to eliminate the fail-safe provision and to prohibit citizens of Georgia who possessed all the qualifications prescribed by the Georgia Constitution and who had lawfully registered to vote prior to the effective date of the 2006 act, from being admitted to the polls and allowed to cast a ballot, as citizens of Georgia have done for over 200 years, *in person*, in primary, special, or general elections for state, national, and local elections held on or after July 1, 2005, unless the voter presented a government-issued photographic identification card (“Photo ID”) to election officials .

**Enactment of the 2005 Photo ID Act**

17.

The Photo ID requirement (Section 59 of HB 244) was sponsored by Representative Sue Burmeister, a Republican member of the Georgia House of Representatives. Representative Burmeister told the Voting Rights Section of the U.S. Department of Justice, “that if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud.” Exhibit A at 6; Bob Kemper and Sonji Jacobs, *Voter ID Memo Stirs Tension – Sponsor of Disputed Georgia Legislation Told Feds that Blacks in Her District Only Vote if They are Paid to Do So*, *Atlanta Journal Constitution* (Nov. 18, 2005) (attached hereto as Exhibit B). The Department of Justice reported that “[Rep. Burmeister] said that when black voters in her black precincts are not paid to vote, they do not go to the polls.” *Id.*

18.

Prior to enactment of the 2005 Photo ID Act, the Secretary of State, who is the Chief Election Officer in Georgia, addressed the General Assembly in a memorandum (attached hereto as Exhibit C), and also sent the Governor a letter (attached hereto as Exhibit D) before he signed the bill into law. In these documents, Secretary of State Cox warned that HB 244 would open

the door even wider to fraud in absentee balloting, while imposing a severe and unnecessary burden on the right to vote of hundreds of thousands of poor, elderly, and minority voters. The Secretary of State also advised the General Assembly and the Governor that during her two terms as Secretary of State, her office had received no documented cases of fraudulent voting involving in-person voting by imposters who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers.

19.

The 2005 Photo ID Act was approved in the House by a vote of 89 Republicans and only 2 Democrats voting in favor of the bill, while 72 Democrats and only 3 Republicans voted against the bill. The report of the Conference Committee was approved in the Senate by a vote of 31 Republicans and no Democrats voting in favor of the report, while 18 Democrats and only 2 Republican Senators voted against the report. Of the 43 African-American members of the House and Senate, 42 voted against the bill, while only one, a Republican, voted in favor.

20.

The 2005 Photo ID Act was signed into law by Georgia's Governor, Sonny Perdue, on April 22, 2005, and was scheduled to become effective on July 1, 2005, subject to pre-clearance by the United States Department of Justice.

#### **Preclearance of the 2005 Photo ID Act**

21.

On August 25, 2005, the career staff in the Voting Rights Section recommended that the mandatory Photo ID requirement in the 2005 Photo ID Act be denied pre-clearance under the Voting Rights Act (see Exhibit A). But this recommendation was overruled the next day by the Republican political appointees in the Department of Justice. Dan Eggen, *Criticism of Voting*

*Law Was Overruled – Justice Dept. Backed Georgia Measure Despite Fears of Discrimination, Washington Post* (Nov. 17, 2005) (attached hereto as Exhibit E).

22.

The Department of Justice pre-cleared the law over the objection of the career staff, and the 2005 Photo ID Act became effective upon pre-clearance, on August 26, 2005. *Id.*

**Effect of the 2005 Photo ID Act**

23.

As a result of the adoption of the 2005 Photo ID Act, Georgia became the first state to require registered voters to present a photo identification as an **absolute** condition of being admitted to the polls and of being allowed to cast a ballot in federal, state, and local elections, the 2005 Photo ID Act was the most restrictive voter identification statute in the nation. Voting Rights Section Memorandum (Exhibit A at 42).

24.

At the same time that it voted to make the presentation of a Photo ID a mandatory condition of voting in person, the Republican Majority in both Houses of the 2005 General Assembly also voted: (a) to amend O.C.G.A. § 40-5-103(a), by doubling the minimum fee for a Photo ID from \$10 to \$20 for a 5-year Photo ID, and also authorizing a new 10-year Photo ID for a fee of \$35. 2005 Ga. Laws 2005, 334, 396 (Act No. 68) § 17-24(a), and (b) to amend O.C.G.A. § 21-2-380 and § 21-2-381 to make it easier for voters to obtain absentee ballots.

25.

