



# State Democracy Research Initiative

UNIVERSITY OF WISCONSIN LAW SCHOOL

## Explainer: North Carolina Supreme Court Election Protest

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More than a month after the November 2024 election, the result of the North Carolina Supreme Court race is still uncertain. There have been two recounts—one machine and one partial hand recount—neither of which changed the initial result: Democrat and incumbent North Carolina Supreme Court Justice Allison Riggs still leads over Republican North Carolina Court of Appeals Judge Jefferson Griffin by just under 750 votes.<sup>1</sup> The North Carolina State Board of Elections (NCSBE) also [rejected an election protest](#) brought by Judge Griffin, challenging the eligibility of over 60,000 voters who cast a ballot in the last election. Judge Griffin, however, disputes that ruling, and litigation is now underway.

North Carolina Supreme Court justices are chosen in partisan elections, and a win for Justice Riggs would maintain the court's current 5-2 Republican majority. A win for Judge Griffin would give the court a 6-1 Republican majority and thus reduce the odds of Democrats winning back a majority later in the decade.

The term of office for the prevailing justice in this election was supposed to begin on January 1, 2025, but, as detailed below, the election contest continues and will likely not be resolved for some time.

### Challenges to Voter Eligibility Began Before the Election

Prior to the election, the Republican National Committee (RNC) and North Carolina Republican Party (NCGOP) filed a lawsuit [challenging the registration of 225,000 voters](#) who registered to vote using a form that failed to indicate that an individual must provide a driver's license number or the last four digits of their Social Security number, or check a box if they have neither number. Under the Help America Vote Act (HAVA), [states are required to collect this information](#) and assign a unique identifying number to voter registration applicants who have neither a current driver's license nor Social Security number.

When this issue was brought to the NCSBE's attention, the Board issued a new form but declined to investigate the eligibility of individual voters who had registered with the deficient form. The

Board reasoned that the identity of impacted voters would be verified when and if they went to vote since voters are required by state law to [show voter ID at the polls](#), [attach a copy of their ID to an absentee ballot](#), or [fill out a photo ID exception form](#). The RNC and NCGOP argued that this was insufficient and violated HAVA and state law. Their position was that the 225,000 registrants who used the deficient form should be [purged from the voter rolls or required to cast provisional ballots in the 2024 general election](#).

Although the RNC/NCGOP case was first filed in state court, it was removed to federal court, where Judge Richard Myers II [dismissed the claim](#). The court reasoned that the [North Carolina law](#) that directs the Board to maintain a voter list in compliance with HAVA requirements provides no private cause of action.<sup>2</sup>

## Following the Election, GOP Candidates Filed a Protest Challenging Eligibility of 60,000 Voters

In the weeks following the election, several GOP candidates—Judge Griffin and state senate candidates Ashlee Adams and Stacie McGinn—[filed election protests with the NCSBE](#). The NCSBE took up three categories of protests challenging the votes of: (1) individuals who registered to vote without providing a driver’s license or partial Social Security number, (2) voters living abroad who have never resided in North Carolina but whose parents or legal guardians were last eligible to vote in North Carolina, and (3) overseas and military voters who did not include a photocopy of their ID or an exception form when casting their absentee ballot.

The protesters challenged voters of all and no party affiliation. However, the protesters need not prove that the outcome of the election would be changed to support a protest. Instead, protesters need only prove that the number of votes affected could affect the outcome of the election. [Fewer than 1,000 votes separate the candidates in all three races](#), so, if the Board agreed with the protesters that even a small fraction of the approximately 60,000 challenged votes are legally defective, there would be sufficient support for the election protest. In the event of a successful protest, the Board is [empowered to order a remedy](#) and may take any [“action within \[its\] authority.”](#) This includes ordering a new election, although [that would require the unanimous approval of the Board](#).

