

NORTH CAROLINA COURT OF APPEALS

JEFFERSON GRIFFIN,

Petitioner-Appellant,

v.

NORTH CAROLINA STATE BOARD
OF ELECTIONS,

Respondent-Appellee,

and

ALLISON RIGGS,

Intervenor-Respondent-
Appellee.

From Wake County

No. 24CV040619-910

No. 24CV040620-910

No. 24CV040622-910

**UNOPPOSED MOTION TO INTERVENE BY NORTH CAROLINA
ALLIANCE FOR RETIRED AMERICANS, VOTEVETS ACTION FUND,
JUANITA ANDERSON, SARAH SMITH, AND TANYA WEBSTER-
DURHAM**

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

The North Carolina Alliance for Retired Americans (“Alliance”), VoteVets Action Fund (“VoteVets”), Juanita Anderson, Sarah Smith, and Tanya Webster-Durham (collectively, “Proposed Voter Intervenors”) respectfully move to intervene as Respondent-Appellees in this appeal. The existing parties—the State Board, Justice Riggs, and Judge Griffin—do not

oppose this motion. In support of the motion, Proposed Voter Intervenors state as follows:

1. Proposed Voter Intervenors are already parties to the federal court proceedings of this case. *See* Order, *Griffin v. N.C. State Bd. of Elections*, No. 25-1020 (4th Cir. Feb. 4, 2025), Dkt. No. 31 (granting unopposed motion to intervene); *see also* Text Order, *Griffin v. N.C. State Bd. of Elections*, No. 5:24-cv-724-M (E.D.N.C. Dec. 20, 2024) (“*Griffin I*”) (granting opposed motion to intervene in related federal case). However, for reasons related to the procedural posture of this case, Proposed Voter Intervenors were granted intervention *after* the district court initially remanded this case to the Wake County Superior Court and briefing in that court had been completed. *See* Order, *Griffin v. N.C. State Bd. of Elections*, No. 5:24-cv-731-M (E.D.N.C. Jan. 7, 2025), ECF No. 24 (“*Griffin II*”) (remanding case sua sponte based on order entered in *Griffin I*).

2. Proposed Voter Intervenors seek to formally intervene in these proceedings because they concern the same dispute at issue in the parallel federal litigation in which they are already parties—Judge Jefferson Griffin’s election protests and his challenge to the ballots of thousands of voters, including Proposed Voter Intervenors. Their participation here, which no party opposes, is warranted because the parallel federal and state court proceedings are inextricably linked. Indeed, subject to a mandate from the U.S. Court of

Appeals for the Fourth Circuit, the district court has “expressly retain[ed] jurisdiction of the federal issues” involved, “should those issues remain after the resolution of the state court proceedings, including any appeals.” *Griffin II*, ECF No. 33 (quotation omitted).

3. Proposed Voter Intervenorors have also participated in every other iteration of litigation involving Judge Griffin’s protests. Proposed Voter Intervenorors were first granted intervention by the federal district court on 26 December 2024, in the action removing Judge Griffin’s petition for writ of prohibition to federal court. *See* Text Order, *Griffin I* (E.D.N.C. Dec. 26, 2024). Proposed Voter Intervenorors participated in that case through the appeal of the district court’s remand order, including at oral argument. That appeal was ultimately consolidated with an appeal of the federal analog to this case, where Proposed Voter Intervenorors were once more granted intervention. *See Griffin II*, Dkt. 32. Because they were granted intervention in *Griffin I* prior to remand, they also participated as parties in subsequent proceedings before the Supreme Court of North Carolina regarding Judge Griffin’s petition for writ of prohibition. *See* Brief of Intervenor-Respondents, *Griffin v. North Carolina Board of Elections, et al.*, No. 320P24 (N.C. Jan. 21, 2025).

4. Given the inherent intersection between the federal and state court proceedings on Judge Griffin’s election protests, and the further likelihood that the federal and state proceedings may ultimately share a

common disposition, Proposed Voter Intervenors' intervention in the instant case will aid the Court's ultimate resolution of the issues by ensuring commonality of the parties across all proceedings.

5. Counsel for Proposed Voter Intervenors consulted with counsel for the other parties. The State Board and Justice Riggs consent to this motion. Judge Griffin takes no position on this motion.

6. Apart from these strong procedural reasons for granting intervention, Proposed Voter Intervenors also satisfy the standard for intervention as a matter of right under Rule 24(a), or alternatively, permissive intervention under Rule 24(b). *See* N.C.G.S. § 1A-1, Rule 24.

7. Rule 24(a) permits timely intervention "where (1) the movant has an interest relating to the property or transaction; (2) denying intervention would result in a practical impairment of the protection of that interest; and (3) there is inadequate representation of that interest by existing parties." *Alford v. Davis*, 131 N.C. App. 214, 218, 505 S.E.2d 917, 920 (1998) (citing N.C.G.S. § 1A-1, Rule 24(a)(2)).

8. North Carolina's Rule 24 "is virtually identical to Rule 24 of the Federal Rules of Civil Procedure," and North Carolina courts "look to the federal court decisions for guidance." *Nicholson v. F. Hoffmann Laroche, Ltd.*, 156 N.C. App. 206, 208, 576 S.E.2d 363, 365 (2003) (quotations omitted). The Fourth Circuit has stated that "liberal intervention is desirable to dispose of

as much of a controversy ‘involving as many apparently concerned persons as is compatible with efficiency and due process.’” *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). Proposed Voter Intervenors readily satisfy each element of this liberal standard.

9. First, the motion is timely. Timeliness under Rule 24 is not governed by a precise deadline but is instead “determined by the court in the exercise of its sound discretion” based on “all the circumstances” of the action. *NAACP v. New York*, 413 U.S. 345, 366 (1973). The Fourth Circuit granted Proposed Voter Intervenors’ motion to intervene in this case on 4 February 2025. Order, *Griffin II*, No. 25-1020, Dkt. 31. The same day, the Fourth Circuit stayed the federal case, affirmed the district court’s remand order in part, and clarified that the federal district court must retain jurisdiction over the federal issues in this case while the state courts address the relevant state law issues. Order, *id.*, Dkt. 33 (per curiam). These orders were issued after all briefing on Judge Griffin’s protests had been completed in Wake County Superior Court. Out of respect for the Superior Court’s established deadlines and to avoid derailing the fast-moving proceedings in that court, Proposed Voter Intervenors did not move to intervene at that time. Given that the forum issues have now been resolved by the U.S. Court of Appeals, Proposed Voter

Intervenors can participate in these state court proceedings without disturbing the Court's schedule.

10. Second, Proposed Voter Intervenors have an interest that is of “such direct and immediate character that [they] will either gain or lose by the direct operation and effect of the judgment.” *Wichnoski v. Piedmont Fire Prot. Sys., LLC*, 251 N.C. App. 385, 394, 796 S.E.2d 29, 36 (2016) (quotation omitted). For Ms. Webster-Durham, Ms. Smith, and Ms. Anderson, the resolution of this case will determine whether their votes in the 2024 election for North Carolina Supreme Court Associate Justice are counted. Ex. B, Declaration of Sarah Smith; Ex. C, Declaration of Juanita Anderson; Ex. D, Declaration of Tanya Webster-Durham. The disposition of this case will also determine whether dozens of members of the Alliance, as well as VoteVets' constituents—overseas military voters and their families—will have their votes counted. Ex. A, Declaration of William Dworkin; Ex. E, Declaration of Peter Mellman. The right to vote and have that vote counted is unquestionably a significantly protectable interest that satisfies Rule 24(a). *See, e.g., Bellitto v. Snipes*, No. 16-cv-61474-BLOOM/Valle, 2016 WL 5118568, at *2 (S.D. Fla. Sept. 21, 2016) (granting labor union intervention as of right in suit seeking court-ordered “voter list maintenance”); *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 434–35 (5th Cir. 2011) (reversing denial of intervention and holding that seeking to protect right to vote was “a

sufficient interest to satisfy Rule 24(a)(2)"). Proposed Voter Intervenor have a further interest in participating in this case because it involves the same subject matter as that of the parallel federal court proceedings to which they are a party. Proposed Voter Intervenor thus "stand to gain or lose by the direct legal operation" of this Court's disposition of Judge Griffin's protests. *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991).