By eliminating the restrictions on absentee voting, the Republican majority of the Georgia Legislature and its Republican Governor ignored the warning from Secretary of State Cox that by adopting the provision of HB 244 that proposed to make it easier for voters to cast

absentee ballots, “[Y]ou would be opening a gaping opportunity for fraud.” She explained the basis for her opposition as follows:

At virtually every meeting of the State Elections Board during the past 10 years, we have dealt with cases involving fraud or election law violations in handling or voting absentee ballots. HB 244 removes all restrictions on voting by mail, and thus makes it quite simple for someone inclined to commit fraud to do so.

Exhibit C.

26.

The Republican majority made it easier for voters to cast absentee ballots despite the increased risk of fraud because they knew that voting records maintained by the Secretary of State of the 2004 primary elections reflect that Republicans were almost twice as likely to vote by absentee ballot as Democrats, and white voters cast absentee ballots at almost twice the rate as black voters.

**Preliminary Injunction of the 2005 Photo ID Act**

27.

On October 18, 2005, the United States District Court for the Northern District of Georgia granted a preliminary injunction prohibiting the enforcement of the 2005 Photo ID statute on the ground that the “Plaintiffs have a substantial likelihood of success on the merits of their claim that the [2005] Photo ID requirement unduly burdens the right to vote and a substantial likelihood of success on the merits of their claim that the Photo ID requirement constitutes a poll tax.” *Common Cause v. Billups*, 406 F. Supp. 2d 1326, 1376 (N.D. Ga. 2005) (Federal District Court Order, p. 120 (Oct. 18, 2005)).

28.

The decision of the federal court to enjoin the enforcement of the 2005 Photo ID Act as

an undue burden on the right to vote was based on the factual finding that “the State’s interest in preventing voter fraud [did not] make[ ] it necessary to burden the right to vote.” The federal court found that the evidence showed:

... the Photo ID requirement is not narrowly tailored to the State’s proffered interest of preventing voter fraud, and likely is not rationally based on that interest. Secretary of State Cox testified that her office has not received even one complaint of in-person voter fraud over the past eight years and that the possibility of someone voting under the name of a deceased person has been addressed by her Office’s monthly removal of recently deceased persons from the voter roles. Further, the Photo ID requirement does absolutely nothing to preclude or reduce the possibility for the particular types of voting fraud that are indicated by the evidence: voter fraud in absentee voting, and fraudulent voter registrations. The State imposes no Photo ID requirement ... for registering to vote, and has removed the conditions for obtaining an absentee ballot imposed by the previous law. In short, HB 244 opened the door wide to fraudulent voting via absentee ballots. Under those circumstances, the State Defendants’ proffered interest simply does not justify the severe burden that the Photo ID requirement places on the right to vote.

*Common Cause v. Billups*, 406 F. Supp. 2d 1326, 1366 (N.D. Ga. 2005); *Id.* at 95-96.

**Enactment of Georgia’s Current Law, the 2006 Photo ID Act**

29.

Although none of the facts identified by Judge Harold Murphy in the excerpt from the federal court order quoted above had changed at the time the General Assembly convened in January 2006, the general assembly adopted a new Photo ID requirement and the Governor signed it on January 26, 2006. The Republican majority in both the House and Senate responded to the federal court’s preliminary injunction by adopting SB 84 (the “2006 Photo ID Act”), which repealed the 2005 Photo ID Act, but replaced it with a similar Photo ID requirement and added a new code section (O.C.G.A. § 21-2-417.1) that required the board of elections in each county to issue a “Georgia voter identification card,” containing a photograph of the voter, without charge to voters residing in the county, upon presentation of identifying documents.

Section 3 of SB 84 also amended O.C.G.A. § 40-5-103 by striking the previous subsection (d) in the 2005 Photo ID Act, which had required a voter to execute an affidavit of poverty to obtain a Photo ID without charge from the DDS and substituted in its place a requirement that the voter swear “that he or she desires an identification card in order to vote . . . and that he or she does not have any other form of identification that is acceptable under Code § 21-2-417” and to “produce[ ] evidence that he or she is registered to vote in Georgia.”

30.

On January 9<sup>th</sup>, the first day of the 2006 legislative session, the House Committee on Governmental Affairs of the Georgia House of Representatives approved SB 84 by a straight party line 7-3 vote and sent the bill to the floor of the House.

31.

