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 Governor of North Carolina, *et al.*, Defendants.	1:13CV658
LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, *et al.*, Plaintiffs, *and* LOUIS M. DUKE, *et al.*, Plaintiffs-Intervenors, v. THE STATE OF NORTH CAROLINA, *et al.*, Defendants.	1:13CV660
UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF NORTH CAROLINA, *et al.*, Defendants.	1:13CV861

DEFENDANTS' TRIAL BRIEF

Defendants submit this trial brief on the issue of the photo identification ("photo ID") requirements of N.C. Sess. Laws 2013-381 ("SL 2013-381"), as amended by N.C. Sess. Laws 2015-103 ("SL 2015-103"), in particular the enactment of the new reasonable impediment exception to the photo ID requirement.

Plaintiffs' claims fall woefully short regardless of the legal theory they advance. First, plaintiffs will present no evidence regarding the purported actual burden of the photo ID requirement as amended. Instead, the evidence assembled by plaintiffs will simply denigrate the original photo ID requirement and speculate about its possible effect on voters even with the reasonable impediment option. But neither plaintiffs nor their witnesses will be able to identify any specific individual who will definitively be unable to vote as a result of the photo ID requirement. Speculation about burdens of an election law that plaintiffs simply do not like is plainly insufficient to strike it down.

Second, presumably because of the dearth of evidence on the actual burden or effect of the amended photo ID requirement, plaintiffs will instead attack defendants' efforts to educate voters about the amended law. It would appear that plaintiffs would have the State inform the public that the photo ID requirement has essentially been nullified by the recent amendments. The evidence will demonstrate that the State's outreach message is correct and that its education efforts are perhaps the most robust in the history of states which have adopted a photo ID requirement.

Finally, plaintiffs will rely on an unreliable matching analysis that is no longer relevant following adoption of the reasonable impediment exception. Even prior to the photo ID amendments the plaintiffs' matching analysis was seriously flawed and grossly misleading. However, new evidence discovered by defendants since the July 2015 trial in this matter demonstrates that the matching analysis developed by plaintiffs' experts is baseless and does not support their claims. Accordingly, plaintiffs' claims should be rejected and judgment should be entered for the defendants.

I. BACKGROUND

Plaintiffs' Pre-Reasonable Impediment Claims

Prior to the enactment of SL 2015-103, plaintiffs alleged that the photo ID requirements of SL 2013-381, codified as N.C. Gen. Stat. §§ 163-166.13 and -166.14, burdened their right to vote in violation of the United States Constitution and Section 2 of the Voting Rights Act of 1965, as amended ("VRA"). The purported burden stemmed from plaintiffs' alleged disproportionate inability to obtain any one of the acceptable forms of government-issued photo ID needed to vote.

The NAACP Plaintiffs alleged that requiring voters to present photo ID at their polling place "imposes real and substantial burdens on the right to vote" and is "not supported by a legitimate or compelling state interest." (NAACP Plaintiffs' Second Amend. Compl., ¶¶ 130-132; 139-143) The NAACP Plaintiffs also alleged the photo ID requirement violated the rights of African American voters under Section 2 of the VRA. The NAACP Plaintiffs claimed that the requirement "imposes disproportionate burdens

on African-Americans" because "the history of racial discrimination in North Carolina has caused African-Americans to have less access to transportation…to be less well-educated…and more likely to live in poverty than their white counterparts," and that "these vestiges of race discrimination make it more difficult for African-Americans to comply" with the photo ID provisions of SL 2013-381. (NAACP Plaintiffs' Second Amend. Compl., ¶¶ 7, 85, 110, 112, 113, 117) According to the NAACP Plaintiffs, the photo ID requirements would "independently and collectively, interact with the social and historical conditions [of race discrimination] in North Carolina…to deny African-Americans meaningful access to the political process." (NAACP Plaintiffs' Second Amend. Compl., ¶¶ 117-118)

USDOJ claimed the photo ID provision would violate Section 2 because the "social and economic conditions [of minorities], caused by historical and ongoing discrimination [in North Carolina], including poverty…and lack of transportation," would disproportionately burden minorities' right to vote in comparison to the rest of the population. (USDOJ Compl., ¶¶ 75, 76, 97, 99) USDOJ argued that the photo ID requirement was unconstitutional because it "lacks reasonable safeguards for voters who face barriers in obtaining such identification."[1] (USDOJ Compl., ¶ 74) With regard to

