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ELECTIONS Elections and Primaries Generally: Authorize State Election Board to Conduct Certain Educational Programs; Change Provisions Relating to Required Presentation of Identification by Voters; Specify Types of Identification Which May be Used; Provide for Georgia Voter Identification Cards To Be Issued by Each County Board of Registrars to Registered Electors Who do not Have a Valid Driver's License or Identification Card Issued by the Department of Driver Services; Provide for the Contents and Appearance of Such Cards; Provide for Applications and Supporting Documentation; Provide for the Supply of

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ELECTIONS

Elections and Primaries Generally: Authorize State Election Board to Conduct Certain Educational Programs; Change Provisions Relating to Required Presentation of Identification by Voters; Specify the Types of Identification Which May be Used; Provide for Georgia Voter Identification Cards To Be Issued by Each County Board of Registrars to Registered Electors Who do not Have a Valid Driver's License or Identification Card Issued by the Department of Driver Services; Provide for the Contents and Appearance of Such Cards; Provide for Applications and Supporting Documentation; Provide for the Supply of Equipment and the Adoption of Rules and Regulations by the State Election Board; Change Provisions Relating to Issuance of Free Identification Card by the Department of Driver Services to Registered Electors; Provide for Other Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. § 21-2-31 (amended); §21-2-417 (amended); §40-5-103 (amended)

BILL NUMBER: SB 84

ACT NUMBER: 432

GEORGIA LAWS: 2006 Ga. Laws 3

SUMMARY: The Act limits the forms of identification that are acceptable in order to register and to vote in the State of Georgia to the following: (1) Georgia driver's license; (2) Georgia "Voter Identification Card" or other government-issued identification card containing a photograph; (3) U.S. passport; (4) government employee identification card containing a photograph; (5) U.S. military identification card containing a photograph; or (6) tribal identification card containing a photograph. The Act

creates the Georgia Voter Identification Card, a card to be issued free of charge. The Act also authorizes the State Election Board to conduct educational programs pertaining to the new voter identification requirements.

EFFECTIVE DATE: January 26, 2006¹

History

Alan Jay Mandel of Atlanta, always a patriotic man, believed in the power of the ballot box. The former owner of the Tinder Box, a well-known Lenox Square tobacco shop, Mandel conscientiously exercised his right to vote. Mandel's last three votes, in March, July, and November, 1997, are particularly noteworthy because they were cast after his death. He died of congestive heart failure in January 1997, two months before the first of those three elections.²

That anecdote does not describe an isolated incident in Georgia. The Atlanta Journal-Constitution, in partnership with WSB-TV, reported that on November 6, 2000, 15,198 deceased people remained on Georgia's voter rolls.³ A review of the minutes of the State Elections Commission over the last 18 months reveals that there was not a single meeting that did not have a report of two or three examples of "voter fraud . . . including people who engage in casting multiple votes, machines with inconsistent balloting numbers, [and] illegally obtained or handled absentee ballots."⁴

The previous provisions of Code section §21-2-417 included seventeen different forms of proper identification a voter could show at the poll.⁵ A Georgian could just as easily vote with a student

1. See 2006 Ga. Laws 3, §§ 4, 5, at 7. The Act became effective upon approval by the Governor. See *id.*

2. Press Release, Office of Governor of the State of Georgia, Governor Perdue Signs Voter ID Bill (Jan. 26, 2006), <http://www.gov.state.ga.us/press/2006/press1040.shtml> (quoting *Even Death Can't Stop Some Voters*, ATLANTA J.-CONST., Nov. 6, 2000).

3. See Audio Recording of Senate Proceedings, Jan. 25, 2006 (remarks by Sen. Preston Smith), <http://www.state.ga.us/services/leg/audio/2006archive> [hereinafter Senate Audio].

