

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 24CV040620-910

JEFFERSON GRIFFIN,)
)
 Petitioner,)
)
 v.)
)
 NORTH CAROLINA STATE BOARD)
 OF ELECTIONS,)
)
 Respondent,)
)
 and)
)
 ALLISON RIGGS,)
)
 Intervenor-Respondent.)
 _____)

**BRIEF OF INTERVENOR
ALLISON RIGGS**

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INTRODUCTION

Judge Griffin filed three petitions for judicial review in this Court to protest his election loss to Justice Allison Riggs for Associate Justice of the North Carolina Supreme Court.¹ For the Court's convenience, Justice Riggs filed a lead brief in Case No. 24CV040622 (Photo ID for Military and Overseas Voters).

This brief incorporates most of the lead brief by reference and addresses only the facts and legal issues specific to Case No. 24CV00620 (Allegedly Incomplete Registrations). A separate brief addresses the issues specific to Case No. 24CV00619 (U.S. Citizens Whose Parents are N.C. Residents).

With this Petition, Judge Griffin presses a category of protests that would disenfranchise 60,273 voters for whom, through no fault of the voters, a voter registration database record contains neither a driver's license number nor the last-four digits of a social security number. State law is clear that a voter—once registered—is not subject to challenge at all (much less years later) on the grounds of an issue with the voter's registration.

Accordingly, not only should this protest be denied because (like the others) it reflects an unlawful attempt to change the election rules after the game has been played in violation of substantive due process, and because Judge Griffin failed to

¹ This Court consolidated the three petitions into one lead case for purposes of filing a single administrative record (No. 24CV00619) and invited the parties to inform the Court whether they consented to consolidation for any other case management purposes. Justice Riggs proposed consolidation for briefing to simplify matters for the Court. Judge Griffin opposed that proposal. As the parties did not all consent, the parties are filing separate briefs in each action.

give these voters proper notice in violation of procedural due process, but also because the protest fails on its own merits under federal and state law.

INCORPORATION OF BRIEF FROM NO. 24CV040622

For ease of this Court’s review, this brief incorporates by reference the following from the lead brief filed in Case. No. 24CV040622:

- The Introduction
- The Statement of Facts:
 - Section A: Judge Griffin Protests the Election Results
 - Section C: The State Board Dismisses Judge Griffin’s Protests
 - Section D: Judge Griffin Bypasses the Superior Court and Court of Appeals to File an Unprecedented Supreme Court Petition
 - Section E: The Fourth Circuit Evaluates Whether this Action Belongs in Federal Court
- Summary of Argument
- Argument
 - I. The Protests Are an Unlawful Attempt to Change the Election Rules After the Votes Have Been Cast and Counted
 - II. The Board Correctly Dismissed All Protests Because Judge Griffin Failed to Provide Voters with Due Process

ADDITIONAL BACKGROUND

The Help America Vote Act (HAVA), 52 U.S.C. § 20901, *et seq.*, requires states to collect the voter’s driver’s license number or, if they do not have one, the last four digits of their social security number for anyone registering to vote. 52 U.S.C. § 21083(a)(5)(A)(i). The state uses those numbers to confirm the registrant’s identity.

Id. § 21083(b)(3)(B). Eligible voters who have neither number still have a right to vote—the law just requires that the state assign a “unique identifier to an applicant.”

Id. § 21083(a)(1)(A), (5)(A)(ii). If a state registers a voter without collecting the information, the voter lacks the information, or the information provided by the voter does not match a state database, then the voter must produce a photo ID or other identifying document when they first go to vote, called a HAVA ID. *Id.* § 21083(a)(5)(A), (b)(1)(A), (b)(1)(B), (b)(2)(A). State law incorporates these requirements and applies them to all federal, state, and local elections in North Carolina. N.C. Gen. Stat. §§ 163-82.11(c), 163-166.12(a), (b), (d).

For twenty years, from the enactment of HAVA, to 2024, North Carolina’s official registration form requested each voter’s driver’s license number or social security number but did not make clear the voter was required to provide one of these numbers if available. Some voters provided one or both numbers. For those who did not provide a number (or whose number could not be matched to a state or federal database), those voters were provided a unique identifier and required to produce a HAVA ID document when they first voted. App. 5356.

