

NORTH CAROLINA COURT OF APPEALS

TELIA KIVETT, et al.,

Plaintiff-Petitioners,

v.

NORTH CAROLINA STATE BOARD OF  
ELECTIONS, et al.,

Defendant-Respondents,

and

DEMOCRATIC NATIONAL COMMITTEE,

Intervenor-Defendant-  
Respondent.

From Wake County

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**DEFENDANT-RESPONDENTS'  
MOTION TO STAY PROCEEDINGS  
AND REQUEST FOR EXPEDITED CONSIDERATION  
OF THE MOTION TO STAY**

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TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Pursuant to Appellate Rule 37, Defendant-Respondents (“Defendants” or “State Board”) respectfully move to stay the proceedings in this case and request expedited consideration of the instant motion to stay. The same issues underlying the pending petitions and motions are being considered on an expedited basis by the Supreme Court of North Carolina and the United States Court of Appeals for the Fourth Circuit. A decision by either of those courts is likely to resolve, or at least provide important direction, in this matter. Accordingly, good cause exists to stay this action and to expedite consideration of the instant motion. In support of this motion, Defendants present the following:

### **PROCEDURAL HISTORY**

1. Currently, there are multiple cases, including this one, pending in both state and federal courts in which parties are seeking to invalidate the ballots cast by certain 5 November 2024 general election simply because, through no fault of these voters, their registration records may lack a social security number or driver’s license number.<sup>1</sup>

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<sup>1</sup> See *RNC, et al. v. N.C. State Board of Elections, et al.*, Nos. 24CV026995-910 (Wake Super. Ct); 5:24-cv-547 (E.D.N.C.); 24-2044, 24-4045 (4th Cir.) (“*RNC*”); *Griffin v. N.C. State Board of Elections*, Nos. 320P24 (N.C. Sup. Ct.); 5:24-cv-00724-M (E.D.N.C.); 24-1018, -1019, -1024 (4th Cir.) (“*Griffin I*”); *Griffin v. N.C. State Board of Elections*, Nos. 24CV040619-910, 040620-910, 040622-910 (N.C. Super. Ct., Wake Co.); 5:24-cv-00731-M (E.D.N.C.); 24-1020 (4th Cir.) (“*Griffin II*”); and *Kivett, et al. v. N.C. State Board of Elections, et al.*, Nos. 24CV041789-910 (N.C. Super. Ct., Wake Co.); 5:25-cv-00003-M (E.D.N.C.); 24-1021 (4th Cir.) (“*Kivett*”). *But see also N.C. Democratic Party v. N.C. State Bd. of Elections, et al.*, No. 5:24-cv-00699

2. Defendants removed these cases to federal court.<sup>2, 3</sup> The parties in this case and two others, *Griffin I* and *II*, are currently before the Fourth Circuit litigating the question of jurisdiction, following remand orders on 6 January 2025.<sup>4</sup> A fourth case, *RNC*, is pending in federal district court.<sup>5</sup>

3. One of the four cases, *Griffin I*, was initiated by a candidate in the November 2024 race for the office of Associate Justice Seat 6 on the state Supreme Court with the filing of a petition for writ of prohibition in the North Carolina Supreme Court, where it is currently pending.<sup>6</sup>

4. With the exception of that one race, all other election contests in North Carolina are final, the certificate of election has issued, and the prevailing candidate has taken office. As a result, neither the State Board nor the courts have the authority to revoke that certification, order a new election, or somehow unseat the occupant of the office for which the election was certified. *In re Election Protest of Fletcher*, 175 N.C. App. 755, 759, 625 S.E.2d 564, 567 (2006); *Britt v. Bd. of Canvassers of Buncombe Cty.*, 172 N.C. 797, 807-08, 90 S.E. 1005, 1008 (1916); *In re Protest of Whittacre*, 228 N.C. App. 58, 59, 743 S.E.2d 68, 69 (2013) (issuance of an election certificate moots an election protest appeal).

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(E.D.N.C. filed Dec. 6, 2024) (seeking to prevent the disfranchisement of the same voters).

<sup>2</sup> The procedural history of these four cases is complex. This filing focuses on the aspects most pertinent to a decision on the instant motion to stay.

<sup>3</sup> See n.1. *supra*.

<sup>4</sup> See n.1 *supra*, *Griffin I*, *Griffin II*, and *Kivett*.

<sup>5</sup> See n.1 *supra*, *RNC*.

<sup>6</sup> See *Griffin I*, No. 320P24, Pet. for Writ of Prohibition (N.C. Sup. Ct. Dec. 18, 2025).

*Griffin I and II*

5. Judge Jefferson Griffin and Associate Justice Allison Riggs were candidates in the statewide 2024 General Election for Associate Justice Seat 6 on the North Carolina Supreme Court. After the county boards of elections conducted a full count of the votes, a full machine recount of the votes, and a partial hand recount of the votes, final canvassed results of the election show Justice Riggs to be in the lead.<sup>7</sup>

6. Judge Griffin filed hundreds of election protests challenging the election results on several bases, including that ballots were cast by registered voters with allegedly incomplete voter registration records. Ultimately, the State Board denied the protests.<sup>8</sup>

7. Judge Griffin filed his prohibition petition in the state Supreme Court on 18 December 2024.<sup>9</sup> The State Board removed that action to the United States District Court for the Eastern District of North Carolina.

