IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF SOUTH CAROLINA, *Plaintiff*, v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., in his official capacity as Attorney General, *Defendants*, and, JAMES DUBOSE, JUNIOR GLOVER, FAMILY UNIT, INC., BRENDA C. WILLIAMS, M.D., AMANDA WOLF, DELORES FREELON, NAOMI GORDON, JOSEPH RILEY, RAYMOND RUTHERFORD, and THE SOUTH CAROLINA PROGRESSIVE NETWORK, *Defendant-Intervenors*, and, LEAGUE OF WOMEN VOTERS OF SOUTH CAROLINA and CRAIG DEBOSE, *Defendant-Intervenors*, and, SOUTH CAROLINA STATE CONFERENCE OF THE NAACP and KENYDA BAILEY, *Defendant-Intervenors*.	Case No. 1:12-cv-203 (CKK, BMK, JDB)

DEFENDANT-INTERVENORS' REPLY TO THE STATE'S RESPONSE TO INTERVENORS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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A. Martin	Initial Report of Dr. Andrew D. Martin, expert witness for Defendant-Intervenors (June 19, 2012)
AA	African-American
AG	Attorney General
Am.	Amendment
Arrington	Initial Report of Dr. Theodore S. Arrington, expert witness for the United States (June 19, 2012)
Arrington Supp.	Supplemental Report of Dr. Theodore S. Arrington (July 28, 2012)
Bailey Tr.	Deposition of Kenyda Bailey, Intervenor
Bursey Tr.	Deposition of Brett Bursey, Executive Director of Intervenor South Carolina Progressive Network
Burton	Initial Report of Dr. Orville Vernon Burton, expert witness for Defendant-Intervenors (June 19, 2012)
Burton Supp.	Supplemental Report of Dr. Orville Vernon Burton (July 26, 2012)
Calkins Tr.	Deposition of Dr. Patricia Calkins, former York County poll manager
Cleary Tr.	Deposition of Sen. Ray Cleary, member of Senate Judiciary Sub-Committee on Election Law during H.3418 and H.3003's legislative consideration
Debney Tr.	Deposition of Joseph Debney, Executive Director of Charleston County Board of Elections and Voter Registration
Dennis Tr.	Deposition of Patrick Dennis, Staff Attorney for House Judiciary Committee
DI CL	Defendant-Intervenors' Proposed Conclusions of Law
D.I. Ex.	Defendant-Intervenors' Exhibit
DI FF	Defendant-Intervenors' Proposed Findings of Fact
DI RCL	Defendant-Intervenors' Response to South Carolina's Proposed Conclusions of Law
DI RFF	Defendant-Intervenors' Response to South Carolina's Proposed

	Findings of Fact
DMV ID	The non-driver's license photo ID issued by the DMV
DOB	Date of birth
DOJ	U.S. Department of Justice
FOIA	Freedom of Information Act
GA	State of Georgia
H.3003	House Bill 3003, enacted as Act R54
H.3418	House Bill 3418, predecessor bill to H.3003
HAVA	Help America Vote Act, 42 U.S.C. § 15301 *et seq.*
Hutto Written	Written Direct Testimony of Sen. C. Bradley Hutto, ECF No. 218-1 (August 21, 2012)
ID	Identification
IN	State of Indiana
JA	Joint Appendix
JA-DI	Defendant-Intervenors' Supplement to the Joint Appendix
JA-SC	South Carolina's Supplement to the Joint Appendix
JA-US	United States' Supplement to the Joint Appendix
K. Rutherford Tr.	Deposition of Karen Rutherford, Benedict College
Knotts Tr.	Deposition of Sen. Jake Knotts, Chair of Senate Rules Committee
L. Martin Tr.	Deposition of Sen. Larry A. Martin, Chair of Senate Judiciary Sub-Committee on Election Law during H.3003's legislative consideration
PB	Provisional ballot
Pearson Tr.	Deposition of Tim Pearson, Chief-of-Staff to SC Gov. Nikki Haley
PM	Poll manager
Quinn	Initial Report of Dr. Kevin J. Quinn, expert witness for Defendant-Intervenors (June 18, 2012)
Quinn Written	Written Direct Testimony of Dr. Kevin J. Quinn, ECF No. 219-1 (August 21, 2012)
R54	Act R54
Required ID	The five forms of photo ID accepted at the polls under Act R54
RI	Reasonable impediment
SC	South Carolina

