

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

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

Plaintiffs,)

v.)

CIVIL ACTION
FILE NO. 2008cv151081

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

Defendants.)

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION
FOR A TEMPORARY RESTRAINING ORDER**

On May 23, 2008, Plaintiff Democratic Party of Georgia, Inc. filed a complaint seeking to have the Court declare unconstitutional and enjoin the enforcement of, the 2006 amendment to O.C.G.A. § 21-2-417 (Ga. L. 2006, p.3, § 2 / S.B. 84) (“the 2006 Photo ID Act” or “the Act”).¹

¹ Plaintiffs assert a facial **and** as applied challenge to the 2006 Photo ID Act. A facial challenge is appropriate here because the statute **always prohibits** a duly-qualified elector from casting a ballot, *in person*, if he or she does not present the required photo identification. *See State v. Jackson*, 269 Ga. 308, 312 (1998). *See generally Hubbard v. State*, 256 Ga. 637, 638-39

Along with the Complaint, plaintiff served discovery requests and filed a motion to expedite the responses to the discovery. That motion is pending before the Court. While the plaintiffs need to conduct some discovery before pursuing an interlocutory injunction on all of the claims asserted in the Complaint, plaintiff seeks a temporary restraining order because of the upcoming July 15 elections and the irreparable harm that will occur because of the deprivation of a right established by the Georgia Constitution.

In this lawsuit, plaintiff intends to establish that the 2006 Photo ID Act violates several provisions of the Georgia Constitution.² This Motion deals only with Count One, which has already been decided in the plaintiff's favor by this Court on two separate occasions. Specifically, plaintiff seeks a temporary restraining order to prevent the application of the Act in the primary election on July 15, 2008, because the Act imposes an unauthorized condition and qualification on the fundamental right to vote of registered Georgia voters in violation of Art. II, § I, ¶ II of the Georgia Constitution.

The Georgia Constitution does not give the General Assembly the power to impose an absolute condition or qualification of voting. A Georgia resident has an **absolute right** to vote if he or she meets the four qualifications expressed in the Constitution. The 2006 Photo ID Act violates this precept.

In a previous case, *Lake v. Perdue*, Civ. Action No. 2006 CV 119207, Fulton County Superior Court, this Court twice considered whether the 2006 Photo ID Act violates Art. II § J,

(1987) (explaining that facial challenge is inappropriate where the question is one of construction, that is, a question of whether the statute can be construed in a constitutional manner). There is no ambiguity, this statute mandates that state issued photo identification must be shown to cast a ballot in person.

² Plaintiff asserts no claim in this action arising out of the United States Constitution or any laws or treaties of the United States.

¶¶ II & III of the Georgia Constitution and on both occasions, concluded that it does. In one such ruling, where the Court issued a TRO prohibiting enforcement of the law, Judge Westmoreland held:

In this instance the 2006 amendment surpasses the defined role given to the legislature by the Constitution when it violates the Constitution by placing a restrictive condition on the right of a citizen to vote.

Order at 3. A copy of this July 7, 2006 Order is attached hereto as Exhibit 1.

In a second ruling granting an injunction and declaring the 2006 Photo ID Act unconstitutional under the Georgia Constitution, Judge Bedford held that:

[T]his Court HEREBY DECLARES O.C.G.A. § 21-2-417 AS AMENDED IN 2006 UNCONSTITUTIONAL pursuant to the Georgia Constitution, Article II, Section I, Paragraphs 2 and 3 and **HEREBY PERMANENTLY ENJOINS** the Defendants in their official capacities and the State and all its political subdivisions from enforcing or applying the provisions of O.C.G.A. § 21-2-417 (2006) so as to condition the counting of any properly registered and qualified voter's ballot exclusively on the presentation of a photo ID for in-person voting.

Order at 17. A copy of this September 19, 2006 Order is attached hereto as Exhibit 2.

While the Supreme Court ultimately vacated the September 19, 2006 injunction because it determined that the plaintiff did not have standing to challenge the law, nothing in that opinion called into question the Superior Court's analysis of the 2006 Photo ID Act's constitutionality under the Georgia Constitution. (A copy of the Opinion of the Georgia Supreme Court in *Lake v. Perdue* is attached as Exhibit 3). For the same reasons set forth in the September 19, 2006 Order of this Court, the defendants should be restrained from enforcing the 2006 Photo ID Act in the July 15, 2008 primary election.

STATEMENT OF FACTS

I. Voter Identification Requirements in Georgia

A. There was no identification requirement for voting at the polls prior to 1998.

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.

B. Seventeen forms of identification were acceptable prior to the 2005 Amendment to O.C.G.A. § 21-2-417.

As a result of the adoption of O.C.G.A. § 21-2-417 in 1997 by the General Assembly, Georgia voters were required for the first time to present one of seventeen forms of identification to election officials as a condition of being admitted to, and allowed to vote at the polls. *See* former O.C.G.A. § 21-2-417. Under O.C.G.A. § 21-2-417 as it existed prior to its amendment by the Photo ID Acts in 2005 and 2006, registered voters had the option of using a Georgia driver's license or other form of official photographic identification as a method of identification as a condition of voting. Photographic identification was not required, however. Voters were free to use any of eight other methods of identification, including such commonly available documents as a social security card, a current utility bill, a government check, a payroll check, or a bank statement that showed the name and address of the voter. *See* former O.C.G.A. § 21-2-417(a)(10), (11), (14), (15), (16).

Significantly, Georgia law provided for an alternative means of identification for a voter who did not have, or was unable to find, one of the seventeen forms of photographic or non-photographic identification specified in former O.C.G.A. § 21-2-417(a) on election day. Such a voter was entitled under Georgia law, as it existed prior to the enactment of the Photo ID Acts of 2005 and 2006, to be admitted to the polls, issued a ballot and allowed to vote simply by signing 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). This "fail safe provision" (O.C.G.A. § 21-2-417(b)), guaranteed the right to vote at the polls of any registered voter who did not have or was unable to find one of the 17 forms of photographic or non-photographic identification specified in former O.C.G.A. § 21-2-417(a).³

C. The 2005 Photo ID Act.

In 2005, the General Assembly of Georgia amended O.C.G.A. § 21-2-417, to eliminate the fail-safe provision and require 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 (Ga. L. 2005, P. 253, § 59/HB244, "the 2005 Photo ID Act").

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.⁴

³ According to an August 25, 2005 "Section 5 Recommendation Memorandum" of the Voting Rights Section of the Department of Justice career staff, 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." *See* Complaint, Exh. A, p. 19.

⁴ In removing restrictions on who may vote by absentee ballot, Georgia lawmakers ignored advice from the Secretary of State who informed the members of the State Senate and the Governor that by adopting the provision of HB 244 that proposed to make it easier for voters to

The 2005 Photo ID Act was signed into law by Georgia's Governor, Sonny Perdue, on April 22, 2005,⁵ and was scheduled to become effective on July 1, 2005, subject to pre-clearance by the United States Department of Justice. 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 (*see* Complaint, Exh. A), but their recommendation was overruled the next day by the Republican political appointees in the Department of Justice. *See* Complaint, Exh. E. Thus the 2005 Photo ID Act became effective upon pre-clearance by the Justice Department, on August 26, 2005.

On October 18, 2005, the United States District Court for the Northern District of Georgia granted a preliminary injunction prohibiting the enforcement of the 2005 Photo ID statute on the ground that the Plaintiffs established a substantial likelihood of success on the

cast absentee ballots, “[y]ou would be opening a gaping opportunity for fraud.” *See* Complaint, Exh. C, p. 1. She explained the basis for her opinion 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.

Id.

⁵ The Secretary of State is the Chief Election Officer in Georgia. *See* O.C.G.A. § 21-2-30(d); O.C.G.A. § 21-2-50.2; and O.C.G.A. § 21-2-210. The Secretary of State has stated publicly in letters to the General Assembly before the passage of the 2005 Photo ID Act (Complaint, Exh. C), and to the Governor (Complaint, Exh. D) before he signed the bill into law, that **there have been no documented cases of fraudulent in-person voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers** reported to the Secretary of State during her nine years in office.

merits of their claim that the 2005 Photo ID requirement violated the United States Constitution. *Common Cause v. Billups*, 406 F. Supp. 2d 1326, 1359-1370 (N.D. Ga. 2005).⁶

D. The 2006 Photo ID Act.

In January, 2006, the majority in both the House and Senate adopted SB 84 which repealed the 2005 Photo ID Amendment, and replaced it with a similar list of approved forms of photo ID's which must be presented prior to voting in person, and added a new code (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 that are only vaguely described in the statute. Section 3 of SB 84 also amended O.C.G.A. § 40-5-103 by striking the previous subsection (d) in the 2005 Photo ID Act, which had required a voter to execute an affidavit of poverty to obtain a Photo ID without charge from the DDS and substituted in its place a requirement that the voter swear "that he or she desires an identification card in order to vote . . . and that he or she does not have any other form of identification that is acceptable under Code § 21-2-417" and to "produce evidence that he or she is registered to vote in Georgia."⁷

The 2006 Photo ID Act, like the 2005 Photo ID Act that preceded it, applies only to the hundreds of thousands of Georgia citizens who 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 those who are the least mobile members of the electorate who will have the greatest difficulty in complying with the requirements of the statute. *See* Complaint, ¶ 39. Those

⁶ The federal court in *Common Cause* found that it was precluded from considering plaintiffs' claims under the Georgia Constitution because of the Eleventh Amendment. 406 F. Supp. 2d at 1356-57.

