

NORTH CAROLINA COURT OF APPEALS

JEFFERSON GRIFFIN,

Petitioner-Appellant,

v.

NORTH CAROLINA STATE BOARD
OF ELECTIONS,

Respondent-Appellee,

and

ALLISON RIGGS,

*Intervenor-Respondent-
Appellee*

From Wake County

**BRIEF OF RALIM ALLSTON, CINDY OATES ANTHONY, RACHEL
ARNOLD, DANIELLE BROWN, AMY BRYANT, DENISE CARMAN, JEAN
CARY, LOUANNE CASPAR, ALEXIA CHAVIS, CARRIE CONLEY, JOSE
BENITO DEL PLIEGO, SOFIA DIB-GOMEZ, MARY KAY HELING, WESLEY
HOGAN-PHILIPSEN, ELIZABETH HUNTER KESLING, KEVIN HUNTER
KESLING, LESLEY-ANNE LEONARD, GAYNELLE LITTLE, JENNA
MARROCCO, AUDREY MEIGS, BRUKLYN MILLER, DIRK PHILIPSEN,
LARRY REPANES, ANNA RICHARDS, LILA RICHARDSON, LYSE
ROCHLEDER, KEMEKA SIDBURY, SOPHIA “FELIX” SOTO, ALEXA
ADAMO VALVERDE, DIANE WYNNE, PHOEBE ZERWICK, NORTH
CAROLINA STATE CONFERENCE OF THE NAACP, NORTH CAROLINA
BLACK ALLIANCE, COMMON CAUSE EDUCATION FUND, DEMOCRACY
NORTH CAROLINA, EL PUEBLO, NORTH CAROLINA ASIAN
AMERICANS TOGETHER, AND NORTH CAROLINA POOR PEOPLE’S
CAMPAIGNAS *AMICI CURIAE* SUPPORTING RESPONDENT**

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INTRODUCTION

Judge Jefferson Griffin challenges the ballots of more than 60,000 voters in his Election Protests. Their transgression? Voting exactly how the State Board of

¹ Pursuant to Rule 28.1(b)(3)(c) of the North Carolina Rules of Appellate Procedure, no person or entity other than amici curiae, its members and its counsel, helped to write the brief or contributed money for its preparation.

Elections told them to, in accordance with longstanding election law and practices used for numerous election cycles before this one.

And who, exactly, are the challenged voters? A list of over 60,000 North Carolinians, composed of disproportionately Black, Latino, and Asian American and Pacific Islander (“AAPI”) voters in a state with a long, tragic history of suppressing votes from these communities. The challenge list includes voters from all walks of life, all of whom voted pursuant to, and in reliance on, the rules promulgated by the State Board of Elections.

Through all of the legal wrangling and procedural maneuvering amongst the parties to date, the voices of the challenged voters themselves have been glaringly absent. These voters deserve not just to be heard, but to be centered in this proceeding. Amici, themselves a small subset of the challenged voters directly impacted by this proceeding, as well as non-partisan organizations who work with impacted voters across the state, respectfully submit this brief to ensure that the Court hears the voices and perspective of those voters at risk of being disenfranchised for nothing more than following the rules.

Judge Griffin’s Protests seek retroactive disenfranchisement of these voters, and more than 60,000 like them, based on legal theories that have been rejected by both federal and state courts. Stuningly, Judge Griffin fails to allege any evidence that even a single one of these voters is actually ineligible to vote in North Carolina—only that they should have anticipated his challenges and followed an alternative,

hypothetical set of rules when casting their ballot. State law requires that election protests make this showing by *substantial* evidence. Yet the Protests offer *none*.

The Protests also request sweeping, unprecedented remedies that would permanently destabilize the post-election period and deny voters any assurance their ballots will be counted, despite having met North Carolina's voting requirements in precisely the way that was required of them. The sought-after relief is without basis in state law and dubious in the eyes of bedrock constitutional principles and fundamental fairness. If the Protests are successful, no election will ever have finality in North Carolina again.

Put simply, Judge Griffin asks for extraordinary relief with an extraordinary lack of evidence. The consequences of granting his relief cannot be overstated. It will create distrust in the democratic process amongst all North Carolinians, and shake North Carolina elections to the core. To avoid precisely that outcome, in accordance with North Carolina law, Amici respectfully request that this Court reject Judge Griffin's Protests in their entirety.

