

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

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

Plaintiffs,

v.

PATRICK LLOYD MCCRORY, in his
official capacity as the Governor of North
Carolina, *et al.*,

Defendants.

**Plaintiffs' Joint Proposed Findings
of Fact and Conclusions of Law
Regarding Photo ID Claims**

Civil Action No. 1:13-cv-658

LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, *et al.*,

Plaintiffs,

v.

Civil Action No. 1:13-cv-660

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

Defendants.

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 1:13-cv-861

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

Defendants.

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
PROPOSED FINDINGS OF FACT	1
I. Introduction	1
A. Background	1
II. North Carolina's Photo ID Requirement.....	2
A. The Photo ID Requirement as Originally Enacted in August 2013	2
B. The Photo ID Requirement as Amended in June 2015	5
III. The General Assembly Enacted HB 589's Photo ID Requirement Because of Its Disproportionate Impact on African American Voters	6
A. The General Assembly Knew of a Significant Racial Disparity in Rates of DMV ID Possession Among Registered Voters in North Carolina	8
B. The General Assembly Knew That a Requirement to Obtain DMV ID Would Impose a Significant Burden on African American Voters	10
C. The House Passed a Pre- <i>Shelby</i> Version of HB 589 That Included Alternative Forms of ID and Was Praised By Proponents as Suitable for Achieving Their Purported Goals	12
D. The Post- <i>Shelby</i> Version of HB 589 Reflects a Series of Unjustified Changes Made Without Public Notice or Input That Disproportionately Impacted African American Voters	14
1. Numerous Major Post- <i>Shelby</i> Changes to HB 589 Had a Discriminatory Impact on African American Voters.....	15
2. After <i>Shelby</i> , the General Assembly Abandoned its Deliberative Legislative Process for a Rushed, Secretive Approach	17
E. The General Assembly Did Not Offer Any Legitimate Justification for the Photo ID Requirement	20

IV.	Rigorous Independent Analysis Confirms the Significant Racial Disparity in Rates of Photo ID Possession Among Registered Voters in North Carolina	21
A.	The Database Matching Methodology That Dr. Stewart Used in This Case is Commonly Practiced and Produces Reliable Results	22
B.	Dr. Stewart's Database Matching Analysis Confirms That North Carolina Voters Who Lack HB 589 ID Are Disproportionately African American, as Indicated by Data Before the General Assembly	25
C.	Defendants' Critiques of Dr. Stewart's Methodology Do Not Undermine His Results.....	28
1.	Dr. Thornton's Criticisms of Dr. Stewart Are Unavailing.....	28
2.	The SBOE Mailings Do Not Cast Doubt on the Accuracy of Dr. Stewart's Matching Results	34
D.	Defendants' Arguments Regarding the So-Called "Predictions" of Plaintiffs' Experts are Spurious.....	35
V.	The Photo ID Requirement Disproportionately Burdens Minority Voters	36
A.	HB 589 Contemplates That Few Voters Will Have a Qualifying ID Issued by an Entity Outside of the DMV	37
B.	Requiring Voters to Obtain DMV ID Imposes Significant Burdens Which Fall Disproportionately on African Americans and Latinos	38
1.	The Burden of Obtaining Transportation to a DMV Office Falls Disproportionately on Minority Voters.....	39
2.	The Burden of Complying with DMV's Documentation Requirements Falls Disproportionately on Minority Voters.....	43
3.	Minority Voters Disproportionately Bear the Monetary Cost of Obtaining DMV ID	46
4.	The Requirement to Maintain Valid DMV ID Once Acquired Falls Disproportionately on Racial Minorities.....	47
C.	The Exceptions to HB 589's Photo ID Requirement are Too Narrow to Mitigate the Foreseeable Burdens it Imposes	49

VI.	HB 589’s Photo ID Requirement Adds to the Bill’s Cumulative Impact on African American and Latino Voters.....	51
VII.	The Reasonable Impediment Provision Fails to Alleviate the Disproportionate Burden of the Photo ID Requirement on Minority Voters.....	51
A.	The Reasonable Impediment Declaration Form is Complicated and Difficult to Navigate and Will Deter Voters	52
B.	The Reasonable Impediment Provision Forces Long-Time Voters Without ID Into a Separate Voting System Where Their Ballot May Not Count	55
C.	The Challenge Process is Onerous and Intimidating, and Will Deter Voters From Submitting Declarations in the First Place	56
D.	South Carolina’s Photo ID System Differs in Substance and Implementation from North Carolina’s System	59
1.	South Carolina Already Had An ID Requirement Before it Implemented its Photo ID Requirement.....	60
2.	In Sharp Contrast to North Carolina, South Carolina Provided Voters With Two Distinct Free Forms of ID Allowing More Than 38,000 Voters to Obtain Free ID That Never Expire	60
PROPOSED CONCLUSIONS OF LAW		62
I.	Enactment of HB 589’s Photo ID Requirement Violates Section 2 of the Voting Rights Act	62
A.	The Photo ID Requirement Violates Section 2 Because it Was Enacted with a Discriminatory Purpose	62
B.	The Photo ID Requirement Violates Section 2’s Results Test	69
II.	The Photo ID Requirement Violates the Fourteenth Amendment Because it Burdens the Fundamental Right to Vote Without Supporting a Countervailing State Interest.....	73
III.	Requested Remedy	75

PROPOSED FINDINGS OF FACT

I. Introduction

A. Background

1. On August 12, 2013, Governor Pat McCrory signed into law HB 589/S.L. 2013-381 (PX110), an omnibus elections bill. PX121 (HB 589 bill history). Plaintiffs¹ brought suit under Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the Constitution, challenging certain provisions of HB 589, including its photo identification requirement for in-person voters.

2. On June 22, 2015, Governor McCrory signed HB 836/S.L. 2015-103 (PX897) into law, amending HB 589's photo ID requirement. PX906 (bill history). In response to this eleventh-hour development, the Court agreed to bifurcate proceedings by limiting the scope of the July 2015 trial to Plaintiffs' challenges to the non-ID related provisions of HB 589, and delaying consideration of Plaintiffs' challenge to the photo ID requirement to a later date. The July 2015 trial proceeded accordingly, and Plaintiffs filed a set of post-trial Joint Proposed Findings of Fact and Conclusions of Law on August 17, 2015 (13-CV-861, ECF No. 346) (hereinafter "2015 FOFs").

3. The amendments to the photo ID provision of HB 589 do not alter Plaintiffs' contention that North Carolina enacted HB 589's ID provision with the discriminatory purpose of seeking to suppress the African American vote. Moreover, Plaintiffs continue to maintain that the ID law as originally enacted had a discriminatory impact; that HB 836's revisions to the ID provision did not ameliorate all of the discriminatory effects of

¹ Except where noted, the United States and the NAACP Plaintiffs submit these proposed findings of fact and conclusions of law jointly.

HB 589's ID provision; and that the remaining discriminatory effects of the ID provision continue to combine with the other provisions of HB 589 to intentionally deprive African American voters of an equal opportunity to participate in the political process, all in violation of Section 2 of the Voting Rights Act.

4. The NAACP Plaintiffs also maintain that the photo ID requirement remains unlawful despite the changes because it produces discriminatory results under Section 2 and burdens the right to vote in ways that are not outweighed by any substantial State purpose.

5. Additional evidence regarding the photo ID requirement was presented during a trial held January 25 to February 1, 2016. This document will refer to evidence from both trials and where possible will reference the 2015 FOFs to avoid repetition.²

II. North Carolina's Photo ID Requirement

A. The Photo ID Requirement as Originally Enacted in August 2013

6. Prior to implementation of HB 589's photo ID requirement, most in-person voters in North Carolina were required to (1) state their names and current addresses, and (2) sign the Authorization to Vote form, with any false signature constituting a Class I felony. N.C.G.S. §§ 163-166.7(a), (c)(10), -275(13) (2013); 1/28/16 Trial Tr. 89:16-90:4, 91:2-93:4 (Strach). Consistent with the federal Help America Vote Act ("HAVA"), 52 U.S.C. § 21083(b), certain first-time voters were also required to present identification.

² For the Court's convenience, Plaintiffs are attaching to this document a list of Plaintiffs' exhibits admitted at the 2016 trial, *see Exhibit A*, and a list of previously admitted Plaintiffs' exhibits cited in this document, *see Exhibit B*, each organized as far as practicable by type of exhibit and chronologically (declarations of fact witnesses, expert witness reports and related exhibits, deposition designations, etc.).

Numerous forms of photo and non-photo ID could be used to meet this requirement, including a current utility bill, bank statement, government check, paycheck, or other government document. PX242 ¶ 10 (Stewart Trial Decl.); N.C.G.S. § 163-166.12(a)-(b); PX16 ¶ 37 (Bartlett Decl.).

7. Beginning in 2016, HB 589 required that almost all voters casting ballots at the polls, whether on Election Day or during early voting (“in-person voters”), present one of a limited number of qualifying forms of photo ID. PX110 § 2.1, sec. 163-166.13(a). Qualifying ID³ was limited to identification issued by the North Carolina Division of Motor Vehicles (“DMV”), U.S. passports, U.S. military identification, U.S. veterans identification, and certain tribal identification. PX110 § 2.1, sec. 163-166.13(e). In addition, the bill permitted a voter who registered within 90 days of an election to use an ID issued by another state’s department of motor vehicles. *Id.*

8. To be accepted for voting, these forms of ID were required to have a printed expiration date and be unexpired, except that a military ID, veterans ID, or ID issued by a federally recognized tribe would also be acceptable if it had a printed issuance date not more than eight years before it was presented for voting. In-person voters over the age of 70 could use an expired ID if it was unexpired on the voter’s 70th birthday. *Id.*; *see also* DX535 at 7, 71 (Strach Decl. ¶ 17, Ex. 2.1).

9. While HB 589 does not explicitly exclude a revoked or suspended driver’s license from the list of qualifying ID, such an ID cannot lawfully be used to vote because North

³ The phrases “qualifying ID” and “qualifying photo ID” as used in this document refer to photo ID that is acceptable for in-person voting under applicable voter photo ID provisions. “HB 589 ID” refers to qualifying ID under HB 589 as originally enacted.

Carolina law prohibits possession or display of any DMV ID⁴ that has been canceled, revoked, or suspended. N.C.G.S. §§ 20-30(1), 20-24(a); PX663 ¶¶ 36, 38, 40 (Defs.’ Resp. to RFAs); *see also* 1/27/16 Trial Tr. 119:18-120:2 (Nieman) (after suspension or revocation of a license, a motorist is sent a notice requiring the license to be surrendered to the DMV); PX998 (DMV suspension letters).

10. Under HB 589, a voter who did not present qualifying photo ID was permitted to cast a provisional ballot, PX110 § 2.1, sec. 163-166.13(c), but the ballot would not count unless the voter appeared at the county board of elections with qualifying ID before noon on the day before the election canvass, PX110 § 2.8—i.e., as soon as six days after the election; 1/28/16 Trial Tr. 119:1-4 (Strach); N.C.G.S. § 163-182.5(b).

11. The only in-person voters excluded from HB 589’s ID requirement were voters unable to enter the polling place because of age or physical disability (“curbside” voters), voters with sincerely held religious objections to being photographed, and voters who lack qualifying ID as a result of a natural disaster occurring within 60 days of the election. PX110 § 2.1, sec. 163-166.13(a)(1)-(3).

12. There were no exceptions to the photo ID requirement for in-person voters who were unable to obtain qualifying photo ID due to indigence, inability to obtain required documents, inability to arrange transportation, or other reasons. 1/28/16 Trial Tr. 96:10-22 (Strach).

13. HB 589 required the DMV to issue a special identification card free of charge to

⁴ As used in this document, the phrase “DMV ID” means a driver’s license or non-operators ID card (including a no-fee voter ID) issued by the North Carolina DMV.

any person eligible for such an ID who is a registered voter in NC and declares that he or she lacks HB 589 ID. PX110 § 3.1. However, North Carolina statutes require applicants for such ID cards to furnish the same identifying information as applicants for any other DMV identification, including at least two forms of identification approved by the Commissioner of Motor Vehicles. N.C.G.S. § 20-7(b1); *see also* DX535 at 8, 72 (Strach Decl. ¶ 19, Ex. 2.2) (educational flyer listing documentation requirements).

B. The Photo ID Requirement as Amended in June 2015

14. HB 836, enacted in June 2015, made two significant changes to the photo ID requirement. First, it amended the requirement to permit the use of expired DMV ID if the expiration date is no more than four years before the date on which it is presented for voting. PX897 § 8(a), sec. 163-166.13(e). Second, it added a provision permitting a voter who does not present qualifying ID “due to a reasonable impediment that prevents the voter from obtaining photo identification” to have her vote counted under specified circumstances. PX897 § 8(a), sec. 163-166.13(c).

15. In order to vote under the “reasonable impediment” provision, a voter must (1) complete a provisional ballot application; (2) complete a declaration attesting to his or her identity and listing the impediment; and (3) present HAVA ID or provide his or her date of birth and the last four digits of his or her social security number (“SSN4”). DX546 ¶ 6 (Strach Decl.); PX897 § 8(d), sec. 163-166.15(b)-(c). The North Carolina State Board of Elections (“SBOE”) is required to provide a declaration form for this purpose which lists several possible impediments and a space to describe some other impediment. PX897 § 8(d), sec. 163-166.15(e).

16. Under this provision, the voter may vote only by provisional ballot, and not by regular ballot. PX897 § 8(d), sec. 163-166.15(a). A county board of elections must count a provisional ballot cast under this provision by an otherwise eligible voter unless the board has grounds to believe the reasonable impediment declaration was “factually false, merely denigrated the photo identification requirement, or made obviously nonsensical statements,” or the board is unable to confirm the voter’s registration using the voter’s date of birth and SSN4 where the voter provided that information. PX897 § 8(e), sec. 163-182.1B(a).

17. When a voter casts a provisional ballot under the reasonable impediment provision, any other registered voter in the county may challenge the ballot before the county board of elections by the third day following the election. PX897 § 8(e), sec. 163-182.1B(b)(1)-(2). The board may sustain the challenge “if the evidence demonstrates the declaration merely denigrated the photo identification requirement, made obviously nonsensical statements, or made statements or selected a reasonable impediment check box that was factually false.” PX897 § 8(e), sec. 163-182.1B(b)(7).

18. Apart from these changes, the SBOE considers HB 589’s photo ID requirement to be fully in place. 1/28/16 Trial Tr. 104:19-24 (Strach).

III. The General Assembly Enacted HB 589’s Photo ID Requirement Because of Its Disproportionate Impact on African American Voters

19. North Carolina legislators would not have enacted HB 589’s photo ID requirement absent its likelihood of suppressing the African American vote. As discussed in detail in the Plaintiffs’ 2015 Proposed Findings of Fact, from 2001 to 2009, North Carolina undertook a series of election reforms designed to increase access to the

ballot. 2015 FOFs ¶¶ 45-91. These reforms benefitted all of the State's voters, but especially benefitted African American voters, who had had difficulty participating equally in the political process because of the State's legacy of intentional discrimination in voting and in other areas such as education, housing, and employment. *See id.* ¶¶ 3-44. In 2008, following most of these reforms, African American voter turnout exceeded that of white voters for the first time. *See id.* ¶¶ 92-97.

20. This increasing minority participation threatened the fortunes of a new majority in the General Assembly elected with virtually no support from African American voters. *See id.* ¶¶ 98-110. In July 2013, just a month after the Supreme Court's decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), relieved the State of its affirmative obligation to show that its voting changes were adopted without a discriminatory purpose or effect, the General Assembly responded by enacting HB 589.

21. The sequence of events leading to passage of the bill, as well as other evidence, shows that the legislature acted at least in part *because of* HB 589's discriminatory effects. Initially, during the period when the State was under the obligation to preclear its changes, the House passed a stand-alone photo ID requirement that legislators likely believed could withstand the Section 5 preclearance process. But, following the *Shelby* decision, the legislature jettisoned this approach and adopted a far-reaching omnibus elections bill. *See id.* ¶¶ 111-149. The omnibus bill included (1) numerous provisions that repealed or curtailed the voting reforms that had expanded access to the electoral process in the previous decade, *see id.* ¶¶ 111-149; and (2) a significantly stricter version of the photo ID requirement. These changes were intended to disproportionately limit

access to the franchise for African American voters, who threatened the new General Assembly majority, *id.* ¶¶ 150-191, and they had the desired impact, *id.* ¶¶ 192-267.

