**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF NORTH CAROLINA**

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, *et al.*,

*Plaintiffs*,

v.

ALAN HIRSCH, in his official capacity as Chair of the North Carolina State Board of Elections, *et al.*,

*Defendants*,

and

PHILLIP E. BERGER, in his official capacity as President Pro Tempore of the Senate, *et. al*,

*Legislative Defendants-Intervenors*.

No. 1:18-cv-01034

**PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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## INTRODUCTION

"It is beyond dispute that 'voting is of the most fundamental significance under our constitutional structure' . . . 'Other rights, even the most basic, are illusory if the right is undermined.'" *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 241 (4th Cir. 2016), *cert. denied,* 581 U.S. 985 (2017). Plaintiffs bring this lawsuit to challenge various provisions of Senate Bill 824 ("S.B. 824"), (N.C. Sess. Law 2018-144): (i) the provisions requiring photo-identification for voters (Sections 1.1(a)-1.5(d), currently codified in N.C. Gen. Stat §§ 163-82.8A, 163-166.16–166.18, 163-229(b)(8)); (ii) the provisions allowing any voter to challenge another voter for failing to comply with the photo ID provisions (Section 3.1(c), currently codified in N.C. Gen. Stat § 163-87(5)); and (iii) the provisions expanding the use of poll observers (Section 3.3, currently codified in N.C. Gen. Stat. 163-45.1(b)(3)).

The record presented at trial in this case is more robust than the paper record presented at the preliminary injunction stage: in addition to the expert analysis and declarations presented at that time, the record is richer, among other things, from live testimony from critical participants in the process (including North Carolina legislators, voting rights advocates, individual voters, and the Executive Director of the State Board of Elections), from the presentation of documentary evidence including critical internal communications among and between the Defendants, as well as from evidence regarding the implementation of S.B. 824 and subsequent legislative actions events which shed light on the intent behind and impact of S.B. 824. The evidence presented at trial in this case confirms an inescapable conclusion: that S.B. 824 was enacted with discriminatory intent

in violation of the Fourteenth and Fifteenth Amendments of the U.S. Constitution and has already had and, unless enjoined, will continue to have a discriminatory impact on the right of Black and Latino citizens in North Carolina to participate in the political process, in violation of Section 2 of the Voting Rights Act, (52 U.S.C. § 10301(a)).

## PROPOSED FINDINGS OF FACT

## I. THE HISTORICAL BACKGROUND OF NORTH CAROLINA

### A. North Carolina's History of Discrimination Against African Americans is Atrocious, Continues to the Present Day, and Has Affected Every Area of Social and Economic Policy

1. North Carolina's history of extensive official discrimination against African Americans in the area of voting is well documented. Indeed, for most of its history, discrimination prevented most of the State's African Americans from registering to vote, voting, or otherwise participating in the democratic process. PX1 ("Leloudis Rpt.") at 3, 5-6, 70-72; *see also Gingles v. Edmisten*, 590 F. Supp. 345, 359-60 (E.D.N.C. 1984).

2. At the time of the preliminary injunction, the Court found that "North Carolina has a sordid history of racial discrimination and voter suppression stretching back to the time of slavery, through the era of Jim Crow, and, crucially, continuing up to the present day." ECF No. 120 at 12. On appeal, the Fourth Circuit wrote "we do not doubt as we held in *McCrory* and the State expressly acknowledges in this case, that there is a long and shameful history of race-based voter suppression in North Carolina." *N.C. State Conf. of the NAACP v. Raymond*, 981 F.3d 295, 311 (4th Cir. 2020).

3. Since the preliminary injunction, the evidence of North Carolina's history of race-based voter suppression has only gotten stronger. The Court heard from numerous

witnesses – including Reverends Barber and Spearman, Ms. Maxwell, Senators McKissick and Van Duyn, Representatives Reives, Harrison, Michaux, and Morey, as well as community advocates like Tomas Lopez, Iliana Santillan, Dreama Caldwell, Corye Dunn, and Marcus Bass – about the efforts of the General Assembly since the *Shelby County v. Holder*, 570 U.S. 529 (2013), decision to engage in racial gerrymandering and enact restrictions aimed at suppressing the vote of Black and Latino North Carolinians. Those efforts include the passage of the unconstitutional 2013 omnibus voting bill (H.B. 589), and they include extensive efforts since the *McCrory* decision striking down H.B. 589—even up to this day—seen in the passage of S.B. 325 and S.B. 824 in 2018 and S.B. 747 and S.B. 749 in 2023.

4. The State Board Defendants recognize this history. In seeking summary judgment, they noted:

> There is no denying North Carolina's long history of racial discrimination . . . . That history contains many "shameful" chapters related to race . . . . The State Board does not dispute this history, and recognizes and accepts that another relevant part of that history is H.B. 589, which was partially invalidated for having been enacted with the purpose of burdening African American voters. The State Board acknowledges that unconstitutional considerations of race have also recently predominated North Carolina's redistricting process.

ECF No. 182 at 12-13.

5. While the State Board acknowledges this history, the Legislative Defendants do not. At trial, the Legislative Defendants contemptuously dismissed the relevance of North Carolina's history – arguing during their opening argument that the relevant "historical background is that the people of this State in 2018 mandated and required that

the legislature enact a photo ID law." Tr. 95:22-24 (LD's Opening Statement). The Legislative Defendants were equally dismissive in closing, contending that North Carolina's history of racial discrimination "is what it is," was not "material," and falsely claimed "the Fourth Circuit said [North Carolina's historical background] wasn't enough to enjoin the law." *Compare* Tr: 1402:4-7 (LD's Closing) *with Raymond*, 981 F.3d at 311 ("there is a long and shameful history of race-based voter suppression in North Carolina.").

6. The Legislative Defendants' dismissive, cavalier, and unrepentant stance towards North Carolina's long and atrocious history of racial discrimination, which the record shows continued through the passage of S.B. 824 to today, is consistent with and strongly confirms an intent to discriminate.

7. Indeed, the Legislative Defendants' strenuous denials that they engaged in racial discrimination in enacting S.B. 824 is entirely consistent with their history of denying that they engaged in discrimination in recent matters such as:

a. the passage of H.B. 589 (*compare* McCrory, 831 F.3d at 214 (H.B. 589 "targeted African Americans with almost surgical precision") *with* PX44 ("Lichtman Rpt.") at 10 (quoting Chairman David Lewis[1] referring to H.B. 589: "frankly, we think we passed a good law before."));

[1] David Lewis served as Chairman of the House Elections Committee in 2013, during the passage of H.B. 589. Lichtman Rpt. at 11. In 2018, he was one of the primary sponsors of H.B. 1092, the constitutional amendment underlying S.B. 824. PX548 (H.B. 1092 Bill History) at 1. Throughout the passage of H.B. 1092 and S.B. 824, he was also Chairman of the House Committee on Rules, (*see generally* PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.); PX691 (12/4/18 S.B. 824 House Rules Cmte. Tr.)), and Co-Chairman of the House Committee on Elections and Ethics (*see generally* PX690 (12/3/18 S.B. 824 House Elec. Cmte. Tr.); PX690 (12/4/18 S.B. 824 House Elec. Cmte. Tr.)).

b. the drawing of state legislative districts in 2011 (*compare Covington v. North Carolina*, 270 F. Supp. 3d 881, 884 (M.D.N.C. 2017) (finding that North Carolina had implemented one of the "largest racial gerrymanders ever encountered by a federal court") *with North Carolina v. Covington*, No. 16-649, Jurisdictional Statement at 12 (U.S. Nov. 14, 2016)[2] (calling district court decision "legally and factually indefensible [and] so obviously wrong that it merits summary reversal"));

c. the drawing of congressional districts in 2011 (*compare Cooper v. Harris*, 581 U.S. 285, 301 (2017) ("[T]he District Court did not clearly err in finding . . . District 1 [was] a textbook example of race-based districting") *with McCrory v. Harris*, No. 15-1262, 2016 WL 4771954, at *17 (U.S. Sept. 12, 2016) ("race plainly did not predominate . . . . The district court's contrary conclusion was plainly wrong.");

d. the enactment of Senate Bill 747 in 2023 (*Voto Latino v. Hisrch*, No. 23-CV-861, 2024 WL 230931 at *23, *26 (M.D.N.C. Jan. 21, 2024) ("The enactment of Senate Bill 747 in 2023 ([SB 747 "creates an unacceptable risk that eligible voters' ballots will be erroneously removed and not counted" notwithstanding Legislative Defendants insistence that it "ensures election integrity and instills confidence in the fairness of elections.").

e. the perpetuation of felon disenfranchisement, including as reformulated in 2023 in S.B. 747 (*compare N.C. A. Philip Randolph Inst. v. N.C.*

[2] *Available at* https://www.brennancenter.org/sites/default/files/legal-work/Covington_Jurisdictional_Statement.pdf (last accessed June 29, 2024).

*State Bd. of Elections*, --- F. Supp. 3d. ---, No. 1:20-cv-00876, 2024 WL 1719366 (M.D.N.C. Apr. 22, 2024) ("[T]he Challenged Statute was enacted with discriminatory intent, has not been cleansed of its discriminatory taint, and continues to disproportionately impact Black voters.") *with id.*, ECF No. 44 (Mot. to Intervene by Phillip E. Berger, Timothy K. Moore) at 5 ("Therefore, the defenses of the Proposed Intervenors will necessarily share common factual and legal issues with those of the other defendants: namely, that Plaintiffs will not be able to show that the General Assembly enacted this statute with discriminatory intent . . . .").

8. Analysis and testimony from Plaintiffs' expert, Professor James Leloudis II, reveals a pattern in this history: "In North Carolina, battles over the franchise have played out through cycles of emancipatory politics and conservative retrenchment. In a pattern repeated multiple times, blacks and their allies have formed political movements to end racial exploitation and claim their rights as equal citizens . . . not only to advance their own interests but to promote participatory democracy more generally and to make government responsive to the needs of all its people. Invariably, these efforts have met resistance from conservative lawmakers . . . around the ballot box." Leloudis Rpt. at 5. 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 v. Moore*, 270 N.C. App. 7, 22 (N.C. App. 2020) (quotation marks omitted); *see also* Leloudis Rpt. at 52-53, 56-59 (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* Leloudis Rpt. at 56 ("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.").

9. Frequently throughout this history, laws limiting African American political participation have been facially race neutral but have nevertheless had profoundly discriminatory effects. Leloudis Rpt. at 18-20, 32-33, 50-51, 67.

10. Community advocate Marcus Bass, the Executive Director of NC Black Alliance and the Deputy Director of Advance Carolina, also testified about the cyclical nature of voter disenfranchisement in North Carolina. Mr. Bass testified that "the policies that have been administered have been restrictions to voting" and that "what we have seen is restrictions around [the] ability [to vote] and questioning eligibility whenever African American communities [turnout] en masse, in large numbers." Tr. 1084:21-1085:5 (Bass). Gathered from his observations of history and personal experience, Mr. Bass stated, "there seems to be a forward progression of [Black] voter turnout and that's met with laws to help create more restrictions to seemingly prevent that turnout." *Id.*

11. This history, detailed below, is relevant here because it reveals a pattern that is mirrored in the current enactment of S.B. 824 and because it has led to present-day effects on the socioeconomic status of minorities in North Carolina. It has also had an impact on the experiences of minorities with - and faith in - the integrity of the North Carolina electoral system. *See N.C. State Conf. of the NAACP v. McCrory*, 997 F. Supp. 2d 322, 349 (M.D.N.C. 2014) ("*McCrory I*"). Considering North Carolina's history of discrimination together with the events leading up to passage of S.B. 824 reveals a

troubling pattern of backlash against rising minority political strength in North Carolina. Leloudis Rpt. at 5 ("In North Carolina, battles over the franchise have played out through cycles of emancipatory politics and conservative retrenchment. In a pattern repeated multiple times, [B]lacks and their allies have formed political movements to end racial exploitation . . . . Invariably, these efforts have met with resistance from conservative lawmakers.").

### 1. North Carolina's Long History of Racial Discrimination in Voting

12. Professor Leloudis' historical analysis identifies four periods in which this pattern has repeated itself. The first period occurred from Reconstruction to end of the nineteenth century. Community advocate Marcus Bass also testified about the cyclical nature of voter disenfranchisement in North Carolina. Mr. Bass testified that "the policies that have been administered have been restrictions to voting" and that "what we have seen is restrictions around [the] ability [to vote] and questioning eligibility whenever African American communities [turnout] en masse, in large numbers." Tr. 1084:21-1085:5 (Bass). Gathered from his observations of history and personal experience, Mr. Bass stated, "there seems to be a forward progression of voter turnout and that's met with laws to help create more restrictions to seemingly prevent that turnout." *Id.*

13. In the nineteenth century, following ratification of the Fourteenth and Fifteenth Amendments, the North Carolina Constitution of 1868 guaranteed every adult male citizen the right to cast their ballot in a free and fair election. Leloudis Rpt. at 9.

14. As a result, North Carolina experienced a brief period of increased Black voter participation, during which African American voters had a substantial impact on the outcome of elections. *Id.* at 9, 11-12.

15. During this period, Black and white Republicans, and later white Populists, began to vote together, gain seats in the North Carolina General Assembly, and elect African American officials. *Id.* at 11-12. Between 1895 and 1897, a new political coalition revised North Carolina's election code to remove barriers to voter registration and encouraged voter participation, with turnout among Black voters increasing from 60 to nearly 90 percent. *Id.* at 12-14. During this period, there was ample voting by Black men and North Carolina had "probably the fairest and most democratic election law in the post-reconstruction south." PX337 ("Burden Rpt.") at 8-9. The new coalition also enacted certain populist economic programs that assisted poor North Carolinians, including Black North Carolinians, particularly by providing funding for public schools. Leloudis Rpt. at 14-15.

16. This biracial coalition threatened white supremacists' ability to maintain political power. The 1898 campaign was characterized by express racist appeals and violence and resulted in a narrow majority for white supremacists. *Id.* at 15-18.

17. With that narrow majority, white supremacists reinstituted policies and laws that had the purpose and effect of disenfranchising African Americans in the legislature, and immediately rolled back electoral reforms enacted by the Fusion ticket. *Id.* at 18-20. Such efforts included the 1899 "Act to Regulate Elections" law that required every voter to re-register and gave registrars discretion to exclude African Americans from the rolls,

expanded election day challenge provisions, and repealed practices to assist illiterate voters. *Id.* at 19. Legislators claimed that this legislation was needed to protect against "voter fraud"; in reality, it was designed to thwart growing Black political power. Leloudis Rpt. at 18-20; Burden Rpt. at 9. The 1899 General Assembly, under the control of white supremacists, also ended populist economic programs and enacted the first statewide segregation laws. Leloudis Rpt. at 21.

18. In 1900, North Carolina adopted a "suffrage" constitutional amendment that established a poll tax, and limited voting to those who either passed a literacy test or owned a certain amount of property. *Id.* at 18-19; Burden Rpt. at 9. The literacy test required that "every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language." Leloudis Rpt. at 18-19. The amendment also included a grandfather clause designed to exempt whites from the literacy test. *Id.*

19. Following the passage of the constitutional amendment, the North Carolina legislature enacted facially neutral laws implementing the poll tax and the literacy test. *Id.*

20. Although these laws were neutral on their face, they had a profoundly discriminatory impact. Notably, the grandfather clause exempted most illiterate whites, but not Black North Carolinians, from the requirements of the literacy test. *Id.*

21. Discriminatory tactics such as the poll tax and literacy test reduced Black voter participation from 87% in the 1896 election to nearly 0% in elections held during the early part of the twentieth century. *Id.* at 21; Burden Rpt. at 9. The literacy test and poll tax resulted in the wholesale disenfranchisement of Black North Carolinians and their removal from the political life of the State. Leloudis Rpt. 21-23; *Gingles*, 590 F. Supp. at

359-60. Between 1900 and 1968, there were no Black members of the North Carolina General Assembly, and no Black individuals were elected to Congress or to statewide office until 1992. Burden Rpt. at 18. As North Carolina Governor Charles Aycock stated in 1903 "we have solved the negro problem . . . we have taken him out of politics." Burden Rpt. at 9.

22. While the poll tax and grandfather clause were eliminated before 1965, North Carolina continued until the 1960s to impose various literacy tests that effectively disenfranchised most African Americans in the state. Leloudis Rpt. at 36-39, 42-43; Burden Rpt. at 9-10; *Gaston Cnty. v. United States*, 395 U.S. 285, 293-95 (1969); *Gingles*, 590 F. Supp. at 360. These intentionally discriminatory, but facially neutral laws, directly impacted many eligible Black voters who reside in North Carolina today. Tr. 935:9-12 (McKissick) ("[Y]ou saw areas in times where there were poll taxes. There were literacy tests. There were barriers to people being able to exercise the right to vote. And it wasn't until 1965 that that got reversed and that got changed."); 1196:8-22 (Barber) ("[I]n 1963 when I was born, they didn't have protected voting rights" and even "in 1966, though the Voting Rights Act had been passed, there were still all kinds of challenges."). And, although it is no longer enforced, the literacy test provision remains part of North Carolina's constitution today, and efforts to repeal it (including efforts in 1970, 2013, and 2018) have been unsuccessful. Tr. 1238:14-1239:12 (Barber); Burden Rpt. at 9-10; Lichtman Rpt. at 19-20.

23. The second period where Blacks and their allies formed political movements to combat racial discrimination followed the 1900 Constitutional Amendment and

extended through the enactment of the Voting Rights Act of 1965. Leloudis Rpt. at 21-44. The era was characterized by political and economic subjugation of Black North Carolinians, including imposing segregation of public facilities and relegating the majority of Black North Carolinians to serve as a "bound agricultural labor force" and holding wages to "near-subsistence levels." *Id.* at 21-22.

24. During this period, despite the effects of the literacy test and Jim Crow policies, African Americans slowly achieved some measure of political success: through extensive efforts to train Black North Carolinians to pass the literacy test, approximately 40,000 Black North Carolinians registered to vote during the New Deal. *Id.* at 24. Through these efforts, shortly after World War II, in the late 1940s and early 1950s, nine African American officials were elected in North Carolina at the municipal and county level. *Id.* at 31.

25. Campaigns during this era "brought race front and center" and included express claims that Black voters were engaged in fraudulent and corrupt practices. *Id.* at 29-34.

26. In response, the North Carolina General Assembly enacted a variety of targeted measures, such as replacing ward elections with at-large, multimember districts (that would prevent election of Black candidates from particular wards) and prohibiting single-shot voting. *Id.* at 33. These measures were passed over time in "piecemeal" fashion and were not part of one single piece of legislation. *Id.* Officials claimed that these actions were needed to protect against "bloc" voting; in reality, they were designed to thwart growing Black political power. *Id.* at 34. These new, targeted measures largely put a stop

to the election of African American candidates at the municipal and county level. *Id.* at 34-35.

27. The third period identified in Professor Leloudis' historical analysis runs from shortly after the enactment of the Voting Rights Act through the *Shelby County* decision. *Id.* at 44-60.

28. In 1966 and 1967, shortly after passage of the Voting Rights Act, the General Assembly adopted numerous multi-member at-large districts and a constitutional amendment requiring counties to be kept whole. While these laws were facially neutral, they had a disparate impact on African Americans – successfully blocking Black candidates from winning seats in the General Assembly. *Id.* at 50-51. By 1971, there were only two African American lawmakers in the General Assembly, and by 1981, a total of three African Americans had served in the General Assembly. *Id.* at 51. No Black individuals were elected to statewide office or to Congress until 1992. Burden Rpt. at 18.

29. In 1980, only 51.3% of the Black voting age population was registered to vote compared to 70.1% of the white voting age population. *Gingles*, 590 F. Supp. at 360-61.

30. This time period also saw the rise of "a new conservative movement" in North Carolina, with campaigns such as Congressman Jim Gardner's "play[ing] on racial fears that dated back to the era of Reconstruction and the white supremacy politics of the late 1890s." Leloudis Rpt. at 49. As the North Carolina Republican party's general counsel and former chairman Simeon A. DeLapp put it, the strategy was to use racial animus that had built up because "[people] are mad because [Lyndon] Johnson has become the

President of the negro [sic] race and of all the left wingers." *Id.* This culminated in Richard Nixon's 1964 and 1968 presidential campaigns, which tapped into racial animosity and made a "clean sweep" of southern states in a "white uprising." *Id.* at 50.

31. Enforcement of the Voting Rights Act finally led to notable improvements for Black voters in North Carolina, but barriers to equal political participation persisted. *Gingles*, 590 F. Supp. at 361. In 1986, a unanimous U.S. Supreme Court held that North Carolina's "legacy of official discrimination" had "acted in concert" with the use of multimember state legislative districts "to impair the ability of … cohesive groups of black voters to participate equally in the political process and to elect candidates of their choice." *Thornburg v. Gingles*, 478 U.S. 30, 80 (1986); *see also United States v. Onslow Cnty.*, 683 F. Supp. 1021, 1024 (E.D.N.C. 1988); *Johnson v. Halifax Cnty.*, 594 F. Supp. 161, 168-71 (E.D.N.C. 1984); Leloudis Rpt. at 52.

32. Due to North Carolina's continued history of discrimination, 40 of the State's counties were subject to preclearance requirements pursuant to Section 5 of the Voting Rights Act of 1965. Burden Rpt. at 10. Between 1965 and 2012, the U.S. Department of Justice objected, pursuant to Section 5, to over 60 voting changes in North Carolina, including discriminatory methods of election and dilutive practices such as staggered terms, residency requirements, annexations of predominately white areas, and majority vote and runoff requirements. *Id.*

33. Following the *Gingles* decision, the number of African Americans elected to the General Assembly slowly increased from the late 1980s to 2000s. Leloudis Rpt. at 52. In fact, by 1990 over four hundred African Americans had been elected to county and

municipal offices across the state. *Id.*. And rates of Black voter registration and turnout started to increase s well.

34. Then, between 1992 and 2009, the General Assembly also passed into law a series of election reforms designed to increase citizens' access to the ballot box, including the expansion of early voting, out-of-precinct voting, same day registration during early voting, and pre-registration for teens with driver's licenses. *Id.* at 53-54. These reforms benefitted all of the State's voters—with North Carolina jumping from ranking 43rd in the nation in voter turnout in 1996 to 37th place by 2000 and 11th place by 2012. *Id*. at 54. But they especially benefitted African American voters, who had had difficulty participating equally in the political process because of the State's legacy of intentional discrimination in voting and in other areas such as education, housing, and employment. Tr. 931:12-932:9, 935:5-19 (McKissick); 1166:10-23 (Barber); Leloudis Rpt. at 21-23, 54, 63-65; Lichtman Rpt. at 81-99; Burden Rpt. at 14-15.

35. These measures resulted in a dramatic increase in Black political participation. Leloudis Rpt. at 54-55. 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. *Id.* at 54. The new coalition also enacted a populist economic program including expanded funding on public schools, the creation of the Smart Start preschool education program, and the launching of Health Choice to provide children's health insurance that assisted poor North Carolinians, including Black North Carolinians. *Id.* at 53.

36. Voting in North Carolina was, by this time, as racially polarized as it had been at the end of the nineteenth century. For example, in 2012, 89% of the Republican party's registered voters in nationally were white, compared to 60% of registered Democratic voters; and only 2% of registered Republican voters were Black, with 6% Hispanic, compared to over a third (22% plus 13%, respectively) of Democratic voters. *Id.* at 56. This polarization is also evident in North Carolina specifically. For example, looking at 2016 State gubernatorial, senate, and presidential races, nearly two-third (63%) of white voters supported Republican candidates, while only 41% of Hispanic and only 10% of Black voters did so; and for Democratic candidates, white support in North Carolina was only 34%, while 56% of Hispanic and 89% of Black voters supported Democratic candidates. Lichtman Rpt. at 52-53, Table 13. In the 2016 presidential election, there was a 57-point gap between Black and white support for the Presidential candidate, and similar gaps were evident in the 2000 (59 points), 2004 (58 points), 2008 (60 points), 2012 (65 points), and 2014 (63 points) federal elections. Burden Rpt. at 10. A "pervasive pattern" of racial polarization in elections has persisted in North Carolina. *Dickson v. Rucho*, No. 11-CVS-16896 2013 WL 3376658 at *18 (N.C. Super. Ct. July 8, 2013).

37. In 2008, following most of these electoral reforms, African American voter turnout exceeded that of white voters for the first time. Leloudis Rpt. at 54; Burden Rpt. at 7, Table 1. This "level of participation was critically important in the 2008 presidential contest," as Barack Obama won North Carolina by a slim margin of 14,171 votes (out of over 4.2 million cast). Leloudis Rpt. at 54-55.

38. As Black and Hispanic voters in North Carolina began to use their growing electoral power, a conservative backlash resulted. *Id.* at 56. The 2010 campaign used racial appeals relying on "familiar tropes to stir up white fear and animosity." *Id.* For example, in 2010, the North Carolina Republican Party's Executive Committee distributed a campaign mailer in a General Assembly race appealing to anti-immigrant and anti-Hispanic sentiment. The mailer depicts incumbent Representative John Christopher Heagarty with a sombrero on top of his head and his skin darkened by photo editing. It depicts "Señor" Heagarty exclaiming, "Mucho taxo." *Id.* at 58. Organizations supportive of Republican Party policies, but officially unaffiliated with the Party, made further racial appeals. For example, the legislative director of the Raleigh office of Americans for Prosperity disparaged Hispanic immigrants as "illegal aliens," describing North Carolina as a "magnet for illegals" who wanted only to take advantage of state welfare programs. *Id.* During the 2012 Democratic National Convention in Charlotte, effigies of President Obama and state political figures were strung up in a hangman's noose and displayed on a truck parked near delegates' hotels. *Id.* at 57. Similar effigies were deployed in the 2018 and 2020 elections. Tr. 1205:4-1206:2 (Barber). As a civil rights leader in the state and a leading proponent of civil and voting rights, Rev. Barber has received personal threats and death threats for standing up for voting rights. Tr. 1204:15-1206:17 (Barber). Other civil rights leaders and voters testified about being subject to similar intimidation. Tr. 574:23-576:3, 576:20-577:24 (Caldwell), 301:19-304:7 (Burney). *See also* Tr. 754:24-755:17 (Brinson Bell)

39. In 2010, in this racially charged political environment, Republicans won majorities in both chambers of the North Carolina General Assembly, for the first time since 1896. Leloudis Rpt. at 59-60. In 2012, Republicans strengthened their control of the General Assembly and won the governor's office. *Id.* at 60.

40. Increasing minority participation threatened the fortunes of a new majority in the General Assembly elected with virtually no support from African American voters. From January 2004 to June 2018, for example, white voter registration "plunged from 77.9%" to 69.1%, representing an 8.8 percentage point drop in white voting strength. Lichtman Rpt. at 47. At the same time, Black voting strength increased by 2.7 percentage points (from 19.4% to 22.1%, making for an overall 11-point swing in white-to-Black voting strength in North Carolina. *Id.* Moreover, simple demographic changes worked against Republicans. For example, between 1990 and 2010, North Carolina's Hispanic population grew from approximately 75,000 to roughly 800,000, and by 2018, it rose to over 996,000. Leloudis Rpt. at 55. Between 2004 and 2010, the number of registered Hispanic voters rose from 10,000 to 79,000, and by 2016, that number had jumped again to 164,000. *Id.* "[T]hat figure is likely to rise dramatically in the years ahead." *Id.* This is primarily because the Hispanic population is comparatively younger and the majority of young Hispanics are U.S. citizens. *Id.* at 55, 62. For example, 84% of Hispanics in North Carolina who will turn 18 between 2015 and 2020 are citizens, and 97-98% of Hispanics who will turn 18 between 2020 and 2030 are citizens. Statewide, the eligible Hispanic voting age population should surpass 300,000 by 2020, 400,000 by 2025, and be close to or above 500,000 by 2030. *Id.* at 62 (based on graphic data). *See also* PX316 ("Barreto

Rpt.") ¶ 25 (noting that "24% of Whites are 65 or older, compared to . . . 5% of Latinos. In contrast . . . Latinos are far more likely to be under the age of 30.").

41. It is a fair inference that this decline in white voting strength in North Carolina will have a serious impact on statewide and national races, and thus "the motivation to suppress African American and other minority voters may have been [even] stronger in 2018 than in 2013." Lichtman Rpt. at 68. As already discussed, at the presidential level, Barack Obama won North Carolina in 2008 by only 14,171 votes out over 4.2 million cast. *Id.* In 2016, Democrat Roy Cooper won the Governorship by only 10,277 votes out of 4.7 million cast. *Id.* And in 2018, it would have been clear that Donald Trump was "facing a difficult reelection campaign[], with North Carolina a battle-ground state." *Id.*

### B. North Carolina's History of Racial Discrimination in Voting Continued After *Shelby County*

42. Upon taking control of the General Assembly, the Republican majority immediately turned to entrenching itself in power with the use of intentionally discriminatory election practices. Among other things, the 2011 General Assembly enacted racially gerrymandered legislative maps to lock in a Republican majority. Leloudis Rpt. at 60; Lichtman Rpt. at 13; Burden Rpt. at 12-13. As the Supreme Court ultimately found, the North Carolina General Assembly approved "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." *North Carolina* v. *Covington*, 581 U.S. 1015 (2017); *see generally* Lichtman Rpt. at 13-17.

43. During the 2011-2012 legislative session, Republican legislators attempted to enact a voter photo ID law (H.B. 351) that Democratic governor Beverly Purdue vetoed. *NAACP v. McCrory*, 182 F. Supp. 3d 320, 337 (M.D.N.C. 2016); DX276 (North Carolina Veto History) at 2. Governor Perdue explained that H.B. 351, amounted to "creation of new obstacles to voting . . . [that] will serve only to reduce voting in this State – particularly among elderly, poor, and African American voters. This bill has nothing to do with voter fraud and everything to do with voter suppression. . . I refuse to allow the General Assembly to turn back the clock to the days when the right to vote was enjoyed only by some citizens rather than all citizens."[3]

44. Prior to implementation of H.B. 589's photo ID requirement, most in-person voters in North Carolina were required to (1) state their names and current addresses, and (2) sign the Authorization to Vote form, with any false signature constituting a Class I felony. Consistent with the federal Help America Vote Act ("HAVA"), 52 U.S.C. § 21083(b), certain first-time voters were also required to present identification. Numerous forms of photo and non-photo ID could be used to meet this requirement, including a current utility bill, bank statement, government check, paycheck, or other government document. H.B. 589 eliminated public university ID cards, employee ID cards, and ID

[3] Governor's Objections and Veto Message (June 23, 2011) available at https://www.ncleg.net/Sessions/2011/h351Veto/letter.pdf

cards given to those on public assistance, changes that would hit African American voters the hardest. Lichtman Rpt. at 37-38, Table 8; Leloudis Rpt. at 61.

45. Although by 2013 Republicans controlled both houses of the General Assembly and the Governor's office, the State was still subject to the federal preclearance regime laid out in Section 5 of the Voting Rights Act, under which the State bore the burden of proving that any change in election law had neither a discriminatory purpose nor a retrogressive effect. *See* 52 U.S.C. § 10304; Leloudis Rpt. at 60; Burden Rpt. at 10; Lichtman Rpt. at 64.

46. Prior to the *Shelby County v. Holder,* 570 U.S. 529 (2013), decision, proponents of H.B. 589 acknowledged that any legislation would have to satisfy Section 5. Lichtman Rpt. at 64-65.

47. Legislative sponsors of an identification requirement, including Representative (now Speaker) Tim Moore and Chairman Lewis, pursued a limited voter photo ID bill that they likely believed would withstand the preclearance process. They engaged in a legislative process that they lauded as transparent and involving extensive vetting, study, and analysis. *Id.* at 64. The House passed a version of H.B. 589 in April 2013 that would have allowed voters to present numerous other forms of ID, including types of ID held at higher rates among African Americans. *Id.* For instance, the version of the bill that the House ultimately approved in April 2013 permitted the use of a photo ID "issued by a branch, department, agency, or entity of the United States, this State, or any other state." *Id.* at 37-38, Table 8. The bill listed a number of examples of such ID, including a student ID issued by a public college or university; an ID issued to a fireman,

EMS or hospital employee, or law enforcement officer; an ID issued by a unit of local government; and an ID issued for a public assistance program. *Id.*

48. Immediately following the release of the *Shelby County* decision, legislators abandoned their deliberate approach and transformed H.B. 589 into an omnibus overhaul of North Carolina election law, specifically targeting the very reforms that had been advocated for and disproportionately used by African Americans, and that expanded electoral opportunities for Hispanic and young voter participation within the state. Leloudis Rpt. at 60-63; Lichtman Rpt. at 64-65; Burden Rpt. at 11-12. The day of the *Shelby* decision, Senator Apodaca, then-chair of the Committee on Rules and Operations of the Senate ("Senate Rules Committee") announced that the Senate would move ahead with a "full bill" version of H.B. 589. *McCrory*, 831 F.3d at 216. As Dr. Lichtman noted, Senator Apodaca publicly commented that *Shelby* eliminated "legal headaches" and would "speed along" consideration of the "full" version of H.B. 589. Lichtman Rpt. at 64-65. Ultimately, the first and only Senate Rules Committee hearing was scheduled for July 23, 2013, only three days before Republican leadership had determined that the legislative session would adjourn. *See* Lichtman Rpt. at 65.

49. The post-*Shelby* Senate Rules Committee substitute version of H.B. 589 was 57 pages long and bore little resemblance to the version that the Senate had received from the House. *McCrory*, 931 F.3d at 227; *see also* Lichtman Rpt. at 37-40, Table 8, 65. The new bill included 53 new parts, in addition to modifications to the voter photo ID provision, which made it much more restrictive. Lichtman Rpt. at 37-40, Table 8.

50. Based on data known to members of the General Assembly, each of the specific changes that the legislature made to H.B. 589 in the wake of the *Shelby County* decision—both additions to and subtractions from the initial version—had the foreseeable consequence of disproportionately affecting minority voters. *McCrory*, 831 F.3d at 214; *see also* Leloudis Rpt. at 60-62. For example, the post-*Shelby* version of H.B. 589 dispensed with the relatively broad list of qualifying IDs that had been incorporated by the House, and made the list of IDs exclusive and limited to identifications issued by the North Carolina Division of Motor Vehicles ("DMV"), U.S. passports, U.S. military identification, U.S. veterans identification, and [certain] tribal identifications. Lichtman Rpt. at 37-40, Table 8. In-person voters over the age of 70 could use an expired ID if it was unexpired on the voter's 70th birthday. *Id*. at 39, Table 8. Under H.B. 589, a voter who did not present qualifying photo ID was permitted to cast a provisional ballot, but the ballot would not count unless the voter appeared at the county board of elections with qualifying ID before noon on the day before the election canvass. *McCrory*, 182 F. Supp. 3d at 370. The only in-person voters excluded from H.B. 589's ID requirement were voters unable to enter the polling place because of age or physical disability ("curbside" voters), voters with sincerely held religious objections to being photographed, and voters who lack qualifying ID as a result of a natural disaster occurring within 60 days of the election. *McCrory*, 182 F. Supp. 3d at 346. H.B. 589 required the DMV to issue a special identification card free of charge to any person eligible for such an ID who is a registered voter in North Carolina and declares that he or she lacks H.B. 589 ID, but required applicants for such ID cards to furnish the same identifying information as applicants for

any other DMV identification, including at least two forms of identification approved by the Commissioner of Motor Vehicles. Lichtman Rep. at 39, Table 8.

51. Among other provisions, H.B. 589 also eliminated one week of the early voting period, abolished same day registration, and prohibited the counting of OOP ballots. It also eliminated straight-ticket voting and preregistration. Finally, it allowed political parties to designate up to ten at-large observers per county, and it allowed any registered voter to challenge another voter from anywhere in the state before Election Day and from the same county on Election Day. Leloudis Rep. at 61-63.

52. Between February 2011 and April 2013, at times at the request of and in consultation with legislative leaders, the SBOE performed a series of database matching analyses to identify North Carolina registered voters who could not be matched to a record in the DMV database of DMV ID holders. *NAACP v. McCrory*, 182 F. Supp. 3d 320, 352 (M.D.N.C. 2016). Although each analysis used a different set of matching criteria—criteria that tended to reduce the number of "no-matches" with each succeeding iteration—they all revealed that hundreds of thousands of registered voters could not be matched to a DMV ID. *Id.*. Each of the analyses also showed that registered African American voters in North Carolina lacked DMV IDs at dramatically higher rates than white voters. *McCrory*, 831 F.3d at 216; *McCrory*, 182 F. Supp. 3d at 372 ("In each of the SBOE's four no-match analyses, African Americans were less likely to be matched to a qualifying ID . . . the evidence shows that racial disparities grow as the no-match list becomes smaller."); Lichtman Rpt. at 20-21, 74-78, Tables 18-19. Notably:

a. In January 2013, the SBOE compared its voter registration database to the DMV customer database and issued a report. *McCrory*, 182 F.Supp.3d at 352. This report found that 612,955 registered voters could not be matched to a DMV ID and that the pool of unmatched voters was disproportionately African American. *McCrory*, 831 F.3d at 216; *McCrory*, 182 F. Supp. 3d at 352, 372.

b. At the request of key sponsors of H.B. 589, including Representative Tim Moore, the SBOE produced a new list of 318,643 "unmatched" voters, which it described in an April 2013 report as the "most accurate estimate on the number of voters for whom it could not determine to have a photo ID." *McCrory*, 182 F. Supp. 3d at 352. This list also showed the pool of unmatched voters was disproportionately African American. *McCrory*, 831 F.3d at 216; *McCrory*, 182 F. Supp. 3d at 352, 372; Lichtman Rpt. at 74-75, Table 18.

c. In April 2013, an aide to Speaker Tom Tillis requested a "breakdown, by race, of those registered voters [who] do not have a driver's license number." Leloudis Rpt. at 60-61. Among the unmatched voters, members of the General Assembly requested and the SBOE further reported the race of those who requested absentee ballots, used early voting, registered through SDR, and cast provisional ballots. *McCrory*, 831 F.3d at 230. "This data revealed that African Americans disproportionately used early voting, same-day registration, and out-of-precinct voting, [and H.B. 589] drastically restricted all of these other forms of access to the franchise." *Id.* at 230.

53. The SBOE's April 2013 report concluded that 318,643 registered voters could not be matched to a DMV ID, and that white voters made up 54.2% of the unmatched voters but 71.9% of matched voters, while Black voters made up a disproportionate 33.8% of unmatched voters, and only 21.9% of matched voters. Lichtman Rpt. at 74-76, Table 18, Chart 16. Put another way, the percentage of African American voters who could not be matched was nearly 54% higher than the matched percentage, compared to white voters who were 25% lower. *Id.* This report, including information about racial disparities in DMV ID possession, was presented to legislators during consideration of H.B. 589. Leloudis Rpt. at 60-61; *McCrory*, 831 F.3d at 230.

54. During legislative debate, numerous members of the General Assembly warned that the burdens it imposed on voters would fall disproportionately on African Americans. *McCrory*, 182 F. Supp. 3d at 344. The full Senate debated the new version of H.B. 589 on July 24 and July 25, 2013. Opponents presented data showing the negative effects H.B. 589 would have on African American voters. *McCrory*, 182 F. Supp. 3d at 340-44. On July 25, 2013 the Senate voted to pass the amended version of H.B. 589 and returned the bill to the House. Despite the massive differences between the original House-vetted voter ID bill and the Senate's omnibus kitchen-sink bill, no conference committee was appointed, and H.B. 589 was rushed through the House. Chairman Lewis was the only legislator who spoke in support of the bill after it returned from the Senate. *McCrory*, 182 F. Supp. 3d at 344.

55. Proponents of H.B. 589 articulated two related primary justifications for H.B. 589. First, they suggested that the law was needed to combat the risk of widespread voter

fraud. *McCrory*, 831 F.3d at 235. No empirical evidence was presented to the legislature to suggest that voter fraud was a problem in North Carolina – as the Fourth Circuit noted the Legislature was not presented with evidence of "even a single individual who has ever been charged with committing in-person voter fraud in North Carolina." *McCrory*, 831 F.3d at 235. Indeed, the "between 2000 and 2014 . . . SBOE had only referred two cases of voter impersonation to district attorneys." *McCrory*, 182 F. Supp. 3d at 441; PX272 ("Minnite Rpt.") at 1, 23-26; Lichtman Rpt. at 105.

56. Second, H.B. 589 supporters suggested that the legislation would promote public confidence in the integrity of North Carolina's election system. While proponents asserted that they enacted H.B. 589 to restore confidence in the State's electoral system, in fact, they did exactly the opposite. The evidence establishes that H.B. 589 reduced the confidence many North Carolinians have in the fairness and integrity of their current election system. Lichtman Rpt. at 111-13, Table 26, Chart 28.

57. In the same session in which it passed H.B. 589, the 2013 General Assembly also cut unemployment benefits, declined federally funded expansion of Medicaid that would have extended health insurance to 500,000 North Carolinians, ended the state Earned Income Tax Credit, reduced school funding, and repealed the 2009 Racial Justice Act. Leloudis Rpt. at 60-65. And in 2013, the same year H.B. 589 passed, the General Assembly failed to place on the ballot a referendum repealing the state's literacy requirement constitutional amendment. Burden Rpt. at 10; Lichtman Rpt. at 4, 19-20.

58. Governor McCrory signed H.B. 589 into law in August 2013. *McCrory*, 831 F.3d at 218.

59. Following the passage of H.B. 589, the SBOE continued to perform database matching. In February 2015, the SBOE identified 254,391 registered voters who could not be matched to a qualifying ID in the DMV database. *McCrory*, 182 F. Supp. 3d at 352. Like prior analyses, SBOE's February 2015 no-match analysis showed greater racial disparities than prior analyses, reflecting registered African American voters in North Carolina lacked DMV IDs at even more dramatically higher rates than white voters. *McCrory*, 831 F.3d at 216; *McCrory*, 182 F. Supp. 3d at 372; Lichtman Rpt. 77-79, Table 19, Chart 17.

60. Around the same time, Dr. Charles Stewart, working on behalf of Plaintiffs challenging H.B. 589, performed a series of matching analysis and concluded that the range of voters without a form of ID valid for voting issued by the DMV (and other federal databases) ranged from 397,971 to over 822,000 (accounting for voters whose licenses have been surrendered or are inactive). PX219 ("Lichtman Rebuttal Rpt.") at 5-6; *see also McCrory*, 182 F. Supp. 3d at 352-53, 365 (discussing Dr. Stewart's finding that 397,971 registrants could not be matched to having a qualifying identification in DMV and federal databases). Dr. Stewart also found that, at the low end, Black registered voters "are more than twice as likely to lack the requisite photo ID as are whites (10.1% v. 4.2%)" and that, accounting for surrendered and inactive licenses, the disparity rose to "25.0% of black and 8.4% of white voters." Lichtman Rebuttal Rpt. at 5-6, *see also McCrory*, 182 F.Supp, 3d at 365, 372 (acknowledging that Black North Carolinians lacked DMV IDs at dramatically higher rates than white voters).

61. Shortly before the federal trial on H.B. 589 was due to start, the General Assembly enacted H.B. 836 in June 2015, making two significant changes to the photo ID requirement. First, it amended the requirement to permit the use of expired DMV ID if the expiration date is no more than four years before the date on which it is presented for voting. *McCrory*, 182 F. Supp. 3d at 344-345. Second, it added a provision permitting a voter who does not present qualifying ID "due to a reasonable impediment that prevents the voter from obtaining photo identification" to have her vote counted under specified circumstances. *McCrory*, 831 F.3d at 219.

62. H.B. 589 was in effect for the March 2016 primary election. Lichtman Rpt. at 30. As Dr. Lichtman explained, "[t]here are three primary ways in which a photo voter ID law disenfranchises otherwise eligible voters, especially the minorities that disproportionally lack such identification." *Id*. at 29. First is the direct disenfranchisement for lacking a photo voter ID, as measured by "non-counted provisional ballots filed by people without authorized IDs." *Id.* In the March 2016 primary, a total of 2,327 voters cast provisional ballots and over half—58.1%—were not counted and so these voters were directly disenfranchised by H.B. 589. *Id*. at 30-31, Table 6. Moreover, despite making up 77.2% of the primary electorate, white voters had their no-ID provisional ballots rejected at a rate of 55.7%; by contrast, Black voters (19% of the primary electorate) and other minority voters (3.8% of the primary electorate) had their no-ID provisional ballots rejected at rates of 61.8% and 62.2%, respectively. *Id.* at 30, 32, Table 7. Simply put, "[B]lacks and other minorities [we]re very substantially overrepresented among voters casting non-counted, no-ID provisional ballots in the 2016 primaries." *Id.* at 30.

63. Importantly, this direct and disproportionate disenfranchisement was occurring despite the availability of a "reasonable impediment" option under H.B. 589. *Id.* at 33. Studies have since shed light on explanations of this outcome. "*First*, numerous voters who did not have an acceptable ID for voting were not offered a reasonable impediment provisional ballot, and instead were offered a regular provisional ballot" which would require them to return with photo ID that they did not possess. *Id.* (quoting from a study of the 2016 election by Democracy North Carolina). "*Second*, even where a voter cast a reasonable impediment provisional ballot, the decision about whether to accept or reject the ballot varied wildly from county to county, and ballots were counted in an inconsistent and arbitrary manner." *Id.* at 35. "*Third*, some county board of elections violated state law and systematically rejected ballots that should have been counted," *e.g.*, by rejecting student voters whose "school schedule" impeded them from obtaining a compliant photo ID ballot. *Id.* Finally, "the simplest mistake[s] or omission[s] on the reasonable impediment declaration form would cause a person's ballot to be rejected." *Id.*

64. Two other forms of disenfranchisement impacted the March 2016 primaries held under H.B. 589. The second form (after direct disenfranchisement) "applies to voters who walked away from the polls rather than signing a 'reasonable impediment' declaration," for example because of the longer wait times involved or because of the deterrent effect of signing a statement involving acknowledging the potential felony involved with submitting false declarations. *Id.* at 36 (discussing wait times); *see also* Burden Rpt. at 25 (discussing the deterrent effect of S.B. 824's similar reasonable impediment felony acknowledgment). The "third form of disenfranchisement refers to

person who did not go to the polls" at all "because they [either] lacked acceptable IDs or believed that they lacked acceptable IDs." Lichtman Rpt. at 36. A study found that, using the "most stringent exact matching specification to estimate the deterrent effect," there was an enduring deterrent effect on voters in North Carolina without identification that extended even to the ***general*** election in 2016 (when the law was no longer in effect), with voters lacking ID being 2.6% less likely to participate. *Id.* at 36-37. Dr. Lichtman analyzed the 2016 primary results and concluded that over 101,000 voters failed to come to the polls due to the deterrent effect of the photo ID provision. Lichtman Rebuttal Rpt. at 11-13, Table R-3. Moreover, Dr. Lichtman found significant racial disparities comparing the non-matched voters who did vote in the 2016 primary to the non-matched voters who were deterred from voting in the 2016 primary. *See id.* at 13-14, Table R-4. White voters were over-represented among primary voters compared to primary voters who were deterred, while Black voters were over-represented among deterred voters compared to primary voters. *Id*.

65. 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 and violated the Constitution and Section 2 of the Voting Rights Act. 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." *Id.* at 214.

66. 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." *Id.* at 225. 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. *Id*. at 229.

67. The Fourth Circuit 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 and "which African Americans disproportionately lacked . . ." *Id*. at 216.

68. The Fourth Circuit found that "[p]rior to enactment [of H.B. 589], the legislature requested and received racial data as to the usage of the practices changed by the proposed law" and the data requested by the legislature "showed that African Americans disproportionately lacked the most common kind of photo ID, those issued by the Department of Motor Vehicles (DMV)." *Id*. at 216. *See also id.* at 227 (H.B. 589 "retained only those types of photo ID disproportionately held by whites and excluded those disproportionately held by African Americans.").

69. The Fourth Circuit observed that, after *Shelby County*, H.B. 589 was revised "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." *Id*. at 218. 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.

70. 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," and were more likely to rely on voting and registration mechanisms targeted by H.B. 589, and more likely to lack forms of qualifying voter ID under H.B. 589. *Id*. at 218. The Court further held that North Carolina General Assembly "certainly knew that African American voters were highly likely, and that white voters were unlikely, to vote for Democrats. And it knew that, in recent years, African Americans had begun registering and voting in unprecedented numbers. Indeed, much of the recent success of Democratic candidates in North Carolina resulted from African American voters overcoming historical barriers and making their voices heard to a degree unmatched in modern history." *Id.* at 225-26.

71. 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." *Id*. at

233. As the court explained, "[e]ven if done for partisan ends, that constituted racial discrimination." *Id.*

72. Following the *McCrory* decision, the General Assembly and the North Carolina Republican Party continued to engage in racial discrimination and voter suppression.

73. For example, in 2016, the North Carolina General Assembly enacted H.B. 2, which, among other things, barred victims of workplace racial discrimination from bringing claims in state court and barred municipal governments in North Carolina from passing anti-discrimination measures for four years. Lichtman Rpt. at 20.

74. In the 2016 general election, North Carolina Republican Party Executive Director Dallas Woodhouse called upon Republican Board members of County Boards of Election to "make party line changes to early voting plans" and reduce the number of early-voting polling places and to cut number of early voting hours. In response, seventeen County Boards, primarily in the eastern part of the state, reduced availability of early voting. Leloudis Rpt. at 65-66. During the election, the Republican Party issued a press release announcing the result in expressly racial terms: the "North Carolina Obama coalition was crumbling . . . As a share of Early Voters, African Americans are down 6.0% . . . and Caucasians are up 4.2%." Leloudis Rpt. at 66.

75. Despite these efforts, the 2016 North Carolina Gubernatorial race was close: Democrat Roy Cooper won the governorship by only 10,277 votes out of some 4.7 million cast (or about 0.2%). Lichtman Rpt. at 68. Exit poll data showed that Black voters supported Republican candidates at a level of 10%, and all racial and ethnic minorities

supported Republican candidates at a level of 19%, whereas white voters supported Republican candidates at a level of 63%. Lichtman Rpt. at 52.

76. Following the informal reduction of early voting hours and knowing the racial impact, in 2018, the General Assembly enacted Senate Bill 325 (over Governor Cooper's veto) which reduced the number of early voting sites by 20 percent and ended last Saturday early voting, which ended weekend voting in 56 North Carolina counties. Lichtman Rpt. at 18-19. In response, forty-three North Carolina counties eliminated at least one early voting site, two-thirds of counties reduced weekend voting hours, and half reduced the number of early voting days. Lichtman Rpt. at 18.

77. The national and North Carolina Republican parties used racial appeals during the 2018 campaign. For example, its Executive Director Dallas Woodhouse, tweeted pictures of black people convicted of murder and falsely accused Anita Earls, a black candidate for the North Carolina Supreme Court, of getting them off death row. Leloudis Rpt. at 70-71. At a national level, President Trump railed against Hispanic immigrants who he said were "infest[ing] our country" and voting illegally. Leloudis Rpt. at 67.

78. And the efforts to reimplement portions of H.B. 589 that were invalidated continued after the passage of S.B. 824 and into the present, as discussed below. *See, infra*, §§ II.A-B. For example, in 2023, the General Assembly enacted S.B. 747, which, among other things, curtails same-day registration, expands voter challenge provisions, make it harder for mail ballots to be counted. *See* Tr. 817:7-819:8 (Reives), 893:15-894:22 (Morey), 1084:3-17 (Bass).

### C. African Americans Bear Ongoing Effects of the Legacy of Official Discrimination in Education, Employment, and Housing

79. The protracted race-based exclusion of Black North Carolinians from the State's political franchise had far-reaching, long-lasting effects on their socioeconomic conditions. Leloudis Rpt. at 21-23, 63-65; Lichtman Rpt. at 81-99. For example, in past decades:

- Education expenditures for white children outpaced those for black children by a measure of three to one by 1920, a pattern that persisted through the 1950s. Leloudis Rpt. at 22-23.
- During the industrialization of North Carolina's urban areas, African Americans—with no political recourse—were excluded from skilled and industrial jobs, which severely depressed wages in the urban Black labor market. *Id.* at 22.
- In rural areas, African Americans were relegated to sharecropping, a major source of African American poverty as recently as the last quarter of the twentieth century. *Id*. at 11, 22.
- African Americans were excluded by law from white neighborhoods. *See id.* at 21-22.

80. In more recent decades, discrimination has also targeted and currently impacts Hispanics in North Carolina. Leloudis Rpt. at 60-63; Burden Rpt. at 26-28.

81. There is stark evidence of socioeconomic disparities in education, employment and income, housing, health, and access to transportation, between minorities

and whites in North Carolina. These socioeconomic disparities are a lingering result of centuries of official racial discrimination, segregation, and economic and political subjugation. Leloudis Rpt. at 63-64; Lichtman Rpt. at 81-82; Burden Rpt. at 26-28. As Drs. Leloudis and Lichtman discuss, the legacy of this segregation and lack of economic power is such that at the time S.B. 824 was passed:

- Depending on the metric used, as many as 25 percent of Black North Carolinians lived in poverty as compared to 11 percent of whites. Leloudis Rpt. at 63; *see also* Lichtman Rpt. at 83, Table 21 (similarly noting 21.9% for Blacks, and 10.2% for whites); Burden Rpt. at 14 (similarly noting 19% for Blacks, 22% for Hispanics, and only 8% for whites).
- Black North Carolinians had a median household income of $38,451 compared to a median household income of white North Carolinians of $60,263. Lichtman Rpt. at 83, Table 21.
- Adjusted per capita, Black North Carolinians had an income of $20,382 compared to per capita income of $35,114 for white North Carolinians. *Id.*
- The Black unemployment rate was 7.7%, compared to a white unemployment rate of 4.1%. *Id.*
- 12.2 % of Black North Carolinians lived in households without a vehicle, whereas only 3.7% of white North Carolinians lived in households without a vehicle. *Id.* at 91, Table 23.

- 10.7% of Blacks lacked health insurance, compared to 7.8% of whites. *Id.* at 95, Table 24.

82. These persistent disparities evince a lack of responsiveness on the part of elected officials in North Carolina to the particularized needs of minority members of the community. *See* Leloudis Rpt. at 3, 64, 70-72.

83. As a result of the history of discrimination and other voting barriers linked to socioeconomic disparities, voter registration and participation rates remained low in North Carolina until very recently, particularly among African Americans. Burden Rpt. at 25; *see* Lichtman Rpt. at 7, 81-99, 122.

## II. THE SEQUENCE OF EVENTS LEADING TO THE PASSAGE OF S.B. 824

84. Following the *McCrory* decision, leaders of the General Assembly immediately started plotting out efforts to entrench themselves in power. This strategy had two primary tactics. The first was to perpetuate gerrymandered district maps that suppressed the power of Black voters and forestalled any special or interim election that would reduce the size of their majority. The second was – through a series of legislative enactments, including S.B. 824, S.B. 325, and S.B. 747 – to reenact as many components of H.B. 589 as they could, including the use of a voter photographic identification requirement.

