No. 25-1397(L)

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JEFFERSON GRIFFIN,
Plaintiff – Appellee,

v.

ALLISON RIGGS,
Intervenor – Appellant,

and

NORTH CAROLINA STATE BOARD OF ELECTIONS,
Defendant,

and

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

On Appeal from the United States District Court for the Eastern District of North Carolina, No. 5:24-cv-00731-M-RJ

MOTION FOR STAY AND INJUNCTION PENDING APPEAL

Relief Requested by Wednesday, April 23, 2025[*]

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[*] The North Carolina State Board of Elections reported on April 15 that it is working with a vendor and will be ready to begin implementing the state-law remedy at issue here "within a week of entering into a contract." *See infra* p. 9. Justice Riggs understands that this remedy will thus go into effect on or after April 23.

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Intervenor-Appellant Allison Riggs moves under Federal Rule of Appellate Procedure 8(a)(2) for a stay and injunction pending appeal. Justice Riggs presented this same request to the district court, which denied it on April 15, 2025.

Plaintiff-Appellee Jefferson Griffin opposes this motion and intends to file a response. Defendant North Carolina State Board of Elections consents to the requested relief and also intends to file a response.

INTRODUCTION

Two months ago, this Court exercised its discretion to abstain from deciding the federal issues in this case while the North Carolina courts resolved unsettled questions of state law. The North Carolina courts used the opportunity to issue the "most impactful election-related court decision our state has seen in decades." *Griffin v. N.C. State Bd. of Elections*, No. 320P24-3, 2025 WL 1090903, at *17 (N.C. Apr. 11, 2025) (Dietz, J., concurring in part and dissenting in part). That decision permits a losing candidate to bring a post-election lawsuit intended to overturn the results by retroactively disenfranchising voters. Rather than obviate the need for federal court review, the North Carolina courts endorsed a state-law remedy that "cries out" for "a decisive rejection of this sort of *post hoc* judicial tampering in election results." *Id*.

At Judge Griffin's request, the Supreme Court of North Carolina held that active-duty military personnel and other North Carolinians living abroad had to

provide photo identification in November 2024 when casting their ballots for Associate Justice. This ruling applies to votes cast in only one of North Carolina's one hundred counties, and it applies even though North Carolina law was clear at the time that these voters were "not required to submit a photocopy of acceptable photo identification." 8 N.C. Admin. Code 17.0109(d). The Supreme Court also struck down a North Carolina statute that permitted North Carolinians living abroad who inherited their residence from their parents to vote for Associate Justice.

The Supreme Court applied both changes retroactively, ordered the State Board to throw out the targeted military and overseas ballots unless those voters provide—five months after the election—a copy of their photo identification within 30 days, and ordered the State Board to discard the ballots cast by inherited-residence voters without any cure period. The Supreme Court permitted this remedy without any consideration of federal law because this Court—and Justice Riggs—reserved those federal-law issues for federal court.

Consistent with that reservation, Justice Riggs moved the district court on April 11 to issue an injunction against any implementation of the state-law remedy until it had considered the federal issues. Rather than maintain the status quo, the district court "ORDERED [the State Board] to proceed" with the state-law remedy and instructed the State Board "NOT [to] certify the results of the election" that Justice Riggs won.

Justice Riggs now moves this Court for an order staying the district court's decision and for an injunction pending appeal that prohibits the parties from taking any action to enforce or effectuate the state-law remedy. This stay and injunction are necessary to ensure that this Court has time to "address the federal constitutional and other federal issues the Board raised in removing the case." *Griffin v. N.C. State Bd. of Elections*, No. 25-1020, slip op. at 11 (4th Cir. Feb. 4, 2025) (per curiam) (Exhibit A). To allow the state-law remedy to go into effect while those federal-law issues remain unresolved would be inconsistent with the U.S. Constitution and this Court's mandate.

BACKGROUND

A. Judge Griffin Protests Justice Riggs' Election Win

The final canvassed results of the November 2024 general election showed that Justice Riggs received 734 more votes than did Judge Griffin in the race for Associate Justice. *See* E.D.N.C. ECF No. 1-4 at 11. Judge Griffin then filed a series of election protests, including challenges to 1,409 ballots cast in Guilford County "by military or overseas citizens under Article 21A of Chapter 163, when those ballots were not accompanied by a photocopy of a photo ID or ID Exception Form"; and (2) 266 ballots "cast by overseas citizens who have not resided in North Carolina but whose parents or legal guardians were eligible North Carolina voters before leaving the United States." *Id*. at 12.

For the challenge to military and overseas ballots, Judge Griffin sought information from six counties, brought a timely protest only to ballots cast in Guilford County, and later sought to add challenges to ballots cast in Durham, Forsyth, and Buncombe Counties. *See* Judge Griffin's Br. at 66 n.15, *Griffin v. N.C. State Bd. of Elections*, No. 320P24, 2025 WL 284665 (N.C. filed Jan. 14, 2025).