A. The General Assembly Knew of a Significant Racial Disparity in Rates of DMV ID Possession Among Registered Voters in North Carolina

22. Between February 2011 and April 2013, at times at the request of and in consultation with legislative leaders, the SBOE performed a series of database matching analyses to identify North Carolina registered voters who could not be matched to a record in the DMV database of DMV ID holders. *See id.* ¶¶ 154-160. Although each analysis used a different set of matching criteria—criteria that tended to reduce the number of “no-matches” with each succeeding iteration—they all revealed that hundreds of thousands of registered voters could not be matched to a DMV ID. PX891 ¶ 3, tbl.1 (Stewart 12/10/15 Decl.). Each of the analyses also showed that registered African American voters in North Carolina lacked DMV IDs at dramatically higher rates than white voters. *Id.* ¶¶ 3, 8, 10-13, tbls.2, 4-5; 1/26/16 Trial Tr. 18:1-10 (Stewart).

23. In March 2013, in response to requests from legislative leaders and with their active participation, the SBOE overhauled its matching protocol and significantly expanded its matching criteria so as to capture as many *potential* DMV matches as possible. 2015 FOFs ¶ 155. The SBOE produced a new list of “unmatched” voters, which it described in an April 2013 report (PX534) that was approved by Ray Starling, counsel to House Speaker Thom Tillis. 2015 FOFs ¶ 156 (citing PX346 (4/17/13 email)). Starling declared that the SBOE had “hit the nail on the head” with the new analysis, and that he intended to “make it available to the members of the elections committee.” *Id.*

24. The SBOE’s April 2013 report concluded that 318,643 registered voters could not

be matched to a DMV ID, which included 7.4% of African American registered voters, compared to just 3.8% of white registered voters. PX891 at 4 tbl.2, 7 tbl.5 (Stewart 12/10/15 Decl.); PX534 (April 2013 Rpt.); 7/17/15 Trial Tr. 112:3-113:3 (Lichtman). Put another way, the percentage of African American voters who could not be matched was nearly twice the percentage of white voters who could not be matched. The racial disparity was even greater among voters who participated in the 2012 general election: 4.8% of black 2012 voters but only 2.3% of white 2012 voters appeared on the SBOE's no-match list. PX534 at 9; PX242 App'x I (Stewart Trial Decl.). This report, including information about racial disparities in DMV ID possession, was presented to legislators during consideration of HB 589. 2015 FOFs ¶ 160.

25. The SBOE's 2013 analyses actually understate the number of individuals who lacked a qualifying DMV ID for voting by treating a voter who matched to an expired, suspended, or revoked driver's license as a positive "match" notwithstanding that such licenses could not be used for voting under HB 589 as originally enacted. PX891 at 3 n.6 (Stewart 12/10/15 Decl.); 7/17/15 Trial Tr. 112:16-23 (Lichtman).

26. The results of the SBOE analyses were consistent with publicly available evidence regarding racial disparities in ID possession in other states. For example, in 2012, expert analyses in highly publicized federal court cases established that African Americans were disproportionately likely to lack qualifying photo ID under voter ID laws passed in South Carolina and Texas. PX891 ¶¶ 15, 18; *see also South Carolina v. United States*, 898 F. Supp. 2d 30, 40 (D.D.C. 2012) (three-judge court). Similarly, publicly available scholarly research conducted nationwide and in Georgia, Wisconsin, and

Indiana showed that African Americans tended to possess photo ID at lower rates than whites. PX891 ¶¶ 17-18; 1/26/16 Trial Tr. 19:13-20:8 (Stewart). Legislative sponsors of HB 589 solicited the views of election administrators from some of these states. DX378 at 17 (GA Sec. of State); PX545 at 17 (IN official).

B. The General Assembly Knew That a Requirement to Obtain DMV ID Would Impose a Significant Burden on African American Voters

27. The requirements for obtaining DMV ID in North Carolina—appearing in person at a DMV office and presenting required documentation—impose significant burdens on voters who lack ID. The burdens imposed on such voters were discussed in testimony before the House Elections Committee, PX543 8:19-10:9, 83:20-85:2 (3/13/13 House Elec., Gaskins), during floor debate on the pre-*Shelby* version of the bill, PX548 109:24-111:18 (4/24/13 House Fl., Glazier), and during floor debate on the final, post-*Shelby* version of HB 589, PX138 68:14-69:7 (7/25/13 House Fl., Tine) (explaining that counties in his district have severely limited access to DMV offices). As discussed in detail below, *see infra* Part V, the actual burdens suffered by those minority voters who are trying to obtain ID have been significant.

28. Numerous members of the General Assembly also warned supporters of the bill that the burdens it imposed on voters would fall disproportionately on African Americans. PX548 130:7-11 (4/24/13 House Fl., Pierce); *id.* 138:9-14 (Glazier); PX550 32:5-11, 34:3-12 (7/25/13 Senate Fl., Stein); *id.* 41:14-24 (McKissick); *id.* 50:3-8 (Graham); *see also* 2015 FOFs ¶¶ 132, 134.

29. In addition, by 2013, there were well-known problems with the DMV’s provision of services to driver’s license customers. The Commissioner of the DMV conceded that

in 2013, his agency was poorly organized, deeply unpopular among North Carolinians, interacted with customers in a draconian fashion, and had a lethargic, nonresponsive, and inflexible computer system. 1/28/16 Trial Tr. 154:18-155:4, 195:20-198:9 (Thomas); *see also infra* ¶ 98.

30. Members of the General Assembly also knew that a disproportionate percentage of African American registered voters would have difficulty maintaining a valid DMV ID because legislators were aware of the State's routine practice of suspending or revoking the driver's licenses of low income motorists for their failure to pay traffic fines. In North Carolina, low income individuals—who are disproportionately African American—routinely fall into a spiral in which they are prosecuted for “driving while license revoked” and lose their licenses because of an inability to pay fines arising from minor traffic offenses (the “DWLR spiral”). 1/27/16 Trial Tr. 117:3-119:8, 121:9-122:14 (Nieman); *see also* PX664 ¶¶ 31, 32, 34 (Defs.’ Resp. to RFAs) (describing certain circumstances that can lead to license suspension or revocation); PX918 at 31-35 (NC Driver’s Handbook) (same); *infra* ¶ 62.

31. Jeff Nieman, an assistant district attorney serving Orange and Chatham Counties, explained in uncontested testimony that during the first half of 2013, he worked with the State’s Conference of District Attorneys in support of proposed legislation designed to limit the unnecessary prosecution of low income motorists falling into the DWLR spiral. 1/27/16 Trial Tr. 124:3-128:16 (Nieman). Mr. Nieman communicated with legislators, legislative staff, and gubernatorial staff about the need for this legislation. *Id.* The bill was introduced in early 2013, passed the House in May 2013, and passed a Senate

committee shortly thereafter, but was *not* approved by the full Senate during the 2013 session. *Id.*; see also HB 615, 2013-2014 Session, available at <http://ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2013&BillID=H615>.

C. The House Passed a Pre-Shelby Version of HB 589 That Included Alternative Forms of ID and Was Praised By Proponents as Suitable for Achieving Their Purported Goals

32. Cognizant that under Section 5 of the Voting Rights Act, North Carolina would only be able to implement a photo ID requirement if it could establish that the requirement was not discriminatory in effect or purpose, the House passed a version of HB 589 in April 2013 that would have allowed voters to present numerous other forms of ID, including types of ID held at higher rates among African Americans. For instance, the version of the bill that the House ultimately approved in April 2013 permitted the use of a photo ID “issued by a branch, department, agency, or entity of the United States, this State, or any other state.” PX106 § 4 (HB 589 v.5). The bill listed a number of examples of such ID, including a student ID issued by a public college or university; an ID issued to a fireman, EMS or hospital employee, or law enforcement officer; an ID issued by a unit of local government; and an ID issued for a public assistance program. *Id.* The bill also permitted use of an expired ID as long as it was no more than 10 years beyond its expiration date. *Id.*

33. In permitting the use of a wide range of government-issued IDs, the House version of HB 589 was similar to most of the so-called “strict” photo ID requirements that had been adopted at the time by other states, as classified by the National Conference of State Legislatures. PX242 ¶¶ 12-24 & tbl.1 (Stewart Trial Decl.); see also PX229 at

20-22 (Burden Trial Rpt.). In fact, members of the House Appropriations Committee rejected an amendment proposed by Representative Speciale limiting qualifying ID to only DMV ID, military ID, or a passport. PX547 27:22-28:2 (4/23/13 House Appr.); *see also id.* 29:13-24 (HB 589 sponsor Rep. Samuelson urging Committee to reject amendment).

34. House leaders emphasized the extensive legislative process employed in developing and debating the bill and their attempts to address concerns raised by opponents of a photo ID requirement. For example, House Speaker Tillis acknowledged that the bill was “very different than the bill we tried to pass last year. It has tried to take into account a number of the concerns that were raised.” PX47 ¶ 47 (Lawson Decl.). Representative Warren, one of the bill’s key sponsors, said that the House version of the bill was “the result of many months of research and of listening to the people of North Carolina . . . and by [sic] giving careful and thoughtful consideration to the concerns expressed by those opposed to securing the vote.” PX545 36:19-37:1 (4/10/13 House Elec.); *see also* PX548 39:11-40:24, 43:23-44:4 (4/24/13 House Fl.).

35. House leaders also emphasized that the bill would meet their goal of protecting the integrity of elections. For example, Representative Warren said that the bill would “enhance[] integrity in the balloting process in a comprehensive and considerate fashion. . . .” PX545 37:18-25 (4/10/13 House Elec.); *see also* 2015 FOFs ¶ 125 (quoting PX397A).

D. The Post-*Shelby* Version of HB 589 Reflects a Series of Unjustified Changes Made Without Public Notice or Input That Disproportionately Impacted African American Voters

36. The House approved HB 589 on April 24, 2013, and it was received in the Senate the following day. The Senate referred the bill to the Senate Rules Committee, but the Committee took no action until July 23, 2013. PX121 (bill history). On June 25, 2013, the Supreme Court issued its decision in *Shelby County v. Holder*, relieving North Carolina of its affirmative duty to demonstrate that voting-related legislation did not have a racially discriminatory purpose or effect. That same day, Senator Tom Apodaca, the chairman of the Rules Committee, announced that the Senate would move ahead with a “full bill” version of HB 589, 2015 FOFs ¶ 128 (citing PX81, PX714), and from that point forward, the General Assembly’s approach failed to follow the normal legislative process. About a month later, Senator Apodaca revealed the “full bill,” which was radically different from the version that had passed in the House. This transformation took place without debate or public notice, and with virtually no explanation or attempt at justification. 2015 FOFs ¶¶ 126-149; *see also* PX138 32:24-33:8, 33:22-25 (7/25/13 House Fl., Michaux); PX549 72:12-21 (7/24/13 Senate Fl., Graham).

37. As reflected in the table below, *infra* ¶ 41, every significant change made to HB 589 following the *Shelby County* decision—both related and unrelated to the photo ID requirement—fell more harshly on North Carolina’s African American and Latino voters. This stark pattern of disparate impact, following close on the heels of the *Shelby* decision and undertaken in a rushed and secretive process that shielded the changes from public scrutiny and legislative deliberation, is strong evidence of discriminatory purpose.

1. Numerous Major Post-*Shelby* Changes to HB 589 Had a Discriminatory Impact on African American Voters

38. With regard to the photo ID requirement, the post-*Shelby* version of HB 589 dispensed with the relatively broad list of qualifying IDs that had been incorporated by the House. *Supra ¶ 34.* Even though the General Assembly knew of significant racial disparities in DMV ID possession based on the SBOE no-match analysis and about racial disparities in socioeconomic conditions in North Carolina, the transformed version of HB 589 eliminated all IDs issued by state entities other than the DMV, and most expired DMV IDs, from the list of qualifying ID. PX110 § 2.1 (HB 589/S.L. 2013-381).

39. The forms of ID eliminated after *Shelby* were each relatively more accessible to African Americans. PX231 at 34-35 (Lichtman Trial Rpt.). Specifically, according to data available when the General Assembly was considering the bill, the elimination of four types of state-issued ID—(1) IDs issued by public institutions of higher learning (student IDs), (2) government employee IDs, (3) most expired DMV IDs, and (4) public assistance IDs—adversely affected African American voters because African Americans are more likely than whites to possess each of these types of ID. 7/17/15 Trial Tr. 106:5-108:22, 109:11-20 (Lichtman); PX231 at 36-53, 99 (Lichtman Trial Rpt.). Specifically:

- Recent enrollment statistics indicate that 7.3% of all voting age African Americans in North Carolina were enrolled in public colleges and universities in the State as compared to only 5.7% of voting age whites. PX231 at 50-51 (Lichtman Trial Rpt.).
- African Americans are more likely to work for federal or state governments than whites: 10.9% of African Americans do so as compared to 9% of whites, which means that African American North Carolinians were 21% more likely to work for the government than their white counterparts. *Id.* at 52-53.
- According to the SBOE's methodology, 2.9% of active registered African

American voters matched to expired DMV IDs, while only 2.3% of active registered white voters matched to expired IDs, which means that the matching rate for expired IDs was 26% higher for African Americans than for whites. PX231 at 42; *see also* PX891 at 16 tbl.9 (Stewart 12/10/15 Decl.) (showing decline of racial disparity in ID possession after accounting for amendment allowing use of certain expired IDs).

- The proportion of African American households receiving public assistance is significantly higher than the proportion of white households receiving public assistance. 7/17/15 Trial Tr. 109:11-20 (Lichtman); PX671 Ex. H at 6, 14 (Census data⁵); *see also* DX511 ¶ 22 (Thornton 12/30/15 Decl.) (African Americans in North Carolina are disproportionately likely to receive public assistance).

40. When evaluating whether the legislature acted at least in part with an intent to discriminate against minority voters, the impact of the various ID-related post-*Shelby* decisions should be assessed together with the impact of other provisions that were added to HB 589 at the same time, including: (1) the elimination of same-day registration, (2) the reduction of the early voting period, (3) the elimination of out-of-precinct voting, (4) and the elimination of pre-registration. During the July 2015 trial, this Court heard evidence establishing that each of those provisions had a disproportionate impact on African American voters as compared to white voters. 2015 FOFs ¶¶ 192-261.

41. The chart below summarizes significant post-*Shelby* changes the legislature made to HB 589, and whether those changes had a discriminatory impact on black voters:

⁵ According to Census Bureau data, 29.3% of black households in North Carolina receive food stamps as compared with only 9.6% of white households.

	Post-Shelby Change to HB 589	Disproportionately Burdens African American Voters?
1.	Decision to Eliminate Student IDs	Yes - PX231 at 50-51
2.	Decision to Eliminate Government Employee IDs	Yes - PX231 at 52-53
3.	Decision to Eliminate Most Expired IDs	Yes - PX231 at 36-49
4.	Decision to Eliminate Public Assistance IDs	Yes - PX671 Ex. H at 6, 14
5.	Decision to Eliminate Same-Day Registration	Yes - 2015 FOFs ¶¶ 193-219
6.	Decision to Cut Early Voting Period	Yes - 2015 FOFs ¶¶ 220-240
7.	Decision to Prohibit Out-of-Precinct Voting	Yes - 2015 FOFs ¶¶ 241-251
8.	Decision to Eliminate Pre-Registration	Yes - 2015 FOFs ¶¶ 252-261

2. After *Shelby*, the General Assembly Abandoned its Deliberative Legislative Process for a Rushed, Secretive Approach

42. The Senate held no hearings or debates on HB 589 in between receiving it from the House in April 2013 and the unveiling of the “full bill” in late July 2013 on the heels of the *Shelby* decision. During the three days between the unveiling of the full bill and its passage, there was no expert testimony taken and no reports or analyses offered by the bill’s proponents. 2015 FOFs ¶¶ 132-147. Nothing was added to the legislative record after passage of the House version that provides any justification or explanation for restricting the list of qualifying IDs, particularly in light of the fact that no evidence had been presented in the House to suggest that the initial proposal failed to adequately protect the State’s interests. There were no additional matching analyses offered. There was no new evidence that any of the IDs eliminated were more vulnerable to voter fraud, nor was there any new evidence of voter impersonation fraud. The handful of brief, conclusory statements offered by Senators in support of a photo ID requirement in general do not address the reasons for restricting the list of qualifying IDs.

43. Moreover, Senate proponents of the bill continued to praise Georgia's experience with a photo ID law that permits many of the very same forms of ID eliminated by the Senate's revisions, *see, e.g.*, PX549 76:16-77:17 (7/24/13 Senate Fl., Tillman); *see also* 7/17/15 Trial Tr. 108:23-109:2 (Lichtman); PX231 at 133-38 (Lichtman Trial Rpt.), even though they knew that the post-*Shelby* changes resulted in a bill that was significantly more restrictive than nearly any other state's photo ID requirement that had been enacted at that time. PX550 33:23-34:5 (7/25/13 Senate Fl., Stein); PX138 91:24-92:3 (7/25/13 House Fl., Harrison); PX242 ¶¶ 18-24 (Stewart Trial Decl.); PX229 at 20-22 (Burden Trial Rpt.).

