NORTH CAROLINA COURT OF APPEALS

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JEFFERSON GRIFFIN,

Petitioner,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS,

Respondent,

and

ALLISON RIGGS,

Intervenor-Respondent.

From Wake County
No. 24CV040619-910
No. 24CV040620-910
No. 24CV040622-910

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NORTH CAROLINA ALLIANCE FOR RETIRED AMERICANS, VOTEVETS ACTION FUND, JUANITA ANDERSON, SARAH SMITH, AND TANYA WEBSTER-DURHAM'S BRIEF

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INTRODUCTION

Millions of North Carolina voters cast ballots in the November 2024 general election, including in a hotly contested race for a seat on the Supreme Court of North Carolina. After a full and fair counting of the votes, it became clear that incumbent Justice Allison Riggs defeated her opponent, Judge Jefferson Griffin of this Court. Dissatisfied with that result, Judge Griffin now brings his months-long quest to reverse his loss at the ballot box to this Court, asking it to throw out the ballots of over 60,000 North Carolinians long after they voted. His request for this unprecedented relief is all the more astonishing because he does not allege that *any* of these voters are unqualified to vote in North Carolina, nor does he dispute that each followed registration and election rules as they have existed in North Carolina for *years*. Nonetheless, Judge Griffin seeks extreme relief in the hope that tossing out large numbers of voters will reverse his electoral loss and grant him a Supreme Court seat that the voters of this state denied him.

The State Board of Elections properly rejected Judge Griffin's baseless and dangerous demand, as the Superior Court below promptly determined. As relevant here, the Board correctly concluded that Judge Griffin failed to follow North Carolina law for providing notice to those voters subject to his sweeping election protests—a failure that severely prejudiced the challenged voters and, as a matter of law, requires dismissal of his protests. The Board further

recognized that, under well-established North Carolina precedent, Judge Griffin was obliged to challenge the longstanding election rules at issue *before* the election—not afterward and only once he realized that the voters had rejected him.

On the merits, the Board found Judge Griffin's protests legally meritless and factually speculative. His most significant protest relies overwhelmingly on his assumption that if the State Board's voter files—which do not contain perfect data—do not include a voter's individual identification number, it must mean that the voter never provided that information and their voter registration is insufficient. But as the Board and dozens of voters have shown, the absence of that information in the database illustrates *nothing*. Tens of thousands of these voters demonstrably *did* provide identification numbers on their registration forms, but that information simply failed to make it into the database for reasons beyond the voters' control. Thousands more registered to vote before state law even requested that they provide such numbers, while others provided their identification numbers in an earlier registration record. In fact, Judge Griffin has not identified a *single* voter who demonstrably failed to comply with North Carolina's registration requirements, or who is otherwise unqualified to vote—a failure of proof that dooms his effort to require rejection

of their ballots.[1] His other two challenges at issue here—which ask the Court to disenfranchise overseas voters who followed State Board instructions by not including a photographic ID with their ballot, or who voted in North Carolina based on inherited residency—are equally invalid. As the State Board concluded, those challenges misread state law and seek to upend longstanding election rules that Judge Griffin failed to challenge prior to the election. Each of these state law grounds is a sufficient reason to deny Judge Griffin's election protests, to affirm the order of the Superior Court, and to permit the Board to finally certify this long resolved election. This Court should affirm.

[1] Among the thousands of voters challenged by Judge Griffin are Intervenor-Respondents Tanya Webster-Durham, Sarah Smith, and Juanita Anderson, longtime North Carolina voters who—alongside the North Carolina Alliance for Retired Americans and VoteVets Action Fund—were previously granted intervention in the federal analog to this case. *See* Order, *Griffin v. N.C. State Bd. of Elections,* Appeal No. 25-1020, (4th Cir. Feb. 4, 2025) (granting unopposed motion to intervene), Dkt. 31. As explained in their accompanying unopposed motion, these Voter Intervenors now seek intervention here. And, as explained below and in their accompanying Notice of *England* Reservation, Voter Intervenors join the existing Defendants in expressly reserving their right to "return to the District Court for disposition of [their] federal contentions," *England v. La. State Bd. of Med. Exam'rs*, 375 U.S. 411, 421 (1964), as they do not intend to "litigate[] [their] federal claims in state court[]," *id.*; *see also* Order, *Griffin v. N.C. State Bd. of Elections, et al.*, Case No. 5:24-cv-731-M (E.D.N.C. Feb. 26, 2025), ECF No. 35 (modifying remand order to retain federal jurisdiction over the "federal issues" in this case).

STATEMENT OF THE FACTS

I. Judge Griffin seeks to disenfranchise tens of thousands of voters after losing the election for Supreme Court justice.

In the 2024 general election, millions of North Carolinians cast ballots under well-established voting rules and settled instructions. After voting ended and the ballots were counted, it became clear that incumbent Justice Allison Riggs prevailed over Judge Griffin in the contest to serve as an Associate Justice on the Supreme Court of North Carolina. Dissatisfied with his loss, Judge Griffin filed over 300 election protests in counties across the state.

Judge Griffin's protests fall into three relevant categories. The first and largest targets 60,273 absentee and early voters based on information allegedly missing in their registration file ("HAVA Challenge"). *See* Doc.Ex.I 5370. Under the Help America Vote Act ("HAVA"), when a person registers to vote, states attempt to collect the applicant's driver's license number or the last four digits of their social security number. 52 U.S.C. § 21083(a)(5)(A). While North Carolina law implements HAVA's requirements, *see* N.C.G.S. § 163-82.4(a), (b), for many years the state registration form did not require provision of these identification numbers, and the state accepted registrants' otherwise complete applications. *See* Doc.Ex.I 5391–98. Many of these challenged voters, including Voter Intervenors, have been registered and voted without incident for

decades. *See infra* Argument § II.A.1. Judge Griffin now seeks to retroactively invalidate their votes if their registration files appear to lack a driver's license number or social security information, even though, as the State Board confirmed with its audit of the challenged voters, there are various valid reasons why a voter's file may not accurately represent the information they provided when they registered to vote.

Judge Griffin's second challenge—the "Overseas Voter Challenge"—takes aim at 266 citizens living abroad, Doc.Ex.I 5370, who are expressly entitled to vote under the Uniform Military and Overseas Voters Act ("UMOVA"), as enacted by the General Assembly over 13 years ago. N.C.G.S. § 163-258.1, *et seq*. This category of voters has similarly participated in dozens of elections without issue for more than a decade. But Judge Griffin now believes these citizens should be disenfranchised because, in his view, they are not residents of North Carolina. *See* Doc.Ex.I 4800.

The third category of challenges targets 1,409 overseas voters who voted under the federal Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), complying with all relevant federal and state laws for returning their absentee ballot. Doc.Ex.I 5370.[2] Judge Griffin argues these voters should

[2] Judge Griffin timely challenged just 1,409 of those ballots. *See* Doc.Ex.I 5370. As the State Board noted, Griffin sought to add challenges in supplemental

have provided a copy of their photo identification with their ballot, Doc.Ex.I 4810, notwithstanding that the Board has prescribed rules that exempt UOCAVA voters from this requirement ("UOCAVA ID Challenge"). 8 N.C. Admin. Code 17.0109. The Board's rules have exempted covered UOCAVA voters from such a requirement since at least 2020. *Id.*

II. Judge Griffin did not adequately notify the voters he seeks to disenfranchise.

Under the State Board's rules for election protests, Judge Griffin was expressly required to "serve copies of all filings on every person with a direct stake in the outcome of this protest," including "all such voters" whose ballots stand to be impacted by Judge Griffin's protests. 8 N.C. Admin. Code 2.0111. Rather than provide "all filings" to each of the more than 60,000 voters he seeks to disenfranchise, Judge Griffin purported to notify each challenged voter by sending them a postcard easily mistaken for junk mail. The card—which was addressed to the voter "or current resident"—did not actually tell voters whether their ballot was challenged and, if so, on what ground. Instead, it simply included a QR code that users who have mobile smartphones could scan to be redirected to a North Carolina Republican Party webpage where they could see "what protest *may* relate to you." Doc.Ex.I 5376 (emphasis added).

