No. 342PA19-2 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA
****

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

Plaintiff-Appellees,

v.

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

Defendant-Appellants.

From Wake County
No. COA 22-16

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REPLY BRIEF OF LEGISLATIVE DEFENDANT-APPELLANTS

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INDEX

Page

TABLE OF AUTHORITIES

Cases **Page**

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SUPREME COURT OF NORTH CAROLINA
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REPLY BRIEF OF LEGISLATIVE DEFENDANT-APPELLANTS
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INTRODUCTION

Election legislation in North Carolina is often contentious. In the fall of 2018, the People of North Carolina—by a 55.49% to 44.51% margin—adopted a

constitutional amendment requiring photo voter ID and directing the General Assembly to enact implementing legislation. The General Assembly at that time could have enacted a voter-ID law without any Democratic votes or any Democratic input whatsoever. But that is not what the General Assembly did with S.B. 824. Instead, the Republican supermajority worked closely with Senator Joel Ford, an African American Democrat, who co-sponsored the bill; adopted the majority of amendments offered by Democrats; obtained several Democratic votes for the bill; and otherwise engaged with Democrats every step of the way, garnering thanks even from the bill's opponents. The outcome was one of the most voter-protective photo voter-ID laws in the Nation. Plaintiffs' only real criticism of the process is that Republican legislators did not wait until they lost a veto-proof majority before proceeding with a voter-ID bill as the North Carolina Constitution required. But as Professor Keegan Callanan testified, no political scientist (or rational person) would expect legislators to forfeit the ability to achieve an important policy aim that the sitting Governor openly opposes. *See* R S p 1063 ¶ 10. By enjoining S.B. 824, the Superior Court dealt a blow to cooperation and removed any incentive to seek compromise when none is necessary.

To do so, the Superior Court needed to disregard the presumption of good faith that attaches to all legislation. This error renders the court's factual findings, and the legal conclusions drawn from them, fundamentally flawed. Those findings and conclusions are also flawed in and of themselves.

In defending the Superior Court, Plaintiffs simply repeat its errors, staking their arguments on irrelevant facts while continuing to fail to identify a single voter of any race who will not be able to vote under S.B. 824, *see* R p 1096 ¶¶ 77–78, or any array of IDs that would narrow any purported racial gap in ID possession, T p 807:21–808:2. The Constitution of this State is not at war with itself: Plaintiffs cannot erect a standard that no voter-ID law would satisfy. This Court should not make a mistake of historic proportion by branding a law co-sponsored by an African American as intentionally discriminatory.

ARGUMENT

I. S.B. 824 DOES NOT VIOLATE ARTICLE I, SECTION 19 OF THE NORTH CAROLINA CONSTITUTION.

A. The Superior Court Applied the Wrong Standard.

Plaintiffs had the burden to show that S.B. 824 was motivated by discriminatory intent. They lacked a scintilla of direct evidence of any legislator's discriminatory intent, and thus needed circumstantial evidence of intent "strong enough to overcome the presumption of legislative good faith." *Abbott v. Perez*, 138 S. Ct. 2305, 2329 (2018); *accord* Br. of Leg. Def.-Appellants 17–18 (N.C. Ct. App. Feb. 7, 2022) ("Leg.Def.Br."); Br. of Pls.-Appellees 24 (Mar. 9, 2022) ("Resp.").

The Superior Court failed to presume good faith. *See* Leg.Def.Br. 18–22. Never asking whether *Plaintiffs* had overcome that presumption, the court required *Defendants* to overcome its presumption that S.B. 824 replicated North Carolina's prior voter-ID provision, part of an omnibus election bill (H.B. 589) that the Fourth Circuit had declared unconstitutional. The Superior Court emphasized "that 62

