ID to vote absentee. (Id.) Voters who registered by mail and provided some information concerning their identity, however, are not required to provide a Photo ID to vote absentee. (Id.) Additionally, if a voter does not present identification when registering by mail, but the State can verify certain information provided by the voter through a State database, such as the voter’s date of birth, the voter need not present a Photo ID to vote absentee. (Oct. 12, 2005, Hrg Tr.; Cox Dep. at 26.)

e. Absentee Ballots and Absentee Voting

HB 244 expanded the opportunity for voters to obtain absentee ballots. (Oct. 12, 2005.) Prior to July 1, 2005, voters seeking to obtain absentee ballots had to aver that they met certain requirements. (Id.) After July 1, 2005, those requirements no longer apply for purposes of obtaining absentee ballots. (Id.)

To obtain an absentee ballot, a voter must send in a request to the local registrar providing his or her name, address, and an identifying number, or must appear in person at the registrar’s office and provide such information. (Oct. 12, 2005, Hrg Tr.) Local elections officials are supposed to compare the signature on the request to the signature on the voter’s registration card. (Id.) If the signatures match, the local elections officials will send an absentee ballot to
the address listed on the voter's registration. (Id.) A voter who wishes to vote an absentee ballot need not provide a Photo ID unless that voter registered by mail, did not provide identification, and is voting for the first time by absentee ballot. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 27.)

After receiving an absentee ballot, the voter must complete the ballot and return it to the registrar, either by hand-delivery to the registrar's office by the voter or certain relatives of the voter, or by mail. (Oct. 12, 2005, Hr'g Tr.) Even if an absentee ballot contains a postmark indicating that the voter mailed it on an earlier date, elections officials will not count the absentee ballot if the ballot is not received in the registrar's office by 7:00 p.m. on the day of the applicable election. (Id.) Exceptions to this rule exist for voters who are members of the military or reside overseas. (Id.)

An absentee ballot that arrives in the registrar's office should be returned in two envelopes--an inner blank "privacy" envelope and an outer envelope that contains an oath signed by the voter. (Oct. 12, 2005, Hr'g Tr.) Local elections officials compare the signature on the oath contained on the outer envelope to the signature on the voter's registration card to verify the voter's identity. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 35.) The signature verification procedure is
the only safeguard currently in place in Georgia to prevent imposters from voting by using absentee ballots. (Oct. 12, 2005, Hr’g Tr.) The verification process is done manually. (Id.) Absentee ballots are submitted to the local registrars’ offices over a forty-day period. (Id.) However, if fifty percent of voters decided to vote by absentee ballot in any given election, local elections officials would have a difficult time completing the necessary signature verifications. (Id.)

Once a voter returns an absentee ballot to the registrar’s office, the voter cannot change that ballot. (Oct. 12, 2005, Hr’g Tr.) The voter, however, has the right to notify the registrar that the voter intends to cancel the absentee ballot and vote in person. (Id.)

In the November 2004 general election, 422,490, or approximately ten percent, of Georgia’s 4,265,333 registered voters voted absentee ballots. (Pls’ Ex. 4 at 1.) 46,734, or approximately seven percent, of Georgia’s 697,420 registered African-American female voters voted absentee ballots, as compared with 189,143, or approximately twelve percent, of Georgia’s 1,598,916 registered Caucasian female voters. (Id.) 26,144, or approximately six percent, of Georgia’s 467,835 registered African-American male voters voted absentee ballots, as compared with 150,722, or approximately eleven
percent, of Georgia's 1,376,368 registered Caucasian male voters. (Id.)

f. Signature Comparison for In-Person Voting

Presently, elections officials do not compare signatures on voter certificates of in-person voters to signatures on voter registration cards. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 36-37.) The voter registration cards are not physically present at the polling places. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 36-37.) Secretary of State Cox testified that it would be possible to send voter registration cards to polling places, but that comparing signatures on voter certificates to signatures on voter registration cards for in-person voters would be time-consuming. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 37.)

g. Voters Without Photo ID

A number of Georgia voters are elderly, have no driver's licenses, and have no need for a state-issued Photo ID card other than for voting purposes. (Oct. 12, 2005, Hr'g Tr.) Further, a number of Georgia voters who are elderly or have low incomes do not have automobiles or use mass transit, and would have difficulty obtaining Photo ID to vote. (Id.) Secretary of State Cox does not have information concerning the number of Georgia voters who lack Photo ID. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 23.) Secretary of State Cox also
has received no correspondence concerning significant problems with the new Photo ID requirement or concerning significant numbers of voters who have not been allowed to vote because of the Photo ID requirement. (Id.)

