
Intervenor-Respondent-Appellee.

Nos. 24CV040619-910
24CV040620-910
24CV050622-910

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NORTH CAROLINA COURT OF APPEALS

JEFFERSON GRIFFIN,

Petitioner-Appellant,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Respondent-Appellee,

and

ALLISON RIGGS,

Intervenor-Respondent-Appellee.

From Wake CountyNos. 24CV040619-910
24CV040620-910
24CV050622-910

INTERVENOR-RESPONDENT-APPELLEE'S BRIEF

Judge Griffin lost the race for Associate Justice in the November 2024 general election. In the final count, Justice Riggs received 734 more votes than Judge Griffin. Like many disappointed candidates in a close race, Judge Griffin used the procedures our General Assembly designed to test the integrity of the outcome. But after a machine recount, a hand recount, and individualized evidentiary hearings in nearly every county in the State, the result was unchanged. The State Board of Elections thus certified the vote totals on 11 December 2024.

After failing to win over the voters, Judge Griffin tried to change the election rules. Each of these rules has been applied, without controversy, for *years*. They applied in every primary and general election race in 2024. But Judge Griffin tried

to change the rules for his race only. The effect of his requested rule changes would be to retroactively disenfranchise more than 65,000 eligible North Carolina voters who followed the rules.

It gets worse. Judge Griffin adopted a flood-the-zone but cut-procedural-corners strategy, rushing out hundreds of protests targeting tens of thousands of North Carolinians. In doing so, Judge Griffin decided *not* to serve each affected voter with a copy of the relevant protest, as required by state law. Instead, he sent thousands of postcards with a QR code and an ambiguous warning that the recipient's vote "may be affected." Those postcards failed to give North Carolinians adequate notice that their fundamental right to vote was being challenged.

On 13 December 2024, the Board dismissed Judge Griffin's protests for a host of reasons under state and federal law. This Court should affirm under state law. (The federal courts have assumed jurisdiction over the federal-law issues.)

Judge Griffin's protests were properly rejected because they pose a risk to the stability and integrity of our elections. His effort to change the rules after an election is unprecedented. And if Judge Griffin succeeds, the implications are staggering. Rather than suing *before* an election to challenge rules they do not believe are valid, candidates will have an incentive to say nothing and wait to see if they win. Then if they lose, they will drag out elections through litigation for months, seeking to throw out votes until they win. Never again will North Carolina voters walk out of the voting booths knowing their votes will count, and the court system will be flooded with lawsuits after every election. That result is untenable and should be rejected by

this Court not only for the sake of this race, but to avoid undermining the public’s confidence in every election going forward.

BACKGROUND

A. Judge Griffin Protests the Election Results

Shortly after the November 2024 general election, Judge Griffin filed over three hundred election protests seeking to overturn his apparent loss to Justice Riggs. Three categories of protest are at issue in this appeal.

i. Military and Overseas Citizen Voters

Judge Griffin first challenged 1,409 ballots “cast by military or overseas citizens under Article 21A” when those “ballots were not accompanied by a photocopy of a photo ID or ID Exception Form.” (R p 11.)¹ He brought these challenges even though our Administrative Code is clear that these voters are “not required to submit a photocopy of acceptable photo identification.” 8 N.C. Admin. Code 17.0109(d). Judge Griffin claimed for the first time after the election that this rule conflicts with North Carolina statutory law.

Judge Griffin’s argument here implicates a series of laws designed to address problems faced by our military when voting. *See* R. Michael Alvarez et al., *Military Voting and the Law: Procedural and Technological Solutions to the Ballot Transit Problem*, 34 Fordham Urb. L.J. 935, 948 (2007). For decades in our country’s early

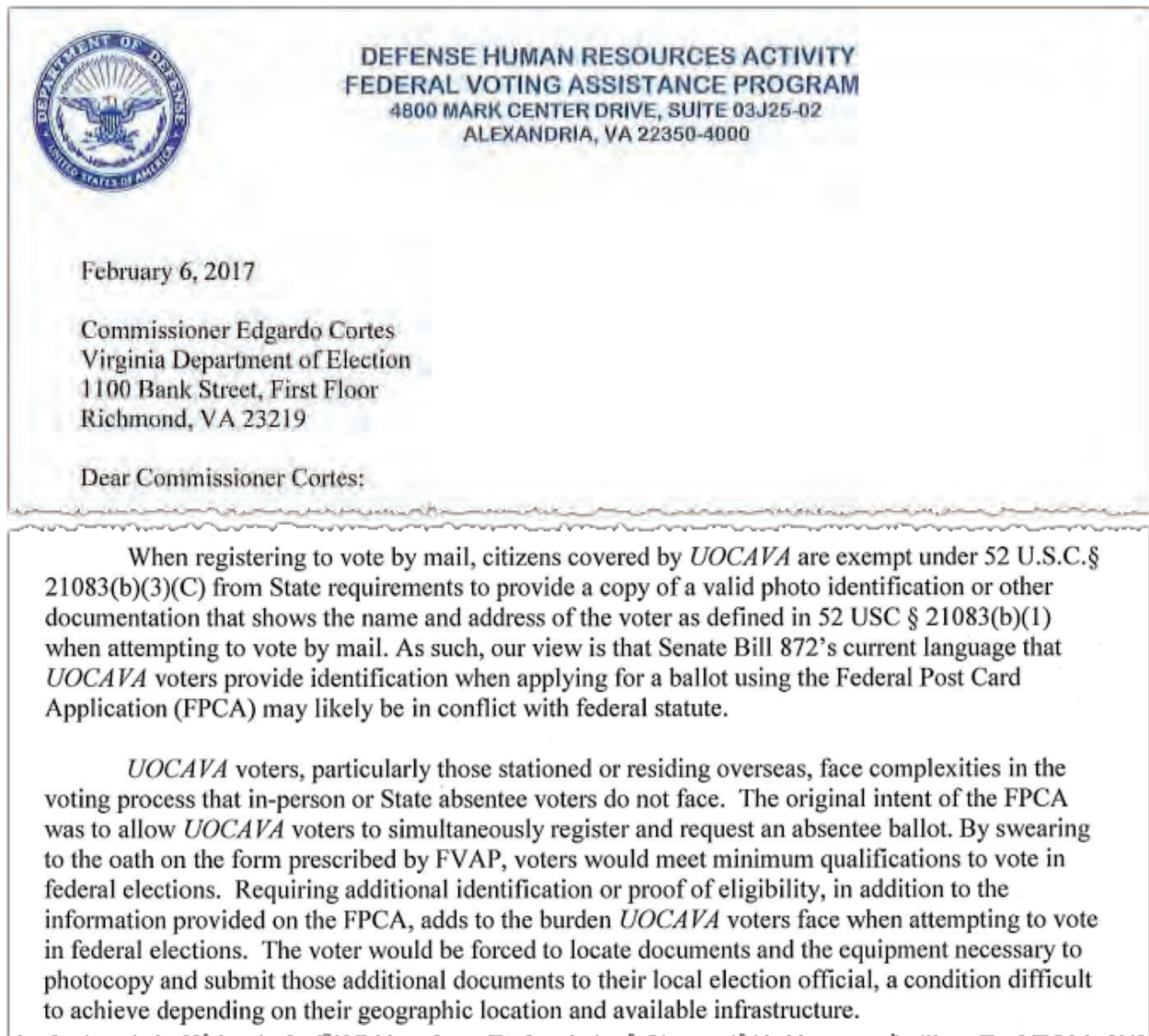
¹ Judge Griffin claims this first category applies to “5,509” ballots, but he filed only one timely protest of this type, challenging 1,409 voters in Guilford County. (Griffin Br. 7 & n.1.) Judge Griffin later sought to add “lists” of additional voters in “supplements” in Durham, Forsyth, and Buncombe Counties, but these new filings came well “after” the statutory “deadline to file an election protest.” (R p 11 n.2.)

history, a patchwork of state laws governing military voting created hurdles to—and sometimes intentionally sought to disenfranchise—military voters. *Id.* at 959–60. These problems were compounded by a voting population “spread across the globe in highly inaccessible areas,” from battlefields to submarines. *Id.* at 937 & n.16. With this context, Congress enacted statutes to address the concern that “our soldiers and sailors and merchant marines must make a special effort to retain their right to vote.” S. Rep. No. 84-580, at 3 (1955), reprinted in 1955 U.S.C.C.A.N. 2778, 2779.

In 1986, Congress passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), Pub. L. No. 99-410, 100 Stat. 924 (1986), which added new safeguards and established a uniform voting regime for active-duty military and their families and civilian voters living overseas. For registration, UOCAVA created a Federal Postcard Application (FPCA), to serve as a voter registration and absentee ballot application for groups covered by the Act. *Id.* §§ 101, 104, 100 Stat. at 926. In 2001, Congress amended UOCAVA to require states to accept that Application, *see* Pub. L. No. 107-107, § 1601, 115 Stat. 1012, 1274 (2001), and a federal write-in absentee ballot (FWAB), *see* 52 U.S.C. § 20302(a).

These federally prescribed forms and instructions do not tell covered voters to provide a photo ID. Indeed, under the first Trump Administration, the Federal Voting Assistance Program (FVAP), an agency of the U.S. Department of Defense responsible for administering UOCAVA, took the position that states may *not* apply a photo ID requirement. The Director of the FVAP explained that, “[w]hen registering to vote by mail, citizens covered by UOCAVA are *exempt* under 52 U.S.C.

§ 21083(b)(3)(C) from State requirements to provide a copy of a valid photo identification”:



Letter from Director Beirne to Commissioner Cortes, Virginia Department of Election (Feb. 6, 2017) (App. 23), available at fvap.gov and archived at <https://perma.cc/2BSZ-VUJ4>.

The FVAP also publishes a comprehensive Voting Assistance Guide to provide uniformed servicemembers, their families, and overseas citizens with a “reference

guide for everything you need to know about absentee voting in all 55 States, territories and the District of Columbia.” FVAP, Voting Assistance Guide, <https://www.fvap.gov/guide> (last visited Feb. 27, 2025), archived at <https://perma.cc/QVF3-3UTK>. This Guide includes “state-specific election dates, deadlines, guidance, and contact information required to vote absentee,” but there is *no instruction for any U.S. state* that its UOCAVA voters must comply with a photo ID requirement when requesting or voting their ballot. FVAP, 2024–25 Voting Assistance Guide at 3 (rev. Aug. 2023), available at [fvap.gov](https://www.fvap.gov) and archived at <https://perma.cc/B4M4-L8QE>.

Against this federal backdrop, our General Assembly decided in 2011 to allow military and overseas citizens to vote in state elections using the same method. It enacted the Uniform Military and Overseas Voters Act (UMOVA) and established a comprehensive regime for absentee voting, with a separate set of requirements codified in Article 21A of Chapter 163. (Article 20 governs absentee voting for domestic civilian voters). Article 21A entitled covered voters to cast a “military-overseas ballot,” defined as:

- (1) a federal write-in absentee ballot under UOCAVA,
- (2) ballots specifically prepared or distributed for use by a covered voter in accordance with UMOVA, or
- (3) a ballot cast by a covered voter in accordance with UMOVA.

N.C. Gen. Stat. § 163-258.2(1), (3), (4), (7).

Article 21A, like UOCAVA, included no photo ID requirement. The General Assembly delegated the power to implement Article 21A to the Board, including the

power to adopt “standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot.” N.C. Gen. Stat. § 163-258.4(d). By this authority, the Board adopted the regulation Judge Griffin now challenges here, which provides that military-overseas voters are “*not* required to submit a photocopy of acceptable photo identification.” 8 N.C. Admin. Code 17.0109(d) (emphasis added).

ii. U.S. Citizens Whose Parents Are N.C. Residents

Judge Griffin next challenged 266 ballots of children of overseas voters who checked a box indicating that they “never lived in the United States” because he claims that someone who has never lived in the United States cannot be a “resident” of North Carolina in accordance with Article VI of the North Carolina Constitution. (Doc.Ex.I 66.)

This argument also implicates UMOVA, which expanded voting rights in state elections to certain voters living abroad. UMOVA provides that various categories of “uniformed-service” and “overseas” voters could use unique procedures to register and vote absentee. *See* N.C. Gen. Stat. §§ 163-258.2–258.15. The “covered voters” include U.S. citizens “born outside the United States” who have never *lived* in this state but whose parents were eligible North Carolina voters before moving abroad. *Id.* § 163-258.2(1)(e). These voters often grew up while their parents were serving their country as uniformed military or serving as foreign aid workers or missionaries. The most natural example of such a “covered voter” would be an individual born to a North Carolina servicemember stationed overseas who—because of their parent’s service—

has never “lived in” North Carolina. UMOVA “specifically authorized” these “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.” (R p 38 (Board Order).)

The General Assembly enacted UMOVA in June 2011 without a single nay vote and covered voters have routinely voted in every North Carolina election since (43 elections in all). But in October 2024, the North Carolina Republican Party sued, alleging that the Board “allows and has allowed persons to register to vote under N.C. Gen. Stat. § 163-258.2(1)(e), including persons who were never and are not presently residents of North Carolina.” (Doc.Ex.I 5110.) That argument failed on the merits in Superior Court, (Doc.Ex.I 5124); this Court unanimously denied a challenge to that decision, (Doc.Ex.I 5128); and the Supreme Court declined to intervene before the election, (*see* Doc.Ex.I 5130 (pending petition for writ of supersedeas)). The November 2024 general election thus proceeded under the current rules.

After he lost the election, Judge Griffin argued for the first time that overseas voters who were eligible to vote under N.C. Gen. Stat. § 163-258.2(1)(e) should have their votes thrown out (*only for his race*) because that statute is unconstitutional under N.C. Const. art. VI, § 2(1).

iii. Allegedly Incomplete Registrations

The final category of protests challenged 60,273 ballots. These challenges re-litigate an issue rejected by the Board in 2023 and then by a federal court for the November 2024 election.

The Help America Vote Act (HAVA), 52 U.S.C. § 20901, *et seq.*, requires states to collect a voter’s driver’s license number or, if they do not have one, the last four

digits of their social security number for anyone registering to vote. 52 U.S.C. § 21083(a)(5)(A)(i). The state uses those numbers to confirm the registrant’s identity. *Id.* § 21083(b)(3)(B). Eligible voters who have neither number still have a right to vote—the law just requires that the state assign a “unique identifier to an applicant.” *Id.* § 21083(a)(1)(A), (5)(A)(ii). If a state registers a voter without collecting the information, the voter lacks the information, or the information provided by the voter does not match a state database, then the voter must produce a photo ID or other identifying document when they first go to vote, called a HAVA ID. *Id.* § 21083(a)(5)(A), (b)(1)(A), (b)(1)(B), (b)(2)(A). State law incorporates these requirements and applies them to all federal, state, and local elections in North Carolina. *See* N.C. Gen. Stat. §§ 163-82.11(c), 163-166.12(a), (b), (d).

For twenty years, from the enactment of HAVA to 2024, North Carolina’s official registration form requested each voter’s driver’s license number or social security number but did not make clear that the voter was required to provide one of these numbers, if available, to comply with federal law. Some voters provided one or both numbers. For those who did not provide a number (or whose number could not be matched to a state or federal database), those voters were provided a unique identifier and required to produce a HAVA ID document when they first voted. (R pp 27-28; Doc.Ex.II 209-210.)

The North Carolina form went unchallenged until a voter filed an administrative complaint in October 2023. The Board resolved that complaint by implementing “recommended changes to the voter registration application form.”

Minutes of Meeting at 4 (State Bd. of Elections Nov. 28, 2023), archived at <https://perma.cc/CCW2-YX7R>. The Board “did not approve the requested remedy to contact all existing registered voters whose electronic records do not show a driver’s license number or last four digits of a Social Security number.” (Doc.Ex.I 4828.) The Board explained that “the law’s purpose of identifying the registrant upon initial registration is already accomplished because,” under HAVA, “any voter who did not provide a driver’s license number or the last four digits of a Social Security number would have had to provide additional documentation to prove their identity before being allowed to vote.” (Doc.Ex.I 4828-29.)

No one—including Judge Griffin—complained about the Board’s December 2023 decision until August 2024. Less than 90 days before the November 2024 general election, the Republican Party sued, alleging “that 225,000 people, including ‘possible non-citizens’ and other ineligible voters, registered to vote using the previous form.” *Republican Nat’l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 399 (4th Cir. 2024). Despite the short window before the election, the plaintiffs made no attempt to seek a temporary restraining order or preliminary injunction. The November 2024 election thus proceeded with those 225,000 people on the voter rolls. These votes counted in every state and local race in 2024, just as they had for years or decades before. The Republican Party’s lawsuit was removed to federal court, which ruled in November 2024 that “the outcome of this suit will have no bearing on the most recent election.” *Republican Nat’l Comm. v. N.C. State Bd. of Elections*, No. 5:24-cv-00547-M (E.D.N.C. Nov. 22, 2024), ECF No. 73, at 4.

But after the results were tallied in the race for Associate Justice, Judge Griffin filed protests raising this same HAVA issue again. He claimed to have identified 60,273 ballots that were cast (a) before election day and (b) by voters whose registration records with the Board “do not contain data in one or more of the following data fields: (1) Driver’s License Number; or (2) Last Four Digits of Social Security Number.” (R p 23.) Judge Griffin did not challenge similarly situated voters who voted on election day but whose registration records lack either number. Instead, he limited his challenges to ballots cast “before election day.”

B. The Board Dismisses Judge Griffin’s Protests

On 13 December 2024, the Board served its Decision and Order on the three categories of protests at issue. The Board dismissed those protests on several overlapping grounds.

First, the Board dismissed all three protests because Judge Griffin “failed to serve the registered voters [he] seek[s] to challenge in [his] protests in a manner that would comply with the North Carolina Administrative Code and be consistent with the requirements of constitutional due process.” (R p 14.)

Second, the Board held that “substantive due process protections under the U.S. Constitution” bar all of Judge Griffin’s protests because, for each of these protests, Judge Griffin is seeking to throw out ballots cast by voters who followed the rules in place at the time of the election. (R p 31; *see also* R pp 40, 47.)

Third, the Board found that each category of protests lacked merit for reasons specific to that category. As to the military and overseas citizens who did not provide photo ID, the Board concluded these protests must be dismissed because Judge

Griffin’s arguments (1) go against the statutory scheme, which “includes no requirement for covered voters to include a photocopy of their photo ID,” (R p 44); (2) contradict the Board’s rule, promulgated through “permanent rulemaking,” which “makes it clear that the county boards of elections may not impose the photo ID requirement on such voters,” (R p 44); and (3) “may likely be in conflict with” UOCAVA, (R p 47).

For U.S. citizens whose parents are North Carolina residents, the Board reasoned that state law is “very clear that such voters are entitled to cast an absentee ballot” under the procedures set forth in Article 21A. (R p 39.) The Board concluded that it could not “ignore a statute of the General Assembly under the theory that the State Board should deem that statute unconstitutional.” (R p 37.) As an administrative agency, the Board is “bound to follow the law that governs it.” (R p 39.)

For allegedly incomplete registrations, the Board found that the protests must be dismissed for five reasons:

- (1) they “include insufficient allegations and evidence to establish probable cause to believe that their challenged voters failed to provide one of these identification numbers on their voter registration application,” (R p 23);
- (2) the “Board and a federal court, examining this very issue prior to and during this election, determined that any previous failure to implement this federal requirement cannot be held against already-registered voters casting ballots in this election,” (R p 26);
- (3) precedent “forbid[s] this type of election protest” because “an error by election officials in the processing of voter registration cannot be used to discount a voter’s ballot,” (R pp 30-31);

- (4) granting “the relief they request in these protests . . . would violate state and federal voter registration laws,” (R p 33); and
- (5) the protests are “also unlawful under state law because [they] would undermine the clear intent of the legislature with regard to how a voter may have their eligibility to vote challenged in an election,” (R p 35).

C. The Superior Court Affirms the Board’s Dismissal After the Federal Court Assumes Jurisdiction Over the Federal Issues

North Carolina law provides that any person seeking review of a Board decision must file a petition for review in Wake County Superior Court. *See* N.C. Gen. Stat. §§ 163-22(l), 163-182.14(b). Instead, Judge Griffin first filed in the Supreme Court a petition for writ of prohibition and motion for temporary stay. *See Griffin v. N.C. State Bd. of Elections*, 910 S.E.2d 348, 348 (N.C. 2025) (per curiam order). Two days later, Judge Griffin “sought judicial review in the Superior Court of Wake County pursuant to N.C.G.S. § 163-182.14(b) on the same grounds as those set out in his petition.” *Id.* at 349.

The Board removed both actions to federal court but, on 6 January 2025, the federal district court remanded both cases to state court. Justice Riggs and the Board appealed to the Fourth Circuit.

On 22 January 2025, and while that Fourth Circuit appeal was pending, our Supreme Court “dismissive[d] the petition for writ of prohibition so that the Superior Court of Wake County may proceed with the appeals that petitioner filed.” *Id.* The Supreme Court ordered that a stay of certification “shall remain in place until the Superior Court of Wake County has ruled on petitioner’s appeals and any appeals

from its rulings have been exhausted,” and it directed the Superior Court “to proceed expeditiously.” *Id.*

On 4 February 2025, the Fourth Circuit affirmed in part and modified in part the district court’s 6 January 2025 order remanding the cases. (R p 137.) Relevant here, the Fourth Circuit “direct[ed] the district court to modify its order to expressly retain jurisdiction of the federal issues identified in the Board’s notice of removal should those issues remain after the resolution of the state court proceedings, including any appeals.” (R p 145 (citing *England v. La. State Bd. of Med. Exam’rs.*, 375 U.S. 411 (1964))); *see also* Order, *Griffin v. N.C. State Bd. of Elections*, No. 5:24-cv-00731-M-RJ (E.D.N.C. Feb. 26, 2025) (Add. 1-2) (modifying remand order in accordance with the Fourth Circuit’s mandate).

On 5 and 6 February 2025, respectively, the Board and Justice Riggs notified the Superior Court of the Fourth Circuit’s ruling and made so-called “*England* reservations.” (*E.g.*, R pp 128, 146.) Justice Riggs explained in her reservation that, as a matter of federal law, she must inform the North Carolina courts of her federal arguments so that North Carolina law can be construed in light of those arguments. (*See, e.g.*, R p 148.) Justice Riggs thus notified the Superior Court that she was “exposing her federal contentions [t]here only for the purpose of complying with [federal law]” and that she “intends, should the state courts hold against her on

questions of state law, to return to the Eastern District of North Carolina for disposition of her federal contentions.” (*E.g.*, R p 149.)²

On 7 February 2025, the Superior Court affirmed the Board’s dismissal of Judge Griffin’s protests. The Superior Court “conclude[d] as a matter of law that the Board’s decision was not in violation of constitutional provisions, was not in excess of statutory authority or jurisdiction of the agency, was made upon lawful procedure, and was not affected by other error of law.” (R pp 152, 210, 269.) This consolidated appeal followed.

