

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

North Carolina Democratic Party,
Plaintiff,

v.

North Carolina State Board of Elections, *et al.*,
Defendants.

Case No. 5:24-cv-699-M

Jefferson Griffin

Plaintiff,

v.

North Carolina State Board of Elections,
Defendants,

and

Allison Riggs, VoteVets Action Fund, North Carolina
Alliance for Retired Americans, Sarah Smith, and
Juanita Anderson,

Intervenor-Defendants

Case No. 5:24-cv-731-M

Carrie Conley, Lockhart Webb, and Ella Kromm,
*individually and on behalf of all others similarly
situated*; Gabriela Adler-Espino; and the League of
Women Voters of North Carolina,

Plaintiffs,

v.

Alan Hirsch, Jeff Carmon, Stacy Eggers IV, Kevin N.
Lewis, and Siobhan O'Duffy Millen, *in their official
capacities as members of the North Carolina State
Board of Elections*, and Karen Brinson Bell, *in her
official capacity as Executive Director of the North
Carolina State Board of Elections*,

Defendants.

Case No. 5:25-cv-193-M

**OPENING BRIEF OF PLAINTIFF NORTH CAROLINA DEMOCRATIC PARTY
PURSUANT TO APRIL 14, 2025, ORDER**

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INTRODUCTION

Last fall, millions of eligible North Carolina voters—including thousands of members of our armed forces and overseas voters—exercised their fundamental right to vote in federal and state elections. One of those elections was for Associate Justice of the North Carolina Supreme Court, a race between incumbent Justice Allison Riggs and North Carolina Court of Appeals Judge Jefferson Griffin. Justice Riggs won that election by hundreds of votes, according to both the initial results and multiple recounts. But Judge Griffin has litigated ever since to overturn the will of the people by disenfranchising voters through retroactive changes to state election laws. And even though he has presented no evidence that even a *single* North Carolina voter was ineligible or voted improperly under the rules in place when they cast their ballots, the state appellate courts have approved his strategy by altering the rules *after* the election—and as a result ordering the state elections board to discard the votes of hundreds (and potentially thousands) of registered military servicepeople and overseas citizens who followed the state’s rules for registering and voting in effect at the time.

The state courts, moreover, have denied some of those voters any opportunity to demonstrate their ballots should not be discarded (including because, as has been publicly reported, they were identified in error). And even as to those voters who have been given a short window in which to prove (five months after the election) that there is no basis to disenfranchise them, it will often be surpassingly difficult or outright impossible for them to do so. To take only one example, U.S. Army Captain Rebecca Lobach, whose vote Judge Griffin contends should be discarded unless she provides photo identification in the next month or so, died on duty in January when her army helicopter collided with a passenger jet over Washington, D.C. *See* Doran, ‘*Our Democracy Is Just a Sham*’: NC Lawmakers Who Served in the Military Slam GOP-Backed Efforts

to Toss Ballots, WRAL News (Feb. 5, 2025), <https://tinyurl.com/e86uzz5e>. Countless others may similarly be unable to defend the votes they cast last fall—and it is grossly unreasonable to demand that they do so.

It is also illegal. Indeed, such post-election disenfranchisement of voters who cast their ballots in reliance on, and in compliance with, the state’s own election rules in place at the time, would brazenly violate federal law—particularly because Judge Griffin has strategically targeted only selected groups of voters (whom he assumes will skew Democratic), while sparing similarly situated voters who are not assumed to have the same leaning. Specifically, the disenfranchisement would violate the Constitution three times over: imposing an undue burden on the right to vote, depriving people of that right without procedural due process, and violating equal protection by treating similarly situated voters differently for no good reason. And if more were needed, the post-hoc widespread deprivation of North Carolinians’ fundamental right to vote would also violate the National Voter Registration Act (NVRA), which bars states from last-minute (much less after-the-fact) mass denials of the franchise. Consistent with the Fourth Circuit’s express direction to this Court to retain jurisdiction over the relevant federal-law issues—and to decide them, to the extent necessary, upon conclusion of the state-court proceedings—the Court should safeguard North Carolinians’ federal rights, vindicate federal law, and finally put an end to Judge Griffin’s misguided efforts. And it should do so now, rather than after any cure process takes place, because that process itself violates federal law.

In particular, the Court should grant declaratory relief as well as a permanent injunction against conducting any cure process or discarding any ballots based on Judge Griffin’s challenges. An injunction is warranted because plaintiff—the North Carolina Democratic Party (NCDP)—has shown that federal law prohibits either discarding votes based on Judge Griffin’s remaining

challenges or subjecting select classes of voters to the post-election remedial process that state officials are poised to commence. Without an injunction, moreover, NCDP will be irreparably harmed, with its members disenfranchised and some forced to undergo an unduly burdensome and selectively targeted (i.e., discriminatory) “cure” process several months after the election. By contrast, neither Judge Griffin nor the North Carolina State Board of Elections (Board or NCSBE) would suffer any cognizable harm from an injunction, because there is no legitimate interest in altering the rules of the election months after it is over. Finally, the public has a strong interest in ensuring elections are fair and honest, which means not changing the rules after the fact in order to disenfranchise strategically targeted groups of North Carolinians who followed the rules in place.

This Court should declare that the post-election measures the state courts have ordered violate federal law and permanently enjoin state election officials from carrying out any “cure” process, discarding any votes, or certifying the election for Judge Griffin.

BACKGROUND

A. State-Court Proceedings

A state-wide canvass and several recounts showed that last fall, Justice Riggs won re-election as associate justice of the North Carolina Supreme Court, defeating Judge Griffin. *See Griffin v. NCSBE*, 2025 WL 1021724, at *1 (N.C. Ct. App. Apr. 4, 2025). Dissatisfied, Judge Griffin filed multiple election protests (the “Protests”) claiming that the ballots of thousands of voters should not be counted—including (1) approximately 260 ballots “cast by overseas citizens who have not resided in North Carolina but whose parents or legal guardians were eligible North Carolina voters before leaving the United States,” and (2) approximately 1,400 ballots cast in just one of North Carolina’s 100 counties (Guilford) “by military or overseas citizens ..., when those ballots were not accompanied by a photocopy of a photo ID or ID Exception Form.” *See* Ex.A to Second Am. Compl. at 2 (Dkt.5:24-cv-699, D.E.35-1). After the state-law deadline to file protests

had passed, Judge Griffin amended his protests to add, in the second of these two categories, several other Democratic-leaning counties, thereby targeting a total of more than 5,500 military or overseas voters. *See* Ex.1 (Lawson Supp. Decl.) ¶11; Exs.H, I, J to Second Am. Compl. (Dkt.5:24-cv-699, D.E.35-8, D.E.35-9, D.E.35-10).¹

Judge Griffin did not bring either of these two categories of challenges before or during the election—even though under North Carolina law, if a private party believed that a military or overseas voter was not eligible to vote, the party was required to challenge the person’s ballot by 5:00 pm on the business day after the deadline for receipt of absentee ballots. N.C. Gen. Stat. §163-258.26(d) (incorporating §163-89). Such a challenger must come forward with affirmative, individualized proof that the person is ineligible to cast a ballot at the relevant time, and the person must be afforded notice and an opportunity to be heard when challenged. *Id.* §§163-89, 163-90.1.

Voters targeted by the first category of challenges—again, U.S. citizens living overseas who have not resided in North Carolina but whose parents or legal guardians were eligible North Carolina voters before leaving the United States—had the right to vote under a state statute, which expressly included them in the definition of “[c]overed voter.” *See* N.C. Gen. Stat. §163-258.2(1)(e). And voters targeted by the second category—again, military or overseas voters who voted without providing photo identification with their absentee ballots—had the right to vote without providing photo identification, as state law provided that they were “not required to submit a photocopy of acceptable photo identification.” 8 N.C. Admin. Code 17.0109(d); *see also* N.C. Gen. Stat. §§163-258.2, 163-258.17(b).

The NCSBE dismissed Judge Griffin’s Protests based largely on federal law. *See Griffin v. NCSBE*, No. 25-1018 at 1 (4th Cir. Feb. 4, 2025) (per curiam) (D.E.30). But Judge Griffin

¹ Where it appears without a docket number, “D.E.” refers to entries on docket 5:24-cv-731.

continued to press them, filing several state-court appeals, which were removed to this Court. *See id.* This Court remanded those appeals without retaining jurisdiction over the federal-law issues, but the Fourth Circuit reversed in part, ordering this Court to retain jurisdiction over Judge Griffin’s removed direct appeal until final resolution in state court (including any appeals) to ensure federal resolution of the “federal constitutional issues” at stake. *Id.* at 9. Judge Griffin then proceeded against the NCSBE and Justice Riggs in state court, where the defendants reserved their right to a federal forum to adjudicate the federal issues. *See, e.g.,* Notice of Fourth Circuit Opinion and *England* Reservation By Justice Riggs (D.E.39-2). The trial court upheld the Board’s rejection of Judge Griffin’s challenges, but a divided panel of the Court of Appeals reversed, *see* 2025 WL 1021724 (N.C. Ct. App. Apr. 4, 2025). Justice Riggs and the NCSBE then sought review by the state supreme court.

On April 11, the North Carolina Supreme Court issued its decision in the consolidated *Griffin* cases. It denied review as to the overseas voters who had registered based on their parents’ state residence, i.e., the people—whom Judge Griffin calls “never residents”—targeted by the first category of Judge’s Griffin’s protests. *Griffin v. NCSBE*, 2025 WL 1090903, at *3 (N.C. Apr. 11, 2025). That denial left in place the North Carolina Court of Appeals ruling ordering the Board to identify and exclude those people’s votes, 2025 WL 1021724, at *3. The state supreme court also largely denied review as to the targets of Judge Griffin’s second category (military and overseas voters who did not provide photo identification with their ballots), agreeing that their votes should be excluded unless they promptly “cured” by providing photo identification five months after the election, but “expand[ing] the period to cure deficiencies” set by the state court of appeals “from fifteen business days to thirty calendar days after the mailing of notice.” *Griffin*, 2025 WL 1090903, at *3. The state supreme court did not state whether its decision applies only to voters

in Guilford County or also to the nearly 4,000 voters from additional Democratic-leaning counties that Judge Griffin added after the protest deadline. *Id.*

B. The Voters Targeted

As mentioned, Judge Griffin’s protests seek to target more than 5,500 North Carolina voters. Lawson Supp. Decl. ¶¶11, 29. Despite the NCSBE’s plan to carry out a verification or cure campaign as to only the approximately 1,660 votes that Judge Griffin *timely* challenged (D.E.61), he continues to protest more than around 5,500 votes (including those he protested after the relevant deadline) in the North Carolina state courts (D.E.76-1). His lists of targeted voters appear to contain numerous inaccuracies. Multiple voters on his “never residents” list have been reported or identified as having lived in or maintained a permanent residence in North Carolina. Lawson Supp. Decl. ¶¶26, 28-31. One such voter is Josiah Young, who was studying abroad during the 2024 general election but maintains a permanent residence in Jackson County. *Id.* ¶28b. Some other voters on Judge Griffin’s list reside in, and may have resided in, North Carolina when they cast their ballots. *Id.* ¶¶28-31. Based on publicly available information NCDP has been able to obtain, at least 32 of the approximately 260 voters named by this category of protests—more than 10%—appear to have been wrongfully accused of being “never residents.” *Id.* ¶29.

C. NCDP’s Lawsuit

NCDP sued the NCSBE and its members in December 2024, *see* Dkt.5:24-cv-699, D.E.1. The operative complaint alleges that selectively discarding votes and subjecting voters to a cure process more than five months after voters cast their ballots in accordance with the guidance they received from the state violates the First and Fourteenth Amendments, and the NVRA, *id.*, D.E.35.

Shortly after the North Carolina Supreme Court’s April 11 ruling (discussed above), NCDP asked this Court to “temporarily restrain and preliminarily enjoin the NCSBE from carrying out

any ‘cure’ process, discarding any votes, or ... certifying the election for Judge Griffin, so that federal courts can determine whether doing so violates federal law before the irreparable harm is inflicted.” Dkt.5:24-cv-699, D.E.37 at 9. This Court granted NCDP’s motion in part, stating that “Defendants are ORDERED to proceed in accordance with” the state-court rulings requiring NCSBE to begin discarding and/or curing votes “but SHALL NOT certify the results of the election, pending further order of this court.” *Id.* Text Order (Apr. 14, 2025). The Court also consolidated NCDP’s lawsuit with Judge Griffin’s direct appeal from NCSBE’s order denying his protests and with a lawsuit voters filed. *Id.*, Text Order (Apr. 14, 2025).

D. The NCSBE’s Proposed Cure Process And Judge Griffin’s Mandamus Petition

As this Court ordered, NCSBE filed a notice of its proposal (D.E.61) to comply with the state supreme court opinion. According to the proposal, NCSBE has interpreted the state appellate courts’ orders as applying only to ballots targeted by Judge Griffin’s timely protests (i.e., the approximately 260 ballots cast in reliance on parental residence and the approximately 1,400 military and overseas ballots cast without photo identification in Guilford County). *Id.* at 2-3. The NCSBE explained that the voters who Judge Griffin says had to submit photo identification with their ballots could not have done so “[b]ecause the online portal” through which many of those voters cast their ballots “is not currently configured to accept attachments.” *Id.* at 3 n.3. It also stated that Judge Griffin’s protests listed certain names “several times,” *id.* at 2 n.1, and named as “never residents” several voters who reportedly have lived in North Carolina, *id.* at 4 n.6 (citing sources).

The proposal states that the NCSBE “intends to instruct” county boards to take certain steps to confirm that the protests do not name anyone in error. D.E.61 at 3-4. The NCSBE then intends

to direct counties to notify voters that their votes will be discarded if they do not take certain enumerated steps. *Id.* at 6-7. It does not address ballots cast by voters who have died since voting.

Judge Griffin has sought mandamus from the North Carolina Court of Appeals (D.E.76-1), challenging NCSBE's plan as not compliant with the state-court decisions. The petition remains pending, so the ultimate scope and terms of the cure process the state courts ordered remain uncertain.

LEGAL STANDARD

A permanent injunction is warranted if plaintiff has shown (1) “actual success” on the merits, (2) “an irreparable injury” that “remedies available at law ... are inadequate to compensate” (3) that “the balance of hardships between the plaintiff and defendant” warrants “a remedy in equity,” and (4) that an injunction would not disserve the public interest. *Mayor of Baltimore v. Azar*, 973 F.3d 258, 274 (4th Cir. 2020) (quoting *Amoco Production Co. v. Village of Gamble*, 480 U.S. 531, 546 n.12 (1987), and *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006)).

This Court has considerable discretion under 28 U.S.C. §2201 to grant declaratory relief where it will “clarify important issues of law” or afford “relief from uncertainty, insecurity, and controversy giving rise to the proceeding.” *Pitrolo v. County of Buncombe*, 589 F.App'x 619, 627-628 (4th Cir. Oct. 20, 2014) (quoting *Aetna Casualty and Surety Co. v. Ind-Com Electric Co.*, 139 F.3d 419, 422-424 (4th Cir. 1998)).

ARGUMENT

I. BOTH THE CURE PROCESS THAT THE STATE COURTS ORDERED AND DISCARDING ANY VOTES BASED ON JUDGE'S GRIFFIN'S CHALLENGES WOULD VIOLATE THE CONSTITUTION

As this Court has explained, “state regulation of state and local elections remains subject to federal constitutional constraints.” Order at 7 n.4 (Dkt.24-cv-724, D.E.50) (citing *Washington*

State Grange v. Washington State Republican Party, 552 U.S. 442, 451 (2008)). And federal law recognizes that the right to vote “‘is a fundamental matter in a free and democratic society,’” a right “‘preservative of other basic civil and political rights.’” *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 667 (1966) (quoting *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964)). Deprivation of that right here, through the retroactive discounting of ballots pursuant to post-election rule changes—even if done after imposing post-election “cure” measures—would unduly burden the right to vote, violate procedural due process, and deny targeted voters equal protection of the laws. So would subjecting voters to the cure process itself. Both should be declared unlawful and enjoined.

A. Undue Burden

State laws that burden the right to vote violate the First and Fourteenth Amendments unless relevant and legitimate state interests of sufficient weight justify the burden. *Anderson v. Celebrezze*, 460 U.S. 780, 788-790 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). “[E]lection laws that impose a severe burden on ballot access are subject to strict scrutiny, and a court applying strict scrutiny may uphold the restrictions only if they are ‘narrowly drawn to advance a state interest of compelling importance.’” *Pisano v. Strach*, 743 F.3d 927, 933 (4th Cir. 2014) (quoting *McLaughlin v. North Carolina Board of Elections*, 65 F.3d 1215, 1220 (4th Cir. 1995)); *see also Burdick*, 504 U.S. at 434.

Case law shows that the post-election discarding of ballots that voters cast pursuant to the state law that was in place before and during an election unduly burdens the right to vote. For example, in a First Circuit case that the Fourth Circuit has described as reflecting “settled” law (*Hendon v. North Carolina State Board of Elections*, 710 F.2d 177, 182 (4th Cir. 1983)), the court held that Rhode Island’s after-the-fact discarding of ballots cast by voters who “were doing no

more than following the instructions of the officials charged with running the election” amounted “to a fraud upon the absent voters” that was unconstitutional, *Griffin v. Burns*, 570 F.2d 1065, 1074-1075 (1st Cir. 1978). In particular, the First Circuit held, the state could not invalidate absentee ballots already cast on the ground that such ballots were never constitutionally or statutorily authorized for party primaries, when the issuance of such ballots in party primaries had been a longstanding practice. *Id.* at 1066-1067. As the First Circuit recognized, when a state reneges on its promise that voters’ ballots will count, due process is violated because the right “involves the appearance of fairness as well as actual fairness.” *Id.* at 1079. Similarly, in *Bennett v. Yoshina*, 140 F.3d 1218 (9th Cir. 1998), the Ninth Circuit explained that a substantive-due-process violation occurs if there is “(1) likely reliance by voters on an established election procedure and/or official pronouncements about what the procedure will be in the coming election; and (2) significant disenfranchisement that results from a change in the election procedures,” *id.* at 1226-1227. These cases are consistent with the Fourth Circuit’s observation that “[c]ourts have imposed a duty on parties having grievances based on election laws to bring their complaints forward for pre-election adjudication” because “failure to require pre-election adjudication would permit, if not encourage, parties who could raise a claim to lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action.” *Hendon*, 710 F.2d at 182 (quotation marks omitted).

The principles all these cases embody apply here. Indeed, “undo[ing] the ballot results in a court action,” *Hendon*, 710 F.2d at 182, is *exactly* what Judge Griffin seeks. And declining to count registered voters’ ballots due to an administrative “error” that was induced by the state—not including a photocopy of a photo ID with an overseas mail-in ballot—unquestionably imposes a severe burden on the right to vote. So does not counting the vote of an overseas voter who, under

then-current state law, could vote based on her parents' North Carolina residence. The state cannot change the rules *after* an election to deny the fundamental right to vote to those who followed the rules in place before and during the election. North Carolina surely could not now decide, for example, that it is only going to count the votes of those who voted by absentee ballot rather than in person (or vice-versa).

That some voters may have a chance to prevent their votes from being discarded does not alter the undue-burden analysis. Being subjected to such a verification process five months after votes have been cast and counted (and recounted) is itself a “severe burden on ballot access,” *Pisano*, 743 F.3d at 933. That is particularly true given that this is no ordinary “cure” procedure, a term that suggests a voter did something wrong. It is a demand that voters who were *told* that they were eligible to vote and could cast their ballots in a particular way (i.e., from overseas via a state-created system that relied on voter attestation and did not allow for—let alone require—them to submit photo identification, D.E.61 at 3 n.3) nonetheless provide supplemental proof of their identity to the state in order for their votes in one particular election to *actually* count.

Supreme Court cases cautioning federal courts against altering state election laws shortly before an election confirm the undue burden that would be imposed by changing election rules now. As the Court recognized in *Purcell v. Gonzales*, 549 U.S. 1 (2006) (per curiam), “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase,” *id.* at 4-5. “That principle—known as the *Purcell* principle—reflects a bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Merrill v.*

Milligan, 142 S.Ct. 879, 880-881 (2022) (Kavanaugh, J., concurring in grant of stay applications). Here, the rules are being changed more than five months *after* the election, far later than *Purcell* would kick in to prevent eve-of-election changes.

No sufficiently weighty state interest justifies changing the rules that govern the election after voters have cast their votes, whether those changes result in the wholesale discarding of votes or requiring voters to provide identification. While states have an interest in ensuring that only qualified and registered individuals vote in elections, that interest must be addressed through rules and procedures put in place before and during an election, not retroactively added months after so as to *change* who is qualified to vote. Moreover, North Carolina has no interest in—and in fact has a strong interest against—inflicting the significant harm that would flow from retroactively disenfranchising voters who registered and voted in reliance on the state’s instructions. Common sense and basic fairness confirm that conclusion. Indeed, the North Carolina Supreme Court itself explained that under its “longstanding precedent, mistakes made by negligent election officials ... ‘will not deprive [citizens] of [their] right to vote or render [their] vote[s] void after [they have] been cast.’” *Griffin*, 2025 WL 1090903, at *2 (quotation marks omitted) (alterations in original). But now, absent federal-court intervention, the state will unduly burden the voting rights of NCDP members, in violation of the First and Fourteenth Amendments. Such conduct should be enjoined.

B. Procedural Due Process

Even if it were ever permissible to retroactively change the rules after an election in order to discard ballots, it is not permissible here because the affected voters will not have been provided adequate process. That is an independent constitutional violation.

