

No. 51P25

No.

TENTH JUDICIAL DISTRICT

 SUPREME COURT OF NORTH CAROLINA

TELIA KIVETT; KARYN
 MULLIGAN; WAKE COUNTY
 REPUBLICAN PARTY;
 REPUBLICAN NATIONAL
 COMMITTEE; and NORTH
 CAROLINA REPUBLICAN PARTY,

Plaintiffs-Appellants,

From NCCOA
 No. P25-30

v.

NORTH CAROLINA STATE BOARD
 OF ELECTIONS; KAREN BRINSON
 BELL, in her official capacity as
 Executive Director of the North
 Carolina State Board of Elections;
 ALAN HIRSCH, in his official
 capacity as Chair of the North
 Carolina State Board of Elections;
 JEFF CARMON, in his official
 capacity as Secretary of the North
 Carolina State Board of Elections;
 STACY EGGERS IV, KEVIN N.
 LEWIS, and SIOBHAN O'DUFFY
 MILLEN, in their official capacities
 as members of the North Carolina
 State Board of Elections,

Defendants-Appellees,

and

DEMOCRATIC NATIONAL
 COMMITTEE,

Intervenor-Appellees.

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**PETITION FOR WRIT OF SUPERSEDEAS AND PETITION FOR WRIT OF
CERTIORARI**

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INDEX

INTRODUCTION	2
FACTUAL AND PROCEDURAL BACKGROUND.....	6
I. Factual Background.....	6
II. Procedural Background	10
REASONS WHY THE WRIT OF SUPERSEDEAS SHOULD ISSUE.....	14
I. A Revocation of the Court of Appeals’ Stay Order is Necessary to Preserve the Status Quo, Avoid Irreparable Harm to Petitioners, and to Protect Petitioners’ Right to a Meaningful Appeal	14
II. Petitioners Are Likely to Succeed on the Merits	15
III. Petitioners Are Likely to Suffer Serious Prejudice Unless Relief is Granted.....	16
REASONS WHY THE WRIT OF CERTIORARI SHOULD ISSUE	17
I. Standards for the Issuance of a Writ of Certiorari.....	17
II. Plaintiffs’ Claims are Likely to Succeed on the Merits and Substantial Error Was Committed Below.....	19
A. Record Evidence Establishes that the NCSBE Repeatedly Violated State Voter Registration Laws.....	19
B. The Defenses Which the NCSBE Projects are Inapplicable Here.....	20
C. Plaintiffs’ Requested Relief Accounts for the NCSBE’s Purported Procedural Risks.....	22
III. The Subject Matter of the Dispute is of Great Public Interest	24
IV. The Case Deals With Issues of First Impression and the Efficient Administration of Justice Requires Immediate Redress.....	25
V. The Court of Appeals’ Stay Was Inappropriate in the First Instance and The Rationale Underlying the NCSBE’s Motion to Stay is Now Moot	26
CONCLUSION.....	27

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>A.E.P. Indus., Inc. v. McClure</i> , 309 N.C. 393, 302 S.E.2d, 754 (1983).....	16
<i>Bay Cnty. Democratic Party v. Land</i> , 347 F. Supp. 2d 404 (E.D. Mich 2004)	21
<i>Beals v. VA Coal. for Immigrant Rts.</i> , 2024 WL 4608863 (U.S. Oct. 30, 2024)	21
<i>Button v. Level Four Orthotics & Prosthetics, Inc.</i> , 380 N.C. 459, 869 S.E.2d 257 (2022).....	18
<i>City of New Bern v. Walker</i> , 255 N.C. 355, 121 S.E.2d 544 (1961).....	14
<i>Craver v. Craver</i> , 298 N.C. 231, 258 S.E.2d 357 (1979).....	14
<i>Cryan v. Nat'l Council of Young Men's Christian Associations of United States</i> , 280 N.C. App. 309, 867 S.E.2d 354	18
<i>Cryan v. Nat'l Council of Young Men's Christian Associations of United States</i> , 384 N.C. 569, 887 S.E.2d 848 (2023).....	18, 19, 25, 26
<i>Doe v. City of Charlotte</i> , 273 N.C. App. 10, 848 S.E.2d 1 (2020)	18
<i>Holmes v. Moore</i> , 384 N.C. 426 (2023)	20
<i>Lakins v. W. N. Carolina Conference of United Methodist Church</i> , 283 N.C. App. 385, 873 S.E.2d 667 (2022)	17
<i>Lloyd v. Babb</i> , 296 N.C. 416, 251 S.E.2d 843 (1979).....	16
<i>Matter of K.C.</i> , 292 N.C. App. 231, 898 S.E.2d 9 (2024)	19
<i>State v. Ricks</i> , 378 N.C. 737, 862 S.E.2d 835 (2021).....	17
<i>Stetser v. TAP Pharm. Products, Inc.</i> , 165 N.C. App. 1 (2004).....	18, 25
<i>Virginia Coal. for Immigrant Rts. v. Beals</i> , 2024 WL 4601052 (4th Cir. Oct. 27, 2024).....	21
<i>Young v. Fordice</i> , 520 U.S. 273 (1997).....	21
<i>Zaliagiris v. Zaliagiris</i> , 164 N.C. App. 602, 596 S.E.2d 285 (2004).....	18
 <u>North Carolina Constitution</u>	
N.C. Const. art. VI § 3	6, 2, 11
N.C. Const. art. IV § 12	17

Statutes

52 U.S.C. § 20501..... 21
52 U.S.C. § 20901..... 21

N.C.G.S. § 1-269..... 14
N.C.G.S. § 1-515..... 5, 24, 26
N.C.G.S. § 1-522..... 15
N.C.G.S. § 1-516..... 16
N.C.G.S. § 163-82.1..... 6, 7, 8
N.C.G.S. § 163-82.3..... 3, 7
N.C.G.S. § 163-82.4..... Passim
N.C.G.S. § 163-166..... 9, 20
N.C.G.S. § 163-182.5..... 8

Regulations

08 NCAC 17.0101..... 20

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TENTH JUDICIAL DISTRICT

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TELIA KIVETT, *et al.*,

 Plaintiffs-Petitioners,

v.

