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**VIA ELECTRONIC MAIL**

January 16, 2024

North Carolina State Board of Elections  
430 N. Salisbury St.  
Raleigh, NC 27603

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Jeff Carmon, Secretary  
Stacy Eggers IV, Member  
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Mr. Paul Cox, General Counsel  
Email: [karen.bell@ncsbe.gov](mailto:karen.bell@ncsbe.gov)  
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**Re: Comment on Proposed Permanent Rules on Voter Photo Identification**

Dear Members of the State Board of Elections, Director Bell, and General Counsel Cox,

Southern Coalition for Social Justice, Democracy North Carolina, and Common Cause North Carolina submits this letter in response to the call for public comment on proposed permanent rules 08 NCAC 17.0101 and 08 NCAC 17.0109 concerning the implementation of voter photo ID.

This submission draws upon the experiences of voters and our partners in the field who monitored the implementation of voter photo ID this past election. As described below, across the state, County Boards of Elections took wildly varied approaches to implementing voter photo ID that flagrantly disregarded state law, State

Board guidance, and the assurances of legal counsel who defended Senate Bill 824 since its passage in November 2018. This was especially true for voters without a photo ID using an ID Exception Form under the law’s reasonable impediment process.

The 2023 Municipal Elections underscored the inadequacy of the State Board’s adopted temporary rules to safeguard voters’ rights. These experiences represent a serious risk to the fundamental right to vote and compel a significant change in how the State Board administers this law. New permanent rules *must* provide further clarity and directives for election officials, including County Boards of Elections, for when they review and consider for approval ID Exception Forms.

## **I. Overview of Current Law When Voting Without Photo ID.**

North Carolina law provides that if a registered voter “suffers from a reasonable impediment that prevents [them] from presenting photograph identification,” the voter can vote a provisional ballot and complete an affidavit (the ID Exception Form) under penalty of perjury affirming that the voter: “(i) is the same individual who personally appears at the voting place; (ii) will cast the provisional ballot while voting in person; and (iii) suffers from a reasonable impediment that prevents the registered voter from presenting photograph identification.” N.C.G.S. § 163-166.16(d)(2).

After the voter has completed the Form and assuming the voter is otherwise eligible to vote, “the county board of elections shall find that the provisional ballot is valid unless the county board has grounds to believe the affidavit is false.” N.C.G.S. § 163-166.16(f). The sole question for a County Board is whether the reasons provided in the ID Exception Form are true or false, not whether they are reasonable or legitimate. *See* Numbered Memo 2023-03 at 12-13, <https://bit.ly/48K8v9P> (“...it is not the county board’s role to second-guess the reasonableness of a voter’s asserted impediment to showing photo ID.”); Numbered Memo 2023-04 at 11-12, <https://bit.ly/47sG52l> (“The county board’s decision that a Form is false must be based on facts, not speculation or personal opinion.”). This means that the voter’s Form must not be deemed false “unless the county board has information proving that the voter did, in fact, know they needed to show ID.” Numbered Memo 2023-03 at 13.

Under the temporary rules, all five County Board members must agree that the ID Exception Form is false for the provisional ballot not to be counted. 08 NCAC 17.0101(e)(1), <https://bit.ly/3SfKx50>; 08 NCAC 17.0109(c)(2), <https://bit.ly/3vvBj6Z>. County Board staff “should not conduct independent research into the truthfulness of the Form” since the General Statutes do not authorize such research and it would make equal treatment of voters “nearly impossible.” Numbered Memo 2023-04 at 11-12.

If the County Board initially determines that an ID Exception Form is false, “the voter must be given notice and an opportunity to be heard on any grounds that the county board is considering regarding the falsity of the Form.” *Id.* at 11; 08 NCAC 17.0101(e)(1). Voters must be contacted by U.S. mail and by email or phone after the Board unanimously makes a preliminary finding of falsity. Before county canvass in an open meeting, the Board must vote to approve the ID Exception Form or reject it based upon

a final finding of falsity. If the voter is present, they must be provided “the opportunity to be heard and present any information relevant to the Form[.]” Numbered Memo 2023-04 at 11. At this stage, a decision that an ID Exception Form is false must be unanimous and “must be based on facts, not speculation or personal opinion.” *Id.* at 12.

Voters without photo ID also have the option to vote with a provisional ballot and then return to their County Board’s office with their photo ID by the day before county canvass. N.C.G.S. § 163-166.16(c); 08 NCAC 17 .0101(e)(2); *see* Numbered Memo 2023-04 at 12-13. If the voter returns to the Board’s office with photo ID, Board staff will review it to determine if it is valid under state law requirements. N.C.G.S. § 163-166.16(a); 08 NCAC 17 .0101(e)(2). If the photo ID is unacceptable, the Board staff must “immediately [provide] the reason for their recommendation of disapproval and when their provisional ballot will be reviewed and considered by the county board.” 08 NCAC 17 .0101(e)(2)(c); Numbered Memo 2023-04 at 12. If the voter appears at the meeting, they may address the Board about whether their photo ID is acceptable.

