

DEC 10 2012

Victoria Lupa 4:07 PM.

ELECTION PROTEST (Amended)
(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 filing the protest.

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

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

(p) 828-775-0804, (f) 828-253-9675, eric.gorny@nmfn.com

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

Yes. I am a registered voter eligible to 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.

11/6/2012. Buncombe County, NC. The election protested is for Buncombe County Commissioner District 2.

Mike Fryar	20,007 (winner)
Ellen Frost	19,918 (winner)
Christina Kelley G. Merrill	19,900
Carol Weir Peterson	19,880

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

No.

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. Upon information and belief, voters cast provisional ballots in precincts and districts other than those in which the voters were eligible to vote, and without proper written affirmation.

The names of those who committed these violations are unknown at this time.

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.

G.S. Sect. 163-166.11(2): "The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before an election official at the voting place, stating that the individual is a registered voter in the jurisdiction as provided in G.S. 163-82.1 in which the individual seeks to vote and is eligible to vote in that election."

Upon information and belief, voters cast provisional ballots in precincts and districts other than those in which the voters were eligible to vote, and without proper written affirmation.

Names, addresses, and phone numbers of those who committed these violations are unknown at this time.

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, 828-775-0804, who overheard voters making statements about voting twice, and attended County Election Board meetings where public, Election Board, and Election Staff comments described provisional ballots cast in precincts and districts other than those in which the voters were eligible to vote, and without proper written affirmation.

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

Invalidate all provisional ballot votes cast for County Commissioner 2 in precincts and districts other than those in which the voters were eligible to vote, and/or without proper written affirmation.

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. Upon information and belief, more than 18 provisional ballots were cast in precincts and districts other than those in which the voters were eligible to vote, and/or without proper written affirmation, and counted towards the official election results.

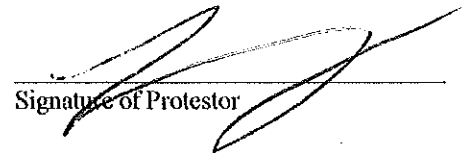
11. Have you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests?

Yes.

12. How many pages of additional answer are attached to this protest? 0 How many pages of attachments are attached? 0

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Signature of Protestor

Date/Time Filed with County Board

(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.*