85. The motivation of the General Assembly leadership to entrench themselves in power were clear. As discussed above, the trends of increasing strength of the political power of Black voters and decreasing power of white voters and racial polarization from 2004-2012 documented in the History section, (*see, supra*, ¶¶ 33-34) had accelerated since

that time. According to Dr. Lichtman, the percentage of registered white voters in North Carolina "plunged from 77.9% in January 2004 to 69.1% in June 2018." Lichtman Rpt. at 47. This shift constituted "an 8.8 percentage point drop and 11.3 percent drop in white voter strength." *Id.* Conversely, "the percentage of registered African American voters in North Carolina rose from 19.4[%] in January of 2004 to 22.1[%] in June of 2018, an increase of 2.7 percentage points or 13.9 percent." *Id.* Moreover, other minority voters (including Hispanic voters) increased their voting share from 2.8% in January 2004 to 8.8% in June 2018, an increase of 6.0 percentage points or 214 percent. *Id.*

86. These trends of decreasing white voter strength and increasing Black and Hispanic voter strength took place alongside a further racial polarization of voting in North Carolina: exit poll data show that on average in 2016 Black voters supported Republican candidates at a level of 10%, whereas white voters supported Republican candidates at a level of 63%. Lichtman Rpt. at 52. And data for all minority groups in 2016 showed that minority voters supported Republican candidates at a level of 19%, compared to white voters who supported Republican candidates at a level of 63%. *Id.*

87. These demographic trends and widening polarization also come against a backdrop of tightening elections: Barack Obama won North Carolina in 2008 by only 14,171 votes out over 4.2 million cast, while in 2016, Democrat Roy Cooper won the Governorship by only 10,277 votes out of 4.7 million cast; by 2018, it was clear that Donald Trump was "facing a difficult reelection campaign . . . , with North Carolina a battle-ground state." Lichtman Rpt. at 68. Considering all this, Dr. Lichtman concludes, it is a fair inference that this decline in white voting strength in North Carolina would have a serious

impact on statewide and national races, and thus "the motivation to suppress African American and other minority voters may have been [even] stronger in 2018 than in 2013." *Id.* As in prior historical cycles discussed above, those trends provided strong motivation for the Republican majority in the General Assembly to try to entrench itself in power by seeking to limit the political rights of Black and other minority voters – through impermissible, race-based gerrymandering and through "targeting groups unlikely to vote for them . . . . [by reenacting] mechanisms and procedures that most heavily affect African Americans [that] predictably redound to the benefit of one political party and to the disadvantage of the other." *McCrory*, 831 F.3d at 214 (4th Cir. 2016).

88. At the time of the preliminary injunction, Plaintiffs submitted a paper record including (i) declarations from five legislators and three advocates concerning, *inter alia*, evidence presented to the legislature during the consideration of S.B 824 that it would have a discriminatory impact, *see* ECF Nos. 91-3, 91-6, 91-7, 91-8, 91-9, 91-10, 91-13, 108-2, 108-12, and (ii) expert analysis, primarily from Dr. Lichtman, that discussed his observations concerning the legislative process leading to the passage of S.B. 824. ECF Nos. 91-1, 108-3.

89. Five years later, at trial, Plaintiffs were able to present a more robust record, including testimony from six legislators and eight advocates about information that was presented to and known to the General Assembly in its consideration S.B. 824, as well as H.B. 1092 (its underlying constitutional amendment). At trial, plaintiffs were also able to introduce and present key documentary evidence, including the full legislative record, as well as internal correspondence and correspondence between the Legislative and State

Board Defendants' agents that establishes that prior to enacting H.B. 1092 and S.B. 824 key legislators obtained and confirmed data concerning the performance of H.B. 589, including its impact and disparate racial impact. As with H.B. 589, such information is reflected in the racially discriminatory policy choices embedded in the drafting of S.B. 824.

90. The findings of fact outlined in this section rely significantly on evidence presented at trial and that are newly developed since the preliminary injunction phase of this case. Following the framework set forth in *North Carolina State Conf. of the NAACP v. Raymond,* 981 F.3d 295 (4th Cir. 2020), the facts recounted below emphasize the contemporaneous statements and actions of key legislators following the *McCrory* decision to perpetuate the diminishing Republican majority's control over the General Assembly, including the planning and enactment of photo ID legislation.

### A. General Assembly Leaders Declare Their Intent to "Continue to Fight" to Resuscitate H.B. 589 and Keep Their Majority

91. On July 29, 2016 the Fourth Circuit ruled that H.B. 589 was unconstitutional and concluded 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. Two weeks later—on August 11, 2016—a three-judge panel of the federal district court in the Middle District of North Carolina invalidated the General Assembly's 2011 racial gerrymander—finding that 28 state legislative districts in North Carolina were drawn as a result of an unconstitutional racial gerrymander. Lichtman Rpt. at 13 (citing *Covington v. N. Carolina*, 316 F.R.D. 117, 124 (M.D.N.C. 2016)). The holdings and conclusions of the *McCrory* and *Covington* decisions were well known and well

understood by the North Carolina General Assembly. Tr. 943:20-944:14 (McKissick) (The *McCrory* decision "was broadly disseminated in public media sources . . . if you read the newspaper, if you watched the news . . . you would have been aware of it"); *see also* Tr. 939:20-940:11 (McKissick) (after *Covington*, "I think there was great concern and great fear among the Republican supermajority at that time that they would lose power").

92. In the immediate aftermath of the *McCrory* decision, the leadership of the General Assembly attacked the *McCrory* decision and defended H.B. 589. Shortly after the Fourth Circuit decision, the Legislative Defendants, Senate Leader Phil Berger and House Speaker Tim Moore, issued a joint statement on July 29, 2016 disparaging the *McCrory* decision as a decision "by three partisan Democrats" with "intent . . . to reopen the door to voter fraud." Lichtman Rpt. at 10; PX47 at 4-5.

93. As described below, in the ensuing period, the General Assembly Republican leadership, knowing that they were losing power in the General Assembly, continued to disparage the *McCrory* decision and to reenact key provisions of H.B. 589. For example, Chairman Lewis (a lead sponsor with Legislative Defendant Tim Moore) of H.B. 589, and Chair of the House Rules Committee and Co-Chair of the House Committee on Elections) stated of the *McCrory* decision: "I think (the Judge) was wrong." Lichtman Rpt. at 10-11.

94. As the State prepared to appeal the *McCrory* decision to the U.S. Supreme Court, on August 16, 2016, North Carolina Republican Party Executive Director Dallas Woodhouse called upon Republican Board members of County Boards of Election to "make party line changes to early voting plans" and reduce the number of early-voting polling places and to cut number of early voting hours – in effect a call for Republican-

appointed election officials, notwithstanding the *McCrory* decision, to use their power to proceed to implement the H.B. 589's reduction in early voting. Leloudis Rpt. at 65-66. In response, seventeen County Boards, primarily in the eastern part of the state, reduced availability of early voting. During the election, the Republican Party, led by Woodhouse, issued a press release announcing the result in expressly racial terms: the "North Carolina Obama coalition was crumbling . . . As a share of Early Voters, African Americans are down 6.0% . . . and Caucasians are up 4.2%." Leloudis Rpt. at 66.

95. The U.S Supreme Court denied certiorari in the *McCrory* litigation on May 15, 2017, allowing the injunction issued in *McCrory* to remain in effect. The same day, the Legislative Defendants, Speaker Moore and Senator Berger, issued a joint statement asserting 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." Lichtman Rpt. at 10; Leloudis Rpt. at 66.

96. Following up on its August 11, 2016 decision, on September 19, 2017, the federal district court in the Middle District of North Carolina found that North Carolina had implemented one of the "largest racial gerrymanders ever encountered by a federal court" and found the "widespread, serious, and longstanding nature of the constitutional violation . . . counsel[ed] in favor of . . . truncat[ing] the terms of legislators . . . and order[ing] a special election." Lichtman Rpt. at 13; *Covington v. North Carolina,* 270 F. Supp. 3d 881, 884 (M.D.N.C. 2017) ("*Covington II*"). To that end, on November 1, 2017 the District Court in *Covington* appointed a Special Master "to submit a report and

proposed plans to remedy the unconstitutional racial gerrymander" of the North Carolina legislative districts. *Covington v. North Carolina*, 2017 WL 5992358 at *1 (M.D.N.C. Dec. 1, 2017) (internal marks omitted).

97. On June 8, 2017, Plaintiffs in *Covington* requested that the Court order the drawing of new district lines in time to hold a special election in 2017. Lichtman Rep. at 13; *see also Covington,* 1:15-cv-00399, ECF No. 150 (M.D.N.C. June 8, 2017). In response, on July 16, 2017 the Legislative Defendants asserted that "the General Assembly had not start[ed] the laborious process of redistricting earlier than July 2017, that it had not been necessary to begin the process of drawing new districts until at, the earliest, the end of the current Supreme Court term on June 30, 2017, and that the General Assembly could begin the process of compiling a record in July 2017 with a goal of enacting new plans by the end of the year." Lichtman Rep. at 13-14 (citing Legislative Defendants' Position Statement, *Covington v. North Carolina,* No. 1:15-cv-00399, ECF 161 at 28-29 (MDNC July 6, 2017) (internal marks omitted). In order to implement the *Covington* Court's order on redistricting, the North Carolina General Assembly created a special Joint Redistricting Committee, also chaired by Representative Lewis, and retained Dr. Thomas Hofeller to draw maps. Lichtman Rpt. at 14-15.

98. As discussed below, the General Assembly's representations to the Court concerning the status of drawing a new redistricting map and its timing were false and were intended to delay the seating of new legislators that would diminish the General Assembly's Republican majority. To advance this scheme, Rep. Lewis repeatedly and deliberately misled the Court about the status of preparation of maps.

99. For example, during a hearing of the Joint Committee on Redistricting on July 26, 2017, Rep. Michaux asked Rep. Lewis: "Are there any other maps that have not yet been released? For instance, anything that has been drawn by Dr. Hofeller or anybody else that you know that have not yet been released?" Lichtman Rpt. at 14 (quoting North Carolina General Assembly, Joint Committee on Redistricting, Transcript of Proceedings, July 26, 2017 at page 11-12 (filed in *Covington v. North Carolina,* 1:15-cv-00399, ECF 184-7 (MDNC Sept. 7, 2017)). Rep. Lewis responded: "Not that I know of, sir." *Id.*

100. During a hearing of the Joint Redistricting Committee on August 4, 2017, Rep. Lewis again represented that no redistricting maps had "been drawn at my direction" and that "I have not yet drawn maps nor have I directed that maps be drawn, nor am I aware of any other entity operating in conjunction with the leadership that has drawn maps." Lichtman Rpt. at 14 (quoting North Carolina General Assembly, Joint Committee on Redistricting, Transcript of Proceedings, August 4, 2017 at page 72-73 (filed in *Covington v. North Carolina,* 1:15-cv-00399, ECF 184-8 (MDNC Sept. 7, 2017)).

101. The General Assembly adopted new redistricting maps to comply with the *Covington* judgment on August 31, 2017. *Common Cause v. Lewis,* 18-CVS-014001, Wake County Superior Court Division, Judgment ("*Common Cause* Judgment"), ¶ 42 (Sep. 3, 2019).

102. On September 19, 2017, in response to Legislative Defendants' representations, the Court granted a delay in the holding of special elections based on the new maps. *Covington II,* 270 F. Supp.3d at 884 (M.D.N.C. 2017); *see also* Lichtman Rpt. at 14.

103. Subsequently, the Wake County Superior Court struck down the 2017 maps as an unconstitutional partisan gerrymander under North Carolina law. Lichtman Rpt. at 15 (citing the *Common Cause* Judgment).

104. The court in *Common Cause* reviewed the record of the Legislative Defendants' statements in 2017 and concluded that the Legislative Defendants' statements in 2017 that they did not have maps prepared in June of 2017 were misleading and inaccurate:

a. "No party disputed that the maps presented in Plaintiffs' Exhibits 124-129 131-133 and 140-147 accurately reflect the district boundaries in Dr. Hofeller's June 2017 draft plans and the final enacted plans." *Id.* at 16 (quoting *Common Cause* Judgment, ¶ 701).

b. "Dr. Hofeller, and consequently the Legislative Defendants who retained him, by having largely completed the drafting of the House and Senate maps by June 2017, did so with little regard for the Adopted Criteria, or the neutral, non-partisan criteria contained therein, which were not adopted by the Senate Redistricting Committee and House Select Committee on Redistricting until August 10, 2017, and provided to Dr. Hofeller on August 11, 2017." *Id.* (quoting *Common Cause* Judgment, ¶ 702).

c. "The Court is troubled by representations made by Legislative Defendants, or attorneys working on their behalf, in briefs and arguments to the Covington Court and to General Assembly colleagues at committee meetings that

affirmatively stated that no draft maps had been prepared even as late as August 4, 2017." *Id.* (quoting *Common Cause* Judgment, ¶ 704).

d. "[T]he Court, as previously stated, is persuaded and specifically finds, that Dr. Hofeller's intent and actions, as evidenced throughout his map drawing process from at least early June 2017, are attributable in full to Legislative Defendants." *Id.*

105. As a result of the misleading statements by Legislative Defendants in June 2017, no special elections for legislative districts were held in 2017. Lichtman Rpt. at 17.

106. Revised legislative maps addressing the racial gerrymander were not drawn and approved until 2018. Lichtman Rpt. at 17. "Curing this widespread and sweeping racial gerrymander required that over two-thirds of the North Carolina House and Senate districts be redrawn." *N. Carolina State Conf. of NAACP v. Moore*, 382 N.C. 129, 139 (2022).

107. The consequence of delayed remedial redistricting maps was that both H.B. 1092 and S.B. 824 were considered by the North Carolina General Assembly in 2018, by a legislature elected to districts found by courts to be the product of unconstitutional racial and partisan gerrymanders. Lichtman Rpt. at 17. "By unjustifiably relying on race to distort dozens of legislative district lines, and thereby potentially distort the outcome of elections and the composition and responsiveness of the legislature, the districting plans interfered with the very mechanism by which the people confer their sovereignty on the General Assembly and hold the General Assembly accountable." *Covington II*, 270 F. Supp. 3d at 897.

108. That General Assembly featured a Republican supermajority that feared losing power in an election based on fair maps. Tr. 939:20-940:25 (McKissick) ("there was great concern and great fear among the Republican supermajority at that time that they would lose power . . . [and] when that election cycle [based on redrawn maps] came up, you saw some Republicans losing in the districts they had previously represented.").

**B. General Assembly Leaders Plot the Reinstatement of H.B. 589**

109. Consistent with the commitments made by Legislative Defendants Senator Berger and Speaker Moore following the *McCrory* decision and the Supreme Court's denial of certiorari to enact a photo identification law, General Assembly leaders worked in late 2017 and early 2018 to reenact components of H.B. 589. This included a plan to include a photo identification law similar to H.B. 589, but to insulate it from attack by enacting a constitutional amendment requiring identification to vote in person.

110. To implement the plan, the leaders of the General Assembly selected lawmakers to lead the effort who had been intimately involved in the passage of H.B. 589. Legislative Defendant Speaker Moore himself had been one of the lead sponsors of H.B. 589 in 2013, and was a primary sponsor of H.B. 1092 in 2018. Lichtman Rpt. at 11; PX548 (H.B. 1092 Bill History). Chairman Lewis was Chair of the House Elections Committee in 2013, and in 2018 was Chair of the House Rules Committee and Co-chair of the House Committee on Elections and Ethics Law – he was also a primary sponsor of H.B. 1092 in 2018. Lichtman Rpt. at 11; PX548 (H.B. 1092 Bill History) at 1. Senator Warren Daniel was a strong supporter of H.B. 589, and in 2018 was a primary sponsor of S.B. 824. *Id.*

111. Their intent to reinstate H.B. 589 was clear in statements made in the immediate aftermath of the *certiorari* denial. Chairman Lewis—a leader in enacting H.B. 589, as well as: a leader in both the General Assembly's efforts to forestall new legislative maps, the lead sponsor of H.B. 1092 (the voter identification constitutional amendment), and a leading proponent of S.B. 824—stated in July 2017, immediately following the denial of *McCrory* certiorari that "[w]e are a hundred percent committed to the idea of voter ID and we are still working out the logistics of what we believe to be the most sure-fired way to get voter ID implemented that will withstand the inevitable challenges that will come from the left." PX46 at 2; Lichtman Rpt. at 11.[4] At trial, Rev. Barber read Chairman Lewis's comments and testified that "I actually reconsidered in that moment, stepping down because what this article said to me and what this statement said when we were briefing, because we had won so much, we thought it was over. We had done our work and we had defeated what we thought was the worst voter suppression bill since the days of Jim Crow. Certainly the worst after Shelby, and we had won. Now what I think I remember seeing at the time they're not going to quit. Now it seemed as though and I told the person that would be incoming leaders of the NAACP while we won. This is far from over. It looks like they're going to break this thing up into pieces." Tr. 1224:7-18 (Barber).

112. At the same time it was attempting to reinstate H.B. 589's photo identification provisions, the General Assembly seized upon an opportunity to reinstate

[4] As noted above, this statement was made virtually simultaneously with Chairman Lewis' misrepresentations concerning the availability of revised redistricting maps that would have allowed a special election to take place.

another portion of H.B. 589. Following Dallas Woodhouse's call in 2016 for County Boards controlled by Republicans to reduce availability of early voting hours and having bragged about the disparate racial impact of these efforts, (*see, supra*, ¶ 94), in June 2018, the General Assembly enacted Senate Bill 325 (over Governor Cooper's veto) which reduced the number of early voting sites by 20% and ended last Saturday early voting, which ended weekend voting in 56 North Carolina counties. Lichtman Rpt. at 18-19. In response, forty-three North Carolina counties eliminated at least one early voting site, two-thirds of counties reduced weekend voting hours, and half reduced the number of early voting days. Lichtman Rpt. at 18.

113. With regard to reinstating H.B. 589's voter identification provisions, General Assembly leaders started their efforts to plot the path forward with extensive baseline data on how voter identification laws would work in North Carolina and what kind of racial impact they would have. As discussed above, in the course of drafting H.B. 589, legislative leaders (including Representative Tim Moore and Chairman Lewis) repeatedly sought and obtained data from SBOE regarding the demographics of individuals who did and did not possess certain forms of identification. *See, supra*, ¶ 68. In addition, General Assembly leaders knew how the voter identification requirement had performed during the 2016 primary, shortly before it was enjoined. *See, infra*, ¶ 171.

114. Specifically, as it embarked on the path to reinstate the voter identification components of H.B. 589, the General Assembly knew that:

a. The April 2013 no-match analysis performed by SBOE found 318,643 registered voters unmatched to a form of DMV ID valid for voting. *N.C. Conf. of*

*the NAACP v. McCrory,* 182 F. Supp.3d 320, 352 (M.D.N.C. 2016) ("*McCrory I*"). "The data showed that African Americans disproportionately lacked the most common kind of photo ID, those issued by the Department of Motor Vehicles . . . with race data in hand, the legislature amended the bill to exclude many of the alternative photo IDs used by African Americans . . . [and] retained only the kinds of IDs that white North Carolinians were more likely to possess." *Id.* at 216; *see also* Lichtman Rpt. at 73 (the April 2013 data showed significant racial disparities between whites and African Americans in ID possession).[5]

b. Also as discussed above, after enactment of H.B. 589, in the course of its implementation, the SBOE continued to refine its no-match lists. *See, supra*, ¶¶ 52-53, 59. In 2015, it developed an updated version of its previous 2013 no-match analysis. *See, supra*, ¶ 59. This updated 2015 analysis, based on a November 2014 snapshot of voter data, found 254,391 voters unmatched to any qualifying ID in the State's DMV database. *See McCrory I*, 182 F. Supp. 3d at 352. This updated 2015 SBOE no-match list showed even greater racial disparities than SBOE's prior no-match list. Lichtman Rpt. at 78, 80, Tables 19-20. Dr. Lichtman reported that the Black no-match percentage of 36.2% exceeds the total Black registration percentage by 13.7 percentage points, whereas the white no-match percentage, 48.5%, is 22.01

[5] According to Dr. Allan Lichtman, the April 2013 SBOE analysis is almost certainly an undercount, since SBOE matched more than 240,000 registered voters to forms of DMV ID that are expired and thus not valid for voting. Lichtman Rpt. at 77.

percentage points *less* than the total white voter registration percentage. Lichtman Rpt. at 78, Table 19.

c. As discussed above, Plaintiffs' expert in McCrory, Dr. Stewart, concluded that between 397,971 and 822,000 (accounting for voters whose licenses have been surrendered or are inactive) could not be matched to having a qualifying identification in DMV and federal databases). *See, supra*, ¶ 60 (citing Lichtman Rebuttal Rpt. at 5-6 and *McCrory*, 182 F. Supp. 3d at 352-53, 365 (discussing the lower range). He found that, at the low end, Black registered voters were more than twice as likely as white voters to lack an approved DOT photo ID (10.1% versus 4.2%), or at the high end, about three times as likely (25.0% versus 8.4%). *Id.*

d. During the March 2016 primary, 2,327 votes were cast provisionally because of the identification requirement and 58.1% of these were not counted, Black voters were disproportionately more likely than white voters to be required to vote provisionally because of an identification issue, and Black voters were disproportionately more likely to have their ballots not counted than white voters. Lichtman Rpt. at 29-34, Tables 6-7.

115. Much of this information was known to large swaths of the General Assembly in the 2017-2018 term, because—reflecting the 2011 racial gerrymander and the successful efforts of the General Assembly leadership in forestalling special elections following the *Covington* decision—there was significant continuity between the membership of the 2013 General Assembly that had enacted H.B. 589 and the 2018 General Assembly that enacted S.B. 824. Lichtman Rpt. at 11-12. Of particular note, no

Republican member of the General Assembly who had been in the legislature in 2013 who remained in the General Assembly in 2018 opposed S.B. 824, the veto override, or H.B. 1092 (the underlying constitutional amendment). Lichtman Rpt. at 11. Of the legislators who voted to approve H.B. 1092, 21 of the 33 Republican Senators and 44 of the 74 Republican Representatives were in the General Assembly in 2013 and voted in favor of H.B. 589. Lichtman Rpt. at 11. Of the legislators who voted in favor of final passage of S.B. 824, 16 of the 30 Republican Senators and 41 of the 67 Republican House members were in the General Assembly in 2013 and voted in favor of H.B. 589. Lichtman Rpt. at 12. And of the legislators who voted in favor of overriding Governor Cooper's veto of S.B. 824, 19 of the 33 Republican Senators and 42 of the 72 Republican Representatives were in the General Assembly in 2013 and voted in favor of H.B. 589. Lichtman Rpt. at 12.

116. In addition to the substantial continuity of lawmakers who participated in and had knowledge of the H.B. 589 debates, in 2018, key legislative leaders obtained updated information concerning the impact and racial impact of a photo identification requirement in the months preceding the consideration and passage of S.B. 824.

117. Of particular note, starting in late 2017 and continuing through 2018, Chairman Lewis, with his knowledge that both SBOE and Plaintiffs' experts in *McCrory* had identified hundreds of thousands of registered voters without a form of photo ID valid for voting and that Black voters disproportionately lacked IDs, specifically sought to confirm the accuracy of that data and obtain any "subsequent" updates of that data. PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-

Match Data). This is evident because on December 18, 2017, Mark Coggins, Charman Lewis's top aide, emailed SBOE Director Kim Strach and SBOE General Counsel Joshua Lawson referencing the "300,000 people the NCSBE found that are on the voter rolls who didn't have photo ID," and requesting they provide the following information:

a. From "deep down in your archives, the data that our friend Marc Burris has been working on for the past several years that shows the number of NCians believed to be on the voter rolls without a photo ID?" PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-Match Data) at 5;

b. ". . . any *subsequent* data on why the number is so high," *Id.* (emphasis added);

c. any "potential data issues with an accurate assessment of the number," *Id.*; and

d. "steps you [SBOE] have taken to bring that number down?" *Id.*

118. SBOE General Counsel Lawson responded to Coggins on January 8, 2018. PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-Match Data) at 1. Coggins received a link to "the raw data" underlying the no-match lists, including the SBOE voter file. *Id*. The SBOE voter file includes data on the racial and ethnic characteristics of registered voters. Tr. 604:4-20 (Brinson Bell).

119. Lawson also forwarded to Coggins an email from SBOE Chief Information Officer Brian Neesby, which confirmed that hundreds of thousands of registered North Carolina voters lacked qualifying identification, and that this, as the *McCrory* court noted,

disproportionately impacted Black and Hispanic voters. Among other things, Lawson forwarded:

a. Several excel spreadsheets providing different versions of SBOE no-match lists, with results ranging from 218,708 unmatched registered voters to 318,641 unmatched registered voters. PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-Match Data) at 1-2. As noted above, all of these no-match lists showed significant racial disparities in ID possession.

b. An excerpt from the District Court opinion in *McCrory I*, summarizing the evidence of no-match analyses presented during the *McCrory* case. That included a summary of SBOE matching analyses showing a range of estimated North Carolina registered voters without a form of qualifying DMV ID from 254,391 to 1,005,581 registrants, depending on the matching criteria used. *Id.* at 2-4. It also included a summary of a no-match analysis conducted by Plaintiffs' expert, Dr. Charles Stewart, Ph. D., concluding that 397,971 registrants lacked a form of qualifying ID in DMV or certain federal databases. *Id.* As noted above, all of these analyses showed significant racial disparities in ID possession.

120. Mr. Coggins had also requested that Lawson and Strach identify any "potential data issues with an accurate assessment of the number" and any "steps [SBOE had] taken to bring that number down." *Id.* at 5. Mr. Lawson's response notably did not respond to either of these requests. *Id.* There is no evidence in the record that SBOE had been able to "bring that number down." *Id.* Nor did Mr. Lawson identify anything to

suggest that the racial disparities in ID possession reflected in this data had been reduced. *Id.*[6]

121. Armed with this data, Chairman Lewis, Speaker Moore, and other leaders of the General Assembly proceeded to launch their plan that they believed would be a sure-fire way to get voter ID implemented without court challenge. "In the final two days of the 2018 regular legislative session, the General Assembly passed six bills that would place six constitutional amendments before the voters: Session Laws 2018-96 (Right to Hunt and Fish Amendment), 110 (Victim's Rights amendment), 117 (First Board of Elections Amendment), 118 (First Judicial Vacancies Amendment), 119 (Tax Cap Amendment), and 128 (Voter ID amendment)." *NAACP v. Moore*, 382 N.C. 129 at 136 (N.C. 2022); *see also* Tr. 856:4-24 (Morey); 946:5-11 (McKissick); Lichtman Rpt. at 70.

122. Legislative Defendant Speaker Moore and Chairman Lewis, both of whom had been lead sponsors of H.B. 589, were lead sponsors of the Voter ID constitutional amendment (H.B. 1092). PX548 (H.B. 1092 Bill History) at 1. As discussed above, at trial Dr. Barber discussed reading an article in which Chairman Lewis explained that the constitutional amendment would help "mute future court challenges[.]" Tr. 1223:12-16 (Barber). Barber further testified that "[t]he Court said what you were doing [in the prior bill] was racism with surgical precision . . . but you can't give up now so you're to suggest

[6] As discussed below, the number of people without identification had not gone down and the racial disparity in ID possession has not been reduced. *See, infra*, § IV.A. This is clear both from SBOE's assessment in 2019 that hundreds of thousands of registered voters still lacked qualifying identification, as well as additional analyses that have confirmed that number and the racial disparities. *Id.*

you need to change the Constitution." Tr. 1225:6-12 (Barber). Reverend Barber testified that he and the North Carolina NAACP put the legislature on notice of their position on Constitutional Amendment. "We actually – with clergy and activists and other people, framed a rally around the concept. Cease-and-desist And we said, listen; You lost the courts. The courts have already said what you're doing is inval*id.* Cease-and-desist. Stop this. You know? And that was the basis of what we called stop trying to silence the people and let the people vote." Tr. 1232:8-14 (Barber). "We wrote – yeah, we made sure it was clear both in voice and in print and in writing." Tr. 1233:5-6 (Barber).

123. Chairman Lewis introduced H.B. 1092, which was filed in the House on June 7, 2018, during the short legislative session. PX548 (H.B. 1092 Bill History) at 4.

124. On June 11, 2018, H.B. 1092 was referred to the House Committee on Elections and Ethics Law, which was chaired by Representative Lewis.

125. A week later, on June 18, 2018, H.B. 1092 was sent to the Committee on Rules, Calendar, and Operations of the House, also chaired by Representative Lewis, where it was taken up at a hearing on June 21, 2018. PX548 (H.B. 1092 Bill History) at 4; *see* PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.). Speaking to the press outside the hearing, on June 21, 2018, Chairman Lewis expressly referenced H.B. 589 as the justification for proceeding with the proposed photo Voter ID constitutional amendment, H.B. 1092: "The reason we are asking voters if they want to do this or not is, frankly, we think we passed a good law before." Lichtman Rpt. at 10 (internal marks omitted).

126. At the June 21, 2018 hearing, the bill was presented at Committee by Legislative Defendant Speaker Moore, who stated that he rarely presented bills but that he

had been working on the "voter ID bill since 2003," that North Carolina "must not tolerate anyone whose vote is not counted," and voter identification "should not be a partisan thing." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 2:14-4:1. As subsequent events made clear, however, the General Assembly proceeded knowing full well that the voter photo ID bill would result in people having their votes "not counted," and that the bill was being enacted on a partisan basis.

127. Similarly, the primary outside advocate for the constitutional amendment at the June 21, 2018 hearing was Dallas Woodhouse, Executive Director of the North Carolina Republican Party. Notwithstanding his prior and ongoing efforts to denigrate and target Black North Carolinians for exclusion from the electorate, (*see, supra*, ¶¶ 74, 77 (racial appeals), 76 (curtailing early voting)), Mr. Woodhouse (similar to Speaker Moore) testified that voter identification would be a "unifying opportunity" for the state, contending it was "supported by black and white, man and woman, Republican and Democrat, urban and rural." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 23:10-19. In fact, polling data showed public opinion on H.B. 1092 to be sharply divided. Lichtman Rpt. at 61. Black voters opposed the Constitutional Amendment by a margin of 61-28 against the amendment, compared to white support of the Constitutional Amendment by a margin of 66-29%. *Id.* Similarly, Democrats opposed the amendment by a 66%-28% margin, while Republicans supported the measure by a margin of 90%-7%. *Id.* Mr. Woodhouse also defended key components of H.B. 589 and S.B. 824, and he "disagree[d] that there is some mass amount of people out there that don't have the ability to get some sort of ID." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 23:20-24:3. Again, his

statements were contradicted by numerous analyses, including those prepared by SBOE, showing hundreds of thousands of North Carolina voters without valid forms of photo ID. *See, supra*, ¶¶ 52-53, 59-60. Finally, Mr. Woodhouse asserted that he "disagree[d] that this amendment has the purpose of suppressing any kind of votes." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 23:20-21. Again, this statement is contradicted by the overwhelming evidence of the fall of white voting strength and the increasing racial polarization of North Carolina elections, giving State Republican leaders a powerful incentive to find ways to suppress the African American vote. *See* Lichtman Rpt. at 68.

128. In contrast to Mr. Woodhouse's statement, at the June 21, 2018 hearing, the General Assembly was presented with evidence from speaker after speaker who made clear that adopting a photo ID requirement would disenfranchise voters, and would do so on a racially discriminatory basis. For example:

a. Reverend T. Anthony Spearman, representing the North Carolina NAACP testified at the hearing that the proposed Constitutional amendment would "disproportionately [impact] people of color and the poor." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 12:7-8. Spearman further stated that "When voter ID was last attempted in this state, it was proven to block eligible voters from casting ballots. Those who were denied their rights were disproportionately African American voters." *Id.* at 12:8-11. Spearman warned the members that "In North Carolina, we know voter ID is intended to silent certain voters and impacts many more. Voter ID has already disproportionately disenfranchised African American voters. Although African Americans make up only 23% of all voters in March 2016

primary, they were 34 percent of the 1,400 voices silenced by the voter ID law." *Id*. at 13:1-7. Rev. Spearman concluded that "This bill has one motivation, eliminate and chill the votes of certain voters . . . . No changes will make this effort to enshrine discrimination in the constitution tolerable, especially since North Carolina has yet -- I repeat yet -- to rid the constitution of the remnants of racial discrimination still on our laws." *Id*. at 13:23-14:5.

b. Bill Rowe of the North Carolina Justice Center testified that the proposed Constitutional Amendment "will use the North Carolina Constitution to disenfranchise voters. That will disproportionately disenfranchise African American voters. Senate [sic] Bill 1092 will make it harder for thousands of poor North Carolinians to vote. Those are folks in your community with disabilities. They're people who are older adults who don't drive." *Id.* at 18:16-21. Rowe further stated that H.B. 1092 "will really hurt those of the least of us in our communities." *Id.* at 19: 5-6.

c. Brent Laurenz of Common Cause North Carolina testified that H.B. 1092 "threatens to leave voters out of the process . . . and in fact would have a disproportionate impact on African American voters across the state." *Id. A*t 20: 16-19. Laurenz further stated that H.B. 1092 would "erect barriers to people's civic duty and their most fundamental right to vote in free and fair elections." *Id.* at 20: 21-23.

d. Doug Dickerson, state director of the American Association of Retired Persons in North Carolina, testified that H.B. 1092 "would, in practical

terms, reduce voter participation by inhibiting basic American voting rights." Dickerson further stated that "We fully expect a lower voter turnout among older adults if this constitutional amendment that creates new barriers to voting were to pass." *Id.* at 27:22-28:1.

e. Tomas Lopez of Democracy North Carolina testified, reminding the General Assembly that the last NC voter ID bill "was thrown out in court for targeting African Americans with almost surgical precision. *Id.* at 15:4-9. He further testified that "There are individuals who aren't necessarily in this room; who live very different lives in some ways and very similar in others; who will not have access to the ballot under either this amendment, a future form of it, or the implementing legislation that it would take to go on the books." *Id.* at 15:15-20. At trial, Mr. Lopez testified that the message that he was trying to convey was "one don't do this. Two, don't do this now. Three, if you do this this will make voting harder for people, especially black and brown voters." Tr. 521:23-25 (Lopez).

f. Long time General Assembly Special Counsel Gerry Cohen testified that "[a] large segment of society does not have an ID" and "obtaining one is not easy for many who lack documents." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 10:9-11. Cohen further warned lawmakers that "[r]esearch has fairly shown that the poorer the voter and the younger the voter in the voter's life it's less likely there is an acceptable photo ID. Clear evidence presented in 2013 in litigation shows racial disparity in access to ID." *Id.* at 10:12-15. Cohen further testified that "[t]hose of us in politics are privileged to be in the top 95 percent of society. We

don't often see the struggle of citizens who are unbanked, poor, homeless, mentally ill with no car or living far away from DMV in rural areas. We all deserve respect and honor Not baseless fraud allegations or artificial and unnecessary barriers to voting. This bill will disenfranchise voters." *Id.* at 10:16-22.

g. Representative Harrison provided specific data to the Committee showing the impacts of prior photo voter ID legislation. Harrison stated that the amendment "would create hardships for people who have a fundamental right to vote" and described statistics from the March 2016 primary documenting "1400 citizens who were denied the right to vote when the voter ID law was in effect." Harrison pointed out that while African American voters were 23% of the electorate voting they were 34% of voters not able to vote due to photo voter ID. *Id.* at 50:1-10.

h. Representative Richardson warned that the bill would create "a hardship on certain groups, like African-Americans or Latinos, for voter ID." *Id* at 56:11-13. Representative Richardson challenged her colleagues: "So who is determining the burden you are putting on people? Whether you think or I think they can get an ID, but they may not be able to. So who is to weigh that burden? Where does that judgment come in?" *Id* at 56:15-19.

i. Representative Black told her colleagues that photo ID would necessarily be "very complicated", and asked whether this would "create a problem where people are not going to be willing to vote and, therefore, we are denying a right that every person in North Carolina should have." *Id* at 61:11-14.

j. SBOE Director Kim Strach testified as to the roll out and implementation of photo voter ID under H.B. 589, and noted that SBOE sent a mailing to 218,000 people who lacked a form of ID. *Id.* at 52:10-16.

129. At the June 21, 2018 hearing, numerous speakers also made clear that the proposed constitutional amendment's lack of implementing legislation that spelled out exactly how any ensuing identification law would be implemented was highly unusual and problematic. For example:

a. Mr. Cohen testified that the absence of implementing language made the Constitutional Amendment a "blank check" for the legislature to do whatever it wanted, and its purpose was "simply to end review on state constitutional grounds." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 9:17-21.

a. Mr. Lopez of Democracy North Carolina testified at the hearing that the proposed amendment was "unnecessarily vague." *Id.* at 14:4-9.

b. Representative Marcia Morey informed the Committee that the proposed amendment was "asking the voters to make a decision with no explanation of what the implementing legislation could be. Right now the simple language is they could bring a photo identification with a picture from Thanksgiving and write their name on it." *Id* at 43:19-23.

c. Representative Robert Reives asked Chairman Lewis whether, if the Amendment passed, "is there anything that will prevent basically rewriting the old bill from 2013 and putting that into law." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 45:3-6. Chairman Lewis responded: "I guess the short answer to your

question would be no." *Id.* at 45:8-9. Indeed, as discussed above, reenacting H.B 589 was, in fact, the Legislative Defendants' plan. *See, supra*, ¶¶ 109-11, 121-22.

d. Representative Reives commented on the lack of specificity of H.B. 1092, stating that "the constitutional amendment would basically be authorizing this body to do whatever it pleases . . . it does give the authority to set this in any manner we want to." *Id* at 46:21-47:2. Representative Reives asserted that due to the vagueness of the proposed Amendment, "voters won't understand the authority that they could be giving to this General Assembly at the time." *Id* at 49:9-10. Representative Reives further urged his colleagues to delay consideration of the amendment, so there could be a fuller debate on the issue: "Let's have that real discussion in a long session." *Id* at 49:7-8.

130. Witnesses at the June 21, 2018 hearing also noted that adding voter ID was unnecessary. For example:

a. Paula Jennings of the League of Women Voters testified that reintroducing photo voter ID was "unnecessary and wasteful." *Id* at 16:19-20. She noted that SBOE audits had identified "only two cases of voter fraud that might have been addressed by voter ID requirement." *Id.* at 17:9-11. Photo ID, Jennings stated, "is an unnecessary political effort to divert attention from serious efforts to protect elections in North Carolina." *Id* at 17:20-22.

b. SBOE Director Kim Strach testified that SBOE voter audits identified only a single instance that was potentially voter impersonation. *Id.* at 53:22-23:4.

131. Director Strach also warned that while SBOE had two-plus years to implement H.B. 589, it would have less than a year to implement photo voter ID if it was enacted in 2018. *Id.* at 54:21-55:6.

132. While relatively few amendments were considered at the June 21, 2018 hearing, those that were offered confirmed that one of the purposes of the constitutional amendment was to entrench the General Assembly leadership in power. Representative Jackson offered an amendment requiring that any implementing legislation for the Amendment be considered by the General Assembly in January, after the new elections had seated a new legislature based on maps not tainted from a racially discriminatory gerrymander. PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 42:8-16. Representative Jackson stated that the purpose of the amendment was ensure that "the lame duck General Assembly would not come back in December to pass the bill." *Id.* Representative Jackson's amendment was rejected 9 to 21. *Id.* at 43:6.

133. Similarly, the Committee rejected an amendment offered by Representative Jackson that would extend the amendment to also cover absentee voting. *Id.* at 42:4-5. In support of the proposed amendment, Representative Jackson pointed out that "On the one hand, the state has failed to identify even a single individual who has ever been charged with committing in person voter fraud in North Carolina. On the other hand, the General Assembly did have evidence of alleged cases of mail in absentee voter fraud. Notably, the legislature also had evidence that absentee voting was not disproportionately used by African Americans. Indeed, whites disproportionately used absentee voting." *Id.* at 32:19-33.

134. At the end of the June 21, 2018 House Rules Committee hearing, H.B. 1092 was reported favorably. PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.).

135. On June 25, 2018, the House held the second reading for H.B. 1092, and considered several amendments, only one of which (substituting "photographic" for "photo," (PX110 (6/25/18 House Second Reading Tr.) at 8:4-23)) was adopted. PX548 (H.B. 1092 Bill History) at 3.

136. During the June 25 debate, H.B. 1092 was introduced by Chairman Lewis, who started his speech by misleadingly asserting that the "law passed in 2013 [H.B. 589]" was not at issue and H.B. 1092 "simply allowed the voters of North Carolina to decide on the question of requiring a photo ID to vote." PX110 (6/25/18 House Second Reading Tr.) 4:15-5:22. But Chairman Lewis also complained that H.B. 589 had been ruled unconstitutional, stating "the issue of voter ID in the state would have been determined by now if we had been able to allow the people of the state their day in court." And Chairman Lewis expressly defended provisions of H.B. 589. PX110 (6/25/18 House Second Reading Tr.) at 7:4-12. Other supporters complained that they did not need "another federal judge that says no reason for doing this has ever been presented" and makes "the phony charge of voter suppression and prejudice"; they argued that the bill "needs to be a constitutional amendment so that the North Carolina Supreme Court can't simply get rid of it[.]" PX110 (6/25/18 House Second Reading Tr.) 58:12-21, 61:9-13 (Rep. Blust).

137. During debate in the House, Chairman Lewis claimed that the proposed constitutional amendment "has consistent support from over 69 percent of the voters who are polled. An overwhelming majority of North Carolinians regardless of parties and

affiliation, race or gender, believe voter ID is common sense to ensure election integrity." PX110 (6/25/18 House Second Reading Tr.) 6:2-8. Contrary to Chairman Lewis's assertion, however, opinion on the Constitutional Amendment for photo ID was deeply polarized along racial and partisan lines. According to polling data, 66% of white voters supported the amendment, while only 28% of African American voters supported the Amendment. Among all non-white voters, 35% supported the Amendment. 90% of Republicans backed the Amendment, while only 28% of Democrats and 49% of independents supporting it. Lichtman Rpt. at 59-60. Ultimately, just 55% of voters voted in favor of the proposed voter photo ID constitutional amendment. PX1049 (11/06/18 Gen. Elec. Results – Statewide) at 2.

138. Again, during the June 25 debate, the General Assembly was presented with evidence from speaker after speaker who made clear that adopting a photo ID requirement would disenfranchise voters, and would do so on a racially discriminatory basis. For example:

a. Representative Michaux noted the Republicans were abusing their supermajority power to "suppress[] one of the dear rights that this county and this state enjoy" and pursuing a constitutional amendment in order to achieve those goals "another way" after they "weren't able to get it through the court system." PX110 (6/25/18 House Second Reading Tr.) 21:13-22:20.

b. Representative Reives highlighted how in 2013, the enabling legislation developed based on "emails . . . asking about how particular groups voted, when they voted, how they voted. It's not simply about [whether to require

an] ID. For some reason, those questions were asked." *Id.* at 55:3-13. "[I]n the four years I've been here I have yet to hear somebody say these are the reasons that we needed to know how these groups voted[.]" *Id.* at 55:14-22.

c. Representative Amos Quick presented a document that made "clear that 1,400 North Carolinians were denied their right to vote in the March 2016 primary . . . because they didn't have the [requisite] ID[.]" *Id.* at 14:14-20, 72:21-73:9.

d. Representative Pricey Harrison noted that the 1,400 voters who were denied the right to vote in 2016 were "disproportionately African American, 34 percent." *Id.* at 73:4-5.

e. Representative Rodney Moore also placed the push for voter photo ID in the context of "Southern history" and North Carolina's history of voter suppression where Black people "were shut out of the process of voting for many years." *Id.* at 41:17-22. Acknowledging that "on the surface . . . photo ID . . . sounds very, very non-threatening," he reminded his colleagues that in the context of Black voters' experience being "marginalized as citizens," having to "fight with our blood, sweat, and tears to get the right to vote . . . even . . . photo ID . . . [is] an impediment[.]" *Id.* at 43:1-18.

f. Representative Terry shared how her grandfather, born in 1879, was unable to vote until 1953, when he registered by marking a piece of paper with an X. *Id.* at 47:18-49:18. Years beyond that, "it took us a great deal of time to get documents together" to help him get his first photo ID, a passport. *Id.* at 49:6-11.

g. Representative Terrence Garrison argued that the legislature should be "encourag[ing]" citizens to vote, not "placing barriers." *Id.* at 70:14-23.

h. Representative Jackson reminded the General Assembly that in *McCrory*, the Fourth Circuit "found a reason for" the legislature's failure to require photo ID for absentee voting: "absentee voting was the one thing that was used by mostly white voters and, therefore, a photo ID was not required[.]" *Id.* at 86:12-87:23.

i. Representative Jackson also explained that the constitutional amendment was an effort to perform an end-run around the court and reenact H.B. 589. He argued "It's an excuse to go back with the same monster [voter suppression] law that we did back in 2013 because the . . . Fourth Circuit . . . made specific findings . . . about legislative intent[.] So now what we want to do is say, no, we don't have the discriminatory intent . . . We're doing it because the North Carolina voters told us to do it." *Id.* at 84:1-9. He also offered a lengthy quote from *McCrory*, reminding the General Assembly of the Fourth Circuit's basis for concluding that H.B. 589 had been passed with discriminatory intent. *Id.* at 85:10-86:11. "All we're going to do," he lamented, "is embark against another two or three-year fight about something the court has already told us." *Id.* at 88:1-3.

139. Legislators also complained about the disconnect between the vagueness of the constitutional amendment language and the lack of enabling legislation. For example, during the June 25, 2018 debate:

a. Representative Reives explained the disconnect between a one-sentence amendment and yet-to-be-determined enabling legislation. He emphasized that voter support for photo ID was based on a broad impression that implementing it would be "easy," not eventual "enabling legislation [that] turn[s] away all types of things that people think of when you think of ID." PX110 (6/25/18 House Second Reading Tr.) 54:6-20.

b. Representative Morey similarly argued "we don't know what the implementing legislation is. You pull out your wallet. You pull out your driver's license. Oops, it expired. Are you turned away?" *Id.* at 29:19-21.

140. And other legislators noted that the amendment was unnecessary, focusing on the lack of evidence of voter fraud that would actually be prevented by a photo identification requirement.

a. Representative Ed Hanes observed how the ostensible purpose of the bill "to restore confidence in elections and prevent voter fraud" had been refuted by "the executive director of the State Board of Elections, Kim Strach, keep refuting its existence again and again and again. No evidence has ever been produced to prove the problem is of any real significance for nine years going. " PX110 (6/25/18 House Second Reading Tr.) 17:2-17.

b. Representative Harrison referenced "another study," in which "they found that since 2000 there are only 31 credible allegations of voter impersonation across the country." *Id.* at 74:1-3.

141. Representative John Ager offered an amendment to remove "photographic" from the proposed amendment language, which would have significantly reduced the potential discriminatory impact of an identification requirement. He noted that "only Mississippi . . . has photo or photographic in its constitution," and in Mississippi, the constitution also requires and directs the state "Department of Public Safety [to] provide a free photo ID to anyone who could not afford one." PX110 (6/25/18 House Second Reading Tr.) 36:14-37:11. Chairman Lewis indicated that he opposed the amendment, and it failed on a party-line vote, 71 to 43. *Id.* at 38.

142. H.B. 1092 passed a second reading in the House on June 25, 2018. PX548 (H.B. 1092 Bill History) at 3. The following day, June 26, 2018, it was heard for third reading in the House and was referred to the Senate Select Committee on Elections the next day. *Id.*

143. Two days later, on June 28, 2018, H.B. 1092 steamrolled through the Senate over the objections of multiple Democrats. *Id.* at 2.

144. During debate on the Senate floor, the Senate was presented with evidence from speaker after speaker that adopting a photo ID requirement would disenfranchise voters, and would do so on a discriminatory basis. For example:

a. Senator Floyd McKissick warned that "many people out here in the State of North Carolina that are validly registered to vote . . . could be prevented from voting in the future . . . because they might not have a photo ID or a suitable form of ID." PX988A (6/28/18 H.B. 1092 Senate Second Reading Tr.) 2:22-3:5. And Senator McKissick warned that the proposed constitutional amendment, along

with other recent restrictions like the elimination of last Saturday voting . . . "disproportionately impacts minorities." *Id.* at 4:2-5:20.

b. Senator Waddell warned that "voter ID laws are strategies, it seems like it is, to prevent communicates of color from having access to ballots and participating in this democratic process . . . . House Bill 109[2] . . . will do . . . more harm than good . . . because it was found that African Americans may be a target." *Id.* at 21:3-14.

c. Senator Chaudhuri further argued that voting for H.B. 1092 would be a "vote to repeat history . . . to forget the injustices of our past." *Id.* at 30:14-16.

d. Senator Robinson invoked the experience from H.B. 589, warning that "in 2013, the courts did say that the rights of African Americans were attacked. The right to vote [was] attacked by this general assembly. And that's what this bill today is about." *Id.* at 40:9-15.

e. Senator Erica Smith argued that the Fourth Circuit's decision in *McCrory* and the Supreme Court's decision not to grant certiorari left "the Fourth Circuit Court's ruling the law of the land. Voter ID has already been determined to disproportionately disenfranchise African American voters." *Id.* at 45:8-19. She emphasized, as Representative Harrison had done in the House, that in the March 2016 primary, the "[o]ver 1,400 citizens" who "lost their right to vote . . . when the ID law was in effect" were disproportionately African American. *Id.* "No matter what you believe is happening, the statistics and the data has shown emphatically and unequivocally that voter ID laws such as this one suppress the African American

vote." *Id.* at 46:10-22. "[W]hat is really happening in North Carolina, there's a disenfranchisement of people of color, communities of color . . . . This is unconscionable." *Id.* at 49:10-20.

f. In response, supporters of the constitutional amendment defended the need for voter photo identification by invoking expressly and explicitly racial themes and tropes. For example, Senator Ralph Hise asserted, without evidence, that voter fraud is more likely among African American and other nonwhite voters: "What you are finding I believe strongly is . . . people use minority communities to more commit frauds within the State of North Carolina, to put in false registrations, to show up to the polls and vote as someone not known to the community." PX988A (6/28/18 H.B. 1092 Senate Second Reading Tr.) 50:15-23. Similarly, Senator Krawiec asserted, vaguely and without evidence, that hundreds of individuals in Wake County who were "not citizens" were on the voter rolls. *Id.* at 32:4-16.

g. In contrast to Senator Krawiec's unsupported assertion, during the June 28 floor debate, numerous legislators presented evidence that the amendment was unnecessary and noted the lack of evidence of voter fraud. For example.

h. Senator McKissick noted that the Fourth Circuit had emphasized that in enacting H.B. 589, proponents "failed to identify even a single individual that's ever [been] charged with committing in-person voting fraud in North Carolina." PX988A (6/28/18 H.B. 1092 Senate Second Reading Tr.) 3:11-4:2. And Senator McKissick emphasized that the evidence had not gotten stronger, noting that data from the State Board of Elections showed that in "2016, close to 4.8 million people

voted in our state, [but] only two cases of voter impersonation . . . were reported." *Id.*

i. Senator Ben Clark added that both cases involved "an individual showing up to vote on behalf of a family member[, s]o there really was no intent to commit fraud[.]" *Id.* at 14:2-9.

j. When Senator Smith pressed Senator Hise on whether he was in possession of any SBOE audit documenting the voter fraud he insisted existed, Senator Hise replied that "the Board of Elections . . . has historically refused and is currently unable to identify and detect the fraud that is occurring in North Carolina elections." *Id.* at 54:4-8. Senator McKissick argued that "[w]hen we're adding amendments to our constitution, it needs to be based on empirical data and facts," not "speculation." *Id.* at 62:14-18.

k. Senator Teresa Van Duyn noted that in the 2016 elections, "North Carolina had one confirmed case of in-person voter fraud while at the same time the Republican Party falsely accused 542 North Carolina voters of fraud" and challenged proponents to "tell us where the threat to the integrity of our elections really lies." *Id.* at 35:6-11.

145. Proponents of the amendment were also repeatedly challenged as to why the amendment required photo ID for in-person voting, but not for absentee voting. For example:

a. Senator McKissick noted that the sponsors "don't want to add on those people applying by absentee ballots because those are people that may more

likely vote with the Republican majority" and "we all know why" the amendment was "not addressing" possible absentee voter fraud. PX988A (6/28/18 H.B. 1092 Senate Second Reading Tr.) 13:1-5.

b. Senator Clark added that "if we are truly interested in shutting the door on voter impersonation, we have to close off . . . the channel for voting in-person and the channel for voting via absentee ballot." *Id.* at 14:17-21.

c. When Senator Chaudhuri asked why the proposed constitutional amendment only applied to in-person voting, Senator Ralph Hise claimed that concerns about absentee voter fraud were overblown relative to in-person fraud, because in-person fraud "is nearly undetectable." *Id.* at 24:13. Senator Chaudhuri responded, "if this amendment were about electoral integrity, this amendment would have also focused on mail-in ballot fraud. . . . So it's not about electoral integrity." *Id.* at 29:21-30:7.

d. Senator Smith also added, "[t]here is very limited evidence that this voter fraud by voter ID even exists. What we're trying to do here is to fix the problem that is not broken[.]" *Id.* at 46:11-21.

146. During debate on June 28, 2018, the Senate tabled several amendments that would have ameliorated the racially disparate impact of a photo identification requirement. PX548 (H.B. 1092 Bill History) at 2.

a. Senator McKissick offered an amendment adding a requirement that the state help voters who lack qualifying ID to obtain one. PX988A (6/28/18 H.B. 1092 Senate Second Reading Tr.) 6:11-23; PX495 (H.B. 1092 Amendment No. A1).

Senator Krawiec argued that Senator McKissick's amendment "is completely unnecessary." PX988A (6/28/18 H.B. 1092 Senate Second Reading Tr.) 9:8-11. Senator McKissick replied, "I think we should all be committed as a state and be willing to put into this amendment that if someone does not have an ID that we as the leaders of this state will make sure or try to make sure that they obtain one." *Id.* at 10:11-18. He reminded the legislature that "there are many, many, many people who don't" have IDs. *Id.* at 11:15-22. "What is wrong with the commitment to say . . . that we will help them obtain one?" *Id.* Senator McKissick's amendment was tabled. *Id.* at 12:5-17; PX495 (H.B. 1092 Amendment No. A1). Afterwards, Senator McKissick lamented, "I wasn't delusional when I sent forth that amendment. I knew what its fate would ultimately be, but I'm also not delusional in knowing what the purpose of this voter ID requirement is. It's specifically and directly targeted to depress minority voter participation." PX988A (6/28/18 H.B. 1092 Senate Second Reading Tr.) 12:21-13:5.

b. Senator Erica Smith offered an amendment requiring an appropriation of "$20 million dollars for the purpose of establishing a database interface between the North Carolina Department of Motor Vehicles and the North Carolina State Board of Elections for the purpose of transferring photos used by the DMV . . . to voter identification cards" and SBOE staff at voter registration drives to help registrants obtain qualifying photo ID. *Id.* at 18:11-19. It was immediately tabled. *Id.* at PX988A (6/28/18 H.B. 1092 Senate Second Reading Tr.) at 19:17-20:14.

147. After passing a third reading the following day, June 29, 2018, H.B. 1092 was ratified for election on the November 2018 ballot. PX548 (H.B. 1092 Bill History) at 1-2.

148. As a bill to place a constitutional amendment on the ballot for voter consideration, H.B. 1092 was not sent to the governor. PX548 (H.B. 1092 Bill History) at 1-2; Tr. 873:15-20 (Morey) ("This was not subject to a governor veto because it was a constitutional amendment.").

