No. 320P24-3

No. _____

SUPREME COURT OF NORTH CAROLINA

****

JEFFERSON GRIFFIN,

Petitioner,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS,

Respondent,

and

ALLISON RIGGS,

Intervenor-Respondent.

From the Court of Appeals of North Carolina
No. COA25-181

****

INTERVENOR-RESPONDENT'S PETITION FOR WRIT OF SUPERSEDEAS AND UNOPPOSED MOTION FOR TEMPORARY STAY

****

ACTION REQUESTED BY 5:00 P.M. ON 7 APRIL 2025

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Intervenor-Respondent Allison Riggs ("Justice Riggs") respectfully petitions this Court to issue its writ of supersedeas to stay enforcement of the divided, per curiam opinion of the North Carolina Court of Appeals dated 4 April 2025 pending review by this Court of that opinion, which reverses three orders entered on 7 February 2025 by Judge William R. Pittman in Wake County Superior Court, remands with instructions, and orders the Clerk of Court to issue the mandate on Monday, 7 April 2025 at 5:00 p.m.

Justice Riggs also respectfully applies to this Court for an order temporarily staying enforcement of that opinion, with such order to be in effect until determination by this Court whether it shall issue its writ. This request for a temporary stay is unopposed; Judge Griffin's counsel reports that "Judge Griffin does not object to the issuance of a temporary stay while the Court considers the petitions [for discretionary review and writ of supersedeas]."[1]

INTRODUCTION

Before Friday afternoon, all assumed at least this much: once the Court of Appeals ruled on Judge Griffin's appeal, this Court would have an opportunity to weigh in on the critically important issues of North Carolina law presented in this hotly contested election for a seat on the State's highest court. *See, e.g.*, *Griffin v. N.C. State Bd. of Elections*, 911 S.E.2d 365 (N.C. 2025) (Barringer, J., concurring in order denying bypass petition) ("Allowing [the Court of Appeals to decide this case first] will bring this case before this Court in relatively short order. . . . [T]his Court and our State will benefit from a well-reasoned, thoughtful, and deliberative analysis by the Court of Appeals."). But unless this Court immediately stays the mandate, the Court of Appeals' opinion threatens to foreclose this Court's meaningful review of

[1] Judge Griffin's counsel authorized Justice Riggs to report the following:

> 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.

Judge Griffin's protests and to launch an unprecedented state-wide cure effort *five months after the election*.

Judge Griffin did not request this cure process. And the Court of Appeals cites no precedent—from any court in North Carolina or elsewhere—to support such an initiative nearly half a year after an election. Worse, the Court of Appeals' ruling is destined to disenfranchise thousands of North Carolinians, denying them due process and equal protection under North Carolina law.[2] If the cure process proceeds, it should be *after* this Court has had an opportunity to consider the weighty issues presented in this appeal, and to evaluate the novel remedy proposed by the Court of Appeals before it is too late to make any changes.

The Court of Appeals' decision, however, leaves this Court little time to think—much less to act. The Court of Appeals accelerated the issuance of its mandate, instructing the Clerk of Court to issue its "mandate on Monday, 7 April 2025 at 5 P.M." (*Griffin v. N.C. State Bd. of Elections*, No. COA25-181, slip op. at 36 (N.C. Ct. App. Apr. 4, 2025) (attached as Exhibit A).) Once that mandate issues, the State Board of Elections is directed to instruct all 100 county boards to work "expeditiously" to identify the "incomplete registration" and military and overseas voters protested

[2] The petitions for review at issue here were removed by the North Carolina State Board of Elections to federal court, then remanded. The U.S. Court of Appeals for the Fourth Circuit held 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." (R p 145 (citing *England v. Med. Exam'rs.*, 375 U.S. 411 (1964)). Accordingly, Justice Riggs filed a notice in superior court under *England* expressly reserving federal-law arguments for federal court. Justice Riggs incorporates her *England* reservation by reference here and in all filings before the Supreme Court. (R p 207.)

by Judge Griffin and then to allow those voters 15 business days from the mailing of notice to cure their alleged registration and photo ID defects. (*Id.* at 35–36.) Any voters who do not receive that notice (whether because they have died, are traveling, have moved, or for other reasons) will have their votes taken away. Any voters, including servicemembers serving in remote locations, who fail to come forward with a social security number, driver's license, or photo ID within a matter of days—when they had no reason to be expecting an emergency demand for information from the State Board five months after election season—will be disenfranchised.

