EXHIBIT 2

EXHIBIT C

Plaintiffs' Exhibit

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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

No. 1:18-cv-01034

v.

ROY ASBERRY COOPER III, in his official capacity as the Governor of North Carolina, *et al.*,
Defendants.

EXPERT REBUTTAL REPORT OF ALLAN J. LICHTMAN FOR PURPOSES OF PRELIMINARY INJUNCTION

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I. Purpose

This report responds to certain assertions in the briefs submitted by defendants and amici in opposition to plaintiffs' motion for preliminary injunction, and also to the Response Reports of defendants' expert Dr. Janet R. Thornton, and to certain assertions in the Expert Reports of defendants' experts James G. Gimpel, Keegan Callanan and Ken Block.[1]

II. Overview

- Neither the Thornton Report nor the briefs submitted by defendants and amici contain a single statistic demonstrating a lack of racial disparity between black and white voters in the possession of authorized voter photo IDs, or in the effects of voter ID requirements on the opportunities for African Americans to participate in North Carolina elections.

- The Thornton Report fails to address the great majority of the intent analysis in my September 16, 2019 Preliminary Expert Report, which dealt with the *Arlington Heights* framework for proving intent. The only *Arlington Heights* factor addressed by the report is the discriminatory effect of a voter photo ID law. Most of the effect analysis in the Thornton Report deals with the North Carolina State Board of Elections 2019 matching of Department of Motor Vehicles (DMV) records and the Board's records of registered voters. This matching was not available at the time of the adoption of Senate Bill 824 ("SB 824") in 2018 and could not have figured into legislative intent.

- Neither the Thornton Report nor the briefs submitted by defendants and amici effectively challenge the findings of the state's own audits and of the Fourth Circuit that voter impersonation is a non-problem in North Carolina.

- The Thornton Report misstates the purpose of my effect analysis, incorrectly claiming that I "assumed that all 617K [from the 2019 matching] lack an approved voter ID." In fact, I made no such assumption. My analysis covered both racial disparities in DMV ID possession and racial disparities across the full range of photo IDs authorized under SB 824. My aim in these analyses was not to specify a particular number of registered voters in North Carolina lacking authorized photo ID.

- The Thornton Report presumes that the list of 617K unmatched voters in the 2019

[1] Response Report of Janet R. Thornton, *North Carolina Conference of the NAACP v. Cooper*, United States District Court, Middle District of North Carolina, October 30, 2019; Defendants' Response in Opposition to Plaintiffs' Motion for Preliminary Injunction, *North Carolina Conference of the NAACP v. Cooper*, United States District Court, Middle District of North Carolina, October 30, 2019; Amicus Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction, *North Carolina Conference of the NAACP v. Cooper*, United States District Court, Middle District of North Carolina, October 30, 2019; Expert Report of James G. Gimpel, *North Carolina Conference of the NAACP v. Cooper*, United States District Court, Middle District of North Carolina, October 30, 2019; Expert Report of Keegan Callenan, *North Carolina Conference of the NAACP v. Cooper*, United States District Court, Middle District of North Carolina, October 30, 2019.

matching is over inclusive of those lacking authorized DMV IDs. In fact, the list is likely under inclusive because it matches registered voters to learner's permits and provisional licenses that are not currently authorized for voting.

- The Thornton Report erroneously attempts to reduce the 617,029 registered voters on the State Board of Election's 2019 no-match list to a much smaller number.

- The Thornton Report mis-analyzes the no-ID provisional ballots cast in the March 2016 presidential primaries, the only statewide election which required the presentation of photo identification.

- The Thornton Report lacks numerical calculations for most of its findings and fails to provide back-up data. It also cites to non-public sources.[2]

- Both the Thornton Report and the briefs submitted by defendants and amici incorrectly presume that the only effect of photo ID on participation in elections comes from the casting of no-ID provisional ballots in the March 2016 primaries. They ignore the effects of those who left the polls rather than undergo the provisional ballot process and, most significantly, the large effect of deterring registered voter from voting in elections. A comparison of the results of the March 2016 primaries to other recent elections demonstrates that over 100,000 voters were deterred from participating in 2016 due to the independent impact of the photo ID requirement.

- The briefs submitted by defendants and amici misrepresent my findings and testimony on the exclusion of public assistance IDs from SB 824.

- The report of Keegan Callanan fails to establish its contentions about comparisons between SB 824 and identification laws in other states or about the procedures followed by the General Assembly in proposing the constitutional amendment and adopting SB 824. The photo-voter ID was passed by the General Assembly in less than one month, setting it apart from every other constitutional amendment proposed from 1985 to prior to the 2018 session.

- The report of James Gimpel fails to establish any of its central claims about popular support for voter photo ID across party and racial lines, or about the relationship between voter photo ID laws and voter confidence.

III. The Thornton Report Fails to Respond to My Intent Analysis

In my initial report I examined the many indicia of discriminatory intent following the *Arlington Heights* framework, which is consistent with standard methodology in my field of history. The Thornton Report attempts only to address the last indicia on discriminatory effect. However, she focuses primarily on the state's 2019 matching of voter registration records and

[2] I reserve the right to supplement this report in light of additional information and discovery.

DMV records: “Counsel for the Legislative Defendants in the above captioned matter asked BRG to review the reports of Plaintiffs’ Experts, Dr. Lichtman and Dr. Herron,[3] to determine if their assessments of the 617,029 (hereafter “617K”) registered voters identified by the North Carolina State Board of Elections (hereafter “NCSBE”) as potentially without an acceptable ID are accurate in light of the acceptable forms of ID allowed by Senate Bill 824 as amended (hereafter “SB 824”).” (p. 4) However, this 2019 analysis was obviously not available to the General Assembly at the time of the adoption of the Amendment and SB 824 in 2018.

Remarkably, the Thornton Report does not challenge the findings of substantial racial disparities between blacks and whites in ID possession from the state’s 2013 and 2014 matching of registration records with DMV IDs; which, unlike the 2019 matching analysis, were available to the General Assembly when it enacted SB 824 in 2018.[4]

IV. The Thornton Report Misrepresents My Analysis of the 2019 No-Match List

The Thornton Report fails to understand that my purpose in examining the 2019 no-match list was not to specify any given number of registered voters without acceptable IDs, but to explore the racial composition of the list to ascertain whether African American voters were overrepresented, and white voters underrepresented, among unmatched registered voters on DMV records. Specifically, I cited the preliminary report of Dr. Herron for these findings. (p. 21) Notably, the Thornton Report does not challenge Dr. Herron’s findings of racial disparities or present any alternative racial breakdown of the 2019 no-match list.

The Thornton Report also incorrectly claims that I assumed “that none of the 617K have an approved voter ID, the error made by Drs. Lichtman and Herron, and illustrates the difficulty of identifying those who truly do not have an approved ID.” (p. 16). I made no such assumption. I recognized the importance of documenting racial disparities in DMV IDs because these are the most commonly available photo IDs under SB 824. But I also recognized that there are other approved photo IDs in addition to DMV IDs, which is why I examined the data reported by the Survey of the Performance of American Elections (SPAE), which queries registered voters in North Carolina about all the authorized IDs under SB 824. I discuss the SPAE survey below.

