

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

MS. ROSALIND LAKE and )  
MR. MATTHEW L. HESS )  
qualified and registered voters )  
under Georgia law, )  
Plaintiffs, )  
v. )  
HON. SONNY PERDUE, in his )  
official capacity as Governor, et al.; )  
Defendants. )

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

**SUMMONS**

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is

Roy E. Barnes, Esq.  
Georgia Bar 039000  
The Barnes Law Group, LLC  
31 Atlanta St.  
Marietta, Georgia 30060

an Answer to the Complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This \_\_\_\_ day of \_\_\_\_\_, 2006.

Linda Carter  
Clerk of Superior Court

By: \_\_\_\_\_  
Deputy Clerk

\*Addendum sheet attached.

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v. )

HON. SONNY PERDUE, in his )  
official capacity as Governor; )

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, )

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CIVIL ACTION

FILE NO. \_\_\_\_\_

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

This is an action to have declared unconstitutional, both on its face and as applied, and to enjoin the enforcement of the 2006 amendment to O.C.G.A. § 21-2-417 (SB 84, as amended) (“the 2006 Photo ID Act”) that imposes an unauthorized condition on the

fundamental right to vote of hundreds of thousands of registered Georgia voters in violation of Art. II, § I, ¶ II of the Georgia Constitution.

**Parties**

1.

The individual plaintiffs are:

(a) **Ms. Rosalind Lake**, a duly qualified and registered voter residing in the City of Atlanta and Fulton County, Georgia. She is a citizen of the State of Georgia and is legally registered and duly qualified to vote in local, state, and national elections in Georgia, but does not possess a Georgia driver's license, passport or other form of photographic identification specified in the 2006 amendment to O.C.G.A. § 21-2-417, issued by the State of Georgia or one of its political subdivisions, one of its sister states, by the United States or by an Indian tribe.

(b) **Mr. Matthew "Max" L. Hess**, a duly qualified and registered voter residing in the City of Atlanta and Fulton County, Georgia. He is a citizen of the State of Georgia and is legally registered and duly qualified to vote in local, state, and national elections in Georgia, but does not possess a Georgia driver's license, passport or other form of photographic identification specified in the 2006 amendment to O.C.G.A. § 21-2-417, issued by the State of Georgia or one of its political subdivisions, one of its sister states, by the United States or by an Indian tribe. Mr. Hess's verification is attached hereto as Exhibit A.

**The Defendants are:**

- (a) **HON. SONNY PERDUE** who is sued in his official capacity as the Governor of the State of Georgia, and;
- (b) **THE STATE ELECTION BOARD** who 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.
- (c) 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

3.

This case arises 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.

4.

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.

### Pre-Existing Georgia Law

5.

Under the Georgia Constitution, both the *qualifications* of voters and the grounds on which an otherwise qualified voter may be disenfranchised and denied the right to vote are expressly set forth in Art. II, § I, ¶ II, and may not be modified by the General Assembly. 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).

6.

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

7.

As a result of the adoption by the General Assembly of O.C.G.A. § 21-2-417 in 1997, registered voters in Georgia were required for the first time 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).

8.

Under O.C.G.A. § 21-2-417, as it existed prior to its amendment by Act 53 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 as a condition of voting. Voters also had the right, however, to use any of eight other methods of identification, 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).

9.

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 of each person 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 O.C.G.A. § 21-2-417(a). If a person did not have one of the 17 forms of identification, 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).

10.

This fail-safe provision was essential to ensure 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, thereby avoiding a conflict between the constitutional right to vote and the 1997 voter identification statute.

11.

According to an August 25, 2005, "Section 5 Recommendation Memorandum" of the Voting Rights Section of the Department of Justice career staff (Exhibit B), 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."

### The 2005 Photo ID Act

12.

In 2005, the General Assembly of Georgia amended O.C.G.A. § 21-2-417, to eliminate the fail-safe provision and require only those registered voters in Georgia who vote *in person* in primary, special, or general elections for state, national, and local offices held on or after July 1, 2005, to present a government-issued photographic identification card (“Photo ID”) to election officials as an absolute condition of being admitted to the polls and being issued a ballot and allowed to vote (“the 2005 Photo ID Act”).

13.

