

No. _____

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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

Plaintiffs-Petitioners,

v.

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

*Defendants-
Respondents.*

From Wake County
18-CVS-15292
No. COA 22-16

PETITION FOR DISCRETIONARY REVIEW PRIOR
TO DETERMINATION BY THE COURT OF APPEALS

INDEX

	<u>Page</u>
INTRODUCTION.....	1
STATEMENT OF PROCEDURAL HISTORY	3
STATEMENT OF FACTS	7
A. Voting in North Carolina Is Racially Polarized and History Shows that Election Laws Have Been Used to Target African American Voters	7
B. The Legislative History of S.B. 824 and Sequence of Events That Led to Its Enactment Support a Finding of Discriminatory Intent.....	9
C. S.B. 824 Bears More Heavily on African American Voters and The Design of the Law Does Not Show that the General Assembly Intended to Cure Racial Disparities Observed Under H.B. 589	12
D. The Specific Provisions of S.B. 824 Are Not Justified by Nonracial Motivations	13
REASONS WHY CERTIFICATION SHOULD ISSUE	14
I. S.B. 824’s Infringement of the Right to Vote Is a Matter of Significant Public Interest	15
II. The Constitutionality of S.B. 824 Is of Major Significance to the Jurisprudence of North Carolina.....	16
III. Absent Discretionary Review, Delay in Final Adjudication Will Cause Substantial Harm	17
ISSUE TO BE BRIEFED.....	19
CONCLUSION.....	20

TABLE OF CASES AND AUTHORITIES

	<u>Page(s)</u>
CASES	
<i>Blankenship v. Bartlett</i> , 363 N.C. 518 (2009).....	15
<i>Cooper v. Berger</i> , 370 N.C. 392 (2018).....	16
<i>Covington v. North Carolina</i> , 270 F. Supp. 3d 881 (M.D.N.C. 2017).....	8
<i>Harper v. Va. State Bd. of Elections</i> , 383 U.S. 663 (1966).....	15
<i>Harper v. Hall</i> , No. 413P21, 2021 N.C. LEXIS 1223 (2021)	16
<i>Holmes v. Moore</i> , 270 N.C. App. 7 (2020).....	5
<i>James v. Bartlett</i> , 359 N.C. 260 (2005).....	16
<i>League of Women Voters of North Carolina v. North Carolina</i> , 769 F.3d 224 (4th Cir. 2014).....	15
<i>North Carolina State Conference of the NAACP v. McCrory</i> , 831 F.3d 204 (4th Cir. 2016).....	8
<i>Pope v. Easley</i> , 354 N.C. 544 (2001).....	16
<i>Stephenson v. Bartlett</i> , 355 N.C. 354 (2002).....	16
CONSTITUTIONS, STATUTES, AND RULES	
N.C. Const. art. VI, §§ 2(4), 3(2)	16
N.C. Const. art. I, § 19	16
N.C. Gen. Stat. § 7A-31(b).....	1, 14, 15, 16

TABLE OF AUTHORITIES
(Continued)

	<u>Page(s)</u>
2018 N.C. Sess. Laws 144	11
N.C. R. App. P. 15.....	1, 6

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Pursuant to N.C. Gen. Stat. § 7A-31(b) and North Carolina Rule of Appellate Procedure 15(a), Petitioners Jabari Holmes, Fred Culp, Daniel E. Smith, Brendon Jaden Peay, and Paul Kearney, Sr. respectfully petition the Court to certify for discretionary review the judgment of the three-judge panel of the Superior Court filed on 17 September 2021, on the grounds that the subject matter of this case raises issues of significant public interest, the case involves legal principles of major significance to the law of the State, and the delay in final adjudication that is likely to result from failure to certify will cause substantial harm to Petitioners and other eligible voters across North Carolina, election officials, and legislators. Petitioners respectfully request that the Court certify the appeal for review prior to a determination by the Court of Appeals.

INTRODUCTION

After a three-week trial, a majority of the three-judge court below concluded that the photo ID requirements of Senate Bill 824 (“S.B. 824”) violate the Equal Protection Clause in Article I, Section 19 of the North Carolina Constitution because they were enacted with the intent to discriminate against African American voters. The trial court’s judgment permanently enjoining S.B. 824’s implementation is supported by extensive findings of fact and carefully explained in the panel majority’s thorough opinion.