A third error made by the Thornton Report with respect to the 2019 matching is to assume that the unmatched list of registered voters was overinclusive of those lacking authorized DMV IDs. In fact, there is reason to believe that the no-match list *was underinclusive* of those lacking authorized IDs. The state matched registered voters to learner’s permits and provisional licenses that are not included among authorized IDs under current law.

[3] Preliminary Expert Report of Allan J. Lichtman for Purposes of Preliminary Injunction, dated September 16, 2019 and Preliminary Expert Report of Michael C. Herron for Purposes of Preliminary Injunction, dated September 16, 2019. See also, Deposition of Allan J. Lichtman, *North Carolina Conference of the NAACP v. Cooper*, United States District Court, Middle District of North Carolina, October 16, 2019.

[4] For an analysis of racial disparities disclosed in both the 2013 and 2014 state matching exercises see my September 16, 2019 Preliminary Report, pp. 73-80.

V. The Thornton Report Incorrectly Attempts to Reduce the Numbers on the 2019 No-Match List

Although my report focused on racial disparities in photo ID possession, not the absolute number of registered voters lacking authorized IDs, the Thornton Report does not at any point challenge the racial disparities among voters not possessing DMV IDs. Rather, Thornton attempts to reduce the 617,029 registered voters on the 2019 no-match list to a smaller number by reference to the findings of the report submitted by Dr. Charles Stewart in the *McCrory* litigation and a prior DMV matching exercise by the North Carolina State Board of Elections, both using 2014 data. Dr. Stewart conducted a more extensive matching analysis than the state in either 2014 or 2019. He matched registered voters not only on DMV IDs, but also on US passports, military IDs, and veterans IDs.[5] Thornton's analysis, however, is fatally flawed for several independent reasons.[6]

The Thornton Report goes through a convoluted, logic-defying process in its attempt to cut down the 617,029 registered voters on the 2019 no-match list to a lower number. It first notes that the North Carolina State Board of Elections "identified 218,733 [registered voters lacking DMV IDs] after list maintenance removals occurred and Dr. Stewart identified an additional 209,922 registered voters." (p. 18).[7] The Thornton Report includes no files or backup data for these claims or any specific citations to the Stewart Report or to a State Board of Elections Report. Still, the Report claims that, "between the NCSBE and Dr. Stewart's lists, a total of 428,631 registered voters were identified as potentially lacking ID." (218,733+209,922) The Thornton Report then states that "Among these previously identified individuals, there are 117K who are also among the 617K, and that "this group would have either been sent a mailing (i.e., the 117K) or would have been part of the matching that Dr. Stewart and NCSBE conducted and were found to have a voter ID under HB 589, the bill with the more restrictive forms of acceptable identification." She finally claims that as a result of this exercise, "Among the 617K, there remain 158,245 registered voters (hereafter "158K") who were not previously sent a mailing and were not vetted against the three external sources." (pp. 18-20)

First, the Thornton Report misstates the findings of the Stewart Report from the *McCrory* litigation. After matching registered voters to the four categories of IDs listed above, Dr. Stewart found that the number of registered voters based on 2014 data without photo IDs ranged from 397,971 to over 822,000. According to the Stewart Report on page 63:

> "In this section I have examined the effects of the identification provisions of HB 589.Under the most conservative assumptions, 397,971 North Carolinians — 6.1% of registered voters — are on the no-match list. African Americans are more than

[5] As an expert for the US Department of Justice Dr. Stewart had unique access to these federal records.

[6] Declaration of Charles Stewart III, Ph.D. (Amended), February 18, 2015, filed in the matter *United States of America v. The State of North Carolina, et al.*, No. 1:13-CV-861 (US. District Court, Middle District of North Carolina).

[7] The Thornton Report's provides no citation for how the 209,000 additional unmatched voters attributable to Dr. Stewart was derived. As indicated below, it certainly could not have come from his less conservative analysis that identified over 822,000 unmatched registered voters. Her backup data listed at the end of the report includes nothing more than a list of some 209,000 with registration numbers and county residents, nothing more: 209K_List.xlsx (Holmes_SBOE_POD_003997), Materials, p. 1 of the Thornton Report.

> twice as likely to lack the requisite photo ID to vote as are whites (10.1% *vs.* 4.2%). Under alternative assumptions that take into account driver's licenses that have been surrendered or are inactive, the estimate rises to over 822,000 registered voters, including 25.0% of black and 8.4% of white voters."

The Thornton Report never questions the findings of Dr. Stewart that under either set of estimates, there are substantial racial disparities between blacks and whites when considering DMV IDs as well as US passports and military and veterans' IDs.

Second, the Thornton report claims that 117,000 registered voters "who are also among the 617K," should be eliminated because they were found to possess valid IDs. However, these registered voters could not have been eliminated as possessing IDs by the Stewart analysis or the State Board's analysis, which reported only unmatched registrants. Therefore, they could have come only from the mailing to unmatched registered voters to which the Thornton Report refers. The state did send verification mailings to hundreds of thousands of registered voters. However, the Thornton Report only refers vaguely to the mailing and provides no data on how many registered voters returned the mailing and indicated that they possessed valid photo IDs.

In fact, data reported to the General Assembly on November 26, 2018, by then Board of Elections head Kim Strach indicated that nowhere close to 117,000 registered voters returned the mailer and affirmed that they possessed valid IDs. According to Strach, the Board's "Final analysis in February 2015 resulted in a list of 254,391 registrations [not 218,733 as the Thornton Report alleges] who could not be matched to a DMV identification card." She indicated that the "Voter Outreach Team sent a mailer to each unmatched voter." However, only 18,728 returned the mailer and "indicated that they possessed acceptable identification." They sent the same mailing "to 209,253 voters identified by plaintiffs' [unnamed] expert." However, only 6,414 of these voters returned the mailer and "indicated that they possessed acceptable identification."[8]

The combination of the two mailers adds not to 117,000 registered voters as the Thornton Report asserts, but only to 25,142 registered voters who claimed to have acceptable identification. Subtracted from the 617,029 registered voters on the 2019 no-match list this yields a residual of *591,887, not 158,245* as the Thornton report claims. Moreover, it is certain that the subtraction from the no-match list should be even lower. Some of these 25,142 registered voters would not have appeared on the 2019 no-match list. Some would have died in the interim since 2014 or moved out of the state. Others may in fact have been matched in 2019 even if they were not matched in 2014.