On December 13, 2024, the State Board served its Decision and Order dismissing Judge Griffin's protests. Judge Griffin then made a series of filings in North Carolina court seeking to reverse that Decision and Order. Those filings included three petitions for judicial review, which the Board removed to federal court under 28 U.S.C. §§ 1331, 1441(a), 1443(2) and 1367(a). *See* E.D.N.C. ECF No. 1 (Notice of Removal). The Board explained in its removal notice that Judge Griffin's protests are inconsistent with a host of federal statutes and the Fourteenth Amendment to the U.S. Constitution. *See generally id.*

On January 6, 2025, the district court "sua sponte remand[ed] this matter to the Superior Court for Wake County." E.D.N.C. ECF No. 24. The State Board appealed, *see* E.D.N.C. ECF No. 26, and this Court granted Justice Riggs' motion to intervene, *see* Order, *Griffin v. N.C. State Bd. of Elections*, No. 25-1020 (4th Cir. Jan. 28, 2025) (ECF No. 19).

B. This Court Directs the District Court to Retain Jurisdiction Over the Federal Issues

On February 4, 2025, this Court entered a per curiam, unpublished opinion affirming in part and modifying in part the district court's remand order. This Court directed 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." *Griffin*, No. 25-1020, slip op. at 11.

C. The North Carolina Courts Resolve Only the State-Law Issues

Two days after this Court issued its opinion, Justice Riggs filed in Wake County Superior Court a Notice of Fourth Circuit Opinion and *England* Reservation. Justice Riggs made this reservation to "preserve her right to return to federal court for the resolution of federal issues" and explained 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." Justice Riggs' *England* Reservation ¶¶ 7, 8 (Exhibit B).

On February 7, 2025, the Superior Court affirmed the State Board's Order and Decision dismissing Judge Griffin's protests. *See Griffin v. N.C. State Bd. of Elections*, No. COA25-181, 2025 WL 1021724, at *3 (N.C. Ct. App. Apr. 4, 2025).

On April 4, 2025, a divided panel of the North Carolina Court of Appeals reversed. The majority held in relevant part that the two categories of ballots still at

issue—the targeted ballots cast by military and overseas citizens and the ballots cast by overseas citizens who have not lived in North Carolina—were not legally cast. *See id.* at *15. The Court of Appeals ordered the State Board to allow the military and overseas voters fifteen business days to "cure their failure to abide by the photo ID requirement." *Id*.

Judge Hampson dissented, arguing (among other things) that "equitable principles demand we do not change the rules of an election midstream or after votes are tallied to disenfranchise qualified North Carolina voters" and "fundamental principles of equal protection demand these absentee and early votes be counted in this election." *Id*. at *16 (Hampson, J., dissenting). Judge Hampson also emphasized the practical effect of the court's decision on North Carolina voters:

> What of voters who have died since election day? Their votes should count. What of servicemembers abroad sacrificing their lives and safety in remote locations unable to jump through the judicial hoops the majority now puts in their way? Their votes should count. What of overseas voters who only learned of this process second-hand due to lack of any service? Their votes should count. What of voters in every county of this State who may have moved, have not learned of this proceeding, or are sick, immobile, elderly, transient, away on extended business travel, traveling on school breaks with their children, or are simply overwhelmed by the unrelenting attack on their voting rights? Their votes should count. They did everything they were required to do. Their votes were accepted as valid votes on election day and through the canvassing process. Make no mistake: should the majority's decision be implemented, the impact will be to disenfranchise North Carolina voters even though they were eligible to vote on election day.

Id. at *42 (Hampson, J., dissenting).

The Court of Appeals entered its opinion on Friday, April 4. On Sunday, April 6, Justice Riggs and the State Board petitioned the North Carolina Supreme Court for discretionary review.

On Friday, April 11, the Supreme Court issued a six-page special order granting the petitions "for the limited purpose of expanding the period to cure deficiencies arising from lack of photo identification or its equivalent from fifteen business days to thirty calendar days after the mailing of notice" and denying the petitions in all other respects relevant to this motion. *Griffin*, 2025 WL 1090903, at *3.

Justices Earls and Dietz each issued separate opinions concurring in part and dissenting in part. Justice Earls' separate opinion is thirty-nine pages long. Justice Earls emphasizes that the Supreme Court's decision unfairly targets military and overseas voters who "registered in Guilford County"—"or maybe one of three or four other counties that vote heavily Democratic, the [majority's] special order is not clear." *Id*. at *3 (Earls, J., concurring in part in the result only, dissenting in part). Justice Earls confines her analysis to "state law issues" and does not address "the obvious conflicts with federal law including the principles relied upon in *Bush v. Gore*, 531 U.S. 98 (2000)" because the parties "expressly asserted *England* reservations of rights so that their federal law defenses may be adjudicated by federal court" *Id*. at *4 n.2.

For his part, Justice Dietz writes that he was "wrong" to expect that "our state courts surely would embrace the universally accepted principle that courts cannot change election outcomes by retroactively rewriting the law." *Id*. at *17 (Dietz, J., concurring in part and dissenting in part). "The Court of Appeals has since issued an opinion that gets key state law issues wrong, may implicate a host of federal law issues, and invites all the mischief [Justice Dietz] imagined in the early days of this case." *Id*. Regardless of whether "the federal courts ultimately reverse the Court of Appeals decision because of a conflict with UOCAVA, or *Bush v. Gore*, or whatever else," Justice Dietz writes, "the door is open for losing candidates to try this sort of post-election meddling in state court in the future." *Id*. at *18.

