UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-01034

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al., Plaintiffs, v. DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections, et al., Defendants.	**NOTICE OF FILING**

NOW COME Defendants Damon Circosta, in his official capacity as Chair of the State Board of Elections; Stella Anderson, in her official capacity as Secretary of the State Board of Elections; Jeff Carmon III, Wyatt T. Tucker Sr., and Stacy "Four" Eggers, IV[1], in their official capacities as Members of the State Board of Elections (collectively "the State Board Defendants") to hereby notify the Court of the filing of:

1. The Final Judgment and Order entered on September 17, 2021 by a three-judge panel consisting of, in the majority, the Hon. Michael J. O'Foghludha and the Hon. Vince M. Rozier, Jr., and, in dissent, the Hon. Nathaniel J. Poovey, Superior Court Judges of the North Carolina Superior Court, in the matter of *Holmes, et al. v. Moore, et al.;* 18 CVS 15292, attached hereto as **Exhibit A**.

[1] Mr. Eggers and Mr. Tucker were automatically substituted as parties to this action, in place of former State Board Members Ken Raymond and David C. Black, pursuant to Federal Rule of Civil Procedure 25(d).

Respectfully submitted this the 29th day of September 2021.

JOSHUA H. STEIN
Attorney General

/s/ Terence Steed
Terence Steed
Special Deputy Attorney General
N.C. State Bar No. 52809
E-Mail: tsteed@ncdoj.gov

Laura McHenry
Special Deputy Attorney General
N.C. State Bar No. 45005
lmchenry@ncdoj.gov

N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
Telephone: (919) 716-6567
Facsimile: (919) 716-6759

Counsel for the State Board Defendants

Exhibit A

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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

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

Plaintiffs,

v.

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

Defendants.

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

FINAL JUDGMENT

AND ORDER

TABLE OF CONTENTS

MAJORITY

Page

DISSENT

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

BACKGROUND

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

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

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

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

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

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

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

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

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

LEGAL STANDARD

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

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

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

I. Plaintiffs Have Standing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. The Proper Remedy Is a Permanent Injunction

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

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

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

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

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

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

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

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

CONCLUSION

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

This the 17th day of September, 2021.

Michael J. O'Foghludha, Superior Court Judge

Vince M. Rozier, Jr., Superior Court Judge

J. Poovey, dissenting.

INTRODUCTION

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Experience Under H.B. 589

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

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

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

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

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

i. Targeted Mailings

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

ii. Community Outreach

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

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

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

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

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

iii. Media Campaign

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

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

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

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

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

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

iv. Poll Worker And County Board Training

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

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

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

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

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

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

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

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

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

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

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

b. Voting Under H.B. 589

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Enactment Of S.B. 824

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

a. The General Assembly Proposes The Voter-ID Amendment

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

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

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

72. The voter-ID amendment required implementing legislation.

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

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

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

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

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

b. The General Assembly Reconvenes After The Election

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

c. Bipartisan Process

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

c. Democratic Senator Smith said during the second reading in the Senate, "I want to thank the bill sponsors for the hard work that you have done in negotiating and accepting many of the amendments that have been placed before you." JX772 at 14:16–19.

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

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

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

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

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

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

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

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

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

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

d. No Direct Evidence Of Discriminatory Intent

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Potential Impact Of S.B. 824

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. Implementation

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

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

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

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

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

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

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

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

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

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

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

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

i. ID Possession

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

CONCLUSIONS OF LAW

I. Legal Standard

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

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

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

II. No Direct Evidence Of Discriminatory Intent

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iii. The Evidence Of ID Possession Disproves Plaintiffs' Theory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Implementation Evidence Is Irrelevant

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

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

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

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

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

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

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

4/23/21 Tr. at 98:18–99:1.

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

IV. Legislative Process

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

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

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

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

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

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

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

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

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

50. What is more is that the consideration of S.B. 824 was consistent with other legislation passed during the lame duck, in particular, H.B. 1108, S.B. 820, and S.B. 823—all of which were ratified in under ten days from their filing date like S.B. 824, and none of which Plaintiffs allege were passed with racially discriminatory purpose. Faires conceded at trial that her analysis provided no means of distinguishing the purposes of the General Assembly in enacting S.B. 824 from any of the other bills that passed in the lame-duck session. 4/14/21 Tr. at 55:6–10. In other words, Plaintiffs have submitted no evidence that S.B. 824 was treated any differently than any other bill passed during the lame duck. Accordingly, S.B. 824 did not depart from the "normal procedural sequence" of the lame duck but was fully consistent with it. *Arlington Heights*, 429 U.S. at 267.

