

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;)
)
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 Elections; MRS.)
CYNTHIA J. WILLIAMS, MR. HARRY)
W. MCDONALD, MR. FRANK B.)
STRICKLAND, and MR. SAMUEL P.)
WESTMORELAND,)
)
Defendants.)

CIVIL ACTION
FILE NO. 2006-CV-119207

**STATE DEFENDANTS' BRIEF IN OPPOSITION TO
PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER**

I. INTRODUCTION

On Monday of this week, counsel for Plaintiffs Rosalind Lake and Matthew Hess filed a Complaint for Declaratory and Injunctive Relief against Governor Sonny Perdue and the State Election Board ("State Defendants"), as well as the Superintendent of Elections for Fulton County and the members of the Fulton County Board of Registration and Elections ("County Defendants"), seeking to have this Court enjoin a statute enacted during the 2006 Regular Session of the Georgia General Assembly which requires in-person voters to show photographic identification when

voting. Plaintiffs' counsel filed this Complaint one day after voluntarily dismissing a complaint on the eve of trial which had been pending for over two months in the Superior Court of DeKalb County; that DeKalb suit challenged the same statute and sought the same relief based upon the same purported state constitutional violation. This Court should not countenance Plaintiffs' counsel's attempt, a mere seven days before the start of advance voting for the July 18 statewide primary, to obtain a temporary restraining order to prevent a presumptively constitutional act of the legislature from being enforced.

Contrary to Plaintiffs' contention that the statute imposes a new "qualification" for voting, it does not. Instead, the statute constitutionally regulates the process by which registered voters verify their identity when voting in person. The legislature originally enacted the regulation in its 2005 General Session ("the 2005 Photo ID Act"), in an effort to eliminate the potential for fraud at the polls. In 2006, the legislature modified the identity verification process to address concerns expressed by a federal court order when preliminarily enjoining the 2005 version of the law.

Plaintiffs' motion for injunctive relief should be denied because they are unlikely to succeed on the merits of their contention that the 2006 amendment to O.C.G.A. § 21-2-417 ("the 2006 Photo ID Act") violates the Georgia Constitution. Article II, Section 1, Paragraph 2 does not prohibit the General Assembly from imposing requirements as to the method by which registered voters may vote in person at the polls, including the manner in which a voter must verify his or her identity. Moreover, the 2006 Photo ID Act does not deny any registered voter the right to vote, because (1) the requirement of the presentation of a photo ID is only a prerequisite to vote in person, not for casting an absentee ballot by mail, and (2) a registered voter who does not have an acceptable form of photo ID when voting in person may still vote a provisional ballot and have that vote counted upon presentation of an acceptable form of photo ID within two days; if the voter does not have an

acceptable form of photo ID, the voter can obtain one, free of charge, from their county registrar or from any of the 60 service centers operated by the Department of Driver Services.

Plaintiffs' Complaint makes clear that the issue at hand is simply a nonjusticiable political dispute, not a conventional one. The Complaint is replete both with references to the sharp partisan disagreement on this legislation and with allegations of improper motives attributed to one political party. (Compl. ¶¶ 13-14, 16, 19, 21-22, 37-40, 42, 54.) Plaintiffs' lawsuit is an attempt by the party that lost the political legislative battle to resurrect it in court and try again.

However, the Georgia Constitution does not prohibit the photo ID requirement now in effect. The General Assembly in good faith amended O.C.G.A. § 21-2-417 to address the principal concerns raised by the federal court in preliminarily enjoining the 2005 Photo ID Act. No Georgia case supports the declaration of the unconstitutionality of this statute and, consequently, there is no substantial likelihood that Plaintiffs will prevail on the merits of their Complaint.

In addition, because neither named Plaintiff¹ has been deprived of the right to vote, and enjoining this statute on a temporary basis will cause great harm and confusion both to voters across the state who have been informed that the photo ID requirement is in effect and to the local election officials who have already received the equipment, training, and forms to implement the 2006 Photo ID Act and have begin issuing those photo IDs, the balance of the equities favors the denial of an interlocutory injunction.

¹ Plaintiffs' counsel attempted unsuccessfully to add Ms. Lake as a plaintiff in the DeKalb County litigation. State Defendants learned upon deposing Ms. Lake in that case (contrary to the allegation in Plaintiffs' Complaint at ¶ 1(a)) that she has a valid photo identification issued by a governmental entity of another state (see Deposition of Rosalind Lake at 25-26, 48 (attached as Tab D to State Defs.' Appendix of Exhibits)), which constitutes a valid photo ID that can be used for all elections, including the July 18 primary election. See O.C.G.A. § 21-2-417(a)(2). Without deposing Mr. Hess, it is unknown whether he too has a valid photo ID for in-person voting, which would also deprive him of standing to challenge the 2006 Photo ID Act.

II. STATEMENT OF FACTS

A. Methods of Voting and Voter Identification in Georgia Prior to the Enactment of the Photo ID Acts²

Prior to the enactment of the Photo ID Acts, Georgia registered voters could exercise their right to vote in one of two different ways: by absentee ballot or at the polls on Election Day. Depending upon which method the voter picked, specific rules applied. First, a voter could vote prior to Election Day by absentee ballot submitted either through the mail or in person at the registrar's or absentee ballot clerk's office. 2003 Ga. Laws 517, §§ 35, 36 (codified as O.C.G.A. §§ 21-2-380(b) & -381 (2003)). In order to obtain an absentee ballot through the mail, a voter was, and still is, required to submit an application that contained "sufficient information for proper identification of the elector." *Id.* § 36 (codified as O.C.G.A. § 21-2-381(a)(1) (2003)). Upon receipt of the ballot, the voter's signature would be, and still is, matched with a signature on file; no other identification was or is now required.

In addition to casting an absentee ballot by mail, an absentee voter could also vote his or her ballot in person as part of the advance voting process or independent from that process. Either way, however, a voter casting an absentee ballot in person was required to present "proper identification to a poll worker." Proper identification under law included the presentation of one of 17 possible documents specified in the law. *Id.* § 48 (codified as O.C.G.A. § 21-2-417(a)(2003)).

Absentee ballot voters (other than advance voters) were also subject to another important requirement. Prior to the 2005 law, in order to cast an absentee ballot by mail or in person at any time other than the advance voting period, a voter would also have to assert one of a series of

² The "Photo ID Acts" refer to the both "the 2005 Photo ID Act" (2005 Ga. Laws 253, § 59) and "the 2006 Photo ID Act" (Act No. 432 (attached as Exhibit J to Plaintiffs' Complaint).)

reasons why he or she could not vote in person on an election day, such as being 75 years of age or older, being absent from the precinct during the time of the primary or election, being physically disabled or having to care for someone who is physically disabled, the election falling on a religious holiday observed by the voter, or being required to remain on the job for the protection of the public health and safety. *Id.* § 35 (codified as O.C.G.A. § 21-2-380(a) (2003)).

As a second option, a registered voter could vote in person by appearing at the polls on Election Day. Again, a voter would be required to present “proper identification to a poll worker” of the same type required for in-person absentee voters.

Thus, prior to 2005, there were different identification requirements imposed under Georgia law for registered voters who voted by mail-in absentee ballot or voted in person, whether via an absentee ballot or at the polls. Furthermore, only certain voters were eligible to cast absentee ballots at any time other than during the advance voting period. Neither Plaintiffs nor anyone else contends that the Georgia Constitution prevented the General Assembly from requiring such identification or imposing different identification or eligibility requirements for in-person voting and voting by mail under that prior election scenario.

B. Changes to Requirements for Absentee and In-Person Voting in 2005

1. Changes to Absentee Voting by Mail in 2005

The 2005 Photo ID Act was enacted during that year’s Regular Session of the General Assembly as a portion of an Act making a wide range of changes to the Georgia Election Code.³ One significant change gave registered voters the ability to vote an absentee ballot by mail without having to claim any excuse for choosing not to vote in person. The amendment expanding the ability to vote by mail is codified as O.C.G.A. § 21-2-380(b):

³ The 2005 Photo ID Act (Section 59) was one of many changes to the Georgia Election Code. See 2005 Ga. Laws 253.

An elector who requests an absentee ballot by mail or who during the period of Monday through Friday of the week immediately preceding the date of a primary, election, or run-off primary or election, casts an absentee ballot in person at the registrar's office or absentee ballot clerk's office shall not be required to provide a reason as identified in subsection (a) of this Code section in order to cast an absentee ballot in such primary, election, or run-off primary or election.