SC CL	South Carolina's Proposed Conclusions of Law
S.C. Ex.	South Carolina's Exhibit
SC FF	South Carolina's Proposed Findings of Fact
SC RFF	South Carolina's Response to Defendant-Intervenors' Proposed Findings of Fact
SC RUSCL	South Carolina's Response to United States' Proposed Conclusions of Law
SCARE	South Carolina Association of Registration and Election Officials
SCLWV	League of Women Voters of South Carolina
Scott Written	Written Direct Testimony of Sen. John L. Scott, Jr. ECF No. 221-1 (August 21, 2012)
SCPN	South Carolina Progressive Network
SEC	State Election Commission
SES	Socioeconomic status
Shwedo Tr.	Deposition of Col. Kevin Shwedo
Stewart	Initial Report of Dr. Charles Stewart III, expert witness for the United States (June 9, 2012)
UOCAVA	Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1971
U.S.	United States
US CL	United States' Proposed Conclusions of Law
U.S. Ex.	United States' Exhibit
US FF	United States' Proposed Findings of Fact
US Response	United States' Response to South Carolina's Proposed Findings of Fact and Conclusions of Law (filed Sept. 14, 2012)
VE	Voter education
VEP	Voter education plan
VR	Voter registration
VRA	Voting Rights Act
Whitmire Tr.	Deposition of Chris Whitmire, SEC Director of Public Information and Training
Wolf Tr.	Deposition of Amanda Wolf, Intervenor
Zia Written	Written Direct Testimony of Barbara Zia, Co-President of Intervenor South Carolina League of Women Voters ECF No. 222-1 (August 21, 2012)

1-4. SC does not dispute DI FF ¶¶1-4 (*e.g.*, that Dr. Hood found that the gap in ID possession represents a "significant racial disparate impact" (8/29 Tr. 219:8-12)). Any additional material that SC provided is opposed. If anything, Dr. Hood's study showed that GA's voter ID law caused turnout to drop among AA voters without ID while turnout among AA voters with ID increased. (DI RFF ¶ 118.)

6-7. SC does not dispute DI FF ¶¶ 6-7 (that DMV IDs carry significant indirect costs, which are likely to prove a significantly greater obstacle to AA voters who lack ID than for their white counterparts). The only "help" Col. Shwedo described for those without documents is "getting them pointed in the right direction." (Shwedo Tr. 41:13-42:17 (JA-DI 673).)

8. Intervenors opposed SC's preclearance request on the merits, and SC's "disinformation" claim implies a motive for which it has no evidence. The only photo IDs available when the SCPN made the flyer did require a birth certificate, and there was no reason to believe that the photo VR cards would not require the same. (*See* DI RFF ¶ 29C (photo IDs without birth certificates considered "ticket to fraud").) The State has had over a year and countless revisions to its VEP materials (*see, e.g.*, 8/28 Tr. at 238:14-239:9 (Andino)) and has not once included or discussed the requirements for obtaining the VR card. (*See* DI RFF ¶ 59.)

9. R54 effectively alters current registration locations for those without ID because they must take an extra step after utilizing mail-in registration. For the bus, *see* DI RFF ¶ 90A.

10-12. SC does not dispute that the "free" IDs create obstacles that impose institutional costs on voters. SC overstates the limited extent to which county election offices provide extended hours and agrees that election day staffing and DMV staffing are problematic. The SEC's own materials confirm that it is "severely underfunded." (JA-DI 912-13 (D.I. Ex. 401).) SC

does not dispute (1) that county election offices lack the capacity to process large numbers of in-person customers; (2) the VR statistics compiled by Dr. Martin; (3) the lower SES of AA voters generally; (4) that lower SES will preclude some voters from obtaining a photo VR card.