INTEREST OF AMICI CURIAE

The Impacted Voters are all U.S. citizens and eligible voters qualified to cast a ballot in North Carolina. *See generally* Exs. 1-26, 28-32. At the time of voting in the 2024 General Election, they lawfully voted under the laws and regulations that existed during the voting process. However, they are now threatened with disenfranchisement by Judge Griffin's Election Protests, which challenge voters for purportedly lacking a Social Security Number ("SSN") or driver's license number in

their voter registration (the “Incomplete” Protests) or not presenting voter ID when voting overseas (“Overseas ID” Protests).²

The Impacted Voters come from across the state, from Pasquotank County in the east (Allston, Ex. 1), Brunswick County in the south (Sidbury, Ex. 31), Jackson and Buncombe Counties in the west (Anthony, Ex. 2, Richardson, Ex. 22), and all manner of areas in between. They include young voters casting their very first ballot in a general election (Dib-Gomez, Ex. 9, Soto, Ex. 23), to seasoned North Carolina voters with decades of demonstrated commitment to ensuring their voices are heard (Zerwick, Ex. 26). They come from diverse racial, economic, political, and occupational backgrounds, and are united in their commitment to voting.

As expressed in the appended affidavits, the Impacted Voters all felt shock, confusion, and disappointment at having their votes challenged. Those with allegedly incomplete registrations utilized the lawful registration procedures at the time. Many in fact provided the purportedly missing information when registering (Exs. 2, 6, 8, 11, 14, 19, 20, 25, 30), including through the DMV ((Valverde, Ex. 24), and many also showed their DMV license when presenting to vote (Exs. 1-3, 6, 8, 11-23, 25-26, 29, 31). And those who voted from abroad were instructed not to provide a photo of their ID with their ballot, but could have done so if asked. (Exs. 23, 26, 28, 32).

The Organizational Amici are non-partisan, non-profit North Carolina-based organizations that engage in year-round voter outreach, voter education, and election

² While Amici do not specifically address the “Overseas Non-Resident” category of election protest here, those number less than the margin of victory and thus would not alone cause an outcome-determinative impact on the election.

protection activities across the state. They include organizations that engage individuals to exercise their right to vote as part of efforts to eliminate discrimination (North Carolina NAACP), advocate for voting rights (NC Poor People's Campaign), and promote systemic policy change to assist marginalized communities, including Black voters (N.C. Black Alliance), AAPI voters (NCAAT), and those in the Latin American community (El Pueblo), who are all disproportionately targeted by the Protests. These and other Organizational Amici have members whose votes have been challenged (Common Cause Education Fund) and work to educate those affected as part of their efforts to ensure all voters can access the ballot (Democracy NC).

Each of the Impacted Voters thus has an interest in the outcome of this matter. The Protests also disproportionately impact the Black and brown constituents and members of the Organizational Amici, which provides a unique and particularly strong interest in the case for those organizations.³

The Impacted Voters and Organizational Amici are not advocating for or against any specific candidate for office. Rather, they seek to protect the fundamental

³ Analysis by the News & Observer found that “Black registered voters were twice as likely to have their votes challenged [by Judge Griffin] as white voters.” Kyle Ingram, *Black NC Voters Twice as Likely to Have Ballots Challenged in Griffin Election Protests*, News & Observer (Jan. 7, 2025), <https://www.newsobserver.com/news/politics-government/election/article296693744.html>. Professor Chris Cooper from Western Carolina University also found that the challenged voters are “much less likely to be white than the pool of voters in 2024,” and that they are more likely to be either Black, Hispanic, or Asian. *An Analysis of Challenged Voters in the 2024 NC Supreme Court Justice Election*, Old North State Politics (Jan. 12, 2025), <https://www.oldnorthstatepolitics.com/2025/01/an-analysis-of-challenged-voters-in.html>.

right to vote of eligible North Carolina voters whose valid votes in the 2024 General Election have been baselessly called into question by these Protests.

ISSUES ADDRESSED

Whether Petitioner's requested relief will lead to the disenfranchisement of eligible North Carolina voters.

Whether Petitioner has met his statutory burden of proof for an election protest.

Whether Petitioner's requested relief is available given his failure to provide any affirmative, individualized allegations or evidence of voter ineligibility.

ARGUMENT

I. North Carolina's Election Protest Scheme Requires Affirmative Proof of Voter Ineligibility to Show an Outcome-Determinative Violation of Election Law.

