

NOV 20 2012

ELECTION PROTEST

(Use of this form is required by G.S. 163-182.9(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. 163-182.9 (b)(4). Please print or type your answers. Feel free to use and attach additional sheets if needed to fully answer the questions below. You may also attach relevant exhibits and documents. Please number the pages of such additional sheets and attachments.

- 1. Full name and mailing address of person(s) filing the protest.

Christina Kelley Gallegos-Merrill
10 Merrill's Rd.
Fletcher, NC 28732

- 2. Home and business phone number, fax number, and e-mail address.

Christina Kelley Gallegos-Merrill
828-423-6190
kelleycoproductions@yahoo.com

- 3. Are you either a candidate or registered voter eligible to vote in the protested election. If a candidate, for what office?

Christina Kelley Gallegos-Merrill is a candidate for the office of Buncombe County Board of Commissioners District 2 and is a registered voter in Buncombe County eligible to vote in the protested election and who did vote in the protested election.

- 4. List the date, location, and exact nature of the election protested. Name all candidates in the election and the number of votes each received. Note the winning candidate(s) elected or nominated.

The election protested is the November 6, 2012, general election for the office of the Buncombe County Board of Commissioners District 2.

| <u>Candidates</u> | <u>Votes</u> |
|-----------------------------------|--------------|
| Mike Fryar | 19,993 |
| Ellen Frost | 19,904 |
| Christina Kelley Gallegos-Merrill | 19,891 |
| Carol Peterson | 19,870 |

- 5. Does this protest involve an alleged error in vote count or tabulation? If so, please explain in detail. No.

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6. Does this protest involve an irregularity or misconduct not described in number 5 above? If so, please give a detailed description of such misconduct or irregularity and name those who committed such action.

This protest concerns several hundred voters who are purportedly students at Warren Wilson College. Warren Wilson College (hereinafter the "College") is a small college located in Buncombe County, North Carolina.

The College campus includes portions of precincts 66.1 and 65.1 of Buncombe County. Precinct 66.1 is in county commission district 1 and Precinct 65.1 is in county commission district 2. There are dormitories in both precincts.

The College has a mail facility located at 701 Warren Wilson Road which address is in Precinct 66.1 and District 1. Upon information and belief 701 Warren Wilson Road is not a residential address. Warren Wilson Road is the dividing line between Precincts 66.1 and 65.1.

The Buncombe County Board of Elections (hereinafter the "Board") staff determined that there were voters who were registered to vote in Precinct 66.1 who reside in Precinct 65.1.

Upon information and belief many of the voters have previously voted in Precinct 66.1.

Upon information and belief the residency of the individuals attending the College changes frequently.

The Board, by and through its staff, sent out a directive (hereinafter the "Directive") to its early voting officials to inquire of each voter registered at 701 Warren Wilson Road which "side of the road they live on." See Exhibit A attached hereto. The Directive further instructed the early voting officials to have all voters with a 701 Warren Wilson Rd. address of registration vote a provisional ballot and provide the voter with a ballot style reflective of the voter's answer.

136 provisional ballots were obtained as a result of the Directive, 19 of which were Same Day registrants (9 in precinct 65.1 and 10 in precinct 66.1.) The Board obtained a list of students from the College and based upon the addresses (dorms) in the list determined which district and precinct each of the provisional voter resided. Upon information and belief the list provided by the College is unsworn and without any affirmation as to its integrity. Upon information and belief no inquiry was made about the accuracy of the list or how it is maintained or how often updated.

Of the 136 provisional ballot voters 75 were determined to live District 2 ballot style (ballot style G003) and 61 were determined to live in District 1 (ballot style G007.)

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Of the 75 provisional voters determined to reside in Precinct 65.1 (District 2), 44 voters reaffirmed their 701 Warren Wilson Road (District 1) while completing the provisional ballot envelope which solicits the voter's residence including the "dorm."

Pursuant to the Board's determination of voter residency, there should have been 75 style G003 ballots and 61 style G007 ballots; however the Board, upon opening the provisional ballot envelopes at canvas, determined that incorrect ballot styles were presented to the voters in some instances.

Using notations marked in writing on the provisional ballot envelope such as "north" and "south" the Board, during canvas, approved many of the provisional ballots. The Board relied upon these notations in determining whether a voter received the correct ballot style. It is unclear who made the notations on the envelopes.

The Board erred in that it determined that voters intended to register in precincts and districts contrary to the intentions stated by the voters on the provisional ballot envelope.

Some voters failed, after repeated opportunity, to provide their residential address as was their obligation. The Board erred in failing to ascertain the correct address and in counting ballots of voters which are not lawfully registered.

The Board erred by providing provisional ballots to ineligible voters contrary to NCGS 163-166.11 in that the voter must execute "a written affirmation" stating that the individual is a registered voter in the jurisdiction in which the individual seeks to vote and is eligible to vote in that election. At least 44 individuals affirmed that they resided in Precinct 66.1 (District 1) and the Board attempted to provide them with precinct 65.1 style ballots.

The Board erred by removing voters from their registered precinct without authority and in disregard to the NCGS 163-82.1.