⁷ *See* Complaint, Exh. F. The Governor signed the bill shortly thereafter. *See* Complaint, ¶ 37.

affected by the statute are most likely poor, elderly and/or infirm and they are not likely to own a car, be able to drive, or have access to a car.

The effect of the 2006 Photo ID Act 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 no more identification than what was required to vote under Georgia law prior to 2005. *See* Complaint, ¶ 40. This requirement does nothing to prevent fraud because one seeking to obtain a Voter ID does not need to provide any documentation other than a voter registration application. *See* Complaint, ¶¶ 42-43.⁸

E. The 2006 Photo ID Act Affects a Large Number of Registered Voters

The Photo ID requirement affects a large number of Georgia voters. The State has demonstrated that between 289,000 and 505,000 Georgia registered voters do not have the most common form of photo IDs, a driver's license or a photo ID issued by the Department of Driver Services. At the request of Republican Secretary of State, Karen Handel, and the Republican-dominated State Election Board, in August 2007, the Department of Driver Services matched all the names in its database of people who have had a Georgia driver's license or DDS issued photo ID against the names and addresses of all 5.04 million voters in the Secretary of State's computerized database of all registered voters in Georgia. The result of these data matches were

⁸ There is overwhelming evidence that the claim that the statute was necessary to prevent fraudulent in-person voting by imposters is itself fraud and a pretext. *See, e.g.*, Complaint, ¶ 61. For example, if the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed at least the same, if not greater, restrictions on the casting of absentee ballots – especially after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office. The fact that the General Assembly went in the opposite direction and expanded the opportunities for fraud in absentee voting is further evidence of the pretextual nature of justification for the statute.

summarized by the DDS in a report, attached to the Complaint as Exhibit L. The DDS summary reflects that:

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

See Complaint, ¶ 49.

This is consistent with other data on the subject. For example, 2000 U.S. Census data, which indicate that: 390,414 Georgians of voting age do not have access to a car or truck, and (b) 243,949 Georgia households do not have access to a car or truck. Also, at the time he signed the 2005 Photo ID act, Governor Perdue stated publicly that 300,000 Georgians do not have a driver's license or other acceptable form of photo identification for voting. *See* Complaint, Ex K.

The availability of a Voter ID has not significantly reduced this total. As of the February 5, 2008 Presidential Preference Primary, a total of only 7,582 Georgia Voter ID's had been issued by county registrars and boards of elections. *See* Complaint, ¶ 50.

In elections where the photo ID requirement has been enforced, Georgia voters have been disenfranchised. In the February 5, 2008 Presidential Preference Primary, for example, at least 416 provisional ballots were cast because the registered voter did not have a Photo ID. Only 120

of those presented a Photo ID at their registrar's office within 48 hours to have their votes counted. *See* Complaint, ¶ 52.

ARGUMENT

When notice has been provided to the opposing party, a trial court has the discretion to grant an injunction to preserve the status quo and balance the conveniences of the parties pending final adjudication. *Ebon Foundation v. Oatman*, 269 Ga. 340, 344 (1998). This Court should grant Plaintiff's Motion for Temporary Restraining Order because it has demonstrated that the equities weigh heavily in favor of granting the TRO. The Act violates the Georgia Constitution and will cause irreparable harm in the absence of a TRO by (among other things) depriving hundreds of thousands of Georgia of their Constitutional rights. Because there is no evidence of in-person voting fraud in Georgia, a TRO would cause no harm to the defendants.

A. **The Photo ID Requirement Imposes An Unauthorized Absolute Condition on the Fundamental Right to Vote In Violation of Art. II, § I, ¶ II of the Georgia Constitution.**

The Georgia Constitution guarantees the right to vote to all who meet the qualifications enumerated in Article II, Section I, Paragraph II of the Georgia Constitution. It also specifies the grounds for which an otherwise qualified voter may be disenfranchised. Art. II, § I, ¶ III. Stated another way, the 2006 Photo ID Act, like the 2005 Photo ID Act, creates a conclusive presumption 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, and that violates both Article II, § I, ¶ II of the Georgia Constitution.

There is nothing ambiguous or equivocal about either of these sections of the Georgia Constitution. Their plain meaning should be honored by this Court. *See, e.g., Hollowell v. Jove*,

247 Ga. 678, 681 (1981) (“[W]here a constitutional provision or statute is plain and susceptible of but one natural and reasonable construction, the court has no authority to place a different construction upon it, but must construe it according to its terms.”). See *Weinschenk v. State*, 203 S.W.3d 201, 221 (Mo. 2006) (enjoining the application of a photo ID law similar to the Act at issue here because it violated the plain terms of the Missouri Constitution).

The 2006 Photo ID Act violates Article II of the Georgia Constitution in two ways: (a) it adds a new qualification or condition on the right to vote, and (b) it adds a new ground for denying the right to vote of citizens who are lawfully registered. Accordingly, the Court should temporarily restrain the enforcement of the 2006 Photo ID Act.

B. The ID Act Violates Article II, § I, ¶ II of the Georgia Constitution.

The 2006 Photo ID requirement unconstitutionally adds a new qualification and condition to the right to vote in Georgia. Article II, Section I, Paragraph II of the Georgia Constitution guarantees the right to vote to every citizen of Georgia who meets the following qualifications: (1) **citizenship** in the United States, (2) **residency** of the State of Georgia as defined by statute, (3) at least **18 years of age**, and (4) who is **registered** to 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).⁹

⁹ The Georgia Constitution also specifies only two grounds on which a person who is *lawfully registered* may be denied the right to vote (*i.e.*, “disenfranchised by this article”): (1) conviction of a felony involving moral turpitude, or (2) adjudication of mental incompetence. Art. II, § I, ¶ III. These grounds are discussed in section C, *infra*.

It is well-established under both the law of this State (*Jones v. Fortson*, 223 Ga. 7, 13 (1967); *Franklin v. Harper*, 205 Ga. 779, 790 (1949); *Stewart v. State*, 98 Ga. 202, 205 (1896)), as well as under federal law (*Powell v. McCormack*, 395 U.S. 486 (1969); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 798 (1995)), that where the qualifications to vote or hold public office are expressly stated in the Constitution, the qualifications so listed are *exclusive*, and neither the legislature nor Congress may add to or subtract from these qualifications.

The Georgia Supreme Court construed the predecessor of Art. II, § I, ¶ II in the 1945 Georgia Constitution in *Franklin v. Harper*, 205 Ga. at 790. The Court said 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.” (Emphasis added). Similarly, in *Stewart v. State*, 98 Ga. at 205, the Georgia Supreme Court held that where the Georgia Constitution “undertakes to enumerate and describe . . . that enumeration and description is exhaustive, and the legislature cannot thereafter enlarge the list.” And in *Jones v. Fortson*, 223 Ga. at 13, the Court stated that a “[constitutional] provision which expressly prescribes the manner of doing a particular thing is exclusive in that regard and impliedly prohibits performance in a substantially different manner. Thus, where the manner in which, or the means by which, a power granted shall be exercised are specified, such manner or means are exclusive of all others. . . .” *Id.* (quotation marks and citation omitted).¹⁰

¹⁰ See also *Morris v. Powell*, 25 N.E. 221, 223 (Ind. 1890) (“That, when the people by the adoption of the constitution, have fixed and defined in the constitution itself what qualifications a voter shall possess to entitle him to vote, the legislature cannot add an additional qualification, is too plain and well recognized for argument or to need the citation of authorities. The principle is elementary that when the constitution defines the qualification of voters, that qualification cannot be added to or changed by legislative enactment.”); *Koy v. Schneider*, 218 S.W. 479, 480 (Tex. 1920) (“[A]ll the authorities seem in accord with the statement that ‘[w]here the right of suffrage is fixed in the Constitution of a state, as is the case in most states, it can be restricted or changed by an amendment to the Constitution or by an amendment to the federal Constitution, which, of

The role of the legislature in regulating voting is carefully *defined* in Article II, Section I, Paragraph II, and *limited* to two specific functions. The legislature is authorized (1) to establish “*minimum residency requirements;*” and (2) to provide for the *registration* of electors. The 2006 Photo ID Act is not a residency requirement, nor does it make presentation of a Photo ID a condition of registration. *See Franklin*, 205 Ga. at 790 (“Registration statutes have for their purpose the regulation of the exercise of the right of suffrage, not to qualify or restrict the right to vote.”) (emphasis added). Under Georgia law, anyone can *register* to vote (or cast an absentee ballot by mail) without presenting a Photo ID. Instead, the 2006 Photo ID Act imposes a new qualification or condition on the right of citizens who are *already lawfully registered* to vote in person. In enacting this legislation, the General Assembly has exceeded the authority granted to it under the Georgia Constitution. *See Weinschenk*, 203 S.W.3d at 212 (holding that similar provision in Missouri Constitution establishes *exclusive* qualifications for voting).

