STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 24CV040622-910

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 lost the race for Associate Justice in the November 2024 general election. In the final count, Justice Riggs received 734 more votes than Griffin. Like most disappointed candidates in a close race, Judge Griffin took full advantage of the procedures our General Assembly designed to test the integrity of the outcome. But after a machine recount, a hand recount, and individualized evidentiary hearings in nearly every county in the State, the result was unchanged. The State Board of Elections thus certified the vote totals on December 11, 2024.

After he failed to win over the voters, Judge Griffin tried to change the election rules. Each of these rules has been applied, without controversy, for *years*. And these rules applied again in every primary and general election race in 2024. But Judge Griffin wants to change the rules for his race only. The effect of these rule changes would be to retroactively disenfranchise more than 65,000 eligible North Carolina voters who followed the rules.

It gets worse. Judge Griffin adopted a flood-the-zone but cut-procedural-corners strategy, rushing out hundreds of protests targeting tens of thousands of North Carolinians. In doing so, Judge Griffin decided *not* to serve each affected voter with a copy of the relevant protest, as required by state law. Instead, he sent thousands of junk-mail postcards with a QR code and an ambiguous warning that the recipient's vote "may be affected." Not only did that postcard violate state law but it was constitutionally deficient as it failed to give North Carolinians adequate notice that their fundamental right to vote was being directly challenged.

Judge Griffin's protests failed at the Board for a host of reasons under state and federal law. Undeterred, Judge Griffin tried to bypass this Court and the Court of Appeals and filed an extraordinary petition for writ of prohibition in the North Carolina Supreme Court, seeking declaratory rulings interpreting multiple federal statutes and the Fourteenth Amendment to the U.S. Constitution. The Board removed that action to federal court (*Griffin I*).

In response, Judge Griffin pivoted and fractured his case into three filings in this Court—hoping to avoid federal court jurisdiction by doing so. The Board removed the Wake County actions to federal court in a single action (*Griffin II*).

The Eastern District of North Carolina concluded it had jurisdiction in *Griffin I* and *Griffin II*, but abstained, and remanded. Those remand decisions are on appeal to the Fourth Circuit and are fully briefed and argued; a final decision in those appeals is likely imminent.

In the meantime, the Supreme Court dismissed Griffin's petition as improper but directed this Court to proceed expeditiously on the three actions pending before it—at least until the federal court acts and reasserts jurisdiction.

Whether in federal court or this court, it is time for this election to end. Each action before this Court is fatally flawed and violates substantive due process, procedural due process, and equal protection rights of voters. But Judge Griffin's protests also fail to carry his burden under state law. To start with this action (No.

24CV040622),[1] Judge Griffin seeks a change that would disenfranchise uniformed servicemembers, their families, and other overseas voters—in a state with a dozen military bases, 100,000 active-duty servicepeople, and more than 21,000 reservists assigned to North Carolina bases. These North Carolinians voted absentee using a standard federal form or a secure online portal in compliance with an absentee voting regime *specially created* to address the unique challenges confronting our military when voting. These voters followed explicit instructions in a state regulation (and online) saying that they—like voters across the country who vote using the same federal forms—did not need to provide photo ID when voting.

The applicable state regulation was unanimously adopted in an open process by the Rules Review Commission. Judge Griffin or the Republican Party could have objected at the Commission (but didn't) or filed suit after the Rule was adopted (but did not). Only after he lost his race is Judge Griffin seeking to throw out votes cast in compliance with, and reliance on, that state regulation. The bipartisan State Board unanimously rejected that request. This Court should too.

[1] This Court consolidated these three cases 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. For the Court's convenience, Justice Riggs is filing a lead brief in this action (No. 24CV00622), then filing shorter briefs in No. 24CV00619 (U.S. Citizens Whose Parents are N.C. Residents) and No. 24CV00620 (Allegedly Incomplete Registrations) that incorporate by reference this brief in substantial part—and address only the facts and law specific to those two actions.

Further, Judge Griffin carefully selected voters in this category *in only four counties that lean heavily Democratic*. He protested 1,409 voters in Guilford County before the deadline, then tried to file untimely "supplements" to include voters in Durham, Forsyth, and Buncombe Counties (for a total of 5,509 voters). This calculated challenge to voters in just four Democratic-leaning counties would pose a clear equal protection problem under the U.S. Constitution. This Court could not order the removal of votes in four counties, while leaving votes from similarly situated voters in all other counties untouched. If a retroactive rule were expanded to all military and overseas voters *in the other 96 counties in the State*, this protest alone would balloon to more than 32,000 votes, including many thousands of uniformed servicepeople and their families. This Court should not open that Pandora's box.

Next, Judge Griffin asks the Court to move on to the adult children of these military and overseas voters (No. 24CV040619). These North Carolinians, though they have *lived* overseas their entire lives while their parents served in the military or worked abroad, may return to our state often for holidays or to visit family and friends, have grandparents or other close family residing here, and feel more connected to North Carolina than the country where they live abroad. In 2011, the General Assembly enacted a statute without a single nay vote making clear that these children of North Carolinians are "residents" of North Carolina. That statute went unchallenged for 13 years and applied in 43 elections, including every primary and general election race in 2024. But Judge Griffin wants this Court to decide—for the first time and only as applied to 266 voters in *his* race—that the statute is

unconstitutional. A last-minute challenge to this statute failed before the election, was appealed to the Supreme Court of North Carolina, and that Court took no action on it before the election. Now that the votes have been cast and counted, Judge Griffin cannot use the protest process to change the rules for just his race. Moreover, this 266-vote protest by itself comes nowhere close to the 734-vote margin between Justice Riggs and Judge Griffin. It should be denied on that ground alone.

Last, Judge Griffin raises a third category of protests that would disenfranchise more than 60,000 voters in one blow (24CV040620). He alleges that voters were not lawfully registered because, through no fault of the voters, a state database lacks a driver's license or social security number associated with their records. Judge Griffin wants this Court to throw out these votes even though many of these voters have been lawfully registered and repeatedly voted in North Carolina elections for years (or decades). 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. In addition, Judge Griffin has been unable to identify a *single voter* who is actually ineligible to vote (*e.g.*, not a U.S. citizen, not over 18 years old, not a resident of North Carolina, or serving a felony sentence). Indeed, the news is full of stories of North Carolinians on Judge Griffin's list who are *clearly eligible* to vote. The Republican Party also tried this strategy and failed before the November 2024 election, filing a lawsuit that raised the very same issue less than 90 days before the election. A federal judge ruled that he would not entertain relief that would disenfranchise votes in the 2024 general election.

* * *

At bottom, Judge Griffin's protests were properly rejected because they pose a risk to the stability and integrity of our elections. His effort to change the rules after an election is unprecedented. And if Judge Griffin succeeds, the implications are staggering. Rather than suing *before* an election to challenge rules they do not believe are valid, candidates will have an incentive to say nothing and wait to see if they win. Then if they lose, they will drag out elections through litigation for months, seeking to throw out votes until they win. Never again will North Carolina voters walk out of the voting booths knowing their votes will count, and the court system will be flooded with lawsuits after every election. That result is untenable and should be rejected by this Court not only for the sake of this race, but to avoid undermining the public's confidence in every election going forward.

STATEMENT OF THE FACTS

A. Judge Griffin Protests the Election Results

Jefferson Griffin lost the race for Supreme Court Associate Justice in the November 2024 general election by 734 votes. Shortly after the election, Judge Griffin filed over three hundred election protests. Judge Griffin's protests were "based on six categories of allegations that certain general election voters' ballots were invalid." App. 5369. Three categories of protests—based on deaths, felony sentences, and registrations denied or removed—were heard in evidentiary hearings in counties across the state because they were "focused on individual, fact-specific determinations of voter eligibility." App. 5370-71. Those protests failed to change the outcome and are no longer the subject of litigation. Griffin -622 Br. at 3.

At Judge Griffin's urging, the Board "voted unanimously to take jurisdiction" over the other three categories of protests. App. 5371. Each of the petitions Judge Griffin filed in this Court corresponds to one of these categories of protests. The Board summarized the subjects of these protests as follows:

> 1. [**Military and Overseas Citizen Voters**.] Ballots cast by military or overseas citizens under Article 21A of Chapter 163, when those ballots were not accompanied by a photocopy of a photo ID or ID Exception Form—1,409 voters challenged;
>
> 2. [**U.S. Citizens Whose Parents are N.C. Residents**.] Ballots cast by overseas citizens who have not resided in North Carolina but whose parents or legal guardians were eligible North Carolina voters before leaving the United States—266 voters challenged; [and]
>
> 3. [**Allegedly Incomplete Registrations**.] Ballots cast by registered voters whose voter registration database records contain neither a driver's license number nor the last-four digits of a social security number—60,273 voters challenged[.]

App. 5370 (footnote omitted) (reordered).

The first category is discussed in section B below. The others are addressed in separate briefs in No. 24CV00619 (U.S. Citizens Whose Parents are N.C. Residents) and No. 24CV00620 (Allegedly Incomplete Registrations).

B. Military and Overseas Citizen Voters

As pertinent here, Judge Griffin challenged 1,409 ballots "cast by military or overseas citizens under Article 21A" when those "ballots were not accompanied by a

photocopy of a photo ID or ID Exception Form." App. 5370.[2] While the N.C. Administrative Code provides that these voters are "not required to submit a photocopy of acceptable photo identification," 8 N.C. Admin. Code 17.0109(d), Judge Griffin argued that this rule conflicts with North Carolina statutory law.