members of the legislature who voted for H.B. 589 also voted for S.B. 824," finding it "implausible that these legislators did not understand the potential that S.B. 824 would disproportionately impact African American voters, just as H.B. 589 had done." R p 984 ¶ 231. Under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), "potential" impact gets Plaintiffs nowhere without evidence of actual disparate impact, which they lack. *See infra* Part I.B.1. Nor may a court "penaliz[e]" legislators "because of who they were" in spite of "what they did"—in this case, respond to the Fourth Circuit's decision by passing one of the most voter-protective photo voter-ID laws in the country. *N.C. State Conf. of NAACP v. Raymond*, 981 F.3d 295, 304 (4th Cir. 2020). The Equal Protection Clause cannot credibly be understood to require the General Assembly to await an entirely new membership before fulfilling its constitutional obligation to enact a voter-ID law. And even on its own terms, the Superior Court's reasoning fails because there was an array of new IDs added to S.B. 824 that were not permitted in the prior law. Moreover, the Superior Court failed to identify **any** collection of IDs that would have closed the alleged discriminatory impact. Indeed, the Superior Court's critique analyzes the wrong question: the disparate impact on voting is relevant, not possession rate of IDs, and here, there is no disparate impact on voting because of the generous reasonable impediment provision.

As another example, the Superior Court "f[ound] that Defendants have not rebutted Plaintiffs' assertion that the General Assembly did not consider any updated racial demographic data" when passing S.B. 824, R p 941 ¶ 114, and thus that the

addition of several forms of qualifying ID did "not evince an intent by the General Assembly to cure racial disparities observed under H.B. 589," R p 940 (cleaned up). Plaintiffs say the court "was simply noting the limits of the legislature's evidence." Resp. 28. But that benign characterization conceals the error that caused this finding. At this stage of the analysis, Defendants were not obligated to "rebut" the General Assembly's alleged discriminatory motives or prove its actual nondiscriminatory motives. The court was required to take as established that the General Assembly had intended to comply with the Equal Protection Clause, and *Plaintiffs* were required to rebut that proposition. Instead, the court took Plaintiffs' allegations as the starting place and required Defendants to rebut them—or else the court would conclude, as it did, that the General Assembly had passed S.B. 824 for the same reason ascribed to H.B. 589.

In any event, the "assertion" that the court required Defendants to rebut was itself entirely consistent with legislative good faith. True, the General Assembly did not obtain new data about ID possession by race. With or without such data, however, the decision to include more forms of qualifying ID plainly evinces an intent to pass a more racially inclusive law. After all, the additional IDs (*e.g.*, student IDs, government-employee IDs) were types that the Fourth Circuit had faulted the General Assembly for *not* including in H.B. 589. *See N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 227 (4th Cir. 2016). At the same time, the Fourth Circuit faulted the General Assembly *for obtaining data about ID possession by race*. *See id.* at 216. A court presuming good faith would find the General Assembly followed the

Fourth Circuit's guidance. And such a court would acknowledge the obvious conclusion that, if the General Assembly could not have known how S.B. 824 might affect different racial groups, it could not have intended to exclude any racial groups from voting—an intent that is already impossible to square with the decision to include so many forms of qualifying ID.

If the Superior Court did not formally "flip" the burden of proof, it effectively did so. The good-faith presumption means nothing if it falls at any assertion of discriminatory intent. And Plaintiffs cannot fix the problem simply by pointing to the Superior Court's mechanical statement of the operative standard. *See* Resp. 25. The court's failure to apply that standard correctly stems from its refusal to presume that the General Assembly acted in good faith.

This was the same error that the federal district court committed in *Raymond*. That court "considered the General Assembly's discriminatory intent in passing [H.B. 589] to be *effectively* dispositive of its intent in passing [S.B. 824]," and "*[i]n doing so*, it improperly flipped the burden of proof at the first step of its analysis and failed to give effect to the [U.S.] Supreme Court's presumption of legislative good faith." 981 F.3d at 303 (emphases added). "Once the proper burden and the presumption of good faith are applied," the Fourth Circuit held, S.B. 824 was likely to survive an equal-protection challenge. *Id.* at 305. Granted, the district court had been open about flipping the burden, but that only "made explicit the burden-shifting that the court engaged in while assessing the *Arlington Heights* factors." *Id.* at 304. The error would have existed without the admission. Indeed, *Raymond* directly followed *Abbott*, which

held that a district court had "improperly reversed the burden of proof" because it had "disregarded the presumption of legislative good faith." 138 S. Ct. at 2326–27.