The issue with the North Carolina form went unchallenged until an individual voter, Carol Snow, filed an administrative complaint about the form in October 2023. The Board resolved Snow’s complaint by implementing “recommended changes to the voter registration application form.” Minutes of Meeting at 4 (State Bd. Elecs. Nov. 28, 2023), archived at <https://perma.cc/CCW2-YX7R>. The Board “did not approve the requested remedy to contact all existing registered voters whose electronic records do

not show a driver’s license number or last four digits of a Social Security number.” App. 4828. The Board explained that “the law’s purpose of identifying the registrant upon initial registration is already accomplished because,” under HAVA, “any voter who did not provide a driver’s license number or the last four digits of a Social Security number would have had to provide additional documentation to prove their identity before being allowed to vote.” *Id.* at 4828-4829.

After a decision on the Snow complaint in late 2023, no one—including Judge Griffin—complained about the Board’s resolution to the problem until August 2024. Less than 90 days before the general election, the Republican Party sued on the same grounds, alleging “that 225,000 people, including (possible non-citizens’ and other ineligible voters, registered to vote using the previous form.” *Republican Nat’l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 399 (4th Cir. 2024). Despite the short window before the election, the plaintiffs made no attempt to seek a temporary restraining order or preliminary injunction. The November 2024 election thus proceeded with those 225,000 people on the voter rolls. These votes counted in every state and local race in 2024, just as they had for years or decades before. The RNC’s lawsuit was removed to federal court, and Judge Myers ruled in November 2024 that “the outcome of this suit will have no bearing on the most recent election.” *Republican Nat’l Comm. v. N.C. State Bd. of Elections*, No. 5:24-cv-00547-M, ECF No. 73, at 4 (E.D.N.C. Nov. 22, 2024).

But after the results were tallied in the race for Associate Supreme Court Justice, Judge Griffin filed protests raising this same HAVA issue again. He claimed

to have identified 60,273 ballots that were cast (a) before Election Day and (b) by voters whose registration records with the State Board “do not contain data in one or more of the following data fields: (1) Driver’s License Number; or (2) Last Four Digits of Social Security Number.” App. 5382. Importantly, Judge Griffin did not challenge similarly situated voters who voted on Election Day but whose registration records lack either number. Instead, he limited his challenges to ballots cast “before election day.”

On December 13, 2024, the State Board served its Decision and Order on the three categories of protests at issue in Judge Griffin’s PJKs. As pertinent here, the Board found that the allegedly incomplete registration protests must be dismissed for five reasons:

- (1) they “include insufficient allegations and evidence to establish probable cause to believe that their challenged voters failed to provide one of these identification numbers on their voter registration application,” App. 5382;
- (2) the State “Board and a federal court, examining this very issue prior to and during this election, determined that any previous failure to implement this federal requirement cannot be held against already-registered voters casting ballots in this election,” App. 5385;
- (3) “North Carolina law forbid[s] this type of election protest” because “an error by election officials in the processing of voter registration cannot be used to discount a voter’s ballot,” App. 5389-90;
- (4) granting “the relief they request in these protests . . . would violate state and federal voter registration laws,” App. 5392; and
- (5) the protests are “also unlawful under state law because [they] would undermine the clear intent of the legislature with regard to how a voter may have their eligibility to vote challenged in an election,” App. 5394.

ARGUMENT

If the Court does not dismiss the Petition (i) because it is too late to change the rules after the election or (ii) because Judge Griffin failed to provide adequate notice to voters under state law and the U.S. Constitution, it should reject the instant protest on the merits under state and federal law.

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. As Judge Griffin knows, he has been unable to identify a single ineligible voter in this group. And North Carolina law is clear that an error in registering a voter cannot be a basis for removing them from the rolls or discounting their votes. Federal law also bars this claim in multiple ways.

I. Judge Griffin Failed to Present Evidence That a Single Voter In this Group Is Ineligible to Vote

To start, Judge Griffin’s protest lacks basic factual information sufficient to sustain his protest because his argument relies on an “unwarranted inference” about the State Board’s data. *See* App. 5382-83 (Board Order describing data issues). He claims that voters “never legally registered to vote” because a driver’s license or social security number is not saved in the Board’s database. *See* Griffin Br. at 32. But as the Board clarified in its Decision and Order, that database does not establish that even *one* voter was not actually eligible to vote, even under Judge Griffin’s flawed reading of the law. *See* App. 5384.