Respondents (the “Legislative Defendants” and “State Defendants”) have appealed. But, because the subject matter of this case is of significant public interest and the legal principles at issue are of major significance, any ruling by the Court of Appeals will ultimately and inevitably result in subsequent appellate review before this Court. Delaying this Court’s review will therefore only further delay a final adjudication of S.B. 824’s legality. And until the question of S.B. 824’s constitutionality has been settled, voters, election officials, and legislators will be deprived of certainty over the status of voter ID requirements in North Carolina.

That ongoing uncertainty carries real consequences. All parties to this litigation agree that the North Carolina Constitution presently requires *some* form of voter ID law. If this Court affirms the trial court’s ruling, the General Assembly will need to begin the work of designing a new law to replace S.B. 824’s unconstitutional provisions. There is no reason to delay that process. Voters in this State need to know when they must show ID to vote in upcoming elections, which forms of ID will be accepted, and what kind of exceptions will apply to that requirement. Election officials need to educate voters and poll workers, and undertake any necessary updates to the State’s election apparatus. All of this work must be completed sufficiently in advance of the elections to avoid voter confusion, poll worker confusion, and the real risk of voter

disenfranchisement. And none of that work can begin until the legislature enacts a voter ID law that respects the constitutional rights of all North Carolina voters, or this Court concludes that S.B. 824 may be enforced.

The possibility of inconsistent rulings by the Court of Appeals and this Court presents its own concerns. A reversal of the trial court's judgment by the Court of Appeals raises the troubling prospect that an election could be conducted under S.B. 824's requirements before the law's legality can be conclusively determined by this Court. Should this Court later reaffirm that S.B. 824 is unconstitutional, African American voters across the State would have been deprived of their fundamental right to participate in the electoral process on equal footing with white voters.

Because S.B. 824's constitutionality is a matter of public interest, because this case involves legal principles of major significance, and because delay in final resolution of this case risks causing substantial harm to voters, election officials, and legislators alike, Petitioners respectfully request that the Court exercise discretionary review prior to a determination by the Court of Appeals.

STATEMENT OF PROCEDURAL HISTORY

The General Assembly enacted S.B. 824 over the veto of Governor Cooper on 19 December 2018. Petitioners immediately challenged the law, alleging that S.B. 824 violated the Equal Protection Clause in Article I, Section 19 of the North Carolina Constitution, because it was enacted with the intent to discriminate against voters of color, including African American voters, and

because it severely burdens the right to vote without adequate justification. The same day, Petitioners also filed a motion for preliminary injunction seeking to prevent the implementation of S.B. 824.

Legislative Defendants and State Defendants moved to dismiss on 22 January 2019, and 21 February 2019, respectively. On 12 March 2019, Vince M. Rozier, Jr., Presiding Superior Court Judge in Wake County, denied Legislative Defendants' motion to dismiss pursuant to Rule 12(b)(1). The Chief Justice of the Supreme Court of North Carolina then transferred the case to a three-judge panel made up of the Honorable Nathaniel J. Poovey, the Honorable Vince M. Rozier, Jr., and the Honorable Michael J. O'Foghludha, to consider Respondents' remaining challenges and Petitioners' request for injunctive relief.

On 19 July 2019, the three-judge panel granted in part the motions to dismiss and denied the motion for a preliminary injunction. The trial court unanimously held that Petitioners had "made sufficient factual allegations to support" their intentional discrimination claim, but dismissed Petitioners' remaining constitutional challenges to S.B. 824. (R p 363-364). A two-judge majority denied Petitioners' request for a preliminary injunction with little explanation. (R p 364-365). Judge O'Foghludha dissented, explaining that a preliminary injunction was warranted because Petitioners were likely to succeed on the merits of their intentional discrimination claim. (R p 366-368).

Petitioners appealed the denial of their motion for a preliminary injunction. This Court declined to exercise discretionary review prior to determination by the Court of Appeals. Thereafter, on 18 February 2020, the Court of Appeals issued a unanimous decision reversing the trial court, holding that Petitioners had shown a clear likelihood of success on the merits of their discriminatory intent claim, and directing the trial court to enter a preliminary injunction barring the implementation of S.B. 824 until its constitutionality could be determined on the merits. *See Holmes v. Moore*, 270 N.C. App. 7 (2020). On 24 March 2020, the Court of Appeals denied the Legislative Defendants' motion for rehearing en banc and remanded the matter back to the trial court. Order, *Holmes v. Moore*, No. 19-762 (N.C. App. 2020).