149. Rev. Barber testified at trial that the NC NAACP brought suit in 2018 to challenge the Voter ID constitutional amendment. Tr. 1234:14-25 (Barber). In that case, the North Carolina Supreme Court held that the North Carolina Constitution imposes limits on the Legislative Defendant's authority to amend the constitution under these circumstances. *N.C. State Conference of the NAACP v. Moore*, 382 N.C. 129, 134, 876 S.E.2d 513 (2022). In doing so, the court pointed out that "what makes this case so unique is that the General Assembly, acting with the knowledge that twenty-eight of its districts were unconstitutionally racially gerrymandered and that more than two-thirds of all legislative districts needed to be redrawn to achieve compliance with the Equal Protection Clause, chose to initiate the process of amending the state constitution at the last possible moment prior to the first opportunity North Carolinians had to elect representatives from presumptively constitutional legislative districts." *Id.* at 132.

### C. The 2018 Campaign and Efforts of S.B. 824's Sponsors to Craft the Bill

150. On October 3, 2018, prior to the Fall election, as S.B. 824 was being drafted, Mark Coggins, Chairman David Lewis's chief aide, requested information from SBOE via

email regarding the number of people who received free IDs. PX785 (Email between Office of Rep. Lewis and SBOE re: Free IDs) at 1. Mr. Coggins also inquired "while the reasonable impediment was in effect, how many people used it at the time of voting?" *Id.*

151. In response, SBOE General Counsel Joshua Lawson responded that there were "7,535 Free IDs distributed since 2014. DMV never stopped (anyone can still get a free ID for voting purposes, even after the VIVA lawsuit resolved)." *Id.* In other words, SBOE informed Chairman Lewis's office that, pursuant to the provisions of H.B. 589, the North Carolina DMV issued fewer than 2,000 alternative identifications per year.

152. In the same email, Mr. Lawson informed Mr. Coggins about reasonable impediment ballots cast in the 2016 primary when photo voter ID was in effect. Mr. Lawson provided a chart, and wrote that "I think the chart shows 1,048 reasonable impediment votes represents votes after canvass." *Id.* In other words, SBOE informed Chairman Lewis's office that only a small fraction of the hundreds of thousands of North Carolinians without acceptable identification had had their votes counted during the March 2016 primary when H.B. 589 was in effect.

153. In November of 2018, elections were held for state legislative seats and the six constitutional amendments placed on the ballot, including photo voter ID. The legislative elections were based on new legislative maps drawn to comply with the Court's order in *Covington.* Lichtman Rpt. at 18.

154. Throughout the campaign, H.B. 1092 generally lost support. Although Chairman Lewis claimed in June that the bill "has consistent support from over 69 percent of the voters," (PX110 (6/25/18 House Second Reading Tr.) 6:2-8), H.B. 1092 was

ultimately passed by the voters with a margin of 55.49% to 44.51%. PX1049 (11/06/18 Gen. Elec. Results – Statewide) at 2; *see also* Tr. 877:16-21 (Morey). In the same election, three of the other proposed amendments (*i.e.*, four in total with the voter ID amendment) were passed, while two failed. PX1049 (11/06/18 Gen. Elec. Results – Statewide) at 1-2; Tr. 896:7-18 (Morey).

155. As a result of the November 2018 legislative elections, Republicans lost their veto-proof majority in the North Carolina General Assembly, starting in January 2019. Tr. 877:16-878:13 (Morey) ("[T]en Republicans lost their seats in the House. The Democrats picked up ten, so they [the Republicans] lost the supermajority. In the Senate, . . . six Democrats gained [Republican] seats. The Senate also lost a supermajority."); 940:14-25 (McKissick) ("coming out of that election cycle, the Republicans . . . no longer had a supermajority in the General Assembly when they returned in January of . . . the next year[.]"); ; Lichtman Rpt. at 17, 81.

156. According to Dr. Lichtman, "[t]he same Republican majority in the General Assembly, elected in 2016, that engaged in these deceptive practices was the same one that along party lines enacted the proposed voter ID constitutional amendment and the implementing legislation, and voted to override the Governor's veto." Lichtman Rpt. at 17. Dr. Lichtman further explained: "the **deception** that precluded a special election[] likely made it possible for the General Assembly to propose the constitutional amendment on voter photo ID by a three-fifths vote and to override the governor's veto of the implementing law by the same three-fifths vote." *Id.* (emphasis added). "By delaying the election of a new General Assembly under a remedial plan, Republicans likely retained

this super-majority, which they lost in the first election after a plan to remedy the racial gerrymander was put in place in 2018. That left the unconstitutionally elected super-majority still in power during the 2018 lame duck session when the General Assembly passed the implementing law and overrode the veto." *Id.*

157. In light of the election result, the leadership of the General Assembly pushed forward to adopt a voter photo identification bill before they lost their supermajority.

158. In drafting S.B. 824, its sponsors kept many of the key features and attributes of H.B. 589. In particular, both bills limited the specific forms of identification that could be used for voting to an enumerated list of provisions. Lichtman Rpt. at 39-40 (Table 8).

159. In this regard, there was a fundamental continuity between H.B. 589 and S.B. 824: both excluded numerous forms of ID (widely known to be used disproportionately far more by Black and/or Latino North Carolinians than white North Carolinians). As the Fourth Circuit noted concerning H.B. 589, the General Assembly "amended the bill to exclude many of the alternative photo IDs used by African Americans . . . [and] retained only the kinds of IDs that white North Carolinians were more likely to possess." *McCrory*, 831 F.3d at 216. As Dr. Lichtman notes "core discriminatory elements were retained [in] rejecting" particular types of IDs. Lichtman Rpt. at 5. For example:

- Both S.B. 824 and H.B. 589 did not allow public assistance IDs. The Fourth Circuit noted that this exclusion was "suspect" and "a reasonable legislator would be aware of the socioeconomic disparities endured by African Americans and could have surmised that African Americans were more likely to possess this form of ID." *McCrory*, 831 F.3d at 227. As Dr. Lichtman notes, "adding

public assistance IDs makes a major difference for the possession of IDs by African Americans" reducing the disparity from whites from 11.0% to 5.2%, (Lichtman Rpt. at 22, Tables 2-3), and are "commonly accepted" in other jurisdictions with photo ID requirements. *Id.* at 115. As Dr. Lichtman concludes, the exclusion of public assistance identifications is a "particularly powerful indicator of discriminatory intent." *Id.* at 40.

- Both S.B. 824 and H.B. 589 did not allow federal government employee IDs (other than military IDs) to be used for voting. As Dr. Lichtman notes, "African Americans are more likely to possess government employee IDs," and these are also "commonly accepted" in other jurisdictions with photo ID requirements. *Id.* at 45, 115. The *McCrory* litigation highlighted that African Americans were more likely than whites to possess government employee IDs. *See* Lichtman Rpt. at 45.
- Neither law allows IDs issued by private employers. *See* PX676 (S.B. 824 Ratified Bill) at Section 1.2(a)(a) (listing valid forms of ID); PX1087 (H.B. 589 Ratified Bill) Section 2.1(e) (listing valid forms of ID).
- Both laws excluded U.S. naturalization certificates as a form of ID. As Dr. Lichtman notes, such identifications are "commonly accepted" in other jurisdictions with photo ID requirement, and their exclusion in North Carolina "clearly poses a disparate burden on Hispanics." Lichtman Rpt. at 45, 115.

- Neither law allowed IDs issued for firemen, EMS workers, hospital IDs or law enforcement officer IDs (unless they were issued by an approved state or local governments). *Id.* at 122.
- Neither law allowed for high school student IDs. *See* PX676 (S.B. 824 Ratified Bill) at Section 1.2(a)(a) (listing valid forms of ID); PX1087 (H.B. 589 Ratified Bill) Section 2.1(e) (listing valid forms of ID). As Dr. Lichtman notes, there are "small racial differences on high school graduation rates." Lichtman Rpt. at 87-89, Table 22.
- Both laws allowed expired military and veteran's IDs to be used, but no other form of expired identifications to be used. *See* PX676 (S.B. 824 Ratified Bill) at Section 1.2(a)(a) (listing valid forms of ID); PX1087 (H.B. 589 Ratified Bill) Section 2.1(e) (listing valid forms of ID).

160. In several respects S.B. 824 "added discriminatory elements" on the forms of identification valid for voting than did H.B. 589. Lichtman Rpt. at 5. For example, under H.B. 589, most forms of ID were valid until four years after expiration, while S.B. 824 only allowed identification expired for one year or less to be val*id.* *Id.* at 37-38. This reduction of the period of time when expired IDs can be used from four years to one year has a discriminatory effect. As Dr. Lichtman notes, the matching analyses performed by the SBOE (that Chairman Lewis' office requested) showed African American registrants and voters are "substantially more likely than whites to be matched to expired IDs." *Id.* at 38.

161. Similarly, S.B. 824, unlike H.B. 589, did not include learner's permits among the identified form IDs acceptable for voting. *Id.* at 40. Like the restriction on expired forms of identification, elimination of learner's permits will disproportionately impact African American voters. As Dr. Lichtman notes, African Americans aged 18-20 are much less likely than whites to possess either a driver's license or a permit but are more likely to possess only a permit rather than a license. *Id.* According to data from the American Automobile Association, only 10% of whites 18-20 have a permit and no license, whereas 23% of African Americans aged 18-20 have a permit but no license. *Id.* at 41, Table 9.

162. Other changes to S.B. 824 reinforced its discriminatory impact. Where H.B. 589 allowed unlimited use of expired forms of ID for voters over 70, S.B. 824 lowered the age of unrestricted use of expired IDs to 65. *Id.* at 40. As Dr. Lichtman reports, this change "widens the gap between African Americans and whites because of the age structure of the North Carolina population." *Id.* According to census data reported by Dr. Lichtman, 24.2% of the white North Carolina voting age population is 65 or older, whereas only 16.1% of the black voting age population in North Carolina is 65 or older. *Id.* at 40, 43. Thus, this modification to H.B. 589 is likely to exacerbate S.B. 824's racial impact.

163. While S.B. 824 nominally included higher education and state and local government IDs where H.B. 589 did not, S.B. 824 allowed these IDs only after a complicated approval process. "Authorized student IDs must be confirmed through Social Security numbers ,and proof of citizenship and date of birth . . . [and] required student ID photographs to be taken by the school or a contractor," and required "a letter from the institution's leadership attesting to the nature of the IDs, the student enrollment process,

and penalties for misuse of ID equipment." Lichtman Rpt. at 39, 45; Burden Rpt. at 22; *see also* S.B. 824 Sections 1.2(b) and 1.2(c). Given these requirements, it is not surprising that very few North Carolina institutions had gone through the approval process. As Drs. Burden and Lichtman noted, as of March 2019, only 81 of North Carolina's 850 universities and state and local government entities had applied for approval, twelve of which had been rejected. Burden Rpt. at 22-23 n. 95; Lichtman Rpt. at 45. Four years later, at the end of 2023, there was little improvement, with only 51 institutions having approved student IDs. PX1082 (SBOE Approved Student and Public Employee IDs by Institution) at 2-10 (counting 51 institutions with approved student IDs); PX1083 (same).

164. S.B. 824 retained very similar exception provisions to H.B. 589 – both bills provided that voters without identification could (at certain places at certain times) obtain alternative identification, and that voters who showed up at the polls without an identification could complete a "reasonable impediment" form or vote provisionally. Lichtman Rpt. at 39-40, Table 8. And, several weeks prior to the introduction of S.B. 824, key legislators sought and obtained information concerning these exceptions and were advised that there was *de minimis* use of both such that they would not meaningfully reduce the discriminatory impact of the identification requirement. PX785 (Email between Office of Rep. Lewis and SBOE re: Free IDs).

165. S.B. 824 added a second form of alternative ID issued by County Boards of elections. *See* S.B. 824, Sec 1.1(a). The addition of this second form of ID is best understood in light of S.B. 824's sponsors' knowledge that H.B. 589's similar program had

led to the issuance of a negligible number of IDs issued compared to the number of voters without a valid form of ID. *See, supra*, ¶¶ 69-71.

166. Thus, as ultimately passed in 2018, S.B. 824 requires someone to show one of the following forms of identification to vote, subject to the qualifications set forth below regarding expiration dates: (1) a North Carolina driver's license, (2) a North Carolina non-operator ID card; (3) a North Carolina voter ID from a County Board of Elections; (4) a U.S. Passport; (5) an approved tribal ID; (6) an approved ID from a college or university in North Carolina; (7) an approved North Carolina state or local government or charter school employee ID; (8) a driver's license from another state if the person registered to vote within 90 days of the election; (9) a federal government military ID; (10) a Veteran's Affairs ID Card. ECF No. 299, ¶ 135.[7] Military IDs, veterans IDs and tribal IDs will be accepted even if the card has no expiration date or issuance date. The remaining IDs accepted for voting under S.B. 824 will only be accepted if they are unexpired or have been expired for one year or less. If a voter is 65 or older, they may utilize an expired ID so long as it was unexpired on their 65th birthday. ECF No. 299, ¶¶ 136-138. Under S.B. 824, a voter may not use a suspended or revoked license to vote. *Id.* at ¶ 148.

167. As drafted, S.B. 824 was, by its terms, scheduled to become effective upon enactment. PX676 (S.B. 824 Ratified Bill), § 5. S.B. 824 was later amended to provide that it did not apply to elections held in 2019. *See* DX183 (Session Law 2019-4, S.B. 214,

[7] In 2020, the legislature passed H.B. 1169, which amended S.B. 824 to permit a voter to utilize photo identification cards issued by any state or federal department, agency, or other entity for a government program of public assistance. *Id.* at ¶¶ 131-133.

Section 1.(a)). The photo ID provisions of H.B. 589, by contrast, became effective January 1, 2016, more than two years after the bill was signed into law. PX1087 (H.B. 589 Ratified Bill) Section 6.2(2). Thus, S.B. 824 allowed far less time for implementation than did H.B. 589.

### D. Reconvening the Legislature for a Special Session and Where S.B. 824 Was Introduced and Passed with Insufficient Time for Review, Input, and Debate

168. On November 26, 2018, members of the General Assembly reconvened in Raleigh for a special session. Tr. 878:15-23, 879:13-16 (Morey); 1240:2-1241:3 (Barber). PX1877 (Testimony of Rep. Mary Price "Pricey" Harrison) 1024:10-24.

169. Upon reconvening, the Joint Committee on Elections held a hearing to discuss implementation of the voter photo identification constitutional amendment. The November 26, 2018 hearing was co-chaired by Representative Lewis. *See* PX687 (11/26/18 Joint Elec. Cmte. Tr.). Although S.B. 824 had not been formally introduced yet, its sponsors presented an overview of the bill. *Id.* 4:5-14:21. Members of the General Assembly, such as Representative Harrison, had to return to Raleigh early before the lame duck session in order to attend. PX1887 (Harrison Testimony) at 1024:8-22; *see also* Tr. 439:1-25 (Van Duyn).

170. During the November 26 hearing, Kim Strach (former Director of the State Board of Elections and Ethics) gave a presentation on the education efforts during the earlier voter ID bill. PX687 (11/26/18 Joint Elec. Cmte. Tr.) 24:8-38:3; DX214 (11/26/18 Presentation by SBOE Director Kim Strach). Director Strach testified that as part of the State Board's efforts to implement the photo ID requirements, the State Board conducted

database matching in order to identify the number of voters without a driver's license or state issued identification card. PX687 (11/26/18 Joint Elec. Cmte. Tr.) 30:17-31:22. Director Strach testified that the DMV database matching indicated that there were over 254,000 thousand registered voters who lacked a driver' license or identification card. *Id.* at 31:18-32:2; DX214 (11/26/18 Presentation by SBOE Director Kim Strach) at 18. Ms. Strach further testified that during the prior litigation on voter photo ID, "plaintiffs had an expert that did their own matching, Dr. Charles Stewart." Dr. Stewart also identified over 200,000 voters without an ID. PX687 (11/26/18 Joint Elec. Cmte. Tr.) 32:16-20.

171. Director Strach also noted that in the March 2016 primary, 1,048 voters completed a Declaration of Reasonable Impediment, and of these "reasonable impediment" voters, 864 ultimately counted. *Id.* at 37:13-18. She advised the Joint Legislative Committee that the SBOE had spent $2.7 million in advertising relating to photo ID implementation from 2013 to 2016. *Id.* at 56:3-9. This publicity campaign included "statewide placement [of advertisements] in roughly thirty TV stations and more than forty-five radio stations," "digital and print billboards," issuing "roughly 12.7 million guides," and "roughly 400,000 posters and flyers printed . . . [and] distributed statewide to churches, advocacy groups, educational institutions, food banks, businesses . . . ." *Id.* at 24:19-30:5.

172. The Joint Election Oversight Committee was not provided any updated analysis on the impact that the proposed implementing legislation for photo ID would have on Black voters. PX1877 (Harrison Testimony) 1027:14-23.

173. During the same debate, Representative Harrison voiced concern over the timing of implementation of S.B. 824 as compared to H.B. 589. "It seems like the implementation date is May 1 of 2019. That seems soon. Maybe you all are more optimistic about our ability to implement it, but the 2013 bill gave us a couple of years to implement the photo ID requirement. So it seems like that would make sense." PX687 (11/26/18 Joint Elec. Cmte. Tr.) 71:14-19. She also expressed "concern[] about the million North Carolinians who don't have a driver's license, who lost it for nonpayment fees or a moving violation," noting that it was "a big portion of the population" and that the General Assembly "ought to be thinking about that, too." *Id.* at 71:20-72: 5.

174. And, in the limited time allowed for public comment, the General Assembly heard from Ms. Anna Lynch, who spoke about the difficulties that voters like her brother would face under S.B. 824. She explained that her brother "moved from North Carolina to Virginia in August of 2016, where they have a voter ID law." *Id.* at 113:22-114:4. In order to

> vote in th[e] November election, [because] [h]e does not drive and he'd allowed his North Carolina ID to expire, and he'd also misplaced his birth certificate[,] he had to start all over, order his birth certificate, and then once that arrived, on an expedited basis, get a passport. This cost him $185, and my sister had to drive him four different times to the DMV, the passport office and board of elections.

*Id.* at 114:3-11. She told the General Assembly how S.B. 824 would disparately impact low-income voters:

> I would call that a poll tax. So what I want to make sure that you all consider is that for anybody who is legally eligible to vote in this state, that it does not cost them to be able to do so.

> People who work hourly -- on an hourly wage basis, it costs them money to go to the DMV and wait for hours . . . So in the bill, it does not say how somebody will get the free voter ID. It's great that it's free, but if it costs you a day's wages to go get it, or even half a day's ages, that's a poll tax in disguise.

*Id.* at 114:12-115:1.

175. S.B. 824 was formally filed in the North Carolina Senate on November 27, 2018, five days after Thanksgiving. PX546 (S.B. 824 Bill History) at 4. It was ratified eight days later, on December 6, 2018. Tr. 880:17-20 (Morey); Tr. 993:12-24 (McKissick); PX546 (S.B. 824 Bill History) at 1; Lichtman Rpt. at 71.

176. Consistent with this expedited consideration, legislative deliberations were curtailed and perfunctory. To wit, on November 27, 2018—the same day that it was introduced—S.B. 824 passed first reading, received a favorable report in the Senate Select Committee on Elections, and was sent to the Senate Rules and Operations Committee. PX546 (S.B. 824 Bill History) at 3. The following day, November 28, 2018, S.B. 824 received and passed its second reading on the Senate Floor. PX546 (S.B. 824 Bill History) at 3. The next day, on November 29, 2018, S.B. 824 passed third reading without substantive debate and was sent to the House. PX546 (S.B. 824 Bill History) at 3.

177. During the second reading debates, numerous Senators warned that S.B. 824 would have a disproportionate impact on Black voters.

a. Senator Kandie Smith, who responded to Senator Tillman's claim that S.B. 824 "doesn't disenfranchise anybody" by stating that "[r]egardless of what you say, the statistics and the data are clear. A photographic ID [requirement] has the

ability to disenfranchise high-poverty, low-income, predominantly people of color." PX688 (11/28/18 S.B. 824 Senate Second Reading Tr.) at 38:16-19, 42:15-43:3.

b. Senator Woodward noted that, with the Senate coming back into session after "the voters of North Carolina had their say on six constitutional amendments and on [] 170 legislative seats," the "goal of having a voter ID [should be] secure, simple, and easy, without disenfranchising voters," but that "this bill comes up short." *Id.* at 16:13-17-22. After explaining numerous problems with S.B. 824, he moved to table the bill, in hopes that, "[w]ith more time and discussion, we might get there," *i.e.*, to a bill that does not disenfranchise voters. *Id.* at 17:22-21:18.

c. Senator Van Duyn explained that she "take[s] very seriously, very seriously [her] responsibility to protect everyone's ability to vote," and was concerned about "[a] study by Dr. Kevin Quinn in 2015 that found that in North Carolina, there were more than 381,000 registered voters who do not have a driver's license." *Id.* at 55:2-56:6. She expressed her concern about addressing that "complicated issue" in the limited time given to considering S.B. 824. *Id.*

178. And Senator Waddell expressed, among other concerns, that "the process [set forth by S.B. 824] will still be an additional obstacle for voters to overcome in order to cast the vote and these o[bs]t[a]cles may be trivia[l] for those with abundant socio and economic resources but they will be substantial [obstacles] to others." *Id*. at 58:3-13.

179. During its exceedingly brief consideration of S.B. 824, the Senate considered eleven proposed amendments: Amendments A1-A4, along with A10 and A11, were

adopted. A5 was withdrawn, and amendments A6-A9 were tabled. PX546 (S.B. 824 Bill History) at 3. Several of the tabled amendments would have had an amelioratory effect on the discriminatory impact of S.B. 824:

a. Senate Amendment 9 (PX632) would have allowed any federal or state employee ID to serve as acceptable identification. Professor Lichtman described this as one of several amendments "to make the voter photo ID law more inclusive and less burdensome on minority voters." Lichtman Rpt. at 46;

b. Senate Amendment 7 (PX634), would have allowed for "unawareness of the law" to serve as a reasonable impediment for an extended period of time, changing "2019" to "2020";

c. Senate Amendment 8 (PX633) would have restored "last Saturday voting," and extended the time to issue alternative IDs.

180. No Senator who supported H.B. 589 ever testified under oath at trial about the legislature's motives or rationales for supporting H.B. 589 or their decisions to use certain procedures in adopting that legislation.

181. Similar to the Senate, the House considered S.B. 824 on an expedited timetable that foreclosed substantive debate. The House wasted no time after receiving a favorable report from the Elections Committee, (where the bill was presented by Chairman Lewis (PX690 (12/3/18 S.B. 824 House Elec. Cmte. Tr.) 2:13-6:16), passing it through the Committee on Rules (chaired by Representative Lewis, *see* PX691 (12/4/18 S.B. 824 House Rules Cmte. Tr.)), and both readings on the floor within just two days. PX546 (S.B. 824 Bill History) at 3; *see also* PX693 (12/5/18 S.B. 824 House Second and Third Readings

Tr.). Public comment was only allowed at the Elections Committee hearing, and speakers were limited to one minute; only four members of the public were able to comment. PX692 (12/4/18 S.B. 824 House Elec. Cmte. Tr.) 67-73. And, as explained in detail below, (*see, infra*, ¶¶ 222-23) Legislative Defendant Moore improperly collapsed the second and third readings to occur back-to-back on the same day, in violation of House Rules. PX693 (12/5/18 S.B. 824 House Second and Third Readings Tr.).

182. Even during this curtailed debate, the House was presented with evidence that S.B. 824 would have a discriminatory impact.

a. During the debate, Karen Ziegler testified that there were "218,000 North Carolinians [that] do not have a voter ID [are] the most disenfranchised of North Carolinians. . . . The people of North Carolina also voted out the very body that is now trying to write and implement this bill. This body has been shown to be extremist and unconstitutional, and I want to ask, please, that there be a long period of public comment." PX692 (12/4/18 S.B. 824 House Elec. Cmte. Tr.) 69:2-13.

b. Ms. Ziegler also testified that S.B. 824 should be viewed as part of "the long history of voter suppression in the State of North Carolina, especially toward African-American[s]." *Id.* at 69:17-22.

c. Jennifer Rudolph testified that S.B. 824 challenge process was discriminatory and invited "poll workers [] will be making a subjective decision based on a person's appearance on the spot. If someone is being judged on their appearance and challenged in a public environment, that creates an intimidating situation. At some point, voters may be inclined to walk away. . . . [People] could

also have their right to vote challenged for no other reason than a poll worker's bias." *Id.* at 70:7-71:2.

d. During the December 3 Elections Committee hearing, Representative Harrison had raised "concern[s] about voters who are deeply impoverished and may not – even [under] the accommodations that have been made will face an impediment to vote, and I'm not sure we've actually solved the problems, the hurdles they're facing." PX690 (12/3/18 S.B. 824 House Elec. Cmte. Tr.) 30:8-14.

e. At the second day of the hearing, Representative Harrison emphasized the "burden [photo voter ID laws] placed on" "extremely low income [voters]" . . . to take a day off of work when they're working a minimum wage job," and that the General Assembly should not "ignore that [S.B. 824] is going to put a burden on some in our society." PX692 (12/4/18 S.B. 824 House Elec. Cmte. Tr.) 98:21-99:21.

f. At the same Elections Committee hearing, Representative Michaux warned that "everybody comes up with a good reason for doing whatever they're doing, [in] this body or any other body. . . . [But] the reason that you're passing this bill is simply for voter suppression. There's no question about it." *Id.* at 74:22-75:6.

g. On the House Floor on December 5, 2018, Representative Michaux warned that S.B. 824 as another "another step in suppressing the vote," following in the footsteps of "literacy tests" and "poll [taxes]." PX693 (12/5/18 S.B. 824 House Second and Third Readings Tr.) 131:22-132:8. Rep. Michaux noted that the sponsors "ha[d] not changed anything from the [McCrory] decision that came out

of the Fourth Circuit. It's going to go back there, and you're going to be back trying to find another way to do what you're trying to do." *Id.* at 76:3-9.

h. On the House floor, Representative Harrison warned that "a lot of folks [] are going to be disenfranchised. And we know there are a couple hundred thousand North Carolinians who do not currently have an ID. I think that this will disproportionately affect folks of color, the young, the elderly, and those of low income. . . . We're going to disproportionately affect certain communities in our State who are going to be denied the right to vote." *Id.* at 118:2-121:22.

i. Representative Morey further warned that the strict and confusing requirements for obtaining valid ID would "disenfranchise voters, particularly . . . seniors, people of color, people who have difficulty in obtaining transportation, to obtain a photo ID. Time is money, and it takes money to get off work to get one of these photo IDs." *Id.* at 128:7-19. At trial, Representative Morey testified that she meant to convey that she was "concerned about the photo identification language, that people would be disenfranchised, especially minorities . . . and it would suppress the vote." Tr. 892:7-15 (Morey).

j. Rep. Insko similarly warned "if we implement this bill, there would be a lot more than one person [*i.e.*, the number of voter impersonation cases in 2016] who is eligible to vote who will not be able to vote. There will be more than 500 people who will not be able to vote. So someone said [S.B. 824] can't be perfect. It sounds like you want to be perfect in eliminating everybody who might miscast a vote, but you're not willing to be perfect about ensuring that everybody who is

eligible to vote . . . actually has the right to vote." PX693 (12/5/18 S.B. 824 House Second and Third Readings Tr.) at 125:3-127:10.

183. During the full House's single day with the bill, it considered thirteen proposed amendments. *Id.* Seven were adopted, one was withdrawn, and five failed. PX546 (S.B. 824 Bill History) at 3. Among the amendments that failed, several would have ameliorated the discriminatory impact of S.B. 824:

a. House Amendment 3 (PX627) would have allowed high school IDs to serve as acceptable identification in addition to university IDs; and

b. House Amendment 13 (PX617) would have allowed any public assistance ID to serve as acceptable identification.

184. Conversely, other amendments were adopted that exacerbated the discriminatory impact of S.B. 824. For example, during the Committee process, Representative Jackson's amendment was adopted that would allow a voter to cure their provisional ballot at the polling place if it was co-signed by two witnesses who could attest to the voter's identity. PX1877 (Harrison Testimony) 1045:16-22; Lichtman Rpt. at 46. During debate, Chairman Lewis proposed stripping this language out via House Amendment 7. PX693 (12/5/18 S.B. 824 House Second and Third Readings Tr.) 70:6-71:11; *see* PX623 (House Amendment 7). This amendment passed. *Id.*; *see also* Lichtman Rpt. at 46.

185. Cumulatively, the amendments accepted and rejected by the General Assembly widened the racial gaps in S.B. 824 to an even greater extent than the gaps present in the bill as introduced. As Dr. Lichtman found, "[d]uring the lame duck session,

the Republican majority in the General Assembly either voted down or killed by tabling a number of amendments proposed by Democrats to make the voter photo ID law more inclusive and less burdensome on minority voters." Lichtman Rpt. at 46. Senator McKissick testified that the amendments "that got struck down . . . were very significant [and] could have . . . improved the bill. The other ones" featured, at best, "modest improvements." Tr. 992:10-13 (McKissick).

186. While the General Assembly considered S.B. 824, "the NAACP, and many other groups had protests calling for them to just stand down." Tr. 1242:9-10 (Barber). Reverend Barber explained at trial, "[w]e were just saying, let the people who just got elected with the constitutional districts implement any changes to the Constitution. You shouldn't be doing it as a lame-duck group of folks who are unconstitutionally constituted by the legislature." Tr. 1249:11-15 (Barber).

187. On December 5, 2018, S.B 824 passed *both* a second and third reading in the House. PX546 (S.B. 824 Bill History) at 3. After it passed the second reading, Speaker Moore indicated that the bill would "without objection, be read a third time." PX693 (12/5/18 S.B. 824 House Second and Third Readings Tr.) 170:18-22. Representative Harrison immediately objected, but Speaker Moore ruled that the objection was "too late." *Id.* at 170:18-71:5. As explained in detail below, (*see, infra*, ¶¶ 222-23) conducting a second and third reading on the same day represented a break with ordinary General Assembly procedure.

188. The House's changes to S.B. 824 were ratified by the Senate on December 5 and sent to Governor Roy Cooper the following day, December 6, 2018. PX546 (S.B. 824 Bill History) at 3.

189. No Representative who supported H.B. 589 testified under oath about the legislature's motives or rationales for supporting H.B. 589 or their decisions to use certain procedures in adopting that legislation.

190. Governor Cooper vetoed S.B. 824 on December 14, 2018, (*id.*), warning the General Assembly that the bill, as written, would discriminate against minority voters:

> Requiring photo ID for in-person voting is a solution in search of a problem. . . . the proposed puts up barriers to voting that will trap honest voters in confusion and discourage them with new rules, some of which haven't been written yet. Finally, the fundamental flaw in the bill is its sinister and cynical origin: 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.

DX10 (Gov. Cooper Veto Message); *see also* Lichtman Rpt. at 81.

191. During the curtailed debate on whether to override the veto, numerous legislators warned the General Assembly that S.B. 824 would have a discriminatory impact. For example:

a. Representative Jackson tied S.B. 824 and the veto override directly to North Carolina's long history discrimination, including in H.B. 589:

> Despite what you want to talk about today and your talking points that are very tired and have made the people of North Carolina have doubts about their voting system, you simply can't talk about photo ID in North Carolina without taking into

> account our history. And I know that's uncomfortable for many of us in this chamber to talk about, but we are not Indiana, and we are not Wisconsin. For almost a century, North Carolina was a slave State. Following the Civil War, we had legalized discrimination for the next century. Hundreds of years of formal and informal barriers to voting and basic citizenship in this State for African Americans as well as women and for many 18- to 20-year-olds until July 1, 1971, when North Carolina ratified the Twenty-Sixth Amendment. You also don't get to ignore your last voter ID bill that was ruled unconstitutional and is still good law in the Fourth Circuit. That opinion notes, "The inexorable link between race and politics in North Carolina." Unquestionably, North Carolina has a long history of race discrimination generally and race-based voter suppression in particular. . . . The court [in *McCrory*] noted the difficulty in trying to eradicate the impact and otherwise eliminate the taint up from a law that was originally enacted with discriminatory intent. And what you've done is simple. You've put it to a vote of the people, trying to eliminate that taint. You're trying to say that the last voter ID bill was struck down for being racially discriminated, but now, since 55 percent of North Carolinians have said they wanted you to show a photo ID to vote, you can do it again. But now we'll just ignore the prior reasons, our prior findings. We're doing it now for a totally unrelated reason. I'm not sure how exactly that works.

PX696 (12/19/18 S.B. 824 House Veto Override Tr.) 21:2-23:5.

b. Representative Reives agreed, reminding his colleagues that the history from 2013 that people still are a little sensitive about" is part of North Carolina's history of discrimination. *Id.* at 33:7-17.

c. And Representative Moore added, "when you fast forward and you look at the spirit, this is the same thing. . . . And especially, especially sensitive to me because I have family, I have people who—through the ages who have fought

for the right to vote." PX696 (12/19/18 S.B. 824 House Veto Override Tr.) at 49:2-16.

192. The Senate overrode the Governor's veto four days later, on December 18, 2018, and the House followed suit the next day. PX546 (S.B. 824 Bill History) at 3.

## III. PROCEDURAL IRREGULARITIES IN THE PASSAGE OF S.B. 824

193. As discussed above, in June 2018, the General Assembly passed H.B. 1092, an amendment to the North Carolina Constitution that requires voters to present photo identification as a condition to vote in person. Tr. 429:19-25 (Van Duyn); 811:16-21 (Reives); 879:17-21 (Morey); 973:2-8 (McKissick); PX1877 (Harrison Testimony) 1019:7-19, 1021:21-25; PX564 (H.B. 1092 Ratified Bill) at 1. In November and December 2018, the General Assembly enacted S.B. 824, legislation to implement this constitutional amendment. Tr. 429:19-25 (Van Duyn); 811:16-21 (Reives); 879:17-21 (Morey); 973:2-8 (McKissick); PX1877 (Harrison Testimony) 1021:21-25; PX676 (S.B. 824 Ratified Bill) at 1.

194. As detailed below, the process that led to the enactment of S.B. 824 and its underlying constitutional amendment (H.B. 1092), were marked by procedural and substantive irregularities and deviated from normal procedure.

195. At the time of the preliminary injunction, Plaintiffs submitted a paper record including (i) declarations from five legislators and three advocates concerning, *inter alia*, irregularities in the process focused on consideration of S.B 824, (*see* ECF Nos. 91-3, 91-6, 91-7, 91-8, 91-9, 91-10, 91-13, 108-2, 108-12), and (ii) expert analysis, primarily from

Dr. Lichtman, that discussed his observations concerning the legislative process, (ECF Nos. 91-1, 108-3).

196. Five years later, at trial, plaintiffs were able to present a far more robust record, including testimony from six legislators (four live) and eight advocates as well as documentary evidence from the actual legislative record, establishing that both S.B. 824, and the underlying H.B. 1092, were marred by significant irregularities designed to prevent meaningful debate and curtail consideration of legislative amendments that would have ameliorated the discriminatory impact of S.B. 824. These process irregularities confirm that the General Assembly's leadership repeatedly abused institutional norms in their effort to entrench themselves in power by reinstating the photo identification requirements from H.B. 589; collectively, the cumulative evidence of these efforts strongly evidences the General Assembly's intent to discriminate.

### A. The Introduction, Consideration, and Passage of H.B. 1092, the Constitutional Amendment Underlying S.B. 824, Was Marked by Irregularities

197. The process through which H.B. 1092 was introduced, considered, and ratified was unusual and irregular in numerous respects.

198. First, H.B. 1092 was introduced in 2018, *i.e.*, a short session, which was highly unusual for constitutional amendments. Representative Morey testified that "it was unusual because that being a short session and then we had a compressed period of time towards the end of June, six constitutional amendments were filed, introduced, voted on, voted out, to be put on the ballot for voters in November of 2018." Tr. 856:8-12 (Morey); *see also* Tr. 850:10-22, 856:4-24 (Morey); 944:18-946:1 (McKissick) ("Short session

year[s], you come in April or May and you're in session for about 60 to 90 days theoretically. And in those short session years, you are tweaking the budget, primarily.").

199. Second, the Republican supermajority rushed to ratify H.B. 1092 in only 22 days, which was significantly faster than most bills proposing constitutional amendments. Representative Morey testified that "there was a lot going on in a very short period of time." Tr. 857:4-5 (Morey). When asked about the timing of the constitutional amendments, she testified that "[s]ix amendments were, in my personal opinion, rushed through to become law to get on the ballot." Tr. 876:2-5 (Morey); *see also* 856:4-12, 876:2-9 (Morey); 946:2-11 (McKissick); PX548 (H.B. 1092 Bill History) at 1, 4 (ratified June 29, 2018; filed June 7, 2018). Rep. Pricey Harrison testified that the timing for considering H.B. 1092 was "fairly rushed." PX1877 (Harrison Testimony) 1016:2-5. She explained that the 22-day time period was "a pretty short time frame for a piece of legislation with this magnitude and . . . especially in the House, not really any real public input . . . [and] the Senate was very rushed as well." *Id.* at 1016:2-11. Dr. Lichtman opined that, "it is highly unusual for the legislature to propose constitutional amendments through a rushed process." Lichtman Rpt. at 69. Dr. Lichtman noted that, for most constitutional amendments, the process "has taken months"; for example, the 1970 multi-amendment proposal "had a study commission that met for two years." *Id.* In fact, out of every constitutional amendment proposed in North Carolina since 1985, **none** were adopted in less than one month – let alone in 22 days. Lichtman Rebuttal Rpt. at 19, Table R-5. Because the process to pass H.B. 1092 was rushed, it allowed less time for the ordinary

debates, discussion, and studies that would accompany a proposed constitutional amendment. Lichtman Rpt. at 69.

200. Third, H.B. 1092 was one of six proposed constitutional amendments being considered at the time; this was a high number that was both unusual and created "a lot to digest." Tr. 856:4-857:5 (Morey); 946:2-11 (McKissick) ("[Considering six constitutional amendments at once] was unprecedented during the years that I served in the North Carolina Senate."); Lichtman Rpt. at 70 (quoting Gerry Cohen, former Special Counsel to the General Assembly) ("This is the third largest number ever . . . . The only time that there were more than six amendments on the same ballot was back in 1970 and 1914."). The decision to consider six constitutional amendments at once also meant that there was less time for public input. Rev. Barber, former leader of the NC NAACP, testified that "again, it [the voter ID amendment] also stacked in with a bunch of other amendments. . . . But, again, this was put on the ballot by a legislature whose election had happened with gerrymandered districts that had already been declared unconstitutional." Tr. 1238:7-13 (Barber). Rev. Barber also explained that the General Assembly "haven't had any major public hearings, nobody knows what's going on. . . . [T]here's no discussion. The people don't [know] what . . . it will mean. It's just a vague statement on the most important governmental document in the state . . . ." Tr. 1237:20-25 (Barber).

201. Fourth, H.B. 1092 had an irregular path through the General Assembly's committee process. Ordinarily, an introduced bill will "get a referral to just one committee. At times[,] you know, they strike those referrals to get them to the floor. But the normal process would be, it's assigned to a committee. That committee calendars it for hearing . .

. [a]nd then once it's heard in committee and everybody has had a chance to go through that, then in the House it goes to [the] Rules [Committee]." Tr. 800:3-20 (Reives). For H.B. 1092, rather than following the "normal process," after being initially sent to the Elections and Ethics Committee, it was "withdrawn from the committee," meaning "no action was taken," and then immediately "re-referred to [the] Rules [Committee,]" where it was reported out favorably. Tr. 854:6-20 (Morey); PX1877 (Harrison Testimony) 1014:16-1015:9 (this was "interesting because [E]lections is the committee of jurisdiction for this, but it was sent to the [C]ommittee on [R]ules, skipped the Elections Committee . . . ."); PX548 (H.B. 1092 Bill History) at 4. This process in turn limited the ability to hear public comment on the bill, because the "Rules Committee isn't where you normally receive much public input, public comment on the bill." PX1877 (Harrison Testimony) 1016:2-11.

202. Fifth, H.B. 1092 was a partisan bill passed along party lines, with all Republicans voting for and all Democrats voting against. PX574, PX568; Tr. 876:17-22 (Morey); *see also* Tr. 971:17-972:24 (McKissick). This "party-line vote is important because the Fourth Circuit Court of Appeals [in *McCrory*] had found in 2016 that through the 2013 photo-only voter ID legislation, the legislation had sought partisan advantage through a law that had the intention and the effect of discriminating against the overwhelmingly Democratic African American voters in North Carolina." Lichtman Rpt. at 100; *see also McCrory*, 831 F.3d at 227-28 (contrasting the "some bipartisan support" received by the pre-*Shelby* voter ID bill with partisan nature and "partisan goals" of the post-*Shelby* version of H.B. 589). Senator McKissick explained, bipartisan legislation is

"extremely important," and, across Democratic majorities, Republican majorities, and Republican supermajorities, he worked "[o]n a regular daily basis in [Senate] committee meetings . . . to come up with a win-win to work in a bipartisan way to accomplish [] objectives so that the public policies that were passed were ultimately the best they could have been." Tr. 936:9-938:18 (McKissick) (contrasting H.B. 1092 with other "[b]ills like the Second Chance Act"); *see also* Tr. 971:17-972:24 (McKissick).

203. Sixth, the supermajority intentionally manipulated the *Covington* court to keep their supermajority to pass H.B. 1092. Their ability to pass H.B. 1092 was only possible because members made false statements to the *Covington* court to hold off a special election. Lichtman Rpt. at 13-17. As previously explained, leaders of the General Assembly, including Chairman Lewis (lead sponsor of H.B. 1092), presented to the *Covington* court in July 2017. Lichtman Rpt. at 13-14. At this time the *Covington* court was considering redrawing the racially gerrymandered districts in time to conduct remedial special elections in 2017. *Id.* The legislative defendants in that case falsely advised the *Covington* court that the General Assembly had not started drawing new districts, when the General Assembly leaders, in fact, had "largely completed" drafting maps by June 2017. *See supra*, § II.C; *see generally* Lichtman Rpt. at 16 (quoting *Common Cause v. Lewis* Judgment) ("The Court is troubled by representations made by Legislative Defendants, or attorneys working on their behalf, in briefs and arguments to the Covington Court and to General Assembly colleagues at committee meetings that affirmatively stated that no draft maps had been prepared even as late as August 4, 2017.").

204. The Legislative Defendants' intentional misrepresentations to the *Covington* court is a shocking procedural irregularity and it is material. In North Carolina, a proposed constitutional amendment requires a three-fifths supermajority of each chamber to be ratified by the General Assembly and cannot be vetoed by the Governor. Tr. 873:15-20 (Morey); N.C. Const. Art. XIII, § 4 ("A proposal of a new or revised Constitution or an amendment … may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal . . . ."). Once elections were conducted under the newly drawn maps that cured the unconstitutional gerrymander, the GOP lost their three-fifths supermajority in both Chambers. Specifically, the General Assembly Republicans lost 10 seats in the House and 6 seats in the Senate, with Democrats gaining those seats. Tr. 877:16-878:13 (Morey); 939:16-940:25 (McKissick). If H.B. 1092 had been voted on by the legislature seated after the newly drawn constitutional maps, and assuming the vote took place along strict party lines, H.B. 1092 would have failed to garner the three-fifths vote necessary to pass. *Compare* Tr. 877:16-878:13 (Morey) *with* PX568 (House Third Reading Vote) (the result, if voted along straight party lines with 10 fewer Republican votes and 10 more Democratic votes, would have been only 64-53).

205. Seventh, and finally, it was highly unusual that H.B. 1092 was proposed as an amendment without any enabling legislation. Dr. Lichtman notes that the failure to specify enabling legislation was a violation of "the norm for decades. . . . [Prior to H.B. 1092,] the legislature passed implementing legislation prior to the amendment." Lichtman Rpt. at 70-71 (quoting explanation from Gerry Cohen, former Special Counsel to the General Assembly). And multiple legislators testified that this sort of vague language for

a constitutional amendment was unusual. PX1877 (Harrison Testimony) 1018:6-1019:6 ("Q. In your experience is this language consistent with standard legislative practices for proposing constitutional amendments to voters? A. Well, I would say no."); Tr. 947:14-16 (McKissick). The ballot question presented to the voters read in full:

[ ] FOR [ ] AGAINST
Constitutional amendment to require voters to provide photo identification before voting in person.

PX564 (H.B. 1092 Ratified Bill) at 1; DX188 (Judicial Voter Guide 2018) at 22. The "Amendment Text" presented below the question made clear the entire 30-word text of the amendment: "Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions." PX564 (H.B. 1092 Ratified Bill) at 1; DX188 (Judicial Voter Guide 2018) at 22.

206. The lack of enabling legislation meant that "voters were not well informed what they were getting when they were voting." Tr. 873:25-875:3, 877:11-12 (Morey); 946:17-947:13, 967:23-969:8 (McKissick) ("You wouldn't have any idea what they have in mind for exceptions."); PX1877 (Harrison Testimony) 1018:6-1019:6; *see also* Tr. 1238:7-10 (Barber). The amendment "did not specify which IDs would be authorized to vote but left that entirely to the General Assembly." Lichtman Rpt. at 69. Representative Reives stated during debate on H.B. 1092: "the Constitutional amendment would basically be authorizing this body to do whatever it pleases." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 46:21-23. As Representative Morey argued during the legislative debate on S.B. 824 (the implementing legislation), "[when] most voters . . . voted [on the

constitutional amendment], they thought this was a very simple sentence. Present an ID. And I think most of them that did vote for this said, okay, next time we go to vote, pull out your wallet, show your debit card . . . your YMCA card . . . your ID from your employer. Well, now we know it's much more complicated[.]" PX693 (12/5/18 S.B. 824 House Second and Third Readings Tr.) at 128:7-12. Dr. Lichtman also concluded that this "constitutional amendment mandating only photo IDs for voting, g[ave] the legislature a self-perceived blank check to craft any implementing legislation that the Republican supermajority would choose to adopt." Lichtman Rpt. at 100.

207. H.B. 1092 was ultimately passed by the voters with a margin of 55.49% to 44.51%. PX1049 (11/06/18 Gen. Elec. Results – Statewide) at 2; Tr. 877:16-21 (Morey). In the same election, four out of the six proposed amendments were passed. PX1049 (11/06/18 Gen. Elec. Results – Statewide) at 1-2; Tr. 895:25-896:18 (Morey).

### B. The Introduction, Consideration, and Passage of S.B. 824 Was Riddled with Additional Irregularities

208. In the same election in which voters passed H.B. 1092, as noted previously, the Republicans lost their supermajority in both the House and the Senate. Tr. 877:16-878:13 (Morey); 939:16-940:25 (McKissick); *see also* Lichtman Rpt. at 81.

209. Despite the fact that voters elected a new General Assembly, that was not comprised of a Republican supermajority elected under racially gerrymandered maps, the legislative defendants decided to reconvene for a special session. Tr. 878:15-23, 879:13-16 (Morey); 1240:2-1241:3 (Barber).

### i. The Lame Duck Session to Consider S.B. 824 After the November 2018 Election Was Irregular

210. The General Assembly's decision to convene an extra legislative session in the short period of time after Thanksgiving rather than waiting for the newly elected General Assembly to be seated in January was irregular in and of itself. Tr. 878:15-879:16 (Morey); Lichtman Rpt. at 81. This rush to enact S.B. 824 before the General Assembly leadership lost their veto-proof supermajority resulted in several further irregularities.

211. First, ordinarily, before implementing a constitutional amendment, the General Assembly typically convenes a commission to study the issue and recommend proposed implementing language. Leloudis Rpt. at 69. Because of the rushed process here, no such commission was ever convened. *Id*.; *see also* Lichtman Rpt. at 73-74.

212. Second, there was no reason for the General Assembly to convene this "Lame Duck" session to pass S.B. 824. There could not have been an urgent, constitutional mandate, because three other amendments were passed by the voters during the November 2018 General election (the "Right to Hunt and Fish" amendment, the "Victim's Rights" amendment, and the "Maximum Income Tax" amendment), yet the General Assembly did not pass implementing legislation for any of these amendments. Tr. 878:15-879:16, 895:25-897:4 (Morey); 969:24-970:5, 971:3-16 (McKissick); PX1049 (11/06/18 Gen. Elec. Results – Statewide) at 1-2; Lichtman Rpt. at 73. "[T]he photo voter ID [amendment] was the only constitutional amendment that had implementing language [enacted] in 2018." Tr. 897:2-3 (Morey). In the same vein, 2019 was an "off-year," with no regularly scheduled federal or state election. Tr. 969:24-971:2 (McKissick) ("There was no need for

it to be addressed at that time. There were -- it wasn't like elections were right around the corner."); Lichtman Rpt. at 73. Accordingly, there was no urgency to adopt election legislation when the next statewide elections were two years away. The only reason the General Assembly had to convene the Lame Duck session was to be able to override the veto of Governor Roy Cooper. Tr. 877:25-879:11 (Morey); 976:5-19 (McKissick); Lichtman Rpt. at 81.

213. Third, it was not typical for the General Assembly to consider enabling legislation for a constitutional amendment during a lame duck session. Tr. 975:3-20 (McKissick).

214. Fourth, the process for convening the lame duck session in order to enact S.B. 824 was also irregular. A regular session in the North Carolina session is comprised of a long session and a short session; the long session is typically adjourned to reconvene at a specified date for the short session in the next year. Tr. 849:18-850:4 (Morey); 944:23-946:1 (McKissick). If the General Assembly convenes outside of the long or short session, for example, that is called a special or extra session. *See, e.g.*, Tr. 437:4-13 (Van Duyn); 850:5-9 (Morey); 969:24-970:5 (McKissick). 2018 was a "short session year," wherein the legislature was typically in session from about April to May or to the end of the summer. Tr. 437:4-17 (Van Duyn); 944:23-946:1 (McKissick). But, "typically, [a] short session winds up towards the end of the summer," so that legislators can run for re-election, and if it is adjourned, it is "always adjourn[ed] to some date in the future." Tr. 437:8-17 (Van Duyn). But this process was not followed for S.B. 824 – instead, the 2018 short session was not adjourned for a specified date, but was just "pause[d] until sometime in the future,"

with no date specified, which was irregular and enabled the General Assembly to call its lame duck session. *Id.* at 437:15.

#### ii. The Process When Considering and Voting on S.B. 824 Was Plagued By Numerous and Significant Irregularities

215. Not only was the convening of a special session irregular, but the legislative deliberations concerning S.B. 824 defied many conventions that the General Assembly normally follows for a bill of such importance.

216. First, 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. PX1877 (Harrison Testimony) 1023:5-22, 1024:2-7 ("[I]t wasn't an ideal time to review the draft [legislation] for sure."); *see also* Tr. 878:24-879:11 (Morey); Lichtman Rpt. at 71. The pre-filed draft was considered by the Joint Elections Committee on November 26, 2018, the day before it was first filed in the Senate. PX687 (11/26/18 Joint Elec. Cmte. Tr.). Members of the General Assembly, such as Representative Harrison, had to return to Raleigh early before the lame duck session in order to attend. PX1887 (Harrison Testimony) at 1024:8-22; *see also* Tr. 439:1-25 (Van Duyn).

217. Second, after the bill was officially filed in the Senate, there was a lack of deliberation and any opportunity for public feedback and vetting was severely curtailed. S.B. 824 was filed the Tuesday after Thanksgiving, on November 27, 2018. Tr. 436:24-437:3 (Van Duyn); 880:9-10 (Morey); 973:4-12 (McKissick); PX546 (S.B. 824 Bill History) at 4; Lichtman Rpt. at 71. It was ratified only eight legislative days later on December 6, 2018. Tr. 880:17-20 (Morey); PX546 (S.B. 824 Bill History) at 1; Lichtman

Rpt. at 71; *see also* Tr. 448:21-449:8 (Van Duyn); 1009:20-22 (McKissick). On November 27, 2018 – the same day that it was introduced – S.B. 824 passed first reading and received a favorable report in the Senate Select Committee on Elections. PX546 (S.B. 824 Bill History) at 4. It passed through the Rules Committee the next day. *Id.* at 3; Lichtman Rpt. at 71.

218. This rushed process provided very little time for notice and public comments and offered no opportunity for testimony or data from experts. PX1877 (Harrison Testimony) 1029:3-1030:14; Lichtman Rpt. at 71-72. Representative Morey testified that S.B. 824 "went through as quick as any legislation I have ever seen go through." Tr. 880:21-881:2 (Morey); Similarly**,** Senator Van Duyn testified, "[the timing of S.B. 824] was a particular issue for me because I represent a district that is four hours from Raleigh. . . . [B]ecause [the] committee hearings were the same day as filing, my constituents and the advocates in my district would not have been able to make it to Raleigh in time to give testimony."). Tr. 439:1-25 (Van Duyn). And as Senator McKissick noted, the bill passed through the Senate in "three days and that was it. And that would not provide significant time for debate, discussion, or for that matter, any research that might have been conducted to have come up with a better way of enabling voter ID restrictions[.]" Tr. 977:22-978:1 (McKissick).

219. Moreover, because of this rushed process, as Rev. Spearman noted, "[v]ery little time was permitted for public questions or comments" in the Senate, and in the House, the Committee on Elections "refused to allow any public comment" over the objections of Committee members, such that representatives of the NC NAACP were not allowed to

comment; the House ultimately only heard from five members of the public, whose comments were limited to one minute each. PX482 (Spearman Decl.), ¶¶ 32, 35; PX1877 (Harrison Testimony) 1028:25-1030:14; PX690 (12/3/18 House Elections and Ethics Comm. Tr.) 46:22-47:2 (adjourning meeting without public comment due to "time constrain[ts]"); PX692 (12/4/18 House Elections and Ethics Comm. Tr.) 67:13-68:3 (five speakers were permitted, each "not to exceed 1 minute."). These limitations on the number of individuals who could speak on the bill deviated from the practice where "bills of this magnitude that affect issues such as voting rights or redistricting . . . [have] provided much more opportunity for lengthy and balanced public comment." Lichtman Rpt. at 72 (quoting *Holmes v. Moore*, Wake County Superior Court, 18 CVS 15292, Aff. of Rep. Pricey Harrison at 5); *see also* PX1887 (Harrison Testimony) 1016:2-11, 1029:25-1030:14 ("I was hoping that the House would hear from the public as we considered this bill as normal practice.").

220. The Republican supermajority was on notice that the process was being rushed because numerous contemporaneous complaints were made on the floor. For example:

a. Senator Woodard said on the floor that "the process for introducing and presenting this bill" was "flawed"; complaining that Senators had "only seen the actual language of [the] bill for 24 hours," having been seen in committee by "only a handful of members" and "with no public comment." He added that the "vague ballot language" voters had approved contained no "mandate" to "move ahead quickly." "This rush over just a few days," he said, "is not the careful

thoughtful approach we should be taking with our sacred franchise to vote." PX688 (11/28/18 Senate Second Reading Tr.) 18:7-16.

b. Senator Van Duyn stated that she could not support the bill because she had not had sufficient time to consider her constituents' concerns, noting that "with just a couple of days of committee meetings and public comment, we've made almost 30 modifications to the base legislation." PX688 (11/28/18 Senate Second Reading Tr.) 55:7-56:6.

c. Representative Harrison argued that the bill was internally inconsistent and would be expensive to administer, a consequence of "rushing it." She added, "there are a lot of folks who didn't feel like they had enough impact." PX693 (12/5/18 House Second and Third Readings Tr.) 121:14-22; *see also* PX1877 (Harrison Testimony) 1027:24-1029:8, 1029:25-1030:14.

d. Representative Reives urged his colleagues to oppose the bill because "[w]e're not in a hurry. Nothing up here moves quickly anyway. January is right around the corner. . . . [G]ive it time. Give it a chance. Think this through." PX693 (12/5/18 House Second and Third Readings Tr.) 146:22-147:8.

e. Representative Alexander declared that the General Assembly was "rushing to judgment" and "not considering all of the technological nuances that could make voting easier." PX693 (12/5/18 House Second and Third Readings Tr.) 159:17-160:4.