13. SC does not deny that requiring voters to obtain DMV ID and photo VR cards in person imposes a significant cost.[1] "On demand transit services" are addressed in Intervenors' demonstrative maps: these "ad-hoc" services are available only in some counties and are only "sometimes available to the general public, typically on a space-available basis." (D.I. Ex. 418 (JA-DI 3866).) These services cannot be relied upon to take a voter to the county seat when needed. *See also* ECF No. 261.

14-15. SC does not dispute DI FF ¶ 14 that accessing transportation is a significantly greater obstacle for AA voters without Required ID. (*See also* DI RFF ¶¶ 90 (the bus), 119 (absentee voting is an inadequate substitute).) SC's Response highlights the burdens Intervenors face in reaching county offices. Ms. Freelon has canceled multiple doctor's appointments because she fears that her daughter would lose her job if she gives Ms. Freelon a ride (8/30 Tr. at 63:23-25) (and her daughter may refuse to take her to the county election office because she does not regard voting as important (*id.* at 68:18-69:3)); Mr. Debose lives

[1] In particular, SC does not deny the information set forth in D.I. Ex. 418: (i) of the five counties (incorrectly stated as seven in DI FF 14B), embracing 3,285 square miles, with a 60% or greater black population, only one has any fixed route public transportation system (in the vicinity of the county seat); and (ii) of the additional twelve counties, embracing 6,853 square miles, with a 40% or greater black population, six have no fixed route public transportation system. (*See also* 8/30 Tr. at 241:16-22 (Sen. Malloy); Hutto Written ¶ 7g; 8/30 Tr. at 274:21-276:5 (Rep. Cobb-Hunter).)

30 miles from a bus stop and normally has to pay friends to give him a ride and ask a friend to take a day off from work, an experience he describes as humbling (*id*. at 110:23-112:5); Dr. Williams was not unable to identify "a single person who cannot obtain ID," but was asked only about a particular individual (*id.* at 95:6-10). (*See also* DI FF ¶ 15.)

16. Ms. Andino's testimony is internally inconsistent and irreconcilable with the State's portrayal of the implementation of R54. (*See* DI FF ¶ 16; DI RFF ¶ 74; ECF No. 266.) She has testified that the RI provision will utilize an objective standard (8/28 Tr. at 271:14-20) and/or a subjective standard (*id.* at 210:17-23). Although Ms. Andino did testify at one point that the RI is to be determined by the voter (*id.* at 219:24-220:4), SC ignores that she also testified that PMs should deny voters a PB if the stated RI does not meet the AG's definition (*id.* at 272:8-19) and that county boards will determine reasonableness (*id.* at 277:5-9 (county boards should reject vote if grounds exist to believe that "something wasn't out of [the voter's] control")). SC attempts to paper over this conflict by equating objective reasonableness with truth or falsity; in its Response, SC asserts that "I don't feel like it" would be a false reason because it would not be a valid impediment, even though Ms. Andino testified that it may be acceptable if the voter was ill (8/28 Tr. at 273:4-8), but these are completely different standards.[2] Ms. Andino's assertion that county boards will use a

[2] Indeed, the State has created various definitions and standards for falsity when convenient. (8/28 Tr. at 225:2-25 (Andino) (falsity refers to veracity of both the identity of the voter and the reason stated as a RI); JA-DI 2351 (DI Ex. 254) (false if contains a falsehood knowingly or with reckless regard for the truth); ECF No.263 at 5 (false affidavit means "the voter is not who they say they are"); SC RFF ¶ 26 (same); SC RFF ¶ 16 ("falsity includes identity and the existence of an impediment").)

subjective standard is also at odds with the AG's Opinion (JA 2351 (D.I. Ex. 254)), which, as SC notes, specifically provides that the impediment must be "valid," *i.e.*, must be something that both was "beyond the voter's control" and "created an obstacle" to the voter obtaining Required ID.