11. Third, there can be little dispute that resolution of this case will impair Proposed Voter Intervenor's ability to protect these significant interests if the votes of Ms. Webster-Durham, Ms. Smith, Ms. Anderson, and many of the Alliance's and VoteVets' members are not ultimately counted. *Cf. League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("Courts routinely deem restrictions on fundamental voting rights irreparable injury.") (collecting cases).

12. Fourth, as the only parties directly representing impacted voters, Proposed Voter Intervenor's unique interests are not adequately represented by the existing parties. *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 195–96 (2022) (explaining how inadequate representation by existing parties "present[s] proposed intervenors with only a minimal challenge"). Whereas Proposed Voter Intervenor seek to preserve their own voting rights and to ensure their ballots are counted, the State Board's "sole litigation interests are to protect the 'public welfare' and the interests of [the] 'general citizenry.'"

Letendre v. Currituck County, No. COA 18-163, 2018 WL 4440587, at *4 (N.C. Ct. App. Sept. 18, 2018) (unpublished; attached). Accordingly, “there are many decisions it might make which would not be aligned with the interests” of Proposed Intervenor. *Id.* at *4–5. Similarly, the fact that other Appellees also oppose Judge Griffin’s requested relief does not mean they share the same objective as Proposed Voter Intervenor. Though Justice Riggs has an understandable interest in her own candidacy, Proposed Voter Intervenor has a singular focus on defending their and their members’ voting rights regardless of candidate preference and serving their specific missions.

13. Alternatively, Proposed Voter Intervenor satisfy the requirements for permissive intervention. Rule 24(b) affords permissive intervention upon timely application “[w]hen an applicant’s claim or defense and the main action have a question of law or fact in common.” N.C.G.S. § 1A-1, Rule 24(b)(2). Proposed Voter Intervenor’s defenses in this case concern common questions of law to those presented by Judge Griffin’s election protests. Their timely motion to intervene will result in no conceivable prejudice to any existing party—none of whom oppose this motion—nor will it cause delay, as Proposed Voter Intervenor agree to be bound by any case schedule set by the Court. Moreover, as shown by their participation in the related federal court proceedings, their participation here will aid the Court in prompt resolution of this appeal.

CONCLUSION

For the reasons stated above, Proposed Voter Intervenors respectfully request that this Court grant their unopposed motion to intervene.

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

PATTERSON HARKAVY LLP

Electronically Submitted

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N.C. R. App. P. 33(b) Certification: I certify that 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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Counsel for Proposed Voter Intervenors North Carolina Alliance For Retired Americans, VoteVets Action Fund, Juanita Anderson, Sarah Smith, and Tanya Webster-Durham

*Motion for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been duly served upon counsel for all parties by email at the following addresses:

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This the 27th day of February, 2025.

Electronically Submitted
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Counsel for Proposed Voter Intervenors

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Exhibit A

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

JEFFERSON GRIFFIN,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Defendant.

Case No. 5:24-cv-00731-BO

DECLARATION OF WILLIAM DWORKIN

I, William Dworkin, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over the age of 18, have personal knowledge of the facts below, and can competently testify to their truth.

2. I am the President of the North Carolina Alliance for Retired Americans (“the Alliance”), a 501(c)(4) nonprofit, social welfare organization incorporated in North Carolina. The Alliance has approximately 58,000 members across all of North Carolina’s 100 counties. The Alliance is a chartered state affiliate of the Alliance for Retired Americans, a nationwide grassroots organization with more than 4.3 million members.

3. The Alliance’s mission is to ensure social and economic justice and full civil rights for retirees. As a central part of its mission, the Alliance works to protect the rights of its members to vote and to have their votes be counted. The Alliance has strong interests in ensuring that the greatest number of our members are allowed to vote and have their votes counted, as well protecting policies that make voting safe, easy, and reliable for our members.

4. The Alliance undertakes a broad range of initiatives to enable its members to vote, including tabling at local events to register voters and get out the vote, canvassing before elections to educate voters about how and where to vote, and other voter turnout programming and communications.

5. The Alliance has also previously initiated and intervened in litigation in North Carolina to protect our members' ability to vote. *See, e.g., N.C. All. for Retired Ams. v. N.C. State Bd. of Elections*, Case No. 20-CVS-8881 (N.C. Super. Ct. Oct. 2, 2020) (Alliance challenged restrictive election procedures implemented during the COVID-19 pandemic); *see also Deas v. North Carolina State Board of Elections*, Case No. 22-CVS-11290 (Wake Cnty. Sup. Ct. Oct. 26, 2022) (granting intervention to Alliance in case involving voting rules); *In re Appeal of Declaratory Ruling from the State Board of Elections*, Case No. 22-CVS-10520 (Wake Cnty. Sup. Ct. Dec. 19, 2022) (same); *Moore v. Circosta*, No. 1:20CV911, 2020 WL 6597291, at *2 (M.D.N.C. Oct. 8, 2020) (same).

6. As the Alliance engages members and the larger community of retired North Carolinians, it answers questions regarding voting requirements and procedures. For instance, during Alliance meetings, members discuss and learn about key issues and candidate positions, as well as about when and how they can cast their ballots.

7. Among other efforts, the Alliance develops and circulates a newsletter to educate its members about important issues facing older and retired Americans, including the voting process. The Alliance regularly communicates with its members to keep them aware of issues that could impact them, their rights, and their quality of life.

8. Alliance members tend to be civically engaged and therefore tend to vote at higher rates than the general public. Because we are an organization of retirees, Alliance members are

generally older individuals, and to my knowledge, the average age is between 60 and 70 years of age. Accordingly, many Alliance members have been registered to vote for decades, including prior to the enactment of federal and North Carolina laws requiring voters to provide a driver's license number or portion of a social security number with their registrations.

9. While the Alliance's members are civically engaged and tend to vote at high rates, they also often face challenges when voting. Due to their advanced age, our members often experience issues that come naturally with getting older, including difficulty with mobility, memory, vision, and administrative tasks. Many of our members no longer regularly leave home, and so they must plan significantly ahead for errands and other obligations, including voting.

10. Due to these limitations, Alliance members depend heavily on opportunities to vote by mail or alternatively vote early in-person at a time that is convenient for them and lets them avoid lines. Judge Griffin primarily seeks to disenfranchise mail and early voters who supposedly do not have driver's license or social security numbers in their voter registration files, meaning it directly targets voting methods preferred by Alliance members. Moreover, these challenges punish voters who have been registered to vote since before such numbers were required to register, which will also disproportionately impact Alliance members.

11. The Alliance has compared the list of voters being challenged with the Alliance's membership lists, and it appears that at least 41 Alliance members are at risk of having their ballots thrown out if the protests are successful. This is likely an underestimate considering the sweeping nature of Judge Griffin's requested relief and the Alliance's broad membership and constituency across North Carolina.

