

No. COAP24-865

No. \_\_\_\_\_

DISTRICT 10

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

JEFFERSON GRIFFIN,

Petitioner,

v.

NORTH CAROLINA BOARD OF  
ELECTIONS,

Respondent.

From Wake County  
No. 24CV039050-910

\*\*\*\*\*  
**PETITION FOR A WRIT OF MANDAMUS**

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Pursuant to Rules 2 and 22 of the Rules of Appellate Procedure, the Honorable Jefferson Griffin of the North Carolina Court of Appeals respectfully petitions this Court for a writ of mandamus, and alternatively for a suspension of the rules. Specifically, Judge Griffin seeks a writ of mandamus compelling the State Board of Elections to issue a final decision on his three categories of election protests pending before that Board by 5:00pm on 10 December 2024. The immediate issuance of a final decision is necessary so that any aggrieved party can seek judicial review of that decision and the winner for the open seat on our Supreme Court can be certified. Public trust in our electoral processes depends on both fair and efficient procedures to determine the outcome of our elections. By failing to give a

timely decision, the State Board continues to undermine the public interest, just as it has done in its mismanagement of the 2024 general election.

### STATEMENT OF THE FACTS

This matter involves the need for immediate action to determine the winner of the Supreme Court contest held in the 2024 general election.

On the evening of Election Day, Judge Griffin maintained a sizeable lead over his opponent, Justice Allison Riggs. However, as ballots continued to trickle in over the next week, Justice Riggs took the lead in the votes.

On 19 November 2024, Judge Griffin filed election protests in each of North Carolina's 100 counties. In total, Judge Griffin filed six categories of election protests. However, only three categories of protests are relevant here. Those three relevant categories are described briefly below. Judge Griffin's full brief to the Board on these issues is in the appendix to this petition. App. 3-37.

*Incomplete Voter Registrations.* Since 2004, the General Assembly has required someone registering to vote to provide his drivers license or last four digits of his social security number on his voter registration application. N.C. Sess. Law 2003-226, § 9 (amending N.C. Gen. Stat. § 163-82.4). However, until December 2023, the State Board of Elections failed to enforce this law. And even when the Board admitted its decades of lawlessness, it refused to cure the improper registrations, and only began requiring the information from new registrants. In the Supreme Court contest, over 60,000 people cast ballots, even though they had never provided the statutorily required information to become lawful voter

registrants. Under state law, unless someone is lawfully registered to vote, he cannot vote. N.C. Const. art. VI, § 3(1); N.C. Gen. Stat. § 163-82.1(a).

*Never Residents.* Our state constitution limits voters for state offices to people who actually reside in North Carolina. N.C. Const. art. VI, § 2(1); *Bouvier v. Porter*, 386 N.C. 1, 4 n.2, 900 S.E.2d 838, 843 n.2 (2024) (explaining that “nonresidents” are “categorically ineligible to vote” for state offices). Nonetheless, the State Board allowed approximately 289 people to vote in the protested election who have never resided in North Carolina or anywhere else in the United States. These voters self-identified themselves as such, stating on a form “I am a U.S. citizen living outside the country, and I have never lived in the United States.” Counting these ballots is unlawful.

*No Photo ID.* It’s well known that photo identification is required for all voters, both those voting absentee ballots and those voting in person. N.C. Gen. Stat. § 163-230.1(a)(4), (b)(4), (e)(3), (f1) (absentee ballots); *id.* § 163-166.16(a) (in-person voting); N.C. Const. art. VI, §§ 2(4), 3(2) (same). Yet the State Board decided not to require photo identification for absentee ballots cast by voters who live overseas. State law, however, doesn’t exempt overseas voters from the photo-identification requirement. Thousands of such ballots were unlawfully cast in the election.

After Judge Griffin filed his protests, the State Board took over jurisdiction from the county boards for the three categories of protests just described. App. 1-2. The Board then entered a briefing schedule for these protests. App. 2. Per that schedule, Judge Griffin filed

his brief on 27 November 2024, and Justice Riggs filed her brief on 6 December 2024. App. 3-37.

On 2 December 2024, Judge Griffin moved the Board to render its final decision on the protests on an expedited basis. App. 38-42. In his motion to expedite, Judge Griffin requested that the Board render its decision no later than Monday, 9 December 2024. App. 42.

On 5 December 2024, the Board informally notified the parties by email that it would hear oral arguments on 11 December 2024—two days after the date by which Judge Griffin requested a final decision. App. 43. The Board thus implicitly denied Judge Griffin's motion to expedite, preferring to proceed at its own pace. Judge Griffin's counsel responded to the email notice, waiving Judge Griffin's right to present argument to the Board, and reiterating his request for an expedited decision on the candidates' briefs by 9 December 2024. App. 43.

Immediately before filing this petition with this Court, Judge Griffin filed a petition for a writ of mandamus in Wake County Superior Court, seeking the same relief. App. 44-62. However, the superior court has not acted on the mandamus petition, nor is there any indication that the superior court can grant final writ relief in a sufficiently expeditious manner.

### **ISSUE PRESENTED**

Should this Court order the State Board of Elections to immediately issue a final decision on the three categories of election protests before it?

## REASONS WHY THE WRIT SHOULD ISSUE

Judge Griffin requests an order requiring the State Board of Elections to render a decision on his protests immediately.

This Court has the power to issue a writ of mandamus to control and supervise lower tribunals. *In re T.H.T.*, 362 N.C. 446, 453, 665 S.E.2d 54, 59 (2008). Mandamus is appropriate when issued to command a lower tribunal to perform its duty in a timely manner. *Id.* at 453-54, 665 S.E.2d at 59. That's especially true when, as here, there is no other remedy provided by law. *Id.*

Rule 2 of the Appellate Rules points in the same direction. The Rules of Appellate Procedure may be suspended "in exceptional circumstances when injustice appears manifest to the court" or when necessary "to expedite decision in the public interest." *State v. Hart*, 361 N.C. 309, 315-16, 644 S.E.2d 201, 205 (2007) (cleaned up); N.C. R. App. P. 2; *Summey v. Barker*, 357 N.C. 492, 496, 586 S.E.2d 247, 249 (2003) (bypassing lower tribunal "to avoid additional delay"). This case easily checks those boxes.

A disputed election to our state's highest court is itself an exceptional circumstance of immense public interest. A speedy determination of that contest is not just important to the candidates, but is critical to the public's trust in the electoral process. Everyone has a strong interest in the fair and speedy determination of election results. *See, e.g., Perloff v. Edington*, 293 Ala. 277, 281, 302 So. 2d 92, 96 (1974) ("The public has an interest in the speedy determination of election contests . . ."); *Kinsey v. Garver*, 91 N.E.2d 54, 56 (Ohio Com. Pl. 1950) ("an interest in the public exists in the speedy determination of election

results”); *Mansfield v. McShurley*, 911 N.E.2d 581, 585 (Ind. Ct. App. 2009) (“The public has an interest in the speedy determination of controversies affecting elections . . .”).

And there is no good reason for the State Board’s failure to issue a ruling on the election protests before it. Consider, for example, the disputed presidential election of 2000. The highest court in the land—the Supreme Court of the United States—was able to resolve a disputed election by December 12 after the 2000 general election. *See Bush v. Gore*, 531 U.S. 98 (2000). In just 35 days, the dispute was able to be reviewed by Florida’s election board, a Florida trial court, the Florida Supreme Court, and the Supreme Court of the United States. At the State Board’s current pace, the current election dispute won’t even reach the court system by the time the United States Supreme Court had finally resolved the 2000 presidential election dispute. The foot-dragging is inexcusable.

When expediency is required, this Court has the power, under Appellate Rule 2, to require a lower tribunal to enter a decision by a date certain. Indeed, the Supreme Court unanimously did so in the political gerrymandering case in 2021. *Harper v. Hall*, 379 N.C. 656, 658, 865 S.E.2d 301, 303 (2021). On a Rule 2 motion, the Supreme Court ordered the trial court to issue a “provide a written ruling” by a date certain on whether electoral maps were unconstitutional as political gerrymanders. *Id.* That is the same relief requested here, as stated below.

### **SPECIFIC RELIEF SOUGHT**

This Court need not let the public trust in the electoral process crumble further. Judge Griffin respectfully requests that the Court either issue a writ of mandamus directly

to the State Board of Elections, ordering it to enter a final decision forthwith, or else order the superior court to issue that order to the Board. Either way, Judge Griffin seeks a final decision from the State Board on the three categories of election protests before it no later than 5:00pm on 10 December 2024.

In addition, Judge Griffin requests that this Court shorten the time for any party, including the Board, to respond to this petition. *See* N.C. R. App. P. 22(c) (“The court for good cause shown may shorten the time for filing a response [to a petition for a writ of mandamus].”); *id.* R 37(a) (“The court may shorten or extend the time for responding to any motion.”). Judge Griffin requests that the response deadline be set for 24 hours after the filing of this petition, on Saturday, 7 December 2024, or as the Court otherwise deems appropriate.

Should any responding party raise any procedural objection to further delay resolution of this matter, Judge Griffin would ask that this Court suspend the Appellate Rules under Rule 2 and overrule any such objections.

This the 6th day of December, 2024.

Electronically submitted  
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### VERIFICATION OF COUNSEL

Pursuant to N.C. Gen. Stat. § 7A-98, counsel submits the following declaration:

I declare under penalty of perjury under the laws of North Carolina that the statements of fact in the foregoing document are true and correct to the best of my knowledge.

Executed on December 6, 2024.

  
Troy D. Shelton

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was electronically filed and served this day by email, addressed as follows:

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This the 6th day of December, 2024.

/s/ Troy D. Shelton  
Troy D. Shelton

No. \_\_\_\_\_

DISTRICT 10

NORTH CAROLINA COURT OF APPEALS

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JEFFERSON GRIFFIN,

Petitioner,

v.

NORTH CAROLINA BOARD OF  
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From Wake County  
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APPENDIX

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**Appendix Pages:**

Order of State Board [Assuming Jurisdiction and Setting  
Briefing Schedule] [entered 20 November 2024] ..... App. 1-2

Judge Griffin's Brief in Support of Election Protests  
(appendix documents excluded) [filed 27 November  
2024]..... App. 3-37

Judge Griffin's Motion to Expedite [filed 2 December  
2024]..... App. 38-42

Emails Between Paul Cox, General Counsel to N.C. State  
Bd. of Elections, and Craig Schauer (5-6 December  
2024) ..... App. 43

Petition for a Writ of Mandamus (Wake Cnty. Super. Ct.)  
[filed 6 December 2024]..... App. 44-62

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

IN RE PROTESTS OF JEFFERSON  
GRIFFIN, ASHLEE ADAMS, FRANK  
SOSSAMON, AND STACIE MCGINN

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**ORDER**

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS in a remote meeting conducted via WebEx videoconference on November 20, 2024, upon its own motion, to consider actions by the Board to facilitate review of election protests filed by Jefferson Griffin regarding the Supreme Court Associate Justice contest, Ashlee Adams regarding the NC Senate District 18 contest, Frank Sossamon regarding the NC House District 32 contest, and Stacie McGinn regarding the NC Senate District 42 contest.