² Justice Riggs incorporates her *England* reservations here by reference. If necessary, Justice Riggs intends to argue to the federal courts that (1) Judge Griffin failed to provide adequate notice to voters under the U.S. Constitution by mailing confusing postcards; (2) the Civil Rights Act bars Judge Griffin’s effort to throw out votes because of alleged paperwork errors unrelated to the whether the voter is qualified to vote; (3) the Equal Protection and Due Process Clauses of the U.S. Constitution, the National Voter Registration Act, and the Voting Rights Act prohibit Judge Griffin’s effort to disenfranchise voters by changing the election rules after the election; and (4) the Equal Protection Clause of the U.S. Constitution bars Judge Griffin from selectively challenging voters by seeking to change the rules only for voters who cast their ballots in Democratic-leaning counties or who voted early or by mail. Justice Riggs’s federal arguments also include those identified in the Fourth Circuit’s 4 February 2025 opinion in this case, such as the contentions that Judge Griffin’s requested relief would violate HAVA and UOCAVA. (*See* R p 207.)

Justice Riggs summarizes these federal contentions here to inform this Court “what h[er] federal claims are, so that the state [law] may be construed ‘in light of those claims.’” *England*, 375 U.S. at 420. As the Fourth Circuit forecasted in its opinion and Justice Riggs explained in her *England* reservations, this Court should not resolve those federal questions. *Cf. id.* at 422 n.12 (expressing confidence that state courts “will respect a litigant’s reservation of h[er] federal claims”). Judge Griffin asks this Court to decide those questions anyway, (*see* Griffin Br. 44–52), but “no party is entitled to insist, over another’s objection, upon a binding state court determination of the federal question,” *England*, 375 U.S. at 422 n.13.

ARGUMENT

Judge Griffin’s protests fail under North Carolina law.³ The Board correctly rejected all three categories at the threshold for two independent reasons: (i) Judge Griffin’s protests attempt to change the rules in effect at the time of the election, and (ii) Judge Griffin failed to provide proper notice under state law. The Board was also right to hold that each of Judge Griffin’s protests fails on its own terms.

I. The Protests Are an Unlawful Attempt to Change the Election Rules After the Votes Have Been Cast and Counted

The Board correctly denied each of Judge Griffin’s protests because, as a matter of North Carolina law, Judge Griffin cannot throw out votes cast by eligible voters who followed the rules in effect during the election.

A. Judge Griffin’s Attempts to Change the Rules Are Untimely

Judge Griffin’s petition is, “in effect, post-election litigation that seeks to remove the legal right to vote from people who lawfully voted under the laws and regulations that existed during the voting process.” *Griffin v. N.C. State Bd. of Elections*, 909 S.E.2d 867, 871 (N.C. 2025) (Dietz, J., dissenting).

As Justice Dietz explained, North Carolina law recognizes a corollary to the federal election doctrine set forth in *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam). The *Purcell* principle “recognizes that, as elections draw near, judicial intervention becomes inappropriate because it can damage the integrity of the election process.” *Griffin*, 909 S.E.2d at 871 (Dietz, J., dissenting); *see also Merrill v.*

³ Justice Riggs’s arguments in this brief rely on North Carolina law. All references to federal law are made in support of her state-law arguments. Justice Riggs reserves her federal-law arguments for federal court.

Milligan, 142 S. Ct. 879, 880–81 (2022) (Mem.) (Kavanaugh, J., concurring) (collecting cases).

To be sure, parties may bring challenges to the State’s electoral regulations *between elections*, and these challenges can be important to ensuring election integrity. But as an election draws near, the candidates, parties, and courts must eventually go “pencils down” and run an election with the rules in place. As Justice Kavanaugh observed, when “an election is close at hand the rules of the road should be clear and settled.” *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Mem.) (Kavanaugh, J., concurring). Knowing that these rules will not change is essential to “giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.” *Id.*

The alternative is a constantly changing landscape of election laws, a flood of post-election litigation, and the threat that a voter will never know—even after leaving the voting booth—whether their vote will count. In such a system of electoral bedlam, post-election litigation could *always* threaten to invalidate the rules under which voters cast their votes. The “chaos” that could “emerge from repeated court-compelled changes to how we administer elections” requires that “at some point the rules governing an election must be locked in.” *Griffin*, 909 S.E.2d at 872 (Dietz, J., dissenting).

Accordingly, candidates such as Judge Griffin who seek to bring “grievances based on election laws” have a “duty” to “bring their complaints forward for pre-election adjudication when possible.” *Hendon v. N.C. State Bd. of Elections*, 710 F.2d

177, 182 (4th Cir. 1983). They cannot “gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action.” *Id.* (quoting *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973)).

As Justice Dietz recognized, the Supreme Court has acknowledged a state version of this *Purcell* doctrine in past cases (though not always by name). *See, e.g., Pender Cty. v. Bartlett*, 361 N.C. 491, 510 (2007); *see also Holmes v. Moore*, 382 N.C. 690, 691 (2022) (Mem.) (Newby, C.J., dissenting); *Harper v. Hall*, 382 N.C. 314, 318-319 (2022) (Barringer, J., dissenting). In the context of voter registration, a long-settled line of North Carolina cases rejected attempts to throw out votes of duly registered voters after-the-fact when a candidate later claims technical defects in their registrations should invalidate their votes. *See, e.g., Woodall v. W. Wake Highway Comm’n*, 176 N.C. 377, 389 (1918) (“Where a voter has registered, but the registration books show that he had not complied with all the minutiae of the registration law, his vote will not be rejected”); *Overton v. Mayor & City Comm’rs of City of Hendersonville*, 253 N.C. 306, 315, 116 S.E.2d 808, 815 (1960) (collecting cases).

This timeliness principle is a “necessary part of our state law doctrine for the same reasons it is incorporated into federal law.” *Griffin*, 909 S.E.2d at 872 (Dietz, J., dissenting). “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.” *Id.* It will “lead to doubts about the finality of vote counts following an election”; it will

“encourage novel legal challenges that greatly delay certification of the results”; and it will “fuel an already troubling decline in public faith in our elections.” *Id.*

Courts across the country have taken this well-recognized approach of refusing to change election rules shortly before—or after—an election. Sometimes they refer to the principle underlying this refusal as laches; at other times, they use a different moniker, like due process or the *Purcell* principle. *See, e.g., Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) (“Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.”).⁴ Whatever the nomenclature, the consistent thread is that candidates who raise arguments *post-election* are barred from raising challenges to election rules that were established *before* the election and subject to challenge if the candidate had filed suit at the proper time. *See, e.g., Trump v. Biden*, 394 Wis. 2d 629, 646, 951 N.W.2d 568, 577 (2020) (“The issues raised in this case, had they been pressed earlier, could have been resolved long before the election.”); *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988) (rejecting attempt to “invalidate” election, citing laches, when plaintiff could have sued before election because to hold otherwise would “encourage sandbagging on the

⁴ Judge Griffin opposes this well-settled principle in election law—that challenges to the rules need to be made well in advance, or not at all—by quibbling about the application of laches outside the election law context. (Griffin Br. 59-60.) Those non-election law cases are inapposite. In any event, Judge Griffin is wrong to argue that laches is inapplicable in the administrative or legal contexts. *See, e.g., Daugherty v. Cherry Hosp.*, 195 N.C. App. 97, 102, 670 S.E.2d 915, 919 (2009) (rejecting argument that laches could not apply in an administrative workers’ compensation proceeding) (citing *Zebulon v. Dawson*, 216 N.C. 520, 522, 5 S.E.2d 535, 537 (1939) (noting that laches may “supplemen[t] the law”).

part of wily plaintiffs”); *Waldrep v. Gaston Cty. Bd. of Elections*, 575 F. Supp. 759, 760 (W.D.N.C. 1983) (denying relief to losing candidate who challenged established practice for counting votes when he made no showing he was “unable” to bring challenge before the election); 29 C.J.S. Elections § 459 (2020) (“Extreme diligence and promptness are required in election-related matters, particularly where actionable election practices are discovered prior to an election. Therefore, laches is available in election challenges.”).

Judge Griffin claims that applying this “*Purcell* principle” post-election would take this Court in a direction “no jurisdiction has ever gone.” (Griffin Br. 56.) But that is wrong, as reflected in the cases cited above. Indeed, “[t]he same imperative of timing and the exercise of judicial review applies with *much more force* on the back end of elections.” See, e.g., *Trump v. Wis. Elections Comm’n*, 983 F.3d 919, 925 (7th Cir. 2020) (emphasis added). It would make little sense to bar changes to election rules *before* an election only to apply those very same rule changes retroactively *after* an election—when it would be not just inconvenient or confusing for voters to comply with those rule changes, but *impossible*. The *Purcell* principle is intended to prevent “confusion” about the rules during “every step” of the electoral process and preserves “confidence in the fairness of the election” by ensuring voters, officials, and candidates can prepare for and conduct elections under voter rules which remain in place both “before and during the election, and again in counting the votes afterwards.” *Wis. State Legislature*, 141 S. Ct. at 31 (Kavanaugh, J., concurring).

Indeed, applying Judge Griffin’s logic to our Supreme Court’s holding in *Pender County* exposes the flaws in his position. In *Pender County*, the Supreme Court held that a redistricting plan violated the Voting Rights Act but “stayed” the redrawing of the unlawful maps until after the *next* election because candidates had “been preparing” for the upcoming election “in reliance upon the districts as presently drawn.” 361 N.C. at 510, 649 S.E.2d at 376. If Judge Griffin were correct that the *Purcell* principle bars action *before* an election, but not in an election protest *after* an election, then when the North Carolina courts next hold that it is too late to change unlawful maps before an election, we can expect mass challenges to votes throughout the unlawful districts in the context of a post-election protest. That outcome would conflict with the Supreme Court’s holding in *Pender County*. That cannot be, and is not, the law in North Carolina.

What Judge Griffin wants this Court to do—throw out votes that were validly cast under laws and guidance in effect at the time they were cast—is unprecedented. He cites examples of courts that rejected arguments based on *Purcell* post-election, (see Griffin Br. 55-56), but only in contexts where votes were *counted* (and where counting these additional votes would have no impact on “voter behavior”), not where courts acquiesced in a litigant’s request to change the rules and throw out votes after the election, see, e.g., *La Unión del Pueblo Entero v. Abbott*, 705 F. Supp. 3d 725, 767 (W.D. Tex. 2023) (“Plaintiff’s requested injunction does not affect the procedures for voting by mail from a voter’s perspective” and “would not disenfranchise anyone”).

B. *James v. Bartlett* Undermines, Rather Than Supports, Judge Griffin’s Attempts to Change the Rules

Judge Griffin is wrong to argue that his challenges are “no different” from those at issue in *James v. Bartlett*, 359 N.C. 260, 607 S.E.2d 638 (2005). (Griffin Br. 13.) Justice Dietz, concurring in the order dismissing Judge Griffin’s petition for a writ of prohibition, specifically highlighted key differences between *James* and this case. *See Griffin*, 910 S.E.2d at 354 (Dietz, J., concurring). And while *James* was decided before the U.S. Supreme Court’s decision in *Purcell*—and thus did not account for that now-settled doctrine of election law—it still specifically evaluated the “timeliness” of the arguments raised. *See James*, 359 N.C. at 265, 607 S.E.2d at 641.

In *James*, the Supreme Court did require out-of-precinct provisional ballots to be excluded from the final tally in the context of a post-election protest. *Id.* But different from this case, where Judge Griffin seeks to change long-settled rules, in *James*, the “2004 election cycle was *the first time in North Carolina history* that State election officials counted out-of-precinct provisional ballots.” *Id.* (emphasis added). Also different from this case, the Board’s decision to count out-of-precinct votes was “unlawful under the election rules that existed at the time of the election,” contrary to both statute and regulation. *Griffin*, 910 S.E.2d at 354 (Dietz, J., concurring). Election law statutes provided that a voter must “*vote in the precinct in which he resides*,” *James*, 359 N.C. at 267, 607 S.E.2d at 642 (quoting N.C. Gen. Stat. § 163-55), and applicable regulations held that a person is eligible to vote a provisional

ballot “*if the person resides in the precinct*,” *id.* at 268, 607 S.E.2d at 643 (quoting 8 N.C. Admin. Code 10B.0103(d)).

By contrast, the voters who Judge Griffin challenges have been told for years, and multiple election cycles, that they can vote in precisely the way they voted in this election. Accordingly, Judge Griffin had years to challenge the laws he now wants this Court to take up and overturn. *See Griffin*, 910 S.E.2d at 354 (Dietz, J., concurring) (“Here, by contrast, the State Board of Elections *complied* with the election rules existing at the time of the election.”). “Judge Griffin’s argument is not that the Board violated the existing rules, but that the rules themselves are either unlawful or unconstitutional.” *Id.*

As Justice Dietz concluded, this case is “more akin” to the post-election challenge in *Hendon*. In that case, a North Carolina congressional candidate alleged a state election law was unconstitutional and sought a recount that complied with the U.S. Constitution. *Id.* The Fourth Circuit “agreed the law was unconstitutional” and “struck it down for future elections.” *Id.* (citing *Hendon*, 710 F.2d at 182). The court declined, however, to apply that ruling to the election at hand, pointing to “the general rule that denies relief with respect to past elections.” *Id.*

Also, different from this case, the protestors in *James* had a reason for their failure to challenge the Board’s rules *before* the election when the candidates and the Board argued that these changes were not timely. As the Supreme Court explained in a section titled “Timeliness,” the election challengers in *James* specifically inquired of the Board *before the* 2004 Election Cycle whether out-of-precinct ballots would be

counted. *James*, 359 N.C. at 265, 607 S.E.2d at 641. The Board vaguely replied that “North Carolina law is clear on this issue. We have and will continue to enforce and administer the provisions as to provisional voting as set out in North Carolina law.” *Id.* James interpreted that response to mean that those votes would not be counted (consistent with state statute and regulation) and so did not seek to challenge that decision before the election. *Id.*

When James and another candidate later filed suit to challenge the ultimate counting of those ballots, the Board and the prevailing candidates argued that James’s challenge was untimely because it was not made before the election. *Id.* The *James* court disagreed, but not because a protester has the right to challenge any election rule at any time up until the election protest deadline (as Judge Griffin contends here). *Id.* Instead, the *James* court held that the Board’s “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 11,310 ballots now at issue.” *Id.* The *James* court accordingly found that James’s post-election challenge was timely filed. *Id.*; *see also Hendon*, 710 F.2d at 182 (recognizing there are “exceptions” to the rule that one cannot seek to undo ballot results with court action arising from a “lack of opportunity for one reason or another to seek pre-election relief”).

That is not the case here. The laws and regulations Judge Griffin is challenging have been in place for years. Therefore, his complaints about the rules “could have been—and should have been—addressed in litigation long before people

went to the polls in November.” *Griffin*, 909 S.E.2d at 872 (Dietz, J., dissenting). Judge Griffin never received a contradictory or confusing communication from the Board that caused him to forestall a challenge. Rather, the rules in place at the time of the election—and for many preceding election cycles—were *clear*. Judge Griffin simply *waited* to challenge these rules until after he lost.

Accordingly, *James* not only fails to support Judge Griffin’s position, it underscores why his arguments miss the mark.

C. Judge Griffin’s Invocation of a Zoning Board Decision in *Godfrey* Does Not Permit Him to Change the Rules

Judge Griffin invokes, for the first time in North Carolina, the so-called *Godfrey* doctrine—never cited outside the zoning context—in an attempt to avoid arguments related to timeliness (*Purcell* and laches) and later equal protection. That doctrine has no application to the superior court’s *de novo* review of the Board’s decision for at least three reasons.

First, as Judge Griffin concedes, the superior court’s review of the Board’s order was “de novo,” as the issues presented to the board were “only legal” and the decision was made in the “preliminary consideration” posture, “somewhat akin to a summary judgment proceeding.” (Griffin Br. 5); see *Rotruck v. Guilford Cty. Bd. of Elections*, 267 N.C. App. 260, 264-65, 833 S.E.2d 345, 349 (2019); N.C. Gen. Stat. § 150B-51(c). On *de novo review* of an administrative decision, the superior court “consider[s] the matter anew” and may “freely substitute its own judgment for the agency’s judgment.” *Mann Media, Inc. v. Randolph Cty. Planning Bd.*, 356 N.C. 1, 13-14, 565 S.E.2d 9, 17 (cleaned up); see also *Trotter v. N.C. Dep’t of Health & Human*

Servs., Pub. Health Dep’t, 189 N.C. App. 655, 660, 659, S.E.2d 749, 752 (2008) (same). *De novo* review “requires a court to consider a question anew, *as if not considered or decided by the agency*.” *Amanini v. N.C. Dep’t of Human Res., N.C. Special Care Ctr.*, 114 N.C. App. 668, 674, 443 S.E.2d 114, 118 (1994) (emphasis added).

This broad scope of review aligns with the application of *de novo* review in other contexts as well. *See, e.g., In re Estate of Pope*, 192 N.C. App. 321, 331, 666 S.E.2d 140, 148 (2008) (declaring that “[u]nder a *de novo* review, the superior court was entitled to base its decision on different grounds than that relied upon by the clerk”); *see also Shore v. Brown*, 324 N.C. 427, 428, 378 S.E.2d 778, 779 (1989) (“If the granting of summary judgment can be sustained on any grounds, it should be affirmed on appeal. If the correct result has been reached, the judgment will not be disturbed even though the trial court may not have assigned the correct reason for the judgment entered.”).

Thus, the Superior Court was permitted in its *de novo* review to “consider the question presented on appeal anew, as if undecided by an agency.” *Homoly v. N.C. State Bd. of Dental Exam’rs.*, 125 N.C. App. 127, 130, 479 S.E.2d 215, 217 (1997). That review may necessarily include additional legal issues not part of the Board’s decision because the Superior Court is “substitut[ing] its own judgment” in place of the Board. *Mann Media, Inc.*, 361 N.C. at 13-14, 565 S.E.2d at 17.

Second, Judge Griffin’s attempt to graft an irrelevant line of zoning cases (in the context of a whole record analysis) onto *de novo* review in the election law context is inapposite. In *Godfrey v. Zoning Board of Adjustment of Union County*, the

Supreme Court ruled that it was improper for the Court of Appeals to uphold a zoning board’s decision based on a *sua sponte* finding that the landowner had vested rights in the property—an issue addressed by neither the board nor the Superior Court, and which necessarily required findings of fact that the Court of Appeals was not empowered to make. 317 N.C. 51, 62-64, 344 S.E.2d 272, 279 (1986). Despite Judge Griffin’s insistence that *Godfrey* is a “fundamental administrative law doctrine,” Judge Griffin does not cite—nor can Justice Riggs locate—any decision invoking *Godfrey* outside the zoning board context. But more importantly, *Godfrey* did not limit, or even address, *de novo* review by a superior court of errors of law by an administrative board. Thus, *Godfrey* does not apply here. *See Fuchs v. Washington*, No. 4:21-CV-81-FL, 2023 WL 5664107, at *13 (E.D.N.C. Aug. 21, 2023) (interpreting *Godfrey* as a case involving whether the board’s decision had been arbitrary and capricious, rather than a legal issue). Neither of the other cases Judge Griffin cites counsels to the contrary. *See Frazier v. Town of Blowing Rock*, 286 N.C. App. 570, 576, 882 S.E.2d 91, 96-97 (2022) (rejecting arguments before the Court of Appeals because “neither the BOA *nor the superior court* relied upon these theories in reaching their decision” (emphasis added)); *Bailey & Assocs., Inc. v. Wilmington Bd. of Adjustment*, 202 N.C. App. 177, 195, 689 S.E.2d 576, 589 (2010) (holding the superior court acted incorrectly in basing decision on facts not presented to the Board of Adjustment),

Third, Judge Griffin cites no case where a *party* to a proceeding was barred on administrative review from making arguments that party *also made* before the

administrative body (even if not expressly addressed in an agency’s written decision). The issues that Judge Griffin now seeks to exclude—the timeliness of Judge Griffin’s attempt to change the rules and equal protection—were raised before the Board and then again in superior court.

Justice Riggs’s arguments on timeliness (whether described as *Purcell*, laches, or substantive due process) boil down to the same fundamental principle—that Judge Griffin may not try to change the rules of the election *after* the election has concluded and *after* citizens of North Carolina exercised their right to vote based on then-existing voting laws. That concept has *always* been foundational to Justice Riggs’s opposition to Judge Griffin’s challenges. As Justice Riggs argued before the Board, the “Board should deny the protests as an illegal attempt to change the election rules after the votes have been cast and counted.” (Doc.Ex.I 5058.) She contended that while Judge Griffin’s effort to change the rules, then to “throw out their votes for failure to anticipate the new rules” was both “legally and constitutionally improper” it was also “wrong on an even more basic level—one familiar in every North Carolina schoolyard.” (*Id.*) “Whether playing a board game, competing in a sport, or running for office, the runner-up cannot snatch victory from the jaws of defeat by asking for a redo under a different set of rules.” (*Id.*) Further, Justice Riggs argued that Judge Griffin’s retroactive changes were “unconstitutional” and violate the due process provisions of the U.S. Constitution, as well as its North Carolina analogue. (*Id.* at 5068-5069.) She also cited a case invoking “laches” to reject an attempt to change the rules post-election. (*Id.* at 5068 n. 36); *Trump v. Biden*, 394 Wis. 2d at 647, 951

N.W.2d at 577 (“Our laws allow the challenge flag to be thrown regarding various aspects of election administration. The challenges raised by the Campaign in this case, however, come long after the last play or even the last game; the Campaign is challenging the rulebook adopted before the season began.”).

Judge Griffin insists that it was not until Justice Dietz framed this settled principle in election law as “our state’s *Purcell* principle” that Appellees used that specific moniker to describe their arguments. The fact that there are multiple ways to characterize the same fundamental point about the untimeliness and impropriety of Judge Griffin’s proposed changes to voting law does not mean that Judge Griffin is “chas[ing] [a] moving target[].” (Griffin Br. 54.) Rather, it merely reinforces that no matter what it is called—a *Purcell* violation, a substantive due process violation, a claim barred by laches—Judge Griffin’s desired outcome is barred under state (and federal) law.