Raymond involves a challenge under the federal Equal Protection Clause, which is the "functiona[l] equivalent" of North Carolina's Equal Protection Clause, to the same law at issue here. *White v. Pate*, 308 N.C. 759, 765, 304 S.E.2d 199, 203 (1983). Plaintiffs nevertheless argue that *Raymond* should be disregarded because it was issued by a federal court. *See* Resp. 47. Yet, they simultaneously base their case on another decision from that very court: the Fourth Circuit's holding in *McCrory* that H.B. 589 violated the federal Equal Protection Clause, which, like the Superior Court, Plaintiffs discuss throughout their brief.

Plaintiffs cannot have it both ways. If *McCrory* is relevant, the same court's unanimous holding that S.B. 824 is likely to withstand the same challenge leveled against H.B. 589 is even more relevant. And to whatever extent the State's Equal Protection Clause differs from the federal Equal Protection Clause, the difference only favors S.B. 824. Unlike the federal Constitution, the North Carolina Constitution requires the General Assembly to enact a law requiring photographic voter ID. That is all the more reason to presume the General Assembly acted in good faith in doing so. For if the Court gives effect to both constitutional provisions—as it must, *see Leandro v. State*, 346 N.C. 336, 352, 488 S.E.2d 249, 258 (1997)—then some voter-ID law must satisfy the Equal Protection Clause. To overcome the presumption of legislative good faith, then, Plaintiffs must at least posit some voter-ID law that the

General Assembly could have passed and that they think would be less discriminatory. They have **never** done so, and neither did the Superior Court.

Instead, Plaintiffs repeat the Superior Court's error, emphasizing the legislative history of a different law (H.B. 1092, which placed the constitutional voter-ID amendment on the ballot), the fate of H.B. 589 (another entirely different law, *see* Leg.Def.Br. 14), and the fact that many of these legislators also voted for H.B. 589. All this evidence is irrelevant to "what they did" here—enact S.B. 824—and thus reflects only a failure to presume good faith. *Raymond*, 981 F.3d at 304. Plaintiffs suggest that merely to apply the *Arlington Heights* framework is to presume good faith because the Court of Appeals held in this litigation that the framework is "congruent" with that presumption. Resp. 24 (quoting *Holmes v. Moore*, 270 N.C. App. 7, 19 n.7, 840 S.E.2d 244, 256 n.7 (2020)); *see also id.* 2–3, 23–28. But that is not how the analysis works. As the Court of Appeals recognized earlier in this case, the "burden-shifting framework is congruent with our Supreme Court's strong presumption that acts of the General Assembly are constitutional" because requiring that a plaintiff "*first* show discriminatory intent" before "judicial deference is no longer justified" aligns with this Court's practice of "initially afford[ing] a strong presumption in favor of a law's constitutionality." *Holmes*, 270 N.C. App. at 19 n.7, 840 S.E.2d at 256 n.7 (cleaned up). Accordingly, an *Arlington Heights* analysis is "congruent" with the deference owed the General Assembly only insofar as a court affords that deference at the first step, and not just says that it did.

The Superior Court's mere acknowledgement that Plaintiffs needed to show discriminatory intent thus does not prove that the court presumed the General Assembly passed S.B. 824 *without* that intent, as the good-faith presumption requires. The majority opinion does not even mention the U.S. Supreme Court's decision in *Abbott* or the Fourth Circuit's holding in *Raymond*. Indeed, the majority does not even mention "good faith," much less presume that the General Assembly acted accordingly.

"[F]acts found under misapprehension of the law are not binding on this Court and will be set aside." *Van Hanford v. McSwain*, 230 N.C. 229, 233, 53 S.E.2d 84, 87 (1949). The Superior Court's presumption of bad faith skewed its assessment of facts, such as the General Assembly's lack of updated racial data. This Court thus owes no deference to any factual findings below.

B. Plaintiffs Failed To Establish Intentional Racial Discrimination.

To be sure, Legislative Defendants *also* (not "only," Resp. 28) argue that the Superior Court erred as a matter of law by concluding that Plaintiffs had carried their burden and that its findings of fact sufficed to demonstrate intentional racial discrimination under *Arlington Heights*. Leg.Def.Br. 22.