NORTH CAROLINA STATE BOARD
 OF ELECTIONS, *et al.*,

 Defendants-Respondents,

From NCCOA
 No. P25-30

and

DEMOCRATIC NATIONAL
 COMMITTEE,

 Intervenor-Defendant-
 Respondent.

**PETITION FOR WRIT OF SUPERSEDEAS AND PETITION FOR WRIT OF
 CERTIORARI**

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF NORTH CAROLINA:

Plaintiffs-Appellants Telia Kivett, Karyn Mulligan, Wake County Republican Party, Republican National Committee, and North Carolina Republican Party (“Petitioners” or “Plaintiffs”), through undersigned counsel, respectfully petition this Court to take jurisdiction of this matter and issue a writ of supersedeas pursuant to Rule 23 of the North Carolina Rules of Appellate Procedure, ordering the North Carolina Court of Appeals to immediately dissolve its January 17, 2025 order staying the underlying proceedings currently in front of the court. As a basis for jurisdiction, Petitioners petition this Court to issue its writ of certiorari pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure to review the order of the North Carolina Court of Appeals staying the underlying matter and, alternatively, the order of the Honorable William R. Pittman, Superior Court Judge Presiding, Wake County Superior Court, dated January 10, 2025.

INTRODUCTION

The North Carolina Constitution establishes several prerequisite qualifications for a person wishing to vote in the state’s elections. One of those requirements is that the person must be “legally registered as a voter . . . in the manner provided by law.” N.C. Const. art. VI § 3(1). In order to determine how a person becomes legally registered, the Constitution then defers to the General Assembly. *Id.* Pursuant to this grant of authority, the General Assembly enacted a comprehensive statutory scheme providing a direct delegation of power to the North Carolina State Board of Elections (“NCSBE”) to promulgate a statewide voter

registration form. *See* N.C.G.S. § 163-82.3. In so delegating, the General Assembly established clear standards for the NCSBE to follow, including enumerating all information the form is required to collect before it may be processed or the applicant deemed “registered.” *See* N.C.G.S. § 163-82.4(a). One of those critical categories of information is the applicant’s driver’s license number or, if they lack such a number, the last four digits of their social security number. *See* N.C.G.S. § 163-82.4(a)(11). If an applicant returns a registration form which lacks either number, then the NCSBE is required to follow a strict statutory procedure and timeline in order for any ballot cast by the person to count in an upcoming election. *See* N.C.G.S. § 163-82.4(f).

For over a decade the NCSBE employed a voter registration form which failed to collect the applicant’s driver’s license number or their social security number. The NCSBE recognized this failure when it changed the statewide registration form on a forward-looking basis. However, the NCSBE repeatedly refused to contact any of the individuals who returned statutorily deficient registration forms. As a result, approximately 225,000 people are erroneously deemed “registered” to vote in the state, despite each one failing to provide the driver’s license or a social security number required by law.

The NCSBE justified its refusal to act on the idea that a person who failed to provide the requisite information at registration would nevertheless provide some sort of identification at the polls, courtesy of North Carolina’s photo-identification statutes. This position is created from whole cloth. Not only is the NCSBE’s intentional inaction unsupported by law, but it is also contrary to the spirit and

purpose of the state's registration statutes. Additionally, it proved to be patently false, as the NCSBE's own records show that at least 60,000 individuals cast ballots in the November 5, 2024 general election contests for state office, each one lacking either a driver's license number or a social security number in their registration.

The NCSBE does not seriously contest that it failed to comply with the statutory procedures for curing incomplete registrations. Instead, they argue that there is nothing that can be done about it now. That is simply incorrect. Both state law and the well-established constitutional rights of Petitioners demand and provide for immediate redress. The NCSBE's unlawful refusal to act cannot now become a shield from liability. Despite clear mandates, the NCSBE continues to violate the law, and Petitioners continue to face severe and irreparable harm.

The Superior Court substantially erred when it denied Petitioners the narrowly tailored but emergent relief sought. The Superior Court based its denial on its view that there was no discernable irreparable harm warranting injunctive relief. To the contrary, Petitioners—especially individual plaintiffs—explained how they are facing ongoing violations of both their rights to vote in free and fair elections and their rights to equal protection. Additionally, Petitioners illustrated for the court that the operation of state law exponentially increases the risk of irreparable harm should no injunction issue. Specifically, should this matter proceed through discovery without injunctive relief and it be uncovered that any state official was elected by virtue of unlawful votes, then additional litigation could arise. *See* N.C.G.S. § 1-515. Because of the trial court's failures to adequately account for these irreparable harms,

Petitioners turned to the North Carolina Court of Appeals seeking a writ of certiorari, a writ of supersedeas, a temporary stay, and a temporary injunction.

