No. 25-181 DISTRICT 10

NORTH CAROLINA COURT OF APPEALS
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JEFFERSON GRIFFIN,
Petitioner-Appellant,

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS,
Respondent-Appellee,

and

ALLISON RIGGS,
Intervenor-Respondent-Appellee.

From Wake County
24CV040619-910

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AMICUS CURIAE BRIEF OF JAY NORMAN DELANCY

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INDEX

TABLE OF AUTHORITIES i

INTRODUCTION 1

INTEREST OF AMICUS CURIAE 1

ISSUES ADDRESSED 3

ARGUMENT 3

- Service of Protests on Challenged Voters 4
- Alleged Incomplete Registrations 5
- Purcell Rule 7

PROPOSED THREE-STEP REMEDY 10

1. Special List Maintenance 11
2. Retabulate Results 12
3. Conduct New Election if Necessary 14

REQUEST FOR REMEDY 14

CONCLUSIONS OF LAW 15

PROPOSED ORDER 16

CERTIFICATE OF COMPLIANCE 17

CERTIFICATE OF FILING AND SERVICE 18

TABLE OF AUTHORITIES

Case Law

Common Cause v. Rucho and *League of Women Voters v. Rucho*
CV-01026-WO-JEP (2018) 7

State Statutes

N.C.G.S. § 163-82.4 ..... 5, 15
N.C.G.S. §163-82.4(f) 6, 8
N.C.G.S. §163-82.7(b) 12
N.C.G.S. §163-82.18 12
N.C.G.S. §163-182.5(b) 7
N.C.G.S. §163-182.12 10
N.C.G.S. §163-182.13(b) 14
N.C.G.S. §163-182.14 11

Federal Statutes

52 U.S.C. § 20507 9
52 U.S.C. § 20507(c)(2)(B) 9

Administrative Code

08 NCAC 02.0111 ..... 4, 15

Numbered Memos

State Board of Elections Numbered Memo 2022-05
(Revised December 15, 2023) 13

INTRODUCTION

Pursuant to Rule 28.1 of the North Carolina Rules of Appellate Procedure, Jay Norman Delancy submits this brief as amicus curiae.[1]

INTEREST OF AMICUS CURIAE

As Founder and Director of Voter Integrity Project NC, a non-partisan, volunteer non-profit organization, I have worked tirelessly to ensure that in North Carolina, it is easy to vote and hard to cheat – no matter your age, race, sex, address, background, or party affiliation.

I have led a team of volunteers who have analyzed and influenced public policy regarding the administration of North Carolina's election laws since 2011.

As an activist, my work has triggered numerous voluntary voter removal actions, criminal referrals for noncitizen voting, and at least four felony prosecutions for voting in more than one state in the same election, resulting in three convictions and one Alford plea deal.

Utilizing crowd-based research, our network of volunteers uncovered nearly 30,000 deceased persons on our state's voter rolls and more than 500 registered voters who declared on their Wake County jury duty questionnaire that they were

[1] Pursuant to rule 28.1(b)(3)(c), the only person who contributed directly or indirectly to the writing of this brief is Steve Holland of Weaverville, NC. No other person directly or indirectly contributed money for its preparation.

not United States citizens. Separately, after filing a suit in federal court against the Wake County Board of Elections, we obtained a mediated settlement regarding its lax voter list maintenance procedures. In 2020, our volunteers worked countless hours to discover that dozens of votes of deceased persons were illegally counted in the North Carolina Supreme Court Chief Justice race, resulting in numerous election protests being filed across the state in a race that was ultimately decided by just 401 votes.

I believe additional reforms to North Carolina's election laws and administration are greatly needed. To increase public awareness of this need, I have published more than 450 web articles and a book on the topic; I have another book set for release later this year.

Following the 2024 General Election, I filed a protest in the Griffin – Riggs race, raising some of the same issues in the protest appeal before you (at the time I filed, Jefferson Griffin happened to be ahead). Without the benefit of legal counsel, I made several procedural errors that resulted in my protest being dismissed at the county level and my appeal being dismissed by the State Board.

The Court's resolution of this case will affect whether my vote is counted fairly or diluted with invalidly cast votes. The same goes for the votes of the many volunteers with whom I have worked very hard to ensure the integrity of North Carolina's elections.

ISSUES ADDRESSED

This brief addresses: 1) how to avoid disenfranchisement of innocent voters whose registration lacked required information and whose validly cast ballots should be counted; 2) how to avoid dilution of all validly cast ballots; 3) how to ensure that all voters' substantive due process rights are upheld; 4) the State Board's inherent conflict of interest between acting in its quasi-judicial capacity on this protest and its own administration of the election which is the subject of the protest itself; and 5) what remedy the court should order to correctly determine the winner of the Griffin – Riggs race in accordance with all state and federal laws.