Before the full House considered SB 84, the *Atlanta Journal Constitution* published a front-page article describing fraud in voter registration. *REGISTRATION in GEORGIA: Bogus Addresses Clutter Voter Registration Rolls*, Alan Judd, *Atlanta Journal Constitution* (Jan. 10, 2006) (attached hereto as Exhibit F).

32.

When SB 84 came up for a vote by the full House, the sponsor of the bill still refused to address the known instances of fraud in voter registration and in absentee voting, despite the findings of the district court and the numerous articles that had appeared in the press reporting instances of fraud in both areas.

33.

On January 12, 2006, SB 84 was approved by the full House without amendment by a vote of 110 to 64, with 99 Republicans and 11 Democrats voting in favor of the bill, and 66

Democrats and no Republicans voting against the bill. Every attempt to amend SB 84 was voted down by the Republican Majority in the House.

34.

After a one-week recess, the Georgia Senate reconvened on Monday, January 23, 2006, and on Tuesday, January 24, the Republican dominated Senate approved SB 84 by a vote of 32-22 with 32 Republicans and no Democrats voting in favor of SB 84, as amended, and 21 Democrats and only 1 Republican voting against the bill.

35.

The Republican Parliamentarian ruled out of order six proposed amendments to SB 84 offered by Democratic Senators that would have mitigated the effects of SB 84, and that ruling was sustained by a party line vote with 33 Republicans voting to sustain the ruling of the Parliamentarian, and 21 Democrats voting to overturn the ruling. The other two proposed amendments that would have mitigated the effects of SB 84 were defeated by a straight party line vote with 32 Republican Senators voting against the amendments and 22 Democratic Senators voting in favor of the amendments.

36.

On January 27, 2006, one day after SB 84, as amended, was approved by the Senate, the bill was returned to the House and was approved by a vote of 98 Republicans and 13 Democrats voting in favor of the bill, and 60 Democrats and no Republicans voting against the bill.

37.

Nevertheless, SB 84 was signed later that same day by Georgia's Republican Governor, Sonny Perdue. A true and correct copy of SB 84 "as passed" by the General Assembly and signed by the Governor is attached hereto as Exhibit G.

38.

One day after SB 84 was signed by Governor Perdue, the *Atlanta Journal Constitution* reported that *ABSENTEE VOTER FRAUD UNTOUCHED BY ID LAW – Most Frequent Form of Cheating May be Eased by Recent Rules*, Alan Judd, *Atlanta Journal Constitution* (Jan. 29, 2006) (attached hereto as Exhibit H).

39.

The 2006 Photo ID Act, as amended, like the 2005 Photo ID Act that preceded it, burdens only to the hundreds of thousands of Georgia citizens who, by definition, do not have a Georgia driver's license, a passport or other form of government-issued Photo ID, and imposes a severe burden on the right to vote of the poor, elderly or infirm, who are the least mobile members of the electorate who will have the greatest difficulty in complying with the requirements of the statute and do not own, cannot drive, or have access to a car.

40.

The effect of the 2006 Photo ID Act is to require every voter who does not have an approved form of government issued Photo ID, to go back to the registrar or board of elections (or to go to a DDS office) and essentially *re-register* to vote. As a condition of such re-registration and issuance of a Georgia voter identification card, the Act requires *no more* documentation than was required to vote under prior Georgia law.

41.

To obtain a Georgia voter identification card, a voter is required by the new provision in O.C.G.A. § 21-2-417.1(e) to provide county officials with no more documentation than is required by Georgia law to register to vote or to obtain an absentee ballot:

(e) The board of registrars shall require presentation and verification of the following information before issuing a Georgia voter identification card to a person:

- (1) A photo identity document, except that a nonphoto identity document is acceptable if it includes both the person's full legal name and date of birth;
- (2) Documentation showing the person's date of birth;
- (3) Evidence that the person is registered to vote in this state; and
- (4) Documentation showing the person's name and address of principal residence.

O.C.G.A. § 21-2-417.1(e).

42.

In June, 2006, the State Election Board adopted Rule 183-1-20 ("the Rule") (attached hereto as Exhibit I). The purpose of the Rule is to provide the registrars guidance as to the acceptable forms of identification that an elector can present to obtain a voter identification card. The Rule highlights the irrational nature of the 2006 Photo ID Act, in that, a voter can obtain a voter identification card by presenting documents that *are not acceptable* to prove his or her identity to vote in-person. For example, a voter can obtain a Voter ID Card from his registrar's office (that can then be used to vote by going back to his appropriate precinct) by presenting the registrar with a birth certificate and a recent utility bill (*see id.*). If that same voter attempted to vote in-person by presenting those same documents as evidence of his identity, he would be turned away. O.C.G.A. § 22-2-417.

