Justice DIETZ concurring in part and dissenting in part.

When these election claims first arrived at this Court three months ago, I urged the Court to summarily reject them. The election protest process cannot be used "to remove the legal right to vote from people who lawfully voted under the laws and regulations that existed during the voting process." *See Griffin v. N.C. State Bd. of Elections (Griffin I)*, 909 S.E.2d 867, 871 (N.C. 2025) (Mem.) (Dietz, J., dissenting). Endorsing this sort of post-election litigation, I warned, "invites incredible mischief." *Id.* at 872. "It will lead to doubts about the finality of vote counts following an election, encourage novel legal challenges that greatly delay certification of the results, and fuel an already troubling decline in public faith in our elections." *Id.*

The Court declined to put an end to these claims back then. But I remained hopeful that this was simply because the case was too important to warrant summary disposition. I expected that, when the time came, our state courts surely would embrace the universally accepted principle that courts cannot change election outcomes by retroactively rewriting the law.

I was wrong. The Court of Appeals has since issued an opinion that gets key state law issues wrong, may implicate a host of federal law issues, and invites all the mischief I imagined in the early days of this case. By every measure, this is the most impactful election-related court decision our state has seen in decades. It cries out for our full review and for a decisive rejection of this sort of *post hoc* judicial tampering in election results.

We should hear this case. I could spend pages laying out why the Court's failure to do so is a mistake—the origins of the so-called "*Purcell* principle," why it is so important to apply it here, and how it protects the public's faith in our elections. But I've already done that in this case, twice. *See Griffin I*, 909 S.E.2d at 871–72 (Dietz, J., dissenting); *Griffin v. N.C. State Bd. of Elections (Griffin II)*, 910 S.E.2d 348, 353–54 (N.C. 2025) (Mem.) (Dietz, J., concurring). Doing so again is not a helpful exercise.

This is not to downplay the majority's concerns about the State Board of Elections. I agree that the agency displayed a troubling lack of competence in its maintenance of the voter rolls. And, as I have explained before, there may be merit to Griffin's other arguments had they been brought in a suit seeking relief in future elections. *Griffin I*, 909 S.E.2d at 871–72 (Dietz, J., dissenting).

The voter ID claim, for example, makes sense to me based on the interplay of the applicable statutes and the likely intent of the legislature. But implementing that voter ID requirement consistent with the federal Uniformed and Overseas Citizens Absentee Voting Act would require careful planning by state election staff, likely with input from federal officials. It is not something that can be retroactively enacted by judicial edict.

Similarly, the so-called "never resident" issue is legitimate—although not for the reasons articulated by the Court of Appeals. Only residents of North Carolina can vote in our state elections. When not physically present in North Carolina, a person

is a resident of our state for voting purposes only if "that person has the intention of returning." N.C.G.S. § 163-57. This applies whether the voter is an hour north in Norfolk or across the world in Beijing. The record in this case indicates that there is a category of overseas voters who checked a box on their ballots indicating that "I am a U.S. citizen living outside the country, and my intent to return is uncertain." It is this clash with our state's residency requirement that concerns me. But on the record before this Court, it is not even clear that any of these voters are among those Griffin challenged, or that simply tossing their votes—without permitting the opportunity to clarify the uncertainty—is a constitutionally permissible remedy.

All of this reinforces why we should allow review in this case and hold that, under our state version of *Purcell*, these claims are not justiciable in a backward-looking challenge to a past election. These are questions that should be resolved in a declaratory judgment action seeking prospective relief that would apply in future elections.

Whatever happens next in this case, it won't fix the Court of Appeals' implied rejection of a state *Purcell* doctrine. Even if the federal courts ultimately reverse the Court of Appeals' decision because of a conflict with UOCAVA, or *Bush v. Gore*, or whatever else, the door is open for losing candidates to try this sort of post-election meddling in state court in the future. We should not allow that.

So, with apologies for repeating myself for a third time, I believe our state version of the *Purcell* principle precludes the relief sought in this election protest.

Election protests must be based on the failure to *follow* our election laws; they are not vehicles to bring challenges *to* our election laws. *See* N.C.G.S. § 163-182.10.

I would formally adopt a state analogue to *Purcell*—one that has always been lurking in our precedent—as part of our state election jurisprudence and uphold the decision of the State Board of Elections on that basis. *See Pender Cnty. v. Bartlett*, 361 N.C. 491, 510 (2007); *James v. Bartlett*, 359 N.C. 260, 265 (2005).

Accordingly, I concur in the Court's decision with respect to the voter registration challenge but respectfully dissent from the Court's decision on the remaining two grounds raised in the petitions.