The Photo ID provision in Section 59 of HB 244 was sponsored by Representative Sue Burmeister (a Republican member of the Georgia House of Representatives who 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. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls.” Exhibit B, p. 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)), Exhibit C.

14.

The real purpose of the Photo ID requirement in Section 59 of HB 244 (and subsequently in SB 84) was and is to perpetuate and entrench the control by the

Republican Party over elections for state and federal offices at all levels in Georgia by making it easier for white voters to cast absentee ballots, and by making it more difficult, if not impossible for voters who are poor, elderly, or infirm, to vote, and most especially to prevent African-Americans and other minority voters from voting.

15.

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a memorandum (attached hereto as Exhibit D), and also informed the Governor in a letter (attached hereto as Exhibit E) before he signed the bill into law, 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 stated that during her two terms as Secretary of State, there had been no documented cases of fraudulent voting involving in-person voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office.

16.

HB 244 (Act No. 53) 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 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.

17.

HB 244 was signed into law by Georgia's Governor, Sonny Perdue, on April 22, 2005, as Act 53 and is hereafter referred to as the 2005 Photo ID Act and was scheduled to become effective on July 1, 2005, subject to pre-clearance by the United States Department of Justice.

18.

On August 25, 2005, the career staff in the Voting Rights Section recommended that the mandatory Photo ID requirement in Section 59 of Act 53 be denied pre-clearance under the Voting Rights Act (Exhibit B), but their 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), Exhibit F.

19.

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. Ga. Laws 2005, p. 334 (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.

20.

As a result of the adoption of the 2005 Photo ID Act, Georgia became the first of only two states that requires 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 Georgia statute is the most restrictive voter identification statute in the nation. Voting Rights Section Memorandum (Exhibit A, p. 42). A majority of states (30) do not require registered voters to present any form of identification as a condition of admission to the polls or casting a ballot, while a minority of states (18) requires voters to present some form of identification at the polls, but also have a fail-safe alternative.

21.

Simultaneously with the adoption of a mandatory Photo ID requirement for in-person voters, the Republican Majority also voted to eliminate the restrictions on absentee voting and ignored the advice from the Secretary of State who informed the members of the General Assembly and the Governor that adopting the provision of HB 244 that proposed to make it easier for voters to cast absentee ballots, "You 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 D.

22.

The Republican Majority in the General Assembly again ignored the information from the Secretary of State that they would be opening a gaping opportunity for fraud by making it easier for voters to vote absentee and removed the restrictions on absentee voting, and arbitrarily chose instead to make presentation of a Photo ID a mandatory condition of voting only for those registered voters who vote in person, and deliberately refused to impose any identification requirements either on absentee voters or to make identification a condition of registration. O.C.G.A. § 21-2-417.

23.

The 2005 Photo ID Act became effective upon pre-clearance by the Justice Department, on August 26, 2005.

24.

The Department of Driver Services (“DDS”) is the only state agency in Georgia from which a registered voter could obtain a drivers license or a state identification card, the two most commonly used forms of identification.

25.

To obtain a drivers license or state identification card from the DDS, as required by the 2005 Photo ID Act, a registered voter must (a) travel to a DDS office, (b) present an original or certified copy of a birth certificate or other “verifiable evidence” stating the applicant’s name and birth date (O.C.G.A. § 40-5-102); and (c) pay a fee of \$20 for a 5-year Photo ID or \$35 for a 10-year Photo ID.

26.

At the time the 2005 Photo ID Act was adopted, there were only 56 DDS locations throughout the entire State of Georgia from which an official state Photo ID may be obtained (see Department of Driver Services website at [www.dds.ga.gov](http://www.dds.ga.gov)). These offices were only open from 9:00 a.m. to 5:00 p.m. Tuesday through Saturday, but are closed on Sundays and Mondays and evenings, times when voters might be able to obtain a Photo ID without having to take time off from work. Currently there are only 60 DDS locations.

27.

To make matters worse, the DDS offices in urban areas typically have long lines and it is often necessary for a person to stand in line 3 or 4 hours to renew a Georgia driver's license or obtain a Photo ID.

28.

The time, inconvenience, and expense in terms of the cost of travel to a DDS office and time to obtain a Photo ID card, is a significant hardship and burden on plaintiffs and the hundreds of thousands of other registered voters who do not have driver's licenses, passports, or employee Photo ID cards. This burden does not exist for those voters who have Georgia driver's licenses, passports, or state or federal employee ID cards. The burden is an even greater obstacle for citizens who are paid on an hourly basis and may be forced to take time off from work to travel to a DDS office because the DDS offices are not open evenings after 5:00 p.m. or on Sundays.

