



Written by [Joe Wolverton, II, J.D.](#) on March 8, 2011

Georgia Supreme Court Upholds State Photo ID Act

On March 7, by a 6-1 vote, the Supreme Court of Georgia upheld that state's law requiring voters to provide government-issued photo identification in order to exercise the franchise.

Given the repeated judicial rejection of similar complaints, the case of *Democratic Party of Georgia, Inc. v. Perdue, et al* was likely the last legal challenge to the Peach State's photo identification mandate.

The plaintiffs in the above-referenced matter claimed that the Photo ID Act of 2006 violated the Constitution of Georgia in two ways. First, they alleged that the statute imposes an "unauthorized condition and qualification on the right of registered Georgia voters to vote by requiring in-person voters to present a photo ID verifying their identity. Next, the plaintiffs argued that the law "unduly burdens the right to vote in violation of the equal protection clause of the Georgia Constitution, Art. I, Section I, Par. II."



In a previous hearing on the constitutionality of the law, the Eleventh Circuit Court of Appeals upheld the statute in 2009 and the Supreme Court subsequently denied the plaintiff's request for a hearing.

However, the Supreme Court held in favor of a similar law enacted in Indiana in 2008. In that case, as well as others, the court cited the plaintiffs' inability to prove standing, that is to say, they were unable to demonstrate that they were actually harmed by the photo ID requirement.

In its [decision](#), Justice Thompson writing for the majority, affirmed the lower court's rejection of the plaintiff's complaint. The Court cited the validity of the Georgia Legislature's intent to prevent "in-person voter fraud" by mandating that voters present one of six approved forms of ID. Of particular note, the Court writes, is the fact that the government of Georgia sought to remove any undue burden on voters by offering a state ID free of charge to those who "swore under oath that they were indigent."

Addressing the plaintiff's averment that the Georgia General Assembly exceeded the authority granted to it under the Georgia Constitution," the Court held that:

Although the right to vote guaranteed by our Constitution cannot be absolutely denied or taken away by legislative enactment, the legislature has the right to prescribe reasonable regulations as to how these qualifications shall be determined.

And later in the 23-page majority opinion, we read:

Indeed, our Constitution specifically authorizes the legislature to enact laws regulating the elections process.... It has long been acknowledged that the legislature has wide latitude in determining how the qualifications required by the Constitution may be determined, provided it does not deny the right of the franchise by making the exercise of such right so difficult or inconvenient as to amount to a denial of the right to vote.



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The court pointed out that the law at issue does not expressly condition the right to vote on presenting a photo ID, as a voter has the option of choosing an alternative manner of voting that does not impose such a restriction — absentee ballot, for example.

Regarding the claim that the photo ID requirement is an unlawful qualification on the right to vote, the Georgia Supreme Court points out that the law does not impose an undue qualification, as any person desiring to vote may obtain a photo ID. Furthermore, “requiring an additional step in the voting process in order to validate identity is not unconstitutional.”

As additional evidence of the pliability of this requirement, the Court recited the provision in the law that admits a person without a photo ID to cast “a provisional ballot and have the vote counted upon presentation of an acceptable photo ID within 48 hours.”

Finally, the Georgia Supreme Court cites several U.S. Supreme Court cases in which state-imposed voting requirements were upheld. In the case of [Anderson v. Celebrezze](#), 460 U.S. 780 (1983), the U.S. Supreme Court created a balancing test to determine the level of scrutiny to apply in evaluating constitutional challenges to state voting laws.

Basically, the test weighs the “character and magnitude of the asserted injury” to the right to vote against the “precise interests put forward by the State as justifications for the burden imposed by its rule....” In applying this rule, the Georgia Supreme Court held that in enacting the measure, the General Assembly identified a valid interest “of assuring that only those persons who are lawfully registered to vote may do so and eliminating the potential for voter fraud at the polls.”

In light of the futility of challenges to these photo ID laws in Georgia and elsewhere, it is likely that we have now seen the end of the legal wrangling over the right to vote versus the right of states to regulate that right.



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