51. Third, Plaintiffs cite to parliamentary minutiae, which under Faires's analysis, they contend makes the enactment of S.B. 824 aberrational. As Professor Callanan has persuasively argued, these complaints miss the mark. For instance, it is unremarkable that the General Assembly reconvened in a regular session without listing the specific topics to be discussed. In June 2018, the General Assembly did not know what the outcome of the November 2018 election would be, it did not know whether the voter ID amendment or the Nonpartisan Judicial Merit Commission Amendment would be adopted by voters, so it did not know whether legislative action on implementing legislation would be required. JX27 ¶ 20. As Callanan stated, "[t]he presence of these unique unknowns distinguishes this session from other reconvened regular sessions and may explain the decision not to

forecast the matters to be taken up in the reconvened regular session." And, in all events, past reconvened regular sessions had allowed for the consideration of bills implementing constitutional amendments. Thus, the consideration of S.B. 824 in a reconvened regular session "cannot be regarded as aberrant." *Id.* ¶ 22.

52. But a broader point is that Plaintiffs' idiosyncratic definition of "aberrational" is unhelpful. The Plaintiffs rely on Faires's theory that "if something happens that is different from what's happened before it would be an exception to the rule," and hence aberrational. 4/14/21 Tr. at 43:18–20. But it is important to keep in mind what is, at bottom, the inquiry: whether circumstantial evidence from the sequence of events leading to the enactment of S.B. 824 leads to an inference of bad faith that can overcome the presumption of legislative good faith. And Faires's definition of "aberrational" can lead to no inference whatsoever. At trial, Faires testified that her analysis could not distinguish between Democrat and Republican actions. Further, as discussed, Faires's analysis cannot distinguish between any of the bills or resolutions passed during the 2018 lame-duck session because, in her view, anything passed in the 2018 lame-duck session was aberrational.

53. In fact, Faires said at trial that there was nothing whatsoever that the General Assembly could have done to pass legislation implementing the voter-ID constitutional amendment before January 1, 2019, in a non-aberrational way. *Id.* at 63:8–17. But this just proves too much. Because, under Faires's standard, it is likely true that any actions taken after January 1, 2019, would be "aberrational" too. For example, Plaintiffs argue that the General Assembly should have taken up S.B. 824

after the New Year with a newly seated General Assembly. But if the General Assembly had done that, then that would have been the first time it had not passed implementing legislation for a constitutional amendment in the same biennium in the history of North Carolina. 4/22/21 Tr. at 26:18–21. In other words, it would have been "aberrational" under Faires's definition.

54. Since Plaintiffs' analysis cannot differentiate between actions by Democrats or Republicans, between S.B. 824 or any other bill or resolution in the lame duck, or between actions taken in 2018 or 2019, it does not prove a reliable way of understanding and assessing the General Assembly's actions leading to the enactment of S.B. 824. It certainly can provide no inference of bad faith. Instead, this Court finds that the North Carolina General Assembly acted similar to how it acted in 2016, it acted consistent with what other legislatures have done, including the U.S. Congress, for decades, and it treated S.B. 824 consistent with the other legislation passed during the 2018 lame-duck session. As Professor Callanan persuasively articulated, there is nothing remarkable or nefarious about the General Assembly's legislative process: it is fully in line with ordinary rational actions taken by political actors to accomplish policy goals.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

c. The Substance Of The General Assembly's Consideration Of S.B. 824 Does Not Lead To An Inference Of Bad Faith

55. When considering the specific sequence of events under *Arlington Heights*, the Court may consider, in addition to the specific procedures, whether the substance of the events leading up to the enactment of a law lead to "evidence that improper purposes are playing a role." *Arlington Heights*, 429 U.S. at 564. For instance, courts have looked at what information a legislature sought and obtained prior to enactment of a law and evaluated whether that information shows a racially discriminatory purpose. In *McCrory*, the Fourth Circuit found it significant that the General Assembly requested data "on the use, by race, of a number of voting practices." *McCrory*, 831 F.3d at 214. By contrast, in *Lee*, the Fourth Circuit found Virginia to have lacked a racially discriminatory purpose, in part because "the legislature did not call for, nor did it have, the racial data" akin to the data found relevant in *McCrory*. JX840 at 10 (*Lee*, 843 F.3d at 604).

56. In this case, the record shows that the General Assembly did not request any data about any voting practices in any way correlated to race. *Id.* The data they did have was the data presented by Kim Strach, which did not provide any racial information. JX878. In Strach's presentation, the General Assembly was told that 2.7 million people voted in the March 2016 primary, when H.B. 589's ID requirements were in place. 4/28/21 Tr. at 165:18–24; PX101 at 145:4–15. Of those who voted, Strach's presentation reported that 1,048 cast a reasonable impediment ballot and 1,248 people did not present acceptable photo ID, cast a reasonable impediment ballot, or return to their county board to cure a provisional ballot by the

deadline. JX878 at 31–32. In total, those 2,296 voters represented approximately 0.1% of all ballots cast in that election. Therefore, approximately 99.9% of voters were not required to cast a provisional ballot because they lacked voter ID under HB 589.