D. The District Court Orders the State Board to Proceed with the State-Law Remedy

On Friday, April 11—the same day that the North Carolina Supreme Court issued its special order—Justice Riggs moved in the district court for a preliminary injunction under Federal Rule of Civil Procedure 65 and an injunction under the All Writs Act that prohibit the parties from taking any action to enforce or effectuate the state-law remedy while the district court considered the remaining federal issues. *See* ECF No. 37. The next day, Saturday, April 12, the district court entered a text order denying the substance of Justice Riggs' motion:

> This matter comes before the court on Intervenor-Defendant Allison Riggs' emergency motion for injunction and motion for status conference [DE 37]. Pursuant to the court's authority under the All

> Writs Act, the motion is GRANTED IN PART. Defendant North Carolina State Board of Elections is ORDERED to proceed in accordance with the North Carolina Court of Appeals opinion, Griffin v. N.C. State Bd. of Elections, No. COA25-181, 2025 WL 1021724 (N.C. Ct. App. Apr. 4, 2025), as modified by the North Carolina Supreme Court in its April 11 Order, but SHALL NOT certify the results of the election, pending further order of this court. Further, the court adopts the following briefing schedule to facilitate prompt resolution of this matter: each party may file an opening brief addressing the remaining federal issues no later than April 21, 2025. Response briefs shall be due no later than April 25, 2025. Replies shall be due April 28, 2025. Unless the court finds that oral argument will aid the decisional process, it intends to rule on the papers as soon as practicable. Entered by Chief Judge Richard E. Myers II on 4/12/2025.

On Monday, April 14, Justice Riggs filed a notice of appeal, *see* E.D.N.C. ECF No. 44, and moved in the district court for a stay and injunction pending appeal, E.D.N.C. ECF No. 47. The district court denied that motion on April 15. *See* E.D.N.C. ECF No. 60.[1]

Also on April 15, the State Board reported that it "has begun work with the vendor that maintains its online portal for processing military and overseas ballots to create a means by which voters may securely submit copies of photo IDs and exception forms online." E.D.N.C. ECF No. 61 at 6 (Exhibit D). "The State Board anticipates the portal to be ready within a week of entering into a contract." *Id*.

[1] This post-appeal order denying Justice Riggs' motion for a stay and injunction pending appeal "is not before" the Court. *Grimmett v. Freeman*, 59 F.4th 689, 691 n.2 (4th Cir. 2023). If the Court is inclined to consider it, Justice Riggs attaches it here as Exhibit C.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this interlocutory appeal because it is an appeal of an order granting and denying injunctive relief. 28 U.S.C. § 1292(a)(1). The district court ordered the State Board to implement the state-law remedy, and it refused in the same text order to enter the injunctions that Justice Riggs requested.

STANDARD OF REVIEW

This Court may "stay" an "order of a district court pending appeal" and "modify[]" or "grant[] an injunction while an appeal is pending." Fed. R. App. P. 8(a)(1)(A), (C). Four factors guide the Court's decision whether to grant this relief: (1) whether the party "has made a strong showing" toward success "on the merits"; (2) whether the party "will be irreparably injured absent a stay" or injunction; (3) whether a stay or injunction "will substantially injure the other parties"; and (4) "where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 786 (1987)). These "four factors should be balanced; thus, for example, if the balance of harms tips heavily enough in the stay applicant's favor then the showing of likelihood of success need not be as strong, and vice versa." 16A Catherine T. Struve, *Federal Practice & Procedure* § 3954 (5th ed. 2025) (footnotes omitted).

ARGUMENT

The Court should maintain the status quo while Justice Riggs pursues her appeal to this Court. Justice Riggs is likely to prevail on the merits of her argument

that the relief outlined by the North Carolina courts and ordered by the district court violates both the U.S. Constitution and this Court's mandate. The remaining three factors likewise favor a stay and injunction pending appeal to protect constitutional rights, avoid confusion, and ensure federal-court review before any state-law remedy is put into effect.

I. Justice Riggs is Likely to Prevail on the Merits

A. Retroactive Changes in Election Law Violate the Federal Due Process Clause

As a matter of federal constitutional law, it "is settled that if the election process reaches the point of 'patent and fundamental unfairness,' the due process clause may be violated." *Hendon v. N.C. State Bd. Elections*, 710 F.2d 177, 182 (4th Cir. 1983) (quoting *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978)); *see also Roe v. Alabama*, 43 F.3d 574, 581 (11th Cir. 1995).

Patent and fundamental 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 results from a change in the election procedures." *Bennett v. Yoshina*, 140 F.3d 1218, 1226–27 (9th Cir. 1998). 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. *Lecky v. Virginia State Bd. Elections*, 285 F. Supp. 3d 908, 916 (E.D. Va. 2018). 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." *Burns*, 570 F.2d at 1070.

The two remaining categories of protests brought by Judge Griffin seek retroactive invalidation of ballots cast in compliance with the law. When military and overseas voters cast their ballots in November 2024, the North Carolina Administrative Code was clear that these voters were "*not* required to submit a photocopy of acceptable photo identification." 8 N.C. Admin. Code 17.0109(d) (emphasis added). And when the children of North Carolinians living overseas cast their ballots, the North Carolina statutes "plainly allow[ed] such individuals to vote in North Carolina." *Griffin v. N.C. State Bd. of Elections*, No. COA25-181, 2025 WL 1021724, at *37 (N.C. Ct. App. Apr. 4, 2025) (Hampson, J., dissenting).