Pursuant to N.C.G.S. 163-182.12, the State Board ORDERS as follows:

1. The State Board takes jurisdiction over protests filed with the county boards of elections by Jefferson Griffin, Frank Sossamon, Ashlee Adams, and Stacie McGinn, where those protests allege that ballots were unlawfully counted for one of the following reasons:
  - a. Ballots were cast by overseas citizens who have not resided in North Carolina but whose parents or legal guardians were eligible North Carolina voters before leaving the United States;
  - b. Ballots were cast by military or overseas citizens under Article 21A of Chapter 163, when those ballots were not accompanied by a photocopy of a photo ID or ID Exception Form; and
  - c. Ballots were cast by registered voters whose voter registration database records contain neither a driver's license number nor the last-four digits of a social security number.
2. The State Board will schedule a time for preliminary consideration of the protests for which it has taken jurisdiction and will provide notice thereof to the relevant parties.
3. By taking jurisdiction over the aforementioned protests, the State Board is not ruling on the timeliness of any such protests or their facial validity otherwise.

4. The county boards of elections shall retain jurisdiction over all other protests that have been timely filed and shall proceed to consider those protests under Article 15A of Chapter 163 and Chapter 2 of Title 8 of the North Carolina Administrative Code.
  - a. At preliminary consideration, the county board shall advance the protest to a hearing to be conducted at a later date upon proper notice, if the protest was timely filed and otherwise substantially complies with G.S. 163-182.9. Because similar protests were filed in many counties, to ensure uniformity in the process for review of these protests, the county boards shall assume at preliminary consideration that the protests establish probable cause to advance to a hearing, per G.S. 163-182.10(a)(1). The county board shall not consider any evidence outside the protest documents at preliminary consideration.
  - b. When conducting a hearing, the board shall take evidence, which will likely include taking testimony from county board staff as to the contents of official county board records pertaining to the voters whose ballots have been called into question by the protests. At the conclusion of the hearing, the board shall vote on its findings of fact and conclusions of law.
  - c. Each county board conducting a hearing shall memorialize its findings of fact and conclusions of law in a written order, which shall be served on the relevant parties, with a copy provided to the State Board via [legal@ncsbe.gov](mailto:legal@ncsbe.gov).
5. To facilitate adjudication of these protests, the protesters—Jefferson Griffin, Frank Sossamon, Ashlee Adams, and Stacie McGinn—shall file, by noon on Friday, November 22, 2024, with the State Board and with the respective county boards of elections copies of the lists of voters whose ballots are called into question by each protest filing in Excel file format, with the same labeling as displayed in the PDF versions of the protest filings.
6. For the protests that are now under the State Board's jurisdiction, the protesters shall file legal briefs, if any, in support of the protests by 5 pm on Wednesday, November 27, 2024. The responding candidates shall file legal briefs, if any, in opposition to the protests by 5 pm on Friday, December 6, 2024.

IT IS SO ORDERED.

This the 20th day of November, 2024.



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Alan Hirsch, Chair  
STATE BOARD OF ELECTIONS

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

In re Protests of JEFFERSON GRIFFIN,  
ASHLEE ADAMS, FRANK  
SOSSAMON, and STACIE MCGINN.

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**BRIEF IN SUPPORT OF ELECTION PROTESTS  
FILED BY JEFFERSON GRIFFIN, ASHLEE ADAMS, and STACIE MCGINN**

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## INDEX

INTRODUCTION.....	1
ARGUMENT.....	2
I.    The Board Cannot Count the Votes of People Who Did Not Lawfully Register to Vote. ....	2
A.    State law prohibits anyone from voting unless he has provided a drivers license or social security number when registering to vote. ....	3
B.    This Board admits that it broke the law.....	5
II.   The Boards of Election Cannot Count the Votes of People Who Have Never Lived Here. ....	6
A.    The state constitution forbids election boards from counting the votes of “Never Residents.” .....	7
B.    The residency clause is not preempted by the federal constitution. ....	8
C.    If UMOVA permits these votes to be counted, it is unconstitutional. ....	13
D.    This argument has no impact on votes cast for federal elections, military voters, or North Carolina residents living overseas.....	16
III.  Overseas Voters Who Did Not Provide Photo Identification Cannot Cast a Ballot in State Elections. ....	18
IV.  These Election Protests Were Not Required to Be Brought as Voter Challenges. ....	23
V.   These Election Protests Were Timely Filed. ....	25

CONCLUSION .....	28
CERTIFICATE OF SERVICE .....	30

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## INTRODUCTION

The Board should grant the protests of the three categories of election protests before it.

The Protestors have filed protests with the county election boards that fall under six broad legal theories. On 20 November 2024, this Board entered an order exercising jurisdiction over three of those theories, which are primarily driven by questions of law. The Board ordered the Protestors to submit this brief in support of these three legal theories. The Board should grant each of the protests before it.

First, ballots were cast by people who did not lawfully register to vote. State law has long required voter applicants to provide their drivers license or social security number before being lawfully registered to vote. However, approximately 60,000 people cast votes in the protested elections without providing that statutorily required information on their voter applications. These voters were not eligible to cast a ballot without first lawfully registering.

Second, county boards of elections have accepted ballots cast by voters who have, by their own admission, never resided in North Carolina. Our state constitution limits eligible voters in state races to North Carolina residents. The county boards, however, have accepted votes from people who were born outside the United States and have never lived *anywhere* in the United States. The votes of these “Never Residents” cannot be lawfully counted in elections for state offices.

Third, the Board cannot accept absentee ballots cast by people who failed to provide photo identification with their ballots. County boards accepted ballots cast by overseas voters who did not provide photo identification. But state law requires all voters to provide photo identification to vote; overseas voters casting absentee ballots do not get special treatment.

Next, the Protestors anticipate that their opponents will contest whether the Board can consider these election protests at all. The opponents have already argued to this Board that it cannot sustain the election protests because they instead should have been filed as voter challenges. But this Board and our Supreme Court have already rejected this argument.

Finally, the Protestors also anticipate that their opponents may contest the timeliness of some of the election protests. This argument also fails. The vast majority of the election protests were filed on or before 5:00pm on 19 November 2024. The handful of others that may have come later were no more than a couple minutes late. That still constitutes substantial compliance under the election protest statutes, and substantial compliance is all that's required.

## **ARGUMENT**

### **I. The Board Cannot Count the Votes of People Who Did Not Lawfully Register to Vote.**

Before anyone can vote for a state race in North Carolina, he or she must be lawfully registered to vote. Our election boards, however, have been registering people to vote who

failed to include their drivers license or social security numbers in their voter registration applications—statutorily required information. These ballots, therefore, lack statutory authorization.

**A. State law prohibits anyone from voting unless he has provided a drivers license or social security number when registering to vote.**

Under state law, a person must provide his drivers license or social security number at the time of registration before he can lawfully cast a ballot.

Before voting in an election, a person must lawfully register to vote. Under article VI of the state constitution, “[e]very person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law.” N.C. Const. art. VI, § 3(1). That’s also true by statute: “No person shall be permitted to vote who has not been registered under” the state’s registration statutes. *See* N.C. Gen. Stat. § 163-82.1(a) (making registration a “prerequisite to voting”).

The protests here involve people who were not legally registered to vote in a manner provided by law, section 163-82.4, because they failed to provide statutorily required application information. Since January 2004, state law has required voter registrants to provide their drivers license or social security number in their voter application. N.C. Sess. Law 2003-226, § 9 (amending N.C. Gen. Stat. § 163-82.4), § 22 (amendment effective 1 January 2004). The State Board of Elections is required to create an application form for voter registration. N.C. Gen. Stat. § 163-82.3(a). From 2004 onward, the General Assembly commanded that the form require an applicant to provide his “[d]rivers license number or, if

the applicant does not have a drivers license number, the last four digits of the applicant's social security number." *Id.* § 163-82.4(a)(11). However, a board can accept an application without a drivers license or social security number only if the applicant "has not been issued either a current and valid drivers license or a social security number." *Id.* § 163-82.4(b).

There's a statutory cure process for this type of registration error, but the errors raised in these protests have not been cured. If a person has a drivers license or social security number, but fails to provide those numbers on their voter application, then the election board shall not allow the person to vote unless the voter cures the deficient application before the county canvass deadline. The statutory cure procedure applies to a voter who "fails to complete any required item on the voter registration form." *Id.* § 163-82.4(f). The board shall notify the voter of the omission and request completion of a corrected application before the county canvass. *Id.* Only if the required information is delivered by that time will the voter's ballot be counted. *Id.* ("If the correct information is provided to the county board of elections by at least 5:00 P.M. on the day before the county canvass, the board shall count any portion of the provisional official ballot that the voter is eligible to vote."). No state law, however, permits a board of elections to count a ballot for a person who never provided a drivers license or social security number on his voter registration form.

Mandating such information from voter registrants is not unique to North Carolina. For federal elections, Congress also requires the states to collect the drivers license or social security number from registrants. 52 U.S.C. § 21083(a)(5)(A)(i). If a person with a drivers

license or social security card fails to provide those identifiers on a voter application form, then the application “may not be accepted or processed by a State.” *Id.*

Although federal law doesn’t apply to elections for state offices—such as the ones at issue here—this federal prerequisite to voting in federal elections corroborates the importance of collecting such information from would-be voters. In other words, the information required by the General Assembly is not some new law designed to burden voters but a decades-old feature of American election law that protects the integrity of our elections.

**B. This Board admits that it broke the law.**

The Board broke the law for twenty years.

