

**ORIGINAL**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

FILED IN CLERK'S OFFICE  
U.S.D.C.

SEP 19 2005

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Deputy Clerk

COMMON CAUSE / GEORGIA; )  
LEAGUE OF WOMEN VOTERS )  
OF GEORGIA, INC.; THE )  
CENTRAL PRESBYTERIAN )  
OUTREACH AND ADVOCACY )  
CENTER, INC.; GEORGIA )  
ASSOCIATION OF BLACK ELECTED )  
OFFICIALS, INC., THE NATIONAL )  
ASSOCIATION FOR THE )  
ADVANCEMENT OF COLORED )  
PEOPLE (NAACP), INC., through its )  
Georgia State Conference of Branches; )  
GEORGIA LEGISLATIVE BLACK )  
CAUCUS; CONCERNED BLACK )  
CLERGY OF METROPOLITAN )  
ATLANTA, INC., the following )  
qualified and registered voters )  
under Georgia law: )  
MR. TONY WATKINS )  
MRS. CLARA WILLIAMS, )

Plaintiffs, )

v. )

MS. EVON BILLUPS, Superintendent of )  
Elections for the Board of Elections and )  
Voter Registration for Floyd County and the )  
City of Rome, Georgia; MS. TRACY )  
BROWN, Superintendent of Elections of )  
Bartow County, Georgia; MR. GARY )  
PETTY, MS. MICHELLE HUDSON, )  
MS. AMANDA SPENCER, MR. RON )  
McKELVEY, AND MS. NINA )

4:05-CV-201

-HLM

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

CRAWFORD, members of the Board of )  
 Elections and Registration of Catoosa )  
 County, Georgia; JUDGE JOHN PAYNE, )  
 Superintendent of Elections of Chattooga )  
 County, Georgia; MS. SHEA HICKS, )  
 Superintendent of Elections for Gordon )  
 County, Georgia; MS. JENNIFER A. )  
 JOHNSON, Superintendent of Elections )  
 for Polk County, Georgia; MR. SAM )  
 LITTLE, Superintendent of Elections for )  
 Whitfield County, Georgia; individually )  
 and in their respective official capacities as )  
 superintendents or members of the )  
 elections boards in their individual )  
 counties, and as CLASS )  
 REPRESENTATIVES under Fed.R.Civ.P. )  
 23(b)(1) and (b)(2) of a class consisting of )  
 all superintendents and members of city )  
 and county boards of elections )  
 throughout the State of Georgia; and )  
 )  
 HON. CATHY COX, individually and in )  
 her official capacities as Secretary of State )  
 of Georgia and Chair of the Georgia )  
 Elections Board. )  
 )  
 Defendants. )

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

This is an action to have the Photo ID requirement in the 2005 amendment to O.C.G.A. § 21-2-417 (Act No. 53), declared unconstitutional both on its face and as applied, and to enjoin its enforcement on the ground that it imposes an unauthorized, unnecessary and undue burden on the fundamental right to vote of

hundreds of thousands of registered Georgia voters in violation of Art. II, § I, ¶ II of the Georgia Constitution, the Fourteenth and Twenty-Fourth Amendments to the United States Constitution, the Civil Rights Act of 1964 (42 U.S.C. § 1971(a)(2)(A) and (a)(2)(B)), Section 2 of the Voting Rights Act of 1965 (42 U.S.C. § 1973(a)) and 42 U.S.C. §§ 1983 and 1988.

1.

**The Plaintiffs are:**

- (a) **Common Cause / Georgia** (“Common Cause”), a chapter of Common Cause, Inc., a non-partisan citizen lobby organized as a not-for-profit corporation under the laws of the District of Columbia, and devoted to electoral reform, ethics in government and to the protection and preservation of the rights of all citizens to vote in national, state and local elections, including the education of voters about voting rights and procedures;
- (b) **the League of Women Voters of Georgia, Inc.** (“the League”), a non-partisan Georgia non-profit corporation founded in 1920 to encourage the informed and active participation by citizens in government at all levels, including the protection of the right of all

citizens to vote and the education of voters about voting rights and procedures;

