

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF WAKE

18 CVS \_\_\_\_\_

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

*Plaintiffs,*

v.

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

*Defendants.*

**VERIFIED COMPLAINT**

(Three-Judge Panel requested pursuant to  
N.C. Gen. Stat. § 1-267.1)

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CLERK OF COURT

1. In numerous iterations of this State's Constitution, stretching over many decades, the people of the State of North Carolina have enshrined in their state's most sacrosanct governing document, through the adoption of a number of separate constitutional provisions and guarantees, the right to participate in their democracy and to have their political voice heard freely and equally. Without question, the right to vote on an equal basis in North Carolina is fundamental, and "[n]o right is more precious in a free country than that of having a voice in the election of those who

make the laws under which, as good citizens, we must live.” *Blankenship v. Bartlett*, 363 N.C. 518, 521 (2009) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964)).

2. Though, as of the November 2018 General Election, the North Carolina Constitution also requires “[v]oters offering to vote in person to present photographic identification before voting,” N.C. Const. Art. VI, §§ 2-3, this requirement must be effectuated through enabling legislation that is consistent with all other rights and freedoms that the State Constitution guarantees. That a piece of enabling legislation is drafted to give force and effect to a new constitutional provision does not insulate it from being in conflict with other constitutional provisions. Indeed, the same constitutional provision explicitly notes that “[t]he General Assembly shall enact general laws governing the requirements of such photographic identification, **which may include exceptions**,” *id.* (emphasis added), as would be necessary to ensure that the enabling legislation does not run afoul of the State’s other constitutional mandates with respect to voting.

3. But the enabling legislation, Senate Bill 824, does just that. Senate Bill 824, passed by the General Assembly on December 6, 2018 and ratified into law after a veto override on December 19, 2018, creates a law that nominally complies with N.C. Const. Art. VI, §§ 2-3, but violates numerous other provisions of the State Constitution. The legislature failed in its duty to balance the constitutional protections for voting—primarily ensuring that no eligible voter will be disenfranchised—with compliance with the new constitutional provision.

4. The historical background of the State’s previous photographic identification (photo ID) requirement for voting in effect for the March and June 2016 Primary Elections, contained in the Voter Information Verification Act, SL 2013-381, and S.L. 2015-103 (hereinafter together referred to as “VIVA”), is that it was invalidated by the United State Court of Appeals for

the Fourth Circuit as intentionally racially discriminatory. *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016), *cert. denied* 137 S. Ct. 1399 (May 15, 2017). The Court of Appeals noted that specific aspects of the photo ID requirement had an intentionally disparate burden on North Carolinians of color, and, indeed, the types of IDs chosen to be acceptable for voting were selected on the basis of the race of the voters most likely to possess those types of IDs. *Id.* at 216, 227–28.

5. The General Assembly’s new voter identification enabling legislation, Senate Bill 824, retains many of the harmful provisions of the State’s previous invalidated requirement. Through this enactment, the General Assembly has simply reproduced the court-identified racially discriminatory intent it manifested a mere five years ago when it enacted a very similar voter ID requirement. The fact that a bare majority of North Carolina voters endorsed a vaguely worded constitutional amendment requiring, with exceptions, some form of photo ID to vote does not insulate the legislature from once again enacting an intentionally racially discriminatory law where its enabling legislation contains provisions nearly identical to those previously found to be constitutionally infirm. Moreover, the legislature has failed to craft a photo ID requirement for voting that gives effect to newly amended Art. VI and that also respects the constitutional rights and freedoms of each North Carolinian to cast a ballot freely and on equal terms. Senate Bill 824, which became law over the objection of the Governor on December 18, 2018, unconstitutionally and unjustifiably burdens the right to vote of Plaintiffs and similarly situated registered, qualified North Carolina voters who lack acceptable photo ID when they go to the polls and are subject to a complex process to vote—assuming that they are even offered a reasonable impediment declaration. Effective immediately when Senate Bill 824 becomes law, several classes of voters will be affected: (1) voters who lack a photo ID from an arbitrarily narrow list of acceptable IDs,

(2) voters who do not have a reasonable impediment to obtaining requisite photo ID, (3) voters who present acceptable photo ID but are denied the ability to cast a regular ballot, (4) voters who forget their photo ID and do not understand how to cure the provisional ballot they will be forced to cast, and (5) voters who are not offered a reasonable impediment declaration, among others, will be unable to have their in-person vote counted.

6. The enabling legislation, Senate Bill 824, purportedly intended to give effect to newly amended Art. VI, violates the North Carolina Constitution—both as applied to Plaintiffs and similarly situated voters, and on its face—in the following ways:

- a. It intentionally discriminates against and disparately impacts African-American and American-Indian qualified, registered voters, as intended by the General Assembly, and in violation of the Equal Protection Clause in Article 1, § 19.
- b. It unduly burdens the fundamental right to vote, in violation of the Equal Protection Clause in Article 1, § 19.
- c. It unjustifiably creates separate of classes of voters, treated differently with respect to their access to the fundamental right to vote, in violation of the Equal Protection Clause in Article I, § 19.
- d. It imposes a financial cost on voting in violation of the Free Elections Clause in Article I, § 10.
- e. It imposes a property requirement for voting in violation of the Property Qualifications Clause in Article I, § 10.

- f. It impedes voters' ability to engage in political expression and speech by casting a ballot, in violation of their Right of Assembly and Petition and Freedom of Speech as mandated by Article I, §§ 12 and 14.

This as-applied and facial constitutional challenge seeks a declaratory judgment that Senate Bill 824 violates the foregoing provisions of the North Carolina Constitution. Plaintiffs further seek injunctive relief prohibiting the enforcement of Senate Bill 824 and allowing all qualified, registered voters who present to vote to cast a regular ballot.

## **I. JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to Articles 26 and 26 A of Chapter 1 of the North Carolina General Statutes.

8. Venue is proper in this matter pursuant to N.C. Gen. Stat. § 1-81.1(a1), as “[v]enue lies exclusively with the Wake County Superior Court” for facial challenges to an act of the General Assembly under the North Carolina Constitution.

9. A three-judge panel must be convened in this matter pursuant to N.C. Gen. Stat. § 1-267.1.

## **II. PARTIES**

10. **Plaintiff Jabari Holmes** is a registered voter residing in Wendell, Wake County, North Carolina. Mr. Holmes is a 42-year-old bi-racial man with severe cerebral palsy that has confined him to a wheelchair. He relies on care from his elderly parents. Mr. Holmes, with assistance from his mother, attempted to obtain a photo ID before the 2016 election; however, they were unsuccessful because they do not have a copy of his Social Security card. With the assistance of his mother, Mr. Holmes has attempted unsuccessfully to obtain a copy of his Social Security card.

11. Mr. Holmes would be unable to obtain a “free” ID from the Wake County Board of Elections because the office is located in downtown Raleigh, on a busy road with no handicapped parking spots anywhere close to where he would need to present in order to obtain that alternate form of ID.

12. Moreover, given the challenges in transportation for Mr. Holmes, a trip to the Wake County Board of Elections, even assuming the existence of parking that would enable him to enter the office, would take at least an hour, round-trip, and could take much longer depending on Raleigh traffic. Mr. Holmes can experience significant pain when forced to remain in one position for a significant period of time. Thus, forcing Mr. Holmes to travel to the Wake County Board of Elections office is significantly burdensome for him.

13. Mr. Holmes has regularly voted in person on Election Day because his polling place is just a six-minute drive (2.5 miles from his home), and voting in person making him feel included in his government and part of his community. Transportation to his Election Day polling place is relatively easy for his family, and he has never voted at any one-stop early voting site or by absentee ballot.

14. Mr. Holmes was required to cast a reasonable impediment provisional ballot in March 2016, and under Senate Bill 824, Mr. Holmes will be required either to clear multiple administrative hurdles or to vote provisionally, at risk of disenfranchisement due to inconsistent or inappropriate application.

15. **Plaintiff Fred Culp** is a registered voter residing in Waxhaw, Union County, North Carolina. Mr. Culp, a 78-year-old African-American man, does not have a photo ID acceptable for voting purposes under Senate Bill 824. Mr. Culp has only an expired South Carolina ID because he has not driven for years due to a neck injury. Mr. Culp has attempted to get a North

Carolina ID but has been unsuccessful, as he is unable to obtain a copy of his birth certificate from the State of South Carolina due to an administrative misspelling of his mother's name.

16. Mr. Culp lives a significant distance from the Union County Board of Elections in Monroe, NC, approximately a 40-minute roundtrip, and because he does not drive, traveling to the County Board of Elections to obtain the alternate form of "free" ID would be burdensome and costly. In contrast, the one-stop early voting site where Mr. Culp regularly votes with his wife is only a few minutes down the road from his home.

17. Mr. Culp was required to cast a reasonable impediment provisional ballot in March 2016, and under Senate Bill 824, Mr. Culp will be required either to clear administrative hurdles or to vote provisionally, at risk of disenfranchisement due to inconsistent or inappropriate application.

18. **Plaintiff Daniel E. Smith** is a 50-year-old African-American registered voter residing in Concord, Cabarrus County, North Carolina. In 2016, Mr. Smith had to get a new driver's license because his old license had expired. The DMV gave Mr. Smith a temporary paper license to use until he received his official replacement in the mail. The temporary government-issued license included his name, address, and a photograph of his face, but nonetheless a poll-worker refused to accept the temporary license for voting on Election Day during the March 2016 Primary. Mr. Smith was not offered a "reasonable impediment" provisional ballot, but instead was forced to cast a regular provisional ballot. Mr. Smith's provisional ballot was not counted in that election.