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filings "submitted after the deadline to file an election protest," and the State Board did not determine "whether such supplementations [were] allowable." *Id.* n.2 (citing N.C.G.S. § 163-182.9(b)(4)).

Even if a voter received a postcard—and many did not—recipients without internet access, smartphones, or familiarity with QR code technology could not access any additional information. *See infra* Argument § II. And even if the voters did receive the postcard and could open the website using the QR code, that website simply contained hundreds of links to various protests filed by multiple different candidates.

If a voter received the notice, did not dismiss it as junk mail, and was able to navigate through the QR code, they were led to a website containing over *three hundred* links to protests filed by Judge Griffin and other candidates. Voters then had to sort through these hundreds of links on a county-by-county basis to see if their names—listed in small print and non-alphabetical order—were among the thousands Griffin challenged. Instead of providing the required notice to challenged voters, Judge Griffin put the burden on *voters* to determine—weeks after they cast their ballots—whether and how their votes were being challenged.

III. The State Board rejected Judge Griffin's challenges.

The Board agreed to take jurisdiction over each of the three challenges at issue here—the HAVA Challenge, Overseas Voter Challenge, and UOCAVA

ID Challenge—pursuant to N.C.G.S. § 163-182.12.[3] On 13 December, the Board issued a written opinion rejecting each of these three protests.

On the threshold issue of service, the Board determined that Judge Griffin had not properly served notice to each challenged voter "in a manner that would comply with the North Carolina Administrative Code and be consistent with the requirements of constitutional due process." Doc.Ex.I 5373.

The Board then proceeded to consider the merits of Judge Griffin's challenges, as state law requires analysis of procedural compliance as well as the substance of the protest. The Board rejected each of the three protests. First, the Board rejected the HAVA Challenge, concluding that Judge Griffin failed to provide any evidence to establish probable cause that the voters had not provided the necessary identification numbers, relying instead on the

[3] Judge Griffin also filed three other categories of protests challenge: (1) voters allegedly ineligible to vote due to felony conviction; (2) voters allegedly dead as of election day; and (3) voters allegedly not registered to vote in North Carolina at all. Doc.Ex.I 5370. The Board concluded that these three categories of challenges were best left to the counties to adjudicate in the first instance. On 20 December, the Board separately considered appeals that had been filed by Judge Griffin to review county-level determinations about whether to count votes identified in his remaining three categories of protests. Because of the small number of ballots at issue, the Board voted to dismiss the appeals because they could not be outcome determinative. On 27 December, the Board issued its written decision on these challenges. *See* Decision & Order, *In re Election Protests of Jefferson Griffin et al.,* N.C. State Bd. of Elections (Dec. 27, 2024), *available at* dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Protest%20Appeals/Griffin-Adams-McGinn-Sossamon%20II_2024.pdf.

baseless assertion that the absence of such numbers in the voter's registration file necessarily meant the voter failed to provide such information on their registration forms. Doc.Ex.I 5382–84.

Second, the Board rejected Judge Griffin's Overseas Voters Challenge, concluding that because the General Assembly specifically authorized U.S. citizens who have not resided in the United States to vote in North Carolina elections based on close familial connections, and laid out unique procedures those voters could utilize to register to vote and request and vote an absentee ballot, the State Board is bound to follow the law as enacted and that governs it. Doc.Ex.I 5396–99. The Board also emphasized that these laws have been in place for 13 years and have faithfully been implemented in 43 elections.

Finally, the Board unanimously rejected Judge Griffin's UOCAVA ID Challenge, concluding that, as with the Overseas Voters Challenge, the General Assembly had clearly laid out two distinct sets of comprehensive regulations for requesting and casting absentee ballots for two groups of voters, and those laws and relevant regulations enacted pursuant to those statutes explicitly exempt military and overseas voters from providing identification when returning their absentee ballot. Doc.Ex.I 5399–5404. And because, during the rulemaking process, the rule exempting identification for these voters was unanimously approved, it is directly applicable and enforceable by the Board. Doc.Ex.I 5404.

IV. Judge Griffin filed several state court actions, which were removed to federal court and remanded in part.

After the Board issued its decision, Judge Griffin filed a petition for a writ of prohibition in the North Carolina Supreme Court. That petition asked the Court to immediately issue a temporary stay of both the Board's certification of his election contest and the filing deadline for Judge Griffin to file an appeal of the Board's decision. Doc.Ex.I 5399, 5406. Two days later, Judge Griffin filed three separate petitions for judicial review of the State Board's 13 December order in Wake County Superior Court. *See* R 1, R 157, R 215. Each petition challenges one of the three categories of election protests dismissed by the Board. The Board removed these actions to federal court and noticed them as related cases. *See* Notice of Removal, *Griffin v. N.C. State Bd. of Elections*, No. 5:24-cv-00724 (E.D.N.C. Dec. 19, 2024) ("*Griffin I*"), ECF No. 1; *Griffin v. N.C. State Bd. of Elections*, No. 5:24-cv-00731-BO (E.D.N.C. Dec. 20, 2024) ("*Griffin II*"), ECF Nos. 1, 2. Intervenors the North Carolina Alliance for Retired Americans ("Alliance"), VoteVets Action Fund ("VoteVets"), and individual Alliance members Webster-Durhan, Smith, and Anderson, moved to intervene in both *Griffin I* and *Griffin II* to protect their own and their members and constituents' fundamental right to vote, which the courts granted. *See* Text Order, *Griffin I* (E.D.N.C. Dec. 26, 2024); Order, *Griffin II* (4th Cir. Jan. 28, 2025), Dkt. 19.

On 6 January 2025, the district court remanded both *Griffin I* and *Griffin II* back to their original state courts. The district court agreed with the Board that it had subject matter jurisdiction over both cases, but nonetheless found abstention warranted under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), and *La. Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959). *See* Remand Order, *Griffin I* (E.D.N.C. Jan. 6, 2025), ECF No. 50 ("*Griffin I* Remand Order"); *see* Remand Order, *Griffin II* (E.D.N.C. Jan. 6, 2025), ECF No. 24. The district court immediately effectuated its remand order via transmittal letters to the relevant state courts and closed both cases. Letter Regarding Remand, *Griffin I* (E.D.N.C. Jan. 6, 2025), ECF No. 51; *see* Letter Regarding Remand, *Griffin II* (E.D.N.C. Jan. 6, 2025), ECF No. 25.

The State Board, as well as Justice Riggs, who was also granted intervention in both *Griffin I* and *Griffin II*, and the Alliance, VoteVets, and individual voters, filed timely notices of appeal of the district court's remand orders in *Griffin I* and *Griffin II*. *See Griffin v. N.C. State Bd. of Elections*, Nos. 25-1018 (lead), –1019, –1024 (4th Cir.) (concerning *Griffin I*); *Griffin v. N.C. State Bd. of Elections*, No. 25-1020 (4th Cir.) (concerning *Griffin II*). While those appeals were pending, the North Carolina Supreme Court stayed the State Board's deadline to certify the election. In a separate order, it also dismissed Judge Griffin's remanded petition for a writ of prohibition and

instructed the Superior Court to resolve the appeals Judge Griffin had filed in that court from the State Board's order.