Justice Riggs urges this Court to act immediately to preserve the status quo long enough for this Court to conduct an expedited, but careful and reasoned, review of the important state-law issues raised in the Court of Appeals' opinion. As demonstrated below, Justice Riggs has shown that good cause exists for entry of the stay. *See* N.C. R. App. P. 23(e) ("The court for good cause shown in such a petition for temporary stay may issue such an order ex parte.").

Justice Riggs is filing a Petition for Discretionary Review concurrently with this Petition for Writ of Supersedeas and Unopposed Motion for Temporary Stay.

PROCEDURAL HISTORY

The complex procedural history of this matter has been well-documented in prior filings before this and other courts. Accordingly, an abbreviated summary follows.

Judge Griffin lost the race for Associate Justice in the November 2024 General Election when Justice Riggs received 734 more votes than Judge Griffin. Shortly after the election, Judge Griffin presented three categories of election challenges

relevant here to the State Board: (1) ballots cast by voters whose registration records lack a driver's license number or the last four digits of a social security number; (2) servicemembers, their families, and other overseas voters who cast ballots pursuant to General Statutes Chapter 163, Article 21A ("UMOVA"), but did not include a copy of their photo identification or an exception form with their ballot because they were not instructed to do so; and (3) overseas North Carolina voters who had never lived in the state, but whose parents were covered North Carolina voters under UMOVA. These challenges in the aggregate implicated the ballots of over 60,000 registered North Carolina voters.

The State Board served its Decision and Order on 13 December 2024, rejecting Judge Griffin's protests. (Attached as Exhibit C.) The Superior Court affirmed the Board's dismissal of Judge Griffin's protests on 7 February 2025. (Attached as Exhibit B.) The Superior Court "conclude[d] as a matter of law that the Board's decision was not in violation of constitutional provisions, was not in excess of statutory authority or jurisdiction of the agency, was made upon lawful procedure, and was not affected by other error of law." (R pp 152, 210, 269.)

Judge Griffin appealed the Superior Court's orders on 10 February 2025. The Court of Appeals heard oral arguments on 21 March 2025. On 4 April 2025, the Court of Appeals issued its opinion reversing the Superior Court's orders. (*Griffin*, slip op. at 36.) The Court of Appeals ruled that: (1) voters who registered after the effective date of N.C. Gen. Stat. § 163-82.4 in 2004 and have not provided their county boards with their driver's license numbers or the last four digits of their social security

numbers were not qualified as eligible voters in the 2024 election; (2) military and overseas voters under Article 21A who had not provided a copy of their photo ID had not cast proper ballots; and (3) voters covered by UMOVA who had never lived in the state of North Carolina were not eligible to vote in North Carolina, statutory authorization notwithstanding, and would not have their votes included in the final count for the Associate Justice Seat 6 race in the November 2024 General Election. (*See id.* at 33–36.)

The Court of Appeals instructed the State Board on remand to direct the county boards to identify the voters implicated under categories one and two above, and to issue notice to them with a 15-business-day opportunity to cure the deficiencies in their registrations and ballots. (*See id.* at 36.)

LEGAL STANDARD

Under Appellate Rule 23, a writ of supersedeas may issue "to stay the execution or enforcement of any judgment, order, or other determination of a trial tribunal." N.C. R. App. P. 23(a)(1). The writ "may issue only in the exercise of, and as ancillary to, the revising power of an appellate court," with the purpose "to preserve the [s]tatus quo pending the exercise of appellate jurisdiction." *Craver v. Craver*, 298 N.C. 231, 238, 258 S.E.2d 357, 362 (1979); *see also City of New Bern v. Walker*, 255 N.C. 355, 356, 121 S.E.2d 544, 545–46 (1961).

In deciding whether to preserve the status quo pending appeal, courts consider whether (1) the appellant has shown a likelihood of success on the merits of the appeal and (2) irreparable harm will occur absent a stay pending appeal. *See* 1 Elizabeth B. Scherer & Matthew N. Leerberg, *North Carolina Appellate Practice and Procedure*

§ 23.04 (2025); *see also N. Iredell Neighbors for Rural Life v. Iredell Cty.*, 196 N.C. App. 68, 78-79, 674 S.E.2d 436, 442–43 (2009) (listing similar criteria for direct appeals from denials of motions to stay pending appeal).

