

SUPREME COURT OF NORTH CAROLINA

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JEFFERSON GRIFFIN,  
 Respondent-Appellant,  
 v.  
 NORTH CAROLINA STATE  
 BOARD OF ELECTIONS,  
 Petitioner-Appellee,  
 and  
 ALLISON RIGGS,  
 Intervenor-Appellee.

From the Court of Appeals  
 No. COAP25-104

From Wake County

Nos. 24CV040619-910,  
 24CV040620-910,  
 24CV040622-910

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**RESPONDENT’S RESPONSE IN OPPOSITION TO PETITION  
 FOR DISCRETIONARY REVIEW PRIOR TO  
 DETERMINATION BY THE COURT OF APPEALS**

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The State Board of Elections now asks this Court to do something extraordinary: to bypass the Court of Appeals and intervene in a case that has yet to receive any articulated judicial analysis. This request is not just procedurally irregular—it’s a stark reversal of the Board’s own arguments from just weeks ago. The Board successfully opposed Judge Griffin’s earlier petition by insisting that election disputes

must follow the “ordinary course of judicial proceedings.” Now, having won that battle, the Board urges this Court to leapfrog the very process it demanded.

Below, the superior court issued three identical, one-paragraph orders after a hearing during which no questions were asked. Because these orders omit the superior court’s reasoning, they do not afford the parties or the public the robust judicial review that this case deserves. Granting the Board’s bypass petition would compound this error, as it would have this Court review a skeletal record in lieu of the Court of Appeals’ expedited efforts to provide the first reasoned analysis of Judge Griffin’s election protests.

The risks are significant. If this Court grants review now, it risks adjudicating these disputes as a six-member panel—a structure vulnerable to deadlock, which could trigger default affirmance of the superior court’s cursory orders. Such an outcome could render judicial review of no value and undermine public confidence in the fairness of this election.

It makes more sense to let the Court of Appeals do its work. The Court of Appeals has already expedited its review and is moving swiftly. Its forthcoming analysis will clarify the legal questions, narrow the scope of this Court’s potential review, and honor this Court’s mandate to preserve the appellate process. Circumventing

this step would disregard the normal appellate process and foreclose the benefits of intermediate review.

For these reasons, and as detailed herein, the Board's petition should be denied.

## ARGUMENT

### **I. The Bypass Petition Threatens to Deprive Judge Griffin of Any Meaningful Judicial Review.**

The bypass petition gains nothing but threatens much. First and foremost, granting the petition risks eliminating Judge Griffin's right to meaningful judicial review.

The superior court did not afford a robust form of judicial review. Before the superior court were hundreds of pages of briefs, and thousands of pages of an administrative record. At the hearing, the court asked no questions. A few hours after the hearing's conclusion, the court entered identical, one-paragraph orders in each of the three protest appeals. The orders have no legal analysis.

If the Court grants the bypass petition, therefore, it will be in the same position that it was when it considered—and rejected—the prohibition petition. It will have nothing to review but the State Board's own decision.

That scenario could threaten to deprive Judge Griffin of meaningful judicial review because this Court may not be able to decide his election protests. Because of

Justice Riggs's recusal, this Court will review Judge Griffin's appeal as a six-member Court. Even-numbered judicial panels can deadlock. And when they do, the deadlock results in the automatic affirmance of the lower court's order.

Worse still is the inconsistency of the Board's bypass petition. The Board objected to Judge Griffin's prohibition petition, arguing that it was procedurally improper to bypass the lower courts. The Board is now doing the same thing, yet nothing meaningful has changed in the meantime. Moreover, while the Board claims its sole interest is expediency, it was the Board that elected to remove these cases to federal court, prolonging their ultimate resolution.