Rather than substantively engage in the matter before the Court of Appeals, the NCSBE requested a stay of proceedings on two grounds: (1) that potential action from this Court in the matter *Griffin v. NCSBE*, 320P24 (N.C. Sup. Ct.) could “resolve the issues underlying” the present matter; and (2) that the Fourth Circuit Court of Appeals could resolve the issues presented in *Griffin v. NCSBE*, Nos. 24-1018, 24-1019, 24-1021 (4th Cir.), thus implicating Petitioners’ matter. In fact, the NCSBE’s request for a stay was premised upon waiting “until the Fourth Circuit or our state Supreme Court [] provides direction or resolves the issues raised here.” Although Petitioners opposed the stay, on January 17, 2025, the Court of Appeals issued a three-sentence Order staying its proceedings “until further order” of the court. Critically, the Court of Appeals’ order took no action to review either petitions for writ and expressly stated that “[t]his ruling is without prejudice to plaintiff-petitioners’ right to seek relief from the North Carolina Supreme Court.”

Since the entry of the Court of Appeals’ stay order, the conditions upon which the NCSBE’s motion were premised have passed. Both this Court and the Fourth Circuit have taken actions, none of which affect Petitioners’ underlying claims for relief and all of which affirm that this matter should proceed expeditiously. Thus, the basis for the NCSBE’s request is moot, and Petitioners turn to this Court for exigent relief.

Absent this Court issuing the writs, and either ordering the North Carolina Court of Appeals to address the manifest errors of law in the trial court's order, or correct them itself, Petitioners will suffer irreparable harm and be denied their right to a meaningful appeal. Indeed, the passage of time created by the Court of Appeals stay has already irreparably harmed Petitioners' statutory rights. As such, immediate redress is necessary, whether in the form of a dissolution of the stay through a writ of supersedeas or this Court addressing the Petitioners' claims in the first instance through the writ of certiorari.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

Article VI § 3 of the North Carolina Constitution expressly limits voting eligibility in North Carolina to those persons who are lawfully registered, providing: "Every 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); *see also* App. 2, at ¶1. The Constitution further states that "The General Assembly shall enact general laws governing the registration of voters." *Id.*

Pursuant to their mandate, the General Assembly established a statutory scheme defining how a person may be lawfully registered to vote in North Carolina's elections. App. 2, at ¶2. First, N.C.G.S. § 163-82.1 echoes the Constitution, stating that "No person shall be permitted to vote who has not been registered under the provisions of this Article or registered as previously provided by law." N.C.G.S. § 163-82.1(a). From there, the General Assembly delegates the authority to establish a

statewide voter registration form to the NCSBE. N.C.G.S. § 163-82.3; App. 2, at ¶ 2. The form serves several purposes, including being the vehicle for a person to change their party affiliation, change addresses, report their change of name, and, of course, register to vote. App. 9, at ¶ 35.

The NCSBE's power to promulgate a statewide voter registration form is not without important guardrails. Specifically, the General Assembly enumerated eleven types of information which the registration form "shall" request. N.C.G.S. § 163-82.4(a); App. 9-10, at ¶ 36. Of those required categories is the applicant's driver's license number or, if they do not have such a number, then the last four digits of their social security number. *Id.*; see also N.C.G.S. § 163-82.4(a)(11). Only if it is confirmed that the applicant has neither number is the NCSBE permitted to assign them a unique voter registration number. N.C.G.S. § 163-82.4(b). App. 10, at ¶¶ 37-38. While the General Assembly did designate certain specific categories of information of which the failure to provide at registration cannot form the basis for the registration form's denial, the driver's license or social security number requirement is not one of them. N.C.G.S. § 163-82.4(a) (listing race, ethnicity, gender, and telephone number as the sole bases which the absence of cannot result in the registration's denial); App. 32, at ¶ 22.

Although the NCSBE is required to collect the listed information on the front end, the General Assembly provided a failsafe to ensure that deficient registration forms may be timely cured in order to be counted in a pending election. N.C.G.S. § 163-82.4(f); App. 11-12. However, the ability to count a ballot returned by such a voter

is expressly preconditioned on the NCSBE and its county boards of election adhering to a strict set of timelines, with N.C.G.S. § 163-82.4(f) providing:

If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, *the voter shall be notified of the omission* and given the opportunity to complete the form at least by 5:00 P.M. on the day before the county canvass as set in G.S. 163-182.5(b). If the voter corrects that omission within that time and is determined by the county board of elections to be eligible to vote, the board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. 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.

N.C.G.S. §163-82.4(f) (emphasis added).

For close to a decade the NCSBE used a statewide voter registration form which failed to make clear that the applicant was required to provide their driver's license or social security number at the time of registration. App. 12, at ¶ 48. As a result, approximately 225,000 people were registered to vote in North Carolina despite failing to provide this information. *Id.* at ¶ 49. According to state law, these registration forms were statutorily deficient from the outset and should have never been accepted until the complete information was received. *See* N.C.G.S. § 163-82.1(a); App. 12, at ¶ 49. The NCSBE recognized this error when they corrected the state's voter registration form moving forward. App. 12, at ¶ 50. However, the NCSBE repeatedly refused to contact any of these people despite ample time to do so. App. 13, at ¶¶ 52-52.

The NCSBE reasoned its refusal on the notion that a person with a missing driver's license or social security number would still have to show some form of identification at the polls by virtue of North Carolina's voter identification statute—N.C.G.S. §163-166.12. App. 15, at ¶¶ 51-53. In the NCSBE's view, providing an acceptable identification at the polls, regardless of the form, would cure the deficiencies in the person's registration. *Id.* This position, while unsupported by any statutory authority, also proved to be patently false. App. 15, at ¶ 54. At least 60,000 people voted in the November 5, 2024 general election contests for state and local offices despite failing to provide the information required by N.C.G.S. § 163-82.4(a)(11) at the time of registration. *Id.* To the extent a photo identification was shown at the polls—instead of some other form of identification such as a utility bill, *see* N.C.G.S. §163-166.12—the NCSBE's own records reveal that the missing information was not recorded. App. 13-14, at ¶ 55.