REASONS WHY WRIT OF SUPERSEDEAS SHOULD ISSUE

I. A STAY IS NECESSARY TO PRESERVE THE STATUS QUO, TO AVOID IRREPARABLE HARM TO NORTH CAROLINA VOTERS, AND TO PREVENT THE COMMENCEMENT OF AN UNPRECEDENTED BALLOT CURE PROCESS FIVE MONTHS AFTER AN ELECTION.

A writ of supersedeas is appropriate to preserve the status quo and to give this Court a meaningful opportunity to review the decision of the Court of Appeals. The unprecedented cure process the Court of Appeals has ordered has not yet commenced. If this Court declines to direct the Court of Appeals to stay the mandate, the mandate will issue, not within the twenty days contemplated by the Rules of Appellate Procedure, but promptly at the end of the day on 7 April 2025. That mandate will trigger a *months-late* cure process that Judge Griffin did not ask for. The Court of Appeals cites no authority—from North Carolina or any other state—for the remedy it fashioned out of whole cloth here, which will require a massive cure process, months after a general election, for tens of thousands of voters. Indeed, the only filing to propose such a resolution in the Court of Appeals was an amicus brief filed by an unrepresented voting rights activist who protested the election result in this race but was unsuccessful before the State Board because he failed to comply with the law.

The Court of Appeals does reference a cure process it contends the county boards should have followed, presumably *years or decades* ago when voters first registered. *See* N.C. Gen. Stat. § 163-82.4(f) ("Correcting Registration Forms"). But

that process is to be conducted when a voter *first* registers and at the corresponding county canvass—*i.e.*, at a time when voters are paying attention to the election and might reasonably expect to be contacted by a county board of elections about their vote. It does *not* provide a lawful basis for a novel, mass-cure process in *April*, months after a November general election, for voters who first registered years or decades in the past and have voted without issue in numerous elections since.

In the absence of a stay from this Court, were such a process to proceed, particularly given its inadequacies, it would effectively deprive this Court of a meaningful opportunity to review, revise, or reject this novel remedy. By the time this Court has an opportunity to review the Court of Appeals' opinion on the merits, the train will have already left the station. The State Board will have wrestled with the vague directions provided by the Court of Appeals and attempted to comply. There is little direction for how the Board is to carry out this process. Most military and overseas voters vote electronically. Should the Board reopen that electronic portal and direct its software engineers to modify the code to permit voters to provide a photo ID? What should the Board do about dead voters who cannot provide cure information? What if a voter does not receive the notice until late in or after the cure period? What if any mailed notice is returned undeliverable? Does the voter need to sign a verification under penalty of perjury when providing the number? If a voter provides a number and that number does not match other federal and state databases, will the vote be counted as would have been required under state law if the information had been provided on the voter registration form?

Some voters will be put to significant time, expense, and difficulty trying to cure their votes before the deadline—particularly if they are traveling, stationed overseas, hospitalized, or facing other hurdles to taking immediate action to respond to a demand for action from the elections board they did not know was coming. Others may decide there is not sufficient time to act and give up—then be discouraged or confused if a longer cure period is later ordered. If the Court later *reverses* the Court of Appeals, it will only cause further confusion and undermine public confidence in our elections if voters have expended additional time, money, and effort to cure months after an election—once again following the directions of elections officials, as they did before Election Day—only to have their votes *still* invalidated anyway. It is impossible to predict the full scope of confusion that could result from this 15-day cure process if implemented before this Court's review. Those risks make it critical that a stay issue to give this Court time to evaluate whether the Court of Appeals' opinion is legally sound before it goes into effect.

