

FILED IN CLERK'S OFFICE
U.S. DISTRICT COURT

SEP 19 2005

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

LUTHER P. HINE JR.
By: *[Signature]*
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

CIVIL ACTION -HINE
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

and service to the poor, the homeless, and the helpless in the metropolitan Atlanta area, including ensuring that their rights as citizens to full participation in the democratic process, including the right to register and vote without undue interference.

- (h) The following plaintiffs, each of whom is a citizen of the State of Georgia and duly qualified and registered under Georgia law to vote in federal, state and local elections:
- (i) **Mr. Tony Watkins**, an African-American citizen and duly qualified and registered voter residing in the City of Rome and Floyd County, Georgia, who does not possess a Georgia driver's license, passport or other form of government-issued photo identity, and cannot readily obtain a Photo ID card from the State Department of Driver Services; and
 - (ii) **Mrs. Clara Williams**, an African-American citizen and duly qualified and registered voter residing in the City of Atlanta and Fulton County, Georgia, who does not possess a Georgia driver's license, passport or other form of government-issued photo identity, and cannot readily obtain a Photo ID card from the State Department of Driver Services.

2.

The Defendants are:

- (a) The following defendants are sued individually and in their official capacities as superintendents or members of their respective city or county boards of elections and also as Class Representatives of a class

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). 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).

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).

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). 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).

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.

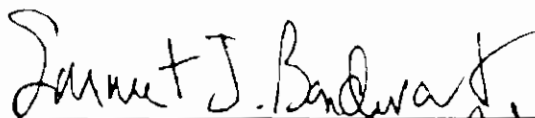
WHEREFORE, Plaintiffs respectfully pray that:

- (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.

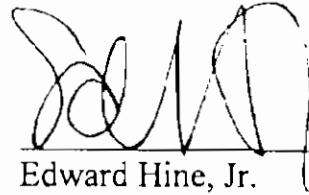
This 19th day of September 2005.

Respectfully submitted,



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FAX NO.

P. 08



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Atlanta, Georgia 30334

Cathy Cox
SECRETARY OF STATE
(404) 656-2881

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Atlanta, Georgia 30334
11am-6pm
11am-6pm

Georgia State Senate
SAM ZAMARRIPA
Senator



District 31
(404) 463-8054
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MEMORANDUM

TO: Members of the Georgia State Senate

FROM: Cathy Cox *ccox*

DATE: March 29, 2005

RE: HB 244

Today you will consider HB 244. Much has been said and written about this particular piece of legislation, and I will not attempt to address the sweeping changes that are proposed by this comprehensive elections bill. Rather, I ask you consider one important point today.

Over the past 9 years, I proposed -- and you passed -- a number of measures to enhance the integrity of elections -- including the current voter ID law, improved authority to remove the names of deceased voters from the rolls, higher penalties that can be imposed by the State Elections Board, and numerous provisions to tighten voter registration requirements. We continue to pursue efforts to fight fraud in any area of the voting process.

For that reason, we are tremendously concerned about the staggering opportunities for voter fraud that will be created by HB 244. By allowing any person, at any time within 45 days before an election, to vote an absentee ballot by mail -- with no ID requirement and no requirement to state one of the current conditions for voting absentee (O.C.G.A. § 21-2-380) -- such as being out of town on election day, having a disability, being over 75 years old, etc.), you would be opening a gaping opportunity for fraud. 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.

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Memo to Members of the Georgia State Senate
March 29, 2005
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This completely contradicts the reasons stated for another measure contained in HB 244 – the photo ID requirement. If the authors are indeed concerned about voter fraud, they would not likely authorize the easiest – and most prevalent form – of election law violations: unregulated voting by mail. In the past 9 years, neither my staff nor I can recall a single case or complaint of a voter impersonating another voter at the polls – the issue sought to be corrected by mandatory photo identification. And had this been occurring, some voter surely would have complained upon finding that someone else had voted under their name. It hasn't happened.

I urge you to fully consider all the changes proposed by HB 244. This bill started out as the "housekeeping" legislation proposed by my office, but other bills – HB 597 and SB 84 – have now been merged into it. The bill attempts to solve a problem that does not exist while expanding the opportunity for fraud in the area that has long been the most vulnerable to this type of abuse – the mailed absentee ballot.

Thank you for your consideration and I hope you will let me know if you have any questions.