## **II. Voter Experiences with Voter Photo ID in the 2023 Municipal Elections.**

During the 2023 Municipal Elections, 305 voters cast provisional ballots using an ID Exception Form, asserting under penalty of perjury that they had a reasonable impediment to presenting photo ID.<sup>1</sup> Of those who voted in person and used an ID Exception Form, 49 voters had their Forms rejected, and correspondingly, their ballots rejected (16% of all ID Exception Forms). An additional 268 voters cast provisional ballots without using an ID Exception Form, instead required to return to the County Board’s office with an acceptable ID—but of these voters, a majority (175) did not return and so their ballots were not counted.

Reports indicate that County Boards implemented voter photo ID inconsistently when voters presented without photo ID or with unacceptable photo ID, leading to confusion and frustration.<sup>2</sup> In some cases, voters’ ID Exception Forms were wrongfully rejected—and their ballots were wrongfully discounted—based on Board members’ personal opinions. In others, voters never received notice to return to the County Board to present photo ID after leaving the polling place.

By way of example, after the October and November elections, the Guilford County Board of Elections voted 3-2 to hold hearings on the alleged falsity of multiple ID Exception Forms. Rather than deciding to hold these hearings based on specific and concrete information, Board members relied on speculation and personal opinion about the reasonableness of the voters’ explanations. For instance, two voters marked “lack of transportation” as their reason for not presenting a photo ID. In response, a Board

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<sup>1</sup> The ID Exception Form provides a voter with several different impediments or reasons as to why they cannot present photo ID at the time of voting, such as “lack of transportation,” “work schedule,” “family responsibilities,” and “lost or stolen identification.” N.C.G.S. § 163-166.16(e); In-person Photo ID Exception Form (Draft), available at: <https://bit.ly/3vzi7W1>.

<sup>2</sup> Bonner, L., “Voting rights groups find new photo ID law caused trouble for voters and county officials,” NC Newsline (Dec. 7, 2023), <https://bit.ly/48RX7YN>.

member asserted that their forms were likely false because the voters were able to travel to the voting place. For voters who indicated their photo IDs were “lost or stolen,” Board Member Kathryn Lindley argued to reject these Forms, suggesting they *could* have obtained a photo ID. Advocates contacted the Election Director and the Board, raising the illegality and impropriety of these hearings; however, the Board proceeded forward despite the Director’s concerns about the temporary rules lacking clarity on this issue.

To make matters worse, the Board’s hearing notices to voters were accusatory, intimidating, and unclear. To the voters who marked “lost or stolen,” the notice asserted “the grounds for falsity” as “the fact that you had a Photo ID but failed to present it, and it was not otherwise lost, stolen, or misplaced, and for such other and further grounds as may be shown at a hearing . . . .” Ex. 1 at 2, 5 (emphasis in original). To the voters who marked “lack of transportation,” the notice asserted “the grounds for falsity” as “you were able to obtain transportation and were well enough to vote, but did not utilize the same resources to obtain and present Photo ID . . . .” Ex. 1 at 3-4 (emphasis in original). Although the notices briefly mentioned “the opportunity to be heard,” they failed to explain the process, the falsity standard, or the Board’s concrete grounds for deeming the Forms false. *Id.* Indeed, these notices do not clarify whether the Board had already deemed the Forms false or whether the voter must appear at the hearing.

Because the Board members did not unanimously agree at hearing on the Forms’ falsity, these voters’ ballots were ultimately counted. But the hearings never should have occurred in the first place and contacting voters in such an aggressive and confusing manner could have a lasting impact on a voter and discourage future participation.

The Mecklenburg County Board of Elections went even further, rejecting thirty (30) ID Exception Forms after the November Municipal Election for “lacking sufficient reasonable impediment,” but without specifying any grounds for deeming them false. The rejected ID Exception Forms included statements such as: “didn't have ID physically on me;” “left ID at home;” “left at home; won't be able to come back;” “unable to retrieve before election ends;” and “waiting for appointment with dmV.” To our knowledge, there was no written decision prepared substantiating the Board’s determination, as administrative law requires. This action left the voters in question and the public at large completely unaware of whether the Board members believed the Forms were false or instead believed the reasons listed did not constitute reasonable impediments (or would not be allowed as “Other” reasonable impediments).

The Brunswick County Board of Elections also rejected several ID Exception forms “as nonreasonable exception[s].” These rejections, like in Guilford and Mecklenburg, explicitly violate the State Board’s instructions not to “second-guess the *reasonableness* of a voter’s asserted impediment to showing photo ID” and that, instead, County Boards should only consider “the *truth or falsity* of the statements made on the Form.” Numbered Memo 2023-03, at 12.

In other counties, confusion and misinformation about voter photo ID abounded. Some counties required voters to use an ID Exception Form and return to the County Board’s office with an acceptable photo ID, which is not legally required and is

especially problematic considering that a substantial number of voters ultimately did not return with a photo ID. In Montgomery and Durham counties, poll workers inconsistently inform voters of the option to vote with an ID Exception Form.

### III. The State Board Must Meaningfully Address Voter Photo ID Implementation Issues in the Permanent Rules.

The issues and inconsistencies with voter photo ID implementation described above deviate from how the law is written and how its staunchest defenders, including legislators, the State Board, and their counsel, insisted the law was intended to work. Absent a remedy, these issues will harm voters by discouraging them from using the ID Exception Form and by violating their due process rights.