On 10 August 2020, the three-judge panel entered an order in accordance with the decision of the Court of Appeals, preliminarily enjoining S.B. 824. Order, *Holmes v. Moore*, No. 18 CVS 15292 (N.C. Super. 2020). The case then proceeded to trial, which was conducted virtually via WebEx in the Wake County Superior Court, over a period of three weeks in April of 2021. On 17 September 2021, the three-judge panel entered its final judgment in this matter in favor of Petitioners and permanently enjoined S.B. 824 on the grounds that it violates the Equal Protection Clause in Article I, Section 19 of the North Carolina Constitution. (R p 896-1001).

As the majority of the three-judge panel explained in its lengthy and detailed opinion, “the evidence at trial [was] sufficient to show that the enactment of S.B. 824 was motivated at least in part by an unconstitutional intent to target African American voters,” even if no member of the General Assembly “harbor[ed] any racial animus or hatred towards African American voters.” (R p 1000). As with North Carolina’s prior voter ID law, House Bill 589 (“H.B. 589”), the evidence showed that “the Republican majority targeted voters who, based on race, were unlikely to vote for the majority party,” when enacting S.B. 824. (R p 1000) (quotation marks and brackets omitted). “Even if done for partisan ends, . . . [that action] constitutes racial discrimination” in violation of the North Carolina Constitution. (R p 1000) (quotation marks and brackets omitted). Moreover, the panel majority found that Respondents “failed to prove, based on the evidence at trial, that S.B. 824 would have been enacted in its present form if it did not tend to discriminate against African American voters.” (R p 1000). Judge Poovey filed his own lengthy and detailed dissenting opinion comprehensively explaining why, in his view, S.B. 824 was not enacted with discriminatory intent.

Respondents timely filed notices of appeal, and filed the record on appeal on 7 January 2022. The Court of Appeals docketed Respondents’ appeal on 7 January 2022. This petition for discretionary review is thus timely filed pursuant to North Carolina Rule of Appellate Procedure 15(b).

STATEMENT OF FACTS

The panel majority made the following findings of fact based on the evidence presented at trial, all of which support the trial court's ruling that S.B. 824 unconstitutionally targets African American voters.

A. Voting in North Carolina Is Racially Polarized and History Shows that Election Laws Have Been Used to Target African American Voters

“[V]oting in North Carolina, both historically and currently, is racially polarized,” and that polarization “offers a political payoff for legislators . . . to dilute or limit the minority vote.” (R p 906) (quotation marks omitted). North Carolina also has a “long history of race discrimination generally and race-based voter suppression in particular.” (R p 905) (quotation marks and citation omitted). “When minority citizens have gained political power in North Carolina, the party in power has moved to constrain that political participation, particularly when those minority voters, because of the way they vote, posed a challenge to the governing party at the time.” (R p 905). “Frequently throughout this history, laws limiting African American political participation have been facially race neutral but have nevertheless had profoundly discriminatory effects.” (R p 906).

In recent years, white voters have favored the Republican Party by a wide margin, while the majority of African American voters have favored the Democratic Party. (R p 909). African American turnout and registration have increased, and African American electoral participation has posed a threat to

Republican electoral prospects, making “access to the ballot box a critical issue.” (R p 909-910). During this same period, “the state Republican party continued to attempt to suppress Black voter turnout.” (R p 909).

Recent history shows that the Republican legislative majority has used election laws to target African American voters. In 2013, the legislature enacted H.B. 589, which included a voter ID requirement. In crafting the bill, “staff for Republican legislators of the General Assembly sought data on voter turnout during the 2008 election, broken down by race.” (R p 912). And the bill ultimately included approved forms of photo ID that African American voters disproportionately lacked, as well as other provisions that bore more heavily on African American voters. (R p 912-913). In 2016, the U.S. Court of Appeals for the Fourth Circuit concluded, based on the evidence presented during trial, that H.B. 589 had been enacted with the unconstitutional discriminatory intent to target African American voters because they were unlikely to vote for the Republican legislative majority. (R p 913-915) (citing *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016)). During roughly the same period, the legislature also committed “among the largest racial gerrymanders ever encountered by a federal court.” (R p 913-915) (quoting *Covington v. North Carolina*, 270 F. Supp. 3d 881, 884 (M.D.N.C. 2017)).

