

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE STATE BOARD OF ELECTIONS

IN RE PROTESTS OF JEFFERSON
GRIFFIN, ASHLEE ADAMS, FRANK
SOSSAMON, AND STACIE MCGINN

**BRIEF OF ASSOCIATE JUSTICE ALLISON RIGGS
IN OPPOSITION TO ELECTION PROTESTS**

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Justice Allison Riggs files this brief in opposition to the three categories of election protests—those labeled “Incomplete Voter Registration Information,” “FPCA,” and “UOCAVA ID”—that Judge Jefferson Griffin filed and that are now before the State Board of Elections.

INTRODUCTION

Justice Riggs won the race for Supreme Court Associate Justice Seat 6. The official canvass results showed that she received 734 more votes than Judge Griffin. The counties then conducted a full machine recount, which once again found that Justice Riggs won by 734 votes.

Having failed to win over the voters, Judge Griffin now pleads his case here. He asks the Board to change the voting rules, decide that tens of thousands of voters failed to satisfy those changed rules, and then throw out their votes for failure to anticipate the new rules. While that request is legally and constitutionally improper, it is wrong on an even more basic level—one familiar in every North Carolina schoolyard. 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. Yet that is what Judge Griffin is trying to do here.

The Board should deny the protests as an illegal attempt to change the election rules after the votes have been cast and counted. Indeed, Judge Griffin’s lead claim—that the State Board made a paperwork error affecting over 60,000 voters—has already been presented to this Board and a federal court. This Board rejected it outright, and the Eastern District of North Carolina determined that the Republican Party cannot obtain any relief on it for the November 5, 2024 election.

The Board should also deny the protests as non-compliant with the protest rules. Judge Griffin failed to provide the challenged voters with adequate notice, and his attempt to bring a mass challenge against tens of thousands of voters makes individualized inquiry impossible. These protests create an intolerable risk of disenfranchisement.

Finally, the Board should reject Judge Griffin's arguments as misstating North Carolina law. While it is far too late to bring bulk challenges related to the November 2024 election, none of Judge Griffin's arguments here establish that a single voter should have been deemed ineligible. Judge Griffin's arguments are about *how* the voters cast their ballots; he argues that certain voters should have jumped through additional hoops before registering and voting. But this attempt to elevate form over substance fails on its own terms, because North Carolina law does not erect the obstacles to voting that he claims. In other words, each of his tactics for changing the rules is simply wrong under North Carolina law.

BACKGROUND

On November 19, 2024, Judge Griffin appears to have filed over three hundred election protests across all one hundred counties. The timing and number of these protests is unclear; Judge Griffin's counsel declined to copy Justice Riggs' counsel when filing them.

According to Judge Griffin, "the vast majority of the protests were emailed by or before [the] 5:00pm [deadline] on 19 November 2024."¹ Later that night, Judge

¹ Br. Supp. Election Protests at 25 (State Bd. Elecs. filed Nov. 27, 2024) ("Griffin Br.").

Griffin provided the State Board and counsel for Justice Riggs with 306 protests.² But when Judge Griffin purported to serve the protests on the affected voters, he sent them a postcard—addressed to the voter “or current resident”—containing a QR code that mobile phone users can use to visit a North Carolina Republican Party website. That website presented links to at least 315 protests ostensibly filed by Griffin.³ This collection of 315 protests appears to be both under- and over-inclusive: it omits protests sent to the State Board and Justice Riggs,⁴ but it also includes other protests not sent to those recipients.⁵ This sloppy approach has left Justice Riggs—and presumably the Board—unclear about exactly which protests were filed and served. Worse, it prevents voters from knowing whether their vote is being challenged here.

Whatever the number of votes at issue, Judge Griffin’s protests fit into one of six categories. The first three—labeled “Deceased Voter,” “Felon,” and “Not Registered”—together cover roughly one thousand voters and are being heard by the county boards of elections. Those county boards are overwhelmingly dismissing Judge Griffin’s challenges, referring only a handful of potential issues to this Board for further action. While these hearings are ongoing, it is clear that any potential issues affect far fewer than 734 votes and thus could not have affected the outcome of this election. The county boards are finding that the vast majority of Judge

² See <https://dl.ncsbe.gov/?prefix=Legal/Nov%202024%20Protests/Griffin/>, archived at <https://perma.cc/G9QX-CDZK>. There is also one apparent duplicate: “Granville-Griffin-Incomplete Voter Registration Protest.”

³ See https://www.nc.gop/griffin_protest, archived at https://web.archive.org/web/20241129185534/https://www.nc.gop/griffin_protest.

⁴ *E.g.*, “Alamance - Griffin - Incomplete Protest” and “Anson - Griffin - Not Registered Protest.”

⁵ *E.g.*, “Ashe - Griffin - Deceased Protest” and “Cabarrus - Griffin -Deceased Protest.”

Griffin’s protests seek to challenge ballots cast by eligible voters or that the county boards had already removed from the official count before Judge Griffin filed his protests.

The remaining three categories of protests are pending before this Board and are discussed below.

A. “Incomplete Voter Registration Information” Protests

Most of the voters that Judge Griffin is challenging—apparently over 60,000—are part of the protests labeled “Incomplete Voter Registration Information.” These protests reprise previously unsuccessful arguments under the Help America Vote Act of 2002 (HAVA).⁶

In October 2023, non-party Carol Snow filed an administrative HAVA complaint with this Board. She alleged that the voter registration application form then in use “would imply” to applicants with a driver’s license or social security number that they need not provide those numbers when registering to vote.⁷

In November 2023, the Board voted unanimously to resolve Ms. Snow’s complaint by finding that a HAVA violation “could occur as a result of the voter registration application form” and that “the appropriate remedy is the implementation of staff’s recommended changes to the voter registration application form.”⁸ The Board “did not approve the requested remedy to contact all existing

⁶ 52 U.S.C. § 20901 *et seq.*

⁷ N.C. HAVA Administrative Complaint Form at 2 (State Bd. Elecs. filed Oct. 6, 2023), archived at <https://perma.cc/Y4C5-EKUT>.