In the prohibition proceeding, the Board successfully opposed Judge Griffin's prohibition petition by arguing that Judge Griffin could "readily seek relief through the ordinary course of judicial proceedings." Br. of Respondent at 28, *Griffin v. N.C. State Bd. of Elections*, 910 S.E.2d 348 (2025) (No. 320P24), [https://www.ncappellatecourts.org/show-file.php?document\\_id=367951](https://www.ncappellatecourts.org/show-file.php?document_id=367951) (cleaned up). The Board emphasized that, after review in the superior court, an appellant would have a "direct appeal" to the "Court of Appeals and, ultimately, this Court. Election-related challenges are addressed this way every cycle." *Id.* at 29.

This election cycle is no different, just like this Court told the parties in the order on the prohibition petition. In her separate opinions, for instance, Justice Earls

explained that Judge Griffin’s election protests should be “subject to the normal appeals process,” and not reviewed by the Supreme Court “in the first instance.” *Griffin v. N.C. Bd. of Elections*, 909 S.E.2d 867, 869 (N.C. 2025) (Earls, J., dissenting). She criticized Judge Griffin for trying to “leapfrog over a direct appeal,” and instead seeking “extraordinary” relief in the Supreme Court. *Griffin v. N.C. Bd. of Elections*, 910 S.E.2d 348, 351 (N.C. 2025) (Earls, J., concurring in part and dissenting in part).

Judge Griffin took this Court’s orders to heart. He presented his arguments to the superior court and has now expedited his appeal to the Court of Appeals. The case should now follow the appellate process.

## **II. Review by the Court of Appeals Could Obviate the Need for or Limit the Scope of This Court’s Review.**

This Court’s order in the prohibition proceeding was not proceduralism for the sake of proceduralism. It was intended to require the parties to present their arguments to lower tribunals, so that those tribunals could give their opinion on the election protests.

The Court of Appeals is a critical part of our appellate system and should be allowed to consider Judge Griffin’s legal challenges in the first instance. The Court of Appeals quickly acted on the parties’ request to expedite the appeal and follow this Court’s mandate. Under the order from the Court of Appeals, briefing will complete on 3 March 2025. The panel members are certain to deliberate and issue a



reasoned opinion on the protests shortly thereafter, in accordance with this Court's mandate. There is nothing to be gained by granting a bypass petition when the Court of Appeals is already moving at break-neck speed.

And because the superior court did not issue an opinion in this case, the opinion from the Court of Appeals will provide the first opportunity for this Court to consider how another judicial tribunal thinks through the complex issues raised in Judge Griffin's election protests. There is value to this Court in having the Court of Appeals give that kind of first look at an appeal.

Besides, depending on how the Court of Appeals rules, this Court may not need to later grant discretionary review, or this Court could limit the scope of its discretionary review. But with a bypass petition, this Court cannot truly limit the scope of the appeal. The Court need not accept all the Board's proposed issues, but the Court must accept all of Judge Griffin's proposed issues, since he's the appellant. And as the appellant, Judge Griffin has a statutory right of appeal. N.C. Gen. Stat. § 7A-27(b)(1). Therefore, if this Court certifies this case for discretionary review prior to a determination by the Court of Appeals, every issue pressed by Judge Griffin for reversal will be before this Court. The bypass procedure does not diminish an appellant's statutory right of appeal. *See id.* § 7A-31.

The Board has proposed 7 issues to be briefed. In this filing, Judge Griffin proposes another 24. But after a ruling by the Court of Appeals, this Court may have reason to review less than those 31 issues.

### **III. The Board’s “Significant” and Primary Legal Issue in Its Petition Is Not Properly Before This or Any Other Court.**

The Board’s new, lead argument is one that it has adopted from Justice Dietz’s separate opinions from the prohibition proceeding: *Purcell*. In its bypass petition, the Board has now switched to calling it the *Pender County* argument. But the label is irrelevant. What matters is that this argument is unfit for discretionary review because it has been forfeited.