In short, “race is still a dominant consideration for the North Carolina General Assembly, particularly when it converges with politics.” (R p 916).

And, according to Legislative Defendants' own expert witness, "it would be rational to expect a political party to pursue policies that would entrench its own control by targeting African American voters if those voters vote reliably for the opposition party." (R p 917).

B. The Legislative History of S.B. 824 and Sequence of Events That Led to Its Enactment Support a Finding of Discriminatory Intent

Following the conclusion of litigation over H.B. 589, Republican legislative leadership vowed to "continue fighting to . . . implement[] the commonsense requirement to show a photo ID" for voting, but the legislature took no immediate action to enact a replacement voter ID law. (R p 917). One year later, after the Supreme Court's final decision in *Covington* confirmed that North Carolina's racially gerrymandered legislative districts would need to be redrawn, the Republican leadership placed on the ballot for the upcoming 2018 general election a proposed constitutional amendment requiring photo ID for voting ("H.B. 1092"). (R p 917-918). Eliminating the racially gerrymandered districts was likely to harm Republican electoral prospects and "[p]assing H.B. 1092 in the immediate aftermath of the *Covington* decision show[ed] an effort and intent by the legislature to alter the State's Constitution [in order to allow] their racially gerrymandered supermajority to implement their legislative goals." (R p 918).

The process that led to the ratification of H.B. 1092 was unusual and deviated from normal procedure in other ways, as well. (R p 918). Among other things, the bill was enacted much more quickly than other bills proposing

constitutional amendments and was not accompanied by the implementing legislation that would have been required if the amendment was adopted by the voters. (R p 919-920). Concurrent release of implementing legislation helps educate voters on the significance and impact of a proposed constitutional amendment. Because none was provided, voters considering the constitutional voter ID amendment did not know what kind of identification would be acceptable for voting if the amendment passed, suggesting an effort by the legislature to avoid voter scrutiny. (R p 920-922).

During the November 2018 election, North Carolina's voters approved the constitutional amendment requiring voter ID, but also elected enough Democrats to the General Assembly to break the Republican supermajority. (R p 922-923). Rather than wait for the duly elected General Assembly to be seated, however, the Republican supermajority enacted S.B. 824 over Governor Cooper's veto "during an unprecedented November 2018 Lame Duck Regular Session, which violated the norms and procedures of the North Carolina General Assembly in several ways." (R p 923). As the trial court found, "[t]here was no need for the General Assembly to reconvene in the post-election lame duck to enact S.B. 824," and legislation enacting other constitutional amendments approved by the voters during the November 2018 election was not passed until 2019, after the new legislature had been seated. (R p 925). The actions of the Republican supermajority during the lame duck session are "consistent with the hypothesis that the Republican supermajority did not want to

pass a ‘watered down’ voter ID law” in the next legislative session “that would have been more flexible and included more forms of qualifying ID.” (R p 925).

Other aspects of S.B. 824’s legislative history confirm that it was designed to entrench Republican political power by targeting African American voters. The bill was enacted through an “extremely rushed” process (R p 928) that did not allow adequate time for consideration of “concerns raised by legislators that S.B. 824 would disproportionately burden and disenfranchise African American voters, just as H.B. 589 had done” (R p 930). Even though the legislature was “on notice” that African American voters were likely to disproportionately lack certain forms of ID as compared to white voters (R p 930), the General Assembly “moved hastily to pass S.B. 824 without first obtaining updated demographic information regarding the number and demographic composition of voters who still lacked” certain forms of ID, and conducted no analysis of “what impact S.B. 824 would have on African American voters or other voters of color.” (R p 933). The Republican supermajority also rejected proposed amendments “that would reasonably have been expected or understood to decrease the disparate impact of S.B. 824 on African American voters,” including an amendment to add public assistance IDs to the list of qualifying IDs acceptable for voting. (R p 936-938). The trial court found the legislature’s decision to reject the public assistance amendment “particularly telling, in light of the [federal] court’s finding during the H.B. 589 litigation that the de-

cision to remove public assistance IDs was particularly suspect because legislators could have reasonably surmised that those forms of ID would be held disproportionately by African American voters.” (R p 938).