1. Plaintiffs Offered No Credible Evidence of Disparate Impact.

Because Plaintiffs failed to offer credible evidence of disparate racial impact their claim necessarily fails. *See Irby v. Va. State Bd. of Elections*, 889 F.2d 1352, 1355 (4th Cir. 1989). Plaintiffs' own expert showed that 140,000 more white voters than African American voters lack one of the forms of qualifying ID that he studied.

R S p 551–52 ¶119 & Table 8. Even on the assumptions that S.B. 824 would prevent voters without qualifying IDs from voting (it does not), and that voting is as racially polarized as Plaintiffs' theory suggests, S.B. 824 may suppress more Republican than Democratic votes. *See* Leg.Def.Br. 22–23.

Yet S.B. 824 by its terms does not prevent *a single voter* from voting in North Carolina. The reasonable impediment process "ensures that all voters of all races . . . continue to have access to the polling place to the same degree they did under pre-existing law," *see South Carolina v. United States*, 898 F.Supp.2d 30, 45 (D.D.C. 2012), and the law mandates that county boards of elections provide a free voter ID to any voter that requests one, *see* Leg.Def.Br. 24–25.

Plaintiffs resist these conclusions for unpersuasive reasons. First, Plaintiffs claim that the distribution of party allegiance is not equal. Since a higher percentage of African Americans identify as Democrats than white voters identify as Republicans, Plaintiffs argue it follows that the General Assembly did burden more Democrats. But Plaintiffs did not present *any evidence* on this score. To determine if what Plaintiffs are saying is true, Plaintiffs would need to take the white voters without qualifying ID and divide between Republicans and Democrats on the basis of voting patterns and then do the same thing for African American voters. Only then would Plaintiffs be able to determine if more Republicans or Democrats (who lack qualifying ID) were burdened by S.B. 824.

The evidence that Plaintiffs do rely on is a "highly misleading" use of statistics to make large that which is "small in absolute terms." *Brnovich v. Democratic Nat'l*

Comm., 141 S. Ct. 2321, 2344–45 (2021). The Supreme Court criticized simplistic equations such as "1.0 ÷ 0.5 = 2" as "statistical manipulation," which is exactly what Professor Quinn did (*i.e.*, 7.61 ÷ 5.47 = 1.39, so "African American voters in North Carolina are 39% more likely to lack a form of qualifying ID under S.B. 824 than white voters," Resp. 19). Even if Quinn's findings were reliable (they are not), it was legally impermissible to present those findings with a ratio that distorted the small difference in possession rates for the IDs he examined. Manipulation aside, Quinn's statistics show only a 2.14 percentage point difference in African American and white no-matches. R S p 554–55 ¶ 125 & Table 10. That difference drops to 1.42% for active voters. *Id.*

Most fundamentally, the Superior Court completely ignored another, undisputed and dispositive fact: the actual burden on voting is **minuscule**. The General Assembly was told that when the more restrictive H.B. 589 was in effect for the 2016 primary less than one-tenth of one percent of voters had their votes discounted for lacking ID. R S p 10673–74. No legislature determined to entrench itself would pass a law that had such a tiny effect in terms of ballots that would not count.

Second, Plaintiffs argue that the availability of free IDs fails to mitigate the alleged disparate possession of qualifying IDs because "the burdens of obtaining an ID . . . fall harder on African American voters in North Carolina." Resp. 43. Yet, the alleged "burden" of traveling to a county board to obtain ID is "at most . . . the same kind of minimal burden associated with obtaining a voter ID that the Supreme Court"

has already "held insufficient to sustain a facial challenge." *Raymond*, 981 F.3d at 309; *cf. Brnovich*, 141 S. Ct. at 2338. And for Plaintiffs to prove this claim, they would have needed to compare the relative burdens of African American voters *without* ID and white voters *without* ID. But they did not do so. Moreover, "all of the obstacles" that Plaintiffs point to "would be covered by the reasonable impediment option." T p 1413:13–15. Moreover, there is little to no incremental burden of getting an ID as compared to voting since the free IDs are available during early voting.