43.

Indeed, pursuant to the SEB regulations, one can obtain a Voter ID with no documentation other than a voter registration application. For a person who is not registered to

vote, a registration application filled out in the registrar's office will qualify one for a Voter ID. For a person who is already registered, he or she may simply ask the registrar to pull the voter's registration application from the registrar's files. (Exhibit I (SEB Rule 183-1-20-.01(4)(b)(2)(c) & (4)(b)(4))).

44.

Because a Voter ID may be obtained with no proof of identity, it does nothing to further the prevention of in-person voter fraud.

45.

Absentee voting is not a realistic alternative to voting in person for many voters who lack a Photo ID and the theoretical availability of voting absentee does not relieve the burden on the right to vote caused by the Photo ID requirements for the following reasons (among others):

- (a) Whether absentee ballots are actually counted is determined by factors outside a voter's control. For example, absentee ballots that are not delivered by the U.S. Postal Service by 7:00 p.m. on election day are not counted.
- (b) Absentee balloting is a demonstrably less preferable way in which to vote, and a vast majority of voters choose to cast their vote at the polls. In fact, according to the Secretary of State's office, in the most recent Georgia Election, the February 5, 2005 presidential primary, of the more than 2 million votes cast, only 32,561 absentee ballots were returned by mail. (A print out from the Secretary of State's webpage containing absentee balloting information for the February 5, 2008 Presidential Preference Primary Election is attached as Exhibit J.)
- (c) In the past, there have been problems in Georgia with absentee ballots being lost and not counted. According to former Secretary of State Cathy Cox's sworn testimony, the state has "had incidences of absentee ballots being taken out of mail boxes. We have incidents of people picking up the ballots, and they may or may not actually get mailed or get returned to the election office. There are just a variety of problems that we have encountered in the handling of absentee ballots."
- (d) According to the National Institute for Literacy, many Georgians lack the literacy skills to apply for and properly complete and submit an absentee ballot.

**The 2006 Act disenfranchises between 289,000 and 505,000 registered voters**

46.

At the time he signed the 2005 Photo ID act, Governor Perdue stated publicly that 300,000 Georgians do not have a driver's license or other acceptable form of photo identification for voting. *Voter ID Bill Likely to be Law*, Jim Tharpe, Nancy Badertscher, *Atlanta Journal-Constitution* (April 2, 2005) (attached hereto as Exhibit K).

47.

The National Commission on Election Reform reported that between 6% and 10% of all Americans of voting age do not have an official government-issued photo ID card. National Commission on Election Reform, *To Assure Price and Confidence: Task Force Reports*, ch. VI: *Verification of Identity*, p.4 (Aug. 2001), [http://webstorage3.mcpa.virginia.edu/commissions/comm\\_2001\\_taskforce.pdf](http://webstorage3.mcpa.virginia.edu/commissions/comm_2001_taskforce.pdf).

48.

The 2000 U.S. Census reported that:

- (a) 390,414 Georgians of voting age do not have access to a car or truck, and
- (b) 243,949 Georgia households do not have access to a car or truck.

49.

At the request of Republican Secretary of State, Karen Handel, and the Republican-dominated State Election Board, in August 2007, the Department of Driver Services matched all the names in its database of people who have had a Georgia driver's license or DDS issued photo ID against the names and addresses of all 5.04 million voters in the Secretary of State's computerized database of all registered voters in Georgia. The result of these data matches were

summarized by the DDS in a report, a true and correct copy of which is attached hereto as

Exhibit L. The DDS summary reflects that:

198,378	registered voters' records from the Secretary of State's database could not be matched with any record from the DDS database of Georgia driver's licenses and DDS-issued photo ID's;
<u>+91,048</u>	registered voters do not have a Georgia driver's license or ID card in their possession that can be used at the polls because their licenses have been surrendered (50,848), suspended (35,103), cancelled (3,408), or revoked (1,689).
=289,426	(approximately 5.7% of all registered voters in Georgia)
<u>+216,318</u>	registered voters once had a Georgia driver's license or DDS-issued Photo ID, but their licenses expired at some unknown time in the last 40 years.
=505,744	(approximately 10% of all registered voters).

50.

As of the February 5, 2008 Presidential Preference Primary, a total of only 7,582 Georgia Voter ID's had been issued by county registrars and boards of elections.