Now, five months after the election, the North Carolina appellate courts have changed both sets of rules. Those state-law decisions may be binding in North Carolina moving forward, but they cannot apply retroactively regardless of whether such retroactive invalidation is "legal or illegal as a matter of state law." *McNeese v. Bd. of Ed. for Cmty. Unit Sch. Dist. 187, Cahokia, Ill.*, 373 U.S. 668, 674 (1963). As a matter of federal law, the voters were entitled to rely on the law in effect when they cast their ballots.

The U.S. Constitution prohibits the State Board from discarding—or threatening to discard—ballots cast in compliance with existing law. The retroactive changes in election law impose a "severe burden" on the right to vote. *Pisano v. Strach*, 743 F.3d 927, 933 (4th Cir. 2014). Yet the district court's text order not only permits this retroactive, state-law remedy to go into effect; it requires the State Board to implement that remedy before the district court or this Court have considered the reserved federal-law issues.

B. Arbitrary and Disparate Burdens on Voting Rights Violate the Federal Equal Protection Clause

"Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (per curiam) (citing *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 665 (1966)). The district court's text order requires the State Board to violate this equal protection principle by burdening and threatening to disenfranchise the military and overseas voters who happened to cast their ballot in a county that Judge Griffin targeted.

Judge Griffin attempted to challenge military and overseas voters in, at most, six of North Carolina's one hundred counties. Judge Griffin brought a timely protest only to the military and overseas ballots cast in Guilford County, and he later attempted to expand his protest to include Durham, Forsyth, and Buncombe Counties. This selective targeting of military and overseas voters has no

constitutionally permissible justification. Only one potential basis for choosing those counties appears in the record: they "are each counties which [Judge Griffin] lost by significant margins." *Griffin v. N.C. State Bd. of Elections*, No. COA25-181, 2025 WL 1021724, at *41 n.23 (N.C. Ct. App. Apr. 4, 2025) (Hampson, J., dissenting). Regardless of intent, Judge Griffin's protests violate the Equal Protection Clause by creating a "preferred class of voters"—those voters who happened to cast a ballot in a county that Judge Griffin chose not to target. *Gray v. Sanders*, 372 U.S. 368, 379–80 (1963) ("The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.").

The "cure" process for these military and overseas voters will also lead inevitably to the different treatment of identical voters based on arbitrary circumstances. An election procedure violates the Equal Protection Clause when "identically situated ballots" will be counted or invalidated "based on random chance." *Gallagher v. N.Y. State Bd. of Elections*, 477 F. Supp. 3d 19, 49 (S.D.N.Y. 2020); *see also Bryanton v. Johnson*, 902 F. Supp. 2d 983, 997 (E.D. Mich. 2012) ("inconsistent administration" of citizenship question). Yet the district court ordered and permitted the State Board to implement a process by which the targeted voters will have their ballots counted only if a series of conditions are met some *six months after the election*, when voters are no longer paying attention or expecting to be

contacted by election officials regarding their votes: (1) the voter must still be alive; (2) the voter must receive notice of their duty to cure; (3) the voter must be able to cure within a 30-day window; (4) the voter must be willing to take time out of their day to cure; and (5) the voter must choose to cure (and not, for example, have changed their mind in the intervening months about their preference for Associate Justice or believe that their vote will not change the outcome). None of these conditions has anything to do with the voters' eligibility to cast a ballot in November 2024; they are arbitrary distinctions created by a retroactive change in the election rules.

Courts routinely reject this type of disparate treatment of ballots. The Southern District of New York rejected a ballot-counting process dependent on the delivery date of the ballot when the question of "[w]hether an individual's vote will be counted . . . may depend in part on something completely arbitrary"—there, the voter's "place of residence and by extension, the mailbox or post office where they dropped off their ballot." *Gallagher*, 477 F. Supp. 3d at 47. This "voting process where arbitrary factors lead the state to valuing one person's vote over that of another" is the "kind of process specifically prohibited by the Supreme Court." *Id.* at 48 (citing *Bush*, 531 U.S. at 104–05); *see also Richardson v. Trump*, 496 F. Supp. 3d 165, 183–87 (D.D.C. 2020) (finding likelihood of success on claim that challenged "policy changes infringe upon [plaintiffs'] constitutional right to vote

and violate the Equal Protection Clause"); *Vote Forward v. DeJoy*, 490 F. Supp. 3d 110, 125–28 (D.D.C. 2020) (same); *Doe v. Walker*, 746 F. Supp. 2d 667, 679–80 (D. Md. 2010) ("By imposing a deadline which does not allow sufficient time for absent uniformed services and overseas voters to receive, fill out, and return their absentee ballots, the state imposes a severe burden on absent uniformed services and overseas voters' fundamental right to vote.").

Justice Riggs respectfully submits that she is likely to prevail on appeal in her argument that selective targeting of military and overseas voters violates the Equal Protection Clause. Justice Earls' comments in partial dissent now apply with equal force to the district court's text order: "as a result of the action taken by [the district court] in this matter, the vote of an overseas or military voter who is registered in Wake County and who voted pursuant to the laws applicable at the time is counted," but "the vote of an overseas or military voter who is registered in Guilford County is presumed to be fraudulent and will not count unless that voter provides proof of their identity within thirty business days." *Griffin v. N.C. State Bd. of Elections*, No. 320P24-3, 2025 WL 1090903, at *3 (N.C. Apr. 11, 2025) (Earls, J., concurring in part in the result only, dissenting in part). It is "impossible" to explain how that distinction "is fair, just, or consistent with fundamental legal principles." *Id.*

C. Implementing the State-Law Remedy Before the Federal-Law Issues Are Resolved Would Frustrate this Court's Mandate

The U.S. Supreme Court has "repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." *United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977).