The Board, however, voted 3-2 on party lines to dismiss the protests as procedurally deficient. [Election protesters are required to serve all filings on all “Affected Parties.”](#) This includes not just the other candidates in the election, but, when the protest challenges the eligibility of certain voters, all voters whose votes would be affected. To fulfill this requirement, the protesters sent postcards to the affected voters. The postcard told the voter that their vote [“may be affected by one or more protests filed in relation to the 2024 General Election”](#) and included a QR code that the recipient could scan to access the protest filings. The three Democratic Board members [expressed concern that the postcards were inadequate in several ways](#), including that the language on the postcard indicated a possibility that the recipient’s vote was not being

challenged when all recipients were the subject of this challenge, recipients may not know or trust QR codes, and the appearance of the postcard failed to indicate that it was a legal notice.

The Republican board members disagreed, reasoning that it was “[too speculative](#)” to assume how a recipient might view the postcard, even though numerous challenged voters who were contacted by reporters said that [they were not aware of the challenge](#) or found the [postcards confusing or reminiscent of junk mail](#).

Although the Board did not have to reach the merits of the protests after determining that the notice to affected voters was defective, the Board chose to do so in anticipation of an appeal.

On the protests challenging votes of the first two categories of voters—those said to have deficient registrations and “never residents”—the Board voted again on party lines to dismiss the protests. Board members disagreed on whether the votes of individuals who registered without providing HAVA identification could be discarded when these voters would otherwise be eligible except for having registered using the flawed form. They also disagreed as to whether “never residents,” who were voting under the state’s [Uniform Military and Overseas Voters Act \(UMOVA\)](#), were eligible to vote and whether the Board could resolve an asserted conflict between UMOVA and the state constitution.

As to the third category of challenged voters—overseas and military voters who did not provide a copy of their ID or an exception form—the Board voted unanimously to dismiss the protests. The Board reasoned that the administrative code [explicitly exempts these voters from the ID requirement](#).

The NCSBE [later heard the protests that were initially referred to county boards of election](#)<sup>3</sup> and voted on party lines to [dismiss the protests](#), finding that the number of challenged votes would be insufficient to change the outcome of the elections.

## **Judge Griffin Files Appeals and Petition for a Writ of Prohibition in State Court**

Judge Griffin filed a [Petition for a Writ of Prohibition with the North Carolina Supreme Court](#), asking the court (1) to issue a temporary stay preventing the state board of elections from certifying the election in favor of Justice Riggs and (2) to order that the disputed votes be rejected. Judge Griffin [also filed appeals](#) of the NCSBE decision in Wake County Superior Court.

Judge Griffin’s petition and appeals largely restated the claims made in the original election protest. However, the petition added arguments addressing the alleged deficiency of the voter notices and whether the protests violate voters’ equal protection and due process rights.

A practical question is whether and how the challenged votes could be identified and thrown out. In the case of overseas and military voters, voters can be matched to their ballots. This is also true for votes cast by absentee and in-person early voters, as [all ballots cast before election day](#)

[are given an identifying number](#) that allows a vote to be retrieved in the case of a successful voter challenge or election protest. Approximately [79% of voters in North Carolina voted absentee](#) in the 2024 general election. For the 21% of voters who voted on election day, however, such ballot matching is not possible, so it is unclear how such votes could be discounted.

The NCSBE then filed a [notice to remove the cases from state to federal court](#), which was [assigned to Judge Myers](#). On January 6, 2025, the federal district court [remanded the cases to state court on abstention grounds](#). That same day, the NCSBE filed a [notice of appeal](#) to the U.S. Court of Appeals for the Fourth Circuit, seeking review of the district court's [decision on the motion to remand](#). The Fourth Circuit heard [oral argument](#) in the appeal from the remand of the petition for writ of prohibition on January 27, 2025. On February 4, 2025, after consolidating all appeals arising out of the election protests, the Fourth Circuit [affirmed in relevant part](#) the district court's decision to abstain and remand the litigation to state court. The upshot is that Judge Griffin's challenges will be adjudicated for now in the North Carolina state courts rather than in federal court. The Fourth Circuit, however, instructed the federal district court to retain jurisdiction over the matter. This leaves the door open to future federal adjudication of any federal-law issues that remain unresolved after the state court proceedings conclude.

