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

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al., Plaintiffs, v. PATRICK LLOYD MCCRORY, in his official capacity as the Governor of North Carolina, *et al*., Defendants.	**UNITED STATES' TRIAL BRIEF** Civil Action No. 1:13-cv-658
LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, et al., Plaintiffs, v. THE STATE OF NORTH CAROLINA, *et al.*, Defendants.	Civil Action No. 1:13-cv-660
UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF NORTH CAROLINA, *et al.*, Defendants.	Civil Action No. 1:13-cv-861

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

FEDERAL STATUTES

STATE STATUTES

I. INTRODUCTION AND BACKGROUND[1]

In 2013, the North Carolina General Assembly abruptly enacted an omnibus elections bill—House Bill 589 ("HB 589") that made it more difficult for newly empowered minorities to register to vote, to cast a ballot, and to have their ballot counted.

During trial in July 2015, the United States and other Plaintiffs presented extensive evidence concerning the discriminatory purpose and results of several of HB 589's provisions, including the elimination of same day registration, the curtailment of the early voting period, and the prohibition on counting out-of-precinct provisional ballots. Resolution of the United States' claim against the voter photo identification provision of HB 589 was deferred as a result of the General Assembly's amendment of that photo ID provision on the eve of the July trial.

The evidence the United States will present at the January 2016 trial will focus on the predictable impact of HB 589's voter photo identification requirement.[2] In addition to the extensive evidence in the record regarding the history, process, and circumstances leading up to the enactment of HB 589, the anticipated impact of the law's photo ID provisions is a relevant and important component of the Court's inquiry into whether

[1] In addition to the evidence cited below, the United States relies on the Statement of Facts in its Memorandum of Law in Support of its Motion for Preliminary Injunction and for the Appointment of Federal Observers (ECF. No. 97, 1:13-cv-861) and the findings of fact set forth in Plaintiffs' Joint Proposed Findings of Fact and Conclusions of Law (ECF No. 346, 1:13-cv-861), previously submitted to the Court.

[2] In connection with this trial brief, the United States has filed a Motion for Clarification regarding the evidence the United States seeks to present at trial. As that motion argues, the United States did not have an opportunity to present its full evidence regarding the predictable impact of the voter photo ID portions of HB 589 in the July 2015 trial and will seek to do so at trial beginning on January 25, 2016.

discriminatory purpose was a motivating factor behind the enactment of the voter photo ID requirement and other challenged provisions. This additional evidence will show that the impact of the voter photo identification requirement was expected to fall, and in fact falls, disproportionately on African American voters and further supports a finding that HB 589 was adopted in part for a racially discriminatory purpose in violation of Section 2 of the Voting Rights Act.

A. HB 589 Creates a Restrictive Photo Identification Requirement for In-Person Voters

HB 589, an omnibus bill that eliminated same-day registration, truncated the early voting period, and prohibited the counting of out-of-precinct provisional ballots, also added a new voting requirement for in-person voters: presentation of government issued photo identification.[3] With very limited exceptions, HB 589 required voters to present an unexpired photo ID from a short list of acceptable forms of government-issued photo identification.[4] The only North Carolina agency that issues acceptable photo

[3] First time voters who register by mail and vote by mail-in absentee ballot are required to present ID but the identification does not require a photo. N.C.G.S. § 163-166.12(b). Absentee voters who are not first time voters who register by mail are not required to present any ID with their mail-in absentee ballot. *See* N.C.G.S. § 163-231. Instead, such voters must have the signature of two witnesses or a notary. *Id*.

[4] The specific forms of acceptable photo ID permitted under HB 589 were (1) a North Carolina drivers license; (2) a special (non-operators) ID issued by the North Carolina DMV; (3) a U.S. passport; (4) military ID; (5) veteran's ID; (6) a tribal ID (from a federally or state-recognized tribe); and (7) a driver's license or non-operator ID issued by another state but only if the voter had registered within 90 days of the election. *See* PX110 (HB 589) at §2.1(e)(1-8) (HB 589). Photo identification had to be unexpired, although military and veterans ID cards need not contain a printed expiration date. *Id*. at § 2.1 (e)(4-5). Voters over 70 could show expired ID so long as it was unexpired on the voter's 70th birthday. *Id*. at §2.1(e).

identification for voting purposes is the Division of Motor Vehicles of the state's Department of Transportation.[5]

Under HB 589, the only method of voting available to in-person voters without acceptable ID was a provisional ballot.[6] However, a provisional ballot cast under HB 589 would be counted only if the voter returned to his or her county board of elections and presented an acceptable form of HB 589 ID before the end of the county canvass.[7]

HB 589 creates a voter photo ID requirement that is stricter than other states' requirements.[8] Legislative sponsors of HB 589 were well aware of its unusual stringency because they consulted with election officials from some of these states before passing the HB 589 photo ID provision.[9] Testimony was provided by elections officials from Georgia and Indiana, which allow photo ID distributed by state agencies other than the

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[5] *See id.* at §2.1 (e)(1-8); N.C.G.S. § 163-166.13(e)(2015).

[6] An in-person voter who appeared to vote at an early voting site during the first few days of the early voting period, before the deadline for requesting an absentee ballot, could request an absentee ballot, which would then be mailed to him for later completion and return pursuant to the absentee ballot statute. HB 589 did not require that state officials notify voters of the option to vote absentee if they did not have acceptable ID. *Compare* PX110 (HB 589) *to* HB 836 v.3.

[7] PX110 (HB 589) at § 2.7. HB 589 also included three statutory exemptions to its photo ID requirement. First, voters unable to enter the voting enclosure because of age or physical disability and barriers encountered at the polling place ("curbside" voters) could show non-photo ID acceptable under the HAVA requirement for first-time voters who register by mail. *Id*. at § 2.1(a)(1). Second, a voter with a sincerely held religious objection to being photographed is not required to show ID. *Id*. at § 2.1 (a)(2). Third, a voter who is a victim of a natural disaster within 60 days of an election is not required to show photo ID. *Id*. at § 2.1(a)(3); *see also* N.C.G.S. § 163-166.13 (a)(outlining same exceptions).

[8] PX242 at ¶ 11-24 & n.7, tbl 1 (Stewart Trial Decl.).