12. We reached out to the Alliance members targeted by these protests to inform them their ballots were being challenged and that they were at risk of disenfranchisement. We were

concerned that Alliance members would have difficulty responding to Judge Griffin's protests because many Alliance members have limited familiarity and fluency with new technology, including QR codes like those included on the postcards Judge Griffin sent to voters whose ballots are being challenged. Many Alliance members also do not have the mobile smartphones necessary to access QR codes and thus face a heightened risk of never learning whether their votes are being challenged, or on what basis.

13. Indeed, none of the Alliance members we contacted recalled receiving any correspondence from Judge Griffin or the North Carolina Republican Party about the protests and confirmed that, even if they had, they would not have been able to learn more information because they do not have smartphones and are unfamiliar with QR codes or how to use them. Every single one of these Alliance members we contacted is a long-time North Carolina voter who has never before faced a problem voting under their current registration.

14. I am deeply concerned that if the protests are successful, Alliance members and other non-member retirees whose interests we seek to protect will have their votes thrown out in this election and it will be harder for them to vote—and for the Alliance to help protect our members' ballots—in future elections. Moreover, if our members' votes are discarded or they are unable to vote in future elections, our mission to ensure social and economic justice and full civil rights for retirees will be frustrated.

I declare under penalty of perjury that the foregoing is true and correct.

Date: December 30, 2024

/s/ William Dworkin

William Dworkin

President

North Carolina Alliance for Retired
Americans

Exhibit B

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

JEFFERSON GRIFFIN,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Defendant.

Case No. 5:24-cv-00731-BO

DECLARATION OF SARAH SMITH

I, Sarah Smith, declare as follows:

1. I am a United States citizen and am over the age of 18. I have never been convicted of a felony.
2. I currently live in Greensboro, North Carolina, in Guilford County. I have been a resident of Guilford County since about 2008.
3. I am retired telecommunications worker and a member of the Communications Workers of America as well as the North Carolina Alliance for Retired Americans.
4. I first registered to vote in North Carolina when I turned 18 in 1963. Although I subsequently moved out of state and had to cancel my registration, I re-registered in 2009 after I moved back to North Carolina. To my knowledge, my new registration was accepted by the North Carolina State Board of Elections shortly after I submitted it.
5. Since re-registering to vote in North Carolina, I have voted in every state and federal election, including primary and general elections, and I have never been turned away from the polls or told there was an issue with my voter registration.

6. In the 2024 general election, I went to vote at my early voting location on October 28, 2024 to vote via curbside voting, presented my North Carolina driver's license, and an election worker confirmed that I was on the list of registered voters. I was then given a ballot, and I voted in all of the elections listed on my ballot, including in the election for Associate Supreme Court Justice.

7. I did not know that Judge Griffin was challenging my vote until I learned from the Alliance for Retired Americans that I was on the list of voters targeted by his protests. I do not recall ever receiving a postcard or any other correspondence from Judge Griffin or the North Carolina Republican Party with information on these protests or indicating that my ballot was being challenged.

8. I understand that the postcards Judge Griffin mailed to challenged voters included a QR code that recipients could scan to learn more about the protests. Even if I had received the postcard, I would not have been able to get more information, as I am unfamiliar with how to use QR codes and have never used one.

9. I believe voting is my civic duty. Through my vote, I have the power to shape the future for my family, for this state, and for this country. I am very concerned that my vote will not count if Judge Griffin's protests are successful, and I am also worried that it will make it harder for me to vote in future elections.

Date: December 30, 2024

/s/ Sarah Smith
Sarah Smith

Exhibit C

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

JEFFERSON GRIFFIN,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Defendant.

Case No. 5:24-cv-00731-BO

DECLARATION OF JUANITA ANDERSON

I, Juanita Anderson, declare as follows:

1. I am a United States citizen and am over the age of 18. I have never been convicted of a felony.
2. I currently live in Franklinton, North Carolina, in Franklin County. I have been a resident of Franklin County for over twenty years.
3. I am retired schoolteacher and member of the American Federation of Teachers, as well as the North Carolina Alliance for Retired Americans.
4. I last updated my registration in North Carolina in 2014. To my knowledge, my registration was accepted by the North Carolina State Board of Elections shortly after I submitted it.
5. Since registering to vote in North Carolina, I have voted in nearly every state and federal election, including primary and general elections, and I have never been turned away from the polls or told there was an issue with my voter registration.

6. I always bring my North Carolina driver's license with me when I go cast a ballot. In the 2024 general election, I went to my early voting polling location on October 31, 2024, presented my driver's license, and an election worker confirmed that I was on the list of registered voters. I was then given a ballot, and I voted in all of the elections listed on my ballot, including in the election for Associate Supreme Court Justice.

7. I did not know that Judge Griffin was challenging my vote until I learned from the Alliance for Retired Americans that I was on the list of voters targeted by his protests. I do not recall ever receiving a postcard or any other correspondence from Judge Griffin or the North Carolina Republican Party with information on these protests or indicating that my ballot was being challenged.

8. I understand that the postcards Judge Griffin mailed to challenged voters included a QR code that recipients could scan to learn more about the protests. Even if I had received the postcard, I would not have been able to get more information, as I do not have a smartphone. I am also unfamiliar with QR codes or how they work.

9. I believe voting is the most important thing I can do as a citizen and resident of North Carolina to protect civil rights, ensure fairness and equality for all, and build a better future for my family. I am very concerned that my vote will not count if Judge Griffin's protests are successful, and I am also worried that it will make it harder for me to vote in future elections.

Date: December 30, 2024

/s/ Juanita Anderson
Juanita Anderson

Exhibit D

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

JEFFERSON GRIFFIN,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Defendant.

Case No. 5:24-cv-00724-M

DECLARATION OF TANYA WEBSTER-DURHAM

I, Tanya Webster-Durham, declare as follows:

1. I am a United States citizen and am over the age of 18. I have never been convicted of a felony.
2. I currently live in Charlotte, North Carolina, in Mecklenburg County. I have been a resident of Mecklenburg County for nearly ten years.
3. I am a member of the United Steelworkers and the North Carolina Alliance for Retired Americans.
4. I first registered to vote in North Carolina in 2004 and voted in every general election until I moved out of state around 2012. I moved back to North Carolina in 2015 and re-registered at a social services office in Mecklenburg County in 2020.
5. To my knowledge, my initial registration and my new registration were both accepted by the North Carolina State Board of Elections shortly after I submitted them.

6. Since re-registering to vote in North Carolina, I have voted in every municipal, state, and federal election, including primary and general elections, and I have never been turned away from the polls or told there was an issue with my voter registration.

7. I always bring my driver's license with me when I go to cast a ballot. In the 2024 general election, I went to my early voting polling location on November 1, 2024, presented my driver's license, and an election worker confirmed that I was on the list of registered voters. I was then given a ballot, and I voted in all of the elections on my ballot, including in the election for Associate Supreme Court Justice.

8. I did not know that Judge Griffin was challenging my vote until I learned from the Alliance for Retired Americans that I was on the list of voters targeted by his protests. I do not recall ever receiving a postcard or any other correspondence from Judge Griffin or the North Carolina Republican Party with information on these protests or indicating that my ballot was being challenged.

9. I understand that the postcards Judge Griffin mailed to challenged voters included a QR code that recipients could scan to learn more about the protests. Even if I had received the postcard, I do not know how to use QR codes, am not generally familiar with them or how they work, and have never used one before.

10. As a United States citizen and resident of North Carolina, I believe it is my civic duty to exercise my right to vote in every election. My vote is my voice and allows me to ensure a better future for my family and loved ones. I am very concerned that my vote will not count if Judge Griffin's protests are successful, and I am also worried that it will make it harder for me to vote in future elections.