17. SC does not dispute that voters will face obstacles in understanding what is meant by a "reasonable impediment" and in understanding how to answer the oblique question that PMs are told to ask regarding RI. (DI FF ¶ 17a-c). Although, as SC indicates, Ms. Andino will send training materials to PMs explaining the overall RI process, the materials do not train PMs on how to explain RI to voters. (DI FF ¶ 17c.) It is not realistic to think, as SC suggests, that confusion at the polling place as to which RIs are "protected against disclosure" will be fully addressed by PMs making calls from polling places to the SEC on election day. SC does not dispute that notaries accept limited forms of proof of identity; the record demonstrates that every form of ID listed in the notary manual has a photo, and that list *is* exhaustive. (*See, e.g.*, JA-DI 1297 (D.I. Ex. 2).) SC agrees that R54 would delegate to notaries the authority to determine qualifications to vote by enabling them to assess a voter's mental capacity, *i.e.*, whether the voter is under the influence of drugs or alcohol (as the State admits in ¶ 17), competent, not suffering from dementia, understands what she or he is doing, is willing to sign without force or duress, and has capacity to sign. (JA DI 1298 (D.I. Ex.2).)[3] SC cites to testimony in which Ms. Andino agreed that the RI PB is unsealed when handed to

[3] These additional qualifications for a RI voter to vote constitute voting changes that independently require preclearance, 28 C.F.R. § 51.13(a), and would seem to run afoul of the VRA's permanent nationwide ban on "tests or devices," 42 U.S.C. § 1973aa.

the PM. (8/29 Tr. at 72:4-23.) SC offers no evidence to contradict the testimony that voters with a low SES are even more likely to be intimidated and embarrassed by the RI process. Finally, SC does not dispute that a RI voter's only assurance that the vote will be counted would be attending the certification hearing, that doing so may present obstacles to the RI voter, and that attendance itself might demonstrate the lack of a RI. While other provisional voters could surely face similar problems, that fact does nothing to address the special circumstances that RI voters would find themselves in, nor does it suggest that the RI process will resolve the racial disparity in ID ownership. Rep. Clemmons was not familiar with the notary manual. (8/28 Tr. at 15:11-14.)

18. SC RFF ¶ 18 does not address DI FF ¶ 18. PMs will find it difficult to explain the RI exception to voters since the definition of what constitutes a RI is ever-changing, ambiguous and confusing, and they will not be trained on how to explain it. (DI FF ¶ 17.) SC does not dispute that AA voters—because of their lower SES, on average—will face greater obstacles in completing the RI process; instead, SC merely asserts that there is no evidence that voters with low SES face problems with the existing provisional balloting process. This assertion ignores that the RI process is distinct and more difficult than the existing process.

19. SC does not refute the substance of DI FF ¶ 19, and instead assumes without basis that RI votes will not be challenged or their affidavits disputed. SC's claim that "RI voters need not attend the hearing because a description of his impediment will be included on the affidavit . . . which 'will be deemed to speak for itself,'" is nonsensical because the impediment may be challenged at the hearing as not being "valid" or true, and the affidavit will not defend itself without the voter being present.

20. SC's response is contradictory: because SC argues that RI PBs will be handled in the same way as current PBs, it must concede that DI FF ¶ 20 is accurate.

21. *See infra* ¶¶ 29-31.

22. The source cited by SC confirms Intervenors' proposed finding—that emergency/provisional ballots are one and the same. (JA-SC 568 (S.C. Ex. 79) ("Emergency/provisional ballots are optical scan paper ballots used at the polls for one of two reasons," in an emergency, and when a voter is challenged.).) The Poll Manager's Handbook further makes clear that the 10% limitation applies to emergency/provisional ballots together. (JA 1693 (D.I. Ex. 348) ("The number of [emergency/provisional] ballots should not exceed 10% of the number of registered voters (Section 7-13-430). These paper ballots are to be used in the event that the voting machines in the precinct become inoperative *or when a voter's ballot is challenged*." (emphasis added)).) Nothing in the 2008 letter cited by SC supports its opposition to this finding.