[1] In response to an interrogatory posed by defendants to USDOJ, USDOJ identified "safe harbors" that it stated would mitigate the alleged burden the photo ID requirement allegedly would place on African American voters including "allowing a voter to cast an in-person regular ballot that will be counted if he or she completes an affidavit stating that he or she is indigent and unable to obtain proof of identification, or if the voter completes a form stating a reasonable impediment to obtaining HB 589-compliant photo identification". Nonetheless, following adoption by North Carolina of the same

"reasonable safeguards," USDOJ argued that the "General Assembly rejected amendments that would have mitigated [the] burden on African-American voters," specifically measures that would have allowed ballots to be counted from voters who "faced barriers to obtaining one of the permitted forms of photo identification." (USDOJ Compl., ¶ 88)

Matching Evidence

Plaintiffs asked Dr. Charles Stewart to prepare a report to determine whether the photo ID requirements of 2013-381, prior to the enactment of 2015-103, would have a disproportionate effect on minority voters. (D.E. 269-1 (Stewart Decl.) ¶ 1)[2] Dr. Stewart elected to use a process known as data matching, which compares records from the North Carolina voter registrations database ("SEIMS") against records from the North Carolina driver license database ("SADLS"), to complete his report. (*Id.* at ¶ 2) Dr. Stewart claimed that the process allowed him to estimate both registered voters who lack photo ID and the racial disparities among those voters. (*Id.*) Dr. Stewart, however, conceded that data matching presents "challenges" involving typographical errors and other inconsistencies that make it difficult to conduct accurate and reliable data matching. (*Id.* at ¶ 28)

---

reasonable impediment safeguard precleared by the United States District Court for the District of Columbia in *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012) (a case to which USDOJ was also a party), USDOJ has continued to press its claims related to photo ID.

[2] All cites to docket entries are in case No. 13-861 unless otherwise noted.

Dr. Stewart completed his report and filed a declaration on February 12, 2015. Defendants asked Brian Neesby, a system analyst for the North Carolina State Board of Elections ("SBE"), to analyze Dr. Stewart's methodology. Mr. Neesby performed this analysis in the regular course of his duties with the SBE, where his responsibilities include list matching projects. Mr. Neesby determined that Dr. Stewart's analysis contained multiple fundamental flaws.

Mr. Neesby discovered that Dr. Stewart did not use all available data, did not attempt a sufficient number of field combinations, used an unreliable one-to-many matching approach and made only minimal attempts to control for human error and voter roll inflation. (D.E. 269-2 (Neesby Aff.) ¶ 6) After analyzing Dr. Stewart's methods, and correcting for many of Dr. Stewart's oversights, Mr. Neesby determined that at least 84,675, or roughly 21.5 percent, of the voters that Dr. Stewart declared on his "no-match" list in fact had an unexpired DMV-issued identification at the time that Dr. Stewart conducted his analysis. (*Id.* at ¶ 5, 7) Numerous other flaws were discovered prior to the enactment of the reasonable impediment option.

Enactment of SL 2015-103

On June 22, 2015, SL 2015-103 was signed into law. SL 2015-103 amended the photo ID requirements enacted by SL 2013-318 by providing that voters who present themselves at the polls to vote, and who have been unable to obtain an acceptable photo ID, will be allowed to cast a ballot upon completion of a declaration that they had a "reasonable impediment" to obtaining an acceptable photo ID. SL 2015-103, § 8(d),

codified as N.C. Gen. Stat. § 163-166.15. Specifically, the amendment provides a list of examples of "reasonable impediments," including lack of transportation, disability or illness, lack of birth certificate or other documents needed to obtain photo ID, work schedule, family responsibilities, that photo ID was lost or stolen, or that photo ID was applied for but not received by the voter in time for the election. *Id.*[3] In addition, the amended law provides that the voter may indicate "any other reasonable impediment" to obtaining an acceptable photo ID. *Id.*[4] Upon completion of the declaration, the voter must provide identification in the form of either (1) a copy of the voter's voter registration card or a document allowed under N.C. Gen. Stat. 163-166.12, including a current utility bill, bank statement, government check, paycheck, or other government document; or (2) the last four digits of the voter's social security number and the voter's date of birth. SL 2015-103, § 8(d).