[9] *See, e.g.*, PX401A, PX402 (Indiana); LEG5908, LEG5951 (Georgia).

DMV.[10] In addition, while Indiana's photo ID law includes an exception for indigent voters, HB 589 did not include an exception for indigent voters who could not obtain ID.[11] Most notably, the proponents of HB 589's voter photo ID requirement squarely rejected a proposal in 2013 to adopt a "reasonable impediment" exception for voters who were unable to obtain ID that was very similar to South Carolina's reasonable impediment exception despite publicly available information concerning South Carolina's photo ID law.[12] As a result, the narrow list of acceptable IDs under HB 589 was among the most restrictive ID laws in the United States and, at the time of enactment, no failsafe was available for a voter who could not obtain ID because of socio-economic conditions.[13]

B. Changes Under HB 836

In June 2015, on the eve of the July 2015 trial in this matter, proponents of HB 589 seemingly changed course and amended the voter photo identification requirement

[10] *Compare* PX110 (HB589) *to* O.C.G.A. § 21-2-417.1 (2015) (authorizing state-issued free voter identification cards at county board of registrars offices); Ind. Code § 3-5-2-40.5 (2015) (accepting all photo ID issued by the State of Indiana or the U.S. government that displays a voter's photo, name, and an expiration date).

[11] *Compare* PX110 (HB 589) *to* Ind. Code § 3-11.7-5-2.5(c-d).

[12] Proposed House amendment A8 to HB 589 provided that: "If a registered voter has a reasonable impediment to obtaining photo identification, that voter may vote a provisional official ballot after showing the voter's voter registration cared …and signing a declaration stating why that voter could not obtain a photo identification prior to voting in person…a 'reasonable impediment' is any credible reason…which creates an obstacle to obtaining photo identification." PX112 (House amendment A8).

[13] PX242 at ¶¶ 16-24 (Stewart Trial Decl.).

by adding a reasonable impediment exception.[14] Under House Bill 836 ("HB 836"), photo IDs expired for four years or less are now acceptable for voting purposes, and a voter who was unable to obtain acceptable photo ID may now present some other form of identification and cast a provisional ballot accompanied by a reasonable impediment declaration in which the voter identifies the obstacles that prevented him or her from obtaining acceptable ID.[15] Under HB 836, voters who submit a reasonable impediment declaration with their provisional ballot do not need to visit their county boards of elections and present a form of acceptable HB 589 photo identification before their provisional ballot will count. Although the reasonable impediment declaration now provides an alternative for voters who show up to vote in-person to cast valid ballots despite having been unable to obtain the requisite photo ID, Defendants have repeatedly emphasized that the photo voter identification requirement continues to apply to all voters except the very few explicitly exempted because of religious conviction or natural disaster, or because they use curbside voting.[16]

As discussed further below, voters who do not possess the requisite ID for voting under HB 589, as amended by HB 836, are disproportionately African American.

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[14] HB 836 v. 3.

[15] N.C.G.S. §§ 163-166.13(c)(2), 163-166.15 (2015). A voter who seeks to cast a provisional ballot pursuant to the reasonable impediment provision must provide a type of non-photo ID acceptable under the Help America Vote Act ("HAVA"), a voter registration card, or their birth date and the last four digits of their social security number as a form of ID. N.C.G.S. §§ 163-166.15 (c); 163-166.12 (a)(2); 52 U.S.C. 21083(b) (2015).

[16] ECF No. 394, 1:13-cv-658, at p. 2 ("The State's message about photo ID was correct then and correct now: in 2016 voters are required to present acceptable identification when voting…"); 30(b)(6) Strach Dep. Tr. (Vol. V)(12/18/15) at 11:24-14:5.

Because of lingering socio-economic effects resulting from the long history of discrimination in North Carolina,[17] African American voters will, on average, bear a materially heavier burden than white voters when attempting to obtain photo identification that satisfies the requirements of HB 589. That burden is part of what the North Carolina legislature intended to achieve in 2013.

II. ARGUMENT

Section 2 of the Voting Rights Act prohibits any State or political subdivision from imposing or applying a "voting qualification," "prerequisite to voting," or "standard, practice, or procedure" for a racially discriminatory purpose. 52 U.S.C. § 10301(a); *see e.g., Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 766 (9th Cir. 1990). "Racial discrimination need only be one purpose, and not even a primary purpose, of an official act" to establish discriminatory intent under Section 2. *United States v. Brown*, 561 F.3d 430, 433 (5th Cir. 2009); *see also Garza*, 918 F.2d at 778. When evaluating a Section 2 claim of discriminatory intent, "normal inferences to be drawn from the foreseeability of defendant's actions", including whether a law "suited the purpose of discrimination" should be considered. *McMillan v. Escambia Cnty.*, 748 F.2d 1037, 1047 (5th Cir. 1984) (quoting S. Rep. No. 97-417, at 27 n. 109); *see also Brown v. Bd. of Sch. Comm'rs*, 706 F.2d 1103, 1107 (11th Cir. 1983). Moreover, establishing proof of discriminatory purpose does not require proof of invidious racial animus, but rather simply an intent to disadvantage minority citizens, for whatever reason. *Garza*, 918 F.2d

[17] ECF No. 346, 1:13-cv-861, Plaintiffs' Joint Proposed Findings of Fact and Conclusions of Law ("Plaintiffs' FOFs") ¶¶ 14-44.

at 778 & n.1 (Kozinski, J., concurring and dissenting in part); *see also LULAC v. Perry*, 548 U.S. 399 (2006). The evidence here shows that HB 589 was motivated, at least in part, by an intent to reduce the opportunity of African Americans to participate in the political process and HB 589's photo identification requirement contributed significantly to that goal.

A. The United States Will Establish That the Impact of HB 589's Voter Photo Identification Provision Supports a Finding of Intentional Discrimination

The appropriate framework for analyzing whether official actions are intentionally discriminatory under Section 2 was established by the Supreme Court in *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977); *see also United States v. Charleston Cnty.*, 316 F. Supp. 2d 268, 305 n. 42 (D.S.C. 2003). *Arlington Heights* identifies a non-exhaustive list of factors to consider when determining whether intentional racial discrimination taints an official act and specifies that "an important starting point" for assessing the discriminatory purpose of an official body is "the impact of the official action[, i.e.,] whether it bears more heavily on one race than another." *Arlington Heights*, 429 U.S. at 266 (internal quotation marks omitted). The Senate factors provide an additional "source of circumstantial evidence regarding discriminatory intent" when analyzing official action. *United States v. Brown*, 561 F.3d at 433.