The Board erred in using unsworn, unreliable information in attempting to determine the residency of individuals for voting purposes.

7. Please set out all election laws or regulations that you allege were violated in your responses to 5 or 6 above. State how each violation occurred. Please provide the names, addresses, and phone numbers of those who you allege committed such violations.

The election laws violated and the nature of the violations have been specified above. The violations were committed during the course of counting and canvassing of votes by the Buncombe County Board of Elections.

8. Please provide the names, addresses, and phone numbers of any witnesses to any misconduct alleged by you in this protest, and specify what each witness listed saw or knows.

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Mark Delk, of 20 Spring Valley Drive, Arden NC 28704 was a witness to the official acts complained of in this protest. Mr. Delk observed the deliberations and voting of the Buncombe County Board of Elections during the course of the violations complained of herein.

Trena Parker is the Director of the Buncombe County Board of Elections and was responsible for the administration of the election the subject of this protest.

Rachel Rathbone is an employee of the Buncombe County Board of Election and the author of the aforesaid Directive.

9. What action do you desire the county board of elections to take in this matter?

The illegal votes which were counted, tabulated and included in the canvass in violation of state law, as described and complained of herein, should be removed from the official count and canvass of votes. The returns in the election for the office of Buncombe County Commission should be corrected in accordance with law.

10. Do you contend the allegations set out by you are sufficient to have affected or cast doubt upon the results of the protested election? If your answer is yes, please state the factual basis for your opinion.

The question of whether the irregularities complained of herein are sufficient to have affected or cast doubt upon the results of the protested election cannot be determined at this time, based upon existing evidence. However, there is a 13 vote margin and hundreds of votes in question.

11. Have you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests?

The Protesters and their legal counsel are familiar with North Carolina law pertaining to election protests and current North Carolina State Board of Elections regulations pertaining to election protests.

12. How many pages of additional answer are attached to this protest? None. How many pages of attachments are attached? One

This the 20th day of November, 2012.


Christina Kelley Gallegos-Merrill

William W. Peaslee
WILLIAM W. PEASLEE ATTORNEY AT LAW PLLC

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North Carolina Bar #17922
102-K Commonwealth Ct.
Cary, NC 27511
Telephone: (919) 481-1992
Facsimile: (919) 481-2919
Attorney for Protester Christina Kelley Gallegos-
Merrill

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Date/Time Filed with County Board

Sho Pak 11/20/12
(to be filled out by the county board)

NOTE: The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections, PO Box 27255, Raleigh, NC 27611-7255, (919) 733-7173.

History Note: Authority G.S. 163-22; 163-182.9; Temporary Adoption Eff. April 15, 2002; *Eff. August 1, 2004.*

CERTIFICATE OF SERVICE ATTACHED

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CERTIFICATE OF SERVICE

I certify that the foregoing ELECTION PROTEST was served this day by hand delivery thereof to the offices of the Buncombe County Board of Elections at its offices located at:

35 Woodfin St.
Asheville, NC
Greensboro NC 28801

I further certify that a copy of the foregoing ELECTION PROTEST was served this day by facsimile transmission as follows:

North Carolina State Board of Elections
Attention Mr. Gary Bartlett
Fax number: (919) 715-0135

This the 20th day of November, 2012.



William W. Peaslee
WILLIAM W. PEASLEE ATTORNEY AT LAW PLLC

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Rachel Rathbone

From: Rachel Rathbone
Sent: Wednesday, October 31, 2012 10:22 AM
To: BOEACCC; BOEAVML; BOEBCTC; BOEBMBL; BOEBSML; BOEBTFD; BOEFVBL; BOEJPF; BOEKENI; BOELCBL; BOELUCH; BOEMHBC; BOENABL; BOESBBL; BOEUHFR; BOEUNCA; BOEWABL; BOEWVTH
Cc: Trena Parker; Jennifer Sparks; John Noce; Barbara Bowers; Kathryn.Horne@buncombecounty.org; Tracy Cannon; Rebekah Barlow; Joyce A. Kanavel
Subject: Urgent! Print out this map!
Attachments: Warren Wilson.pdf

As always, please print the email below and make certain that every worker at your site (both shifts) reads and signs it.

Print out the map attached above!

Hello All! We have identified a particular area at Warren Wilson that requires additional address information from the voters to ensure that they receive the correct ballot style. From this point forward, if you have a voter with an address of 701 Warren Wilson Rd., show them the map attached above and ask them which side of the road they live on. Use the map to determine which ballot style to give them and vote them provisionally. ***They must vote a provisional ballot.***

If they live on the SOUTH side of the road, ask them to fill out a voter registration form so that their residential address can be updated. They should receive ballot G007.

If they live on the NORTH side, give them ballot style G003. Ask them to list their residential address on the provisional envelope.

If you recognize that you have already had voters in your precinct who are registered at the 701 Warren Wilson Road address, please know that we have communicated with the State Board of Elections and are in the process of sending out a memorandum to these voters to address the issue.

If you have any questions regarding these instructions please call us.

Thank you!