SL 2015-103 also provides that voters who present to vote during the one-stop absentee voting period (sometimes called "early voting") without an acceptable photo ID will be instructed about their ability to vote an absentee ballot which requires no photo

[3] The new, amended, statute is nearly identical to a South Carolina law that received preclearance under Section 5 of the VRA in 2012 in *South Carolina*, and which was enforced during elections in 2013 and 2014 without any evidence of an adverse effect on African American turnout. The new statute differs from the South Carolina law in that the statute itself describes what can be considered a "reasonable impediment." South Carolina's law left that determination to those implementing, applying, and enforcing the law. 898 F. Supp. 2d at 35-36. In addition, SL 2015-103 added the ability to use an expired license for up to four years. SL 2015-103, § 8(a).

[4] The new law clearly indicates that "reasonable impediment" is to be interpreted broadly in favor of the voter. SL 2015-103, §§ 8(d) and 8(e).

ID. Any voter who chooses not to vote using the absentee method may declare a reasonable impediment if he or she was unable to obtain a photo ID. Finally, SL 2015-103 specifically directs SBE to educate the public regarding the new reasonable impediment option for voting.

Immediately after the law went into effect, SBE began its education and outreach efforts regarding the reasonable impediment option. These efforts took the form of election officials training, outreach to individuals and interested groups, a media campaign, updating the SBE websites, a billboard campaign, a Voter Guide that will be mailed to every household in North Carolina, and distribution of thousands of copies of printed materials regarding photo ID and exceptions. The education and outreach efforts are described in detail in the Declaration of Kim Strach (D.E. 394-1) and this Court's order denying the NAACP Plaintiffs' motion for preliminary injunction (D.E. 383 at 16-28).

II. ARGUMENT

A. Plaintiffs are unable to demonstrate that the photo ID requirement as amended is an unconstitutional or unlawful burden.

Regardless of whether plaintiffs' claims are analyzed under the United States Constitution or the VRA, they are without merit. Plaintiffs have come forward with no evidence that any single voter will be unable to vote under the photo ID law as amended. Nor have they attempted to quantify the supposed burden that will confront voters with or without an acceptable photo ID for voting.

Plaintiffs' post-amendment claims rest upon a fundamental misunderstanding of the law. For instance, in *Crawford v. Marion Cnty. Elections Bd.*, 553 U.S. 181 (2008), in rejecting a Fourteenth Amendment challenge to Indiana's voter identification requirement, the Court held that "even-handed restrictions that protect the integrity and reliability of the electoral process itself are not invidious" regulations subject to strict scrutiny.[5] *Id.* at 189-90. Instead, in reviewing non-invidious election laws, a court is required to "weigh the asserted injury to the right to vote against the 'precise interests put forward by the state as justification for the burden imposed by its rule.'" *Id.* at 190 (quoting *Burdick v. Takushi*, 504 U.S. 425, 434 (1992)).

Under *Crawford*, plaintiffs must show that the photo ID requirement, as amended by SL 2015-103, is an unconstitutional burden on its face, not as applied to any particular group of voters or as to a particular election. Plaintiffs will be unable to do so. However, while irrelevant, they also will not be able to show it is too burdensome for any group of voters. For example, plaintiffs claim that some voters will stay home because of the photo ID requirement, as amended, but they will produce no evidence of the number of voters that will allegedly be "dissuaded" from voting because of the law.

[5] The actual holding of *Crawford* is the following: "When we consider only the statute's broad application to all Indiana voters we conclude that it 'imposes only a limited burden on voters' rights.' The 'precise interests' advanced by the State are therefore sufficient to defeat petitioners' facial challenge to SEA 483." *Crawford*, 553 U.S. at 202-03 (internal citations and quotations omitted). The foregoing statement received the support of six Justices. To the extent that the opinion of Justice Stevens addressed the impact of election laws on classes or subgroups of voters, that language was plainly dicta and not controlling.

