No. 342PA19-2 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR.	)	
v	)	
TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS	)	From Wake County No. 18CVS15292 No. COA22-16

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PETITION FOR DISCRETIONARY REVIEW PRIOR TO A DETERMINATION BY THE NORTH CAROLINA COURT OF APPEALS
(Filed 14 January 2022)

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Pursuant to N.C. Gen. Stat. § 7A-31(b) and North Carolina Rule of Appellate Procedure 15(a), Petitioners Jabari Holmes, Fred Culp, Daniel E. Smith, Brendon Jaden Peay, and Paul Kearney, Sr. respectfully petition the Court to certify for discretionary review the judgment of the three-judge panel of the Superior Court filed on 17 September 2021, on the grounds that the subject matter of this case raises issues of significant public interest, the case involves legal principles of major significance to the law of the State, and the delay in final adjudication that is likely to result from failure to certify will cause substantial harm to Petitioners and other eligible voters across North Carolina, election officials, and legislators. Petitioners respectfully request that the Court certify the appeal for review prior to a determination by the Court of Appeals.

INTRODUCTION

After a three-week trial, a majority of the three-judge court below concluded that the photo ID requirements of Senate Bill 824 ("S.B. 824") violate the Equal Protection Clause in Article I, Section 19 of the North Carolina Constitution because they were enacted with the intent to discriminate against African American voters. The trial court's judgment permanently enjoining S.B. 824's implementation is supported by extensive findings of fact and carefully explained in the panel majority's thorough opinion.

Respondents (the "Legislative Defendants" and "State Defendants") have appealed. But, because the subject matter of this case is of significant public interest and the legal principles at issue are of major significance, any ruling by the Court of Appeals will ultimately and inevitably result in subsequent appellate review before this Court. Delaying this Court's review will therefore only further delay a final adjudication of S.B. 824's legality. And until the question of S.B. 824's constitutionality has been settled, voters, election officials, and legislators will be deprived of certainty over the status of voter ID requirements in North Carolina.

That ongoing uncertainty carries real consequences. All parties to this litigation agree that the North Carolina Constitution presently requires *some* form of voter ID law. If this Court affirms the trial court's ruling, the General Assembly will need to begin the work of designing a new law to replace S.B. 824's unconstitutional provisions. There is no reason to delay that process. Voters in this State need to know when they must show ID to vote in upcoming elections, which forms of ID will be accepted, and what kind of exceptions will apply to that requirement. Election officials need to educate voters and poll workers, and undertake any necessary updates to the State's election apparatus. All of this work must be completed sufficiently in advance of the elections to avoid voter confusion, poll worker confusion, and the real risk of voter

disenfranchisement. And none of that work can begin until the legislature enacts a voter ID law that respects the constitutional rights of all North Carolina voters, or this Court concludes that S.B. 824 may be enforced.

The possibility of inconsistent rulings by the Court of Appeals and this Court presents its own concerns. A reversal of the trial court's judgment by the Court of Appeals raises the troubling prospect that an election could be conducted under S.B. 824's requirements before the law's legality can be conclusively determined by this Court. Should this Court later reaffirm that S.B. 824 is unconstitutional, African American voters across the State would have been deprived of their fundamental right to participate in the electoral process on equal footing with white voters.

Because S.B. 824's constitutionality is a matter of public interest, because this case involves legal principles of major significance, and because delay in final resolution of this case risks causing substantial harm to voters, election officials, and legislators alike, Petitioners respectfully request that the Court exercise discretionary review prior to a determination by the Court of Appeals.

STATEMENT OF PROCEDURAL HISTORY

The General Assembly enacted S.B. 824 over the veto of Governor Cooper on 19 December 2018. Petitioners immediately challenged the law, alleging that S.B. 824 violated the Equal Protection Clause in Article I, Section 19 of the North Carolina Constitution, because it was enacted with the intent to discriminate against voters of color, including African American voters, and

because it severely burdens the right to vote without adequate justification. The same day, Petitioners also filed a motion for preliminary injunction seeking to prevent the implementation of S.B. 824.

Legislative Defendants and State Defendants moved to dismiss on 22 January 2019, and 21 February 2019, respectively. On 12 March 2019, Vince M. Rozier, Jr., Presiding Superior Court Judge in Wake County, denied Legislative Defendants' motion to dismiss pursuant to Rule 12(b)(1). The Chief Justice of the Supreme Court of North Carolina then transferred the case to a three-judge panel made up of the Honorable Nathanial J. Poovey, the Honorable Vince M. Rozier, Jr., and the Honorable Michael J. O'Foghludha, to consider Respondents' remaining challenges and Petitioners' request for injunctive relief.

On 19 July 2019, the three-judge panel granted in part the motions to dismiss and denied the motion for a preliminary injunction. The trial court unanimously held that Petitioners had "made sufficient factual allegations to support" their intentional discrimination claim, but dismissed Petitioners' remaining constitutional challenges to S.B. 824. (R p 363-364). A two-judge majority denied Petitioners' request for a preliminary injunction with little explanation. (R p 364-365). Judge O'Foghludha dissented, explaining that a preliminary injunction was warranted because Petitioners were likely to succeed on the merits of their intentional discrimination claim. (R p 366-368).

Petitioners appealed the denial of their motion for a preliminary injunction. This Court declined to exercise discretionary review prior to determination by the Court of Appeals. Thereafter, on 18 February 2020, the Court of Appeals issued a unanimous decision reversing the trial court, holding that Petitioners had shown a clear likelihood of success on the merits of their discriminatory intent claim, and directing the trial court to enter a preliminary injunction barring the implementation of S.B. 824 until its constitutionality could be determined on the merits. *See Holmes* v. *Moore*, 270 N.C. App. 7 (2020). On 24 March 2020, the Court of Appeals denied the Legislative Defendants' motion for rehearing en banc and remanded the matter back to the trial court. Order, *Holmes* v. *Moore*, No. 19-762 (N.C. App. 2020).

On 10 August 2020, the three-judge panel entered an order in accordance with the decision of the Court of Appeals, preliminarily enjoining S.B. 824. Order, *Holmes* v. *Moore*, No. 18 CVS 15292 (N.C. Super. 2020). The case then proceeded to trial, which was conducted virtually via WebEx in the Wake County Superior Court, over a period of three weeks in April of 2021. On 17 September 2021, the three-judge panel entered its final judgment in this matter in favor of Petitioners and permanently enjoined S.B. 824 on the grounds that it violates the Equal Protection Clause in Article I, Section 19 of the North Carolina Constitution. (R p 896-1001).

As the majority of the three-judge panel explained in its lengthy and detailed opinion, "the evidence at trial [was] sufficient to show that the enactment of S.B. 824 was motivated at least in part by an unconstitutional intent to target African American voters," even if no member of the General Assembly "harbor[ed] any racial animus or hatred towards African American voters." (R p 1000). As with North Carolina's prior voter ID law, House Bill 589 ("H.B. 589"), the evidence showed that "the Republican majority targeted voters who, based on race, were unlikely to vote for the majority party," when enacting S.B. 824. (R p 1000) (quotation marks and brackets omitted). "Even if done for partisan ends, . . . [that action] constitutes racial discrimination" in violation of the North Carolina Constitution. (R p 1000) (quotation marks and brackets omitted). Moreover, the panel majority found that Respondents "failed to prove, based on the evidence at trial, that S.B. 824 would have been enacted in its present form if it did not tend to discriminate against African American voters." (R p 1000). Judge Poovey filed his own lengthy and detailed dissenting opinion comprehensively explaining why, in his view, S.B. 824 was not enacted with discriminatory intent.

Respondents timely filed notices of appeal, and filed the record on appeal on 7 January 2022. The Court of Appeals docketed Respondents' appeal on 7 January 2022. This petition for discretionary review is thus timely filed pursuant to North Carolina Rule of Appellate Procedure 15(b).

STATEMENT OF FACTS

The panel majority made the following findings of fact based on the evidence presented at trial, all of which support the trial court's ruling that S.B. 824 unconstitutionally targets African American voters.

A. Voting in North Carolina Is Racially Polarized and History Shows that Election Laws Have Been Used to Target African American Voters

"[V]oting in North Carolina, both historically and currently, is racially polarized," and that polarization "offers a political payoff for legislators . . . to dilute or limit the minority vote." (R p 906) (quotation marks omitted). North Carolina also has a "long history of race discrimination generally and race-based voter suppression in particular." (R p 905) (quotation marks and citation omitted). "When minority citizens have gained political power in North Carolina, the party in power has moved to constrain that political participation, particularly when those minority voters, because of the way they vote, posed a challenge to the governing party at the time." (R p 905). "Frequently throughout this history, laws limiting African American political participation have been facially race neutral but have nevertheless had profoundly discriminatory effects." (R p 906).

In recent years, white voters have favored the Republican Party by a wide margin, while the majority of African American voters have favored the Democratic Party. (R p 909). African American turnout and registration have increased, and African American electoral participation has posed a threat to

Republican electoral prospects, making "access to the ballot box a critical issue." (R p 909-910). During this same period, "the state Republican party continued to attempt to suppress Black voter turnout." (R p 909).

Recent history shows that the Republican legislative majority has used election laws to target African American voters. In 2013, the legislature enacted H.B. 589, which included a voter ID requirement. In crafting the bill, "staff for Republican legislators of the General Assembly sought data on voter turnout during the 2008 election, broken down by race." (R p 912). And the bill ultimately included approved forms of photo ID that African American voters disproportionately lacked, as well as other provisions that bore more heavily on African American voters. (R p 912-913). In 2016, the U.S. Court of Appeals for the Fourth Circuit concluded, based on the evidence presented during trial, that H.B. 589 had been enacted with the unconstitutional discriminatory intent to target African American voters because they were unlikely to vote for the Republican legislative majority. (R p 913-915) (citing *North Carolina State Conference of the NAACP* v. *McCrory*, 831 F.3d 204 (4th Cir. 2016)). During roughly the same period, the legislature also committed "among the largest racial gerrymanders ever encountered by a federal court." (R p 913-915) (quoting *Covington* v. *North Carolina*, 270 F. Supp. 3d 881, 884 (M.D.N.C. 2017)).

In short, "race is still a dominant consideration for the North Carolina General Assembly, particularly when it converges with politics." (R p 916).

And, according to Legislative Defendants' own expert witness, "it would be rational to expect a political party to pursue policies that would entrench its own control by targeting African American voters if those voters vote reliably for the opposition party." (R p 917).

B. The Legislative History of S.B. 824 and Sequence of Events That Led to Its Enactment Support a Finding of Discriminatory Intent

Following the conclusion of litigation over H.B. 589, Republican legislative leadership vowed to "continue fighting to . . . implement[] the commonsense requirement to show a photo ID" for voting, but the legislature took no immediate action to enact a replacement voter ID law. (R p 917). One year later, after the Supreme Court's final decision in *Covington* confirmed that North Carolina's racially gerrymandered legislative districts would need to be redrawn, the Republican leadership placed on the ballot for the upcoming 2018 general election a proposed constitutional amendment requiring photo ID for voting ("H.B. 1092"). (R p 917-918). Eliminating the racially gerrymandered districts was likely to harm Republican electoral prospects and "[p]assing H.B. 1092 in the immediate aftermath of the *Covington* decision show[ed] an effort and intent by the legislature to alter the State's Constitution [in order to allow] their racially gerrymandered supermajority to implement their legislative goals." (R p 918).

The process that led to the ratification of H.B. 1092 was unusual and deviated from normal procedure in other ways, as well. (R p 918). Among other things, the bill was enacted much more quickly than other bills proposing

constitutional amendments and was not accompanied by the implementing legislation that would have been required if the amendment was adopted by the voters. (R p 919-920). Concurrent release of implementing legislation helps educate voters on the significance and impact of a proposed constitutional amendment. Because none was provided, voters considering the constitutional voter ID amendment did not know what kind of identification would be acceptable for voting if the amendment passed, suggesting an effort by the legislature to avoid voter scrutiny. (R p 920-922).

During the November 2018 election, North Carolina's voters approved the constitutional amendment requiring voter ID, but also elected enough Democrats to the General Assembly to break the Republican supermajority. (R p 922-923). Rather than wait for the duly elected General Assembly to be seated, however, the Republican supermajority enacted S.B. 824 over Governor Cooper's veto "during an unprecedented November 2018 Lame Duck Regular Session, which violated the norms and procedures of the North Carolina General Assembly in several ways." (R p 923). As the trial court found, "[t]here was no need for the General Assembly to reconvene in the post-election lame duck to enact S.B. 824," and legislation enacting other constitutional amendments approved by the voters during the November 2018 election was not passed until 2019, after the new legislature had been seated. (R p 925). The actions of the Republican supermajority during the lame duck session are "consistent with the hypothesis that the Republican supermajority did not want to

pass a 'watered down' voter ID law" in the next legislative session "that would have been more flexible and included more forms of qualifying ID." (R p 925).

Other aspects of S.B. 824's legislative history confirm that it was designed to entrench Republican political power by targeting African American voters. The bill was enacted through an "extremely rushed" process (R p 928) that did not allow adequate time for consideration of "concerns raised by legislators that S.B. 824 would disproportionately burden and disenfranchise African American voters, just as H.B. 589 had done" (R p 930). Even though the legislature was "on notice" that African American voters were likely to disproportionately lack certain forms of ID as compared to white voters (R p 930), the General Assembly "moved hastily to pass S.B. 824 without first obtaining updated demographic information regarding the number and demographic composition of voters who still lacked" certain forms of ID, and conducted no analysis of "what impact S.B. 824 would have on African American voters or other voters of color." (R p 933). The Republican supermajority also rejected proposed amendments "that would reasonably have been expected or understood to decrease the disparate impact of S.B. 824 on African American voters," including an amendment to add public assistance IDs to the list of qualifying IDs acceptable for voting. (R p 936-938). The trial court found the legislature's decision to reject the public assistance amendment "particularly telling, in light of the [federal] court's finding during the H.B. 589 litigation that the de-

cision to remove public assistance IDs was particularly suspect because legislators could have reasonably surmised that those forms of ID would be held disproportionately by African American voters." (R p 938).

Governor Cooper vetoed S.B. 824 on the grounds that it was designed to suppress the rights of minority, poor, and elderly voters. The Republican supermajority then voted to override Governor Cooper's veto. (R p 935). No Republican legislator voted against S.B. 824 and, setting aside the changes in party membership due to retirements and deaths, Republican legislators who voted in favor of H.B. 589 also voted in favor of S.B. 824. (R p 935-936).

C. S.B. 824 Bears More Heavily on African American Voters and the Design of the Law Does Not Show That the General Assembly Intended to Cure Racial Disparities Observed under H.B. 589

Although S.B. 824 included more forms of ID acceptable for voting than H.B. 589 did, the trial court concluded there was no evidence that the legislature believed those changes "would have any impact on the racial disparities in ID possession rates that had been documented during the H.B. 589 litigation." (R p 940). And methodologically sound expert analysis and testimony confirms that African American voters in North Carolina are 39% more likely to lack a form of qualifying ID under S.B. 824 than white voters, with active African American voters more than twice as likely as active white voters to lack a qualifying form of ID. (R p 948-949). The new forms of qualifying ID added to S.B. 824 that were not included under H.B. 589 covered only a "miniscule" number of voters who did not already possess a qualifying ID and

were unlikely to alleviate the racial disparities observed under H.B. 589. (R p 950). Legislative Defendants' attempt to rebut this expert analysis and testimony with their own expert critique was "unconvincing and not credible." (R p 954).

"Because African American voters are more likely than white voters to lack a form of qualifying ID under S.B. 824, it follows that they are also more likely to have to take steps to obtain a qualifying ID if they wish to vote in person using a regular, non-provisional ballot." (R p 955). As the trial court found, however, "[a]vailable data shows that the burdens of obtaining a qualifying ID are also likely to fall more heavily on African American voters than on white voters." (R p 955). For example, African Americans in North Carolina are more likely than whites to live in poverty, lack access to private transportation, or be employed in a job that does not allow time off during the normal business hours when government offices that issue IDs are open. (R p 955-957). And data from the March 2016 primary, when H.B. 589 was in effect, show that voters who cast provisional ballots using a "reasonable impediment" process similar to the one included in S.B. 824, and whose votes were *not counted*, were "much more likely to be Black than the electorate as a whole." (R p 960-961).

D. The Specific Provisions of S.B. 824 Are Not Justified by Nonracial Motivations

The majority of the three-judge panel concluded that the passage of S.B. 824 could not be explained by Respondents' proffered nonracial motivations.

The law, as enacted, was not necessary to implement the constitutional amendment requiring voter ID and was not sufficiently tailored to deter voter fraud. (R p 968-971). In fact, there was "insufficient evidence to conclude that the desire to combat voter fraud was an actual motivation for the legislature in passing S.B. 824" and there was "no evidence that voter identification laws actually bolster overall confidence in elections or that they make people less concerned about voter fraud." (R p 970-971). To the contrary, "a voter ID law that intentionally targets one group of voters in a discriminatory manner," like S.B. 824, "would reduce, rather than enhance, public confidence in election integrity," and "Black community leaders have expressed concerns" that S.B. 824 will "decreas[e] voter confidence in the electoral system in North Carolina." (R p 968-971).

REASONS WHY CERTIFICATION SHOULD ISSUE

Based upon the findings of fact and credibility determinations discussed above, the panel majority held on 17 September 2021 that S.B. 824 unconstitutionally targeted African American voters in violation of the State Constitution and permanently enjoined the law. This Court should grant the petition for discretionary review and consider the trial court's decision without delay. S.B. 824's constitutionality is undoubtedly a matter of public interest, and this case involves legal principles of major significance for the law of North Carolina. Until the legality of S.B. 824 is finally determined by this Court, the ongoing uncertainty over its status will cause substantial harm to voters, election officials, and legislators.

The depth of analysis offered in the trial court's majority and dissenting opinions is all the more reason for this Court to review this case now. The facts and the law have been fully developed and carefully analyzed. Additional review in the Court of Appeals will result only in further—and detrimental—delay. For all of these reasons, discretionary review, now, is warranted.

I. S.B. 824's Infringement of the Right to Vote Is a Matter of Significant Public Interest

The Court may grant discretionary review in cases where, as here, "[t]he subject matter of the appeal has significant public interest." N.C. Gen. Stat. § 7A-31(b)(1). It goes without saying, but nevertheless bears repeating: the right to vote on equal terms and free from intentional discrimination is "precious" and "fundamental" under our democratic system of government. *Harper* v. *Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966); *see also Blankenship* v. *Bartlett*, 363 N.C. 518, 522 (2009) (describing the right to vote as "a fundamental right"). S.B. 824 threatens that right of Petitioners and other North Carolina voters. Indeed, a majority of the three-judge court below held that Petitioners proved that S.B. 824's voting requirements were enacted with the intent to discriminate against voters of color.

There is no question that Petitioners' constitutional challenge to S.B. 824 is of significant public interest. And, because the "public interest . . . favors permitting as many qualified voters to vote as possible," and because "uphold-

ing constitutional rights serves the public interest," discretionary review is appropriate. *See League of Women Voters of North Carolina* v. *North Carolina*, 769 F.3d 224, 247-248 (4th Cir. 2014) (quotation marks and citations omitted).

II. The Constitutionality of S.B. 824 Is of Major Significance to the Jurisprudence of North Carolina

This Court may also grant discretionary review in cases where "[t]he cause involves legal principles of major significance to the jurisprudence of the State." N.C. Gen. Stat. § 7A-31(b)(2). This condition, too, is self-evidently met in this case.

This Court has previously certified cases for discretionary review prior to a determination by the Court of Appeals where, as here, the matters involved the validity and constitutionality of the State's election laws. *See, e.g.*, *Harper* v. *Hall*, No. 413P21, 2021 N.C. LEXIS 1223 (2021) (involving constitutionality of state House, state Senate and Congressional redistricting plans); *James* v. *Bartlett*, 359 N.C. 260 (2005) (involving question of out-of-precinct provisional ballots); *Stephenson* v. *Bartlett*, 355 N.C. 354 (2002) (involving constitutionality of state legislative redistricting plan). The Court has also repeatedly recognized the significance of cases involving constitutional challenges to legislation enacted by the General Assembly, regularly certifying such cases for discretionary review before a Court of Appeals' determination. *See, e.g.*, *Cooper* v. *Berger*, 370 N.C. 392 (2018) (challenging the constitutionality of a law consolidating functions of elections, campaign finance, lobbying, and ethics under the newly created State Board of Elections and Ethics Enforcement);

Pope v. *Easley*, 354 N.C. 544 (2001) (involving constitutionality of newly enacted statute expanding the size of the Court of Appeals).

The legal principles presented here are at least as significant to the jurisprudence of North Carolina as the questions in those cases. As all parties here recognize, the North Carolina Constitution now requires voters "offering to vote in person" to "present photographic identification before voting," and it is the General Assembly's duty to enact voter ID laws to implement that requirement. N.C. Const. art. VI, §§ 2(4), 3(2). Yet, the North Carolina Constitution also makes unmistakably clear that "[n]o person" shall be "subjected to discrimination by the State because of race, color, religion, or national origin." N.C. Const. art. I, § 19. Whether S.B. 824 violates the Equal Protection Clause, as a majority of the three-judge panel found, or whether it fairly implements the constitutional voter ID amendment, as the dissent concluded, is thus a question of major constitutional significance. For this reason, too, this Court should grant the petition for discretionary review.

III. Absent Discretionary Review, Delay in Final Adjudication Will Cause Substantial Harm

The Court may also grant review where, as here, "[d]elay in final adjudication is likely to result from failure to certify and thereby cause substantial harm." N.C. Gen. Stat. § 7A-31(b)(3).

Until the question of S.B. 824's constitutionality is finally resolved, a significant component of the State's election laws will remain in limbo. An

order from this Court affirming the trial court's judgment will allow the legislature to begin the work of crafting and enacting a new voter ID law that implements the constitutional ID requirement without infringing the constitutional rights of North Carolina voters. An order from this Court reversing the trial court's judgment would allow election officials to begin implementing S.B. 824's requirements and educating voters, a process that will take substantial time and effort and which must be completed sufficiently in advance of upcoming elections to minimize the risk of voter confusion and disenfranchisement. Either way, the pivotal next step for the State, its legislators, its voters, and its election officials is to bring this litigation to its conclusion. Further delay in doing so, and the attendant uncertainty over the status of voter ID requirements in North Carolina, will cause substantial harm.

It has now been more than three years since S.B. 824 was enacted. Intermediate consideration by the Court of Appeals will only delay a final determination of the legality of S.B. 824, increasing the likelihood that the status of voter ID will remain uncertain and unresolved for multiple election cycles. In addition to extending the legal uncertainty over voter ID requirements, intermediate review by the Court of Appeals presents other practical risks. If the Court of Appeals reinstates S.B. 824 but its mandate is not stayed pending review by this Court, election officials will have no choice but to immediately begin implementing the law's requirements and educating voters. Should this

Court then reach a different conclusion, those efforts would be wasted *and* additional time and resources would need to be dedicated to reversing those efforts and correcting misimpressions amongst election administrators and voters regarding the requirements for voting. Moreover, if an election is conducted under S.B. 824's requirements and this Court later reaffirms that S.B. 824 is unconstitutional, African American voters in this State will have been deprived of their right to participate in the electoral process on equal footing with white voters.

The legislature's inability thus far to craft a voter ID law that does not intentionally discriminate against African American voters has resulted in nearly ten years of confusing, on-again-off-again messaging to voters and election officials alike, as first H.B. 589 and now S.B. 824 have wound their way through the courts. The potential for another round of conflicted messaging will only deepen that confusion, raising the risk of disenfranchisement. North Carolina's voters and election officials deserve the certainty that only immediate review by this Court can provide.

ISSUE TO BE BRIEFED

Petitioners respectfully request that the Court exercise discretionary review over each of the proposed issues on appeal set forth in the Record on Appeal filed in the Court of Appeals. These include whether S.B. 824 violates Article I, Section 19 of the North Carolina Constitution.

CONCLUSION

For the foregoing reasons, this Court should grant the petition and certify Respondents' appeal for discretionary review prior to a determination by the Court of Appeals.

Respectfully submitted this the 14th day of January, 2022.

SOUTHERN COALITION FOR SOCIAL JUSTICE

/s/ Jeffrey Loperfido
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N.C.R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petition for Discretionary Review Prior to Determination by the Court of Appeals was served upon all parties by electronic mail addressed to the following:

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Respectfully submitted this the 14th day of January, 2022.

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No. 34P19-2 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
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JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, AND PAUL KEARNEY, SR., *Plaintiffs-Petitioners*, v. TIMOTHY MOORE, *in his official capacity as Speaker of the North Carolina House of Representatives*; PHILIP E. BERGER, *in his official capacity as President Pro Tempore of the North Carolina Senate*; DAVID R. LEWIS, *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session*; RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session*; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS, *Defendants-Respondents*.	From Wake County No. COA 22-16

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LEGISLATIVE DEFENDANTS' RESPONSE TO PETITION FOR DISCRETIONARY REVIEW PRIOR TO DETERMINATION BY THE COURT OF APPEALS

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SUPREME COURT OF NORTH CAROLINA
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LEGISLATIVE DEFENDANTS' RESPONSE TO PETITION FOR DISCRETIONARY REVIEW PRIOR TO DETERMINATION BY THE COURT OF APPEALS

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Pursuant to North Carolina Rule of Appellate Procedure 15(d), defendants-respondents Timothy K. Moore, Phillip E. Berger, and Ralph E. Hise, each in their respective official capacities ("Legislative Defendants"),[1] respectfully submit this response in opposition to plaintiffs-petitioners' ("Plaintiffs") petition for discretionary review prior to determination by the Court of Appeals.

INTRODUCTION

Following over three years of litigation and after securing their sought-after permanent injunction from a divided Superior Court, Plaintiffs now seek to speed things along. Plaintiffs ask this Court to review and decide the important issues in this case at a breakneck pace before the 2022 elections. *See* Pet. for Discretionary Review Prior to Determination by the Court of Appeals at 18 (Jan. 14, 2022) ("Pet.") (seeking a decision "in advance of upcoming elections"). And Plaintiffs do not hide the reason they want to press fast-forward—a potential "reversal of the trial court's judgment by the Court of Appeals." Pet. at 3. This Court should reject Plaintiffs' transparent attempt to invoke this Court's extraordinary power to alter the normal appellate review process based on nothing more than ordinary forum shopping. Instead of prejudging what the Court of Appeals will do in assessing the voluminous record and nuanced legal issues presented by this case, this Court should allow the Court of Appeals to give its fulsome consideration of the issues in accordance with standard appellate procedure. That is what this Court previously did in rejecting

[1] David R. Lewis, a previously named defendant in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session, is no longer in office and therefore no longer a party to this litigation.

Plaintiffs' last effort to short-circuit appellate review in this case. *See Holmes v. Moore*, 832 S.E.2d 708, 709 (N.C. 2019) (mem.). And there is no reason for a different result here as Plaintiffs seek a second bite at skipping the Court of Appeals.

Contrary to the Superior Court majority's decision, S.B. 824 is constitutional. The law was the result of bipartisan and inclusive deliberation. S.B. 824 received the votes of five Democrats at various points in the process, four supported the bill in its final form, and Democratic Senator Joel Ford served as a primary sponsor. The final text of the law offers a central promise: "*All* registered voters will be allowed to vote with or without a photo ID card." 2018 N.C. Sess. Laws 144, § 1.5(a)(10) (emphasis added). And S.B. 824 delivers on that promise. S.B. 824 provides a panoply of qualifying IDs for voters to use. Should a voter not have an ID, the voter can obtain a free one—with no documentation needed—from a county board of election. That free ID can even be obtained at one-stop early voting, allowing a voter to obtain an ID and vote at the same time. And should a voter arrive at the polls without an ID, S.B. 824 allows voting by means of a reasonable impediment provisional ballot, which can only be invalidated if a unanimous (and bipartisan) county board of elections decides the voter lied—an extraordinarily high bar. As Judge Poovey noted, S.B. 824 is one of the most generous voter photo ID laws enacted in the United States. *See* Final Judgment and Order, *Holmes v. Moore*, 18-CVS-15292, at 205 ¶ 92 (N.C. Super. Ct. Sept. 17, 2021) (Poovey, J., dissenting) ("Op.") (Attached as Exhibit 1, Doc. Ex. 1).

While Legislative Defendants are confident in S.B. 824's constitutionality, the public interest weighs in favor of this Court allowing the Court of Appeals to review

the Superior Court's decision in the first instance. No one denies the significance of the issues in dispute here, but that is all the more reason for this Court to avoid a decision made in unnecessary haste and without the benefit of the Court of Appeals' consideration. Consequently, this Court should exercise its discretion to allow for this case to proceed in the ordinary course. That is particularly so because Plaintiffs offer no valid reason to hurry up litigation that has been proceeding diligently for three years. Even by taking this case now and deciding it on Plaintiffs' preferred timeline, this Court cannot provide the finality that Plaintiffs claim. Plaintiffs entirely omit any discussion of the parallel federal litigation challenging S.B. 824, which is stayed pending a decision by the U.S. Supreme Court. Thus, any resolution of that federal case is likely more than another year away, ensuring the legality of S.B. 824 will continue to be tested in the courts beyond any premature consideration by this Court. And Plaintiffs' alleged concerns about voter confusion are not only entirely speculative but can be resolved by other judicial tools rather than the blunt instrument of depriving this Court of the considered views of the Court of Appeals.

Although this case is of great importance, the usual appellate procedures are best equipped to ensure this Court has the full benefit of intermediate appellate review, giving confidence to this Court, the parties, and the public at large that whatever decision is reached in this contentious case is well-considered and ultimately correct. Legislative Defendants respectfully request that the Court deny Plaintiffs' petition.

PROCEDURAL HISTORY

The People of North Carolina voted to amend the State's constitution to require that "[v]oters offering to vote in person shall present photographic identification before voting" and that the General Assembly "shall enact general laws governing the requirements of such photographic identification, which may include exceptions." N.C. CONST. art. VI, § 2, cl. 4; *id.* art. VI, § 3, cl. 2. Following the mandate of the amended constitution, the General Assembly passed on December 6, 2018, the "Act To Implement the Constitutional Amendment Requiring Photographic Identification To Vote"—S.B. 824—on a bipartisan basis. *See* Doc. Ex. 241, 267–272, 256–259. Governor Cooper then vetoed S.B. 824 on December 14, 2018. *See* Doc. Ex. 274. The General Assembly overrode, again on a bipartisan basis, the Governor's veto on December 19, 2018. *See* Doc. Ex. 247–254.

On the same day that the General Assembly enacted S.B. 824 over the Governor's veto, Plaintiffs commenced this suit. Plaintiffs alleged that S.B. 824 facially violated the North Carolina Constitution on six grounds and simultaneously moved for a preliminary injunction. *See* Doc. Ex. 382–389.

The Chief Justice of the North Carolina Supreme Court transferred this case to a three-judge panel of the Wake County Superior Court, pursuant to N.C.G.S. § 1-267.1(a1). After a hearing, the Superior Court denied Plaintiffs' motion for a preliminary injunction and dismissed all of the Plaintiffs' claims except for their claim that the General Assembly enacted S.B. 824 with discriminatory intent in violation of the North Carolina Constitution's Equal Protection Clause. N.C. CONST.

art. I, § 19. *See* Doc. Ex. 393–400. This Court denied Plaintiffs' petition to this Court for discretionary review prior to determination by the Court of Appeals. *See Holmes*, 832 S.E.2d at 709. After this Court's denial of Plaintiffs' petition, the Court of Appeals reversed the Superior Court in part. The Court of Appeals remanded the case with instructions to grant Plaintiffs' motion for a preliminary injunction against Defendants and enjoin them from implementing or enforcing S.B. 824's voter-ID provisions until Plaintiffs' equal protection claim was decided on the merits. *Holmes v. Moore*, 270 N.C. App. 7, 36, 840 S.E.2d 244, 266 (2020).[2]

Following remand, the Superior Court held a three-week remote trial on the merits of Plaintiffs' equal protection claim. On September 17, 2021, in a divided opinion, the Superior Court permanently enjoined S.B. 824's enforcement. *See* Op. at 1, ¶ 1 (Doc. Ex. 6). The majority concluded that the General Assembly "was motivated at least in part by an unconstitutional intent to target African American voters" in enacting S.B. 824. Op. at 101, ¶ 271 (Doc. Ex. 106). Judge Poovey dissented in a one hundred-and-two-page opinion. *See* Op. at 103–205 (Doc. Ex. 108–210). Unlike the majority, Judge Poovey concluded that Plaintiffs failed to meet their burden and that the "credible, competent evidence before [the court] does not suggest our legislature

[2] Prior to the North Carolina Court of Appeals preliminary injunction decision on February 18, 2020, the U.S. District Court for the Middle District of North Carolina preliminarily enjoined S.B. 824 under the U.S. Constitution on December 31, 2019 in parallel litigation. *N.C. State Conf. of NAACP v. Cooper*, 430 F. Supp. 3d 15, 53–54 (M.D.N.C. 2019). The Middle District's decision was later reversed by a unanimous three-judge panel of the U.S. Court of Appeals for the Fourth Circuit. *See N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 311 (4th Cir. 2020).

enacted this law with a racially discriminatory intent." Op. at 104 (Doc. Ex. 109) (Poovey, J., dissenting). As Judge Poovey explained,

> Senate Bill 824 was a bipartisan bill that was supported along the way by multiple African American legislators and enacted after the people of our State approved a constitutional amendment calling for voter-photo-ID requirements. The totality of the competent evidence presented in *this* litigation over *this* act of the General Assembly *in 2018* fails to support a finding that the General Assembly acted with racially discriminatory intent.

Op. at 205 (Doc. Ex. 210) (Poovey, J., dissenting).

Legislative Defendants timely filed a notice of appeal of the Superior Court's judgment on September 24, 2021. *See* Doc. Ex. 494–498. State Defendants timely filed a notice of appeal on September 27, 2021. *See* Doc. Ex. 499–502. The Record on Appeal and Rule 9(d) Documentary Exhibits were filed in the Court of Appeals on January 7, 2022, *see* Doc. Ex. 503–504, and the appeal docketed January 20, 2022. Plaintiffs filed their petition for discretionary review on January 14, 2022. This Response follows.

STATEMENT OF FACTS

In November of 2018, 2,049,121 North Carolina voters—55.49% of those who voted—voted in favor of a constitutional amendment to require photo voter ID. *See* 11/06/2018 Official General Election Results – Statewide (Attached as Exhibit 20, Doc. Ex. 294–95). That amendment mandates that "[v]oters offering to vote in person shall present photographic identification before voting" and that the General Assembly "enact general laws governing the requirements of such photographic identification, which may include exceptions." 2018 N.C. Sess. Laws 128, § 1. The General Assembly enacted S.B. 824 to implement this mandate, and in doing so, S.B.

824 offers a central promise to North Carolinians: "*All* registered voters will be allowed to vote with or without a photo ID card." 2018 N.C. Sess. Laws 144, § 1.5.(a)(10) (emphasis added).

I. The General Assembly Enacted S.B. 824 in a Deliberative, Inclusive, and Bipartisan Legislative Process.

S.B. 824 emerged out of a deliberative, inclusive, and bipartisan legislative process. During consideration of S.B. 824, it is undisputed that the General Assembly neither sought nor obtained data about rates of photo ID possession by race. It is also undisputed what the General Assembly *did* know. From a presentation by then-Executive Director of the State Board of Elections Kimberly Strach, the General Assembly learned about the effect of H.B. 589's photo ID requirement during the March 2016 primary election (the only election in which that ID requirement was in place). *See* Kimberly Strach, *Prior Education Efforts on Voter Identification Requirements (2014-16)*, N.C. STATE BD. OF ELECTIONS & ETHICS ENFORCEMENT ("State Bd. Presentation") (Attached as Exhibit 21, Doc. Ex. 296–332). Despite a *record* turnout, H.B. 589's ID provision affected few voters. *See* Trial Tr. Vol. 12 of 14, Weds., Apr. 28, 2021, at 2267:18–24 ("Trial Tr. Vol. 12") (Attached as Exhibit 4, Doc. Ex. 226–33). According to the State Board's data, less than one-tenth of one percent (<0.1%) of March 2016 primary voters' ballots were not counted for an ID-related reason. *See* Tr. of Nov. 26, 2018 Joint Elections Oversight Committee at 37:13–38:3 ("Joint Elections Tr.") (Attached as Exhibit 16, Doc. Ex. 276–80); State Bd. Presentation at 31–32 (Doc. Ex. 327–28); Op. at 117 ¶¶ 54–58 (Doc. Ex. 122) (Poovey, J., dissenting). Accordingly, more than 99.9% of North Carolina voters were able to

vote with H.B. 589's ID requirement. Not being satisfied with a 0.1% rate of ID issues with ballots during a record turnout election, the General Assembly crafted S.B. 824 to be significantly more voter friendly than H.B. 589. The resulting photo voter ID law "is one of the most generous in the country." Op. at 204–05 ¶ 92 (Doc. Ex. 209–10) (Poovey, J., dissenting).

The law was crafted with extensive input from legislators, both Republicans and Democrats. S.B. 824 was modeled on South Carolina's voter ID law, which had been precleared under Section 5 of the Voting Rights Act by a three-judge panel of the United States District Court for the District of Columbia. *See* Trial Tr. Vol. 8 of 14, Thurs., Apr. 22, 2021, at 1510:18–1512:20 (Attached as Exhibit 3, Doc. Ex. 219–225); *South Carolina v. United States*, 898 F.Supp.2d 30 (D.D.C. 2012). Even before the bill was formally introduced, a draft had been circulated broadly to legislators a week prior, *see* Trial Tr. Vol. 6 of 14, Tues., Apr. 20, 2021, at 1060:23–1061:9 (Attached as Exhibit 2, Doc. Ex. 213–218), and it underwent 24 changes from discussions with Democrats, the Joint Legislative Oversight Committee, the Elections Committee, and the Rules Committee, *see* Tr. of Nov. 28, 2018 Senate Floor – 2d Reading at 3:4–13 ("Senate Floor 2d Reading Tr.") (Attached as Exhibit 17, Doc. Ex. 281–286). The bill went through multiple rounds of committee review, five days of legislative debate, and multiple floor readings. *See* Op. at 181 ¶ 49 (Doc. Ex. 186) (Poovey, J., dissenting). Time was permitted for public comment, and the General Assembly considered 24 amendments. *See* S.B. 824 / SL 2018-144, N.C. GEN. ASSEMBLY, https://bit.ly/2BQ9EOX (Attached as Exhibit 6, Doc. Ex. 240). Of the 24

amendments that the General Assembly considered, it adopted more than half—13—including amendments proposed by the bill's opponents. *See* Op. at 123–25 ¶¶ 91–92, 94–95 (Doc. Ex. 128–130) (Poovey, J. dissenting).

The accepted amendments included substantive contributions from Democrats and served to make the law even more voter friendly than initially drafted. For example, Representative Charles Graham, a Democrat and opponent of S.B. 824, introduced, and the General Assembly adopted, an amendment that added to the list of qualifying photo IDs a tribal enrollment card issued by a state or federal recognized tribe. *See* Amendment No. A11 to S.B. 824 by Rep. C. Graham (Attached as Exhibit 7, Doc. Ex. 243–244). Senator Joel Ford, a Democrat and primary co-sponsor of S.B. 824, introduced, and the General Assembly adopted, an amendment that required County Boards to offer free IDs during early voting. *See* Amendment No. A1 to S.B. 824 by Sen. Ford (Attached as Exhibit 8, Doc. Ex. 245–246). As Plaintiffs' witness Senator Floyd McKissick—a staunch Democratic opponent of S.B. 824—testified, the majority party in the North Carolina Senate will not normally even consider amendments from the minority party or put them up for vote; instead, the majority will typically table those amendments. *See* Trial Tr. Vol. 13 of 14, Thurs., Apr. 29, 2021, at 2354:15–18 (Attached as Exhibit 5, Doc. Ex. 234–39). "That did not occur with S.B. 824." Op. at 123 ¶ 90 (Doc. Ex. 128) (Poovey, J., dissenting).

With this inclusive legislative process, it is not surprising that even Senator McKissick admitted that S.B. 824 was "an earnest effort to try [and] expand . . . significantly beyond what it was when the last voter ID bill came before us" and

"appreciate[d] the fact that this bill is far more broad and far more expansive." Senate Floor 2d Reading Tr. at 48:13–18 (Doc. Ex. 286). And Representative Pricey Harrison, another opponent, stated on the House floor that she "want[ed] to start by thanking Chairman Lewis because I think he's done a really terrific job *working with us* to help improve the bill." *See* Tr. of Dec. 5, 2018 House Floor Audio – 2d and 3d Reading at 116:20–22 ("House Floor 2d and 3d Reading Tr.") (Attached as Exhibit 19, Doc. Ex. 290–293) (emphasis added).

The inclusive process is evident from the bipartisan support that S.B. 824 ultimately enjoyed. As noted, Joel Ford, an African American Democrat, served as one of the law's three primary sponsors. And, overall, *five Democrats* across the Senate and the House voted for S.B. 824 at different points with *four Democrats* voting for the bill in its final form. *See* Doc. Ex. 253–72.

After its initial passage, S.B. 824 was subsequently amended four times. The General Assembly subsequently passed, and the Governor thereafter signed, a series of four stand-alone amendments to S.B. 824. Senate Bill 214, passed on March 13, 2019, amended S.B. 824 by postponing enforcement of photo voter ID to the 2020 elections while providing that "all implementation and educational efforts . . . shall continue." House Bill 646, passed on May 28, 2019, increased the time during which educational institutions and government employees could have their ID approved to qualify as voter ID and relaxed approval requirements. This bill also removed the expiration date requirements from tribal IDs: a tribal ID may now be used even if it has been expired for over a year or lacks an expiration date. Senate Bill 683, passed

on October 29, 2019, changed the reasonable impediment process for absentee ballots to include a process for voters without acceptable photocopies of their ID and appropriated additional funding to the State Board of Elections to implement voter ID. And House Bill 1169, passed on June 11, 2020, amended S.B. 824 by adding to the list of qualifying voter IDs an ID card issued by a department, agency, or entity of the United States government or of North Carolina for a government program of public assistance. These IDs qualify for voting use regardless of whether they contain a printed issuance or expiration date.

II. S.B. 824 Offers Voters an Expansive Array of Options to Vote With or Without ID.

Both as initially enacted and after amendment, S.B. 824 provides for an expansive array of photo ID that North Carolina voters can present when voting: a North Carolina driver's license; a special non-operator's identification card or other form of non-temporary identification issued by the North Carolina DMV or Department of Transportation; a driver's license or non-operator's identification card issued by another state or the District of Columbia, so long as the voter registered to vote in North Carolina within 90 days of election day; U.S. passport; a "free ID" issued by a county board of election, free of charge and without requiring underlying documentation; a tribal enrollment card issued by a State or federally recognized tribe; a student identification card, provided that the ID meets certain requirements; an employee identification card issued by a state or local government entity, including a charter school, provided that the ID is issued in accordance with certain requirements; a U.S. military identification card, regardless of whether the ID

contains a printed expiration or issuance date; and a veterans identification card issued by the U.S. Department of Veterans Affairs regardless of whether the ID contains a printed expiration or issuance date; and (as amended) an identification card issued by a department, agency, or entity of the United States government or of North Carolina for a government program of public assistance. *See* N.C.G.S. § 163-166.16(a)(1)–(2). A voter aged 65 or older may present any of these forms of ID, even if expired, so long as the ID was unexpired on the voter's 65th birthday. *Id.* § 163-166.16(a)(3).

S.B. 824 also provides multiple means for those without ID to obtain a qualifying ID prior to voting. S.B. 824 requires county boards of elections to issue voter photo ID cards to registered voters without charge and upon request. To obtain these "Free IDs," a voter need not provide any underlying documentation. The voter need only provide her name, date of birth, and the last four digits of her Social Security number. The text of S.B. 824 provides for these IDs to be available during one-stop early voting, on election day, and after election day. Specifically, they "shall be issued at any time, except during the time period *between* the end of one-stop voting for a primary or election . . . and election day for each primary and election." 2018 N.C. Sess. Laws 144, § 1.1(a); N.C.G.S. § 163-82.8A(d)(2) (emphasis added). Further, the text of S.B. 824 does not prevent counties from providing these IDs at multiple sites and does not prevent the State Board of Elections from requiring counties to do so.

In addition to the free IDs from the county boards of elections, S.B. 824 also provides for special ID cards from the DMV. *See* 2018 N.C. Sess. Laws 144, § 1.3(a); N.C.G.S. § 20-37.7. These DMV voting IDs are available to anyone at least 17 years old to obtain. Further, when voters have a valid form of DMV ID, but that ID is seized or surrendered due to cancellation, disqualification, suspension, or revocation, S.B. 824 requires the DMV to *automatically* issue a special identification card to that voter via first-class mail with no application and no charge. *See* 2018 N.C. Sess. Laws 144, § 1.3(a); N.C.G.S. § 20-37.7(d2).

And S.B. 824 provides numerous means for registered voters, who lack photo ID at the time of voting or fail to bring it to the polls, to still vote. Registered voters who have a "reasonable impediment" to "*presenting*" a qualifying photo ID at the polls may cast a provisional ballot. N.C.G.S. § 163-166.16(d)(2)(emphasis added). Numerous grounds are recognized as reasonable impediments and voters may identify any "other" reason that they subjectively deem reasonable. As the testimony at trial made clear, the State Board of Elections has interpreted "other" expansively. *See* Deposition of Karen Bell, Vol. I, at 72:14–25, 73:3–4 (Dec. 3, 2020) ("Bell Dep.") (Attached as Exhibit 22, Doc. Ex. 333–336). The only basis for rejecting a reasonable impediment affidavit is falsity, N.C.G.S. § 163-166.16(f), and a bipartisan county board of elections must unanimously vote that a reasonable impediment ballot is false for it not to be counted, *see* 08 NCAC 17.0101(b), Photo Identification. There is no provision for other voters to challenge the veracity of a reasonable impediment declaration. In this way, calling a reasonable impediment ballot " 'provisional' is a bit

of a misnomer in this instance." *South Carolina v. United States*, 898 F. Supp. 2d 30, 41 (D.D.C. 2012).

In addition to the reasonable impediment process, voters who fail to present an ID at the time of voting—either because they have yet to obtained one or simply forgot it—can vote a provisional ballot and return to the county board of elections by no later than the end of the day before canvassing (generally ten days after the election). N.C.G.S. § 163-166.16(c); *id.* § 163-182.5(b). Under S.B. 824, voters can obtain a free ID on the same trip to the county board or bring another ID and cure their ballot.

III. S.B. 824 Differs Dramatically from Prior Voting Legislation in North Carolina.

S.B. 824 materially differs from H.B. 589, both in the sequence of events leading to enactment and in the substance of the laws. S.B. 824 was enacted pursuant to a mandate that was lacking for H.B. 589: in 2018, the people of North Carolina amended the Constitution to require individuals to present photographic identification when voting. H.B. 589 was an omnibus election bill with provisions unrelated to voter ID, such as "the elimination of preregistration" and "same-day registration." *Raymond*, 981 F.3d at 299. S.B. 824 is focused on voter ID. H.B. 589 was passed strictly on party lines; S.B. 824 received bipartisan support. The Fourth Circuit concluded that in the enactment of H.B. 589, the General Assembly relied on "racial data," where "the General Assembly requested and received a breakdown by race of DMV-issued ID ownership, absentee voting, early voting, same-day registration, and provisional voting." *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d

204, 230 (4th Cir. 2016). With S.B. 824, however, the General Assembly requested and relied on *none* of this kind of data. As discussed, the General Assembly was instead informed that 99.9% of voters in March 2016 were able to vote under H.B 589's requirements and the General Assembly acted to drive that number *even higher* by expanding on the list of IDs, including by adding additional forms of qualifying ID and by making the reasonable impediment provision more expansive.

The substance of S.B. 824—modeled on laws, like South Carolina's, that have been upheld by courts—is dramatically different from H.B. 589 as well. First, S.B. 824 has always contained a reasonable impediment fail-safe. As originally enacted, H.B. 589 did not include such a provision. And although the General Assembly did create an exemption in 2015 legislation passed during the litigation over H.B. 589, that exemption prohibited counting reasonable impediment ballots that "merely denigrated the photo identification requirement, or made obviously nonsensical statements," and it required an impediment to *obtaining* identification, not merely presenting it. 2015 N.C. Sess. Laws 103, § 8.(e). As discussed, S.B. 824's reasonable impediment provision is much more expansive. And while the former law's reasonable impediment provision allowed other voters to challenge reasonable impediment declarations, S.B. 824 does not. *Compare* 2015 N.C. Sess. Laws 103, § 8.(e), *with* N.C.G.S. § 163-87. Second, S.B. 824 unlike H.B. 589 extends voter ID provisions to absentee balloting. Third, S.B. 824 broadens the list of voter ID to include qualifying student and government employee ID. Fourth, S.B. 824 creates a form of free ID that is issued by county boards of election without requiring underlying documentation,

and that can be obtained and used to vote in one trip during early voting. Fifth, unlike H.B. 589, S.B. 824 requires the State Board to make aggressive and individualized outreach to voters lacking DMV-issued voter ID. *Compare* 2018 N.C. Sess. Laws 144, § 1.5.(a)(8), *with* 2013 N.C. Sess. Laws 381, §§ 5.2, 5.3, *and* 2015 N.C. Sess. Laws 103 § 8.(g). Sixth, as amended, S.B. 824 lists public assistance ID as qualifying voter ID. H.B. 589 did not.

As the Fourth Circuit found in reversing the preliminary injunction in the parallel federal proceedings, the facts do not show "the General Assembly acted with discriminatory intent in passing [S.B. 824]." *Raymond*, 981 F.3d at 305. Instead, by enacting S.B. 824, the General Assembly succeeded in crafting one of the most generous voter ID laws ever enacted in the United States. In fact, after years of litigation, Plaintiffs still fail to identify a single registered voter who will be prevented from voting by the terms of S.B. 824.

REASONS WHY CERTIFICATION SHOULD NOT ISSUE

Legislative Defendants do not contest that this case is significant, raising issues of importance to the public and the jurisprudence of the State. Nevertheless, this Court should not exercise its discretion to review and decide this case now because: (i) it is in the public interest for the Court of Appeals to consider the substantive issues first, (ii) Plaintiffs offer no valid reason to bypass the Court of Appeals, (iii) granting the petition is not necessary to resolve unsubstantiated and speculative voter confusion concerns, and (iv) this Court cannot accomplish the finality that Plaintiffs claim.

I. The Public Interest Weighs in Favor of the Court of Appeals' Consideration

Outside of highly unusual cases, the public policy of the State favors direct appeal to the Court of Appeals prior to this Court's review. Since "public policy, which has been not inaptly termed the 'manifested will of the state,' is very largely a matter of legislative control," *Reid v. Norfolk S. R.R. Co.*, 162 N.C. 355, 78 S.E. 306, 307 (1913), this Court must consider the carefully legislated path for appellate review. It is the State's public policy under N.C.G.S. § 7A-27 that appeals from the Superior Court are to be reviewed first by the Court of Appeals. *See* N.C.G.S. § 7A-27(b). In 2016, a series of amendments crystallized this policy. Session Law 2016-125 removed the direct pathway of appeal to this Court for facial challenges like the one Plaintiffs raise here, explicitly preferencing Court of Appeals review first. 2016 N.C. Sess. Laws 125 § 22(b). In addition, the General Assembly created en banc review in the Court of Appeals, further indicating a State policy preference for intermediate appellate review. *Id.* § 22(a). And underscoring this State policy is the longstanding importance given to the opinions of Court of Appeals judges: since the inception of the Court of Appeals, the State has allowed, in one form or another, for direct review in this Court when a Court of Appeals judge dissents, an implicit recognition of the value of the development of legal arguments at the intermediate level. *See* 1967 N.C. Sess. Laws 108, § 1; N.C.G.S. § 7A-30(2). With this strong legislated policy prizing intermediate appellate review, it is only in highly unusual circumstances that this Court is to pluck cases out of the normal procedure.

This is not one such a case. Although this case implicates the right to vote, this Court has denied certification in such cases, including this case, previously. *See, e.g.*, *Holmes*, 832 S.E.2d at 709; Pet. for Discretionary Review, in *N.C. State Conf. of the NAACP v. Moore*, No. 261P18-2, 2019 WL 2018297 (N.C. May 1, 2019) (invoking the right to vote as a matter of "significant public interest"); *N.C. State Conf. of the NAACP v. Moore*, 372 N.C. 359, 828 S.E.2d 158 (N.C. June 11, 2019) (mem.) (denying petition). It has also done so in other cases purportedly implicating fundamental rights. *See, e.g.*, Pet. for Discretionary Review, in *Bessemer City Express, Inc. v. City of Kings Mountain*, No. 85P03, 2003 WL 23325713 (N.C. Feb. 5, 2003) (invoking fundamental constitutional rights and substantive due process); *Bessemer City Express, Inc. v. City of Kings Mountain*, 357 N.C. 61, 579 S.E.2d 384 (2003) (mem.) (denying petition); *Leandro v. State*, 346 N.C. 336, 344, 488 S.E.2d 249, 253 (1997) (denying joint request for discretionary review prior to determination by Court of Appeals in case implicating fundamental right to education).

This case is also in a very different posture than *Harper v. Hall*, in which this Court recently exercised its authority for early discretionary review. *See Harper v. Hall*, 865 S.E.2d 301, 302 (N.C. 2021) (mem.). In *Harper*, the Court explained that in addition to the significance of the issues, there was "the need for urgency in reaching a final resolution on the merits at the earliest possible opportunity." *Id.* That case concerns the implementation of districts *right now* that are determinative of who will represent North Carolinians and for whom North Carolinians can vote in elections speedily coming up. By contrast, this case has been litigated for over three years.

Since the Middle District of North Carolina's preliminary injunction (later reversed by the Fourth Circuit), *N.C. State Conf. of NAACP v. Cooper*, 430 F. Supp. 3d 15 (M.D.N.C. 2019), *rev'd sub nom.*, *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295 (4th Cir. 2020), and the North Carolina Court of Appeals' preliminary injunction, North Carolina has held elections without S.B. 824 in March 2020, June 2020, and November 2020. Barring extraordinarily expeditious appellate review, North Carolina will hold its 2022 primary elections without S.B. 824 being implemented. With elections having come and gone, Plaintiffs' claims of "detrimental . . . delay" caused by the Court of Appeals review ring hollow. Pet. at 15. S.B. 824's implementation has already been delayed past several elections. And Plaintiffs can point to no marginal additional detriment from merely allowing the ordinary appellate process to take its course. Given the lack of any genuine prejudice to Plaintiffs of review in the Court of Appeals, it appears that Plaintiffs simply believe that this Court will be a more favorable forum for their claims than the Court of Appeals. But that is not a legitimate reason for upending the normal appellate process.

II. Plaintiffs Offer No Valid Reasons to Short-Circuit Appellate Review.

Plaintiffs argue that a speedy decision by this Court is necessary for the State Board of Elections to implement S.B. 824 in advance of the 2022 elections, in the event that this Court upholds the Act (which it should). *See* Pet. at 18. Yet, Plaintiffs' assertions are contradicted by both the State Board of Election's prior representations and Plaintiffs' own arguments to the Superior Court. There, the State Board repeatedly emphasized that it needs *significant* lead time to implement S.B. 824. In

briefing relating to lifting the preliminary injunction, the Board said that only if the injunction were lifted in early July 2020 would the Board be able to implement S.B. 824 in time for the November 2020 elections. *See* State Defs' Resp. to Legis. Defs' Mot. for Entry of a Case Management Order in *Holmes v. Moore*, No. 18 CVS 15292, at 2 (N.C. Super. Ct. Apr. 14, 2020) (Attached as Ex. 25, Doc. Ex. 404–10) ("[I]mplementation activities would need to begin by early July."). And the Board's estimate did not include COVID-related delays. *Id.* Remarkably, Plaintiffs *disagreed* with the State Board's own estimate of its abilities, asserting that even if the Superior Court had lifted the injunction "sometime in July, the State would then be left with *insufficient time* . . . to implement the law and educate voters." Pls' Opp'n To Legis. Defs' Mot. For Entry Of A Case Management Order And For Scheduling A Remote Hr'g On Pls' Mot. To Compel in *Holmes v. Moore*, No. 18 CVS 15292, at 2 (N.C. Super. Ct. Apr. 14, 2020) ("Pls' Opp'n") (Attached as Exhibit 26, Doc. Ex. 411–29) (emphasis added). Were this Court to uphold S.B. 824, Plaintiffs thus maintain that decision would need to arrive at the latest by early July of this year in order for the Board to have sufficient opportunity to implement the law prior to the 2022 elections.

And even if the Court were to decide to take this case *today*, it would likely already be too late to meet this early July deadline for implementation. According to the North Carolina Department of Justice, this Court takes on average six months to decide a case. *See How long does it take for an appeal to be decided by the Court?*, N.C. DEP'T OF JUST., https://bit.ly/3u0Vg31 (Attached as Exhibit 31, Doc. Ex. 505–07). A decision six months from today at the end of July will be past the time the State Board

has previously claimed it needed to get started on S.B. 824—and that was only a partial estimate about implementation without voter education. *See* State Defs' Resp. to Legislative Defs' Mot. to Dissolve Inj. in *Holmes v. Moore*, No. 18 CVS 15292 at 3 (N.C. Super. Ct. July 24, 2020) (Attached as Exhibit 27, Doc. Ex. 463–70) ("The early-July target date . . . has now passed, making the implementation of the law infeasible for the upcoming [November 2020] election."). And it would be a decision past the time Plaintiffs previously asserted would be necessary, at a speed Plaintiffs previously represented would be unwise for a court to pursue. *See* Pls' Opp'n. at 2–3 (Doc. Ex. 414–15). Only if this Court were to operate at a breakneck pace would it be able to hastily resolve this case in time for implementation of S.B. 824 for November 2022. If the Court is not inclined to conduct its consideration of this important case at a breakneck pace in time for implementation before the November 2022 elections, then Plaintiffs' claimed basis for exigence evaporates. Given the lack of truly exigent circumstances, *cf. Harper*, 865 S.E.2d at 302, there is no need to circumscribe the deliberateness of this Court's review of S.B. 824 by taking this case early and without the benefit of the Court of Appeals' perspective.

Plaintiffs also assert that granting this Petition would in fact benefit the General Assembly so that "the legislature [can] begin the work of crafting and enacting a new voter ID law." Pet. at 18. But Legislative Defendants, as leaders of the General Assembly, submit that what is most important to the legislature is the fulsome consideration, not hasty resolution, of the constitutionality of S.B. 824. This Court's guidance will be relevant whether the Court upholds S.B. 824 (as it should)

or invalidates the law, because requiring photo voter ID at the polls is affixed in our State's constitution. That means the guidance provided by this Court will be critical for future General Assemblies either in amending S.B. 824 as time goes on or in proposing new photo voter ID legislation. Given the long-term stakes of any decision by this Court, it is critical that this Court consider the case without the manufactured pressure of a premature decision that Plaintiffs' Petition seeks. And this Court's decision should come with the full benefit of the Court of Appeals' consideration.

The fact that this Court is currently considering the validity, *inter alia*, of the constitutional amendment mandating photo voter ID is yet another reason why this Court should decline to take this case now. *See N.C. State Conf. of NAACP v. Moore*, 261A18-3 (N.C.). For one, that case has had the benefit of intermediate appellate review. *See N.C. State Conf. of NAACP v. Moore*, 273 N.C. App. 452, 849 S.E.2d 87 (2020). For another, the case implicates the constitutional amendment that led to S.B. 824. As legislators who were both for and against S.B. 824 stated during deliberations, the law was enacted because of that constitutional amendment. *See* Joint Elections Tr. at 3:9–11 (Doc. Ex. 278) (Rep. Lewis: "We are here today to do the people's business, which is to adopt a law implementing the constitutional amendment that requires a photo ID to vote."); Senate Floor 2d Reading Tr. at 2:16–19 (Doc. Ex. 283) (Sen. Krawiec: "On Election Day, voters made it clear that they had decided that we needed to add a voter ID to our Constitution. So we're following through on that decision."); Senate Floor 2d Reading Tr. at 16:17–20 (Doc. Ex. 284) (Sen. Woodard: "[W]e are here this week to honor the majority of North Carolina's

voters and work to craft enabling legislation."); Senate Floor 2d Reading Tr. at 38:8–10 (Doc. Ex. 285) (Sen. Tillman: "November 6th, the people of this state voted rather strongly that they wanted a voter ID, photo voter ID."); Tr. of Nov. 29, 2018 Senate Floor – 3d Reading at 3:9–12 (Attached as Exhibit 18, Doc. Ex. 287–89) (Sen. McKissick: "While I prefer the bill were it not necessary, we have a constitutional amendment, so it is. So I think it's best that we try to move forward with it the best we can."); House Floor 2d and 3d Reading Tr. at 50:16–19 (Doc. Ex. 292) (Speaker Moore: "The chair would point to—would state that, number one, this bill is to implement a constitutional amendment that was passed by the people of the State at the ballot box.").

What this Court decides in *North Carolina State Conference of NAACP v. Moore*, may have a bearing on this case, and, at the very least, that decision may prove relevant. As this Court normally does not consider issues in the first instance, it would be a better use of judicial resources to leave it to the Court of Appeals to address any effect of that decision first. *Cf. State v. Marcoplos*, 357 N.C. 245, 245, 580 S.E.2d 691 (2003) (mem.) ("We decline to consider this constitutional issue in the first instance. This matter is remanded to the Court of Appeals so that this issue may be addressed by that court."); *State v. Hope*, 317 N.C. 302, 308, 345 S.E.2d 361, 365 (1986) ("In deference to the authority of the Court of Appeals to render the first appellate consideration of this issue, we remand this case to that court."); *Virginia Elec. & Power Co. v. Tillett*, 316 N.C. 73, 76, 340 S.E.2d 62, 64–65 (1986) ("Giving proper deference to the Court of Appeals . . . we remand the case to the Court

of Appeals so that it may address those issues initially on appeal and prior to their being decided by this Court.").

III. Pulling the Case from the Court of Appeals Is Not Necessary to Remedy Unsubstantiated Claims of Voter Confusion.

An early decision by this Court is not needed to prevent voter confusion because Plaintiffs' assertions are based on pure speculation. Instead, the Superior Court heard at trial about the State Board's repeated efforts to inform voters of voter ID requirements when these have been in effect and of the efforts by current State Board of Elections Director Bell to inform the public of the Court of Appeals' injunction, which suspended enforcement of S.B. 824. *See* Trial Tr. Vol. 12 at 2179:2–2180:25 (Doc. Ex. 231–32) (Director Strach); Bell Dep. at 83:18–84:1 (Doc. Ex. 336) (Director Bell). There is no reason to think that the State Board of Elections would not faithfully and diligently apprise the public should S.B. 824 be upheld by the Court of Appeals and consequently go into effect, alleviating any voter confusion. Op. at. 144 ¶ 152 (Doc. Ex. 149) (Poovey, J., dissenting) ("The record in this case makes clear that the State Board and County Boards will do everything in their power to ensure S.B. 824's fair and evenhanded implementation.").

And to the extent any voter confusion is substantiated, this Court has other tools to allay those concerns. For instance, Plaintiffs may seek a temporary stay of the ruling, if the Court of Appeals reverses the Superior Court majority's decision, or a writ of supersedeas. *See* N.C. R. App. P. 23(b) ("Application may be made in the first instance to the Supreme Court for a writ of supersedeas to stay the execution or enforcement of a judgment, order, or other determination mandated by the Court of

Appeals when a notice of appeal of right or a petition for discretionary review has been or will be timely filed[.]"). In that instance, this Court would be able to assess and weigh any risk of voter confusion *if and when* such confusion may actually arise. *Cf.* N.C. R. App. P. 23(c) (requiring "statement of any *facts*" (emphasis added)). Of course, Legislative Defendants reserve the right to oppose any future request by Plaintiffs to stay or otherwise modify a ruling that upholds S.B. 824 because constitutional laws should be enforced. *Cf. Cooper v. Berger*, 376 N.C. 22, 33, 852 S.E.2d 46, 56 (2020) ("[W]e presume that laws enacted by the General Assembly are constitutional . . ."). Nevertheless, the most judicious way to remedy any voter confusion is at the time such confusion may arise, not by speculation about what the Court of Appeals may or may not do months from now. An approach based on actual circumstances is a far superior option than using the blunt instrument of pulling the case from the Court of Appeals because of speculative and unsubstantiated risks.

IV. Early Adjudication Will Not Provide the Finality that Plaintiffs Claim.

Accelerating this Court's decision by skipping consideration by the Court of Appeals will not provide the finality Plaintiffs claim. That is because Plaintiffs wholly omitted from their Petition any acknowledgment of the parallel federal proceedings. *See N.C. State Conf. of the NAACP v. Circosta*, No. 1:18-cv-1034 (M.D.N.C). The federal district court was set to hear trial in this case this month (January 2022). *See* Not., *N.C. State Conf. of the NAACP v. Circosta*, No. 1:18-cv-1034, Doc. 173 (M.D.N.C. Sept. 17, 2021) (Attached as Exhibit 32, Doc. Ex. 508–09). But those trial proceedings are now stayed while the U.S. Supreme Court considers whether the federal district

court should have allowed intervention by two of the Legislative Defendants in this action. *See* Order, *N.C. State Conf. of the NAACP v. Circosta*, No. 1:18-cv-1034, Doc. 194 at 1 (M.D.N.C. Dec. 30, 2021) (Attached as Exhibit 33, Doc. Ex. 510–13); *Berger v. N.C. State Conf. of the NAACP*, No. 21-248, 2021 WL 5498793 (U.S. Nov. 24, 2021) (granting petition for certiorari). With a decision on intervention by the U.S. Supreme Court not likely for months, the federal trial on S.B. 824 will not start at the earliest until this summer with a decision and appeal(s) from that decision to ensue in the months or year(s) following. The litigation over S.B. 824 can be expected to continue even if this Court grants discretionary review before determination by the Court of Appeals. In other words, finality cannot be guaranteed by an early decision of this Court.

CONCLUSION

The Court should deny Plaintiffs' petition.

Respectfully submitted this 27th day of January 2022.

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this

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VERIFICATION

The undersigned attorney for Legislative Defendants, after being duly sworn, says:

I have read the foregoing Response to Petition for Discretionary Review Prior to Determination by the Court of Appeals and I hereby certify that the material allegations and contents of the foregoing Response are true to my knowledge, except those matters stated upon information and belief and, as to those matters, I believe them to be true.

I also hereby certify that the documents attached to this Response are true and correct copies of court orders, documents from the file in the Wake County Superior Court or the North Carolina Court of Appeals, and/or are documents of which this Court can take judicial notice.

Nathan Huff

Wake County, North Carolina

Sworn to and subscribed before me this 27th day of January, 2022.

Cynthia Fabian Medina

Cynthia Fabian Medina
Notary's Printed Name, Notary Public

My Commission Expires:

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 27th day of January, 2022, pursuant to Rule of Appellate Procedure 26, served a copy of the foregoing Response to Petition for Discretionary Review Prior to Determination by the Court of Appeals on the following counsel for the parties at the following addresses by electronic mail.

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INDEX OF DOCUMENTARY EXHIBITS

EXHIBIT 1

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 15292

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, *and* PAUL KEARNEY, SR.,

Plaintiffs,

v.

TIMOTHY K. MOORE, *in his official capacity as Speaker of the North Carolina House of Representatives*; PHILLIP E. BERGER, *in his official capacity as President Pro Tempore of the North Carolina Senate*; DAVID R. LEWIS, *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session*; RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session*; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

FILED
2021 SEP 17 AM 11:06
WAKE CO., C.S.C.
BY

FINAL JUDGMENT

AND ORDER

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MAJORITY

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1. At issue in this case is whether Senate Bill 824 (2018 N.C. Sess. Law 144) ("S.B. 824"), North Carolina's Voter ID law, was enacted with the unconstitutional intent to discriminate against African American voters. After carefully considering all of the evidence, the majority of this three-judge panel concludes that S.B. 824 was enacted in violation of the Equal Protection Clause in Article I, § 19 of the North Carolina Constitution and therefore permanently enjoin S.B. 824 for the reasons that follow.

BACKGROUND

2. The General Assembly enacted S.B. 824 over the veto of Governor Cooper on December 19, 2018.

3. Plaintiffs Jabari Holmes, Fred Culp, Daniel E. Smith, and Brendon Jaden Peay immediately challenged the law, alleging among other things, that S.B. 824 violated the Equal Protection Clause in Article I, § 19 of the North Carolina Constitution because it was enacted with the intent to discriminate against voters of color, including African American voters. The same day, Plaintiffs also filed a Motion for Preliminary Injunction seeking to prevent the implementation of S.B. 824.

4. Legislative Defendants moved to dismiss the Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure on January 22, 2019.

5. On March 12, 2019, Vince M. Rozier, Jr., Presiding Superior Court Judge in Wake County, denied Legislative Defendants' Motion to Dismiss pursuant to 12(b)(1) as to Plaintiffs' intentional discrimination claim and transferred the matter to a three-judge panel for consideration of the 12(b)(6) motion.

6. On July 19, 2019, this Court entered its Order on Defendants' Motion to Dismiss and Plaintiffs' Preliminary Injunction. This Court unanimously held that "Plaintiffs . . . made sufficient factual allegations to support" their intentional discrimination claim, but, in a divided opinion, denied Plaintiffs' request for a preliminary injunction.

7. Plaintiffs appealed the denial of their motion for a preliminary injunction, and on February 18, 2020, the North Carolina Court of Appeals reversed this Court's decision, holding that Plaintiffs had shown a clear likelihood of success on the merits of their discriminatory-intent claim. The case was remanded to this Court with instructions to grant Plaintiffs' motion and preliminarily enjoin Defendants from implementing or enforcing the voter ID provisions of S.B. 824 until after trial.

8. This Court entered an order in accordance with the decision of the Court of Appeals enjoining S.B. 824 on August 10, 2020. Shortly thereafter, on August 12, 2020, this Court denied Legislative Defendants' motion to dissolve the preliminary injunction.

9. Trial in this matter was conducted virtually via WebEx on April 12-16, 19-23, and 26-30, 2021.

10. Based on the evidence admitted at trial, and the legal standards articulated below, this Court now makes the following findings of fact and conclusions of law.

LEGAL STANDARD

11. The relevant framework for analyzing whether an official action was motivated by discriminatory purpose was set forth in *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977), and recently discussed by our Court of Appeals in *Holmes v. Moore*, 270 N.C. App. 7, 16, 840 S.E.2d 244, 254 (2020) (stating that "proof of racially discriminatory intent *or* purpose" will show "a violation of the Equal Protection Clause.") *(emphasis added*).

12. Courts must undertake "a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266; *State v. Jackson*, 322 N.C. 251, 261, 318 S.E.2d 838, 843–44 (1988) (Frye, J., concurring). *Arlington Heights* laid out a non-exhaustive list of factors for courts to consider. *Holmes*, 270 N.C. App. at 18. Those factors include: (1) the law's historical background, (2) the specific sequence of events leading to the law's enactment, including any departures from the normal procedural sequence, (3) the legislative history of the decision, (4) the impact of the law and whether it bears more heavily on one race than another. *Arlington Heights*, 429 U.S. at 266–68.

13. Plaintiffs "need not show that discriminatory purpose was the 'sole[ ]' or even a 'primary' motive for the legislation, just that it was 'a motivating factor.'" *Holmes*, 270 N.C. App. at 16–17 (quoting *Arlington Heights*).

14. Plaintiffs also need not show that "any member of the General Assembly harbored racial hatred or animosity toward any minority group" in order to prevail on their intentional discrimination claim. *See N.C. State Conference of the NAACP v. McCrory*, 831 F.3d 204, 233 (4th Cir. 2016). "Using race as a proxy for party may be an effective way to win an election. But intentionally targeting a particular race's access to the franchise because its members vote for a particular party, in a predictable manner, constitutes discriminatory purpose," even in the absence of "any evidence of race-based hatred." *Id.* at 222–23.

15. "Once racial discrimination is shown to have been a substantial or motivating factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor. Although . . . North Carolina caselaw generally gives acts of the General Assembly great deference, such deference is not warranted when the burden shifts to a law's defender after a challenger has shown the law to be the product of a racially discriminatory purpose or intent." *Holmes*, 270 N.C. App. at 19 (quotation marks and citations omitted).

16. Instead, if Plaintiffs meet their burden, Defendants must "demonstrate that the law would have been enacted without" discrimination as a motivating factor. *Holmes*, 270 N.C. App. at 33 (quoting *McCrory*, 831 F.3d at 221). "Because racial discrimination is not just another competing consideration," we instead "scrutinize the legislature's actual non-racial motivations to determine whether they alone can justify the legislature's choices." *Id.* (quotation marks omitted).

17. Overall, Plaintiffs have the burden of showing that the challenged law was passed with a discriminatory purpose. This can be done by relying on the factors laid out in *Arlington Heights*. Subjective racial animus of a particular legislator, or the legislature as a whole, is not necessary.

18. When an equal protection claim has been raised, as here, "the injury in fact [i]s the denial of equal treatment . . . not the ultimate inability to obtain the benefit." *Holmes*, 270 N.C. App. at 14 n.4 (quotation marks omitted). "That Plaintiffs may ultimately be able to vote in accordance with S.B. 824's requirements is not determinative of whether compliance with S.B. 824's commands results in an injury to Plaintiffs." *Id.* It is enough to show that the legislature had a purpose to diminish the power of African American voters because of polarized voting in North Carolina. Once the plaintiffs have established this discriminatory purpose, the defendants must establish that an actual, nondiscriminatory motivation would have justified the passage of the challenged law. All parties generally agree that the test laid out in *Arlington Heights* controls here.

FINDINGS OF FACT

19. This Court recognizes that "[u]nlike the trial court, the court of appeals cannot ask questions that might help resolve issues or prompt responses necessary to create a complete record. For this reason and others, the trial court [has made] the determinations required by G.S. 1-267.1(a1) and G.S. 1A-1, N.C. R. Civ. P. 42(b)(4), in the first instance." *Holdstock v. Duke Univ. Health Sys.*, -- N.C. App. --, 841 S.E.2d 307 (2020).

20. Each finding of fact set forth or incorporated herein, to the extent it may be deemed a conclusion of law, shall also constitute a conclusion of law.

I. North Carolina Has a Long and Undisputed History of Enacting Racially Discriminatory Voting Laws

21. "Just as with other states in the South, North Carolina has a long history of race discrimination generally and race-based vote suppression in particular." *Holmes*, 270 N.C. App. at 20–21 (quotation marks omitted); *see also* JX 0694 at 2, 5-7. History reveals a pattern. When minority citizens have gained political power in North Carolina, the party in power has moved to constrain that political participation, particularly when those minority voters, because of the way they vote, posed a challenge to the governing party at the time. (Leloudis Trial Tr. 4/13/21 11:32:48–11:27:43).[1]

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[1] For ease of appellate reference, citations to support in the record are included for convenience. However, these citations should not be considered exhaustive support for the findings of fact, nor should the absence of a citation be taken as lack of support in the record.

22. This is not surprising, because "voting in North Carolina, both historically and currently, is racially polarized—*i.e.*, the race of voters correlates with the selection of a certain candidate or candidates." *Holmes*, 270 N.C. App. at 22 (quotation marks omitted); *see also* JX0695 (Leloudis Report) at 53, 58–63 (describing consistent racial polarization in the 19th century, 1980s, and present). "Such polarization offers a political payoff for legislators who seek to dilute or limit the minority vote." *Holmes*, 270 N.C. App. at 22 (quotation marks omitted); *see also* JX0695 at 59 ("In tight elections, this polarization heightened the importance of two related factors: newly enfranchised voters' access to the ballot box and the effectiveness of racial strategies for limiting turn-out.").

23. Frequently throughout this history, laws limiting African American political participation have been facially race neutral but have nevertheless had profoundly discriminatory effects. (Leloudis Trial Tr. 4/13/21 11:50:27–11:20:57). Defendants even concede that North Carolina has an unacceptable history of racial disenfranchisement.

24. This pattern has repeated itself at least three times during North Carolina's history. The North Carolina Constitution of 1868 guaranteed every adult male citizen the right to cast their ballot in a free and fair election. (Leloudis Trial Tr. 4/13/21 11:50:27–11:20:57). From Reconstruction to the end of the nineteenth century, this resulted in increased African American political participation. (Leloudis Trial Tr. 4/13/21 11:28:08–11:28:31, 12:11:38-12:11:46).

25. In response, Democrats implemented an amendment to the North Carolina Constitution that required passage of a literacy test and payment of a poll tax as preconditions to register to vote. (Leloudis Trial Tr. 4/13/21 11:28:36–11:29:09; JX0695 at 15–21). The literacy test and poll tax resulted in the wholesale disenfranchisement of African American North Carolinians and their removal from the political life of the State. (Leloudis Trial Tr. 4/13/21 11:29:21–11:29:38).

26. Following the passage of the literacy test, and extending through the enactment of the Voting Rights Act of 1965, African Americans, despite the effects of Jim Crow policies, achieved some hard won political successes as the result of persistent and determined efforts to mobilize residents of Black communities to present themselves to the literacy test repeatedly, in effect to challenge the literacy test. (Leloudis Trial Tr. 4/13/21 11:29:46–11:29:58 11:30:08–11:30:29). As a result, by the mid-1950s, roughly one dozen African American officials were elected in North Carolina at the municipal and county level. (Leloudis Trial Tr. 4/13/21 11:30:52–11:31:14).

27. In response, in the 1950s and 60s, the North Carolina General Assembly enacted a variety of narrowly drawn and targeted measures, such as implementing at-large, multimember districts and prohibiting single-shot voting. (Leloudis Trial Tr. 4/13/21 11:31:19–11:31:54). These measures were passed over time in "piecemeal" fashion and were not part of one single piece of legislation. (Leloudis 4/13/21 Trial Tr. 11:33:34–11:34:00). Officials claimed that these actions were needed to protect against "voter fraud"; in reality, they were designed to

thwart growing Black political power. (JX0695 at 34; Leloudis Trial Tr. 4/13/21 11:54:06–11:54:58). These new, targeted measures largely put a stop to the election of African American candidates at the municipal and county level. By 1971, there were only two African American lawmakers in the General Assembly. (Leloudis Trial Tr. 4/13/21 11:34:06–11:34:50).

28. Shortly after the enactment of the Voting Rights Act through the present day, African American representation in the General Assembly increased due to judicial intervention, including the decision to enforce the Voting Rights Act, and to force states to take down many of the barriers to African American voting that were erected in the 1950s and '60s. (Leloudis Trial Tr. 4/13/21 11:35:07–11:36:15). The General Assembly also passed into law during this period a number of measures designed to increase citizens' access to the ballot box, including the introduction of early voting, out-of-precinct voting, same day registration, and pre-registration for teens with driver's licenses. (Leloudis Trial Tr. 4/13/21 11:36:17–11:37:02). These measures resulted in a dramatic increase in Black political participation, including a 50 percent increase in Black voter registration by 2010. (Leloudis Trial Tr. 4/13/21 11:37:05–11:38:08).

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29. During this time, the state Republican party continued to attempt to suppress Black voter turnout. They mailed postcards to thousands of voters in heavily Black precincts, warning recipients incorrectly that they would not be allowed to cast a ballot if they had moved within thirty days, and that if they attempted to vote, they would be subject to prosecution and imprisonment. (JX0695 at 56).

30. Between 2000 and 2012, Black voter registration increased by 51.1 percent. Black voter turnout increased from 41.9 percent in 2000 to 71.5 percent in 2008. And in the 2008 and 2012 elections, Black voters in North Carolina registered at higher rates than whites for the first time in the state's history. (JX0695 at 57).

31. Voting in North Carolina was, by this time, as racially polarized as it had been at the end of the nineteenth century. White voters favored the Republican Party by a wide margin, while the majority of Black and other minority voters favored the Democratic Party. (JX0695 at 58–59).

32. During roughly the same period, however, Republicans cemented their control over the General Assembly. Since the 2010 election, Republicans have maintained a majority of seats in both chambers of the General Assembly. For three of the five legislative terms since that election, spanning 2013 – 2018, the Republican majorities in each chamber were supermajorities, meaning Republicans had at least the minimum number of seats required to override a gubernatorial veto. (JX0031 (Faires Report) at 10).