Despite the clarity in the law since 2003, this Board did not require voters to provide a drivers license or social security number when people registered to vote. Before December 2023, the voter application form appeared like this:

**NORTH CAROLINA VOTER REGISTRATION APPLICATION** (fields in red text are required) 2023.04 **06w**

<b>1</b> Indicate whether you are qualified to vote or preregister to vote based on U.S. citizenship and age. <b>Are you a citizen of the United States of America?</b> IF YOU CHECKED "NO" IN RESPONSE TO THIS CITIZENSHIP QUESTION, DO NOT SUBMIT THIS FORM. YOU ARE <u>NOT</u> QUALIFIED TO VOTE. <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Will you be at least 18 years of age on or before election day?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Are you at least 16 years of age and understand that you must be 18 years of age on or before election day to vote?</b> IF YOU CHECKED "NO" IN RESPONSE TO BOTH OF THESE AGE QUESTIONS, DO NOT SUBMIT THIS FORM. YOU ARE <u>NOT</u> QUALIFIED TO REGISTER OR PREREGISTER TO VOTE. <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>2</b> Provide your full legal name. Last Name First Name Middle Name Suffix	<b>3</b> Provide your date of birth and identification information. Date of Birth (MM/DD/YYYY) State or Country of Birth NC Driver License or NC DMV ID Number Last 4 Digits of Social Security Number <input type="checkbox"/> Check if you do not have a driver license or Social Security number. State voter Registration Number (Optional: To locate, check "Voter Lookup" at <a href="http://www.NCSBE.gov">www.NCSBE.gov</a> .)

As this image reveals, the application did not tell registrants that these identifiers were required because it was not in red text. Yet this information is required. N.C. Gen. Stat. § 163-82.4(a)(11).

The Board admitted this violation of law when it entered an order on an administrative complaint from 2023 that raised the issue. In that order, the Board concluded that a related provision of federal law could be violated “as a result of the current North Carolina voter registration application form failing to require an applicant to provide an identification number or indicate that they do not possess such a number.” Order at 4, *In re HAVA Complaint of Carol Snow* (N.C. State Bd. of Elections Dec. 6, 2023) [App. 4]. The Board ordered its staff to revise the form going forward.<sup>1</sup> *Id.* But the Board declined to remedy its past legal violations.

Now, however, the issue has caused irregularities in the protested elections, and those irregularities may well be outcome dispositive.

## **II. The Boards of Election Cannot Count the Votes of People Who Have Never Lived Here.**

At the core of any democracy is a definition of who is within the political community and who is not. When it comes to voting in North Carolina elections for candidates to state offices, our constitution restricts voting rights to people who reside in North Carolina “to

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<sup>1</sup> In light of this order, the Board’s counsel has advised county boards that they cannot register new voter applicants who fail to provide a drivers license or social security number and who also fail to “state in writing that they lack these numbers.” Email of Paul Cox, N.C. State Bd. of Elections, to Directors of County Bds. of Election (Sept. 4, 2024) [App. 6-7].

preserve the basic conception of a political community.” *Lloyd v. Babb*, 296 N.C. 416, 449, 251 S.E.2d 843, 864 (1979). That is why, months ago, our Supreme Court explained that “nonresidents” are “categorically ineligible to vote” for state offices. *Bouvier v. Porter*, 386 N.C. 1, 4 n.2, 900 S.E.2d 838, 843 n.2 (2024).

Yet people voted in the general election who, by their own admission, were born overseas and have never resided in North Carolina or anywhere else in the United States. These overseas voters are United States citizens, but they aren’t residents of North Carolina who can vote for state contests. It’s unlawful to count the votes of these “Never Residents.”

**A. The state constitution forbids election boards from counting the votes of “Never Residents.”**

The North Carolina Constitution defines the political community for purposes of voting in our elections. No one can vote in a state election unless they meet the “qualifications” in article VI of the constitution. N.C. Const. art. VI, § 1. The constitution then sets out the first of the qualifications in the voter residency clause. Under that clause, to vote in an election for a state office, a person must have “resided in the State of North Carolina for one year . . . next preceding an election.” *Id.* § 2(1).

Despite the clarity of this constitutional provision, the election boards permitted people to vote in the general election who have never resided in North Carolina or anywhere else in the United States. The evidence is set out in an affidavit from Ryan Bonifay attached to the relevant protests on this issue. This Board, in response to a public records

request sent on 9 November 2024, identified overseas voters who voted in the 2024 general election but who self-identified as having never lived in the United States. Affidavit of Ryan Bonifay (Wake County FPCA), 2-3 ¶¶ 10-12 [App. 9-10].<sup>2</sup> This Board identified a list of voters who, the Board explained, checked a box on a federal post card application “indicating that they never lived in the United States.” *Id.* ¶ 12 [App. 10]. Specifically, that check-box states, “I am a U.S. citizen living outside the country, and I have never lived in the United States.” *Id.*, Attachment 1 [App. 14]. Attachment 2 to each version of the Bonifay affidavit submitted to each county board of election lists the voters who checked that box yet actually voted in the general election. *Id.* ¶¶ 14-20 & Attachment 2 [App. 10-11, 17].

Someone who has never lived in the United States has never resided in North Carolina. These people, therefore, were not qualified to vote in our state elections under the voter residency clause. Nonetheless, the county election boards counted these votes anyway. Under the state constitution, counting those votes was unlawful.

**B. The residency clause is not preempted by the federal constitution.**

Opponents of this theory have made several objections. The first is a broadside attack on the state constitution itself.

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<sup>2</sup> A version of this affidavit was filed with each county election board. The only difference among the affidavits is Attachment 2, which identifies the non-resident voters who voted in that county. For convenience, the Protestors are attaching to this brief a copy of the Bonifay FPCA Affidavit submitted to the Wake County Board of Elections. *See* App. 8-17.



In *Dunn v. Blumstein*, 405 U.S. 330 (1972), the U.S. Supreme Court considered whether a one-year durational residency requirement, as a prerequisite to registering to vote, violated the equal protection clause of the Fourteenth Amendment. *Dunn v. Blumstein*, 405 U.S. 330, 334 (1972). The Court held that a one-year residency requirement was too long to comply with the equal protection clause. *Id.* at 334.

Importantly, however, the Court explained what was *not* at issue. The Court emphasized that it was not ruling on whether Tennessee could “restrict the vote to bona fide Tennessee residents.” *Id.* The plaintiff-challenger was, without dispute, a Tennessee resident “when he attempted to register” to vote. *Id.* The issue, as the Court stated, was not Tennessee’s bona fide residency requirement, but the durational part of the residency requirement. *Id.* It’s only the durational residency requirement that penalizes someone who has recently moved into the state from elsewhere. *Id.* Indeed, the Court emphasized that its prior precedent had already established the constitutionality of “bona fide residence requirements”:

We emphasize again the difference between bona fide residence requirements and durational residence requirements. We have in the past noted approvingly that the States have the power to require that voters be bona fide residents of the relevant political subdivision. An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny. But durational residence requirements, representing a separate voting qualification imposed on bona fide residents, must be separately tested by the stringent standard.

*Id.* at 343-44 (citations and footnotes omitted).

Our Supreme Court has considered the impact of *Dunn* on the residency requirement of our own state constitution and determined that the bona fide residency requirement continues to apply. Our Supreme Court explained that *Dunn* drew a “careful distinction . . . between durational residence requirements and bona fide residence requirements.” *Lloyd*, 296 N.C. at 439, 251 S.E.2d at 858. Thus, “[a]ppropriately defined and [u]niformly applied bona fide residence requirements are permissible” under the federal constitution. *Id.* at 440, 251 S.E.2d at 859. And although those “who reside in a community and are subject to its laws must be permitted to vote there,” the corollary is that those who do *not* reside in a community are not permitted to vote. *Id.* Citing *Dunn*, the Court held that “[t]he power of the state to require that voters be bona fide residents is unquestioned.” *Id.*; accord *id.* at 441, 251 S.E.2d at 860 (“In both *Carrington* and *Dunn*, the Supreme Court made it clear that the states could classify persons as residents and non-residents and forbid non-residents from voting.”).

The continued viability of the state constitution’s bona fide residency requirement has already been confirmed twice this year. Just a few months ago, our Supreme Court confirmed that “nonresidents” are “categorically ineligible to vote” under the residency clause of the state constitution. *Bouvier*, 386 N.C. at 4 n.2, 900 S.E.2d at 843 n.2 (citing N.C. Const. art. VI, §§ 1-2). And a federal district court held that, under *Dunn*, North Carolina can enforce a 30-day residency requirement consistent with the federal constitution. *N.C. All. for Retired Americans v. Hirsch*, No. 5:24-CV-275-D, 2024 WL 3507677, at \*13 (E.D.N.C. July 19, 2024) (Dever, J.) (to be published). This is not news to this Board, of

course, since the Board was a defendant in that case. The Board adopted the arguments of the legislative intervenors, who successfully argued that a 30-day residency requirement does not violate the federal constitution. State Bd. Defs.’ Resp. to Pl.’s Mot. for Prelim. Inj. at 18-21, *N.C. All. for Retired Americans v. Hirsch*, No. 5:24-CV-275-D, 2024 WL 3507677 (E.D.N.C. July 19, 2024) [App. 51-54]; Intervenor’s Resp. in Opp. to Pl.’s Mot. for Prelim. Inj. at 6, *N.C. All. for Retired Americans v. Hirsch*, No. 5:24-CV-275-D, 2024 WL 3507677 (E.D.N.C. July 19, 2024) [App. 23]. The argument adopted by this Board even criticized *Dunn* as bad law. Intervenor’s Resp. at 21 [App. 54].

The continuing viability of *Dunn*, however, is irrelevant. As these points show, *Dunn* does not invalidate the state constitution’s bona fide residency requirement.

Nor can *Dunn* operate to invalidate the residency clause in its entirety, as *Lloyd* itself demonstrated. It is not unusual for federal law to limit the applicability of electoral provisions of the state constitution. When such conflict occurs, the state constitution necessarily defers to federal law, but our courts still require that state constitutional provisions be enforced as much as federal law will permit.

Consider, for example, the “whole county” provisions of the state constitution. See N.C. Const. art. II, § 3(3), 5(3). Under these redistricting provisions, “[n]o county shall be divided in the formation of” a senate or representative district. *Id.* But the “one-person-one-vote” principles of the federal constitution require population equality among legislative districts. *Stephenson v. Bartlett*, 355 N.C. 354, 363, 562 S.E.2d 377, 384 (2002). In

*Stephenson*, this Board and the other state defendants argued that this federal law rendered the whole county provisions totally unenforceable. *Id.* at 369, 562 S.E.2d at 388.

Our Supreme Court disagreed. Rather than seek to render state constitutional provisions totally preempted by federal law, “North Carolina courts should make every effort” to reconcile state and federal law and avoid “striking State provisions as wholly unenforceable.” *Id.* at 370, 562 S.E.2d at 389. Although “an inflexible application of the [whole county provisions] is no longer attainable,” those provisions must still be applied where they serve “beneficial purposes” not inconsistent with federal law. *Id.* at 371, 562 S.E.2d at 389. The *Stephenson* Court then found the state legislative districts unconstitutional because they failed to conform to the whole county provisions “to the maximum extent possible.” *Id.* at 374-75, 562 S.E.2d at 391-92.