Third, even if we assume incorrectly that the Thornton Report identified 117,222 registered voters on the 2019 no-match list with verified photo ID and subtract that number from the 617,029 on the 2019 no-match list, the residual is *499,807, not 158,245* as the Thornton Report claimed. Thornton provides no explanation at all for how or why she dropped the number

[8] Kim Westbrook Strach, Executive Director, North Carolina State Board of Elections, "Prior Educational Efforts on Voter Identification Requirements (2014-2016)," Slides 18-20, https://s3.amazonaws.com/dl.ncsbe.gov/Public_Records_Requests/11262018_JntElect_Westbrook_Strach_Presentation.pdf. The Thornton Report also references this presentation on p. 40.

from 499,805 to 158,245. Further, there is no basis for her further reducing the already highly erroneous residual of 158,245 down to 72,272. (p. 21)

Critically, we need not infer information about possible over-inclusion of 2019 unmatched DMV registered voters either by inference from 2014 data or by speculation from defendants' or amici's experts. The Affidavit of Karen Brinson Bell, Executive Director of the State Board of Elections, asserts that the State Board sent a mass mailing to the 2019 no-match list. According to Bell, "the mailing was delivered to approximately 700,000 individuals throughout the state," which made it even larger than the 617,029 no-match list distributed to plaintiffs. After "tracking calls and other correspondence received from recipients of these letters" Director Bell reported that the Board had received *only 173 contacts* from the 700,000 mailing recipients, some of whom affirmed that they had valid DMV IDs. There was also an unspecified number of other recipients who said they were no longer North Carolina voters, or that the referenced person had passed away. Thus, the 2019 mailing and vetting made no dent in the 2019 no-match list, further indicating that — despite all of Thornton's criticisms — the list was not significantly over-inclusive of those who lacked unexpired DMV IDs.[9]

The Thornton Report also states that registered voters without an authorized photo ID under SB 824 could obtain a free photo ID from the county boards of elections for voting. Yet, the Bell Affidavit reports that from the beginning of the process on May 1, 2019, through October 21, 2019, the boards had issued only 1,720 free voter photo IDs, an average of about 305 per month. Projected through the first 2020 elections in on March 3, 2020, that equals just an estimated 3,000 issued free voter photo IDs.[10] Even if this rate of issuance increases significantly in the coming months, CBOE-issued free IDs are unlikely to make a substantial impact on the number of voters who lack other forms of photo ID.

VI. The Thornton Report's Attempt to Show That Registrants on the 2019 No-Match List May Have Other Forms of ID Fails to Diminish Racial Disparities

The Thornton Report on pages 21–23 attempts to show that some registrants on the 2019 no-match list may have US passports, military IDs, and veterans IDs. She fails to recognize, however, than in his matching analysis Dr. Stewart included all of these forms of photo ID and still found very substantial disparities between blacks and whites in ID possession. As reported above, after considering DMV IDs and these three additional forms of ID, Dr. Stewart found under the most conservative assumptions a black v. white difference of 10.1% *vs.* 4.2%, for a net disparity of 5.9 percentage points; and, under less conservative assumptions, a black v. white difference of 25.0% *vs* 8.4%, for a net disparity of 16.6 percentage points. Notably, these differences do not consider expired IDs, which were considered matched under Stewart's analysis. These forms of photo ID were also covered in the SPAE survey which likewise showed sharp, statistically significant disparities in ID possession between blacks and whites. The Thornton Report provides no estimate of black v. white disparities in ID possession after completing her analysis.

[9] Affidavit of Karen Brinson Bell, *North Carolina Conference of the NAACP v. Cooper*, United States District Court, Middle District of North Carolina, October 30, 2019, pp. 7-8.

[10] Ibid., pp. 5-6.

VII. The Thornton Report Erroneously Attempts to Diminish the Significance of No-ID Provisional Ballots Cast in the March 2016 Primaries

The Thornton Report's analysis of no-ID provisional ballots in the March 2016 primaries fails to refute my finding that more than 1,300 voters were disenfranchised as a result of the photo ID requirement that was uniquely in effect for that statewide election. As demonstrated in Table 7 and Chart 5 (pp. 32-24) of my September 16, 2019 Preliminary Report, African Americans were overrepresented among registered voters casting provisional ballots in the March 2016 primaries, were overrepresented in the rejection of no-ID provisional ballots and were overrepresented among the group of registered voters whose no-ID provisional ballots were not counted. *The Thornton Report fails to challenge any of these findings. It present not a single estimate of its own for the racial component of either group. In fact, it includes no analytic tables of any kind for the no-ID provisional ballots cast in the 2016 primaries.*

The Thornton Report attempts to diminish the significance of the 1,353 primary voters disenfranchised by the photo ID requirement in 2016, noting that these registrants represent a small proportion at 0.06% (1,353 of 2,336,300) of ballots cast in the primaries. Yet, the disenfranchisement of voters represents a serious consequence of the photo voter ID requirement regardless of its percentage of the total vote. Moreover, disenranchising 1,353 voters is disproportionate to the policy concern justifying the voter ID law in the first instance. The avowed pupose of the photo voter ID law then and now was to deter voter fraud. As explained in my September 2019 report, there was only one documented case of an impersonated vote in the 2016 general election (with a turnout twice as high as the 2016 primary election) and one impersonated vote in the absentee ballots. Thus the ratio of disenfranchised voters to documented cases of voter fraud is — allowing for the numbers as favorable as possible to bill proponents — of 1,353 to 2.

The Thornton Report also claims that 85 percent of rejected ballots were from persons who did not file a reasonable impediment declaration and that 82 percent of provisional ballots with this declaration were counted. I do not accept that these figures are necessarily accurate, but my analysis did not turn on which type of no-ID provisional ballots were accepted or rejected, but on the overall racial disparities in counted and non-counted no-ID provisional ballots.

VIII. The Thornton Report Incorrectly Analyzes My Findings From the Survey of the Performance of American Elections (SPAE) on the Full Range of Photo ID Possession by Race

The Thornton Report attempts to critique the SPAE saying, "the results of the survey are based on those who have access to the internet and who self-select to participate." (p. 36) All surveys, of course, whether internet, telephonic or in person, include those who select to participate. In addition, Thornton fails to explain why the use of an internet survey would bias differentials between blacks and whites in ID possession, which was the sole purpose of my inquiry. The SPAE is one of the most respected of electoral surveys and is widely used in

political analysis. In fact, amici's own expert Professor James G. Gimpel relies on the SPAE in his report. He praises the SPAE as one of the nation's "reputable data collections."[11]

Thornton further claims that "the SPAE surveys pre-date SB 824 and, therefore, the questionnaire is not specific to the forms of ID as outlined in SB 824." In fact, as my September 2019 Preliminary Report makes clear, I included questions from the SPAE that cover the full range of IDs authorized under SB 824. These include "unexpired driver's licenses and passports, tribal IDs, military and veterans' IDs, tribal IDs, in-state college and university IDs, and in-state local or state government IDs." (Lichtman Preliminary Report, p. 21). If anything, this list is overinclusive of authorized IDs under SB 824 because it includes all student IDs, not just those expired for a year or less and approved under the state's criteria, and all state and local government IDs, not just those unexpired for a year or less and approved under the state's criteria. The only category of IDs not included are out-of-state driver's licenses which are approved only under the very limited case of a voter registered within 90 days of the election.

The Thornton Report also critiques the SPAE survey results on the grounds that it reports for 2012 to 2016 a larger proportion of North Carolina registered voters without driver's licenses than were found in the state's 2019 matching. However, this is an apples to oranges comparison because the state in 2019 did not match registered voters just to driver's licenses, but also to learner's permits, non-operator DMV IDs, and suspended and cancelled licenses. Registered voters possessing these IDs would not likely have reported the possession of driver's licenses, and thus the percentage of those without driver's licenses would logically be higher in the SPAE survey than in the 2019 matching exercise. In my *McCrory* report I noted that DMV records included 343,907 non-operator IDs, and 89,639 cancelled or suspended licenses.[12] The number of learner's permits is not known but is likely to be substantial based on the data reported in Table 9 of my September 2019 Preliminary Report (p. 41).

Similarly, Thornton claims that the 15.1 percent SPAE estimate of African American registered voters in North Carolina without authorized photo ID under SB 824 is larger than the 12.5 percent of 2019 registered voters on the state's no-match list. Again, this is not a meaningful comparison because of the different bases of the two studies. In addition, many more African Americans may actually be on the 2019 no-match list because those listed as mixed race or undesignated may actually identify as black.