23. Intervenors rely on record evidence, not assumptions. (*See* DI FF ¶¶ 24-27.)

24. Dr. Quinn's expert opinion speaks for itself. (ECF No. 219-1 (Quinn Written)). Dr. Quinn reached his conclusions after considering the best available empirical studies—all of which are published in peer-reviewed journals[4]—as well as evidence from SC, including the sworn statements of key election officials and materials submitted to this Court by the State. (Quinn Written ¶3; 8/30 Tr. at 128:24-129:20.)

[4] Notably, Dr. Quinn's own analysis of discriminatory implementation of voter ID laws in Boston received the Robert H. Durr Award for the best paper applying quantitative methods to a substantive problem in political science. (Quinn Written at ¶ 2).

25. SC does not dispute the facts alleged in DI FF ¶ 25. That county election officials, broadly and generally speaking, look to Ms. Andino for guidance and try to follow that guidance does not refute that, in practice, both county officials and PMs misapply or sometimes even disregard SEC guidance. (*See* DI FF ¶ 24; DI RFF ¶ 69C.)

26. Ms. Andino testified that county boards will have discretion to reject a RI as unreasonable, and SC's Response asserts that an improper RI would be a false RI. *See supra* ¶ 17. Thus, county boards will have substantial discretion in counting these ballots (in assessing what is a "valid" impediment, what is "beyond the voter's control" and what is an "obstacle" to obtaining ID).

27. SC does not dispute that the notary requirement allows further discrimination and abuse, nor does it dispute DI FF ¶¶ 27.a, c, or d. Regarding photo ID requirements for notarization, *see also supra* ¶ 17.

29. *See supra* ¶ 24.

30. SC admits that discriminatory behavior and voter intimidation still exist in SC and does not dispute that this behavior exacerbates the risk of racially discriminatory application of the RI provision. Further, Rep. Clemmons described witnessing unsolicited PM assistance to voters "on more than one occasion." (8/27 Tr. at 204:21-206:9.) SC presents no evidence to refute DI FF ¶¶ 30.b-d.

31. SC admits that the county boards are weighted along partisan lines. And, as Dr. Quinn explained, "[p]erhaps the strongest work in political science on provisional balloting" found that "the partisanship of election officials affects the rate at which provisional votes are cast and counted as valid votes." (Quinn at 12-13 (JA 1812-13).)

32. Dr. Stewart's expert opinion speaks for itself. Intervenors are not the source of confusion. Regarding RI, *see* ¶ 16. Funding is insufficient to reach all of the registered voters who lack photo ID.

33. SC would place the burden of educating voters on the voters themselves, requiring them to seek out "publicly available" information. Reliance upon a single bus to reach tens of thousands of voters lacking photo ID in a state with a land area of 30,109 square miles is unreasonable on its face. (*See also* DI RFF ¶ 90.) The record shows that 675 people called regarding the DMV's ride program, many of whom did not have a birth certificate. (D.I. Ex. 279 (JA-DI 604).) The State cannot say how many of those wanted a ride but were told they did not have the proper documentation. (Pearson Tr. 148:2-149:8 (JA-DI 602-03).)

34. None of the voter education materials explain what is required to obtain the photo VR card, and the "beyond your control" explanation of RI is vague and difficult to comprehend. The State cites to FF that admit that important information is omitted that the Court suggested should be added. (SC FF ¶¶86-94; *see also* DI RFF ¶¶86-94.) Regarding the shifting definitions of "valid," see DI RFF ¶¶ 101-102.

35. SC does not dispute FF ¶ 35 regarding its lack of expert "purpose" testimony. SC attempts to meet its burden by offering the testimony of four legislators—all proponents of R54—as to purpose. Yet such evidence must be weighed against the following:

a. The House stripping critical measures achieved by bipartisan and biracial compromise in the Senate that would mitigate the effect of photo ID on AA voters, including a transition period for implementation (DI FF ¶¶ 40(b), 41(b)), early voting (DI FF ¶¶ 40(a), 41(a)), valid-when-issued IDs (DI FF ¶¶ 40(d), 41(d)), and government-employee IDs (DI FF ¶¶