- (c) **The Central Presbyterian Outreach and Advocacy Center, Inc.**, a Georgia non-profit corporation that provides support to people in poverty including emergency services for basic human needs and assistance in achieving self-sufficiency, including assisting individuals in obtaining photo identification;
- (d) **Georgia Association of Black Elected Officials, Inc.**, an unincorporated association of more than 700 elected officials throughout the State of Georgia, and who regularly conduct election campaigns and seek the votes of all registered, eligible voters. The Georgia Association of Black Elected Officials also promotes voter registration, education and participation, that preserves minority voting rights, and fights to ensure that no qualified voters are turned away on election day for failure to possess a photo identity card in violation of their right to vote.
- (e) **The National Association for the Advancement of Colored People (NAACP), Inc.**, through its Georgia State Conference of Branches, the nation's oldest civil rights organization was formed in 1909 by a

multiracial group of activists. The NAACP has nationwide membership including members and offices in Georgia. The NAACP has advocated for the advancement and protection of voting rights for minorities, and has, throughout its history, fought for access to the ballot, for its members and others. It has also fought to ensure that racial minorities, low income and economically disadvantaged persons have access to the ballot box and the equal opportunity to participate in the political process.

- (f) **Georgia Legislative Black Caucus (“GLBC”)** was formed in 1966 and consists of elected African-American members of the House and Senate of the Georgia General Assembly. As elected representatives, members of GLBC engage in election campaigns, seek the votes of registered, eligible voters and also seek to make certain that the right to vote of all eligible citizens are protected and that no eligible voters are discouraged or prevented from voting on election day for failure to possess a photo identity card in violation of their right to vote.
- (g) **Concerned Black Clergy of Metropolitan Atlanta, Inc.**, a non-partisan, interfaith religious organization of mostly African-American members and laity whose mission is to provide leadership, advocacy

of city and county election superintendents or members of city or county election boards throughout the State of Georgia as provided by Fed.R.Civ.P. Rule 23(b)(1) & b(2):

- (i) **Ms. Evon Billups**, who is sued individually and in her official capacity as the Superintendent of Elections for the Board of Elections and Voter Registration for Floyd County, Georgia and for the City of Rome, Georgia, in which capacity she is charged by O.C.G.A. §§ 21-2-70 & 21-2-70.1 with the duty of conducting elections in Floyd County, Georgia and in the City of Rome, Georgia;
- (ii) **Ms. Tracy Brown**, who is sued individually and in her official capacity as the Superintendent of Elections for the Board of Elections and Voter Registration for Bartow County, Georgia, in which capacity she is charged by O.C.G.A. § 21-2-70 with the duty of conducting elections in Bartow County, Georgia;
- (iii) **Mr. Gary Petty, Ms. Michelle Hudson, Ms. Amanda Spencer, Mr. Ron McKelvey, and Ms. Nina Crawford**, who are sued individually and in their official capacities as members of the Board of Elections and Voter Registration for Catoosa

County, Georgia, in which capacities they are charged by O.C.G.A. § 21-2-70 with the duty of conducting elections in Catoosa County, Georgia;

- (iv) **Judge John Payne**, who is sued individually and in his official capacity as the Superintendent of Elections for the Board of Registrars for Chattooga County, Georgia, in which capacity he is charged by O.C.G.A. § 21-2-70 with the duty of conducting elections in Chattooga County, Georgia;
- (v) **Ms. Shea Hicks**, who is sued individually and in her official capacity as the Superintendent of Elections for the Board of Elections and Registrations for Gordon County, Georgia, in which capacity she is charged by O.C.G.A. § 21-2-70 with the duty of conducting elections in Gordon County, Georgia;
- (vi) **Ms. Jennifer A. Johnson**, who is sued individually and in her official capacity as the Superintendent of Elections for the Board of Elections and Voter Registration for Polk County, Georgia, in which capacity she is charged by O.C.G.A. § 21-2-70 with the duty of conducting elections in Polk County, Georgia; and

- (vii) **Mr. Sam Little**, who is sued individually and in his official capacity as the Superintendent of Elections for the Board of Elections and Registration for Whitfield County, Georgia, in which capacity he is charged by O.C.G.A. § 21-2-70 with the duty of conducting elections in Whitfield County, Georgia;
- (viii) **Hon. Cathy Cox**, who is sued individually and in her official capacity as Secretary of State of the State of Georgia, in which capacity she is the Chair of the State Election Board by O.C.G.A. § 21-2-30(d), and has been designated as the Chief Election Official for purposes of the federal Help America Vote Act of 2002 by O.C.G.A. § 21-2-50.2, and also the Chief Election Official for purposes of the National Voter Registration Act of 1993 by O.C.G.A. § 21-2-210.