A stay and injunction pending appeal are necessary and appropriate here to effectuate and prevent frustration of this Court's mandate. This Court directed the district court "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." *Griffin*, No. 25-1020, slip op. at 11. Justice Riggs then made an *England* reservation to protect her right to return to federal court, *see* Exhibit B, and the district court modified its remand order to make clear that it retained jurisdiction over the federal-law issues, *see* E.D.N.C. ECF No. 35.

Those federal-law issues remain unresolved, but the district court's text order permits—and directs—the State Board to proceed under state law anyway. Justice Riggs is likely to prevail on appeal in her argument that the text order is inconsistent with this Court's mandate—which ensured the "federal forum for certain federal

civil rights claims" that 28 U.S.C. § 1443 "guarantees," *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 141 S. Ct. 1532, 1536 (2021).

After all, the North Carolina courts had jurisdiction to proceed with this dispute only because the district court, having obtained jurisdiction, remanded it to the Wake County Superior Court. Under this Court's mandate, both judicial systems have been exercising jurisdiction over the same dispute—the North Carolina courts with respect to the state-law issues, and the federal courts with respect to the federal-law issues. But now, the district court's text order threatens to upset that balance by permitting (and requiring) the State Board to begin implementing that state-law remedy before the district court or this Court considered the federal-law issues that this Court and Justice Riggs expressly reserved for the federal courts.

II. The Other Three Factors Support a Stay and Injunction Pending Appeal

The threatened violations of the Due Process and Equal Protection Clauses justify a stay and injunction pending appeal because the "prospect of an unconstitutional enforcement 'supplies the necessary irreparable injury.'" *Air Evac EMS, Inc. v. McVey*, 37 F.4th 89, 103 (4th Cir. 2022) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 382 (1992)); *see also League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("Courts routinely deem restrictions on fundamental voting rights irreparable injury.").

Proceeding with the proposed cure process also poses a serious risk of irreparable harm directly to Justice Riggs by undermining the legitimacy of her election victory. The U.S. Supreme Court issued a stay in *Bush v. Gore*, forestalling various state-court remedies pending federal court review of the equal protection issues, because proceeding with a state process "of questionable legality" threatens irreparable harm to a candidate, as well as to the public, "by casting a cloud upon what [she] claims to be the legitimacy of [her] election." 531 U.S. 1046, 1047 (2000) (mem.) (Scalia, J., concurring).

Consistent with the Supreme Court's issuance of a stay in *Bush*, federal courts across the country allow candidates for office to assert *per se* irreparable harm based on constitutional violations resulting from improper election challenges. *See, e.g.*, *Moore v. Circosta*, 494 F. Supp. 3d 289, 321 (M.D.N.C. 2020); *Jones v. United States Postal Serv.*, 488 F. Supp. 3d 103, 109, 139–40 (S.D.N.Y. 2020); *Gallagher*, 477 F. Supp. 3d at 26, 41–42. One can barely imagine the chaos that would ensue if an arbitrary, non-uniform, and constitutionally improper state-law "cure" process suggested a change to the election outcome, only for this Court later to decide that Justice Riggs' constitutional arguments were meritorious and the "cure" process should never have proceeded. The proverbial toothpaste can never be put back in the tube, and that is exactly why the U.S. Supreme Court intervened in *Bush v. Gore*.

In addition, permitting the cure process to proceed will force Justice Riggs to invest substantial resources helping voters to cure their ballots. These resources will be wasted if the cure process is ultimately found to be unconstitutional under federal law, and that injury will be irreparable because there is no way for Justice Riggs to recover the time and money she spent in furtherance of an unconstitutional cure effort. *Cf. Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 362 (4th Cir. 1991) ("Without a preliminary injunction, the Company will face probable irreparable harm from the alleged violation of a federally protected right and will be prevented from recovering monetary compensation from the State.").

The balance of the equities and public interest also favor a stay and injunction pending appeal. When this case was last before the Court, it exercised its "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." *Griffin*, No. 25-1020, slip op. at 11. As a sitting North Carolina Associate Justice, Justice Riggs understands better than most the federal judicial restraint and concerns of comity that underpin this Court's earlier decision. It is regrettable, but now unavoidable, that this Court must intervene to prevent a retroactive application of a state court ruling that infringes North Carolina voters' fundamental rights.

The challenged North Carolina voters were eligible to vote in November 2024, they followed every rule, and they acted in reliance on longstanding, unchallenged election laws. "Surely, upholding constitutional rights serves the public interest," *Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003), especially when, as here, the threatened constitutional violation would erode the "fundamental" right to vote, *Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections*, 827 F.3d 333, 337 (4th Cir. 2016) (quoting *Bush*, 531 U.S. at 104–05). "Count first, and rule upon legality afterwards, is not a recipe for producing election results that have the public acceptance democratic stability requires." *Bush*, 531 U.S. at 1047 (Scalia, J., concurring).