Thornton also attempts to critique the SPAE data by noting that in 2016 the survey found a black percentage of registered voters of 17.5 percent which was lower than the 22 percent

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[11] Expert Report of James G. Gimpel, *North Carolina Conference of the NAACP v. Cooper*, U.S. District Court, Middle District of North Carolina, October 30, 2019, p. 8. For examples of the use of the SPAE by respected scholars and organizations see Paul Gronke, "Voter Confidence as a Metric of Election Performance," in Barry C. Burden and Charles Stewart III, ed., *The Measure of American Elections* (Cambridge University Press, 2014), pp.248-270; Bridgett A. King and Alicia Barnes, "Descriptive Representation in Election Administration: Poll Workers and Voter Confidence," *Election Law Journal: Rules, Politics, and Policy*, 48 (2019): 16-30; Adriano Udani, David C. Kimball, and Brian Fogarty, "How Local Media Coverage of Voter Fraud Influences Partisan Perceptions in the United States," *State Politics and Policy Quarterly*, 18 (2018): 193-201;The Pew Charitable Trusts, "Elections Performance Indexes," August 2016, https://www.pewtrusts.org/~/media/assets/2016/08/epi_methodology.pdf.

[12] Lichtman, McCrory Report, Table 24, p. 79.

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reported by the State Board of Elections. But she fails to recognize that my analysis pooled data from 2012, 2014, and 2016. This pooled data reports a black percentage of 19.8 percent of registered voters averaged for those three years, close to the 22 percent average reported by the Board for these three election years.

Thornton additionally critiques the SPAE because, like all surveys, it has margins of error. However, I made clear in my September 2019 Preliminary Report that disparities in photo ID possession between black and whites were statistically significant under stringent criteria. The Thornton Report then attempts to show wide margins of error for SPAE estimates of white and black ID possession in Table 12 (p. 39). However, Thornton commits two serious errors in this demonstration. First, she includes in Table 12 only driver's licenses, whereas my analysis encompassed essentially all form of authorized ID under SB 824. Second, she reports error margins separately for each of the SPAE surveys for 2012, 2014, and 2016, whereas, as indicated above, my analysis pooled the results from these three surveys to increase sample size and decrease the margins of error. Thus, her reported margins of error in Table 12 have no bearing on my analysis.

In addition, Thornton again misunderstands the purpose of my analysis, which was not to specify the precise number of registered voters lacking authorized photo IDs but to assess racial disparities between blacks and whites in such photo ID possession. So, any error margins are properly reported for the difference between blacks and whites who lack the full range of authorized IDs in the SPAE surveys pooled from 2012 to 2016. Table R-1 reports the results of that analysis. At the standard 95% confidence interval the lower bound of the disparity in ID possession for blacks and whites is 5.2 percentage points. The upper bound of the disparity in ID possession for blacks and whites is 18.7 percentage points.

TABLE R-1
DISPARITIES DISPARITY BETWEEN BLACK AND WHITE ID POSSESSION 2012-2016 SPAE RESULTS POOLED, LOWER AND UPPER MARGINS OF ERROR, 95% CONFIDENCE LEVEL

DISPARITY BETWEEN BLACK AND WHITE ID POSSESSION 2012-2016 SPAE RESULTS POOLED	LOWER BOUND OF DISPARITY 95% CONFIDENCE LEVEL	UPPER BOUND OF DISPARITY 95% CONFIDENCE LEVEL
11.0 PERCENTAGE POINTS	5.2 PERCENTAGE POINTS	18.7 PERCENTAGE POINTS
Source: Lichtman, September 16, 2019 Preliminary Report, Table 2, p. 22.		

These findings are largely consistent with the findings of Dr. Stewart's report from the *McCrory* litigation. As reported above, after examining racial disparities in possession of DMV photo IDs, US passports, military photo IDs, and veterans photo IDs, Dr. Stewart found that under the most conservative assumptions the disparities in ID possession for blacks and whites a

net disparity of 5.9 percentage points. Under less conservative assumptions he found a net disparity of 16.6 percentage points.[13]

IX. The Thornton Report and the Briefs Submitted by Defendants and Amici Ignore the Most Important Discriminatory Effect of SB 824: Deterrence

Both the Thornton Report and the briefs submitted by defendants and amici suggest that the no-ID provisional ballots cast in the 2016 primaries represent the only effects of the photo ID requirement on voters. Yet, my September 2019 Preliminary Report identified two other effects. First, there were voters who simply walked away from the polls. But second, and by far the largest impact on participation, is the deterrent effect of the photo ID requirement.[6]

The Thornton Report's own data on turnout in the 2016 primaries — the only statewide election in which photo ID was required — compared to turnout in other elections decisively confirms the conclusions of my September 2019 Preliminary Report documenting the substantial deterrent effect on turnout of photo voter ID laws.[14] According to the Thornton Report, 22.2 percent of registrants on the State Board of Elections 2019 unmatched list voted in the March 2016 North Carolina primaries. (p. 22) However, the Thornton Report fails to note that the turnout in the March 2016 primaries was much higher than for August 24, 2019 registrants who were not on the no-match list. Table R-2 provides the comparison between the March 2016 primary turnout for registrants on the no-match list compared to the list of all registrants at the time. The Table adjusts for the fact that many of the 2019 registrants on both 2019 lists may have registered too late for eligibility to vote in the March 2016 primaries. The table therefore reports turnout rates only for registrants on both lists whose registrations did not come too late for these primaries.

The data reported in Table R-2 demonstrates that the turnout for the March 2016 primaries among eligible registrants was 28.8 percent for registrants on the 2019 no-match list compared to a turnout of 46.1 percent for all registrants. Thus, the comparison of the two turnout rates demonstrates that the turnout of those on the 2019 no-match list was 37.5 percent lower than the turnout of all other registered voters at the time of the list's compilation in August 2019 (46.1% – 28.8%/46.1% = a falloff of 37.5%).

[13] I did not use in my analysis the oversample for 2014 to avoid having results skewed by a single year. However, the use of the 2014 oversample results for the 2012-2016 results in a similar margin of error for the black vs. white disparity of ID possession, with the a lower bound of 4.8 percentage points and an upper bound of 12.2 percentage points.

[14] See the studies examined on pp. 36-37 of my September 2019 Report, neither of which are questioned or even mentioned in the Thornton Report and the briefs filed by defendants and amici.

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TABLE R-2
COMPARISON OF TURNOUT RATES OF UNMATCHED 2019 REGISTERED WITH ALL 2019 REGISTERED VOTERS: MARCH 2019 PRIMARIES & ALL ELECTIONS SINCE JULY 2014

MARCH 2016 PRIMARIES		
REGISTERED VOTERS 2019 NO-MATCH LIST	**ALL REGISTERED VOTERS 2019**	**DIFFERENCE IN PERCENT BETWEEN UNMATCHED AND ALL REGISTRANTS**
28.8%	46.1%	**-37.5%**
ALL ELECTIONS SINCE JULY 2014		
REGISTERED VOTERS 2019 NO-MATCH LIST	**ALL REGISTERED VOTERS 2019**	**DIFFERENCE IN PERCENT BETWEEN UNMATCHED AND ALL REGISTRANTS**
59.2%	75%	**-21.1%**
Sources: Thornton Report, p. 17; VOTER_REG_FLTRD_20190824.txt; ncvhis_ Statewide.txt from 2019_08_0.		