Judge Griffin's argument on this protest depends heavily on giving "effect to the legislative intent" of the laws governing photo ID. *See* Griffin -622 Br. at 18. Accordingly, it is important to understand that North Carolina's laws regarding *military* absentee voting were enacted against a backdrop of a long history of efforts to address the problems that our military faces when voting while deployed, dating back to the Civil War. *See* R. Michael Alvarez et al., *Military Voting and the Law: Procedural and Technological Solutions to the Ballot Transit Problem*, 34 Fordham Urb. L.J. 935, 948 (2007). For decades in our country's early history, a patchwork of state laws governing military voting often created hurdles to, and sometimes intentionally sought to disenfranchise, military voters. For example, Texas banned voting by military personnel altogether, six states required military personnel to register in person, two states abolished absentee voting, and twenty states had very

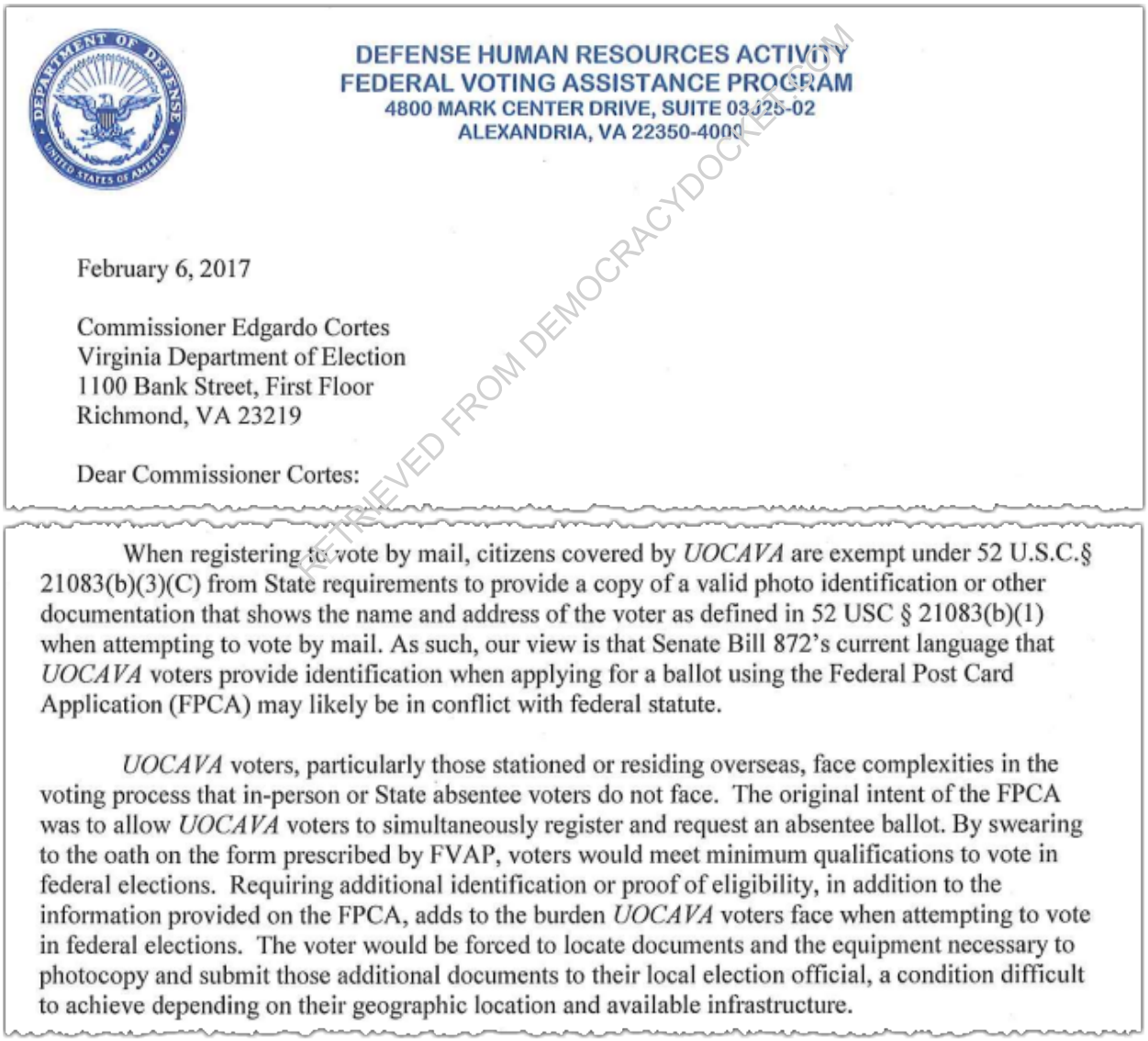
[2] Judge Griffin claims this first category applies to "5,509" ballots, Griffin -622 Br. at 4, but he filed only one timely protest challenging 1,409 voters in Guilford County, *see id.* at 4 n.1. Judge Griffin later sought to add "lists" of additional voters in "supplements" in Durham, Forsyth, and Buncombe Counties, but these new filings came well "after" the statutory "deadline to file an election protest." App. 5370 n.2 (citing N.C. Gen. Stat. § 163-182.9(b)(4)). The Board rejected Judge Griffin's protests as "legally deficient" and thus found it unnecessary to decide "whether such supplementations are allowable under the General Statutes and Administrative Code." App. 5370 n.2. Judge Griffin makes no attempt to defend the timeliness of these "supplements" filed days or weeks after the deadline.

short windows to request and return absentee ballots. *Id.* at 959–60. These problems were compounded by the issues faced by a voting population "spread across the globe in highly inaccessible areas," from battlefields to submarines. *Id.* at 937 & n.16. With this context, Congress enacted a series of statutes to address the concern that "our soldiers and sailors and merchant marines must make a special effort to retain their right to vote." S. Rep. No. 84-580, at 3 (1955).

In 1986, Congress passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), Pub. L. No. 99-410, 100 Stat. 924 (1986). The Act consolidated various federal laws governing overseas voting and established a uniform regime for active-duty military and their families and for civilian voters living overseas. The Act added new safeguards for these voters. For registration, it created a Federal Postcard Application (the "FPCA postcard"), to serve simultaneously as a voter registration and absentee ballot application for groups covered by the Act. *Id.* §§ 101, 104, 100 Stat. at 926.

In 2001, Congress declared that military personnel must "receive[] the utmost consideration and cooperation when voting" and amended UOCAVA to *require* states to accept the FPCA postcard. Pub. L. No. 107-107, § 1601, 115 Stat. 1012, 1274 (2001). UOCAVA requires states to allow active-duty military and overseas voters to register, request a ballot, and vote by mail in federal elections using prescribed federal forms, including the FPCA postcard and the federal write-in absentee ballot (FWAB). 52 U.S.C. § 20302(a).

These federally prescribed forms and their instructions do not tell covered voters to include a photo ID. Further, the Federal Voting Assistance Program (FVAP), an agency of the U.S. Department of Defense responsible for administering UOCAVA, has taken the position that states *may not* apply a photo ID requirement. The Director of the FVAP explained that, "[w]hen registering to vote by mail, citizens covered by UOCAVA are *exempt* under 52 U.S.C. § 21083(b)(3)(C) from State requirements to provide a copy of a valid photo identification":



DEFENSE HUMAN RESOURCES ACTIVITY
FEDERAL VOTING ASSISTANCE PROGRAM
4800 MARK CENTER DRIVE, SUITE 03J25-02
ALEXANDRIA, VA 22350-4000

February 6, 2017

Commissioner Edgardo Cortes
Virginia Department of Election
1100 Bank Street, First Floor
Richmond, VA 23219

Dear Commissioner Cortes:

When registering to vote by mail, citizens covered by *UOCAVA* are exempt under 52 U.S.C.§ 21083(b)(3)(C) from State requirements to provide a copy of a valid photo identification or other documentation that shows the name and address of the voter as defined in 52 USC § 21083(b)(1) when attempting to vote by mail. As such, our view is that Senate Bill 872's current language that *UOCAVA* voters provide identification when applying for a ballot using the Federal Post Card Application (FPCA) may likely be in conflict with federal statute.

UOCAVA voters, particularly those stationed or residing overseas, face complexities in the voting process that in-person or State absentee voters do not face. The original intent of the FPCA was to allow *UOCAVA* voters to simultaneously register and request an absentee ballot. By swearing to the oath on the form prescribed by FVAP, voters would meet minimum qualifications to vote in federal elections. Requiring additional identification or proof of eligibility, in addition to the information provided on the FPCA, adds to the burden *UOCAVA* voters face when attempting to vote in federal elections. The voter would be forced to locate documents and the equipment necessary to photocopy and submit those additional documents to their local election official, a condition difficult to achieve depending on their geographic location and available infrastructure.

Letter from Director Beirne to Commissioner Cortes, Virginia Department of Election (Feb. 6, 2017) (cited in Board's Order at App. 5406 n.26), available at fvap.gov and archived at https://perma.cc/2BSZ-VUJ4; Letter from Director Beirne to Director Robert A. Brehm and Director Todd Valentine, New York State Board of Elections (Mar. 1, 2017), available at fvap.gov and archived at https://perma.cc/K4XU-44V6.

The FVAP also publishes a comprehensive Voting Assistance Guide to provide uniformed servicemembers, their families, and overseas citizens with a "reference guide for everything you need to know about absentee voting in all 55 States, territories and the District of Columbia." FVAP, Voting Assistance Guide, https://www.fvap.gov/guide (last visited Jan. 20, 2025), archived at https://perma.cc/QVF3-3UTK. This Voting Assistance Guide includes "state-specific election dates, deadlines, guidance, and contact information required to vote absentee," but there is *no instruction for any U.S. state* that its UOCAVA voters must comply with a photo ID requirement when requesting or voting their ballot. 2024–25 Voting Assistance Guide at 3 (rev. Aug. 2023) (cited in Board's Order at App. 5405), available at fvap.gov and archived at https://perma.cc/B4M4-L8QE. Indeed, as the Board recognized, there are only two references in the Guide to photo ID.[3] Neither addresses the submission or counting of a UOCAVA voter's ballot.

