

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:25-cv-00003-M**

TELIA KIVETT, et al.,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF  
ELECTIONS, et al.,

Defendants.

**MEMORANDUM OF LAW  
IN SUPPORT OF  
DEFENDANTS' MOTION TO  
MODIFY FINAL ORDER  
AND REQUEST FOR INDICATIVE  
RULING  
OF THAT SAME MOTION**

Defendants North Carolina State Board of Elections and its executive director and members in their official capacity, provide this memorandum of law in support of their motion for this Court to modify its January 6, 2025 order remanding this case to state court pursuant to Fed. R. Civ. P. 60(b) and request for indicative ruling of that same motion pursuant to Fed. R. Civ. P. 62.1.

**STATEMENT OF FACTS**

On December 31, 2024, eight weeks after the election, the present action was filed by Plaintiffs in the Superior Court of Wake County.<sup>1</sup> Plaintiffs seek to invalidate ballots cast by certain voters in the November 2024 general election. Defendants removed the action to this Court.<sup>2</sup>

---

<sup>1</sup> See *Kivett, et al. v. N.C. State Board of Elections, et al.* (Kivett), Nos. 24CV041789-910, Compl. (N.C. Super. Ct., Wake Co., filed Dec. 31, 2024).

<sup>2</sup> See *id.*

This Court subsequently remanded the case to the state court on January 6, 2025.<sup>3</sup> In the remand order in the present case, the Court found that “the factual and legal subject matter of this action [were] substantially identical to that in” *Griffin v. N.C. State Bd. of Elections*, No. 24-cv-724, D.E. 50 (E.D.N.C.) (*Griffin I*), and “[h]aving concluded in that case that abstention and remand under *Burford* and *Louisiana Power*<sup>4</sup> [were] warranted,” the Court found its “conclusion” in *Griffin I* “operat[ed] with equal force [in the present case].”<sup>5</sup> This Court also remanded another case, *Griffin v. N.C. State Bd. of Elections*, No. 24-cv-731, D.E. 24 (E.D.N.C.) (*Griffin II*), for the same reasons.

Defendants appealed the remand orders in this case and in *Griffin I* and *II* to the U.S. Court of Appeals for the Fourth Circuit.

The Fourth Circuit consolidated *Griffin I* and *II* and issued its opinion in those cases on February 4, 2025.<sup>6</sup> The Fourth Circuit dismissed the appeal in *Griffin I*.<sup>7</sup> As for the appeal of this Court’s remand order in *Griffin II*, the Fourth Circuit first held that the State Board properly removed the case to federal court.<sup>8</sup> The Court also held that this Court had correctly decided to initially abstain from hearing the case.<sup>9</sup>

---

<sup>3</sup> *Kivett*, No. 5:25-cv-3, D.E. 19 (E.D.N.C. Jan. 6, 2025).

<sup>4</sup> See *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), and *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959).

<sup>5</sup> *Kivett*, No. 5:25-cv-3, D.E. 19.

<sup>6</sup> See *Griffin v. N.C. State Bd. of Elections*, Nos. 25-1018, 25-1019, 25-1020 & 25-1024 (4th Cir. Feb. 4, 2025) (per curiam) (slip opinion attached as Exhibit A).

<sup>7</sup> *Id.* at 8-9.

<sup>8</sup> *Id.* at 9.

<sup>9</sup> *Id.*

The Fourth Circuit modified the Court’s remand order in *Griffin II* in an important way, however. As noted above, this Court had remanded that case back to state court under *Burford*, and *Louisiana Power*, without retaining jurisdiction. The Fourth Circuit held that the “more appropriate theory for abstaining from federal jurisdiction” here arises under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941).<sup>10</sup> A federal court abstains under *Pullman* “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.”<sup>11</sup> When a federal court abstains under *Pullman*, it retains jurisdiction over the case to decide the federal issues in the case after the state-law issues are decided in state court.<sup>12</sup> Accordingly, the Fourth Circuit directed this Court “to modify its order to expressly retain jurisdiction of the federal issues identified in the State Board’s notice of removal should those issues remain after the resolution of the state court proceedings, including any appeals.”<sup>13</sup> In light of the Fourth Circuit’s decision, this Court retains jurisdiction over the federal issues in *Griffin II*.

The appeal of this Court’s remand order in the present case remains pending in the Fourth Circuit.<sup>14</sup> That court has entered a briefing order requiring Defendants to file their Opening Brief and the Joint Appendix on or before February 18, 2025.<sup>15</sup>

---

<sup>10</sup> *Id.* at 10.