A procedural-due-process violation exists where state action deprives someone of “a cognizable liberty or property interest”—here, the undeniable interest in exercising one’s

constitutionally protected right to cast a ballot that will be counted, *see Harper*, 383 U.S. at 667— and “the procedures employed were constitutionally inadequate,” *Kendall v. Balcerzak*, 650 F.3d 515, 528 (4th Cir. 2011) (quotation marks omitted). To evaluate the latter question, i.e., whether procedural protections were adequate, courts examine (1) “the private interest that will be affected”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Applying those factors here confirms that the relief ordered by the state courts violates procedural due process.²

1. The private interest at stake is extremely strong. “No right is more precious in a free country than that of having a voice in the election of those who make the laws.” *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 241 (4th Cir. 2016). The action ordered by the state courts threatens that right, which encompasses voters’ right both to “cast their ballots” and to “have them counted.” *United States v. Classic*, 313 U.S. 299, 315 (1941).

2. Under the state appellate courts’ decisions, there is a serious risk of erroneous deprivations of the right to vote. For starters, Judge Griffin has not claimed that even *one* of the military and overseas voters who did not provide photo ID is not who the voter claimed to be. *See* N.C. Gen. Stat. §163-166.16(g) (explaining this to be the purpose of photo identification); Ex.2

² “Multiple district courts” have applied *Mathews* to “procedural due process challenges to election regulations.” *Arizona Democratic Party v. Hobbs*, 485 F.Supp.3d 1073, 1093 (D. Ariz. 2020) (collecting cases), *vacated on other grounds*, 18 F.4th 1179 (9th Cir. Dec. 8, 2021). One court in this circuit, for example, did so with a procedural-due-process challenge to a North Carolina law governing absentee ballots. *See Democracy North Carolina v. NCSBE*, 476 F.Supp.3d 158, 228-229 (M.D.N.C. 2020). And even if such a challenge were properly analyzed under the undue-burden framework, there would still be a procedural-due-process violation for the reasons that follow (and those explained in the prior section).

at 43 (State Board’s Opposition to Petition for Judicial Review, *Griffin*, No. 24CV040620-910 (Wake County Sup. Ct. Feb. 3, 2025)). And all of those voters were required, when casting their ballots, to sign a declaration under penalty of perjury attesting to their eligibility to vote and their identity. *See* N.C. Gen. Stat. §§163-258.4(e), 163-258.13. While the NCSBE’s “intended” approach to the cure process could alleviate some (but certainly not all) of the risk of error, moreover, Judge Griffin’s challenge to that approach remains pending in state court, *supra* p.8, so the ultimate terms of the remedial process remain unclear. Regardless, absent federal intervention, eligible voters may lose their right to cast a vote that will be counted unless all the stars happen to align.

In particular, under the Board’s current proposal, voters targeted by the second category of Protests must—unless Guilford County independently determines they were listed in error—(1) actually receive a mailing the Board sends them, which will require not only that the Board have the correct mailing information but also that the likely-international mailing not be unduly delayed and the voter not be indisposed during the narrow cure period (e.g., because she is actively engaged in military operations); (2) have on hand the necessary proof of eligibility the Board is demanding (or be able to procure it very quickly); (3) be in a position to photocopy that information or fill out an exception form; and (4) be able to successfully return that information to the Board—all in just 30 days. *See* Lawson Supp. Decl. ¶¶21-22, 33-35.

That will be difficult or impossible for many voters. Some of these voters live at far-flung addresses, where there is no telling how long it will take the written notice from the NCSBE to arrive. Lawson Supp. Decl. ¶22. This is all the more concerning because the 30-calendar-day cure clock runs not from *receipt* of the notice but from when the notice is *mailed*. *Id.* ¶34. On military bases, for example, mail delivery is often delayed for security purposes. *Id.* And Plaintiff NCDP

has no way to door-to-door canvass voters stationed or living abroad, to easily phone bank international numbers, or to conduct targeted and systematic email outreach because the NCSBE's email database is not made publicly available under state law. *Id.* ¶22.

Some of these voters no longer reside at the same address they did in November 2024. For example, many voters who cast an overseas ballot were students studying abroad during the fall semester and may no longer receive mail at their temporary overseas address. Lawson Supp. Decl. ¶35. And if these voters are registered to vote at their on-campus mailing address, they will not have access to that address when the spring semester ends and they leave campus for the summer (likely in April or May). *Id.*

Some of these voters have passed away since casting their ballot in the 2024 election. As discussed above, Captain Lobach, a Durham resident, cast her ballot in accordance with the laws in effect during the 2024 general election, but tragically died on January 29, 2025, aboard a military helicopter that collided with a passenger plane near Reagan Washington National Airport. Lawson Supp. Decl. ¶21. But the NCSBE has not put forth a plan to contact the families or estates of deceased voters about the need or method for a cure, and the state courts have not ordered it to do so. *Id.* ¶33.

And even if all necessary steps happen for voters in the second category of Protests, the lack of any articulated process for voters to appeal a determination that the information submitted does not suffice to “cure” further heightens the risk of erroneous deprivations.

That risk is even higher for the hundreds of voters (the so-called never-residents) who are not guaranteed, under the state appellate courts' orders, to be sent *any* notice before their ballots are discarded, let alone afforded any opportunity to challenge the determination that they were properly named in that Protest. *See Griffin*, 2025 WL 1021724, at *15. Although the Board has

announced plans to determine whether any voters were placed on the list in error (as has been reported), *see* D.E.61 at 4 n.6, that is not guaranteed, especially in light of Judge Griffin's pending mandamus petition. And binding precedent establishes that procedures are typically inadequate where "notice and an opportunity to be heard" are not guaranteed. *Wolf v. Fauquier County Board of Supervisors*, 555 F.3d 311, 323 (4th Cir. 2009); *see also Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972). Even according to the NCSBE's current proposal, moreover, voters in this category can prevent removal of their ballots from the vote count only if they can timely receive, complete, and submit an affidavit attesting they were improperly named as "never residents" (unless a county board independently reviews historical records to determine that they were listed in error). *See* D.E.61 at 4. This, again, will be difficult or impossible for many voters, such as those who have died, moved, cannot be contacted, or cannot access a computer or postal services.

3. As explained in the undue-burden argument, North Carolina has no valid interest either in disenfranchising eligible voters or in unfairly changing the rules after an election in order to do so. And while it has an interest in ensuring that only qualified and eligible people vote in its elections, that does not justify after-the-fact disenfranchisement, especially based on post-hoc changes in election law. Nor does it justify failing to provide adequate procedural protections (including sufficient notice and a meaningful opportunity to be heard) before denying people their right to vote.

Requiring additional or substitute process would also not unreasonably burden the state, because state law already establishes a system for providing notice and an opportunity to be heard: North Carolina's ordinary challenge and protest processes guarantee voters *meaningful* notice and an individualized hearing at which a voter whose eligibility or identification is challenged has an opportunity to attest that she is qualified to vote or to cast a valid vote *before* her ballot is counted.

See N.C. Gen. Stat. §163-89. There is no reason such a process could not have worked here, and voters should not have to undergo a constitutionally inadequate process because Judge Griffin failed to challenge these voters before the results were canvassed. Alternatively, the individualized process available pre-election could be used post-election. While that may be costly, the costs cannot be viewed as overly burdensome, since state law provides for such hearings pre-election. In any event, costs cannot control the analysis; surely if, for example, Republican candidates protested every Democratic voter's ballot, the strong interest in avoiding a partisan voter purge would justify additional processes to ensure no mistakes are made. Likewise, that individualized hearings may extend the process is not dispositive. The scale of the threatened disenfranchisement heightens the need for more process, even if the costs—in money and time—would be significant. At the very minimum, it would not unduly burden the state to allow voters more than 30 days to provide photo identification.

Balancing these three factors makes clear that the so-called remedial process is inadequate: A crucial right is at stake; the chances of erroneous denial of that right is high, and the burden on the state for a process that would reduce those chances is minimal and in any event warrants relatively little weight in the analysis. The balance thus tips sharply in favor of a due-process violation.

C. Equal Protection

The Fourteenth Amendment's Equal Protection Clause guarantees citizens "a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). And "[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104-105 (2000) (per curiam).

The selective application of new election rules that the state courts blessed violates this binding precedent. Indeed, the North Carolina Supreme Court itself has explained that “[t]he right to vote on equal terms is a fundamental right.” *Northampton County Drainage District Number One v. Bailey*, 326 N.C. 742, 747, 392 S.E.2d 352, 356 (1990). But the Protests target only voters in certain counties (and only votes cast in Judge Griffin’s race). In particular, his challenge to military and overseas voters who submitted absentee ballots without accompanying photo ID was limited to ballots cast in heavily Democratic Guilford County, even though there are military and overseas citizens in North Carolina’s other 99 counties who also submitted absentee ballots without either a copy of a photo ID or an ID exception form. *See Griffin*, 2025 WL 1021724, at *40 (Hampson, J., dissenting). Unlike similarly situated voters from Guilford County (and, if Judge Griffin’s mandamus petition succeeds, five other Democratic-leaning counties), the votes of citizens in other counties will be unaffected even if they do not provide photo identification within 30 days. Voters targeted by the Protests are thus now “at risk of being disenfranchised while similarly situated voters are not, simply because of the county in which they reside ... or their physical location.” *Id.* That is “arbitrary and disparate treatment” that impermissibly “value[s] one person’s voter over that of another,” *Bush*, 531 U.S. at 104-105.

The 30-day cure process confirms these equal-protection problems. Requiring voters from targeted counties to complete additional steps in order to have their votes counted—steps not required of any other voters in the 2024 North Carolina Supreme Court election or in any other race—violates the Equal Protection Clause by subjecting similarly-situated voters to drastically different voting rules based on the losing candidate’s strategic decision to target (and thus burden) only voters registered in counties more likely to vote for his opponent.

II. THE POST-ELECTION MEASURES THE NORTH CAROLINA COURTS ADOPTED VIOLATE THE NATIONAL VOTER REGISTRATION ACT

Like the Constitution, the NVRA prohibits North Carolina from discarding the votes of overseas voters who did not themselves live in North Carolina. Specifically, NVRA section 8 requires systematic (i.e., non-individualized) challenges to voters' registration to be brought at least 90 days before the relevant election, providing that: "A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. §20507(c)(2)(A). The purpose of this 90-day bar is to prohibit the systematic removal of voters "when the risk of disfranchising eligible voters is the greatest," and targeted voters cannot "correct the State's errors in time to vote." *Arcia v. Florida Secretary of State*, 772 F.3d 1335, 1346 (11th Cir. 2014).³

Applying the 90-day bar, a judge in this district held in one case that North Carolina county boards of elections violated the NVRA when they systematically removed voters from the voting rolls within 90 days of a federal election, even though the efforts to remove the voters were motivated by evidence that the voters no longer lived at their address. *See North Carolina State Conference of NAACP v. Bipartisan Board of Elections and Ethics Enforcement*, 2018 WL 3748172, at *5-10 (M.D.N.C. Aug. 7, 2018). The judge enjoined state officials both from continuing to remove the voters "without individualized inquiry as to the circumstances of each voter in the 90 days preceding a federal election" and from "holding hearings or taking any other

³ Although section 8 refers to elections for federal office, it applies here because "North Carolina has a unified registration system for both state and federal elections, and thus is bound by the provisions" of federal law. *Republican National Committee v. NCSBE*, 120 F.4th 390, 401-402 (4th Cir. 2024). Specifically, the NCSBE has acknowledged that it maintains "the same rules for registration for voters in state and federal elections," Ex.B to Second Am. Compl. (Dkt.5:24-cv-699, D.E.35-2 at 27). Indeed, this dispute concerns votes cast in the November 2024 elections during which voters elected federal as well as state officials.

action(s) to process challenges” designed to facilitate systematic removal. *Id.* at *12. Likewise here, retroactively declaring voters improperly registered—and discarding their votes—would violate the 90-day ban.

It is no answer to say that there is no violation because votes can be *discarded* without formally *removing* the voters from the rolls. The discarding of registered voters’ ballots is tantamount to removal—“a distinction without a difference,” *Majority Forward v. Ben Hill County Board of Elections*, 512 F.Supp.3d 1354, 1368 (M.D. Ga. 2021)—and Congress could not have intended to permit such an end-run around the NVRA’s protections. Nor is it an answer to say that section 8 applies only to the 90 days *before* an election, whereas the election at issue here has now passed. That too would circumvent the statute’s manifest purpose of preventing states from using last-minute removals from the rolls to deny people their right to vote. Systematic post-election discarding of ballots cast by voters on state voter rolls has precisely the same effect.

The NCSBE’s proposed notice of remedial efforts fails to remedy the NVRA problem here: The Board intends to gather a list of “challenged overseas voters who are identified as having never resided in North Carolina” and “retrieve their ballots for further action.” D.E.61 at 7. And unless this Court instructs the NCSBE otherwise, those ballots will be “discounted” pursuant to the North Carolina Supreme Court decision, *id.*, meaning these voters will effectively be retroactively removed from the voting rolls, in violation of the NVRA.

III. INJUNCTIVE RELIEF IS WARRANTED

To prevent the flagrant federal-law violations just discussed, this Court should permanently enjoin the NCSBE from (1) excluding votes by based on any of Judge Griffin’s Protests, (2) requiring any voter targeted by one or both Protests to “cure” a purportedly defective ballot in order to have it be counted, or (3) certifying the election insofar as the results are altered as a result of the Protests. Such an injunction is warranted because otherwise NCDP will suffer irreparable

harm that cannot be compensated through remedies available at law, and the balance of hardships and public interest overwhelmingly favor an injunction.

A. NCDP Will Suffer Irreparable Harm Absent Relief

As explained, the state appellate courts have directed the Board to identify and discard votes in the first category of Protests (which includes approximately 260 votes). *See* Lawson Supp. Decl. ¶¶23, 29. And approximately 1,400 additional military and overseas voters—more if Judge Griffin’s mandamus petition is granted—will have their votes discarded unless they can provide photo identification within 30 calendar days from the date the notice is mailed (or unless Guilford county independently determines that they were listed in error). *Id.* ¶¶11, 36. The denial of a fundamental constitutional right—and certainly the denial of what is perhaps the most important and fundamental right of all, *see supra* p.9—“unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (lead opinion) (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)). Indeed, “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury.” *League of Women Voters of North Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (collecting cases).

This infringement on voting rights irreparably harms NCDP—a membership organization that aims to elect Democrats in North Carolina by supporting candidates and ensuring that all voters can cast ballots and have their votes counted. Second Am. Compl. ¶¶22-23 (Dkt.5:24-cv-699, D.E.35); Lawson Supp. Decl. ¶¶3, 24. NCDP members will suffer the harm of having their votes discarded and/or being subjected to an unlawful cure process (targeted at strategically selected Democratic counties), and NCDP’s candidate for associate justice may have the election and seat she won stolen from her. These harms are irreparable because once an election comes and goes, “there can be no do-over and no redress.” *League of Women Voters*, 769 F.3d at 247.

The injury to NCDP members—and hence to NCDP—is “real and completely irreparable if nothing is done to enjoin” unlawful state action. *Id.*

NCDP must also now devote limited time and resources to contact voters and help them participate in the cure process. Lawson Supp. Decl. ¶¶19, 22. That independently constitutes irreparable harm. *See Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 361 (4th Cir. 1991). That harm is especially pronounced because the voters reside abroad and/or on bases where NCDP cannot go door to door or easily phone bank, requiring NCDP to engage in non-traditional (and almost certainly more expensive) methods of research and outreach. Lawson Supp. Decl. ¶22.

None of these harms can be adequately compensated by any remedy at law; only injunctive relief can prevent voters from being subjected to the cure process and having their votes excluded, and ensure that NCDP’s candidate is not deprived of the seat she won.

B. The Balance Of Hardships And Public Interest Favor An Injunction

The balance of hardships and public interest “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009); *see United States v. Klamath Drainage Dist.*, 2025 WL 262346, at *2 (9th Cir. Jan. 22, 2025) (applying this element of *Nken* to permanent injunctions). That merged factor favors an injunction here.

As explained, granting an injunction would prevent the state from inflicting the harm of disenfranchising selectively-targeted voters (and/or burdening them with an unlawful cure process), including military servicemembers and their families. It would also prevent the state from depriving Justice Riggs of the seat she lawfully won, overriding the will of the voters. Nothing remotely balances, let alone outweighs, these harms. Indeed, as the Fourth Circuit has explained, the state “is in no way harmed by issuance of an injunction that prevents the state from

enforcing unconstitutional restrictions.” *Legend Night Club v. Miller*, 637 F.3d 291, 302-303 (4th Cir. 2011).

The public, moreover, has a “strong interest in exercising the fundamental political right to vote,” *Purcell*, 549 U.S. at 4 (quotation marks omitted)—which includes the right to have one’s vote counted, *see Reynolds*, 377 U.S. at 554. That interest is best served by “permitting as many qualified voters to vote as possible” (and, again, to have their votes counted). *Obama for America v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012). Indeed, the public’s interest in “electoral integrity is enhanced, not diminished, when all eligible voters are allowed to exercise their right to vote free from interference and burden unnecessarily imposed by others.” *North Carolina State Conference of NAACP v. Cooper*, 430 F.Supp.3d 15, 53 (M.D.N.C. 2019). Conversely, discarding votes cast in reliance on then-current state law long after an election (whether with or without first subjecting voters to an unlawful cure process)—and potentially reversing the results of that election—undermines the public’s interest in election integrity and stability.

That conclusion is borne out by the public alarm over Judge Griffin’s and the state courts’ actions. Scores of public-interest groups, including at least one representing veterans and overseas U.S.-citizen families, have expressed the toll that this retroactive disenfranchisement would impose on both overseas voters and the public’s trust in elections. *E.g.*, Brief of Secure Families Initiative and Certain Members of Count Every Hero, *Griffin*, No. 24CV040620-910 (Wake Cnty. Sup. Ct. Feb. 3, 2025), <https://tinyurl.com/4f8798pd>. And a bipartisan group of over 200 North Carolina jurists—including former state supreme court justices—and senior state government officials and lawyers have publicly described the Protests as “a threat to the public’s faith in” state government and accordingly urged Judge Griffin to abandon his attempt to thwart the will of the people. *See* Letter to Judge Jefferson Griffin (Mar. 18, 2025), <https://tinyurl.com/4xpk7ar7>. Other

commentators, meanwhile, have emphasized that overturning the election by changing the rules after the fact would embolden other candidates to adopt Judge Griffin's playbook, setting a dangerous precedent and imperiling the peaceful transition of power. *See, e.g., Bonner, A Republican-Led Group Is Running Ads in NC Opposing the GOP Attempt to Throw out Ballots*, NC Newsline (Jan. 24, 2025), <https://tinyurl.com/47kkmmfw>; Holder, *The Courts Must Stop This Judge From Stealing an Election*, N.Y. Times (Feb. 6, 2025), <https://www.nytimes.com/2025/02/06/opinion/north-carolina-supreme-court.html>; Blake, *The Gravity of a GOP Election Challenge in N.C.: 'Invites Incredible Mischief'*, Wash. Post (Jan. 8, 2025), <https://www.washingtonpost.com/politics/2025/01/08/gop-election-challenge-north-carolina/>; Clark, *A North Carolina Supreme Court Candidate's Bid to Overturn His Loss Is Based on Theory Election Deniers Deemed Extreme*, ProPublica (Dec. 23, 2024), <https://www.propublica.org/article/jefferson-griffin-north-carolina-supreme-court-challenge-election-integrity-network>. Preventing such a regime is assuredly in the public interest.

CONCLUSION

The Court should issue a permanent injunction and declaratory relief as requested in NCDP's second amended complaint, or effect equivalent relief by exercising federal jurisdiction over and rejecting—on federal-law grounds—Judge Griffin's petitions for judicial review of the NCSBE's order denying the first and second categories of Protests.

April 21, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 21st day of April, 2025, I electronically filed the foregoing document using the court's CM/ECF system.

/s/ Shana L. Fulton

Shana L. Fulton

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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

Jefferson Griffin

Plaintiff,

v.

North Carolina State Board of Elections,

Defendants,

and

Allison Riggs, VoteVets Action Fund, North
Carolina Alliance for Retired Americans,
Sarah Smith, and Juanita Anderson,

Intervenor-Defendants

Case No. 5:24-cv-731-M

North Carolina Democratic Party,

Plaintiff,

v.

North Carolina State Board of Elections, *et al.*,

Defendants.

Case No. 5:24-cv-699-M

Carrie Conley, Lockhart Webb, and Ella
Kromm, *individually and on behalf of all
others similarly situated*; Gabriela Adler-
Espino; and the League of Women Voters of
North Carolina,

Plaintiffs,

v.

Alan Hirsch, Jeff Carmon, Stacy Eggers IV,
Kevin N. Lewis, and Siobhan O'Duffy Millen,
*in their official capacities as members of the
North Carolina State Board of Elections*, and
Karen Brinson Bell, *in her official capacity as
Executive Director of the North Carolina State
Board of Elections*,

Defendants.

Case No. 5:25-cv-193-M

SUPPLEMENTAL DECLARATION OF CATHERINE LAWSON

1. My name is Catherine Lawson. I am an adult and under no disability. The facts stated in this declaration are known to me personally, unless otherwise specifically stated.

I. Statements From April 14, 2025 Declaration

2. This declaration supplements my declaration submitted in this action on April 14, 2025. For the Court's convenience, the facts set out in my April 14, 2025 declaration are restated verbatim (with the exception of footnote 2, an updated Exhibit A, and any corrections to typographical errors), in paragraphs 3-27.

3. I am the Director of Voter Protection and Strategic Counsel for the North Carolina Democratic Party ("NCDP"), the Plaintiff in this action. In my capacity as Director of Voter Protection, I have led NCDP's voter protection programs for the 2024 general election. These programs include counseling interested voters and volunteers on election participation, hosting candidate and voter-registration events, staffing voting-protection hotlines, educating voters on how to cast their ballots, and assisting voters in curing deficiencies in their ballots during the canvass period.