On a parallel track, the day after the district court remanded the case, the [North Carolina Supreme Court issued an order](#) granting Judge Griffin's motion for a stay of certification of the election results and set a briefing schedule for resolution of his protest. However, on January 22, 2024, before Judge Griffin could file a reply brief, the North Carolina Supreme Court issued an [order dismissing the petition for writ of prohibition](#) and allowing the appeals Judge Griffin had filed in Wake County Superior Court to proceed. Following a hearing, on February 7, 2025, the trial court [affirmed the NCSBE's decision](#) to reject all three categories of election protests. Judge Griffin has [appealed the decision to the North Carolina Court of Appeals](#). [Briefing is scheduled](#) to be completed by March 3, 2025. Although the [NCSBE filed a petition for discretionary review](#), the North Carolina Supreme Court [denied the petition](#), allowing the case to proceed before the Court of Appeals.

## The North Carolina Democratic Party Has Sued to Prevent the NCSBE from Throwing Out Votes

Separately, the North Carolina Democratic Party (NCDP) [sued the NCSBE earlier this month](#) in federal court to prevent the Board from rejecting the votes being challenged in the election protest. In the suit, the NCDP argued that discarding these votes would violate the National Voter Registration Act (NVRA), HAVA, and the U.S. Constitution.

The NCDP argues that these election protests differ from regular voter challenges because the protests seek to discount votes without raising individualized objections to each voter's eligibility. The complaint contends that ["\[b\]y endeavoring to throw away the already-cast votes of large swaths of voters based on generic legal challenges, the Protests, in essence, call for retroactive](#)

[post-election voter-roll maintenance](#)” in violation of the NVRA. Relatedly, because the protests seek to discount the votes of eligible voters for reasons unrelated to their eligibility, the NCDP asserts they also violate HAVA’s restrictions on retroactive voter roll maintenance.

NCDP’s complaint further alleges that the postcards sent by the NCGOP and the information provided to voters failed to give “affected voters adequate notice or an opportunity to be heard before they are deprived of their fundamental right to have their votes counted,” in violation of voters’ federal due process rights. The complaint details how, even if voters scanned the QR code, voters were not informed whether or how they could speak at the protest hearing or provide the information alleged to be missing from their registration or ballot.

Finally, the complaint contends that “[d]eclining to count a voter’s vote due to a procedural ‘error’ that was affirmatively induced by the state—such as not including a driver’s license number on a registration form or a photocopy of a photo ID with an overseas mail-in ballot—severely burdens the right to vote” in violation of the federal constitution.

The NCSBE has until [March 5, 2025](#), to file an answer to this complaint.

## In the Meantime, Precedent Suggests that Justice Allison Riggs Continues to Serve

The elected justice’s term was set to start on January 1. With the election protest unresolved, there is [some precedent](#) indicating that, in absence of a certified winner, Justice Allison Riggs would continue to serve as a holdover, although, having recused herself, she will not participate in the case challenging her win.

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<sup>1</sup> Following the initial vote count, Justice Allison Riggs led by 734 votes. The machine recount resulted in both candidates [losing 110 votes](#), while the partial hand recount [increased Riggs’ lead by 14 votes](#).

<sup>2</sup> The RNC and NCGOP also brought [a second claim](#) arguing that allowing improperly registered voters to vote diluted the vote of properly registered voters in violation of the state constitution’s Equal Protection Clause because some of those improperly registered voters may be ineligible to vote. The district court originally remanded that claim to state court, but the Fourth Circuit Court of Appeals reversed the remand order. [The district court then denied the NCSBE’s motion to dismiss](#) the second claim, and it remains pending. Should the court find in favor of plaintiffs, the relief would be prospective only, requiring HAVA compliance for future elections but not affecting the outcome of past elections.

<sup>3</sup> These challenges involved whether voters voted while serving a felony sentence, died after voting, or voted despite having their registration denied due to a failed mail verification test.