<sup>11</sup> *Id.* (citation omitted).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 10.

<sup>14</sup> See *Kivett*, No. 24-1021 (4th Cir. 2025).

<sup>15</sup> *Id.* at Dkt. 3.

Following this Court's remand of the present case to state court, Plaintiffs noticed a hearing on a previously filed motion for a temporary restraining order and a preliminary injunction in Superior Court.<sup>16</sup> Following that hearing, on January 13, 2025, the Superior Court entered an order denying both a TRO and PI, concluding that "after a careful balancing of the equities, [it could] not conclude by the greater weight of the evidence that a preliminary injunction is necessary to prevent immediate and irreparable harm."<sup>17</sup>

On January 14, 2025, Plaintiffs noticed an appeal, and in the alternative sought certiorari review, of the Superior Court's order denying the motion for TRO and PI to the North Carolina Court of Appeals.<sup>18</sup> They also filed an appellate petition and related motions seeking preliminary relief, which would have effectively granted the relief they original sought in their Complaint. On motion by Defendants, the North Carolina Court of Appeals stayed all proceedings before that court in an order entered January 17, 2025.<sup>19</sup>

State Board Defendants filed a Motion to Dismiss the present case in the Superior Court on February 5, 2025.<sup>20</sup>

That same day, Plaintiffs filed petitions in the North Carolina Supreme Court, asking that court to dissolve the state Court of Appeals' stay order and to review that stay order or,

---

<sup>16</sup> See *Kivett*, No. 24CV041789-910, Not. of Hearing (N.C. Super. Ct., Wake Co., filed Jan. 9, 2025).

<sup>17</sup> See *id.*, Order (N.C. Super. Ct., Wake Co., Jan. 13, 2025).

<sup>18</sup> See *id.*, Not. of Appeal (N.C. Super. Ct., Wake Co., filed Jan. 14, 2025), and *Kivett*, No. P25-30, Pet. (N.C. Ct. App., filed Jan. 14, 2025).

<sup>19</sup> See *Kivett*, No. P25-30, Order (N.C. Ct. App. Jan. 17, 2025).

<sup>20</sup> See n.16 *supra*, Mot. to Dismiss (N.C. Super. Ct., Wake Co., filed Feb. 5, 2025).

in the alternative, to review the Superior Court's order denying their TRO and PI.<sup>21</sup> That petition remands pending in the state Supreme Court.

### **LEGAL ARGUMENT**

Defendants move for modification under Rule 60(b)(5) and (6) of the Rules of Civil Procedure of this Court's January 6, 2025 order remanding the present case to state court. Defendants acknowledge that the appeal of the Court's remand order remains pending in the Fourth Circuit, and for that reason, this Court cannot grant their Rule 60(b) motion. *See generally Fobian v. Storage Tech. Corp.*, 164 F.3d 887, 891 (4th Cir. 1999). Accordingly, defendants also move under Rule 62.1(a)(3) for an indicative ruling on their Rule 60(b) motion.

#### *Rule 60(b)(5) and (6)*

To obtain relief under Rule 60(b), "a moving party must first show (1) that the motion is timely, (2) that he has a meritorious claim or defense, and (3) that the opposing party will not suffer unfair prejudice if the [order is modified]." *United States v. Welsh*, 879 F.3d 530, 533 (4th Cir. 2018). The party must also show the existence of one of the six ground for relief enumerated in Rule 60(b). *Id.* Those grounds include circumstances where the order which the party seeks to modify "was based on an earlier [order] that has been reversed[.]" Fed. R. Civ. P. 60(b)(5), or where "any other reason [] justifies relief[.]" Fed. R. Civ. P. 60(b)(6).

---

<sup>21</sup> *See Kivett, No. 51P25, Pet.* (N.C. Sup. Ct., filed Feb. 5, 2025).

For relief under Rule 60(b)(5) based upon reversal of a prior order, that order must have “necessarily [been] considered” in the later action, although the two orders can be ones entered “simultaneously.” *Werner v. Carbo*, 731 F.2d 204, 207-08 (1984) (providing that the word “‘prior’ in Rule 60(b)(5) refers not only to prior in time but also to prior as a matter of legal significance”). The Fourth Circuit has acknowledged that relief has been granted under Rule 60(b)(5) “where the prior judgment was not the basis of the second judgment in the sense of res judicata, estoppel, or like theory.” *Werner*, 731 F.2d at 207. However, something more than “a material change in decisional law” is needed to support modification under that subsection. *Manzanares v. City Of Albuquerque*, 628 F.3d 1237, 1240 (10th Cir. 2010) ; see, e.g., *Gilbert v. Deutsche Bank Trust Co. Ams.*, No. 4:09-CV-181-D, 2011 WL 10636412, \*3 (E.D.N.C. June 15, 2011) (unpublished) (indicating that, if the Fourth Circuit were to return jurisdiction, the district court would grant relief per Rule 60(b)(5) from part of a judgment dismissing state-law claims where in entering the judgment the court relied on the preclusive effect of a state-court proceeding that was later reversed).