This fall off of 37.5 percent can be a result of 1) the general propensity of registered voters on the no-match 2019 list to turnout at lower rates than other registered voters and 2) the independent deterrent effect of the photo voter ID law uniquely in effect for the March 2016 primaries. The Thornton Report goes on to provide the control needed to isolate the independent deterrent effect of photo voter ID. It does so by reporting turnout on the no-match list and among all registered voters for any election held since July 2014. The vast majority of the ballots cast in these elections would have been cast in contests other than the March 2016 primaries, the only election for which the photo voter ID requirement was in force.

As indicated in Table R-2, the Thornton Report states that 59.2 percent of registered voters on the no-match voted in some election since July 2014, compared to 75 percent of all voters registered as of August 2019 who voted in some election since July 2014. This amounts to a fall off of 21.2 percent, well below the falloff for the one election in which photo ID was required. This data represents the differential turnout between the two groups that is largely independent of the voter photo ID requirement. This lower falloff rate demonstrates that the substantial difference in turnout for the March 2016 primary between those on the no-match list and all registered voters cannot be due strictly to the lower turnout propensity of those on the no-

match list. Rather, to a substantial extent the differential in falloff is a direct, independent consequence of the deterrent effect of the photo ID requirement.

As indicated in Table R-3, the differential falloff in turnout for the no-match group in the March 2016 primaries directly attributable to the photo ID requirement is substantial, amounting to 16.4 percentage (37.5%–21.1% = 16.4 percentage points). When multiplied by the 617,029 registered voters on the 2019 no-match list, this amounts to a disenfranchisement of 101,193 registered voters attributable independently to the photo voter ID law (617,029 *.164 =101,193). This analysis, moreover, does not include the additional effect on the dampening of turnout by registered voters who may have authorized IDs, but do not believe that they do so.[15]

The Thornton Report also fails to report the racial composition of the registered voters on the 2019 no-match list who voted in the March 2016 primaries as compared to those on the list who did not vote in the primaries. This comparison shows that whites are overrepresented among voters and blacks and others are underrepresented. As indicated in Table R-4, after eliminating the undesignated, white registered voters comprised 56.9 percent of non-voters as compared to 65.9 percent of voters, for an *increase* of 16 percentage points. Black registered voters comprised 31.8 percent of non-voters as compared to 29.4 percent of voters, for a *decrease* of 8 percentage points. Other registered voters comprised 11.3 percent of non-voters as compared to 4.6 percent of voters, for a *decrease* of 59 percentage points. In addition, 5.5 percent of those on the 2019 no-match list are classified as "two or more races," many of whom would also identify as black + one or more other races. Only 8 percent of this multi-race group voted in the 2016 primaries.

TABLE R-3
FALLOFF IN MARCH 2016 PRIMARIES OF UNMATCHED COMPARED TO ALL REGISTERED VOTER /WITH EXPECTED FALLOFF FROM TURNOUT IN ALL ELECTIONS SINCE 2014

ACTUAL FALLOFF OF NO MATCH REGISTERED VOTERS MARCH 2016 PRIMARIES	EXPECTED FALLOFF BASED ON ALL ELECTIONS SINCE JULY 2014	DIFFERENCE: EXPECTED MINUS ACTUAL
37.5%	**21.1%**	**16.4 PERCENTAGE POINTS**
NUMBER OF DISENFRANCHISED VOTERS ON NO MATCH LIST = 102,427 (617,029*.164 = 101,193)		

[15] In addition to the studies cited on pages 36-37 of my September 2019 Preliminary Report see, also, Mark P. Jones, et al., "The Texas Voter ID Law and the 2014 Election: A Study of Texas's 23rd Congressional District," University of Houston, Hobby Center for Public Policy, August 2015, https://www.uh.edu/hobby/_docs/voteridcd23.pdf.

TABLE R-4
RACIAL BREAKDOWN OF 2019 NO-MATCH REGISTRANTS WHO VOTED AND DID NOT VOTE IN 2016 PRIMARY

2019 NO-MATCH LIST REGISTERED VOTERS	% OF 2019 NO MATCH WHO WERE MARCH 2016 NON-VOTERS	% OF 2019 NO-MATCH WHO WERE MARCH 2016 VOTERS	DIFFERENCE NON-VOTERS – VOTERS
WHITES	**56.9%**	**65.9%**	**+16 PERCENTAGE POINTS**
BLACKS	**31.8%**	**29.4%**	**-8 PERCENTAGE POINTS**
OTHERS	**10.2%**	**4.5%**	**-56 PERCENTAGE POINTS**
Source: 2019 no-match list matched against voter files for March 2016 primaries.			

X. Defendant's Brief Incorrectly Analyzes the Issue of Public Assistance IDs

Defendants' brief claims that I testified in deposition that "the adoption of a public assistance ID amendment would have made little difference to a discriminatory intent analysis here." In support of this claim the brief generically cites 17 pages of my deposition testimony (pp. 134-150) but provides no quotations. In fact, the brief fundamentally misrepresents my testimony. I did not testify as represented in the brief, but rather made very different points about the absence of public assistance IDs among authorized IDs in SB 824.

First, I testified that the General Assembly's failure to include public assistance IDs in SB 824 and the rejection of an amendment to do so were important indicia of discriminatory intent because such IDs "far and away is the IDs that would affect the disparities far more than any of these other things." However, I added that even with the inclusion of public assistance IDs the "the racial disparities are less but the racial disparities still remain."

Given that the addition of these IDs would not eliminate racial disparities in photo ID possession and the many other indicia of discriminatory intent examined in my report, I further testified in deposition that addition of public assistance IDs alone would not have altered my ultimate opinion about discriminatory intent under the Arlington Heights factors:

Q So for example, in addition to the current list of various photographic identifications that North Carolina allows under S.B. 824, if North Carolina added public assistance IDs would North Carolina have found that law with an intentional, with a discriminatory intent in your opinion?

A I don't think that alone would have cured the discriminatory intent, no.

The briefs submitted by defendants and amici also indicate that Republicans in the General Assembly rejected the public assistance amendment because it would cover all public assistance IDs, not just those with photographs. However, the amendment at issue unmistakably and unambiguously applied *only* to photographic identification.

The public assistance ID amendment (A13) was proposed as an addition to the version of the bill under consideration at the time: House Committee Substitute Favorable 12/4/18 PROPOSED HOUSE COMMITTEE SUBSTITUTE S824-PCS15340-BKf-54. The amendment reads as follows:

> "moves to amend the bill on page 2, line 51, by inserting the following after the lines: 2 3 'c. An identification card issued by a branch, department, agency, or entity of the 4 United States or this State for a government program of public assistance'."[16]

Line 51 and item c refer to subsection 2 under Section 1.2 (a) of the bill entitled "**§ 163A-1145.1. Requirement for photo identification to vote in person**." This Section specifies that "Photo Identification Required to Vote. – When a registered voter presents to vote in person, the registered voter shall produce any of the following forms of identification that *contain a photograph of the registered voter*," (emphasis added). Therefore, any of the forms of IDs in the subsections under this section would be limited to those with a photograph. So, with the public assistance amendment included, the relevant section of the bill would include the new sub-section (2)(c) and read:

> (a) Photo Identification Required to Vote. -- When a registered voter presents to vote in person, the registered voter shall produce an of the following forms of identification *that contain a photograph of the registered voter* (emphasis added):
> . . .
> (2) Any of the following, regardless of whether the identification contains a printed expiration or issuance date:
> "a. military identification card issued by the United States government.
> b. A Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical 50 facilities."