These failures notwithstanding, the NCSBE had every opportunity to comply with the cure procedures set forth in N.C.G.S. § 163-82.4(f), yet they failed to do so. App. 12-13, at ¶¶ 50, 52. County canvasses have since passed and the NCSBE failed to act. App. 14., at ¶ 56. The NCSBE's intentional failure to act lacks any cognizable basis for support under state law. As a result, the November 5, 2024 general election contest results for state and local offices have been infected with the prospect of potentially unlawful votes, implicating a host of concerns, each demanding immediate redress. App. 14, at ¶¶ 57-59.

II. Procedural Background

On December 31, 2024, Petitioners filed their Verified Complaint in Wake County Superior Court. App. 1-25. On January 2, 2025, Petitioners filed their Motion for an Emergency Temporary Restraining Order and Preliminary Injunction (“Motion”). App. 26-36. That same day, the NCSBE removed the matter to federal court. App. 37-110. On January 3, 2025 Petitioners filed an emergency motion to remand to state court, and on January 6, 2025, Chief Judge Richard E. Myers II remanded the matter to state court. App.111-138.¹ In remanding the matter, Judge Myers observed *inter alia*, that the questions presented were novel issues of state constitutional law and principles of federalism demanded that a state court be the first to address them. *Id.* On January 7, 2025, Petitioners provided notice of the remand to the Wake County Superior Court and simultaneously renewed their request for a hearing on the Motion. App. 139-144.

The Motion was heard on January 10, 2025 before the Honorable Judge William R. Pittman. In their Motion, Petitioners asked the court to enter an order: (1) declaring that the NCSBE’ registration of voters who failed to provide the information required by N.C.G.S. § 163-82.4(a)(11) violates Article VI § 3 of the North Carolina Constitution, and enjoining the NCSBE from allowing these individuals from voting in future state and local elections until the missing information is

¹ While Chief Judge Myers independently remanded the present matter, *see* App. 111, he incorporated by reference his analysis in the matter of *Griffin v. NCSBE, et al.*, 5:24-cv-00724 (E.D.N.C. 2025). *See* App. 112-138. Petitioners maintain that the two matters are distinct in their claims for relief.

provided; (2) directing the NCSBE to immediately identify and segregate the ballots of all persons who voted in the November 5, 2024 general election for state offices despite failing to provide the information required by N.C.G.S. § 163-82.4(a)(11), and either (A) remove those votes from the final election counts, or (B) order the NCSBE to comply with a judicially established process mirroring N.C.G.S. § 163-82.4(f), such that the missing information can be expeditiously solicited from the affected individuals and, if not timely corrected, then remove the votes from the final election counts. Petitioners also requested a writ of mandamus requiring the NCSBE to immediately begin complying with the processes outlined in N.C.G.S. § 163-82.4(f) to correct all deficient registrations prior to the next state or local election contests. App. 34-35, at ¶ 31.

On January 10, 2025 Judge Pittman denied the Motion, finding that Petitioners had failed to establish the irreparable harm necessary for the issuance of an injunction. App. 145. Notably, Judge Pittman expressly refused to make any findings on the merits of the underlying claims. *Id.*

Petitioners filed their Notice of Appeal with the trial court on January 14, 2025 as the order fails to prevent serious and ongoing violations of the North Carolina Constitution, all of which are readily redressable, and which the failure to address immediately will lead to severe irreparable harm to Petitioners. As a result, Petitioners filed a petition for a writ of certiorari and a writ of supersedeas, along with a motion for a temporary stay and a temporary injunction, with the North Carolina Court of Appeals on January 14, 2025. App. 149-179. The petitions aimed

both to preserve the status quo—i.e. that only lawfully registered persons may have their vote counted in North Carolina’s state and local elections—until Petitioners’ full appeal may be heard, and to provide the Court of Appeals with an alternate means to review the trial court’s order to ensure that appellate jurisdiction is maintained in this appeal of public consequence.

On January 15, 2025, Intervenor-Respondent filed a notice with the Court of Appeals stating their intent to respond to the petitions by no later than 5:00 p.m. of January 17, 2025. App. 180-185. The same day, counsel for the NCSBE requested both Petitioners and Intervenor-Respondent’s positions on a motion to stay the underlying appellate proceedings on the basis that either this Court or the Fourth Circuit could “provide [the parties] with direction or resolution on these issues on an expedited basis already.” App. 186-187. The NCSBE further stated that if the motion were denied, they would respond to the petition by January 21, 2025. *Id.* Petitioners promptly notified the NCSBE that they opposed the request for a stay. App. *Id.* Later that evening, the NCSBE filed their Motion to Stay Proceedings and Request for Expedited Consideration of the Motion to Stay (“Motion to Stay”). App. 189-199.

On January 16, 2025, Petitioners filed a response in opposition to the Motion to Stay. App. 200-210. Petitioners’ main argument in opposition was that, contrary to the NCSBE’s arguments, the claims for relief presented in this matter and those in both *Griffin v. NCSBE*, 320P24 (N.C. Sup. Ct.) and *Griffin v. NCSBE*, Nos. 24-1018, 24-1019, 24-1021 (4th Cir.) were sufficiently distinct such that relief in either of those matters would not necessarily dictate the outcome of Petitioners’. App. 204-

208. Similarly, Petitioners argued that the matter before both this Court and the Fourth Circuit presented unique claims and parties, none of which are at issue or appearing here. App. *Id.* As Petitioners made clear, the relief they seek applies to all state office election contests, not just the one at issue in *Griffin v. NCSBE*, 320P24 (N.C. Sup. Ct.). App. *Id.*