As for the issue of equal protection, the Board’s decision not to rely on that point in its dismissal of Judge Griffin’s protest is of no moment when the Superior Court took up *de novo* review of the legal issues in Judge Griffin’s petition. In any event, Justice Riggs *did* present equal protection (under both the U.S. and N.C. Constitutions) as one of the many flaws in Judge Griffin’s petition before the Board. (See Doc.Ex.I 5068-69 & n.38, 40). Thus, as part of the Superior Court’s *de novo* review of the record, Appellees were free to raise equal protection arguments based on issues of law and matters uncontested within the record.

II. The Board Correctly Dismissed All Protests Because Judge Griffin Failed to Provide Voters with Sufficient Notice

As a matter of North Carolina constitutional and regulatory law, voters have the right to sufficient notice that their ballots are being challenged. North Carolina ensures that voters receive this notice by requiring protestors to “*serve copies of all filings* on every person with a direct stake in the outcome of [the] protest,” *including the targeted or affected voter*. 8 N.C. Admin. Code 2.0111 (emphasis added). This requirement appears on the face of the Board’s election protest form itself, a form issued in accordance with an express direction from the General Assembly. *See* N.C. Gen. Stat. § 163-182.9(c).

AFFECTED PARTIES & SERVICE

You must *serve copies of all filings* on every person with a direct stake in the outcome of this protest (“Affected Parties”). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed under Prompt 4, not only the apparent winner and runner-up. *If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served.*

8 N.C. Admin. Code 2.0111 (emphasis added).

Service requires delivery of the protests in-person or by U.S. Mail to the mailing address on file with the county board of elections, or by “other means *affirmatively authorized* by the Affected Party.” *Id.* (emphasis added). Delivery by mail is complete upon deposit of a “postage-paid *parcel*” with the U.S. Mail. *Id.* (emphasis added). It is the responsibility of the *protestor* “to ensure service is made on all Affected Parties.” *Id.* Election protests that do not “substantially comply” with this requirement are properly dismissed. N.C. Gen. Stat. §§ 163-182.9, 163-182.10.

Judge Griffin affirmed that he both read and understood his obligation to serve affected voters with copies of his protest filings:

PROTESTOR CERTIFICATION

15. By signing this protest application, you affirm the following:
I, Jefferson Griffin (full name), swear, under penalty of perjury, that the information provided in this protest filing is true and accurate to the best of my knowledge, and that I have read and understand the following:

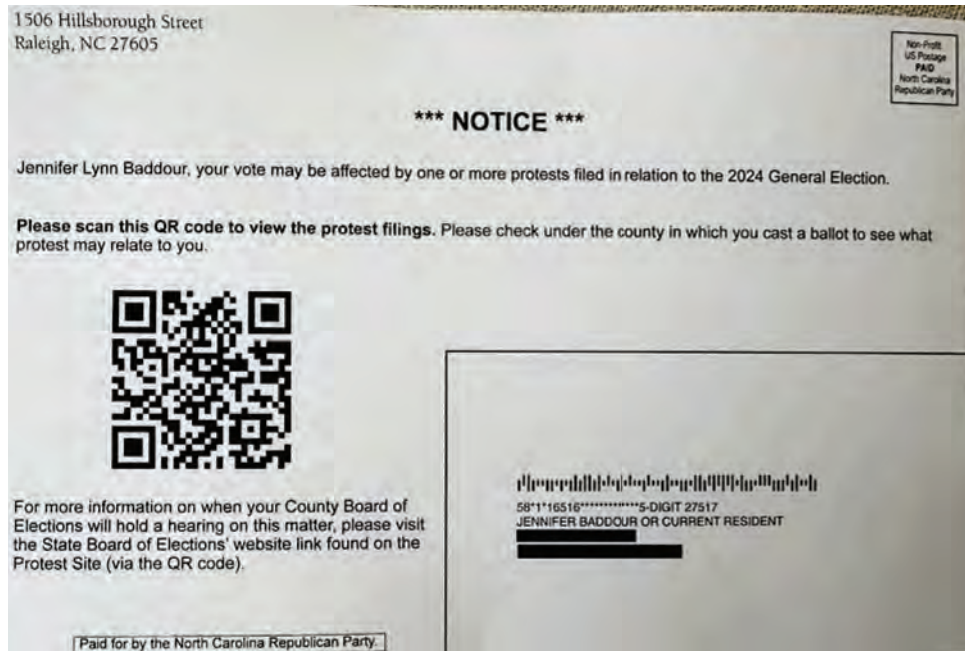
(initial)
JG
JG
JG
JG
JG
JG
JG
JG

I have reviewed the statutes and administrative rules governing election protests, including all deadlines.
My protest must originate with a filing at the county board of elections.
I must timely serve all Affected Parties.
I must prove by *substantial evidence* either the existence of a defect in the manner by which votes were counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct, either of which were sufficient to cast doubt on the apparent results of the election.
It is a crime to interfere unlawfully with the conduct and certification of an election.
It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote counted in the election.
The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I have a good faith basis to protest the conduct and results of the election.

Doc.Ex.I 8.

Despite affirming his obligation to do so, Judge Griffin did not “serve” affected voters with actual “copies” of his election protest “filings” or any other legal document. Had he done so, each voter would have received an official-looking *document* that would have alerted them to something *serious* taking place: a formal challenge that could deprive them of their right to vote.

Instead, Judge Griffin caused postcards to be sent by non-forwardable bulk mail with this equivocal message: “your vote *may be affected by one or more protests* filed in relation to the 2024 General Election.” (R pp 16-18; see Doc.Ex.II 312 (postcard).) As noted below, *infra* at 35, not every voter received the cards. For those who did, the postcards looked like the following:



Brief of *Amicus Curiae* at Ex. 3, *Griffin v. N.C. State Bd. of Elections*, No. 5:24-cv-00724-M (E.D.N.C. filed Jan. 1, 2025), ECF No. 41-1; (*accord* Doc.Ex.I 4889 (App. 5)).

The postcards included a QR code that led to a N.C. Republican Party website with links to *hundreds* of protests filed by four candidates. Recipients who did not discard the postcard as election season junk-mail and were able to navigate the QR code, would then have to sift through spreadsheet printouts, not organized alphabetically, to determine whether and why their votes “may be affected” by the various protests. (R p 16-18.) The Board’s decision includes screenshots of what those voters would have seen when they accessed the link. (*See* R p 49-50.)

The Board correctly determined that the postcard failed to satisfy 8 N.C. Admin. Code. 2.0111. In arguing otherwise, Judge Griffin starts not by explaining how he complied with the rule, but by arguing that the rule itself is flawed, permitting him to disregard its requirements. He argues that N.C. Gen. Stat. § 163-182.10(b) burdens county boards of elections, not protestors, with serving copies of protests on

affected parties. (*See* Griffin Br. 62.) That argument misreads the law. Section 163-182.10(b) requires county boards to “give notice of the *protest hearing* to . . . those persons likely to have a significant interest in the resolution of the protest” (emphasis added), not to serve the protest documents on the voter. Indeed, a separate sentence of N.C. Gen. Stat. § 163-182.10(b) states that “[e]ach person given notice shall also be given a copy of the protest or a summary of its allegations.” The General Assembly could have drafted the statute to state that county boards must provide notice of the hearing *and* serve the protests, but it chose not to—presumably because the protester must serve his protest on the affected parties.

Rather than requiring county boards to serve copies of protest filings, N.C. Gen. Stat. § 163-182.10(e) mandates that the Board “promulgate rules providing for adequate notice to parties,” and N.C. Gen. Stat. § 163-182.9(c) mandates that the Board “prescribe forms for filing protests.” Consistent with this express statutory authority—and the general authority for rulemaking under N.C. Gen. Stat. § 163-22(a)—the Board properly established rules requiring protestors such as Judge Griffin to serve affected parties with copies of their protests. This requirement was approved in turn by the Rules Review Commission—a legislatively appointed body tasked with ensuring that rules adopted are “within the authority delegated to the agency by the General Assembly.” *Id.* §§ 143B-30.1(a), 150B-21.9(a)(1).

This framework is not unique. Under the North Carolina Administrative Procedure Act, “the party that files the petition [commencing a contested case] shall serve a copy of the petition on all other parties,” but the “Office of Administrative

Hearings” must give “notice of [the] hearing” to the parties. N.C. Gen. Stat. § 150B-23(a); *see also* N.C. R. Civ. P. 3–4 (requiring plaintiffs filing a complaint to serve the complaint in accordance with the Rules of Civil Procedure).

Judge Griffin argues in the alternative that the postcards satisfied 8 N.C. Admin Code 2.0111’s service requirements because the Board uses similar mailers in other contexts. (Griffin Br. 63.) But Judge Griffin relies on two statutes that expressly discuss the issuance of “cards,” neither of which implicates a voter’s right to have their ballot counted and neither of which uses the word “serve” or “service” with respect to the Board’s responsibilities. *See* N.C. Gen. Stat. § 163-82.8(c) (discussing a “voter registration card” containing certain information); N.C. Gen. Stat. § 163-82.14(d)(2) (discussing a confirmation mailing in the form of a “preaddressed return card”). Here, in contrast, challenged voters must be served with “copies of all [protest] filings,” 8 N.C. Admin. Code 2.0111. Judge Griffin failed to do so. Accordingly, his protests were properly dismissed for lack of proper service.

Judge Griffin next contends he met the due process requirements outlined in *Mullane v. Central Hanover Bank & Trust Company*, 339 U.S. 306 (1950), protesting that the “standard does not demand perfection.” (Griffin Br. 64.) But *Mullane* dealt with notice to a class of *potential* beneficiaries of a trust, many of whom were either “unknown, “nonresidents” of the state, or had interests that were “conjectural or future,” and many of their “addresses [were] unknown to the trustee.” 339 U.S. at 317, 318. Here, in contrast, all the challenged voters are North Carolina voters who have a “direct stake in the outcome of [Judge Griffin’s] protest[s].” 8 N.C. Admin.

Code 2.0111. And there is no suggestion that Judge Griffin could not locate the challenged voters.

By failing to serve the voters he challenged, Judge Griffin left countless North Carolina voters without any notice *at all*, including voters who (i) mistook his postcard as just political junk mail from the “North Carolina Republican Party”—not a serious legal document warning of a loss of a constitutional right—and threw it away; (ii) never *received* the postcard because they moved and Judge Griffin chose to send the notice by non-forwardable bulk mail; (iii) lack a cellphone to scan the QR code; (iv) distrust QR codes from unknown sources; (v) could not find their names amid hundreds of links with spreadsheets listing names out of alphabetical order, and (vi) did not understand that the notice that their right to vote “may” be affected meant that Judge Griffin had specifically identified them *by name* in a specific protest challenging their individual right to vote.

* * *

For the reasons discussed above, the Court should affirm the superior court’s rejection of all three of Judge Griffin’s petitions, without considering the substance of the protests he is attempting to pursue here. If the Court considers Judge Griffin’s arguments in support of those protests, however, it should hold that each fails under settled North Carolina law just as they did before the Board.

III. Military and Overseas Voters Were Not Required to Provide Photo ID When Casting Their Ballots

Judge Griffin seeks to invalidate 1,409 votes of military and overseas voters by creating a new, post-election photo identification requirement that simply is not part of Article 21A of Chapter 163 and does not apply to them.

Judge Griffin cannot dispute the following: an open-and-shut regulation promulgated by the Board (and online instructions to voters) state that a voter casting a ballot under Article 21A “is not required to submit a photocopy of acceptable photo identification” or to claim an exception. 8 N.C. Admin. Code 17.0109(d). Instead, he argues that (i) the General Assembly intended to impose a photo ID requirement in Article 21A (governing military and overseas voting), when it added that requirement to *Article 20* (governing domestic absentee voting), and (ii) the Board never had the authority to issue the regulation that dooms his claim in the first place. Both arguments lack merit. In addition, as set forth below, it would violate equal protection to permit Judge Griffin to challenge *only* the military and overseas ballots cast in one (or a handful of counties)—while leaving the “old rules” in place for the voters in 96 of the other 100 counties in the State.

A. Article 21A Does Not Incorporate the Photo ID Requirement Found in Article 20

As the Board explained, Article 20 and Article 21A establish two regimes for absentee voting. Article 21A “comprehensively addresses the requirements for voting by absentee ballot for ‘covered persons’” (*i.e.*, uniformed military, their family, and overseas voters). (R p 40.) By contrast, the “provisions of Article 20 comprehensively address” the requirements for domestic absentee voting. (*Id.*) To be sure, in some

areas, the same requirements apply to both types of absentee voters, but the “requirements of one article do not apply to the class of individuals subject to the other article, unless otherwise stated in the statute.” (*Id.*)

This is confirmed by the express terms of both Article 20 and Article 21A. For example, at the end of Article 20, the last section expressly states that the provisions in Article 21A *do not apply* to absentee voting under Article 20:

§ 163-239. Article 21A relating to absentee voting by military and overseas voters *not applicable*

Except as otherwise provided therein, Article 21A of this Chapter shall not apply to or modify the provisions of this Article.

N.C. Gen. Stat. § 163-239 (emphasis added).

As the Board correctly stated in its Decision and Order, the “clear intent” of this language “and especially the title of the statute” is that Article 21A does not “apply to or modify” Article 20, meaning that UMOVA’s *separate* voting procedures are inapplicable to absentee voting covered by Article 20. (R pp 43-44); *see also Myers v. Myers*, 269 N.C. App. 237, 241, 837 S.E.2d 443, 448 (2020) (holding a statute’s meaning can be derived from “the title” of the statute).

On the other hand, UMOVA provides that its voters can “apply for a military-overseas ballot using *either* the regular application provided by Article 20 of this Chapter *or* the federal postcard application,” and are not prohibited “from voting an absentee ballot under Article 20.” N.C. Gen. Stat. § 163-258.7(a), (f) (emphasis added). Thus, military and overseas voters are expressly authorized to apply for and

cast a ballot under the methods set forth *either* in Article 21A *or* Article 20. But UMOVA voters must make a choice between the two. Simply put:

by setting forth two distinct sets of comprehensive regulations for requesting and casting absentee ballots for two distinct classes of voters, and separating those comprehensive regulations in different statutory articles, the General Assembly clearly did not intend for the State Board to pick and choose laws from one article and apply those laws to persons subject to the other article.

(R p 43.)

All of this is directly relevant to Judge Griffin’s protest because when it came time for the General Assembly to implement photo ID requirements for absentee voting, it *specifically modified* Article 20 to include a photo ID requirement, *see* N.C. Gen. Stat. § 163-230.1(a)(4), (b)(4), (f1) (requiring voted ballots “*under this section*” to be “accompanied by a photocopy of identification” (emphasis added)). At the same time, the General Assembly *did not amend* Article 21A’s separate absentee voting regime to impose a photo ID requirement for military and overseas voters. Of course, given the history of military and overseas voting, and the fact that no other state has adopted a comprehensive photo ID requirement for UOCAVA voters, the General Assembly’s choice is hardly surprising.

This exclusion of military and overseas voters from the photo ID requirement is also consistent with Article VI of the North Carolina Constitution. Article VI requires photo ID for voters “offering to vote in person.” It *does not require* photo ID for absentee voting at all (even though the General Assembly later imposed that requirement in Article 20). And even for in-person voting, Article VI permits the

General Assembly to enact laws that “include exceptions.” N.C. Const. art. VI, §§ 2(4), 3(2).

Trying to avoid this conclusion, Judge Griffin maintains that Article 21A should be read to “incorporate” Article 20’s photo identification requirement because “[i]f our legislature intended to exempt overseas absentee voters from the photo identification requirement, it would have said so explicitly.” (Griffin Br. 18.) But that gets the statutory construction backwards. If the General Assembly imposes a requirement in one Article of the statutes, *but does not include it* in another, the conclusion to be drawn is that it did not intend to include it where it was omitted. It is “not reasonable to assume that the legislature would leave an important matter . . . open to inference or speculation”; therefore, “the judiciary should avoid ingrafting upon a law something that has been omitted.” *Shaw v. U.S. Airways, Inc.*, 362 N.C. 457, 463, 665 S.E.2d 449, 453 (2008). Of course, it would be wrong to read a photo ID requirement into Article 21A if the requirement were simply *included* in Article 20 but *omitted* from Article 21A. But here the photo ID requirement in Article 20 is even clearer: it is *explicitly* limited to “voted ballots *under this section*.” N.C. Gen. Stat. § 163-230.1(f1).

The timing of the enactment of these statutes aligns with this analysis. The UMOVA was passed in 2011 and became effective in January 2012. The first photo identification law, applicable to in-person voting, was signed in August 2013. *Compare* N.C. Sess. Law 2011-182 (H.B. 514), *with* N.C. Sess. Law 2013-381 (H.B. 589). The General Assembly *later* added legislation to amend Article 20 to include a

photo identification requirement for domestic absentee ballots. *See* N.C. Sess. Law 2019-239 (S.B. 683). No such amendment was made to Article 21A. If the General Assembly had intended to impose a photo identification requirement in Article 21A, it would have amended Article 21A to “explicitly” include such a requirement—just as it did with respect to Article 20 in 2019.

Judge Griffin argues that Article 20’s photo identification requirement nevertheless *must be* incorporated into Article 21A because absentee ballots cast under both articles are “generally treated alike and are all considered absentee ballots.” (Griffin Br. 19.) But that results-oriented approach is not the way statutory construction is conducted under North Carolina law. *See, e.g., Rhyne v. K-Mart Corp.*, 358 N.C. 160, 169, 594 S.E.2d 1, 8 (2004) (“The General Assembly is the ‘policy-making agency’ because it is a far more appropriate forum than the courts for implementing policy-based changes to our laws.”).

In any event, to support his argument that Article 20 and Article 21A should just be “treated alike,” Judge Griffin cites statutes that, while they apply a uniform rule to Article 20 and Article 21A absentee ballots for one purpose or another, *specifically* distinguish between the two types of ballots. *See, e.g.,* N.C. Gen. Stat. § 163-132.5G(a1)(4) (requiring reporting of early vote ballots separate from “absentee ballots cast under Article 20 *or* 21A of this Chapter” (emphasis added)); *id.* § 163-234 (setting different deadline for counting of absentee ballots “issued under Article 21A”). Where the General Assembly wanted requirements from Article 20 to apply to Article 21A, it explicitly adopted parallel requirements for Article 21A or made

appropriate statutory cross-references. *Compare* N.C. Gen. Stat. §§ 163-232, 232.1 *with* N.C. Gen. Stat. § 163-258.26 (requiring preparation of certified lists of absentee ballots under Article 21 and Article 21A).

At the same time, Judge Griffin ignores the many other distinctions between the two types of absentee ballots, underscoring that they are distinct absentee voting regimes for different types of absentee ballots and that the provisions in Article 21A are intended to facilitate voting while away from North Carolina. *See Insulation Sys., Inc. v. Fisher*, 197 N.C. App. 386, 391, 678 S.E.2d 357, 360 (2009) (articulating basic principle that “[b]y enacting two separate statutes, the legislature clearly intended that two distinct standards be applied.”). For example, ballots cast under Article 21A, unlike absentee ballots cast under Article 20, can be submitted electronically. N.C. Gen. Stat. §§ 163-231(b)(1)(c), 163-258.4(d). In addition, unlike the declaration required to authenticate an Article 21A ballot, an absentee ballot under Article 20 must be authenticated by two witnesses or a notary. *Id.* § 163-231(a)(6). And all ballots under Article 20 must be submitted no later than 7:30 p.m. on the date of election, while Article 21A ballots are counted so long as they are received before the county canvass. *Compare id.* § 163-231(b)(2), *with id.* § 163-258.12. These distinctions in the methods and deadlines for submitting absentee domestic ballots under Article 20 and Article 21A underscore that the methods for voting absentee under the two Articles are distinct.

Judge Griffin also argues that Article 21A makes no reference to a “sealed container-return envelope” and speculates that the term requires the Board to look

outside Article 21A to Article 20 for guidance. (Griffin Br. 18-19 (discussing N.C. Gen. Stat. § 163-231(b)(1)).) But the reason Article 21A makes no reference to “sealed container return envelopes” is because, under Article 21A, the Board prescribes “privacy and transmission envelopes and their electronic equivalents . . . to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this State.” N.C. Gen. Stat. § 163-258.4(d); *see also id.* § 163-231(b)(1), (2) (specifically recognizing in Article 20 that Article 21A allows for different methods of transmission than regular absentee ballots).

Judge Griffin also cites several provisions that he assumes “*must* apply to overseas voters” from Article 20 even though Article 20 “does not say so expressly” because “Article 21A is silent on the issue.” (Griffin Br. 20.) As an initial matter, Judge Griffin is wrong about some of his examples. For example, Article 21A *does* impose penalties for perjury. *See* N.C. Gen. Stat. § 163-258.13. As that statute indicates, however, sometimes prosecution of military-overseas voters needs to be done by the United States rather than North Carolina, explaining the absence in Article 21A of provisions regarding referral of legal violations to a local district attorney. To the extent there are interstitial gaps in Article 21A, that Article specifically tasks the Board with filling those gaps in a manner that harmonizes state law and federal law under UOCAVA (*e.g.*, regulations for maintaining proper registration records for military overseas voters). *See, e.g.*, N.C. Gen. Stat. §§ 163-258.4, 163-258.30.

Judge Griffin is also wrong to conclude that “Article 21 recognizes that overseas voters will need to provide photo identification” because it provides that a military or overseas voter may apply for an absentee ballot by using “the regular application provided by Article 20.” (Griffin Br. 20 (citing N.C. Gen. Stat. § 163-258.7(a)).) To the contrary, that provision of state law makes clear that *it is the voter’s choice* whether to vote an absentee ballot under Article 20 instead of Article 21A. Whatever the voter’s choice, the applicable set of laws and regulations under the pertinent absentee voting regime (whether Article 20 or Article 21A) then apply.