4. Because the 2024 general election was the first federal and statewide general election implementing North Carolina's recent photo identification requirements, NCDP relied upon the state's photo identification statutes and regulations to ensure voters were educated on when they were required to provide photo identification.

5. Effective August 1, 2023, the North Carolina State Board of Elections (the "State Board") promulgated a temporary regulation (later made permanent) that voters casting

military-overseas ballots were “not required to submit a photocopy of acceptable photo identification.” 8 N.C. Admin. Code 17.0109(d).

6. NCDP relied upon this regulation in counseling military and overseas voters how to cast their ballots in the 2024 general election. NCDP’s voter-education resources, such as the voter-protection manual its volunteers use, instructed volunteers that military and overseas voters were not required to provide photo identification (or a so-called “reasonable-impediment” form) when submitting their military-overseas ballots. Likewise, NCDP trained its volunteers to answer questions from or about military and overseas voters on NCDP’s voter-assistance hotline and instruct these voters they were not required to provide photo identification or a reasonable-impediment form.

7. North Carolina’s military and overseas voters, including voters who cast ballots for Justice Allison Riggs (NCDP’s nominee for Associate Justice of the North Carolina Supreme Court), likewise relied upon the State Board’s regulations in voting last November. They authenticated their identity by submitting a declaration, not photo identification or an exception form, with their ballots.

8. In fact, to my knowledge, voters who voted using military-overseas ballots had no opportunity to submit photo identification or an exception form prior to the election. Under state law, military and overseas voters may vote using a federal write-in absentee ballot or an electronic portal created by the State Board. Neither method of casting a military-overseas ballot allowed for voters to submit photo identification or an exception form.

9. Based upon the final absentee-ballot statistics prepared by the State Board on November 26, 2024, 10,500 North Carolina military servicemembers and 21,533 other North Carolinians abroad cast military-overseas ballots in the 2024 general election.

10. On November 19, 2024, Judge Jefferson Griffin, the Republican challenger to Justice Riggs, filed over 300 election protests across the state in connection with his loss in the election to Justice Riggs. One category of protests asserted, for the first time and weeks after the polls closed, that military and overseas voters were required to submit copies of their photo identification or an exception form (the "Photo ID Protests"). Another alleged that counting the votes of overseas voters who checked a box on a voter registration form that they have never "lived" in the United States violated the state constitution (the "Residency Protests").

11. Judge Griffin filed the Photo ID Protests only in a handful of counties, each with large populations of Democratic voters. Only the approximately 1,400 voters Griffin challenged in Guilford County, moreover, were protested by November 19, 2025, the statutory deadline to file an elections protest. Judge Griffin subsequently submitted challenges to around 4,000 military and overseas voters from Buncombe, Durham, and Forsyth counties whose votes he contends should be discarded.¹ According to the State Board's tally, Justice Riggs earned 62.2% of the total vote in Guilford County, 63.7% in Buncombe County, 81.7% in Durham County, and 57.5% in Forsyth County.

¹ The State Board has provided lists of challenged voters on its website, at <https://www.ncsbe.gov/information-voters-challenged-election-protest#1Whichvotershavebeenchallenged-4570>.

12. The Photo ID Protests are purely technical—none included any evidence that challenged military or overseas voters were not who they identified themselves to be. Every such voter was required to submit a declaration with his or her ballot authenticating his or her identity.

13. On April 4, 2025, almost five months after the 2024 general election, the North Carolina Court of Appeals endorsed Judge Griffin's interpretation of state law, holding that 8 N.C. Admin. Code 17.0109(d) was inconsistent with Articles 20 and 21A of Chapter 163 of the North Carolina General Statutes. Based on this interpretation, the Court of Appeals ordered that the military and overseas voters targeted by the Photo ID Protests must "cure" their ballots by providing a photocopy of their approved identification or a reasonable-impediment form to their county boards of elections.

14. The Court of Appeals further ordered that voters subject to the Residency Protests were ineligible to vote, and it instructed the State Board to discard those votes, without providing the affected voters any notice or opportunity to be heard before being denied their right to vote.

15. On April 11, 2025, the North Carolina Supreme Court modified the Court of Appeals' order to require voters subject to the Photo ID Protests to provide photo identification or a reasonable-impediment form within 30 calendar days of the county boards of elections mailing out notices for these voters' ballots to count.

16. The North Carolina Supreme Court declined to review the Court of Appeals' decision with respect to Residency Protests.

17. NCDP will be irreparably harmed if military and overseas voters are subjected to the cure process and vote deletion mandated by the state courts.

18. NCDP nominated Justice Riggs, and any alteration to the vote count that jeopardizes her win irreparably harms NCDP's interest in electing its candidates.

19. Further, as a political party, NCDP's staff, volunteers, time, and financial resources ordinarily would be spent on organizing, educating and engaging voters in preparation for the 2025 municipal and 2026 statewide elections. If the State Board is not immediately enjoined from carrying out orders of the state court, NCDP will be forced to divert significant resources from organizing and other party activities to educating and assisting potentially thousands of military and overseas voters on how to submit photo identification or reasonable-impediment forms to their county boards of elections. NCDP estimates that the time and expense the cure process will immediately incur in the absence of preliminary relief include tens of thousands of dollars in staff salaries, programming, and legal support, as well as hundreds of hours of volunteer time. Once expended, NCDP cannot recover these lost funds.

20. NCDP's members will also be irreparably harmed if the cure process and vote discarding are not immediately enjoined.

21. Some voters subject to the ordered cure process in connection with the Photo ID Protests will be unable to comply because they have died, cannot be contacted, or cannot access a computer. For example, Captain Rebecca M. Lobach, a resident of Durham challenged by Judge Griffin, cast her ballot in accordance with the laws in effect during the 2024 general election. Captain Lobach was aboard the UH-60 Blackhawk helicopter

that collided with an airplane near Reagan Washington National Airport on January 29, 2025, and died in the crash. Her vote (and votes cast by those like her) should count, notwithstanding that she cannot posthumously comply with the state court's order.

22. Based on my experience in voter protection, the 30-day cure process will not provide an adequate opportunity to cure for many military and overseas voters who are in remote locations without easy access to the physical or email address they used to vote six months ago. Others may not comply because contacting these voters is exceptionally difficult. NCDP cannot door-to-door canvass voters stationed or living abroad; cannot easily phone bank international numbers; and does not have access to the State Board's email database (which is not made publicly available under state law). As discussed, mail likely will not be an effective means for communicating with voters who are living abroad and voted electronically.

23. The voters targeted by the Residency Protests are not subject to the cure process. The State Board will delete these voters' votes unless enjoined from doing so by this Court.²

24. Deleting these votes will irreparably harm the NCDP and its members. NCDP has an interest in electing its candidates, including Justice Riggs, which interest will be irreparably injured if Justice Riggs' victory is altered by discounting these votes.

² On April 15, 2025, the State Board filed a notice in this consolidated litigation (DE 61) setting forth "how it intends to approach [the] administrative remedial process" ordered by the North Carolina Supreme state courts "unless and until directed to do otherwise by court order." The following day, Judge Griffin filed a petition for writ of mandamus and alternative motion to clarify mandate in the North Carolina Court of Appeals challenging the Board's intended approach. Dkt. 5:24-cv-00731-M-RJ, ECF 76 (notice of state court filing). As Judge Griffin's mandamus petition and motion remain pending, the Board's ultimate approach is unclear.

25. Additionally, unlike the voters subject to the Photo ID Protests, the overseas voters subject to the Residency Protests have not received notice that their votes will be discarded. They have not been given any opportunity to show that the allegations in Judge Griffin's Residency Protests are incorrect or that they are residents of North Carolina for voting purposes under N.C. Gen. Stat. § 163-258.2 or another provision of state law.

26. Judge Griffin's Residency Protests have incorrectly named North Carolinians as "never residents" when in fact those voters have resided in North Carolina. A copy of a recent news story identifying 16 of these voters is attached as **Exhibit A**.

27. Voters' ballots should not be discarded on the assumption that Judge Griffin's protests are factually accurate.

II. Developments Since April 14

28. Since the Court issued a preliminary injunction in this now-consolidated matter, there have been several recent news reports indicating that Judge Griffin has erroneously challenged many voters as "never residents," including:

- a. Josey Wright, a 25-year-old Ph.D. student studying in the United Kingdom. According to news sources, Ms. Wright lived in North Carolina from early childhood until age 18. Her parents still live there, and she visits most years, typically spending summers there. She voted from abroad using a web portal available to US citizens who now live overseas, as she has done in several local and national elections since she moved to the UK to study.

- b. Josiah Young, 20, who was studying abroad in Spain during the 2024 general election. Mr. Young attended community college in North Carolina and runs a drone photography business in the state. He voted in North Carolina, and his permanent residence is in Jackson County.
- c. Neil McWilliam, who taught at Duke University for two decades before moving to France with his family in 2023. Originally from the United Kingdom, McWilliam, his wife and his son were naturalized in 2013, and he has voted in every state and federal election since. He is a Democrat, and his wife is registered as an independent. His vote was challenged, and hers was not.
- d. David Eberhard, a former North Carolina resident who moved to Italy for his son's education but still owns his home in the state and intends to return. He voted while living in Italy in 2024 using the online forms provided by local officials, he said.
- e. Vidyaranya Gargeya, a retired professor who taught at UNC-Greensboro for 30 years and who, according to the school, has visited every college in the state. He's paid property taxes at the same suburban Guilford County home he's owned since 2003, according to public records. And voting records show he voted in-person on Election Day eight times without issue, and has voted in every midterm and presidential general election since 2006. He appears to have cast an overseas mail-in ballot for the 2024 election.
- f. Derrick Raphael, who attended law school at Duke University from 2009-12 and worked in North Carolina for years after graduating. Raphael voted in person in

North Carolina from 2006 to 2014. He has since been living and working in Canada with his spouse, but maintains his permanent residence in North Carolina.

g. Cameron Avila, a postal worker based in Jacksonville, North Carolina.

h. Abdulai Conteh, an army mechanic at Fort Bragg, North Carolina.

29. Judge Griffin's "never resident" protests challenged 259 unique voters. Based upon the publicly available information I have been able to obtain, at least 32 appear to have been wrongfully accused of being "never residents." My sources of information include:

- a. News articles reporting individual voters who reside in North Carolina;
- b. National change of address data showing voters on the "never resident" list moved from one address in North Carolina to another address in North Carolina; and
- c. Voter history data indicating voters on the "never resident" list voted domestically by mail, in person at early voting, or in person on election day in at least one election prior to the 2024 general election under claim of residency in their county.

30. I have reviewed the notice filed by North Carolina State Board of Elections in this matter on April 15, 2025 (DE 61). I have also reviewed the response to the State Board's notice filed by Judge Griffin on April 16, 2025 (DE 76).

31. The State Board's independent analysis corroborates my testimony that Judge Griffin has wrongfully included voters in his "never resident" protests. A sample internal review the Board conducted of the voter history of the supposed "never resident" voters

identified by Judge Griffin also indicates that some have resided in North Carolina previously. (DE 61 p.4 n.6).

32. As the Director of Voter Protection and Strategic Counsel for the NCDP, I have worked with our staff and volunteers to craft a cure program and identify potential pitfalls with the State Board's cure process, some of which I describe below. Based on my experience in voter protection, it remains likely that certain voters will be unable to comply with the cure process and will therefore have their votes discarded unless this Court orders otherwise.

33. The State Board's notice does not address what to do about voters who passed away after election day (and I know that at least one voter targeted by Judge Griffin has since tragically died, *see supra* ¶21). The notice does not, for example, propose to alert a deceased voter's family or estate about the need for a cure. Nor does the notice address whether family or other individuals who independently learn of a deceased voter's threatened disenfranchisement can submit photo identification on the voter's behalf (even assuming they happen to have the voter's identification) or whether someone other than the voter can complete an exception form.

34. Also according to the State Board's notice—and as the state courts have required, *Griffin v. North Carolina State Board of Elections*, 2025 WL 1090903, at *3 (N.C. Apr. 11, 2025)—the 30-day cure period will begin when notice is *mailed*. The NCDP has learned of concerns from multiple voters living on military bases that notices will not reach them in time. They report that mail delivery on these bases is often delayed for security purposes. Overseas voters have likewise expressed concern that delays with

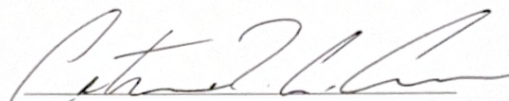
international mail will not allow adequate time to respond to the notices, even if they receive the notices within 30 calendar days.

35. Additionally, many voters who cast overseas ballots on election day are students who were studying abroad during the fall semester. Many of these students may no longer receive mail at their temporary overseas address. While they may be registered to vote at their college or university and maintain an on-campus mailing address, many will not have access to that address, either, once the spring semester ends (e.g., because they are moving within the campus, graduating, returning to their parents' homes for summer jobs, moving to internship or study abroad housing, or doing something else away from campus). In addition to my work for NCDP, I am a Senior Lecturing Fellow at Duke University, so I know that Duke's exam schedule ends (and students will be leaving campus) on April 27—just when the State Board plans to send its initial mailing. Similarly, final exams at NC State are scheduled for April 24-30 (*see* <https://studentservices.ncsu.edu/calendars/academic-calendar/>), such that I would expect many students from NC State to depart campus shortly thereafter.

36. If Judge Griffin successfully obtains a state court order instructing the State Board to expand the scope of his protests and modify its proposed cure process, these concerns will be exacerbated. Increasing the number of voters who must cure (as Judge Griffin wants) heightens the risk that eligible voters will be disenfranchised because they never receive notice. And Judge Griffin has demanded that those voters he accuses of never having resided in North Carolina be disenfranchised without any notice at all, increasing

the chance that eligible voters who he erroneously accused of not residing in North Carolina will be disenfranchised.

I declare under penalty of perjury that the foregoing is true and correct. Executed April 21, 2025.


Catherine Lawson

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EXHIBIT A

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At least 16 'never residents' who are poised to have ballots tossed have actually lived in North Carolina

A preliminary review shows many of the 260 voters stand to have their ballots wrongly removed. The North Carolina Court of Appeals is expected to soon direct elections officials to toss out the votes.



BRYAN ANDERSON
APR 14, 2025

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Democratic Court of Appeals Judge Toby Hampson and Republican Judges John Tyson and Fred Gore hear an ongoing Supreme Court election dispute during a hearing on Friday, March 21, 2025.

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At least 16 North Carolina voters from 10 different counties are poised to have their ballots immediately removed from the Supreme Court tally without any opportunity to address concerns a Republican candidate has with their ballots, a preliminary *Anderson Alerts* review of [the challenged voters](#) shows.

To overturn an apparent 734-vote defeat to Democratic Supreme Court Justice **Allie Riggs**, Republican Court of Appeals Judge **Jefferson Griffin** contested the ballots of 260 North Carolinians, labeling them as “never residents.”

The North Carolina Court of Appeals [ruled this month](#) that the State Board of Elections must remove all 260 voters from the count. The state Supreme Court [upheld that decision](#).

In response, Riggs appealed to federal court, where a Trump-appointed judge ruled over the weekend that Judges **Fred Gore** and **John Tyson** may proceed with directing state elections officials to remove the so-called “never residents” from the vote count.

“The totality of the circumstances indicates the domicile of the parents of these absentee, ‘Never Resident’ voters was overseas,” Gore and Tyson had concluded. “These ‘Never Resident’ voters, who were born to parents overseas, were never brought to North Carolina to reside during the entirety of their eighteen-year dependency as minors, and their domicile is overseas.”

But a review of public records, news clips, social media posts, and interviews show many of those people have indeed lived in the state, with some having spent their entire childhood in North Carolina, continuing to pay property taxes or working in state.

The at-risk voters include military servicemembers based out of Fort Bragg and Camp Lejeune, college professors, young adults working or studying abroad, a former D1 swimmer and even an aspiring actress.

Cameron Avila, a postal worker at Marine Corps Base Camp Lejeune in Jacksonville has his vote challenged, as does Capt. **Jacob Sugg**— a UNC-Wilmington alum who's worked for the Marines since at least 2019.

They're far from the only ones whose votes face imminent risk.

Abdulai Conteh, who has served as a U.S. Army mechanic since 2017 and is based out of Fort Bragg, also faces the same challenge to his ballot.

Josey Wright, a Pitt County voter, stands to have her Supreme Court vote discarded

"I lived in Pitt County until I was 18, when I moved to England for my undergrad, although I was back in NC most summers/Christmas vacations," Wright told *Anderson Alerts*. "I am currently still in Cambridge working on my PhD but have voted in North Carolina elections as an overseas voter since I moved in 2017."

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Wright has voted without issue since 2018. She also noted she worked at Duke University one summer through a residential program and continues to travel back North Carolina two to three times per year to be with her family.

"It's ridiculous that they're trying to discount so many people who have every legal right to vote in NC elections," Wright said.

Neil McWilliam, an Orange County voter, taught at Duke's Trinity College of Arts Sciences from 2003 to 2023 and is a naturalized citizen. Since retiring from Duke, he lived in France. He's infuriated to now find himself on Griffin's list.

"As appears to be the case with much of Mr. Griffin's questioning of the result for the NC Supreme Court, the challenge to my vote is spurious," McWilliam told *Anderson Alerts*. "I hope this is of help, though in the current climate, it is hard to be confident of a just outcome."

Wake County Board of Elections Member **Gerry Cohen** said the challenged ballots likely the result of the voters checking a box on a **Federal Post Card Application** that read, "I am a U.S. citizen living outside the country, I have never lived in the United States." Cohen said voters may very well have checked the box in error.

If the Court of Appeals retains its position that such ballots ought to be immediately discarded, these voters and others stand to be left without any remedy.

Anderson Alerts identified 16 voters who were born in North Carolina, resided in North Carolina, still live in North Carolina, or some combination of the three. Additional voters may very well fall into these groups, but further review would be needed to reach a definitive conclusion.

Here's the other "never resident" voters who stand to have their ballots wrongfully discarded:

- **Vidyaranya Gargeya (Guilford County)**: A retired professor who taught at UNC Greensboro for 30 years who, according to the school, has visited every college in the state. He's paid property taxes at the same suburban Guilford County home he's owned since 2003, according to public records. And voting records show he voted in-person on Election Day eight times without issue, and has voted in every midterm and presidential general election since 2006. He appears to have cast a

overseas mail-in ballot for the 2024 election. And his nextdoor neighbor confirmed on Saturday that Gargeya does indeed live next to him.

- **Josiah Young (Jackson County):** Young was raised in Webster, played basketball for Jackson County Early College and runs a drone photography business based in western North Carolina. Young, who briefly studied abroad in Spain at the time of last year's election, said he was born and raised in Jackson County and has never been out of the country for more than three to four months at a time.

He said it's possible he checked the wrong box on an FPCA application, but can't remember. He said he voted for Riggs. He's now livid that he's left with no recourse to get his vote counted. "It just shows that there's really no interest in them trying to find out if these ballots are actual citizens or not," Young said. "It's clearly just to give [Griffin] an advantage in this election. If they wanted to look into this even just a little bit, it's pretty clear that my residence is in Jackson County. It's really not that hard to figure that out."

- **Michelle Carrillo-Corujo (Guilford County):** Corujo grew up in North Carolina. She attended Crestdale Middle School in Matthews in 2015 and has largely remained in North Carolina ever since. She graduated from UNC-Greensboro last year with a degree in political science and recently moved to the Netherlands for further academic pursuits.
- **Holly Arrowood (Henderson County):** Arrowood has been a North Carolina voter since 2008 and has cast a ballot in-person on Election Day seven times. She also appears to still live in Chapel Hill.
- **Jean-Louis Mondon (Henderson County):** Mondon has been a U.S. citizen since 1986, has long lived in North Carolina and has voted in the state since at least 1994. He taught English, French and Spanish at Blue Ridge Community College from 2005 to 2009, runs a Christian blog and is a private tutor and linguist.
- **David Eberhard (Orange County):** Eberhard is a longtime neurologist and taught at UNC-Chapel Hill from 2011 to 2016.

- **Austyn Blamy (Union County):** Blamy graduated from high school at Cuthbert High School in Waxhaw and has been a seasonal swim coach there since 2018, according to her LinkedIn page. Blamy was also a D1 athlete from 2023-2024 for Liberty University's swim team.
- **Ayse Babahan (Wake County):** Babahan was born in North Carolina, but grew up in Istanbul. She graduated from the Stella Adler Studio of Acting in New York and is now an actress living overseas.
- **Vicki Brent (Wake County):** Brent attended Millbrook High School in Raleigh from 2017 to 2021 and served on the Wake County Black Student Coalition.
- **Eric Hoffman (Wake County):** Hoffman attended UNC-Chapel Hill from 2014 to 2016 and got a master's degree in business administration and has been a registered North Carolina voter since 2011. He's since worked out of Holly Springs and Australia.
- **Sergio Cutiva Valencia (Watauga County):** Valencia is an Appalachian State University alum who graduated in 2022.

Based on public records, at least 11 additional voters in Griffin's "never resident" protest appeared to have lived or currently live in North Carolina. But a more robust review for them and others would be needed.

Update: This story was updated at 1:30 p.m. on Monday, April 14, to include perspective from Josiah Young, a "never resident" listed on Griffin's protest who spent his entire childhood in Jackson County and has never been overseas for more than three to four months at a time.

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Bryan is a freelance journalist who covers all things North Carolina politics. He pays close attention to voting, elections and activities within the North Carolina General Assembly.

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Write a comment...



Stanley Toney 5d

The only "quick" remedy I can think of is that one of these people, or more, need to sue the state of elections and or the North Carolina Supreme Court.

LIKE (3) REPLY



1 reply



Gina 5d

Insanity!

