

SUPREME COURT OF NORTH CAROLINA

JEFFERSON GRIFFIN

v.

NORTH CAROLINA STATE
BOARD OF ELECTIONS

and

ALLISON RIGGS, Intervenor

From N.C. Court of Appeals
P25-104

From Wake
24CV040619-910 24CV040620-
910 24CV040622-910

ORDER

Respondent’s Petition for Discretionary Review Prior to Determination by the North Carolina Court of Appeals is denied. Respondent’s Motion to Suspend Appellate Rules and Motion to Expedite are dismissed as moot.

By order of the Court in Conference, this the 20th day of February 2025.

/s/ Allen, J.
For the Court

Riggs, J., recused.

Earls, J., dissents.

Dietz, J., dissents.

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Order of the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this
the 20th day of February 2025.



A handwritten signature in blue ink, reading "Grant E. Buckner".

Grant E. Buckner
Clerk of the Supreme Court

Copy to:

North Carolina Court of Appeals

Mr. Troy D. Shelton, Attorney at Law, For Griffin, Jefferson - (By Email)

Mr. Terrence Steed, Special Deputy Attorney General, For State Board of Elections - (By Email)

Mr. Craig D. Schauer, Attorney at Law, For Griffin, Jefferson - (By Email)

Mr. Philip Thomas, Attorney at Law, For Griffin, Jefferson - (By Email)

Mr. Raymond M. Bennett, Attorney at Law, For Riggs, Allison - (By Email)

Mr. Samuel B. Hartzell, Attorney at Law, For Riggs, Allison - (By Email)

Mr. Ryan Y. Park, Solicitor General, For State Board of Elections - (By Email)

West Publishing - (By Email)

Lexis-Nexis - (By Email)

Justice BARRINGER concurring.

I concur with the order of the Court. I also concur with Justice Allen’s concerns regarding the barebones orders entered by the superior court only a few hours after hearing extensive arguments from multiple parties and counsel.

When this Court last had the opportunity to exercise jurisdiction over this case outside the normal appellate process and render the most expeditious outcome to this Supreme Court race, I reluctantly concurred with this Court’s decision to dismiss the extraordinary writ of prohibition. In that prior posture, I saw value in this Court addressing the most salient issues presented at that time without first passing through the lower courts. Now, the circumstances have changed.

The Court of Appeals has set an expedited briefing schedule that will propel this case at an extraordinary speed. Allowing the normal order of the appellate process will bring this case before this Court in relatively short order. Given the complexity and quantity of the issues presented in this case, this Court and our State will benefit from a well-reasoned, thoughtful, and deliberative analysis by the Court of Appeals.

Moreover, I am mindful that this Court has been able to fulfill its role in our judicial system despite the uncertainty of an uncertified election looming over our State. Even with the political and personal attacks being publicly promoted almost

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Barringer, J., concurring

every day by many groups and individuals including, sadly, even some of the litigants in this case, this Court has continued to efficiently and effectively conduct its affairs.

In stark but positive contrast, none of the litigants in this Court's numerous other pending cases are in limbo. All of these other cases continue to proceed through this Court with thoughtful and deliberate focus and attention.

Now, it is time that we allow the Court of Appeals to exercise the same diligent and deliberate focus and attention to this case—thereby effectuating its important and vital constitutional and statutory role.

Justice ALLEN concurring.

I write separately to explain my rejection of the petition to bypass the Court of Appeals filed by the State Board of Elections. Having voted in last year’s Supreme Court race, the citizens of North Carolina understandably want to see the rightful winner of the election certified as soon as possible. For this reason, it might make sense to bypass the Court of Appeals pursuant to N.C.G.S. § 7A-31(b) if the superior court had provided us with a careful analysis of the factual and legal issues presented by this case.

The three nearly identical one-page orders entered by the superior court do not meet this standard. Perhaps influenced by this Court’s order directing it to move expeditiously, the superior court simply ruled against Judge Griffin without explaining why, in its view, his claims should be denied. Consequently, if we were to take this case now, we would do so in the absence of any meaningful examination of those claims by a lower court. Given the significance of this case and the complexity of the issues raised, I think that this Court could benefit from a well-reasoned and thorough evaluation of the parties’ arguments. I therefore believe that we should follow the ordinary process of appellate review—albeit at an accelerated pace—and allow the Court of Appeals to hear this case.

Justice EARLS dissenting.

The circumstances of this case, the statutory procedures, and our past practice all support our immediate review prior to determination by the Court of Appeals. I would allow the State Board's petition.

There is strong justification for this Court to expeditiously address, with transparency, the significant issues in this case that go to the heart of what democracy requires under the state Constitution. Judge Jefferson Griffin's opposition to the bypass petition begins by asserting that this Court should not hear this case because, as a Court of six members, we might split 3-3 leaving the lower court's ruling as the final ruling in the case. In other words, he asks us not to hear the case because he might lose. Such outcome-determined reasoning has no place in a court committed to the rule of law.