221. This unprecedented, expedited process meant that the bill was not properly vetted. Dr. Lichtman notes "a more extended and careful process of review, deliberation

and debate . . . could have examined the differing laws of other states and . . . the considerable differences between the pre- and post-Shelby versions of the 2013 photo voter legislation." Lichtman Rpt. at 70. When asked "[w]hat would [he] have done differently if [he] had had more time" Senator McKissick testified that:

> I would have been pretty thorough in looking at what states had done in terms of voter ID laws and restrictions to have made certain that we came up with enabling authority that minimized the impact upon people that did not have voter IDs that were potentially being disenfranchised, to make sure that they were able to get those IDs or to make sure that they were able to vote.
>
> I can remember having conversations with Erica Churchill, over at the General Assembly on the staff there, about the documents and how that would function and operate and what's been done in some other states. That it would have been good to have had some vigorous discussion about the potential use of HAVA documents, such as utility bills, as a substitution.
>
> It would be good to have known about what happened in South Carolina dealing with expiration dates on voter IDs. I gather there they did not have expiration dates and we were proposing expiration dates here. It would have been nice to have known a lot of things about, you know -- I mean, why -- why should a voter ID expire?
>
> There's a lot of things that we could have researched. There's a lot of things that we could have investigated. There's a lot of things that could have contributed to a broader, more comprehensive voter ID bill that was not narrowly targeted and designed to impact those voting that did not have the requisite IDs. . . .
>
> I think that were we able to look at what was going on in other jurisdictions, maybe we could have gotten rid of the expiration dates dealing with these voter IDs. If we could have allowed for HAVA documents to be used as a substitution. If we could have gone in there and allowed all types of government-issued ID. You know, all types of -- well, like, the standards for IDs in terms of the way they might have been issued.

> But I think there's a lot of IDs, if you're really looking out for the likeness of the person, to make sure that person that's voting is the person who is registered to vote and the person whose picture is there, I mean, there are ways of knowing it.
>
> I mean, even in terms of issuing IDs through County Boards of Election. I mean, how that might be done more comprehensively. How that could be done more effectively. Could you have used churches? Could you have used community centers? Could you have used opportunities to have broadened access to IDs? Maybe they were only voting IDs, but IDs that could, in fact, be used by people who would not have them based upon the way this particular law was designed, this enabling authority was designed.

Tr. 978:7-979:9, 979:22-980:19 (McKissick). Dr. Lichtman further noted that the expedited schedule meant that the General Assembly "failed to conduct an analysis of the impact of proposed photo voter ID requirements on minority voters" which would have been appropriate diligence in light of the fact that the "General Assembly had information before it in 2018 showing the racial disparity between African Americans and whites on the most common form of identification." Lichtman Rpt. at 73-74.

222. Third, S.B. 824 followed an unusual path in the Senate. Typically, introduced bills are sent to the Rules Committee which decides which subject matter committee has jurisdiction, before they are sent to a subject matter committee; if and after a subject matter committee reports favorably on a bill, it goes back to the Rules Committee a second time. *See* Tr. 439:7-16 (Van Duyn). That process was not followed for S.B. 824 – which went directly to the Elections Committee and only passed through the Rules Committee once. *Id.*

223. Fourth, and among the most egregious irregularities, the North Carolina House of Representatives collapsed the Second and Third readings of S.B. 824 to the same legislative day – December 5, 2018. Specifically, within seconds of completing the vote after the second reading, Speaker Moore called for the third reading. PX693 (12/5/18 House Second and Third Reading Tr.) 170:18-22. The North Carolina Constitution requires that, with a few exceptions not applicable to S.B. 824, "all bills shall be read three times in each house[.]" N.C. Const. Art. II § 22(1). Representative Morey testified that, "[o]ur rules indicate that bills should be read three times. . . . A second reading is when there is a floor vote, and then **followed by a third reading the next day, in the House rules**." Tr. 882:24-883:7 (Morey) (emphasis added); *see also* 433:23-434:14 (Van Duyn) ("Q. So second and third reading don't typically happen on the same day? A. No, we [the Senate] actually have a rule, I believe, [] that requires us to do third reading on a subsequent day."); *see also* N.C. House Res. 114, Rule 41(b) (Feb. 21, 2017) ("No bill shall be read more than once on the same day without the concurrence of two-thirds of the members present and voting.")[8]. The House changed this rule for purposes of the lame duck session – underscoring the irregularity of the process. *See* N.C. House Res. 1, § 1(11) (Oct. 2, 2018)[9].

224. Speaker Moore proceeded to hold the third reading on the same day as the second reading, without holding any vote to determine the concurrence of two-thirds of the members, and **despite** an objection. Specifically, immediately after Speaker Moore called

[8] *Available at* https://www.ncleg.gov/Sessions/17/Bills/House/PDF/H114v7.pdf.
[9] *Available at* https://www.ncleg.gov/Sessions/17E3/Bills/House/PDF/H1v2.pdf.

for the third reading, Representative Pricey Harrison objected. PX693 (12/5/18 House Second and Third Reading Tr.) 170:18-171:5; Tr. 883:8-16 (Morey); PX1877 (Harrison Testimony) 1040:1-1041:13. Even though the objection came immediately after Speaker Moore called for the third reading and came before the third reading started, Speaker Moore ruled that the "objection did come too late." PX693 (12/5/18 House Second and Third Reading Tr.) 171:1-5; *see also* Lichtman Rpt. at 71-72. Representative Harrison testified, explaining the matter:

> I recall objecting to the third reading because we knew that there were amendments. We had an agreement with Chairman Lewis to run some amendments on the third reading, and then **my objection to the third reading was ignored**. And so normally it would have gone over to another day so that we could consider more amendments, but that didn't happen. And I would say that's not the regular course of business of the legislature.

PX1877 (Harrison Testimony) 1040:21-1041:3 (emphasis added). Speaker Moore's collapsing of the third reading and cutting off debate prevented consideration of further ameliorative amendments that representatives intended to offer. PX1877 (Harrison Testimony) 1040:1-1041:13; Lichtman Rpt. at 70-71. As Representative Harrison made clear, this was not what "normally" would have happened, and was "not the regular course of business of the legislature." PX1877 (Harrison Testimony) 1040:1-1041:13

225. Sixth, S.B. 824 was a partisan bill and did not implement the constitutional amendment in a collaborative or bipartisan way. As Senator McKissick testified, the "model of the way it should have worked" is with the General Assembly "working collaboratively as Democrats and Republicans to come up with enabling authority to make

sure that [the amendment] was implemented in the best possible way." Tr. 975:3-20 (McKissick). But with S.B. 824, no member of the Democratic caucus had any input in drafting the bill. Tr. 816:4-817:6 (Reives). And the Court heard testimony about how the Democratic caucus proposed a variety of substantive amendments that could have ameliorated the disparate impact of S.B. 824. Tr. 911:14-17, 911:25-912:6 (Morey) (on cross-examination, explaining that while she personally proposed an amendment on "[l]ast Saturday voting . . . [t]hat was called out of order," she and her colleagues "split up what [they] decided" to propose.); 825:2-10 (Reives) (testifying that although he did not personally propose amendments, as the minority leader, he "would have had that amendment commitment [sic] be proposed by somebody else in [the] normal way of doing business."). The legislative history of S.B. 824 revealed, however, that while cosmetic or "modest" amendments by the Democratic caucus were allowed, substantive amendments that could have "improved the bill" were voted down, tabled, and in some cases denied debate entirely. For example:

- House Amendment 3 (PX627), which would have allowed high school IDs to serve as acceptable identification in addition to university IDs, failed;
- House Amendment 13 (PX617), which would have allowed any public assistance ID to serve as acceptable identification, failed;
- Senate Amendment 9 (PX632), which would have allowed any federal or state employee ID to serve as acceptable identification, was tabled;

- Senate Amendment 7 (PX634), which would have allowed for "unawareness of the law" to serve as a reasonable impediment for an extended period of time, by changing "2019" to "2020," was tabled;
- Senate Amendment 8 (PX633), which would have restored "last Saturday voting," and extended the time to issue free IDs, was tabled.

*See generally* Tr. 991:19-992:13 (McKissick) (explaining that "the [amendments] that got struck down . . . were very significant [ones] that could have, you know, improved the bill. The other ones" were only "modest improvements."); Lichtman Rpt. at 46. And as Representative Morey testified, two of her amendments, including an amendment to restore "last Saturday voting" was ruled "not germane" over her appeal, and did not even receive a debate. Tr. 889:8-890:10 (Morey); PX693 (12/5/18 House Second and Third Reading Tr.) 48:5-10, 49:5-51:19. Meanwhile, the majority adopted Republican amendments, such as House Amendment 7, which removed "two-witness verification" as an option for voters who did not have photo identification (thus further restricting the ability to vote without a photo ID), and accepted Democratic amendments such as House Amendment 11, which simply re-worded the way tribal identification was dealt with. PX623 (House Amendment 7); PX619 (House Amendment 11); PX1877 (Harrison Testimony) 1045:16-22; Lichtman Rpt. at 46.

226. The expedited process also meant that some amendments that could have ameliorated the discriminatory impact of the law were not even proposed or considered. For example, in the run-up to the debate over the constitutional amendment, Speaker Moore had suggested adopting the HAVA model of proposing non-photo ID options for voting;

but no such amendment was ever proposed. Tr. 999:5-19 (McKissick); Lichtman Rpt. at 70, 100.

227. The final votes on S.B. 824 were also not bipartisan. S.B. 824 passed third reading in the Senate 30 to 10, with only two Democrats voting in favor, and no Republicans in opposition. PX657 (Senate Third Reading Vote). It passed third reading in the House 67 to 40, with only two Democrats voting in favor, and only one Republican voting in opposition. PX643 (House Third Reading Vote). Similarly, after Governor Cooper vetoed the bill, the Senate voted to override his veto along nearly strict party lines: 33 to 12 in the Senate, with only one Democrat voting in favor and no Republicans in opposition, and 72 to 40, with only one Democrat voting in favor and no Republicans in opposition. PX641 (Senate Veto Override Vote); PX642 (House Veto Override Vote).

228. The Court heard testimony from Senator McKissick and Representative Reives about what bipartisan bills look like: they typically have a sponsor who is caucusing with each party, they typically provide for meaningful input in crafting the bill from both caucuses, and they typically enjoy support from multiple members caucusing with both parties. *See* Tr. 937:3-939:2 (McKissick); 802:9-14, 803:8-804:3 (Reives). But the only Democratic member who supported S.B. 824 and was actually caucusing with the Democrats at the time was Duane Hall; Senator Ford, a primary cosponsor of S.B. 824, "was not caucusing with the Senate Democratic Congress. Tr. 450:24-451:3 (Van Duyn); 814:15-21 (Reives); 981:21-982:18 (McKissick). "He wasn't caucusing with the North Carolina Legislative Black Caucus. He was not involved in Democratic Party matters and affairs [] in the North Carolina General Assembly. . . . [H]e was a lame-duck member. He

had lost [his] [re]election bid"; in short, "he was a Democrat in name only." Tr. 982:13-982:18 (McKissick); *see also* Tr. 450:24-451:3 (Van Duyn); 814:15-21 (Reives). Multiple legislators testified that the support of just a single caucusing Democratic member did not make S.B. 824 bipartisan and said that they did not consider it to be bipartisan legislation. Tr. 450:16-451:3 (Van Duyn); 804:9-805:5, 815:20-817:6 (Reives); 937:3-15, 972:2-24, 995:9-14 (McKissick).

229. Seventh, as with H.B. 1092, the passage of S.B. 824 depended upon the use of misrepresentations to courts of law to maintain an unconstitutional, racially gerrymandered supermajority. Governor Roy Cooper vetoed S.B. 824, saying that it was "a solution in search of a problem," that it "puts up barriers to voting that will trap honest voters in confusion and discourage them with new rules," and that it "was designed to suppress the rights of minority, poor and elderly voters." DX10 (Gov. Cooper Objections and Veto Message). But, as previously explained, the Legislative Defendants intentionally misled the courts to delay holding elections under new maps until 2018. This allowed the Republican supermajority to override Governor Cooper's veto and enact the photo voter ID law before a legislature based on constitutionally compliant districts could be elected. *See supra*, § II.C.

230. Once elections were held under redrawn maps in November of 2018, Republicans lost 10 seats in the House and 6 seats in the Senate, with Democrats gaining those seats. Tr. 877:16-878:13 (Morey); 939:16-940:25 (McKissick). Given Governor Cooper's veto, the General Assembly needed a three-fifths supermajority to override it and pass S.B. 824. N.C. Const. Art. II, § 22(1); Tr. 881:5-21, 892:21-25 (Morey). Had S.B.

824 been voted on by the new legislature seated after redrawn maps were used in the November 2018 election, it would have failed to garner the three-fifths needed to override the Governor's veto. *Compare* Tr. 877:16-878:13 (Morey) *with* PX568 (House Veto Override Vote) (the result, assuming Representative Hall and all Republicans continued to support the bill, would have been 62-50). As Dr. Lichtman concluded, "the **deception** that precluded a special election [in 2017] likely made it possible for the General Assembly to propose the constitutional amendment on voter photo ID by a three-fifths vote and to override the governor's veto of the implementing law by the same three-fifths vote." Lichtman Rpt. at 17 (emphasis added); *see also id.* at 81.

231. Simply put, the process for enacting S.B. 824 was anything but regular. This is particularly evident when S.B. 824 is compared not just with the general practices of the General Assembly (described above), but also with the procedures followed (or not followed) when considering and enacting the pre- and post-*Shelby* versions of H.B. 589. The pre-*Shelby* version of H.B. 589 "was the result of a 10-month process that included multiple public hearings, hours of testimony by experts and members of the public, and in-depth analysis of voter ID systems in numerous other states" in a "fair and open and transparent process." Lichtman Rpt. at 64 (first quoting then-Speaker of the House Thom Tillis; and then quoting Chairman Lewis). By contrast, after *Shelby* struck down the preclearance requirement of the Voting Rights Act, the General Assembly made "sweeping changes" to H.B. 589, and then rushed to pass it over the course of "two days without public hearings, testimony by authorities or interest groups, research into its implications for the voting rights of minorities and other citizens, or extensive and open legislative

debate." *Id*. at 65 (discussing the public history of H.B. 589). S.B. 824's process, by comparison—9 days, 4 public speakers, no expert testimony, no "in-depth" analysis of the effect on voting rights, and rushed legislative debates, with amendments disregarded and readings collapsed into a single day—is far closer to the unconstitutional version's 2 days than to the pre-*Shelby* version's 10 months.

## IV. S.B. 824 DISPARATELY IMPACTS BLACK AND HISPANIC VOTERS

232. "There are three primary ways in which a photo voter ID law disenfranchises otherwise eligible voters, especially the minorities that disproportionately lack such identification: through non-counted provisional ballots filed by people without authorized IDs, through those without authorized IDs who simply leave the polling place rather than file a provisional ballot, and through those who are deterred from voting either because they lack authorized IDs or believe that they may lack authorized IDs." Lichtman Rpt. at 29.

233. At the time of the preliminary injunction, Plaintiffs submitted an extensive record showing that (i) under the prior voter ID requirement included in H.B. 589, there was extensive evidence that Black and Hispanic voters disproportionately lacked identification, that ameliorative measures such as offering "free IDs" and provisional ballots had not worked, and that voters without identification were deterred, (*id.* at 29-37), (ii) expert analysis showing that Black and Hispanic voters disproportionately still lacked identification, (*see generally* PX280 ("Herron Rpt.")), and (iii) expert analysis predicting that S.B. 824 would have a similar effect because Black and Hispanic voters disproportionately still lacked identification, voters without identification had been

deterred, and the ameliorative measures would not dampen the effect, (Lichtman Rpt. at 37-46; *see generally* Barreto Rpt.).

234. Five years later, at trial, plaintiffs established that (i) prior to enacting S.B. 824, key legislators obtained and confirmed data concerning the performance of H.B. 589 and such information is reflected in the drafting of S.B. 824, (*see supra*, § I.B.), and (ii) as discussed further in this section, the predictions of Plaintiffs' experts proved to be accurate—as data from the SBOE and testimony from witnesses have confirmed, Black and Hispanic voters disproportionately still lack qualified identification, voters without identification have been deterred, and the ameliorative measures have not dampened the impact of the identification requirement. In summary, there is extensive record evidence that each of these forms of disenfranchisement have occurred under S.B. 824, and that they disproportionately impacted Black and Hispanic voters.

235. The effects of a voting regulation can be analyzed by looking at the "calculus of voting," a framework used by political scientists to study voter turnout. Burden Rpt. at 3-4. Under this theory, "[a]n individual will vote if the *probability* of their vote determining the outcome (P) multiplied by the net psychological *benefit* of seeing one's preferred candidate win the election (B) is greater than the *costs* of voting (C)." *Id.* at 3. The cost variable is "the only term that the state can manipulate directly, by setting election rules that effect the costs of voting." *Id.* The costs of voting "include the effort required to become informed about the candidates and issues" as well as "the time, resources, and activity needed to overcome the administrative requirements and other barriers to registering to vote and successfully casting a ballot." *Id.*

236. Black and Hispanic voters tend to lack the resources to pay the costs of voting, which include "formal education, literacy, income and residency stability . . . ." *Id.* at 4. Because of this, "[w]hat may appear to be equal costs imposed by a restriction on voting practices are in fact often more acute for [B]lacks and Hispanics than for non-Hispanic whites." *Id.*

237. For example, "[e]xperiences with poverty are sharply differentiated between whites and minorities in North Carolina. A report based on recent U.S. Census Bureau data shows that poverty rates, defined as those living below the federal poverty level in 2017, were 8% for whites, 19% for blacks, and 22% for Hispanics. Poverty is thus two to three times as common among minority residents in North Carolina as among whites." *Id.* at 14; *see also id.* at 4, 14-16.

238. Black and Hispanic voters also fall behind whites when it comes to numerous other socioeconomic voters which are strong predictors of whether someone can pay the costs of voting, such as educational attainment, health outcomes and treatment within the criminal justice system. *Id.* at 15-16.

239. As Dr. Burden concluded in his report,

> the requirements of the photo ID law demand more time, skills and other resources of voters lacking photo ID than are required of traditional voters. The group of voters most likely to lack photo ID is also the group who would be most likely to lack precisely these additional resources, typically for the same reason they lack identification in the first place – disproportionately lower levels of literacy and education, less access to an automobile, and fewer economic resources.

Burden Rpt. at 26.

240. The political science research shows that voter participation "is largely a product of habit," meaning that "[a]s long as the habit is not disrupted, voting in one election actually makes voting in the next election more likely." *Id.* at 5. Starting the habit of voting in the first place involves costs, and "the foreignness of the voting experience can itself deter participation." *Id.* Whites statistically "have more established voting habits" than do Blacks and Hispanics. *Id.* at 6; *see id.* at 5-8.

241. At trial, NAACP leaders testified about the barriers faced by their Black and Hispanic constituents in becoming educated about voting and starting the habit of voting. Dr. Elma Hairston, President of the High Point Branch of the North Carolina NAACP, testified that her organization had to work with local sororities, fraternities, and members of the clergy to educate the community on the ever-changing landscape of voting laws so that eligible community members can exercise the franchise. Tr. 204:2-208:14 (Hairston).

242. Deborah Dicks Maxwell, President of the North Carolina State Conference of the NAACP, identified older members of the NAACP as a group that will be further impacted by S.B. 824 stating that, "[t]he voter ID requirement has had an impact on older members because of the discrimination that was pervasive when they were born" explaining that "many of the older members were born at home with midwives, with their birth being recorded within a Bible, not at a hospital" it was not until later that information was recorded at a Department of Vital Statistics "because no one cared about the birth of a little Black child on a farm or somewhere." Tr. 127:23-128:4 (Maxwell). Ms. Maxwell stated that "it is not an easy process just to get a birth certificate if you were born at home"

and that "it takes about 2 months [to receive a birth certificate]" upon request. *Id.* at 128:7-9, 129:22-23 (Maxwell).

243. Al Wadood Salaam Jabbar, the President of the Winston-Salem Branch of the NAACP, also testified that his constituents face a barrier in terms of the ability to afford the materials, such as a photo copier, scanner, or printer, necessary to provide Photo ID for absentee voting, stating, "everyone can't afford the new technology of today." Tr. 1125:24-25, 1132:11-14 (Jabbar). Mr. Jabbar also expressed that he "deal[s] with a lot of seniors who are 75-plus years old who have a desire to vote" and that there are "a plethora of things that seniors run into" including "transportation" and "the ability to get the resources they need in order to mail in their ballots[.]" *Id.* at 1125:25-1126:7 (Jabbar).

244. According to Mr. Bass, the implementation of Voter ID has forced NC Black Alliance to "completely change" their 2024 programming. He stated, "our focus going into this election cycle was merely about mobilization and education. Now that education has had to go into overdrive, we've had to spend a considerable amount of time rewriting our graphic and print materials and our training documents to make sure that voters know about the rules around voter ID." Tr. 1057:4-11 (Bass). Additionally, NC Black Alliance has hired additional attorneys to assist with breaking down the information and the organization has "employed with partners a process to make sure that residents that need an ID have access by virtue of a ride to the Board of Elections or to the DMV to receive their free photo ID." Tr. 1057:12-17 (Bass).

245. Iliana Santillan, Executive Director of El Pueblo, testified about how it is particularly difficult for Hispanic citizens in North Carolina to begin the habit of voting.

Ms. Santillan testified that this occurs for a few different reasons. First, in mixed-status households, there is a fear that having anyone in the household vote will negatively affect those family members who are not U.S. citizens. Tr. 181:4-15 (Santillan). Ms. Santillan testified that, "there's a lot of fear within our community members and it's very challenging for them to overcome that fear, even when the child is a citizen and they can vote, the parents, their – their own fear influences what their child does." *Id*. at 187:20-188:2 (Santillan). Second, the voting process in the United States can be "very different" from the system in a country like Mexico; which means that recent immigrants will also have to bear the cost of learning a new voting system. *Id*. at 186:12-18 (Santillan). Third, there is a significant lack of resources in Spanish, and when someone is both a new citizen and a monolingual Spanish speaker, the prospect of navigating this process is very intimidating: "[w]hen I became a citizen and I was voting for the first time, I found that a lot of resources were not in – in Spanish. And even just going to the poll site, understanding what the ballot looks like, and even figuring out the process. I think for me, at least, it was very intimidating to have never done that before . . . ." *Id.* at 185:11-21 (Santillan).

246. In addition, individuals who are Black and Hispanic that have a physical or mental disability face additional challenges when starting the habit of voting. Corye Dunn, Director of Public Policy for Disability Rights North Carolina, testified that, to begin with, "ableism is real and people don't trust that people with disabilities can or should vote." Tr. 1159:8-13 (Dunn). For these individuals, even just the most basic information of "Where can I vote?" and "When can I vote?" and "Do I need an ID?" is difficult to obtain "for clients who don't have regular access to the Internet" and "don't receive a newspaper

anymore." *Id.* at 1153:6-18 (Dunn). Individuals with disabilities need the support of Disability Rights NC to obtain this information in an accessible format that they can utilize, whether that is information in large print, information accessible to screen readers, or audio content for blind or low vision voters. *Id.* at 1153:13-1154:11 (Dunn). Ms. Dunn added that "our Black and Latino constituents struggle with [] trusting government agencies. And so that's one barrier that we face is . . . helping people out, how to navigate government systems without having to engage in a way that feels unsafe or . . . threatens their . . . well-being in some other way." *Id.* at 1151:2-1152:13 (Dunn). Ms. Dunn testified that her Black and Hispanic constituents face an additional barrier of being "afraid to ask for what they actually need and are entitled to." *Id.* at 1152:15-24 (Dunn).

247. Even after starting the habit of voting, voters can be deterred or taken away from their voting habits by even modest changes to voting regulations, and numerous academic studies support this conclusion. For example, studies have found that individuals who have moved recently are much less likely to vote. Burden Rpt. at 5-8. This is particularly true with regulations that make it more difficult to vote. *Id.* For example, turnout has been shown to be depressed when new registration requirements are put in place, and "[r]elocating polling places has been shown to decrease by several percentage points." *Id.* at 6.

248. Black and Hispanic voters have historically lagged behind white voters when it comes to turnout. According to Dr. Burden, "[o]ver the last five presidential elections – 2000 through 2016 – white turnout in North Carolina was 54.9%, 63.5%, 65.6%, 64.4%, and 64.5%, respectively. Black turnout in those same elections was 43.1%, 55.0%, 69.3%,

67.8%, and 61.1%." *Id.* at 7. And "Hispanic turnout in those same elections was 3.3%, 15.0%, 31.2%, 28.8% and 36.3%." *Id.* Dr. Burden explained that "[a]veraging across these five presidential elections, white turnout has been about three points higher than that of blacks and 40 points higher than that of Hispanics." *Id.* In addition, over the past five midterm elections, "white turnout has been about seven points higher than that of blacks and 32 points higher than that of Hispanics." *Id.* at 7.

249. Dr. Burden concludes that "the disruption of voting practices and additional costs induced by S.B. 824 will negatively affect minority voters more than white voters." *Id.* at 1; *see also* Tr. 918:10-17 (Morey) ("Q. Now, you testified that you believed S.B. 824 has a disparate impact on minorities . . . is that right? A. Correct. . . . [From] common sense and communication with my constituents, I know it to be true.").

### A. Rigorous Analysis Confirms the Significant Racial Disparity in Rates of Photo ID Possession Among Registered Voters in North Carolina

250. Both prior to and following the adoption of S.B. 824, the SBOE conducted a number of analyses of voter registration/Department of Motor Vehicle ("DMV") identification "no-match" rates. An individual on such a "no-match" list made by SBOE is a registered voter who has neither a North Carolina driver's license nor a Department of Transportation ("DOT") issued "non-operator" card. *See* Herron Rpt., ¶ 9 (explaining what a no-match list is in the context of SBOE's August 2019 no-match list); Lichtman Rpt. at 73-80 (explaining SBOE's 2013 and 2014 no-match lists).

251. First, starting in February 2011, the SBOE under its then-director Kim Strach, conducted a series of no-match analysis comparing various iterations of the voter

file to DOT records. *See generally supra*, §§ I.B, II.B. For example, the analysis conducted concerning the April 2013 records showed that 318,643 registered North Carolinian voters lacked qualifying DOT identification. Lichtman Rpt. at 74. SBOE's 2013 analysis found that these voters were disproportionately Black, being 54% (or 11.9 percentage points) more likely to be African American than white. *Id.* at 75, Table 18. SBOE later updated its analysis for the November 2014 voter files and DOT records. *Id.* at 77. Using more conservative criteria, SBOE found a lower number of registered North Carolina voters appeared on the no-match list (254,391); but it also found that the racial disparities ***increased***. *Id.* Specifically, in the November 2014 no-match analysis SBOE found that Black voters were 60.9% (or 13.7 percentage points) more likely to be on the 2014 no-match list than white voters. *Id.* at 77, 80, Table 20.

252. "The General Assembly had information before it in 2018 showing the racial disparity between African Americans and whites on [this] most common form of identification, DMV photo IDs." Lichtman Rpt. at 73-74. As discussed in the Sequence of Events, (*see generally supra*, ¶¶ 116-21), key legislative staffers referenced the prior SBOE analyses and asked Ms. Strach to provide "any subsequent data," which Ms. Strach provided. PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-Match Data) at 5. And at the opening of consideration of S.B. 824, Ms. Strach presented the no-match results in testimony before the General Assembly's Joint Elections Committee. *See* DX214 (11/26/18 Presentation by SBOE Director Kim Strach); PX687 (11/26/18 Joint Elec. Cmte. Tr.) 24:9-33:16. It is also clear that the General Assembly was aware of this analysis during the debate over S.B. 824, because these

numbers of non-matched voters were openly discussed during both House and Senate debates, on both H.B. 1092 and S.B. 824. *See, e.g.*, PX693 (12/5/18 S.B. 824 House Second and Third Reading Tr.) 128:20-129:4; PX690 (S.B. 824 House Elec. Cmte. Debate) 29:4-30:6; PX988A (H.B. 1092, Senate Debate re: Second Reading) 4:22-5:2; *see also* Tr. 890:25-892:6 (Morey) ("I think we're implementing [S.B. 824] much too soon. I think it will hurt the 200,000 to 300,000 eligible voters that don't currently have a photo ID. I do think it's discriminatory in intent and I ask you to vote against this bill."); Tr. 952:22-954:1 (McKissick) ("What does it mean when you've got 300,000 people now that may not be able to exercise that constitutional right to [vote]?"). Representative Pricey Harrison also testified that she discussed the 200,000 number during the House's December 3 meeting on S.B. 824. PX1877 (Harrison Testimony) 1030:10-1031:3.

253. The analysis of Plaintiffs' experts Dr. Michael Herron and Dr. Matthew Barreto corroborates the evidence of disproportionate racial impact that was before the General Assembly when it passed S.B. 824 and demonstrates the racial disparity in identification possession did not narrow. *See generally* Herron Rpt.; Barreto Rpt., ¶¶ 41-72.

254. One of the statutory requirements of S.B. 824 was that SBOE create an updated no-match list as of September 1, 2019, assessing the number of individuals that do not possess a qualifying DOT identification (either a North Carolina driver's license or a non-operator identification card). PX676 (S.B. 824 Ratified Bill) Sec. 1.5(b); Herron Rpt., ¶¶ 9-10, 22. SBOE created such a list assessing the August 24, 2019 voter file and DOT records. *Id.*, ¶¶ 9, 28. The SBOE's 2019 no-match list contained 617,029 unmatched

registered voters. *Id.*, ¶ 28. Dr. Herron compared SBOE's no-match list to the public September 2019 voter file (removing any voters who registered after August 24, 2019, to ensure a proper match) to enable a breakdown of the 2019 no-match list by race and ethnicity. *Id.*, ¶¶ 33, 36, 39, 41-42, Table 2. His analysis concluded that while North Carolina's overall no-match rate (*i.e.*, the number of North Carolinians who lack a DOT-approved photo voter ID) was 8.1%, the white no-match rate was only 6.5% as compared to a Black no-match rate of 10.6%, meaning that Black voters were over 1.6 times as likely as white voters to lack DOT identification that could be used for voting. *Id.*, ¶¶ 43, 49-50, Table 3. As to ethnicity, Dr. Herron concluded that the non-Hispanic no-match rate was only 5.7%, compared to a Hispanic no-match rate of 11.1%, a 5.4 percentage point gap, meaning that Hispanic voters were nearly two times (1.94) as likely has non-Hispanic voters to lack DOT identification that could be used for voting. *Id.*, ¶¶ 57-59, Table 5. Moreover, SBOE sent a mailing to their no-match list of over 700,000 non-matched voters and received only 173 responses, indicating that the SBOE list was highly accurate and that the list "incorrectly identified a very small number of individuals lacking DMV identification." *Id.*, ¶¶ 77-78.

255. Dr. Matthew Barreto further conducted a public opinion survey in August and September 2019 contacting 1,642 North Carolinians who were eligible to vote regarding, *inter alia*, rates of possession of qualifying identification. Barreto Rpt., ¶¶ 31, 35-40. Dr. Barreto's survey found that for unexpired identifications issued by the North Carolina DMV, 6.7% of eligible white voters lacked such an identification, while 11.4% of eligible Black voters (*i.e.,* a 4.7% difference than white eligible voters) and 22.9% of

Hispanic voters (*i.e.*, a 16.2% difference than white eligible voters) lacked valid-DMV issued identification. *Id.*, ¶ 43, Table 1B. As Dr. Barreto concluded, "[a]s compared to eligible non-Hispanic-whites, Black and Latino eligible voters in North Carolina are less likely to possess a photo ID acceptable under SB 824." *Id.*, ¶ 42.

256. Dr. Barreto's survey also found significant disparities among currently registered voters. For registered voters, Dr, Barreto's survey found that for unexpired identifications issued by the North Carolina DMV, 5.8% of registered white voters lacked such an identification, while 10.6% of registered Black voters (*i.e.,* a 4.8% difference than white registered voters) and 19.2% of registered Hispanic voters (*i.e.*, a 13.4% difference than white eligible voters) lacked valid-DMV issued identification. *Id.*, ¶ 52, Table 4B. These numbers show similar disparities to the no-match rates that Dr. Herron and the prior SBOE analyses (obtained by and presented to the General Assembly) found. *Compare* Herron Rpt., ¶¶ 43, 49-50, Table 3 (white no-match rate was only 6.5% as compared to a Black no-match rate of 10.6%) *with* Barreto Rpt., Table 4B (5.8% of registered white voters and 10.6% of registered Black voters lack a valid DMV-issued identification). As Dr. Barreto concluded "among registered voters, large and statistically significant differences in possession rates are found by race with white voters consistently more likely to have access to a qualifying ID than Black or Latino voters." Barreto Rpt., ¶ 52.

257. Dr. Barreto's survey also examined whether survey respondents resembled the photo in their identification because S.B. 824 requires that a qualifying identification contains a photo that matches the voter in order to establish identity. *Id.*, ¶¶ 42-43. Dr. Barreto's survey found that for unexpired identifications issued by the North Carolina

DMV where the photo resembled the individual, 9.2% of eligible white voters lacked such an identification, while 16.4% of eligible Black voters (*i.e.,* a 7.2% difference than white eligible voters) and 26.8% of eligible Hispanic voters (*i.e.,* a 17.6% difference than white eligible voters) lacked such identification. *Id.*, ¶ 43, Table 1B. Dr. Barreto's survey also found disparities of similar magnitudes among registered voters. *See id.*, ¶ 52, Table 4B (7.3% of white registered voters, 15.8% of Black registered voters, and 23.1% of Hispanic registered voters lack unexpired DMV identification with a qualifying photo). As Dr. Barreto concludes "When we take into account an accurate and matching photo, the discrepancy between whites and non-whites grows even larger . . . among registered voters, large and statistically significant differences in possession rates are found by race with white voters consistently more likely to have access to a qualifying ID than Black or Latino voters." *Id.*, ¶¶ 43, 52.

258. And Dr. Barreto's survey also examined whether, beyond DMV-issued licenses, respondents possessed other types of qualifying identifications. Dr. Barreto's survey found that for unexpired eligible photo identifications 3.1% of eligible white voters lacked such an identification, while 7.2% of eligible Black voters (*i.e.,* a 4.1% difference than white eligible voters) and 11.0% of Hispanic voters (*i.e.,* a 7.9% difference than white eligible voters) lacked any valid identification. *Id.*, ¶ 44, Table 1B. And for people with any form of qualifying identification whose photo resembles the individual, Dr. Barreto's survey found that 6.1% of eligible white voters lacked such an identification, while 12.4% of eligible Black voters (*i.e.,* a 6.3% difference than white eligible voters) and 16.7% of Hispanic voters lacked (*i.e.,* a 10.6% difference than white eligible voters) any valid

identification. *Id.*, ¶ 44, Table 1B. Dr. Barreto's survey also found disparities of similar magnitudes among registered voters. *See id.*, ¶ 52, Table 4B (4.5% of white registered voters, 12.2% of Black registered voters, and 14.4% of Hispanic registered voters lack any valid identification with a qualifying photo). As Dr. Barreto concludes "the discrepancy between whites, Blacks and Latinos continues when we consider the full list of qualifying IDs . . . [and] are statistically significant at the 99% levels." *See id.*, ¶¶ 44, 52.

259. Defendants never responded to or in any way disputed Dr. Barreto's analysis, which was served in November 2019. Moreover, there is also no contrary expert analysis as to Dr. Barreto or Dr. Herron in the record, as Legislative Defendants preliminary injunction reports in opposition had been struck from the record before the close of discovery, (*see* ECF No. 116 at 3), and Legislative Defendants never sought to reintroduce their expert reports and represented that they were "willing to proceed to trial on the evidentiary record that existed at the close of discovery, as they have repeatedly represented to this Court after entering the case as parties," (ECF No. 250 at 1).

260. In October 2019 Brian Neesby, then the Chief Information Officer of the SBOE, provided an affidavit on behalf of State Board Defendants explaining the SBOE 2019 no-match list and addressing some of Dr. Herron's conclusions. ECF No. 97-28. While Mr. Neesby stated that the 2019 no-match list may contain "false negatives," he did not estimate or otherwise quantify the number of "false negatives,"[10] nor did he address,

[10] Other evidence submitted by the State Board Defendants suggests the number of "false negatives" on the no-match list is minimal. In opposing the preliminary injunction, Director Brinson Bell submitted a declaration stating that, in response to a mailing the State

contest, nor refute Dr. Herron's conclusions regarding the racial and ethnic composition of the SBOE 2019 no-match list. ECF No. 97-28, ¶10.

261. And, as discussed previously, Plaintiffs' expert in *McCrory*, Dr. Stewart, concluded that between 397,971 and 822,000 (accounting for voters whose licenses have been surrendered or are inactive) could not be matched to having a qualifying identification in DMV and federal databases). *See, supra*, ¶ 60 (citing Lichtman Rebuttal Rpt. at 5-6 and *McCrory*, 182 F. Supp. 3d at 352-53, 365 (discussing the lower range). He found that, at the low end, Black registered voters were more than twice as likely as white voters to lack an approved DOT photo ID (10.1% versus 4.2%), or at the high end, about three times as likely (25.0% versus 8.4%). *Id.*

262. Defendants do not deny that there are hundreds of thousands of voters who do not possess an ID approved under S.B. 824.

### B. The Availability of Free IDs Has Not Ameliorated the Disproportionate Impact on Black and Hispanic Voters

263. Since Black and Hispanic voters are statistically more likely than white voters to lack a qualifying ID under S.B. 824, it necessarily follows that they are more likely to have to utilize one of the law's so-called "ameliorative provisions" to cast a ballot: obtaining a free ID or casting a provisional ballot. As set forth below, the burdens of

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Board sent to people on the no match list, only 173 people responded "many of these [173] voters have reported that they do, in fact, have a valid photo ID that can be used for voting . . . that they are no longer North Carolina voters, or that the mailing was addressed to someone who had recently passed away" ECF No. 97-8 P 22. The Defendants submitted no other evidence suggesting that any of the 617,000 non-matched individuals in fact had a valid form of DMV issued ID.

obtaining either form of free ID fall disproportionately on Black and Hispanic North Carolinians; and the data produced by Defendants demonstrates that very few of these IDs have been successfully acquired by voters.

264. Prior to enacting S.B. 824, key legislators knew that making free identifications available would not address the hundreds of thousands of North Carolinians without qualifying identification. As discussed in the Sequence of Events, (*see generally supra,* §§ II.B-C), in January 2018, Chairman Lewis's office inquired about the number of "NCians believed to be on the voting rolls without a photo ID" and the steps SBOE had "taken to bring that number down" and was advised that there were still several hundred thousand registered North Carolina voters without qualifying ID. PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-Match Data) at 5. The SBOE's response notably failed to identify any measures the SBOE had taken to "bring that number down." *Id.* And in early October 2018—just weeks before S.B. 824 was introduced— Chairman Lewis's staff requested the SBOE advise him how many free IDs had been issued under H.B. 589. PX785 (Email between Office of Rep. Lewis and SBOE re: Free IDs). In response, Chairman Lewis was advised that 7,355 IDs had been issued since 2014—fewer than 2,000 IDs each year, and far fewer than the hundreds of thousands of people Lewis had previously been advised lacked Voter ID. *Id.* And seven weeks later—on November 26, 2018, the day before S.B. 824 was introduced—SBOE Executive Director Kim Strach gave a presentation to the Joint Elections Committee that noted that the DMV had only issued 7,841 identifications to voters who needed them—far fewer than the 254,391 registered voters whom SBOE could not match to a DMV

identification card. DX214 (11/26/18 Presentation by SBOE Director Kim Strach) at 17, 22. So the General Assembly was aware that the provision of so-called "free IDs" had not ameliorated the large number of people without qualifying identification.

265. With key legislative leaders knowing that providing free identifications to registered voters had not "brought the number of . . . NCians believed to be on the voting rolls without a photo ID . . . down," (PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-Match Data) at 5), the General Assembly, in enacting S.B. 824, added a second way for an individual to obtain an ID if they do not currently possess an acceptable ID. Specifically, while under H.B. 589, a voter could only obtain a free ID in the form of a non-operator ID from the DMV, S.B. 824 also authorized voters to be able to also obtain a voter ID from their County Board of Elections. Burden Rpt. at 29; Tr. 601:11-21 (Bell).

266. As discussed below, adding a second form of identification has not "brought the number down" either. Notably, data produced by the SBOE shows that the addition of a second mechanism to obtain an identification has not increased the number of alternative identifications issued or materially addressed the hundreds of thousands of voters and eligible voters without qualifying identification. In particular, since 2019 through the March 2024 primary, a total of 10,795 identifications have been issued. PX1189 (Free IDs Issued To Date 3/4/24). Again, this is only about 2,000 alternative identifications issued per year and is far fewer than the hundreds of thousands of registered voters the SBOE determined do not have qualifying identification. And with regard to identifications issued by the DMV, there is no evidence in the record that the DMV has issued any such

identifications since Chairman Lewis inquired about them in October 2018; notably, neither the SBOE nor the Legislative Defendants introduced any evidence at trial that the DMV has issued any further identifications since S.B. 824 passed.

#### i. The Burden of Obtaining Qualifying ID, Including Free IDs, Falls More Heavily on Black and Hispanic Voters

267. The record reflects two significant difficulties with obtaining free IDs. First, as Dr. Barreto determined in his survey of the "eligible voters who currently lack a qualifying identification -- *i.e.,* the voters who most need to be aware of their need to take additional steps to comply with SB 824 . . . an overwhelming majority incorrectly believe they have an ID that meets SB 824's requirements, which suggests they will not take steps to update their IDs or obtain one that enables them to vote." Barreto Rpt., ¶ 56. As Dr. Barreto notes, 76.2% of Black eligible voters and 80.7% of Hispanic eligible voters who do not have a valid ID mistakenly believe they have an ID that meets S.B. 824's requirements. *Id.*, ¶ 56, Table 7.

268. Second, Black and Hispanic eligible voters face greater challenges and possess fewer of the resources available to obtain any type of additional ID. As Dr. Barreto notes, his survey found that "Blacks and Latinos will face burdens in obtaining a state-issued ID in a greater degree than non-Hispanic whites." *Id.*, ¶ 60. As Dr. Burden discussed in his report, minority residents are less likely to have access to a vehicle and other material resources to make travel possible. Burden Rpt. at 3, 6, 29.

269. Dr. Barreto's survey asked North Carolinians who are eligible to vote and lack valid ID about eleven potential burdens that make obtaining qualifying ID difficult,

and found that Black and Hispanic respondents consistently "report facing these barriers at higher levels." Barreto Rpt., ¶ 60, Tables 22-23. For example:

- Black and Hispanic respondents are 1.98 times more likely than white respondents to report a burden of getting time off of work or school to obtain an identification;
- Black and Hispanic respondents are 2.46 times more likely to report being burdened by the 8:00 a.m. – 5:00 p.m. hours of operation than white respondents;
- Black and Hispanic respondents are 1.84 times more likely to report a burden of having to wait in line at the DMV or County Board for two hours or more than white respondents;
- Black and Hispanic respondents are 2.17 times more likely than white respondents to report a burden of needing to get a ride to visit in the first place;
- Black and Hispanic respondents are 1.90 times more likely than white respondents to report a burden of having to track down the necessary underlying documents for a DMV-issued ID, such as a birth certificate or social security card; and
- Black and Hispanic respondents are 2.17 times more likely than white respondents to report a burden of having well as having to potentially travel over 20 miles to the DMV or County Board of Elections to obtain an ID card.

*Id.* (Burden Rpt. 2-5, 7, and 10).

270. A considerable part of North Carolina's Black population is concentrated in the Eastern part of the State, where poverty rates are high and transportation access is limited. Leloudis Rpt. at 11, 22, 48, 51. Ride share apps like Uber are "absolutely not" available statewide, and groups like Disability Rights NC have only been able to utilize these resources to assist voters "in metro areas." Tr. 1173:5-12 (Dunn). Courtney Patterson, Chair of the Lenoir County Board of Elections, testified about the difficulties faced by Black and Hispanic voters in his county, which is located in Eastern North Carolina and is approximately 46-47% white, 45% Black and 10% Hispanic. Tr. 346:17-347:12 (Patterson). Problems faced by these voters who reside in Lenoir and surrounding counties include the absence of access to copying machinery, which complicates the ability to complete the absentee ballot and difficulty in procuring transportation to travel to the board of elections or to obtain a free voter ID. *Id*. at 314:11-315:21, 353:16-25 (Patterson).

271. As discussed below, many witnesses at trial confirmed that Black and Hispanic voters have faced these burdens in trying to obtain the two forms of "free ID" under S.B. 824. And these burdens are certainly reflected in the State of North Carolina's actual experience issuing such a paltry number of alternative IDs. As discussed above, the SBOE's own data shows that the number of alternative identifications issued has been minimal—around 2,000 per year; far fewer than the hundreds of thousands of registered voters that do not have qualifying identification. As Dr. Barreto accurately predicted five years ago in his 2019 report "[t]he availability of free voter ID is therefore unlikely to reduce the disparities in qualifying ID possession rates . . . or to assure that voters who lack

qualifying ID, who are disproportionately Black and Latino, obtain them." Barreto Rpt., ¶ 59.

272. Studies have shown that the costs of so-called free IDs "can be substantial." For example, a study by Richard Sobel analyzed the cost of obtaining "free" photo voter ID cards in Pennsylvania, South Carolina and Texas "based on costs due to travel, purchase of underlying documents, and lost wages due to the time required for travel and interacting with government agencies." Burden Rpt. at 30. Even *without* including any potential legal fees, Sobel "finds that the cost for nine current individuals falls between $75.00 and $175.00." *Id.*

**ii. The Burden of Obtaining a DMV Free ID Disproportionately Burdens Black and Hispanic Voters**

273. One option for obtaining a "free ID" under S.B. 824 is to obtain a non-operator ID from the DMV. The "[d]ocumentary requirements for acquiring photo ID at a DMV office are substantial and complex." Burden Rpt. at 29. In order to obtain this ID, "a person must appear in person and provide (a) one document verifying age and identity, (b) one document proving the existence of a Social Security number, and (c) one document proving residency." *Id.* Since the passage of S.B. 824, this option is "theoretical"; neither the State Board nor Legislative Defendants introduced any evidence of issuance of alternative DMV identifications, and there is no evidence in the record that the DMV has issued any such ID since the passage of S.B. 824.

274. The lack of issuance of IDs from the DMV is consistent with the fact that obtaining one of these IDs from the DMV is a burdensome, multi-step process that has a

disparate impact on minority citizens of North Carolina because they are more likely to lack qualifying ID and are more likely to face greater hurdles in obtaining it because of socioeconomic disparities. *Id.* at 14, 36; Barreto Rpt., ¶ 60, Tables 22-23. As the Fourth Circuit summarized when analyzing the same provision in H.B. 589, the General Assembly "creat[ed] hoops through which certain citizens must jump." *McCrory*, 831 F.3d at 236.

275. To obtain a DMV ID, including a non-operator ID for purposes of voting, an individual must appear in person at a DMV licensing office. In and of itself, the requirement that an ID be obtained in person at a DMV office poses a discriminatory burden. Dr. Barreto's survey found that "Blacks and Latinos are less likely than whites to report they know where their nearest DMV office is, and both Blacks and Latinos are more likely than whites to state they have never been to any DMV office in the state of North Carolina." Barreto Rpt., ¶ 60, Tables 12-13. Among white respondents without a qualifying ID, 94.6% reported they had been to a North Carolina DMV office, as opposed to 64% of Black respondents and 55% of Hispanic respondents who lack qualifying ID. *Id.*, ¶ 60, Table 13. And of respondents without a qualifying ID, only 76.6% of Hispanic respondents and 63.9% of Black respondents knew where the nearest DMV office was, as compared with 86.6% of white respondents. *Id.*, Table 12.

276. This requirement to obtain a non-operator ID in person at a DMV office can also impose significant burdens on voters, especially those without access to a car. Individuals who need a non-operator ID for voting must not already have a current and valid driver's license, which means they must first find transportation to the DMV. Households that lack access to a car are disproportionately Black and Hispanic. Burden

Rpt. at 29. For example, Mr. Bass testified to the struggles his 89-year-old grandmother faced due to the voter ID requirement stating that "[she] has never driven a vehicle, never had a need for an ID at all until this moment where now we have to figure out a time for us to get to Wayne County.. me personally, to take off of work to make sure that she has a photo voter ID." Tr. 1061:19-25 (Bass). And Jeanette Dumas, a Black voter living in Moore County, submitted a declaration stating that she has an expired license since she is no longer physically able to drive; she cannot get a ride to the DMV or County Board through the Department of Aging, and there is no public transportation that stops near her apartment. PX512 (Dumas Declaration), ¶¶ 10-13. Ms. Dumas stated that she would have no choice but to "pay for private transportation to take me to and from either the DMV or the County Board of Elections office." *Id*., ¶ 13.

277. In some areas of North Carolina, access to DMV offices is limited. As Ms. Dunn testified, "I think it's common knowledge that North Carolina DMV offices have, in recent years, had reduced hours . . . and some locations have closed. Some counties only have one office, typically located in places that are really convenient for drivers but maybe not for folks who rely on public transit." Tr. 1176:15-24 (Dunn). In addition, 17 out of 100 counties in North Carolina do not have a DMV office at all. Tr. 130:5-19 (Maxwell).

278. Ms. Santillan testified that the Hispanic community she serves would face barriers in obtaining free IDs under S.B. 824. She stated that she "[doesn't] know that there's enough information out there so that the Latino community, Spanish speakers, are aware of those resources," and "[e]ven if they were aware of the resource, it would be time-consuming. They would have to have enough trust to go there. They would have to miss,

you know, time out of their -- their work." Tr. 188:16-189:2 (Santillan). Regarding free IDs from the DMV specifically, Ms. Santillan stated that "to my knowledge, I don't think I've ever seen anyone get that." *Id*. at 189:11-15 (Santillan).

279. Ms. Maxwell expressed concerns regarding the accessibility of free ID for NAACP members stating, "It's not [easy]. Nothing's open on Saturday. Walmart is but, getting a photo ID is not." Tr. 126:10-12 (Maxwell). With regard to barriers faced in obtaining a non-operator ID by the DMV in particular, Ms. Maxwell testified that there isn't a DMV in every county, the DMV is not open on Saturday or after 5:00pm, and "most people do work during the daytime and are free in the evening time. And are free on the weekends." *Id.* at 130:1-13 (Maxwell). Furthermore, it is difficult to get an appointment at the DMV, and there is no "special line" for those seeking to obtain free ID for voting purposes. *Id*. at 130:1-131:8 (Maxwell). Ms. Maxwell testified that this burden is further exacerbated for her rural constituents, who might have to pay "someone like a Jitney" for a ride, "[s]o then you're going to have to give someone 10, 15, $20 to get you there, so it is not free." *Id*. at 131:12-25.

280. Mr. Jabbar, the President of the Winston-Salem Branch of the NAACP, also testified that his constituents face a barrier in obtaining DMV IDs: "But we deal with the same issue is, how do we get there? How does one get to these places to get these IDs? And again, it's the things that I aforestated, transportation, disabilities, and others." Tr. 1127:4-13 (Jabbar).

281. Dr. Hairston testified that her understanding of challenges faced by members of the High Point branch "are centered in the folks having to have the laborious task of

acquiring an ID, especially folks that don't already have an ID. We have people in nursing homes that do not have an ID. We have people that are disabled . . . ." Tr. 205:23-206:4 (Hairston).

282. Ms. Dunn testified that individuals with disabilities would face barriers in obtaining IDs from the DMV without additional assistance from her organization, because DMVs are "typically located in places that are really convenient for drivers, but maybe not for folks who rely on public transit . . . that's not a great point of contact for a lot of our clients." Tr. 1176:15-1177:2 (Dunn). Ms. Dunn testified that "the DMV is not like a natural nexus for a lot of our clients. It's not an agency that they're already familiar with. They aren't drivers in a lot of cases." *Id*. at 1169:17-25.

283. Cedric Baker, a Black resident of Winston-Salem, attempted to vote on election day at a local church in Forsyth County during the 2024 primary election, but his vote was ultimate denied due to S.B. 824's photo ID requirement. Tr. 1020:12-1021:5, 1025:1-8 (Baker). Mr. Baker was not aware that North Carolina required photo identification when he went to vote. *Id.* at 1020:24-1021:2 (Baker). Mr. Baker testified that he was not readily able to obtain an ID from the DMV because of his work schedule—which included double shifts, his inability to miss work without financial consequence that would directly affect hm and his children, and a lack of personal transportation. *Id.* at 1023:3-1024:19 (Baker). Even when Mr. Baker was only required to work the day shift, "by the time [he] got off, the DMV would be closed." *Id.* at 1024:4-8 (Baker).

284. Individuals with suspended or revoked licenses are not allowed to utilize those IDs to vote under S.B. 824, and would face barriers in getting to the DMV to obtain

a non-operator ID. ECF No. 299, ¶ 148. Dreama Caldwell, the Co-Director of Down Home North Carolina testified that her license has been suspended multiple times with the longest revocation occurring from 2000-2004. Tr. 579:2-11 (Caldwell). Ms. Caldwell's license was suspended so long because she was a single mother, earning $9 per hour and could not afford the fines and fees which were "well over $2000"; it took her that long to come up with that much money. *Id*. at 579:13-21 (Caldwell). She went on to testify that she would not feel comfortable and would be chilled from voting with a revoked or suspended license due to her personal experience; Ms. Caldwell specifically stated "I'm from Alamance where I've watched people be prosecuted for voting errors, mistakes. And so, yeah, I wouldn't." *Id.* at 579:22-580:4 (Caldwell).

285. Robert Fletcher, a retired Black Franklin County voter who has voted since the 1970s, attempted to vote during the 2024 primary election, but his vote was ultimately denied due to S.B. 824's photo requirement. Tr. 1116:1-6, 1116:25-1117:3 (Fletcher). Mr. Fletcher took his expired temporary license to vote and ultimately used a provisional ballot to cast his vote. *Id.* at 1118:20-21, 1120:10-12 (Fletcher). After voting, he testified that he was told to return with a proper ID within three days; he believed he needed to return to his voting location and had not heard about returning to the County Board of Elections. *Id.* at 1119:2-14 (Fletcher). Mr. Fletcher further testified that he was unable to return with his ID because he was busy with family obligations and matters that he "had to take care of during that time." *Id.* at 1120:1-9 (Fletcher).

286. All these burdens are reflected in and consistent with the Defendants' failure to adduce any evidence in the record that the DMV has issued any IDs since S.B. 824

passed. In other words, the fact that the DMV has issued no such IDs reflects that the "hoops, through which certain citizens must jump," *McCrory*, 831 F.3d at 236, remain incredibly burdensome.