[3] Indiana permits voters to provide a copy of their photo identification instead of writing their identification or social security number on their ballot request form. 2024–25 Voting Assistance Guide at 128. Wisconsin instructs "temporary overseas voters" to include a copy of their photo identification with their ballot because Wisconsin does not consider temporary overseas voters to be in the same class as "permanent overseas voters" such as uniformed servicemembers and their families, who may vote without a photo ID. *Id.* at 427–28.

Against this federal backdrop for military and overseas voters, the General Assembly decided in 2011 to allow military and overseas voters to vote in *state elections* using the same method. It enacted the Uniform Military and Overseas Voters Act (UMOVA) and established a comprehensive regime for absentee voting, with an entirely separate set of requirements codified in Article 21A of Chapter 163. (Article 20 governs absentee voting for domestic civilian voters). Article 21A entitled covered voters to cast a "military-overseas ballot," defined as:

> (1) a federal write-in absentee ballot under UOCAVA,
>
> (2) ballots specifically prepared or distributed for use by a covered voter in accordance with UMOVA, or
>
> (3) a ballot cast by a covered voter in accordance with UMOVA.

N.C. Gen. Stat. § 163-258.2(1), (3), (4), (7).

Article 21A, like UOCAVA, included no photo ID requirement. The General Assembly delegated the power to implement Article 21A to the Board, including the power to adopt "standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot." N.C. Gen. Stat. § 163-258.4(d). By this Authority, the Board adopted the regulation Judge Griffin now challenges here, which provides that military-overseas voters are "*not* required to submit a photocopy of acceptable photo identification." 8 N.C. Admin. Code 17.0109(d) (emphasis added).

C. The State Board Dismisses Judge Griffin's Protests

On December 13, 2024, the State Board served its Decision and Order on the three categories of protests at issue here. The Board dismissed those protests on several overlapping grounds.

First, the Board dismissed all three protests because Judge Griffin "failed to serve the registered voters [he] seek[s] to challenge in [his] protests in a manner that would comply with the North Carolina Administrative Code and be consistent with the requirements of constitutional due process." App. 5373. The Board's regulations required Judge Griffin "to 'serve' the voters with 'copies of all filings.'" App. 5374 (quoting N.C. Admin. Code 2.0111). Judge Griffin instead mailed postcards with a QR code link to a N.C. Republican Party website. That "postcard never states clearly that the recipient's right to vote is being challenged." App. 5378. This attempt at service "does not comport with the plain text of the rule or the constitutional due-process requirements to serve an affected party." App. 5377.

Second, the Board held that "substantive due process protections under the U.S. Constitution" bar all of Judge Griffin's protests. App. 5390. For each of the three categories of protests, Judge Griffin is seeking to throw out ballots cast by eligible voters who followed the rules. Even if those rules were later found to be improper, "it would violate the federal constitution's guarantee of substantive due process to apply such a newly announced rule of law to remove voters' ballots after an election, when those voters participated in the election in reliance on the established law at the time of the election to properly cast their ballots." App. 5399.

Third, the Board found that each category of protests lacked merit for reasons specific to that category. As pertinent here, the Board concluded that the military and overseas citizens protests must be dismissed because Judge Griffin's arguments (1) go against the statutory scheme, which "includes no requirement for covered voters to include a photocopy of their photo ID," App. 5403; (2) contradict the State Board's rule, promulgated through "permanent rulemaking," which "makes it clear that the county boards of elections may not impose the photo ID requirement on such voters," *id.*; and (3) "may likely be in conflict with" the federal Uniformed and Overseas Citizens Absentee Voting Act, App. 5406.

D. Judge Griffin Bypasses the Superior Court and Court of Appeals to File an Unprecedented Supreme Court Petition

North Carolina law provides that any person seeking review of a State Board decision must file a petition for review in Wake County Superior Court. *See* N.C. Gen. Stat. §§ 163-22(*l*), 163-182.14(b). Rather than file in Wake County, Judge Griffin took the unprecedented step of petitioning for a writ of prohibition directly in the Supreme Court. He asked that Court to reject the Board's rulings on the merits under state law as well as to reject "[a]ll arguments under the [National Voting Rights Act], HAVA, the [Voting Rights Act], and the Civil Rights Act against the relief requested by Judge Griffin," "[a]ll arguments under the state or federal constitution that affected persons who cast ballots were improperly served or are due additional process," and "[a]ll other arguments that the ballots cannot be discounted without violating the federal or state constitution." Petition at 70–71.

On December 19, 2024, the State Board filed a Notice of Removal under 28 U.S.C. § 1441 (federal question jurisdiction) and 28 U.S.C. § 1443(2) (refusal to do an act that would violate a civil rights statute).[4] *See Griffin v. N.C. State Bd. of Elections (Griffin I)*, No. 5:24-cv-00724, ECF 1 (E.D.N.C.).

The next day, Judge Griffin split his claims into parts and filed three petitions for judicial review in this Court, one addressed to each of the categories of protests over which the Board took jurisdiction. Again, the Board removed these petitions to federal court. *See Griffin v. N.C. State Bd. of Elections (Griffin II)*, No. 5:24-cv-00731, ECF 1 (E.D.N.C.)

On Monday, January 6, 2025, the district court issued an order holding that it had jurisdiction over *Griffin I* under 28 U.S.C. § 1443(2), but the district court abstained under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), and remanded the case to the Supreme Court. *See* Griffin -320 Br. Exhibit B (Order). That same evening, the federal court *sua sponte* remanded *Griffin II* to this Court for the same reasons, concluding that the "factual and legal subject matter of th[e] action is substantially identical." *Griffin II*, ECF 24 at 1.

The Board filed immediate notices of appeal to the Fourth Circuit that evening. *Griffin I*, ECF 52; *Griffin II*, ECF 26.

The next morning, the Supreme Court issued an order granting Judge Griffin's motion for a temporary stay of the certification of the election and setting an

[4] Justice Riggs moved to intervene in the lawsuit that same day. The federal court granted intervention in the suit "as of right." *Griffin v. N.C. State Bd. of Elections*, No. 5:24-cv-00724-M-RN (E.D.N.C. Dec. 26, 2024) (text order).

expedited briefing schedule, with briefing to conclude on January 24, 2025. Before the close of briefing, however, the Supreme Court issued an order dismissing the petition for writ of prohibition. The Supreme Court held that the petition for writ of prohibition was procedurally improper because state law allows an aggrieved party to appeal the final decision of the State Board of Elections to this Court in accordance with N.C. Gen. Stat. § 163-182.14(b), noting that Judge Griffin had already sought judicial review "on the same grounds as those set out in his petition" filed in the Supreme Court in file numbers 24CV040619, 24CV040620, and 24CV040622. *Griffin v. N.C. State Bd. of Elections*, No. 320P24 (N.C. Jan. 22, 2025). Additionally, the Supreme Court held that "[a]bsent further action by" that court, the "temporary stay" of the certification of the election would "remain in place until the Superior Court of Wake County has ruled on petitioner's appeals and any appeals from its rulings have been exhausted." *Id.* The Supreme Court also directed this Court "to proceed expeditiously." *Id.*

E. The Fourth Circuit Evaluates Whether this Action Belongs in Federal Court

Meanwhile, in the Fourth Circuit, the Board requested a stay from the Fourth Circuit of the remand orders in *Griffin I* and *II*. The Fourth Circuit deferred the stay motions, but expedited briefing and oral argument in *Griffin I*. The parties argued *Griffin I* in Richmond on January 27, 2025. The next day, the Fourth Circuit issued an order in *Griffin II* noting that "the parties agreed" that the issues in *Griffin I* and *Griffin II* "are not substantially distinct" and directing the parties to "file briefs" with the Court no later than 5:00 P.M. on January 30, 2025 if they wished "to argue any

distinction between the cases." *Griffin v. N.C. State Bd. of Elections*, No. 25-1020, ECF 19 (4th Cir. Jan. 28, 2025) (Order). "No other briefs" will "be permitted" in *Griffin II*. *Id.* Accordingly, the appeals in *Griffin I* and *Griffin II* are now fully briefed and ripe for decision, and a decision on these expedited appeals is likely imminent.

"If the Fourth Circuit grants that stay or reverses the district court's remand order, it will once again halt the statutory election protest" currently proceeding before this Court. *Griffin v. N.C. State Bd. of Elections*, No. 320P24 (N.C. Jan. 22, 2025) (Order) (Newby, C.J., concurring, at 5).

SUMMARY OF ARGUMENT

All three of Judge Griffin's protests are fatally flawed under North Carolina law. The PJRs should be rejected at the threshold, however, for two separate and independent reasons.

First, the PJRs should be denied because these arguments come too late. Judge Griffin's protests attempt to change the rules in effect at the time of the election that North Carolina voters relied upon in casting their votes. Therefore, they fail under this State's *Purcell* principle, laches, and substantive due process.

Second, the PJRs should be denied for lack of proper service. A bulk-mailed postcard with a QR code directing a voter to hundreds of protests does not satisfy the requirements of state law for service of an election protest or procedural due process.

If the Court does not dismiss the PJRs on one of the two grounds above, it should still reject each protest on the merits for the reasons set forth separately in

briefs filed in each of the three actions pending before the Court. These protests failed under state law at the Board and fail again here for the same reasons.

As pertinent here, military-overseas voters who voted under Article 21A cannot have their votes invalidated for failing to provide photo ID when state law *did not require it* and a state regulation specifically said they did not need to do so.

ARGUMENT

I. The Protests Are an Unlawful Attempt to Change the Election Rules After the Votes Have Been Cast and Counted

The Board correctly denied each of Judge Griffin's protests on the ground that the runner-up in an election cannot attempt to change the outcome by striking voters from the voting rolls or changing established voting requirements after the election.