19. Mr. Smith's experience demonstrates the inadequacy of Senate Bill 824's reasonable impediment process, the failure of the State Board of Election's education efforts for poll workers, and the inevitable disenfranchising effects that will result from inconsistent and

unfair application of a strict photo ID requirement that provides only provisional ballots to those who meet its “exceptions.”

20. **Plaintiff Brendon Jaden Peay** is an African-American registered voter residing in Durham, Durham County, North Carolina. Mr. Peay, who is 19 years old, moved to Durham from Rock Hill, South Carolina (just outside of Charlotte) to attend North Carolina Central University in 2017. He has only a South Carolina driver’s license. Mr. Peay is a part of the ROTC program and will join the military service upon his graduation from college.

21. Mr. Peay prefers to maintain his South Carolina driver’s license so that he may more easily remain on his mother’s car insurance policy.

22. Under Senate Bill 824, it is unclear whether his student ID from North Carolina Central University will satisfy the same level of proof of identity as a North Carolina driver’s license or whether his university will be able to reissue compliant IDs if the existing IDs do not satisfy the requirements of Senate Bill 824. As a result of Senate Bill 824, Mr. Peay may be required either to jump through administrative hurdles or to vote provisionally, at risk of disenfranchisement due to inconsistent or inappropriate application.

23. **Plaintiff Shakoya Carrie Brown** is a registered voter residing in Mecklenburg County, North Carolina. Ms. Brown is a 20-year-old African-American woman attending college at Johnson C. Smith University, a Historically Black College or University (HBCU) in Charlotte. She has been registered and voting in North Carolina since she arrived at college in 2016. She is originally from Florida, and in terms of photo ID, has only a Florida driver’s license and her student ID from Johnson C. Smith University. She does not own a car in the State of North Carolina.

24. Her student ID from Johnson C. Smith University includes no expiration date and would not comply with Senate Bill 824. Because her university is a small, private school, and



because Senate Bill 824 made no appropriations to assist universities or community colleges in bringing their student IDs into compliance with Senate Bill 824, she has serious concerns about the burden that this law will create on her university and whether her university will have the resources necessary to alter the form of its issued student IDs to become complaint with the terms outlined in Senate Bill 824. Ms. Brown fears that she will be forced to vote provisionally or be disenfranchised because of the challenged bill.

25. **Plaintiff Paul Kearney, Sr.**, is a registered voter residing in Warrenton, Warren County, North Carolina. Mr. Kearney, a 69-year-old African-American man, has been voting in the same precinct for decades. On Election Day, during the March 2016 Primary, Mr. Kearney arrived at the polls near closing time, only to find that he had forgotten his ID in his other clothes. Despite the fact that multiple poll workers acknowledged that they knew and recognized Mr. Kearney, he was nonetheless required to cast a provisional ballot.

26. The poll workers were confused as to how to deal with Mr. Kearney under the terms of the ID law. He was offered a provisional ballot, but the poll workers did not appear able to explain how he could cure that provisional ballot. Mr. Kearney was not adequately informed that his vote would not count if he did not return to the Board of Elections with his ID, so his provisional ballot did not count. Mr. Kearney's experience demonstrates that even voters who possess adequate ID may be forced to cast a provisional ballot and risk disenfranchisement through the inconsistent and unfair application of a strict photo ID requirement.

27. **Defendant Timothy K. Moore** is being sued in his official capacity as Speaker of the North Carolina House of Representatives.

28. **Defendant Phillip E. Berger** is being sued in his official capacity as President Pro Tempore of the North Carolina Senate.

29. **Defendant David R. Lewis** is being sued in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session.

30. **Defendant Ralph E. Hise** is being sued in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session.

31. **Defendant State of North Carolina** is a sovereign state in the United States.

32. **Defendant North Carolina State Board of Elections** is the agency responsible for the administration of the election laws of the State of North Carolina.

### **III. FACTUAL ALLEGATIONS**

#### **A. Photo ID Requirements for Voting in North Carolina**

33. Since 2011, the North Carolina General Assembly has worked, without success, to implement a photo ID requirement for voting. When they first passed such a requirement in 2011, then-Governor Bev Perdue vetoed the law based on the discriminatory and disenfranchising impact it would have on North Carolina voters.

34. In 2013, after voter-ID proponent Pat McCrory was elected as governor and after North Carolina was relieved of the duty of having to comply with Section 5 of the Voting Rights Act, the legislature enacted a stringent voter ID requirement, with a highly limited number of acceptable IDs. Civil rights groups immediately sued. On the eve of trial in 2015, the legislature amended the voter ID law to allow for a reasonable impediment exception, where voters who faced some barrier in obtaining a photo ID might cast a special type of provisional ballot that would be more likely to count. This amendment was described as a “South Carolina-style” voter ID law.

35. Nonetheless, a year later, the United States Court of Appeals for the Fourth Circuit invalidated the entire law because the law, and in particular the photo ID requirement, was crafted with racially discriminatory intent, and the last-minute amendment to dampen the disenfranchising effects of the discriminatory law was not sufficiently remedial for a law enacted unconstitutionally.

Since 2016, North Carolina has not had a photo ID requirement for voting, although first-time voters may have to present identification as required by the Help America Vote Act and all voters are required to affirmatively provide their correct registration address and to affirm their identity, upon penalty of perjury, on an Authorization to Vote form.

36. In the summer of 2018, at the end of the regular session, the North Carolina legislature decided to put a ballot measure on the November 2018 ballot asking the state's voters to approve an amendment to the Constitution that would require voters to present a photo ID.

37. It passed with 55% of the vote.

38. In the 2018 primary and general elections, many incumbent legislators failed to secure re-election. As a result, the Republican Legislative Caucus no longer comprises a super-majority in the legislature, meaning that it will soon lose the ability to override a gubernatorial veto. Rather than allow the 2019 legislature, reflective of the expressed will of North Carolina voters, to consider a bill to effectuate the new constitutional amendment, the lame-duck legislature called a special session to pass legislation implementing the new constitutional photo ID requirement resulting in a number of procedural irregularities and suspicious short cuts in legislative procedure.

39. Within only nine days of filing the enabling legislation, Senate Bill 824, the legislature had passed the new law and presented it to the governor for his signature or veto.

40. Senate Bill 824 implements the 2018 amendment to Article VI of the North Carolina Constitution requiring all duly registered voters to show an acceptable photo ID when presenting to vote in person.

41. The forms of acceptable ID under the statute are limited to:

- a. A North Carolina driver's license that is valid and unexpired, or has been expired for one year or less;
- b. A special identification card for nonoperators issued under N.C. Gen. Stat. § 20-37.7 that is valid and unexpired, or has been expired for one year or less;
- c. A United States passport that is valid and unexpired, or has been expired for one year or less;
- d. A North Carolina voter photo identification card of the registered voter that is valid and unexpired, or has been expired for one year or less;
- e. A tribal enrollment card issued by a state or federally recognized tribe that is valid and unexpired, or has been expired for one year or less;
- f. A student ID card that is valid and unexpired, or has been expired for one year or less, issued by a constituent institution of the University of North Carolina, a community college, as defined in N.C. Gen. Stat. § 115D-2(2), or eligible private postsecondary institution as defined in N.C. Gen. Stat. § 116-280(3), provided that card is issued in accordance with G.S. § 163A-1145.2;
- g. An employee identification card that is valid and unexpired, or has been expired for one year or less, issued by a state or local government entity, including a charter school, provided that card is issued in accordance with G.S. § 163A-1145.3;
- h. A driver's license or special identification card for nonoperators issued by another state, the District of Columbia, or a territory or commonwealth of

the United States that is valid and unexpired, or has been expired for one year or less, but only if the voter's voter registration was within 90 days of the election;

- i. A military identification card issued by the United States government regardless of whether the identification contains a printed expiration or issuance date; and
- j. A Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities, regardless of whether the identification contains a printed expiration or issuance date.

42. The statute allows for voters who are sixty-five years of age or older to present an acceptable form of photo ID that has been expired for longer than one year if that photo ID was unexpired on the voter's sixty-fifth birthday.

43. In order for a student ID to be approved by the State Board as acceptable for voting, Senate Bill 824 requires that the following criteria are met:

- a. The chancellor, president, or registrar of the university or college submits a signed letter to the Executive Director of the State Board under penalty of perjury that the following are true:
  - i. The identification cards that are issued by the university or college contain photographs of students taken by the university or college or its agents or contractors;
  - ii. The identification cards are issued after an enrollment process, that includes methods of confirming the identity of the student that

- include, but are not limited to, the social security number, citizenship status, and birthdate of the student;
- iii. The equipment for producing the identification cards is kept in a secure location;
  - iv. Misuse of the equipment for producing the identification cards would be grounds for student discipline or termination of an employee;
  - v. University or college officials would report any misuse of student identification card equipment to law enforcement if N.C. Gen. Stat. § 163A-1389(19) was potentially violated;
  - vi. The cards issued by the university or college contain a date of expiration, effective January 1, 2021;
  - vii. The university or college provides copies of standard identification cards to the State Board to assist with training purposes; and
- b. The university or college complies with any other reasonable security measure determined by the State Board to be necessary for the protection and security of the student identification process.