CONCLUSION

The Court should enter a stay and injunction pending appeal that prohibits the parties from taking any action to enforce or effectuate the state-law remedy.

Dated: April 16, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2), because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 5,129 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman.

Dated: April 16, 2025

/s/ Samuel B. Hartzell
Samuel B. Hartzell

Counsel for Intervenor-Appellant

Exhibit A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1018

JEFFERSON GRIFFIN,

Plaintiff - Appellee,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendant - Appellant.

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

Amici Supporting Appellant.

RESTORING INTEGRITY AND TRUST IN ELECTIONS,

Amicus Supporting Appellee.

No. 25-1019

JEFFERSON GRIFFIN,

Plaintiff - Appellee,

v.

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

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We deny all remaining outstanding motions as moot.

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

Exhibit B

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

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Counsel for Justice Allison Riggs

Exhibit C

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

JUDGE JEFFERSON GRIFFIN,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendant.

and

ALLISON RIGGS, et al.,

Intervenor-Defendants

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

NORTH CAROLINA DEMOCRATIC PARTY,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, et al.,

Defendants.

Case No. 5:24-CV-00699-M

CARRIE CONLEY, et al.

Plaintiffs,

v.

ALAN HIRSCH, et al.

Defendants.

Case No. 5:25-CV-00193-M

These matters comes before the court on three emergency motions to stay filed by Intervenor-Defendant Allison Riggs (5:24-CV-731-M) [DE 47], Intervenor-Defendants VoteVets Action Fund, North Carolina Alliance for Retired Americans, Sarah Smith, and Juanita Anderson (5:24-CV-731-M) [DE 54], and the *Conley* Plaintiffs (5:25-CV-193-M) [DE 52]. All three motions request a stay of the portion of Text Orders entered by this court on April 12 and April 14 that direct the North Carolina State Board of Elections "to proceed in accordance with the North Carolina Court of Appeals opinion . . . as modified by the North Carolina Supreme Court." *E.g.*, Text Order dated April 12, 2025. That portion of the court's Text Orders, though framed in mandatory terms, did nothing more than decline to interfere (on an expedited basis and without the benefit of briefing) with the initiation of a remedial process ordered by the North Carolina Court of Appeals and North Carolina Supreme Court. *See, e.g.*, *Griffin v. N. Carolina State Bd. of Elections*, No. COA25-181, 2025 WL 1021724 (N.C. Ct. App. Apr. 4, 2025); *Griffin v. N. Carolina State Bd. of Elections*, No. 320P24-3, 2025 WL 1090903 (N.C. Apr. 11, 2025).

Thus, to the extent the parties seek a stay of the court's *inaction*, that is, its decision *not* to enjoin the Board of Elections from complying with the North Carolina Court of Appeals' order, that request is denied as improper. What the parties actually seek is reconsideration of the court's denial of their requests for temporary restraining orders.[1] The correct avenue for that form of relief is a motion for reconsideration or direct appeal, if one is available. *See Office of Pers. Mgmt. v. Am. Fed'n of Gov't Emps., AFL-CIO*, 473 U.S. 1301, 1305-06 (1985); *Webb v. Beyer*, 801 F. App'x 152, 153 (4th Cir. 2020).

[1] Intervenor-Defendant Riggs styled her motion as one for an "injunction," but she requested "Immediate Relief" on an "Emergency" basis. DE 40 at 1. Accordingly, the court treated her motion as one for a temporary restraining order. *See Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 433 n.7 (1974); *Ciena Corp. v. Jarrard*, 203 F.3d 312, 319 (4th Cir. 2000).

This court now clarifies that the only mandatory portion of its April 12 and April 14 Text Orders is the language prohibiting the Board of Elections from certifying the results of election pending further order of this court. *E.g.*, Text Order dated April 12, 2025. This court has made no order altering or modifying the cure process, which is now proceeding pursuant to the North Carolina Court of Appeals' order, as modified by the North Carolina Supreme Court.

The parties also invoke Rule 62 of the Federal Rules of Civil Procedure in order to obtain a mandatory injunction pending their appeals of this court's prior denials of their requests for temporary restraining orders. The court does not find that initiation of a cure process ordered by the North Carolina Court of Appeals and North Carolina Supreme Court, on its own, constitutes a form of irreparable harm because that process cannot result in "massive *ex post* disenfranchisement," unless the Board of Elections takes further action at the conclusion of that process. *Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998); *see also Griffin v. Burns*, 570 F.2d 1065, 1078 (1st Cir. 1978). And the court has expressly prohibited the Board of Elections from certifying the results of the election until the federal constitutional issues in these consolidated matters have been resolved. *See* Text Order dated April 12, 2025.

Temporary restraining orders are disfavored and there is sufficient time remaining in the cure process to allow full briefing by the parties on their respective requests for injunctive relief. For the foregoing reasons, the emergency motions for a stay [DE 47; DE 52; DE 54] are denied.

SO ORDERED this 15th day of April, 2025.

Richard E Myers II

RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE

Exhibit D

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

JUDGE JEFFERSON GRIFFIN,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendant,

and

ALLISON RIGGS, et al.,

Intervenor-Defendants.