Nor is it correct to conclude that there would be no “rational basis” for this difference in treatment or that it “would make no sense to require photo identification for voters presented in the United States but not for overseas voters” including our uniformed military. (Griffin Br. 26, 35); *see also Griffin*, 909 S.E.2d at 871-72 (Dietz, J., dissenting) (“Exempting voters in foreign countries from voter ID” is “inconsistent with the law’s intent”). While there may be policy arguments for extending photo ID to military and overseas voters, the General Assembly has not yet decided to impose such a requirement. That legislative choice is not only consistent with the law for UOCAVA voters in *other states across the country*, but also with the historical recognition in federal and state law that it is simply harder for overseas citizens to exercise their right to vote—from uniformed military on the battlefield or in submarines, to missionaries and nonprofit workers in remote locations. Indeed, the Department of Defense disagrees with Judge Griffin’s argument that it “makes no

sense” to permit military and overseas voters to access the ballot without a photo ID and has explained why these voters *should* be treated differently.⁵

As the Board also recognized, Article 21A implements UOCAVA, a federal law that does not require photo ID. Because Article 21A *requires* the Board to allow military-overseas voters to register and vote using UOCAVA ballots, and counties used a combined federal-state ballot in this election, *see* N.C. Gen. Stat. § 163-165.5B, Article 21A is properly read not to impose a photo ID requirement. As the Board has recognized, an exception from photo ID requirements for these votes may ultimately be required by federal law.

There are still multiple checks designed to ensure the integrity of the overseas vote. A voter must confirm their identity when submitting the standard federal forms. (*See* R p 41 (federal forms require information such as the voter’s “name, birthdate, and their driver’s license number or social security number” for the purpose of “confirm[ing] the voter’s identity.”).) And each Article 21A ballot includes a declaration swearing to the voter’s eligibility and identity. *See* N.C. Gen. Stat. §§ 163-258.4(e); 163-258.13. A military or overseas voter submitting a ballot under Article 21A must provide “a declaration signed by the voter declaring that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under the laws of the United States or this State.” N.C. Gen. Stat. § 163-258.13. A separate section sets out specific facts to which a covered voter must “swear

⁵ *See, e.g.*, Letter from Director Beirne to Commissioner Cortes (Feb. 6, 2017) (App. 23) (cited in Board’s Order at R p 47 n.26).

or affirm” including “specific representations pertaining to the voter’s identity, eligibility to vote, [and] status as a covered voter.” N.C. Gen. Stat. § 163-258.4(e).⁶

Accordingly, Judge Griffin’s attempt to change settled law and disenfranchise military servicemembers, their families, and other North Carolinians overseas should be rejected.

B. The Board Properly Exercised Its Authority in Issuing the Rule Providing That a Photo ID Is Not Required Under Article 21A

Judge Griffin argues the Photo ID Exemption Rule is unenforceable because “[t]here is no textual indication that the General Assembly ever intended for the State Board to decide whether to require photo identification for any kind of voter.” (Griffin Br. 25.) That is wrong. The Board did not exceed the scope of its authority; the *General Assembly* made the policy choice to impose a photo ID requirement for an absentee ballot under Article 20 without at the same time imposing such a requirement for casting a ballot under Article 21A. In addition, the General Assembly *did* direct the Board to develop “standardized absentee-voting materials . . . in coordination with other states.” N.C. Gen. Stat. § 163-258.4(d). And the ID exception found in 8 N.C. Admin. Code 17.0109(d) aligns with this directive. As noted, the FVAP’s Voting Assistance Guide “reveals no instruction from any state to

⁶ As the Board pointed out, (*see* R pp 41–44), these are the *only authentications* that may be required to cast an Article 21A ballot: “An authentication, other than the declaration specified in G.S. 163-258.13 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this Article. The declaration and any information in the declaration may be compared against information on file to ascertain the validity of the document.” N.C. Gen. Stat. § 163-258.17(a).

its UOCAVA voters stating that they must comply with a photo ID requirement when requesting or voting their ballot.” (R p 46.) The regulation was thus clearly within the General Assembly’s express direction to the Board to develop “standardized absentee-voting materials” for Article 21A voters, including “authentication materials, and voting instructions.” N.C. Gen. Stat. § 163-258.4(d).

This regulation was adopted during an *open participatory process*, with a specific check designed to ensure the Board does not exceed its statutory authority. The Rule took effect 15 months before the election, beginning in August 2023, first as a temporary rule, then as a permanent rule. (R p 45.) During rulemaking, Judge Griffin submitted no comments on the Rule. The North Carolina Republican Party submitted “thorough comments on the Rule” but “did *not* object to this aspect of the Rule” or seek to invalidate it through administrative or judicial process. (R p 45.) The Rule was approved unanimously by the Rules Review Commission, an agency appointed by the leadership of the General Assembly that is required to object to rules proposed by an agency “if those rules exceed the authority of the agency to adopt them.” (R p 45 (citing N.C. Gen. Stat. § 150B-21.9(a)(1)).) After the rule was adopted, neither Judge Griffin *nor anyone else* ever challenged it through litigation.

Accordingly, the Rule Judge Griffin challenges here is valid as it was implemented in accordance with the authority delegated by the General Assembly to the Board.

C. Judge Griffin’s Selective Prosecution of This Claim Violates Equal Protection Under the North Carolina Constitution

Not only is Judge Griffin’s post-election protest too late to challenge a lawfully enacted regulation, and not only is his argument wrong on the merits, but it also presents a clear equal protection problem. *See Blankenship v. Bartlett*, 363 N.C. 518, 525, 681 S.E.2d 759, 765 (2009) (“[O]nce the legal right to vote has been established, equal protection requires that the right be administered equally.”); *Northampton Cnty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747, 392 S.E.2d 352, 356 (1990) (“The right to vote on equal terms is a fundamental right.”).

Judge Griffin protested voters on this basis before the deadline *only in Guilford County*. (See Griffin Br. 7 n.1 (glossing over untimely filings in other counties); R p 11 n.2 (noting late filings but dismissing on the merits).) He later tried to supplement with data for three more counties (Durham, Forsyth, and Buncombe). He blames the timing of county boards in providing the requested data (without explaining why he did not request the data months earlier)—*but Judge Griffin never intended a uniform application of this change in the rules*. From the start, Judge Griffin only “requested the list of such voters from . . . six counties.” (Griffin Br. 7 n.1.)⁷ In other words, he does not seek to change the rules for all voters in the State. To change the rules and throw out the votes of North Carolinians in one county, or just four counties—

⁷ Judge Griffin suggests that he requested data only in six counties because in those counties “local election official confirmed that the county board accepted overseas ballots without requiring photo identification.” (Griffin Br. 7 n.1.) But *every county* was required by state law to do so. Therefore, the suggestion that his selective data request, targeted at urban counties, was anything but a deliberate choice appears to be misleading.

particularly when those counties are some of the most Democratic in the State—while counting the votes of similarly situated North Carolinians of the other 96 counties in the State would run directly into constitutional guarantees of equal protection of the law.⁸

This Court should not sanction this selective disenfranchising of our military, their families, and overseas voters. Moreover, if it does so, the Court will be forced to address whether to dramatically expand the inquiry to more than 32,000 North Carolinians who voted using this method in all 100 counties in 2024.⁹

IV. Judge Griffin Cannot Establish That Adult Children of North Carolinians Stationed or Living Abroad Are Ineligible to Vote

Judge Griffin claims that children of North Carolinians stationed or living abroad who themselves have “never lived” in North Carolina are ineligible to vote because they do not satisfy the “voter residency” requirement of Article VI of the North Carolina Constitution. This argument is meritless. That argument fails to recognize the difference between where a voter “lives” and their residency and contradicts a statute enacted by the General Assembly in 2011 that deliberately extended the franchise to these voters.

⁸ Judge Griffin contends that, as a private actor, he “cannot violate anyone’s equal protection rights.” (Griffin Br. 75.) But Judge Griffin is asking the Board—a state actor—to violate equal protection.

⁹ See Jeffrey Billman & Michael Hewlett, *Jefferson Griffin’s Gambit For a State Supreme Court Seat*, The Assembly (Jan. 20, 2025), archived at <https://perma.cc/QMC6-2N4F>; *accord* https://s3.amazonaws.com/dl.ncsbe.gov/ENRS/2024_11_05/absentee_counts_state_20241105.csv (10,500 military and 21,534 overseas absentee ballots).

A. This Protest Should Be Rejected Because It Does Not Challenge Enough Votes to Change the Outcome of the Race

To start, this argument should be rejected outright because it simply does not implicate enough voters to change the outcome of the race. To succeed in an election protest, a protest must establish that any irregularities in the election were “sufficiently serious to cast doubt on the apparent results of the election.” N.C. Gen. Stat. § 163-182.10(d)(2)(e). Absent such a showing, the protest must be dismissed. *Id.* § 163-182.10(d)(2)(c). In other words, a protest is unwarranted only to change the “vote count.” It must be sufficient to affect the outcome. Here, Judge Griffin protested just 266 votes before the protest deadline. (R p 118.) That is *hundreds* of votes shy of the 734-vote margin by which Justice Riggs won this race. Accordingly, the Court may reject this category of protest without the need to reach the merits.

Judge Griffin knows this. For that reason, he is trying to amend his protests more than two months after the statutory deadline to shoehorn hundreds of new voters into his protests. Without any legal basis, Judge Griffin claims he can keep on amending his protests—to include even voters who were *never* presented to the Board and are not anywhere in the record before the Court—to change the outcome of the election in his favor. While Judge Griffin protested only 266 voters in his “Never Residents” category in protests filed before the statutory deadline, he now attempts to bring this total to 516 and claims that number can increase going forward. (*See*

Griffin Br. 8 n.2; *see also* R p 118 (referring to just “266 voters challenged”).) That effort is *months* too late, procedurally improper, and should be rejected outright.¹⁰

“In all election protests, swiftness is the order of the day.” *Bouvier v. Porter*, 386 N.C. 1, 16, 900 S.E.2d 838, 850 (2024). Accordingly, the General Assembly has carefully crafted a set of election protest rules that seek “to balance the public’s interest in achieving accurate election results with the need to finalize those results in a short period of time.” *Id.* at 4, 900 S.E.2d at 843. N.C. Gen. Stat. § 163-182.9 sets forth the procedures and deadlines for filing an election protest. “The timing of election protests is measured relative to the county boards of elections’ canvasses, which are normally held ten days after an election.” *Bouvier*, 386 N.C. at 15, 900 S.E.2d at 850; *see* N.C. Gen. Stat. § 163-182.5(b). “*At the latest*” an “election protest may be filed by ‘5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results.’” *Bouvier*, 386 N.C. at 15, 900 S.E.2d at 850 (emphasis added) (quoting N.C. Gen. Stat. § 163-182.9(b)(4)). That deadline expired more than 90 days ago, on 19 November 2024. Accordingly, Judge Griffin’s ongoing campaign to expand and supplement those protests comes much too late.

This is not the first time Judge Griffin has tried to shoehorn belated voter protests. During the proceedings before the Board, the Board noted that Judge Griffin “sought to add voters to the second and third protest categories in

¹⁰ The irony that Judge Griffin is trying to expand the *factual* basis of his protests months after the election, while invoking the “*Godfrey* doctrine” to prevent minor revisions in legal arguments before the superior court, is striking.

supplemental filings submitted *after* the deadline to file an election protest.” (R p 11 n.2 (emphasis added) (citing N.C. Gen. Stat. § 163-182.9(b)(4)).) “Because the Board determine[d]” that those “protests [were] legally deficient,” it did not expressly “determine whether such supplementations are allowable under the General Statutes and Administrative Code.” (R p 11 n.2)

While the Board did not need to reach the procedural defects with Judge Griffin’s belated supplementation, Judge Griffin cited no law that would authorize him to file supplements to amend his protests after the statutory deadline in N.C. Gen. Stat. § 163-182.9(b)(4). (*See, e.g.,* Doc.Ex.I 4044-46 (“Amendment and Supplementation of ‘Never Resident’ Protest in Pitt County”).) Nor does he cite any law in his Brief before this Court.

Yet even if the supplementations he tried to include before the Board were included, Judge Griffin concedes that this “supplemental data” when combined with his “original protests” only brings the total to “405” voters protested in this election. (Griffin Br. 8 n.2.) That is 329 votes shy of the margin.

Now Judge Griffin wants to supplement his protests yet again—this time based on unsupported and extra-record claims that he is in the possession of records from five additional counties identifying another 111 North Carolina voters who voted in this election in compliance with N.C. Gen. Stat. § 163-258.2(1)(e). He *speculates* that if he received additional information from “60 counties” it is “possible” this issue could have “changed the outcome of the election.” (Griffin Br. 8 n.2.)

This Court’s judicial review is limited to the “official record” that was before the Board. *See* N.C. Gen. Stat. § 150B-51(c) (determination of whether petition is entitled to relief “based upon [the court’s] review of the final decision and the official record”); Local Civ. R. Super. Ct., Tenth Judicial District, Rule 9.1 (requiring the agency to provide “the original or a certified copy of the official record in the case under review from which the final agency decision was entered”). Judge Griffin’s representations regarding yet additional voters from yet additional counties are outside the record before the Board. Even if these claims were part of the record, the “total” of “516” votes he claims are subject to his protest are *still* nowhere close to being enough to change the outcome of the election.

Judge Griffin speculates that still-outstanding public records requests to 60 counties could increase that total. But the fact that Judge Griffin has received no responses after *months* just as likely reflects that those counties *do not have any more voters to identify* in this extremely narrow category. If the counties have information and failed to comply with public records laws in providing that information to Judge Griffin, he could, and should, have taken action long ago to enforce his public records requests under state law. *See* N.C. Gen. Stat. § 132 *et seq.*

Moreover, Judge Griffin’s speculative forecast of a “possible” impact on the election would require not just 734 voters subject to his protest, but many more than that number. 734 votes would be enough only if—extremely implausibly—*every one of those voters* voted for Justice Riggs. To win, Judge Griffin must protest enough votes to *decrease the margin* Justice Riggs enjoys over Judge Griffin by 734 votes or

more. That will take many more than 734 votes—and Judge Griffin is still more than 200 votes short even when ignoring the election protest rules.

As the Supreme Court recognized in *Bouvier*, “[i]n all election protests, swiftness is the order of the day.” *Bouvier*, 386 N.C. at 16, 900 S.E.2d at 850. Judge Griffin would turn that rule on its head by making an election protest a never-ending, open-ended process that continues until a candidate achieves his preferred outcome. This Court should reject that effort to circumvent the elections protest process.

**B. Article VI Does Not Prohibit Overseas Citizens Who Have
“Never Lived” in North Carolina from Voting**

Judge Griffin’s claims also fail on the merits. Article VI guarantees the right to vote to eligible individuals who have “resided in” North Carolina for 30 days before an election. N.C. Const. art. VI, § 2(1). Citing this Constitutional right, Judge Griffin argues that any voter who “never lived in the United States” is ineligible to vote in North Carolina elections because such a person “has never resided in North Carolina.” Griffin Br 28. This argument is wrong because “living” and “residing” in North Carolina are not synonymous under Article VI.

The term “resided” is not defined in the North Carolina Constitution. The North Carolina Supreme Court has therefore “held . . . without variation that residence within the purview of this constitutional provision [Article VI] is synonymous with domicile.” *Owens v. Chaplin*, 228 N.C. 705, 708, 47 S.E.2d 12, 15 (1948) (collecting cases); *see also Hall v. Wake Cty. Bd. of Elections*, 280 N.C. 600, 605, 187 S.E.2d 52, 55 (1972) (“Residence as used in Article VI of the North Carolina Constitution of 1970 continues to mean domicile.”). Domicile does not merely mean

where someone temporarily “lives.” *See Hall*, 280 N.C. at 606, 187 S.E.2d at 55 (“One who lives in a place for a temporary purpose . . . effects no change of domicile.”). Rather, domicile is an individual’s “permanent” home. *Id.* North Carolina law therefore recognizes “three kinds” of domicile: “domicile of origin, domicile of choice, and domicile by operation of law.” *Thayer v. Thayer*, 187 N.C. 573, 574, 122 S.E.2d 307, 308 (1924). It is true that someone who has never lived in North Carolina cannot make North Carolina his or her domicile *of choice*. *Id.* (“A domicile of choice is a place which a person has chosen for himself.”). But an individual need not live in North Carolina for the state to be their domicile of origin or domicile by operation of law.

i. North Carolina Can Be the Domicile of Origin of Overseas Voters Who Have Never Lived in North Carolina

At birth, a person inherits their parent’s or legal guardian’s domicile as their “domicile of origin.” *Id.* (“As a general rule the domicile of every person at his birth is the domicile of the person on whom he is legally dependent.”). This is true even if the person is born away from home and, by some twist of fate, never visits their parent’s or legal guardian’s domicile. It is therefore “entirely logical that on occasion, a child’s domicile of origin will be in a place where the child has never been.” *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989).

Judge Griffin posits North Carolina cannot be the domicile of origin of an overseas voter who has never lived in this State by arguing—without citing any supporting legal authority—that a child’s domicile of origin expires when they turn 18. (See Griffin Br. 34-35.) Judge Griffin is wrong. Domicile of origin cannot expire upon reaching majority, suddenly leaving a U.S. citizen without a domicile anywhere

in the United States. Such a result would contravene the basic principle that “[t]he law permits no individual to be without a domicile.” *Hall*, 280 N.C. at 608, 187 S.E.2d at 57. Thus, domicile of origin, like any domicile, “once acquired is presumed to continue until it is shown to have been changed.” *Reynolds v. Lloyd Cotton Mills*, 177 N.C. 412, 99 S.E.2d 240, 244 (1919); *see also* *Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979) (holding that college students may retain their domicile of origin while living away from home).

Moreover, “[w]here a change of domicile is alleged, the burden of proving it rests upon the person making the allegation.” *Reynolds*, 177 N.C. at 420-21, 99 S.E.2d at 244; *Hall*, 280 N.C. at 608, 187 S.E.2d at 57. Judge Griffin has made no evidentiary showing that any overseas voter has changed their domicile of origin since becoming an adult. Nor does he assert that such an evidentiary showing reasonably *could* be made.

**ii. North Carolina Can Be the Domicile by Operation of Law
of Overseas Voters Who Have Never Lived in North
Carolina**

“A domicile by operation of law is one which the law determines or attributes to a person without regard to his intention or the place where he is actually living.” *Thayer*, 187 N.C. at 574, 122 S.E.2d at 308. For example, at common law, a wife obtained her husband’s domicile by operation of law, no matter where she lived. *Id.*; *see In re Cullinan’s Estate*, 259 N.C. 626, 631, 131 S.E.2d 316, 319 (1963). The General Assembly has remedied that anachronistic voting rule by statute. N.C. Gen. Stat. § 163-57(11) (allowing a spouse to establish a separate domicile “for the purpose of voting”). But the law is that domicile may be established by operation of law,

without respect to where a person is “actually living.” *Thayer*, 187 N.C. at 574, 122 S.E.2d at 308; *see also generally* N.C. Gen. Stat. § 163-57 (defining residence in various contexts for purposes of voting).

The General Assembly expressed its clear intent to protect the right of children and dependents of North Carolinians living abroad to be heard in North Carolina elections when it enacted N.C. Gen. Stat. § 163-258.2(1)(e), and confirmed that a person “born outside the United States” is eligible to vote—regardless of whether he or she has ever “lived in” North Carolina—if his or her “parent or legal guardian” was eligible to vote in North Carolina “before leaving the United States.” N.C. Gen. Stat. § 163-258.2(1)(e) establishes domicile by operation of law for these voters. This is reaffirmed by N.C. Gen. Stat. § 163-258.8, which specifically assigns a residence for these voters: “a voter *described by G.S. 163-258.2(1)e* . . . shall be assigned an address” which constitutes his or her *residence* “for voting purposes” (emphasis added). This “assigned” address for a voter covered by N.C. Gen. Stat. § 163-258.2(1)(e) is “the last place of residence in this State of the parent or legal guardian of the voter.” *Id.* Thus, the “residency requirement” exception set forth in N.C. Gen. Stat. § 163-258.2(1)(e) refers exclusively to the *residence* requirement of N.C. Gen. Stat. § 163-57(1) and is consistent with the requirement that these voters be “residents” of North Carolina for purposes Article VI of the North Carolina Constitution.

This has “been the law of North Carolina for thirteen years” “faithfully implemented in 43 elections in this state since that time.” (R p 39.) Accordingly, Judge Griffin cannot invalidate their votes in a post-election protest.

V. Judge Griffin Cannot Establish That Any Individuals Voted with Allegedly Incomplete Registration Information or, If They Did, That Any Such Persons Should Have Their Ballots Discarded

Judge Griffin claims that every voter without a driver’s license or social security number in a state database should not have been permitted to vote *in any race in the 2024 General Election* and should have their vote thrown out—but only as to his race. As Judge Griffin knows, he has been unable to identify a single ineligible voter in this group. Further, it is federal law, not state law, that “requires” this information to vote. And North Carolina law is clear that an error in registering a voter cannot be a basis for removing them from the rolls or discounting their votes.

A. Judge Griffin Failed to Present Evidence That a Single Voter in This Group Is Ineligible to Vote

To start, Judge Griffin’s protest lacks basic factual information sufficient to sustain his protest because his argument relies on an “unwarranted inference” about the State Board’s data. (See R pp 25-26 (Board Order describing data issues).) He claims that voters never “lawfully registered to vote” because a driver’s license or social security number is not saved in the Board’s database. (See Griffin Br. 36.) But as the Board clarified in its Decision and Order, that database does not establish that even *one* voter was not actually eligible to vote, even under Judge Griffin’s flawed reading of the law. (See R p 25.)

First, the data lacks a number for some voters because those voters had no driver's license or social security number when they registered, and neither state nor federal law requires that they have one to register to vote. (*See R pp 24-25.*)

Second, some voters *did* include a number on their registration form, but that number was deleted from the records Judge Griffin reviewed because it failed to match a number in an outside database. (*See R pp 24-25.*) When a registrant provides such a number, but the number does not match with state or federal databases, that voter will be given another way to confirm their identity by providing a HAVA ID, and that information will no longer be found in the electronic registration record (even though the voter provided the information). (*See R pp 27-28.*) If the voter provides a HAVA ID, then their vote must count, even if staff were unable to verify their voter registration or driver's license number. N.C. Gen. Stat. § 163-166.12(d).