LIKE (1) REPLY



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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV040620-910

JEFFERSON GRIFFIN,)	
)	
)	
Petitioner,)	
)	STATE BOARD'S RESPONSE IN
v.)	OPPOSITION TO
)	PETITIONER'S PETITION FOR
NORTH CAROLINA STATE BOARD OF)	JUDICIAL REVIEW
ELECTIONS,)	
)	
Respondent.)	

NOW COMES Respondent, the North Carolina State Board of Elections ("Respondent" or "State Board"), to respond in opposition to the Petition for Judicial Review filed by Petitioner Judge Jefferson Griffin on December 20, 2024. For the reasons explained below, the Court should affirm the agency decision challenged by the Petition and deny the Petition for Judicial Review.

INTRODUCTION

The petition should be denied for three threshold reasons.

First, Petitioner's request that this Court retroactively change election rules to alter the result in his recent election violates North Carolina's version of the *Purcell* principle. As Justice Dietz has explained, the *Purcell* principle "recognizes that as elections draw near, judicial intervention becomes inappropriate because it can damage the integrity of the election process." Am. Order at 1 (Jan. 7, 2025) (Dietz, J., dissenting). Strict, dispassionate adherence to this doctrine "protects the State's interest in running an orderly, efficient election" and preserves the public's "confidence in the fairness of the election." *Democratic Nat'l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring).

The circumstances of this case call out for application of the *Purcell* principle. Petitioner, like all candidates, has the right to file post-election protests claiming that irregularities occurred during the course of the election. But Petitioner does not claim here that the Board counted votes in violation of the rules in place at the time of the election. He instead seeks to retroactively *change* longstanding election rules by bringing novel legal claims—including claims that would require courts to strike down statutes passed by the General Assembly. And the result would be to retroactively disenfranchise more than 65,000 voters, many of whom have been voting in North Carolina elections without controversy for decades. Under *Purcell*, these claims can and should be litigated on a going-forward basis. But it is far too late to alter the rules of an election that has already taken place.

Our Supreme Court’s decision in *James v. Bartlett* is not to the contrary. 359 N.C. 260, 607 S.E.2d 638 (2005). In that case, as Justice Dietz has explained, the Board decided to count certain ballots that were “unlawful under the election rules that existed at the time of the election.” Order at 1 (Jan. 22, 2025). In this case, “by contrast, the State Board of Elections complied with the election rules existing at the time of the election.” *Id.* at 2. Unlike in *James*, therefore, the *Purcell* principle applies here because Petitioner is seeking to cancel votes by retroactively changing the rules of an election *after* that election took place.

Second, Petitioner’s requested remedy would violate the Fourteenth Amendment as well as North Carolina Supreme Court precedent. As several federal courts have held, it is flatly unconstitutional for a court to retroactively cancel votes that were cast in compliance with official guidance from election officials. *See, e.g., Griffin v. Burns*, 570 F.2d 1065, 1075-76 (1st Cir. 1978); *Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (4th Cir. 1983). This is true even when that guidance turned out to be inaccurate. *See Burns*, 570 F.2d at 1075-76. When

voters have cast ballots in accordance with “the instructions of the officials charged with running the election,” it violates due process to cancel their votes. *Id.*

North Carolina Supreme Court precedent is even more directly on point. The Court has twice specifically held that it is unlawful to discount votes based on alleged noncompliance by election officials during the registration process. See *Woodall v. Western Wake Highway Comm’n*, 176 N.C. 377, 388-89, 97 S.E. 226, 231-32 (1918); *Overton v. Mayor of Hendersonville*, 253 N.C. 306, 315-16, 116 S.E.2d 808, 815 (1960). These precedents recognize that when a lawful voter casts a ballot after being registered, it would be “hostile to the free exercise of the right of franchise” to cancel their ballot merely because “the voter may not actually have complied entirely with the requirements of the registration law.” *Woodall*, 176 N.C. at 388-89, 97 S.E. at 231-32.

Petitioner’s requested remedy is unconstitutional for another reason as well. As the U.S. Supreme Court has held, it violates the federal Equal Protection Clause to arbitrarily “value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000) (per curiam). But Petitioner asks this Court to do just that. He specifically seeks to cancel votes of people who he claims are improperly registered, but *only* those who voted absentee or early in-person—leaving intact the votes of identically situated persons who voted on election day. Likewise, Petitioner seeks to cancel the votes of military and overseas voters who did not submit a copy of their photo ID along with the absentee ballot application supplied by the federal government for such voters. But he asks that only such voters from four large, urban counties have their votes cancelled. All the other identically situated voters in the State’s other 96 counties, according to Petitioner, should continue to have their ballots counted. Granting this arbitrary request would clearly violate the Equal Protection Clause.

Third, Petitioner’s protests should be denied because he failed to provide voters with adequate notice that he was challenging their votes. To comply with procedural due process, notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of [a matter] and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr., Co.*, 339 U.S. 306, 314 (1950). Petitioner failed to do so here. Challenged voters were mailed a postcard stating that their votes *may* be subject to a protest, along with a QR code that, when scanned with a smartphone, linked to a list of *hundreds* of protests, many of which contained *thousands* of names, out of alphabetical order, on *hundreds* of pages. Because this form of notice guarantees that a “significant number” of voters would not understand their votes were being challenged, it violates procedural due process. *Greene v. Lindsey*, 456 U.S. 444, 453 (1982).

For each of these independent reasons, the petition should be denied at the threshold. Petitioner’s claims can and should instead be resolved on a prospective basis. But even if this Court were inclined to consider the merits of Petitioner’s protest in this posture, it would fail on the merits.

Petitioner claims that over 60,000 voters should have their votes disregarded because they allegedly registered to vote improperly under the federal Help America Vote Act (HAVA) and its state law analog. But Petitioner has failed to establish probable cause to believe that any challenged voter *actually* registered to vote and cast ballots in violation of the law. HAVA and corresponding state law explicitly contemplate numerous situations in which a voter may lawfully register and vote, even though their records lack a social security or driver’s license number in the Board’s database. For example, some challenged voters registered *before* HAVA was even enacted, and nothing in HAVA requires previously registered voters to provide an

identification number to remain on the rolls. As another example, HAVA and state law explicitly allow voters to register without providing an identification number, if they lack such numbers. And yet another example: HAVA and state law recognize that, due to database-matching errors, many voters who *did*, in fact, provide an identification number at registration may not have that number reflected in the Board's database. HAVA and state law therefore provide that these voters also may vote if they show a HAVA ID before voting for the first time.

Because Petitioner failed to satisfy his burden to show that any individual voter whose registration records lack an identification number *actually* was ineligible to register and vote, the Board correctly dismissed Petitioner's first protest. Indeed, in response to Petitioner's arguments here and in other post-election litigation, the Board conducted a preliminary data analysis showing that at least half of the voters that Petitioner challenges (and likely many more) actually *did* provide a driver's license or social security number on their voter-registration form or were not required by law to do so. This preliminary data analysis only confirms that Petitioner failed to meet his burden of showing probable cause that any individual challenged voter was ineligible to register and vote.

For these reasons, Petitioner's protest fails on the merits. But even if this Court were to disregard all of the above and conclude that Petitioner's protests state valid claims for relief, Petitioner is wrong that this Court can skip past factfinding and the Board's remedial process and award him the election. Below, the Board dismissed Petitioner's protests at the preliminary stage—akin to a dismissal on the pleadings. Thus, the only remedy available to Petitioner at this stage would be a remand to the Board for further proceedings, including an evidentiary hearing. At that evidentiary hearing, the State Board or county boards could conduct any necessary

factfinding on an individualized basis—rather than disenfranchising more than 60,000 voters *en masse* as Petitioner demands.

In sum, this Court should deny the petition outright as procedurally and constitutionally defective. But even if this Court were to consider Petitioner’s arguments, those arguments fail on the merits. And even if this Court were to consider and agree with the merits of Petitioner’s claims, the only proper relief would be a remand to the Board.

STATEMENT OF FACTS

A. Petitioner files hundreds of election protests.

Petitioner Judge Jefferson Griffin and Intervenor Associate Justice Allison Riggs were candidates in the statewide 2024 general election for Associate Justice on the North Carolina Supreme Court. Final canvassed results show Justice Riggs prevailed by 734 votes.¹

On November 19, 2024, Petitioner filed hundreds of election protests throughout the State challenging the election results, alleging that certain voters’ ballots were invalid. (Agency R p 5369) In his protests, Petitioner challenged, among others, the following three categories of voters:

- 60,273 ballots cast by registered voters with allegedly incomplete voter registrations. However, these challenged ballots include only those cast by individuals who voted early or voted absentee. They do not include tens of thousands of identically situated ballots cast in-person on election day.²

¹ *NC SBE Election Contest Details*, N.C. State Bd. of Elections, bit.ly/3PA7R6P (last visited Feb. 3, 2025).

² (See Agency R pp 21-64, 81-116, 133-47, 164-232, 249-87, 304-48, 375-94, 411-40, 457-88, 505-40, 526-40, 557-660, 677-98, 715-56, 773-830, 857-72, 889-929, 979-98, 1015-101, 1128-48, 1165-237, 1248-70, 1287-367, 1388-401, 1418-503, 1568-88, 1605-51, 1668-738, 1755-80, 1797-815, 1832-83, 1900-17, 1934-55, 1972-2008, 2024-74, 2091-253, 2270-88, 2305-37, 2354-400, 2411-26, 2443-73, 2491-547, 2564-600, 2617-33, 2650-99, 2716-31, 2748-88, 2805-81, 2898-936, 2953-3024, 3041-87, 3103-77, 3210-398, 3415-90, 3507-62)

- 1,409 votes cast by military and overseas voters registered in Guilford County who did not include a copy of a photo identification with their ballots. He also challenged similar votes in three additional counties (Buncombe, Durham and Forsyth), but did not identify specific voters.³
- 266 ballots cast by overseas citizens who voted absentee and who have never resided in the United States.⁴

B. The Board takes jurisdiction over three categories of protests.

When an election protest is filed with a county board, the State Board may take jurisdiction over the protest and resolve it in the first instance. N.C. Gen. Stat. § 163-182.12. On November 20, the Board voted unanimously to take jurisdiction over the three categories of protests listed above, which “presented legal questions of statewide significance.” (Agency R p 5371) The Board instructed county boards to consider Petitioner’s other protests, “which were focused on individual, fact-specific determinations of voter eligibility.”⁵ (Agency R p 5371)

³ (See Agency R pp 349-58, 1102-11, 1238-47, 1504-51) Petitioner initially challenged voters in Cumberland and New Hanover counties as well, but declined to pursue these challenges. (See Agency R pp 831-40, 2401-10)

⁴ (See Agency R pp 5-20, 65-80, 148-63, 233-48, 288-303, 359-74, 395-410, 441-56, 489-504, 441-56, 489-504, 541-56, 661-76, 699-714, 752-72, 841-56, 873-88, 930-45, 963-78, 999-1014, 1112-27, 1149-64, 1271-86, 1402-17, 1552-67, 1589-604, 1652-67, 1739-54, 1781-96, 1816-31, 1889-99, 1918-33, 1956-71, 2009-23, 2073-90, 2254-69, 2289-2304, 2338-53, 2427-42, 2474-90, 2548-63, 2601-16, 2634-49, 2700-15, 2732-47, 2789-2804, 2882-97, 2937-52, 3025-40, 3088-102, 3178-209, 3399-414, 3419-506)

⁵ The remaining three categories of protests challenged ballots allegedly cast by voters (1) who were serving a felony sentence; (2) who were deceased; and (3) whose registrations were denied or removed. (Agency R p 5371) On December 27, 2024, the Board dismissed these protests for failure to substantially comply with service requirements and because they challenged an inadequate number of votes to change the outcome of the contest. N.C. State Bd. of Elections, Decision and Order at 1-2 (Dec. 27, 2024). Petitioner declined to appeal that decision to this Court by the January 9, 2025 statutory deadline. See N.C. Gen. Stat. § 163-182.14(b). As a result, the Board was required by statute to certify the election by January 10, 2025 absent a court order. See *id.* On January 7, 2025, the North Carolina Supreme Court issued a stay of the statutory certification deadline. Am. Order at 2.

After this meeting, Petitioner filed additional untimely protests after the statutory deadline. *See* N.C. Gen. Stat. § 163-182.9(b)(4). These protests sought to add additional ballots to Petitioner’s challenges with respect to the second and third categories listed above.

With respect to the third category, Petitioner tried to update his protests by newly challenging the votes of 4,100 military and overseas voters in Buncombe, Durham, and Forsyth counties. (Agency R pp 3790-926, 4006-42) He did not, however, seek to challenge the more than 25,000 identically situated voters across the State.⁶

C. The Board dismisses the protests.

Having taken jurisdiction over the protests initially filed with a county board, the Board followed the same procedures for resolving the protests as the county boards would have. *See* N.C. Gen. Stat. §§ 163-182.10, -182.11(b), -182.12. These procedures first require the Board to give the protest “preliminary consideration.” N.C. Gen. Stat. § 163-182.10(a). At this preliminary consideration stage, the Board must answer two questions. First, did the protest comply with the protest-filing requirements in N.C. Gen. Stat. § 163-182.9? *Id.* Second, did the protest “establish[] probable cause to believe that a violation of election law or irregularity or misconduct has occurred”? *Id.* For a protest to proceed beyond the preliminary consideration stage, the Board must answer both questions in the affirmative. *Id.*

Protests that meet these preliminary requirements then proceed to an evidentiary hearing. *Id.* §§ 163-182.10(a), (c)-(d). Following this hearing, the Board must issue a “written decision” with findings of fact and conclusions of law. *Id.* § 163-182.10(d). The findings of fact must be “based exclusively on the evidence” presented at the hearing “and on matters officially noticed.” *Id.* § 163-182.10(d)(1). The conclusions of law must be based on whether there is “substantial

⁶ Petitioner did not include in the appendix to his petition the protests for seven additional counties that he filed on the second category.

evidence of a violation, irregularity or misconduct sufficient to cast doubt on the results of the election.” *See id.* §§ 163-182.10(d)(2)(a)-(e).

If the Board finds substantial evidence of a violation, the Board may correct vote totals, order a recount, or take “[a]ny other action within [its] authority.” *See id.* § 163-182.10(d)(2)(e); *see also id.* § 163-182.12. In addition, under certain circumstances, the Board may order a new election. *Id.* § 163-182.13. Decisions of the State Board may be appealed to Wake County Superior Court. *Id.* § 163-182.14.

In line with this procedure, on December 11, 2024, the Board held a public meeting to consider the protests over which it had retained jurisdiction. (Agency R p 5368) Two days later, the Board dismissed the protests at the “preliminary consideration” stage—concluding both that Petitioner had failed to comply with procedural filing requirements, and that he had failed to establish “probable cause” of a violation of law. (Agency R pp 5368-410) With respect to all three categories of protests, the Board held that Petitioner “failed to serve” affected voters, in violation of the North Carolina Administrative Code and “the requirements of constitutional due process.” (Agency R p 5373) The Board reasoned that Petitioner’s chosen method of service—a postcard with a QR code—did not provide affected voters adequate notice that their vote was being challenged. (Agency R pp 5378-381)

The Board also recognized that the additional protests that Petitioner filed after the deadline “may not have been timely filed under [section] 163-182.9(b)(4),” but did not decide whether these protests were timely since it “dismiss[ed] these protests for other reasons.” (Agency R p 5373 n.4)

The Board then examined each category of protests individually, outlining the reasons why each protest was “legally invalid.” (Agency R p 5407) Pertinent to this appeal, on the first

category of protests about alleged incomplete voter registrations, the Board held that the federal Help America Vote Act (HAVA) foreclosed Petitioner’s requested relief to cancel the votes of affected voters. (Agency R pp 5381-87, 5394) The Board further held that, “to the extent there is a potential violation of HAVA involved in registration of voters in the past, it was remedied consistent with a separate provision of HAVA.” (Agency R p 5387) That “separate provision . . . states that a new voter registration applicant must provide an alternative form of identification before or upon voting for the first time, if the state did not have a system complying with the requirement to collect a driver’s license number or last four digits of a social security number.” (Agency R p 5386 (citing 52 U.S.C. § 21083(b)(1)-(3)))

The Board also noted the recent decision of the U.S. District Court for the Eastern District of North Carolina in *Republican National Committee v. North Carolina State Board of Elections*, No. 5:24-cv-00547, slip op. at 4 (E.D.N.C. Nov. 22, 2024)—a case in which the federal court denied the plaintiffs in that case relief similar to what Petitioner seeks here. (Agency R p 5387) Acknowledging the federal court’s reasoning that “there had been no meaningful opportunity for the voters at issue to address any potential deficiency far enough in advance of the election to comply with the law,” the Board similarly concluded that votes cannot be invalidated *after* an election when eligible voters complied with all the instructions they had been given when they registered and voted. (Agency R pp 5387-92) Doing so, the Board held, would violate “substantive due process protections under the U.S. Constitution.” (Agency R pp 5390-92)

The Board also rejected Petitioner’s protests as to the votes of military and overseas voters who did not include a copy of their photo identification with their ballots. (Agency R p 5399) One of its administrative rules, the Board explained, expressly provides that these voters

were “not required to submit a photocopy of acceptable photo identification” with their absentee ballots. (Agency R pp 5403-04 (citing 08 N.C. Admin. Code 17 .0109(d))).

The Board further explained that absentee voting by military and overseas voters is governed by the Uniform Military and Overseas Voters Act (UMOVA), a law unanimously passed by the General Assembly in 2011, which allows these voters to use special procedures to register to vote, request an absentee ballot, and submit an absentee ballot. *See* (Agency R pp 5399-403); N.C. Gen. Stat. §§ 163-258.1 *et seq.* These procedures, the Board noted, do not require military and overseas voters to include a copy of their photo identification when submitting their absentee ballot. (Agency R pp 5399-401) Moreover, because these procedures originate under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which UMOVA applies to state elections, the Board concluded that imposing an identification requirement on voters covered by UOCAVA that is inconsistent with federal law would likely violate the Supremacy Clause of the U.S. Constitution. (Agency R pp 5404-06)

The Board also rejected Petitioner’s protests as to overseas voters who have never resided in the United States but whose parents had been North Carolina residents. (Agency R p 5396) In dismissing this category of protests, the Board noted that UMOVA “specifically authorized U.S. citizens who have never lived in the United States to vote in North Carolina elections if they have a familial connection to this state.” (Agency R pp 5396-97) The Board elected not to “ignore” this state statute. (Agency R p 5396)

D. Petitioner files petitions for judicial review, and the Board removes to federal court.

On December 20, 2024, Petitioner filed three petitions for judicial review in this Court of the three categories of protests over which the Board took jurisdiction. *See Griffin v. N.C. State Bd. of Elections*, No. 24CV040622-910 (Wake Cnty. Sup. Ct.); *Griffin v. N.C. State Bd. of*

Elections, No. 24CV040619-910 (Wake Cnty. Sup. Ct.); *Griffin v. N.C. State Bd. of Elections*, No. 24CV040620-910 (Wake Cnty. Sup. Ct.). The Board removed those petitions to federal court. *See Griffin v. N.C. State Bd. of Elections*, No. 5:24-cv-00731 (“*Griffin II*”), D.E. 1 (E.D.N.C.). On January 6, 2025, the district court *sua sponte* remanded the three petitions for judicial review to this Court, *Griffin II*, D.E. 24, 25, in light of its decision to remand Petitioner’s petition for a writ of prohibition to the North Carolina Supreme Court in *Griffin v. North Carolina State Board of Elections*, No. 5:24-CV-00724-M-RN (*Griffin I*) (E.D.N.C.). One of these three petitions for judicial review addresses the category of protests concerning alleged incomplete voter registrations, and that is the petition that is before this Court in this case.

Respondent appealed the district court’s remand decisions in both *Griffin I* and *Griffin II* to the U.S. Court of Appeals for the Fourth Circuit. *Griffin I*, D.E. 52; *Griffin II*, D.E. 26. The Board moved in the Fourth Circuit for a temporary administrative stay and stay pending appeal in each case, on which the Fourth Circuit has yet to rule. No. 25-1018 (4th Cir.), D.E. 10; No. 25-1020 (4th Cir.), D.E. 7. In *Griffin I*, the Fourth Circuit granted Intervenor Justice Riggs’ motion for expedited review, setting a schedule that had that appeal briefed and argued by January 27, 2025. *See* No. 25-1018 (4th Cir.), D.E. 18, 33. The day after oral argument took place in *Griffin I*, the Fourth Circuit granted Justice Riggs’ motion to intervene in *Griffin II*. No. 25-1020 (4th Cir.), D.E. 19.

On January 7, 2025, the North Carolina Supreme Court issued an order granting Petitioner’s motion for a temporary stay of the certification of the election and setting an expedited briefing schedule. Am. Order (Jan. 7, 2025). On January 22, 2025, the North Carolina Supreme Court issued an order dismissing Petitioner’s petition for a writ of prohibition, calling for the three categories of election protests that were the subject of the State Board’s decision to

first undergo the statutorily prescribed appeal procedure. Order at 2-3 (Jan. 22, 2025). Thus, the Court ordered, the petitions for judicial review that were filed in Wake County Superior Court in accordance with such procedure are to proceed “expeditiously.” *Id.* at 3. The Court further ordered that the stay of certification remains in effect. *Id.*

STANDARD OF REVIEW

Because the appeal of a State Board’s decision on an election protest to this Court is one seeking review of a final agency decision, that review is governed by Chapter 150B where not otherwise provided for in those General Statutes specifically governing election protest proceedings. *See generally* N.C. Gen. Stat. § 150B-43; *see also id.*, § 150B-2(1b) (defining “agency”).