1. The Racially Discriminatory Impact of HB 589 Was Foreseeable

The United States' expert, Dr. Charles Stewart III, will provide testimony confirming that, at the time it passed HB 589, the North Carolina General Assembly had

clear evidence showing that African Americans were disproportionately likely to lack DMV-issued photo ID.[18] Between February 2011 and April 2013, the North Carolina State Board of Elections ("SBOE") performed a series of database matching analyses to identify North Carolina voters who could not be matched to an ID record maintained by the North Carolina Division of Motor Vehicles.[19] The SBOE prepared these analyses as a result of legislative and media inquiries regarding the number of individuals who did not have DMV issued photo-ID.[20] Various iterations of the database matches conducted by the SBOE from 2011 through 2013 used different matching criteria but one thing remained constant: every match conducted by the SBOE revealed both that hundreds of thousands of voters could not be matched to a DMV ID and that the pool of unmatched voters was disproportionately African American.[21] In fact, the racial disparity among the remaining unmatched voters consistently *increased* even as the overall number of unmatched voters decreased when state officials refined the criteria used to match registered voters to records in the DMV database.[22]

The results of the SBOE's analyses of voter registration and DMV databases were also consistent with publicly available evidence of racial disparities in ID possession that

[18] *See* Declaration of Charles Stewart, Ph.D, *U.S. v. North Carolina*, Case no. 13-cv-861 at ¶¶ 3-13 (December 10, 2015) ("Stewart ID Trial Decl.").

[19] *Id*.

[20] *E.g.*, PX534 at 1, 5 (2013 SBOE DMV-ID Analysis); PX430.

[21] *See* Stewart ID Trial Decl. at ¶¶ 3-13.

[22] *Id*. at ¶¶10-13 and Tbls. 4-5.

had emerged from other states as of 2013.[23] For example, in 2012, expert analyses in highly publicized federal court cases established that African Americans were disproportionately likely to lack qualifying ID under photo voter ID laws passed in South Carolina and Texas.[24] When the North Carolina legislature adopted HB 589 in 2013 information from the Texas and South Carolina cases was publicly available.[25] In addition, publicly available scholarly research showed that, in many states, African Americans tended to possess photo ID at lower rates than whites.[26] Moreover, these sources included information regarding the disproportionate burdens in obtaining photo identification due to socio-economic conditions.[27]

The racial disparity among those impacted by HB 589's photo voter ID requirement was also foreseeable because the requirement was only applied to in-person voters. HB 589 exempted absentee-by-mail voters from the ID requirement. North Carolina voters who participate in elections by mail are disproportionately white; therefore, the exemption from providing ID for absentee-by-mail voters disproportionately benefited white voters and enhanced the racial disparity in the

[23] *See id.* at ¶¶ 15, 18.

[24] *Id.*

[25] *See Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C., Aug. 11, 2012); *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C., Oct. 10, 2012).

[26] *See* Stewart ID Trial Decl. at ¶¶ 16-18 (discussing additional studies conducted in Georgia, Wisconsin, and Indiana, and one nationwide survey).

[27] *See infra* section II.A.4.

expected impact of the new law.[28] The decision to not to include an exemption from North Carolina's ID requirement for socio-economic reasons but to include an exception for absentee voters, who were disproportionately white, was made even though proponents of HB 589 were aware of the significance of in-person voting for African American voters because of historical discrimination.[29] Indeed, SBOE data on the methods of voting showed a recent surge among African Americans through in-person voting and the disproportionate use of absentee voting by mail by whites. [30]

2. The United States' Expert Confirms That at the Time of HB 589's Enactment African Americans Disproportionately Lacked the Forms of Identification Acceptable Under HB 589's Voter Photo Identification Requirement

Dr. Stewart performed a database matching analysis to assess whether each of the approximately 6 million registered voters in North Carolina possess HB 589 ID.[31] Dr. Stewart's analysis included a comparison of the North Carolina voter registration

[28] PX242 at App'x S, Tbls. 1-3 (Stewart Trial Decl.). In addition, the absentee by mail voting process must be evaluated in the context of the level of literacy necessary to successfully navigate each step of voting absentee by mail, as well as racial disparities in literacy levels. PX239 at ¶¶ 61-62 (Summers Decl.).

[29] PX17 at ¶ 35(H.M. Michaux).

[30] PX18A JA0184, JA0200 (Stein); *see also* PX72 JA 1710-13 (emails between Veronica Degraffenreid and Reps. Warren, Murry, and Samuelson); PX74 at JA 1796 (SBOE spreadsheet reporting that of those on the SBOE's no-match list, there was only a 5 percentage point difference between the fraction of black (47.47%) and white (42.33%) voters who voted by one-stop absentee ballot during the 2012 election, but there was a 49 percentage point difference between the fraction of black (19.96%) and white (69.25%) voters who voted by mail absentee ballot.).

[31] *See generally* PX242 at Section 1 (Stewart Trial Decl.); Stewart ID Trial Decl. at ¶¶ 26-38. Dr. Stewart used a July 2014 snapshot of the North Carolina voter list to conduct his matching analysis.

database to the North Carolina DMV database and federal databases containing data on passports and military and veteran ID.[32] Like the SBOE in 2011-2013, *see supra*, Dr. Stewart found statistically significant racial disparities in the possession of acceptable ID under HB 589 as originally enacted. [33]

The United States will present this evidence at trial showing that under HB 589, hundreds of thousands of North Carolina registered voters likely did not possess photo ID that can be used for voting, and African Americans were substantially over-represented among voters without ID.[34] Specifically, Dr. Stewart found that African Americans were over twice as likely as whites to lack the photo ID required for voting under HB 589 as originally enacted.[35] Dr. Stewart's estimates likely understate the number of voters without HB 589 ID because his analyses treat tens of thousands of driver's licenses that have been suspended or physically surrendered to the DMV as valid ID for voting, although in practice they are not.[36]

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[32] *See* Stewart ID Trial Decl. at ¶¶ 19-25.

