

No. COA25-181

TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

JEFFERSON GRIFFIN,

Petitioner-Appellant,

v.

NORTH CAROLINA STATE
BOARD OF ELECTIONS,

Respondent-Appellee,

and

ALLISON RIGGS,

Intervenor-Respondent-
Appellee.

From WAKE COUNTY

Nos. 24CV040619-910

24CV040620-910

24CV050622-910

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

TO THE HONORABLE COURT OF APPEALS OF NORTH
CAROLINA:

The American Civil Liberties Union of North Carolina Legal
Foundation and the American Civil Liberties Union hereby request
leave, pursuant to Rule 28.1 of the North Carolina Rules of Appellate
Procedure, to file an amici curiae brief in support of Respondent-

Appellee North Carolina State Board of Elections. The proposed brief is filed contemporaneously with this motion.

STATEMENT OF INTEREST

The American Civil Liberties Union and the ACLU of North Carolina Legal Foundation (together, “ACLU”) are non-profit, nonpartisan organizations dedicated to the principles of liberty and equality enshrined in the U.S. and state constitutions and the nation’s civil rights laws. The ACLU has contributed extensive resources to non-partisan voter education and election monitoring in North Carolina and around the country, and has filed numerous amicus briefs in state and federal courts addressing voting rights and state constitutional law. The ACLU has an interest in this case as it involves an effort to discount tens of thousands of ballots cast in the November 2024 election, which would infringe on North Carolinians’ fundamental right to vote and would violate the popular sovereignty principle of Article I, Section 2 of the North Carolina constitution.

TIMELINESS AND RULE 37(c) CERTIFICATION

This motion and accompanying brief are timely under North Carolina Rule of Appellate Procedure 28.1(b)(4) because they are being

filed within seven days of the filing of the respondents-appellees' briefs, and because this Court's scheduling order of February 13, 2025, does not specify a different deadline for the filing of amicus briefs.

Neither Rule 28.1 nor Rule 37(c)¹ requires amici to seek consent of the parties before filing amicus briefs. Nonetheless, amici certify that in advance of filing this motion, they notified counsel for the parties of their intent to submit this motion and accompanying brief. Counsel for the Respondent-Appellee and the Intervenor-Respondent-Appellee consented to this motion for leave. Counsel for the Petitioner-Appellant opposed the motion. At Petitioner-Appellant's request, amici quote his stated reason for that opposition: "Judge Griffin opposes the request because its timing is inconsistent with the Court's expedited briefing schedule and the filings of other amici supporting Appellees. Judge Griffin does not intend to file a response to the motion."

Petitioner-Appellant has not identified any rule or court order, and amici are aware of none, that would make this motion and amicus

¹ The consultation requirement of Rule 37(c) refers only to "parties," and the text of Rule 28.1 indicates that amici are distinct from parties. See N.C. R. App. Proc. 37(c) (requiring a movant to notify "other parties"); N.C. R. App. Proc. 28.1 (referring to amicus "support[ing] a party").

brief untimely. Additionally, Petitioner-Appellant can claim no prejudice to his interests under the Rules, as he may file an additional reply brief addressing amici's arguments should he wish to do so. *See* N.C. R. App. Proc. 28(b)(6).

REASONS WHY THE BRIEF IS DESIRABLE

Amici have extensive experience with non-partisan voter education and election monitoring, voting rights litigation, and constitutional law, both in North Carolina and in other jurisdictions. Counsel for amici have reviewed the briefs of the other parties and proposed amici curiae and believe that this proposed brief offers an additional perspective and is not duplicative of other filings.

ISSUES TO BE ADDRESSED

Amici wish to address if and when Article I, Section 2 of the North Carolina constitution allows courts to discard ballots after the election because they followed government officials' instructions. Specifically, amici's brief argues that granting the relief sought by Petitioner-Appellant—namely, discarding the ballots of more than 65,500 North Carolinians who complied with government instructions for registering to vote and casting their ballots—would violate the principle of popular

sovereignty guaranteed by N.C. Const. art. I, § 2, as well as the Supreme Court of North Carolina's decisions in cases such as *State v. Lattimore*, 120 N.C. 426, 26 S.E. 638 (1897), and *McPherson v. City Council of City of Burlington*, 249 N.C. 569 107 S.E.2d 147 (1959). The *Lattimore* line of cases holds that courts cannot scrap ballots cast by voters who relied on government instructions about which procedures to follow.

Amici's brief likewise explains that the case on which Petitioner-Appellant relies, *James v. Bartlett*, 359 N.C. 260, 607 S.E.2d 638 (2005), is distinguishable. The out-of-precinct voters in *James* were required to be informed in writing that they had come to the "Incorrect Precinct" and that their provisional ballots might be "not counted." See Appellants' Amended Br. at 8-9 & App. 3 *James v. Bartlett*, 607 S.E.2d 638 (2005) (No. 602PA04-2) ((quoting N.C. Gen. Stat. § 163-166.11(3) (2004)), available at https://www.ncappellatecourts.org/show-file.php?document_id=93936. Consequently, as the plaintiffs in *James* conceded, "neither plaintiffs *nor any other voters* were given notice" that the contested ballots would be counted. *Id.* at 36 (emphasis added).

That is completely unlike this case. Here, as in *Lattimore* and *McPherson*, public servants told the voters who cast the contested ballots that they had done enough to register and vote.

CONCLUSION

Amici respectfully request that the Court grant them leave to file an amicus curiae brief in support of Respondent-Appellees.

Respectfully submitted this 3rd day of March, 2025.

/s/ Kristi Graunke

Kristi Graunke

N.C. State Bar No. 51216

ACLU OF NORTH CAROLINA
LEGAL FOUNDATION

P.O. Box 28004

Raleigh, NC 27611

(919) 354-5066

kgraunke@acluofnc.org

I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

Matthew Segal

Mass. State Bar No. 654489*

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

One Center Plaza, Suite 850

Boston, MA 02108

(617) 299-6664

msegal@aclu.org

Bridget Lavender
N.Y. State Bar No. 1175453*
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad St., 18th Floor
New York, NY 10004
blavender@aclu.org

**Pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I certify that on March 3, 2025, this motion and accompanying brief was served on all counsel of record via email to the following:

Craig D. Schauer
cschauer@dowlingfirm.com
Troy D. Shelton
tshelton@dowlingfirm.com
W. Michael Dowling
mike@dowlingfirm.com
Philip R. Thomas
pthomas@chalmersadam.com

Counsel for Petitioner-Appellant Jefferson Griffin

Terence Steed
tsteed@ncdoj.gov
Ryan Park
rpark@ncdoj.gov
Marc Brunton
mbrunton@ncdoj.gov
Trey Ellis
tellis@ncdoj.gov
Nicholas Brod
nbrod@ncdoj.gov
Jim Doggett
jdoggett@ncdoj.gov
Kaeli Czosek
kczosek@ncdoj.gov

Counsel for Respondent-Appellee North Carolina State Board of Elections

Raymond M. Bennett
ray.bennett@wbd-us.com
Samuel B. Hartzell
Sam.hartzell@wbd-us.com

Counsel for Intervenor-Respondent-Appellee Hon. Allison Riggs

This 3rd day of March, 2025.

/s/ Kristi Graunke
Kristi Graunke
Counsel for Amici Curiae