#### a. Inconsistency with the General Statutes and Prior Representations from the Legislature and State Board

First, the law mandates counting a voter’s provisional ballot unless the County Board “has grounds to believe the affidavit is false.” N.C.G.S. § 163-166.16(f). This provision requires the Board to have *grounds* to make that determination—not mere suspicions or speculation. If County Boards examine the sufficiency of the reason rather than its truth or falsity, whether a voter’s ballot is ultimately counted would depend on where they live, the particular members on their Board, and what those Board members believe is reasonable, instead of a consistent standard applied across all of North Carolina’s 100 counties.

What happened in Guilford County is a perfect example of these risks. There, Board members believed that an ID Exception Form could be questioned if there was any hypothetical scenario where the voter could have obtained a photo ID before voting despite the voter’s listed reasonable impediment. But such an interpretation would swallow this failsafe whole, as every reasonable impediment listed in S.B. 824 could be questioned using the same faulty logic. For example, if someone states that they lost their ID, a Board member could speculate that the person still could have replaced their ID before voting. If a voter claims their work schedule or family responsibility prevented them from obtaining photo ID, a Board member might insist that the voter still should have prioritized their time to obtain a photo ID before voting. If Boards were permitted to question and reject ID Exception Forms on such shaky grounds, no voter could ever confidently assert a reasonable impediment.

Representations and arguments by the law’s defenders during the state court challenge to S.B. 824 underscore how issues like those described above are inconsistent with the text and spirit of the law. Lawyers for the Legislature repeatedly emphasized that “[t]he law allows all registered voters, whether they have a photo ID or not, to vote.”<sup>3</sup> The State Board argued that state law on the ID Exception Form “**waives the**

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<sup>3</sup> Opening Statement by David Thompson, Cooper & Kirk LLC, counsel for Timothy K. Moore, Philip E. Berger, David R. Lewis, and Ralph E. Hise [hereinafter the “Legislature”], at 51:13-15 (Apr. 12, 2021), excerpted at Ex. 2 (emphasis added).

**photo-ID requirement entirely.**<sup>4</sup> Elaborating further on the ID Exception Forms, these attorneys represented in legal filings or open court that:

- “[T]he legislature did not allow local officials to second-guess the validity of these reasonable impediment forms. . . . As long as the person filling out the reasonable impediment provision doesn’t lie, the ballot counts.”<sup>5</sup>
- “And as Director Bell testified, **this falsity provision is written in such a way that it’s difficult to even conceive of scenarios where falsity could be invoked to reject a voter’s ballot.**”<sup>6</sup>
- “Numerous grounds are recognized as reasonable impediments, and voters may identify any ‘other’ they might have. **The State Board properly has interpreted ‘other’ expansively and has identified *nothing* that would not count.**”<sup>7</sup>

These statements make clear that the falsity hearing standard—a unanimous preliminary finding of falsity based on specific, factual information—must be consistently applied across all 100 counties to guarantee the equal treatment of voters. Anything less grants County Boards unfettered discretion to interrogate voters about not having a photo ID to vote, with criminal liability for voter fraud hanging in the balance. This is far afield from the law described by counsel above.

*b. Need to Adequately Remedy Harms to Voters Voting Without Photo ID*

Apart from contradicting the law’s text and in-court representations on voter photo ID, the issues observed with counties’ implementation of voter ID and the ID Exception Forms risk intimidating voters and discouraging them from voting at all. Importantly, when a voter completes an ID Exception Form, they affirm under penalty of perjury that their statements are true.<sup>8</sup> For that voter, who followed the rules set forth under law and on the Form before them, to then receive a notice from their County Board that their Form may be false—that is, that they suspect the voter of perjury—would be deeply alarming and signals directly that the Board is challenging that voter’s integrity and character. Given this risk of intimidation, County Boards should send notices and initiate the formal hearing process only when they have concrete and non-speculative grounds to believe the Form is false.

These ongoing issues with voter photo ID implementation threaten to violate voters’ fundamental right to vote, including the right to fair notice and an opportunity to be heard before adverse state action rejecting a ballot. *See generally Democracy N.C. v.*

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<sup>4</sup> Brief of the State of North Carolina and the North Carolina State Board of Elections [hereinafter the “State Defendants”], at 35, No. COA22-16 (Feb. 7, 2022), excerpted at Ex. 3 (emphasis added).

<sup>5</sup> Opening Statement by David Thompson, Cooper & Kirk LLC, counsel for the Legislature, at 53:5-12 (Apr. 12, 2021), excerpted at Ex. 2 (emphasis added).

<sup>6</sup> Closing Statement by Paul Cox, N.C. Department of Justice, counsel for the State Defendants, at 2530:17-20 (Apr. 30, 2021), excerpted at Ex. 4 (emphasis added).

<sup>7</sup> Brief of the Legislature, at 12, No. COA22-16 (Feb. 7, 2022), excerpted at Ex. 5 (bolding added).

<sup>8</sup> Voters may be guilty of a Class I felony if they “knowingly [] swear falsely with respect to any matter pertaining to any primary or election.” N.C.G.S. § 163-275(4).

*N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 227 (M.D.N.C. 2020); *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140, 146 (4th Cir. 2014). Voters cannot receive proper notice and a meaningful opportunity to be heard if County Boards are permitted to list spurious, speculative bases for believing an ID Exception Form may be false.