44. In order for a state or local government employee ID to be approved by the State Board as acceptable for voting, Senate Bill 824 requires that the following criteria are met:

- a. The head elected official or lead human resources employee of the state or local government entity or charter school submits a signed letter to the Executive Director of the State Board under penalty of perjury that the following are true:

- i. The identification cards that are issued by the state or local government entity contain photographs of the employees taken by the employing entity or its agents or contractors;
  - ii. The identification cards are issued after an employment application process that includes methods of confirming the identity of the employee that include, but are not limited to, the social security number, citizenship status, and birthdate of the employee;
  - iii. The equipment for producing the identification cards is kept in a secure location;
  - iv. Misuse of the equipment for producing the identification cards would be grounds for termination of an employee;
  - v. State or local officials would report any misuse of identification card equipment to law enforcement if N.C. Gen. Stat. § 163A-1389(19) was potentially violated;
  - vi. The cards issued by the state or local government entity contain a date of expiration, effective January 1, 2021;
  - vii. The state or local government entity provides copies of standard identification cards to the State Board to assist with training purposes; and
- b. The state or local government entity complies with any other reasonable security measures determined by the State Board to be necessary for the protection and security of the employee identification process.

45. While Senate Bill 824 allows student and employee IDs that pass muster under these stringent requirements to be used for voting, it neither mandates that qualifying entities issue ID to their constituency, nor allocates funds to facilitate the issuance of compliant ID.

46. If a voter does not already possess one of the acceptable photo IDs for voting described above, Senate Bill 824 provides two mechanisms for a voter to obtain an allegedly free photo ID: from either the county board of election office or from the NC DMV.

47. Under Senate Bill 824, county boards of elections are required to issue to registered voters a voter photo identification card (voter photo ID card), containing a photograph of the voter and the voter's registration number, free of charge upon request. The voter photo ID card may be used only for purposes of voting and is valid for a period of ten years.

48. The statute requires the State Board of Elections to provide county boards with the equipment necessary to print voter photo ID cards.

49. Under Senate Bill 824, a registered voter must provide at least their date of birth and the last four digits of their social security number to obtain a voter photo ID card. The statute gives the State Board the authority to impose additional requirements for obtaining a voter photo ID card.

50. Under Senate Bill 824, a duly registered voter cannot obtain a voter photo ID card during the period between the end of the early voting period and Election Day.

51. Senate Bill 824 also provides for any person at least 17 years of age to obtain a special ID card from the North Carolina Department of Motor Vehicles allegedly free of charge.

52. However, to obtain a "free" special ID card, a voter needs to present three different categories of documents to prove (1) their social security number; (2) their residence; and (3) their



full name and date of birth. North Carolina voters have faced significant barriers in attempting to obtain a “free” ID or any acceptable ID for voting from the NCDMV, including but not limited to:

- a. Having to pay for a NCDMV Photo ID even though they requested a free NCDMV ID card;
- b. Not being able to obtain any NCDMV Photo ID, including a free NCDMV Photo ID, due to inconsistent policies as to what underlying documents are necessary to obtain a NCDMV Photo ID, name-change issues, NCDMV error, and mistreatment by NCDMV employees;
- c. Having to pay significant monies for underlying documents to obtain a NCDMV Photo ID;
- d. College or university students not being able to obtain a NCDMV Photo ID when they have an out-of-state driver’s license, due to a NCDMV policy requiring the student to obtain a NC Driver’s License and North Carolina automobile insurance if the student wishes to obtain any NCDMV Photo ID, even if the student does not own a vehicle;
- e. Burdens or the inability to travel to NCDMV offices that are not located in every North Carolina county, that do not have evening or weekend hours, that are not open five days per week, that are not open as advertised, that when open are plagued by long lines and understaffing, and that are long distances from voters’ homes or workplaces. Indeed, in recent months, NCDMV offices have been plagued by hours’-long wait times, extensively covered in local media, as part of the issuance of REAL IDs; and

- f. Having to make multiple trips to a NCDMV driver's license office to obtain an ID acceptable for voting.

53. A voter must show two documents to prove their full name and date of birth, limited to a U.S. or Canadian driver's license; a birth certificate; an original Social Security card; tax forms; a motor vehicle driver's record; school documents; a U.S. military ID; a passport; a certified marriage certificate; a North Carolina limited driving privilege; U.S. government documents; or U.S. or Canadian court documents. Additionally, if women have changed their name through marriage or divorce, they may have to show their marriage license or divorce decree to prove their name.

54. Senate Bill 824 also imposes a requirement that voters requesting an absentee ballot include with their written request for that absentee ballot "acceptable forms of readable identification that are substantially similar to those required under G.S. 163A-1145.1." But, importantly, if a voter is unable to produce acceptable readable identification, the voter is allowed to complete an alternative affidavit and is mailed a regular, not provisional absentee ballot.

55. In the text of Senate Bill 824, the stated purpose of the ID required by the statute is "to confirm the person presenting to vote is the registered voter on the voter registration records." The statute explicitly denies any further purpose of the ID requirement, such as confirming residence or eligibility for voting.

56. After establishing which IDs are acceptable or not, and some mechanisms by which voters may try to obtain acceptable photo ID, Senate Bill 824 then delineates procedures for when a voter attempts to vote without acceptable ID.

57. If a voter fails to present acceptable photo ID at the polls, they may cast a provisional ballot. The provisional ballot will only be counted for a voter without a reasonable

impediment to obtaining a photo ID if the voter returns to their local board of elections with acceptable photo ID before the end of the seven- to ten-day canvass period following the election.

58. Voters nominally exempted from the photo ID requirement, pursuant to statute, are those who sign affidavits attesting that: (1) they have a religious objection to being photographed, (2) they have suffered from a reasonable impediment preventing them from presenting photo identification, or (3) they were a victim of a natural disaster occurring within 100 days before the election that resulted in a disaster declaration by the President of the United States or the Governor of this State.

59. A voter who does not have acceptable photo ID for voting and who has a reasonable impediment to presenting or obtaining acceptable photo ID to vote should also be offered a reasonable impediment declaration under Senate Bill 824. Voters will not have their reasonable impediment provisional ballot counted if the reasonable impediment declaration reason provided is not accepted by the County Board of Elections. Voters who do not have acceptable photo ID and are not offered a reasonable impediment declaration will not have their votes counted.

**B. The Process by Which the Challenged Law Was Enacted Is Deeply Troubling**

60. Much as it did in 2013, the legislature rushed the process of enacting the current photo ID requirement. And, just like in 2013, it rejected forms of identification that are disproportionately held by voters of color, or erected obstacles making it more difficult for those forms of identification to be acceptable. These same factors that led the United States Court of Appeals for the Fourth Circuit to invalidate the 2013 law as intentionally racially discriminatory are present in the 2018 enactment as well.

61. Despite the broad slate of ID that would serve to effectuate the bill's purpose: "to confirm the person presenting to vote is the registered voter on the voter registration records,"

amendments seeking to broaden the types of acceptable photo ID were largely rejected during the 2018 third special session.

62. For example, Senate Bill 824 does not allow voting-age high school students to present a high school photo ID for purposes of voting, even if issued by a public high school. An amendment introduced on the House floor that would have allowed such ID to be presented for voting was rejected along party lines.

63. Additionally, while Senate Bill 824 does allow approved state or local government employee ID to be used for voting, it does not allow use of federal employee ID. An amendment introduced on the Senate floor that would have allowed such ID to be presented for voting was tabled without debate.

64. Nor does it allow use of photo IDs issued by government entities to non-employees, such as public assistance IDs. For example, the law would not allow for use of a photo ID issued by a public housing authority to its residents. Public housing authorities are local governmental entities that receive state and federal funding. There are 70 housing authorities across the state of North Carolina, and recipients of assistance from these authorities are disproportionately low-income, women, and people of color. Some, such as the Burlington Housing Authority, the Hertford Housing Authority, and the Redevelopment Commission of the Town of Tarboro, provide a picture ID for all of their residents over a certain age. Other public housing authorities that do not currently put a photograph on its residential IDs would be willing to do so in an effort to assist its residents in voting. An amendment in the Senate to allow such IDs to be presented for voting was tabled without debate.

65. Many of the members of the legislature who voted for Senate Bill 824 this year also were members of the legislature in 2013 and voted for the racially discriminatory VIVA law. An

even greater number of the members of the legislature who voted for Senate Bill 824 this year were in the legislature when the Court of Appeals invalidated VIVA in 2016 – in part for rejecting the aforementioned alternative photo IDs. Likewise, there is a substantial overlap in legislative leadership in the legislature that passed the racially discriminatory VIVA law in 2013 and the current legislature that enacted Senate Bill 824.

66. Indeed, it is settled law that the “culmination of a series of events,” as is the case here, can be plausible evidence of intentional discrimination in violation of equal protection rights. *Carcaño v. McCrory*, 1:16-cv-236, Memorandum Order, at \*11, 56 (M.D.N.C. Sept. 30, 2016).

67. The special session in which the legislature considered enabling legislation for the photo ID constitutional amendment began on November 27, 2018. There was no need for this enabling legislation to be enacted in a special session, by a lame-duck legislature that possesses veto override power that the voters of North Carolina took away in November of 2018.

68. Senate Bill 824 was ratified by the North Carolina General Assembly on December 6, 2018, nine days after it was first introduced.

69. The Senate approved the bill by a vote of 30-10, and with amendments, the House approved the bill by a vote of 67-40. The Senate concurred on the altered bill by a vote of 25-7.

70. The ratified bill was presented to Governor Roy Cooper on December 6, 2018, who vetoed the bill on December 14, 2018.