40(c), 41(c)), while choosing to retain only those generic measures that white voters are likely to take advantage of at equal or greater rates than AA voters (DI RCL ¶ 136; *see* DI RFF ¶ 29B (legislators aware of potentially discriminatory challenges to RI/RO PBs);

b. The testimony of AA legislators that they believed that Act R54 was enacted with the intent to suppress AA voting (DI FF ¶ 35 (citing 8/30 Tr. at 271:20-23 (Sen. Scott); *id.* at 290:18-291:1 (Rep. Cobb-Hunter)));

c. The concerted push for Voter ID legislation that immediately followed historic AA turnout for the 2008 general election (DI FF ¶¶ 35-39; DI RFF ¶ 17A), which cannot be explained by any approval of IN or GA laws, to which R54 bears little resemblance (DI RFF ¶¶ 18, 29), nor HAVA, which allows both photo and non-photo ID (DI RFF ¶ 10);

d. Rep. Clemmons' awareness of racially polarized voting and overwhelming AA voting for Democrats (8/28 Tr. at 38:9-13, 40:16-21), coupled with his intent to suppress AA voting (DI FF ¶ 38);

e. The unusual legislative procedures employed, including exclusion of AA conferees from conference committee negotiations (DI FF ¶ 51, US FF ¶¶ 122, 125), the use of the majority-vote special order tactic (DI FF ¶ 49, US FF ¶ 124), and the House's unfulfilled "assurance" to pass early voting, which was the basis on which then-Sen.McConnell agreed to the conference report on R54 (DI FF ¶ 52);

f. The House's systematic dismissal of concerns over AA disenfranchisement expressed by AA legislators and confirmed by the SEC data (DI FF ¶¶ 43-45), lack of adequate consideration of AA legislators' views, and efforts to limit their opportunity to express those views (DI FF ¶¶ 46-47);

g. The House-engineered "propaganda" campaign that exerted "tremendous" pressure on the Senate to adopt the restrictive House version. (8/28 Tr. at 77:4-78:8, 175:7-176:2 (Lt. Gov. McConnell));

h. Lt. Gov. McConnell's doubt that the House version eventually adopted would obtain preclearance (DI FF ¶ 42);

i. The disconnect between proponents' proffered purpose—combating voter fraud and instilling voter confidence—and inability to find even a single credible report of voter impersonation fraud in SC that R54 could have prevented (DI FF ¶ 58; DI RFF ¶¶ 16, 17), while neglecting to address other types of election fraud known to be prevalent and the measures supported by election officials as actually promoting confidence (DI FF ¶ 59).

36. Regarding timing of the legislation, *see supra* ¶ 35.c. The State mischaracterizes Rep. Cobb-Hunter's legislation. (DI RFF ¶ 13.) SC's benchmark is a voter ID law.

37. *See generally supra* ¶ 35. Rep. Clemmons acknowledged that his bill was to "prevent[] the kind of acorn abuses that we saw in 2008." (JA DI. 2025 (D.I. Ex. 117).) Speaker Harrell failed to offer any concrete examples demonstrating a groundswell of support to pass photo ID. (DI RFF ¶ 14.)

38. As to Rep. Clemmons' intent as reflected by these emails and association of bussing with AA voters, see *supra* ¶ 35.d. Even if "them" referred to Democrats, Rep. Clemmons affirmed that AAs are "overwhelmingly likely" to vote Democratic (*supra* ¶ 35.d), and otherwise offered no explanation of how photo ID would "blunt" Democratic gains if not by restricting AA votes. Further, Rep. Clemmons' excuses for these emails—which may only represent a small percentage of those he actually authored or received in light of the House's

spoliation of evidence (8/28 Tr. at 46:4-48:14; ECF No. 169)—are not credible, and there is reason to doubt his credibility. The State admits that he testified untruthfully about who was responsible for the concept of "reasonable impediment." (*Compare* 8/27 Tr. at 230:12-231:13, 249:3-250:22 (Rep. Clemmons) *with* SC FF ¶¶ 29, 80). Moreover, although Rep. Clemmons attempted to distance himself from Ed Koziol, author of the admittedly racist e-mail regarding photo ID, by testifying at trial that he would "not know him if he were to walk in the courtroom" (8/28 Tr. at 19:6-10), Mr. Koziol states that he and Rep. Clemmons met at Horry County Republican Club meetings (JA-US 1992 (U.S. Ex. 212)).