The same is true of *Dunn* and the residency clause. It could be true that, under *Dunn*, the full *durational* portion of the residency clause cannot be enforced. But *Dunn* certainly does not stop states from enforcing a bona fide residency requirement. By its own terms, *Dunn* validates bona fide residency requirements. 405 U.S. at 343-44. And, at a minimum, our residency clause requires a person to be a resident when they register to vote in the state or actually vote in a state election. Indeed, whether looked at as domicile or residence, a person must at a minimum prove that he has been physically present in the state before voting in our elections. *See Lloyd*, 296 N.C. at 444, 251 S.E.2d at 861 (“The requisites for domicile are legal capacity, *physical presence* and intent to acquire domicile.” (emphasis added)); *accord id.* at 446, 251 S.E.2d at 862 (“[A person] resides where he has his

established home, the place where he is habitually present . . . .” (quoting *Berry v. Wilcox*, 62 N.W. 249, 251 (Neb. 1895)).

This Board, like the General Assembly, is required to follow the preemption analysis in *Stephenson*. That mode of analysis requires the residency clause to be enforced “to the maximum extent possible.” *Stephenson*, 355 N.C. at 374, 562 S.E.2d at 391. Enforcement of that clause, in the context of this case, requires that persons be bona fide residents of North Carolina when they register to vote or vote in a state election. The voters at issue with this protest have already told the election boards that they have *never* resided in North Carolina or anywhere else in the United States. They’ve never been bona fide state residents. Therefore, counting the votes of these “Never Residents” violates the North Carolina Constitution.

**C. If UMOVA permits these votes to be counted, it is unconstitutional.**

Those wanting to count the votes of the “Never Residents” have turned to a state statute, UMOVA, to fulfill their aspirations. Of course, if the statute permits voting by those ineligible to vote under the constitution, it violates the constitution. UMOVA, therefore, should not be read to conflict with the state constitution.

In 2011, the General Assembly enacted the Uniform Military and Overseas Voters Act (UMOVA). N.C. Session Law 2011-182 (enacting N.C. Gen. Stat. §§ 163-258.1 to - 258.20). As the name suggests, this bill was originally drafted by the Uniform Law Commission, which recommended its adoption among the states. When the Commission drafts uniform laws for use by all states, it does not consider the North Carolina Constitution.

UMOVA lets a “covered voter” register to vote in various ways for elections for federal and state offices. *See* N.C. Gen. Stat. § 163-258.3 (defining elections covered by UMOVA); *id.* § 163-258.6 (setting out methods of registration).

At issue is who counts as a “covered voter.” The relevant definition is provided here in full:

(1) “Covered voter” means any of the following:

a. A uniformed-service voter or an overseas voter who is registered to vote in this State.

b. A uniformed-service voter defined in subdivision (7) of this section whose voting residence is in this State and who otherwise satisfies this State’s voter eligibility requirements.

c. An overseas voter who, before leaving the United States, was last eligible to vote in this State and, except for a State residency requirement, otherwise satisfies this State’s voter eligibility requirements.

d. An overseas voter who, before leaving the United States, would have been last eligible to vote in this State had the voter then been of voting age and, except for a State residency requirement, otherwise satisfies this State’s voter eligibility requirements.

e. An overseas voter who was born outside the United States, is not described in sub-subdivision c. or d. of this subdivision, and, except for a State residency requirement, otherwise satisfies this State’s voter eligibility requirements, if:

1. The last place where a parent or legal guardian of the voter was, or under this Article would have been, eligible to vote before leaving the United States is within this State; and

2. The voter has not previously registered to vote in any other state.

*Id.* § 163-258.2(1).

Protestors are challenging ballots cast by overseas voters who identified themselves as United States citizens who have never resided in the United States. Such voters could only plausibly count as UMOVA “covered voters” under subsection (1)(e). That subsection defines a covered voter as (1) a United States citizen “born outside the United States,” (2) is not described in subsections (c) and (d) as an overseas voter who previously lived in the United States, (3) meets the state’s voter eligibility requirements except for a “State residency requirement,” (4) the voter’s parent was last eligible to vote in this state before leaving the United States, and (5) the voter hasn’t registered to vote in another state. *Id.* § 163-258.2(1)(e).

UMOVA doesn’t define the phrase “State residency requirement” that such a voter needs to comply with. The term is not defined anywhere in the Act. As it stands, the phrase is ambiguous as to whether it means a durational residency requirement or a bona fide residency requirement. If the ambiguous phrase were interpreted to mean just a durational residency requirement, it’s possible that UMOVA would, at least in some circumstances, be constitutional under the residency clause, as that clause is limited by *Dunn*. But if, on the other hand, the ambiguous clause were interpreted to let someone vote who has *never* been a resident, it would be unenforceable under the bona fide residency requirement of the state constitution.

The canon of constitutional avoidance requires the Board to interpret N.C. Gen. Stat. § 163-258.2(1)(e) as exempting overseas voters only from a durational residency requirement, and not a bona fide residency requirement. Only such an interpretation could

save the statute from being invalidated. “[W]here one of two reasonable constructions will raise a serious constitutional question, the construction which avoids this question should be adopted.” *N.C. State Bd. of Educ. v. State*, 371 N.C. 149, 160, 814 S.E.2d 54, 62 (2018) (quoting *In re Arthur*, 291 N.C. 640, 642, 231 S.E.2d 614, 616 (1977)).

But if the Board does not believe this to be a reasonable interpretation of section 163-258.2(1)(e), then it would be the Board’s duty to refuse to enforce the statute at all. Every official in this state is “bound to give effect to the intent of framers” of the state constitution, as well as the intent “of the people adopting it.” *Id.* (quoting *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm’rs*, 363 N.C. 500, 505, 681 S.E.2d 278, 282 (2009)). And that intent, based on the plain text of the state constitution, is clear: only residents can vote for state offices.

**D. This argument has no impact on votes cast for federal elections, military voters, or North Carolina residents living overseas.**

To be clear, the Protestors are not challenging the votes of military voters, nor are Protestors challenging any vote cast for federal contests.

None of the Protestors were candidates for federal offices. And federal statutory law, which imposes duties on states for uniformed services voters and other overseas voters, applies only to “elections for Federal office.” *See* 52 U.S.C. § 20302(a).

This matters for state law as well. Advocates of “Never Resident” voting have suggested that the General Assembly can reduce the residency requirement to zero days—in other words, write it out of the constitution. Although the argument makes little sense, it



also isn't relevant to the protests before the Board. The argument could only work for federal elections. Under the state constitution,

[t]he General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

N.C. Const. art. VI, § 2(2). But this provision does not empower the legislature to trim or eliminate the residency requirement for voting for state offices.

UMOVA also distinguishes between, on one hand, uniformed-service voters and overseas voters who have resided in this state, N.C. Gen. Stat. § 163-258.2(1)(a)-(d), and, on the other hand, overseas voters who were born abroad and have never resided in this state, *id.* § 163-258.2(1)(e). The Protestors have challenged the votes of this latter group only.

Anyway, a servicemember who previously resided in North Carolina but is deployed overseas does not lose his North Carolina residency. Unless a servicemember leaves the state and intends never to return, he remains a resident of the state. *See Lloyd*, 296 N.C. at 444, 251 S.E.2d at 861 (student who leaves for college becomes resident at the place of his college unless he intends to return to his former home after graduation). Unless the servicemember has “abandoned” his home in North Carolina, he remains a resident here for

voting purposes. *Id.* at 449, 251 S.E.2d at 864.<sup>3</sup> By contrast, the “Never Residents” whose votes are being challenged in these protests never had a home in North Carolina that they could abandon.

\* \* \*

Our state constitution imposes a commonsense requirement: people who are members of the political community can vote in state elections, and people who aren’t part of the community can’t. If the Board were to count the votes of people who have *never* been members of our political community, it will violate our state constitution. That harms the Protestors as well as the true members of our state’s political community.

### **III. Overseas Voters Who Did Not Provide Photo Identification Cannot Cast a Ballot in State Elections.**

The final category of protests before the Board involves ballots cast by overseas voters. State law requires these voters to submit photo identification along with their absentee ballots. But the county boards accepted overseas absentee ballots without accompanying identification, in violation of state law.

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3 Some proponents of “Never Resident” voting have suggested that these overseas voters “inherit” the residences of their parents. This argument analogizes to the law of domiciliary for infants. Yet the analogy crumbles upon inspection because infants can’t vote. N.C. Const. art. VI, § 1 (voting rights limited to those at least “18 years of age”). Unlike an infant, an 18-year-old chooses where he resides. If he wishes to become a member of North Carolina’s political community, he must decide, as an adult, to reside in North Carolina. Otherwise, he is not a member of our political community entitled to vote. There is no such thing as “birthright residency” for purposes of voting in our state’s elections.

Subchapter VII of Chapter 163 of the General Statutes contains the requirements for all types of absentee-ballot voting in North Carolina. Article 20 of that subchapter sets out the general rules for absentee voting. *See* N.C. Gen. Stat. §§ 163-226 to -239. Article 21A, also known as UMOVA, layers on additional rules for absentee voting by military and overseas voters. *See id.* §§ 163-258.1 to -258.31. The general absentee voting provisions of Article 20 apply to overseas absentee voting under Article 21A, and not vice versa. Section 163-239 states, “Except as otherwise provided therein, Article 21A of this Chapter [for overseas absentee voting] shall not apply to or modify the provisions of this Article [20].”

One of the key provisions of Article 20 is the requirement of photo identification for absentee voting. N.C. Gen. Stat. § 163-230.1(a)(4), (b)(4), (e)(3), (f1). These provisions equalize the burden of voting: both in-person voters and absentee voters must show photo identification to cast a ballot. *See id.* § 163-166.16(a) (requiring photo identification for in-person voting); N.C. Const. art. VI, §§ 2(4), 3(2) (same). If our legislature intended to exempt overseas absentee voters from the photo identification requirement, it would have said so explicitly.

But overseas voters are not exempt from this equalization requirement, and must provide photo identification to vote. All absentee ballots—cast under either Article 20 or Article 21A—must be transmitted to the relevant county board of elections by placing it in a “sealed container-return envelope.” *Id.* § 163-231(b)(1). Article 21A, however, makes no reference to a “sealed container-return envelope.” *See id.* §§ 163-258.1 to -258.31. To understand the requirements of the “sealed container-return envelope” for overseas absentee

ballots cast under Article 21A, it's necessary to turn to Article 20. Article 20 is clear that the "sealed container-return envelope" exists, in part, to hold the photo identification of *all* absentee ballots. The container-return envelope must contain a valid photo identification: "Each container-return envelope returned to the county board with application and voted ballots under this section shall be accompanied by a photocopy of identification . . . ." *Id.* § 163-230.1(f1). The failure to include a photo identification in the container-return envelope is a curable deficiency, but only if the proper identification is received the day before the county canvass. *Id.* § 163-230.1(e).