57. With this data in hand that 99.9% of voters had been able to vote under H.B. 589, the General Assembly did not seek to include less ID options. To the contrary, the General Assembly crafted S.B. 824 to ensure more voters could vote under the new constitutionally mandated ID requirement. Thus, S.B. 824 provided, inter alia, for (1) more ID options, including a Free ID at all county boards of elections, and (2) a more expansive reasonable impediment provision. With the data the General Assembly had, the General Assembly "specifically included a wide variety of photo IDs and offer[ed] free photo IDs to [North Carolina] citizens who wish to obtain one, which raises the question: 'Indeed, why would a racially biased legislature have provided for a cost-free election ID card to assist poor registered voters—of all races—who might not have drivers' licenses?'" *Greater Birmingham Ministries*, 992 F.3d at 1324 (quoting *Veasey v. Abbott*, 830 F.3d 216, 281 (5th Cir. 2016) (Jones, J., dissenting)). The only plausible inference is they would not.

58. Plaintiffs contend that the General Assembly should have sought racial information. But any member of the General Assembly could have sought this information. And the State Board would have provided that information to any member of the General Assembly who wanted it. 4/28/21 Tr. at 164:1–9. Plaintiffs fail to offer a compelling reason why the lack of racial data should lead to an

inference of racial animus on the part of the legislators who voted in favor of S.B. 824. After all, those who voted against S.B. 824 did not seek racial data either, and they could have. To accept Plaintiffs' argument, this Court would have to find that those who voted in favor of S.B. 824 were motivated by racial animus for not seeking racial data and those who voted against S.B. 824 were motivated by racial animus for not seeking racial data. Neither law nor logic provide a justification for that result. Instead, this Court finds, as did the Fourth Circuit in *Lee*, that the absence of that data or its request shows, that the "process was unaccompanied by any facts or circumstances suggesting the presence of racially discriminatory intent." JX840 at 10 (*Lee*, 843 F.3d at 604).

59. Further, nearly two and a half years after the legislative debates, Plaintiffs still have not presented evidence of possession rates of all types of ID that qualify under S.B. 824. *See* 4/30/21 Tr. at 29:8–10 (Plaintiffs' counsel stated, "We tried to get that data for him, believe me we tried, we wished we could have got it all."). It is far from clear what additional value this data would have provided. Strach testified that if the State Board had been asked for a matching analysis in November 2018 about the number of registered voters who lack qualifying ID under Senate Bill 824, she did not believe she could "say to [the General Assembly] that this is an accurate number of voters that do not possess acceptable ID." *See* 4/28/21 Tr. at 165:6–10. Plaintiffs still have not offered an accurate number.

60. Ultimately, Plaintiffs offered testimony from several legislators who do not support voter ID who opined how they would have preferred the process to have gone. But Plaintiffs have not identified an amendment that is not in the current law and that would have made a material difference to S.B. 824's voter ID provisions. As Dr. Quinn testified, he "is not aware" of a combination of photo IDs that would eliminate any racial disparity between African Americans and whites. 4/15/21 Tr. at 160:10–18. And nothing in his report is inconsistent with the possibility that S.B. 824 and the list of Qualifying ID in S.B. 824 produces the narrowest possible racial disparity between African Americans and whites holding Qualifying ID. *Id.* at 160:23–161:7.

V. The Legislative History Reveals An Inclusive Process

61. The process by which the General Assembly enacted S.B. 824 further confirms that the General Assembly's goal was what legislators said it was: implementing the voter-ID amendment and ensuring election integrity and voter confidence, not political entrenchment through racial discrimination. First, in stark contrast to the historical African American voter suppression measures in North Carolina, such as the poll tax and the literacy test, the legislative record on S.B. 824 is devoid of racial appeals. *See Raymond*, 981 F.3d at 309.

62. Second, even though voter ID is a contentious issue between Republicans and Democrats, and even though the Republican supermajority did not need to include any Democrats in the process, the process was bipartisan under any normal understanding of that term. Republican leadership assured their Democratic colleagues that the process would not be rushed. *See* JX771 at 118:5–8

(Chairman Lewis: "The instructions we've received from Speaker Moore and Senator Berger is that this process not be rushed in any way."); JX774 at 46:14–15 (Chairman Jones: "We'll go as long as we need to go[.]"). The level of Democratic involvement shows that it was not. Republicans took input from Democrats; Democrats proposed the amendments that they intended to propose; and most were accepted. 4/20/21 Tr. at 51:9–24, 125:16–19, 184:10–12; 4/21/21 Tr. at 41:18–42:12; 4/23/21 Tr. at 5:20–24; PX5 ¶ 12; JX645; JX636; JX635; JX644; JX772 at 12:9–15; LX262 at 3; 4/29/21 Tr. at 72:11–73:2; JX633; JX631; JX624; JX634; see also LX776 at 81:1–10 (Chairman Lewis withdrawing motion to report bill favorably out of committee to permit Representative Harrison to present an additional amendment about challenge procedures).