It further violates voters' due process rights to expose them to potential criminal liability for perjury due to the current vagueness and inconsistent application of the falsity standard. *Carolina Youth Action Project v. Wilson*, 60 F.4th 770, 781 (4th Cir. 2023) (noting that, when it comes to vagueness, "laws imposing criminal penalties or threatening to inhibit the exercise of constitutionally protected rights are subject to a stricter standard"); *see also Cunney v. Bd. of Trs. of Grand View*, 660 F.3d 612, 621 (2d Cir. 2011) ("Statutes must provide explicit standards for those who apply them to avoid resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application."). Here, as in *Carolina Youth Action Project*, the vagueness of the falsity standard has "generate[d] starkly disparate outcomes" in its enforcement. 60 F.4th at 784. Such vagueness raises serious Due Process Clause concerns.

#### **IV. Recommended Revisions to the Temporary Rules**

In light of these issues, the revisions to the temporary rules are insufficient to prevent voters from being wrongfully disenfranchised or accused of perjury without adequate constitutional protections. Accordingly, the State Board must revise the proposed rules to ensure correct and consistent voter photo ID implementation for future elections. The following changes to the proposed rules would help achieve that goal:

1. *Clarify the standards for when and how the County Boards can hold a falsity hearing.* The Board must be required to have concrete, non-speculative grounds to hold a falsity hearing in the first instance, let alone to actually find that an ID Exception Form is false. The proposed amendments requiring the County Board to include the "specific reasons the county board is considering the affidavit to be potentially false" and limiting Boards from issuing notices unless they have "identified a reason to find that the affidavit . . . is false" are a step in the right direction. *See* 08 NCAC 17. 0101(e)(1); 08 NCAC 17. 0109(c)(2). However, the actions by County Boards described above show that more clarity is needed to prevent Board members from challenging Forms on speculative grounds.
  - a. Explicitly requiring that the vote to hold a falsity hearing be unanimous, just as needed for the ultimate falsity finding, would further protect voters' rights and be consistent with the law, which requires unanimity for such legally significant official action.
  - b. The proposed amendment to 08 NCAC 17. 0109(c)(2) stating that the voter should receive notice and opportunity to be heard "provided there is sufficient time remaining before the county canvass to send a notice that will be delivered in advance of the opportunity to address the county board" is a move in the wrong direction. This suggests that procedural due process is not required if the County Board holds a falsity hearing too

close to county canvass. Instead, the County Board must be required to conduct its initial review with sufficient time to provide meaningful notice and an opportunity to be heard for those voters.

2. *Clarify the standard for deeming an ID Exception Form “false.”* The County Board’s rejection of an ID Exception Form must be based on falsity, not the Board’s opinion on the reasonableness of the voter’s explanation or speculation about their ability to obtain and present ID. Although this standard is explained in Numbered Memos 2023-03 and 2023-04, the County Boards’ blatant deviations from the falsity standard, as described above, illuminate the need for inclusion in these rules. County Boards would also benefit from more examples of the difference between truth/falsity and reasonableness.
3. *Direct that, in the absence of affirmative proof of falsity, there is a presumption in the voter’s favor.* This presumption accords with the law, legislators, and the State Board’s representations about S.B. 824 in court. It would further discourage bad-faith questioning of voters’ statements. And it would align with other aspects of the elections code when the right of a voter to cast a ballot is questioned, such as voter challenges. *See, e.g., Voter Challenge Procedures Guide*, at 11-12, N.C. State Bd. of Elections, <https://bit.ly/3vpujbJ> (“No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated.”) (last updated Dec. 18, 2023); N.C.G.S. §§ 163-89(c), 163-90.1; *contra* N.C.G.S. § 163-127.5 (candidate challenge where the burden is on the candidate).
4. *Ensure voters returning to the County Board to show photo ID receive adequate notice before county canvass.* In response to a majority of voters who did not return to the County Boards with photo ID to have their provisional ballots approved, the rules must direct Boards to provide these voters with notice of potential disenfranchisement and the opportunity to receive a free voter photo ID at the Elections Office before county canvass.

## V. Conclusion

Thank you for the opportunity to comment on the proposed permanent rules. We hope these comments help you to better reach our shared goal of ensuring that every eligible voter can participate in our state’s elections without risk of intimidation and have their ballot counted. If there are any questions, we would be happy to join a conversation to discuss them further.

Sincerely,

Southern Coalition for Social Justice

Democracy North Carolina

Common Cause North Carolina



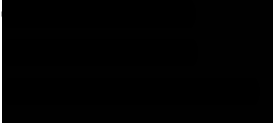
# **EXHIBIT 1**

*Notices of Hearing Sent by the Guilford  
County Board of Elections (Nov. 9, 2023)*



GUILFORD COUNTY  
BOARD OF ELECTIONS

November 9, 2023



On November 7<sup>th</sup>, 2023, you voted with a provisional ballot and completed a Photo ID Exception Affidavit, per NCGS §163-166.16.

You are hereby given notice of the grounds for falsity of the affidavit, including but not limited to, the fact that you had a Photo ID but failed to present it, and it was not otherwise lost, stolen, or misplaced, and for such other and further grounds as may be shown at a hearing, and the opportunity to be heard at **9:00am on Friday, November 17, 2023** concerning any findings of falsity of the affidavit.