This principle is reflected in state law and mandated by the U.S. Constitution. Accordingly, whatever the merit to Judge Griffin's protests under state law (and there is none, as set forth below in Part III), it is ultimately unnecessary for this Court *even to reach* the merits of his claims in the context of this election protest proceeding in order to reject Judge Griffin's PJR.

A. Judge Griffin's Attempts to Change the Rules Post-Election Are Barred by the *Purcell* Principle

As Justice Dietz explained in a well-reasoned dissent from the Supreme Court's order granting Judge Griffin's motion for temporary stay, 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*, No. 320P24,

Amended Order (Jan. 7, 2025) (Dietz, J., dissenting, at 1).[5] As Justice Dietz explained, any "potential legal errors" to the extent Judge Griffin asserts there were errors made by the Board "could have been—and should have been—addressed in litigation long before people went to the polls in November." *Griffin*, No. 320P24, Jan. 7, 2025 Order (Dietz, J., dissenting, at 4).

As Justice Dietz recognized, North Carolina law recognizes a corollary to the federal election doctrine known as the "*Purcell* principle" set forth in *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam). The *Purcell* principle "recognizes that, as elections draw near, judicial intervention becomes inappropriate because it can damage the integrity of the election process." *Griffin*, No. 320P24, Jan. 7, 2025 Order (Dietz, J., dissenting, at 1); *see also Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Mem.) (Kavanaugh, J., concurring) (collecting cases). To be sure, parties may bring challenges to the State's electoral regulations *between elections*, and these challenges are important to ensuring election integrity. North Carolina "has been flooded with dozens" of such challenges to its election laws in recent years. *Sharma v. Hirsch*, 121 F.4th 1033, 1043 (4th Cir. 2024).

But there is another side to this coin that is equally important to ensuring election integrity. As an election draws near, the candidates, parties, and courts must eventually go "pencils down" and run an election with the rules in place. *See Hendon*

[5] While Justice Dietz articulated his position in dissent, Justice Allen wrote separately to emphasize that the majority's decision to grant the temporary stay "should not be taken to mean that Judge Griffin will ultimately prevail on the merits." *Id.* (Allen, J., concurring, at 1).

v. N.C. State Bd. of Elections, 710 F.2d 177, 182 (4th Cir. 1983) ("Courts have imposed a duty on parties having grievances based on election laws to bring their complaints forward for pre-election adjudication when possible."). As Justice Kavanaugh observed, when "an election is close at hand the rules of the road should be clear and settled." *Democratic Nat'l Comm. v. Wisconsin State Legislature*, 141 S. Ct. 28, 31 (2020) (Mem.) (Kavanaugh, J., concurring). Knowing that these rules are fixed and will not change is essential to "giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election." *Id.*

The alternative is a constantly changing landscape of election laws, a flood of post-election litigation, and the threat that a voter will never know—even after leaving the voting booth—whether their vote will count. In such a system of electoral bedlam, post-election litigation could *always* threaten to invalidate the rules under which they cast their votes. The prospect of the resulting "chaos" that could "emerge from repeated court-compelled changes to how we administer elections" requires that "at some point the rules governing an election must be locked in." *Griffin*, No. 320P24, Jan. 7, 2025 Order (Dietz, J., dissenting, at 4).

Accordingly, candidates such as Judge Griffin who seek to bring "grievances based on election laws" have a "duty" to "bring their complaints forward for pre-election adjudication." *Hendon*, 710 F.2d at 182 (cleaned up). They cannot "gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action." *Id.* (quoting *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973)).

As Justice Dietz recognized, the Supreme Court has acknowledged a state version of this *Purcell* doctrine in past cases (though not always by name). *See, e.g.*, *Pender Cty. v. Bartlett*, 361 N.C. 491, 510 (2007), *aff'd sub nom. Bartlett v. Strickland*, 556 U.S. 1 (2009); *see also Holmes v. Moore*, 382 N.C. 690, 691 (2022) (Mem.) (Newby, C.J., dissenting); *Harper v. Hall*, 382 N.C. 314, 318-319 (2022) (Barringer, J., dissenting). In the context of voter registration, more specifically, a long-settled line of North Carolina cases has rejected attempts to throw out votes of duly registered voters after-the-fact when a candidate later claims technical defects in their registrations should invalidate their votes. *See, e.g.*, *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"); *Overton v. Mayor & City Comm'rs of City of Hendersonville*, 253 N.C. 306, 315, 116 S.E.2d 808, 815 (1960) (collecting cases).

The *Purcell* principle is a "necessary part of our state law doctrine for the same reasons it is incorporated into federal law." *Griffin*, No. 320P24, Jan. 7, 2025 Order (Dietz, J., dissenting, at 5). "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." *Id.* 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.*

B. Judge Griffin's Attempts to Change the Rules Post-Election Are Barred by Laches

Judge Griffin's claims are also barred by the equitable doctrine of laches. Laches is an "affirmative defense" that "bars a claim" where the "lapse of time has resulted in some change" in "the relations of the parties which would make it unjust to permit" the claim. *Town of Cameron v. Woodell*, 150 N.C. App. 174, 176-77, 563 S.E.2d 198, 200-201 (2022) (applying laches to prohibit town from enforcing zoning ordinance). Laches applies when the (1) claimant knew of the existence of the grounds for a claim, (2) unreasonably delayed to the prejudice of the party asserting the defense, and the (3) delay changes the parties' relationship. *Id.*

Those requirements are all easily met here. Judge Griffin knew about and could have raised the legal challenges he raises here before the election—but elected not to do so. As a result, voters exercised their constitutional rights to vote *in reliance upon the rules in place for this election*. To toss out their votes post-election (when they cannot correct any issue with their registration, provide a photo ID, or change their place of residence), would inevitably prejudice voters by retroactively invalidating tens of thousands of their votes. Judge Griffin's claims are barred by the doctrine of laches, therefore, in pressing his after-the-fact challenges to the rules.

Courts across the country have taken this well-recognized approach of refusing to change election rules post-election. Sometimes they refer to it as laches; at other times, they use a different moniker, like substantive due process (as discussed in the next section) or *Purcell* (as discussed above). *See, e.g.*, *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) ("Call it what you will—laches, the *Purcell* principle, or

common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so."). Consistently, however, candidates who raise arguments *post-election* are barred from raising challenges to election rules that were established *before* the election and subject to challenge if the candidate had filed suit at the proper time. *See, e.g.*, *Trump v. Wis. Elections Comm'n*, 983 F.3d 919, 925 (7th Cir. 2020) ("The same imperative of timing [reflected in *Purcell*] and the exercise of judicial review applies with much more force on the back end of elections."); *Hendon*, 710 F.2d at 182 (holding that the Fourth Circuit has "imposed a duty on parties having grievances based on election laws to bring their complaints forward for pre-election adjudication when possible"); *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988) (rejecting attempt to "invalidate" election, citing laches, when plaintiff could have sued before election because to hold otherwise would "encourage sandbagging on the part of wily plaintiffs"); *Waldrep v. Gaston Cty. Bd. of Elections*, 575 F. Supp. 759, 760 (W.D.N.C. 1983) (denying relief to losing candidate who challenged established practice for counting votes when he made no showing he was "unable" to bring challenge before the election).

C. The Board Correctly Held That Judge Griffin's Protests Are Barred by Substantive Due Process Under the U.S. Constitution

As the Board held, not only does North Carolina law forbid this type of election protest, federal law also forbids it because it would violate substantive due process protections under the U.S. Constitution. App. 5373-5378, 5390, 5406.

Judge Griffin seeks to brush aside the U.S. Constitution as irrelevant to a North Carolina election, but "the Constitution of the United States protects the right

of all qualified citizens to vote, in state as well as in federal elections." *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). As a matter of federal constitutional law, it "is settled that if the election process reaches the point of 'patent and fundamental unfairness,' the due process clause may be violated." *Hendon*, 710 F.2d at 182 (quoting *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978)). That level of unfairness exists—and "a court will strike down an election on substantive due process grounds"—if "two elements are present: (1) likely reliance by voters on an established election procedure and/or official pronouncements about what the procedure will be in the coming election; and (2) significant disenfranchisement that results from a change in the election procedures." *Bennett v. Yoshina*, 140 F.3d 1218, 1226–27 (9th Cir. 1998). Those elements are satisfied when, for example, "the losing candidate contest[s] the validity of the absentee ballots" cast in accordance with officially sponsored election procedure. *Lecky v. Va. State Bd. of Elections*, 285 F. Supp. 3d 908, 917 (E.D. Va. 2018). Even if that procedure turns out to have been flawed in hindsight, a "state's retroactive invalidation" of those absentee ballots "violate[s] the voters' rights under the fourteenth amendment." *Griffin*, 570 F.2d at 1070.

All three of Judge Griffin's protests seek that sort of retroactive invalidation. In each case, these voters did everything asked of them to vote. But now, Judge Griffin argues that they should have done more—ensure that county boards updated their records, affirmatively established residency in North Carolina, and submitted photo identification—even though official guidance made clear that none of these steps was necessary. It would therefore be a gross violation of due process to penalize

these voters for "state actions" that "induce[d]" them to take steps that Griffin now claims caused them to "miscast their votes." *Ne. Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580, 597 (6th Cir. 2012).

D. *James v. Bartlett* Undermines, Rather Than Supports, Judge Griffin's Attempts to Change the Rules

Judge Griffin is wrong to argue that this case is "no different" from *James v. Bartlett*, 359 N.C. 260, 607 S.E.2d 638 (2005). Griffin -622 Br. 9–13. Justice Dietz, concurring in the order dismissing Judge Griffin's petition for a writ of prohibition, specifically highlighted key differences between *James* and this case. *Griffin*, No. 320P24, Jan. 22, 2025 Order (Dietz, J., concurring). Moreover, *James* was decided before the U.S. Supreme Court's decision in *Purcell*, so did not account for that now-settled doctrine of election law. In any event, the *James* court still grappled with the "timeliness" of the arguments raised, and Judge Griffin gets the implications of that analysis precisely backwards. *See* 359 N.C. at 265, 607 S.E.2d at 641 (section with header "Timeliness").