C. The Act Violates Article II, § I, ¶ III of the Georgia Constitution.

The 2006 Photo ID requirement also violates Article II, Section I, Paragraph III by making the failure to present a Photo ID at the polls (or within 2 days thereafter) a ground for denying a registered voter the right to vote. Article II, § I, ¶ III of the Georgia Constitution limits the grounds on which a Georgia citizen who is registered may be denied the right to vote by providing only two grounds on which a lawfully registered voter may be denied the right to vote: (1) conviction of a felony involving moral turpitude, or (2) judicial determination of mental incompetency to vote. The Georgia Constitution does not authorize the legislature to specify any

course, is binding upon the states. But it cannot be restricted or changed in any other way. The legislature can pass no law, directly or indirectly, either restricting or extending the right of suffrage as fixed by the Constitution.”).

additional grounds (such as the presentation of a Photo ID) for denying any citizen the right to vote.

In *Powell v. McCormack*, 395 U.S. 486 (1969), the Supreme Court of the United States held that the qualifications for member of the House of Representatives set forth in Article I, § II, ¶ II of the Constitution were exclusive and that Congress could not use the power expressly granted to “Each House” in Section 5 of Article I to “be the judge of the . . . qualifications of its own members” to add to those qualifications expressly stated in Art. I, § II, ¶ II to either refuse to seat or expel Representative Adam Clayton Powell from the House.

In its subsequent opinion in the *Term Limits* case, the Supreme Court struck down a provision in the Arkansas Constitution imposing term limits on its U.S. Senators and Congressmen on the ground that, “the qualifications for service in Congress set forth in the text of the Constitution are ‘fixed,’ at least in the sense that they may not be supplemented by Congress.” *U.S. Term Limits, Inc.*, 514 U.S. at 798.

The Court explained its earlier decision in *Powell* based on the text of the Qualifications Clause:

[T]he enumeration of a few qualifications would by implication tie up the hands of the Legislature from supplying omissions. . . .

It would seem but fair reasoning upon the plainest principles of interpretation, that when the constitution established certain qualifications, as necessary for office, it meant to exclude all others, as prerequisites. From the very nature of such a provision, the affirmation of these qualifications would seem to imply a negative of all others.

Id. at 793 n. 9 (internal citations and quotations omitted).

Thus, the 2006 Photo ID requirement violates Article II, § I, ¶ III of the Georgia Constitution. *See* Exhibit 2 (Order, p. 15) (“Nowhere in the Constitution is the legislature

authorized to deny a registered voter the right to vote on any other ground, including possession of a photo ID of the type required by [the 2006 law]”).

By making presentation of a Photo ID by citizens who are lawfully registered an additional condition of voting, and by making the failure to present a Photo ID at the polls an additional ground for denying citizens of their right to vote, the 2006 Photo ID Act violates both Art. II, § I, ¶ II and Art. II, § I, ¶ III of the Georgia Constitution.

D. The 2006 Photo ID Act is Not a Valid Time, Place or Manner Restriction.

The State has argued that the Photo ID requirement should be upheld under Article II, Section I, Paragraph I of the Georgia Constitution that allows the State to control the time, place and manner of elections. The Photo ID requirement is not, however, a valid “time, place or manner” restriction on the right to vote.

A similar argument by the State of Arkansas was expressly rejected by the United States Supreme Court in the *U.S. Term Limits* case. 514 U.S. at 828-836 (Part IV). In that case, the Court held that neither the Tenth Amendment, nor the power granted to the States by Art. I, § IV to prescribe “The Times, Places and Manner of holding Elections for Senators and Representatives,” authorized the states to add to or supplement the qualifications set forth in the Constitution by imposing term limits on members of Congress. *Id.* at 833-34 (Elections Clause, which allows states to regulate “times, places, and manner” of elections, is “a grant of authority to issue procedural regulations, and not . . . a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints.”); *see also Statesboro Publ’g. Co. v. City of Sylvania*, 271 Ga. 92, 93 (1999) (holding that ordinance regulating political speech – purportedly under City’s authority to regulate time, place, or manner of expression – must be narrowly drawn under the Georgia Constitution).

Furthermore, adoption of the State’s proffered construction of the “time, place and manner” provision in Art. II, § 1, ¶ 1 would drain all meaning out of the Georgia Constitutional provisions discussed above, Art. II, § 1, ¶¶ 2 & 3. The State’s argument violates well-established canons of construction. *See Service Employees Int’l Union v. Perdue*, 280 Ga. 379, 382 (2006) (in construing a constitutional provision “courts are not authorized either to read into *or to read out that which would add to or change its meaning.*”) (quotation marks and citations omitted) (emphasis added); *Shelley v. Shannon*, 267 Ga. App. 582, 584 (2004) (“It is a basic rule of construction that a statute or constitutional provision should be construed to make *all its parts* harmonize and to give a sensible and intelligent effect to each part, *as it is not presumed that the legislature intended that any part would be without meaning.*”) (quotation marks and citations omitted and emphasis added); *Jones v. Darby*, 174 Ga. 71, 72 (1931) (“In construing statutes, their ordinary signification shall be applied *to all words*, except in certain defined cases. The same rule of construction is applicable to constitutional provisions.”) (citation omitted) (emphasis added).¹¹

Such a construction of the “time, place and manner” provision in Art. II, § 1, ¶ I, which would allow the legislature to make an end run around the mandatory restrictions in paragraphs II and III, is contrary to Georgia law. The legislature is not only prohibited from *directly* denying registered voters the right to vote granted by Article II, § I, ¶ III, by making presentation of a Photo ID an additional condition or qualification of voting or making the absence of a Photo ID a ground for denial of the right to vote in violation of Art. II, § I, ¶ III. The State is also prohibited from accomplishing the same result, *indirectly*, under the guise of restricting the

¹¹ “[T]he general principles governing the construction of statutes apply also to the construction of the Constitution.” *DeJarnette v. Hospital Auth. of Albany*, 195 Ga. 189, 204 (1942) (citations omitted).

“manner of elections” under Paragraph I of the same section. *See Morris v. Glover*, 121 Ga. 751, 753 (1905) (holding that the legislature may not “by indirection accomplish what it is restrained from doing by the organic law of the land.”) As the Supreme Court said in rejecting a similar argument in the *Term Limits* case, “[C]onstitutional rights would be of little value if they could be . . . indirectly denied [citation omitted]. The Constitution nullifies sophisticated as well as simple-minded modes of infringing on constitutional protections.” 514 U.S. at 829 (internal quotations omitted).

In summary, the Georgia Constitution enumerates in clear and unmistakable terms the two areas in which the General Assembly is authorized to regulate by statute (“provide by law”), and also limits the grounds on which citizens of Georgia who meet both the residency and registration requirements may be denied the right to vote. *See also Franklin*, 205 Ga. at 790 (noting that the legislature may not deny the right of franchise by “making the exercise of such right so difficult or inconvenient as to amount to a denial of the right to vote.”).

The 2006 Photo ID Act thus falls outside the scope of the General Assembly’s authority.

E. The Ability to Vote Absentee is Not an Adequate Substitute for In-Person Voting.

While the State may argue that no one is disenfranchised because of a theoretical ability to vote by absentee ballot, that is not the case.

To vote absentee by mail, a voter must first obtain an absentee ballot, in which a voter relies upon the registrar’s office to promptly verify the information on the application for a ballot and mail the ballot to the voter. The ballot must be mailed sufficiently early that it arrives before 7:00 p.m. on election day. *See* 406 F. Supp. 2d at 1364. Significantly, if the ballot arrives late, the vote (of a voter who is not in the military and does not reside overseas) will not be counted even if it is postmarked prior to election day. *Id.* at 1364. Should information be disclosed in the

course of campaigning leading up to election day that changes a voter's mind as to who should receive his or her vote, a voter has the right to cancel the absentee ballot and vote in person (which would require a photo ID), but a voter may not be issued a second absentee ballot, even after canceling his or her absentee ballot. *Id.* at 1353. For these reasons, theoretical availability of absentee voting by mail does not render the 2006 Photo ID Act constitutional. *See Weinschenk*, 203 S.W.3d at 215 (“Those things that require substantial planning in advance of an election to preserve the right to vote can tend to ‘eliminate from the franchise a substantial number of voters who did not plan so far ahead.’”) *quoting Harman*, 380 U.S. at 539-40.