29.

On October 18, 2005, the Federal District Court 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.” Federal District Court Order, p. 120 (Oct. 18, 2005), Exhibit G.

30.

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 type of voting fraud that are indicated by the evidence: voter fraud in absentee voting, and fraudulent voter registrations. The State imposes no 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.

Order, pp. 95-96 (Oct. 18, 2005).

## The New 2006 Photo ID Act

31.

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, or at the time the 2006 Photo ID Act was signed by the Governor on January 26, 2006, the majority in both the House and Senate adopted SB 84 which repealed the 2005 Photo ID Amendment, and replaced it with a new code section (O.C.G.A. § 21-2-417.1), requiring 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 acceptable under Code § 21-2-417” and to “produce evidence that he or she is registered to vote in Georgia.”

32.

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.

33.

SB 84, as amended, like the 2005 Photo ID Act that preceded it, applies 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 very 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.

34.

The effect of SB 84 is to require every voter who does not have a Georgia driver's license or a passport, to go back to the registrar or board of elections (or to go to a DDS office) and essentially *re-register* to vote, and to provide, as a condition of such re-registration and issuance of a Georgia voter identification card, *more* documentation than is required by Georgia law either to register to vote in the first instance, or to obtain an absentee ballot.

35.

Before the full House considered SB 84, the *Atlanta Journal Constitution* published a front-page article entitled, *REGISTRATION in GEORGIA: Bogus Addresses Clutter Voter Registration Rolls*, Alan Judd *Atlanta Journal Constitution* (Jan. 10, 2006), Exhibit H.

36.

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.

37.

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.

38.

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.

39.

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.

40.

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.

41.

On the following day, the *Atlanta Journal Constitution* carried an article entitled, *VOTER ID COSTS STILL DEBATED – Counties Say They're Already Overworked*, Nancy Badertscher, Sonji Jacobs, *Atlanta Journal Constitution* (Jan. 28, 2006), Exhibit I.

42.

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 J.

43.

One the 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), Exhibit K.

44.

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 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).

45.

On June 19, 2006, the State Election Board adopted Rule 183-1-20("the Rule"), Exhibit L. 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 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 certified copy of his birth certificate and his Transit card. If that same voter attempted to vote in-person by presenting a certified birth certificate and his Transit card, as evidence of his identity, he would be turned away.

46.

No matter the size of the county, each of Georgia's 159 counties is allotted one piece of equipment to produce the Voter ID Card. For example, Fulton County with an

approximate population of over 915,000 has one Voter ID machine to service its population and Taliaferro County with an approximate population of 1,800 residents has one Voter ID machine to service its population. Population Estimates of Georgia Counties, Census Bureau, Exhibit M. Each voter must go to his county registrar's office, in the county where he is registered, to obtain a Voter ID Card. Thus, a voter in Fulton cannot travel to a smaller county to obtain an appropriate ID. So, the addition of the 159 machines, in each county, does not alleviate the burden of persons in larger population areas because those people have only ONE extra site, in addition to the 60 DDS offices, where they may obtain the proper ID to vote.

47.

The 2006 Photo ID Act adds a condition or qualification of voting that any person who does not have a government-issued Photo ID of the type described in the 2006 version of O.C.G.A. § 21-2-417 is not registered and is not lawfully entitled to vote in person in Georgia, in violation of Article II, § I, ¶ II of the Georgia Constitution.

48.

The General Assembly refused to delay the effective date of the 2006 Photo ID Act until after the 2006 primary and general elections, despite the fact that the number of citizens in Georgia who are over 18 and who would be precluded from voting in the 2006 primary and general elections for Governor, Lieutenant Governor, and other state-wide constitutional offices, for members of the Georgia House of Representatives and the Georgia Senate, and for Representatives in Congress is in the *hundreds of thousands*, and is so large as to make compliance with the 2006 Photo ID Act prior to the 2006 primary

and general election a physical impossibility for many of those voters, and for election officials.

49.