“When the trial court exercises judicial review over an agency’s final decision, it acts in the capacity of an appellate court.” *N.C. Dep’t of Env’t & Nat. Res. v. Carroll*, 358 N.C. 649, 662, 599 S.E.2d 888, 896 (2004); *see also* N.C. Gen. Stat. § 150B-51(c) (providing that the superior court “shall determine whether the petitioner is entitled to the relief sought in the petition based upon its review of the final decision and the official record”). When a petitioner contends a “board’s decision was based on an error of law, de novo review is proper.” *Mann Media, Inc. v. Randolph Cnty. Plan. Bd.*, 356 N.C. 1, 13, 565 S.E.2d 9, 17 (2002) (cleaned up).

DISCUSSION

I. Petitioner’s Requested Relief Violates the *Purcell* Principle.

The petition should be denied for a threshold reason: The relief that Petitioner seeks is foreclosed by the *Purcell* principle. *See Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam).

A. *Purcell* is a neutral rule of judicial restraint that guards against late-breaking judicial changes to election rules.

The *Purcell* principle “reflects a bedrock tenant of election law: When an election is close at hand, the rules of the road must be clear and settled.” *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring). “Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.” *Id.* at 881. A state therefore has an “extraordinarily strong interest in avoiding late, judicially imposed changes to its election laws and procedures.” *Id.* For that reason, courts recognize “the general rule that denies relief with respect to *past elections*,” but that the “corollary to judicial reluctance to interfere with election results is the obligation to afford *prospective relief*.” *Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (4th Cir. 1983) (emphasis added).

Given these concerns, *Purcell* serves as an “important principle of judicial restraint.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring). Adhering to *Purcell* “protects the State’s interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.” *Id.* It “also discourages last-minute litigation and instead encourages litigants to bring any substantial challenges to election rules ahead of time, in the ordinary litigation process.” *Id.*

To be sure, the *Purcell* principle is a federal rule that applies to federal courts. But “[the North Carolina Supreme] Court has long acknowledged a state version of *Purcell* (although not always by name).” Am. Order at 5 (Jan. 7, 2025) (Dietz, J., dissenting). The Court first recognized the principle just one year after *Purcell* was decided, in *Pender County v. Bartlett*, 361 N.C. 491, 649 S.E.2d 364 (2007). In that case, the Court held that a state house district was

not required under the Voting Rights Act and thus had to comply with our state constitution's whole county provision. *Id.* at 510, 649 S.E.2d at 376. The Court accordingly ordered the General Assembly to redraw the district. *Id.* The Court also recognized, however, that candidates had already been preparing for the upcoming 2008 election “in reliance upon the districts as presently drawn.” *Id.* As a result, “to minimize disruption to the ongoing election cycle,” the Court stayed its order requiring the General Assembly to redraw the district “until after the 2008 election.” *Id.*

Several Justices of the North Carolina Supreme Court have since emphasized the importance of this principle. *E.g.*, Am. Order at 5 (Jan. 7, 2025) (Dietz, J., dissenting); *Holmes v. Moore*, 382 N.C. 690, 691, 876 S.E.2d 903, 904 (2022) (Newby, C.J., dissenting) (citing *Purcell* and dissenting from expedited consideration given an “impending” election); *Harper v. Hall*, 382 N.C. 314, 319, 874 S.E.2d 902, 906 (2022) (Barringer, J., dissenting) (stating that expedited consideration of challenge to state election rules “would appear to be a clear violation of the Supreme Court of the United States’ ‘repeated emphasis’ that ‘courts ordinarily should not alter state election laws in the period close to an election’” (cleaned up) (quoting *DNC*, 141 S. Ct. at 30) (Kavanaugh, J., concurring)).

B. If ever there were a case that called for applying the *Purcell* principle, this case is it.

It is difficult to imagine a case that more squarely calls for *Purcell*'s application. To begin, there can be no doubt that this case involves a challenge to election rules in a period close to the election—and that “the changes in question” are not “feasible before the election.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). The election concluded two months ago, followed by multiple recounts confirming the winner. To change the rules of the election now—months after millions of North Carolinians have already cast their ballots—would

“fundamentally alter[] the nature of the election” and “gravely affect the integrity of the election process.” *See Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424-25 (2020) (per curiam). That is exactly the intolerable outcome the *Purcell* principle seeks to avoid.

Moreover, Petitioner unduly delayed challenging the election rules. *See id.* Petitioner, like all candidates, has every right to bring post-election protests over alleged irregularities in the election process. But Petitioner here is attempting to cancel votes based on the Board following longstanding election rules and practices. That kind of post-election protest seeking to change the rules of the game after it has been played violates *Purcell*.

Specifically here, Petitioner challenges voters who lack a driver’s license or social security number in the Board’s database. But it is undisputed that the voter-registration form that he contests was in place long before this election—with affected voters likely casting at least hundreds of thousands (and possibly *millions*) of ballots without challenge during that time.⁷ It was not until October 2023 when a voter took issue with the form. (Agency R p 4825) In December 2023, the Board concluded that “the appropriate remedy is to implement changes recommended by staff to the voter registration application form and any related materials” only on a going-forward basis. (Agency R p 4828-29) Petitioner thus had almost a year before the election to challenge this decision. He did not. *Purcell* bars Petitioner from waiting until *after* the election to challenge this rule. *See Little v. Reclaim Idaho*, 140 S. Ct. 2616, 2617 (2020) (Roberts, C.J., concurring) (party challenging election rule “delayed unnecessarily its pursuit of relief until more than a month after the deadline for submitting signatures”).

⁷ While this case was in federal court, intervenors filed affidavits from voters whose votes Petitioner has challenged. Those voters affirmed that they most recently registered to vote in 2009, 2014, and 2020 and had regularly voted since without issue until Petitioner challenged their votes. *See Griffin*, No. 5:24-cv-00724, D.E. 24-2, 24-3, 24-4 (E.D.N.C.).

In this way, *Purcell* is an election-law analog to laches. *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) (Sutton, J.) (“Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.”). For example, the Wisconsin Supreme Court has applied laches to bar post-election challenges to roughly 220,000 votes under Wisconsin’s election-protest statute. *Trump v. Biden*, 951 N.W.2d 568, 570 (Wis. 2020). The court explained that “the proposition that laches may bar an untimely election challenge . . . appears to be recognized and applied universally.” *Id.* at 572-73 & n.7 (collecting cases). Applying this principle, the court found unreasonable delay in bringing election challenges when those challenges similarly concerned events and rules in place long before the start of the election. *Id.* at 575 (“Waiting until after an election to challenge the sufficiency of a form application in use statewide for at least a decade is plainly unreasonable.”); *id.* (same for challenge to election-agency guidance “relied on in 11 statewide elections” since 2016). “The time to challenge election policies,” the court explained, “is not after all ballots have been cast and the votes tallied.” *Id.* at 575-76. Rather, “[p]arties bringing election-related claims have a special duty to bring their claims in a timely manner.” *Id.* at 577. “Failure to do so affects everyone, causing needless litigation and undermining confidence in the election results.” *Id.* The Wisconsin Supreme Court’s decision is on all fours here. Petitioner here was on notice long before the election of the rules that he now contests.

Making the changes that Petitioner requests at this late date will also come at “significant cost, confusion, [and] hardship.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring). Accepting Petitioner’s arguments would create “chaos for candidates, campaign organizations, independent groups, political parties, and voters”—in this and future elections. *Id.* at 880. “Permitting post-election litigation that seeks to rewrite our state’s election rules—and, as a

result, remove the right to vote in an election from people who already lawfully voted under the existing rules—invites incredible mischief.” Am. Order at 5 (Jan. 7, 2025) (Dietz, J., dissenting). “It will lead to doubts about the finality of vote counts following an election, encourage novel legal challenges that greatly delay certification of the results, and fuel an already troubling decline in public faith in our elections.” *Id.*

To be clear, nothing in the Board’s arguments here means that “the legal issues presented are foreclosed from further judicial scrutiny.” *Trump*, 951 N.W.2d at 577 n.11. *Purcell* does not bar Petitioner from seeking *forward-looking* relief for future elections if he challenges the rules sufficiently in advance of the next election. *Hendon*, 710 F.2d at 182. In fact, this protest is the subject of other pending lawsuits, outside of the context of this particular case, that seek changes to the State’s election rules for future elections. For example, plaintiffs in a case pending before the U.S. District Court for the Eastern District of North Carolina are currently seeking prospective relief of this kind with respect to the alleged HAVA violations here. *Republican Nat’l Comm.*, slip op. at 4 (*Purcell* does not apply when a plaintiff “seek[s] prospective relief unconnected with the most recent election.”). Thus, applying *Purcell* here will not immunize these or other future election challenges from judicial review. Many are currently being litigated, and can be resolved in plenty of time before voters next go to the polls.

Nor does *Purcell* foreclose challenges based on unanticipated events that take place during an election. Because the *Purcell* principle seeks to ensure clear and settled election rules, it does not apply to claims arising from unforeseen election-day errors or improprieties. When a party brings “claims . . . of improper electoral activity”—rather than “issues that arise in the administration of every election”—those claims do not face the *Purcell* bar because the party

lacked advance notice of the alleged impropriety. *See Trump*, 951 N.W.2d at 577 (drawing this distinction for purposes of evaluating undue delay).

But the *Purcell* principle recognizes that changing election rules mid-stream—or, even worse, after the fact—“fundamentally alters the nature of the election” and “gravely affect[s] the integrity of the election process.” *Republican Nat’l Comm.*, 589 U.S. at 424-25; *see also, e.g.*, Am. Order at 5 (Jan. 7, 2025) (Dietz, J., dissenting) (“[O]nce people are actually *voting* in the election, it is far too late to challenge the laws and rules used to administer that election.”). For this reason, the Supreme Court has repeatedly invoked the *Purcell* principle after votes have already been cast. In so doing, the Court has made clear that any votes that were cast that complied with the election rules in place at the time *may not be thrown out*. *See Andino v. Middleton*, 141 S. Ct. 9, 9-10 (2020) (invoking *Purcell* to stay an injunction that had been entered against a state election rule, but expressly ordering that ballots cast before the stay “may not be rejected for failing to comply” with the reinstated election rule).

As this decision recognizes, moreover, *Purcell* continues to apply even if the challenger’s underlying claims may have merit. Under *Purcell*, the proper posture for litigating election claims is prospectively, not retrospectively. Thus, in many cases, courts have applied *Purcell* even while “recogniz[ing] and respect[ing] the seriousness of the [challenger’s] claim.” *Liddy v. Lamone*, 919 A.2d 1276, 1290 (Md. 2007); *compare also, e.g., Merrill*, 142 S. Ct. at 882 (Kavanaugh, J., concurring) (applying *Purcell* while emphasizing that any change to election rules “can take effect for congressional elections that occur after [the election]”), *with Allen v. Milligan*, 599 U.S. 1, 42 (2023) (later affirming change to election rules and permitting it to take place for future elections). The *Purcell* principle thus applies here, regardless of this Court’s

views on the merits of Petitioner’s arguments. Those arguments can be considered in due course before the next election cycle.

As Judge Dever recently put it in a case involving a similar effort to rewrite the State’s election rules close to an election, the *Purcell* principle is a “heavy gate with flashing red lights amplified by loud sirens” calling for judicial restraint. *Pierce v. N.C. State Bd. of Elecs.*, 713 F. Supp. 3d 195, 242 (E.D.N.C. 2024), *aff’d*, 97 F.4th 194 (4th Cir. 2024). And as the U.S. Supreme Court has demonstrated, the *Purcell* principle may be applied consistently to guard against late-breaking changes to election rules—regardless of the challenger’s political affiliation. *Compare, e.g., DNC*, 141 S. Ct. at 30 (Kavanaugh, J., concurring), *with, e.g., Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring). Following *Purcell*’s neutral and evenhanded rule preserves the public’s faith in the election process, and ensures against courts excessively entangling themselves in hotly disputed political contests. This Court should deny the petition under the *Purcell* principle.

C. *James* does not override the *Purcell* principle here.

Petitioner ignores the *Purcell* principle, instead analogizing this case to the North Carolina Supreme Court’s decision in *James v. Bartlett*, 359 N.C. 260, 607 S.E.2d 638 (2005). In *James*, two candidates challenged whether the Board could lawfully count provisional ballots cast on election day at a precinct other than the voter’s correct precinct. 359 N.C. at 263, 607 S.E.2d at 640. The defendants argued that the challengers had waited too long to contest the Board’s counting such out-of-precinct provisional ballots. *Id.* at 265, 607 S.E.2d at 641.

The Court rejected this delay argument, observing that “[t]he facts do not support defendants’ allegations.” *Id.* The Court explained that the election marked “the first time in North Carolina history that State election officials counted out-of-precinct provisional ballots.”

Id. What is more, when one of the challengers had asked the Board *before* the election whether the Board intended to count such votes, the Board’s General Counsel “failed to indicate that [it] would count out-of-precinct provisional ballots.” *Id.* “This response, coupled with the absence of any clear statutory or regulatory directive that such action would be taken, failed to provide plaintiffs with adequate notice that election officials would count” the ballots. *Id.* The challengers therefore did not unreasonably delay in bringing their claims.

After concluding that the petitions were timely, the Court held that the Board had improperly counted the challenged ballots. *Id.* at 271, 607 S.E.2d at 645. Relevant statutes and the Board’s own regulations said “clearly and unambiguously” that “voters must cast ballots . . . in their precincts of residence.” *Id.* at 267-68, 607 S.E.2d at 642-43. As such, “the [Board] violated the election rules by counting those votes.” Order at 1 (Jan. 22, 2025) (Dietz, J. dissenting).

Given these facts, this case hardly comes before this Court “in the same posture” as *James*, as Petitioner claims. *See* Br. 13. Unlike the challengers in *James*, Petitioner was on notice long before the election of the rules that he now challenges. *See, e.g., Republican Nat’l Comm. v. N.C. State Bd. of Elections (RNC)*, 120 F.4th 390, 399 (4th Cir. 2024) (alleging that voter registrations were missing required information). Also unlike in *James*, where the Board deviated from its historical practice, the election here was conducted in accordance with longstanding rules. As Justice Dietz has recognized, in *James*, the ballot counting in question “was unlawful under the election rules that existed at the time of the election.” Order at 1 (Jan. 22, 2025) (Dietz, J. dissenting) (citing *James*, 359 N.C. at 269). In this case, “by contrast, the State Board of Elections complied with the election rules existing at the time of the election.” *Id.* at 2 (Dietz, J. dissenting). And there is no allegation (as there was in *James*) that Petitioner

relied on contrary, pre-election statements from the Board in deciding whether to bring a challenge. *See James*, 359 N.C. at 265, 607 S.E.2d at 641.⁸

Petitioner is therefore wrong that applying *Purcell* here would be inconsistent with *James*. As Justice Dietz has explained, the Court's subsequent *Pender County* decision is instead controlling here. Am. Order at 5 (Jan. 7, 2025) (Dietz, J. dissenting).

Petitioner also wrongly suggests that *James* compels the remedy he seeks. Br. 12-13. At the time *James* was decided, the “general rule” was that courts would “den[y] relief with respect to past elections.” *See Hendon*, 710 F.2d at 182 (striking down election law as unconstitutional, but only prospectively); *Owens v. Chapin*, 228 N.C. 705, 712, 47 S.E.2d 12, 17-18 (1948) (refusing to discount absentee ballots despite technical irregularities); *State ex re. Quinn v. Lattimore*, 120 N.C. 426, 26 S.E. 638, 639 (1897) (votes should not “be rejected” after an election even if “registrations [were] irregularly made”). Although the Court in *James* made clear that it thought the challenged votes were cast unlawfully, it did not actually order those votes to be discounted. *See James*, 359 N.C. at 271, 607 S.E.2d at 645. Instead, it simply “remand[ed] the case . . . for further proceedings.” *Id.*⁹

⁸ Petitioner argues at length that this case is similar to *James* because the defendants in that case *claimed* that out-of-precinct votes had been counted prior to the election, pointing to the primaries leading up to that election. Br. 10-13. But the North Carolina Supreme Court squarely *rejected* that argument, concluding that this isolated episode did not provide “adequate notice” where the Board had later advised that these votes would *not* be counted in the general election. *James*, 359 N.C. at 265, 607 S.E.2d at 641. More importantly, unlike here, counting the contested ballots was *unlawful* under the rules at the time of the election. *Id.* at 267-68, 607 S.E.2d at 642-43.

⁹ After the Supreme Court's remand, the General Assembly passed legislation clarifying that it had intended to allow out-of-precinct voting and that “[i]t would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters voting and acting in reliance on the statutes adopted by the General Assembly and administered by the State Board of Elections in accordance with its intent.” N.C. Sess. Law 2005-2, § 1(11). The General Assembly also enacted procedures for the General Assembly alone to determine contested legislative and Council of State elections. N.C. Sess. Law 2005-3.

Finally, the remedy sought in *James* is distinguishable for another reason as well: The challengers in *James* sought to discount *all* similarly situated votes on a statewide basis. *Id.* at 262, 607 S.E.2d at 639 n.2. Here, by contrast, Petitioner has arbitrarily selected only certain, disfavored voters for disenfranchisement. For example, on his challenge to military and overseas voters who did not present a copy of a photo ID, Petitioner has inexplicably challenged only voters from four, large urban counties. As explained *infra*, granting that irrationally selective demand would clearly violate the Equal Protection Clause.

In sum, comparison between this case and *James* only confirms that the *Purcell* principle applies to bar Petitioner's requested relief here.

II. Retroactively Changing Election Rules Would Violate the Fourteenth Amendment to the U.S. Constitution and the Voting Rights Act.

The Court should deny the petition for another threshold reason as well. If the Court declines to follow the *Purcell* principle and instead opts to retroactively change the rules of the election after all the votes have been cast, it would violate the Fourteenth Amendment to the United States Constitution and the Voting Rights Act.

A. Retroactively cancelling votes violates due process.

It is “patent[ly] and fundamental[ly]” unfair to change the rules governing an election after it has already taken place. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); *see Hendon*, 710 F.2d at 182 (describing this principle as “settled”). For that reason, the Fourteenth Amendment's Due Process Clause bars the systematic, “retroactive invalidation” of votes. *Burns*, 570 F.2d at 1079-80.

The seminal case on this point is *Griffin v. Burns*. There, election officials in Rhode Island issued absentee ballots in a party primary—a practice which had been in place for seven years, and which the officials believed was authorized by state law. *Id.* at 1067. After the

primary, the losing candidate asserted the use of such ballots was unlawful. *Id.* The state supreme court agreed, invalidated those ballots, and changed the outcome of the election. *Id.*

The First Circuit held that this abrupt reversal violated due process. *Id.* at 1078. As the court explained, because absentee voters had cast their ballots in an “officially-endorsed manner,” invalidating their ballots en masse resulted in “broad-gauged unfairness” of a constitutional magnitude. *Id.* at 1073, 1077. Put another way: the U.S. Constitution forbids a state from discounting votes cast in accordance with “long-standing practice” and “the instructions of the officials charged with running the election.” *Id.* at 1075-76; *see also, e.g., Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998); *Roe v. Alabama*, 43 F.3d 574, 580 (11th Cir. 1995) (retroactively eliminating a requirement of Alabama law that absentee ballots contain the signatures of two witnesses or a notary after voting had begun violated due process); *Baber v. Dunlap*, 349 F. Supp. 3d 68, 76 (D. Me. 2018) (“For this Court to change the rules of the election, after the votes have been cast, could well offend due process”).

Our Supreme Court’s precedent similarly recognizes the acute unfairness that would result from cancelling votes that were cast in compliance with guidance from election officials. In fact, the Court has specifically held that an error by election officials in the processing of voter registration cannot be used to discount a voter’s ballot. In *Woodall v. Western Wake Highway Commission*, 176 N.C. 377, 97 S.E. 226 (1918), registrars failed to administer an oath to voters, which was then a legal prerequisite to registration. *Id.* at 388, 97 S.E. at 231. The North Carolina Supreme Court rejected the argument that those votes should be canceled, explaining:

A vote received and deposited by the judges of the election is presumed to be a legal vote, although the voter may not actually have complied entirely with the requirements of the registration law; and it then devolves upon the party contesting to show that it was an illegal vote, and this cannot be shown by proving merely that the registration law had not been complied with.

Id. at 389, 97 S.E. at 232. To hold otherwise would “be regarded as hostile to the free exercise of the right of franchise.” *Id.* Our Supreme Court reaffirmed *Woodall* decades later. It held in *Overton v. Mayor of Hendersonville*, 253 N.C. 306, 316, 116 S.E.2d 808, 815 (1960):

[A] statute prescribing the powers and duties of registration officers should not be so construed as to make the right to vote by registered voters depend upon a strict observance by the registrars of all the minute directions of the statute in preparing the voting list, and thus render the constitutional right of suffrage liable to be defeated, without the fault of the elector, by the fraud, caprice, ignorance, or negligence of the registrars.

These principles fully apply here. The rules Petitioner challenges have long been in place, without issue or protest. Like in numerous past elections, the challenged voters were informed that they were registered voters, and consistent with that status, they were offered ballots by election officials in the general election upon request. They have thus voted in line with longstanding state law, administrative guidance, and judicial decisions. It would therefore be unlawful to cancel their ballots.

In sum, voters who followed all the official guidance in place when they registered and cast their ballots may not be retroactively disenfranchised because of alleged errors by election officials. Were the law otherwise, it would “permit, if not encourage, parties who could raise a claim to lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action.” *Hendon*, 710 F.2d at 182 (cleaned up). Both the Fourteenth Amendment and our Supreme Court’s precedents bar that patently unfair result.¹⁰

¹⁰ In arguing against the applicability of *Woodall v. Western Wake Highway Commission*, 176 N.C. 377, 97 S.E. 226 (1918), and *Overton v. Mayor of Hendersonville*, 253 N.C. 306, 116 S.E.2d 808 (1960), Petitioner seems to change his position on exactly *who* shoulders the blame for the votes cast by voters with allegedly incomplete registrations. Specifically, Petitioner attempts to distinguish *Woodall* and *Overton* by claiming that the registration issues were the fault of elections officials, whereas here the fault lies with individual voters. Br. 38-39. This

B. *Anderson-Burdick* produces the same outcome.

Although the Board discussed the above due-process protections at length, Agency R pp 5373, 5378-81, Petitioner does not mention them at all in his brief to this Court. *See* Br. 35-40. Instead, he asserts that the *Anderson-Burdick* line of cases provides the right framework for evaluating any Fourteenth Amendment concerns stemming from his protests. *See* Br. 35-40.