Further many Georgia voters view absentee ballots as an unacceptable alternative. They distrust absentee ballots and therefore, prefer to vote in person. *See* 439 F. Supp. 2d at 1313. The federal court acknowledged evidence that “voters have expressed distrust of absentee voting, noting that their ballots may not be counted and that their ballots may not be handled in a way that will protect the secrecy of their votes,” and “those concerns discourage voters from using absentee voting.” Complaint, ¶ 45. Finally, the literacy of many Georgians may form a barrier to voting absentee by mail. *See* Complaint, ¶ 45; *see also* National Institute for Literacy, *The State of Literacy in America* (1998) (reporting that 23% of Georgia's adults cannot read above Level 1 – Level 1 means that a person can sign his name, but cannot read well enough to “locate eligibility from a table of employee benefits” or “identify and enter background information on a social security card application.” *Id.* at 4).

In the *Term Limits* case, the state of Arkansas made a similar argument to the absentee ballot argument advanced by the state with respect to the 2008 Photo ID Act. There, Arkansas argued that despite the Constitutional prohibition on additional qualifications, the Arkansas term limitation at issue was constitutional because it did not impose a legal bar to service – the term

limits did not prevent a candidate from running as a write-in candidate, and, if elected, serving despite the term limits. 514 U.S. at 829. The Supreme Court rejected this argument, noting that “even if petitioners are correct that incumbents may occasionally win reelection as write-in candidates, there is no denying that the ballot restrictions will make it significantly more difficult for the barred candidate to win the election.” *Id.* at 831. The Court held that “Petitioners’ argument treats the Qualifications Clauses not as the embodiment of a grand principle, but rather as empty formalism. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.” *Id.* (citations and quotations omitted).

F. The Ability to Cast a Provisional Ballot Does not Cure the Constitutional Defects in the Statute.

As this Court correctly concluded in its September 19, 2006 Order enjoining the statute, the 2006 Act, by shifting the burden to the registered voter who lacked a photo ID to prove his or her identity, disenfranchised otherwise qualified voters. (Exhibit 2, pp. 9-10).

The Court summarized the flawed logic of the statute as follows:

What appears to be the real issue is the requirement under the new law, O.C.G.A. § 21-2-417 (b), that failing a voter’s ability to produce one of the six required forms of photo ID, the voter is then allowed to vote a “provisional ballot” (O.C.G.A. § 21-2-418 (2005) and § 21-2-419 (2003)) which will only be counted if the registrars are able to verify current and valid identification of the elector by one of the six forms of photo ID already required by O.C.G.A. § 21-2-417 (a). Pursuant to O.C.G.A. § 21-2-419, the burden is then put upon the voter to appear within two days at the registrar’s office and provide the photo ID required, or simultaneously provide lesser forms of identification to qualify for issuance of a State voter photo ID (O.C.G.A. § 21-2-417 1(e)), at which time, after the voter’s photo is taken, and their ID card is issued, their vote is allowed to be counted. If the voter fails to appear within two days and provide any one of the six necessary photo IDs, which may include a voter ID card which presumably in the interim could have been obtained at a Department of Driver Services location, or simultaneously, at the registrar’s office, their vote is not counted. In effect, an otherwise qualified voter forfeits his or her vote. This cannot be.

Significantly, the primary distinction between the 1997 law with the “fail safe” affidavit provision, and the new Voter ID law with its “provisional ballot” requirement is that under the 1997 law, the vote was counted with the burden being on the State to demonstrate through its registration records that the voter was not otherwise qualified to vote. Under the new law, an otherwise qualified voter has the burden of satisfying the registrar that he or she is qualified to vote by the further condition of producing a photo ID, which, coincidentally, can be obtained without showing a photo ID. This additional condition to casting a valid vote is curious because, for purposes of registering to vote, a photo ID is not required. The only information at the registrar’s office subject to verification is residency, date of birth and a signature. There is no photo on file for comparison purposes.

G. Plaintiff Will Suffer Irreparable Harm Absent Injunctive Relief.

“[V]oting is of the most fundamental significance under our constitutional structure.”

Burdick v. Takushi, 504 U.S. 428, 434 (1992) (citation omitted). Because of the preferred place it occupies in our constitutional scheme, “any illegal impediment to the right to vote, as

guaranteed by the U.S. Constitution or statute, would by its nature be an irreparable injury.”

Harris v. Graddick, 593 F. Supp. 128, 135 (M.D. Ala 1984). *See also Elrod v. Burns*, 427 U.S. 347, 373 (1976)(the loss of constitutionally protected freedoms “for even minimal periods of time, unquestionably constitutes irreparable injury”).

Plaintiff is the Democratic Party of Georgia (“DPG”). As part of its fundamental mission, DPG fields candidates for elective offices in Georgia, engages in activities aimed at supporting those Democratic candidates, and attempts to maximize the number of Democratic candidates elected in Georgia. Complaint, ¶ 1. If the Act is not enjoined, DPG will be harmed by the diversion of its resources that will be required to counteract the effects of the Act. Moreover, hundreds of thousands of duly registered Georgia voters will be disenfranchised in violation of the Georgia Constitution if the Act is not restrained for the July 15, 2008 primary.

H. **The Harm Caused To Plaintiff Clearly Outweighs Any Harm That May Be Suffered By Defendants As A Result Of This Equitable Relief.**

Absent the imposition of equitable relief, Plaintiff will suffer harm and hundreds of thousands of other Georgians without a requisite state-issued photo ID will be disenfranchised. However, Defendants would not be harmed at all. As noted by Secretary of State Cathy Cox, in her letters to the General Assembly and to Governor Perdue, there have been no reports of in person voting fraud in her two terms as the state of Georgia's chief election officer. See Complaint, Exhs. C & D. Thus, the balance of equities clearly tips in favor of Plaintiffs and the issuance of the equitable relief requested.

CONCLUSION

For the foregoing reasons, the defendants should be restrained from enforcing the 2006 Photo ID Act at the July 15, 2008, Primary.

Respectfully submitted this 3rd day of July, 2008.



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CERTIFICATE OF SERVICE

I, David G.H. Brackett, do hereby certify that I have this day caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER** to be served on opposing counsel by hand delivery as follows:


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This 3rd day of July, 2008.



David G.H. Brackett

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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,

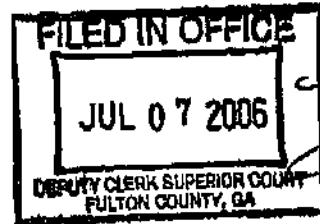
v.

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

Defendants.



CIVIL ACTION

FILE NO. 2006CV119207

TEMPORARY RESTRAINING ORDER

The above-styled action came before the Court for a hearing on Plaintiffs' motion for a temporary restraining order. Plaintiffs request that the Court enjoin Defendants, and all persons in active concert or participation with them, from enforcing the 2006 amendment to O.C.G.A. § 21-2-417 ("the 2006 Photo ID Act"), which they allege imposes an unauthorized condition and qualification on the fundamental right to vote of registered Georgia voters in violation of Article II, Section 1, Paragraph II of the Georgia Constitution.

The general assembly originally enacted legislation during the 2005 session which amended the code section at issue. In 2006, the legislature modified the identity verification process in an effort to address concerns expressed by a federal court when enjoining the earlier version of the law.

Although it may be easy for some to couch the new law in political terms, the fact remains the right to vote is not just a political right, but a constitutional one. The Court does not view this as a political matter, but rather a constitutional issue to be decided.

In that regard, our democracy has operated quite successfully for over two hundred years under a republic which separates the powers of government among three independent branches formed to create, enforce and interpret the laws.

As a co-equal branch of government, the Georgia courts have long respected the authority of the general assembly and the power of the governor while being mindful that it is the judiciary's function to secure and protect the rights of citizens against the excesses of both the legislative and executive branches.

The general assembly has wide latitude to legislate unless it undertakes to act where the Georgia Constitution enumerates a clear and unmistakable right to Georgia's citizens. It is a given that any illegal restriction of the fundamental right to vote is prohibited.

An injunction before trial must be reluctantly granted and only upon a clear showing that it is demanded by the Constitution. Although courts have the authority to declare acts of the legislature void, that approach should only be resorted to in clear and urgent cases since every presumption favors the constitutionality of a regularly enacted statute.