44. During this litigation, Defendants have attempted to cast doubt on the reliability of the SBOE's April 2013 matching report. *See* Defs.' Proposed Findings of Fact (13-CV-861, ECF No. 347) at 25-26. However, the brief Senate floor statements cited by Defendants fail to set out reasonable grounds to doubt the accuracy of the matching report. The House committee testimony cited by Defendants, *id.* nn.10-11, related to the SBOE's January matching report, not its April report, and was in any case considered by the House when it passed its much less restrictive version of the bill after working with the SBOE to refine its matching analysis. Although Senator Rucho claimed that the Senate "did some analysis of" the SBOE's April report and found that it was "flawed" PX202 39:9-13 (7/23/13 Senate Rules), his assertion is unsupported in the legislative and trial records. No such analysis was presented. Moreover, Senator Rucho never explained how his "analysis" related to the decision by proponents of the bill to pare back the scope of qualifying ID. Nor did he assert that the purported analysis cast any doubt on the

available evidence of racial disparities in ID possession.

45. In contrast to the approach taken by House leaders prior to the *Shelby* decision, the rushed process imposed by legislative leaders after *Shelby* foreclosed any opportunity for opponents to seriously probe the failure of the bill’s authors to offer any evidence in support of their bill. 2015 FOFs ¶¶ 126-148. Not only did HB 589’s sponsors wait until the very end of the legislative session to unveil the changes to the photo ID requirement, they waited until July 22, 2013—three days before the bill ultimately passed both chambers—to unveil a host of other controversial provisions, including the other provisions challenged in this lawsuit and additional provisions not challenged here. *Id.* ¶¶ 128-130; PX202 4:10-15:2 (7/23/13 Senate Rules) (description of new provisions). This left legislators who were not privy to the decisionmaking of the bill’s authors scrambling to examine the post-*Shelby* bill and without sufficient time to solicit comment about any of its provisions from members of the public, election officials, or other experts. 7/21/15 Trial Tr. 171:2-18, 172:4-25 (Stein). Among other deviations, the bill was sent to the Senate Rules Committee instead of the Judiciary Committee, where bills addressing elections issues were generally sent because of its expertise. Also, when the bill was sent to the House on the evening of the last day of the session, the House majority refused to appoint a conference committee, thus depriving House members of any opportunity to consider, debate, or amend the multiple new provisions added to the bill. 2015 FOFs ¶¶ 131, 137-140.

46. Four House members who voted for the pre-*Shelby* bill opposed the post-*Shelby* version as a result of the changes imposing greater burdens on voters. For example,

Representative Goodman stated that he voted for the pre-*Shelby* version reluctantly, because he believed its proponents were “people of goodwill who were really trying to craft a bill that . . . would solve what in their minds was a problem, while at the same time would be the least restrictive bill they could have.” PX138 88:9-89:8 (7/25/13 House Fl.). By opposing the post-*Shelby* version, Representative Goodman said that he was “rectifying” his vote because “this bill from the Senate is just blatantly cynical in its intent. And I just can’t vote for it.” *Id.*; *see also id.* 67:24-69:15 (Rep. Tine); *id.* 76:8-77:4 (Rep. Graham).

E. The General Assembly Did Not Offer Any Legitimate Justification for the Photo ID Requirement.

47. The evidence further establishes that the State’s “voter fraud” and “voter confidence” justifications for adopting its strict photo ID provision are tenuous and pretextual. First, not only is voter fraud virtually non-existent in North Carolina, 1/27/16 Trial Tr. 20:15-22, 37:14-17 (Minnite); 2015 FOFs ¶¶ 170-177, the only type of voter fraud North Carolina’s ID requirement can prevent is voter impersonation at the polls, 1/25/16 Trial Tr. 53:18-54:3 (Burden); 2015 FOF ¶ 178, and Defendants still have failed to present credible evidence of even a single voter impersonation case occurring in North Carolina. 1/28/16 Trial Tr. 138:23-139:7, 139:8-140:1 (Strach); 1/25/16 Trial Tr. 53:18-54:3 (Burden); *see also* 2015 FOFs ¶¶ 169-185.

48. Further, the testimony confirms that the General Assembly’s decision to carve out an exception to the photo ID requirement for mail-in absentee ballots is inconsistent with the stated rationale of combating voter fraud, *see* 2015 FOFs ¶¶ 169-185; 1/25/16 Trial Tr. 54:21-23, 55:2-5 (Burden) (explaining that fraud occurs more commonly with mail-in

ballots than with in-person voting), but perfectly consistent with the goal of suppressing the African American vote, PX231 at 144-150 (Lichtman Trial Rpt.) (explaining that white voters use absentee ballots more than African American voters).

49. Defendants did not and could not show that signature attestation, a process used by North Carolina for decades, has been problematic. 1/26/16 Trial Tr. 163:22-164:5, 198:25-200:1, 200:5-201:1, 201:9-202:1 (Barber); 1/27/16 Trial Tr. 54:5-55:25, 56:1-57:15 (Minnite). Not only did this process work, but there was no evidence of fraud under signature attestation. 1/27/16 Trial Tr. 37:14-17 (Minnite).

50. Second, Defendants have failed to produce any evidence of a correlation between the photo ID requirement and voter confidence or that any such evidence was before the legislature. 1/27/16 Trial Tr. 27:3-28:2, 29:8-15 (Minnite); *see also* 1/25/16 Trial Tr. 55:16-56:6, 56:18-20 (Burden). The Court also heard additional unrebutted testimony that instead of increasing voter confidence, North Carolina's ID requirement has had the opposite effect, by undermining minorities' confidence in the electoral system. 1/26/16 Trial Tr. 167:13-14 (Barber); *see also* 2015 FOFs ¶ 180.

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

51. The analysis of the United States' expert, Dr. Charles Stewart III, corroborates the evidence of disproportionate racial impact that was before the General Assembly when it passed HB 589. Specifically, Dr. Stewart confirmed that the ID provision as originally enacted in 2013 left hundreds of thousands of North Carolina registered voters without a qualifying photo ID, and African American registered voters are more than twice as likely as white voters to be without ID. *See infra* Part IV.B.

52. As explained further below, Dr. Stewart's estimates understate the number of voters without HB 589 ID because they treat 256,024 driver's licenses that have been suspended or physically surrendered to the DMV as valid ID when, in practice, such IDs cannot be used for voting. *See infra* ¶ 62.

A. The Database Matching Methodology That Dr. Stewart Used in This Case is Commonly Practiced and Produces Reliable Results

53. Dr. Stewart performed a database matching analysis, meaning that he electronically compared voter records from North Carolina's voter registration database to records in a number of state and federal identification databases to determine whether records in one database "matched" records in another.⁶ PX242 ¶¶ 27, 36 (Stewart Trial Decl.). Courts in other voting rights cases involving state voter photo ID requirements have relied on electronic database matching analyses of this nature. *See, e.g., Veasey v. Perry*, 71 F. Supp. 3d 627, 659-60 (S.D. Tex. 2014), *aff'd in relevant part sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015); *Frank v. Walker*, 17 F. Supp. 3d 837, 870-71 (E.D. Wisc. 2014), *rev'd on other grounds*, 17 F. Supp. 3d 837 (7th Cir.); *South Carolina v. United States*, 898 F. Supp. 2d 30, 40 (D.D.C. 2012).

54. To conduct his analysis, Dr. Stewart employed a methodology that is sound, that

⁶ Dr. Stewart compared voter records to records from (1) the North Carolina DMV's customer database, which contains records for holders of DMV-issued IDs; (2) the U.S. Department of State's passport database; (3) the U.S. Department of Defense's military identification card database; and (4) the U.S. Department of Veterans Affairs' database of holders of Veterans Identification Cards and Veterans Health Identification Cards. PX242 ¶ 36 (Stewart Trial Decl.). Dr. Stewart was unable to access data identifying holders of tribal IDs or out-of-state driver's licenses and was therefore unable to match North Carolina voter records to such records. Dr. Stewart determined that omitting these sources of identification did not meaningfully affect his conclusions. *Id.* ¶¶ 38, 48-56 .

is consistent with scientific practice in the field of political science, and that produced reliable results. The hallmarks of this methodology are described below.

55. First, Dr. Stewart applied data cleaning and standardization steps to all of the databases being matched in order to address typographical errors within databases and formatting inconsistencies across databases. PX242 ¶¶ 28, 31, 40, 45, App'x A & C; 1/26/16 Trial Tr. 22:15-23 (Stewart). Dr. Stewart also removed deceased voters from the voter file. PX242 ¶¶ 34, 57 n.30. Dr. Stewart testified that the datasets he used to conduct his matching analysis were of high quality and well suited to conducting the analysis. 1/26/16 Trial Tr. 21:19-22:1 (Stewart).

56. Second, because the databases being matched did not contain a common, unique data field that identified the individuals in each file, such as a nine-digit social security number, PX242 ¶¶ 62-63, Dr. Stewart joined multiple data fields to create unique identifiers for each record being matched, and then ran numerous sequential matches or “sweeps,” each using a different combination of data fields to match the voter file with the identification databases, 1/26/16 Trial Tr. 24:10-26:22 (Stewart). Dr. Stewart designed the combinations used to perform the sequential matches to maximize the number of unique combinations in all databases, thereby minimizing the number of “false positives” in the match results—that is, incorrectly concluding that a voter has ID when in fact he or she does not. *Id.* Trial Tr. 27:24-28:11. In turn, using numerous sequential matches minimizes the problem of “false negatives”—incorrectly concluding that a voter does not have ID when in fact he or she does. *Id.* 27:5-23; *see also* PX242 ¶¶ 64-76 (Stewart Trial Decl.).

57. Dr. Stewart's protocol used 10 data fields, which were joined in various ways to produce 33 sweeps. PX242 ¶¶ 78-80, tbl.3 (original 21 sweeps); PX891 ¶ 34 (Stewart 12/10/15 Decl.) (repeating 12 sweeps but replacing last name with middle name). For example, first name, last name, and SSN4 were joined to create a combination that was unique for the majority of records in the North Carolina voter file. PX242 ¶ 63, App'x E. This particular combination allowed Dr. Stewart to successfully match over 5 million voters. *See id.* App'x H, tbls.H-1, H-2 (combo 2); *see also* 1/26/16 Trial Tr. 29:25-32:5 (Stewart). If a voter record matched a record in any identification database on any one of the sweeps, Dr. Stewart concluded that the voter possessed valid HB 589 ID. PX242 ¶ 76.

58. Third, Dr. Stewart performed a series of follow-up analyses to confirm the accuracy and reliability of his match results, including two stages of manual inspection. 1/26/16 Trial Tr. 34:3-19, 149:14-150:16 (Stewart). Dr. Stewart assessed the quality of each matching combination by manually reviewing a sample of the matches produced by each sweep. PX254 ¶¶ 35-42 (Stewart Surr.). Then, to assess the quality of the final product, Dr. Stewart manually reviewed a sample of the no-match list. 1/26/16 Trial Tr. 34:3-34:16, 103:21-104:20 (Stewart). In addition, Dr. Stewart conducted sensitivity analyses to confirm that the results were not driven by assumptions or choices built into the design of the study, rather than by the actual rates of ID possession in North Carolina. 1/26/16 Trial Tr. 34:16-38:25 (Stewart); PX242 ¶¶ 105-123.

59. Basing database matching on a series of combinations of data fields as Dr. Stewart did is a methodology routinely used in academia and industry, as well as in voting rights cases. *See supra* ¶ 53 (citing cases); PX242 ¶ 77; 1/26/16 Trial Tr. 8:10-14,

44:12-45:14 (Stewart). In other projects, Defendants' experts, Dr. Thornton and Dr. Hood, have relied on similar techniques to match records between databases, including matching to driver's license records in state DMV databases. 2/1/16 Trial Tr. 74:15-75:2 (Thornton); *Frank*, 17 F. Supp. 3d at 871, 881-82 (describing Hood analysis); DX505 ¶ 9 (*South Carolina* Stewart Decl., describing Hood analysis). Indeed, the SBOE's own matching analyses described above used a variation of this methodology. *See supra* ¶¶ 22-26. The SBOE has continued to use its matching methodology and has relied on the results to target its outreach efforts. 1/29/16 Trial Tr. 154:22-155:7 (Strach); DX535 ¶ 20 (Strach Decl.); DX511 ¶ 26 (Thornton 12/30/15 Decl.).⁷

B. Dr. Stewart's Database Matching Analysis Confirms That North Carolina Voters Who Lack HB 589 ID Are Disproportionately African American, as Indicated by Data Before the General Assembly

60. First, Dr. Stewart estimated the number and racial composition of voters without qualifying ID under HB 589 as originally enacted in 2013 (the "principal analysis"). That is, he excluded all expired identification cards from the pool of identification cards available for matching, except for voters who met the exemption for individuals aged 70 and over. PX242 ¶ 42, App'x B & C (Stewart Trial Decl.); PX254 ¶ 8 (Stewart Surr.).

61. Based on this principal analysis, Dr. Stewart concluded that 397,971 individuals

⁷ In addition, a recent academic study showed that the methodology Dr. Stewart used produces match results that are very close to those one would get if one were able to match between databases using the full social security number. PX891 at 11 n.20 (Stewart 12/10/15. Decl.). Indeed, Dr. Stewart's match rates in this case are consistent with matching analyses conducted in South Carolina, where full social security numbers were available. *See South Carolina*, 898 F. Supp. 2d at 40 (finding that approximately 4% of white voters and between 6% and 8% of black voters lacked qualifying ID under South Carolina's photo voter ID law); PX891 ¶ 15 (Stewart 12/10/15 Decl.).

who were registered to vote did not match to a qualifying ID in any of the examined state and federal databases (the “principal no-match list”). African Americans were substantially overrepresented among voters without qualifying HB 589 ID.⁸ Consistent with the SBOE’s 2013 analyses, *see supra* Part III.A, Dr. Stewart found that African Americans were more than twice as likely as whites to lack a qualifying photo ID. PX242 ¶¶ 103-104, tbl.7 (showing that 10.1% of African American registered voters lacked HB 589 ID, compared to only 4.6% of white voters).

62. Dr. Stewart’s principal analysis was conservative in that it treated all unexpired driver’s licenses in the DMV file as available for voting. In reality, thousands of those licenses were suspended or had been physically surrendered to the DMV. Because these licenses are not actually available for voting, the number of voters without a qualifying ID under HB 589 is 653,995 voters and the racial disparity increases: 18.1% of African American registered voters are found to be without HB 589 ID, compared to only 7.3% of white registered voters. PX256 revised tbl.11 (Stewart 4/2/15 Addendum); 1/26/16 Trial Tr. 40:18-25 (Stewart). This is consistent with lay witness testimony describing the “DWLR spiral.” *See supra* ¶ 30.

63. Following passage of HB 836 in June 2015, Dr. Stewart estimated the size of the no-match list under the new law (the “post-HB 836 analysis”). Consistent with HB 836, he now *included* DMV ID that was expired for less than four years in the pool of identification cards available to be matched to the voter file. PX891 ¶ 28 and n.26

⁸ The North Carolina voter file includes the self-reported race of each voter. PX242 ¶ 32 (Stewart Trial Decl.).

(Stewart 12/10/15 Decl.).⁹

64. Dr. Stewart's post-HB 836 analysis shows that North Carolina's photo ID requirement continues to have a discriminatory impact on African American voters. Dr. Stewart concluded that 224,863 registered voters lack qualifying ID for voting under HB 589, as amended by HB 836 (the "post-HB 836 no-match list"). Although the total number of unmatched voters is smaller than in his principal analysis (224,863 vs. 397,971¹⁰), the racial disparity among unmatched voters is actually slightly larger. PX891 ¶ 36, tbl.10. Specifically, 5.7% of African American voters, compared to just 2.5% of white voters, appear on the post-HB 836 no-match list. Thus, under the amended law, African Americans are more than twice as likely as whites to lack qualifying ID for voting. *Id.* ¶¶ 36-37, tbls.10-11; 1/26/16 Trial Tr. 43:18-44:8 (Stewart). HB 836 actually increases the disproportionate racial impact of the State's photo ID requirement.

65. As with his principal analysis, Dr. Stewart's post-HB 836 estimate understates the number of voters who lack qualifying ID and the racial disparities within this group because he did not exclude surrendered or suspended driver's licenses. *See* PX256.