Assuming that *Anderson-Burdick* even applies to post-election challenges like these, it yields the same result. Under that test, state actions that “impose a severe burden on ballot access” are “subject to strict scrutiny.” *Pisano v. Strach*, 743 F.3d 927, 933 (4th Cir. 2014). The protests here clearly fail to satisfy that standard. Were the protests to succeed, they would impose the severest possible burden on voting—literally cancelling votes—while advancing only peripheral state interests at best.

In arguing otherwise, Petitioner mischaracterizes both the relative “burden” and the State’s interests. Br. 36-40. Asking voters to append a driver’s license or social security number to their registration form would perhaps impose a modest burden *before an election takes place*. The same is clearly true for photo ID requirements. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189-90 (2008). But the relevant “burden” here is Petitioner’s attempt to irrevocably nullify voters’ ballots *after the fact*, when they were *not* asked to provide these numbers in order to vote. Doing so is plainly unconstitutional under *Anderson-Burdick*.

C. Petitioner’s requested relief would also violate the Equal Protection Clause.

Separately, sustaining Petitioner’s protests would violate the Equal Protection Clause. “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and

position cannot be squared with Petitioner’s overall claim that “*the State Board failed*” to adequately comply with the registration law. Br. 38. That is precisely the same allegation that the North Carolina Supreme Court held in *Woodall* and *Overton* cannot justify disenfranchising individual voters.

disparate treatment, value one person's vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000) (per curiam). But were Petitioner to prevail, “the standards for accepting or rejecting” ballots would “vary” for wholly arbitrary reasons. *Id.* at 106.

Even though the Board has repeatedly explained in its prior briefing that these protests contravene the Equal Protection Clause, Petitioner inexplicably does not address this issue in his opening brief. While Petitioner tellingly fails to confront this issue, his arbitrary selection of voters to challenge, if sustained, would effectuate a clear violation of the Equal Protection Clause.

Petitioner claims that “anybody who wants to vote in North Carolina must be a resident and lawfully registered—no exceptions are allowed.” Br. 36-37. Under the hood, however, his protests tell a different story. The votes that Petitioner seeks to cancel by this protest were cast by a certain category of voters—those whose registration records in the Board’s database do not include a social security or driver’s license number. Critically, Petitioner does not challenge *all* voters in this category. Instead, he challenges only the approximately 60,000 of these votes that were cast *before* election day—either absentee-by-mail or early in-person. He has not challenged the tens of thousands of identically situated voters within this category who voted *on election day*. See, e.g., *RNC*, 120 F.4th at 399 (noting allegation that 225,000 registered voters were missing this data in their records). By seeking only to invalidate a subset of identically situated voters, Petitioner would force the Board to arbitrarily “value one person’s vote over that of another.” *Bush*, 531 U.S. at 104-05. This would plainly violate the Equal Protection Clause. *Id.*; see *Lecky v. Va. State Bd. of Elections*, 285 F. Supp. 3d 908, 920 (E.D. Va. 2018) (“Courts have generally found equal protection violations where a lack of uniform standards and procedures results in arbitrary and disparate treatment of different voters.”).

D. Petitioner's suggested remedy also violates the Voting Rights Act.

Petitioner's requested relief would also violate the Voting Rights Act. Under the VRA, election officials may not "fail or refuse to permit any person to vote who is entitled to vote" or "otherwise qualified to vote," or "willfully fail or refuse to tabulate, count, and report such person's vote." 52 U.S.C. § 10307(a). Petitioner's proposed remedy would violate this provision. Whether a voter is entitled to vote is a separate determination from whether that voter properly registered under HAVA. Here, the Board has determined that the voters whose ballots are being challenged *are* qualified to vote. Indeed, Petitioner does not dispute that the voters he challenges are lawful, eligible voters. The VRA thus prohibits the Board from refusing to count their votes. Moreover, Petitioner seeks to invalidate the votes of countless voters who registered in *compliance* with HAVA and its accompanying state laws. As described below, there are several reasons why a voter's records might lack an identification number, but the voter is still properly registered. *See infra* Part IV.

Petitioner claims the VRA does not apply here, claiming that the law applies only where parties have alleged racial discrimination. Br. 34-35 (citing *Powell v. Power*, 436 F.2d 84, 87 (2d Cir. 1970)). But this argument cannot be squared with the plain text of the VRA provision at issue here, which instructs that officials may not "fail or refuse to permit *any person* to vote" who is entitled or otherwise qualified to do so. 52 U.S.C. § 10307(a) (emphasis added). Nothing in the provision's text suggests that it is limited to refusals based solely on racial discrimination. This absence is particularly notable when considered alongside other sections of the VRA which explicitly require proof of racial discrimination. *See, e.g., id.* § 10301(a) (outlawing the imposition of any "voting qualification or prerequisite to voting" which denies voting rights "on account of race or color"); *League of United Latin Am. Citizens - Richmond Region Council*

4614 v. *Pub. Int. Legal Found.*, No. 1:18-cv-00423, 2018 WL 3848404, at *3-4 (E.D. Va. Aug. 13, 2018)) (rejecting argument that § 10307(b) requires evidence of “racial animus” given the absence of such language in the statutory text); *Nat’l Coal. on Black Civic Participation v. Wohl*, 512 F. Supp. 3d 500, 509 (S.D.N.Y. 2021) (same).

Petitioner’s sole authority for his atextual interpretation of the VRA, moreover, is inapt. The Second Circuit in *Powell* rejected an attempt to use the VRA as a sword to exclude ballots. 436 F.2d at 85-86. There, plaintiffs were members of a political party who argued that it violated the VRA to have allowed persons who were not members of that party to vote in the party’s primary elections. *Id.* at 85-87. The court rejected this argument, noting its concern with greenlighting this “sweeping and novel” theory of the VRA to prevent ballots from being counted. *Id.* at 86-87. Here, by contrast, the VRA properly functions as a shield against Petitioner’s demand that the Board exclude ballots in violation of § 10307(a).

III. Petitioner’s Failure to Adequately Notify Voters of His Protests Violates Procedural Due Process.

This Court should also deny Petitioner’s petition for judicial review for another threshold reason: Petitioner did not provide voters with constitutionally adequate notice of his protests or properly serve his protests on voters.

As an initial matter, Petitioner’s protests denied voters procedural due process. Voters have a “constitutionally protected liberty interest” in their right to vote. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 227 (M.D.N.C. 2020); *see Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“[V]oting is of the most fundamental significance under our constitutional structure.”) (cleaned up). As a result, when a voter’s “ballot [is] challenged,” due process requires that voters be “given notice,” so they can take steps to protect their vote. *Democracy N.C.*, 476 F. Supp. 3d at 228. Constitutionally adequate notice must be “reasonably calculated,

under all the circumstances, to apprise interested parties of the pendency of [a matter] and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see also In re Chastain*, 909 S.E.2d 475, 481 (N.C. 2024) (same). That is why the Board’s rules direct protesters to serve voters with copies of protests that concern “the eligibility or ineligibility of particular voters.” 08 N.C. Admin. Code 02 .0111.¹¹

Here, the notice that Petitioner provided voters was not “reasonably calculated” to inform them that he sought to invalidate their votes. *Mullane, Co.*, 339 U.S. at 314. Petitioner did not send physical copies of his protests to voters’ addresses. Instead, Petitioner’s political party mailed voters a postcard, which stated that their “vote *may* be affected by one or more protests filed in relation to the 2024 General Election.” (Agency R p 4889 (emphasis added)) The postcard did not inform voters that their vote *was* actually under protest. It also did not inform voters that it was meant to effect formal service of an election protest.

Rather, the postcard merely directed voters to “scan this QR code to view the protest filings.” (Agency R p 4889) This QR code, when scanned with a smartphone, took users to a website where hundreds of protests were listed. (Agency R p 5408-09 (showing smartphone screenshots)) Voters then, to find out if any protests concerned them, had to scour hundreds of protests to try to locate their names on attached spreadsheets. (Agency R p 5409) These spreadsheets listed voters’ names in small print, out of alphabetical order. (Agency R p 5409) Some spreadsheets contained hundreds of pages, listing thousands of names. (Agency R p 5409)

¹¹ The Board specifically directs protesters: “You must serve copies of all filings on every person with a direct stake in the outcome of this protest (‘Affected Parties’). . . . If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served.” 08 N.C. Admin. Code 02 .0111.

In these circumstances, neither the postcard nor its QR code were reasonably calculated to apprise voters that their votes were being contested. The postcard did not even inform voters that their votes had *actually* been challenged. (Agency R p 4889) Vague, equivocal notice of this kind, which does not “specifically” disclose that a person’s rights will be impaired, does not give “adequate notice.” *In re Linkous*, 990 F.2d 160, 162 (4th Cir. 1993); *see e.g., Fogel v. Zell*, 221 F.3d 955, 962 (7th Cir. 2000) (if a “notice is unclear,” it is not adequate); *Griffin v. Griffin*, 348 N.C. 278, 280, 500 S.E.2d 437, 439 (1998) (a party’s notice to an attorney only saying it was seeking sanctions against him was inadequate because “[t]he bases for the sanctions must be alleged”).

This lack of specificity, moreover, was not cured by the QR code. Many voters do not own smartphones. *See Pew, Mobile Fact Sheet* (Nov. 13, 2024), <https://tinyurl.com/yeywjxfn> (noting that one in five senior citizens do not have a smartphone) (last visited Feb. 3, 2025); *see also* No. 5:24-cv-00724, D.E. 24-2, 24-3, 24-4 (E.D.N.C.) (affidavits from voters attesting that they do not know how to use QR codes). These voters would therefore not have been able to scan the code to learn if a protest affected them. As a result, in “a significant number of instances,” notice by QR code would not “provide [voters with] actual notice” of protests. *Greene v. Lindsey*, 456 U.S. 444, 453 (1982). As the U.S. Supreme Court has held, where a chosen form of notice will not notify a “significant number” of persons, as here, it does not satisfy “due process.” *Id.*¹²

¹² Petitioner notes that the Board has sent voters mailers with QR codes. Br. 51. The mailers that Petitioner references, however, were not meant to provide notice of formal proceedings. Unlike the postcards that Petitioner sent voters, moreover, the Board’s mailers did not rely on QR codes to convey their primary message. *See* N.C. State Bd. Voter ID Mailer, *available at* <https://tinyurl.com/ykavb4up> (last visited Feb. 3, 2025).

Despite this precedent, Petitioner argues that the U.S. Supreme Court has held that notice is sufficient so long as most affected persons receive notice. Br. 30. Petitioner is mistaken. The Court has actually held that where service of papers via “the mails” is possible, then that form of notice is *required*. *Mullane*, 339 U.S. at 319; *see also Greene*, 456 U.S. at 455. By relying on QR codes instead, Petitioner failed to provide adequate notice.

But even if a QR code could theoretically provide adequate notice, it did not do so here. The Fourth Circuit, for instance, has held that an eviction warning provided inadequate notice when “it [was] time-consuming to wade through” the entire form at issue to locate the warning, which was listed “in small print two-thirds of the way down the back of a form.” *Todman v. Mayor of Baltimore*, 104 F.4th 479, 488-89 (4th Cir. 2024). Here, for voters to find out if protests affected them, they had to “wade through” hundreds of protests, some of which listed thousands of names “in small print.” *Id.* This kind of needle-in-a-haystack notice offends due process as it is not “reasonably calculated” to convey notice. *Id.* at 488.

Separately, Petitioner’s protests also fail because he did not properly serve voters with physical copies of his protests. The Board’s rules, as noted above, specify that when protesters dispute “the eligibility . . . of particular voters,” then “all such voters . . . must be served” with copies of the protests. 08 N.C. Admin. Code 02 .0111.

The rules, moreover, also contemplate service of *physical* copies, consistent with how service is provided in other contexts under state law. *See* N.C. R. Civ. P. 5(b)(2) (providing that “papers” must be served on parties by “hand[]” or “mail[],” absent consent otherwise). The Board’s rules do so, for instance, because they mandate that “parcel[s]” with protests be served. 08 N.C. Admin. Code 02 .0111. Because Judge Griffin served postcards on voters, not parcels with physical copies of protests, his protests also fail for this reason as well.

Despite his noncompliance with these rules, Petitioner suggests that his failure to properly serve his protests and provide voters with constitutionally adequate notice should be ignored because he had no obligation to serve his protests on voters at all. Br. 28-29. He claims that the county boards have exclusive statutory responsibility for “giv[ing] notice” of “protest hearing[s].” N.C. Gen. Stat. § 163-182.10(b).

Notwithstanding that statutory duty of county boards, however, the Board also has distinct statutory authority to “promulgate rules providing for adequate notice” of election protests. *Id.* § 163-182.10(e). The Board’s rulemaking authority is thus not limited to prescribing rules for the *county boards* to follow when they provide notice of a *hearing*, as Petitioner argues. *Id.* § 163-182.10(b)(2). Instead, the Board has ample authority to require that separate notice also be provided when persons *file protests* that initiate legal proceedings, as Petitioner did here. That authority is especially important where, as here, protests directly implicate constitutional rights.

The Board’s duly promulgated rules, moreover, leave no doubt that Petitioner was required to notify voters in this situation, *see* 08 N.C. Admin. Code 02 .0111—which Petitioner expressly agreed to do. (*See, e.g.,* Agency R p 8) Given this commitment, Petitioner cannot now claim he had no obligation to notify the voters he seeks to disenfranchise. *Cf. State v. Gillespie*, 362 N.C. 150, 152, 655 S.E.2d 355, 356 (2008) (noting that parties can “waive[]” arguments through “consent[]”).

IV. Petitioner’s HAVA Protest Fails on the Merits.

Even if this Court were to address Petitioner’s arguments on their merits, it should deny the petition because the Board correctly dismissed Petitioner’s protest for failing to set out a valid claim for relief.

A. North Carolina law implements HAVA for state elections.

HAVA seeks to establish “uniform and nondiscriminatory election technology and administration requirements” across the States to govern federal elections. Pub. L. No. 107-252, §§ 301-12, 116 Stat. 1666, 1704-15 (2002). Among other things, HAVA directs States to establish “a single, uniform, official, centralized, interactive computerized statewide voter registration list” to “serve as the official voter registration list” for all federal elections. 52 U.S.C. §§ 21083(a)(1)(A), (a)(1)(A)(viii).

HAVA also imposes voter-list-maintenance and registration requirements on States. As for voter-list maintenance, HAVA directs States to maintain voter lists “on a regular basis.” *Id.* § 21083(a)(2)(A). But HAVA limits how they may do so. For example, States may only remove individuals from the voter list consistent with the requirements in the National Voter Registration Act (NVRA), Pub. L. No. 103-31, 107 Stat. 77 (1993). *Id.* §§ 21083(a)(2)(A)(i)-(iii).

As for voter-registration applications, HAVA generally prohibits States from “accept[ing] or process[ing]” any application unless it includes the applicant’s driver’s license number or the last four digits of the applicant’s social security number. *Id.* § 21083(a)(5)(A)(i). HAVA instructs state election officials to establish a system to attempt to “match” the identification number provided in an application with existing government records, *id.* § 21083(a)(5)(B)(i), and to establish state-law procedures to address registrations that do not match with such records, *see id.* § 21083(a)(5)(A)(iii). However, HAVA does not make a match a prerequisite to accepting an application. *See id.* §§ 21083(a)(5)(A), (b).

HAVA allows certain voters who do not provide a driver’s license number or the last four digits of their social security number in a registration application to register to vote. For applicants who have not been “issued” either number, HAVA instructs States to instead assign “a number which will serve to identify the applicant for voter registration purposes.” *Id.*

§ 21083(a)(5)(A)(ii). And if a State did not have a system complying with the requirement to collect a driver's license number or last four digits of a social security number, HAVA provides that a new voter registration applicant by mail may vote by providing an alternative form of identification before or upon voting for the first time. *See id.* §§ 21083(b)(1)-(3). This identification—a so-called HAVA ID—may include “a current and valid photo identification” or “a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.” *Id.* §§ 21083(b)(2)(A)(i)-(ii).

Although HAVA itself only applies to federal elections, in 2003, the General Assembly enacted a statute that applied HAVA's federal rules to state elections. The law's express purpose was to “ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002.” Act of June 19, 2003, S.L. No. 2003-226, sec. 1, 2003 N.C. Sess. Laws 341, 341. The law specifically instructed the Board to ensure “[c]ompliance [w]ith [f]ederal [l]aw” by “updat[ing] the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002.” *Id.* sec. 6 (codified at N.C. Gen. Stat. § 163-82.11(c)).

Through this Act, the General Assembly amended several of North Carolina's voter registration and list-maintenance statutory provisions to incorporate HAVA's requirements. For example, state law now requires all voter registration applications to “request” that voters provide their driver's license number or the last four digits of their social security number. N.C. Gen. Stat. § 163-82.4(a)(11). Like HAVA, however, the statute allows voters who have not been issued one of those numbers to receive a “unique identifier number” from the Board for

registration. *Id.* § 163-82.4(b). Like HAVA, North Carolina law also requires voters who register by mail and who have not had their driver's license or social security number validated beforehand to present a HAVA ID when they vote for the first time. *Id.* §§ 163-166.12(a)-(b), (f). And although state law directs county boards to attempt to match an identification number provided on a registration form with an existing government database, *id.* §§ 163-82.12(6)-(9), when the information provided by any voter, regardless of how they registered, does not match, voters may cast ballots by providing a HAVA ID before voting for the first time, *id.* § 163-166.12(d); *see also Voting Site Station Guide* 19, N.C. State Bd. of Elections, bit.ly/3BQDmWR (last visited Feb. 3, 2025) (same).

The result is that, like most States, North Carolina has a single voter registration system for both federal and state elections that incorporates HAVA's requirements. *RNC*, 120 F.4th at 401 ("North Carolina has a unified registration system for both state and federal elections."); N.C. Gen. Stat. § 163-82.11(a) ("The system shall serve as the single . . . official list of registered voters . . . for the conduct of all elections in the State."). North Carolina "thus is bound by" provisions of federal law, like HAVA, governing voter registration and list maintenance. *RNC*, 120 F.4th at 401.

B. Canceling the challenged votes would violate HAVA and the NVRA.

To begin, Petitioner's HAVA protest is meritless because his proposed remedy of canceling these votes would run afoul of HAVA and the NVRA. Both HAVA and North Carolina law require any voter-registration list maintenance to be performed in accordance with the NVRA. 52 U.S.C. § 21083(a)(2)(A); N.C. Gen. Stat. § 163-82.14. The NVRA only allows the removal of ineligible voters from the rolls in specific, enumerated circumstances: (1) at the request of the registrant, (2) for criminal conviction or mental incapacity, as provided by State law, (3) for death or a change in residence, and (4) if an individual has not participated or

responded to a notice in two consecutive federal general elections. 52 U.S.C. §§ 20507(a)(3), (a)(4), (b)(2). Petitioner does not claim that his basis for canceling these votes—and thus effectively removing these voters from the official list of eligible voters in this past election—falls among these narrow, enumerated reasons. The NVRA therefore squarely forecloses Petitioner’s requested relief. *See RNC*, 120 F.4th at 402-03 (concluding that the NVRA does not authorize removal from voter rolls based on this same allegation of HAVA non-compliance).

Moreover, the NVRA forecloses Petitioner’s relief for a separate reason as well. Under the NVRA, systematic removals, other than by registrant request, felony conviction, or death, must be completed “not later than 90 days prior to the date of a primary or general election for Federal office.” 52 U.S.C. § 20507(c)(2)(A). While we are not technically within this quiet period, requiring the Board to purge voters now would clearly violate the quiet period’s purpose. *See id.* Congress enacted the quiet period to “prevent the discriminatory nature of periodic voter purges.” S. Rep. 103-6, at 20 (1993). It would be strange indeed for Congress to have instituted a prophylactic prohibition against voter purges for the 90-day period before an election only for the State to implement mass voter purges *after* an election has occurred and retroactively remove those voters’ ballots from the election’s tally.

C. Petitioner has not established probable cause of any HAVA violation.

In any event, Petitioner has not shown probable cause of a HAVA violation here. At bottom, probable cause requires “‘a reasonable ground for belief’” that the law has been violated, a belief that must be “‘particularized with respect to’” the individual who allegedly committed the legal violation. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (quoting *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)). The question is whether an objectively reasonable decisionmaker can reach a “reasonable conclusion to be drawn from the facts known . . . at the time” that a legal violation “has been or is being committed.” *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004).

Under this standard, Petitioner has failed to show probable cause of any HAVA violation. Petitioner's protest is based on a list of over 60,000 registered voters—provided to him by the Board—who lack a recorded driver's license or social security number in the Board's database and who voted early or absentee in the 2024 elections. Petitioner carelessly assumes that all of these voters are improperly registered. Br. 13. But this assumption is indisputably false.¹³

For numerous reasons, a voter may lack a driver's license or social security number in their records and still be registered in accordance with state and federal law. For example: (1) a voter may not have a driver's license or social security number; (2) a database-matching failure resulted in identification numbers not being retained in the record; (3) voters who did not provide a driver's license or social security number, when applying to register by mail, could still register by providing a HAVA ID before or when voting for the first time; (4) voters who registered before the effective date of HAVA have a new post-HAVA registration that is not linked to their pre-HAVA registration; and (5) voters provided an identification number in a previous application under a registration record different than the one that is contested. Cox Aff. ¶¶ 9, 14.