The hearing at 9:00am on November 17<sup>th</sup> will be held at the following location:

**The Carolyn Q. Conference Room  
Old Guilford County Courthouse  
301 W. Market St.  
Greensboro, NC 27401**

Please contact me if you have any questions.

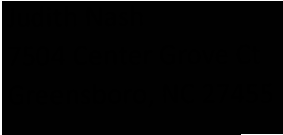
Sincerely,

Charlie Collicutt  
Director  
Guilford County Board of Elections



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BOARD OF ELECTIONS**

November 9, 2023



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Please contact me if you have any questions. This notice has also been emailed.

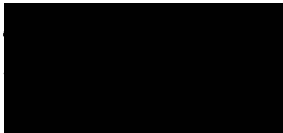
Sincerely,

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Director  
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November 9, 2023



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Charlie Collicutt  
Director  
Guilford County Board of Elections



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Sincerely,

Charlie Collicutt  
Director  
Guilford County Board of Elections

## **EXHIBIT 2**

*Excerpts of Opening Statement by David Thompson,  
Cooper & Kirk LLC, counsel for Timothy K. Moore,  
Philip E. Berger, David R. Lewis, and Ralph E. Hise  
(Apr. 12, 2021)*

No. COA22-16

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF WAKE

18 CVS 15292

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

APRIL 12, 2021

PAGES 1 - 198

v. )

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

Defendants. )

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APRIL 12, 2021, CIVIL SESSION

HONORABLE NATHANIEL J. POOVEY,  
HONORABLE MICHAEL O'FOGHLUDHA,  
HONORABLE VINCE M. ROZIER, JR.,  
JUDGES PRESIDING

TRANSCRIPT OF THREE-JUDGE PANEL PROCEEDING

VOLUME 1 OF 14

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Maren M. Fawcett, RPR, CRR  
Official Court Reporter  
District 10  
Wake County, North Carolina

11:19:48 1 In order to prevail, the Plaintiffs must prove  
11:19:53 2 that SB 824 was enacted to discriminate against African  
11:19:58 3 Americans. At the threshold, we note that the Plaintiffs  
11:20:03 4 bear the burden to prove that racial discrimination was a  
11:20:08 5 substantial or motivating factor behind the enactment of  
11:20:13 6 this law, and in addition, this court must grant the General  
11:20:16 7 Assembly a presumption of good faith. And the evidence here  
11:20:20 8 will demonstrate that the General Assembly, in fact, acted  
11:20:25 9 in good faith.

11:20:26 10 Before addressing the four *Arlington Heights*  
11:20:30 11 factors, I would point the court to the terms of the law  
11:20:34 12 itself. No legislature intent on discriminating against  
11:20:40 13 African Americans would enact a law like SB 824. The law  
11:20:45 14 allows all registered voters, whether they have a photo ID  
11:20:51 15 or not, to vote. There is no even hypothetical registered  
11:20:57 16 voter that the Plaintiffs have pointed to, let alone  
11:21:00 17 procured a Plaintiff who won't be able to vote under this  
11:21:03 18 law. And that is because the Plaintiffs themselves either  
11:21:07 19 have these IDs or fit within one of the explicit reasonable  
11:21:14 20 impediment categories.

11:21:15 21 As for other voters, Plaintiffs' own evidence  
11:21:20 22 demonstrates that the vast majority, 93 percent, have  
11:21:24 23 qualifying IDs. And we will show that the actual possession  
11:21:28 24 rate is far higher than 93 percent. That is because SB 824  
11:21:34 25 includes an expansive list of IDs: North Carolina driver's



11:21:39 1 license, passports, tribal IDs, authorized student IDs and  
11:21:44 2 governmental IDs, military and veteran IDs and, as amended,  
11:21:50 3 public assistance IDs.

11:21:52 4 SB 824 also created an entirely new type of ID. A  
11:21:58 5 free ID with no documentation required that could be picked  
11:22:03 6 up at a County Board of Elections and during one-stop early  
11:22:08 7 voting. So someone can do one trip, get their free ID with  
11:22:14 8 no documentation and vote all in one fell swoop. And that's  
11:22:19 9 really important because African Americans  
11:22:21 10 disproportionately use early voting, and the legislature  
11:22:25 11 knew that and they put this provision into the law.

11:22:31 12 The SB 824 also prevents -- presents individuals  
11:22:36 13 without a qualifying ID two options to have their vote  
11:22:41 14 counted. Number one, they can cast a provisional ballot and  
11:22:44 15 come back within nine days to the County Board of Election  
11:22:46 16 with qualifying ID, and it's important to note they can get  
11:22:52 17 that qualifying ID when they come back during that nine-day  
11:22:56 18 period, so it's one trip.