66. Whether considering HB 589 as originally passed, or as amended by HB 836, Dr.

⁹ Dr. Stewart further refined his analysis by incorporating historical name and address data from the driver's license database to account for the possibility that voters had changed their name or address with the DMV without notifying election officials. PX891 ¶ 34. This is consistent with HB 589 implementing regulations issued by the SBOE in October 2015 under which election officials must accept a photo ID showing a different name or address than the name or address recorded in the voter file so long as the voter offers a "reasonable explanation" for the discrepancy, such as a name change after marriage or divorce. *See* 8 N.C. Admin. Code 17.0101(c)(4), (e).

¹⁰ The principal no-match list increases to 653,995 voters when voters who possess only a suspended or surrendered license are included. *See supra* ¶ 62.

Stewart found that African American voters are at least twice as likely as white voters to be without ID. 1/26/16 Trial Tr. 45:9-14 (Stewart); PX891 ¶¶ 20, 31. The disparities between African American and white ID possession rates that Dr. Stewart found in all of these analyses are statistically significant and highly unlikely to have arisen by chance. PX242 ¶ 102 n.43; 1/26/16 Trial Tr. 33:25-34:2, 41:1-3, 44:9-10 (Stewart).

C. Defendants' Critiques of Dr. Stewart's Methodology Do Not Undermine His Results

67. Defendants' matching expert, Dr. Thornton, admitted that she did not conduct her own analysis to estimate the number of North Carolina voters without ID. 2/1/16 Trial Tr. 70:14-24, 74:4-24 (Thornton). Moreover, Dr. Thornton never attempted to quantify how the flaws she purports to find in Dr. Stewart's methodology affect the size or racial composition of the no-match list. *Id.* 72:2-23. Without at least an estimate of that effect, the Court cannot conclude that her criticisms undermine Dr. Stewart's conclusions. Indeed, Defendants have not presented any evidence that refutes Dr. Stewart's conclusion that voters without qualifying ID are disproportionately African American. *Id.* 70:21-24, 72:15-23. Nor have Defendants contested Dr. Stewart's finding that hundreds of thousands of DMV IDs have been suspended or physically surrendered to the DMV, and that voters with suspended and surrendered IDs are disproportionately African American. PX242 App'x B (Stewart Trial Decl.); PX256 revised tbl.11 (Stewart 4/2/15 Addendum).

1. Dr. Thornton's Criticisms of Dr. Stewart Are Unavailing

68. Dr. Thornton identified additional matching criteria and data that Dr. Stewart could have used. However, Dr. Thornton admitted that her efforts to find additional matches among Dr. Stewart's no-match list were essentially thought experiments; she

never attempted to confirm that the “potential” additional matches she identified represented *actual* matches, or to assess the racial composition of the “potential” additional matches. 2/1/16 Trial Tr. 71:5-17, 72:2-10 (Thornton). Having failed to examine these key questions, her exercises tell us nothing about the reliability of Dr. Stewart’s results.

69. First, Dr. Thornton contended that Dr. Stewart’s principal no-match list (of 397,971 voters) overestimated the number of voters without HB 589 ID by approximately 17,000 because he did not incorporate additional matching criteria proposed by Defendants. DX309 ¶¶ 45-46 (Thornton Trial Decl.); 2/1/16 Trial Tr. 34:23-35:2 (Thornton). Dr. Stewart conducted a thorough assessment of the Defendants’ proposed matching criteria and concluded that they were prone to producing false positives, that is, inaccurately overestimating matches, while having little impact on Dr. Stewart’s overall conclusions. PX254 ¶¶ 26-28, 35-42, tbl.3, fig.1 (Stewart Surr.); 1/26/16 Trial Tr. 137:5-20 (Stewart). Even if one incorporated the Defendants’ additional matches, African Americans remained twice as likely as whites to appear on the no-match list. PX254 ¶¶ 23- 24, tbl.2.

70. Second, Dr. Thornton’s claim to have identified “potential matches” for 217,000 of the 397,971 voters on Dr. Stewart’s initial no-match list is highly misleading. DX309 ¶ 55. Dr. Thornton admitted that these “potential matches” included matches to expired driver’s licenses, which Dr. Stewart had excluded from his analysis because they were not qualifying ID under HB 589. 2/1/16 Trial Tr. 86:16-87:2 (Thornton). Indeed, Dr. Stewart reported that 214,325 of the 397,971 voters on his initial no-match list would

have been matched under his method if he had allowed matches to expired driver's licenses. PX254 ¶ 12 n.8. Thus, Dr. Thornton is wrong to suggest that Dr. Stewart missed 217,000 matches because of inadequacies in his matching criteria, DX309 ¶ 55; rather, most were not matched because they possessed only expired driver's licenses that were not valid HB 589 ID.

71. Dr. Thornton also admitted she did nothing to assess the reliability of the criteria she used to make the additional "potential" matches, 2/1/16 Trial Tr. 86:6-9 (Thornton), and she conceded that her results likely included false positives because she allowed multiple voter records to match to the same driver's license. *Id.* at 87:3-14.

72. Third, Dr. Thornton's criticism of Dr. Stewart's use of July 2014 data rather than data drawn after the November 2014 general election would not yield different results. The SBOE conducted a matching analysis using the November 2014 data, and still found that over 254,000 North Carolina voters lacked DMV ID. DX535 ¶ 20 (Strach Decl.). The SBOE reached this result despite including the additional DMV name and address history files that Dr. Stewart incorporated when preparing his post-HB 836 no-match list of 224,863 voters, using overly expansive match criteria, *see supra* ¶ 69, and allowing matches to *any* record in the DMV file, even long-expired licenses. 1/26/16 Trial Tr. 135:22-137:4 (Stewart); DX511 ¶ 26 (Thornton 12/30/15 Decl.); PX254 at 22-23 n.32. Consistent with every other matching analysis conducted in North Carolina, African American voters were twice as likely as white voters to appear on the SBOE's November 2014 no-match list. PX254 at 22-23 n.32; 1/26/16 Trial Tr. 136:11-19 (Stewart).

73. Next, Dr. Thornton's contention that Dr. Stewart's no-match list is inflated

because of North Carolina's faulty voter rolls is flawed.¹¹ Her conclusion is based on a review of the status of voters on Dr. Stewart's no-match list (active, inactive, removed, deceased) as of December 2015, 17 months *after* the date of the voter file that Dr. Stewart used to conduct his analysis. 2/1/16 Trial Tr. 78:17-24 (Thornton). Consistent with accepted practice, Dr. Stewart's matching analysis was designed to estimate the number and racial composition of voters without qualifying ID as of a particular point in time—July 2014. PX242 ¶ 29. As Dr. Stewart explained, the fact that some voters on the no-match list were removed from the voter rolls after July 2014 tells us nothing about the validity of the no-match list as of that date. PX254 ¶ 63; 1/26/16 Trial Tr. 23:22-24:9, 50:16-24 (Stewart).

74. Defendants' argument that Dr. Stewart's failure to remove inactive voters from his matching analysis renders the analysis unreliable is likewise unfounded. First, both active and inactive voters are entitled to cast a regular ballot in a North Carolina election. 1/28/16 Trial Tr. 141:12-142:5 (Strach). Indeed, SBOE data show that tens of thousands of inactive voters routinely return to active voter status. *See* PX575 at 8-9 (SBOE report). For this reason, among others, Dr. Stewart concluded that both active and inactive voters should be included in his analysis. 1/26/16 156:18-157:14 (Stewart).

75. Second, whether inactive voters are included in the analysis or not, Dr. Stewart's conclusions remain the same. When Dr. Stewart analyzed active voters alone, he found

¹¹ There is no evidence in the record indicating that North Carolina's voter rolls are significantly inflated with individuals who are not eligible to vote. The SBOE runs a comprehensive list maintenance program, according to which voters who have moved, died, or otherwise become ineligible to vote in North Carolina are regularly removed from the rolls. *See* PX575; DX228 at 13-27; *see also* PX242 ¶ 28 (Stewart Trial Decl.).

that hundreds of thousands of voters lacked qualifying ID and racial disparities in ID possession were even greater: among active voters, African Americans were well over twice as likely as whites to lack the requisite ID. PX242 tbl.9 (finding that 8.6% of African American but only 3.3% of white active voters lacked qualifying ID under HB 589 as originally enacted); PX1063 (confirming that racial disparities among active voters persisted after HB 836); 1/26/16 Trial Tr. 37:18-38:7, 145:14-146:5 (Stewart).¹²

76. Dr. Thornton also missed the mark when she argued that Dr. Stewart's no-match list is inflated with voters who could not be matched because their records in the voter file are missing either a driver's license number or an SSN4. As an initial matter, voters without a driver's license number in the voter file may not have matched because they in fact *do not* possess a driver's license, or any other form of accepted ID. Moreover, the methodology Dr. Stewart employed is designed to account for missing or inconsistent data, which commonly occur in large datasets. 1/26/16 Trial Tr. 27:5-23 (Stewart). For example, many of Dr. Stewart's matching sweeps rely on data fields other than SSN4 or driver's license number to match voters to the identification databases. PX242 tbl.3; 1/26/16 Trial Tr. 147:14-20 (Stewart).

77. Finally, the fact that Dr. Stewart did not have direct access to the federal

¹² Similarly, Dr. Stewart found that among registered voters who voted in the 2012 or 2014 November general elections, African American voters were 3.8 times more likely than white voters to be on the principal no-match list. PX242 ¶¶ 110-111, tbl.10; 1/26/16 Trial Tr. 38:8-25 (Stewart). These disparities show that among registered voters most likely to vote in future elections—and indeed, among recent active voters most likely to be perceived as a threat to the new General Assembly majority—African Americans are much more likely than whites to be impacted by HB 589's photo voter ID requirement. PX242 ¶¶ 108-109.

databases does not render his analysis unreliable. Dr. Stewart prepared detailed instructions for the agencies on how to conduct each step of the matching process. PX242 ¶ 45, App'x C; 1/26/16 Trial Tr. 23:14-18 (Stewart). Upon completing the exercise, each agency provided diagnostic statistics and a sworn declaration describing the matches they conducted. PX242 ¶ 46 (Stewart Trial Decl.); DX309 ¶¶ 35-36. In addition, Dr. Stewart took various steps to confirm that the agencies had properly run the matching process. PX242 ¶ 46. Expert analyses on which courts relied in the South Carolina and Texas voter ID cases were similarly informed by federal database matching conducted at experts' direction by federal agency staff. *See Veasey*, 71 F. Supp. 3d at 659; *South Carolina*, 898 F. Supp. at 40; DX505 ¶¶ 51, 72 (*South Carolina*, Stewart Rebuttal Decl.).

78. Ultimately, notwithstanding these many criticisms and “potential matches,” Dr. Thornton identified only six likely false negatives on Dr. Stewart’s no-match lists. *See* PX254 ¶ 33.¹³ Here again, her expert report is misleading. Dr. Thornton claimed that through a manual review of unmatched voters on Dr. Stewart’s principal no-match list, she had “identified 19 registered voters . . . that [she] could potentially identify [as] a match in the DMV data.” DX309 ¶ 72. She failed to mention, however, that 13 of these 19 voters matched only to an expired driver’s license. 2/1/16 Trial Tr. 88:14-18

¹³ Dr. Thornton agreed that some degree of error is inevitable in a matching analysis of the kind Dr. Stewart performed here. 2/1/16 Trial Tr. 74:10-14 (Thornton). Because she did not review a random sample of Dr. Stewart’s unmatched voters, Dr. Thornton admitted that she cannot draw broader inferences about his results. *Id.* 88:5-13. Further, having only examined a non-random sample of *African Americans* on the no-match list, she cannot say how supposed errors in the no-match list impact the racial composition of the list. DX309 ¶ 72 (Thornton Trial Decl.).

(Thornton); PX254 ¶ 33. Once again, these voters appear on Dr. Stewart's principal no-match list not because of flaws in his methodology but because they did not possess an *unexpired* ID valid to vote under HB 589. PX254 ¶¶ 14, 29. Dr. Thornton did not offer any additional "potential matches" in her testimony or her December report. *See* DX511 ¶¶ 24-25.

2. The SBOE Mailings Do Not Cast Doubt on the Accuracy of Dr. Stewart's Matching Results

79. In 2015, the SBOE sent mailings to individuals who had appeared either on its own no-match list or on Dr. Stewart's no-match list. DX535 ¶¶ 20, 23 (Strach Decl.). These mailings asked recipients to return a postcard to the SBOE indicating whether they possessed qualifying ID. *Id.* ¶¶ 21, 24. According to Dr. Thornton, 172,098 of the voters on Dr. Stewart's post-HB 836 no-match list were sent one of these mailings, and 6,086 of those recipients (3.5%) returned postcard responses. DX511 tbl.5.

80. For several reasons, the responses the SBOE received cannot be relied on to assess the accuracy of Dr. Stewart's no-match list. First, there was a significant time lag—nine to eleven months between July 2014, the date Dr. Stewart's data were drawn, PX242 ¶ 29, and April and June 2015, when most of the mailings were sent, PX535 ¶¶ 20, 23. Information received in response to these mailings thus tells us little about whether Dr. Stewart's no-match list accurately estimated ID possession as of July 2014. 1/26/16 Trial Tr. 50:12-51:7 (Stewart); *see also* 2/1/16 Trial Tr. 92:22-93:3 (Thornton).

81. Second, as Dr. Thornton conceded, the SBOE did not verify whether those voters who reported having ID did in fact possess qualifying ID. 2/1/16 Trial Tr. 92:9-21 (Thornton); 1/26/16 Trial Tr. 51:8-22 (Stewart); 1/28/16 Trial Tr. 144:2-11 (Strach).

82. Finally, as both Dr. Thornton and Dr. Hood conceded, the mailings do not tell us anything about whether the 96.5% of recipients who did not respond possess qualifying ID.¹⁴ 2/1/16 Trial Tr. 89:6-12 (Thornton); 1/29/16 Trial Tr. 26:20-27:13 (Hood). Drs. Thornton and Hood also agreed that they could not, based on the responses to the SBOE mailings, draw any conclusions about the racial composition of North Carolina voters who lack qualifying ID. 2/1/16 Trial Tr. 93:11-13 (Thornton); 1/29/16 Trial Tr. 28:15-20 (Hood).

D. Defendants' Arguments Regarding the So-Called ‘Predictions’ of Plaintiffs’ Experts are Spurious

83. Defendants enlisted their expert, Dr. Stephan Thernstrom, to advance the spurious argument that the testimony of Drs. Stewart and Burden cannot be relied upon because they were “far off the mark” when it came to “predicting what would happen in the November 2014 election . . .” 1/29/16 Trial Tr. 76:17-23 (Thernstrom). Contrary to Dr. Thernstrom’s insinuations, neither Dr. Stewart nor Dr. Burden made predictions about whether the disproportionate costs HB 589 imposes on African American voters would have the aggregate effect of depressing African American turnout in any given election. In fact, Dr. Stewart explicitly stated before the 2014 election that it would be a mistake to do so. 7/9/14 PI Tr. 21:18-23:10 (Stewart); PX168 ¶¶ 12-13, 16-17, 18-20 (Stewart 6/28/14 Decl.); *see also* 2015 FOFs ¶¶ 268-279. This is in large part because the social science literature establishes that a “wide variety of factors . . . go into turnout rates.

¹⁴ All of these mailings—both to the SBOE’s no-match list and to Dr. Stewart’s no-match list—are similarly uninformative. Dr. Thornton reported that in total, mailings were sent to 437,805 registered voters, and only 29,520 (6.7%) of the recipients returned postcard responses. DX511 tbl.8 (Thornton 12/30/15 Decl.).

Some of them are election laws, but there are other big factors that statistically oftentimes swamp the effect of election laws, like the demographic characteristics of voters or the hotness of the elections or efforts of the campaigns.” 7/9/14 PI Tr. 21:21-22:19 (Stewart); *see also* 7/16/15 Trial Tr. 91:14-92:6 (Stewart). Dr. Thernstrom acknowledged as much. 1/29/16 Trial Tr. 90:18-91:16.

84. In addition, Dr. Thernstrom’s criticisms of Dr. Stewart’s matching analysis are baseless because he has no experience conducting or reviewing matching exercises of the sort conducted by Dr. Stewart, which involve the linking of millions of records contained in large modern electronic databases, using unique common identifiers and sensitivity analysis. 1/29/16 Trial Tr. 102:16-110:6 (Thernstrom).