33. In contrast, party control of North Carolina's executive branch has varied since 2010. Democratic Governor Beverly Perdue held office from 2009 through 2012 and was succeeded by Republican Pat McCrory, who governed with Republican supermajorities in both chambers from 2013 through 2016, until the current governor, Democrat Roy Cooper, assumed office on January 1, 2017. (JX0031 at 11).

34. In close elections, and in an era of divided State government, polarization along racial lines has made access to the ballot box a critical issue. For example, in the 2008 presidential election, Barack Obama won North Carolina by a margin of 14,171 votes out of 4,271,125 ballots cast—sweeping 95% of the African American vote and illustrating the threat that increased African American participation posed to Republican prospects. (*See* JX0695 at 57–58).

35. This most recent expansion of African American political participation has been met with facially neutral laws enacted by Republican majorities and designed to constrain African American political power.

36. Conservative movements returned to outwardly racial denunciations of Black political power. The Tea Party, which erupted in 2009, hailed President Obama as the "primate in chief," and donned T-shirts that said, "Put the White Back in White House." (JX0695 at 60). This was seen in North Carolina politics, as well. The executive committee of the North Carolina Republican Party distributed mailers criticizing sitting Democrat John Christopher Heagarty of District 41 House seat in the General Assembly. The mailer showed Heagarty wearing a sombrero, his

skin darkened by photo editing. "Señor" Heagarty exclaims, "Mucho taxo" --a reference to policies that Republicans charged were driving away jobs. (JX0695 at 62). Looking back on the 2008 election, Republican U.S. Senator Lindsey Graham said his party was "not generating enough angry white guys to stay in business for the long term." (JX0695 at 68).[2]

37. Additionally, since 2011, the Republican majority has attempted to pass three voter photo identification laws.

38. In 2011, the General Assembly ratified H.B. 351, a bill to require photo identification in order to vote. At this time, nearly forty North Carolina jurisdictions were considered "covered jurisdictions" under Section 5 of the Voting Rights Act. (Plaintiffs' Proposed and Agreed Stipulations ¶¶ 2–3). Governor Perdue vetoed H.B. 351, and proponents of the bill failed to gather the requisite votes to override her veto in the House. (JX0031 at 11; JX0414 at 1). Governor Perdue vetoed H.B. 351 because, "as written, [it would have] unnecessarily and unfairly disenfranchise[d] many eligible and legitimate voters." (Plaintiffs' Proposed and Agreed Stipulations ¶ 5).

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[2] Nearly all exhibits cited as support for this Court's findings of fact were admitted as substantive evidence at trial.

39. Thereafter, in January 2013, staff for Republican legislators of the General Assembly sought data on voter turnout during the 2008 election, broken down by race. (JX0694 at 43–44). The North Carolina House of Representatives began holding hearings on a bill that would require voters to show photo identification in order to vote. (JX0694 at 44). The bill was sent to the North Carolina Senate on April 25, 2013, where it sat untouched for two months until the U.S. Supreme Court issued its decision in *Shelby County v. Holder*, 570 U.S. 529 (2013) invalidating the Voting Rights Act's coverage formula, effectively ending the Section 5 preclearance regime. (JX0694 at 44, 63).

40. After *Shelby County*, North Carolina Republican Senator Thomas Apodaca, told reporters the Senate could "go with the full bill because the legal headache of Section 5 [of the Voting Rights Act] is out of the way." (JX0694 at 44 (internal quotations omitted)). This "full bill" was House Bill 589. Although facially race-neutral, H.B. 589's provisions were targeted at voting mechanisms that had fostered increased African American turnout and participation. (JX0695 at 63).

41. First, H.B. 589 required that in-person voters provide one of eight approved forms of photo identification in order to cast a ballot; however, Black voters disproportionately lacked the two most common forms of photo identification. (JX0695 at 64). Second, H.B. 589 eliminated the first week of early voting, same-day registration, and straight-ticket voting, all of which would have a disproportionately negative effect on Black voter participation. (JX0695 at 64). Third, H.B. 589 ended North Carolina's pre-registration program that allowed

sixteen- and seventeen-year-olds to pre-register at their high schools and other locations, a program that was particularly popular among Black teenagers. (JX0695 at 64). Finally, H.B. 589 also revised the rules for challenging voters' eligibility to cast a ballot, which increased the potential for voter intimidation and echoed Reconstruction- and Jim Crow-era attempts to undermine Black voter participation. (JX0695 at 64).

42. H.B. 589 also barred voters from casting ballots outside their assigned precinct and blocked the ability of local boards of elections to extend precinct hours to accommodate long lines at the polls. (JX0694 at 44–45).

43. In 2016, the U.S. Court of Appeals for the Fourth Circuit, in *North Carolina State Conference of the NAACP* v. *McCrory*, 831 F.3d 204 (4th Cir. 2016), held that H.B. 589 had been enacted with an unconstitutional discriminatory intent to target African American voters. (JX0695 at 69). H.B. 589 was described as "the most restrictive voting law North Carolina has seen since the era of Jim Crow." *McCrory*, 831 F.3d at 229; (JX0695 at 68).

44. The Fourth Circuit held that it "c[ould] only conclude that the North Carolina General Assembly enacted the challenged provisions of [H.B. 589] with discriminatory intent." *McCrory*, 831 F.3d at 215; (JX0838 at 10).

45. Several factors contributed to the court's conclusion. The court acknowledged the history of discrimination in voting laws in North Carolina, including evidence that "state officials continued in their efforts to restrict or dilute African American voting strength well after 1980 and up to the present day," and

the fact, discussed above, that "race and party are inexorably linked in North Carolina." *McCrory*, 831 F.3d at 225; (JX0838 at 18). The Fourth Circuit also noted the sequence of events leading to H.B. 589, including "the General Assembly's eagerness to at the historic moment of *Shelby County*'s issuance, rush through the legislative process the most restrictive voting law North Carolina has ever seen since the era of Jim Crow," as persuasive evidence of the General Assembly's intent. (JX0838 at 20).

46. The court likewise found that the legislative history of H.B. 589 evidenced a discriminatory intent, particularly the General Assembly's use of race data to enact legislation that targeted voting practices used disproportionately by African Americans, and to construct a list of qualifying voter IDs held disproportionately by white voters. (JX0838 at 21). The Fourth Circuit observed that after *Shelby County*, H.B. 589 "provided a much more stringent photo ID provision," that "retained only those types of photo ID disproportionately held by whites and excluded those disproportionately held by African Americans." *McCrory*, 831 F.3d at 227. The court also noted that "the removal of public assistance IDs in particular was suspect, because a reasonable legislator [would be] aware of the socioeconomic disparities endured by African Americans [and] could have surmised that African Americans would be more likely to possess this form of ID." *Id*. at 227-28. (JX0838 at 19).

47. Finally, the Fourth Circuit found that H.B. 589 disproportionately affected African Americans. As both the district court and Fourth Circuit acknowledged, "African Americans in North Carolina are disproportionately likely to move, be poor, less educated, have less access to transportation, and experience poor health," were more likely to rely on voting and registration mechanisms targeted by H.B. 589, and were more likely to lack forms of qualifying voter ID under H.B. 589. *McCrory*, 831 F.3d at 233; (JX0838 at 23).

48. Viewed in the totality of the circumstances, these factors and others led the Fourth Circuit to find that "the General Assembly used [H.B. 589] to entrench itself" by "targeting voters who, based on race, were unlikely to vote for the majority party." *McCrory*, 831 F.3d at 233. As the court explained, "[e]ven if done for partisan ends, that constituted racial discrimination." *Id.*; (JX0838 at 23–24 (quotation marks omitted)).

49. Even after H.B. 589 was overturned, the Republican Party attempted to salvage some of the advantages that the law would have given them. Dallas Woodhouse, executive director of the state Republican Party, encouraged county boards to press ahead with what he called "party line changes" to early voting. The boards no longer had legal authority to shorten the early-voting period, but they could achieve much the same effect by reducing the number of early voting sites and cutting the hours they would be open. Seventeen county boards did just that and, in the affected counties, Black voter turnout sagged significantly through most of the early voting period and caught up to 2012 levels only after a Herculean get-out-the-

vote effort. State Republican Party officials reported the news in explicitly racial terms. They reported that the "North Carolina Obama coalition" was "crumbling" and that "as a share of Early Voters, African Americans are down 6.0%," (JX0695 at 69-70).

50. Republican leaders vowed to "continue the fight" and shifted focus to the state constitution. (JX0695 at 70).

51. North Carolina's unfortunate history of using voting laws to suppress minority political participation continues into the present. Indeed, another recent decision, *Carolina v. Covington*, 137 S. Ct. 2211 (2017), affirmed a judgment of the Middle District of North Carolina finding that "twenty-eight challenged districts in North Carolina's 2011 State House and Senate redistricting plans constitute[d] racial gerrymanders in violation of the Equal Protection Clause of the United States Constitution." (Plaintiffs' Proposed and Agreed Pre-Trial Stipulations, No. 39). Our United States Supreme Court affirmed that the General Assembly committed a "widespread, serious, and longstanding. . . constitutional violation—among the largest racial gerrymanders ever encountered by a federal court." *Covington*, 270 F. Supp. 3d at 884. These recent cases show that race is still a dominant consideration for the North Carolina General Assembly, particularly when it converges with politics.

52. Indeed, it would be rational to expect a political party to pursue policies that would entrench its own control by targeting African American voters if those voters vote reliably for the opposition party. (Callanan 4/22/21 Trial Tr. 12:07:24–12:08:09).

II. The Sequence of Events Leading to the Enactment of S.B. 824 Was Unusual and Marked by Departures from Normal Legislative Procedure

A. H.B. 1092, the Voter ID Constitutional Amendment, Followed Immediately after Racially Gerrymandered Districts Were Ordered Redrawn, and Departed From Normal Legislative Practices

53. The U.S. Supreme Court denied certiorari in *McCrory* in May 2017, ending the litigation over H.B. 589. (Callanan 4/22/21 Trial Tr. 10:27:00–10:28:41). Shortly thereafter, Speaker Tim Moore and Senate Leader Phil Berger issued a statement declaring that "all North Carolinians can rest assured that Republican legislators will continue fighting to protect the integrity of our elections by implementing the commonsense requirement to show a photo ID when we vote." (Plaintiffs' Proposed and Agreed Pre-Trial Stipulations ¶ 27). The General Assembly nevertheless took no immediate action to enact a replacement Voter ID law.

54. Just over one year later, on June 28, 2018, the Supreme Court issued its decision in *Covington*, discussed above, affirming a federal court finding that several General Assembly districts were unlawful racial gerrymanders and had to be redrawn. Based on statistics available following the *Covington* decision, eliminating the racially gerrymandered districts identified in *Covington* was likely

to result in fewer Republican districts and a chance for Democrats to pick up seats. (Robinson 4/21/21 Trial Tr. 09:43:48-09:46:48).

55. On June 29, 2018, the day after the Supreme Court's final decision in *Covington*, the North Carolina General Assembly ratified H.B. 1092, an amendment to the North Carolina Constitution to require voters to present photo identification as a condition to vote in person, and placed the proposed amendment on the ballot for the November 2018 general election. (JX0416; JX0410).

56. Passing H.B. 1092 in the immediate aftermath of the *Covington* decision shows an effort and intent by the legislature to alter the State's Constitution, thereby allowing their racially gerrymandered supermajority to implement their legislative goals. (Robinson 4/21/21 Trial Tr. 09:46:03-09:46:48).

57. Apart from being enacted in the immediate aftermath of a decision striking down racially gerrymandered districts, the process that led to the ratification of H.B. 1092 was unusual and deviated from normal procedure in other ways.

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58. First, H.B. 1092 was enacted in a short session, and on a much shorter timeline than previous bills proposing constitutional amendments. From 1971 until the 2018 session, all but three of the forty-five proposed amendments adopted for the N.C. Constitution of 1971 were adopted in the long session. (Faires 4/14/2021 Trial Tr. at 09:33:53–09:38:10; JX0031 at 21, Ex. 6). H.B. 1092 was also enacted far more quickly than most bills proposing constitutional amendments. Prior to 2018, the average amount of time the General Assembly considered a law proposing a constitutional amendment was about 140 days. The General Assembly considered H.B. 1092 for only 22 days. (Faires 4/14/2021 Trial Tr. at 09:44:25–09:47:32, JX0031 at 28–29, Ex. 8).

59. Representative Mary Price "Pricey" Harrison, who has served in the General Assembly since 2005 and has served on the House Elections Law Committee for her entire tenure (Harrison 4/20/21 Trial Tr. 09:36:16–09:37:35), testified that in her experience the time frame for consideration of H.B. 1092 was "fairly rushed" for a piece of legislation of such magnitude. (Harrison 4/20/21 Trial Tr. 09:41:15–09:42:29). This Court finds that the time frame for consideration of H.B. 1092 was, in fact, rushed.

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60. Second, H.B. 1092 was one of six session laws proposing a constitutional amendment passed by the General Assembly in the waning days of the short session. (Faires 4/14/2021 Trial Tr. at 09:38:18–09:38:43; JX0031 at Ex. 6). Enacting six session laws proposing six constitutional amendments in a single year is atypical and a departure from normal procedure for the General Assembly. (Faires 4/14/2021 Trial Tr. at 09:38:31–09:39:03; JX0031 at Ex. 6; *see also* Harrison 4/20/2021 Trial Tr. at 09:43:47–09:43:58 (testifying it is "not standard practice, certainly not in my experience" for the General Assembly to approve six constitutional amendments at once for consideration by the voters)).

61. Third, H.B. 1092 was not accompanied by proposed legislation necessary to implement the constitutional amendment if it was adopted by the voters. This too was unusual and a departure from normal procedures. Prior to 2018, when previous proposed constitutional amendments required the General Assembly to enact laws on the topic of the amendment, the General Assembly enacted the proposed amendment and the implementing laws in the same session and sometimes in the same bill. (JX0031 at 25-26). H.B. 1092 broke from that normal procedure. (Faires 4/14/2021 Trial Tr. at 09:47:37–09:49:44; JX0031 at 25–26). As a result, voters considering the constitutional amendment did not know what kinds of identification would be acceptable if the amendment passed or what form the law would take. (Harrison 4/20/2021 Trial Tr. 09:47:47–09:48:05).

62. There is no reason why the General Assembly could not have followed normal procedures, passed implementing legislation to accompany the proposed constitutional amendment, and submitted that proposed legislation to the People of North Carolina for their approval. The General Assembly could have considered and enacted implementing legislation in the short session when the General Assembly was considering H.B. 1092. The matter also could have been considered by the standing bi-partisan Joint Election Oversight Committee, but that Committee did not meet between the end of the short session and the November 2018 election. (Faires 4/14/2021 Trial Tr. at 09:49:46–09:52:00; JX0031 at 28). The General Assembly also could have considered H.B. 1092's implementing legislation during one of the extra sessions that year, which convened to address election law topics. (Faires 4/14/2021 Trial Tr. at 09:49:46–09:52:00). The General Assembly's seeming unwillingness to present the voters with the substance of the voter ID bill that would be needed to implement the constitutional amendment is unusual and suggests an effort by the legislature to avoid voter scrutiny.

63. Fourth, the ballot question presenting the constitutional amendment did not explain to voters that the General Assembly would even need to enact laws implementing the amendment. This too broke from normal procedure. Prior to 2018, when an amendment required implementing legislation, the ballot question indicated that action by the General Assembly was required. (Faires 4/14/2021 Trial Tr. at 09:52:06–09:52:00; JX0031 at 26–27). The language regarding H.B. 1092 that was presented to voters on the ballot was instead fairly vague and, as a

result, the fact that implementing legislation was required was not widely known by the voters. (Harrison 4/20/2021 Trial Tr. 09:46:05–09:46:11). This fact and departure from legislative norms also suggests that the General Assembly wanted to avoid scrutiny of its eventual voter ID legislation.

64. Fifth, North Carolina voters had less time than usual to consider the constitutional amendment, compounding the effect of its vague language and lack of implementing legislation. The average amount of time between the enactment of a law proposing a constitutional amendment and the date voters must decide on the referendum is 337 days. North Carolina voters had only 130 days to consider H.B. 1092. (Faires 4/14/2021 Trial Tr. at 09:39:50–09:44:22; JX0031 at 27, Ex. 7).

65. On November 6, 2018, North Carolina voters voted in favor of the constitutional amendment requiring voter photo identification, with 2,049,121 (55.49%) voting for the amendment and 1,643,983 (44.51%) voting against the amendment. (Legislative Defendants' Proposed and Agreed Pre-Trial Stipulations, ¶¶ 2, 3).

B. The Republican Supermajority Departed Sharply from Normal Procedure by Rushing to Enact S.B. 824 During a Lame Duck Session before It Lost the Ability to Override Governor Cooper's Veto

66. In the same election in which voters approved the constitutional amendment for voter ID, Republicans also lost 10 of the 75 seats they previously held in the North Carolina House of Representatives to Democratic candidates and no longer held their supermajority of three-fifths of the seats in the North Carolina House of Representatives on January 1, 2019. (Plaintiffs' Proposed and Agreed Pre-

Trial Stipulations ¶¶41, 42). Republicans likewise lost 6 of the 35 seats they had previously held in the North Carolina Senate to Democratic candidates and no longer held their supermajority three-fifths of the seats in the North Carolina Senate on January 1, 2019. (Plaintiffs' Proposed and Agreed Pre-Trial Stipulations ¶¶ 43, 44).

67. Rather than wait for the duly elected General Assembly to be seated, however, the General Assembly enacted S.B. 824 over Governor Cooper's veto during an unprecedented November 2018 Lame Duck Regular Session, which violated the norms and procedures of the North Carolina General Assembly in several ways. (JX0031 at 4).

68. S.B. 824 is the only legislation implementing a constitutional amendment ever to be enacted in a post-election lame duck session in North Carolina. (JX0031 at 21). The November 2018 Lame Duck Session in which the General Assembly passed S.B. 824 was the only reconvened Regular Session in North Carolina history held after a November general election prior to the newly elected officials taking office. (JX0031 at 7). Although a post-election lame duck session has been possible since 1982, it had never occurred before the November 2018 Lame Duck Session. (JX0031 at 14).

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69. The convening of this session alone was a deviation from the General Assembly's normal practices. When Democrats lost control of the General Assembly in 2010, they did not hold a lame duck session. (Faires 4/14/2021 Trial Tr. at 11:44:29–11:45:23). Nor did Democrats hold a post-election lame duck session when they maintained their majorities in the Senate but lost their majorities in the House in the elections of 1994 and 2002. (JX0031 at 14).

70. The resolution establishing the November 2018 Lame Duck Session was also unusual. The General Assembly convened the November 2018 Lame Duck Session by adopting Resolution 2018-10 on June 29, 2018, the day after the United States Supreme Court issued its holding ordering new legislative districts in *Covington*. (JX0031 at 15–16). Resolution 2018-10 was procedurally unprecedented because it is the only resolution reconvening a regular session in North Carolina's history that did not limit the matters to be considered. Every authorizing resolution for a reconvened regular session, except Resolution 2018-10, had previously set limits on the topics that could be considered in a reconvened session. Resolution 2018-10 suspended the typical rules and set no limitations on what could be considered. (Faires 4/13/2021 Trial Tr. at 4:23:56–4:25:00; Faires 4/14/2021 Trial Tr. at 10:02:00–10:04:17; JX0031 at 17–19, Ex. 4).

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71. There was no need for the General Assembly to reconvene in the post-election lame duck to enact S.B. 824. During the November 2018 election, North Carolina voters also passed another constitutional amendment, known as Marsy's Law. This amendment also required implementing legislation. However, the General Assembly did not pass implementing legislation for Marsy's Law until August 28, 2019, after the new legislature had been seated. (Faires 4/14/2021 Trial Tr. at 10:14:08–10:15:47; JX0031 at 23).

72. Viewed in context, the Republican supermajority's unprecedented decision to take up S.B. 824 during the post-election lame duck session, after the racially gerrymandered districts were ordered redrawn, suggests that Republicans wanted to entrench themselves by passing their preferred, and more restrictive, version of a voter ID law. The General Assembly's actions during the lame duck session were consistent with the hypothesis that the Republican supermajority did not want to pass a "watered down" voter ID law—*i.e.*, a law that would have been more flexible and included more forms of qualifying ID if it had been passed once the incoming 2019 legislature was seated. (Callanan 4/22/21 Trial Tr. 02:05:20–02:08:23).

73. Legislative Defendants have admitted that their actions were designed to prevent newly elected legislators from voting on language implementing the approved Constitutional amendment. These new legislators had been elected from non-discriminatorily drawn districts. Legislative Defendants rationalize this as acting within its supermajority power. However, but for the motivation to utilize the

improper advantages of the racially discriminatory garnered authority the legislature possessed as described in *Covington*, Legislative Defendants would have possessed no supermajority in the lame duck session, and no bill would have been offered, vote made, nor legislation passed.

III. The Legislative History of S.B. 824 Raises Additional Red Flags

A. S.B. 824 Was Enacted in a Rushed Process That Left Insufficient Time to Consider and Redress Concerns about the Law's Impact on Minority Voters

74. The General Assembly passed S.B. 824 in eight legislative days, following a rushed process that defied many conventions that the General Assembly would normally follow for a bill of such importance.

75. A pre-filed draft of S.B. 824 was shared by its sponsors on November 20, 2018, the Tuesday before Thanksgiving, when many legislators were preparing for the holiday with family. (Harrison 4/20/2021 Trial Tr. 09:52:58–09:53:19).

76. The pre-filed draft was then considered by the Joint Elections Committee on November 26, 2018, the day before it was first filed in the Senate. (JX771 (Transcript of 11/26/2018 Joint Elections Oversight Committee)). Members of the legislature, including Representative Harrison, had to return to Raleigh early before session in order to attend. (Harrison 4/20/2021 Trial Tr. 09:53:32–09:54:16).

77. In a typical regular session, Committee consideration of a newly introduced bill would take weeks instead of days or hours. (JX0031 at 21–22). It is highly irregular for a bill to be filed, introduced, referred to committee, and for the committee to meet on the same day. (Faires 4/14/2021 Trial Tr. at 10:13:13–10:13:35). But that is what happened with S.B. 824. The bill was introduced in the

Senate on November 27, 2018, the Tuesday after Thanksgiving. (Faires 4/14/2021 Trial Tr. at 9:55:59–09:56:54, 10:08:48–10:09:11; JX0031 at 21). The rules were then suspended, the bill was referred to the Select Committee on Elections, that committee met and gave the bill a favorable report, and the bill was re-referred to the Senate Committee on Rules and Operations of the Senate that same day. (Faires 4/14/2021 Trial Tr. at 10:09:11–10:09:27; JX0031 at 21–22). The next day, the Rules Committee met and gave the bill a favorable report, and the bill was placed on the Senate Calendar for that day, November 28. (JX0031 at 21–22).

78. In the Senate, only a handful of amendments were adopted, while others were offered and immediately tabled. Still, on the same day, the bill passed its Second Reading. The bill was placed on the Senate Calendar for the next day, and quickly passed the Senate on its Third Reading. (Faires 4/14/2021 Trial Tr. at 10:09:27–10:10:03; JX0031 at 22).

79. The House received S.B. 824 on November 29, 2018, and it was immediately referred to the Committee on Elections and Ethics Law. This committee met on December 3 and 4, after hearing public comment from only five North Carolinians, and adopted a committee substitute. On December 5, the bill passed the House after a handful of floor amendments were adopted and was sent to the Senate for concurrence. The Senate concurred on December 6. (Faires 4/14/2021 Trial Tr. at 10:09:27–10:12:15; JX0031 at 22; JX0476 (Legislative summary of S.B. 824); Harrison 4/20/2021 Trial Tr. 10:00:35–10:00:51).

80. In total, S.B. 824 was considered by the Senate for "a maximum of two or two and a half days." (Robinson 4/21/21 Trial Tr. At 9:48:01-9:48:58, 9:50:36-9:51:29; 9:51:32-9:52:21; JX0476 (Legislative Summary of S.B. 824)).

81. Democrats tried twice in the Senate to table the bill, once when it was initially debated in the Senate and once when it came back to the Senate for concurrence. (JX0031 at 22). Tabling would have provided additional time for input and discussion, particularly from voters, but those efforts were rejected. (Robinson 4/21/21 Trial Tr. At 9:52:57–9:54:42).

82. The Senate process for considering S.B. 824 was extremely rushed (Robinson 4/21/2021 Trial Tr. At 09:48:53–09:48:58), and deviated significantly from past election-related bills, including a redistricting bill that received much more citizen input in committees, and for which voters were able to come and view the data, view the maps, determine what the issues might be, and ask questions. (Robinson 4/21/21 Trial Tr. At 9:49:01–9:49:47). By comparison, S.B. 824 received little or nothing in terms of process. (Robinson 4/21/21 Trial Tr. At 9:49:47-9:49:59).

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83. Former Senator Floyd McKissick served in the Senate from 2007 to 2020. He served as senior deputy Democratic leader for much of that time in addition to chairing the legislative Black Caucus for two years. (McKissick 4/29/2021 Trial Tr. 10:02:38–10:03:08). Like Senator Robinson, former Senator McKissick testified that the process for S.B. 824 was rushed, and that there was no time for him and other legislators to conduct research to craft ameliorative amendments. (McKissick 4/29/2021 Trial Tr. 10:08:07, 10:36:14–10:36:52). Based on the testimony of Senator Robinson and Former Senator McKissick, this Court finds that the process for enacting S.B. 824 was rushed.

84. In the House, Representative Harrison objected to the third reading of S.B. 824 on December 5, 2018, so that additional amendments could be considered on the floor. (Harrison 4/20/2021 Trial Tr. At 10:19:26–10:19:41). According to Representative Harrison, debate normally would have gone over to another day so that they could consider more amendments, but that didn't happen. That's not the regular course of business of the legislature. (Harrison 4/20/2021 Trial Tr. At 10:19:26–10:20:27). She did not know why her objection to the third reading was denied, except to perhaps rush the process, and believes that her objection was properly lodged. (Harrison 4/20/2021 Trial Tr. 10:19:54–10:21:47). The ruling by Representative Lewis that her objection was out of time was, in her experience, not too common. (Harrison 4/20/2021 Trial Tr. 12:10:16–12:10:39).

85. Overall, the rushed process did not allow enough time for the legislature to consider data on who might be disenfranchised by the law, to receive public input, or to debate all of the proposed amendments on the House floor. (Harrison 4/20/2021 Trial Tr. At 10:18:40–10:19:50).

86. In particular, the rushed process did not allow adequate time to consider concerns raised by legislators that S.B. 824 would disproportionately burden and disenfranchise African American voters, just as H.B. 589 had done. Members of the General Assembly were on notice that hundreds of thousands of voters were at risk of being disenfranchised under S.B. 824 because they potentially lacked a qualifying form of photo identification. During the floor debate on the bill on November 28, 2018, Senator Terry Van Duyn cited to an analysis conducted by an expert political scientist, Professor Kevin Quinn, which showed that hundreds of thousands of registered voters potentially lacked a form of qualifying voter ID in 2015 during prior litigation over H.B. 589. (JX0772 at 16).

87. More specifically, the analysis cited by Senator Van Duyn showed that at least 5.9% of registered North Carolina voters lacked identification acceptable for voting under H.B. 589, and that 9.6% of African American registered voters lacked acceptable ID, as compared with 4.5% of white registered voters. (JX0005 ¶ 29 (Quinn 2020 Report (citing 2015 *Currie* analysis))).

88. In light of Professor Quinn's 2015 analysis showing the risk of disenfranchisement for several hundred thousand registered voters, Senator Van Duyn expressed concern that the General Assembly's efforts to pass S.B. 824 were "rushed" and, for that reason, she could not "support this bill at this time." (JX0772 at 16).

89. Senator Erica Smith, who represents a district comprised mostly of African Americans, gave a very passionate plea on the floor that this bill was really going to discriminate against or disenfranchise the voters in her area and across the state as well. (Robinson 4/21/21 Trial Tr. At 10:12:55–10:13:06).

90. But despite being faced with information indicating that S.B. 824 could bear more heavily on African American voters, like H.B. 589 did, no changes were made to the bill to address Senator Smith's concerns. (Robinson 4/21/21 Trial Tr. At 10:13:11–10:13:30).

91. During the December 3, 2018 meeting of the House Elections and Ethics Law Committee, Representative Harrison asked bill manager Representative Lewis whether he knew how many registered voters lacked the IDs that were approved for voting under S.B. 824, and noted that there was data suggesting that as many as 200,000 voters might lack qualifying ID. (Harrison 4/20/2021 Trial Tr. 10:04:27–10:05:55). Representative Lewis replied that he didn't know but acknowledged that he was aware there were voters who did not have acceptable ID who would be impacted by S.B. 824. (Harrison 4/20/2021 Trial Tr. 10:04:27 – 10:05:55; JX774 at 9 (Tr. 29:11)).

92. In the December 4, 2018, House Elections and Ethics Law Committee meeting, Representative Harrison spoke about the 2013 debate on the prior voter ID law and the impact it would have on low-income voters, explaining that the Committee could not ignore that this is going to put a burden on some in our society, including as many as 200,000 according to her recollection at the time. (JX776 at 27 (Tr. 98:16)). She made these comments because she remembered the history of H.B. 589. Given that history, Representative Harrison felt that the General Assembly needed to get it right, and she did not believe they were doing so. (Harrison 4/20/2021 Trial Tr. 10:11:37–10:12:41).

93. In 2013, data compiled by the State Board of Elections, and available to the General Assembly, showed that 176,091 Democratic voters could not be matched with a North Carolina DMV-issued ID, compared to 67,639 Republican voters. Of the Democratic voters who lacked a NCDMV-issued ID, 67,553 were white and 91,927 were Black. Of the Republican voters who lacks a NCDMV-issued ID, 2,549 were Black and 60,592 were white. Black voters constituted the largest proportion of unmatched voters across all racial groups that were measured in 2013.

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94. Thus, over 318,000 voters did not match with a NCDMV-issued ID in 2013, with a disparate proportion of Democratic voters and Black voters lacking the IDs. 108,452 more Democratic voters were unmatched than their Republican counterparts, and 24,374 more Black voters were unmatched than white voters. Despite having access to this data, the General Assembly moved hastily to pass S.B. 824 without first obtaining updated demographic information regarding the number and demographic composition of voters who still lacked a NCDMV-issued ID.

95. The House Elections Committee was never provided any updated data regarding voter ID possession rates, and no updated analysis on what impact S.B. 824 would have on African American voters or other voters of color, during the December 3 and 4, 2018, committee meetings. (Harrison 4/20/2021 Trial Tr. 10:06:11–10:06:34; 10:12:44–10:13:14).

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96. On the House floor during the December 5, 2018, debate, Representative Harrison again spoke about concerns with the speed of S.B. 824's passage through the General Assembly, how it was known that there were thousands of North Carolinians who might lack ID, and how there was evidence presented that the bill's reasonable impediment process for voters without ID would not fully mitigate this issue. (JX777 at 31 (Tr. 116:20–120)). Representative Harrison made these comments because she felt on the process that they rushed it, that they didn't have any requirement to enact this legislation prior to coming back in January where they could have gotten more input. They could have considered the data that might have led them to think about alternatives. (Harrison 4/20/2021 Tr. 10:34:27–10:35:49).

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97. Despite these comments, and her previous comments in committee regarding the potential impact on thousands of North Carolina voters, no data on ID possession rates or analysis of this bill's impact on African American voters was provided to the House. (Harrison 4/20/2021 Trial Tr. 10:28:03–10:28:40). And, despite multiple legislators raising concerns about S.B. 824's potential impact on African American voters, there is no evidence the General Assembly requested or reviewed any new data on the rates at which North Carolina voters possessed the forms of qualifying ID being considered under S.B. 824, or the extent to which there was a racial disparity in ID possession rates, as there had been under H.B. 589—despite the Fourth Circuit's conclusion that H.B. 589 would bear more heavily on African American voters. *McCrory*, 831 F.3d at 231-33. These facts suggest that the Republican supermajority intended to push S.B. 824 through with limited analysis and scrutiny, before it lost the ability to enact its preferred, and more restrictive, version of a voter ID bill.

98. Governor Cooper vetoed the bill on the grounds that it was designed to suppress the rights of minority, poor, and elderly voters. The Senate overrode the veto in a 32 to 12 vote. The House overrode the veto with a 72 to 40 vote. (JX0031 at 23).

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99. 62 legislators who voted for H.B. 589 on concurrence in 2013 voted again to override the Governor's veto of S.B. 824 in 2018. (Harrison 4/20/2021 Trial Tr. 10:41:20–10:44:29). This overlap does not include all Republicans in each chamber due to retirements and deaths; however, despite this attrition, this overlap represents a "fairly significant overlap of members who were there for the 2013 and 2018 votes." (Harrison Trial Tr. 10:43:40–10:44:29).

B. Proposed Amendments to S.B. 824 That Could Have Benefitted African American Voters Were Rejected

100. The Republican supermajority in the General Assembly also rejected proposed ameliorative amendments that would reasonably have been expected or understood to decrease the disparate impact of S.B. 824 on African American voters.

101. In the Senate, five amendments to S.B. 824 were tabled. (Robinson 4/21/21 Trial Tr. At 9:58:11–9:58:19). For example, Senator Van Duyn introduced an amendment that would have extended the time for boards of election to prepare for implementation and for voters to learn about the reasonable impediment process. (Robinson 4/21/21 Trial Tr. At 10:00:29-10:04:20).

102. This amendment would have extended the time to educate and inform voters. However, the amendment was tabled, and was thereafter not debated anymore. (Robinson 4/21/21 Trial Tr. At 10:04:22-10:05:19).

103. Senator Lowe offered an amendment that would have extended the early one-stop election voting period. This amendment would have helped members and organizations within the African American community by giving them another opportunity to get to the polls. That amendment was tabled as well. (Robinson 4/21/21 Trial Tr. At 10:05:21-10:07:50). Overall, the amendments offered by Democratic caucus members that were tabled would have expanded discussion on the bill if they had been allowed to be fully debated (Robinson 4/21/21 Trial Tr. At 10:30:05-10:30:22), and at least one would have benefited African American voters.

104. Former Senator McKissick and his colleagues had very little time to research the universe of ameliorative amendments to S.B. 824 or conduct similar research. (McKissick 4/29/2021 Trial Tr. 10:30:53-10:31:31). For example, Senator McKissick was not aware that South Carolina's voter ID law provided for free photo IDs on election day and that these IDs did not have an expiration date, and he would absolutely have offered amendments adding these provisions to S.B. 824 if he had known that at the time. (McKissick 4/29/2021 Trial Tr. 10:35:02- 10:36:01).

105. Although some amendments put forth by Democrats were accepted, this Court finds, based on the testimony of Senator Robinson, that the accepted amendments primarily addressed technical points and were not as consequential in effect as the amendments that were tabled. (Robinson 4/21/21 Trial Tr. At 10:07:54-10:12:15). Further, amendments to S.B. 824 were only considered in the Senate for one day, on November 28, 2018. This hurried process did not allow time for Senate Democrats to conduct research surrounding the implications of the amendments on

S.B. 824 or to consider potential ameliorative effects of the amendments; nor did it allow time for Senate Democrats to request the demographic data pertaining to photo-ID possession among various racial groups, which was not requested by Republicans prior to proposing S.B. 824.

106. Democrats in the House also organized a series of ameliorative amendments, including an amendment proposed by Representative Richardson to add public assistance IDs to the list of qualifying IDs acceptable for voting under S.B. 824, and an amendment by Representative Morey to require that early voting sites be open on the last Saturday before the election. (Harrison 4/20/2021 Trial Tr. 10:22:10- 10:23:05).

107. The amendment to add public assistance IDs failed after Representative Lewis urged members to vote no because they would have no way to impose North Carolina standards on the Federal Government, despite the fact that federal military IDs over which the State had no control were among those listed in S.B. 824 from the start. (JX777 at 27-28 (Tr. 101:3-104:4)). This Court finds the legislature's decision to reject that amendment particularly telling, in light of the court's finding during the H.B. 589 litigation that the decision to remove public assistance IDs was particularly suspect because legislators could have reasonably surmised that those forms of ID would be held disproportionately by African American voters. *McCrory*, 831 F.3d at 227–28.[3]

[3]The General Assembly's subsequent decision to add public assistance IDs as a qualifying form of ID for voting through H.B. 1169 (JX0016 (Session Law 2020-17) at § 10), does not change the intent of the legislature that enacted S.B. 824 in the first place. Moreover, it appears that no public

108. The early voting amendment was proposed in order to ensure voters could get a "free" ID from their county board during what was historically one of the most popular early voting days; however, it was ruled out of order and was, therefore, not voted on at all. (Harrison 4/20/2021 Trial Tr. 10:23:17-10:24:17; JX777 at 14 (Tr. 48:10)). This Court finds this decision suspect, given the Fourth Circuit's holding that the reduction in early voting days in H.B. 589 bore disproportionately on African American voters. *McCrory*, 831 F.3d at 231–32.

109. Other substantive amendments offered by House Democrats were also rejected. (Harrison 4/20/2021 Trial Tr. 10:24:58- 10:26:08, 10:26:42-10:27:12, 10:27:28-10:27:55).

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assistance ID meets the standard set forth in H.B. 1169 meaning that the bill would not help any new voters who did not already possess a form of qualifying ID under S.B. 824. (PX101 at 14).

C. The Design of S.B. 824 Does Not Evince an Intent by the General Assembly to Cure Racial Disparities Observed Under H.B. 589

110. S.B. 824 included additional forms of qualifying ID for voting that had not been included in H.B. 589, including, for example, college and university student IDs approved for use by the State Board of Elections. (JX674 at 2, 4-5). However, it was not until 2019 that the legislature loosened the stringent requirements for approval of student IDs by enacting Session Law 2019-22. Further, because the General Assembly did not receive updated data on ID possession rates, as discussed above, the legislature did not know whether these changes between S.B. 824 and H.B. 589 would have any impact on the racial disparities in ID possession rates that had been documented during the H.B. 589 litigation.

111. The categories of ID added to the list of acceptable ID were arbitrary, and Legislative Defendants have offered no evidence to show that inclusion of these IDS would make a difference to overcome the already existing deficiency. The forms of approved identification have varied issuance requirements and expiration dates spanning from one year to a lifetime. The legislature chose to accept federal worker ID while not accepting ID for those receiving public assistance. Military IDs are accepted with an indefinite timeline of expiration, while the free NC Voter IDs are designated with a one-year expiration term.

112. Further demonstrating the lack of reasoning or logic in the legislature's designation of acceptable form of IDs, S.B. 824 would permit driver's licenses to be accepted if expired for up to one year, while revoked IDs have an

entirely separate timeline for acceptability. This distinction does not appear to be consistent, as the majority of this three-judge panel finds that there is no difference in the verification quality of either ID.

113. Legislative Defendants' expert witness, Professor Keegan Callanan, opined at trial that the forms of ID acceptable for voting under S.B. 824 do not suggest an intent to favor forms of ID held disproportionately by white voters. (Callanan 4/22/21 Trial Tr. 02:29:17-02:29:32). However, this Court finds no evidence that the General Assembly considered, or even requested, the demographic and ID possession data Professor Callanan analyzed in his report. (Callanan 4/22/21 Trial Tr. 02:32:30- 02:32:36; 02:33:01- 02:33:13).

114. Professor Callanan offered no opinion about what the General Assembly understood or believed regarding racial disparities when it chose to include certain forms of qualifying ID for voting in S.B. 824. (Callanan 4/22/21 Trial Tr. 02:31:01- 02:31:24). Professor Callanan likewise admitted that he was unaware of any evidence indicating the General Assembly had evaluated the experience of other states when it decided what types of IDs to include among those acceptable under S.B. 824. (Callanan 4/22/21 Trial Tr. 02:27:31- 02:28:48). As such, this Court finds that Defendants have not rebutted Plaintiffs' assertion that the General Assembly did not consider any updated racial demographic data prior to the enactment of S.B. 824.

115. The General Assembly's decision to include in S.B. 824 an option for voters without qualifying ID to complete a "reasonable impediment" declaration and cast a provisional ballot also does not demonstrate that the legislature intended to reduce the burdens on voters without qualifying ID.

116. Legislative leadership asked Kim Strach, then-Executive Director of the State Board of Elections, to make a presentation on previous voter ID implementation efforts on November 26, 2018. (Strach 4/28/21 Trial Tr. 2:27:46-2:29:25; JX013). Based on the testimony of Kim Strach, this Court finds that, during the March 2016 primary, when H.B. 589 was in effect, voters were disenfranchised despite the option to complete a reasonable impediment declaration and vote a provisional ballot. Specifically, 184 out of 1048, or more than 15%, of reasonable impediment provisional ballots did not count during the March 2016 primary. (JX878 at 31). This Court finds that a significant amount of otherwise eligible voters who attempted to vote by way of the reasonable impediment process in the March 2016 primary had their votes rejected. (Harrison Trial Tr. 09:56:08-09:57:13; *see also* Strach 4/28/21 Trial Tr. 2:15:51-2:17:48).

117. Indeed, while S.B. 824 does require a unanimous vote of a bipartisan committee to reject a reasonable impediment ballot, there is no articulable standard employed in the process. Additionally, there is no appeal process for voters who have had their votes rejected.

118. During the March 2016 primary, 1,248 voters without acceptable photo identification cast provisional ballots but did not execute a reasonable impediment declaration or otherwise cure their provisional ballots. As a result, their votes did not count. (JX878 at 32). As to these voters, this Court does not find that any were ineligible to vote or attempting to commit voter fraud. (Harrison 4/20/2021 Trial Tr. 09:57:26- 09:58:19; *see also* Strach 4/28/21 Trial Tr. 2:20:13-2:20:42, 2:26:38-2:26:48, 2:27:18-2:27:35).

119. Legislators therefore understood when contemplating S.B. 824 that including a reasonable impediment provision would not necessarily protect all voters who lacked qualifying ID from having their votes rejected.

D. Limited Democratic Involvement in Enacting S.B. 824 Does Not Normalize the Legislative Process

120. S.B. 824 was not the result of a normal, bipartisan legislative process.

121. The fact that Senator Ford, an African American Democrat, was a co-sponsor of S.B. 824 and voted to override Governor Cooper's veto does not establish that the bill was a bipartisan effort, or show that S.B. 824 was not intended to entrench the Republican majority by targeting African American voters.

122. At the time Senator Ford chose to co-sponsor S.B. 824 and voted for it, he had lost his primary to a Democratic challenger from the left after supporting Republican initiatives during his term (Ford 4/20/21 Trial Tr. 2:31:47-2:33:17); had considered switching political parties (Ford 4/20/21 Trial Tr. 2:33:32-2:33:42); was upset, hurt and disappointed by how he was treated by his party and felt like a "man without a party" and a "person without a political home" (Ford 4/20/21 Trial

Tr. 2:41:10-2:41:43, 2:43:42-2:43:50; Ford 4/23/21 Trial Tr. 10:05:20-10:05:36); had publicly endorsed a Republican candidate for Senate in a competitive race when the Democrats in the Senate were actively working to break the Republican supermajority (Ford 4/20/21 Trial Tr. 2:35:51-2:38:27); and was no longer caucusing with the Democrats (Ford 4/20/21 Trial Tr. 4:00:38-4:00:44). Senator Ford was not a standard bearer for the Democratic party and freely admitted under cross examination that, given his "independence," his involvement in the bill did not speak for other Democrats or signal Democratic endorsement of S.B. 824. (Ford 4/23/21 Trial Tr. 09:43:23-09:43:44).

123. This Court finds that, by the time Senator Ford became involved in the endorsement of S.B. 824, he had pulled away from the Democratic Senate caucus and legislative Black caucus, opting instead to spend time with colleagues on the other side of the aisle. (Robinson 4/21/21 Trial Tr. At 10:26:16-10:28:22).

124. Senator Ford misapprehended the Democratic caucus's views on the merits of S.B. 824. Senator Ford evidently believed the process surrounding S.B. 824 was bipartisan because Democrats offered amendments to the bill and some of those were accepted. Senator Ford contends that Senator McKissick told him that he was happy with the bill, and he also claimed that there would have been more bipartisan discussion if not for the Democrats' strategy to limit the debate. (Ford 4/20/21 Trial Tr. 4:00:46-4:01:38). However, this Court finds that Senator McKissick refuted Senator Ford's assertions, noting that Senator Ford was not caucusing with the Democrats and had estranged himself form the Democratic

caucus such that he would not have been attending caucus meetings or been privy to the thought, discussion and information that would have been shared by Senate Democratic caucus members. (McKissick 4/29/2021 Trial Tr. 10:05:05- 10:05:32). Senator McKissick was overall disappointed with the bill and had deep reservations and concerns with it, specifically with respect to its disproportionate impact on African American voters and voters of color. (McKissick 4/29/2021 Trial Tr. 10:38:04- 10:39:51).

125. Moreover, Senator Ford testified at trial that his understanding when he agreed to sponsor S.B. 824 was that the law required the State and County Boards of Elections to provide free photo IDs at all early voting sites and at all voting sites on Election Day. (Ford 4/20/21 Trail Tr. 3:19:14-3:20:21; 3:21:48-3:23:47, 3:24:17-3:24:27). He testified he would not have supported S.B. 824 without the availability of free photo ID during early voting and on Election Day. (Ford 4/23/21 9:11:52-9:12:35). However, this Court finds that Senator Ford's understanding of S.B. 824 is inconsistent with the State Board of Election's interpretation, which limits the availability of free photo IDs to any time except during the period between the end of one stop voting for a primary or election and the end of election day for each primary and election. (JX0018; Ford 4/23/21 Trial Tr. 9:47:06-9:52:36, 9:57:25-9:57:36). Senator Ford's understanding is also inconsistent with the understanding of Republican staffers, who understood that Senator Ford's amendment did not permit a voter to obtain a free voter photo ID on election day (JX746; Ford 4/20/21 Trial Tr. 3:27:27-3:30:21; 3:48:24-3:49:37), but

failed to inform him of that fact (Ford 4/23/21 Trial Tr. 10:00:54-10:01:16). It is thus unclear whether Senator Ford would even have supported S.B. 824 if he had been informed of the commonly held understanding of his amendment.

126. Other members of the legislature who testified at trial vigorously disagreed that the process was bipartisan. Senator Robinson did not consider S.B. 824 to be a bipartisan effort because there had not been bipartisan discussion, development, or input. Senator Robinson contrasted S.B. 824 with previous breast cancer and opioid treatment bills that she considered to be bipartisan because she was able to engage meaningfully with Republican colleagues and understand voters' concerns. (Robinson 4/21/21 Trial Tr. At 10:13:34-10:16:27). This Court likewise finds that S.B. 824 was not enacted through a truly bipartisan process.

127. The Court finds the testimony of Representative Harrison persuasive, that the enactment of S.B. 824 was not bipartisan and differed from her prior experience participating in bipartisan legislation. (Harrison 4/20/2021 Trial Tr. 10:35:51 – 10:36:14). True bipartisan legislation is legislation where both parties work across the aisle actively together from the get-go to craft legislation for the betterment of our state. By contrast, S.B. 824 was a very partisan effort. (Harrison 4/20/2021 Trial Tr. 10:36:34 – 10:38:05). The Court finds that Representative Harrison having thanked Chairman Lewis in her comments on the House floor as a "a matter of decorum" does not undermine her testimony that S.B. 824 was not enacted through a bipartisan process. (Harrison 4/20/2021 Trial Tr. 10:36:34 – 10:38:05).

128. This Court also finds that, like Senator Robinson and Representative Harrison, former Senator McKissick did not interpret S.B. 824 as a bipartisan bill in any respect in his experience and lacked the collaborative deliberative process that is typical for bipartisan bills. (McKissick 4/29/2021 Trial Tr. 10:07:26 – 10:08:35). Senator McKissick's comments on the Senate Floor during the third reading of S.B. 824 are not duly characterized as an indication that S.B. 824 had strong bipartisan participation and effort, but rather, Senator McKissick's comments reflected his efforts to be courteous so as to help efforts to introduce amendments in the future. (McKissick 4/29/2021 Trial Tr. 10:10:20 – 10:11:32).

IV. S.B. 824 Bears More Heavily on African American Voters

A. African American Voters Are More Likely to Lack Qualifying ID Than White Voters

129. In order to estimate the rate at which voters in North Carolina possess forms of qualifying ID under S.B. 824, Plaintiffs' expert, Professor Kevin Quinn, performed a matching analysis linking records from the North Carolina voter file to databases of information on qualifying ID. (Quinn 4/15/21 Trial Tr. At 10:05:33–10:06:53; JX0005 at ¶ 13). Courts in other voting rights cases involving state voter photo ID requirements have relied on electronic database matching analyses of this nature. *See, e.g.*, *Veasey v. Perry*, 71 F. Supp. 3d 627, 659-60 (S.D. Tex. 2014); *Frank v. Walker*, 17 F. Supp. 3d 837, 870-71 (E.D. Wisc. 2014), *rev'd on other grounds*, 17 F. Supp. 3d 837 (7th Cir.).

130. Professor Quinn employed a sound methodology that is consistent with scientific practices in the field of Political Science. His matching analysis utilized ID possession data from the DMV's customer database, State employee databases including the State human resource file, and information from colleges, universities, and schools across the State. (Quinn 4/15/21 Trial Tr. At 10:04:21–10:04:57; PX0072 (Summary of Data Sources); JX0005 at ¶¶ 40, 115). Professor Quinn first performed standard data cleaning steps to minimize errors in the data that could affect his analysis. (Quinn 4/15/21 Trial Tr. At 10:01:20–10:01:51; JX0005 at ¶¶ 36–39). He then removed "deadwood" records from the voter file, including deceased voters. (Quinn 4/15/21 Trial Tr. At 10:01:20–10:02:19; JX0005 at ¶ 38). Professor Quinn then created and applied eleven composite matching fields to identify matches between records in the voter file and ID possession records. (Quinn 4/15/21 Trial Tr. At 10:05:49–10:06:53, 10:08:58–10:11:15; JX0005 at ¶¶ 83–91). Each of these eleven matching fields was more than 98% unique (and most were more than 99% unique), meaning that the collection of data points utilized in each composite field could accurately identify and match unique individuals, minimizing the risk of false matches. (Quinn 4/15/21 Trial Tr. At 10:12:36–10:13:32; JX0005 at ¶ 100). Professor Quinn also designed matching fields that would help reduce the risk of false negatives (i.e., voters who appear not to have ID but actually do have ID). For example, some of Professor Quinn's composite matching fields did not rely on a voter's last name, meaning that a match was possible even if a voter had married and changed her or his name, provided that certain other combinations of

data points (such as address, date of birth, and other identifying information) were a match across both databases. (Quinn 4/15/21 Trial Tr. At 10:16:04–10:17:06; JX0005 at ¶¶ 92–99).

131. Based upon Professor Quinn's matching analysis, this Court finds that 6.65% of registered North Carolina voters do not possess one of the forms of qualifying ID that he was able to analyze. (JX0005 at ¶ 115). Amongst those voters, registered African American voters in North Carolina are 39% more likely to lack a form of qualifying ID than white registered voters. (Quinn 4/15/21 Trial Tr. At 9:53:56–9:54:38; JX0005 at ¶ 114). When restricting his analysis to active voters—those who voted in the 2016 and 2018 elections—African American voters were over twice as likely to lack qualifying ID than white voters. (Quinn 4/15/21 Trial Tr. At 9:55:27–9:56:03; JX0005 at ¶ 114).

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132. DMV-issued ID accounts for the vast majority of qualifying ID possessed by voters. Out of the 6,747,103 matches identified by Professor Quinn, more than 6.7 million matches are attributable to DMV-issued ID. (Quinn 4/15/21 Trial Tr. At 10:22:42–10:22:48; JX0005 ¶ at 115). Prof. Quinn included cancelled, suspended, and inactive driver's licenses in his analysis. (Quinn 4/15/21 Trial Tr. At 10:22:53–10:23:15). He included these forms of DMV ID, despite having reason to believe they may not be acceptable or available for voting purposes under S.B. 824, in order to maximize the number of matches in his analysis and minimize the potential to overstate the number of voters without qualifying ID. (Quinn 4/15/21 Trial Tr. At 10:22:53–10:23:15; JX0005 at ¶ 42 n.13). Had he excluded cancelled, suspended, and inactive DMV-issued IDs from his analysis, the racial disparity in ID possession would increase to 2.12. (JX0005 at ¶ 42 n.13).

133. This Court finds, based upon Professor Quinn's matching analysis, that the new forms of qualifying ID added to S.B. 824 that were not included under H.B. 589, including school IDs, State employer IDs, and State Board of Elections free IDs, added a "miniscule" number of unique, incremental matches to voters who did not already possess another form of qualifying ID, such as a DMV-issued ID. (Quinn 4/15/21 Trial Tr. At 10:24:42–10:25:01). Only 205 new matches were added from State Board of Elections free IDs. (*Id.* at 10:23:21–10:23:46; JX0005 at ¶ 115). Only 1,819 new matches were added from employee IDs, and only 44,422 new matches were added from school IDs. (Quinn 4/15/21 Trial Tr. At 10:24:03–10:24:13; JX0005 at ¶ 115).

134. Professor Quinn was not able to perform a matching analysis with federally-issued forms of ID, such as passports, because those data were not available to him. (JX0005 at ¶ 40 n.11). However, Professor Quinn accounted for these forms of ID in his matching analysis by conducting a "sensitivity analysis," in which he analyzed available data on the racial demographics of ID possession for the forms of IDs not included in his matching analysis and evaluated whether those forms of ID could plausibly erase the racial disparity in ID possession rates he found through his matching analysis. (Quinn 4/15/21 Trial Tr. At 10:43:48–10:44:41; JX0005 at ¶¶ 131, 151). For example, publicly available data suggests that in North Carolina, white voters are 2.4 times more likely to possess unexpired passports than African American voters. (*Id.* at 10:41:48–10:42:5). As a result, it is not "plausible that passports would eliminate the racial disparity" identified in his analysis. (*Id.* at 10:42:08–10:42:59). To the contrary, if other forms of ID such as passports and military ID were incorporated into his matching analysis, one should expect the racial disparity to be larger than the 1.39 ratio identified in Professor Quinn's report, because white voters are more likely than African American voters to possess those forms of ID. (Quinn 4/15/21 Trial Tr. 10:18:04–10:18:47). As a result, based on his sensitivity analysis, Professor Quinn concluded it is not plausible to think those forms of other ID not included in his matching analysis would erase the racial disparity that he identified in his matching analysis. (*Id.*)

135. Defendants have neither demonstrated that there would be no racial disparity in ID possession if S.B. 824 were allowed to go into effect, nor have they contradicted Professor Quinn's findings.

136. Brian Neesby, the Chief Information Officer for the North Carolina State Board of Elections, conducted a matching analysis and generated a no-match list in 2019 after the passage of S.B. 824, but did not include race data in his analysis. As a result, the State Board's no-match list does not contradict Professor Quinn's finding that North Carolina voters who lack a form of qualifying ID are more likely to be African American than white. (Neesby 4/27/2014 Trial Tr. At 02:07:47–02:08:14; 02:10:36–02:10:45).

137. Dr. Janet Thornton, Legislative Defendants' expert, responded to Professor Quinn's analysis but did not perform her own independent matching analysis in this case, or present a competing estimate of the number and racial breakdown of North Carolina voters who lack a form of qualifying ID under S.B. 824. Instead, she analyzed Professor Quin's no-match list and supporting data, and critiqued Professor Quinn's results. (Thornton 4/26/2021 Trial Tr. At 2:13:41—2:15:04).

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138. Dr. Thornton opined that Professor Quinn's no-match list was inflated, but did not identify voters on Professor Quinn's no-match list that actually possessed ID acceptable for voting under S.B. 824 or provide this Court with the number of matches in total on Professor Quinn's no-match list that she believed were erroneous. (Thornton 4/27/2021 Trial Tr. At 9:55:07-9:57:16; *see also* Thornton 4/26/2021 Trial Tr. 2:27:18-2:27:50).

139. Dr. Thornton also did not analyze the racial composition of voters who possess forms of qualifying ID added to S.B. 824 that were not included under H.B. 589, nor did she analyze the extent to which inclusion of those forms of ID under S.B. 824 impacts the racial disparity in ID possession rates among North Carolina voters. (Thornton 4/26/2021 Trial Tr. At 2:12:01-2:13:08).

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140. Dr. Thornton also opined that Professor Quinn's inability to perform a matching analysis using databases of federally issued photo identification (*i.e.*, passports, military ID, and veterans ID) undermines his finding. Dr. Thornton suggested that the federal data used by Professor Quinn could not be used to determine the ID possession rates of North Carolinians. This Court finds Dr. Thornton's testimony unconvincing and not credible. Professor Quinn's testimony was that, in order to combat the racial disparity seen in DMV ID possession, the federal ID possession rates in North Carolina would need to be completely flipped from the national rates. There is no reason to believe, based on North Carolina demographics, that such a flip is the reality. Dr. Thornton admitted that if white voters were more likely to possess these forms of photo ID, then the racial disparity Professor Quinn finds through his matching analysis would increase, rather than decrease, if federally issued IDs were included in the matching analysis. (Thornton 4/27/2021 Trial Tr. At 9:48:52-9:49:56).

141. This Court finds that Professor Quinn's results are reliable and establish that African American voters are more likely than white voters to lack a form of qualifying ID under S.B. 824.

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B. The Burdens of Obtaining Qualifying ID, Including Free ID, Fall More Heavily on African American Voters

142. Because African American voters are more likely than white voters to lack a form of qualifying ID under S.B. 824, it follows that they are also more likely to have to take steps to obtain a qualifying ID if they wish to vote in person using a regular, non-provisional ballot. (Quinn 4/15/21 Trial Tr. 19:23–20:6). Available data shows that the burdens of obtaining a qualifying ID are also likely to fall more heavily on African American voters than on white voters.

143. Poverty is the most lasting consequence of North Carolina's history of discrimination. (Leloudis Trial Tr. 4/13/21 11:43:02–11:43:18).

144. Decades of racial segregation and other forms of official discrimination entrenched economic disparities and denied Black North Carolinians opportunities to accumulate wealth. (JX0695 at 73). As a result, today Black North Carolinians are far more likely to be impoverished than white North Carolinians: the poverty rate for Black North Carolinians is twenty-two percent compared to nine percent for whites. (Leloudis Trial Tr. 4/13/21 11:43:02–11:43:35). A Black person is 2.5 times more likely to live in poverty as compared to a white person. (Leloudis Trial Tr. 4/13/21 11:43:26-11:43:35).

145. It is well established that poverty negatively impacts political participation. (JX0695 at 74). Specifically, this is due to increased difficulty accessing transportation, higher rates of illness and disability, inability to take time off from work to register and go to the polls, unfamiliarity with the electoral system, and associated psychological factors including loss of self-esteem, pride, and self-confidence. (JX0695 at 74).

146. As a result, many people living in poverty have difficulty obtaining common forms of photo ID. (JX0695 at 75; JX0696 at 2). Since a greater percentage of Black voters live in poverty, Black voters face greater hurdles to acquiring photo ID. (JX0696 at 73–77).

147. For example, Black voters are more likely to be employed in low-wage jobs which do not allow them time off from work to acquire photo ID, particularly given that offices providing those IDs are open only during business hours. (Leloudis Trial Tr. 4/13/21 11:43:43–11:44:09).

148. Additionally, Black voters are less likely to have access to private transportation and to own a car. (Leloudis Trial Tr. 4/13/21 11:44:09–11:44:33). A considerable part of North Carolina's Black population is concentrated in the eastern part of the state where poverty rates are high and public transportation is limited to nonexistent, meaning that Black voters are more likely than white voters to face challenges accessing DMV and County Board of Election offices where certain forms of IDs can be obtained. (Leloudis Trial Tr. 4/13/21 11:44:33–11:45:21).

149. These challenges apply equally to the "free ID" available at county board of elections offices. For example, Jabari Holmes, one of the named Plaintiffs in this case, would still face significant obstacles to obtaining a "free" photo identification card at a County Board of Elections office due to his disabilities and his family's income status. (Holmes 4/12/21 Trial Tr. At 2:29:19–2:30:16).

150. The Wake County Board of Elections office is located approximately 11.5 miles from the Holmes' residence. (Holmes 4/12/21 Trial Tr. At 2:27:35–2:29:17; PDX 2-16). The Election Day polling place where the Holmes family votes is at East Wake High School, which is approximately 2.5 miles from their residence. (Holmes 4/12/21 Trial Tr. At 2:06:04–2:06:25; PDX 2-15). The drive from the Holmes' residence to East Wake High School takes approximately ten minutes and features very little traffic. (Holmes 4/12/21 Trial Tr. At 2:09:57–2:10:25). The drive to the Wake County Board is longer, which means a greater risk of discomfort for Jabari, because of his disabilities.

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151. Due to his disabilities, Jabari only leaves his house a few times a week, almost always for doctor's appointments. Elizabeth, Jabari's mother, drives him to these appointments. (Holmes 4/12/21 Trial Tr. At 1:52:58–1:53:57, 1:57:01–1:58:13). Elizabeth previously paid a family friend to take Jabari on social outings, such as to the movies or the mall, approximately once or twice a week. These outings occurred only during the summer, because the Holmes' family friend was a teacher who worked during the school year. (Holmes 4/12/21 Trial Tr. At 1:54:02–1:55:02, 1:58:34–1:59:18, 2:30:23–2:30:41). Elizabeth would potentially also have to pay for someone to take Jabari to the Wake County Board of Elections to obtain a photo identification card. Because of this expense, such an identification card would not be "free" for the Holmes family. (Holmes 4/12/21 Trial Tr. At 2:30:23–2:30:41).

152. Both Elizabeth and her husband, Aaron, are elderly and try to save everything they can in order to provide for Jabari's care now and in the future. Paying a contact to take Jabari to the Wake County Board of Elections to obtain a photo identification card would deplete the funds for Jabari's care. (Holmes 4/12/21 Trial Tr. At 2:31:22–2:32:32).

153. Jabari's example is not unique. Many low-income voters, voters who live in rural areas far from their county board of elections office or from public transportation, voters who live in residential facilities, and voters who do not drive are among those who might have trouble obtaining a "free ID." (Fellman 4/21/21 Trial Tr. At 2:14:39–2:15:09).

154. Asking voters without compliant ID to stand in two different lines at an early voting site could make voting a full-day activity, making it harder for hourly workers to find time to both obtain an ID and vote. (Fellman 4/21/21 Trial Tr. At 2:15:22–2:16:20).

155. More practically, though, it does not appear that "free ID" will or can be offered at every early voting site. The "free ID" is not required to be offered at every early voting site and is not funded for every early voting site. The Alamance County Board of Elections, for example, only had one printer for making the "free ID", which was maintained at the county board office, and it is unclear if the county board of elections will have adequate staffing and computer capabilities to operate "free ID" printers at each early voting site. (Read 4/14/21 Trial Tr. At 12:05:04-12:05:41, 2:58:52-2:59:11).

156. It would not be practical to have ID printing machines at early voting sites because those sites only have part-time staff there during elections, and those are temporary sites. (Read Trial Tr. 4/14/21 12:11:53–12:12:21). Typically, early voting sites do not have the computer capability and the record checking capability that the county board office has, making the option to print IDs at all early voting sites even more impractical. (Read Trial Tr. 4/14/21 2:58:52–2:59:11). Further, S.B. 824 does not require that free IDs be made available in more than one location within each county. S.B. 824 would only require that "the county board of elections shall, in accordance with this section, issue without charge voter photo identification cards upon request to registered voters."

C. African American Voters May Be More Likely to Encounter Problems Navigating the Reasonable Impediment Process

157. Because African American voters are more likely to lack a form of qualifying ID than white voters, and more likely to encounter barriers to obtaining a qualifying ID, those voters may be more likely than white voters to vote using S.B. 824's reasonable impediment provisional ballot process, if the law were allowed to go into effect. (*See* Quinn 4/15/21 Trial Tr. 19:23–20:6).

158. To this point, the State Board has not conducted any systematic evaluation of whether poll workers consistently enforced photo ID requirements in the March 2016 primary, such as whether poll workers asked voters for identification and appropriately described the acceptable identification types, and whether poll workers accurately described and applied the reasonable impediment declaration process when voters didn't have identification. (Strach 4/28/21 Trial Tr. 2:33:44-2:37:12). Specifically, the State Board did not make any inquiry as to whether in the March 2016 primary the 1,248 voters without ID who did not complete reasonable impediment declarations and whose provisional ballots were not counted should have been offered a reasonable impediment ballot. (Strach 4/28/21 Trial Tr. 2:23:36-2:26:18). Neither did the State Board conduct any post training evaluations of poll workers to determine whether they properly understood the photo ID requirement after their training. (Strach 4/28/21 Trial Tr. 2:38:39-2:39:08).

159. 1,096 of the 1,400 voters who cast a provisional ballot due to lack of acceptable ID and did not have an accompanying reasonable impediment declaration did not have their ballots counted. (White 4/16/21 Trial Tr. At 10:41:09-10:41:38).

160. Voters who did not have their ballots counted were much more likely to be Black than the electorate as a whole. (White 4/16/21 Trial Tr. At 10:43:28-10:44:21).

161. Moreover, explanations provided in the provisional file for a number of these votes that did not count indicate that poll workers had not adequately followed the proper procedures of implementing the ID requirement. (White 4/16/21 Trial Tr. At 10:42:02-10:43:26).

162. Voters like Plaintiffs Daniel Smith and Paul Kearney were not given proper instruction on how to complete a reasonable impediment ballot during the March 2016 primary.

163. Prior to the election, Mr. Smith misplaced his regular driver's license, so he sought a temporary replacement license from the DMV. (Smith 4/15/21 Trial Tr. At 4:40:28–4:40:43, 4:41:17–4:41:31).

164. Based on his conversation with workers at the DMV, Mr. Smith understood that he could use his temporary license in the same manner as his regular license. (Smith 4/15/21 Trial Tr. At 4:43:04–4:43:32).

165. At the time, Mr. Smith did not possess any other form of photo identification other than an ID issued by his private employer. (Smith 4/15/21 Trial Tr. At 4:40:48–4:41:12). Nor was Mr. Smith aware of H.B. 589's photo ID requirements. (Smith 4/15/21 Trial Tr. At 4:43:37-4:43:57).

166. When Mr. Smith arrived at his polling place to vote, poll workers asked him to present his photo ID, and he offered his temporary driver's license. (Smith 4/15/21 Trial Tr. At 4:43:43–4:45:08).

167. The poll workers then asked Mr. Smith to step out of line while they discussed whether he could use his temporary driver's license to vote. (Smith 4/15/21 Trial Tr. At 4:45:31–4:46:09). Mr. Smith was frustrated and embarrassed while he was pulled out of line since he didn't know what was happening or why it was happening, and because he had never encountered anything like this in all his years of voting. (Smith 4/15/21 Trial Tr. At 4:46:16–4:46:40).

168. Mr. Smith observed that the poll workers appeared confused. (Smith 4/15/21 Trial Tr. At 4:47:20–4:47:51). When one poll worker returned, she explained that they were uncertain whether he could utilize his temporary license to vote. (Smith 4/15/21 Trial Tr. At 4:46:44–4:47:18).

169. The poll workers did not offer Mr. Smith a reasonable impediment declaration, let alone inform him of the option to vote using a reasonable impediment declaration. Instead, the poll workers told Mr. Smith that he would have to cast a provisional ballot. (Smith 4/15/21 Trial Tr. At 4:47:56–4:48:34).

170. Mr. Smith had never cast a provisional ballot before, and the poll workers failed to explain that he was required to cure his provisional ballot in order for it to be counted. (Smith 4/15/21 Trial Tr. At 4:48:35–4:48:39). Because the poll workers did not provide Mr. Smith with directions on how to cure his provisional ballot, it was not counted. (Smith 4/15/21 Trial Tr. At 4:49:29–4:49:43). As a result, Mr. Smith was disenfranchised during the March 2016 primary election.

171. Paul Kearney possesses valid ID but was unable to bring the ID with him when he went to the polls to vote during the 2016 primary election due to an emergency on his farm. (Kearney 4/16/21 Trial Tr. At 9:14:30-9:15:41).

172. Mr. Kearney is on a first-name basis with the individuals who were staffing his polling site because they are all members of the same community. (Kearney 4/16/21 Trial Tr. At 9:19:02-9:19:17). Despite lacking his ID, he was under the impression that individuals without ID would still be able to vote in the 2016 primary election. He learned this information from individuals in his church and community, as well as the media. (Kearney 4/16/21 Trial Tr. At 9:31:02-9:31:09).

173. When Mr. Kearney arrived at the poll site and attempted to vote, he informed the poll workers that he had left his ID behind. This appeared to "create a little bit of excitement" amongst the poll workers, who told him they would have to make some arrangements for him to vote. (Kearney 4/16/21 Trial Tr. At 9:17:20-9:18:26).

174. Mr. Kearney was ultimately provided a provisional ballot, but was not given any information about the need to follow up with the county board of elections in order for his ballot to count. (Kearney 4/16/21 Trial Tr. At 9:20:14-9:20:23). He was not informed of the reasonable impediment declaration form or given the option of filling one out. (Kearney 4/16/21 Trial Tr. At 9:20:02-9:20:13).

175. Mr. Kearney was disheartened to learn that his vote had not counted during the March 2016 primary election. (Kearney 4/16/21 Trial Tr. At 9:21:18-9:21:49).

176. Voting advocates also understand and observe that the reasonable impediment process may be confusing for many voters. (Fellman 4/21/21 Trial Tr. At 2:03:24-2:04:33). This potential for confusion has also been acknowledged by the State Board of Elections. In its media rollout for H.B. 589, the State Board of Elections purposely did not use the term "reasonable impediment" out of a concern that the term would "cause confusion" for voters. (Strach 4/28/21 Trial Tr. At 3:05:47- 3:06:59).

177. A hesitant or infrequent voter may be deterred from voting with a reasonable impediment declaration because the process is unfamiliar or because it appears the voter is being treated differently from everyone else at the polls. (*See* Fellman 4/21/21 Trial Tr. At 2:04–2:05:21; 2:17:15–2:17:39). For example, in Alamance County, voters who are offered provisional ballots sometimes choose not to vote at all. (Read 4/14/21 Trial Tr. 2:42:03-2:42:40).

D. Professor Hood's Analysis Does Not Show a Lack of Disparate Impact on African American Voters

178. Legislative Defendants' expert Professor Trey Hood offers the opinion that S.B. 824 would not deter minority voter turnout because, he claims, South Carolina's voter ID law, which shares certain features with S.B. 824, did not suppress minority turnout. (Hood Trial Tr. 4/23/21 12:06:30–12:06:45). This Court finds that Professor Hood's analysis does not negate the conclusion that S.B. 824 would bear more heavily on African American voters, for several reasons.

179. First, Professor Hood's analysis does not attempt to measure the extent to which African American voters are more likely than white voters to lack a form of qualifying ID under S.B. 824. (Hood Trial Tr. 4/23/21 11:14:39–11:16:58). Professor Hood's testimony therefore cannot rebut Professor Quinn's conclusion that African American voters are more likely than white voters to lack qualifying ID, and are thus more likely to have to take additional steps to obtain a qualifying ID or take additional steps to vote using the reasonable impediment process. All of those differences establish that S.B. 824 would bear more heavily on African American voters, if permitted to go into effect.

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180. Second, even on its own terms, Professor Hood's analysis does not reliably establish what the effect of S.B. 824 would be on minority turnout in North Carolina. Professor Hood studied the effect of South Carolina's law by comparing turnout rates in elections before and after South Carolina implemented its voter ID law, but he readily admits he conducted no similar study in North Carolina using data from before and after H.B. 589, North Carolina's prior voter ID law, was in effect. (Hood Trial Tr. 4/23/21 12:28:51–12:29:25).

181. Instead, Professor Hood simply assumes that the results he observes in his South Carolina study are readily generalizable to North Carolina. His very own study of South Carolina expressly rejects that premise. In his South Carolina study, Professor Hood argued for the necessity of rigorous within-state testing in other contexts to determine if similar conclusions can be drawn. (JX 39 at 43). He likewise specifically noted that although one can categorize voter ID statutes (e.g., states that require government-issued photo ID), there remain important differences between these laws across states. (JX 39 at 43). But Professor Hood admitted that he did not conduct the "rigorous testing" he stated was required to compare South Carolina's voter identification law to other states and instead relied on "generalized conclusions." (Hood Trial Tr. 4/26/21 09:47:14–09:48:06). Nor did Professor Hood design or apply any study or survey to methodically compare North and South Carolina across metrics that could affect voter turnout, including population sizes, ages, racial demographics, or median income. (Hood Trial Tr. 4/26/21 09:48:09–09:50:27). To the contrary, Professor Hood explicitly admits that

he didn't conduct a study of S.B. 824 or H.B. 589 (Hood Trial Tr. 4/26/21 09:49:05–09:49:09), and that his analysis is not based on any comprehensive analysis of North Carolina itself. (Hood Trial Tr. 4/26/21 09:50:54–09:51:22).

182. Furthermore, Professor Hood acknowledged at the outset of his study that where Black registered voters have a higher ID nonpossession rate than white registrants, it is logical to hypothesize that turnout for the Black registrants would more likely be adversely affected. In fact, Professor Hood hypothesized that Black registrants would be negatively affected at a greater rate following the implementation of South Carolina's voter ID law than would white registrants. (JX 39 at 36).

183. Finally, even if Professor Hood's South Carolina results were generalizable to North Carolina, his underlying study in South Carolina shows that the South Carolina law did suppress minority turnout, when all eligible voters are included in the study. Specifically, when the study accounted for inactive voters (who remain eligible to vote in South Carolina and are subject to the voter ID law), Professor Hood's results show that the South Carolina law had a slightly greater effect on Black voters than white voters. (Hood Trial Tr. 4/23/21 12:21:13–12:23:50).

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184. Thus, Professor Hood's results cannot rebut or contradict Professor Quinn's findings regarding racial disparities in ID possession rates in North Carolina. And, because Professor Hood has done nothing to study North Carolina or to relate his work in South Carolina to North Carolina in a reliable way, his testimony also cannot establish what effect, if any, S.B. 824 is likely to have on minority voter turnout in North Carolina. The majority of this three-judge panel therefore accords his testimony no weight.

V. Defendants' Proffered Nonracial Motivations for S.B. 824 Do Not Alone Justify the Specific Provisions of the Law

A. The Specific, Restrictive Provisions of S.B. 824 Are Not Tailored to Implement the Voter ID Constitutional Amendment

185. The General Assembly was under no legal mandate to enact legislation to implement North Carolina's voter ID amendment during the 2018 lame duck session. As discussed, implementing legislation for other successful amendments, such as Marsy's Law, was deferred until the 2019 legislature was seated.

186. Professor Callanan suggested that S.B. 824 cannot be unconstitutional because it is a "non-strict" law, as described by the National Conference of State Legislatures. However, the factors used to determine strictness and the factors used to determine unconstitutionality are different, making this argument irrelevant. Moreover, H.B. 589 was considered a non-strict law and was also found to be unconstitutional. This Court finds this testimony unpersuasive.

187. A voter ID law passed by the 2019 legislature would have been more flexible and likely would have included more forms of qualifying ID than S.B. 824. Such a law would have more than adequately implemented North Carolina's voter

ID constitutional amendment. Defendants instead rushed to pass S.B. 824 in the lame duck session and over Governor Cooper's veto because they did not want to pass a "watered down" bill. But Defendants cannot show that their preferred, more restrictive voter ID law was tailored to achieve the goal of implementing the constitutional amendment alone.

188. Defendants claim that S.B. 824 had to be passed quickly and while Republicans still had a supermajority in the General Assembly because, otherwise, Democrats would not have allowed them to pass a voter ID bill or helped them to overcome the inevitable gubernatorial veto. As evidence, they point to Governor Cooper's veto message which said that the bill has "sinister and cynical origins" and that "[t]he cost of disenfranchising those votes or any citizens is too high, and the risk of taking away the fundamental right to vote is too great." (JX0687). This argument is unpersuasive. Regardless of Governor Cooper's statements, Defendants have pointed to no evidence that the Democratic legislators themselves would have neglected their constitutionally mandated duty to pass voter ID legislation. Indeed, the evidence shows that Democratic legislators did attempt to engage with S.B. 824 by offering amendments aimed at correcting the shortfalls they saw in the bill.

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B. The Specific, Restrictive Provisions of S.B. 824 Are Not Tailored to Prevent or Deter Voter Fraud

189. The State Board of Elections does not believe there is rampant voter fraud in North Carolina. (PX 101 at 34, 41). From 2000 to 2012, there were two documented cases of voter impersonation fraud in North Carolina. (PX101 at 32). From 2015 to 2019, the State Board of Elections referred only five cases of voter impersonation fraud to prosecutors. (PX101 at 31–32).

190. Senator Ford, co-sponsor of S.B. 824, did not think that in-person voter impersonation was an issue in North Carolina when supporting the law. (Ford 4/20/21 Trial Tr. 3:24:20-3:24:43, 4:09:14-4:09:40).

191. Voter fraud is extremely rare. (White 4/16/21 Trial Tr. At 10:54:04-10:55:28). There is little indication that voter ID laws would be able to prevent voter impersonation even if it were common. (White 4/16/21 Trial Tr. At 10:55:32-10:56:34).

192. General Assembly members and their staff did not request data on rates of voter fraud in North Carolina from the State Board of Elections prior to the enactment of S.B. 824. (PX101 at 8, 33). Nor was the State Board of Elections asked to analyze the potential effect that S.B. 824 might have on voter fraud before S.B. 824 was enacted. (PX101 at 8).

193. In April 2017, the State Board of Elections released an audit of the previous year's general election in which it reported that questionable ballots accounted for just over 0.01 percent of the 4,469,640 total votes cast. Of the five hundred and eight cases of fraudulent voting that the board identified, only one

involved the kind of in-person deception that a photo ID requirement was designed to expose and prevent. (JX0695 at 71). This Court finds that voter fraud in North Carolina is almost nonexistent.

194. Defendants therefore cannot show that S.B. 824's specific provisions are tailored to preventing voter fraud, or that some less restrictive alternative that would not bear more heavily on African American voters could not achieve the same ends. There is certainly insufficient evidence to conclude that the desire to combat voter fraud was an actual motivation of the legislature in passing S.B. 824.

C. The Specific, Restrictive Provisions of S.B. 824 Are Not Tailored to Enhance Voter Confidence

195. There is no evidence that voter identification laws actually bolster overall confidence in elections or that they make people less concerned about voter fraud. (White 4/16/21 Trial Tr. At 10:56:38-10:57:28).

196. In fact, it is reasonable to assume that a voter ID law that intentionally targets one group of voters in a discriminatory manner would reduce, rather than enhance, public confidence in election integrity. (Callanan 4/22/21 Tr. 03:10:49-03:11:10).

197. Black community leaders have expressed concerns about S.B. 824 and whether it is intended to keep Black voters from voting, decreasing voter confidence in the electoral system in North Carolina. (*See* Fellman 4/21/21 Trial Tr. At 2:19:37–2:20:48 ("they just don't want us to vote")).

198. Because, as here, a voter ID law motivated at least in part by intentional discrimination will decrease rather than increase voter confidence, it cannot be tailored to achieve the neutral goal of enhancing voter confidence.

CONCLUSIONS OF LAW

I. Plaintiffs Have Standing

199. "The North Carolina Constitution confers standing on those who suffer harm[.]" *Mangum v. Raleigh Bd. Of Adjustment*, 362 N.C. 640, 642, 669; *Comm. To Elect Forest v. Emps. Pol. Action Comm.*, 260 N.C. App. 1, 6 (2018). The relevant question is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Stanley v. Dep't of Conservation & Dev.*, 284 N.C. 15, 28 (1973)).

200. "[The United States Supreme] Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Holmes v. Moore*, 270 N.C. App. 7, 14 (2020) (citing *Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S. Ct. 995, 31 L. Ed. 2d 274, 280 (1972)). "[I]n the context of an equal protection claim," like this one, "the injury in fact [i]s the denial of equal treatment . . . not the ultimate inability to obtain the benefit." *Holmes*, 270 N.C. App. at 14 n.4 (quotation marks omitted). "That Plaintiffs may ultimately be able to vote in accordance with S.B. 824's requirements

is not determinative of whether compliance with S.B. 824's commands results in an injury to Plaintiffs." *Id.*

201. Plaintiffs therefore need not show that they will be completely prevented from voting by S.B. 824 or that they will ultimately be unable to obtain a qualifying form of ID, but instead that they have been denied the right to participate in elections on an equal basis with white voters because they are African American voters and because S.B. 824 is intended to impose disproportionate burdens on African American voters. *Id.* at 14 & n.4 (holding that these Plaintiffs have standing and rejecting Legislative Defendants' argument to the contrary).