Even at a more general level, absentee ballots cast both within and without the United States (Article 20 and Article 21A absentee ballots) are generally treated alike and are all considered absentee ballots:

- "The county board shall report ballots cast during early voting under Part 5 of Article 14A of this Chapter separately from mail-in absentee ballots cast under Article 20 or 21A of this Chapter." *Id.* § 163-132.5G(a1)(4).
- "The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued those ballots as follows . . . All ballots issued under the provisions of this Article and Article 21A of this Chapter shall be transmitted by one of the following means . . . ." *Id.* § 163-231(b).
- The lawful procedure for counting absentee ballots cast under both Article 20 and Article 21A are set out in Article 20. *Id.* § 163-234.

Ultimately, it would make no sense to require photo identification for voters present in the United States, but not for overseas voters. The General Assembly did not require photo identification for one category of voter and not the other. Rather, *everyone* in North Carolina, whether voting in person or by any kind of absentee ballot, must submit a photo identification to vote in our elections.

This Board has a rule that purports to let overseas voters cast an Article 21A ballot without providing photo identification. 8 N.C. Admin. Code 17.0109(d). That rule is invalid, however, since it conflicts with the correct interpretation of the statutes, as set out above.

The rule would collapse under the state constitution anyway. If voters are to be treated differently, there must be a rational basis for the differential treatment. *See* N.C. Const. art. I, § 19 (“No person shall be denied the equal protection of the laws . . . .”); *Lloyd*, 296 N.C. at 439, 251 S.E.2d at 858 (“[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” (quoting *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972))); *N.C. Bar & Tavern Ass’n v. Cooper*, 901 S.E.2d 355, 373 (N.C. Ct. App.), *review allowed*, 901 S.E.2d 232 (N.C. 2024); *Askew v. City of Kinston*, 906 S.E.2d 500, 507 (N.C. Ct. App. 2024). But there is no legitimate reason to impose a greater burden—photo identification—on actual North Carolina residents than is imposed on nonresidents casting ballots under Article 21A. There is no reason to think that the General Assembly intended that bizarre, differential treatment, which would violate the state constitution’s equal protection clause.

Therefore, these absentee ballots, submitted under Article 21A, cannot be counted for the contests that are the subject of these election protests.

Judge Griffin filed six protests challenging the eligibility of overseas voters who did not provide a copy of their photo identification (or a completed exemption form). Before filing the protest, counsel to Judge Griffin requested the list of such voters from six counties. *See* Public Records Request from Philip R. Thomas to Directors of County Election Boards re: UOCAVA Voters (Nov. 19, 2024) [App. 66]. At the time of the filing deadline, one county (Guilford) had provided information that identified such voters, and this list was included with the protest filed in Guilford County. Since filing the protests, Durham and Forsyth Counties have also provided information identifying these voters, and Judge Griffin has filed protest supplements that include these lists. *See* Letter from Philip R. Thomas to N.C. State Bd. of Elections re: Protest Amendments and Supplementation (Nov. 19, 2024) [App. 67-166]; Letter from Philip R. Thomas to N.C. State Bd. of Elections re: Forsyth County Protest Amendments and Supplementation (Nov. 25, 2024) [App. 167-198]. At the time of filing this brief, Judge Griffin is still awaiting the production of lists from the counties of Buncombe, Cumberland, and New Hanover. Judge Griffin has asked the State Board to issue subpoenas for this information. *See* Letter from Philip R. Thomas to N.C. State Bd. of Elections re: Request to Issue Subpoenas (Nov. 21, 2024) [App. 199-204].

#### IV. These Election Protests Were Not Required to Be Brought as Voter Challenges.

The Protestors' opponents have argued that these election protests should fail because they should have been brought as voter challenges. But this argument is wrong, and this Board has already rejected it.

The General Statutes define an election protest as “a complaint concerning the conduct of an election which, if supported by sufficient evidence, may require remedy by” a correction in the returns, a recount, or a new election. N.C. Gen. Stat. § 163-182(4). In other words, an election protest can challenge any “irregularity” in the conduct of an election that changes the outcome of an election. *See id.* § 163-182.9. A voter challenge, however, does not seek any of these remedies; it seeks merely to remove a person from the voter rolls. *Id.* §§ 163-85, -90.2. The key distinction is the remedy being sought.

Such protestable “irregularities” include a county board permitting ineligible persons to vote in elections. In 2016, an election protest was filed by the Pat McCrory campaign in the governor's race, challenging the eligibility of certain voters to cast ballots in that election. *Bouvier*, 386 N.C. at 5-6, 900 S.E.2d at 843-44. McCrory's opponent, Roy Cooper, argued that the protests should be dismissed because they merely challenged the eligibility of certain voters, and therefore should have been brought as voter challenges instead. *See Bouvier v. Porter*, 279 N.C. App. 528, 542, 865 S.E.2d 732, 741-42, *rev'd in part and remanded*, 386 N.C. 1, 900 S.E.2d 838 (2024); Order at 1-2, *In re Consideration of Certain Legal Questions Affecting the Authentication of the 2016 General Election* (N.C. State Bd. of Elections Nov. 28, 2016) [App. 59-60].

This Board rejected Cooper’s argument. *Id.* [App. 59-60]. In an order on Cooper’s request to dismiss the protests, the Board explained that an election protest “must prove the occurrence of an outcome-determinative violation of election law, irregularity, or misconduct.” *Id.* at 1 ¶ 3 [App. 59]. Although an election protest “may not merely dispute the eligibility of a voter,” an election protest may challenge a voter’s eligibility if the “claims regarding the eligibility of certain voters” are presented “as evidence that an outcome-determinative violation of election law, irregularity, or misconduct has occurred.” *Id.* at 2 ¶ 5 [App. 60]. Thus, an election board may “discount a ballot cast by an unqualified voter” if an election protest shows “that ineligible voters participated in number sufficient to change the outcome of the election.” *Id.* at 2 ¶ 7 [App. 60].

The McCrory election protest spun off collateral litigation that wound up at the Supreme Court of North Carolina as *Bouvier v. Porter*, 386 N.C. 1, 900 S.E.2d 838 (2024). One of the issues in *Bouvier* continued to be whether an election protest can challenge the eligibility of certain voters. The Supreme Court affirmed the logic of the Board’s 2016 order, explaining that “an election protest may address any ‘irregularity’ or ‘misconduct’ in the election process, including the counting and tabulation of ballots cast by ineligible voters.” *Id.* at 4, 900 S.E.2d at 843 (citations omitted). *Bouvier* then specifically held that an election protest could be used to challenge a ballot cast by a “nonresident,” who is “categorically ineligible to vote.” *Id.* at 4 n.2, 900 S.E.2d at 843 n.2.

Thus, as the Board and the Supreme Court have already determined, these election protests are properly brought as election protests.



## **V. These Election Protests Were Timely Filed.**

There has been a suggestion that a handful of the protests filed with county boards were not timely filed. That suggestion is meritless, for several reasons.

First, the vast majority of the protests were emailed by or before 5:00pm on 19 November 2024, so there isn't a potential timeliness issue with these protests. The deadline for an election protest turns on the time of its "filing" by the protestors, not the time of its receipt by an election board. N.C. Gen. Stat. § 163-182.9(b)(4). As our statutes generally explain, service by email is timely when the email is "sent." N.C. Gen. Stat. § 1A, Rule 5(b)(1)(a), (b)(2)(c). Thus, if a person sends an email on or before 5:00pm, it is timely filed. Nearly all the protests before this Board meet that requirement. *See* Affidavit of Kyle Offerman [App. 61-65]. The unfortunate reality is that, due to the expedited timeline for filing protests and the challenges of obtaining pertinent voter information,<sup>4</sup> the Protestors were working up until the deadline to compile necessary materials and file their protests. In the face of these challenges, the protests at issue were nevertheless filed before, or within minutes of, the deadline.

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<sup>4</sup> Despite submitting some public records requests to the State Board at least 10 days before the protest filing deadline, counsel for Judge Griffin was still awaiting requested information the day before the protest deadline and, therefore, felt compelled to file a lawsuit that morning seeking the State Board's production of the requested information. After the lawsuit was on file, the State Board offered to produce the requested information. *See* Verified Complaint, *N.C. Republican Party v. N.C. State Bd. of Elections*, No. 24CV036912-910 (Wake Cnty. Super. Ct.) [App. 205-225]; Email from Paul Cox, N.C. State Bd. of Elections, to Philip Thomas & Craig Schauer (Nov. 18, 2024, 9:51 AM) [App. 226-27].

Second, even if a few election protests were emailed or received by email shortly after 5:00pm on 19 November 2024, the filing of such protests still substantially complied with the deadline in N.C. Gen. Stat. § 163-182.9(b)(4)(c). As the election protest statutes make clear, absolute compliance with the election protest procedures is not required. Rather, an election protest is adequate if it “*substantially* complies with G.S. 163-182.9.” N.C. Gen. Stat. § 163-182.10(a)(1) (emphasis added) (“The county board shall, as soon as possible after the protest is filed, meet to determine whether the protest substantially complies with G.S. 163-182.9 and whether it establishes probable cause to believe that a violation of election law or irregularity or misconduct has occurred.”). The protest can be dismissed on procedural grounds only if the protest “does not substantially comply with G.S. 163-182.9.” *Id.* § 163-182.10(d)(2)(a).

The low and flexible “substantial compliance” standard makes sense. The election protest process is supposed to be “simple so that everyone, not just lawyers, can use it.” *Bouvier*, 386 N.C. at 4, 900 S.E.2d at 843. Substantial compliance—not perfect compliance—is all that’s called for.

Next, even if the Board thought a protest filed three or four minutes after 5:00pm did not substantially comply with a 5:00pm deadline, the Board would have the discretion to disregard the technical noncompliance. When this Board exercises jurisdiction over a protest, it “may consider protests that were not filed in compliance with G.S. 163-182.9.” N.C. Gen. Stat. § 163-182.12.

An exercise of such discretion would be appropriate here. Because of the nature of their challenges for a statewide race, counsel for the Protestors were required to file protests in every county of the state, based on information and data that was still being received from the state and county boards the day before and day of the deadline for the protests. By contrast, the Protestors' opponents cannot possibly show prejudice from a protest received a few minutes after 5:00pm.