63. Third, Democrats voted for S.B. 824 at various points as it worked its way through the General Assembly. When the Fourth Circuit upheld Virginia's voter-ID law, it noted that, "[w]hile there was a substantial party split on the vote enacting the law, two non-Republicans (one Democrat and one Independent) voted for the measure as well." JX840 at 9 (*Lee*, 843 F.3d at 603). Here, five Democrats across the Senate and the House voted for S.B. 824 at different points, with four of them voting for the bill in its final form. JX663; JX662; JX647; JX648; JX649; JX646. This is particularly salient in this context, where Plaintiffs' theory of the case is that the General Assembly discriminated against African Americans as a means to entrench Republicans. Plaintiffs have not offered a convincing explanation for why any Democrat would vote for such a bill.

64. And fourth, legislators' statements reflect a thorough, inclusive, deliberative process. *See* JX779 at 2:16–3:8 (Senator Krawiec: "From the time this bill was introduced, we made 30 something changes. We listened to everybody. There's not anyone who can say that all sides didn't participate. We took guidance, suggestions, amendments from colleagues on the other side of the aisle, from stakeholders, from our colleges, universities, community colleges. We listened to everyone. We tried to incorporate the changes they recommended, that they asked for, because we don't want anyone to be disenfranchised. We don't want anyone to not be able to vote. So I think we've covered just about everything that we could have covered, and I believe that it's a good bill. I thank my colleagues, particularly on the other side of the aisle, for their input[.]").

65. Democratic General Assembly members who are generally opposed to voter ID laws confirmed that S.B. 824's process was inclusive. Both Senator McKissick and Representative Harrison thanked the Republican majority for being open and inclusive and for working with Democrats to improve the bill, statements that they did not offer while H.B. 589 was being considered in the General Assembly. *Compare* JX773 at 3:3–8, JX777 at 116:20–117:2, *and* JX776 at 98:17–19, *with* JX509 at 39:19–23. These members had a demonstrated history of offering vocal criticism to voter-ID bills and giving no words of thanks to the Republican majority that offered the bills, so the inclusion of these words of thanks from these same members is striking here.

66. This inclusive process is inconsistent with Plaintiffs' attribution of bad faith to the legislators' who enacted S.B. 824. Under *Arlington Heights*, this Court must afford the General Assembly "the presumption of legislative good faith." *See Abbott*, 138 S. Ct. at 2329. Again, this is not a presumption that courts may give only "lip service" to; instead, it is an essential part of the analysis, especially when considering the actions of legislators themselves. Plaintiffs' burden was to identify departures strong enough to "give rise to an inference of bad faith" and overcome the presumption of legislative good faith. As the inclusive process just outlined demonstrates, Plaintiffs have failed to do so.

VI. S.B. 824 Echoes Historical Voting Protections, Not Historical Restrictions

67. Before analyzing the remaining *Arlington Heights* factor—historical background—it is necessary to explain the factor's relevance. History alone cannot impugn the General Assembly's intent, for two main reasons.

68. First, arguments that might impugn the intent behind any voter-ID law are not relevant. The North Carolina constitution requires the General Assembly to pass a voter photo-ID law. If S.B. 824 were suspect merely because racial discrimination has occurred in North Carolina's past, any voter-ID law would be similarly marked with "original sin."

69. Second, the concept of original sin has no place under the *Arlington Heights* framework. Instead, *Arlington Heights* calls for evidence of a pattern of official discrimination in which the challenged action itself plays a part. As the U.S. Supreme Court explained, "historical background" is relevant "particularly if it

reveals a series of official actions taken for invidious purposes." 429 U.S. at 267. And courts must afford legislators a presumption of good faith. *See Raymond*, 981 F.3d at 303 (explaining that if the invalidation of H.B. 589 was dispositive on the question of the legislature's intent in enacting S.B. 824, that would "improperly flip[] the burden of proof at the first step of its analysis and fail[] to give effect to the Supreme Court's presumption of legislative good faith"); *McCrory*, 831 F.3d at 241.

70. That is especially so when intervening events sever the challenged act from past discrimination, as the U.S. Supreme Court explained in *Abbott v. Perez*, 138 S. Ct. 2305 (2018). Two intervening events exist here. The first was the Fourth Circuit's decision in *McCrory*, which endeavored to "fashion a remedy that w[ould] fully correct past wrongs," specifically the intent that the Court had found in H.B. 589. JX838 at 28 (*McCrory*, 831 F.3d at 239 (internal quotation marks omitted)). The court did not, however, purport to "freeze North Carolina election law in place as it is today," for the court recognized that the Fourteenth Amendment does not "bin[d] the State's hands in such a way." JX838 at 29 (*McCrory*, 831 F.3d at 241). The second event was, of course, the constitutional amendment requiring the General Assembly to pass a voter-ID law.

