Davis, David

From: Bartlett, Gary <Gary.Bartlett@ncsbe.gov>
Sent: Friday, November 02, 2012 1:35 PM
To: Davis, David
Cc: McLean, Johnnie; Wright, Don
Subject: RE: ECU Registration Table

Yes sir.

From: Davis, David [mailto:dpdavis@pittcountync.gov]
Sent: Friday, November 02, 2012 1:34 PM
To: Bartlett, Gary
Cc: McLean, Johnnie; Wright, Don
Subject: RE: ECU Registration Table

Can we use the list generated by ECU that lists on-campus students (contains their name, on-campus address, & date of birth)? We match that with their student ID. Other government document?

From: Bartlett, Gary [mailto:Gary.Bartlett@ncsbe.gov]
Sent: Friday, November 02, 2012 12:11 PM
To: Davis, David; Steven Donaldson
Cc: McLean, Johnnie; Wright, Don
Subject: RE: ECU Registration Table

Stop it; instructions will follow through Johnnie.

From: Davis, David [mailto:dpdavis@pittcountync.gov]
Sent: Friday, November 02, 2012 11:58 AM
To: Steven Donaldson
Cc: Bartlett, Gary; McLean, Johnnie; Wright, Don
Subject: RE: ECU Registration Table

That is correct we are using that as verification of address. The State Board is cc'd on this email. If they wish for us to stop accepting that as proof of address we will do so.

Thanks,
Dave

From: Steven Donaldson [mailto:SDonaldson@mittromney.com]
Sent: Friday, November 02, 2012 11:48 AM
To: Davis, David
Subject: RE: ECU Registration Table
Importance: High

David,

I have just received a report that the registration table at the ECU location is accepting Amazon.com and other online shopping accounts presented on smartphones as proof of residence. This, of course, does not fall within the regulations

set forth by the State Board of Elections. Please call me as soon as possible to discuss the resolution that you come to in this situation.

Thanks,

Steve Donaldson
North Carolina Director of Election Day Operations
Romney for President, Inc.
(859)893-2452 (c)
(919)719-0540 (o)

Davis, David

From: McLean, Johnnie <Johnnie.McLean@ncsbe.gov>
Sent: Friday, November 02, 2012 4:54 PM
To: Steven Donaldson
Cc: Davis, David
Subject: RE: ECU Registration Table

Steve,

This confirms the practice identified in your first email has been stopped. You are correct that online shipping information is not one of the allowable documents to be used for same day registration.

Johnnie McLean
Deputy Director
919-715-1790

From: Davis, David [mailto:dpdavis@pittcountync.gov]
Sent: Friday, November 02, 2012 12:19 PM
To: Bartlett, Gary; Steven Donaldson
Cc: McLean, Johnnie; Wright, Don; Fleming, June; McQueen, Tony; Overton, Sylvia; Peele, LaToya; Robertson, Joanne; Stevens, Lillie; Conradt, David (Pitt Co. Board of Elections); Nelson, Patrick M. (Pitt Co. Board of Elections); Taylor, Lisa (Pitt Co. Board of Elections)
Subject: RE: ECU Registration Table

Notifying all sites & staff now. Telling them to follow exactly by the list of ID types.

Thanks

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Sent: Friday, November 02, 2012 12:11 PM
To: Davis, David; Steven Donaldson
Cc: McLean, Johnnie; Wright, Don
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Thanks,

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North Carolina Director of Election Day Operations
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(919)719-0540 (o)

NOV 1 5 2012

08 NCAC 02 .0111 ELECTION PROTEST FORM

All persons filing election protests with a county board of election shall use the following form:

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 filing the protest.

Dan Forest ("Forest") and Kimberly Hendrix ("Hendrix") are the persons filing this protest. Both Mr. Forest and Ms. Hendrix should be contacted through their attorney, John Branch, at 128 E. Hargett St., Suite 300, Raleigh, NC 27601, (919) 856-9494.