### **Jurisdiction and Venue**

3.

This case arises under the Constitution and laws of the United States and of Georgia. This Court has subject matter jurisdiction of this action under 28 U.S.C. §§ 1331, 1343(3) & (4) and 28 U.S.C. § 1367(a), and 42 U.S.C. §§ 1971(d),



1973j(f) and 1983. This Court has jurisdiction to grant both declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2102.

4.

Venue in this district and division is proper under 28 U.S.C. § 1391(b) because all of the individual defendants identified by name in the complaint, other than Secretary of State Cathy Cox, reside in this district and division.

5.

Each of the individual plaintiffs is a citizen of the State of Georgia and is legally registered and duly qualified to vote in local, state and national elections in Georgia, but does not possess a Georgia driver's license, passport or other form of photographic identification specified in the 2005 amendment to O.C.G.A. § 21-2-417, issued by the State of Georgia or one of its political subdivisions, one of its sister states in the United States or by an Indian tribe.

#### **Class Allegations**

6.

The superintendents and board members of the city and county boards of elections named in paragraphs 2(a)(i) – (vii) above are members of a class that consists of superintendents and members of city and county boards of elections in each of the other 159 counties in the State of Georgia, who are so numerous as to

make their joinder impracticable and who can and will fairly and adequately represent the interests of the members of the class because (a) there are questions of law and fact that are common to the entire class of city and county election officials, (b) the claims of the plaintiffs are the same as the claims of other similarly situated qualified voters residing in the cities or counties, and (c) any defenses that might be asserted by one local election official to those claims are the same as the defenses that might be asserted by or on behalf of any other member of the class to plaintiffs' claims.

7.

Certification of a defendant class of all superintendents and members of all city and county boards of election in Georgia under Fed.R.Civ.P. 23(b)(1) and (2) is appropriate because (a) the prosecution of separate actions in each of 159 counties would create a risk of inconsistent and varying adjudications, and (b) a final decision on the merits in one action may, as a practical matter, have an impact upon or be dispositive of the interests of other members of the defendant class.

**Pre-Existing Georgia Law**

8.

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.

9.

As a result of the adoption by the General Assembly of O.C.G.A. § 21-2-417 in 1997, registered voters in Georgia were required for the first time to identify themselves by presenting one of seventeen forms of identification to election officials as a condition of being admitted to, and allowed to vote at the polls. Former O.C.G.A. § 21-2-417.

10.

Under O.C.G.A. § 21-2-417 as it existed prior to its amendment by Act 53 in 2005, registered voters were permitted, but were not required, to present a Georgia driver's license or other form of official photographic identification as a method of identification as a condition of voting. Voters were free, however, to use any of eight other methods of identification, including such commonly available documents as a birth certificate, a social security card, a copy of a current utility bill, a government check, a payroll check, or a bank statement that showed the

name and address of the voter. Former O.C.G.A § 21-2-417(1)(10), (11), (14), (15), (16).

11.

In addition, registered voters who did not have or were unable to find one of the seventeen forms of photographic or non-photographic identification specified in O.C.G.A. § 21-2-417(a) were entitled under Georgia law, as it existed prior to the enactment of Act 53, 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. O.C.G.A. § 21-2-417(b).

**The New Photo ID Requirement**

12.

In 2005, the General Assembly of Georgia adopted Act 53, which amended O.C.G.A. § 21-2-417, to require all registered voters in Georgia who vote *in person* in all 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 a condition of being admitted to the polls and before being issued a ballot and allowed to vote ("The new Photo ID requirement").

13.

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

14.

Only 1 of 43 African-American legislators in both houses of the General Assembly voted in favor of the bill.

15.

Act 53 was signed by Georgia's Governor, Sonny Perdue on April 22, 2005, and the Photo ID requirements in the bill became effective on July 1, 2005, subject to pre-clearance by the United States Department of Justice, which was granted on August 26, 2005.