71. On December 19, 2018, the North Carolina General Assembly reconvened and overrode the Governor’s veto and, thus, the bill became law notwithstanding the objections of the Governor.

**C. Thousands of North Carolina's Registered or Eligible Voters Lack a Photo ID Acceptable Under the New Law**

72. Troublingly, neither prior to the introduction of the constitutional amendment to be voted upon in the November 2018 election nor prior to the passage of the enabling legislation in December did the North Carolina General Assembly or the State Board of Elections update its analysis of how many registered North Carolina voters do not have North Carolina DMV-issued photo identification. Prior to the enactment of VIVA in 2013, and during the course of litigation challenging that law, the State Board of Elections conducted numerous analyses comparing lists of registered voters with lists of customers to whom NCDMV had issued driver's licenses and nonoperators' licenses. Such analysis informed the racial and demographic impact of a photo identification requirement in North Carolina.

73. The legislature chose to rely on dated analyses from its prior effort to draft legislation rather than to conduct a new analysis that would more accurately capture the current impact of the law, and thus blindly drafted a law without care for the disproportionate impact it would have on subgroups of North Carolina voters.

74. The most recent analysis conducted by the State Board of Elections is now more than three years old. In February of 2015, the State Board of Elections conducted a study that revealed, using a conservative methodology, that 254,391 registered voters lacked DMV-issued ID.

75. Experts for litigants challenging VIVA, using different methodologies and examining some federal ID databases, moreover, identified tens of thousands of additional North Carolina voters who lacked acceptable ID for voting.

76. The figures from the State Board study and the litigation experts' studies were presented by State Board of Elections Director Kimberly Strach to a legislative committee and

were brought up repeatedly during legislative debate, so legislators voting in favor of Senate Bill 824 could not have been unaware of the impact of a photo ID requirement, particularly with limited forms of ID accepted.

77. At bottom, hundreds of thousands of North Carolina registered voters do not possess acceptable photo ID for voting and will have their fundamental right to vote threatened by Senate Bill 824.

78. Senate Bill 824 does not require the State Board to ascertain how many registered voters lack DMV-issued photo ID, or to inform those voters of the law's requirements, until September 1, 2019. Upon information and belief, municipal elections will begin as early as September 10, 2019.

**D. The Challenged Law Will Impose Serious Costs On Eligible Voters in Order to Exercise their Fundamental Rights**

79. Senate Bill 824 creates two mechanisms for voters to obtain allegedly free identification for voting: through the NCDMV or through the county boards of election. Neither, in fact, creates a viable path to obtaining a truly free ID card, and both impose serious time and financial costs on voters.

80. The first option for obtaining a photo ID—from the NCDMV—is certainly the more costly of the two options.

81. Under Senate Bill 824, the clerk of court in each county is directed to make free certified birth certificates and marriage license copies available for a registered voter who signs a declaration stating that the registered voter does not have a copy of the requested document necessary to obtain photo ID.

82. However, the provision for free birth certificates and marriage licenses only helps voters who were born in North Carolina or married in the state. Voters born or married out of state

must pay fees to receive copies of the documents necessary to obtain photo ID. For example, a copy of a birth certificate issued in New York currently costs \$30.00. A copy of a New York marriage license also costs \$30.00. Thus, a woman born and married in New York who changed her name after marriage may have to pay \$60.00 to obtain the documents necessary to receive a “free” special ID card from the NCDMV.

83. Upon information and belief, of the more than 6 million registered voters that have indicated their state of birth to the State Board of Elections, fewer than 50% of registered voters were born in the State of North Carolina. Under Senate Bill 824, at least three million North Carolina registered voters born out of state would be ineligible to receive a free birth certificate.

84. People who lack photo ID are also unable to drive because they lack a driver’s license. To obtain a special ID, they must arrange transportation to the local DMV Driver’s License office or Mobile Unit, which may be a great distance from where they live and/or have sporadic and infrequent availability. In many areas of the state, there is no way to access a DMV Office or Mobile Unit by public transportation.

85. Voters may have to make multiple trips to Social Security offices and the offices of registers of deeds or the courts in order to obtain the documentation necessary to receive a special ID. Without the ability to drive or access to public transportation, each one of these trips imposes an undue burden on voters who previously needed only to walk to their local precinct on Election Day in order to vote. This burden is particularly high for voters who lack a stable address at which to receive mail.

86. Additionally, upon information and belief, some states require proof of photo ID before the voter can obtain a birth certificate. There is no relief under the statute for North Carolina voters caught in this cycle to obtain NCDMV ID.



87. The second option for obtaining a “free” photo ID, in lieu of a special ID from the NCDMV, is established in a provision of Senate Bill 824 that allows registered voters to request a voter photo ID card from their county board of elections free of charge. But this option also carries with it significant time and transportation costs.

88. Senate Bill 824 requires the state board to adopt rules regulating the issuance of voter photo ID cards, requiring at a minimum that the registered voter provide their date of birth and the last four digits of their social security number. The statute empowers the State Board of Elections to make rules imposing additional requirements for a voter to obtain a voter photo ID card, including a requirement that the voter show the same, difficult-to-acquire documentation required by the NCDMV to issue a special ID card.

89. Voters should not be made to rely on the rulemaking discretion of the State Board of Elections—which, despite its purported independence, is subject to changes in personnel and policy preference—in order to have access to the franchise. However, even with only the minimum requirements in effect, the provision of Senate Bill 824 allowing county boards to issue voter photo ID cards does not fully alleviate the burden that voters without ID must endure in order to vote a regular ballot under the statute.

90. Upon information and belief, the overwhelming majority of counties have only one board of elections office location at which voter photo ID cards may be issued, and many office locations are a great distance from other parts of the county and inaccessible by public transportation.

91. Upon information and belief, no county board of elections office in the state has regular business hours on the weekend, or on weekdays after 5:00 PM, and at least two counties have boards of elections that are only open on Monday, Wednesday, and Friday.

92. An amendment proposed on the Senate floor during debate of Senate Bill 824 that would have restored the final Saturday of early voting, thereby requiring all county boards of elections to be open and issuing voter photo ID cards for at least one Saturday before Election Day, was tabled without discussion. A similar amendment introduced on the House floor was ruled out of order by Speaker Moore as not germane to the bill.

93. As they would to obtain a special ID card from NCDMV, voters must arrange transportation to their county board of elections office, which may be a great distance away in many parts of the state, during traditional work hours. As an example, the Hyde County Board of Elections Office is located in Swan Quarter, North Carolina, and operates from 9:00 AM – 1:00 PM on Monday, Wednesday, and Friday only. A voter in Ocracoke, Hyde County, North Carolina would be required to travel for nearly three hours by ferry in order to obtain a voter photo ID card from the Hyde County Board of Elections Office. As an additional example, Brunswick County, in the top quartile in population statewide, has its county seat (and county board of elections office) in Bolivia, a town with 150 persons and a town that is equidistantly difficult to reach from the county's major population centers.

94. Under Senate Bill 824, a voter photo ID card may only be used for voting purposes. Amendments proposed on the senate floor during debate of Senate Bill 824 that would have allowed the voter photo ID card to serve as identification for other purposes, including obtaining NCDMV ID, were tabled without discussion.

95. Requiring voters to take time away from work, forgo compensation, and arrange or pay for transportation to travel for potentially hours to obtain a voter photo ID card for no other purpose than to cast a regular ballot constitutes an undue burden—and in some cases, an

insurmountable barrier—on voters who previously needed only to walk to their local precinct on Election Day to cast such a regular ballot.

**E. The Challenged Law Creates Substantial Burdens on Discrete Groups of Voters**

96. While the legislature should have, if it intended to pursue the imposition of a photo ID constitutional amendment and implementation of a new photo ID requirement in good faith, with no intent to disenfranchise eligible voters, first obtained from the State Board of Elections an updated analysis of voters who lack an adequate photo ID, the analyses from 2015 are more than sufficient to establish the constitutional flaws with the enabling legislation. Specifically, based on those studies, it is indisputable that certain subgroups of North Carolina voters will be burdened by this new law.

**1. African-American Voters**

97. The expense of obtaining documents, securing transportation, and taking time away from work impose the greatest burdens on the poor, for whom an additional cost of \$10 or \$30 may force the choice between voting or feeding their family.

98. Poverty in North Carolina is higher among people of color, causing Senate Bill 824 to have a disproportionate impact on voters of color. According to the American Community Survey's 2012-2016 estimates, 26% of African Americans, 28% of American Indians, and 30% of Latinxs live in poverty in North Carolina, as compared to only 13% of whites. Poverty is defined by the American Community Survey as income below a certain threshold based on members of the household.

99. Additionally, although African Americans accounted for 22% of all active registered voters in 2013 when the State Board of Elections conducted its DMV-No-Match study, African Americans comprised 31% of all voters the State Board identified as lacking NCDMV-issued photo ID.

100. Further, the costs associated with obtaining the supporting documents or arranging transportation to obtain photo identification are prohibitive for many African Americans. A 2010 report by the University of North Carolina's Center on Poverty, Work and Opportunity found that for North Carolina, half of the African-American households surveyed had less than \$100 in savings, a finding consistent with other research on African-American wealth and savings. A 2017 FDIC survey of unbanked and underbanked households found that 16.9% of African American households lack a bank account, as compared to only 3% of white households.