Other courts have also dealt with similar filing issues and have excused them. In a contentious federal case, a party moving for summary judgment filed its motion four minutes after its midnight filing deadline. *Hyperphrase Techs. LLC v. Microsoft Corp.*, No. 02-C-647-C, 2003 WL 21920041, at \*1 (W.D. Wis. July 1, 2003). The non-moving party promptly filed a motion to strike the brief as untimely. The federal court denied the motion in a humorous opinion that showed the perils of hyper-zealousness. *See id.* (“Wounded though this court may be by Microsoft’s four minute and twenty-seven second dereliction of duty, it will transcend the affront and forgive the tardiness. . . . Having spent more than that amount of time on Hyperphrase’s motion, it is now time to move on to the other Gordian problems confronting this court.”). Other courts, including our own, have taken similar views. *See, e.g., Hwang v. Cairns*, No. COA22-31, 2023 WL 192912, at \*4 (N.C. Ct. App. Jan. 17, 2023), *review allowed on other grounds*, 385 N.C. 298, 890 S.E.2d 913 (2023) (forgiving party’s service of brief “two minutes after the deadline” and denying motion to dismiss appeal); *Carnell Const. Corp. v. Danville Redevelopment & Hous. Auth.*, No. 4:10CV00007, 2012 WL 2367157, at \*3 n.2 (W.D. Va. June 21, 2012) (forgiving filing made

four minutes late); *McCarter v. Univ. of N.C. at Chapel Hill*, No. 1:20CV1050, 2024 WL 1142518, at \*1 n.1 (M.D.N.C. Mar. 15, 2024) (forgiving late filing, especially due to lack of prejudice); *Winebarger v. Bos. Sci. Corp.*, No. 2:13-CV-28892, 2015 WL 1887222, at \*25 (S.D.W. Va. Apr. 24, 2015) (forgiving filing that was made “just minutes after the deadline”).

Under the circumstances, the Protestors request that any late filing be forgiven.

### CONCLUSION

For the reasons stated in this brief, as well as the reasons stated in the protests filed with the county boards of election, this Board should conclude that there is substantial evidence to believe that a violation of the election laws or other irregularity or misconduct occurred and that it was sufficiently serious to cast doubt on the apparent results of the elections being protested.

This the 27th day of November, 2024.

/s/ Craig D. Schauer

Craig D. Schauer

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*Counsel for Protestor Jefferson Griffin*

RETRIEVED FROM DEMOCRACYDOCKET.COM

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was electronically filed and served this day by email, addressed as follows:

Ray Bennett ([ray.bennett@wbd-us.com](mailto:ray.bennett@wbd-us.com))  
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Brad Hessel ([info@electbradhessel.org](mailto:info@electbradhessel.org), [bhessel@intelledgement.com](mailto:bhessel@intelledgement.com))

*Pro se*

This the 27th day of November, 2024.

/s/ Craig D. Schauer  
Craig D. Schauer

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

In re Protests of JEFFERSON GRIFFIN,  
ASHLEE ADAMS, FRANK  
SOSSAMON, and STACIE MCGINN.

\*\*\*\*\*

**APPENDIX TO BRIEF IN SUPPORT OF ELECTION PROTESTS**

\*\*\*\*\*

**Appendix Pages:**

Order, *In re HAVA Complaint of Carol Snow* (N.C. State  
Bd. of Elections Dec. 6, 2023) ..... App. 1-5

Email of Paul Cox, N.C. State Bd. of Elections, to Direc-  
tors of County Bds. of Election (Sept. 4, 2024) ..... App. 6-7

Affidavit of Ryan Bonifay (Wake County FPCA) ..... App. 8-17

State Bd. Defs.' Resp. to Pl.'s Mot. for Prelim. Inj., *N.C.*  
*All. for Retired Americans v. Hirsch*, No. 5:24-CV-275-  
D, 2024 WL 3507677 (E.D.N.C. July 19, 2024) ..... App. 18-27

Intervenors' Resp. in Opp. to Pl.'s Mot. for Prelim. Inj.,  
*N.C. All. for Retired Americans v. Hirsch*, No. 5:24-CV-  
275-D, 2024 WL 3507677 (E.D.N.C. July 19, 2024) .... App. 28-58

Order, *In re Consideration of Certain Legal Questions Affect-*  
*ing the Authentication of the 2016 General Election* (N.C.  
State Bd. of Elections Nov. 28, 2016) ..... App. 59-60

Affidavit of Kyle Offerman ..... App. 61-65

Public Records Request from Philip R. Thomas to Direc-  
tors of County Election Bds. re: UOCAVA Voters  
(Nov. 19, 2024) ..... App. 66

Letter from Philip R. Thomas to N.C. State Bd. of Elections re: Durham County Protest Amendments and Supplementation (Nov. 25, 2024) ..... App. 67-166

Letter from Philip R. Thomas to N.C. State Bd. of Elections re: Forsyth County Protest Amendments and Supplementation (Nov. 25, 2024) ..... App. 167-198

Letter from Philip R. Thomas to N.C. State Bd. of Elections re: Request to Issue Subpoenas (Nov. 21, 2024) ..... App. 199-204

Verified Complaint, *N.C. Republican Party v. N.C. State Bd. of Elections*, No. 24CV036912-910 (Wake Cnty. Super. Ct.) ..... App. 205-225

Email from Paul Cox, N.C. State Bd. of Elections, to Philip Thomas & Craig Schauer (Nov. 18, 2024, 9:51 AM) ..... App. 226-27



STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

In re Protests of JEFFERSON  
GRIFFIN, ASHLEE ADAMS, FRANK  
SOSSAMON, and STACIE MCGINN,

**Motion to Expedite**

The Honorable Jefferson Griffin respectfully moves for the North Carolina State Board of Elections (“NCSBE”) to expedite (1) the Board’s adjudication of Judge Griffin’s pending *Motion to Disqualify Siobhan Millen* and (2) the NCSBE’s adjudication of election protests filed by Judge Griffin over which the Board has exercised jurisdiction in the first instance. In support of this motion, Judge Griffin states as follows:

1. On November 5, 2024, the State conducted a general election for State, local, and federal offices, including Seat 6 of the North Carolina Supreme Court. The Republican candidate in the Supreme Court race is Jefferson Griffin, a judge on the North Carolina Court of Appeals. The Democratic candidate is Justice Allison Riggs, the incumbent for Seat 6.

2. Although Judge Griffin was winning the contest by approximately 10,000 votes on election night, in the days thereafter, Judge Griffin’s lead gradually decreased with the counting of additional votes, and eventually Justice Riggs took a very narrow lead in the race.

3. On November 19, 2024, Judge Griffin requested a recount, which is presently underway.

4. The current vote margin between the candidates is approximately 722 votes.

5. On November 19, 2024, Judge Griffin timely filed over 300 election protests pursuant to N.C.G.S. § 163-182.9 in all 100 North Carolina counties.

6. Judge Griffin's election protests fall into six categories, and allege multiple irregularities or violations of North Carolina election law that affected the outcome of the Supreme Court race, including:

- (a) counting votes in State races from voters whose registration was incomplete and noncompliant with North Carolina law;
- (b) counting votes in State races from individuals who have never resided in the State of North Carolina;
- (c) counting votes in State races from overseas voters who did not present photo-identification in accordance with law;
- (d) counting votes from deceased individuals;
- (e) counting votes from convicted felons who had not had their voting rights restored; and
- (f) counting votes from non-registered voters.

7. The NSCBE took jurisdiction in the first instance over all protests alleging the first three types of challenges, set out above in subparagraphs (a) to (c).

8. On November 26, 2024, Judge Griffin filed a Motion to Disqualify Siobhan Millen based on her marriage to Pressly Millen, who is legal counsel to

Justice Riggs and is a partner at the law firm that represents Justice Riggs before this Board.

9. The issues raised in Judge Griffin's Motion to Disqualify and in his election protests currently with the NCSBE are weighty and demand the parties' and the Board's immediate attention. The Motion and the protests raise substantial questions regarding the impartiality of the NCSBE and the eligibility of individuals who voted in the Supreme Court race, respectively. These matters are of critical importance, and it is imperative that they be handled promptly. North Carolinians deserve to know the rightful occupant of Seat 6 on the North Carolina Supreme Court come January 1, 2025, and delays in resolving the pending disputes will only undermine the public's faith in the elections and our democratic institutions.

WHEREFORE, Judge Griffin requests that the NCSBE expedite a final decision on the *Motion to Disqualify Siobhan Millen* and a final decision on the three types of election protests over which the Board has taken jurisdiction in the first instance, and requests the following deadlines in these important matters:

- (a) Set the deadline for filing any response to the Motion to Disqualify Siobhan Millen as 5:00 PM on December 4, 2024;
- (b) Retain the deadline for any parties to file briefs regarding the protests over which the Board has taken jurisdiction in the first instance as 5:00 PM on December 6, 2024;
- (c) Issue a decision on the Motion to Disqualify no later than December 6, 2024;

- (d) Issue a final written decision on the protests over which the Board has taken jurisdiction in the first instance no later than December 9, 2024.

Respectfully submitted, this the 2d day of December, 2024.

/s/ Craig D. Schauer  
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*Counsel for Jefferson Griffin*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was electronically filed and served this day by email, addressed as follows:

Ray Bennett ([ray.bennett@wbd-us.com](mailto:ray.bennett@wbd-us.com))  
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*Pro se*

Phil Strach ([phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com))

*Counsel for Frank Sossaman*

This the 2d day of December, 2024.

/s/ Craig D. Schauer  
Craig D. Schauer

## Craig Schauer

---

**From:** Craig Schauer  
**Sent:** Friday, December 6, 2024 10:31 AM  
**To:** Cox, Paul; John Wallace; NCGOP Legal; Phil Thomas; Ray Bennett; Sam Hartzell; Alyssa Riggins; Shana Fulton; wrobertson@brookspierce.com; jwhalen@brookspierce.com; Jordan Koonts; Phil Strach; Cassie Holt; RYAN.BROWN@RYANBROWNNC.ORG; info@ryanbrownnnc.org  
**Cc:** SBOE\_Grp - Legal; Bell, Karen B  
**Subject:** RE: State Board Meeting - Wednesday, Dec. 11, 12:30 pm

Paul,

Thanks for advance notice of the hearing. As counsel for Judge Griffin, Ashlee Adams, and Stacie McGinn, we waive oral argument in the interest of expediency. We will rely on the arguments in our brief. We also reiterate the request to have a final decision by Monday.