202. Plaintiffs easily make that showing because they are each North Carolina voters and members of the subject class against which they allege S.B. 824 is intended to discriminate.

II. S.B. 824 Violates Article I, Section 19, of the North Carolina Constitution Because It Was Adopted With a Discriminatory Purpose

203. The North Carolina Constitution guarantees all persons equal protection of the laws, and further provides that no person shall be "subjected to discrimination by the State because of race, color, religion, or national origin." *See* N.C. Const. art I, § 19.

204. As discussed above, *supra* ¶¶ 11–16, the relevant framework for analyzing whether a facially neutral official action was motivated by discriminatory purpose was set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). Determining whether a discriminatory purpose was a motivating factor in the enactment of a challenged law "demands a

sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights*, 429 U.S. at 266; *State v. Jackson*, 322 N.C. 251, 261, 318 S.E.2d 838, 843–44 (1988) (Frye, concurring). Factors relevant to that analysis include: (1) the impact of the law and whether it bears more heavily on one race than another, (2) the law's historical background, (3) the specific sequence of events and legislative history leading to the law's enactment, and (4) departures from the normal legislative process. *Arlington Heights*, 429 U.S. at 266–68.

205. Even a seemingly neutral law violates the equal protection standard if its enactment was motivated by "racially discriminatory intent or purpose." *Arlington Heights*, 429 U.S. at 265; *see also S.S. Kresge Co. v. Davis*, 277 N.C. 654, 660–62 (1971). Such discrimination need not be borne of racial animus. *See McCrory*, 831 F.3d at 222 (explaining that racially polarized voting "provide[s] an incentive for intentional discrimination in the regulation of elections."). Nor must Plaintiffs show that the discriminatory purpose was the "dominant" or "primary" reason that the legislature passed the law. *Arlington Heights*, 429 U.S. at 265. Rather, it is sufficient to show that racial discrimination was "a motivating factor in the decision." *Id.* at 265–66. This Court's analysis pursuant to *Arlington Heights* does not require a finding that the admitted to actions were due to racial animus or racist, superior ideology. This Court does "not conclude, that any individual member of the General Assembly harbored racial hatred or animosity toward any minority group." *N.C. State Conference of the NAACP v. McCrory*, 831 F.3d 204, 233 (4th Cir. 2016).

206. The majority of this three-judge panel now concludes that the evidence presented to the Court, when viewed in the totality of circumstances, points to the conclusion that S.B. 824 was enacted in part for a discriminatory purpose and would not have been enacted in its current form but for its tendency to discriminate against African American voters.

A. Racial Discrimination Was a Motivating Factor in the Enactment of Senate Bill 824

1. The Historical Background of Senate Bill 824 Strongly Supports an Inference of Discriminatory Intent

207. The historical background of [a] decision is one evidentiary source [in proving intentional discrimination], particularly if it reveals a series of official actions taken for invidious purposes. *Arlington Heights*, 429 U.S. at 267. "A historical pattern of laws producing discriminatory results provides important context for determining whether the same decision-making body has also enacted a law with discriminatory purpose." *McCrory*, 831 F.3d at 223–24; *see also Holmes*, 270 N.C. App. at 20 (citing *McCrory*).

208. Plaintiffs have presented sufficient evidence that the history of voting and elections laws in North Carolina shows a recurring pattern in which the expansion of voting rights and ballot access to African Americans is followed by periods of backlash and retrenchment that roll back those gains for African American voters. *See supra* Findings of Fact, Section I.

209. The history of this backlash is characterized by facially neutral laws that did not always explicitly discriminate by race, but were still enacted with the intent of restricting the voting rights of African Americans. Examples of these laws

include the literacy test, poll tax, bans on single-shot voting, and multimember legislative districts that diluted African American voting power. Some of these facially neutral restrictions, most notably the literacy test, were enacted in response amendments to the State's Constitution.

210. This history of restricting African American voting rights through facially neutral laws is not ancient; it is also a twenty-first century phenomenon. H.B. 589, the first voter ID law successfully enacted by the General Assembly in 2013 was invalidated because it was designed to discriminate against African American voters. Prior to the passage of H.B. 589, legislative staff in the General Assembly sought data on voter turnout during the 2008 election, broken down by race. With this data in hand, legislators excluded many types of IDs that were disproportionately used by African Americans from the list of qualifying forms of voter ID under H.B. 589. *McCrory*, 831 F.3d at 216.

211. After reviewing the evidence showing that the General Assembly sought to use race data to determine the list of qualifying forms of ID under H.B. 589, and excluded forms of ID that African American voters held disproportionately to white voters, the United States Court of Appeals for the Fourth Circuit invalidated the law, holding that the General Assembly "target[ed] African Americans with almost surgical precision." *McCrory*, 831 F.3d at 214.

212. "[T]he important takeaway from this historical background is that State officials continued in their efforts to restrict or dilute African American voting strength well after 1980 and up to the present day." *Holmes*, 270 N.C. App at 23

(citing *McCrory*, 831 F.3d at 225) (internal quotation marks omitted). The facts and evidence show that race and politics in North Carolina remain closely linked, and that racially polarized voting continues to create an incentive to target African American voters when they reliably vote against the party in power.

213. That is the incentive that the Fourth Circuit found motivated the General Assembly when it enacted H.B. 589, and that the majority of this three-judge panel concludes motivated the General Assembly to enact S.B. 824. Indeed, the placement of the voter ID constitutional amendment on the 2018 general election ballot, in the wake not only of the *McCrory* decision invalidating H.B. 589, but also the *Covington* decision requiring the redrawing of racially gerrymandered districts, with no evidence of any change in racially polarized voting creates a strong inference that race was once again a motivating factor behind the enactment of S.B. 824. *See Holmes*, 270 N.C. App. at 23 ("The proposed constitutional Amendment, and subsequently S.B. 824, followed on the heels of the *McCrory* decision with little or no evidence . . . of any change in [] racial polariz[ed] [voting].").

214. Thus, the historical context in which the General Assembly passed S.B. 824 supports Plaintiffs' claim that the legislature intended to discriminate against African American voters. *See Holmes*, 270 N.C. App. at 23, 840 S.E.2d at 259.

2. The Sequence of Events Leading Up to the Enactment of S.B. 824 Gives Rise to a Strong Inference of Impermissible Intent

215. *Arlington Heights* directs a court reviewing a discriminatory-intent challenge to consider the "specific sequence of events leading up to the challenged decision[.]" 429 U.S. at 267 (citations omitted). "In doing so, a court must consider departures from the normal procedural sequence, which may demonstrate that improper purposes are playing a role." *McCrory*, 831 F.3d at 227 (alteration, citation, and quotation marks omitted). However, "a legislature need not break its own rules to engage in unusual procedures." *Id.* at 228.

216. The significant departures by the North Carolina General Assembly from its normal legislative processes leading up to the passage of S.B. 824 provide strong circumstantial evidence of discriminatory intent. *See* Findings of Fact, Section II.

217. These departures begin with the timing and passage of the constitutional amendment requiring voter photo ID, H.B. 1092. H.B. 1092 was passed just one day after the Supreme Court's *Covington* decision affirmed that previously racially gerrymandered districts would have to be redrawn. H.B. 1092 was also passed in a short session, unusual for constitutional amendments, which are historically passed during the odd-year long sessions in North Carolina. H.B. 1092's passage in the short session meant both a shorter-than-usual time for consideration by the General Assembly and also shortened the time afforded to voters to consider this amendment before voting on it.

218. H.B. 1092 also deviated from past historical practice because it was passed by the General Assembly without any accompanying implementing legislation. As a result, voters did not—and indeed could not—know that certain types of photo ID would not be accepted under this constitutional amendment, much less what types of photo ID they and their fellow voters would be able to use to vote. Defendants have not explained why no implementing legislation accompanied H.B. 1092 when it was proposed. The most reasonable and plausible inference is that the legislature wanted the freedom and flexibility to enact its preferred form of a voter ID law in the lame duck session, if necessary, rather than submitting the substance of the law to the voters to decide.

219. That inference is supported by the fact that the General Assembly adjourned their short session, again the day after the *Covington* decision, to continue in a lame duck regular session commencing November 27, 2018. The evidence supports the view that the General Assembly's leadership took this unprecedented step after the *Covington* decision because they anticipated (rightly) that they would lose their supermajority once racially gerrymandered districts were no longer in place, and would need to act during the lame duck session in order to enact the majority's preferred version of a voter ID bill.

220. As explained by Plaintiffs' expert Sabra Faires, this 2018 lame duck regular session was unprecedented in North Carolina, where lame duck sessions are not standard practice. When lame duck sessions have occurred, they have not been regular sessions but instead are more typically limited extra sessions meant to

address emergent issues such as disaster relief. Instead, the General Assembly here took the unusual step of enacting S.B. 824—implementing legislation for a constitutional amendment affecting the fundamental right to vote—in a rushed process over 8 legislative days between Thanksgiving and Christmas. As noted by Ms. Faires, this process required suspension of ordinary rules, and efforts by Democrats in the Senate to table the bill and in the House to delay the third and final reading, to allow for additional debate, failed along party lines.

221. Defendants contend that passing S.B. 824 on this expedited timeline and during this unprecedented lame duck regular session was not unusual because it is rational to expect a supermajority to exercise its power for so long as it maintains the ability to do so. They rely primarily on the testimony and report of their expert political scientist, Professor Keegan Callanan, who analyzed the lame duck practices of legislatures around the country as well as the U.S. Congress in reaching his conclusions.

222. The proper analysis under *Arlington Heights*, however, is to consider the normal legislative process of the North Carolina General Assembly, not (as proposed by Legislative Defendants' expert Professor Keagan Callanan) the practices in other states or the U.S. Congress. This is well established in case law. For example, the Court in *Arlington Heights* looked at that specific zoning board's practice for a specific village. *Arlington Heights*, 429 U.S. at 269. In a more recent case, *Veasy v. Abbott*, the Fifth Circuit looked at the *Texas legislature's* normal practices, not any other body. 830 F.3d 216, 238 (5th Cir. 2016) (applying *Arlington*

Heights factors to a Section 2 claim). Indeed, the approach proposed by Legislative Defendants and their expert would require this Court to *disregard* past North Carolina practices in deference to other legislative bodies, a step this Court is not prepared to take.

223. Viewed in the proper context of North Carolina legislative practices, then, the sequence of events leading to the enactment of S.B. 824 was indeed unusual. As noted by Plaintiffs' expert Sabra Faires, when Democrats lost control of the General Assembly in 2010, they did not hold a lame duck session to entrench themselves or press for political advantage. Nor did they hold a post-election lame duck session when they maintained their majorities in the Senate but lost their majorities in the House in the elections of 1994 and 2002.

224. Finally, as Ms. Faires pointed out, the proponents of S.B. 824 had several other options for enacting a voter ID law that would have followed more closely the standard practice of the North Carolina General Assembly. These included passing S.B. 824 in the 2017-2018 long or short session, or passing the terms of S.B. 824 along with H.B. 1092 as implementing legislation to the Constitutional amendment in the 2018 short session. In other words, to the extent the legislature perceived an urgent need to enact S.B. 824 in a rushed lame-duck session, that was a self-created emergency.

225. Rather than adhere to normal procedures, the Republican supermajority here chose to take several unprecedented and unusual steps to quickly enact H.B. 1092 and, in turn, S.B. 824, after it became clear that the

elimination of racially gerrymandered districts would deliver Democrats a political advantage in the 2018 election. The evidence also shows that the proponents of S.B. 824 enacted the law in the lame duck session, over Governor Cooper's veto, in order to pass their preferred, and more restrictive version of a voter ID law—one that was less flexible and included fewer forms of qualifying ID than the law that likely would have been enacted once the duly elected legislature was seated in 2019. The record thus supports the conclusion that the legislature intended to enact a more restrictive form of voter ID law in response to the *Covington* decision. This is strong circumstantial evidence of discriminatory intent.

226. Indeed, the majority of this three-judge panel agrees with the Court of Appeals conclusion that "the fact S.B. 824 was passed in a short timeframe by a lame-duck-Republican supermajority, especially given Republicans would lose their supermajority in 2019 because of seats lost during the 2018 midterm election . . . [a]t a minimum . . . shows an intent to push through legislation prior to losing supermajority status and over the governor's veto," all of which is consistent with Plaintiffs' theory that S.B. 824 was intended to entrench the Republican majority by targeting African American voters who reliably support Democratic candidates. *Holmes*, 270 N.C. App. at 26–27.

3. The Legislative History Supports the Conclusion that Racial Discrimination Was a Motivating Factor in the Enactment of S.B. 824

227. *Arlington Heights* also requires us to examine the legislative history of a challenged law, as this "may be highly relevant [to the question of discriminatory intent], especially where there are contemporary statements by members of the

decision-making body, minutes of its meetings, or reports." *Arlington Heights,* 429 U.S. at 268.

228. The legislative history of S.B. 824 here indicates that the General Assembly intended to target African American voters in order to entrench the Republican majority.

229. To begin with, the rushed process during the lame duck session left little time for true bipartisan debate or even a cursory assurance to legislators that, unlike its immediate predecessor H.B. 589, this new voter photo ID would not have a discriminatory impact.

230. Legislative bodies, to be sure, are not required under typical circumstances to ensure that legislation will have no disparate impact on minority voters in order to avoid an inference of discriminatory intent, but the context of S.B. 824's passage is not typical. Its passage followed shortly after a similar voter photo ID law, H.B. 589, was found to have been enacted to target African American voters for political expediency, and members of the minority party repeatedly raised concerns that S.B. 824, like its predecessor, would also disproportionately burden African American voters. Indeed, the only data available to the legislature on ID possession rates and the racial disparity in ID possession rates during the debate on S.B. 824 related to the prior law, and showed that African American voters would be disproportionately burdened.

231. But rather that obtain new data and attempt to design a new voter ID law that would be as inclusive as possible and reduce as much as possible any disparities in possession rates between African American and white voters, the Republican supermajority pushed ahead during the lame duck session without any new information. Even worse, a presentation from then-Executive Director of the State Board of Elections, Kim Strach, put legislators on notice that hundreds of thousands of North Carolina voters might lack acceptable identification, and that the proposed backstop of the reasonable impediment exception would not eliminate the risk of voter disenfranchisement. Within this specific and unique context, the failure of the General Assembly to make any effort to investigate the potential impact of S.B. 824 on African American voters, or even allow time for such information to be gathered and presented, speaks volumes. Particularly so given that 62 members of the legislature who voted for H.B. 589 also voted for S.B. 824. It is implausible that these legislators did not understand the potential that S.B. 824 would disproportionately impact African American voters, just as H.B. 589 had done.

232. Like the Court of Appeals, the majority of this three-judge panel agrees that "the quick passage of S.B. 824 . . . with limited debate and public input and without further study of the law's effects on minority voters—notwithstanding the fact H.B. 589 had been recently struck down" is persuasive evidence of discriminatory intent. *Holmes*, 270 N.C. App. at 27.

233. The process for amendments to S.B. 824 in the Senate and House also supports a finding of discriminatory intent. While some amendments from Democrats were proposed and accepted, the most salient ameliorative amendments that would have been reasonably understood to benefit African American voters were not. The court in *McCrory* recognized, as particularly suspect and relevant to its discriminatory-intent analysis, "the removal of public assistance IDs . . . because a reasonable legislator . . . could have surmised that African Americans would be more likely to possess this form of ID." 831 F.3d at 227–28 (citation and quotation marks omitted). The General Assembly repeated that choice here, rejecting amendments that would have added public assistance IDs as an acceptable form of ID for voting. Without any updated data on ID possession rates or additional information on public assistance IDs, it is reasonable to infer that legislators who voted against adding public assistance IDs could have surmised that public assistance ID was likely to be held disproportionately by African Americans, just as the Fourth Circuit observed in *McCrory*. In this context, the majority's decision to again reject public assistance IDs is telling and provides additional evidence of discriminatory intent. *See Holmes*, 270 N.C. App. at 28.

234. In addition to public assistance ID amendments, other amendments that would have been reasonably calculated to benefit African American voters were not adopted. For example, an amendment to extend early voting to the last Saturday before the election, a day which Senator Robinson testified was important

to voting in the African American community, was not adopted. This too adds to the circumstantial evidence supporting a finding of discriminatory intent.

235. Legislative Defendants' contention that the legislative history of S.B. 824 shows a "bipartisan" process are unavailing. The single Democratic sponsor of S.B. 824, Senator Joel Ford, admitted he was not caucusing with Democrats at the time he co-sponsored this legislation, and that he was more accurately a "man without a party." He also testified that he only agreed to support S.B. 824 because he believed it would provide free IDs at all early voting sites and at all polling places on Election Day. Neither is true, thus it appears plausible that Senator Ford himself may not have supported S.B. 824 had his Republican colleagues informed him that the bill did not provide free IDs in the manner he expected.

236. It is important not to view race and politics in such a myopic manner so as to allow the vote of one African American politician, with a singular and unique view of politics, to supplant the rational understanding of the overall facts. To use the opinions of one African American as a representation of the views of all African Americans would be the same as casting the hate of one racist amongst an entire political party. Instead, it is necessary to examine the facts and compare the applicable facts with the legal precedent available.

237. Senator Ford's position on S.B. 824 was clearly not representative of the view of Senate Democrats, much less the views held by African American Senate Democrats in relation to S.B. 824. The uniqueness of his position among those of his party was evidenced by his being the only Senate Democrat to vote in

favor of overriding Governor Cooper's veto of S.B. 824. Furthermore, Senator Ford's support of S.B. 824 was predicated on his misunderstanding of how the law would function.

238. The majority of this three-judge panel also is not persuaded that the practice of Democratic legislators of thanking their Republican counterparts during the S.B. 824 debates indicates that the bill was the product of a truly bipartisan effort. Representative Harrison and Senator McKissick each explained that offering words of thanks to colleagues is a standard courtesy in the legislature. And both, along with Senator Robinson, testified clearly that they did not view S.B. 824 as a bipartisan bill, did not believe the legislature gave adequate consideration to the bill's effects on minority voters, and did not support the bill in its final form.

239. Taken together, then, the rushed process through which S.B. 824 was enacted over Governor Cooper's veto during the lame duck session, and the rejection of certain key amendments that would have been reasonably calculated to benefit African American voters, supports the conclusion that the Republican supermajority intended to enact a voter ID law that was more restrictive and would bear more heavily on African American voters than a more flexible version that would have been passed in the subsequent long-session when true bipartisan support would have been required. This supports the inference that discrimination was a motivating factor for S.B. 824.

4. The Impact of the Official Action is a Disparate Burden on Black Voters

240. *Arlington Heights* instructs that courts also consider the "impact of the official action"—and specifically whether "it bears more heavily on one race than another." *Arlington Heights*, 429 U.S. at 266.

241. "Showing disproportionate impact, even if not overwhelming impact, suffices to establish one of the circumstances evidencing discriminatory intent." *McCrory*, 831 F.3d at 231 (footnote, citations, and quotation marks omitted). Further, Plaintiffs need not prove that S.B. 824 will "prevent[] African Americans from voting at the same levels they had in the past." *Id.* at 232. Evidence that voters of color disproportionately lack the forms of ID required under S.B. 824 "establishes sufficient disproportionate impact." *Id.* at 231.

242. The analysis by Plaintiffs' expert Kevin Quinn shows that, like its predecessor, S.B. 824 is very likely to have a disproportionate impact on African American voters. The evidence shows that African American voters are approximately 39% more likely than white voters to lack forms of qualifying ID under S.B. 824.

243. In contrast, the testimony of Legislative Defendants' expert, Dr. Janet Thornton, is of limited assistance in light of her failure to conduct her own comprehensive matching analysis. And, because an "overwhelming impact" is not required, Plaintiffs have come forward with sufficient evidence of discriminatory intent, even if we accept for the sake of argument Legislative Defendants'

contention that the true disparate impact on African Americans is somewhat lower than Dr. Quinn reports. *See McCrory*, 831 F.3d at 231 (footnote omitted).

244. Neither of the purported "fail safe" provisions of S.B. 824 alleviate this disparate impact. The evidence shows that, for at least some voters, the process for obtaining a form of qualifying ID, even the "free ID," will not be cost-free and will entail its own unique burdens. The record also shows that the burdens of obtaining these IDs will fall disproportionately on African American voters due to socioeconomic disparities in the State.

245. The reasonable impediment process also does not eliminate the disparate impact of this law. As shown by the March 2016 primary, where a similar provision was enforced under H.B. 589, reasonable impediments are not uniformly provided to voters, and the process is susceptible to error and implicit bias. And, because African American voters will lack acceptable ID at greater rates than white voters, they will be disproportionately impacted by these issues. Indeed, testimony from Plaintiffs' expert Dr. White shows that African Americans were disproportionately more likely to encounter difficulty navigating the reasonable impediment process under H.B. 589. The experience of two Plaintiffs, Paul Kearney and Daniel Smith, provides additional evidence of these shortcomings in the reasonable impediment process.

246. Legislative Defendants' reliance on South Carolina's voter ID law, which has similar ID requirements and fail safes, does not convince us that S.B. 824 will not disparately impact African American voters. The fact that a three-judge

panel precleared South Carolina's voter-ID law is inapposite to Plaintiffs' claim here because the standard for obtaining preclearance under Section Five of the VRA requires the state to prove the proposed changes neither have the purpose nor effect of denying or abridging the right to vote on account of race. *See South Carolina*, 898 F. Supp. 2d at 33 (citation omitted). In this regard, the analysis under the effects test of Section Five is similar to a discriminatory-results analysis under Section 2 of the VRA, which requires a greater showing of disproportionate impact than a discriminatory-intent claim. *See McCrory*, 831 F.3d at 231 n.8.10. Accordingly, South Carolina's analysis does not control our decision here.

247. The possibility that disparities in ID possession rates under S.B. 824 may be lower than under H.B. 589 also does not change our conclusion that the law nevertheless places disparate burdens on African American voters. The appropriate question simply is not whether S.B. 824 is less discriminatory than prior legislation, but whether in its own right it bears more heavily on African American voters. Professor Quinn's analysis, among other evidence presented by Plaintiffs, shows that it does.

248. Finally, this Court does not have to find definitively that S.B. 824 would in fact disenfranchise African American voters if it were allowed to go into effect in order to find it would have a disproportionate impact. Much has been made of the gains in turnout among African American voters in recent years. However, the fact that African American voters may be able to overcome the barriers that S.B. 824 disproportionately places in their path does not mean that this law will not

disproportionately impact them, or that it was not intended to target their access to the franchise.

249. Like the Court of Appeals at the preliminary injunction stage of this case, "we conclude, based on the totality of the circumstances, that Plaintiffs have shown . . . that discriminatory intent was a motivating factor behind enacting S.B. 824. . . . [T]he historical background of S.B. 824, the unusual sequence of events leading up to the passage of S.B. 824, the legislative history of this act, and some evidence of disproportionate impact of S.B. 824 all suggest an underlying motive of discriminatory intent in the passage of S.B. 824." *Holmes*, 270 N.C. App. at 33.

B. Defendants Cannot Demonstrate that S.B. 824 Would Have Been Enacted Without that Discriminatory Factor

250. Plaintiffs have established that racial discrimination was a motivating factor behind S.B. 824. "Once racial discrimination is shown to have been a 'substantial' or 'motivating' factor behind enactment of the law, the burden shifts to the law's defenders to demonstrate that the law would have been enacted without this factor." *Hunter v. Underwood*, 471 U.S. 222, 228 (1985).

251. "Racial discrimination is not just another competing consideration," and any deference otherwise accorded to the acts of the North Carolina General Assembly disappears once the law has been shown to be the product of a racially discriminatory purpose. *Arlington Heights*, 429 U.S. at 265-66 ("When there is proof that a discriminatory purpose has been a motivating factor in the decision . . . judicial deference is no longer justified").

252. "A court assesses whether a law would have been enacted without a racially discriminatory motive by considering the substantiality of the state's proffered non-racial interest and how well the law furthers that interest. *See Hunter*, 471 U.S. at 228-33; *see also Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 614 (2d Cir. 2016) (considering whether [non-racial] concerns were sufficiently strong to cancel out any discriminatory animus after shifting the burden under *Arlington Heights* in a Fair Housing Act claim)." *N.C. State Conference of the NAACP v. McCrory*, 831 F.3d 204, 233-34 (4th Cir. 2016) (internal quotation marks omitted). "Without deference and with the burden placed firmly on the legislature, [this Court's] . . . second step must 'scrutinize the legislature's *actual* non-racial motivations to determine whether they *alone* can justify the legislature's choices." *N.C. State Conference of the NAACP v. Raymond*, 981 F.3d 295, 303 (4th Cir. 2020) citing *McCrory*, 831 F.3d at 221.

253. The proper inquiry at this stage is into the actual purpose of the legislators who passed S.B. 824, not hypothetical or after-the-fact justifications. The Court must "scrutinize the legislature's *actual* non-racial motivations to determine whether they *alone* can justify the legislature's choices," and whether S.B. 824 would have been enacted "irrespective of any alleged underlying discriminatory intent." *Holmes*, 270 N.C. App. at 33-34.

1. The 2018 Voter ID Constitutional Amendment Did Not Require Enabling Legislation as Burdensome as Senate Bill 824

254. The mandate to enact legislation implementing the photo identification constitutional amendment cannot justify the General Assembly's actions in passing S.B. 824. *Holmes*, 270 N.C. App. at 34 ("Although the General Assembly certainly had a duty, and thus a proper justification, to enact some form of a voter-ID law, the majority of this three-judge panel does not believe this mandate '*alone* can justify the legislature's choices' when it drafted and enacted S.B. 824 specifically.") (quoting *McCrory*, 831 F.3d at 221 (citations omitted)).

255. Nothing in the text of the amendment to the North Carolina constitution mandated that the General Assembly enact a law as disproportionately burdensome on African American voters as S.B. 824. Although the amendment mandated that the General Assembly "shall enact general laws governing the requirements of such photographic identification," the amendment text also provided that the legislation implementing the constitutional amendment "may include exceptions." JX0410 at § 1; *see also Holmes*, 270 N.C. App. at 33–34 (holding that the voter ID amendment "grants the General Assembly the authority to 'include exceptions' when enacting a voter-ID law") (citing N.C. Const. art. VI, §§ 2(4), 3(2)).

256. As noted, African American voters disproportionately lack forms of qualifying identification under S.B. 824, and there is reason to believe that the Republican supermajority understood this when it enacted the law. Where the constitutional amendment itself "allows for exceptions to any voter-ID law, yet the

evidence shows the General Assembly specifically included types of IDs that African Americans disproportionately lack," the choice to pass specific implementing legislation that would disproportionately burden African American voters "speaks more of an intention to target African American voters rather than a desire to comply with the newly created Amendment in a fair and balanced manner." *Holmes*, 270 N.C. App. at 34.

2. Senate Bill 824 Is Not Alone Justified by an Interest in Addressing Voter Fraud or Voter Confidence Concerns

257. Where the evidence establishes that, at least in part, race motivated the passage of a voter ID requirement, the State's interests in preventing voter fraud or promoting voter confidence in elections are not necessarily sufficient to justify passage of a voter ID law. *McCrory*, 831 F.3d at 235. Instead of deferring to the State's interests, the proper judicial inquiry is whether the state legislature would have enacted the voter ID law "if it had no disproportionate impact on African American voters." *Id.*

258. The *McCrory* court rejected voter fraud as a neutral justification for H.B. 589 for precisely this reason, noting that that voter ID law was simultaneously "too restrictive and not restrictive enough to effectively prevent voter fraud," that is, "'at once too narrow and too broad'" to achieve its purported goal. *McCrory*, 831 F.3d at 235 (quoting *Romer v. Evans*, 517 U.S. 620, 633 (1996)). H.B. 589 was too narrow because it only applied to in-person voting, not absentee voting, despite the state's failure "to identify even a single individual who has ever been charged with committing in-person voter fraud in North Carolina," while the General Assembly

possessed "evidence of alleged cases of mail-in absentee voter fraud" prior to enacting the law. *Id.* H.B. 589 was also too broad because it "enact[ed] seemingly irrational restrictions unrelated to the goal of combating fraud," specifically "exclud[ing] as acceptable identification all forms of state-issued ID disproportionately held by African Americans." *Id.* at 236.

259. Although S.B. 824 now applies the same photo identification requirement to absentee voters as in-person voters, and it has added college and university student IDs and state government IDs, and, through subsequent legislation, public assistance IDs, to the list of qualifying forms of photo identification (JX0413, JX0915), it is still too narrow and too broad to alone be justified by the goal of addressing voter fraud. Voter fraud is a vanishingly small phenomenon in North Carolina, with only two documented cases of in-person impersonation fraud out of approximately 4.8 million votes cast in the 2016 general election, for example. A less restrictive law that did not bear as heavily on African American voters, or which included more forms of qualifying ID that African American voters would have been more likely to possess, would have been sufficient to deter the small amount of potential in person voter fraud that may occur. Instead, the General Assembly enacted its preferred and more restrictive version of a voter ID bill during the lame duck session and over the Governor's veto. Thus, Defendants have failed to demonstrate that S.B. 824 would have been enacted "if it had no disproportionate impact on African American voters." *McCrory*, 831 F.3d at 235.

260. Defendants have also failed to produce sufficient evidence of a correlation between requiring voters to produce photo identification before voting in accordance with S.B. 824 and increasing confidence in elections among North Carolina voters. In fact, 14 heard testimony from Legislative Defendants' own expert, Professor Callanan, that evidence showing a connection between voter ID laws and enhanced voter confidence is murky at best, and that a law that targets or disenfranchises a particular group of voters may even *decrease* voter confidence. (Callanan 4/22/2021 Trial Tr. at 3:09:32–3:11:10).

261. Regardless, any purported interest in addressing voter fraud or promoting voter confidence does not justify the particular requirements of S.B. 824. Just as in *McCrory*, the "record thus makes obvious that the 'problem' the majority in the General Assembly sought to remedy was emerging support for the minority party"—not concerns about voter fraud or voter confidence. *McCrory*, 831 F.3d at 238.

262. Defendants contend that the reasoning was more political than racial in nature. The electoral implications of race and political affiliation are woven together tightly in the admitted motivation for the process by which S.B. 842 was enacted. "[I]n North Carolina, African-American race is a better predictor for voting Democratic than party registration." *N.C. State Conference of the NAACP v. McCrory,* 831 F.3d 204, 225 (4th Cir. 2016). Voting in many areas of North Carolina is racially polarized. That is, "the race of voters correlates with the selection of a certain candidate or candidates." *Thornburg v. Gingles*, 478 U.S. 30, 62, 106 S. Ct.

2752, 92 L. Ed. 2d 25 (1986) (discussing North Carolina). In *Gingles* and other cases brought under the Voting Rights Act, the Supreme Court has explained that polarization renders minority voters uniquely vulnerable to the inevitable tendency of elected officials to entrench themselves by targeting groups unlikely to vote for them. *McCrory*, 831 F.3d at 214.

263. While the language of S.B. 824 does not involve the disenfranchisement of Black voters, the implementation of legislation to amend the State's Constitution does involve the direct disenfranchisement of Black voters who were without constitutional representation as the bill was passed. This is particularly true when a constitutional representation of North Carolina citizens was awaiting its opportunity to serve according to the will of the voters in less than a month. A legislature that was not "formed by the will of the people, representing our population in truth and fact, … commence[d] those actions necessary to …alter the central document of this State's laws" through the use of implementing legislation. *N.C. State Conference of the NAACP v. Moore*, 849 S.E.2d 87, 105 (N.C. Ct. App. 2020) (Young, J., dissenting). "For an unlawfully-formed legislature, crafted from unconstitutional gerrymandering, to attempt to do so is an affront to the principles of democracy which elevate our State and our nation." *Id.* As such, this legislation would not have passed *when* and *how* it was passed but for the racially motivated reasons *why* it passed.

III. The Proper Remedy Is a Permanent Injunction

264. When discriminatory intent impermissibly motivates the passage of a law, a court may remedy the injury — the impact of the legislation — by invalidating the law. *See, e.g.*, *Hunter v. Underwood*, 471 U.S. 222, 231 (1985); *Anderson v. Martin*, 375 U.S. 399, 400-04 (1964). If a court finds only part of the law unconstitutional, it may sever the offending provision and leave the inoffensive portion of the law intact. *Leavitt v. Jane L.*, 518 U.S. 137, 139-40 (1996).

265. In North Carolina, severability turns on whether the legislature intended that the law be severable, *Pope v. Easley*, 354 N.C. 544, 556 S.E.2d 265, 268 (N.C. 2001), and whether provisions are "so interrelated and mutually dependent" on others that they "cannot be enforced without reference to another." *Fulton Corp. v. Faulkner*, 345 N.C. 419, 481 S.E.2d 8, 9 (N.C. 1997).

266. This action challenges the constitutionality of S.B. 824 in its entirety, not certain challenged provisions of an omnibus bill. S.B. 824 does not contain a severability clause, and there are no provisions within the law—which serves to implement a statewide voter photo ID requirement—that can "be enforced without reference to" the overall scheme for implementing voter photo ID. Therefore, relief in this case must address S.B. 824 in its entirety.

267. "Once a plaintiff has established the violation of a constitutional or statutory right in the civil rights area, . . . court[s] ha[ve] broad and flexible equitable powers to fashion a remedy that will fully correct past wrongs." *N.C. State Conference of the NAACP v. McCrory*, 831 F.3d 204, 239 (4th Cir. 2016) (citing *Smith v. Town of Clarkton*, 682 F.2d 1055, 1068 (4th Cir. 1982)); *see also Green v.*

County School Board, 391 U.S. 430, 437-39 (1968) (explaining that once a court rules that an official act purposefully discriminates, the "racial discrimination [must] be eliminated root and branch").

268. The United States Supreme Court has established that official actions motivated by discriminatory intent "ha[ve] no legitimacy at all under our Constitution." *City of Richmond v. United States*, 422 U.S. 358, 378 (1975). Thus, the proper remedy for a legal provision enacted with discriminatory intent is invalidation. *See id*. at 378-79 ("[Official actions] animated by [a discriminatory] purpose have no credentials whatsoever; for [a]cts generally lawful may become unlawful when done to accomplish an unlawful end.").

269. The fact that the 2019 General Assembly later amended and/or modified S.B. 824 does not change our conclusion that invalidation of the law is the appropriate remedy in this case. The majority of this three-judge panel sees no evidence that subsequent amendments to S.B. 824 have eliminated the discriminatory effect of the photo ID requirement. So long as some discriminatory impact remains, as the majority of this three-judge panel finds it would, we must invalidate a law that was enacted with discriminatory intent. *See McCrory*, 831 F.3d at 240 ("While remedies short of invalidation may be appropriate if a provision violates the Voting Rights Act only because of its discriminatory effect, laws passed with discriminatory intent inflict a broader injury and cannot stand.").

270. Therefore, having found S.B. 824 in violation of the North Carolina constitutional prohibitions on intentional discrimination, this Court permanently enjoins the law in full.

CONCLUSION

271. The majority of this three-judge panel finds the evidence at trial sufficient to show that the enactment of S.B. 824 was motivated at least in part by an unconstitutional intent to target African American voters. In reaching this conclusion, we do not find that any member of the General Assembly who voted in favor of S.B. 824 harbors any racial animus or hatred towards African American voters, but rather, as with H.B. 589, that the Republican majority "target[ed] voters who, based on race, were unlikely to vote for the majority party. Even if done for partisan ends, that constitute[s] racial discrimination." *McCrory*, 831 F.3d at 233.

272. The majority of this three-judge panel also finds that the Defendants have failed to prove, based on the evidence at trial, that S.B. 824 would have been enacted in its present form if it did not tend to discriminate against African American voters. Other, less restrictive voter ID laws would have sufficed to achieve the legitimate nonracial purposes of implementing the constitutional amendment requiring voter ID, deterring fraud, or enhancing voter confidence.

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273. For the foregoing reasons, the majority of this three-judge panel holds that S.B. 824 was enacted in violation of the North Carolina Constitution, and we permanently enjoin its enforcement on that basis.

This the 17th day of September, 2021.

Michael J. O'Foghludha, Superior Court Judge

Vince M. Rozier, Jr., Superior Court Judge

J. Poovey, dissenting.

INTRODUCTION

In the November 2018 general election, the people of our State chose to approve an additional measure that contributes to certainty in our State's electoral process—that voters offering to vote must present photographic identification before voting. Thereafter, our General Assembly, the duly elected representatives of the people of our State, enacted a law to carry out this expression of the will of the people. That the presentation of photographic identification was chosen by the voters of our State to be a prerequisite act for casting a vote should not be a surprise. Presenting some form of identification is a task we must perform quite frequently in everyday life. Adding more familiarity to the process of casting a vote increases the level of certainty in the electoral process. And doing so by requiring the presentation of photographic identification ensures each person offering to vote is who they proclaim to be, thereby increasing confidence in the outcome of each election.

Plaintiffs in this case, however, claim the opposite. Rather than strengthen the overall electoral process, Plaintiffs claim the law makes the process for them and other persons in our State inherently and impermissibly different. This is so because, as Plaintiffs claim, the law was enacted with the intent to discriminate against African Americans on account of their race. The allegations underpinning Plaintiffs' claim remain unproven by the evidence presented in this case. But as the evidence does show, no registered voter in this State will be precluded from voting by the identification requirements in this law.

Despite Plaintiffs' protestations against voter identification requirements in general, the law enacted by our General Assembly in 2018 was enacted at the command of a constitutional provision and the credible, competent evidence before this three-judge panel does not suggest our legislature enacted this law with a racially discriminatory intent. Instead, the law challenged by Plaintiffs in this case provides certainty to the electoral process and, as a result, provides confidence in the electoral outcome.

Not one scintilla of evidence was introduced during this trial that any legislator acted with racially discriminatory intent. Plaintiffs' evidence relied heavily on the past history of other lawmakers and used an extremely broad brush to paint the 2018 General Assembly with the same toxic paint. The majority opinion in this case attempts to weave together the speculations and conjectures that Plaintiffs put forward as circumstantial evidence of discriminatory intent behind Session Law 2018-144. Some of Plaintiffs' witnesses testified that no voter-ID law would ever pass constitutional muster despite the recent amendment approved by the will of the people. Although express admissions of improper racial motivations are rare, the majority piles Plaintiffs' mostly uncredible and incompetent evidence to find discriminatory intent behind the General Assembly's actions.

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At the end of the day, Plaintiffs presented insufficient evidence to suggest that our legislature acted with a racially discriminatory intent and therefore failed to meet their initial burden in this case. Even if Plaintiffs did meet their initial burden, the State has shown that S.B. 824 was supported by other considerations and would have been passed absent any potential impermissible purpose. Accordingly, and for the following reasons, I respectfully dissent.

The findings of fact and conclusions of law below are this Court's proposals had it authored the majority opinion. Each finding of fact set forth or incorporated herein, to the extent it may be deemed a conclusion of law, shall also constitute a conclusion of law, and each conclusion of law set forth herein which is deemed to be more properly included as a finding of fact shall also constitute a finding of fact.

FINDINGS OF FACT

I. S.B. 824 Is Vastly Different From H.B. 589

1. This case presents a challenge to the validity and enforceability of North Carolina Session Law 2018-144 (also known as Senate Bill 824 and hereinafter referred to as "S.B. 824").

2. Broadly speaking, S.B. 824 does the following: it identifies categories of photo IDs permitted for in-person and absentee voting; it authorizes the issuance of free photo IDs; it provides a number of exceptions to the photo ID requirement; it mandates that the State Board of Elections ("State Board") engage in a variety of voter outreach and other implementation activities; and it funds the statute's implementation.

3. Any characterization of S.B. 824 as merely H.B. 589 "2.0" must be rejected. S.B. 824 differs from H.B. 589 in several material aspects.

4. H.B. 589 was not constitutionally required. S.B. 824 was enacted as implementing legislation after North Carolinians amended the North Carolina Constitution—by a vote of 55% in favor—to require "[v]oters offering to vote in person" to "present photographic identification before voting." N.C. CONST. art. VI, § 2, cl. 4; id. art. VI, § 3, cl. 2.

5. H.B. 589 was omnibus legislation that included numerous provisions unrelated to voter ID. *See* JX781. S.B. 824 is a single-issue bill focused on voter ID. *See* JX674.

6. Under H.B. 589, student IDs, government employee IDs, and public assistance IDs were not included in the list of qualifying IDs. JX781 at 2 (H.B. 589 § 2.1). Tribal IDs were accepted so long as they met certain criteria, such as having a printed expiration date. JX781 at 2 (H.B. 589 § 2.1). Under S.B. 824, student IDs approved by the State Board, government employee IDs, and tribal IDs without a printed expiration date are acceptable. JX16 at 5 (H.B. 1169 § 10); JX674 at 2 (S.B. 824 § 1.2.(a)).

7. To obtain a free photo voter ID from the DMV under H.B. 589, a voter needed to provide supporting documentation. JX781 at 5–6 (H.B. 589 § 3.1); 4/27/21 Tr. at 169:17–20. Under S.B. 824, in addition to this free DMV ID, which is still available, voters are also able to obtain a free photo voter ID from the County

Boards of Elections ("County Boards")—including during the early voting period—without needing to show any documentation. JX674 at 1–2 (S.B. 824 § 1.1(a)–(b)).

8. H.B. 589's voter ID requirements did not apply to absentee ballots, but S.B. 824's voter ID requirements do apply to absentee ballots. JX674 at 6–8 (S.B. 824 § 1.2(d)–(e)).

9. Unlike H.B. 589, S.B. 824 requires the State Board to implement "an aggressive voter education program." JX674 at 10 (S.B. 824 § 1.5(a)). This program incorporated many of the measures that the General Assembly learned about in a presentation from the State Board's Executive Director—such as working with local organizations to disseminate information to their communities, JX878 at 13, and including information on the State Board's website, JX878 at 7—but expanded on them as well, such as by mandating that the State Board have prominent signage displayed at all one-stop voting sites and precincts on election day and sending out four mailers to all residential addresses in the State, JX674 at 11 (S.B. 824 § 1.5(a)).

10. S.B. 824 requires the DMV to issue a free special ID card to individuals without application if their DMV-issued ID is canceled, disqualified, or suspended, JX674 at 9–10 (S.B. 824 § 1.3(a)–(b)), a situation H.B. 589 did not address.

11. As compared to H.B. 589, S.B. 824 lowered the age for any person to obtain a free ID from the DMV from 70 to 17. JX674 at 9 (S.B. 824 § 1.3.(a)). It lowered the age for voters to be able to use an expired form of ID from 70 to 65. *Compare* JX781 at 2 (H.B. 589 § 2.1(e)), *with* JX674 at 2 (S.B. 824 § 1.2(a)). And

S.B. 824 also allowed more types of IDs to be used without printed issuance dates. *Compare* JX781 at 2 (H.B. 589 § 2.1(e)), *with* JX16 at 5 (H.B. 1169 § 10).

12. H.B. 589, as originally enacted, was a strict voter ID law. In order to cast a ballot that would count, a voter who appeared at the polls without ID would have to return to the County Board of Elections before canvass with qualifying ID. JX781 at 4 (H.B. 589 § 2.8(c)). S.B. 824 takes a non-strict approach to voters who do not possess compliant identification documents.

13. As amended, H.B. 589 allowed voters without qualifying photo ID to cast a provisional ballot accompanied by a reasonable impediment form if they had an impediment to *obtaining* qualifying ID. JX868 at 7 (H.B. 836 § 8(d)(a)). S.B. 824, by contrast, allows voters to cast a provisional ballot accompanied by a reasonable impediment form if they have an impediment to *presenting* qualifying ID. JX674 at 3 (S.B. 824 § 1.2(a)(d)(2)).

14. H.B. 589's reasonable impediment process required the voter to present alternative identification in the form of (i) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that showed the name and address of the voter or the voter's voter registration card, or (ii) the last four digits of the voter's Social Security number and the voter's date of birth. JX868 at 7 (H.B. 836 § 8(d)(c)). S.B. 824's reasonable impediment process does not require alternative ID.

15. Under H.B. 589, any registered voter of the county could make a challenge to a reasonable impediment declaration by submitting clear and convincing evidence against the factual veracity of a voter's stated impediment. JX868 at 8–9 (H.B. 836 § 8(e)(b)(1)). S.B. 824 does not provide for challenges to reasonable impediment declarations.

16. Under H.B. 589, a County Board could reject a provisional ballot accompanied by a reasonable impediment declaration if the Board had grounds to believe that the declaration was "factually false, merely denigrated the photo identification requirement, or made obviously nonsensical statements." JX868 at 8 (H.B. 836 § 8(e)(a)(1)). Under S.B. 824, by contrast, a County Board may reject a provisional ballot accompanied by a reasonable impediment declaration *only if* the Board has grounds to believe that the declaration "is false." JX674 at 4 (S.B. § 1.2(a)(e)). Furthermore, per the State Board's proposed regulations, the County Boards may reject a provisional ballot accompanied by a reasonable impediment declaration only if the County Board *unanimously* determines that the declaration is false. 08 N.C.A.C. 17.0101(b)(3). The lack of an appeal process for disallowed votes is mitigated by the probable infrequency of challenges, and the minimal likelihood of success, after a bipartisan County Board unanimously determines that a reasonable impediment declaration is not true.

II. Experience Under H.B. 589

17. Although the General Assembly made significant changes to S.B. 824 compared with the State's previous voter-ID bill, the experience under H.B. 589 is relevant to (1) the State Board's ability—as understood by the General Assembly—to educate voters and train poll workers, and (2) the General Assembly's knowledge of the minimal effect that even this more restrictive voter-ID law had on voters' ability to cast a ballot successfully.

a. Voter Education And Poll Worker Training Under H.B. 589

18. The State Board and County Boards extensively publicized H.B. 589's voter photo ID requirements and trained poll workers in administering them.

19. Before passing S.B. 824, the General Assembly was made aware of these publicization and training efforts by Ms. Kimberly Westbrook Strach, the then-Executive Director of the State Board, who gave a presentation to the Joint Elections Oversight Committee on November 26, 2018, the day before S.B. 824 was formally introduced. JX878.

20. Ms. Strach wanted to ensure that, in implementing H.B. 589, the State Board was doing everything it could to assist people with getting an acceptable photo ID that they could use in the 2016 election. 4/27/21 Tr. at 159:21–24.

i. Targeted Mailings

21. To that end, the State Board did a number of targeted mailings to registered voters that the State Board believed might not have acceptable photo ID. The State Board's Voter Outreach Team then worked with those voters who responded requesting assistance to fulfill their needs. 4/27/21 Tr. at 160:15–19.

22. The Voter Outreach Team was tasked with doing whatever it could to try to assist voters in obtaining acceptable photo ID. 4/27/21 Tr. at 167:1–3.

23. The first two targeted mailings resulted from H.B. 589 § 6.2(6)'s requirement that at any primary or election between May 1, 2014, and January 1, 2016, poll workers were required to ask voters presenting to vote in person whether they possessed one of the forms of photo ID acceptable under H.B. 589. JX781 at 13 (H.B. 589 § 6.2(6)). If the voter indicated he or she did not have an acceptable photo ID, the poll worker was required to ask the voter to sign an acknowledgment of the photo ID requirement form and be given a list of types of qualifying photo ID and information on how to obtain those IDs. *Id.* In accordance with this provision, the State Board collected these forms during each election in 2014 and 2015. 4/27/21 Tr. at 161:3–10.

24. In 2014, 10,743 voters signed the acknowledgment form. JX878 at 17. The State Board sent a targeted mailing to these voters to ascertain whether they did not in fact have an acceptable ID and whether they needed the State Board's assistance. 4/27/21 Tr. at 162:12–21.

25. 2,353 voters responded. Of these responders, 95% indicated that they did in fact possess acceptable photo ID. 51 voters requested assistance from the State Board. JX878 at 18.

26. The State Board repeated this process with the 823 voters who signed an acknowledgment form during the 2015 elections. JX878 at 17; 4/27/21 Tr. at 162:22–163:7.

27. The State Board also performed two targeted mailings based on no-match analyses.

28. The first mailing resulted from a no-match analysis the State Board conducted. The Board compared a DMV database and the voter registration list to identify voters who could not be matched with a DMV-issued ID card. JX878 at 19–20; 4/27/21 Tr. at 164:7–17. The State Board then sent a mailing to the 254,391 individuals the no-match analysis identified, and 20,580 voters responded. JX878 at 19–20. Of these responders, 91% indicated that they possessed acceptable photo ID. JX878 at 20. 633 voters requested assistance, which the Voter Outreach Team provided. JX878 at 20.

29. The second mailing resulted from a no-match analysis that Dr. Charles Stewart had performed as part of the *N.C. State Conference of the NAACP v. McCrory* litigation. JX878 at 21. The State Board sent a mailing to 209,253 voters that the State Board's no-match analysis had not identified and received 8,440 responses. JX878 at 21; 4/27/21 Tr. at 165:10–19. Of these responders, 76% indicated that they possessed acceptable photo ID, and 782 voters requested assistance, which the Voter Outreach Team provided. JX878 at 21.

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ii. Community Outreach

30. The State Board created educational flyers, held events with community groups, and provided them with materials that they could disseminate to other members of their groups. 4/27/21 Tr. at 173:3–15; JX878 at 11, 13–14. The Voter Outreach Team conducted more than 200 community presentations and events. JX878 at 13.

31. The State Board created the materials distributed to community groups uniformly so that the State Board sent a consistent message. 4/27/21 Tr. at 173:23–174:8.

32. Some of these materials were generic enough to be used apart from H.B. 589. 4/27/21 Tr. at 175:2–20.

33. The State Board also partnered with specific groups to reach certain communities, like North Carolinians with disabilities, the elderly, or those living in poor socioeconomic conditions. 4/27/21 Tr. at 174:12–175:1.

34. The State Board sent roughly 12.7 million Voter Guides to every residential address between 2014 and the 2016 primaries that highlighted assistance options and outlined H.B. 589's requirements and exceptions. JX878 at 10.

iii. Media Campaign

35. The State Board engaged with a professional marketing group to develop messaging for a statewide publicization campaign for H.B. 589. JX878 at 5. That campaign consisted of the numerous facets below.

36. TV and radio ads were run on approximately 30 TV stations and more than 45 radio stations. The ads, in 30- and 60-second forms, informed the public that photo ID would be required for most voters beginning in 2016, exceptions existed, assistance in obtaining free IDs was available, and voters unable to obtain acceptable ID were able to present in person at the polls and request assistance or to vote by mail. JX878 at 6.

37. Some of the TV and radio ads were "evergreen" and could be recycled for future elections. 4/27/21 Tr. at 175:15–20. The State Board wanted to be sure to create TV and radio ads that could be used in future elections. 4/27/21 Tr. at 175:12–15.

38. A stand-alone website was created that explained H.B. 589's photo ID requirements and exceptions with a FAQ. The website also allowed organizations and the public to request assistance or printed materials. JX878 at 7.

39. Billboards informing voters of key election dates and the address of the stand-alone website were set up. JX878 at 8.

40. Finally, there were press releases and interviews, as well as a Public Information Officer that joined the State Board to coordinate public education efforts. JX878 at 9.

iv. Poll Worker And County Board Training

41. The State Board developed training curricula in conjunction with the County Boards in preparing to administer the photo ID requirements of H.B. 589 in the 2016 elections. 4/28/21 Tr. at 4:3–9.

42. Traditionally, the County Boards trained their own precinct officials. But with H.B. 589, the State Board wanted to ensure that the training provided to all precinct officials and election officials across the state was uniform so that everyone received the same information. 4/28/21 Tr. at 4:12–23.

43. The State Board developed several training materials and reference guides.

44. One training item was video modules that the State Board required all County Boards to use during their precinct training for the 2016 March primary election. 4/28/21 Tr. at 5:1–3. The videos were professionally produced to educate poll workers about standard procedures regarding photo ID. JX878 at 27.

45. Another training item and reference guide was the tabletop station guide—provided to the County Boards for each of their polling places—that included scripts for different situations a poll worker might encounter in the polling place. 4/28/21 Tr. at 5:4–14; JX878 at 28.

46. The State Board also created the Election Official Handbook, which was a more in-depth guide for situations that could come up during the election. 4/28/21 Tr. at 10:18–11:2.

47. The State Board also created mandatory precinct signage that included detailed guidance about alternative voting procedures, exceptions, and ID requirements. JX878 at 30.

48. The State Board conducted several train-the-trainer presentations and webinars and invited all the County Board directors, staff, members, and precinct officials to attend. During these webinars, the State Board explained the resources that the State Board was providing and requiring the County Boards to use in their trainings. 4/28/21 Tr. at 6:24–7:10; JX878 at 29.

49. The State Board opted for the train-the-trainer model because it is preferable to have each County Board train their own staff. The State Board "wanted to give them some flexibility in how they conducted the training but . . . wanted to make sure that the content was uniform and consistent." 4/28/21 Tr. at 8:10–13.

50. As Ms. Strach estimated, more than 20,000 election officials received training for the March 2016 primary. 4/28/21 Tr. at 5:19–24.

51. The reasonable impediment declaration was a "prominent part" of the training. 4/28/21 Tr. at 7:11–16.

b. Voting Under H.B. 589

52. H.B. 589 was in effect for the March 2016 primary election. PX101 at 145:4–15.

53. 2.3 million people voted in that election, which was a record turnout at the time. 4/28/21 Tr. at 165:18–24. Ms. Strach's presentation to the General Assembly on November 26, 2018 mistakenly indicated that 2.7 million people voted because she included the total number of voters for both the March 2016 primary and June 2016 primary elections. 4/28/21 Tr. at 31:3–12; JX878 at 32.

54. In Ms. Strach's presentation, the General Assembly learned that 1,048 voters cast a provisional ballot accompanied by a reasonable impediment declaration in the March 2016 primary. JX878 at 31.

55. The General Assembly also learned that 1,248 voters did not present acceptable photo ID, cast a provisional ballot with an accompanying reasonable impediment declaration, or return to their County Board to cure a provisional ballot by the deadline. JX878 at 32.

56. Ms. Strach's presentation, however, did not say why any of these voters did not cast a provisional ballot with a reasonable impediment declaration, whether the voters had an ID that was acceptable under H.B. 589, or whether they had an ID that would be acceptable under S.B. 824. JX878 at 32.

57. Ms. Strach's presentation did not provide any racial data for any of the information she explained. JX878.

58. In total, these 2,296 voters (1,048 from Paragraph 54 and 1,248 from Paragraph 55) represented approximately 0.1% of all ballots cast in that election. Therefore, approximately 99.9% of voters were not required to cast a provisional ballot due to a lack of voter ID under H.B. 589.

59. Of the voters who cast a provisional ballot accompanied by a reasonable impediment declaration, 184 ballots were not counted, as indicated by Ms. Strach. JX878 at 31.

60. Based on publicly available voter history data, 5 of these 184 ballots actually counted. LX188A.

61. Thus, the ballots rejected from voters who claimed a reasonable impediment to obtaining a form of ID acceptable under H.B. 589 represented less than 0.01% of all ballots cast in that primary election.

62. The record provides greater detail on these ballots, including the reasons why they were rejected, although this information was not presented to the General Assembly.

63. Thirty-four provisional ballots with an accompanying reasonable impediment declaration were rejected for reasons that are not grounds to reject such ballots under S.B. 824, including because the voter forgot to bring an ID or kept it out of state, had not yet received a qualifying ID, or disagreed with the voter-ID law. LX188A at 3–6.

64. Over 50 provisional ballots with an accompanying reasonable impediment declaration were rejected at least in part because voters failed to provide the requisite alternative ID. LX188A. Such alternative ID is no longer required under S.B. 824.

65. Over 50 provisional ballots with an accompanying reasonable impediment declaration were cast by college-age voters at a one-stop early voting site on Duke University's campus. LX188A. Duke now has an approved voter ID under S.B. 824, so if these voters were Duke students, they could now use the Duke voter ID to vote.

66. Three provisional ballots with an accompanying reasonable impediment declaration were not counted for lacking required HAVA documents, which is an independent basis for invalidity that is unrelated to the voter-ID requirement. LX188A at 9.

67. Additionally, the option to obtain free, no-documentation ID during early voting was not available to the 81 voters who voted early under H.B. 589, submitted a reasonable impediment declaration, and did not have their ballots counted. LX188A.

III. Enactment Of S.B. 824

68. The record shows that S.B. 824 was the result of a bipartisan effort to implement the voter-ID constitutional amendment.

a. The General Assembly Proposes The Voter-ID Amendment

69. The General Assembly placed six amendments on the 2018 ballot. *See* 2018 N.C. Sess. Laws 96; 2018 N.C. Sess. Laws 110; 2018 N.C. Sess. Laws 117; 2018 N.C. Sess. Laws 118; 2018 N.C. Sess. Laws 119; 2018 N.C. Sess. Laws 128.

70. Several of those amendments, including the voter-ID amendment, were challenged on the ground that their ballot language was vague. *Cooper v. Berger*, No. 18CVS9805, 2018 WL 4764150, at *3 (N.C. Super. Ct. Aug. 21, 2018).

71. A state court agreed as to two amendments, and the General Assembly reconvened to rewrite them—but not the voter-ID amendment. *See* 2018 N.C. Sess. Laws 132; 2018 N.C. Sess. Laws 133; *see also* JX31 at 49, 99–100.

72. The voter-ID amendment required implementing legislation.

73. One of the other amendments, commonly known as Marsy's Law, also required implementing legislation. *See* JX27 ¶ 34.

74. The General Assembly did not pass implementing legislation at the same time it proposed these amendments. That has happened only twice in North Carolina history, both in 1971. JX27 ¶ 34.

75. Both amendments' official explanations noted that legislation would be needed and were included in the judicial voter guide that was sent to the address of every registered voter in the state. JX27 ¶ 34, 4/14/21 Tr. at 72:19–23; JX843 at 18–20, 22.

76. North Carolina voters adopted four of the six amendments, including the voter-ID amendment. JX874.

77. The Voter-ID amendment was approved with 55.49% of the vote, representing 2,049,121 voters' approval. JX842 at 2.

b. The General Assembly Reconvenes After The Election

78. The 2018 election was the first time in North Carolina history that a party lost a legislative supermajority while the opposing party held the governorship. 4/14/21 Tr. at 32:4–9; 4/22/21 Tr. at 20:14–20.

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79. But lame-duck legislative sessions after power-shifting elections are common in U.S. legislative practice. "Legislative action in the lame duck period . . . is normal throughout several state legislatures of the United States and in the United States Congress." JX27 ¶ 9. For example, the U.S. Congress has convened in every lame-duck period since 1998. JX27 ¶ 9. And since 1954, Congress has called a lame-duck session every single time there has been a power-shifting election. 4/22/21 Tr. at 23:21-24.

80. In the 2018 lame-duck session, the General Assembly acted on 36 bills and resolutions, passing 10 laws in total. JX27 ¶ 11. Among these was S.B. 824.

81. Early drafts and legislative communications in the record indicate that South Carolina's voter-ID law was taken as the baseline for S.B. 824. *See* JX863; 4/22/21 Tr. at 138:16–139:14; *see also* JX857; 4/22/21 Tr. at 139:16–140:5.

82. South Carolina's voter-ID law had been precleared under Section 5 of the Voting Rights Act by a three-judge panel of the United States District Court for the District of Columbia. *See* JX841 (*South Carolina v. United States*, 989 F. Supp. 2d 30 (D.D.C. 2012)).

83. During the General Assembly's consideration of S.B. 824, no rules were violated nor did the General Assembly in any way exceed its authority in the enactment of S.B. 824. *See* 4/14/21 Tr. at 38:4–10.

c. Bipartisan Process

84. The process by which S.B. 824 traversed the General Assembly was bipartisan.

85. Joel Ford, an African American Democrat and then-Senator, was one of the primary sponsors of S.B. 824. 4/20/21 Tr. at 125:16–19.

86. Several changes were made to the bill based on Democrats' feedback, even without the need for formal amendments.

87. Before a draft of S.B. 824 was formally introduced in the Senate, Republicans, including Senator Krawiec, reached out to certain Democrats, including Senator Clark and Senator Ford, to ask for input on the legislation and with hopes that those contacted might sponsor the legislation. PX5 ¶ 12.

88. Senator Ford had "significant influence in crafting S.B. 824" and "worked closely with members of the majority party on crafting this legislation in a bipartisan manner before S.B. 824 was introduced." *Id.*

89. When the bill was introduced in the Senate, there had already been 24 changes made to the legislation since it had first been circulated, as indicated by Senator Krawiec. Those changes resulted from discussions with Democrats, the Joint Legislative Oversight Committee, the Elections Committee, and the Rules Committee. JX772 at 3:4–13. A draft of the bill had been circulated broadly on November 20, 2018, 4/20/21 Tr. at 52:23–53:12, a week before the bill was formally introduced.

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90. Democrats did offer amendments to S.B. 824, some of which were accepted, even though the Republican supermajority had the votes necessary to pass the bill without any Democratic support. 4/20/21 Tr. at 184:10–12. Often the majority party in the North Carolina Senate will not even consider amendments offered by the minority party or put them up for a vote; instead, the amendments are typically tabled. 4/29/21 Tr. at 43:14–22 (Senator McKissick). That did not occur with S.B. 824, where the Republican supermajority accepted three amendments offered by Democrats in the Senate.

91. During debate on S.B. 824, the Senate considered 11 amendments. PX5 ¶ 16.

92. The Senate adopted six of those amendments, including substantive Democratic amendments. The Senate adopted:

a. Senator Ford's amendment, which provided that free photo voter-ID cards shall be issued by the County Boards "at any time, except during the time period between the end of one-stop voting for a primary or election . . . and election day for each primary and election," JX645;

b. Senator McKissick's amendment, which required the County Boards to notify voters with a County Board-issued photo ID that the ID was going to expire 90 days before its expiration date, extended the expiration date of those free photo voter-ID cards from eight to ten years, and extended the exception to the photo-ID requirement when a natural disaster occurs from 60 to 100 days of an election, JX636; and

c. Senator Clark's amendment, which required the placement of a statement in all voter educational materials and informational posters reassuring voters that "[a]ll registered voters will be allowed to vote with or without a photo ID card" and explaining the reasonable impediment option, JX635.

93. The Senate also adopted an amendment by Senator Daniel, a Republican, that provided greater specificity regarding the circumstances and standards under which a voter without an acceptable photo ID could sign a reasonable impediment declaration. JX644. Senator Daniel offered this amendment to address concerns as a result of discussions with Senator McKissick. JX772 at 12:9–15; LX262 at 3; 4/29/21 Tr. at 72:11–73:2.

94. The House considered 13 amendments. JX622–JX634.

95. The House adopted seven of those amendments, including substantive Democratic amendments. The House adopted:

a. Representative Beasley's amendment, which required that the expiration of a free photo voter-ID card would not create a presumption that a voter's voter registration had expired and mandated the placement of a disclaimer to that effect on the ID cards, JX633;

b. Representative Floyd's amendment, which made applicable S.B. 824's photo-ID requirements to absentee ballot requests and absentee ballots, JX631;

c. Representative Charles Graham's amendment, which added to the list of acceptable photo IDs a tribal enrollment card issued by a state or federal recognized tribe, JX624; and

d. Representative Harrison's amendment, which altered the natural disaster exception from requiring a disaster declaration from both the U.S. President and the Governor of North Carolina to requiring a disaster declaration from either the President or the Governor. JX634.

96. Less than half of the non-withdrawn amendments offered by Democrats were tabled or rejected, and the record reveals that the General Assembly had reasonable, nondiscriminatory reasons to have done so:

a. Senator Van Duyn offered an amendment that would have delayed the date by which the County Boards were required to make free photo voter IDs available from May 1, 2019, to July 1, 2019. JX639. The Senate tabled the amendment, with even Senator McKissick voting to table it. JX668; PX5 ¶ 21.

b. Senator Lowe offered an amendment that would have provided an extra day of early voting, which the Senate voted to table. JX638; PX5 ¶ 21. Whatever the policy benefits or detriments of such a change, it is not directly relevant to voter ID. In 2019, the General Assembly also adopted the extra day of early voting in S.B. 683. JX783.

c. Senator Clark offered another amendment that would have allowed the free photo voter-ID cards to be used for purposes other than voting, which the Senate voted to table. JX640; PX5 ¶ 21. Whatever the benefits or detriments of such a policy, even if adopted it would not have affected voters' ability to comply with the voter-ID law.

d. Senator Woodard offered an amendment that would have allowed all types of state and federal government-issued IDs to be used as voter IDs, which the Senate voted to table. JX637; PX5 ¶ 21. Plaintiffs presented no evidence that the General Assembly knew how many IDs it would have been adding to the pool of qualifying IDs, and the amendment did not include standards or parameters about what constituted an acceptable state or federal ID. Plaintiffs also did not present any evidence about how many voters would have one of these types of IDs but not any other, nor the racial breakdown of any such voters. These are nonracial reasons to have rejected the amendment.

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e. Representative Bobbie Richardson offered an amendment that would have added state and federal public assistance IDs to the list of qualifying photo IDs, JX622, and Representative Fisher offered an amendment that would have added high school IDs, JX632. The House rejected both amendments. Representative Lewis spoke against Representative Richardson's amendment, explaining that North Carolina could not impose requirements on how the federal government issued IDs. JX777 at 101:15–102:12. Even Representative Richardson herself stated that she understood and accepted Representative Lewis's justifications for urging his fellow members to vote against the amendment. JX777 at 102:22–103:2. Plaintiffs did not present evidence that the General Assembly knew how many IDs it would have been adding to the pool of qualifying IDs or how many voters would have one of these types of IDs but not any other (nor the racial breakdown of such voters) for these amendments either.

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97. The House also rejected several amendments offered by Republicans. The House rejected:

a. Two amendments by Representative Pittman. One amendment would have allowed the County Boards to issue free photo voter IDs only to registered voters who did not have a different qualifying form of photo ID. JX623. The other amendment would have removed college and university approved student IDs from the list of qualifying photo IDs. JX626.

b. One amendment by Representative Warren that would have required voters casting a provisional ballot with a reasonable impediment declaration to include their date of birth and Social Security number or driver's license and allowed County Boards to reject provisional ballots accompanied by reasonable impediment declarations if the Boards had reason to believe the declaration was factually false, merely denigrated the photo ID requirement, or made obviously nonsensical statements. JX629.

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98. In both the Senate and the House, Democrats offered all the amendments that they wanted to offer to S.B. 824 at that time. 4/20/21 Tr. at 51:20–24 ("Q. Just to clarify my question, there were no[] [amendments] that you had in mind at that time that you withheld from the process or any member of your caucus did?" Representative Harrison: "No, right. That's correct, we didn't – not that I recall."); 4/21/21 Tr. at 42:9–12 ("Q. And so if no other amendments were offered by the Democrats that was a decision that was made by the caucus?" Senator Robinson: "That was a decision – yeah, we made them collectively.").

99. As the bill worked its way through the General Assembly, Democratic members thanked the Republican supermajority for how they handled the bill, expressing gratitude that the majority was open and inclusive and for listening to Democrats. This Court would find these statements to be credible indications of the bipartisan process employed in passing S.B. 824.

a. Democratic Senator McKissick spoke during S.B. 824's third reading, saying "I'd just like to say thank you to Senator Daniel and Senator Krawiec for their work on the bill and for being open and including in listening to us on the other side of the aisle in trying to come up with something that is reasonable in terms of its approach. So I want to thank you for that effort." JX773 at 3:3–8.

b. By contrast, during H.B. 589's third reading, Senator McKissick had no kind words for the Republican majority or the bill, saying "This bill greatly, greatly concerns and disappoints me. This bill basically reverses decades of progressive legislation that we've had here in North Carolina that have increased voter participation." JX509 at 39:19–23.

c. Democratic Senator Smith said during the second reading in the Senate, "I want to thank the bill sponsors for the hard work that you have done in negotiating and accepting many of the amendments that have been placed before you." JX772 at 44:16–19.

d. Democratic Senator Van Duyn said during the second reading in the Senate, "I want to very sincerely acknowledge the work that Senator Daniel and Senator Krawiec did, particularly around amendments that have been brought to you by my colleagues, my Democratic colleagues. I'm very grateful for every one that you've incorporated." JX772 at 55:1–6.

e. Democratic Senator Woodard also had appreciative words during the second reading in the Senate, saying "[W]e appreciate the Republican Caucus amending the bill to allow issuance of voter IDs during early voting, . . . and we appreciate the dialogue and the 34 [sic] changes that Senator Krawiec cited." JX772 at 17:16–20.

f. During debate on S.B. 824 in the House, Democratic Representative Harrison had similar words of praise, stating "I did want to start by thanking Chairman Lewis because I think he's done a really terrific job working with us to help improve the bill. And this bill is a much better bill than the bill that left this chamber in 2013. So I want to thank him for that." JX777 at 116:20–117:2.

g. During a House Elections and Ethics Committee meeting, Representative Harrison said, "I wanted to thank Chair Lewis and the rest of the committee for working with us as we tried to improve this bill." JX776 at 98:17–19.

100. Democrats voted for S.B. 824 as it moved through the General Assembly.

101. Senator Ford, Senator Don Davis, and Senator Clark voted for S.B. 824 on its second reading in the Senate. JX663.

102. Senator Ford and Senator Davis voted for the bill on its third reading in the Senate. JX662. Senator Clark was absent from the third vote, JX662, but there was no substantive change in the bill between the second and third reading.

103. Senator Ford voted to override Governor Cooper's veto. JX647. Although Senator Clark and Senator Davis voted to sustain the veto, this was the first time that either voted against the bill.

104. Democratic Representatives Duane Hall and Ken Goodman voted for the bill on its second and third readings in the House. JX648; JX649.

105. Representative Hall voted to override Governor Cooper's veto and Representative Goodman did not vote either way; he was absent. JX646.

d. No Direct Evidence Of Discriminatory Intent

106. The record is devoid of direct evidence that any member of the General Assembly voted for S.B. 824 with the intent to discriminate against African Americans or to prevent African Americans from voting because they predictably vote Democrat.

107. As explained above, Democratic legislators, including several African American Democrats and members of other racial minorities, supported and actively participated in crafting S.B. 824. *See* 4/20/21 Tr. at 125:16–19; 4/23/21 Tr. at 5:20–24; PX5 ¶ 12; JX624; JX633; JX634; JX635; JX636; JX645; JX646; JX647; JX648; JX649; JX662; JX663.

108. No witness, including witnesses who were members of the General Assembly when S.B. 824 was under consideration, testified that any member of the General Assembly voted for S.B. 824 for discriminatory reasons. *See N.C. State Conference of the NAACP v. McCrory,* 831 F.3d 204, 221 (4th Cir. 2016) (acknowledging that "outright admissions of impermissible racial motivation are infrequent") (citation and quotation omitted). However, Plaintiffs' case improperly relies on speculation and presumes discriminatory intent. *See N.C. State Conference of the NAACP v. Raymond,* 981 F.3d 295, 303 (4th Cir. 2020) (recognizing the presumption of legislative good faith).

109. This Court finds as credible Plaintiffs' own witness, Representative Harrison, who testified that she "cannot say that racial bias entered into it and [she] would not say that racial bias entered into it." 4/20/21 Tr. at 118:25–119:2. If Plaintiffs' own witness, who was in the General Assembly and actively participated in the passage of this legislation, did not then and does not now attribute the passage of S.B. 824 with any discriminatory intent, then this Court certainly will not either.

110. It is clear from the evidence introduced during this trial that the General Assembly passed this bill during the November 2018 session solely based on their unique position of being able to override the veto of Governor Cooper—who had made clear that he was not a supporter of voter ID. 4/20/21 Tr. at 93:1–11. This action was completely lawful and within their authority.

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111. After the General Assembly passed the bill, the Governor vetoed it and issued a veto message:

> Requiring photo IDs for in-person voting is a solution in search of a problem. Instead, the real election problem is votes harvested illegally through absentee ballots, which this proposal fails to fix. In addition, the proposed law puts up barriers to voting that will trap honest voters in confusion and discourage them with new rules, some of which haven't even been written yet. Finally, the fundamental flaw in the bill is its sinister and cynical origins: It was designed to suppress the rights of minority, poor and elderly voters. The cost of disenfranchising those voters or any citizens is too high, and the risk of taking away the fundamental right to vote is too great, for this law to take effect. Therefore, I veto the bill. JX687.

112. Plaintiffs' witnesses either did not know the legislators' intentions, had no evidence of their intentions, or had not analyzed their intent. 4/29/21 Tr. at 62:4–6 (Senator McKissick); 4/21/21 Tr. at 54:21–25 (Senator Robinson); 4/13/21 Tr. at 25:22–25 (Professor Anderson); *id.* at 112:3–5 (Professor Leloudis); 4/16/21 Tr. at 77:8–12 (Professor White); 4/14/21 Tr. at 31:23–32:3 (Ms. Faires).

113. Indeed, Ms. Faires's report and testimony does not address whether S.B. 824 was passed with racially discriminatory intent, *id.* at 31:23–32:3, and her testimony did not provide any basis to distinguish the General Assembly's purposes in passing S.B. 824 from its purposes in enacting any of the other bills that it passed in the lame-duck session, *id.* at 55:6–10, such as H.B. 1108 (An Act to Modify Inmate Pharmacy Purchasing and Monitoring) or S.B. 823 (An Act to Provide Additional Disaster Relief in Response to Hurricane Florence), JX25 ¶ 25.

e. Race-Neutral Reasons For Enacting S.B. 824

114. While devoid of any direct evidence of discriminatory intent, the record contains race-neutral justifications for enacting S.B. 824.

115. The North Carolina constitution requires the General Assembly to enact a voter-ID law. N.C. CONST. art. VI, § 2, cl. 4; *id.*, art. VI, § 3, cl. 2.

116. Several legislators, including those who voted for S.B. 824 and those who voted against it, cited this requirement throughout the legislative process as the reason for proceeding with S.B. 824. *See* JX771 at 3 (Representative Lewis: "We are here today to do the people's business, which is to adopt a law implementing the constitutional amendment that requires a photo ID to vote."); JX772 at 2 (Senator Krawiec: "On Election Day, voters made it clear that they had decided that we needed to add a voter ID to our Constitution. So we're following through on that decision."); JX772 at 16 (Senator Woodard: "[W]e are here this week to honor the majority of North Carolina's voters and work to craft enabling legislation"); *id.* at 38 (Senator Tillman: "November 6th, the people of this state voted rather strongly that they wanted a voter ID, photo voter ID."); JX773 at 3 (Senator McKissick: "While I

prefer the bill were it not necessary, we have a constitutional amendment, so it is. So I think it's best that we try to move forward with it the best we can."); JX777 at 50 (Speaker Moore: "The chair would point to—would state that, number one, this bill is to implement a constitutional amendment that was passed by the people of the State at the ballot box.").

117. Fulfilling a constitutional mandate was a legitimate, race-neutral motivation for enacting S.B. 824.

118. This Court finds Senator Ford's statement on another race-neutral reason for enacting S.B. 824 as credible evidence: "Voter ID plays an important role in protecting the integrity of elections and public confidence in election results. When properly crafted [like S.B. 824], voter ID legislation promotes both confidence in the integrity of election results and free and fair access to the franchise." PX5 ¶ 24.

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119. Interest in preserving election integrity and public confidence in election integrity are also race-neutral motivating factors behind S.B. 824. *See* JX772 at 2–3 (Senator Krawiec: "And our goal has been to defend against potential voter fraud, restore faith to over voter system, while not making it difficult for those eligible to vote, and this bill secures our elections process and makes it easy and free for everyone to obtain their ID and cast their ballot."); *id.* at 16–17 (Senator Woodard: "As we approached this week, we set a goal of having a voter ID that would be secure, simple, and easy, without disenfranchising voters and potential voters. Secure and correctly identifying the voter who presents to case his or her ballot, not restore but maintain the integrity and faith in our current system."); *id.* at 38 (Senator Tillman: "A few short years ago, Georgia implemented photo voter ID. Voter participation went up in that very next election. Minority voter participation went up in that election. They had confidence that their vote was not going to be diluted by a fraudulent vote. That's all this is assuring to do[.]"); JX776 at 96 (Representative Warren: "I support this, and I really encourage everybody who really is conscientious about protecting the integrity of the vote, vote for the bill as well."); *id.* at 114 (Representative Blust: "So this bill doesn't include all kinds of fixes we may need for other voter fraud or voter integrity issues, but this is a necessary step to make sure that the person is who that person is claiming to be."); JX780 at 14 (Representative Lewis: "It is impossible to catch fraud if you aren't looking for it, and it's clear that our current system of in-person voting does not

allow us to even track these problems, much less prosecute offenders. And that's the reason that voter ID has been adopted in 36 states and around the world.").

120. Preserving election integrity was a legitimate, race-neutral motivation for enacting S.B. 824.

121. "There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters." JX837 at 9 (*Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (plurality op.)).

122. "While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear." *Id.*

123. "[P]ublic confidence in the integrity of the electoral process has independent significance, because it encourages citizen participation in the democratic process." *Id.* at 197.

124. In making these observations, the U.S. Supreme Court relied on the Carter Baker Report, *see id.*, which Professor Callanan also found to be consistent with his conclusions. 4/22/21 Tr. at 46:19–20; LX1.

125. As Professor Callanan's testimony shows, and as this Court would find, voter fraud is "a real phenomenon." 4/22/21 Tr. at 46:21–22; JX25 ¶¶ 40–45; LX90. And while "there is some scientific support for the expectation that voter-ID laws may increase public confidence in elections," 4/22/21 Tr. at 55:25–56:2, "there's nothing in the political science literature to suggest that coordinated voter impersonation would not be possible in North Carolina." 4/22/21 Tr. at 52:1–3.

126. Fraud and multiple voting "both occur" and "could affect the outcome of a close election[,]" as evidenced by the Carter Baker Report. LX1 at 26. "The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." *Id.*

127. North Carolina has recently experienced significant election fraud that voter-ID laws can prevent or deter—an objective that will increase voters' confidence in the electoral process. Confidence in an outcome requires a level of certainty in how that outcome is reached, and in the context of an election, confidence in the outcome requires certainty in how the electoral process is conducted. If there is not a sufficient level of certainty in that process, then each voter in our state cannot be sufficiently confident that on election day the will of the people has been ascertained, fairly and truthfully, once each vote has been counted.

128. In the 2016 general election, North Carolina saw 441 felons and 41 non-citizens cast ballots when they were ineligible to do so. JX695 at 71–72.

129. The evidence also shows thousands of non-citizens of voting age living in North Carolina in recent years. JX695 at 65.

130. A photo-ID requirement makes voting by unauthorized individuals more difficult because there are often legal barriers to obtaining the forms of identification required. JX25 ¶ 38 & n.58.

131. In the 2018 election—the election just before the General Assembly enacted S.B. 824—North Carolina also experienced serious election fraud in the form of a ballot-harvesting scheme in the race for the Ninth Congressional District seat. A photo-ID requirement would have made that scheme more difficult to achieve. 4/28/21 Tr. at 78:2–16.

IV. Potential Impact Of S.B. 824

132. By its terms, S.B. 824 does not prevent any voter from voting and therefore cannot have a disparate racial impact. The record also lacks evidence of disparate racial impact. Indeed, all Plaintiffs can vote under S.B. 824.

a. S.B. 824 Allows Voters To Vote With Or Without ID

i. S.B. 824 Is One Of The Most Permissive Photo Voter-ID Laws In The Country

133. Thirty-four states have voter-ID laws governing all voters. JX873 at 3; JX26 at 3. Most of these states are not former members of the Confederacy. JX873 at 4.

134. S.B. 824 is a non-strict photo-ID law. *Id.* at 5 (ranking from the National Conference of State Legislatures). Of the states with photo-ID laws, S.B. 824 is one of the most permissive and broad. JX26 ¶¶ 12–14.

135. In comparison to other states' voter-ID laws, S.B. 824 adopts a moderately flexible approach to qualifying forms of ID and makes substantial provisions for voters lacking photo IDs to obtain them free of charge and without supporting documentation. *Id.* at ¶¶ 15–18, 20–24.