To be successful, an election protest must demonstrate “substantial evidence of any violation, irregularity, or misconduct sufficient to cast doubt on the results of the election.” N.C.G.S. § 163-182.10(d)(2). Election protests challenging specific voters should be dismissed unless they allege that ineligible voters participated “in numbers sufficient to change the outcome of the election.” *In re Consideration of Certain Legal Questions Affecting the Authentication of the 2016 General Election*, N.C. State Bd. of Elections, at 1-2 (Nov. 28, 2016); *see also Bouvier v. Porter*, 386 N.C. 1, 4, 900 S.E.2d 838, 843 (2024).

North Carolina election law has an unambiguous presumption of eligibility for a voter whose eligibility to vote is challenged. “No challenge shall be sustained unless

the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated.” N.C.G.S. § 163-90.1(b). In addition, “[c]hallenges shall not be made indiscriminately and may only be made if the challenger knows, suspects or reasonably believes such a person not to be qualified and entitled to vote,” N.C.G.S. § 163-90.1(a), requiring evidence specific to each individual voter being challenged. *See* North Carolina State Board of Elections, *Voter Challenge Procedures Guide*, at 6 (last updated Dec. 18, 2023).⁴ “[I]nformation pulled from a public website or database that conveys no information specific to the circumstances of the voter” does not qualify as individualized evidence and cannot be grounds for a voter challenge. *Id.*; *see also* *N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enft*, No. 1:16-CV-01274, 2018 WL 3748172, at *7 (M.D.N.C. Aug. 7, 2018).

Faithful adherence to the statutory scheme requires that Judge Griffin be held to the statutorily mandated burden of proof. Even if he articulates plausible legal theories of voter ineligibility (a legal conclusion that Amici do not concede), he must also allege and then prove via affirmative, individualized evidence that these voters are actually ineligible. As set forth below, Judge Griffin has failed to meet this burden.

II. The Complete Lack of Individualized Allegations in Judge Griffin’s Protests Fails to Carry the Statutorily Required Burden and Cannot Justify Granting His Requested Relief.

⁴ <https://s3.amazonaws.com/dl.ncsbe.gov/Legal/Voter%20Challenge%20Guide.pdf>.

- a. *The Protests Do Not Allege, Much Less Show, Actual Voter Ineligibility, as Required By State Law.*

Judge Griffin's Protests suffer a fundamental, and fatal, oversight requiring dismissal: He has not offered (or even alleged) *any* evidence—let alone substantial evidence—that *any* Incomplete or Overseas ID challenged voter is ineligible to vote, as required to prevail under state law.

As an initial matter, Judge Griffin does not dispute that each challenged voter cast a ballot pursuant to their registration on the state's official list of valid registrants at the time of the election. There are no allegations of fraud, or that these voters lack the requisite age, residency, or citizenship to cast a ballot in the state. Nor does Judge Griffin offer any investigation into the specific circumstances of any voter he challenges. Instead, the lists of voters whose registrations are purportedly incomplete rely upon the kind of systematized data query that does not meet a protester's burden to challenge voter ineligibility. *See Voter Challenge Procedures Guide* at 6 (citing *Bipartisan Bd. of Elections & Ethics Enft*, 2018 WL 3748172, at *7). This kind of mass challenge is expressly forbidden by the North Carolina election code.

The Protests also fail to account for any of the readily available alternative explanations that do not bear on voter eligibility for the voters who appear in his Incomplete protests, including, for example, voters that provided a driver's license or SSN at the time of registration that was either not entered or was somehow removed from their voter registration file. *See, e.g.*, Exs. 2, 6-15, 17, 19-21, 25 (Impacted Voters who remember providing identifying information, including some who confirmed this

with their county board of elections). The State Board recognized that such information might be omitted in a voter's file due to an information mismatch with the DMV or Social Security Administration databases, for reasons unrelated to eligibility (such as inadvertent typos, misspelling, or reasonable variation in names). *See* NCSBE Decision and Order at 16 (Dec. 13, 2024).

Judge Griffin also ignores that voters may have provided a driver's license or SSN after registering, such as when they requested a mail-in ballot or when they presented a driver's license to satisfy North Carolina's voter ID requirement. *See, e.g.*, Exs. 1-3, 6, 8, 10-22, 24, 25, 29, 31 (Impacted Voters who provided their driver's license when they voted). Other voters might not possess a driver's license or SSN but are still North Carolina citizens who are eligible to register and vote, a scenario contemplated by state and federal law.