However, on January 17, 2025, the Court of Appeals entered an order staying its proceedings until “further order” from the court. App. 210-211. Although the Court of Appeals did not provide a rationale for the stay, it made clear that it was “without prejudice to [Petitioners’] right to seek relief from the North Carolina Supreme Court.” *Id.*

On January 22, 2025, this Court dismissed *Griffin v. NCSBE*, 320P24 (N.C. Sup. Ct.) and ordered it to proceed expeditiously through the trial court. Then, on January 27, 2025, the Fourth Circuit heard oral argument in *Griffin v. NCSBE*, Nos. 24-1018, 24-1019, 24-1021 (4th Cir.) on the narrow question of the federal district court’s abstention under two federal abstention doctrines. On February 4, 2025 the Fourth Circuit issued a *per curiam* opinion affirming the district court’s abstention but modifying the method of abstention. In so affirming, the Fourth Circuit reiterated that this matter can and should proceed in state court. Accordingly, both bases upon which the NCSBE premised its Motion to Stay have passed, no actions have affected Petitioners’ claims or this underlying matter, and the matter is ripe for resolution.

REASONS WHY THE WRIT OF SUPERSEDEAS SHOULD ISSUE

A writ of supersedeas is available “to stay the . . . enforcement of any . . . order, or other determination of a trial tribunal which is not automatically stayed by the taking of appeal when an appeal has been taken” N.C. R. App. P. 23(a)(1); *see also* N.C. Gen. Stat. § 1-269 (authorizing the writ of supersedeas). A petitioner may apply “in the first instance to the Supreme Court for a writ of supersedeas to stay the execution or enforcement of a judgment, order, or other determination mandated by the Court of Appeals when . . . a petition for review by certiorari, mandamus, or prohibition has been filed to obtain review of the decision of the Court of Appeals.” N.C. R. App. P. 23(b). “The writ of supersedeas may issue in the exercise of, and as ancillary to, the revising power of an appellate court,” and the writ’s purpose “is to preserve the status quo pending the exercise of appellate jurisdiction.” *Craver v. Craver*, 298 N.C. 231, 237-38, 258 S.E.2d 357, 362 (1979); *see also City of New Bern v. Walker*, 255 N.C. 355, 121 S.E.2d 544, 545-46 (1961).

I. A Revocation of the Court of Appeals’ Stay Order is Necessary to Preserve the Status Quo, Avoid Irreparable Harm to Petitioners, and to Protect Petitioners’ Right to a Meaningful Appeal

In this case, a writ of supersedeas is proper because it would command the Court of Appeals to address and preserve the status quo immediately prior to the trial court’s Order. Specifically, only lawfully registered persons may participate in the state’s elections, consistent with state law. This has been the status quo in North Carolina for over a decade. The trial court’s order eviscerates this long standing principle based upon little more than a vague conclusion that it could discern no

irreparable harm. To the contrary, the harm faced by Petitioners due to the ongoing degradation of their well-established rights, as well as the harm that would come should discovery reveal state election contests decided by a margin of unlawful votes, makes immediate redress necessary. The true status quo—the one reflected in North Carolina’s Constitution and codified by the General Assembly—should remain while this Court reviews the orders of the courts below.

By staying proceedings and effectively refusing to provide relief, the Court of Appeals, without any justification, risks cancelling Petitioners’ statutory and constitutional rights, inflicting harm on them while potentially unlawful—but certainly undetermined—votes decide state and local election contests. The Court of Appeals’ order fails to account for this risk. Petitioners’ abilities to seek future redress is significantly stymied, should the stay order remain in effect. In its order the trial court refused to grant the emergent relief sought. By staying the matter indefinitely, the Court of Appeals has effectively done the same. By refusing to act, the Court of Appeals risks cancelling the time-sensitive, statutory rights of Petitioners—especially individual Petitioners Kivett and Mulligan. *See* N.C.G.S. § 1-522. Time is of the essence, and meaningful appellate review at this juncture is necessary.

II. Petitioners Are Likely to Succeed on the Merits

For all the reasons established in Petitioners’ Petition for Writ of Certiorari, *infra*, Petitioners have established a high likelihood of success on the merits, sufficient to pass muster for any form of injunctive relief. *Accord A.E.P. Indus., Inc. v. McClure*, 309 N.C. 393, 402, 302 S.E.2d, 754, 760 (1983); *Lloyd v. Babb*, 296 N.C.

416, 251 S.E.2d 843 (1979). More specifically, the record evidence reveals that the NCSBE has not and does not seriously contest that it failed to comply with the requirements of N.C.G.S. § 163-82.4 *et seq.* Instead, the NCSBE has argued that it cannot be forced to retroactively correct its errors now that all but one certificate of election has issued. But Petitioners have established at least one statutory vehicle which proves that the NCSBE's position is not as insurmountable a hurdle as they believe it to be. *See* N.C.G.S. § 1-516, *et seq.*

III. Petitioners Are Likely to Suffer Serious Prejudice Unless Relief is Granted.

Should the Court of Appeals stay not be dissolved and the requested relief not issue, Petitioners will be highly prejudiced, effectively losing their right to a productive appeal. Additionally, if Petitioners were denied an appeal here, and discovery in the underlying litigation reveals any state or local contests decided by a margin of unlawful votes, the risk of such contests being the subject of future litigation becomes increasingly palpable. While the NCSBE has argued—and Petitioners vehemently disagree—that too much time has passed since the November 5, 2024 contests and now, certainly all parties can agree that future litigation at some untold point is not an efficient use of judicial resources, nor is it a desirable outcome. This reality further dictates that immediate review and relief from this Court is appropriate.