Third, Plaintiffs argue that the reasonable impediment process is not ameliorative because H.B 589's more restrictive reasonable impediment process allegedly disparately affected African Americans. Resp. 44–45. Implementation evidence from H.B. 589 is utterly irrelevant. For it to be relevant, the General Assembly must have *intended* S.B. 824 to be implemented in a racially discriminatory manner. *See Raymond*, 981 F.3d at 310. No such evidence exists. To the contrary, the General Assembly was told that only 184 people, out of over 2 million who voted, had their ballots not count in 2016 because their H.B. 589 reasonable impediment declaration was disallowed. R S p 10673. The General Assembly took this data and then made S.B. 824's reasonable impediment process *even more* voter-protective. *See* Leg.Def.Br. 12–13. And the General Assembly mandated an aggressive education and training program to improve S.B. 824's implementation. R S p 2150. No legislature with a discriminatory intent would have included these features.

2. Plaintiffs' Remaining Evidence Supports Upholding S.B. 824.

a. Historical Background.

S.B. 824 does not repeat past discrimination. Past discriminatory voting laws were supported with explicit racial appeals, accompanied by racial violence, and entirely eliminated African American voter turnout. *See* Leg.Def.Br. 29. And H.B. 589 lacked such features but had a "panoply of restrictions" that (in the Fourth Circuit's view) "cumulatively" impacted minority voters, a fact that was critical to the Fourth Circuit's finding that it was discriminatory. *McCrory*, 831 F.3d at 231.

In any event, past acts cannot be used "in the manner of original sin" to impugn the General Assembly's intent in passing S.B. 824. *Abbott*, 138 S. Ct. at 2324 (cleaned up). But that is what Plaintiffs do. They emphasize that many legislators who voted for S.B. 824 had also voted for H.B. 589 and suggest that negative inferences should be drawn from the recency of that vote. *See* Resp. 32–33. Even more recent, however, was the constitutional amendment adopted by a majority of North Carolina voters *requiring* the General Assembly to enact a voter-ID law. If any link could be drawn between these two entirely different laws, that amendment would sever it. *See Abbott*, 138 S. Ct. at 2325.

Plaintiffs reject this intervening event on the specious ground that North Carolina voters did not vote on the language of S.B. 824 itself. North Carolina voters deserve more credit for their choice. Of course, voters could have rejected the voter-ID amendment if they wanted more details or thought the amendment gave the General Assembly too much discretion. Instead, they instructed the General

Assembly to enact a voter-ID requirement, with any exceptions it chose, and the General Assembly followed these instructions by enacting a law that *does not require any voter to present ID to successfully vote.*

Plaintiffs also argue that, despite intervening events, a prior legislature's intent can still be "relevant." Resp. 26 (cleaned up). But under the presumption of good faith, the legislature must be considered to have started with a blank slate. Thus, as Plaintiffs admit, prior actions are relevant only "to the extent that they naturally give rise to—or tend to refute—inferences regarding the intent of the" legislature in question. *Abbott*, 138 S. Ct. at 2327. The Superior Court, on the other hand, considered the General Assembly tainted by H.B. 589. *See supra* Part I.A. Its historical analysis was thus wrong as conceived. And it was wrong as applied, for comparison refutes any inference that S.B. 824 was passed for the same reasons as any prior discriminatory laws.

Plaintiffs further contend that North Carolina's past history of racial discrimination dovetails with testimony that it would be "rational" for the supermajority to have pursued a policy—*i.e.*, S.B. 824—"that would entrench its own control by targeting African American voters if those voters vote reliably for the opposition party." *See* Resp. 15. But Professor Callanan testified that "[it]'s rational" for the General Assembly to "take into account . . . all of the constraints on their institution." T p 1507:10–12. Callanan agreed that among these constraints was the "prohibition on racial discrimination under the equal protection clause of the U.S. and North Carolina Constitutions." T p 1507:6–9. In other words, it would be

"rational" to expect the General Assembly to abide by this "fundamental law." T p 1507:13. And that is what the General Assembly did.

b. Sequence of Events.