136. Specifically, in comparison to other states' photo-ID laws, S.B. 824 takes a non-strict approach to voters who do not possess compliant identity documents. *Id.* ¶¶ 8–14.

137. That some states' voter-ID laws allow voters to show non-photo IDs does not necessarily mean they are less strict than S.B. 824. Unlike North Carolina, four non-photo states do not accept local-government employee IDs; at least six do not accept private college IDs; and one rejects student IDs altogether. *Id.* ¶ 15.

138. S.B. 824 is as or more permissive than several photo-ID laws that courts have upheld.

139. Indiana's voter-ID law, upheld by the U.S. Supreme Court in *Crawford v. Marion Cnty. Election Board*, 553 U.S. 181 (2008), did not provide for voter IDs to be issued for free and without underlying documentation, and allowed only a limited set of voters without ID to cast a provisional ballot, which voters needed to return to a county office to cure. JX837 at 4 (*Crawford*, 553 U.S. at 186).

140. South Carolina's voter-ID law, upheld by a three-judge panel of the U.S. District Court for the District of Columbia in *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012), contained an exception for voters claiming a reasonable impediment to obtaining—as opposed to presenting—photo ID, which required the voter to present alternative ID and allowed county boards to reject a ballot on the ground that the reasonable impediment affidavit was nonsensical or merely denigrated the photo-ID requirement. JX841 at 5–7 (*South Carolina*, 898 F. Supp. 2d at 36–37 & n.5).

141. Texas's voter-ID law, upheld by the Fifth Circuit in *Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018), contained an exception for voters claiming a reasonable impediment to obtaining—as opposed to presenting—photo ID, which required alternative ID and contained no box for "other" impediment. JX850 at 4–5 (*Veasey*, 888 F.3d at 796–97). The law did not provide for free, no-documentation voter IDs.

142. Georgia's voter-ID law, upheld by the Eleventh Circuit in *Common Cause/Georgia v. Billups*, 554 F.3d 1340 (11th Cir. 2009), provided for free voter IDs but contained no reasonable impediment exception. JX851 at 7 (*Billups*, 554 F.3d at 1346).

143. Virginia's voter-ID law, upheld by the Fourth Circuit in *Lee v. Virginia State Board of Elections*, 843 F.3d 592 (4th Cir. 2016), provided for free voter IDs but contained no reasonable impediment exception. JX840 at 3 (*Lee*, 843 F.3d at 594).

144. Alabama's voter-ID law, upheld by the Eleventh Circuit in *Greater Birmingham Ministries v. Secretary of State for Alabama*, 992 F.3d 1299 (11th Cir. 2021), likewise provided free voter IDs but no reasonable impediment exception. *Id.* at 1327.

145. No voter-ID law that provides both a reasonable impediment process and free voter IDs available without underlying documents has been invalidated.

ii. Implementation

146. The General Assembly delayed S.B. 824's application, through the passage of an additional law, S.B. 214, until after any election in 2019 for which the filing period opened prior to September 1, 2019. JX782.

147. The State Board has proposed regulations indicating that it will implement the law, and in particular the reasonable impediment process, in a way that protects voters.

148. Under S.B. 824, if a County Board determines that a voter cast a provisional ballot accompanied by a reasonable impediment declaration only due to the inability to provide acceptable photo ID, the County Board must find that the ballot is valid unless the County Board "has grounds to believe the affidavit is false." JX674 at 4 (S.B. 824 § 163A-1145.1(e)).

149. County Boards are currently composed of 5 members and are bipartisan: three members are of the same party of the governor (currently Democrat), and two members are of the opposite party (currently Republican). 4/28/21 Tr. at 85:1–7.

150. Per the State Board's proposed regulations, the County Boards may reject a provisional ballot accompanied by a reasonable impediment declaration only if the County Board unanimously determines that the declaration is false. JX908 at 2; 08 N.C.A.C. 17.0101(c)(3).

151. In making this determination, the County Boards must construe all evidence in the light most favorable to the voter. *Id.* at 3; 08 N.C.A.C. 17.0101(f).

152. The record in this case makes clear that the State Board and County Boards will do everything in their power to ensure S.B. 824's fair and evenhanded implementation. Every election official who testified supported this concept and that the law would be implemented as written. *See* 4/28/21 Tr. at 13:8–19 (Kimberly Strach); PX101 at 154:15–155:1, 155:19–25 (Director Bell); 4/14/21 Tr. at 97:2–24, 147:19–22, 145:18–146:3 (Noah Read).

153. The record contains no evidence that county boards of elections will have difficulty providing free, no-documentation IDs to voters who might need them.

154. Only one witness, Mr. Read, spoke to the process of printing these IDs, and this Court would find his testimony incredible and irrelevant because Mr. Read did not have firsthand experience with that process. Moreover, while S.B. 824 was in effect, the Alamance County Board of Elections had multiple staff members, who are still employed by the Board, trained to print these IDs with the equipment provided by the State Board at no cost to the county. *Id.* at 127:8–10, 21–23.

155. Voters have multiple, low-cost options for traveling to the Alamance County Board of Elections. LX225; LX227; LX 228; LX229. Similar transportation options exist in neighboring Guilford County. 4/20/21 Tr. at 85:22–86:14. The record contains no evidence that other counties' boards of elections are comparatively less accessible or available to assist voters in need of a free, no-documentation ID.

156. The record contains no reliable evidence that voters will be confused about acceptable photo ID under S.B. 824 or the reasonable impediment process.

b. The Record Contains No Valid Evidence Of Disparate Racial Impact

i. ID Possession

157. S.B. 824 was based on South Carolina's voter-ID law, which, with its reasonable impediment provision, was found to have no disparate racial impact. *See* JX863; 4/22/21 Tr. at 138:16–139:15; *see also* JX857; 4/22/21 Tr. at 139:16–140:5.

158. North Carolina's voter-identification law passed in December 2018 (S.B. 824) is "certainly overall very similar" to the South Carolina law upon which it is modeled. 4/22/21 Tr. at 157:7–17; JX39 ¶ 2 (Professor Hood analysis).

159. This Court would find that black and white registrants in South Carolina were affected in equal measure, and based on the laws' similarities and the mitigation provisions utilized in North Carolina, S.B. 824 will also be racially neutral if fully implemented. JX39 at 43, ¶ 29.

160. This Court finds as incredible Professor Quinn's analysis based upon his failure to assess other types of qualifying IDs, the reasonable impediment process, and the availability of free IDs. 4/15/21 Tr. at 134:6–135:1, 55:4–7, 104:20–21.

ii. S.B. 824's Ameliorative Provisions Redress Any Alleged Disparities In ID Possession

161. Any voter that might currently lack a qualifying form of ID still has multiple ways to cast a ballot that will be counted.

162. S.B. 824 requires that free, no-documentation voter IDs be issued "at any time, except during the time period between the end of one-stop voting for a primary or election . . . and election day for each primary and election," and permits counties to issue these IDs at multiple sites. JX674 at 1 (S.B. 824 § 1.1(a)).

163. Thus, under S.B. 824's plain terms, a voter without ID may obtain an ID and cast a ballot in the same trip during one-stop early voting.

164. African Americans disproportionately use one-stop early voting. JX838 at 21 (*McCrory*, 831 F.3d at 230).

165. One-stop voting sites and hours increased across the State from the 2012 to the 2016 general election—the general election before S.B. 824 was passed—and again for the 2020 general election. LX209; LX219; LX210.

166. Counties must offer one-stop early voting on the last Saturday before an election, a high-traffic voting day. N.C.G.S. § 163.227.2(b); 4/20/21 Tr. at 85:7–10.

167. Under S.B. 824's plain terms, a voter also should be able to obtain a free, no-documentation ID and cast a ballot on election day.

168. If a voter does not obtain one of these IDs during one-stop voting or on election day, the voter can still cast a provisional ballot, return to a county board during the cure period, obtain a free ID, and cure the ballot then.

169. There is no credible evidence that obtaining these IDs entails significant financial cost. The only evidence offered comes from a historian, Professor Leloudis, who was not proffered as an expert in this subject, and none of the financial costs that Professor Leloudis discussed apply under S.B. 824. 4/13/21 Tr. at 133:7–19.

170. Furthermore, it is a given that increased security in the election process will require some action on behalf of some voters. This additional action, however, is not inconsistent with exercising the right to vote or unduly burdensome by any measure.

171. Voters who are unable to present one of these IDs have still another way to vote: by checking one of the boxes on the reasonable impediment form and submitting a provisional ballot, which can be rejected only if a unanimous county board of elections has grounds to believe that the voter's claimed impediment is false. JX674 at 4 (S.B. 824 § 1.2(a)).

172. In addition to the impediments specified in the statute—which the State Board of Elections is permitted to supplement in promulgating the form, *id.* at 3—the form must include a box for "other" impediment, permitting the voter to list an impediment not specified. *Id.* at 4.

173. The State Board has interpreted the "other" category expansively. According to Executive Director Bell, the Board has "not defined that there would be *anything* that would not qualify as 'Other'" under its current non-finalized guidance. PX101 at 73:3–4 (emphasis added); *see also id.* at 72:14–25 (declaration that voter was taking a principled stand against voter ID would qualify as "other"; declaration that "the weather is terrible today" would qualify as "other").

174. The record contains no evidence that any voter, in particular any African American voter, would be dissuaded from using this process.

175. No evidence suggests that this process stigmatizes poverty. Voters of all income brackets can have an impediment to presenting ID that causes them to complete a reasonable impediment form, *e.g.*, "[l]ost or stolen photo identification." JX674 at 4.

176. No evidence has been offered to show that African American voters would be more susceptible to any such stigma than white voters. 4/13/21 Tr. at 157:17–20.

177. As the federal court three-judge panel said of South Carolina's voter-ID law, on which S.B. 824 was modeled, "the sweeping reasonable impediment provision in [that law]"—which, as noted, is in fact less sweeping that S.B. 824's—"*eliminates* any disproportionate effect or material burden that South Carolina's voter ID law otherwise might have caused." JX841 at 8 (*South Carolina v. United States*, 898 F. Supp. 2d 30, 40 (D.D.C. 2012)) (emphasis added).

c. All Plaintiffs Can Vote Under S.B. 824

178. The record is devoid of evidence that any Plaintiff had issues voting under H.B. 589 because of his race.

179. Jabari Holmes has cerebral palsy, is paraplegic, and has severe scoliosis. 4/12/21 Tr. at 71:5–14. He uses a wheelchair to move around. *Id.* at 76:5–7.

180. Any challenges to voting he faces stem from his disabilities, not his race.

181. When Mr. Holmes went to vote in the March 2016 primary election, he did not have acceptable photo ID under H.B. 589. As a result, at his polling place, Mr. Holmes was offered and completed a provisional ballot accompanied by a reasonable impediment declaration. *Id.* at 95:17–24, 105:3–6.

182. From walking in the door of the polling place to leaving the door at the polling place, it took Mr. Holmes "[a]t least a half hour, probably 45 minutes" to vote that day. *Id.* at 96:14–17.

183. Mr. Holmes's vote was counted. *Id.* at 105:7–10.

184. Paul Kearney did not present ID when voting in the March 2016 primary election because he forgot it at home, which has nothing to do with his race. 4/16/21 Tr. at 11:19–24, 13:20–25.

185. When Daniel Smith went to vote in the March 2016 primary election, he presented a temporary paper driver's license printed in black and white that he obtained from the DMV because he had misplaced his driver's license. 4/15/21 Tr. at 177:16–19, 178:14–19, 186:17–20. Mr. Smith's misplacing of his license has nothing to do with his race.

186. Fred Culp did not present acceptable photo ID when voting in the March 2016 primary election, so poll workers assisted him in filling out a provisional ballot and a reasonable impediment declaration. LX129 at 39:4–11.

187. His vote counted. *Id.* at 48:1–3.

188. Each Plaintiff has multiple ways to vote under S.B. 824.

189. Mr. Holmes could get a free photo voter ID from his County Board with no documentation and that would be acceptable ID under S.B. 824. 4/12/21 Tr. at 98:18–20, 101:12–102:1.

190. After Mrs. Holmes spent about 10 to 15 hours combined trying to get Mr. Holmes acceptable photo ID, *id.* at 91:16–21, she stopped trying when she became involved in this lawsuit, *id.* at 107:5–7.

191. Should Mr. Holmes and his family opt not to get him a free photo voter ID, he could still vote by casting a provisional ballot accompanied by a reasonable impediment form—as he did in March 2016, where his vote was counted. *Id.* at 95:17–24, 105:3–10, 106:2–6.

192. And if he or his family is concerned that completing the reasonable impediment process will be too stressful at the polls, Mr. Holmes can vote absentee from his own home. *Id.* at 106:20–24.

193. Mr. Kearney has three forms of photo ID that he could use to vote under S.B. 824: an unexpired North Carolina driver's license, 4/16/21 Tr. at 18:19–23, a veterans ID, *id.* at 18:24–19:1, and a U.S. passport that expired after he turned 65 years old, *id.* at 19:2–22.

194. Mr. Smith has an unexpired North Carolina driver's license that he could use to vote under S.B. 824. 4/15/21 Tr. at 185:11–22.

195. He also knows that he could get a free photo voter ID from his County Board under S.B. 824, *id.* at 187:23–188:2; if he were to lose or forget his driver's license when voting in the future, he could complete the reasonable impediment process under S.B. 824 to vote, *id.* at 185:23–186:3; and under S.B. 824, if he were to vote a provisional ballot, he could cure that ballot by returning to the County Board with an acceptable photo ID by the deadline, *id.* at 186:4–8.

196. If Mr. Culp continues to lack a photo ID that is acceptable under S.B. 824, he could vote a provisional ballot accompanied by a reasonable impediment form, a process that he has already successfully completed once before under H.B. 589. LX129 at 39:4–11, 48:1–3.

197. He could also acquire a free photo voter ID from his local County Board. By his own admission, the only thing preventing him from doing so is his own choice. *Id.* at 99:22–100:2.

V. S.B. 824 Bears No Connection To Historical Discrimination

198. Plaintiffs focus on our State's past treatment of African Americans. This State has indeed treated its African American citizens shamefully in the past, as no party denies. But such evidence, while generally relevant in the broader context of legislative action in our State, is not of particularly probative value in deciphering our General Assembly's intent in December 2018 when enacting S.B. 824.

199. There is no evidence connecting this particular law to past discrimination. If anything, the weight to be given to evidence pertaining to our State's history should decrease with each passing day. To find otherwise and place outsized weight on the increasingly distant past would constitute a failure by the judiciary to allow our State to fully progress from that shameful past. Any overreliance on our State's history is therefore misplaced.

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CONCLUSIONS OF LAW

I. Legal Standard

1. Plaintiffs' lone remaining claim in this case is that S.B. 824 impermissibly violates the North Carolina Constitution's Equal Protection Clause in that it was enacted with racially discriminatory intent. The constitutional guarantee underlying this claim is contained in Article I, Section 19 of our Constitution, which declares, in relevant part, as follows: "No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin." N.C. CONST. art. I, § 19.

2. The North Carolina Supreme Court has recognized that the "Equal Protection Clause of Article I, § 19 of the Constitution of North Carolina is functionally equivalent to the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States." *White v. Pate*, 308 N.C. 759, 765, 304 S.E.2d 199, 203 (1983) (citation omitted). Thus, decisions under the equal-protection clauses of both constitutions are relevant in assessing Plaintiffs' claim that S.B. 824 was enacted with racially discriminatory intent. *See Libertarian Party of N.C. v. State*, 365 N.C. 41, 42, 707 S.E.2d 199, 200-01 (2011) ("adopt[ing] the United States Supreme Court's analysis for determining the constitutionality of ballot access provisions"); *see also Holmes v. Moore*, 270 N.C. App. 7, 16, 840 S.E.2d 244, 254 n.5 (2020).

3. S.B. 824 is a facially neutral law that contains no overt classification on race. Accordingly, to prevail on a discriminatory intent claim, Plaintiffs must prove that the circumstances surrounding the enactment of the law and the law's impacts demonstrate that the law was motivated by an intent to burden minority voters. *See Holmes*, 270 N.C. App. at 16 n.5, 840 S.E.2d at 254 n.5.; *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d, 204 220 (4th Cir. 2016).

4. Here, the evidence and arguments have been organized around one decision in particular: the U.S. Supreme Court's decision in *Arlington Heights*. Discriminatory intent, under such an analysis may be "inferred from the totality of the relevant facts." *McCrory*, 831 F.3d at 220 (quoting *Washington v. Davis*, 426 U.S. 229, 242 (1976)). The "non-exhaustive list of factors" that are relevant to determining discriminatory intent include a law's historical background, the sequence of events that led to its enactment, its legislative history, and any racially disproportionate impact of the law. *Id.* at 220–21 (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–67 (1977)). But the ultimate question remains whether "a discriminatory purpose [was] a motivating factor in the decision" to pass the law. *Arlington Heights*, 429 U.S. at 265–66.

5. It is Plaintiffs' burden to prove that discriminatory intent was a motivating factor in the enactment of S.B. 824. *See id.* at 270. "[L]egislators . . . are properly concerned with balancing numerous competing considerations," *id.* at 265, and they are due a presumption that they did so in good faith—in other words, that they sought to advance the public interest while adhering to their oath as

legislators to respect constitutional rights. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018); *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 303 (4th Cir. 2020). Only if Plaintiffs prove discriminatory intent does that presumption fall away. *See Raymond*, 981 F.3d at 303; *see also Arlington Heights*, 429 U.S. at 265–66. A finding of discrimination by a State in the past does not change "[t]he allocation of the burden of proof and the presumption of legislative good faith." *Abbott*, 138 S. Ct. at 2324.

6. "Proof that the decision . . . was motivated in part by a racially discriminatory purpose would not," however, "necessarily" require the "invalidation of the challenged decision." *Arlington Heights*, 429 U.S. at 270 n.21. Rather, such proof would shift to the defense "the burden of establishing that the same decision would have resulted even had the impermissible purpose not been considered." *Id*. If so, Plaintiffs "no longer fairly could attribute the injury complained of to improper consideration of a discriminatory purpose," and "there would be no justification for judicial interference with the challenged decision." *Id*.

7. In conducting this analysis, this Court is not bound by the Court of Appeals' prior holding in this case. Conclusions in a ruling on a preliminary injunction are "not binding at a trial on the merits." *Precision Walls, Inc. v. Servie*, 152 N.C. App. 630, 636, 568 S.E.2d 267, 271 (2002). Additionally, whereas the Court of Appeals "ma[d]e the General Assembly bear the risk of nonpersuasion with respect to intent," *Holmes*, 270 N.C. App. at 26, 840 S.E.2d at 261, Plaintiffs have waived any argument that Legislative Defendants must do so here. *See* 4/12/21 Tr.

at 31:24–32:1 (Plaintiffs "are not asking the state to bear the risk of non-persuasion with respect to intent"). This Court is also not bound by the decision of the U.S. Court of Appeals for the Fourth Circuit regarding H.B. 589, *McCrory*, 831 F.3d 204, or its recent decision regarding S.B. 824, *Raymond*, 981 F.3d 295. Of course, these decisions can inform the analysis to the extent their conclusions apply to the evidence now in the record. For example, it is plainly relevant that the Fourth Circuit recently held that many of the same arguments as Plaintiffs' were unlikely to succeed even though that court, unlike this one, was bound by *McCrory*. *See Raymond*, 981 F.3d at 311.

8. Finally, though equivalent standards apply under the State and federal equal-protection clauses, the State and federal constitutions have an important difference. The federal constitution does not require voters to show photographic identification when casting their ballots. The North Carolina constitution does. Because North Carolina's Equal Protection Clause must be construed in light of this requirement, arguments against voter-ID requirements in general are irrelevant. The question is whether S.B. 824 was passed for discriminatory purposes.

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II. No Direct Evidence Of Discriminatory Intent

9. As an initial matter, Plaintiffs concededly lack direct evidence that any legislator who voted for S.B. 824 was motivated by an intent to discriminate against African Americans. Plaintiffs' own witnesses, including members of the General Assembly, have disclaimed that any legislators voted for S.B. 824 for that reason. *See, e.g.*, 4/20/21 Tr. at 118:25–119:2 (Representative Harrison); 4/29/21 Tr. at 62:4–6 (Senator McKissick); 4/21/21 Tr. at 54:21–25 (Senator Robinson).

10. Plaintiffs themselves suggest that no legislator did. The parties agree that what the General Assembly knew when it passed S.B. 824 is what matters to its intent in passing that law. 4/12/21 Tr. at 26:22–24. If, as Plaintiffs say, the General Assembly did not know what voters S.B. 824 might disenfranchise—even though it disenfranchises none—the General Assembly could not have intended to disenfranchise anyone. Although any legislator could have asked the State Board of Elections for updated data about ID-possession rates among North Carolina voters, Ms. Strach, who was the Board's Executive Director at the time, confirmed that no Democratic or Republican legislator did so. 4/28/21 Tr. at 111:5–12, 164:10–15. Plaintiffs argue that this is somehow proof that the General Assembly intended to target certain groups of voters. To the contrary, it is entirely consistent with what a race-neutral legislature (no longer required to consider racial effect under the Voting Rights Act's preclearance provisions) would do when passing a law that enables all registered voters to vote.

11. In lieu of direct evidence, Plaintiffs focus on the overlap in legislators who voted for both H.B. 589 and S.B. 824—the idea being that, since many Republican legislators voted for both, we should impute to the 2018 General Assembly the intent that the Fourth Circuit located in H.B. 589, that is, an intent "to entrench itself . . . by targeting voters who, based on race, were unlikely to vote for the majority party." JX838 at 24 (*McCrory*, 831 F.3d at 233). But as the Fourth Circuit has since explained, it would be a "mistake" to "penalize[e] the General Assembly because of who they were, instead of what they did." *Raymond*, 981 F.3d at 304.

12. S.B. 824 had a primary sponsor, Senator Joel Ford, who is a registered Democrat. It received votes from two other Democratic Senators—combining for over 20% of the Senate Democratic caucus—and two Democratic representatives. The salient fact, therefore, is not that Republicans supported both H.B. 589 and S.B. 824, but that H.B. 589 received zero votes from Democrats and S.B. 824 received votes from five.

III. S.B. 824 Will Have No Disparate Impact

13. Under *Arlington Heights*, the Court considers "[t]he impact of the official action" in dispute and "whether it 'bears more heavily on one race than another.'" *Arlington Heights*, 429 U.S. at 266 (quoting *Washington*, 426 U.S. at 242).

14. In assessing impact, however, it is important to understand the nature of our inquiry. First, Plaintiffs' theory of the case is that the General Assembly enacted S.B. 824 to entrench Republican interests by disenfranchising African American voters, *i.e.*, preventing African Americans from voting Democratic. Therefore, the circumstantial evidence under *Arlington Heights* must support that theory. In other words, the impact Plaintiffs must show is that S.B. 824 will lead to less African Americans voting. Otherwise, Plaintiffs' race-as-proxy-for-party theory does not work. Second, the North Carolina Constitution requires that voters present photographic identification. And Plaintiffs do not challenge that constitutional requirement. Accordingly, impact is only relevant to the extent it shows that this law—S.B. 824—has more additional disparate impact than any other voter-ID law that the General Assembly could have passed. Only then can Plaintiffs disaggregate impact attributable to voter ID and the "'heterogeneity' of the [State's] population" generally from any alleged disparate impact attributable to S.B. 824 specifically. *Arlington Heights*, 429 U.S. at 266 n.15 (quoting *Jefferson v. Hackney*, 406 U.S. 535, 548 (1972)). After all, the "official action" in dispute is S.B. 824, not voter ID generally. *Id.*

15. After a survey of the evidence, Plaintiffs' theory of impact fails at the outset. Under Plaintiffs' entrenchment theory (and as Professor Leloudis agreed on the stand), the relevant disparate impact is disenfranchisement, *i.e.*, prevention from voting. Otherwise, S.B. 824 could not do what Plaintiffs allege it was meant to do: entrench Republicans. *See* 4/13/21 Tr. at 126:22–25. Yet Plaintiffs have not

shown such a disparate impact. Plaintiffs' evidence of ID possession is not only incomplete and unreliable, but it cannot show disparate impact because it fails to address the sweeping ameliorative provisions of S.B. 824 that allow anyone to vote, ID or no ID. In fact, Plaintiffs have failed to identify a single North Carolina voter who cannot vote under S.B. 824. Similarly, Plaintiffs have failed to identify any array of IDs that would produce a lesser alleged impact of possession. And their claims of disparate impact in possession rates stem from the inclusion of driver's licenses—and every voter ID law in America includes driver's licenses, so that feature of the law does not reflect a racially discriminatory intent. While Plaintiffs devoted much of their case-in-chief to speculation about implementation of S.B. 824, such speculation is legally irrelevant and factually meritless. *See Raymond*, 981 F.3d at 310.

a. Plaintiffs' Evidence of ID Possession Rates Is Insufficient To Show Disparate Impact

16. Plaintiffs have failed to show that S.B. 824 bears more heavily on African Americans. *Arlington Heights*, 429 U.S. at 266.

i. S.B. 824's Sweeping Reasonable Impediment Provision

17. First, even accepting Plaintiffs' evidence that "minority voters disproportionately lack" Qualifying ID, S.B. 824 does not disparately impact African Americans because of the sweeping reasonable impediment provision. *Raymond*, 981 F.3d 309. This is one of several provisions that shows that the General Assembly went "out of [their] way to make" the impact of S.B. 824 "as burden-free as possible." *Id.* (quoting *Lee*, 843 F.3d at 603). As the District Court for the District

of Columbia said with respect to South Carolina's similar (but stricter) reasonable impediment provision, "the sweeping reasonable impediment provision . . . eliminates any disproportionate effect or material burden that South Carolina's voter ID law otherwise might have caused." JX841 at 8 (*South Carolina*, 898 F. Supp. 2d at 40). Consider how a voter may fill out a reasonable impediment form by selecting "other." Although the State Board has not issued formal guidance on how County Boards are to interpret the "Other" category of the reasonable impediment declaration, Director Bell testified that the State Board is construing the category expansively. As Director Bell stated, "'Other' is 'Other.'" PX101 at 72:19. The State Board has "not defined that there would be anything that would not qualify as 'Other'" under the State Board's current non-finalized guidance. *Id.* at 73:3–4. That is consistent with the text of S.B. 824, which does not give election officials any authority to second-guess the reasonableness of a voter's claimed impediment. And any reason provided by the voter can only be rejected if the County Board unanimously determines that the voter's reason is false. *See id.* at 72:4–13, 127:10–18. This sweeping provision, "as interpreted by the responsible [North] Carolina officials[,] ensures that all voters of all races . . . continue to have access to the polling place to the same degree they did under pre-existing law." JX841 at 12 (*South Carolina*, 898 F. Supp. 2d at 45).

18. Professor Hood's peer-reviewed study—prepared independent of any litigation—on the experience in South Carolina is instructive. It concluded that "the preponderance of evidence gathered on the question of racial effects would seem to indicate that black and white registrants in South Carolina were affected, but in equal measure, by implementation of the state's voter ID statute." JX39 at 42.

19. These results hold lessons for North Carolina. Although "no two state laws are probably exactly alike," S.B. 824 and South Carolina's voter-ID law "are very, very similar." 4/22/21 Tr. at 158:7–9. There are differences but, as Professor Hood testified, these generally show that North Carolina's law is more permissive as S.B 824 provides for a "more expansive" mix of IDs. 4/22/21 Tr. at 160:22. Moreover, Plaintiffs have not rebutted Hood's conclusions. Dr. Quinn did not address any turnout effects in his report about ID possession.

20. Plaintiffs not only fail to rebut Hood's evidence from South Carolina's experience with a similar reasonable impediment provision, but Plaintiffs' ID possession expert, Dr. Quinn, disclaimed doing any analysis whatsoever on the reasonable impediment provision or what effect that would have on voting. Dr. Quinn stated at trial, "I have not studied the reasonable impediment exception under S.B. 824 and it's simply something that I don't have any knowledge of in terms of how it would be implemented." *Id.* at 55:4-7." It is perhaps not surprising that he did not do so. He previously testified in litigation about South Carolina's reasonable impediment provision, and he opined that "the South Carolina reasonable impediment exception was unlikely to eliminate racial disparities." *Id.*

at 52:23-25. The South Carolina court disagreed. JX841 at 8 (*South Carolina*, 898 F. Supp. 2d at 40). Nevertheless, as Professor Callanan explained, the absence of a reasonable impediment analysis in Dr. Quinn's report means that Dr. Quinn has not done a full impact analysis. 4/22/21 Tr. at 42:9–14. Instead, his analysis is "at most half an impact analysis because it doesn't account for the effect of the reasonable impediment option, which is a major distinction of the North Carolina law and which certainly would shape its impact on — on voters." *Id.*

ii. Plaintiffs Have Not Tried to Quantify The Effect of S.B. 824's Free IDs

21. Second, free IDs are yet another provision that shows the General Assembly's efforts to make S.B. 824 and "its impact as burden-free as possible." *Lee*, 843 F.3d at 603. Similar to what Virginia did under the law considered by the Fourth Circuit in *Lee*, S.B. 824 "provide[s] free IDs to those who [do] not have Qualifying ID," these are issued "without any requirement of presenting documentation," and there are "numerous locations throughout the State where free IDs" can be obtained. *Id.* Yet Plaintiffs have not even tried to quantify the impact of free IDs, issued without any documentation by the county boards of election, if S.B. 824 goes into effect.

22. For instance, Dr. Quinn's analysis of free IDs is circumscribed. Free IDs have not been available since S.B. 824 was enjoined. 4/15/21 Tr. at 100:22–24. Free IDs have not been available within two months of an election in North Carolina. *Id.* at 100:25–101:3. And free IDs have not been available during one-stop early voting. *Id.* at 101:4–9. Despite the limited time free IDs were available in

North Carolina, Dr. Quinn did not try to supplement his analysis of the impact of free IDs by looking to other states that have issued free IDs. *Id.* at 101:10–12. He thus conceded that he had no basis for quantifying how many free IDs would be issued moving forward if S.B. 824 goes into effect. *Id.* at 104:20–21.

23. In the federal litigation over S.B. 824, the district court "discounted" the existence of these IDs "out of concern that minority voters would be more likely to have to spend time and money (though the IDs are free and require no documentation) to procure" them. *Raymond*, 981 F.3d at 309. Plaintiffs suggest that this Court should do the same. Reversing the district court, the Fourth Circuit pointed to the U.S. Supreme Court's admonition in *Crawford* that the inconveniences involved in making a trip to the DMV, gathering documents, and posing for a photograph "surely do[] not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting." *Raymond*, 981 F.3d at 309 (internal quotation marks omitted). The Fourth Circuit also emphasized the fact that, for those voting early at the County Boards of Elections, "the marginal cost of obtaining a qualifying ID is negligible because they can obtain a free voter ID and vote in a single trip." *Id.* And Plaintiffs' only evidence that obtaining these IDs entails any financial cost—which they offered through a historian, Professor Leloudis—has been disclaimed by Professor Leloudis himself. 4/13/21 Tr. at 133:7–19. Thus, far from making it harder to get an ID at a place where African Americans disproportionately vote, S.B. 824 makes it easier.

iii. The Evidence Of ID Possession Disproves Plaintiffs' Theory

24. Plaintiffs are relying on the *Arlington Heights* factors to prove a theory of racially discriminatory intent. By using circumstantial evidence, Plaintiffs attempt to show that the General Assembly sought to entrench Republican interests by disenfranchising African Americans, who tend to support Democrats in North Carolina. But the evidence of ID possession in the record directly contradicts their theory of the case.

25. First, even taking Dr. Quinn's analysis as an accurate picture of ID possession in North Carolina (it is not, as discussed *infra*), the following is clear. Dr. Quinn's analysis found that more North Carolinian voters who are African American have Qualifying ID under S.B. 824 than Dr. Quinn found under HB 589 in *Currie*. *See* 4/15/21 Tr. at 73:23–74:8. Dr. Quinn's analysis found that the percentage of those African American voters who did not match to a Qualifying ID under S.B. 824 decreased as compared to Dr. Quinn's analysis under HB 589 in *Currie*. *See id.* at 74:9–12. In other words, the additional evidence in this case shows more African Americans have Qualifying ID, not less.

26. Continuing to take Dr. Quinn's analysis at face value, as discussed, the African American no-matches he found disproportionately vote at one-stop early voting—where free IDs are available. *See id.* at 61:11–20. As discussed, this provides more opportunities for those voters to vote, not less. Additionally, Dr. Thornton found that 240,185 of Dr. Quinn's no-matches have a driver's license number in their voter registration file. This does not indicate that those 240,185 no-

matches necessarily have Qualifying ID right now, but rather Dr. Thornton's finding is proof of a more limited, yet critical, fact: these 240,185 have been able to successfully acquire ID from the DMV in the past and may be able to obtain an acceptable ID in the future. 4/27/21 Tr. at 25:23–25. And Plaintiffs have not put into evidence anything to indicate that these 240,185—who have successfully acquired DMV IDs in the past—would be unable to similarly acquire IDs from the DMV or any other source of Qualifying ID under S.B. 824 in the future.

27. In all events, Plaintiffs' evidence confirms what the General Assembly knew in November and December 2018—the vast majority of North Carolinian registered voters have Qualifying ID. According to Ms. Strach's November 2018 presentation to the General Assembly, the State Board sent a mailing to 254,391 voters, whom the State Board had identified as lacking DMV-issued ID. JX878 at 19–20. Of those who responded, 91% told the State Board that they possessed acceptable photo ID. *Id.* at 20. In the March 2016 primary, 99.9% of those that voted were not required to cast a provisional ballot because they lacked voter ID under H.B. 589. And under Dr. Quinn's analysis in 2020, the vast majority of white and African American voters possess Qualifying IDs.

iv. Plaintiffs' Evidence of Racial Disparity Is Incomplete And Does Not Satisfy Their Burden

28. Although the analysis so far has relied, in part, on Dr. Quinn's analysis, his conclusion that there is a racial disparity in Qualifying ID possession is unable to show disparate impact because the analysis is incomplete. Plaintiffs cannot meet their burden by relying on it.

29. Dr. Quinn's ultimate conclusion that there is a racial disparity from S.B. 824 is unreliable because his conclusion is based on fundamentally incomplete data and speculation. To begin with, Dr. Quinn lacks a valid number of individuals who lack Qualifying ID in North Carolina. In fact, at the very most Dr. Quinn provides a "measure of the number of voters who don't have a form of ID that [he] explicitly matched against. So DMV issued IDs, state employees, schools." 4/15/21 Tr. at 58:11-14. As Dr. Quinn conceded, there are individuals who "very likely have passports, military IDs, veterans IDs." *Id.* at 58:22-23. We thus know that the number of no-matches is certainly lower than Dr. Quinn's analysis indicates. This is especially true because Dr. Quinn's analysis did not assess databases containing passports, veteran IDs, military IDs, tribal IDs, out of state driver's licenses, or local government IDs. *Id.* at 134:6-135:1. S.B. 824 includes all of these IDs. To understand any impact, it is not enough to have a partial peek into some IDs, especially as Professor Callanan noted, these additional IDs do not show a pattern or preference for IDs held by whites. JX26 ¶ 19.

30. The lack of federal IDs particularly undermines the reliability of Dr. Quinn's conclusions about the number of individuals in North Carolina who lack Qualifying ID under S.B. 824. In Dr. Quinn's analysis in the *Currie* litigation, these three forms of federal IDs provided over 180,000 matches under HB 589. 4/15/21 Tr. at 78:11–13. Passports alone provided 158,683 matches in *Currie*. JX5 ¶ 149. And based on what Dr. Quinn saw in *Currie*, he believes passports would be the most important form of Qualifying ID for adding new matches. *Id.* at 85:14–18. Yet Dr.

Quinn is missing these IDs, along with the many others noted above. If North Carolinians had federal IDs at similar rates as in Dr. Quinn's *Currie* analysis, then Dr. Quinn's no-match list would be expected to go down by around 25%. *Id.* at 79:23–80:10; 80:25–81:24.

31. Dr. Quinn's "sensitivity analysis" is particularly unconvincing with respect to the potential impact of federal IDs. According to Dr. Quinn, the most important form of ID he is missing is U.S. Passports, which he attempted to account for in his sensitivity analysis by relying on a survey from the American National Election Study. *See* JX5 ¶ 150. From this study, Dr. Quinn purported to find the percentage of white and African Americans in North Carolina that had passports. *See id.* ¶ 150. But the study Dr. Quinn relies on—to justify his conclusions despite missing one of the most important forms of ID—"is intended to be representative nationally not at the state level." LX178; 4/15/21 Tr. at 86:13–17. The authors of the study "would not recommend using [their] data for representative state-level analyses." *Id.* Yet that is exactly how Dr. Quinn uses this survey for a state-level analysis of North Carolina against the study's explicit recommendations. Despite knowing it was not designed to be used at the state level, 4/15/21 Tr. at 92:17, he did not disclose that fact in his report. *See* JX5 ¶¶ 150–51.

32. Dr. Quinn's analysis for the ID databases that he did have is also incomplete. As Dr. Thornton and Brian Neesby explained, the DMV maintains multiple databases that Dr. Quinn did not analyze. For instance, Dr. Quinn did not search DMV_Hist_File, which means that he may have improperly concluded that

some voters with non-expired DMV ID lacked qualifying ID. Dr. Quinn also attempted to match voters in non-DMV ID databases. *Id.* at 33–35 ¶ 106 and Table 5. These databases contained 691,641 unique records. But based on the design of Dr. Quinn's chosen matching methodology, Dr. Quinn could not match to nearly 144,000 such non-DMV ID records using one of his designed matching strings. *Id.* at 34–35. This does not mean there are no individuals with Qualifying ID among nearly 144,000 non-DMV ID records, but rather that Dr. Quinn's matching strings—as designed—would possibly not be able to identify any matches whatsoever based on the information in those databases and his matching strings. In fact, Dr. Quinn had less than half of the data he would have needed to do a full matching analysis of the Non-DMV ID records—he could use ten or the full eleven of his matching fields on only 218,051 of the 691,641 non-DMV ID records. *Id.* at 34–35. These are all potential sources of false negatives, *i.e.*, people who have Qualifying ID but show up as no-matches because of the limits of Dr. Quinn's methodology.

33. The issues with Dr. Quinn's analysis do not stop with the ID databases, but rather they also stretch to the voter list itself. Dr. Quinn did not address issues with the voter registration list involving "deadwood" and list maintenance procedures. The term "deadwood" refers to the obsolete records in various state voter registration lists. 4/15/21 Tr. at 68:2–7. It has been estimated by election scholars that between 4 to 6% of North Carolina's voter registration list is deadwood. LX177 at 80. If it were 5%, that would translate to about 350,000

obsolete records in the voter registration file that Quinn used. 4/15/21 Tr. at 69:1–4. Dr. Quinn only removed 63,621 deceased voter records. *Id.* at 69:18–19. Further, the State Board estimated that it would remove 380,000 inactive voters from the voter rolls in 2021. *Id.* at 71:20-21. These voters were part of Dr. Quinn's no-match analysis. Id. 72:7–9. Yet there is no evidence he took these voters, in particular those that will be removed, into account in his analysis.

34. In the end, "[w]ith the uncertainty of the information and lack of information that we have regarding the other IDs," Dr. Quinn has not established there is a racial disparity in possession of Qualifying ID by registered voters under S.B. 824. 4/26/21 Tr. at 73:9–15; *see also* 4/27/21 Tr. at 28:16–20.

b. Implementation Evidence Is Irrelevant

35. Plaintiffs devoted a substantial part of their evidence to how North Carolina election officials and workers implemented H.B. 589 and how S.B. 824 could be implemented. Two of their witnesses—Professor White and Ms. Fellman—focused solely on implementation, and Representative Harrison testified that her concerns "about the potential impact of Senate Bill 824 have to do with [her] concerns about how its provisions will be implemented." 4/20/21 Tr. at 80:1–5, 121:14–122:8. But potential implementation errors are irrelevant to Plaintiffs' burden to proffer "[p]roof of racially discriminatory intent or purpose" in the General Assembly's passing S.B. 824, *Arlington Heights*, 429 U.S. at 265. Implementation errors are, by definition, departures from a statute's design and are thus irrelevant to determining the legislature's intent in passing a law. These witnesses do not opine on the potential discriminatory impact of the General

Assembly's official action—the text of S.B. 824 as written and properly implemented. For implementation errors to be relevant, the General Assembly would have had to have somehow intended for implementation errors to disproportionately affect African Americans. There is no evidence supporting that notion, particularly with the numerous mandatory education and training steps the General Assembly required. Indeed, in *Raymond*, the Fourth Circuit recognized that "an inquiry into the legislature's intent in enacting a law should not credit disparate impact that may result from poor enforcement of that law." 981 F.3d at 310.

36. Furthermore, Professor White admitted that there is risk of implementation error with any election regulation. 4/16/21 Tr. at 77:13–16. Her "doubts about poll workers' ability to accurately and fairly implement a voter identification requirement in the state" would apply to any voter ID law, and thus are legally irrelevant. JX692 ¶ 59. Photo ID is constitutionally mandated in this State. Consequently, theoretical observations about possible problems that could occur with any voter ID law are legally irrelevant. Professor White's opinions were also quite tepid. She concluded simply that there "could" be implementation problems with S.B. 824. JX692 ¶ 71. She offered no opinion on whether such problems were "probable." 4/16/21 Tr. at 120:1–5. Moreover, none of Professor White's evidence had anything to do with whether any voter of any race can cast a ballot under S.B. 824, which all can. Professor White's testimony is not enough to carry Plaintiffs' burden of proof. This evidence is merely speculative and irrelevant

to the intent in passing S.B. 824. It also was not before the General Assembly as that body considered S.B. 824, so it cannot be used to impugn the General Assembly's intent.

37. Plaintiffs' evidence that there will be widespread implementation errors that negatively affect North Carolinians' ability to vote under S.B. 824 is entirely speculative. As already explained, Professor White's conclusions were couched in terms of what "could" happen, and she offered no opinion on what was "probable." As for Ms. Fellman, a lay, not expert, witness, 4/21/21 Tr. at 113:1–7, she relied entirely on a nonrepresentative sample of anecdotes. Her testimony about S.B. 824's implementation was merely speculation. She conceded that she has no personal knowledge or information about what the State's implementation plans for S.B. 824 will be if the injunction is lifted. *Id.* at 116:13. She does not know what community organizations or outreach programs would be included in the State Board's implementation plans. *Id.* at 116:22–117:1. And what she does "know" is unreliable. Much of Ms. Fellman's testimony about voter behavior and confusion was based on second- or third-hand information that she received from volunteers at her organization, who themselves had spoken with voters. *Id.* at 119:24–120:4. She does not know if those voters are a representative sample of all voters in North Carolina. *Id.* at 121:12–15.

38. Indeed, the voters upon which Ms. Fellman based her testimony are decidedly nonrepresentative because she and her organization had "no reason" to keep track of voters they spoke to that were not confused about photo-ID requirements. *Id.* at 124:5–6. Ms. Fellman could not distinguish or do any comparison between the number of voters who are confused about one election requirement and another election requirement (*e.g.*, the number of voters who are confused about their eligibility to register to vote vs. the number of voters who are confused about acceptable forms of photo ID). *Id.* at 124:24–125:9. Voters are often confused about all sorts of election requirements, especially recent changes. *Id.* at 124:15–23. Ms. Fellman provided no differentiation between that general confusion and any possible confusion from voter ID laws. In contrast to such testimony, Senator Ford stated at trial, and this Court finds as credible, that:

> In 2021, I find it to be insulting, demeaning to suggest that African Americans, Black North Carolinians are not smart enough to figure out how to obtain free voter ID, especially if you're already going to the polling place. So if you're already going to vote, then if you don't have ID, one would be provided for you for free. To me that is the least intrusive, easiest, most common sense, reasonable thing to do for our citizens, one to protect their vote, two to ensure that their vote counts.

4/23/21 Tr. at 98:18–99:1.

39. Plaintiffs' implementation and confusion evidence is also contradicted by their own witnesses and by the testimony from the State Board directors. Ms. Fellman testified that voters develop habits regarding voting. *Id.* at 104:18–22. Consequently, over time, a voter will become more familiar with a voter-ID law, its requirements, and its exceptions, lessening the need for reliance on receiving information from poll workers. Mr. Read testified that he and the Alamance County Board would make every possible effort to ensure that every vote counts. 4/14/21 Tr. at 97:23–24, 147:19–22. And both Ms. Strach and Director Bell testified that the State Board took direct efforts to educate the public and election workers about H.B. 589's and S.B. 824's requirements and to inform them when both laws were not in effect. 4/28/41 Tr. at 79:2–80:18; PX101 at 83:18–84:1.

IV. Legislative Process

40. Under *Arlington Heights*, "[t]he specific sequence of events leading up to the challenged decision also may shed some light on the decisionmaker's purposes." 429 U.S. at 267. For instance, "[d]epartures from the normal procedural sequence also might afford evidence that improper purposes are playing a role." *Id.* But under this analysis too, the General Assembly must be afforded "the presumption of legislative good faith." *See Abbott*, 138 S. Ct. at 2329. Courts may not simply give "lip service" to this presumption; instead, it is an essential part of the analysis, especially when considering the actions of legislators themselves. Thus, any departures that Plaintiffs identify must "give rise to an inference of bad faith . . . that is strong enough to overcome" this presumption. *Id.* at 2328–29. Plaintiffs have not done so.

a. The Legislative Procedure Leading To H.B. 1092 Is Irrelevant

41. Plaintiffs attempt to bring in procedural criticisms of H.B. 1092, the bill that proposed the Voter-ID amendment to North Carolina voters, as part of their critique of the legislative process of S.B. 824. But Plaintiffs are not challenging H.B 1092, and they are not challenging the constitutional amendment itself. *See* 4/14/21 Tr. at 68:13–18 It is thus not clear the relevance of the legislative process surrounding H.B. 1092 when that process is "largely unconnected to the passage of the actual law in question." *Greater Birmingham Ministries v. Sec'y of State for State of Ala.*, 992 F.3d 1299, 1324 (11th Cir. 2021). Moreover, the voters' approval of the constitutional amendment stands as a significant "intervening event" that "constitutionally mandated that the legislature enact a voter-ID law." *Raymond*, 981 F.3d at 306. The specific legislative steps giving rise to the constitutional amendment—that has been ratified by the voters and is the supreme law of the state—are beside the point. This Court takes the constitutional amendment as a given and have confined our analysis to "the actual law in question:" S.B. 824. *Greater Birmingham Ministries*, 992 F.3d at 1324.

42. Even considering the sequence of events surrounding HB 1092 and the voter-ID constitutional amendment, Plaintiffs have not pointed to any evidence to give rise to an inference of bad faith: the General Assembly's actions were unremarkable. Plaintiffs' expert Sabra Faires says it was aberrational for the constitutional amendment to be proposed in a short session. But as Professor Callanan explained, between 1971 and 2018, more than 25% of all amendments have been passed during the short session. This makes it unremarkable that HB

1092 and the other five 2018 constitutional amendments were ratified in a short session. JX27 at 13. And consider the alternative. The Supreme Court announced its decision denying certiorari in the H.B. 589 litigation in May 2017. So, if HB 1092 were to have been proposed during the 2017 long session, the General Assembly would have had to "move quickly to introduce voter ID legislation within a month or a couple months" of the Supreme Court's decision. 4/22/21 Tr. at 20:3–6. But given the fact the Supreme Court announced its certiorari denial late in the 2017 long session, "it's particularly *unsurprising* to see [H.B.] 1092 dealt with a year later in the short session." *Id.* at 20:9–11 (emphasis added).

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43. Plaintiffs also rely on Faires's opinion to argue that H.B. 1092 was aberrational because the General Assembly did not pass legislation implementing the voter ID amendment at the same time as the constitutional amendment. *See* 4/14/21 Tr. at 70:9–17. This claim is not persuasive. This argument is about an alleged norm that was established based on two instances in 1971, when the General Assembly passed implementing legislation at the same time as two constitutional amendments. *Id.* This provides "no robust basis for comparison." JX27 ¶ 34. Moreover, Faires fails to explain why the baseline for what should be expected from the General Assembly is its actions taken in 1971, rather than the actions the General Assembly actually took in 2018. After all, the General Assembly did not pass implementing legislation for the Marsy's Law Amendment at the time it was proposed in 2018 either. 4/14/21 Tr. at 71:2–5; JX27 ¶ 34. When evaluating whether there have been any "[d]epartures from the normal procedural sequence," it is far more probative that the General Assembly treated like amendments alike in 2018 rather than anything the General Assembly did half a century ago. *Arlington Heights*, 429 U.S. at 267. The enactment of H.B. 1092 affords no evidence of improper purpose. *Id.*

b. The Enactment Of S.B. 824 Did Not Depart From Expected Procedures

44. "[T]here were no procedural irregularities in the sequence of events leading to the enactment of the 2018 Voter-ID law." *Raymond*, 981 F.3d at 305. Sabra Faires, Plaintiffs' expert on the legislative process, did not allege that any rule was violated or that the General Assembly exceeded its authority in the

enactment of S.B. 824. 4/14/21 Tr. at 38:4–10. Plaintiffs have simply provided no evidence of any departure of legislative process that resulted in any rules being broken or called into question the General Assembly's authority to pass S.B. 824. Although "a legislature need not break its own rules to engage in unusual procedures," JX838 at 20 (*McCrory*, 831 F.3d at 228), the evidence about the legislative process that Plaintiffs do cite, fails to "spark suspicion." *Arlington Heights*, 429 U.S. at 269.

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45. First, Plaintiffs argue that convening the General Assembly in a lame-duck session after the 2018 elections was an aberrational procedure. But the General Assembly's conduct was perfectly rational in light of Governor Cooper's vehement opposition to voter ID—the record does not reflect any voter ID law that Governor Cooper would have signed. His opposition is a critical piece of context because the General Assembly faced an unprecedented set of circumstances in November 2018. For the first time in state history, a party lost a supermajority while there was a governor with veto authority of the other party. *See* 4/14/21 Tr. at 32:21–24. It is thus, as Professor Callanan argued, unsurprising that the Republican supermajority convened the lame duck to accomplish their policy priorities. In fact, this is consistent with the General Assembly's actions in the lame duck in 2016, when the Governor's office changed from Republican to Democrat. Although Republicans maintained their supermajority in 2016, Professor Callanan found the 2016 lame duck to be the nearest comparator in North Carolina history. And during the 2016 lame duck, the General Assembly passed bills "cover[ing] seven or eight different topics and all passed – both passed in the lame duck and from introduction to ratification only three days elapsed." 4/22/21 Tr. at 22:1–3.

46. The fact the 2018 lame duck was a "reconvened regular session" and the 2016 lame duck was an "extra session" convened by legislative call is irrelevant. In *Abbott*, the Supreme Court explained that the Texas state legislature needed to call an additional session "because the regular session had ended." *Abbott*, 138 S. Ct. at 2329. The General Assembly faced a similar situation in June 2018 when the

short session was coming to a close. The General Assembly had two options available to it: call a reconvened regular session or plan to call an extra session by legislative call.[4] Although Faires faults the General Assembly for selecting a reconvened regular session, she conceded on cross-examination that there is no "substantive distinction in the authority of what the General Assembly can do" in an extra session called by legislative call or a reconvened regular session. 4/14/21 Tr. at 77:3–9. It is a distinction without a difference.

47. Moreover, the General Assembly's decision to call a lame duck is unsurprising because it is common throughout the Union. As Professor Callanan noted, lame-duck sessions have been called after power-shifting elections in state legislatures. 4/22/21 Tr. at 23:3–9. And for the U.S. Congress, a lame-duck session has been called every single time there has been a power shifting election since 1954. *Id.* at 23:21–24. It is unsurprising then that in the unprecedented circumstances facing the General Assembly in 2018, the General Assembly called a lame-duck session to similarly complete its legislative agenda before power shifted on January 1, 2019.

[4] The Governor also had the power to call the General Assembly back into session, but as Faires conceded, it was "unlikely" the Governor would convene the General Assembly back into session, 4/14/21 Tr. at 77:10–17, especially since the General Assembly would use the session to pass legislation with which the Governor vehemently disagreed. And, in any event, that was an option for the *Governor* to exercise, not an option that the General Assembly could pursue on its own initiative. *See* N.C. CONST. art. III, § 5(7) (providing the Governor the power to convene an extra session by gubernatorial proclamation); *see id.* art. II. § 11(b) (providing the General Assembly with the distinct power to convene an extra session by "legislative call").

48. As the Supreme Court found in *Abbott*, the fact the General Assembly convened another session does not give rise to an inference of bad faith. *Abbott*, 138 S. Ct. at 2329. In fact, given the legislative practices throughout the union and the impending ability by the Governor to be able to veto any voter ID bill without fear of override in 2019, it could be viewed as normal legislative practice for the General Assembly to act. "From the perspective of political science, there is no need to reach for nefarious or unusual explanations to account for the General Assembly's decision to do what American legislatures commonly do in like circumstances: convene to pursue their remaining policy priorities. This is normal legislative behavior." JX27 at 4.

49. Second, Plaintiffs argue that S.B. 824 was pushed through at a "rapid pace." "But [this Court] do[es] not see how the brevity of the legislative process can give rise to an inference of bad faith." *Abbott*, 138 S. Ct. at 2328–29. The pace of lame-duck sessions is ordinarily more compressed than at other times in the legislative calendar. *See* 4/14/21 Tr. at 54:3–5; 4/22/21 Tr. at 23:25–24:3 (Professor Callanan noting pace of action in lame-duck sessions and in normal sessions is "radically different"). Because of that, the relevant point of comparison is how the enactment of S.B. 824 compared to legislation in other lame-duck sessions and how it compared to other legislation during that same lame-duck session. After all, the General Assembly acted on 36 bills and resolutions during the 2018 lame duck. In the previous North Carolina lame duck in 2016, Professor Callanan explained that the pace of action was three days from filing to enactment for legislation dealing

with a variety of issues. By contrast, a draft of S.B. 824 was released publicly on November 20, 2018, *see* 4/20/21 Tr. at 53:8–11, underwent 24 changes before being officially filed in the Senate, JX772 at 3, was officially filed in the Senate on November 27, passed the Senate on November 29, passed the House on December 5, sent to the Governor on December 6, and then the Governor's veto was overridden on December 19, 2018. Howsoever one counts the days: from public release, from consideration before filing, from the date of filing, including the five days of legislative floor debate, this was a far more fulsome process than the most recent lame-duck session in 2016. Further, "the enactment was not the 'abrupt' or 'hurried' process that characterized the passage of the [H.B. 589]." *Raymond*, 981 F.3d at 306 (quoting *McCrory*, 831 F.3d at 228–29). And this timing does not even account for the fact that voter ID has been debated within the state and the General Assembly since at least 2011—an undoubtedly familiar topic with which many are well-aware.

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50. What is more is that the consideration of S.B. 824 was consistent with other legislation passed during the lame duck, in particular, H.B. 1108, S.B. 820, and S.B. 823—all of which were ratified in under ten days from their filing date like S.B. 824, and none of which Plaintiffs allege were passed with racially discriminatory purpose. Faires conceded at trial that her analysis provided no means of distinguishing the purposes of the General Assembly in enacting S.B. 824 from any of the other bills that passed in the lame-duck session. 4/14/21 Tr. at 55:6–10. In other words, Plaintiffs have submitted no evidence that S.B. 824 was treated any differently than any other bill passed during the lame duck. Accordingly, S.B. 824 did not depart from the "normal procedural sequence" of the lame duck but was fully consistent with it. *Arlington Heights*, 429 U.S. at 267.

51. Third, Plaintiffs cite to parliamentary minutiae, which under Faires's analysis, they contend makes the enactment of S.B. 824 aberrational. As Professor Callanan has persuasively argued, these complaints miss the mark. For instance, it is unremarkable that the General Assembly reconvened in a regular session without listing the specific topics to be discussed. In June 2018, the General Assembly did not know what the outcome of the November 2018 election would be, it did not know whether the voter ID amendment or the Nonpartisan Judicial Merit Commission Amendment would be adopted by voters, so it did not know whether legislative action on implementing legislation would be required. JX27 ¶ 20. As Callanan stated, "[t]he presence of these unique unknowns distinguishes this session from other reconvened regular sessions and may explain the decision not to

forecast the matters to be taken up in the reconvened regular session." And, in all events, past reconvened regular sessions had allowed for the consideration of bills implementing constitutional amendments. Thus, the consideration of S.B. 824 in a reconvened regular session "cannot be regarded as aberrant." *Id.* ¶ 22.

52. But a broader point is that Plaintiffs' idiosyncratic definition of "aberrational" is unhelpful. The Plaintiffs rely on Faires's theory that "if something happens that is different from what's happened before it would be an exception to the rule," and hence aberrational. 4/14/21 Tr. at 43:18–20. But it is important to keep in mind what is, at bottom, the inquiry: whether circumstantial evidence from the sequence of events leading to the enactment of S.B. 824 leads to an inference of bad faith that can overcome the presumption of legislative good faith. And Faires's definition of "aberrational" can lead to no inference whatsoever. At trial, Faires testified that her analysis could not distinguish between Democrat and Republican actions. Further, as discussed, Faires's analysis cannot distinguish between any of the bills or resolutions passed during the 2018 lame-duck session because, in her view, anything passed in the 2018 lame-duck session was aberrational.

53. In fact, Faires said at trial that there was nothing whatsoever that the General Assembly could have done to pass legislation implementing the voter-ID constitutional amendment before January 1, 2019, in a non-aberrational way. *Id.* at 63:8–17. But this just proves too much. Because, under Faires's standard, it is likely true that any actions taken after January 1, 2019, would be "aberrational" too. For example, Plaintiffs argue that the General Assembly should have taken up S.B. 824

after the New Year with a newly seated General Assembly. But if the General Assembly had done that, then that would have been the first time it had not passed implementing legislation for a constitutional amendment in the same biennium in the history of North Carolina. 4/22/21 Tr. at 26:18–21. In other words, it would have been "aberrational" under Faires's definition.

54. Since Plaintiffs' analysis cannot differentiate between actions by Democrats or Republicans, between S.B. 824 or any other bill or resolution in the lame duck, or between actions taken in 2018 or 2019, it does not prove a reliable way of understanding and assessing the General Assembly's actions leading to the enactment of S.B. 824. It certainly can provide no inference of bad faith. Instead, this Court finds that the North Carolina General Assembly acted similar to how it acted in 2016, it acted consistent with what other legislatures have done, including the U.S. Congress, for decades, and it treated S.B. 824 consistent with the other legislation passed during the 2018 lame-duck session. As Professor Callanan persuasively articulated, there is nothing remarkable or nefarious about the General Assembly's legislative process: it is fully in line with ordinary rational actions taken by political actors to accomplish policy goals.

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c. The Substance Of The General Assembly's Consideration Of S.B. 824 Does Not Lead To An Inference Of Bad Faith

55. When considering the specific sequence of events under *Arlington Heights*, the Court may consider, in addition to the specific procedures, whether the substance of the events leading up to the enactment of a law lead to "evidence that improper purposes are playing a role." *Arlington Heights*, 429 U.S. at 564. For instance, courts have looked at what information a legislature sought and obtained prior to enactment of a law and evaluated whether that information shows a racially discriminatory purpose. In *McCrory*, the Fourth Circuit found it significant that the General Assembly requested data "on the use, by race, of a number of voting practices." *McCrory*, 831 F.3d at 214. By contrast, in *Lee*, the Fourth Circuit found Virginia to have lacked a racially discriminatory purpose, in part because "the legislature did not call for, nor did it have, the racial data" akin to the data found relevant in *McCrory*. JX840 at 10 (*Lee*, 843 F.3d at 604).

56. In this case, the record shows that the General Assembly did not request any data about any voting practices in any way correlated to race. *Id.* The data they did have was the data presented by Kim Strach, which did not provide any racial information. JX878. In Strach's presentation, the General Assembly was told that 2.7 million people voted in the March 2016 primary, when H.B. 589's ID requirements were in place. 4/28/21 Tr. at 165:18–24; PX101 at 145:4–15. Of those who voted, Strach's presentation reported that 1,048 cast a reasonable impediment ballot and 1,248 people did not present acceptable photo ID, cast a reasonable impediment ballot, or return to their county board to cure a provisional ballot by the

deadline. JX878 at 31–32. In total, those 2,296 voters represented approximately 0.1% of all ballots cast in that election. Therefore, approximately 99.9% of voters were not required to cast a provisional ballot because they lacked voter ID under HB 589.

57. With this data in hand that 99.9% of voters had been able to vote under H.B. 589, the General Assembly did not seek to include less ID options. To the contrary, the General Assembly crafted S.B. 824 to ensure more voters could vote under the new constitutionally mandated ID requirement. Thus, S.B. 824 provided, inter alia, for (1) more ID options, including a Free ID at all county boards of elections, and (2) a more expansive reasonable impediment provision. With the data the General Assembly had, the General Assembly "specifically included a wide variety of photo IDs and offer[ed] free photo IDs to [North Carolina] citizens who wish to obtain one, which raises the question: 'Indeed, why would a racially biased legislature have provided for a cost-free election ID card to assist poor registered voters—of all races—who might not have drivers' licenses?'" *Greater Birmingham Ministries*, 992 F.3d at 1324 (quoting *Veasey v. Abbott*, 830 F.3d 216, 281 (5th Cir. 2016) (Jones, J., dissenting)). The only plausible inference is they would not.

58. Plaintiffs contend that the General Assembly should have sought racial information. But any member of the General Assembly could have sought this information. And the State Board would have provided that information to any member of the General Assembly who wanted it. 4/28/21 Tr. at 164:1–9. Plaintiffs fail to offer a compelling reason why the lack of racial data should lead to an

inference of racial animus on the part of the legislators who voted in favor of S.B. 824. After all, those who voted against S.B. 824 did not seek racial data either, and they could have. To accept Plaintiffs' argument, this Court would have to find that those who voted in favor of S.B. 824 were motivated by racial animus for not seeking racial data and those who voted against S.B. 824 were motivated by racial animus for not seeking racial data. Neither law nor logic provide a justification for that result. Instead, this Court finds, as did the Fourth Circuit in *Lee*, that the absence of that data or its request shows, that the "process was unaccompanied by any facts or circumstances suggesting the presence of racially discriminatory intent." JX840 at 10 (*Lee*, 843 F.3d at 604).

59. Further, nearly two and a half years after the legislative debates, Plaintiffs still have not presented evidence of possession rates of all types of ID that qualify under S.B. 824. *See* 4/30/21 Tr. at 29:8–10 (Plaintiffs' counsel stated, "We tried to get that data for him, believe me we tried, we wished we could have got it all."). It is far from clear what additional value this data would have provided. Strach testified that if the State Board had been asked for a matching analysis in November 2018 about the number of registered voters who lack qualifying ID under Senate Bill 824, she did not believe she could "say to [the General Assembly] that this is an accurate number of voters that do not possess acceptable ID." *See* 4/28/21 Tr. at 165:6–10. Plaintiffs still have not offered an accurate number.

60. Ultimately, Plaintiffs offered testimony from several legislators who do not support voter ID who opined how they would have preferred the process to have gone. But Plaintiffs have not identified an amendment that is not in the current law and that would have made a material difference to S.B. 824's voter ID provisions. As Dr. Quinn testified, he "is not aware" of a combination of photo IDs that would eliminate any racial disparity between African Americans and whites. 4/15/21 Tr. at 160:10–18. And nothing in his report is inconsistent with the possibility that S.B. 824 and the list of Qualifying ID in S.B. 824 produces the narrowest possible racial disparity between African Americans and whites holding Qualifying ID. *Id.* at 160:23–161:7.

V. The Legislative History Reveals An Inclusive Process

61. The process by which the General Assembly enacted S.B. 824 further confirms that the General Assembly's goal was what legislators said it was: implementing the voter-ID amendment and ensuring election integrity and voter confidence, not political entrenchment through racial discrimination. First, in stark contrast to the historical African American voter suppression measures in North Carolina, such as the poll tax and the literacy test, the legislative record on S.B. 824 is devoid of racial appeals. *See Raymond*, 981 F.3d at 309.

62. Second, even though voter ID is a contentious issue between Republicans and Democrats, and even though the Republican supermajority did not need to include any Democrats in the process, the process was bipartisan under any normal understanding of that term. Republican leadership assured their Democratic colleagues that the process would not be rushed. *See* JX771 at 118:5–8

(Chairman Lewis: "The instructions we've received from Speaker Moore and Senator Berger is that this process not be rushed in any way."); JX774 at 46:14–15 (Chairman Jones: "We'll go as long as we need to go[.]"). The level of Democratic involvement shows that it was not. Republicans took input from Democrats; Democrats proposed the amendments that they intended to propose; and most were accepted. 4/20/21 Tr. at 51:9–24, 125:16–19, 184:10–12; 4/21/21 Tr. at 41:18–42:12; 4/23/21 Tr. at 5:20–24; PX5 ¶ 12; JX645; JX636; JX635; JX644; JX772 at 12:9–15; LX262 at 3; 4/29/21 Tr. at 72:11–73:2; JX633; JX631; JX624; JX634; see also LX776 at 81:1–10 (Chairman Lewis withdrawing motion to report bill favorably out of committee to permit Representative Harrison to present an additional amendment about challenge procedures).

63. Third, Democrats voted for S.B. 824 at various points as it worked its way through the General Assembly. When the Fourth Circuit upheld Virginia's voter-ID law, it noted that, "[w]hile there was a substantial party split on the vote enacting the law, two non-Republicans (one Democrat and one Independent) voted for the measure as well." JX840 at 9 (*Lee*, 843 F.3d at 603). Here, five Democrats across the Senate and the House voted for S.B. 824 at different points, with four of them voting for the bill in its final form. JX663; JX662; JX647; JX648; JX649; JX646. This is particularly salient in this context, where Plaintiffs' theory of the case is that the General Assembly discriminated against African Americans as a means to entrench Republicans. Plaintiffs have not offered a convincing explanation for why any Democrat would vote for such a bill.

64. And fourth, legislators' statements reflect a thorough, inclusive, deliberative process. *See* JX779 at 2:16–3:8 (Senator Krawiec: "From the time this bill was introduced, we made 30 something changes. We listened to everybody. There's not anyone who can say that all sides didn't participate. We took guidance, suggestions, amendments from colleagues on the other side of the aisle, from stakeholders, from our colleges, universities, community colleges. We listened to everyone. We tried to incorporate the changes they recommended, that they asked for, because we don't want anyone to be disenfranchised. We don't want anyone to not be able to vote. So I think we've covered just about everything that we could have covered, and I believe that it's a good bill. I thank my colleagues, particularly on the other side of the aisle, for their input[.]").

65. Democratic General Assembly members who are generally opposed to voter ID laws confirmed that S.B. 824's process was inclusive. Both Senator McKissick and Representative Harrison thanked the Republican majority for being open and inclusive and for working with Democrats to improve the bill, statements that they did not offer while H.B. 589 was being considered in the General Assembly. *Compare* JX773 at 3:3–8, JX777 at 116:20–117:2, *and* JX776 at 98:17–19, *with* JX509 at 39:19–23. These members had a demonstrated history of offering vocal criticism to voter-ID bills and giving no words of thanks to the Republican majority that offered the bills, so the inclusion of these words of thanks from these same members is striking here.

66. This inclusive process is inconsistent with Plaintiffs' attribution of bad faith to the legislators' who enacted S.B. 824. Under *Arlington Heights*, this Court must afford the General Assembly "the presumption of legislative good faith." *See Abbott*, 138 S. Ct. at 2329. Again, this is not a presumption that courts may give only "lip service" to; instead, it is an essential part of the analysis, especially when considering the actions of legislators themselves. Plaintiffs' burden was to identify departures strong enough to "give rise to an inference of bad faith" and overcome the presumption of legislative good faith. As the inclusive process just outlined demonstrates, Plaintiffs have failed to do so.

VI. S.B. 824 Echoes Historical Voting Protections, Not Historical Restrictions

67. Before analyzing the remaining *Arlington Heights* factor—historical background—it is necessary to explain the factor's relevance. History alone cannot impugn the General Assembly's intent, for two main reasons.

68. First, arguments that might impugn the intent behind any voter-ID law are not relevant. The North Carolina constitution requires the General Assembly to pass a voter photo-ID law. If S.B. 824 were suspect merely because racial discrimination has occurred in North Carolina's past, any voter-ID law would be similarly marked with "original sin."

69. Second, the concept of original sin has no place under the *Arlington Heights* framework. Instead, *Arlington Heights* calls for evidence of a pattern of official discrimination in which the challenged action itself plays a part. As the U.S. Supreme Court explained, "historical background" is relevant "particularly if it

reveals a series of official actions taken for invidious purposes." 429 U.S. at 267. And courts must afford legislators a presumption of good faith. *See Raymond*, 981 F.3d at 303 (explaining that if the invalidation of H.B. 589 was dispositive on the question of the legislature's intent in enacting S.B. 824, that would "improperly flip[] the burden of proof at the first step of its analysis and fail[] to give effect to the Supreme Court's presumption of legislative good faith"); *McCrory*, 831 F.3d at 241.

70. That is especially so when intervening events sever the challenged act from past discrimination, as the U.S. Supreme Court explained in *Abbott v. Perez*, 138 S. Ct. 2305 (2018). Two intervening events exist here. The first was the Fourth Circuit's decision in *McCrory*, which endeavored to "fashion a remedy that w[ould] fully correct past wrongs," specifically the intent that the Court had found in H.B. 589. JX838 at 28 (*McCrory*, 831 F.3d at 239 (internal quotation marks omitted)). The court did not, however, purport to "freeze North Carolina election law in place as it is today," for the court recognized that the Fourteenth Amendment does not "bin[d] the State's hands in such a way." JX838 at 29 (*McCrory*, 831 F.3d at 241). The second event was, of course, the constitutional amendment requiring the General Assembly to pass a voter-ID law.

71. This case is therefore much like *Abbott*, and if anything, the comparison favors S.B. 824. In *Abbott*, the Texas legislature adopted a redistricting plan in 2011 that a court found discriminatory. In 2013, the Texas legislature adopted the court's redrawn map. "Under these circumstances," the Supreme Court said, "there can be no doubt about what matters: It is the intent of the 2013

Legislature. And it was the plaintiffs' burden to overcome the presumption of legislative good faith and show that the 2013 Legislature acted with invidious intent." *Abbott*, 138 S. Ct. at 2325. If a court decision was sufficient to separate the legislatures there, a court decision and a constitutional amendment are certainly sufficient here.

72. In short, what matters is the intent of the legislature that passed the specific law at issue. Plaintiffs must therefore show that something about this voter-ID law connects it to past discrimination.

73. Neither of their historical witnesses conducted that analysis. Both conclude that S.B. 824 repeats past discrimination. But to determine whether this voter-ID law—as opposed to any other voter-ID law that the General Assembly might have passed—repeats past discrimination, it is necessary to consider what else the General Assembly could have done to protect the rights of minority voters. If there is no other law that, in these witnesses' view, would wash the taint of the past, then nothing about this voter-ID law connects it to past discrimination. Professor Leloudis explicitly did not consider the General Assembly's other options. 4/13/21 Tr. at 79:2–4, 13–15. And Professor Anderson concludes that any law requiring photo ID that the General Assembly could have passed would be consistent with North Carolina's pattern of voter suppression. 4/12/21 Tr. at 137:14–18. Indeed, in her view, the only thing the General Assembly could have done to excise the discrimination found in H.B. 589 would be to not have a voter-ID law. *Id.* at 137:10–13. Thus, their analyses are flawed as conceived.

74. They are also flawed as executed. Given the many evident deficiencies in her analysis discussed above, Professor Anderson is unable to connect S.B. 824 to any past official discrimination by the General Assembly, the relevant actor here. She argues that S.B. 824 echoes the literacy test and poll tax based on the mere fact that all were required by constitutional amendment. But Plaintiffs are not challenging the voter-ID amendment, which, as explained, points toward S.B. 824's constitutionality, not against it. In any event, Professor Anderson provides no evidence that anyone voted for that amendment with the intent to disenfranchise African Americans, 4/13/21 Tr. at 25:22–25, in contrast to the openly discriminatory motivations for the literacy test and poll tax that both she and Professor Leloudis identify. 4/12/21 Tr. at 163:21–22; 4/13/21 Tr. at 108:25–109:8.

75. Professor Anderson further argues that the differences between S.B. 824 and H.B. 589 are "just so" tweaks intended to mask discrimination. Having not read either law, however, she does not account for the effect of those differences, and indeed was not even aware of some. She was not aware whether the reasonable impediment exception was included in the final version of S.B. 824, and her report neither discusses that exception nor reviews how many African American voters would be able to vote because of it. 4/13/21 Tr. at 26:14–27:6. She was not aware whether H.B. 589 required county boards of elections to issue free, no-documentation IDs (which it did not), and her report does not discuss S.B. 824's requirement that county boards do so. *Id.* at 27:7–16. She was also not aware that these IDs can be obtained at one-stop early voting, which she knew African

American voters disproportionately use. 4/12/21 Tr. at 160:19–22. Ultimately, in her view, even if a voter-ID law allowed every type of photo ID that exists to be used for voting, she would still see that as a tweak. 4/13/21 Tr. at 26:1–5. And in her view, no tweak would make the law palatable. *Id.* at 27:21–24. In other words, her arguments would apply against any voter-ID law that the General Assembly might pass.

76. Professor Anderson holds these views because, she asserts, "the underlying foundation for voter ID laws emerged out of the . . . lie of massive rampant voter fraud . . . that identified that fraud as coming out of these major urban areas." *Id.* at 26:5–9. But she provides no relevant basis for that assertion, either: no statement from the legislative debates over S.B. 824 that characterizes voter fraud as occurring only among minority voters, no statement suggesting that voter fraud occurs only in the cities, no statement suggesting that massive voter fraud is coming out of the inner city. 4/13/21 Tr. at 29:8–21. Nor does she account for race-neutral reasons why legislators support voter-ID laws even if voter-impersonation fraud is not rampant, such as those identified in the Carter Baker Report. LX1. Although she cites articles about the report, she did not review the Commission's recommendations and was not aware that a Commission co-chaired by former President Jimmy Carter had recommended that states adopt voter-ID laws even stricter than North Carolina's. 4/13/21 Tr. at 32:16–33:7, 33:20–34:9, 35:1–9, 36:8–16.

77. Professor Leloudis's historical account is more thorough—and, as discussed above, shows increasing racial parity. Yet he too cannot connect S.B. 824 to any past act of official discrimination and thus to any relevant pattern of racially motivated retrenchment. Whereas only "a very small number" of African American voters might have satisfied the Grandfather Clause, thereby avoiding the literacy test like white voters did, S.B. 824 applies to everyone. *Id.* at 100:5–15. Whereas the literacy test gave election registrars wide latitude to exclude African American voters, S.B. 824 does not give election officials any discretion to reject ballots from those who appear with a Qualifying ID. *Id.* 108:14–20. Whereas the literacy test, poll tax, and other such past measures were adopted in the context of explicit racial appeals and concerted violence against African Americans, Professor Leloudis is aware of no racial appeals about S.B. 824 or the voter-ID amendment or of any violence against African American voters in North Carolina in this century. *Id.* at 109:19–24, 110:19–111:13; *see also* JX695 at 34–35. And whereas these amendments delivered a "knockout punch" to voter turnout, Professor Leloudis would not imagine "that S.B. 824 would have the same scale of effect." *Id.* at 107:17–20; *accord id.* 111:19–21.

78. Indeed, no one has alleged that even strict voter-ID laws (which S.B. 824 is not) eliminate African American turnout entirely, as occurred after the adoption of the 1900 amendments.

79. Professor Leloudis attempts to downplay S.B. 824's ameliorative provisions by arguing that African American voters will not utilize them. But he misunderstands the reasonable impediment process, which he described as opening voters up to "roving at large challenges" without knowing whether reasonable impediment declarations are subject to challenge under S.B. 824—which they are not. 4/13/21 Tr. at 90:12–91:9, 158:24–159:7; *see* JX674 at 12–13 (S.B. 824 § 3.1(c)). Professor Leloudis also misunderstood the free-ID provision. He testified that the availability of these IDs during one-stop early voting came by later amendment and therefore did not factor in his report, when in fact S.B. 824 has mandated the availability of free IDs from the start. 4/13/21 Tr. at 164:22–165:8; JX674 at 1 (S.B. 824 § 1.1(a)).

80. In sum, Plaintiffs' historical evidence, like the rest of their evidence, does not satisfy their burden to prove discriminatory intent. In the face of their historians' unfounded conclusions about S.B. 824 is a steady progress that continues to this day and throughout which North Carolina's African American voters have exercised significant voting strength—which, in passing S.B. 824, the General Assembly took several steps to preserve. It does not diminish the discrimination of the past to say that North Carolina is in a far better place today and that—by ensuring that all voters can vote while honoring its constitutional commitments—the General Assembly followed the lead of past reformers, not past discriminators. If anything, it diminishes the discrimination suffered by past citizens to compare S.B. 824 to poll taxes, literacy tests, and Jim Crow. By engaging in such

comparisons and by the "reading between the lines" approach urged upon this panel, Plaintiffs attempt to make the fiction that African Americans would be more confused by or generally less able to comply with S.B. 824's identification requirements into fact.

VII. The Circumstantial Evidence Of Discriminatory Intent That The Fourth Circuit Located In H.B. 589 Does Not Exist In S.B. 824

81. For all the above reasons, S.B. 824 shares none of the characteristics that the Fourth Circuit relied upon when enjoining H.B. 589.

82. First, the omnibus nature of H.B. 589 was critical to the Fourth Circuit's analysis. "[T]he sheer number of restrictive provisions," the court said, "distinguishes this case from others," because "cumulatively, the panoply of restrictions results in greater disenfranchisement than any of the law's provisions individually." JX838 at 22 (*McCrory*, 831 F.3d. at 231). "[A] rational justification can be imagined for many election laws, including some of the challenged provisions here. But a court must be mindful of the number, character, and scope of the modifications enacted together in a single challenged law." JX838 at 24 (*McCrory*, 831 F.3d at 234). These statements do not apply to S.B. 824, which is not an omnibus bill.

83. Second, the Fourth Circuit observed that the initial draft of H.B. 589, introduced before the U.S. Supreme Court invalidated the preclearance process in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), included "a much less restrictive photo ID requirement" than the final bill and none of the other omnibus provisions. JX838 at 19 (*McCrory*, 831 F.3d. at 227). After *Shelby County*, the General

Assembly replaced that draft with a much more expansive bill, which it proceeded to pass in three days and "on strict party lines." JX838 at 20 (*McCrory*, 831 F.3d at 228).

84. The sequence of S.B. 824 is entirely different. The bill was introduced not after a judicial decision removing restrictions on states' ability to make voting changes, but after a constitutional amendment requiring the General Assembly to pass a law implementing a specific change. The initial draft of the bill included a free-ID provision and sweeping reasonable impediment process. It became only more lenient during the legislative process, which the direct statements of multiple Democratic legislators confirm was thorough and inclusive. *See* JX773 at 3 (Senator McKissick); JX772 at 44 (Senator Smith); JX772 at 55 (Senator Van Duyn); JX772 at 17 (Senator Woodard); JX777 at 116–117 (Representative Harrison). And it was not passed on strict party lines.

85. Third, the Fourth Circuit determined that "findings that African Americans disproportionately used each of the removed mechanisms" of H.B. 589—preregistration, same-day registration, early voting, and out-of-precinct voting—"as well as disproportionately lacked the photo ID required by [H.B. 589] . . . establishes sufficient disproportionate impact." JX838 at 22 (*McCrory*, 831 F.3d at 231). S.B. 824 cannot have the same impact; again, it is not omnibus legislation, and it leaves in place the voting mechanisms that H.B. 589 had removed. What is more, even if Plaintiffs had established that African Americans disproportionately lack the forms of ID approved by S.B. 824 (and they have not), that fact alone could

not establish disparate impact because S.B. 824's reasonable impediment provision allows all voters to vote. While H.B. 589 was later amended to include a reasonable impediment process, the Fourth Circuit in *McCrory* did not consider that process in its impact analysis because it was not part of the original bill. The more pertinent precedent is therefore South Carolina, which found that the "sweeping reasonable impediment provision [in that State's voter ID law] eliminate[d] any disproportionate effect or material burden that South Carolina's voter ID law otherwise might have caused." JX841 at 8 (*South Carolina*, 898 F. Supp. 2d at 40). Plaintiffs do not rebut this with record evidence.