Id. (emphasis added). Although the General Assembly expanded the opportunity for registered voters to vote by mail in Georgia, it did not alter the means upon which an absentee voter may provide documentation to obtain an absentee ballot. "The application shall be in writing and shall contain sufficient information for proper identification of the elector" O.C.G.A. § 21-2-381(a)(1)(C). Therefore, a registered voter who votes by mail still is not required to present a photo ID prior to being permitted to cast his or her vote.⁴

Although there is no requirement for the presentation of a photo ID when voting by mail, to protect against voter fraud, election officials are required to ensure that the person voting by mail is the same person who registered to vote. When an application for an absentee ballot is made, a registrar or absentee ballot clerk must record the date received and determine if the applicant is eligible to vote in the primary or election involved. O.C.G.A. § 21-2-381(b)(1). There are specific means by which the registrar or clerk declares the potential absentee voter eligible or ineligible, or requests additional information prior to the primary or election to confirm the voter's identity. O.C.G.A. § 21-2-381(b)(2)-(4). Absentee ballots are mailed only to eligible applicants. O.C.G.A. § 21-2-384(a)(2). The absentee voter is required to sign an oath verifying eligibility. O.C.G.A. § 21-2-384(c)(1). When the voted ballot is returned, the registrar

⁴ The only exception to this is a person who registered to vote through the mail and then votes for the first time by absentee ballot. That person has a choice of including for identification purposes with his or her absentee ballot a photo ID or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. O.C.G.A. § 21-2-386(a)(1)(D).

or clerk is required to compare the identification and signature of the voter on the absentee ballot with the identifying information on the voter registration and absentee ballot application:

Upon receipt of each [absentee] ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk shall then compare the identifying information on the oath with the information on file in his or her office, shall compare the signature or mark on the oath with the signature or mark on the absentee elector's application for absentee ballot or a facsimile of said signature or mark taken from said application, and shall, if the information and signature appear to be valid, so certify by signing or initialing his or her name below the voter's oath. Each elector's name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct.

O.C.G.A. § 21-2-386(a)(1)(B).

In contrast, when a registered voter appears in person to vote at the polls, the voter executes a voter's certificate, and the poll officer checks the name of the certificate against the electors list present in the precinct. O.C.G.A. § 21-2-431(a). Unlike the identification requirement imposed when voting an absentee ballot by mail, there is no requirement that a poll officer check the signature on the voter's certification with the signature on the voter's registration. Contrary to Plaintiffs' suggestion that there should be signature matching at the polls, it is not necessary to distribute individual voter's registration cards to the various polling places because the voter's identity can be verified in a different way at the polls – through the presentation of a statutorily-prescribed form of identification.

2. Changes to In-Person Voting in 2005

In conjunction with expanding the ability of registered voters to cast an absentee ballot by mail, the General Assembly enacted the 2005 Photo ID Act. That Act changed the manner in which registered voters who vote in person can verify their identity, in an effort to protect against in-person voter fraud by assuring that only the registered voter is casting a ballot. Registered

voters who chose to vote in person were required to present at their polling place one of the following forms of government-issued identification which carries indicia of reliability:

- A Georgia driver's license issued by the appropriate state agency,
- A valid photographic identification card issued by any agency or branch of the United States or any state government agency,
- A valid U.S. passport,
- A valid photographic employee identification card issued by the United States or a Georgia state or county government agency,
- A valid photographic U.S. military identification card, or
- A valid tribal photographic identification card.

2005 Ga. Laws 253, § 59. Under the 2005 Photo ID Act, an in-person voter who was unable to produce any of the alternative photo IDs would be permitted to vote a provisional ballot. That ballot would then be counted if the registrar was able to verify current and valid identification of the registered voter no later than two days after the polls close. *Id.* This same process is used to allow voters whose names do not appear on the list of electors to cast a provisional vote, which will be counted if the issue is resolved no later than two days after the polls close. O.C.G.A. §§ 21-2-418(a) & -419(c).

Photo ID cards for voting purposes were available at service centers operated by the Department of Driver Services ("DDS") for a fee ranging from \$20 for a five-year card to \$35 for a ten-year card.⁵ O.C.G.A. § 40-5-103(a). Such cards were free to all applicants for a DDS-issued photo ID card for voting who swore under oath they were indigent. 2005 Ga. Laws 253, § 66.

⁵ Contrary to Plaintiffs' statement at page 7 of their brief, the cost of a driver's license or DDS-issued ID was not "doubled" in 2005. Previously, a four-year license or ID could be obtained for \$10.00 (or \$2.50 per year). O.C.G.A. §§ 40-2-25(a)(1) & 40-2-103(a) (2004). In 2005, the price was changed to \$20.00 for a five-year card (\$4.00 per year) and \$35.00 for a ten-year card (\$3.50 per year). O.C.G.A. § 40-2-103(a) (2005).

C. **The Federal Court Order Preliminarily Enjoining the 2005 Photo ID Act in *Common Cause/Georgia v. Billups***

On September 19, 2005, a group of plaintiffs filed an action in the United States District Court for the Northern District of Georgia, seeking to declare the 2005 Photo ID Act unconstitutional. *Common Cause/Georgia v. Billups*, No. 4:05-CV-201-HLM. By Order dated October 18, 2005, the federal court granted the plaintiffs' motion for a preliminary injunction against the enforcement of the 2005 Photo ID Act. *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1377 (N.D. Ga. 2005). The court found that the plaintiffs were likely to succeed on the merits of their federal constitutional challenge on two grounds. First, the court found that there was a significant burden on the right to vote, based principally on the conclusion that because the DDS service centers at which the photo IDs were available "are not located in every Georgia county," these centers were not readily accessible to those who may need a photo ID. *Id.* at 1362-63. Second, the court found that the fee for a photo ID card issued by DDS constituted a poll tax in violation of the Twenty-Fourth Amendment to the United States Constitution. *Id.* at 1369-70.

D. **The General Assembly Responded to the Federal Court's Concerns by the Enactment of the 2006 Photo ID Act, and Significant Efforts Already Have Been Undertaken to Implement That Act.**

In direct response to the District Court order in *Common Cause/Georgia*, during the Regular Session of the 2006 General Assembly, the legislature enacted amendments to O.C.G.A. § 21-2-417 and an additional provision in O.C.G.A. § 21-2-417.1 (collectively, "the 2006 Photo ID Act"). While the legislature maintained the requirement for the presentation of a government-issued photo ID for in-person voting was maintained, the new legislation provides that for voters who need them, free photo ID cards are available from two sources. O.C.G.A. §§ 21-2-417 & -417.1; see also *id.* § 40-5-103(d).

First, voters may continue to obtain photo identification suitable for in-person voting from any of the State's 60 DDS service centers. O.C.G.A. § 40-5-103(d). Second, each county board of registrars must provide at least one place in their respective counties where photo ID cards may be issued to registered voters who do not already have a valid license or identification card issued by DDS. O.C.G.A. § 21-2-417.1(a). The 2006 Photo ID Act required the State Election Board to provide each county board of registrars with "the necessary equipment, forms, supplies, and training" for the production of the photo ID cards. O.C.G.A. § 21-2-417.1(g). That Act also authorized the State Election Board to adopt rules and regulations for the administration of the issuance of photo ID cards. O.C.G.A. § 21-2-417.1(h).

In addition, the General Assembly appropriated \$800,000 to the State Election Board to provide for the purchase and installation of equipment to produce photo IDs in every county voter registrar's office, the training for the registrars to operate the equipment, and voter education concerning the issuance of the photo IDs. (See Affidavit of Claud L. McIver, III, ¶ 4 (attached as Tab B to State Defs.' Appendix of Exhibits) ("McIver Aff."))

The 2006 Photo ID Act was submitted to the United States Department of Justice as required by Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and was precleared by letter dated April 21, 2006. (A copy of the preclearance letter for the 2006 Photo ID Act is attached as Tab E to State Defs.' Appendix of Exhibits.) Following preclearance, the State Election Board immediately set about fulfilling its purchasing, training, and education obligations. (McIver Aff. ¶ 5.)

The State Election Board first initiated and completed the equipment purchasing process, which culminated in the distribution of equipment to each county. (Id. ¶¶ 6, 7.) That equipment has

been installed and is operational in all 159 county registrar's offices, and registrars have begun issuing photo IDs, although demand has been exceedingly low. (Id. ¶¶ 7, 10.)

In addition, the training of all registrars has been completed. A mass training session was held at the Voter Registrars Association of Georgia on May 22-24, 2006, which was attended by representatives of 157 of the 159 county registrars. (Id. ¶ 7.) Many counties have also received on-site training from the vendor, as may have been required by the needs of the particular county. (Id.)

The State Election Board has also instituted education efforts. The Board has produced an educational piece which will be handed out during early voting (set to begin five days from the date of the TRO hearing on July 10) and at the polls on July 18, primary election day. (Id. ¶ 11, Ex. 1.) Critics of the 2006 Photo ID Act have alleged concern that voters will appear at the polls without the required photo ID, will be turned away, and thus denied the right to vote. That fear is unfounded. Under the law, a voter without one of the forms of required photo ID will be issued a provisional ballot and can vote the ballot. That vote will be counted if the voter provides one of the required forms of photo ID within two days, which is the same procedure used for a voter who appears at the polls and believes he or she is registered but whose name does not appear on the list of registered voters. O.C.G.A. §§ 21-2-417(b), -418(a), & -419(c). In either case, voters have two days to establish their identity with a photo ID or establish they are in fact registered.

For voters who appear without the required photo ID (who are the source of the opponents' stated concern), the State Election Board's education piece tells those voters what forms of photo ID are acceptable, one of which they may already have. It also tells voters how to get a free photo ID from their county registrar or the DDS. Finally, the piece advises all voters that every registered voter is permitted to vote absentee by mail without a photo ID and without an excuse. (McIver Aff. ¶ 11, Ex. 1.)