STATE BOARD'S NOTICE OF REMEDIAL EFFORTS IN RESPONSE TO THE COURT'S APRIL 12, 2025 TEXT ONLY ORDER

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

NORTH CAROLINA DEMOCRATIC PARTY,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, et al.,

Defendants.

Case No. 5:24-cv-00699-M

CARRIE CONLEY, et al.,

Plaintiffs,

v.

ALAN HIRSCH, et al,

Defendants.

Case No. 5:25-cv-00193-M

Defendant the North Carolina State Board of Elections respectfully submits this notice in response to this Court's April 12, 2025 order directing the Board to inform "the court of the scope of its remedial efforts, including the number of potentially affected voters and the counties in which those voters cast ballots." The State Board is aware of pending appeals concerning this Court's decision to require the State Board to implement the North Carolina state courts' orders while refraining from certifying any result of the election at issue in this case. Various parties argue that further remedial steps to execute the state courts' orders may, in and of themselves, implicate federal constitutional questions. However, pursuant to this Court's April 12 and April 15, 2025 orders, the State Board summarizes how it intends to approach this administrative remedial process unless and until directed to do otherwise by court order. The State Board will promptly report any substantive modifications to this Court or another court with jurisdiction at the time.

I. Identification of Affected Voters.

Pursuant to the North Carolina Court of Appeals Order, as modified by the North Carolina Supreme Court, the first step the State and county boards must take is to identify the challenged voters in the two categories of protests that remain.[1]

For Plaintiff Judge Griffin's protests concerning absentee ballots cast by military and overseas voters who did not submit a copy of a photo ID or an exception form with their ballots, these protests affect potentially up to 1,409 voters in Guilford County.[2]

[1] Certain of the voters referenced in Plaintiff's protests appear to have been listed several times. The figures below may therefore count the same voter multiple times. In addition, certain voters appear to be included within both categories of protests. These voters will receive both forms of notice.

[2] As indicated in the State Board's initial decision, only the Guilford County protest was complete by the deadline to file an election protest under state law.

In order to ensure each of the voters challenged are accurately identified as falling within this category, the Board intends to instruct the Guilford County Board of Elections to assemble and review the documentation submitted with the absentee ballots cast by each of these 1,409 voters, to confirm that these voters did not submit a copy of a photo ID or an exception form with their absentee ballots.[3] For those who did submit a photo ID or exception form when they voted, they will necessarily not fall within the category challenged and no further action will be required with respect to these voters. For those who did not submit such documentation, the Board will instruct the county board to provide notice to these voters as described below.

For Plaintiff's protests concerning absentee ballots cast by overseas voters who possibly checked the fourth box on question 1 of their federal Voter Registration and Absentee Ballot Request / Federal Post Card Application ("FPCA")[4] form that states, "I am a U.S. citizen living outside the country, I have never lived in the United States," these protests potentially affect up to 266 voters in fifty-three counties.[5]

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[3] While the majority of military and overseas voters utilized the online portal to submit their absentee ballots in the election, some submitted ballots via email, mail, or fax. Because the online portal is not currently configured to accept attachments, only the voters within these latter subcategories may have submitted additional documentation, even though not required at the time.

[4] *See* FPCA Form, https://tinyurl.com/4rxkjvsx, last visited April 15, 2025.

[5] Alamance (one voter), Alleghany (one voter), Ashe (two voters), Avery (one voter), Brunswick (one voter), Buncombe (nine voters), Burke (two voters), Cabarrus (three voters), Caldwell (one voter), Carteret (two voters), Catawba (three voters), Cleveland (one voter), Columbus (one voter), Cumberland (six voters), Currituck (one voter), Dare (one voter), Davie (one voter), Duplin (one voter), Durham (twenty-three voters), Edgecombe (one voter), Forsyth (fifteen voters), Gaston (one voter), Guilford (fifteen voters), Halifax (one voter), Harnett (one voter), Henderson (seven voters), Iredell (seven voters), Jackson (one voter), Johnston (one voter), Lee (one voter), Lenoir (one voter), Lincoln (four voters), Madison (two voters), Mecklenburg (twenty-seven voters), Moore (eight voters), Nash (one voter), New Hanover (eight voters), Onslow (three voters), Orange (thirty-seven voters), Pender (one voter), Person (one voter), Pitt (two voters), Randolph (one voter), Robeson (one voter), Rutherford (one voter), Scotland (one

First, in order to ensure each of the voters challenged are accurately identified as falling within this category,[6] the Board intends to instruct the county boards for these fifty-three counties to assemble and review the FPCA forms submitted by these 266 voters to confirm that they did check the fourth box on the form.

Next, the county boards will review the voter's registration record and voter history record to ensure that the voter in question does not have a record of registering previously or voting previously under a claim of residency in the county. A prior registration form would show that the voter attested, under penalty of perjury, to an in-county residence in the past.[7] A record of voting in-person or using the absentee voting procedures under Article 20 of Chapter 163 would similarly show that the challenged voter attested, under penalty of perjury, to having resided within the county during a prior election. In either case, such records would demonstrate that these voters do not fit within the category of "never residents" under the order of the Court of Appeals. If such records exist, voters thus will be removed from the list of affected voters.

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voter), Swain (one voter), Union (three voters), Vance (one voter), Wake (thirty-nine voters), Warren (one voter), Watauga (seven voters), and Wilson (three voters).