ARGUMENT

The question presented on appeal is "Did the superior court err in affirming the State Board?" Petitioner-Appellants' Brief, p 4. Amici takes the position that the superior court did err in affirming the State Board. With the superior court order providing no basis for its affirmation, Amici must resort to reviewing the reasoning provided by the State Board in its December 13, 2024 order dismissing Plaintiff-Appellant's protest. Amici takes no position in this protest appeal on the court's disposition of "never residents"[2] and Military and Overseas Voters Who Did Not Send Photo ID.[3]

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[2] Part C of the State Board's December 12, 2024 order beginning on Page 29, "U.S. Citizens Whose Parents Were North Carolina Residents but Who Have Never Resided in the United States.

[3] Part D of the State Board's December 12, 2024 order beginning on Page 32.

Service of Protests on Challenged Voters

The State Board's Election Protest Form is contained in 08 NCAC 02.0111. It states, "If a protest concerns the eligibility or ineligibility of particular voters, all such voters are Affected Parties and must be served." The obvious purpose of designating such voters as "Affected Parties" and requiring them to be notified is to ensure that voters substantive due process rights are not violated. In determining whether or not the Plaintiff-Appellant's service to approximately 60,000 voters is adequate, the Court should consider the magnitude of the problem the State Board itself created by not following the law and obtaining the required personally identifiable information (PII) from voters for whom such information was missing, when it knew of such problem on or about October 6, 2023. The Plaintiff-Appellant was up against a monumental task to contact an enormous number of voters, given the extremely tight timeline for filing a protest and providing notice to Affected Parties. I would contend that the State Board rule, buried in its Protest Form, requiring the Protestor to contact this number of voters is arbitrary and capricious. Further, the remedy that Amici is proposing, which is contained later in this brief, will satisfy any concerns about the protection of voters' substantive due process rights.

Alleged Incomplete Registrations

First, I join the chorus of those opposing the disenfranchisement of more than 60,000 voters en masse over what was clearly a problem created by the adamant refusal of the State Board to follow the letter and intent of both state and federal law, regarding the PII that is required to be requested before a person can become registered to vote in North Carolina according to N.C.G.S. § 163-82.4. The clear intent of this statute is that the applicant's driver license number is required. In the case where the applicant does not have a driver license number, the applicant is required to provide the last four-digits of his or her social security number. Only in the case that an applicant does not possess a driver license or social security number, may the applicant be assigned a unique identifier number without providing this otherwise required information. For the sake of simplicity, I will refer to such voters as "PII-noncompliant" voters, although they did nothing wrong. It makes sense that driver license number or last four digits of social security number is required so that election officials can use this information to verify the identity and citizenship of the applicant by cross-checking the applicant with the North Carolina Department of Motor Vehicles database, the Social Security Administration database, or other official databases.

Consider the following facts:

1) On or about October 6, 2023, the State Board publicly admitted that the missing PII was "required" registration information;

2) On or about December 6, 2023, State Board Chairman Hirsch issued an order consenting to change the State Board's on-line registration form to make driver license number or last four digits of SSN a mandatory field, but refused to correct any of the 252,644 PII-noncompliant voters already registered to vote;

3) By January 10, 2024, the State Board had updated its English language registration form;

4) The State Board delayed updating its Spanish language registration form until June 7, 2024, a full six months after it updated the English language form;

5) My associates and I used an October 24, 2024 list of PII-noncompliant voters to identify an additional 34,667 voters who registered *and voted* without the required PII after the December, 2023 order was issued;

6) N.C.G.S. §163-82.4(f) says, "If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, the voter shall be notified of the omission and given the

opportunity to complete the form at least by 5:00 P.M. on the day before the county canvass as set in N.C.G.S. §163-182.5(b).” Even after “newly discovering” this requirement in late 2023, County Boards of Elections and the State Board abrogated their duty to process new applications in compliance with this statute, openly defying state law. The State Board simply accepted all 34,667 incomplete registrations, along with any additional registrations they completed after our October 24, 2024 snapshot of the PII-noncompliant voter rolls.

Purcell Rule

The Respondent-Appellee has cited the Purcell Rule, which generally bars courts from changing election laws during the final 90 days before an election to justify dismissing this entire protest action. You will find that the remedy I propose does not change North Carolina Election law but instead, works within its confines. I respectfully ask the court to consider at least two factors that mitigate any consideration of the Purcell Rule.

First, it is a “rule” and not a law. As such, it is freely ignored or violated any time a Court decides to do so. A recent example is the August 27, 2018 federal court ruling titled, *Common Cause v. Rucho* and *League of Women Voters v.*

Rucho,[4] which resulted in the elections being halted, new districts being redrawn, a new candidate-filing period being held, and new Congressional elections conducted statewide. These actions were well within the 90-day Purcell period.