V. The Photo ID Requirement Disproportionately Burdens Minority Voters

85. In addition to the known racial disparities in ID possession rates outlined above, the HB 589 photo ID requirement had the actual effect of creating burdens disproportionately borne by African Americans and Latinos with more limited socioeconomic resources. When the narrow list of ID acceptable for voting emerged from the Senate in July 2013, the General Assembly expected that voters who lack qualifying ID would have to obtain one from the DMV. *See* PX202 36:21-37:1 (7/23/13 Senate Rules, Rucho). The limited availability, substantial costs, and small share of voters who would rely on non-DMV ID were foreseeable. In addition, the General Assembly was aware of the poor conditions at and limited availability of DMV offices and the extremely burdensome documentation process for obtaining DMV ID. *See supra ¶¶ 27-29; infra ¶¶ 101-107.* The natural, foreseeable consequence of the General

Assembly's decision to funnel those in need of ID to the DMV was to place significant burdens on minority voters.

A. HB 589 Contemplates That Few Voters Will Have a Qualifying ID Issued by an Entity Outside of the DMV

86. The types of qualifying ID other than a DMV ID are available to only a limited number of voters or are costly to obtain. These qualifying IDs include certain tribal ID, military or veterans ID, or a passport. PX110 § 2.1, sec. 163-166.13(e).

87. Few people are eligible to obtain a tribal ID card. Only around 1.1% of the State's voting population is Native American. PX242 ¶ 49 (Stewart Trial Decl.).

88. Military ID cards are issued only to individuals who meet certain narrow qualifications related to military service or employment by the Department of Defense. PX1001 (Common Access Card website); PX1002 (Uniformed Services ID Card website). Dr. Stewart determined that only 4.9% of North Carolina voters matched to a qualifying record in the Department of Defense's military ID database, and all but 19,490 of these voters also possessed a DMV ID. PX242 tbl.5. Similarly, Veterans Identification Cards and Veterans Health Identification Cards are issued only to veterans enrolled in the Veterans Affairs Health System. PX1003 (VHIC Website). Dr. Stewart determined that only 2.3% of North Carolina voters matched to a VIC or VHIC record, and all but 7,350 of these voters also possessed a DMV ID. PX242 tbl.5.

89. Finally, obtaining a U.S. passport or passport card requires paying a substantial fee and meeting significant documentary requirements. A first-time application must be delivered in person to one of several authorized locations. PX987 (U.S. Passport Application). The first-time cost is \$135 for a passport, and \$55 for a passport card.

PX988 (Passport Fees Chart). The renewal cost is \$110 for a passport, and \$30 for a passport card. *Id.* For U.S. citizens, an application for a passport or passport card must include documentary proof of citizenship, which in most cases must be a previous U.S. passport or a certified birth certificate. PX987 (U.S. Passport Application). Dr. Stewart found that all but 165,559 of the North Carolina voters who matched to a record in the passport file also had a DMV ID. PX242 tbl.5.

B. Requiring Voters to Obtain DMV ID Imposes Significant Burdens Which Fall Disproportionately on African Americans and Latinos

90. Obtaining DMV ID is a burdensome, multi-step process that has a disproportionate impact on minority voters in North Carolina both because they are more likely than white voters to lack qualifying ID in the first place and because, among voters who initially lack qualifying ID, they are likely to face greater hurdles in obtaining it, on average, than white voters because of socioeconomic disparities. 2015 FOFs ¶¶ 14-42.

91. Dr. Stewart found that voters who lack ID tend to live in counties where residents report lower incomes, less education, and less access to transportation, and that African American voters on the no-match list are more likely to have lower incomes, less wealth, and lower levels of education than white voters on the no-match list. PX242 ¶¶ 135, 140-143, 149, figs.6-7, tbl.13 (Stewart Trial Decl.); *see also* 1/26/16 Trial Tr. 57:9-58:2, 109:23-110:4 (Stewart). Individuals with fewer socioeconomic resources have greater difficulties navigating the formal aspects of government. 1/26/16 Trial Tr. 56:22-57:8, 149:1-13 (Stewart); PX242 ¶ 146; 7/16/15 Trial Tr. 80:1-82:12 (Stewart); 1/27/16 Trial Tr. 62:5-64:13 (Hoard); 1/27/16 Trial Tr. 89:10-90:1 (Kennedy).

92. Undisputed racial disparities in socioeconomic conditions in North Carolina were

well documented during the July 2015 trial. *See* 2015 FOF ¶¶ 14-32. For example, African Americans in North Carolina are disproportionately represented among those with below basic literacy skills. PX239 at 1, n.1 (Summers Decl.); PX240 ¶ 30, figs.5-6 (Vernon-Feagans Decl.); PX683 (Vernon-Feagans Dep. 43:24-44:21). Individuals with lower literacy skills have greater difficulty navigating processes and instructions that require several steps. 7/15/15 Trial Tr. 18:8-19:9, 22:16-23:6 (Summers). In addition, lower literacy skills impact other socioeconomic conditions. PX1050 (Lasher Dep. 65:24-66:20). As a result, African American and Latino voters who lack ID will, on average, face greater hurdles in obtaining DMV ID than white voters who lack ID.

1. The Burden of Obtaining Transportation to a DMV Office Falls Disproportionately on Minority Voters

93. To obtain an initial issuance of a DMV ID, reinstate a suspended or revoked driver's license, renew a driver's license expired more than two years, or renew a non-operator's ID (including a no-fee voter ID), a voter must appear in person at a DMV licensing office. PX1042 (Boyd-Mallette Dep. 59:16-19); 1/28/16 Trial Tr. 201:5-202:6 (Thomas); *see also* DX535 at 8, 72 (Strach Decl. ¶ 19, Ex. 2.2). This requirement can impose significant burdens on voters, especially those without access to a motor vehicle. North Carolina households that lack access to a vehicle are disproportionately African American. 7/20/15 Trial Tr. 169:18-173:3, 173:13-174:6 (Webster); PX241 ¶¶ 10-11, 18-21, tbls.3-8, figs.1, 4 (Webster Decl.); PX229 at 20 (Burden Trial Rpt.); PX230 at 36 (Leloudis Trial Rpt.); *see also* 1/25/16 Trial Tr. 46:1-12 (Burden).

94. In some areas of North Carolina, including areas with large African American populations, access to DMV offices is limited. *See* PX110 §§ 5.2-5.3 (outreach efforts in

areas with limited DMV access); PX952 (DMV locations and hours for each county).

95. Permanent DMV locations are only available in 84 of North Carolina's 100 counties. PX664 ¶ 72 (Defs.' Resp. to RFAs). Many of the State's 114 permanent DMV offices are only open weekdays between 8:00 a.m. and 5:00 p.m. PX918 at 8 (NC Driver's Handbook). Some of the permanent locations are not open every day of the week. 1/28/16 Trial Tr. 204:1-5 (Thomas); *see also* PX663 ¶ 66 (Defs.' Resp. to RFAs). Only 21 of the 114 locations offer extended hours, none are open later than 6:00 p.m., none are open on Sundays, and the 11 locations that are available every Saturday close at noon. 1/28/16 Trial Tr. 202:23-203:11 (Thomas); PX664 ¶¶ 79-80, 82-83.

96. Of the 16 counties without permanent DMV locations, five do not have any DMV licensing services. PX241 ¶ 23, n.3 (Webster Decl.); PX1044 (Dishong Dep. 143:14-144:3). Three of the five counties that lack any DMV licensing services are majority African American with high levels of poverty and low rates of access to motor vehicles. PX241 ¶ 23. These three counties (Bertie, Northampton, and Washington) also have higher than average rates of African American voters on Dr. Stewart's no-match list. PX242 App'x N (Stewart Trial Decl.).

97. The remaining 11 counties receive licensing services only through DMV mobile units. PX241 ¶ 23; PX952. Some mobile unit locations are served only once or twice a month, and no mobile location is available more than three days a month or has extended business hours. 1/28/16 Trial Tr. 204:6-11 (Thomas); PX664 ¶ 69 (Defs.' Resp. to RFAs); PX241 ¶ 50. Thus, although the Commissioner of the DMV testified that 98% of North Carolina's DMV market is currently within a 30 minute drive to a DMV license

office or mobile unit location, 1/28/16 Trial Tr. 203:21-25 (Thomas), this assumes that a voter who does not live near a permanent office will be able to arrange transportation on one of the few days when a nearby mobile unit location is open. In some cases, a voter will find it necessary to travel to a permanent location, which may be as far as 50 to 60 minutes away by car. PX1044 (Dishong Dep. 154:6-14). By definition, the voters seeking ID do not already have valid North Carolina licenses and thus require someone else to drive them.

98. In addition, when the legislature adopted HB 589 in 2013, it was well known that DMV mobile unit service was provided by notoriously unreliable vehicles. 1/28/16 Trial Tr. 198:15-18 (Thomas); PX355 (2013 email re mobile unit failures). DMV mobile unit service has been and continues to be plagued by mechanical, staffing, and technical problems, as well as service interruption because of the weather. PX1044 (Dishong Dep. 119:9-121:6; 163:8-10, 12-14); PX1043 (Bucholtz Dep. 304:25-309:15); 1/28/16 Trial Tr. 170:7-171:22, 172:11-172:6 (Thomas).¹⁵

99. For rural voters without access to a vehicle or public transportation, arranging transportation to a DMV office may be difficult or even impossible, a burden

¹⁵ Notwithstanding the DMV's effort to replace its mobile units, only one has been replaced since 2013, which was in the DMV's westernmost division on January 28, 2016, the same day the DMV Commissioner testified at trial. 1/28/16 Trial Tr. 175:2-8, 198:19-22, 199:8-19 (Thomas). The counties with the highest rates of poverty, which also tend to have high proportions of African Americans, a pronounced history of racial discrimination in voting, and a disproportionate share of voters on Dr. Stewart's no-match list, are in the non-coastal southeastern and northeastern portions of North Carolina. PX241 ¶ 19, fig.3 (Webster Decl.); PX242 App'x M (Stewart Trial Decl.); *see also* 7/24/15 Trial Tr. 25:19-26:2 (Leloudis) 7/22/15 Trial Tr. 12:4-11; 17:7-21 (Michaux); PX542 107:23-25, 108:12-109:15 (3/12/13 House Elec., Ferguson); PX138 31:8-21 (7/25/13 House Fl., Michaux).

disproportionately borne by African Americans. *See* PX683 (Vernon-Feagans Dep. 39:2-40:11); PX240 ¶¶ 10, 66; PX241 ¶¶ 10, 25, 27; 7/20/15 Trial Tr. 173:13-174:24 (Webster). For example, three African American voters testified about the transportation challenges they face, explaining that if they cannot walk to a location, they need to arrange for a family member or a friend to provide them with a ride. PX680 (Brown Dep. 14:4-22); PX1059 (Brown Dep. 27:2-17, 28:16-20); PX1052 (Foster Dep. 6:22-7:15, 9:5-9:15, 10:5-11:8); PX1048 (Phillips Dep. 9:3-10:10, 14:2-22); *see also* PX1103 at 2 (“As they lack a vehicle, Mr. and Mrs. Johnson actually walked into Scotland Neck to meet the mobile unit. . . .”); PX1117 at 2 (going to the DMV is “something we are physically not likely to do”). Transportation is particularly difficult for elderly voters who do not live with anyone who can drive. PX1059 (Brown Dep. 5:12-13).

100. Even in areas where a DMV office is accessible by public transportation, voters without access to a vehicle face significant burdens in lengthy trips to a DMV office. PX241 ¶ 11; 7/20/15 Trial Tr. 174:18-24, 175:13-21 (Webster); 1/27/16 Trial Tr. 63:19-64:13 (Hoard) (discussing challenges homeless individuals face in getting to a DMV office in Charlotte); 1/27/17 Trial Tr. 89:10-90:1 (Kennedy) (discussing similar challenges in Greensboro). Voters in those parts of North Carolina’s five largest cities with the lowest rates of vehicle access are disproportionately African American. PX241 ¶¶ 28, 38, 47, 56, 65, 74. Many such voters must make their trip to the nearest DMV office via public transportation, a significantly longer trip and greater burden than for those who travel by car. PX241 ¶¶ 25-26, 83. Moreover, urban areas have particularly long wait times for DMV services, frequently extending beyond one hour. PX1044

(Dishong Dep. 84:25-85:6; 156:10-18); PX1043 (Bucholtz Dep. 322:17-323:2).

2. The Burden of Complying with DMV's Documentation Requirements Falls Disproportionately on Minority Voters

101. In order to obtain a DMV ID, a voter must present at least two documents proving age and identity; a document proving North Carolina residency; and a valid social security number. PX917 at 14-17 (NC Driver's Handbook (rev. Feb. 2014)); N.C.G.S. § 20-7(b1); PX1047 (Webb Dep. 67:12-25). In 2013, the list of documents accepted by the DMV was limited. *See* PX917 at 14-15; DX 258 (Required Documents (rev. Nov. 2014)); PX1047 (Webb Dep. 70:12-24). The DMV posts links to the list of accepted documents on its website and publishes the list in the DMV handbook. 1/28/16 Trial Tr. 205:14-24 (Thomas); PX964, PX965, PX966 (DMV webpages). This information was thus easily available to the General Assembly in 2013.¹⁶

102. Complying with these documentation requirements can be time consuming and costly, especially for individuals with limited economic resources. Michelle Kennedy

¹⁶ Although the DMV has recently published a list of alternative documents that can be used to establish age and identity, this list was not made publicly available until January 2016. 1/28/16 Trial Tr. 200:7-19 (Thomas); *see also* PX918 at 15-19 (NC Driver's Handbook (rev. Oct. 2015)) (same list as in 2014 handbook). To the extent this list was in use before 2016, the evidence suggests it was not applied uniformly. *See* PX843 (voter informed certified birth certificate was required to obtain voter ID); PX1049 (Kent Dep. 45:8-46:2) (DMV required a corrected birth certificate); PX1042 (Boyd-Mallette Dep. 14:21-15:2, 74:15-75:1) (DMV official testifying that applicants for voter ID must present identification from more restrictive public list); 1/27/16 Trial Tr. 88:17-89:9 (Kennedy) (Greensboro DMV office does not have a consistent approach toward whether it requires applicants to provide underlying documents in order to obtain a new homeless photo ID); *id.* 65:17-66:10, 77:4-15 (Hoard) (many indigent clients required to provide underlying documents in order to obtain a photo ID). The DMV's inconsistency and inflexibility persist today. *See* PX1132 (On Feb. 11, 2016, DMV commissioner Kelly Thomas admitted that the DMV "made a mistake" when it refused to give an 86-year-old North Carolina resident an ID based on the documents she provided.)

and Richard Hoard, two witnesses experienced in providing document recovery services to the homeless and other indigent individuals, testified that poverty and homelessness often lead to individuals not having identifying documents. 1/27/16 Trial Tr. 85:3-86:15 (Kennedy); *id.* 61:16-62:4 (Hoard). They also testified that indigent individuals typically find it difficult, if not impossible, to obtain DMV IDs and the documents necessary to obtain DMV IDs without significant assistance from organizations such as theirs. *Id.* 86:16-87:5, 87:21-88:12, 89:10-90:1 (Kennedy); *id.* 62:5-64:13 (Hoard). Even then, the process can take months. *Id.* 113:7-114:6 (Kennedy); *id.* 58:20-59:21, 66:11-15, 68:5-10 (Hoard). They also testified, however, that many indigent and homeless individuals do not have access to this type of assistance. *Id.* 90:2-15 (Kennedy); *id.* 62:5-64, 66:16-67:11, 76:15-18 (Hoard).

103. In addition, the DMV strictly requires a voter's full name, date of birth, and social security number to match data maintained by the Social Security Administration before it will issue any DMV ID. 1/28/16 Trial Tr. 183:1-6 (Thomas); PX1042 (Boyd Mallette Dep. 31:3-15); PX1024 ¶ 8 (Defs.' Resp. to RFAs); PX846 (emails regarding experience of two DMV customers). The DMV's exact match requirement has existed for over 10 years, and was in place when the legislature enacted HB 589 in 2013. 1/28/16 Trial Tr. 182:11-18 (Thomas); N.C.G.S. § 20-7(b1) (2013).

104. The DMV also frequently requires exact matches of information on applicants' documentation, often leaving individuals with errant documents with little recourse. PX1049 (Kent Dep. 19:4-39:22) (describing efforts to get DMV ID for sisters whose birth certificates contained errors); PX1048 (Phillips Dep. 14:2-16:2) (describing inability

to obtain DMV ID because of missing letter on birth certificate).

105. The exact match requirement is particularly burdensome for African Americans who have birth certificates with incorrect information. Parents of many older African Americans directly impacted by segregation had less education and relied on midwives to transfer birth certificates to county officials. 1/26/16 Trial Tr. 167:23-168:2 (Barber); 2015 FOF ¶¶ 14-19; *see also* PX1052 (Foster Dep. 7:23-8:10) (mother had second-grade education; name misspelled on birth certificate); PX1049 (Kent Dep. 35:20-36:2) (midwife did not file birth certificate until two decades after birth); PX1045 (Eaton Dep. 18:16-19:12) (explaining errors in birth date and name changes on birth certificates). In addition, this requirement is often burdensome for Latinos who have different names on underlying documents as a result of Latin American naming conventions. 1/28/16 Trial Tr. 9:1-10:16 (Palmer); PX1051 (Sanchez Dep. 26:15-35:16).