Date: 12/20/2024



Tanya Webster-Durham

Exhibit E

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

JEFFERSON GRIFFIN,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Defendant.

Case No. 5:24-cv-00724-M

DECLARATION OF PETER MELLMAN

I, Peter Mellman, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over the age of 18, have personal knowledge of the facts below, and can competently testify to their truth.
2. My name is Peter Mellman, and I am the Chief Financial Officer (“CFO”) at VoteVets Action Fund (“VoteVets”) where I have worked for over 18 years.
3. VoteVets is a national non-profit organization dedicated to elevating the voices of veterans and their families on issues that affect the lives of those who serve and have served in the Armed Forces, including on issues like veterans’ care. VoteVets was founded in 2006 and is organized under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, to advocate for issues that impact troops, veterans, and their families.
4. As CFO, my responsibilities include managing personnel as well as the budget and expenditures of programs that are dedicated to serving over 1.5 million subscribers across the country, including thousands in North Carolina, composed mainly of active-duty military members, veterans, and their families. These individuals have taken affirmative steps to become a recipient of communications from us.

5. In addition to its affirmative subscribers, VoteVets is dedicated to serving all active servicemembers, including those who are deployed, and veterans, by providing the support, training, and tools they need to face issues at home, such as utilizing their voting rights and combating disinformation, as well as challenges in other policy areas like health care, jobs, and more.

6. Increasing voter turnout among military personnel, veterans, and their families, especially those who are overseas, is critical to VoteVets' mission, as we believe that turning out these groups of voters will benefit all Americans by engaging people who have served their country in the civic process.

7. To advance this goal, VoteVets dedicates significant resources, such as money, personnel time, and volunteer efforts, to ensure that their constituents—military and veteran voters, as well as their families—can participate in the franchise.

8. VoteVets and its partners have also built a first-of-its-kind military voter file containing approximately 14 million records of veterans and military family members, including thousands of records for voters in North Carolina, to help the organization focus its mobilization, education, and turnout efforts. VoteVets relies on this voter file to contact military voters and facilitate veteran-to-veteran communications to assist with ensuring that military and veteran votes are counted.

9. Using this file, VoteVets and its partners sent over 2.5 million texts to 1.5 million military voters, including those overseas, in connection with the 2024 general election, and saw a substantial increase in turnout participation among contacted voters.

10. This outreach is critical because military voters and veterans often face challenges in exercising their right to vote. Many active-duty servicemembers and their families are deployed away from home, which makes it physically impossible for them to vote in person. As a result, these voters are reliant on laws like the Uniformed And Overseas Citizens Absentee Voting Act (“UOCAVA”) and the Uniform Military and Overseas Voters Act (“UMOVA”) to participate in the franchise through voting by mail.

11. Because the constituents and subscribers VoteVets serves are so dependent on mail voting, a large part of the organization's voter education mission and programming efforts focus on absentee voting, including by educating voters about laws like UOCAVA and UMOVA, which ensure military voters and their families can successfully cast ballots. This is true in North Carolina as well as in other states across the country.

12. To that end, VoteVets also educates military voters about the rules for properly returning their ballots so that each and every vote will get counted. This includes providing information about who may vote under laws like UOCAVA and UMOVA, as well as the requirements to cast ballots under these laws. VoteVets is unable to perform that work in a reliable manner if election rules can be challenged, disrupted, or altered *after* an election has occurred.

13. This litigation challenges thousands of ballots cast by North Carolinians, including VoteVets' constituents serving overseas who have voted under UOCAVA and UMOVA. These challenges threaten to disenfranchise VoteVets' supporters and constituents who participated in the 2024 election according to existing law with the rightful expectation that their ballots will be counted. VoteVets is extremely disturbed at the prospect that military voters and their families—who did everything right—will have their votes thrown out through no fault of their own, weeks after the election has already occurred.

14. Disenfranchising VoteVets' constituents also threatens our mission to elevate the voices of military personnel, veterans, and their families on issues that affect their lives and ensure their civic engagement.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 12/20/2024

By:  _____

Peter Mellman
Chief Financial Officer
VoteVets Action Fund

Exhibit F

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UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1018

JEFFERSON GRIFFIN,

Plaintiff - Appellee,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendant - Appellant.

NORTH CAROLINA DEMOCRATIC PARTY; BIPARTISAN FORMER MEMBERS
OF CONGRESS; NORTH CAROLINA VOTERS; LEAGUE OF WOMEN VOTERS
OF NORTH CAROLINA; HONEST ELECTIONS PROJECT,

Amici Supporting Appellant.

RESTORING INTEGRITY AND TRUST IN ELECTIONS,

Amicus Supporting Appellee.

No. 25-1019

JEFFERSON GRIFFIN,

Plaintiff - Appellee,

v.

NORTH CAROLINA ALLIANCE FOR RETIRED AMERICANS; VOTEVETS ACTION FUND; TANYA WEBSTER-DURHAM; SARAH SMITH; JUANITA ANDERSON,

Intervenors – Appellants.

NORTH CAROLINA DEMOCRATIC PARTY; BIPARTISAN FORMER MEMBERS OF CONGRESS; NORTH CAROLINA VOTERS; LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA; HONEST ELECTIONS PROJECT,

Amici Supporting Appellant.

RESTORING INTEGRITY AND TRUST IN ELECTIONS,

Amicus Supporting Appellee.

No. 25-1020

JUDGE JEFFERSON GRIFFIN,

Plaintiff - Appellee,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendant - Appellant,

ALLISON JEAN RIGGS; NORTH CAROLINA ALLIANCE FOR RETIRED AMERICANS; VOTEVETS ACTION FUND; TANYA WEBSTER-DURHAM; SARAH SMITH; JUANITA ANDERSON,

Intervenors.

No. 25-1024

JEFFERSON GRIFFIN,

Plaintiff - Appellee,

v.

ALLISON RIGGS,

Intervenor - Appellant.

Appeals from the United States District Court for the Eastern District of North Carolina, at Raleigh. Richard E. Myers, II, Chief District Judge. (5:24-cv-00724-M-RN; 5:24-cv-00731-M-RJ)

Argued: January 27, 2025

Decided: February 4, 2025

Before NIEMEYER, QUATTLEBAUM, and HEYTENS, Circuit Judges.

Affirmed in part, modified in part, and remanded with instructions by unpublished per curiam opinion.