In *James*, the Supreme Court did require out-of-precinct provisional ballots to be excluded from the final tally in the context of a post-election protest. *Id.* But different from this case, where Judge Griffin seeks to change long-settled rules, in *James*, 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). Also different from this case, the Board's decision to exclude out-of-precinct votes was "unlawful under the election rules that existed at the time of the election," contrary to both statue and regulation. *Griffin*, No. 320P24, Jan. 22, 2025 Order (Dietz, J.,

concurring at 1). Election law statutes provided that a voter must "vote in the precinct in which he resides" and applicable regulations held that a person is eligible to vote a provisional ballot "*if the person resides in the precinct*." 359 N.C. at 267-68, 607 S.E.2d at 642-43 (quoting N.C. Gen. Stat. § 163-55 & 8 NCAC 10B.01013(d)); *see also Griffin*, No. 320P24, Jan. 22, 2025 Order (Dietz, J., concurring at 1).

By contrast, here, the voters who Judge Griffin challenges have been told for years, and multiple election cycles, that they are permitted to vote, or to vote in precisely the way they voted in this election. Accordingly, Judge Griffin had years to challenge the laws and regulation he now wants this Court to take up and overturn. *See Griffin*, No. 320P24, Jan. 22, 2025 Order (Dietz, J., concurring at 2) ("Here, by contrast, the State Board of Elections *complied* with the election rules existing at the time of the election."). As Justice Dietz reasoned, "Judge Griffin's argument is not that the Board violated the existing rules, but that the rules themselves are either unlawful or unconstitutional." *Id.*

As Justice Dietz concluded, this case is "more akin" to the post-election challenge in *Hendon*. In that case, a North Carolina congressional candidate alleged a state election law was unconstitutional and sought a recount that complied with the U.S. Constitution. *Id.* The Fourth Circuit "agreed the law was unconstitutional" and "struck it down for future elections." *Id.* (citing *Hendon*, 710 F.2d at 182). The court declined, however, to apply that ruling to the election at hand, pointing to "the general rule that denies relief with respect to past elections." *Id.*

Also, different from this case, the protestors in *James* had a reason for their failure to challenge the Board's rules *before* the election when the candidates and the Board argued that these changes were not timely. As the Supreme Court explained in a section titled "Timeliness," the election challengers in *James* specifically inquired of the Board *before the* 2004 Election Cycle whether out-of-precinct ballots would be counted. *James*, 359 N.C. at 265, 607 S.E.2d at 641. The Board vaguely replied that "North Carolina law is clear on this issue. We have and will continue to enforce and administer the provisions as to provisional voting as set out in North Carolina law." *Id.* James interpreted that response to mean that those votes would not be counted (consistent with state statute and regulation) and so did not seek to challenge that decision before the election. *Id.*

When James and another candidate later filed suit to challenge the ultimate counting of those ballots, the Board and the prevailing candidates argued that James' challenge was untimely because it was not made before the election.[6] *Id.* The *James* court disagreed, but not because a protester has the right to challenge any election

[6] Judge Griffin tries to downplay the timeliness arguments addressed by the Supreme Court in *James* by suggesting it was only the *Board* that argued the plaintiffs "failed to bring" a related "declaratory judgment action in a timely manner" and that the "Board never accused the *protestors* of filing their election protests too late." Griffin -622 Br. at 11. That claim is absurd. The Supreme Court's decision in *James* is clear that the Board "*along with*" the two prevailing candidates argued that plaintiff's arguments were untimely. *James*, 359 N.C. at 265, 607 S.E.2d at 641. And the Court made no distinction between the declaratory judgment action and the election protests. Instead, it noted at the outset the appeal involved three challenges, including two election protests, *id.* at 262 & n.2, and it addressed whether "plaintiffs filed their claims in a timely manner." *Id.* at 263. Nowhere did the Supreme Court suggest that these arguments would *always be timely* in the election protest context, nor explain why it bothered to address timeliness at all if so.

rule at any time up until the election protest deadline (as Judge Griffin contends here). *Id.* Instead, the *James* court held that the Board's "response, *coupled with the absence of any clear statutory or regulatory directive that such action would be taken*, failed to provide plaintiffs with adequate notice that election officials would count the 11,310 ballots now at issue." *Id.* The *James* court accordingly found that James' post-election challenge was timely filed. *Id.*; *see also Hendon*, 710 F.2d at 182 (recognizing there are "exceptions" to the rule that one cannot seek to undo ballot results with court action arising from a "lack of opportunity for one reason or another to seek pre-election relief").

That is decidedly not the case here. The rules 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*, No. 320P24, Jan. 7, 2025 Order (Dietz, J., dissenting, at 4). Judge Griffin never received a contradictory or confusing communication from the Board that caused him to forestall a challenge. Rather, the rules in place at the time of the election—and for many preceding election cycles—were *clear*. Judge Griffin simply *waited* to challenge these rules until after he lost.

Accordingly, *James* not only fails to support Judge Griffin's position, it underscores why his arguments miss the mark.

Further, the Supreme Court never addressed in *James* the serious substantive due process problems Justice Riggs and the Board raise here and had no occasion to even consider *Purcell* because the case would not be decided until a year later.

There are thus ample grounds—state and federal—to merit rejection of Judge Griffin's attempts to change the rules of the game after it has already been played.

II. The Board Correctly Dismissed All Protests Because Judge Griffin Failed to Provide Voters with Due Process

North Carolina voters have a due process right to notice that their ballots are being challenged. *See, e.g.*, *Voto Latino v. Hirsch*, 712 F. Supp. 3d 637, 674 (M.D.N.C. 2024); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 228 (M.D.N.C. 2020); *see also* N.C. Gen. Stat. § 163-182.10(b) (requiring that all affected voters be given a copy of the protest or a summary of its allegations).

At a minimum, the method of service must amount to "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The same standard applies under the North Carolina Constitution's due process clause. *See Horton v. Gulledge*, 277 N.C. 353, 359 (1970) (North Carolina's state due process clause has the same meaning as "due process of law" under the Federal Constitution). And "when notice is a person's due, process which is a mere gesture is not due process" at all. *Mullane*, 339 U.S. at 315.

North Carolina ensures that voters receive this notice by requiring protestors to "*serve copies of all filings* on every person with a direct stake in the outcome of [the] protest," *including the targeted or affected voter*. 8 N.C. Admin. Code 2.0111 (emphasis added). This requirement appears on the face of the Board's election protest form itself, a form issued in accordance with an express direction from the General Assembly. *See* N.C. Gen. Stat. § 163-182.9(c).

> AFFECTED PARTIES & SERVICE
>
> You must *serve copies of all filings* on every person with a direct stake in the outcome of this protest ("Affected Parties"). Affected Parties include every candidate seeking nomination or election in the protested contest(s) listed under Prompt 4, not only the apparent winner and runner-up. *If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served.*

8 N.C. Admin. Code 2.0111 (emphasis added).

Service requires delivery of the protests in-person or by U.S. Mail to the mailing address on file with the county board of elections, or by "other means *affirmatively authorized* by the Affected Party." *Id.* (emphasis added). Delivery by mail is complete upon deposit of a "postage-paid *parcel*" with the U.S. Mail. *Id.* (emphasis added). It is the responsibility of the *protestor* "to ensure service is made on all Affected Parties." *Id.* Election protests that do not "substantially comply" with this requirement are properly dismissed. N.C. Gen. Stat. §§ 163-182.9, 163-182.10.

Judge Griffin affirmed that he both read and understood his obligation to serve affected voters with copies of his protest filings:

PROTESTOR CERTIFICATION

15. By signing this protest application, you affirm the following:
I, Jefferson Griffin *(full name)*, swear, under penalty of perjury, that the information provided in this protest filing is true and accurate to the best of my knowledge, and that I have read and understand the following:

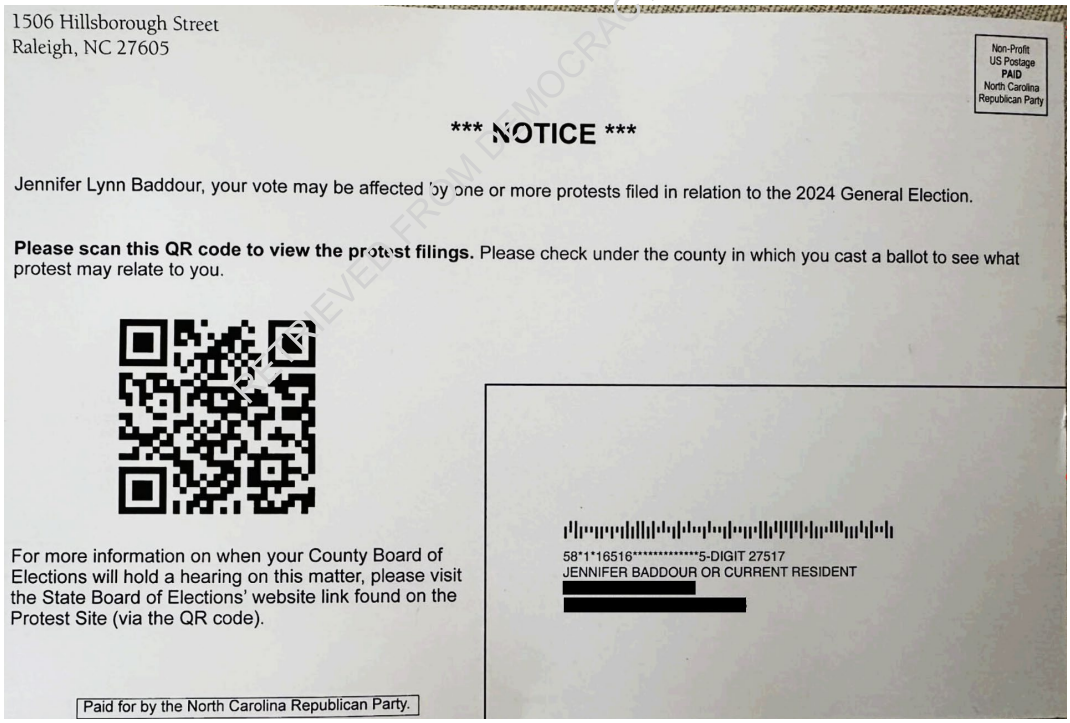
(initial)

- JG — I have reviewed the statutes and administrative rules governing election protests, including all deadlines.
- JG — My protest must originate with a filing at the county board of elections.
- JG — I must timely serve all Affected Parties.
- JG — I must prove by *substantial evidence* either the existence of a defect in the manner by which votes were counted or results tabulated or the occurrence of a violation of election law, irregularity, or misconduct, either of which were sufficient to cast doubt on the apparent results of the election.
- JG — It is a crime to interfere unlawfully with the conduct and certification of an election.
- JG — It is a crime to interfere unlawfully with the ability of a qualified individual to vote and to have that vote counted in the election.
- JG — The facts I allege in connection with this protest are true and accurate to the best of my knowledge, and I have a good faith basis to protest the conduct and results of the election.