### iii. The Burden of Obtaining a CBOE Free ID Disproportionately Burdens Black and Hispanic Voters

287. The record at trial also established that so-called "free IDs" provided by the County Boards of Elections are difficult to obtain. An individual seeking to obtain this type of ID must first know that it exists, and then must "apply in person [at a County Board of Elections], be a registered voter and provide at least a name, date of birth, and last four digits of their Social Security numbers." Burden Rpt. at 29.

288. The County Board of Elections IDs are also not offered on Election Day, even if the County Board is a voting site. Voter photo identification cards may not be issued "during the time period between the end of one-stop voting for a primary or election . . . and election day for each primary and election." ECF No. 299, ¶ 141.

289. Most eligible voters who need these IDs don't know that they need to get them, Barreto Rpt., ¶ 56, Table7, don't know that they can get them, Barreto Rpt., ¶ 57, Table 8-9, and don't know how to get them. Barreto Rpt., ¶ 58, Table 10. And even for individuals who know how to get them, it has proven incredibly burdensome to get them. To reiterate, the SBOE's own data confirms that only around 2,000 of these identifications have been issued each year. PX1189 (Free IDs Issued To Date 3/4/24); Tr. 598:11-600:15 (Brinson Bell).

290. Dr. Barreto's survey found that North Carolinian "potential voters have very low levels of information about the new North Carolina Voter ID card, which suggests that they will not be well-equipped to take advantage of this option if they lack a qualifying identification." Barreto Rpt., ¶ 59. Dr. Barreto's survey found that, among eligible voters who lack a qualifying identification, only 30.1% of Black respondents and 27.4% of Hispanic respondents had heard about the new ID card. *Id.*, ¶ 57, Table 8. And rates of understanding were not much higher even for people who had a qualifying identification: only 44.1% of all Black respondents and 39% of all Hispanic respondents had ever heard of the new ID card. *Id.*, Table 9. And of people who had actually heard of the new ID card, only 23.8% of Hispanic respondents and 18.7% of Black respondents knew that the card was issued by County Boards of Election, and only 46.7% of Hispanic respondents and 48.1% of Black respondents knew the ID card was issued for free. *Id.*, ¶¶ 58-59, Tables 10-11. And among respondents who did not have a valid ID, only 36.3% of Black eligible voters and 37.5% of Hispanic eligible voters knew where their County Board of Elections Office was. *Id.*, ¶ 60, Table 15.

291. As for the burden in actually obtaining the cards, Dr. Burden explained in his report that "[t]he average county has a land area of 486 square miles and could thus require lengthy, inconvenient, costly, or difficult travel to acquire an ID. An analysis by Christopher Dalton Ketchie estimates that the mean 'straight line' distance from a registered voter's residence to the county board of elections is 7.79 miles. A round trip to the office and back home would thus cover twice that amount (15.6 miles)." Burden Rpt. at 29.

292. These burdens were confirmed at trial by numerous witnesses. For example, Ms. Santillan testified at trial about the barriers the Hispanic community would face in obtaining a free ID at the CBOE. She stated that "I know that, you know, people would have to physically go there, take time out of their day. And I don't even know if there's Spanish-language resources once they get there. If they would be able to even understand how to go about it." Tr. 189:3-10 (Santillan).

293. Ms. Maxwell similarly testified "the free ID is only at your local Board of Elections, which is generally within your county seat, if you look on the map . . . [people of color] generally just don't live all around the county seat, which may not be in the middle of the county" and while "[t]here is Board of Elections in every county . . . it is not always geographically available. It is not always hour-wise available. It is just not always available to reach everyone." Tr. 132:11-15; Tr. 133:5-8 (Maxwell). An additional impediment Ms. Maxwell identifies is that "we have government centers in North Carolina. Most of those government centers, like the one I retired from, have the Board of Elections and the sheriff's department or the police department and sometimes, for certain people of color, that is a dissuasion to see the sheriff's car parked nearby because of things that have happened to us previously" further explaining that "it's a mindset. I've never been in trouble with law enforcement. I'm an ex-military police, but I sometimes feel some sort of way depending on how much I am close to law enforcement. So, it happens to those who even have not had an issue." *Id.* at 132:16-133:2 (Maxwell).

294. Ms. Dunn testified that individuals with disabilities would face barriers in obtaining IDs from the CBOEs because "any additional stop is . . . a burden" for her

constituents, who may be facing barriers such as mobility impairments and fatigue due to their disabilities. Tr. 1173:25-1174:23 (Dunn). In addition, Ms. Dunn pointed out that getting transportation to a County Board of Election can be particularly difficult for individuals living in group homes or residential facilities, because "[n]ot every service provider understands that facilitating voting is part of their obligation to support people living in the community" and these individuals "sort of have a limited number of things you can – you feel like you can ask for and have that be granted without being treated as a burden." *Id.* at 1174:24-1175:18 (Dunn). While Disability Rights NC does some work to provide individuals with disabilities with transportation to County Boards to obtain an ID, "those funds are limited and . . . it's not a systemic solution . . . it does not resolve the whole gap." *Id*. at 1170:4-12 (Dunn).

295. In addition, the County Board of Elections is not designated as an early voting site in all counties. There is only one County Board of Elections' office per county, and even if you travel to that single CBOE location, there is no guarantee that you'll be able to both obtain an ID and vote at the same location during early voting. Tr. 235:24-236:5 (Fellman) ("[t]here is only one County Board of Elections in every county"); 1170:13-1171:23 (Dunn) ("One thing that we learned . . . was that not every County Board of Elections uses their County Board office as an early voting site . . . that means that we then have to arrange for two rides. We have to arrange for a ride to the County Board for the ID and then a ride – to the polling place, wherever that may be.").

296. Ms. Caldwell testified about the voting barriers that her constituents at Down Home North Carolina face with 80% residing in rural areas, where there is less access to

public transportation and County Board of Election offices "may not be close enough for folks to get to." Tr. 581:24-582:8 (Caldwell). Even if voters secure transportation to reach the Board of Election, members are working class people who may be unable "to get off work to go and vote." *Id.* at 582:1-8 (Caldwell).

297. Despite County Boards of Election offering "free IDs," obtaining the IDs remains disproportionately burdensome to voters such as Mr. Baker. Mr. Baker voted provisionally in the 2024 Primary Election in Forsyth County because he "felt the need" and "wanted to be heard." Tr. 1020:12-19 (Baker). When Mr. Baker testified on May 9, 2024, he had only recently obtained a new temporary ID, approximately two weeks prior. *Id.* at 1024:20-25 (Baker). When asked why it took so long to obtain his new ID, Mr. Baker reiterated that it took so long to obtain an ID because of his work schedule. *Id*.

298. Keith Rivers, a Black voter in Pasquotank County, testified that he took his 88-year old mother, Myrtle Rivers, to vote in the 2024 primary election without an accepted ID because she had lost hers. Tr. 273:18-275:14 (Rivers). Ms. Rivers was ultimately able to cast a provisional ballot alongside an ID Exception Form, but it was an hour-long process which required assistance from both her son, election officials and volunteers from a non-partisan election protection hotline. *Id.* at 276:21-279:20. While Ms. Rivers was later able to obtain an ID from the County Board of Elections, Mr. Rivers testified that this was only possible because of his assistance and knowledge of the process. *Id*. at 282:15-25 (Rivers) ("If she didn't have me and I didn't live in the city, probably would be pretty hard to get somebody from 8:00 to 5:00, between those hours, to take her down to the Board of Elections to get an ID card.").

### C. The Law's Reasonable Impediment and Provisional Balloting Process Have Not Ameliorated the Disparate Burden on Black and Hispanic Voters

299. As discussed previously, State Board Defendants' own data shows there are hundreds of thousands of individuals who do not possess an ID accepted under S.B. 824, and neither the State Board nor Legislative Defendants contested or disputed in any way analysis from Drs. Lichtman, Herron, and Barreto that these hundreds of thousands of registered voters are disproportionately Black and Hispanic. *See, supra*, § IV.A.

300. Since Black and Hispanic voters are statistically more likely than white voters to lack a qualifying ID under S.B. 824, it necessarily follows that they are more likely to have to utilize one of the law's so-called "ameliorative provisions" in order to cast a ballot. If they cannot obtain a free ID, they must cast one of the two types of provisional ballots to have their vote counted.

301. As S.B. 824 was enacted, in order to cast a ballot without one of the accepted IDs under S.B. 824, a voter must either (a) cast a provisional ballot which must be cured by returning to the County Board of Elections without an ID (which we will refer to here as a "return with ID provisional ballot"), or (b) successfully fill out and have counted the reasonable impediment declaration, now called the "ID Exception Form," alongside a provisional ballot. Voters choosing to cast a "return with ID" provisional ballot must travel to the county board of elections by noon the day before county election canvass to present a valid ID. This creates an effective deadline of six or seven weekdays after election day. Burden Rpt. at 26.

302. The existence and availability of both of these "ameliorative" measures is also tenuous. Legislative Defendant Moore and other members of the General Assembly have announced their intention to cut back on the reasonable impediment provision and make it even harder to vote without an ID. Tr. 899:8-13, 901:4-18 (Morey) ("I know the Speaker of the House has publicly stated, this year in February, he would like to see a tightening of the exemptions on the photo voter ID."); PX1048 (WRAL News Article) at 2 (Moore stating that he "think[s] the affidavit where you can simply attest that you don't have [ID] is silly. . . . It's pointless. You ought to have an ID to vote. And, I think we ought to make that abundantly clear."). Obviously, if these measures are eliminated, they cannot reduce the racial disparities in possession of qualifying identification.

303. Moreover, the evidence in the record shows that these ameliorative provisions will not eliminate or meaningfully reduce the racial disparities in possession of qualifying identification, and that S.B. 824 proponents knew this when they crafted and presented the law. Notably, key legislators knew that similar provisions in H.B. 589 did not reduce racial disparities. As Dr. Lichtman observed, H.B. 589 had similar provisions as S.B. 824 concerning reasonable impediment and provisional ballots, which were in effect during the March 2016 primary, and concluded "[B]lacks and other minorities [we]re very substantially overrepresented among voters casting non-counted, no-ID provisional ballots in the 2016 primaries." Lichtman Rpt. at 33. As Dr. Lichtman notes, in the March 2016 primary, a total of 2,327 voters cast provisional ballots and over half—58.1%—were not counted and so these voters were directly disenfranchised by H.B. 589, with white voters having had their ballots rejected at a rate of 55.7%, Black voters rejected at 61.8%

and other minorities rejected at a rate of 62.2%. *Id*. at 30-31, Tables 6-7. Dr. Lichtman also noted that Black and other minority voters were disproportionately likely to have cast a no-ID provisional, finding that white voters were 27.6 percent less likely to vote provisionally, while Black voters were 79.5% and other minority voters were 163% more likely to have been directed to vote provisionally. *Id.* at 30, Table 7, Chart 5. Dr. Burden's report notes that, "of the 1,419 provisional ballots rejected for lack of photo ID, 34% of those with a race designation were black. This is despite the fact that only 19% of voters who participated in the primary with a designated race were black." Burden Rpt. at 24.

304. Dr. Burden also analyzed the use of the "highly similar" provisional ballot process in the March 2016 election in his report and warned that "[t]here is great potential for uneven application of the 'exception' to provisional balloting that accompanies the reasonable impediment declaration." *Id.* Relying on the 2016 Democracy NC Report by Executive Director Bob Hall, Dr. Burden noted that (1) "voters in identical circumstances . . . were treated differently depending on which poll worker served them," (2) voters were "handled in ways contrary to the law," including "issuing a regular provisional ballot [to the voter] rather than a reasonable impediment ballot in the case of a lost or stolen ID," and (3) "there were 'wild variations' in how reasonable impediment ballots were treated in the canvassing by county boards of election." *Id.*

305. Prior to enacting S.B. 824, key legislators knew that making "return with ID" provisional ballots and the reasonable impediment process available would not prevent North Carolinians without identifications from being disenfranchised. As discussed in the Sequence of Events, (*see, supra*, § II.C), in early October 2018—just weeks before S.B.

824 was introduced— Chairman Lewis's staff requested the SBOE advise him "while the reasonable impediment was in effect, how many people used it at the time of voting?" PX785 (Email between Office of Rep. Lewis and SBOE re: Free IDs) at 1. In response, Chairman Lewis was provided a chart and advised that there were only 1,048 reasonable impediment votes after canvas. *Id.* Seven weeks later—on November 26, 2018, the day before S.B. 824 was introduced—SBOE Executive Director Kim Strach gave a presentation to the Joint Elections Committee (which Chairman Lewis chaired) noting that during the March 2016 primary (i) "1,048 voters completed a Declaration of Reasonable Impediment . . ., and [o]f these Reasonable Impediment voters, 864 ultimately counted," and (ii) "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 . . . These votes did not count." DX214 (11/26/18 Presentation by SBOE Director Kim Strach) at 30-31. So the General Assembly was aware both that (i) the reasonable impediment and provisional ballot provisions received *de minimis* use, and (ii) a substantial number of people participating in either mechanism were disenfranchised—meaning that neither of these provisions ameliorated the potential disenfranchisement of the large number of people without qualifying identification.

306. In addition, as Mr. Lopez testified, Democracy North Carolina publicized the "issues that voters encounter[ed] as put forward in the 2016 report" to the General Assembly during the consideration of S.B. 824, including that "Black voters made up large portion of rejected ballots." Tr. 519:16-520:9, 524:4-12 (Lopez). Democracy NC's report,

which Dr. Lichtman cited at length, noted that there were numerous problems with the use of the reasonable impediment process:

> [N]umerous voters who did not have an acceptable ID for voting were not offered a reasonable impediment provisional ballot, and instead were offered a regular provisional ballot. The difference is critical because voters without acceptable photo ID who are given regular provisional ballots must, despite not having acceptable photo ID, go to the county board of elections before noon the day before the canvass and present valid photo ID for their votes to count. When poll workers did not offer those voters the reasonable impediment provisional ballot, but instead the regular provisional ballot, numerous voters were disenfranchised because they did not have an acceptable photo ID in their possession to take to the county board of elections . . . .
>
> [E]ven when a voter cast a reasonable impediment provisional ballot, the decision about whether to accept or reject the ballot varied wildly from county to county, and ballots were counted in an inconsistent and arbitrary manner. For example . . Some counties rejected voters who wrote in for "other" that their ID had expired, that they had forgotten to bring it, that they did not have an ID because they did not drive, that they had an out-of-state ID, or that their acceptable ID was in another state. But other counties counted ballots of voters with the same wording.
>
> [S]ome county boards of election violated state law and systematically rejected ballots that should have counted. For example, the State Board of Elections issued a memo to county boards of elections before the primary stating that checking "other" and writing in something related to a "school schedule" would be a reasonable impediment because that was similar to the pre-printed impediment of "work schedule." . . . Despite this clear guidance, the Chair of the Mecklenburg County Board of Elections effectively overruled the law, publicly declared that attending college was not a reasonable impediment, led her fellow board members to reject the ballots of students providing that explanation, and in one day disenfranchised more voters than have been accused of impersonating another voter in the past decade.

> [P]ost-election analysis revealed that the simplest mistake or omission on the reasonable impediment declaration form would cause a person's ballot to be rejected. The most elementary guidance from a poll worker would have corrected the problem, but assistance and knowledge of the reasonable impediment process by poll workers was extremely poor. For example, many reasonable impediment ballots were rejected because the voter forgot to check one of the boxes, answer a question, or sign the form; a poll worker reviewing the form could have encouraged the voter to fix the problem.

Lichtman Rpt. at 33-35.

307. With knowledge that neither reasonable impediment nor provisional ballot exceptions ameliorated the potential discriminatory disenfranchisement, the General Assembly carried both concepts from H.B. 589 over to S.B. 824.

308. As Dr. Lichtman noted five years ago in his 2019 report with regard to H.B. 589—and correctly predicted for S.B. 824—many North Carolina voters "were not offered a reasonable impediment provisional ballot, and instead were offered a regular provisional ballot" and "numerous voters were disenfranchised because they did not have an acceptable photo ID in their possession to take to the county board of elections, . . . . [T]he decision about whether to accept or reject the [reasonable impediment] ballots varied wildly from county to county, and ballots were counted in an inconsistent and arbitrary manner, . . . . [S]ome county boards of election violated state law and systematically rejected ballots that should have counted," and "the simplest mistake or omission on the reasonable impediment declaration form would cause a person's ballot to be rejected." Lichtman Rpt. at 33, 35.

309. The trial record has confirmed that Dr. Lichtman's prediction was correct—there have been significant difficulties with S.B. 824's reasonable impediments and

provisional ballot provisions, and these provisions have not ameliorated the discriminatory impact of S.B. 824.

310. First, there is very little understanding—by either voters or election workers—as to how these provisions work. With regard to voters, as Dr. Barreto observed, his survey indicated that "[e]ligible voters who lack an ID are also unfamiliar with how the law will be implemented and the availability of provisional ballots or other opportunities to vote on election day." Barreto Rpt., ¶ 62. Specifically:

- "An overwhelming majority of voters of all races were not aware of the reasonable impediment declaration option that allows voters without qualifying ID to cast provisional ballots, if they declare that they faced a reasonable impediment to presenting a qualifying ID. Only 17.9% of Blacks and 21.3% of [Hispanics] said they were even aware of the reasonable impediment declaration option . . . . This suggests that voters who lack identification are very unlikely to take advantage of the reasonable impediment declaration." *Id.*, ¶ 63, Table 20.
- "[V]oters were unaware of how the reasonable impediment declaration process works and what impediments are identified as reasonable under SB 824. . . . [I]n most instances, eligible voters did *not* think most of them could be used as a valid basis to declare an impediment . . . . Black and [Hispanic] eligible voters were statistically less likely to report an accurate understanding of what qualifies as a reasonable impediment as compared to [w]hites." *Id.* ¶ 64, Table 21.

- "[I]n the mistaken belief that they will never be allowed to vote without one[, t]he overwhelming majority of Blacks and Latinos expressed the belief that voters without qualifying identification would *not* be allowed to cast a ballot. *Id.*, ¶ 62.
- "[O]nly 21.2% of Blacks and 36.2% of Latinos who lack an ID thought it was possible to still attempt to cast a ballot without an ID." *Id.*, ¶ 62, Table 18.

311. A lack of understanding of the law is a cost that will have to be overcome by a voter, and "[k]nowledge of these additional administrative burdens might deter voters who lack ID from taking advantage of the reasonable impediment option, particularly so for [B]lack and Hispanic voters who possess fewer of the resources, that would be helpful in navigating the process in North Carolina." Burden Rpt. at 25-26. Mr. Patterson testified that "some people just don't vote because they're confused about the process" and "[p]hoto ID has made it even worse as far as people being confused." Tr. 357:4-8 (Patterson). Voters "don't want to go in and try to cast the ballot when they don't understand whether or not they have the proper ID." *Id.* at 357:19-20. Instead, "a lot of folk just stay home and don't go vote because they don't want the embarrassment of being told they can't vote." *Id*. at 358:7-13 (Patterson).

312. Voters may also be deterred by a lack of confidence in the provisional balloting system. Mr. Patterson, Chair of the Lenoir County Board of Elections, testified that "[p]eople really don't have a lot of confidences in a provisional ballot. . . . [T]here's a lack of trust. There's a big -- you know, folk just feel like if they didn't put that ballot in

that -- in that tabulator and it says, you voted, or thank you for your vote, then they just feel like that, you know, their vote may not get counted." Tr. 356:6-22 (Patterson).

313. Second, the State and County Boards' experience in implementing these provisions in the 2023 municipal elections and the 2024 primary elections was an unmitigated disaster. As discussed below, many witnesses at trial confirmed that the same problems that Democracy North Carolina noted regarding the March 2016 primary and warned the General Assembly of during the S.B. 824 debates, were manifestly evident in 2023 and 2024 elections: voters were treated differently based upon which poll workers and election officials they interacted with, many voters were not offered both provisional voting options, and there was essentially no consistency with how County Boards of Elections analyzed ID Exception Forms and determined whether or not they had grounds to believe the statements on that form were false. As a result, thousands of voters had to navigate additional burdens in their voting process, and hundreds of otherwise eligible voters ultimately had their votes thrown out.

**i. The 2023 Municipal Elections**

314. In late April 2023, the State Board of Elections announced that it would be implementing S.B. 824 in three sets of municipal elections that occurred on September 12, October 10 and November 7, 2023 (the "2023 Municipal Elections"). This gave the State Board and County Boards only four months to implement the law, including training poll workers and election officials. Tr. 595:4-21 (Brinson Bell) ("we had to have preparations done by August to be ready for absentee voting for the September elections"). This is compared to the 29 months that the State Board of Elections had to implement H.B. 589.

*Id*. at 593:25-594:2 (Brinson Bell). As set forth below, Mr. Patterson, longtime Chair of the Lenoir County Board of Elections, first Vice President of NC NAACP, and staff person for Blueprint, testified at trial that the State Board of Elections' training program and regime was ineffective, untested, and incapable of proper administration.

315. Mr. Patterson has been the Chair of the Lenoir County Board of Elections for the last 11 years. Tr. 311:20-25 (Patterson). He testified that county board members receive two election procedure trainings per year at the State Board conferences. *Id*. at 321:1-322:20 (Patterson). There is no testing done to ensure that the Board members retain information from these trainings. *Id.* at 325:11-14 (Patterson). The paid staff at the County Boards also attend these bi-annual trainings at the State Board of Elections conference. *Id*. at 323:12-22 (Patterson). The staff are also not given any testing to ensure that they retain the information provided at these trainings. *Id*. at 326:8-11 (Patterson).

316. Mr. Patterson testified that the County Boards do not have adequate funding to pay poll workers well, especially after the passage of S.B. 747, which prohibits County Boards from receiving private funds. Tr. 318:4-319:20 (Patterson). He testified that he believes the pay is normally $8 to $10 an hour, unless you are a chief judge who would be paid $12 an hour. *Id.* at 418:18-24 (Patterson). As a result, the County Boards "have to settle for people who probably don't even have the educational levels to be able to . . . understand what's being taught to them in terms of elections, to retain it, that's another issue." *Id.* at 317:24-318:8 (Patterson).

317. Mr. Patterson testified that the poll workers who assist with election activities during early voting and on election day receive only two hours of general training annually

before each election administration. Tr. 323:23-324:15 (Patterson). Mr. Patterson testified that the approximately 60 poll workers in his county were not required to attend a separate photo ID training, and instead "[t]hey got a full training of everything that they were told that they were supposed to be able to do, their job, that whole bit, in that two hours." *Id*. at 326:12-25 (Patterson). This is despite the fact that "it would almost take two hours, in my opinion, to train a -- to train a person just on voter ID alone." *Id*. at 368:4-18 (Patterson). Upon completion of the single two-hour training, there is no procedure in place to test and confirm the level of understanding that each poll worker possesses. *Id*. at 327:5-9 (Patterson). The amount of time for training is limited because counties must pay poll workers to attend; and this also hinders the ability of County Boards to add on an evaluation or testing element to their elections training. *Id*. at 394:16-24, 396:19-397:1 (Patterson). Mr. Patterson testified that this training is "definitely not" adequate, and that he sees "issues all the time as a result of the lack of knowledge of our -- our poll workers." *Id*. at 330:11-16 (Patterson).

318. The 2023 Municipal Elections were low turnout elections (with a total of only 613,835 voters casting ballots across all 3 municipal election dates), and those who did turn out to vote in the municipals were regular voters who were more likely to have an ID and possess the resources to overcome the barriers involved in voting without an ID. ECF No. 299, ¶¶ 161-164. Karen Brinson Bell, Director of the State Board of Elections, testified at the legislature after the March 2024 elections that municipal and primary voters "are considered some of the more engaged [voters]. . . . [W]e see low turnout in both cases.

And so the people who do come generally are, you know, more civically engaged, so we feel like their awareness is probably higher as well." Tr. 612:19-613:5 (Brinson Bell).

319. On September 14, 2023, the State Board of Elections issued Numbered Memo 2023-03, "Photo ID and In-Person Voting," to provide guidance about the implementation of S.B. 824. PX835 (N.C. Board of Elections Memo). In Numbered Memo 2023-03, the State Board of Elections made clear that "[a]ll voters are allowed to vote with or without a photo ID," and detailed the process for voting "without an acceptable photo ID." *Id.* at 2. Despite the low turnout—which should have allowed poll workers and election officials ample time to ensure that all voters could cast a ballot "with or without an ID" as set forth in the Numbered Memo—hundreds of otherwise eligible in-person voters, and an unknown number of otherwise eligible absentee voters, were ultimately disenfranchised in these elections due to the ID requirements of S.B. 824.

320. In the fall 2023 municipal elections, 573 provisional ballots were cast *in person* due to an ID-related reason.[11] ECF No. 299, ¶ 165. Despite the fact that filling out an ID Exception Form at the polling site on the same day that you cast your ballot would be a much lower burden on voters, voters utilized the two provisional ballot options at about the same rate—305 voters utilized an ID Exception Form (53%), whereas 268 voters utilized the "return with ID" provisional ballot (47%). *Id.*, ¶¶ 166, 168. Of the 305 voters who utilized an ID Exception Form, 256 had their votes counted and 49 did not. *Id.*, ¶ 166.

[11] The State Board provided no evidence about how many people cast absentee ballots for an ID-related reason, or how many of those ballots were rejected.

Of voters who utilized a "return with ID" provisional ballot, a clear majority (219 out of 268, or 81.7%) did have their votes counted. *Id.* at ¶¶ 165-170.

321. This data demonstrates that voters were not offered both provisional balloting options, as it defies logic that 215 people, if they were given both options, would tell a poll worker that they would prefer to take a separate trip to their County Board of Elections instead of filling out a form on-site at their polling place, and then never make that trip to the County Board. In addition, there is no evidence in the record that these individuals even had an accepted ID they could have shown to the County Board in order to have their provisional ballot counted. Mr. Patterson, Chair of the Lenoir County Board of Elections, testified that, while poll workers are supposed to offer both options, "in practice, many times, it doesn't happen simply because a poll worker didn't get it." Tr. 379:14-22 (Patterson). Mr. Patterson stated that he "see[s] an incident every time I walk in the polls to vote" and this made him "wonder how many times it's happened, you know, throughout the -- the county as far as how many people, you know, were affected by this poll worker . . . who just didn't get it." Tr. 379:14-382:23 (Patterson).

322. With regard to the upcoming November Election, Mr. Bass testified that NC Black Alliance is very concerned about misinformation and disinformation. He stated, "in this current climate, there are a lot of changes to election laws, and individuals, even with good intentions, may not be fully versed on all of the different changes and scenarios that will come up at the polls." Tr. 1044:23-1045:2 (Bass). For example, "if a poll worker is untrained or not properly trained, and they're asking for information that is not necessary in order to validate a voter, and that voter said to have to cast a provisional ballot, then that

voter is disenfranchised. In the same way, if information is shared that is incorrect intentionally to undermine the voter, then the voter and the voting process is harmed as well." Tr. 1045:20-1046:3 (Bass).

323. Mr. Bass testified that NC Black Alliance has already assisted voters with issues relating to voter ID stating that he "received a call from the students that were engaged in North Carolina A&T regarding individuals that were made to cast a provisional ballot, or were turned away because of poll workers looking at their photo ID trying to match the address which is not a requirement of the Photo ID. Those individuals at North Carolina A&T that had to cast a provisional or were turned away were denied a right to vote." Tr. 1057:18-1058:6 (Bass).

324. For those voters who were offered the ID Exception Form, the form states in bold at the top that "Your vote will count if you truthfully complete and sign this form." PX908 (Photo ID Exception Form). This is consistent with the State Board's repeated assurances that it would be essentially inconceivable for a County Board of Elections to reject a reasonable impediment declaration on falsity grounds:

> MR. COX: That is my point, Your Honor. There's no – there's no way -- the only way that they can reject it is if they determine that it is a false statement and have grounds to believe that. And so -- so a statement like that, how would you -- exactly, how would you determine that it's a falsehood. In our read of the law, there has to be some grounds to believe -- and this is the exact text -- that there is a falsehood committed in that affidavit; and admittedly, it's hard to conceive of how a County Board member would come up with grounds to believe what the person said was false unless -- I mean, we can come up with hypothetical situations where the County Board member knows the person and says, "Oh, they said they didn't have a car, but they do have a car." But then they have to get

> all four other members of the Board to agree with them that's a falsehood.

ECF No. 119 at 112.

325. However, the evidence at trial showed that County Boards of Election challenged and rejected ballots based upon pure speculation that perhaps a voter could have found a way to obtain an ID for purposes of voting. In the October municipal election in Guilford County, for example, members of the County Board voted to challenge several ID Exception Forms purely based upon speculation that perhaps these individuals could have obtained an ID. Tr. 674:1-677:7 (Brinson Bell). They sent letters to these voters questioning how, for example, the voter was able to vote in person if they didn't have transportation to obtain an ID. *Id.* at 676:18-677:7 (Brinson Bell). Director Brinson Bell confirmed that the board was "conducting hearing that had not been outlined as something the County Boards should be doing" and the actions of the board were "not prescribed within law, that they were outside of the -- the -- the instruction of the law." *Id*. at 676:11-17 (Brinson Bell).

326. These types of letters have a chilling effect on voters. Dr. Hairston was asked on cross-examination whether her branch "informs its members if they don't have qualifying ID, they can fill out the Photo ID Exception Form," and Dr. Hairston responded that, "[t]he one thing that makes people so skeptical about filling that out is the fact that their vote may not get counted and it may not get cured whenever they have canvas." Tr. 218:15-25 (Hairston).

327. In the November municipal election in Mecklenburg County, there was an incident with "some board members questioning" the "reason listed on the [ID] Exception Forms." Tr. 677:23-678:7 (Brinson Bell). Although Director Brinson Bell could not recall the exact number of ID Exception Forms that were rejected in Mecklenburg County, the State Board received a report from Southern Coalition for Social Justice stating that these rejections were due to speculation and no evidence of actual falsity was presented; but the votes were thrown out regardless. *Id.* at 673:6-677:7 (Brinson Bell). Director Brinson Bell testified that the actions of the Mecklenburg County Board of Elections were not "the method -- this is not how we would have guided the counties to handle this." *Id.* at 678:25-679:9 (Brinson Bell).

328. The law also requires County Boards to issue written decisions when they reject an ID Exception Form, stating the reasons for their rejection. 08 NCAC 17.0101(e)(1); PX835 (N.C. Board of Elections Memo) at 13. However, no evidence was presented of even a single one of these written decisions, and Director Brinson Bell testified that she did not believe that County Boards are required to provide these decisions to the State Board. Tr. 683:3-12 (Brinson Bell). She also testified that she had not personally reviewed a single one of these decisions, nor did she provide any assurances for how the State Board could be sure that the decisions were being written by the counties. *Id.* at 681:21-685:13 (Brinson Bell).

329. Mr. Patterson testified about serious mistakes by poll workers in Lenoir County in the November 2023 Municipal Election while seeking to implement the ID requirement. Mr. Patterson testified that poll workers provided incorrect information to

two Hispanic voters who appeared at the Pink Hill polling site during that County's Municipal Election. Tr. 330:17-333:3 (Patterson). The two voters did not have photo voter IDs when they arrived to vote and were directed to cast "return with ID" provisional ballots. *Id.* However, the poll worker failed to offer them an ID exception form and did not properly record the voters' names. *Id.* Due to these errors, when the two voters returned to the Lenoir County Board of Election to present their IDs, the Board staff was unable to match the provisional ballots with the proper voters. *Id.* In that race, the winning candidate won by two votes. *Id.* at 332:2-5 (Patterson). Mr. Patterson testified that this should have been raised to the Board, but it was not. *Id.* at 331:18-332:1 (Patterson). The missing two votes could have actually changed the outcome for that race because of the closeness of the vote count. *Id.* at 330:17-333:3 (Patterson).

330. Even more concerning than the fact that these incidents happened throughout the state is that Director Brinson Bell testified at trial that there is no remedy for County Boards violating the law, or poll worker negligence, and there is nothing that would prevent this from happening on a larger scale in the November 2024 presidential election. Even where the State Board was made aware of the incidents in Guilford and Mecklenburg, and Director Brinson Bell agreed that the law was violated, the voters were still disenfranchised. Tr. 675:16-677:7, 678:25-679:20 (Brinson Bell). Director Brinson Bell was asked by the Court what the State Board does "when you receive information from these various organizations that are out there to protect voter integrity -- voter -- voters who are there to vote, when you get a letter from them detailing that [there] has been a complaint that has come to them . . . ?" and she responded that, "at that point, you know, if -- if it's

just general ideas for improvement or areas of concern, then we -- then we look at do we update that Numbered Memo . . . ." Tr. 754:2-23 (Brinson Bell). When the Court pointed out that, "[b]y that time, the voter has lost their right to vote," Director Brinson Bell did not disagree. *Id*. at 755:2-7 (Brinson Bell).

**ii. The State Board of Elections' Winter Conference (February 2024)**

331. Reflecting that this was a significant issue in its elections since S.B. 824 became effective, the State Board emphasized at its February 2024 winter training (and subsequently revised its guidance on February 23, 2024 to require) that voters are offered both options when they show up to vote without an accepted ID. PX950 (Photo ID Exception Form Workshop) at 11; PX835 (N.C. Board of Elections Memo) at 2; Tr. 685:17-686:12 687:6-11 (Brinson Bell).

332. As revised, Numbered Memo 2023-03 (PX835) now states that:

> All voters are allowed to vote with or without a photo ID. There are two options for an in-person voter who does not present acceptable photo ID. Every voter without an acceptable photo ID must be offered both options.
>
> (1) The voter may complete a Photo ID Exception Form, claiming an exception to the photo ID requirement, and then vote a provisional ballot. A county board is required to approve and count the provisional ballot unless the county board unanimously finds that the form was falsely completed and puts that finding in a written decision. Before the county board makes a final finding of falsity, it must give the voter notice and an opportunity to address the county board on the matter.
>
> (2) The voter may vote a provisional ballot and then bring an acceptable photo ID to the county board office before 5:00 P.M. on the day before county canvass. When a voter chooses

> this option, their photo ID will be evaluated at the county board office in the same manner as it would have been evaluated at the voting place.

PX835 at 2-3.

333. On February 5-6, 2024, the State Board of Elections conducted a winter conference for its County Board members and directors. As part of this conference, Associate General Counsel Adam Steele and Program Specialist Allison Blackman presented a presentation on the ID Exception Form. PX950 (Photo ID Exception Form Workshop). The presentation emphasized that the Photo ID Exception Form is for anyone who is unable to "show an acceptable photo ID when the voter is there to vote," and not simply for individuals who are unable to obtain an ID. *Id.* at 6. The presentation also highlighted the data from the municipal election showing that 82% of "return with ID" provisional ballots were not counted. *Id*. at 12. The PowerPoint slides for this training state that: "The ability for a person to have their eligible vote counted relies heavily on the ability of your precinct officials to: Get voters into the correct process, Collect the correct information including contact information [and] Clearly instruct the voter on any follow up needed." *Id*. at 25.

334. In this presentation, the State Board also instructed County Board members on what can and cannot be considered when deciding whether to count an ID Exception Form. *Id.* at 37-38. The guidance states that "What cannot be considered" is "speculation, personal opinion, second guessing reasonableness [or] independent investigation." *Id*. at 38. Notwithstanding this, as discussed below, the same kinds of problems were widespread in the March 2024 primary. According to Director Brinson Bell, this guidance was in

response to reports from the municipals that "we had some inconsistencies and some that were board members who were not adhering to the truth of false -- you know, false information or questioning whether something was false within a voter's provisional ballot or exception form." Tr. 674:24-675:10 (Brinson Bell).

### iii. The March 2024 Primary Elections

335. On March 5, 2024, North Carolina conducted a statewide primary election. This was a low turnout election compared to a general election and compared to the 2020 Primary Election in this state. Tr. 609:14-17 (Brinson Bell). In total, 1,800,118 North Carolinians voted in this election. ECF No. 299, ¶¶ 171-72.

336. Despite the additional training and guidance provided by the State Board between these two elections, the same implementation problems that were seen in 2016 and 2023 persisted. In this election, 1,185 provisional ballots were cast *in-person* for an ID related reason.[12] *Id.* Of these 1,185 voters, 627 filled out the ID Exception Form (53%), and 558 cast a "return with ID" provisional ballot (47%). *Id.*, ¶¶ 172, 176. This is the **exact same** breakdown between the two provisional balloting options that we saw in the 2023 municipals—53% ID Exception Form and 47% Return with ID provisional. *Id.*, ¶¶ 166, 68.

[12] The State Board did not provide exact numbers of how many individuals cast absentee ballots for an ID-related reason in the March 2024 primary. In a presentation made to the Joint Legislative Elections Oversight Commission, Director Brinson Bell indicated that over 3,000 people utilized an ID Exception Form with their ballot; but stated that she didn't know how many of these were rejected. Tr. 664:3-13 (Brinson Bell).

337. Of the 558 individuals who cast a "return with ID" provisional ballot in the 2024 Primary, the vast majority (416) once again did not return with an ID and therefore did not have their vote counted. *Id.*, ¶ 177. Of the 627 voters who filled out an ID Exception Form, 61 did not have their ballots counted at all and another 9 individuals had their ballots only partially counted. *Id.*, ¶ 175. The vast majority of those that weren't counted at all (43 of the 61) are listed simply as "ID Not Provided" as the reason why the ballot was not counted. *Id.* This doesn't provide any useful information about why the form was rejected, as anyone utilizing an ID Exception Form is by nature not providing an ID. In total, 477 voters in the 2024 primary who utilized one of the provisional balloting options to vote without an ID in person were disenfranchised entirely. *Id.*, ¶ 179.

338. Individual voters testified at trial that the 2024 elections were rife with poll worker confusion and misinformation. As previously noted, Mr. Rivers testified about his experience taking his mother, an 88-year-old Black voter who had loser her photo ID, to vote in the 2024 Primary Election. *See, supra*, ¶ 298; Tr. 273:18-274:16 (Rivers). Mr. Rivers took his mother to vote curbside at the Kermit E. White Center in Elizabeth City. *Id*. at 275:23-276:11 (Rivers). Mr. Rivers testified that his mother no longer drives and couldn't find her ID at the time of the primary election. *Id.* at 275:9-22 (Rivers). Mr. Rivers' plan was to have his mother vote utilizing a provisional ballot due to a lack of ID. *Id*. However, despite his mother being registered to vote for 50 years at the same address, she was asked by poll workers to fill out a voter registration form. *Id.* at 276:03-277:20 (Rivers). Mr. Rivers stated that he was not comfortable filling this out because he didn't understand the need for it; and he was particularly concerned that he was told that this form

would not be required if Ms. Rivers had chosen to vote inside. *Id*. Mr. Rivers sought the help of the election protection hotline, Disability Rights North Carolina, and spoke to the chief judge, but he ultimately had to fill out the voter registration form for his mother for her to cast her provisional ballot. *Id*. at 277:25-279:17 (Rivers). While Ms. Rivers was ultimately able to utilize an ID Exception Form and cast a provisional ballot, her voting experience lasted an hour, and was incredibly confusing and frustrating for her and her son. *Id*. at 279:12-20 (Rivers). Mr. Rivers testified that "the whole process . . . kind of put a damper in my spirit and also my mom because she was, like, 'Well, baby, I'm glad you were here.' And she was, like, 'I didn't know that we had to go through all of this.'" *Id*. at 283:1-20 (Rivers).

339. Individual voters Cedric Baker and Robert Fletcher testified that they were not offered Photo ID Exception forms while voting in the 2024 primary election, and both of their "return with ID" provisional ballots were ultimately not counted. Tr. 1022:1-2 (Baker); 1119:16-19 (Fletcher). Mr. Baker, a new Forsyth County voter, testified that the poll worker offered him a provisional ballot after learning his license was expired and broken. Tr. 1021:14-25 (Baker). Mr. Baker was unaware that there was a second option and that utilizing the Photo ID Exception Form option would eliminate the need to return with an acceptable ID. *Id.* at 1022:1-5 (Rivers). When asked whether he knew completing a Photo ID Exception form would eliminate the need to return with an acceptable form of ID, Mr. Baker unequivocally stated, "[n]o, ma'am, I didn't." *Id*. at 1022:3-5 (Baker). When asked how it felt knowing his vote was not counted, Mr. Baker explained to the court that "[a]ctually for me to take my time – take time out of my day to do that, it kind of hurts

a little bit because I thought maybe I would be heard or, you know. So it kind of touched my feelings a little bit." Tr. 1025:4-7 (Baker).

340. Mr. Fletcher went to vote on election day in Franklin County during the 2024 primary election. Tr. 1116:25-1117:3, 1117:19-24 (Fletcher). Mr. Fletcher took an expired temporary license to vote in-person at his local fire station on election day. *Id.* at 1117:10-16, 1120:10-13 (Fletcher). Mr. Fletcher testified that after showing his ID, he was told he had "to have a current ID in order to vote." *Id.* at 1118:5-7 (Fletcher). After Mr. Fletcher advocated for his right to vote and explained that he "had never had a problem voting," the poll worker made a call, which Mr. Fletcher believed was to get "someone else's approval." *Id.* at 1118:5-13 (Fletcher). At the call's end, the poll worker gave Mr. Fletcher a provisional "return with ID" ballot as the sole voting option. *Id.* at 1118:14-21 (Fletcher). When Mr. Fletcher was asked at trial whether he was offered a Photo ID Exception Form, he stated, "Not at all. There wasn't anything like that available." *Id.* at 1119:16-19 (Fletcher). When Mr. Fletcher was further questioned on whether he knew completing the Photo ID Exception form would eliminate the need to return with an acceptable form of ID, he testified that he "didn't know anything about that" because the Photo ID Exception form "wasn't offered." *Id*. at 1119:20-25 (Fletcher). Not only was Mr. Fletcher misinformed about photo identification requirements at the beginning of his voting experience, but Mr. Fletcher testified that after casting his provisional ballot, he was misinformed that he had only three days to return with his ID. *Id*. at 1118:25-1119:5 (Fletcher). At trial, Mr. Fletcher was asked how he felt knowing that his vote was not

counted, and he testified that he "was totally upset. I really had a problem with that because I never had that problem before. It was terrible." Tr. 1120:22-24 (Fletcher).

### D. The Photo Identification Requirements in S.B. 824 Deter Voters, and Disproportionately Deter Black and Hispanic Voters, from Voting

341. Dr. Lichtman noted that the photo identification requirement in S.B. 824 would have two types of potential deterrent effects. First, he noted that "those without authorized IDs . . . simply leave the polling place rather than file a provisional ballot." Lichtman Rpt. at 29. Dr. Lichtman noted that while the number of such voters is "not quantifiable," he noted that Democracy North Carolina reported examples of specific voters who left the polls in March 2016 while H.B. 589 was in effect:

- "At the VFW Building polling place in New Hanover County, voters were waiting to have their photo IDs verified for over two hours. A minimum of twenty-two voters left the polling place without voting because of the lengthy wait to show photo ID to vote.
- Adrienne Williams, an African-American student registered to vote in Wake County, left a polling place in Wake County at 8 PM (polls are supposed to close at 7:30 PM) on Election Day without voting after waiting in two lines for at least three hours.
- Jazlin Laboy, a Hispanic student registered to vote in Orange County, waited in lines for 50 minutes before having to leave without voting. Ms. Laboy had to wait that long after she was told to go to a second line because she did not have

acceptable photo ID to vote. She was not offered a reasonable impediment ballot."

Lichtman Rpt. at 36. As Mr. Lopez testified, Democracy North Carolina "point[ed] out" to the General Assembly what it had learned during the 2016 primary. Tr. 523:14-524:17 (Lopez).

342. Second, Dr. Lichtman noted that certain voters "are deterred from voting either because they lack authorized IDs or believe that they may lack authorized IDs." Lichtman Rpt. at 29. Several witnesses testified that they were personally aware of individuals who had been deterred from voting as a result of S.B. 824. *See, e.g.*, Tr. 206:5-8, 214:22-215:11 (Hairston); 903:20-904:1 (Morey).

343. Ms. Maxwell testified that S.B. 824 puts an "extra hurdle and an extra barrier for anyone engaged in the voter registration process," expressing that some branches already "had issues with registering people" to vote. Tr. 119:23-25; 119:13-15 (Maxwell).

344. At trial, witnesses testified that the process of being put in a separate line to fill out an ID exception form could be very intimidating—and voters might just leave the voting site entirely out of fear. Ms. Santillan testified that, if she had been asked to go in a separate line to fill out an ID Exception Form, "I know that from my experience, especially the first time I ever voted, I would have been extremely worried and concerned. Like, I would immediately be like, why am I being pushed to the side getting something different, and I would leave, honestly." Tr. 189:19-190:6 (Santillan). Ms. Santillan stated that she believed her constituents would face that same barrier in having to fill out an ID Exception Form. *Id.* at 190:6-9 (Santillan).

345. The ID Exception Form also includes a "prominent statement" that "submitting fraudulently or false completed declarations is a Class I felony" and "[t]his requirement is likely to deter many voters, particularly those who have lower education, lower economic resources, or have been subjected to prior arrest or other contact with the law enforcement system, a group that is disproportionately [B]lack and Hispanic in North Carolina. Such voters are more likely to be reluctant to sign the form out of concern that they do not fully understand it and could make a mistakes that would subject him or her to prosecution." Burden Rpt. at 25.

346. Witnesses also testified that the State Board's planned voter education campaign "Bring It" would deter voters from voting. As Kate Fellman, Executive Director of the voter education organization You Can Vote testified:

> [W]hat does a voter do if they don't have an ID and they see this and think that . . . you have to have an ID in order to vote. . . . [I]t's a deterrence for people who have questions about their ID or may lose their ID. . . . [They will] stay home and -- and not bother going to vote because they don't have the requirements and they don't want to stand in line for something that they can't do. . . . [V]oters who don't have a state-issued photo ID in North Carolina will be deterred if they believe that if you don't have it, you can't vote.

Tr. 241:14-22, 242:11-14 (Fellman).

347. The State Board of Elections has acknowledged similar concerns that S.B. 824 may deter people from voting. As Director Brinson Bell warned the legislature on April 17, 2024, she was concerned about "how many people decided they weren't going to come and vote because they knew they didn't have voter ID." Tr. 649:9-12 (Brinson Bell).

348. Although Ms. Brinson Bell testified that she was not familiar with any poll or survey that examined the extent of deterrence in North Carolina, Dr. Lichtman analyzed the 2016 primary results and concluded that over 101,000 voters failed to come to the polls due to the deterrent effect of the photo ID provision. Lichtman Rebuttal Rpt. at 11-13, Table R-3. Moreover, Dr. Lichtman found significant racial disparities comparing the non-matched voters who did vote in the 2016 primary to the non-matched voters who were deterred from voting in the 2016 primary. *Id.* at Table R-4. White voters were over-represented among primary voters compared to primary voters who were deterred, while Black voters were over-represented among deterred voters compared to primary voters. *Id.* at 13-14, Table R-4.

349. Dr. Lichtman also noted that Stanford University professors Justin Grimmer and Jesse Yoder had found that the "deterrent effect [of H.B. 589 was] substantial and falls most heavily on minority voters." Lichtman Rpt. at 36-37. Their analysis noted that the State Board Defendants sent a mailer prior to the March 2016 primary noting that voter photo ID was required but never sent a corrective mailer following the *McCrory* decision and found:

> Using our most stringent exact matching specifications to estimate the deterrent effect, we find that those without identification were 2.6 percentage points less likely to participate in the [2016] general election. This effect is unlikely to be due to non-ID holders having differential turnout trends, as we deploy a variety of stringent specifications and robustness checks. We show the effect of the voter ID law is to change the composition of the electorate [and] . . . the law has the biggest effect for occasional voters and because minority voters and Democrats are less likely to hold valid

> identification, the law causes them to be underrepresented in the electorate.

Lichtman Rpt. at 37.

350. These findings are consistent with national surveys, as well as surveys from particular states also finding that identification laws have significant deterrent effects, which disproportionately impact minority voters. Dr. Burden noted that the national Survey on the Performance of American Elections consistently found that Black and Hispanic voters were more likely to report they had not voted due to "not having the right kind of identification" than white voters—in 2016, 10% of whites and 18% of Blacks and Hispanics, in 2014, 8% of whites and 14% of Blacks and Hispanics, and in 2012, 11% of whites and 14% of Blacks and Hispanics. Burden Rpt. at 35. As both Drs. Burden and Litchman note, a study of non-voters in Wisconsin during the 2016 election found that "11.2% of nonvoting registrants in Dane and Milwaukee counties were 'deterred' in some way from voting by the voter ID law" with "8.3 percent of non-voting whites, compared to 27.5 percent of non-voting African Americans, were deterred from voting by the photo voter ID law." Lichtman Rpt. at 36; Burden Rpt. at 35.

351. In addition to Dr. Lichtman's analysis and the Stanford University research, Dr. Barreto's survey also asked North Carolinians "who currently lack a qualifying ID if they would personally try to vote on election day if they learned they lacked a qualifying photo ID and overwhelmingly they said no." Barreto Rpt., ¶ 62. In particular, Dr. Barreto's survey found that Black and Hispanic respondents were particularly likely to be deterred. *Id.* Of individuals who lacked qualifying ID, 51.8% of white eligible voters said

they would still try to vote, while only 38.9% of Blacks and 38.6% of Hispanics said they would still try to vote. *Id.* at ¶ 62, Table 19. As Dr. Barreto notes, this is consistent with the fact that "the overwhelming majority of Blacks and Latinos expressed the belief that voters without qualifying identification would be allowed to cast a ballot." *Id.* ¶ 62, Table 18 (noting that only 21.2% of Black and 36.2% of Hispanic respondents without valid ID thought that someone without an ID would still be allowed to vote).

352. As Dr. Barreto concludes, "[e]ven if the law makes it *possible* for voters without qualifying ID to cast a ballot, if voters do not know or believe they can vote without an ID, or do not understand this process, they ultimately will not vote. . . . This appears to be a double penalty for minority voters, who are more likely to lack a valid ID in the first place, and then among those who lack an ID, are more likely to be deterred from voting by their lack of familiarity with the details of S.B. 824." *Id.*, ¶¶ 60, 62.

### E. The Ability to Vote Absentee by Mail Does Not Reduce the Disparate Burdens of S.B. 824

353. Voters are also required to provide a photo ID with their absentee ballot, even though this process doesn't allow an election official the ability to compare that photo ID with a voter in front of them. If they are unable to provide a photocopy of an accepted ID, they must fill out an ID Exception Form and enclose that within their absentee ballot package. ECF 299, ¶¶ 134-35.

354. Dr. Burden concluded in his report that the "administrative burdens are significant" for an individual seeking to vote absentee by mail who either doesn't have an ID, or isn't able to provide a photocopy of their ID. Burden Rpt. at 26-27.

355. In April 2024, the State Board reported in a presentation to the legislature that over 3,000 voters had utilized an ID Exception Form with their absentee ballot in the March 2024 Primary. Tr. 664:2-13 (Brinson Bell) (confirming that 3,203 absentee ballots in the March 2024 elections were cast with an ID Exception Form, accounting for 11% of all absentee ballots). However, the State Board did not track and has been unable to provide any data on how many absentee ballot voters had their ballots rejected, or for what reason, and whether any were able to cure. Therefore, the numbers discussed above, (*see supra*, ¶¶ 334-35, about how many people were disenfranchised by S.B. 824 during the March 2024 primary undercount the actual number of people disenfranchised. The numbers discussed at paragraphs 334 and 335 only reflect how many people who voted provisionally for an ID-related reason *in person* and did not have their vote counted.

### F. The State Board's Public Education Campaign Does Not Reduce the Disparate Burden Imposed by S.B. 824

356. In considering S.B. 824, the General Assembly provided for far less time and far less money for the State Board of Elections to implement the photo identification requirement than had been allowed for H.B. 589.

357. For starters, in enacting H.B. 589, the General Assembly provided that it would not become effective until January 1, 2016, which was 29 months after the law passed in July 2013. PX1087 (H.B. 589) at Section 6.2(2); Tr. 593:15-594:25 (Brinson Bell). Accordingly, the State Board of Elections had two and a half years to do public education prior to H.B. 589 becoming effective. *Id.* at 594:4-8 (Brinson Bell).

358. In contrast, as originally passed, the General Assembly made S.B. 824 effective immediately. PX676 (S.B. 824 Ratified Bill) at Section 5. However, the passage of S.B. 214 amended the effective date of the statute to March 2020. ECF 299, ¶ 123. So the State Board had less than half the time to educate the public about S.B. 824 than it did to educate the public about H.B. 589. Tr. 594:18-25 (Brinson Bell). After court orders which halted the implementation of S.B. 824 from December 2019 through April 2023, the State Board only had four months to implement the law and re-educate the public in 2023. Tr. 595:4-21 (Brinson Bell).

359. As Director Brinson Bell testified, in order to advertise the identification requirement for H.B. 589, the General Assembly appropriated "around [$]5 million." *Id.* at 647:8-19 (Brinson Bell). At the outset of deliberations on S.B. 824, at the November 26, 2018 presentation to the Joint Elections Committee, the State Board reminded the General Assembly that the H.B. 589 publicity campaign had included "statewide placement [of advertisements] in roughly thirty TV stations and more than forty-five radio stations," "digital and print billboards," issuing "roughly 12.7 million guides," and "roughly 400,000 posters and flyers printed . . . [and d]istributed statewide to churches, advocacy groups, educational institutions, food banks, [and] businesses . . . ." DX214 (11/26/18 Presentation by SBOE Director Kim Strach) at 5, 7, 9 and 10; PX687 (11/26/18 Joint Elec. Cmte. Tr.) 24:19-30:5; *see also* PX687 (11/26/18 Joint Elec. Cmte. Tr.) 55:21-56:20 (Director Strach advised the Joint Legislative Committee on November 26, 2018 that the SBOE had spent $2.7 million as of July 2016 prior to the *McCrory* injunction).

360. The General Assembly authorized a small fraction of these amounts to advertise S.B. 824's requirements. As enacted, the General Assembly appropriated only $750,000 "to implement the provisions" of S.B. 824. PX676 (S.B. 824 Ratified Bill) at Section 4(a).

361. This level of funding has had a direct impact on how the State Board can educate the public about the photo identification requirement. As Director Brinson Bell testified, "we don't have the same amount of money for advertising purposes . . . . [We have] a million for advertising." Tr. 647:8-19 (Brinson Bell). Because of this, the State Board's publicity campaign "can't be" as extensive as the campaign was to publicize the requirements of 589. Tr. 647:8-12 (Brinson Bell). Among other things, while Kim Strach told the Joint Legislative Committee on November 26, 2018 that SBOE had conducted focus groups of both voters and election workers to help it target its implementation of H.B. 589, PX687 (11/26/18 Joint Elec. Cmte. Tr.) 25:11-27:6, 35:4-19. Director Brinson Bell testified that financially the State Board was "not . . . in a position to" conduct or fund any kind of survey work. Tr. 650:6-23.

362. The scope of this program is insufficient to address the public's lack of knowledge about this law. Dr. Barreto found that "[l]evels of awareness of any public outreach made by North Carolina are exceedingly low across the electorate." Barreto Rpt., ¶ 61. Dr. Barreto's survey found that only 24.0% of Hispanic and 35.2% of Black respondents without a valid ID had "seen or heard any official announcements or advertisements" about the photo identification requirement. Barreto Rpt., ¶ 61, Table 16.