[16] Amendment 13, S824-ABK-145 [v.2], https://webservices.ncleg.net/ViewBillDocument/2017/7631/0/S824-ABK-145-V-2

c. An identification card issued by a branch, department, agency, or entity of the United States or this State for a government program of public assistance (emphasis added)

Like the amendment for public assistance IDs, the specification of these IDs that were already part of the bill does not include the word "photo." In fact, most of the IDs included in the bill do not include the word "photo." It was not necessary to make this inclusion because as indicated above, Section 1.2 (a) required that any forms of IDs under its subsections would be authorized for voting only if they included a photograph of the registered voter. This stipulation would have similarly applied to the public assistance amendment, which, as indicated in its wording would, if adopted, have been item c under subsection 2, inserted after veterans IDs.[17]

XII. Neither the Thornton Report Nor the Defendants' and Amici Briefs Establish the Existence of Fraudulent Voter Impersonation in North Carolina.

The only assertion regarding alleged voter fraud presented in any of defendants' or amici's material is found on pages 31–32 of the amicus brief. The brief cites a report by Kenneth Block which claims to have "found 1,265 instances of likely voter fraud consisting of voters voting in both North Carolina and in another State in the 2016." This is an irrelevant claim because, as explained in my September Preliminary Report, "photo ID would not prevent anyone from registering or voting in two or more states." (p. 107). Moreover, the state's 2016 audit headed by Kim Strach, the Republican-appointed executive director of the State Board of Elections, questioned any finding of widespread double voting that year. The audit found no 1,265 instances of double-voting, but only "24 substantiated cases of double-voting from the 2016 general election" that it was investigating. Even for this handful of suspected double-voters the audit noted that the "process is still in its preliminary stages and staff have not yet completed review of voter documents to determine whether the match was due to administrative error rather than illegal voting."[18] Moreover, Block's data analysis relied on the work of third party vendors to acquire the social security numbers of individual voters to reach his conclusions regarding duplicate voting. The methods and data used by these vendors was not provided in the Block report, and thus cannot be analyzed or verified. Finally, the information on duplicate voting in the Block report was not available to the North Carolina General Assembly when it enacted SB 824, and so is irrelevant to an analysis of discriminatory intent.

XIII. The Callanan Report's Comparison of SB 824 and Other Photo Voter IDs Laws is Misleading and Inaccurate

Critically, this comparison is irrelevant to the intent of the North Carolina General Assembly in adopting SB 824. The law stands on its own in terms of the unique history documented in the Arlington Heights factors. Moreover, the backers of the SB 824 never

[17] The full text of bill to which the public assistance amendment would have applied can be found at https://webservices.ncleg.net/ViewBillDocument/2017/7621/0/S824-PCS15340-BKf-54.

[18] North Carolina State Board of Elections," Post-Election Audit Report: 2016 General Election," 21 April 2017, pp. 5-6, https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf.

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justified the adoption of the law by conducting the kind of inter-state comparison that is in the Callanan Report. His analysis is strictly *post hoc*.

In addition, there are major problems with Callanan's post hoc analysis. Callanan cites the importance of the adoption of the Help America Vote Act (HAVA) in spurring interest in identification laws. He notes that since HAVA "25 states have enacted voter ID requirements for all voters, bringing the total number of states with voter ID laws to 35 in all." However, in more than half of these states the laws authorized non-photo IDs. In addition, 15 states have no form of identification requirements. So rather than joining the mainstream of states North Carolina, by adopting voter photo ID, has joined a minority of 17 states (34 percent). He also ignores Speaker Moore's initial admission that the purported aim of preventing voter fraud by impersonation would be met by following the HAVA precedent and including in an identification law the option to use non-photo IDs.

The Callanan Report also notes that in North Carolina, as in nine other voter photo ID states "The voter may follow an alternative procedure at the polls and vote. The ballot is counted if valid." He fails to note that the majority of all other states that he lists as having voter photo ID requirements, unlike North Carolina under SB 824, have procedures to allow voters without photo ID to cast a *regular* not just a *provisional* ballot, authorize non-photo forms of ID, or validate a provisional ballot simply by checking the voters' registration and voter history or the voters' signature (Alabama, Arizona, Florida, Idaho, Louisiana, Michigan, Rhode Island, South Dakota, Texas).

The Callanan Report compares one-by-one some of the IDs authorized under SB 824 with IDs authorized by other states. This comparison is irrelevant because such one-by-one comparison cannot establish whether the ID requirements in North Carolina overall are more or less restrictive than in other states, especially given the vast demographic differences and socioeconomic conditions present across the states which impact the number of voters who possess various forms of ID. Callanan's comparisons are also marked by omissions and errors.

The Callanan Report mentions that North Carolina excludes public assistance IDs, but fails to add that such IDs are *authorized for voting in 14 of the 17 other voter photo ID states*, either explicitly or under a general provision authorizing any government-issued ID. Although the report notes that most states accept student IDs, it fails to compare other states with the uniquely restrictive requirements under North Carolina law or cite the low percentages of institutions with approved IDs (see above). The same flaw applies to the report's discussion of state government IDs. The report notes that like most states North Carolina accepts expired IDs, but it fails to add that North Carolina stands nearly alone with its stringent 1-year expiration requirement (although it has an exception for those 65-years or older who possessed an unexpired ID on their 65th birthday).

Callanan also misquotes my report on expired IDs, claiming that, "Professor Lichtman erroneously states that the original H.B. 589 allowed IDs expired for up to one year." (p. 13) In fact, my report actually stated: "House Bill 836 also extended the period for which expired IDs would be accepted for voting from one year under the original VIVA to *four years*. It stated an

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ID "shall be acceptable if it has a printed expiration date that is not more than four years before it is presented for voting." (p. 66)

Contrary to Callanan's claims, public assistance IDs, as noted in my September 2019 Preliminary Report, was the type of ID held most disproportionately by African Americans (29 percent of African Americans compared to 7 percent of whites reported possessing such IDs in the 2016 SPAE survey, p. 45). The Callahan Report parallels the mistake made in the briefs saying that the inclusion of public assistance IDs would be inappropriate because it would include forms of non-photo IDs. (pp. 14-15) However, as explained above, the amendment on public assistance IDs would only have authorized public assistance photo IDs.

XIV. Defendants' and Amici Cannot Sustain Their Claim of a Lack of Procedural Irregularities in the Adoption on SB 824.

The briefs filed by both defendants and amici allege a lack of procedural irregularities in adopting SB 824. Amici provide an expert opinion by Keegan Callanan. (p. 32) The Callanan Report makes several claims to assert that there was nothing exceptional or unusual about the adoption of SB 824. None withstand scrutiny.