Further, the Court of Appeals' "cure" remedy will be inadequate to prevent the disenfranchisement of thousands of North Carolina voters. There can be no doubt that tens of thousands of voters—through no fault of their own—will be unable to cure their registrations or ballots in time. Judge Hampson's dissent includes a sampling of the many accidents or circumstances that would render the 15-day "cure period" futile: the post-election death of a voter, the inability for active servicemembers to pause their duties to comply, the overseas voters who never received proper service to begin with, and voters who "may have moved, have not

learned of this proceeding, or are sick, immobile, elderly, transient, away on extended business travel, [or] traveling on school breaks with their children." (*Griffin*, slip op. at 64–65 (Hampson, J., dissenting).) Should these or any other potential impediments to compliance arise, the ultimate effect will be the same: these voters will be disenfranchised months after the 2024 General Election, despite doing everything they were required and told to do to cast valid ballots. Requiring additional steps from these voters to have their votes counted—which were not required of any other voters in the 2024 North Carolina election or in any other race—also presents an equal protection problem under our state constitution.

Accordingly, for good cause shown, this Court should act immediately to preserve the status quo, issue a writ of supersedeas, and direct the Court of Appeals to stay its mandate until after this Court has had an opportunity to review the lower court's decision.

II. JUSTICE RIGGS IS LIKELY TO SUCCEED ON THE MERITS.

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

As a matter of North Carolina constitutional and regulatory law, voters have the right to sufficient notice that their ballots have been challenged. Judge Griffin failed to comply with the rules, but he and the Court of Appeals excuse this failure by challenging the rules themselves. To wit, Judge Griffin failed to comply with 8 N.C. Admin. Code 2.0111, which requires the protestor to "serve" copies of all filings in an election protest on "every person with a direct stake in the outcome of the protest." Instead of serving "copies" of his protests, Judge Griffin caused, via the

North Carolina Republican Party, postcards to be sent by non-forwardable bulk mail with a vague message that the recipient's vote "*may*" be affected by an election protest, and then included a QR code directing the recipient to sift through links to hundreds of protests in an attempt to determine whether, and why, their votes may be subject to protest. (R pp 16–18.) The State Board correctly determined, and the Superior Court properly affirmed, that this notice was woefully deficient as a matter of state law and procedural due process.

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

Both Judge Griffin and the Court of Appeals sidestepped these issues by focusing on the State Board's obligation under state law to give "notice of a protest *hearing*" to the *protestor* and those potentially impacted by the protest. (*Griffin*, slip op. at 13–14 (emphasis added and omitted).) Not only does the statute say nothing

about who must provide a copy of the underlying protest itself to the affected voter, but the Court of Appeals fails meaningfully to grapple with the statutory authority the General Assembly granted to the Board to "promulgate rules providing for adequate notice to parties," N.C. Gen. Stat. § 163-182.10(e), and to "prescribe forms for filing protests," N.C. Gen. Stat. § 163-182.9(c).

Judge Griffin did not follow state law. Nor did he afford voters their state constitutional right to due process. Accordingly, Judge Griffin's protests are unlikely to succeed upon further review.

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

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

A settled regulation approved unanimously by the State Board and the Rules Review Commission provides that a voter casting a ballot under Article 21A "is not required to submit a photocopy of acceptable photo identification" or to claim an exception. 8 N.C. Admin. Code 17.0109(d). Judge Griffin argues nevertheless that this regulation should be ignored because Article 21A incorporates the photo ID requirement found in Article 20, a separate statutory scheme that sets out requirements for domestic absentee voting. Yet, when the General Assembly implemented photo ID requirements for absentee voting, it specifically modified Article 20 to include a photo ID requirement, *see* N.C. Gen. Stat. § 163-230.1(a)(4), (b)(4), (f1) (requiring voted ballots "under this section" to be "accompanied by a

photocopy of identification" (emphasis added)). The General Assembly did not amend Article 21A's separate absentee voting regime to impose a photo ID requirement for military and overseas voters.

Judge Griffin argues—and the Court of Appeals agreed—that the State Board lacked the authority to issue a rule that a photo ID is not required under Article 21A. (*See Griffin*, slip op. at 27–30.) But that is wrong. It is the General Assembly that made the policy choice to impose a photo ID requirement for an absentee ballot under Article 20 without at the same time imposing such a requirement for casting a ballot under Article 21A. In addition, to the extent there is any ambiguity, the General Assembly specifically directed the Board in Article 21A to develop "standardized absentee-voting materials. . . in coordination with other states." N.C. Gen. Stat. § 163-258.4(d). The ID exception found in 8 N.C. Admin. Code 17.0109(d) aligns with this directive, as no other U.S. state requires their military and overseas voters to provide a photo ID (even when those states, like North Carolina, require photo ID from their other voters).