[33] *See* PX242 at ¶¶ 107 nn.45-46 (Stewart Trial Decl.).

[34] *See* Stewart ID Trial Decl. at ¶¶ 19-25; PX242 at ¶ 102 & Tbl.6 (showing that 397,971 North Carolina voters lacked HB 589 ID, of whom 147,111 were African American and 212,656 were white).

[35] *See* Stewart ID Trial Decl. at ¶¶ 19-25; PX242 at ¶¶ 103-104, Tbl.7 (Stewart Trial Decl.) (showing that 10.1% of African American registered voters lacked HB 589 ID, compared to only 4.6% of white voters).

[36] Addendum to the Feb. 12, 2015 Declaration of Charles Stewart, Ph.D, *U.S. v. North Carolina*, Case no. 13-cv-861, Revised Tbl. 11 (April 2, 2015); PX663 at ¶ 36 (Defs' Response to Requests for Admission) (admitting that it is unlawful to possess or display a suspended driver's license); N.C.G.S. § 20-30; PX664 at ¶¶ 29-32, 43-48 (Defs' Suppl. and Amend. Response to Requests for Admission) (discussing various provisions of North Carolina law requiring the surrender of a license); *see also* N.C.G.S. §20-17(b).

Dr. Stewart also found that African Americans who actively participated in the North Carolina political process were particularly likely to be impacted by North Carolina's photo voter ID provision. HB 589's ID requirement had a racially disparate impact on active voters—those who participated in recent elections or had some recent contact with his or her county board of elections.[37] African American voters in active status were 2.6 times more likely than white voters in active status to lack required ID under HB 589 as originally enacted.[38] And when Dr. Stewart analyzed registered voters who voted in 2012 or 2014, he found that African Americans were 3.8 times more likely than whites to lack acceptable ID under HB 589 as originally enacted.[39] Thus, African Americans who actively participated in North Carolina's political process were much more likely than whites to be impacted by North Carolina's photo ID requirement. The type of voter impacted by HB 589 is particularly relevant in the context of the history of discrimination in voting in North Carolina and the surge in voter participation among African Americans between 2000 and 2012 and supports the inference that these very voters were targeted by HB 589.[40]

Dr. Stewart also found that the small fraction of voters who cast ballots by mail in recent elections were disproportionately white, and they alone will benefit from the only

[37] PX242 at ¶ 106-109 (Stewart Trial Decl.).

[38] *Id*. at ¶ 108, Tbl. 9 (analyzing 397,997 person no-match list).

[39] *Id*. at ¶¶ 110-111, Tbl. 10.

[40] Plaintiffs' FOFs ¶¶ 43-44, 92-97.

exception to the photo voter ID requirement that applied to all North Carolina voters.[41] In 2008, 6.4 percent of white voters who voted cast by-mail absentee ballots, compared to just 1.7 percent of black voters. Similarly, in 2012, 5.8 percent of white voters cast by-mail absentee ballots, compared to just 1.8 percent of black voters, and in 2014, 3.0 percent of white voters cast their ballots by mail, compared to just 1.2 percent of black voters.

In response to opinions by Defendants' experts Hood and Thornton that mailings done by the North Carolina SBOE show that the no-match data may overestimate the number of registered voters who do not have qualifying ID, Dr. Stewart will explain the reasons why SBOE mailings do not prove that matching analyses overestimate voters without ID.

3. The United States' Expert Confirms That There Remains a Significant Racial Disparity in ID Possession Notwithstanding the Enactment of HB 836

The amendments HB 836 made to the voter photo identification requirement do not eliminate the requirement that an in-person voter present one of seven acceptable forms of photo identification in order to cast a regular ballot.[42] HB 836 provides instead that in-person voters who do lack HB 589 ID but who affirm that they have a reasonable impediment to acquiring an ID, will have an opportunity to cast only a provisional ballot. Therefore, the racially discriminatory impact of the photo ID requirement reflected in

[41] PX242 at App'x S (Stewart Trial Decl.) (summarizing data from 2006-2014).

[42] HB 836 v.3; 30(b)(6) Strach Dep. Tr. (Vol. V)(12/18/15) at 11:24-14:5.

both the SBOE's and Dr. Stewart's analyses of possession rates of DMV-issued ID among registered voters has not been eliminated.

Dr. Stewart performed a database matching analysis to assess whether each of the approximately 6 million registered voters in North Carolina possess HB 836 ID.[43] When driver's licenses and non-operator ID cards that were expired less than four years are treated as acceptable for voting, as required by HB 836, the overall number of unmatched voters declines, but there remain approximately 224,000 of North Carolina registered voters who likely do not possess photo ID that can be used for voting. Moreover, once expired ID cards have been factored in, the racial disparity in ID possession rates increases further. [44] According to Dr. Stewart's analysis, African Americans were 2.27 times more likely than whites to lack qualifying ID for voting under HB 589, as amended by HB 836.[45] Far from diminishing the discriminatory results of HB 589, HB 836 may exacerbate them.

4. The United States' Evidence Will Show That African American Voters Face a Heavier Burden in Obtaining HB 589-Compliant ID from North Carolina

There are three basic types of acceptable ID that voters may seek to obtain and use for in-person voting in North Carolina: specific federally-issued ID, specific state-issued ID, or specific tribal-issued ID. The North Carolina Division of Motor Vehicles is the only state agency that issues ID acceptable for voting under HB 589, as amended by HB

[43] *See generally* Stewart ID Trial Decl. at ¶¶ 26-38.

[44] Stewart ID Trial Decl. at ¶ 36, Tbls. 10-11.

[45] *Id*. at ¶¶ 35-37, n.26, Tbls. 10-11.

