No. P24-865   DISTRICT 10

NORTH CAROLINA COURT OF APPEALS
****

JEFFERSON GRIFFIN,

              Petitioner,

       v.

NORTH CAROLINA BOARD OF
ELECTIONS,

              Respondent.

                                         <u>From Wake County</u>
                                         No. 24CV039050-910

****
NOTICE OF ADVERSE RULING BY TRIAL COURT
****

Today, the Wake County Superior Court entered a ruling denying a petition for a

writ of mandamus. As stated in Judge Griffin's earlier petition filed with this Court, Judge

Griffin had filed a petition for a writ of mandamus with the superior court last Friday, 6

December 2024. That petition was heard on an emergency basis this morning by the supe-

rior court, and the superior court denied it. A copy of the superior court's order is attached

to this notice.

By denying that petition, the State Board of Elections is now permitted to decide the

election protests on any arbitrary deadline. And the time for action by the Board is likely to

be arbitrary. Eighteen years ago, the General Assembly commanded the State Board to is-

sue rules that govern the "the timing of deliberations and issuance of decisions." N.C. Gen.

Stat. § 163-127.4(e); N.C. Sess. Law 2006-155, § 1 (enacting N.C. Gen. Stat. § 163-127.4), *available at* https://www.ncleg.net/enactedlegislation/sessionlaws/html/2005-2006/sl2006-155.html. In defiance of this statute, the Board has not issued any such rules. In its brief to the superior court on the mandamus action, the Board flaunted its own violation of the statute, asserting, "There are no statutory or rule-based timelines for the State Board to consider protest appeals . . . ." The superior court said the same in its order, at paragraph 8. There are supposed to be rules, but there aren't, and the fault lies with the State Board.

Now that the superior court has failed to hasten the State Board, Judge Griffin renews his request for immediate relief from this Court.

This the 9th day of December, 2024.

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Electronically submitted
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N.C. App. R. 33(b) Certification: I certify that the attorneys listed below have authorized me to list their names on this document as if they had personally signed.

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CERTIFICATE OF SERVICE

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

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Trial Court Administrator for the 10th Judicial District

This the 9th day of December, 2024.

/s/ Troy D. Shelton
Troy D. Shelton

ATTACHMENT

FILED
DATE: December 9, 2024
TIME: 12/09/2024 12:40:47 PM
WAKE COUNTY
SUPERIOR COURT JUDGES OFFICE
BY: K. Myers

STATE OF NORTH CAROLINA   IN THE GENERAL COURT OF JUSTICE
                                    SUPERIOR COURT DIVISION
COUNTY OF WAKE   24CV039050-910

JEFFERSON GRIFFIN,	)
Petitioner,	)
v.	)
	)
NORTH CAROLINA STATE	)
BOARD OF ELECTIONS,	)
Respondent.	)

THIS MATTER WAS HEARD by the undersigned at the December 9, 2024 session of Wake County Superior Court upon Petitioner's Petition for a Writ of Mandamus, and the Court having carefully considered the written and oral arguments of counsel as well as the proffered and other relevant authority, the Court makes the following FINDINGS OF FACT.

1. On or about November 19, Petitioner and others filed protests of election results.

2. The North Carolina State Board of Elections assumed jurisdiction of some of those protests on November 20.

3. The Board set a schedule for hearing the matter on December 11 with briefs due from the protesters on November 27 and from the responding candidates on December 6, this past Friday.

4. On December 2, Petitioner jointly with other protesters filed with the Board a Motion to Expedite requesting that the Board issue a written decision on the protests over which the Board assumed jurisdiction on December 9, today.

5. On December 6, Petitioner filed this petition, and asked that it be heard today.

6. North Carolina General Statutes Chapter 163, Article 15A and North Carolina Administrative Code Title 8, Chapter 2 apply to election protests, and generally contemplate a hearing with adequate notice and appropriate due process.

7. The Board appears to be following the legislatively required process, and there are no allegations to the contrary.

8. There is no statutory or administrative time frame for the Board to act on protests.

9. Petitioner asks the Court to order the Board to render a decision on the protests by December 10, tomorrow.

IN CONSIDERATION OF THE FOREGOING, the Court makes the following CONCLUSIONS OF LAW.

1. Mandamus generally is only appropriate when (1) the party seeking relief has a clear legal right to the act requested; (2) the respondent has a legal duty to perform the act requested; (3) performance of the act at issue is ministerial in nature and does not involve the exercise of discretion; (4) the respondent did not perform the act requested and the time for performance of the act has expired; and (5) no alternative, legally adequate remedy is available.

2. Petitioner has no legal right to have the act performed by a certain time arbitrarily set by him.

3. While the Board has a legal duty to make a decision, it does not have a legal duty to make a decision one day prior to the date it set for hearing.

4. The time for performance has not expired.

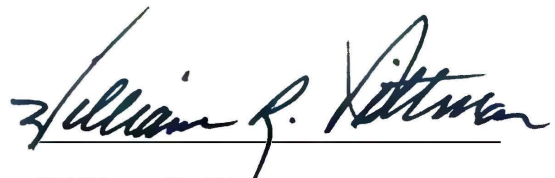5. Alternative, legally adequate legal remedies are available.

5. The Board's actions are reasonable.

6. There is no legal reason for the writ to issue.

NOW, THEREFORE, the Petition for a Writ of Mandamus is denied.

IT IS SO ORDERED this the 9th day of December, 2024.

_____
William R. Pittman
Superior Court Judge