51.

In a September 20, 2005 special election in Richmond County, in which the 2005 Photo ID Act was enforced, thirteen registered voters were forced to cast provisional ballots because they did not have a Photo ID. Of those, only two of those voters returned within 48 hours to present a Photo ID and have their votes counted.

52.

In the February 5, 2008 Presidential Preference Primary, at least 416 provisional ballots were cast because the registered voter did not have a Photo ID. Only 120 of those presented a Photo ID at their registrar's office within 48 hours to have their votes counted.

**The act imposes a heavy burden on the poor,  
the elderly, and the physically handicapped**

53.

The 2006 Photo ID Act imposes a severe, unnecessary and undue burden on the exercise of the fundamental right to vote of hundreds of thousands of citizens of Georgia who, because of their poverty, age or physical infirmities, do not have a car, a Georgia driver's license or a passport, and as the least mobile and most vulnerable members of society, have the greatest difficulty of complying with the requirements of the Act.

54.

Compliance with the new Photo ID requirement will present an especially high obstacle for registered voters who are (a) poor and do not own a motor vehicle and do not have passports because they cannot afford to travel on a passport outside the United States; (b) elderly and no longer drive (or have a passport which allows them to travel outside the United States); (c) visually impaired and are unable to drive (or travel on a passport outside the United States); (d) physically impaired and are unable to drive (or travel on a passport outside the United States); (e) residents of retirement or nursing homes who, by choice or necessity, do not have driver's licenses or passports; and (f) students without automobiles or passports who have Photo ID's issued by private colleges and universities (e.g., Emory, Morehouse, Mercer), but who cannot vote in Georgia without first acquiring a Photo ID issued by the state or federal government.

55.

The SEB only requires the County Registrar and Board of Elections offices to be open during normal business hours 8am-5pm, during the week prior to the election. Generally, they

are not open on Saturdays or Sundays.

56.

Georgia law requires employers to allow time off for their employees to vote. There is no provision of Georgia law requiring employers to allow time off for an employee to obtain a photo ID.

**The 2006 Photo ID Act imposes a severe burden on African-Americans**

57.

A true and correct copy of Selected Socio Economic Data for Georgia, African American and White, Non-Hispanic (Census 2000 Summary File (SF3) – Sample Data) is attached hereto as Exhibit M. It reports that 17.7% of African-American households do not have a vehicle, in contrast to 4.4% of white, non-hispanic households with no vehicle.

58.

Of the 289,426 Georgia registered voters who do not have a driver's license or state-issued Photo ID, approximately 144,000, or 49% are black, even though only 28% of Georgia's population is black.

59.

Further, it makes sense for the Republican Majority to attempt to limit the number of African Americans who vote because that community overwhelmingly supports the Democratic Party's candidates. According to the Georgia Secretary of State, 597,615 African American voters participated in the most recent primary election, on February 5, 2008. Of that number, 585,023 (or 97.8%) voted in the Democratic Primary, while only 12,592 (or 2.1%) voted in the Republican Primary. (A printout from the Secretary of State's Webpage containing this information is attached as Exhibit N. It is available at

[http://sos.georgia.gov/elections/voter\\_registration/2008%20stats/ssvrz521\\_history\\_2008\\_PPP\\_by\\_age.pdf](http://sos.georgia.gov/elections/voter_registration/2008%20stats/ssvrz521_history_2008_PPP_by_age.pdf).)

**The 2006 Photo ID act applies only to voters who vote in person and does not apply to people who vote by mail; neither does said act apply to voter registration**

60.

The 2006 Photo ID Act applies solely to registered voters who vote *in-person*. The General Assembly did not impose a Photo ID requirement or any other identification requirement on (a) absentee voters, or (b) as a condition of registration of voters, even though there was an abundance of evidence of fraud in both areas, and a total absence of fraud in in-person voting in at least 10 years.

61.

If the motive of the Republican Majority in adopting the 2005 Photo ID Act or the 2006 Photo ID Act had been to prevent fraudulent voting, there were more effective measures available that could have been adopted that would not have interfered with the right to vote of hundreds of thousands of poor, elderly and minority voters who are lawfully registered to vote. For example, the legislature could have required the registrars in each county to distribute to each precinct the originals, paper or electronic copies of the Voter Registration Applications of each voter residing in the precinct, and could have directed the election officials in each precinct to compare the signatures on each of the Voter Registration Applications of voters without an approved form of Photo ID with the signatures on the Elector's Certificate that every voter who votes in person is already required by existing law to execute under oath at the polls. This is the same procedure that election officials are currently required to follow to verify absentee ballots,

and if it is good enough to prevent fraud for absentee ballots, it should be good enough for ballots that are cast in person.