39. SC does not contest this finding, which is rendered *further* relevant by *supra* ¶ 35.a.

40-41. The General Assembly removed *every* mitigating provision from Am. 8 that would disproportionately benefit AA voters. (*See supra* ¶ 35.a; DI FF ¶¶ 40-41; *see also* DI RFF ¶¶ 29, 35, 45 (inadequacy of remaining mitigation devices and legislator awareness of same).) Early voting was intimately associated with preclearance and increasing AA participation that voter ID would restrict. (DI RFF ¶¶ 54-55; DI FF ¶¶ 40(a), 41(a).) The House's reasons for excluding government and state employee IDs failed to persuade then-Sen. McConnell. (8/28 Tr. at 180:3-9.) SC does not dispute legislators' awareness that minorities are disproportionately likely to have the IDs they excluded from the bill. (DI FF ¶¶ 40(c).) That the Senate once supported "valid and current," but became vehemently opposed upon realizing the implications (JA 6383-84 (D.I. Ex. 189) (Sen. Oakes: "that alone is enough to go to conference to get that one word changed"); *see* Hutto Written ¶7(h)) does not render the House's crusade to eliminate the provision any less probative of intent.

42. SC does not dispute that the House's claim that it wanted a "clean bill" was belied by the House's own bill, and that this was "propaganda," thereby conceding that the House's claimed reason for rejecting the Senate compromise was pretextual. Lt. Gov. McConnell's testimony and SC FF ¶ 53 establish that he indeed thought the Senate bill was more likely than R54 to be precleared in part because of its substance. (8/28 Tr. at 141:7-12.)

43. SC seeks to obscure the fact that all AA legislators opposed R54; its citation to Am. 8 as an example of AA opportunity for input is inapposite because the House stripped Am. 8's critical components from the final version that became Act R54. *Supra* ¶ 35.a.

44. SC's production provides no record of any other House subcommittee hearing on H.3003 aside from the single, 70-minute session. (DI FF ¶ 44; *see* ECF No. 169.)

45. SC does not dispute that Rep. Clemmons enthusiastically endorsed a racist email (SC RUSCL ¶ 24) that directly concerned whether a photo ID law would be discriminatory.

46. SC asserts only that cloture was not against the rules, which Intervenors do not dispute.

47. The clinching motion, which passed while AA legislators were absent from the chamber, cut off any opportunity for further debate. (DI FF ¶ 47.) Limited, if any, meaningful debate occurs on third reading. (8/28 Tr. at 72:7-13 (Speaker Harrell).)

48. SC fails to offer an explanation for the House's urgency to beat the Senate to cross-over.

49. See US FF ¶ 124 on rare use of 33B special order.

50. Then-Sen. McConnell "supported" R54 because he had no "political option." (8/28 Tr. at 174:9-20.)

51. Sen. Malloy discussed the irregularities of the H.3418 conference committee at length on the Senate floor, just days after the meeting. (JA 4147-50 (D.I. Ex. 108).)

52. Lt. Gov. McConnell testified that he signed the conference report based on the House's assurance that it would deliver an early voting bill. (8/28 Tr. at 180:20-25 (Lt. Gov. McConnell).) Rep. Clemmons told conferees, "We, in fact, have a [early voting] bill scheduled for next week in my subcommittee . . . . " (JA 4912 (D.I. Ex. 398).)

53-56. SC fails to dispute the facts in DI FF ¶¶ 53-56, contending instead that the cases in which some of these facts are recounted are irrelevant because they pertain to vote dilution or because they did not find purpose. Regardless of the context in which it occurs, a "history of failures to comply with the VRA is one of the circumstantial factors that Arlington Heights instructs [courts] to consider." *See Texas* v. *U.S.*, No. 11-1303, slip op. at *41 (D.D.C. Aug. 28, 2012).