Plaintiffs contend the current statute violates the Georgia Constitution because it imposes an unauthorized qualification on the right to vote and that irreparable harm will result if an injunction does not issue restraining the enforcement of the new photo identification requirement. Defendants contend that the requirement is a reasonable means of achieving the legitimate state interest of regulating voting.

The right to vote is not absolute as the State can impose voter qualifications and regulate access to voting. However, it cannot unduly burden that paramount right to vote. The power to regulate elections does not justify the abridgment of the right to vote.

Although the members of the general assembly are elected by the people of Georgia, as are judges, the Georgia Constitution was approved by a vote of the citizens and the rights outlined in it supersede any contrary acts of the legislature. Where the right of suffrage is fixed in the Constitution it cannot be restricted by the legislature, but only by the people through an amendment to the Constitution.

The Court started from the premise the new statute is legal, but the Constitution simply does not allow that to stand as the end result. In this instance the 2006 amendment surpasses the defined role given to the legislature by the Constitution when it violates the Constitution by placing a restrictive condition on the right of a citizen to vote.

After consideration of the pleadings, evidence and arguments the Court finds the current statute unduly burdens the fundamental right to vote rather than regulate it and irreparable harm will result if the 2006 Photo ID Act is not enjoined.


As such, the Court GRANTS Plaintiffs' motion for a temporary restraining order and enjoins Defendants, their officers, agents, servants, employees, attorneys and those persons

in active concert or participation with them from requiring a duly qualified elector to produce state-issued photographic identification of the kind enumerated in the 2006 Photo ID Act as a pre-condition to casting a ballot in Georgia's July 18, 2006, primary election or any resulting run-off election.

Instead, the requirements of the law as they stood before the 2005 or 2006 Amendments to O.C.G.A. § 21-2-417, will remain in force. Accordingly, any of the seventeen forms of photographic or non-photographic identification specified in the former O.C.G.A. § 21-2-417(a) will be acceptable to identify the elector who presents him or herself for in-person voting at the polls. Further, if a person does not have one of the seventeen forms of identification, that person can continue to sign a statement under oath swearing or affirming that he or she is the person identified on the elector's certificate pursuant to former O.C.G.A. § 21-2-417(b).

As the undersigned heard the request for a preliminary injunction as the presiding judge, this Court's involvement in the matter is concluded and the action is referred back to the judge to whom the case is assigned, the Honorable T. Jackson Bedford, Jr., for a hearing of the requested declaratory judgment and permanent injunction.

SO ORDERED, this 7th day of July, 2006, at 3:00 p.m.


MELVIN K. WESTMORELAND
PRESIDING JUDGE
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

COPY

Hon. T. Jackson Bedford, Jr., Presiding

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

FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS,

Defendants.

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CIVIL ACTION
FILE NO. 2006CV119207

**ORDER ON PLAINTIFF'S COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

The above-styled case came before the Court on Plaintiff's Verified Complaint for Declaratory and Injunctive Relief challenging the constitutionality of O.C.G.A. § 21-2-417 as amended by the legislature in 2006, hereinafter referred to as the "new" or "2006" Voter ID law.

At the outset, the Court is mindful of the controversy surrounding this matter. Either way the Court rules, the decision will be seen by some group as egregiously wrong and there is little doubt this ruling will be appealed. Notwithstanding the controversy, this Court, as well as all courts, when confronted by such legal issues brought before it by differing parties must fulfill its constitutional obligation to rule "without favor or affection" based upon the law as the Court understands it, irrespective of politics or

personal beliefs. See, e.g., Jackson v. Seaboard Airline Ry., 140 Ga. 277 (1913) (duty of trier of facts to decide issues “without favor or affection”).

Indeed, it is the judicial philosophy of this Court to defer to the legislature in matters of public policy and legislative prerogative; however, the Court’s deference is tempered by its constitutional mandate to enforce the limitations placed on the legislature by the Constitution and, when appropriate, declare as unconstitutional those acts of the legislature which this Court believes, based upon its understanding of the law, to exceed the authority of the legislature. Ga. Const. art. I, § 2, ¶ 5. In a sense, the Constitution is a contract between the people and the State by which the people grant certain powers to the State and by which the people in turn are guaranteed that the State will not exceed those powers in the course of governance. The courts act as umpire when called upon to determine if there has been a breach of that contract, or, if you will, a violation of the rules.

I. SUMMARY OF FACTS AND LAW

A. History of Election Code as it Relates to this Case

This case was initiated by two Plaintiffs, Rosalind Lake (Ms. Lake) and Matthew L. Hess (Mr. Hess), contending that the new Voter ID law, O.C.G.A. § 21-2-417, as enacted by the legislature and approved by the Governor in 2006, is unconstitutional pursuant to Article II, Section 1, Paragraph 2 of the Georgia Constitution as an abridgment of the right to vote guaranteed by the Constitution.

Both Plaintiffs asserted standing as aggrieved parties alleging that they did not have the ability to appear at the polls and vote, because they did not have any of the forms of photographic ID required by O.C.G.A. § 21-2-417(a), the new Voter ID law. Specifically, they challenge the requirement, under O.C.G.A. § 21-2-417(b), that they be

required to obtain a "valid voter identification card" if they lack any other form of photo ID as a prerequisite to their right to have their vote counted. At the time of the hearing on September 8, 2006, the Plaintiffs dismissed Mr. Hess, acknowledging that he had obtained a state-issued ID subsequent to the filing of the Complaint and therefore did not have standing.

The genesis of this case arises out of an attempt by the legislature in 2005 to revamp Georgia's election laws. As a part of the process of doing so, the legislature amended O.C.G.A. § 21-2-417, the 1997 voter identification statute, to require voters to have one of six forms of photo ID instead of the seventeen forms then allowed. One of the forms of ID allowed under the 2005 law, if the voter had no other permitted photo ID, was a state-issued voter ID card for which the voter was required to pay a fee. This 2005 law was enjoined by the United States District Court, Northern District, Rome Division, Judge Harold Murphy, Presiding, for among other reasons, as imposing a poll tax in violation of the United States Constitution. Judge Murphy's decision is thorough and sets forth a detailed and comprehensive history of the legislation. Common Cause/Georgia v. Billups, 406 F. Supp. 2d 1326 (N.D. Ga. 2005).

In 2006, in an effort to comply with Judge Murphy's ruling and to meet his objections, the legislature passed the new Voter ID law, O.C.G.A. § 21-2-417 (2006) which is now challenged. The significant distinction between the 2005 and 2006 Voter ID laws is that under the 2006 law, the fee charged for the state-approved Voter ID card has been eliminated and the card is free of charge to those voters otherwise qualified to receive it. O.C.G.A. § 21-2-417.1 (a) (2006).

An important distinction between the 1997 version of O.C.G.A. § 21-2-417 and the 2005 and 2006 versions, is that under the 1997 law, if a voter was unable to produce

any one of the seventeen forms of identification allowed, the voter could sign an affidavit under oath swearing or affirming that he or she was the person identified on the voter's certificate. The voter's ballot was then accepted and counted, subject to the verification and challenge scheme provided elsewhere in the Elections Code. See O.C.G.A. § 21-2-417 (b) (2003).¹ This provision has been referred to by all parties as the "fail safe" procedure.

Unlike the 1997 version of O.C.G.A. § 21-2-417, the 2005 and now 2006 version of O.C.G.A. § 21-2-417 dispenses with the "fail safe" procedure, and requires that a voter who does not have one of the six forms of required voter ID must cast a "provisional ballot" pursuant to O.C.G.A. § 21-2-418 and within the two days provided for in O.C.G.A. § 21-2-419, the registrars must "verify current and valid identification" as provided for in subsection (a) of O.C.G.A. § 21-2-417 (2006), or failing which, the voter's ballot will not be counted. Subsection (a) includes as among the six forms of voter ID, the state-issued voter identification card authorized pursuant to O.C.G.A. § 21-2-417.1 (2006).

O.C.G.A. § 21-2-417.1 describes eligibility for the "Georgia Voter Identification Card" and the information it must contain. One of the requirements is the inclusion of a "digital color photograph of the applicant." O.C.G.A. § 21-2-417.1(e) also sets forth five forms of identification required to obtain such a card, including as an alternative to a photo ID, a "non-photo identity document" if it includes the person's full legal name and date of birth.

The "evidence" presented by both sides in voluminous addenda includes a substantial amount of political posturing and disputed anecdotal claims of voter fraud,

¹ Although this law was amended several times, the pre-2005 version of the statute shall be referred to as the "1997 law."

numbers of voters which it is claimed will be adversely affected by the new law, and numbers of voters which it is claimed will not be adversely affected by the new law. The one fact agreed to by all is that the legislative reason given by the State for the passage of the new Voter photo ID law was to prevent voter fraud. The Court notes that, on this issue, the only evidence the Court actually heard was from the State's own witness, Ms. Gloria Champion, representing the Fulton County Board of Elections. Ms. Champion testified that in her 26 years as an employee of that Board, she had personal knowledge of only one instance of voter fraud when someone tried to vote twice.