106. The cost of resolving such issues can be significant. PX1049 33:8-18, 34:5-9 (Kent) (describing attempts to call a lawyer to aid resolution of birth certificate discrepancy); 1/27/16 Trial Tr. 113:24-114:6 (Kennedy); PX1045 (Eaton Dep. 19:25-21:25, 24:16-22, 25:1-9) (resolving birth certificate discrepancy took 10 trips and 21 days); 1/27/16 Trial Tr. 68:3-12, 74:19-75:6 (Hoard) (describing 4-5 year ongoing efforts to help registered voter obtain birth certificate from South Carolina); PX1108 (SBOE letter to NC Bar Association seeking volunteer assistance for voters).

107. Other provisions of North Carolina's election code do not impose these types of burdens when documentation does not match. For example, if information provided by a newly registered voter does not match information maintained by the Social Security

Administration, the voter is permitted to use an alternative method of verifying eligibility when voting in person. *See* N.C.G.S. § 163-166.12(b2), (c).

3. Minority Voters Disproportionately Bear the Monetary Cost of Obtaining DMV ID

108. Obtaining a DMV ID and the underlying required documents has direct monetary costs disproportionately borne by minorities. The DMV charges fees for issuing and renewing driver's licenses and certain non-operator ID cards. PX918 at 26 (NC Driver's Handbook). For example, a driver's license for those aged 18-65 currently costs \$40 (\$5 per year for 8 years), and non-operator ID cards cost \$13. *Id.* A duplicate DMV ID costs \$13. *Id.* When HB 589 was passed, these fees were \$32, \$10, and \$10, respectively, PX917 at 24 (2014 Driver's Handbook), but the General Assembly can raise the fees at any time, PX1024 ¶3 (Defs.' Resp. to RFAs), and in fact did so recently, PX935 (DOT news release); PX1005 (SL 2015-241). There are no exceptions to these fees for indigence. PX1042 (Boyd-Malette Dep. 31:24-32:1). In addition, an applicant for a driver's license must have liability insurance, regardless of whether the applicant owns a car. *Id.* 32:2-12. And an applicant with an outstanding traffic violation in a different state must resolve the violation, such as by paying an out-of-state fine, before the DMV will issue a North Carolina driver's license. PX1043 (Bucholtz Dep. 58:20-60:3, 60:16-62:21).

109. Fees are also charged to obtain many of the documents required to obtain a DMV ID. *See, e.g.*, PX1024 ¶6 (Defs.' Resp. to RFAs). North Carolina county registrars of deeds charge \$10 for a certified copy of a birth certificate or marriage license, two of the types of documents the DMV will accept as proof of identity.

N.C.G.S. § 161-10(a)(8). And although HB 589 provides for a waiver of the \$10 birth certificate fee for registered voters seeking to obtain a voter ID, this option is not widely known and is of no use to citizens born outside the State (where birth certificates routinely cost over \$20). *See* PX1052 61:8-62:14 (Foster); 1/27/16 Trial Tr. 63:6-18 (Hoard); PX1048 (Phillips Dep. 17:24-18:4); PX984 (CDC Vital Records Guide).

110. Although HB 589 authorizes the DMV to issue free IDs for voting, PX110 § 3.1, if a voter enters the DMV seeking a driver's license, but cannot get one for some reason, alternative ID is only issued if the voter affirmatively requests a non-operator ID and foregoes his or her driving privilege. PX1043 (Bucholtz Dep. 68:25-70:3). Furthermore, some DMV offices will issue a free voter ID only if a voter, on his or her own initiative, explicitly says the words "voting" or "voter ID," *see, e.g.*, PX1114, and the record identifies numerous voters who sought DMV ID for voting and were charged a fee. *See, e.g.*, PX845; PX847; PX852; PX1102, PX1103, PX1104; PX1110; PX1116; PX1120; *see also* DX535 at 8, 72 (Strach Decl. ¶ 19, Ex. 2.2). The record indicates that voters without ID are unaware of the availability of an alternative DMV ID that does not require a fee. PX1059 (Brown Dep. 36:4-38:24); PX1052 (Foster Dep. 60:17-61:7).

4. The Requirement to Maintain Valid DMV ID Once Acquired Falls Disproportionately on Racial Minorities

111. Possession of a photo ID at one point in time is not a permanent guarantee of the ability to vote. Valid IDs expire, *see, e.g.*, PX1045 (Eaton Dep. 49:25-50:8), the poor may lose IDs due to transient living conditions, 1/27/16 Trial Tr. 85:19-86:15 (Kennedy); *id.* 61:21-62:4 (Hoard), and licenses can be suspended or revoked. *Supra* ¶¶ 30. African Americans are disproportionately affected by each of these factors. 1/27/16 Trial Tr.

60:19-61:15 (Hoard), *id.* 84:10-85:2 (Kennedy); *supra* ¶¶ 30, 39, 62.

112. All DMV IDs expire 8 years after issuance if the holder is between the ages of 18 and 65 or 5 years after issuance if the holder is over 65. PX918 at 24-25 (NC Driver's Handbook); N.C.G.S. § 20-37.7(d) (non-operator ID). Online renewal services are not available for no-fee voter ID cards or individuals with outstanding DMV debts or suspended licenses. PX1024 ¶ 7 (Defs.' Resp. to RFAs); 1/28/16 Trial Tr. 201:2-202:6 (Thomas). And although driver's license holders receive notice approximately 60 days before expiration, PX918 at 22, individuals with non-operator IDs receive no notice of expiration. PX1047 (Webb Dep. 33:8-12, 21-23).

113. For an individual whose driver's license has been suspended or revoked, the direct and indirect costs of restoring the license are significant.¹⁷ *See, e.g.*, PX1059 (Brown Dep. 18:16-19:22, 20:14-22:9). Individuals restoring their driver's license must appear in person, reapply for a driver's license, pay a restoration fee and provide proof of insurance. PX918 at 21, 36. The total cost for reinstatement can range from \$65 to \$180 on top of any other amounts owed. *Id.* at 35-36; 1/27/16 Trial Tr. 120:3-121:8 (Nieman) (discussing escalating fines); N.C.G.S. § 20-7(i1). And individuals seeking restoration frequently fall into a "spiral" in which they lose their driver's licenses due to an inability to pay fines. *See supra* ¶ 30; 1/27/16 Trial Tr. 117:3-119:8 (Nieman). These individuals are disproportionately minority. *See, e.g.*, 1/27/16 Trial Tr. 121:15-122:15 (Nieman);

¹⁷ Under North Carolina traffic laws, "revoked" and "suspended" licenses are synonymous terms. 1/27/16 Trial Tr. 117:12-13 (Nieman).

PX256 revised tbl.11 (Stewart 4/2/15 Addendum).¹⁸

114. Finally, this Court has heard directly from voters impacted by HB 589. *See, e.g.*, PX1052 (Foster Dep.) (75 year-old African American voter and product of State's segregated school system who has never had a qualifying photo ID in her life despite her efforts to obtain one); PX1059 (Brown Dep.) (67 year-old African American voter and product of State's segregated school system who lived without a qualifying ID for five years because of the "DWLR spiral" and did not know that his current photo ID is expired because he cannot read); PX1048 (Phillips Dep.) (61 year-old African American who has not had a qualifying ID since the early 1990s despite his efforts to obtain one). Their stories illustrate how HB 589's ID requirement interacts with the socioeconomic circumstances of many of the State's African American residents to deprive them of their ability to equally participate in the political process. PX683 (Vernon-Feagans Dep. 28:1-32:25, 72:2-23); 7/8/14 PI Tr. 94:9-95:7 (Hawkins) (discussing cumulative variables that hinder political participation); *see also* 1/25/16 Trial Tr. 46:1-12 (Burden) (direct and indirect costs affect voter behavior).

C. The Exceptions to HB 589's Photo ID Requirement are Too Narrow to Mitigate the Foreseeable Burdens it Imposes

115. The exceptions contained in HB 589's photo ID requirement are insufficient to mitigate the burdens imposed on voters by the requirement. First, only very small numbers of voters cast curbside ballots—in 2014, for example, out of nearly 3 million

¹⁸ Although a voter with a suspended driver's license is eligible for a no-fee voter ID, obtaining one requires an additional trip to the DMV, which can be burdensome for voters without a valid driver's license. *See supra ¶¶ 99-100.*

total ballots cast, only about 38,000, roughly 1.3%, were curbside ballots. PX242 App'x S (Stewart Trial Decl.).

116. Second, absentee voters casting ballots by mail are not subject to the photo ID requirement. Only a small fraction of North Carolina voters cast ballots by mail, and such voters are disproportionately white. *Id.*; 1/25/16 Trial Tr. 59:20-25 (Burden). For example, in the 2012 presidential election, only 1.8% of black voters cast ballots by mail, as compared with 5.8% of white voters.¹⁹ *Id.* The General Assembly knew that whites disproportionately used absentee voting by mail when it created an exception to HB 589's photo ID requirement for such voters. 2015 FOFs ¶ 184.

117. Moreover, the costs of absentee voting fall more heavily on African Americans and Latinos because of the resources that are needed to navigate the absentee ballot process, including literacy, confidence in using that system, and financial expense. 1/25/16 Trial Tr. 59:14-19 (Burden); *see also* 2015 FOFs ¶¶ 237-239; 7/15/15 Trial Tr. 32:13-33:11, 34:23-35:6 (Summers); PX1052 (Foster Dep. 18:16-19:9, 19:16-12). Minorities are more likely to rely on in-person assistance from election officials and to place value on the profound symbolic and practical assurance that a ballot cast in person will count. 2015 FOFs ¶¶ 58-59. In addition, because of deadlines to request absentee ballots, such an option will not be available to voters trying to cast a ballot close to election day. 1/25/16 Trial Tr. 58:12-17 (Burden).

¹⁹ The other two exceptions to the photo ID requirement are even narrower—those with a sincerely held religious objection to being photographed, and those who lack photo ID as a result of a natural disaster occurring within 60 days of the election. N.C.G.S. § 163-166.13(a)(2)-(3).

VI. HB 589's Photo ID Requirement Adds to the Bill's Cumulative Impact on African American and Latino Voters

118. As with each of the other challenged provisions of HB 589, the photo ID requirement erected an obstacle between voters and the ballot. Voting is a series of steps, and each of the challenged provisions, including the ID requirement, presents an additional hurdle. A voter who overcomes one hurdle might nevertheless falter at the next one, and added together, these hurdles create a cumulative discriminatory impact on African American and Latino voters. For example, even voters who manage to register well ahead of the election (after the elimination of same-day registration) may now find themselves excluded because of the photo ID requirement. *See* 2015 FOFs ¶¶ 263-267.

VII. The Reasonable Impediment Provision Fails to Alleviate the Disproportionate Burden of the Photo ID Requirement on Minority Voters

119. The reasonable impediment provision is limited. In spite of the reasonable impediment process, voters are still being instructed, and will continue to be instructed, that they must attempt to obtain a qualifying photo ID. 1/28/16 Trial Tr. 104:19-24 (Strach). Plaintiffs' supplemental exhibits show several examples, following the enactment of the reasonable impediment provision, of SBOE staff telling voters that they must attempt to obtain a qualifying ID, even when it is obvious from the voter's situation that doing so will be a heavy burden. *See, e.g.*, PX1101-1103; PX1114; PX1116; PX1117.

120. Furthermore, the reasonable impediment provision does not alleviate the disproportionate burden that the photo ID requirement imposes on minority voters for at least three reasons: (1) the new reasonable impediment process is difficult to navigate; (2)

the process forces the disproportionately African American group of voters who lack photo ID into a separate and lesser voting process; and (3) the process by which reasonable impediment declarations may be challenged is intimidating and will deter voters from participating in the voting process in the first place. 1/25/16 Trial Tr. 61:16-62:3 (Burden); 1/27/16 Trial Tr. 34:25-35:6 (Minnite).

121. Even if some voters are able to successfully navigate the complexities and ambiguities of the reasonable impediment process, that does not mean that they have not been burdened. The fact that a voter can overcome burdens on the franchise does not negate the existence of those burdens, and does not justify them. *See* 1/26/16 Trial Tr. 220:19-25 (Barber); 1/25/16 Trial Tr. 101:9-20 (Burden). Voters who are forced to overcome burdens in order to vote must divert their resources from other important aspects of their lives into navigating the voting process.

122. The burden of navigating the reasonable impediment declaration process—like the burden of obtaining qualifying ID in the first place—continues to fall disproportionately on minority voters, who, as discussed above, disproportionately lack photo ID and the resources to obtain an ID. 1/25/16 Trial Tr. 57:6-10 (Burden); 1/27/16 Trial Tr. 19:3-9 (Minnite).

A. The Reasonable Impediment Declaration Form is Complicated and Difficult to Navigate and Will Deter Voters

123. The reasonable impediment declaration process siphons off those voters who do not have qualifying ID and forces them to navigate a complex process and a complex form in order to exercise their right to vote. Particularly for low-literacy voters, navigating the reasonable impediment form creates yet another hurdle that will be

difficult to surmount. 1/26/16 Trial Tr. 173:20-174:5 (Barber); PX1050 (Lasher Dep. 30:5-7, 63:5-65:1).

124. A number of witnesses offered unrebutted testimony regarding the difficulty faced by low-literacy, limited English proficiency, and/or homeless individuals in executing forms. *See, e.g.*, PX1050 (Lasher Dep. 39:19-40:8, 32:9-33:7) (describing the shame, intimidation, and difficulties faced by lower literacy voters filling out forms).

125. For instance, Ashley Lasher, the executive director of the Literacy Council of Buncombe County, testified that her adult students would likely struggle to fill out the reasonable impediment declaration because filling out paperwork is a very intimidating process for someone with low literacy skills, particularly given the level of vocabulary used in the declaration. *Id.* 37:18-38:17, 39:14-21, 57:21-59:7, 62:12-24, 63:5-65:1, 65:11-65:23.

126. Similarly, Ms. Kennedy testified that many homeless individuals who visit her center—the majority of whom are African American—would not be able to read the reasonable impediment declaration form, much less fill it out. 1/27/16 Trial Tr. 102:23-104:2 (Kennedy).

127. For Latino voters who may speak limited English or English as a second language, the form can also pose difficulties. Maria Teresa Unger Palmer, who helps voters at the polls, testified that Latino voters will find the process particularly intimidating and fear prosecution for mistakes they might make on the form, particularly where Latin American naming conventions can result in inconsistent documentation. 1/28/16 Trial Tr. 8:11-18, 9:1-10:13, 13:1-9, 30:14-22 (Palmer); PX1051 (Sanchez Dep.

39:7-40:6) (intimidation of completing government forms).

128. Defendants suggested throughout trial that voters who may not understand the reasonable impediment form should bring someone to assist them. 1/27/16 Trial Tr. 105:10-15 (Kennedy); 1/29/16 Trial Tr. 138:23-24 (Strach).

129. But private institutions do not have adequate resources and are not well positioned to help those who may require assistance at the polls. As Ms. Kennedy and Mr. Hoard testified, their organizations cannot meet the number of guests who need assistance with filling out forms by accompanying them to the polls, nor is it the mission or responsibility of their groups. 1/27/16 Trial Tr. 104:3-13 (Kennedy); *id.* 73:1-20 (Hoard). Ms. Palmer testified that candidates and non-profit organizations do not have the resources to translate and produce documents to assist voters, nor can they be expected to assist voters with this complicated process. *See* 1/28/16 Trial Tr. 28:10-12, 28:23-29:6 (Palmer).

130. Although Defendants claim that poll workers may assist voters, none of the training materials, including polling place guides,²⁰ voter education materials,²¹ or numbered memoranda²² produced by Defendants would assist poll workers—the election officials who actually interact with voters at the precinct, 1/29/16 Trial Tr. 180:10-20

²⁰ DX 445; DX 465; DX 469; DX475; DX 476; DX482-483; DX531-532; DX548-551; DX 553; DX 554; PX916; PX924; PX933-934; PX936; PX938; PX943; PX955.

²¹ DX 441-444; DX 468; DX471-473; DX484-485; DX555/PX1035, DX556, PX913, PX928, PX956-958, PX972, PX992, PX994-995.

²² DX547 (addressing only the reasonable impediment challenge process for county board members); PX996; PX1121.