⁸ Minutes of Meeting at 4 (State Bd. Elecs. Nov. 28, 2023), archived at <https://perma.cc/CCW2-YX7R>.

registered voters whose electronic records do not show a driver’s license number or last four digits of a Social Security number.”⁹ The Board explained that “the law’s purpose of identifying the registrant upon initial registration is already accomplished because 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.”¹⁰ “In other words, no one who lacked this information when registering since the enactment of HAVA would have been allowed to vote without proving their identity consistent with HAVA.”¹¹

Nearly a year later, and less than 90 days before the election, the Republican National Committee and North Carolina Republican Party filed a lawsuit parroting Ms. Snow’s allegations.¹² They alleged in their August 23, 2024 complaint “that 225,000 people, including ‘possible non-citizens’ and other ineligible voters, registered to vote using the previous form,” and they claimed that this “Board was required to strike these ineligible voters from the North Carolina voter rolls.”¹³ The Eastern District of North Carolina dismissed that lawsuit in part,¹⁴ but it permitted the plaintiffs to maintain a claim under the North Carolina Constitution.¹⁵ In allowing that claim to proceed, the district court acknowledged this Board’s argument that the

⁹ Order at 4 (State Bd. Elecs. Dec. 6, 2023), archived at <https://perma.cc/5KPY-SQP5>.

¹⁰ *Id.* at 4–5.

¹¹ *Id.* at 5.

¹² *Republican Nat’l Comm. v. N. Carolina State Bd. of Elections*, 120 F.4th 390, 398 (4th Cir. 2024).

¹³ *Id.* at 399.

¹⁴ *Republican Nat’l Comm. v. N. Carolina State Bd. of Elections*, No. 5:24-CV-00547-M, 2024 WL 4523912, at *21 (E.D.N.C. Oct. 17, 2024).

¹⁵ Order at 4, *Republican Nat’l Comm.* (E.D.N.C. Nov. 22, 2024) (ECF No. 73) (attached as Exhibit 1).

plaintiffs had waited too long to bring their claim—until just weeks before the November 2024 election. The district court declined to dismiss plaintiffs’ claim because their argument could potentially have forward-looking applicability for future elections. The district court noted, however, that plaintiffs “are not going to obtain any relief in connection with the most recent election.”¹⁶

Meanwhile, Judge Griffin filed protests raising this same HAVA argument in connection with the most recent election, seeking the retroactive application that the district court already rejected in the North Carolina Republican Party’s lawsuit. Judge Griffin claims to have identified over 60,000 ballots statewide that were cast (a) before election day and (b) by voters whose registration records with the State 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.”¹⁷ Judge Griffin asks the Board to inform those 60,000 voters that they “have a cure period during which the voter can provide the missing information.”¹⁸ If those voters “fail to provide a validated drivers license or social security number during the cure period,” he asks the Board to throw out their ballots.¹⁹ Judge Griffin thus seeks to force these voters to comply with a new—and superfluous—requirement to have their vote counted.

¹⁶ *Id.*

¹⁷ *E.g.*, “Durham-Griffin-Incomplete Voter Registration Information Protest” at Bonifay Aff. ¶ 10.a, archived at <https://perma.cc/W84R-HQRG>.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 3.

B. “FPCA” and “UOCAVA ID” Protests

The final two categories of protests reprise claims already rejected by the North Carolina trial and appellate courts. In the “FPCA” protests, Judge Griffin claims to have identified some number of “likely matches”—apparently more than 250 voters—who submitted Federal Post Card Application forms “in 2024 seeking a North Carolina ballot, and who self-identified as never having lived in the United States.”²⁰ The “UOCAVA ID” protests purport to cover an indefinite number of absentee ballots that were, on “information and belief,” cast “by overseas voters who did not provide a copy of photo identification (or an exception form).”²¹

These arguments mirror claims that the North Carolina Republican Party and others brought in October 2024 in an action styled *Kivett v. North Carolina State Board of Elections*. The plaintiffs in that case alleged that this 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.”²² Judge Griffin raises that same issue here in his “FPCA” protests.

The *Kivett* plaintiffs also claimed that the Board had improperly exempted overseas and military voters from “N.C. Gen. Stat. § 163-166.12’s HAVA identification provisions.”²³ Judge Griffin has now repackaged that claim in his

²⁰ *E.g.*, “Durham-Griffin-Felon Protest” at Bonifay Aff. ¶¶ 15, 19, archived at <https://perma.cc/7BEP-TMJB>.

²¹ *E.g.*, “Durham-Griffin-UOCAVA ID Protest” at 2, archived at <https://perma.cc/ZVV5-27FW>.

²² Compl. ¶ 78, *Kivett v. N. Carolina State Bd. of Elections*, No. 24CV031557-910 (N.C. Super Ct. filed Oct. 2, 2024) (attached as Exhibit 2).

²³ *Id.* ¶ 90.

“UOCAVA ID” protests, arguing that all military and overseas voters must satisfy the photo ID requirements that apply to domestic absentee ballots.

Just over two weeks before the election, the Wake County Superior Court heard the *Kivett* plaintiffs’ request for a preliminary injunction.²⁴ The plaintiffs abandoned their photo ID argument by announcing that they were proceeding only on their claim that overseas voters were ineligible to vote in North Carolina.²⁵ The Superior Court then denied their request for an injunction, finding that the plaintiffs had “failed to make a threshold showing that they are likely to succeed on the merits.”²⁶ The plaintiffs immediately appealed, and the Court of Appeals unanimously denied their Petition for Writ of Supersedeas and Motion for Temporary Stay and Temporary Injunction.²⁷ Then, four days before the election, the plaintiffs filed in our Supreme Court a Petition for Writ of Supersedeas and for Discretionary Review, but the Supreme Court did not intervene before the election.²⁸ (Justice Riggs is recused from that Petition, which is still pending.) The election thus proceeded without the changes that Judge Griffin now asks this Board to impose retroactively.