Accordingly, Petitioners respectfully request that this Court grant the petition for a writ of supersedeas, ordering the Court of Appeals to immediately dissolve its stay and expeditiously address the merits of the Petitioners' underlying petitions.

REASONS WHY THE WRIT OF CERTIORARI SHOULD ISSUE

Alongside Petitioners' petition for a Writ of Supersedeas, Petitioners request that this Court exercise its discretion and grant the petition for a Writ of Certiorari pursuant to N.C. R. App. P. 21. *See State v. Ricks*, 378 N.C. 737, 741, 862 S.E.2d 835 (2021); *see also* N.C. Const. art. IV § 12(1). Petitioners' request that this Court grant certiorari over the Court of Appeals' Order staying the matter which, if left undisturbed, effectively abolishes Petitioners' rights to meaningful appellate review. Alternatively, Petitioners request that this Court exercise its discretion and directly address the manifest errors contained within the trial court's order.

I. Standards for the Issuance of a Writ of Certiorari

Under N.C.R. App. P. 21(a)(1), "a writ of certiorari will only be issued upon a showing of appropriate circumstances in a civil case where [*inter alia*]. . . no right to appeal from an interlocutory order exists." *Lakins v. W. N. Carolina Conference of United Methodist Church*, 283 N.C. App. 385, 390, 873 S.E.2d 667, 673 (2022). The driving purpose of a writ of certiorari is to allow an appellate court the opportunity to correct errors of law in a lower court's order when a traditional appeal is not available. *See Button v. Level Four Orthotics & Prosthetics, Inc.*, 380 N.C. 459, 465-66, 869 S.E.2d 257, 264 (2022). Resultingly, "[i]t is an appropriate exercise of this Court's discretion to issue a writ of certiorari in an interlocutory appeal where. . . there is merit to an appellant's substantive arguments and it is in the interests of justice to treat an appeal as a petition for writ of certiorari." *Zaliagiris v. Zaliagiris*, 164 N.C. App. 602, 606, 596 S.E.2d 285, 289 (2004). North Carolina's appellate courts

have been particularly inclined to grant certiorari in instances where the issues involved in the underlying litigation were of great public importance, affected a large number of people, where expeditious resolution was necessary for the “efficient administration of justice,” or where a resolution of the question presented would provide lower courts with guidance on the application of a complex statutory scheme. *Stetser v. TAP Pharm. Products, Inc.*, 165 N.C. App. 1 (2004); *see also Cryan v. Nat'l Council of Young Men's Christian Associations of United States*, 280 N.C. App. 309, 315-16, 867 S.E.2d 354, 359, *aff'd*, 384 N.C. 569, 887 S.E.2d 848 (2023) (collecting cases).

Regarding the concept of extraordinary circumstances, this Court has explained that “[t]here is no fixed list of “extraordinary circumstances” that warrant certiorari review, but this factor generally requires a showing of substantial harm, considerable waste of judicial resources, or “wide-reaching issues of justice and liberty at stake.” *Cryan v. Nat'l Council of Young Men's Christian Associations of United States*, 384 N.C. 569, 887 S.E.2d 848 (2023) (quoting *Doe v. City of Charlotte*, 273 N.C. App. 10, 23, 848 S.E.2d 1 (2020).

Plaintiffs meet each of this Court’s well-settled criteria for the issuance of certiorari. For the following reasons it would be appropriate for this Court to exercise its discretion to reach the merits of the trial court’s erroneous ruling denying Plaintiffs’ request for injunctive relief.

II. **Plaintiffs' Claims are Likely to Succeed on the Merits and Substantial Error Was Committed Below**

“Our appellate courts employ a two-factor test to determine whether a writ of certiorari should issue: (1) ‘if the petitioner can show merit or that error was probably committed below’ and (2) ‘if there are extraordinary circumstances to justify it,’ including “a showing of substantial harm’.” *Matter of K.C.*, 292 N.C. App. 231, 240, 898 S.E.2d 9, 15 (2024) (quoting *Cryan*, 384 N.C., at 572, 887 S.E.2d, at 851). Plaintiffs satisfy both factors.

Plaintiffs' claims are likely to succeed on the merits for three reasons. First, record evidence indicates that the NCSBE violated state voter registration laws. Second, the defenses the NCSBE raises are wholly inapplicable to the situation presented. Third, the relief sought is readily ascertainable and accounts for the procedural risks the NCSBE raises.

A. **Record Evidence Establishes that the NCSBE Repeatedly Violated State Voter Registration Laws**

The NCSBE has never contested the fact that some population of individuals were registered to vote without providing either a driver's license or a social security number. While they have attempted to attack the perimeter of Plaintiffs' population estimates,² it is unquestionable that a significant number of people are implicated. When the NCSBE was repeatedly confronted with these failures, they refused to act,

² For example, Defendants have argued that some of these individuals may have registered to vote before a driver's license or social security number was required. Assuming *arguendo* that this is accurate, such persons could readily be identified and removed from the scope of the inquiry based upon the date of their registration.

reasoning that North Carolina's photo identification statutes would save them. App. 12-13, at ¶¶ 49-55. This position is contrary to the purposes of the state's voter registration laws and its photo identification laws. The former confirms a person's eligibility to vote while the latter ensures the person appearing at the polls is who they claim to be. *Compare* N.C.G.S. §§ 163-82.4, 82.12, and 166.12(d) *with* 08 NCAC 17.0101, *and Holmes v. Moore*, 384 N.C. 426, 430-31 (2023); *see also* App. 13, at ¶ 51, n.3. These statutes serve distinct purposes and the NCSBE can point to no authority allowing a documents such as utility bill to supplement a missing driver's license number. *See* N.C.G.S. § 163-166.12(a)(2).