First, voters who have not been issued a driver's license or social security number will necessarily lack this information in the Board's database. But these voters are nonetheless allowed to register to vote using a number assigned to them by the Board. 52 U.S.C. § 21083(a)(5)(A)(ii); N.C. Gen. Stat. § 163-82.4(b) (state law implementing this HAVA requirement). Cox Aff. ¶ 14(f).

¹³ Petitioner wrongly claims that the Board did not list a driver's license or social-security number as required on the voter-registration form since HAVA and its implementing state law were "enact[ed] in 2003" until "December 2023." Br. 16. In fact, as public records have long shown, the voter-registration form expressly listed this information as required until 2009 and was only changed to imply that the information was not required in 2013, during the McCrory administration. See Cox Aff. ¶ 16; Ex. A to Cox Aff.

Second, many voters who *did*, in fact, provide an identification number when they registered may nevertheless not have that number recorded in the Board's database because of a database-matching failure. Cox Aff. ¶ 9; (Agency R p 5383 ("Unvalidated identification numbers are not retained in a voter's registration record.")). As discussed, HAVA instructs state election officials to establish a system to attempt to "match" the identification number provided in an application with existing government records. 52 U.S.C. § 21083(a)(5)(B)(i); N.C. Gen. Stat. §§ 163-82.12(6)-(9) (state law implementing this HAVA requirement). But county workers may make "routine data-entry errors" that do not enable a match and cause the database to lack a recorded identification number. (Agency R p 5391-92 n.16) Voters may also make a data-entry error in their registration form causing the database to lack this information. *See* (Agency R p 5383) The matching error may also result from voters having different names at different points in their lives—for example, differences between married and maiden names or hyphenated last names.

Importantly, HAVA explicitly contemplates that these kinds of matching errors might occur and that voters are not improperly registered as a result. *See* 52 U.S.C. §§ 21083(a)(5)(A), (b). Instead, HAVA directs States to establish procedures to address registrations that do not match existing government records. *Id.* § 21083(a)(5)(A)(iii); N.C. Gen. Stat. § 163-166.12(d) (implementing this HAVA requirement); *cf. Wash. Ass'n of Churches v. Reed*, 492 F. Supp. 2d 1264, 1296 (W.D. Wash. 2006) ("HAVA's matching requirement was intended as an administrative safeguard for 'storing and managing the official list of registered voters,' and not as a restriction on voter eligibility." (quoting 52 U.S.C. § 21083(a)(1)(A)(i)). North Carolina has done so by allowing voters to provide a HAVA ID before or upon voting for the first time. In doing so, the General Assembly made clear that "[i]f that identification is provided and the board

of elections does not determine that the individual is otherwise ineligible to vote a ballot, the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual's vote counted." N.C. Gen. Stat. § 163-166.12(d). Thus, the law is clear that voters whose information was subject to a matching error *may register and vote* even though their voter records lack an identification number in the Board's database.

Third, even assuming that North Carolina's registration system did not previously comply with HAVA, voters who applied to register by mail without providing a driver's license or social security number would nonetheless have been eligible to register upon providing a HAVA ID before or when voting for the first time. *See* 52 U.S.C. §§ 21083(b)(1)-(3); N.C. Gen. Stat. §§ 163-166.12(a)-(b), (f) (implementing this HAVA requirement); Cox Aff. ¶ 9. Thus, both HAVA and state law make clear that these voters may register and vote even if the Board's database lacks an identification number.

Petitioner is simply wrong that HAVA and state law always require voters who register by mail to provide a driver's license or social security number to register. Br. 14. In a variety of circumstances—if such voters do not have this information when they register, if officials are unable to match their information with an existing government database, or if voters register under a system that is not set up to halt a registration that lacks an identification number—both HAVA and state law allow those voters to register and vote by providing HAVA ID on or before voting in their first election. 52 U.S.C. §§ 21083(b)(1)-(2); N.C. Gen. Stat. §§ 163-166.12(a)-(b). Voters who register by mail and who provide a driver's license or social security number that matches with an existing government database are merely *exempt* from the requirement that they provide HAVA ID. 52 U.S.C. § 21083(b)(3)(B); N.C. Gen. Stat. § 163-166.12(f)(2).

Fourth, although Petitioner purports to challenge only those voters who were registered after HAVA's effective date, some of these voters actually "registered *prior* to the effective date of HAVA but a new registration was created for them that is not linked to that older registration." (Agency R p 5391-92 n.16 (emphasis added)); see also Cox Aff. ¶ 14(a). Yet nothing in HAVA or the state law that implements HAVA required voters who registered to vote before HAVA's effective date to re-register in compliance with HAVA's requirements. Indeed, "HAVA did not direct states to purge all existing voters from state rolls and force them to re-register in accordance with the new federal requirements." *La Unión del Pueblo Entero v. Abbott*, 705 F. Supp. 3d 725, 752 (W.D. Tex. 2023). After all, "[s]uch a requirement would almost certainly violate the constitution." *Id.* at 752 n.21.

Fifth, voters may lack this information in the Board's database because they "supplied such a number in a previous application under a different registration record than the one challenged." (Agency R p 5392 n.16); see also Cox Aff. ¶ 14(b) and (c). But again, nothing in HAVA or the state law that implements HAVA provides any basis to conclude that such voters would be improperly registered.

In all of these ways, a voter may have registered to vote in full compliance with HAVA, but their records nevertheless lack an identification number in the Board's database. Petitioner has failed to even *attempt* to establish probable cause that *any* of the 60,000 voters he targets fall outside these circumstances. Lacking any particularized, objectively reasonable facts with respect to any individual voter, Petitioner cannot meet the probable-cause standard. *Ybarra*, 444 U.S. at 91 (probable cause must be "particularized with respect to that person"). As a leading treatise explains, "it is commonly said" that "events as consistent with innocent as with

[unlawful] activity,” without more, are “too equivocal to form the basis” of probable cause. 2 W. LaFave et al., *Criminal Procedure* § 3.3(b) (4th ed.) (cleaned up). That is the case here.

D. Petitioner’s contrary arguments are unpersuasive.

At the outset, Petitioner contends that HAVA does not apply here, because the statute governs only federal elections. Br. 22-24. But as discussed, the General Assembly has expressly applied HAVA’s federal-election requirements to state elections as well. *See supra* Part IV.A. Petitioner cites the North Carolina Supreme Court’s decision in *James* for the proposition that HAVA itself does not apply to state elections. Br. 23. That is true. But as *James* goes on to confirm, the General Assembly then passed a law “in response to Congress’ passage of the Help America Vote Act” that implemented HAVA’s requirements for state elections. 359 N.C. at 267, 607 S.E.2d at 643. Thus, whether this Court examines HAVA itself or its implementing state laws, the analysis is the same.

When Petitioner addresses HAVA, his arguments are unpersuasive. Petitioner is correct that HAVA generally prohibits a State from processing a voter-registration application unless it includes a driver’s license or social security number. 52 U.S.C. §§ 21083(a)(5)(A)(i)(I)-(II); *see* Br. 15-16. But Petitioner proceeds as if this were HAVA’s only provision.

To the contrary, as discussed, HAVA elsewhere allows some voters to register and cast ballots absent this information. Moreover, HAVA explicitly contemplates that voters may still register when they provide one of these numbers but that number does not validate against other government databases. 52 U.S.C. § 21083(a)(5)(A)(iii). And importantly here, when a number does not validate, the voter’s current database record will lack a number. (Agency R p 5383) Thus, there are many voters within this group who *did* provide a driver’s license or social security number when registering, but because the number did not validate, the statewide database lacks an entry in that data field. (Agency R p 5383)

All told, HAVA expressly contemplates that many lawfully registered voters will not have a validated identification number in their voter records, and creates a process for verifying their identity to allow them to vote. Thus, no voter that Petitioner targets could have cast a ballot without at least first presenting election officials with a HAVA ID—just as federal law requires.

Petitioner's reliance on the so-called "cure" provision in section 163-82.4(f) reflects a simple misunderstanding of the statute. Petitioner claims that the procedures set out in this provision are the only way to "cure" voter registrations that lack a driver's license or social security number. Br. 15. But section 163-82.4(f) applies *before* a voter has been registered by a county board. N.C. Gen. Stat. § 163-82.4(f). And it requires the *county board*, not the voter, to take steps in the event of an incomplete voter registration by contacting the voter and giving the voter an opportunity to correct the application. *Id.* Here, by contrast, Petitioner is challenging the votes of voters who are *already* on the voter rolls. And as explained above, there are numerous ways that a voter may be registered in full compliance with federal and state law, but lack an identification record in the Board's database.

Petitioner's focus on the cure provision demonstrates a more fundamental defect in his arguments: Petitioner confuses voter registration with voter *eligibility*. Petitioner has never suggested that the more than 60,000 voters he challenges in this protest category are *actually* ineligible to vote in North Carolina elections. *See* N.C. Gen. Stat. § 163-55 (outlining statutory qualifications to vote); N.C. Const. art. VI, § 2 (same, constitutional). Moreover, all persons who register to vote, including those challenged here, are required to affirm that they meet all the qualifications to vote, under penalty of a Class I felony. *See* N.C. Gen. Stat. §§ 163-82.4(c)(1), (e); *see also* North Carolina Voter Registration Form, Section 11, bit.ly/4iUMGtv (last visited Feb. 3, 2025). Petitioner therefore openly seeks to use technicalities to disenfranchise tens of

thousands of *lawful North Carolina voters*—many of whom have been voting without controversy in North Carolina elections *for decades*. Nothing in HAVA or the state law that implements HAVA permits this audacious request. Indeed, the North Carolina Supreme Court has twice rejected arguments of just this kind. *See supra* Part II.A. And as discussed above, the federal constitution affirmatively forbids it. *Id.*

V. Petitioner’s Proposed Remedy Is Improper and Unlawful

For all the above reasons, this Court should deny the petition. But even if this Court were to consider the petition and agree with Petitioner that the Board erred in adjudicating his protests, Petitioner’s proposed remedy—that the Court order the Board to simply cancel the challenged ballots—is clearly improper. Under these circumstances, the only appropriate remedy would be for this Court to remand to the State Board for further proceedings, including factfinding hearings on Petitioner’s protests.¹⁴

A. If this Court grants relief to Petitioner, the only proper remedy would be a remand to the Board.

As described above, the statutory framework for adjudicating elections protests involves multiple steps, including an evidentiary hearing to test a protester’s allegations against the evidence. *See supra* at 7-8. Here, the Board dismissed the protests at a preliminary, threshold stage of the process. Specifically, the Board held that the protests failed at the outset because he failed to comply with filing requirements and failed to “establish[] probable cause to believe that a violation of election law or irregularity or misconduct has occurred.” N.C. Gen. Stat. § 163-182.10(a); *see* (Agency R pp 5381, 5396)

¹⁴ Given the individualized nature of Petitioner’s protests, on remand, the State Board may direct initial hearings to be conducted at the county level where individual voter records are most conveniently available.

Because the Board dismissed the protests at this initial stage, it never moved on to conducting a hearing, where it could receive evidence and engage in factfinding to test Petitioner's factual allegations. *See* N.C. Gen. Stat. §§ 163-182.10(a), (c). As a result, the question before this Court is limited to whether the Board's decision on its initial consideration of Petitioner's protests was legally correct. If this Court disagrees with the Board's legal decisions, the only appropriate remedy would be to remand to for evidentiary hearings. It is *at a hearing* that the State Board or county boards would apply the substantial-evidence standard to resolve Petitioner's protests. *Id.* § 163-182.10(d). Following hearings, the Board would be then required to "make a written decision on each protest" stating its findings of facts and accompanying conclusions of law. *Id.*

As a result, the question before this Court is limited to whether the Board applied the law correctly. Petitioner is simply wrong that this Court may consider his factual allegations under the substantial-evidence standard. Rather, the only appropriate remedy should the Board's threshold legal decisions be reversed, is to remand for evidentiary hearings, applying the substantial-evidence standard at that time. *See id.* §§ 163-182.10(a)(1), (c); *cf. Cmty. Sav. & Loan Ass'n v. N.C. & Loan Comm'n*, 43 N.C. App. 493, 497-98, 259 S.E.2d 373, 376-77 (1979) (reversing trial court decision that resolved legal conclusions in a petition for judicial review of an agency decision, and ordering that the case should instead be "remanded . . . for further [factual] findings").

B. Petitioner is wrong that the appropriate remedy to any error is discounting the challenged ballots wholesale.

Petitioner asks this Court to simply "order the State Board to retabulate the vote with the unlawful ballots excluded." Br. 40. This remedy would clearly be improper at this stage of the process. And indeed, it is contrary to the remedy that Petitioner himself requested in his protests.

As detailed above, the State Board dismissed Petitioner's protests at the preliminary consideration stage. *See* N.C. Gen. Stat. § 163-182.10(a). If the Court were to find error in the Board's order dismissing at that preliminary stage, the only appropriate remedy would be a remand to the Board for further proceedings, including an evidentiary hearing, at which the State Board or county boards could conduct any necessary factfinding on an individualized basis rather than disenfranchising more than 60,000 voters *en masse* as Petitioner demands. *See id.* §§ 163-182.10(a), (c)–(d).

Petitioner has failed to establish that any voter *actually* registered to vote and cast ballots in violation of the law.¹⁵ Petitioner's request that the Board simply discard all the challenged votes would therefore clearly be improper under the statutes and case law governing election protests. On remand, the Board would be authorized by statute to take a wide variety of measures, as appropriate, in response to an adjudicated election violation. Specifically, the General Assembly has authorized the Board, subject to judicial review, to correct vote totals, order a recount, or take any other action "necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election." *Id.* §§ 163-182.10(d), -182.12. In addition, under certain limited circumstances, the Board may also order a new election. *Id.* § 163-182.13(a).

¹⁵ The burden of proof is on the protestor, not the State Board. *In re Appeal of Ramseur*, 120 N.C. App. 521, 525, 463 S.E.2d 254, 257 (1995); *In re Cleveland Cty. Comm'rs: Protest of Crawford*, 56 N.C. App. 187, 191, 287 S.E.2d 451, 455 (1982); and *In re Jud. Rev. by Republican Candidates for Election in Clay Cnty.*, 45 N.C. App. 556, 570, 264 S.E.2d 338, 346 (1980)). Nonetheless, as discussed, in response to some of Petitioner's arguments in this litigation, the Board chose to voluntarily perform a preliminary data analysis to evaluate Petitioner's assertions. Cox Aff. ¶¶ 8-13. That analysis shows that, as predicted in earlier filings, roughly half, and likely many more, voters challenged by Petitioner did in fact provide a driver's license or social security number when they registered. Cox Aff. ¶ 13.

Moreover, here, Petitioner does not contest that the vast majority (if not all) of the voters he challenges in this protest are lawful, eligible voters. As a result, on remand, any remedy provided by the state and county boards would have to provide challenged voters an opportunity to address any deficiencies that this Court identifies before their voters are discarded. Indeed, this is exactly the remedy that Petitioner himself requested in his protests. Petitioner did not ask the Board to cancel votes outright in his protests. Instead, in all of his protests on this issue, he asked that:

The State Board of Elections should (1) notify all voters who registered by a voter registration form since January 1, 2004, and failed to provide a drivers license or social security number that their voter registration was deficient and, absent correction, their vote cannot be counted; (2) inform such voters that they have a cure period during which the voter can provide the missing information; (3), for all such voters who provide a validated drivers license or social security number during the cure period, count the ballots in the election contest identified above; (4), for all such voters who fail to provide a validated drivers license or social security number during the cure period, not count the ballot in the election contest identified above; and (5), after the cure period, correct the vote count accordingly in the election contest identified above.¹⁶

This request appropriately recognizes that the outright cancelling of votes cast by lawful, eligible North Carolina voters—without any opportunity to cure—would be inappropriate if this protest ever proceeds to the evidentiary hearing and remedial phases.

In sum, should this Court reverse the Board's initial legal determinations and order a factfinding hearing, and should the Board ultimately find that Petitioner has adduced substantial

¹⁶ (Agency R pp 22, 50, 82, 97, 134, 165, 181, 199, 215, 250, 305, 376, 412, 458, 476, 506, 527, 558, 586, 615, 632, 647, 678, 716, 735, 774, 858, 890, 907, 947, 980, 1016, 1129, 1166, 1249, 1288, 1318, 1334, 1349, 1369, 1389, 1419, 1569, 1606, 1636, 1669, 1689, 1705, 1726, 1756, 1798, 1833, 1870, 1901, 1935, 1973, 1994, 2026, 2042, 2058, 2092, 2223, 2239, 2271, 2306, 2355, 2412, 2444, 2492, 2533, 2565, 2587, 2618, 2651, 2684, 2717, 2749, 2774, 2806, 2837, 2861, 2899, 2919, 2954, 2971, 2991, 3007, 3042, 3059, 3075, 3105, 3159, 3211, 3385, 3416, 3444, 3474, 3508, 3534, 3549)

evidence of an election law violation, discounting ballots is only one of several remedies authorized by law.

CONCLUSION

For the reasons stated above, this Court should deny the petition for judicial review.

Electronically submitted this the 3rd day of February, 2025.

/s/ Terence Steed

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day electronically filed the foregoing document with the Wake County Clerk of Court using the NC eCourts efile and serve system, which electronically mails a link to the same in PDF format using the following addresses:

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This the 3rd day of February, 2025.

/s/ Terence Steed
Terence Steed
Special Deputy Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV040620-910

JEFFERSON GRIFFIN,

Petitioner,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Respondent.

**AFFIDAVIT OF
PAUL COX**

I, Paul Cox, swear under penalty of perjury that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old. I am competent to give this declaration and have personal knowledge of the facts set forth herein.

2. I am general counsel for the North Carolina State Board of Elections ("State Board"), a position I have held since September 1, 2022. Prior to that, I served as an associate general counsel to the State Board from September 2021 to August 2022. In my role, I provide legal advice to the State Board and its staff on all matters of election administration. I also provide advice to the county boards of elections. I also regularly confer with subject-matter experts on State Board staff and with county directors of elections regarding the operation of the State Election Information Management System (SEIMS), which is the suite of software and databases maintained by the State Board and used by both State and county election officials to manage nearly all elections-related processes, including voter registration and voter list maintenance. I also regularly confer with these election professionals regarding operational practices for voter registration and voter list maintenance.

3. As general counsel to the State Board, I have access to documents in the care and custody of that state agency and can verify that true and accurate copies of those documents are attached hereto. These are documents created by State Board staff, made by persons with knowledge of the contents therein, kept in the course of the regularly conducted business of the State Board, and are considered public records under North Carolina law.

4. As general counsel to the State Board, I also have access to information stored in North Carolina's current voter registration database, as well as information kept in archived voter registration processing databases. I am familiar with the functioning of the current database, including how it stores and verifies information entered into the database. The State Board is responsible for the development, enhancement, maintenance, and management of the current voter registration database, and retains custody of archived databases. Through my personal knowledge, I am aware that information maintained in these databases was originally entered by county board of elections staff members (or, in rare occasions, State Board staff members), who had knowledge of that information at the time it was entered.

5. I requested that the State Board's information technology (IT) staff retrieve data from the current and archived voter registration databases that provides the basis for the information discussed in this affidavit. I can verify that the information in this affidavit derived from data in those databases is true and accurate, to the extent it was originally inputted correctly, and is of public record.

6. The Petitioner in this matter included an affidavit from an employee of a political consulting firm, Ryan Bonifay. Mr. Bonifay stated that he conducted a data query of a list provided to the North Carolina Republican Party from the State Board containing all currently registered voters in active, inactive, or temporary status that do not contain data in one or more

of the following data fields in their registration record: driver's license number or last four digits of social security number. He states that he then matched this list against the absentee voter list to produce a final list which, according to him, contains "a list of people who (1) attempted to vote in the 2024 General Election before November 5, 2024 (via early vote, absentee by mail, etc.), (2) had their vote accepted by their applicable county board of elections, and (3) never provided a North Carolina driver's license number nor the last 4 digits of their Social Security Number to their county board of elections."

7. Mr. Bonifay's conclusion that the results of this database matching would definitively show whether a registrant "provided" one of these numbers "to their county board of elections" is based on incorrect assumptions. It assumes that numbers provided on a voter registration form to a county board of elections necessarily and always appear in a voter's registration record in the electronic database used to produce the list that the Republican Party obtained from the State Board. It is a conclusion that, in a very large number of cases, proves to be incorrect.

8. In response to arguments made in the various post-election litigation brought by the Petitioner, I requested that our IT staff run a database query on January 24, 2025, to replicate the analysis that Mr. Bonifay says he conducted. We matched the list of individuals whose electronic voter registration database record contains neither a driver's license nor the last four digits of a social security number, against the list of voters who cast an early or absentee ballot in the 2024 general election that was accepted by their county board of elections. The result was a list of 62,027 voter records: 60,666 early voters and 1,361 absentee voters.

9. Our IT staff did further analysis, however, using voter registration archive databases to identify whether any of these voters had one of these numbers in their voter

registration application record—the record created when the county board of elections initially enters data from the voter registration application into the voter registration database. These archive databases are distinct from the current database of voter registrations queried for Mr. Bonifay's analysis. Under the data processing rules that operate within SEIMS, when a county user inputs a new registration application or updated application record with a driver's license or the last four digits of a social security number in the appropriate database field, the system automatically attempts to validate that number against the North Carolina DMV database, for driver's license numbers, and the federal Social Security Administration database, for social security numbers. To validate, the applicant's first and last name, date of birth, and the driver's license or last four of their social security number must all match exactly, between the voter registration database and the other government database. If there is any discrepancy preventing an exact match on any of these fields, that prevents the identification number from being validated, and the driver's license or social security number is removed from the registrant's voter record. That number is retained, however, in an archive database associated with the processing of voter registration applications. Such voters are permitted to register and vote upon providing another form of identification, which we refer to as HAVA ID. *See* N.C.G.S. § 163-166.12(d).