ARGUMENT

The three categories of protests pending before this Board—those labeled “Incomplete Voter Registration Information,” “FPCA,” and “UOCAVA ID”—are

²⁴ Order Denying Pls.’ Mot. at 1, *Kivett* (N.C. Super. Ct. Oct. 21, 2024) (attached as Exhibit 3).

²⁵ *Id.* at 2 ¶ 1.

²⁶ *Id.* at 4 ¶ 2.

²⁷ Order, *Kivett v. N. Carolina State Bd. of Elections*, No. P24-735 (N.C. Ct. App. Oct. 29, 2024) (attached as Exhibit 4).

²⁸ See Pls.’ Pet. Writ Supersedeas & Discret. Rev., *Kivett v. N. Carolina State Bd. of Elections*, No. 281P24 (N.C. filed Nov. 1, 2024) (attached as Exhibit 5).

attempts to revive arguments that already failed to change the rules in the weeks and days leading up to the election. Those claims were meritless and untimely before the election, and they are even more improper now.

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

The Board should deny all Judge Griffin’s protests on the ground that the runner-up in an election cannot attempt to change the outcome by striking voters from the voting rolls or adding new voting requirements.

A. The Civil Rights Act Bars Most of the Challenges

Judge Griffin asks the Board to throw out tens of thousands of votes based on an alleged technicality that sheds no light on whether the voter had a right to vote.

For the bulk of the challenges—those in the “Incomplete Voter Registration Information” protests—Judge Griffin relies on a list of voters whose registration records with the State 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.”²⁹ This list establishes only what is in Board records. It does not establish that any person lacks either number, that any person declined to provide those numbers, or that any person is not qualified to vote. Yet Judge Griffin asks the State Board to throw out tens of thousands of votes on this basis alone.

That request violates the Civil Rights Act of 1964, which prohibits public officials from “deny[ing] the right of any individual to vote in any election because of

²⁹ *E.g.*, “Durham-Griffin-Incomplete Voter Registration Information Protest” at Bonifay Aff. ¶ 10.a.

an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.”³⁰ This “law protecting against racially discriminatory voting practices and ‘providing for equal rights’” prohibits the sort of hyper-technical challenges that Judge Griffin brings here.³¹ Allegations that State Board records suffer from a paperwork error is not a basis to throw out votes.

B. The National Voter Registration Act and Voting Rights Act Bar the Protests

Judge Griffin’s protests seek to strike tens of thousands of people from the voter rolls *after* they cast their votes. That request violates the National Voter Registration Act of 1993 (NVRA) and the Voting Rights Act of 1965 (VRA).³² The NVRA “prohibits systematic removal programs ‘90 days before an election because that is when the risk of dis[en]franchising eligible voters is the greatest.’”³³ When the election is at least 90 days away, “eligible voters who are incorrectly removed have enough time to rectify any errors.”³⁴ But when the election is imminent, any

³⁰ 52 U.S.C. § 10101(a)(2)(B).

³¹ *Republican Nat’l Comm. v. N. Carolina State Bd. of Elections*, 120 F.4th 390, 406 (4th Cir. 2024).

³² *Cf.* N.C. Gen. Stat. § 163-82.14(a1) (“List maintenance efforts under this section shall be nondiscriminatory and shall comply with the provisions of the Voting Rights Act of 1965, as amended, and with the provisions of the National Voter Registration Act.”).

³³ *Republican Nat’l Comm.*, 120 F.4th at 401 (alteration in original) (quoting *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014)); *see also id.* (“North Carolina has a unified registration system for both state and federal elections, and thus is bound by the provisions of the NVRA for the registrants at issue here.”).

³⁴ *Arcia*, 772 F.3d at 1346.

systematic removal effort risks disenfranchisement because of the limited time remaining for voters to show that they are eligible to vote.

The mass challenges here wouldn't just create that risk; they would all but ensure that eligible voters would be disenfranchised. That disenfranchisement would violate the NVRA's prohibition on systematic removal. And it would also violate the VRA's separate requirement that "[n]o person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of chapters 103 to 107 of [Title 52] or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote."³⁵ Judge Griffin is asking the Board to throw out votes cast by those who were (and still are) qualified to vote. His arguments for changing the registration and voting rules now are, in addition to being meritless, not a permissible basis for throwing out votes already cast.

C. The U.S. and N.C. Constitutions Bar the Protests

Judge Griffin's attempts to change the rules after the election are also unconstitutional.³⁶ The retroactive changes he seeks would disenfranchise voters and

³⁵ 52 U.S.C. § 10307(a).

³⁶ As the Supreme Court of Wisconsin put it when rejecting the Trump campaign's post-election effort to invalidate more than 220,000 ballots: "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." *Trump v. Biden*, 394 Wis. 2d 629, 647, 951 N.W.2d 568, 577 (2020); *see also id.* at 629 n.12, 951 N.W.2d at 577 n.12 ("Granting the relief requested by the Campaign may even be unconstitutional.").

thus violate the Equal Protection and Due Process Clauses of the U.S. Constitution,³⁷ as well as their North Carolina analogues.³⁸

In state elections, “the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election.”³⁹ Accordingly, a state “may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.”⁴⁰

Likewise, it “is settled that if the election process reaches the point of ‘patent and fundamental unfairness,’ the due process clause may be violated.”⁴¹ That level of unfairness exists—and “a court will strike down an election on substantive due process grounds”—if “two elements are present: (1) likely reliance by voters on an established election procedure and/or official pronouncements about what the procedure will be in the coming election; and (2) significant disenfranchisement that

³⁷ “Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).