First, the data lacks a number for some voters because those voters had no driver's license or social security number when they registered. *See id.* at 5382-83. Under federal and state law, a voter who lacks one of these numbers can still register to vote. *See id.*

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 to a number in an outside database. *Id.* at 5382-83. When a registrant provides such a number, but the number does not match with state or federal databases, that voter will be given another way to confirm their identity by providing a HAVA ID, and that information will no longer be found in the electronic registration record (even though the voter provided the information). *See id.* If the voter provides a HAVA ID, then their vote must count, even if staff were unable to verify their voter registration or driver's license number. N.C. Gen. Stat. § 163-166.12(d).

Third, many voters have provided this *exact* information to elections officials since registering. In 2024, for example, every voter who voted absentee in this election was required to provide this information on their absentee ballot request form, regardless of whether they provided it when they registered.² Additionally, many voters complied with North Carolina's photo ID requirement in 2024 by producing their N.C. driver's license or non-operator *identification*. *See* N.C. Gen. Stat. § 163-166.16. Judge Griffin offers no reason why providing this information on

² *See* 2024 Absentee Ballot Request Form, *available at* <https://s3.amazonaws.com/dl.ncsbe.gov/Forms/2024/English-Fillable-2024-Absentee-Ballot-Request-Form.pdf> (item #3) (last visited Jan. 18, 2025).

an absentee ballot request form or presenting it with a photo ID would not count as a voter furnishing such information to the county boards.

Moreover, every single voter Griffin protested was required to provide a HAVA document when they first voted. Indeed, if a county board erroneously registered voters without collecting their driver's license or social security numbers, federal and state law provide a specific remedy: voters are *required* to submit a photo ID or a document establishing their residency before they vote in their first election. See 52 U.S.C. § 21083(a)(5)(A), (b)(1)(A), (b)(1)(B), (b)(2)(A) (setting out rules for registration for federal elections and if county boards do not comply with HAVA registration procedures); N.C. Gen. Stat. § 163-166.12(a), (b) (applying HAVA to state elections). State law is clear: an issue with the voter's driver's license or social security number “*shall not prevent that individual from registering to vote and having that individual's vote counted*” if they present photo ID or HAVA ID when they vote. N.C. Gen. Stat. § 163-166.12(d) (emphasis added). Every voter complied with this requirement. Thus, under clear federal and state law, each voter's vote must count.

II. State Law Prohibits Systematic, Retroactive Removal of Voter Registrations

Whether or not the allegedly incomplete voter registrations *should* have been accepted, they *were* accepted by county boards. County boards are responsible for registering eligible voters. N.C. Gen. Stat. § 163-82.1(b). Ultimately, once a voter completes a voter registration form, the *burden is on the county*, not the voter, to identify and address any errors in the registration. 52 U.S.C. § 21083(a)(5)(A)(iii); N.C. Gen. Stat. §§ 163-82.7(a), 163-82.11(d). The county boards processed

applications from these voters, added them to the official rolls, and mailed them voter registration cards to “evidence” their “registration.” N.C. Gen. Stat. § 163-82.8(d). The voter rolls, rather than the voter registration application, is the official record of a voter’s registration. *Id.* § 163-82.10(a).

Once a voter is on the rolls, the Board must count the votes of all eligible voters who appear on that list of eligible voters. This is true not only under federal law, 52 U.S.C. § 10307(a), but well-settled state law as well. For more than 100 years, North Carolina has been clear: “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) (citing *Davis v. Bd. of Educ. of Beaufort Cty.*, 186 N.C. 227, 233, 119 S.E. 372, 375 (1923)). 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. *Gibson v. Bd. of Comm’rs of Scotland Cty.*, 163 N.C. 510, 513, 79 S.E. 976, 977 (1913); *State ex rel. Quinn v. Lattimore*, 120 N.C. 426, 429, 26 S.E. 638, 639 (1897).