71. This case is therefore much like *Abbott*, and if anything, the comparison favors S.B. 824. In *Abbott*, the Texas legislature adopted a redistricting plan in 2011 that a court found discriminatory. In 2013, the Texas legislature adopted the court's redrawn map. "Under these circumstances," the Supreme Court said, "there can be no doubt about what matters: It is the intent of the 2013

Legislature. And it was the plaintiffs' burden to overcome the presumption of legislative good faith and show that the 2013 Legislature acted with invidious intent." *Abbott*, 138 S. Ct. at 2325. If a court decision was sufficient to separate the legislatures there, a court decision and a constitutional amendment are certainly sufficient here.

72. In short, what matters is the intent of the legislature that passed the specific law at issue. Plaintiffs must therefore show that something about this voter-ID law connects it to past discrimination.

73. Neither of their historical witnesses conducted that analysis. Both conclude that S.B. 824 repeats past discrimination. But to determine whether this voter-ID law—as opposed to any other voter-ID law that the General Assembly might have passed—repeats past discrimination, it is necessary to consider what else the General Assembly could have done to protect the rights of minority voters. If there is no other law that, in these witnesses' view, would wash the taint of the past, then nothing about this voter-ID law connects it to past discrimination. Professor Leloudis explicitly did not consider the General Assembly's other options. 4/13/21 Tr. at 79:2–4, 13–15. And Professor Anderson concludes that any law requiring photo ID that the General Assembly could have passed would be consistent with North Carolina's pattern of voter suppression. 4/12/21 Tr. at 137:14–18. Indeed, in her view, the only thing the General Assembly could have done to excise the discrimination found in H.B. 589 would be to not have a voter-ID law. *Id.* at 137:10–13. Thus, their analyses are flawed as conceived.

74. They are also flawed as executed. Given the many evident deficiencies in her analysis discussed above, Professor Anderson is unable to connect S.B. 824 to any past official discrimination by the General Assembly, the relevant actor here. She argues that S.B. 824 echoes the literacy test and poll tax based on the mere fact that all were required by constitutional amendment. But Plaintiffs are not challenging the voter-ID amendment, which, as explained, points toward S.B. 824's constitutionality, not against it. In any event, Professor Anderson provides no evidence that anyone voted for that amendment with the intent to disenfranchise African Americans, 4/13/21 Tr. at 25:22–25, in contrast to the openly discriminatory motivations for the literacy test and poll tax that both she and Professor Leloudis identify. 4/12/21 Tr. at 163:21–22; 4/13/21 Tr. at 108:25–109:8.

75. Professor Anderson further argues that the differences between S.B. 824 and H.B. 589 are "just so" tweaks intended to mask discrimination. Having not read either law, however, she does not account for the effect of those differences, and indeed was not even aware of some. She was not aware whether the reasonable impediment exception was included in the final version of S.B. 824, and her report neither discusses that exception nor reviews how many African American voters would be able to vote because of it. 4/13/21 Tr. at 26:14–27:6. She was not aware whether H.B. 589 required county boards of elections to issue free, no-documentation IDs (which it did not), and her report does not discuss S.B. 824's requirement that county boards do so. *Id.* at 27:7–16. She was also not aware that these IDs can be obtained at one-stop early voting, which she knew African

American voters disproportionately use. 4/12/21 Tr. at 160:19–22. Ultimately, in her view, even if a voter-ID law allowed every type of photo ID that exists to be used for voting, she would still see that as a tweak. 4/13/21 Tr. at 26:1–5. And in her view, no tweak would make the law palatable. *Id.* at 27:21–24. In other words, her arguments would apply against any voter-ID law that the General Assembly might pass.

76. Professor Anderson holds these views because, she asserts, "the underlying foundation for voter ID laws emerged out of the . . . lie of massive rampant voter fraud . . . that identified that fraud as coming out of these major urban areas." *Id.* at 26:5–9. But she provides no relevant basis for that assertion, either: no statement from the legislative debates over S.B. 824 that characterizes voter fraud as occurring only among minority voters, no statement suggesting that voter fraud occurs only in the cities, no statement suggesting that massive voter fraud is coming out of the inner city. 4/13/21 Tr. at 29:8–21. Nor does she account for race-neutral reasons why legislators support voter-ID laws even if voter-impersonation fraud is not rampant, such as those identified in the Carter Baker Report. LX1. Although she cites articles about the report, she did not review the Commission's recommendations and was not aware that a Commission co-chaired by former President Jimmy Carter had recommended that states adopt voter-ID laws even stricter than North Carolina's. 4/13/21 Tr. at 32:16–33:7, 33:20–34:9, 35:1–9, 36:8–16.