Third, voters who failed to provide either number on their registration forms were given unique voter registration numbers. *See* N.C. Gen. Stat. §§ 163-82.4(b), 163-82.10A (implementing 52 U.S.C. § 21083(a)(1)(A), (5)(A)(ii)). They were then permitted to vote only if they submitted photo ID or a document establishing their residency (HAVA ID) before they voted in their first election. *Id.* § 163-166.12(a), (b). Voters who did so were lawfully registered, and county boards were required by statute to count their votes. *Id.* § 163-166.12(d) (an issue with the voter's driver's license or social security number “shall not prevent that individual from registering to vote and having that individual's vote counted” if they present photo ID or HAVA

ID when they vote). Every voter complied with this requirement. Thus, under clear state law, each voter’s vote must count.

B. State Law Does Not Require Voters to Provide a Social Security or Driver’s License Number to Vote

Judge Griffin’s argument to the contrary depends on a state law requirement that does not exist. It is federal law, not state law, that “requires” that voters provide a social security number or driver’s license to register to vote in accordance with HAVA, 52 U.S.C. § 21083(a)(5)(A). The plain text of the applicable state law statute merely provides that voter registration forms should “request” a driver’s license and social security number from voters. N.C. Gen. Stat. § 163-82.4(a). State law also says that registration forms should “request” the “date of application” and “county of residence,” but no one has ever contended that omitting that information on one’s form could invalidate their registration or their vote.

While Judge Griffin invokes the cure provision in N.C. Gen. Stat. § 163-82.4(f), *see* Griffin Br 38, that provision applies *before* a voter is registered, not after an application is accepted by the county boards and the applicant is officially registered. *See* N.C. Gen. Stat. §§ 163-82.1(b), 163-82.1(c), 163-82.7(a), 163-82.7(c), 163-82.7(d), 163-82.10(a). Additionally, that cure provision applies only when the voter is “notified of the omission and given the opportunity to complete” the voter registration form “at least by 5:00 P.M. on the day before the county canvass as set in G.S. 163-182.5(b).” N.C. Gen. Stat. § 163-82.4(f). Here, no notice or opportunity to cure was given to the voters Judge Griffin challenges. Judge Griffin asks the Board to invalidate votes *post facto*—votes of individuals who have been on voter rolls for

decades and who fully complied with the law each time they voted—without such an opportunity, and after their applications were accepted by the county boards.

Judge Griffin also argues that the Board “admitted” that it violated the law. (Griffin Br. 39.) This is false and mischaracterizes the Board’s December 2023 Order resolving the administrative complaint. True, the Board modified the form to be clear going forward that a voter must provide a driver’s license or social security number if they have one, consistent with *HAVA*. See Order at 4 (State Bd. of Elections Dec. 6, 2023), archived at <https://perma.cc/5KPY-SQP5>. But it said nothing about state law, which as noted above, does not “require” this information. In any event, the N.C. Republican Party made this same argument to the Fourth Circuit, which went out of its way to note that it was “not convinced that [the Board] conceded to a violation of *HAVA*.” See *Republican Nat’l Comm.*, 120 F.4th at 402 n.3.

Regardless, the State Board expressly (and unanimously) decided that no action was necessary for previously registered voters, such as the 60,273 voters challenged here, because they have proven their identity in the manner required by *HAVA*. Order at 4–5 (State Bd. of Elections Dec. 6, 2023), archived at <https://perma.cc/5KPY-SQP5>.

C. State Law Prohibits Systematic, Retroactive Removal of Voter Registrations

For each vote Judge Griffin challenges as an allegedly incomplete registration, the registration was submitted, *and accepted*, by county boards. County boards are responsible for registering eligible voters. N.C. Gen. Stat. § 163-82.1(b). Ultimately, once a voter completes a voter registration form, the *burden is on the county*, not the

voter, to identify and address any errors in the registration. N.C. Gen. Stat. §§ 163-82.7(a), 163-82.11(d). The county boards processed applications from these voters, added them to the official rolls, and mailed them voter registration cards to “evidence” their “registration.” N.C. Gen. Stat. § 163-82.8(d). The voter rolls, rather than the voter registration application, are the official records of a voter registration. *Id.* § 163-82.10(a).

Once a voter is on the rolls, the Board must count the votes of all eligible voters who appear on that list of voters. For more than 100 years, North Carolina has been clear: “a mere irregularity in registration will not vitiate an election.” *Plott v. Bd. of Comm’rs of Haywood Cty.*, 187 N.C. 125, 131, 121 S.E. 190, 193 (1924). Once a county board registers a voter who is otherwise “entitled to register and vote,” the voter “cannot be deprived of his right to vote,” even if the county board “inadverten[tly]” registered the qualified voter. *Gibson v. Bd. of Comm’rs of Scotland Cty.*, 163 N.C. 510, 513, 79 S.E. 976, 977 (1913).

In *Woodall v. W. Wake Highway Comm’n*, 176 N.C. 377 (1918), a losing candidate argued that “the votes of electors otherwise qualified should be rejected, because the registrars failed to administer the oath to them, and they were allowed to vote without being challenged.” *Id.* at 388. The Court rejected this argument, explaining that a “vote received and deposited” is “presumed to be a legal vote” even if “the voter may not have complied entirely with the requirements of the registration law.” *Id.* at 389. In such a case, it “devolves upon the party contesting [the vote] 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.* Put simply, “[w]here a voter has registered, but the registration books show that he had not complied with all the minutiae of the registration law, his vote will not be rejected.” *Id.* The *Woodall* decision is one of a robust line of binding Supreme Court cases prohibiting exactly what Judge Griffin seeks to do here—disenfranchise qualified voters who have legally cast ballots, by arguing that alleged technical defects in their registrations (without proof of one voter’s ineligibility) should in and of themselves invalidate thousands of votes. *See, e.g., Overton*, 253 N.C. at 315, 116 S.E.2d at 815 (collecting cases); *see also Wilmington, O. & E.C.R. Co. v. Onslow Cty. Comm’rs*, 116 N.C. 563, 568, 21 S.E. 205, 207 (1895) (“[T]he machinery provided by law to aid in attaining the main object—the will of the voters—[] should not be used to defeat the object which they were intended to aid.”).

Judge Griffin’s argument that the *Overton* and *Woodall* cases are “obsolete,” (Griffin Br. 73),¹¹ fails to recognize that the General Assembly, when enacting the election protest statute, merely codified the legal standard set by the courts regarding election irregularities over the previous 100 years. *Compare* N.C. Gen. Stat. § 163-182.10(d)(2)(d), (e) (providing that remedial action or further consideration of protests are limited to irregularities that “might have affected the outcome of the

¹¹ Judge Griffin also argues here for the first time without citation to authority that the General Assembly nullified the *Overton* and *Woodall* cases by enacting the Chapter 163 provisions dealing with election protests. (See Griffin Br. 72-73.) Given that Judge Griffin failed to make this argument before the Board or the Superior Court, he may not make it for the first time in this Court. *See, e.g., Clark v. Bischel*, 239 N.C. App. 13, 17, 767 S.E.2d 145, 148 (2015); *Floyd v. Exec. Pers. Grp.*, 194 N.C. App. 322, 329, 669 S.E.2d 822, 828 (2008).

election” or were “sufficiently serious to cast doubt on the apparent results of the election”) *with, e.g., Plott*, 187 N.C. at 131, 121 S.E. at 193; *In re Brown*, 56 N.C. App. 629, 632, 289 S.E.2d 626, 627 (1982) (“It is settled law that an election will not be disturbed for irregularities where it is not shown that such irregularities are sufficient to alter the result.”). Our courts have been clear that statutes that follow common law pronouncements of the courts “must be construed with reference to the common law; for in this way alone is it possible to reach a just appreciation of its purpose and effect” and “the common law must be allowed to stand unaltered as far as is consistent with a reasonable interpretation of the new law.” *Seward v. Receivers of Seaboard Air Line Ry.*, 159 N.C. 241, 245-46, 75 S.E. 34, 35 (1912) (quoting Henry Campbell Black, *Interpretation of Laws*, at 232). Judge Griffin points to no legislative history or other authority indicating that the General Assembly intended to repudiate an entire line of unbroken Supreme Court precedent by enacting legislation addressing protests.

D. Judge Griffin’s Protest Would Violate the Equal Protection Rights of Voters Under the North Carolina Constitution

Last, Judge Griffin’s final protest also presents a clear equal protection problem under state law. *Blankenship*, 363 N.C. at 525, 681 S.E.2d at 765; *Northampton Cnty.*, 326 N.C. at 747, 392 S.E.2d at 356 (“The right to vote on equal terms is a fundamental right.”). Judge Griffin’s protest includes no voters who voted *on election day*. Inevitably tens of thousands of North Carolinians voted in this race on election day had the very same issue with their registrations. Throwing out the votes of those who voted early or absentee just because that data was available to

Judge Griffin, while ignoring the votes of those who voted on election day (and whose ballots are not retrievable) would present an equal protection problem. This is a separate and independent basis for rejecting this protest all on its own.

Accordingly, Judge Griffin’s “Incomplete Registration” protest should be rejected, and the Court should stop this threat to thousands of votes of North Carolinians who have voted in our state’s elections for years without issue.

CONCLUSION

The Court should affirm the Superior Court’s orders on appeal.

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

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, counsel for Intervenor-Respondent-Appellee certifies that the foregoing brief, which is prepared using a 12-point proportionally spaced font with serifs, is fewer than 17,500 words (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, this certificate of compliance, and appendixes) as reported by the word-processing software.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document as well as the accompanying Appendix and Addendum were electronically filed and served by email, addressed as follows:

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This the 27th day of February, 2025.

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NORTH CAROLINA COURT OF APPEALS

JEFFERSON GRIFFIN,

Petitioner-Appellant,

v.

NORTH CAROLINA STATE BOARD
OF ELECTIONS,

Respondent-Appellee,

and

ALLISON RIGGS,

Intervenor-Respondent-
Appellee.

From Wake County

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STATE OF NORTH CAROLINA)
COUNTY OF WAKE)

AFFIDAVIT OF KYLE OFFERMAN)
)
)
)
)

I, Kyle Offerman, being duly sworn, depose and state as follows:

Background and Qualifications

1. I am over 18 years of age and fully competent to make this affidavit.
2. I have personal knowledge of the facts and matters set forth herein.
3. I am a citizen of the United States and a resident of Wendell, Wake County, North Carolina.
4. I am employed as the Chief Counsel of the North Carolina Republican Party.

Preparation of Filing

5. In preparation for filing election protests related to the 2024 General Election, my team and I conducted a thorough review of 08 NCAC 02 .0111, which outlines the filing requirements for an Election Protest.
6. We assembled the list of all County Board of Elections Directors in North Carolina from <https://vt.ncsbe.gov/BOEInfo/PrintableVersion/> to gather their applicable emails as provided by the State Board of Elections.

7. We then prepared one hundred emails to be sent to the County Board of Elections Directors with the applicable Jefferson Griffin protests for said county and a cover letter attached.

Filing

8. We then sent said Jefferson Griffin protests from legal@ncgop.org with the Counsel for Jefferson Griffin, Craig Schauer, carbon copied.
9. All protests on behalf of Jefferson Griffin were submitted by 5:00 PM Eastern Standard Time in accordance with N.C.G.S. § 163-182.9(b).

Preparation of Service

10. In preparation for filing election protests related to the 2024 General Election, my team and I conducted a thorough review of 08 NCAC 02 .0111, which outlines the service requirements for affected parties.
11. We compiled an Excel file containing the names and addresses of those parties affected by the protests filed by Jefferson Griffin, Ashlee Adams, Stacie McGinn, and Frank Sossaman.
12. To ensure conformity with North Carolina law and on behalf of these candidates, we created a webpage hosted on www.ncgop.org, accessible to those who receive service that a protest has been filed that may affect his or her vote.
13. A QR code was generated to provide a direct link to this webpage.
14. We designed a service postcard, incorporating the QR code, to notify all affected parties.
A draft of this postcard is attached hereto as Attachment 1.

15. A third-party vendor was contracted to handle the mailing of these service postcards in compliance with 08 NCAC 02 .0111.
16. The third-party vendor was provided with the Excel file containing the names and addresses of all affected parties to facilitate the mailing process.

Service

17. The third-party vendor prepared and mailed the service postcards to all affected parties by the deadline established in 08 NCAC 02 .0111.
18. Each postcard directs recipients, via the QR code, to the public webpage where all filed protests are uploaded and available for review.
19. Once on the webpage, affected parties can easily locate the relevant protest filed in their county in which they are named.
20. The process and manner of service adhered to the requirements set forth in 08 NCAC 02 .0111.

Further, the affiant sayeth not.

This 22 day of November 2024.

Kyle v. Offerman
KYLE OFFERMAN

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Signed and sworn to (or affirmed) before me by Kyle Offerman.

Date: 11/22/2024

[Signature]
[Official Signature of Notary]



Daniel Milan Krchnavek
Notary Public
[Notary's printed or typed name]

My commission expires: 04-04-2026

ATTACHMENT 1

1506 Hillsborough Street
Raleigh, NC 27605



*** NOTICE ***

[[First Name]] [[Middle Name]] [[Last Name]], your vote may be affected by one or more protests filed in relation to the 2024 General Election.

Please scan this QR code to view the protest filings. Please check under the county in which you cast a ballot to see what protest may relate to you.



For more information on when your County Board of Elections will hold a hearing on this matter, please visit the State Board of Elections' website link found on the Protest Site (via the QR code).

Paid for by the North Carolina Republican Party.

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

Case Nos. 24CV040619-910
24CV040620-910
24CV040622-910

JEFFERSON GRIFFIN,
Petitioner,

v.

NORTH CAROLINA STATE BOARD
OF ELECTIONS,

Respondent,

and

ALLISON RIGGS,

Intervenor-Respondent.

**NOTICE OF FOURTH CIRCUIT
OPINION AND *ENGLAND*
RESERVATION BY JUSTICE RIGGS**

Intervenor-Respondent Allison Riggs files this Notice to inform the Court of a recent decision by the U.S. Court of Appeals for the Fourth Circuit and to make the “*England* reservation” contemplated by that decision.

1. On February 4, 2025, the Fourth Circuit issued the attached unpublished per curiam opinion (“Opinion”) in this case, which the Fourth Circuit refers to as *Griffin II*.

2. As the Fourth Circuit explains, Respondent North Carolina State Board of Elections removed *Griffin II* to the U.S. District Court for the Eastern District of North Carolina. See Opinion at 6. The Eastern District of North Carolina decided to abstain from hearing *Griffin II* under *Burford v. Sun Oil Company*, 319 U.S. 315 (1943), and on that basis it remanded *Griffin II* to this Court on January 6, 2025. See

id. at 6–7. The Board appealed the remand order in *Griffin II* to the Fourth Circuit, which docketed the appeal as Case No. 25-1020. *See id.* at 7.

3. In its February 4 Opinion, the Fourth Circuit affirmed the Eastern District of North Carolina’s remand order insofar as it found the Board had properly removed the case under 28 U.S.C. § 1443(2). *See id.* at 9. The Fourth Circuit also affirmed the Eastern District of North Carolina’s decision to remand *Griffin II* to this Court. *See id.* But the Fourth Circuit held that abstention under *Railroad Commission of Texas v. Pullman Company*, 312 U.S. 496 (1941), “is a more appropriate theory for abstaining from federal jurisdiction.” *Id.* at 10. The difference between *Burford* and *Pullman* abstention matters because, “under *Pullman* abstention, the federal court retains jurisdiction of the federal constitutional claims while the state court issues are addressed in state court.” *Id.*

4. In its remand order, the Eastern District of North Carolina “did not retain jurisdiction of the federal issues as required by *Pullman* abstention.” *Id.* at 11. The Fourth Circuit thus instructed the Eastern District of North Carolina “to modify its order to expressly retain jurisdiction of the federal issues identified in the Board’s notice of removal should those issues remain after the resolution of the state court proceedings, including any appeals.” *Id.* (citing *England v. Med. Exam’rs.*, 375 U.S. 411 (1964)).

5. In *England*, the U.S. Supreme Court observed that “[a]bstention is a judge-fashioned vehicle for according appropriate deference to the ‘respective competence of the state and federal court systems.’” 375 U.S. at 415 (quoting

Louisiana Power & Light Co. v. City of Thibodaux, 360 U.S. 25, 29 (1959)). This “recognition of the role of state courts as the final expositors of state law implies no disregard for the primacy of the federal judiciary in deciding questions of federal law.” *Id.* at 415–16. Accordingly, “a party has the right to return to the [U.S.] District Court, after obtaining the authoritative state court construction for which the court abstained, for a final determination of [her] claim.” *Id.* at 417 (quoting *NAACP v. Button*, 371 U.S. 415, 427 (1963)).

6. This procedure “does not mean that a party must litigate h[er] federal claims in the state courts, but only that [s]he must inform those courts what [her] federal claims are, so that the state statute may be construed ‘in light of those claims.’” *Id.* at 420. Yet the line between informing and litigating is not always clear. The Supreme Court therefore held that “a party may readily forestall any conclusion that [s]he has elected not to return to the District Court.” *Id.* at 421.

7. To preserve her right to return to federal court for the resolution of federal issues, a litigant may make “on the state record [a] ‘reservation to the disposition of the entire case by the state courts.’” *Id.* (quoting *Button*, 371 U.S. at 428). “That is, [s]he may inform the state courts that [s]he is exposing [her] federal claims there only for the purpose of complying with [*Government & Civic Employees Organizing Committee, C.I.O. v. Windsor*, 353 U.S. 364 (1957)], and that [s]he intends, should the state courts hold against [her] on the question of state law, to return to the District Court for disposition of [her] federal contentions.” *Id.*

8. Justice Riggs makes this *England* reservation to the disposition of this entire case by the state courts. Justice Riggs is exposing her federal contentions here only for the purpose of complying with *Windsor*. Justice Riggs intends, should the state courts hold against her on questions of state law, to return to the Eastern District of North Carolina for disposition of her federal contentions.

9. For the avoidance of doubt, Justice Riggs' federal contentions include those identified in the Fourth Circuit's Opinion: that granting Judge Griffin the relief he seeks would "violate federal civil rights law, including the Help America Vote Act, 52 U.S.C. § 20901, *et seq.*; the National Voter Registration Act, 52 U.S.C. § 20501, *et seq.*; the Voting Rights Act, codified in relevant part at 52 U.S.C. § 10307; the Civil Rights Act, codified in relevant part at 52 U.S.C. § 10101, the Uniformed and Overseas Citizens Absentee Voting Act, codified in relevant part at 52 U.S.C. § 20302; and the Fourteenth Amendment to the United States Constitution." Opinion at 9.

Dated: February 6, 2025

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

/s/ Raymond M. Bennett

Raymond M. Bennett

N.C. State Bar No. 36341

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Counsel for Justice Allison Riggs

-App. 10-

- R 150 -

EXHIBIT A

DUPLICATE FILES REMOVED

Removed Document: *Griffin v. Riggs*, No. 25-1018, slip op. (4th Cir. Feb. 4, 2025)

Available at: R pp 135-45

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1018

JEFFERSON GRIFFIN,

Plaintiff - Appellee,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendant - Appellant.

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

Amici Supporting Appellant.

RESTORING INTEGRITY AND TRUST IN ELECTIONS,

Amicus Supporting Appellee.

No. 25-1019

JEFFERSON GRIFFIN,

Plaintiff - Appellee,

v.

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

Intervenors – Appellants.

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

Amici Supporting Appellant.

RESTORING INTEGRITY AND TRUST IN ELECTIONS,

Amicus Supporting Appellee.

No. 25-1020

JUDGE JEFFERSON GRIFFIN,

Plaintiff - Appellee,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendant - Appellant,

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

Intervenors.

No. 25-1024

JEFFERSON GRIFFIN,

Plaintiff - Appellee,

v.

ALLISON RIGGS,

Intervenor - Appellant.

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

Argued: January 27, 2025

Decided: February 4, 2025

Before NIEMEYER, QUATTLEBAUM, and HEYTENS, Circuit Judges.

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

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

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

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As to No. 25-1020, we affirm the district court in part and modify in part. We affirm the district court's order insofar as it found the Board had properly removed the case under § 1443(2). As the district court explained, the Board claimed that granting Griffin the relief he sought might violate federal civil rights law, including the Help America Vote Act, 52 U.S.C. § 20901, *et seq.*; the National Voter Registration Act, 52 U.S.C. § 20501, *et seq.*; the Voting Rights Act, codified in relevant part at 52 U.S.C. § 10307; the Civil Rights Act, codified in relevant part at 52 U.S.C. § 10101, the Uniformed and Overseas Citizens Absentee Voting Act, codified in relevant part at 52 U.S.C. § 20302; and the Fourteenth Amendment to the United States Constitution. Following *Republican National Committee v. North Carolina State Board of Elections*, 120 F.4th 390, 408 (4th Cir. 2024), we see no error in the district court's decision.

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

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

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

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

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

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

However, because the district court did not retain jurisdiction of the federal issues as required by *Pullman* abstention, we remand with instructions directing the district court to modify its order to expressly retain jurisdiction of the federal issues identified in the Board's notice of removal should those issues remain after the resolution of the state court proceedings, including any appeals. *See England v. Med. Exam'rs.*, 375 U.S. 411 (1964).

We deny all remaining outstanding motions as moot.

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



**DEFENSE HUMAN RESOURCES ACTIVITY
FEDERAL VOTING ASSISTANCE PROGRAM**
4800 MARK CENTER DRIVE, SUITE 03J25-02
ALEXANDRIA, VA 22350-4000

February 6, 2017

Commissioner Edgardo Cortes
Virginia Department of Election
1100 Bank Street, First Floor
Richmond, VA 23219

Dear Commissioner Cortes:

I am writing today with regard to the General Assembly of Virginia Senate Bill 872, specifically the removal of the *UOCAVA* identification exemption that was discussed during the Committee meeting on Tuesday, January 24, 2017. As you are aware, the Federal Voting Assistance Program (FVAP) is the Department of Defense program charged with administering the federal responsibilities of the *Uniformed and Overseas Citizens Absentee Voting Act*, or *UOCAVA*. Our mission is to help ensure Service members, their eligible family members and overseas citizens are aware of their right to vote and have the tools and resources to successfully do so.

When registering to vote by mail, citizens covered by *UOCAVA* are exempt under 52 U.S.C. § 21083(b)(3)(C) from State requirements to provide a copy of a valid photo identification or other documentation that shows the name and address of the voter as defined in 52 USC § 21083(b)(1) when attempting to vote by mail. As such, our view is that Senate Bill 872's current language that *UOCAVA* voters provide identification when applying for a ballot using the Federal Post Card Application (FPCA) may likely be in conflict with federal statute.