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Secretary of State
214 State Capital
Atlanta, Georgia 30334

Cathy Cox
SECRETARY OF STATE
(404) 656-2881

April 8, 2005

Honorable Sonny Perdue
Governor, State of Georgia
203 State Capitol
Atlanta, Georgia 30334

Dear Governor Perdue:

I am writing to you to request that you veto House Bill 244. It is my strong belief that the picture identification requirement in House Bill 244 is (1) unnecessary, (2) creates a very significant obstacle to voting on the part of hundreds of thousands of Georgians, including the poor, the infirm and the elderly who do not have drivers licenses because they are either too poor to own a car, are unable to drive car, or have no need to drive a car, (3) very unlikely to receive pre-clearance under the Voting Rights Act by the Department of Justice, (4) violates Art. II, section I paragraph I of the Georgia Constitution by adding a condition on the right to vote that is not contained in the constitution and (5) imposes an undue burden on a fundamental right of all citizens, the right to vote, in violation of both the state and the federal constitutions.

My concerns in this regard are not fanciful or without thorough consideration. I call your attention to an official opinion issued by the Attorney General of Michigan in 1997, in which he declared unconstitutional a voter identification statute adopted by the Michigan legislature that was less restrictive than the provisions in House Bill 244. For your convenience, I have attached a copy of that opinion to this letter. It is my opinion that absent a veto of House Bill 244, it is important that the state assess the legality of the legislation before it becomes subject to possible litigation with respect to its constitutionality which, in turn, could bring unnecessary cost and embarrassment to our state.

In order to more clearly state my concerns, I submit to you the following:

1. *The photo identification requirements of House Bill 244 are unnecessary.*

One of the primary justifications given by the Legislature for the passage of the photo identification provisions of House Bill 244 - the elimination of voter ID fraud at the polls - is an unfounded justification. I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls. Our state currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they in fact occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or

Honorable Sonny Perdue
 April 8, 2005
 Page 2

herself as such person on that respective Election Day. As a practical matter, there is no possibility that vote fraud of this type would have gone undetected if it had in fact occurred because there is a list of registered voters at each polling place that is checked off as each person votes. If the impersonator voted first, and the legitimate voter came to the polling place later in the day and tried to vote, he or she would be told that they had already "voted" and would not be allowed to vote a second time in the same day. It is reasonable to suspect that a voter who cared enough to show up at the polls to cast a ballot would almost certainly have complained - but there have been no such complaints. If the opposite occurred, and the legitimate person came to the polls first and cast his ballot, the impersonator who showed up later would not be allowed to vote for the same reason and the attempted fraud would have been prevented.

In addition, this state has adopted severe criminal sanctions for the type of voter impersonation that is purportedly of concern and it is evident that such penalties have been a sufficient deterrent. In essence, there is no voter fraud problem currently in existence that House Bill 244 addresses. Additionally, the concern for this type of voter fraud has not prompted other states to approve legislation as restrictive as House Bill 244. Forty-two of those states provide for other valid forms of identification besides photo identification. Of the other seven states, not one is as restrictive as the legislation recently enacted in our state. If this type of voting fraud was a national trend, other states would likely be adopting legislation as restrictive as House Bill 244.

In contrast to the lack of voter fraud relating to impersonation of voters at polls during my tenure, the State Election Board has reviewed numerous cases of voter fraud relating to the use of absentee ballots. However, the Legislature, in adopting House Bill 244 grossly expanded the opportunities for absentee voting by mail without any photographic identification requirement whatsoever, even though absentee ballots pose more of a threat of voting fraud than people voting in a polling location in their community. As a result, the type of voter fraud that has frequently occurred in our state is not addressed, and in fact is enhanced by the expansion of vote-by-mail opportunities. In sum, the justification for House Bill 244 is but a pretext.

2. *The photo identification requirements of House Bill 244 create substantial obstacles to many Georgia voters.*

Requiring someone who is otherwise registered and fully qualified to vote to present a government issued picture identification at the polling place as a condition of voting places a very real burden on many people, and especially upon the poor and the elderly who do not own or cannot drive a car and therefore do not have drivers' licenses. It is estimated by the League of Women Voters and the AARP that an estimated 152,664 individuals over the age of 60 who voted in the 2004 presidential election do not have a Georgia driver's license and are likely not to have other photo identification. For such voters to obtain identification is often an unnecessarily burdensome task, particularly if such voters are in retirement communities and assisted living facilities, or live in rural areas.