ARGUED: Nicholas Scott Brod, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina; Samuel B. Hartzell, WOMBLE BOND DICKINSON (US) LLP, Raleigh, North Carolina; Christopher D. Dodge, ELIAS LAW GROUP LLP, Washington, D.C., for Appellants. William Thomas Thompson, LEHOTSKY KELLER COHN LLP, Austin, Texas, for Appellee. **ON BRIEF:** Raymond M. Bennett, WOMBLE BOND DICKINSON (US) LLP, Raleigh, North Carolina, for Appellant Allison Riggs. Ryan Y. Park, Solicitor General, James W. Doggett, Deputy Solicitor General, Sripriya Narasimhan, Deputy General Counsel, Trey A. Ellis, Solicitor General Fellow, Mary Carla Babb, Special Deputy Attorney General, Terence Steed, Special Deputy Attorney General, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellant North Carolina State Board of Elections. Narendra K. Ghosh, PATTERSON HARKAVY LLP, Chapel Hill, North Carolina; Lalitha D. Madduri, Tina Meng Morrison,

Julie Zuckerbrod, James J. Pinchak, ELIAS LAW GROUP LLP, Washington, D.C., for Appellants North Carolina Alliance for Retired Americans, VoteVets Action Fund, Tanya Webster-Durham, Sarah Smith, and Juanita Anderson. Mark M. Rothrock, Raleigh, North Carolina, Kyle D. Hawkins, LEHOTSKY KELLER COHN LLP, Austin, Texas, for Appellee. Shana L. Fulton, William A. Robertson, James W. Whalen, BROOKS, PIERCE, MCLENDON HUMPHREY & LEONARD, LLP, Raleigh, North Carolina; Seth P. Waxman, Daniel S. Volchok, Christopher E. Babbitt, Jane E. Kessner, Ann E. Himes, Nitisha Baronia, WILMER CUTLER PICKERING HALE AND DORR LLP, Washington, D.C., for Amicus North Carolina Democratic Party. Norman Eisen, Tianna Mays, Jon Greenbaum, Spencer Klein, STATE DEMOCRACY DEFENDERS FUND, Washington, D.C.; William C. McKinney, HAYNSWORTH SINKLER BOYD, P.A., Raleigh, North Carolina. Jessica A. Marsden, Anne Harden Tindall, Chapel Hill, North Carolina, Hayden Johnson, PROTECT DEMOCRACY PROJECT, Washington, D.C.; Stacey Leyton, Danielle Leonard, ALTSHULER BERZON LLP, San Francisco, California, for Amici North Carolina Voters and The League of Women Voters.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

These appeals involve the November 2024 general election for Seat 6 of the Supreme Court of North Carolina. The candidates in that election are Jefferson Griffin, a current judge on the North Carolina Court of Appeals, and Allison Riggs, the incumbent for Seat 6.

Griffin brought a number of challenges to the ballots cast in the election. The North Carolina State Board of Elections held a hearing on three of Griffin's challenges: (1) ballots cast by people who were not legally registered to vote because of incomplete voter registrations in violation of N.C. Gen. Stat. § 163-82.4; (2) votes cast by overseas citizens who were not North Carolina residents and did not live in the United States in violation of N.C. Gen. Stat. §§ 163-230.1, 163-231, and 163-166.16; and (3) the Board's acceptance of ballots by military and overseas citizen voters who failed to provide photo identification with their absentee ballots in violation of N.C. Gen. Stat. § 163-239. After considering these challenges, the Board dismissed Griffin's election protests on procedural grounds and on the merits. Part of the Board's denial was its determination that granting Griffin relief would violate certain federal statutes.¹

Griffin then petitioned for a writ of prohibition in the Supreme Court of North Carolina ("*Griffin I*"). In that proceeding, he sought an order prohibiting the Board from counting the votes he challenged. Griffin also sought a stay of the Board's certification of the election results for Seat 6 pending the resolution of his election challenges. Finally, in

¹ The Board initially dismissed a subset of the total challenges but dismissed the remainder of the protests in a later order.

addition to the petition filed in the Supreme Court of North Carolina, Griffin petitioned for review of the Board's dismissal of his challenges in the Superior Court of Wake County, North Carolina ("*Griffin II*").

The Board removed both cases—*Griffin I* and *Griffin II*—to the United States District Court for the Eastern District of North Carolina under 28 U.S.C. §§ 1331, 1441(a), 1443(2) and 1367(a). In *Griffin I*, Griffin moved for a preliminary injunction prohibiting the Board from certifying the election results for Seat 6. The district court ordered the Board to respond to Griffin's motion for preliminary injunction and to show cause as to why the "matter should not be remanded to the North Carolina Supreme Court for lack of subject-matter jurisdiction." J.A. 9. The district court also ordered the parties that had intervened—Riggs as well as the North Carolina Alliance for Retired Americans, VoteVets Action Fund, Tanya Webster-Durham, Sarah Smith and Juanita Anderson—to respond to the motion for preliminary injunction. After that, Griffin moved for the district court to remand *Griffin I* back to the state supreme court, claiming first that the Board's removal of the case was not proper under §§ 1441 or 1443(2) and, alternatively, that the district court should abstain under *Railroad Commission of Texas v. Pullman Company*, 312 U.S. 496 (1941).

In considering Griffin's motion for preliminary injunction, the district court held that the Board's removal under § 1443(2), the civil rights removal statute, was proper. Nevertheless, the court decided to abstain from hearing the removed case under *Burford v. Sun Oil Company*, 319 U.S. 315 (1943). As a result, it remanded the matter to the Supreme Court of North Carolina. That same day, the district court sua sponte remanded *Griffin II*

back to the Superior Court of Wake County under the same reasoning as its remand of *Griffin I*.²

That same day, the Board appealed the district court's order remanding *Griffin I* to the Supreme Court of North Carolina. We assigned that appeal Case No. 25-1018. The next day, the intervenors appealed. We assigned the appeal of the North Carolina Alliance for Retired Americans, VoteVets Action Fund, Tanya Webster-Durham, Sarah Smith and Juanita Anderson Case No. 25-1019. We assigned Riggs' appeal Case No. 25-1024. Finally, the Board appealed the district court's order remanding *Griffin II* to the Superior Court of Wake County. We assigned that appeal Case No. 25-1020.

Meanwhile, the Supreme Court of North Carolina, having received *Griffin I* back from the district court by remand, granted Griffin's motion for a temporary stay of the certification of the election results and set an expedited briefing schedule concerning the writ of prohibition.

We consolidated Case Nos. 25-1018 (L), 25-1019 and 25-1024, all of which challenged the district court's order finding removal proper under § 1443(2) and remanding to the Supreme Court of North Carolina under *Burford* abstention. After appealing, the Board moved for a stay asking us to order the district court to retrieve the action from the Supreme Court of North Carolina. With respect to these consolidated cases removed from

² For the same reason the district court remanded another related case, *Kivett v. North Carolina State Board of Elections*, No. 5:25-cv-00003-M-BM, to the Superior Court of Wake County. The Board appealed that decision to the Fourth Circuit and that appeal remains pending, Case No. 25-1021.

the Supreme Court of North Carolina, we granted Riggs' motion to expedite briefing, scheduled oral argument for January 27, 2025, and deferred action on the pending motion to stay.

Days before oral argument, Griffin notified us that the Supreme Court of North Carolina had dismissed the writ of prohibition proceeding, permitting Griffin's challenges to the Board's denial of his election protests to proceed in the Superior Court of Wake County. The Supreme Court of North Carolina also ordered that the temporary stay it previously issued should apply to the Wake County Superior Court proceedings until that court ruled on Griffin's election challenges.

After we held oral argument in Case No. 25-1018 (L),³ we granted Riggs' motion to intervene in Case No. 25-1020. We also ordered expedited briefing in that case, allowing any parties to file briefing with respect to any distinction between the two sets of appeals, No. 24-1018 (L) on the one hand and No. 25-1020 on the other.

Now, having reviewed the record and considered the positions advanced in the parties' briefs and at oral argument, we issue the following orders:

As to Case No. 24-1018 (L), the Supreme Court of North Carolina's dismissal of Griffin's petition for a writ of prohibition renders moot the appeals of the district court's order abstaining from exercising jurisdiction and remanding the case. "If an event occurs during the pendency of an appeal that makes it impossible for a court to grant effective relief to a prevailing party, then the appeal must be dismissed as moot." *Int'l Bhd. of*

³ Our reference to Case No. 25-1018 (L) includes Case Nos. 25-1019 and 25-1024.