Plaintiffs criticize the reasonable impediment safeguard, but they will not produce any evidence at trial of any study or survey of voters who will supposedly be "confused" or fail to understand the reasonable impediment process. Plaintiffs simply will not present to the Court to prove how many voters will purportedly not be able to vote even with the existence of the reasonable impediment option. In short, plaintiffs' evidence will do no more than demonstrate policy disagreements with the photo ID requirement and question the ability of citizens, including those whom they represent, to understand clear and simple requirements of North Carolina's election laws. Plaintiffs will offer no evidence, however, that the law as amended is actually an unconstitutional or unlawful burden.[6]

B. Plaintiffs are unable to demonstrate that the State's education and outreach effort renders the law unconstitutional or unlawful.

Instead of presenting evidence that the photo ID law as amended will have an identifiable and measurable burden on voters, plaintiffs will instead focus on the State's education and outreach efforts.[7] Their misguided speculation will amount to little more

[6] To the extent that plaintiffs point to evidence of alleged sporadic errors by the DMV or elections officials, such issues do not prove violations of the Constitution or the VRA where, as here, there is no evidence that any mistakes were purposeful or systemic. *United States v. Jones*, 57 F.3d 1020, 1023-24 (11th Cir. 1995) ("We have found no case holding that an inadvertent error can constitute a standard, practice, or procedure under Section 2. As the district court correctly noted, the text of the act contains no reference to inadvertent error."); *Gamza v. Aguirre*, 619 F.2d 449, 454 (5th Cir. 1981); *Harris Co. Dept. of Educ. v. Harris Co.*, No. H-12-2190, 2012 WL 3886427, at *6 (S.D. Tex. Sept. 6, 2012); *Vallejo v. City of Tucson*, No. CV 08-500 TUC DCB, 2009 WL 1835115, at *3 (D. Ariz. June 26, 2009); *Coleman v. Bd. of Educ.*, 990 F. Supp. 221, 227 (S.D.N.Y. 1997).

[7] Plaintiffs' preoccupation with the State's education and outreach plan before the photo ID law has even been implemented in one election demonstrates that their post-

than nitpicking SBE's pushcards and advertisements. Plaintiffs will invite the Court to either micromanage the administration of the State's outreach efforts or deny enforcement to a validly enacted law because plaintiffs would use different words or font sizes on pamphlets and websites the State has designed to educate all voters about all aspects of the photo ID law.

Plaintiffs' focus on the outreach effort is all the more irrelevant when considered in the context of the actual education campaign the State is embarked on to fully inform all voters about the photo ID law and its exceptions. SBE is using numerous methods available to it such as broadcast media, billboards, websites, and outreach to interested groups. SBE has even sent a mailing specifically describing the new reasonable impediment provision to thousands of voters who have been previously identified as not matching to the State's DMV database.

Moreover, contrary to plaintiffs' allegations, this education effort began immediately after SL 2015-103 became law. The SBE websites were updated immediately. In August – less than two months after enactment – SBE trained elections officials on the reasonable impediment option at a statewide elections conference. SBE also immediately updated its written education materials on photo ID and distributed them to individuals and groups around the State. Then, as soon as the 2015 municipal

---

amendments claims are baseless. Plaintiffs have no claim and are simply trying to manufacture a claim grounded in pre-implementation outreach. Even if defendants did not engage in any pre-implementation outreach, we are not aware of any authority holding that the State would therefore be in violation of the constitution or VRA absent evidence from an election that voters were harmed by the lack of education about the law.

elections ended, SBE launched a media campaign which specifically informs voters that if they are unable to obtain a photo ID they can still vote if they show up to the polls. There is simply no factual basis for plaintiffs' claim that voters will be unconstitutionally burdened in the March 2016 primary because of the photo ID requirement or the reasonable impediment failsafe.

Nor is there a legal basis for this claim. Plaintiffs primarily rely on two cases: *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294 (N.D. Ga. 2006) and *South Carolina*. These cases are inapplicable for several reasons. For instance, *Billups* was decided prior to *Crawford*. In *Billups*, a preliminary injunction was orally granted on July 12, 2006 for an election that was only *six days away*, on July 18, 2006. *Billups*, 439 F. Supp. 2d at 1300. Moreover, the *Billups* court enjoined the photo ID requirement because the photo ID requirement itself had not been advertised in time for the election just six days away. *Id.* at 1346. In North Carolina, the photo ID requirement itself has been advertised for over eighteen months. And SBE has been advertising the reasonable impediment requirement since June 2015. In contrast, the *Billups* court specifically noted that there was only "one piece of equipment" to issue free IDs that the state had promised, and that broadcast advertisements regarding the ID requirement had begun "to run only shortly prior the July 18, 2006" elections. *Id.* at 1346-47. Indeed, "the State did not seriously begin to educate its voters concerning the requirements of the 2006 Photo ID Act and the availability of a free Voter ID card until approximately two weeks before the July 18, 2006, primary elections." *Id.* at 1351. Thus, it was not surprising

that the court concluded the photo ID requirement would be potentially unduly burdensome.