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

Dan Forest – 8760 Wildwood Links, Raleigh, NC, 27613, (919) 961-2424

Kimberly Hendrix – 1830 Blue Banks Farm Rd, Greenville, NC 27834, (252) 752-8689, rllltd@aol.com.

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

Dan Forest – candidate for North Carolina Lieutenant Governor

Kimberly Hendrix – registered voter in Pitt County, North Carolina, and was eligible to participate 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.

Both Forest and Hendrix are protesting the November 2012 race between Linda D. Coleman and Dan Forest for North Carolina Lieutenant Governor. As of November 14, 2012, the website of the North Carolina State Board of Elections reported the election results as 2,172,108 votes for Dan Forest and 2,161,799 votes for Linda Coleman.

The specific grounds for the election protest are that, upon information and belief, during early voting in Pitt County from October 18, 2012 through November 2, 2012, the poll works at the early

voting site located at the Mendenhall Student Center on the campus of East Carolina University ("Mendenhall Voting Site") allowed voters to use documents not listed in N.C.G.S. §§ 163-82.6A or 163-166.12 to complete in-person registration to vote and voting. Specifically, poll workers at this site allowed people who were using the same day registration to vote and voting process to use their smartphone, tablet computer, or laptop computer to access Amazon.com or PayPal.com to show the poll worker that he or she had items shipped to an address within Pitt County. After showing the poll worker the address information from the voter's smartphone, tablet computer, or laptop computer, the poll worker would complete the voter's registration and allow the voter to vote a normal (and not provisional) ballot.

N.C.G.S. §§ 163-82.6A and 163-166.12 provide the exclusive list of documents by which a voter must confirm his or her residence: a North Carolina driver's license, a photo identification from a government agency, a current and valid photo identification, or a current utility bill, bank statement, government check, paycheck, or other government document containing the name and address of the voter. The North Carolina General Assembly has not authorized poll workers to confirm the address of voters by way of the Amazon.com and PayPal.com websites.

In recognition of this, on November 2, 2012, David Davis, the Director of Elections for the Pitt County Board of Elections, sent an email stating that "[i]t has been brought to my attention that we have been too broad in our interpretation of the ID requirements for same day registrants at One Stop. We must follow exactly by the statutes (163-166.12 & 163-82.6A). It is our responsibility to be fair to all & compliant with election law. If you have any questions please feel free to contact me for more information." A copy of the email is attached to this Election Protest as **Exhibit A.**

Hendrix and Forest protest the votes from the Mendenhall Voting Site on the grounds that there were voters that were registered and votes that were cast in violation of North Carolina law.

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

The vote count from the Mendenhall Voting Site was in error due to voters being registered and voting in violation of North Carolina law as described in the response to paragraph 4.

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 involves an irregularity or misconduct with respect to voting at the Mendenhall Voting Site being in violation of North Carolina law as described in the response to paragraph 4.

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.

N.C.G.S. §§ 163-82.6A or 163-166.12 were violated, as descried in the response to paragraph 4.

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.

Melissa Powell – Ms. Powell was an election observer at the Mendenhall Voting Site on October 30, 2012 and November 2, 2012. Ms. Powell directly observed the use of smartphones, tablet computers, and laptops to register voters. An affidavit from Ms. Powell describing the incidents is attached to this Election Protest Form as **Exhibit B**. Ms. Powell's address is 594 Lexington Dr., Greenville, NC 27834 and her phone number is 252-752-3720.

David Davis – Director of Elections for the Pitt County Board of Elections. Mr. Davis sent the email recognizing the issues with the Mendenhall Voting Site and, upon information and belief, investigated complaint(s) of the illegal behavior described above. Mr. Davis's address is 1717 W. 5th Street, Greenville, NC 27834, and his phone number is 252.902.3300.