Meanwhile, after expediting briefing and oral argument, the Fourth Circuit consolidated *Griffin I* and *Griffin II*. The Fourth Circuit agreed that the district court had subject matter jurisdiction over the removed cases, but rejected the district court's dismissal of those cases under *Burford* and *Thibodeaux* abstention, and instead affirmed the remand on the basis of *Pullman* abstention. Order at 10–11, *Griffin I* (4th Cir. Feb. 4, 2025), Dkt. 132; Order at 10–11, *Griffin II* (4th Cir. Feb. 4, 2025), Dkt. 33. Under *Pullman*, "federal courts have discretion to refrain from resolving a case pending in federal court that involves state law claims and potential federal constitutional issues if the resolution of those unsettled questions of state law could obviate the need to address the federal issues." Order at 10, *Griffin I*, Dkt. 132; Order at 10, *Griffin II*, Dkt. 33. Where that discretion is exercised, the federal court retains jurisdiction of the federal constitutional claims while the state court issues are addressed in state court, and the case returns to federal court once the state issues have been resolved, if needed.

On 14 February, the Fourth Circuit issued the mandate and its judgment took effect. Mandate, *Griffin I* (4th Cir. Feb. 14, 2025), Dkt. 139; Mandate, *Griffin II* (4th Cir. Feb. 14, 2025), Dkt. 40. On 26 February, in accordance with the Fourth Circuit's order, the district court modified its order regarding

abstention and expressly retained jurisdiction of the federal issues identified in Defendants' notice of removal should those issues need resolution after the state court proceedings conclude. Order, *Griffin II* (E.D.N.C. Feb. 26, 2025), ECF No. 35.[4]

V. The Board conducted an audit of Judge Griffin's protests.

Meanwhile, the State Board conducted an audit of Judge Griffin's HAVA ID Challenge voters. The audit confirmed that the inference underlying Judge Griffin's challenge—that because a voter's registration file does not contain a driver's license number or social security information, the voter never provided that information when they registered to vote—cannot be accurately drawn. A query of the state's archive database, which contains records created when the Board initially enters data from the voter registration application into the voter registration database and is distinct from the registration records Judge Griffin bases his challenges on, shows evidence that at least 28,000 voters provided a driver's license number or social security information on their registration form, but the identification number was removed from the voter's record when the normal automatic matching with DMV and Social Security databases did not result in an exact match. Doc.Ex.II 226–27 ¶¶ 9–10.

[4] As to *Griffin I*, the district court noted that because the Fourth Circuit dismissed the appeal in that case as moot, there was no need to adjust the prior decision regarding abstention. *Griffin I*, ECF No. 70.

Thousands of other voters were identified as having multiple registrations where the earlier one had the requisite identification number but had not been connected or ported into the more recent registration. Doc.Ex.II 228 ¶ 11.

The audit also showed various other circumstances that could otherwise explain why a voter registration's record may not contain a driver's license or social security information, including but not limited to registration before the digitization of records and failure to link registrations from voters after updated or reinstated registrations. Doc.Ex.II 229 ¶ 14.

VI. The Superior Court dismisses Judge Griffin's protest appeals.

After the Fourth Circuit's decision clarified the jurisdictional posture of the case, the Superior Court proceeded to consider the state issues within Judge Griffin's election protests. After considering all of the information and arguments presented by the parties, including the State Board's audit which was submitted to the court for its consideration, the Superior Court promptly dismissed Judge Griffin's protests. The court concluded that "as a matter of law," "the Board's decision was not in violation of constitutional provisions, was not in excess of statutory authority or jurisdiction of the agency, was made upon lawful procedure, and was not affected by other error of law." *See* R 152, R 210, R 269.

Judge Griffin appealed these decisions to this Court.[5]

LEGAL STANDARD

In cases appealed from administrative agencies, "[q]uestions of law receive *de novo* review," whereas fact-intensive issues "such as sufficiency of the evidence to support [an agency's] decision are reviewed under the whole-record test." *In re Denial of NC IDEA's Refund of Sales*, 196 N.C. App. 426, 432, 675 S.E.2d 88, 94 (2009) (quotation omitted). Under the "whole record test," a reviewing court must examine all the record evidence in order to determine whether there is substantial evidence to support the agency's decision. "[S]ubstantial evidence" means "relevant evidence a reasonable mind might accept as adequate to support a conclusion." *Id.* (quotation omitted). In conducting its review, a reviewing court "may not substitute its judgment for the agency's" as if the matter had been reviewed *de novo*. *Id.* (quotation omitted).

[5] In parallel, the Board filed a bypass petition with the North Carolina Supreme Court and requested that the court take jurisdiction over Judge Griffin's appeal. *See generally Griffin v. N.C. Bd. of Elections*, No. 320P24-2 (N.C. 2024). The North Carolina Supreme Court denied that request several days later. Order, *id.* (N.C. Feb. 20, 2025).

ARGUMENT

I. The protests are an unlawful attempt to change the election rules after the votes have been cast and counted.

Judge Griffin's petition is barred by the equitable doctrine of laches. Laches bars a claim where there has been (1) an unreasonable delay on the part of the party seeking relief, and (2) injury or prejudice to the person seeking to invoke the doctrine of laches. *See MMR Holdings, LLC v. City of Charlotte*, 148 N.C. App. 208, 209, 558 S.E.2d 197, 198 (2001). Whether a delay is unreasonable "depends upon the facts and circumstances of each case," *id.* at 209, but "[w]henever the delay is mere neglect to seek a known remedy or to assert a known right, . . . and is without reasonable excuse, the courts are strongly inclined to treat it as fatal to the plaintiff's remedy." *Taylor v. City of Raleigh*, 290 N.C. 608, 622, 227 S.E.2d 576, 584 (1976); *see also Save Our Schs. of Bladen Cnty., Inc. v. Bladen Cnty. Bd. of Educ.*, 140 N.C. App. 233, 237, 535 S.E.2d 906, 910 (2000) (affirming grant of laches where suit challenging bond initiative was filed after referendum was passed by voters).

Timeliness in seeking relief is particularly important in the context of elections. *See Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006); *see also Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) ("Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt

imminent elections absent a powerful reason for doing so.").[6] North Carolina courts regularly refuse to change the rules of an election when an election is imminent. *See, e.g., Pender County v. Bartlett*, 361 N.C. 491, 510, 649 S.E.2d 364 (2007) (refusing to implement remedy to redistricting violation in the run up to the 2008 election). The fact that Judge Griffin brought his protests *after* the election was complete only strengthens the application of laches here: "[t]he same imperative of timing and the exercise of judicial review applies with much *more* force on the back end of elections." *Trump v. Wis. Elections Comm'n*, 983 F.3d 919, 925 (7th Cir. 2020) (emphasis added) (applying laches to bar post-election challenge).