363. The State Board's educational materials state "Bring Your Photo ID." Ms. Fellman testified that she was concerned that this could deter voters because it doesn't explain what to do if you don't have an ID until you get to the fine print. Tr. 238:7-239:25 (Fellman). Ms. Fellman explained that in her experience, "you need a conversation to really help people understand what works for ID and what doesn't. And -- and this mailing piece tells me that I *need* to bring a North Carolina driver's license to vote." *Id.* at 239:21-25 (Fellman) (emphasis added).

### G. The Right to Challenge and Poll Observer Provisions of S.B. 824 Also Impose a Disparate Burden on Black and Hispanic Voters

364. Section 3.1(c) of S.B. 824 expands the grounds for "ballot challenges" to include lack of proper photo ID. North Carolina law permits "any . . . registered voter of the county" to challenge another voter's registration and eligibility in certain circumstances. See N.C. Gen. Stat. § 163-87. S.B. 824 invites any voter of the county to "enter the voting enclosure" and proclaim that another voter "[did] not present photo identification in accordance with [S.B. 824]." N.C. Gen. Stat. § 163-87(5). (hereinafter the "Right to Challenge Provision").

365. Section 3.3(a) of SB 824 allows the Chair of each political party to appoint an additional 100 at-large poll observers who can be present in polling locations to challenge the rights of any voters who enter the precinct. N.C. Gen. Stat. § 163-45.1(b)(3) (hereinafter the "Poll Observer Provision").

366. These provisions, which provide for the expansion of at-large poll observers and the ability to challenge voters, will cause a "chilling effect" and disproportionately

burden voters of color, as a result of North Carolina's history of discrimination, the cumulative impact of the provisions of S.B. 824 and the most recent evidence of racial targeting and intimidation of Blacks and Hispanics.

367. These provisions also impose a disparate burden on Black and Hispanic voters, and the possibility for additional poll observers, or bringing in poll observers from elsewhere in the state, and for an individual to be challenged regarding compliance with the ID requirement cannot be analyzed in a vacuum. These provisions would only intensify the race-based voter intimidation which is incredibly prevalent in North Carolina.

368. Ms. Caldwell testified about multiple incidences of voter intimidation beginning in her childhood, when a Black man was running for a city seat for the first time in her county. Ku Klux Klan members "dressed in sheets" and gathered across from the polling location because "they didn't want to see this Black man be in office; they were there hoping that that would be the reason we wouldn't go in." Tr. 568:7-17 (Caldwell).

369. In 2020, Ms. Cadwell became the first Black woman to run for Alamance County Commissioner. *Id.* at 569:24-25 (Caldwell). During election season, she witnessed people carrying guns in early voting lines, taking her literature out of voters' hands before balling it up and throwing it way, and "very aggressive, like, behavior from [*sic*] people that were there." Tr. 569:10-20 (Caldwell). Ms. Cadwell also described intimidation that occurred during a march to the polls event where five or six hundred, majority Black community members were met by "confederate sympathizers", agitators and police, in what "looked like a war scene." *Id.* at 573:12-18; 575:7-8; 576:22-25 (Caldwell). People were screaming, being pepper sprayed, vomiting and having seizures, so Ms. Caldwell

attempted to use social media to request additional support and show the severity of "voter intimidation happening in Alamance County." *Id.* at 575:7-25 (Caldwell). Ms. Caldwell testified that there is a "history of this intimidation that had happened in Graham." *Id.* at 577:2-5 (Caldwell).

370. Danell Burney, an eligible Black North Carolina voter, testified to the intimidating experience she had with a poll observer during the 2020 General Election at a polling site in Guilford County. Tr. 295:22-308:24 (Burney). Ms. Burney testified that she has been registered to vote in North Carolina since 2001, around the same time she moved to the state, and has participated consistently in elections since she was eighteen years old. *Id.* at 297:15-298:8 (Burney). Since her time here in North Carolina, she has cast a ballot every single Presidential Election and has participated in several municipal, primary, and local elections as well. *Id.* at 298:18-299:7 (Burney). She testified that prior to 2020 she "never had any issues" with voting in North Carolina elections. *Id.* at 299:8-13 (Burney).

371. Ms. Burney testified that the racial climate in 2020 was "very tense" in her working-class Black and Hispanic community detailing that there were "people in pickup trucks with confederate flags and guns on the back rack driving through the neighborhood." Tr. 299:14-20 (Burney).

372. Ms. Burney testified that she went to cast a ballot at the Brown Recreation Center in Guilford County on a Sunday during Early Voting. Tr. 300:8-301:4 (Burney). She stated that it was the first time she had been to that site "because [she] had recently moved." *Id.* at 300:13-16 (Burney). She described at that particular polling site "[i]t was

mostly middle-aged and older African American adults" and that the site was "very crowded" with a "very long line." *Id.* at 301:5-10 (Burney). Ms. Burney stated that when she arrived "[the atmosphere] was very jovial" and that "everyone was talking," "[i]t was very casual, lighthearted." *Id.* at 301:13-18 (Burney). She testified that the atmosphere changed when a poll observer came out and "proceeded to walk down the hallway and stare at each person in the line." *Id.* at 301:19-23 (Burney). She testified that "he didn't touch anyone, but the scary thing is that he took his time to look at each and every person and walking very slowly." Tr. 303:8-12 (Burney). Ms. Burney stated that "after he did that, the whole atmosphere changed. Everybody stopped talking instantly. Some people were looking away, but there was no more talking. It was just very tense and it had the atmosphere of, just let me vote and let me go." *Id.* at 302:1-5 (Burney). Ms. Burney described the poll observer as "a very tall and very well-built Caucasian man, middle-aged. He seemed to me he had the look of . . . a retired Marine. Very stern" and wearing a T-shirt with a sign that said, "Republican Poll Watcher." *Id.* at 302:6-20 (Burney). Ms. Burney testified that not only was the poll watcher outside of the polling site, he was also inside the gymnasium "sitting directly to the left of the election worker," sitting so close that he was able to hear her state her name, address and party affiliation. *Id.* at 303:13-19 (Burney).

373. That same day, Ms. Burney sent an email to Charlie Collicut, Director of the Guilford County Board of Elections, to report what had happened to her. She stated that this was "a form of soft intimidation" and "reminded me of the slave movies when the

overseer checks the slaves and lets them know his presence. It took a lot of control not to cry." PX1881 (10/19/20 Email from D. Burney re: Voting at Brown Rec Center) at 3.

374. When asked how the 2020 voting experience made her feel, Ms. Burney testified that it made her feel scared, so much so, that she did not vote again until spring 2024. Tr. 305:20-22 (Burney). Ms. Burney testified that she was scared to go back to the Brown Recreation Center to vote because "I didn't know if that man was going to be there or other people were going to be there. Were there going to be more people there, poll watchers, and intimidation. I just didn't feel comfortable." *Id.* at 305:23-306:9 (Burney).

375. Ms. Santillan also testified about the way that her constituents—Hispanic voters—have been intimidated in North Carolina. She testified at trial about the need for El Pueblo to partner with other organizations to host "safe sites," particularly in locations with known incidents of racist voter intimidation. Tr. 181:16-22 (Santillan). She also described a situation in which El Pueblo's presence was needed for its constituents to feel safe at a voting site in Yadkin County, due to the presence of Confederate flags there. Tr. 182:2-183:14 (Santillan).

376. Mr. Bass testified to his personal experience serving the Black community as an elections advocate and the various barriers faced by Black North Carolinians when attempting to exercise their right to vote. Tr. 1027:5-1085:13 (Bass). Mr. Bass testified that NC Black Alliance focuses on the Black Community because "[t]here have been struggles from education to healthcare. All of these different individual systems are connected to the political system" and emphasizes Election Protection involvement because "for communities of color, primarily Black communities, there's an issue of voter

safety. Not just the individual incidents that happen in the polls, but even before a vote gets to the poll," "it's about making sure the voters are able to perform and exercise safely." *Id.* at 1038:6-1043:3 (Bass).

377. Mr. Bass testified that Black community members face additional barriers and obstacles when trying to exercise their right to vote such as having "individuals brandish weapons at the polls" and "aggressive electioneering at polling sites," naming that "[r]acist voter intimidation is one of the largest hinderances in Black voter turnout in North Carolina." Tr. 1048:24-1049:10 (Bass).

378. Mr. Bass also testified that "the policies that have been administered have been restrictions to voting" and that "what we have seen is restrictions around [the] ability [to vote] and questioning eligibility whenever African American communities [turnout] en masse, in large numbers." Tr. 1084:21-1085:5 (Bass). Gathered from his observations of history and personal experience, Mr. Bass stated "[t]here seems to be a forward progression of voter turnout and that's met with laws to help create more restrictions to seemingly . . . prevent that turnout." *Id.*

379. Regarding the poll observer changes that will be in effect for the November 2024 election due to the passage of both S.B. 824 and S.B. 747, Mr. Bass testified that his concerns with the law is that "it's very ambiguous." Tr. 1062:10-14 (Bass). One element of the bill that Mr. Bass highlights is the ability of poll observers to take notes on their phones while inside stating, "[i]n a lot of cases, we have never seen a policy that allows someone to use a cellphone inside the polling enclosure." *Id.* at 1062:14-16 (Bass). "I don't know if the individuals at the General Assembly understand how easy it is for folks

to take pictures inside the polling enclosure, but that's illegal. In this case, if you're able to take notes on a phone in the polling enclosure, we don't know what else you're surveilling." *Id.* at 1062:17-21 (Bass). An additional aspect of this bill that Mr. Bass is concerned about is the Poll Observer provision adding 100 poll observers who can roam across the state. He states, "[w]e know for a fact, 100 individuals that can be deployed to any polling locations in any county without any real control aspect, that can wreak havoc, particularly in rural parts of the state." *Id.* at 1063:1-4 (Bass). He further testified, "We're very fearful that in our community when individuals see strangers" that are "'observing' actions at the polls, they're going to take that as intimidation. And the drastic impact of what could happen if that is unchecked or unreported . . . . We don't know what impact it will now have if a voter is turned away because an observer assumes that that person has a nefarious intent at the polls." *Id.* at 1064:10-21 (Bass).

### H. The Disparate Impact of S.B. 824 Will Be Exacerbated in a Presidential Election

380. In total, 745 voters who voted *in-person* in 2023 or 2024, who cast an ID-related provisional ballot, did not have their vote counted. ECF 299, ¶¶ 170, 179. This does not include the unknown number of absentee ballots rejected for an ID-related reason. Any impact of S.B. 824 that we have seen in municipal or primary elections would be exacerbated in a presidential election, since these elections "see far higher levels of voter turnout than do primaries and see more participation by voters who have less established voting habits and fewer resources that would make them aware of and able to navigate the voter ID requirement and reasonable impediment process." Burden Rpt. at 25; Tr. 608:19-

609:3 (Brinson Bell) (testifying that the March 2024 primary had a 24% turnout, as compared to the 60 - 75% turnout you would see in a general election); 610:8-10 (testifying that primary voters "are more engaged voters than what you see in general elections.").

## V. DEFENDANTS FAILED TO ESTABLISH ANY JUSTIFICATION FOR S.B. 824 AS NECESSARY TO MEET THEIR BURDEN

381. "Once racial discrimination is shown to have been a 'substantial' or 'motivating' factor behind enactment of the [challenged] 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). At this stage, judicial deference to the legislature "is no longer justified." *Arlington Heights*, 429 U.S. at 265-66. Without deference and with the burden placed firmly on the legislature, a district court at the second step must "scrutinize the legislature's *actual* non-racial motivations to determine whether they alone can justify the legislature's choices." *McCrory*, 831 F.3d at 221 (emphasis in original); *see also Raymond*, 981 F.3d at 303.

382. Although the Defendants posited various state interests in their trial briefs and in their opening statements, they did not put on any live testimony or other evidence to establish S.B. 824 would have been enacted, at the time that it was and in the form that is was, absent its disproportionate impact on Black and Hispanic voters. In particular, none of the sponsors or supporters of S.B. 824 testified as to the state interests behind the bill or that the law would have been enacted without its discriminatory impact.

383. Defendants' arguments and advocacy about state interest are not evidence. Accordingly, Defendants have failed to meet their burden.

384. While Plaintiffs do not bear the burden of showing that the asserted state interests do not support the legislation, Plaintiffs nonetheless provide extensive, credible evidence that the interests asserted by Defendants are pretextual, false, and tenuous.

### A. S.B. 824 Is Not Justified by the Constitutional Amendment

385. In their opening argument, the only state interest identified by Legislative Defendants supporting S.B. 824 was the passage of the photo identification constitutional amendment in November 2018. Tr. 99:19-21 ("The General Assembly was compelled by the people of North Carolina to enact a voter ID law, and they would have done so.").

386. As Dr. Leloudis notes, the North Carolina General Assembly has a long and ignominious history of claiming that discriminatory voting practices are required because of provisions of the North Carolina Constitution. The passage of the constitutional amendment in 1899 disenfranchised Black voters in North Carolina, and was used tp permit the General Assembly to provide for the literacy registration requirements that burdened voter registration by Black North Carolinians until the enactment of the Voting Rights Act. Leloudis Rpt. at 18-19 (citing Laws and Resolutions, 1900, chapter 2 (*see* p. 55)); *see also id.* at 36-38 (explaining how North Carolina changed its literacy test statute in response to Court challenges, while maintaining its discriminatory effect). And the passage of the "whole county" redistricting amendment was used to justify the enactment of multi-member legislative districts in 1967, which effectively barred election of Black candidates to the General Assembly until the *Gingles* decision. Leloudis Rpt. at 50-51.

387. The Legislative Defendants failed to establish that the November 2018 constitutional amendment compelled the enactment of S.B. 824, either in the form of the legislation, or at the time it was enacted.

388. With regard to the form of the legislation, S.B. 824 bears no resemblance to the constitutional amendment. This is clear from the texts themselves. The constitutional amendment is 30 words long: "Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions." PX564 (H.B. 1092 Ratified Bill). In contrast, S.B. 824 is 21 pages long and contains over 11,400 words. PX564 (S.B. 824 Ratified Bill).

389. The constitutional amendment simply says that voters need to "present photographic identification before voting." PX564 (H.B. 1092 Ratified Bill). There is nothing in that language that suggests any of the restrictions the General Assembly actually made that invalidate certain student identifications, invalidate certain employment identifications, categorically bar public assistance identifications, etc. *See, supra*, ¶¶ 159-67. The General Assembly could have, entirely consistent with the broad constitutional language, enacted a far more permissible bill.

390. As Representative Morey testified, the constitutional amendment simply said "present an ID" and people voted for it thinking "next time we go to vote, pull out your wallet, show your debit card with your photo on it, show your YMCA card with your photo on it, show anything with your photo on it. Show them your ID from your employer. Well, we know it's much more complicated than just showing an ID with your photo on it. I

think this will disenfranchise voters, particularly, as already mentioned, the seniors, people of color, people who have difficulty in obtaining transportation to obtain a photo ID." Tr. 891:14-24 (Morey). She similarly testified that it was consistent with the constitutional amendment to allow "[e]mployment photo identifications. Expired identifications could have been allowed. . . . Gym cards with your photo ID. Library cards, if they have [a photo]. To make it as permissible as possible for any photo ID. . . . [T]here were many things we could have done to help make photo voter ID much more accessible and attainable." Tr. 911:3-13 (Morey). Representative Reives stated during debate on H.B. 1092 that "the constitutional amendment would basically be authorizing this body to do whatever it pleases. . . . [I]t does give the authority to set this in any manner that we want to." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 46:21-47:2. Professor Lichtman described the amendment as "giving the legislature a self-perceived blank check to craft any implementing legislation that the Republican super-majority would choose to adopt." Lichtman Rpt. at 100.

391. Moreover, undisputed evidence in the record shows that Legislative Defendants placed the constitutional amendment on the ballot for the specific purpose of defying the *McCrory* court and future judicial review. In 2017, Chairman Lewis stated that the GOP majority was developing "the most sure-fired way to get voter ID implemented that will withstand the inevitable challenges that will come from the left." *Id.* at 10-11. Later, he stated explicitly that the purpose of the amendment was to "mute future court challenges." *Id.* at 11. Indeed, former General Assembly Special Counsel Gerry Cohen challenged the legislature to explain whether "the actual reason to amend the constitution

[is] simply to end[] review[] [on] state constitutional grounds because of the current [constitutional requirements] on Qualifications of Voters." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 9:17-21. These statements contradict the notion that lawmakers had some independent mandate to enact S.B. 824, since their explicit stated purpose in enacting the amendment was to insulate the law they were already preparing from judicial challenge.

392. The Legislative Defendants failed to put up any witnesses or present any evidence to explain why key policy elements of S.B. 824, including limiting and restricting the forms of eligible identification, were compelled by the constitutional amendment.

393. In particular, the Legislative Defendants presented no witnesses who explained why the constitutional amendment mandated particular policy points embedded in S.B. 824, such as why:

a. driver's licenses and DMV non-operators cards had to be valid or unexpired for a period of a year or less. PX676 (S.B. 824 Ratified Bill) at 2. Nor did Legislative Defendants explain why the validity period was reduced from four years (under H.B. 836) to one year, or why people over the age of 65 were grandfathered and could present expired IDs. *See, supra*, ¶ 162.

b. learner's permits did not qualify. PX676 (S.B. 824 Ratified Bill) at 2. Nor did Legislative Defendants explain why this was changed from H.B. 589. *See, supra*, ¶ 161.

c. suspended driver's licenses did not qualify. PX676 (S.B. 824 Ratified Bill) at 2, 9.

d. employee identifications generally, and federal government employee identifications in particular, did not qualify. *Id.* at 2, 5-6.

e. state and local government employee identifications would only qualify if the employer went through a specified approval process. *Id.*

f. high school identification cards did not qualify. *Id.* at 2, 4-5.

g. U.S. naturalization certificates did not qualify. *Id.* at 2.

h. college and university identification cards would only qualify if the educational institution went through a specified approval process. *Id.* at 2, 4-5.

i. public assistance identifications did not qualify. *Id.* at 2.

j. other forms of photographic identification (beyond military, veterans, or tribal enrollment cards) did not qualify. *Id.* at 2.

k. the identification requirement would be extended to absentee ballots. *Id.* at 6-8.

l. County Boards of Election cannot issue identifications on election day or in the three days preceding an election. *Id.* at 1.

As Dr. Lichtman notes, many of the decisions concerning which types of identifications qualified and which did not had racial or discriminatory impacts. *See* Lichtman Rpt. at 37-46; *see also generally, supra*, §§ II.B-C. And the Legislative Defendants did not put on any witness to explain why it was necessary for S.B. 824 to implement these discriminatory features.

394. Nor did the Legislative Defendants put on any witnesses explaining why S.B. 824 had to be enacted in December 2018 by lame duck legislators, many of whom had just lost their seats. There was nothing "compelling" these particular legislators to enact enabling legislation—the same electorate that narrowly passed the constitutional amendment had just stripped S.B. 824's proponents of their legislative supermajority. Tr. 437:20-438:14 (Van Duyn); 877:22-879:11 (Morey); 973:17-974:4, 976:5-19 (McKissick).

395. Moreover, there is nothing in the North Carolina Constitution that requires constitutional amendments to be implemented immediately. Rather, the standard practice, before implementing a constitutional amendment, is to convene a commission to study the issue and recommend proposed implementing language. Leloudis Rpt. at 69; Lichtman Rpt. at 73-74. The Legislative Defendants did not put on any witness explaining why S.B. 824 was enacted without the convening of a study commission.

396. Notably, three other constitutional amendments were enacted in November 2018—all by a larger margin than the photo identification amendment (*see* PX1049 (11/06/18 Gen. Elec. Results – Statewide))—but none of them had implementing legislation enacted in December 2018. Tr. 895:19-897:4 (Morey); 971:3-16 (McKissick). The Legislative Defendants did not put on any witness to present evidence why, in their counsel's words, passage of S.B. 824 was "compelled by the people of North Carolina to enact a voter ID law," when they were not compelled to enact the three other constitutional amendments.

397. Indeed, the General Assembly has subsequently enacted legislation implementing the "board of elections" constitutional amendment, despite this amendment being decisively rejected by 61.6% of the 2018 electorate. PX1049 (11/06/18 Gen. Elec. Results – Statewide) at 2. As Representative Morey testified, notwithstanding this rejection, the General Assembly subsequently enacted S.B. 749 which made changes to the Board of Elections that implemented "the constitutional amendment that voters rejected in 2018." Tr. 897:5-898:20 (Morey). That is the opposite of a popular mandate. And the Legislative Defendants did not put on any witness to explain their decision to selectively interpret what constitutes a mandate.

### B. S.B. 824 Is Not Justified by a Supposed Need to Prevent or Detect Voter Fraud

398. As stated above, the SBOE conducted exhaustive audits of North Carolina elections, both before and after enactment of H.B. 589, and also immediately prior to S.B. 824. These audits showed that in person voter fraud was not an issue in North Carolina. This information was shared with and known to the legislature when it considered H.B. 1092 and S.B. 824.

399. At trial, Representative Morey's testimony on the House floor for S.B. 824 was played. In that testimony, she stated that "[t]he facts don't bear out any massive voter fraud. It just isn't borne out, and yet we're putting an impediment on people, especially the poor, the elderly." Tr. 868:17-19 (Morey). Explaining her comments further, Representative Morey testified at trial that "I think the data that had been reported in the news, that everything we had seen, I think it was someone on the floor said, out of 4.6

million votes cast, about that, in 2016, there were only, in North Carolina, two instances of voter fraud at the polls for in-person voting. That was so negligible that to hear it repeated by Republicans that there was rampant voter fraud was just not the reality." Tr. 872:15-25 (Morey).

400. Senator McKissick testified that, when considering H.B. 1092 and S.B. 824, he was aware of the results of the State Board's 2016 audit; and that the claims of voter fraud were unsupported by any evidence. He stated that, "as a result of what I learned, and from data that was released by the State Board of Elections, there had -- in 2016, there had been two instances of what I would refer to as voter fraud or voter impersonation, as the case may be. . . . So in -- in my mind, two people was not -- was not a significant number to justify moving forward with a constitutional amendment. . . . There was nothing data-wise that would support that contention." Tr. 949:20-950:11 (McKissick).

401. Senator McKissick also testified that, when he raised these concerns with his colleagues, "it fell upon deaf ears. There was no meaningful response." Tr. 956:12-15 (McKissick). He testified that Senator Hise's response regarding incidences of voter fraud were based on speculation, and "[t]here was nothing to support that conclusion, except for the fact that it was a perception in his mind. I'd like to know that if we are about to pass a constitutional amendment that can disenfranchise upwards to 300,000 people who might not have an ID and be able to vote, that's based upon something other than conjecture, suspicions, belief . . . ." Tr. 957:7-25 (McKissick).

402. Plaintiffs' expert Dr. Lorraine Minnite has conducted extensive research on the incidences of voter fraud nationally, and has authored the "first and only peer-reviewed

book on the subject of voter fraud in contemporary U.S. elections," *The Myth of Voter Fraud* (published in 2010). Minnite Rpt. at 13.[13] For her report in this matter, Dr. Minnite analyzed numerous types of sources in what is called a "mixed-methods" approach, and ultimately determined that "[t]he empirical evidence makes clear that fraud committed by voters either in registering to vote or at the polls on Election Day is exceedingly rare, both nationally and in North Carolina." *Id*. at 1, 13. Instead, Dr. Minnite concludes that allegations of voter fraud "are motivated by political interests, and are designed to make voting harder for certain populations." *Id*. at 2.

403. Using the mixed-method research approach to analyze the incidence of voter fraud nationally, Dr. Minnite gathered, reviewed and analyzed a wide range of sources including but not limited to: all scholarly literature by historians, political scientists, and legal scholars on voter fraud; all pertinent federal and state election statutes; an extensive overview of hundreds of news sources across the U.S. at the state and local levels; official government investigations and reports; and legal materials that included opinions at the state and local federal levels. In addition, Dr. Minnite submitted Freedom of Information Act requests to various agencies within the U.S. Department of Justice, as well as conducted interviews with a wide range of people with relevant expertise. *Id.* at 14 n. 38.

404. Dr. Minnite concludes in her report that "[s]ocial scientific research finds very little evidence of voter fraud in contemporary U.S. elections." *Id.* at 11. The 2014 U.S. Government Accountability Office ("GAO") performance audit on state voter ID laws

[13] Dr. Minnite defines voter fraud as "the intentional corruption of the voting process by voters." *Id*. at 9 (emphasis omitted).

included a review of this social scientific research. Only five studies out of 300, including *The Myth of Voter Fraud*, met the GAO's strict criteria for inclusion, and "were sufficiently sound to support the studies' results and conclusions." *Id.* at 11-12. All five studies "find very little evidence of voter fraud in contemporary U.S. elections." *Id.* at 12. *The Myth of Voter Fraud* analyzed, among many other sources, records of federal indictments for voter fraud. The U.S Department of Justice's Ballot Access and Voting Integrity Initiative, which aimed to identify and prosecute voter fraud, recorded only 95 indictments between the years of 2003-2005; and only one of these was an individual voter who was prosecuted in North Carolina. *Id.* at 14-16, n. 40.

405. To determine the incidences of voter fraud in North Carolina, Dr. Minnite analyzed, among other sources: transcripts from hearings, proceedings and floor debates of the House and Senate; audio recordings of the proceedings in the legislature; materials from the North Carolina State Board of Elections (including press releases, numbered memos, and post-audit reports); press releases from the Attorney General's Office; newspaper articles; and litigation materials from *NAACP v. McCrory*. *Id.* at 3. Dr. Minnite concluded, and her research supports the finding, that voter fraud in North Carolina is exceedingly rare. *Id*. at 1.

406. Dr. Minnite found that, between 1996 and 2019, the federal government indicted 21 people in North Carolina for illegal voting, fewer than one indictment per year. *Id.* at 20. Not one of these indictments was for voter impersonation, *i.e.*, the type of voter fraud that would be prevented by an in-person identification requirement. *Id.* at 22.

407. Some of the data that Dr. Minnite relied on to find the voter fraud rate came from a letter written by Gary Bartlett, then Director of the North Carolina State Board of Elections. On March 7, 2013, "just prior to the introduction of H.B. 589, staff from the SBOE met with members of the House Appropriations Subcommittee on General Government." *Id.* at 23. On March 11, 2013, Bartlett sent follow-up correspondence to members of that subcommittee detailing the "Documented Cases of Voter Fraud in North Carolina." *Id.* Bartlett's email included a 33-page packet, including a table entitled "Documented Cases of Voter Fraud in North Carolina" which contains the total number of voter fraud cases referred by the SBOE to prosecutors over a 12-year period (2000 to 2012). *Id.* Of the 578 cases listed on this table, "*only two of the referrals were for alleged voter impersonation*." *Id.* at 24 (emphasis added). In addition, one of those two cases was determined to be an individual from Project Veritas who went "undercover" in order to see if he would be able to successfully impersonate another voter; he left and did not proceed when he was asked to sign the Authorization to Vote form under penalty of perjury. *Id.* at 24-25. Between 2012-2014, "the SBOE made two additional referrals for voter fraud." *Id.* at 25.

408. Between 2000 and 2014, therefore, the State Board of Elections "referred just two cases of voter impersonation to county district attorneys for prosecution." *Id.* at 1. During this time period, there were no federal indictments for voter impersonation in the state. *Id.* During this time period, 35,134,262 votes were cast "in 16 federal primary and general elections alone," meaning that "[i]f we count the two referrals as *actual* cases

of voter impersonation, the rate of voter impersonation fraud in these elections is .000006 percent." *Id.*

409. The State Board of Elections also conducted an audit of the 2016 presidential election, which "identified just two cases of voter impersonation, both involving family members casting ballots for recently deceased relatives." *Id.* "Both cases involved family members voting for recently deceased persons who wanted to vote Republican, and in both cases the perpetrators told investigators that they did not think that what they were doing was illegal." *Id*. at 33. There were 4,769,640 votes cast in the 2016 election, "yielding a voter impersonation rate of .00004 percent." *Id.* at 1.

410. Bartlett's submission to the General Assembly shows that the legislators knew that voter fraud, particularly impersonation, was rare in North Carolina before passing H.B. 589. However, there was a strategic choice not to have any voter fraud data presented to the legislature prior to the introduction and ratification of S.B. 824.

411. In Dr. Burden's report, he also concludes that S.B. 824 "targets some of the rarest kinds of election crimes and will have no overall effect on public confidence in the integrity of North Carolina elections." Burden Rpt. at 31. Dr. Burden cites to an analysis by News21, an investigative reporting project out of Arizona State University, which documented the incidences of voter fraud nationwide by using "public records requests to election and law enforcement agencies, a list of vote fraud cases generated by the Republican National Lawyers Association, and other sources." *Id.* The News21 project only identified 15 cases of alleged voter fraud in North Carolina between the years of 2000

and 2012, none of which "would have been addressed by the voter ID requirements in S.B. 824." *Id.* at 31.

412. Dr. Burden analyzed the Heritage Foundation's database of voter fraud "cases" and determined that this database lists only 30 "cases" of alleged voter fraud in North Carolina between the years of 2014 and 2018. He concluded that "none of the cases in the Heritage database appear to involve voter impersonation." *Id.* at 31-32. Dr. Burden also cites to the 2016 post-election audit by the State Board of Elections, which found only two possible cases of voter impersonation statewide in that election, both of which "involved voting on behalf of a recently deceased loved one . . . ." *Id.* at 32. This was an election in which nearly 4.8 million votes were cast, and supports Dr. Burden's conclusion that "[t]his is a minuscule rate of voter impersonation crimes, given the millions of ballots cast during this time period." *Id.*

413. Dr. Lichtman reported that, according to the U.S. Election Assistance Commission on Election Crimes, "impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election." Lichtman Rpt. at 108. Dr. Lichtman reviewed extensive academic evidence from peer-reviewed scholarly sources, and reported on numerous studies concluding that in-person voter fraud is virtually non-existent. One study of in-person voter fraud in Georgia prior to implementation of photo voter ID in that state (published in Social Science Quarterly) sought to identify deceased persons for whom ballots had been cast and concluded that "not a single vote was cast in-person in the name of a deceased person." *Id.*

at 110. Another study of voter impersonation, from Election Law Journal, concluded there was "no evidence of voter impersonation in the 2012 election" and also found "no difference between states with and without strict voter ID requirements." *Id.* Yet another study reported by Dr. Lichtman, published in American Politics Research, concluded that "electoral fraud, if it occurs, is an isolated and rare occurrence in modern U.S. elections." *Id.* at 110-11.

414. At trial, Defendants produced no evidence to rebut or contradict the extensive scholarly and peer-reviewed studies cited by Dr. Minnite, Dr. Burden and Dr. Lichtman.

415. When Ms. Santillan was asked on cross-examination if she was "familiar with undocumented immigrants voting in elections in the United States," she answered "I have never met a single undocumented person who has casted a ballot." Tr. 193:14-17 (Santillan). There was no evidence produced to contradict Ms. Santillan's testimony, and there was no evidence presented of voting by undocumented immigrants.

416. On cross-examination, Courtney Patterson, who has been a member of the Lenoir County Board of Elections for 13 years and Chair for 11 years, testified that "I never, never had an incident where we had someone to show up to vote who wasn't that person. I've never seen that happen." Tr. 399:6-8 (Patterson).

417. Defendants presented no evidence at trial that voter impersonation is a problem either nationally or in North Carolina, or that S.B. 824 was designed or tailored to prevent voter fraud that was actually occurring in North Carolina..

### C. S.B. 824 Is Not Justified by a Supposed Need to Promote Voter Confidence.

418. S.B. 824 was not necessary to improve or restore voter confidence in the North Carolina election system.

419. During debate on S.B. 824, no legislator offered any concrete evidence to demonstrate that there was a crisis of voter confidence in North Carolina elections or that photo voter ID laws improve voter confidence. Lichtman Rpt. at 111.

420. At trial, Senator McKissick testified that a better course for improving voter confidence would have been to "let people know that there is no voting fraud. Let people know that they have every reason to be confident in [their] elections." Tr. 966:6-8 (McKissick).

421. According to data from the Survey of the Performance of the American Electorate ("SPAE") reviewed by Dr. Lichtman, there is no evidence that the confidence of North Carolina voters in the integrity of their election systems increased after enactment of photo voter ID in 2013. Lichtman Rpt. at 111-12.

422. Comparing pre and post enactment SPAE survey data, there is no evidence of an increase in voter confidence after enactment of H.B. 589. SPAE data shows that in 2012, pre-enactment of H.B. 589, 93.9% of respondents were very or somewhat confident that their vote was counted as they intended; compared to 95.5% of respondents post-enactment in 2014. *Id.* at 112, Table 26. This amounts to a statistically insignificant difference of 1.6 percentage points. *Id.* Similarly, pre-enactment, in 2012, 85.6% of

respondents were very or somewhat confident that votes statewide were counted as voters intended, which actually declined to 82.2% post enactment in 2014. *Id.*

423. Survey data further shows no increase in voter confidence in elections in states that have implemented photo voter ID measures compared to states that have not. According to Dr. Lichtman, SPAE data on voter confidence in elections in the 15 states that adopted photo voter ID (as of 2016) indicate that voter confidence in elections is slightly lower in photo ID states than in states without photo ID requirements. Lichtman Rebuttal Rpt. at 22. Voters in non-photo ID states indicate 1.6 percentage points more confidence that their own vote was counted as intended, and 3.3 percentage points more confidence that votes statewide were counted as intended, compared to responses from voters in states with photo voter ID requirements. *Id.* at 23, Table R-6.

424. According to Professor Barry Burden, "There is little to no evidence in the academic literature that voter ID laws buoy public confidence in election systems or motivate more citizens to participate as a result of public perception that the integrity of the voting system is improved." Burden Rpt. at 32.

425. Dr. Burden cited studies showing that "there is no overall relationship between the strictness of state voter ID laws and voter confidence." *Id.* at 32-33. Dr. Burden cited an additional study showing "[t]here is little or no relationship between beliefs about the frequency of fraud and electoral participation. . . . Nor does it appear to be the case that universal voter identification requirements will raise levels of trust in the electoral process." *Id.* at 33.

426. Dr. Burden cited a recent study that concluded that "the presence of a voter ID requirement does not affect the public's belief in the frequency of voter fraud." *Id.*

427. Dr. Burden observed that "repeated, unfounded claims of voter fraud used to justify S.B. 824 could serve to undermine voter confidence in the election system; creating the precise problem that S. B. 824 proponents claim to seek to remedy." *Id.*

### D. Enjoining S.B. 824 Before the November 2024 Election Will Not Cause Delay or Voter Confusion

428. At the November 21, 2023 hearing before Judge Biggs on Plaintiffs' discovery motion, the Court discussed what a "sufficient time" might be "for an order to come out. 11/21/23 Mot. Tr. 67:9-16 (The Court). In response to questions about State Board Defendants' timelines and the Court's concern about potential voter confusion, State Board Defendants represented: (1) that "absentee voting starts in September, [and] obviously, August would be late in the cycle," but that (2) "April, May, June [or] July is a period where there would be less concern about the burden placed on State Board staff to be part of this and likely the confusion that the Court is concerned about." *Id.* at 68:21-69:10 (State Board Defendants)). The Court ultimately relied on these representations in setting a trial date: "[Plaintiffs] wanted a trial back in February. You didn't want the trial back in February; you wanted the later trial. . . . I made the decision to do it later to assist with all of the primaries and everything that you shared with the Court." Tr. 1089:9-1090:1 (The Court).

429. At trial, on cross-examination by the Legislative Defendants, Director Brinson Bell also declined to identify a date by which changes to the voter ID process

would need to be made prior to the general election. Tr. 771:8-18 (Brinson Bell). For example, when asked questions about how the "period of time" necessary for the SBOE would need to change voter ID requirements for the November 2024 election "for your county officials, and for your poll workers and your volunteers to learn and be comfortable with the new law and the new changes to the law" Director Brinson Bell denied that there was any specific amount of time required and testified that "I mean, if it's a new law, then we have to -- you know, it might be a change in the SEIMS system, so there may be training involved on, you know, the technical processes. If there's a change in any law, it may require guidance like the Numbered Memos." *Id.*

430. When Director Brinson Bell was asked on cross-examination if she has "any concerns about voter confusion if you, having now started and been doing an education campaign to let them know that they need to bring photo ID to the polls . . . if you have to turn [around] and the message is, no, you don't have to?"; Director Brinson Bell responded that "I don't think about it -- whether it's voter confusion or not. . . . [W]e just want to make sure that we are -- are -- are providing information to voters so that they are clear on what the process will be." Tr. 770:16-25 (Brinson Bell).

431. In addition, as of June 26, 2024, the State Board of Elections had just approved new revisions the ID Exception Form that will accompany provisional ballots and absentee ballots for the November 2024 general election. *See* June 26, 2024 SBOE

Meeting Recording at 3:22-5:24, 12:23-13:8.[14] Accordingly, State Board Defendants' concerns at trial that "Mecklenburg and Wake [Counties] . . . would need to know that they need to alter their absentee ballots by, essentially, July 1st," cannot have been a strict deadline. *Contra* Tr. 1087:18-1088:3 (State Board Defendants).

432. Accordingly, consistent with State Board Defendants' representations at the November 21, 2023 hearing, Director Brinson Bell's testimony at trial, and the fact that SBOE has not yet finished finalizing its election materials, *e.g.*, the ID Exception Form, there is ample time for this Court to issue a decision that would not cause voter confusion.

## VI. FINDINGS OF FACT RELATING TO THE VOTING RIGHTS ACT

### A. North Carolina Has a Long History of Voting Related Discrimination and the State Has Utilized Practices that Enhance the Opportunities for Discrimination (Senate Factors 1 and 3)

433. There is a "long and pronounced history of election practices that facilitate discrimination" in North Carolina, (Burden Rpt. at 8), which includes the cyclical history of discrimination described above in Dr. Leloudis' report, (*see supra*, § I.A). For example, the political gains made by Black citizens during the "fusion movement" were ultimately

[14] *Available at* https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-06-26/State%20Board%20of%20Elections%20Meeting-20240626%202000-1.mp4 (last accessed July 1, 2024). This meeting had not yet occurred at the time of trial. However, under Fed. R. Evid. 201, "The court [] may take judicial notice on its own" of "a fact that is not subject to reasonable dispute because . . . (2) [it] can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)-(c). This meeting recording is maintained by SBOE's public governmental website, and the fact that the reasonable impediment form was not finalized as of June 26, 2024, and that a motion to make additional changes was passed, cannot reasonably be questioned given Mr. Adam Steele's proposal and the motion adopted unanimously by SBOE. The Court hereby takes judicial notice of these facts.

met with "backlash to this success" in the form of new voting restrictions. Burden Rpt. at 8-9; *see, supra*, ¶¶ 12-16.

434. In addition, "[a]s part of this disenfranchisement effort," the state's voters approved the addition of a literacy test for voter registration and a poll tax for voting in the North Carolina Constitution. These changes resulted in an 87% drop in Black turnout statewide over an eight-year period. While the poll tax lasted until 1920, the literacy test remains a part of the North Carolina Constitution to this day. Burden Rpt. at 8-9; *see, supra*, ¶¶ 16-22.

435. Opportunities for discrimination have been enhanced in North Carolina since the 2013 *Shelby v. Holder* decision eliminating the pre-clearance requirement, which at that time prevented 40 of 100 counties in North Carolina from making "changes to election practices without approval of the U.S. Department of Justice or an appropriate federal court." Burden Rpt. at 11. One result of these enhanced opportunities for discrimination was the passage of H.B. 589 immediately after the *Shelby* decision. Burden Rpt. at 11-12; *see also, supra*, § I.B.

436. In addition to the end of pre-clearance, legislative gerrymandering has enhanced the opportunities for discrimination in this state. Dr. Burden, for example, detailed the state of court challenges to gerrymandering as of 2018, including the 2016 *Covington* decision that struck down 28 State Senate and House districts as unconstitutional. The *Covington* decision "marked the third instance in North Carolina in the last decade in which the courts served as the only backstop to prevent racially discriminatory election laws from being in effect." Burden Rpt. at 12-13.

437. Senator McKissick recalled how the county he lived in during the 1970s, Warren County, "a county that was 68 percent Black . . . had never been able to elect a Black to public office." Tr. 933:4-7 (McKissick). He recalled how forty North Carolina counties "were subjected to Section 5 preclearance provisions because of historically discriminatory voting practices," *id*. at 933:17-22, and described the challenges of helping voters get registered in spite of a history of "poll taxes . . . literacy tests . . . [and other] barriers to people being able to exercise their rights to vote. And it wasn't until 1965 that that got reversed and that got changed," *id*. at 935:9-12.

438. Rev. William Barber's testimony of his personal and professional experiences illuminates North Carolina's long history of voting relating discrimination. Rev. Barber reflected on there being no protected voting rights in 1963 when he was born and "all kinds of challenges" in 1966, after the passage of the 1965 Voting Rights Act; his home served as a movement and meeting home where voting history was discussed. Tr. 1196:8-12, 17-24 (Barber).

439. Rev. Barber testified that he also saw "attempts to undermine the right to vote at the local level." Tr. 1199:8-9 (Barber). The NAACP State Conference "had to be very vigilant, no matter who was in power, whenever there was redistricting. Whenever there was redistricting, we had to make sure that we watched it, studied it, we had all the lawyers ready to [*sic*] address any time redistricting would be used in a way that would weaken what we used to call stack, pack, bleach, Black voting power in this state." *Id*. at 1199:10-16.

440. When describing the *McCrory* case, Rev. Barber testified about one of the lead plaintiffs who "talked about how difficult it would be, even for her to get voter ID, but, more importantly, how she was - - she had worked so hard to expand the right to vote, and at 90 years old, this woman would not quit. She would not quit because she says, 'This is an affront to all of the work that people like me have done.'" Tr. 1210:2-7 (Barber).

441. Rev. Barber testified in *McCrory* as the then President of the NC NAACP committed to fight because the NAACP believed the proposed bill "was intentional racism. And then the courts later on did say it was racism." It was paraphrased as "racism with surgical intention – and one of the worst voter suppression cases since the *Shelby* decision." Tr. 1210:22-1211:4 (Barber).

442. Throughout Rev. Barber's testimony, he recalled instances of discriminatory voting bills and actions taken to combat them such as the college students who protested by duck taping their mouth in 2013; "Their message was: Why are you trying to silence our voices by suppressing our votes?" Tr. 1208:25-1209:5 (Barber). When discussing changes made in 2018 that impacted voting rights, significant to he and his affiliate organizations, Rev. Barber stated "we were concerned about the efforts that we saw coming to lessen Sunday voting, to lessen the number of places that you could, in fact vote, to lessen the number of early voting sites . . . . Rather than expanding the right to vote, they were in every effort, seeming to constrict and suppress." *Id*. at 1239:13-1240:1.

### B. There is Racial Polarization in Voting in North Carolina (Senate Factor 2)

443. Racial polarization in voting "is easily observed at the statewide level in North Carolina" and "[t]hese large disparities far exceed other demographic comparisons including income, education and sex . . . ." Burden Rpt. at 10. Exit polls from the 2012 election showed that 96% of Black voters voted for the Democratic presidential candidate compared to 31% of whites, a gap of 65 percentage points. The gap was "60 percentage points in 2008, 58 points in 2004, and 59 points in 2000." *Id.* As Dr. Lichtman notes, "racial disparities in voting in North Carolina far exceed disparities for other politically salient characteristics of voters, such as sex, age, education and income." Lichtman Rpt. at 52.

444. In the 2016 presidential election, 89% of Blacks and 57% of Hispanics voted for the Democratic candidate, as compared to only 32% of whites. Burden Rpt. at 10-11. In the 2016 State gubernatorial, senate, and presidential races, nearly two-third (63%) of white voters supported Republican candidates, while only 41% of Hispanic and only 10% of Black voters did so; and for Democratic candidates, white support in North Carolina was only 34%, while 56% of Hispanic and 89% of Black voters supported Democratic candidates. Lichtman Rpt. at 52-53, Table 13.

445. In the 2016 presidential election, in North Carolina, there was a 57-point gap between Black and white support for the Presidential candidate, and similar gaps were evident in the Presidential elections held in 2000 (59 points), 2004 (58 points), 2008 (60 points), 2012 (65 points), and 2014 (63 points). Burden Rpt. at 10.

446. "[V]oting 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* Leloudis Rpt. at 52-53, 56-59 (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* Leloudis Rpt. at 56 ("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.").

447. Dr. Lichtman concludes that "demographic shifts in the North Carolina voter registration base combined with polarized voting indicate that Republicans had much to gain in 2018 by attempting to reduce black registration and voting relative to white registration and voting. No other demographic shift in registration and voting would have nearly the same impact on prospective political gains." Lichtman Rpt. at 52.

448. Dr. Barreto also concluded that "[t]here is a long history of racially polarized voting in North Carolina, where white voters and Black and Latino voters typically prefer different candidates." Barreto Rpt. ¶ 68. Dr. Barreto examined two sets of election exit polls from the 2012, 2014, and 2016 election cycles and found "Latino and Black voters have consistently demonstrated voting patterns distinct from whites in North Carolina." Barreto Rpt. ¶¶ 69-70. He concluded that "Latino and Black voters have strongly supported Democratic candidates for both Presidential and U.S. Senate races while white voters have strongly supported Republicans," noting that "82% of Latino voters and 89% of Black

voters supported Democrat Hillary Clinton compared to only 32% of white voters in North Carolina" and "77% of Latinos and 90% of Blacks voted for Democrat Deborah Ross, while 64% of white voters 64% supported Republican Richard Burr." Barreto Rpt. ¶ 70.

### C. There is a History of Racial Appeals in Campaigns (Senate Factor 6)

449. Throughout North Carolina history, "political campaigns in North Carolina have been characterized by racial appeals, both overt and subtle" and the invocation of racial tropes and racialized fears. Leloudis Rpt. at 3, 16, 52, 56-59, 70-71. These appeals have continued to the present day.

450. For example, during the 2018 campaign – shortly before S.B. 824 was enacted and in the same campaign where the voter photo identification constitutional amendment passed – North Carolina Republican Party Executive Director Dallas Woodhouse—"echo[ing attacks from] the past"—tweeted pictures of [B]lack people convicted of murder and falsely accused Anita Earls, a [B]lack candidate for the North Carolina Supreme Court, of getting them off death row – relying on "purposeful misinformation to fuel racialized fears." Leloudis Rpt. at 70-71. During the same campaign, at a national level, President Trump rallied against Hispanic immigrants who he said were "infest[ing] our country" and voting illegally. Leloudis Rpt. at 67.

451. These attacks followed a decade throughout which the Republican Party and its allies invoked race in campaigns and for political purposes, relying on "familiar tropes to stir up white fear and animosity." Leloudis Rpt. at 33. For example:

m. In 2010, the North Carolina Republican Party's Executive Committee distributed a campaign mailer in a General Assembly race appealing to anti-

immigrant and anti-Hispanic sentiment. The mailer depicts incumbent Representative John Christopher Heagarty with a sombrero on top of his head and his skin darkened by photo editing. It depicts "Señor" Heagarty exclaiming, "Mucho taxo." Leloudis Rpt. at 58.

n. The legislative director of the Raleigh office of Americans for Prosperity disparaged Hispanic immigrants as "illegal aliens," describing North Carolina as a "magnet for illegals" who were members of "narco gangs" seeking benefits "from food stamps and free medical care to in-state tuition at our community colleges." Leloudis Rpt. at 58.

o. During the 2012 Democratic National Convention in Charlotte, effigies of President Obama and state political figures were strung up in a hangman's noose and displayed on a truck parked near delegates' hotels. Leloudis Rpt. at 57.

p. In 2012, Raleigh-based John Locke Foundation think tank posted on its blog a picture of President Obama, dressed in green fetish leather with a bucket of Kentucky Fried Chicken between his legs with a criticism of President Obama's support of same-sex marriage. Leloudis Rpt. at 57.

452. These recent appeals invoked North Carolina's long history of racial appeals in campaigns. Some prominent examples of these are:

q. The 1996 Senate campaign between Senator Jesse Helms and former Charlotte mayor Harvey Gantt, in which Helms' closing advertisement featured two white hands crumbling a lay-off notice with the narrative saying: "You needed that

job and you were the best qualified. But they had to give it to a minority because of a racial quota. Is that really fair? Harvey Gantt says it is . . . . You'll vote on this issue next Tuesday. For racial quotas, Harvey Gantt. Against racial quotas, Jesse Helms." Leloudis Rpt. at 52.

r. The 1950 Senate campaign between former UNC president Frank Graham (who had served on President Truman's Committee on Civil Rights) and Willis Smith in which Willis' campaign issued advertisements saying "White People: Wake Up Before It's Too Late . . . Frank Graham Favors Mingling of the Races." Leloudis Rpt. at 30.

s. The 1898 and 1890 campaigns in which Democratic newspapers published on their front pages political cartoons depicting Black men as "sexual predators who were intent on emasculating white men . . . and ravaging their wives and daughters." Leloudis Rpt. at 16.

### D. There is a History of Excluding Minorities from Public Office in North Carolina (Senate Factor 7)

453. North Carolina has a long history of excluding racial minorities from public office. Historically, both Blacks and Hispanics have lagged far behind whites in terms of representation in elected public office in North Carolina.

454. While the precise tactics utilized have shifted over time, through a combination of various redistricting tactics (such as at-large districts, multimember districts, and gerrymandering) and restrictions making it harder to register to vote, harder to vote, and harder for Black voters to elect candidates of choice), Black and other minority

candidates have been effectively barred or significantly underrepresented in North Carolina's public offices. While much of this history is summarized in the Historical Background section, to summarize:

t. As a result of various efforts to restrict voter registration undertaken through the 1899 "Act to Regulate Elections" and the 1900 literacy constitutional amendment, Leloudis Rpt. at 18-21, Burden Rpt. at 9, between 1900 and 1968, there were no Black members of the North Carolina General Assembly. Burden Rpt. at 18.

u. Similarly, between 1900 and 1992, no Black individuals were elected to Congress or to statewide office. Burden Rpt. at 18.

v. Following the election of nine Black individuals to municipal and county offices in the late 1940s and 1950s, the North Carolina legislature responded with a series of measures designed to prevent election of Black officials at even the most local offices, including replacing ward elections with at-large, multimember districts (that would prevent election of Black candidates from particular wards) and prohibiting single-shot voting. Leloudis Rpt. at 31-33.

w. Following the passage of the Voting Rights Act in 1965, in order to prevent the election of Black candidates to the General Assembly and Congress, the General Assembly adopted numerous multi-member at-large districts and a constitutional amendment requiring counties to be kept whole. Leloduis Rpt. at 50-51. These measures prevented election of Black candidates; by 1981, a total of only three African Americans had served in the General Assembly and none had served

in Congress. Leloudis Rpt. at 51; Burden Rpt. at 18. "As recently as 1989, [B]lacks comprised only 8% of the Senate and 11% of the House." Burden Rpt. at 18.

x. In 2011, the North Carolina General Assembly enacted one of the "largest racial gerrymanders ever encountered by a federal court" that reduced the number of Black candidates and Black-preferred candidates elected. Leloudis Rpt. at 60; Lichtman Rpt. at 13; Burden Rpt. at 12-13. As the Supreme Court ultimately affirmed, the North Carolina General Assembly approved "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." *North Carolina* v. *Covington*, 581 U.S. 1015 (2017); *see generally* Lichtman Rpt. at 13-17.

y. In 2011, the North Carolina General Assembly enacted a racially gerrymandered congressional map packing Black voters into two congressional districts, reducing their ability to elect other Black-preferred candidates to congress. *Cooper v. Harris*, 581 U.S. 285 (2017).

z. Among the state's "nine statewide constitutional officers and two U.S. Senators, only [two] ha[ve] been black in the 225 year history of the state (State Auditor Ralph Campbell, 1993-2005 [and Lt. Governor Mark Robinson (2020-present]." Burden Rpt. at 18.

455. As described above in the Sequence of Events, following the *Covington* decision, General Assembly leaders engaged in perjury to forestall efforts to conduct elections to elect additional Black and Black-preferred candidates. Lichtman Rpt. at 11-

17. When elections were finally held in November 2018, Republicans lost 10 seats in the House and 6 seats in the Senate. Tr. 437:20-438:14 (Van Duyn); Tr. 877:22-787:12 (Morey); 973:24-974:4 (McKissick).

456. Lawsuits have been filed by NC NAACP, Common Cause and individual Black voters challenging North Carolina's redrawn State House, State Senate and Congressional maps in 2023, for violations of the VRA and the Constitution. *N.C. NAACP v. Berger*, 1:23-cv-1104, *Williams v. Hall*, 1:23-cv-1057 (consolidated on March 18, 2024).

457. While over the last century, the Black share of the population in North Carolina ranged from 22% and 30%, Blacks "have only recently approached parity with their prevalence in the electorate whereas Hispanics remain significantly underrepresented relative to their share of the population." Burden Rpt. at 18-19. As of 2019, the estimated Hispanic population in North Carolina was 9.6%. However, "there are apparently no Hispanics serving in either chamber of the General Assembly," and "[n]o Hispanics have been elected to statewide office or to Congress from North Carolina." Burden Rpt. at 19.

458. Senator McKissick recalled that Warren County, where he lived in the 1970s, "was 68 percent Black" and yet, "at that time, they had never been able to elect a Black to public office[.]" Tr. 933:4-8 (McKissick). He recalled "a time when there were very, very few African American officials in North Carolina," which he linked to North Carolina's "historically discriminatory voting practices," including "poll taxes . . . literacy tests . . . [and other] barriers to people being able to exercise their rights to vote. And it wasn't until 1965 that that . . . changed." Tr. 933:17-935:12.

459. When asked to describe his concerns over S.B. 824, Rev. William Barber II stated that the methodology that creates "racial discrimination and is rooted in racial intent" can "leave us taking steps toward a more impoverished democracy because the representative bodies, they're not representing all the people." Tr. 1251:14-18 (Barber).

460. The history of excluding minorities from public office was a topic of conversation in Rev. Barber's home. He testified that he "grew up in a household where [he] was taught that we didn't even have an African American to serve in the Congress from 1900 when George White left, all the way to Eva Clayton. That's 90 years." Tr. 1197:16-20 (Barber).

461. Rev. Barber testified about the racial gerrymandering that occurred in 2010 that "allowed the legislature that got elected in 2013 to get elected," explaining how the court found "that the gerrymandering was racially driven and that the State needed to redraw the maps." Tr. 1123:9-15 (Barber).

462. In 2020, when Ms. Dreama Cadwell became the first [B]lack woman to run for Alamance County Commissioner, she experienced so much harassment and intimidation, including people showing up to her home, that she was forced to move; Ms. Caldwell testified that "it became obvious to [her] that [she] wasn't safe." Tr. 569:17-25. (Caldwell).

### E. There is a Long History of Minorities Bearing the Effects of Past Discrimination and Unresponsiveness in North Carolina (Senate Factor 5 and Additional Factor 1)

#### 1. Effects of Discrimination on Minority Group Members and Participation in Electoral Process

463. In North Carolina, the impact of past discrimination on Blacks and Hispanics is reflected by many socioeconomic factors, including education, employment and health outcomes, and the protracted race-based exclusion of Black North Carolinians from the State's political franchise has had far-reaching, long-lasting effects. Leloudis Rpt. at 21-23, 63-65; Lichtman Rpt. at 80-99.

464. There is stark evidence of socioeconomic disparities in education, employment and income, housing, health, and access to transportation, between minorities and whites in North Carolina. These socioeconomic disparities are a lingering result of centuries of official racial discrimination, segregation, and economic and political subjugation. Leloudis Rpt. at 63; Lichtman Rpt. at 81-82; Burden Rpt. at 26-28.