(Strach)—in answering substantive questions from voters regarding the reasonable impediment form, rules, and procedures (nor would the materials provide answers to the voters themselves).

B. The Reasonable Impediment Provision Forces Long-Time Voters Without ID Into a Separate Voting System Where Their Ballot May Not Count

131. The reasonable impediment provision also forces voters who have for decades been able to cast a regular ballot via signature attestation into a secondary process, requiring them to wait in a separate line and cast a provisional ballot, creating “two types of citizenship.” 1/26/16 Trial Tr. 174:23-175:5 (Barber); *see also* 1/27/16 Trial Tr. 11:5-13 (Minnite); 1/28/16 Trial Tr. 111:14-22 (Strach). This system forces certain voters who are properly registered, who would have previously been able to vote a normal ballot, to cast a provisional ballot, which will be subject to review and challenge. 1/27/16 Trial Tr. 13:1-8 (Minnite); 1/26/16 Trial Tr. 212:4-11 (Barber).

132. This increases the risk that a validly cast ballot will not be counted, particularly because North Carolina has a higher rate of rejecting provisional ballots than the national average. 1/27/16 Trial Tr. 18:1-8 (Minnite). This risk is exacerbated by the time-consuming nature of the reasonable impediment process, as inadequate staffing at polling locations could lead to both additional wait times and errors in the provisional balloting process. *See* PX1119 (acknowledging that provisional ballots “can be a time consuming one on one between voter and election official” and assessing staffing levels at polling places with large numbers of provisional ballots).

C. The Challenge Process is Onerous and Intimidating, and Will Deter Voters From Submitting Declarations in the First Place

133. The reasonable impediment declaration process also opens up a voter to threat of his or her declaration being challenged and his or her provisional ballot being rejected. The reason provided by a voter on the reasonable impediment declaration form must meet four independent requirements: (1) it must be “reasonable”; (2) it must be truthful (not factually false); (3) it must not “denigrate the Photo ID Requirement”; and (4) it must not be “obviously nonsensical.” 1/28/16 Trial Tr. 123:12-19 (Strach).

134. As an initial matter, the process of defending one’s reasonable impediment declaration is onerous. Under the new provision, any registered voter from any county can seek access to reasonable impediment forms for an entire county through a simple public records request, and may then file a challenge to another voter’s ballot up to three days after the election. 1/28/16 Trial Tr. 117:9-118:15 (Strach). These challenges are heard at the time of the county canvass, which is the 7th or 10th day after an election, depending on the election, typically a Friday—thus requiring a voter whose declaration is challenged to show up in person on a workday to defend his or her ballot or else risk having it discarded. *Id.* 118:16-121:22. A voter who cannot arrange transportation to the county office on the work day in which a challenge hearing is held will be unable to present evidence supporting the factual veracity of his or her reasonable impediment form. *Id.* 120:3-121:22. Voters who are aware of the potential need to defend their ballot may decide not to cast a ballot, not because they are not eligible to vote but because they know they lack the resources to mount a defense.

135. If the partisan county board of elections makes a determination that a voter’s

reasonable impediment declaration is false and that their vote should not be counted, that decision is final and not subject to review or appeal, as Ms. Strach originally testified at trial. *Id.* 134:18-25. Not until Ms. Strach was examined the following day by her own lawyers did she suggest there might be a mechanism to challenge the county board's decision through a general review by the SBOE. But, as Ms. Strach conceded, that process (a) appears nowhere in the new law, (b) would require yet another challenging process for voters who have proven unable to obtain photo ID in the first place, and (c) in any event occurs only after votes have been counted in the county canvass. 1/29/16 Trial Tr. 223:19-24, 223:25-225:3 (Strach).

136. A number of the witnesses explained that the reasonable impediment declaration, which requires voters to attest that their reason for not being able to obtain an ID is not false, is a significant departure from the prior voter authorization form which only required a voter to affirm only his or her name and address. *See, e.g.*, 1/26/16 Trial Tr. 170:15-171:3, 184:12-185:17 (Barber); 1/28/16 Trial Tr. 30:14-22 (Palmer). Ms. Kennedy testified that even though the homeless and marginalized voter would not have done something wrong, this threat of prosecution for attesting to an ambiguous standard would scare them from filling out a declaration. 1/27/16 Trial Tr. 100:6-14 (Kennedy). As of the close of the trial record, the State had not provided voters with sufficient information regarding the factual falsity provision that could put voters at ease. 1/26/16 Trial Tr. 171:13-22 (Barber).

137. Unlike an individual's name or address—which is objectively verifiable—the reasonableness of a voter's explanation for not obtaining a qualifying ID is subject to

disagreement, and Defendants have taken no steps to instruct voters or poll workers on how such disagreement should be resolved. 1/28/16 Trial Tr. 125:19-131:8 (Strach); *see also id.* at 106:6-11, 116:11-22, 121:23-122:7 (Strach); PX1118 (highlighting pollworker misinformation regarding the reasonable impediment provision).

138. Specifically, the State's failure to explain the difference between a challenge for "reasonableness" and a challenge for "falsity" will also intimidate, confuse, and deter voters from using the reasonable impediment declaration process in the first place. In particular, the State has not been clear about the circumstances under which a reasonable impediment declaration may be successfully challenged as "factually false," and such lack of clarity from the State means that voters who check one of the boxes on the SBOE-mandated form may fall into a "trap for the unwary," *South Carolina*, 898 F. Supp. 2d at 40. For instance, it is not clear whether a voter's declaration marking "lack of transportation" (one of the impediments that SBOE is required by law to include on the form) would be deemed factually false if the voter had no car of his own, but might have been able to borrow the car of an acquaintance living some distance away. Such ambiguity amounts to its own deterrent.²³

139. The sheer confusion inherent in the law itself only further exacerbates voter intimidation and confusion. As Reverend Barber testified, NAACP members have

²³ Given the lack of clarity from the State—both in its educational materials and Ms. Strach's testimony, 1/28/16 Trial Tr. 125:19-126:1, 126:9-130:17 (Strach)—it would seem that voters will always be in a stronger position if they write in the details of their situations rather than checking one of the provided boxes, but the structure of the form encourages voters to use the boxes and voters have not been instructed otherwise. This is a classic "trap for the unwary."

questioned the meaning of “reasonable impediment”—a term which Ms. Strach herself admits is not used in regular parlance and that the SBOE itself has avoided using in its advertising, 1/28/16 Trial Tr. 104:25-105:19 (Strach)—and how it will be implemented. 1/26/16 Trial Tr. 173:12-19 (Barber). Dr. Minnite similarly testified that the rules regarding the process have not been clearly implemented, including a proper explanation of what it means for a reason to be “obviously nonsensical” or to “merely denigrate” the photo ID requirement. 1/27/16 Trial Tr. 16:12-17:3 (Minnite).

140. Even if county boards of elections ultimately reject a challenge based on a claim of factual falsity, the prospect of being challenged, of having to appear at the board of elections on a weekday, and of possibly being investigated and indicted for a felony is intimidating and will deter voters from using the reasonable impediment option.²⁴

D. South Carolina’s Photo ID System Differs in Substance and Implementation from North Carolina’s System

141. Defendants have suggested that North Carolina’s photo ID requirement should be approved under Section 2 given the similarities between the North Carolina reasonable impediment provision and South Carolina’s reasonable impediment provision, which was approved by a three-judge panel in a Section 5 case in 2012. *South Carolina*, 898 F. Supp. 2d 30. However, in addition to the important legal distinctions between Section 2 and Section 5 (described in more detail below), the photo ID laws, history, and respective implementations are distinguishable between the two states as a factual matter.

²⁴ After the trial ended, defendant SBOE sent a Numbered Memo to CBOEs setting out the procedures and burdens of proof for adjudicating challenges. See DX547. This provides little guidance to voters about what will qualify for the “not factually false” requirement.

1. South Carolina Already Had An ID Requirement Before it Implemented its Photo ID Requirement

142. Prior to implementation of the South Carolina photo ID requirement, voters were required to show one of three forms of ID at the polls: (i) a South Carolina non-photo voter registration card, (ii) a South Carolina Driver's License, or (iii) an ID issued by the DMV. PX1064 (Andino Dep. 17:16-18:3). In fact, South Carolina voters had been required to show some kind of ID for decades.²⁵ Hence, South Carolina's change to a photo identification requirement was not a major disruption to voters' existing habits. 1/25/16 Trial Tr. 102:9-13 (Burden).

143. In contrast, HB 589 represented a brand new requirement that voters show identification at the polls. This was a major disruption and abrupt change—from no ID requirement to one of the strictest photo ID laws in the country. 1/25/16 Trial Tr. 102:14-19 (Burden).

2. In Sharp Contrast to North Carolina, South Carolina Provided Voters With Two Distinct Free Forms of ID Allowing More Than 38,000 Voters to Obtain Free ID That Never Expire

144. In contrast to North Carolina, when imposing its photo ID requirement, South Carolina created *two* forms of free ID: (1) a free DMV identification, and (2) a free voter ID card issued by county voter registration and elections offices. PX1064 (Andino Dep. 23:17-24:5).

145. Marci Andino, the Executive Director of the South Carolina Election Commission, testified that South Carolinians were able to obtain a photo voter

²⁵ To Plaintiffs' knowledge, no court has addressed the legality of South Carolina's previous ID requirement under Section 2 of the Voting Rights Act.

registration ID from any of the state's 46 county boards of voter registration and elections and did not require a trip to the DMV. *Id.* 25:6-25:16. Nor does the photo voter registration ID require onerous underlying documents or exact matching of information. Registered voters can present their non-photo voter registration card or can provide their date of birth and social security number. For new registrants, HAVA ID is sufficient. *Compare id.* 25:6-31:20 with *supra* Part V.B.2.

146. The South Carolina county voter registration and elections offices and South Carolina Election Commission also attended numerous public events where, using only a laptop and camera, they were able to access their statewide voter registration database, take pictures of voters, and create free photo voter IDs outside the confines of any office and without the need for a mobile unit or bus. PX1064 (Andino Dep. 65:25-66:15; 67:10-67:24). Between 2013 and the present, South Carolina has issued more than 38,000 free photo voter IDs to South Carolinians throughout the state. PX1055 (S.C. Provisional Ballot Summary Chart).

147. Once obtained, South Carolina's free photo voter ID never expires, such that voters are never burdened with renewing their ID or worrying about whether that ID could expire or be subject to suspension. PX1064 (Andino Dep. 29:8-12).

148. South Carolinians could also avail themselves of the free DMV ID, similarly available in North Carolina. *Id.* 85:4-85:14.

149. The availability and dissemination of South Carolina's free photo voter ID stands in sharp contrast to the soft roll-out of photo ID in North Carolina. In the first two years after North Carolina made its "no fee" DMV ID available, only 2,139 free photo

IDs were issued in contrast to more than 30,000 free IDs that were issued in the same time frame in South Carolina. 1/28/16 Trial Tr. 177:5-12 (Thomas); PX1055.

PROPOSED CONCLUSIONS OF LAW

I. Enactment of HB 589's Photo ID Requirement Violates Section 2 of the Voting Rights Act

A. The Photo ID Requirement Violates Section 2 Because it Was Enacted with a Discriminatory Purpose

1. The legal standard regarding claims of discriminatory purpose pursuant to Section 2 of the Voting Rights Act is set out in paragraphs 32 through 42 of Plaintiffs' previously filed proposed conclusions of law (13-cv-861, ECF No. 346, at 126-129) (hereinafter "2015 COLs"). We do not repeat an explanation of the standard here, but offer some brief elaboration.

2. The appropriate framework for analyzing whether an official action was motivated by discriminatory purpose was established by the Supreme Court in *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977), which sets forth a non-exhaustive list of evidentiary sources to consider. *See also United States v. Charleston Cnty.*, 316 F. Supp. 2d 268, 305 n. 42 (D.S.C. 2003) (noting that Senate report incorporated *Arlington Heights* framework for analyzing a Section 2 intent claim). Establishing proof of discriminatory purpose does not require proof of invidious racial animus, but rather simply an intent to disadvantage minority citizens, for whatever reason. *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 778 & n.1 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part), *cert. denied*, 498 U.S. 1028 (1991); *see also LULAC v. Perry*, 548 U.S. 399 (2006). The evidence here shows that HB 589 was

motivated, at least in part, by an intent to reduce the opportunity of African Americans to participate in the political process and HB 589's photo identification requirement contributed significantly to that goal.

3. In *Arlington Heights* the Court emphasized that "an important starting point" for assessing discriminatory purpose is "the impact of the official action[, i.e.,] whether it bears more heavily on one race than another." 429 U.S. at 266 (internal quotation marks omitted). The Supreme Court reaffirmed this point more recently in *Reno v. Bossier Parish School Board*, where it explained that the impact of an official action "is often probative of why the action was taken in the first place since people usually intend the natural consequences of their actions." 520 U.S. 471, 487 (1997). For example, the Court stated, a jurisdiction that enacts a redistricting plan that dilutes minority voting strength is more likely to have acted with a discriminatory intent than a jurisdiction whose plan has no such impact. *Id.*; see also *N.C. State Conf. of the NAACP v. McCrory*, 997 F. Supp. 2d 322, 355 (M.D.N.C. 2014), aff'd in relevant part sub nom. *League of Women Voters v. McCrory*, 769 F.3d 224 (4th Cir.).

4. A question that goes to the crux of the discriminatory intent analysis in this case is whether the General Assembly, and specifically sponsors and proponents of HB 589, knew that enacting the challenged provisions, including the voter photo identification requirement, would disproportionately impact minority voters. The Court finds that the evidence here shows that the General Assembly was well aware of the racially disproportionate impact of the challenged provisions, and particularly of the voter photo identification requirement, yet they proceeded to enact HB 589 with the intent to

discriminate.

5. The evidence demonstrates that prior to and at the time it passed HB589, the General Assembly had substantial evidence—yielded from a series of data analyses conducted by the North Carolina State Board of Elections—consistently showing that African Americans were disproportionately likely to lack DMV-issued ID. *See* FOFs ¶¶ 22-26; 2015 FOFs ¶¶ 154-160. Indeed, key legislative sponsors of HB 589 were closely involved in developing the criteria used for the April 2013 analysis of voters without DMV ID and expressed their unreserved approval of the results. *See* FOFs ¶ 23; 2015 FOFs ¶ 125.

6. Legislators were also aware that thousands of North Carolinians, disproportionately low income, were susceptible to having their license suspended or revoked because of their inability to pay traffic fines. *See* FOFs ¶¶ 30-31. By law and in practice, suspended or revoked licenses cannot be presented as valid identification. *See* FOFs ¶ 9.

7. Moreover, evidence collected since HB 589's passage confirms these disproportionate impacts. As described in the findings of fact, independent matching analyses performed by United States' expert Dr. Charles Stewart, confirm the racial disparities in possession of HB 589 ID. *See* FOFs ¶¶ 51-66. Dr. Stewart's analysis also confirms that hundreds of thousands of North Carolina voters possess only a driver's license that has been suspended or physically surrendered, and that these individuals are disproportionately African American. *See* FOFs ¶ 62. Under *Arlington Heights* and *Bossier Parish*, this post-enactment impact evidence sheds additional light on the

legislature's intent in passing the law. 429 U.S. at 266; 520 U.S. at 487; *see also Smith v. Town of Clarkton*, NC, 682 F.2d 1055, 1064, 1066 (4th Cir. 1982).

8. The historical background and sequence of events leading up to passage of HB 589, coupled with this knowledge of likely disproportionate impact, reveal that the General Assembly acted with discriminatory intent. *See Arlington Heights*, 429 U.S. at 266-67. What is quite telling and indicative of proponents' intent is that despite having data and knowledge of the discriminatory impact of the photo ID requirement, they not only proceeded to enact the provision, but also took advantage of the Supreme Court's decision in *Shelby County v. Holder* to affirmatively transform the provision to include stricter requirements that were previously deemed unnecessary and that proponents knew would bear more heavily on African Americans. *See* FOFs ¶¶22-46.

9. Prior to the *Shelby County* decision, while North Carolina was still subject to Section 5, proponents crafted a voter photo ID bill that would have allowed voters to show any one of a broad list of state and federally-issued photo IDs. *See* FOFs ¶¶32-33. When they passed the pre-*Shelby* version of HB 589, proponents lauded the process they undertook during consideration of the bill and applauded the House for passing a voter ID bill that met their objectives of protecting the integrity of elections and preventing voter fraud. *See* FOFs ¶¶ 34-35.