62.

The 2006 Photo ID Act was preliminarily enjoined by the U.S. District Court for the Northern District of Georgia, but after a final hearing, the Court denied a challenge to the law based on the U.S. Constitution. That ruling is now on appeal.

63.

A previous challenge to the 2006 Photo ID Act based on the Georgia Constitution prevented enforcement of the law through a Temporary Restraining Order entered by the Honorable Melvin K. Westmoreland and a subsequent Interlocutory Injunction entered by the Honorable T. Jackson Bedford, Jr. On appeal, the Georgia Supreme court vacated the injunction for lack of standing.

64.

The 2006 Photo ID Act is now in effect.

**Count One**

**(Violation of Art. II, § I, ¶ II of the Georgia Constitution)**

65.

The allegations of paragraphs 1 through 63 above are hereby incorporated as allegations of paragraph 64 of Count One of the complaint.

66.

In violation of Article II, § I, ¶ II of the Georgia Constitution, the 2006 Photo ID Act adds a new and additional condition or qualification of voting by requiring that a person who is already lawfully registered and entitled to vote, to obtain a government-issued Photo ID (of the

specific type described in O.C.G.A. § 21-2-417) as a condition of being admitted to the polls and allowed to cast a ballot on election day, as Georgians have voted for over 200 years.

67.

Art. II, § I, ¶ II of the Georgia Constitution sets forth the exclusive list of the qualifications to vote in Georgia and provides as follows:

**Right to register and vote.**

**Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people.** The General Assembly shall provide by law for the registration of electors.

Georgia Const., Art. II, § I, ¶ II (emphasis added).

68.

The members and adherents of the DPG and every other citizen of Georgia have an absolute constitutional right to register and vote under Article II, § I, ¶ II of the Georgia Constitution, provided he or she meets the five qualifications set forth in the Georgia Constitution, which are exclusive:

- (a) is a citizen in the United States;
- (b) is at least 18 years of age;
- (c) meets the minimum residency requirement as provided by law;
- (d) has registered to vote in the manner prescribed by law; and
- (e) has not been disenfranchised by Article II, Section I, Paragraph III of the Georgia Constitution based on (i) a conviction for a felony involving moral turpitude (Art. II, § I, ¶ III(a)), or (ii) has been adjudicated mentally incompetent to vote (Art. II, § I, ¶ III(b)).

69.

Article II, § I, ¶ III also sets forth an exclusive list of the grounds on which a citizen who is lawfully registered to vote may be refused a ballot and denied the right to vote.

**Exceptions to Right to Register and Vote**

- (a) No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote upon completion of the sentence.
- (b) No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

70.

By requiring that registered voters present a Photo ID before being issued a ballot and allowed to vote, the 2006 Photo ID Act violates Art. II, § I, ¶ II of the Georgia Constitution in either of two ways:

- (a) the statute purports to add an additional condition or qualification for voting to the exclusive list of qualifications set forth in Art. II, § I, ¶ II by making presentation of a Photo ID a condition and qualification of being admitted to the polls and casting a ballot on election day, and
- (b) the statute prohibits citizens who have lawfully registered to vote and meet all the qualifications set forth in Art. II, § I, ¶ II of the Constitution from being admitted to the polls and casting a ballot for a reason (lack of a government-issued photo ID) that is not one of the two reasons specified in Art. II, § I, ¶ III for denying a Georgia citizen the right to vote, even though those voters who do not have a Photo ID are lawfully registered and possess each of the qualifications set forth in Art. II, § I, ¶ II of the Georgia Constitution.

**Count Two**

**(Denial of Equal Protection of the Law)**

71.

The allegations of paragraphs 1 through 69 above are hereby incorporated as allegations of paragraph 70 of Count Two of the complaint.

72.

Art. I, § I, ¶ II of the Bill of Rights in the Georgia Constitution imposes an affirmative and paramount duty on the State to treat its citizens impartially by providing that “Protection to person ... is the paramount duty of government and shall be impartial and complete.”

73.

Art. I, § I, ¶ II of the Bill of Rights also prohibits the State from discriminating against any person, including registered voters, on the basis of race, poverty, age, physical disability or political affiliation or preference by providing that “No person shall be denied the equal protection of the laws.”