836.[46] To obtain an initial DMV-issued ID, a voter must appear in-person at a DMV office.[47]

The evidence will show that when the legislature adopted HB 589, the North Carolina Department of Transportation did not maintain a DMV office in each of North Carolina's 100 counties during regular business hours every day of the week, a condition that persists today.[48] And of the 114 physical offices that issue DMV-ID in North Carolina, many are only open on a part time basis, only 21 offer extended business hours, and not one is open after 6:00 pm on any day of the month. Counties without a physical DMV office rely on mobile units that offer licensing services on a set schedule. As late as 2015, no mobile unit site was visited more than three days per month, only one location had mobile unit visits that exceeded two days per month, and only five mobile units were serviced for more than one day a month.[49] Moreover, these mobile units have long been—and continue to be—plagued by mechanical and connectivity issues, which severely limit their ability to serve North Carolinians in need of DMV-issued ID. Finally,

[46] *Id*. at ¶ 21; ECF No. 394-1, 1:13-cv-658, at 72 (Strach Decl., Dec. 12, 2015) (Exh. 2.2). The three forms of acceptable ID issued by the NC DMV are: driver's licenses (including learners permits and provisional licenses), non-operator identification cards, and voter identification cards.

[47] ECF No. 394-1, 1:13-cv-658, at 72 (Strach Decl., Dec. 12, 2015) (Exh. 2.2).

[48] *See* PX663 at ¶ 66 (Defs' Response to Requests for Admission). Regular business hours at DMV offices are 8:00 am to 5:00 pm. (2014-2015 DMV handbooks). *See* ECF No. 384-1, 1:13-cv-861 at p. 2 listing witnesses who will or may testify at trial, including: Charlotte Boyd-Mallette, Tracy Bucholtz, and Randy Dishong, Kelly Thomas.

[49] PX663 at ¶¶ 75-77.

as late as 2015, DMV offices in urban areas reported wait times that frequently exceeded 30 minutes and, in some cases, reached 1 hour.

The United States has previously set out at length, in its findings of fact and conclusions of law from the July 2015 trial, the ways in which the effects of discrimination in education and employment disproportionately impact the socio-economic conditions of African Americans in North Carolina.[50] When these socio-economic conditions interact with the limited availability of state-issued ID acceptable for voting in North Carolina, it increases the burdens voters without ID have to overcome. For example, three of the five counties in North Carolina with no physical DMV office or DMV mobile unit location have poverty levels greater than 25%, and more than 10% of the households in those counties lack access to a vehicle.[51] These counties are also disproportionately African American and have higher than average rates of African American voters on Dr. Stewart's no-match list.[52]

Dr. Stewart's analysis of the list of voters who could not be matched to a record in any of the identification databases found that the two areas with the highest no-match rates are clustered in two regions of North Carolina that are historically associated with high levels of poverty: the Coastal Plain counties in the east and the Mountain counties in the west.[53] Moreover, the counties with lower median household incomes, lower

[50] Plaintiffs' FOFs ¶¶ 14-42.

[51] PX241 ¶ 23 (Webster Decl.).

[52] PX242 at App'x N (Stewart Trial Decl.).

[53] *Id*. at ¶¶ 137-138, Figure 5.

literacy levels, and less access to private automobiles tended to have more voters on the no-match list.[54] In every North Carolina county except two, African Americans are more likely to be on the no-match list than white voters.[55] Moreover, Dr. Stewart's analysis shows that among voters on the no-match list, African Americans are more likely to have lower incomes, less wealth, and lower levels of education than white voters on the no-match list.[56]

Thus, for African American registered voters who lack HB 589 ID and face greater socio-economic barriers, the monetary cost of obtaining an ID can present a significantly different burden than it does for whites. The United States will present testimony from fact witnesses regarding these significant burdens. One such witness, who lives in poverty and suffers from chronic medical conditions, will testify that she would have to forego purchasing medication to cover any costs associated with making corrections to her birth certificate and obtaining the requisite identification to vote. Another witness, who lives in poverty and is illiterate, will testify about the significant financial challenges he faced and the additional assistance he needed when obtaining a state-issued identification.[57]

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[54] *Id*. at ¶¶ 140-143, Figs. 4, 6, 7 (analyzing 397,997 person no-match list).

[55] *Id*. at ¶ 138, Figure 5. The two counties with a greater proportion of white voters on the no-match list have very small numbers of African American registered voters: 2 in Graham County and 26 in Mitchell County. *Id*. ¶ 138 n.68, ¶¶ 135, 141-143, Figs. 6-7.

[56] *Id*. at ¶ 149, Tbl.13 (analyzing 397,997 person no-match list).

[57] *See* Brown Dep. 21:11-24, 22:15-23:9; Foster Dep. 17:4-21.

5. The Voter Photo Identification Requirement Significantly Contributes to the Cumulative Effect of the Challenged Provisions of HB 589

The United States has previously recounted how HB 589's challenged provisions targeted those methods of voting that recently empowered African American voters were more likely than their white counterparts to rely on: early voting, particularly during the periods eliminated by HB 589, as well as the same-day registration and out-of-precinct provisional balloting options HB 589 eliminates.[58] All of those voting methods require a voter to appear in person, and thus be subject to HB 589's photo ID requirement.

The record contains extensive evidence regarding how HB 589's challenged provisions collectively interact with economic, historical, and ongoing social conditions in North Carolina to result in a denial or abridgement of equal opportunities for African American voters to participate in the political process. The impact of HB 589's photo ID requirement is relevant to an analysis of the intended effect of the omnibus bill because of the number of voters without ID impacted by HB 589's photo ID provision, the omission of an exemption to the photo ID requirement for voters whose socio-economic status makes it less likely that they already have HB 589-compliant ID and more burdensome for them to acquire it, the inclusion of an exception disproportionately relied on by white voters, and the legislative process that prevented changes to the bill that could have altered the foreseeable racial effect of HB 589's provisions.[59] Ultimately, each provision of HB 589 intentionally carves out additional categories of voters that are

[58] Plaintiffs' FOFs ¶¶ 192-251.

[59] *Id.* at ¶¶ 114-151.

disproportionately African American and excludes them from the political process. Proponents of HB 589 were well aware of the entirely foreseeable disproportionate impact of the challenged provisions of HB 589 and the voter photo ID provision in particular.