10. After querying this archive database for any of the 62,027 voter records, our data shows that 28,803 of these voters' records contained a driver's license number or last four digits of a social security number during the registration application processing phase. In all likelihood, based on the processes outlined above, these identification numbers were removed from these voters' records when the automatic matching between the elections database and the DMV or Social Security databases did not result in an exact match.

11. Next, our IT staff ran a query to determine whether any of the 62,027 voters have another voter registration record on file that contains a driver's license or last four digits of a social security number. This can occur, for example, if a person registers in one county and then re-registers in another county. When this occurs, in some instances, the county user fails to match and populate the new record with the identification information from the previous record. To identify such records, our IT staff searched for other registration records associated with the same unique voter identification number (which we call NCID) of any of the 62,027 voters. We determined that 2,200 of these voters had an earlier registration that contained a driver's license or social security number, 1,168 of which are unique from the list of 28,803 voters whose initial processing record contained one of these numbers.

12. Next, our IT staff ran a query to determine whether any of the 62,027 voters have a record in the database showing that they indicated on their initial voter registration application that they "do not have a driver's license/DMV ID or Social Security number." Such voters are permitted to register and, in lieu of an identification number that the voter does not have, SEIMS automatically assigns that voter a unique identification number (again, an NCID number). *See* 52 U.S.C. § 21083(a)(5)(A)(ii). SEIMS did not have a field for this entry until July 2024, when our software developers added it to the software application the county boards use to enter voter registration applications into the system. Accordingly, any query of "I do not have" voters would necessarily be underinclusive because it would capture only those voters who selected this option on the voter registration application from July 2024 onward, and no such voters from before that time. From this query, we determined that 1,266 of the 62,027 voters have an indication in their record that they informed their county board of elections that they have neither a driver's license number nor social security number, 1,196 of which are unique from the earlier two queries.

13. Accordingly, when combining the first two queries, we can determine that among the voters who, according to Mr. Bonifay's analysis, "never provided" a driver's license or last four digits of a social security number, 29,971 of them actually did provide one of these numbers. And drawing on the third query, 1,196 additional voters included in Mr. Bonifay's analysis, and likely many more, were properly registered pursuant to federal law when they indicated that they lacked these numbers, for a total of 31,167 of the 62,027.

14. If the election protests at issue were determined to be legally valid and should advance to an evidentiary hearing, which did not occur at the agency level, this type of data analysis by State Board staff of public records in its possession would be the first step. Next, the county boards of elections would have to investigate all of the remaining voter registrations identified by Mr. Bonifay. That is because there are a variety of fact-specific circumstances that would establish that a voter either provided one of the identification numbers at issue, contrary to Mr. Bonifay's conclusion, or that they were exempt from providing one. My colleagues at the State Board and I have conferred with multiple staff members from county boards of elections who have been reviewing the records of voters identified in Mr. Bonifay's list, and the following is a list of some of these circumstances:

- a. Some voters registered before the digitization of registration records in the late 1990s/early 2000s and then submitted a new registration form, but the system was unable to link the older form to the new one, so the current data, erroneously, appears to show that the person first registered after HAVA became effective.
- b. Some voters registered and provided a driver's license or last four digits of social security number or indicated they lacked these numbers and then re-registered, or they registered prior to HAVA. But because of a discrepancy in how they filled out the later registration form (or a data entry error by county staff), the two

records were not linked. So, the later registration appears in the database, erroneously, as a first-time registration.

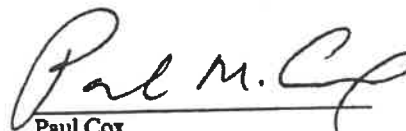
- c. Some voters were removed from the rolls due to inactivity but later voted after attesting that they maintained residency in the county, which requires a county to “reinstate[]” that voter’s registration. N.C.G.S. § 163-82.14(d)(3). However, the county may have created a new registration record rather than reactivating a removed record due to various processing practices at the county level. If the original registration was either exempt from the HAVA identification requirement or the voter supplied an identification number on the original record, the new record would not show that in the current record in the database.
- d. Some voters provided a driver’s license or last four digits of their social security number with their initial registration application, which a county worker can verify by pulling up the scanned copy of that form, but a county worker simply failed to key that information into the database when they originally processed the registration.
- e. As noted above, some voters selected “I do not have” a driver’s license or social security number, but they registered before July 2024, so the county board could only identify this scenario by pulling up and reviewing the scanned copy of the voter registration application.
- f. It is also possible that some voters had to vote provisionally for the first time, because there was no record of registration. But county staff were able to determine that the voter attempted to timely register before the election through the DMV, for example, but the registration did not get processed for some reason, which makes their provisional ballot eligible to count. *See* N.C.G.S. § 163-82.19(a). But because the DMV record did not come through, their provisional application served as their initial registration form, and that form may not have included their driver’s license, unlike if the record had come through from the DMV as originally intended.

15. As these examples demonstrate, it would require individualized, one-by-one, manual review of records by the county boards to determine if any voter on the challenged list falls into one of these categories, or possibly others. And for the issue of a prior registration not linking to a new registration, it would require fairly complex data analysis to attempt to identify potential older registrations for challenged voters that have not been linked to the current, active registration in the database due to slight data mismatches. Then, it would require manual review of any such older registrations to see if any challenged voter actually registered prior to HAVA's effective date or registered after HAVA became effective but included a driver's license or the last four digits of a social security number, or indicated they lacked these numbers, on that initial registration application. This sort of effort would be required to ensure that no voter was erroneously identified as having registered after the effective date of HAVA without providing the identification information at issue or stating that they lacked it.

16. As general counsel to the State Board, I am also familiar with the history of the voter registration application form created by the agency over the years, and I have access to records of historical versions of these forms, all of which are public records. Attached as Exhibit A to this affidavit is a demonstrative table showing the fields on the application and the instructions on the application, version by version, since 2003.

This concludes my affidavit.

This the 2nd day of February, 2025.



Paul Cox
General Counsel
N.C. State Board of Elections

Sworn to and subscribed before me this the 3rd day of February, 2025.

Karla D. Garcia

(Notary Public)

My commission expires: 6/30/2029



RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

Year	HAVA Fields	HAVA Instructions (typically on the reverse page)
2003	<p>Drivers License Number: If you do not have a Driver's license, then list the last four digits of your Social Security Number:</p>	<p>IDENTIFICATION REQUIREMENT If you do not have a driver's license or social security number, and this form is submitted by mail, and you have never registered to vote in the county you are now registering in, you must send, with this application, either a.) a copy of current and valid photo identification, or b.) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. If you do not provide the information requested above, you will be required to provide to election officials either a. or b. above the first time you vote at a voting place or by absentee ballot.</p>
2004	<p>ID Number If you have a NC driver's license, check here and print the number where indicated below. <input type="checkbox"/> License No. _____ If you have no NC driver's license, check here and print your Social Security No. where indicated below. <input type="checkbox"/> SSN (Last 4 Digits) _____ If you have no NC driver's license or SSN, check here. <input type="checkbox"/> I have no NC driver's license or SSN</p>	<p>IDENTIFICATION REQUIREMENT If you do not have a driver's license or social security number, are submitting this form by mail, and have never registered to vote in the county in which you are now registering, you must send, with this application, either a copy of current and valid photo identification, OR a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address. If you do not provide the information requested above, you will be required to provide ID to election officials when you vote for the first time.</p>
2005	<p>ID Number If you have a NC driver's license, check here and print the number where indicated below. <input type="checkbox"/> License No. _____ If you have no NC driver's license, check here and print your Social Security No. where indicated below. <input type="checkbox"/> SSN (Last 4 Digits) _____ If you have no NC driver's license or SSN, check here. <input type="checkbox"/> I have no NC driver's license or SSN</p>	<p>IDENTIFICATION REQUIREMENT If you do not have a driver's license or social security number, are submitting this form by mail, and have never registered to vote in the county in which you are now registering, you must send, with this application, either a copy of current and valid photo identification, OR a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address. If you do not provide the information requested above, you will be required to provide ID to election officials when you vote for the first time.</p>
2006	<p>Section 2 Personal Identification Number (Required) Do you have a NC driver's license or NC Identification card? <input type="checkbox"/> Yes <input type="checkbox"/> No Do you have a U.S. issued Social Security Number? <input type="checkbox"/> Yes <input type="checkbox"/> No Have you been assigned a NC State Voter Number? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>NC Driver License or Identification Number _____ Social Security Number (Last Four Digits Are Required) _____ NC State Voter Registration Number _____</p>	<p>Requirements: PLEASE READ</p> <ul style="list-style-type: none"> To be eligible to vote in the county you are registering in, you must have resided in that county for at least 30 days before the day of the election. If you are registering by mail, and cannot provide a valid ID number in Section 2, you must submit a copy of one of the following forms of current and valid identification with this application. If you do not provide this information, you will be required to provide one of these forms of ID to an election official when you vote for the first time in this county. <ul style="list-style-type: none"> A current and valid photo identification A current utility bill, or bank statement, government check or paycheck, or a government document that shows your name and address as it appears on this application
2007	<p>Section 2 Personal Identification Number (Required) Do you have a NC driver's license or NC Identification card issued by DMV? If yes, provide the number. <input type="checkbox"/> Yes <input type="checkbox"/> No If you do not have a DMV-issued card, do you have a U.S.-issued Social Security Number? If yes, provide last 4 digits. <input type="checkbox"/> Yes <input type="checkbox"/> No Have you been assigned a NC State Voter Registration Number? If yes, provide unless you provided one of the numbers above. <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>NC Driver License or Identification Number _____ Social Security Number (Last Four Digits) _____ NC State Voter Registration Number _____</p>	<p>Requirements: PLEASE READ</p> <ul style="list-style-type: none"> To be eligible to vote in the county you are registering in, you must have resided in that county for at least 30 days before the day of the election. If you are registering by mail, and cannot provide a valid ID number in Section 2, you must submit a copy of one of the following forms of current and valid identification with this application. If you do not provide this information, you will be required to provide one of these forms of ID to an election official when you vote for the first time in this county. <ul style="list-style-type: none"> A current and valid photo identification A current utility bill, or bank statement, government check or paycheck, or a government document that shows your name and address as it appears on this application

2008	Section 2 Identification (Required) Do you have a NC driver's license or NC identification card issued by DMV? If yes, provide the number. <input type="checkbox"/> Yes <input type="checkbox"/> No If you do not have a DMV-issued card, do you have a U.S.-issued Social Security Number? If yes, provide last 4 digits. <input type="checkbox"/> Yes <input type="checkbox"/> No X X X - X X -	Requirements: PLEASE READ <ul style="list-style-type: none"> To be eligible to vote in the county you are registering in, you must have resided in that county for at least 30 days before the day of the election. If you are registering by mail, and cannot provide a valid ID number in Section 2, you must submit a copy of one of the following forms of current and valid identification with this application. If you do not provide this information, you will be required to provide one of these forms of ID to an election official when you vote for the first time in this county: <ul style="list-style-type: none"> A current and valid photo identification A current utility bill, or bank statement, government check or paycheck, or a government document that shows your name and address as it appears on this application. 								
2009	3 Do you have a NC Driver's License or DMV-issued Identification card? If yes, provide the number. <input type="checkbox"/> Yes <input type="checkbox"/> No If you do not have a NC DMV-issued license or ID card, do you have a Social Security Number? If yes, provide the last 4 digits. <input type="checkbox"/> Yes <input type="checkbox"/> No X X X - X X -	Requirements: <ul style="list-style-type: none"> To be eligible to vote in the county you are registering in, you must have resided in that county for at least 30 days before the day of the election. If you are registering by mail, and cannot provide a valid ID number in Section 3, you must submit a copy of one of the following forms of current and valid identification with this application. If you do not provide this information, you will be required to provide one of these forms of ID to an election official when you vote for the first time in this county: <ul style="list-style-type: none"> A current and valid photo identification A current utility bill, or bank statement, government check or paycheck, or a government document that shows your name and address as it appears on this application. 								
2010	No record of changes	No record of changes								
2011	No record of changes	No record of changes								
2012	3 Do you have a NC Driver's License or DMV-issued Identification card? If yes, provide the number. <input type="checkbox"/> Yes <input type="checkbox"/> No If you do not have a NC DMV-issued license or ID card, do you have a Social Security Number? If yes, provide the last 4 digits. <input type="checkbox"/> Yes <input type="checkbox"/> No X X X - X X -	No record of changes								
2013	3 <table border="1"> <tr> <td>Date of Birth MMDDYYYY (Required)</td> <td>State of Birth/Country of Birth</td> </tr> <tr> <td colspan="2">If you know your NC Voter Registration Number, enter it below.</td> </tr> <tr> <td colspan="2">If you have a NC drivers license or non-operators ID card, enter the number below.</td> </tr> <tr> <td>Enter the last 4 digits of your SSN.</td> <td><input type="checkbox"/> Check here if you do not have a NC drivers license, ID card, or a SSN.</td> </tr> </table>	Date of Birth MMDDYYYY (Required)	State of Birth/Country of Birth	If you know your NC Voter Registration Number, enter it below.		If you have a NC drivers license or non-operators ID card, enter the number below.		Enter the last 4 digits of your SSN.	<input type="checkbox"/> Check here if you do not have a NC drivers license, ID card, or a SSN.	Voter Identification (ID) Requirements: <i>Help America Vote Act ID Requirements</i> — Under federal and state law, if you are registering and cannot provide a valid ID number in Section 3, you should include with this application a copy of one of the documents below: <ul style="list-style-type: none"> A current and valid photo ID. A current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address. If you do not provide a valid ID number on your application or submit a copy of one of the documents noted above, you must show ID the first time you vote.
Date of Birth MMDDYYYY (Required)	State of Birth/Country of Birth									
If you know your NC Voter Registration Number, enter it below.										
If you have a NC drivers license or non-operators ID card, enter the number below.										
Enter the last 4 digits of your SSN.	<input type="checkbox"/> Check here if you do not have a NC drivers license, ID card, or a SSN.									
2014	No record of changes	No record of changes								

2015	<div data-bbox="142 267 640 487"> <div>3</div> <div>Date of Birth MMDDYYYY (Required)</div> <div>State of Birth/Country of Birth</div> <div>If you know your NC Voter Registration Number, enter it below.</div> <div>If you have a NC drivers license or non-operators ID card, enter the number below.</div> <div>Enter the last 4 digits of your SSN.</div> <div> <input type="checkbox"/> Check here if you <u>do not</u> have a NC drivers license, ID card, or a SSN. </div> </div>	<div data-bbox="1050 284 1722 503"> <div>Identification Requirements:</div> <p>Registration ID — Under federal and state law, if you register to vote by mail and do not provide a valid identification number in Section 3, you must include a copy of one of the following documents with this application:</p> <ul style="list-style-type: none"> A current and valid photo ID. A current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address. <p>If you do not provide a valid identification number in Section 3 or submit a copy of one of the above identification documents, you must present one of the above identification documents the first time you appear to vote.</p> </div>
2016	<div data-bbox="142 527 693 755"> <div>3</div> <div>Date of Birth MMDDYYYY (Required)</div> <div>State of Birth/Country of Birth</div> <div>If you know your NC Voter Registration Number, enter it below.</div> <div>If you have a NC drivers license or non-operators ID card, enter the number below.</div> <div>Enter the last 4 digits of your SSN.</div> <div> <input type="checkbox"/> Check here if you <u>do not</u> have a NC drivers license, ID card, or a SSN. </div> </div>	<div data-bbox="1050 535 1606 795"> <div>Identification Requirements:</div> <p>Registration ID — Under federal and state law, if you register to vote by mail and do not provide a valid identification number in Section 3 on this form, you must enclose a copy of one of the following documents with this application:</p> <ul style="list-style-type: none"> A current and valid photo ID. A current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address. <p>If you do not provide the identification information listed above, you will be asked to show ID the first time you present to vote.</p> </div>
2017	No record of changes	No record of changes
2018	<div data-bbox="142 868 987 1161"> <div>NORTH CAROLINA VOTER REGISTRATION APPLICATION (fields in red text are required)</div> <div>3 Provide your date of birth and identification information.</div> <div> <div>Date of Birth (MM/DD/YYYY)</div> <div>State or Country of Birth</div> <div>NC Driver License or NC DMV ID Number</div> <div>Last Four Digits of Social Security Number</div> <div> <input type="checkbox"/> Check if you do not have a driver license or Social Security number. </div> <div>State Voter Registration Number - Optional (To locate, check "Voter Lookup" at www.ncsbe.gov.)</div> </div> </div>	<div data-bbox="1050 885 1690 1128"> <div>Identification Requirements</div> <p>Registration ID — Under federal and state law, if you apply to register to vote and do not provide a valid identification number in Section 3 on this form, you must enclose a copy of one of the following documents with this application:</p> <ul style="list-style-type: none"> A current and valid photo ID A current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address <p>If you do not provide a valid form of identification, you will be asked to show ID the first time you present to vote.</p> </div>

2019	<p>NORTH CAROLINA VOTER REGISTRATION APPLICATION (fields in red text are required)</p> <p>3 Provide your date of birth and identification information.</p> <p>Date of Birth (MM/DD/YYYY) State or Country of Birth</p> <p>NC Driver License or NC DMV ID Number Last 4 Digits of Social Security Number</p> <p><input type="checkbox"/> Check if you do not have a driver license or Social Security number. State Voter Registration Number - Optional (To locate, check "Voter Lookup" at www.NCSBE.gov)</p>	<p>3 You are required to provide your date of birth. If you have a NC driver license or non-operator's identification number, provide this number. If you do not have a NC driver license or ID card, then provide the last four digits of your social security number. If you have neither a NC driver license, NC DMV ID card or a social security number and you are registering to vote for the first time in North Carolina, attach a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address to this application.</p>
2020	<p>NORTH CAROLINA VOTER REGISTRATION APPLICATION (fields in red text are required)</p> <p>3 Provide your date of birth and identification information.</p> <p>Date of Birth (MM/DD/YYYY) State or Country of Birth</p> <p>NC Driver License or NC DMV ID Number Last 4 Digits of Social Security Number</p> <p><input type="checkbox"/> Check if you do not have a driver license or Social Security number. State Voter Registration Number (Optional: To locate, check "Voter Lookup" at www.NCSBE.gov)</p>	<p>3 You are required to provide your date of birth. If you have a NC driver license or non-operator's identification number, provide this number. If you do not have a NC driver license or ID card, then provide the last four digits of your social security number. If you have neither a NC driver license, NC DMV ID card or a social security number and you are registering to vote for the first time in North Carolina, attach a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address to this application.</p>
2021	<p>NORTH CAROLINA VOTER REGISTRATION APPLICATION (fields in red text are required)</p> <p>3 Provide your date of birth and identification information.</p> <p>Date of Birth (MM/DD/YYYY) State or Country of Birth</p> <p>NC Driver License or NC DMV ID Number Last 4 Digits of Social Security Number</p> <p><input type="checkbox"/> Check if you do not have a driver license or Social Security number. State Voter Registration Number (Optional: To locate, check "Voter Lookup" at www.NCSBE.gov)</p>	<p>3. You are required to provide your date of birth. If you have a NC driver license or non-operator's identification number, provide this number. If you do not have a NC driver license or ID card, then provide the last four digits of your social security number. If you have neither a NC driver license, NC DMV ID card or a social security number and you are registering to vote for the first time in North Carolina, attach a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address to this application.</p>

2022	<p>NORTH CAROLINA VOTER REGISTRATION APPLICATION (fields in red text are required)</p> <p>3 Provide your date of birth and identification information.</p> <p>Date of Birth (MM/DD/YYYY) State or Country of Birth</p> <p>NC Driver License or NC DMV ID Number Last 4 Digits of Social Security Number</p> <p><input type="checkbox"/> Check if you do not have a driver license or Social Security number. State Voter Registration Number (Optional: To locate, check "Voter Lookup" at www.NCSBE.gov.)</p>	<p>3 You are required to provide your date of birth. If you have a NC driver license or non-operator's identification number, provide this number. If you do not have a NC driver license or ID card, then provide the last four digits of your social security number. If you have neither a NC driver license, NC DMV ID card or a social security number and you are registering to vote for the first time in North Carolina, attach a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address to this application.</p>
2023	<p>NORTH CAROLINA VOTER REGISTRATION APPLICATION (fields in red text are required)</p> <p>3 Provide your date of birth and identification information.</p> <p>Date of Birth (MM/DD/YYYY) State or Country of Birth</p> <p>NC Driver License or NC DMV ID Number Last 4 Digits of Social Security Number</p> <p><input type="checkbox"/> Check if you do not have a driver license or Social Security number. State Voter Registration Number (Optional: To locate, check "Voter Lookup" at www.NCSBE.gov.)</p>	<p>3. You are required to provide your date of birth. If you have a NC driver license or non-operator's identification number, provide this number. If you do not have a NC driver license or ID card, then provide the last four digits of your social security number. If you have neither a NC driver license, NC DMV ID card or a social security number and you are registering to vote for the first time in North Carolina, attach a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address to this application.</p>
2024	<p>North Carolina Voter Registration Application (Sections in red are required.)</p> <p>Identification information Required.</p> <p>3 Date of birth (mm/dd/yyyy) AND</p> <p>NC Driver's License/DMV ID number OR, if you do not have one, Last 4 digits of your Social Security number OR</p> <p><input type="checkbox"/> I do not have a driver's license/DMV ID or Social Security number.</p>	<p>3. Provide your date of birth. If you have an NC driver's license or NCDMV ID number, you must provide this number. If not, you must provide the last four digits of your social security number. If you have none of these ID numbers and you are registering to vote for the first time in North Carolina, you must check the box indicating that you do not have these forms of identification. If you check that box, you may attach to this application a copy of a current and valid photo identification, utility bill, bank statement, government check, paycheck, or other government document that shows your name and address.</p>