The State Election Board has ordered these pieces printed for the large metro counties and that printing has begun; the counties have been instructed to distribute the letters during early voting and at the polls on primary election day. (Id. ¶ 12.) For smaller counties, the State Election Board has provided the letter template, supplied the paper to the counties, and instructed them to print the letters for distribution during early voting and on primary election day. (Id.) The State Election Board has also made and as of today is airing public service announcements providing information about the need to bring photo IDs to the polls, the types of photo ID that are acceptable, how to get a free photo Voter Identification Card (“VIC”) or identification card from the DDS, and the ability of all voters to vote an absentee ballot by mail without having to provide an excuse or photo ID. (Id. ¶ 13.)

In short, the concerns of the federal court were heard and have been addressed. The machines to produce the photo IDs are up and operating; training on the issuance of the IDs has been completed; those IDs are being issued; and educational pieces have been produced and are being distributed and disseminated.

E. The State Election Board Has Enacted Regulations Providing for the Administration of the Issuance of Free Photo IDs Under the 2006 Photo ID Act.

In accordance with the 2006 Photo ID Act, on June 19, 2006, the State Election Board adopted regulations providing for the documentation required for the issuance of the free photo ID card to registered voters who do not already possess a valid photo ID for in-person voting. Ga. Comp. R. & Regs. r. 183-1-20-.01 (2006) (copy attached as Tab F to State Defs.’ Appendix of Exhibits); see also McIver Aff. ¶ 6. The regulations were precleared under Section 5 by the United States Department of Justice by letter dated June 27, 2006. (A copy of the preclearance letter for the rules adopted by the State Election Board is attached as Tab H to State Defs.’ Appendix of Exhibits.)

F. There Are 219 Locations Statewide Where Photo ID Cards Are Available Free of Charge for Registered Voters Who Choose to Vote In Person and Do Not Currently Have a Valid Photo ID.

The 2006 Photo ID Act provides that each registrar's office in Georgia's 159 counties will have the necessary equipment to produce a voter photo ID card free of charge to any registered voter who does not presently have a valid Georgia driver's license or state-issued ID card that would be acceptable for identification at the polls. In addition, state photo ID cards may be obtained free of charge at any one of 60 DDS service center locations, including three service centers in Fulton County (one located within the City of Atlanta) and two service centers in DeKalb County. (See Affidavit of Thomas Blake Ussery ¶ 7 (attached as Tab C to State Defs.' Appendix of Exhibits).) That is a total of 219 locations statewide (including five DDS service centers and two voter registrars' offices in Fulton and DeKalb Counties); voters have the option of obtaining a free photo ID card at any one of the DDS service centers in the state or at any location designated by his or her county registrar. (*Id.* ¶ 7 & Ex. 1.)

G. Plaintiffs' "Statement of Facts" Is Filled With Argument, Citations to the Common Cause Litigation Over the 2005 Photo ID Act, and Hearsay References.

Plaintiffs have "cut and pasted" significant portions of the filings in the Common Cause/Georgia v. Billups federal case into their "Statement of Facts." These unsupported assertions are not "Facts" at all, but references to hearsay contained in newspaper articles, census figures, deposition testimony, and the hearing transcript.

Curiously missing from Plaintiffs' selective recitations to Common Cause/Georgia is the following portion of the colloquy between the federal court and the plaintiffs' counsel from the transcript of the preliminary injunction hearing:

THE COURT: Mr. Bondurant, if the state had a law that any registered voter or any individual, any individual who's a citizen of the State of Georgia who wants a photo I.D. and does not otherwise have one, or even if he or she had one, such as a driver's

license, if they can go to a reasonably convenient state office and get a photo I.D. for no cost whatsoever to themselves, if that were the law and we still had the voter I.D. requirements that we have now as passed by the legislature last session, would it be your position that that denies the equal protection of the law to vote?

MR. BONDURANT: The answer to that question in my view would be no.

(See Pls.' Mem. Supp. of Mot. for T.R.O. [hereinafter "Pls.' Mem."], Ex. D, at 109-10.)⁶ In any event, the references to selected portions of argument made by the plaintiffs in the Common Cause/Georgia litigation as "Facts" by Plaintiffs in the instant case should be ignored, and this Court should decide the validity of the 2006 Photo ID Act based upon the facts and law applicable to it.

H. **Only One Day Before This Case Was Filed, Plaintiffs' Counsel Dismissed the Same State Constitutional Challenge to the 2006 Photo ID Act Pending Since April 12 in the Superior Court of DeKalb County.**

Plaintiffs' counsel filed a Complaint for Declaratory and Injunctive Relief based, in part, on the same state constitutional challenge in the Superior Court of DeKalb County on April 12, 2006, on behalf of a registered voter who was allegedly "forced" to either obtain a photo ID or "forfeit" her rights to vote in the next election. (See Margaret Berry v. Sonny Perdue, et al., Superior Court of DeKalb County, No. 06CV4751-4, Compl. ¶ 69 (attached as Tab I to State Defs.' Appendix of Exhibits).) A final hearing on the Berry Complaint was set for July 3, 2006. In fact, the plaintiff in that case cast an absentee ballot by mail, calling into question her standing to maintain her claim that the 2006 Photo ID Act causes her to "forfeit" her right to vote. This led Senior Superior Court Judge Mallis to schedule a hearing on State Defendants' motion to dismiss the complaint for lack of standing at the call of the case for trial. (See Order of June 29, 2006 in Berry v. Perdue (attached as Tab J to State Defs.' Appendix of Exhibits).) Plaintiffs' counsel

⁶ Counsel for the plaintiffs in Common Cause/Georgia then proceeded to explain why he thought such a revised statute might still violate Article II, Section 1, Paragraph 2 of the Georgia Constitution, a position the federal court refused to consider in its order preliminarily enjoining the 2005 Photo ID Act. Common Cause/Georgia v. Billups, 406 F. Supp. 2d at 1356-59.

dismissed, rather than face that issue, which Judge Mallis acknowledged was “potentially dispositive of this matter.” (See id.; see also Pl.’s Voluntary Dismissal Without Prejudice, filed June 30, 2006 (attached as Tab K to State Defs.’ Appendix of Exhibits).) Plaintiffs’ counsel then marched over to this Court to attempt to enjoin the enforcement of the 2006 Photo ID Act at the eleventh hour.

I. Plaintiffs Misrepresent the Number of Persons Lacking Proper Identification to Vote In-Person.

Plaintiffs have attached to their motion documents recently produced by the Secretary of State’s office, which Plaintiffs say reveal that up to 87,000 persons in Fulton County, and over 600,000 persons statewide, lack the identification to vote in person at the polls on July 18. (See Pls.’ Mem, Exs. H and I.) However, the numbers contained in those exhibits do not in fact represent the number of registered voters who lack one of the acceptable forms of photographic identification for in-person voting; moreover, an initial examination of the list reveals that the numbers themselves are unreliable.

First, the numbers contained in Exhibits H and I to Plaintiffs’ Memorandum do not, as Plaintiffs contend, reflect the number of registered voters who lack an *acceptable* form of photo ID for in-person voting. O.C.G.A. § 21-2-417.1 (a & b) provides that a registered voter may obtain a voter photo ID free of charge if he or she does not presently have a Georgia driver’s license or state-issued ID card that would be acceptable at the polls. In an attempt to determine the number of persons who might be *eligible* for receiving that free photo ID card, the Secretary of State’s office sent a list of registered voters to the DDS and requested that the DDS compare that list to its own database of person who had been issued driver’s licenses or DDS-issued ID cards.

However, even if that database comparison were accurate, which it is not for the reasons discussed below, the results of the comparison would do nothing to prove the number of registered voters who do not possess any acceptable form of photo ID for in-person voting. In order to arrive at that number, a comparison would also have to be performed between the registered voter list and (1) the databases of all agencies and branches of the United States which issue photo IDs, (2) the databases of all state government agencies which issue photo IDs, (3) the databases of all federal and Georgia state and county government agencies which issue photo IDs to their employees, (4) the databases of United States military branches which issue photo IDs, and (5) the databases of Native American tribes which issue photo IDs. See O.C.G.A. § 21-2-417(a). There are a number of photo IDs other than Georgia driver's licenses and DDS-issued cards which are not encompassed within the exhibits relied upon by Plaintiffs but which can provide identification for registered voters to vote in person.

Second, even a cursory review of the results of the database comparison between the list of registered voters provided and the DDS-driver's license/identification card list reveals the inaccuracy of the "match" performed. The list of registered voters who are shown on the list not to have driver's licenses or DDS-issued ID cards include a member of the State Election Board, the father of a member of the State Election Board, the secretary of a Deputy Attorney General, the spouse of one of the Special Assistant Attorneys General in this case and others, all of whom actually have valid driver's licenses. (See, e.g., Affidavits of Stefan Passantino, Bradley J. Lewis, and Ruby J. Kajumba (attached as Tabs M, N, and O to State Defs.' Appendix of Exhibits).) These individuals were identified in a very quick search of the list, which is about all that time has permitted at this point. None of them lacks a driver's license and so none of them are entitled to a

free photo ID. Their appearance on the list demonstrates that the entire list, relied upon by Plaintiffs, is inaccurate and therefore unreliable.