Rule 60(b)(6) is often referred to as the “catch-all provision” of Rule 60(b). *Justus v. Clarke*, 78 F.4th 97, 106 (4th Cir. 2023) (citation omitted). It “gives a court authority to relieve a party from a judgment for any other reason not articulated in sections (1) through (5) [of Rule 60(b)], but only when the movant demonstrates extraordinary circumstances,” and when “such action is appropriate to accomplish justice.” *Id.* (citations omitted).

*Civil Rule 62.1(a)(3) and Appellate Rule 12.1*

Civil Rule 62.1(a)(3) provides that if a party timely moves for relief in the district court, and “that the court lacks authority to grant [the motion] because of an appeal that has been docketed and is pending, the court may . . . state [whether] it would grant the motion if the court of appeals remands for that purpose . . . .” Fed. R. Civ. P. 62.1(a)(3). “If the district court states that it would grant the motion . . . , the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal.” Fed. R. App. P. 12.1(b). This procedure “sav[es] judicial resources,” “avoid[s] expense and delay,” and thus “accords with the overarching mandate in the Federal Rules of Civil Procedure that the rules ‘shall be construed to secure the just, speedy, and inexpensive determination of every action.’” *Fobian*, 164 F.3d at 891 (quoting Fed. R. Civ. P. 1).

*The Court should enter a ruling indicating it will modify its remand order and retain jurisdiction over any federal issues.*

This Court should issue a ruling indicating that, if the Fourth Circuit remands the instant case to this Case, it would grant Defendant’s motion to modify its January 6, 2025 remand order under Rule 60(b)(5) or, in the alternative, under Rule 60(b)(6), in light of the Fourth Circuit’s decision in *Griffin II*.

Grounds for modification under Rule 60(b) are satisfied here. First, Defendant’s Rule 60(b) motion is timely, in that it was made “within a reasonable time” after entry of the order Defendants seek to modify. *See* Fed. R. Civ. P. 60(c). The remand order was issued on January 6, 2025, slightly more than a month ago, with the Fourth Circuit issuing

the ruling for which Defendants seek modification, the decision in *Griffin II*, just last week, on February 4, 2025.

Second, the relief Defendants seek is meritorious and satisfies the requirements for granting relief under Rule 60(b)(5) or, alternatively, Rule 60(b)(6). This Court *sua sponte* remanded the present case to state court.<sup>22</sup> In doing so, it “necessarily considered,” *Werner*, 731 F.2d at 207-08, and in fact relied wholly on *Griffin I*. It found that “the factual and legal subject matter of this action [were] substantially identical to that in [*Griffin I*],” and “[h]aving concluded in that case that abstention and remand under *Burford* and *Louisiana Power* [were] warranted,” the Court also found the “conclusion” in *Griffin I* “operat[ed] with equal force [in the present case].”<sup>23</sup>

Rule 60(b)(5) permits the modification of a district court’s order where that order was “based on an earlier [order] that has been reversed.” The Fourth Circuit ordered this Court to fundamentally modify the basis for and scope of the remand in *Griffin II*, a case also remanded *sua sponte* based wholly on *Griffin I*.<sup>24</sup> Tantamount to partially reversing this Court’s order remanding the entirety of *Griffin II* to state court, the circuit court concluded this Court should have applied a different type of abstention, specifically *Pullman*; remanded the appeal; and directed this Court “to modify its order [in that case] to expressly retain jurisdiction of the federal issues identified in the State Board’s notice of

---

<sup>22</sup> See *Kivett*, No. 5:25-cv-3, D.E. 19.