UOCAVA voters, particularly those stationed or residing overseas, face complexities in the voting process that in-person or State absentee voters do not face. The original intent of the FPCA was to allow *UOCAVA* voters to simultaneously register and request an absentee ballot. By swearing to the oath on the form prescribed by FVAP, voters would meet minimum qualifications to vote in federal elections. Requiring additional identification or proof of eligibility, in addition to the information provided on the FPCA, adds to the burden *UOCAVA* voters face when attempting to vote in federal elections. The voter would be forced to locate documents and the equipment necessary to photocopy and submit those additional documents to their local election official, a condition difficult to achieve depending on their geographic location and available infrastructure.

Please contact Ms. Meghan Kelly, FVAP State Affairs Specialist, at meghan.kelly@fvap.gov with any questions, concerns or comments you may have.

Thanks for all you, your staff and colleagues in the Virginia Department of Elections do to support and assist our military and overseas voters. We look forward to continuing to work with you.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Beirne", is written over a horizontal line.

David Beirne
Director

08 NCAC 02 .0111 ELECTION PROTEST FORM

All persons bringing an election protest under Article 15A shall complete and timely file the following form. For the purposes of this Rule, "timely" means within the time required by G.S. 163-182.9(b). Please note this form shall not be used to challenge the registration of an individual voter or to report an incident other than an irregularity affecting the outcome of an election.

ELECTION PROTEST

(Use of this form is required by G.S. 163-182.9(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. 163-182.9(b)(4). Please print or type your answers. Use additional sheets if needed to answer the below questions fully. Number the pages of all additional sheets. Please note that filings will be a public record. Please redact all confidential information, such as date of birth, Social Security number, and driver's license number.

Respond to all prompts. Failure to complete this form as required may result in the dismissal of your protest. Attach additional sheets as necessary, including all exhibits and supplemental documents. All attachments are deemed incorporated and covered under the Protest Certification.

PROTESTOR

1. Provide your preferred contact information:

Name: _____ County of Residence: _____
 Email: _____ Phone: _____
 Mailing Address: _____

NOTE: You will be deemed to consent to service at all of the above addresses (including email), unless you attach an addendum indicating otherwise.

2. Are you represented by counsel? ☐ Yes ☐ No

NOTE: If you answered Yes, above, your counsel must complete and you must attach the Counsel Certification Addendum.

3. Mark all that describe you:

- ☐ Candidate for the office of _____
- ☐ Registered voter eligible to participate in the protested election contest
- ☐ Neither of the above*

**If you select this option, you are not eligible to file a protest.*

PROTEST SCOPE

4. List all election contests subject to your protest and calculate the margin of votes separating the apparent winner from the runner-up as of the date of filing. Your response does not waive your right to contest the validity of the current vote count. If your protest concerns all contests on the ballot, you must include the vote margin for each contest.

Protested Contest(s)	Current Vote Margin (subtract runner-up totals from apparent winner's totals)
Example: Mayor of Townsville	75

ASSISTANCE

11. List all persons who assisted you in preparing the contents of this protest and indicate the nature of the assistance provided:

Note: For protestors represented by an attorney, this protest is the initial filing in a proceeding as defined by N.C. State Bar Rules. *See* 27 N.C.A.C. 02 Rule 1.00(n).

12. Has any candidate, political party, organization, or person acting on behalf of the same requested that you bring this protest?

- ☐ Yes
☐ No

13. Have you received any financial or other benefit or promise of future financial or other benefit in exchange for filing this protest?

- ☐ Yes
☐ No

AFFECTED PARTIES & SERVICE

You must serve copies of all filings on every person with a direct stake in the outcome of this protest ("Affected Parties"). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed under Prompt 4, not only the apparent winner and runner-up. If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served. Address information for registered voters is available from the county board of elections or using the Voter Lookup at www.ncsbe.gov.

Materials may be served by personal delivery, transmittal through U.S. Mail or commercial carrier service to the Affected Party's mailing address of record on file with the county board of elections or the State Board, or by any other means affirmatively authorized by the Affected Party. If you know the Affected Party is represented by an attorney, service must be made on his or her counsel. Service must occur within one (1) business day of filing materials with the county board of elections. If service is by transmittal through the U.S. Mail or commercial carrier service, service will be complete when the properly addressed, postage-paid parcel is deposited into the care and custody of the U.S. Mail or commercial carrier service. It is your responsibility to ensure service is made on all Affected Parties.

14. List all Affected Parties, including their service address:

<i>Affected Party</i>	<i>Service Address</i>

PROTESTOR CERTIFICATION

15. By signing this protest application, you affirm the following:

I, _____ (*full name*), swear, under penalty of perjury, that the information provided in this protest filing is true and accurate to the best of my knowledge, and that I have read and understand the following:

(initial)

- _____ I have reviewed the statutes and administrative rules governing election protests, including all deadlines.
- _____ My protest must originate with a filing at the county board of elections.
- _____ I must timely serve all Affected Parties.
- _____ I must prove by *substantial evidence* either the existence of a defect in the manner by which votes were counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct, either of which were sufficient to cast doubt on the apparent results of the election.
- _____ It is a crime to interfere unlawfully with the conduct and certification of an election.
- _____ It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote counted in the election.
- _____ The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I have a good faith basis to protest the conduct and results of the election.

Submitting fraudulently or falsely completed declarations is a Class I felony under Chapter 163 of the General Statutes. This notice is provided pursuant to S.L. 2013-381, s. 5.4.

Signature of Protestor: _____ Date: _____
(This signature must be signed in the presence of a notary)

State of North Carolina, County of _____

Sworn to (or affirmed) and subscribed before me this the _____ day of _____, 20____

(Official Seal)

Official Signature of Notary

_____, Notary Public
Printed Name

My commission expires: _____

Date/Time Filed with County Board

(completed by the county board)

NOTE: The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections & Ethics Enforcement, PO Box 27255, Raleigh, NC 27611-7255.

COUNSEL OF RECORD ADDENDUM

If you answered Yes to Prompt 2 on the above, your attorney must complete this form and you must file it with your Election Protest Application.

Attorney Must complete all of the following:

Protestor Name: _____ Protestor County: _____
Attorney Name: _____
Attorney Email: _____ Attorney Phone: _____

☐ I am a member in good standing with the North Carolina State Bar
☐ I am not licensed to practice law in North Carolina but am a member in good standing in _____ (State or District of Columbia), and do hereby apply to appear pro hac vice and certify that I have or will file all appropriate documents required under G.S. 84-4.1.

Law Firm: _____
Bar Number: _____

I (choose one) ☐ am ☐ am not:

Subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law. If you are subject to any orders, explain in the space below.

I represent the Protestor whose name is provided above. I have read and understand the laws governing election protests in North Carolina General Statutes Chapter 163 and Title 8 of the N.C. Administrative Code. I swear/attest that the information I have provided in this Addendum is true and accurate to the best of my knowledge.

Attorney Signature

Date

*History Note: Authority G.S. 163-22; 163-182.9;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. September 1, 2018;
Amended Eff. November 1, 2020.*

08 NCAC 17 .0109 PHOTO IDENTIFICATION FOR ABSENTEE-BY-MAIL BALLOTS

(a) Identification Requirement for Absentee-by-Mail Ballots. Photo identification accompanying a voter's absentee ballot pursuant to G.S. 163-230.1(f1) is acceptable if it is a photocopy of a type of photo identification acceptable for voting purposes under 18 NCAC 17 .0101(a)(1), is readable, and the name appearing on the identification is the same as or substantially equivalent to the name contained in the voter's voter registration record in accordance with 08 NCAC 17 .0101(a)(3). As used in this Rule, "readable" means that, on the photocopy of identification required by this Rule, the name on the identification can be read and the photograph depicts a person, as opposed to displaying, for example, a mere shadow or outline of a person. A photo identification shall not be rejected due to differences between the address appearing on an absentee voter's photo identification and any address contained on the voter's absentee request form, absentee ballot application, or registration record. A copy of photo identification that is acceptable under this Rule need include only the side of the identification (or, if the identification is a booklet, the page of the identification) where the person's name and photo appears.

(b) Initial Review by County Board Staff. County Board staff shall, upon receipt of a voter's absentee ballot application, determine whether the application is accompanied by a photocopy of photo identification that is acceptable under Paragraph (a) of this Rule, or, if the application is accompanied by an affidavit claiming an exception to the identification requirement pursuant to G.S. 163-166.16(d), determine whether the affidavit includes the affirmations required by G.S. 163-166.16(d) for that exception and, if applicable, the personal identification number required to be provided by G.S. 163-230.1(g)(2). Staff shall review the registration records to determine whether the number provided matches the corresponding number in the registration records. The number required to be provided by G.S. 163-230.1(g)(2) is deficient only if it does not match the corresponding number listed in the voter's voter registration record.

If staff identify any deficiency, they shall mail written notice of the deficiency to the voter within one business day of identifying the deficiency, informing the voter that the voter, the voter's verifiable legal guardian or near relative, or a person of the voter's choice if the voter needs assistance due to the voter's disability, may provide a photocopy of the voter's acceptable photo identification or a completed affidavit claiming an exception. The notice shall state the photocopy or affidavit must be received by the county board by 5 p.m. on the business day before the county canvass. The notice of the deficiency shall also be provided by telephone or email if the telephone number or email address was provided by the voter on the request form for the absentee ballot. The voter may transmit either of the above documentation curing the deficiency in person, by mail, or by email.

(c) Final Review by County Board. The county board shall, at the first meeting held pursuant to G.S. 160-230.1(f) after the application and ballot is received, proceed as follows:

- (1) If the voter has submitted a photocopy of their photo identification, the county board shall make its determination whether the identification is acceptable under Paragraph (a) of the Rule. A final determination that the photocopy of the photo identification is not acceptable under Paragraph (a) of this Rule shall require a unanimous vote by the county board. If the county board makes a final determination that a voter's photocopy of the photo identification is not acceptable, staff shall notify the voter as provided in Paragraph (b) of this Rule, and the county board shall reserve its final decision on the approval of the absentee application until the next official meeting after it receives documentation curing the deficiency or the county canvass, whichever occurs first.
- (2) If the voter has completed an affidavit claiming an exception to the identification requirement pursuant to G.S. 163-166.16(d) and is otherwise eligible to vote, the county board may reject that person's ballot only if the county board unanimously finds that the affidavit is false. The county board shall substantiate any finding of falsity with grounds recorded in a written decision, and those grounds shall be based only on facts and not speculation. Before rejecting a voter's ballot because of a finding of falsity, the county board shall provide the voter advance notice and an opportunity to address the county board prior to the completion of canvass on any grounds that the county board is considering regarding the falsity of the affidavit. The notice shall identify the specific reasons the county board is considering the affidavit to be potentially false and inform the voter how the voter may address the reasons for potential falsity, which shall include the options to provide a written explanation or documentation or to address the board at a meeting in person. The county board shall send the notice via U.S. Mail within one business day of a county board's preliminary finding of falsity, provided that the opportunity to be heard is at least five days from the date of mailing. The notice shall be mailed for next-day delivery if the opportunity to be heard is less than five days from the date mailing. Notice shall also be provided within one business day of a county board's preliminary finding of falsity by any email address or phone number that the county board possesses for the voter. The notice and opportunity to address the county board provided for in this Subparagraph shall be offered only to those voters for whom a number of county board members equal to one less than all of the members of the county board, or more, have identified a specific reason, based only on facts and not speculation, to find that the affidavit claiming an exception to the identification requirement is false.
- (3) If a voter's photocopy of photo identification or affidavit claiming an exception to the identification requirement pursuant to G.S. 163-166.16(d) is deemed deficient upon initial review under Paragraph (b) of this Rule, the county board shall reserve its final decision on the approval of the absentee application until the next official meeting after it receives documentation curing the deficiency identified pursuant Paragraph (b) of this Rule or the county canvass, whichever occurs first.

(d) Exception for Military and Overseas Voters. A voter who is casting a ballot pursuant to G.S. 163, Article 21A, Part 1 is not required to submit a photocopy of acceptable photo identification under Paragraph (a) of this Rule or claim an exception under G.S. 163-166.16(d).

(e) Return of Original Form of Identification. If a voter sends their original form of photo identification in the container-return envelope, or if a voter or other person permitted to return the voter's absentee ballot hand-delivers an absentee ballot to the county board of elections that is not accompanied by a photocopy of the voter's photo identification and the voter or other person has the voter's photo identification that is a type acceptable for voting purposes under 08 NCAC 17 .0101(a)(1) on hand, the county board shall make a photocopy of the identification, which shall serve as an acceptable photo identification accompanying the voter's absentee ballot. When a voter sends their original form of photo identification in the container-return envelope, the county board shall notify the voter by mail and by any email address or phone number that the county board possesses for the voter that the original photo identification will be returned to the voter. The county board shall use a method of return that documents receipt of the photo identification.

History Note: Authority G.S. 163-22; 163-166.7; 163-166.16; 163-230.1; Temporary Adoption Eff. August 23, 2019; January 1, 2020; Temporary Rule Exp. Eff. October 11, 2020; Temporary Adoption Eff. August 1, 2023; Eff. April 1, 2024.

§ 163-55. Qualifications to vote; exclusion from electoral franchise, NC ST § 163-55



KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or Preempted Held Unconstitutional by *North Carolina State Conference of NAACP v. McCrory*, 4th Cir.(N.C.), July 29, 2016

West's North Carolina General Statutes Annotated

Chapter 163. Elections and Election Laws (Refs & Annos)

Subchapter III. Qualifying to Vote

Article 6. Qualifications of Voters

N.C.G.S.A. § 163-55

Formerly cited as NC ST § 163A-841

§ 163-55. Qualifications to vote; exclusion from electoral franchise

Currentness

(a) Residence Period for State Elections.--Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct in which the person offers to vote for 30 days next preceding an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to vote in the precinct in which the person resides. Removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which the person has removed until 30 days after the person's removal.

Except as provided in this Chapter, the following classes of persons shall not be allowed to vote in this State:

(1) Persons under 18 years of age.

(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) Precincts.--For purposes of qualification to vote in an election, a person's residence in a precinct shall be determined in accordance with *G.S. 163-57*. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices.

(c) Elections.--For purposes of the 30-day residence requirement to vote in an election in subsection (a) of this section, the term "election" means the day of the primary, second primary, general election, special election, or referendum.

Credits

Added by Laws 1967, c. 775, § 1. Amended by Laws 1971, c. 1231, § 1; Laws 1973, c. 793, § 18; S.L. 2005-2, § 2, eff. March 22, 2005; S.L. 2008-150, § 5(a), eff. Aug. 2, 2008; S.L. 2009-541, § 5, eff. Aug. 28, 2009; S.L. 2013-381, § 49.1, eff. Jan. 1, 2014. Recodified from § 163-55 by S.L. 2017-6, § 3, eff. May 1, 2017. Re-recodified from § 163A-841 by S.L. 2018-146, §§ 3.1(a), (b), eff. Jan. 31, 2019.

Editors' Notes

EFFECTIVE DATE

<For enactment and effective date information for this section, see, [N. Carolina State Conf. of NAACP v. McCrory](#), 831 F.3d 204 (4th Cir. 2016). See, also, Historical and Statutory Notes relating to S.L. 2013-381, under this section.>

[Notes of Decisions \(87\)](#)

N.C.G.S.A. § 163-55, NC ST § 163-55

The statutes and Constitution are current through the end of the 2024 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

End of Document

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N.C. Gen. Stat. § 163-82.4

Current through Session Laws 2024-58 of the 2024 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 163. Elections and Election Laws. (Subchs. I — X) > Subchapter III. Qualifying to Vote. (Arts. 6 — 8A) > Article 7A. Registration of Voters. (§§ 163-82.1 — 163-83)

§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. — The form required by [G.S. 163-82.3\(a\)](#) shall request the applicant's:

- (1) Name,
- (2) Date of birth,
- (3) Residence address,
- (4) County of residence,
- (5) Date of application,
- (6) Gender,
- (7) Race,
- (8) Ethnicity,
- (9) Political party affiliation, if any, in accordance with subsection (d) of this section,
- (10) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
- (11) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(b) No Drivers License or Social Security Number Issued. — The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(c) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. — The form required by [G.S. 163-82.3\(a\)](#) shall contain, in uniform type, the following:

N.C. Gen. Stat. § 163-82.4

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under [G.S. 163-275\(13\)](#).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(d) **Party Affiliation or Unaffiliated Status.** — The application form described in [G.S. 163-82.3\(a\)](#) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in [G.S. 163-96](#), or a preference to be an “unaffiliated” voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as “unaffiliated”, except that if the person is already registered to vote in the county and that person’s registration already contains a party affiliation, the county board shall not change the registrant’s status to “unaffiliated” unless the registrant clearly indicates a desire in accordance with [G.S. 163-82.17](#) for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in [G.S. 163-119](#), but may vote in any other primary or general election. The application form shall so state.

(e) **Citizenship and Age Questions.** — Voter registration application forms shall include all of the following:

(1) The following question and statement:

a. “Are you a citizen of the United States of America?” and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

b. “If you checked ‘no’ in response to this question, do not submit this form.”

(2) The following question and statement:

a. “Will you be 18 years of age on or before election day?” and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

b. “If you checked ‘no’ in response to this question, do not submit this form.”

(f) **Correcting Registration Forms.** — **Correcting Registration Forms.** - If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board to identify and contact the voter, the voter shall be notified of the omission and given the opportunity to complete the form at least by 12:00 p.M. on the third business day after the election. If the voter corrects that omission within that time and is determined by the county board to be eligible to vote, the county board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. If the correct information is provided to the county board by at least 12:00 p.M. on the third business day after the election, the county board shall count any portion of the provisional official ballot that the voter is eligible to vote.

History

1901, c. 89, s. 12; Rev., s. 4319; C.S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6; 1973, c. 793, s. 27; c. 1223, s. 3; 1975, c. 234, s. 2; 1979, c. 135, s. 1; c. 539, ss. 1-3; c. 797, ss. 1, 2; 1981, c. 222; c. 308, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); [1993, c. 74, s. 1](#); 1993 (Reg. Sess., 1994), c. 762, s. 2; [1999-424, s. 7\(c\)](#), (d); [1999-453, s. 8\(a\)](#); [2003-226, s. 9](#); [2004-127, s. 4](#); [2005-428, s. 15](#); [2007-391, s. 20](#); [2008-187, s. 33\(a\)](#); [2009-541, s. 9\(a\)](#); [2013-381, s. 12.1\(c\)](#); [2017-6, s. 3](#); [2018-146, s. 3.1\(a\)](#), (b); [2024-57, s. 3A.4\(a\)](#).

Annotations

Notes

N.C. Gen. Stat. § 163-82.4

Prior Law in Force.

In the case of NAACP v. McCrory, the defendants were enjoined from implementing certain portions of Session Laws 2013-381 and Session Laws 2015-103, relating to photo IDs and changes to early voting, same-day registration, out-of-precinct voting, and preregistration, and the pertinent statutory provisions in effect prior to those amendments were declared to be in full force (Case 1:13-cv-00658-TDS-JEP Document 455 (M.D.N.C. 2016)). In a letter dated October 5, 2017, the Revisor was informed that as a result, the version of this section that the State Board was actually enforcing is as follows:

§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. — The form required by [G.S. 163-82.3\(a\)](#) shall request the applicant's:

- (1) Name,
- (2) Date of birth,
- (3) Residence address,
- (4) County of residence,
- (5) Date of application,
- (6) Gender,
- (7) Race,
- (7a) Ethnicity,
- (8) Political party affiliation, if any, in accordance with subsection (c) of this section,
- (9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
- (10) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. — The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. — The form required by [G.S. 163-82.3\(a\)](#) shall contain, in uniform type, the following:

N.C. Gen. Stat. § 163-82.4

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under [G.S. 163-275\(13\)](#).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) **Party Affiliation or Unaffiliated Status.** — The application form described in [G.S. 163-82.3\(a\)](#) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in [G.S. 163-96](#), or a preference to be an “unaffiliated” voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as “unaffiliated”, except that if the person is already registered to vote in the county and that person’s registration already contains a party affiliation, the county board shall not change the registrant’s status to “unaffiliated” unless the registrant clearly indicates a desire in accordance with [G.S. 163-82.17](#) for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in [G.S. 163-119](#), but may vote in any other primary or general election. The application form shall so state.

(d) **Citizenship and Age Questions.** — Voter registration application forms shall include all of the following:

(1) The following question and statement:

a. “Are you a citizen of the United States of America?” and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

b. “If you checked ‘no’ in response to this question, do not submit this form.

(2) The following questions and statement:

a. “Will you be 18 years of age on or before election day?” and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

b. “Are you at least 16 years of age and understand that you must be 18 years of age on or before election day to vote?” and boxes for the applicant to check to indicate whether the applicant is at least 16 years of age and understands that the applicant must be at least 18 years of age or older by election day to vote.

c. “If you checked ‘no’ in response to both of these questions, do not submit this form.”

(3) Repealed by Session Laws [2009-541, s. 9\(a\)](#), effective January 1, 2010.

(e) **Correcting Registration Forms.** — If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, the voter shall be notified of the omission and given the opportunity to complete the form at least by 5:00 P.M. on the day before the county canvass as set in [G.S. 163-182.5\(b\)](#). If the voter corrects that omission within that time and is determined by the county board of elections to be eligible to vote, the board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. If the correct information is provided to the county board of elections by at least 5:00 P.M. on the day before the county canvass, the board shall count any portion of the provisional official ballot that the voter is eligible to vote.

Editor’s Note.

This section was recodified as now former G.S. 163A-863 by Session Laws [2017-6, s. 3](#). Former G.S. 163A-863 was then re-recodified as this section by Session Laws [2018-146, s. 3.1\(a\)](#), effective January 31, 2019. The historical citation from the former section has been added to this section as re-recodified.

N.C. Gen. Stat. § 163-82.4

Session Laws [2003-226, s. 1](#), provides: "The purpose of this act is 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, Public Law 107-252, 116 Stat. 1666 (2002), codified at [42 U.S.C. §§ 15481- 15485](#).

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in [G.S. 163-82.14](#) has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Session Laws [2007-391, s. 1\(c\)](#), was amended by Session Laws [2008-198, s. 33\(a\)](#), to eliminate any confusion as to the effective dates of the 2007 act. Session Laws [2007-391, s. 20](#), which rewrote subsection (e), is effective August 19, 2007.

Session Laws [2018-146, s. 3.1\(b\)](#), effective January 31, 2019, repealed Session Laws [2017-6, s. 3](#), which had recodified this section.