Moreover, Judge Griffin's selective targeting of registered voters in just Guilford County (and a handful of others after the statutory deadline) selectively disenfranchises members of the military, their families, and overseas voters, placing them on unequal footing not only with the rest of the North Carolina citizenry, but also with similarly situated persons who simply registered in a different, unchallenged county.

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

Judge Griffin claimed, and the Court of Appeals held (*see Griffin*, slip op. at 32), that children of North Carolinians stationed or living abroad who themselves have "never lived" in North Carolina are ineligible to vote because they do not satisfy the "voter residency" requirement of Article VI of the North Carolina Constitution. This argument is meritless and ignores the critical distinction between where an individual *lives* and the place they *reside* (which North Carolina law defines as that person's "domicile"). A person's domicile may be in North Carolina even if they have not physically lived here, either because North Carolina is that person's domicile of origin—and that voter has never adopted a new domicile—or by operation of law.

At birth, a person inherits their parent's or legal guardian's domicile as their "domicile of origin." *Thayer v. Thayer*, 187 N.C. 573, 574, 122 S.E.2d 307, 308 (1924). And domicile of origin, like any domicile "once acquired is presumed to continue until it is shown to have been changed." *Reynolds v. Lloyd Cotton Mills*, 177 N.C. 412, 99 S.E.2d 240, 244 (1919); *see also Lloyd v. Babb*, 296 N.C. 416, 251 S.E.2d 843 (1979) (holding that college students may retain their domicile of origin while living away from home).

In addition, an individual may have a domicile in North Carolina by operation of law, without respect to whether that voter "actually" lives here. *Thayer*, 187 N.C. at 574, 122 S.E.2d at 308; *see also generally* N.C. Gen. Stat. § 163-57 (defining residence in various contexts for purposes of voting, including voters who "live" out of state). And critically, the General Assembly expressed its clear intent to protect the

right of children and dependents of North Carolinians living abroad to be heard in North Carolina elections when it enacted N.C. Gen. Stat. § 163-258.2(1)(e), and confirmed that a person "born outside the United States" is eligible to vote—regardless of whether he or she has ever "lived in" North Carolina—if his or her "parent or legal guardian" was eligible to vote in North Carolina "before leaving the United States." N.C. Gen. Stat. § 163-258.2(1)(e) establishes domicile by operation of law for these voters, a fact which the Court of Appeals ignored.

This has "been the law of North Carolina for thirteen years" "faithfully implemented in 43 elections in this state since that time." (R p 39.) Accordingly, Judge Griffin cannot invalidate these votes in a post-election protest and Justice Riggs is likely to succeed on the merits in challenging the Court of Appeals' opinion disenfranchising these voters.

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

Judge Griffin claims that every voter without a driver's license or social security number in a state database should not have been permitted to vote in any race in the 2024 General Election and should have their vote thrown out—but only as to his race.

In the first instance, Judge Griffin has not presented evidence—and so has not sustained *his burden as the protestor*—that the challenged voters were unlawfully registered to vote. The deficiencies in Judge Griffin's protest are legion. First, the State Board's database may lack a number for some voters because they had no

driver's license or social security number when they registered, and neither state nor federal law requires that they have one to register to vote. (*See* R pp 24–25.) Second, some voters *did* include a number on their registration form, but that number was deleted from the records Judge Griffin reviewed because it failed to match a number in an outside database, and so that voter was given another way to confirm their identity by providing a HAVA ID. (*See* R pp 24–28.) Third, voters who failed to provide either number on their registration forms were given unique voter registration numbers, *see* N.C. Gen. Stat. §§ 163-82.4(b), 163-82.10A (implementing 52 U.S.C. § 21083(a)(1)(A), (5)(A)(ii)), and were then permitted to vote if they provided a HAVA ID before they voted in their first election, *id.* § 163-166.12(a), (b).