<sup>23</sup> *Id.*

<sup>24</sup> See n.5 *supra* (attached as Ex. A).



removal should those issues remain after the resolution of the state court proceedings, including any appeals.”<sup>25</sup>

The order upon which this Court based the remand of the present case to state court was gutted and the basis for abstention in that order replaced by the Fourth Circuit’s decision in *Griffin II*. It necessarily follows that, just like in *Griffin II*, this Court should modify its order in the present case “to expressly retain jurisdiction of the federal issues identified in the State Board’s notice of removal should those issues remain after the resolution of the state court proceedings, including any appeals.”<sup>26</sup>

This is true even if such modification is not squarely provided for in Rule 60(b)(5), given that the instant case also presents “extraordinary circumstances” justifying modification under Rule 60(b)(6). Both the present case and *Griffin II* were not only remanded based exclusively on the same case, *Griffin I*, but they also seek the exact same form of relief. Although Plaintiffs in this action purport to be seeking relief on all state office elections in November 2025, with the exception of the one contest at issue in *Griffin II*, all other state office elections have been certified and those prevailing candidates have taken office. See Order of the Supreme Court of North Carolina in *Griffin v. N.C. State Bd. of Elections*, No. 320P24, Order at 2-3 (N.C. Jan. 22, 2025). Once a certificate of election issues, neither the State Board nor the courts have the authority to revoke that certificate, order a new election, or somehow unseat the occupant of the office for which the election was certified. See *In re Election Protest of Fletcher*, 625 S.E.2d 564, 567 (N.C.

---

<sup>25</sup> *Id.* at 10.

<sup>26</sup> *Id.*

Ct. App. 2006); *see also* *Britt v. Bd. of Canvassers of Buncombe Cty.*, 90 S.E. 1005, 1008 (N.C. 1916); *In re Protest of Whittacre*, 743 S.E.2d 68, 69 (N.C. Ct. App. 2013) (issuance of an election certificate moots an election protest appeal). It follows that the only portions of Plaintiffs’ action that is still live are their claims as applied to the election at issue in *Griffin II*. And, thus, the only possible relief that remains available to Plaintiffs in the instant case is the same as the relief available in *Griffin II*. Moreover, the relief both in this case and *Griffin II* seeks is itself extraordinary—to invalidate ballots cast in an election that has long since passed.

Finally, Plaintiffs will not suffer prejudice if the remand order is modified. Nothing about granting the relief sought by Defendants’ motion will interfere with or delay Plaintiffs seeking review from the state court. This Court will simply retain jurisdiction over the federal law issues which this case presents. This is relief the Fourth Circuit has already determined was the proper form of relief in the case that this Court previously found had a “substantially identical” “factual and legal subject matter” and a “conclusion” which “operat[ed] with equal force [in the present case].”<sup>27</sup>

Undersigned counsel informed Plaintiffs about this motion and inquired about their position on the requested relief, including consent to dismiss the currently pending appeal in order to seek a Rule 60(b) motion without the need for an indicative ruling. Plaintiffs responded that they do not consent to any motion to this Court relating to the *Griffin* matter, including a Rule 60(b) motion.

---

<sup>27</sup> *Kivett*, No. 5:25-cv-3, D.E. 19.

## **CONCLUSIONS**

For the reasons detailed above, Defendants respectfully request that the Court enter a ruling on their Rule 60(b) motion pursuant to Rule 62.1(a)(3) indicating that, if the Fourth Circuit remands the instant case to this Court, it would modify the January 6, 2025 remand order in light of the circuit court's decision in *Griffin II* and retain jurisdiction over the federal issues that this case presents.

Respectfully submitted, this 13th day of February, 2025.

NORTH CAROLINA  
DEPARTMENT OF JUSTICE

/s/ Mary Carla Babb

Mary Carla Babb

Special Deputy Attorney General

N.C. State Bar No. 25731

[MCBabb@ncdoj.gov](mailto:MCBabb@ncdoj.gov)

Terence Steed

Special Deputy Attorney General

N.C. State Bar No. 52809

[TSteed@ncdoj.gov](mailto:TSteed@ncdoj.gov)

North Carolina Department of Justice

Post Office Box 629

Raleigh, North Carolina 27602

Phone: 919-716-6900

Fax: 919-716-6758

*Counsel for Defendants*

**EXHIBIT A****UNPUBLISHED****UNITED 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.

EXHIBIT A

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.

## EXHIBIT A

---

**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,

## EXHIBIT A

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.

## EXHIBIT A

## 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.<sup>1</sup>

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

---

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



## EXHIBIT A

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*

## EXHIBIT A

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

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

---

<sup>2</sup> 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.

## EXHIBIT A

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),<sup>3</sup> 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*

---

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

## EXHIBIT A

*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.<sup>4</sup> While the district

---

<sup>4</sup> “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*

## EXHIBIT A

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).

## EXHIBIT A

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*