In *Woodall v. W. Wake Highway Comm’n*, 176 N.C. 377 (1918), a losing candidate argued that “the votes of electors otherwise qualified should be rejected, because the registrars failed to administer the oath to them, and they were allowed to vote without being challenged.” *Id.* at 388. The Court rejected this argument, explaining that a “vote received and deposited” is “presumed to be a legal vote” even if “the voter may not have complied entirely with the requirements of the registration law.” *Id.* at 389. In such a case, it “devolves upon the party contesting [the vote] to

show that it was an illegal vote, and this cannot be shown by proving merely that the registration law had not been complied with.” *Id.* Put simply, “[w]here 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.” *Id.* The *Woodall* decision is one of a robust line of cases prohibiting exactly what Judge Griffin seeks to do here—disenfranchise qualified voters who have legally cast ballots, by arguing that alleged technical defects in their registrations should invalidate their votes. *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); *see also 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.”).

While Judge Griffin invokes the cure provision in N.C. Gen. Stat. § 163-82.4(f), *see Griffin -620 Br at 17-20*, that provision applies *before* a voter is registered, not after an application is accepted by the county boards and the applicant is officially registered. *See* N.C. Gen. Stat. §§ 163-82.1(b), 163-82.1(c), 163-82.7(a), 163-82.7(c), 163-82.7(d), 163-82.10(a). Additionally, that cure provision applies only when the voter is “notified of the omission and given the opportunity to complete” the voter registration form “at least by 5:00 P.M. on the day before the county canvass as set in G.S. 163-182.5(b).” N.C. Gen. Stat. § 163-82.4(f). Here, no notice or opportunity to cure was given to the voters Judge Griffin challenges. Judge Griffin asks the Board to invalidate votes *post facto*—votes of individuals who have been on voter rolls for

decades—without such an opportunity, and after their applications were accepted by the county boards.

Judge Griffin also argues that the Board “admitted” that it violated the law. Griffin -620 Br. at 16. This is false and mischaracterizes the Board’s December 2023 Order resolving the administrative complaint. That Order addressing the Snow complaint changed the registration form to require voters to do one of three things: (1) provide a driver’s license; (2) provide a social security number; or (3) check a box affirmatively stating they have not been issued either number. *See* Order at 4 (State Bd. Elecs. Dec. 6, 2023), archived at <https://perma.cc/5KPY-SQP5>; *see also* Griffin -620 Br., Exhibit A, at 4. This alteration, which clarified for the county boards how they should respond when a voter leaves that section blank, was consistent with the State Board’s discretion under state law. But it in no way was an admission, as Judge Griffin claims, that this Board “broke the law.” Griffin -620 Br. at 16. In fact, the N.C. Republican Party made this same argument to the Fourth Circuit, which went out of its way to note that it was “not convinced that [the Board] conceded to a violation of HAVA.” *See Republican Nat’l Comm.*, 120 F.4th at 402 n.3.

Regardless, the State Board expressly (and unanimously) decided that no action was necessary for previously registered voters, such as the 60,273 voters challenged here, because they have proven their identity in the manner required by HAVA. Order at 4–5 (State Bd. of Elections Dec. 6, 2023), archived at <https://perma.cc/5KPY-SQP5>. Thus, counting the votes cast by the 60,273 voters is authorized—not prohibited—by HAVA and corresponding state law.

III. Federal Law Likewise Prohibits Retroactive Removal of Voter Registrations

Judge Griffin’s attempts to strike thousands of votes would also violate federal law, including the National Voter Registration Act of 1993 (NVRA), and the Voting Rights Act of 1965 (VRA).

Judge Griffin argues that the NVRA is inapplicable to a state election, *see* Griffin -620 Br. at 24–25, but he makes no real effort to distinguish the Fourth Circuit’s holding that “North Carolina has a unified registration system for both state and federal elections, and thus is bound by the provision of the NVRA for the registrants at issue here.” *Republican Nat’l Comm.*, 120 F.4th at 401.