Honorable Sonny Perdue

April 8, 2005

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In addition, for many of the poorest residents of our state, photographic identification is not just a matter of unnecessary documentation that has no direct bearing on their day to day lives (they often have no need to drive or travel, or otherwise engage in activities that require a license), but is a burden of cost, economy and time. Although seemingly nominal, the \$8.00 fee for an identification card may be a cost that many of our poor residents are unable to bear. Given the fact that the United State Supreme Court has held that a \$1.50 poll tax is an unconstitutional burden on the ability for an individual to vote (*Harper v. State Bd of Elections*, 383 U.S. 663 (1966)), an \$8.00 fee for an identification card required by the state would also seemingly be unconstitutional, even if such fee may be waived by the state in the event that a voter swears that he or she is indigent. In fact, to require that someone swear and affirm they are indigent when they are above the level of indigence but nonetheless too poor to afford the cost of an identification card, is both an affront to that person as well as an unlawful requirement that he or she swear to something that is not true. In addition, there are other costs related to obtaining an identification which the state does not have the ability to waive. For an individual working on an hourly wage, the time it takes to travel to a DMVS (which may be an unreasonable distance away from the residents home or office), wait in the lengthy lines that result from only having 56 DMVS offices in the state (according to the list of locations posted on www.dmv.ga.gov) and then the return commute, results in actual lost wages. For the state to require this of our citizens, some of whom cannot afford to take such time off, is an unnecessary burden related to the exercise of that person's right to vote.

The geography of state DMVS offices poses a significant burden on many residents who would be required to obtain identification in order to vote. Given this state has only 56 DMVS offices, citizens without cars who reside in 103 of the 159 counties in Georgia must travel outside their home counties to obtain a state-issued picture ID in order to vote. Nor is there a single location to obtain such an ID in the city of Atlanta.

3. *The photo identification requirements of House Bill 244 are very unlikely to receive pre-clearance by the Department of Justice under the Voting Rights Act.*

As you are aware, pursuant to Section 5 of the Voting Rights Act of 1965, as amended by 42 U.S.C. § 1973c, when this state (or any other state) seeks to administer any changes in voting qualification or prerequisites to voting or standards, practice or procedure it must submit such qualifications for pre-clearance by the U.S. Department of Justice Civil Rights Division. To obtain pre-clearance under §5, the state, as submitting authority, has the burden of showing that the submitted change has neither discriminatory purpose nor effect. (*Brooks v. State Bd. of Elections*, 775 F.Supp. 1470, *aff'd* 498 U.S. 916).

There are demographic factors that give pause for concern regarding the disparate impact that House Bill 244 may have with respect to the disenfranchisement of a class of voters. Recent census data indicates that African Americans in Georgia are nearly five times more likely not to have access to a motor vehicle than are whites. *Census Summary File 3 (SF3) HCT 33B*. This statistic, as well as the general discussion above regarding the economic impact of requiring voters to obtain identification, raises even greater scrutiny of the

Honorable Sonny Perdue
 April 8, 2005
 Page 4

constitutionality of House Bill 244. The very issue of disparate impact on minority voters is one of which we should be mindful and could possibly lead to the "retrogression in the position of racial minorities with respect to their effective exercise of their electoral franchise." *Beer v. United States*, 425 U.S. 130 (1976).

I helped to write Georgia's current Voter ID law in 1997, and the existing list of acceptable types of ID was crafted in careful consideration with the Department of Justice so that we could assure pre-clearance. The affidavit provision in current law, which serves as a "fall back" provision to prevent a valid voter from being turned away at the polls, was specifically included at the request of the Department of Justice.

The fact that the photo identification provisions of House Bill 244 will have disparate impact on the elderly, the disabled, rural voters and minority voters, as well as the fact that there are limited DMVS locations available in our state to satisfy the demand we are placing on citizens to obtain photographic identification, and that no "fall back" provisions exist for a voter who simply does not have or may have lost their photo ID, I have great concern with respect to the prospects of House Bill 244's pre-clearance. In particular, and as you may be aware, in 1994 and 1995, the DOJ objected to certain provisions of Louisiana's then voter identification statute which was strikingly similar to House Bill 244.

4. *The photo identification requirements of House Bill 244 violate Article II Section I, paragraph II of the Georgia Constitution.*

Article II, Section I, Paragraph II of the Constitution of the State of Georgia provides that:

"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 the 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."

As noted above, the relevant portion of the Georgia Constitution sets forth the qualifications for entitlement to vote in elections by the people, and the General Assembly provides by law for the registration of electors. The Georgia Constitution does not vest in the General Assembly the authority to add qualifications to the eligibility to vote. Under House Bill 244, even if an elector satisfies each of the qualifications set forth in Article II, Section I, Paragraph II, the elector may still not be eligible to vote if such elector does not possess a photo identification in accordance with House Bill 244. This is in clear contradiction to the Georgia Constitution and is, in my opinion, a fundamental aspect of the unconstitutionality of House Bill 244.

Honorable Sonny Perdue
 April 8, 2005
 Page 5

5. The photo identification requirements of House Bill 244 impose an undue burden on the fundamental right of all citizens -- the right to vote -- in violation of the state and federal constitutions.

Our federal and state courts have consistently recognized the right to vote as one of the most fundamental rights of our citizens. *Wesberry v. Sanders*, 376 US 1 (1964). The right to vote is "preservative" of other rights, and is one that bears the strictest of scrutiny and it is the fundamental nature of this right which cannot be burdened by state actions. *Harper v. State Bd of Elections*, 383 U.S. 663 (1966), *Reynolds v. Sims*, 377 US 533 (1964). The United States Supreme Court, in *Dunn v. Blumstein*, 405 U.S. 330 (1972), recognized the close constitutional review required with respect to any restriction on the right to vote. In particular, the Supreme Court held in *Dunn* that "before the right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet strict constitutional scrutiny." In addition, our state Supreme Court has also held that "substantive due process requires that state infringement on a fundamental right be narrowly tailored to serve a compelling state interest." *State of Ga. v. Jackson*, 269 Ga. 308 (1998). Our Supreme Court has also held that "when it is established that the legislation 'manifestly infringes upon a constitutional provision or violates the rights of the people' that the statute should be declared unconstitutional." *Cobb County School District v. Barker*, 271 Ga. 35 (1995). The intersection of these two precedents presents two clear questions. First, acknowledging that the right to vote is a fundamental right, is House Bill 244 narrowly tailored to serve a compelling state interest? Second, is it established that the photo identification requirements of House Bill 244 do not manifestly infringe upon the rights of the people? Based on the foregoing facts referenced above, the answer to both of these questions is no.

Governor, House Bill 244 places an unfair and heavy burden on the right to vote of tens of thousands of Georgia citizens, especially on the poor, the elderly and the physically infirm, and therefore has been vigorously opposed by the AARP, the NAACP, the League of Women Voters and dozens of churches and denominations of all faiths for this reason.

In the event that you do not agree with my analysis, I request that you ask Georgia Attorney General Thurbert Baker for his opinion as to the constitutionality of House Bill 244. The request of such an opinion could not possibly harm the state and could save the state the considerable embarrassment and expense of having House Bill 244 either rejected by the Department of Justice under the Voting Rights Act, or from having to defend any case brought by voters in the state or federal courts to have House Bill 244 declared unconstitutional.

I appreciate your consideration and urge your veto of House Bill 244.

Sincerely,

 Cathy Cox

cc: Honorable Thurbert Baker

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Georgia Department Of DRIVER SERVICES

Applying for a Georgia ID Card

Any person that is old enough to sign their name, or make a mark indicating their legal signature can apply to the DDS for a identification card. You must provide acceptable proof of identification. You can apply for an identification card if your Georgia driver license is suspended or revoked. You do not have to surrender a Georgia identification card when you get a Georgia driver license or your Georgia driver license is reinstated.

A identification card contains the same personal information, photo, signature and special protection against alteration and fraud as a driver license. The cost of the Identification Card is **\$20.00 for 5 years or \$35 for a card valid 10 years.**