101. In its July 2016 opinion invalidating the previous iteration of North Carolina's photo ID law, the United States Court of Appeals for the Fourth Circuit also noted that African Americans in North Carolina are disproportionately more likely to lack DMV-issued ID, and that "African Americans . . . in North Carolina are disproportionately likely to move, be poor, less educated, have less access to transportation, and experience poor health." *NAACP v. McCrory*, 831 F. 3d. at 232-33. Upon information and belief, the North Carolina General Assembly, while considering Senate Bill 824 was on notice of these findings.

102. Moreover, the Court of Appeals recognized that African-American voters were being targeted by VIVA in part because of the inextricable intertwining of race and politics—that is, because African-American voters tend to vote for Democratic candidates, Republican legislators targeted that particular racial group for voter suppression efforts because of how they were voting.

103. This information demonstrates that African Americans lacking photo ID would face extraordinary burdens in obtaining acceptable ID under Senate Bill 824 in order to vote a regular ballot.

## **2. Voters with Disabilities**

104. Additionally, voters with disabilities will be disproportionately impacted by Senate Bill 824 due not only to socioeconomic disparities but also unique challenges that differently-abled voters will encounter in obtaining acceptable ID.

105. Obtaining documents or transportation necessary to acquire an ID acceptable for voting will have a disparate financial impact on voters with disabilities. According to the American Community Survey's 2017 estimates, North Carolinians with disabilities fall below the poverty line at a higher rate, at 21.2%, than North Carolinians without a disability, at 11.5%.

106. Further, a 2017 FDIC survey of unbanked and underbanked households found that 18.1% of "working-age" (age 25-64) individuals with disabilities lacked a bank account, as compared to 5.7% of working-age individuals without a disability.

107. According to census data, as many as 122,000 North Carolinians may have disabilities that prevent them from driving and may lack a DMV-issued photo ID. These voters will face economic burdens associated with obtaining documents and arranging transportation to acquire acceptable photo ID in order to cast a regular ballot, and these burdens may be exacerbated by the special care and/or equipment required, in addition to any physical discomfort associated with transportation to a local DMV or board of elections office.

108. Voters with disabilities are disproportionately likely to be deterred from voting due to the additional barrier obtaining an ID will present in the process. A 2012 report by Disability Rights North Carolina about accessible voting in North Carolina noted that the voter turnout rate in North Carolina was 14.4% lower for voters with disabilities than for voters without—twice the national average—and that 44% of voters with disabilities cite their disability as their deterrent from voting. Imposing additional barriers to the voting process on voters with disabilities will only serve to increase this turnout gap.

### **3. Elderly Voters**

109. Based on the available no-match data, elderly voters are disproportionately represented among voters who lack DMV-issued photo identification.

110. Many seniors, because of age or health, may have surrendered their licenses or may no longer drive, exacerbating the difficulty these voters will have in obtaining the “free” ID from a county board of elections. A substantial and disproportionate number of seniors live in households with no vehicle available to them, which makes obtaining transportation to a DMV office or a county board of elections office difficult. Moreover, a disproportionate number of the state’s seniors live in rural areas as opposed to urban areas, meaning that public transportation is also likely not an option for these voters to obtain a “free” photo ID.

111. Moreover, while voters aged 65 and older may use an expired North Carolina driver’s license to vote, they may not use an expired out-of-state driver’s license to vote unless they have only registered within 90 days. This burdens elderly voters who have relocated to North Carolina, and who may lack the documents or transportation necessary to obtain a North Carolina driver’s license or county board-issued photo ID.

### **4. College Student Voters**

112. According to available no-match data from the State Board of Elections, voters aged 26 and younger are disproportionately represented on a list of voters who lack DMV-issued photo identification.

113. For many of these young voters, obtaining a DMV-issued ID will be logistically and financially impossible. For example, North Carolina has tens of thousands of out-of-state students, and these students are unlikely to have the documentation with them necessary to obtain an ID from the DMV. Others, even though they intend to remain in North Carolina for the present

and thus are entitled to vote in the state, may not want to obtain a North Carolina driver's license in order to make remaining on their parents' car insurance policies easier.

114. Likewise, even for students from in-state that lack photo ID, getting to a county board of elections office, where the documentation needed to obtain an ID may be less, will be burdensome for the many students who do not have vehicles. Students attending a secondary education institution in one of the State's many non-urban counties, where public transportation options are severely limited, may find the lack of a vehicle to be a complete barrier to traveling to a county board of elections office.

115. Further, even young voters who are students and have a student ID may not be able to use those student IDs to vote. Senate Bill 824 creates an onerous system under which community colleges and universities must have its photo IDs approved by the State Board of Elections, subject to stringent standards. Some community colleges, like Mitchell Community College, have already publicly indicated that they may not be able to comply with the statutory requirements, because of the cost or person-power required to make their IDs compliant with the new law, meaning students at such schools would not be able to use their school IDs to vote.

## **5. American-Indian Voters, Particularly Members of the Lumbee Tribe**

116. Based on the available no-match data, American-Indian voters disproportionately lack photo identification and thus are disproportionately likely to be burdened by the requirements of Senate Bill 824.

117. In particular, members of the Lumbee Tribe—a state, but not federally, recognized tribe—are likely to feel that burden even more acutely.

118. While Senate Bill 824 makes allowances for tribal enrollment cards issued by state recognized tribes to be used to vote, in practice, many members of the Lumbee Tribe—the state's

largest American-Indian voting block—may have to jump over additional administrative hurdles and pay extra costs in order for their Lumbee enrollment cards to be acceptable to vote.

119. Senate Bill 824 requires that a tribal enrollment card, to be acceptable to use to vote, be unexpired or expired for one year or less. However, the Lumbee Tribe issues to its members aged 55 and older a permanent enrollment card that does not expire and thus does not display an expiration date. Thus, by the terms of the law, members of the Lumbee Tribe aged 55 and older will not be able to use their enrollment cards to vote.

**F. The Rushed and Inadequately Funded Implementation of the Photo ID Law Will Disenfranchise Thousands of Eligible North Carolina Voters**

120. Under Senate Bill 824, the photo ID requirement will be in effect for the 2019 Primary Elections, providing fewer than nine months for voter and poll-worker education. The disenfranchisement that took place during the 2016 primary, following a three-year roll-out period, demonstrates that this period of time is wholly inadequate to ensure adequate training and implementation of the reasonable impediment provision under Senate Bill 824, particularly in light of the fact that voters have been receiving materials indicating that they *do not* need photo ID to vote since August of 2016. It is also inadequate time for the State Board of Elections and other groups to attempt to assist voters in obtaining photo ID.

121. Under the previous invalidated VIVA voter ID law, the State Board of Elections engaged in a nearly three-year “soft rollout” program, where voters were first warned, starting in 2014, that they would be asked for a picture ID starting in 2016, and the actual requirement that photo ID be presented would not be implemented until nearly three years after the enactment of the discriminatory law.

122. From 2013 to 2016, the State Board of Elections also allegedly engaged in an extensive voter outreach program to educate voters about the new ID requirement and to assist



voters who lacked IDs in obtaining them. According to a presentation that State Board of Elections Executive Director Kimberly Strach made to the Joint Legislative Elections Oversight Committee on November 26, 2018, the State Board, in that timeframe, spent years placing TV, radio, and online ads communicating with voters about the upcoming ID requirement; placed billboards across the state with information on the ID requirement; mailed approximately 12.7 million guides to residential addresses between 2014 and 2016 with information about the ID requirement; produced and distributed approximately 400,000 posters with information on the ID requirement, targeting churches and community gathering places; and conducted more than 200 community presentations and events.

123. Despite this, when the ID requirement was in effect in the 2016 primary elections, voters and advocates witnessed enormous problems in both voters' and poll workers' understanding of the new rules. Indeed, several of the Plaintiffs in this action, like Plaintiffs Smith and Kearney, were disenfranchised because the three-year education effort was not sufficient to educate the electorate and election administrators about the ID requirement. Indeed, these Plaintiffs' experiences are not unusual, and Plaintiffs intend to present evidence of many other voters who were deterred from even going to vote or disenfranchised because of inadequate education and implementation efforts.

124. In her presentation, Director Strach also reported on the number of voters which the State Board of Elections allegedly assisted in obtaining photo IDs. In 2014, when voters were warned that they would need to present a picture ID to vote in 2016, voters who reported that they lacked an ID were asked to sign an acknowledgement form. The State Board sent a mailing to those voters who signed the acknowledgement form. Of the 10,743 voters who signed the acknowledgment form in 2015, only 2,353 voters responded to the State Board's mailing. While,

inexplicably, most of the voters who had just signed an acknowledgement form stating that they did not have photo ID did tell the State Board in response to the Board's mailing that they possessed photo ID, Director Strach reported that the State Board only assisted fewer than half of the voters who said they lacked ID and wanted the State Board's assistance. Also of concern, Director Strach reported on the number of voters to whom the State Board provided assistance, but did not report on the number of voters for whom that assistance was successful—that is, the voters obtained photo IDs.

125. Likewise, in 2015, based on voters identified by experts in the case challenging VIVA, the State Board of Elections did another outreach to voters lacking ID. The State Board sent a mailing to over 250,000 voters, but only approximately 20,000 voters responded. Again, the State Board reported providing assistance to only about one third of the 1,800 voters who reported that they lacked ID and wanted assistance from the State Board in obtaining ID. And again, it was unclear how many of those voters assisted actually obtained a photo ID.