North Carolina courts have long rejected late attempts to throw out votes of qualified voters after an election. For instance, in *Woodall v. Western Wake Highway Commission*, 176 N.C. 377, 97 S.E. 226 (1918), the Supreme Court rejected a post-election attempt to discard qualified electors' votes after they had been counted solely because the voters were not given a required oath

[6] Several justices of the North Carolina Supreme Court have recognized a state version of the so-called *Purcell* principle, which cautions against courts altering voting rules shortly before an election in a manner that is likely to cause "voter confusion," which may create an "incentive to remain away from the polls." *Purcell*, 549 U.S. at 4–5. *See, e.g.,* Am. Order, *Griffin*, No. 320P24 (N.C. Jan. 7, 2025) (Dietz, J., dissenting); *Holmes v. Moore*, 382 N.C. 690, 691, 876 S.E.2d 903 (2022) (Mem.) (Newby, C.J., dissenting); *Harper v. Hall*, 382 N.C. 314, 319, 874 S.E.2d 902 (2022) (Mem.) (Barringer, J., dissenting).

when they registered. The Supreme Court explained that "[a] party offering to vote without a regular registration, may under some circumstances, be refused" a ballot, but "if the party is allowed to vote and his vote is received and deposited, it will not afterwards be held to be illegal, if he is otherwise qualified to vote." *Id.* at 232. And courts across the country have held similarly. *See, e.g.*, *Wood v. Raffensperger*, 501 F. Supp. 3d 1310, 1324 (N.D. Ga.) (concluding laches barred suit that could have been filed months ahead of election rather than weeks after it), *aff'd on other grounds*, 981 F.3d 1307 (11th Cir. 2020).

Judge Griffin seeks precisely the kind of post-election relief that courts prohibit. After losing his election, Judge Griffin retroactively challenges the validity of election laws and procedures that have all been in place for years. For example, the state's UMOVA rules have been the law for thirteen years over the course of 43 elections. Doc.Ex.I 5398. Judge Griffin's HAVA ID challenge is based on the state's longstanding use of a registration form that did not explicitly require provision of driver's license or social security numbers until last year. Doc.Ex.I 5388. And the regulation exempting military and overseas voters from having to provide identification when they return their ballot was enacted seven months before the election through a transparent rulemaking process that allowed any interested party to submit comments or object. Doc.Ex.I 5404. The regulation was approved unanimously by the

commission authorized by the General Assembly to specifically object to administrative agency rules that exceed the agency's authority. *Id*. There is no question that Judge Griffin could have brought his challenges well before the general election. Nor does he—or can he—offer any justification for his unreasonable delay. Instead, Judge Griffin rolled the dice on the election results and now seeks to enlist the judiciary to disenfranchise tens of thousands of voters to hand him an election he lost.

Judge Griffin's unreasonable delay severely harms North Carolina voters, including the Voter Intervenors. Take for example Intervenors Anderson, Smith, and Webster-Durham, each of whom Judge Griffin now contends failed to properly register to vote because their registration files lack certain identification numbers. Each of them has been registered in North Carolina for *years* and has voted without controversy in numerous elections going back as far back as 2009. Mot. Intervene Ex. B, Declaration of Sarah Smith ¶¶ 4–5; Mot. Intervene Ex. C, Declaration of Juanita Anderson ¶¶ 4–5; Mot. Intervene Ex. D, Declaration of Tanya Webster-Durham ¶¶ 4–5. And there is no dispute that each of these North Carolinians is qualified to vote. Smith Decl. ¶¶ 1–2; Anderson Decl. ¶¶ 1–2; Webster-Durham Decl. ¶¶ 1–2.

Other ordinary voters who are similarly situated have also been targeted and are at risk of being disenfranchised unfairly. *See* Br. of Amici Curiae Ralim Allston et al. Supporting Respondents ("Impacted Voters Amicus"). Judge

Griffin does not dispute that each of them is qualified to vote in North Carolina. And he has not introduced a shred of evidence establishing that they actually submitted incomplete or deficient voter registration applications. *See, e.g.*, Doc.Ex.I 13 ¶¶ 11–14 (submission of protest only references absence of information in the voter's registration records). He simply insists that the Court assume as much and—based on nothing more than that assumption—cancel the votes they cast months ago. Such a result is patently unfair to these qualified voters, none of whom have been shown to have violated any registration or voting rule. And by choosing a wait-and-see approach, Judge Griffin has maximized the prejudice to these ordinary voters. *See King v. Whitmer*, 505 F. Supp. 3d 720, 732 (E.D. Mich. 2020) ("Plaintiffs' delay prejudices [the] Defendants . . . This is especially so considering that Plaintiffs' claims for relief are not merely last-minute—they are after the fact. While Plaintiffs delayed, the ballots were cast; the votes were counted; and the results were certified.").

As Justice Dietz recognized, "[t]he harm this type of post-election legal challenge could inflict on the integrity of our elections is precisely what the *Purcell* principle is designed to avoid." Am. Order, *Griffin v. N.C. State Bd. of Elections*, No. 320P24 (N.C. Jan. 7, 2025) (Dietz, J., dissenting). Consider the implications if Judge Griffin is allowed to proceed—political candidates would be incentivized to gamble on election results and, if they lose, seek to

retroactively rewrite election rules to disenfranchise enough law-abiding voters to thwart the will of the people. Post-election disputes would profligate, frustrating the public's strong interest in ensuring that "the rules of the road [are] be clear and settled" well *before* an election occurs. *Democratic Nat'l Comm. v. Wisconsin State Legislature*, 141 S. Ct. 28, 208 L. Ed. 2d 247 (2020) (Kavanaugh, J., concurring). With this case, Judge Griffin has embarked on a dangerous attempt to "misuse [] the judicial system to baselessly cast doubt on the electoral process in a manner that is conspicuously consistent with the [candidate's] political ends." *Lake v. Hobbs*, 643 F. Supp. 3d 989, 1010 (D. Ariz. 2022). In short, Judge Griffin's unreasonable delay in bringing his challenges alone precludes relief.

II. The Board correctly dismissed all protests because Judge Griffin failed to provide voters with notice.

The more than 60,000 voters targeted by Judge Griffin's challenges did not receive the notice guaranteed to them by state law, which required Judge Griffin to "ensure" that service was effected on each of the challenged voters. 8 N.C. Admin. Code 2.0111. Judge Griffin instead mailed non-forwardable bulk postcards that, even if received by voters, did nothing to properly inform them that Judge Griffin was seeking to disenfranchise them, the bases for his challenges, or how those voters could defend themselves.

North Carolina law grants the Board authority to prescribe forms for election protests. *See* N.C.G.S. § 163-182.9(c). The Board has exercised that authority to promulgate an election protest form that instructs protestors to "serve copies of all filings on every person with a direct stake in the outcome of th[e] protest." 8 N.C. Admin. Code 2.0111. "If a protest concerns the eligibility or ineligibility of particular voters, all such voters . . . *must be served*." *Id.* (emphasis added). The form issued by the Board even advises protestors that they can obtain the necessary voter contact information from the county boards of elections or directly from the Board's website. *See id.*

As the Board's implementing regulations make clear, it is not sufficient for an election challenger to merely pay lip service to the notice requirement—challengers must "*ensure* service is made on all Affected Parties" through a "postage-paid parcel [] deposited" with the U.S. Postal Service, or by "other means affirmatively authorized by the Affected Party." *See id.* (emphasis added). Protests that do not "substantially comply" with this requirement must be dismissed. *See* N.C.G.S. § 163-182.10 (explaining the relevant election board "shall dismiss the protest" if it does not "substantially compl[y]" with N.C.G.S. § 163-182.9).