1. Applicant must furnish proof that he or she resides in Georgia and must provide a valid Georgia residence address. The following items are acceptable
 - o Utility bill with valid Georgia residence address;
 - o Bank statement with valid Georgia residence address;
 - o Rental contracts and/or receipts with valid Georgia residence address;
 - o Employer verification;
 - o Georgia license issued to parent, guardian or spouse.
2. Applicant must surrender all previous drivers licenses, identification cards, and Instructional permits to the Examiner.
 - o If applicant does not have in their possession, a license/ID card to surrender, must provide a certified copy of Motor Vehicle Report or status letter from previous state.
3. First time applicants for a Georgia license or permit or identification card must show some acceptable form of personal identification that includes full name, month, day and year of birth. After verification of full name and date of birth, documents will be returned immediately to the licensee. The following items are acceptable but must be Original or a Certified Copy:
 - o Original birth certificate (State issued) State Vital Statistics (Hospital birth certificates are not acceptable).
 - o Certified copy of birth certificate (Issued from Vital Statistics with affixed seal)
 - o Certificate of birth registration
 - o Certified copy of court records (adoption, name changes or sex changes)
 - o Certified naturalization records
 - o Immigration I.D. card Immigration and Naturalization
 - o Valid Passport
4. Anyone applying for a Georgia driver's license or identification card must provide a social security number at the time of issuance. It is not necessary to have your original social security card. However, penalties will occur if an incorrect social security number is provided.

U.S. citizens must furnish proof of citizenship. Non-U.S. citizens must present proper INS documentation. Documents presented must be either in English or translated into English by a translator approved by the Department of Driver Services.

Last Updated On: 7/8/2005

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Privacy Statement

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This Section

- [Vital Records](#)
- [Directions to Vital Records Office](#)
- [Birth Certificates](#)
- [Death Certificates](#)
- [Marriage Records](#)
- [Divorce Records](#)
- [Putative Father Registry](#)
- [Frequently Asked Questions](#)

Features

[50 Most Popular Male & Female Infant Names - GA, 2002](#)

[Birth certificate and death record request forms](#)

Attorneys and Clerks can download [Form 3927](#) report of divorce

Contact Us

Vital Records
2600 Skyland Dr. NE
Atlanta, GA 30318
(404) 678-4701
prvitalrecords@dph.state.ga.us

Birth Certificates

Birth records are available from 1919 to the present. Georgia law and Department of Human Resources regulation require that all requests for vital records include the signature of the requestor and the proper fee. Access to birth records is limited to

- the person named on the certificate
- the parents shown on the birth record
- an authorized legal guardian or agent
- grandparents of the person named on the certificate
- an adult child of the person named on the certificate
- an adult sibling of the person named on the certificate
- the spouse of the person named on the certificate

Required Information

The person requesting a certified copy of a birth record must provide all the information below, a signed request form, and a photocopy of your valid photo ID, such as: driver's license, state-issued ID card, or employer-issued photo ID. You may provide the information in three ways:

1. By filing out a form online, printing it, signing it, and mailing it to Vital Records
2. By downloading the PDF version of the form, filling it out by hand and mailing it to Vital Records
3. By writing all the following information down and mailing it to Vital Records

The following information must be provided to conduct a search for a birth certificate:

1. Full name of person shown on the birth certificate (last name at birth if female)
2. Date of Birth (month, day, year)
3. Place of Birth (city, county),
4. Current age
5. Sex
6. Race (optional)
7. Full name of mother (include mother's maiden last name)
8. Full name of father
9. Relationship to the person named on the birth certificate requested
10. The number of certificates requested

Fees

Georgia law requires pre-payment before a record or a service can be provided. Fees are not refundable after a service has been provided. Records are sent first class mail

Georgia Division of Public Health ; Vital Records

Page 2 of 3

Search Fee (includes one certified copy, if the record is found on file) \$10.00

Additional certifications of same record ordered at the same time (full size copies only) \$ 5.00

Multi-year search (every ten years or portion thereof) \$10.00

Special Filing Fees

(Does not include the \$10.00 search fee which must also be included.)

Delayed certificate of birth \$10.00

Amending birth certificates because of adoption, paternity acknowledgment, legitimation or court order \$10.00

No special filing fee is required during the first year of birth to amend a birth record. This includes all types of amendments.

Where to Request a Birth Certificate

The following options are available for requesting a birth certificate:

- Mail your request, fee and photocopy of valid photo ID to:

**Vital Records
2600 Skyland Drive NE
Atlanta, GA 30319-3640**

- Request a birth certificate in person at the state Vital Records Office or County Vital Records Office in the county where the birth occurred
- Request a birth certificate from the VitalChek web site

You may request a certified copy of a vital record by using your Discover, MasterCard, American Express or Visa charge card through the use of VitalChek services.

(The VitalChek Network is not affiliated with the State of Georgia.)