App. 8.

Despite affirming his obligation to do so, Judge Griffin did not "serve" affected voters with actual "copies" of his election protest "filings" or any other legal document. Had he done so, each voter would have received an official-looking *document* that would have alerted them to something *serious* taking place: a formal challenge that could deprive them of their right to vote.

Instead, Judge Griffin caused postcards to be sent by non-forwardable bulk mail with this equivocal message: "your vote *may be affected by one or more protests* filed in relation to the 2024 General Election." App. 5375-77; *see* App. 3712 (postcard). As noted below, *infra* at 35, not every voter received the cards. For those who did, the postcards looked like the following:



1506 Hillsborough Street
Raleigh, NC 27605

Non-Profit
US Postage
PAID
North Carolina
Republican Party

*** NOTICE ***

Jennifer Lynn Baddour, your vote may be affected by one or more protests filed in relation to the 2024 General Election.

Please scan this QR code to view the protest filings. Please check under the county in which you cast a ballot to see what protest may relate to you.

For more information on when your County Board of Elections will hold a hearing on this matter, please visit the State Board of Elections' website link found on the Protest Site (via the QR code).

Paid for by the North Carolina Republican Party.

58*1*16516**********5-DIGIT 27517
JENNIFER BADDOUR OR CURRENT RESIDENT
[redacted]
[redacted]

Griffin v. N.C. State Bd. of Elections, E.D.N.C. No. 5:24-cv-724, ECF 41-1 at 42.[7]

The postcards included a QR code that led to a N.C. Republican Party website with links to *hundreds* of protests filed by four candidates. Recipients who did not discard the postcard as election season junk-mail and were able to navigate the QR code, would then have to sift through spreadsheet printouts, not organized alphabetically, to determine whether and why their votes "may be affected" by the various protests. App. 5376-5377. The Board's decision includes screenshots of what those voters would have seen when they accessed the link. *See* App. 5408-5409.

The Board correctly determined that the postcard failed to satisfy 8 N.C. Admin. Code. 2.0111. In arguing otherwise, Judge Griffin starts not by explaining how he complied with the rule, but by arguing that the rule itself is flawed, permitting him to disregard its requirements. He argues that N.C. Gen. Stat. § 163-182.10(b) burdens county boards of elections, not protestors, with serving copies of protests on affected parties. *See* Griffin -622 Br. at 25. That argument misreads the law. Section

[7] Judge Griffin includes a generic sample in the Appendix at 3712, but this image of an actual postcard was attached to an amicus brief filed by the League of Women Voters in the removed federal action. The amici requested the Court take "judicial notice" of six letters to the Board ahead of the December 11 hearing concerning Griffin's protests of their votes. These letters were before the Board and the accuracy of the letters is not reasonably subject to dispute. *See* N.C. R. Evid. 201. The federal court accepted the filing and noted that it "aided" in "its decisional process," as part of this election dispute. E.D.N.C. No. 5:24-cv-00724-M-RN, ECF 50 at 6. This Court may also take independent judicial notice of the voters' letters to the Board. *See State v. Watson*, 258 N.C. App. 347, 352, 812 S.E.2d 392, 396 (2018) (a court may take judicial notice of federal court filings, data published by state agencies, or other facts and documents "capable of demonstration by reference to a readily accessible source of indisputable accuracy") (quoting *West v. G.D. Reddick, Inc.*, 302 N.C. 201, 203, 274 S.E.2d 221, 223 (1981)).

163-182.10(b) requires county boards to "give notice of the *protest hearing* to . . . those persons likely to have a significant interest in the resolution of the protest" (emphasis added), not to serve the protest documents on the voter. Indeed, a separate sentence of N.C. Gen. Stat. § 163-182.10(b) states that "[e]ach person given notice shall also be given a copy of the protest or a summary of its allegations." The General Assembly could have drafted the statute to state that county boards must provide notice of the hearing *and* serve the protests, but it chose not to—presumably because the protester must serve his protest on the affected parties.

Rather than requiring county boards to serve copies of protest filings, N.C. Gen. Stat. § 163-182.10(e) mandates that the State Board "promulgate rules providing for adequate notice to parties," and N.C. Gen. Stat. § 163-182.9(c) mandates that the Board "prescribe forms for filing protests." Consistent with this express statutory authority—and the general authority for rulemaking under N.C. Gen. Stat. § 163-22(a)—the Board properly established rules requiring protestors such as Judge Griffin to serve affected parties with copies of their protests. This requirement was approved in turn by the Rules Review Commission—a legislatively appointed body tasked with ensuring that rules adopted are "within the authority delegated to the agency by the General Assembly." *Id.* §§ 143B-30.1(a), 150B-21.9(a)(1).

This framework is not unique. Under the North Carolina Administrative Procedure Act, "the party that files the petition [commencing a contested case] shall serve a copy of the petition on all other parties," but the "Office of Administrative Hearings" must give "notice of [the] hearing" to the parties. N.C. Gen. Stat. § 150B-

23(a); *see also* N.C. R. Civ. P. 3–4 (requiring plaintiffs filing a complaint to serve the complaint in accordance with the Rules of Civil Procedure).

Judge Griffin argues in the alternative that the postcards satisfied 8 N.C. Admin Code 2.0111's service requirements because the Board uses similar mailers in other contexts. Griffin -622 Br. at 26-27. But Judge Griffin relies on two statutes that expressly discuss the issuance of "cards," neither of which implicates a voter's right to have their ballot counted and neither of which uses the word "serve" or "service" with respect to the Board's responsibilities. *See* N.C. Gen. Stat. § 163-82.8(c) (discussing a "voter registration card" containing certain information); N.C. Gen. Stat. § 163-82.14(d)(2) (discussing a confirmation mailing in the form of a "preaddressed return card"). Here, in contrast, challenged voters must be served with "copies of all [protest] filings," 8 N.C. Admin. Code 2.0111. Judge Griffin failed to do so. Accordingly, his protests were properly dismissed for lack of proper service.

Judge Griffin next contends he met the due process requirements outlined in *Mullane*, protesting that the "standard does not demand perfection." Griffin -622 Br. at 27. But *Mullane* dealt with notice to a class of *potential* beneficiaries of a trust, many of whom were either "unknown, "nonresidents" of the state, or had interests that were "conjectural or future," and many of their "addresses [were] unknown to the trustee." 339 U.S. at 317, 318. Here, in contrast, all the challenged voters are North Carolina voters who have a "direct stake in the outcome of [Judge Griffin's] protest[s]." 8 N.C. Admin. Code 2.0111. And there is no suggestion that Judge Griffin could not locate the challenged voters.

Similarly, Judge Griffin claims that voters can be treated "as a class" and so notice to *some* was just as good as notice to all, because those who received notice can "safeguard the interests" of the rest. Griffin -622 Br. at 27. But that claim is also wrong. A right to vote is an individualized right entitling a voter to "individualized notice and opportunity to be heard." *Voto Latino*, 712 F. Supp. 3d at 653. Generalized "notice" that a "vote may not be counted" is not sufficient. *Id.*

* * *

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. *See, e.g.*, E.D.N.C. No. 5:24-cv-00724-M-RN, ECF No. 41-1 at 4–6 (amicus brief including statements from voters that they had received no correspondence from Judge Griffin alerting them to the challenge to their votes); ECF No. 24-2, 24-3, 24-4 (attaching declarations of voters permitted to

intervene here who do not have smartphones necessary to access QR codes and are unfamiliar with QR codes and how they work).

* * *

For the reasons discussed above, the Court should deny all three of Judge Griffin's PJRs without considering the substance of the protests he is attempting to pursue here. If the Court considers Judge Griffin's arguments in support of those protests, however, it should hold that each fails under settled North Carolina law just as they did before the Board. The remainder of this brief addresses why Judge Griffin is wrong on the merits in arguing that military and overseas voters should be disenfranchised if they failed to anticipate that Judge Griffin would later challenge their votes if they did not provide a photo ID (despite clear state law saying they did not need to do so). For arguments regarding Judge Griffin's other two categories of protests, Justice Riggs has filed shorter briefs addressing only the facts and law specific to those protests in No. 24CV00619 (U.S. Citizens Whose Parents are N.C. Residents) and No. 24CV00620 (Allegedly Incomplete Registrations).

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

Judge Griffin seeks to invalidate 1,409 votes 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.