Judge Griffin was well aware that he needed to fulfill these requirements. In fact, when he filed his election protests, he affirmed under penalty of perjury that he "reviewed the statutes and administrative rules

governing election protests," and that he "underst[ood]" that he "must timely serve all Affected Parties." Doc.Ex.I 8. Despite purporting to understand these rules, he did not "serve" the challenged voters with any "copies" of his election protest "filings." Instead, Judge Griffin mailed non-forwardable postcards sent from the "North Carolina Republican Party" reading: "your vote may be affected by one or more protests filed in relation to the 2024 General Election." Doc.Ex.I 5375. And instead of listing the grounds for challenges, Judge Griffin's mailers included digitally printed "QR codes" that, once scanned with a smartphone, led to a website with links to hundreds of protests filed by multiple different candidates. *See* Doc.Ex.I 5408–09. As the Board rightly concluded, these junk-mail-looking postcards were not enough comply with the clear requirements of 8 N.C. Admin. Code 2.0111. Judge Griffin instead gave challenged voters nothing more than a vague clue to begin a scavenger hunt to try to determine whether and on what grounds their ballots were being challenged. Judge Griffin's paltry efforts plainly fail to comply with the state law governing his election protest, and required dismissal of his protest.

Judge Griffin's failure to provide notice was no mere technical deficiency. Many voters either never received Judge Griffin's postcard, reasonably concluded it was junk mail, or lacked the means or knowledge to access its QR code. Voter Intervenor Juanita Anderson is a retired schoolteacher and has voted in nearly every state and federal election since becoming registered. *See*

Anderson Decl. ¶¶ 3, 5. Despite being on Judge Griffin's challenge list, Ms. Anderson does not recall receiving a postcard from Judge Griffin with information indicating that her ballot was being challenged. *See id.* ¶ 7. Neither does Voter Intervenor Sarah Smith, a retired telecommunications worker and registered North Carolina voter since 2009. *See* Smith Decl. ¶¶ 3-4, 7. Voter Intervenor Tanya Webster Durham, a member of the United Steelworkers and registered voter since 2004, also does not remember receiving anything. *See* Webster-Durham Decl. ¶¶ 3-4, 8.

Even if these voters had received Judge Griffin's postcard, none of them could have accessed the information about Judge Griffin's challenges on the linked website. Ms. Anderson does not own a smartphone and could not have navigated the QR code, while Ms. Smith and Ms. Webster Durham are unfamiliar with QR codes and how to navigate them. Webster-Durham Decl. ¶ 9; Smith Decl. ¶ 8; Anderson Decl. ¶ 8. They only learned of their imminent risk of disenfranchisement through their membership in the Alliance, which notified them that they were on Judge Griffin's challenge list. Webster-Durham Decl. ¶ 8; Smith Decl. ¶ 7; Anderson Decl. ¶ 7. Their experiences are not unique; the record is littered with similar examples from other voters who do not recall receiving any notice from Judge Griffin that their votes were in jeopardy. *See* Impacted Voters Amicus, Ex. 1 ¶ 9; Ex. 5 ¶ 9; Ex. 6 ¶ 8; Ex. 7 ¶

8; Ex. 8 ¶ 8; Ex. 9 ¶ 8; Ex. 11 ¶ 9; Ex. 15 ¶ 8; Ex. 16 ¶ 10; Ex. 19 ¶ 9; Ex. 20 ¶ 9; Ex. 23 ¶ 10; Ex. 24 ¶ 9; Ex. 26 ¶ 9.

Even voters who did receive the notice—and did not throw it away as junk mail—could not discern whether their votes were being challenged, on what grounds, or the proper procedure for defending them. *See, e.g.*, Impacted Voters Amicus. When Rachel Suzanne Arnold, a senior vice president in a government affairs firm, received Judge Griffin's postcard, which was addressed to "Rachel Arnold or current resident," she thought the mailer was a "scare tactic" and left a voicemail with the North Carolina Republican Party seeking more information. *See id.* Ex. 3 ¶ 12. No one returned her call. And when Diane Wynne—another validly registered voter subject to one of Judge Griffin's challenges—received Judge Griffin's postcard, she "thought it was confusing and was a scam" because she "did now know how a vote could be challenged and taken away after the fact." *Id.* Ex. 25 ¶ 9.

Other voters who tried to navigate the website linked with the postcard could not do so. When Mary Kay Heling—a North Carolina voter of nine years who views voting as her "responsibility"—received the postcard in the mail, she "spent tons of time trying" to find her name on Judge Griffin's challenge list but "could not locate it" given "how many people were on the list." *Id.* Ex. 10 at 2, ¶ 6. Lesley-Anne Leonard, a decades long North Carolina resident, met a similar fate: even though she visited the website link included in the

postcard's QR code, she "could not find" her name on the spreadsheets and so "did not think it applied" to her, and she tossed the postcard in the trash. *Id.* Ex. 14 ¶ 8.

These voters' experiences are just a sampling of the thousands of voters who Judge Griffin seeks to disenfranchise, yet failed to properly notify of his challenges. The Board correctly concluded that Judge Griffin's slipshod effort failed to substantially comply with the notice requirements set forth in 8 N.C. Admin. Code. 2.0111. His protests should be dismissed on this basis alone. *See* N.C.G.S. § 163-182.9.

III. Judge Griffin's challenges should be denied because they are each meritless.

Judge Griffin, as the challenging party, bears the burden to establish a violation of election law, irregularity, or misconduct. *Id.* § 163-182.10. His protests had to meet the "probable cause" standard under state law to be entitled to a hearing before the Board. *Id.* § 163-182.10(a)(1). To be entitled to any ultimate relief, however, Judge Griffin was required to bring forth "*substantial evidence*" of some "violation, irregularity, or misconduct sufficient to cast doubt on the results of the election." *Id.* § 163-182.10(d)(2) (emphasis added). Such evidence must be "strong enough to establish to a reasonable person that the claimed irregularities occurred and that those irregularities swayed the election." Election Protest Procedures Guide at 8, N.C. State Bd. of

Elections (last updated June 27, 2022), https://s3.amazonaws.com/dl.ncsbe.gov/Requests/2020/Election%20Protest%20Procedures%20Guide.pdf.

Judge Griffin's protests, consisting of deficient legal theories and irrelevant evidence, fail to meet either burden. He has never been entitled to move beyond the preliminary protest stage to a hearing, and even if Judge Griffin received the hearing he asked for, none of his "evidence" could have met the high burden to show that any violation, irregularity, or misconduct cast doubt on the results of the 2024 election. N.C.G.S. § 163-182.10.

A. Judge Griffin's HAVA ID Challenge was properly rejected.

Judge Griffin's claim that more than 60,000 votes were cast in the 2024 election by voters who had not provided social security or driver's license information has been proven baseless. It is not only unsupported by his data, it is contradicted both by the State Board's audit and the sworn statements of eligible voters who followed every rule and obeyed every instruction. And irrespective of any clerical or data entries that might have occurred in some of these voters' registrations, Judge Griffin has not proven or even alleged that any were ineligible to vote under North Carolina law. Judge Griffin has thus failed to meet his burden to show that a legal violation or other misconduct casts doubt on the results of the Supreme Court election. *See also* N.C.G.S. §

163-90.1(b) (In the absence of affirmative proof, "the presumption shall be that the voter is properly registered or affiliated").

To start, Judge Griffin flips the law on its head. State law is clear that, even where a registrant's provided driver's license or social security number does not "result in a match" through the Board's computer validation process, that "shall not prevent" that individual's vote from being counted if they "submit with the[ir] ballot" another form of identification. *Id.* § 163-166.12(d). Even if Judge Griffin's baseless allegation that over 60,000 voters failed to provide either number on their registration forms were true, he has provided no evidence to show that they failed to provide another form of ID as contemplated by N.C.G.S. § 163-166.12. Indeed, the classes of voters Judge Griffin challenges—early and vote-by-mail—would have almost certainly provided such identification under the state's photo identification laws. *See id.* § 163-166.16 (in-person); *id.* § 163-230.1(a)(4), (b)(4), (e1)(3), (f1) (mail). This includes Voter Intervenors—all three of whom presented their driver's licenses when they voted in the 2024 election. *See* Webster-Durham Decl. ¶ 7; Smith Decl. ¶ 6; Anderson Decl. ¶ 6.