An individual who votes in person but does not present a Photo ID may vote a provisional ballot. (Oct. 12, 2005, Hr’g Tr.; Cox Dep. at 27-28.) Elections officials, however, will not count the provisional ballot unless the voter returns to the registrar’s office within forty-eight hours and presents a Photo ID. (Oct. 12, 2005, Hr’g Tr.; Cox Dep. at 27-28.) Secretary of State Cox has no information indicating that voters have cast a significant number of provisional ballots in the elections conducted after the Photo ID requirement received preclearance. (Id.)

h. Training by Elections Division

After the Photo ID requirement received preclearance from the Justice Department, Secretary of State Cox ensured that the Elections Division conducted necessary training, distributed necessary supplies, and did everything possible to ensure that the Photo ID requirement was carried out in every election, including the elections held on August 26, 2005, September 20, 2005, September 27, 2005, and November 8, 2005. (Cox Decl. ¶ 7; Oct. 12, 2005, Hr’g Tr.) The Elections Division also provided information to the public concerning
the Photo ID requirement via the website for the Secretary of State's Office and through other public information efforts. (Cox Decl. ¶ 7; Oct. 12, 2005, Hr'g Tr.)

**i. Connection to Local Elections Officials**

Local elections officials for counties are connected to the Secretary of State's Office through a mainframe computer. (Oct. 12, 2005, Hr'g Tr.) The Secretary of State's Office has the capability of e-mailing information concerning a preliminary injunction order to the various county elections officials. (Id.) The Secretary of State's Office does not have that capacity for municipal elections officials; however, in many cases, county elections officials also manage elections for municipalities within their counties. (Id.)

**j. Effect of a Preliminary Injunction**

Secretary of State Cox believes that a preliminary injunction precluding Georgia from applying the Photo ID requirement in the November 8, 2005, elections likely would cause confusion for election officials, poll workers, and voters, especially in jurisdictions that already have conducted elections under the new law. (Cox Decl. ¶ 8; Oct. 12, 2005, Hr'g Tr.) Additionally, the Elections Division would have to reprint and distribute new election forms and materials for the jurisdictions conducting November 8, 2005, elections in a very short period of time. (Cox Decl. ¶ 8;
Oct. 12, 2005, Hr’g Tr.) Secretary of State Cox anticipates that such a preliminary injunction would result in some local election officials applying the Photo ID requirement, some local election officials applying the former law, and others applying a variation of the laws. (Cox Decl. ¶ 8.)

H. Procedural Background

On September 19, 2005, Plaintiffs filed this lawsuit. Plaintiffs assert that the Photo ID requirement violates the Georgia Constitution, is a poll tax that violates the Twenty-fourth Amendment and the Equal Protection Clause, unduly burdens the fundamental right to vote, violates the Civil Rights Act of 1964, and violates Section 2 of the Voting Rights Act.

On September 19, 2005, Plaintiffs requested that the Court schedule a preliminary injunction hearing. On that same day, the Court entered an Order scheduling a preliminary injunction hearing for October 12, 2005. (Order of Sept. 19, 2005.)

On October 6, 2005, Plaintiffs filed a formal Motion for Preliminary Injunction. On October 7, 2005, Secretary of State Cox filed a Motion to Dismiss Individual Capacity Claims. On October 11, 2005, individual Plaintiff Tony Watkins filed a Stipulation of Dismissal Without Prejudice of his claims. Finally, on October 12, 2005, Plaintiffs filed
their First Amendment to Complaint, which addresses the issue of standing for the organizational Plaintiffs.

