

Litigation over the Riggs Seat

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SCHOOL OF GOVERNMENT

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General Election November 5, 2024

Day Zero

North Carolina Supreme Court Seat 6

Allison Riggs, incumbent

Democratic nominee

Jefferson Griffin, judge on North Carolina Court of Appeals

Republican nominee

North Carolina Supreme Court Seat 6

Canvass, December 10, 2024

Riggs 2,770,412

Griffin 2,769,678

Difference 734

Griffin's Initial Challenges

- Election protests before county boards of elections
- Consolidation before the State Board of Elections
- An original action in the NC Supreme Court
- “Griffin I”
- Petitions for judicial review in Wake superior court

Griffin's Challenge Bases

Individuals with incomplete registrations voted unlawfully
IVR

Overseas individuals without photo ID voted unlawfully
PIDOV

Individuals who have never resided in NC voted unlawfully
NR

Griffin's Challenge Bases

IVR	60,000+ voters' votes unlawfully counted
PIDOV	5,000+* voters' votes unlawfully counted
NR	200+ voters' votes unlawfully counted

2023

Day Zero Minus 379

A

NC State Board of Elections (“SBE”)

23 October

Burke County voter files HAVA Administrative Complaint

Asserts that the state voter registration form does not require the DL/SSNs that HAVA requires

NORTH CAROLINA VOTER REGISTRATION APPLICATION (fields in red text are required)

2023.04

06w

1 Indicate whether you are qualified to vote or preregister to vote based on U.S. citizenship and age.	
Are you a citizen of the United States of America? IF YOU CHECKED "NO" IN RESPONSE TO THIS CITIZENSHIP QUESTION, DO NOT SUBMIT THIS FORM. YOU ARE <u>NOT</u> QUALIFIED TO VOTE	
☐ Yes ☐ No	
Will you be at least 18 years of age on or before election day? Are you at least 16 years of age and understand that you must be 18 years of age on or before election day to vote? IF YOU CHECKED "NO" IN RESPONSE TO BOTH OF THESE AGE QUESTIONS, DO NOT SUBMIT THIS FORM. YOU ARE <u>NOT</u> QUALIFIED TO REGISTER OR PREREGISTER TO VOTE.	
☐ Yes ☐ No	
☐ Yes ☐ No	
2 Provide your full legal name.	3 Provide your date of birth and identification information.
Last Name	Date of Birth (MM/DD/YYYY)
Suffix	State or Country of Birth
First Name	NC Driver License or NC DMV ID Number
Middle Name	Last 4 Digits of Social Security Number
	☐ Check if you do not have a driver license or Social Security number.
	State Voter Registration Number (Optional: To locate, check "Voter Lookup" at www.NCSBE.gov .)



NORTH CAROLINA VOTER REGISTRATION APPLICATION

Please use black or blue ink and print legibly.

06w

FOR OFFICE USE ONLY

Date Received

1

Are you a citizen of the United States of America? ☐ Yes ☐ No

**IF YOU CHECKED "NO" IN RESPONSE TO THIS QUESTION,
DO NOT SUBMIT THIS FORM.**

Will you be at least 18 years of age on or before election day? ☐ Yes ☐ No

Are you at least 16 years of age and understand that you must be 18 years of age on or before election day to vote? ☐ Yes ☐ No

**IF YOU CHECKED "NO" IN RESPONSE TO BOTH OF THESE QUESTIONS
ABOVE, DO NOT SUBMIT THIS FORM.**

2

Last Name (Required)

First Name (Required)

Middle Name (Required)

Date of Birth MMDDYYYY (Required)

☐ Jr ☐ Sr ☐ II

☐ III ☐ IV ☐ V

If you know your NC Voter Registration Number, please enter it here:

County of Birth

State of Birth

3

Do you have a NC Driver's License or DMV-issued identification card? If yes, provide the number. ☐ Yes ☐ No

If you do not have a NC DMV-issued license or ID card, do you have a Social Security Number? If yes, provide the last 4 digits.

☐ Yes ☐ No

X X X - X X -



Day Zero Minus 335

A

- 6 December
- SBE order concludes “that violation of [HAVA] could occur as a result of the current North Carolina voter registration application form failing to require an applicant to provide an identification number or indicate that they do not possess such a number, and that the appropriate remedy is to implement changes recommended by staff to the voter registration application form and any related materials.”

2024

Day Zero Minus 74

S/F

- 23 August
- Republican National Committee and state Republican Party sue in state superior court
- Claim is essentially the subject matter of the HAVA Administrative Complaint
- SBE removes to federal court

Day Zero Minus 19

F/S

- 17 October
- EDNC dismisses state statutory claim and remands state constitutional claim to the state court

Day Zero Minus 7

F

- 29 October
- Fourth Circuit Court of Appeals reverses
- Dismissal of the statutory claim was error and remand of the state constitutional claim was error.
- Remands to EDNC

Day Zero

- 5 November
- General election day

Day 10

A

At end of SBE canvass, Riggs leads Griffin by 734 votes

Day 14

A

- 19 November
- Griffin files protests with all 100 county boards of elections
- Asserts all three grounds
 - IVR
 - PIDOV
 - NR

Day 15

A

- 20 November
- SBE asserts jurisdiction over protests and consolidates

Day 38

A

- 13 December
- State Board of Elections
- Rejects all three of Griffin's challenges
 - Inadequate service
 - Failed to establish probable cause an election violation occurred

Day 43

S

- 18 December
- NC Supreme Court
- Griffin files an original action—a petition for writ of prohibition—to prohibit SBE counting the challenge votes
- Also motion for temporary stay of certification of the elections
- “Griffin I”

Day 44

S/F

- 19 December
- NC Supreme Court
- SBE files notice of removal to EDNC
- “Griffin I”

Day 45

S/F

- 20 December
- Griffin files three petitions (one for each claim) for judicial review in Wake superior court
 - Temporary restraining order
 - Preliminary injunction
 - Stay of certification
- And SBE files notice of removal to EDNC
- “Griffin II”

2025

Day 62

F/S

- 6 January
- EDNC
- Order: Federal court has removal jurisdiction but abstains and remands both Griffin I and Griffin II to NC courts
- Soon SBE appeals to Fourth Circuit and Riggs intervenes

Day 63

S

- 7 January
- NCSC
- Motion for temporary stay allowed
- “Griffin I”

Day 78

S

- 22 January
- NCSC
- Dismisses petition for writ of prohibition
- Directs Wake superior court “to proceed expeditiously” on Griffin’s petitions in “Griffin II”
- “Griffin I” is over except NCSC stays certification until all appeals completed

Day 90

S

- 3 February
- Riggs intervenes in superior court judicial review
- SBE and Riggs file reservation of rights to litigate federal issues in federal court

Day 91

F

- 4 February
- Fourth Circuit
- Modifies EDNC remand order to make clear that the EDNC retains jurisdiction

Day 94

S

- 7 February
- Wake superior court affirms SBE dismissal on all three claims

Through February

S

- Griffin appeals to NC COA
- NC COA grants motion for expedited review
- Riggs asks for immediate *en banc* consideration/denied

Day 150

S

- 4 April
- NC Court of Appeals
 - IVR: Voters get 15 days to cure their registrations
 - PIDVO: Voters get 15 days to cure their registrations
 - NR: Remove their votes from the vote total

Day 153

S

- 7 April
- NCSC allows SBE/Riggs motion for temporary stay of COA order

Day 157

S

- 11 April
- NCSC
 - Rejects IVR claim
 - Accepts PIDVO claim but modifies cure
 - Upholds NR ruling

S

Also Day 157

F

- 11 April
- Riggs moves the EDNC to enjoin the PIDOV and NR rulings until EDNC can consider the federal law issues involved

Day 158

F

- 12 April
- EDNC Orders
 - To proceed with the 30-day cure notices under NCSC order of 11 April
 - But not to certify the election pending further order of EDNC
 - EDNC sets expedited schedule “to facilitate prompt resolution of this matter”

Day 160

F

- 14 April
- Two new lawsuits in EDNC, seeking TROs on the cure notices
- Lots of parties appeal the 12 April order to proceed with the cure process

Day 168

F

- 22 April
- Fourth Circuit enjoins SBE from mailing any 30-day cure notices
- Matter still rests with EDNC

Day 191

F

- 5 May
- EDNC enters summary judgment

Summary Judgment

- Griffin v. NC State Board of Elections, et al (“Griffin II”)
- NC Democratic Party v. NC State Board of Elections
- Conley v. Hirsch

Summary Judgment

“[T]his case concerns whether the federal Constitution permits a state to alter the rules of an election *after the fact* and apply those changes retroactively to only a select group of voters.”

Summary Judgment

“By the court’s count, then, in these three cases there are seven pending requests for injunctive relief and one pending motion for summary judgment. Given the exceptional circumstances and exigencies of this case, and considering the significant public interest in the finality of elections, the court sees only one ‘just’ and ‘speedy’ way to efficiently resolve this consolidated action.”

Summary Judgment

“Under the circumstances, summary judgment is the most appropriate procedural vehicle to resolve this consolidated action. Through this imperfect record, there are few disputes of fact, and none that are material.”

Summary Judgment on PIDOV

“Judge Griffin challenged the absentee ballots cast by overseas military and civilian voters in no more than 6 of [NC’s] 100 counties. Per the court orders from North Carolina's Court of Appeals and Supreme Court, those targeted voters must, in short order, provide a copy of their driver's licenses or a completed declaration of reasonable impediment to the State Board or their votes will be discarded.”

Summary Judgment on PIDOV

“As a consequence, overseas military and civilian voters who cast a ballot in Guilford County are required to undertake additional efforts in order to have their votes counted. Their neighbors in Randolph, Alamance, and Rockingham Counties need not.”

Summary Judgment on PIDOV

“That disparate treatment between similarly situated voters, based solely on their casting of ballots in different counties, amounts to a constitutional violation of the Equal Protection Clause.”

Summary Judgment on PIDOV

“In other words, ‘[i]t would be absurd to make it the responsibility of the voters to reject the ballot sent by the [State] Board’ because the State Board failed to anticipate that the North Carolina Court of Appeals and Supreme Court would later disagree with its interpretation of state law.”

Summary Judgment on NR

“True Never Residents have no substantive right, under either state law or the federal Constitution, to have their votes counted in the 2024 election for Seat 6. . . .

Therefore, that group of voters possesses no attendant procedural due process rights. . . .”

Summary Judgment on NR

“But what of individuals erroneously designated as Never Residents? The available record contains sufficient evidence that multiple individuals have been misclassified as Never Residents: perhaps more than 10% of the individuals named in Judge Griffin's protest.”

Summary Judgment on NR

“As applied to Never Residents who have been erroneously classified as such, the lack of a cure process violates their right to procedural due process.”

Summary Judgment

“At least in theory, the court could attempt to revise the remedial orders of the North Carolina Court of Appeals and Supreme Court to ameliorate the constitutional issues it has identified. But, this late in the game, the *Purcell* doctrine bars the court from doing so. . . . If *Purcell* counsels against ‘judicial tinkering’ when ‘an election is close at hand,’ it sure forbids retroactive tinkering.”

Summary Judgment

“The principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.’ That principle will be familiar to anyone who has played a sport or board game. You establish the rules before the game. You don't change them after the game is done.”

Summary Judgment

- Permanent injunction:
- SBE to take no action in furtherance of the NC Court of Appeals and NC Supreme Court orders.
- SBE to certify the election results as of the canvass

Day 204

F

- US v. NC State Board of Elections filed
- EDNC
- IVR must be fixed

Day 302

F

- 8 September 2025
- Consent Judgment and Order
- EDNC
- US DOJ and NC SBE agree to plan to get DL/SSNs