

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

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

Plaintiffs,

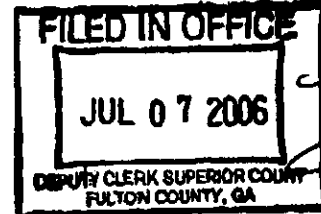
v.

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

STATE ELECTION BOARD; and,

MS. GLORIA CHAMPION, Superintendent
of Elections for Fulton County, Georgia;
MS. JUANITA MARSHALL EBER,
Chair of the Fulton County Board of
Registration and Elections;
MRS. CYNTHIA J. WILLIAMS,
MR. HARRY W. MCDONALD,
MR. FRANK B. STRICKLAND, and
MR. SAMUEL P. WESTMORELAND,

Defendants.



CIVIL ACTION

FILE NO. 2006CV119207

TEMPORARY RESTRAINING ORDER

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

The general assembly originally enacted legislation during the 2005 session which amended the code section at issue.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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

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

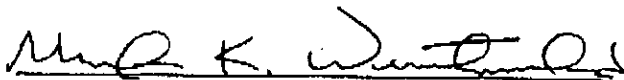

MELVIN K. WESTMORELAND
PRESIDING JUDGE
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

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