126. Director Strach further reported that from the time of VIVA's enactment through November of 2018, the DMV had issued 7,841 identifications for voting purposes at no cost to the voter. However, this figure comprises only about 3% of the more than 230,000 voters identified in 2015 as potentially lacking DMV-issued photo ID. Thus, despite a multi-year rollout, the State Board of Elections' education and assistance campaign failed to meaningfully decrease the number of otherwise eligible North Carolina voters without acceptable ID, who would otherwise be relegated to casting a provisional ballot or face disenfranchisement.

127. Under the provisions of Senate Bill 824, the list of voters who lack a photo ID is only required to be produced and made public by September 1, 2019. The first municipal elections take place that same month. There will be no meaningful ability for the State Board or advocacy

groups to assist voters in advance of the implementation of the ID requirement in obtaining IDs, which is certain to result in eligible voters being disenfranchised.

128. Moreover, all of the work expended in voter education from 2013 to 2016 has essentially been undone in the last two years because the State Board of Elections has been compelled by the Court of Appeals for the Fourth Circuit's invalidation of the state's previous voter ID law to broadly communicate with voters that they would not be required to present a photo ID to vote in 2016 and 2018.

129. Even if the State Board of Elections' multi-year voter education campaign had been effective, and it plainly was not, the State Board cannot feasibly expect to reverse course on the message that it has been disseminating for the last two years in order to achieve a comparable amount of voter education and assistance under the truncated timeframe that Senate Bill 824 provides. With so little time provided for effective implementation before the next regularly scheduled elections, voter disenfranchisement is the inevitable result.

130. Arguments from proponents of Senate Bill 824 that delayed enforcement to allow for a more deliberate and careful rollout of the new Photo ID Law would run afoul of the new constitutional requirement that voters shall present photo ID when presenting to vote in person are belied by other legislative action taken by the same body during the same special session.

131. On December 12, 2018, the legislature passed House Bill 1029, a bill reorganizing the State Board of Elections and the State Elections Commissions. An unrelated provision of the law established that, should the State Board of Elections order a new primary and general election in Congressional District 9 in 2019—a district in which allegations of significant absentee vote theft have raised serious questions about the legitimacy of the election results—the photo ID requirements would not be in place for those election contests. The exemption of an election

involving hundreds of thousands of North Carolina voters in the first few months of 2019 flies in the face of proponents' claims that that they could not delay implementation or do another "soft" rollout of the photo ID requirement because the State Constitution now mandates the presentation of a photo ID to vote. If that constitutional provision is so unforgiving—and certainly it is not, when balanced against North Carolina's other state constitutional voting protections—then it should apply to a new election for Congressional District 9. The legislature plainly believes that delaying implementation of the photo ID requirement for a new election held in Congressional District 9 is within its constitutional authority to craft exceptions, and it is inconsistent, if not disingenuous, to suggest that they lack the authority to enact enabling legislation that requires a more deliberate and careful implementation of the photo ID law to ensure that qualified and eligible voters do not face disenfranchisement.

132. Lastly, the text of Senate Bill 824 and the accompanying fiscal note reveal the gross inadequacy in the funding for the law, all but ensuring that poll workers and voters will be inadequately educated (which, just like in 2016, will result in disenfranchised voters) about the new requirement and the steep costs imposed upon on the county boards of election will also have deleterious ripple effects on the right to vote.

133. The fiscal note implausibly approximates that providing each of North Carolina's 100 counties to be provided with the machinery they will need to issue voters free IDs will cost only \$112,500 statewide. It also designates this as a one-time cost. The fiscal note contains no approximation for the cost of obtaining additional staff at the county boards in order to perform this extra duty, training workers on this new duty, nor adequately maintaining the machinery. The allocation made in Part IV of Senate Bill 824 of \$850,000 to be dispersed to the counties at the discretion of the State Board of Elections still falls critically short of what would be necessary for

the counties to implement this law in a manner that did not result in the disenfranchisement of eligible voters.

134. Just this year, when the legislature imposed upon the county board of elections the obligation of keeping every early voting site open the exact same hours, and from 7 A.M. to 7 P.M. on weekdays, that financial burden led many county boards of elections to reduce the number of early voting sites offered in the 2018 elections. Thus, the effect of this additional, inadequately funded mandate on the counties is predictable—they will have to make up the costs elsewhere, almost certainly to the detriment of voters.

135. Likewise, the funds appropriated for education are grossly inadequate to educate the electorate and poll workers given the incredibly compressed timeframe in which this requirement is being implemented. In the three-year rollout of the VIVA Act, the State Board of Elections expended \$2.5 million in outreach activities, and history has shown that such expenditures and efforts still failed to adequately ensure that no eligible voters were disenfranchised. In stark contrast, the fiscal note for Senate Bill 824 assumes that the State Board of Elections will spend only \$2 million over five years on education and outreach. Moreover, the initial appropriation to the State Board covering the first year (2019) of the law's applicability would at most allow for a maximum amount of \$750,000 to be spent on outreach and education. This is a recipe for mass voter confusion and disenfranchisement, particularly since it represents a change in course from the State Board's educational messaging since the invalidation of VIVA—namely, that there is no photo ID requirement for voting.

136. There are no funding appropriations made to assist public universities and community colleges in the likely extensive and expensive efforts they would have to undertake in order to make their student IDs compliant with Senate Bill 824.

**G. The Reasonable Impediment Declaration and Provisional Ballot, Used in the 2016 Primaries, Did Not Act as an Adequate Failsafe to Protect the Constitutionally Recognized Fundamental Right to Vote of Eligible Voters**

137. The reasonable impediment provision of Senate Bill 824 is an inadequate safeguard to ensure that voters who lack acceptable photo ID under the statute will not be disenfranchised.

138. Under the reasonable impediment provision of Senate Bill 824, voters with a reasonable impediment to obtaining a photo ID are relegated to casting provisional ballots, and have no option to vote a regular ballot in-person.

139. Both the administration and counting of provisional ballots are cumbersome and time consuming, and already create additional burdens on election administration. The increased number of provisional ballots that will inevitably be cast in conjunction with Senate Bill 824's "failsafe" mechanism will serve to place further strain on election administrators attempting to navigate the newly implemented photo ID requirement, and increase the likelihood for error.

140. The reasonable impediment provision of Senate Bill 824 is nearly identical to the provision in place for the 2016 Primary Election.

141. Thousands of North Carolina voters were disenfranchised by inconsistent or inappropriate application of the reasonable impediment provision in issuing and counting ballots during the 2016 Primary Election, and those disenfranchised voters were disproportionately African American.

142. Poll workers and county elections board workers, trained by Defendants, did not apply the photo identification requirement, including the reasonable impediment process, in a uniform manner, but rather in an arbitrary and unequal manner that lead to voter disenfranchisement.

143. On November 26, 2018, just one day before the 2018 special session in which Senate Bill 824 was adopted, Executive Director Strach informed the Joint Legislative Elections

Oversight Committee that of 1,048 voters who completed a Declaration of Reasonable Impediment and cast a provisional ballot during the 2016 Primary, only 864 of those votes ended up counting. In essence, the process put in place to serve as a “failsafe” for voters who lack ID failed to save the franchise of nearly 18% of the voters who utilized it. Of the 1,248 regular provisional ballots cast because the voter did not present a photo ID, none of those provisional ballots were counted. Thus, in that relatively low-turnout primary election, 1,432 North Carolina voters were denied their fundamental right to vote.

144. Upon information and belief, the racial composition of the 1,432 eligible voters disenfranchised in the 2016 primary elections was disproportionately African-American and other voters of color.

145. Many voters, like Plaintiff Daniel Green, should have been offered a reasonable impediment declaration and provisional ballot, but instead were made to vote a regular provisional ballot, which did not count.

146. Many other voters were erroneously turned away from the polls without being offered any type of ballot due to the photo identification requirement for voting, so the full extent of disenfranchisement cannot be assessed by analyzing provisional ballot data alone.

147. Upon information and belief, many other voters were wholly deterred from voting by the photo ID requirement because they knew they lacked the types of photo IDs allowed under the law. These disenfranchising effects are certain to be hugely magnified in a general election, particularly during a presidential election year, because many voters only choose to vote in those elections.

148. The reasonable impediment provision of Senate Bill 824 allows for voters to list lack of knowledge of the photo ID requirement as a reasonable impediment for the municipal elections held in 2019.

149. Voters who list lack of knowledge of the photo ID requirement as a reasonable impediment in 2020 will not have their provisional ballots counted.

150. Turnout in odd-numbered years is substantially lower than in even-numbered years, and the overwhelming majority of North Carolina voters will not engage in the elections process or encounter the new photo ID requirement until 2020.

151. An amendment was proposed on the floor of the Senate during the debate of Senate Bill 824 that would have also allowed for lack of knowledge of the photo ID requirement to be listed as a valid, reasonable impediment for elections in 2020. This amendment was tabled without discussion.

152. Even if each voter reporting to vote without photo ID was correctly issued a reasonable impediment declaration form in the future, Senate Bill 824 nonetheless creates substantial uncertainty as to whether any given reasonable impediment provisional ballot will be counted.

153. Unlike regular ballots, provisional ballots are vulnerable to the discretion of election officials. Under Senate Bill 824, a provisional ballot cast due to lack of acceptable ID and in conjunction with a reasonable impediment affidavit shall be counted unless the county board has grounds to believe the affidavit is false.

154. Senate Bill 824 does not delineate a burden of proof or what suffices as adequate grounds to believe a voter's affidavit is false.



155. Further, Senate Bill 824 does not require a county board of elections to provide notice to a voter, or an opportunity to present affirmative proof on behalf of their reasonable impediment, before a provisional ballot is invalidated.