86. Finally, though North Carolina's history has not changed since *McCrory*, North Carolina's constitution has. Especially in light of the intervening voter-ID amendment—approved by a majority of North Carolinians—the intent of any prior General Assembly cannot be simply transferred to the one that passed S.B. 824. The intent of that General Assembly is what matters. And the evidence shows that this General Assembly's intent is not what the Fourth Circuit had found in the passage of H.B. 589.

87. The clearest sign that the Fourth Circuit's opinion in *McCrory* does not apply to S.B. 824 comes from the Fourth Circuit itself. Bound by *McCrory*, the Fourth Circuit nevertheless held that S.B. 824's federal challengers were unlikely to succeed in showing that S.B. 824 was passed with discriminatory intent. In doing so, the court recognized the many differences between S.B. 824 and H.B. 589, including that "[n]othing here suggests that the General Assembly used racial

voting data to disproportionately target minority voters with surgical precision." *Raymond*, 981 F.3d at 308–09 (internal quotation marks omitted).[5] More simply, the court recognized that S.B. 824 is not H.B. 589.

VIII. The Evidence Shows That The General Assembly Would Have Passed S.B. 824 Even Apart From Any Allegedly Discriminatory Motive

88. If Plaintiffs had proved discriminatory intent, which they have not, the question would then become whether "the same decision would have resulted even had the impermissible purpose not been considered." *Arlington Heights*, 429 U.S. at 270, n.21. The evidence shows it would have.

89. First, it is a given that the General Assembly needed to enact some form of voter-ID law. The constitution commands it, and several legislators—including those who voted for and those who voted against S.B. 824—cited that command during S.B. 824's legislative process. *See* JX771 at 3 (Representative Lewis); JX772 at 2 (Senator Krawiec); JX772 at 16 (Senator Woodard); JX772 at 38 (Senator Tillman); JX773 at 3 (Senator McKissick); JX777 at 50 (Speaker Moore). These statements are fully consistent with legislators' testimony in this case. *See* 4/20/21 Tr. at 203:4–12 (Senator Ford); 4/20/21 Tr. at 50:1–5 (Representative Harrison). The goal of preserving election integrity is an independent reason voiced by legislators during the process and likewise confirmed by the evidence. Voter confidence is key to voter participation, and existing studies provide some scientific

[5] The *McCrory* court criticized the General Assembly for requesting racial voting data before enacting H.B. 589. JX838 at 10 (*McCrory*, 831 F.3d at 214). But at the time that it did so, the General Assembly was required under the Voting Rights Act's preclearance provisions to consider the potential racial impact of voting changes, *see, e.g.*, Georgia v. United States, 411 U.S. 526, 538 (1973), a requirement no longer in place when S.B. 824 was introduced.

support for the notion that voter-ID laws enhance voter confidence. And though the extent of voter-impersonation fraud in North Carolina is not known, because not all instances are likely discovered, it is rational to expect a legislature to take precautionary steps against an unquantified but potentially serious threat. JX25 ¶ 54; 4/22/21 Tr. at 52:19–24.

90. Second, we know that the General Assembly would have convened to enact a voter-ID law during a post-election, lame-duck session. Republican legislators had every reason to suspect that, once they lost their supermajority in the 2019 session, their desires to implement the constitutional amendment and to preserve election integrity would be blocked by Governor Cooper's newly effective veto pen and would become subject to bipartisan uncertainties. The suggestion that waiting to pass a voter-ID law in the next session with the Governor's consent would have been anything but a hopeless enterprise is contradicted by the Governor's veto message about S.B. 824 itself. JX687 ("Requiring photo IDs for in-person voting is a solution in search of a problem. . . . Finally, the fundamental flaw in the bill is its sinister and cynical origins: It was designed to suppress the rights of minority, poor and elderly voters. The cost of disenfranchising those voters or any citizens is too high, and the risk of taking away the fundamental right to vote is too great, for this law to take effect."). He reiterated these sentiments in an amicus brief asking the Fourth Circuit to uphold an injunction against S.B. 824. *See* Brief of Gov. Roy Cooper as Amicus Curiae Supporting Plaintiffs-Appellees and Affirmance at 1, *Raymond*, 981 F.3d 295 (4th Cir. 2020) (No. 20-1092) ("[T]he photo ID

requirement in S.B. 824 is a solution in search of a problem, erects barriers that will confuse citizens and discourage them from voting, and was enacted with discriminatory intent."). That a majority of the General Assembly's intent in convening as a lame duck was to enact a voter-ID law before the Governor could veto it is again fully consistent with legislators' testimony in this case. See 4/20/21 Tr. at 93:1–11 (Representative Harrison); 4/21/21 Tr. at 57:4–9 (Senator Robinson).

91. And finally, we know that the General Assembly would have enacted the same voter-ID law in that session. S.B. 824 was based on South Carolina's voter-ID law, which had already been upheld in court. Plaintiffs have not identified a single change to the bill that would have meaningfully improved voters' access to the polls. They have identified no array of qualifying IDs that would result in a narrower gap of ID-possession rates than they alleged. They have not attempted to quantify the effect of S.B. 824's free-ID provision or reasonable impediment process. Nor have they identified any additional ameliorative provision that would have measurably improved voter access beyond these existing ones.

92. Thus, even assuming a counterfactual, discriminatory motivation behind S.B. 824, there is still "no justification for judicial interference with the challenged decision." *Arlington Heights*, 429 U.S. at 270 n.21. Nothing in the record indicates that a legislature, scrubbed of that assumed motive, would have done anything differently in the unique situation that the General Assembly found itself in. And even if the General Assembly were required to begin the process of enacting another voter-ID law tomorrow, not even Plaintiffs—after several years of litigation

and a three-week trial—have explained what other voter-ID law the General Assembly should pass, because S.B. 824 is one of the most generous in the country.

CONCLUSION

Senate Bill 824 was a bipartisan bill that was supported along the way by multiple African American legislators and enacted after the people of our State approved a constitutional amendment calling for voter-photo-ID requirements. The totality of the competent evidence presented in *this* litigation over *this* act of the General Assembly *in 2018* fails to support a finding that the General Assembly acted with racially discriminatory intent. Moreover, even if some evidence allowed for a showing of such an intent, the totality of the competent evidence shows that S.B. 824 would have still been enacted absent that allegedly discriminatory intent.

In conclusion, the North Carolina General Assembly's enactment of S.B. 824 comports with the North Carolina Constitution, and S.B. 824 should not be declared unconstitutional or otherwise enjoined in its operation based upon the record before this Court.

For the foregoing reasons, I respectfully dissent.

Nathaniel J. Poovey, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

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Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 17th day of September 2021.

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EXHIBIT 2

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF WAKE	18 CVS 15292

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR., Plaintiffs, v. TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS, Defendants.	APRIL 20, 2021 PAGES 1003 - 1217

APRIL 12, 2021, CIVIL SESSION

HONORABLE NATHANIEL J. POOVEY,
HONORABLE MICHAEL J. O'FOGHLUDHA,
HONORABLE VINCE M. ROZIER, JR.,
JUDGES PRESIDING

TRANSCRIPT OF THREE-JUDGE PANEL PROCEEDING

VOLUME 6 OF 14

Maren M. Fawcett, RPR, CRR
Official Court Reporter
District 10
Wake County, North Carolina

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EXHIBITS

PLAINTIFFS' EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
PX 5	Affidavit of Joel Ford	1159	
PX 73	Joel Ford Tweet	1147	
PX 79	11/16/2018 Email from J. Ford to W. Daniel	1171	
PX 81	The Charlotte Observer Article	1148	
PX 88	Daily Tar Heel Article "Who are the Voting Members on the UNC Board of Governors	1142	

JOINT EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
JX 746	Email from Pat Ryan	1183	

LEGISLATIVE DEFENDANTS' EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
LX 51	Report WRAL "Republicans Roll Out Voter ID Bill"	1060	
LX 248	Transcript of North Carolina Senate Resolution 258, Senate BOG Vacancy Election, 3/17/2021	1207	
LX 249	Senate Resolution 258	1205	
LX 250	Roll Call Vote on Senate Resolution 258	1207	

10:49:31 Q. And I believe you said on your direct examination
10:49:35 that a draft of Senate Bill 824 was circulated on
10:49:41 November 20. So that would have been circulated to you as a
10:49:44 member of the Elections Committee, correct?
10:49:47 A. That is correct.
10:49:50 Q. Do you recall when that draft bill was made
10:49:53 publicly available?
10:49:58 A. I -- I thought it was the night before the -- the
10:50:05 November 26th Joint Elections Committee hearing, but I might
10:50:12 be mistaken.
10:50:13 Q. Would you -- would you have known when -- back in,
10:50:18 you know, two years ago, two and a half years ago, would you
10:50:21 have known when the bill was publicly released?
10:50:27 A. We -- we normally would know when a bill is
10:50:30 publicly released. I'm just -- I'm drawing a blank on it
10:50:35 right now.
10:50:36 Q. Okay. I'd like to see if this refreshes your
10:50:40 recollection.
10:50:43 MR. MASTERMAN: Ms. Hardiman, could we pull up
10:50:44 what's been marked as LX 051.
10:50:47 (Legislative Defendants' Exhibit LX 51
10:50:47 identified.)
10:50:53 Q. And this is a report from WRAL entitled
10:50:56 "Republicans Roll Out Voter ID Bill." You're familiar with
10:51:01 WRAL, correct?

10:51:03 A. Sure, yes.
10:51:04 Q. And do you see the date on this article?
10:51:09 A. Yes. So that is the same day, November 20th, that I guess it was released to the committee members.
10:51:16 Q. Okay.
10:51:16 A. November 20th, yes.
10:51:18 Q. Does this refresh your recollection about when it would have been released publicly?
10:51:23 A. Yes, it does. And yes, November 20th.
10:51:28 Q. November 20th, okay. Thank you.
10:51:30 MR. MASTERMAN: Ms. Hardiman, you can -- you can take that down.
10:51:43 Q. Now, if we could look at what's been marked as JX 0771. And if Ms. Hardiman -- I'm showing you a transcript of the November 26 Joint Elections Oversight Committee.
10:51:58 That's the committee hearing that you said you attended, correct?
10:52:01 A. Yes.
10:52:04 Q. Do you remember speaking at that committee hearing?
10:52:05 A. I do recall -- well, I believe I recall offering some suggestions towards the end of that committee meeting, if I'm correct, because I -- yes, I believe I spoke at that committee.
10:52:12 MR. MASTERMAN: Ms. Hardiman, could we turn to

EXHIBIT 3

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF WAKE	18 CVS 15292

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR., Plaintiffs, v. TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS, Defendants.	APRIL 22, 2021 PAGES 1364 - 1558

APRIL 12, 2021, CIVIL SESSION

HONORABLE NATHANIEL J. POOVEY,
HONORABLE MICHAEL J. O'FOGHLUDHA,
HONORABLE VINCE M. ROZIER, JR.,
JUDGES PRESIDING

TRANSCRIPT OF THREE-JUDGE PANEL PROCEEDING

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Maren M. Fawcett, RPR, CRR
Official Court Reporter
District 10
Wake County, North Carolina

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EXHIBITS

JOINT EXHIBITS ----------

JOINT EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
JX 863	Bill Draft 2017-BK-21	1510	

PLAINTIFFS' EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
PX 52	Supplemental Declaration of Floyd B. McKissick, Jr.	1446	
PX 99	Washington Post Article	1478	

LEGISLATIVE DEFENDANTS' EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
LX 4	M.V. Hood III & Charles S. Bullock III, Much Ado About Nothing? Article	1547	
LX 10	Justin Grimmer et al., Obstacles to Estimating Voter ID Laws' Effect on Turnout Article	1554	
LX 90	Heritage Foundation Database	1417	
LX 145	Fourth Circuit Decision	1508	

provision is the appropriate remedy in this case. Specifically, in 2015, the General Assembly enacted SL 2015-103, which amended the photo ID requirement and added the reasonable impediment exception."

Does this refresh your recollection about the Fourth Circuit not incorporating the reasonable impediment amendment completely into its analysis in striking down HB 589?

A. It does.

Q. And under HB 589, was it possible for a voter to get a free ID without presenting documentation?

A. No.

Q. And was it possible for a voter to get a free ID without documentation from a County Board of Elections during early voting under HB 589?

A. No.

(Joint Exhibit JX 863 identified.)

MR. PATTERSON: I would like to publish next, Your Honors, since -- Professor Callanan was asked about what the legislature considered during enactment of SB 824, and I'd like to publish JX 863, which is one of the legislative privilege documents that was ordered to be produced and that we are waiving confidentiality on for purposes of publishing here.

Hearing no objection, I will continue.

03:25:17 Q. Professor Callanan, I'll represent to you that you
03:25:19 see here this is a draft bill. Let's scroll up to the top,
03:25:25 please, if we could. General Assembly of North Carolina, it
03:25:31 says bill draft. It's dated November 15th, 2018. Do you
03:25:34 see that, Professor Callanan?
03:25:36 A. I do. I do.
03:25:38 Q. Okay. And if we scroll down now to the beginning
03:25:42 text, there is language highlighted in yellow, it says:
03:25:46 "The language in part one directly tracks the SC statute to
03:25:51 the extent possible. Small changes were made for clarity,
03:25:56 conforming changes to NC drafting style, removal of
03:26:00 redundancies, and when other procedures in SC election law
03:26:03 did not fit with NC procedures, those are noted within."
03:26:10 Professor Callanan, is this consistent with what I
03:26:12 believe you've testified that it would be normal to expect a
03:26:18 legislature to be aware of and cognizant of other voter ID
03:26:24 laws when enacting its own voter ID law?
03:26:27 A. Yes.
03:26:27 (Joint Exhibit JX 857 marked for identification.)
03:26:29 Q. And I would like to bring up one more similar
03:26:32 document, that's JX 857, and this is another one of the
03:26:40 legislative privilege documents for which we are withdrawing
03:26:44 confidentiality on. And if we scroll down, you see -- Let's
03:26:51 scroll up, scroll up a little bit so we can see the people
03:26:54 on this email, the second email.

03:26:57 So we've got ncleg.net email addresses,
03:27:05 legislative analysis titles, and if we go down to the text,
03:27:11 it says: "Attached is a copy of the rough draft we have
03:27:14 started for voter ID. This incorporates in the 2011 South
03:27:18 Carolina legislation H-3003, including the five specified
03:27:24 types of ID."
03:27:26 Now, is this also consistent with your
03:27:27 understanding that the General Assembly would be cognizant
03:27:30 of other voter ID laws?
03:27:33 A. It is.
03:27:35 Q. And it says here specifically that the South
03:27:38 Carolina legislation has five specified types of ID. And to
03:27:45 your knowledge, does SB 824 have more than five specified
03:27:49 types of ID?
03:27:50 A. Yes.
03:27:51 Q. And so is that consistent with a conclusion that
03:27:54 the General Assembly intentionally extended the forms of ID
03:27:58 beyond what is available in South Carolina?
03:28:02 A. There -- If there are more IDs, then it was
03:28:05 certainly done intentionally in some sense.
03:28:15 MR. PATTERSON: Okay. I have no further questions
03:28:16 for you at this time, Professor Callanan. Thank you.
03:28:20 THE WITNESS: Thank you, Mr. Patterson.
03:28:22 JUDGE POOVEY: Mr. Brachman, do you have other
03:28:23 recross?

EXHIBIT 4

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF WAKE	18 CVS 15292

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR.,	APRIL 28, 2021
Plaintiffs,	PAGES 2093 - 2303
v.	
TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,	
Defendants.	

HONORABLE NATHANIEL J. POOVEY,
HONORABLE MICHAEL J. O'FOGHLUDHA,
HONORABLE VINCE M. ROZIER, JR.,
JUDGES PRESIDING

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Maren M. Fawcett, RPR, CRR
Official Court Reporter
District 10
Wake County, North Carolina

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PLAINTIFFS' EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
PX 124	2021.04.27 Declaration of Kevin Quinn in Holmes et al. v. Moore et al.	2282	2296
PX 127	Excerpt of April 23, 2021, Trial Transcript	2223	
PX 134	Duke University ID Card Website	2235	

LEGISLATIVE DEFENDANTS' EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
LX 188	Voter Data	2152	
LX 191	Analysis of Provisional Ballots Cast in Alamance County in March 2016 Primary Election		2274
LX 192	Summary of Guilford County Discounted Provisional Ballots in March 2016 Primary Election With a Reasonable Impediment	2168	2274
LX 202	3/15/2016 Official Primary Election Results - Guilford	2167	2275
LX 209	One-Stop Voting Sites for the November 6, 2012 General Election	2170	2275
LX 210	One-Stop Voting Sites for the November 3, 2020 Election	2171	2275
LX 219	One-Stop Voting Sites for the November 8, 2016 Election	2170	2276
LXD 220	Guilford County One Stop Voting Sites	2172	2276
LX 224	3/15/2016 Official Primary Election Results - Alamance		2276
LX 257	Maintaining the Voter Registration Database in North Carolina Handbook		2273

LEGISLATIVE DEFENDANTS' EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
LXD 258	Excerpt from JX0798 - March 2016 Provisional Ballot Spreadsheet	2119	2277
LX 270	NCSBOE Memo, "SBE: Early Voting Begins in North Carolina"	2262	

implementation of House Bills 589's photo ID requirement.

To the extent that a criticism has been made that no efforts were made to educate voters about the fact that they no longer needed to show photo ID in the general election in 2016, do you believe that such criticisms are valid?

A. I don't, because -- and there was a lot of evidence to what the State and the County Boards did. The -- the decision in the Fourth Circuit in that case, I believe, came out on July 29th, and as I -- my best recollection is that we were about to conduct a statewide training seminar that was -- the purpose of that was at that time to continue to train people on the need to have their outreach efforts and get ready for the general election. And once that decision came out, we had to immediately switch gears because it became very clear to us very quickly that we had advertising that was going on that was telling people that they would have to show up and provide a photo ID. We had literature that was out in the community that was going to have to be -- we needed to stop. And so we immediately started to make efforts to notify all of the individual -- or the groups that we had provided -- provided literature on the need to show photo ID to get them to stop distributing that and providing additional things to show that they didn't have to show photo ID.

12:13:26 We included -- and after -- in every general
12:13:32 election we -- and some primaries we print what is called a
12:13:37 Judicial Voter Guide. And the Judicial Voter Guide has
12:13:41 been -- it goes out since 2004, I think was the first time
12:13:45 we started mailing those. They go to every household in the
12:13:49 state, not just to registered voters, and it provides
12:13:52 information on registering to vote, pertinent information
12:13:56 about the appellate judicial races, but also voting
12:14:00 information. And so we've used that opportunity because we
12:14:05 knew that we needed to be able to reach not just registered
12:14:08 voters but everyone that might show up and vote in the
12:14:11 general election.
12:14:12 So we prominently used that voter guide as an
12:14:15 opportunity to show and to distribute out to every household
12:14:19 that photo ID would not be required in the 2016 general
12:14:24 election. And, as I said, with our statewide conference,
12:14:29 that was -- happened very close after that. I can't
12:14:32 remember the exact date, but it was just a few weeks. And
12:14:36 so the message at that conference was ensuring that we were
12:14:40 using our partners in the 100 counties to also get that
12:14:46 message out that you wouldn't have to show a photo ID.
12:14:49 So I -- I do believe that that information shows
12:14:51 that we made every effort we could to try to get information
12:14:58 out to as many people as we could to know they would not
12:15:03 have to show photo ID.

analysis, would you have been able -- based on the data available to the State Board of Elections, have been able to provide the General Assembly with an accurate list or number of registered voters who lack qualifying ID under Senate Bill 824?

A. I don't believe so based on the matching exercises we had done and the responses to those matching mailings. I'm not sure that I could -- I could not say to them that this is an accurate number of voters that do not possess acceptable ID.

Q. And I believe in response to one of Ms. Riggs' questions asking about whether you did any analysis of the effectiveness of the outreach campaign that the State Board of Elections had engaged in prior to the March 2016 primary that you measured the effectiveness in turnout. Did I understand that testimony correctly?

A. That's correct, yes.

Q. And what is your understanding, based upon your experience and your tenure with the State Board of Elections during that election, what the turnout was for the March 2016 primary as compared to prior elections?

A. Well, it was -- there was -- there were 2.3 million, which was the largest turnout in a primary in North Carolina history, so that was -- and with that, the number of people that actually brought their ID. Those two

EXHIBIT 5

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF WAKE	18 CVS 15292

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR., Plaintiffs, v. TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS, Defendants.	APRIL 29, 2021 PAGES 2304 - 2438

APRIL 12, 2021, CIVIL SESSION

HONORABLE NATHANIEL J. POOVEY,
HONORABLE MICHAEL J. O'FOGHLUDHA,
HONORABLE VINCE M. ROZIER, JR.,
JUDGES PRESIDING

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Maren M. Fawcett, RPR, CRR
Official Court Reporter
District 10
Wake County, North Carolina

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NO.	DESCRIPTION	MKD	RCVD
PDX 4-11	Kevin Quinn Demonstrative - Few New Matches Were Added with S.B. 824/s New Forms of ID		2426
PDX 6-2	Quinn Demonstrative - BVAP Percentage for Counties without Satellite One-Stop Voting Sites 2018 General Election		2426
PDX 6-3	Quinn Demonstrative - Dr. Quinn's Composite Match Fields Account for Potential Missing Data		2426
PDX 6-4	Quinn Demonstrative – Hypothetical Missing Last 4 Digits of SSN		2427
PDX 6-5	Quinn Demonstrative – Hypothetical Missing Driver's License Number		2427

PLAINTIFFS' EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
PDX 6-6	Quinn Demonstrative – Hypothetical Last Name Change		2427
PDX 6-7	Quinn Demonstrative – Dr. Thornton's String Cannot Generate New Matches		2428
PDX 6-8	Quinn Demonstrative – Dr. Thornton's "New Matches" to DMV Database		2428
PX 52	Supplemental Declaration of Floyd B. McKissick, Jr.		2422
PX 92	Hood, "They Just Do Note Vote Like They Used To: A Methodology to Empirically Assess Election Fraud"	2423	2423
PX 99	"Va. Election Officials Assigned 26 Voters to the Wrong District. It Might've Cost Democrats a Pivotal Race," The Washington Post		2423
PX 107	2016.08.22 [180-1] - Thornton Rebuttal Report in Feldman		2425
PX 111	2020.03.24 [277] - Rebuttal Report of Janet Thornton Report in Fair Fight Action		2425
PX 120	NC SBOE Numbered Memo 2020-14		2430
PX 121	One-Stop Voting Sites for the November 6, 2018 Election		2430
PX 122	One-Stop Voting Sites for the November 4, 2014 Election		2430
PX 125	Email from P. Cox to J. Loperfido et al. re: Production		2428
PX 126	Email from O. Vysotskaya to J. Loperfido et al. re: Holmes v. Moore - discovery		2429
PX 127	Excerpt of April 23, 2021 Trial Transcript		2431

PLAINTIFFS' EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
PX 136	South Carolina Election Commission Website Page	2359	
PX 137	Draft Trial Transcript April 26, 2021, Holmes v. Moore, et al.	2342	
PX 138	Draft Trial Transcript April 27, 2021, Holmes v. Moore, et al.	2344	

LEGISLATIVE DEFENDANTS' EXHIBITS ----------

NO.	DESCRIPTION	MKD	RCVD
LX 129	Deposition Designations from the Deposition Transcript of Plaintiff Culp	2436	2436
LX 262	McKissick Website - "A Summary of North Carolina's New Voter ID Law"	2401	2438
LX 263	McKissick Website - "The Passage of the Voter ID Law and the Real Voter Fraud in Bladen County, NC"	2404	2438
LX 269	Rough Draft Transcript April 26, 2021, Holmes v. Moore, et al.	2313	
LX 270	NCSBOE Memo, "SBE: Early Voting Begins in North Carolina"		2436
LX 271	Draft Transcript April 27, 2021, Holmes v. Moore, et al.	2330	

10:09:53 Q. Senator McKissick, are you aware in this case that
10:09:56 Legislative Defendants have argued that your comments on the
10:09:59 floor during third reading of Senate Bill 824 indicate that
10:10:03 the process was bipartisan?
10:10:08 A. I became aware that they made that representation.
10:10:11 I think that's an inaccurate characterization of my
10:10:16 comments.
10:10:16 Q. Okay. Senator McKissick -- sorry --
10:10:20 A. What I tried to do as a legislator when I was in
10:10:23 the legislature was to be courteous to my colleagues. I
10:10:27 always found that being courteous to people and extending
10:10:31 common courtesies was a -- an attribute that I found was
10:10:36 helpful when I wanted to run other amendments in the future,
10:10:40 particularly if there had been an amendment that I had run
10:10:42 that had been accepted. Because so often when amendments
10:10:45 are run if you're in -- a minority party member, they just
10:10:50 table it. They don't even consider it. They don't even
10:10:52 ever come up for a vote.
10:10:54 So expressions that I made were being courteous of
10:10:59 the fact that amendment that I filed was in fact, you know,
10:11:03 adopted. So, I mean, that's really the only thing that
10:11:08 represented, and those are typical of remarks I might have
10:11:12 made on many other occasions during my years in the Senate,
10:11:20 but it did not reflect the fact that what we had in this
10:11:23 case was a bad bill that I did not support. I did not vote

EXHIBIT 6

S823

Senate Bill 824 / SL 2018-144

S825

Implementation of Voter ID Const. Amendment.
2017-2018 Session

GOVERNOR'S VETO OF SENATE BILL 824	
VIEW BILL DIGEST	
VIEW AVAILABLE BILL SUMMARIES	
EDITION	FISCAL NOTE
Filed	
Edition 1	Incarceration Incarceration Rev.
Edition 2	Fiscal Note
Edition 3	
Edition 4	
Edition 5	
Ratified	
SL 2018-144	

Last Action:	Ch. SL 2018-144 on 12/19/2018
Sponsors:	Krawiec; Ford; Daniel (Primary)
Attributes:	Public; Contains Appropriations; Contains Local Appropriations; Text has changed; Requests Study
Counties:	No counties specifically cited
Statutes:	130A, 161, 163A, 20 (Chapters); 115D-2, 116-280, 130A-93.1, 161-10, 163A-1133, 163A-1134, 163A-1137, 163A-1140, 163A-1145, 163A-1145.1, 163A-1145.2, 163A-1145.3, 163A-1146, 163A-1147, 163A-1167, 163A-1168, 163A-1298, 163A-1300, 163A-1301, 163A-1303, 163A-1306, 163A-1307, 163A-1308, 163A-1309, 163A-1310, 163A-1315, 163A-1368, 163A-1389, 163A-1411, 163A-1520, 163A-741, 163A-821, 163A-867, 163A-868, 163A-869, 163A-869.1, 163A-913,
Keywords:	APPROPRIATIONS, BOARDS, BUDGETING, COLLEGES & UNIVERSITIES, COMMUNITY COLLEGES, COUNTIES, CRIMES, DMV, DRIVERS LICENSES, EDUCATION, ELECTIONS, ELECTIONS BOARDS, ELECTIONS, STATE BOARD OF, FRAUD, FUNDS & ACCOUNTS, HIGHER EDUCATION, ID SYSTEMS, LICENSES & PERMITS, LOCAL GOVERNMENT, MINORITIES, MOTOR VEHICLES, PHOTOGRAPHY, PRESENTED, PRIVATE SCHOOLS, PUBLIC,

LATEST 2 VOTES

DATE	SUBJECT	RCS#	AYE	NO	N/V	EXC.ABS.	EXC.VOTE	TOTAL	RESULT
12/19/2018 3:39 p.m.	M4 Previous Question Veto Override	[H]-1353	68	43	3	6	0	111	PASS
12/19/2018 3:39 p.m.	Veto Override	[H]-1354	72	40	2	6	0	112	PASS

HISTORY

DATE	CHAMBER	ACTION	DOCUMENTS	VOTES
12/19/2018		Ch. SL 2018-144		
12/19/2018	House	Veto Overridden		PASS: 72-40
12/18/2018	House	Placed On Cal For 12/19/2018		
12/18/2018	House	Veto Received From Senate		
12/18/2018	Senate	Veto Overridden		PASS: 33-12
12/17/2018	Senate	Placed On Cal For 12/18/2018		
12/14/2018		Vetoed 12/14/2018	Veto Document	
12/6/2018		Pres. To Gov. 12/6/2018		
12/6/2018		Ratified		
12/6/2018	Senate	Ordered Enrolled		
12/6/2018	Senate	Concurred In H Com Sub		PASS: 25-7
12/6/2018	Senate	Motion to Table bill Failed		FAIL: 8-23
12/5/2018	Senate	Placed On Cal For 12/06/2018		
12/5/2018	Senate	Special Message Received For Concurrence in H Com Sub		
12/5/2018	House	Special Message Sent To Senate		
12/5/2018	House	Ordered Engrossed		
12/5/2018	House	Passed 3rd Reading		PASS: 67-40
12/5/2018	House	Passed 2nd Reading		PASS: 67-40
12/5/2018	House	Amend Failed A12	**A12:** Scanned Document	FAIL: 9-95
12/5/2018	House	Amend Failed A13	**A13:** ABK-145-V-2	FAIL: 38-68
12/5/2018	House	Amend Adopted A11	**A11:** AST-182-V-1	PASS: 106-0
12/5/2018	House	Amend Adopted A10	**A10:** ABK-155-V-6	PASS: 105-0

JX476

12/5/2018	House	Amendment Withdrawn A8	**A8:** ABK-155-V-5	
12/5/2018	House	Amend Failed A9	**A9:** ABK-151-V-3	FAIL: 17-89
12/5/2018	House	Amend Adopted A7	**A7:** AST-181-V-1	PASS: 68-38
12/5/2018	House	Amend Failed A6	**A6:** ATC-203-V-1	FAIL: 17-89
12/5/2018	House	Amend Adopted A5	**A5:** ATC-204-V-2	PASS: 68-39
12/5/2018	House	Amend Adopted A4	**A4:** ATC-202-V-3	PASS: 106-1
12/5/2018	House	Amend Failed A3	**A3:** ABK-147-V-6	FAIL: 41-66
12/5/2018	House	Amend Adopted A2	**A2:** ABK-133-V-5	PASS: 102-4
12/5/2018	House	Amend Adopted A1	**A1:** Scanned Document	PASS: 86-14
12/4/2018	House	Placed On Cal For 12/05/2018		
12/4/2018	House	Cal Pursuant Rule 36(b)		
12/4/2018	House	Reptd Fav Com Sub 2	**CS:** PCS15340-BKf-54	
12/4/2018	House	Re-ref Com On Rules, Calendar, and Operations of the House		
12/4/2018	House	Reptd Fav Com Substitute	**CS:** PCS15339-BKf-53	
11/29/2018	House	Ref To Com On Elections and Ethics Law		
11/29/2018	House	Passed 1st Reading		
11/29/2018	House	Special Message Received From Senate		
11/29/2018	Senate	Special Message Sent To House		
11/29/2018	Senate	Engrossed		
11/29/2018	Senate	Passed 3rd Reading		PASS: 30-10
11/28/2018	Senate	Passed 2nd Reading		PASS: 32-11
11/28/2018	Senate	Amend Adopted A11	**A11:** AST-165-V-2	PASS: 40-3
11/28/2018	Senate	Amend Adopted A10	**A10:** AST-164-V-1	PASS: 43-0
11/28/2018	Senate	Amend Tabled A9	**A9:** ABK-123-V-2	PASS: 30-12
11/28/2018	Senate	Amend Tabled A8	**A8:** ABK-125-V-1	PASS: 29-14
11/28/2018	Senate	Amend Tabled A7	**A7:** ABK-122-V-1	PASS: 31-12
11/28/2018	Senate	Amend Tabled A6	**A6:** ABK-119-V-6	PASS: 29-13
11/28/2018	Senate	Amendment Withdrawn A5	**A5:** ABK-121-V-2	
11/28/2018	Senate	Motion to Table bill Failed		FAIL: 13-30
11/28/2018	Senate	Amend Adopted A4	**A4:** Scanned Document	PASS: 43-0
11/28/2018	Senate	Amend Adopted A3	**A3:** ABK-118-V-3	PASS: 43-0
11/28/2018	Senate	Amend Adopted A2	**A2:** ABK-126-V-3	PASS: 43-0
11/28/2018	Senate	Amend Adopted A1	**A1:** ABK-120-V-1	PASS: 43-0
11/28/2018	Senate	Placed on Today's Calendar		
11/28/2018	Senate	Reptd Fav		
11/27/2018	Senate	Re-ref Com On Rules and Operations of the Senate		
11/27/2018	Senate	Reptd Fav		
11/27/2018	Senate	Ref to Select Committee on Elections. If fav, re-ref to Rules and Operations of the Senate		
11/27/2018	Senate	Passed 1st Reading		
11/27/2018	Senate	Filed	**DRAFT:** DRS15330-BKf-25	

EXHIBIT 7

ADOPTED

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 824

AMENDMENT NO. A11
(to be filled in by Principal Clerk)

S824-AST-182 [v.1]

Amends Title [NO]
Fourth Edition

Date _____,2018

Representative C. Graham

moves to amend the bill on page 2, lines 25-33, by rewriting those lines to read:

"e. A tribal enrollment card issued by a state or federal recognized tribe.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

JX624

The official copy of this document, with signatures and vote information, is available in the House Principal Clerk's Office

S824-AST-182-V-1

EXHIBIT 8

ADOPTED

JX645

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 824

AMENDMENT NO. A1
(to be filled in by Principal Clerk)

S824-ABK-120 [v.1]

Amends Title [NO]
First Edition

Date _____,2018

Senator Ford

moves to amend the bill on page 1, lines 26-29, by deleting the lines and substituting the following:

"(2) Voter photo identification cards shall be issued at any time, except during the time period between the end of one-stop voting for a primary or election as provided in G.S. 163A-1300 and election day for each primary and election.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

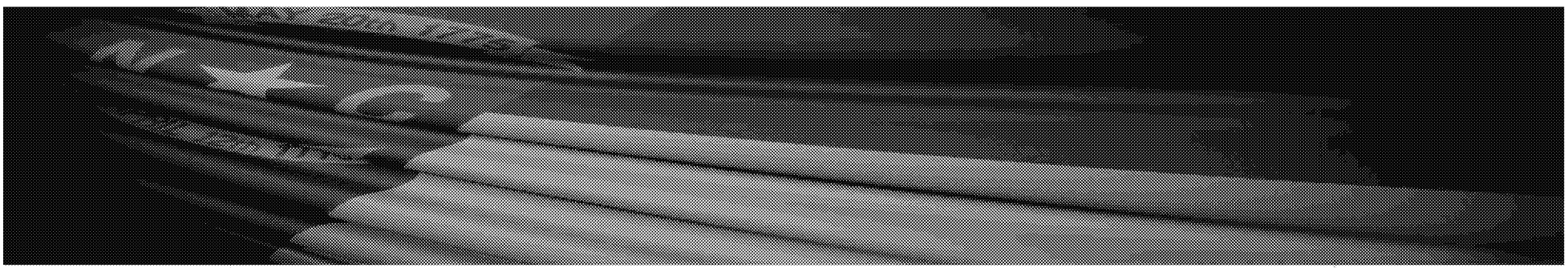
The official copy of this document, with signatures and vote information, is available in the Senate Principal Clerk's Office

S824-ABK-120-V-1

EXHIBIT 9

HOUSE ROLL CALL VOTE TRANSCRIPT FOR ROLL CALL #1354

2017-2018 Session



Time: 12/19/2018 3:39 p.m.
Total votes: 112
Ayes: 72
Noes: 40
Not Voting: 2
Excused Absence:
6
Excused Vote: 0

Ayes (Democrat)
Duane Hall
Ayes (Republican)
Adams; J. Adcock; Arp; J. Bell; Bert Jones;

JX646

Blackwell; Blust; Boles; Boswell; Bradford; Brawley; Brenden Jones; Brisson; Brody; Bumgardner; Burr; Clampitt; Cleveland; Collins; Conrad; Corbin; Davis; Destin Hall; Dixon; Dobson; Dollar; Elmore; Faircloth; Ford; Fraley; Grange; K. Hall; Hardister; Hastings; Henson; Horn; Howard; Hurley; Iler; Johnson; Jordan; Lambeth; Lewis; Malone; McElraft; McGrady; McNeill; T. Moore (Speaker); Muller; Murphy; Pittman; Potts; Presnell; Riddell; Rogers; Ross; Saine; Sauls; Setzer; Shepard; Speciale; Steinburg; Stevens; Stone; Strickland; Szoka; R. Turner; Warren; Watford; White; Yarborough

Noes (Democrat)

G. Adcock; Ager; Alexander; Autry; Ball; Beasley; Belk; L. Bell; Black; Brockman; Butler; Carney; Cunningham; Earle; Farmer-Butterfield; Floyd; Garrison; Gill; C. Graham; Harrison; Holley; Hunter; Insko; Jackson; John; Lucas; G. Martin; Meyer; Michaux; Montgomery; R. Moore; Morey; Pierce; Quick; Reives; B. Richardson; W. Richardson; Terry; Willingham; Wray

Noes (Republican)

None

Not Voting (Democrat)

None

Not Voting (Republican)

Dulin; S. Martin

Excused Absence (Democrat)

Fisher; Goodman; G. Graham; B. Turner

Excused Absence (Republican)

Torbett; Zachary

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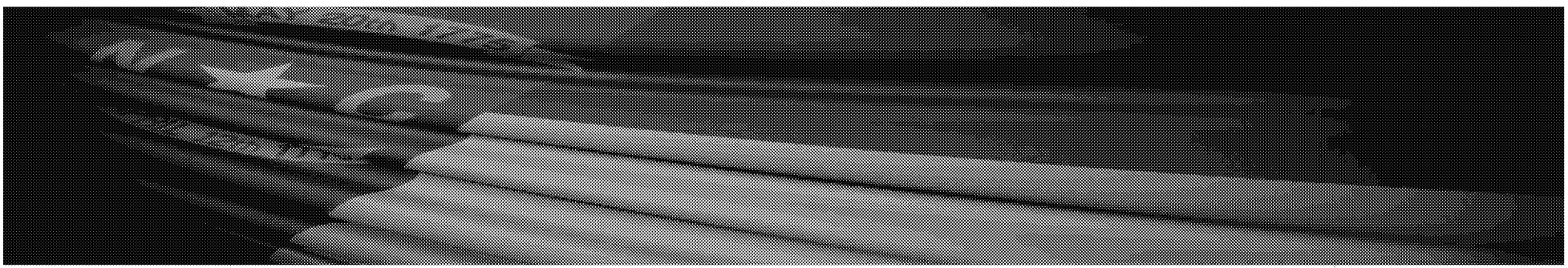
SENATE ROLL CALL VOTE TRANSCRIPT FOR ROLL CALL #824

2017-2018 Session



Time: 12/18/2018 2:18 p.m.
Total votes: 45
Ayes: 33
Noes: 12
Not Voting: 1
Excused Absence:
4
Excused Vote: 0

Ayes (Democrat)
Ford
Ayes (Republican)
Alexander; Ballard; Barefoot; Barrett;

JX647

Barringer; Berger (Chair); Bishop; Britt; Brown; Cook; Daniel; J. Davis; Dunn; Edwards; Gunn; Harrington; Hise; Horner; B. Jackson; Krawiec; Lee; McInnis; Meredith; Newton; Rabin; Rabon; Sanderson; Sawyer; Tarte; Tillman; Tucker; Wells

Noes (Democrat)

Chaudhuri; Clark; D. Davis; Fitch; Foushee; J. Jackson; McKissick; Robinson; Smith; Van Duyn; Waddell; Woodard

Noes (Republican)

None

Not Voting (Democrat)

Lowe

Not Voting (Republican)

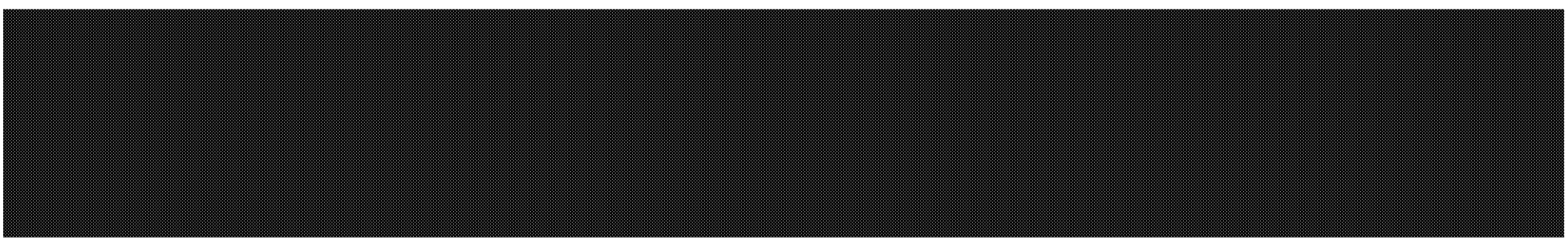
None

Excused Absence (Democrat)

Blue

Excused Absence (Republican)

Pate; Randleman; Wade



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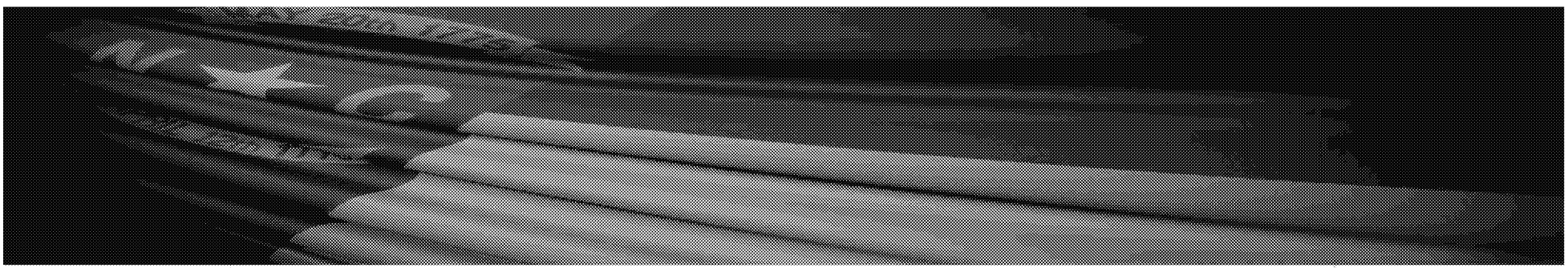
HOUSE ROLL CALL VOTE TRANSCRIPT FOR ROLL CALL #1324

2017-2018 Session



Time: 12/5/2018 4:44 p.m.
Total votes: 107
Ayes: 67
Noes: 40
Not Voting: 3
Excused Absence:
10
Excused Vote: 0

Ayes (Democrat)
Duane Hall; Goodman
Ayes (Republican)
Adams; J. Adcock; Arp; Blust; Boles; Brawley;

JX648

HOLMES_00007903

Brenden Jones; Brisson; Brody; Bumgardner; Burr; Clampitt; Cleveland; Collins; Conrad; Corbin; Davis; Destin Hall; Dixon; Dobson; Dollar; Dulin; Faircloth; Ford; Fraley; K. Hall; Hardister; Hastings; Henson; Horn; Howard; Hurley; Iler; Johnson; Lambeth; Lewis; Malone; McElraft; McGrady; McNeill; T. Moore (Speaker); Muller; Murphy; Pittman; Potts; Presnell; Riddell; Rogers; Ross; Saine; Sauls; Setzer; Shepard; Speciale; Steinburg; Stone; Strickland; Szoka; Torbett; R. Turner; Warren; Watford; White; Yarborough; Zachary

Noes (Democrat)

G. Adcock; Ager; Alexander; Autry; Ball; Beasley; Belk; L. Bell; Black; Brockman; Butler; Carney; Cunningham; Earle; Farmer-Butterfield; Fisher; Floyd; Garrison; Gill; C. Graham; Harrison; Holley; Hunter; Insko; Jackson; John; Lucas; G. Martin; Michaux; Montgomery; Morey; Pierce; Quick; Reives; B. Richardson; Terry; B. Turner; Willingham; Wray

Noes (Republican)

Jordan

Not Voting (Democrat)

None

Not Voting (Republican)

Boswell; Grange; S. Martin

Excused Absence (Democrat)

G. Graham; Meyer; R. Moore; W. Richardson

Excused Absence (Republican)

J. Bell; Bert Jones; Blackwell; Bradford; Elmore; Stevens

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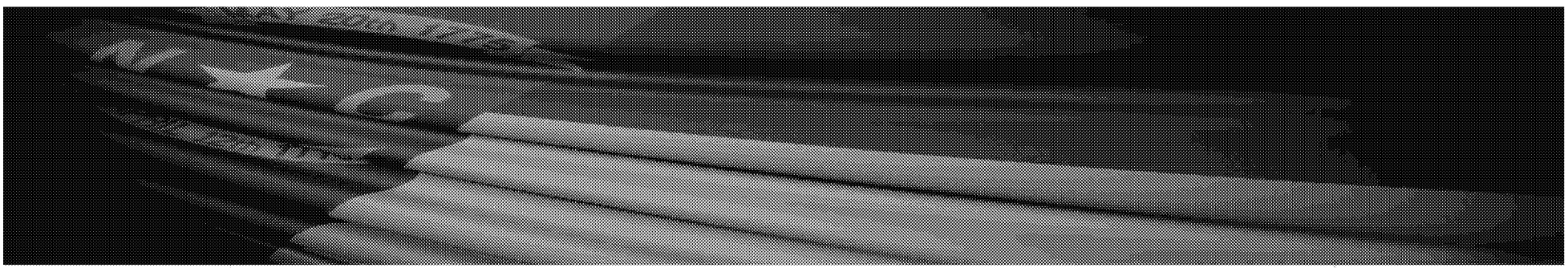
HOUSE ROLL CALL VOTE TRANSCRIPT FOR ROLL CALL #1323

2017-2018 Session



Time: 12/5/2018 4:43 p.m.
Total votes: 107
Ayes: 67
Noes: 40
Not Voting: 3
Excused Absence:
10
Excused Vote: 0

Ayes (Democrat)
Duane Hall; Goodman
Ayes (Republican)
Adams; J. Adcock; Arp; Blust; Boles; Brawley;

JX649

HOLMES_00007907

Brenden Jones; Brisson; Brody; Bumgardner; Burr; Clampitt; Cleveland; Collins; Conrad; Corbin; Davis; Destin Hall; Dixon; Dobson; Dollar; Dulin; Faircloth; Ford; Fraley; K. Hall; Hardister; Hastings; Henson; Horn; Howard; Hurley; Iler; Johnson; Lambeth; Lewis; Malone; McElraft; McGrady; McNeill; T. Moore (Speaker); Muller; Murphy; Pittman; Potts; Presnell; Riddell; Rogers; Ross; Saine; Sauls; Setzer; Shepard; Speciale; Steinburg; Stone; Strickland; Szoka; Torbett; R. Turner; Warren; Watford; White; Yarborough; Zachary

Noes (Democrat)

G. Adcock; Ager; Alexander; Autry; Ball; Beasley; Belk; L. Bell; Black; Brockman; Butler; Carney; Cunningham; Earle; Farmer-Butterfield; Fisher; Floyd; Garrison; Gill; C. Graham; Harrison; Holley; Hunter; Insko; Jackson; John; Lucas; G. Martin; Michaux; Montgomery; Morey; Pierce; Quick; Reives; B. Richardson; Terry; B. Turner; Willingham; Wray

Noes (Republican)

Jordan

Not Voting (Democrat)

None

Not Voting (Republican)

Boswell; Grange; S. Martin

Excused Absence (Democrat)

G. Graham; Meyer; R. Moore; W. Richardson

Excused Absence (Republican)

J. Bell; Bert Jones; Blackwell; Bradford; Elmore; Stevens

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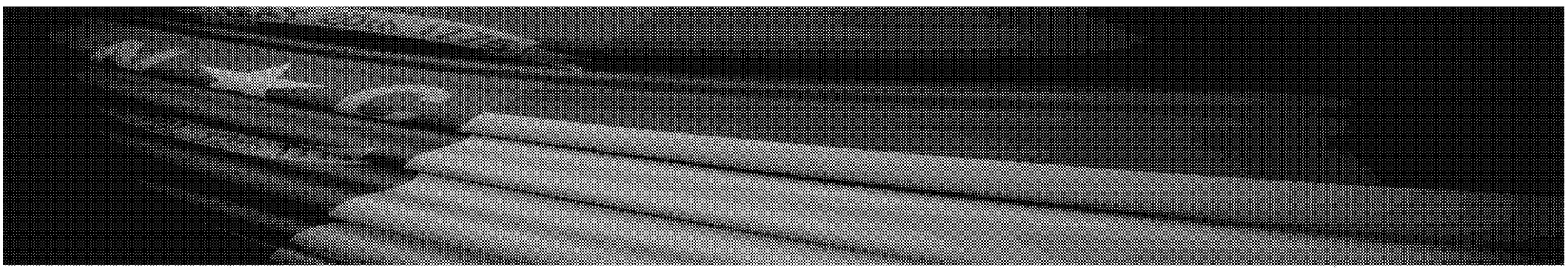
SENATE ROLL CALL VOTE TRANSCRIPT FOR ROLL CALL #811

2017-2018 Session



Time: 11/29/2018 9:46 a.m.
Total votes: 40
Ayes: 30
Noes: 10
Not Voting: 1
Excused Absence:
9
Excused Vote: 0

Ayes (Democrat)
D. Davis; Ford
Ayes (Republican)
Alexander; Ballard; Barefoot; Barrett;

JX662

Barringer; Berger; Bishop; Britt; Brown; Cook; Daniel; J. Davis; Dunn; Edwards; Gunn; Hise; Horner; B. Jackson; Krawiec; McInnis; Newton; Rabin; Rabon; Randleman; Sanderson; Sawyer; Tillman; Wells

Noes (Democrat)

Chaudhuri; Fitch; Foushee; Lowe; McKissick; Robinson; Smith; Van Duyn; Waddell; Woodard

Noes (Republican)

None

Not Voting (Democrat)

None

Not Voting (Republican)

Tucker

Excused Absence (Democrat)

Blue; Clark; J. Jackson

Excused Absence (Republican)

Harrington; Lee; Meredith; Pate; Tarte; Wade

[redacted]

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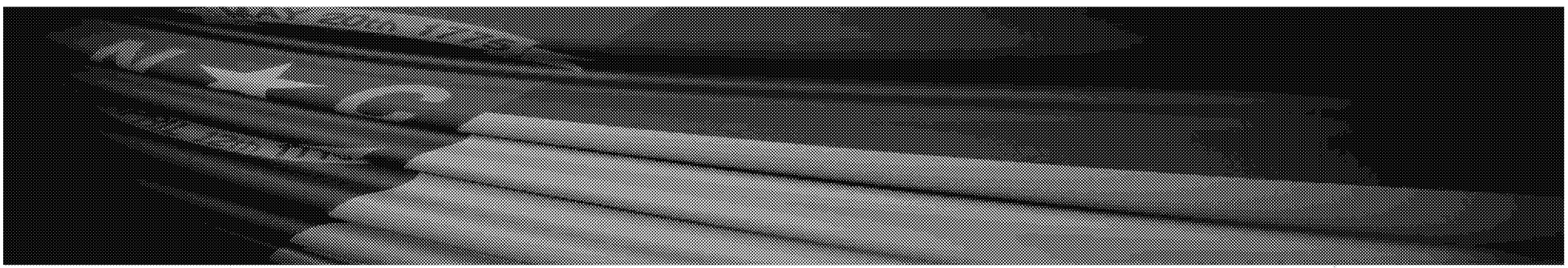
EXHIBIT 14

SENATE ROLL CALL VOTE TRANSCRIPT FOR ROLL CALL #810

2017-2018 Session



Time: 11/28/2018 5:56 p.m.
Total votes: 43
Ayes: 32
Noes: 11
Not Voting: 1
Excused Absence:
6
Excused Vote: 0

Ayes (Democrat)
Clark; D. Davis; Ford
Ayes (Republican)
Alexander; Ballard; Barefoot; Barrett;

JX663

Barringer; Berger; Bishop; Britt; Brown; Cook; Daniel; J. Davis; Dunn; Edwards; Gunn; Hise; Horner; B. Jackson; Krawiec; McInnis; Meredith; Newton; Rabin; Rabon; Randleman; Sanderson; Sawyer; Tillman; Wells

Noes (Democrat)

Chaudhuri; Fitch; Foushee; J. Jackson; Lowe; McKissick; Robinson; Smith; Van Duyn; Waddell; Woodard

Noes (Republican)

None

Not Voting (Democrat)

None

Not Voting (Republican)

Tucker

Excused Absence (Democrat)

Blue

Excused Absence (Republican)

Harrington; Lee; Pate; Tarte; Wade

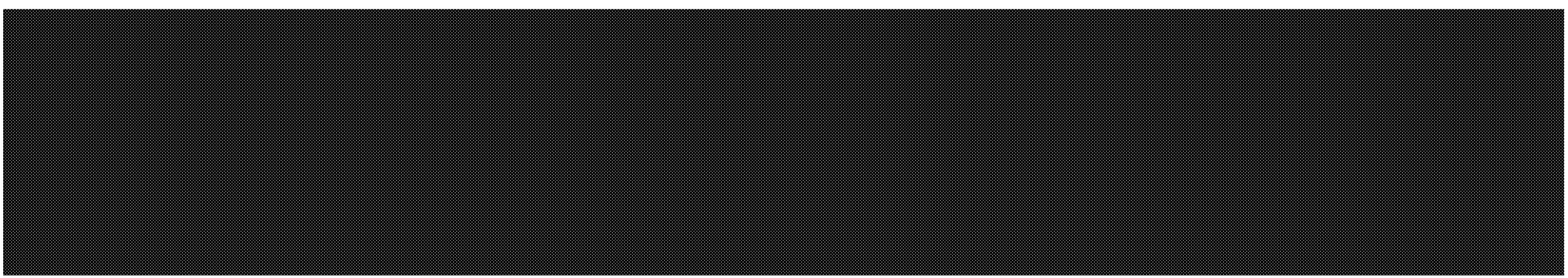


EXHIBIT 15

Roy Cooper, Governor
State of North Carolina

GOVERNOR ROY COOPER OBJECTIONS AND VETO MESSAGE:

Senate Bill 824, AN ACT TO IMPLEMENT THE CONSTITUTIONAL AMENDMENT REQUIRING PHOTOGRAPHIC IDENTIFICATION TO VOTE.

Requiring photo IDs for in-person voting is a solution in search of a problem. Instead, the real election problem is votes harvested illegally through absentee ballots, which this proposal fails to fix.

In addition, the proposed law puts up barriers to voting that will trap honest voters in confusion and discourage them with new rules, some of which haven't even been written yet.

Finally, the fundamental flaw in the bill is its sinister and cynical origins: It was designed to suppress the rights of minority, poor and elderly voters. The cost of disenfranchising those voters or any citizens is too high, and the risk of taking away the fundamental right to vote is too great, for this law to take effect.

Therefore, I veto the bill.

RECEIVED FROM GOVERNOR
Date Dec. 14, 2018
Time 3:46 p.m.
Signed Sarah Holland

Roy Cooper
Governor

The bill, having been vetoed, is returned to the Clerk of the North Carolina Senate on this the 14th day of December 2018, at 3:46pm for reconsideration by that body.

The Capitol Building, Raleigh, NC 27602
Mail: 20301 Mail Service Center, Raleigh, NC 27699-0301
Phone: (919)814-2100

JX687

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of December, 2018.

Philip E. Berger
President Pro Tempore of the Senate

Tim Moore
Speaker of the House of Representatives

VETO
Roy Cooper

Roy Cooper
Governor

Approved _____.m. this _____ day of _____, 2018

RECEIVED FROM GOVERNOR
Date Dec. 14, 2018
Time 3:46 p.m.
Signed Sarah Holland

EXHIBIT 16

Alderson®
COURT REPORTING

Transcript of **November 26, 2018 Jt Elections Oversight Cmte**

Monday, November 26, 2018

Transcription for Cooper & Kirk

Alderson Court Reporting
1-800-FOR-DEPO (367-3376)
Info@AldersonReporting.com
www.AldersonReporting.com

Alderson Reference Number: 83704

JX771

Page 2

Male Speaker. Joint Legislative Elections Oversight Committee, November 26, 2018, Room 544.

[Pause.]

Chairman Lewis. -- to take their seats. We welcome all of our guests who are here today.

As always, we thank the assistance of our sergeant-at-arms from the House -- Warren Hawkins, Doug Harris, and Malachi McCullough. From the Senate, Billy Fritscher and Steve McKaig. We thank you so much for being here.

And pleased to welcome our House page, Mary Shuping. So thank you for this time to be here today.

We are here today after the people of North Carolina have spoken to require a photo ID to vote. This joint committee will discuss a draft of implementing legislation that was released to Members early last week.

We are acting now because we need to ensure the maximum amount of time to implement this constitutional amendment. We are ready and willing to deploy the necessary resources across the State to provide a smooth implementation process before the upcoming

Page 3

elections.

Later today, we will take public comment from those who signed up to speak. The chair would ask during that time that we keep in mind that negative comments about the concept of voter ID, while they are welcome, may not be particularly helpful to the process of drafting a bill, which we are now constitutionally obligated to do.

We are here to do the people's business, which is to adopt a law implementing the constitutional amendment that requires a photo ID to vote. I am ready to engage with any Member of this body who wants to have a constructive debate about what the bill will look like and look forward to the work we will do in today's committee and over the next 2 weeks.

Thank you.

Senator Hise, do you have any remarks? If not, we're going to move into a staff presentation of the initial draft legislation. The chair is going to recognize Jessica Sammons for that purpose. If you could come forward to the well?

The chair would also announce that Room 643 is

Page 4

being opened up as an overflow for those who were not able to find a seat in here. Staff is making those preparations now. It will have an audio feed from this room.

So, with that, Ms. Sammons, you have the floor to present the draft legislation.

Ms. Sammons. Thank you, Representative Lewis.

So you should have in your folders bill draft 2017-BK-23, and that is what I am going to just go over the contents of.

So this bill draft implements the voter ID constitutional amendment. It would require a voter presenting to vote in person during early voting or on Election Day to show an acceptable identification that contains a photo to a precinct official. The precinct official would be assigned to check the voter registration, will compare the photograph that the person is presenting with the person that is presenting to vote to verify that the picture on the ID matches the person seeking to vote.

If the precinct official disputes that the photograph contained on the ID matches that of the

Page 5

person seeking to vote, a challenge will be conducted under the procedures and current law for hearing challenges made on Election Day, and that involves a process where the chief judge and the judges of the precinct come together to say whether or not the picture matches the person that is appearing to vote.

The -- if the person insists that they are who they say they are, they are qualified to vote. The precinct officials will administer an oath for the person to swear that they are qualified to vote, and then the precinct officials would decide if the person is qualified -- or permitted to cast a ballot.

If the person refuses to take the oath, the challenge is sustained. If they do take the oath and the precinct officials are satisfied that the person is the legal voter, they will overrule the challenge and permit the voter to vote.

So this bill draft goes on to identify the types of photo IDs that are acceptable. That is Section 1.2 of the bill draft provides a list of the IDs that contain a photograph of the voter that would be acceptable for identification when the voter presents

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rulemaking.

We understood that we needed -- we've got 100 counties in the State. We've got a lot of election workers. We needed to make sure we had standardized training materials for everyone to use so everyone would have the same experience, no matter where you voted in North Carolina.

And we understood that after the May primary -- the March primary, excuse me, in 2016, we would need to review the results of that to see what we needed to do going forward.

So with rulemaking, we had nine public hearings across the State. We had public hearings at our office, but we also had nine -- in nine different cities, we held public hearings on the rules that the State board had proposed. I think we had more than 1,000 pages of comments that came in on these rules. There was lots of interest in what those rules would be. And those rules remain codified in Chapter 17 of the Administrative Code.

And then, finally, the training materials. Part of our engagement with the PR firm was to also come up

Page 35

with training materials. This was not only educating the public, but we've got a lot of precinct officials, a lot of workers that don't work every day in elections that needed to get it right on Election Day. And so we worked -- not only did they have focus groups with the public, we had focus groups with our county boards and precinct officials, people that are actually on the ground, who know exactly what they are going to encounter.

And based on those focus groups and based on those meetings, we put together training materials, including a professionally done video series, that sort of walked people through the entire process from walking in the door, having greeters to sort of welcome people, let them know they are going to need to get their ID out. Of how you would deal with a voter who didn't have photo ID. All of those processes were taking -- were addressed in our training materials, and they were required to be used during their precinct training.

One of the other things that was something that we recognized is that you can do a training, and people leave and sometimes they don't retain that

Page 36

information. You need something that's right at their hands. And because things sometimes change, we don't need a book that just is going to sit in the corner. So what we did was we had what we called a station guide, and this was a station guide that I hope everyone in here when you voted saw our station guide because it was not something that we just did for 2016. It was something that we used before that, we are using now, and it is at a place that we can take and add things to it when the law changes.

But it had specific script language for every precinct official to use when engaging with a voter. Any question -- and it also identified every acceptable form of photo identification so they could see it. They could see where the expiration date was. It showed them where to look at for it. So that there was -- we didn't have long lines, hopefully, by doing that.

But this was something that really was our sort of insurance policy that people were communicating uniformly across the State with voters.

We also understood that a small voter outreach team can't train the large number of precinct

Page 37

officials, that so what we needed to do is train the trainer. So we did a lot of train the trainer seminars, webinars. We did regional trainings where we actually sent our people out into the field to train people so that they could then train their election officials.

We mandated that every precinct have signage up, the same signage, so that people would see -- before they even got into the place to vote, they would know of these requirements. They would know of the acceptable IDs. They would know what to do if they didn't have acceptable ID.

And then, finally, what we did immediately after the March primary is we looked at the data. We wanted to see who voted by a declaration of reasonable impediment. For that election, there was 1,048 voters completed that declaration. Ultimately, of those, 864 of those counted.

And then those that did not complete a reasonable impediment declaration but did not -- simply just did not bring their ID, that was 1,248. And these were people that didn't bring the ID and did not go back

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before canvass to present photo ID, and there were 2,000 -- 2.7 million voters that participated in the 2016 primary.

Chairman Lewis. Thank you, Ms. Strach.

At this time, Members, we're going to move into committee discussion and committee questions while we do have the presenters that are here. If there are questions for them, if you would direct those through the chair, the chair would be happy to recognize Members at this point.

We're going to start with Chairman Hise and then Senator Woodard.

Chairman Hise. Thank you, Mr. Chairman. A couple of questions I wanted to ask, and I think the first two will be for Director Strach.

How -- when setting up training for poll workers and others, how many IDs could a poll worker be reasonably expected to be able to identify? I think we were looking originally at 4, and now there are proposals of making -- adding 17 for the universities and 58 for the community colleges and 39. How many could they reasonably be able to identify?

Page 39

Ms. Strach. Thank you, Senator Hise.

That's one of the things we were concerned about was them being able to recognize these, and that's why we put together this guide. And so this sort of shows you every ID that was allowed. I mean, there were a lot of tribal IDs, too.

We had a picture of all of them in the guide so that people could see exactly what they looked like, the new driver's license versus the old driver's license. So I think as long as we have something like this that's at the hands of every precinct official, we could put as many in there as you want.

Chairman Hise. And that would be the size of the books for, I think, six IDs last time?

Ms. Strach. Yes.

Chairman Hise. And a follow-up question as well.

Chairman Lewis. The Senator is recognized.

Chairman Hise. On the mailing, I think if I added that together, there is a little more than 400,000 identified from the DMV or the other database set. How many of those came back as nondeliverable or that no one by that name was at that address?

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Ms. Strach. We do have that data. I don't know that number offhand, but we do know -- we do have data on the undeliverables as well.

Chairman Hise. If you can get that, thank you.

And then the follow-up question I had, I guess both to the private colleges and the community colleges, is that when you issue IDs, I know that, obviously, you designate your students as in-State and out-of-State students and residents. Are there any of those identifications placed on the IDs themselves that someone was an out-of-State resident? And is there a procedure where even online students can receive an ID?

Dr. Williams. Mr. Chairman?

Chairman Lewis. Please, Dr. Williams.

Dr. Williams. Thank you.

There is not an identification of in-State or out-of-State on an ID as far as I am aware. And most of the reason for that is that there are no in-State and out-of-State rates for students attending our colleges and universities because, of course, there is not the funding from the State to make an in-State tuition type of fee in terms of that. So I don't think we have that

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on there.

We do provide the IDs for all of our students who are enrolled. There are some who are doing online, and I would have to check to see if all of them -- and I would be happy to do that -- provide those same IDs. And obviously, would have followed the same process for any ID for everybody.

Chairman Lewis. Ms. Shuping, did you wish to comment on Chairman Hise's question?

Ms. Shuping. Yes.

Chairman Lewis. So you're recognized.

Ms. Shuping. Thanks, Chairman Hise. Thank you, Mr. Chair.

I do not know if there is a residency determination designation on our IDs. Obviously, there is differentiated tuition for in-State and out-of-State students. I would imagine that online students, if they were in a program that they would normally get a student ID, they could get one as well. However, I cannot say that with absolute certainty.

But what we would be able to do certainly, Mr. Chair, any questions that you all would have that

EXHIBIT 17

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Transcript of **November 28, 2018 Senate Floor - 2nd Reading**

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Page 2

Mr. President. Senate Bill 824. The Clerk will read.

The Clerk. Senate Bill 824, Implementation of Voter ID Constitutional Amendment.

Mr. President. Senator Krawiec is recognized to explain the bill.

Senator Krawiec. Thank you, Mr. President. Before I begin explaining the bill, I also would like to ask if the rules could be suspended so that staff might join Senator Daniel and myself on the Floor.

Mr. President. Without objection, so ordered.

Senator Krawiec. Senate Bill 824, I want to make you aware that 34 states are in this nation have some form of voter ID, all in the Southeast. North Carolina is the last to join the Southeast.

On Election Day, voters made it clear that they had decided that we needed to add a voter ID to our Constitution. So we're following through on that decision.

And our goal has been to defend against potential voter fraud, restore faith to our voter system, while not making it difficult for those eligible to vote, and

Page 3

this bill secures our elections process and makes it easy and free for everyone to obtain their ID and cast their ballot.

We've been very transparent in this process. We have released the draft last week and we've talked with our colleagues on the other side of the aisle. We've taken input from them. We've had joint Legislative Oversight Committee as well as Elections Committee and Rules Committee that have heard this bill.

So there -- and we've taken all of the input from all of those sources and we've made 24 changes since this bill was first introduced. So I think all of those changes have made it a better bill.

In fact, I believe we have an amendment today that will make it even better that I believe Senator Ford is going to offer and I'd ask for your support on that amendment.

We modeled this bill on South Carolina's law because it had already been through federal scrutiny with a judges' panel. So we believe that we've covered all of the bases on that. We've tried to do everything that we could to make certain that it would withstand

Page 4

the court scrutiny.

This legislation allows many forms of ID, including tribal IDs, student IDs, and certain expired IDs. I think it's a good bill. I think it reflects an open, transparent, and very inclusive drafting process.

We've taken a lot of consideration from everyone and tried to make it better in all those aspects.

A strong majority of North Carolina voters support voter ID and I urge this body to accept the public's decision and enact this bill.

And, Mr. President, I'd like for you to call on Senator Daniel to explain the technical parts of the bill, please.

Mr. President. Senator Daniel is recognized to explain the remainder of the bill.

Senator Daniel. Thank you, Mr. President, and Members of the Senate.

This bill adopts a new Voter Photo ID that has never been used in North Carolina but is used in South Carolina and has been successful. The Voter Photo ID is a voter registration card with the voter's photo on it.

Page 5

To obtain one, a voter needs to be registered and provide date of birth and the last four digits of his or her social security number at the County Board of Elections Office.

County Boards of Elections will check that info against the Voter Registration File. County Boards under the bill will need to start offering these cards no later than May 1st, 2019.

Additionally, the following forms of identification would be valid for voter ID: a North Carolina driver's license or a non-operator ID card, U.S. passport, tribal enrollment card, or federally- or state-recognized tribe, military or veterans ID card, student ID cards from state universities, private universities, and community colleges that opt in through the Board of Elections, employee ID cards issued by a state or local government entity that opt in to the Board of Elections, valid out-of-state driver's licenses or non-driver IDs if the voter registration is within 90 days of the election.

The bill would allow any of the acceptable forms of ID to be used as long as they are currently valid or

Page 14

Senator Daniel. Send forth an amendment.
Mr. President. The Clerk will read.
The Clerk. Senator Daniel moves to amend the bill.
Mr. President. Senator Daniel is recognized to explain Amendment 3.
Senator Daniel. Thank you, Mr. President, Members of the Senate.
This is a technical amendment that changes the North Carolina Community College System language on Page 4 and substitutes "a community college" as defined in GS-115D-2(2) and the reason this is necessary is because the community college system doesn't issue IDs but the constituent institutions do.
Ask for your support.
Mr. President. Any discussion or debate on Amendment 3?
[No response.]
Mr. President. Hearing none, the question before the Senate is the adoption of Amendment 3.
All in favor, vote aye. Opposed, vote no. Five seconds will be allowed for the voting. The Clerk will

Page 15

record the vote.
[Vote.]
Mr. President. 43 having voted in the affirmative and zero in the negative, Amendment 3 is adopted. The bill as amended is back before the body.
Senator Krawiec, for what purpose do you rise?
Senator Krawiec. To send forth an amendment, please.
Mr. President. Do we have it up here, Senator? We do. Clerk will read.
The Clerk. Senator Krawiec moves to amend the bill.
Mr. President. Senator Krawiec is recognized to explain Amendment 4.
Senator Krawiec. This is just a technical correction. It amends the bill on Page 5, Line 7, by deleting the word "student."
Mr. President. Any discussion or debate on Amendment 4?
[No response.]
Mr. President. Hearing none, the question before the body is the adoption of Amendment 4.

Page 16

All in favor, vote aye. Opposed, vote no. Five seconds will be allowed for the voting. The Clerk will record the vote.
[Vote.]
Mr. President. 43 having voted in the affirmative and zero in the negative, Amendment 4 is adopted. The bill as amended is back before the body.
Any further discussion or debate? Senator Woodard, for what purpose do you rise?
Senator Woodward. Speak on the bill.
Mr. President. Senator Woodard, you have the floor to speak to the bill.
Senator Woodard. Thank you, Mr. President.
Ladies and gentlemen, three weeks ago, the voters of North Carolina had their say on six constitutional amendments and on a 170 legislative seats and while we as a party did not support the Voter ID amendment, we are here this week to honor the majority of North Carolina's voters and work to craft enabling legislation.
As we approached this week, we set a goal of having a voter ID that would be secure, simple, and

Page 17

easy, without disenfranchising voters and potential voters. Secure and correctly identifying the voter who presents to cast his or her ballot, not restore but maintain the integrity and faith in our current system.
Simple in creating a system that would allow the State Board and our Local Boards to implement it efficiently with a minimum of cost and hassle, and easy, easy for voters and potential voters to understand what is required of them and easy in obtaining an ID if they needed one.
I have to be honest. This bill isn't as restrictive or burdensome as some of us feared and the second draft is better than what the Oversight Committee saw on Monday.
It adequately addresses the secure criterion that we have and we appreciate the Republic Caucus amending the bill to allow issuance of voter IDs during early voting, as Senator Clark and I suggested in our alternate bill, and we appreciate the dialogue and the 34 changes that Senator Krawiec cited.
However, when it comes to being simple and easy, this bill comes up short. First, as we often argue

Page 38

Mr. President. Do we have any further discussion or debate?

Senator Tillman, for what purpose do you rise?

Senator Tillman. Thank you, Mr. President. Speak briefly on the bill.

Mr. President. Senator Tillman, you have the floor to speak to the bill.

Senator Tillman. November 6th, the people of this state voted rather strongly that they wanted a voter ID, photo voter ID.

A few short years ago, Georgia implemented photo voter ID. Voter participation went up in that very next election. Minority voter participation went up in that election. They had confidence that their vote was not going to be diluted by a fraudulent vote.

That's all this is assuring to do, and I've heard I don't know how many of you say that it disenfranchises this or that or the other or minority. It doesn't disenfranchise anybody.

We've made it so easy to get an identification with your photo on it. We've bent over backwards to do nearly everything you all have requested. No, it does

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not disenfranchise anyone. What it does disenfranchise, folks, is cheating. You don't want it, we don't want it, and all this 55 percent of voters weren't all Republicans either. There are many of you that I spoke before in forums this last election and many were minorities that spoke in favor of voter ID. So it's not a single party issue, though you try to make it that. It's simply a fairness issue that the people of this state have been wanting for a long time.

Mr. President. Any further discussion or debate?

Senator Lowe, for what purpose do you rise?

Senator Lowe. Send forth an amendment.

Mr. President. Senator Lowe, we have your amendment here. The Clerk will read it.

The Clerk. Senator Lowe moves to amend the bill.

Mr. President. Senator Lowe is recognized to speak to Amendment Number 8.

Senator Lowe. All right. The only thing --

Mr. President. Hold on one second, sir, make sure we're up. Is it up on the dash? We have that on -- yeah. We have it on the dashboard.

Okay. Senator, you have the floor.

Page 40

Senator Lowe. Okay. The only thing that this amendment seeks to do is to ensure one-stop voting on the last day before the Election Day. I ask that you support this amendment.

Mr. President. Any discussion or debate on Amendment 8?

Senator Rabon, for what purpose do you rise?

Senator Rabon. Motion, please.

Mr. President. Senator Rabon, you have the floor for your motion.

Senator Rabon. Thank you, Mr. President.

Mr. President, I move that Amendment 8 lie upon the table.

Mr. President. Senator Rabon moves that Amendment 8 lie upon the table.

Senator Hise. Second.

Mr. President. And we have a second by Senator Hise and again we have a non-debatable motion with one electronic vote. All in favor will vote aye. Opposed will vote no. Five seconds will be allowed for voting. The Clerk will record the vote.

[Vote.]

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Mr. President. 29 having voted in the affirmative and 14 in the negative, Amendment 8 lies upon the table and the bill as amended is back before the body.

Senator Smith, for what purpose do you rise?

Senator Smith. To ask Senator Krawiec a question.

Mr. President. Senator Krawiec, do you yield for a question?

Senator Krawiec. I do.

Senator Smith. Thank you. Senator Krawiec, I saw in the bill earlier that the state-issued voter photo ID expires after eight years.

Can you explain to me the rationale for choosing eight years?

Senator Krawiec. The rationale was because we wanted to be consistent with the DMV, the photo IDs that they issue. The driver's licenses that the issue are eight years and we just wanted to be consistent with that.

Senator Smith. Would that have a further --

Mr. President. Is there --

Senator Smith. Would you yield for a follow-up question?

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Mr. President. Do we have any further discussion or debate?

Senator Woodward, for what purpose do you rise?

Senator Woodard. Speak on the bill.

Mr. President. Senator Woodard, you have the floor to speak to the bill.

Senator Woodard. Thank you, Mr. President.

According to Senator Tillman's comments, I don't think I would Georgia up as any example of how to conduct an election.

I would like to sent forward an amendment.

Mr. President. Senator, we have your amendment. The Clerk will read it.

The Clerk. Senator Woodard wishes to amend the bill.

Mr. President. Senator Woodard is recognized to speak to Amendment 9.

Senator Woodard. This simply changes what I spoke about earlier, which would take the provision currently in the bill, which would allow for all state, federal, and local government employee IDs and simply say that all IDs issued by state, federal, local government that

Page 47

contain date of birth and last four digits of social security number approved by the State of Board of Elections would suffice as an acceptable voter ID.

I commend it to you and urge you to vote yes.

Mr. President. Any discussion or debate on Amendment 9?

Senator Rabon, for what purpose do you rise?

Senator Rabon. Motion, Mr. President.

Mr. President. Senator Rabon, you have the floor for a motion.

Senator Rabon. Thank you, Mr. President.

I move that Amendment 9 lay upon the table.

Senator Hise. Second.

Mr. President. Motion by Senator Rabon is to lay Amendment 9 upon the table. Seconded by Senator Hise. Be one electronic vote. All in favor will vote aye. Opposed will vote no. Five seconds will be allowed for voting. The Clerk will record the vote.

[Vote.]

Mr. President. 30 having voted in the affirmative and 12 in the negative, Amendment 9 lays upon the table, and the bill as amended is back before the body.

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Senator McKissick, for what purpose do you rise, sir?

Senator McKissick. Speak on the bill.

Mr. President. Senator McKissick, you have the floor to speak to the bill.

Senator McKissick. Well, one thing I would like to say from the outset is that I understand the constitutional amendment has passed with 55 percent of the voters of North Carolina who believe that we now need a constitutional -- at least we need enabling authority that sets forth standards for voter IDs.

I think the effort made to bring forth legislation that I see here today is an earnest effort to try to expand it significantly beyond what it was when the last voter ID bill came before us, which was actually stricken down by the courts as being unconstitutional. So I appreciate the fact that this bill is far more broad and far more expansive.

The thing that I do not lose sight of is that while this amendment passed with 55 percent of the vote, that if any one of you were to call the State Board of Elections today, they would tell you that back

Page 49

in 2016, that when it comes to cases where persons actually went to the polls or in one way or the other tried to impersonate somebody else, that there are only two cases like that, only two cases in the state that existed. One was somebody voting in person, the other was somebody voting by absentee.

So I think when we look at the grand scheme of things, we do want to pass a bill that is broad, that's expansive, that provides reasonable access for people to continue voting that are lawfully registered to vote today who may not have an appropriate ID to do so.

One of the things which the bill allows for is these new voter IDs which we offer by the County Board of Elections. I think that's an excellent way of moving forward.

One of the things that it involves, though, is the fact that it has an expiration date. The expiration date is eight years, but, of course, you can also present a driver's license.

Now while a driver's license expires in eight years, any one of you that has a driver's license can go in and renew that by mail and any of you were to do

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Transcript of **November 29, 2018 Senate Floor - 3rd Reading**

Wednesday, March 6, 2019

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Page 2

Mr. President. So that will take us into our Calendar for the day for Third Reading on Senate Bill 824. The Clerk will read.

The Clerk. Senate Bill 824, Implementation of Voter ID, Constitutional Amendment.

Mr. President. Do we have any further discussion or debate?

Senator Krawiec, for what purpose do you rise?

Senator Krawiec. Thank you, Mr. President.

I just want to thank my co-sponsors, Senator Daniel, and also the Board for the work that we've done on this Voter ID Bill, and my colleagues on the other side of the aisle.

We've had tremendous input from the public and from our colleagues and I think this is a good bill and I'm asking for your support and I hope you'll all support this bill.

Thank you.

Mr. President. Thank you, Senator Krawiec.

Any further discussion or debate? Senator McKissick, for what purpose do you rise?

Senator McKissick. Speak on the bill.

Page 3

Mr. President. Senator McKissick, you have the floor to speak to the bill.

Senator McKissick. I'd just like to say thank you to Senator Daniel and Senator Krawiec for their work on the bill and for being open and inclusive in listening to us on the other side of the aisle in trying to come up with something that is reasonable in terms of its approach. So I want to thank you for that effort.

While I prefer the bill were it not necessary, we have a constitutional amendment, so it is. So I think it's best that we try to move forward with it the best we can.

Thank you.

Mr. President. Thank you, Senator.

Any further discussion or debate?

[No response.]

Mr. President. Hearing none, the question before the Senate is the passage of Senate Bill 824 on its Third Reading.

All in favor, vote aye. Opposed, vote no. Five seconds will be allowed for the voting. The Clerk will record the vote.

Page 4

[Vote.]

Mr. President. 30 having voted in the affirmative and 10 in the negative, Senate Bill 824 passes its Third Reading. The amendments will be enrolled and sent to the House via special message.

[Whereupon, the Third Reading was adjourned.]

EXHIBIT 19

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Transcript of **December 5, 2018 House Floor Audio - 2nd and 3rd Reading**

Wednesday, December 5, 2018

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the most popular weekend day of voting used by over 136,000 people in the 2018 election, respectfully, Mr. Speaker, I think this is very germane to the photo ID requirement that we need to keep our current hours of voting available for all future elections.

Thank you.