Teamsters, Loc. Union No. 639 v. Airgas, Inc., 885 F.3d 230, 235 (4th Cir. 2018). Here, the Board asked us to reverse the district court and direct it to retrieve the case from the Supreme Court of North Carolina. Because the Supreme Court of North Carolina has dismissed the case the Board asks us to retrieve, we cannot grant the relief the Board requests. Accordingly, those appeals are dismissed as moot. And all remaining motions pending in those consolidated cases are denied as moot.

As to No. 25-1020, we affirm the district court in part and modify in part. We affirm the district court's order insofar as it found the Board had properly removed the case under § 1443(2). As the district court explained, the Board claimed that granting Griffin the relief he sought might 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. Following *Republican National Committee v. North Carolina State Board of Elections*, 120 F.4th 390, 408 (4th Cir. 2024), we see no error in the district court's decision.

Regarding the district court's order abstaining from exercising federal jurisdiction and remanding to Wake County Superior Court, we affirm but modify.⁴ While the district

⁴ “Where a district court has remanded a lawsuit to state court based on abstention principles, the remand is considered a final order appealable under 28 U.S.C. § 1291.” *Bryan v. BellSouth Commc’ns, Inc.*, 377 F.3d 424, 428 (4th Cir. 2004) (citing *Quackenbush*

court abstained under *Burford*, in our view, *Pullman* abstention is a more appropriate theory for abstaining from federal jurisdiction. *Pullman* abstention may be applied when “there is (1) an unclear issue of state law presented for decision (2) the resolution of which may moot or present in a different posture the federal constitutional issue such that the state law issue is potentially dispositive.” *Wise v. Circosta*, 978 F.3d 93, 101 (4th Cir. 2020) (en banc) (quoting *Educ. Servs., Inc. v. Md. State Bd. for Higher Educ.*, 710 F.2d 170, 174 (4th Cir. 1983) (internal quotation marks omitted)). In other words, 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. However, under *Pullman* abstention, the federal court retains jurisdiction of the federal constitutional claims while the state court issues are addressed in state court. *Meredith v. Talbot Cnty.*, 828 F.2d 228, 232 (4th Cir. 1987) (“The usual rule is to retain jurisdiction in *Pullman* situations, but to dismiss in *Burford* situations.”).

Pullman abstention is not new to this case. Griffin asked the district court to abstain under *Pullman* in his motion to remand. And the district court referenced *Pullman* abstention in its order remanding *Griffin I*. And we, of course, may affirm on any ground apparent from the record and are not limited to the grounds offered by the district court to support its decision. *L.J. v. Wilbon*, 633 F.3d 297, 310 n.9 (4th Cir. 2011).

v. Allstate Ins. Co., 517 U.S. 706, 715 (1996)). So, because the district court remanded the lawsuit to state court based on abstention principles, we have jurisdiction to consider the district court’s decision to abstain under 28 U.S.C. §§ 1291 and 1447(d).

Applying the requirements of *Pullman* abstention, the state law issues involved in the case removed from the Superior Court of Wake County are unsettled. The parties advance diametrically opposed interpretations of the North Carolina statutes that are the subject of Griffin's challenges. And neither provide authority from North Carolina appellate courts making the resolution of that conflict about those state law issues abundantly clear. What's more, the resolution of those issues of North Carolina law could avoid the need to address the federal constitutional and other federal issues the Board raised in removing the case. For example, if the Board prevails in Wake County on the state law issues, the resolution of the federal claims may not be necessary. Thus, this case satisfies the elements of *Pullman* abstention. Accordingly, we affirm the district court's decision to abstain from exercising federal jurisdiction.

However, because the district court did not retain jurisdiction of the federal issues as required by *Pullman* abstention, we remand with instructions directing 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. *See England v. Med. Exam'rs.*, 375 U.S. 411 (1964).

We deny all remaining outstanding motions as moot.

*AFFIRMED IN PART, MODIFIED IN PART,
AND REMANDED WITH INSTRUCTIONS*

Exhibit G

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261 N.C.App. 537

Unpublished Disposition

NOTE: THIS OPINION WILL NOT APPEAR
IN A PRINTED VOLUME. THE DISPOSITION
WILL APPEAR IN THE REPORTER.

An unpublished opinion of the North Carolina Court
of Appeals does not constitute controlling legal
authority. Citation is disfavored, but may be permitted
in accordance with the provisions of Rule 30(e)(3)
of the North Carolina Rules of Appellate Procedure.
Court of Appeals of North Carolina.

Elizabeth E. LETENDRE, Plaintiff,

v.

CURRITUCK COUNTY, North Carolina, Defendant.

No. COA18-163

I

Filed: September 18, 2018

Appeal by proposed intervenors from order entered 9 October
2017 by Judge Beecher R. Gray in Superior Court, Currituck
County. Heard in the Court of Appeals 22 August 2018.
Currituck County, No. 17-CVS-146

Attorneys and Law Firms

George B. Currin, Raleigh, for proposed intervenor-
appellants.

Parker Poe Adams & Bernstein LLP, Raleigh, by Jonathan E.
Hall and Michael J. Crook, for plaintiff-appellee.

The Brough Law Firm, PLLC, by G. Nicholas Herman and
Donald I. McRee, Jr., for defendant.

Opinion

STROUD, Judge.

*1 Michael and Marie Long, proposed intervenors, appeal
the trial court's order denying their motion to intervene.
Because defendant Currituck County does not adequately
represent the interests of the Longs, we reverse and remand.

I. Background

The background of this case may be found in two prior
opinions from this Court. See *Letendre v. Currituck County*,

— N.C. App. —, — S.E.2d — (May 15, 2018)
(COA17-1108) (“*Letendre I*”), *temporary stay allowed*, —
N.C. —, 814 S.E.2d 111 (2018); *Long v. Currituck*
County, — N.C. App. —, 787 S.E.2d 835, *disc. review*
dismissed, 369 N.C. 74, 793 S.E.2d 222, *stay dissolved*, *writ*
of supersedeas denied, *disc. review denied*, 369 N.C. 74,
793 S.E.2d 232 (2016). In *Long*, Michael and Marie Long
 (“Longs”), proposed intervenors herein, appealed two orders
from the trial court which upheld the Currituck County Board
of Adjustment's decision to allow plaintiff Elizabeth Letendre
to build a 15,000 square foot project comprised of three
buildings on her property adjacent to the Longs' property. See
Long, — N.C. App. at —, 787 S.E.2d at 836. The primary
question before this Court was whether Currituck County had
properly classified plaintiff's proposed project as a “Single
Family Dwelling” under the Currituck County Uniform
Development Ordinance (“UDO”); this Court determined the
project was not a Single Family Dwelling as defined by
the UDO and reversed and remanded the trial court's order,
concluding:

this project includes multiple
“buildings,” none of which are
“accessory structures;” see UDO §
10.34. Any determination that this
project fits within the definition
of Single Family Dwelling requires
disregarding the structural elements of
the definition, including the singular
“a” at the beginning of the definition
to describe “building” and allowing
multiple attached “buildings,” none of
which are accessory structures, to be
treated as a Single Family Dwelling in
clear contravention of the UDO. UDO
§ 10.51. The project does not fit within
the plain language of the definition of
Single Family Dwelling, and thus is
not appropriate in the SF District. See
UDO §§ 3.4.4; 10.51. We therefore
must reverse the Superior Court order
and remand for further proceedings
consistent with this opinion.

Id. at —, 787 S.E.2d at 841.