156. Because Senate Bill 824 provides no mechanism for voters reporting in person but lacking photo ID to cast a regular ballot, the franchise of an otherwise qualified North Carolina voter who lacks a photo ID through no fault of their own is improperly hinged on the absolute discretion of a few election administrators.

157. Under Senate Bill 824, voters will continue to be disenfranchised by inconsistent and inappropriate application of the reasonable impediment provision for issuing and counting ballots, and as such, the provision is inadequate to ensure the constitutionality of the law.

**H. Disenfranchising Eligible Voters Constitutes a Ban on Political Speech, and Making it Harder to Vote Constitutes a Barrier to Political Speech**

158. The North Carolina Supreme Court has recognized freedom of speech as a bulwark of liberty, and no act of speech carries with it more power to defend liberty than the act of voting. The casting of a vote is perhaps the most important form of political speech that a North Carolina voter can utter, and should not be restrained.

159. In an era where political contributions (i.e., money) are afforded strong free speech protections, the casting of a vote must be afforded equally strong free speech protections.

160. “Regulation of so-called pure speech, a term that most often refers to political advocacy, must pass strict scrutiny: the government must show a compelling interest in the regulation, and the regulation must be narrowly tailored to achieve that interest.” *Hest Techs., Inc. v. State ex rel. Perdue*, 366 N.C. 289, 297, 749 S.E.2d 429, 436 (2012).

161. The disenfranchising of eligible North Carolina voters, as happened extensively in the 2016 primaries and as is certain to happen here, violates the free speech rights of those voters.

Even where voters are not disenfranchised, where the exercise of their expressive vote is made more difficult, this is a restriction on speech that should likewise be subject to heightened scrutiny.

162. Moreover, because two specific groups of voters—black voters and young voters—which are going to be disproportionately disenfranchised, and because those voters strongly tend to vote for Democratic candidates, Senate Bill 824’s free speech denials and restrictions are not content-neutral—they are targeted at the silencing of a particular political point-of-view.

**I. Given the Burden it Places on the Right to Vote and Free Speech, Senate Bill 824 Is Not Narrowly Tailored to Advancing a Compelling Governmental Interest**

163. Senate Bill 824 creates significant burdens on the exercise of rights that the North Carolina Constitution guarantees—the right to free speech, the right to vote, and the right to equal protection under the law. Even assuming that complying with the state constitution’s new provision is a compelling interest, the enabling legislation is not narrowly tailored to effectuating that provision.

164. The language in Senate Bill 824 damns its ability to survive any level of heightened scrutiny. The statute plainly states that the purpose of “the identification required pursuant to subsection (a) of this section [listing the acceptable forms of ID] is to confirm the person presenting to vote is the registered voter on the voter registration records.” Any piece of identification with a voter’s name and photograph indisputably achieves that very limited purpose.

165. The rejection of other acceptable IDs is stark evidence of the failure of the legislature to narrowly tailor the legislation to minimize the burden on the fundamental right to vote. For instance, several of the State’s public housing authorities issue IDs to residents with names and photos, but the legislature rejected proposals to accept public assistance IDs that would obviously satisfy the stated purpose of the law. The legislature rejected proposals to use North Carolina public high school student photo IDs, even though, again, such IDs would satisfy the

articulated purpose of the law. Additionally, the legislature rejected attempts to include federal employee ID as acceptable for voting on the basis that the state legislature lacks control over the process by which those IDs are issued, despite accepting military and veterans IDs, over which the state legislature has equally little control. Indeed, at one point, Representative David Lewis explained that he was comfortable rejecting the expansion of the list of acceptable IDs, deciding that the list was already long enough. That view does not satisfy constitutional scrutiny, when both the constitutional requirement to provide photo ID and the stated purpose of the implementation statute could have been complied with by reducing the burden on voters and avoiding violation of other constitutional provisions.

166. Further, to the extent that the proponents of Senate Bill 824 tout election integrity as the justification for its burdensome requirements, requiring qualified and eligible voters who report to the polls without photo ID to cast a provisional ballot serves to undermine, rather than strengthen, confidence in the integrity of our electoral system.

167. According to the 2016 Election Administration and Voting Survey produced by the U.S. Election Assistance Commission, 55.66% of provisional ballots cast in 2016 in North Carolina were rejected. The number of rejected provisional ballots can be expected to increase if, as Senate Bill 824 contemplates, provisional ballots are the only option provided for voters reporting to the polls without acceptable ID. Relegating so many voters to cast provisional ballots that are more likely than not to be rejected will undermine voters' faith in North Carolina's election system.

168. Further, provisional ballots are counted after Election Day, and often after election contest results are reported. Voters casting non-reasonable impediment provisional ballots will reasonably be deterred from enduring the burden of returning to their local board of elections to

ensure their vote is counted in contests that have already been called in favor of a candidate. The collective effect of this reasonable reaction could be outcome determinative, and would thus undermine public confidence in election results.

169. To the extent that the law's narrow requirements were justified in debate by an alleged scourge of voter fraud, the narrow requirements and procedures put in place by Senate Bill 824 are not proportionate to the ills they purport to remedy. In the over two years since the 2016 primary election, neither the State Board of Elections nor any other group has presented any evidence that a single one of the 1,432 North Carolina voters who were disenfranchised by the previous iteration of the voter ID law despite casting a provisional ballot was engaged in fraud or was attempting to impersonate another voter.

170. In fact, the publicly available information, discussed in the legislative process of Senate Bill 824, is that in every election since the year 2000, there have been four alleged cases of in-person voter impersonation fraud—the only type of voter fraud that a photo ID requirement purports to prevent. Thus, Senate Bill 824 fails to adequately protect the fundamental right to vote, and the legislature had no basis for enacting a law that has disenfranchised so many voters. Indeed, the provision can only be certain to disenfranchise more voters in a higher turnout general election.

171. Furthermore, the legislature also failed to narrowly tailor the law when it decided that absentee voters who failed to provide a picture ID could make an alternate attestation and cast a regular, not provisional, absentee ballot. To be clear, this is the right remedy. And if that solution is acceptable for absentee voters, it should be acceptable for in-person voters. Given the “exception” language in the constitutional amendment, a system that provided in-person voters with the same alternatives as absentee voters would amply satisfy compliance with the new constitutional amendment, and would more strictly hew to other constitutional requirements that

demand that the State treat with utmost care the ability of North Carolinians to exercise the franchise.

172. Moreover, the stated purpose of the law could be achieved without creating the enormous administrative hurdles for colleges and universities and employers to validate their picture IDs for use in voting. Student and employee IDs have the holder's name and photograph on them, and this would allow poll workers to confirm that the person presenting to vote is the person on the voter rolls. The imposition of these administrative hurdles only makes it likely that some of these institutions will be unable to comply, rendering their issued IDs useless for voting, and does nothing to further the purpose of the law.

#### **PLAINTIFFS' FIRST CLAIM FOR RELIEF**

*(Violation of Article I, § 19 of the North Carolina Constitution in the enactment of an intentionally racially discriminatory law)*

173. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

174. By implementing Senate Bill 824, the State purposefully discriminates against African-American and American-Indian voters that lack acceptable photo ID, in violation of the Equal Protection Clause in Article I, § 19 of the North Carolina Constitution.

175. The equal protection clause of Article I, § 19 of the North Carolina Constitution states that "nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin." This provision prevents a state and its officials from discriminatorily or arbitrarily treating qualified voters differently on account of their race or skin color.

176. A motivating purpose behind Senate Bill 824 is to suppress the turnout and electoral participation of African-American and American-Indian voters, who disproportionately lack acceptable photo identification.

177. At the time of the law's enactment, the General Assembly had before it evidence that African-American and American-Indian voters lacked picture IDs at higher rates than white voters. The General Assembly established the list of acceptable IDs with full knowledge that the list established would burden the voting rights of African-American and American-Indian voters at substantially higher rates than white voters. The legislature enacted Senate Bill 824 with minimal public debate and on an extremely compressed legislative schedule, with the bill passing both houses of the legislature only days after its initial reveal.

178. Both the discriminatory effect of a statute and its legislative history are relevant factors in analyzing a statute for discriminatory intent. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

#### **PLAINTIFFS' SECOND CLAIM FOR RELIEF**

*(Violation of Article I, § 19 of the North Carolina Constitution in the enactment of a law that unjustifiably and significantly burdens the fundamental right to vote)*

179. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

180. The equal protection guarantee in Article I, Section 19 of the North Carolina Constitution prohibits the State from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” This provision also prohibits states from imposing severe burdens upon the fundamental right to vote unless they are narrowly tailored to advance a compelling state interest. Federal equal protection guarantees require that any state election law that imposes reasonable and non-discriminatory restrictions on the right to vote be justified by an important state regulatory interest. The court: “must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary

to burden the plaintiff's rights.” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). The North Carolina Supreme Court has adopted this test for assessing alleged violations under the State Constitution. *See Libertarian Party v. State*, 365 N.C. 41, 50, 707 S.E.2d 199, 205 (2011). The state’s highest court has advised that “strict scrutiny is warranted only when this associational right is severely burdened.” *Id.* (quoting *Burdick*, 504 U.S. at 434).