Governor Cooper vetoed S.B. 824 on the grounds that it was designed to suppress the rights of minority, poor, and elderly voters. The Republican supermajority then voted to override Governor Cooper’s veto. (R p 935). No Republican legislator voted against S.B. 824 and, setting aside the changes in party membership due to retirements and deaths, Republican legislators who voted in favor of H.B. 589 also voted in favor of S.B. 824. (R p 935-936).

C. S.B. 824 Bears More Heavily on African American Voters and the Design of the Law Does Not Show That the General Assembly Intended to Cure Racial Disparities Observed under H.B. 589

Although S.B. 824 included more forms of ID acceptable for voting than H.B. 589 did, the trial court concluded there was no evidence that the legislature believed those changes “would have any impact on the racial disparities in ID possession rates that had been documented during the H.B. 589 litigation.” (R p 940). And methodologically sound expert analysis and testimony confirms that African American voters in North Carolina are 39% more likely to lack a form of qualifying ID under S.B. 824 than white voters, with active African American voters more than twice as likely as active white voters to lack a qualifying form of ID. (R p 948-949). The new forms of qualifying ID added to S.B. 824 that were not included under H.B. 589 covered only a “miniscule” number of voters who did not already possess a qualifying ID and

were unlikely to alleviate the racial disparities observed under H.B. 589. (R p 950). Legislative Defendants’ attempt to rebut this expert analysis and testimony with their own expert critique was “unconvincing and not credible.” (R p 954).

“Because African American voters are more likely than white voters to lack a form of qualifying ID under S.B. 824, it follows that they are also more likely to have to take steps to obtain a qualifying ID if they wish to vote in person using a regular, non-provisional ballot.” (R p 955). As the trial court found, however, “[a]vailable data shows that the burdens of obtaining a qualifying ID are also likely to fall more heavily on African American voters than on white voters.” (R p 955). For example, African Americans in North Carolina are more likely than whites to live in poverty, lack access to private transportation, or be employed in a job that does not allow time off during the normal business hours when government offices that issue IDs are open. (R p 955-957). And data from the March 2016 primary, when H.B. 589 was in effect, show that voters who cast provisional ballots using a “reasonable impediment” process similar to the one included in S.B. 824, and whose votes were *not counted*, were “much more likely to be Black than the electorate as a whole.” (R p 960-961).

D. The Specific Provisions of S.B. 824 Are Not Justified by Nonracial Motivations

The majority of the three-judge panel concluded that the passage of S.B. 824 could not be explained by Respondents’ proffered nonracial motivations.

The law, as enacted, was not necessary to implement the constitutional amendment requiring voter ID and was not sufficiently tailored to deter voter fraud. (R p 968-971). In fact, there was “insufficient evidence to conclude that the desire to combat voter fraud was an actual motivation for the legislature in passing S.B. 824” and there was “no evidence that voter identification laws actually bolster overall confidence in elections or that they make people less concerned about voter fraud.” (R p 970-971). To the contrary, “a voter ID law that intentionally targets one group of voters in a discriminatory manner,” like S.B. 824, “would reduce, rather than enhance, public confidence in election integrity,” and “Black community leaders have expressed concerns” that S.B. 824 will “decreas[e] voter confidence in the electoral system in North Carolina.” (R p 968-971).

REASONS WHY CERTIFICATION SHOULD ISSUE

Based upon the findings of fact and credibility determinations discussed above, the panel majority held on 17 September 2021 that S.B. 824 unconstitutionally targeted African American voters in violation of the State Constitution and permanently enjoined the law. This Court should grant the petition for discretionary review and consider the trial court’s decision without delay. S.B. 824’s constitutionality is undoubtedly a matter of public interest, and this case involves legal principles of major significance for the law of North Carolina. Until the legality of S.B. 824 is finally determined by this Court, the ongoing uncertainty over its status will cause substantial harm to voters, election officials, and legislators.

The depth of analysis offered in the trial court’s majority and dissenting opinions is all the more reason for this Court to review this case now. The facts and the law have been fully developed and carefully analyzed. Additional review in the Court of Appeals will result only in further—and detrimental—delay. For all of these reasons, discretionary review, now, is warranted.