4. *Id.*

5. 2003 Ga. Laws 517, 548, § 48 (formerly found at O.C.G.A. § 21-2-417 (2003)).

identification card issued by a college as with a driver's license.⁶ Senator Cecil Staton of the 18th district was "flabbergasted at all things [used] for identification in the state of Georgia."⁷ In response, he, along with other senators, introduced Senate Bill 84 to prevent the problem of voter fraud in Georgia.⁸

In the 2005 legislative session, HB 244 restricted the acceptable forms of voter identification to six documents, one of which was a Georgia voter identification card to be issued by the Department of Driver Services ("DDS") offices.⁹ The card was slated to cost \$20 for five years, unless the voter swore under oath that he or she was indigent and could not pay the fee for the identification card, in which case the card would be issued for free.¹⁰ In the last few days of the 2005 session, both houses of the Georgia General Assembly passed HB 244 and Governor Sonny Perdue signed the bill into law as Act 53.¹¹ However, on October 18, 2005, U.S. District Court Judge Harold L. Murphy issued an injunction against the Act, holding that the photo identification requirement violated the Equal Protection Clause and that the \$20.00 fee for the five-year voter identification imposed a poll tax on Georgia voters.¹² Because the injunction was affirmed on appeal, the Georgia legislators proposed revisions to the Act.¹³

Bill Tracking of SB 84

Introduction of SB 84

In the 2005 legislative session, Senators Cecil Staton, Tommie Williams, Jeff Chapman, Chip Rogers, Ronnie Chance and Bill Heath of the 18th, 19th, 3rd, 21st, 16th and 31st districts, respectively,

6. *See id.*

7. Senate Audio, *supra* note 3.

8. *Id.*

9. *Review of Selected 2005 Georgia Legislation*, 22 GA. ST. U. L. REV. 109 (2005).

10. *Id.*

11. *Id.*

12. *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1376 (N.D. Ga. 2005); Darryl Fears, *Voter ID Law is Overturned*, WASH. POST Oct. 28, 2005, at A03.

13. *See* Senate Audio, *supra* note 3 (remarks by Sen. Staton).

introduced SB 84.¹⁴ In the last few days of the 2005 session, SB 84 was added to HB 244 as section 59.¹⁵ Although HB 244 was later signed into law as Act 53, because the district court issued an injunction against the Act, SB 84 was revived during the 2006 legislative session.¹⁶

Consideration and Passage by the House

On January 12, 2006, the House Committee on Governmental Affairs offered a substitute to SB 84 which responded to the issues raised by the judicial decision in *Common Cause/Georgia v. Billups*.¹⁷ The substitute included a requirement that the State Election Board conduct a voter education program concerning voting procedures “with particular emphasis on the proper types of identification required for voting.”¹⁸ The substitute provided for a free voter identification card to be issued by the State and to be labeled “Georgia Voter Identification Card.”¹⁹ It also mandated that the county board of registrars provide at least one place per county to process applications and issue the Georgia Voter Identification Card.²⁰ The substitute removed any requirement that a person swear under oath that he or she is indigent and cannot pay the fee for the identification card before the prospective voter is eligible for a free card.²¹ The House adopted the Committee substitute on January 12, 2006, without any amendments, by a vote of 110 to 64.²²

14. SB 84, as introduced, 2005 Ga. Gen. Assem.

15. *Id.* See also, HB 244, as passed, 2005 Ga. Gen. Assem..

16. *Id.* The changes to SB 84 prior to the judicial decision that overturned the photo identification requirements for Georgia voters under Act 53 are beyond the scope of this article. For a detailed discussion of Act 53, please refer to *Review of Selected 2005 Georgia Legislation*, 22 GA. ST. U. L. REV. 109 (2005).

17. State of Georgia Final Composite Status Sheet, SB 84, Mar. 11, 2005 (Mar. 30, 2006).

18. SB 84 (HCS), 2006 Ga. Gen. Assem.

19. *Id.*

20. *Id.*

21. *Id.*

22. Georgia General Assembly, SB 84 Bill Tracking, http://www.legis.state.ga.us/legis/2005_06/sum/sb84.htm [hereinafter Bill Tracking]; State of Georgia Final Composite Status Sheet, SB 84, Jan. 12, 2006 (Mar. 30, 2006).