To date, the NCSBE has not cited any statutory authority legitimizing its refusal to contact individuals with deficient registration forms. Resultingly, the record evidence establishes that Plaintiffs are highly likely to succeed on the merits. Coupled with the severe and irreparable harm Plaintiffs face should relief not issue, *see* Section V, *infra*, it is patent that the trial court's failure to act constitutes the extraordinary circumstances contemplated by certiorari.

B. The Defenses Which the NCSBE Projects are Inapplicable Here

The NCSBE attempts to legitimize its decisions through a variety of citations to federal law and other statutes, none of which are implicated here. For example, in the January 10, 2025 hearing the NCSBE argued that statutes such as National Voter Registration Act, 52 U.S.C. § 20501, *et seq.* ("NVRA"), Help America Vote Act, 52 U.S.C. § 20901, *et seq.* ("HAVA"), and the Voting Rights Act prohibit them from removing individuals from the state's voter registration lists within a certain period

before an election. *See* App. 37-39. Not only is that position subject to controversy,³ but it is wholly irrelevant; Plaintiffs’ affirmatively disclaim any relief relating to the state’s voter registration list. App. 16, at ¶ 73, n.5. Similarly, it is well-settled that HAVA is only applicable to federal elections whereas here Plaintiffs only seek redress for state and local election contests. *See* App. 117-119 (collecting cases and discussing the relevant distinctions in statutory applicability across elections). The fact that state law takes inspiration from HAVA, or any other federal law in this regard, is of no consequence. States are free to establish their own registration procedures for state and local elections, and that is exactly what the North Carolina General Assembly did here. *See* App. 119 (citing *Young v. Fordice*, 520 U.S. 273, 275 (1997) and *Bay Cnty. Democratic Party v. Land*, 347 F. Supp. 2d 404, 436 (E.D. Mich 2004)). Beyond their own speculation, the NCSBE cannot articulate a single tangible barrier to the relief Plaintiffs seek.

Additionally, the NCSBE argued that the trial court should abstain from ruling here under the doctrine of *Purcell v. Gonzalez* and its purported state counterpart. *See* 549 U.S. 1 (2006); *see also Pender County v. Bartlett*, 361, N.C. 491 (2007). This argument fails on several fronts. First, these doctrines warn against changing

³ Indeed, there is an unsettled question as to whether the NVRA’s 90-day quiet provision applies to individuals who were never properly registered under state law. *Compare Virginia Coal. for Immigrant Rts. v. Beals*, No. 24-2071, 2024 WL 4601052, at *1-2 (4th Cir. Oct. 27, 2024) (declining to adopt state’s argument that a person who is not qualified to vote in the first instance cannot be covered by the NVRA’s quiet provision); *with Beals v. VA Coal. for Immigrant Rts.*, No. 24A407, 2024 WL 4608863 (U.S. Oct. 30, 2024) (granting emergency stay and allowing the state to remove non-citizens from its voter registration list). Nothing presented here turns on the answer to that question.

election laws on the eve of an election. Plaintiffs do not seek any such change in the law, they simply ask that they laws be enforced in the manner in which they were intended. Second, this relief does not seek to strip the legal right to vote away from anyone so entitled. Instead, Plaintiffs seek this Court's assistance in quickly and determinatively instituting a process to confirm lawfully registered voters. The harm created by the NCSBE's unjustifiable refusal to act strikes at the very core of election integrity. Not only is the state's doctrine on this principle much less developed or clear than the NCSBE would like, but the questions and relief presented by this matter surpass even the doctrine's federal counterpart. Abstention on these grounds is unwarranted.

C. Plaintiffs' Requested Relief Accounts for the NCSBE's Purported Procedural Risks

In an attempt to retroactively justify their actions here, the NCSBE raises the specter of mass voter disenfranchisement, should Plaintiffs obtain the relief sought. Generalized assertions aside, this argument is toothless. Plaintiffs' first line argument is that these persons were never lawfully registered under North Carolina law. As a result, Plaintiffs seek a declaration stating the same, as well as injunctive relief requiring the NCSBE to immediately correct their errors moving forward, including contacting the affected individuals before future elections, and removing the unlawful votes from the relevant election contests. *See* App. 22-23 at ¶¶ 2, 3. Alternatively, Plaintiffs request the implementation of a judicial process to expeditiously identify those affected individuals and solicit the missing information in a timely manner akin to what N.C.G.S. §163-82.4(f) requires, such that those then-

lawfully registered voters' votes will count in all affected state election contests. App. 22, at ¶ 2(c).

The NCSBE does not plausibly contend that they cannot contact these individuals, rather, they argue that it would somehow be a burden on them to do so. This argument defies reality. In an attempt to attack the feasibility of implementing a judicial cure process, the NCSBE broadly argues that there could be instances of a voter missing their mail or being on vacation when the NCSBE attempts to retrieve the individual's missing information. Not only are these considerations which can be accounted for should this Court grant relief, but it fails to consider the fact that the very same thing might occur had the NCSBE followed the process established in N.C.G.S. §163-82.4 in the first place. Simply put, the risk here is no greater than it would be had the NCSBE complied with the law.

Due to the publicity surrounding the NCSBE's registration failures, several third parties have established databases for interested persons to quickly search and determine if they have an incomplete registration that is potentially affected here.⁴ Similarly, the NCSBE's own website provides links for users to check their registration and to contact their county board of elections to provide any missing

⁴ See Emily Vespa, *Under the Dome: What to know if your vote is challenged by NC Supreme Court GOP candidate*, CHARLOTTE OBSERVER, Jan. 10, 2025; see also Common Cause, *New Online Tool Helps NC Voters Find Out if Their Ballot is Challenged by Jefferson Griffin* (Jan. 10, 2025) <https://www.commoncause.org/north-carolina/press/new-online-tool-helps-nc-voters-find-out-if-their-ballot-is-challenged-by-jefferson-griffin/>

information.⁵ Certainly something that is as easily discernable as the click of a search button cannot constitute the burden the NCSBE portray it to be, especially when they are encouraging voters to provide the missing information the NCSBE was required to collect.