465. These persistent disparities evince a lack of responsiveness on the part of elected officials in North Carolina to the particularized needs of minority members of the community. *See* Leloudis Rpt. at 3, 64, 71-72.

#### 2. Racial Disparities in Education and Literacy

466. For much of its history, North Carolina engaged in official, state sanctioned discrimination in education. Leloudis Rpt. at 22-23, 63. Well into the middle of the twentieth century, the State had an explicit policy of racially segregating its educational institutions and providing African Americans with significantly inferior educational

resources and opportunities. Leloudis Rpt. at 21-22, 35. Following the Supreme Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), North Carolina and its school boards routinely circumvented the mandate to desegregate by adopting facially neutral plans that kept intact de facto segregation. Leloudis Rpt. at 41-42. As late as 1971, the Supreme Court found that one of North Carolina's largest school districts was operating a "dual system." *See generally Swann v. Bd. of Education*, 402 U.S. 1 (1971). As a result of the State's policies, many current Black voters in North Carolina are victims of the State's official discrimination in education. Tr. 1212:25-1213:9 (Barber); Burden Rpt. at 14-15; Lichtman Rpt. at 82, 87.

467. Further, de facto segregation persists in North Carolina schools in the present day. From 1998 to 2016, elementary and secondary school segregation has *increased* by more than a third in urban, mostly Black areas. Lichtman Rpt. at 87. As of 2016, major metropolitan areas in North Carolina remain highly segregated, with "dissimilarity" indices, which measure "the percentage of Black students that would have to relocate to become fully integrated with white residents," ranging from 39% to 60%. Lichtman Rpt. at 98-99, Table 25.

468. The racial imbalances in North Carolina's schools lead to concrete disparities in educational results, including rates of literacy and standardized test scores, high school completion rates, and completion of higher education, which continue to exist. As compared to 82% of whites, only 60% of Black North Carolinians have basic reading proficiency at or above an eighth grade reading level. Lichtman Rpt. at 88, Table 22. And, as compared to 81% of whites, less than half of Black North Carolinians (45%) have

achieved a basic mathematical proficiency at or above an eighth-grade level. *Id.* Standardized test scores, based on the National Assessment of Educational Progress, a test administered by the U.S. Department of Education, similarly showed that 80% of white students met basic standards for a fourth grade reading level, while only 56% of Black students and 57% of Hispanic students met the same. Burden Rpt. at 15. And for mathematics, the same test found that 81% of whites, but only 45% of Black students and 61% of Hispanic students, could meet basic standards for an eighth-grade level. *Id.* Ultimately, studies have found that approximately 90% of white North Carolinians graduate from high school, compared to only about 85% of Black North Carolinians and 81% of Hispanic North Carolinians. Lichtman Rpt. at 88, Table 22; Burden Rpt. at 15. The differences in higher education are even more stark, with about 33 or 35% of whites holding a four-year college degree, while only about 21% of Blacks and 14% of Hispanics hold such degrees in North Carolina. Burden Rpt. At 14.

469. Historical and current racial disparities in educational attainment and achievement bear directly on how S.B. 824 impairs the ability of minority voters to participate equally in the political process. Numerous studies have shown that educational attainment is often the single best predictor of whether an individual votes. Burden Rpt. at 15. "[T]his is largely because education lowers the 'costs' of voting by providing language skills, direct information about the electoral process and a sense of confidence [or] efficacy that facilitate participation even when the rules are changed." *Id.*; *see also* Lichtman Rpt. at 87.

470. In sum, the continuing effect of North Carolina's past discriminatory policies and practices in its provision of educational resources, as well as present educational inequalities, has direct effects on outcomes such as basic literacy, and educational attainment, which directly impacts the "costs of voting." Burden Rpt. at 14-15; Lichtman Rpt. At 82, 87-90, 98-99; Leloudis Rpt. at 21-22, 63.

### 3. Racial Disparities in Employment and Income

471. Similarly, North Carolina's discriminatory policies have led to disparities in employment and income between Black, Hispanics, and whites that continue to the present day. Lichtman Rpt. at 81-83, 87; Leloudis Rpt. at 21-22, 63; Burden Rpt. at 14, 16. U.S. Census Bureau data from 2017 shows that 8% of whites in North Carolina were living below the federal poverty level, as compared to 19% of African Americans and 22% of Hispanics. Burden Rpt. at 14. The American Community Survey ("ACS") similarly found 21.9% of Blacks living in poverty as compared to 10.2% of whites. Lichtman Rpt. at 83, Table 21. In 2017, Black North Carolinians were more than three times as likely as whites to receive aid from the Supplemental Nutrition Assistance Program ("SNAP") program, with 25.4% of Blacks and only 7.8% of whites receiving a*id.* *Id.* And Black households were nearly twice as likely as white households to have a zero or negative net worth (21.4% for Blacks versus 11.8% for whites). *Id.*

472. The median household income of white families in North Carolina today is over 1.5 times that of African Americans, with the median white family earning $60,263 compared to only $38,451 earned by the median Black family. Lichtman Rpt. at 83, Table

21. Similar disparities exist at the individual level, with white per capita income at $35,114 compared to only $20,382 for Black North Carolinian per capita income. *Id*.

473. Census data also "indicates that racial and ethnic disparities in unemployment are sizable in North Carolina." Burden Rpt. at 14. Specifically, for the first quarter of 2019, 2.7% of white North Carolinians were unemployed as compared to 6.7% of Blacks and 5.0% of Hispanics. *Id*.; *see also* Lichtman Rpt. at 83, Table 21 (noting, in 2017, 7.7% of whites and 4.1% of Blacks as unemployed). "Compared to whites, unemployment is thus 2.5 times as common among blacks and almost twice as common among Hispanics." Burden Rpt. at 14.

474. The disproportionate poverty and disparities in employment and income that minority North Carolinians confront undermines their ability to participate in the political process. "Individuals with lower household incomes are significantly less likely to vote because it is comparably more burdensome for them to make time to do so." Burden Rpt. at 16. In fact, unlike most states, North Carolina does not require that employers give employees time off from work to vote, nor does it require that an employee be paid for any time off taken to vote. *Id.* "This places a burden on employees who would suffer financial loss if they missed work to participate in an election," who are disproportionately Black and Hispanic in North Carolina. *Id.*; *see also* Lichtman Rpt. at 81-82.

**4. Racial Disparities in Housing and Transportation**

475. North Carolina also has racial disparities in home and vehicle ownership that continue to negatively impact African Americans and Hispanics today. In 2017, for example, nearly three quarters (73.4%) of whites occupied their own home, while the rate

for Black North Carolinians was less than half (46.1%). Lichtman Rpt. at 91, Table 23. The homes owned by Black North Carolinians are also worth less, with the median Black home value being $124,500 and the median white home value being $187,100. *Id.*

476. "Blacks and Hispanics are less likely than whites to live in households where a vehicle is readily available." Burden Rpt. at 30; *see also* Lichtman Rpt. at 91, Table 23. For example, in 2005, 3.8% of white households in North Carolina lacked a motor vehicle, compared to nearly twice as many (6.6%) of Hispanic households and over four times as many (15.5%) Black households. Burden Rpt. at 30, n.118. Similar disparities existed when S.B. 824 was enacted, with only 3.7% of white households lacking a vehicle as compared to 12.2% of Black households. Lichtman Rpt. at 91, Table 23.

477. These differences also undercut minority participation in civic activities such as voting. This is especially true with voter ID; for example, although documentary requirements to obtain photo voter ID may be minimal, "travel to a board of elections office will be challenging for many voters . . . [and the] burden of this travel requirement will be greater for minority residents than whites because they are less likely to have access to a vehicle." Burden Rpt. at 29.

**5. Racial Disparities in Health Outcomes**

478. The legacy of racial discrimination in North Carolina also disproportionately impacts the health outcomes of African Americans and Hispanics. In particular, "by determining access to education and employment opportunities," segregation is "a primary cause of racial differences in socioeconomic status (SES)," and "SES in turn remains a

fundamental cause of racial differences in health." Lichtman Rpt. at 82; *see also* Burden Rpt. at 16.

479. There are "widespread disparities between whites and Blacks and Hispanics in terms of health outcomes." Burden Rpt. at 16. Blacks and Hispanics "routinely fare worse than whites" across specific measures such "as infant deaths, heart disease, and homicides." *Id.*; Lichtman Rpt. at 95, Table 24. For example, the white mortality rate between 2013 and 2017 in North Carolina was 777.7 per 100,000 residents, compared to a Black mortality rate of 891.7 per 100,000 residents. Lichtman Rpt. at 95, Table 24 (taking data from https://schs.dph.ncdhhs.gov/schs/pdf/NCPopHealthDatabyRaceEthNov2018v2.pdf) (making clear that "mortality rates are age-adjusted per 100,000 resident population," and that Table 24 has inadvertently switched the numbers for Black versus white North Carolinians). Black North Carolinians are also nearly twice as likely (at 14.4%) to have low-weight births compared to white North Carolinians (at 7.6%). *Id.* And the infant mortality rate for Blacks is over twice as high as whites, at 12.7% to 5.3%.

480. There are also racial disparities across more "general" measures of health in North Carolina. In 2017, only 17% of white North Carolinians reported having "fair" or "poor" health, as compared to 24% of Blacks and 29% of Hispanics. Burden Rpt. at 16. Blacks are also less likely than whites to have health insurance in North Carolina; 10.7% of Blacks lack health insurance compared to only 7.8% of whites. Lichtman Rpt. at 95, Table 24.

481. Mental and physical health also "influence whether a person votes. For example, a disability makes the average person approximately 20 points less likely to vote." Burden Rpt. at 16; *see also* Lichtman Rpt. At 82.

**6. Racial Disparities in Criminal Justice**

482. Another legacy of discrimination in North Carolina is that African Americans and Hispanics suffer from unequal treatment by the criminal justice system. This is true today according to a variety of measures. Burden Rpt. at 16. Between 2000 and 2011, Blacks and Hispanics were "far more likely to be searched and arrested" for traffic stops than whites; Black motorists were 77% more likely to be searched than white motorists, and Hispanic motorists were 96% more likely to be searched. Burden Rpt. at 16.

483. Disparities are also evident in incarceration rates. As of late 2017, whites accounted for only 39% of those under custody in state or federal prison in North Carolina, while Blacks comprised 52% of inmates and Hispanics were 5%. *Id.* When compared to the makeup of the North Carolina population, which is 22% Black and 10% Hispanic, respectively, this means that "North Carolina Hispanics are incarcerated as a rate similar to that of whites, [while] Blacks are incarcerated at a rate of 4.3 times that of whites." *Id.*

484. Criminal justice is also "an area where discrimination has [] immediate effects on political participation." *Id.* at 17. One obvious effect is that North Carolina's felony disenfranchisement laws, which prohibit voting by inmates, parolees, and probationers, had "disenfranchise[d] approximately 43,000 Black residents, or 2.63% of the Black voting age population" as of 2016. *Id.* Moreover, "traffic citations, arrest, and

incarceration…can result in revocation of a driver's license, the most likely form of ID that will be used by voters to comply with S.B. 824." *Id.*

485. As a result of the history of discrimination and other voting barriers linked to socioeconomic disparities, voter registration and participation rates remained low in North Carolina until very recently, particularly among African Americans. *See* Burden Rpt. at 9, 14-18.

### F. Socioeconomic Disparities in North Carolina Impact Participation in the Political Process

486. As covered above, "[t]hese glaring disparities in outcomes have a direct bearing on the impact of state election laws on minority voting rates." Burden Rpt. at 18. "The ongoing history of racial discrimination in North Carolina has a direct effect on the opportunities for [minorities] to participate fully in the political process." Lichtman Rpt. at 82. Education, income, employment, criminal justice, and health are "strongly associated with the likelihood of an individual being deterred from voting." Burden Rpt. at 18. Thus, even after formal barriers to the franchise were eliminated, racial disparities in political participation persisted in North Carolina, in part as a product of socioeconomic disparities linked to prior discrimination. *See Gingles*, 590 F. Supp. at 361.

487. The dominant framework in political science for studying voter participation is the "calculus of voting." Burden Rpt. at 3. Under this framework, an "individual will vote if the *probability* of their vote determining the outcome (P) multiplied by the net psychological *benefit* of seeing one's preferred candidate win the election (B) is greater than the *costs* of voting (C)." *Id.* This "cost" is "the most relevant parameter for

understanding the voter ID requirement in S.B. 824[,] . . . because [it] is the only term that the state can manipulate directly[.]" *Id.* The costs that a voter must incur include the time, resources, and effort needed to overcome administrative requirements in order to vote. *Id.* Increases in such costs will "increase the burden [and] inhibit[] the right to vote." *Id.* at 4.

488. Such costs "are especially consequential for individuals with less education, fewer resources, and with less well-established voting habits." *Id.* Thus, given the socioeconomic disparities along racial and ethnic lines, "[w]hat may appear to be equal costs imposed by a restriction on voting practices are in fact often more acute for [B]lacks and Hispanics than for non-Hispanic whites." *Id.*

489. There are educational disparities in North Carolina along racial and ethnic lines, disproportionately impacting Black and Hispanic North Carolinians. *See supra*, § I.C. Numerous studies have shown that educational attainment is often the single best predictor of whether an individual votes. Burden Rpt. at 15. "This is largely because education lowers the 'costs' of voting by providing language skills, direct information about the electoral process, access to mobilizing social networks, and a sense of confidence [or] efficacy that facilitate participation even when the rules are changed." *Id.*; *see also* Lichtman Rpt. at 87.

490. There are disparities in income and employment in North Carolina along racial and ethnic lines, disproportionately impacting Black and Hispanic North Carolinians. *See supra*, § I.C. "Income also affects voter participation. Individuals with lower household incomes are significantly less likely to vote because it is comparably more burdensome for them to make time to do so." Burden Rpt. at 16. In fact, unlike a majority

of states, North Carolina does not require employers to give employees time off from work to vote, nor does it require that the employee be paid for any time off taken to vote. *Id.* "This places a burden on employees who would suffer financial loss if they missed work to participate in an election," who are disproportionately Black and Hispanic in North Carolina. *Id.*; *see also* Lichtman Rpt. at 81-82.

491. There are disparities in housing and access to transportation in North Carolina along racial and ethnic lines, disproportionately impacting Black and Hispanic North Carolinians. *See supra*, § I.C. These differences also undercut minority participation in civic activities such as voting. This is especially true with voter ID, where "travel to a board of elections office [to obtain voter ID] will be challenging for many voters . . . [and the] burden of this travel requirement will be greater for minority residents than whites because they are less likely to have access to a vehicle." Burden Rpt. at 29.

492. There are disparities in criminal justice and policing in North Carolina along racial and ethnic lines, disproportionately impacting Black and Hispanic North Carolinians. *See supra*, § I.C. Criminal justice is also "an area where discrimination has [] immediate effects on political participation." Burden Rpt. at 17. One obvious effect is that North Carolina's felony disenfranchisement laws, which prohibit voting by inmates, parolees, and probationers, had "disenfranchise[d] approximately 43,000 Black residents, or 2.63% of the Black voting age population" as of 2016. *Id.* But moreover, "traffic citations, arrest, and incarceration . . . can result in revocation of a driver's license, the most likely form of ID that will be used by voters to comply with S.B. 824." *Id.*

493. And there are disparities in health outcomes in North Carolina along racial and ethnic lines, disproportionately impacting Black and Hispanic North Carolinians. *See supra*, § I.C. Mental and physical health both "influence whether a person votes. For example, a disability makes the average person approximately 20 points less likely to vote." Burden Rpt. at 16; *see also* Lichtman Rpt. at 82.

494. "In summary[,] . . . North Carolina displays substantial and enduring racial disparities in areas such as education income, employment, criminal justice, [access to transportation,] and health . . . [which] are strongly associated with the likelihood of an individual being deterred from voting by a burdensome voting practice." Burden Rpt. at 18.

**G. A Lack of Responsiveness by Elected Officials**

495. In addition to enduring disparities in the socioeconomic factors described above, "[r]ecent years have seen the legislature roll back legal provisions and funding designed to alleviate racial and ethnic disparities . . . ." Burden Rpt. at 20. This includes the repeal of the Racial Justice Act, which had "provided inmates on death row an opportunity to challenge their sentences based on evidence showing that race was a factor in their sentences." Burden Rpt. at 20. Around the same time the Racial Justice Act was repealed (and H.B. 589 was enacted), the General Assembly also cut unemployment benefits, declined federally-funded expansion of Medicaid that would have extended health insurance to 500,000 North Carolinians, ended the state Earned Income Tax Credit, and reduced school funding. Leloudis Rpt. at 64-65.

496. And, as Representative Morey testified, from the time Representative Morey joined the General Assembly, *i.e.*, 2017 until 2023-2024 term, "there's never been an African American or person of color in the majority [or] supermajority in the Republican Party." Tr. 904:23-905:11 (Morey). She explained that this is concerning because "[t]heir voice is important, and if you have a supermajority with the ability to pass bills without the threat of a veto and you don't have the representation of a diverse body [of] minorities helping inform your caucus, I think that's a real shame." Tr. 905:12-18 (Morey). It is fair to infer that this lack of any Black, Hispanic, or other persons of color in the Republican supermajority also contribute to its lack of responsiveness to minority concerns.

497. There is also evidence that election officials "are less responsive to minority constituents seeking information about how to participate in state elections." Burden Rpt. at 20. In a study conducted by Ariel White, Noah Nathan and Julie Faller in 2015, the authors emailed County Boards of Election in North Carolina to see how they would respond to messages from voters asking what they need to vote. *Id.* The study "found that equivalent messages sent to county boards were 5.6 percentage points less likely to get a response if they were signed by Hispanic names." *Id.*

498. The lack of responsiveness to Hispanic residents can also be seen in the lack of Spanish-language resources provided by the State Board of Elections or County Boards of Election. Dr. Burden found that "Spanish language materials are not routinely available in parts of the state with large Hispanic populations," such as Wake and Mecklenburg County Boards of Election websites. Burden Rpt. at 21. In addition, Iliana Santillan testified that the majority of forms that must be filled out by voters are not available in

Spanish. 185:22-186:5 (Santillan). In fact, the State Board of Elections stipulated that they "do not currently offer a Spanish language version of the ID Exception Form." ECF No. 313, ¶ 7.

499. Ms. Santillan testified that the paper voter registration is in Spanish and "perhaps the absentee ballot, but that's it" and "[a]t the polling site, I have never seen anything in Spanish, not even signs of here's where you can go vote. Nothing." Tr. 185:22-186:08 (Santillan). Ms. Santillan testified that the Photo ID Identification Request Form is also available in Spanish; and the State Board's website is available in Spanish, but "some of the Spanish language content was not correct." *Id*. at 198:10-21. Ms. Santillan also testified that she has not encountered any poll workers who speak Spanish in the last few years, and that the online voter registration is not available in Spanish nor is it provided in a format that allows it to be easily translated. *Id*. at 180:20-25; 186:06-8.

500. Mr. Patterson, the Chairperson of the Lenoir County Board of Elections, testified that he has only seen the voter registration form in Spanish. Tr. 345:13-346:14 (Patterson). He also testified about the absence of Spanish-Speaking staff members in the Lenoir County Board, which constitutes a barrier for Spanish-Speaking and reading residents and/or voters. Tr. 345:10-20 (Patterson. Patterson testified that the Latino population in Lenoir County is approximately 10%. Tr. 346:16-21 (Patterson). The absence of Spanish-Speaking staff makes it difficult to adequately service the Spanish-Speaking population in the county. Tr. 345:10-346:21. Mr. Patterson also testified that he doesn't believe a single one of Lenoir County's 60 poll workers speaks Spanish. *Id*. at 351:16-352:03.

### H. The Size of Burden Imposed by S.B. 824 is Massive (*Brnovich* Guidepost 1)

501. The *Brnovich* decision identified the "size of the burden imposed by a challenged voting rule" as the first guidepost. 594 U.S. 647, 669 (2021).

502. S.B. 824 fails this guidepost. The SBOE's own analysis consistently showed that large numbers of voters – hundreds of thousands of registered voters – do not have qualifying identification. Lichtman Rpt. at 74. The SBOE's analysis of April 2013 records showed that 318,643 registered North Carolinian voters lacked qualifying DOT identification. *Id.* This 2013 analysis was well-known by the General Assembly when it was formulating S.B. 824, (*see, supra*, ¶ 250), including "raw data" (which includes demographic data) being separately requested by the office of Chairman Lewis, (PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-Match Data)).

503. The SBOE's analysis concerning the November 2014 voter files and DOT records found that 254,391 registered voters did not have qualifying DOT identification. Lichtman Rpt. at 77. 2014 no-match analysis was also presented to the General Assembly while it was formulating S.B. 824. DX214 (11/26/18 Presentation by SBOE Director Kim Strach) at 18; *see also* PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-Match Data).

504. Following enactment of S.B. 824, SBOE conducted a further analysis using the August 2019 voter file, which found that there are 617,029 unmatched registered voters. Herron Rpt. ¶¶ 9-10, 22, 28; ECF No, 97-28 ¶ 9 (Neesby Decl.). There were 7,646,171

registered voters as of the date on which the SBOE prepared this analysis. Herron Rpt. ¶ 33. Dr. Herron determined that the SBOE's analysis of the August 2019 voter file indicated that "8.1 percent of North Carolina's registered voters" lacked identification issued by the North Carolina DMV. Herron Rpt. ¶ 43.

505. Dr. Barreto's public opinion survey conducted in August and September 2019 found similar numbers of registered voters lacked qualifying identification. For registered voters, Dr, Barreto's survey found that for unexpired identifications issued by the North Carolina DMV, 5.8% of registered white voters, 10.6% of registered Black voters and 19.2% of registered Hispanic voters lacked valid-DMV issued identification. Barreto Rpt. ¶ 52, Table 4B. And beyond DMV-issued licenses, Dr. Barreto's survey found that for unexpired eligible photo identifications, 2.3% of registered white voters, 6.8% of registered Black voters, and 8.2% of registered Hispanic voters lacked any valid identification. *See* Barreto Rpt. ¶ 52, Table 4B. Dr. Barreto also found that even for voters who possessed an unexpired ID, a significant number of them had a non-matching photograph – 4.5% of white registered voters, 12.2% of Black registered voters, and 14.4% of Latino registered voters lack any valid identification with a qualifying photo. *See* Barreto Rpt. ¶ 52, Table 4B.

506. As detailed above, the burdens faced by a voter without qualifying identification can be substantial. As Dr. Lichtman has shown significant numbers of such individuals simply gave up and did not cast votes under H.B. 589, (*see, supra*, § IV.D (discussing Lichtman Rpt. at 29, 37; Lichtman Rebuttal Rpt. at 11-14, Table R-3, R-4), and both Dr. Lichtman and Dr. Barreto's analysis suggest the same is true for S.B. 824, (*id.*,

discussing Barreto Rpt. ¶¶ 60, 62). In particular, Dr. Barreto's survey found (i) "an overwhelming majority of . . . eligible voters who currently lack a qualifying identification . . . incorrectly believe they have an ID that meets SB 824's requirements, which suggests they will not take steps to update their IDs or obtain one that enables them to vote," Barreto Rpt. ¶ 56, (ii) "the overwhelming majority of Blacks and Latinos expressed the belief that voters without qualifying identification would not be allowed to cast a ballot," Barreto Rpt. ¶ 62, and (iii) North Carolinians "who currently lack a qualifying ID . . . overwhelmingly" said they would not "try to vote on election day if they learned they lacked a qualifying photo ID." *Id.*

507. With regard to the so-called "ameliorative provisions" of S.B. 824, there are substantial burdens associated with each of them. With regard to obtaining either form of alternative IDs, as discussed above, (*see, supra*, §§ IV.B-C), most eligible voters who lack a qualifying identification do not know that they need to get them, (Barreto Rpt. ¶ 56, Table 7), do not know that they can get them, (Barreto Rpt. ¶ 57, Table 8, 9), and do not know how to get them, (Barreto Rpt. ¶ 58, Table 10). And even for individuals who know how to get them, it has proven incredibly burdensome to get them: Dr. Burden noted that "[t]he average county has a land area of 486 square miles and could thus require lengthy, inconvenient, costly, or difficult travel to acquire an ID." Burden Rpt. at 14, 29, 36. And testimony from Ms. Maxwell, Ms. Santillan, Dr. Hairston, Ms. Caldwell, Mr. Baker, Mr. Bass, Mr. Fletcher, and Ms. Dunn all established the difficulty in obtaining these IDs. Tr. 126:10-12, 130:1-131:25 (Maxwell); 188:16-189:15 (Santillan); 205:23-206:4 (Hairston); 579:2-580:4 (Caldwell); 1020:12-1021:5 (Baker); 1061:19-25 (Bass); 1116:1-6, 1116:25-

1117:3, 1118:20-21, 1119:2-1120:12 (Fletcher); 1169:17-25, 1173:5-12, 1176:15-1177:02 (Dunn). These burdens are also reflected in the data produced by Defendants, which demonstrates that very few of these IDs have been successfully obtained by voters – around 2,000 per year. *See, supra*, ¶¶ 150-51.

508. The record also establishes that other ameliorative measures – the availability of provisional ballots and the reasonable impediment declaration – have not reduced the burden on voters without identification. *See, supra*, § IV.C. The General Assembly was aware that measures were anemic and had not addressed racial disparities under H.B. 589 in 2016, and thousands of otherwise eligible voters had to navigate additional burdens in the voting process in 2023 and 2024 elections, with hundreds of their votes thrown out. *See, supra*, §§ II.C, IV.C.

### I. S.B. 824 Is a Drastic Departure from Standard Practice in 1982. (*Brnovich* Guidepost 2)

509. The second *Brnovich* guidepost is "the degree to which a voting rule departs from what was standard practice when [Section 2] was amended in 1982." 594 U.S. at 669-70.

510. S.B. 824 fails this guidepost as well – neither North Carolina, nor any other jurisdiction, required voters to show photographic identification in order to be able to vote in 1982. As Legislative Defendant Speaker Moore acknowledged during floor debate: "If you look about where we are now versus where we were decades ago . . . thirty years ago . . . when there was no voter ID, its a different world . . . ." PX241A (6/21/18 H.B. 1092 House Rules Cmte. Tr.) 4:8-12.

511. S.B. 824 is also an outlier compared to other states at the time that it passed. In 2019, sixteen states didn't require voter identification to vote at all; and of the states with voter identification laws, many did not require photographic identification, and others did not specify or limit the types of permissible identifications in the way S.B. 824 does. PX444 ("Burden Rebuttal Rpt.") at 2; *see also* Lichtman Rebuttal Rpt. at 17.

512. As reported by Dr. Lichtman, as of 2018 half of the 34 states that require identification also allow non photo forms of ID, including such readily available documents as a utility bill, paycheck or bank statement. Lichtman Rpt. at 114. Combined with states that do not require photo ID at all, North Carolina as of 2018 would have been among the minority of states requiring a photo ID. Lichtman Rebuttal Rpt. at 17. Moreover, the majority of states with photo ID requirements allow voters using alternative procedures to cast a regular ballot, authorize non-photo forms of ID or provide for immediate validation of a provisional ballot, unlike S.B. 824 where use of the reasonable impediment process only allows casting a provisional ballot. *Id.* Additionally, where North Carolina disallows the use of public assistance photo IDs, 14 out of 17 states requiring photo IDs allow public assistance IDs, either explicitly or through provisions allowing any form of government issued ID. *Id.* And SB 824 is almost unique among other photo ID laws in its requirement that IDs can only be used if they are expired for less than a year. *Id.*

### J. The Disparity Between S.B. 824's Impact on Black and Hispanic Voters and the Impact on White Voters is Also Massive (*Brnovich* Guidepost 3)

513. The third *Brnovich* guidepost is "the size of any disparities in a rule's impact on members of different racial or ethnic groups." 594 U.S. at 671.

514. S.B. 824 fails this guidepost as well. The SBOE's own analysis consistently showed large disparities in the race of voters who did not have qualifying identification. Of the 318,643 registered North Carolinian voters in April 2013 that lacked qualifying DOT identification, SBOE's 2013 analysis found that these voters were disproportionately Black, being 54% (or 11.9 percentage points) more likely to be African American than white. Lichtman Rpt. at 75, Table 18. This 2013 analysis was well-known by the General Assembly when it was formulating S.B. 824, (*see, supra*, ¶ 250), including "raw data" (which includes demographic data) being separately requested by the office of Chairman Lewis, (PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-Match Data)).

515. Of the 253,391 registered North Carolina voters in November 2014 that lacked qualifying DOT identification, the SBOE's analysis found that Black voters were 60.9% (or 13.7 percentage points) more likely to be on the 2014 no-match list than white voters. Lichtman Rpt. at 77, 80, Table 20. The 2014 no-match analysis was also presented to the General Assembly while it was formulating S.B. 824. DX214 (11/26/18 Presentation by SBOE Director Kim Strach) at 18; *see also* PX197 (12/18/17 to 1/8/18 Email Chain between Office of David Lewis and SBOE re: SBOE No-Match Data).

516. The SBOE's analysis of the August 2019 voter file yielded similar results. Of the 617,029 registered voters who lacked qualifying DOT identification, 6.5% of white registered voters lacked such identification, as compared to a 10.6% of Black registered voters (meaning that Black voters were over 1.6 times as likely as white voters to lack DOT identification that could be used for voting). Herron Rpt. ¶¶ 43, 49-50, Table 3. Similarly,

only 5.7% of non-Hispanic voters lacked qualifying DMV identification, as compared to a 11.1% of Hispanic registered voters, a 5.4 percentage point gap, meaning that Hispanic voters were nearly two times (1.94) as likely has non-Hispanic voters to lack DOT identification that could be used for voting. Herron Rpt. ¶¶ 57-59, Table 5. As Dr. Herron concludes "[B]lack registered voters in North Carolina have less access to these forms of identification than do white registered voters; Hispanic registered voters have less access to these forms of identification than do non-Hispanic registered voters; and, . . . minority registered voters in North Carolina will be disproportionately burdened by the voter identification requirements in SB 824." Herron Rpt. ¶ 66.

517. The conclusions of Dr. Charles Stewart in the *McCrory* case reinforce these conclusions and show potentially wider racial disparities in ID possession. As previously discussed, Dr. Stewart concluded that between 397,971 and 822,000 (accounting for voters whose licenses have been surrendered or are inactive) could not be matched to having a qualifying identification in DMV and federal databases). *See, supra*, ¶ 60 (citing Lichtman Rebuttal Rpt. at 5-6 and *McCrory*, 182 F. Supp. 3d at 352-53, 365 (discussing the lower range). He found that, at the low end, Black registered voters were more than twice as likely as white voters to lack an approved DOT photo ID (10.1% versus 4.2%), or at the high end, about three times as likely (25.0% versus 8.4%). *Id.*

518. As detailed above, Dr. Barreto's survey consistently found significant racial disparities in rates of possession of qualifying identification.

- For unexpired identifications issued by the North Carolina DMV, 6.7% of eligible white voters lacked such an identification, while 11.4% of eligible

Black voters (*i.e.,* a 4.7% difference than white eligible voters) and 22.9% of Hispanic voters (*i.e.*, a 16.2% difference than white eligible voters) lacked valid-DMV issued identification. Barreto Rpt. ¶ 43, Table 1B.

- For registered voters, Dr, Barreto's survey found "large and statistically significant differences in possession rates" that for unexpired identifications issued by the North Carolina DMV, 5.8% of registered white voters lacked such an identification, while 10.6% of registered Black voters (*i.e.,* a 4.8% difference than white registered voters) and 19.2% of registered Hispanic voters (*i.e.*, a 13.4% difference than white eligible voters) lacked valid-DMV issued identification. Barreto Rpt. ¶ 52, Table 4B.
- Beyond DMV-issued licenses. Dr. Barreto's survey found that for unexpired eligible photo identifications, 3.1% of eligible white voters lacked such an identification, while 7.2% of eligible Black voters (*i.e.,* a 4.1% difference than white eligible voters) and 11.0% of Hispanic voters (*i.e.,* a 7.9% difference than white eligible voters) lacked any valid identification. Barreto Rpt. ¶ 44, Table 1B. And for people with any form of qualifying identification whose photo resembles the individual, Dr. Barreto's survey found that 6.1% of eligible white voters lacked such an identification, while 12.4% of eligible Black voters (*i.e.,* a 6.3% difference than white eligible voters) and 16.7% of Hispanic voters lacked (*i.e.,* a 10.6% difference than white eligible voters) any valid identification. Barreto Rpt. ¶ 44, Table 1B. As Dr. Barreto concludes, "the differences between Whites and Blacks, and

Whites and Latinos are statistically significant at the 99% levels." Barreto Rpt. ¶ 44.

- For registered voters with any kind of qualifying identification, Dr. Barreto's survey found 4.5% of white registered voters, 12.2% of Black registered voters *(i.e.,* a 7.7% difference than white registered voters), and 14.4% of Latino registered voters (*i.e.,* a 9.9% difference than white registered voters) lack any valid identification with a qualifying photo. Barreto Rpt. ¶ 52, Table 4B. As Dr. Barreto concludes "large and statistically significant differences in possession rates are found by race with White voters consistently more likely to have access to a qualifying ID than Black or Latino voters [and] . . . are statistically significant at the 99% levels." Barreto Rpt. ¶ 52.

519. All of these disparities are large in absolute terms and dwarf the disparities at issue in *Brnovich*. *See* 141 S.Ct at 2344-45 (discussing non-minority rate of 0.5% as compared to 1.0% rate of Black and Hispanic voters).

### K. Opportunities Afforded by North Carolina's Voting System Do Not Alleviate S.B. 824's Disparate Impact (*Brnovich* Guidepost 4)

520. The fourth *Brnovich* guidepost is "the opportunities provided by a State's entire system of voting when assessing the burden imposed." 594 U.S. at 671.

521. S.B. 824 fails this guidepost as well. In North Carolina, voter ID is required for both in-person voting (either during early voting or on election day) and absentee voting. While Defendants have argued that there are parallels between the South Carolina voter ID law and S.B. 824, "unlike in North Carolina, South Carolina's photo ID

requirement does not apply to mailed absentee ballots . . . . This provides a common path for voting without ID that is not possible in North Carolina under S.B. 824." Burden Rpt. at 25-26.

522. Under S.B. 824, voters must either present an acceptable photo ID, or choose from two provisional balloting options – a voter may either fill out an ID Exception Form on-site alongside a provisional ballot, or they may cast their provisional ballot and then return with an accepted ID to their County Board by the day before canvass in order for it to count. However, the latter type of provisional ballot will only be counted if the voter travels to the county board of elections by noon on the day before the county election canvass to present a valid ID. As discussed above, (*see, supra*, ¶ 313), substantial numbers of voters who filled out provisional ballots due to lack of an ID had their votes thrown out.

523. And it is clear that significant numbers of voters without qualifying ID have been and will be deterred by the photo ID requirement and do not believe it is possible to vote in North Carolina. As discussed above, (*see, supra*, § IV.D), Dr. Lichtman analyzed the 2016 primary results and concluded that over 101,000 voters failed to come to the polls due to the deterrent effect of the photo ID provision; he also found significant racial disparities. Lichtman Rebuttal Rpt. at 11-14, Table R-3, R-4. Dr. Lichtman also noted that Stanford University professors Justin Grimmer and Jesse Yoder had found that the "deterrent effect [of H.B. 589 was] substantial and falls most heavily on minority voters"—their analysis noted found that people without identification "were 2.6 percentage points less likely to participate in the [2016] general election." Lichtman Rpt. at 37. Dr. Burden noted that the national Survey on the Performance of American Elections consistently

found that Black and Hispanic voters were more likely to report they had not voted due to "not having the right kind of identification" than white voters – in 2016, 10% of whites and 18% of Blacks and Hispanics, in 2014, 8% of whites and 14% of Blacks and Hispanics, and in 2012, 11% of whites and 14% of Blacks and Hispanics. Burden Rpt. at 35.

524. In addition to these analyses, Dr. Barreto's survey also asked North Carolinians "who currently lack a qualifying ID if they would personally try to vote on election day if they learned they lacked a qualifying photo ID and overwhelmingly they said no." Barreto Rpt. ¶ 62. In particular, Dr. Barreto's survey found that Black and Latino respondents were particularly likely to be deterred. *Id.* Of individuals who lacked qualifying ID, 51.8% of white eligible voters said they would still try to vote, while only 38.9% of Blacks and 38.6% of Latinos said they would still try to vote. Barreto Rpt. ¶ 62, Table 19. As Dr. Barreto notes, this is consistent with the fact that "the overwhelming majority of Blacks and Latinos expressed the belief that voters without qualifying identification would not be allowed to cast a ballot." Barreto Rpt. ¶ 62, Table 18 (noting that only 21.2% of Black and 36.2% of Latino respondents without valid ID thought that someone without an ID would still be allowed to vote).

### L. The Tenuousness of the State's Purported Interests are Tenuous and Weak (*Brnovich* Guidepost 5 and Additional Factor 2)

525. The fifth *Brnovich* guidepost is "the strength of the State's interest served by a challenged voting rule." 594 U.S. at 671-72. A related additional unenumerated Senate factor is the "tenuousness of the policy underlying the challenged system." *NAACP v. City of Columbia*, 850 F. Supp. 404, 425 (D.S.C. 1993). "A policy is 'tenuous' if the reasons

behind it appear suspect." *Id*. Dr. Burden defines tenuousness in his report as meaning "that proponents' claims about the law's intended effects are dubious and that new requirements are a sharp deviation from prior election practices in the state." Burden Rpt. at 22.

526. S.B. 824 fails these factors as well. Academic research has shown that "voter ID requirements nationwide tend to be enacted out of partisan motivations rather than as a measured response to documented vulnerabilities in the voting process." Burden Rpt. at 21. These partisan motivations include an increase in minority voter turnout, which causes Democrats to be less likely to support voter ID bills; whereas it makes Republicans more likely to support them. *Id.* at 22. This conclusion is supported by an examination of roll call votes of legislators done by Hicks, McKee and Smith in 2016. *Id.* In addition, a Biggers and Hammer study showed that these laws are "more likely to be adopted in states where blacks and Hispanics make up larger shares of the electorate, especially where it coincides with a recent switch in control of state government." *Id.* at 21-22.

527. In his report, Dr. Burden concludes that S.B. 824 is tenuous because "(1) the law is unnecessarily burdensome, (2) the reasonable impediment option does not eliminate the disproportionate burden on minority voters, (3) other means of voting for people without acceptable ID do not eliminate the disproportionate burden on minority voters, (4) minority voters are less likely to possess acceptable ID, (5) the costs of obtaining acceptable ID are significant, (6) the law will do little to improve election security or public confidence in elections, and (7) lack of public knowledge is likely to affect voter turnout." Burden Rpt. at 22.

528. As set forth in detail above, (*see, supra*, ¶¶ 159-65), S.B. 824 only accepts a specific list of IDs for voting, and also requires that certain IDs be both valid and unexpired, even though it is not clear how these requirements relate to ensuring that the voter appearing in person matches the photo on their ID. Burden Rpt. at 23. Dr. Burden also concludes that "administrative burdens are significant" to vote absentee without an ID, as voters must submit an absentee request form and either attach a photocopy of their ID with their ballot or fill out a reasonable impediment declaration. Burden Rpt. at 27. In addition, the limited exception to the ID requirement (the reasonable impediment declaration) has "great potential for uneven application . . . ." *Id*. at 24. The reasonable impediment option was not applied consistently or fairly in the 2016 election, and it does not remedy the fact that many voters will be deterring from showing up to the polls in the first place. *Id*. at 24-25. The reasonable impediment option (now called the ID Exception Form) was also not applied fairly or consistently in the 2023 or 2024 elections. *See, supra*, § IV.C.

529. Dr. Burden also concludes that the law is tenuous because of how many sources of data demonstrate that Blacks and Hispanics are less likely than whites to have the types of IDs accepted for voting under S.B. 824. Burden Rpt. at 28. In addition to studies from the State Board on ID possession, Dr. Burden cites to data which shows that, while 79% of whites aged 18 to 20 have driver's licenses, only 55% of Blacks and 57% of Hispanics do. *Id.* In addition, one national academic survey found that while 23% of whites have never flown, 28% of Hispanics and 36% of Blacks had never flown. *Id.* In addition, a study by the FDIC found that, while only 2.6% of white households in North Carolina are "unbanked," the rate is 12.6% for Black families. *Id.* at 27-28. As set forth

in detail above, (*see, supra*, § IV.B), the cost to obtain a so-called "free ID" is also high, and these costs will fall hardest on Black and Hispanic residents who lack the resources to pay them.

530. The law is also tenuous because S.B. 824 is not necessary to either improve election security or to increase public confidence in North Carolina's elections. Burden Rpt. at 31-32. As explained previously, in-person voter impersonation is virtually non-existent. *See, supra*, §§ V.B-C. As reports from both the Arizona State University and the Heritage Foundation's voter fraud "case database" show that "there either were zero or two cases of voter impersonation in a time period in which millions of votes were cast and counted in the general, primary, special, and other elections that took place in North Carolina." *Id.* at 32. These findings that voter impersonation is incredibly rare were also confirmed by audits conducted by the North Carolina State Board of Elections. Burden Rpt. at 31-32.

531. In addition, "[t]here is little to no evidence in the academic literature that voter ID laws buoy public confidence in election systems or motivate more citizens to participate as a result of public perception that the integrity of the voting system in improved." Burden Rpt. at 32. Dr. Burden cites to a 2009 study by Stephen Ansolabehere which "shows that there is no overall relationship between the strictness of state voter ID laws and voter confidence" - and in fact, "[b]elief in the frequency of election fraud is uncorrelated with propensity to vote." *Id.* at 33. Another 2016 study by Ansolabehere, Charles Stewart and Nathaniel Persily concluded that "the presence of a voter ID requirement does not affect the public's belief in the frequency of voter fraud." *Id.* at 33.

532. Finally, Dr. Burden concludes that the law is tenuous because the lack of public knowledge about the law will likely affect voter turnout—the law's "ameliorative provisions" can only help voters to the extent they know about them. Burden Rpt. at 33. In addition, "because of the on-again off again nature of the voter ID requirement in North Carolina due to actions by the legislature, courts, and voters, it is likely that many state residents are uninformed or misinformed about the current nature of the voter ID law." Burden Rpt. at 35.

533. The state's asserted interest in photo voter ID is particularly weak and tenuous because all of the interests asserted by photo ID proponents—both those asserted at trial and those asserted by proponents in public statements not argued by defendants at trial—have been shown to be pretextual. Dr. Lichtman exhaustively reviewed the arguments presented in defense of photo voter ID in 2018 and concluded "[n]one of the stated reasons are supported by factual evidence" and further concluded that "the justifications for S. 824 appear to be pretext for other, unstated purposes, which is a strong indication of discriminatory intent." Lichtman Rpt. at 100. Dr. Lichtman's analysis of the evidence of pretext underlying the stated rationales for photo ID in North Carolina includes the following:

a. Republican House Speaker Tim Moore publicly acknowledged that a non-photo voter ID law satisfy state interests in election security. Lichtman Rpt. at 100-101. He nevertheless promoted a photo ID law and rejected an amendment that would have allowed non-photo IDs. *Id.*

b. Photo ID law sponsors rejected adding public assistance IDs as a form of photo ID for voting, on the grounds that these IDs were not consistent and not controlled by the State. *Id.* at 101. Yet sponsors accepted veteran's IDs, which also are not consistent and not controlled by the state, and refused to accept non-military federal IDs. *Id.* at 102-104.

c. Contrary to the sponsors' statements, making photo ID for voting a state constitutional requirement did not conform to the practice of other states. *Id.* at 114-115. Only one other state has a constitutional requirement for photo ID for voting. *Id.*

d. As addressed above, (*see, supra*, § V.B-C) lawmakers asserted that photo ID was necessary to reduce in person voter fraud, when the lawmakers knew from numerous reports from SBOE and others that voter impersonation was "essentially non-existent in North Carolina." Lichtman Rpt. at 8, 105-108. Moreover, during legislative debate on photo voter ID, lawmakers presented no evidence or testimony that photo ID would reduce in person voter fraud. *Id.* at 8; *see, supra*, ¶¶ 398-401.

e. Legislative proponents of photo voter ID presented no evidence that photo ID would enhance voter confidence, or that there was an issue of voter confidence that needed to be addressed. Lichtman Rpt. at 111.

f. As described above, (*see, supra*, § VI.I), contrary to the claims of proponents, photo voter ID in 2018 was required only by a minority of states. *Id.* at 114-115.

534. Proponents of S.B. 824 did not address or otherwise rebut Dr. Lichtman's analysis. Nor did S.B. 824 proponents present any witnesses at trial or present other evidence to actually support these purported interests or jurisdictions for the law.

## PROPOSED CONCLUSIONS OF LAW

## VII. PLAINTIFFS HAVE ESTABLISHED STANDING

535. Plaintiffs have standing to bring this lawsuit. Organizational plaintiffs have standing on a representational theory if "(1) [the organization's] members would have standing if they sued individually; (2) the interests the lawsuit seeks to raise 'are germane to the organization's purpose'; and (3) the claims and type of relief asserted in the complaint do not require the individual members' participation in the lawsuit." *Raymond*, 981 F.3d at 301 (4th Cir. 2020) (quoting *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

536. Plaintiffs' members include Black and Hispanic voters in North Carolina who lack the forms of ID required under S.B. 824, and who will therefore effectively be denied the right to vote or otherwise deprived of meaningful access to the political process because of the challenged provisions of S.B. 824. *See* Tr. 275:4-8 (Rivers) (testifying about his mother, an NAACP member, lacking a qualifying ID under S.B. 824). The challenged provisions of S.B. 824 will impose costs and substantial and undue burdens on the right to vote for those and other members.

537. Plaintiff North Carolina State Conference of the NAACP ("NC NAACP") is a nonpartisan, nonprofit organization with branches in 42 counties consisting of 70 adult chapters with over 10,000 members around the state, as well as youth and college chapters.

Tr. 117:2-14 (Maxwell). The mission of the NC NAACP includes political action where members are actively engaged in voter outreach, education and advocacy to ensure that the right to vote is exercised, protected and defended. Tr. 116:21-117:1 (Maxwell); 204:2-7 (Hairston). The NC NAACP is currently led by President Deborah Maxwell who has been a long-time member of the NC NAACP. Tr. 115:24-116:4 (Maxwell). Prior to her role as President of the NC NAACP, Ms. Maxwell served as the President of the New Hanover Branch of the NAACP for ten years, and served as its District Director of the Southeastern Region, which includes six counties in the immediate area surrounding New Hanover County. Tr. 116:7-14 (Maxwell).

538. The NC NAACP has standing to bring this lawsuit. The Fourth Circuit has already observed that Plaintiffs have standing under *Hunt* to assert the claims in this case. *See Raymond*, 981 F.3d at 301 (setting forth the elements for standing and holding that "[t]he Challengers meet those requirements.").

539. The NC NAACP has also been an active opponent of photo voter ID since it was first proposed in North Carolina in 2010. In 2013, the NC NAACP filed suit against and successfully challenged the initial attempt by the NC General Assembly to enact a Photo Voter ID mandate (H.B. 589) in the *McCrory* case. *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016). The NC NAACP also filed a lawsuit in 2018, challenging H.B. 1092, the constitutional amendment requiring photo voter ID that was passed shortly before S.B. 824, its implementing legislation. *N.C. State Conf. of the NAACP v. Moore*, 382 N.C. 129 (2022).

540. Since 2018, the NC NAACP has had to divert energy, financial resources and organizational efforts to challenge this most recent enactment of photo voter ID, to mobilize opposition to its use and to educate its membership and residents of local communities regarding its impacts. The focus of the voter ID requirement has been to undermine the voting powers of Black and Hispanic residents of this state. That diversion of resources and energy has impacted the state office's and local branches' activities. Since the mission of the NC NAACP is to mobilize and empower Black voters, the disparate racial impacts of S.B. 824 thwart the broad organizational mission of the NC NAACP and its Chapters.

541. At trial, Plaintiffs testified to the various impacts S.B. 824 has had, and will continue to have, on NAACP Plaintiffs. Such testimony is sufficient to establish organizational standing. *See Voto Latino v. Hirsch*, --- F. Supp. 3d. ---, No. 23-CV-0862, 2024 WL 230931, at *9-12 (M.D.N.C. Jan. 21, 2024). The impacts of S.B. 824 have been discussed previously. *See, supra*, § IV.

542. Evidence shows that the NAACP Plaintiffs have diverted resources to address the changes in election law imposed by S.B. 824, including diverting resources to educate the community about obtaining the needed photo IDs and how to use the Reasonable Impediment Declaration process (now called the ID Exception Form). For example:

a. Mr. Jabbar testified that:

> we at the NAACP [] put on voter drives, voter registration, Get Out the Vote, Souls to the Polls . . . and getting people built up to understand and trust the system to even register to vote has

> been a major hurdle for us," further stating, "it cost the [] chapter more time, resources to print off to create information for people in our communities. So the voter ID has just added another piece of [] information that we are being accountable for to get that information out to the community.

Tr. 1133:18-1134:13 (Jabbar).

b. Dr. Hairston testified that S.B. 824 has affected how the High Point branch of the NAACP allocates its resources by taking money away from other issue areas. She stated,

> it takes money to have all of the tools and mediums that we've needed to try to get the word out. We could have been spending that money on some of our education programs. It is no [] secret that our young people are in need of direction. Our folks are in need of understanding for housing . . . . They are in need of understanding [] what the economics are of getting employed. We provide all of those kinds of services, and it takes money to provide those services. And when you take money from those kinds of serves and allocate[] it to [] educating for voter ID, it really puts a strain on the organization as far as what we can offer to our community from a collective standpoint.

Tr. 206:9-207:1 (Hairston).

c. Ms. Maxwell testified that the voter ID requirement adds an "additional layer" of education that the NC NAACP must provide to its members, because "if we're going to educate, we also have to make sure that they have that vehicle in order to vote." Tr. 151:10-152:08. She explained, "if I offer the education, but I don't have any access to that machine that can alleviate the problem, which is that ID, we're going to have to spend more time to make sure as we follow through. We are not just going to leave that voter behind." *Id.*

543. Accordingly, as the Fourth Circuit observed in *Raymond*, Plaintiffs have met their burden and have established standing. *See Raymond*, 981 F.3d at 301.

## VIII. S.B. 824 WAS RACIALLY MOTIVATED UNDER THE *ARLINGTON HEIGHTS* FRAMEWORK

544. S.B. 824 is unconstitutional because it was enacted by the North Carolina legislature, including Legislative Defendants, with racially discriminatory intent in violation of the Fourteenth and Fifteenth Amendments. *See Reno v. Bossier Parish School Board*, 520 U.S. 471, 481 (1997).

545. First, in assessing whether a statute was enacted with discriminatory intent, a plaintiff must establish that racial discrimination "was a substantial or motivating factor behind the enactment of the law." *Raymond*, 981 F.3d at 303 (4th Cir. 2020) (quoting *Hunter v. Underwood*, 471 U.S. 222, 228 (1985)) (cleaned up). As set forth in *Raymond*, "determining whether a statute was enacted with discriminatory intent is a factual question involving a two-step process." 981 F.3d at 303.

546. The Supreme Court has outlined the *Arlington Heights* factors for courts to consider in determining whether a plaintiff has met their burden: (1) historical background; (2) the specific sequence of events leading to the law's enactment, including any departures from the normal legislative process; (3) the law's legislative history; and (4) whether the law "bears more heavily on one race than another." *Arlington Heights*, 429 U.S. at 265; *see also Raymond*, 981 F.3d at 302. In assessing whether the plaintiff met its burden, courts must afford the legislature a "presumption of good faith." *Raymond*, 981 F.3d at 303 (quoting *Abbott* v. *Perez*, 585 U.S. 579, 603 (2018)).

547. Of course, *Abbott* did not rewrite the test for discriminatory intent; but rather restates the longstanding requirement that a plaintiff bears the burden of proving discriminatory intent (*see Abbot*, 585 U.S. at 603-04) and that courts should afford legislators a "presumption of regularity." *City of Richmond v. J.A. Croson Co*., 488 U.S. 469, 500 (1989). Plaintiffs must overcome the presumption with a "showing that a legislature acted with an ulterior racial motive." *LULAC v. Abbott*, 601 F. Supp. 3d 147, 181 (W.D. Tex. 2022). *Abbott* did not overrule the holdings from *Arlington Heights* and *McCrory* that past discrimination by the same legislative body is "certainly" relevant to determining its present intent. *Arlington Heights*, 429 U.S. at 265-67; *McCrory*, 831 F.3d at 225. Rather, it acknowledged that past discrimination cannot be "dispositive" in determining whether a legislature acted with discriminatory intent and cannot overcome the presumption by itself. *Raymond*, 981 F. 3d at 303, *U.S. v. Sanchez-Garcia*, 98 F.4th 90, 98 (4th Cir. 2024).

548. In order to prevail on a claim of racially discriminatory purpose, the evidence must demonstrate only that discriminatory purpose was *one* of the motivating factors underlying the enactment. The evidence need not show "that the challenged action rested solely on racially discriminatory purposes" or that the racially discriminatory purpose "was the dominant or primary one." *Arlington Heights*, 429 U.S. at 265 (citation and internal quotation marks omitted).

549. Discriminatory purpose may be proved by direct evidence or circumstantial evidence. *McCrory*, 831 F.3d at 220 (explaining that a facially neutral election law constitutes intentional race discrimination where "circumstantial and direct evidence of

intent" shows that the law had an impermissible purpose). It does not require proof of invidious racial animus. All that is required is a showing of an intent to disadvantage minority citizens. *Garza v. County of Los Angeles*, 918 F.2d 763, 778, n.1 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part); *see also LULAC v. Perry*, 548 U.S. 399, 440 (2006) (noting that taking away political opportunity just as a minority group is about to exercise it "bears the mark of intentional discrimination that could give rise to an equal protection violation").

550. Indeed, "invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." *Washington v. Davis*, 426 U.S. 229, 242 (1976); *see also La Union Del Pueblo Entero v. Ross*, 771 F. App'x 323, 324-25 (4th Cir. 2019) (Wynn, J., concurring) ("To that end, even in the absence of direct evidence of invidious discriminatory intent, this Court and other courts have found such intent when, for example, a governmental decisionmaker was aware that an action was likely to disproportionately impact a minority group, the decisionmaker declined to impose ameliorative measures to minimize the likely disproportionate impact, the decisionmaker's process for deciding to take the action deviated from standard practice, and the decisionmaker provided pretextual reasons for taking the action.").

551. Second, if a plaintiff satisfies their burden of establishing that racial discrimination was a substantial or motivating factor behind the enactment of the law, the burden shifts to the defendant, who must "demonstrate that the law would have been enacted without racial discrimination." *Raymond*, 981 F.3d at 303 (citation omitted).

When assessing whether the defendant has met their burden after the burden shifting, the legislature is no longer afforded a presumption of good faith. *See id.* (citations omitted).

552. Because it is unlikely that proponents motivated by a discriminatory purpose would announce that purpose publicly, public statements by legislative proponents of a challenged law articulating an ostensibly permissible intent should not be accorded any special weight. *Smith v. Town of Clarkton*, 682 F.2d 1055, 1064 (4th Cir. 1982).