This fact is supported by numbers released by the Secretary of State on June 19, 2006, which show that out of Georgia's over 4 million voters, approximately 600,000 do not have Georgia drivers licenses or state identification cards. This number was reached after the Secretary of State compared the statewide voter registration roles, as of 6/7/2006, with DDS's database of Georgia residents holding drivers licenses and state identification cards. While it is true that some of the 600,000+ voters without photo identification may hold some other appropriate government issued photo identification (e.g., a passport). Drivers licenses and state identification cards are the most commonly used forms of identification. See Exhibit N (breakdown of statewide voter registration numbers submitted to DDS); Exhibit O (breakdown of 600,000+ voters by county who do not have a DDS issued photo id). Significantly, the Secretary of States' numbers show that approximately 87,000 duly registered voters in Fulton County do not have DDS issued identification. Id. Out of this 87,000, 46,000 are African-American voters.

50.

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.

51.

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 are, therefore, the least mobile and most vulnerable members of society, and have the greatest difficulty of complying with the requirements of either Act.

**The 2006 Photo ID Act Applies Only To Voters  
Who Vote In Person and Does Not Apply to  
People Who Vote by Mail Neither Do Said Act Apply to Voter Registration**

52.

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.

53.

Statistics from both the 2000 Census and from the 2004 general election in Georgia showed that white voters were twice as likely to use absentee ballots than voters who are African-American. Exhibit P.

**There Were Many Less Restrictive Alternatives That  
Have Been More Effective to Prevent the Fraud that Does Exist**

54.

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 many 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.

- (a) The legislature could have adopted measures to combat fraudulent voter registration by requiring applicants to present a reasonable amount of identification as a condition of registering to vote,
- (b) The legislature could also have combated future fraudulent registration of voters and fraud in absentee voting by adopting a prospective requirement that registrars or boards of elections issue Photo ID voter registration cards to new voters at the time of registration without forcing the hundreds of thousands of Georgians who registered lawfully in the past to return to the registrar's office (or go to the DDS) to obtain a Photo ID,
- (c) The legislature could have adopted measures requiring every absentee voter to present a reasonable amount of additional identification (other than a mere signature on a letter) when they apply for an absentee ballot, and
- (d) Since every voter who votes in person is already required by existing law to execute an Elector's Certificate under oath swearing to his or her correct name and address, the legislature could have placed the burden on election officials to verify the identity of any voter who does not have a Photo ID by comparing the signature on the Elector's Certificate with the signature on the copy of the voter registration card on file in the office of the county board of elections, and to disqualify the ballot if there is clear evidence that the signature on the Elector's Certificate is a forgery. This is essentially the same procedure that election officials are currently required to follow in the case of absentee ballots.

**Count One**

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

55.

The allegations of paragraphs 1 through 55 above are hereby incorporated as allegations of paragraph 56 of Count One of the complaint.

56.

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.

57.

The individual plaintiffs and every other citizen of Georgia has 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)).

58.

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 make presentation of a Photo ID a new condition and qualification of voting, or (b) to disenfranchise voters from voting 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.

**Irreparable Harm / Inadequate Remedy At Law**

59.

Georgia is scheduled to conduct a primary election on July 18, 2006, a general election in November 7, 2006, for Governor, Lieutenant Governor, Secretary of State, Attorney General, and other state-wide constitutional offices, 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 7, 2006.

60.

The individual plaintiffs 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

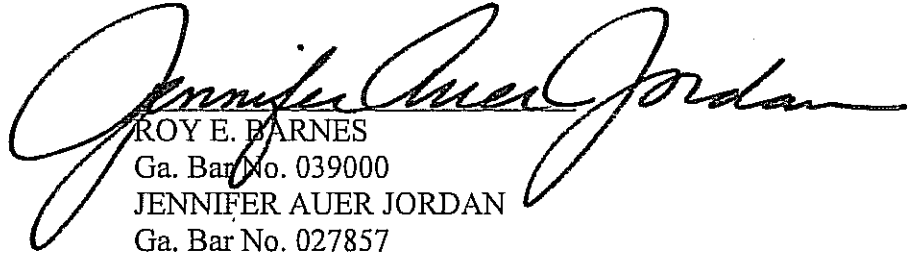
districts or political subdivisions for which they cannot be adequately compensated in an action at law for money damages.

WHEREFORE, Plaintiffs respectfully prays 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.

Respectfully submitted this 3rd of July, 2006.

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