

## Voter Photo Identification

### *Common Cause/Georgia v. Billups* (Harold L. Murphy, N.D. Ga. 4:05-cv-201)

Several voters' rights organizations filed a federal action on September 19, 2005, to declare Georgia's new voter photo identification law unconstitutional.<sup>1</sup> Defendants were Georgia's secretary of state, who was chair of the State Election Board, and election officials in 7 of the 11 counties in the Northern District of Georgia's Rome Division.<sup>2</sup>

In response to the plaintiffs' request for a preliminary injunction,<sup>3</sup> on the day the complaint was filed, Judge Harold L. Murphy signed a proposed order to show cause why the preliminary injunction should not be granted, and he set a hearing for October 12.<sup>4</sup> Because the plaintiffs had not filed a supporting brief by October 3, Judge Murphy ordered them to do so by October 6.<sup>5</sup> The order to show cause and the briefing order helped to get the case moving quickly.<sup>6</sup>

On October 5, the State Election Board moved to intervene.<sup>7</sup> At a telephone conference that day, Judge Murphy granted the motion.<sup>8</sup> On October 18, six days after the hearing,<sup>9</sup> Judge Murphy issued a 123-page order enjoining application of the new photo identification law.<sup>10</sup> On October 20, Judge Murphy denied Geor-

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1. [Complaint](#), *Common Cause/Georgia v. Billups*, No. 4:05-cv-201 (N.D. Ga. Sept. 19, 2005), D.E. 1; [Common Cause/Georgia v. Billups](#), 554 F.3d 1340, 1346 (11th Cir. 2009); [Common Cause/Georgia v. Billups](#), 439 F. Supp. 2d 1294, 1297 (N.D. Ga. 2006); see Carlos Campos & James Salzer, *Suit Slams Voter ID Law*, Atlanta J. & Const., Sept. 20, 2005, at A1; see also [Amended Complaint](#), *Cause/Georgia*, No. 4:05-cv-201 (N.D. Ga. Oct. 12, 2005), D.E. 41.

2. [Complaint](#), *supra* note 1; see 28 U.S.C. § 90(a)(3) (2012) (listing counties in the division); N.D. Ga. L.R. app. A.I.4 (same).

“[I]t was noticeable when the liberal groups bunched their plaintiffs and defendants in a handful of relatively rural counties near one another.” Walter C. Jones, *Shopping Around Helped ID Case*, Augusta Chron., Oct. 30, 2005, at B5.

3. [Preliminary Injunction Motion](#), *Common Cause/Georgia*, No. 4:05-cv-201 (N.D. Ga. Sept. 19, 2005), D.E. 2; see [Common Cause/Georgia v. Billups](#), 504 F. Supp. 2d 1333, 1337 (N.D. Ga. 2007); [Common Cause/Georgia](#), 439 F. Supp. 2d at 1297–98.

4. [Order](#), *Cause/Georgia*, No. 4:05-cv-201 (N.D. Ga. Sept. 19, 2005), D.E. 3; see [Common Cause/Georgia](#), 504 F. Supp. 2d at 1337; [Common Cause/Georgia](#), 439 F. Supp. 2d at 1298; see also Brandon Larrabee, *Debate Heads to Federal Court*, Augusta Chron., Oct. 9, 2005, at B8.

Tim Reagan interviewed Judge Murphy for this report by telephone on October 12, 2012.

5. [Order](#), *Cause/Georgia*, No. 4:05-cv-201 (N.D. Ga. Oct. 3, 2005), D.E. 19; see [Common Cause/Georgia](#), 504 F. Supp. 2d at 1337; [Common Cause/Georgia](#), 439 F. Supp. 2d at 1298.

6. Interview with Hon. Harold L. Murphy, Oct. 12, 2012.

7. [Intervention Motion](#), *Cause/Georgia*, No. 4:05-cv-201 (N.D. Ga. Oct. 5, 2005), D.E. 20.