Election workers and poll observers at the Mendenhall Voting Site – The election workers and poll observers at the Mendenhall Voting Site should have knowledge of the registration and voting that occurred there from October 18, 2012 to November 2, 2012. Forest and Hendrix currently do not have a list of who all of the workers or observers are.

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

Due to the illegal votes being cast at the Mendenhall Voting Site and since they illegal votes were irretrievably case as regular votes (as opposed to provisional votes), all votes case at the Mendenhall Voting Site from October 18, 2012 through November 2, 2012 should be invalidated.

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. A large number of voters voted at the Mendenhall Voting Site from October 18, 2012 to November 2, 2012. The race between Ms. Coleman and Mr. Forest is currently within about 11,000 votes. Due to the volume of votes at the Mendenhall Voting Site and the closeness of the Lieutenant Governor's election, the facts described above affected or cast doubt upon the Lieutenant Governor's race.

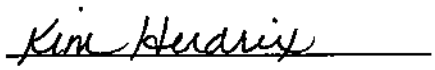
11. Have you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests?

Both Mr. Forest and Ms. Hendrix are represented by counsel who has read N.C.G.S. §§ 163-182.9 through 163-182.14 and the current NCSBE regulations pertaining to election protests.

12. How many pages of additional answer are attached to this protest? 0 How many pages of attachments are attached? 5

Signature of Protestor:

Dan Forest



Kim Hendrix

Date/Time Filed with County Board

NOV 15 2012 / 3:00 pm

(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.

Sent: Friday, November 2, 2012 3:41 PM
Subject: ID for Same Day Registrants at One-Stop

It has been brought to my attention that we have been too broad in our interpretation of the ID requirements for same day registrants at One-Stop. We must follow exactly by the statutes (163-166.12 & 163-82.6A). It is our responsibility to be fair to all & compliant with election law. If you have any questions please feel free to contact me for more information.

Thanks,
Dave Davis
Director of Elections
Pitt County Board of Elections
www.pittcountync.gov/depts/elections
PO Box 56, Greenville NC 27835
(252) 902-3300

AFFIDAVIT OF MELISSA POWELL

1. My name is Melissa Powell. I am over eighteen (18) years of age and am competent to give the testimony in this Affidavit.

2. This Affidavit is based upon my personal knowledge, except to those matters that are based upon information and belief, and to those matters I believe them to be true based upon information reasonably available to me at this time.

3. On October 30, 2012, I was an observer at a polling place located on the campus of East Carolina University, specifically at the Mendenhall Student Center. On October 30, the polling place was used as a One Stop Early Voting Site at which voters could register to vote and vote on the same day.

4. While serving as an observer, I noticed that a number of college-age voters, presumably students, were using websites accessed with smart phones, tablet computers, and laptop computers in an attempt to show proof of residency. My estimate is that a large number of college-age voters used this method, but I believe that many more voters other than the ones I observed did so as well. The elections officials consistently allowed students to register in this manner for sixteen (16) days so there is no way for me to know with certainty the exact number. I would assume it to be substantial because the practice continued for days.

5. In a typical case, a voter would access a user account on a website such as Amazon.com or Paypal.com which contained their address. The voter would then show the web page to a poll worker using their mobile device, explaining that the address associated with the user account was where the voter had items shipped to and, therefore, lived.

6. In nearly all the cases I observed, voters who used their mobile devices to show proof of residency while filling out registration forms were permitted to complete the process and were given regular ballots to vote.

7. Upon witnessing this, I believed that a user account on a website accessed with a mobile device was not an acceptable method of proving residency under North Carolina law.

8. Another observer and I asked the chief judge at the polling place whether using a mobile device had been approved as a proper method of establishing residency. She stated that it was an acceptable type of identification, but was vague as to when this method had begun to be accepted.

9. Later, the chief judge claimed that mobile devices had been used to show proof of residency at other early voting locations and for regular voting registrations on campus.