74.

There is no rational basis (much less a compelling, or even legitimate, state interest) to believe that a registered voter who has a Georgia driver’s license, a passport, or has a government employee ID card is any more honest, or less likely to engage in voter fraud, than a registered voter who does not have any of the required forms of official Photo ID.

75.

There is no rational basis (much less a compelling, or even legitimate, state interest) to believe that a registered voter who does not have a Georgia driver’s license, a passport, or another government-issued Photo ID is any more prone

- (a) to commit fraud if he or she votes in person at the polls, than if the same individual votes by mailing an absentee ballot, or
- (b) to commit fraud if he or she is admitted to the polls and allowed to cast a ballot in person at a neighborhood polling place than the registered voters who cast absentee ballots by mail.

76.

By requiring presentation of a government-issued Photo ID as a condition of being admitted to the polls on election day, and being allowed to cast a ballot in person, the 2006 act is not impartial, but discriminates between registered voters of equal honesty, integrity and who have an equal right to vote, who do not have the required forms of Photo ID because they happen to be:

- (a) **poor** – because poor people are less likely to own a car, have a passport, or work for the federal, state, county or other government, there are voters with larger incomes who can afford a car, or to vacation in foreign lands,
- (b) **elderly** – because a large percentage of voters over 65 do not own cars, have driver's licenses or passports and being retired, have valid government or military ID cards as compared to registered voters who are young, or
- (c) **the disabled** – because of a larger percentage of voters with visual or physical impairments do not own cars, have driver's licenses or passports and being disabled, have valid government or military ID cards as compared to registered voters who are not disabled.

77.

The 2006 act also discriminates against African-American voters as compared to voters who are white by requiring presentation of a driver's license, passport, or other government issued ID as a condition of being admitted to the polls and allowed to vote on election day.

78.

African-Americans are far less likely to have a Georgia driver's license, a passport, or other form of government-issued Photo ID than are white voters.

79.

According to the 2000 U.S. Census:

- (a) 28% of African-Americans live in poverty as compared to 10% of residents of Georgia who are white,

- (b) the median income of African-American households in Georgia is slightly less than half that of white households, and
- (c) 140,000 African-American households in Georgia do not have access to a car as compared to 89,000 white households who do not have access to a car.

*Common Cause/Georgia v. Billups*, 439 F. Supp. 2d 1294, 1306 (N.D. Ga. 2006).

80.

Statistics from the 2004 general election in Georgia showed that white voters were almost twice as likely to vote absentee as voters who are African-American (attached hereto as Exhibit O).

81.

That the Photo ID requirement in the 2006 act falls more heavily on African-American voters who are already registered and lawfully entitled to vote is confirmed by statistical data produced by the Secretary of State and the Department of Driver Services. This data shows that while African-Americans represent only 28% of the population of Georgia, 49% (144,000) of the 289,000 registered voters in Georgia who do not have a valid or expired Georgia driver's license that can be used for identification purposes at the polls are black.

### **Count Three**

#### **(Undue Burden on the Right to Vote)**

82.

The allegations of paragraphs 1 through 80 above are hereby incorporated as allegations of paragraph 81 of Count Two of the complaint.

83.

The Bill of Rights in the Georgia Constitution contains a series of provisions that individually and collectively prohibit the legislature from unnecessarily interfering with or

imposing unnecessary obstacles or burdens on the fundamental rights of citizens to vote, including the following:

- (a) Art. I, § I, ¶ I – which prohibits the State from depriving any citizen of due process of law;
- (b) Art. I, § I, ¶ II – which requires the legislature to be impartial in the adoption of laws, and also prohibits the State from discriminating against any person by denying them equal protection of the law;
- (c) Art. I, § I, ¶ VII – which specifies that it is the “duty of the General Assembly to enact such laws ... [to] protect ... the full enjoyment of the rights, privileges, and immunities ... [of] citizenship” – of which the right to vote without undue interference is one of the more fundamental;
- (d) Art. I, § 1, ¶ IX – which guarantees the right of the people to petition government for redress of grievances – of which the right to vote is the most meaningful and effective method of petition; and
- (e) Art. I, § I, ¶ X – which prohibits the General Assembly from enacting not only *ex post facto* criminal laws, but “retroactive [civil] law[s].”

84.