Judge Griffin cannot dispute the following: an open-and-shut regulation promulgated by the Board (and online instructions to voters) state 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). Instead, he argues that (i) the General Assembly intended to impose a photo ID requirement in Article 21A (governing military and overseas voting), when it added that requirement to *Article 20* (governing domestic absentee voting), and (ii) the Board never had the authority to issue the regulation that dooms his claim in the first place. Both arguments lack merit. In addition, as set forth below, it would violate Equal Protection to permit Judge Griffin to challenge *only* the military and overseas ballots cast in one (or a handful of counties)—while leaving the "old rules" in place for the voters in 96 of the other 100 counties in the State.

A. Article 21A Does Not Incorporate the Photo ID Requirement Found in Article 20

As discussed above (in Part B of the Statement of the Facts), the General Assembly enacted UMOVA (Article 21A) against a federal backdrop regulating voting by military and overseas voters in federal elections. In the 1980s, Congress enacted the UOCAVA, which established a detailed regime for voting by uniformed military, their family, and overseas voters, including federally prescribed forms (the FPCA and FWAB). These federally prescribed forms and their instructions do not require covered voters to include a photocopy of their photo ID. And the FVAP, an agency of the Department Defense charged with administering the law, has taken the position that states *may not* apply a photo ID requirement to a UOCAVA voter using an FPCA because these voters are "exempt" from providing a copy of a photo ID when attempting to vote by mail. Also, in the FVAP's comprehensive Voting Assistance

Guide there is no instruction *for any U.S. state* that its UOCAVA voters must comply with a photo ID requirement when requesting or voting their ballot. *See* App. 5405.

Against this federal backdrop, in 2011, the General Assembly decided to allow military and overseas voters to vote in *state elections* using the same method when it enacted the UMOVA and codified it in Article 21A.

As the Board explained, Article 20 and Article 21A establish two regimes for absentee voting. Article 21A "comprehensively addresses the requirements for voting by absentee ballot for 'covered persons'" (*i.e.*, uniformed military, their family, and overseas voters). App. 5399. By contrast, the "provisions of Article 20 comprehensively address" the requirements for domestic absentee voting. *Id.* To be sure, in some areas, the same requirements apply to both types of absentee, but the "requirements of one article do not apply to the class of individuals subject to the other article, unless otherwise stated in the statute." *Id.*

This is confirmed by the express terms of both Article 20 and Article 21A. For example, at the end of Article 20, the last section expressly states that the provisions in Article 21A *do not apply* to absentee voting under Article 20:

> **§ 163-239. Article 21A relating to absentee voting by military and overseas voters *not applicable***
>
> Except as otherwise provided therein, Article 21A of this Chapter shall not apply to or modify the provisions of this Article.

N.C. Gen. Stat. § 163-239 (emphasis added).

As the Board correctly stated in its Decision and Order, the "clear intent" of this language "and especially the title of the statute" is that Article 21A does not "apply to or modify" Article 20, meaning that UMOVA's *separate* voting procedures

are inapplicable to absentee voting covered by Article 20. App. 5402-03; *see also* *Myers v. Myers*, 269 N.C. App. 237, 241, 837 S.E.2d 443, 448 (2020) (holding a statute's meaning can be derived from "the title" of the statute).

On the other hand, UMOVA provides that its voters can "apply for a military-overseas ballot using *either* the regular application provided by Article 20 of this Chapter *or* the federal postcard application," and are not prohibited "from voting an absentee ballot under Article 20." N.C. Gen. Stat. § 163-258.7(a), (f) (emphasis added). Thus, military and overseas voters are expressly authorized to apply for and cast a ballot under the methods set forth *either* in Article 21A *or* Article 20. But the requirement that UMOVA voters must choose between these unique methods confirms the clear distinction between the two regimes. Simply put:

> by setting forth two distinct sets of comprehensive regulations for requesting and casting absentee ballots for two distinct classes of voters, and separating those comprehensive regulations in different statutory articles, the General Assembly clearly did not intend for the State Board to pick and choose laws from one article and apply those laws to persons subject to the other article.

App. 5402.

All of this is directly relevant to Judge Griffin's protest because when it came time for the General Assembly to implement 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)). At the same time, the General Assembly *did not amend* Article 21A's separate absentee voting regime to impose a photo ID requirement for military and overseas voters. Of course,

given the history of military and overseas voting, and the fact that no other state has adopted a comprehensive photo ID requirement for UOCAVA voters, the General Assembly's choice is hardly surprising.

This exclusion of military and overseas voters from the photo ID requirement is also fully consistent with Article VI of the North Carolina Constitution. Article VI requires photo ID for voters "offering to vote in person." It *does not require* photo ID for absentee voting at all (even though the General Assembly later imposed that requirement in Article 20). And even for in-person voting, Article VI permits the General Assembly to enact laws that "include exceptions." N.C. Const. art. VI, §§ 2(4), 3(2).

Trying to avoid this conclusion, Judge Griffin maintains that Article 21A should be read to "incorporate" Article 20's photo identification requirement because "[i]f our legislature intended to exempt overseas absentee voters from the photo identification requirement, it would have said so explicitly." Griffin -622 Br. at 14. But that gets the statutory construction backwards. If the General Assembly imposes a requirement in one Article of the statutes, *but does not include it* in another, the conclusion to be drawn is that it did not intend to include it where it was omitted. It is "not reasonable to assume that the legislature would leave an important matter . . . open to inference or speculation"; therefore, "the judiciary should avoid ingrafting upon a law something that has been omitted." *Shaw v. U.S. Airways, Inc.*, 362 N.C. 457, 463, 665 S.E.2d 449, 453 (2008). Of course, it would be wrong to read a photo ID requirement into Article 21A if the requirement were simply *included* in Article 20

but *omitted* from Article 21A. But here the photo ID requirement in Article 20 is even clearer: it is *explicitly* limited to "voted ballots *under this section*." N.C. Gen. Stat. § 163-230.1(f1).

The timing of the enactment of these statutes is also consistent with this analysis. The UMOVA was passed in 2011 and became effective in January 2012. The first photo identification law, applicable to in-person voting, was signed in August 2013. *Compare* N.C. Sess. Law 2011-182 (H.B. 514), *with* N.C. Sess. Law 2013-381 (H.B. 589). The General Assembly *later* added legislation to amend Article 20 to include a photo identification requirement for domestic absentee ballots. *See* N.C. Sess. Law 2019-239 (S.B. 683). No such amendment was made to Article 21A. If the General Assembly had intended to impose a photo identification requirement in Article 21A, it would have amended Article 21A to "explicitly" include such a requirement—just as it did with respect to Article 20 in 2019.

Judge Griffin argues that Article 20's photo identification requirement nevertheless *must be* incorporated into Article 21A because absentee ballots cast under both articles are "generally treated alike and are all considered absentee ballots." Griffin -622 Br. at 15. But that results-oriented approach is not the way statutory construction is typically conducted under North Carolina law. *See, e.g.*, *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 169, 594 S.E.2d 1, 8 (2004) ("The General Assembly is the 'policy-making agency' because it is a far more appropriate forum than the courts for implementing policy-based changes to our laws.").

In any event, to support his argument that Article 20 and Article 21A should just be "treated alike," Judge Griffin cites statutes that, while they apply a uniform rule to Article 20 and Article 21A absentee ballots for one purpose or another, *specifically* distinguish between the two types of ballots. *See, e.g.*, N.C. Gen. Stat. § 163-132.5G(a1)(4) (requiring reporting of early vote ballots separate from "absentee ballots cast under Article 20 *or* 21A of this Chapter" (emphasis added)); *id.* § 163-234 (setting different deadline for counting of absentee ballots "issued under Article 21A"). Where the General Assembly wanted requirements from Article 20 to apply to Article 21A, it explicitly adopted parallel requirements for Article 21A or made appropriate statutory cross-references. *Compare* N.C. Gen. Stat. §§ 163-232, 232.1 *with* N.C. Gen. Stat. § 163-258.26 (requiring preparation of certified lists of absentee ballots under Article 21 and Article 21A).

At the same time, Judge Griffin ignores the many other distinctions between the two types of absentee ballots, underscoring that they are distinct absentee voting regimes for different types of absentee ballots and that the provisions in Article 21A are intended to facilitate voting while away from North Carolina. *See Insulation Sys., Inc. v. Fisher*, 197 N.C. App. 386, 391, 678 S.E.2d 357, 360 (2009) (articulating basic principle that "[b]y enacting two separate statutes, the legislature clearly intended that two distinct standards be applied."). For example, ballots cast under Article 21A, unlike absentee ballots cast under Article 20, can be submitted electronically. N.C. Gen. Stat. §§ 163-231(b)(1)(c), 163-258.4(d). In addition, unlike the declaration required to authenticate an Article 21A ballot, an absentee ballot under Article 20

must be authenticated by two witnesses or a notary. N.C. Gen. Stat. § 163-231(a)(6). A voter covered by Article 21A, unlike an absentee ballot under Article 20, can request a ballot under "the federal postcard application." N.C. Gen. Stat. § 163-258.7(a); *compare with* N.C. Gen. Stat. § 163-230.2(a) (providing a ballot under Article 20 can be requested only through completion of a form created by the State Board). And all ballots under Article 20 must be submitted no later than 7:30 p.m. of the date of election, while Article 21A ballots are counted so long as they are received before the county canvass. *Compare* N.C. Gen. Stat. § 163-231(b)(2), *with* N.C. Gen. Stat. § 163-258.12. These distinctions in the methods and deadlines for submitting absentee domestic ballots under Article 20 and Article 21A underscore that the methods for voting absentee under the two Articles are distinct, and do not have the same requirements (unless stated expressly in the statutes).

