

Received at 10:30am
D. B. W.

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

NOV 16 2012

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 filing the protest.

Mike Fryar, 2 Lake Dr., Fairview, NC 28730

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

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

Mike Fryar 2 Lake Dr., Fairview, NC 28730 , 828-275-2333, mikefryar@chater.net

Christina Kelley Gallegos-Merrill, 10 Merrill's Rd., Fletcher, NC 28732, 828-423-619, 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?

Yes, both are candidates for County Commission District 2

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.

Candidates concerned include: candidate for County Commissioner Dist. 2. Mike Fryar (19,904), County Commissioner Dist. 2. Ellen Frost (19719), County Commissioner Dist. 2. Christina Kelley Gallegos-Merrill (19806), Ellen Frost Carol Peterson (19701). The number of vote received for each is based upon the unofficial results as the canvass has not begun.

On November 15, 2012 Eric Gorny, a registered voter of Buncombe County Precinct 65.1, filed a notice of challenge challenging the right of 256 individuals listed as registered voters in Buncombe County precinct 65.1 to vote or remain registered in Precinct 65.1.

Counsel for the protestors asked the County Board of Elections (hereinafter "Board") to hear those challenges prior to the canvass of votes. The Board decided it would delay its decision on the matter of whether to hear those challenges to the morning of November 16, 2012, the day of the canvass. Counsel has argued that the deadlines provided in NCGS 163-83 and 163-85 are in applicable as the individuals challenged were not on the list of registered voters in Precinct 65.1 until the Board, on its own motion, re-registered the individuals challenged from a neighboring precinct which was not in District 2. The Protestors, Mr. Gorny and other registered voters were not provided the notice and/or the opportunity to challenge the individuals who are the subject of Mr. Gorny's challenges within the times prescribed by the aforesaid statutes.

5. Does this protest involve an alleged error in vote count or tabulation? If so, please explain in detail.

Yes, the provisional ballots which voted by submitted by the voters which are the subject of Mr. Gorny's challenges, once cast, will not be retrievable. The Board should hear the challenges before canvass and the loss of the ability to retrieve the ballots.

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.

Yes, several hundred voter registrations were changed by the Board on its own motion. Provisional ballots were provided to these voters for a County Commission District 2 ballot style. The Board used information to determine the residency of these individuals from unreliable sources and without sufficient scrutiny.

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.

NCGS 163-82.1, 82.6, 82.7

Eric Gorny, 318 Mountain Crest Rd., Swannanoa, NC 28778

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.

Eric Gorny, 318 Mountain Crest Rd., Swannanoa, NC 28778, Mr. Gorny is the voter who filed the challenges
Trena Parker, 35 Woodfin St., Asheville, NC 28801, Ms. Parker is the Director of the Board

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

The County Board of Elections should delay the canvass until it has had an opportunity to hear the challenges to vote and remain registered filed by Eric Gorny. The Board should delay the canvass until such time that it has further scrutinized the voter registration of the provisional and absentee voters whose registration was changed by the Board's own action.

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.

Yes, the vote margin is smaller than the number of absentee and provisional votes which are the subject of the Gorny challenges and this protest.

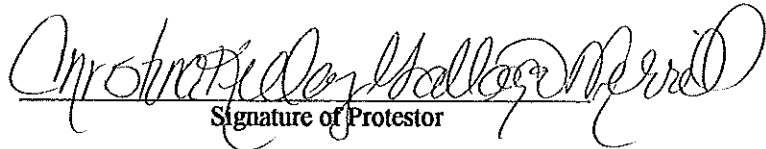
11. Have you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests?

Yes

12. How many pages of additional answer are attached to this protest? 2

How many pages of attachments are attached? 2

Date & time signed: 11/16/12 10:30AM


Signature of Protestor

Printed name of Protestor

Date/Time Filed with _____ County Board of Elections

_____ by: _____
(to be filled out by the county board) (title)

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.