B. The United States Has Shown That the History, Sequence of Events, and Legislative Process Leading to the Enactment of HB 589's Voter Photo Identification Requirement Support a Finding of Intentional Discrimination

The new evidence showing disproportionate racial impact of the photo identification requirement considered together with the extensive evidence already in the record regarding the history and specific sequence of events leading up to the enactment of HB 589, and the photo ID requirement specifically, procedural and substantive departures from the normal legislative process, and contemporaneous statements made by legislators, establishes that HB 589 was motivated, in part, by the intent to discriminate against African American voters in North Carolina.

1. North Carolina's History of Official Discrimination Against African Americans and the Sequence of Events Leading Up to the Enactment of HB 589 Evince Discriminatory Purpose

The State of North Carolina's official history of discrimination against African Americans is undisputed and has been extensively documented and supported by expert testimony and evidence.[60] The history of minority voting rights in North Carolina has been characterized by a cyclical pattern that begins with the expansion of voting rights for African American voters, leads to a period of increased African American political

[60] *Id.* at ¶¶ 3-13.

participation, and is followed by official discriminatory actions and reactions, which result in the suppression and reversal of advancements and political gains experienced by minority voters.[61] The pattern of expansion and retrenchment of minority voting rights in North Carolina was repeated again in the "sequence of events" leading up to the enactment of HB 589, which together with the state's history of discrimination are strong evidence that the law and its provisions were motivated by discriminatory intent. *Arlington Heights*, 429 U.S. at 267.

In the decade preceding enactment of HB 589, North Carolina enacted a series of election reforms, including early in person voting and same day registration, that each expanded voting opportunities for all North Carolinians. African Americans, in particular, came to disproportionately rely on these practices to overcome historical and socio-economic barriers to political participation. These reforms resulted in significant increases in the rates of African American voter registration and turnout. Indeed, during the 2008 and 2012 presidential elections, black voter participation rates reached a fragile parity with white voter participation rates. [62]

Due to the racially polarized nature of voting in North Carolina, the recent expansion of African American political participation and voting strength had major political implications for Republicans in North Carolina. As is the consensus among experts in this matter, the evidence shows that in North Carolina race is a better predictor

[61] *Id.*

[62] *Id.* at ¶¶ 45-97.

of how a person will vote than is political party, and on average, African American voters in North Carolina currently vote for Democratic candidates at near-unanimous levels.[63]

In the face of a significant demographic shift in voting strength that threatened recent Republican gains, a Republican legislative majority in North Carolina undertook efforts to repeal the electoral reforms that had successfully expanded minority voter access and participation in the preceding decade, precisely because of these voters' impact. These legislative efforts began with the introduction of a photo voter identification bill that failed in 2011 and culminated in the enactment of HB 589 in 2013.[64]

The record is replete with evidence showing that proponents of HB 589 had full knowledge that the bill's provisions, including its photo identification requirement, would disproportionately impact African Americans. With respect to the photo ID provision, it is quite telling that despite knowledge of the discriminatory impact of the requirement, proponents not only proceeded to enact the provision but over the course of the legislative process affirmatively transformed it to include stricter requirements and fewer forms of acceptable ID, which legislators knew would also bear more heavily on African Americans. The fact that the impact of the ID requirement would bear more heavily on one race than another—and that this was widely known and foreseeable—is highly probative of discriminatory intent. *See Arlington Heights*, 429 U.S. at 266; *Reno v. Bossier Parish School Bd.* (Bossier I), 520 U.S. 471, 487 (1997) ("[T]he impact of an

[63] *Id*. at ¶¶ 98-100.

[64] *Id*. at ¶¶ 106-149.

official action is often probative of why the action was taken in the first place since people usually intend the natural consequences of their actions.")

2. The Evidence Shows the North Carolina General Assembly Exploited the Supreme Court's Decision in *Shelby County v. Holder* to Change Fundamentally the Legislative Process of HB 589, Including Multiple Substantive and Procedural Departures from the Normal Practice

Of particular salience, record evidence reveals dramatic changes in the legislative process leading up to the enactment of HB 589 and the photo ID requirement following the Supreme Court's decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013).

Prior to the Supreme Court's June 2013 decision in *Shelby County v. Holder*, HB589's proponents acknowledged that the proposed legislation would have to comply with the preclearance requirements of Section 5 of the Voting Rights Act. Thus, they undertook a legislative process that included a series of public hearings, multiple committee hearings, and two full days of floor debate in the House. And they proceeded somewhat cautiously with respect to the actual substance of the proposed bill.[65]

After a month of consideration, HB 589 was passed by the House and was sent to the Senate. The final House version of HB 589 was 16 pages long and included only provisions that required photo ID for voting and amended some absentee voting procedures. HB 589's pre-*Shelby* voter photo ID provision provided that acceptable ID would include "[a]n identification card . . . issued by a branch, department, agency, or entity of the United States, this State, or any other state," and it set forth a non-

[65] *Id.* at ¶¶118-125.

exhaustive, illustrative list of acceptable ID.[66] Proponents of HB 589 expressed unreserved support for the pre-*Shelby* version of HB 589 and the process used to pass the bill.[67]

Following the *Shelby County* decision, sponsors unveiled what one proponent called the "full bill," which had morphed from a photo-ID bill into an omnibus attack on the electoral reforms that expanded voter access and participation in the state for black voters—a version of the bill that proponents likely believed would not have met the legal standard for preclearance under Section 5.[68] *See League of Women Voters v. North Carolina*, 769 F.3d 224, 242 (4th Cir. 2014). The post-*Shelby* bill included a more onerous and restrictive voter photo ID requirement, as well as provisions circumscribing the early voting period, eliminating same day registration, and prohibiting the counting of out-of-precinct provisional ballots, all of which intensified the discriminatory impact on African Americans.

Despite these dramatic substantive changes to the contents of HB 589, and specifically to the ID provision, each of which exacerbated the racially discriminatory impact of the bill, the proponents of the now much larger bill did not subject the post-*Shelby* version to the same extensive and transparent vetting process as was undertaken during consideration of the pre-*Shelby* version of HB 589. Instead, the sponsors of the much larger HB 589 pushed the bill through the General Assembly in just two days,

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[66] PX106 (HB 589 v. 5).

[67] PX545 at 36:18-37:9 (4/10/13 House Elec.); Plaintiffs' FOFs ¶ 125.