16.

At the same time that it voted to require the presentation of a Photo ID, the General Assembly also voted 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).

17.

As a result of the adoption of Act 53, Georgia became one of only two (2) states that requires registered voters to present a photo identification as an absolute condition of being admitted to the polls and allowed to cast a ballot in federal, state and local elections. A majority of thirty (30) states do not require registered voters to present any form of identification as a condition of admission to the polls or casting a ballot, while a minority of twenty (20) states requires voters to present some form of identification at the polls, but of these, only two states (Georgia and Indiana) require that voters present a Photo ID as the sole method of identification required as a condition of voting.

18.

The press release prepared by the Communications Office of Georgia Act 53 states that only the following forms of Photo ID will be acceptable after the effective date of the Act:

**Acceptable Forms of I.D.**

- Georgia Driver's License
- State Identity Card
- Passport
- Government Employee ID Card
- Military ID Card
- Tribal ID Card

19.

According to the same press release from the House Communications Office, the following forms of voter identification that had been acceptable prior to the enactment of Act 53 will no longer be accepted by election officials as valid forms of voter identification after the effective date of the Act:

**Forms of ID No Longer Valid**

- Birth Certificate
- Social Security Card
- Certified Naturalization Document
- Current Utility Bill

- Bank Statement
- Government Check or Paycheck
- Other Government Documents

**The New Photo ID Requirement Applies Only To Voters Who Vote In Person  
And Does Not Apply To People Who Vote By Mail**

20.

The new Photo ID requirement in Act 53 applies only to registered voters who vote *in person*. The General Assembly imposed no similar Photo ID requirement on absentee voters, except those who are voting for the first time.

21.

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters (other than first-time voters). O.C.G.A. § 21-2-417.



**The Photo ID Requirement Imposes An Undue Burden On The Right To Vote**

22.

The new Photo ID requirement became effective on August 26, 2005, and imposes an unnecessary and undue burden on the exercise of the fundamental right to vote of hundreds of thousands of citizens of Georgia who are fully eligible, registered and qualified to vote, but who do not have Georgia driver's licenses, passports, or government employer ID cards or other forms of official photographic identification issued by the state or federal government.

23.

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

Emory, Morehouse, Mercer), but who cannot vote in Georgia without first acquiring a Photo ID issued by the state or federal government.

24.

AARP and the League have estimated that 152,000 of those who voted in the general election in Georgia in 2004 were over 60 years of age and did not have Georgia driver's licenses.

25.

The Department of Driver Services ("DDS") is the only state agency in Georgia from which a registered voter may obtain an official Photo ID.

26.

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

27.

There are currently only 56 DDS locations throughout the entire State of Georgia from which an official state Photo ID may be obtained (*see* Department of Driver Services website at [www.dds.ga.gov](http://www.dds.ga.gov)). These offices are only open from

9:00 a.m. to 5:00 p.m. Tuesday through Saturday, but are closed on Sundays and Mondays and evenings, times when voters might be able to obtain a Photo ID without having to take time off from work.

28.

There is not a single DDS office located within the City of Atlanta, Georgia's largest city, or in the City of Rome, which means that registered voters who are residents of those cities are required to travel outside the limits to obtain the required Photo ID.

29.

There are currently only 56 DDS offices in the entire State of Georgia, which means that tens of thousands of registered voters who live in 103 of Georgia's 159 counties must travel outside their home counties to a DDS office located in another county to obtain a Photo ID.

30.

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

31.

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

**The \$20 Fee For A Photo ID Is A Poll Tax On The Right To Vote**

32.

The \$20 fee for a 5-year Photo ID and the \$35 fee for a 10-year Photo ID are a poll tax on the right to vote because these fees are a financial condition for the right to vote, and exceed the cost of the Photo ID to the State, and the revenue collected by the DDS from the fees for a Photo ID card is deposited in the general treasury of the State, and is commingled with, and is indistinguishable from, the revenue generated by other State taxes, including the State income or sales taxes. O.C.G.A. § 40-5-103(a).

33.