8. [Order](#), *id.* (Oct. 5, 2005), D.E. 24; [Minutes](#), *id.* (Oct. 5, 2005), D.E. 22.

9. Transcript, *id.* (Oct. 12, 2005, filed Oct. 26, 2005), D.E. 54.

10. [Order](#), *id.* (Oct. 18, 2005), D.E. 47; see [Common Cause/Georgia v. Billups](#), 554 F.3d 1340, 1346 (11th Cir. 2009); [Common Cause/Georgia](#), 504 F. Supp. 2d at 1338; [Common Cause/Georgia](#), 439 F. Supp. 2d at 1298; see also Brandon Larrabee, *Federal Judge Stalls Georgia Voter ID Law*, Augusta Chron., Oct. 19, 2005, at B4; Bill Rankin, *Judge Halts Voter ID Law*, Atlanta J. & Const., Oct. 19, 2005, at A1.

gia's motion to stay the injunction pending appeal.<sup>11</sup> The court of appeals denied a stay a week later.<sup>12</sup>

The case received considerable attention from the news media, but that did not interfere with the case's proceedings.<sup>13</sup>

In 2006, Georgia enacted a new voter photo identification law, which the U.S. Justice Department precleared pursuant to section 5 of the Voting Rights Act.<sup>14</sup> The plaintiffs amended their complaint to challenge the constitutionality of the new law on April 26, 2006.<sup>15</sup> On July 14, Judge Murphy enjoined application of the new law to the July 18 primary elections and any necessary run-off elections.<sup>16</sup>

One week earlier, a state court judge had similarly enjoined application of the law during the primaries,<sup>17</sup> and Georgia's supreme court denied a stay of that order.<sup>18</sup> On June 11, 2007, however, Georgia's supreme court concluded that the plaintiff in the state case lacked standing because she possessed sufficient identification to entitle her to vote.<sup>19</sup>

Two voters without the required identification documents filed a separate complaint on August 16<sup>20</sup> and sought, on August 17, to consolidate their action

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11. *Order*, *Cause/Georgia*, No. 4:05-cv-201 (N.D. Ga. Oct. 20, 2005), D.E. 51; see *Common Cause/Georgia*, 504 F. Supp. 2d at 1338; *Common Cause/Georgia*, 439 F. Supp. 2d at 1298; see also Bill Rankin, *Judge Firm on Voter ID Ruling*, *Atlanta J. & Const.*, Oct. 21, 2005, at D5.

12. Docket Sheet, *Common Cause/Georgia v. Billups*, No. 05-15784 (11th Cir. Oct. 21, 2005) (noting denial of a stay on Oct. 27, 2005, and remand of the case on Feb. 9, 2006); see *Common Cause/Georgia*, 504 F. Supp. 2d at 1338; *Common Cause/Georgia*, 439 F. Supp. 2d at 1298; see also Bill Rankin, *Hold on Photo ID Law Upheld*, *Atlanta J. & Const.*, Oct. 28, 2005, at A1.

13. Interview with Hon. Harold L. Murphy, Oct. 12, 2012.

14. *Notice*, *Common Cause/Georgia*, No. 4:05-cv-201 (N.D. Ga. Apr. 21, 2006), D.E. 83; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 42 U.S.C. § 1973c (2012); see also *Common Cause/Georgia*, 554 F.3d at 1346-47; *Common Cause/Georgia*, 504 F. Supp. 2d at 1338; Carlos Campos & Nancy Badertscher, *U.S. Oks Latest ID Voter Law*, *Atlanta J. & Const.*, Apr. 22, 2006, at E1; Shannon McCaffrey, *Georgia Voter ID Law Cleared*, *Augusta Chron.*, Apr. 22, 2006, at A1.

15. *Second Amended Complaint*, *Common Cause/Georgia*, No. 4:05-cv-201 (N.D. Ga. Apr. 26, 2006), D.E. 85; see *Common Cause/Georgia*, 504 F. Supp. 2d at 1338; *Common Cause/Georgia*, 439 F. Supp. 2d at 1298.