77. Professor Leloudis's historical account is more thorough—and, as discussed above, shows increasing racial parity. Yet he too cannot connect S.B. 824 to any past act of official discrimination and thus to any relevant pattern of racially motivated retrenchment. Whereas only "a very small number" of African American voters might have satisfied the Grandfather Clause, thereby avoiding the literacy test like white voters did, S.B. 824 applies to everyone. *Id.* at 100:5–15. Whereas the literacy test gave election registrars wide latitude to exclude African American voters, S.B. 824 does not give election officials any discretion to reject ballots from those who appear with a Qualifying ID. *Id.* 108:14–20. Whereas the literacy test, poll tax, and other such past measures were adopted in the context of explicit racial appeals and concerted violence against African Americans, Professor Leloudis is aware of no racial appeals about S.B. 824 or the voter-ID amendment or of any violence against African American voters in North Carolina in this century. *Id.* at 109:19–24, 110:19–111:13; *see also* JX695 at 34–35. And whereas these amendments delivered a "knockout punch" to voter turnout, Professor Leloudis would not imagine "that S.B. 824 would have the same scale of effect." *Id.* at 107:17–20; *accord id.* 111:19–21.

78. Indeed, no one has alleged that even strict voter-ID laws (which S.B. 824 is not) eliminate African American turnout entirely, as occurred after the adoption of the 1900 amendments.

79. Professor Leloudis attempts to downplay S.B. 824's ameliorative provisions by arguing that African American voters will not utilize them. But he misunderstands the reasonable impediment process, which he described as opening voters up to "roving at large challenges" without knowing whether reasonable impediment declarations are subject to challenge under S.B. 824—which they are not. 4/13/21 Tr. at 90:12–91:9, 158:24–159:7; *see* JX674 at 12–13 (S.B. 824 § 3.1(c)). Professor Leloudis also misunderstood the free-ID provision. He testified that the availability of these IDs during one-stop early voting came by later amendment and therefore did not factor in his report, when in fact S.B. 824 has mandated the availability of free IDs from the start. 4/13/21 Tr. at 164:22–165:8; JX674 at 1 (S.B. 824 § 1.1(a)).

80. In sum, Plaintiffs' historical evidence, like the rest of their evidence, does not satisfy their burden to prove discriminatory intent. In the face of their historians' unfounded conclusions about S.B. 824 is a steady progress that continues to this day and throughout which North Carolina's African American voters have exercised significant voting strength—which, in passing S.B. 824, the General Assembly took several steps to preserve. It does not diminish the discrimination of the past to say that North Carolina is in a far better place today and that—by ensuring that all voters can vote while honoring its constitutional commitments—the General Assembly followed the lead of past reformers, not past discriminators. If anything, it diminishes the discrimination suffered by past citizens to compare S.B. 824 to poll taxes, literacy tests, and Jim Crow. By engaging in such

comparisons and by the "reading between the lines" approach urged upon this panel, Plaintiffs attempt to make the fiction that African Americans would be more confused by or generally less able to comply with S.B. 824's identification requirements into fact.

VII. The Circumstantial Evidence Of Discriminatory Intent That The Fourth Circuit Located In H.B. 589 Does Not Exist In S.B. 824

81. For all the above reasons, S.B. 824 shares none of the characteristics that the Fourth Circuit relied upon when enjoining H.B. 589.

82. First, the omnibus nature of H.B. 589 was critical to the Fourth Circuit's analysis. "[T]he sheer number of restrictive provisions," the court said, "distinguishes this case from others," because "cumulatively, the panoply of restrictions results in greater disenfranchisement than any of the law's provisions individually." JX838 at 22 (*McCrory*, 831 F.3d. at 231). "[A] rational justification can be imagined for many election laws, including some of the challenged provisions here. But a court must be mindful of the number, character, and scope of the modifications enacted together in a single challenged law." JX838 at 24 (*McCrory*, 831 F.3d at 234). These statements do not apply to S.B. 824, which is not an omnibus bill.

83. Second, the Fourth Circuit observed that the initial draft of H.B. 589, introduced before the U.S. Supreme Court invalidated the preclearance process in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), included "a much less restrictive photo ID requirement" than the final bill and none of the other omnibus provisions. JX838 at 19 (*McCrory*, 831 F.3d. at 227). After *Shelby County*, the General

Assembly replaced that draft with a much more expansive bill, which it proceeded to pass in three days and "on strict party lines." JX838 at 20 (*McCrory*, 831 F.3d at 228).

84. The sequence of S.B. 824 is entirely different. The bill was introduced not after a judicial decision removing restrictions on states' ability to make voting changes, but after a constitutional amendment requiring the General Assembly to pass a law implementing a specific change. The initial draft of the bill included a free-ID provision and sweeping reasonable impediment process. It became only more lenient during the legislative process, which the direct statements of multiple Democratic legislators confirm was thorough and inclusive. *See* JX773 at 3 (Senator McKissick); JX772 at 44 (Senator Smith); JX772 at 55 (Senator Van Duyn); JX772 at 17 (Senator Woodard); JX777 at 116–117 (Representative Harrison). And it was not passed on strict party lines.

