

SUPREME COURT OF NORTH CAROLINA

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

Plaintiffs-Petitioners,

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 Election; 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-Respondents,

DEMOCRATIC NATIONAL
COMMITTEE,

Intervenor-Defendant-
Respondent.

From N.C. Court of Appeals
P25-30

From Wake County
24CV041789-910

**THE DEMOCRATIC NATIONAL COMMITTEE'S NOTICE OF RELATED
RULING AND *ENGLAND* RESERVATION**

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Intervenor-Defendant-Respondent the Democratic National Committee (“DNC”) respectfully provides notice to this Court of (1) a related ruling from the United States Court of Appeals for the Fourth Circuit and (2) its reservation to the complete disposition of the entire case by the state courts under *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964).

On 31 December 2024, Petitioners filed this lawsuit in Wake County Superior Court, seeking to throw out ballots cast by tens of thousands of eligible voters. Pet. App. 1–25. On 2 January 2025, Defendants (“State Board”) removed the case to the United States District Court for the Eastern District of North Carolina, Pet. App. 37–40, where a parallel proceeding filed by certain Petitioners months ago remains pending. See DNC App. 8–35.¹

On 6 January 2025, the federal district court *sua sponte* remanded this case, citing as support its decision to remand another case filed by Judge Jefferson Griffin asserting identical legal issues and requests for relief with respect to the race for Associate Justice of this Court. See Pet. App. 111–38. In that remand order, the district court concluded that removal was proper but that it should abstain from exercising jurisdiction. Pet. App. 111. The State Board appealed both remand orders.

¹ Citations to “Pet. App.” refer to the appendix to Petitioners’ Petition for Writ of Certiorari and Petition for Writ of Supersedeas, filed in this Court on 5 February 2025. Citations to “DNC App.” refer to the appendix to the DNC’s Response to Petitioners’ Petition for Writ of Certiorari and Petition for Writ of Supersedeas, filed in this Court on 18 February 2025.

On 4 February 2025, the Fourth Circuit issued its opinion in the *Griffin* appeals. DNC App. 83–93. In relevant part, the Fourth Circuit held that the district court should have abstained under the doctrine adopted in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), rather than some other abstention doctrine. The Fourth Circuit thus ordered the district court to modify its remand order to be consistent with *Pullman* abstention, i.e., modify the order “to expressly retain jurisdiction of the federal issues identified in the State Board’s notice of removal should those issues remain after the resolution of the state court proceedings, including any appeals.” DNC App. 91–93.

On 13 February 2025, the State Board moved the district court to modify its remand order in this case to conform with the *Griffin* opinion, i.e., modify the remand order so as to retain jurisdiction over the federal issues in this case. *See id.* In light of the fact that this case raises substantially the same issues as the *Griffin* case (over which, again, the Fourth Circuit has already stated the federal court retains jurisdiction), and because certain Petitioners already have a duplicative lawsuit pending in federal court (*see* DNC App. 8–35), the appropriate course is for the state courts to resolve only the state-law issues raised by the parties here, leaving resolution of the federal issues to federal courts.

When a federal court abstains under *Pullman* and a party returns to state court to litigate state-law issues, the party must still inform the state courts of its federal-law arguments. *Government Emps. v. Windsor*, 353 U.S. 364, 366 (1957) (*per curiam*). That approach allows the state courts to construe the state-law claims and

defenses in light of Defendants' federal claims and defenses. *England*, 375 U.S. at 420; *Windsor*, 353 U.S. at 366. Accordingly, the DNC notifies this Court that the federal-law arguments made in its Response to Petitioners' Petitions for Certiorari and Supersedeas should be considered only for the purpose of construing the state law claims and defenses raised this case. *See England*, 375 U.S. at 421.

A party in a case in which federal courts have abstained under *Pullman* may also "inform the state courts that he is exposing his federal claims there only for the purpose of complying" with *Windsor* "and that he intends, should the state courts hold against him on the question of state law, to return to the District Court for disposition of his federal contentions." *England*, 375 U.S. at 421. "When the reservation has been made . . . his right to return [to federal court] will in all events be preserved." *Id.* at 421-22; *see also Promovision Int'l Films, Ltd. v. Trapani*, 744 F.2d 1063, 1065 (4th Cir. 1984) ("Retention of jurisdiction by a federal court while the parties resolve state law issues in a state court is the procedure appropriate for abstention under [*Pullman*], but under this variety of abstention a party may reserve the right to return to federal court for disposition of its federal issues under [England].").

The DNC hereby makes the "reservation" described in the prior paragraph, i.e., the DNC "is exposing [its] federal claims [in state court] only for the purpose of complying with *Windsor*" and intends, "should the state courts hold against [it] on the question of state law, to return to the District Court for disposition of [its] federal contentions." *England*, 375 U.S. at 421.

In light of the Fourth Circuit's holding in the *Griffin* appeals, and the State Board's pending motion to alter the district court's remand order such that the district court retains jurisdiction over the federal-law issues in this case, the DNC does not seek to litigate any issues of federal law before any state court, and submits that the state courts should not resolve any such issue in these cases. Those issues include, but are not limited to, the DNC's arguments under (1) the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; (2) the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution; (3) the National Voter Registration Act, 52 U.S.C. § 20501, et seq.; (4) the Voting Rights Act, codified in relevant part at 52 U.S.C. § 10307; and (5) the Civil Rights Act, 52 U.S.C. § 10101. *See* Pet. App. 38. They also include any other issues of federal law raised in the DNC's Response to Petitioners' Petition for Writ of Certiorari and Petition for Writ of Supersedeas.

Respectfully submitted this the 18th day of February, 2025.

Electronically Submitted

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had 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 18 January 2025, addressed as follows:

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This the 18th day of February, 2025.

Electronically Submitted
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