Consideration and Passage by the Senate

On January 24, 2006, Senator Staton introduced SB 84 on the Senate floor.²³ In his introductory remarks, Senator Staton stated that the revised SB 84 addressed in “significant and meaningful ways all of the concerns” in the prior court’s decision.²⁴ Senator Staton explained that the bill was revised in three major ways: (1) by mandating a voter education program explaining, in particular, the “proper types of identification required for voting;” (2) by eliminating any fees for the issuance of voter identification cards and eliminating the requirement for any affidavits with respect to the voter’s income or needs; and (3) by providing at least one place in each county where the new and free Georgia Voter Identification Card will be issued.²⁵

Senators Staton, Bill Stephens, and John Wiles of the 18th, 27th, and 37th districts, respectively, offered a floor amendment, which Senator Staton explained during the floor debate and which the Senate subsequently adopted on January 24, 2006.²⁶ The amendment clarified that the free voter identification cards would only be issued to registered voters and, in order to alleviate concerns about identity theft, removed the requirement that the voter provide a social security number in order to get the voter identification card.²⁷

Senator Kasim Reed of the 35th district spoke against the bill’s adoption.²⁸ He pointed out that more than 80% of the cases of voter fraud involved absentee ballots and not in-person voting.²⁹ He criticized the bill for failing to address what he perceived as the more significant problem of voter fraud with absentee ballots.³⁰

Senator Sam Zamarripa of the 36th district offered two floor amendments on January 24, 2006, which would have required the DDS to establish mobile identification card issuance units for

23. Senate Audio, *supra* note 3 (remarks by Sen. Staton).

24. *Id.*; see also *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005).

25. See Senate Audio, *supra* note 3 (remarks by Sen. Staton).

26. See SB 84 (AM 18 1276), 2006 Ga. Gen. Assem.

27. See Senate Audio, *supra* note 3 (remarks by Sen. Staton).

28. See Senate Audio, *supra* note 3 (remarks by Sen. Kasim Reed).

29. *Id.*

30. *Id.*

residents of nursing homes or assisted living facilities.³¹ Both amendments failed.³²

Following the floor debate on January 24, 2006, the Senate adopted the House Substitute to Senate Bill 84 with the Senate floor amendment, and passed SB 84 by a vote of 32 to 22.³³ On January 25, 2006, the House adopted the Senate amendment by a vote of 111 to 60.³⁴ Governor Perdue signed the bill into law on January 26, 2006.³⁵

The Act

The Act amends Code section 21-2-31 by mandating that the State Election Board formulate and conduct a voter education program concerning voting procedures, with particular emphasis on the proper types of identification required for voting, subject to funds being specifically appropriated for such purpose by the General Assembly.³⁶

The Act amends Code section 21-2-417 by restricting the proper forms of identification that may be used for in-person voting and specifically including the new Georgia Voter Identification Card as a valid form of identification for voting purposes.³⁷

The Act adds Code section 21-2-417.1, which creates the Georgia Voter Identification Card, a card to be issued to registered voters free of charge upon presenting a photo identification document, a document showing the person's date of birth, evidence that the person is registered to vote in the state, and documentation showing the person's name and address of principal residence.³⁸ The Act

31. See Failed Senate Floor Amendments to SB 84, introduced by Sen. Sam Zamarripa, Jan. 24, 2006.

32. See *id.*

33. Georgia Senate Voting Record, SB 84 (Jan. 24, 2006); State of Georgia Final Composite Status Sheet, SB 84, Jan. 24, 2006 (Mar. 30, 2006).

34. Georgia House Voting Record, SB 84 (Jan. 25, 2006); State of Georgia Final Composite Status Sheet, SB 84, Jan. 25, 2006 (Mar. 30, 2006).

35. State of Georgia Final Composite Status Sheet, SB 84, Jan. 26, 2006 (Mar. 30, 2006).

36. O.C.G.A. § 21-2-31 (Supp. 2006).

37. O.C.G.A. § 21-2-417 (Supp. 2006).

38. O.C.G.A. § 21-2-417.1 (Supp. 2006). The Act created an alternative procedure under amended Code section 40-5-103 for voters who do not have the documents required in section 21-2-417.1. See O.C.G.A. § 40-5-103 (Supp. 2006).

requires that each county board of registrars shall ensure that there is at least one place per county that processes and issues the Georgia Voter Identification Card.³⁹

The Act amends Code section 40-5-103 by stating the DDS shall not be authorized to collect a fee for the identification card.⁴⁰ Furthermore, a voter only needs to submit evidence that he or she is registered to vote in Georgia and to swear under oath that he or she needs the card to vote in an election in Georgia and that he or she does not have any other form of acceptable identification.⁴¹