Session Laws [2024-57, s. 3A.4\(h\)](#), made the rewriting of subsection (f) of this section by Session Laws [2024-57, s. 3A.4\(a\)](#), effective January 1, 2025, and applicable to elections conducted on or after that date.

Session Laws [2024-57, s. 4.1](#), is a severability clause.

Effect of Amendments.

Session Laws 2004-127, s. 4, substituted "163-275(13)" for "163-275(4)" at the end of subdivision (b)(1).

Session Laws 2007-391, s. 20, effective August 19, 2007, rewrote subsection (e).

Session Laws 2009-541, s. 9(a), effective January 1, 2010, rewrote subsection (d).

Session Laws 2013-381, s. 12.1(c), effective September 1, 2013, substituted "question" for "questions" in subdivision (d)(2); deleted sub-subdivision (d)(2)b.; and substituted "this question" for "both of these questions" in sub-subdivision (d)(2)c.

Session Laws 2024-57, s. 3A.4(a), rewrote subsection (f). For effective date and applicability, see editor's note.

CASE NOTES

Constitutionality. —

District court clearly erred in ignoring or dismissing the historical background evidence, refusing to draw the obvious inference from the sequence of events leading to passage of 2013 N.C. Sess. Laws 381, and refusing to acknowledge the import of the undisputed impact of the challenged provisions. After assessing the Arlington Heights factors, the appellate court concluded that provisions requiring photo ID, reducing the days of early voting, and eliminating same-day registration, out-of-precinct voting, and preregistration were enacted with racially discriminatory intent in violation of the Equal Protection Clause of the Fourteenth Amendment and § 2, [52 U.S.C.S. § 10301\(a\)](#), of the Voting Rights Act. Additionally, the State's proffered explanation was rejected where the only clear factor linking the various reforms was their impact on African American voters. [N.C. State Conf. of the NAACP v. McCrory, 831 F.3d 204, 2016 U.S. App. LEXIS 13797 \(4th Cir. 2016\)](#), cert. denied, 581 U.S. 985, 137 S. Ct. 1399, 198 L. Ed. 2d 220, 2017 U.S. LEXIS 2947 (2017).

Research References & Practice Aids

N.C. Gen. Stat. § 163-82.4

Hierarchy Notes:

[N.C. Gen. Stat. Ch. 163](#)

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End of Document

N.C. Gen. Stat. § 163-166.12

Current through Session Laws 2024-58 of the 2024 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 163. Elections and Election Laws. (Subchs. I — X) > Subchapter VI. Conduct of Primaries and Elections. (Arts. 12 — 19) > Article 14A. Voting. (Pts. 1 — 5) > Part 3. Procedures at the Voting Place Generally. (§§ 163-166 — 163-166.24)

§ 163-166.12. Requirements for certain voters who register by mail.

(a) Voting in Person. — An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. — An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(c) Notation of Identification Proof. — The county board of elections shall note the type of identification proof submitted by the voter under the provisions of subsection (a) or (b) of this section and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records. The county board of elections shall create a list denoting the voter, the method of voting by the voter, and type of identification proof submitted by the voter, which shall be a public record.

(d) Voting When Identification Numbers Do Not Match. — Regardless of whether an individual has registered by mail or by another method, if the individual has provided with the registration form a drivers license number or last four digits of a Social Security number but the computer validation of the number as required by G.S. 163-82.12 did not result in a match, and the number has not been otherwise validated by the county board, in the first election in which the individual votes that individual shall submit with the ballot the form of identification described in subsection (a) or subsection (b) of this section, depending upon whether the ballot is voted in person or absentee. If that identification is provided no later than 12:00 P.M. on the third business day after the election and the county board 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.

(e) The Right to Vote Provisionally. — If an individual is required under subsection (a), (b), or (d) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by absentee ballot, the absentee ballot without the required identification shall be treated as a provisional official ballot.

(f) Exemptions. — This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.

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b. A copy of a "HAVA document" as defined in [G.S. 163-82.6B\(e\)](#).

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration. If any individual's number does not match, the individual shall provide identification as required in subsection (d) of this section in the first election in which the individual votes.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law.

History

[2003-226, s. 16](#); [2004-127, s. 3](#); [2007-391, s. 21\(a\)](#); [2008-187, s. 33\(a\)](#); [2013-381, s. 16.4](#); [2013-410, s. 14\(b\)](#); [2017-6, s. 3](#); [2018-146, s. 3.1\(a\), \(b\)](#); [2023-140, ss. 10\(b\), 26](#); [2024-57, s. 3A.4\(c\)](#).

Annotations

Notes

Prior Law in Force.

In the case of *NAACP v. McCrory*, the defendants were enjoined from implementing certain portions of Session Laws 2013-381 and Session Laws 2015-103, relating to photo IDs and changes to early voting, same-day registration, out-of-precinct voting, and preregistration, and the pertinent statutory provisions in effect prior to those amendments were declared to be in full force (Case 1:13-cv-00658-TDS-JEP Document 455 (M.D.N.C., 2016)). In a letter dated October 5, 2017, the Revisor was informed that as a result, the version of this section that the State Board was actually enforcing is as follows:

§ 163-166.12. Requirements for certain voters who register by mail.

(a) Voting in Person. - An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail-In Absentee. - An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following: (1) A copy of a current and valid photo identification. (2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

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(b1) Notation of Identification Proof. - The county board of elections shall note the type of identification proof submitted by the voter under the provisions of subsection (a) or (b) of this section and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

(b2) Voting When Identification Numbers Do Not Match. - Regardless of whether an individual has registered by mail or by another method, if the individual has provided with the registration form a drivers license number or last four digits of a Social Security number but the computer validation of the number as required by [G.S. 163-82.12](#) did not result in a match, and the number has not been otherwise validated by the board of elections, in the first election in which the individual votes that individual shall submit with the ballot the form of identification described in subsection (a) or subsection (b) of this section, depending upon whether the ballot is voted in person or absentee. If 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. If the individual registers and votes under [G.S. 163-82.6A](#), the identification documents required in that section, rather than those described in subsection (a) or (b) of this section, apply.

(c) The Right to Vote Provisionally. - If an individual is required under subsection (a), (b), or (b2) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions. - This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following: a. A copy of a current and valid photo identification. b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration. If any individual's number does not match, the individual shall provide identification as required in subsection (b2) of this section in the first election in which the individual votes.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act. (5) An individual who is entitled to vote otherwise than in person under any other federal law.

Editor's Note.

This section was recodified as now former G.S. 163A-1144 by Session Laws [2017-6, s. 3](#). Former G.S. 163A-1144 was then re-recodified as this section by Session Laws [2018-146, s. 3.1\(a\)](#), effective January 31, 2019. The historical citation from the former section has been added to this section as re-recodified.

Session Laws [2003-226, s. 1](#), provides: "The purpose of this act is 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, Public Law 107-252, 116 Stat. 1666 (2002), codified at [42 U.S.C. §§ 15481- 15485](#).

"The General Assembly finds that the education and training of election officials as required by G.S. 163-82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in [G.S. 163-82.14](#) has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

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"In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act."

Session Laws [2007-391, s. 1\(c\)](#), was amended by Session Laws [2008-198, s. 33\(a\)](#), to eliminate any confusion as to the effective dates of the 2007 act. Session Laws [2007-391, s. 21\(a\)](#), which added subsection (b2), substituted "(a), (b), or (b2)" for "(a) or (b)" in subsection (c), and added the last sentence in (d)(2), is effective August 19, 2007.

Session Laws [2018-146, s. 3.1\(b\)](#), effective January 31, 2019, repealed Session Laws [2017-6, s. 3](#), which had recodified this section.

Session Laws [2023-140, s. 50](#), made the amendments to subsection (c), and sub-subdivision (f)(1)b. by Session Laws [2023-140, ss. 10\(b\)](#), 26, effective January 1, 2024, and applicable to elections on or after that date.

Session Laws [2023-140, s. 49](#), is a severability clause.

Session Laws [2024-57, s. 3A.4\(h\)](#), made the amendment of subsections (d) and (e) of this section by Session Laws [2024-57, s. 3A.4\(c\)](#), effective January 1, 2025, and applicable to elections conducted on or after that date.

Session Laws [2024-57, s. 4.1](#), is a severability clause.

Effect of Amendments.

Session Laws 2004-127, s. 3, effective July 26, 2004, inserted the subsection (b1) designation; inserted "under the provisions of subsection (a) or (b) of this section" in the first sentence of subsection (b1); and deleted the undesignated paragraph following subsection (b1), relating to persons entitled to vote under the Uniformed and Overseas Citizens Absentee Voting Act.

Session Laws 2007-391, s. 21(a), effective August 19, 2007, added subsection (b2); substituted "(a), (b), or (b2)" for "(a) or (b)" in subsection (c); and added the last sentence in (d)(2).

Session Laws 2013-381, s. 16.4, effective January 1, 2014, deleted the former last sentence in subsection (b2), which read "If the individual registers and votes under G.S. 163-82.6A, the identification documents required in that section, rather than those described in subsection (a) or (b) of this section, apply."

Session Laws 2013-410, s. 14(b), effective August 23, 2013, added "Notation of Identification Proof" as the subsection heading in subsection (b1).

Session Laws 2023-140, ss. 10(b), 26, added the last sentence in subsection (c), and rewrote sub-subdivision (f)(1)b. For effective date and applicability, see editor's note.

Session Laws 2024-57, s. 3A.4(c), subsection (d), substituted "county board" for "county board of elections" twice and inserted "no later than 12:00 P.M. on the third business day after the election"; and substituted "voting by absentee ballot, the absentee ballot" for "voting by mail-in ballot, the mailed ballot" in subsection (e). For effective date and applicability, see editor's note.

CASE NOTES

Constitutionality. —

District court clearly erred in ignoring or dismissing the historical background evidence, refusing to draw the obvious inference from the sequence of events leading to passage of 2013 N.C. Sess. Laws 381, and refusing to acknowledge the import of the undisputed impact of the challenged provisions. After assessing the Arlington Heights factors, the appellate court concluded that provisions requiring photo ID, reducing the days of early voting, and eliminating same-day registration, out-of-precinct voting, and preregistration were enacted with racially discriminatory intent in violation of the Equal Protection Clause of the Fourteenth Amendment and § 2, [52 U.S.C.S. § 10301\(a\)](#), of the Voting Rights Act. Additionally, the State's proffered

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explanation was rejected where the only clear factor linking the various reforms was their impact on African American voters. [N.C. State Conf. of the NAACP v. McCrory](#), 831 F.3d 204, 2016 U.S. App. LEXIS 13797 (4th Cir. 2016), cert. denied, 581 U.S. 985, 137 S. Ct. 1399, 198 L. Ed. 2d 220, 2017 U.S. LEXIS 2947 (2017).

Research References & Practice Aids

Hierarchy Notes:

[N.C. Gen. Stat. Ch. 163](#)

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N.C. Gen. Stat. § 163-230.1

Current through Session Laws 2024-58 of the 2024 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 163. Elections and Election Laws. (Subchs. I — X) > Subchapter VII. Absentee Voting. (Arts. 20 — 21A) > Article 20. Absentee Ballot. (§§ 163-226 — 163-244)

§ 163-230.1. Simultaneous issuance of absentee ballots with application.

(a) Written Request. — A qualified voter who is eligible to vote by absentee ballot under [G.S. 163-226](#), or that voter's near relative or verifiable legal guardian, shall complete a request form for an absentee application and absentee ballots so that the county board receives that completed request form not later than 5:00 P.M. on the second Tuesday before the election. That completed written request form shall be in compliance with [G.S. 163-230.2](#). The county board shall enter in the register of absentee requests, applications, and ballots issued the information required in [G.S. 163-228](#) as soon as each item of that information becomes available. Upon receiving the completed request form, the county board shall cause to be mailed to that voter a single package that includes all of the following:

- (1) The official ballots the voter is entitled to vote.
- (2) A container-return envelope for the ballots, printed in accordance with [G.S. 163-229](#).
- (3) An instruction sheet.
- (4) A clear statement of the requirement for a photocopy of identification described in [G.S. 163-166.16\(a\)](#) or an affidavit as described in [G.S. 163-166.16\(d\)\(1\)](#), (d)(2), or (d)(3) with the returned ballot.

(a1) Mailing of Application and Ballots. — The ballots, envelope, and instructions shall be mailed to the voter by the county board's chair, member, officer, or employee as determined by the county board and entered in the register as provided by this Article.

(a2) Publish Deadline for Written Request and Ballot. — At least once per primary or election, each county board and the State Board shall publish on its website or in any mailing sent to voters the following information:

- (1) The date by which a completed request form as described in subsection (a) of this section must be received by a county board.
- (2) The means by which the voter's marked absentee ballot must be returned to the county board.
- (3) The date and time the voter's completed absentee ballot must be received by the county board in order to be counted.

(b) Absence for Sickness or Physical Disability. — Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make the request for absentee ballots in person to the county board of the county in which the voter is registered after 5:00 P.M. on the second Tuesday before the election but not later than 5:00 P.M. on the last business day before the election. The county board shall treat that completed request form in the same manner as a request under subsection (a) of this section but may personally deliver the application and ballots to the voter or that voter's near relative or verifiable legal guardian, and shall enter in the register of absentee requests, applications, and ballots issued the information required in [G.S. 163-228](#) as soon as each item of that information becomes available. The county board shall personally deliver to the requester in a single package:

- (1) The official ballots the voter is entitled to vote.
- (2) A container-return envelope for the ballots, printed in accordance with [G.S. 163-229](#).

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(3) An instruction sheet.

(4) A clear statement of the requirement for a photocopy of identification described in [G.S. 163-166.16\(a\)](#) or an affidavit as described in [G.S. 163-166.16\(d\)\(1\)](#), (d)(2), or (d)(3) with the returned application and voted ballots.

(c) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. — When the county board receives a completed request form for applications and absentee ballots from the voter, or the near relative or the verifiable legal guardian of that voter, the county board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each absentee ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the county board shall write or type the words "Absentee Ballot No. ____" or an abbreviation approved by the State Board and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and absentee ballots issued. That person shall not write, type, or print any other matter upon the absentee ballots transmitted to the absentee voter. Alternatively, the county board may cause to be barcoded on the absentee ballot the voter's application number, if that barcoding system is approved by the State Board.

(2) The chair, member, officer, or employee of the county board shall fold and place the absentee ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of [G.S. 163-229\(b\)](#), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the absentee ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the absentee ballots in the envelopes shall leave the container-return envelope holding the absentee ballots unsealed.

(3) The chair, member, officer, or employee of the county board shall then place the unsealed container-return envelope holding the absentee ballots together with printed instructions for voting and returning the absentee ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board: Provided, that in case of a request received after 5:00 P.M. on the second Tuesday before the election under the provisions of subsection (b) of this section, in lieu of transmitting the absentee ballots to the voter in person or by mail, the chair, member, officer, or employee of the county board may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the absentee ballots to a near relative or verifiable legal guardian of the voter.

The county board may receive completed written request forms for applications at any time prior to the election but shall not mail applications and absentee ballots to the voter or issue applications and absentee ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election. No election official shall issue applications for absentee ballots except in compliance with this Article.

(d) Voter to Complete. — The application shall be completed and signed by the voter personally, the absentee ballots marked, the absentee ballots sealed in the container-return envelope, and the certificate completed as provided in [G.S. 163-231](#).

(e) Approval of Applications. — At its next official meeting prior to election day after the return of the completed container-return envelope with the voter's absentee ballots, the county board shall determine whether the container-return envelope has been properly executed. If the county board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the absentee ballots counted at the same time as all other container-return envelopes and absentee ballots.

(e1) Curable Deficiencies. — If a container-return envelope contains a curable deficiency, the county board shall promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency. Curable deficiencies are deficiencies that can be cured with supplemental documentation or attestation provided by the voter, including when any of the following occurs:

(1) The voter did not sign the voter certification as required by [G.S. 163-231\(a\)\(4\)](#).

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(2) The voter signed the application in the wrong place on the application.

(3) The voter failed to include with the container-return envelope a photocopy of identification described in [G.S. 163-166.16\(a\)](#) or an affidavit as described in [G.S. 163-166.16\(d\)\(1\)](#), (d)(2), or (d)(3), as required by subsection (f1) of this section.

The identification of the two persons witnessing the casting of the absentee ballot in accordance with [G.S. 163-231\(a\)](#) is not a curable deficiency. Any container-return envelope with a curable deficiency that is transmitted to the county board shall be considered timely if cure documentation is received no later than 12:00 p.m. on the third business day after the election. Cure documentation may be transmitted via email to the county board if the deficiency is one described in subdivision (3) of this subsection. The notification of voters regarding curable deficiencies is an administrative task that may be performed by county board staff and is not required to be performed at an absentee meeting as provided for in subsection (f) of this section. The voter shall be notified of curable deficiencies by mail, and by telephone or email if the telephone number or email address was provided by the voter on the request form for absentee ballots.

(f) Required Meeting of County Board of Elections. — During the period commencing on the fifth Tuesday before an election, in which absentee ballots are authorized, the county board shall hold one or more public meetings each Tuesday at 5:00 P.M. for the purpose of action on applications for absentee ballots. At these meetings, the county board shall pass upon applications for absentee ballots.

If the county board changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board makes its decision on an application for absentee ballots, the county board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was "Approved" or "Disapproved".

The decision of the county board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chair or any other member of the county board individually.

(f1) Each container-return envelope returned to the county board with application and voted ballots under this section shall be accompanied by a photocopy of identification described in [G.S. 163-166.16\(a\)](#) or an affidavit as described in [G.S. 163-166.16\(d\)\(1\)](#), (d)(2), or (d)(3).

(g) Rules. — The State Board, by rule or by instruction to the county boards of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section. The State Board shall adopt rules to provide for the forms of identification that shall be included with returned application and voted absentee ballots. At a minimum, the rules shall include the following:

(1) Acceptable photocopies of forms of readable identification, as described in [G.S. 163-166.16\(a\)](#).

(2) A process for a voter without acceptable photocopies of forms of readable identification under subdivision (1) of this subsection to complete an alternative affidavit in accordance with [G.S. 163-166.16\(d\)\(1\)](#), (d)(2), or (d)(3) that includes inability to attach a physical copy of the voter's identification with the returned application and voted ballots as a reasonable impediment to compliance with the identification requirement, provided the reasonable impediment includes one of the following:

- a. The number of the voter's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.
- b. The number of the voter's special identification card for nonoperators issued under [G.S. 20-37.7](#).
- c. The last four digits of the voter's social security number.

(h) Recodified as [G.S. 163-226\(f\)](#) by Session Laws [2019-239, s. 1.2\(a\)](#), effective January 1, 2020, and applicable to elections conducted on or after that date.

History

1983, c. 304, s. 1; 1985, c. 759, ss. 5.1-5.5; [1991, c. 727, s. 6.3](#); [1993, c. 553, s. 67](#); [1995, c. 243, s. 1](#); [1999-455, s. 10](#); [2001-337, s. 3](#); [2002-159, s. 55\(m\)](#); [2009-537, s. 5](#); [2013-381, s. 4.2](#); [2017-6, s. 3](#); [2018-144, s. 3.4\(i\)](#); [2018-146, s. 3.1\(a\), \(b\)](#); [2019-239, s. 1.2\(a\), \(b\)](#); [2020-17, s. 4](#); [2023-139, s. 6.5](#); [2023-140, s. 35](#); [2024-57, s. 3A.4\(f\)](#).

Annotations

Notes

Editor's Note.

This section was recodified as now former G.S. 163A-1308 by Session Laws [2017-6, s. 3](#). Former G.S. 163A-1308 was then re-recodified as this section by Session Laws [2018-146, s. 3.1\(a\)](#), effective January 31, 2019. The historical citation from the former section has been added to this section as re-recodified.

Session Laws [2013-381, s. 1.1](#), provides: "Parts 1 through 6 of this act shall be known and cited as the Voter Information Verification Act." Session Laws [2018-144, s. 2\(a\)](#) repealed Session Laws [2013-381, s. 1.1](#), effective December 19, 2018.

Session Laws [2013-381, s. 6.2\(4\)](#), made the amendment to this section by Session Laws [2013-381, s. 4.2](#), applicable to primaries and elections held on or after January 1, 2014.

Session Laws [2013-381, s. 6.2\(6\)](#), provides: "At any primary and election between May 1, 2014, and January 1, 2016, any registered voter may present that voter's photo identification to the elections officials at the voting place but may not be required to do so. At each primary and election between May 1, 2014, and January 1, 2016, each voter presenting in person shall be notified that photo identification will be needed to vote beginning in 2016 and be asked if that voter has one of the forms of photo identification appropriate for voting. If that voter indicates he or she does not have one or more of the types of photo identification appropriate for voting, that voter shall be asked to sign an acknowledgment of the photo identification requirement and be given a list of types of photo identification appropriate for voting and information on how to obtain those types of photo identification. The list of names of those voters who signed an acknowledgment is a public record."

Session Laws [2013-381, s. 60.1](#), is a severability clause.

Session Laws [2018-146, s. 3.1\(b\)](#), effective January 31, 2019, repealed Session Laws [2017-6, s. 3](#), which had recodified this section.

Session Laws [2019-239, s. 1.3\(d\)](#), provides: "On or before May 1, 2020, the State Board of Elections shall report to the Joint Legislative Elections Oversight Committee and the General Assembly as to its plans to implement Sections 1.2 and 1.3 of this act and any recommendations for statutory changes necessary to implement these provisions."

Session Laws [2019-239, s. 1.6](#), provides: "Rule Making. — The State Board of Elections shall adopt emergency rules for the implementation of this Part in accordance with [G.S. 150B-21.1A](#). This section does not require any rule making if not otherwise required by law."

Session Laws [2019-239, s. 7](#), made the recodification of former subsection (h) of this section as [G.S. 163-226\(f\)](#) by Session Laws [2019-239, s. 1.2\(a\)](#), and the rewriting of the section by Session Laws [2019-239, s. 1.2\(b\)](#), effective January 1, 2020, and applicable to elections conducted on or after that date.

Session Laws [2019-239, s. 5.12](#), provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2019-2021 fiscal biennium, the textual provisions of this Part apply only to funds appropriated for, and activities occurring during, the 2019-2021 fiscal biennium."

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Session Laws [2019-239, s. 5.14](#), is a severability clause.

Session Laws [2023-139, s. 7.1](#), is a severability clause.

