

No. _____

TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

JEFFERSON GRIFFIN,

Respondent-Appellee,

v.

NORTH CAROLINA STATE BOARD
OF ELECTIONS,

Petitioner-Appellant,

and

ALLISON RIGGS,

Intervenor-Appellant.

From Wake County
No. COA25-181

**PETITION FOR WRIT OF SUPERSEDEAS AND
UNOPPOSED MOTION FOR TEMPORARY STAY**

RELIEF REQUESTED BY 5 p.m., Monday, April 7, 2025

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

The North Carolina State Board of Elections respectfully petitions this Court to issue a writ of supersedeas to stay the mandate of the Court of Appeals. The Board also moves for a temporary stay to allow this Court to review the Board's simultaneously filed petition for discretionary review. The Board respectfully requests a temporary stay by 5 p.m. on Monday, April 7, 2025—when the mandate is set to go into effect. Respondent Judge Jefferson Griffin does not oppose a temporary stay.

In the decision below, the Court of Appeals accepted three categories of election protests filed by Respondent concerning the 2024 election for an Associate Justice seat on this Court. The Court of Appeals ordered the State Board and county boards of elections to carry out a complex remedial process to implement its order. Absent a stay, the Board and all 100 counties will soon be required to begin implementing the decision below, even while this Court considers the Board's request to review that decision.

The Board respectfully submits that doing so will cause considerable confusion, hardship, and inefficiency. The Board respectfully requests that this Court temporarily stay the mandate while it considers the Board's petition for discretionary review. If the Court allows review, the Board

respectfully requests that the Court issue a writ of supersedeas while the Court considers the case.

STATEMENT OF THE FACTS ¹

The facts of this dispute are familiar to the Court. In brief, Respondent Judge Jefferson Griffin and Intervenor Associate Justice Allison Riggs were candidates in the statewide 2024 general election for Associate Justice on the North Carolina Supreme Court. (R p 9) Final canvassed results show that Justice Riggs prevailed by 734 votes. (R p 10) On November 19, 2024, Respondent filed election protests throughout the State challenging the election results. (R p 10)

In the protests at issue, Respondent challenged more than 60,000 votes cast by (1) voters who Respondent alleges registered to vote without providing certain identifying information, (2) military and overseas voters who did not submit a copy of their photo ID with their ballot, and (3) military and overseas-citizen voters who have not lived in the United States but who the General Assembly authorized to vote in state elections due to their familial connection to the State. (R p 11)

¹ The statement of facts in this petition is identical to the statement in the Board's simultaneously filed petition for discretionary review.

The Board dismissed these protests at the “preliminary consideration” stage—concluding both that Respondent had failed to comply with procedural filing requirements, and that he had failed to establish “probable cause” of an election-law violation. (R pp 9-51) Respondent filed petitions for judicial review in Wake County Superior Court for each of the three protests.² (R pp 1-51, 157-65, 215-23) The superior court denied the petitions, “conclud[ing] as a matter of law that the Board’s decision was not in violation of constitutional provisions, was not in excess of statutory authority or jurisdiction of the agency, was made upon lawful procedure, and was not affected by other error of law.” (R pp 152, 210, 269)

² The Board removed those petitions to federal court. The district court remanded them back to Wake County Superior Court. On February 4, 2025, the Fourth Circuit held that the Board correctly removed to federal court and “direct[ed] the district court to modify its order to expressly retain jurisdiction of the federal issues identified in the Board’s notice of removal should those issues remain after the resolution of the state court proceedings, including any appeals.” *Griffin v. N.C. State Bd. of Elections*, No. 25-1018(L) (4th Cir. Feb. 4, 2025) (per curiam), slip op. at 9, 11 (citing *England v. La. State Bd. of Med. Exam’rs*, 375 U.S. 411 (1964)). Following this decision, the Board filed a notice in superior court under *England* expressly reserving its federal-law arguments for federal court. (R pp 128-33) The Board again reserved under *England* in its brief to the Court of Appeals. No. COA25-181, Response Br. at 81-83. The Board incorporates these *England* reservations by reference.