Plaintiffs do not meaningfully contest that the General Assembly's actions in the lame duck session were in line with ordinary legislative behavior across the country. Instead, Plaintiffs argue that "the norms of other legislatures are not relevant here." Resp. 37. But the problem is that there are zero examples of equivalent situations in the past in North Carolina when there has been a power-shifting election involving the loss of a supermajority while the governor's office is held by a member of the opposing party with a veto. Plaintiffs (and the Superior Court) sought to look at what the General Assembly has done in wholly different contexts. By turning a blind eye to similar situations in legislatures across the country, Plaintiffs' preferred comparisons to wholly dissimilar legislative circumstances are simply not informative.

c. Legislative History.

Plaintiffs' arguments relating to S.B. 824's legislative history fail to support the Superior Court's holding.

First, Plaintiffs argue that S.B. 824 was not enacted through a bipartisan process because Senator Ford's co-sponsorship of the bill and comments by Democratic legislators lauding S.B. 824's process should be afforded no weight. Resp. 39–40. But in evaluating this evidence, Plaintiffs do not apply the presumption of legislative good faith. Instead, they presume that Senator Ford was ignorant of the

bill that he was co-sponsoring and that legislators' positive comments were meaningless and incongruent with their true views of the process. Indeed, though Plaintiffs charge that Senator Ford "agreed to support S.B. 824" because of a purportedly mistaken understanding of when and where the bill would provide free voter IDs, and that he "may not have supported S.B. 824" without that mistaken understanding, Resp. 39, Plaintiffs ignore that Senator Ford testified that he still believed that S.B. 824 is "a reasonable way to secure one person one vote and to do it in a respectful, safe manner that all North Carolinians can be proud of," T p 1582:2–7. Despite Plaintiffs' claims about the law, Senator Ford never recanted his support but instead gave emotional testimony in support of the bill and voter ID. *See, e.g.*, T p 1580:10–25, 1582:2–7.

Furthermore, critically, although Plaintiffs *mention* that other African American Democratic legislators voted for S.B. 824 throughout the legislative process, they completely fail to explain why that would be if S.B. 824 was targeted to discriminate against Democrats generally and African Americans specifically. African American Democrats voting for S.B. 824 is entirely incompatible with Plaintiffs' theory of the case. It would be irrational for African American Democrats to vote for a bill that would (on Plaintiffs' telling) entrench their political opponents, and Plaintiffs do not offer a rationale.

Second, Plaintiffs argue that the General Assembly's rejection of two specific amendments to S.B. 824 evinces that the law was motivated by discriminatory intent. Resp. 40–41. But the rejection of these amendments allows for no inference of

discriminatory intent. For the amendment that would have expanded early voting to the last Saturday before the election, Plaintiffs offer no rebuttal to the fact that, under the House's rules, the amendment was not germane to the voter-ID bill under consideration and was thus properly ruled out of order. Leg.Def.Br. 39–40. Whatever the policy benefits or detriments of expanding early voting, the topic is not germane to implementing a photo-ID requirement. And the General Assembly thereafter enacted a separate law mandating last-Saturday early voting. *Id.* 40. For the amendment that would have added certain public assistance IDs to the list of qualifying IDs, Plaintiffs try to adopt two contradictory positions. They simultaneously criticize the fact that the General Assembly rejected the amendment during deliberations on S.B. 824, Resp. 40, but also argue that the later bill adding public assistance IDs to the list of qualifying IDs in substantially the same form as the amendment carries no weight because it allegedly would have enabled no additional voters to comply with S.B. 824, *id.* 40–41. But the General Assembly rejected the public assistance amendment for legitimate, nondiscriminatory reasons, Leg.Def.Br. 39, and "the failure to adopt" an allegedly "meaningless amendment cannot support finding discriminatory intent," *Raymond*, 981 F.3d at 308.