You may telephone VitalChek at 1-877-572-8343, seven days a week, 24 hours a day. If overnight delivery is requested you will be charged an additional fee for this service.

There is an additional VitalChek charge to use your credit card to request a certified copy of a vital record by telephone or fax.

- **Note:** You may use the VitalChek fax service to request a record, but copies of birth certificates cannot be sent by fax.
- **Note:** It is not possible to request a birth certificate via email. By law, vital record search requests must be signed and paid for.

Methods of Payment

Fees may be paid by one of the following methods (make certified checks and money orders payable to Vital Records):

- Certified check
- Money order
- Credit card through [VitalChek](#) only

Note: Please do not send cash in the mail

[Counties/Districts](#) | [Programs/Services](#) | [Publications](#) | [Health Data/Info](#) | [About GDPH](#)



©2000-2005 GA Dept of Human Resources, Div of Public Health
Public health information: GDPHINEO@dhr.state.ga.us
Comments to Webmaster: ptwebmaster@dhr.state.ga.us
Contact: [Phone](#), [Fax](#) or [Mail](#).
[Privacy Policy & Disclaimers](#)

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Bowling

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

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)

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.)
 22(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.)

MOTION TO SET A PRELIMINARY INJUNCTION HEARING

Plaintiffs respectfully request that the Court enter the attached Show Cause Order scheduling a hearing for a preliminary injunction in the above-referenced action. In support of this motion, Plaintiffs submit the following:


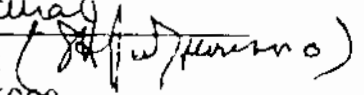
Georgia's 2005 amendment to O.C.G.A. § 21-2-417 requires voters to present certain photographic identification as a pre-condition to voting. As set forth in detail in the Complaint for Declaratory and Injunctive Relief, filed herewith, the new Georgia Photo ID requirement imposes an unauthorized, unnecessary and undue burden on the fundamental right to vote of hundreds of thousands of 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)), and 42 U.S.C. § 1983.

Plaintiffs seek preliminary and injunctive relief and a prompt hearing is necessary to prevent the Plaintiffs and others from suffering a violation of their constitutional rights of the plaintiffs and a multitude of other registered voters in Georgia who do not have the required Photo ID and will not be allowed to vote in the November 8, 2005 election in Rome, Atlanta, and dozens of cities and counties in Georgia. A hearing at the Court's earliest convenience is necessary to protect the rights of the individual Plaintiffs to vote in these elections.

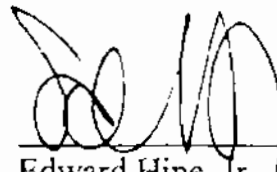
For the foregoing reasons, the Plaintiffs respectfully request that the Court enter the attached Show Cause Order and set a hearing to address a motion for preliminary injunction.

This 19th day of September 2005.

Respectfully submitted,


Emmet J. Bondurant 
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David G.H. Brackett
Georgia Bar No. 068353

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Attorneys for Plaintiffs

SEP 10 2005

Handwritten signature

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

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)
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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,)

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CIVIL ACTION
FILE NO. _____

2005

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 Whitfield County, Georgia; individually)
 and in their respective official capacities as)
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 HON. CATHY COX, individually and in)
 her official capacities as Secretary of State)
 of Georgia and Chair of the Georgia)
 Elections Board.)
)
 Defendants.)

ORDER TO SHOW CAUSE

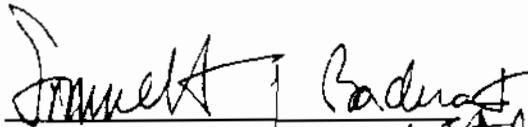
After reviewing the Complaint filed in the above-referenced action and the Plaintiffs' motion to set a hearing on a motion for preliminary injunction, the Court hereby Orders the following:

1. Defendants are hereby ordered to show cause why preliminary injunctive relief should not be granted at a hearing on _____, 2005, beginning at ___ a.m./p.m., in Courtroom _____, at the United States Courthouse in Rome, Georgia.
2. Plaintiffs are hereby Ordered to serve a copy of this Order, along with the Complaint on the Attorney General for the State of Georgia.

SO ORDERED, this _____ day of _____, 2005.

_____, Judge
 United States District Court for the
 Northern District of Georgia, Rome Division

Prepared By:


 Emmet J. Bondurant (301) 512-1111

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 David G.H. Brackett
 Georgia Bar No. 068353
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