Notwithstanding the dispute over voter fraud *vel non*, the Court does not believe it needs to weigh in on this issue to resolve the actual challenge made by the Plaintiff, Rosalind Lake. Indeed, the Court accepts and defers to the legislature's stated motive of preventing voter fraud. No one who is interested in the integrity of the electoral process can argue with the legislature's concern with ensuring the integrity of that process. The Court's only concern is with the constitutionality of the legislature's method of dealing with perceived voter fraud.

B. Factual findings as to Ms. Lake's Attempts to Vote on July 18th and August 8th

Contrary to most of the evidence presented by the Plaintiff Ms. Lake at the hearing on September 8, 2006, and statements made by Ms. Lake to the press following, this case is not about the treatment of Rosalind Lake at her polling place on July 18, 2006 or on August 8, 2006. At the time Ms. Lake presented herself to vote on both of those occasions, the enforcement of the new Voter ID law had been stayed by Order of the Honorable Melvin K. Westmoreland sitting for this Court as Presiding Judge.

On July 18, 2006, Ms. Lake was accompanied to her polling place by one of her lawyers, Ms. Jennifer Jordan. Ms. Lake was at that time voting in Fulton County as a

“first time voter” pursuant to a 2003 mail-in registration which was not in compliance with subsection (c) of O.C.G.A. § 21-2-220 (2003). (Amended Affidavit of Gloria Champion). As a consequence, because her registration was incomplete, Ms. Lake was required under O.C.G.A. § 21-2-417 (b) (1997) then in effect to prove her identity to a poll worker by one of the many ways listed in O.C.G.A. § 21-2-417 (a) (1997) - - e.g. by providing one of seventeen permissible forms of identification such as a utility bill, bank statement, or other similar forms of identification. Ms. Lake was not required by the law then in effect to show a picture ID for purposes of voting on July 18th. Notwithstanding the presence of her lawyer, who should have known these requirements, Ms. Lake did not provide or have upon her person any such acceptable ID. After some discussion between Ms. Jordan and the poll worker (which was described as courteous) the poll worker then acceded to Ms. Jordan’s demand that Ms. Lake be allowed to sign an affidavit verifying her identity as it was allowed for voters who have properly registered in person, but which was not allowed for “first time” mail in voters who have not otherwise properly established their identity for the registrar. As a result, Ms. Lake was allowed to vote, despite her failure and apparent intentional refusal to comply with the law in effect at that time.

Again, on August 8, 2006 (the runoff election), Ms. Lake presented herself at her polling place to vote, but this time without a lawyer. By her own admission, Ms. Lake left virtually every piece of identification in her possession at her 6th floor apartment because she did not want to walk up six flights of stairs given that her building’s elevator was malfunctioning. Nonetheless, she attempted to vote. After a check of her registration on the polling place computer, it was determined that she had never presented any ID as was required for “first time voters.” This notation was apparently in the poll

official's computer because of her July 18th voting using an affidavit, which did not comply with the then-statutory mandate of positive identification for completing the registration process. When the poll manager, Ms. Dumas, was called to the scene to assist, she tried to explain the problem to Ms. Lake, who according to Ms. Dumas, was highly agitated and insulting to the poll staff. In an effort to accommodate Ms. Lake, Ms. Dumas called the registrar's main office to seek guidance. At this time, Ms. Dumas was advised that the office had already heard from Ms. Lake and that Ms. Lake was in the parking lot of the polling place boarding a voter's bus to return to her residence. Ms. Dumas was given authority under the circumstances to allow Ms. Lake to vote, once again by executing an affidavit, although the verification of identity required as part of the lawful registration process had never been complied with. Thereafter, Ms. Dumas went to the parking lot to retrieve Ms. Lake in order to allow her to sign an affidavit. By this time, however, Ms. Lake had departed without voting.

C. The Standing Issue

The Court is satisfied from the testimony on September 8th, that at the time the lawsuit was commenced, Ms. Lake did not have standing to challenge the new 2006 Voter ID law. That is, as an elector who registered by mail in 2003 (Amended Affidavit of Gloria W. Champion), and who did not comply with subsection (c) of O.C.G.A. § 21-2-220 (2005)², Ms. Lake was a "first time voter". Thus, under the new Voter ID law, as under the pre-existing law, she was required and allowed to present to the poll worker, as a condition of completing registration, any one of six forms of identification listed in subsection (a) of O.C.G.A. § 21-2-417 (2006), or in the alternative, "a copy of a current

² The Elections Code has been amended several times since 1997. In 2005, O.C.G.A. § 21-2-220 was amended to add a new subsection (c) so as to be consistent with the new voter ID requirements of O.C.G.A. § 21-2-417.

utility bill, bank statement, government check, pay check, or other government document that shows the name and address of such elector.” O.C.G.A. § 21-2-417 (c) (2006). There has been no allegation or evidence presented that Ms. Lake did not have the ability to present one of the latter forms of identification. As a “first time voter” she was not required to have a photo ID of any sort.

Now at issue in this case is whether Ms. Lake, who the Court has determined did not have standing at the time the lawsuit was initially filed, can nonetheless proceed with her claim. Standing is generally determined from the date of the commencement of the lawsuit: “To have standing to institute a claim, the [plaintiff] must have a legally protected interest, or “legal interest standing.” Georgia Power Co. v. Allied Chemical Corp., 233 Ga. 558, 560 (1975).

However, even if a party did not have standing at the time of filing suit, the suit does not have to be dismissed in certain circumstances. Under O.C.G.A. § 9-11-15(b), issues not raised by the pleadings that are tried by express or implied consent of the parties shall be treated in all respects as if they had been raised in the pleadings. Furthermore, the Court has the discretion to conform the Complaint to the evidence. See generally, Andean Motor Co. v. Mulkey, 251 Ga. 32, 33 (1983); Smith v. Smith, 235 Ga. 109, 112-113 (1975).

During the September 8th hearing on this declaratory judgment action, the Court took evidence and heard argument as to whether Plaintiff Lake had standing to assert a claim under the 2006 Voter ID law. After close of the evidence, the Court requested additional briefing on the issue of standing as to whether Ms. Lake still had standing despite not having had standing when the lawsuit was initially filed. Both parties and Amicus Common Cause submitted argument and citations as to the issue of standing and

the Court will make those submissions a part of the record. To the extent necessary, the Court will treat the pleadings to have been amended to address the issue. Moreover, the State Defendants do not dispute they had a fair opportunity to defend on this issue and agree under Carreras v. Austell Box Bd. Corp., 154 Ga. App. 135, 137 (1980) the Court has discretion to conform the Complaint to the evidence on that issue.

Accordingly, it does now appear that Ms. Lake, having been allowed to vote on July 18, 2006, is no longer a “first time voter” and therefore is subject to the photo ID requirement of O.C.G.A. § 21-2-417 (2006) as a prerequisite to having her vote counted in the November elections.

Inasmuch as Ms. Lake has alleged and satisfied the Court that she does not have one of the forms of photo ID as required by the new Voter ID law, standing is conferred upon her as she can no longer vote without meeting the requirements of O.C.G.A. 21-2-417(a) or (b) (2006).³

II. THE CONSTITUTIONAL CHALLENGE

A. The “New” Voter ID Law Disenfranchises an Otherwise Qualified Voter

Although Plaintiff’s challenge to the 2006 Voter ID law, at first blush, seems to focus entirely on the need for a photo ID, particularly a state-issued voter ID, as a condition to vote, the Court’s analysis sees the issue a little differently. What appears to be the real issue is the requirement under the new law, O.C.G.A. § 21-2-417 (b), that failing a voter’s ability to produce one of the six required forms of photo ID, the voter is then allowed to vote a “provisional ballot” (O.C.G.A. § 21-2-418 (2005) and § 21-2-419

³ The evidence was conflicting as to whether Ms. Lake’s Florida International University ID card was a “valid” identity card. Ms. Lake and Ms. Jordan said the poll workers would not take it. Ms. Champion, the registrar, said it was “valid” for voting, notwithstanding the affidavit of Ms. Marini of FIU who said it was not “valid”. The Court agrees with the Defendant, “valid” means valid.

(2003)) which will only be counted if the registrars are able to verify current and valid identification of the elector by one of the six forms of photo ID already required by O.C.G.A. § 21-2-417 (a). Pursuant to O.C.G.A. § 21-2-419, the burden is then put upon the voter to appear within two days at the registrar's office and provide the photo ID required, or simultaneously provide lesser forms of identification to qualify for issuance of a State voter photo ID (O.C.G.A. § 21-2-417.1(e)), at which time, after the voter's photo is taken, and their ID card is issued, their vote is allowed to be counted. If the voter fails to appear within two days and provide any one of the six necessary photo IDs, which may include a voter ID card which presumably in the interim could have been obtained at a Department of Driver Services location, or simultaneously, at the registrar's office, their vote is not counted. In effect, an otherwise qualified voter forfeits his or her vote. This cannot be.