Respondent appealed to the Court of Appeals. (R pp 154-56, 212-14, 271-73) Over a dissent, the Court of Appeals reversed. The Court held that the Board erred when it concluded that Respondent had not properly served his protests or shown probable cause of an election law violation or irregularity. Slip op. at 12-19.

The Court first held that Respondent's protests did not fail for improper service. *Id.* at 16. It held that notwithstanding the Board's statutory authority to "promulgate rules providing for adequate notice" of election protests, N.C. Gen. Stat. § 163-182.10(e), the Board lacked authority to require election protesters to provide notice to voters that they were challenging their votes. Slip op. at 14-15. The Court also held that, in any event, Respondent satisfied the Board's service rules by mailing voters a postcard with a QR code stating that their votes may be subject to protest. *Id.* at 15.

The Court next held that Respondent had shown probable cause sufficient to allow his protests to proceed beyond the preliminary stage of the protest proceedings. *Id.* at 16-19. It based this holding on the fact that this Court had decided "to issue a stay of certification" concerning this election. *Id.* at 19. It also stated that a recent decision of the Fourth Circuit that rejected a federal constitutional challenge to an unrelated state statute

showed that Respondent had demonstrated probable cause of an election-law violation in this case. *Id.* (citing *Sharma v. Hirsch*, 121 F.4th 1033, 1043 (4th Cir. 2024)).

Having concluded that probable cause existed, the Court chose not to remand this case for further proceedings before the Board, as contemplated by statute. *See* N.C. Gen. Stat. § 163-182.10(a), (c). It instead proceeded to review for itself the merits of the three categories of protests that Respondent had advanced. Slip op. at 19-32.

First, the Court addressed the protests concerning voters who are alleged to have incomplete registrations. *Id.* at 19-25. The Court concluded that any voter who has registered since the adoption of N.C. Gen. Stat. § 163-82.4(a)(11), and who has not provided their driver's license number or the last four digits of their social security number with their registrations, or who has not been assigned a unique identifier number by elections officials, is not lawfully registered and may not vote in the State's elections. Slip op. at 24-25.

Second, the Court addressed the protests concerning military and overseas voters who did not provide photo ID with their ballots. *Id.* at 25-30. It held that a statute that requires domestic civilian voters to present photo ID with their absentee ballots also applied to military and overseas voters. *Id.* at

27-29. In doing so, the Court invalidated a rule that was approved without controversy by the Rules Review Commission. *Id.*; see 08 N.C. Admin Code 17 .0109.

Third, the Court addressed the protests concerning votes cast by certain overseas-citizen voters who the General Assembly unanimously authorized to vote in state elections. Slip op. at 30-32; R p 37. The Court held that this statute is facially unconstitutional. Slip op. at 30-32.

The Court of Appeals did not try to reconcile its decision with this Court's holding in *Pender County v. Bartlett* that challenges to settled election practices must be litigated before an election takes place. 361 N.C. 491, 649 S.E.2d 364 (2007). Nor did the Court address *State ex rel. Quinn v. Lattimore* and its progeny, where this Court has repeatedly recognized that votes cast in compliance with official guidance from election officials cannot be retroactively discarded. 120 N.C. 426, 26 S.E. 638 (1897).

Having addressed the merits of Respondent's protests in this manner, the Court of Appeals reversed the superior court's affirmance of the Board's dismissal of Respondent's three groups of protests. Slip op. at 34-36. The Court of Appeals further ordered the superior court to "remand [each] matter to the Board" for further proceedings. *Id.* at 35-36.

The Court also provided instructions to the Board on remand. For voters with allegedly incomplete registrations and military and overseas voters who did not present photo ID, the Court instructed the Board to: (1) identify the affected voters, (2) notify those voters of the alleged defects in their registrations or their failure to present photo ID, (3) allow voters fifteen business days to cure the defects, and (4) change the final vote count by removing votes cast by those voters who fail to cure the alleged defects. *Id.* at 34-36. Separately, the Court ordered that the final vote total be changed by removing votes cast by those overseas voters who, the Court held, are categorically ineligible to vote. *Id.* at 36.