Act 53 imposes an undue burden on the right to vote of voters who will be required to expend time and money to acquire the underlying documents needed to be issued a Photo ID card and to travel to state offices to be issued a Photo ID.

34.

The \$20 (or \$35) fees are also discriminatory because they are not required to be paid by all voters as a condition of voting. Voters who have a Georgia driver's license, a passport, or a government-issued Photo ID are not required to pay a \$20 (or \$35) fee for a Photo ID. Absentee voters who do not have driver's licenses, passports or other Photo ID (other than first-time voters) are also not required to present a Photo ID as a condition of receiving an absentee ballot, and, therefore, are not required to pay \$20 (or \$35) for the privilege of voting, while other similarly situated voters who vote in person and do not have driver's licenses or passports and are not government employees, are required to pay a \$20 (or \$35) fee for a Photo ID as a condition of being admitted to the polls.

35.

Moreover, payment of the \$20 (or \$35) fee is not a one-time expense (nor is the time, inconvenience and expense and lost wages involved to travel to a DDS office). Unlike voter registration cards which are issued free of charge and never

expire, a \$20 Photo ID card is valid only for *five* years. At the same time that the General Assembly eliminated the previous requirement of Georgia law that a driver's license used for voter identification purposes must be "valid" (*i.e.*, unexpired), Act 53 expressly requires that the Photo ID cards be "*valid identification cards*," which means that voters who rely on Photo ID cards in order to vote, must pay \$20 to obtain a *new* Photo ID card from a DDS office *every five years* (or \$35 every 10 years) in order to continue voting. This means that a 5-year Photo ID card is a \$20 ticket that is good for admission to the polls for only one or at most two, gubernatorial elections and one (or at most two) presidential elections – but not two of each, before the Photo ID expires. A voter whose Photo ID card has expired must acquire a new \$20 (or \$35) Photo ID card from the State in order to vote in the succeeding presidential, gubernatorial or local election.

### **The Waiver Of The Fee Is Ineffective**

36.

Section 66 of Act 53 amended O.C.G.A. § 40-5-103 to allow the DDS to issue a Photo ID to a registered voter "who swears under oath that he or she is *indigent and cannot pay* the fee for the identification card, that he or she desires an identification card in order to vote in a primary or election in Georgia and that he

or she does not have any other form of identification that is acceptable at the polls under Code Section 21-2-417 for identification at the polls in order to vote.”

37.

If the statute is read literally, even a registered voter who is “indigent” (a term that is undefined in the Act and vague in its general usage) cannot qualify for the waiver of the \$20 fee under the first requirement of the statute if he or she has at least \$20, because he or she cannot truthfully swear that he or she “*cannot pay the fee*” as required by the plain wording of the statute.

38.

A voter may not be able to qualify for a waiver under the second requirement of the statute because the term “indigent” in the 2005 amendment to O.C.G.A. § 40-5-103 is not defined and is so vague that a person of ordinary intelligence can only guess at the meaning of the term “indigent” in this context. Moreover, the Act leaves clerical personnel in each of the 56 DDS offices (and local district attorneys) free to apply their own subjective interpretations of the term “indigent” in determining whether a particular individual is eligible for a waiver of the \$20 fee. It is unclear for example, whether a person who earns only \$5.15 per hour minimum wage is “indigent” within the meaning of the statute and would qualify for a waiver of the \$20 fee as a result.

39.

Even if the term “indigent” in O.C.G.A. § 40-5-103 were interpreted broadly under some unstated definition, the \$20 fee would still constitute an unconstitutional poll tax on the right to vote of thousands of *other* registered voters who are not indigent, but who do not have driver’s licenses, passports, or government issued Photo ID cards; moreover the \$20 poll tax is also discriminatory because it does not have to be paid by absentee voters or voters who have one of the permitted forms of photo identification.

40.

Finally, the waiver of the \$20 fee for registered voters who are “indigent” and “cannot pay the fee,” does not relieve a registered voter who does not have a valid Georgia driver’s license, a passport, or other form of official Photo ID of the burden and expense of having to spend the time and incur the cost of having to travel by bus or taxi to a DDS office that may be located in another city or county, miles from their homes or places of work to obtain a Photo ID in order to vote. These costs constitute a far greater and more significant obstacle to voting than the \$20 fee, and fall almost exclusively and most heavily on the poor, the infirm, and the elderly and not on the more affluent individuals who own cars, have driver’s licenses and/or passports.