³⁸ “Article I, Section 19 of the North Carolina Constitution guarantees both due process rights and equal protection under the law by providing that no person shall be ‘deprived of his life, liberty, or property, but by the law of the land’ and that ‘[n]o person shall be denied the equal protection of the laws.’” *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 180, 594 S.E.2d 1, 15 (2004) (alteration in original) (quoting N.C. Const. art. I, § 19).

³⁹ *Kim v. Bd. of Educ. of Howard Cnty.*, 93 F.4th 733, 741 (4th Cir. 2024) (quoting *Hadley v. Junior Coll. Dist. of Metro. Kansas City, Mo.*, 397 U.S. 50, 56 (1970)); see also *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 36 n.78 (1973) (noting “the protected right, implicit in our constitutional system, to participate in state elections on an equal basis with other qualified voters whenever the State has adopted an elective process for determining who will represent any segment of the State’s population”).

⁴⁰ *Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (per curiam); see also *Lecky v. Virginia State Bd. of Elections*, 285 F. Supp. 3d 908, 920 (E.D. Va. 2018) (“Courts have generally found equal protection violations where a lack of uniform standards and procedures results in arbitrary and disparate treatment of different voters.”).

⁴¹ *Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (4th Cir. 1983) (quoting *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978)).

results from a change in the election procedures.”⁴² Those elements are satisfied when, for example, “the losing candidate contest[s] the validity of the absentee ballots” cast in accordance with officially sponsored election procedure.⁴³ Even if that procedure turns out to have been flawed in hindsight, a “state’s retroactive invalidation” of those absentee ballots “violate[s] the voters’ rights under the fourteenth amendment.”⁴⁴

Judge Griffin’s protests seek that sort of retroactive invalidation. Over a year ago, this Board unanimously declined “to contact all existing registered voters whose electronic records do not show a driver’s license number of last four digits of a Social Security number.”⁴⁵ The state and federal courts likewise declined to alter the election rules in response to the North Carolina Republican Party’s lawsuits. This Board and those courts were correct not to intervene then, and it would be unconstitutional to do so now.

II. The Protests Are Procedurally Improper Mass Challenges That Fail to Provide Voters with Notice and an Opportunity to Be Heard

The General Assembly empowered and directed this Board to “prescribe forms for filing protests.”⁴⁶ For over six years, the protest form has begun with a warning that it “shall not be used to challenge the registration of an individual voter.”⁴⁷ This Board’s Election Protest Procedures Guide thus clarifies that “[a]llegations of

⁴² *Bennett v. Yoshina*, 140 F.3d 1218, 1226–27 (9th Cir. 1998).

⁴³ *Lecky*, 285 F. Supp. 3d at 917.

⁴⁴ *Griffin*, 570 F.2d at 1070.

⁴⁵ Order at 4 (State Bd. Elecs. Dec. 6, 2023), archived at <https://perma.cc/5KPY-SQP5>.

⁴⁶ N.C. Gen. Stat. § 163-182.9(c).

⁴⁷ 8 N.C. Admin. Code 2.0111.

unqualified voters participating may not be brought as election protests; these must be brought as voter qualification challenges filed within the time period required by law.”⁴⁸

Judge Griffin’s protests are untimely challenges—attacks on the eligibility of specific North Carolina voters. By attempting to bring these untimely challenges as part of the protest process, Judge Griffin is making it impossible for the affected voters to receive the individualized attention that these accusations merit.

Consider the obligation to “timely serve all Affected Parties.”⁴⁹ This service requirement obligates Judge Griffin to “serve copies of all filings on every person with a direct stake in the outcome of this protest” by “personal delivery, transmittal through U.S. Mail or commercial carrier service . . . , or by any other means affirmatively authorized by the Affected Party.”⁵⁰ If Judge Griffin could proceed with these challenges as protests, he would have to serve over 60,000 people with copies of those protests. But rather than attempt to carry that heavy (and costly) burden, Judge Griffin’s counsel claims to have sent a postcard to over 60,000 voters across the state stating that their “vote *may be affected* by one or more protests filed in relation to the 2024 General Election,” all without explaining that *he* was the one filing the protests or even telling the addressee *which protests* apply to their vote.⁵¹ Judge Griffin tried to offload that work onto the voter by providing a QR code that links to

⁴⁸ State Board of Elections, Election Protest Procedures Guide at 9 (June 27, 2022), archived at <https://perma.cc/PD92-HWDZ>.

⁴⁹ 8 N.C. Admin. Code 2.0111.

⁵⁰ *Id.*

⁵¹ Affidavit of Kyle Offerman at Attach. 1 (emphasis added) (attached as Exhibit 6).

the North Carolina Republican Party website where some of the protests are available. The postcards gave no indication of service of formal legal documents that might implicate voters' constitutional rights. Nor did the postcards attach copies of the protests or any other legal document.

These mailings are not designed to provide actual notice, much less accomplish service. They are just as likely to be tossed in the trash—or rejected as potential mail fraud—as taken seriously. After all, the Federal Trade Commission and Social Security Administration warn the public that “scammers hide harmful links in QR codes to steal personal information.”⁵² Judge Griffin cites no law supporting electronic service by QR code. Nor can he. The applicable regulations provide that other forms of service, such as electronic service, are permissible only if “affirmatively authorized by the Affected Party.”⁵³ There is no evidence that any of the voters challenged here consented to service by QR code.

These procedural violations—attempting to bring mass challenges as protests while failing to serve affected parties—underscore the fundamental unfairness of Judge Griffin’s approach. He is asking to throw out votes cast by registered voters who followed the rules applicable to them. While these voters cannot be forced to jump through new, additional hoops after the election just to have their votes

⁵² Federal Trade Commission, “Scammers hide harmful links in QR codes to steal your information” (Dec. 6, 2023), archived at <https://perma.cc/UZ4F-9YBE>; *see also* Social Security Administration, “Protecting Yourself from QR Code Fraud” (Feb. 23, 2024), archived at <https://perma.cc/YY6V-CGZF>.