Similarly, in *South Carolina*, involving a reasonable impediment provision that is narrower than what was enacted in SL 2015-103, the Court did not preclear the Act until *four weeks* before the 2012 elections. 898 F. Supp. 2d at 48-49. Prior to preclearance, the State had hardly advertised the new reasonable impediment option at all. *Id.* at 49. More significantly, the Act that created the reasonable impediment provision in South Carolina itself laid out a timeline for its advertisement that spanned at least eleven months. *Id.* Thus, the State would not be able to comply with its own statute if it had been implemented for the 2012 elections. Indeed, the officials responsible for implementing the reasonable impediment provision had previously informed the Court that it could not be implemented if preclearance was not received at least two months prior to the election. *Id.* No such timeline was present in SL 2015-103. In *South Carolina*, the court also found it important that, in light of the late preclearance, voters would have little time to obtain the free photo ID available under the Act. *Id.* at 49-50. In North Carolina, by contrast, voters have had nearly two years to obtain the free photo ID allowed under SL 2013-381.

In short, plaintiffs cannot demonstrate that North Carolina's photo ID law as amended is an unconstitutional or unlawful burden based on the State's outreach and education efforts. Those efforts instead prove that the law is decidedly unlikely to burden voters.

C. Plaintiffs' Matching Evidence was Meritless Prior to SL 2015-103 and is Baseless in light of the photo ID amendments.

1. Flaws in Matching Analysis Prior to SL 2015-103

Even before the enactment of the reasonable impediment option, plaintiffs' attempt to prove that the photo ID requirement was a burden by analyzing the number of voters potentially without acceptable ID was meritless. There were numerous flaws with the methodology of plaintiffs' expert Dr. Stewart.

First, Dr. Stewart's report contained unreliable conclusions because he failed to use the most complete records that were provided to the plaintiffs. Dr. Stewart's unfamiliarity with SADLS led him to analyze the incorrect data set. Dr. Stewart queried SADLS' "Driver_ID" table, which contains only a North Carolina Division of Motor Vehicles ("DMV") customer's most recent application or issuance. (D.E. 269-2 (Neesby Aff.) ¶ 13) In contrast, the "Driver_Hist" table, which Dr. Stewart did not include in his analysis, contains all other issuances, even if they remain unexpired. (*Id.*) As such, Dr. Stewart's report incorrectly assumed that DMV customers with an inactive or expired ID in the "Driver_ID" table did not possess a valid DMV-issued identification card. This false assumption led to significant inaccuracy; specifically Dr. Stewart included at least 38,801 customers on his "no-match" list even though they had an unexpired, DMV-issued ID in the "Driver_Hist" table. (*Id.* at ¶ 14)

The reliability of Dr. Stewart's report also suffered because it analyzed data from July 13, 2014, almost four months before the 2014 general election. (D.E. 269-1 (Stewart Decl.) ¶ 29) Plaintiffs received a snapshot of both the driver license and voter

registration databases on the day of the 2014 election that provided much more comprehensive information about registered voters and DMV customers who had acquired IDs. (D.E. 269-2 (Neesby Aff.) ¶ 17) In relying on a mid-year snapshot, Dr. Stewart failed to consider all available, relevant data in his analysis.