Significantly, the primary distinction between the 1997 law with the "fail safe" affidavit provision, and the new Voter ID law with its "provisional ballot" requirement is that under the 1997 law, the vote was counted with the burden being on the State to demonstrate through its registration records that the voter was not otherwise qualified to vote. Under the new law, an otherwise qualified voter has the burden of satisfying the registrar that he or she is qualified to vote by the further condition of producing a photo ID, which, coincidentally, can be obtained without showing a photo ID. This additional condition to casting a valid vote is curious because, for purposes of registering to vote, a photo ID is not required. The only information at the registrar's office subject to verification is residency, date of birth and a signature. There is no photo on file for comparison purposes. See discussion p. 17, infra.

B. The Requirement of a Photo ID as the Sole Method of Establishing Identity for Purposes of Having a Vote Counted as a Condition of Voting is Not Required by the Constitution

As a general rule, the Courts are required to give great deference to the legislature. That is why the Court cannot second guess the legislature's reasons for enacting the 2006 Voter ID law. As far as this Court is concerned, if the legislature perceives there to be a concern over voter fraud then that is for the legislature to determine and not this Court to second guess. Likewise, this Court, as a concerned citizen itself and as a voter, understands and appreciates the need for integrity of the voting process. Our democratic institutions and processes which depend on the principle of citizen participation through voting demands that there be integrity in the very process itself. In many parts of the world, voting "monitors" from the international community are often in place to ensure the fairness of the voting process. Indeed, in Iraq, this country has placed its soldiers at the polls to ensure Iraq's fledgling democracy experiences integrity at the polls.

This Court's concern then, in the case before it, is not the desirability of requiring certain forms of voter ID, but is whether the legislature has exceeded its constitutional authority in the regulation of voting by placing an additional condition on the right to vote not otherwise authorized by the Constitution.

The Constitution authorizes the State, through the legislature, to condition the right to vote on compliance with the registration requirements set forth by the legislature. Ga. Const. art. II, § 1, ¶ 2. Once a voter properly registers, the legislature may impose reasonable identification requirements aimed at ensuring that the person who appears to vote is the person who has registered to vote and who is otherwise qualified to vote. See Franklin v. Harper, 205 Ga. 779, 789 (1949).

As the determination of validity or acceptability of identification at the polling place necessarily requires the exercise of some discretion on the part of the poll worker,⁴ and given that there is always the chance that an otherwise qualified voter may not have one of the pieces of identification required by law, under the pre-existing law there was a “fail safe” procedure, as has been discussed, by which a qualified voter could by affidavit verify identification, then vote.

Under the new Voter ID law, the legislature under the guise of verifying voter identification, has now required as a condition of counting the vote of an otherwise registered and qualified voter, the additional requirement of appearing at the registrars office within two days and either presenting a photo ID or having a photo ID made, then presenting it. If the properly registered and otherwise qualified voter fails to comply with this requirement, then the provisionally cast ballot is not counted. The result of this provisional ballot scheme is to disenfranchise an otherwise qualified voter who does not comply with the additional conditions imposed by the legislature.

As a general rule, the law abhors forfeitures. The effect of the requirement that a voter comply with the subsequent condition to prove identification by a photo ID results in a forfeiture of the right to have one’s ballot counted. Nowhere in the constitutional provisions related to voting is the legislature allowed to take away the right to vote except as otherwise specifically enumerated. See Ga. Const. art. II, § 1, ¶ 3.

The right to vote is a fundamental right of citizenship. Ambles v. Stole, 259 Ga. 406, 408 (1989). It, like the integrity of the voting process itself, goes to the very core of

⁴ The Court finds instructive on this issue of discretion the obstacles Ms. Lake did, in fact, confront when trying to vote on July 18th. It is interesting to note that the poll workers and Ms. Champion of the registrar’s office had differing views as to the “validity” of Ms. Lake’s Florida International University Student ID card. Fortunately, under the pre-existing law, this difference of opinion or exercise of discretion would not deprive a qualified voter of the right to vote and have their vote counted.

our democracy. Without the right to vote, there is no democracy. Likewise, “to refuse to count an elector’s vote is tantamount to a refusal to allow him to cast it . . .” Thompson v. Willson, 223 Ga. 370, 373 (1967). Additionally, our Supreme Court has recognized for years that the legislature may not deny the right to vote by “making the exercise of such right so difficult or inconvenient as to amount to a denial of the right to vote.” Franklin, 205 Ga. at 790 (citation omitted). Any attempt by the legislature to require more than what is required by the express language of our Constitution cannot withstand judicial scrutiny.

The 2006 law requiring a photo ID as the exclusive means of proving one’s identity at the polls and thereby making the possession of an approved form of photo ID a prerequisite to voting in person and having one’s ballot counted violates the plain terms of the Georgia Constitution.

Article II, Section 1, Paragraph 2 of our Constitution guarantees the right to vote to all residents of Georgia who are (1) citizens of the United States, (2) at least 18 years of age, (3) who meet the minimum residency requirements prescribed by the General Assembly, and (4) who have registered to 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.

Ga. Const., art. II, § 1, ¶ 2.

In construing this constitutional provision, the Court must honor its plain meaning. See, e.g., Hollowell v. Jove, 247 Ga. 678, 681 (1981) (discussing construction of statutes). “[W]here a constitutional provision or statute is plain and susceptible of but

one natural and reasonable construction, the court has no authority to place a different construction upon it, but must construe it according to its terms.” Rayle Electric Membership Corp. v. Cook, 195 Ga. 734, 734 (1943) (citations omitted). There is nothing equivocal about the words “**shall be entitled to vote.**” By requiring Georgia residents over 18 who are properly registered to vote to present an approved form of photo ID as the exclusive means of identification in order to have one’s vote counted, the 2006 Voter ID law violates the plain terms of this constitutional provision.

Equally clear is the principle that where the Constitution “undertakes to enumerate and describe . . . that enumeration and description is exhaustive, and the legislature cannot thereafter enlarge the list.” Stewart v. State, 98 Ga. 202, 205 (1896). The analysis in Morris v. Powell, 25 N.E. 221 (Ind. 1890) where the Indiana legislature attempted to impose voter qualifications not required by that State’s constitution is instructive:

That, when the people by the adoption of the constitution have fixed and defined in the constitution itself what qualifications a voter shall possess to entitle him to vote, the legislature cannot add an additional qualification, is too plain and well recognized for argument, or to need the citation of authorities. The principle is elementary that when the constitution defines the qualification of voters, that qualification cannot be added to or changed by legislative enactment.

25 N.E. at 223.

Likewise, in Koy v. Schneider, 218 S.W. 479 (Tex. 1920), the Texas Supreme Court in discussing the extent of suffrage granted by the Texas constitution observed:

‘Where the right of suffrage is fixed in the constitution of a State, as is the case in most States, it can be restricted or changed by an amendment to the Constitution or by an amendment to the federal Constitution, which, of course, is binding upon the States. But it cannot be restricted or

changed in any other way. The Legislature can pass no law directly or indirectly, either restricting or extending the right of suffrage as fixed by the Constitution.’ (citations omitted).

218 S.W. at 480.

The role of the legislature in our State is both expressly **defined** and **limited** by Article II, Section 1, Paragraph 2 of the Constitution to two specific functions: (1) establishing minimum residency requirements; and (2) providing for the registration of electors. The new photo ID only requirement is *ultra vires* because it is neither a residency requirement nor is it a condition of registration. “[W]here the State constitution provides who shall be entitled to vote, the legislature cannot take from or add to the qualifications unless the power is granted expressly or by necessary implication.” Franklin, 205 Ga. at 790. “Registration statutes have for their purpose the regulation of the exercise of the right of suffrage, not to qualify or restrict the right to vote.” Id.

The new photo ID only requirement is also prohibited by Article II, Section 1, Paragraph 3 because the Constitution limits the grounds on which a Georgia citizen who is registered may be denied the right to vote to those persons who have been (1) convicted of a felony involving moral turpitude, or (2) judicially determined to be mentally incompetent to vote. Nowhere in the Constitution is the legislature authorized to deny a registered voter the right to vote on any other ground, including possession of a photo ID of the type required by § 21-2-417.1 of the 2006 law.