Finally, the small number of persons who have sought free photo IDs since they have become available belies the argument that a large number of persons lack the necessary photo identification to vote in person. (See McIver Aff. ¶ 10; “Voters in no hurry to get IDs,” Rome News-Tribune, July 2, 2005 (attached as Tab L to State Defs.’ Appendix of Exhibits).) Indeed, Gloria Champion, the Superintendent of Elections for Fulton County, states that based upon the number of limited inquiries she has received about the free photo ID card and her 26-year experience in that office, she believes the equipment already provided by the State of Georgia to Fulton County will be sufficient to fulfill the amount of anticipated requests for the photo ID card. (See Affidavit of Gloria Champion ¶ 10 (attached as Tab A to State Defs.’ Appendix of Exhibits) (“Champion Aff.”).) As of this morning, the Fulton County Board of Registration and Elections has issued five Voter Identification Cards. (Id. ¶ 11.)

J. Voting in the July 18, 2005 Primary Election Has Already Begun Using the 2006 Photo ID Law, and Fulton County Election Officials and Poll Workers Have Been Trained and Equipped to Enforce that Law; a TRO Now Would Result in Both Worker and Voter Confusion.

As testimony from Ms. Champion shows, voting for the July 18 primary election is already well underway. (Id. ¶ 4.) Most importantly, absentee voting in person has begun and 168 voters in Fulton County have already cast their absentee ballots in person; all have met the requirement that they show one of the six required forms of ID. (Id.) Early voting, which is another form of in-person absentee voting, begins in two business days. See O.C.G.A. § 21-2-380(b). Those voters, too, will show one of the six required forms of photo ID.

In addition, the Fulton County Board of Registration and Elections has already trained its workers on the forms of photo ID that are acceptable. (Champion Aff. ¶ 11.) The Fulton County

Board of Registration and Elections has also held a press conference announcing the availability of absentee voting with no excuse and no photo ID and the way that voters can get a free photo ID. (Id. ¶ 12.) All of the major television stations, the newspaper and a number of radio stations attended and all are expected to provide the information to the public today or tomorrow. Several media outlets have agreed to run Public Service Announcements as well. (Id.)

A TRO entered at this point would mean different rules applied to different voters, confusion among workers already trained and confusion in the public, as media reports and public service announcements are already out and reflect the current state of the law. Furthermore, as stated above (see Section II.D., *supra*), training of all the voter registrars with respect to the implementation of the 2006 Photo ID Act has been completed and voter education efforts initiated by the State Election Board are well under way.

III. ARGUMENT AND CITATION OF AUTHORITY

A. Plaintiff Rosalind Lake Has No Standing to Bring This Action.

Ms. Lake alleges that she does not have one of the prescribed forms of photo ID required for voting in person. (Compl. ¶ 1(a).) She complains that because she does not have a photo ID, she will be “forced, between now and the next election [which she concedes to be July 18, 2006 (Compl. ¶ 59)] to either (a) obtain a photo ID, or (b) forfeit [her] rights as a registered voter to vote in the next and subsequent elections or referenda in [her] respective voting district[] or political subdivision[]” (Compl. ¶ 60.)

A plaintiff cannot attack a statute on grounds of unconstitutionality unless he or she can show that the enforcement of the statute infringes upon his or her personal or property rights and that the infringement results from an unconstitutional feature of the challenged statute. Smith v. City of LaGrange, 218 Ga. App. 394, 395 (1995). “[The plaintiff] must show that the alleged

unconstitutional feature of the statute injures him, and so operates as to deprive him of rights protected by the Constitution of this State or by the Constitution of the United States, or by both. Id. (quoting South Ga. Natural Gas Co. v. Ga. Pub. Serv. Comm'n, 214 Ga. 174, 175 (1958)); see also Love v. Whirlpool Corp., 264 Ga. 701, 705 (1994).

As noted in footnote 1 of this brief, Plaintiffs' counsel attempted unsuccessfully to add Ms. Lake as a plaintiff in the Berry v. Perdue litigation in DeKalb County. Upon deposing Ms. Lake in the Berry case, State Defendants learned that, contrary to her allegation in paragraph 1(a) of the Complaint, she possesses a valid photo identification issued by Florida International University, a public institution and a governmental entity of another state. (See Lake Dep. at 25-26, 48); Fla. Int'l Univ., "Facts at a Glance," <http://www.fiu.edu/docs/downloads/FIUaboutus.pdf> (visited June 27, 2006) (attached as Tab G to State Defs.' Appendix of Exhibits.) Ms. Lake also confirmed that the card does not have an expiration date. (See Lake Dep. at 48.) That identification is a valid photo ID for the July 18 primary election. See O.C.G.A. § 21-2-417(a)(2). Accordingly, Ms. Lake has no standing to bring this action because she is not adversely affected by the requirement that in-person voters show a photo ID. Without deposing Mr. Hess, State Defendants do not know whether he also has a valid photo ID for in-person voting, which would similarly deprive him of standing to challenge the 2006 Photo ID Act.

B. Plaintiffs Have Failed to Satisfy the "Drastic Extraordinary" Remedy of Obtaining a Temporary Restraining Order, Especially As Asserted Against the State.

To obtain a temporary restraining order ("TRO") or interlocutory injunction, a movant must demonstrate that the balance of equities favor such drastic relief. See Garden Hills Civic Ass'n, Inc. v. Metro. Atlanta Rapid Transit Auth., 273 Ga. 280, 281 (2000). The likelihood of an applicant's ultimate success on the merits is not by itself determinative, but it is a proper criterion for the trial court to consider in balancing the equities. See id. ("Although the merits of

the case are not controlling, they nevertheless are proper criteria for the trial court to consider in balancing the equities.”); see also Lee v. Envtl. Pest & Termite Control, 271 Ga. 371, 373 (1999) (citing Ledbetter Bros., Inc. v. Floyd County, 237 Ga. 22 (1976)) (“In determining whether the equities favor one party or the other, a trial court may look to the final hearing and contemplate the results.”).

Under the principle of balancing the equities, a TRO or interlocutory injunction should be denied, “where its grant would operate oppressively on the defendant’s rights, especially in such a case where the denial of the temporary injunction would not work ‘*irreparable injury*’ to the plaintiff or leave the plaintiff ‘practically remediless’ in the event it ‘should thereafter establish the truth of [its] contention.’” Id. at 281-82 (citing McKinnon v. Neugent, 226 Ga. 331, 332 (1970)) (emphasis added). Additionally, the Court should consider whether the potential “injury to [State Defendants] outweighs any harm to” Plaintiffs. Id. at 282.

Although the decision whether to issue a TRO or interlocutory injunction is generally within the trial court’s discretion, “when there is no material conflict in the evidence, the applicable rules of law cannot be avoided on the basis of discretion.” Id. at 282 (quoting Am. Bldgs. Co. v. Pascoe Bldg. Sys., 260 Ga. 346, 348 (1990)); see also Zant v. Dick, 249 Ga. 799 (1982). Instead, in such cases the trial judge’s discretion is circumscribed by the applicable rules of law. See Garden Hills Civic Ass’n, 273 Ga. at 282 (quoting Zant, 249 Ga. at 799-800).

The federal courts have categorized the requirements for TROs and interlocutory (or “preliminary”) injunctions as a four-factor test, stating that a movant must demonstrate “(1) a substantial likelihood that he will ultimately prevail on the merits; (2) that he will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that

the injunction, if issued, would not be adverse to the public interest.” Zardui-Quitana v. Richard, 768 F.2d 1213, 1216 (11th Cir. 1985); see Newman v. City of East Point, 181 F. Supp.2d 1374, 1377 (N.D. Ga. 2002) (stating that same requirements apply to a TRO as to an interlocutory, or preliminary, injunction).

Both Georgia state and federal courts have emphasized that injunctive relief is a “drastic extraordinary” remedy, and a litigant is not entitled to a TRO or interlocutory injunction unless he or she has clearly met the prerequisites. Newnan v. Atlanta Laundries, Inc., 174 Ga. 99, 113 (1932); accord Times-Journal, Inc. v. Jonquil Broadcasting Co., 226 Ga. 673, 674-75 (1970) (“[T]his section of the Civil Practice Act deals with *extraordinary* relief”) (emphasis added); see Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1223, 1240 (11th Cir. 2005); Cafe 207, Inc. v. St. Johns County, 989 F.2d 1136, 1137 (11th Cir. 1993); Ne. Fla. Chapter of Ass’n of Gen. Contractors of Am. v. City of Jacksonville, 896 F.2d 1283, 1285 (11th Cir. 1990); United States v. Jefferson County, 720 F.2d 1511, 1519 (11th Cir. 1983) (quoting Canal Auth. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974)).⁷ As the Supreme Court of Georgia has emphasized, “[t]here is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or [is] more dangerous in a doubtful case, than the issuing of an injunction.” Bruce v. Wallis, 274 Ga. 529, 532 (2001) (quoting Prime Bank v. Galler, 263 Ga. 286, 289 (1993)).

Plaintiffs have a particularly heavy burden in this case because they seek to enjoin enforcement of a state statute. Because a TRO or interlocutory injunction of a legislative enactment will “interfere with the democratic process and lack the safeguards against abuse or

⁷ In Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), the United States Court of Appeals for the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit rendered prior to the close of business on September 30, 1981.

error that come with a full trial on the merits,” it “must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts.” Ne. Fla. Chapter, 896 F.2d at 1285. When a movant seeks to enjoin a government agency, “his case must contend with the well-established rule that the Government has traditionally been granted the widest latitude in the dispatch of its own affairs.” Rizzo v. Goode, 423 U.S. 362, 378-79 (1976); see also Franklin v. Harper, 205 Ga. 779, 790 (1949) (emphasizing that “the legislature has a *wide latitude* in determining how the [voting] qualifications required by the Constitution may be determined”) (emphasis added).