553. Evidence regarding a particular decisionmaker's individual intent in seeking to enact a voting change is relevant evidence in a purpose analysis, particularly where that decision-maker played a key role in the enactment of the voting change. *See, e.g.*, *Busbee v. Smith*, 549 F. Supp. 494, 500 (D.D.C. 1982) (three-judge court), *aff'd mem.* 459 U.S. 1166 (1983).

554. Here, even after affording the North Carolina legislature a presumption of good faith, the evidence before the Court all points in the same direction: that the challenged provisions of S.B. 824 were enacted in part for a discriminatory purpose. This evidence includes the racial impact of the changes, the legislators' knowledge of that impact, the partisan motivation to limit the methods of identification used by Blacks and Hispanics, the tenuousness of the alternative rationales offered for the statute, and the legislative process.

555. Regarding the historical background, North Carolina has a long history of disenfranchising African Americans. S.B. 824 is only the most recent example. *See generally* Pls. Trial Brief, ECF No. 270 at 6-7. The Fourth Circuit acknowledged this overwhelmingly negative—and recent—history regarding African American's access to

the franchise in North Carolina in *Raymond*. There, the court found that "North Carolina's historical background favors finding discriminatory intent." *Raymond*, 981 F.3d at 305. Moreover, in *Raymond* the Fourth Circuit quoted its own 2016 decision in *McCrory*, which stated that North Carolina "has a long history of race discrimination generally and race-based vote suppression in particular." *Raymond*, 981 F.3d at 305 (quoting *McCrory*, 831 F.3d at 228). And although not dispositive, *McCrory* was a 2016 decision that invalidated S.B. 824's predecessor in African American disenfranchisement legislation—H.B. 589—after finding in a sweeping opinion that H.B. 589 was enacted in part with a discriminatory purpose. *McCrory*, 811 F.3d at 214 ("Although the new provisions target African Americans with almost surgical precision, they constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist.").

556. The other *Arlington Heights* factors also weigh in favor of a finding of discriminatory intent. At the outset, it is important to note that the record that was before this Court regarding each of these factors is significantly more fulsome than what the Fourth Circuit had before it in *Raymond* (and *a fortiori* this Court on the preliminary injunction record which was reviewed in *Raymond*).

557. Turning first to the sequence of events, and resulting procedural irregularities, looking only at the preliminary pre-trial record, the *Raymond* court held that the evidence "fails to spark suspicion of impropriety in the 2018-Voter ID Law's [S.B. 824] passage." *Raymond*, 981 F.3d at 305. But the trial record has shown that, beneath the surface, the sequence of events leading up to the passage of S.B. 824 was irregular in many respects, including in the process for enacting S.B. 824.

558. The full trial record has shown that the sequence of events, which started even before the passage of the constitutional amendment, does much more than "spark suspicion of impropriety." Rather, the sequence of events, as detailed above, suggests a discriminatory motive by the legislature in enacting S.B. 824. *See, supra*, § II. First, the sequence of events shows that after H.B. 589, the previous voter ID law, was declared unconstitutional and violative of the Equal Protection Clause, key legislative leaders—including Legislative Defendants Moore and Berger, as well as Chairman Lewis—intended to revive discriminatory provisions of H.B. 589 in a piecemeal fashion. *See, supra*, §§ II.A.-B. This includes the enactment of S.B. 325, which reduced the number of early voting sites by 20% and ended last Saturday early voting, (*see, supra*, ¶ 112), and more recently the enactment of S.B. 747, targeting same-day registration (*see, supra*, ¶¶ ¶¶ 7(d), 78, 84); S.B. 824 fits within this pattern.

559. Second, the General Assembly relied on an unconstitutional, racial gerrymander to enact S.B. 824. *See, supra*, §§ II.A., ¶¶ 202-03, ¶¶ 227-29; *see also North Carolina v. Covington*, 585 U.S. 696 (2018) (*per curiam*); *Covington v. North Carolina*, 316 F.R.D. 117, 124 (M.D.N.C 2016), *aff'd*, 581 U.S. 1015 (2017). While, alone, "gerrymandered maps [only] tell [the Court] about the motivations of the mapmakers and the legislators to whom they answered," *i.e.*, significantly including Chairman Lewis, the more complete record, including testimony from legislator-witnesses, makes clear that the General Assembly relied on Chairman Lewis's deception of the courts to forestall special elections and maintain the unconstitutional supermajority necessary to enact both S.B. 824

and H.B. 1092. *Id.* This deception of the nations' courts to maintain power is especially troubling and highly improper.

560. Third, as *Raymond* noted, this Court previously "assumed that the racial data remained in the minds of the legislators: [T]hey need not have had racial data in hand to still have it in mind." *Raymond*, 981 F.3d at 304-05 (internal quotation marks omitted). But the Court need no longer assume: the trial record as borne out that key legislators *not only* had racial data in mind; they in fact had racial data in hand, including the "raw data" on the numbers of registered voters who lacked approved DOT identification, when drafting and debating S.B. 824. *See, supra*, §§ II.B-C.

561. Relatedly, at trial, Defendants asserted that this historical background and sequence of events is irrelevant given the passage of H.B. 1092, the constitutional amendment mandating photo voter identification. *See* Tr. 95:22-24, 99:19-21 (Legislative Defendants, arguing that the relevant "historical background is that the people of this State in 2018 mandated and required that the legislature enact a photo ID law," and that "[t]he General Assembly was compelled by the people of North Carolina to enact a voter ID law, and they would have done so."). But while *Raymond* cautioned that H.B. 1092 served as an "intervening event" between H.B. 589 and S.B. 824, thereby undercutting any "who" argument regarding identical legislators, it did not "suggest[] that the 2013 General Assembly's discriminatory intent in enacting the 2013 Omnibus Law is irrelevant." *Raymond* 981 F.3d at 305. Accordingly, H.B. 589 itself can be considered under the "historical background" factor of the *Arlington Heights* analysis, and statements by legislators about their intent to re-enact it, their deception of the courts to maintain an

unconstitutional supermajority, and the availability and knowledge of racial data during the consideration of both H.B. 1092 and S.B. 824, are all relevant events to be considered.

562. Moreover, there were significant procedural irregularities in the enactment of S.B. 824 and H.B. 1092, as detailed above. *See, supra*, § III. First, evaluating the preliminary injunction record, the *Raymond* court was limited to focusing on a few events. *See Raymond*, 981 F.3d at 304-05. The more complete trial record, however, reveals the irregularity of these events, as well as significant other procedural irregularities not previously present. First, the trial record has revealed that H.B. 1092 *itself* was plagued with numerous irregularities, so that it could not exonerate S.B. 824's irregularities. *See, supra*, § III.A. (detailing the unusual use of a short session to pass H.B. 1092, the "unprecedented" (in the modern era) passage of six constitutional amendments at once, the 22-day unusually rushed timeframe for passing a H.B. 1092, the odd committee route followed by H.B. 1092, the complete lack of implementing legislation for H.B. 1092 that offered the General Assembly a "blank check," the entirely partisan nature of H.B. 1092, and the fact that H.B. 1092 would not have passed without the deception employed by the General Assembly to maintain its unconstitutional gerrymander).

563. But, moreover, the trial record reveals major irregularities in the passage of S.B. 824 on its own. *See, supra*, § III.B. First, instead of adjourning for a specific date as is usual at the end of a short session, the General Assembly was "pause[d]" until an unspecified time in the future—enabling it to quickly come back to order for a lame duck session after having lost its supermajority. *See, supra*, § III.B.1. The immediate rush to enact implementing legislation for S.B. 824, but not for any of the other three amendments

that passed during the November 2018 general election, was also irregular and unexplained by any motivation except make use of the racially-gerrymandered supermajority. *Id.* S.B. 824 was also passed through an unusually rushed process: while there were five days of legislative debate and one session allowing public comment, the trial record shows that the this was an unusually compressed time period, with the bill hopping through multiple committees and readings on single days, and with last-minute changes to the public comment schedule that ultimately resulted in four speakers having only 1 minute each. *See, supra*, § III.B.2. Testimony from legislative witnesses at trial also crystalized what it means for a bill to be bipartisan, and confirmed that S.B. 824 was not "bipartisan." Rather, there was no meaningful input from the minority on the bill and, with regard to the final veto-override votes on S.B. 824, (which Representative Reives explained were the most important votes to assess a legislator's support or opposition of a bill, (Tr. 806:11-23 (Reives)), it received support from just *one* Democrat who was caucusing with his party. *See, supra*, §§ III.B.2. Indeed, this lack of bipartisanship is also evident from the way in which meaningful amendments proposed by the minority were treated—both Representative Morey and Senator McKissick described how the material amendments to S.B. 824 proposed by Democrats were all defeated, tabled, or even denied debate. *See, supra*, ¶¶ 224-25.

564. Finally, and most egregiously, S.B. 824 was so rushed that its second and third readings in the House were collapsed onto a single day. The North Carolina Constitutional requires bills like S.B. 824 to be read three times. N.C. Const. Art. II § 22(1). Multiple witnesses familiar with both the House and Senate Rules of the General

Assembly testified that the third reading is typically required to be on a day subsequent to the third reading. *See, supra*, § III.B.2. (citing Tr. 882:24-883:7 (Morey); 433:23-434:14 (Van Duyn)). And the 2017-2018 ordinary session rules certainly required separate readings, unless two-thirds of the members concurred. *Id.* In this case, even if the House Rules had been changed for the special session to allow the second and third readings to be collapsed onto a single day under certain circumstances,[15] this was still a departure from the normal and ordinary procedures of the General Assembly. *See, supra*, ¶¶ 221-23. "[O]f course, a legislature need not break its own rules to engage in unusual procedures." *McCrory*, 831 F.3d at 228 (4th Cir. 2016). Yet it is worth noting that the General Assembly appears to have done so here; at a minimum, the General Assembly tip-toed up to the line and engaged in highly irregular procedures to pass S.B. 824 in time to override expected the Governor's veto.

565. This irregularity is made all the more serious by the testimony of Representative Harrison, who explained that the Democratic minority "had an agreement" with Chairman Lewis, a key leader behind S.B. 824, "to run some amendments on the third reading." PX1877 (Harrison Testimony) 1040:21-10:41:3. Representative Harrison objected to the third reading being held immediately after the second reading, and her objection was overruled; the third reading was held on December 5, 2018, and the bill was passed, cutting off any further debate on potential amendments. *Id.* As Representative

[15] It is not clear from the record what the basis of Representative Harrison's objection, or under what circumstances a second and third reading could be collapsed, if any. *See, supra*, ¶¶ 222-24.

Harrison made clear, this was not what "normally" would have happened, and was "not the regular course of business of the legislature." PX1877 (Harrison Testimony) 1040:1-1041:13.

566. It is with that backdrop that the sequence of events leading up to the enactment of S.B. 824 is properly assessed. In sum, all of these events and procedural irregularities more than "spark suspicion of the impropriety of in" S.B. 824's passage—all are evidence of the irregular sequence of events leading to S.B. 824's enactment that weigh in favor of a finding of discriminatory intent.

567. The legislative history of the enactment of S.B. 824, is also "highly relevant" to a finding of discriminatory intent and overlaps significantly with the sequence of events leading to enactment factor. *See Arlington Heights*, 429 U.S. at 268. First, the record evidence shows that that the General Assembly—in both the House and the Senate—rejected amendments that would have ameliorated S.B. 824's discriminatory impact. *See, supra*, ¶¶ 223-25. Second, the proponents of S.B. 824 confirmed that the intent of S.B. 824 was to enact H.B. 589's provisions in a way to defeat any legal challenges, not to resolve the discriminatory features and aspects of H.B. 589 as identified by the Fourth Circuit in *McCrory*. *See, supra*, § II.B. And, third, while the preliminary injunction record did not contain direct, contemporaneous statements by the legislators from legislative transcripts, the trial record now shows that numerous legislators during the debate warned of the discriminatory effects the bill would have. *See, supra*, § II.D. The legislative history of S.B. 824 is evidence of its discriminatory intent.

568. Finally, as to the fourth *Arlington Heights* factor, S.B. 824 has had, and will continue to have, a discriminatory impact on Black and Hispanic voters. Courts also look to the impact of a law—"whether it bears more heavily on one race or another"—to assess discriminatory intent. *Arlington Heights*, 429 U.S. at 266. At the time that S.B. 824 was passed in 2018, the General Assembly knew that Black and Hispanics disproportionately lacked the IDs needed to vote under this law, that they would be disproportionately unable to bear the costs of obtaining so-called "free ID" under the law, and that the law's provisional balloting options for those without an ID would not cure these disparate impacts. *See, supra*, § II.A-C.

569. Analysis by both the State Board of Elections and Plaintiffs' experts Drs. Herron, Lichtman, and Barreto, conclusively demonstrate that hundreds of thousands of individuals lack accepted ID under S.B. 824, and that these individuals are predominantly Black and Hispanic. *See, supra*, ¶¶ 250-62. This evidence was presented very clearly by several legislators and community advocates during the debates on S.B. 824. *See, supra*, ¶¶ 172, 177, 182. This data was also presented to the legislature by then-Director of the State Board of Elections Kim Strach, prior to legislative debates on the bill. *See, supra*, at ¶ 169.

570. And in fact, everything that community leaders, legislators and voters were concerned about regarding S.B. 824's discriminatory impact was borne out when it was implemented in 2023. *See, supra*, ¶ 313. At trial, NAACP Representatives Ms. Maxwell, Dr. Hairston, and Mr. Jabbar, community leaders Ms. Santillan, Ms. Dunn, Mr. Bass, and Ms. Caldwell, election official Mr. Patterson, Representative Morey, and individual voters

Mr. Rivers, Mr. Baker and Mr. Fletcher testified about the negative impact that S.B. 824 has had on Black and Latino voters, including how difficult it is for them to become educated about this law, to obtain an ID from the DMV or County Board of Elections, and to navigate the provisional balloting and ID Exception Form process when they show up to the polls without an ID. Tr. 127:23-128:4 (Maxwell); Tr. 181:4-15 (Santillan); Tr. 205:23-206:4 (Hairston); Tr. 892:7-15 (Morey); Tr. 1127:4-13 (Jabbar); Tr. 1151:2-1152:24 (Dunn); Tr. 1057:4-24 (Bass); Tr. 283:01-20 (Rivers); Tr: 568-3-6 (Caldwell); Tr. 1116-20 (Fletcher); Tr. 1020-25 (Baker).

571. Prior to enacting S.B. 824, key legislators knew that making "return with ID" provisional ballots and the reasonable impediment (ID Exception Form) process available would not prevent North Carolinians without identifications from being disenfranchised. *See, supra*, ¶¶ 128, 305. And in fact, it didn't prevent that from occurring in the 2023 or 2024 elections. The same exact problems that Democracy North Carolina identified during the implementation of H.B. 589 in the March 2016 primary and warned the General Assembly of during the S.B. 824 debates, were manifestly evident in 2023 and 2024 elections: voters were treated differently based upon which poll workers and election officials they interacted with, many voters were not offered both provisional voting options, and there was essentially no consistency with how County Boards of Elections analyzed ID Exception Forms and determined whether or not they had grounds to believe the statements on that form were false. As a result, thousands of voters had to navigate additional burdens in their voting process, and hundreds of otherwise eligible voters ultimately had their votes thrown out. *See, supra*, ¶¶ 313-39.

572. Plaintiffs have therefore demonstrated that racial discrimination was "a substantial or motivating factor" behind the passage of S.B. 824, and "the burden must shift 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). This is true even though good faith of the General Assembly is presumed, and although that presumption of good faith is not changed based on a finding of past discrimination. *Abbott*, 585 U.S. at 603. At this stage, the court must "scrutinize the legislature's *actual* non-racial motivations to determine whether they alone can justify the legislature's choices." *McCrory*, 831 F.3d at 221 (emphasis in original).

573. Here, Defendants did not put on any live testimony or other evidence to support their alleged justifications for the passage of S.B. 824. *See, supra*, § V. The mere mention of a concern for "voter fraud" or "election integrity" is not enough for Defendants to succeed in defeating a showing of racially discriminatory intent under *Arlington Heights*. And despite Defendants' reliance on *Crawford v. Marion County* for this point, as *Raymond* noted, the "plaintiffs [in *Crawford*] did not allege that the law had been passed with racially discriminatory intent," and so *Crawford* does not directly answer the discriminatory-intent issue before this Court. *Raymond*, 981 F.3d at 302-03. Indeed, the court in *Crawford* was conducting an *Anderson-Burdick* analysis, not an *Arlington Heights* analysis, and under an *Arlington Heights* analysis, no deference need be awarded to the legislature at this stage: it is not enough to show that "the State has an interest in preventing voter fraud—it does—or whether a photo ID requirement constitutes one way to serve that interest—it may—but whether the legislature would have enacted [the] photo ID

requirement if it had no disproportionate impact on African American voters." *McCrory*, 831 F.3d at 235.

574. Here, as detailed above, Defendants asserted justifications fall flat. *See, supra*, § V. Rather, the evidence shows that S.B. 824 would not have been enacted if it did not have a disproportionate impact on Black and Hispanic voters, as the law is not narrowly tailored to prevent voter impersonation, disallowing IDs predominantly held by minorities for reasons unrelated to fraud, and ultimately disenfranchising hundreds, if not thousands, of voters every election. *See, supra*, §§ I-IV. Considering the *Arlington Heights* framework, Plaintiffs have carried their burden.

## IX. CONCLUSIONS UNDER THE VOTING RIGHTS ACT ANALYSIS

### A. The Challenged Provisions of S.B. 824 Violate Section 2 of the Voting Rights Act

575. Section 2 of the Voting Rights Act ("VRA") prohibits a state from imposing any voting practice that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color[.]" 52 U.S.C. § 10301(a). "Section 2 [of the Voting Rights Act, 52 U.S.C. § 10301(a)] 'prohibits all forms of voting discrimination' that lessen opportunity for minority voters," *League of Women Voters v. North Carolina* ("*LWV*"), 769 F.3d 224, 238 (4th Cir. 2014) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 45 n.10 (1986)), including restrictive voter photo identification laws, *Veasey v. Perry*, 13-cv-193, 2014 WL 5090258 (S.D. Tex. Oct. 9, 2014), *aff'd in relevant part*, 2015 WL 4645642 (5th Cir. Aug. 5, 2015). Section 2 prohibits the implementation of the provisions at issue here—the voter ID requirement, the increased number of poll observers, and the

expanded reasons for challenging a ballot—where the evidence shows that these requirements, separately and together, "result[] in a denial or abridgment of the right . . . to vote" of minority voters.

576. Unlike claims under the Fourteenth and Fifteenth Amendments, plaintiffs are not required to prove discriminatory intent when claiming a violation of Section 2 of the VRA. *Chisom v. Romer*, 501 U.S. 380, 403 (1991). "Congress [has] made it clear that a violation of § 2 c[an] be established by proof of discriminatory results alone." *Id*. at 404; *see also* 52 U.S.C. § 10301(a), (b); *Allen v. Milligan*, 599 U.S. 1, 25 (2023) ("[Section] 2 turns on the presence of discriminatory effects, not discriminatory intent . . . Congress has used the words 'on account of race and color' in the Act to mean 'with respect to race or color' and not to connote any required purpose of racial discrimination").

577. This Circuit has adopted a two-part test to assess discriminatory results claims under Section 2:

> (i) The challenged law "imposes a discriminatory burden on members of a protected class" such that "members of the protected class 'have less opportunity than other members of the electorate to participate in the political process. . .'"; and
>
> (ii) The discriminatory burden is in part "caused by or lined to 'historical conditions' that have or currently produce discrimination against members of the protected class."

*LWV*, 769 F.3d at 240 (citations omitted); *see also Veasey v. Abbott*, 796 F.3d 487, 504 (2015).

578. The second prong of this test does not analyze whether the practice(s) standing alone cause the disproportionate effect, but rather whether the practice "interacts

with social and historical conditions" to produce an "inequality in the opportunities enjoyed by black and white voters." *Gingles*, 478 U.S. at 47; *see also Gonzalez v. Arizona*, 624 F.3d 1162, 1193 (9th Cir. 2010), *aff'd sub nom. Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013). Section 2 requires states to "eradicat[e] inequalities in political opportunities that exist due to the vestigial effects of past purposeful discrimination." *Gingles*, 478 U.S. at 69 (citing S. Rep. at 5, 40; H.R. Report No. 967-227, at 31).

579. Analysis of a vote denial claim under Section 2 requires consideration of "the totality of circumstances." *Brnovich*, 594 U.S. at 674. The Supreme Court in *Brnovich* set forth "certain guideposts" appropriate for assessing whether, based on the "totality of circumstances," a state election law violated Section 2. *Id*. at 2336. These include: (i) "the size of the burden imposed by a challenged voting rule"; (ii) "the degree to which a voting rule departs from what was standard practice when [Section] 2 was amended in 1982"; (iii) "the size of any disparities in a rule's impact on members of different racial or ethnic groups"; (iv) "the opportunities provided by a [s]tate's entire system of voting when assessing the burden imposed by a challenged provision"; and (v) "the strength of the state interests served by a challenged voting rule." *Id*. at 669-72.

580. The Court in *Brnovich* emphasized that these "guideposts" are not an exhaustive list. *Id*. at 2338. In fact, "any circumstance that has a logical bearing on whether voting is 'equally open' and affords equal 'opportunity' may be considered." *Id.*; *see also* ECF No. 234, at 15. Additionally, underlying evidence of racially polarized voting, racially tinged campaign appeals, and the election of minority-group candidates is relevant

in determining whether minority group members suffered discrimination and whether such discrimination persists. *Brnovich*, 594 U.S. at 673; *see also Gingles*, 478 U.S. at 37.

581. The objective factors set forth in the 1982 Senate Judiciary Committee Report (the "Senate Factors") remain relevant to the overall analysis of a neutral time, place and manner voting restriction, including: (i) whether minority groups suffered discrimination in the past; and (ii) whether such discrimination persists. *Id*. at 2340; *see Thornburg v. Gingles*, 478 U.S. 30, 36–37. The Senate Report identified nine "typical factors" that can inform a court's evaluation (the "Senate Report factors") and "shed light on whether the two elements of a Section 2 claim are met." *LWV*, 769 F.3d at 240; *see also Gingles*, 478 U.S. at 36-37. The Senate Report factors include:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction[;]

[8.] whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group[; and]

[9.] whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

*See Gingles,* 478 U.S. at 36-37; Senate Report 28-29. No one factor is dispositive and "there is no requirement that any particular number of factors be proved, or that the majority of them point one way or the other." *LWV*, 769 F.3d at 240 (quoting Senate Report at 29).

582. Section 2, "on its face, is local in nature." *LWV*, 769 F.3d at 243. It requires a court to assess whether the political process "*in the State or political subdivision* are not equally open" to minority citizens. 52 U.S.C. § 10301(b) (emphasis added). Therefore, the Section 2 inquiry "is peculiarly dependent upon the facts of each case and requires an 'intensely local appraisal of the design and impact' of contested electoral mechanisms." *Gingles*, 478 U.S. at 79. The inquiry "benefits from 'the trial court's particular familiarity with the indigenous political reality." *Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194, 219 (4th Cir. 2024).

583. Under Section 2, the question is whether, "based on the totality of the circumstances," the challenged provisions result in minority voters having "less opportunity *than other members of the electorate* to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 1030(b) (emphasis added); *see also*

*LWV*, 769 F.3d at 238; Senate Report at 29. Section 2 prohibits "abridgement" of the right to vote as well as outright "denial," 52 U.S.C. § 10301(a). Therefore, voter turnout cannot be the sole measure of whether a Section 2 violation has occurred because "nothing in Section 2 requires a showing that voters cannot register or vote under any circumstance." *LWV*, 769 F.3d at 243.

### B. The Senate Factors Support a Finding that the Challenged Provisions of S.B. 824 Violate Section 2's Results Test

584. This Court, and the Fourth Circuit, has already found that "there is a long and shameful history of race-based voter suppression in North Carolina" (Senate Factor One) and that "North Carolina's historical background favors finding discriminatory intent." *Raymond*, 981 F.3d at 305, 311 (4th Cir. 2020); *N.C. State Conf. of the NAACP v. Cooper*, 430 F. Supp. 3d at 25 ("No one disputes that North Carolina 'has a long history has a long history of race discrimination generally and race-based vote suppression in particular"). Plaintiffs have provided a voluminous record in support of this factor as well. *See, supra*, § I.

585. The record here demonstrates that "minority group members continue to bear the effects of past discrimination" (Senate Factor 5). The effects of North Carolina's history of past discrimination continue to impact Black and Hispanic voters into the present. Plaintiffs' experts Burden, Leloudis, and Lichtman and fact witnesses presented evidence in their reports and at trial that Black and Hispanic voters in North Carolina are disproportionately low income, have less education, suffer greater incidences of poverty, have less adequate health care, and are treated unequally in the criminal justice system.

These disparities are directly related to unequal impacts in voting and electoral participation. The socioeconomic status of Black and Hispanic voters hinders their ability to participate fully in the political process and obtain acceptable forms of photo identification; and educational attainment and income correlate directly with whether an individual votes. 52 U.S.C. § 10303(a)(2); *see also McCrory I*, 997 F. Supp. 2d at 348, 366 ("Black citizens of North Carolina currently lag behind whites in several key socioeconomic indicators, including education, employment, income, access to transportation, and residential stability" and these "current economic disparities" result in part from "North Carolina's history of official discrimination against blacks").

586. Defendants have acknowledged in other litigation that there is a "pervasive pattern" of racial polarization in North Carolina (Senate Factor Two). *Dickson v. Rucho*, 2013 WL 3376658 at *18 (N.C. Super. Ct. July 8, 2013). In his report for this case, Dr. Barry Burden concludes that, in North Carolina, racial polarization in voting "is easily observed at the statewide level" and "[t]hese large disparities far exceed other demographic comparisons including income, education and sex . . . ." Burden Rpt. at 10. And in his report, Dr. Lichtman concludes that "racial disparities in voting in North Carolina far exceed disparities for other politically salient characteristics of voters, such as sex, age, education and income." Lichtman Rpt. at 52.

587. The report of Dr. Leloudis demonstrates that "political campaigns in North Carolina have been characterized by racial appeals, both overt and subtle" as well as the invocation of racial tropes and racialized fears. Leloudis Rpt. at 3, 16, 52, 56-59, 70-71. (Senate Factor Six). Dr. Leloudis details how these appeals have continued to the present

day, including several instances that targeted both Black and Hispanic voters in the 2018 election, just before the publication of Dr. Leloudis' report in this matter. Leloudis Rpt. at 70-71; *see also, supra*, § VI.C.

588. Due in part to racially polarized elections in North Carolina, elected officials whose success does not depend on the support of minority voters have not been responsive to the concerns of these voters (Senate Factor Eight). Dr. Burden's report details many ways in which elected officials in North Carolina have not been responsive to the "distinctive group interests" of Blacks and Hispanics "that are capable of aid or amelioration by government." *Gingles v. Edmisten*, 590 F. Supp. 345, 355 (E.D.N.C. 1984). This includes efforts in recent years by the legislature to "roll back legal provisions and funding designed to alleviate racial and ethnic disparities..." including the repeal of the Racial Justice Act, cuts to unemployment benefits and reduction in school funding. Burden Rpt. at 20, Leloudis Rpt. at 60–65. The record also demonstrates that elected officials are less responsive to the needs of North Carolina's growing Hispanic population, including a significant gap in the availability of Spanish-language resources related to the voter ID requirement. *See, supra*, § VI.G.

589. Moreover, opportunities for discrimination have increased in North Carolina since the 2013 *Shelby v. Holder* decision eliminating the pre-clearance requirement, which at that time prevented 40 of 100 counties in North Carolina from making "changes to election practices without approval of the U.S. Department of Justice or an appropriate federal court." Burden Rpt. at 11. One result of these enhanced opportunities for discrimination was the passage of H.B. 589 immediately after the *Shelby* decision. Burden

Rpt. at 11–12. Legislative gerrymandering has increased the opportunities for discrimination in this state. Burden Rpt. at 12–13 (the *Covington* decision "marked the third instance in North Carolina in the last decade in which the courts served as the only backstop to prevent racially discriminatory election laws from being in effect").

590. As described in the findings of fact, the primary justifications proponents of S.B. 824 offered for enacting the challenged provisions are highly tenuous, meaning "that proponents' claims about the law's intended effects are dubious and that new requirements are a sharp deviation from prior election practices in the state." Burden Rpt. at 22. The rationales offered for the law are so unpersuasive as to suggest that they are pre-textual and constitute an additional Senate Report factor bolstering the conclusions that the challenged provisions of S.B. 824 violate Section 2. (Senate Rpt. Factor 9).

### C. The *Brnovich* Guideposts Support a Finding that the Challenged Provisions of S.B. 824 Violate Section 2's Results Test

591. S.B. 824 imposes significant and disparate burdens on Black and Hispanic voters in several distinct ways, including the disparity in ID possession by minority voters; the deterrent effect of non-possession of IDs; the failure of the "ameliorative" provisions of SB 824 to resolve the disparate impacts of the ID requirements; and the impact of the actual costs of obtaining a photo ID for Black and Hispanic voters.

592. The disparities in ID possession among Black and Hispanic voters in North Carolina are significant and well documented (*Brnovich* Guidepost One), and numerous lines of evidence were presented at trial to support this conclusion, including:

a. The State Board's 2013 no-match list identified 318,643 registered voters lacking qualifying DOT Identification. According to Dr. Lichtman, these voters were disproportionately Black, being 54% (or 11.9 percentage points) more likely to be African American than white. Lichtman Rpt at 75, Table 18. Moreover, the racial disparities in SBOE's updated November 2014 no-match analysis were even greater, with Black voters 60.9% (or 13.7 percentage points) more likely to be on the 2014 no-match list than white voters. *Id.* at 77, 80, Table 20.

b. As discussed above, Plaintiffs' expert in *McCrory*, Dr. Stewart, concluded that between 397,971 and 822,000 (accounting for voters whose licenses have been surrendered or are inactive) could not be matched to having a qualifying identification in DMV and federal databases). *See, supra*, ¶ 60 (citing Lichtman Rebuttal Rpt. at 5-6 and *McCrory*, 182 F. Supp. 3d at 352-53, 365 (discussing the lower range). He found that, at the low end, Black registered voters were more than twice as likely as white voters to lack an approved DOT photo ID (10.1% versus 4.2%), or at the high end, about three times as likely (25.0% versus 8.4%). *Id.*

c. Professor Michael Herron's analysis of the no-match list developed by the SBOE in 2019, which contained 617,029 unmatched voters, showing that 8.1% of NC voters lack a valid form of DOT issued photo ID, but the white no-match rate is only 6.5% as compared to a Black no-match rate of 10.6%, meaning that Black voters are 1.6 more times as likely as white voters to lack DOT identification that is accepted for voting. Herron Rpt., ¶¶ 9, 28, 43, 49-50, Table 3. Dr. Herron also concluded the non-Hispanic no-match rate was only 5.7%,

compared to a Hispanic no-match rate of 11.1%, a 5.4 percentage point gap, meaning that Hispanic voters were nearly two times (1.94) as likely has non-Hispanic voters to lack DOT identification that could be used for voting. *Id.*, ¶¶ 57-59, Table 5.

d. A survey conducted by Matthew Barreto in 2019 of 1,642 North Carolina eligible voters that concluded that for unexpired identifications issued by the North Carolina DMV where the photo resembled the individual, 9.2% of eligible white voters lacked such an identification, while 16.4% of eligible Black voters (*i.e.,* a 7.2% difference than white eligible voters) and 26.8% of eligible Hispanic voters (*i.e.,* a 17.6% difference than white eligible voters) lacked such identification. Barreto Rpt., ¶ 43, Table 1B. And for people with any form of qualifying identification whose photo resembles the individual, Dr. Barreto's survey found that 6.1% of eligible white voters lacked such an identification, while 12.4% of eligible Black voters (*i.e.,* a 6.3% difference than white eligible voters) and 16.7% of Hispanic voters lacked (*i.e.,* a 10.6% difference than white eligible voters) any valid identification. Barreto Rpt. ¶ 44, Table 1B. Dr. Barreto's survey also found disparities of similar magnitudes among registered voters.

These differences are substantial, material, and much larger than the one at issue in *Brnovich*.

593. Plaintiffs' expert reports and fact witness testimony at trial established that the photo ID requirements of S.B. 824 have disproportionately impacted Black and Hispanic voters through its deterrent effect, in at least two different ways (Brnovich

Guidepost Three). First, voters who lack a valid form of identification, who are disproportionately Black and Hispanic, will leave the polls rather than complete the burdensome steps required to vote without one. Second, the photo ID requirement will keep voters who lack ID or who believe they lack ID from coming to the polls to vote. *See, supra*, §§ IV.D., VI.F. For example, Dr. Lichtman estimated that in the 2016 primary election estimated that over 100,000 voters were deterred from voting due to the photo ID requirement. Lichtman Rpt. at 5.

594. In addition, individuals who lack an accepted ID for voting, who are disproportionately Black or Hispanic, will necessarily be more likely to have to utilize one of S.B. 824's so-called "ameliorative provisions" (obtain a free ID, or cast a provisional ballot) in order to vote. At trial, Plaintiffs clearly demonstrated that the so-called "free IDs" that voters can obtain at either the DMV or their County Board of Elections are anything but free, as they require significant costs that Black and Hispanic voters are less able to pay, due to well-established socioeconomic disparities in this state. *See, supra*, §§ VI.B, VI.F, VI.H.

595. Plaintiffs also presented evidence at trial that, despite the fact that the State Board of Elections' guidance clearly says that every voter without an accepted ID must be presented with both provisional balloting options, many voters were only offered the option to return with their ID to the County Board of Elections (and are not offered the reasonable impediment declaration option, now called the ID Exception Form) – unfortunately, the majority of these voters who cast this type of provisional were ultimately disenfranchised. *See, supra,* ¶ 313.

596. Under S.B. 824, if a voter selects to utilize the ID Exception Form, the County Board of Elections is allegedly required to find that the provisional ballot is valid unless the County Board has grounds to believe the affidavit is false. However, at trial Plaintiffs presented evidence that the County Boards failed to properly and consistently implement the RID process in the 2023 Municipal Election and the 2024 Primary Elections. Numerous County Boards voted to question voters on the veracity of their ID Exception Forms, or to reject a form entirely, based solely on speculation and not on actual falsity. Despite the fact that the Director of the State Board agreed that the actions of these County Boards were contrary to the law, voters were disenfranchised and the State Board does not have any ability to prevent this from happening on a larger scaled in the 2024 General Election. *See, supra,* ¶¶ 306-08, 330.

597. *Brnovich* Guidepost Two also favors finding S.B. 824 in violation of Section 2, since North Carolina (and other states) did not have photo ID requirements in place in 1982. Photographic identification requirements were the law in North Carolina for a single primary election in 2016, before being struck down by the Fourth Circuit. *See McCrory*, 831 F. 3d 204 (4th Cir. 2016). Thus, photo ID requirements for voting were not "standard practice" or in "widespread use" in North Carolina or elsewhere in 1982.

598. The "opportunities provided by [North Carolina's] entire system of voting" also do not reduce the burdens imposed by S.B. 824 (Brnovich Guidepost Four). *Brnovich*, 141 U.S. at 2339. Unlike the Arizona voting practices reviewed in *Brnovich*, there are no alternative methods of voting that somehow escape the burdens imposed by S.B. 824's photo ID requirements. In *Brnovich*, the court found the requirement to vote in the assigned

precinct to be mitigated in part by the fact that individuals could still vote by mail or drop off their early ballots at any polling place or vote early at an early voting location. *Id*. at 2344. By contrast, S.B. 824's photo ID requirements apply to all methods of voting in North Carolina. Thus, the only other provisions of the state voting system that might alleviate the impacts of S.B. 824 are the measures included in S.B. 824: the reasonable impediment declaration process and the provision of cost-free IDs. As described above, the evidence at trial showed that these provisions fail to accomplish this.

599. Finally, the state interest in photo identification for voting is demonstrably weak and pretextual (Brnovich Guidepost Five). Defendants have asserted that the state interest in S.B. 824 is to prevent voter fraud or to enhance public confidence in the election system. However, as set forth in detail above, (*see, supra*, §§ V.B-C), Plaintiffs witnesses provided extensive evidence that the kind of in-person voter fraud that could be addressed by photo identification is exceedingly rare in North Carolina; that the legislature was fully aware of the very low incidence of in-person voter fraud when it enacted SB 824; that enactment of photo ID laws makes no appreciable difference in enhancing voter integrity in state election systems; that voters in states with photo ID laws show no greater public confidence in elections than in states without; and voters in states that enact photo ID laws show no appreciable increase in voter confidence once these laws are enacted. While prevention of voter fraud and instilling voter confidence can be a valid state interest, (*see Brnovich*, 594 U.S. at 672), the mere recitation of the words "voter fraud" or "election integrity" are not sufficient to automatically overcome a Section 2 analysis. *See id*. Furthermore, a finding of a state interest must always be weighed against the other factors,

as all Section 2 inquiries require consideration of "the totality of the circumstances." *Brnovich*, 594 U.S. at 673-74.

600. Rules that "are supported by strong state interests are less likely to violate Section 2." *Brnovich*, 141 S. Ct at 2340. While prevention of voter fraud and instilling voter confidence can be a valid state interest, (*see Brnovich*, 141 S. Ct at 2340), the mere recitation of the words "voter fraud" or "election integrity" are not sufficient to automatically overcome a Section 2 analysis. Rather, Defendants must demonstrate that the bills' proponents "were sincere in their belief that" the law they were passing would reduce voter fraud, and that this was "a necessary prophylactic measure." *Id.* at 2335. That is not the case here, as Legislative Defendants' concern about voter fraud was demonstrably weak and pretextual, and the actual motivations of those who passed S.B. 824 was to further entrench themselves in power. Furthermore, a finding of a valid state interest must always be weighed against the other factors, as Section 2 inquiries require consideration of the "totality of the circumstances." *Id.* at 2341.

601. Defendants also assert that S.B. 824 was enacted to implement the Constitutional amendment requiring photo voter ID. But the record at trial demonstrated that the enactment of the Constitutional Amendment was a component of the overall effort to enact S.B. 824, and that many leading sponsors of S.B. 824 were explicit in their desire to use the Constitutional Amendment to deflect further legal challenges to a photo ID law. This is a meager state interest indeed. *See, supra*, § V.A.

### D. The Right to Challenge and Poll Observer Provisions

602. Section 3.1(c) of S.B. 824 expands the grounds for "ballot challenges" to include lack of proper photo ID. North Carolina law permits "any . . . registered voter of the county" to challenge another voter's registration and eligibility in certain circumstances. *See* N.C. Gen. Stat. § 163-87 (hereinafter the "Right to Challenge Provision"). S.B. 824 invites *any voter* of the county to "enter the voting enclosure" and proclaim that another voter "[did] not present photo identification in accordance with [S.B. 824]."

603. Section 3.3(a) of SB 824 allows the Chair of each political party to appoint an additional 100 at-large poll observers who can be present in polling locations to challenge the rights of any voters who enter the precinct. N.C. Gen. Stat. 163-45.1(b)(3) (hereinafter the "Poll Observer Provision").

604. These provisions which provide for the expansion of at-large poll observers and the ability to challenge voters will cause a "chilling effect" and disproportionately burden voters of color, as a result of North Carolina's history of discrimination, the cumulative impact of the provisions of S.B. 824 and the most recent evidence of racial targeting and intimidation of Blacks and Hispanics. Indeed, the Fourth Circuit has indicated its skepticism that no challengers or poll observers will abuse their statutory power in the future. *LWV*, 769 F.3d at 237. At trial, a voter from Guilford County, Ms. Burney, described the manner in which she was racially intimidated by a poll observer; and was ultimately so upset by the interaction that she did not vote for years and only willing

to vote again if she didn't have to return to the site where the incident occurred. Tr. 295–305 (Burney); *see also, supra*, ¶¶ 370-74.

605. The type of voter intimidation that Ms. Burney was subjected to is well documented throughout North Carolina's history. Dr. Leloudis explained that in 1898, "local White Government Unions and encouraged the party faithful to don the paramilitary uniform known as the 'red shirt,' a symbol of the blood sacrifice of the Confederacy and the late-19th-century equivalent of the hooded robes worn by Klansmen in an earlier era. Democrats engaged in open intimidation of voters at registration and polling places across the state." Leloudis Rpt. at 16.

606. Dreama Caldwell, another register voter in Guilford, described growing up in Alamance County and witnessing the KKK post outside of polling locations there. Tr: 568:3-6 (Caldwell). She also described how the racial tension in Alamance County was so bad in 2020 that she moved away. *Id.* at 577:14-24 (Caldwell).

607. These two Black women came forth and testified about being intimidated by white people at the voting polls in North Carolina; both women modified their behavior because of this intimidation. *See, supra*, ¶¶ 605-06. The evidence produced at trial demonstrates that authorizing expanded challenges and additional statewide poll observers, cumulatively with the photo identification requirement of S.B. 824, will have the propensity to intimidate Black and Brown voters at the polls. *See, supra*, § IV.G.

608. The Right to Challenge and Poll Observer Provisions violates Section 2 of the Voting Rights Act because they will have disparate impact on African American and Latino citizens of North Carolina. Actual experience in recent elections shows that poll

watchers engage in intimidating and threatening behavior, which is disparately impacting Black and Hispanic voters. Plaintiffs presented evidence at trial demonstrating, cumulatively with the photo ID requirements of SB 824, the Right to Challenge and Poll Observer Provisions have had and will continue to have a disparate impact on Black and Latino voters, in violation of Section 2 of the Voting Rights Act. *See* Tr 303:1-3 (Burney); Tr: 1064:10-13 (Bass); Tr: 568-3-6 (Caldwell); *see also, supra*, § IV.G.

609. In sum, the totality of the circumstances demonstrates that the challenged provisions of S.B. 824 result in Blacks and Hispanics having an unequal opportunity to participate in the political process, and thus denies and abridges the right to vote on account of race, color, or membership in a language minority group in violation of Section 2.

## X. REMEDIES AND BAIL-IN

### A. The Court Should Order A Permanent Injunction and Retention of Jurisdiction under Section (c)(3) of the Voting Rights Act

610. "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." *McCrory*, 831 F.3d at 239 (alterations in original) (quoting *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) (purposeful "racial discrimination [must] be eliminated root and branch").

611. 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.

612. Invalidation is also a proper remedy for violations of the discriminatory results prong of Section 2 of the Voting Rights Act.

613. Therefore, having found SB 824 in violation of the prohibitions on intentional discrimination in the Constitution and the Voting Rights Act and in violation of the prohibition of discriminatory results under Section 2 of the Voting Rights Act, this Court should therefore enter judgment in favor of Plaintiffs by (a) declaring that S.B. 824 violates the Fourteenth and Fifteenth Amendments to the U.S. Constitution and Section 2 of the Voting Rights Act and (b) permanently enjoining the Defendants from enforcing or implementing S.B. 824 in full.

614. In addition to this relief, the Court also retains jurisdiction and adopts a preclearance relief pursuant to Section 3(c) of the Voting Rights Act, 52 U.S.C. § 10302(c). That language provides, in relevant part:

> (c) If in any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging

> the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 10303(f)(2) of this title[.]

52 U.S.C. § 10302(c). In short, Section 3(c) "empowers a court, in a proper case, to impose a preclearance remedy on states," known as "bail-in" relief. *Perez v. Abbott*, 390 F. Supp. 3d 803, 807-08 (W.D. Tex. 2019) (citing *Jeffers v. Clinton*, 740 F. Supp. 585, 587 (E.D. Ark. 1990), *aff'd*, 498 U.S. 1019 (1991) (mem.)).

615. "Section 3's provisions have long applied equally to all states and localities, and have been imposed in numerous cases." *Allen v. City of Evergreen*, No. 13-CV-0107, 2014 WL 12607819, at *1-2 (S.D. Ala. Jan. 13, 2014) (collecting cases and ordering bail-in relief).[16]

[16] Since the adoption of the Voting Rights Act in 1965, courts in at least 19 different cases have ordered relief under Section 3(c), requiring jurisdictions to obtain preclearance of some or all proposed voting changes. *See Jeffers*, 740 F. Supp. at 601-02 (three-judge court) (State of Arkansas); *Evergreen*, 2014 WL 12607819, at *1-2; *United States v. Vill. of Port Chester*, No. 06-CV-15173, ECF No. 119 (S.D.N.Y. Dec. 22, 2009); *Blackmoon v. Charles Mix Cnty.*, No. 05-CV-4017, ECF No. 144 (D.S.D. Dec. 4, 2007); *Kirkie v. Buffalo Cnty.*, No. 03-CV-3011, ECF No. 23 (D.S.D. Feb. 10, 2004); *United States v. Bernalillo Cnty.*, No. 98-CV-156, ECF Nos. 4-6 (D.N.M. Apr. 22, 1998); *Cuthair v. Moteczuma-Cortez Sch. Dist. No. RE-1*, No. 89-CV-964, ECF No. 135 (D. Col. Oct. 5, 1998); *United States v. Alameda Cnty.*, No. 95-CV-1266, ECF No. 13 (N.D. Cal. Jan. 27, 1996); *United States v. Cibola Cnty.*, No. 93-CV-1134, ECF No. 72 (D.N.M. Apr. 21, 1994); *United States v. Socorro Cnty.*, No. 93-CV-1244, ECF Nos. 44, 46 (D.N.M. Apr. 11, 1994); *Garza v. Cnty. of Los Angeles*, No. 88-CV-5143 (C.D. Cal. Apr. 25, 1991); *Brown v. Bd. of Comm'rs of Chattanooga*, No. 87-CV-388 (E.D. Tenn. Jan. 18, 1990) (City of Chattanooga); *United States v. Sandoval Cnty.*, No. 88-CV-1457, ECF Nos. 125, 160 (D.N.M. May 17, 1990); *United States v. McKinley Cnty.*, No. 86-CV-0028 (D.N.M. Jan. 13, 1986); *NAACP v. Gadsden Cnty. Sch. Bd.*, 589 F. Supp. 953 (N.D. Fla. Mar. 6, 1984); *Sanchez v. Anaya*, No. 82-CV-0067M (D.N.M. Dec. 17, 1984) (State of New Mexico); *Woodring v. Clarke*, No. No. 80-CV-4569 (S.D. Ill. Oct. 31, 1983) (Alexander County); *McMillan v. Escambia Cnty.*, No. 77-CV-0432 (N.D. Fla. Dec. 3, 1979), *aff'd* 688 F.2d 960 (5th Cir. 1982) (vacated on other grounds), *remedial plan modified,* 559 F. Supp. 720 (N.D. Fla. 1983); *United States v. Thurston Cnty.*, No. 78-0-380 (D. Neb. May 9, 1979).

616. Where a violation of the Fourteenth or Fifteenth Amendments justifies equitable relief within the State or its political subdivisions, "traditional principles of equitable discretion" guide whether courts should impose bail-in relief, "as conditioned by the necessities of the public interest which Congress has sought to protect." *Jeffers*, 740 F. Supp. at 600-01 (citing *Hecht Co. v. Bowles*, 321 U.S. 321, 329-30 (1944)).

617. Several non-exhaustive factors are relevant in making this determination: "[1] Have the violations been persistent and repeated? [2] Are they recent or distant in time? [3] Are they the kinds of violations that would likely be prevented, in the future, by preclearance? [4] Have they already been remedied by judicial decree or otherwise? [5] How likely are they to recur? [6] Do political developments, independent of this litigation, make recurrence more or less likely?" *Perez*, 390 F. Supp. 3d at 818 (quoting *Jeffers*, 740 F. Supp. at 601).

618. While courts must consider the defendants' countervailing interests alongside "the interest of the plaintiffs in vindication of their constitutional right to vote," "the rights of the plaintiffs must prevail" when "prospective relief in the form of preclearance is indicated by the other factors in the case." *Jeffers*, 740 F. Supp. at 601.

619. As thoroughly documented in the record of this case and by multiple federal and North Carolina courts, the State of North Carolina and its General Assembly have a longstanding pattern of intentionally imposing burdens on Black and Hispanic voters, both historically and continuing into the present. *See, supra*, §§ I.A-B. These violations have been persistent and repeated.

620. Moreover, as to the likelihood of recurrence, these patterns are likely to recur. This is true as to the restrictions at issue in this litigation, as members of the majority indicated even post-*McCrory* their intent to attempt to re-enact the restrictions of H.B. 589. *See, supra*, § II.A-B. And it is true as to other unconstitutional voting restrictions, as these patterns have already begun to recur—as shown by the General Assembly's enactment of S.B. 747 just last year. *See, supra*, ¶¶ 7(d), 78, 84; *infra,* ¶ 626.

621. Furthermore, independent political developments make these patterns even more likely to recur, because the majority in the General Assembly has a veto-proof supermajority and, because of well-established racial polarization patterns in voting, the majority party tends to benefit from imposing burdens on Black and Hispanic voters. The current supermajority is also likely to persist, given the "egregious and intentional partisan gerrymander[ed maps], designed to enhance Republican performance," currently in force in North Carolina. *Harper v. Hall*, 384 N.C. 292, 382-83 n. 2 (2023) (dissent) (after initially vacating the maps in 2022, on rehearing, the North Carolina Supreme Court held "claims of partisan gerrymandering [to be] nonjusticiable, political questions under the North Carolina Constitution," *id.* at 326, but did not reverse the factual findings of the trial court regarding the gerrymander). Preclearance may be the only mechanism to prevent the State of North Carolina from engaging in further efforts to impair the voting rights of Black and Hispanic voters.

622. And, these violations are persistent and recent in time. After gaining a majority of the seats in each chamber of the North Carolina General Assembly in 2010, the Republican legislative majority launched more than a decade of *blatant, intentional* racial

discrimination designed to entrench its own power by disadvantaging and discouraging voters of color.

623. First, in the 2011 redistricting, the General Assembly intentionally packed African American voters into a small number of districts to prevent their influence in other districts. These extreme racial gerrymanders applied to the State legislature's House and Senate districts, as well as the State's U.S. House of Representative districts. The state legislative redistricting plan was later found by a three-judge federal court to be one of the "largest racial gerrymanders ever encountered by a federal court." *Covington v. North Carolina*, 270 F. Supp. 3d 881, 884 (M.D.N.C. 2017). The court found that this gerrymander "impact[ed] nearly 70 [percent] of the House and Senate districts, touch[ed] over 75 [percent] of the state's counties, and encompass[ed] 83 [percent] of the State's population—nearly 8 million people." *Id.* at 892; *see also Covington v. North Carolina* ("*Covington II*"), 316 F.R.D. 117, 128, 176 (M.D.N.C. 2016); *Covington v. North Carolina* ("*Covington III*"), 283 F. Supp. 3d 410, 419–20 (M.D.N.C. 2018), *aff'd in part, rev'd in part*, 585 U.S. 969 (2018). Almost two-thirds of all House and Senate districts had to be redrawn to create remedial maps. The fact that the legislative leaders claimed that they could not construct a remedy plan in time for 2017 special elections, when in fact it later was revealed in a state court proceeding that such a remedy plan was already virtually complete, demonstrates a lack of good faith that can also be considered in weighing the likelihood that further constitutional violations will result if Section 3(c) is not invoked.

624. Second, the General Assembly similarly engaged in intentional racial discrimination in constructing the 2011 Congressional redistricting plan. In 2017, the U.S.

Supreme Court upheld a three-judge federal court decision finding that the General Assembly violated the Fourteenth Amendment when it used race as the predominant factor in designing the State's Congressional redistricting plan. *See generally Cooper v. Harris*, 581 U.S. 285 (2017).

625. Third, in 2013, the General Assembly enacted an omnibus election bill, H. B. 589, that included elimination of, or changes to, six different parts of the voting process, all designed to suppress minority voting. The Fourth Circuit in *McCrory* found that these changes in voting procedures constituted intentional racial discrimination that violated the Fourteenth Amendment and "target[ed] African Americans with almost surgical precision." 831 F.3d at 214.

626. Fourth, last year the legislature passed S.B. 747, which made a number of changes to the State's voting process, including eliminating the 3-day grace period and altering the same-day registration process. In January of this year, in *Voto Latino v. Hirsch,* portions of S.B. 747 were preliminarily enjoined. --- F. Supp. 3d. ---, No. 23-CV-0862, 2024 WL 230931 (M.D.N.C. Jan. 21, 2024). In entering the preliminary injunction, the court found that plaintiffs were "likely to show that the undeliverable mail provision of S.[B.] 747 imposes a substantial burden on [Same Day Registrant] voters," in violation of the fourteenth amendment. *Id.* at *21.

627. Fifth, in April of this year in *A. Phillip Randolph Institute v. North Carolina State Board of Elections*, this Court found that North Carolina's felony disenfranchisement law, passed in the last Century but modified by Senate Bill 747, was enacted with and continues to be motivated by intentional racial discrimination in violation of the fourteenth

amendment. *N.C. A. Philip Randolph Inst. v. N.C. State Bd. of Elections*, --- F. Supp. 3d. ---, No. 20-CV-876, 2024 WL 1719366 (M.D.N.C. Apr. 22, 2024). In particular, the 2023 enactment of S.B. 747 "amended the Challenged Statute to include a scienter requirement, resulting in the current version of the statute," (*id.* at *2), yet this Court still found that "the Challenged Statute was enacted with discriminatory intent, has not been cleansed of its discriminatory taint, and continues to disproportionately impact Black voters," (*id.* at *8).

628. This case represents the sixth federal court finding of intentional racial discrimination against minority voters by the General Assembly since 2010.

629. Each of these cases by itself is a major, serious deprivation of constitutional rights affecting millions of voters statewide. Combined, the damage inflicted on North Carolina voters is breathtaking.

630. These recent instances of intentional statewide racial discrimination make clear that the supermajority in the State's General Assembly is committed to suppressing voting by African American and Hispanic citizens in order to retain its political power.

631. The behavior of the North Carolina General Assembly since 2011 is exactly the type of whack-a-mole that Section 3(c) is designed to prevent. Its actions with regard to voting rights over the past decade leave no doubt that the General Assembly will not on its own comply with the Constitution, but instead will intentionally and aggressively continue to seek ways to circumvent the prohibition of intentional racial discrimination against Black and Hispanic voters. The Court finds that each of the factors identified by the *Jeffers* court as relevant to the exercise of equitable discretion leans strongly in favor of bail in.

632. For these reasons, the Court therefore retains jurisdiction for a period of ten years under 52 U.S.C. § 10302(c), and orders that any enactment by the North Carolina General Assembly affecting a voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting shall not be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in 52 U.S.C. section 10303(f)(2).

633. Pursuant to Section 3(c), the State must submit to this Court voting changes adopted or implemented by Defendants for preclearance for a 10-year period.

July 1, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date I electronically filed the foregoing PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW with the Clerk of Court using the CM/ECF system which will send notification of such to all counsel of record in this matter.

This, the 1st day of July, 2024,

*/s/ Preston Smith*
Preston Smith

## CERTIFICATE OF WORD COUNT

The undersigned counsel hereby certifies that pursuant to Local Rules 7.3(d) and this Court's prior permission, the foregoing has a word count of 83,800 words not including the caption, signature block and certifications. *See* Tr. 1110:23-1111:3 (The Court) ("All I need is proposed findings of fact and conclusions of law. Are we all on the same page? I am not putting restrictions on the number. I'm going to allow you to do what you feel like you need to do to propose to the Court what you believe the Court should consider.").

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Dated this 1st day of July, 2024,

*/s/ Preston Smith*
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