Dr. Stewart not only failed to consult all of the relevant data during his analysis, he also failed to use proper methods to maximize the accuracy of his results within the flawed dataset. Dr. Stewart did not attempt a sufficient number of field combinations for his data matching efforts and determined his unique identifiers based on intuition rather than mathematical examination. Dr. Stewart chose to use 21 field combinations out of thousands of potential options. (D.E. 269-1 (Stewart Decl.) Table 3) Dr. Stewart's choice of field combinations did not represent the most effective approach to avoid duplicates and conduct the most accurate data matching. (D.E. 269-2 (Neesby Aff.) ¶ 34) Out of the eleven different data points available for matching, Dr. Stewart could have chosen from hundreds of more unique field combinations. (*Id*. at ¶ 33) Instead, Dr. Stewart's flawed approach led him to place more voters with valid IDs, who could have been found with more effective use of field combinations, on his no-match list.[8] Notably, Dr. Stewart's report ignored registrants' phone numbers altogether, even though phone

[8] One such voter was SBE Executive Director Kim Strach. Ms. Strach's name appeared on Dr. Stewart's no-match list because her voter registration information did not contain her social security number and her last name did not match in Dr. Stewart's analysis because she changed it after her marriage. (D.E. 269-2 (Neesby Aff.) ¶ 11) It is unlikely that this erroneous result was unique to Ms. Strach.

number represents the second most unique data point available behind driver license number. (*Id.* at ¶ 35)

Dr. Stewart's report also compounded the problem of human error in data entry rather than effectively controlling for it. For example, Dr. Stewart converted addresses to numerical combinations including residence number and zip code,[9] presumably to account for human error in the entry of address data. (D.E. 269-1 (Stewart Decl.) ¶ 89) However, by simplifying these data points, Dr. Stewart necessarily caused more matches to duplicate within the database. (D.E. 269-2 (Neesby Aff.) ¶ 41) In itself, the increase in duplicates does not harm the analysis. However, Dr. Stewart conducted 'pre-processing' that threw out duplicates from the data pool used to conduct matching. Thus, Dr. Stewart's attempt to control for human error likely led to the elimination of numerous voters that could have been properly matched to a DMV ID if they had not been removed from the data pool through pre-processing.

Dr. Stewart also failed to properly control for list inflation in the voter registration data. Because the voter rolls are not updated immediately after someone dies or leaves the state, names remain in the voter registrations database even after the person associated with that record becomes ineligible to vote in the state. Dr. Stewart attempted to control for deceased voters using his flawed matching process, but unsurprisingly, his approach still resulted in 692 dead people appearing on the "no-match" list. (*Id.* at ¶ 68) Additionally, Dr. Stewart considered more than 1.5 million DMV customers with

[9] For example, the address 2408 Main Street, Raleigh, NC, 27609 becomes 240827609.

records indicating that they no longer live in North Carolina. (*Id.* at ¶ 69) Dr. Stewart included more than 46,000 of those apparent out-of-state residents on his no-match list. (*Id*.)

Moreover, Dr. Stewart used a snapshot of registered voters as of July 2014 and declined to use updated databases provided after the 2014 General Election or the full previous database provided in December 2014. As a result, and as confirmed by Mr. Neesby, Dr. Stewart did not use table changes of address or name changes from SADLS. (D.E. 269-3 (Thornton Decl.) ¶¶ 32-34, 54) If Dr. Stewart had used these tables, he would have found that as many as 217,686 people listed on this no-match list may in fact possess a driver license. (*Id.* at ¶ 55)

The United States Departments of State and of Defense maintain databases of persons who possess federal ID cards that are acceptable forms of identification under SL 2013-381 (passports and military/veterans IDs). USDOJ provided to federal agencies the July 2014 snapshot of registered voters and DMV customers instead of the November 2014 snapshot of registered voters and the complete DMV database provided as of that time. USDOJ provided matching protocols it asked each federal agency use to seek matches in the federal databases and matching criteria requested by North Carolina. Plaintiffs' experts only used the resulting matching reports provided by the federal agencies for the USDOJ matching criteria and not the criteria requested by North Carolina. The federal agencies refused North Carolina's request that residence and mailing addresses be used to match persons in the federal databases. USDOJ also

refused to apply matching criteria against databases showing citizenship which could have been obtained from the United States Department of Homeland Security or the Social Security Administration. (*Id.* at ¶¶ 35-38).

It is difficult to either determine the most useful matching criteria or to assess the effectiveness of the matching criteria because the parties have no knowledge of the format of the data from each federal agency, the sets of data that were or might have been available, the underlying programming code written to apply data modifications and matching criteria, or whether additional criteria or data management could have been used for more complete matching. (*Id.* at ¶¶ 48-52).