Speaker Moore. Is the lady wishing to appeal the decision on a particular one? If she does, just state which one. The way the appeal has to go has to lie for each one, although the chair ruled on both. So is the lady wishing to appeal on ABK-142? I believe that's what the --

Ms. Morey. Yes, Mr. Speaker.

Speaker Moore. Okay, all right. And the chair will speak to the chair's ruling.

The chair would point to -- would state that, number one, this bill is to implement a constitutional amendment that was passed by the people of the State at the ballot box. There was nothing relevant to voter ID whatsoever on the constitutional amendment that was adopted by the people.

Therefore, this bill that has been -- that is

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before the body is designed to deal with voter ID and things related directly to that. The scope of the bill is that, therefore, anything relating to expanding voting days or hours is simply just -- is simply not germane to the bill.

So further discussion, further debate?

[No response.]

Speaker Moore. If not, the question before the House is the -- is should the Member's appeal of the chair's ruling be sustained?

All those in favor of Representative Morey's motion to appeal the decision of the chair will vote aye. All those opposed to the appeal will vote no. The clerk will open the vote.

[Voting.]

Speaker Moore. The clerk will lock the machine and record the vote. 40 having voted in the affirmative and 66 in the negative, the lady's appeal fails. The chair's decision is sustained.

Did the lady wish to appeal the second or sufficient of the first?

[No response.]

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Speaker Moore. Hearing nothing, the chair will deem the lady is satisfied at the moment.

For what purpose does the -- Representative Beasley is recognized to send forth Amendment ABK-133. The clerk will read.

The Clerk. Representative Beasley moves to amend the bill on page 1, line 15, by inserting the following at the end of the line.

Speaker Moore. The gentleman from Mecklenburg is recognized to debate the amendment.

Mr. Beasley. Thank you, Mr. Speaker.

This amendment goes to an assumption that may be out there, given that we are doing something that has not been done for many years. My concern is that since we are creating a voter photo identification card, that some members of the public may start to think of these cards as though they are like driver's licenses or hunting licenses, where once your driver's license has expired, you shouldn't drive. Or when your hunting license has expired, you should not hunt, pursuant to that license.

What this amendment would do is two things.

Page 53

Number one, it would clarify that just because your voter ID card itself has expired does not mean that your underlying registration has expired. So you would not have to actually go and re-register in order to continue to vote.

The second thing that it does is it adds a disclaimer onto the card itself that informs the voter if you have an expired voter ID card, you are still eligible to vote, and the State Board of Elections will not assume because the card itself is expired that you are somehow going inactive.

This is more to, you know, push back against any misconceptions out there. I know that in the bill, it does not say anything saying that if your card does expire that there would be anything to cause your registration to go inactive, but this is just a belt-and-suspenders approach to make sure that the public is well informed about their rights.

Thank you, Mr. Speaker.

Speaker Moore. For what purpose does the gentleman from Harnett, Representative Lewis, arise?

Mr. Lewis. To debate the amendment.

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Again, as I say, I think voter ID is not just about being sure that the person is who they say they are. I think it's also about -- and I think it's what the people of this State want who approved this. It's about being sure that that person is a citizen who has the right to vote in the place where they're voting. And so I think these additions, these changes that I've offered need to be made for that purpose.

You know, I hope it's okay. We're not supposed to get personal, but I hope it's okay to get personal in a positive manner. I'm looking at my friend Charles Graham. I have told him, at least a couple of occasions, I believe he is one of the finest gentlemen in this body. I think a lot of him. We disagree on some things, but I want him to be able to vote, you know? He has a right. He's a citizen of the State. He should be able to vote.

And I think he feels the same way about me voting, okay? But Charles doesn't want to vote in my place, and I don't want to vote in his place. And neither of us would want somebody else to do that to either of us.

Making sure it's the person they claim to be and

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that they are a citizen of this State is what voter ID is about. That's why I want to make these changes in this bill. And I don't believe that the bill will quite do what the people of this State have voted to do by approving that amendment unless we do this.

Thank you.

Speaker Moore. For what purpose does the gentleman from Harnett, Representative Lewis, arise?

Mr. Lewis. To debate the amendment.

Speaker Moore. You're recognized to debate the amendment.

Mr. Lewis. Thank you, Mr. Speaker.

Mr. Speaker and Members, Representative Pittman, in his earlier debate, said exactly what I have to stand up here and say now. The purpose of voter ID is to make sure that someone is who they say they are. That is the purpose of it in all 34 States which currently have it.

It is not to verify that they live where they say they live or for any other purpose. The purpose is simply to verify that the face matches the name. Therefore, I would ask you to please defeat this

Page 116

amendment.

Speaker Moore. Further discussion or debate?

[No response.]

Speaker Moore. Hearing none, the question before the House is the adoption of the Pittman amendment.

All in favor, vote aye. All opposed, vote no. The clerk will open the vote.

[Voting.]

Speaker Moore. The clerk will lock the machine and record the vote. 9 having voted in the affirmative and 95 in the negative, the amendment failed.

The bill is back before us.

For what purpose does Representative Harrison of Guilford arise?

Ms. Harrison. To debate the bill.

Speaker Moore. You're recognized to debate the bill.

Ms. Harrison. Thank you, Mr. Speaker and ladies and gentlemen of the House.

I did want to start by thanking Chairman Lewis because I think he's done a really terrific job working with us to help improve the bill. And this bill is a

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much better bill than the bill that left this chamber in 2013. So I want to thank him for that.

But I did want to speak both to the process and to the substance. And on the process, just because I'm hearing a lot from my constituents about the process. One, the constitutional amendment itself was somewhat vague in terms of how the constitutional voter ID amendment would be implemented. So I do believe there are a lot of voters who did not actually know what they were voting for. And while it did pass 55 percent to 45 percent, 45 percent of North Carolinians felt pretty strongly that it was not -- not a good amendment. So I did want to speak to that.

Also while I appreciate the efforts to allow for public comment, I think there were a lot that felt like they did not get a chance to speak at some of the committee hearings, especially last Monday's, which those 30 slots filled up pretty fast. And I did want to speak to the timing, too. Yes, the voters spoke, but there was no timeline listed in the constitutional amendment. We'd have plenty of time to spend a little bit more time on this and get more public input if we

EXHIBIT 20

REQUIRE PHOTO ID TO VOTE
Precincts Reported: 2706 of 2706

NAME ON BALLOT	PARTY	BALLOT COUNT	PERCENT
For		2,049,121	55.49%
Against		1,643,983	44.51%

NONPARTISAN JUDICIAL MERIT COMMISSION
Precincts Reported: 2706 of 2706

NAME ON BALLOT	PARTY	BALLOT COUNT	PERCENT
Against		2,385,696	66.85%
For		1,183,080	33.15%

BIPARTISAN BOARD OF ETHICS AND ELECTIONS
Precincts Reported: 2706 of 2706

NAME ON BALLOT	PARTY	BALLOT COUNT	PERCENT
Against		2,199,787	61.60%
For		1,371,446	38.40%

TOWN OF CHAPEL HILL AFFORDABLE HOUSING BONDS
Precincts Reported: 24 of 24

NAME ON BALLOT	PARTY	BALLOT COUNT	PERCENT
Yes		18,518	71.77%
No		7,285	28.23%

TOWN OF LONG VIEW MIXED BEVERAGE ELECTION
Precincts Reported: 3 of 3

NAME ON BALLOT	PARTY	BALLOT COUNT	PERCENT
For		634	53.19%
Against		558	46.81%

EXHIBIT 21

SBOE_10

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Prior Education Efforts on Voter Identification Requirements (2014-16)

Kim Westbrook Strach
Executive Director

Prior Mandate: S.L. 2013-381 § 5.2

- Publicize requirements and how to obtain photo identification.
- Identify voters lacking photo identification by partnering with public agencies, private entities, and nonprofits.
- Assist "any registered voter" in obtaining required photo identification.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Publicize

S.L. 2013-381 § 5.2

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Publicize requirements and how to obtain photo identification.

- Engaged professional marketing group to develop messaging for statewide campaign.
- Group worked to identify key messages for target communities.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Publicize requirements and how to obtain photo identification.

TV, Radio & Online Ads

- Statewide placement in roughly thirty TV stations and more than forty-five radio stations.
- 60 and 30 second ads informed the public that (1) photo ID would be required for most voters beginning in 2016; (2) exceptions exist; (3) assistance in obtaining free ID is available; and (4) voters unable to obtain acceptable ID remain able to present at the polls and ask for assistance or vote by mail.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Publicize requirements and how to obtain photo identification.

- VoterID.nc.gov

- Stand-alone website featured photo ID requirements, exceptions, and FAQs in both English and Spanish.

- Online portal allowed organizations and the public to request assistance or printed materials.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Publicize requirements and how to obtain photo identification.

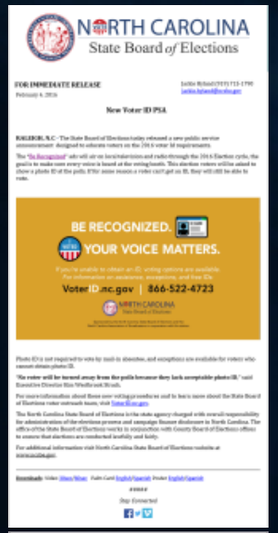
- Billboards

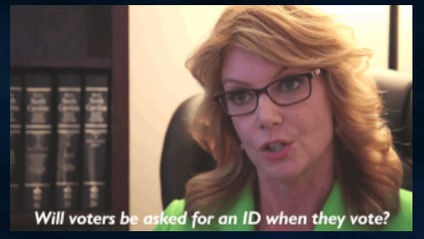
- Digital and print billboards displayed different messages informing voters of key election dates and drove traffic to VoterID.nc.gov.
- Millions of passersby estimated to have viewed the billboards.

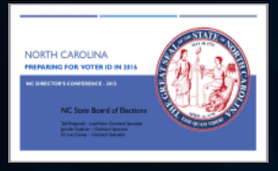
NORTH CAROLINA
State Board of Elections & Ethics Enforcement

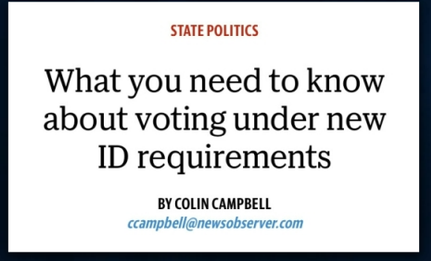
Publicize requirements and how to obtain photo identification.

Earned Media







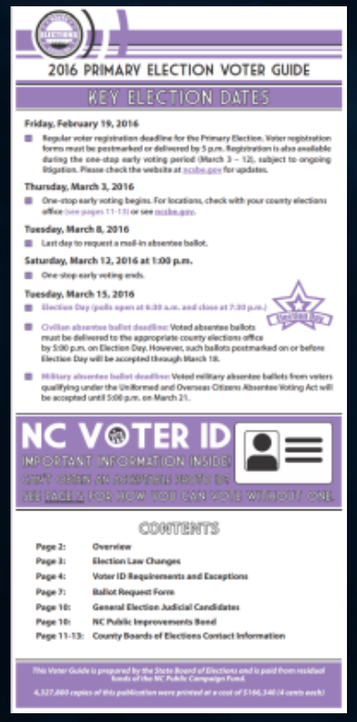


- Press releases and interviews helped position the agency as an impartial source for election administration information throughout implementation period.
- PIO joined agency to coordinate public education efforts.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Publicize requirements and how to obtain photo identification.

Voter Guides



2016 PRIMARY ELECTION VOTER GUIDE

KEY ELECTION DATES

Friday, February 19, 2016

- Regular voter registration deadline for the Primary Election. Voter registration forms must be postmarked or delivered by 5 p.m. Registration is also available during the one-stop early voting period (March 3 – 12), subject to ongoing litigation. Please check the website at ncsbe.gov for updates.

Thursday, March 3, 2016

- One-stop early voting begins. For locations, check with your county elections office (see pages 11-13) or see ncsbe.gov.

Tuesday, March 8, 2016

- Last day to request a mail-in absentee ballot.

Saturday, March 12, 2016 at 1:00 p.m.

- One-stop early voting ends.

Tuesday, March 15, 2016

- Election Day (polls open at 6:30 a.m. and close at 7:30 p.m.)
- Civilian absentee ballot deadline: Voted absentee ballots must be delivered to the appropriate county elections office by 5:00 p.m. on Election Day. However, such ballots postmarked on or before Election Day will be accepted through March 18.
- Military absentee ballot deadline: Voted military absentee ballots from voters qualifying under the Uniformed and Overseas Citizens Absentee Voting Act will be accepted until 5:00 p.m. on March 21.

NC VOTER ID

IMPORTANT INFORMATION INSIDE!

CONTENTS

This Voter Guide is prepared by the State Board of Elections and is paid from residual funds of the NC Public Campaign Fund.

4,327,000 copies of this publication were printed at a cost of $166,340 (4 cents each)

Voter ID

Most voters must now show acceptable photo ID at the polls. This guide contains information about voter ID requirements and exceptions outlined in the law (S.L. 2013-381, S.L. 2014-111, and S.L. 2015-103). You may vote with any of the photo IDs listed below. Free photo IDs are available from the Division of Motor Vehicles (DMV). **There are ways to vote, even if you cannot obtain acceptable photo ID before the election (see exceptions on page 5).**

For additional information or assistance, please contact the State Board of Elections Voter Outreach Team at 1-866-522-4723 or VoterOutreach.SBOE@ncsbe.gov

WHAT VOTER ID WILL BE REQUIRED?

NC DRIVERS LICENSE/PERMIT

NC IDENTIFICATION CARD

US PASSPORT/PASSPORT CARD

MILITARY IDENTIFICATION CARD

VETERANS IDENTIFICATION CARD

CERTAIN TRIBAL ENROLLMENT CARDS

* Cards issued by North Carolina recognized tribes and approved by the State Board of Elections are acceptable for voting. If they have an expiration date and are unexpired. Cards issued by federally recognized tribes are acceptable if they have an expiration date and are unexpired, or if they have an issuance date and were issued within eight years.

If you do not have one of the forms of photo ID above, you can get a free ID from the DMV.

NEED HELP GETTING YOUR FREE NC DMV ID CARD?

Step 1: Gather the needed documents and information:

1. Two documents that prove your **age** and **identity** (examples: birth certificate, court documents, or tax forms)
2. One document to prove your **North Carolina residency** (examples: a lease, voter registration card, or utility bill)
3. You or **social security number**

Step 2: Bring these items to any drivers license office or DMV mobile unit, and state that you are there for your free NC identification Card. DMV locations may be found at **www.iVoteNC.gov**.

EXCEPTIONS

4

- **Roughly 12.7 million** guides sent to every residential address between 2014 and 2016 primaries.
- Highlighted assistance options and outlined requirements and exceptions.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Holmes_SBOE_POD_024485

Publicize requirements and how to obtain photo identification.

Posters & Flyers

- Roughly 400,000 posters and flyers printed.
- Distributed statewide to churches, advocacy groups, educational institutions, food banks, businesses, polling sites, election offices, libraries, and other community locations in English and Spanish.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

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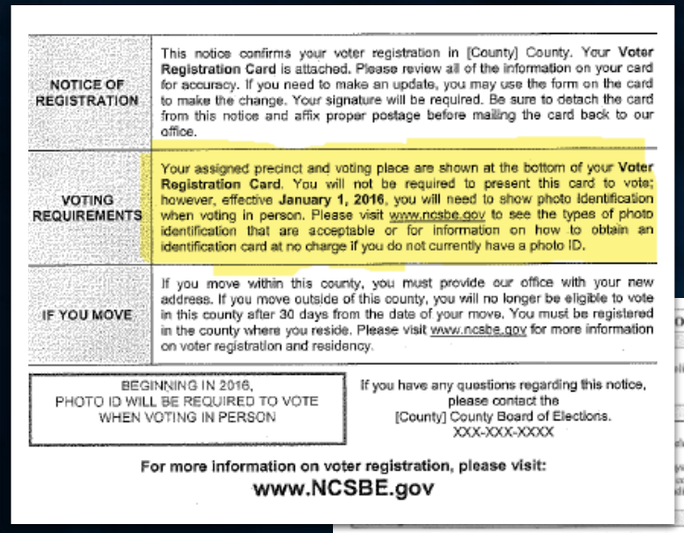
Publicize requirements and how to obtain photo identification.

Official Forms/Mailers

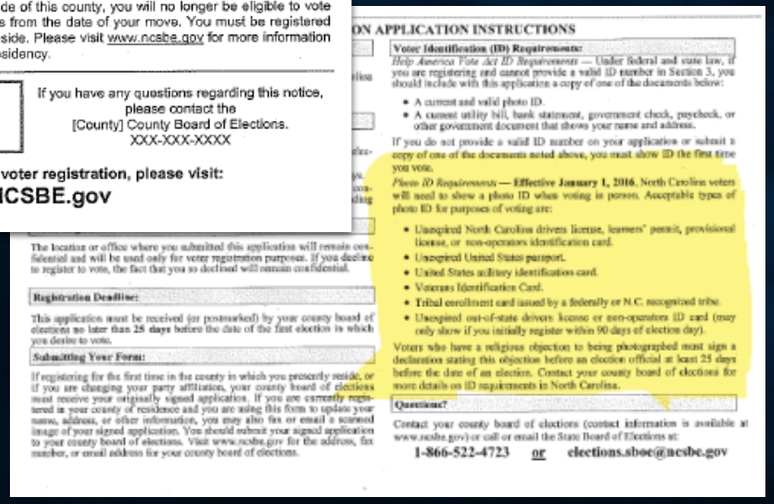


NOTICE OF REGISTRATION	This notice confirms your voter registration in [County] County. Your **Voter Registration Card** is attached. Please review all of the information on your card for accuracy. If you need to make an update, you may use the form on the card to make the change. Your signature will be required. Be sure to detach the card from this notice and affix proper postage before mailing the card back to our office.
VOTING REQUIREMENTS	Your assigned precinct and voting place are shown at the bottom of your **Voter Registration Card**. You will not be required to present this card to vote; however, effective **January 1, 2016**, you will need to show photo identification when voting in person. Please visit www.ncsbe.gov to see the types of photo identification that are acceptable or for information on how to obtain an identification card at no charge if you do not currently have a photo ID.
IF YOU MOVE	If you move within this county, you must provide our office with your new address. If you move outside of this county, you will no longer be eligible to vote in this county after 30 days from the date of your move. You must be registered in the county where you reside. Please visit www.ncsbe.gov for more information on voter registration and residency.

BEGINNING IN 2016,
PHOTO ID WILL BE REQUIRED TO VOTE
WHEN VOTING IN PERSON

If you have any questions regarding this notice, please contact the
[County] County Board of Elections.
XXX-XXX-XXXX

For more information on voter registration, please visit:
www.NCSBE.gov



ON APPLICATION INSTRUCTIONS

Voter Identification (ID) Requirements:

Help America Vote Act ID Requirements — Under federal and state law, if you are registering and cannot provide a valid ID number in Section 3, you should include with this application a copy of one of the documents below:

- A current and valid photo ID.
- A current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address.

If you do not provide a valid ID number on your application or submit a copy of one of the documents noted above, you must show ID the first time you vote.

Photo ID Requirements — **Effective January 1, 2016**, North Carolina voters will need to show a photo ID when voting in person. Acceptable types of photo ID for purposes of voting are:

- Unexpired North Carolina drivers license, learners' permit, provisional license, or non-operators identification card.
- Unexpired United States passport.
- United States military identification card.
- Veterans Identification Card.
- Tribal enrollment card issued by a federally or N.C. recognized tribe.
- Unexpired out-of-state drivers license or non-operators ID card (may only show if you initially register within 90 days of election day).

Voters who have a religious objection to being photographed must sign a declaration stating this objection before an election official at least 25 days before the date of an election. Contact your county board of elections for more details on ID requirements in North Carolina.

Questions?

Contact your county board of elections (contact information is available at www.ncsbe.gov) or call or email the State Board of Elections at:

1-866-522-4723 or elections.sboe@ncsbe.gov

The location or office where you submitted this application will remain confidential and will be used only for voter registration purposes. If you decline to register to vote, the fact that you so declined will remain confidential.

Registration Deadline:

This application must be received (or postmarked) by your county board of elections no later than **25 days** before the date of the first election in which you desire to vote.

Submitting Your Form:

If registering for the first time in the county in which you presently reside, or if you are changing your party affiliation, your county board of elections must receive your originally signed application. If you are currently registered in your county of residence and you are using this form to update your name, address, or other information, you may also fax or email a scanned image of your signed application. You should submit your signed application to your county board of elections. Visit www.ncsbe.gov for the address, fax number, or email address for your county board of elections.

- **Voter Registration Forms** reprinted to include information about requirements and exceptions.
- **Confirmation Mailers** sent to new registrants repeated information.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Publicize requirements and how to obtain photo identification.

Voter Outreach Team

- More than 200 community presentations and events conducted by the Voter Outreach Team enabled advocacy groups, faith communities, political parties, NC Tribes, care facilities, and others groups to provide accurate information to members.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Publicize requirements and how to obtain photo identification.

Voter Outreach Team

- Established partnerships with United Way's "2-1-1" information line along with other organizations and churches to promote awareness of new requirements and how to obtain free identification.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Identify

S.L. 2013-381 § 5.2

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Identify voters lacking photo identification.

- The State Board worked to identify voters who lacked identification by utilizing:

1. Voter self-identification

2. Database matching

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Identify voters lacking photo identification.

Voter self-identification

- S.L. 2013-381 § 6.2 required poll workers to notify voters of the coming requirements and to offer an acknowledgement signed by the voter indicating that she lacked acceptable identification.
- In 2014, 10,743 voters signed the form. In 2015, 823 voters signed the form.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Identify voters lacking photo identification.

Voter self-identification

- Voter Outreach Team sent a mailing to each voter who signed the acknowledgement.
- Of the 2014 voters, 2,353 responded. Of those responders, 95% indicated that they did in fact possess acceptable identification.
- 51 voters requested assistance.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Identify voters lacking photo identification.

Database matching

- No-match List generated by comparing DMV and voter roll databases to identify voters who could not be matched with a DMV identification card.
- Final analysis in February 2015 resulted in a list of 254,391 registrations who could not be matched to a DMV identification card.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Identify voters lacking photo identification.

Database matching

- Voter Outreach Team sent a mailing to each unmatched voter.
- 20,580 returned a response card. Of those responders, 91% indicated that they possessed acceptable identification.
- 633 voters requested assistance. Voter Outreach worked each of these and additional cases opened based on calls/emails.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Identify voters lacking photo identification.

Database matching

- Plaintiffs' expert in *NAACP v. McCrory*, conducted a separate database analysis. Voter Outreach sent a mailing to 209,253 voters identified by Plaintiff's expert.
- 8,440 returned a marked response card. Of responders, 76% indicated that they possessed acceptable identification.
- 782 voters requested assistance. Voter Outreach worked each of these and additional cases opened based on calls/emails.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Assist

S.L. 2013-381 § 5.2

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Assist "any registered voter" in obtaining required photo identification.

- Voter Outreach Team worked more than 2,700 cases and established agreements with 97 transit systems across the State to provide transportation to and from DMV offices at no cost to the voter.
- Team members helped voters obtain DMV identification. DMV issued 7,841 photo identifications for voting purposes at no cost to the voter (issuance continues as of Nov. 2018).

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Implementation

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Implementation

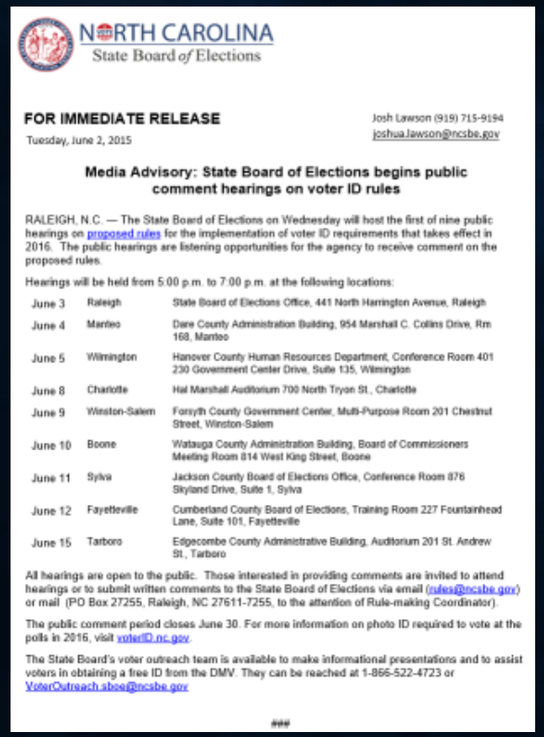
- Implementation involved:

1. Administrative rulemaking
2. Standardized training materials
3. Review of 2016 primary (March) data

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Implementation

Rulemaking



NORTH CAROLINA
State Board of Elections

FOR IMMEDIATE RELEASE
Tuesday, June 2, 2015

Josh Lawson (919) 715-9194
joshua.lawson@ncsbe.gov

Media Advisory: State Board of Elections begins public comment hearings on voter ID rules

RALEIGH, N.C. — The State Board of Elections on Wednesday will host the first of nine public hearings on proposed rules for the implementation of voter ID requirements that takes effect in 2016. The public hearings are listening opportunities for the agency to receive comment on the proposed rules.

Hearings will be held from 5:00 p.m. to 7:00 p.m. at the following locations:

June 3	Raleigh	State Board of Elections Office, 441 North Harrington Avenue, Raleigh
June 4	Manteo	Dare County Administration Building, 954 Marshall C. Collins Drive, Rm 168, Manteo
June 5	Wilmington	Hanover County Human Resources Department, Conference Room 401 230 Government Center Drive, Suite 135, Wilmington
June 8	Charlotte	Hal Marshall Auditorium 700 North Tryon St., Charlotte
June 9	Winston-Salem	Forsyth County Government Center, Multi-Purpose Room 201 Chestnut Street, Winston-Salem
June 10	Boone	Watauga County Administration Building, Board of Commissioners Meeting Room 814 West King Street, Boone
June 11	Sylva	Jackson County Board of Elections Office, Conference Room 876 Skyland Drive, Suite 1, Sylva
June 12	Fayetteville	Cumberland County Board of Elections, Training Room 227 Fountainhead Lane, Suite 101, Fayetteville
June 15	Tarboro	Edgecombe County Administrative Building, Auditorium 201 St. Andrew St., Tarboro

All hearings are open to the public. Those interested in providing comments are invited to attend hearings or to submit written comments to the State Board of Elections via email (rules@ncsbe.gov) or mail (PO Box 27255, Raleigh, NC 27611-7255, to the attention of Rule-making Coordinator).

The public comment period closes June 30. For more information on photo ID required to vote at the polls in 2016, visit voterID.nc.gov.

The State Board's voter outreach team is available to make informational presentations and to assist voters in obtaining a free ID from the DMV. They can be reached at 1-866-522-4723 or VoterOutreach.sbee@ncsbe.gov

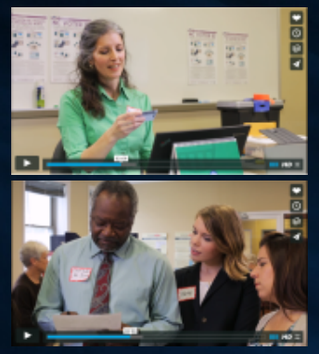
###

- State Board adopted administrative rules to ensure uniform implementation.
- Staff held public comment hearings in nine cities statewide.
- Rules remain codified in Chapter 17 of Title 8 of the Administrative Code.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Implementation

Training Materials

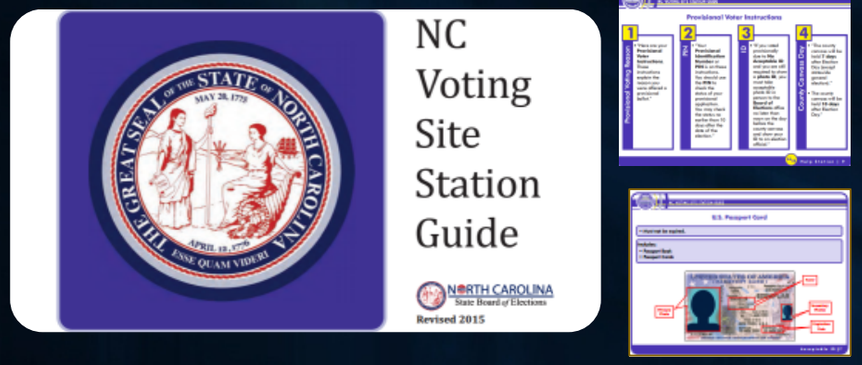


- Video training series professionally produced to educate poll workers about standard procedures regarding photo identification.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Implementation

Training Materials

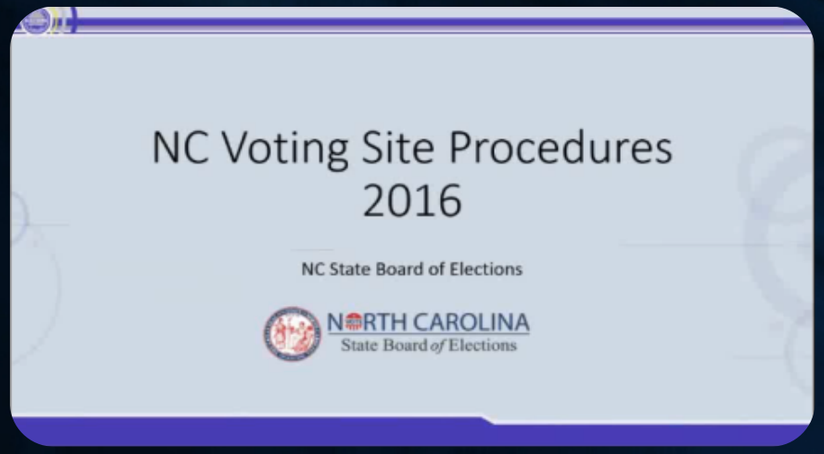


- Tabletop station guide with step-by-step instructions and standard scripts for photo identification and other polling place procedures, printed and distributed for each station in every precinct.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Implementation

Training Materials

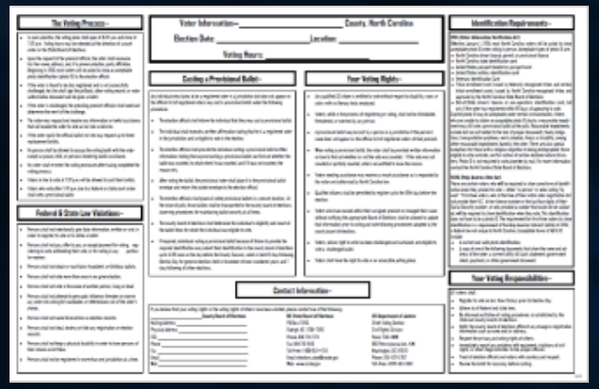


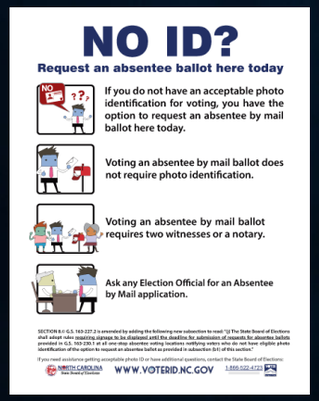
- Train-the-Trainer Presentations and Webinars required of all local election workers who trained precinct officials. Presentations summarized how each polling station handles identification requirements.

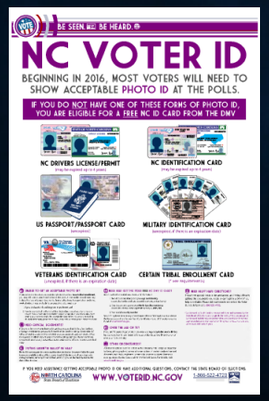
NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Implementation

Training Materials







- Mandatory precinct signage included detailed guidance regarding alternative voting procedures, exceptions, and identification requirements.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

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Implementation

Review of 2016 primary data

- 1,048 voters completed a Declaration of Reasonable Impediment indicating that a "reasonable impediment" prevented them from obtaining acceptable identification. Of these Reasonable Impediment voters, 864 ultimately counted.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Implementation

Review of 2016 primary data

- 1,248 voters did not present acceptable photo identification, or execute a Declaration of Reasonable Impediment, or return to the county office by the deadline after election night. These votes did not count.
- 2.7 million voters participated in the 2016 Primary.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

Questions

VOTE WITH ID In North Carolina

BE SEEN. BE HEARD.

NC VOTER ID

BEGINNING IN 2016, MOST VOTERS WILL NEED TO SHOW ACCEPTABLE PHOTO ID AT THE POLLS.

NC DRIVERS LICENSE/PERMIT
(may be expired up to 4 years)

NC IDENTIFICATION CARD
(may be expired up to 4 years)

US PASSPORT/PASSPORT CARD
(unexpired)

MILITARY IDENTIFICATION CARD
(unexpired, if there is a expiration date)

VETERANS IDENTIFICATION CARD
(unexpired, if there is a expiration date)

CERTAIN TRIBAL ENROLLMENT CARDS
(** see requirements on back)

IF YOU DO NOT HAVE ONE OF THESE FORMS OF PHOTO ID, YOU ARE ELIGIBLE FOR A FREE NC ID CARD FROM THE DMV

GETTING YOUR FREE NC DMV ID CARD:

Step 1: Gather the documents and information you will need:

1. Two documents that prove your **age** and **identity** (examples: a birth certificate, court documents, or tax forms).
2. One document to prove your **North Carolina residency** (examples: a lease, voter registration card, or utility bill).
3. Your **Social Security number**.

Step 2: Bring these items to any DMV drivers license office or DMV mobile unit, and be sure to say you are there for your free NC Identification Card. DMV locations can be found at the website below.

WWW.VOTERID.NC.GOV

NORTH CAROLINA State Board of Elections

1-866-522-4723 VOTER OUTREACH

NEED OFFICIAL DOCUMENTS?

If you were born or married in North Carolina, you are eligible for a free birth or marriage certificate if you need it to get your NC Identification Card for voting. contact the NC Office of Vital Records at **(919) 733-3000** or your county's Register of Deeds Office to request a certified copy of your records for voting purposes. If you were born or married out-of-state, contact that state's vital records office to receive a certified copy.

UNABLE TO GET AN ACCEPTABLE PHOTO ID?

Voters who are unable to obtain an acceptable photo ID due to a **reasonable impediment** may still vote a provisional ballot at the polls. A reasonable impediment may include the lack of proper documents, family obligations, transportation problems, work schedule, illness or disability, among others. Voters must also:

1. Sign a declaration describing the impediment they face; and
2. Provide their date of birth and last four digits of their Social Security number, or present their current voter registration card, or present a copy of an acceptable document with their name and address.*

VOTING ABSENTEE BALLOT BY MAIL?

Photo ID is not required to cast a mail-in absentee ballot. Absentee Ballot Request Forms are available online, at the county board of elections and at all one-stop early voting locations, and can be submitted until 5:00 p.m. on the Tuesday before the date of the election.

QUALIFIED TO VOTE CURBSIDE?

Voters who cannot enter the polling place without assistance because of age or disability may vote from their vehicle. Those voters may present either an acceptable photo ID or another acceptable document with their name and address.*

FORGOT YOUR ACCEPTABLE PHOTO ID?

Voters who do not present an acceptable photo ID at the polling place may still vote a provisional ballot that will be counted **if** the voter later presents an acceptable photo ID at their county board of elections office before noon on the day before their county board canvasses the election.

OVER THE AGE OF 70?

Voters who are 70 years of age or older may use **any acceptable photo ID** that has been expired for any length of time, provided the photo ID expired after their 70th birthday.

OTHER CIRCUMSTANCES?

Additional options exist for voters with a sincerely held religious objection to being photographed, voters who are victims of certain declared natural disasters, and newly registered voters who possess a drivers license or non-operators license issued within the United States. For details, visit www.VoterID.nc.gov.

NEED HELP? HAVE QUESTIONS?

If you have special needs or circumstances, are having difficulty getting the documents you need, or can't get to a DMV office, help is available. Please visit our website or contact the Voter Outreach Team at 1-866-522-4723.

* Acceptable documents include a current utility bill, bank statement, government check, paycheck, or other government document.

** Cards issued by North Carolina-recognized tribes and approved by the State Board of Elections are acceptable for voting if they have an expiration date and are unexpired. Cards issued by federally-recognized tribes are acceptable if they have an expiration date and are unexpired, or if they have an issuance date and were issued within eight years.

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

REASONABLE IMPEDIMENT DECLARATION	ELECTION DATE	PROVISIONAL POLL BOOK NO.

TO BE COMPLETED BY ELECTION OFFICIAL

Location Voted: _____ VRN: _____

Provisional Voting Reason(s): ☒ No Acceptable ID ☐ Other (if any) _____

TO BE COMPLETED BY VOTER

Name _____
Last Name First Name Middle Name Suffix

Date of Birth: _____ Last 4 Digits of Social Security No. _____

VOTER'S DECLARATION OF REASONABLE IMPEDIMENT

I DECLARE that I am the same individual who personally appeared at the polling place, that I am casting a provisional ballot while voting in person in accordance with Article 14A of Chapter 163 of the General Statutes or G.S. 163-227.2, and I suffer from a reasonable impediment that prevents me from obtaining acceptable photo identification.

My reasonable impediment is due to the following reason(s):

- ☐ Lack of transportation
- ☐ Disability or illness
- ☐ Lack of birth certificate or other documents needed to obtain photo ID
- ☐ Work schedule
- ☐ Family responsibilities
- ☐ Lost or stolen photo ID
- ☐ Photo ID applied for but not received
- ☐ Other reasonable impediment _____
- ☐ State or federal law prohibits me from listing my impediment

Proof of Identity – I am presenting identification in the form of a copy of one of the following documents that shows my name and address:

- ☐ Last four digits of Social Security number (provided above)
- ☐ A copy of one of the following documents that shows my name and address:
  - ____a current utility bill ____bank statement ____ government check ____ paycheck
  - ____other government document _____
- ☐ Voter Registration card

For Election Official

- ☐ Voter did not provide any alternative identification document or information.

FRAUDULENTLY OR FALSELY COMPLETING THIS FORM IS A CLASS I FELONY UNDER CHAPTER 163 OF THE NC GENERAL STATUTES

X _____ _____
VOTER'S SIGNATURE (REQUIRED) DATE

NCSBOE 2015.12

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

FRAUDULENTLY OR FALSELY COMPLETING THIS FORM IS A CLASS I FELONY UNDER CHAPTER 163 OF THE NC GENERAL STATUTES.

EVIDENTIARY CHALLENGE FORM

NORTH CAROLINA
COUNTY OF [COUNTY]

[ ] COUNTY BOARD OF ELECTIONS
[ADDRESS]
[CITY/STATE/ZIP]

PHONE: XXX-866-5227 FAX: 919-715-0135
XXXXXXXXX.boe@ncsbe.gov

TO: [COUNTY] COUNTY BOARD OF ELECTIONS

I am a registered voter in _____ County and I hereby challenge the factual truthfulness of the reasonable impediment claimed by _____ on his/her *Reasonable Impediment Declaration* dated _____.

NOTICE: Any hearing on your challenge before the County Board of Elections will be strictly limited to the facts you allege in your written challenge form. You will not be permitted to allege new facts at the hearing. The County Board of Elections may not find a challenge valid if it provides only evidence regarding the reasonableness of the impediment.

Supply all facts in support of your challenge. Attach all documents you wish for the County Board of Elections to consider. If any fact you allege is outside your personal knowledge, you may attach affidavits from an individual who has personal knowledge of that fact.

_____

_____

_____

_____

_____

COMPLETE THE BELOW SECTION IN THE PRESENCE OF A PUBLIC NOTARY

NORTH CAROLINA

COUNTY OF _____

_____, appearing before the undersigned notary being duly sworn, says that:

1. I declare that all facts I have alleged in connection with this challenge are true and accurate to the best of my knowledge.
2. I declare my sincerely held belief that the facts I have alleged form a good faith basis to challenge the factual truthfulness of the reasonable impediment claimed by _____ on his/her *Reasonable Impediment Declaration* dated _____.
3. I understand that submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 of the General Statutes.

_____ _____
Challenger's Name Challenger's Signature

_____
Address

_____ _____
Telephone No. Email Address

Sworn to (or affirmed) and subscribed before me this the _____ day of _____, 20____.

_____
Official Signature of Notary

(Official Seal)

_____, Notary Public
Notary's printed or typed name

My commission expires: _____

NC SBOE 2016.01

NORTH CAROLINA
State Board of Elections & Ethics Enforcement

EXHIBIT 22

Bell, Karen 120320

Bell, Karen (Vol. 01) - 12/03/2020

1 CLIP (RUNNING 02:08:17.752)

PLT AFF - DEF CTR - DEF AFF - PLT CTR

BELL — 87 SEGMENTS (RUNNING 02:08:17.752)

1. PAGE 7:21 TO 8:03 (RUNNING 00:00:14.986)

Q. Good morning. I'm Jessica Morton with the Paul, Weiss law firm, and I represent Plaintiffs in this matter. With me today is my colleague Taylor Williams, who will be helping out.
Do you prefer "Ms. Bell" or "Ms. Brinson Bell"?
A. "Ms. Bell" is fine. I'll -- I'll make it short for you.

2. PAGE 12:17 TO 13:07 (RUNNING 00:00:41.116)

So you're the executive director of the North Carolina State Board of Elections, right?
A. Yes, I am.
Q. What do your responsibilities entail in that role?
A. So I'm the chief elections official for the State of North Carolina. I oversee the State Board of Elections, as an agency which is approximately 75, 85 employees, given the temporary staff that we have currently.
I -- I also have oversight of the county Boards of Elections, which there are 100 counties Boards of Elections. We are responsible for the administration of elections, as well as compliance with campaign finance reporting. And so I oversee that as well.

3. PAGE 13:24 TO 14:10 (RUNNING 00:00:30.348)

Q. Got it. Do you understand that you're here today in two separate capacities, both your capacity as an individual and also as an executive director, a representative of the State Board?
A. Yes.
Q. And you understand that as representative of a State Board, under Rule 30(b)(6), you're testifying to the knowledge of the State Board as an entity, not just your own personal experience, right?
A. Yes, I understand that.
MS. MORTON: Taylor, could you please pull up the amended 30(b)(6) deposition notice?

4. PAGE 15:07 TO 15:20 (RUNNING 00:00:30.487)

So have you seen this document before?
A. I have.
Q. And you understand that this is a notice to testify in your representative capacity?
A. Yes.
Q. And if you could, you know, you or Taylor, turn to page 2.
A. I'm there.
Q. Great. It lists out ten topics for deposition, right?
A. It does, yes.

PX101

for circumstance for "Other" in the reasonable impediment.

Q. If a voter wrote that they were taking a principled stand against voter ID because they don't think it's a good policy, would that count as "Other"?

A. I should probably just say that, you know, "Other" is "Other," and it's the statement of the voter. And then the rule indicates that it would have to be proven false. So their statement is what is to be considered.

Q. If a voter were to write "The weather is terrible today," would that count as "Other"?

A. That is an "Other."

00073:01 Q. Can you give me any examples of anything that would not qualify as "Other"?

A. We have not defined that there would be anything that would not qualify as "Other."

Q. But the -- the guidance is not finalized yet; is that right?

A. That's correct. In terms of -- yes.

Q. So is it possible that when the guidance is finalized, there might be a response that would not qualify as "Other"?

A. Because we haven't actually written beyond just training materials that were in development, it -- I can't say that we would list an item as something not qualifying or -- or that we would not -- or that there would be anything that we would state that would be not qualifying.

44. PAGE 74:22 TO 76:13 (RUNNING 00:02:15.369)

Q. You had previously testified back in June 2019 that the State Board would be drafting a form for the reasonable impediment declaration that would be available at polling sites; is that right?

00075:01 A. Yes.

Q. And when you were deposed in -- as of June 2019, that form had not been finalized at that point, correct?

A. That's correct.

Q. Has it been finalized since then?

A. There was a form that I would say was near final, if not final, that we were planning to be rolling out as part of training and -- and implementation.

Q. It hasn't -- had not yet been rolled out when the law was enjoined?

A. I don't recall it having been provided to the county at that point.

Q. Going back to the -- the "Other" question for one second. If a -- what would happen if a voter left "Other" blank? They checked "Other," but they didn't write an explanation?

A. So, the decision on any response on the reasonable impediment form is up to the county Board of Elections, and they would have to determine if there was a falsehood to the statement made by the individual, and unanimously make a decision on that.

So I mean, that would be to the discretion of the county boards of Elections to determine

00076:01 unanimously if that's an acceptable answer or not.

Q. In addition to promulgating regulations, the State Board is responsible for educating the county boards about SB 824; is that correct?

A. Yes.

48. PAGE 81:23 TO 81:24 (RUNNING 00:00:09.815)

up Tab 28? This is marked Exhibit 15. It's Bates-numbered Holmes_SBOE_POD_006780. I

49. PAGE 82:03 TO 82:23 (RUNNING 00:00:59.763)

Q. So this spreadsheet is a list of those public seminars you were just discussing; is that right?
A. Yes, I believe that's what this is, yes.
Q. And the right-hand column shows the number of attendees at each of those seminars; is that right?
A. Yes, that's correct.
Q. And if you look at the first page, at the very bottom of the page, on the right-hand column, it's the sum total of the number of attendees for that page; is that right?
A. That's right.
Q. So I will save you some math and represent to you that across all the pages in this document, that adds up to 3,209 attendees across each of those public seminars. Would you agree that's not a particularly high number in comparison to the number of North Carolina voters?
A. That is a small number compared to 7.3 million registered voters, yes.

50. PAGE 83:02 TO 84:14 (RUNNING 00:01:55.323)

Q. And Ms. Bell, if you would please look at paragraph 20. It's on page 7 of the declaration and page 8 of the PDF.
A. I'm there.
Q. Great. You see "In September 2019, the State Board distributed a mass mailing . . . to every registered voter who the State Board determined may not possess a DMV-issued ID." Correct?
A. Yes.
Q. And that mailing went to about 700,000 North Carolinians; is that right?
A. That's right.
Q. And since that September 2019 mailing, has the State Board sent any such mass mailings to registered voters who may not possess DMV-issued ID?
A. Well, not for that specific -- not because they were identified on that list. We did do a mailing indicating the injunction that would have gone to every household in North Carolina, so that may have meant we reached some of these individuals, but not -- not as a -- a specific mailing because they are identified in this group.
Q. When did the mailing indicating the injunction was in place go out?
00084:01 A. That was early January, as I recall.
Q. Can you turn to paragraph 24 on the next page.
A. Okay.
Q. So you stated "between now and when early voting begins for the 2020 general election, each residence will receive four notifications of the photo ID requirements for voting." Do you see that?
A. Yes.
Q. How many of those mailings actually went out before the law was enjoined?
A. We -- we did not send out those mailings as identified there. We used one of those mailings

EXHIBIT 23

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS _____

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, and PAUL KEARNEY, SR.,

Plaintiffs,

v.

TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives;* PHILLIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate;* DAVID R. LEWIS, *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session;* RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session;* THE STATE OF NORTH CAROLINA; *and* THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

VERIFIED COMPLAINT
(Three-Judge Panel requested pursuant to N.C. Gen. Stat. § 1-267.1)

1. In numerous iterations of this State's Constitution, stretching over many decades, the people of the State of North Carolina have enshrined in their state's most sacrosanct governing document, through the adoption of a number of separate constitutional provisions and guarantees, the right to participate in their democracy and to have their political voice heard freely and equally. Without question, the right to vote on an equal basis in North Carolina is fundamental, and "[n]o right is more precious in a free country than that of having a voice in the election of those who

make the laws under which, as good citizens, we must live." *Blankenship* v. *Bartlett,* 363 N.C. 518, 521 (2009) (quoting *Wesberry* v. *Sanders,* 376 U.S. 1, 17 (1964)).

2. Though, as of the November 2018 General Election, the North Carolina Constitution also requires "[v]oters offering to vote in person to present photographic identification before voting," N.C. Const. Art. VI, §§ 2-3, this requirement must be effectuated through enabling legislation that is consistent with all other rights and freedoms that the State Constitution guarantees. That a piece of enabling legislation is drafted to give force and effect to a new constitutional provision does not insulate it from being in conflict with other constitutional provisions. Indeed, the same constitutional provision explicitly notes that "[t]he General Assembly shall enact general laws governing the requirements of such photographic identification, **which may include exceptions**," *id.* (emphasis added), as would be necessary to ensure that the enabling legislation does not run afoul of the State's other constitutional mandates with respect to voting.

3. But the enabling legislation, Senate Bill 824, does just that. Senate Bill 824, passed by the General Assembly on December 6, 2018 and ratified into law after a veto override on December 19, 2018, creates a law that nominally complies with N.C. Const. Art. VI, §§ 2-3, but violates numerous other provisions of the State Constitution. The legislature failed in its duty to balance the constitutional protections for voting—primarily ensuring that no eligible voter will be disenfranchised—with compliance with the new constitutional provision.

4. The historical background of the State's previous photographic identification (photo ID) requirement for voting in effect for the March and June 2016 Primary Elections, contained in the Voter Information Verification Act, SL. 2013-381, and S.L. 2015-103 (hereinafter together referred to as "VIVA"), is that it was invalidated by the United State Court of Appeals for

the Fourth Circuit as intentionally racially discriminatory. *N.C. State Conf. of the NAACP* v. *McCrory,* 831 F.3d 204 (4th Cir. 2016), *cert. denied* 137 S. Ct. 1399 (May 15, 2017). The Court of Appeals noted that specific aspects of the photo ID requirement had an intentionally disparate burden on North Carolinians of color, and, indeed, the types of IDs chosen to be acceptable for voting were selected on the basis of the race of the voters most likely to possess those types of IDs. *Id.* at 216, 227–28.

5. The General Assembly's new voter identification enabling legislation, Senate Bill 824, retains many of the harmful provisions of the State's previous invalidated requirement. Through this enactment, the General Assembly has simply reproduced the court-identified racially discriminatory intent it manifested a mere five years ago when it enacted a very similar voter ID requirement. The fact that a bare majority of North Carolina voters endorsed a vaguely worded constitutional amendment requiring, with exceptions, some form of photo ID to vote does not insulate the legislature from once again enacting an intentionally racially discriminatory law where its enabling legislation contains provisions nearly identical to those previously found to be constitutionally infirm. Moreover, the legislature has failed to craft a photo ID requirement for voting that gives effect to newly amended Art. VI and that also respects the constitutional rights and freedoms of each North Carolinian to cast a ballot freely and on equal terms. Senate Bill 824, which became law over the objection of the Governor on December 18, 2018, unconstitutionally and unjustifiably burdens the right to vote of Plaintiffs and similarly situated registered, qualified North Carolina voters who lack acceptable photo ID when they go to the polls and are subject to a complex process to vote—assuming that they are even offered a reasonable impediment declaration. Effective immediately when Senate Bill 824 becomes law, several classes of voters will be affected: (1) voters who lack a photo ID from an arbitrarily narrow list of acceptable IDs,

(2) voters who do not have a reasonable impediment to obtaining requisite photo ID, (3) voters who present acceptable photo ID but are denied the ability to cast a regular ballot, (4) voters who forget their photo ID and do not understand how to cure the provisional ballot they will be forced to cast, and (5) voters who are not offered a reasonable impediment declaration, among others, will be unable to have their in-person vote counted.

6. The enabling legislation, Senate Bill 824, purportedly intended to give effect to newly amended Art. VI, violates the North Carolina Constitution—both as applied to Plaintiffs and similarly situated voters, and on its face—in the following ways:

a. It intentionally discriminates against and disparately impacts African-American and American-Indian qualified, registered voters, as intended by the General Assembly, and in violation of the Equal Protection Clause in Article 1, § 19.

b. It unduly burdens the fundamental right to vote, in violation of the Equal Protection Clause in Article 1, § 19.

c. It unjustifiably creates separate of classes of voters, treated differently with respect to their access to the fundamental right to vote, in violation of the Equal Protection Clause in Article I, § 19.

d. It imposes a financial cost on voting in violation of the Free Elections Clause in Article I, § 10.

e. It imposes a property requirement for voting in violation of the Property Qualifications Clause in Article I, § 10.

f. It impedes voters' ability to engage in political expression and speech by casting a ballot, in violation of their Right of Assembly and Petition and Freedom of Speech as mandated by Article I, §§ 12 and 14.

This as-applied and facial constitutional challenge seeks a declaratory judgment that Senate Bill 824 violates the foregoing provisions of the North Carolina Constitution. Plaintiffs further seek injunctive relief prohibiting the enforcement of Senate Bill 824 and allowing all qualified, registered voters who present to vote to cast a regular ballot.

I. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to Articles 26 and 26 A of Chapter 1 of the North Carolina General Statutes.

8. Venue is proper in this matter pursuant to N.C. Gen. Stat. § 1-81.1(a1), as "[v]enue lies exclusively with the Wake County Superior Court" for facial challenges to an act of the General Assembly under the North Carolina Constitution.

9. A three-judge panel must be convened in this matter pursuant to N.C. Gen. Stat. § 1-267.1.

II. PARTIES

10. **Plaintiff Jabari Holmes** is a registered voter residing in Wendell, Wake County, North Carolina. Mr. Holmes is a 42-year-old bi-racial man with severe cerebral palsy that has confined him to a wheelchair. He relies on care from his elderly parents. Mr. Holmes, with assistance from his mother, attempted to obtain a photo ID before the 2016 election; however, they were unsuccessful because they do not have a copy of his Social Security card. With the assistance of his mother, Mr. Holmes has attempted unsuccessfully to obtain a copy of his Social Security card.

11. Mr. Holmes would be unable to obtain a "free" ID from the Wake County Board of Elections because the office is located in downtown Raleigh, on a busy road with no handicapped parking spots anywhere close to where he would need to present in order to obtain that alternate form of ID.

12. Moreover, given the challenges in transportation for Mr. Holmes, a trip to the Wake County Board of Elections, even assuming the existence of parking that would enable him to enter the office, would take at least an hour, round-trip, and could take much longer depending on Raleigh traffic. Mr. Holmes can experience significant pain when forced to remain in one position for a significant period of time. Thus, forcing Mr. Holmes to travel to the Wake County Board of Elections office is significantly burdensome for him.

13. Mr. Holmes has regularly voted in person on Election Day because his polling place is just a six-minute drive (2.5 miles from his home), and voting in person making him feel included in his government and part of his community. Transportation to his Election Day polling place is relatively easy for his family, and he has never voted at any one-stop early voting site or by absentee ballot.

14. Mr. Holmes was required to cast a reasonable impediment provisional ballot in March 2016, and under Senate Bill 824, Mr. Holmes will be required either to clear multiple administrative hurdles or to vote provisionally, at risk of disenfranchisement due to inconsistent or inappropriate application.

15. **Plaintiff Fred Culp** is a registered voter residing in Waxhaw, Union County, North Carolina. Mr. Culp, a 78-year-old African-American man, does not have a photo ID acceptable for voting purposes under Senate Bill 824. Mr. Culp has only an expired South Carolina ID because he has not driven for years due to a neck injury. Mr. Culp has attempted to get a North

Carolina ID but has been unsuccessful, as he is unable to obtain a copy of his birth certificate from the State of South Carolina due to an administrative misspelling of his mother's name.

16. Mr. Culp lives a significant distance from the Union County Board of Elections in Monroe, NC, approximately a 40-minute roundtrip, and because he does not drive, traveling to the County Board of Elections to obtain the alternate form of "free" ID would be burdensome and costly. In contrast, the one-stop early voting site where Mr. Culp regularly votes with his wife is only a few minutes down the road from his home.

17. Mr. Culp was required to cast a reasonable impediment provisional ballot in March 2016, and under Senate Bill 824, Mr. Culp will be required either to clear administrative hurdles or to vote provisionally, at risk of disenfranchisement due to inconsistent or inappropriate application.

18. **Plaintiff Daniel E. Smith** is a 50-year-old African-American registered voter residing in Concord, Cabarrus County, North Carolina. In 2016, Mr. Smith had to get a new driver's license because his old license had expired. The DMV gave Mr. Smith a temporary paper license to use until he received his official replacement in the mail. The temporary government-issued license included his name, address, and a photograph of his face, but nonetheless a poll-worker refused to accept the temporary license for voting on Election Day during the March 2016 Primary. Mr. Smith was not offered a "reasonable impediment" provisional ballot, but instead was forced to cast a regular provisional ballot. Mr. Smith's provisional ballot was not counted in that election.

19. Mr. Smith's experience demonstrates the inadequacy of Senate Bill 824's reasonable impediment process, the failure of the State Board of Election's education efforts for poll workers, and the inevitable disenfranchising effects that will result from inconsistent and

unfair application of a strict photo ID requirement that provides only provisional ballots to those who meet its "exceptions."

20. **Plaintiff Brendon Jaden Peay** is an African-American registered voter residing in Durham, Durham County, North Carolina. Mr. Peay, who is 19 years old, moved to Durham from Rock Hill, South Carolina (just outside of Charlotte) to attend North Carolina Central University in 2017. He has only a South Carolina driver's license. Mr. Peay is a part of the ROTC program and will join the military service upon his graduation from college.

21. Mr. Peay prefers to maintain his South Carolina driver's license so that he may more easily remain on his mother's car insurance policy.

22. Under Senate Bill 824, it is unclear whether his student ID from North Carolina Central University will satisfy the same level of proof of identity as a North Carolina driver's license or whether his university will be able to reissue compliant IDs if the existing IDs do not satisfy the requirements of Senate Bill 824. As a result of Senate Bill 824, Mr. Peay may be required either to jump through administrative hurdles or to vote provisionally, at risk of disenfranchisement due to inconsistent or inappropriate application.

23. **Plaintiff Shakoya Carrie Brown** is a registered voter residing in Mecklenburg County, North Carolina. Ms. Brown is a 20-year-old African-American woman attending college at Johnson C. Smith University, a Historically Black College or University (HBCU) in Charlotte. She has been registered and voting in North Carolina since she arrived at college in 2016. She is originally from Florida, and in terms of photo ID, has only a Florida driver's license and her student ID from Johnson C. Smith University. She does not own a car in the State of North Carolina.

24. Her student ID from Johnson C. Smith University includes no expiration date and would not comply with Senate Bill 824. Because her university is a small, private school, and

because Senate Bill 824 made no appropriations to assist universities or community colleges in bringing their student IDs into compliance with Senate Bill 824, she has serious concerns about the burden that this law will create on her university and whether her university will have the resources necessary to alter the form of its issued student IDs to become complaint with the terms outlined in Senate Bill 824. Ms. Brown fears that she will be forced to vote provisionally or be disenfranchised because of the challenged bill.

25. **Plaintiff Paul Kearney**, Sr., is a registered voter residing in Warrenton, Warren County, North Carolina. Mr. Kearney, a 69-year-old African-American man, has been voting in the same precinct for decades. On Election Day, during the March 2016 Primary, Mr. Kearney arrived at the polls near closing time, only to find that he had forgotten his ID in his other clothes. Despite the fact that multiple poll workers acknowledged that they knew and recognized Mr. Kearney, he was nonetheless required to cast a provisional ballot.

26. The poll workers were confused as to how to deal with Mr. Kearney under the terms of the ID law. He was offered a provisional ballot, but the poll workers did not appear able to explain how he could cure that provisional ballot. Mr. Kearney was not adequately informed that his vote would not count if he did not return to the Board of Elections with his ID, so his provisional ballot did not count. Mr. Kearney's experience demonstrates that even voters who possess adequate ID may be forced to cast a provisional ballot and risk disenfranchisement through the inconsistent and unfair application of a strict photo ID requirement.

27. **Defendant Timothy K. Moore** is being sued in his official capacity as Speaker of the North Carolina House of Representatives.

28. **Defendant Phillip E. Berger** is being sued in his official capacity as President Pro Tempore of the North Carolina Senate.

29. **Defendant David R. Lewis** is being sued in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session.

30. **Defendant Ralph E. Hise** is being sued in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session.

31. **Defendant State of North Carolina** is a sovereign state in the United States.

32. **Defendant North Carolina State Board of Elections** is the agency responsible for the administration of the election laws of the State of North Carolina.

III. FACTUAL ALLEGATIONS

A. Photo ID Requirements for Voting in North Carolina

33. Since 2011, the North Carolina General Assembly has worked, without success, to implement a photo ID requirement for voting. When they first passed such a requirement in 2011, then-Governor Bev Perdue vetoed the law based on the discriminatory and disenfranchising impact it would have on North Carolina voters.

34. In 2013, after voter-ID proponent Pat McCrory was elected as governor and after North Carolina was relieved of the duty of having to comply with Section 5 of the Voting Rights Act, the legislature enacted a stringent voter ID requirement, with a highly limited number of acceptable IDs. Civil rights groups immediately sued. On the eve of trial in 2015, the legislature amended the voter ID law to allow for a reasonable impediment exception, where voters who faced some barrier in obtaining a photo ID might cast a special type of provisional ballot that would be more likely to count. This amendment was described as a "South Carolina-style" voter ID law.

35. Nonetheless, a year later, the United States Court of Appeals for the Fourth Circuit invalidated the entire law because the law, and in particular the photo ID requirement, was crafted with racially discriminatory intent, and the last-minute amendment to dampen the disenfranchising effects of the discriminatory law was not sufficiently remedial for a law enacted unconstitutionally.

Since 2016, North Carolina has not had a photo ID requirement for voting, although first-time voters may have to present identification as required by the Help America Vote Act and all voters are required to affirmatively provide their correct registration address and to affirm their identity, upon penalty of perjury, on an Authorization to Vote form.

36. In the summer of 2018, at the end of the regular session, the North Carolina legislature decided to put a ballot measure on the November 2018 ballot asking the state's voters to approve an amendment to the Constitution that would require voters to present a photo ID.

37. It passed with 55% of the vote.

38. In the 2018 primary and general elections, many incumbent legislators failed to secure re-election. As a result, the Republican Legislative Caucus no longer comprises a super-majority in the legislature, meaning that it will soon lose the ability to override a gubernatorial veto. Rather than allow the 2019 legislature, reflective of the expressed will of North Carolina voters, to consider a bill to effectuate the new constitutional amendment, the lame-duck legislature called a special session to pass legislation implementing the new constitutional photo ID requirement resulting in a number of procedural irregularities and suspicious short cuts in legislative procedure.

39. Within only nine days of filing the enabling legislation, Senate Bill 824, the legislature had passed the new law and presented it to the governor for his signature or veto.

40. Senate Bill 824 implements the 2018 amendment to Article VI of the North Carolina Constitution requiring all duly registered voters to show an acceptable photo ID when presenting to vote in person.

41. The forms of acceptable ID under the statute are limited to:

a. A North Carolina driver's license that is valid and unexpired, or has been expired for one year or less;

b. A special identification card for nonoperators issued under N.C. Gen. Stat. § 20-37.7 that is valid and unexpired, or has been expired for one year or less;

c. A United States passport that is valid and unexpired, or has been expired for one year or less;

d. A North Carolina voter photo identification card of the registered voter that is valid and unexpired, or has been expired for one year or less;

e. A tribal enrollment card issued by a state or federally recognized tribe that is valid and unexpired, or has been expired for one year or less;

f. A student ID card that is valid and unexpired, or has been expired for one year or less, issued by a constituent institution of the University of North Carolina, a community college, as defined in N.C. Gen. Stat. § 115D-2(2), or eligible private postsecondary institution as defined in N.C. Gen. Stat. § 116-280(3), provided that card is issued in accordance with G.S. § 163A-1145.2;

g. An employee identification card that is valid and unexpired, or has been expired for one year or less, issued by a state or local government entity, including a charter school, provided that card is issued in accordance with G.S. § 163A-1145.3;

h. A driver's license or special identification card for nonoperators issued by another state, the District of Columbia, or a territory or commonwealth of

the United States that is valid and unexpired, or has been expired for one year or less, but only if the voter's voter registration was within 90 days of the election;

i. A military identification card issued by the United States government regardless of whether the identification contains a printed expiration or issuance date; and

j. A Veterans Identification Card issued by the United States Department of Veterans Affair for use at Veterans Administration medical facilities, regardless of whether the identification contains a printed expiration or issuance date.

42. The statute allows for voters who are sixty-five years of age or older to present an acceptable form of photo ID that has been expired for longer than one year if that photo ID was unexpired on the voter's sixty-fifth birthday.

43. In order for a student ID to be approved by the State Board as acceptable for voting, Senate Bill 824 requires that the following criteria are met:

a. The chancellor, president, or registrar of the university or college submits a signed letter to the Executive Director of the State Board under penalty of perjury that the following are true:

i. The identification cards that are issued by the university or college contain photographs of students taken by the university or college or its agents or contractors;

ii. The identification cards are issued after an enrollment process, that includes methods of confirming the identity of the student that

include, but are not limited to, the social security number, citizenship status, and birthdate of the student;

iii. The equipment for producing the identification cards is kept in a secure location;

iv. Misuse of the equipment for producing the identification cards would be grounds for student discipline or termination of an employee;

v. University or college officials would report any misuse of student identification card equipment to law enforcement if N.C. Gen. Stat. § 163A-1389(19) was potentially violated;

vi. The cards issued by the university or college contain a date of expiration, effective January 1, 2021;

vii. The university or college provides copies of standard identification cards to the State Board to assist with training purposes; and

b. The university or college complies with any other reasonable security measure determined by the State Board to be necessary for the protection and security of the student identification process.

44. In order for a state or local government employee ID to be approved by the State Board as acceptable for voting, Senate Bill 824 requires that the following criteria are met:

a. The head elected official or lead human resources employee of the state or local government entity or charter school submits a signed letter to the Executive Director of the State Board under penalty of perjury that the following are true:

i. The identification cards that are issued by the state or local government entity contain photographs of the employees taken by the employing entity or its agents or contractors;

ii. The identification cards are issued after an employment application process that includes methods of confirming the identity of the employee that include, but are not limited to, the social security number, citizenship status, and birthdate of the employee;

iii. The equipment for producing the identification cards is kept in a secure location;

iv. Misuse of the equipment for producing the identification cards would be grounds for termination of an employee;

v. State or local officials would report any misuse of identification card equipment to law enforcement if N.C. Gen. Stat. § 163A-1389(19) was potentially violated;

vi. The cards issued by the state or local government entity contain a date of expiration, effective January 1, 2021;

vii. The state or local government entity provides copies of standard identification cards to the State Board to assist with training purposes; and

b. The state or local government entity complies with any other reasonable security measures determined by the State Board to be necessary for the protection and security of the employee identification process.

45. While Senate Bill 824 allows student and employee IDs that pass muster under these stringent requirements to be used for voting, it neither mandates that qualifying entities issue ID to their constituency, nor allocates funds to facilitate the issuance of compliant ID.

46. If a voter does not already possess one of the acceptable photo IDs for voting described above, Senate Bill 824 provides two mechanisms for a voter to obtain an allegedly free photo ID: from either the county board of election office or from the NC DMV.

47. Under Senate Bill 824, county boards of elections are required to issue to registered voters a voter photo identification card (voter photo ID card), containing a photograph of the voter and the voter's registration number, free of charge upon request. The voter photo ID card may be used only for purposes of voting and is valid for a period of ten years.

48. The statute requires the State Board of Elections to provide county boards with the equipment necessary to print voter photo ID cards.

49. Under Senate Bill 824, a registered voter must provide at least their date of birth and the last four digits of their social security number to obtain a voter photo ID card. The statute gives the State Board the authority to impose additional requirements for obtaining a voter photo ID card.

50. Under Senate Bill 824, a duly registered voter cannot obtain a voter photo ID card during the period between the end of the early voting period and Election Day.

51. Senate Bill 824 also provides for any person at least 17 years of age to obtain a special ID card from the North Carolina Department of Motor Vehicles allegedly free of charge.

52. However, to obtain a "free" special ID card, a voter needs to present three different categories of documents to prove (1) their social security number; (2) their residence; and (3) their

full name and date of birth. North Carolina voters have faced significant barriers in attempting to obtain a "free" ID or any acceptable ID for voting from the NCDMV, including but not limited to:

a. Having to pay for a NCDMV Photo ID even though they requested a free NCDMV ID card;

b. Not being able to obtain any NCDMV Photo ID, including a free NCDMV Photo ID, due to inconsistent policies as to what underlying documents are necessary to obtain a NCDMV Photo ID, name-change issues, NCDMV error, and mistreatment by NCDMV employees;

c. Having to pay significant monies for underlying documents to obtain a NCDMV Photo ID;

d. College or university students not being able to obtain a NCDMV Photo ID when they have an out-of-state driver's license, due to a NCDMV policy requiring the student to obtain a NC Driver's License and North Carolina automobile insurance if the student wishes to obtain any NCDMV Photo ID, even if the student does not own a vehicle;

e. Burdens or the inability to travel to NCDMV offices that are not located in every North Carolina county, that do not have evening or weekend hours, that are not open five days per week, that are not open as advertised, that when open are plagued by long lines and understaffing, and that are long distances from voters' homes or workplaces. Indeed, in recent months, NCDMV offices have been plagued by hours'-long wait times, extensively covered in local media, as part of the issuance of REAL IDs; and

f. Having to make multiple trips to a NCDMV driver's license office to obtain an ID acceptable for voting.

53. A voter must show two documents to prove their full name and date of birth, limited to a U.S. or Canadian driver's license; a birth certificate; an original Social Security card; tax forms; a motor vehicle driver's record; school documents; a U.S. military ID; a passport; a certified marriage certificate; a North Carolina limited driving privilege; U.S. government documents; or U.S. or Canadian court documents. Additionally, if women have changed their name through marriage or divorce, they may have to show their marriage license or divorce decree to prove their name.

54. Senate Bill 824 also imposes a requirement that voters requesting an absentee ballot include with their written request for that absentee ballot "acceptable forms of readable identification that are substantially similar to those required under G.S. 163A-1145.1." But, importantly, if a voter is unable to produce acceptable readable identification, the voter is allowed to complete an alternative affidavit and is mailed a regular, not provisional absentee ballot.

55. In the text of Senate Bill 824, the stated purpose of the ID required by the statute is "to confirm the person presenting to vote is the registered voter on the voter registration records." The statute explicitly denies any further purpose of the ID requirement, such as confirming residence or eligibility for voting.

56. After establishing which IDs are acceptable or not, and some mechanisms by which voters may try to obtain acceptable photo ID, Senate Bill 824 then delineates procedures for when a voter attempts to vote without acceptable ID.

57. If a voter fails to present acceptable photo ID at the polls, they may cast a provisional ballot. The provisional ballot will only be counted for a voter without a reasonable

impediment to obtaining a photo ID if the voter returns to their local board of elections with acceptable photo ID before the end of the seven- to ten-day canvass period following the election.

58. Voters nominally exempted from the photo ID requirement, pursuant to statute, are those who sign affidavits attesting that: (1) they have a religious objection to being photographed, (2) they have suffered from a reasonable impediment preventing them from presenting photo identification, or (3) they were a victim of a natural disaster occurring within 100 days before the election that resulted in a disaster declaration by the President of the United States or the Governor of this State.

59. A voter who does not have acceptable photo ID for voting and who has a reasonable impediment to presenting or obtaining acceptable photo ID to vote should also be offered a reasonable impediment declaration under Senate Bill 824. Voters will not have their reasonable impediment provisional ballot counted if the reasonable impediment declaration reason provided is not accepted by the County Board of Elections. Voters who do not have acceptable photo ID and are not offered a reasonable impediment declaration will not have their votes counted.

B. The Process by Which the Challenged Law Was Enacted Is Deeply Troubling

60. Much as it did in 2013, the legislature rushed the process of enacting the current photo ID requirement. And, just like in 2013, it rejected forms of identification that are disproportionately held by voters of color, or erected obstacles making it more difficult for those forms of identification to be acceptable. These same factors that led the United States Court of Appeals for the Fourth Circuit to invalidate the 2013 law as intentionally racially discriminatory are present in the 2018 enactment as well.

61. Despite the broad slate of ID that would serve to effectuate the bill's purpose: "to confirm the person presenting to vote is the registered voter on the voter registration records,"

amendments seeking to broaden the types of acceptable photo ID were largely rejected during the 2018 third special session.

62. For example, Senate Bill 824 does not allow voting-age high school students to present a high school photo ID for purposes of voting, even if issued by a public high school. An amendment introduced on the House floor that would have allowed such ID to be presented for voting was rejected along party lines.

63. Additionally, while Senate Bill 824 does allow approved state or local government employee ID to be used for voting, it does not allow use of federal employee ID. An amendment introduced on the Senate floor that would have allowed such ID to be presented for voting was tabled without debate.

64. Nor does it allow use of photo IDs issued by government entities to non-employees, such as public assistance IDs. For example, the law would not allow for use of a photo ID issued by a public housing authority to its residents. Public housing authorities are local governmental entities that receive state and federal funding. There are 70 housing authorities across the state of North Carolina, and recipients of assistance from these authorities are disproportionately low-income, women, and people of color. Some, such as the Burlington Housing Authority, the Hertford Housing Authority, and the Redevelopment Commission of the Town of Tarboro, provide a picture ID for all of their residents over a certain age. Other public housing authorities that do not currently put a photograph on its residential IDs would be willing to do so in an effort to assist its residents in voting. An amendment in the Senate to allow such IDs to be presented for voting was tabled without debate.

65. Many of the members of the legislature who voted for Senate Bill 824 this year also were members of the legislature in 2013 and voted for the racially discriminatory VIVA law. An

even greater number of the members of the legislature who voted for Senate Bill 824 this year were in the legislature when the Court of Appeals invalidated VIVA in 2016 – in part for rejecting the aforementioned alternative photo IDs. Likewise, there is a substantial overlap in legislative leadership in the legislature that passed the racially discriminatory VIVA law in 2013 and the current legislature that enacted Senate Bill 824.

66. Indeed, it is settled law that the "culmination of a series of events," as is the case here, can be plausible evidence of intentional discrimination in violation of equal protection rights. *Carcaño* v. *McCrory*, 1:16-cv-236, Memorandum Order, at *11, 56 (M.D.N.C. Sept. 30, 2016).

67. The special session in which the legislature considered enabling legislation for the photo ID constitutional amendment began on November 27, 2018. There was no need for this enabling legislation to be enacted in a special session, by a lame-duck legislature that possesses veto override power that the voters of North Carolina took away in November of 2018.

68. Senate Bill 824 was ratified by the North Carolina on General Assembly on December 6, 2018, nine days after it was first introduced.

69. The Senate approved the bill by a vote of 30-10, and with amendments, the House approved the bill by a vote of 67-40. The Senate concurred on the altered bill by a vote of 25-7.

70. The ratified bill was presented to Governor Roy Cooper on December 6, 2018, who vetoed the bill on December 14, 2018.

71. On December 19 2018, the North Carolina General Assembly reconvened and overrode the Governor's veto and, thus, the bill became law notwithstanding the objections of the Governor.

C. Thousands of North Carolina's Registered or Eligible Voters Lack a Photo ID Acceptable Under the New Law

72. Troublingly, neither prior to the introduction of the constitutional amendment to be voted upon in the November 2018 election nor prior to the passage of the enabling legislation in December did the North Carolina General Assembly or the State Board of Elections update its analysis of how many registered North Carolina voters do not have North Carolina DMV-issued photo identification. Prior to the enactment of VIVA in 2013, and during the course of litigation challenging that law, the State Board of Elections conducted numerous analyses comparing lists of registered voters with lists of customers to whom NCDMV had issued driver's licenses and nonoperators' licenses. Such analysis informed the racial and demographic impact of a photo identification requirement in North Carolina.

73. The legislature chose to rely on dated analyses from its prior effort to draft legislation rather than to conduct a new analysis that would more accurately capture the current impact of the law, and thus blindly drafted a law without care for the disproportionate impact it would have on subgroups of North Carolina voters.

74. The most recent analysis conducted by the State Board of Elections is now more than three years old. In February of 2015, the State Board of Elections conducted a study that revealed, using a conservative methodology, that 254,391 registered voters lacked DMV-issued ID.

75. Experts for litigants challenging VIVA, using different methodologies and examining some federal ID databases, moreover, identified tens of thousands of additional North Carolina voters who lacked acceptable ID for voting.

76. The figures from the State Board study and the litigation experts' studies were presented by State Board of Elections Director Kimberly Strach to a legislative committee and

were brought up repeatedly during legislative debate, so legislators voting in favor of Senate Bill 824 could not have been unaware of the impact of a photo ID requirement, particularly with limited forms of ID accepted.

77. At bottom, hundreds of thousands of North Carolina registered voters do not possess acceptable photo ID for voting and will have their fundamental right to vote threatened by Senate Bill 824.

78. Senate Bill 824 does not require the State Board to ascertain how many registered voters lack DMV-issued photo ID, or to inform those voters of the law's requirements, until September 1, 2019. Upon information and belief, municipal elections will begin as early as September 10, 2019.

D. The Challenged Law Will Impose Serious Costs On Eligible Voters in Order to Exercise their Fundamental Rights

79. Senate Bill 824 creates two mechanisms for voters to obtain allegedly free identification for voting: through the NCDMV or through the county boards of election. Neither, in fact, creates a viable path to obtaining a truly free ID card, and both impose serious time and financial costs on voters.

80. The first option for obtaining a photo ID—from the NCDMV—is certainly the more costly of the two options.

81. Under Senate Bill 824, the clerk of court in each county is directed to make free certified birth certificates and marriage license copies available for a registered voter who signs a declaration stating that the registered voter does not have a copy of the requested document necessary to obtain photo ID.

82. However, the provision for free birth certificates and marriage licenses only helps voters who were born in North Carolina or married in the state. Voters born or married out of state

must pay fees to receive copies of the documents necessary to obtain photo ID. For example, a copy of a birth certificate issued in New York currently costs $30.00. A copy of a New York marriage license also costs $30.00. Thus, a woman born and married in New York who changed her name after marriage may have to pay $60.00 to obtain the documents necessary to receive a "free" special ID card from the NCDMV.

83. Upon information and belief, of the more than 6 million registered voters that have indicated their state of birth to the State Board of Elections, fewer than 50% of registered voters were born in the State of North Carolina. Under Senate Bill 824, at least three million North Carolina registered voters born out of state would be ineligible to receive a free birth certificate.

84. People who lack photo ID are also unable to drive because they lack a driver's license. To obtain a special ID, they must arrange transportation to the local DMV Driver's License office or Mobile Unit, which may be a great distance from where they live and/or have sporadic and infrequent availability. In many areas of the state, there is no way to access a DMV Office or Mobile Unit by public transportation.

85. Voters may have to make multiple trips to Social Security offices and the offices of registers of deeds or the courts in order to obtain the documentation necessary to receive a special ID. Without the ability to drive or access to public transportation, each one of these trips imposes an undue burden on voters who previously needed only to walk to their local precinct on Election Day in order to vote. This burden is particularly high for voters who lack a stable address at which to receive mail.

86. Additionally, upon information and belief, some states require proof of photo ID before the voter can obtain a birth certificate. There is no relief under the statute for North Carolina voters caught in this cycle to obtain NCDMV ID.

87. The second option for obtaining a "free" photo ID, in lieu of a special ID from the NCDMV, is established in a provision of Senate Bill 824 that allows registered voters to request a voter photo ID card from their county board of elections free of charge. But this option also carries with it significant time and transportation costs.

88. Senate Bill 824 requires the state board to adopt rules regulating the issuance of voter photo ID cards, requiring at a minimum that the registered voter provide their date of birth and the last four digits of their social security number. The statute empowers the State Board of Elections to make rules imposing additional requirements for a voter to obtain a voter photo ID card, including a requirement that the voter show the same, difficult-to-acquire documentation required by the NCDMV to issue a special ID card.

89. Voters should not be made to rely on the rulemaking discretion of the State Board of Elections—which, despite its purported independence, is subject to changes in personnel and policy preference—in order to have access to the franchise. However, even with only the minimum requirements in effect, the provision of Senate Bill 824 allowing county boards to issue voter photo ID cards does not fully alleviate the burden that voters without ID must endure in order to vote a regular ballot under the statute.

90. Upon information and belief, the overwhelming majority of counties have only one board of elections office location at which voter photo ID cards may be issued, and many office locations are a great distance from other parts of the county and inaccessible by public transportation.

91. Upon information and belief, no county board of elections office in the state has regular business hours on the weekend, or on weekdays after 5:00 PM, and at least two counties have boards of elections that are only open on Monday, Wednesday, and Friday.

