

NORTH CAROLINA COURT OF APPEALS

JEFFERSON GRIFFIN,)	
)	
Petitioner-Appellant,)	
)	
v.)	<u>From Wake County</u>
)	
NORTH CAROLINA STATE BOARD)	Nos. 24CV040619-910,
OF ELECTIONS,)	24CV040620-910,
)	24CV050622-910
Respondent-Appellee,)	
)	
and)	
)	
ALLISON RIGGS,)	
)	
Intervenor-Respondent-)	
Appellee.)	

RESPONSE OF ALLISON RIGGS TO
RULE 2 MOTION TO EXPEDITE APPEAL

Intervenor-Respondent-Appellee Allison Riggs files this response to Appellant Jefferson Griffin's motion to expedite this appeal by modifying the deadlines and rules governing the appeal.

The parties have reached agreement regarding several matters addressed in Judge Griffin's motion, but two matters remain for a decision from this Court: (i) whether Judge Griffin should have nine calendar days to prepare his opening brief

and four calendar days to prepare a reply, while Justice Riggs and the Board are given two calendar days to prepare their responsive briefs, and (ii) whether the briefing schedule in this Court should be triggered by a decision from the Supreme Court on the Board's bypass petition or proceed while the Supreme Court considers the petition. In response to Judge Griffin's motion, Justice Riggs states as follows:

1. The parties have been litigating this matter on an expedited basis before county election boards, the State Board, the North Carolina Supreme Court, and in the federal courts, ever since the November 2024 election—more than three months ago. This is now the last statewide race in the country without a certified winner.

2. Justice Riggs agrees this matter should proceed expeditiously and wants this election dispute to come to an end as quickly as possible.

3. As the losing candidate in a close race for Associate Justice of the Supreme Court, Judge Griffin took full advantage of the procedures our General Assembly designed to test the integrity of the election. After a machine recount, a hand recount, and individualized evidentiary hearings in nearly every county in the State, the result was unchanged.

4. The instant appeal involves three categories of protests Judge Griffin filed in counties across the state that are different from the typical election protest: each group of protests challenges one of the rules in place at the time of the election. The Board took jurisdiction of these protests, heard the matter on December 11, 2024, and issued a written decision dismissing the protests on December 13, 2024.

5. Rather than initiating an appeal in the Wake County Superior Court, Judge Griffin filed a petition for a writ of prohibition directly in the Supreme Court. After filing his petition, Judge Griffin also sought judicial review in the Superior Court of Wake County pursuant to N.C.G.S. § 163-182.14(b) on the same grounds as those set out in his petition.¹

6. The Supreme Court set an expedited schedule for briefing on the petition for an extraordinary writ, giving Petitioner seven days to file an opening brief, Respondents seven days to file a response, and Petitioner three business days to file a reply.

7. On January 22, 2025, the Supreme Court issued an order dismissing as procedurally improper the petition for writ of prohibition “so that the Superior Court may proceed with the appeals that petitioner filed in 24CV040619-910, 24CV040620-910, and 24cv040622-910.” *Griffin v. N.C. State Bd. of Elections*, 320P24 (N.C. Jan. 22, 2024) (Order). The Supreme Court also allowed a stay of certification of the race to 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.” *Id.*

¹ The Board removed Judge Griffin’s petition for a writ of prohibition (*Griffin I*) as well as his three Wake County appeals (*Griffin II*) to federal court. The Eastern District of North Carolina found it had jurisdiction but abstained and remanded both actions to state court on January 6, 2025. On February 4, 2025, the Fourth Circuit affirmed the district court’s remand order as to jurisdiction, but narrowed the scope of the remand and directed the district court “to modify its order to expressly retain jurisdiction over the federal issues identified in the Board’s notice of removal should those issues remain after the resolution of the state court proceedings, including any appeals.”

9. This matter came on for a hearing in the Wake County Superior Court before the Honorable William R. Pittman on Friday, February 7, 2025. Following a two-and-a-half-hour hearing, Judge Pittman took the matter under advisement, but promised to rule “as fast as I can by written order.”

10. Shortly before 5:00 p.m. that afternoon, Judge Pittman issued the written orders attached as Exhibit A. The court affirmed the decision of the Board, concluding “as a matter of law that the Board’s decision was not in violation of constitutional provisions, was not in excess of statutory authority or jurisdiction of the agency, was made upon lawful procedure, and was not affected by other error of law.”

11. Judge Griffin ordered a copy of the transcript of the hearing and the court reporter delivered a certified copy of the transcript on Monday, February 10, 2025.

MODIFICATION OF APPELLATE DEADLINES

12. Justice Riggs agrees this matter should be expedited and urges the Court to set a schedule to decide this matter promptly.

13. With respect to the dates proposed for record preparation, Justice Riggs notes the administrative record was previously compiled by the Board as part of the appeal to the Superior Court of Wake County, and a certified transcript of the Wake County hearing was delivered on Monday, February 10, 2025.