I. S.B. 824’s Infringement of the Right to Vote Is a Matter of Significant Public Interest

The Court may grant discretionary review in cases where, as here, “[t]he subject matter of the appeal has significant public interest.” N.C. Gen. Stat. § 7A-31(b)(1). It goes without saying, but nevertheless bears repeating: the right to vote on equal terms and free from intentional discrimination is “precious” and “fundamental” under our democratic system of government. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966); *see also Blankenship v. Bartlett*, 363 N.C. 518, 522 (2009) (describing the right to vote as “a fundamental right”). S.B. 824 threatens that right of Petitioners and other North Carolina voters. Indeed, a majority of the three-judge court below held that Petitioners proved that S.B. 824’s voting requirements were enacted with the intent to discriminate against voters of color.

There is no question that Petitioners’ constitutional challenge to S.B. 824 is of significant public interest. And, because the “public interest . . . favors permitting as many qualified voters to vote as possible,” and because “uphold-

ing constitutional rights serves the public interest,” discretionary review is appropriate. *See League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 247-248 (4th Cir. 2014) (quotation marks and citations omitted).

II. The Constitutionality of S.B. 824 Is of Major Significance to the Jurisprudence of North Carolina

This Court may also grant discretionary review in cases where “[t]he cause involves legal principles of major significance to the jurisprudence of the State.” N.C. Gen. Stat. § 7A-31(b)(2). This condition, too, is self-evidently met in this case.

This Court has previously certified cases for discretionary review prior to a determination by the Court of Appeals where, as here, the matters involved the validity and constitutionality of the State’s election laws. *See, e.g., Harper v. Hall*, No. 413P21, 2021 N.C. LEXIS 1223 (2021) (involving constitutionality of state House, state Senate and Congressional redistricting plans); *James v. Bartlett*, 359 N.C. 260 (2005) (involving question of out-of-precinct provisional ballots); *Stephenson v. Bartlett*, 355 N.C. 354 (2002) (involving constitutionality of state legislative redistricting plan). The Court has also repeatedly recognized the significance of cases involving constitutional challenges to legislation enacted by the General Assembly, regularly certifying such cases for discretionary review before a Court of Appeals’ determination. *See, e.g., Cooper v. Berger*, 370 N.C. 392 (2018) (challenging the constitutionality of a law consolidating functions of elections, campaign finance, lobbying, and ethics under the newly created State Board of Elections and Ethics Enforcement);

Pope v. Easley, 354 N.C. 544 (2001) (involving constitutionality of newly enacted statute expanding the size of the Court of Appeals).

The legal principles presented here are at least as significant to the jurisprudence of North Carolina as the questions in those cases. As all parties here recognize, the North Carolina Constitution now requires voters “offering to vote in person” to “present photographic identification before voting,” and it is the General Assembly’s duty to enact voter ID laws to implement that requirement. N.C. Const. art. VI, §§ 2(4), 3(2). Yet, the North Carolina Constitution also makes unmistakably clear that “[n]o person” shall be “subjected to discrimination by the State because of race, color, religion, or national origin.” N.C. Const. art. I, § 19. Whether S.B. 824 violates the Equal Protection Clause, as a majority of the three-judge panel found, or whether it fairly implements the constitutional voter ID amendment, as the dissent concluded, is thus a question of major constitutional significance. For this reason, too, this Court should grant the petition for discretionary review.

III. Absent Discretionary Review, Delay in Final Adjudication Will Cause Substantial Harm

The Court may also grant review where, as here, “[d]elay in final adjudication is likely to result from failure to certify and thereby cause substantial harm.” N.C. Gen. Stat. § 7A-31(b)(3).

Until the question of S.B. 824’s constitutionality is finally resolved, a significant component of the State’s election laws will remain in limbo. An

order from this Court affirming the trial court's judgment will allow the legislature to begin the work of crafting and enacting a new voter ID law that implements the constitutional ID requirement without infringing the constitutional rights of North Carolina voters. An order from this Court reversing the trial court's judgment would allow election officials to begin implementing S.B. 824's requirements and educating voters, a process that will take substantial time and effort and which must be completed sufficiently in advance of upcoming elections to minimize the risk of voter confusion and disenfranchisement. Either way, the pivotal next step for the State, its legislators, its voters, and its election officials is to bring this litigation to its conclusion. Further delay in doing so, and the attendant uncertainty over the status of voter ID requirements in North Carolina, will cause substantial harm.