Prior to Judge Griffin's newfound opposition to our review, members of this Court and all parties agreed that this proceeding must be resolved expeditiously. That included Judge Griffin himself, who in a request for action by this Court nine weeks ago, asserted that "[t]he candidates and the public have a vital interest in this election receiving finality as expeditiously as possible." Pet. for Writ of Prohibition at 19, *Griffin v. N. Carolina Bd. of Elections*, No. 320P24 (filed Dec. 18, 2024); *see also id.* at 70 ("In the interests of finality and expediency, Judge Griffin respectfully requests that the Court[] . . . address every issue that has been raised in this

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proceeding.”). Our Court shared the same urgent sentiment in our 22 January 2025 Order dismissing that petition. Order, *Griffin v. N. Carolina Bd. of Elections*, No. 320P24, at 3 (N.C. Jan. 22, 2025) (per curiam) (compelling the Superior Court “to proceed expeditiously” in reviewing Griffin’s election protests); *id.* at 3 (Earls, J. concurring in part and dissenting in part) (expressing concern that “litigious losers [may] prevent[] duly elected persons from taking office for months or longer”). Members of the Court now voting to deny the Board’s petition objected just weeks ago to having this matter “twist in the jurisprudential winds for the upcoming months before ultimately landing before this Court for the requisite de novo review.” *Id.* at 3 (Barringer, J. concurring). That change is unfortunate, as allowing immediate review would further the shared goal of expeditiously resolving this matter.

Immediate review is also consistent with our 22 January 2025 Order directing Judge Griffin to follow the law in bringing his election protests. Section 163-182.14(b) of the General Statutes specifies that candidates for judicial office must first appeal the State Board’s decisions on elections protests to the Wake County Superior Court. At that point Judge Griffin had failed to do so. Thus it was appropriate for our Court to dismiss his attempt to circumvent that court in violation of the statutory procedure. But while the statutes specify where an election protest appeal must *begin*, they do not require a particular path of appeal *beyond* Wake County. Simply put, no statute requires the Court of Appeals to hear such appellate claims in the first instance. In fact, the statutes specifically contemplate that “an appellate court” may

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weigh in after the Wake County Superior Court—ours or the Court of Appeals. *See* N.C.G.S. § 163-182.15(a)(3) (2023). Since we previously “ordered that this statutory process be carried out expeditiously,” Order, No. 320P24, at 6 (Newby, C.J. concurring), and since immediate review is consistent with the statutory process, bypassing the Court of Appeals under N.C.G.S. § 7A-31(b) and Appellate Procedure Rule 15(a) is warranted. Our Court is equally as capable as the Court of Appeals to resolve the disputed state law issues, including whether “retroactively invalidating votes that were cast consistent with the laws and regulations that existed during the voting process would be fundamentally unfair under state law.”

Finally, our past practice further supports immediate review. We previously allowed a candidate for Superintendent of Public Instruction to bypass the Court of Appeals to receive immediate review of the Wake County Superior Court election protest orders. *James v. Bartlett*, 359 N.C. 260, 265 (2005). Our decision there was issued 4 February 2005, on an even earlier timeline than the present appeal. That underscores that immediate review makes sense here, too.

Our past practice in other cases also supports allowing expedited review here. This case presents issues no less complicated or important to the public interest than other cases in which we have allowed bypass petitions. *E.g.*, Order, *Hoke Cnty. Bd. of Educ. v. State*, No. 425A21-3 (N.C. Oct. 18, 2023) (allowing petition for discretionary review prior to determination by the Court of Appeals as to whether the trial court lacked subject matter jurisdiction to enter an order); *Cnty. Success Initiative v.*

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Moore, 384 N.C. 194, 196 (2023) (judgment on a petition for discretionary review prior to determination by the Court of Appeals on a challenge to the constitutionality of statute governing restoration of citizenship rights); *Matter of A.R.A.*, 373 N.C. 190, 194 (2019) (same, for review of an order terminating parental rights); *Bailey v. State*, 348 N.C. 130, 135–36 (1998) (same, for review in an action challenging the constitutionality of legislation capping tax exemption for state and local employees’ retirement benefits, where the lower court proceedings involved a two-week trial, twenty-four witnesses, and 1,689 pages of transcript); *State ex rel. Edmisten v. Tucker*, 312 N.C. 326, 327 (1984) (same, for review in a declaratory judgment action as to the meaning and validity of Safe Roads Act of 1983). At least as much as those other claims, the claims here—that threaten to undermine confidence in our democratic system and make courts, not voters, the arbiter of elections outcomes—are of significant public interest, involve legal principles of major significance, and are causing substantial harm from delayed adjudication. *See* N.C.G.S. § 7A-31(b)(1)–(3).

It is especially appropriate for our Court to immediately review the Board’s claims because our Court left in place a temporary stay pending the exhaustion of any party’s appeals. Order, No. 320P24, at 3 (per curiam) (“[T]he temporary stay allowed on 7 January 2025 shall remain in place until the Superior Court of Wake County has ruled on petitioner’s appeals and any appeals from its rulings have been exhausted.”). That temporary stay prevents the State Board from certifying the

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election “within 5 days after entry of a final order in the case in Superior Court” as it must under state law. N.C.G.S. § 163-182.15(a)(3). Since the Superior Court issued its final orders affirming the State Board’s decisions nearly two weeks ago, our stay is what bars certification. *See Order, Griffin v. N. Carolina State Bd. of Elections*, Nos. 24CV040619-910, 24CV040620-910, 24CV040622-910 (Wake Cnty. Super. Ct. Feb. 7, 2025). Because it is still unclear “how we have jurisdiction under our Rules of Appellate Procedure to Order a stay of the certification of election while simultaneously dismissing the Petition,” Order, No. 320P24, at 2 (Earls, J. concurring in part and dissenting in part), we ought to resume jurisdiction in this appeal over the last uncertified statewide race in the country. The failure to do so is harmful to the parties seeking finality and to the public who voted over three months ago. Further delay at this stage continues to erode trust in our elections and calls into question the ability of the legal system to guarantee that fundamental principles of democracy are capable of being recognized and enforced by a fair and impartial judiciary. I dissent from today’s Order deciding to further delay final resolution of the issues in this case.