10. After leaving the polling place on October 30, I contacted a friend who works for the North Carolina Republican Party and described what I had observed. She told me that a website accessed with a mobile device was not a permissible form of identification and that the practice would be stopped.

11. On November 1, 2012, I spoke with my friend once again. She told me that she believed the situation had been resolved, and that if I witnessed any voter attempting to establish proof of residency using a mobile device, I should contact the hotline that the Party had established to address voting irregularities.

12. I returned to the Mendenhall Student Center polling place on November 2, 2012. Within thirty (30) minutes of my arrival, I witnessed a poll worker telling a college-age voter that if she had a smart phone or other mobile device and could access a website listing her

present address, that address would be accepted as proper identification for her to register and vote.

13. At that point, I asked the chief judge to be excused, stepped outside, and contacted the hotline with the telephone number I had been provided.

14. Within thirty (30) minutes of my call to the hotline, the chief judge received a phone call, and then announced that smart phones and mobile devices were banned from use in the voting area, and that poll workers were no longer able to accept a website address as proper identification.

15. The chief judge then walked along the line of waiting voters, repeating her announcement several times and answering any questions regarding the materials that were acceptable to prove identification and residency.

16. In addition, a member of the Board of Elections arrived to assist students who wished to register and vote.

17. After the chief judge's announcement, any voter who lacked proper identification was given a provisional ballot and informed that they had fifteen (15) days to provide the proper identification information to the county Board of Elections office.

18. However, I believe that voters who used mobile devices to show proof of residency before the chief judge's announcement were permitted to register and were given regular ballots to vote.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

This the 15 day of November, 2012.

By: Melissa Powell
Melissa Powell

SWORN TO AND SUBSCRIBED BEFORE ME

This the 15 day of November, 2012.

PEGGY J. HAGANS NOTARY PUBLIC PITT COUNTY, NC

Notary Public

My Commission Expires:

10-13-14

STATE OF NORTH CAROLINA

COUNTY OF PITT

PITT COUNTY
BOARD OF ELECTIONS

In the Matter of:

ELECTON PROTEST
FILED BY DAN FOREST
AND KIMBERLY HENDRIX

ORDER

THIS MATTER was heard on November 16, 2012 by a panel (the "Panel") consisting of the members of the Pitt County Board of Elections to consider the election protest filed November 15, 2012 by Dan Forest, candidate for North Carolina Lieutenant Governor, and Kimberly Hendrix, registered voter in Pitt County, challenging the method of residency verification for same day voter registration at the Mendenhall Student Center Early Voting Site at East Carolina University during the early voting period.

This protest, having been filed prior to canvass, was scheduled for hearing on November 16, 2012 pursuant to North Carolina General Statute 163-182.10.

Counsel for the Dan Forest Campaign, John E. Branch, was present. Also present was Betsy Leech of the Pitt County Democratic Party.

The Panel considered the following evidence:

(1) The Election Protest Form filed November 15, 2012;
(2) Affidavit of Melissa Powell dated November 15, 2012;
(3) Email from Dave Davis dated 11/2/12 at 3:41 PM;
(4) Email chain between David Davis, Steven Donaldson, and Gary Bartlett dated 11/2/12 beginning at 11:48 AM and ending at 1:35 PM
(5) Statements from Dave Davis; and
(6) Statements from Betsy Leech;

After considering the evidence, hearing the argument of counsel, and reviewing the law, the Panel makes the following:

FINDINGS OF FACT

1. Dan Forest and Kimberly Hendrix timely filed an election protest on November 15, 2012 with the Pitt County Board of Elections.

2. The Mendenhall Student Center at East Carolina University served as an early voting site prior to the general election on November 6, 2012. This site was open for twelve (12) days.

3. 1,023 voters at this site registered to vote on the same day.

4. An undetermined number of those same day registration voters provided electronic Paypal or Amazon.com receipts as proof of residence.