11:22:58 19 In addition, voters can fill out a reasonable  
11:23:01 20 impediment form, and the categories are sweeping and  
11:23:06 21 generous. They include lack of transportation, disability,  
11:23:10 22 illness, work schedule, family responsibilities, lost ID,  
11:23:17 23 stolen ID, and identification applied for but not received.  
11:23:22 24 Basically, procrastination is covered too. And if that  
11:23:26 25 isn't enough, and it's really hard to think of anyone who

11:23:29 1 doesn't fit within one of those categories, the legislature  
11:23:33 2 went farther and had a catch-all other provision that allows  
11:23:38 3 everybody to vote regardless of whether they have an ID or  
11:23:43 4 not provided they fill out this reasonable impediment form.  
11:23:46 5 And the legislature did not allow local officials to  
11:23:50 6 second-guess the validity of these reasonable impediment  
11:23:54 7 forms. The only basis that they can be rejected under  
11:23:58 8 SB 824 is if a unanimous bipartisan five-member commission  
11:24:04 9 says that they are false. If there is falsity, then they  
11:24:07 10 don't count. As long as the person filling out the  
11:24:10 11 reasonable impediment provision doesn't lie, the ballot  
11:24:13 12 counts.

11:24:14 13 The General Assembly also sought to ensure that  
11:24:16 14 the people of North Carolina were educated about SB 824.  
11:24:22 15 The General Assembly charged the State Board of Elections  
11:24:25 16 with identifying voters who may lack North Carolina DMV ID  
11:24:31 17 and informing them about the law. It directed the State  
11:24:34 18 Board to include in all voter education materials sent to  
11:24:39 19 citizens and on informational posters at polling places a  
11:24:44 20 statement that, quote, all registered voters will be allowed  
11:24:47 21 to vote with or without a photo ID card, close quote. And  
11:24:53 22 the State Board was also required by the General Assembly to  
11:24:57 23 send not one, not two, not three, four separate mailings to  
11:25:04 24 every household in the state over the years 2019 and 2020  
11:25:10 25 describing the forms of acceptable photo ID and the options

## **EXHIBIT 3**

*Excerpts of Brief of the State of North Carolina and  
the North Carolina State Board of Elections,  
Holmes v. Moore, No. COA22-16  
(Feb. 7, 2022)*

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

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

Plaintiffs-Appellees,

v.

TIMOTHY K. MOORE in his official  
capacity as Speaker of the North  
Carolina House of Representatives;  
PHILIP E. BERGER in his official  
capacity as President Pro Tempore of  
the North Carolina Senate; DAVID R.  
LEWIS,<sup>1</sup> 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-Appellants.

From Wake County  
No. 18 CVS 15292

\*\*\*\*\*

THE STATE OF NORTH CAROLINA &  
THE NC STATE BOARD OF ELECTION'S BRIEF

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<sup>1</sup> David Lewis is no longer a member of the General Assembly.

light of those provisions, the Fourth Circuit concluded North Carolina's "2018 Voter-ID Law is more protective of the right to vote than other states' voter-ID laws that courts have approved." *Id.* at 310.

In a case relied upon by *Raymond, Lee*, 843 F.3d 592, the Fourth Circuit upheld a finding that the burdens imposed by Virginia's similar photo-ID law were not suggestive of discriminatory intent. Under Virginia's law, like North Carolina's, local elections officials were required to issue free voter-ID cards to registered voters with no showing of documentation required. *Id.* at 595. Local officials could also provide such cards at "mobile voter-ID stations." *Id.*

S.B. 824 offers these types of measures as well. For example, prior to the time S.B. 824 was enjoined, the State Board had promulgated a now-expired administrative rule that permitted county boards to issue voter IDs not simply at their own offices, but also at other locations.<sup>6</sup> See 08 N.C. Admin. Code 17.0107(a) (effective Apr. 29, 2019; expired June 20, 2020) (available at R9(d)pp. 10996-97).

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<sup>6</sup> Following the trial in this case, the General Assembly passed the State's 2021 appropriations act, wherein it provided \$5 million dollars for a mobile program to assist those who need photo IDs to vote in person. N.C. Sess. Law 2021-180, S.B. 105 § 43.2(a) & Joint Conf. Comm. Rpt. p. F-65.

Virginia's list of qualifying IDs was admittedly longer than North Carolina's, but Virginia had fewer exceptions to its photo-ID requirement. *See Lee*, 843 F.3d at 594. Most notably, Virginia's law did not have a reasonable impediment provision that waives the photo-ID requirement entirely. *Id.*

The Fourth Circuit in *Lee* acknowledged that white Virginians possessed IDs that could be used for voting at higher rates than Black Virginians, and that obtaining an ID required some effort from voters. 843 F.3d at 597–98, 600. But, to assess whether Virginia's law was enacted with discriminatory intent, the Fourth Circuit focused on the provisions of the law that minimized the burden imposed on voters *without an ID*. *Id.* at 600–01, 03. In light of these provisions, the *Lee* Court concluded “the Virginia legislature went out of its way to make its impact as burden-free as possible.” *Id.* at 603.

Direct comparison with *Lee* suggests that any burden S.B. 824 imposes on North Carolina voters without an ID is not sufficient to support a finding of discriminatory intent. Registered voters can receive free voter-ID cards without needing to provide identification documents.<sup>7</sup> If registered voters arrive without qualifying ID, they may vote provisionally, and their vote will

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<sup>7</sup> Unless otherwise stated, citations are to the Statement of Facts.

count if they return later with their qualifying ID. Voters with a reasonable impediment may cast a provisional ballot after only affirming their identity and the reason for not producing ID.

Finally, S.B. 824 requires no additional identification documentation once a voter fills out the reasonable impediment form, does not allow any voter to challenge another voter's reasonable impediment, and requires the voter's ballot to be counted unless the county board has grounds to determine the voter's affidavit is false.