Regards,  
Craig Schauer

---

**From:** Cox, Paul <paul.cox@ncsbe.gov>  
**Sent:** Thursday, December 5, 2024 5:39 PM  
**To:** Craig Schauer <cschauer@dowlingfirm.com>; John Wallace <jrwallace@wallacenordan.com>; NCGOP Legal <legal@ncgop.org>; Phil Thomas <pthomas@chalmersadams.com>; Ray Bennett <ray.bennett@wbd-us.com>; Sam Hartzell <sam.hartzell@wbd-us.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Shana Fulton <SFulton@BrooksPierce.com>; wrobertson@brookspierce.com; jwhalen@brookspierce.com; Jordan Koonts <jordan.koonts@nelsonmullins.com>; Phil Strach <phil.strach@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; RYAN.BROWN@RYANBROWNNC.ORG; info@ryanbrownnnc.org  
**Cc:** SBOE\_Grp - Legal <Legal@ncsbe.gov>; Bell, Karen B <Karen.Bell@ncsbe.gov>  
**Subject:** State Board Meeting - Wednesday, Dec. 11, 12:30 pm

Counsel for candidates involved in protests pending before the State Board:

For your planning purposes, the Chair of the State Board plans to call a meeting of the Board for next Wednesday, December 11, at 12:30 pm, in the State Board Meeting Room, 3<sup>rd</sup> floor of the Dobbs Building, 430 N. Salisbury, Raleigh, NC. At that meeting, the parties will be allowed to present oral argument regarding the protests pending before the Board. More details will be forthcoming.

Best regards,

**Paul Cox**  
General Counsel  
NORTH CAROLINA STATE BOARD OF ELECTIONS  
RALEIGH, NC 27611  
919.814.0700  
[www.ncsbe.gov](http://www.ncsbe.gov)

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

Case No. \_\_\_\_\_

JEFFERSON GRIFFIN,

Petitioner,

v.

NORTH CAROLINA STATE BOARD OF  
ELECTIONS,

Respondent.

**PETITION FOR A WRIT OF  
MANDAMUS**

**EMERGENCY RELIEF  
REQUESTED**

The Honorable Jefferson Griffin, judge of the North Carolina Court of Appeals, petitions this Court to issue a writ of mandamus to the State Board of Elections. Judge Griffin is a candidate for Seat 6 on the Supreme Court of North Carolina. That Board has assumed jurisdiction over three categories of election protests that Judge Griffin has filed. However, the Board is unreasonably delaying a decision on these protests. A decision is required immediately so that any aggrieved party can seek judicial review—which is certain to occur given the outcome-determinative nature of the protests at issue. By delaying a decision on these protests, a winner of the election cannot be certified. And the delay in certifying a winner undermines the public’s trust in the electoral process.

Judge Griffin, therefore, respectfully requests that the Court immediately issue a writ of mandamus to the State Board of Elections. Judge Griffin asks the Court to issue an order on this mandamus petition no later than 9 December 2024.

## **PARTIES, JURISDICTION, AND VENUE**

1. The Honorable Jefferson Griffin is a judge on the North Carolina Court of Appeals. He is the Republican candidate in the 2024 general election for Seat 6 of the Supreme Court of North Carolina.

2. The Honorable Allison Riggs currently holds the office of Seat 6 of the Supreme Court of North Carolina. Justice Riggs is the Democratic candidate for that office in the 2024 general election.

3. The State Board of Elections (the “Board” or “Respondent”) is an administrative agency with the legal duty to certify electoral winners from the 2024 general election.

4. The superior courts of this state have the power to issue remedial writs to any lower tribunal over which the superior court has appellate jurisdiction.

5. By statute, Wake County Superior Court has appellate jurisdiction over a “final decision of the State Board of Elections on an election protest.” N.C. Gen. Stat. § 163-182.14.

6. The Board is being served with a summons and the petition pursuant to Rule 4(j)(3). Justice Riggs’s counsel will also receive a copy of this petition.

## **BACKGROUND**

7. On the evening of Election Day 2024, Judge Griffin maintained a sizeable lead over his opponent, Justice Allison Riggs. However, as ballots continued to be counted over the next week, Justice Riggs took the lead in the votes.



8. On 19 November 2024, Judge Griffin filed election protests in each of North Carolina's 100 counties. In total, Judge Griffin filed six categories of election protests. However, only three categories of protests are relevant here. Those three relevant categories are described briefly below.

9. *Incomplete Voter Registrations.* Since 2004, the General Assembly has required someone registering to vote to provide his drivers license or last four digits of his social security number on his voter registration application. N.C. Sess. Law 2003-226, § 9 (amending N.C. Gen. Stat. § 163-82.4). However, until December 2023, the State Board of Elections failed to enforce this law. And even when the Board admitted its decades of lawlessness, it refused to cure the improper registrations, and only began requiring the information from new registrants. In the Supreme Court contest, over 60,000 people cast ballots who had never provided the statutorily required information to become lawful voter registrants. Under state law, unless someone is lawfully registered to vote, he cannot vote. N.C. Const. art. VI, § 3(1); N.C. Gen. Stat. § 163-82.1(a).

10. *Never Residents.* Our state constitution limits voters for state offices to people who actually reside in North Carolina. N.C. Const. art. VI, § 2(1); *Bouvier v. Porter*, 386 N.C. 1, 4 n.2, 900 S.E.2d 838, 843 n.2 (2024) (explaining that “nonresidents” are “categorically ineligible to vote” for state offices). Nonetheless, the State Board allowed approximately 289 people to vote in the protested election who have never resided in North Carolina or anywhere else in the United States. These voters self-identified themselves as such,

stating on a form “I am a U.S. citizen living outside the country, and I have never lived in the United States.” Counting these ballots is unlawful.

11. *No Photo ID*. It’s well known that photo identification is required for all voters, both those voting absentee ballots and those voting in person. N.C. Gen. Stat. § 163-230.1(a)(4), (b)(4), (e)(3), (f1) (absentee ballots); *id.* § 163-166.16(a) (in-person voting); N.C. Const. art. VI, §§ 2(4), 3(2) (same). Yet the State Board decided not to require photo identification for absentee ballots cast by voters who live overseas. State law, however, doesn’t exempt overseas voters from the photo-identification requirement. Thousands of such ballots were unlawfully cast in the election.

12. After Judge Griffin filed his protests, the State Board took over jurisdiction from the county boards for the three categories of protests just described. The Board then entered a briefing schedule for these protests. Per that schedule, Judge Griffin filed his brief on 27 November, and other parties, including Justice Riggs, were ordered to file responsive briefs on 6 December 2024. A copy of this order from the State Board is attached as Exhibit A.

13. On 2 December 2024, Judge Griffin moved the Board to issue a final decision on the protests before it on an expedited basis. In his motion to expedite, Judge Griffin requested that the Board render its decision no later than Monday, 9 December 2024. A copy of this motion is attached as Exhibit B.

14. Instead of ruling on the motion to expedite, the Board instead set a hearing on the election protests for 11 December 2024, two days after Judge Griffin had requested

a *decision* on the protests. A copy of that (informal) notice of hearing is attached as Exhibit C. That notice constituted a denial of Judge Griffin's motion to expedite, since the Board set arguments for a date after which Judge Griffin had requested a final decision.

15. In the interest of expediency, Judge Griffin (as well as the other candidates who filed protests) waived oral argument and elected to rely on the arguments set forth in their briefs. A true and accurate copy of those communications is included in Exhibit C.

16. Mandamus is appropriate when issued to command a lower tribunal to perform its duty in a timely manner. That's especially true when, as here, there is no other remedy provided by law.

17. A disputed election to our state's highest court is itself an exceptional circumstance of immense public interest. A speedy determination of that contest is not just important to the candidates, but is critical to the public's trust in the electoral process itself. Everyone has a strong interest in the fair and speedy determination of election results.

18. This Court need not let the public trust in the electoral process crumble further. Judge Griffin respectfully requests that the Court issue a writ of mandamus to the State Board of Elections, ordering it to enter a final decision on the three categories of election protests before it no later than 5:00pm on 10 December 2024.

### **RELIEF SOUGHT**

Judge Griffin respectfully requests that the Court grant the following relief:

1. Issue a temporary restraining order, preliminary injunction, and/or expedited and final mandamus relief immediately, ordering that the State Board of Elections

enter a final decision on the three categories of election protests before it no later than 5:00pm on 10 December 2024.

2. Grant such other and further relief as the Court deems appropriate.

This the 6th day of December, 2024.

/s/ Craig D. Schauer  
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Telephone: (919) 529-3351

*Counsel for the Honorable Jefferson Griffin*

### VERIFICATION OF COUNSEL

Pursuant to N.C. Gen. Stat. § 7A-98, counsel submits the following declaration:

I declare under penalty of perjury under the laws of North Carolina that the statements of fact in the foregoing document are true and correct to the best of my knowledge.

Executed on December 6, 2024.

  
Craig D. Schauer

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# **EXHIBIT A**

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STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

IN RE PROTESTS OF JEFFERSON  
GRIFFIN, ASHLEE ADAMS, FRANK  
SOSSAMON, AND STACIE MCGINN

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)  
)  
)  
)

**ORDER**

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS in a remote meeting conducted via WebEx videoconference on November 20, 2024, upon its own motion, to consider actions by the Board to facilitate review of election protests filed by Jefferson Griffin regarding the Supreme Court Associate Justice contest, Ashlee Adams regarding the NC Senate District 18 contest, Frank Sossamon regarding the NC House District 32 contest, and Stacie McGinn regarding the NC Senate District 42 contest.

Pursuant to N.C.G.S. 163-182.12, the State Board ORDERS as follows:

1. The State Board takes jurisdiction over protests filed with the county boards of elections by Jefferson Griffin, Frank Sossamon, Ashlee Adams, and Stacie McGinn, where those protests allege that ballots were unlawfully counted for one of the following reasons:
  - a. Ballots were cast by overseas citizens who have not resided in North Carolina but whose parents or legal guardians were eligible North Carolina voters before leaving the United States;
  - b. Ballots were cast by military or overseas citizens under Article 21A of Chapter 163, when those ballots were not accompanied by a photocopy of a photo ID or ID Exception Form; and
  - c. Ballots were cast by registered voters whose voter registration database records contain neither a driver's license number nor the last-four digits of a social security number.
2. The State Board will schedule a time for preliminary consideration of the protests for which it has taken jurisdiction and will provide notice thereof to the relevant parties.
3. By taking jurisdiction over the aforementioned protests, the State Board is not ruling on the timeliness of any such protests or their facial validity otherwise.