**The New Photo ID Requirement Will Have A Disparate Impact  
On African American Voters**

41.

The new Photo ID requirement will also have a disparate impact on the right to vote of registered voters who are African Americans, as compared to voters who are white, because African-American voters in Georgia, as a group, are (a) less affluent than whites, and (b) are three times less likely to own or have access to a motor vehicle than are whites, according to recent data published by the U.S. Census Bureau. Census Survey File 3 (SF3) HCT33B.

**It Is Impossible For Some Voters To Obtain A Photo ID**

42.

The Georgia Department of Driver Services requires an applicant to present an "*original or a certified copy*" of a birth certificate issued by an official state agency as a condition of obtaining a Photo ID, and has also stated that "Hospital birth certificates are not acceptable." Exhibit C, Georgia Department of Driver Services "Applying for a Georgia ID Card" ([www.dds.ga.gov](http://www.dds.ga.gov)).

43.

A registered voter who was born in Georgia and does not have the original or a certified copy of his or her original birth certificate, must apply to the Georgia Division of Public Health and pay a search fee of \$10 and an additional fee of \$10

for a certified copy of his or her birth certificate. Exhibit D

([www.health.state.ga.us/programs/vitalrecords/birth.asp](http://www.health.state.ga.us/programs/vitalrecords/birth.asp)).

44.

It is impossible for a registered voter who does not have a Photo ID to obtain a certified copy of his or her birth certificate from the Georgia Division of Public Health because the Georgia Division of Public Health demands the following:

#### **Required Information**

**The person requesting a certified copy of a birth record must provide . . . a signed request form, and a photocopy of your valid photo ID, such as a driver's license, state-issued ID card, or employer issued photo ID ([www.health.state.ga.us/programs/vitalrecords/birth.asp](http://www.health.state.ga.us/programs/vitalrecords/birth.asp)). Exhibit D.**

45.

Moreover, it is impossible for registered voters who were born in Georgia before 1919 to obtain a certified copy of their birth certificates because the Georgia Division of Public Health does not maintain a record of births prior to 1919. *Id.*

46.

Finally, many older and less affluent registered voters cannot obtain a Photo ID because they do not have birth certificates on file with the Department of Vital Statistics in Georgia or other states for a variety of reasons: (a) because they were born before such records were recorded and maintained, (b) because they were

born at home and no official records of their births were filed, or (c) because they were informally adopted and have lived for years under the name of their adoptive parents, rather than the name under which they were born, among other reasons.

**The Stated Purpose Of The Photo ID Requirement (Fraud) Is A Pretext**

47.

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is:

. . . to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

48.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the *Gainesville Times*:

I don't think we need it for voting, because I don't think there's a voter fraud problem.

*Gainesville Times*, "States Voters Must Present Picture IDs" (September 15, 2005) ([www.gainesvilletimes.com](http://www.gainesvilletimes.com)).

49.

The stated purpose of the Photo ID requirement was a pretext that is intended to conceal the true purpose of the amendment, which was, and is to

suppress voting by the poor, the elderly, the infirm, African-American, Hispanic and other minority voters by increasing the difficulty of voting.

50.

There is no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.

51.

The pretextual nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

- (a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.
  - (i) Fraudulent voting was already prohibited as a crime under O.C.G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to \$10,000 or imprisonment for up to ten years, or both.
  - (ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.
  - (iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered

voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

- (iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O.C.G.A. § 21-2-417.
- (b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators – the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office.
- (c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots – particularly 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.
- (d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:
  - (i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

- (ii) Voters were required by existing Georgia law (O.C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.
- (iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

**The Photo ID Requirement Is Overbroad And Was Not Narrowly Tailored**

52.

Even if the Photo ID requirement had been truly intended to prevent fraudulent voting by imposters, the new Photo ID requirement is overbroad and was not narrowly tailored:

- (i) Overbroad because it applies to and burdens the right to vote of the vast majority of citizens who cast their ballots in person in order to prevent a hypothetical miniscule fraction of people from fraudulently casting ballots by misrepresenting their identities to poll workers.