181. Here, Plaintiffs’ right to vote is burdened by the arbitrary and unjustified voter ID implementation legislation. The list of acceptable IDs established by Senate Bill 824 is unnecessarily restricted given the stated purpose of the law, and hundreds of thousands of voters lack such forms of IDs. Moreover, the mechanisms established by Senate Bill 824 offered to voters to obtain allegedly free photo IDs are administratively burdensome and costly. Finally, the mechanisms established by Senate Bill 824 to deal with eligible voters who present to vote without an acceptable ID are inadequate to protect their fundamental right to vote. Voting provisionally, given the high rate of rejection of provisional ballots in North Carolina and the arbitrary and inequitable treatment of provisional ballots across North Carolina’s 100 counties, is not a constitutionally adequate substitute for casting a regular ballot. Voters who cannot adjust to the new rules for presentation of IDs when voting or the new mechanisms they may have available to them if they lack one of those few acceptable IDs, will be disfranchised or significantly burdened. Other voters will encounter longer lines, undue delay, and in many cases, be prevented from voting altogether due to increased congestion during early voting and on Election Day.

182. In contrast, there are no plausible benefits to the State that outweigh the burdens created on the fundamental right to vote. While of course the State must comply with the new constitutional provision requiring photo ID, it has an equally demanding interest in complying

with multiple other provisions of the State Constitution, which it has ignored. In nearly two decades of searching high and low for examples of in-person voter impersonation fraud, the State has only identified an alleged four instances of such behavior, the only type of fraud purportedly prevented by a strict photo ID law such as the one at issue here. That number is certainly not outweighed by the more than 1,400 eligible voters disenfranchised in the 2016 primaries, when a nearly identical law was in place. Finally, arguments that the State has an interest in election integrity are revealed as mere pretext when the State constructs a complicated, administratively-burdensome scheme such as the one in Senate Bill 824 that will cripple effective election administration, create chaos in upcoming elections and deprive thousands of voters of their fundamental right to vote. Election integrity is preserved by vigorously protecting the fundamental right to vote.

183. Senate Bill 824 creates an undue burden on the fundamental right to vote, both as applied to Plaintiffs and on its face, in violation of the Equal Protection Clause in Article I, § 19 of the North Carolina Constitution.

### **PLAINTIFFS' THIRD CLAIM FOR RELIEF**

*(Violation of Article I, § 19 of the North Carolina Constitution in the enactment of a law that creates different classes of voters who will be treated disparately in their access to their fundamental right to vote)*

184. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

185. Senate Bill 824 violates Article I, § 19, by treating persons similarly situated differently with respect to the exercise of their fundamental right to vote, in effect creating different classes of voters who will experience different access, and ease of access, to the franchise. The North Carolina Constitution guarantees voters the right to vote on equal terms, and the various classification schemes embodied in Senate Bill 824 ensure that voters will not vote on equal terms, depending on the classification category into which they fall.



186. First, Senate Bill 824 establishes two classes of voters: those who already possesses a photo ID from an unnecessarily limited list of acceptable IDs, and those who do not possess such an ID. For voters who have such an ID, their voting experience will remain almost unchanged, and their access to exercising their fundamental right to vote will remain unhindered. For voters in the other class—who do not already possess ID—in a best-case scenario, they will be forced to jump through numerous administrative hurdles to obtain a photo ID in order to access their fundamental right, or they will be forced to forever cast a provisional ballot, in marked contrast to similarly situated North Carolina voters who will be allowed to vote a regular ballot. In what is likely to be an all-too-common less than best case scenario, these voters will be disenfranchised, again denied their fundamental right to vote on equal terms with other North Carolina eligible voters.

187. Senate Bill 824 also establishes an age-based classification of voters that acts to the distinct disadvantage of young voters, a discrete and identifiable group that should be treated as a protected class. The law allows voters aged 65 and older to use a photo ID that has been expired more than one year, so long as their ID was not expired when they turned 65. In contrast, any voter younger than 65 may only use a photo ID from the list of acceptable IDs if it has been expired for one year or less. Even worse, voters of college age, who may only have a college or university photo ID, may only use that photo ID to vote if their college or university complies with the substantial requirements placed upon the institution by Senate Bill 824 to ensure acceptability of that institution's photo ID. Put another way, those student voters have no control over whether or not their photo ID will be acceptable and enable them to access the franchise. Thus, for no compelling governmental interest, voters over the age of 65 are treated differently from voters under the age of 65, who are also treated differently than young voters attending institutions of

secondary education, with each group facing increasingly limited access to the franchise. The North Carolina Constitution prohibits this classification of voters on the basis of age, and certainly the resulting hurdles to the exercise of a fundamental right of voters depending on the class into which they fall.

188. Article I, § 19 of the North Carolina Constitution restrains the ability of the legislature to create classifications of persons where such classifications treat similarly situated individuals different and such a classification scheme interferes with the exercise of a fundamental right, such as the fundamental right to vote. Moreover, Article I, § 19 demands the application of strict scrutiny to a law where the legislature has created such a classification scheme.

#### **PLAINTIFFS' FOURTH CLAIM FOR RELIEF**

*(Violation of Article I, § 10 of the North Carolina Constitution in the enactment of a law that infringes upon the right of North Carolina voters to participate in free elections)*

189. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

190. Senate Bill 824 imposes a cost that violates the Free Elections Clause in Article I, § 10 of the North Carolina Constitution.

191. Art. I, § 10 guarantees that “All elections shall be free.” Senate Bill 824 imposes on voters costs, particularly in terms of work time lost and transportation costs, in order to obtain an ID to vote. Because Senate Bill 824 imposes these costs, elections are no longer free and Senate Bill 824 violates this provision of the State Constitution.

192. Plaintiffs and other qualified North Carolina voters without acceptable photo ID are deprived of the right to a free election and will be irreparably harmed if Senate Bill 824's photo ID requirement is not enjoined.

### **PLAINTIFFS' FIFTH CLAIM OF RELIEF**

*(Violation of Article I, § 10 of the North Carolina Constitution in the enactment of a law that conditions the fundamental right to vote on the possession of property)*

193. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

194. Art. I, § 10 of the North Carolina Constitution also states that “As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.”

195. Senate Bill 824 imposes a unconstitutional property requirement in violation of Article I, § 10 by requiring voters to possess not only an acceptable photo ID, but also the documents necessary to obtain the photo ID and the resources (primarily, access to transportation) necessary to obtain those documents. The conditioning of the exercise of the fundamental right to vote on equal terms with other voters on the voter’s possession of a physical item—a photo ID—runs afoul of Article I, § 10.

196. Plaintiffs and other qualified North Carolina voters without acceptable photo ID are subject to an unconstitutional property requirement and will be irreparably harmed if Senate Bill 824’s photo ID requirement is not enjoined.

### **PLAINTIFFS' SIXTH CLAIM OF RELIEF**

*(Violation of Article I, §§ 12 and 14 of the North Carolina Constitution in the enactment of a law that infringes upon the right of North Carolina voters to participate in free elections)*

197. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

198. Senate Bill 824 violates Plaintiffs’ Right of assembly and petition and Freedom of speech under Article I, §§ 12 and 14 of the North Carolina Constitution.

199. The North Carolina Supreme Court has recognized the importance of free speech, and that political advocacy should be deemed “pure speech.” There is no more powerful political advocacy than the casting of a vote in a North Carolina election.

200. Because Senate Bill 824 will disproportionately disenfranchise African-American and young voters, who vote overwhelmingly for Democratic candidates, Senate Bill 824 should be treated as a statute that regulates or forbids the communication of a specific idea—that is, is not content neutral. When a statute affecting speech is not content neutral, it will be subject to “exacting scrutiny: the State must show that the ‘regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.’” *State v. Petersilie*, 334 N.C. 169, 183, 432 S.E.2d 832, 840 (N.C. 1993). Even if compliance with one state constitutional provision (at the expense of compliance with other state constitutional provisions) were a compelling governmental interest, and it is not, Senate Bill 824 is plainly not narrowly tailored. It excludes forms of ID that would clearly satisfy the stated purpose, and it does not offer adequate protections to ensure that eligible voters are not disenfranchised. As such, it fails exacting scrutiny and must be invalidated.

201. Even if Senate Bill 824 is treated as content neutral, it would still fail constitutional scrutiny. A content neutral regulation of free speech will only be upheld “if the restriction is narrowly tailored to serve a significant governmental interest, and it leaves open ample alternatives for communication.” *State v. Petersilie*, 334 N.C. at 183, 432 S.E.2d at 840. As previously discussed, given the stated purpose of the statute, the law is not narrowly tailored to effectuate that purpose. And more significantly, a voter who has been disenfranchised does not have any equal alternative for communicating the political speech that he or she wanted to communicate through the vote.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the following relief:

1. A declaratory judgment declaring that Senate Bill 824 as currently written violates constitutional rights guaranteed by the North Carolina Constitution both on its face and as-applied

to Plaintiffs and those similarly situated North Carolina-qualified, registered voters that lack acceptable photo ID to vote when presenting to vote at the polls.

2. An injunction allowing qualified, registered voters without acceptable photo ID at the polls to cast regular ballots.

3. Award Plaintiffs' reasonable attorneys' fees, if just and proper.

4. Make all further orders as are just, necessary, and proper, including orders providing for an expedited and shortened period of discovery and an expedited trial.

5. Grant Plaintiffs such other and further relief as the court deems just and proper.

This the 19th day of December, 2018.

  
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### **CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day submitted a copy of the foregoing Motion for Preliminary Injunction in the above titled action with the Clerk of Superior Court in Wake County, and served the document by mail and electronic mail to the following parties:

Alexander McC. Peters  
NC Department of Justice  
P.O. Box 629  
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This the 19<sup>th</sup> day of December, 2018:

  
Allison J. Riggs

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