[68] Plaintiffs' FOFs ¶ 128.

completely truncating the opportunity for meaningful review and debate on the multiple new provisions. Undeterred by statements from several legislators that the bill's provisions restricted access to voting and constituted voter suppression, Senate and House proponents passed the omnibus version of HB 589.[69]

While the substantive and procedural deviations from the normal legislative process that occurred during consideration of the final bill were not violations of the formal rules of the North Carolina House or Senate, such notable departures are indicators of discriminatory intent. *Arlington Heights*, 429 U.S. at 267.

3. The Evidence Shows that Major Legislative Decisions Made By Proponents of HB 589 All Had the Effect of Increasing the Bill's Disproportionate Impact on African American Voters and Were Based on Pretextual or Tenuous Rationales

In addition to the deviations from the normal legislative process, specific legislative decisions regarding the contents of the bill and its provisions provide additional evidence that proponents of HB 589 were motivated by a discriminatory purpose. These decisions include the rejection of amendments that could have mitigated the disproportionate burden of the photo ID requirement on African Americans, and modifications of the photo ID provision that heightened the discriminatory impact on African American voters.

During House floor debate on the pre-*Shelby* version of HB589, Representative Glazier introduced an amendment that would have permitted voters who were unable to obtain the requisite photo ID to cast a provisional ballot upon the execution of a

[69] *Id*. at ¶¶ 126-149.

declaration describing the "reasonable impediment" preventing them from obtaining an ID.[70] This provision largely mirrored a similar provision in South Carolina's ID law deemed crucial to mitigating the South Carolina law's discriminatory impact.[71] Despite knowledge that the photo identification requirement would have a disproportionate negative impact on African American voters, HB 589's proponents summarily rejected the amendment and dismissed the need for such an exception.[72]

Following the *Shelby* decision, every change proponents of the bill made to the photo ID provision significantly heightened the burden on African American voters. The pre-*Shelby* voter photo ID requirement included among the original broader list of acceptable forms of ID: employee ID; ID issued by the University of North Carolina or its constituent institutions; ID issued by a North Carolina community college; ID issued to a fireman, EMS or hospital employee, or law enforcement officer; ID issued by a unit of local government, public authority, or special district; and ID issued for a government program of public assistance. The post-*Shelby* version of the photo ID provision—included in the "full bill"—eliminated every one of these types of ID, all of which are relatively more accessible to African Americans. [73] On the other hand, the post-*Shelby* version of the photo ID provision retained, as acceptable IDs for voting, unexpired DMV-

[70] PX112 (House amendment A8); PX548 at 109:10-112:8 (4/24/13 House Flr.).

[71] *See South Carolina v. United States*, 898 F. Supp. 2d 30, 37 (stating that the South Carolina voter ID law's reasonable impediment provision—and the expansive interpretation offered by the state—were central in the court's resolution of the case).

[72] PX548 at 113:3-24; 116:7-117:1 (4/24/13 House Flr.).

[73] *Compare* PX106 (HB 589 v. 5) *to* PX110 (HB 589); Plaintiffs' FOFs ¶¶ 150-151; PX231 at 34-35, 99 (Lichtman Rpt.).

issued ID, U.S. passports, and veterans and military ID, all of which are relatively less accessible to African Americans.[74] Every one of the changes to the content of the voter photo ID provision resulted in the increased imposition of a disproportionate burden on black voters as opposed to white voters.

The actions taken by proponents to add further restrictions to the photo ID provision also serve to undermine the justifications offered for the provision. The main rationales offered by sponsors and supporters of HB 589 for enacting the photo ID provision were the need for electoral integrity and prevention of voter fraud. When the pre-*Shelby* version of HB 589 passed the House, proponents lauded the bill and its photo ID provision as a measure that would protect the integrity of the election system.[75] They provided no basis for later concluding that the pre-*Shelby* version of HB 589 provided inadequate protection of those interests. That they subsequently modified the provision despite their assertions that the version passed by the House sufficed to meet their objectives of protecting the integrity of elections against fraud, evinces that justifications offered for the provision are pretextual.

C. HB 836 Does Not Vitiate the Original Discriminatory Purpose Behind HB 589

The reasonable impediment exception of HB 836 does not alter the original discriminatory purpose that motivated the adoption of HB 589 in 2013, nor does it remove the discriminatory intent behind the voter photo identification requirement. *Hunter v. Underwood*, 471 U.S. 222, 227-233 (1985) (holding that the law in question

[74] *Id.*

[75] Plaintiffs' FOFs ¶ 125.

was intentionally discriminatory in violation of the Fourteenth Amendment, where its original enactment was motivated by a desire to discriminate on account of race and the provision had had racially discriminatory impact since its adoption).

Indeed, the facts surrounding the later introduction and passage of HB 836, which amended the original photo ID provision to include the reasonable impediment exception, belie any claim that the reasonable impediment provision was passed to assuage or remedy either the impact of the photo ID requirement or the original discriminatory intent behind HB 589.

First, despite having knowledge of the disproportionate impact of the photo identification requirement, proponents made no attempts in 2013 to include types of ID that were acceptable under the pre-*Shelby* version of the photo ID requirement, which in turn, would have assuaged the discriminatory impact of the provision. Next, the timing of the reasonable impediment amendment and the process by which it was introduced and enacted in 2015 suggest that proponents of the law were concerned with obstructing the upcoming trial and not with addressing the original intent of HB 589 or the voter photo ID provision.[76] Key supporters of HB 589 introduced the reasonable impediment amendment nearly two years after the enactment of HB 589 and only three weeks before the commencement of trial scheduled to adjudicate challenges to provisions of HB 589.

[76] Such actions taken by proponents of HB 589 are evocative of the tactics Congress sought to address when it enacted Section 5 of the Voting Rights Act. *See South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966) (acknowledging that Section 5 was intended to prevent covered jurisdictions from "contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination" that traditional case-by case legal remedies could not effectively deter).