But whether any one of these reasons, or yet another reason, specifically describes any individual voter's circumstance is beside the point. It is the protester's burden under state law to affirmatively prove that the voters they claim are ineligible are, in fact, ineligible to vote. Judge Griffin's Incomplete challenges have not attempted to, much less met this burden.

Likewise, Griffin's Overseas ID protests seek to disenfranchise voters he admits *followed* the State Board's instructions when voting, pursuant to a lawful rule in place well before the election, 8 N.C. Admin. Code § 17.0109, without making any showing that these voters were not eligible to cast their ballots. He never alleges even one vote cast by this group of challenged voters was fraudulent. Rather, had it

actually been required of them, many (or even all) of these voters would have provided a copy of their ID or availed themselves of the reasonable impediment exception. *See, e.g., Exs. 23, 26, 28, 32.* For the same reasons, then, his Overseas ID protests are insufficient as a matter of state law and must be dismissed.

b. *Even if Griffin's Erroneous Interpretations of Law Were Correct, He Could Not Show an Outcome-Determinative Irregularity Occurred.*

Even were the Court to assume the existence of an irregularity or violation of law during the 2024 General Election, Judge Griffin still has not satisfied his burden of demonstrating that any such alleged irregularity was outcome-determinative. This is because he cannot show that, had his preferred interpretation of the law been in place all along, any of the challenged voters could not have satisfied these requirements and still cast a ballot. As the appended affidavits show, many did or would have.

This is relevant because Judge Griffin is not arguing that the law as established by lawful authorities at the time of the election was violated or misapplied. He is rather arguing that those lawful bodies erred in their interpretations and that, instead, his preferred construction should have been adopted during that time. If the Court finds this untimely theory plausible, both state law and fundamental fairness demand that Judge Griffin then show voters could not have satisfied those alternative requirements had they instead been the law at the time of the election, which he does not do here.

This provides an alternative ground for the Court to affirm dismissal.

c. *Even if Judge Griffin's Legal Theories Were Valid, His Requested Remedy is Not Available Without an Evidentiary Record.*

Even if this Court were inclined to overlook these facial defects in Judge Griffin's Protests and consider the protest theories on their merits, it would not be able to grant his requested relief without an evidentiary record. The statutory election protest scheme requires an evidentiary record before consideration of granting any substantive relief. See N.C.G.S. § 163-182.10(d)(2) (requiring "substantial *evidence* of any violation, irregularity, or misconduct sufficient to cast doubt on the results of the election" (emphasis added)). The lack of evidentiary record in this case necessarily prevents the Protests from establishing anything by substantial evidence, let alone a violation of state election law.

James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638 (2005) does not counsel any differently. In *James*, the North Carolina Supreme Court ruled that when the State Board counted out-of-precinct provisional ballots, it was a violation of state election law. 359 N.C. at 271. However, the evidentiary record in *James* was clear: there was no factual dispute that the challenged voters voted out-of-precinct. *Id.* at 263. Instead, the case turned entirely on whether voting out of precinct was legal under the state law in place for the election. *Id.* There is no such evidentiary record in this case, and there is significant dispute about whether the technical deficiencies identified by Judge Griffin actually occurred or are the result of administrative errors. If the Protests are to be considered on their merits, such disputes must be resolved through adducing and testing an evidentiary record, which does not exist here.

Further, there was no argument in *James* that voters detrimentally relied on the State Board's guidance, as the State Board had shifted its interpretation of the relevant North Carolina statutes in *James* for the very first time that election cycle, and had not informed voters or candidates of the shift in policy. *Id.* at 265 (noting the "absence of any clear statutory or regulatory directive" that out-of-precinct ballots would be counted in 2004).⁵ The opposite is true here, where the State Board prominently announced rules governing each of Griffin's Protests well in advance of the 2024 election, operated in compliance with those rules throughout the election, and where each category of challenged voters cast their ballots in accordance with those announced rules and procedures.

Judge Griffin's prior contention that "this is not an instance in which an election official affirmatively instructed a voter" to take a specific course of action (Griffin Brief, Case No. 622-910, at 37), which he seemingly has abandoned on appeal, is wholly inaccurate. Each of the challenged voters, in all three of Griffin's categories, voted specifically pursuant to rules laid out by the State Board. In the case of the Overseas ID voters, as well as the Never Resident voters, this is self-evident. *See Military and Overseas Voting*, North Carolina State Board of Elections,

⁵ Judge Griffin's insistence that the 2004 general election was not the first time out-of-precinct ballots were counted, and thus voters developed reliance interests that the North Carolina Supreme Court held were insufficient to defeat the protests, is inaccurate. The relevant reliance interest is that of the voters who voted pursuant to the rule. In *James*, voters were not expressly told that out-of-precinct ballots would be counted ahead of time. 359 N.C. at 265. No out-of-precinct voter relied on guidance from the State Board to cast their ballot in 2004, because no such guidance existed. That is very different from the present case.