1. ***Plaintiffs are Not Substantially Likely to Succeed on the Merits Because the 2006 Photo ID Act Does Not Violate Article II, Section 1, Paragraph 2 of the Georgia Constitution.***

“The General Assembly shall have the power to make all laws not inconsistent with this Constitution, and not repugnant to the Constitution of the United States, which it shall deem necessary and proper for the welfare of the state.” Ga. Const. art. III, § 6, ¶ 1. Unlike the United States Congress, which has only delegated powers, the General Assembly’s powers are plenary, and it is “absolutely unrestricted in its power to legislate” unless it undertakes an act prohibited by the Constitution. Bryan v. Ga. Pub. Serv. Comm’n, 238 Ga. 572, 573 (1977) (quoting Sears v. State, 232 Ga. 547, 554 (1974)). It is a cardinal rule in Georgia that statutes are presumed to be constitutional and that all doubts must be resolved in favor of their validity. Albany Surgical, P.C. v. Ga. Dep’t of Cmty. Health, 278 Ga. 366, 368 (2004). Not only are acts of the General Assembly presumed constitutional, but “the authority of the Courts to declare them void, will never be resorted to, except in a clear and urgent case” Brugman v. State, 255 Ga. 407, 414 (1986) (quoting Bartow County Bank v. Bartow County Bd. of Tax Assessors, 251 Ga. 831, 833 (1984)). “An act

must be construed to support its constitutionality if there is one construction which would support constitutionality and one which would not.” Lassiter v. Ga. Pub. Serv. Comm’n, 253 Ga. 227, 230 (1984); see also Bd. of Pub. Ed. v. Hair, 276 Ga. 575, 576 (2003). A court cannot reject the plain language of a statute or constitutional provision “unless it will lead to unreasonable consequences or absurd results not contemplated by the Legislature.” See Innovative Clinical & Consulting Servs. v. First Nat’l Bank, 279 Ga. 672, 675 (2005) (citing generally Haugen v. Henry County, 277 Ga. 743 (2) (2004), and Hollowell v. Jove, 247 Ga. 678, 681 (1981)).

Plaintiffs contend that the 2006 Photo ID Act violates Article II, Section 1, Paragraph 2 of the Georgia Constitution. That constitutional provision states as follows:

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.

Ga. Const. art. II, § 1, ¶ 2. Plaintiffs argue that Article II, Section 1, Paragraph 2 prohibits the State of Georgia from regulating elections, except as necessary to ensure that one seeking to vote (1) is a United States citizen and at least eighteen years of age, (2) meets the minimum residency requirements, (3) has registered to vote as prescribed by law, and (4) has not been disenfranchised based on conviction of a felony involving moral turpitude or adjudication of mental incompetence. (Compl. ¶ 57.) Plaintiffs contend that the Georgia Constitution prohibits the General Assembly from enacting any other voting regulation not encompassed within these particular items and that because the 2006 Photo ID Act does not fall within any of these items, it is unconstitutional.

Plaintiffs’ claim, however, must fail because it raises an inappropriate facial challenge, ignores the Georgia constitutional provision that is actually applicable to this case, presents a textual argument that Georgia Supreme Court case law rejects, relies only on irrelevant cases involving the

seating of and term limits for Members of Congress, disregards that the 2006 Photo ID Act does not prohibit any Georgia registered voter from casting a ballot, and presents an odd legal interpretation which, if adopted, would risk challenge to a whole host of election laws.

a. Plaintiffs' Facial Challenge to the 2006 Photo ID Act Is Inappropriate.

At the outset, it should be recognized that Plaintiffs are bringing both a facial and as applied challenge to the 2006 Photo ID Act. (See Pls.' Mem. at 15 n.4.) A facial challenge, however, is inappropriate in cases where the law is valid for the large majority of its applications. See State v. Jackson, 269 Ga. 308, 311-12 (1998) (stating that a facial challenge is appropriate only when "the statute operates unconstitutionally in a large fraction of the cases in which it applies"); Hubbard v. State, 256 Ga. 637, 638-39 (1987) ("We decline to strike down this statute as facially unconstitutional where there are a substantial number of situations to which it may constitutionally be applied.") (citation omitted); see also Hill v. Colorado, 530 U.S. 703, 733, 120 S. Ct. 2480, 2498, 147 L. Ed.2d 597, 622 (2000) ("[S]peculation about possible vagueness in hypothetical situations not before the Court will not support a facial attack on a statute when it is surely valid in the vast majority of its intended applications.") (quoting United States v. Raines, 362 U.S. 17, 23, 80 S. Ct. 519, 521, 4 L. Ed. 2d 524, 531 (1960)), cited in Ind. Democratic Party v. Rokita, No. 1:05-CV-0634-SEB-VSS, 2006 U.S. Dist. LEXIS 20321, at *162, 165 (S.D. Ind. Apr. 14, 2006) (upholding Indiana's photo ID law)).⁸

⁸ As in the Indiana photo ID case, Indiana Democratic Party v. Rokita, Plaintiffs have "mounted a facial challenge to the validity of [the 2006 Photo ID Act], raising a variety of related issues about the Voter ID Law, including that it substantially burdens the fundamental right to vote, impermissibly discriminates between and among different classes of voters, disproportionately affects disadvantaged voters, is unconstitutionally vague, imposes a new and material requirement for voting, and was not justified by existing circumstances or evidence." 2006 U.S. Dist. LEXIS 20321, at *7.

Even if Plaintiffs were somehow prevented from voting in person due to the operation of the 2006 Photo ID Act, the case law is clear that they cannot bring a facial challenge to the constitutionality of the Act as the law can be constitutionally applied in an overwhelming number of cases. “Except where First Amendment rights are involved, [a] party has standing to challenge the constitutionality of a statute only insofar as it has an adverse impact on his own rights.” Adams v. Ga. Dep’t of Corr., 274 Ga. 461, 462 (2001) (quoting Lambeth v. State, 257 Ga. 15, 16 (1987) (citations omitted)).

b. Plaintiffs Discount the Directly Applicable Provision of the Georgia Constitution Which Specifically Allows the General Assembly to Enact Election Laws Such as the 2006 Photo ID Act.

Plaintiffs’ argument that the 2006 Photo ID Act violates Article II, Section 1, Paragraph 2 of the Georgia Constitution also lacks legal merit because, in making that argument, Plaintiffs discount the directly applicable provision of the Georgia Constitution, and their interpretation of the law would effectively deny to the General Assembly any authority to regulate the time, place, and manner of voting. While Plaintiffs direct the Court’s attention to Article II, Section 1, Paragraph 2, which simply provides for registration and voting by eligible persons, they ignore the importance of the immediately preceding Article II, Section 1, Paragraph 1, which provides both that elections by the people shall be by “secret ballot” and that those elections “shall be conducted in accordance with procedures provided by law.” Ga. Const. art. II, § 1, ¶ 1. Accordingly, the Georgia Constitution specifically contemplates that the General Assembly shall enact statutes for both the method of voting by secret ballot and for the procedures to be used in conducting elections generally. As the 2006 Photo ID Act affects the method and procedures for in-person voting – as opposed to voter registration (for which no photo ID is required) – Article II, Section 1, Paragraph 1 is the applicable provision for reviewing the 2006 Photo ID Act, and

that constitutional provision expressly permits the General Assembly to enact appropriate statutes.

This interpretation of the constitutional provision mirrors longstanding case law on the subject. The Georgia Supreme Court and neighboring states' appellate courts have consistently recognized legislative power to regulate the time, place, and manner of establishing voter qualifications and voting – including measures to confirm voter identity – and have held that such regulations do not impose impermissible, additional qualifications on the right to vote. See, e.g., Johnson v. Byrd, 263 Ga. 173, 174-75 (1993) (holding that votes cast by persons whose registration cards had not been signed were void, even if names appeared on list of electors); see also AFL-CIO v. Hood, 885 So. 2d 373, 373-76 (Fla. 2004) (holding that Florida legislation allowing voters to cast provisional ballots, which required that the voter be eligible to vote at the precinct where the ballot was cast, did not impose an additional qualification on the right of suffrage, was not an unnecessary restriction on the right to vote, and therefore did not violate the Florida Constitution); Perez v. Rhiddlehoover, 186 So. 2d 686, 691 (La. App. 1966) (holding that a Louisiana requirement that a voting registrant give information sufficient to identify himself when he appears at the polling booth does not conflict with the prohibition in the Voting Rights Act against “tests or devices” or the federal constitutional provision that the right to vote shall not be denied on account of race, color, or previous condition of servitude).

Indeed, in setting forth the requirements for the qualifications of voters, the Georgia Constitution “contemplates enactment of laws to determine these qualifications.” Franklin, 205 Ga. at 790. The Supreme Court of Georgia has emphasized that the General Assembly has “wide latitude” in determining how voting qualifications required by the Georgia Constitution may be determined, provided that it does not make “the exercise of such right so difficult or inconvenient as

to amount to a denial of the right to vote.” *Id.* at 790. The minimal burden that the photo ID requirement places on the right to vote clearly does not amount to a denial of that right.

c. Plaintiffs’ Textual Argument Comparing the Current Georgia Constitution with Past Constitutions Presents a Legal Argument That Georgia Supreme Court Case Law Rejects.