⁵³ 8 N.C. Admin. Code 2.0111.

counted, Judge Griffin’s approach ensures that many of those voters will never even have the opportunity to be heard.

III. Judge Griffin Is Wrong on the Merits

Issues of timing and procedure aside, Judge Griffin’s legal theories for disenfranchising voters are wrong on the merits.⁵⁴

A. Judge Griffin Has Not Demonstrated Probable Cause That Any Voter’s Registration Application Was “Incomplete”

In the “Incomplete Voter Registration Information” protests, Judge Griffin alleges that state law requires voters to provide their driver’s license number or the last four digits of their social security number when registering to vote. He claims that “approximately 60,000 people” may have failed to include that information on their voter applications—in some cases years or *decades* ago.⁵⁵ Because of that potential paperwork error, Judge Griffin contends that these 60,000 North Carolinians’ votes should not count in this election even if their votes have been repeatedly counted in past elections. These protests fail to comprehend, or accurately describe, federal and North Carolina law on voter registration.

North Carolina law implements and is governed by HAVA, which provides procedures for voter registration.⁵⁶ County boards are responsible for registering

⁵⁴ The arguments in this section overlap somewhat with those presented in Terence Everitt’s, Woodson Bradley’s, Bryan Cohn’s and the North Carolina Democratic Party’s Responsive Brief in Opposition to Election Protests.

⁵⁵ Griffin Br. at 1.

⁵⁶ See, e.g., N.C. Gen. §§ 163-82.11(c), 163-82.27. The 2024 general election was a federal and state election. Because the county boards used combined ballots for federal and state office in this election, see N.C. Gen. Stat. § 163-165.5B, the federal requirements of HAVA applied to the county boards of elections and the 60,000 voters in this election.

eligible voters.⁵⁷ A person registers by completing a form that requests various information, including a driver’s license or social security number.⁵⁸ Eligible voters who do not have either number are still entitled to register to vote; in that case, the state assigns a “unique identifier number to an applicant.”⁵⁹

Once a voter completes a voter registration form, the *burden is on the county*, not on the voter, to identify and address any errors in the registration. If information on a registration form is missing, that omission does not invalidate the registration. Instead, the county board must “make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete.”⁶⁰ Despite this mandate, if a county board received a voter registration form without a driver’s license or social security number, the county board might have assumed that a voter *did not have those numbers*.⁶¹ It is ultimately the county board—not the voter—that must determine whether the information provided by the voter (including any lack of driver’s license or social security number) meets federal and state requirements.⁶² If it reaches such a determination, the county board proceeds with mail verification and registration.⁶³

Judge Griffin does not allege whether any of the 60,000 voters cast ballots in any prior federal elections.

⁵⁷ N.C. Gen. Stat. § 163-82.1(b).

⁵⁸ See 52 U.S.C. § 21083(a)(5)(A)(i); N.C. Gen. Stat. § 163-82.4(a)(11).

⁵⁹ 52 U.S.C. § 21083(a)(1)(A), (5)(A)(ii); N.C. Gen. Stat. §§ 163-82.4(b), 163-82.10A.

⁶⁰ N.C. Gen. Stat. § 163-82.4(a).

⁶¹ See 52 U.S.C. § 21083(5)(A)(ii) (“Special rule for applicants without driver’s license or social security number”); N.C. Gen. Stat. § 163-82.4(b) (“No Drivers License or Social Security Number Issued”).

⁶² 52 U.S.C. § 21083(a)(5)(A)(iii); N.C. Gen. Stat. §§ 163-82.7(a), 163-82.11(d).

⁶³ N.C. Gen. Stat. § 163-82.7(c), (d), (e).

Federal and state law do not demand omniscience or perfection from the county boards when reviewing voter registration forms. If a county board erroneously registered voters by mail without collecting their driver's license or social security numbers, there is an easy remedy: voters are required to submit a photo ID or a document establishing their residency before they vote in their first election.⁶⁴ This requirement applies to all voters, including not only people who did not provide a driver's license or social security number, but also people who provided those numbers but their numbers did not match public records. N.C. Gen. Stat. § 163-166.12(d) thus explains that a failure to match driver's license or social security number to a voter "shall not prevent that individual from registering to vote and having that individual's vote counted" if they present photo ID or HAVA ID. State law also allows any registered voter in a county to challenge other voters if they can prove that they are ineligible to vote.⁶⁵

The "Incomplete Voter Registration Information" protests all rest on the faulty assumption that the cure provision in N.C. Gen. Stat. § 163-82.4(f) somehow renders the 60,000 voters' registrations invalid, but this argument fails for two reasons.

First, § 163-82.4(f) applies only when the county board has not already registered the voter.⁶⁶ Once a county board approves a voter's registration, the state's

⁶⁴ 52 U.S.C. § 21083(a)(5)(A), (b)(1)(A), (b)(1)(B), (b)(2)(A) (setting out rules for registration for federal elections if county boards do not comply with HAVA registration procedures); *see* N.C. Gen. Stat. § 163-166.12(a), (b) (implementing HAVA for federal elections such as the 2024 general election).

⁶⁵ *See* N.C. Gen. Stat. §§ 163-85(c), 163-87, 163-89(c).