Analysis

The Act restricts the acceptable forms of identification to vote at polling places to the following: (1) Georgia's driver's license; (2) Georgia Voter Identification Card or other government-issued identification card containing a photograph; (3) U.S. passport; (4) government employee identification card containing a photograph; (5) U.S. military identification card containing a photograph; and (6) tribal identification card containing a photograph.⁴² This restriction is aimed at reducing voter fraud.⁴³ By requiring more stringent standards for voter identification, the Act aims to reduce incidences of voter impersonation and fraud, which, in effect, dilute the principle of one person, one vote, and thereby undermine citizens' confidence in the integrity of the electoral process.⁴⁴

However, opponents maintain "that requiring photo IDs of voters is a . . . ploy to suppress voting among the Democratic base of the elderly, poor, and minorities."⁴⁵ These opponents point to evidence that absentee ballots account for more than 80% of fraud cases

39. *Id.*

40. O.C.G.A. § 40-5-103 (Supp. 2006).

41. *Id.*

42. O.C.G.A. §§ 21-2-417 (a)(1) - (6) (Supp. 2006).

43. See Senate Audio, *supra* note 3 (remarks by Sen. Staton).

44. *Id.*; see also Senate Audio, *supra* note 3 (remarks by Sen. Smith) (discussing instances of voter fraud).

45. Carlos Campos, *Voter ID Bill Approved: Opponents Vow to Continue Fight*, ATLANTA J.-CONST., Jan. 26, 2006 at A1.

brought to the Election Board; yet, the Act does not require photo identification of individuals requesting absentee ballots.⁴⁶

The Act also creates a new form of photo identification in the form of the “Georgia Voter Identification Card” for people who do not have driver’s licenses, passports, or other forms of identification that require payment of fees before they can be issued.⁴⁷ The Act mandates that the DDS issue these voter identification cards free of charge.⁴⁸ This provision eliminated the U.S. District Court’s objections to the HB 244 provision for a fee-based voter identification card, which the court likened to a Jim Crow-era poll tax.⁴⁹ Yet, many feel that this is not enough. Emmet Bondurant, who represented the plaintiff in the case, said, ““They may think by making essentially cosmetic changes they have materially affected the case . . . They haven’t even come close.””⁵⁰

The financial consequences of the Act have also been a concern for many legislators and state officials. The Act dictates that each county board of registrars provides at least one place in each county which accepts applications for Georgia Voter Identification Cards.⁵¹ Some have criticized the sponsors of the bill for voting on a bill without knowing its cost.⁵² Senator Staton, one of the sponsors of the bill, responded that, based on studies done by the House, the cost for the equipment and processing is anticipated at approximately \$200,000.⁵³ By contrast, Secretary of State Cathy Cox’s office said that the state may have to spend nearly \$1 million on the equipment required to issue the cards.⁵⁴ The same financial concerns also extend to the Act’s mandate that the State Election Board develop and disseminate a voter education program concerning procedures for voting with particular emphasis on proper types of identification because the

46. See Senate Audio, *supra* note 3 (remarks by Sen. Reed).

47. O.C.G.A. § 21-2-417(a)(2) (Supp. 2006); O.C.G.A. § 21-2-417.1(c) (Supp. 2006).

48. O.C.G.A. § 40-5-103(d) (Supp. 2006).

49. *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1370 (N.D. Ga. 2005).

50. Campos, *supra* note 45.

51. O.C.G.A. § 21-2-417.1 (Supp. 2006).

52. Nancy Badertscher & Sonji Jacobs, *Voter Id Costs Still Debated; Counties Say They’re Already Overworked*, ATLANTA J.-CONST., Jan. 28, 2006, at E1. During the Senate Floor debate, Senator Tate also pointed out that the sponsors of SB 84 had failed to include a fiscal note outlining its costs. See Senate Audio, *supra* note 3 (remarks by Sen. Horacena Tate).