Judge Hampson dissented. The dissent first observed that Respondent had not identified any voters who were, “in fact, ineligible to vote in the 2024 General Election under the statutes, rules, and regulations in place in November 2024 governing that election.” Slip op. at 1 (Hampson, J., dissenting). The dissent would have affirmed the rejection of Respondent’s protests for that reason alone: “Changing the rules by which . . . lawful voters took part in our electoral process after the election to discard their otherwise valid votes,” the dissent explained, “is directly counter to law, equity, and the Constitution.” *Id.* at 1; *see also id.* at 13-22. Separately, the dissent indicated

that it would have affirmed the Board's dismissal of the protests because they were not properly served and because they failed on the merits. *Id.* at 5-13, 22-60.

REASONS WHY THE WRIT SHOULD ISSUE

Under Appellate Rule 23, a writ of supersedeas may issue “to stay the execution or enforcement of a judgment, order, or other determination mandated by the Court of Appeals when . . . a petition for discretionary review has been or will be timely filed.” N.C. R. App. P. 23(b). As noted, the Board has filed a petition for discretionary review together with this petition.

In deciding whether to issue a stay pending appeal, courts consider whether (1) the appellant can make “a *prima facie* showing that the underlying issues being appealed have merit” and whether (2) the appellant “would be irreparably harmed” absent a stay pending appeal. Elizabeth B. Scherer & Matthew N. Leerberg, *North Carolina Appellate Practice and Procedure*, § 23.04[3] (2022). Both requirements are satisfied here.

I. A Stay Is Needed to Prevent Irreparable Harm.

A stay of the mandate of the Court of Appeals should issue because, absent a stay, the State, the counties, and the State's voters will suffer irreparable harm.

In its decision, the Court of Appeals ordered the Board and the county boards to take certain steps to implement its decision. Slip op. at 33-36. The Court also directed the mandate to issue at 5 p.m. on Monday, April 7th. *Id.* at 36. Thus, absent intervention, the Board will need to immediately begin carrying out the remedial measures ordered by the Court of Appeals. *See supra* at p. 7.

The Board respectfully submits that proceeding with these remedial steps before final resolution of this case would cause considerable confusion, cost, and inefficiency. For example, if the decision below were to be immediately implemented, nearly all counties across the state will be required to undertake significant mailing and staffing expenses that have not been budgeted for the current fiscal year. The Board may also need to immediately devise a secure electronic method to allow military and overseas-citizen voters to submit highly sensitive documents such as military IDs and passports. *See* N.C. Gen. Stat. § 163-258.10. The Board would be required to take these steps provisionally, when it is possible that this Court could later order the challenged votes to be counted notwithstanding these steps, or for the Board to take different remedial steps. Absent a stay, therefore, tens of thousands of voters will be forced to act now to safeguard

their votes, without knowing if such steps will ultimately be needed or if alternative steps will be needed later.

Implementing the decision below now would also be in tension with this Court's previous order in this case. In that order, this Court directed that "the temporary stay allowed on 7 January 2025 shall remain in place until the Superior Court of Wake County has ruled on [Respondent's] appeals and any appeals from its rulings have been exhausted." *Griffin v. N.C. Bd. of Elections*, 910 S.E.2d 348, 349 (N.C. 2025). The Board understands this order to bar it from issuing a certificate of election until this Court reviews the decision below, or declines to do so. In these circumstances, it would be anomalous for the Board to implement a remedial process before this Court has an opportunity to consider whether that process is appropriate.

II. A Stay is Further Appropriate Because the Court of Appeals Likely Erred.

Supersedeas relief is further warranted because the Court of Appeals likely erred by ordering the Board to discard votes cast in compliance with the rules in place at the time of the election.

In its decision, the Court of Appeals held that certain votes should not be counted based on legal theories that Respondent first advanced after the election was over. Specifically, it held that votes cast by voters whose registrations lack certain information may not be counted, even though many of those voters have been voting without controversy for decades and those voters have otherwise confirmed their identities in two separate ways. Slip op. at 34. It also held that votes cast by military and overseas voters who did not present a photo ID with their ballots may not be counted, even though the Rules Review Commission approved a rule without objection providing that no such ID was needed. *Id.* at 35. And it held that votes cast by certain overseas voters may not be counted, striking down as facially unconstitutional a statute that was unanimously passed by our General Assembly in 2011. *Id.* at 36.