92. An amendment proposed on the Senate floor during debate of Senate Bill 824 that would have restored the final Saturday of early voting, thereby requiring all county boards of elections to be open and issuing voter photo ID cards for at least one Saturday before Election Day, was tabled without discussion. A similar amendment introduced on the House floor was ruled out of order by Speaker Moore as not germane to the bill.

93. As they would to obtain a special ID card from NCDMV, voters must arrange transportation to their county board of elections office, which may be a great distance away in many parts of the state, during traditional work hours. As an example, the Hyde County Board of Elections Office is located in Swan Quarter, North Carolina, and operates from 9:00 AM – 1:00 PM on Monday, Wednesday, and Friday only. A voter in Ocracoke, Hyde County, North Carolina would be required to travel for nearly three hours by ferry in order to obtain a voter photo ID card from the Hyde County Board of Elections Office. As an additional example, Brunswick County, in the top quartile in population statewide, has its county seat (and county board of elections office) in Bolivia, a town with 150 persons and a town that is equidistantly difficult to reach from the county's major population centers.

94. Under Senate Bill 824, a voter photo ID card may only be used for voting purposes. Amendments proposed on the senate floor during debate of Senate Bill 824 that would have allowed the voter photo ID card to serve as identification for other purposes, including obtaining NCDMV ID, were tabled without discussion.

95. Requiring voters to take time away from work, forgo compensation, and arrange or pay for transportation to travel for potentially hours to obtain a voter photo ID card for no other purpose than to cast a regular ballot constitutes an undue burden—and in some cases, an

insurmountable barrier—on voters who previously needed only to walk to their local precinct on Election Day to cast such a regular ballot.

E. The Challenged Law Creates Substantial Burdens on Discrete Groups of Voters

96. While the legislature should have, if it intended to pursue the imposition of a photo ID constitutional amendment and implementation of a new photo ID requirement in good faith, with no intent to disenfranchise eligible voters, first obtained from the State Board of Elections an updated analysis of voters who lack an adequate photo ID, the analyses from 2015 are more than sufficient to establish the constitutional flaws with the enabling legislation. Specifically, based on those studies, it is indisputable that certain subgroups of North Carolina voters will be burdened by this new law.

1. African-American Voters

97. The expense of obtaining documents, securing transportation, and taking time away from work impose the greatest burdens on the poor, for whom an additional cost of $10 or $30 may force the choice between voting or feeding their family.

98. Poverty in North Carolina is higher among people of color, causing Senate Bill 824 to have a disproportionate impact on voters of color. According to the American Community Survey's 2012-2016 estimates, 26% of African Americans, 28% of American Indians, and 30% of Latinxs live in poverty in North Carolina, as compared to only 13% of whites. Poverty is defined by the American Community Survey as income below a certain threshold based on members of the household.

99. Additionally, although African Americans accounted for 22% of all active registered voters in 2013 when the State Board of Elections conducted its DMV-No-Match study, African Americans comprised 31% of all voters the State Board identified as lacking NCDMV-issued photo ID.

100. Further, the costs associated with obtaining the supporting documents or arranging transportation to obtain photo identification are prohibitive for many African Americans. A 2010 report by the University of North Carolina's Center on Poverty, Work and Opportunity found that for North Carolina, half of the African-American households surveyed had less than $100 in savings, a finding consistent with other research on African-American wealth and savings. A 2017 FDIC survey of unbanked and underbanked households found that 16.9% of African American households lack a bank account, as compared to only 3% of white households.

101. In its July 2016 opinion invalidating the previous iteration of North Carolina's photo ID law, the United States Court of Appeals for the Fourth Circuit also noted that African Americans in North Carolina are disproportionately more likely to lack DMV-issued ID, and that "African Americans . . . in North Carolina are disproportionately likely to move, be poor, less educated, have less access to transportation, and experience poor health." *NAACP* v. *McCrory,* 831 F. 3d. at 232-33. Upon information and belief, the North Carolina General Assembly, while considering Senate Bill 824 was on notice of these findings.

102. Moreover, the Court of Appeals recognized that African-American voters were being targeted by VIVA in part because of the inextricable intertwining of race and politics—that is, because African-American voters tend to vote for Democratic candidates, Republican legislators targeted that particular racial group for voter suppression efforts because of how they were voting.

103. This information demonstrates that African Americans lacking photo ID would face extraordinary burdens in obtaining acceptable ID under Senate Bill 824 in order to vote a regular ballot.

2. Voters with Disabilities

104. Additionally, voters with disabilities will be disproportionately impacted by Senate Bill 824 due not only to socioeconomic disparities but also unique challenges that differently-abled voters will encounter in obtaining acceptable ID.

105. Obtaining documents or transportation necessary to acquire an ID acceptable for voting will have a disparate financial impact on voters with disabilities. According to the American Community Survey's 2017 estimates, North Carolinians with disabilities fall below the poverty line at a higher rate, at 21.2%, than North Carolinians without a disability, at 11.5%.

106. Further, a 2017 FDIC survey of unbanked and underbanked households found that 18.1% of "working-age" (age 25-64) individuals with disabilities lacked a bank account, as compared to 5.7% of working-age individuals without a disability.

107. According to census data, as many as 122,000 North Carolinians may have disabilities that prevent them from driving and may lack a DMV-issued photo ID. These voters will face economic burdens associated with obtaining documents and arranging transportation to acquire acceptable photo ID In order to cast a regular ballot, and these burdens may be exacerbated by the special care and/or equipment required, in addition to any physical discomfort associated with transportation to a local DMV or board of elections office.

108. Voters with disabilities are disproportionately likely to be deterred from voting due to the additional barrier obtaining an ID will present in the process. A 2012 report by Disability Rights North Carolina about accessible voting in North Carolina noted that the voter turnout rate in North Carolina was 14.4% lower for voters with disabilities than for voters without—twice the national average—and that 44% of voters with disabilities cite their disability as their deterrent from voting. Imposing additional barriers to the voting process on voters with disabilities will only serve to increase this turnout gap.

3. Elderly Voters

109. Based on the available no-match data, elderly voters are disproportionately represented among voters who lack DMV-issued photo identification.

110. Many seniors, because of age or health, may have surrendered their licenses or may no longer drive, exacerbating the difficulty these voters will have in obtaining the "free" ID from a county board of elections. A substantial and disproportionate number of seniors live in households with no vehicle available to them, which makes obtaining transportation to a DMV office or a county board of elections office difficult. Moreover, a disproportionate number of the state's seniors live in rural areas as opposed to urban areas, meaning that public transportation is also likely not an option for these voters to obtain a "free" photo ID.

111. Moreover, while voters aged 65 and older may use an expired North Carolina driver's license to vote, they may not use an expired out-of-state driver's license to vote unless they have only registered within 90 days. This burdens elderly voters who have relocated to North Carolina, and who may lack the documents or transportation necessary to obtain a North Carolina driver's license or county board-issued photo ID.

4. College Student Voters

112. According to available no-match data from the State Board of Elections, voters aged 26 and younger are disproportionately represented on a list of voters who lack DMV-issued photo identification.

113. For many of these young voters, obtaining a DMV-issued ID will be logistically and financially impossible. For example, North Carolina has tens of thousands of out-of-state students, and these students are unlikely to have the documentation with them necessary to obtain an ID from the DMV. Others, even though they intend to remain in North Carolina for the present

and thus are entitled to vote in the state, may not want to obtain a North Carolina driver's license in order to make remaining on their parents' car insurance policies easier.

114. Likewise, even for students from in-state that lack photo ID, getting to a county board of elections office, where the documentation needed to obtain an ID may be less, will be burdensome for the many students who do not have vehicles. Students attending a secondary education institution in one of the State's many non-urban counties, where public transportation options are severely limited, may find the lack of a vehicle to be a complete barrier to traveling to a county board of elections office.

115. Further, even young voters who are students and have a student ID may not be able to use those student IDs to vote. Senate Bill 824 creates an onerous system under which community colleges and universities must have its photo IDs approved by the State Board of Elections, subject to stringent standards. Some community colleges, like Mitchell Community College, have already publicly indicated that they may not be able to comply with the statutory requirements, because of the cost or person-power required to make their IDs compliant with the new law, meaning students at such schools would not be able to use their school IDs to vote.

5. American-Indian Voters, Particularly Members of the Lumbee Tribe

116. Based on the available no-match data, American-Indian voters disproportionately lack photo identification and thus are disproportionately likely to be burdened by the requirements of Senate Bill 824.

117. In particular, members of the Lumbee Tribe—a state, but not federally, recognized tribe—are likely to feel that burden even more acutely.

118. While Senate Bill 824 makes allowances for tribal enrollment cards issued by state recognized tribes to be used to vote, in practice, many members of the Lumbee Tribe—the state's

largest American-Indian voting block—may have to jump over additional administrative hurdles and pay extra costs in order for their Lumbee enrollment cards to be acceptable to vote.

119. Senate Bill 824 requires that a tribal enrollment card, to be acceptable to use to vote, be unexpired or expired for one year or less. However, the Lumbee Tribe issues to its members aged 55 and older a permanent enrollment card that does not expire and thus does not display an expiration date. Thus, by the terms of the law, members of the Lumbee Tribe aged 55 and older will not be able to use their enrollment cards to vote.

F. The Rushed and Inadequately Funded Implementation of the Photo ID Law Will Disenfranchise Thousands of Eligible North Carolina Voters

120. Under Senate Bill 824, the photo ID requirement will be in effect for the 2019 Primary Elections, providing fewer than nine months for voter and poll-worker education. The disenfranchisement that took place during the 2016 primary, following a three-year roll-out period, demonstrates that this period of time is wholly inadequate to ensure adequate training and implementation of the reasonable impediment provision under Senate Bill 824, particularly in light of the fact that voters have been receiving materials indicating that they *do not* need photo ID to vote since August of 2016. It is also inadequate time for the State Board of Elections and other groups to attempt to assist voters in obtaining photo ID.

121. Under the previous invalidated VIVA voter ID law, the State Board of Elections engaged in a nearly three-year "soft rollout" program, where voters were first warned, starting in 2014, that they would be asked for a picture ID starting in 2016, and the actual requirement that photo ID be presented would not be implemented until nearly three years after the enactment of the discriminatory law.

122. From 2013 to 2016, the State Board of Elections also allegedly engaged in an extensive voter outreach program to educate voters about the new ID requirement and to assist

voters who lacked IDs in obtaining them. According to a presentation that State Board of Elections Executive Director Kimberly Strach made to the Joint Legislative Elections Oversight Committee on November 26, 2018, the State Board, in that timeframe, spent years placing TV, radio, and online ads communicating with voters about the upcoming ID requirement; placed billboards across the state with information on the ID requirement; mailed approximately 12.7 million guides to residential addresses between 2014 and 2016 with information about the ID requirement; produced and distributed approximately 400,000 posters with information on the ID requirement, targeting churches and community gathering places; and conducted more than 200 community presentations and events.

123. Despite this, when the ID requirement was in effect in the 2016 primary elections, voters and advocates witnessed enormous problems in both voters' and poll workers' understanding of the new rules. Indeed, several of the Plaintiffs in this action, like Plaintiffs Smith and Kearney, were disenfranchised because the three-year education effort was not sufficient to educate the electorate and election administrators about the ID requirement. Indeed, these Plaintiffs' experiences are not unusual, and Plaintiffs intend to present evidence of many other voters who were deterred from even going to vote or disenfranchised because of inadequate education and implementation efforts.

124. In her presentation, Director Strach also reported on the number of voters which the State Board of Elections allegedly assisted in obtaining photo IDs. In 2014, when voters were warned that they would need to present a picture ID to vote in 2016, voters who reported that they lacked an ID were asked to sign an acknowledgement form. The State Board sent a mailing to those voters who signed the acknowledgement form. Of the 10,743 voters who signed the acknowledgment form in 2015, only 2,353 voters responded to the State Board's mailing. While,

inexplicably, most of the voters who had just signed an acknowledgement form stating that they did not have photo ID did tell the State Board in response to the Board's mailing that they possessed photo ID, Director Strach reported that the State Board only assisted fewer than half of the voters who said they lacked ID and wanted the State Board's assistance. Also of concern, Director Strach reported on the number of voters to whom the State Board provided assistance, but did not report on the number of voters for whom that assistance was successful—that is, the voters obtained photo IDs.

125. Likewise, in 2015, based on voters identified by experts in the case challenging VIVA, the State Board of Elections did another outreach to voters lacking ID. The State Board sent a mailing to over 250,000 voters, but only approximately 20,000 voters responded. Again, the State Board reported providing assistance to only about one third of the 1,800 voters who reported that they lacked ID and wanted assistance from the State Board in obtaining ID. And again, it was unclear how many of those voters assisted actually obtained a photo ID.

126. Director Strach further reported that from the time of VIVA's enactment through November of 2018, the DMV had issued 7,841 identifications for voting purposes at no cost to the voter. However, this figure comprises only about 3% of the more than 230,000 voters identified in 2015 as potentially lacking DMV-issued photo ID. Thus, despite a multi-year rollout, the State Board of Elections' education and assistance campaign failed to meaningfully decrease the number of otherwise eligible North Carolina voters without acceptable ID, who would otherwise be relegated to casting a provisional ballot or face disenfranchisement.

127. Under the provisions of Senate Bill 824, the list of voters who lack a photo ID is only required to be produced and made public by September 1, 2019. The first municipal elections take place that same month. There will be no meaningful ability for the State Board or advocacy

groups to assist voters in advance of the implementation of the ID requirement in obtaining IDs, which is certain to result in eligible voters being disenfranchised.

128. Moreover, all of the work expended in voter education from 2013 to 2016 has essentially been undone in the last two years because the State Board of Elections has been compelled by the Court of Appeals for the Fourth Circuit's invalidation of the state's previous voter ID law to broadly communicate with voters that they would not be required to present a photo ID to vote in 2016 and 2018.

129. Even if the State Board of Elections' multi-year voter education campaign had been effective, and it plainly was not, the State Board cannot feasibly expect to reverse course on the message that it has been disseminating for the last two years in order to achieve a comparable amount of voter education and assistance under the truncated timeframe that Senate Bill 824 provides. With so little time provided for effective implementation before the next regularly scheduled elections, voter disenfranchisement is the inevitable result.

130. Arguments from proponents of Senate Bill 824 that delayed enforcement to allow for a more deliberate and careful rollout of the new Photo ID Law would run afoul of the new constitutional requirement that voters shall present photo ID when presenting to vote in person are belied by other legislative action taken by the same body during the same special session.

131. On December 12, 2018, the legislature passed House Bill 1029, a bill reorganizing the State Board of Elections and the State Elections Commissions. An unrelated provision of the law established that, should the State Board of Elections order a new primary and general election in Congressional District 9 in 2019—a district in which allegations of significant absentee vote theft have raised serious questions about the legitimacy of the election results—the photo ID requirements would not be in place for those election contests. The exemption of an election

involving hundreds of thousands of North Carolina voters in the first few months of 2019 flies in the face of proponents' claims that that they could not delay implementation or do another "soft" rollout of the photo ID requirement because the State Constitution now mandates the presentation of a photo ID to vote. If that constitutional provision is so unforgiving—and certainly it is not, when balanced against North Carolina's other state constitutional voting protections—then it should apply to a new election for Congressional District 9. The legislature plainly believes that delaying implementation of the photo ID requirement for a new election held in Congressional District 9 is within its constitutional authority to craft exceptions, and it is inconsistent, if not disingenuous, to suggest that they lack the authority to enact enabling legislation that requires a more deliberate and careful implementation of the photo ID law to ensure that qualified and eligible voters do not face disenfranchisement.

132. Lastly, the text of Senate Bill 824 and the accompanying fiscal note reveal the gross inadequacy in the funding for the law, all but ensuring that poll workers and voters will be inadequately educated (which, just like in 2016, will result in disenfranchised voters) about the new requirement and the steep costs imposed upon on the county boards of election will also have deleterious ripple effects on the right to vote.

133. The fiscal note implausibly approximates that providing each of North Carolina's 100 counties to be provided with the machinery they will need to issue voters free IDs will cost only $112,500 statewide. It also designates this as a one-time cost. The fiscal note contains no approximation for the cost of obtaining additional staff at the county boards in order to perform this extra duty, training workers on this new duty, nor adequately maintaining the machinery. The allocation made in Part IV of Senate Bill 824 of $850,000 to be dispersed to the counties at the discretion of the State Board of Elections still falls critically short of what would be necessary for

the counties to implement this law in a manner that did not result in the disenfranchisement of eligible voters.

134. Just this year, when the legislature imposed upon the county board of elections the obligation of keeping every early voting site open the exact same hours, and from 7 A.M. to 7 P.M. on weekdays, that financial burden led many county boards of elections to reduce the number of early voting sites offered in the 2018 elections. Thus, the effect of this additional, inadequately funded mandate on the counties is predictable—they will have to make up the costs elsewhere, almost certainly to the detriment of voters.

135. Likewise, the funds appropriated for education are grossly inadequate to educate the electorate and poll workers given the incredibly compressed timeframe in which this requirement is being implemented. In the three-year rollout of the VIVA Act, the State Board of Elections expended $2.5 million in outreach activities, and history has shown that such expenditures and efforts still failed to adequately ensure that no eligible voters were disenfranchised. In stark contrast, the fiscal note for Senate Bill 824 assumes that the State Board of Elections will spend only $2 million over five years on education and outreach. Moreover, the initial appropriation to the State Board covering the first year (2019) of the law's applicability would at most allow for a maximum amount of $750,000 to be spent on outreach and education. This is a recipe for mass voter confusion and disenfranchisement, particularly since it represents a change in course from the State Board's educational messaging since the invalidation of VIVA—namely, that there is no photo ID requirement for voting.

136. There are no funding appropriations made to assist public universities and community colleges in the likely extensive and expensive efforts they would have to undertake in order to make their student IDs compliant with Senate Bill 824.

G. The Reasonable Impediment Declaration and Provisional Ballot, Used in the 2016 Primaries, Did Not Act as an Adequate Failsafe to Protect the Constitutionally Recognized Fundamental Right to Vote of Eligible Voters

137. The reasonable impediment provision of Senate Bill 824 is an inadequate safeguard to ensure that voters who lack acceptable photo ID under the statute will not be disenfranchised.

138. Under the reasonable impediment provision of Senate Bill 824, voters with a reasonable impediment to obtaining a photo ID are relegated to casting provisional ballots, and have no option to vote a regular ballot in-person.

139. Both the administration and counting of provisional ballots are cumbersome and time consuming, and already create additional burdens on election administration. The increased number of provisional ballots that will inevitably be cast in conjunction with Senate Bill 824's "failsafe" mechanism will serve to place further strain on election administrators attempting to navigate the newly implemented photo ID requirement, and increase the likelihood for error.

140. The reasonable impediment provision of Senate Bill 824 is nearly identical to the provision in place for the 2016 Primary Election.

141. Thousands of North Carolina voters were disenfranchised by inconsistent or inappropriate application of the reasonable impediment provision in issuing and counting ballots during the 2016 Primary Election, and those disenfranchised voters were disproportionately African American.

142. Poll workers and county elections board workers, trained by Defendants, did not apply the photo identification requirement, including the reasonable impediment process, in a uniform manner, but rather in an arbitrary and unequal manner that lead to voter disenfranchisement.

143. On November 26, 2018, just one day before the 2018 special session in which Senate Bill 824 was adopted, Executive Director Strach informed the Joint Legislative Elections

Oversight Committee that of 1,048 voters who completed a Declaration of Reasonable Impediment and cast a provisional ballot during the 2016 Primary, only 864 of those votes ended up counting. In essence, the process put in place to serve as a "failsafe" for voters who lack ID failed to save the franchise of nearly 18% of the voters who utilized it. Of the 1,248 regular provisional ballots cast because the voter did not present a photo ID, none of those provisional ballots were counted. Thus, in that relatively low-turnout primary election, 1,432 North Carolina voters were denied their fundamental right to vote.

144. Upon information and belief, the racial composition of the 1,432 eligible voters disenfranchised in the 2016 primary elections was disproportionately African-American and other voters of color.

145. Many voters, like Plaintiff Daniel Green, should have been offered a reasonable impediment declaration and provisional ballot, but instead were made to vote a regular provisional ballot, which did not count.

146. Many other voters were erroneously turned away from the polls without being offered any type of ballot due to the photo identification requirement for voting, so the full extent of disenfranchisement cannot be assessed by analyzing provisional ballot data alone.

147. Upon information and belief, many other voters were wholly deterred from voting by the photo ID requirement because they knew they lacked the types of photo IDs allowed under the law. These disenfranchising effects are certain to be hugely magnified in a general election, particularly during a presidential election year, because many voters only choose to vote in those elections.

148. The reasonable impediment provision of Senate Bill 824 allows for voters to list lack of knowledge of the photo ID requirement as a reasonable impediment for the municipal elections held in 2019.

149. Voters who list lack of knowledge of the photo ID requirement as a reasonable impediment in 2020 will not have their provisional ballots counted.

150. Turnout in odd-numbered years is substantially lower than in even-numbered years, and the overwhelming majority of North Carolina voters will not engage in the elections process or encounter the new photo ID requirement until 2020.

151. An amendment was proposed on the floor of the Senate during the debate of Senate Bill 824 that would have also allowed for lack of knowledge of the photo ID requirement to be listed as a valid, reasonable impediment for elections in 2020. This amendment was tabled without discussion.

152. Even if each voter reporting to vote without photo ID was correctly issued a reasonable impediment declaration form in the future, Senate Bill 824 nonetheless creates substantial uncertainty as to whether any given reasonable impediment provisional ballot will be counted.

153. Unlike regular ballots, provisional ballots are vulnerable to the discretion of election officials. Under Senate Bill 824, a provisional ballot cast due to lack of acceptable ID and in conjunction with a reasonable impediment affidavit shall be counted unless the county board has grounds to believe the affidavit is false.

154. Senate Bill 824 does not delineate a burden of proof or what suffices as adequate grounds to believe a voter's affidavit is false.

155. Further, Senate Bill 824 does not require a county board of elections to provide notice to a voter, or an opportunity to present affirmative proof on behalf of their reasonable impediment, before a provisional ballot is invalidated.

156. Because Senate Bill 824 provides no mechanism for voters reporting in person but lacking photo ID to cast a regular ballot, the franchise of an otherwise qualified North Carolina voter who lacks a photo ID through no fault of their own is improperly hinged on the absolute discretion of a few election administrators.

157. Under Senate Bill 824, voters will continue to be disenfranchised by inconsistent and inappropriate application of the reasonable impediment provision for issuing and counting ballots, and as such, the provision is inadequate to ensure the constitutionality of the law.

H. Disenfranchising Eligible Voters Constitutes a Ban on Political Speech, and Making it Harder to Vote Constitutes a Barrier to Political Speech

158. The North Carolina Supreme Court has recognized freedom of speech as a bulwark of liberty, and no act of speech carries with it more power to defend liberty than the act of voting. The casting of a vote is perhaps the most important form of political speech that a North Carolina voter can utter, and should not be restrained.

159. In an era where political contributions (i.e., money) are afforded strong free speech protections, the casting of a vote must be afforded equally strong free speech protections.

160. "Regulation of so-called pure speech, a term that most often refers to political advocacy, must pass strict scrutiny: the government must show a compelling interest in the regulation, and the regulation must be narrowly tailored to achieve that interest." *Hest Techs., Inc.* v. *State ex rel. Perdue*, 366 N.C. 289, 297, 749 S.E.2d 429, 436 (2012).

161. The disenfranchising of eligible North Carolina voters, as happened extensively in the 2016 primaries and as is certain to happen here, violates the free speech rights of those voters.

Even where voters are not disenfranchised, where the exercise of their expressive vote is made more difficult, this is a restriction on speech that should likewise be subject to heightened scrutiny.

162. Moreover, because two specific groups of voters—black voters and young voters—which are going to be disproportionately disenfranchised, and because those voters strongly tend to vote for Democratic candidates, Senate Bill 824's free speech denials and restrictions are not content-neutral—they are targeted at the silencing of a particular political point-of-view.

I. Given the Burden it Places on the Right to Vote and Free Speech, Senate Bill 824 Is Not Narrowly Tailored to Advancing a Compelling Governmental Interest

163. Senate Bill 824 creates significant burdens on the exercise of rights that the North Carolina Constitution guarantees—the right to free speech, the right to vote, and the right to equal protection under the law. Even assuming that complying with the state constitution's new provision is a compelling interest, the enabling legislation is not narrowly tailored to effectuating that provision.

164. The language in Senate Bill 824 damns its ability to survive any level of heightened scrutiny. The statute plainly states that the purpose of "the identification required pursuant to subsection (a) of this section [listing the acceptable forms of ID] is to confirm the person presenting to vote is the registered voter on the voter registration records." Any piece of identification with a voter's name and photograph indisputably achieves that very limited purpose.

165. The rejection of other acceptable IDs is stark evidence of the failure of the legislature to narrowly tailor the legislation to minimize the burden on the fundamental right to vote. For instance, several of the State's public housing authorities issue IDs to residents with names and photos, but the legislature rejected proposals to accept public assistance IDs that would obviously satisfy the stated purpose of the law. The legislature rejected proposals to use North Carolina public high school student photo IDs, even though, again, such IDs would satisfy the

articulated purpose of the law. Additionally, the legislature rejected attempts to include federal employee ID as acceptable for voting on the basis that the state legislature lacks control over the process by which those IDs are issued, despite accepting military and veterans IDs, over which the state legislature has equally little control. Indeed, at one point, Representative David Lewis explained that he was comfortable rejecting the expansion of the list of acceptable IDs, deciding that the list was already long enough. That view does not satisfy constitutional scrutiny, when both the constitutional requirement to provide photo ID and the stated purpose of the implementation statute could have been complied with by reducing the burden on voters and avoiding violation of other constitutional provisions.

166. Further, to the extent that the proponents of Senate Bill 824 tout election integrity as the justification for its burdensome requirements, requiring qualified and eligible voters who report to the polls without photo ID to cast a provisional ballot serves to undermine, rather than strengthen, confidence in the integrity of our electoral system.

167. According to the 2016 Election Administration and Voting Survey produced by the U.S. Election Assistance Commission, 55.66% of provisional ballots cast in 2016 in North Carolina were rejected. The number of rejected provisional ballots can be expected to increase if, as Senate Bill 824 contemplates, provisional ballots are the only option provided for voters reporting to the polls without acceptable ID. Relegating so many voters to cast provisional ballots that are more likely than not to be rejected will undermine voters' faith in North Carolina's election system.

168. Further, provisional ballots are counted after Election Day, and often after election contest results are reported. Voters casting non-reasonable impediment provisional ballots will reasonably be deterred from enduring the burden of returning to their local board of elections to

ensure their vote is counted in contests that have already been called in favor of a candidate. The collective effect of this reasonable reaction could be outcome determinative, and would thus undermine public confidence in election results.

169. To the extent that the law's narrow requirements were justified in debate by an alleged scourge of voter fraud, the narrow requirements and procedures put in place by Senate Bill 824 are not proportionate to the ills they purport to remedy. In the over two years since the 2016 primary election, neither the State Board of Elections nor any other group has presented any evidence that a single one of the 1,432 North Carolina voters who were disenfranchised by the previous iteration of the voter ID law despite casting a provisional ballot was engaged in fraud or was attempting to impersonate another voter.

170. In fact, the publicly available information, discussed in the legislative process of Senate Bill 824, is that in every election since the year 2000, there have been four alleged cases of in-person voter impersonation fraud—the only type of voter fraud that a photo ID requirement purports to prevent. Thus, Senate Bill 824 fails to adequately protect the fundamental right to vote, and the legislature had no basis for enacting a law that has disenfranchised so many voters. Indeed, the provision can only be certain to disenfranchise more voters in a higher turnout general election.

171. Furthermore, the legislature also failed to narrowly tailor the law when it decided that absentee voters who failed to provide a picture ID could make an alternate attestation and cast a regular, not provisional, absentee ballot. To be clear, this is the right remedy. And if that solution is acceptable for absentee voters, it should be acceptable for in-person voters. Given the "exception" language in the constitutional amendment, a system that provided in-person voters with the same alternatives as absentee voters would amply satisfy compliance with the new constitutional amendment, and would more strictly hew to other constitutional requirements that

demand that the State treat with utmost care the ability of North Carolinians to exercise the franchise.

172. Moreover, the stated purpose of the law could be achieved without creating the enormous administrative hurdles for colleges and universities and employers to validate their picture IDs for use in voting. Student and employee IDs have the holder's name and photograph on them, and this would allow poll workers to confirm that the person presenting to vote is the person on the voter rolls. The imposition of these administrative hurdles only makes it likely that some of these institutions will be unable to comply, rendering their issued IDs useless for voting, and does nothing to further the purpose of the law.

PLAINTIFFS' FIRST CLAIM FOR RELIEF

(Violation of Article I, § 19 of the North Carolina Constitution in the enactment of an intentionally racially discriminatory law)

173. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

174. By implementing Senate Bill 824, the State purposefully discriminates against African-American and American-Indian voters that lack acceptable photo ID, in violation of the Equal Protection Clause in Article I, § 19 of the North Carolina Constitution.

175. The equal protection clause of Article I, § 19 of the North Carolina Constitution states that "nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin." This provision prevents a state and its officials from discriminatorily or arbitrarily treating qualified voters differently on account of their race or skin color.

176. A motivating purpose behind Senate Bill 824 is to suppress the turnout and electoral participation of African-American and American-Indian voters, who disproportionately lack acceptable photo identification.

177. At the time of the law's enactment, the General Assembly had before it evidence that African-American and American-Indian voters lacked picture IDs at higher rates than white voters. The General Assembly established the list of acceptable IDs with full knowledge that the list established would burden the voting rights of African-American and American-Indian voters at substantially higher rates than white voters. The legislature enacted Senate Bill 824 with minimal public debate and on an extremely compressed legislative schedule, with the bill passing both houses of the legislature only days after its initial reveal.

178. Both the discriminatory effect of a statute and its legislative history are relevant factors in analyzing a statute for discriminatory intent. *Vill. of Arlington Heights* v. *Metro. Hous. Dev. Corp*, 429 U.S. 252 (1977).

PLAINTIFFS' SECOND CLAIM FOR RLIEF

(Violation of Article I, § 19 of the North Carolina Constitution in the enactment of a law that unjustifiably and significantly burdens the fundamental right to vote)

179. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

180. The equal protection guarantee in Article I, Section 19 of the North Carolina Constitution prohibits the State from "deny[ing] to any person within its jurisdiction the equal protection of the laws." This provision also prohibits states from imposing severe burdens upon the fundamental right to vote unless they are narrowly tailored to advance a compelling state interest. Federal equal protection guarantees require that any state election law that imposes reasonable and non-discriminatory restrictions on the right to vote be justified by an important state regulatory interest. The court: "must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary

to burden the plaintiff's rights.'" *Burdick* v. *Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson* v. *Celebrezze*, 460 U.S. 780, 789 (1983)). The North Carolina Supreme Court has adopted this test for assessing alleged violations under the State Constitution. *See Libertarian Party* v. *State*, 365 N.C. 41, 50, 707 S.E.2d 199, 205 (2011). The state's highest court has advised that "strict scrutiny is warranted only when this associational right is severely burdened." *Id*. (quoting *Burdick*, 504 U.S. at 434).

181. Here, Plaintiffs' right to vote is burdened by the arbitrary and unjustified voter ID implementation legislation. The list of acceptable IDs established by Senate Bill 824 is unnecessarily restricted given the stated purpose of the law, and hundreds of thousands of voters lack such forms of IDs. Moreover, the mechanisms established by Senate Bill 824 offered to voters to obtain allegedly free photo IDs are administratively burdensome and costly. Finally, the mechanisms established by Senate Bill 824 to deal with eligible voters who present to vote without an acceptable ID are inadequate to protect their fundamental right to vote. Voting provisionally, given the high rate of rejection of provisional ballots in North Carolina and the arbitrary and inequitable treatment of provisional ballots across North Carolina's 100 counties, is not a constitutionally adequate substitute for casting a regular ballot. Voters who cannot adjust to the new rules for presentation of IDs when voting or the new mechanisms they may have available to them if they lack one of those few acceptable IDs, will be disfranchised or significantly burdened. Other voters will encounter longer lines, undue delay, and in many cases, be prevented from voting altogether due to increased congestion during early voting and on Election Day.

182. In contrast, there are no plausible benefits to the State that outweigh the burdens created on the fundamental right to vote. While of course the State must comply with the new constitutional provision requiring photo ID, it has an equally demanding interest in complying

with multiple other provisions of the State Constitution, which it has ignored. In nearly two decades of searching high and low for examples of in-person voter impersonation fraud, the State has only identified an alleged four instances of such behavior, the only type of fraud purportedly prevented by a strict photo ID law such as the one at issue here. That number is certainly not outweighed by the more than 1,400 eligible voters disenfranchised in the 2016 primaries, when a nearly identical law was in place. Finally, arguments that the State has an interest in election integrity are revealed as mere pretext when the State constructs a complicated, administratively-burdensome scheme such as the one in Senate Bill 824 that will cripple effective election administration, create chaos in upcoming elections and deprive thousands of voters of their fundamental right to vote. Election integrity is preserved by vigorously protecting the fundamental right to vote.

183. Senate Bill 824 creates an undue burden on the fundamental right to vote, both as applied to Plaintiffs and on its face, in violation of the Equal Protection Clause in Article I, § 19 of the North Carolina Constitution.

PLAINTIFFS' THIRD CLAIM FOR RELIEF

(Violation of Article I, § 19 of the North Carolina Constitution in the enactment of a law that creates different classes of voters who will be treated disparately in their access to their fundamental right to vote)

184. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

185. Senate Bill 824 violates Article I, § 19, by treating persons similarly situated differently with respect to the exercise of their fundamental right to vote, in effect creating different classes of voters who will experience different access, and ease of access, to the franchise. The North Carolina Constitution guarantees voters the right to vote on equal terms, and the various classification schemes embodied in Senate Bill 824 ensure that voters will not vote on equal terms, depending on the classification category into which they fall.

186. First, Senate Bill 824 establishes two classes of voters: those who already possesses a photo ID from an unnecessarily limited list of acceptable IDs, and those who do not possess such an ID. For voters who have such an ID, their voting experience will remain almost unchanged, and their access to exercising their fundamental right to vote will remain unhindered. For voters in the other class—who do not already possess ID—in a best-case scenario, they will be forced to jump through numerous administrative hurdles to obtain a photo ID in order to access their fundamental right, or they will be forced to forever cast a provisional ballot, in marked contrast to similarly situated North Carolina voters who will be allowed to vote a regular ballot. In what is likely to be an all-too-common less than best case scenario, these voters will be disenfranchised, again denied their fundamental right to vote on equal terms with other North Carolina eligible voters.

187. Senate Bill 824 also establishes an age-based classification of voters that acts to the distinct disadvantage of young voters, a discrete and identifiable group that should be treated as a protected class. The law allows voters aged 65 and older to use a photo ID that has been expired more than one year, so long as their ID was not expired when they turned 65. In contrast, any voter younger than 65 may only use a photo ID from the list of acceptable IDs if it has been expired for one year or less. Even worse, voters of college age, who may only have a college or university photo ID, may only use that photo ID to vote if their college or university complies with the substantial requirements placed upon the institution by Senate Bill 824 to ensure acceptability of that institution's photo ID. Put another way, those student voters have no control over whether or not their photo ID will be acceptable and enable them to access the franchise. Thus, for no compelling governmental interest, voters over the age of 65 are treated differently from voters under the age of 65, who are also treated differently than young voters attending institutions of

secondary education, with each group facing increasingly limited access to the franchise. The North Carolina Constitution prohibits this classification of voters on the basis of age, and certainly the resulting hurdles to the exercise of a fundamental right of voters depending on the class into which they fall.

188. Article I, § 19 of the North Carolina Constitution restrains the ability of the legislature to create classifications of persons where such classifications treat similarly situated individuals different and such a classification scheme interferes with the exercise of a fundamental right, such as the fundamental right to vote. Moreover, Article I, § 19 demands the application of strict scrutiny to a law where the legislature has created such a classification scheme.

PLAINTIFFS' FOURTH CLAIM FOR RELIEF

(Violation of Article I, § 10 of the North Carolina Constitution in the enactment of a law that infringes upon the right of North Carolina voters to participate in free elections)

189. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

190. Senate Bill 824 imposes a cost that violates the Free Elections Clause in Article I, § 10 of the North Carolina Constitution.

191. Art. I, § 10 guarantees that "All elections shall be free." Senate Bill 824 imposes on voters costs, particularly in terms of work time lost and transportation costs, in order to obtain an ID to vote. Because Senate Bill 824 imposes these costs, elections are no longer free and Senate Bill 824 violates this provision of the State Constitution.

192. Plaintiffs and other qualified North Carolina voters without acceptable photo ID are deprived of the right to a free election and will be irreparably harmed if Senate Bill 824's photo ID requirement is not enjoined.

PLAINTIFFS' FIFTH CLAIM OF RELIEF

(Violation of Article I, § 10 of the North Carolina Constitution in the enactment of a law that conditions the fundamental right to vote on the possession of property)

193. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

194. Art. I, § 10 of the North Carolina Constitution also states that "As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office."

195. Senate Bill 824 imposes a unconstitutional property requirement in violation of Article I, § 10 by requiring voters to possess not only an acceptable photo ID, but also the documents necessary to obtain the photo ID and the resources (primarily, access to transportation) necessary to obtain those documents. The conditioning of the exercise of the fundamental right to vote on equal terms with other voters on the voter's possession of a physical item—a photo ID—runs afoul of Article I, § 10.

196. Plaintiffs and other qualified North Carolina voters without acceptable photo ID are subject to an unconstitutional property requirement and will be irreparably harmed if Senate Bill 824's photo ID requirement is not enjoined.

PLAINTIFFS' SIXTH CLAIM OF RELIEF

(Violation of Article I, §§ 12 and 14 of the North Carolina Constitution in the enactment of a law that infringes upon the right of North Carolina voters to participate in free elections)

197. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

198. Senate Bill 824 violates Plaintiffs' Right of assembly and petition and Freedom of speech under Article I, §§ 12 and 14 of the North Carolina Constitution.

199. The North Carolina Supreme Court has recognized the importance of free speech, and that political advocacy should be deemed "pure speech." There is no more powerful political advocacy than the casting of a vote in a North Carolina election.

200. Because Senate Bill 824 will disproportionately disenfranchise African-American and young voters, who vote overwhelmingly for Democratic candidates, Senate Bill 824 should be treated as a statute that regulates or forbids the communication of a specific idea—that is, is not content neutral. When a statute affecting speech is not content neutral, it will be subject to "exacting scrutiny: the State must show that the 'regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.'" *State* v. *Petersilie*, 334 N.C. 169, 183, 432 S.E.2d 832, 840 (N.C. 1993). Even if compliance with one state constitutional provision (at the expense of compliance with other state constitutional provisions) were a compelling governmental interest, and it is not, Senate Bill 824 is plainly not narrowly tailored. It excludes forms of ID that would clearly satisfy the stated purpose, and it does not offer adequate protections to ensure that eligible voters are not disenfranchised. As such, it fails exacting scrutiny and must be invalidated.

201. Even if Senate Bill 824 is treated as content neutral, it would still fail constitutional scrutiny. A content neutral regulation of free speech will only be upheld "if the restriction is narrowly tailored to serve a significant governmental interest, and it leaves open ample alternatives for communication." *State* v. *Petersilie*, 334 N.C. at 183, 432 S.E.2d at 840. As previously discussed, given the stated purpose of the statute, the law is not narrowly tailored to effectuate that purpose. And more significantly, a voter who has been disenfranchised does not have any equal alternative for communicating the political speech that he or she wanted to communicate through the vote.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. A declaratory judgment declaring that Senate Bill 824 as currently written violates constitutional rights guaranteed by the North Carolina Constitution both on its face and as-applied

to Plaintiffs and those similarly situated North Carolina-qualified, registered voters that lack acceptable photo ID to vote when presenting to vote at the polls.

2. An injunction allowing qualified, registered voters without acceptable photo ID at the polls to cast regular ballots.

3. Award Plaintiffs' reasonable attorneys' fees, if just and proper.

4. Make all further orders as are just, necessary, and proper, including orders providing for an expedited and shortened period of discovery and an expedited trial.

5. Grant Plaintiffs such other and further relief as the court deems just and proper.

This the 19th day of December, 2018.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day submitted a copy of the foregoing Motion for Preliminary Injunction in the above titled action with the Clerk of Superior Court in Wake County, and served the document by mail and electronic mail to the following parties:

Alexander McC. Peters
NC Department of Justice
P.O. Box 629
Raleigh, NC 27602
apeters@ncdoj.gov

This the 19th day of December, 2018.

Allison J. Riggs

EXHIBIT 24

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 15292

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, and PAUL KEARNEY, SR.,

Plaintiffs,

v.

TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; PHILIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate*; DAVID R. LEWIS *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session*; RALPH E. HISE *in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session*; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

ORDER
DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

AND

DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTIONS TO DISMISS

This matter comes before the undersigned three-judge panel upon the motion for preliminary injunction filed by Plaintiffs, the motion to dismiss filed by Defendants Moore, Berger, Lewis, and Hise ("Legislative Defendants"), and the motion to dismiss filed by Defendants the State of North Carolina and the North Carolina Board of Elections ("State Defendants").

In this litigation, Plaintiffs seek a declaratory judgment that Session Law 2018-144 (hereinafter "S.L. 2018-144"), which serves as the enabling legislation for the voter-ID related amendments made to Article VI of the North Carolina Constitution, violates several rights guaranteed elsewhere in the North Carolina Constitution on its face and as applied to Plaintiffs and other, similarly situated North Carolina voters who lack qualifying identification to vote. Plaintiffs also seek to enjoin S.L. 2018-144, which would allow registered voters who do not possess a qualifying ID to cast regular ballots at the polls.

Summary of Relevant Facts and Procedural History

In the 2018 General Election, North Carolina voters approved an amendment to Article VI of the North Carolina Constitution providing that "[v]oters offering to vote in person shall present photographic identification before voting," and that "[t]he General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions." N.C. Const. art VI, §§ 2, 3. On December 19, 2018, the General Assembly enacted the requisite enabling legislation— S.L. 2018-144—over Governor Roy Cooper's veto. The Session Law lists, *inter alia*, the types of photographic identification that a voter may present to vote in accordance with the constitutional amendment, sets forth a process by which voters can obtain a free identification card at their county board of elections, and outlines a reasonable impediment process by which voters who do not possess a qualifying identification for one of several statutorily listed reasons may still vote by provisional ballot.

On the same day that the General Assembly enacted S.L. 2018-144, Plaintiffs filed their complaint in Superior Court, Wake County. In their complaint, Plaintiffs assert six claims in support of their request for declaratory and injunctive relief. Plaintiffs contend that the General Assembly violated Article I, Section 19 by intentionally enacting a racially discriminatory law (Claim I), that S.L. 2018-144 significantly burdens a "fundamental right to vote" (Claim II), that S.L. 2018-144 unconstitutionally creates different classes of voters (Claim III), that it infringes on their Article I, Section 10 right to participate in free elections (Claim IV), that it places a property requirement on the right to vote in violation of Article I, Section 11 (Claim V), and, finally, that it violates their assembly, petition, and speech rights under Article I, Sections 12 and 14 (Claim VI).

Plaintiffs filed their motion for preliminary injunction concurrent with their complaint. Legislative Defendants filed their motion to dismiss the complaint on January 22, 2019, and State Defendants filed their motion to dismiss the complaint and answer on February 21, 2019. Legislative Defendants contend that the complaint should be dismissed for lack of standing pursuant to North Carolina Rule of Civil Procedure 12(b)(1) because each Plaintiff either possesses a qualifying identification or would statutorily qualify to vote via the reasonable impediment process. Legislative Defendants move to dismiss the complaint pursuant to Rule 12(b)(6) on the grounds that each challenge is an as-applied instead of facial constitutional challenge and because each claim either lacks sufficient, supporting factual allegations or has no basis in the law. State Defendants argue in support of

their motion that Plaintiffs' Claims II-VI should be dismissed pursuant to Rule 12(b)(6) because Plaintiffs cannot meet their burden on a facial constitutional challenge of showing that there are no circumstances under which the law might be constitutional.

Due to the nature of Plaintiffs' claims, the Chief Justice of the Supreme Court of North Carolina transferred this case to the undersigned three judge panel on March 19, 2019 pursuant to N.C.G.S. § 1-267.1. On June 28, 2019, this panel heard oral arguments on Legislative Defendants' motion to dismiss, State Defendants' motion to dismiss, and Plaintiffs' motion for a preliminary injunction.

Applicable Legal Standards

"On a Rule 12(b)(6) motion to dismiss, the question is whether, as a matter of law, the allegations of the complaint, treated as true, state a claim upon which relief can be granted." *Wood v. Guilford Cty.*, 355 N.C. 161, 166, 558 S.E.2d 490, 494 (2002) (citing *Isenhour v. Hutto*, 350 N.C. 601, 604, 517 S.E.2d 121, 124 (1999)). North Carolina Courts will dismiss a complaint in whole or in part when "(1) the complaint on its face reveals that no law supports the plaintiff's claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim." *Id.* (citing *Oates v. JAG, Inc.*, 314 N.C. 276, 278, 333 S.E.2d 222, 224 (1985)).

A preliminary injunction "will be issued only (1) if a plaintiff is able to show likelihood of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court,

issuance is necessary for the protection of a plaintiff's rights during the course of litigation." *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (quoting *Investors, Inc. v. Berry*, 293 N.C. 688, 701, 239 S.E.2d 566, 574 (1977)).

Because Plaintiffs challenge the facial constitutionality of S.L. 2018-144, the questions of whether they have stated claims upon which relief can be granted as to the motions to dismiss and of whether they have shown a likelihood of success on the merits for the purposes of a preliminary injunction must both be evaluated against the strong presumption of constitutionality afforded to acts of the General Assembly. *See Rhyne v. K-Mart Corp.*, 358 N.C. 160, 168, 594 S.E.2d 1, 7 (2004) (citing *Stephenson v. Bartlett*, 355 N.C. 354, 362, 562 S.E.2d 377, 384 (2002)). Because of this presumption, S.L. 2018-144 ultimately cannot be declared invalid based on any claim unless we determine that it is "unconstitutional beyond a reasonable doubt." *Cooper v. Berger*, 370 N.C. 392, 413, 809 S.E.2d 98, 111 (2018) (quoting *McCrory v. Berger*, 368 N.C. 633, 639, 781 S.E.2d 248, 252 (2016)).

Motions to Dismiss

Upon considering the complaint, the motions to dismiss pursuant to Rule of Civil Procedure 12(b)(6), and the supporting briefs, and taking the factual allegations in the complaint as true, we determine that Plaintiffs have made sufficient factual allegations to support Claim I, and that Claim I should not be dismissed as a matter of law. We also determine that Plaintiffs have failed to state

claims upon which relief can be granted as a matter of law in their Claims II-VI. We therefore dismiss those claims.

Furthermore, because we determine that Defendants' motions to dismiss for lack of jurisdiction pursuant to Rule 12(b)(1) were addressed by Judge Rozier in his Amended Order dated March 14, 2019, and because this matter was referred to the panel based upon Plaintiffs' facial challenge to the constitutionality of S.L. 2018-144, we will not take up the issue of Plaintiffs' standing here.

Motion for Preliminary Injunction

Upon considering the pleadings, the parties' briefs, and the submitted affidavits and other supporting material, the majority of this panel agrees with Defendants that Plaintiffs have failed to demonstrate a likelihood of success on the merits of their sole remaining claim that enactment of S.L. 2018-144 violated their Article I, Section 19 equal protection rights. Therefore, Plaintiffs are not entitled to a preliminary injunction.

For the foregoing reasons, Defendants' motions to dismiss are DENIED as to Plaintiffs' Claim I and GRANTED as to Plaintiffs' Claims II, III, IV, V, and VI. Plaintiffs' motion for a preliminary injunction is DENIED.

This the 10 day of July, 2019.

Nathaniel J. Poovey, Superior Court Judge

Vince M. Rozier, Jr., Superior Court Judge

claims upon which relief can be granted as a matter of law in their Claims II-VI. We therefore dismiss those claims.

Furthermore, because we determine that Defendants' motions to dismiss for lack of jurisdiction pursuant to Rule 12(b)(1) were addressed by Judge Rozier in his Amended Order dated March 14, 2019, and because this matter was referred to the panel based upon Plaintiffs' facial challenge to the constitutionality of S.L. 2018-144, we will not take up the issue of Plaintiffs' standing here.

Motion for Preliminary Injunction

Upon considering the pleadings, the parties' briefs, and the submitted affidavits and other supporting material, the majority of this panel agrees with Defendants that Plaintiffs have failed to demonstrate a likelihood of success on the merits of their sole remaining claim that enactment of S.L. 2018-144 violated their Article I, Section 19 equal protection rights. Therefore, Plaintiffs are not entitled to a preliminary injunction.

For the foregoing reasons, Defendants' motions to dismiss are DENIED as to Plaintiffs' Claim I and GRANTED as to Plaintiffs' Claims II, III, IV, V, and VI. Plaintiffs' motion for a preliminary injunction is DENIED.

This the 10 day of July, 2019.

Nathaniel J. Poovey, Superior Court Judge

Vince M. Rozier, Jr., Superior Court Judge

Judge O'Foghludha, concurring in part and dissenting in part.

Judge O'Foghludha agrees with the rest of the panel that Defendants' motions to dismiss should be denied as to Plaintiffs' Claim I and granted as to Plaintiffs' Claims II-VI; however, Judge O'Foghludha would grant a preliminary injunction on Plaintiffs' first claim. While recognizing that the State has a legitimate interest in preventing voter fraud and increasing voter confidence in the integrity of elections, *see Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008), and indeed the State must implement laws mandating photographic identification pursuant to Sections 2 and 3 of Article VI of the North Carolina Constitution, the State has no legitimate interest in passing enabling legislation containing provisions already adjudicated to discriminate against minority voters, and that are likely to have a disproportionate impact on such voters, per the decision in *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

The Fourth Circuit in *McCrory* held that North Carolina's prior photographic ID law, denominated as H.B. 589 from the 2013-2014 Session, was passed with discriminatory intent, as that legislation excluded government-issued identifications (public housing and public benefit IDs) used disproportionately by African-American voters. *McCrory*, 831 F.3d at 235-36. Yet, these same forms of identification were again excluded in S.B. 824. Evidence presented to this Court, and considered solely on the issue of an injunction, confirms that the exclusion of these forms of identification from a list of acceptable forms of photographic ID

would again disproportionally affect African-American voters, and this Court should so hold.

Further, all parties agree that the only data on the impact of various forms of photographic ID voter requirements before the General Assembly during its consideration of enabling legislation pursuant to the Constitutional amendment was the same data used to pass H.B. 589—data that the Fourth Circuit held was used to disproportionately impact African-American voters. The legislature is therefore charged with knowledge that the exclusion of legitimate forms of government IDs such as public housing and public benefit IDs is discriminatory. A seemingly neutral law may be facially invalid under these circumstances, *S.S. Kresge Co. v. Davis*, 277 N.C. 654 (1971), and intent may be shown by either direct or circumstantial evidence in these circumstances, *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

Applying the *Arlington Heights* factors, namely that this law will likely bear more heavily on one race than another, and because of the current law's historical background and the sequence of events leading to its passage (the comparison with H.B. 589 and the passage of S.B. 824 between an election and the seating of those elected), Judge O'Foghludha would hold that Plaintiffs have shown a reasonable probability of success on the merits, *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393 (1983), and that the issuance of an injunction is necessary to protect Plaintiffs' rights during the litigation. In weighing the equities for and against an injunction, Judge O'Foghludha would hold that the reasonable likelihood of disproportionate

impact on minority voters would outweigh the likelihood of actual in-person voter fraud, as the risk of the latter, based on historical data, approaches zero. Further, the implementation of photographic voter ID pursuant to the constitutional amendment has already been delayed by further legislation until 2020, and the likelihood of voter confusion between disparate methods of in-person voting in 2019 and 2020 would be obviated by the preservation of the status quo during the pendency of this litigation. *See* Brinson Bell Dep. 74-75, 78-79. Any disruption of efforts by the State Board of Elections to prepare for the ultimate implementation of some kind of photographic voter ID can be accommodated by this Court by the crafting of flexible exceptions to injunctive relief, such as allowing for the continued updating of the State's SEIMS system and the continued development of internal SBOE policies relevant to photographic voter ID. *See* State Defs.' Resp. to Pls.' Mot. for Prelim. Inj. 13.

Michael J. O'Foghludha, Superior Court Judge

EXHIBIT 25

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 18 CVS 15292
JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR., Plaintiffs, v. TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; PHILLIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS, Defendants.	**STATE DEFENDANTS' RESPONSE TO LEGISLATIVE DEFENDANTS' MOTION FOR ENTRY OF A CASE MANAGEMENT ORDER**

Defendants the State of North Carolina and the North Carolina State Board of Elections (the "State Defendants") hereby respond to the Legislative Defendants' Motion for Entry of a Case Management Order, which was served on the parties and emailed to the Trial Court Administrator on April 10, 2020.

The State Defendants defer to the Court's discretion as to whether an expedited pretrial schedule is appropriate. Below, the State Defendants highlight a number of considerations that impact the potential implementation of S.B. 824 and its photo ID requirement before the 2020 general election, including considerations arising from the current public health emergency. The State Defendants have discussed these considerations with counsel for the Legislative

Defendants and the Plaintiffs.

The Legislative Defendants propose a trial schedule with the hope of allowing enough time after final decision—if S.B. 824 is upheld and the current injunction is lifted—to apply its provisions to the November 2020 general election, for which voting is scheduled to begin on September 4, 2020, less than 5 months from now.

As the Legislative Defendants note (Mot. at 6), in early March 2020, in the federal case challenging the photo ID requirement, the State Defendants informed the Fourth Circuit Court of Appeals that the elections boards would need to restart photo ID implementation activities—which had been suspended in December 2019 pursuant to the federal court's order—well in advance of the start of absentee voting on September 4, 2020. The State Defendants have since determined with more specificity that, without factoring in the likelihood of additional delays resulting from the effects of the pandemic, which are discussed below, implementation activities would need to begin by early July. This estimate is based solely on accommodating the State Board's activities in logistically preparing to administer an election with the new photo ID requirement. It does not take into account voter-education activities that would also need to take place to inform voters that the photo ID law that was enjoined for the primary election in March would be enforced in the general election in November.

The early July estimate also does not take into account any measures that may be necessary to deal with the reality that the State now faces in trying to prepare for and carry out an election amid the disruption to regular activities that the COVID-19 pandemic has caused. At present, it is unclear how long the social distancing requirements, limits on mass gatherings, and other public health-related restrictions ordered or recommended by state, local, and federal authorities will last, or in what ways they might be reduced over time. Agencies involved in

election administration, including the State and county boards and the Division of Motor Vehicles (DMV), must begin consideration and planning now for administering the upcoming general election consistent with some or all of these public health restrictions, while allowing for the possibility of new or modified restrictions over time.

One challenge for local elections boards is ensuring that they will have enough poll workers. The average age of poll workers in the state is 70, meaning that most poll workers are in the category of individuals most at risk from the COVID-19 virus. Because of this and because of the uncertainty associated with the ongoing public health emergency, elections boards must work to identify and train alternate poll workers in the event that some poll workers opt out or are directed to avoid the potential exposure that could come from working at polling sites. The State Board must begin now to plan to reconfigure thousands of polling sites statewide to allow for adequate distancing, sanitization, and minimal contact with surfaces that would increase the chances of virus transmission, to protect both poll workers and voters. This will require significant preparation, training of employees and volunteers, and procurement of supplies to support these procedures.

State and county elections boards must also plan now for an expected massive increase in the number of voters who may cast their votes by absentee ballot. The State Board estimates that 40% or more of the state's voters may cast their vote by absentee ballot—in comparison to the approximately 4% of voters who have done so in election cycles in the recent past. To prepare for an increase in absentee ballots of this magnitude, State and county elections boards need to ensure the availability of absentee ballots, coordinate with postal services, including by potentially establishing designated drop-off points for ballots to be mailed, and create new processes to open, count, audit, and report election results for this volume of absentee ballots.

Implementing a photo ID requirement in the midst of the evolving public health emergency would require the State and county boards to undertake additional measures. Restarting implementation of S.B. 824 would require meeting voters' requests for free IDs and documentation needed to obtain those IDs. However, the State Board, many county boards, and other federal, state, and local government agencies are currently closed to the public or are operating with reduced hours and staff. The same is true for DMV offices, which issue the most common form of photo identification in the state.

In addition, public health requirements that may be in place would compel State and county boards to undertake extra planning and training to implement the photo ID requirement during in-person voting, which begins in mid-October. For example, if social-distancing and face-mask requirements are in effect during in-person voting, State and county boards of elections will need to have planned and trained for effective procedures to verify photo IDs, provide assistance to voters lacking photo IDs, and assist voters in filling out provisional voting applications and reasonable impediment affidavits, while abiding by the public health requirements.

Prior to the public health emergency, the State Board had been planning to conduct in-person training for county boards and staff during its August conference. The county boards and their staff would then provide in-person training to their poll workers in the weeks following the State Board's conference. This kind of in-person training will be particularly critical if S.B. 824 is in effect because it imposes administratively complex requirements on poll workers and elections-board staff. The State Board is not aware of poll worker training having been conducted remotely by any county board before, and is unsure of the efficacy of such remote training—particularly in light of the fact that many communities and poll workers will face

technical hurdles to remote training. If social-distancing guidelines are in effect in the summer and fall, the State Board will not be able to conduct in-person training during its August conference and county staff will not be able to train poll workers in-person in September and October.

In sum, the State and local boards are working to address a number of uncertainties and logistical challenges associated with administering the November 2020 elections amidst the COVID-19 pandemic. Implementing a photo ID requirement would add to these. The State Defendants defer to the Court's discretion on the trial schedule and stand ready to continue to update the Court with any additional information requested.

If the Court orders an accelerated discovery and trial schedule similar to the one proposed by the Legislative Defendants, the State Defendants request that the Court's order provide flexibility to account for the current and any subsequent orders of the North Carolina courts that govern the use of remote hearings, depositions, and testimony.

Respectfully submitted this the 14th of April, 2020.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon all parties by electronic mail, by consent, addressed to the following:

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Respectfully submitted this the 14th day of April, 2020.

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EXHIBIT 26

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 18 CVS 15292
JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, *and* PAUL KEARNEY, SR., *Plaintiffs,* v. TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives*; PHILLIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate;* DAVID R. LEWIS, *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session*; RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session*; THE STATE OF NORTH CAROLINA; *and* THE NORTH CAROLINA STATE BOARD OF ELECTIONS, *Defendants.*	**PLAINTIFFS' OPPOSITION TO LEGISLATIVE DEFENDANTS' MOTION FOR ENTRY OF A CASE MANAGEMENT ORDER AND FOR SCHEDULING A REMOTE HEARING ON PLAINTIFFS' MOTION TO COMPEL**

INTRODUCTION

Legislative Defendants' proposal to rush this case to trial in under three months is infeasible and contrary to the public interest. Their motion must be denied.

The schedule Legislative Defendants request does not provide enough time to complete fact discovery and prepare this case for trial. It allows just seven weeks to complete discovery (nearly half the time allotted in the prior schedule agreed upon by the parties), and would require experts to submit initial reports just two weeks from now—before any additional facts can be discovered, much less analyzed. That schedule would have been a non-starter even under ideal circumstances.

But, as this Court is well aware, present circumstances are anything but ideal. The Chief Justice of the North Carolina Supreme Court has instructed the courts of this State to delay trials and other proceedings, because "catastrophic conditions resulting from the COVID-19 outbreak have existed and continue to exist in all counties of this state."[1] Legislative Defendants' request to speed up discovery and trial preparation between now and June in the midst of this crisis defies the spirit of that order (and others) and all common sense. And Legislative Defendants' assurances that the parties can prepare for trial safely and in keeping with social distancing requirements—

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[1] Order of the Chief Justice of the Supreme Court of North Carolina (Apr. 2, 2020), https://bit.ly/2RzOGfF.

all at a breakneck pace—are based on nothing more than self-serving speculation.

Legislative Defendants also argue, but have failed to show, that a trial before the 2020 election would promote the public interest. The public has no interest in implementing a law like SB 824 that was enacted with discriminatory intent—as the Court of Appeals unanimously held Plaintiffs were likely to prove at trial. But even if Legislative Defendants prevail at trial, there is also no present basis for their assertion that SB 824 could be implemented before the general election. SB 824 has now been preliminarily enjoined in both state and federal court, and trial in the federal case is not set to begin until January 2021—after the 2020 election. An expedited trial in this case thus would neither change the status quo nor serve Legislative Defendants' purported interest. And, even in the unlikely event that Defendants succeed in overturning both injunctions by sometime in July, the State would then be left with insufficient time (at most four months, and less for absentee voting) to implement the law and educate voters, poll workers, and election officials on SB 824's complex requirements, particularly in light of the present public health crisis.

The public interest is best served by a schedule that allows for the safe and orderly completion of pre-trial discovery, a trial on a full and well-developed record, and an election in 2020 that is not marred by chaos and confusion. Legislative Defendants' proposed schedule seeks just the opposite.

This Court should therefore deny Legislative Defendants' motion for a case management order, and decline to enter any scheduling order until there is greater clarity on the impact the COVID-19 pandemic will continue to have on public life. If the Court is inclined to enter a schedule, Plaintiffs respectfully submit that February 17 is the earliest feasible trial date in this matter. *See* Ex. 5 (Plaintiffs' proposed schedule).

ARGUMENT

Legislative Defendants argue their proposed trial schedule is reasonable because it shares some similarities with the schedule the parties proposed in August 2019. But they fail to appreciate, or even meaningfully address, the ways in which the status of this case and current events have dramatically changed in the intervening months. Those changes render Legislative Defendants' schedule infeasible and inappropriate.

I. LEGISLATIVE DEFENDANTS' SCHEDULE DOES NOT ALLOW FOR ADEQUATE DISCOVERY

Legislative Defendants repeatedly assert that their proposed schedule is reasonable because it includes the same amount of time "from exchange of expert reports to trial" as the schedule the parties' proposed last year. Mot. at 1; *see also id.* at 5, 7. But that carefully limited comparison masks key differences. Most notably, the schedule the parties proposed last year provided nearly twelve weeks to complete discovery; Legislative Defendants' schedule provides just seven. And whereas last summer's schedule allowed six weeks for expert witnesses to submit initial reports, Legislative Defendants' proposal

provides just two. Legislative Defendants are *not* proposing the same schedule that the parties agreed to last summer. Instead, they are seeking to rush this case to trial on an even shorter schedule in the hopes that an underdeveloped record will save a law that the Court of Appeals unanimously found, on just the preliminary record, was likely enacted with unconstitutional discriminatory intent. *Holmes* v. *Moore*, 2020 WL 768854, at *17 (N.C. Ct. App. Feb. 18, 2020). The public interest is best served by fully developing the record bearing on the motivations behind SB 824, not conducting a sham trial on an incomplete record.

Legislative Defendants would surely respond that discovery has not been truncated, since the parties have had the benefit of the intervening months since last summer. But that is not true. Proceedings in this Court were, until recently, stayed for over five months while the case was pending on appeal. Legislative Defendants supported that stay. *See* Legislative Defs.' Opp'n Br. at 2–3, Sept. 30, 2019 (opposing Plaintiffs' motion for reconsideration of the stay order). As a result, although the parties have made some progress on discovery, significant third-party discovery remains outstanding. In particular, Plaintiffs have sought substantial amounts of data from State agencies, colleges, and universities to conduct expert analysis of SB 824's impact on voters of color. And many of those third parties were unwilling to

comply with subpoenas while this case was stayed.[2] *See* Exs. 1–3. Having advocated for a stay of proceedings that hampered third-party discovery for months, Legislative Defendants should not now be permitted to nullify the discovery process altogether through an unreasonably short schedule.[3]

There are also significant discovery disputes that must be resolved before this case can be tried—disputes that Plaintiffs could not bring before this Court during the stay. Colleges and universities have, for example, objected to the scope of Plaintiffs' subpoenas on privacy grounds. *See* Exs. 1–2, 4. Now that the stay has dissolved, Plaintiffs anticipate that motions practice will be required to resolve those objections. But even if Plaintiffs moved to compel responses to all outstanding subpoenas immediately, opposition briefs would not be due until June 1—just one day before discovery is set to close under Legislative Defendants' proposed schedule.[4] That is unworkable. Likewise, Legislative Defendants continue to object to critical

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[2] Plaintiffs will also have to issue additional subpoenas, because the list of State-approved ID providers was not finalized until November 2019—after this Court entered its stay order. *See* N.C. State Bd. of Elections (Nov. 26, 2019), https://s3.amazonaws.com/dl.ncsbe.gov/Voter%20ID/Approved%20Employee%20%26%20Student%20IDs%20on%20November%2026%2C%202019.pdf; N.C. State Bd. of Elections (Nov. 1, 2019), https://s3.amazonaws.com/dl.ncsbe.gov/Voter%20ID/Student%20Employee%20ID%20Approvals%2020190101.pdf.

[3] Indeed, Legislative Defendants' attempts to secure en banc reconsideration of the Court of Appeals' decision extended the stay by over a month.

[4] *See* Order of the Chief Justice of the Supreme Court of North Carolina (Apr. 13, 2020), https://bit.ly/3a4iWpf.

discovery requests that are already the subject of a pending motion to compel.[5] In light of these anticipated and ongoing disputes, restarting and completing discovery in seven weeks is simply impractical. And doing so in the two weeks before experts would be required to tender their reports under Legislative Defendants' proposed schedule is impossible. Thus, even under ideal circumstances, the schedule Legislative Defendants are proposing would not allow sufficient time to complete discovery and prepare this case for trial.

That brings us to the elephant in the room. As should be obvious, we are not operating under ideal circumstances. The current public health crisis has changed the calculus of what is possible, and on what timeline, for every aspect of discovery and adjudication in this case, as well as the potential implementation of SB 824.

In response to the COVID-19 global pandemic, courts all over the country have responded in unprecedented ways: by closing courthouses, delaying hearings and trials, and even prohibiting the filing of new, non-essential cases.[6] The North Carolina court system is no exception. Within the

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[5] Plaintiffs take no position on Legislative Defendants' motion to schedule a remote hearing on Plaintiffs' pending motion to compel, and defer to this Court's preferences and convenience. As Legislative Defendants suggest, however, Plaintiffs view the resolution of that motion, and the production of any related documents, as essential before any trial could be contemplated. *See* Mot. at 8–9.

[6] *See, e.g.*, Supreme Court of the United States, www.supremecourt.gov (last visited Apr. 14, 2020) (noting that the Supreme Court Building is closed until further notice); Standing Order 13 (Am.) (M.D.N.C. Mar. 30, 2020) (postponing all civil jury trials); Administrative Order of the Chief

span of three weeks, the Chief Justice of the Supreme Court of North Carolina has issued four separate orders with emergency directives, as well as a related memorandum.[7] Under these orders, nearly all proceedings and filing deadlines have been postponed until at least June 1.[8]

As the Chief Justice has recognized, these delays are necessary to protect the health and safety of the North Carolina courts and the litigants and counsel who appear before them. Accordingly, the Chief Justice has "encourage[d] all court officials to liberally grant additional accommodations to parties, witnesses, attorneys, and others with business before the courts."[9] That is all that Plaintiffs' alternative proposed schedule seeks.

Legislative Defendants' proposal disregards these orders. Legislative Defendants suggest that because the current order from the Chief Justice expires on June 1, a June 30 trial presents no problem. But even if the courts

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Administrative Judge of the Courts AO/85/20 (Apr. 8, 2020) (prohibiting new filings of non-essential matters in New York state courts).

[7] *See generally* Order of the Chief Justice of the Supreme Court of North Carolina (Mar. 13, 2020), https://bit.ly/2VoEfgb; Mem. (Mar. 15, 2020), https://bit.ly/2RzVnhG; Order of the Chief Justice of the Supreme Court of North Carolina (Mar. 19, 2020) https://bit.ly/2V4ZSD9; Order of the Chief Justice of the Supreme Court of North Carolina (Apr. 2, 2020), https://bit.ly/2XslPxE.; Order of the Chief Justice of the Supreme Court of North Carolina (Apr. 13, 2020), https://bit.ly/3a4iWpf.

[8] *See* Order of the Chief Justice of the Supreme Court of North Carolina, at 1 (Apr. 2, 2020), https://bit.ly/2XslPxE; Order of the Chief Justice of the Supreme Court of North Carolina (Apr. 13, 2020), https://bit.ly/3a4iWpf.

[9] *Id.* at 5.

are able to resume normal proceedings on June 1 (which is far from certain[10]), Legislative Defendants' schedule would require the parties and third parties to engage in significant discovery—including depositions—in the intervening seven short weeks. Asking third parties, including colleges, universities, and State agencies, to respond to discovery requests and sit for depositions in a condensed timeframe, under social distancing guidelines, while they are themselves struggling to respond to the COVID-19 emergency, is unreasonable.[11]

In sum, there is no feasible way in which discovery and trial preparation can be completed on the schedule Legislative Defendants propose, and particularly not in the midst of a pandemic. That is reason enough to deny Legislative Defendants' motion.

II. LEGISLATIVE DEFENDANTS' PROPOSED SCHEDULE IS NOT IN THE PUBLIC INTEREST

Legislative Defendants argue that public safety and the constraints of time should bend to their impractical schedule because this is an important

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[10] The Chief Justice's April 3 letter to the North Carolina State Bar acknowledged that there would be further extensions to "filing and other deadlines," and requested "patience as [the courts] determine how best to plan for the inevitable backlog that will result from these delays." *See* Letter from Cheri Beasley, Chief Justice, to Members of the Bar (Apr. 3, 2020), https://us17.campaign-archive.com/?u=c8f565c89cc1996a150dc1259&id=62296d8c48.

[11] Legislative Defendants' suggestion that all of these difficulties can be overcome through the magic of technology, Mot. at 7–8, is entirely speculative. Many witnesses may not have the technology necessary to participate in a remote hearing, much less consent to one.

case. In Legislative Defendants' view, the will of the public will be undermined if SB 824 is not implemented before the general election. Mot. at 1–2, 6–7. That is wrong.

The voters of North Carolina enacted a constitutional amendment requiring voter ID; they did not approve a mandate for the General Assembly to enact an intentionally discriminatory voter ID law like SB 824. The public interest in adjudicating the constitutionality of a voter ID statute is surely at its lowest ebb where, as here, the Court of Appeals has unanimously held that Plaintiffs have "shown a clear likelihood of success on the merits of their Discriminatory-Intent Claim for the voter-ID provisions of S.B. 824." *Holmes*, 2020 WL 768854, at *17; *see also* Order, Case No. 19-762 (N.C. Ct. App. Mar. 24, 2020) (denying reconsideration en banc). Legislative Defendants do not explain, because they cannot, why the public interest is served by rushing to try to implement a law that is likely to be deemed unconstitutional.

Legislative Defendants' public interest arguments fall flat for another reason: even if Defendants were to succeed at trial, implementing SB 824 before the election would not be possible. The United States District Court for the Middle District of North Carolina has *also* entered an injunction barring SB 824 from taking effect before the general election. *See N.C. State Conf. of the NAACP* v. *Cooper*, Case No. 18-cv-1034, 2019 U.S. Dist. LEXIS 222874 (M.D.N.C. Dec. 31, 2019). And trial in *that* case is not scheduled until January 2021—fully consistent with the schedule Plaintiffs propose. *See* Notice, Dkt.

No. 130, *N.C. State Conf. of the NAACP* v. *Cooper*, Case No. 18-cv-1034 (M.D.N.C. Feb. 20, 2020) (setting trial for the January 4, 2021 master calendar term). Thus, a victory for Legislative Defendants in July 2020 would not change the status quo: the federal injunction would still bar the implementation of SB 824 in November. Taxing the resources of this Court, the parties, and third parties to race to a trial that will not change the status quo no matter its outcome is not in anyone's interest, much less the public's.

Just the opposite. The best Legislative Defendants can achieve with their proposed schedule is not the implementation of SB 824 for the general election, but voter confusion. Multiple trials, and the possibility of divergent outcomes, could lead poll workers to mistakenly believe they should implement SB 824—though it will remain under federal injunction—and deter confused voters from even trying to cast a ballot. That would undermine, not promote, the public interest.

Finally, even if Defendants succeed in overturning the federal injunction before the general election—an outcome speculative at best—trying this case in July would still leave the State with insufficient time and resources to implement SB 824 and adequately educate voters about its requirements, particularly when faced with the unprecedented challenge of conducting a presidential election during a global pandemic. Legislative Defendants admit that the process of implementation would be time and labor intensive. *See* Mot. at 6. SB 824 calls for robust voter education efforts—all of which have

been stalled since SB 824 was first enjoined in December. Those efforts cannot practically be restarted and completed with less than four months until Election Day, and even less time before the start of absentee voting.

Indeed, even the General Assembly has acknowledged that four months to implement SB 824 is untenable—under normal circumstances. After SB 824 was enacted in 2018, the legislature voluntarily suspended its application to special congressional elections scheduled for September 2019, citing concerns about the State's ability to uniformly implement the law's requirements. *See* An Act to Delay the Implementation of the Regulatory Requirements of S.L. 2018-144 in Order to Ensure the Efficient Administration of Unexpected Special Elections, 2019 N.C. Sess. Laws 4. If ten months was not enough time to implement SB 824 back then, four months is woefully inadequate now—particularly in the midst of the COVID-19 emergency.

Consider a few practical implications. Should quarantine continue past June, as is entirely possible,[12] voter education efforts will be hamstrung by limitations on public gathering. Voter outreach often includes notices in public spaces like libraries—now closed—or presentations at meetings of community

[12] National Institute of Allergy and Infectious Diseases Director Anthony Fauci has stated: "It could be anywhere from four to six weeks to up to three months . . . but I don't have great confidence in that range." *See* Ed Yong, *How the Pandemic Will End*, The Atlantic (Mar. 25, 2020), https://www.theatlantic.com/health/archive/2020/03/how-will-coronavirus-end/608719/. *See also* Joe Pinsker, *The Four Possible Timelines for Life Returning to Normal*, The Atlantic (Mar. 26, 2020), https://bit.ly/2yXBtXE.

groups—now forbidden.[13] Legislative Defendants have offered no evidence, other than unsubstantiated optimism, that it is even possible to implement SB 824 and provide adequate voter education between July and November. And State Defendants themselves are unable to predict that it is logistically possible to do so on this timeline, under the current circumstances. *See* State Defs.' Response to Legislative Defs.' Mot. for Entry of a Case Mgmt. Order at 2 (Apr. 14, 2014) ("State Defs.' Response") (explaining that implementation activities would need to begin by early July—not accounting for voter education, and not accounting for disruption due to the pandemic).

Even if it were possible for the State to engage in voter education efforts during this time, the State's resources are better and more appropriately being diverted to responding to the current crisis, and the possibility that alternatives to in-person voting may be required in November due to COVID-19.[14] As the State Defendants detail in their response, the pandemic has presented serious logistical challenges. *See generally* State Defs.' Response. Just last week, the Executive Director of the State Board of Elections asked lawmakers to enact fifteen proposed changes to North Carolina's election laws

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[13] *See* N.C. Exec. Order No. 121 (Mar. 27, 2020), https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf.

[14] *See, e.g.*, Danielle Battaglia, *Voting by mail, Election Day holiday recommended for N.C.'s November election*, Winston-Salem J. (Apr. 10, 2020), https://bit.ly/2XwjyBB.

because the Board is "planning for a pandemic-infested election."[15] The Board of Elections is also preparing for a troubling shortfall in the number of poll workers available,[16] which will result in longer lines, and increased health risks—concerns that would be exacerbated should poll workers be saddled with the additional burden of checking for voter ID and administering a high number of reasonable impediment ballots or provisional ballots. Adding additional ID requirements to election officials' plates will not serve the public interest: it will instead ensure disenfranchisement and the spread of disease.

Furthermore, even assuming the State could successfully implement SB 824 and educate voters in under four months, North Carolina voters may not be able to obtain ID in time to vote. Legislative Defendants have argued that SB 824 is constitutional precisely because it contains provisions permitting North Carolina residents to obtain "free" ID. Setting aside the myriad substantive problems with this argument, *see, e.g.*, Pls.' Opp'n to Defs.' Mots. to Dismiss the Compl. at 9–11, it is almost meaningless under the current circumstances. SB 824 provides for "free" ID from North Carolina DMVs and County Boards of Elections. But some DMV offices are closed during the pandemic—and those that remain open are operating on an

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[15] *See id.*; *see also* Recommendations to Address Election-Related Issues Affected by COVID-19, N.C. State Bd. of Elections (Mar. 26, 2020), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20Legislative%20Recommendations_COVID-19.pdf ("SBOE Recommendations").

[16] *See* SBOE Recommendations, *supra* n.15; *see also* State Defs.' Response at 3.

appointment-only basis, with limited availability.[17] And nearly all of the County Boards of Elections are closed until further notice.[18] Moreover, if a North Carolina voter needs to obtain predicate documentation, such as a birth certificate, she will face additional hurdles: N.C. Vital Records has suspended all in-person service, and has warned of significant delays. Standard orders for birth certificates pre-dating 1971 may now take six to eight weeks.[19] These delays may get worse before they get better. And even if these services do re-open before the general election, they will be backed up after weeks or months of closure, creating additional barriers to obtaining ID and to voting. Voters thus cannot avail themselves of options for "free" ID when the relevant offices are closed and North Carolina residents are under a "stay-at-home" order. Legislative Defendants' arguments about the feasibility of implementation—like their arguments about the feasibility of their proposed schedule—are illusory at best.

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[17] *See* NCDMV Services in Response to COVID-19, N.C. Dep't of Transp., https://bit.ly/2xtNWBZ (last visited Apr. 11, 2020).

[18] *See* County Board of Elections Closures/Change in Hours, N.C. State Bd. of Elections (Apr. 8, 2020), https://s3.amazonaws.com/dl.ncsbe.gov/Outreach/Coronavirus/Coronavirus_CBE_Closures.pdf.

[19] *See* Vital Records, NCDHHS, https://vitalrecords.nc.gov/ (last visited Apr. 11, 2020).

* * *

Legislative Defendants have set forth no compelling reason to hold a trial before the general election. And they have offered no rationale for holding the parties and this Court to an unreasonable and infeasible schedule. The prudent course of action is to defer entering a schedule until the worst of the pandemic has passed, and there is greater clarity on what timeline will be reasonably feasible. Plaintiffs agree with Legislative Defendants that this case "is one of the most consequential civil matters pending in the North Carolina court system." Mot. at 6. And that is precisely why the parties cannot hasten to trial on an incomplete discovery record. This case is too important to the voters of North Carolina to give them short shrift.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Legislative Defendants' motion for entry of a case management order.

Respectfully submitted this the 14th day of April 2020.

By: /s/ Jeffrey Loperfido
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Opposition to Legislative Defendants' Motion for Entry of a Case Management Order and for Scheduling a Remote Hearing on Plaintiffs' Motion to Compel was served upon all parties by electronic mail addressed to the following:

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Respectfully submitted this the 14th day of April, 2020.

/s/ Jeffrey Loperfido
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Southern Coalition for Social Justice

EXHIBIT 1

JOSH STEIN
ATTORNEY GENERAL

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October 21, 2019

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RE: *Jabari Holmes et al. v. Timothy K. Moore, et al.*
Wake County File No. 18 CVS 25292

Dear Mr. Loperfido:

I write on behalf of certain constituent institutions of the University of North Carolina ("UNC") on whom you served a subpoena in the above-referenced matter. My records reflect that the following institutions received a subpoena from you by mail: Appalachian State University, East Carolina University, Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical State University, North Carolina Central University, North Carolina State University, University of North Carolina at Asheville, University of North Carolina at Chapel Hill, University of North Carolina at Charlotte, University of North Carolina at Greensboro, University of North Carolina at Pembroke, University of North Carolina School of the Arts, University of North Carolina Wilmington, Western Carolina University, and Winston-Salem State University (collectively, "the subpoenaed universities"). Pursuant to Rule 45(c) of the North Carolina Rules of Civil Procedure, this letter provides the subpoenaed universities' written objections.