Judge Griffin’s protests seek to strike tens of thousands of people from the voter rolls *after* they cast their votes. That request violates the NVRA and the VRA, which expressly apply to the voter rolls at issue here. *Cf.* N.C. Gen. Stat. § 163-82.14(a1) (“List maintenance efforts under this section shall be nondiscriminatory and shall comply with the provisions of the Voting Rights Act of 1965, as amended, and with the provisions of the National Voter Registration Act.”). The NVRA provides that “any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters” must be completed “*not later than* 90 days prior to the date” of any primary or general election. 52 U.S.C. § 20507(c)(2)(A) (emphasis added). The NVRA also prohibits the Board from removing voters from the rolls outside of narrow, enumerated circumstances that are not present here. *See* 52 U.S.C. §§ 20507(a)(3), (a)(4), (c)(1). The NVRA “prohibits systematic removal programs ‘90 days before an election because that is when the

risk of dis[en]franchising eligible voters is the greatest.” *Republican Nat’l Comm.*, 120 F.4th at 401 (alteration in original) (quoting *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014)); *see also id.* (“North Carolina has a unified registration system for both state and federal elections, and thus is bound by the provisions of the NVRA for the registrants at issue here.”). When the election is at least 90 days away, “eligible voters who are incorrectly removed have enough time to rectify any errors.” *Arcia*, 772 F.3d at 1346. But when the election is imminent, any systematic removal effort risks disenfranchisement because of the limited time remaining for voters to show that they are eligible to vote.

The mass challenges here would not just create that risk; they would all but ensure that thousands of eligible voters would be disenfranchised. That disenfranchisement would violate the NVRA’s prohibition on systematic removal.

Judge Griffin makes the preposterous argument that his protests do not actually seek to *remove* any voters from the voter rolls—he just wants to challenge “the outcome of *his* election.” Griffin -620 Br. at 25. That argument presents a “distinction without a difference”; the effect of having one’s vote disregarded “is the same as not being eligible to vote.” *Majority Forward v. Ben Hill Cty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1368 (M.D. Ga. 2021). Worse, this position would inevitably lead to a “shadow” registration system—applicable only to state elections, and capable of being invoked in any election protest in the future to disenfranchise voters who lack a driver’s license or social security number in the Board’s database, but *only*

in each specific race where a disappointed candidate files a protest like Judge Griffin. That unworkable and absurd result is not permissible under the NVRA.

Systematic removal of these voters would also violate the VRA’s separate requirement that “[n]o person acting under color of law shall fail or refuse to permit any person to vote who is. . . otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person’s vote.” 52 U.S.C. § 10307(a). In North Carolina, to qualify to vote, a person must (1) be at least 18 years old; (2) be a U.S. citizen; (3) be a resident of North Carolina; (4) not have been adjudged guilty of a felony without having citizenship rights restored; and (5), for in-person voters, present photo ID or meet a qualifying exception. N.C. Const. art. VI, § 2; N.C. Gen. Stat. § 163-55. Judge Griffin has not presented evidence that *any* of the 60,273 voters at issue failed to meet these qualifications. Instead, he is asking this Court to throw out votes cast by tens of thousands of voters who were (and still are) qualified to vote.

IV. Judge Griffin’s Protest Would Violate the Equal Protection Rights of Voters

Last but certainly not least, Judge Griffin’s final protest presents a clear equal protection problem. *See Kim v. Bd. of Educ. of Howard Cty.*, 93 F.4th 733, 741 (4th Cir. 2024) (citation omitted) (in state elections, “the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election”); *see also San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 36 n.78 (1973) (noting “the protected right, implicit in our constitutional system, to participate in state elections on an equal basis with other

qualified voters whenever the State has adopted an elective process for determining who will represent any segment of the State’s population”).

Judge Griffin’s protest 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 squarely present an equal protection problem. This is a separate and independent basis for rejecting this protest all on its own. *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (per curiam) (a state “may not, by later arbitrary and disparate treatment, value one person’s vote over that of another”).

Accordingly, Judge Griffin’s “Incomplete Registration” protest should be rejected, and the Court should put a stop to this threat to thousands of votes of North Carolinians who have voted in our state’s elections for years without issue.

CONCLUSION

It is time for this election to end. For the reasons stated above, Judge Griffin’s Petition should be denied, and this action should be dismissed.

Respectfully submitted, this 3rd day of February, 2025.

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CERTIFICATE OF SERVICE

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