Without notice, the legislature added the reasonable impediment amendment to a mostly unrelated bill following a conference committee; the reasonable impediment amendment was subject to very limited debate.[77] As with the post-*Shelby* version of HB589, sponsors of HB 836 and the reasonable impediment amendment pushed through the bill and ignored requests to postpone a vote on the bill until after there had been an opportunity to discuss and debate the bill. [78] Indeed, even supporters of HB 589 suggested that the true motivation behind the reasonable impediment provision was fear of losing the impending challenge to HB 589 and its voter photo ID provision.[79] Cf. *Collins v. City of Norfolk*, 883 F.2d 1232, 1243 (4th Cir. 1989) (recognizing that a jurisdiction's "desire to moot" a pending Voting Rights Act lawsuit can be a relevant circumstance to take into account in assessing a Section 2 violation). Legislation passed as a litigation strategy, amending but not repealing a tainted obstacle, cannot erase the underlying stain of discriminatory intent.

[77] HB 836; 6/18/15 Senate Tr. (HB 836) 6:22-7:10 (Senator Stein stating: "This is a joke of a process. This provision on voter I.D., it wasn't in the House Bill. It wasn't in the Senate bill. This has not gotten a single moment's of deliberation by this legislative body. We had no notice that this provision was going to be voted on today…So the first time any of us have had an opportunity to look at this voter I.D. provision is on this screen right now while we're in the middle of the debate having to vote on it.").

[78] 6/18/15 Senate Tr. (HB 836) 14:23-15:5; 7:11-16.

[79] 6/19/15 email exchange LEG-2_0000253 (Representative McGrady relaying that "the law was needed to insure that our Voter ID law was not declared unconstitutional." Representative Whitmire replying that "a tactical adjustment" was needed to ensure the photo ID requirement was not "defeated by other means.").

D. Retaining Jurisdiction and Subjecting North Carolina to a Preclearance Requirement Pursuant to Section 3(c) of the Voting Rights Act is Necessary to Remedy its Violation of Section 2

The United States' prayer for relief includes a request that the Court retain jurisdiction and subject North Carolina to a preclearance requirement pursuant to Section 3(c) of the Voting Rights Act, 52 U.S.C. § 10302(c).[80] Section 3(c) is a significant remedial provision that authorizes federal courts to impose a preclearance requirement on jurisdictions where intentional racial discrimination in voting has occurred. Here Section 3(c) relief is necessary to remedy North Carolina's violation of Section 2.

In order for the Court to grant relief under Section 3(c), the following conditions must be met: (1) the request for relief must be made in a "proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision"; and (2) a court must conclude that "violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision." 52 U.S.C. § 10302(c). As a practical matter, this requires a finding of intentional voting discrimination. *See Jeffers v. Clinton*, 740 F. Supp. 585, 591-92

[80] Section 3(c) of the Voting Rights Act provides:

If in any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth and fifteenth amendment in any State or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until [preclearance is granted by the court or the Attorney General declines to interpose an objection]. 52 U.S.C. § 10302(c).

(E.D.Ark. 1990); *Brown v. Bd. Of Sch. Comm'rs*, 542 F. Supp. 1078, 1101-03 (S.D. Ala. 1982); *see also Rogers v. Lodge*, 458 U.S. 613, 617-20 (1982).

Both conditions are met in this case. First, the United States filed an action under Section 2 of the Voting Rights Act to enforce the guarantees of the Fourteenth and Fifteenth Amendments against racial discrimination in voting in North Carolina. Second, the record evidence shows that HB 589 was enacted with the intent to discriminate against minority voters, in violation of Section 2 of the Voting Rights Act and the voting guarantees of the Fourteenth and Fifteenth Amendments.

Upon making a finding of discriminatory intent, Section 3(c) authorizes the Court to require preclearance of all voting changes. *See* 52 U.S.C. § 10302(c) (applying to any "voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting"); *cf. Allen v. State Bd. of Elections*, 393 U.S. 544, 565 (1969) ("The Voting Rights Act was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race.").

Extensive evidence regarding the impact of the challenged provisions, including the photo identification requirement, North Carolina's pervasive and long-standing history of official discrimination against African Americans, the sequence of events leading up to the enactment of HB 589, and the contemporaneous statements and tenuous rationales offered by proponents of the law all support the conclusion that HB 589 was motivated by a discriminatory purpose. Indeed, the very fact that North Carolina continued to tinker with and alter its election procedures during the pendency of this case in an attempt to moot it strengthens the conclusion that Section 3(c) relief is appropriate.

The prerequisites to Section 3(c) relief have been met and the imposition of a preclearance requirement for all voting changes is warranted and necessary to remedy Defendants' violation of Section 2. Accordingly, this Court should grant the requested relief pursuant to Section 3(c) of the Voting Rights Act.

III. CONCLUSION AND REQUEST FOR RELIEF

The complete record in this matter shows that the challenged provisions of HB 589, including the voter photo identification requirement, violate Section 2 of the Voting Rights Act. The new evidence to be presented in the January 2016 trial regarding the impact of the voter photo identification requirement on African American voters in North Carolina further supports a finding that the State adopted this requirement in 2013 with a racially discriminatory purpose in violation of Section 2 of the Voting Rights Act, and that this purpose has not been extinguished with the adoption of amendments to the photo identification provision by HB 836 in 2015.

For the reasons set forth above, the United States requests that this Court enter judgment in favor of Plaintiffs by (a) declaring that the challenged provisions of HB 589 (including parts 2, 16, 25, and 49), notwithstanding any subsequent amendments, violate Section 2 of the Voting Rights Act and the voting guarantees of the Fourteenth and Fifteenth Amendments; (b) permanently enjoining the challenged provisions (including parts 2, 16, 25, and 49), including the photo identification requirement as subsequently amended; (c) authorizing the appointment of Federal observers, pursuant to Section 3(a) of the Voting Rights Act, 52 U.S.C. § 10302(a); (d) retaining jurisdiction and subjecting North Carolina to a preclearance requirement pursuant to Section 3(c) of the Voting

Rights Act, 52 U.S.C. § 10302(c), and (e) ordering such additional relief as the interests of justice may require.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2016, I electronically filed the foregoing **United States' Pre-Trial Brief**, using the CM/ECF system in case numbers 1:13- cv-658, 1:13- cv-660, and 1:13-cv-861, which will send notification of such filing to all counsel of record.

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