While the appeal was pending in *Long*, plaintiff obtained a building permit and began construction of her project. See *Letendre I*, — N.C. App. at —, — S.E.2d at —, *10 (2018). After this Court issued its opinion in *Long*, defendant Currituck County issued a Stop Work Order and Notice of Violation in compliance with this Court's opinion in *Long*. *Id.* at —, — S.E.2d at —, *1-2. On 27 March 2017, plaintiff Letendre filed this lawsuit against defendant Currituck County “seeking a declaratory judgment, preliminary injunction, permanent injunction, monetary damages, and attorney fees.” *Id.* at —, — S.E.2d at —, *2.¹ Plaintiff Letendre sought to enjoin defendant Currituck County from enforcing its UDO so that she could complete and use the project, or in the alternative, monetary damages for inverse condemnation of her property. *Id.* at —, — S.E.2d at —, *2, 56. On 25 May 2017, the Longs filed a motion to intervene in this case, plaintiff Letendre's action against defendant Currituck County, and on 18 September 2017, they filed an amended motion. On 9 October 2017, the trial court denied the motion “in its original form and as amended[.]” The Longs appeal.

II. Interlocutory Order

*2 Proposed intervenors acknowledge that their appeal is interlocutory since it is not a final judgment:

An order is either interlocutory or the final determination of the rights of the parties. An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.... As a general proposition, only final judgments, as opposed to interlocutory orders, may be appealed to the appellate courts. Appeals from interlocutory orders are only available in exceptional cases. Interlocutory orders are, however, subject to appellate review:

if (1) the order is final as to some claims or parties, and the trial court certifies pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b) that there is no just reason to delay the appeal, or (2) the order deprives the appellant of a substantial right that would be lost unless immediately reviewed.

The appealing party bears the burden of demonstrating that the order from which he or she seeks to appeal is appealable despite its interlocutory nature.

Hamilton v. Mortg. Info. Servs., Inc., 212 N.C. App. 73, 76–77, 711 S.E.2d 185, 188–89 (2011) (citations and quotation marks omitted).

The order here is not certified, so proposed intervenors “bear[] the burden of demonstrating that” “the order deprives ... [them] of a substantial right that would be lost unless immediately reviewed.” *Id.* at 77, 711 S.E.2d at 189.

The test for whether a substantial right has been affected consists of two parts: (1) the right itself must be substantial; and (2) the deprivation of that substantial right must potentially work injury to the appealing party if not corrected before appeal from final judgment. Whether a substantial right is affected is determined on a case-by-case basis and should be strictly construed.

Builders Mut. v. Meeting Street Builders, — N.C. App. —, —, 736 S.E.2d 197, 199 (2012) (citations, quotation marks, and brackets omitted).

The Longs contend they have a substantial right based upon the effects of plaintiff Letendre's project on their adjacent real property, and, if they are not allowed to intervene, the resolution of this case may cause injury to their rights as they would be unable to appeal or challenge any final order or resolution if they are not parties. The Longs allege that if plaintiff Letendre is successful in this case, “the Letendre project will cause adverse secondary effects to the Longs’ adjacent property, including but not limited to a diminution of the value of their property.” In *Long*, defendant Currituck County had approved plaintiff Letendre's project, but the Longs challenged this approval. See generally *Long*, — N.C. App. —, 787 S.E.2d 835. In the *Long* case, plaintiff Letendre and defendant Currituck County were on the same side of the case, opposed to the Longs. See generally *id.* Only after this Court's opinion in *Long* did defendant Currituck County take the same position as the Longs. See *Letendre I*, — N.C. App. at —, — S.E.2d at —, *2.

In this case, plaintiff Letendre is a private citizen contending that defendant Currituck County has violated her rights.

See *Letendre I*, — N.C. App. —, — S.E.2d —. Plaintiff Letendre is seeking not only monetary damages from defendant Currituck County, but she also seeks an injunction to prevent defendant Currituck County from enforcing *Long* and to “deem” her project to be a Single Family Dwelling so it may be constructed and occupied within the Single Family Residential Outer Banks Remote District. See generally *id.* — N.C. App. —, — S.E.2d —. The trial court essentially recognized the Longs’ substantial right, even in its order denying intervention, since the trial court determined the Longs have “a direct and immediate interest relating to the property or transaction” and “denying intervention would result in a practical impairment of the protection of that interest[.]” *Harvey Fertilizer & Gas Co. v. Pitt Cty.*, 153 N.C. App. 81, 85, 568 S.E.2d 923, 926 (2002). Because the Longs have a substantial interest in ensuring that both plaintiff Letendre and defendant Currituck County comply with *Long* and because plaintiff Letendre seeks, as a practical matter, to overturn *Long* in this case, we conclude the Longs have demonstrated a substantial right as their property “right itself ... [is] substantial; and ... the deprivation of that substantial right [would] potentially work injury to ... [them] if not corrected before appeal from final judgment.” *Builders Mut.*, — N.C. App. at —, 736 S.E.2d at 199. We will therefore consider the Longs’ appeal.

III. Motion to Intervene

*3 The Longs first contend that the trial court erred in denying their “motion to intervene as a matter of right under N.C. R. Civ. P. 24(a)[.]” (Original in all caps.)

N.C. Gen. Stat. § 1A–1, Rule 24(a) provides that a third party may intervene as a matter of right:

- (1) When a statute confers an unconditional right to intervene; or
- (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

N.C.G.S. § 1A–1, Rule 24(a) (2001). To satisfy the requirements of Rule 24(a)(2), our Supreme Court has recently stated that an intervening party must show that (1) it has a direct and immediate interest relating to the property

or transaction, (2) denying intervention would result in a practical impairment of the protection of that interest, and (3) there is inadequate representation of that interest by existing parties.

Harvey Fertilizer & Gas Co. v. Pitt Cty., 153 N.C. App. 81, 85–86, 568 S.E.2d 923, 926 (2002) (citations and quotation marks omitted). The Longs do not contend they have “an unconditional right to intervene” so they are proceeding under (a)(2). See *id.* In *Harvey*, this Court addressed prior inconsistencies with our standard of review and clarified that we review the trial court's ruling on intervention *de novo*:

[W]e believe the *de novo* standard to be the better approach. In that our appellate courts have not heretofore adopted a specific standard of review for N.C.G.S. § 1A–1, Rule 24(a)(2) decisions, we expressly adopt the *de novo* standard. Furthermore, this explicit adoption of the *de novo* standard comports with the past decisions of our State's appellate courts in reviewing N.C.G.S. § 1A–1, Rule 24(a)(2) decisions.

153 N.C. App. at 89, 568 S.E.2d at 928.

Here, the trial court's order determined the Longs met the first and second prongs of (a)(2) because they have “a direct and immediate interest relating to the property or transaction” and “denying intervention would result in a practical impairment of the protection of that interest[.]” *id.* at 85, 568 S.E.2d at 926, but concluded the Longs did not meet the third prong: “[T]he Proposed Intervenors have met the first two requirements for Intervention of Right pursuant to Rule 24(a)(2), they have failed to meet their burden of demonstrating that their interests are not adequately represented by the existing parties to this action[.]” Plaintiff Letendre argues the Longs do not have “an interest sufficient for intervention in this case” and “[t]he unsupported fear of a diminished property value is too speculative to warrant intervention[.]” but the trial court's order determined otherwise on the first two prongs of North Carolina General Statute § 1A–1, Rule 24(a)(2), and plaintiff Letendre did not cross-appeal the trial court's order. Only the Longs have appealed, so the only issue before

this Court is whether “there is inadequate representation of [the Longs’] interest by existing parties.” *Id.*

*4 Plaintiff Letendre also contends that the Longs failed to properly plead inadequately aligned interests with defendant Currituck County because they did not state in sufficient detail *why* defendant Currituck County’s interests are different from their own. We disagree, as the Longs’ motion alleged their “special damages” which included “increased noise and lighting, increased safety concerns, increased traffic and a negative impact on aesthetics.” The Longs also argued plaintiff Letendre’s proposed project would “completely block” their “view of the ocean toward the northeast.” These “special damages” enumerated are interests specific to the Longs as adjacent property owners, but not defendant Currituck County.