Short on evidence, Judge Griffin is left to argue that Section 163-166.12's alternative photo identification path does not apply here because, according to its "plain language," that section of the statute "applies only to those voters who have registered by mail." Br. of Pet'r-Appellant at 41, No. 25-181 (N.C. Ct.

App. Feb. 24, 2025) (hereinafter "Griffin Pet. Opening Br."). That is dead wrong. The provision expressly applies "[r]egardless of whether an individual has registered by mail or by another method." N.C.G.S. § 163-166.12(d). Judge Griffin's contrary argument ignores this exceedingly clear text in reliance on the title of the section alone. But a "title will not, of course, 'override the plain words' of a statute." *Dubin v. United States*, 599 U.S. 110, 121 (2023) (quoting *Fulton v. Philadelphia*, 141 S. Ct. 1868, 1879 (2021)). That principle is a longstanding rule of statutory construction in this state. *See Dunn v. Dunn*, 199 N.C. 535, 155 S.E. 165, 166 (1930) (explaining that "the caption [of a statutory section] will not be permitted to control when the meaning of the text is clear"); *see also In re Chisholm's Will*, 176 N.C. 211, 96 S.E. 1031, 1031 (1918) (collecting authority); *State v. Fowler*, 197 N.C. App. 1, 21, 676 S.E.2d 523, 532 (2009) (similar).

Judge Griffin has not even shown that any of the challenged 60,000 voters failed to provide their social security or driver's license numbers on their registration forms in the first place. His *only* evidence is a state database of voter registration files that do not contain within them certain voters' social security or driver's license numbers. *See* Griffin Pet. Opening Br. at 9. Based only on the lack of those numbers in one particular file, Judge Griffin claims that all 60,000 voters failed to provide these numbers, and are thus not "lawfully registered to vote" *Id*.

Judge Griffin's assumptions fail on every level. That these numbers are not listed in voter files maintained by the Board (a centralized state agency) does not mean they were never provided. It does not even mean the numbers are missing from the files maintained by *county boards*. In fact, many voters challenged by Judge Griffin have since demonstrated that they *did* provide one of those numbers when they registered to vote. Take the case of Spring Dawson-McClure, whose vote is being challenged by Judge Griffin. Ms. Dawson-McClure has been a registered voter since 1994 and is a dedicated get-out-the-vote volunteer. *See* ECF No. 41-1 at 44, *Griffin I* (E.D.N.C. Jan. 1, 2025).[7] Since registering to vote in 1994, she has regularly voted in North Carolina elections. *Id.* After Ms. Dawson-McClure learned that her name was on Judge Griffin's list of challenged voters and that her vote was at risk of being discarded, she contacted her local election officials, who provided her

[7] Letters and registration forms were attached to an amicus brief filed by the League of Women Voters in the removed federal actions. *See* ECF No. 41-1 at 42, *Griffin I* (E.D.N.C. Jan. 1, 2025) (letters); *Griffin I*, No. 25-1018 (4th Cir. Jan. 17, 2025), Dkt. 79 (letters and registration forms). Amici requested the courts take "judicial notice" of letters to the Board ahead of the hearing for Griffin's protests. These letters were before the Board and the accuracy of the letters is not reasonably subject to dispute. *See* N.C. R. Evid. 201. The letters were accepted by the district court. ECF No. 50 at 6, *Griffin I*.

Separately, before the Fourth Circuit denied the League of Women Voters' motion to file an amicus brief as moot, amici requested the Fourth Circuit take "judicial notice" of both the letters and the registration forms, as both are "public records" and their accuracy were not subject to dispute. *See* Dkt. 79 at 4, *Griffin I*, No. 25-1018.

with a copy of her voter registration form confirming that she did in fact provide her social security number when she registered to vote. *See* Dkt. 79 at 13, *Griffin I*, No. 25-1018 (4th Cir. Jan. 17, 2025). Judge Griffin nonetheless now demands that her vote be erased, notwithstanding her complete compliance with North Carolina's registration rules, as even Judge Griffin views them.

Ms. Dawson-McClure's experience is hardly unique—many of the voters Judge Griffin seeks to disenfranchise have come forward to affirm their compliance with North Carolina's registration requirements. For example, Susan Copland Arnold Rudolph, a 57-year-old public education worker and resident of Buncombe County, has been a registered North Carolina voter since 1988. *See* ECF No. 41-1 at 34, *Griffin I* (E.D.N.C. Jan. 1, 2025). Despite "not having potable water or wifi or electricity when voting started," Ms. Rudolph and her community "voted in record numbers" in the 2024 election. *See id.* at 34–35. After she learned she was on Judge Griffin's challenge list, she contacted her county board of elections, which provided her with a copy of her registration form showing that she did provide her social security number. *See* Dkt. 79 at 4–5, 18, *Griffin I* (4th Cir. Jan. 17, 2025). Nonetheless, Judge Griffin demands that Ms. Rudolph's vote—which is indisputably both legal and valid—be tossed aside.

Other challenged voters have come forward with stories strikingly similar to those of Ms. Rudolph and Ms. Dawson-McClure. *See, e.g.*, Impacted Voters Amicus. The trial court received and accepted sworn testimony to this effect from challenged voters (1) Ralim Allston, (2) Cindy Oates Anthony, (3) Rachel Suzanne Arnold, (4) Louanne Flanagan Caspar, (5) Alexia Chavis, (6) Benito Del Pliego, (7) Sofia Dib-Gomez, (8) Mary Kay Heling, (9) Wesley Hogan-Philipsen, (10) Elizabeth Hunter Kesling, (11) Kevin Hunter Kesling, (12) Lesley-Anne Leonard, (13) Gaynelle Little, (14) Audrey Meigs, (15) Dirk Philipsen, (16) Larry Repanes, (17) Anna Louise Richards, (18) Alexa Adamo Valverde, and (19) Diane Wynne.[8] Despite these voters having provided either their social security or driver's license numbers on their registration forms—many of whom have since received confirmation from their local election officials of having done so—Judge Griffin demands every one of their votes be tossed out.

These are just a handful of individuals that Voter Intervenors and amici curiae have been able to uncover in their expedited investigations; there are sure to be thousands more. Indeed, the State Board found the same during its audit. According to sworn testimony from the State Board's general counsel,

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[8] *See* Impacted Voters Amicus Ex. 1 ¶ 10, Ex. 2 ¶ 9, Ex. 6 ¶¶ 9–10, Ex. 7¶ 9, Ex. 8 ¶ 9, Ex. 9 ¶ 9, Ex. 10 ¶ 11, Ex. 11 ¶ 10, Ex. 12 ¶ 11, Ex. 13 ¶ 12, Ex. 14 ¶ 10, Ex 15 ¶ 9, Ex. 17 ¶ 9, Ex. 19 ¶ 6, Ex. 20 ¶ 10, Ex. 21 ¶ 10, Ex. 25 ¶ 10, Ex. 25 ¶ 6.