8. Judge Griffin also filed three petitions for judicial review in the Superior Court of Wake County on three categories of his election protests.<sup>10</sup> The State Board again removed to the Eastern District Court, which later remanded

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<sup>7</sup> See “NC SBE Election Contest Results Details,” [https://er.ncsbe.gov/contest\\_details.html?election\\_dt=11/05/2024&county\\_id=0&contest\\_id=1377](https://er.ncsbe.gov/contest_details.html?election_dt=11/05/2024&county_id=0&contest_id=1377), (last visited January 15, 2025).

<sup>8</sup> See 13 Dec. 2024, N.C. SBE Decision, [https://s3.amazonaws.com/dl.ncsbe.gov/State Board Meeting Docs/Orders/Protest%20Appeals/Griffin-Adams-McGinn-Sossamon\\_2024.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Protest%20Appeals/Griffin-Adams-McGinn-Sossamon_2024.pdf) (last visited January 15, 2025.)

<sup>9</sup> See n.4 *supra*.

<sup>10</sup> See n.1 *supra* *Griffin II*.

*Griffin I and II* to state court on 6 January 2025.<sup>11</sup>

9. Following the remand of *Griffin I* to our state Supreme Court, on 7 January 2024, that Court issued a temporary stay order halting the issuance of the certificate of election for the North Carolina Supreme Court Associate Justice race in which Judge Griffin and Justice Riggs were candidates.<sup>12</sup> With that stay, the Supreme Court also issued a briefing schedule directing Judge Griffin to file a brief in support of his prohibition petition by 14 January 2025, which he did; Respondent State Board and Respondent-Intervenor Justice Riggs to file responses by 21 January; and Judge Griffin to file a reply by 24 January.

*The Present Case, Kivett*

10. On 31 December 2024, eight weeks after the election, the present action was filed by Plaintiffs in the Superior Court of Wake County.<sup>13</sup>

11. Previously, on 23 August 2024, the Republican National Committee and North Carolina Republican Party, Plaintiffs in this action, filed an action in the Superior Court of Wake County, *RNC*, alleging nearly identical claims to the ones brought in this action.<sup>14</sup> Defendants removed to federal court, where removal was found to be proper, and where it remains pending.

12. On 2 January 2025, Plaintiffs filed a motion for a temporary restraining order and preliminary injunction, and that same day, the State Board

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<sup>11</sup> See n.1 *supra* *Griffin I and II*.

<sup>12</sup> See n.4 *supra* *Amended Order (N.C. Sup. Ct. Jan. 7, 2025)*.

<sup>13</sup> See n.1 *supra* *Kivett*; see also Compl. attached to PWS at App. 1-25.

<sup>14</sup> See n.1 *supra* *RNC*.

Defendants removed the action to federal district court.<sup>15</sup>

13. On 6 January 2025, the district court summarily remanded the case back to the Superior Court.<sup>16</sup> The State Board appealed the remand order to the Fourth Circuit that same day where that appeal remains pending.

14. Following the remand, Plaintiffs noticed a hearing on their TRO and preliminary injunction motions in Superior Court, which was held on 10 January 2025 before the Honorable William R. Pittman.<sup>17</sup> Judge Pittman ruled from the bench denying the motions based upon his conclusion that Plaintiffs would suffer no harm if the motions were not granted.

15. On 13 January 2025, the Superior Court entered an order denying both the TRO and preliminary injunction, concluding that “after a careful balancing of the equities, [it] cannot conclude by the greater weight of the evidence that a preliminary injunction is necessary to prevent immediate and irreparable harm.”<sup>18</sup>

*Appeals to the Fourth Circuit in  
Griffin I and II and Kivett*

16. The federal district court’s remand orders *Griffin I* and *II*, and in this case, *Kivett*, were appealed to the Fourth Circuit Court of Appeals on 6 January 2025, where those appeals remain pending.<sup>19</sup>

17. In *Griffin I*, the Fourth Circuit issued an order expediting briefing and

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<sup>15</sup> See n.1 *supra Kivett*; see also Mot and Not. attached to PWS at App. 26-110.

<sup>16</sup>.See n.1 *supra Kivett*; see also Order attached to PWS at App. 111.

<sup>17</sup> See n.1 *supra Kivett*; see also Order attached to PWS at App. 145.

<sup>18</sup> See n.1 *supra Kivett*; see also Order attached to PWS at App.145.

<sup>19</sup> See n.1 *supra Griffin I and II and Kivett*.

oral argument.<sup>20</sup> According to that order, opening briefs were to be filed today, 15 January 2025, response briefs filed 22 January 2025, and oral argument held on 27 January 2025.<sup>21</sup>

18. With *Griffin I* being expedited, no further action has occurred in the Fourth Circuit on the cases raising the same issues, *Griffin II* or *Kivett*.