5. On November 2, 2012 at 11:48 AM, David Davis received an email from Steven Donaldson advising that Amazon.com and other online shopping accounts were presented on smartphones as proof of residence at the ECU early voting location.

6. On November 2, 2012 at 11:58 AM, David Davis affirmed the Donald Donaldson's report was correct, and sought written direction from the State Board of Elections as to the practice.

7. On November 2, 2012 at 12:11 PM, Gary Bartlett with the North Carolina State Board of Elections directed that the above practice stop, and the practice was immediately stopped.

Based on the foregoing Findings of Fact, the Panel makes the following

CONCLUSIONS OF LAW

1. The presentation of Paypal and/or Amazon.com account information on a Smartphone or other electronic device as proof of residence for purposes of same day voter registration is an irregularity.

2. The Panel is unable to finally determine the effect of this irregularity on the outcome of the election because this was a multicounty election.

Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED** by the Panel as follows:

1. The election protest filed by Dan Forest and Kimberly Hendrix on November 15, 2012 and the Findings of Fact and Conclusions of Law made by this Panel shall be sent to the State Board of Elections for further action.

This _____ day of November, 2012, nunc pro tunc to November 16, 2012.

_____
DAVID CONRADT
CHAIR, PITT COUNTY
BOARD OF ELECTIONS AND
PANEL MEMBER

_____
PATRICK NELSON
MEMBER, PITT COUNTY
BOARD OF ELECTIONS AND
PANEL MEMBER

_____
LISA TAYLOR
MEMBER, PITT COUNTY
BOARD OF ELECTIONS AND
PANEL MEMBER

SHANAHAN LAW GROUP, PLLC

TOUGH • SMART • PROVEN

DEC 07 2012

December 4, 2012

Mr. David Davis
Director
Pitt County Board of Elections
1717 W. 5th Street Greenville, NC 27834

RE: Dan Forest Election Protest

Dear Mr. Davis,

As you are aware, I represent Dan Forest. This will confirm our conversation a week or so ago wherein I informed you that Mr. Forest withdraws the election protest he filed with the Pitt County Board of Elections.

Please let me know if you have any questions.

Sincerely,

John E. Branch III

Cc: Don Wright

128 E. HARGETT STREET, SUITE 300 • RALEIGH, NC 27601 • (919) 856-9494 • 1-866-392-1962
www.shanahanlawgroup.com

Meeting Type: Canvass
Location: 1717 West 5th Street, Greenville NC
Date and Time: November 16, 2012; 9:00 am

Present: Chair David Conradt, Secretary Patrick Nelson, Member Lisa Taylor, and Director Dave Davis.

Agenda: Approved.

Election Protest (Dan Forest & Kim Hendrix): Kim Hendrix, John Branch, and Betsy Leech addressed the Board regarding the protest filed on November 15, 2012 (see attached). County Attorney Janis Gallagher and Lisa Overton assisted the Board. The Board ordered that their findings of fact and conclusions of law be sent to the State Board of Elections for further action (see attached draft order).

Provisional Ballots: Provisional ballots that had not been previously fed into the M100 were hand-counted. Provisional results were added to the official results total.

Supplemental Absentee Ballots: Supplemental absentee ballots were counted and added to the official results total.

Chief Judges: The Board met with the precinct Chief Judges.

Business: The Board signed the official abstract. An election protest was timely received from Faris Dixon (see attached) and a preliminary hearing was scheduled for November 21 at 3:30 pm.

The Board adjourned.

Patrick M. Nelson, Secretary

Meeting Type: Special
Location: 1717 West 5th Street, Greenville NC
Date and Time: November 21, 2012; 3:30 pm

Present: Chair David Conradt, Secretary Patrick Nelson, Member Lisa Taylor, and Director Dave Davis.

Business: The Board received Mr. Dixon's withdrawal of protest (see attached).

The Board adjourned.

Patrick M. Nelson, Secretary