Paul Cox, Judge's Griffin's assertion that over 60,000 election voters failed to provide driver's license or social security numbers was based on a litany of "incorrect assumptions." *See* Doc.Ex.II 225–26 ¶¶ 6–7. Additional forensic investigation showed that at least 28,803 of the voters challenged by Judge Griffin *did* provide those numbers. Doc.Ex.II 227 ¶ 10. Although their driver's license and social security numbers were erroneously removed from the particular list relied upon by Judge Griffin, they were archived elsewhere in the State Board's database. *See* Doc.Ex.II 226–27 ¶ 9. As Mr. Cox explained, those errors occurred for a number of reasons, including where harmless discrepancies prevented "an exact match" between, for example, a voter's last name and the name on file with a different government agency. *See* Doc.Ex.II 227 ¶ 9.

Mr. Cox's findings are corroborated by voters' sworn testimony submitted to the trial court. J. Benito Del Pliego, for example, explained that when she reached out to her local election officials after discovering that Judge Griffin was challenging her vote, she was told her record lacked a social security number because of a "difficulty with reconciling" her last name in her voter registration with the one in her social security file. The reason? Her "last name has two words." *See* Impacted Voters Amicus, Ex. 8 ¶ 9. Likewise, challenged voter Larry Repanes learned from his local election officials that his voter record was likely missing his social security number because his name

was listed as "Lawrence" in the social security records, but his voter registration listed it as "Larry." *Id.* Ex. 20 ¶ 12. If Judge Griffin had his way, both of these qualified voters would be disenfranchised.

That the State Board discovered 28,803 challenged voters who *definitely* provided these numbers does not mean that the remaining challenged voters failed to do the same. To the contrary, the Board's investigation found numerous other common errors which led to similar data issues for these remaining voters. *See* Doc.Ex.II 229–30 ¶ 14 (listing numerous computer, "county worker," and "system" errors leading to "erroneous" data listings in these individuals' voter files). As Mr. Cox explained, an investigation into all the remaining voter registrations would "require individualized, one-by-one, manual review of records by the county boards" to determine if these remaining voters fell into one of the discovered categories of errors, "or possibly others." Doc.Ex.II 229–31 ¶¶ 14–15; *see also* Voter Challenge Procedures Guide at 6, N.C. State Bd. of Elections (last updated Dec. 18, 2023), https://s3.amazonaws.com/dl.ncsbe.gov/Legal/Voter%20Challenge%20Guide.pdf ("[I]nformation pulled from a public website or database that conveys no information specific to the circumstances of the voter" does not qualify as individualized evidence and cannot be grounds for a voter challenge). Absent such evidence of ineligibility, there is no authority that allows this Court to throw out the votes of tens of thousands of law-abiding North Carolina voters.

And it is *Judge Griffin's* burden—which he has failed to meet—not the Board's, to bring forth "substantial evidence" that these remaining voters were ineligible. N.C.G.S. § 163-182.10(d)(2); *accord Woodall*, 97 S.E. at 232-33 (emphasizing that the burden rests on a challenger to set aside the result of an election or to disqualify a voter).

Finally, Judge Griffin's challenges fail to allege, let alone prove, that any of the voters on his challenge list are actually ineligible to vote. Judge Griffin has never even suggested that the challenged voters were ineligible to vote under North Carolina's constitution or statutory requirements. *See* N.C.G.S. § 163-55 (statutory qualifications); N.C. Const. art. VI, § 2 (constitutional qualifications). The Board's mere possession of paperwork containing clerical errors or omissions is not evidence of an ineligible voter. As the challenged voters' stories and Board audit illustrate, there are mundane and innocent explanations for the data anomalies Judge Griffin rests his entire case on. But he has not shown that any vote was cast by an ineligible voter, and he is thus not entitled to any relief.

B. Judge Griffin's UOCAVA ID challenge was properly rejected.

As the State Board unanimously found, Judge Griffin's UOCAVA ID Challenge fails because it is premised on a legitimately enacted and enforceable regulation that exempts military and overseas voters from having

to provide identification when they return their ballot. *See supra* Background § III.

Beyond that, Judge Griffin's challenge fails because it is similarly unsupported by evidence that *any* of the targeted voters were ineligible to vote in the 2024 election. The only reason Judge Griffin challenges these voters' ballots is because they *followed* applicable state regulations exempting military and overseas voters from being "required to submit a photocopy of acceptable photo identification" when submitting their ballots. 8 N.C. Admin. Code 17.0109(d). And over a century of the state's precedent confirms that voters are entitled to rely on the voting instructions they receive from state officials and cannot "be denied the right to vote by reason of ignorance, negligence or misconduct of the election officials." *Overton v. Mayor of Hendersonville*, 253 N.C. 306, 315, 116 S.E.2d 808, 815 (1960); *see also Woodall v. W. Wake Highway Comm'n*, 176 N.C. at 377, 97 S.E. at 232 ("It cannot be successfully contended that it is the duty of the voter to see that he is duly sworn, and that other directory requirements are properly observed.").

To carry the heavy evidentiary burden required to disqualify votes after they have been cast and counted, Judge Griffin had to provide sufficient proof to establish "probable cause" that "a violation of election law or irregularity or misconduct has occurred." N.C.G.S. § 163-182.10(a)(1). Judge Griffin has failed to do so. He does not argue that the voters subject to his UOCAVA ID challenge

violated the election law at the time the election took place or engaged in any misconduct when voting. He also does not claim that any one of them was ineligible to vote under the state's election laws. Instead, he argues the exact opposite—that despite these voters being qualified and eligible to vote, they should have their votes thrown out *because* they followed all of the existing voting rules.

Take, for example, Phoebe Zerwick, a 64-year-old resident of Winston Salem, North Carolina. Impacted Voters Amicus, Ex. 26 ¶¶ 3–4. Ms. Zerwick meets all of the qualifications for eligibility to register and vote in North Carolina and has been registered to vote in Forsyth County for nearly forty years. *Id.* ¶¶ 5–6. She voted in the 2024 general election by overseas ballot because she was teaching in Venice, Italy, though a Wake Forest University study abroad program. *Id.* ¶ 8. Ms. Zerwick did not include a copy of her photo ID with her ballot because it was not required under the instructions she was provided to submit her overseas ballot. *Id.* ¶ 10. Ms. Zerwick has a North Carolina driver's license and a passport and could have easily provided a copy of either when she returned her absentee ballot, but she was never asked or given an opportunity to do so. *Id.* ¶¶ 10–11.

Similarly, Sophia "Felix" Angelita Soto is an 18-year-old resident of Oak Ridge, North Carolina. Impacted Voters Amicus, Ex. 23 ¶¶ 2–3. He meets all the qualifications for eligibility to register and vote in North Carolina and

voted for the first time in the 2024 elections. *Id.* ¶¶ 5, 7. Mr. Soto cast an overseas ballot in the 2024 general election because he was working at an animal veterinary practice in Costa Rica during the fall semester through a gap year program before starting college at UNC Chapel Hill. *Id.* ¶ 2, 8-9. Mr. Soto has a passport and *tried* to provide a copy of it with his absentee ballot, but he was explicitly told by the Guilford County Board of Elections that he did not need to. *Id.* ¶¶ 9–10. Adopting Judge Griffin's theory that these voters who *followed* the law when voting should nevertheless have their votes discarded would not only run contrary to established state regulations—it would violate well-established equitable principles that voters should not be unfairly disenfranchised when those voters did everything in their power to vote according to the state's requirements. *See Overton*, 253 N.C. at 315, 116 S.E.2d at 815.

As Ms. Zerwick and Mr. Soto's stories show, many if not all of the military and overseas voters Judge Griffin challenges are qualified North Carolina voters who followed all the rules presented to them when they voted. Judge Griffin did not and cannot establish probable cause that these voters violated any election law or engaged in any irregularity or misconduct that would justify disenfranchising them. Without more, Judge Griffin's post-hoc attempt to throw out legally cast ballots must be rejected.