The 2006 act violates all of these provisions of the Bill of Rights by imposing an arbitrary, unnecessary, and useless obstacle to voting by citizens of Georgia who are lawfully registered and equally entitled to vote before the effective date of the 2006 act by requiring voters who cannot afford to own or are unable to drive a car, or to afford to travel to exotic foreign lands on a passport, to go to the county registrar’s office and essentially re-register to vote for the sole purpose of obtaining a Georgia Voter ID that the law says cannot be used for identification anywhere but at the polls.

**Irreparable Harm / Inadequate Remedy At Law**

85.

Georgia is scheduled to conduct a primary election on July 15, 2008, a general election on November 4, 2008, for Senate, President, for members of the General Assembly, and for

members of Congress, and a non-partisan general election for members of the Georgia Supreme Court, Court of Appeals, Superior and State Courts also on November 4, 2008.

86.

The members and adherents of the DPG who do not have one of the forms of ID required by the 2006 Photo ID act will be irreparably harmed if they are forced, between now and the next election to either (a) obtain a Photo ID, or (b) forfeit their rights as a registered voter to vote in the next and subsequent elections or referenda in their respective voting districts or political subdivisions for which they cannot be adequately compensated in an action at law for money damages. The DPG itself will be forced to expend its limited resources—including its time and attention—to mitigate the unconstitutional effects of the 2006 Photo ID Act, and those resources would otherwise be spent in furtherance of the Democratic Party's mission. The harm suffered likewise cannot be adequately compensated in an action for damages.

WHEREFORE, Plaintiffs respectfully pray that:

- (a) the Court enter a declaratory judgment declaring the Photo ID requirement in the amendment to O.C.G.A. § 21-2-417 in the 2006 Photo ID Act to be unconstitutional, null, and void;
- (b) the Court enter a preliminary and a permanent injunction restraining and enjoining defendants in their official capacities from enforcing or applying the Photo ID requirement in the amendment to O.C.G.A. § 21-2-417 (the 2006 Photo ID Act) to deny plaintiffs or any other registered voter in Georgia admission to the polls, a ballot, or the right to cast their ballots and have their ballots counted in any special, general, run off or referenda election in Georgia because of their

failure or refusal to present an official Photo ID required by O.C.G.A. § 21-2-417,  
as amended the 2006 Photo ID Act; and

(c) Plaintiffs have such other and further relief as may be just and equitable.

This 23<sup>rd</sup> day of May, 2008.

Respectfully submitted,



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*Attorneys for Plaintiffs*

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

DEMOCRATIC PARTY OF GEORGIA, )  
 INC., a non-profit corporation )  
 organized and existing under Georgia )  
 law, )

Plaintiff, )

v. )

CIVIL ACTION  
 FILE NO. \_\_\_\_\_

SONNY PERDUE, in his )  
 official capacity as Governor; )  
 KAREN HANDEL, in her official )  
 capacity as Secretary of State and Chief )  
 Election Official of Georgia; )  
 STATE ELECTION BOARD; and, )  
 MS. GLORIA CHAMPION, Superintendent )  
 of Elections for Fulton County, Georgia )  
 MS. JUANITA MARSHALL EBER, )  
 Chair of the Fulton County Board of )  
 Registration and Elections; MRS. )  
 CYNTHIA J. WILLIAMS, MR. HARRY )  
 W. MCDONALD, MR. FRANK B. )  
 STRICKLAND, and MR. SAMUEL P. )  
 WESTMORELAND, )

Defendants. )

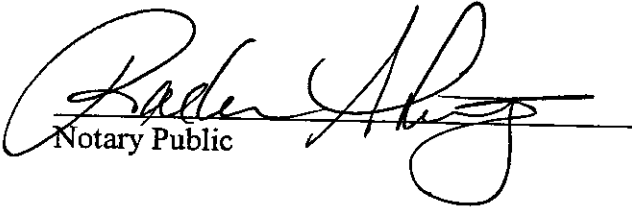
**VERIFICATION**

Personally appeared before the undersigned officer duly authorized to administer oaths, Jane V. Kidd, Chair of the Democratic Party of Georgia, who being duly sworn deposes and says that the facts alleged in the Complaint, except those that state legal conclusions, are true and correct to the best of her knowledge, information and belief. And she further states that as a member of the Georgia House of Representatives she personally observed the clearly partisan debate and passage of both the 2005 and 2006 Photo ID Acts, she voted against them.

This 21 day of May 2008.

  
Jane V. Kidd

Sworn to and subscribed before me  
this 21<sup>st</sup> day of May 2008.

  
Notary Public

My Commission Expires:

