

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

Hon. T. Jackson Bedford, Jr., Presiding

COPY

MS. ROSALIND LAKE and
MR. MATTHEW L. HESS
qualified and registered voters
under Georgia law,

Plaintiffs,

v.

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

STATE ELECTION BOARD; and

FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS,

Defendants.

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CIVIL ACTION
FILE NO. 2006CV119207

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

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

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

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

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

I. SUMMARY OF FACTS AND LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. The Standing Issue

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

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

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

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

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

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

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

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

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

II. THE CONSTITUTIONAL CHALLENGE

A. The "New" Voter ID Law Disenfranchises an Otherwise Qualified Voter

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ga. Const., art. II, § 1, ¶ 2.

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

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

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

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

25 N.E. at 223.

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

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

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

218 S.W. at 480.

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

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

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

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

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

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

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

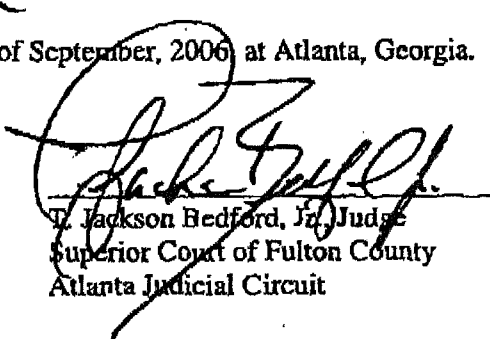
As has been discussed above, the new Voter ID law's "provisional ballot" requirement of O.C.G.A. § 21-2-417(b) shifts the burden of voter registration verification from the State to the voter, and results in the disenfranchisement of an otherwise qualified voter if the voter does not produce the required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

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

III. CONCLUSION

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

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


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