Third, Plaintiffs maintain that "the most plausible inference from the evidence presented at trial" is that because "a substantial number of legislators who voted in favor of S.B. 824 also deliberated over and voted in favor of H.B. 589," then those legislators must have intended a discriminatory effect in S.B. 824. Resp. 41. But as explained above, *no* inference can be drawn about the General Assembly's intent

regarding alleged ID possession rates because the General Assembly had no such data before them. To conclude otherwise would be to ignore the presumption of legislative good faith and condemn the General Assembly for H.B. 589 "in the manner of original sin." *Abbott*, 138 S. Ct. at 2324 (cleaned up). And the data that the General Assembly did have indicated that while matching analyses conducted in connection with H.B. 589 failed to match hundreds of thousands of voters to qualifying voter ID, only 2,296 out of more than two million voters (less than one-tenth of one percent) cast a provisional ballot because they lacked an acceptable ID under H.B. 589 in 2016. *See* R S p 10661, 10663, 10673–74. This minuscule number of voters who voted provisionally for lacking qualifying ID undermines the reliability of no-match analyses as providing any useful information about S.B. 824's actual effects on voters.

C. S.B. 824 Serves Nondiscriminatory Purposes.

Even if Plaintiffs had proven a discriminatory motivation the question would remain whether the same decision would have resulted even had the impermissible purpose not been considered. Nondiscriminatory motives alone do indeed justify the enactment of S.B. 824. Specifically, the General Assembly was constitutionally required to enact a photo voter-ID law and, in doing so, sought to instill voter confidence and to prevent voter fraud, interests that are "strong," "entirely legitimate," and "indisputably . . . compelling." *Brnovich*, 141 S. Ct. at 2340, 2347 (cleaned up).

Plaintiffs contest that these nondiscriminatory explanations alone justify S.B. 824. They first argue that the constitutional amendment mandating the General

Assembly to enact voter-ID legislation did not "obligate the Republican supermajority to enact . . . S.B. 824." Resp. 46. S.B. 824, however, is not H.B. 589 by another name. The General Assembly modeled S.B. 824 on South Carolina's voter-ID law, which had been precleared under Section 5 of the Voting Rights Act by a three-judge panel of the United States District Court for the District of Columbia. *See* T p 1510:18–1512:30; *South Carolina*, 898 F.Supp.2d 30. It was entirely reasonable for North Carolina to model its voter-ID law on a neighboring state's law that had been approved in federal court because it had no discriminatory effect. Moreover, Plaintiffs have identified no array of qualifying IDs that would result in a narrower gap of ID-possession rates than they alleged. They have not attempted to quantify the effects of S.B. 824's free-ID provision or reasonable-impediment process. Nor have they identified any additional ameliorative provision that would have measurably improved voter access beyond the existing provisions.

Plaintiffs next argue that "the specific features of S.B. 824 did not prevent fraud or enhance confidence in ways that a law that did not bear as heavily on African American voters would not." Resp. 46. But it is no response to speculate whether and how other laws not at issue here could prevent voter fraud in North Carolina. Plaintiffs offer no substantive response to the fact that North Carolina *has* been struck by pernicious voter fraud—a fact that the Superior Court majority failed to mention—and that a photo voter-ID requirement would have made this voter-fraud scheme more difficult to achieve. *See* T p 2178:2–7. It was reasonable for legislators to conclude that S.B. 824 could help election officials prevent this and other voter

fraud and thereby preserve voter confidence. Indeed, a much stricter voter-ID law was recommended by a bipartisan commission co-chaired by former President Jimmy Carter. R S p 11400–03. General Assembly members repeatedly referred to these interests during deliberation on S.B. 824. *See* Leg.Def.Br. 42–43.

Nothing in the record indicates that the General Assembly, wholly apart from an assumed racial motivation, would have enacted a different voter-ID law.

CONCLUSION

The Superior Court's judgment must be reversed and the injunction vacated.

Respectfully submitted, this the 28th day of March, 2022.

/s/ Nicole J. Moss

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure and the Court of Appeal's January 19, 2022 Order, the undersigned counsel certifies that the foregoing Reply Brief of Legislative Defendant-Appellants, which was prepared using a 12-point proportionally spaced font with serifs, is less than 5,000 words (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and appendixes) as reported by Microsoft Word.

/s/ Nicole J. Moss
Nicole J. Moss

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 28th day of March, 2022, pursuant to Rules of Appellate Procedure 13 and 26, served a copy of the foregoing Reply Brief of Legislative Defendant-Appellants on the following counsel for the parties at the following addresses by electronic mail.

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