It has now been more than three years since S.B. 824 was enacted. Intermediate consideration by the Court of Appeals will only delay a final determination of the legality of S.B. 824, increasing the likelihood that the status of voter ID will remain uncertain and unresolved for multiple election cycles. In addition to extending the legal uncertainty over voter ID requirements, intermediate review by the Court of Appeals presents other practical risks. If the Court of Appeals reinstates S.B. 824 but its mandate is not stayed pending review by this Court, election officials will have no choice but to immediately begin implementing the law's requirements and educating voters. Should this

Court then reach a different conclusion, those efforts would be wasted *and* additional time and resources would need to be dedicated to reversing those efforts and correcting misimpressions amongst election administrators and voters regarding the requirements for voting. Moreover, if an election is conducted under S.B. 824's requirements and this Court later reaffirms that S.B. 824 is unconstitutional, African American voters in this State will have been deprived of their right to participate in the electoral process on equal footing with white voters.

The legislature's inability thus far to craft a voter ID law that does not intentionally discriminate against African American voters has resulted in nearly ten years of confusing, on-again-off-again messaging to voters and election officials alike, as first H.B. 589 and now S.B. 824 have wound their way through the courts. The potential for another round of conflicted messaging will only deepen that confusion, raising the risk of disenfranchisement. North Carolina's voters and election officials deserve the certainty that only immediate review by this Court can provide.

ISSUE TO BE BRIEFED

Petitioners respectfully request that the Court exercise discretionary review over each of the proposed issues on appeal set forth in the Record on Appeal filed in the Court of Appeals. These include whether S.B. 824 violates Article I, Section 19 of the North Carolina Constitution.

CONCLUSION

For the foregoing reasons, this Court should grant the petition and certify Respondents' appeal for discretionary review prior to a determination by the Court of Appeals.

Respectfully submitted this the 14th day of January, 2022.

SOUTHERN COALITION FOR
SOCIAL JUSTICE

/s/ Jeffrey Loperfido
Jeffrey Loperfido
State Bar No. 52939
jeff@southerncoalition.org

N.C.R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

Allison J. Riggs
State Bar No. 40028
allison@southerncoalition.org
1415 W. Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3909
Facsimile: 919-323-3942

PAUL, WEISS, RIFKIND, WHAR-
TON & GARRISON LLP

Andrew J. Ehrlich
(*pro hac vice forthcoming*)
aehrlich@paulweiss.com

Jane B. O'Brien
(*pro hac vice forthcoming*)
jobrien@paulweiss.com

Paul D. Brachman
(*pro hac vice forthcoming*)
pbrachman@paulweiss.com

1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: 212-373-3000
Facsimile: 212-757-3990

Counsel for Plaintiffs-Petitioners

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Petition for Discretionary Review Prior to Determination by the Court of Appeals was served upon all parties by electronic mail addressed to the following:

Nicole J. Moss
David Thompson
Peter Patterson
Haley N. Proctor
Joseph Masterson
John Tienken
Nicholas Varone
COOPER & KIRK, PLLC
1523 New Hampshire Ave., N.W.
Washington, DC 20036
nmoss@cooperkirk.com
dthompson@cooperkirk.com
ppatterson@cooperkirk.com
hproctor@cooperkirk.com
jmasterman@cooperkirk.com
jtienken@cooperkirk.com
nvarone@cooperkirk.com

Nathan A. Huff
PHELPS DUNBAR LLP
4140 ParkLake Avenue, Suite 100
Raleigh, NC 27612
nathan.huff@phelps.com

*Counsel for Legislative Defendants-
Respondents*

Terence Steed
Assistant Attorney General
Laura H. McHenry
Special Deputy Attorney General
Mary Carla Babb
Special Deputy Attorney General

NC DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
lmchenry@ncdoj.gov
mcbabb@ncdoj.gov

*Counsel for the State Defendants-
Respondents*

Respectfully submitted this the 14th day of January, 2022.

/s/ Jeffrey Loperfido
Jeffrey Loperfido
Southern Coalition for Social Justice