Second, and this is key, Purcell presumes election officials are following the laws that are already in place, which the State Board clearly was *not doing* for this election. The State Board has demonstrated a willful disregard of election laws. They ignored rules they didn't like and then entertained the notion that any changes to the rules would be a violation of Purcell, a rule they *did* like. This is tantamount to a child murdering both of his parents and then asking the Court for leniency because he's an orphan.

Evidence suggesting the State Board acted in a deliberately subversive way, thus disabling the Purcell criteria, includes the following relevant details: 1) its six-month delay in updating the Spanish language registration form; 2) its refusal to conduct the desperately-needed list-maintenance mailings after the December 2023 hearing regarding required PII on its registration forms; 3) its refusal to obey NCGS §163-82.4(f) which guides election officials on the correction of incomplete registration forms; and 4) its defiant flooding of the voter rolls with at *least* 34,667

[4] https://www.govinfo.gov/content/pkg/USCOURTS-ncmd-1_16-cv-01026/pdf/USCOURTS-ncmd-1_16-cv-01026-5.pdf

additional PII-noncompliant voters even after the Board voted to require the critical PII for each new registrant.

The undeniable fact of this entire protest is that, since 2004, the State Board of Elections has willfully and defiantly subverted both state and federal law by misleading voters into believing that providing PII when registering to vote was "optional" instead of required. As a basis for that claim, they cited the provisions in HAVA and NC law that provides a registration option for registrants who truly lack either of those two documents.

The State Board then turned that rare exception into a de facto policy which encouraged as many voters as possible to register without providing that critical personally identifying information. This stealth action facilitated the opportunity for the voter rolls to be flooded with the only class of voter who truly lacks either piece of PII - non-US citizens.

It is important to note that 52 U.S.C. § 20507 applies a 90-day rule only to voter registration for elections for Federal office. Therefore, even though North Carolina has a "unified" registration system for Federal and State voting, this Federal statute does not apply to this race or the remedy proposed in this brief because this race is not for a Federal office. Even if this statute were to be construed to apply, 52 U.S.C. § 20507(c)(2)(B) specifically excludes correction of registration records.

PROPOSED THREE-STEP REMEDY

It is the highest calling of the State Board of Elections to ensure that every election in this state is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election. N.C.G.S. §163-182.12 gives the State Board broad authority to take any action necessary to do just that. In fact, shouldn't assuring that an election is determined without taint of fraud or corruption and without irregularities be paramount?

Amici disagrees with the proposed remedies and disposition of this protest sought by Plaintiff-Appellant JEFFERSON GRIFFIN, Respondent-Appellee NORTH CAROLINA STATE BOARD OF ELECTIONS, and Intervenor-Respondent-Appellee ALLISON RIGGS. However, our statutes do indeed allow a remedy that would correct these underlying problems, remove the taint of impropriety in this contest, and restore public trust in our electoral process.

This Court should require the State Board to implement the following reasonable, methodical, three-step remedy under N.C.G.S. §163-182.12 and in accordance with other statutes noted below. This remedy does not produce an instant result. However, it will avoid disenfranchising any voters, address the underlying problem, remove the taint of irregularity and impropriety in this contest, correctly determine the duly elected winner for Seat #6 of the North Carolina Supreme Court, and restore public trust in our electoral process.

1. Special List Maintenance

In accordance with N.C.G.S. §163-82.14, this Court should order the State Board to conduct a special list-maintenance mailing on or before April 15, 2025 to all voters who 1) were eligible to vote and who voted in the November 5, 2024 General Election; and 2) were PII-noncompliant voters. Since this race is not a federal election, such list maintenance does not interfere with federal law restricting the timing of list maintenance. This process protects the substantive due process rights of all voters.

In summary, the mailing to each voter should include the following: 1) a warning that the voter's inaction will result in his or her vote being removed from the NC Supreme Court Seat #6 race only in the November 5, 2024 election; 2) a warning that the voter's inaction will result in being removed from the voter rolls; 3) a clearly written form he or she must complete; 4) a reply deadline for returning the completed form, which shall be 30 days after the mailing is postmarked; and 5) a postage-paid, pre-addressed envelope in which to return the form.

These voters shall have one of four possible options: 1) provide the missing information by using the postage-paid response envelope; 2) disqualify themselves by admitting they are NOT a US citizen and simultaneously requesting their immediate removal from the voter rolls; 3) swear under penalty of perjury, with a witness verifying their signature, that they ARE a US citizen and were resident in

the county as of October 6, 2024, but truly have neither a North Carolina driver license nor a Social Security number; or 4) discard the mailing without responding.