C. Judge Griffin's Overseas Voter Challenge was properly rejected.

The same arguments about retroactive changes to election rules apply with equal force to the voters subject to Judge Griffin's Overseas Voter Challenge—Americans living abroad, including the children of military servicemembers, who the North Carolina Legislature has long chosen to enfranchise based on their familial connection with the State. *See* N.C.G.S. § 163-258.5. The Legislature enacted this law more than a decade ago without a *single* opposing vote, and it has applied without dispute or incident in dozens of ensuing elections. Any constitutional challenge to this longstanding law meant to benefit the children of servicemembers may only be made *prospectively*—not as a gambit to change election outcomes after-the-fact. *See Overton*, 253 N.C. at 315. Such retroactive relief would pull the rug out from under military voters and their families, who organizations like VoteVets often engage with to enfranchise under laws like UMOVA. *See* Mot. Intervene Ex. E, Declaration of Peter Mellman ¶¶ 10–14.[9]

IV. Voter Intervenors reserve their right to return to federal court to litigate federal issues.

As explained in their separately filed Notice of *England* Reservation, Voter Intervenors reserve the disposition of this entire case by the state courts

[9] Intervenors further join and incorporate here the additional arguments made by the State Board and Justice Riggs's as to the constitutionality of UMOVA.

of North Carolina pursuant to *England*, 375 U.S. at 411. Should the state courts of North Carolina hold against Voter Intervenors on questions of state law, Voter Intervenors intend to return to the federal district court for resolution of their federal contentions. *See id.* at 422 (a party "may 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").

There is no question that the Voter Intervenors (and other Defendants) have the right to have their federal issues resolved in a federal forum. After the district court's remand of this action to Wake County Superior Court, the U.S. Court of Appeals for the Fourth Circuit instructed the district court "to modify its order to expressly retain jurisdiction of the federal issues identified in the Board's notice of removal should those issues remain after the resolution of the state court proceedings, including any appeals." Ex. F, Opinion, *Griffin II* (4th Cir. Feb. 4, 2025), Dkt. 33 ("Opinion") (citing *England*, 375 U.S. at 411). The Fourth Circuit issued its mandate on 14 February, 2025 and the district court modified its order accordingly on 27 February. Order, *Griffin II* (E.D.N.C. Feb. 26, 2025), ECF No. 35. Under the Fourth Circuit's mandate and the district court's modified remand order, Voter Intervenors have "the right to return to the [U.S.] District Court, after obtaining the authoritative state court

construction for which the court abstained, for a final determination of [their federal] claim[s]." *England*, 375 U.S. at 417 (quoting *NAACP v. Button*, 371 U.S. 415, 427 (1963)). This right is ironclad: upon making their *England* reservation, Intervenors' "right to return [to federal court] will in all events be preserved." *Id.* at 421–22 (further holding that, upon making a reservation, a "party may readily forestall any conclusion that he has elected not to return to the District Court").

While this procedure "does not mean that a party must litigate his federal claims in the state courts," those parties invoking it "must inform those courts what his federal claims are, so that the state statute may be construed 'in light of' those claims." *Id.* at 420.

Voter Intervenors' federal contentions include those identified in the Fourth Circuit's opinion: that granting Judge Griffin the relief he seeks would "violate federal civil rights law, including the Help America Vote Act, 52 U.S.C. § 20901, *et seq.*; the National Voter Registration Act, 52 U.S.C. § 20501, *et seq.*; the Voting Rights Act, codified in relevant part at 52 U.S.C. § 10307; the Civil Rights Act, codified in relevant part at 52 U.S.C. § 10101, the Uniformed and Overseas Citizens Absentee Voting Act, codified in relevant part at 52 U.S.C. § 20302; and the Fourteenth Amendment to the United States Constitution." Opinion at 9. Voter Intervenors also include a brief resuscitation of these arguments in their jointly filed reservation pursuant to *England*, 375 U.S. at

417. Intervenors also join by reference the portions of the Board's and Justice Riggs' briefs—both before this Court and the Superior Court, *see* Doc.Ex.II at 46–76; 156–223; 280–350—describing these federal claims to the North Carolina Court of Appeals. Proposed Intervenors take these actions for the limited purpose of complying with *Government & Civic Employees Organizing Committee, C.I.O. v. Windsor*, 353 U.S. 364 (1957). *See* N.C. R. App. P. 28(f).

Finally, this Court should dismiss out of hand Judge Griffin's suggestion that the Appellees have somehow forfeited their right to a federal forum for their federal issues. The parties engaged in emergency and expedited briefing to the U.S. Court of Appeals for the Fourth Circuit on this precise issue, and that Court promptly ordered that federal jurisdiction be retained over the federal issues in this dispute. *See* Opinion at 11. His paper-thin arguments—each readily dispatched—cannot simply erase the clear import of that order.

First, he claims that a case must begin in a federal court for *England* to apply. That is nonsense—*England* itself rejects that argument out of hand:

> The reservation may be made by any party to the litigation. Usually the plaintiff will have made the original choice to litigate in the federal court, but the defendant also, by virtue of the removal jurisdiction, 28 U.S.C. s 1441(b), has a right to litigate the federal question there. Once issue has been joined in the federal court, no party is entitled to insist, over another's objection, upon a binding state court determination of the federal question.

England, 375 U.S. at 422 n.13.

Second, Griffin claims Appellees waived any *England* reservation by raising federal issues in state court *before* the Fourth Circuit instructed the district court to modify its remand order and to retain federal jurisdiction. In other words, Judge Griffin fancifully suggests Appellees had the duty to *prophesize* how the Fourth Circuit would rule—at the risk of forfeiting their federal arguments in state court if the Fourth Circuit ruled unfavorably. In reality, each Appellee promptly filed their reservation notice *after* the Fourth Circuit's ruling.

Third, Judge Griffin notes that—at the time he filed his opening brief here—the district court had not yet acted upon the Fourth Circuit's mandate. But it now has, making clear that it "expressly retain[s] jurisdiction of the federal issues" in this case. *See* ECF No. 35 at 1, *Griffin II*.

Fourth, according to Judge Griffin, Appellees were obliged to ask the North Carolina courts to transfer this case back to federal court in order to preserve access to that forum. But the plain text of the Fourth Circuit's mandate, and the district court's modified remand order, make clear that is simply not so. There remains a live dispute between the parties in federal court. If necessary, and upon completion of these antecedent state court proceedings, Appellees may return to that federal action to litigate their federal claims. *See* Opinion at 11. *Lastly*, Judge Griffin insists the Fourth Circuit restricted its order to preserving federal jurisdiction over affirmative

federal "claims," rather than federal defenses or other issues. Even a cursory review of the Fourth Circuit's order reveals that is not so, regardless of Judge Griffin's cherry-picking. In no uncertain terms, the Fourth Circuit held that Appellees could (if necessary) return to federal court for resolution "of the federal *issues* identified in the Board's notice of removal." *Id.*; *see also id.* (recognizing the "federal constitutional and other federal issues" raised by Appellees). The Board's comprehensive recitation of these "*issues*" was in no way limited to affirmative claims. The Fourth Circuit's order is entirely consistent with its own precedent, which makes clear that *Pullman* abstention applies to "federal constitutional issue[s]" and not merely claims. *Wise v. Circosta*, 978 F.3d 93, 101 (4th Cir. 2020) (en banc).

CONCLUSION

For the reasons stated above, the Court of Appeals should affirm the Wake County Superior Court's rejection of Judge Griffin's election protests.

Respectfully submitted, this 27th day of February, 2025.

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