

NORTH CAROLINA COURT OF APPEALS

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JEFFERSON GRIFFIN,

Petitioner-Appellant,

v.

NORTH CAROLINA STATE  
BOARD OF ELECTIONS,

Respondent-Appellee,

and

ALLISON RIGGS,

Intervenor-Respondent-  
Appellee.

From Wake County

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**APPELLANT’S RESPONSE IN OPPOSITION TO  
MOTION FOR INITIAL EN BANC HEARING**

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As Appellate Rule 31.1 states, en banc hearings are “not favored.” N.C. R. App. P. 31.1(a). This case is no exception. Justice Riggs’ motion for initial en banc hearing should be denied.

Many of the reasons for denying the en banc motion are the same as the reasons for why the Supreme Court denied the bypass petition.

First, as Justice Allen explained in the order denying the bypass petition, the Supreme Court had expected the superior court to provide “a careful analysis of the factual and legal issues presented by this case.” Order, *Griffin v. N.C. State Bd. of Elections*, No. 320P24-2, slip op. at 5 (N.C. Feb. 20, 2025) (Allen, J., concurring), *available* at <https://appellate.nccourts.org/orders.php?t=P&court=1&id=447067&pdf=1&a=0&docket=1&dev=1>. But the “three nearly identical one-page orders entered by the superior court do not meet this standard.” *Id.* It did not make sense for the full Supreme Court to hear the case “in the absence of any meaningful examination of those claims by a lower court.” *Id.*

So too here. Initial en banc hearing does not make sense given the absence of a reasoned opinion from the superior court. As the parties explained in their briefing on the bypass petition, there are 31 issues presented in this case. There may be a time for en banc rehearing after a panel decision on those issues, and the en banc Court could decide to narrow the issues that the full Court will reconsider to ensure expeditious review. But 31 issues does not meet the required standard that the questions in the case be “concisely stated.” N.C. R. App. P. 31.1(a)(2).

Second, the number of issues in this case could extend the time needed for and overwhelm en banc review. For instance, Judge Griffin’s petition for a writ of prohibition generated one per curiam opinion and five separate opinions at the Supreme

Court—and none of those opinions even reached the merits. If en banc review in this Court were to generate as many separate writings, review would be slower, not faster, than a panel decision.

Although the motion simply asserts that the en banc Court is better positioned to provide a thorough analysis, Mot. at 4 ¶ 12, the motion gives no reasons why that would be true. There is nothing to suggest that the full Court would provide a more thorough analysis than a three-judge panel. This Court, sitting in panels of three, publishes thorough analyses all the time.

Third, there's also the chance that initial en banc hearing would deprive Judge Griffin of his first shot at meaningful appellate review. With Judge Griffin recused, the en banc court would have an even number of judges, which could lead to deadlocking. That was a defect in the Board's bypass petition, also directed at an even-numbered Court. Oddly, the en banc motion agrees that deadlocking is a legitimate concern, En Banc Mot. at 5 ¶ 14, but it fails to recognize the risk of deadlocking posed by a decision in this case by a 14-member body.

As the Supreme Court made clear in the order denying the bypass petition, Judge Griffin has still not had any meaningful appellate review. This Court could go through the en banc procedure just to find itself deadlocked. It's not even clear what would happen at that point. Would the superior court's decision be automatically

affirmed? Or would the case be referred back to a three-member panel for initial decision? Regardless, there's no need to invite that kind of procedural chaos in a case of such public importance. Contrary to the argument in the motion, deadlocking would not preserve the public's trust and confidence. Mot. at 4 ¶ 12.

Finally, ignoring all these problems, the en banc motion argues that en banc review on the front end will be faster than en banc review on the back end. For support, the motion points to Rule 31.1(d), which delays the deadline to petition for discretionary review when en banc rehearing is sought. En Banc Mot. at 4-5.

This is not a concern worth worrying about today. First, it's speculative whether anyone will seek en banc rehearing in this Court as opposed to discretionary review in the Supreme Court. Second, this Court can act quickly on an en banc petition. Third, Appellees have not let deadlines in the Appellate Rules stop them from making filings. When they sought to bypass this Court altogether, Appellees filed a Rule 2 motion because they sought to operate outside the timelines in the appellate rules. N.C. R. App. P. 15(b) (prohibiting bypass petition until record docketed); Petition for Discretionary Review Prior to Determination by the Court of Appeals, Motion to Suspend Appellate Rules, and Motion to Expedite at 14, *Griffin v. N.C. State Bd. of Elections*, No. 320P24-2 (N.C. Feb. 17, 2025), available at [https://www.ncappellatecourts.org/show-file.php?document\\_id=369838](https://www.ncappellatecourts.org/show-file.php?document_id=369838). If after a panel decision

Appellees wish to operate outside the timing requirements in the Appellate Rules, they will likely invoke Rule 2 again.

### **CONCLUSION**

Judge Griffin respectfully requests that the Court deny initial en banc review.

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This the 6th day of March, 2025.

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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.

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