- (ii) Not narrowly tailored to prevent the primary source of what fraudulent voting does exist – namely fraudulent voting by absentee ballots.

**Count One**

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

53.

The allegations of paragraphs 1 through 52 above are hereby incorporated as allegations of paragraph 53 of Count One of the complaint.

54.

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

**Right to register and vote.**

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

55.

Each of the individual plaintiffs and every other citizen of Georgia has an absolute constitutional right to register and vote under Article II, § I, ¶ II of the

Georgia Constitution, provided he or she meets the five qualifications set forth in the Georgia Constitution, which are exclusive:

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

56.

By requiring that registered voters present a Photo ID before being issued a ballot and allowed to vote, the 2005 amendment to O.C.G.A. § 21-2-417 by Act 53 purports to add a new condition and qualification of voting in addition to those specified by Article II, § I, ¶ II of the Georgia Constitution, and is, therefore, unconstitutional, null and void.



**Count Two**

**Undue Burden on the Right to Vote in  
Violation of Equal Protection of the Law**

57.

The allegations of paragraphs 1 through 52 above are hereby incorporated as allegations of paragraph 58 of Count Two of the complaint.

58.

The Photo ID requirement imposes an undue burden on the fundamental right of registered voters in Georgia to vote that is neither justified by, nor necessary to promote a substantial and compelling state interest that was not already being adequately protected by existing criminal laws and election procedures, or which could not have been accomplished in other, less restrictive alternatives. *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1972).

59.

The Photo ID requirement is also overbroad and is not narrowly tailored to prevent what few documented instances of fraudulent voting that do exist (*i.e.*, fraudulent voting of absentee ballots), while making it significantly harder for hundreds of thousands of qualified citizens who vote in person to cast ballots in order to prevent a hypothetical – and so far as the Secretary of State knows, a non-

existent – possibility that a few individuals might attempt to vote illegally by misrepresenting their identity to poll workers.

**Count Three**

**Unconstitutional Poll Tax on the Right to Vote  
In Violation of Both the Fourteenth and the Twenty-Fourth Amendments**

60.

The allegations of paragraphs 1 through 52 above are hereby incorporated as allegations of paragraph 61 of Count Three of the complaint.

61.

Act 53, in combination with O.C.G.A. § 40-5-103, imposes an unconstitutional \$20 poll tax on the right to vote in federal, state and local elections in Georgia.

62.

Conditioning the right to vote in person or the payment of a \$20 fee to purchase a Photo ID violates the equal protection clause in both the Georgia and United States Constitutions because the fee must be paid only by some voters (those who vote in person, but do not have passports, government employee ID cards, or Georgia driver's licenses) and not by others (absentee voters and voters who have passports, government employee ID cards or Georgia driver's licenses).

*See Harper v. Virginia*, 383 U.S. 663 (1966).

63.

Even if the \$20 fee is not discriminatory, and applied uniformly to all voters, the Photo ID requirement is still invalid as applied to the right to vote in federal elections because it conflicts with the Twenty-Fourth Amendment.

**Section 1.** The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay a **poll tax or other tax.**

Amendment XXIV to the United States Constitution, Section 1; *see Harman v. Forssenius*, 380 U.S. 528 (1965) (emphasis added).

#### **Count Four**

##### **Violation of the Civil Rights Act of 1964 (42 U.S.C. §§ 1971(a)(2)(A) and 1971(a)(2)(B))**

64.

The allegations of paragraphs 1 through 52 above are hereby incorporated as allegations of paragraph 65 of Count Four of the complaint.

65.

The Photo ID requirement in Act 53, therefore, violates the Civil Rights Act of 1964, 42 U.S.C. § 1971(a)(2)(A), which provides that:

No person acting under color of law shall –

(A) in determining whether any individual is qualified under State law or laws to vote in any election, **apply any standard**, practice, or procedure **different from the standards**, practices, or procedures **applied** under such law or laws to other individuals **within the same county, parish, or similar political subdivision** who have been found by State officials to be qualified to vote; . . .

42 U.S.C. § 1971(a)(2)(A) (emphasis added).

66.