<https://www.ncsbe.gov/voting/military-and-overseas-voting> (last visited Feb. 3, 2025); *FAQ: Voter ID*, North Carolina State Board of Elections, <https://www.ncsbe.gov/voting/voter-id/faq-voter-id#IsphotoIDrequiredformilitaryandoverseasvotersakaUOCAVAvoters-2274> (last visited Feb. 26, 2025). In the case of the Incomplete voters, the State Board announced a year in advance of the 2024 election that it would not require additional information from anyone already registered to vote. *See In re HAVA Complaint of Carol Snow*, N.C. State Bd. of Elections, at 4 (Dec. 6, 2023). These are prominent, unambiguous announcements made well in advance of the election. Voters were entitled to rely on these affirmative instructions about how to vote.⁶

III. The Challenged Voters Are Eligible to Vote in North Carolina.

Not only did Griffin fail to allege or attempt to prove actual ineligibility, he would not be able to do so. What evidence has been adduced, both by Amici and in the public record, all supports the presumption that the more than 60,000 voters Judge Griffin challenges are bona fide eligible voters who have followed all rules provided by the State to exercise their fundamental right to vote. In addition to Amici, there are numerous public accounts of voters who retrieved copies of their voter registration

⁶ For over a century, the North Carolina Supreme Court has recognized that otherwise eligible and registered voters should not have their votes disqualified due to administrative errors. *See People ex rel. Boyer v. Teague*, 106 N.C. 576, 11 S.E. 665, 670 (1890) (rejecting effort to disqualify vote based on an alleged failure to register where “the voter procure[d] the proper certificate and duly register[ed] thereunder[.]” since where “the registrar made a mistake, without the fault or complicity of the voter . . . the vote is legal and should not be disturbed”); *see also Woodall v. W. Wake Highway Comm’n*, 176 N.C. 377, 388-91, 97 S.E. 226, 231-32 (1918); *Overton v. Mayor & City Comm’rs of Hendersonville*, 253 N.C. 306, 315-16, 116 S.E.2d 808, 815 (1960).

forms to confirm they included purportedly missing information.⁷ This should give the Court extreme pause before granting any of Griffin's requested relief.

These eligible voters followed the law. To retroactively attempt to disqualify their ballots on the basis of newfound disagreement with the rules they voted under – after federal and state courts had already rejected similar efforts to challenge these rules prior to the election – violates fundamental precepts of due process, democracy, and basic fairness.

CONCLUSION

For the reasons stated above, Amici respectfully request that the Court affirm the lower court decision and further hold that, in addition to the reasons stated by the NCSBE Decision and Order, Griffin's Protests also fail as a matter of law for failure to allege or prove the challenged voters are actually ineligible to vote in North Carolina, as required by N.C.G.S. § 163-90.1.

⁷ See, e.g., Patrick Marley, *To gain a court seat, Republicans seek to throw out thousands of votes*, Wash. Post (Jan. 23, 2025), <https://www.washingtonpost.com/politics/2025/01/23/north-carolina-supreme-court-griffin-riggs/>; Joe Bruno, *Voter whose ballot is being challenged provided SSN during registration*, YahooNews (Jan. 8, 2025), <https://www.yahoo.com/news/voter-whose-ballot-being-challenged-215500041.html?guccounter=1>; see also Doug Bock Clark, *They Followed North Carolina Election Rules When They Cast Their Ballots. Now Their Votes Could Be Tossed Anyway*, ProPublica (Jan. 27, 2025), <https://www.propublica.org/article/north-carolina-voters-jefferson-griffin-supreme-court-challenge>.

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

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, the undersigned counsel certifies that the foregoing brief, which is prepared using a proportional font, contains fewer than 3,750 words (excluding cover, index, table of authorities, caption, signature blocks, certificate of service, and this certificate of compliance) as reported by the word-processing software.

This the 27th day of February 2025.

/s/ Jeffrey Loperfido
Jeffrey Loperfido

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was e-filed and served upon the parties listed below via e-mail, addressed as follows:

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