14. While Justice Riggs has no objection to the proposed deadlines for preparation of the record, that relatively leisurely schedule should not be used as a

basis for extending the time for Petitioner to prepare his opening brief, while requiring Respondents to prepare their responsive briefs in a much shorter time.

14. Petitioner has proposed to file his opening brief nine calendar days after delivery of the transcript, and proposed four calendar days to prepare his reply, but has proposed a deadline for Respondents to file responsive briefs two calendar days after the opening brief is filed.

15. Whatever schedule the Court sets should give the parties equal time to prepare their opening briefs and should treat the relatively modest obligations of the parties to prepare the record here as separate and independent from the briefing schedule.

16. With respect to the Board's bypass petition, Justice Riggs agrees with the Board that a bypass petition in accordance with N.C. Gen. Stat. § 7A-31(b) is warranted here to accelerate the timeline to final resolution, to minimize the already significant burden of this dispute on judicial and taxpayer resources, and to address the significant interests involved here that all agree warrant ultimate resolution by the Supreme Court.

17. Justice Riggs further respectfully suggests that a briefing schedule that commences upon a decision from the Supreme Court to reject the bypass petition, if it chooses to do so, could be an appropriate way to preserve judicial resources and avoid duplication of effort between the two courts. If the Court elects to do so, Justice Riggs respectfully suggests the Court adopt an expedited briefing schedule in line with the schedule the Supreme Court adopted for briefing on Judge

Griffin's petition for a writ of prohibition—with 7 days for the opening brief, 7 days for responsive briefs, and 3 business days for a reply.

OTHER MATTERS

18. *Consolidation.* Justice Riggs consents to the consolidation of these three related appeals.

19. *Word limits.* Justice Riggs consents to Judge Griffin's proposed word limits.

20. *Submission of original or electronic exhibits.* Justice Riggs takes no position on Judge Griffin's proposal regarding electronic aspects of the record.

WOMBLE BOND DICKINSON (US) LLP

Electronically Submitted
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N.C. R. App. P. 33(b) Certification: I certify that the attorney listed below has authorized me to list his name on this document as if he personally signed it.

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*Attorneys for North Carolina Associate
Justice Allison Riggs*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was electronically filed and served this day by email, addresses as follows:

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Attorneys for the North Carolina State Board of Elections

/s/ Raymond M. Bennett
Raymond M. Bennett

EXHIBIT A

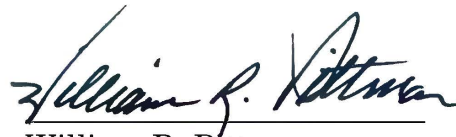
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Jefferson Griffin,)	
)	
vs.)	
)	
North Carolina State Board of)	
Elections,)	ORDER
)	
)	
and)	
Allison Riggs,)	
)	
Intervenor-Respondent)	

THIS CAUSE WAS HEARD by the undersigned at the February 7, 2025 term of Wake County Superior Court upon Petitioner's petition for judicial review of a final decision by the North Carolina State Board of Elections dismissing one category of protest of the 2024 general election for Seat 6 of the North Carolina Supreme Court (the "Never Resident" category). The Court has carefully considered *de novo* the entire record, the written and oral arguments of counsel, the written arguments of *amici curiae*, and the proffered and other relevant authority. The Court concludes as a matter of law that the Board's decision was not in violation of constitutional provisions, was not in excess of statutory authority or jurisdiction of the agency, was made upon lawful procedure, and was not affected by other error of law.

NOW THEREFORE, based upon the foregoing, the Court concludes that the decision of the North Carolina State Board of Elections should be, and hereby is, affirmed.

IT IS SO ORDERED this the 7th day of February, 2025.


William R. Pittman
Superior Court Judge

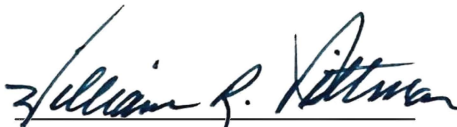
FILED
DATE: February 7, 2025
TIME: 02/07/2025 4:32:05 PM
WAKE COUNTY
SUPERIOR COURT JUDGES OFFICE
BY: S. Smallwood
STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE SUPERIOR COURT DIVISION
24CV040620-910

Jefferson Griffin,)	
)	
vs.)	
)	
North Carolina State Board of)	
Elections,)	ORDER
)	
and)	
Allison Riggs,)	
Intervenor-Respondent)	

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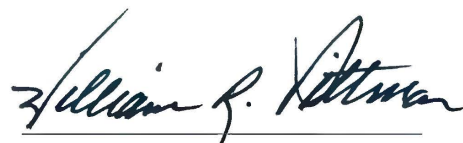
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NOW THEREFORE, based upon the foregoing, the Court concludes that the decision of the North Carolina State Board of Elections should be, and hereby is, affirmed.

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