A large portion of Dr. Stewart's original no-match list included registered voters who do not have the last 4 digits of a social security number listed in SEIMS. For example, 195,534 (or 49%) of Dr. Stewart's list of unmatched registered voters (397,971) are missing the last four digits of their social security numbers. There is no driver license number for 235,654 (or 59%) of the 397,971 registered voters who could not be matched with the DMV snapshot by Dr. Stewart. (*Id.* at ¶ 53) As noted by Mr. Neesby, SEIMS was not programmed to record either the last four digits of a social security number or driver license numbers until 2004. (D.E. 269-2 (Neesby Aff.) ¶ 34) Therefore, the fact that a registered voter is not listed in the SBE database with the last four digits of their social security number or their driver license number (such as the SBE Executive Director) does not mean that they lack either. Instead, it is more likely

that voters in these groups are simply more difficult to match. (D.E. 269-3 (Thornton Decl.) ¶ 53)

Dr. Stewart also did not account for the over-representation of women on his no-match list, a group that is more likely to change names without updating their information with SBE or with DMV. (*Id.* at ¶ 56) Likewise, Dr. Stewart did not account for the high percentage of college students included in his no-match list. College students often attend college at a different location from their county or state of residence and may not update information regarding their current address with either SBE or with DMV. The large number of out-of-state college students in North Carolina also raises an issue of whether at least some of these registered voters are genuine residents of North Carolina. (*Id.* at ¶¶ 57-64) Finally, among Dr. Stewart's no-match list, 86,069 have been removed from the voter rolls following Dr. Stewart's report. (*Id.* at ¶ 65)

2. Flaws in Matching Analysis After SL 2015-103

Dr. Stewart's most recent matching analysis demonstrates that plaintiffs' claims are baseless. Dr. Stewart makes no attempt to predict the number of individuals who will not be able to vote because of the photo ID requirement as amended.

Moreover, Dr. Stewart's predictions about unmatched voters are significantly inflated. In Dr. Stewart's most recent report, he contends that he has been unable to match 224,863 registered voters in the SBE database with an acceptable DMV or federal ID. (D.E. 387-3 (12/10/15 Stewart Declaration)) Perhaps most tellingly, Dr. Stewart did

not follow the same criteria he applied in the only other case in which he has performed such a matching exercise. *South Carolina v. United States*, No. 1:12-CV-203-CKK-BMK-JDB, 2012 WL 11923579 (D.D.C. June 26, 2012) (Declaration of Charles Stewart) In *South Carolina*, Dr. Stewart did not include "inactive" voters in his matching analysis because inactive voters have a much lower turnout percentage and it can be reasonably anticipated that inactive voters are likely to be removed from the voter rolls. (*Id.* at 21, 22; ¶¶ 62, 63) In South Carolina, Dr. Stewart also removed from his no-match list voters who had moved out of the state of South Carolina as indicated by fields maintained in the South Carolina DMV database. (*Id.* at 33, 36; ¶ 95, Table 3; ¶ 102, Table 4) However, in his 10 December 2015 North Carolina no-match report, Dr. Stewart included inactive voters in his list of 224,863 voters for whom he could not report a match while also not eliminating those voters who had moved out of the state of North Carolina. (Deposition of Charles Stewart at 41:2-25, 62:8—63:23)

The evidence will show that out of the 224,863 voters identified by Dr. Stewart in December 2015, 99,172 (or 44.10%) are inactive voters, 55,847 (or 24.84%) have been removed from the SBE database because of list maintenance procedures, and 135 (.06%) have died. That leaves only 69,709 voters out of Dr. Stewart's December 2015 no-match list. Thus, while Dr. Stewart's matching analysis is of questionable relevance following SL 2015-103, the evidence will demonstrate that the analysis is completely unreliable and deserves no evidentiary weight. *Common Cause/Georgia v. Billups*, 2007 WL 7600409, at *10-14 (N.D. Ga. 2007) (excluding similar matching analysis).

III. CONCLUSION

For the foregoing reasons, it will be clear after trial that judgment should be entered for defendants on all claims by all plaintiffs.

Respectfully submitted, this the 19th day of January, 2016.