North Carolina adheres to a basic administrative law doctrine, which, in this state, is called the *Godfrey* doctrine. Under the *Godfrey* doctrine, a reviewing court cannot affirm an agency decision for reasons different from those given by the agency. In *Godfrey v. Zoning Board of Adjustment of Union County*, this Court held that a reviewing court must judge an agency’s decision “solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis.” 317 N.C. 51, 63-64, 344 S.E.2d 272, 279-80 (1986) (cleaned up). In other words, the agency whose decision is under review cannot “urge grounds for affirmance other than and additional to those set forth in its

decision.” *Id.* Alternative grounds for affirmance are not permitted on judicial review of agency action.

Regardless of whether *Purcell* could have been raised in the prohibition proceeding, which was not direct judicial review of an agency action, *Purcell* cannot be raised in this judicial review proceeding. In its decision, the State Board never determined that Judge Griffin’s election protest was untimely under *Purcell*, *Pender County*, laches or another other timeliness doctrine. The idea never struck the Board (or any other party) until Justice Dietz introduced the idea in a separate opinion. And that was long after the Board issued its final decision.

These untimely timeliness doctrines are especially unsuited to discretionary review, since they aren’t subject to judicial review at all.

### **ADDITIONAL ISSUES TO BE BRIEFED IF CERTIFICATION ISSUES**

This Court should deny the bypass petition. But if the Court grants the petition, the Court should grant review on every issue listed below:

1. Whether the State Board erred in counting the votes of people who did not lawfully register to vote.
2. Whether HAVA or the NVRA preempts Judge Griffin’s election protests.

3. Whether the State Board erred when it counted the ballots of people who have never lived in North Carolina or anywhere else in the United States.

4. Whether the State Board erred when it counted the votes of overseas voters who never presented photo identification when they submitted absentee ballots.

5. Whether federal law preempts North Carolina on the question of photo identification for overseas voters.

6. Whether Appellees failed to make an effective *England* reservation, or waived their right to make an *England* reservation.

7. Whether the trial court acquiesced in the Appellees' *England* reservation.

8. Whether this Court should otherwise exercise the jurisdiction that it already has over the entirety of the issues in this case, including all federal law issues.

9. Whether the *Godfrey* doctrine bars Appellees from seeking affirmance on alternative grounds not stated in the State Board's decision.

10. Whether the *Purcell* principle (or as the Board now calls it, the *Pender County* principle) barred the election protests and judicially invalidates the election-protest statutes.

11. Whether invocation of the *Purcell* principle is barred by the *Godfrey* doctrine.
12. Whether Appellees can recast *Purcell* as laches and invoke laches to bar the election protests.
13. Whether Appellees' invocation of laches is also barred by the *Godfrey* doctrine.
14. Whether Appellees have forfeited their argument that the protests should have been brought as voter challenges, and, if not, whether this argument is meritless.
15. Whether the Board wrongly dismissed the election protests for lack of service.
16. Whether Judge Griffin's election protests comport with procedural due process under both the state and federal constitutions.
17. Whether Appellees' invocation of procedural due process under the state constitution is barred by the *Godfrey* doctrine.
18. Whether the Appellees have forfeited their argument that Judge Griffin did not timely file his protests, and, if not, whether that argument is meritless.
19. Whether the federal Civil Rights Act bars the election protests.
20. Whether the federal Voting Rights Act bars the election protests.

21. Whether the election protests, or the relief they seek, is barred by equal protection under both the state and federal constitutions.

22. Whether Appellees' invocation of equal protection under the state constitution is barred by the *Godfrey* doctrine.

23. Whether the election protests, or the relief they seek, is barred by substantive due process under the federal constitution.

24. What remedial measures must be taken in light of the illegal ballots counted by the State Board.

## CONCLUSION

Judge Griffin respectfully requests that the Court deny the bypass petition.

This the 19th day of February, 2025.

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## CERTIFICATE OF SERVICE

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This the 19th day of February, 2025.

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