The Photo ID requirement violates 42 U.S.C. § 1971(a)(2)(A) because only voters who vote in person are required to present a Photo ID as a condition of being allowed to vote, while Georgia law imposes no such Photo ID requirement on voters residing in the same “county” or “political subdivision” who vote by casting absentee ballots.

67.

The Photo ID requirement in Act 53 also violates the Civil Rights Act of 1964 (42 U.S.C. § 1971(a)(2)(B)), which provides that:

No person acting under color of law shall –

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, **if such error or omission is not material in determining whether such individual is qualified under State law to vote** in such election; . . .

68.

The Photo ID requirement violates 42 U.S.C. § 1971(a)(2)(B) because it denies individuals who are fully qualified and lawfully registered the right to vote in person based solely on whether or not they have a government-issued Photo ID, regardless of whether their identity may be established by other means, such as when their signatures can be matched to the signatures on their official voter registration cards, or if they are personally known to election officials to be the same person as the person whose name appears on the official list of registered voters.

**Count Five**

**Section 2 of the Voting Rights Act**

69.

The allegations of paragraphs 1 through 52 above are hereby incorporated as allegations of paragraph 70 of Count Five of the complaint.

70.

Section 2 of the Voting Rights Act of 1965 (42 U.S.C. § 1973(a)) provides:

- (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.

71.

Non-white citizens of Georgia, as a group, have lower personal and family incomes than citizens of Georgia who are white, and are less likely, as a group, to have Georgia driver's licenses, passports or other government-issued Photo IDs, than are white citizens, as a group.

72.

Act 53's requirement of possession of a government issued photo identity card in order to cast a vote and/or have one's vote counted is a qualification to voting, a standard practice or procedure with respect to voting which will result in the denial of the right to vote to individual plaintiffs and others on account of race or color in violation of Section 2 of the voting Rights Act, 42 U.S.C. § 1973(a).

**Irreparable Harm / Inadequate Remedy At Law**

73.

There are dozens of municipal and county elections that will be subject to the Photo ID requirement scheduled to be held on November 8, 2005, including the 2005 municipal elections for the City of Rome and the City of Atlanta.

74.

The individual plaintiffs and the members of the organizational plaintiffs who do not have one of the forms of ID required by the 2005 amendment to O.C.G.A. § 21-2-417 will be irreparably harmed if they are forced, between now and the next election to either (a) obtain a Photo ID from a State DDS office, or (b) forfeit their rights as registered voters to vote in the next and subsequent elections or referenda in their respective voting districts or political subdivisions for which they cannot be adequately compensated in an action at law for money damages.

WHEREFORE, Plaintiffs respectfully pray that:

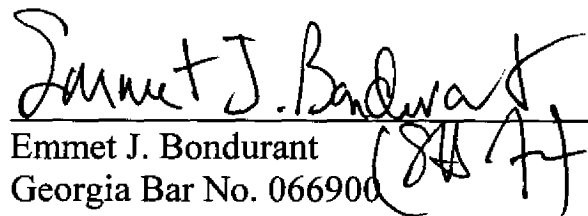
- (a) the Court enter a declaratory judgment pursuant to 28 U.S.C. § 2201 declaring the Photo ID requirement in the 2005 Amendment to O.C.G.A. § 21-2-417 unconstitutional, null and void;
- (b) the Court enter a preliminary and a permanent injunction pursuant to Fed.R.Civ.P. 65 restraining and enjoining defendants individually and in their official capacities from enforcing or applying the Photo ID requirement in the 2005 Amendment to O.C.G.A. § 21-2-417 (Act No. 53, Section 59) to deny plaintiffs or any other registered voter in Georgia admission to the polls, a ballot, or the right to cast their

ballots and have their ballots counted in any special, general, run off or referenda election in Georgia because of their failure or refusal to present an official Photo ID required by O.C.G.A. § 21-2-417;

- (c) plaintiffs recover their reasonable attorneys' fees and costs; and
- (d) plaintiffs have such other and further relief as may be just and equitable.

This 19<sup>th</sup> day of September 2005.

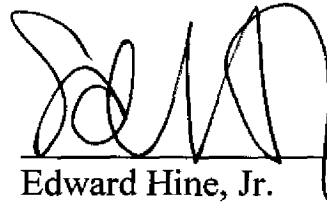
Respectfully submitted,



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