

**BUNCOMBE COUNTY BOARD OF ELECTIONS
MINUTES OF DECEMBER 5, 2012**

BE IT REMEMBERED: THAT THE BUNCOMBE COUNTY BOARD OF ELECTIONS MET ON DECEMBER 5, 2012 AT 6:30 P.M. AT 35 WOODFIN STREET, MEETING ROOM #330, IN ASHEVILLE NORTH CAROLINA, WHERE AND WHEN THE FOLLOWING BUSINESS WAS TRANSACTED:

MEMBERS PRESENT:

Jones Byrd, Chairman
Lucy Smith, Secretary
Robert Van Wagner, Member

STAFF PRESENT:

Trena Parker, Director
Rachel Rathbone, Staff
John Noce, Staff

VISITORS: See Attached

The meeting was called to order at 6:37 p.m. The Board greeted the visitors. Jones stated that the purpose of this meeting is to determine preliminary consideration for a protest that was filed and to answer two questions; one, does it comply with the protest statutes, and two, is there probable cause to believe that there is a violation of election law, misconduct, or irregularity.

Jones asked Trena to describe what has been filed. Trena responded that two protests had been filed by Mr. Peaslee, one of which was initiated by Mike Fryar and Christina Merrill, and a second one that is down in Raleigh waiting for an appeal to be heard by the State Board. Mike Fryar stated that his protest was basically a request to keep the provisional ballots issued to Warren Wilson students separate from all other provisional ballots and that the Board had granted that request. Jones stated, and Ms. Merrill's attorney Mr. Johnson and Mr. Fryer, acknowledged that the Board had dealt with these two protests. Trena told the Board that a Notice of Challenge for registration had also been filed on November 15th. Jones stated that the deadline to file challenges was 25 days before Election Day, or on Election Day itself, and that because this one was filed at Canvass, it was not timely. Eric Gorny stated that he felt like there were circumstances that would have allowed it. Jones responded that it did not meet the deadline and that it had been dealt with already as well, which neither Mr. Gorney nor his counsel disagreed.

Jones stated that there were eight documents from Eric Gorny that resembled printouts from various locations. Jones inquired as to whether or not the basis for the objections was the same. Eric responded that each of these eight persons are still registered in other places. Jones inquired as to whether anyone knew if the students had voted in other places. Attorney John Skerritt, who was representing Eric Gorny, responded that he did not know. He stated that he would concede on these eight, that the form presented indicated that these voters were thereby canceling any other registrations, that any contentions regarding these 8 were no longer at issue, and that he and his client were only concerned about the three larger stacks.

Jones examined the three separate stacks that had been filed and he questioned Mr. Sterritt to determine the content of each. It was determined that the stack referred to as Group 1, consisted of students whom the protestant believes casted absentee ballots and then re-casted absentee ballots. Mr. Skerritt cited GS 163-233.1 and argued that reissuing absentee ballots is not permitted by statute. It was determined that Group 2 consisted of voters who were re-issued the correct ballot style by the county board, and whose ballots, the protestant argued, were not postmarked and received by the county board in accordance with GS 163-231 (b). It was determined that Group 3 consisted of voters who had voted provisional ballots and whom the protestant argued had not right to do so based on the fact that the provisional ballot was not cast in the precinct in which the voter resided. Mr. Skerritt cited GS 163-166.11 (2) to argue that provisional ballots must have safeguards and that the voters must affirm their residence within the precinct where the ballots are cast if they are not on the precinct voter list. Jones explained to Mr. Skerritt that voters should have the opportunity to vote and that the Board is supposed to promote that opportunity and to not impede upon it or thwart it. Mr. Skerritt provided a copy of Bartlett v SBOE to argue his point. Jones asked Mr. Skerritt under what circumstances the need for a provisional ballot would exist if the voter only goes to their assigned precinct and were not able to vote at another location. Jones reviewed the case provided by Mr. Skerritt. Jones also asked how all persons would be allowed an equal opportunity to vote, particularly during early voting, when there were 80 precincts in the county but only 18 voting sites. That would mean only the persons in whose precincts where early voting sites were located would be allowed to vote early. Also, what about national or statewide elections where all residents could vote, but the voter showed up to vote in the county where they were registered, but were at the wrong precinct, or if they then went to the right precinct, and for some unknown reason the person were not on that list. Should the be deprived of the right to vote? Jones repeated that the arguments presented did not make logical or legal sense to him.

Lucy Smith stated that it appeared perhaps Mr. Gorney and others did not fully understand how the voting structure and processed worked.

Jones stated that the State Board of Elections sent a memorandum regarding the handling of the relevant ballots and that in terms of probable cause based on the documents presented and arguments made, he did not see much there. He added that the statutes and administrative code says that a protest must be submitted on a certain form. He further stated that if it was a ballot objection, then it is to be handled at Canvass and it was, in fact, dealt with at Canvass. Robert Malt asked how it was dealt with at Canvass. Jones responded that the Board considered every provisional ballot during the canvass process.

Mr. Skerritt responded that there was no area of the law where an attorney cannot draft their own pleading. Jones responded that he didn't like it any more than Mr. Skerritt did, but the statutes and administrative code set out the requirements that must be followed. Mr. Skerritt suggested that Jones go ahead and issue a ruling to enable his client to figure out what to do next.

Mike Fryar inquired as to what statute allows the Board to change a voter's precinct seven days before Election Day. Jones inquired as to when the new district lines became effective. Trena stated that the district lines became effective in January. Mike responded that we get all the way through the Primary, up to the 31st of October and then once this mess is discovered, where does it say that it has to be fixed right before

the election? Trena responded that the Board is charged with determining the voters correct ballot style and is charged with doing what is right.

Jones moved that the documents for whatever claim has been filed to be dismissed due to the fact that it does not comply with GS 163-182.9 (c) or the administrative code section that pertains to the form to be used, and, therefore, does not comply with GS 163-182.9 which is the statute that is referenced with what the protest must comply with in GS 163-182.10, and that there is no probable cause to believe that there is a violation of election law, an irregularity, or misconduct. Lucy seconded the motion. Bob opposed the motion. The motion carried. The visitors left the meeting.

Rachel asked the Board to open the sealed envelopes containing the duplicated UOCAVA ballots to enable her to extract the duplicated ballots that were to be hand-eye counted in the recount. The Board opened the sealed absentee envelopes.

The meeting adjourned at 9:30 p.m.

Jones Byrd, Chair

Lucy Smith, Secretary

Bob Van Wagner, Member