NORTH CAROLINA DEPARTMENT
OF JUSTICE

/s/ Alexander McC. Peters
Alexander McC. Peters
Senior Deputy Attorney General
N.C. State Bar No. 13654
apeters@ncdoj.gov

N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
Telephone: (919) 716-6900
Facsimile: (919) 716-6763
Counsel for Defendants North Carolina and State Board of Elections Defendants.

OGLETREE, DEAKINS, NASH SMOAK & STEWART, P.C.

/s/ Thomas A. Farr
Thomas A. Farr
N.C. State Bar No. 10871
Phillip J. Strach
N.C. State Bar No. 29456
thomas.farr@ogletreedeakins.com
phil.strach@ogletreedeakins.com

4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412
Co-counsel for Defendants North Carolina

and State Board of Elections Defendants.

BOWERS LAW OFFICE LLC

By: /s/ Karl S. Bowers, Jr.
Karl S. Bowers, Jr.*
Federal Bar #7716
P.O. Box 50549
Columbia, SC 29250
Telephone: (803) 260-4124
E-mail: butch@butchbowers.com
*appearing pursuant to Local Rule 83.1(d)
Counsel for Governor Patrick L. McCrory

By: /s/ Robert C. Stephens
Robert C. Stephens (State Bar #4150)
General Counsel
Office of the Governor of North Carolina
20301 Mail Service Center
Raleigh, North Carolina 27699
Telephone: (919) 814-2027
Facsimile: (919) 733-2120
E-mail: bob.stephens@nc.gov
Counsel for Governor Patrick L. McCrory

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

***Counsel for United States of America*:**

T. Christian Herren, Jr.
John A. Russ IV
Catherine Meza
David G. Cooper
Spencer R. Fisher
Elizabeth M. Ryan
Jenigh Garrett
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
Room 7254-NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Gill P. Beck
Special Assistant United States Attorney
Office of the United States Attorney
United States Courthouse
100 Otis Street
Asheville, NC 28801

Counsel for NCAAP Plaintiffs:

Penda D. Hair
Edward A. Hailes, Jr.
Denise D. Liberman
Donita Judge
Caitlin Swain
ADVANCEMENT PROJECT
Suite 850
1220 L Street, N.W.
Washington, DC 20005
phair@advancementproject.com

Irving Joyner
P.O. Box 374
Cary, NC 27512
ijoyner@nccu.edu

Adam Stein
TIN FULTON WALKER & OWEN
312 West Franklin Street
Chapel Hill, NC 27516
astein@tinfulton.com

Thomas D. Yannucci
Daniel T. Donovan
Susan M. Davies
K. Winn Allen
Uzoma Nkwonta
Kim Knudson
Anne Dechter
Bridget O'Connor
Jodi Wu
Kim Rancour
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
tyannucci@kirkland.com

Counsel for League of Women Voter Plaintiffs:

Anita S. Earls
Allison J. Riggs
Clare R. Barnett
Southern Coalition for Social Justice
1415 Hwy. 54, Suite 101
Durham, NC 27707
anita@southerncoalition.org

Laughlin McDonald
ACLU Voting Rights Project
2700 International Tower
229 Peachtree Street, NE
Atlanta, GA 30303
lmcdonald@aclu.org

Dale Ho
Julie A. Ebenstein
ACLU Voting Rights Project
125 Broad Street
New York, NY 10004
dale.ho@aclu.org

Christopher Brook
ACLU of North Carolina Legal Foundation
PO Box 28004
Raleigh, NC 27611-8004
cbrook@acluofnc.org

***Counsel for the Intervening Plaintiffs*:**

John M. Davaney
jdevaney@perkinscoie.com
Marc E. Elias
melias@perkinscoie.com
Kevin J. Hamilton
khamilton@perkinscoie.com
Elisabeth Frost
efrost@perkinscoie.com
PERKINS COIE, LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960

Edwin M. Speas, Jr.
espeas@poynerspruill.com
John W. O'Hale
johale@poynerspruill.com
Caroline P. Mackie
cmackie@poynerspruill.com
POYNER SPRUILL, LLP
301 Fayetteville St., Suite 1900
Raleigh, NC 27601

This the 19th day of January, 2016.

OGLETREE, DEAKINS, NASH SMOAK & STEWART, P.C.

/s/ Thomas A. Farr
Thomas A. Farr

23553441.1