[6] Recent news reports and a sample internal review of the voter history of these voters indicates that some have resided in the state previously. *See* Bryan Anderson, *Longtime N.C. Voters May Have Their Ballots Wrongfully Tossed in Supreme Court Race*, The Assembly (Apr. 13, 2025), https://tinyurl.com/mpadw2zw; Judd Legum et al., *North Carolina Supreme Court throws out hundreds of ballots based on flawed data*, Popular Information (Apr. 15, 2025), https://tinyurl.com/y2wf44be; Paige Masten, *NC Supreme Court's ruling in Griffin case has some big, glaring problems*, The Charlotte Observer (Apr. 15, 2025, 10:18 AM), https://tinyurl.com/hnfzanjb. It is suspected that these voters were either incorrectly identified as never residents or inadvertently indicated that they never lived in the United States. Thus, these steps are necessary to ensure that the State Board is in compliance with the Court of Appeals order directing the State and county boards to identify the voters who it ruled are not eligible to vote under state law for failure to satisfy a residency requirement.

[7] *See* North Carolina Voter Registration Application Form, https://tinyurl.com/jjcnk9bc, last visited April 15, 2025.

Finally, for those that remain after the first two identification steps, the Board will instruct the county boards to inform these voters via a mailing (and, if possible, by email and telephone) that their votes were protested and North Carolina courts have ordered the State Board to discount their vote cast in the 2024 general election for North Carolina Supreme Court Associate Justice because state records indicate they informed the State that they never resided in North Carolina when they submitted their absentee ballot request form in the 2024 general election. The mailing will also inform the voter that this litigation is ongoing and that the voter's obligations may therefore be subject to change. In order to ensure these challenged voters were properly identified and are afforded due process as part of this identification, these voters will then be provided thirty days from the date of the mailing to submit a sworn affidavit stating that they have resided in the county and identifying their prior residence address. A template affidavit will be included with the mailing. Any such voters who provide the affidavit of in-state residence do not belong in this category and their votes will not be identified for removal.[8]

II. Notice to Affected Voters.

For challenged voters whose votes were challenged for having voted as overseas or military voters without meeting the photo ID requirement, the State Board will direct the county boards to prepare notices to these voters via a mailing (and, if possible, by email and telephone) about their need to submit a copy of their photo identification, or an affidavit referred to as a Photo ID Exception Form. For ease of administration, this mailing concerning the photo ID

[8] Under normal state election protest procedures, a voter challenged under an election protest would be guaranteed notice and an evidentiary hearing to contest the allegations of ineligibility in the protest. *See* N.C. Gen. Stat. § 163-182.10(b)–(c). The Court of Appeals order does not appear to permit this statutory process to play out. However, the State Board interprets the order's direction for the county board to "identify the votes from 'Never Residents'" to afford any such challenged voters an opportunity to demonstrate to the county board that their votes should not be so identified, because they are not, in fact, "Never Residents."

requirement will be sent to voters at the same time as the other mailing referenced above. A blank exception form will be included with this mailing, which is included with all absentee ballot packages and is part of the standard cure process for civilian absentee voters who need to cure a deficiency with their photo identification documentation.

These voters will specifically be notified that North Carolina state courts have ordered the State Board provide them notice that their vote cast in the 2024 general election for North Carolina Supreme Court Associate Justice will only count if, within thirty days of the date that the mailing referenced above was sent, these voters submit a copied photo ID or exception form. The mailing will also inform the voter that this litigation is ongoing and the voter's obligations are subject to change. Voters will be informed that copied IDs or exception forms can be submitted by mail, fax, or submitted electronically via an online portal or email.

The State Board has begun work with the vendor that maintains its online portal for processing military and overseas ballots to create a means by which voters may securely submit copies of photo IDs and exception forms online. So as to ensure as orderly a process as possible, and to avoid confusion, the State Board will not instruct the county boards to send out the notice to these voters until this portal is ready. The State Board anticipates the portal to be ready within a week of entering into a contract. Also, to avoid confusion regarding the deadline for a voter to respond, the State Board will instruct the county boards to send out all notices on the same date, so that all challenged voters will have to respond within the same thirty-day period.

III. Identifying Ballots With Votes That May Be Discounted.

For challenged overseas and military voters who voted without providing an ID or claiming an exception and who now submit a photo ID or exception form, the county board will

proceed under 08 N.C. Admin. Code 17 .0109 for the review of such photo ID documentation.[9] For any challenged military or overseas voters who, within thirty days of the notice being sent, fails to provide any photo ID documentation or who provides documentation that is not acceptable under 08 N.C. Admin. Code 17 .0109, the State Board will instruct the county board to retrieve their ballots for further action consistent with an order from this Court or another court with jurisdiction.

For challenged overseas voters who are identified as having never resided in North Carolina, the State Board will instruct the county board to retrieve their ballots for further action consistent with an order from this Court or another court with jurisdiction.

Until this Court or another court with jurisdiction directs the State Board to change the vote count after having identified the ballots as described above, the State Board will direct the county boards not to ascertain or discount the votes of any such ballots, and to not reveal to anyone how any such ballots were voted.

Should this Court require further information, the State Board stands ready to provide it upon request.

Respectfully submitted, this 15th day of April, 2025.

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[9] With the exception of paragraph (d) of the Rule, as the Court of Appeals has now determined that provision is invalid.