85. Third, the Fourth Circuit determined that "findings that African Americans disproportionately used each of the removed mechanisms" of H.B. 589—preregistration, same-day registration, early voting, and out-of-precinct voting—"as well as disproportionately lacked the photo ID required by [H.B. 589] . . . establishes sufficient disproportionate impact." JX838 at 22 (*McCrory*, 831 F.3d at 231). S.B. 824 cannot have the same impact; again, it is not omnibus legislation, and it leaves in place the voting mechanisms that H.B. 589 had removed. What is more, even if Plaintiffs had established that African Americans disproportionately lack the forms of ID approved by S.B. 824 (and they have not), that fact alone could

not establish disparate impact because S.B. 824's reasonable impediment provision allows all voters to vote. While H.B. 589 was later amended to include a reasonable impediment process, the Fourth Circuit in *McCrory* did not consider that process in its impact analysis because it was not part of the original bill. The more pertinent precedent is therefore South Carolina, which found that the "sweeping reasonable impediment provision [in that State's voter ID law] eliminate[d] any disproportionate effect or material burden that South Carolina's voter ID law otherwise might have caused." JX841 at 8 (*South Carolina*, 898 F. Supp. 2d at 40). Plaintiffs do not rebut this with record evidence.

86. Finally, though North Carolina's history has not changed since *McCrory*, North Carolina's constitution has. Especially in light of the intervening voter-ID amendment—approved by a majority of North Carolinians—the intent of any prior General Assembly cannot be simply transferred to the one that passed S.B. 824. The intent of that General Assembly is what matters. And the evidence shows that this General Assembly's intent is not what the Fourth Circuit had found in the passage of H.B. 589.

87. The clearest sign that the Fourth Circuit's opinion in *McCrory* does not apply to S.B. 824 comes from the Fourth Circuit itself. Bound by *McCrory*, the Fourth Circuit nevertheless held that S.B. 824's federal challengers were unlikely to succeed in showing that S.B. 824 was passed with discriminatory intent. In doing so, the court recognized the many differences between S.B. 824 and H.B. 589, including that "[n]othing here suggests that the General Assembly used racial

voting data to disproportionately target minority voters with surgical precision." *Raymond*, 981 F.3d at 308–09 (internal quotation marks omitted).[5] More simply, the court recognized that S.B. 824 is not H.B. 589.

VIII. The Evidence Shows That The General Assembly Would Have Passed S.B. 824 Even Apart From Any Allegedly Discriminatory Motive

88. If Plaintiffs had proved discriminatory intent, which they have not, the question would then become whether "the same decision would have resulted even had the impermissible purpose not been considered." *Arlington Heights*, 429 U.S. at 270, n.21. The evidence shows it would have.

89. First, it is a given that the General Assembly needed to enact some form of voter-ID law. The constitution commands it, and several legislators—including those who voted for and those who voted against S.B. 824—cited that command during S.B. 824's legislative process. *See* JX771 at 3 (Representative Lewis); JX772 at 2 (Senator Krawiec); JX772 at 16 (Senator Woodard); JX772 at 38 (Senator Tillman); JX773 at 3 (Senator McKissick); JX777 at 50 (Speaker Moore). These statements are fully consistent with legislators' testimony in this case. *See* 4/20/21 Tr. at 203:4–12 (Senator Ford); 4/20/21 Tr. at 50:1–5 (Representative Harrison). The goal of preserving election integrity is an independent reason voiced by legislators during the process and likewise confirmed by the evidence. Voter confidence is key to voter participation, and existing studies provide some scientific

[5] The *McCrory* court criticized the General Assembly for requesting racial voting data before enacting H.B. 589. JX838 at 10 (*McCrory*, 831 F.3d at 214). But at the time that it did so, the General Assembly was required under the Voting Rights Act's preclearance provisions to consider the potential racial impact of voting changes, *see, e.g.*, Georgia v. United States, 411 U.S. 526, 538 (1973), a requirement no longer in place when S.B. 824 was introduced.

support for the notion that voter-ID laws enhance voter confidence. And though the extent of voter-impersonation fraud in North Carolina is not known, because not all instances are likely discovered, it is rational to expect a legislature to take precautionary steps against an unquantified but potentially serious threat. JX25 ¶ 54; 4/22/21 Tr. at 52:19–24.