53. See Senate Audio, *supra* note 3 (remarks by Sen. Staton).

54. Badertscher & Jacobs, *supra* note 52.

voter education program is “subject to funds being specifically appropriated by the General Assembly.”⁵⁵

In issuing the injunction against HB 244, the U.S. District Court raised two issues: (1) the Act created an undue burden on the fundamental right to vote, and (2) the fee for the issuance of the voter identification card was an unconstitutional poll tax.⁵⁶ By eliminating the fee for the voter identification card, the revised SB 84 adequately responds to the court’s latter concern. The remaining constitutional issue, therefore, is whether the revised SB 84 meets strict scrutiny and the test set forth in *Burdick v. Takushi*.⁵⁷

The Supreme Court discussed whether voting is a fundamental right in *Burdick v. Takushi*.⁵⁸ However in issuing the initial injunction, the district court recognized that the Supreme Court has not applied strict scrutiny to all challenges to voting regulations.⁵⁹ The Court observed that the mere fact that a state’s system creates barriers does not itself compel close scrutiny.⁶⁰ Instead, the Court articulated the standard of weighing the “character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments” against “the precise interests put forward by the State as justification for the burden,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.”⁶¹ Thus, in evaluating the photo identification requirement in the Georgia law, the District Court considered both strict scrutiny and the *Burdick* standard.⁶²

Under strict scrutiny, the court concluded that, assuming preventing voter fraud is a legitimate state concern, the statute was not narrowly tailored to prevent voter fraud.⁶³ The court based its conclusion on evidence that although the most prevalent type of voter fraud is with absentee voting, the State had drafted its photo

55. O.C.G.A. § 21-2-31 (Supp. 2006).

56. *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1366, 1370 (N.D. Ga. 2005).

57. *Burdick v. Takashi*, 504 U.S. 428, 433 (1992)

58. *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1359 (citing *Burdick v. Takashi*, 504 U.S. 428, 433 (1992)).

59. *Id.* at 1360.

60. *Id.*

61. *Id.*

62. *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1361-66 (N.D. Ga. 2005).

63. *Id.* at 1362.

identification requirement to apply only to in-person voters.⁶⁴ The revised SB 84 continues to address the prevention of voter fraud exclusively in in-person voting.⁶⁵ Thus, opponents question the constitutionality of the Act, arguing that it is not narrowly tailored.⁶⁶ Proponents of the Act argue that problems with absentee ballots arise from the handling and registering process, which is difficult to tackle because most legislators do not want to tighten up the requirements for registering voters.⁶⁷ Given the court's concern with the Act's focus on in-person voting rather than absentee voting, it is uncertain whether the Act would pass Constitutional muster.⁶⁸

Under the *Burdick* test, in which a court weighs the asserted injury against the State's interest in preventing voter fraud, the revised SB 84 arguably has reduced the extent of the injury by eliminating fees, mandating voter education programs, and providing for voter identification card offices in every county in the State of Georgia.⁶⁹ Yet, the failure to address absentee ballots remains.⁷⁰ The *Billups* court was troubled by the idea that the State imposed no photo identification requirements or absolute identification requirements for registering to vote, and actually removed the conditions for obtaining an absentee ballot imposed by the previous law.⁷¹ The court concluded that "in short, HB 244 opened the door wide to fraudulent voting via absentee ballots. Under those circumstances, the State Defendant's proffered interest simply does not justify the severe burden that the Photo ID requirement places on the right to vote."⁷² Notably, the court's decision was based on its perception that the burden on voting created by HB 244 was "severe."⁷³ By lessening the burden through eliminating the voter identification card cost,

64. *Id.* at 1361-62.

65. *See* SB 84, as passed, 2006 Ga. Gen. Assem.

66. Interview with Isidor J. Kim, Korean-American Coalition, Atlanta Chapter (April 14, 2006) [hereinafter Kim Interview].

67. Interview with Sen. Cecil Staton, Senate Dist. No. 18, (Apr. 19, 2006) [hereinafter Staton Interview].

68. *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1361 (N.D. Ga. 2005).

69. *See* Staton Interview, *supra* note 67. In fact, these three revised provisions address each concern the court raised in its discussion of the asserted injury. *See Billups*, 406 F. Supp. 2d at 1362-66.

70. *See* Kim Interview, *supra* note 66.

71. *Billups*, 406 F. Supp. 2d at 1366.

72. *Id.*

73. *Id.* at 1365.

2006]

LEGISLATIVE REVIEW

155

educating voters, and creating easy access to identification card issuance offices, there is a greater likelihood that the Act will survive the *Burdick* test.⁷⁴

Myung-Hee Hahn

74. See Senate Audio, *supra* note 3 (remarks by Sen. Staton).