Where the Constitution expressly states circumstances under which a power is to be exercised, the power may not be exercised in any other manner. Jones v. Fortson, 223 Ga. 7, 13 (1967). In Jones, the Supreme Court approved the following principle:

A [constitutional] provision which expressly prescribes the manner of doing a particular thing is exclusive in that regard and impliedly prohibits performance in a

substantially different manner. Thus, where the manner in which, or the means by which, a power granted shall be exercised are specified, such manner or means are exclusive of all others, and the right or power to use other means does not arise by implication even though considered more convenient or effective.

In accord with the reasoning in Jones, the directive in the Constitution specifying those persons who may be denied the right to vote is exclusive of all other reasons for the denial of this fundamental right. See also, Powell v. McCormack, 395 U.S. 486 (1969) and U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995) (providing analogy to limits on Congress and State legislatures).

C. The New Voter ID Law Appears to be Inconsistent with the Preexisting and Current Scheme to Verify the Identification of Voters

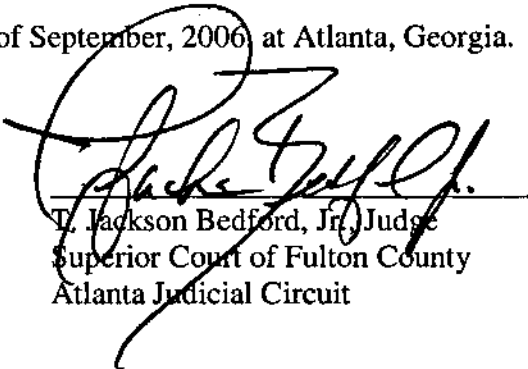
As has been discussed above, the new Voter ID law's "provisional ballot" requirement of O.C.G.A. § 21-2-417(b) shifts the burden of voter registration verification from the State to the voter, and results in the disenfranchisement of an otherwise qualified voter if the voter does not produce the required photo ID. A review of the Elections Code, particularly O.C.G.A. § 21-2-418 (2005), reveals that "provisional ballots" are allowed to be cast under circumstances where the voter's name does not appear on the list of registered electors thereby raising the issue of whether the prospective voter is indeed qualified and registered to vote. O.C.G.A. § 21-2-419(b) charges the registrar with then making a "good faith effort to determine whether the person casting the provisional ballot was entitled to vote. . .". That code section repeatedly puts the burden on to the registrar to determine if the person was (1) timely registered to vote; and (2) was eligible and entitled to vote. According to the Elections Code, the only way registrars have to make this determination is to review their registration documents which, if the voter has registered to vote, include identifiers such

as full legal name, date of birth, residence address and signature. The added requirement of a photo ID as a condition to having one's vote counted has no rational connection to ascertaining the identity of the voter by comparing it to the information kept by the registrar as a condition of registration. This additional photo ID requirement results in a condition being placed on the right to vote unique to a class of voters who, except for the inability to obtain a photo ID (other than the State ID now challenged) are otherwise qualified to vote. This is why the "fail safe" procedure of the 1997 law worked. If the voter was otherwise on the registrar's list of registered voters, they were allowed to vote unconditionally by signing the required affidavit. It was then incumbent on the registrar to compare signatures and other identifying information before challenging the vote.

III. CONCLUSION

For the foregoing reasons, this Court **HEREBY DECLARES O.C.G.A. § 21-2-417 AS AMENDED IN 2006 UNCONSTITUTIONAL** pursuant to the Georgia Constitution, Article II, Section 1, Paragraphs 2 and 3, and **HEREBY PERMANENTLY ENJOINS** the Defendants in their official capacities and the State and all its political subdivisions from enforcing or applying the provisions of O.C.G.A. § 21-2-417 (2006) so as to condition the counting of any properly registered and qualified voter's ballot exclusively on the presentation of a photo ID for in-person voting. This injunction shall apply to any special, general, runoff, local or referenda election in the State of Georgia.

IT IS SO ORDERED this 19th of September, 2006 at Atlanta, Georgia.


T. Jackson Bedford, Jr. Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

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In the Supreme Court of Georgia

Decided: JUN 11 2007

S07A0525. PERDUE et al. v. LAKE et al.

MELTON, Justice.

Sonny Perdue, in his capacity as Governor, and the State Election Board (“Appellants”) appeal the trial court’s determination that the 2006 Photo-ID Act (“2006 Act”) violates Art. II, Sec. 1, Pars. II and III of the Georgia Constitution by requiring in-person voters to present a photo-ID verifying their identity. Because the sole remaining plaintiff in this case, Rosalind L. Lake,¹ lacks standing to challenge the constitutionality of the 2006 Act, we reverse.

¹ Although Matthew L. Hess was originally named as a plaintiff, he voluntarily dismissed his claims after obtaining a state-issued photo ID which would qualify him to vote under the 2006 Act.

1. In deciding this matter, we must determine whether the trial court had the appropriate jurisdiction over the underlying case to reach the conclusions that it did. Specifically, we must determine whether Lake had standing to pursue her claims. “The only prerequisite to attacking the constitutionality of a statute is a showing that it is hurtful to the attacker.” (Citation and punctuation omitted.) Agan v. State, 272 Ga. 540, 542 (1) (533 SE2d 60) (2000). As a general rule, “standing must be determined at the time at which the plaintiff’s complaint is filed” in order to place an actual case or controversy within the purview of the court. See, e. g., Focus on the Family v. Pinellas Suncoast Transit Authority, 344 F3d 1263, 1272 (11th Cir. 2003); Ga. Power Co. v. Allied Chem. Co., 233 Ga. 558 (212 SE2d 628) (1975). In other words, the plaintiff must be able to show that he or she has been harmed at the time that the complaint is filed alleging a constitutional violation.

2. With these principles in mind, Lake’s status as a viable plaintiff must be examined as of July 3, 2006, the date that she filed her complaint seeking a declaratory judgment that the 2006 Act was unconstitutional to the extent that it placed an improper burden on her right to vote by requiring her to obtain one of six types of photo identification set forth in OCGA § 21-2-417 (a).

(a) It is undisputed that, on July 3, 2006, Lake, who had moved from Florida to Georgia, qualified as a first-time voter at the polls in this state in accordance with OCGA § 21-2-417 (c), which provides, in relevant part:

An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state shall present to the poll workers either one of the forms of identification listed in subsection (a) of this Code section or a copy of a current utility bill, bank statement, government check, paycheck, or other document that shows the name and address of such elector.

(Emphasis supplied.) Therefore, at the time that she filed her complaint, Lake could have voted in person under the 2006 Act without the need to show a photo ID, and Lake has made no contention that she did not have any of the forms of non-photo identification allowed to be shown by first-time voters. As a result, Lake was qualified to vote in person under the 2006 Act at the time that she filed her complaint, and she suffered no harm from the 2006 Act. Accordingly, and as the trial court acknowledged, as a first-time voter who was qualified to vote at the time she filed her complaint, Lake lacked standing to challenge the constitutionality of the 2006 Act. See Agan, supra.

Lake nonetheless contends that the trial court properly found that she acquired standing by considering the complaint to be amended by the fact that,

on July 18, 2006, her status as a first-time voter changed because she was allowed to vote in person by affidavit. In other words, Lake argues that actions taken by her after the filing of the complaint created standing. This argument must fail. As stated previously, a plaintiff must have standing on the date that his or her action is filed. Subsequent amendments of a complaint which seek to confer standing based on events occurring after the initial complaint was filed cannot cure this jurisdictional defect. Because the original complaint was filed without standing and the trial court had no jurisdiction over that complaint, there is simply no viable document to amend.

(b) Moreover, under the facts of this case, Lake also lacked standing because, as of July 3, 2006, she did have a form of photo ID acceptable under the 2006 Act. OCGA § 21-2-417 (a) (2) indicates that proper photo identification includes a

valid Georgia voter identification card issued under Code Section 21-2-417.1 or other valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification, provided that such identification card contains a photograph of the elector.

It is undisputed that, in order to be allowed to use paratransit services offered by

MARTA pursuant to the Americans with Disabilities Act (ADA), Lake applied for, received, and currently retains a MARTA/ADA photo ID card containing her picture, name, and address. As Lake conceded at trial, MARTA is an entity of the State of Georgia, and it issued the photo ID as part of a procedure to comply with the regulations set forth in the ADA. This ADA paratransit photo ID, therefore, would qualify as a “valid identification card issued by [an] entity of the State of Georgia . . . authorized by law to issue personal identification.” OCGA § 21-2-417 (a) (2). Because Lake possesses a photo ID acceptable for in-person voting under the 2006 Act, once again, she lacks standing to challenge the Act as an unconstitutional restriction on her right to vote.

(c) Accordingly, due to Lake’s lack of standing, the trial court’s determination that the 2006 Act is unconstitutional must be vacated, and this case must be remanded with the direction that it be dismissed.

Judgment vacated and case remanded with direction. Sears, C.J., Benham, Carley, Thompson and Hines, JJ., and Judge Debra Bernes concur. Hunstein, P.J., not participating.