

To Arkansas judge who ruled on execution drugs, death penalty protest is a religious act

by [Bob Allen](#) in the [May 24, 2017](#) issue

Wendell Griffen, an Arkansas circuit judge who also serves as a Baptist pastor, defended his participation in a death penalty protest after issuing a court order barring the state from using an execution drug.

His ruling had nothing to do with his views on capital punishment, [Griffen wrote in a blog post April 19](#). He was preparing to join other members of New Millennium Church in Little Rock for a Good Friday prayer vigil outside the Arkansas Governor's Mansion when he received a motion seeking a temporary restraining order to block the first of a series of executions scheduled to begin the day after Easter.

The party bringing the complaint claimed the Arkansas Department of Corrections had purchased vecuronium bromide—one of three drugs used in the state's execution protocol—illegally under false pretenses and wanted the product returned. Griffen focused on facts and the law, he wrote.

"I was not supposed to think about whether making the correct legal decision would be popular to anyone," Griffen wrote. "That is what judges do, whether we support or oppose capital punishment."

Griffen determined the facts showed the drug's distributor risked imminent and irreparable harm and had a legal claim likely enough to succeed to order the state not to use or dispose of the drug until a hearing. He then went to the protest, where for an hour and a half he lay on a cot, posing as a dead man "in solidarity with Jesus, the leader of our religion who was put to death by crucifixion by the Roman Empire."

Death penalty supporters responded to the judge's actions by calling for his impeachment. The Arkansas Supreme Court removed Griffen from all pending death penalty and lethal injection cases "to ensure that all are given a fair and impartial tribunal."

Arkansas executed four men in late April. In early May, the state medical board announced it would investigate the purchase of the lethal injection drugs.

The Arkansas high court has also referred Griffen to the state's Judicial Discipline and Disability Commission to determine whether he violated the Code of Judicial Conduct requiring judges to "maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives" and conduct themselves in ways that ensure "the greatest possible public confidence in their independence, impartiality, integrity, and confidence."

Griffen said whether or not the drug distributor was entitled to a temporary restraining order, he himself is entitled to be part of a Good Friday vigil.

"I am entitled to practice my religion—whether I am a judge or not—even if others disapprove of the way I practice it," he said.

Griffen denounced secrecy in the execution process at a session on the death penalty at last year's Cooperative Baptist Fellowship General Assembly in Greensboro, North Carolina.

"If you want to euthanize your dog, you know that under your state only the people who have certain credentials can put your dog down," Griffen said. Yet it is extremely challenging to find the qualifications of those who execute people, he said.

"As a matter of fact, there is no requirement that the state tell you, and they have an affirmative obligation to not disclose that," the judge continued. "One would call it irony, but it's too nice a word."

Griffen has long argued that his judicial role does not negate his responsibility to speak prophetically as a pastor, often leading to clashes with political opponents.

As a member of the Arkansas Court of Appeals appointed in 1996, Griffen clashed with the Arkansas Judicial Discipline and Disability Commission over comments in 2002 criticizing the racial diversity practices at the University of Arkansas. The ethics panel eventually dropped its case against Griffen, but he was voted out of office in 2008. In 2010, he was elected as circuit judge for the Fifth Division in Arkansas and reelected in 2016.

Recently he opposed a proposal to increase public funding of the Little Rock School District, protesting a 2015 takeover by the Arkansas Board of Education after the dissolution of a majority-black school board elected by voters. —Baptist News Global

**FOLLOWING UP (Updated October 5, 2018):** A government commission in Arkansas found probable cause that six members of the state's supreme court violated judicial ethics when they disciplined Griffen for participating in a death penalty protest.

"Judge Griffen was never given notice of, and the opportunity to be heard on, the Supreme Court's ultimate action—the removal of Judge Griffen from all death penalty and execution protocol cases pending and in the future," [wrote J. Brett Standridge, special counsel for the Judicial Discipline and Disability Commission, in a statement September 20](#). "In acting on such matters involving judges, it is important to consider the well-established case law that judges are presumed to be impartial and unbiased and presumptively will act with honesty and integrity in adjudicating cases."

The case in question related to a company declaring that the Arkansas Department of Corrections had purchased a pharmaceutical product from the distributor under false pretenses and wanting a temporary restraining order to block the state from using it as an execution drug.

"In a process separate from the ethics complaints, the 8th U.S. Circuit Court of Appeals recently dismissed a lawsuit by Griffen accusing the Arkansas Supreme Court of violating his civil rights," Baptist News Global reported. "Griffen's attorney has said he plans to appeal to the U.S. Supreme Court."

*Versions of this article appear in the May 24, 2017, and October 24, 2018, print edition under the title "People: Wendell Griffen" and Following Up.*