Even if Article II, Section 1, Paragraph 2, the constitutional provision on which Plaintiffs rely, is somehow applicable to this case, their interpretation that it prohibits enactment of a photo ID law is unsupportable. Concisely stated, Plaintiffs’ argument is as follows: All Georgia Constitutions since 1877 have provided that qualified electors shall be entitled to vote, *see* Ga. Const. art. II, § 1, ¶ 2; Ga. Const. of 1976 art. II, § 1, ¶ 2; Ga. Const. of 1945 art. II, § 1, ¶ 2; Ga. Const. of 1877 art. II, § 1, ¶ 2, while the General Assembly has been permitted to enact laws for the registration of electors, *see* Ga. Const. art. II, § 1, ¶ 2; Ga. Const. of 1976 art. II, § 2, ¶ 1; Ga. Const. of 1945 art. II, § 2, ¶ 1; Ga. Const. of 1877 art. II, § 2, ¶ 1. Accordingly, while the registration of electors can be regulated by the General Assembly, once they are registered, the act of voting cannot be regulated. Plaintiffs contend that their interpretation was specifically reiterated with somewhat changed but substantively identical language in the enactment of the 1983 Constitution.

Plaintiffs’ position, though, is contradicted by relevant precedent. If Plaintiffs’ interpretation is right, then not only from 1983 until today, but also from 1877 through 1982, there would have been no legal basis for the General Assembly to have enacted any laws regulating more than the registration of voters. In fact, however, in cases dating from ratification of the 1877 Constitution through subsequent Constitutions, the Supreme Court of Georgia has held that the General Assembly has the right to regulate how voter qualifications are determined.

The Supreme Court has long emphasized that, although the right to vote guaranteed in Article II, Section 1, Paragraph 2 cannot be “absolutely denied or taken away by legislative

enactment,” it is “subject to reasonable regulation,” including the legislature’s right to prescribe how “qualifications shall be determined.” Franklin, 205 Ga. at 789; accord Griffin v. Trapp, 205 Ga. 176, 181-82 (1949); Stewart v. Cartwright, 156 Ga. 192, 197 (1923). Plaintiffs cite to the language quoted in Franklin v. Harper that “where the State Constitution provides who shall be entitled to vote, the legislature cannot take from or add to *the qualification* unless the power is granted expressly or by necessary implication.” (See Pls.’ Mem. at 16 (citing Franklin, 205 Ga. at 790, and Tolbert v. Long, 134 Ga. 298 (1910)) (emphasis added).) The immediately succeeding sentence from Franklin emphasizes, “[h]owever, the legislature has a wide latitude in determining how the qualifications required by the Constitution *may be determined*” See Franklin, 205 Ga. at 790 (emphasis added). The only limit the Supreme Court places on this “wide latitude” is that the prescribed regulation cannot “amount to a *denial* of the right to vote.” See id. (emphasis added).

As shown in this brief, the 2006 Photo ID Act does not deny anyone the right to vote. The photo ID is simply a requirement by which election officials can determine whether those who vote in person are whom they claim to be and, if so, are qualified to vote. “The Constitution of this State, in setting up requirements for the qualification of electors, contemplates enactment of laws to determine these qualifications.” Id. Plaintiffs concede that the General Assembly can provide for the method and manner of voting in Georgia (see Pls.’ Mem. at 21-22), and in-person voting and absentee voting by mail are among such methods and manners. See Ga. Const. art. II, § 1, ¶ 1. If the General Assembly can determine the greater restriction of whether voting should be in-person at all, or by mail, or both, or otherwise, it certainly can enact lesser restrictions on how to implement the chosen voting methods and ensure that they are conducted fairly and honestly. See Storer v. Brown, 415 U.S. 724, 729-30, 94 S. Ct. 1274, 1279, 39 L. Ed. 2d 714, 723-24 (1974) (“[T]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of

order, rather than chaos, is to accompany the democratic processes.”). Contrary to Plaintiffs’ contention otherwise, the photo ID requirement is not a qualification, or “condition,” of one’s right to vote (see Pls.’ Mem. at 22.), but merely a way to ensure that constitutional qualifications, or conditions, are observed. As noted above, “the legislature has a wide latitude in determining how the qualifications required by the Constitution *may be determined . . .*” See Franklin, 205 Ga. at 790 (emphasis added).

Even accepting Plaintiffs’ argument that Article II, Section 1, Paragraph 2 has some relevance in challenging these statutes and the ID requirement, that portion of the Constitution fails to support their argument. The Constitution clearly provides the General Assembly with the authority to provide for the registration of qualified persons as voters. However, the corollary for such registration is determining that only such registered voters appear to vote and that the votes that are cast are indeed cast by those very same qualified voters. The requirement of registration of a voter hardly matters at all if an election official is subsequently stripped of the authority to determine whether the person who appears to vote is in fact the qualified and registered voter whose name appears on the voter’s list. But that is precisely the scenario promoted by Plaintiffs, who advance a legal argument that would not permit a poll worker to verify whether the person appearing to vote is, in fact, the registered voter he or she claims to be. Applying Plaintiffs’ constitutional interpretation, one could challenge *any* identification requirement, including the one for absentee voters and the one for in-person voting which existed before 2005. That surely is not the meaning of this constitutional provision and would certainly be an absurd result not contemplated under Georgia law.

d. Plaintiffs' Reliance on Cases Involving the Seating of and Term Limits for Members of Congress Are Irrelevant.

Plaintiffs' attempt to analogize this case to two federal cases involving attempts to impose term limitations on and otherwise exclude qualified persons from becoming members of Congress misses the point entirely. (See Pls.' Mem. at 18 (citing Powell v. McCormack, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969), and U.S. Term Limits v. Thornton, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995).) In fact, as Plaintiffs concede, these cases are not about the right of individual voters to cast a ballot (see Pls.' Mem. At 18 n.6), and the U.S. Supreme Court and other federal courts have specifically approved of laws that regulate the time, place, and manner of elections. See, e.g., Storer, 415 U.S. at 728-46, 94 S. Ct. at 1278-87, 39 L. Ed. 2d at 722-33 (holding that provision of California Election Code forbidding ballot position to independent candidate who had registered affiliation with qualified political party within one year prior to primary election was not unconstitutional as improperly adding qualifications for Congress); Williams v. Tucker, 382 F. Supp. 381, 388 (M.D. Pa. 1974) (holding that Pennsylvania statute, which had effect of preventing candidate defeated in primary from obtaining position on general election ballot as independent candidate, merely regulated the manner of holding elections and did not unconstitutionally add qualifications for Congress). It is telling that the only case law that Plaintiffs cite as "analogous" to their allegations are these two federal cases which are in fact wholly unrelated to the state law claim they assert. (See Pls.' Mem. at 18.)

e. The 2006 Photo ID Act Does Not Prohibit Any Registered Voter from Casting a Ballot.

In addition to being legally meritless, Plaintiffs' argument is also factually inaccurate. Nothing in the 2006 Photo ID Act would prohibit any Georgia voter from casting a ballot in any

election. Even with enactment of the 2006 Photo ID Act, every eligible Georgia resident remains entitled to vote in any election. The 2006 Photo ID Act applies only to registered voters who vote in person, and any registered voter who does not possess a photo ID can obtain one free of charge at a location in his or her own home county or at any of the DDS service centers throughout Georgia.

If a voter does not wish to obtain a photo ID card, he or she may both register and, when elections occur, vote by mail without presenting a photo ID. The paragraph of the Georgia Constitution which Plaintiffs cite protects the right of qualified citizens to vote, but it does not require that those citizens must be allowed to vote in any particular manner. See Ga. Const. art II, § 1, ¶ 2 (“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.”) (emphasis added); Wheeler v. Bd. of Trustees, 200 Ga. 323, 334 (1946) (“The legislative branch of our government is charged with the duty of providing the *manner* of holding elections”) (emphasis added); see also Rokita, 2006 U.S. Dist. LEXIS 20321, at *115 (emphasizing in case upholding a state photo ID law that “there is no absolute [federal] constitutional right to vote in any specific manner an individual may desire”).

f. Adopting Plaintiffs’ Legal Interpretation Would Risk Challenge to a Whole Host of Election Laws.

Finally, if Plaintiffs’ interpretation of Article II, Section 1, Paragraph 2 is adopted, i.e., that the only elections laws the General Assembly can enact are those related to residency and registration, a whole host of existing Georgia election laws could be challenged as unconstitutional. See, e.g., O.C.G.A. §§ 21-2-234 & -235 (allowing those who have not voted or contacted election officials within three years to be placed on an inactive list); id. §§ 21-2-260, -

261 & -265 (providing for designation of voting precincts and polling places and changes in and creation of precincts); id. §§ 21-2-380 to -385 (providing for absentee voting procedures); id. § 21-2-403 (providing times for opening and closing of polls); id. § 21-2-413 (regulating the manner in which a voter may occupy and remain in a voting booth); id. § 21-2-451 (requiring eligible voters to execute a voter's certificate in order to cast a ballot). The Court should not "presume that the General Assembly intended to enact an unconstitutional law," Wickham v. State, 273 Ga. 563, 566 (2001), much less a multitude of them. Courts cannot strike down legislation "unless it plainly and palpably violates some provision of the Federal or State Constitution." City of Atlanta v. Associated Builders & Contractors of Ga., Inc., 240 Ga. 655, 657 (1978).