On October 12, 2005, the Court held a hearing with respect to Plaintiffs' Motion for Preliminary Injunction. During the October 12, 2005, hearing, the parties presented evidence and arguments in support of their respective positions. The Court concludes that the Motion for Preliminary Injunction now is ripe for resolution by the Court.

II. Standing

Defendants argue that Plaintiffs lack standing to pursue this lawsuit. The Court addresses the issue of standing before turning to the merits of Plaintiffs' Motion for Preliminary Injunction.

Article III of the federal Constitution limits the power of federal courts to adjudicating actual "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1. "The most significant case-or-controversy doctrine is the requirement of standing." Nat'l Alliance for the Mentally Ill, St. Johns Inc. v. Bd. of County Comm'r's, 376 F.3d 1292, 1294 (11th Cir. 2004). "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Id. (quoting Warth v.
Seldin, 422 U.S. 490, 498 (1975).

The party invoking federal jurisdiction has the burden of proving standing. Nat’l Alliance for the Mentally Ill, 376 F.3d at 1294. At least three different types of standing exist: taxpayer standing, individual standing, and organizational standing. Id. To establish those types of standing, a plaintiff must “demonstrate that he has suffered injury in fact, that the injury is fairly traceable to the actions of the defendant, and that the injury will likely be redressed by a favorable decision.” Id. at 1295 (citing Bennett v. Spear, 520 U.S. 154, 162 (1997)) (internal quotation marks omitted). For purposes of this Order, the Court focuses on whether the organizational Plaintiffs have standing to pursue this action.2

“An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to

2 One of the individual Plaintiffs, Tony Watkins, dismissed his claims without prejudice prior to the October 12, 2005, hearing, apparently because he did not wish to submit to a deposition. Defendants argue that the remaining individual Plaintiff, Clara Williams, lacks standing because she has a MARTA card that would qualify as a Photo ID card under the new Photo ID requirement and because she could vote by absentee ballot. In light of the need to issue a ruling quickly, and in light of the Court’s decision infra concerning Plaintiffs’ Section 2 claims, the Court does not address Defendants’ arguments pertaining to Plaintiff Williams at this point.
the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.’’ Nat’l Alliance for the Mentally Ill, 376 F.3d at 1296 (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 120 S. Ct. 693, 704 (2000)). Here, Plaintiffs' First Amendment to Complaint adds a new paragraph 1(i) to their Complaint that states:

Common Cause, the League, the Central Presbyterian and Advocacy Center, Inc., Georgia Association of Black Elected Officials, Inc., The National Association for the Advancement of Colored People (NAACP), Inc., GLBC, and the Concerned Black Clergy of Metropolitan Atlanta, Inc., (in the aggregate, the “Non-Profit Plaintiffs”), are non-profit organizations composed of members who would have standing to sue in their individual right for the allegations set forth in the Complaint, the interests which each of the Non-Profit Plaintiffs and their members seek to protect in the Complaint are germane to the purpose of each of the Non-Profit Plaintiffs, and neither the claim or the relief sought requires participation by the individual members of the Non-Profit Plaintiffs.

(First Am. to Compl.) The Court concludes that Plaintiffs' allegations satisfy the organizational standing requirements, for purposes of Plaintiffs' Motion for Preliminary Injunction.

III. Plaintiffs' Motion for Preliminary Injunction

To obtain a preliminary injunction, a movant must show: (1) a substantial likelihood of ultimate success on the merits; (2) the preliminary injunction is necessary to prevent
irreparable injury; (3) the threatened injury outweighs the harm the preliminary injunction would inflict on the non-movant; and (4) the preliminary injunction would serve the public interest. McDonald’s Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998). In the Eleventh Circuit, “'[a] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion' as to the four requisites.” Id. (quoting All Care Nursing Serv., Inc. v. Bethesda Mem’l Hosp., Inc., 887 F.2d 1535, 1537 (11th Cir. 1989)) (internal quotation marks omitted) (alterations in original).