On appeal, the Longs contend that their interests are not adequately represented by defendant Currituck County. Plaintiff Letendre argues defendant Currituck County’s “defense of the UDO—the goal of which is to have the UDO upheld—adequately protects the Longs’ same interest, which is also to have the UDO upheld.” But the Longs and defendant Currituck County have other interests as well which are quite different. Plaintiff Letendre’s argument entirely ignores the “special damages” unique to the Longs as adjacent property owners. While both the Longs and defendant Currituck County seek to have the UDO upheld and to ensure compliance with this Court’s opinion in *Long*, defendant Currituck County concurs with the Longs and explains the difference in their positions:

[T]he County’s defenses, and its interests in upholding its ordinance, have *nothing* to do with the purely “parochial” or “personal” interests of any particular landowner—like the Longs—in the SFR District. Rather, the County’s sole litigation interests are to protect the “public welfare” and the interests of its “general citizenry” to enact reasonable zoning restrictions on behalf of the common good of the County.

In contrast, the Longs, as an adjacent neighbor of Plaintiff’s property, have different interests from the County in the instant litigation. Their interests are entirely “parochial” and “personal,” which have nothing to do with the interests of the overall “public welfare” and “general citizenry” sought to be vindicated by the County as a “sovereign” for the benefit of its citizens are large. For the Longs, they allege “special damages” to their property if Plaintiff is adjudicated as exempt from the single-family detached

dwelling requirement due to adverse secondary effects on the Longs’ property in the form of: (i) increased noise; (ii) increased lighting; (iii) increased traffic; (iv) negative impacts on aesthetics, including partial blocking of ocean views; (v) potential fire hazards; (vi) potential adverse effects on water supply; and (vii) overall negative impacts on the quiet use and reasonable enjoyment of the Longs’ property.

Because defendant Currituck County’s “sole litigation interests are to protect the ‘public welfare’ and the interests of its ‘general citizenry’ ” there are many decisions it might make which would not be aligned with the interests of the Longs. For example, this is the third appeal to this Court regarding this property and *Letendre I* is currently pending at our Supreme Court; defendant Currituck County could make a financial decision not to proceed with litigation and agree to a settlement with plaintiff Letendre which would not protect the Longs’ interests. The Longs argue, and the record reflects, that plaintiff Letendre and defendant Currituck County have already “been engaged in settlement negotiations which have not included the Longs and which could result in dismissal of the lawsuit” without protecting the Longs’ interests. This Court has previously recognized that the risk of settlement of case between a landowner and a Board of Adjustment, without the participation of a landowner “in close proximity” who sought to intervene, demonstrated that the Board of Adjustment could not adequately represent the interests of the proposed intervenor. See *Councill v. Town of Boone Bd. of Adjust.*, 146 N.C. App. 103, 104-08, 551 S.E.2d 907, 908-10 (2001) (“As to the second and third requirements—a practical impairment of the protection of the party’s interest and inadequate representation of that interest by existing parties—appellants alleged that the Board intended to settle the dispute with Councill without appellants’ input, and that the Board intended to issue a permit to Councill. There being no allegations or evidence to the contrary, we hold that all three requirements of Rule 24 have been satisfied and appellants have standing to intervene.”).

*5 Plaintiff Letendre is also seeking monetary damages from defendant Currituck County, but the Longs are not subject to any potential claim for monetary damages in this case. The Longs seek compliance with the UDO as written and interpreted by *Long*. It is not necessary that the Longs and defendant Currituck County have entirely different interests, and their incentives may be different. See *Wichnoski v. Piedmont Fire Prot. Sys., LLC*, — N.C. App. —, 796 S.E.2d 29, 40 (2016) (“As Main Street

observed at the hearing on its motion to intervene, Plaintiffs may have little incentive to use their resources to seek damages beyond what is necessary to make themselves whole. This proposition does not require an assumption that Plaintiffs would act in bad faith in their efforts to recover on Main Street's behalf; it merely acknowledges that they may encounter practical limitations that Main Street's participation could alleviate. Main Street alleged it has all the resources to pay for a fire protection engineering expert and to assist in bearing Plaintiffs' costs. Finally, Plaintiffs' opposition to Main Street's effort to intervene indicates that, at minimum, Plaintiffs' and Main Street's interests are not entirely aligned." (quotation marks, ellipses, and brackets omitted)), *disc. review allowed sub nom. David Wichnoski, O.D., P.A. v. Piedmont Fire Protection Systems, LLC and Shipp's Fire Extinguisher Sales and Services, Inc.*, 370 N.C. 64, 802 S.E.2d 733 (2017), *appeal withdrawn*, 370 N.C. 691, 809 S.E.2d 889 (2018). We agree with the Longs and defendant Currituck County that the County does not have the same interests as the Longs as private property owners.

Plaintiff Letendre also contends that "lack of participation in this case does not impede [the Longs] ability to protect whatever speculative or indirect interests they may have" as they have by "means other than intervention." Plaintiff Letendre contends "[a]ny issues the Longs may face with noise, lighting, safety, traffic, or aesthetics are addressed in the County's ordinances, through law enforcement, or with claims for damages and nuisance." First, as discussed above, the trial court determined the Longs' interests are not "speculative or indirect" and that issue is not before us on appeal. Furthermore, if the trial court should ultimately make a final ruling adverse to defendant Currituck County in this case, it is likely that any effort by the Longs to seek relief may then be foreclosed. Considering the contentious history

of the project and plaintiff Letendre's multiple attempts to not comply with the UDO, intervention in this action is likely the only way the Longs can seek to protect their interests. We also do not agree that the Longs should be required to file yet another lawsuit after this one is resolved to try to protect their interests. "The interests of judicial economy and efficiency weigh in favor of suits that will settle all of the issues in the underlying controversy." *Coca-Cola Bottling Co. Consol. v. Durham Coca-Cola Bottling Co.*, 141 N.C. App. 569, 578, 541 S.E.2d 157, 163 (2000). Because defendant Currituck County admittedly cannot provide adequate representation of the Longs' interests, we conclude the Longs should have been allowed to intervene as a matter of right under [Rule 24\(a\)\(2\)](#). We therefore will not address their arguments for intervention under [Rule 24\(b\)](#).

IV. Conclusion

Because we conclude that the interests of the Longs are not adequately represented by defendant Currituck County, we reverse and remand the trial court's order.

REVERSED and REMANDED.

Report per Rule 30(e).

Judges [ZACHARY](#) and [MURPHY](#) concur.

All Citations

261 N.C.App. 537, 817 S.E.2d 920 (Table), 2018 WL 4440587

Footnotes

- 1 At the trial level plaintiff Letendre was granted a preliminary injunction, but upon appeal to this Court, the injunction was reversed and the case remanded because this Court concluded plaintiff Letendre was unlikely to succeed on any of her underlying claims. See *Letendre I*, — N.C. App. —, — S.E.2d —. Plaintiff Letendre was allowed a temporary stay at the Supreme Court, and thus the issues in *Letendre I* are currently pending before that Court, the substance of which has no direct effect on the appeal before us. See *Letendre I*, — N.C. —, 814 S.E.2d 111.

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