10. Following the *Shelby County* decision, and once freed from the burden of having to prove that their proposed law had neither a discriminatory result nor purpose, the General Assembly overhauled the bill, embracing a series of changes that resulted in a "clear pattern" of disproportionate negative impacts on African American voters. *See*

Arlington Heights, 429 U.S. at 266. In particular, they limited state-issued qualifying ID to ID issued by the North Carolina DMV, despite SBOE reports revealing racial disparities in possession of such ID and widespread knowledge of dysfunction at the DMV. *See* FOFs ¶¶ 27-29, 36-46, 85. They never identified a single basis for making the photo ID provisions stricter than they had been in the pre-*Shelby* bill. Moreover, the Court finds that the process for a voter to obtain HB 589 compliant ID involves numerous burdens, including fees, inconsistent documentation requirements, eligibility limitations, limited business hours to apply for DMV-issued ID and associated wait times, restrictions associated with suspended and revoked licenses, as well as travel burdens. *See* FOFs ¶¶ 86-118. These burdens fall more heavily on minority voters who, as the record evidence shows, are disproportionately likely to lack qualifying ID and disproportionately subject to socioeconomic disparities in education, employment and income, housing, health, and access to transportation. *See id.* ¶¶ 60-66; 2015 FOFs ¶¶ 14-42.

11. In addition to making HB 589's voter ID requirement more onerous, following the *Shelby County* decision legislators added new provisions to the bill that truncated the early voting period, eliminated same day registration, and prohibited the counting of out of precinct provisional ballots, all of which proponents were aware would exacerbate the racially disproportionate impact of the bill. *See* FOFs ¶¶ 40-41; 2015 FOFs ¶¶ 117; 129; 150; 154-168.

12. The discriminatory impact and burdens imposed by the voter photo ID requirement exacerbate the cumulative discriminatory effects of HB 589's other

challenged provisions. It is clear from the evidence that HB 589's proponents were aware of these foreseeable consequences and that this was precisely what they intended.

13. The sequence of events must be viewed in light of North Carolina's distinct historical background. *Arlington Heights*, 429 U.S. at 267. All of this took place as the growing minority electorate in North Carolina appeared finally poised to exercise political strength after a century of marginalization and in an environment marked by a persistent and pervasive pattern of racial polarization in elections. *See* 2015 FOFs ¶¶ 43-44, 92-103. Indeed, these events and actions are set against North Carolina's protracted legacy of official racial discrimination, segregation, and economic and political subjugation. *See* 2015 FOFs ¶¶ 3-16.

14. The desire for partisan gain and maintenance of the political status quo, especially where, as in the specific context of North Carolina, a person's race is a better predictor of how he or she will vote than formal party affiliation, does not negate the conclusion that the General Assembly acted with a discriminatory purpose. *See LULAC*, 548 U.S. at 439-441 (recognizing that “[taking] away [a minority group’s] opportunity because [minorities] were about to exercise it” was an action that bore “the mark of intentional discrimination”); *see also* 2015 COLs ¶¶ 43-44.

15. Following the Court's comprehensive assessment of the evidence of the discriminatory impact of HB 589's provisions, North Carolina's history of official discrimination (2015 FOFs ¶¶ 3-13), the sequence of events leading up to the enactment of HB 589 (2015 FOFs ¶¶ 98-149), the multiple substantive and procedural deviations from the legislative process (2015 FOFs ¶¶ 130-131, 134-143, 145-147); and the

pretextual rationales offered by its proponents (FOFs ¶¶ 47-50; 2015 FOFs ¶¶ 169-191), it concludes that HB 589 and its challenged provisions were motivated, at least in part, by an intent to reduce the opportunity of African Americans and, increasingly, Latinos to participate in the political process.

16. The goal of denying African American voters an equal opportunity to participate in the political process is one that has “no legitimacy at all under our Constitution.” *City of Richmond v. U.S.*, 422 U.S. 358, 379 (1975). A law animated by such a goal cannot be allowed to stand if any vestige of its intended discriminatory intent remains. *See id.* at 379-80 (stating that, notwithstanding the City of Richmond’s post-annexation efforts to preserve much of the African American community’s political potential in the newly enlarged City by changing the method of election, the annexation could not stand if enacted for a discriminatory purpose). Here, HB 589 was birthed with just such an impermissible purpose. For this reason and because the record establishes that even after HB 836’s enactment, some of the discriminatory effects of the law persist, HB 589 cannot now be allowed to stand. Moreover, Defendants make no argument that legislative actions taken in passing HB 836 had any curative effect on the discriminatory intent of the General Assembly. 1/28/16 Trial Tr. 77:23 -79:7; *see also* 1/28/16 Trial Tr. 33:20-45:19, 66:5-67:23 (Glazier) (describing timing, contemporary actions and statements, and procedural irregularities regarding the legislative process of HB 836).

B. The Photo ID Requirement Violates Section 2's Results Test²⁶

17. The legal standard regarding a discriminatory results claim under Section 2 is set out in paragraphs 1-10 of Plaintiffs' 2015 COLs, and is briefly summarized here.

18. "Section 2 'prohibits all forms of voting discrimination' that lessen opportunity for minority voters," *League of Women Voters*, 769 F.3d at 238 (quoting *Thornburg v. Gingles*, 478 U.S. 30, 45 n.10 (1986)), including restrictive voter photo identification laws, *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014), *aff'd in relevant part sub nom. Veasey v. Abbott*, 797 F.3d 487 (5th Cir. 2015). Plaintiffs may prevail by showing that the Photo ID requirement has a discriminatory result, was enacted or maintained with discriminatory purpose, or both. *Chisom v. Roemer*, 501 U.S. 380, 403-04 (1991).

19. This Circuit, along with the Fifth and Sixth Circuits, have adopted a two-part framework to evaluate a Section 2 results claim: (1) first, the challenged provision "must impose a discriminatory burden," meaning that it "disproportionately impact[s] minority voters"; and, (2) second, that disproportionate impact must "in part be caused by or linked to social and historical conditions that have or currently produce discrimination against members of the protected class." *League of Women Voters*, 769 F.3d at 240, 245 (citations omitted); *see also Veasey*, 796 F.3d at 504; *Ohio Conference of NAACP v. Husted*, 768 F.3d 524, 554 (6th Cir. 2014), *vacated on other grounds by No. 14-3877, 2014 WL 10384647* (6th Cir. Oct. 1, 2014).

20. The approval of South Carolina's photo ID law (including a reasonable

²⁶ The United States does not join in this section as it no longer has a Section 2 results claim pertaining to voter identification.

impediment provision) under Section 5 is neither controlling nor persuasive. Section 2 “requires ‘an intensely local appraisal of the design and impact’ of the contested electoral mechanisms,” *see Gingles*, 478 U.S. at 79 (citation omitted), and does not call for consideration of, or comparison with, the laws or practices in other states. *See League of Women Voters*, 769 F.3d at 243-44.

21. Critical to the comparison between North Carolina and South Carolina is that the Section 2 and Section 5 inquiries are distinct. “[Section] 5 prevents nothing but backsliding” under its retrogression standard, *Reno v. Bossier Parish School Board*, 528 U.S. 320, 335-36 (2000), whereas, Section 2 requires assessing whether the challenged provisions result in minority voters having “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b); *see also League of Women Voters*, 769 F.3d at 238; Senate Report at 29. Furthermore, as laid out in the findings of fact, the differences between each system are stark.

22. A close reading of *South Carolina* shows that on each element of the state’s Photo ID law, and on the law’s overall impact, the court compared the voting opportunities of African Americans prior to the law to the opportunities of African Americans after the law—as is required under Section 5. The case thus provides little insight into the intensely local question of the voting opportunities of North Carolina’s African American and Latino voters compared to North Carolina’s white voters—as is required under Section 2.

23. Section 2 forbids “abridgement” of the right to vote as well as outright “denial,”

52 U.S.C. § 10301(a). Therefore, a practice’s racially disproportionate burden on voters is central to a Section 2 claim, even if some voters are ultimately able to overcome that burden. “[N]othing in Section 2 requires a showing that voters cannot register or vote under any circumstance.” *League of Women Voters*, 769 F.3d at 243.

24. Here, the Photo ID requirement violates Section 2’s results test by “impos[ing] a discriminatory burden” that “disproportionately impact[s] minority voters.” *League of Women Voters*, 769 F.3d at 240, 245 (citation omitted). Moreover, that burden is “in part . . . caused by or linked to ‘social and historical conditions’ that have or currently produce discrimination against members of the protected class.” *Id.* (citation omitted). The Photo ID requirement thus “results in a denial or abridgement of the right of [African Americans and Latino citizens] to vote on account of race or color, or [membership in a language minority group],” in violation of Section 2. 52 U.S.C. § 10301(a). And it does so without justification. *See League of Women Voters*, 769 F. 3d at 246 (holding that non-tenuous rationales, at a minimum, must be more than “merely imaginable”).

25. As set forth in Plaintiffs’ previously filed proposed conclusions of law, the evidence in this case established the presence of numerous Senate Report factors supporting a finding of a Section 2 violation. *See* 2015 FOF ¶¶ 14-32.

26. Moreover, this Court previously concluded that “[b]lack citizens of North Carolina currently lag behind whites in several key socioeconomic indicators, including education, employment, income, access to transportation, and residential stability.” *N.C. State Conference of NAACP v. McCrory*, 997 F. Supp. 2d 322, 348 (M.D.N.C. 2014) (citing Senate Rpt. Factor 5). It found that these “current socioeconomic disparities”

result in part from “North Carolina’s history of official discrimination against blacks.”

Id. at 366. As set forth in Plaintiffs’ prior proposed findings of fact, Latino voters lag behind whites in these key indicators as well.

27. As demonstrated above, the Plaintiffs have provided ample evidence that African Americans are substantially over-represented among North Carolina voters without qualifying ID and that African Americans and Latinos face greater burdens to obtaining ID required to vote under the ID requirement. These burdens are in part “caused by or linked to” the impact of social and historical conditions on the lives of these voters. *League of Women Voters*, 769 F. 3d at 240, 245 (citation omitted). As set forth above, social and historical conditions in North Carolina—such as disproportionately lower levels of education, income, and access to transportation—make it more difficult for African Americans and Latinos than whites to navigate the process to procure ID. These same burdens are present with regard to the no-fee voter ID—which is only available through the DMV—and thus the no-fee voter ID fails to alleviate the law’s disproportionate burden on racial minorities.

28. Finally, neither the availability of absentee mail-in voting, nor the reasonable impediment provision, alleviates the law’s disproportionate burdens on African Americans. The very same social and historical disparities that render African Americans more likely to lack ID and disproportionately burden their ability to procure one, also disparately impact the ability of voters of color to navigate the reasonable impediment procedures including disproportionately lower levels of education, literacy, income, and access to transportation and their ability to navigate a mail-in absentee

ballot. As set forth in the proposed findings of fact, the reasonable impediment's challenge provision adds to the intimidation disproportionately for racial minorities who face historical and current inequalities in the criminal justice system. The record also demonstrates that the lack of assistance for Spanish-speaking voters at the polls adds to these burdens for Latino voters.

29. The totality of the circumstances demonstrate that the Photo ID requirement, including its amendments, results in African Americans and Latinos having an unequal opportunity to participate in the political process, and thus denies and abridges the right to vote on account of race, color, or membership in a language minority group in violation of Section 2.

II. The Photo ID Requirement Violates the Fourteenth Amendment Because it Burdens the Fundamental Right to Vote Without Supporting a Countervailing State Interest²⁷

30. Plaintiffs have established that the Photo ID requirement independently, and cumulatively with the other challenged provisions of HB 589, imposes burdens on North Carolina voters, warranting heightened scrutiny under the Fourteenth Amendment.

31. The flexible balancing test under *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), requires courts to “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.’” *Burdick*, 504 U.S. at 434 (citations omitted).

²⁷ The United States does not join in this section.

32. The Court must consider the effects of the restriction not to voters generally but on those voters who are actually affected by it, and compare that with the state's interest in burdening those voters' right to vote. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 198, 201 (2008). As a result, the proper balancing inquiry takes place within the context of the specific state at issue, *Crawford*, 553 U.S. at 199, and is highly localized. Thus, although the Crawford Court upheld Indiana's voter ID requirement notwithstanding its lack of a reasonable impediment provision, this does not compel a conclusion that North Carolina's law survives even with a reasonable impediment provision.

33. As set forth in the proposed findings of fact above and as related to the July 2015 trial, Plaintiffs have presented substantial evidence establishing North Carolina's history of purposeful discrimination against African Americans and Latinos in the area of voting. *See* 2015 FOF ¶¶ 3-13. Plaintiffs also demonstrated that this history of discrimination has created socioeconomic disparities that make African Americans and Latinos less able to bear the costs of participating in the electoral process. *See* 2015 FOF ¶¶ 4, 14-44. These and any other state-specific factors proved in this case impact the balancing analysis that the Court must conduct under the *Anderson-Burdick* framework.

34. As set forth above, voters who lack ID or who must overcome hurdles to obtain ID are burdened by the ID requirement. This burden can be significant, and must be considered in the Anderson-Burdick inquiry, even if some voters are ultimately able to overcome it. *Supra* Part V.

35. Moreover, Plaintiffs presented substantial record evidence at both the 2015 and

2016 trials that the State's claims of preventing fraud or bolstering voter confidence were pretextual given the absence of record evidence to support either claim. *See, e.g.*, 2015 FOFs ¶¶ 169-184.

36. Accordingly, under the localized inquiry, North Carolina's photo ID law fails the *Anderson-Burdick* balancing test because of the significant burden imposed by the requirement particularly on vulnerable subgroups of voters and the lack of any significant countervailing state interest.

III. Requested Remedy

37. For the reasons set forth above, this Court therefore enters judgment in favor of Plaintiffs by (a) declaring that the relevant challenged provisions of HB 589 (found in parts 11, 12, 16, 19, 20, 25, 33, 49) violate Section 2, and the Fourteenth and Fifteenth Amendments to the U.S. Constitution; (b) permanently enjoining the challenged provisions of HB 589; (c) authorizing the appointment of federal observers, pursuant to Section 3(a) of the Voting Rights Act; (d) retaining jurisdiction and subjecting North Carolina to a preclearance requirement pursuant to Section 3(c) of the Voting Rights Act; and (e) granting other such relief that may be just and proper.

38. Pursuant to Section 3(a), the court authorizes the appointment of federal observers through January 31, 2019.

39. By subsequent order, the Court will set a status conference to address the procedures to be followed for considering Plaintiffs' request for relief under Section 3(c) of the Voting Rights Act.

Dated: February 24, 2016

Respectfully submitted,

Penda D. Hair
Edward A. Hailes, Jr.
Denise D. Lieberman
Donita Judge
Caitlin Swain
ADVANCEMENT PROJECT
Suite 850
1220 L Street, N.W.
Washington, DC 20005
Phone: (202) 728-9557
E-mail:
phair@advancementproject.com

Irving Joyner (N.C. State Bar # 7830)
P.O. Box 374
Cary, NC 27512
Phone: (919)319-353
E-mail: ijoyner@nccu.edu

By: /s/ Adam Stein
Adam Stein (N.C. State Bar # 4145)
Of Counsel
TIN FULTON WALKER & OWEN, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
Phone: (919) 240-7089
E-mail: astein@tinfulton.com

Daniel T. Donovan
Bridget K. O'Connor
Susan M. Davies
Michael A. Glick
K. Winn Allen
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
Phone: (202) 879-5000
E-mail: ddonovan@kirkland.com

*Attorneys for Plaintiffs in North Carolina State Conference of the NAACP, et al. v.
McCrory, et al.*

Gill P. Beck (State Bar # 13175)
Special Assistant United States
Attorney
OFFICE OF THE UNITED
STATES ATTORNEY
United States Courthouse
100 Otis Street
Asheville, NC 28801
Phone: (828) 259-0645
E-mail: gill.beck@usdoj.gov

By: /s/ David G. Cooper
T. Christian Herren, Jr.
John A. Russ IV
Timothy F. Mellett
Catherine Meza
David G. Cooper
Elizabeth M. Ryan
Jenigh J. Garrett
Avner Shapiro
Ernest A. McFarland
Attorneys, Voting Section
Civil Rights Division

U.S. DEPARTMENT OF JUSTICE
Room 7254-NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Phone: (800) 253-3931
E-mail: david.cooper@usdoj.gov

Attorneys for Plaintiffs in United States v. North Carolina, et al.

CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on February 24, 2016, I electronically filed the foregoing **Plaintiffs' Joint Proposed Findings of Fact and Conclusions of Law Regarding Photo ID Claims**, using the CM/ECF system in case numbers 1:13- cv-658, 1:13- cv-660, and 1:13-cv-861, which will send notification of such filing to all counsel of record.

/s/ David G. Cooper

DAVID G. COOPER
U.S. Department of Justice
Civil Rights Division - Voting Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Phone: (800) 253-3931
Email: david.cooper@usdoj.gov