These rulings were in error. Most significantly, the decision below erred by ordering votes to be discarded that were cast in compliance with the rules in place at the time of the election. This decision conflicts with this Court's precedent in at least two ways.

First, this Court's decision in *Pender County v. Bartlett* holds that challenges to established election practices must be litigated well in advance

of the election. 361 N.C. 491, 649 S.E.2d 364. As the Court explained, voters, candidates, and election officials all act “in reliance upon” the rules in place during the voting process. *Id.* at 510, 649 S.E.2d at 376.

The decision below, however, fails to honor *Pender County*’s guidance. It instead grants a post-election request “to rewrite our state’s election rules—and, as a result, remove the right to vote in an election from people who already lawfully voted under the existing rules.” *Griffin v. N.C. Bd. of Elections*, 909 S.E.2d 867, 872 (N.C. 2025) (Dietz, J., dissenting). Blessing post-election litigation of this kind “invites incredible mischief.” *Id.* It “will lead to doubts about the finality of vote counts following an election, encourage novel legal challenges that greatly delay certification of the results, and fuel an already troubling decline in public faith in our elections.” *Id.*

Second, the decision below fails to respect this Court’s longstanding precedent that voters “cannot be deprived of [their] right to vote” based on the allegedly “willful or negligent acts” of government officials. *Lattimore*, 120 N.C. at 430, 26 S.E. at 639. Contrary to this precedent, the decision below holds that votes cast in full compliance with the guidance set forth in forms, rules, and statutes may be discarded because courts decide, after the

fact, that state officials—including the Board’s members, members of the Rules Review Commission, and every single member of the General Assembly—construed the law incorrectly. As this Court has held, disenfranchising eligible voters who followed prevailing election rules is inconsistent with our democratic “theory of our government.” *Id.*

Given the departure of the Court of Appeals from settled precedents, a stay of the mandate is warranted. Moreover, given the gravity of the issues raised in this case, a stay pending this Court’s review is warranted even putting aside any consideration “on the merits” of those issues. *Griffin*, 909 S.E.2d at 868 (Allen, J., concurring).

MOTION FOR TEMPORARY STAY

For the same reasons set forth above, the Board also requests that this Court temporarily stay the mandate under Appellate Rule 23(e) while this Court decides whether to issue a writ of supersedeas. The Board respectfully requests that this Court grant a temporary stay before the mandate goes into effect on Monday, April 7th at 5 p.m.

The Board has contacted Intervenor and Respondent on this motion. Intervenor consents to the motion and does not intend to file a response.

Respondent has requested that the Board state his position as follows: “Judge Griffin recognizes that the Supreme Court traditionally grants a temporary stay whenever petitions for discretionary review and writ of supersedeas are filed. Therefore, Judge Griffin does not object to the issuance of a temporary stay while the Court considers the petitions filed by the opposing parties. However, Judge Griffin opposes the petitions for discretionary review and writs of supersedeas, and intends to file a response asking that those petitions be denied.”

CONCLUSION

The Board respectfully requests that this Court grant the motion for a temporary stay and the petition for a writ of supersedeas.

This the 6th day of April, 2025.

/s/ Electronically submitted

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N.C. R. App. P. 33(b) Certification:
I certify that the attorneys listed below
have authorized me to list their names
on this petition and motion as if they had
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CERTIFICATE OF SERVICE

I certify that today, I caused this petition and motion to be served on
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VERIFICATION

I, James W. Doggett, as counsel for the Board, verify under penalties of perjury that the facts stated in this petition, including any facts incorporated by reference in the petition, are true to the best of my knowledge, information, and belief.


James W. Doggett

Wake County, North Carolina

Sworn to and subscribed before me
This 6th day of April, 2025.


Notary Public

My commission expires: 7/11/2026