Thus, any discriminatory impact resulting from S.B. 824 is substantially mitigated by the law's three ameliorative provisions—free IDs; the broad exceptions to the requirement to present ID, including relying upon a reasonable impediment; and the ability for voters to cure their lack of qualifying ID by casting a provisional ballot and returning to the county board with their ID. The majority's conclusion to the contrary that the existence of some inconvenience in the voting process necessarily proves discriminatory impact or intent is legally unsupported. (*See* Rp. 991 ¶ 248); *cf. Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 198 (2008) (plurality) (holding in a non-discriminatory-intent case, inconveniences like making a trip to the DMV do

## **EXHIBIT 4**

*Excerpts of Closing Statement by Paul Cox, N.C.  
Department of Justice, counsel for the State of North  
Carolina and the North Carolina State Board of  
Elections (Apr. 30, 2021)*



No. COA22-16

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF WAKE

18 CVS 15292

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

APRIL 30, 2021

PAGES 2439 - 2553

v. )

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

Defendants. )

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APRIL 12, 2021, CIVIL SESSION

HONORABLE NATHANIEL J. POOVEY,  
HONORABLE MICHAEL J. O'FOGHLUDHA,  
HONORABLE VINCE M. ROZIER, JR.,  
JUDGES PRESIDING

TRANSCRIPT OF THREE-JUDGE PANEL PROCEEDING

VOLUME 14 OF 14

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Maren M. Fawcett, RPR, CRR  
Official Court Reporter  
District 10  
Wake County, North Carolina

11:25:10 1 revocation, as Judge O'Foghludha alluded to in one of his  
11:25:13 2 questions, the law requires DMV to automatically send that  
11:25:16 3 person a replacement ID. This is in section 1.3(a) of the  
11:25:20 4 session law.

11:25:23 5 Next, if a voter still does not have acceptable ID  
11:25:25 6 when they vote, even if they just forgot it, they can still  
11:25:29 7 vote and have that vote counted if they fall under three  
11:25:32 8 exceptions to the ID requirement, two that are narrow and  
11:25:35 9 one that is broad. First, the voter is a victim of a recent  
11:25:38 10 natural disaster. Second, the voter has a religious  
11:25:42 11 objection to being photographed. And third, the voter has a  
11:25:44 12 reasonable impediment that, quote, prevents the registered  
11:25:47 13 voter from presenting photographic identification.

11:25:50 14 Now, I highlight this phrase because the set of  
11:25:51 15 problems that prevent you from presenting or showing your ID  
11:25:57 16 at the polls are broader than the problems that you would --  
11:26:00 17 that would keep you from obtaining an ID, which is how the  
11:26:03 18 exception was phrased under the prior law. For example,  
11:26:07 19 forgetting ID at home prevents you from presenting ID, so it  
11:26:11 20 would count under the new law, but it doesn't prevent you  
11:26:13 21 from obtaining the ID. In other words, the excuse is  
11:26:16 22 broader in the newer law.

11:26:19 23 Reasonable impediments under the law explicitly  
11:26:22 24 include a number of obvious ones: inability to obtain ID due  
11:26:26 25 to lack of transportation; disability; illness; lack of

11:26:30 1 birth certificate or other documents required to get it at  
11:26:32 2 the DMV; work schedule; family responsibilities; lost or  
11:26:37 3 stolen ID; you applied for ID, but have not yet received it.  
11:26:41 4 Now, in addition to these obvious examples, the law also  
11:26:44 5 permits a voter to identify any, quote, other, unquote,  
11:26:49 6 reasonable impediment to presenting ID.

11:26:52 7 When claiming one of these exceptions, a voter  
11:26:55 8 votes a provisional ballot and fills out an affidavit  
11:26:57 9 attesting to their identity and the fact that one of these  
11:27:00 10 three exceptions applies. Critically, the law requires that  
11:27:05 11 provisional ballots cast under one of these exceptions be  
11:27:08 12 counted, quote, unless the County Board has grounds to  
11:27:11 13 believe the affidavit is false, unquote. Under an  
11:27:15 14 administrative rule adopted by the State Board, a  
11:27:18 15 determination that a reasonable impediment affidavit is  
11:27:21 16 false must be agreed upon by all five members of the  
11:27:24 17 bipartisan County Board unanimously. And as Director Bell  
11:27:28 18 testified, this falsity provision is written in such a way  
11:27:33 19 that it's difficult to even conceive of scenarios where  
11:27:35 20 falsity could be invoked to reject a voter's ballot.

11:27:40 21 This falsity limitation is a critical distinction  
11:27:42 22 from the prior law, which provided broad discretion to  
11:27:46 23 County Boards to discredit a voter's reason that they  
11:27:49 24 provided, including by drawing their own conclusions that  
11:27:52 25 the voter's reason, quote, merely denigrated the photo

11:27:57 1 identification requirement or made obviously nonsensical  
11:28:00 2 statements. Those -- those reasons are not in the current  
11:28:03 3 law. In other words, discretionary grounds for rejecting a  
11:28:06 4 vote are not in this law.