Callanan first addresses the speed for enactment of the constitutional amendment of voter photo ID. He claims that the process was not unusual because "since 1985 the North Carolina General Assembly has ratified 21 acts to amend the state constitution. Forty-eight percent of those acts moved from initial committee referral to ratification in under two months." (p. 37) Callanan's citation refers only to a list of constitutional amendments proposed by the General Assembly in North Carolina. It does not include the legislative history for these amendments. The Callanan analysis also includes the 2018 voter photo ID amendment and other amendments enacted in 2018. After examining the legislative history for each proposed constitutional amendment, I report in Table R-5 the time of adoption for all amendments prior to the 2018 session.

The data reported in Table R-5 demonstrate that 11 of 16 amendments (69 percent) since 1985 were adopted in more than two months from filing to adoption. Moreover, the General Assembly adopted the voter photo ID constitutional amendment not in less than two months, but in less than one month from filing to adoption (from 6/7/2018 to 6/29/2018).[19] *Not a single constitutional amendment proposed from 1985 to prior to the 2018 session was passed in less than one month.*

[19] https://www.ncleg.gov/BillLookup/2017/H1092.

TABLE R-5
PROPOSED NORTH CAROLINA CONSTITUTIONAL AMENDMENTS SINCE 1985 WITH MORE THAN 2 MONTHS FROM FILING TO ADOPTION, AMENDMENTS ADOPTED IN MORE THAN TWO MONTHS IN BOLD

YEAR	BILL	FILED	ADOPTED
1985	H.88	2/19/1985	4/5/1985
1985	H.961	5/14/1985	6/22/1985
1985	S. 865	5/16/1985	7/7/1985
1985	S.711	5/17/1985	7/15/1985
1985	**H.306**	**3/28/1985**	**7/8/1985**
1993	**S. 1157**	**5/13/1993**	**7/23/1993**
1995	**S. 4**	**1/26/1995**	**7/13/1995**
1995	**S. 6**	**1/26/1995**	**7/13/1995**
1995	S. 3	1/26/1995	3/8/1995
1999	**S.1127**	**4/15/1999**	**7/12/1995**
2003	**S.725**	**4/2/2003**	**8/7/2003**
2003	**S.965**	**4/2/2003**	**8/14/2003**
2004	**S.577**	**3/29/2004**	**7/26/2004**
2010	**H.1307**	**4/8/2010**	**7/1/2010**
2011	**S. 514**	**4/15/2011**	**9/14/2011**
2013	**S. 402**	**3/25/2013**	**7/26/2013**
SUMMARY: 11 OF 16, 69%, SINCE 1985 ADOPTED IN OVER TWO MONTHS			
SUMMARY: 10 OF 11, 91%, SINCE 1993 ADOPTED IN OVER TWO MONTHS			
Source: https://www.ncleg.gov/Search/SessionLaws provides a guide to finding the legislative history of each proposed constitutional amendment.			

Callanan also chooses 1985 as an arbitrary date. Examination of more recent practice during the past quarter century since 1993 demonstrated that 10 of 11 proposed amendments (91 percent) were ratified in more than two months.

Callanan additionally claims that it is not unusual to place 6 constitutional amendments for a vote in an election at the same time. He claims that "the average number of constitutional referenda on the ballot, when there are any, is three," which is half the number of the 6 amendments on the ballot in 2018. He also claims that several times before, the General Assembly placed 6 or more constitutional amendments on the ballot: six amendments in 1962; seven amendments in 1970 and 1982; and 10 amendments in 1914." (p. 37)

This statement is misleading and inaccurate. The 1970 session of the General Assembly did place 7 amendments on the ballot for the November 1970 elections. But as former Counsel Cohen reported, these amendments were proposed only after review over two years by a study commission. (Lichtman Preliminary Report, p. 69). The 1982 session did propose 7

amendments, but only 5, not 6, were put on the ballot at one time (5 on 6/9/1982 and 2 on 11/02/1982). Thus, not since 1970 were as many as 6 constitutional amendments put to the voters at one time.

With respect to the adoption of SB 824 during the lame duck session, Callanan says that such sessions are not unusual in North Carolina. Yet he fails to note that the 2018 session was unique in that it represented the seating of a legislature enacted under unconstitutional racial and partisan gerrymanders and that was likely seated only as a result of deceiving a federal court about the state's ability to hold a special election in 2017. This set of circumstances is so deviant that I far as I can ascertain it has no precedent in any state in the history of the United States.

Callanan also says that the rapid adoption of S. 589 in just 10 days is not unusual. He ignores the statements of Republican leaders in 2013 who stressed the importance of an extensive 10-month review process for the pre-*Shelby* voter photo ID legislation that impacted peoples' fundamental right to vote. Moreover, the process in 2018 was even more rushed than the adoption of the post-*Shelby* "full bill" legislation in 2013. Yet the Fourth Circuit concluded about this post-Shelby process that "the legislature rushed it through the legislative process . . . But, of course, a legislature need not break its own rules to engage in unusual procedures. Even just compared to the process afforded the pre-Shelby County bill, the process for the 'full bill' was, to say the very least, abrupt."[20] The General Assembly in 2018 just disregarded this cautionary warning from the Fourth Circuit. Although Callanan cites examples for legislation that has nothing to do with the right to vote he fails to compare the 2018 process to the 2013 process, the last time that the General Assembly considered voter photo ID legislation. He also ignores the fact that since the Supreme Court's declining to review the Fourth Circuit's opinion in May 2017, the Republican leaders of the General Assembly had ample time for a full review of alternative forms of voter photo ID legislation.

Callanan claims that the General Assembly adopted three unspecified amendments proposed by Democrats. However, the General Assembly rejected all Democratic proposed amendments of any significance, including the amendment to add public assistance IDs to the list of authorized photo IDs (House Amendment 13), to authorize for voting any state or federally issued photo ID (Senate Amendment 9), to enable high school students to use their student ID for voting (House Amendment 3), and — during the debates over the constitutional amendment — to eliminate the word "photo" from the amendment (House Amendment 5). He also does not note that the General Assembly tabled and never acted on other proposed amendments, and never acted on Speaker Moore's recommendation that the implementing legislation should include an option for the use of non-photo forms of identification authorized under the Help America Vote Act (HAVA).

Callanan also claims that the General Assembly provided for public hearings. But he fails to note the ways in which the General Assembly significantly hampered public comment. As noted on pages 72-73 of my September 2019 Preliminary Report, public comment was unusually limited to just 30 persons. The General Assembly switched the

[20] See the discussions in my September 16, 2019 Preliminary Report on p. 67,

times for public comment, shutting out interested individuals. It limited comment to just one minute per person. In addition, unlike the process for the 2013 pre-Shelby version of voter photo ID, the General Assembly did not provide for commentary by experts in the field.

XV. The Report of James Gimpel Fails to Establish Any of its Key Claims

The Gimpel Report makes several claims about voter photo ID legislation, none of which withstand scrutiny. He claims widespread popular support that cuts across the lines between Republicans and Democrats and blacks and whites, citing various national polls. What is conspicuously missing from this litany of polls is the most relevant poll: the SurveyUSA poll on support for the constitutional amendment on photo voter ID taken just 8 to 11 days before the November 2018 election. Gimpel excludes this poll even though it was reported and analyzed on pages 60 to 63 of my September 2019 Preliminary Report.

The SurveyUSA results refute Gimpel's claim that voters in North Carolina backed a voter photo ID requirement across party lines between Republicans and Democrats and across racial lines between whites and blacks. As noted in my September 2019 Preliminary Report, the SurveyUSA poll found that 90 percent of Republicans backed the voter photo ID amendment, compared to just 28 percent of Democrats, for a polarization level of 62 percentage points. The poll additionally found that 66 percent of whites backed the voter photo ID amendment, compared to just 28 percent of blacks, for a polarization level of 38 percentage points.