A plaintiff seeking to enjoin enforcement of a state statute bears a particularly heavy burden. "'[P]reliminary injunctions of legislative enactments--because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits--must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts.’" Bankwest, Inc. v. Baker, 324 F. Supp. 2d 1333, 1343 (N.D. Ga. 2004) (quoting Northeastern Fla. Chapter of the Ass’n of Gen. Contractors of Am. v. City of Jacksonville, 896 F.2d 1283, 1285 (11th Cir. 1990)).
A. Substantial Likelihood of Success on the Merits

1. Claims Under the Georgia Constitution

Plaintiffs allege that the Photo ID requirement violates article II, section 1, paragraph 2 of the Georgia Constitution. Article II, section 1, paragraph 2 of the Georgia Constitution provides: "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.

Article II, section 1, paragraph 3 of the Georgia Constitution sets forth the following exceptions to the right to register to vote:

(a) No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence.

(b) No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

Ga. Const. art. II, § 1, ¶ 3.

Plaintiffs argue that the new Photo ID requirement violates the Georgia Constitution because it denies certain Georgia citizens the right to vote. According to Plaintiffs,
the Georgia Constitution lists only two grounds for denying a Georgia citizen who is registered to vote the right to vote: (1) having a conviction for a felony involving moral turpitude; or (2) having a judicial determination of being mentally incompetent to vote. Plaintiffs contend that the Georgia legislature simply has no power to regulate voting outside the areas of defining residency and establishing registration requirements.

Defendants argue that any claim that the State Defendants are violating Georgia law is barred by the Eleventh Amendment. Defendants quote Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984), for the proposition that the Eleventh Amendment bars federal courts from enforcing state law either prospectively or retroactively. According to Defendants, because Georgia state courts are the correct arbiters on the meaning of state law, "it would be a 'gross intrusion'" for this Court to grant a preliminary injunction on the basis of Plaintiffs' claims arising under the Georgia Constitution claims. (State Defs.' Br. Opp'n Pls.' Mot. Prelim. Inj at 56.)

Defendants also argue that even if Eleventh Amendment immunity does not exist, Plaintiffs cannot succeed because the constitutionality of a Georgia statute is presumed, and "'all doubts must be resolved in favor of its validity.'" (Id. at 57
According to Defendants, the General Assembly did not prescribe qualifications for voters when enacting the Photo ID law; instead, they were attempting to regulate the voting process itself. Defendant argue that the in-person Photo ID requirement is a "time, place, or manner" regulation, and that the Georgia Constitution does not require that citizens be permitted to vote in person nor does it state that citizens have an absolute right to be free from any regulation of in-person voting. (Id. at 59.)

Before the Court can consider Plaintiffs' claims regarding the Georgia Constitution, the Court must determine whether the Eleventh Amendment to the United States Constitution bars those claims. McClendon v. Ga. Dept. of Cmty. Health, 261 F.3d 1252, 1257 (11th Cir. 2001); Silver v. Baggiano, 804 F.3d 1211, 1213 (11th Cir. 1986).

The Eleventh Amendment to the Constitution provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. The Supreme Court has made clear that this language also bars suits against a state by its own citizens. DeKalb County School Dist. v. Schrench 109 F.3d 680, 687 (1997) (citing Hans v. Louisiana, 134 U.S. 1
(1890)). "In short, the Eleventh Amendment constitutes an 'absolute bar' to a state's being sued by its own citizens, among others." Id. (citing Monaco v. Mississippi, 292 U.S. 313, 329 (1934)).

"[A]bsent its consent, a state may not be sued in federal court unless Congress has clearly and unequivocally abrogated the state's Eleventh Amendment immunity by exercising its power with respect to rights protected by the Fourteenth Amendment." Id. at 688 (quoting Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 99 (1984) ("Pennhurst II"). "Congress may not nullify a state's immunity with respect to alleged violations of state law." Id. "For that reason, a federal court may not entertain a cause of action against a state for alleged violations of state law, even if that state claim is pendent to a federal claim which the district court could adjudicate. Id. (citing Pennhurst II, 465 U.S. at 117-23). In Pennhurst II, the United States Supreme Court explained that:

[a] federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.

Pennhurst II, 465 U.S. at 106.