III. The Subject Matter of the Dispute is of Great Public Interest

The subject matter of this underlying litigation is undoubtedly of great public importance. Not only does the relief sought implicate tens of thousands of potentially unlawful registrations, but its impact stretches to potentially every state and local election contest across North Carolina. Indeed, the very purpose of the state's voter registration statutes is to determine one's eligibility to vote. To the extent any affected contest were decided by persons who were never eligible to vote—as opposed to individuals who are qualified but fell victims of the NCSBE's failures to comply with state law—then those contests risk *post hoc* challenges. *See, e.g.*, N.C.G.S. § 1-515. Thus, the NCSBE's inaction also risks draining judicial resources, inundating North Carolina's courts and Attorney General's office with untold numbers of legal actions.

In *Stetser v. TAP Pharm. Prods., Inc.*, the North Carolina Court of Appeals found that an action implicating a potential statewide class action was sufficient to warrant certiorari under the public interest inquiry. 165 N.C. App. 1, 12, 598 S.E.2d 570, 578-79 (2004). Surely if the implicated rights of a discrete group of class members

⁵ NCSBE, Information for Voters Challenged in Election Protest (Jan. 9, 2025) <https://www.ncsbe.gov/information-voters-challenged-election-protest>

creates an extraordinary circumstance, then the questions presented in this matter must as well. Indeed, much publicity has followed other actions arising from the NCSBE's failure to properly register voters. North Carolinians have a vested interest in the expeditious resolution to the questions presented here.

IV. The Case Deals With Issues of First Impression and the Efficient Administration of Justice Requires Immediate Redress

No court has interpreted or applied either the Constitution's registration requirement or the statutes promulgated thereunder in the context presented here. Thus, the questions presented by this matter are both novel and of great public importance. *See* App. 131-137. Chief Judge Myers recognized this fact when he quickly remanded the matter to state court, exhaustively discussing the principles of federalism implicated by asking a federal court to decide this issue of state law at its first impression. *Id.*

Resolution of this matter would also provide invaluable guidance to trial courts, including the trial court currently set for hearing in *Griffin v. NCSBE*, 24CV040619-910 (Wake Super. Ct.). *See Cryan* 384 N.C., at 574, 887 S.E.2d, at 851 (finding that certiorari was appropriate when the issue presented was a novel question of state law and that refusing to answer it would create a "considerable waste of judicial resources."). Specifically, the NCSBE cite to several cases which they claim prohibits reopening an election once a certificate of election has issued. In contrast, Plaintiffs point to authority allowing the legality of a state office holder to be challenged under appropriate circumstances. *See* N.C.G.S. § 1-515. Resultingly, the answers and appropriate remedies here are far from settled, and this Court is

well within its authority to dictate the necessary outcome. *See Cryan* 384 N.C., at 574, 887 S.E.2d, at 851.

Much like in *Cryan*, the answers to the questions presented will have far-reaching impacts on the interpretation of a novel issue of North Carolina law. *Id.* Relief from this Court will inject finality into this dispute once and for all. Certiorari is particularly appropriate in instances such as this one where, absent relief from this Court, the passage of time will continue to irreparably harm Plaintiffs' well-established rights.

V. The Court of Appeals' Stay Was Inappropriate in the First Instance and The Rationale Underlying the NCSBE's Motion to Stay is Now Moot

As Petitioners explained in their opposition to the NCSBE's Motion to Stay, the present matter is sufficiently distinct in both its claims for relief and its allegations as compared to *Griffin v. NCSBE*, 320P24 (N.C. Sup. Ct.). Due to the relief requested and the distinct irreparable harm Petitioners face by a stay, the Court of Appeals substantially erred in granting the Motion to Stay. Even still, the two events which the NCSBE premised its Motion to Stay on—further action from this Court in *Griffin v. NCSBE*, 320P24 (N.C. Sup. Ct.) or further action from the Fourth Circuit in *Griffin v. NCSBE*, Nos. 24-1018, 24-1019, 24-1021 (4th Cir.) have now passed, thus rendering the entire premise of the NCSBE's motion moot. To be sure, the Fourth Circuit's February 4, 2025 opinion affirming the district court's abstention made clear that the questions presented in *Griffin v. NCSBE*, Nos. 24-1018, 24-1019, 24-1021 (4th Cir.) should proceed in state court.

In sum, the Court of Appeals erred in ignoring the substantial harm faced by Petitioners by granting a stay and instead sided with the NCSBE's erroneous assertions in support of the same. Even still, those assertions have proven to be ineffective and as such, the basis for the stay no longer remains. Petitioners respectfully request that this Court review the Court of Appeals decision to stay, dissolve the stay, and proceed with the underlying merits of the claims presented.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully pray that this Court:

1. Issue a Writ of Supersedeas, ordering the North Carolina Court of Appeals to immediately dissolve its January 17, 2025 stay of the underlying matter;
2. Issue a Writ of Certiorari reviewing the North Carolina Court of Appeals' January 17, 2025 stay of the underlying matter;
3. Alternatively, Issue a Writ of Certiorari granting review of the trial court's January 10, 2025 order and correcting its manifest errors of law; and
4. Grant such other relief deemed just and proper.

Respectfully submitted this, the 5th day of February, 2025.

[Signatures on following page]