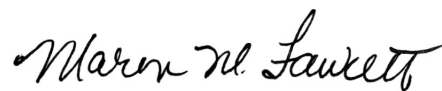
11:28:09 5 A third and final mechanism helps ensure a voter  
11:28:12 6 can exercise their right to vote. If a voter simply forgets  
11:28:16 7 their ID when she goes to vote, she can cast a provisional  
11:28:19 8 ballot and later return to the County Board with an  
11:28:21 9 acceptable form of ID no later than the day before the  
11:28:24 10 canvass of votes. That translates into a deadline of nine  
11:28:27 11 days after election day. The ID requirements and exceptions  
11:28:32 12 that I just went through apply largely the same way to  
11:28:35 13 absentee voters.

11:28:37 14 One final point on the law's provisions. There  
11:28:39 15 was testimony from one of Plaintiffs' experts, Professor  
11:28:42 16 Leloudis, suggesting that voters from across this state  
11:28:45 17 could lodge challenges to reasonable impediment affidavits.  
11:28:49 18 Although I have great respect for Professor Leloudis as an  
11:28:52 19 historian, the court should not credit his legal analysis.  
11:28:55 20 The State Board does not interpret the photo ID law to  
11:28:58 21 permit challenges to reasonable impediments. That is  
11:29:01 22 because the reasonable impediment provision associated with  
11:29:04 23 the prior photo ID law, unlike this law, explicitly allowed  
11:29:08 24 for such challenges, terming them, quote, impediment  
11:29:12 25 evidentiary challenges, close quote. In other words, a

## CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken April 12, 2021, through April 30, 2021, during the April 12, 2021, Civil Session of Wake County Superior Court is a true and accurate transcript of the proceedings taken by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This 17th day of September, 2021.



Maren M. Fawcett  
Maren M. Fawcett, RPR, CRR  
Official Court Reporter

## **EXHIBIT 5**

*Excerpts of Brief of Timothy K. Moore, Philip E. Berger, David R. Lewis, and Ralph E. Hise, Holmes v. Moore, No. COA22-16 (Feb. 7, 2022)*

NORTH CAROLINA COURT OF APPEALS

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

Plaintiff-Appellees, )

v. )

From Wake County
No. 18 CVS 15292

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

Defendant-Appellants. )

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BRIEF OF LEGISLATIVE DEFENDANT-APPELLANTS

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primary and election.” N.C.G.S. § 163-82.8A(d)(2) (emphasis added). Counties may provide these IDs at multiple sites and the State Board may require counties to do so. Furthermore, S.B. 824 allows the use of a mobile unit to provide these IDs, and the General Assembly recently appropriated funds for that purpose. *See* 2021 N.C. Sess. Laws 180, § 43.2(a); JOINT CONFERENCE COMMITTEE REPORT ON THE CURRENT OPERATIONS APPROPRIATIONS ACT OF 2021 at F65, N.C. GEN. ASSEMBLY (Nov. 15, 2021), <https://bit.ly/3LfHsrp>.

In addition to the free IDs from the county boards of elections, S.B. 824 also provides for special ID cards from the DMV. *See* N.C.G.S. § 20-37.7. These DMV voting IDs are available to anyone at least 17 years old. Further, when a voter has a valid form of DMV ID seized or surrendered due to cancellation, disqualification, suspension, or revocation, S.B. 824 requires the DMV *automatically* to issue a special identification card to that voter via first-class mail with no application and no charge. *See* N.C.G.S. § 20-37.7(d2).

S.B. 824 provides numerous means for voters who lack photo ID at the polls to vote. Registered voters who have a “reasonable impediment” to “presenting” a qualifying photo ID may cast a provisional ballot. *Id.* § 163-166.16(d)(2). Numerous grounds are recognized as reasonable impediments, and voters may identify any “other” they might have. The State Board properly has interpreted “other” expansively and has identified *nothing* that would not count. R S p 194 at 72:14–25, 73:3–4. The only basis for rejecting a reasonable impediment affidavit is falsity, N.C.G.S. § 163-166.16(f), and county boards of elections—which are statutorily



mandated to be bipartisan, *see id.* at § 163-30(a)—must unanimously find an impediment false in order not to count the ballot, *see* 08 NCAC 17.0101(b). S.B. 824 does not authorize any other voter to challenge the declaration.

Voters who fail to present an ID at the polls may also vote a provisional ballot and return to their county board of elections with an ID by the end of the day before canvassing (generally ten days after the election) to “cure” their ballot. N.C.G.S. § 163-166.16(c); *id.* § 163-182.5(b). Voters without ID can obtain a free ID and use it to cure their ballot on the same trip to the county board.

The General Assembly mandated that the State Board “establish an aggressive voter education program.” R S p 2150, § 1.5(a). S.B. 824 required the Board (among several other things) to train precinct officials to answer voter questions about the law’s requirements; to coordinate with county officials, local service organizations, and local media outlets to inform voters of those requirements; to mail *every* voter who lacked a North Carolina driver’s license a notice of the requirements no later than S.B. 824’s effective date; and to send four mailers to all North Carolina residential addresses—twice in 2019 and twice in 2020—describing forms of qualifying ID and voting options for those who cannot present one. All educational mailers, and all informational posters displayed at one-stop early voting sites and at precincts on election day, must contain a prominent statement explaining the reasonable-impediment option and assuring voters: “All registered voters will be allowed to vote with or without a photo ID card.” *See* R S p 2150–51, § 1.5(a)(1)–(11).