Moreover, the Court of Appeals did not even cite, much less discuss or attempt to distinguish, over a century of North Carolina legal precedent that "a mere irregularity in registration will not vitiate an election." *Plott v. Bd. of Comm'rs of Haywood Cty.*, 187 N.C. 125, 131, 121 S.E. 190, 193 (1924). That principle has been repeatedly upheld by this Court over the course of decades. *See, e.g., Overton v. Mayor & City Comm'rs of City of Hendersonville*, 253 N.C. 306, 315, 116 S.E.2d 808, 815 (1960) (collecting cases); *Woodall v. W. Wake Highway Comm'n*, 176 N.C. 377, 389 (1918) ("Where a voter has registered, but the registration books show that he had not complied with all the minutiae of the registration law, his vote will not be rejected."); *Gibson v. Bd. of Comm'rs of Scotland Cty.*, 163 N.C. 510, 513, 79 S.E. 976, 977 (1913) (reasoning that once a county board registers a voter who is otherwise "entitled to register and vote," the voter "cannot be deprived of his right to vote," even

if the county board "inadverten[tly]" registered the qualified voter); *Wilmington, O. & E.C.R. Co. v. Onslow Cty. Comm'rs*, 116 N.C. 563, 568, 21 S.E. 205, 207 (1895) ("[T]he machinery provided by law to aid in attaining the main object—the will of the voters—[]should not be used to defeat the object which they were intended to aid.").

In light of the plain text of the law and repeatedly reaffirmed holdings from this Court, Justice Riggs is likely to succeed on the merits of her appeal with respect to this issue.

E. Judge Griffin's Protest Ignores Considerations of the *Purcell/Pender County* Principle, Timeliness, and Equal Protection.

While Judge Griffin's protests fail on their own terms, other legal and equitable considerations—all ignored by both Judge Griffin and the Court of Appeals—also doom his claim.

First, Judge Griffin's protest violates the *Purcell/Pender County* doctrine and related equitable doctrines applied by courts across the country in elections cases. Judge Griffin's petition is, "in effect, post-election litigation that seeks to remove the legal right to vote from people who lawfully voted under the laws and regulations that existed during the voting process." *Griffin v. N.C. State Bd. of Elections*, 909 S.E.2d 867, 871 (N.C. 2025) (Dietz, J., dissenting). As Justice Dietz explained, North Carolina law recognizes a corollary to the federal election doctrine set forth in *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam). The *Purcell/Pender County* principle "recognizes that, as elections draw near, judicial intervention becomes inappropriate because it can damage the integrity of the election process." *Griffin*, 909 S.E.2d at 871 (Dietz, J., dissenting).

The Court of Appeals' opinion threatens to throw out votes that were validly cast under statutes, regulations, and guidance in effect at the time they were cast. That threat is unprecedented and dangerous. "Permitting post-election litigation that seeks to rewrite our state's election rules—and, as a result, remove the right to vote in an election from people who already lawfully voted under the existing rules—invites incredible mischief." *Griffin*, 909 S.E.2d at 872 (Dietz, J., dissenting). It will "lead to doubts about the finality of vote counts following an election"; it will "encourage novel legal challenges that greatly delay certification of the results"; and it will "fuel an already troubling decline in public faith in our elections." *Id.*

Second, the Court of Appeals' decision to allow Judge Griffin's untimely protests—when he could have but did not raise these challenges before the election—is in conflict with this Court's decision in *James v. Bartlett*, 359 N.C. 260, 607 S.E.2d 638 (2005). Judge Griffin has repeatedly invoked *James* to argue that he was entitled to gamble on the election outcome then challenged settled law (including statutes, regulations and Board guidance) because the protest statute permits him to do so. That argument misreads *James*. In *James*, this Court instructed the State Board to exclude out-of-precinct ballots from its final tally following a post-election protest. *James*, 359 N.C. at 265, 607 S.E.2d at 641. The petitioner's post-election challenge was permissible—despite a challenge to the "timeliness" of his challenge—because the "2004 election cycle was *the first time in North Carolina history* that State election officials counted out-of-precinct provisional ballots," *id.* (emphasis added). In other words, the decision of the State Board to count out-of-precinct votes came as a

surprise to everyone. Moreover, such a decision was "unlawful under the election rules that existed at the time of the election." *Griffin v. N.C. State Bd. of Elections*, 910 S.E.2d 348, 354 (N.C. 2025) (Dietz, J., concurring). Therefore, the petitioner in *James* necessarily could not have filed his challenge until *after the election*; he had no way of knowing the Board would count these votes before the election. The *James* court permitted the challenge not because a protestor has the right to challenge any election rule at any time up until the election protest deadline (as Judge Griffin contends here), but rather because the petitioner did not have adequate notice that election officials would count the ballots at issue. *James*, 359 N.C. at 265, 607 S.E.2d at 641.