Judge Griffin also argues that Article 21A makes no reference to a "sealed container-return envelope" and speculates that the term requires the Board to look outside Article 21A to Article 20 for guidance. Griffin -622 Br. at 14-15, 15-16 (discussing N.C. Gen. Stat. § 163-231(b)(1)). But the reason Article 21A makes no reference to "sealed container return envelopes" is because, under Article 21A, the Board prescribes "privacy and transmission envelopes and their electronic equivalents . . . to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this State." N.C. Gen. Stat. § 163-258.4(d); *see also* N.C. Gen. Stat. § 163-231(b)(1), (2) (specifically recognizing in Article 20 that Article 21A allows for different methods of transmission than regular absentee ballots)).

Judge Griffin also cites several provisions that he assumes "*must* apply to overseas voters" from Article 20 even though Article 20 "does not say so expressly" because "Article 21A is silent on the issue." Griffin -622 Br. at 16. As an initial matter, Judge Griffin is wrong about some of his examples. For example, Article 21A *does* impose penalties for perjury. *See* N.C. Gen. Stat. § 163-258.13. As that statute indicates, however, sometimes prosecution of military-overseas voters needs to be done by the United States rather than North Carolina, explaining the absence in Article 21A of provisions regarding referral of legal violations to a local district attorney. To the extent there are interstitial gaps in Article 21A, that Article specifically tasks the Board with filling those gaps in a manner that harmonizes state law and federal law under UOCAVA (*e.g.*, regulations for maintaining proper registration records for military overseas voters). *See, e.g.*, N.C. Gen. Stat. §§ 163-258.4, 163-258.30.

Judge Griffin is also wrong (Griffin -622 Br at 16) to conclude that "Article 21 recognizes that overseas voters will need to provide photo-identification" because it provides that a military or overseas voter may apply for an absentee ballot by using "the regular application provided by Article 20." *Id.* (citing N.C. Gen. Stat. § 163-258.7(a)). To the contrary, that provision of state law makes clear that *it is the voter's choice* whether to vote an absentee ballot under Article 20 instead of Article 21A. Whatever the voter's choice, the applicable set of laws and regulations under the pertinent absentee voting regime (whether Article 20 or Article 21A) then apply.

Nor is it correct to conclude that there would be no "rational basis" for this difference in treatment or that it "would make no sense to require photo identification for voters presented in the United States but not for overseas voters" including our uniformed military. Griffin Br. 18, 22; *see also Griffin*, No. 320P24, Jan. 7, 2025 Order (Dietz, J., dissenting at 3) ("Exempting voters in foreign countries from voter ID" is "inconsistent with the law's intent"). While there may be policy arguments for extending photo ID to military and overseas voters, the General Assembly has not yet decided to impose such a requirement. That legislative choice is not only consistent with the law for UOCAVA voters in *other states across the country*, but also with the historical recognition in federal and state law that it is simply harder for overseas citizens to exercise their right to vote—from uniformed military on the battlefield or in submarines, to missionaries and nonprofit workers in remote locations. Indeed, the Department of Defense disagrees with Judge Griffin's argument that it "makes no sense" to permit military and overseas voters to access the ballot without a photo ID and has explained why these voters *should* be treated differently.[8]

Importantly, as the Board also recognized, Article 21A implements UOCAVA, a federal law that does not require photo ID. Because Article 21A *requires* the Board to allow military-overseas voters to register and vote using UOCAVA ballots, and counties used a combined federal-state ballot in this election (*see* N.C. Gen. Stat. §

[8] *See, e.g.*, Letter from Director Beirne to Commissioner Cortes (Feb. 6, 2017) (cited in Board's Order at App. 5406 n.26).

163-165.5B), Article 21A is properly read not to impose a photo ID requirement. And as the Board has recognized, an exception from photo ID requirements for these votes may ultimately be required by federal law and the Supremacy Clause of the U.S. Constitution.

There are still multiple checks designed to ensure the integrity of the overseas vote. A voter must confirm their identity when submitting the standard federal forms. *See* App 5400 (federal forms require information such as the voter's "name, birthdate, and their driver's license number or social security number" for the purpose of "confirm[ing] the voter's identity."). And each Article 21A ballot includes a declaration swearing to the voter's eligibility and identity. *See* N.C. Gen. Stat. §§ 163-258.4(e); 163-258.13. A military or overseas voter submitting a ballot under Article 21A must provide "a declaration signed by the voter declaring that a material misstatement of fact in completing the document may be grounds for a conviction of perjury under the laws of the United States or this State." N.C. Gen. Stat. § 163-258.13. A separate section sets out specific facts to which a covered voter must "swear or affirm" including "specific representations pertaining to the voter's identity, eligibility to vote, [and] status as a covered voter." N.C. Gen. Stat. § 163-258.4(e).[9]

[9] As the Board points out (App. 5400), these are the *only authentications* that may be required to cast an Article 21A ballot: "An authentication, other than the declaration specified in G.S. 163-258.13 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this Article. The declaration and any information in the declaration may be compared against information on file to ascertain the validity of the document." N.C. Gen. Stat. § 163-258.17(a).

Accordingly, Judge Griffin's attempt to change settled law and disenfranchise military servicemembers, their families, and other North Carolinians overseas should be rejected.

B. The Board Properly Exercised Its Authority in Issuing the Rule Providing That a Photo ID Is Not Required Under Article 21A

Judge Griffin argues the Photo ID Exemption Rule is unenforceable because "[t]here is no textual indication that the General Assembly ever intended for the State Board to decide whether to require photo identification for any kind of voter." Griffin -622 Br. at 21. That is wrong. As an initial matter, the Board did not exceed the scope of its authority; the *General Assembly* 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, the General Assembly *did* direct the Board to develop "standardized absentee-voting materials . . . in coordination with other states." N.C. Gen. Stat. § 163-258.4(d). And the ID exception found in 8 N.C. Admin. Code 17.0109(d) aligns with this directive. As noted, the FVAP's Voting Assistance Guide "reveals no instruction from any state to its UOCAVA voters stating that they must comply with a photo ID requirement when requesting or voting their ballot." App. 5405. The regulation was thus clearly within the General Assembly's express direction to the Board to develop "standardized absentee-voting materials" for Article 21A voters, including "authentication materials, and voting instructions." N.C. Gen. Stat. § 163-258.4(d).

Importantly, this regulation was adopted during an *open participatory process*, with a specific check designed to ensure the Board does not exceed its statutory

authority. The Rule took effect 15 months before the election, beginning in August 2023, first as a temporary rule, then as a permanent rule. App. 5404. During rulemaking, Judge Griffin submitted no comments on the Rule. The North Carolina Republican Party submitted "thorough comments on the Rule" but "did *not* object to this aspect of the Rule" or seek to invalidate it through administrative or judicial process. *Id.* The Rule was approved unanimously by the Rules Review Commission, an agency appointed by the leadership of the General Assembly that is required to object to rules proposed by an agency "if those rules exceed the authority of the agency to adopt them." *Id.* (citing N.C. Gen. Stat. § 150B-21.9(a)(1)). After the rule was adopted, neither Judge Griffin *nor anyone else* ever challenged it through litigation.

Accordingly, the Rule Judge Griffin challenges here is valid as it was implemented in accordance with the authority delegated by the General Assembly to the State Board.

C. Judge Griffin's Selective Prosecution of This Claim Violates the Equal Protection Clause of the U.S. Constitution

Not only is Judge Griffin's post-election protest too late to challenge a lawfully enacted regulation, and not only is his argument wrong on the merits, but the Equal Protection Clause of the U.S. Constitution bars his claim because of the selective means by which he seeks to enforce this claim. Even 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." *Kim v. Bd. of Educ. of Howard Cty.*, 93 F.4th 733, 741 (4th Cir. 2024) (quoting *Hadley v. Junior Coll. Dist. of Metro. Kansas City, Mo.*, 397 U.S. 50, 56 (1970)); *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"). Accordingly, a state "may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (per curiam); *see also Lecky*, 285 F. Supp. 3d at 920 ("Courts have generally found equal protection violations where a lack of uniform standards and procedures results in arbitrary and disparate treatment of different voters.").

Judge Griffin protested voters on this basis before the deadline *only in Guilford County*. *See* Griffin Br. 66 n.15 (glossing over untimely filings in other counties); App. 5370 n.2 (noting late filings but dismissing on the merits). He later tried to supplement with data for three more counties (Durham, Forsyth, and Buncombe). He blames the timing of county boards in providing the requested data (without explaining why he did not request the data months earlier)—*but Judge Griffin never intended a uniform application of this change in the rules*. From the start, Judge Griffin only "requested the list of such voters from . . . six counties." Griffin -622 Br. at 4.[10] In other words, he does not seek to change the rules for all voters in the State.

[10] Judge Griffin suggests that he requested data only in six counties because in those counties "local election official confirmed that the county board accepted overseas ballots without requiring photo identification." Griffin -622 Br. at 4 n.1. But *every county* was required by state law to do so. Therefore, the suggestion that his selective data request, targeted at urban counties, was anything other than a deliberate choice on his part appears to be highly misleading.

To change the rules and throw out the votes of North Carolinians in one county, or just four counties—particularly when those counties are some of the most Democratic in the State—while counting the votes of similarly situated North Carolinians of the other 96 counties in the State would run directly into constitutional guarantees of equal protection of the law. This Court should not sanction this selective disenfranchising of our military, their families, and overseas voters. Moreover, if it does so, the Court will be forced to address whether to dramatically expand the inquiry to more than 32,000 North Carolinians who voted using this method in all 100 counties in 2024.[11]

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.

[11] *See* Jeffrey Billman & Michael Hewlett, *Jefferson Griffin's Gambit For a State Supreme Court Seat*, The Assembly (Jan. 20, 2025), archived at https://perma.cc/QMC6-2N4F; *accord* https://s3.amazonaws.com/dl.ncsbe.gov/ENRS/2024_11_05/absentee_counts_state_20241105.csv (10,500 military and 21,534 overseas absentee ballots).

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