⁶⁶ *See* 52 U.S.C. § 21083(a)(5)(A)(iii); N.C. Gen. Stat. §§ 163-82.1(b) and (c), 163-82.7(a), 163-82.11(d).

voter registration system becomes the official record of the registration; under N.C. Gen. Stat § 163-82.10(a), the voter’s registration form is merely “backup to the official registration record of the voter.” The county boards’ approval of the 60,000 voters’ registrations is thus legally binding under federal and state law; it cannot be undone except when a voter is *ineligible*.⁶⁷

Second, the protests assert that the 60,000 voters failed to “cure” any alleged defect in their voter registration form, but that claim is not supported by any facts. For example, because of the new photo ID law in effect during the 2024 general election, many of the 60,000 voters likely showed their drivers’ licenses to election officials before casting their ballots. In that event, *even under Judge Griffin’s (incorrect) legal theory, any purported “deficiency” was timely cured by the 60,000 voters when they voted.*

Judge Griffin also argues that the Board “admitted” that it broke the law.⁶⁸ But this argument mischaracterizes the Board’s December 2023 Order resolving Ms. Snow’s administrative complaint. That Order changed the registration form to require voters to do one of three things: (1) provide a driver’s license; (2) provide a social security number; or (3) check a box affirmatively stating they have not been issued either number.⁶⁹ This alteration, which clarified for the county boards how

⁶⁷ 52 U.S.C. §§ 20507(a)(3), (4), 21083(a)(2)(A)(i), (ii); N.C. Gen. Stat. § 163-82.1(c); *see also* N.C. Gen. Stat. §§ 163-82.14(a) (explaining list maintenance is limited to removing “the names of ineligible voters from the official lists of eligible voters”), 163-82.14(a1) (requiring compliance with the NVRA), 163-85(b) & (c) (setting out the grounds for challenging a voter’s registration).

⁶⁸ Griffin Br. at 6.

⁶⁹ *See* N.C. Voter Registration Application (rev. Jan. 2024) (attached as Exhibit 7); *see also* Order at 4 (State Bd. Elecs. Dec. 6, 2023), archived at <https://perma.cc/5KPY-SQP5>.

they should respond when a voter leaves that section blank, was consistent with the State Board’s discretion under state law. But it in no way was an admission, as Judge Griffin claims, that this Board “broke the law.”⁷⁰ In fact, the North Carolina 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.”⁷¹

Regardless, this Board expressly decided that no action was necessary for previously registered voters, such as the 60,000 voters, because they have proven their identity in the manner required by HAVA.⁷² Thus, counting the votes cast by the 60,000 voters is authorized—not prohibited—by HAVA.

* * *

The “Incomplete Voter Registration Information” protests fail to allege probable cause. Each of the 60,000 voters is eligible to vote: they have executed sworn statements to this effect by registering and voting, and Judge Griffin makes no allegations that impeach those statements. The county boards accepted and processed the 60,000 voters’ registration forms long ago, and the 60,000 voters confirmed their identity by presenting either a photo ID or an approved document establishing residency in their first federal election (whether in the 2024 general election or decades ago). Judge Griffin has offered no individualized evidence to establish when the 60,000 voters first voted, or what documentation they presented.

⁷⁰ Griffin Br. at 5.

⁷¹ *Republican Nat’l Comm. v. N. Carolina State Bd. of Elections*, 120 F.4th 390, 398 (4th Cir. 2024).

⁷² Order at 4–5 (State Bd. Elecs. Dec. 6, 2023).

Accordingly, he cannot establish probable cause to believe that *any* voter identified in his “Incomplete Voter Registration Information” protests was ineligible to vote. Judge Griffin’s hyper-technical reading of federal and state law does not allege an election irregularity, much less one that could sway the outcome of this race.

B. Judge Griffin Has Not Demonstrated Probable Cause to Show That Overseas Voters Are Ineligible

Judge Griffin next alleges in the “FPCA” protests that any voter who checked a box indicating that they “never lived in the United States” is automatically ineligible to vote in state elections because, he claims, “[s]omeone who has never lived in the United States has never resided in North Carolina.”⁷³ Again, Judge Griffin gets the law wrong. “Living” and “residing” in North Carolina are two different things.

The N.C. Constitution guarantees the right to vote to eligible individuals who resided in North Carolina for 30 days before an election.⁷⁴ The Constitution does not define “resided.” North Carolina courts have thus interpreted “resided” in line with common law principles of domicile.⁷⁵

Domicile does not merely mean where someone “lives.” Domicile means a permanent, legal residence as defined by law.⁷⁶ There are three types of domicile: domicile of origin, domicile of choice, and domicile by law.⁷⁷ A person who has never

⁷³ Griffin Br. at 8.

⁷⁴ N.C. Const. art. VI, § 2(1).

⁷⁵ *Hall v. Wake Cnty. Bd. of Elections*, 280 N.C. 600, 605 (1972), *modified by Lloyd v. Babb*, 296 N.C. 416 (1979); *accord Owens v. Chaplin*, 228 N.C. 705, 708–09 (1948).

⁷⁶ *Hall*, 280 N.C. at 605.

⁷⁷ *Thayer v. Thayer*, 187 N.C. 573, 122 S.E. 307, 308 (1924).

lived in North Carolina admittedly cannot make North Carolina their domicile *of choice*. But living in North Carolina is unnecessary for our state to be someone's domicile of origin or domicile by law.

i. An Overseas Voter May Be a North Carolina Resident Due to Their Domicile of Origin

At birth, a person inherits their parents' domicile as their "domicile of origin."⁷⁸ That is true even if the child is born away from home and, by some twist of fate—or, in this case, the military obligations of their overseas parents—never visits her parents' permanent residence. Thus, "it is entirely logical that on occasion, a child's domicile . . . will be in a place where the child has never been."⁷⁹

For example, a child born to a North Carolina servicemember stationed overseas would inherit her parent's North Carolina "residence." That residence would persist until the child (or her parents) established a new permanent residence elsewhere. Since military families often move from temporary assignment to temporary assignment without adopting a new permanent residence, the child may grow up and go off to college without ever establishing a permanent residence to supplant her North Carolina domicile of origin.