*Appeal to and Filings in this Court  
in the present case, Kivett*

19. On 14 January 2025, Plaintiffs noticed an appeal of the Superior Court's order denying the motion for TRO and PI.<sup>22</sup> That same date, they filed a petition seeking, in the alternative, a writ of certiorari for this Court's review of the Superior Court's Order. They also filed a petition for writ of supersedeas and motions for temporary stay and mandatory injunction.

20. On 15 January 2025, Intervenor, the Democratic National Committee, gave notice to this Court that it would file a response to Plaintiffs' petitions and motions before 5:00 p.m., 17 January 2025.

**REASONS WHY A STAY SHOULD BE GRANTED  
AND GRANTED ON AN EXPEDITED BASIS**

21. Defendants agree with Intervenor's characterization of Plaintiffs' requested relief in the Notice they filed in this Court. Such relief, including the relief requested in the supposedly temporary stay motion, is indeed extraordinary. It goes far beyond the relief requested in *Griffin I* described above. Even in the

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<sup>20</sup> See n.1 *supra Griffin I*.

<sup>21</sup> See n.1 *supra Griffin I* and *II* and *Kivett*.

<sup>22</sup> See n.1 *supra Kivett*; see also Not. attached to PWS at App.146-47.

motion for temporary stay, Plaintiffs are asking the Court to grant the ultimate relief they sought in their Complaint, which will require the State Board to order all 100 county boards of elections to locate and segregate 60,000 ballots, somehow determine these voters' eligibility based on Plaintiffs' interpretation, and to disenfranchise those voters who do not satisfy Plaintiffs' interpretation of voting eligibility. What is more, Plaintiffs demand this relief based solely on the averments in their Verified Complaint.

22. Moreover, although Plaintiffs purport to be seeking relief on all state office elections, as noted above, with the exception of the one contest at issue in *Griffin I and II*, all other state office elections have been certified and those prevailing candidates have taken office.<sup>23</sup> Again, once a certificate of election issues, neither the State Board nor the courts have the authority to revoke that certificate, order a new election, or somehow unseat the occupant of the office for which the election was certified. *See supra* ¶ 4.

23. It follows that the only portions of Plaintiffs' action that is still live are their claims as applied to the Griffin-Riggs election. And those claims are entirely duplicative of claims already proceeding on an expedited basis in other cases, including before our state Supreme Court.

24. Our state Supreme Court has stayed the issuance of certificate of election for the Griffin/Riggs race, such that there is no risk of harm from the current status quo.

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<sup>23</sup>*See* n.6 *supra*.



25. That contest is being litigated before the Fourth Circuit in *Griffin I* and *II* and the state Supreme Court in *Griffin I*, along with the very issues underlying Plaintiffs' petitions for writs of certiorari and supersedeas, as well as their motions for temporary stay and a mandatory injunction.

26. Both those courts have already expedited the proceedings before them in *Griffin I* and are poised to reach resolution on those issues soon, likely before or shortly after the end of the month.

27. Also, both those actions involve the two candidates in the Griffin/Riggs race. Those parties undoubtedly have the greatest interests in the outcome of the resolution of this election.

28. The *Griffin* cases, not this one, should resolve the issues underlying Plaintiffs' filings in the first instance. Those cases will likely resolve these same issues here, directly impact this litigation, or at minimum, provide important direction to this Court and the parties as how best to proceed. Moreover, action by this Court while those other actions remaining pending presents a serious risk of inconsistent results.

29. As a result, good cause exists to stay the present proceedings until the Fourth Circuit or our state Supreme Court in *Griffin I* provides direction or resolves the issues raised here.

30. Good cause also exists for the Court to issue a ruling on this motion on an expedited basis, given the nature of the relief sought by Plaintiffs. It would waste the resources of the parties and the Court for this action to proceed any

further, such that expedited relief is reasonable. Respectfully, Defendants request that the Court issue a ruling by Friday, 17 January to avoid any further waste of resources on this tertiary litigation.

31. Undersigned counsel consulted counsel for the other parties about the present motion. Counsel for Plaintiffs stated that they oppose the motion, and counsel for Intervenor stated they consent to the motion and do not plan to respond.

WHEREFORE, Defendants respectfully move the Court to stay the present proceedings and request that the Court do so on an expedited basis, before Friday 17 January 2025. Alternatively, if the Court is not inclined to expedite ruling on or grant the motion, Defendants hereby give notice that they are prepared to respond to Plaintiffs' filings by 21 January 2025, unless the Court orders otherwise.

Respectfully submitted this the 15th day of January, 2025.

Electronically Submitted

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N.C. R. App. P. 33(b) Certification: I certify that the attorney listed below has authorized me to list his name on this document as if he personally signed it.

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a copy of the foregoing document was served upon the parties by email on 15 January 2025, addressed as follows:

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This the 15th day of January, 2025.

Electronically Submitted  
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