All of the polls Gimpel cites deal generically with a voter photo ID requirement, not the specific law, SB 824, adopted by the General Assembly in 2018. For example, the Elon University poll that Gimpel cites from 2013 at the time of the adoption of the prior voter photo ID law, SB 589 asked "As you may know, the state legislature is considering a law requiring voters to show *some sort of government approved photo identification* before they are allowed to vote . . . do you [support or oppose] such a law?" Another closely proximate poll conducted in North Carolina by SurveyUSA in April 2013 found that *66 percent of North Carolina registered voter respondents would allow persons to vote if they signed an affidavit of identity under penalty of perjury*. No such option is available under SB 824. The same poll found that 74 percent agreed that "Legislators should show evidence of significant problems, *such as real voter fraud*, before they pass laws that make voting more difficult."

The most recent Elon University poll cited by Gimpel from the beginning of 2018 also contains revealing findings that Gimpel fails to report: 98 percent of respondents favored authorizing for voting a "driver's License or other state-issued ID." Not all state-issued IDs, including public assistance IDs, are authorized for voting under SB 824. The poll also found that 56 percent of respondents favored authorizing for voting "Other non-governmental id with photo (such as a work ID)." No non-government work IDs are authorized for voting under SB 824.

Gimpel further claims that with respect to voter confidence that the Survey of the Performance of American (SPAE) elections show that the voters were worried about various forms of election fraud. There are several fatal flaws with his analysis. First, he relies on national results, not North Carolina-specific results. Second, he does not report the results of the SPAE which specifically ask about voter confidence. Third and most critically, he does not tie an

increase in voter confidence or a decline in worry about the types of voter fraud preventable by voter photo ID to the adoption of voter photo ID laws.

The linkage between voter confidence and worry about preventable voter fraud is tested in Table R-6. The 2016 SPAE reports that 15 states had adopted forms of voter photo ID laws prior to 2016. Table R-6 separates out these 15 states from the other 35 states plus DC included in the 2016 SPAE. It reports for these two groups of states responses on voter confidence and responses to worries about voter impersonation. It adds in worries about double-voting, because such voting has been cited incorrectly by Republicans in the General Assembly as tied to voter photo identification.

If the adoption of voter photo ID laws increases voter confidence or decreases voter concern about allegedly preventable voter fraud, then the 15 voter photo ID states as compared to the other states should demonstrate significantly highly confidence about their vote or the statewide vote and significantly lower concern about preventable voter fraud. As demonstrated in Table R-6, this is false. Although the differences are small, respondents to the SPAE in the voter photo ID states have *less confidence not more confidence* than respondents in the non-photo ID states about whether their vote or the statewide vote will be counted as intended. Similarly, respondents in the voter photo ID states have *more concern not less concern* than respondents in the non-photo ID states about preventable voter fraud.

Gimpel additionally claims that that the photo ID requirement in place for the March 2016 presidential primaries could not have diminished black turnout, which increased from the 2012 primaries. The comparison is misguided because, unlike in 2016, in 2012, the Democratic presidential primary was uncontested. Blacks participate overwhelmingly in the Democratic primary as compared to the Republican primary and 85 percent of the increase in primary turnout between 2012 and 2016 occurred in the Democratic, not the Republican primary.[21]

[21] Democratic primary turnout from 2012 to 2016 increased by **176,029 voters, compared to 30,665 for Republican primary turnout.**
https://er.ncsbe.gov/?election_dt=05/08/2012&county_id=0&office=FED&contest=1120 &
https://er.ncsbe.gov/?election_dt=03/15/2016&county_id=0&office=FED&contest=0.

TABLE R-6
VOTER CONFIDENCE: PHOTO VOTER ID STATES VS. NON-PHOTO VOTER ID STATES, 2016 SURVEY OF THE PERFORMANCE OF AMERICAN ELECTIONS (SPAE)

	NON-PHOTO VOTER ID STATES 35+DC	**PHOTO VOTER ID STATES N=15**	**Difference: non-photo voter ID minus photo voter ID states**
QUESTION	Somewhat or very confident	Somewhat or very confident	
Are you confident that your vote was counted as you intended.	94.9% N=6,548	93.3% N=2,629	**+1.6 Percentage Points**
Are you confident that votes statewide were counted as voters intended.	89.2% N=6,945	85.9% N=2,854	**+3.3 Percentage Points**
QUESTION	Occurs infrequently or almost never	Occurs infrequently or almost never	
Frequency that voters impersonate someone else.	75.0% N=5,771	73.3% N=2,319	**+1.7 Percentage Points**
Frequency that voters double vote.	76.6% N=5,814	75.4% N=2,339	**+1.2 Percentage Points**
Source: 2016 SPAE, https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/Y38VIQ.			

XVI. Conclusions

None of the information or analysis included in the Thornton Report, the Gimpel Report, the Callanan Affidavit, or the briefs filed by defendants and amici have altered or modified my finding that the North Carolina General Assembly adopted SB 824 with discriminatory intent. The Thornton Report ignores all of these *Arlington Heights* factors analyzed in my September 16, 2019 Preliminary Report, with the exception of discriminatory effect. The defendant and amicus briefs attempt to chip away at the edges of my other findings regarding the *Arlington Heights* factors, but they both misrepresent my testimony and ignore critical data sustaining that

testimony. The material presented in the Gimpel Report and the Callanan Report, when properly analyzed, only sustains and does not contradict my findings.

Despite the Thornton Report's exclusive focus on discriminatory effect, it fails to present any credible analysis that the 2019 no-match list is overinclusive of registered voters unmatched to expired DMV IDs. The most recent and relevant mailings and vetting of the no-match list fails to demonstrate that more than a handful of registered voters on the list of 617,209 registered voters affirmed the possession of an unexpired DMV ID.

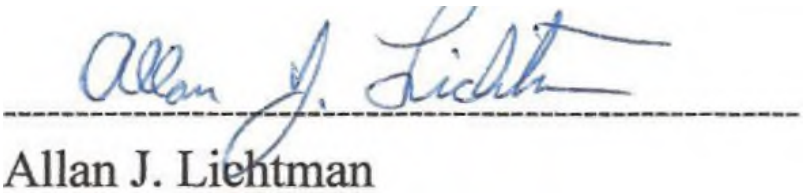
Neither the Thornton report nor any other submission by defendants and amici present a single statistic to challenge the results of every study conducted since 2013 that there are racial disparities in the possession of photo IDs authorized under both SB 589 and SB 824, and that voter photo ID laws place a disparate burden on the opportunities for African Americans to participate fully in the political process in North Carolina. Similarly, the defendant and amici briefs include no such statistics.

Likewise, none of defendant's submissions present a single statistic demonstrating the existence of voter impersonation in North Carolina beyond a vanishingly small number of scattered incidents. Thus, neither the report nor the briefs challenge the findings of my September 2019 report reaffirming the findings of the Fourth Circuit that the photo voter ID requirements in SB 824 like those in SB 589," constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist. Thus, the asserted justifications cannot and do not conceal the State's true motivation."[22]

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

Executed on November 15, 2019



Allan J. Lichtman