57. SC does not dispute the existence of a high degree of racially polarized voting.

58-59. *See supra* ¶ 35.ii.

60-71. DI CL ¶¶ 60-71 more accurately state the applicable law.

61.a, c. The RI provisional ballot procedures here bear little similarity to "inter-county mover" provisional ballots in *Florida*, which did not involve any of the numerous implementation problems presented by the RI procedures. *Compare* DI FF ¶¶17-31 *with Florida*, slip. op. at *89-90 n.55, *93. Further, the *Texas* Court's discussion of indirect costs does not support SC's selective citation in (c). *Texas* v. *Holder*, No. 12-128, slip op. at *22-23 (D.D.C. Aug. 30, 2012).

62.a-b. The *Texas* reasoning applies here. *Id.* at *45. Further, the evidence shows that SC minorities lacking ID have lower SES than whites. (Stewart ¶¶ 135-39 (JA 1258-60).)

63. See DI RCL ¶¶ 147, 147C, and 150 on the State's failure to produce evidence that its ameliorative provisions will reduce the racial gap in ID possession.

65-66. *See supra* ¶¶ 10-17; DI FF ¶¶ 5-15. The *Florida* Court's observation about deterring voters is inapplicable here; the unwieldy, time-consuming, confusing, and potentially intimidating reasonable impediment notarized affidavit process here bears little resemblance to the simple certification and affirmation process in Florida's inter-county mover law. *Compare supra* ¶¶ 16-17 *with Florida*, slip op. at *84-85.

67.b. The State's response conflates racial animus with discriminatory purpose, failing to address the proposed conclusion. *See* DI FF ¶ 67.

70. DI CL ¶ 70 more accurately characterizes the law. As to (b), direct evidence of discriminatory intent is not required, *Rogers* v. *Lodge*, 458 U.S. 613, 618 (1982), and may be established by the *Arlington Heights* categories of circumstantial evidence, which, here, uniformly demonstrate that the State cannot meet its burden. (DI FF ¶¶ 35-59).

70.c-d. Some of the procedures employed did potentially violate South Carolina law. (DI RFF ¶ 51A). Such practices need not be "impermissible" to constitute departures from the normal decision-making process or a suspect sequence of events. *See Texas* v. *U.S.*, slip op. at *41-42, *48-50 (disregard for minority viewpoints, limited time for review, and deviation from past redistricting practices support finding of discriminatory intent).

70.e. SC fails to disassociate R54 from Rep. Clemmons. Here, in contrast to the facts in *Florida*, slip op. at *114, Rep. Clemmons was the principal author and primary proponent of H. 3418 and R54 (8/27 Tr. at 201:4-7 (Rep. Clemmons); *see also* 8/28 Tr. at 75:13-14 (Speaker Harrell) (voter ID bill was Clemmons' "baby")), and one of only four legislators

offered by the State to testify on the General Assembly's purpose in enacting R54. He served on both conference committees and played the leading role in rejecting the Senate ameliorative provisions. (8/27 Tr. at 92:6-18 (Sen. Campsen); 8/28 Tr. at 176:18-177:10 (Lt. Gov. McConnell).) As such, his purposes—which are expressed in multiple emails and in his testimony at trial evincing a disregard for R54's impact on minorities and an intent to restrict AA voting (*supra* ¶ 35.d)—are highly relevant as to whether a discriminatory purpose motivated the enactment of R54. *See Busbee* v. *Smith*, 549 F. Supp. 494, 514 (D.D.C. 1982) (finding discriminatory purpose where chairman of redistricting committee "utilized the full power of his position and personality to insure passage of his desired [discriminatory] Congressional plan").

71. The State mischaracterizes the *Texas* opinion, which merely rejected the argument that pretext may be shown solely by an absence of impersonation fraud, and recognized that circumstantial evidence "could nonetheless suggest that Texas invoked the specter of voter fraud as pretext for racial discrimination." *Texas* v. *Holder*, slip op. at *21.

Dated: September 19, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

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