16. *Common Cause/Georgia*, 439 F. Supp. 2d at 1360; see *Common Cause/Georgia*, 504 F. Supp. 2d at 1340; see also Brenda Goodman, *Federal Judge Rules Voter ID Card Law in Georgia Is Illegal*, *N.Y. Times*, July 13, 2006, at A18; Errin Haines, *Voter Photo ID Rule Ruled Out*, *Augusta Chron.*, July 13, 2006, at B1; Sonji Jacobs & Carlos Campos, *Photo ID Law Suffers 2 Setbacks*, *Atlanta J. & Const.*, July 13, 2006, at B1.

17. Temporary Restraining Order, *Lake v. Perdue*, No. 2006CV119207 (Ga. Sup. Ct. July 7, 2006), filed as Ex. 1, *State Motion*, *Common Cause/Georgia*, No. 4:05-cv-201 (N.D. Ga. July 7, 2006), D.E. 113; see *Common Cause/Georgia*, 504 F. Supp. 2d at 1340; see also Carlos Campos, *Voter ID Law on Hold*, *Atlanta J. & Const.*, July 8, 2006, at A1; Brenda Goodman, *Judge Blocks Requirement in Georgia for Voter ID*, *N.Y. Times*, July 8, 2006, at A10.

18. See *Common Cause/Georgia*, 504 F. Supp. 2d at 1340.

19. *Perdue v. Lake*, 647 S.E.2d 6, 7-8 (Ga. 2007); see *Common Cause/Georgia*, 554 F.3d at 1347; *Common Cause/Georgia*, 504 F. Supp. 2d at 1341.

20. *Complaint*, *Young v. Billups*, No. 4:07-cv-163 (N.D. Ga. Aug. 16, 2007), D.E. 1.

with the pending 2005 case.<sup>21</sup> Pending in the 2005 case was a motion to add these two voters as plaintiffs,<sup>22</sup> a motion that Judge Murphy granted on August 17.<sup>23</sup> He denied the motion to consolidate the new action, because the new action was redundant and trial was approaching in the first action.<sup>24</sup> In 2008, the new action was dismissed voluntarily.<sup>25</sup>

On September 6, 2007, after a bench trial, Judge Murphy determined that after the 2006 statutory change the plaintiffs' complaint was ultimately without merit and he awarded judgment to the defendants.<sup>26</sup> The court of appeals affirmed on January 14, 2009.<sup>27</sup>

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21. [Emergency Motion](#), *id.* (Aug. 17, 2007), D.E. 2.

22. [Motion to Amend Complaint](#), *Common Cause/Georgia*, No. 4:05-cv-201 (N.D. Ga. Aug. 13, 2007), D.E. 159.

23. [Order](#), *id.* (Aug. 17, 2007), D.E. 181; [see Amendment to Second Amended Complaint](#), *id.* (Aug. 20, 2007), D.E. 193.

24. [Order](#), *Young*, No. 4:07-cv-163 (N.D. Ga. Aug. 17, 2007), D.E. 3.

25. [Voluntary Dismissal](#), *id.* (Apr. 24, 2008), D.E. 5.

26. [Common Cause/Georgia](#), 504 F. Supp. 2d at 1383; [see Common Cause/Georgia](#), 554 F.3d at 1348; [see also](#) Shaila Dewan, *Photo IDs for Voters Are Upheld*, N.Y. Times, Sept. 7, 2007, at A22; Vicky Eckenrode, *Voting ID Law Upheld*, Augusta Chron., Sept. 7, 2007, at B1; Bill Rankin & Jim Galloway, *State Law Upheld*, Atlanta J. & Const., Sept. 7, 2007, at A1.

27. [Common Cause/Georgia](#), 554 F.3d at 1352–55, *cert. denied*, [NAACP v. Billups](#), 556 U.S. 1282 (2009); [see](#) Bill Rankin, *Georgia's Voter ID Law Upheld in Federal Appeals Court Ruling*, Atlanta J. & Const., Jan. 15, 2009, at C3.