Session Laws [2023-140, s. 50](#), made the amendments to this section by Session Laws [2023-140, s. 35](#), effective January 1, 2024, and applicable to elections on or after that date.

Session Laws [2023-140, s. 49](#), is a severability clause.

Session Laws [2024-57, s. 3A.4\(h\)](#), made the rewriting of this section by Session Laws [2024-57, s. 3A.4\(f\)](#), effective January 1, 2025, and applicable to elections conducted on or after that date.

Session Laws [2024-57, s. 4.1](#), is a severability clause.

Effect of Amendments.

Session Laws 2009-537, s. 5, effective January 1, 2010, and applicable with respect to elections held on or after that date, in the first sentence of the last paragraph of subdivision (a)(2), substituted "at any time" for "earlier than 50 days" and substituted "in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election" for "in person earlier than 50 days prior to the election".

Session Laws 2013-381, s. 4.2, effective January 1, 2014, rewrote subsections (a) and (a1); and, in subsection (a2), added "completed" and "form" in the first sentence, and in the second paragraph, added "completed" and substituted "request forms" for "requests." For applicability, see editor's note.

Session Laws 2018-144, s. 3.4(i), effective December 19, 2018, in subsection (c), deleted "163A-1301" following "G.S. 163A-1300"; and made a minor stylistic change.

Session Laws 2019-239, s. 1.2(a), (b), recodified former subsection (h) as G.S. 163-226(f); and rewrote the section. For effective date and applicability, see editor's note.

Session Laws 2020-17, s. 4, effective June 12, 2020, substituted "fifth Tuesday" for "third Tuesday" in the first sentence of subsection (f).

Session Laws 2023-139, s. 6.5, effective October 10, 2023, substituted "returned application and voted ballots as a reasonable impediment to compliance with the identification requirement, provided the reasonable impediment includes one of the following:" for "written request as a reasonable impediment to compliance with the identification requirement. If a reasonable impediment under this subdivision states inability to attach a physical copy of the voter's identification with the written request, the reasonable impediment shall include one of the following:" in the introductory paragraph of subdivision (g)(2).

Session Laws 2023-140, s. 35, added subsection (a2); made minor stylistic changes in subsections (b) and (f) and subdivision (c)(3); deleted the exception language at the end of the first sentence of the second paragraph of subsection (c); and added the second and third paragraphs of subsection (e). For effective date and applicability, see editor's note.

Session Laws 2024-57, s. 3A.4(f), rewrote the section. For effective date and applicability, see editor's note.

CASE NOTES

Election Held Not Vitiating by Irregular Delivery of Ballots. —

The fact that the chairman of the county board of elections, in company with candidates in the election, personally delivered absentee ballots to absentee voters at their temporary residence in another state or county was insufficient, under former G.S. 163-230, of itself, to vitiate their votes, there being no evidence remotely suggesting coercion, fraud or imposition. [State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 SE.2d 12, 1948 N.C. LEXIS 496 \(1948\)](#).

N.C. Gen. Stat. § 163-230.1

Research References & Practice Aids

Hierarchy Notes:

[N.C. Gen. Stat. Ch. 163](#)

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End of Document

N.C. Gen. Stat. § 163-231

Current through Session Laws 2024-58 of the 2024 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 163. Elections and Election Laws. (Subchs. I — X) > Subchapter VII. Absentee Voting. (Arts. 20 — 21A) > Article 20. Absentee Ballot. (§§ 163-226 — 163-244)

§ 163-231. Voting absentee ballots and transmitting them to the county board of elections.

(a) Procedure for Voting Absentee Ballots. — In the presence of two persons who are at least 18 years of age, and who are not disqualified by [G.S. 163-226.3\(a\)\(4\)](#) or [G.S. 163-237\(c\)](#), the voter shall do all of the following:

- (1) Mark the voter's ballots, or cause them to be marked by that person in the voter's presence according to the voter's instruction.
- (2) Fold each ballot separately, or cause each of them to be folded in the voter's presence.
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence.
- (4) Make the application printed on the container-return envelope according to the provisions of [G.S. 163-229\(b\)](#) and make the certificate printed on the container-return envelope according to the provisions of [G.S. 163-229\(b\)](#).
- (5) Require those two persons in whose presence the voter marked that voter's ballots to sign and print their names on the application and certificate as witnesses and to indicate those persons' addresses. Failure to list a ZIP code does not invalidate the application and certificate. Failure to include a printed witness name does not invalidate the application and certificate if the identity of an individual can solely be ascertained by the witness's signature.
- (6) Do one of the following:
 - a. Have the application notarized. The notary public may be the person in whose presence the voter marked that voter's ballot.
 - b. Have the two persons in whose presence the voter marked that voter's ballots to certify that the voter is the registered voter submitting the marked ballots.

Alternatively to the prior paragraph of this subsection, any requirement for two witnesses shall be satisfied if witnessed by one notary public, who shall comply with all the other requirements of that paragraph. The notary shall affix a valid notarial seal to the envelope, and include the word "Notary Public" below his or her signature.

The persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests assistance and that person is otherwise authorized by law to give assistance. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the county board of elections which issued the ballots.

(b) Transmitting Executed Absentee Ballots to County Board of Elections. — The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued those ballots as follows:

- (1) All ballots issued under the provisions of this Article and Article 21A of this Chapter shall be transmitted by one of the following means:

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- a. Mail or commercial courier service, at the voter's expense, and received by the county board not later than 7:30 P.M. on the day of the statewide primary or general election or county bond election.
- b. Delivered in person, by the voter or the voter's near relative or verifiable legal guardian, to the county board not later than 7:30 P.M. on the day of the statewide primary or general election or county bond election.
- c. Electronically transmitted to the county board, if the ballot was issued under the provisions of Article 21A of this Chapter.

(2) If ballots are received later than the hour stated in subdivision (1) of this subsection, those ballots shall not be accepted unless required by federal law or the ballots are received in accordance with Article 21A of this Chapter or the State Board or court order extended the closing time of the polls for every poll in the county in accordance with [G.S. 163-166.25](#). If the State Board or court order so extended the closing time of the polls, the ballots shall be received by the closing time as extended by the State Board or court order in order to be counted.

(c) Delivering Executed Absentee Ballots in Person. — For purposes of this section, "Delivered in person" includes physically handing the voted absentee ballot to an election official at an early voting site under Part 5 of Article 14A of this Chapter during any time that early voting site is open for voting, but does not include depositing the voted absentee ballot in a drop box or other location designated for the return of voted absentee ballots. The voted absentee ballots delivered to the early voting site shall be kept securely and delivered by election officials at that early voting site to the county board of elections office for processing.

History

1939, c. 159, ss. 2, 5; 1941, c. 248; 1943, c. 736; c. 751, s. 1; 1945, c. 758, s. 5; 1963, c. 457, ss. 2, 5; 1967, c. 775, s. 1; 1971, c. 1247, s. 3; 1973, c. 536, s. 1; 1977, c. 469, s. 1; 1979, c. 799, s. 5; 1985, c. 562, ss. 1, 2; 1987, c. 583, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 991, s. 4; [1999-455, s. 11](#); [2009-537, ss. 6, 8\(a\)](#); [2011-182, s. 5](#); [2013-381, s. 4.4](#); [2014-111, s. 11](#); [2017-6, s. 3](#); [2018-144, s. 3.4\(j\)](#); [2018-146, ss. 3.1\(a\), \(b\), 4.8](#); [2023-140, s. 35](#).

Annotations

Notes

Editor's Note.

This section was recodified as now former G.S. 163A-1310 by Session Laws [2017-6, s. 3](#). Former G.S. 163A-1310 was then re-recodified as this section by Session Laws [2018-146, s. 3.1\(a\)](#), effective January 31, 2019. The historical citation from the former section has been added to this section as re-recodified.

Session Laws [2013-381, s. 1.1](#), provides: "Parts 1 through 6 of this act shall be known and cited as the Voter Information Verification Act." Session Laws [2018-144, s. 2\(a\)](#) repealed Session Laws [2013-381, s. 1.1](#), effective December 19, 2018.

Session Laws [2013-381, s. 6.2\(4\)](#), made the amendment to this section by Session Laws [2013-381, s. 4.4](#), applicable to primaries and elections held on or after January 1, 2014.

Session Laws [2013-381, s. 6.2\(6\)](#), provides: "At any primary and election between May 1, 2014, and January 1, 2016, any registered voter may present that voter's photo identification to the elections officials at the voting place but may not be required to do so. At each primary and election between May 1, 2014, and January 1, 2016, each voter presenting in person shall be notified that photo identification will be needed to vote beginning in 2016 and be asked if that voter has one of the forms of photo identification appropriate for voting. If that voter indicates he or she does not have one or more of the types of photo identification appropriate for voting, that voter shall be asked to sign an acknowledgment of the photo identification

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requirement and be given a list of types of photo identification appropriate for voting and information on how to obtain those types of photo identification. The list of names of those voters who signed an acknowledgment is a public record.”

Session Laws [2013-381, s. 60.1](#), is a severability clause.

Session Laws [2018-146, s. 3.1\(b\)](#), effective January 31, 2019, repealed Session Laws [2017-6, s. 3](#), which had recodified this section.

Session Laws 2019-4 provides in its preamble: “Whereas, in November 2018, the voters of North Carolina approved a constitutional amendment requiring every voter offering to vote in person to present photographic identification before voting; and

“Whereas, the approved constitutional amendment became effective upon certification of the November 6, 2018, election results; and

“Whereas, the General Assembly of North Carolina enacted S.L. 2018-144 in December 2018, setting forth the general laws governing the requirements of photographic identification for voting in person and the exceptions thereto, and setting forth a time line of implementation for the 2019 elections and thereafter; and

“Whereas, S.L. 2018-144 also contained reforms to the process of absentee voting by mail and those reforms require rule making and other implementation efforts from the State Board of Elections; and

“Whereas, in February 2019, the need for a special congressional election to fill a vacancy in the United States House of Representatives has arisen due to unforeseen circumstances, and the Governor has determined a schedule for such special election; and

“Whereas, in March 2019, the State Board of Elections issued an order to conduct a new election in a separate United States House of Representatives district and has determined a schedule for such new election; and

“Whereas, the schedule of the two additional elections generates concerns about the ability of the county boards of election and the State Board of Elections to ensure uniformity in the requirement to present photographic identification before voting in person; and

“Whereas, the absentee voting by mail reforms in S.L. 2018-144 require rule making and other administrative procedures on the part of the State Board of Elections which will not be completed prior to the two additional 2019 congressional elections; and

“Whereas, the State Board of Elections needs legislative clarity regarding absentee voting by mail in order to conduct the two additional 2019 congressional elections in an orderly fashion; Now, therefore,”

Session Laws [2019-4, s. 1\(a\)](#), (b), provides: “(a) S.L. 2018-144 shall not apply to any election held in 2019 for which the filing period opens prior to the date set forth in Section 1.5(a)(8) of S.L. 2018-144.

“(b) Notwithstanding Section 1(a) of this act, all implementation and educational efforts set forth in S.L. 2018-144 during 2019 by the State and counties shall continue.”

Session Laws [2020-17, s. 1\(a\)](#), provides: “For an election held in 2020, notwithstanding [G.S. 163-229\(b\)](#) and [G.S. 163-231\(a\)](#), and provided all other requirements for absentee ballots are met, a voter's returned absentee ballot shall be accepted and processed accordingly by the county board of elections if the voter marked the ballot in the presence of at least one person who is at least 18 years of age and is not disqualified by [G.S. 163-226.3\(a\)\(4\)](#) or [G.S. 163-237\(c\)](#), provided that the person signed the application and certificate as a witness and printed that person's name and address on the container-return envelope. For an election held in 2020, notwithstanding [G.S. 163-229\(b\)](#), the State Board of Elections may prepare applications for each container-return envelope providing for a space for the identification of one person witnessing the casting of the absentee ballot in accordance with [G.S. 163-231](#), that person's signature, and that person's printed name and address.”

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Session Laws [2023-140, s. 50](#), made the amendments to this section by Session Laws [2023-140, s. 35](#), effective January 1, 2024, applicable to elections on or after that date.

Session Laws [2023-140, s. 49](#), is a severability clause.

Effect of Amendments.

Session Laws 2011-182, s. 5, effective January 1, 2012, in subsection (b), in the first sentence, substituted "Articles 20 and 21A" for "Articles 20 and 21," added the second sentence, and in the third sentence, substituted "Article 21A" for "Article 21" and "not later than the end of business on the business day before the canvass conducted by the county board of elections held pursuant to G.S. 163-182.5" for "not later than three days after the election by 5:00 p.m."

Session Laws 2013-381, s. 4.4, effective January 1, 2014, in subsection (a), substituted "two persons" for "a person," added "do all of the following", subdivision (a)(5), and the second paragraph, deleted the former second sentence of the third paragraph, which read "The person in whose presence the ballot was marked shall sign the application and certificate as a witness and shall indicate that person's address" and made minor stylistic and punctuation changes throughout; in subsection (b), substituted "those ballots" for "them" and redesignated former subsection (b) as present subsection (b) and subdivisions (b)(1) and (b)(2); rewrote subdivisions (b)(1) and (b)(2); and added subsection (c). For applicability, see Editor's note.

Session Laws 2014-111, s. 11, effective August 6, 2014, added the last sentence in subdivision (a)(5).

Session Laws 2018-144, s. 3.4(j), effective December 19, 2018, in subsection (c), deleted "163A-1301" following "G.S. 163A-1300"; and made a minor stylistic change.

Session Laws 2018-146, s. 4.8, effective December 27, 2018, added subdivision (a)(6).

Session Laws 2023-140, s. 35, in subdivision (a)(5) inserted "and print their names on" in the first sentence and added the third sentence; and rewrote subsections (b) and (c). For effective date and applicability, see editor's note.

CASE NOTES

Constitutionality of State Elections Board Memorandum.

Plaintiffs were likely to succeed on their claim that the State Board of Elections memorandum extending the deadline for receiving ballots was likely to violate equal protection where the change contravened the express deadline established by the General Assembly, by extending the deadline from three days after Election Day, to nine days after Election Day. Moreover, it resulted in disparate treatment, as voters like the individual plaintiffs returned their ballots within the time-frame permitted under state law, but other voters whose ballots would otherwise not be counted if received three days after Election Day, would have an additional six days to return their ballot. [Moore v. Circosta, 494 F. Supp. 3d 289, 2020 U.S. Dist. LEXIS 190193 \(M.D.N.C. 2020\)](#).

Plaintiffs were unlikely to succeed on their equal protection challenge to a State Board of Elections' memorandum clarifying that a ballot would be considered postmarked by Election Day if it had a USPS postmark, and there was information in BallotTrax, or another tracking service offered by the USPS or a commercial carrier, indicating that the ballot was in the custody of USPS or the commercial carrier on or before Election Day. [Moore v. Circosta, 494 F. Supp. 3d 289, 2020 U.S. Dist. LEXIS 190193 \(M.D.N.C. 2020\)](#).

Voters Must Be Sworn. —

Where the evidence supports the findings that certain absentee voters were not sworn, the rejection of their ballots is proper. [State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, 1948 N.C. LEXIS 496 \(1948\)](#).

Oaths Need Not Be Taken upon the Bible. —

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The fact that the oaths of absentee voters were not taken by them upon the Bible, but were taken with uplifted hands, does not invalidate their votes. [State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, 1948 N.C. LEXIS496 \(1948\)](#).

Interest of superior court clerk in reelection, standing alone, does not disqualify him from administering oaths

to absentee voters, administering the oaths being ministerial and not judicial. [State ex rel. Owens v. Chaplin, 228 N.C. 705, 47 S.E.2d 12, 1948 N.C. LEXIS496 \(1948\)](#).

Research References & Practice Aids

Hierarchy Notes:

[N.C. Gen. Stat. Ch. 163](#)

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N.C. Gen. Stat. § 163-239

Current through Session Laws 2024-58 of the 2024 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 163. Elections and Election Laws. (Subchs. I — X) > Subchapter VII. Absentee Voting. (Arts. 20 — 21A) > Article 20. Absentee Ballot. (§§ 163-226 — 163-244)

§ 163-239. Article 21A relating to absentee voting by military and overseas voters not applicable.

Except as otherwise provided therein, Article 21A of this Chapter shall not apply to or modify the provisions of this Article.

History

1963, c. 457, s. 11; 1967, c. 775, s. 1; 1977, c. 469, s. 1; [2011-182, s. 8](#); [2017-6, s. 3](#); [2018-146, s. 3.1\(a\)](#), (b).

Annotations

Notes

Editor's Note.

This section was recodified as now former G.S. 163A-1319 by Session Laws [2017-6, s. 3](#). Former G.S. 163A-1319 was then re-recodified as this section by Session Laws [2018-146, s. 3.1\(a\)](#), effective January 31, 2019. The historical citation from the former section has been added to this section as re-recodified.

Session Laws [2018-146, s. 3.1\(b\)](#), effective January 31, 2019, repealed Session Laws [2017-6, s. 3](#), which had recodified this section.

Effect of Amendments.

Session Laws 2011-182, s. 8, effective January 1, 2012, rewrote the section catchline, which formerly read: "Article 21 relating to absentee voting by servicemen and certain civilians not applicable"; and substituted "Article 21A of this Chapter" for "Article 21 of this Chapter, relating to absentee registration and voting by servicemen and certain civilians."

Research References & Practice Aids

Hierarchy Notes:

[N.C. Gen. Stat. Ch. 163](#)

N.C. Gen. Stat. § 163-258.7

Current through Session Laws 2024-58 of the 2024 Regular Session of the General Assembly, but does not reflect possible future codification directives from the Revisor of Statutes pursuant to G.S. 164-10.

General Statutes of North Carolina > Chapter 163. Elections and Election Laws. (Subchs. I — X) > Subchapter VII. Absentee Voting. (Arts. 20 — 21A) > Article 21A. Uniform Military and Overseas Voters Act. (Pts. 1 — 2) > Part 1. Uniform Military and Overseas Voters Act. (§§ 163-258.1 — 163-258.25)

§ 163-258.7. Methods of applying for military-overseas ballot.

- (a) A covered voter who is registered to vote in this State may apply for a military-overseas ballot using either the regular application provided by Article 20 of this Chapter or the federal postcard application, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 101(b)(2), [42 U.S.C. § 1973ff\(b\)\(2\)](#), or the application's electronic equivalent.
- (b) A covered voter who is not registered to vote in this State may use the federal postcard application or the application's electronic equivalent simultaneously to apply to register to vote under [G.S. 163-258.6](#) and to apply for a military-overseas ballot.
- (c) The State Board of Elections shall ensure that the electronic transmission system described in [G.S. 163-258.4\(c\)](#) is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot.
- (d) A covered voter may use the declaration accompanying the federal write-in absentee ballot, as prescribed under the Uniformed and Overseas Citizens Absentee Voting Act, section 103, [42 U.S.C. § 1973ff-2](#), as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official no later than 5:00 P.M. on the day before the election.
- (e) To receive the benefits of this Article, a covered voter shall inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include any of the following:
 - (1) The use of a federal postcard application or federal write-in absentee ballot.
 - (2) The use of an overseas address on an approved voter registration application or ballot application.
 - (3) The inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a covered voter.
- (f) This Article does not preclude a covered voter from voting an absentee ballot under Article 20 of this Chapter.

History

[2011-182, s. 1](#); [2017-6, s. 3](#); [2018-146, s. 3.1\(a\)](#), (b).

Annotations

Notes

N.C. Gen. Stat. § 163-258.7

Editor's Note.

This section was recodified as now former G.S. 163A-1341 by Session Laws [2017-6, s. 3](#). Former G.S. 163A-1341 was then re-recodified as this section by Session Laws [2018-146, s. 3.1\(a\)](#), effective January 31, 2019. The historical citation from the former section has been added to this section as re-recodified.

[42 U.S.C. § 1973ff](#), referred to in subsection (a), was transferred to [52 U.S.C. § 20301](#) and [42 U.S.C. § 1973ff-2](#), referred to in subsection (d), was transferred to [52 U.S.C. § 20303](#), by the Office of the Law Revision Counsel as part of an editorial reclassification of the United States Code.

Session Laws [2018-146, s. 3.1\(b\)](#), effective January 31, 2019, repealed Session Laws [2017-6, s. 3](#), which had recodified this section.

Research References & Practice Aids

Hierarchy Notes:

[N.C. Gen. Stat. Ch. 163](#)

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NORTH CAROLINA COURT OF APPEALS

JEFFERSON GRIFFIN,

Petitioner-Appellant,

v.

NORTH CAROLINA STATE BOARD
OF ELECTIONS,

Respondent-Appellee,

and

ALLISON RIGGS,

Intervenor-Respondent-
Appellee.

From Wake County

CONTENTS OF ADDENDUM

Order, Griffin v. NCSBOE, et al, Case No. 5:24-CV-00731-M, dated

February 25, 2025Add 1-2

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

Case No. 5:24-CV-00731-M

JEFFERSON GRIFFIN,

Plaintiff,

v.

NORTH CAROLINA STATE
BOARD OF ELECTIONS,

Defendant,

and

NORTH CAROLINA ALLIANCE
FOR RETIRED AMERICANS et al.,

Intervenor-Defendants.

ORDER

This matter comes before the court after a mandate from the United States Court of Appeals for the Fourth Circuit took effect. *See* DE 34 (reflecting docketing date of “02/26/2025”); *see also id.* at 3. On February 4, 2025, the Fourth Circuit affirmed in part and affirmed and modified in part this court’s order abstaining and remanding this matter to the Wake County Superior Court. DE 30 at 9-11; *see also* DE 24 at 1 (referencing analysis from Docket Entry 50 in Case No. 5:24-CV-00724-M); *Jefferson Griffin v. North Carolina State Board of Elections, et al.*, Case No. 5 :24-CV-00724-M, DE 50 at 20-26. In accordance with the Fourth Circuit’s order, this court MODIFIES “its order to” abstain under *Railroad Commission of Texas v. Pullman Company*, 312 U.S. 496 (1941), and therefore “expressly retain[s] jurisdiction of the federal issues identified in [Defendant’s] notice of removal should those issues remain after the resolution of the state court proceedings, including any appeals.” DE 30 at 11.

Nothing in this order should be construed as a limit upon the parties to invoke those federal issues in state court (subject to an appropriate *England*-reservation). *England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 411, 421-23 & n.13 (1964).

SO ORDERED this 26th day of February, 2025.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE