

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

TELIA KIVETT; WANDA NELSON  
FOWLER; the REPUBLICAN  
NATIONAL COMMITTEE and the  
NORTH CAROLINA REPUBLICAN  
PARTY,

Plaintiffs-Petitioners

v.

NORTH CAROLINA STATE BOARD  
OF ELECTIONS, ALAN HIRSCH,  
JEFF CARMON, KEVIN N. LEWIS,  
SIOBHAN O'DUFFY MILLEN, STACY  
"FOUR" EGGERS IV, in Official  
Capacity as Members of NCSBE, and  
KAREN BRINSON BELL, in Official  
Capacity as Executive Director of  
NCSBE,

Defendants-Respondents,

DEMOCRATIC NATIONAL  
COMMITTEE,

Defendant-Intervenor-  
Respondent.

From N.C. Court of Appeals  
No. P24-735

\*\*\*\*\*

**BRIEF OF AMICI CURIAE SECURE FAMILIES INITIATIVE, ADMIRAL  
STEVE ABBOT, U.S. NAVY (RETIRED); ADMIRAL THAD ALLEN, U.S.  
COAST GUARD (RETIRED); FORMER SECRETARY OF THE ARMY LOUIS  
CALDERA; GENERAL GEORGE CASEY, U.S. ARMY (RETIRED); GENERAL  
CARLTON W. FULFORD, JR., U.S. MARINE CORPS (RETIRED); FORMER  
SECRETARY OF THE AIR FORCE DEBORAH LEE JAMES; GENERAL  
JOHN JUMPER, U.S. AIR FORCE (RETIRED); GENERAL CRAIG  
MCKINLEY, U.S. AIR FORCE (RETIRED); AND FORMER SECRETARY OF  
THE NAVY SEAN O'KEEFE , IN SUPPORT OF DEFENDANTS-  
RESPONDENTS AND DEFENDANT-INTERVENOR-RESPONDENT**

\*\*\*\*\*

**TABLE OF CONTENTS**

	<b><u>Pages</u></b>
TABLE OF AUTHORITIES .....	ii
INTEREST OF AMICI CURIAE.....	- 2 -
INTRODUCTION .....	- 3 -
ISSUES ADDRESSED .....	- 6 -
ARGUMENT .....	- 6 -
I.    THE COURT SHOULD REJECT PETITIONERS’ LAST-MINUTE EFFORT TO REVERSE MORE THAN A DECADE OF NORTH CAROLINA LAW AND DISENFRANCHISE ELIGIBLE OVERSEAS NORTH CAROLINA VOTERS. ....	- 6 -
II.   THE RELIEF PETITIONERS SEEK MISUNDERSTANDS THE OVERSEAS VOTING PROCESS AND RISKS DISENFRANCHISING A BROAD RANGE OF ABSENTEE VOTERS. ....	- 7 -
III.  GRANTING PETITIONERS’ ULTIMATE RELIEF WOULD ADD TO THE ALREADY SIGNIFICANT PROCEDURAL BARRIERS OVERSEAS AND MILITARY VOTERS FACE, RISKING FURTHER DISENFRANCHISEMENT. ....	- 13 -
A.   UOCAVA VOTERS ALREADY FACE SIGNIFICANT BARRIERS TO VOTING. ....	- 13 -
B.   PETITIONERS’ REQUESTED RELIEF WILL FURTHER DISENFRANCHISE UOCAVA VOTERS, CONTRAVENING CONGRESS AND THE NORTH CAROLINA GENERAL ASSEMBLY’S INTENT TO PROTECT MILITARY AND OVERSEAS VOTERS. ....	- 16 -
CONCLUSION.....	- 17 -
CERTIFICATE OF COMPLIANCE.....	- 19 -
CERTIFICATE OF SERVICE.....	- 20 -

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006).....	7
<b>Statutes</b>	
50 U.S.C. § 4025(b)(2) .....	10
50 U.S.C. § 4027 .....	10
52 U.S.C. § 20310(1).....	16
52 U.S.C. § 20507(c)(2)(A).....	7
N.C. Gen. Stat. Ann. § 163-182.5(b) .....	12
N.C. Gen. Stat. § 163-258.2(1)(e).....	3, 6, 16
N.C. Gen. Stat. § 163-258.7 .....	8
Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. 99-410, 100 Stat. 924 (1986).....	3
<b>Other Authorities</b>	
<i>2020 Report to Congress, FED. VOTING ASSISTANCE PROGRAM</i> <a href="https://www.fvap.gov/uploads/FVAP/Reports/FVAP-2020-Report-to-Congress_20210916_FINAL.pdf">https://www.fvap.gov/uploads/FVAP/Reports/FVAP-2020-Report-to-Congress_20210916_FINAL.pdf</a> .....	15
<i>2020 Overseas Citizen Population Analysis Report, FED. VOTING ASSISTANCE PROGRAM (2021)</i> , <a href="https://www.fvap.gov/uploads/FVAP/Reports/OCPA-2020-Final-Report_20220805.pdf">https://www.fvap.gov/uploads/FVAP/Reports/OCPA-2020-Final-Report_20220805.pdf</a> .....	8, 14
<i>2023 Post-Election Voting Survey: Active Duty Military (ADM)</i> , FED. VOTING ASSISTANCE PROGRAM (2023), <a href="https://www.fvap.gov/uploads/FVAP/Reports/2022-PEVS-ADM-Tech-Report-Final-20230823.pdf">https://www.fvap.gov/uploads/FVAP/Reports/2022-PEVS-ADM-Tech-Report-Final-20230823.pdf</a> .....	8, 13

<i>Birth Abroad - Register Your Child as a U.S. Citizen</i> , U.S. EMBASSY AND CONSULATE GENERAL OF THE NETH., <a href="https://nl.usembassy.gov/birth-abroad-register-your-child-as-a-u-s-citizen/">https://nl.usembassy.gov/birth-abroad-register-your-child-as-a-u-s-citizen/</a> (last visited Oct. 25, 2024).....	11
<i>Birth Abroad and Eligibility for U.S. Citizenship</i> , U.S. EMBASSY & CONSULATES IN MEX., <a href="https://mx.usembassy.gov/passports/births/">https://mx.usembassy.gov/passports/births/</a> (last visited Oct. 25, 2024).....	11
H.R. REP. NO. 99-765 (1986), <i>reprinted</i> in 1986 U.S.C.C.A.N. 2009 .....	13, 16
<i>Housing America’s Military Families</i> , BIPARTISAN POLICY CTR. (2023), <a href="https://bipartisanpolicy.org/event/housing-americas-military-families/">https://bipartisanpolicy.org/event/housing-americas-military-families/</a> .....	14
<i>How to Vote Absentee from Abroad</i> , FED. VOTING ASSISTANCE PROGRAM, <a href="https://www.fvap.gov/citizen-voter/overview">https://www.fvap.gov/citizen-voter/overview</a> .....	12
<i>N.C. Absentee &amp; Early Voting Statistics for the 2024 General Election</i> , NORTH CAROLINA STATE BOARD OF ELECTIONS (Oct. 25, 2024), <a href="https://s3.amazonaws.com/dl.ncsbe.gov/Press/2024%20General/NC%20Absentee%20Stats%20for%202024%20General/2024-10-25%20Daily%20Absentee%20Stats%20Report%20-%202024%20General.pdf">https://s3.amazonaws.com/dl.ncsbe.gov/Press/2024%20General/NC%20Absentee%20Stats%20for%202024%20General/2024-10-25%20Daily%20Absentee%20Stats%20Report%20-%202024%20General.pdf</a> (current through Oct. 24, 2024) .....	12
Niall McCarthy, <i>U.S. Military Voting Intention in 2016 and 2020</i> , STATISTA (Sept. 1, 2020), <a href="https://www.statista.com/chart/22761/us-military-voting-intention-in-the-november-election/">https://www.statista.com/chart/22761/us-military-voting-intention-in-the-november-election/</a> .....	5
<i>2020 Post-Election Voting Survey: Active Duty Military</i> , FED. VOTING ASSISTANCE PROGRAM (2021), <a href="https://www.fvap.gov/uploads/FVAP/Reports/FVAP_ADM-Technical-Report-2020_FINAL_20210831.pdf">https://www.fvap.gov/uploads/FVAP/Reports/FVAP_ADM-Technical-Report-2020_FINAL_20210831.pdf</a> .....	8, 14, 15
<i>Quick Response Evaluation, Accuracy of the Help America Vote Verification Program Responses (A-03-09-29115)</i> , OFF. OF THE INSPECTOR GEN., SOC. SEC. ADMIN. (2009), <a href="https://oig-files.ssa.gov/audits/full/A-03-09-29115.pdf">https://oig-files.ssa.gov/audits/full/A-03-09-29115.pdf</a> .....	11

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

TELIA KIVETT; WANDA NELSON  
FOWLER; the REPUBLICAN  
NATIONAL COMMITTEE and the  
NORTH CAROLINA REPUBLICAN  
PARTY,

Plaintiffs-Petitioners

v.

NORTH CAROLINA STATE BOARD  
OF ELECTIONS, ALAN HIRSCH,  
JEFF CARMON, KEVIN N. LEWIS,  
SIOBHAN O'DUFFY MILLEN, STACY  
"FOUR" EGGERS IV, in Official  
Capacity as Members of NCSBE, and  
KAREN BRINSON BELL, in Official  
Capacity as Executive Director of  
NCSBE,

Defendants-Respondents,

DEMOCRATIC NATIONAL  
COMMITTEE,

Defendant-Intervenor-  
Respondent.

From N.C. Court of Appeals  
No. P24-735

\*\*\*\*\*

**BRIEF OF AMICI CURIAE SECURE FAMILIES INITIATIVE, ADMIRAL  
STEVE ABBOT, U.S. NAVY (RETIRED); ADMIRAL THAD ALLEN, U.S.  
COAST GUARD (RETIRED); FORMER SECRETARY OF THE ARMY LOUIS  
CALDERA; GENERAL GEORGE CASEY, U.S. ARMY (RETIRED); GENERAL  
CARLTON W. FULFORD, JR., U.S. MARINE CORPS (RETIRED); FORMER  
SECRETARY OF THE AIR FORCE DEBORAH LEE JAMES; GENERAL  
JOHN JUMPER, U.S. AIR FORCE (RETIRED); GENERAL CRAIG  
MCKINLEY, U.S. AIR FORCE (RETIRED); AND FORMER SECRETARY OF  
THE NAVY SEAN O'KEEFE , IN SUPPORT OF DEFENDANTS-  
RESPONDENTS AND DEFENDANT-INTERVENOR-RESPONDENT**

\*\*\*\*\*

**INTEREST OF AMICI CURIAE<sup>1</sup>**

*Amicus* Secure Families Initiative (“SFI”) is a nonpartisan 501(c)(4) not-for-profit organization comprising military spouses and family members that advocates for federal and state policies to increase accessibility for absentee voters, especially registered military-affiliated and overseas voters. Because voting remains less accessible for its members and the broader military and overseas community, SFI also educates and registers those voters and engages in non-partisan “get-out-the-vote” efforts for military voters in all elections.

*Amici* Admiral Steve Abbot, United States Navy (Retired); Admiral Thad Allen, United States Coast Guard (Retired); Former Secretary of the Army Louis Caldera; General George Casey, United States Army (Retired); General Carlton W. Fulford, Jr., United States Marine Corps (Retired); Former Secretary of the Air Force Deborah Lee James; General John Jumper, United States Air Force (Retired); General Craig McKinley, United States Air Force (Retired); and Former Secretary of the Navy Sean O’Keefe are nine retired four-star admirals and generals, and former secretaries of the Army, Navy, and Air Force, who together, have served under every President from John F. Kennedy to Donald Trump. Collectively, these *Amici* identify as Count Every Hero, a nonpartisan unincorporated association.

---

<sup>1</sup> Pursuant to Rule 28.1(b)(3)(c) of the North Carolina Rules of Appellate Procedure, Protect Democracy United assisted in drafting this brief. Otherwise, no other persons or entities, other than amici curiae, its members and its counsel, helped to write or financially contributed to this brief.

*Amici* have a strong interest in ensuring that all military and overseas Americans voting in North Carolina are not unduly burdened in exercising their right to vote. Drawing on their experiences, *Amici* aim to inform the Court how the unjustifiable and poorly thought-out relief Petitioners seek—just days before the November 5, 2024 General Election—would disenfranchise military and overseas voters and others.

### **INTRODUCTION**

The November 5, 2024 General Election is one day away. Long after military and overseas voters began receiving and returning their ballots, Petitioners ask this Court to provide emergency relief that would upend the counting of absentee ballots across the state and disenfranchise many eligible North Carolina voters, including the children and dependents of North Carolinians serving honorably in the United States Armed Forces, and other eligible absentee military and overseas voters.

Petitioners challenge the constitutionality of North Carolina’s Uniform Military Overseas Voters Act (“UMOVA”), Compl. ¶ 77, which—for more than a decade—has expressly guaranteed the children and dependents of military and overseas North Carolinians the right to register and vote in North Carolina, regardless of whether they have themselves lived in the state, *see* N.C. Gen. Stat. § 163-258.2(1)(e). Petitioners seek to overturn this longstanding law days before an election, and force election officials not to count ballots cast by these voters in the 2024 General Election unless each voter proves their residency in North Carolina or

eligibility to vote under the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), Pub. L. 99-410, 100 Stat. 924 (1986).

Petitioners misunderstand the voting process for military and overseas voters. They cannot explain how the ballots they target for disenfranchisement can accurately be segregated from other returned absentee ballots, let alone in time to certify the November General Election. Their eleventh-hour request would (1) deliberately disenfranchise some otherwise eligible overseas and military voters—including the children and dependents of Americans stationed and living overseas; (2) require additional verification and threaten disenfranchisement of thousands of UOCAVA voters; and (3) burden still further the rights of all absentee military and overseas voters.<sup>2</sup>

While Petitioners present themselves as victims in need of protection from the allegedly unconstitutional acts of North Carolina’s election administrators, the only people actually threatened with harm in this matter are the voters Petitioners seek to disenfranchise. *Amici* submit this brief to stress the substantial irreparable harm Petitioners’ requested relief would inflict on SFI members and other eligible overseas

---

<sup>2</sup> Petitioners insist their requested relief would not impact the right to vote of uniformed service members and their qualified spouses and dependents stationed abroad. *See* Pet. for Writ of Supersedeas & for Discretionary Review (“Petition”) at 6 n.2. But as explained *infra* pp. 7-12, Petitioners offer no mechanism—and none currently exists—to distinguish only (or all of) the absentee ballots of children and dependents of Americans born abroad. Consequently, requiring the segregation and rejection of ballots from all voters even suspected of being “Never Residents” unless they prove their eligibility to vote—on the eve of an election—is sure to sweep in the ballots of qualified military and overseas voters, and purportedly ineligible voters alike.



and military voters, many of whom have already received or even returned their ballots for the November General Election under the longstanding and well-established law Petitioners seek to upend.

*Amici* speak not to favor any one political party but rather to safeguard the voices of the broad coalition of voters they represent—who are far from a monolith in terms of party preference.<sup>3</sup> United States citizens living abroad—including members of the military and their children—deserve a voice in our government’s electoral process, and Congress and the North Carolina General Assembly have made their agreement with this principle clear through legislation. The Superior Court recognized the harm that would befall these voters as a reason not to impose an injunction, emphasizing that “the equitable discretion of this court should not be invoked to treat an entire group of citizens differently based upon unsupported and speculative allegations for which there is not even a scintilla of substantive evidence.” Order ¶ 10. For the same reason, *Amici* urge this Court to deny Plaintiffs-Petitioners’ petition for writ of supersedeas and for discretionary review; the relief sought will undermine the important goals and intent behind both federal and state legislation, disenfranchising military and overseas, and other absentee, voters in North Carolina.

---

<sup>3</sup> See, e.g., Niall McCarthy, *U.S. Military Voting Intention in 2016 and 2020*, STATISTA (Sept. 1, 2020), <https://www.statista.com/chart/22761/us-military-voting-intention-in-the-november-election/>.

## ISSUES ADDRESSED

*Amici* submit this brief to address whether Petitioners’ requested relief will lead to the disenfranchisement of eligible, absentee military and overseas voters in North Carolina.

## ARGUMENT

### **I. THE COURT SHOULD REJECT PETITIONERS’ LAST-MINUTE EFFORT TO REVERSE MORE THAN A DECADE OF NORTH CAROLINA LAW AND DISENFRANCHISE ELIGIBLE OVERSEAS NORTH CAROLINA VOTERS.**

North Carolina has specifically empowered the children and dependents of North Carolinians—whom Petitioners label “Never Residents,” Petition at 4—to vote in North Carolina elections since at least 2011, *see* N.C. Gen. Stat. § 163-258.2(1)(e). To put it more plainly, these voters have a clear right to vote in North Carolina elections. After more than a decade, however, and with only days left until the November General Election, Petitioners ask this Court to overturn the will of the General Assembly and rush a judgment that would disenfranchise countless North Carolina voters. Worse still, Petitioners do so based on “absolutely no evidence that any person has ever fraudulently claimed [the challenged] exemption and actually voted in any North Carolina election.” Order ¶ 4; *see also id.* ¶ 10.

Petitioners have put forward no valid reason for the timing of their emergency request, especially given UMOVA’s long history and Petitioners’ “involve[ment] in elections under [the] . . . statute since its passage without complaint.” *Id.* ¶ 3. Thus—even before considering the burden on the right to vote and the electoral chaos Petitioners’ requested relief would cause—there is no compelling rationale to grant

emergency relief that will disenfranchise in haste voters whose only “errors” were (1) being the child or dependent of a North Carolinian serving or living abroad; and (2) faithfully following operative state law permitting them to register and vote in North Carolina. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (“Court orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”).<sup>4</sup>

## **II. THE RELIEF PETITIONERS SEEK MISUNDERSTANDS THE OVERSEAS VOTING PROCESS AND RISKS DISENFRANCHISING A BROAD RANGE OF ABSENTEE VOTERS.**

Setting aside the dubious merits of Petitioners’ claims, their requested injunction offers a faulty solution to a nonexistent problem, revealing Petitioners’ lack of understanding of the military and overseas voting process.

Petitioners ask the Court to require North Carolina election officials to segregate and not process any ballots returned to them by Never Residents—*i.e.*, children and dependents of North Carolinians born abroad—until those voters confirm their residency in the state of North Carolina or eligibility under UOCAVA. Petition at 7-8. Petitioners suggest that these voters’ ballots are “readily and easily identifiable”: election officials must simply segregate ballots by voters who checked a box affirming they have never lived in the United States on either the Federal Post

---

<sup>4</sup> Petitioner’s proposed removal of all “Never Resident” voters on the eve of the 2024 General Election also violates the National Voter Registration Act’s prohibition on states “systematically remov[ing] the names of ineligible voters from the official lists of eligible voters” fewer than 90 days before an election. 52 U.S.C. § 20507(c)(2)(A).

Card Application (“FPCA”) or Federal Write-In Absentee Ballot (“FWAB”). Petition at 13-14; *see also id.* at 7; Mot. for Prelim. Inj. ¶¶ 18, 35, 40(c).

But this method will not accurately identify all the voters Petitioners purport to challenge, for several reasons. *First*, the FPCA and FWAB are not the only voting methods available to overseas voters. Overseas voters, including North Carolina overseas voters, may—and commonly do—request ballots using a state or local form from their state of legal voting residence or from non-government websites.<sup>5</sup> *See* N.C. Gen. Stat. § 163-258.7 (noting that military and overseas voters may “us[e] either the regular [state absentee ballot] application . . . or the federal postcard application”). In 2020, for example, the Federal Voting Assistance Program reported that only 31% of active duty military members “[u]sed the FPCA to request a ballot” and only 2% used the FWAB to cast their vote.<sup>6</sup> The Program likewise reported that only 50% of responding overseas voters used “an FPCA to request an absentee ballot,” while the remaining 50% used either a state or local form (37%), a non-government website (4%), or another method (9%).<sup>7</sup> Among active-duty military members, only 20-26% surveyed between 2018 and 2022 even knew how to use the FPCA to register and

---

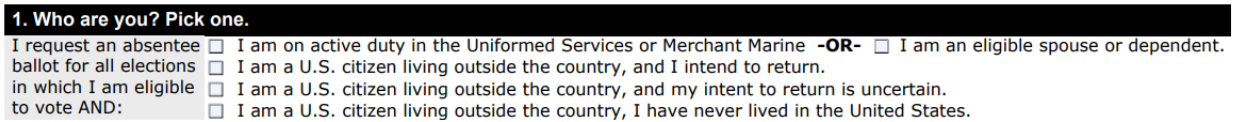
<sup>5</sup> *See 2020 Overseas Citizen Population Analysis Report*, FED. VOTING ASSISTANCE PROGRAM 97 (2021), [https://www.fvap.gov/uploads/FVAP/Reports/OCPA-2020-Final-Report\\_20220805.pdf](https://www.fvap.gov/uploads/FVAP/Reports/OCPA-2020-Final-Report_20220805.pdf).

<sup>6</sup> *2020 Post-Election Voting Survey: Active Duty Military*, FED. VOTING ASSISTANCE PROGRAM 21, 26 (2021), [https://www.fvap.gov/uploads/FVAP/Reports/FVAP\\_ADM-Technical-Report-2020\\_FINAL\\_20210831.pdf](https://www.fvap.gov/uploads/FVAP/Reports/FVAP_ADM-Technical-Report-2020_FINAL_20210831.pdf).

<sup>7</sup> *2020 Overseas Citizen Population Analysis Report*, *supra* note 5, at 97.

request an absentee ballot.<sup>8</sup> Even fewer knew how to use the FWAB.<sup>9</sup> Data thus makes clear that military and overseas voters are not relying solely—or even primarily—on the forms Petitioners suggest would accurately identify them and allow for the segregation and removal of ballots Petitioners propose.

*Second*, even using the FPCA or FWAB, many of the specific voters Petitioners challenge—the children and dependents of North Carolinians born abroad—may not check the box Petitioners suggest will identify them. On both the FPCA and FWAB, a voter is instructed to choose one from among five “classifications.” One option, as Petitioners note, confirms that the voter is an American citizen who has never resided in the country. But there is another option, one specifically for “an eligible spouse *or dependent*” of a member of the Uniformed Services or Merchant Marine on active duty.



*Screenshot of FPCA<sup>10</sup>*

Based on both forms’ plain language, the spouses, children, and other dependents of military voters may very well check the “spouse or dependent” box rather than the

---

<sup>8</sup> *2023 Post-Election Voting Survey: Active Duty Military (ADM)*, FED. VOTING ASSISTANCE PROGRAM 50 (2023), <https://www.fvap.gov/uploads/FVAP/Reports/2022-PEVS-ADM-Tech-Report-Final-20230823.pdf>.

<sup>9</sup> *Id.* (only 19%, 19%, and 17% in 2018, 2020, and 2022, respectively, knew how to use the FWAB).

<sup>10</sup> The same selections appear on the FWBA.

final box, even if both could apply. Thus, Petitioners' requested relief is under-inclusive. It would miss some voters Petitioners challenge because they did not vote using the federal forms or tick the right box.<sup>11</sup>

As a result, ruling for Petitioners would likely require segregation of *all* absentee overseas ballots, making the relief sought over-inclusive as well. This risks disenfranchising not just the specific overseas individuals Petitioners seek to target, but thousands of other absentee military and overseas voters.

*Third*, Petitioners request that ballots of all voters flagged as “Never Residents” not be counted unless “such person’s qualifications to vote under all applicable state and federal laws can be determined,” including their North Carolina residency. Petition for Writ & Mot. for Temporary Stay and Temporary Inj. (“Appellate Petition”) at 16; *see also* Mot. for Prelim. Inj. ¶ 40(c). Here too Petitioners’ relief threatens not just the specific voters Petitioners intend to target but thousands of additional voters whose ballots would be subjected to a process of review and verification the State would have to devise and execute in a matter of days. Petitioners suggest no process or timeframe in which this should occur, let alone how absentee voters whose ballots have been rejected or segregated could properly re-register to vote in time for the 2024 General Election, or otherwise appeal the rejection of their ballots.

---

<sup>11</sup> Petitioners have not suggested segregation of ballots where voters checked the box identifying them as an “eligible spouse or dependent” likely because that request would violate federal law, which specifically permits spouses to derive their residence from their military-affiliated spouse. *See* 50 U.S.C. §§ 4027, 4025(b)(2).

To the extent Petitioners' unexplained verification procedures would mirror those in the federal Help America Vote Act, Petitioners fail to recognize that UOCAVA voters often will not have access to the forms of identification necessary to verify their residency. A voter born or living abroad long-term will rarely have a state-issued identification or driver's license. And children born abroad are not automatically assigned a social security number; following certification of a child's citizenship, parents may separately apply.<sup>12</sup> If the parents do not apply, the child has no social security number yet is still eligible to vote at eighteen.

Even if military and overseas voters do have necessary documentation, verification processes can be unreliable—especially verifying social security numbers. In 2009, the Office of the Inspector General evaluated and “assess[ed] the accuracy of the verification responses provided by the Help America Vote Verification (HAVV) program.”<sup>13</sup> It found that “[b]ecause of the limitations of the matching criteria established by the legislation, the HAVV program may indicate a no-match when a match does in fact exist in SSA [Social Security Administration] records.”<sup>14</sup> The report concluded that “the high no-match response rate and the inconsistent

---

<sup>12</sup> See, e.g., *Birth Abroad – Register Your Child as a U.S. Citizen*, U.S. EMBASSY AND CONSULATE GENERAL OF THE NETH., <https://nl.usembassy.gov/birth-abroad-register-your-child-as-a-u-s-citizen/> (last visited Oct. 25, 2024) (noting that social security numbers must be applied for after a child's citizenship has been registered); *Birth Abroad and Eligibility for U.S. Citizenship*, U.S. EMBASSY & CONSULATES IN MEX., <https://mx.usembassy.gov/passports/births/> (last visited Oct. 25, 2024) (same).

<sup>13</sup> *Quick Response Evaluation, Accuracy of the Help America Vote Verification Program Responses* (A-03-09-29115), OFF. OF THE INSPECTOR GEN., SOC. SEC. ADMIN. 1 (2009), <https://oig-files.ssa.gov/audits/full/A-03-09-29115.pdf>.

<sup>14</sup> *Id.* at 4.

verification responses could hinder the States’ ability to determine whether applicants should be allowed to vote.”<sup>15</sup> Most voters overcome a failed SSA match by showing some other form of identification (including, e.g., a utility bill) at the polls. But if military and overseas voters, who are necessarily voting absentee, are relying on their social security numbers—which many do because they lack state driver’s licenses or IDs—their vote may be discounted, with little to no recourse to correct the error.

Petitioners offer no solutions to these problems yet expect Respondents to solve them in time to implement its proposed relief for the November General Election. That election is just one day away, and the recommended federal deadline to return overseas ballots—October 21, 2024—has long passed.<sup>16</sup> As of November 2, 25,045 military and overseas North Carolinians—including children and dependents born abroad—already returned their absentee ballots,<sup>17</sup> believing (correctly) that they have the right to vote under North Carolina law. County boards must canvass all votes on November 15, 2024 or “a reasonable time thereafter” if “the initial counting of all the votes has not been completed by that time.” N.C. Gen. Stat. § 163-182.5(b). And the State Board of Elections must canvass the votes on November 26, 2024—“the

---

<sup>15</sup> *Id.*

<sup>16</sup> *How to Vote Absentee from Abroad*, FED. VOTING ASSISTANCE PROGRAM, <https://www.fvap.gov/citizen-voter/overview>.

<sup>17</sup> *N.C. Absentee & Early Voting Statistics for the 2024 General Election*, NORTH CAROLINA STATE BOARD OF ELECTIONS (Nov. 1, 2024), <https://s3.amazonaws.com/dl.ncsbe.gov/Press/2024%20General/NC%20Absentee%20Stats%20for%202024%20General/2024-11-03%20Daily%20Absentee%20Stats%20Report%20-%202024%20General.pdf> (current through Nov. 2, 2024).



Tuesday three weeks after election day”—or no later than December 6, 2024, if “the State Board has not received the county canvasses.” *Id.* at § 163-182.5(c).

Simply put, beyond the flawed nature of Petitioners’ requested relief, there is no time to implement their proposed process prior to the deadline for certifying the 2024 General Election, let alone in time to prevent disenfranchisement of and confusion among overseas and other absentee voters in that election.

**III. GRANTING PETITIONERS’ ULTIMATE RELIEF WOULD ADD TO THE ALREADY SIGNIFICANT PROCEDURAL BARRIERS OVERSEAS AND MILITARY VOTERS FACE, RISKING FURTHER DISENFRANCHISEMENT.**

Even under an ordinary timetable, Petitioners’ proposed relief would add still further to the already numerous barriers Americans face when voting overseas, disenfranchising eligible voters and undermining Congress’s intent in passing UOCAVA and subsequent legislation.

**A. UOCAVA VOTERS ALREADY FACE SIGNIFICANT BARRIERS TO VOTING.**

Voting from overseas is already challenging for North Carolinians. When discussing the merits of enacting UOCAVA, Congress found that one reason military and overseas citizens faced difficulties voting was because States had enacted legal and administrative obstacles that “discourage[d] or confuse[d] overseas citizens.” H.R. REP. NO. 99-765, at 9 (1986), *reprinted* in 1986 U.S.C.C.A.N. 2009, 2012. Despite laws like UOCAVA, the Military and Overseas Voter Empowerment Act, and North Carolina’s UMOVA, such difficulties persist, across the nation and in North Carolina.

From the outset, overseas voters find it difficult to register to vote, to request and return absentee ballots, and to know key absentee ballot deadlines.<sup>18</sup> Indeed, only 35%, 41%, and 32% of active-duty military members in 2018, 2020, and 2022, respectively, knew how to “[r]equest [an] absentee ballot.”<sup>19</sup> And in 2020, 14% of overseas citizens reported difficulties “[r]equesting a ballot.”<sup>20</sup> If a military or overseas voter knows how to request their ballot, doing so may still require internet access. In 2020, however, 11% of active-duty military members did not have reliable access to the internet,<sup>21</sup> and 14% of overseas voters more generally characterized their internet connection as “very unreliable” or “unreliable.”<sup>22</sup>

To return their ballot by mail, military and overseas voters likewise need a printer. In 2020, however, 29% of active-duty military members did not have “reliable access to a printer.”<sup>23</sup> In addition, about 60% of servicemembers do not live on a military base,<sup>24</sup> and may have to travel to reach a post office to return their ballot. Finally, military and overseas voters returning their ballot by mail must necessarily

---

<sup>18</sup> *2023 Post-Election Voting Survey*, *supra* note 8, at 50.

<sup>19</sup> *Id.*

<sup>20</sup> *2020 Overseas Citizen Population Analysis Report*, *supra* note 5, at 35.

<sup>21</sup> *2020 Post-Election Voting Survey*, *supra* note 6, at 28.

<sup>22</sup> *2020 Overseas Citizen Population Analysis Report*, *supra* note 5, at 101.

<sup>23</sup> *2020 Post-Election Voting Survey*, *supra* note 6, at 28.

<sup>24</sup> *Housing America’s Military Families*, BIPARTISAN POLICY CTR. (2023), <https://bipartisanpolicy.org/event/housing-americas-military-families/>.

budget additional time to ensure their ballot is timely received, especially given the unreliability of some foreign postal services.<sup>25</sup>

Even without the additional burdens Petitioners' requested relief would impose, over 20% of active-duty military members in 2020 reported that they wanted to vote but were unable.<sup>26</sup> Indeed, 43% and 40% of military members who tried or wanted to vote but did not do so cited "difficulty registering to vote" and voting process complications, respectively, as reasons they were deterred from voting.<sup>27</sup> Among overseas voters more generally, 82% who did not return a ballot in 2020 did not vote because they "couldn't complete the process."<sup>28</sup>

There is no question that procedural hurdles already deprive eligible overseas North Carolinians who desire to participate in this State's elections of the opportunity to do so. Despite their interest in voting in 2020, participation among UOCAVA-eligible voters remained lower than among the general population: only 47% of active-duty service members voted, compared to 74% of the civilian, non-military population.<sup>29</sup>

---

<sup>25</sup> *2020 Post-Election Voting Survey*, *supra* note 6, at 15 (roughly 20% of respondents "reported that the postal system in their country was somewhat or very unreliable").

<sup>26</sup> *Id.* at 38.

<sup>27</sup> *Id.* at 39.

<sup>28</sup> *2020 Report to Congress, FED. VOTING ASSISTANCE PROGRAM* 17 [https://www.fvap.gov/uploads/FVAP/Reports/FVAP-2020-Report-to-Congress\\_20210916\\_FINAL.pdf](https://www.fvap.gov/uploads/FVAP/Reports/FVAP-2020-Report-to-Congress_20210916_FINAL.pdf).

<sup>29</sup> *2020 Post-Election Voting Survey*, *supra* note 6, at 12.

**B. PETITIONERS' REQUESTED RELIEF WILL FURTHER DISENFRANCHISE UOCAVA VOTERS, CONTRAVENING CONGRESS AND THE NORTH CAROLINA GENERAL ASSEMBLY'S INTENT TO PROTECT MILITARY AND OVERSEAS VOTERS.**

Petitioners' requested relief would disenfranchise countless UOCAVA voters outright, principally the children and other dependents of North Carolinians born abroad, who wish to participate in our democracy and exercise their right to vote.

Beyond disenfranchising these UOCAVA voters outright, Petitioners' requested relief will disenfranchise still more voters by sowing confusion and doubt about the eligibility of voters overseas, on the eve of an election. As discussed *supra*, Section II, requiring voters to confirm their residency or eligibility to vote under UOCAVA will heighten difficulties associated with voting from abroad. In so doing, Petitioners' proposed verification requirement risks deterring North Carolina voters from exercising their right to vote, jeopardizing the ability of American citizens living abroad to participate in our elections—including the 2024 General Election.

Petitioners' requested relief also runs afoul of Congress's broader intent. In UOCAVA, a bipartisan act, Congress expressed an unequivocal intent to protect military and overseas voters and facilitate their ability to participate in federal elections. To that end, Congress sought "to facilitate absentee voting by United States citizens, both military and civilian, who are overseas." H.R. REP. NO. 99-765, at 5 (1986), *reprinted* in 1986 U.S.C.C.A.N. 2009, 2009. This includes voting by "absent uniformed services voter[s]"—specifically defined to include "a spouse *or dependent*" of a uniformed service member "who, by reason of the active duty or service of the

member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.” 52 U.S.C. § 20310(1) (emphasis added).

Congress has thus expressed a clear desire to protect the right to vote of military and overseas voters—including their children and dependents—through numerous acts of legislation. So too has the North Carolina General Assembly. *See* N.C. Gen. Stat. § 163-258.2(1)(e). Petitioners’ sought-after relief will harm the very population Congress and the State of North Carolina have singled out for special protection.

### **CONCLUSION**

For the foregoing reasons, the Court should deny Petitioners’ petition for a writ for supersedeas.

Respectfully submitted this the 4th day of November, 2024.

/s/ Jeffrey Loperfido\_\_\_\_\_

Jeffrey Loperfido  
N.C. State Bar No. 52939  
[jeffloperfido@scsj.org](mailto:jeffloperfido@scsj.org)

N.C.R. App. P. 33(b) Certification: 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.

SOUTHERN COALITION FOR  
SOCIAL JUSTICE  
P.O. Box 51280  
Durham, NC 27717  
Telephone: 919-794-4213  
Facsimile: 919-908-1525

Danielle Lang\*  
Alexandra Copper\*  
CAMPAIGN LEGAL CENTER  
1101 14th St. NW, Suite 400  
Washington, DC 20005  
Tel: 202-736-2200  
dlang@campaignlegalcenter.com  
acopper@campaignlegalcenter.com

Corey Stoughton\*  
Elizabeth Snow\*  
Alexandra G. Butler\*  
Andrew L. Azorsky\*  
SELENDY GAY PLLC  
1290 Avenue of the Americas  
New York, NY 10104  
Tel: 212-390-9000  
cstoughton@selendygay.com  
esnow@selendygay.com  
abutler@selendygay.com  
aazorsky@selendygay.com

*Attorneys for Amici Curiae*

*\*Pro Hac Vice Applications Forthcoming*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, the undersigned counsel for *Amici Curiae* certifies that the foregoing brief, which is prepared using a proportional font, contains fewer than 3,750 words (excluding cover, index, table of authorities, caption, signature blocks, certificate of service, and this certificate of compliance) as reported by the word-processing software.

This the 4th day of November 2024.

*/s/ Jeffrey Loperfido* \_\_\_\_\_  
Jeffrey Loperfido

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was e-filed and served upon the parties listed below via e-mail, addressed as follows:

Philip J. Strach  
[phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com)  
Jordan A. Koonts  
[jordan.koonts@nelsonmullins.com](mailto:jordan.koonts@nelsonmullins.com)  
*Counsel for Plaintiffs-Petitioners*

Terence Steed  
[tsteed@ncdoj.gov](mailto:tsteed@ncdoj.gov)  
Mary Carla Babb  
[mcbabb@ncdoj.gov](mailto:mcbabb@ncdoj.gov)  
Sarah G. Boyce  
[sboyce@ncdoj.gov](mailto:sboyce@ncdoj.gov)  
*Counsel for the Board*

Eric M. David  
[edavid@brookspierce.com](mailto:edavid@brookspierce.com)  
Jim W. Phillips, Jr.  
[jphillips@brookspierce.com](mailto:jphillips@brookspierce.com)  
Charles E. Coble  
[ccoble@brookspierce.com](mailto:ccoble@brookspierce.com)  
Shana L. Fulton  
[sfulton@brookspierce.com](mailto:sfulton@brookspierce.com)  
William A. Robertson  
[wrobertson@brookspierce.com](mailto:wrobertson@brookspierce.com)  
James W. Whalen  
[jwhalen@brookspierce.com](mailto:jwhalen@brookspierce.com)  
*Counsel for Defendant-Intervenor-Respondent*

This the 4th day of November, 2024.

*/s/ Jeffrey Loperfido* \_\_\_\_\_  
Jeffrey Loperfido