The subpoenaed universities have grave concerns about the scope of the subpoenas and the burden they impose. As a preliminary matter, the subpoenas fail to provide reasonable time for compliance. The subpoenaed universities received your subpoena on varying dates between October 10 and October 17. Each subpoena demands compliance by October 23, 2019 — less than two weeks after the earliest service date. The subpoenas demand a variety of data, information, and documents, including an expansive array of "communications" from a wide-range of potential custodians. Under any circumstance, it is unreasonable to expect sixteen

university institutions to collect, review, and produce information to such broad requests in a matter of days.

It is my understanding that trial of the underlying matter has been stayed and that the trial court has not issued a discovery scheduling order. Thus, there seems to be no reasonable basis for imposing a compressed time restriction, and the burdens that creates, on the subpoenaed universities.

Moreover, any information provided by October 23 is likely to become obsolete in the coming weeks. Your subpoenas seek a variety of information about the process by which the subpoenaed universities issue photo identification cards and about the number and demographics of persons who have been issued photo identification approved by the North Carolina State Board of Elections ("NCSBE") pursuant to N.C.G.S. §163A-1145.2 and §163A-1145.3.

As you are aware, the relevant statutes were amended in June of this year to allow the universities additional time to submit their university-issued identification cards to the NCSBE for approval as voting identification. The submission deadline is only weeks away, and the NCSBE must issue approvals or denials by December 1.

Many of the subpoenaed universities will submit renewed applications to the NCSBE in the next few weeks. If those applications are approved, information responsive to your subpoenas will be vastly different from — indeed, will supersede and moot — information that may be currently responsive. The subpoenaed universities object to providing obsolete information on the grounds that doing so subjects them to undue burdens and expenses that are unreasonable, unnecessary, and oppressive.

As an additional matter, the timing of and deadlines imposed by your subpoenas raise the burden and expense of production and lowers the reasonableness of the subpoenas because the NCSBE will imminently review and consider the universities' renewed applications and because of the current state of your litigation, in which trial appears to be stayed.

The subpoenaed universities are concerned that responding to your subpoenas by the requested deadline (October 23) will lead to a second round of requests and responses after the NCSBE has reviewed their renewed applications. They reasonably seek to avoid engaging in duplicative, unnecessary discovery. By seeking to avoid duplicative discovery, the subpoenaed universities in no way concede that your requests are otherwise appropriately tailored so as to not constitute an unreasonable, oppressive, or undue burden or expense. Even after the NCSBE issues its decision with regard to the universities' renewed applications, the subpoenaed universities preserve and do not waive their right to object to the scope, proportionality, and relevance of information requested in your subpoenas and to the burden and expense associated with responding.

The subpoenaed universities further object to the extent your subpoenas seek disclosure of information about UNC, its constituent institutions, and other third parties (such as university students and employees) that is made confidential by State or federal law, including but not limited to the North Carolina Human Resources Act and the federal Family Educational Records Privacy Act as detailed below. Further, the subpoenaed universities object to the extent your subpoenas seek disclosure of information protected by the attorney-client privilege and the work product doctrine.

The federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, 34 C.F.R. Part 99, protects the privacy of student education records and prohibits the disclosure of personally identifiable student information except in limited circumstances and under certain conditions as specifically prescribed by federal law and regulation. FERPA applies to all institutions that receive federal funding, including the subpoenaed universities.

I understand you believe your subpoenas do not implicate FERPA. However, the subpoenaed universities are responsible for administering their FERPA obligations and any consequences for a violation will fall on them. Notably, the cross-tabulated data you have requested (Request 5) may indeed require the disclosure of FERPA protected information. The unnecessarily compressed deadline imposes an unreasonable burden on the subpoenaed universities to thoughtfully consider whether your requests implicate FERPA and, if so, to take appropriate action to fulfill their statutory obligations.

Likewise, in addition to confidential student information, the subpoenas seek confidential personnel information protected from public disclosure by federal privacy law and by Chapter 126 of the North Carolina General Statutes. *See* N.C.G.S. §§ 126-23; 126-24 (providing that personnel information except for certain statutorily enumerated categories of information "is confidential and shall not be open for inspection and examination"). Disclosure of such protected information without a protective order in place is a misdemeanor. *See* N.C.G.S. § 126-27.

I am aware that the parties to the litigation have entered into a consent protective order governing the disclosure of confidential information. However, and particularly given the current procedural posture of the litigation and the vast scope of information sought to be produced, the subpoenaed universities have concerns about the extent to which the subpoenas and consent protective order provide adequate protection against an inadvertent violation of state and federal law. The penalties for violating these laws are severe and far reaching. It is unreasonable to expect the subpoenaed universities to proceed hastily or without adequate protection under these circumstances.

The subpoenaed universities further object, on the grounds of undue burden, undue expense, unreasonableness and oppression, to the extent your subpoenas seek information that is readily available from a party to the litigation, like the NCSBE, or in the public domain. For instance, your subpoenas seek documents "relating to the process for requesting ID approval" from the NCSBE (Request 8). To the extent this request seeks copies of any applications the subpoenaed universities have submitted to the NCSBE or other correspondence with the NCSBE, those documents are readily available from the NCSBE.

To the extent Request 8 seeks a broader scope of documents not readily available from the NCSBE, that scope is not clear from the face of the request and, most likely, extends to irrelevant information that is disproportionate to the needs of the case. It bears noting that the underlying litigation seeks to litigate, and in some ways vindicate, the perceived burden on universities to comply with the statutory approval process under N.C.G.S. §163A-1145.2 and §163A-1145.3. To the extent responding to your requests intensifies that burden, the subpoenas are unjustified, oppressive, and unreasonable. This is particularly true for any university that has already obtained approval from the NCSBE or that will obtain approval in the near future.

Likewise, your subpoenas seek information that is readily available in the public domain. Each of the subpoenaed universities publishes detailed statistical data and analytics about students, faculty, and staff. The subpoenas make no reference to the wide variety of information that is publically available, or otherwise explain why such information is insufficient for use in the underlying litigation.

Finally, the subpoenaed universities object to the extent your requests are vague and ambiguous. Many of your requests use terms that are not defined and are susceptible to multiple interpretations. For example, Request 4 seeks information about the "residency status" of "students and/or employees." The term "residency status" is not defined and your subpoena does not otherwise acknowledge that the term "resident" can have different meanings when used for different purposes. The standard for establishing residency for purposes of voting is not the same as establishing residency for purposes of qualifying for in-state tuition.

Several other terms and phrases are similarly vague and ambiguous (*e.g.* "citizenship status," "age," "student," "employee"). The subpoenaed universities offer this non-exhaustive list for illustrative purposes only. In doing so, they do not waive their right to object to any other term or phrase that is vague or ambiguous in the context of your subpoena.

For all the reasons stated above, the subpoenaed universities object to each of your requests because they fail to allow reasonable time for compliance, require disclosure of privileged and other protected material, are unduly burdensome, expensive, and otherwise unreasonable and oppressive.

As a separate (but related) matter, I note that the North Carolina School of Science and Mathematics ("NCSSM") has not been served with a subpoena. NCSSM preserves its right to object to any forthcoming subpoena. To the extent that you believe NCSSM has been properly served, then it objects to its subpoena on the same grounds described above.

Subject to these objections, the subpoenaed universities are willing to cooperate with you in good faith, and I am hopeful that we will be able to work together to resolve these issues. That said, I am aware that you have subpoenaed a number of other state agencies and have requested information that overlaps and duplicates your requests to the subpoenaed universities. I am hopeful that we can resolve any issues in a coordinated and efficient manner that does not require the subpoenaed universities to unnecessarily duplicate efforts. I look forward to hearing from you.

Sincerely yours,

Nora F. Sullivan

Nora F. Sullivan
Assistant Attorney General

cc: Andrew J. Ehrlich
Jane O'Brien
Nicole Moss
Nathan Huff
Olga E. Vysotskaya de Brito
Clients (via email)

EXHIBIT 2

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 18-CVS-15292

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, and PAUL KEARNEY, SR.,

Plaintiffs,

vs.

TIMOTHY K. MOORE, *in his official capacity as Speaker of the North Carolina House of Representatives;* PHILIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate;* DAVID R. LEWIS, *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session;* RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session;* THE STATE OF NORTH CAROLINA; *and* THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

RESPONSES AND OBJECTIONS OF SAINT AUGUSTINE'S UNIVERSITY TO THIRD PARTY SUBPOENA FOR DOCUMENTS

Pursuant to Rule 45(c)(3) of the North Carolina Rules of Civil Procedure, non-party Saint Augustine's University ("the University") hereby objects to the subpoena to produce documents issued by the Superior Court for the County of Wake (the "Subpoena") in the matter entitled *Jabari Holmes et al. v. Timothy K. Moore et al*, 18 CVS 15292 (the "Litigation"). Plaintiffs Jabari Holmes, Fred Culp, Daniel Smith,

Brendon Jaden Peay, Shakoya Carrie Brown, and Paul Kearney, Sr. (the "Plaintiffs") served the subpoena on the University by mail on October 7, 2019. The University responds to the subpoena as follows:

GENERAL OBJECTIONS

1. The University objects to the manner of service because Plaintiffs served the University's registered agent—Kyle Brazile—at his home address, rather than the address listed for the University on the website for the North Carolina Secretary of State.

2. The University further objects to the Subpoena because the University understands that the Litigation is currently stayed and the University should not—as a third party—be required to respond to a Subpoena until the Court lifts the stay.

3. The University objects to the Subpoena to the extent that it may be construed to request privileged communications with counsel concerning this or other ongoing litigation, the identity of information or documents created or prepared in anticipation of litigation or for trial, or other information or documents that are protected by the attorney-client and/or work-product privileges, or are otherwise not subject to discovery under the North Carolina Rules of Civil Procedure and/or other applicable law.

4. The University objects to the Subpoena to the extent that it seeks to define terms and/or characterize evidence in the Litigation. To the extent the University adopts any terms used in this Subpoena, such adoption is solely limited to

the objections and responses herein, and does not constitute an admission of law or fact by the University.

5. The University objects to the Subpoena to the extent that it seeks to impose a duty to respond beyond what is required by the North Carolina Rules of Civil Procedure and/or applicable law.

6. The University objects to the Subpoena to the extent that it calls for information or the identification of documents that are not within the applicable scope of discovery in the Litigation, are not relevant to the subject matter of the Litigation, and/or are not proportional to the needs of the case, particularly in light of the Parties' obligations to take affirmative steps to avoid imposing undue burden and expense on a third party. The University further objects to the Subpoena to the extent that it calls for information which is not available after reasonable inquiry.

7. The University objects to the Subpoena to the extent that it is overly broad or overly inclusive and/or calls for extensive research, investigation, information, or identification of documents which would subject the University to annoyance, embarrassment, oppression, harassment or undue burden or expense, including, without limitation, requests that require production of "all," "each" or "any" documents or testimony thereof.

8. The University objects to the Subpoena because it fails to allow reasonable time for compliance and, as noted above, requires the University to respond to the Subpoena while the Litigation has been stayed.

9. The University objects to the Subpoena to the extent that it is vague, indefinite, uncertain, ambiguous, incomprehensible and/or confusing because it contains undefined or ill-defined terms, contains incorrect factual assumptions, or fails to describe with reasonable particularity the information sought.

10. The University objects to the Subpoena to the extent that it requires the University to take action other than a reasonable search for documents responsive to the requests maintained in its possession, custody, or control in locations where such documents are most likely to be found.

11. The University objects to the Subpoena to the extent it seeks production of information that is available through sources that are more convenient, less burdensome, less expensive or more appropriate than through the requests propounded. In particular, the University objects to the Subpoena to the extent it seeks publicly available information.

12. The University objects to the Subpoena to the extent that the requests seek information not in the possession, custody or control of the University, or information not owned by or belonging to the University.

13. The University objects to the Subpoena on the ground that it is significantly and unduly expensive to respond. The University reserves its right to seek a remedy for reimbursement of its expenses, including its reasonable attorneys' fees, resulting from any inspection and copying, as may be appropriate.

14. The University objects to the Subpoena to the extent it seeks information or documents protected by the Family Educational Rights and Privacy

Act, 20 USC § 1232g, 34 CF § 99 ("FERPA") and will require the University to perform an unduly burdensome notification process before providing the information.

15. The University further objects to the Subpoena's stated time for compliance.

16. The University will respond to the Subpoena as it interprets and understands it. If the Parties subsequently assert an interpretation of any request that differs from the University's understanding, the University reserves the right to supplement its objections.

SPECIFIC OBJECTIONS

1. Documents sufficient to show the number of students and/or employees who have received photo identification from You that is approved for use as photo identification to vote under N.C.G.S. 163A-1145.1.

RESPONSE:

The University objects to this Request on the grounds that it is overbroad, unreasonable, oppressive and subjects the University to an undue burden and expense, particularly in light of Plaintiffs' obligations to take reasonable steps to avoid imposing an undue burden or expense on the University, and the University's limited resources. The University further objects to this Request to the extent it requires the University to make a legal conclusion about whether a photo identification satisfies the requirements of North Carolina law. The University further objects to the Request to the extent it would require the University to create

documents that are not already within the University's possession, custody, or control.

The University further objects to this Request as overly burdensome when compared to the minimal—if any—relevance of the requested information to the Litigation: none of the plaintiffs in this case are enrolled at the University, the University is not a party, and documents showing the number of students or employees who have received IDs approved for voting is not relevant to the subject matter of the Litigation and/or not proportional to the needs of the case, especially in light of Plaintiffs' obligations to take affirmative steps to avoid imposing undue burden and expense on a third party.

2. Documents sufficient to show Your current or future processes for issuing photo identification that is approved for use as photo identification to vote under N.C.G.S. 163A-1145.1.

RESPONSE:

The University objects to this Request on the grounds that it is overbroad, unreasonable, oppressive and subjects the University to an undue burden and expense, particularly in light of Plaintiffs' obligations to take reasonable steps to avoid imposing an undue burden or expense on the University, and the University's limited resources. The University further objects to this Request to the extent it requests information in the possession, custody, or control of a party, such as the State of North Carolina. The University further objects to this Request to the extent it requires the University to make a legal conclusion about whether a photo

identification satisfies the requirements of North Carolina law. The University further objects to this Request to the extent it would require the University to create documents that are not already within the University's possession, custody, or control. The University objects to the request for documents showing hypothetical "future processes" to the extent the Request seeks to impose a continuing obligation to produce documents created in the future.

The University further objects to this Request as overly burdensome when compared to the minimal—if any—relevance of the requested information to the Litigation: none of the plaintiffs in this case are enrolled at the University, the University is not a party, and the University's process for issuing identification cards is not relevant to the subject matter of the Litigation and/or not proportional to the needs of the case, especially in light of Plaintiffs' obligations to take affirmative steps to avoid imposing undue burden and expense on a third party.

Subject to and without waiving its general or specific objections, the University states that identification cards are issued to students by campus police if the University's business office confirms that the student is current on all payments to the University. The human resources department issues identification cards to some employees, but many employees of the University do not have identification cards. The University further states that it is not presently aware of any documents detailing its current process and has no current plans to change its process for issuing IDs in the future.

3. Documents sufficient to show the number of first-year students (including graduate students) You enrolled in the summer and/or fall of 2019.

RESPONSE:

The University objects to this Request on the grounds that it is overbroad, unreasonable, oppressive and subjects the University to an undue burden and expense, particularly in light of Plaintiffs' obligations to take reasonable steps to avoid imposing an undue burden or expense on the University, and the University's limited resources. This Request is particularly difficult for the University because the University enrollment includes early college students (i.e. high school students attending the University) and students enrolled in the Cooperating Raleigh Colleges program, which permits students from nearby universities and colleges to take classes at the University; the only report that would show this information would include those students as well and would have to be manually filtered by an employee of the University.

The University further objects to this Request as overly burdensome when compared to the minimal—if any—relevance of the requested information to the Litigation: none of the plaintiffs in this case are enrolled at the University, the University is not a party, and documents showing the University's first year enrollment is not relevant to the subject matter of the Litigation and/or not proportional to the needs of the case, especially in light of Plaintiffs' obligations to take affirmative steps to avoid imposing undue burden and expense on a third party.

4. Documents sufficient to show, at an aggregate level, the demographic breakdown of students and/or employees currently enrolled and/or employed by You based on sex, citizenship status, race/ethnicity, residency status (in- or out-of-state), and age (25 and over, or less than 25).

RESPONSE:

The University objects to this Request on the grounds that it is overbroad, unreasonable, oppressive and subjects the University to an undue burden and expense, particularly in light of Plaintiffs' obligations to take reasonable steps to avoid imposing an undue burden or expense on the University, and the University's limited resources. Because the University has no centralized database with this information, the University would have to obtain the information from several different sources. The University further objects to the Request for age because the University only records dates of birth, and thus the University would have to calculate the age for every student and/or employee. The University further states it could not verify the completeness or accuracy of the information because it relies on the information supplied by students in paper applications and manually inputs some—but not all—of that data into its databases.

The University further objects to this Request because its demographic information is publicly available at

https://nces.ed.gov/globallocator/col_info_popup.asp?ID=199582

The University further objects to this Request as overly burdensome when compared to the minimal—if any—relevance of the requested information to the

Litigation: none of the plaintiffs in this case are enrolled at the University, the University is not a party, and documents showing the University's demographic breakdown is not relevant to the subject matter of the Litigation and/or not proportional to the needs of the case, especially in light of Plaintiffs' obligations to take affirmative steps to avoid imposing undue burden and expense on a third party.

5. For students currently enrolled by you, documents sufficient to show the cross-tabulation of the data responsive to Request No. 4, presented in the format reflected below:

sex	race.ethnicity	state.residence	age	number.with.qualifying.IDs
Male	Hispanic/Latino	In-State	25 and Older	NA
Female	Hispanic/Latino	In-State	25 and Older	NA
Male	Black	In-State	25 and Older	NA
Female	Black	In-State	25 and Older	NA
Male	White	In-State	25 and Older	NA
Female	White	In-State	25 and Older	NA
Male	American Indian	In-State	25 and Older	NA
Female	American Indian	In-State	25 and Older	NA
Male	Asian	In-State	25 and Older	NA
Female	Asian	In-State	25 and Older	NA

The University incorporates by reference its objections to Request No. 4. The University further objects to this Request because it asks the University to create a document that does not currently exist.

6. All databases or other documents available to the public that contain lists of current students enrolled by You.

RESPONSE:

The University objects to the Request because it seeks publicly available documents and thus the requested information is obtainable from other sources that are more convenient, less burdensome, and less expensive.

The University further objects to this Request as overly burdensome when compared to the minimal—if any—relevance of the requested information to the Litigation: none of the plaintiffs in this case are enrolled at the University, the University is not a party, and documents showing all currently enrolled students at the University are not relevant to the subject matter of the Litigation and/or not proportional to the needs of the case, especially in light of Plaintiffs' obligations to take affirmative steps to avoid imposing undue burden and expense on a third party. The University further objects to the Request because it seeks "all" documents with lists of students, which could include any document listing currently enrolled students for any purpose.

Subject to and without waiving its objections, the University states that it has no publicly available student directory.

7. All databases or other documents that contain lists of individuals currently employed by You, including the following data points pertaining to each employee:

a. First name

b. Middle name

c. Last name

d. Suffix

e. Residential Address 1

f. Residential Address 2

g. Residential City

h. Residential State

i. Residential Zip

j. Race

k. Date of Birth

l. SSN-Last-4-digits

m. NC Driver's License Number

RESPONSE:

The University objects to this Request on the grounds that it is overbroad, unreasonable, oppressive and subjects the University to an undue burden and expense, particularly in light of Plaintiffs' obligations to take reasonable steps to avoid imposing an undue burden or expense on the University, and the University's limited resources.

First, the Request seeks "all" documents that contain a list of employees with any of the data points listed without any meaningful limitation on the documents the University would have to collect, review, and potentially produce in response to the Subpoena.

Second, the University does not have this information in a centralized database and would have to collect it from several different sources, some of which only exist in paper form.

Third, providing the last four digits of employees' social security numbers would require the University to redact the first five numbers for each employee.

The University anticipates that complying with this Request would require an employee of the University to devote a minimum of 40 dedicated hours to the project.

The University further objects to this Request as overly burdensome when compared to the minimal—if any—relevance of the requested information to the Litigation: none of the plaintiffs in this case are enrolled at the University, the University is not a party, and documents showing data for all of the University's employees are not relevant to the subject matter of the Litigation and/or not proportional to the needs of the case, especially in light of Plaintiffs' obligations to take affirmative steps to avoid imposing undue burden and expense on a third party.

The University further states that it does not collect or record the race of its employees and only collects the driver's license number for those employees who are required to operate a vehicle as part of their job duties.

8. All non-privileged documents relating to the photo identification requirements of S.B. 824, including, but not limited to, documents relating to the process for requesting ID approval from the North Carolina State Board of Elections and documents reflecting communications with Your students, employees, or other universities or employers concerning the approval of Your identification cards.

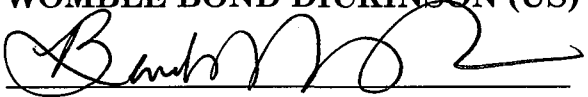
RESPONSE:

The University objects to this Request on the grounds that it is overbroad, unreasonable, oppressive and subjects the University to an undue burden and expense, particularly in light of Plaintiffs' obligations to take reasonable steps to avoid imposing an undue burden or expense on the University, and the University's limited resources. The University further objects to this Request to the extent it seeks documents that are available to parties to the Litigation, such as, for example, communications between the University and the State Board of Elections.

The University further objects to this Request as overly burdensome when compared to the minimal—if any—relevance of the requested information to the Litigation: none of the plaintiffs in this case are enrolled at the University, the University is not a party, and internal communications among or between employees or students of the University about S.B. 824 or the process for obtaining approval of the University's identification cards are not relevant to the subject matter of the Litigation and/or not proportional to the needs of the case, especially in light of Plaintiffs' obligations to take affirmative steps to avoid imposing undue burden and expense on a third party.

This, the 21st day of October, 2019.

WOMBLE BOND DICKINSON (US) LLP

By: 

Benita N. Jones, N.C. State Bar No. 40263
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jonathon.townsend@wbd-us.com
Counsel for Third Party Saint Augustine's University

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **RESPONSES AND OBJECTIONS OF SAINT AUGUSTINE'S UNIVERSITY TO THIRD PARTY SUBPOENA FOR DOCUMENTS** to the following persons via U.S. mail and electronic mail:

Allison J. Riggs
(allison@southerncoaltition.org)
Jeffrey Loperfido
(jeff@southerncoalition.org)
Gregory Moss
(greg@southerncoalition.org)
Jaclyn Maffetore
(jaclyn@southerncoalition.org)
Southern Coalition for Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707

Counsel for Plaintiffs

This, the 21st day of October, 2019.

WOMBLE BOND DICKINSON (US) LLP

By: _____

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Counsel for Third Party Saint Augustine's University

EXHIBIT 3

JOSH STEIN
ATTORNEY GENERAL

Reply to:
Joseph E. Elder
Assistant Attorney General
Human Services Section
Telephone (919) 716-6887
Facsimile (919) 716-6756
jelder@ncdoj.gov

October 21, 2019

Via U.S. Mail and Electronic Mail
Jeffrey Loperfido, Esq.
Southern Coalition for Social Justice
1415 West Highway 54, Suite 101
Durham, NC 27707
jeffloperfido@scsj.org

Re: *Holmes et al. v. Moore et al.*
Wake Co. Sup. Ct., 18-cvs-15292

Dear Mr. Loperfido:

I am writing in response to a subpoena issued by you to the North Carolina Department of Health and Human Services (hereafter "Department"). This subpoena was received in the Department's Legal Affairs office in Raleigh, NC on October 14, 2019. Please consider this letter written objection to the subpoena pursuant to N.C. Gen. Stat. § 1A-1, Rule 45(c)(3).

Some of the information sought by way of the subpoena is confidential personnel information that is not subject to disclosure. Specifically, Requests 1 and 4 of Schedule A to the subpoena seek demographic information such as age, date of birth, race, sex, driver's license number, social security number, citizenship status, residency status, and address for all employees currently employed by the Department. This information is confidential and is not subject to disclosure.

Section 126-22 of the North Carolina General Statutes excludes personnel information of current and former State employees from inspection and examination. Certain personnel information may be disclosed such as date of hire or termination, current salary, position, increases in salary, as well as reason for termination. Other information, such as demographic information, addresses, driver's license numbers, social security numbers, residency and citizenship status, is not included in the list of information that may be disclosed. Protected personnel information, such as that requested in your subpoena, is not a public record as defined by N.C. Gen. Stat. § 132-1. Anyone disclosing confidential personnel information without authorization may be convicted of a Class 3 misdemeanor and may be subject to a financial fine as provided for in N.C. Gen. Stat. § 126-27.

The subpoena also seeks a large amount of information. The Department has approximately 18,000 employees and compiling the information sought is potentially unreasonable and unduly burdensome.

In addition to the above stated objections, the Department has concerns with the procedural posture of the case. It is my understanding that the case is currently stayed pending appeal, and this raises some issues as to whether the Court can enter a proper order directing disclosure of the information you seek.

While the Department is aware of the protective order entered in the above referenced case, this protective order does not address confidential personnel information. Furthermore, as a non-party, the protective order is not binding on the Department, and the order cannot properly authorize the release of the confidential information sought. As provided for in N.C. Gen. Stat. § 126-24 (4), a party may examine and inspect confidential personnel information where a proper court order authorizes access to the information. To this end, the Department is willing to discuss with you the necessity of the confidential information you seek to the pending litigation and the possibility of obtaining a proper order that authorizes the disclosure.

For the above stated reasons, the Department objects to the subpoena and the information requested to be produced. Should you have any questions or concerns, please contact me at 919-716-6887 or John Barkley at 919-716-6858.

Thank you, in advance, for your cooperation in this matter and I would be happy to discuss this further.

Best Regards,

Joseph E. Elder
Assistant Attorney General

cc: Lisa Corbett, General Counsel
NC Department of Health and Human Services
(via email at lisa.corbett@dhhs.nc.gov)

John Barkley, Assistant Attorney General
NC Department of Justice
(via email at jbarkley@ncdoj.gov)

EXHIBIT 4

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 18-CVS-15292
JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, *and* PAUL KEARNEY, SR., *Plaintiffs,* v. TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives;* PHILLIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate;* DAVID R. LEWIS, *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session;* RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session;* THE STATE OF NORTH CAROLINA; *and* THE NORTH CAROLINA STATE BOARD OF ELECTIONS, *Defendants.*	**OBJECTIONS OF NON-PARTY DUKE UNIVERSITY TO SUBPOENA**

Pursuant to Rule 45 (c)(3) of the North Carolina Rules of Civil Procedure, non-party Duke University ("Duke") objects and responds to the subpoena dated August 26, 2019, and served upon Duke on August 29, 2019 (the "Subpoena"), as follows:

1. Duke objects to the Subpoena and its Definitions and Instructions on the grounds that they are overly broad and to the extent that they seek information protected from discovery by the attorney client privilege and the work product doctrine, and further seek protected, highly sensitive student information (including

portions of social security numbers and drivers license numbers), and no exception or waiver applies to the privilege or protection.

2. Specifically, Duke objects to the Subpoena and Definitions and Instructions because much of the data requested is protected by federal law and compliance with the Subpoena in light of those restrictions would be extraordinarily burdensome and out of proportion to the needs for the data. The Subpoena seeks information protected by the Family Educational Rights and Privacy Act, 20 USC §1232g, 34 CFR § 99 ("FERPA"). FERPA protects personally identifiable information ("PII") in students' education records, including much of the data requested in the subpoena. FERPA limits the circumstances under which Duke and other universities may disclose PII without student consent. In the case of a subpoena like the one at issue here, the law would require that Duke provide notification to students before it released the data. 34 C.F.R. 99.31(a)(9). Students, in turn, must be given the opportunity to seek with the Court "protective action". *Id.* With approximately 19,400 currently active students, the notifications to active students alone would be time-consuming, extraordinarily burdensome, and likely impossible within the timeline requested by the Subpoena.

3. Duke objects to the Subpoena and its Definitions and Instructions on the ground that they are overly broad and unduly burdensome, they are unreasonable and oppressive, they subject Duke to an undue burden and expense, and they fail to allow reasonable time for compliance. Duke is not a party to this litigation, and the requirement to search for documents and electronically stored information is overly broad, burdensome, unreasonable, oppressive, and submits Duke to undue burden and

expense. Moreover, certain of the information sought by the Subpoena, for example, the aggregate racial demographics of the student body, is publicly available, and there is no reason to subject Duke to the burden of providing Plaintiffs with information that is publicly available. In addition, a significant number of students enrolled at Duke are residents of states other than North Carolina or citizens of foreign countries and who are not eligible to vote in North Carolina.

4. Duke further objects to the Subpoena and its Definitions and Instructions as unreasonable, oppressive, and unduly burdensome and expensive to the extent that the requests therein are unlimited in time, to the extent that it requests documents "relating to" matters, to the extent that it requests all databases that contain the same information, and to the extent that the protective order in the case does not specifically permit non-parties to designate documents and information as confidential.

5. Duke further objects to the Subpoena on the ground that it is procedurally defective.

6. Without waiver of and subject to the above Objections, and with each incorporated into the following responses, Duke responds to the Subpoena as follows:

The North Carolina Board of Elections approved Duke's student identification card for use as a photo identification card to vote under N.C.G.S. § 163A-1145.1, but Duke has not issued student identification cards approved for use as photo identification to vote under N.C.G.S. § 163A-1145.1.

This the 9th day of September, 2019

WILLIAM K. DAVIS (NCSB 1117)
ALAN M. RULEY (NCSB 16407)
Attorneys for Duke University

OF COUNSEL:
BELL, DAVIS & PITT, P.A.
Post Office Box 21029
Winston-Salem, NC 27120-1029
Telephone: 336/722-3700
Facsimile: 336/722-8153

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a copy of the foregoing document upon all parties to this action by the method(s) indicated below:

NAME	METHOD
Southern Coalition for Social Justice ATTN: Jeffrey Loperfido, Esq. 1415 W. Highway 54, Ste. 101 Durham, NC 27707	Hand Delivery ☐ Facsimile ☐ U.S. Mail ☒ Email ☐

This the 9th day of September, 2019.

Alan Kelley for
William K. Davis,
Attorney for Duke University

 # 753582

EXHIBIT 5

Plaintiffs' Proposed Pretrial Schedule	
Cut-off for Document Production	August 31, 2020
Close of Fact Discovery	September 30, 2020
Expert Reports (or Supplements)	October 12, 2020
Rebuttal Expert Reports	November 11, 2020
Close of Expert Discovery	November 24, 2020
Exhibit Lists, Witness Lists, & Deposition Designations	December 3, 2020
Objections & Counter-Designations	December 21, 2020
Objections to Counter-Designations	January 6, 2021
Motions in Limine	January 15, 2021
Oppositions to Motions in Limine	January 29, 2021
Replies to Motions in Limine	February 5, 2021
Parties File Joint Pretrial Order	February 8, 2021
Final Pretrial Conference	February 10, 2021
Trial	February 17–March 3, 2021

EXHIBIT 27

STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 18 CVS 15292
JABARI HOLMES, et al., Plaintiffs, v. TIMOTHY K. MOORE, et al., Defendants.	**STATE DEFENDANTS' RESPONSE TO LEGISLATIVE DEFENDANTS' MOTION TO DISSOLVE INJUNCTION**

Defendants the State of North Carolina and the North Carolina State Board of Elections (the "State Defendants") hereby respond to the Legislative Defendants' Motion to Refrain from Entering or Dissolving the Preliminary Injunction, which was served on the parties and provided to the Court on July 9, 2020. The State Defendants oppose the Motion because (1) the Motion asks for relief that this Court may not have authority to enter, and (2) even if the Court had authority to enter the relief requested, the complexities of implementing the photo ID requirement at this time counsel against issuing this relief.

I. It Is Unclear Whether This Court Has the Authority to Amend the Decree Issued by the Court of Appeals.

The decision of the Court of Appeals in this case instructs this Court "to grant Plaintiff's [Preliminary Injunction] Motion and preliminarily enjoin Defendants from implementing or enforcing the voter-ID provisions of S.B. 824—including, specifically, Parts I and IV of 2018 N.C. Sess. Law 144—until this case is decided on the merits." *Holmes v. Moore*, 840 S.E.2d 244, 266–67 (N.C. Ct. App. 2020).

The State Defendants are aware of no law that would permit a superior court, on remand from a decision of the Court of Appeals, to amend the decree issued by the Court of Appeals.

The case law indicates that a superior court lacks such authority. *See D & W, Inc. v. Charlotte*, 268 N.C. 720, 722, 152 S.E.2d 199, 202 (1966); *Collins v. Simms*, 257 N.C. 1, 7–10, 125 S.E.2d 298, 303–04 (1962).

II. The Equities Weigh Heavily Against Implementing the Photo ID Requirement at This Time.

The State Defendants also question whether the relief requested by the Legislative Defendants would serve the interests of sound election administration and clarity for voters, at this particular point in time.

A. Dissolving the Preliminary Injunction Would Have No Practical Effect on the November 2020 Elections.

The law under challenge has also been enjoined by a federal court until that court conducts a trial in January 2021. *See N.C. State Conf. of NAACP v. Cooper*, 430 F. Supp. 3d 15, 54 (M.D.N.C. 2019); Doc. 130, *N.C. State Conf. of NAACP v. Cooper*, No. 1:18-cv-01034 (M.D.N.C. Feb. 20, 2020). The State Board has appealed that federal injunction, but the Fourth Circuit has recently indicated that the appeal will not be heard until mid-September, at the earliest. Doc. 68, *N.C. State Conf. of NAACP v. Raymond*, No. 20-1092 (4th Cir. June 12, 2020). As the State Board informed the Fourth Circuit in March, it would be too late to re-initiate the enforcement of photo ID for the 2020 election in September, in part due to the requirement to begin mailing absentee ballots on September 4, 2020, which requires significant lead-time for designing the ballot envelope, procurement, and printing. Doc. 34, *id.*; *see* N.C.G.S. § 163-229(b). With a federal injunction in place until after absentee voting for the Fall election has already begun, the dissolution of this Court's injunction *at this time* is unlikely to serve any practical purpose and may confuse voters.

B. Even if the Photo ID Law Could Take Effect for the Fall Election, the State Board Cannot Responsibly Implement It at This Time.

The State Defendants further informed this Court in April that if the State Board were to resume implementation of photo ID, it would have to start that effort in early July 2020, at the latest. State Defs.' Resp. to Legis. Defs.' Mot. for CMO at 2, *Holmes v. Moore*, No. 18 CVS 15292 (N.C. Super. Ct., Apr. 14, 2020). The early-July target date factored in the time that the design and procurement of the absentee envelopes would require,[1] along with the time required to update the code in the State Board's information management system to allow elections officials to document photo ID compliance when voters cast their ballots. *See* State Bd. Not. of Filing, Bell Aff. ¶¶ 21–22, *Holmes v. Moore*, No. 18 CVS 15292 (Wake Cty. Super. Ct. June 19, 2019). That date has now passed, making the implementation of the law infeasible for the upcoming election.

Importantly, however, that date did not factor in the myriad complications that the COVID-19 pandemic has posed for implementing photo ID in the November 2020 election. *See* State Defs.' Resp. to Legis. Defs.' Mot. for CMO, *supra*, at 2. Those complications, which were predictions in April, have become serious challenges for election administrators today.

[1] Requiring photo ID for absentee voting, pursuant to S.B. 824, would require a complete overhaul of the absentee ballot container that a voter receives from their county board and submits for voting. That is because the copy of the voter's ID or affidavit may not be inserted into the same pocket as the ballot. The voter's absentee application and witness signature must be presented with the ID or affidavit, separated from the sealed ballot, because those items must be reviewed for compliance by the county board before the ballot can be opened and counted. *See* N.C.G.S. §§ 163-229, -231, *as amended by* N.C. Sess. Law 2020-17; *id.* § 163-234(1). The extra envelopes or pockets must be custom designed to provide the proper instructions to voters so they understand which pocket is for the sealed ballot and which pocket is for the copy of their ID or affidavit. The absentee envelope for the Fall election, which does not include these features, has already been designed and provided to county boards of elections for printing and distribution. *See* Bell Decl. ¶¶ 18–19 (Doc. 50-1), *Democracy North Carolina v. N.C. State Bd. of Elections*, No. 1:20-cv-457 (M.D.N.C. June 26, 2020) (attached as Exhibit 1).

The State Board and the 100 county boards of elections have been working tirelessly to ensure that voting this Fall—whether it is absentee voting, one-stop early voting, or election day—will be conducted safely and accessibly. To that end, the State Board has issued directives to county boards to ensure that they continue to process voter registrations and ballot requests, canvass votes from the primaries earlier this year, and carry out other critical functions, while also practicing social distancing for the safety of election workers and the public. N.C. State Bd. of Elections, Numbered Memo 2020-11 (March 15, 2020), https://bit.ly/32GWbYH. The State Board has also provided detailed guidance to help county boards prepare for the public-health precautions required for in-person voting in the Fall. N.C. State Bd. of Elections, Numbered Memo 2020-12 (June 1, 2020), https://bit.ly/2CB3hD9. Such precautions require reconfiguring polling sites, identifying alternative sites, procuring protective supplies, and procuring sufficient ballots and ballot counters to meet the heavy demand for voting by mail, to name just a few examples. These efforts have been significantly aided by legislation enacted by the General Assembly earlier this summer. *See* N.C. Sess. Law 2020-17, secs. 1, 2, 2.5, 4, 5, 7, 11.1, 11.2, https://bit.ly/2OO0Kba.

County boards must also establish procedures to ensure they can timely process the large increase of mail-in ballots that are anticipated this Fall,[2] which will involve adjudicating whether each ballot meets the detailed requirements for valid absentee ballots, *see* N.C.G.S. §§ 163-229, -231, *as amended by* N.C. Sess. Law 2020-17, and providing an opportunity for voters to cure any deficiencies in the form of their mailed-in ballots, *see* Bell Decl. ¶ 17 (Doc. 50-1), *Democracy North Carolina v. N.C. State Bd. of Elections*, No. 1:20-cv-457 (M.D.N.C. June 26,

[2] *See* Jim Morrill, Coronavirus fears spark 'striking surge' of mail-in ballot requests, Charlotte Observer (July 13, 2020), https://bit.ly/32Lh1pS (linking to analysis of increase in absentee ballot requests by Professor Michael Bitzer of Catawba College).

2020) (attached as Exhibit 1).

Additionally, given the fact that many poll workers are in a high-risk category for the virus, elections officials throughout the state are working to recruit and train a new crop of poll workers. N.C. State Bd. of Elections, Election Officials Searching for Democracy Heroes, Launch New Portal (June 19, 2020), https://bit.ly/32IcBQA. This effort was similarly aided by recent legislation that provides financial incentives for poll workers. *See* N.C. Sess. Law 2020-71, https://bit.ly/39hXiz6. And last week, the Executive Director of the State Board issued an emergency order requiring county boards to take specific actions to reduce crowding at voting sites and thereby minimize the risk of spreading COVID-19. N.C. State Bd. of Elections, Emergency Order at 6–8 (July 17, 2020), https://bit.ly/3hmNoPx.

These efforts are necessary to ensure safe and accessible voting in current environment. But they also impose new and unanticipated strains on the state's elections workers. Introducing the implementation of photo ID on top of these responsibilities, at this late stage, would lead to confusion among poll workers and voters, and it would jeopardize the ability of elections officials to conduct elections without disruption.

The public health emergency has also undermined the ability of elections officials to carry out the mandates of the photo ID law.

S.B. 824 requires county boards to print and issue free voter IDs to voters, S.B. 824, sec. 1.1(a), but such voters must appear in person to have their photograph taken, 08 NCAC 17 .0107(a)–(b). Numerous county board offices were closed to the public following the initial outbreak of COVID-19, and many have remained closed to visitors or have limited access to the office. *See* N.C. State Bd. of Elections, County Board of Elections Closures/Change in Hours (July 20, 2020), https://bit.ly/2Ctp8wA. Similarly, S.B. 824 requires the state Division of Motor

Vehicles (DMV) to issue free photo ID that can be used for voting. S.B. 824, sec. 1.3. But many DMV offices remain closed or are operating by appointment only. *See* N.C. Div. of Motor Vehicles, NCDMV Services in Response to COVID-19 (July 21, 2020), https://bit.ly/32K4brS; N.C. Div. of Motor Vehicles, DMV Office Locations (June 24, 2020), https://bit.ly/30BG2Rx. These closures of county board offices and DMV offices may present difficulties for certain voters who do not currently have appropriate ID to have access to the free IDs that the statute requires.

Additionally, in compliance with the federal-court injunction, the State Board has not educated North Carolina voters on how to comply with the photo ID mandate, and county boards of elections have not trained poll workers on how to enforce the law's requirements and exceptions. *See N.C. State Conf. of NAACP*, 430 F. Supp. 3d at 54. Restarting the process now, at this late stage, may be ineffective—or worse, may engender increased confusion among voters and poll workers—undermining the statute's mandate to carry out voter education and training. *See* S.B. 824, sec. 1.5(a).

Finally, voters throughout the state will vote in person this Fall wearing "cloth face covering[s]," pursuant to CDC recommendations and the Executive Director's Emergency Order regarding the conduct of voting. *See* Ctrs. For Disease Control and Prevention, Considerations for Election Polling Locations and Voters (June 22, 2020), https://bit.ly/3jwVRkX; N.C. State Bd. of Elections, Emergency Order, *supra*, at 3, 7. Mask-wearing would complicate the ability to enforce S.B. 824's requirement for poll workers to determine whether the voter resembles the photo on their identification and will require poll workers to undergo significant additional training for ensuring photo ID compliance according to the CDC guidelines. S.B. 824, sec. 1.2, § 163A-1145.1(b); 08 NCAC 17 .0101(c)(3); Ctrs. For Disease Control and Prevention, *supra*.

Accordingly, even assuming the Court has the authority to modify the mandate of the Court of Appeals, which is dubious, the equities of the circumstances counsel against dissolving the preliminary injunction before the November 2020 election.

Respectfully submitted this the 24th of July, 2020.

JOSHUA H. STEIN
Attorney General

/s/ Paul M. Cox
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Counsel for the State and the State Board Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon all parties by electronic mail, by consent, addressed to the following:

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Respectfully submitted this the 24th of July, 2020.

/s/ Paul M. Cox
Paul M. Cox

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Civil Action No. 1:20-cv-457

DEMOCRACY NORTH CAROLINA, *et al.*, Plaintiffs, v. THE NORTH CAROLINA STATE BOARD OF ELECTIONS; *et al.*, Defendants, and PHILIP E. BERGER, etc., *et al.*, Intervenors.	)	**DECLARATION OF KAREN BRINSON BELL**

I, Karen Brinson Bell, declare, that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old. I am competent to give this declaration. I have personal knowledge of the facts set forth in this affidavit and have consulted senior-level staff in preparation thereof.

2. I currently serve as the Executive Director of the North Carolina State Board of Elections ("State Board"). I became Executive Director of the State Board effective June 1, 2019. My statutory duties as Executive Director include staffing, administration, and execution of the State Board's decisions and orders. I am also the chief State election official for North Carolina under the National Voter Registration Act

of 1993. As Executive Director, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county boards of elections ("county boards"), and as Executive Director, I provide guidance to the directors of the county boards.

3. Prior to my employment as an Executive Director of the State Board, I spent a significant portion of my professional life working on a wide scope of issues related to election administration, including in the State of North Carolina.

4. I served as an Election Administration Consultant for the Ranked Choice Voting Resource Center from October 2016 until May 2019. I worked part time for the Center from April 2016 to October 2016. Prior to that, I was employed as a Business Development Director/Project Management Director at EasyVote Solutions from April 2015 until September 2016, and as a Director of Elections for the Transylvania County Board of Elections from March 2011 until March 2015. I also worked for the State Board as a District Elections Technician from February 2006 until March 2011.

5. Because the COVID-19 pandemic impacts the conduct of elections and daily operations for the State Board and county boards of elections, the State Board has taken numerous actions in recent week and months to respond to the unfolding pandemic and ensure voters feel safe when they cast their ballot this year, whether they vote on Election Day, at one-stop early voting, or absentee by mail.

6. The first case of COVID-19 was identified in North Carolina on March 3, 2020, the day of North Carolina's primary election. As Executive Director, I issued

Numbered Memo 2020-11[1] on March 15, 2020, to the 100 county boards of elections in North Carolina, updating them on State Board's responses to the COVID-19 outbreak and providing recommendations to ensure that elections administration could proceed. The memo recommended that county boards conduct board meetings telephonically, if possible, and indicated that I would be extending the deadline for county boards of elections to sort ballots by precinct under G.S. § 163-132.5G by at least 30 days. It also announced the creation of a COVID-19 Task Force, which was formed to discuss both short-term and long-term needs related to the pandemic and voting. The COVID-19 Task Force is composed of state and county elections officials who have provided input regarding legislative recommendations to administer elections during the pandemic, necessary measures for the expected increase in mail balloting as well as efforts that must be taken to ensure the health and well-being of voters and election workers during in-person voting, and considerations for uses and allocation of federal funding among the county boards of elections.

7. On March 12, 2020, I adopted an amendment by emergency rule, effective March 20, 2020, to 08 NCAC 01 .0106 ("Emergency Powers Rule"), to clarify that a disease epidemic such as COVID-19 fits the definition of a natural disaster under the Emergency Powers Rule and N.C.G.S. 163-27.1 ("Emergency Powers Statute"). The existing permanent rule already defined "natural disaster" as a "[c]atrastrophe arising

[1] State Board of Elections, Numbered Memo 2020-11, March 15, 2020, available at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-11_Coronavirus%20Response.pdf.

from natural causes," but the Emergency Powers Rule clarified that this phrase includes "a disease epidemic or other public health incident that makes it impossible or extremely hazardous for elections officials or voters to reach or otherwise access the voting place or that creates a significant risk of physical harm to persons in the voting place, or that would otherwise convince a reasonable person to avoid traveling to or being in a voting place." The change also clarified that any such "[c]atastrophe arising from natural causes" must have resulted in either a disaster declaration by the President of the United States or the Governor, a national emergency declaration by the President, or a state of emergency declaration issued under N.C.G.S. 166A-19.3(19). I simultaneously commenced the temporary rulemaking process for a temporary rule with identical language, pursuant to N.C.G.S. 150B-21.1A(a). The Rules Review Commission did not approve the temporary rule and returned it to the agency on June 12, 2020. Pursuant to N.C.G.S. 150B-21.1A, the emergency rule then expired on the same date.

8. On March 20, 2020, as Executive Director I issued an order pursuant to the Emergency Powers Rule and the Emergency Powers Statute rescheduling the Republican second primary in Congressional District 11 from May 12, 2020 to June 23, 2020. The order stayed consideration of election protests until May 20, 2020, extended the deadline for county boards to sort ballots by precinct to May 20, 2020, required county board offices that are closed to provide a secure lock-box for the public to deposit election-related forms, and suspended the requirement to keep a log of absentee request forms dropped off in person. The order also permitted the transfer of voters to a non-adjacent precinct if the transfer was related to the COVID-19 pandemic. For the second primary,

voters in 11 precincts were transferred to non-adjacent precincts, reflecting a total of 9,019 eligible voters transferred.

9. On March 26, 2020, I provided recommendations[2] to address election-related issues affected by COVID-19 to the North Carolina General Assembly and the Governor. The recommendations included allowing absentee requests to be submitted by fax or email, establishment of an online portal for absentee requests, permitting postage to be pre-paid for absentee ballots, and reducing or eliminating the witness requirement for elections conducted in 2020. In light of the current restrictions on visitors to care facilities, I suggested temporarily modifying the prohibition on employees of hospitals, nursing homes, and other congregate living facilities to allow these individuals to assist voters and serve as witnesses. I also recommended that county boards of elections be allowed flexibility to determine their sites and hours for early voting to allow a tailored response to the COVID-19 pandemic in each county.

10. On June 1, 2020, I issued Numbered Memo 2020-12,[3] which provided guidance to the 100 county boards of elections conducting in-person voting for the June 23, 2020 second primary in Congressional District 11 and new primary in Columbus County. The memo established policies to provide a safe experience for voters and elections officials during the COVID-19 pandemic, including requiring pollworkers and early voting workers to wear PPE, including masks, face protection, and gloves, when

[2] State Board of Elections, Letter, March 26, 2020, available at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/SBE%20Legislative%20Recommendations_COVID-19.pdf
[3] State Board of Elections, Numbered Memo 2020-12, June 1, 2020, available at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-12_In-Person%20COVID%20Response%20June%2023%20Election.pdf

appropriate, and to self-screen for symptoms prior to reporting to work. Voters who presented to vote were provided with masks, if they needed one, hand sanitizer, and single use pens and cotton swabs, if voting by ballot marking device. Routine cleanings took place throughout the day at each voting place, and social distancing measures were in place as recommended by the CDC. County boards of elections were encouraged to assign additional roles for precinct officials, including interior line control worker, door control worker, exterior line control worker, and sanitizer worker.

11. Pursuant to N.C.G.S. 163-278.69, the State Board will send a Judicial Voter Guide to every North Carolina household prior to the November general election. The agency is making plans to include a blank absentee request form in the Guide. The form will be on heavier weight paper than the rest of the guide, which is necessary to ensure the form can be readily scanned into the Statewide Elections Information Management System (SEIMS). The Guide will include a link to the absentee request portal that will be available beginning September 1, 2020, as required by Session law 2020-17. It will also inform voters about recent changes to the law and measures that are being taken to ensure voter safety for in-person voting.

12. During a bimonthly webinar with directors of the county boards of elections on June 10, 2020, I announced my commitment to maintaining election-day precincts as they are and avoiding precinct mergers whenever possible for general elections. As discussed above, precinct transfers were permitted in some cases for the Republican second primary in Congressional District 11. I permitted these changes because of the low turnout expected for primary and because of the time frame in which

the election was taking place, which in some cases made it difficult to secure alternative sites that would allow for social distancing needs. For the general election, it will be important to keep open as many precincts as possible to prevent long lines and to allow for greater social distancing. If a polling place needs to be shut down due to a case of COVID-19, there will be a lessened impact if there are greater number of voting places. Reducing the number of individuals who vote at a given site will also reduce the potential exposure to COVID-19. Additionally, with the passage of Session Law 2020-17, county boards of elections now have greater flexibility to allow non-resident precinct officials to serve, which will help ensure that each polling place remains open even if some current precinct officials decline to serve.

13. For the same reasons, in Numbered Memo 2020-13, issued on June 24, 2020, I strongly encouraged county boards of elections to increase the number of one-stop sites for the general election.[4] Session Law 2020-17 appropriates funds that may be used for one-stop, and the CARES Act permits funds to be used for additional one-stop sites that are needed due to COVID-19. I stressed that presidential elections have high turnout, and that other states conducting recent elections have experienced long lines. In order to reduce the potential to spread the virus, and because voting may take slightly longer due to the precautions in place, I recommended that county boards also conduct one-stop voting on each day of the 17-day early voting period, including Saturdays and

[4] State Board of Elections, Numbered Memo 2020-13, June 24, 2020, available at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-13_One-Stop%20Planning%20for%202020%20General%20Election.pdf.

Sundays.

14. On June 19, 2020, the State Board announced in a press release that it was seeking "democracy heroes" to serve as election officials at early voting and on Election Day. A link[5] is available on the State Board's website for individuals to express their interest, which will be provided to the appropriate county board of elections. This effort is part of a broader effort to recruit pollworkers to serve in 2020 general election. Other efforts will include recruiting from veterans' groups and public and private colleges and universities.

15. The State Board will be launching a new website, which is anticipated to go live in August 2020. The website will present information to voters in a clear, simple manner and highlight key topics, including information about voting during the pandemic and how voters can register and vote in person and absentee. The website redesign has been underway since March 2020. The new site will be hosted by the North Carolina Digital Commons in partnership with the North Carolina Department of Information Technology, who are providing in-depth assistance with the redesign.

16. If a precinct needs to be consolidated or a polling place relocated for the 2020 general election, county boards of elections will mail notice to affected voters at least 30 days prior to the election. N.C.G.S. 163-128(a). If a one-stop site or polling place needs to be closed or relocated while voting is already ongoing, notice would be

[5] State Board of Elections, Serve Democracy - Work in Elections Online Form, last accessed June 26, 2020, available at https://forms.office.com/Pages/ResponsePage.aspx?id=3IF2etC5mkSFw-zCbNftGbSu5CXmv0RFtQ9-DB1johdUOU4xMU5CMzVVVTJBTVdDN0RGWFBDRkFYVy4u

posted on the door and voters directed to the new voting location. Depending on the circumstances, a precinct official may also be stationed outside of the old voting place to help direct voters to the proper new voting location. Each voting place is required to have an emergency backup plan if voting cannot continue in the usual location. Additionally, I have directed State Board staff to develop an enhancement to SEIMS that would allow voters from one precinct to vote at another precinct on Election Day if voters had to be transferred due to an emergency. This would allow voting to continue even if the precinct officials at the old precinct could no longer serve due to COVID-19 exposure.

17. The State Board and I, as Executive Director, will continue to monitor the situation with the COVID-19 pandemic so that we can plan and exercise our authority to ensure that voters and pollworkers are safe, that voters are able to vote using their preferred method, and that elections can be administered in an orderly manner. Additional guidance will be issued to county boards of elections, including guidance for absentee voting processes and updated guidance for in-person voting for the November 2020 general election. The absentee guidance we are working on will include a standardized cure process with notice to the voter when their absentee application cannot be approved, as well as standards for legibility, signature verification, witness verification, and processing of ballots. State Board staff also continue to collaborate with State partners, including Emergency Management and the Department of Health and Human Services, to monitor the situation and assess if and when additional actions are necessary.

Responses to Measures Sought by Plaintiffs

Proposal for Elimination of the Witness Requirement

18. Earlier this year, I directed staff at the State Board to begin work to redesign the absentee container return envelope to be more user friendly and help ensure voters understand how to complete the certification so that the ballot will be counted. Staff have worked with the Center for Civic Design, a non-profit organization that seeks to use civic design to simplify and improve the voter experience, to improve the overall design and look of the envelope. On June 12, 2020, as soon as Session Law 2020-17 became law, staff immediately contacted the Center for Civic Design to modify the envelope to remove the second witness and notary portions of the envelope. The schedule for the remaining work on the envelope is as follows:

1) The State Board received an updated envelope design from the Center for Civic Design on June 16, 2020.
2) State and county board staff are currently reviewing and editing the envelope for layout, process, format, and legal compliance. This review is scheduled to be completed around June 30, 2020.
3) The Center for Civic Design will provide the envelope to a third-party vendor to complete the print-ready artwork. State Board staff will review and approve a final proof. This process will take approximately two weeks and be completed by mid-July.
4) Once the envelope is finalized, the file will be provided to the printers used by the State Board and county boards of elections. Approximately half of

the county boards have asked the State Board to print the envelopes for them and provide them directly to the counties. We estimate that the printing and distribution to the county boards of elections will take 4-6 weeks. County boards need to have the absentee envelopes in their possession by mid-August so they have sufficient time to assemble absentee packets. This process includes printing labels and placing them on envelopes in order to ensure the ballots are ready to mail on September 4, 2020, pursuant to N.C.G.S. 163-227.10. If the envelopes are not ready in mid-August, county boards of elections will not be prepared to send out absentee ballots by the September 4, 2020 deadline.

19. Any change to the witness requirement at this time would require that the absentee envelope be redesigned, which would re-start the process for formatting, review, artwork, printing, and distribution. This delay could result in county boards not being able to send ballots to voters who requested them on September 4, 2020.

Proposal to Extend Voter Registration Deadline

20. North Carolina law establishes two ways a voter may register. A voter may register by the voter registration deadline, 25 days before the election, or they register to vote in person at a one-stop site. Both processes include methods of verifying that the voter resides at their address. A voter who registers by the regular deadline will be sent a verification, by nonforwardable mail. If the mailing is not returned as undeliverable, the county board will register the voter. If the mailing is returned as undeliverable, the county board will send the voter a second mailing. If the second mailing is also returned

as undeliverable, the voter registration will be denied and the county board will not contact the voter further. N.C.G.S. 163-82.7.

21. The statutes set out a different process to verify the residence of voters who register at a one-stop site. Any voter who registers at one-stop is required to appear in person at a one-stop site and show proof of residence when they register to vote. N.C.G.S. 163-82.6A, as reinstated by *NAACP v. McCrory*, 831 F.3d 204, July 31, 2016. Documents that show proof of residence include a valid North Carolina drivers license, a photo identification from a government agency, or any of the documents listed in N.C.G.S. 163-166.12(a)(2). A voter who registers at a one-stop site is subject to the mail verification process, with the first mailing required to be sent within two business days of the person's registering to vote. Same-day registrants also vote retrievable ballots, which may be retrieved by a county board of elections if a timely filed challenge is sustained. *Id.* A voter who registered during after the 25-day deadline may not receive the verification mailing(s), particularly if they register towards the end of the one-stop period. Allowing voters to register after the deadline without the additional proof of residence would circumvent the safeguards provided by the statute to verify voters' residence.

22. Extending the voter registration deadline may cause voter confusion, as voters who registered after the usual 25-day deadline would not appear on the pollbooks at a one-stop site. Once the registration books close 25 days before an election, county boards of elections prepare electronic pollbooks for the one-stop sites that contain the list of registered voters in the county. Voters would likely be required to re-register or vote

provisionally, and this could cause confusion and uncertainty about the registration process. This could require voters to stand in additional lines, which would their time at the one-stop site and possible exposure to COVID-19. This is unnecessarily repetitious and burdensome for the voter.

23. Typically, there is a very high volume of forms received at the end of the voter registration deadline. For example, during the five days prior to the 2020 primary election voter registration deadline, 30,646 voters registered between February 3-7, 2020. During the five days prior to the 2016 general election voter registration deadline—the most recent presidential general election—98,207 voters registered between October 10-14, 2016. County boards will not be prepared to handle the volume of applications that, based on past data, we anticipate would arrive close to Election Day.

24. If the voter registration deadline were extended, county boards would at the same time be conducting and concluding the final days of one-stop voting. The new registrations would each have to be scanned in and individually data entered into the Statewide Election Information Management System (SEIMS), the State's voter registration and election management system. This process contrasts with one-stop registrations, for which the one-stop worker has already completed the data entry on an electronic pollbook, allowing the information can be uploaded directly to SEIMS.

25. Once the new registrations are processed, voters are added to the pollbook. Some county boards of elections provide their pollbook lists to the printer on the Saturday night before the election, while others work through the night to provide the lists to the printer on Sunday. Other county boards use electronic pollbooks on Election

Day and begin distributing their laptops to pollworkers on Sunday. Processing tens of thousands of additional voter registrations would require hiring and training additional staff, and funds have not been allocated for this purpose.

26. Voter registration forms received by NVRA agencies must be transmitted to the county board within five days of the voter registration deadline. An extension of the deadline to the last Saturday might result in forms not being timely received or processed, and affected voters would not be on the pollbooks when they went to vote on Election Day.

Proposal to Allow Absentee Requests Not on State Board's Form

27. While supportive of this in concept, I am concerned that requests received on a form other than the State Board's form would frequently be invalid. The law includes certain requirements that must be included on the form, and many voters will not be familiar with these requirements, especially since the law has changed several times in the past year. The State Board's form is also accompanied by instructions indicating how to complete the form, how to submit a form, and which voters may receive assistance and from whom.

28. An absentee request form must contain all of the information listed in N.C.G.S. 163-230.2(a), as amended by Section 1.3.(a) of Session Law 2019-239, or it will be invalid:

1) The name and address of the residence of the voter.
2) The name and address of the voter's near relative or verifiable legal guardian if that individual is making the request.

3) The address of the voter to which the application and absentee ballots are to be mailed if different from the residence address of the voter.

4) One of the following:

   i. The number of the applicant's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.

   ii. The number of the applicant's special identification card for nonoperators issued under G.S. 2037.7.

   iii. The last four digits of the applicant's social security number.

5) The voter's date of birth.

6) The signature of the voter or of the voter's near relative or verifiable legal guardian if that individual is making the request.

7) A clear indicator of the date the election generating the request is to be held, except for annual calendar year requests in accordance with G.S. 163226(b).

29. Additionally, an absentee request is invalid if it is submitted by someone other than the voter, the voter's near relative or verifiable legal guardian, or a trained and authorized Multipartisan assistance team (MAT). N.C.G.S. 163-230.2(c), as amended by Section 1.3.(a) of Session Law 2019-239. Voters who do not use the State Board's form and accompanying instructions may not know about this limitation and risk having their absentee requests rejected.

30. Beginning on September 1, 2020, voters will also have the option to request

an absentee ballot on the State Board's portal. This will be another option that voters will have to request an absentee ballot. The portal will walk voters through the process to help ensure they complete all required fields and that their request is valid. The portal will be able to be accessed on a computer or a mobile device with internet access such as a smart phone or tablet. Any group may link to the portal as a way to encourage voters to use this service.

Proposal to Require Online Registration at State Agencies Other Than DMV

31. Based on my experience as Executive Director, I do not believe it would be possible to provide voter registration online beyond what is currently offered through DMV for the 2020 general election. In March of 2020, in partnership with the DMV, we rolled out standalone online voter registration to North Carolinians who are DMV customers. Previously, DMV customers could register to vote online if they were conducting a DMV transaction, but they could not register without a DMV transaction. The online voter registration service took approximately 4-5 months of active work to implement, and that was with an agency that was already set up with a pipeline of data related to voter registrations to the State Board. We do not have any similar data sharing with DHHS or other state agencies.

32. When a customer registers to vote online through DMV, they authorize their digital signature to be used on the voter registration form. I do not believe that DHHS has digital signatures for all of its customers. The State Board is also not familiar with DHHS's data structure and whether we would be able to match up information we received with existing voters, a process that is required to check for duplicates.

Proposal to Eliminate Assistance Restrictions for Absentee Requests

33. The implementation of changes to who can assist with the absentee request would require lead time because the list of who may assist voters with their absentee request is printed on the absentee request form and instructions. A SEIMS enhancement would be required to change the absentee request form and instructions if this change were ordered by the court. It typically takes three to four days for staff to make this type of change, although it may take up to five days if new data needs to be populated to the form. Staff need the finished product at least a week before the release. A SEIMS release is scheduled for August 28, 2020. We would need to receive any change at minimum two weeks prior to that date to allow time for the development and testing process. The agency has 12 other enhancements that been identified prioritized and affect SEIMS and those are already under development.

Proposal to Eliminate Uniform One-Stop Hours

34. County boards of elections have been instructed to submit their one-stop plans to the State Board for review by July 31, 2020. Numbered Memo 2020-13.[6] The State Board will hold a meeting in late August to consider non-unanimous one-stop plans. We would need to know by the mid-July at the latest of any changes to the law on one-stop schedules so the county boards could make changes to their plans and resubmit them to the State Board by July 31, 2020. As outlined in the memo, the State Board needs

[6] State Board of Elections, Numbered Memo 2020-13, June 24, 2020, available at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2020/Numbered%20Memo%202020-13_One-Stop%20Planning%20for%202020%20General%20Election.pdf.

three weeks to review submitted non-unanimous plans to analyze and produce the data requested by the appointed State Board for its review. The analysis will include a summary of the changes proposed by the majority and minority plan compared with one-stop plans used in the county in recent similar elections, driving time estimates for each proposed site, and a comparison of turnout by day and date for previous similar elections.[7] The State Board will hold a meeting during the last week in August to consider adopting plans for counties with non-unanimous plans. Pursuant to N.C.G.S. 163-33(8), notice of voting sites must be published 45 days prior to the election, which is September 19, 2020.

Proposal to Require Absentee Drop Doxes

35. I am unsure whether a sufficient supply of droboxes is available at this time because many states have increased voting by mail. If the boxes were obtainable, the procurement process also typically takes several months, and funds were not allocated for this purpose. Unmanned drop boxes must also be affixed to the land, similar to how a U.S. Post Office box is fixed, and this would require additional steps to locate and procure use of the land. I do not believe there is sufficient time complete these processes for dropboxes throughout the state prior to the 2020 general election. Permitting absentee drop boxes would also require changing the rule, 08 NCAC 18 .0102, that requires county boards of elections to maintain a log of each absentee ballot that is dropped off at their

[7] By way of example is the data analysis that was staff completed for the Marc 3, 2020 primary election. State Board of Elections, Data Packet, last accessed June 26, 2020, available at https://dl.ncsbe.gov/index.html?prefix=State_Board_Meeting_Docs/2019-12-20/Non-Unanimous%20Plans/Data_Packet/.

office.

Proposal to Permit Absentee Requests by Phone

36. Pursuant to Session Law 2020-17, voters can request by phone that a blank absentee request form be sent to them. Absentee request forms may now be submitted by email and fax, in addition to in person and by mail or commercial carrier. The absentee request form requires the signature of the voter or their near relative or legal guardian, and the form is retained as documentation of the request. If requests were permitted by phone, county boards not have documentation signed by the voter or near relative as a record of the request. A lack of documentation could lead to questions about whether an absentee request was valid. Section 8.(a) of Session Law 2020-17 amended G.S. § 163-237(d7) to make it a Class I felony for a county board of elections employee to knowingly send out an absentee ballot without a valid request, and allowing requests by phone could raise the possibility that elections workers would be subjected to prosecution under this section.

Proposal to Permit Civilian Voters to Vote by Federal Write-In Absentee Ballot

37. Permitting civilian voters to vote by Federal Write-In Absentee Ballot (FWAB) poses administrative concerns. When a civilian voter requests an absentee ballot, that request is linked to the ballot that is sent out, and the ballot envelope contains a unique barcode that is linked to the voter's record. Once the voter returns the envelope to the county board of elections, the barcode is scanned to pull up the voter's record in SEIMS. This semi-automated process limits the need to manually enter data, saves time, and increases accuracy. A large increase in the number of FWABs would substantially

increase the time and effort needed to process a returned ballot.

38. Additionally, each FWAB would need to be duplicated onto a ballot that can be tabulated by a machine. Ballot duplication involves a bipartisan team calling out and double checking each selection that the voter made and ensuring that the selections are then properly marked on a blank official ballot. A civilian voter receives an official ballot that can be tabulated by machine. Voters who use an FWAB, however, type or hand write their selections. Because voters type or in many cases hand write the names of their preferred candidates on the FWAB, rather than filling in the oval or rectangle on the ballot, the ballot duplication process tends to be more involved for FWABs than for voters who mark a standard ballot. A large increase in duplicating the number of FWABs is not something for which county boards have prepared or allocated funds.

39. Permitting civilians to use the FWAB might result in very large increase in in FWABs for the 2020 general election. The number of voters who vote by FWAB in a given election is typically very small. In the 2016 general election, for example, 1,628 total voters voted by FWAB. This represents 0.0341 percent of the voters in that election. In the 2020 primary election, 37 voters voted by FWAB. This represents 0.0017 percent of the voters in that election.

40. There is also a security concern. Because FWABs can be returned electronically, they pose a higher security risk that paper ballots. According to a report issued by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, along with the Election Assistance Commission, Federal Bureau of Investigation, and the National Institute of Standards and Technology, electronic return

of ballots is high-risk.[8] Their report does note that "web applications support stronger security mechanisms than email although they are still vulnerable to cyberattacks."

41. Also, voters who vote by FWAB sign an attestation that they are a military and overseas voter. This affidavit is different than what is required for civilian voters, and it does not include the witness requirement.

Personal Protective Equipment (PPE)

42. PPE is provided for in Numbered Memo 2020-12, which is directed at in-person voting for the June 23, 2020 second primary and new election in Columbus County. As stated in the memo, guidance for in-person voting, including PPE, will be revised and updated based on current conditions and recommendations prior to the 2020 general election.

43. My office has and will continue to work with county boards of elections to assist them in procuring PPE. This includes coordinating with Emergency Management at the North Carolina Department of Public Safety to procure gloves, disinfecting wipes, face shields and masks. We also expect to receive a donation of hand sanitizer to supply to county boards of elections statewide for the 2020 general election.

44. Funds have been allocated to pay for PPE. Session Law 2020-17 provided the state match for the federal CARES Act grant, which together total North Carolina has a total of $13,067,636. This money may be used, in part, to purchase necessary PPE for

[8] Department of Homeland Security, Risk Management for Electronic Ballot Delivery, Marking and Return, accessed on June 26, 2020, available at https://s.wsj.net/public/resources/documents/Final_%20Risk_Management_for_Electronic-Ballot_05082020.pdf?mod=article_inline.

the general election. Pursuant to section 11.3.(d)(2), the State Board is required to report to the Joint Legislative Elections Oversight Committee, the Joint Legislative Oversight Committee on General Government, and the Fiscal Research Division by February 1, 2021, regarding the use of funds allocated by the act, including funding used to address the coronavirus pandemic, including personal protective equipment, social distancing tools, and cleaning and sanitizing supplies. I anticipate that the State Board will be able to provide a sufficient supply of PPE to the 100 county boards of elections, which will supplement any supplies they obtain directly, for the 2020 general election.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and accurate. This Declaration was executed on the 26th day of June, 2020.

Karen Brinson Bell

EXHIBIT 28

STATE OF NORTH CAROLINA	)	IN THE GENERAL COURT OF JUSTICE
	)	SUPERIOR COURT DIVISION
COUNTY OF WAKE	)	CASE NO. 18 CVS 15292
JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, AND PAUL KEARNEY, SR.,	)	
PLAINTIFFS,	)	
vs.	)	**LEGISLATIVE DEFENDANTS' NOTICE OF APPEAL**
TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives;* PHILIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate;* DAVID R. LEWIS,[1] *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session;* RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session;* THE STATE OF NORTH CAROLINA; *and* THE NORTH CAROLINA STATE BOARD OF ELECTIONS,	)	
DEFENDANTS.	)	

2021 SEP 24 P 1:26
WAKE CO., C.S.C.
BY

[1] David Lewis is no longer a member of the General Assembly.

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Defendants Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Ralph E. Hise, in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session (collectively, "Legislative Defendants"), by and through counsel, pursuant to North Carolina Rule of Appellate Procedure 3(a), do hereby notice their appeal to the Court of Appeals of North Carolina from the Final Judgment and Order entered by the Superior Court, Wake County on September 17, 2021, and all interlocutory orders that merged with the final judgment.

This the 24th day of September, 2021.

Respectfully Submitted,

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**Appearing pro hac vice*

Counsel for Legislative Defendants

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 24th day of September, 2021, served a copy of the foregoing Notice of Appeal by electronic mail and by first class mail, on the following parties at the following addresses:

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Counsel for the State and State Board Defendants

**Appearing pro hac vice*

This the 24th day of September, 2021.

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Counsel for Legislative Defendants

EXHIBIT 29

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 15292

JABARI HOLMES, FRED CULP DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, and PAUL KEARNEY, SR.,

Plaintiffs,

v.

TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; PHILLIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants.

NOTICE OF APPEAL

NOW COMES Defendants the State of North Carolina and the North Carolina State Board of Elections and its members (collectively "State Defendants"), by and through undersigned counsel, pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure, to provide notice of appeal to the Court of Appeals of North Carolina from the following Order:

1. The Final Judgment and Order entered on September 17, 2021.

Respectfully submitted, this 27th day of September, 2021.

JOSHUA H. STEIN
Attorney General

Terence Steed

Special Deputy Attorney General
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing document was served on the parties to this action by email, and addressed as follows:

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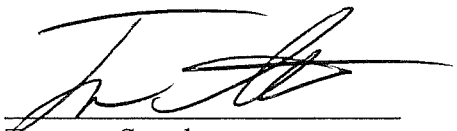
Attorneys for Legislative Defendants

This the 27th day of September, 2021.



Terence Steed
Special Deputy Attorney General

EXHIBIT 30

CERTIFICATE OF SERVICE OF RECORD ON APPEAL

I do hereby certify that I have on this 7th day of January, 2022, pursuant to Rule of Appellate Procedure 26, served a copy of the foregoing Record on Appeal on the following counsel for the parties at the following addresses by electronic mail and by first class mail in the exclusive custody and care of the United States Postal Service:

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(*Motions to Appear *pro hac vice* Forthcoming)

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EXHIBIT 31

Attorney General
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How long does it take for an appeal to be decided by the Court?

An appellate court may issue its opinion, or decision, in as little as a month or as long as a year or more. The average time period is 6 months, but there is no time limit. Length of time does not indicate what kind of decision the court will reach. Opinions are available on the Internet at the **Administrative Office of the Courts**. The Court of Appeals issues opinions on the first and third Tuesday of each month. The Supreme Court issues opinions once each month, usually during the first or second week of the month.

Criminal Appeals Process, **Uncategorized**

« How is an appeal presented to the Court?

Does the judges' decision have to be unanimous? »

Main Campus
114 West Edenton Street
Raleigh, NC 27603

p: (919) 716-6400
f: (919) 716-6750

State Crime Laboratory
121 East Tryon Road
Raleigh, NC 27603

p: (919) 582-8700
f: (919) 662-4475

Triad Regional
State Crime Laboratory
2306 West Meadowview Road
Suite 110
Greensboro, NC 27047

p: (336) 315-4900
f: (336) 315-4956

NC Justice Academy
Salemburg Campus:
PO Box 99
Salemburg, NC 28385

p: (910) 525-4151
f: (910) 525-5439

NC Justice Academy
Edneyville Campus:
PO Box 600
Edneyville, NC 28727

p: (828) 685-3600
f: (828) 685-9933

Sheriffs' Training & Standards
PO Box 629
Raleigh, NC 27602

p: (919) 779-8213
f: (919) 662-4515

f: (336) 315-4956

Western Regional
State Crime Laboratory
300 Saint Pauls Road
Hendersonville, NC 28792

p: (828) 654-0525
f: (828) 654-9682

Criminal Justice
Training & Standards
PO Drawer 149
Raleigh, NC 27602

p: (919) 661-5980
f: (919) 779-8210

CONTACT NCDOJ

NCDOJ does not represent individuals in private cases. Need an attorney?

English

EXHIBIT 32

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE
OF THE NAACP et al

v. Case Number: 1:18CV1034

ROY A COOPER, III et al

NOTICE

==========

TAKE NOTICE that a **BENCH TRIAL** has been **SET** in the above-referenced case for **January 24, 2022.**

PLACE:	**Hiram H. Ward Bldg., 251 N. Main St., Winston-Salem, NC Courtroom No. 4**
DATE & TIME:	**January 24, 2022 – 9:30 a.m.**
PROCEEDING:	**Bench Trial**

The parties shall comply in all respects with Fed.R. Civ. P. 26(a)(3) regarding final pretrial disclosures, including the time requirements set out therein. **Further, the parties shall comply will all of Judge Biggs' Judicial Preferences located on the Court's website, unless otherwise ordered. In addition, no later than January 3, 2022, unless directed to the contrary, each party shall file a trial brief, along with proposed instructions on the issues.** Following the trial, each party shall file proposed findings of fact and conclusions of law on a date to be determined.

John S. Brubaker, Clerk

By: /s/ Debbie Blay, Deputy Clerk

Date: September 17, 2021

TO: ALL COUNSEL OF RECORD

EXHIBIT 33

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, *et al.*,	)	
Plaintiffs,	)	
v.	)	1:18CV1034
DAMON CIRCOSTA, *in his official capacity as Chair of the North Carolina State Board of Elections*, *et al.*,	)	
Defendants.	)	

ORDER

A trial has been scheduled to begin in the above-captioned matter on January 24, 2022, with an approximate duration of nine days. On November 24, 2021, the U.S. Supreme Court granted certiorari in this case to decide whether certain state legislators ("Proposed Intervenors") are entitled to intervene as of right in this litigation. (ECF No. 191-1); *see* Petition for Writ of Certiorari, *Berger v. N.C. State Conf. of the NAACP*, Case No. 21-248, 2021 WL 3741675, at *i. Before the Court is Defendants' Motion to Stay, Continue the Trial, or Allow Permissive Intervention, (ECF No. 192.) Plaintiffs oppose Defendants' motion for the reasons set forth in their brief. (ECF No. 193.)

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). A motion to stay "calls for an exercise of judgment to balance the various factors relevant to the expeditious

and comprehensive disposition of the causes of action on the court's docket." *United States v. Georgia Pac. Corp.*, 562 F.2d 294, 296 (4th Cir. 1977) (citing *Landis*, 299 U.S. at 254–55).

Here, the balance of factors weighs in favor of a stay. In addition to the risks of needlessly expending tremendous resources of time and effort of this Court, counsel, and litigants, the Court is very concerned that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). North Carolina's voter ID requirements have already been subject to extensive judicial intervention at both the federal and state levels, occasionally resulting in conflicting orders. The potential risks of adding to such confusion by a second trial, if such becomes necessary, likewise favors a stay.

These risks far outweigh the potential prejudice to all litigants. While the Court is mindful that parties have been preparing for trial, there is no reason that such preparation must go to waste. Staying this case does not reopen discovery, require additional litigation, or require the parties to change litigation strategies.

While the Court has considered the positions of the parties as outlined in their respective filings, this Order is entered pursuant to the inherent power of this Court to manage its docket and enter orders that are not only in the interest of the litigants but in such a case as this one, the public interest as well.

For these reasons, the Court enters the following:

IT IS THEREFORE ORDERED that this case is **STAYED**, including the trial scheduled to begin January 24, 2022, pending the resolution of the grant of certiorari by the U. S. Supreme Court or until further Order of this Court.

IT IS FURTHER ORDERED that Defendants' Motion to Stay, Continue the Trial, or Allow Permissive Intervention, is **DENIED AS MOOT**, (ECF No. 192.)

This, the 30th day of December 2021.

/s/ Loretta C. Biggs
United States District Judge

NO. 342P19-2 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, SHAKOYA CARRIE BROWN, and PAUL KEARNEY, SR.,

Plaintiffs-Appellees,

v.

TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives; PHILLIP E. BERGER in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants-Appellants.

From Wake County
No. 21 CVS 015292
COA 22-16

****

STATE DEFENDANTS' RESPONSE TO PLAINTIFF-APPELLEES' PETITION FOR DISCRETIONARY REVIEW

****

The State of North Carolina and the North Carolina State Board of Elections ("State Board" and collectively the "State Defendants"), provide this response to Plaintiff-Appellees' Petition for Discretionary Review.

STATE DEFENDANTS' POSITION

State Defendants are prepared to defend the challenged law on appeal and believe that Defendants will ultimately succeed in showing that it is constitutional. State Defendants acknowledge that the issues raised on appeal are of significant public interest and significant to the jurisprudence of the State, and have no objection to review by this Court. However, State Defendants also have no objection to the standard appellate process in which review by the Court of Appeals would precede possible review in this Court. In either event, State Defendants stand ready to defend the law whether before this Court now or the Court of Appeals.

The State Board wishes to note that resolution by the end of the current year, whether through the standard appellate process on an expedited basis or as a result of this petition, would allow the State Board to begin orderly implementation of the statute during the nine-month period before the first municipal election in September of 2023.[1] This would provide the time necessary for the State Board to engage in outreach efforts to raise public

[1] Following the November 2022 general election this fall, North Carolina will not have another election until the September 2023 municipal primary.

awareness, conduct training, work with state and local partners, develop software changes to the election information management system, engage in rulemaking, and numerous other actions necessary to implement the statute. In addition, implementing the law first during municipal elections, prior to statewide elections in 2024, would allow the State Board to address any issues with implementation, should they arise, allowing for a more orderly election process for the public when higher turnout arrives in the 2024 statewide elections. As noted in Legislative Defendants' response in opposition filed today, implementation of this law is a process that requires significant lead-time and should not be rushed. Leg. Defs. Brf. pp. 19-21. Likewise, resolution later than the end of this year would not allow as much time for the implementation and outreach efforts described above.

Electronically submitted this the 27th day of January, 2022.

JOSHUA H. STEIN
ATTORNEY GENERAL

Electronically Submitted
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N.C. R. App. P. 33(b) Certification:
I certify that the attorney listed below has authorized me to list his name on this document as if he had personally signed it.

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Raleigh, N.C. 27602
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I HEREBY CERTIFY that I have this day served the foregoing document upon the parties to this action by electronic mail, addressed as follows:

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Electronically submitted this the 27th day of January, 2022.

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