Judge Griffin claims that a child's domicile of origin expires when she becomes an adult.⁸⁰ That is wrong. Domicile of origin does not expire upon reaching majority—suddenly leaving a U.S. citizen without a domicile anywhere in the United

⁷⁸ *Id.*

⁷⁹ *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989).

⁸⁰ Griffin Br. at 18 n.3.

States. Instead, that domicile of origin continues until the person establishes a new domicile by choice.⁸¹ Like any domicile, it “is presumed to continue until it is shown to have changed,” and the burden rests on the party seeking to show a change.⁸² Judge Griffin’s citation to *Lloyd v. Babb*, which discusses how residency rules apply to college students, shows that young adults retain their domicile of origin while living away from home if they so choose.⁸³

Judge Griffin’s mass protests fail to grapple with the individual circumstances of any voter. There is no evidence that any of them changed their residency since becoming adults. Without that evidence, particularized for each voter Judge Griffin targets, there is no probable cause to believe that an election irregularity occurred.

ii. Overseas Voters May Be North Carolina Residents by Law

Along with domicile of origin and domicile of choice, the North Carolina General Assembly can establish domicile by law.⁸⁴ The General Assembly has ratified common law principles in defining “residence” in the election code, as reflected in N.C. Gen. Stat. § 163-57(1). A person’s residence is their “fixed” “habitation.”⁸⁵ And consistent with common law principles, if a person permanently relocates within the United States, then she is considered to have lost her prior residence in accordance with N.C. Gen. Stat. §§ 163-57(4) and (5).

⁸¹ *Hall*, 280 N.C. at 605.

⁸² *Reynolds v. Lloyd Cotton Mills*, 177 N.C. 412, 419 (1919).

⁸³ Griffin Br. at 17–18 (citing *Lloyd v. Babb*, 296 N.C. 416, 444, 251 S.E.2d 843, 861 (1979)).

⁸⁴ *Thayer*, S.E. at 308.

⁸⁵ N.C. Gen. Stat. § 163-57(1).

But this rule does not apply to voters who permanently move overseas. Instead, the General Assembly decided in 2011, without a single nay vote, to expand voting rights to voters living abroad by adopting the Uniform Military and Overseas Voters Act (“UMOVA”). For overseas voters who do not satisfy North Carolina’s general residency requirement, state law “assign[s]” overseas voters a North Carolina residence: either “the last place of residence of the voter in” North Carolina or, for the children of former North Carolina residents, “the address of the last place of residence in [North Carolina] of the parent or legal guardian of the voter.”⁸⁶ This law ensures that North Carolina citizens retain the right to vote even if living abroad. In expanding voting rights in state elections this way, the General Assembly mirrored action taken by Congress for federal elections.⁸⁷

Judge Griffin argues that the “State residency requirement” supplemented by UMOVA means something other than what it is.⁸⁸ But UMOVA expanded suffrage to the very people Judge Griffin now tries to disenfranchise: overseas voters who do not satisfy the residency requirement in N.C. Gen. Stat. § 163-57(1) but are otherwise eligible to vote. Those voters are “assigned” a residential address in North Carolina by law and may vote.⁸⁹

Retreating, Judge Griffin asks this Board “to refuse to enforce” UMOVA, suggesting that it is unconstitutional.⁹⁰ But legislation is presumptively

⁸⁶ *Id.* § 163-258.5.

⁸⁷ *See* 52 U.S.C. § 20302(a).

⁸⁸ Griffin Br. at 15.

⁸⁹ N.C. Gen. Stat. § 163-258.5.

⁹⁰ Griffin Br. at 16.

constitutional; constitutional limitations upon the General Assembly “must be explicit”; and a violation of that limitation “must be proved beyond a reasonable doubt.”⁹¹ Here, nothing in the Constitution prohibits the General Assembly from assigning North Carolina residences to certain U.S. citizens abroad. The constitutional provision at issue incorporates common law rules on residency, to include the legislative power to declare certain U.S. citizens living abroad to be domiciled in North Carolina by law for elections purposes. And, as discussed above (in Part I.C), Judge Griffin cannot invalidate a thirteen-year-old statute and retroactively disenfranchise voters through this protest process.⁹²

* * *

The overseas voters targeted by Judge Griffin are North Carolina residents via their domicile of origin or domicile by law. Judge Griffin has not alleged any facts about any of these voters that would support a probable cause finding to the contrary. Thus, no irregularity occurred in counting these voters’ ballots, and the “FPCA” protests should be dismissed.

C. Military and Overseas Voters Were Not Required to Show Photo ID When Casting Their Ballots

Finally, Judge Griffin challenges thousands of military and overseas voters in a shameless attempt to disenfranchise military servicemembers, their families, and other North Carolinians overseas by changing settled law after the fact.

⁹¹ *Harper v. Hall*, 384 N.C. 292, 323, 886 S.E.2d 393, 414 (2023).

⁹² *Cf.* N.C. Gen. Stat. § 1-267.1(c) (“No order or judgment shall be entered [that] . . . finds that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law, except by a three-judge panel of the Superior Court of Wake County.”).

In the “UOCAVA ID” protests, Judge Griffin alleges that overseas voters had to submit photo IDs with their ballots.⁹³ But as he admits, this position contradicts the Board’s rule.⁹⁴ That rule states that the military and overseas voters he targets were *not* required to provide photocopies of their photo IDs.

Judge Griffin does not contest the plain meaning of the regulation. He argues instead—in a post-election protest—that this Board’s rule “is invalid” because it conflicts with his interpretation of state statutes.⁹⁵ He claims that the photo ID requirement for absentee ballots (which is contained in and governed by Article 20 of the elections code⁹⁶) must also apply to military-overseas ballots (which are governed by Article 21A). This argument cherry-picks irrelevant statutes and ignores the overall statutory scheme for military-overseas ballots.