90. Second, we know that the General Assembly would have convened to enact a voter-ID law during a post-election, lame-duck session. Republican legislators had every reason to suspect that, once they lost their supermajority in the 2019 session, their desires to implement the constitutional amendment and to preserve election integrity would be blocked by Governor Cooper's newly effective veto pen and would become subject to bipartisan uncertainties. The suggestion that waiting to pass a voter-ID law in the next session with the Governor's consent would have been anything but a hopeless enterprise is contradicted by the Governor's veto message about S.B. 824 itself. JX687 ("Requiring photo IDs for in-person voting is a solution in search of a problem. . . . Finally, the fundamental flaw in the bill is its sinister and cynical origins: It was designed to suppress the rights of minority, poor and elderly voters. The cost of disenfranchising those voters or any citizens is too high, and the risk of taking away the fundamental right to vote is too great, for this law to take effect."). He reiterated these sentiments in an amicus brief asking the Fourth Circuit to uphold an injunction against S.B. 824. *See* Brief of Gov. Roy Cooper as Amicus Curiae Supporting Plaintiffs-Appellees and Affirmance at 1, *Raymond*, 981 F.3d 295 (4th Cir. 2020) (No. 20-1092) ("[T]he photo ID

requirement in S.B. 824 is a solution in search of a problem, erects barriers that will confuse citizens and discourage them from voting, and was enacted with discriminatory intent."). That a majority of the General Assembly's intent in convening as a lame duck was to enact a voter-ID law before the Governor could veto it is again fully consistent with legislators' testimony in this case. See 4/20/21 Tr. at 93:1–11 (Representative Harrison); 4/21/21 Tr. at 57:4–9 (Senator Robinson).

91. And finally, we know that the General Assembly would have enacted the same voter-ID law in that session. S.B. 824 was based on South Carolina's voter-ID law, which had already been upheld in court. Plaintiffs have not identified a single change to the bill that would have meaningfully improved voters' access to the polls. They have identified no array of qualifying IDs that would result in a narrower gap of ID-possession rates than they alleged. They have not attempted to quantify the effect of S.B. 824's free-ID provision or reasonable impediment process. Nor have they identified any additional ameliorative provision that would have measurably improved voter access beyond these existing ones.

92. Thus, even assuming a counterfactual, discriminatory motivation behind S.B. 824, there is still "no justification for judicial interference with the challenged decision." *Arlington Heights*, 429 U.S. at 270 n.21. Nothing in the record indicates that a legislature, scrubbed of that assumed motive, would have done anything differently in the unique situation that the General Assembly found itself in. And even if the General Assembly were required to begin the process of enacting another voter-ID law tomorrow, not even Plaintiffs—after several years of litigation

and a three-week trial—have explained what other voter-ID law the General Assembly should pass, because S.B. 824 is one of the most generous in the country.

CONCLUSION

Senate Bill 824 was a bipartisan bill that was supported along the way by multiple African American legislators and enacted after the people of our State approved a constitutional amendment calling for voter-photo-ID requirements. The totality of the competent evidence presented in *this* litigation over *this* act of the General Assembly *in 2018* fails to support a finding that the General Assembly acted with racially discriminatory intent. Moreover, even if some evidence allowed for a showing of such an intent, the totality of the competent evidence shows that S.B. 824 would have still been enacted absent that allegedly discriminatory intent.

In conclusion, the North Carolina General Assembly's enactment of S.B. 824 comports with the North Carolina Constitution, and S.B. 824 should not be declared unconstitutional or otherwise enjoined in its operation based upon the record before this Court.

For the foregoing reasons, I respectfully dissent.

Nathaniel J. Poovey, Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Allison J. Riggs
Jeffrey Loperfido
Mitchell D. Brown
Hilary Klein
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
jeffloperfido@scsj.org
mitchellbrown@scsj.org
hilaryklein@scsj.org
Counsel for Plaintiffs

Andrew J. Ehrlich
David Giller
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
aehrlich@paulweiss.com
dgiller@paulweiss.com
Counsel for Plaintiffs

Paul D. Brachman
Jane O'Brien
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2001 K Street, NW
Washington, DC 20006-1047
pbrachman@paulweiss.com
jobrien@paulweiss.com
Counsel for Plaintiffs

Nicole Moss
David Thompson
Peter Patterson
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, NW
Washington, DC 20036
nmoss@cooperkirk.com
dthompson@cooperkirk.com
ppatterson@cooperkirk.com
Counsel for Legislative Defendants

Nathan A. Huff
PHELPS DUNBAR LLP
GlenLake One
4140 ParkLake Avenue, Suite 100
Raleigh, NC 27612
nathan.huff@phelps.com
Counsel for Legislative Defendants

Amar Majmundar
Olga E. Vysotskaya de Brito
Stephanie Brennan
Pamela Collier
N.C. DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, NC 27602
amajmundar@ncdoj.gov
ovysotskaya@ncdoj.gov
sbrennan@ncdoj.gov
pcollier@ncdoj.gov
Counsel for the State and State Board Defendants

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 17th day of September 2021.

Kellie Z. Myers
Trial Court Administrator, 10th Judicial District
kellie.z.myers@nccourts.org