Plaintiffs cannot demonstrate that the photo ID requirement imposes additional qualifications on the right to vote or makes it "so difficult or inconvenient as to amount to a denial of the right to vote," Franklin, 205 Ga. at 790. Therefore, Plaintiffs cannot prevail on their claim that the 2006 Photo ID Act violates Article II, Section 1, Paragraph 2 of the Georgia Constitution.

2. Plaintiffs Have Not Shown They Will Be Irreparably Harmed Without the Requested Relief.

A showing of irreparable injury is "the *sine qua non* of injunctive relief" and cannot be presumed, even when there is a violation of constitutional rights. Siegel v. LePore, 234 F.3d 1163, 1176-77 (11th Cir. 2000) (quoting Ne. Fla. Chapter, 896 F.2d at 1285) ("Plaintiffs also contend that a violation of constitutional rights always constitutes irreparable harm. Our case law has not gone that far, however."); see Garden Hills Civic Ass'n, 273 Ga. at 281-82 (citing McKinnon, 226 Ga. at 332) (emphasizing that a TRO or interlocutory injunction should be denied "where the denial . . . would not work '*irreparable injury*' to the plaintiff or leave the

plaintiff 'practically remediless' in the event it 'should thereafter establish the truth of [its] contention.'" (emphasis added). In all cases, a movant for a preliminary injunction against a state or local government must present facts that show a "real and immediate" threat of substantial, irreparable harm before a court will intervene. O'Shea v. Littleton, 414 U.S. 488, 494 (1974); see also Church v. City of Huntsville, 30 F.3d 1332, 1337 (11th Cir. 1994) ("[A] party has standing to seek injunctive relief only if the party alleges, and ultimately proves, a real and immediate – as opposed to a merely conjectural or hypothetical – threat of future injury").

Plaintiffs' only threatened injury in this case is their supposed inability to vote in person without valid photo ID. As discussed previously, Ms. Lake actually can vote in person using her government-issued photo ID card, and depending upon what forms of photo ID Mr. Hess may possess, he may be able to do so as well. To the extent that any harm exists, such harm is not irreparable for several reasons. First, any registered voter without photo identification can vote an absentee ballot by mail. See O.C.G.A. § 21-2-380(b). Plaintiffs admit this fact and are consequently aware that enforcement of the photo ID requirement for the July 18 elections causes no one irreparable harm. (Compl. ¶ 52.) Second, there has been no showing that Plaintiff Hess, if he in fact does not already possess an acceptable form of photo ID, cannot obtain one free of charge at a convenient location. Third, if Plaintiff Hess chooses not to vote an absentee ballot by mail and does not obtain an acceptable form of photo ID prior to the July 18 primary, he may still vote a provisional ballot in person and have that ballot counted upon presenting an acceptable form of photo ID, including a free photo ID, within two days of the primary. O.C.G.A. §§ 21-2-417(b) and 21-2-419(c).

Plaintiffs' failure to show they will be irreparably harmed absent the granting of the injunction, and indeed their admission that no such harm will occur, requires denial of Plaintiffs' motion for preliminary injunction.

3. **The Harm to the State of Georgia If This Court Enjoins It From Its Duty and Obligation to Guard Against Voter Fraud, and Halts the Substantial Steps Already Taken to Implement the 2006 Photo ID Act, Outweighs Any Inconvenience to Plaintiffs.**

In balancing the equities, even “[g]reater caution” must be exercised where a government is involved, because “the Government has traditionally been granted the widest latitude in the dispatch of its own affairs” Martin v. Metro. Atlanta Rapid Transit Auth., 225 F. Supp. 2d 1362, 1372 (N.D. Ga. 2002) (quoting Rizzo, 423 U.S. at 378-79); see also Franklin, 205 Ga. at 790 (emphasizing that “the legislature has a *wide latitude* in determining how the qualifications required by the Constitution may be determined”) (emphasis added).

Through the actions of the State Election Board, all the equipment necessary for the production of free photo IDs in each county registrar's office has been distributed and installed, and registrars have begin issuing photo IDs. (McIver Aff. ¶¶ 6, 7, 10.) In addition, in conjunction with a mass training session held between May 22-24, the training of all registrars under 2006 Photo ID Act has been completed. (Id. ¶ 7.) Many counties have also received on-site training from the equipment vendor, as may have been required by the needs of the particular county. (Id.) The educational effort initiated by the State Election Board is well underway, printing of educational pieces has begun, counties have been instructed as to their use, and advance voting begins on Monday, July 10. (Id. ¶¶ 11-13 & Ex. 1.)

In contrast, Plaintiffs' only threatened injury is their alleged inability to vote in a preferred manner. There, however, is no constitutional right to vote in a preferred manner, either under the Georgia Constitution or the U.S. Constitution. See Ga. Const. art. II, § 1, ¶ 1

(permitting the General Assembly to “provide[] by law” the “[m]ethod of voting” in Georgia); Wheeler, 200 Ga. at 334 (“The legislative branch of our government is charged with the duty of providing the manner of holding elections”); see also Burdick v. Takushi, 504 U.S. 428, 433, 112 S. Ct. 2059, 2063, 119 L. Ed. 2d 245, 253 (1992) (“[I]t does not follow, however, that the right to vote in any manner . . . [is] absolute.”); Kramer v. Union Free Sch. Dist., 395 U.S. 621, 626 n.6, 89 S.Ct. 1886, 1889 n.6, 23 L.Ed.2d 583, 589 n.6 (1969) (“[A]t issue was not a claimed right to vote but a claimed right to an absentee ballot.”); McDonald v. Board of Election Comm’rs, 394 U.S. 802, 807-08, 89 S.Ct. 1404, 1408, 22 L. Ed. 2d 739, 745 (1969) (“[T]here is nothing in the record to indicate that the Illinois statutory scheme has an impact on appellants’ ability to exercise the fundamental right to vote. It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots.”); Rokita, 2006 U.S. Dist. LEXIS 20321, at *115 (“[T]here is no absolute constitutional right to vote in any specific manner an individual may desire”).

Additionally, the circumstances of which Plaintiffs complain are easily remedied. Any registered voter who does not possess a photo ID can obtain one free of charge at the voter registrar’s office in Fulton County, or any of the 60 DDS service centers throughout Georgia, including three in Fulton County. That Mr. Hess might need to visit one of those offices to obtain a photo ID to vote in person is not a burden which supports striking down the law, much less the drastic remedy of a TRO or interlocutory injunction. See Franklin, 205 Ga. at 791-92 (upholding a 1949 Georgia law which required all registered voters to re-register, stating that “[i]t may be that those voters who are now on the permanent voters’ list will be put to great inconvenience in registering again, but this standing alone is not a sufficient reason to strike down the act”). Mr. Hess could also vote an absentee ballot by mail. Either way, any

inconvenience suffered by Mr. Hess is far outweighed by the severe effects a preliminary injunction at this late date would have on the Defendants' election process.

4. **The Public Interest Would Not Be Served by Granted the Requested Temporary Restraining Order.**

It is in the public interest that the State of Georgia not be enjoined from applying its duly enacted and federally precleared photo ID requirement in the July 18, 2006 primary election. A court "should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws" when deciding whether a TRO or interlocutory injunction is appropriate. Miller v. Bd. of Comm'rs, 45 F. Supp. 2d 1369, 1372 (M.D. Ga. 1998) (quoting Reynolds v. Sims, 377 U.S. 533, 585 (1964)). There is a strong public interest in applying the State of Georgia's photo ID requirement to the upcoming elections.

First, Georgia has a legitimate interest in maintaining the integrity of the election process and minimizing voter fraud. See Burdick, 504 U.S. at 441, 112 S. Ct. at 2067, 119 L. Ed. 2d at 258 (stating that "the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system"); League of Women Voters v. Blackwell, 340 F. Supp. 2d 823, 829 (N.D. Ohio 2004) ("Few can doubt that deterrence, detection, and avoidance of election fraud are fundamentally important state and public concerns and interests."); Colo. Common Cause v. Davidson, No. 04CV7709, 2004 WL 2360485, at *3 (D. Colo. Oct. 18, 2004) ("Preventing voters from voting more than once, preventing otherwise ineligible voters from voting, and preventing other kinds of election fraud, is part and parcel of this same compelling state interest."). Ascertaining an individual's identity before allowing the person to vote is a rational way to guard against voter fraud. See Rokita, 2006 U.S. Dist. LEXIS 20321, at *130 ("It is beyond dispute that Indiana has a compelling

interest in ascertaining an individual's identity before allowing the person to vote. It is also well-established that Indiana has an important interest in preventing voter fraud.”).

“Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections.” Burdick, 504 U.S. at 433, 112 S. Ct. at 2063, 119 L. Ed. 2d at 253. The authority to regulate elections, including “the initial task of determining the qualifications of voters,” is given to the states, and “*there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.*” Storer, 415 U.S. at 729-30, 94 S. Ct. at 1279, 39 L. Ed. 2d at 723-24 (citing U.S. Const. art. I, § 2, cl. 1) (emphasis added); see also Dunn v. Blumstein, 405 U.S. 330, 336, 92 S. Ct. 995, 1000, 31 L. Ed. 2d 274, 281 (1972) (“States have the power to impose voter qualifications, and to regulate access to the franchise in other ways.”); Rokita, 2006 U.S. Dist. LEXIS 20321, at *116 (“Pursuant to Art. I, § 4, cl. 1, ‘state legislatures may, without transgressing the Constitution, impose extensive restrictions on voting.’”) (quoting Griffin v. Roupas, 385 F.3d 1128, 1130 (7th Cir. 2004)).

Election laws will invariably impose some burden upon individual voters. Each provision of a code, “whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, *or the voting process itself*, inevitably affects – at least to some degree – the individual’s right to vote and his right to associate with others for political ends.”

Burdick, 504 U.S. at 433, 112 S. Ct. at 2063, 119 L. Ed. 2d at 253 (emphasis added) (quoting Anderson v. Celebrezze, 460 U.S. 780, 788, 103 S. Ct. 1564, 1570, 75 L. Ed. 2d 547, 557 (1983)).

The public interest in eliminating the potential for voter fraud with better voter identification requirements “is to be given weight in deciding whether restraining a state statute would harm the public interest.” BankWest, Inc. v. Baker, 324 F. Supp. 2d 1333, 1357 (N.D.

Ga. 2004) (citing Premium Tobacco Stores, Inc. v. Fisher, 51 F. Supp. 2d 1099, 1108 (D. Colo. 1999)). As Judge Marvin Shoob explained two years ago in a challenge to another Georgia statute:

It is not the province of this Court to resolve the debate as to whether [a duly enacted state law] is good or bad for Georgia citizens. That is a matter for the legislature to decide. Absent a showing by [P]laintiffs that the Act is unconstitutional, which they have failed to do, *the Court must defer to the legislature's determination that enforcement of the Act will serve the public interest.*

Id. at 1357-58 (emphasis added); see Ne. Fla. Chapter, 896 F.2d at 1285 (stating that “enjoin[ing] the enforcement of a municipal ordinance adopted by a duly elected city council [before trial] . . . overrules the decision of the elected representatives of the people and, thus, in a sense interferes with the processes of democratic government”).

Second, the Georgia General Assembly’s remedy need not be perfect in order to serve the public interest. Plaintiffs’ political preference for alternatives other than what was enacted is legally irrelevant and cannot serve as a basis for enjoining the 2006 Photo ID Act. See Rokita, 2006 U.S. Dist. LEXIS 20321, at *142-43 (“Plaintiffs expend considerable effort in their briefs explaining that there exist effective alternatives to requiring photo identification that the General Assembly could have adopted and that there are additional potential avenues of voter fraud that the General Assembly failed to address with [the Indiana Photo ID Act]. These arguments are not relevant, never mind persuasive in view of the fact that the legislature has wide latitude in determining the problems it wishes to address and the manner in which it desires to address them.”) (footnote omitted).

The Supreme Court has emphasized that elected officials should be permitted to respond to electoral process deficiencies “with foresight rather than reactively.” Munro v. Socialist Workers Party, 479 U.S. 189, 195, 107 S. Ct. 533, 537, 93 L. Ed. 2d 499, 506 (1986).

“[E]laborate, empirical verification of the weightiness of the State’s asserted justifications” is not required. Timmons v. Twin Cities Area New Party, 520 U.S. 351, 364, 117 S. Ct. 1364, 1377, 137 L. Ed. 2d 589, 601 (1997). Courts must defer to the legislature’s judgment because “the striking of the balance between discouraging fraud and other abuses and encouraging turnout is quintessentially a legislative judgment with which [] judges should not interfere unless strongly convinced that the legislative judgment is grossly awry.” Griffin v. Rogers, 385 F.3d 1128, 1131 (7th Cir. 2004), quoted in Rokita, 2006 U.S. Dist. LEXIS 20321, at *131.

As Chief Justice Cardozo once wrote, a legislature is also not required to solve all possible evils at once and may choose among various alternatives, even if the chosen alternative will not completely eliminate the evil. See People v. Teuscher, 162 N.E. 484, 485 (N.Y. 1928) (“Legislation is not void because it hits the evil that is uppermost. Equally it is not void because it hits the evil that is nearest.”); see also Weber v. Shelley, 347 F.3d 1101, 1106 (9th Cir. 2003) (upholding legislative determination even if enacted requirement cannot completely eliminate voter fraud). Both the Supreme Court of Georgia as recently as four years ago and the federal court upholding Indiana’s photo ID law earlier this year stressed this point in similar holdings:

Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. *The legislature may select one phase of one field and apply a remedy there, neglecting the others.* The prohibition of the Equal Protection Clause goes no further than the invidious discrimination.

Cross v. Stokes, 275 Ga. 872, 877-78 (2002) (quoting Williamson v. Lee Optical of Okla., 348 U.S. 483, 489, 75 S. Ct. 461, 465, 99 L. Ed. 2d 563, 573 (1955)) (emphasis added); Rokita, 2006 U.S. Dist. LEXIS 20321, at *143 (same); accord FCC v. Beach Commc’ns, Inc., 508 U.S. 307, 316, 113 S. Ct. 2096, 2102, 124 L. Ed. 2d 211, 223 (1993) (same); see also Doe v. Moore, 410

F.3d 1337, 1348 (11th Cir. 2005) (“We will not substitute our judgment on when and where to make such distinctions for that of the [] legislature.”).

In short, “[t]he legislature is free to discern, or to think that it discerns, a greater need to protect the integrity of the democratic process in [one area than another]. It may move to attack a harm where it is perceived, without any necessity for moving against it on other fronts where it may also be found.” Fortson v. Weeks, 232 Ga. 472, 489 (1974) (Hall, J., concurring) (citations omitted); see also McDonald, 394 U.S. at 809, 89 S. Ct. at 745, 22 L. Ed. 2d at 1408. (“[A] legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked.”).

Finally, it is through Plaintiffs’ counsel’s own actions that the legal issue in this case has not already been considered on the merits, and the public should not be penalized for Plaintiffs’ counsel’s failure to bring a justiciable case in the Berry v. Perdue litigation. The Berry complaint was filed over two months ago, with a final hearing specially set on July 3. However, because Plaintiffs’ counsel would not admit that their only plaintiff lacked standing to challenge the 2006 Photo ID Act until the Court compelled them to respond formally to the apparent jurisdictional issue, they waited until June 30 to dismiss their case. Plaintiffs’ counsel then rushed into this Court in a last-second attempt to have this presumptively valid statute enjoined. The public interest in preventing voter fraud is not overcome by such self-imposed dilatory tactics.

Because Plaintiffs have not carried their burden of showing that the extraordinary relief sought would aid public interest, and because strong public interest instead exists for applying

the photo ID requirement in the upcoming election, the Court should deny Plaintiffs' motion for a TRO.

IV. CONCLUSION

For the reasons set forth above, State Defendants respectfully request that the Court deny Plaintiffs' request for a temporary restraining order.

This 5th day of July, 2006.

Respectfully submitted,


THURBERT E. BAKER
Attorney General
Georgia Bar No. 033887

DENNIS R. DUNN
Deputy Attorney General
Georgia Bar No. 234098

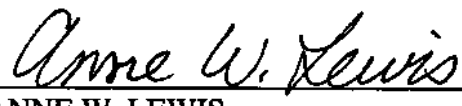
40 Capitol Square, S.W.
State of Georgia
Department of Law
Atlanta, GA 30334-1300
Telephone: 404/656-7298
Facsimile: 404/657-9932

STEFAN E. RITTER
Senior Assistant Attorney General
Georgia Bar No. 606950

Troutman Sanders LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, GA 30308
Telephone: 404/885-3597
Facsimile: 404/962-6753


MARK H. COHEN
Special Assistant Attorney General
Georgia Bar No. 174567

Strickland Brockington Lewis LLP
Midtown Proscenium, Suite 2000
1170 Peachtree Street, N.E.
Atlanta, GA 30309
Telephone: 678/347-2200
Facsimile: 678/347-2210


ANNE W. LEWIS
Special Assistant Attorney General
Georgia Bar No. 737490
(signed with express permission by Mark H. Cohen)

CERTIFICATE OF SERVICE

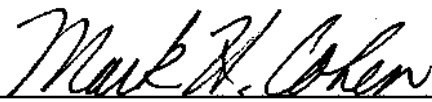
This is to certify that I have this day served a true and correct copy of the STATE DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER upon the following counsel of record via electronic mail and U.S. mail addressed as follows:

Roy E. Barnes, Esq.
roy@barneslawgroup.com
Jennifer Auer Jordan, Esq.
jennifer@barneslawgroup.com
The Barnes Law Group, L.L.C.
P.O. Box 489
Marietta, GA 30061

O. V. Brantley, Esq.
Fulton County Attorney
141 Pryor Street, S.W., Suite 4038
Atlanta, GA 30303
ov.brantley@co.fulton.ga.us

A. Lee Parks, Jr., Esq.
Parks, Chesin & Walbert, P.C.
26th Floor
75 Fourteenth Street
Atlanta, GA 30309
lparks@pcwlawfirm.com

This 5th day of July, 2006.



MARK H. COHEN
Georgia Bar No. 174567