By contrast, the voters who Judge Griffin challenges have been instructed for years, and multiple election cycles, that they can vote in precisely the way they voted in this election. Accordingly, Judge Griffin had years to challenge the laws he now wants this Court to take up and overturn. *See Griffin*, 910 S.E.2d at 354 (Dietz, J., concurring) ("Here, by contrast, the State Board of Elections complied with the election rules existing at the time of the election."). "Judge Griffin's argument is not that the Board violated the existing rules, but that the rules themselves are either unlawful or unconstitutional." *Id.* The laws and regulations Judge Griffin is challenging have been in place for years. Therefore, his complaints about the rules "could have been—and should have been—addressed in litigation long before people went to the polls in November." *Griffin*, 909 S.E.2d at 872 (Dietz, J., dissenting).

Third, Judge Griffin's protests present clear equal protection problems under state law. In addition to the issues referenced above (in Part II.B) relating to overseas military voters, Judge Griffin's protest over valid registrations includes no voters who voted *on election day*. Inevitably tens of thousands of North Carolinians voted in this race on election day had the very same issue with their registrations. Throwing out the votes of those who voted early or absentee just because that data was available to Judge Griffin, while ignoring the votes of those who voted on election day (and whose ballots are not retrievable), would present an equal protection problem. This is a separate and independent basis for rejecting this protest all on its own—and the Court of Appeals did not address it at all.

UNOPPOSED MOTION FOR TEMPORARY STAY

The monumental decision of the Court of Appeals in this case raises multiple issues of first impression and will have implications for North Carolinians' fundamental right to vote in this election and for decades to come. It therefore warrants review for the reasons stated in greater detail in the accompanying Petition for Discretionary Review. That review should not proceed in parallel to a novel, ill-defined, court-fashioned remedy that risks sowing chaos and confusion, only to have that remedy reversed or revised. Instead, this Court should immediately direct the Court of Appeals to stay its mandate while its decision is under review here.

Judge Griffin does not oppose a temporary stay but takes the position that this Court should not hear this case at all. Accordingly, all agree that a stay is warranted while the Court considers the petitions for discretionary review and for writ of supersedeas. Any postponement of the Court of Appeals' chosen remedy should also

extend until after this Court has an opportunity to review that decision in full. There is no principled (or legal) basis for any distinction.

CONCLUSION

Justice Riggs respectfully requests that this Court (1) issue its writ of supersedeas to stay enforcement of the Court of Appeals' opinion pending review by this Court and (2) immediately—before 5:00 p.m. on 7 April 2025—enter an order temporarily staying enforcement of that opinion while this Court decides whether to issue its writ.

Dated: 6 April 2025

Respectfully submitted,

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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ATTACHMENTS

Attached to this Petition for Writ of Supersedeas and Unopposed Motion for Temporary Stay are copies of the following documents from the appellate record:

Exhibit A — The slip opinion issued in this case on 4 April 2025 by the Court of Appeals.

Exhibit B — The three orders entered in this case on 7 February 2025 in Wake County Superior Court.

Exhibit C — The Decision and Order served on 13 December 2024 by the North Carolina State Board of Elections.

VERIFICATION

The undersigned counsel for Justice Riggs verifies that (a) the factual contents of the foregoing Petition for Writ of Supersedeas and Unopposed Motion for Temporary Stay are true to the best of my knowledge and belief; and (b) the documents attached to this Petition for Writ of Supersedeas and Unopposed Motion for Temporary Stay are true and correct copies of (i) the slip opinion issued in this case on 4 April 2025 by the Court of Appeals; (ii) the three orders entered in this case on 7 February 2025 in Wake County Superior Court; and (iii) the Decision and Order served on 13 December 2024 by the North Carolina State Board of Elections.

I verify under penalty of perjury under the laws of North Carolina that the foregoing is true and correct. Executed on 6 April 2025.

/s/ Raymond M. Bennett
Raymond M. Bennett

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petition for Writ of Supersedeas and Unopposed Motion for Temporary Stay was electronically filed and served this day by email, addressed as follows:

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Dated: 6 April 2025

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