4. The county boards of elections shall retain jurisdiction over all other protests that have been timely filed and shall proceed to consider those protests under Article 15A of Chapter 163 and Chapter 2 of Title 8 of the North Carolina Administrative Code.
  - a. At preliminary consideration, the county board shall advance the protest to a hearing to be conducted at a later date upon proper notice, if the protest was timely filed and otherwise substantially complies with G.S. 163-182.9. Because similar protests were filed in many counties, to ensure uniformity in the process for review of these protests, the county boards shall assume at preliminary consideration that the protests establish probable cause to advance to a hearing, per G.S. 163-182.10(a)(1). The county board shall not consider any evidence outside the protest documents at preliminary consideration.
  - b. When conducting a hearing, the board shall take evidence, which will likely include taking testimony from county board staff as to the contents of official county board records pertaining to the voters whose ballots have been called into question by the protests. At the conclusion of the hearing, the board shall vote on its findings of fact and conclusions of law.
  - c. Each county board conducting a hearing shall memorialize its findings of fact and conclusions of law in a written order, which shall be served on the relevant parties, with a copy provided to the State Board via [legal@ncsbe.gov](mailto:legal@ncsbe.gov).
5. To facilitate adjudication of these protests, the protesters—Jefferson Griffin, Frank Sossamon, Ashlee Adams, and Stacie McGinn—shall file, by noon on Friday, November 22, 2024, with the State Board and with the respective county boards of elections copies of the lists of voters whose ballots are called into question by each protest filing in Excel file format, with the same labeling as displayed in the PDF versions of the protest filings.
6. For the protests that are now under the State Board's jurisdiction, the protesters shall file legal briefs, if any, in support of the protests by 5 pm on Wednesday, November 27, 2024. The responding candidates shall file legal briefs, if any, in opposition to the protests by 5 pm on Friday, December 6, 2024.

IT IS SO ORDERED.

This the 20th day of November, 2024.



---

Alan Hirsch, Chair  
STATE BOARD OF ELECTIONS



## **EXHIBIT B**

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

In re Protests of JEFFERSON  
GRIFFIN, ASHLEE ADAMS, FRANK  
SOSSAMON, and STACIE MCGINN,

**Motion to Expedite**

The Honorable Jefferson Griffin respectfully moves for the North Carolina State Board of Elections (“NCSBE”) to expedite (1) the Board’s adjudication of Judge Griffin’s pending *Motion to Disqualify Siobhan Millen* and (2) the NCSBE’s adjudication of election protests filed by Judge Griffin over which the Board has exercised jurisdiction in the first instance. In support of this motion, Judge Griffin states as follows:

1. On November 5, 2024, the State conducted a general election for State, local, and federal offices, including Seat 6 of the North Carolina Supreme Court. The Republican candidate in the Supreme Court race is Jefferson Griffin, a judge on the North Carolina Court of Appeals. The Democratic candidate is Justice Allison Riggs, the incumbent for Seat 6.

2. Although Judge Griffin was winning the contest by approximately 10,000 votes on election night, in the days thereafter, Judge Griffin’s lead gradually decreased with the counting of additional votes, and eventually Justice Riggs took a very narrow lead in the race.

3. On November 19, 2024, Judge Griffin requested a recount, which is presently underway.

4. The current vote margin between the candidates is approximately 722 votes.

5. On November 19, 2024, Judge Griffin timely filed over 300 election protests pursuant to N.C.G.S. § 163-182.9 in all 100 North Carolina counties.

6. Judge Griffin's election protests fall into six categories, and allege multiple irregularities or violations of North Carolina election law that affected the outcome of the Supreme Court race, including:

- (a) counting votes in State races from voters whose registration was incomplete and noncompliant with North Carolina law;
- (b) counting votes in State races from individuals who have never resided in the State of North Carolina;
- (c) counting votes in State races from overseas voters who did not present photo-identification in accordance with law;
- (d) counting votes from deceased individuals;
- (e) counting votes from convicted felons who had not had their voting rights restored; and
- (f) counting votes from non-registered voters.

7. The NSCBE took jurisdiction in the first instance over all protests alleging the first three types of challenges, set out above in subparagraphs (a) to (c).

8. On November 26, 2024, Judge Griffin filed a Motion to Disqualify Siobhan Millen based on her marriage to Pressly Millen, who is legal counsel to

Justice Riggs and is a partner at the law firm that represents Justice Riggs before this Board.

9. The issues raised in Judge Griffin's Motion to Disqualify and in his election protests currently with the NCSBE are weighty and demand the parties' and the Board's immediate attention. The Motion and the protests raise substantial questions regarding the impartiality of the NCSBE and the eligibility of individuals who voted in the Supreme Court race, respectively. These matters are of critical importance, and it is imperative that they be handled promptly. North Carolinians deserve to know the rightful occupant of Seat 6 on the North Carolina Supreme Court come January 1, 2025, and delays in resolving the pending disputes will only undermine the public's faith in the elections and our democratic institutions.

WHEREFORE, Judge Griffin requests that the NCSBE expedite a final decision on the *Motion to Disqualify Siobhan Millen* and a final decision on the three types of election protests over which the Board has taken jurisdiction in the first instance, and requests the following deadlines in these important matters:

- (a) Set the deadline for filing any response to the Motion to Disqualify Siobhan Millen as 5:00 PM on December 4, 2024;
- (b) Retain the deadline for any parties to file briefs regarding the protests over which the Board has taken jurisdiction in the first instance as 5:00 PM on December 6, 2024;
- (c) Issue a decision on the Motion to Disqualify no later than December 6, 2024;

- (d) Issue a final written decision on the protests over which the Board has taken jurisdiction in the first instance no later than December 9, 2024.

Respectfully submitted, this the 2d day of December, 2024.

/s/ Craig D. Schauer  
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*Counsel for Jefferson Griffin*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was electronically filed and served this day by email, addressed as follows:

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*Pro se*

Phil Strach ([phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com))

*Counsel for Frank Sossaman*

This the 2d day of December, 2024.

/s/ Craig D. Schauer  
Craig D. Schauer

# **EXHIBIT C**

RETRIEVED FROM DEMOCRACYDOCKET.COM

## Craig Schauer

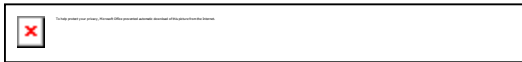
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**From:** Alyssa Riggins <alyssa.riggins@nelsonmullins.com>  
**Sent:** Friday, December 6, 2024 10:44 AM  
**To:** Craig Schauer; Cox, Paul; John Wallace; NCGOP Legal; Phil Thomas; Ray Bennett; Sam Hartzell; Shana Fulton; wrobertson@brookspierce.com; jwhalen@brookspierce.com; Jordan Koonts; Phil Strach; Cassie Holt; RYAN.BROWN@RYANBROWNNC.ORG; info@ryanbrownnnc.org  
**Cc:** SBOE\_Grp - Legal; Bell, Karen B  
**Subject:** RE: State Board Meeting - Wednesday, Dec. 11, 12:30 pm

Paul,

As counsel for Representative Sossamon, we likewise rely on the arguments made in our briefing and waive oral argument in the interest of expediency. We also request to have a final decision by Monday.

Best Regards,



---

ALYSSA RIGGINS **SENIOR ASSOCIATE**  
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**From:** Craig Schauer <cschauer@dowlingfirm.com>  
**Sent:** Friday, December 6, 2024 10:31 AM  
**To:** Cox, Paul <paul.cox@ncsbe.gov>; John Wallace <jrwallace@wallacenordan.com>; NCGOP Legal <legal@ncgop.org>; Phil Thomas <pthomas@chalmersadams.com>; Ray Bennett <ray.bennett@wbd-us.com>; Sam Hartzell <sam.hartzell@wbd-us.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Shana Fulton <SFulton@BrooksPierce.com>; wrobertson@brookspierce.com; jwhalen@brookspierce.com; Jordan Koonts <jordan.koonts@nelsonmullins.com>; Phil Strach <phil.strach@nelsonmullins.com>; Cassie Holt <cassie.holt@nelsonmullins.com>; RYAN.BROWN@RYANBROWNNC.ORG; info@ryanbrownnnc.org  
**Cc:** SBOE\_Grp - Legal <Legal@ncsbe.gov>; Bell, Karen B <Karen.Bell@ncsbe.gov>  
**Subject:** RE: State Board Meeting - Wednesday, Dec. 11, 12:30 pm

Paul,

Thanks for advance notice of the hearing. As counsel for Judge Griffin, Ashlee Adams, and Stacie McGinn, we waive oral argument in the interest of expediency. We will rely on the arguments in our brief. We also reiterate the request to have a final decision by Monday.

Regards,  
Craig Schauer



---

**From:** Cox, Paul <[paul.cox@ncsbe.gov](mailto:paul.cox@ncsbe.gov)>

**Sent:** Thursday, December 5, 2024 5:39 PM

**To:** Craig Schauer <[cschauer@dowlingfirm.com](mailto:cschauer@dowlingfirm.com)>; John Wallace <[jrwallace@wallacenordan.com](mailto:jrwallace@wallacenordan.com)>; NCGOP Legal <[legal@ncgop.org](mailto:legal@ncgop.org)>; Phil Thomas <[pthomas@chalmersadams.com](mailto:pthomas@chalmersadams.com)>; Ray Bennett <[ray.bennett@wbd-us.com](mailto:ray.bennett@wbd-us.com)>; Sam Hartzell <[sam.hartzell@wbd-us.com](mailto:sam.hartzell@wbd-us.com)>; Alyssa Riggins <[alyssa.riggins@nelsonmullins.com](mailto:alyssa.riggins@nelsonmullins.com)>; Shana Fulton <[SFulton@BrooksPierce.com](mailto:SFulton@BrooksPierce.com)>; wrobertson@brookspierce.com; jwhalen@brookspierce.com; Jordan Koonts <[jordan.koonts@nelsonmullins.com](mailto:jordan.koonts@nelsonmullins.com)>; Phil Strach <[phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com)>; Cassie Holt <[cassie.holt@nelsonmullins.com](mailto:cassie.holt@nelsonmullins.com)>; [RYAN.BROWN@RYANBROWNNC.ORG](mailto:RYAN.BROWN@RYANBROWNNC.ORG); [info@ryanbrownnc.org](mailto:info@ryanbrownnc.org)

**Cc:** SBOE\_Grp - Legal <[Legal@ncsbe.gov](mailto:Legal@ncsbe.gov)>; Bell, Karen B <[Karen.Bell@ncsbe.gov](mailto:Karen.Bell@ncsbe.gov)>

**Subject:** State Board Meeting - Wednesday, Dec. 11, 12:30 pm

Counsel for candidates involved in protests pending before the State Board:

For your planning purposes, the Chair of the State Board plans to call a meeting of the Board for next Wednesday, December 11, at 12:30 pm, in the State Board Meeting Room, 3<sup>rd</sup> floor of the Dobbs Building, 430 N. Salisbury, Raleigh, NC. At that meeting, the parties will be allowed to present oral argument regarding the protests pending before the Board. More details will be forthcoming.

Best regards,

**Paul Cox**

General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS

RALEIGH, NC 27611

919.814.0700

[www.ncsbe.gov](http://www.ncsbe.gov)

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