Federal law (the Uniformed and Overseas Citizens Absentee Voting Act or “UOCAVA”) requires states to allow active-duty military and overseas voters to register, request a ballot, and vote by mail in federal elections using prescribed federal forms.⁹⁷ In 2011, the General Assembly decided to allow military and overseas voters to vote in state elections using *the same method*. Voters covered by UMOVA are entitled to cast a “military-overseas ballot.”⁹⁸

The General Assembly delegated to this Board the power to implement UMOVA, including by adopting “standardized absentee-voting materials, including

⁹³ Griffin Br. at 18–22.

⁹⁴ *Id.* at 21 (citing 8 N.C. Admin. Code 17.0109(d)).

⁹⁵ *Id.*

⁹⁶ N.C. Gen. Stat. § 163-230.1.

⁹⁷ 52 U.S.C. § 20302(a).

⁹⁸ N.C. Gen. Stat. § 163-258.2(1), (3), (4), (7).

privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot.”⁹⁹ This Board utilized this authority in deciding that UMOVA voters need not provide photo IDs.

That rule is not “invalid.” Indeed, as written, UMOVA *prohibits* application of the photo ID requirement. The only authentication material required under UMOVA is “a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter’s identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot.”¹⁰⁰ This requirement is exclusive: “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.”¹⁰¹

Judge Griffin argues that the photo ID requirements contained in Article 20 (governing domestic absentee voters) necessarily extend to UMOVA voters, who are governed by Article 21A. This argument takes three forms, none of which is persuasive.

First, Judge Griffin argues that if the legislature intended to exempt military-overseas voters from the photo ID requirement, it would have said so explicitly. This argument fails because UMOVA sets out the exclusive requirements for military-overseas voters to authenticate their ballots. Additionally, this argument incorrectly

⁹⁹ *Id.* § 163-258.4(d).

¹⁰⁰ *Id.* §§ 163-258.4(e), 163-258.13.

¹⁰¹ *Id.* § 163-258.17(b) (emphasis added).

suggests that photo ID laws were already on the books when UMOVA was passed. The opposite is true. UMOVA was passed in 2011 and became effective in January 2012. The first photo ID law was signed in August 2013. If the legislature had intended to impose a photo ID requirement on military and overseas voters under Article 21A, it would have amended UMOVA just as it amended the absentee ballot statute under Article 20.

Second, Judge Griffin cites a hodgepodge of other statutes, none of which can be fairly read to supplant UMOVA. He argues that UMOVA does not mention a “sealed container return envelope,” and speculates that the absence of this term requires the State Board to look outside Article 21A to Article 20 for guidance.¹⁰² Yet the reason UMOVA does not mention a “sealed container return envelope” is that, under UMOVA, the State 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.”¹⁰³

Third, Judge Griffin argues that absentee ballots and military-overseas ballots are “generally treated alike.”¹⁰⁴ But he ignores several material differences. For example, covered voters can register and request an absentee ballot simultaneously and electronically.¹⁰⁵ Military-overseas ballots can be submitted electronically.¹⁰⁶ They include unique declarations.¹⁰⁷ And they will be counted as long as they are

¹⁰² Griffin Br. at 19–20.

¹⁰³ N.C. Gen. Stat. § 163-258.4(d).

¹⁰⁴ Griffin Br. at 20.

¹⁰⁵ N.C. Gen. §§ 163-258.6, 163-258.7.

¹⁰⁶ *Id.* § 258.4(d).

¹⁰⁷ *Id.* § 258.4(e)

received before the county canvass.¹⁰⁸ Covered voters *may* submit “an absentee ballot under Article 20 of this Chapter.”¹⁰⁹ But a military-overseas ballot submitted in accordance with Article 21A is distinguished by the statute.¹¹⁰ Judge Griffin’s claimed similarities, in contrast, are sparse and do not establish that a military-overseas ballot is subject to the same requirements of a domestic absentee ballot.

In one last try to save his protest, Judge Griffin attacks the constitutionality of UMOVA in its entirety, arguing that making voting easier for military and overseas voters violates our state constitution’s equal protection clause.¹¹¹ Again, Judge Griffin cannot level facial constitutional challenges as part of a post-election protest. But regardless, UMOVA survives constitutional scrutiny. Submitting a ballot abroad is significantly more burdensome for those who serve our country or who live abroad. Reducing barriers to voting otherwise applicable to North Carolinians, such as transmission methods (e.g., electronic), or a reduction of unnecessary authentication methods (e.g., requiring declaration under penalty of perjury only), is a fair, reasonable, and rational way to offset those burdens.

In any event, even if photo ID were required for military-overseas ballots, UMOVA explicitly provides that “[i]f a voter’s mistake or omission in the completion of a document under this Article does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document.”¹¹²

¹⁰⁸ *Id.* § 258.12(a).

¹⁰⁹ *Id.* § 258.7(f).

¹¹⁰ *Id.*

¹¹¹ *See* Griffin Br. at 21 (citing N.C. Const. art. I, § 19).

¹¹² N.C. Gen. Stat. § 163-258.17(a).

The omission of photo ID by military-overseas voters does not prevent the State Board from determining their eligibility. As discussed above, all military-overseas ballots include a declaration swearing to each voters' eligibility, including their identity.¹¹³ Judge Griffin offers no evidence that any of these declarations are deficient. Thus, the lack of a photo ID with military-overseas voters' ballots, is not sufficient by itself, to invalidate these ballots or to establish probable cause to support the protests.

Judge Griffin has failed to show that military or overseas voters should have submitted photo IDs. His "UOCAVA ID" protests should therefore be dismissed.

CONCLUSION

The Board should dismiss Judge Griffin's protests.

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Respectfully submitted,

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¹¹³ *Id.* §§ 163-258.4(e), 163-258.13.

CERTIFICATE OF SERVICE

The undersigned counsel certifies that a copy of this Brief of Associate Justice Allison Riggs in Opposition to Election Protests was filed and served by email on December 6, 2024, addressed as follows:

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