The county boards of elections and the State Board shall be given 21 days from the reply deadline to ingest and review the response forms and address any appeal from denial of registration received from mailing recipients. The county boards of elections shall enter information from the forms received in response to the Special List Maintenance into SEIMS and conduct its normal checks against the North Carolina Department of Motor Vehicles database, the Social Security Administration database, or other official databases. For each Special List Maintenance mailing recipient whose response has not been received by the county board of elections within 30 days of the mailing being sent to the voter, his or her registration shall be considered denied under N.C.G.S. §163-82.7(b). As a fail-safe, any person denied registration through this process may appeal the decision under N.C.G.S. §163-82.18.

2. Retabulate Results

Once the responses to the List Maintenance mailing are received and ingested, and the time for appeal from denial of registration has ended, each County Board of Elections shall:

A) Add together the number of election day voters in each of these categories: 1) those who failed to respond to the mailing; 2) those who

responded and disqualified themselves; 3) those who were found to be ineligible through routine database crosschecks; and 4) those who were discovered to be felons ineligible to vote. That total number of voters shall be aggregated on a statewide basis and called "Total A" – the number of ineligible votes that are not retrievable.

B) Remove the early in-person and absentee votes using the procedures outlined in Numbered Memo 2022-05 (Revised December 15, 2023) of those who: 1) failed to respond to the mailing; 2) responded and disqualified themselves; or 3) were found to be ineligible through routine database crosschecks. Each county board of elections shall, also remove under the same procedures, the votes of all persons who voted early in-person or absentee in this race and who were 1) a felon who was ineligible to vote or 2) a person who died before Election Day. All such removals shall be done according to State Board rules and procedures not inconsistent with this order - no matter how the Boards' attention was called to such individuals. After these ballots are removed, the race should be retabulated statewide to determine the margin of victory for the winning candidate. If the margin of victory is larger than "Total A" above, the State Board shall declare the winner and certify the result.

3. Conduct New Election If Necessary

If the margin of victory is equal to or less than "Total A", the State Board shall order a new election under N.C.G.S. §163-182.13(b) which says, "The State Board of Elections shall determine when a new election shall be held and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election."

REQUEST FOR REMEDY

There are three reasons why this Court should specify the remedy in this case rather than remanding the case back to Superior Court or the State Board for further action. First, the Superior Court did not provide any basis for its ruling; remanding the case there will likely leave too many unanswered questions about legal reasoning if the court follows its previous method. Second, the State Board has an inherent conflict of interest because it is tasked with administering the election that is the subject of this protest. The State Board has an actual conflict of interest because holding a full evidentiary hearing on this protest is likely to reveal details about the unlawful actions in which the State Board has engaged. The State Board would not likely implement the remedy proposed in this brief of its own volition because doing so would be an admission of wrongdoing. Third, remanding this case would greatly slow down the process. While correctly determining the winner in this race is paramount over speed, we are already four

months past election day. It's time to implement a plan to correct the administration 2024's State Supreme Court election. This entire problem was created by the North Carolina State Board of Elections, so this Court should require them to fix it.

CONCLUSIONS OF LAW

Amici asks that the court make the following conclusions of law:

1. The State Board of Elections erred in not correcting its violation of N.C.G.S. §163-82.4 when made aware of the violation on or about October 6, 2023. It should not have only updated the Voter Registration Form to require the personally identifiable information, but it should have also obtained the personally identifiable information for all voters for whom it was missing such data.
2. The State Board erred in finding that Petitioner-Appellant did not adequately notify all Affected Parties (voters) under 08 NCAC 02.0111.
3. No substantive due process voter rights have been or will be violated through the filing of this protest nor with the implementation of this order.

PROPOSED ORDER

The State Board of Elections, under its existing statutory authority, shall ensure that the State Supreme Court Seat #6 race in this state is determined without taint of fraud or corruption and without irregularities that may have changed the result of this election by implementing the three-part remedy set forth above.

This the 12th day of March 2025.

/s/ Jay Norman Delancy
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28.1(b)(3)(d) of the North Carolina Rules of Appellate Procedure, Amici certifies that the foregoing Brief, which is prepared in fourteen-point Times New Roman font, is less than 3,750 words (excluding cover, indexes, tables of authorities, certificates of service, this certificate of compliance and appendices) as reported by the word-processing software.

This the 12th day of March 2025.

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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that he electronically filed and served the foregoing Amicus Brief upon the Office of the Clerk of the North Carolina Supreme Court by uploading on the 12th day of March 2025 and by emailing said document to the following email addresses per Rule 26(c) stated below on the parties or their counsel of record:

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