

**BOARD MEETING MINUTES
NOVEMBER 21, 2024 – 3:00 PM
EMERGENCY MEETING**

The Rockingham County Board of Elections held an emergency meeting on Thursday, November 21, 2024 at 3:00 p.m. at the Rockingham County Board of Elections Office.

Board Members Present: Ophelia Wright, Chair; Sarah Totten, Secretary; Nelson Cole, Member; Thurman Hampton, Member; and Tom Schoolfield, Member.

Staff Members Present: Brian Ferrell, Attorney and Paula Seamster, Director.

MEETING CALLED TO ORDER

Chair Wright called the Board meeting to order at 3:00 p.m.

PRELIMINARY CONSIDERATION OF PROTESTS

Mr. Ferrell stated that the emergency meeting was called as the statutes direct to conduct an initial consideration of election protests that were filed. He stated that he would inform the Board why they were called to have an emergency meeting, the decisions the Board needed to make, and the legal authority the Board had in the decision it had to make. Mr. Ferrell stated that the Honorable Jefferson Griffin, a candidate for the North Carolina Supreme Court, filed with the Rockingham County Board of Elections four election protests and by law within in 2 days of this Board's receipt of a protest the Board has to meet and conduct a preliminary consideration of the protest. He stated that the preliminary consideration generally has two parts. The Board must decide if the protest substantially complies with NCGS 163-182.9 and whether it establishes probable cause that a violation of the election law or irregularity or misconduct has occurred. Mr. Ferrell stated that this was typically what happens in a preliminary consideration however the State Board in this case met late yesterday afternoon and entered an order that applied to the election protest filed by Jefferson Griffin in counties all across North Carolina and that order did several things that will limit the Board's work in this meeting. He stated that one the State Board of Elections has used its statutory authority to assume the role of decision maker in certain election protests. Mr. Ferrell stated that the Board had a copy of the protest and that the Board could see that there were 3 different categories of protests that is listed in Section One of the order. He stated that the State Board will hold its preliminary consideration hearing in place of this Board's decision making over those certain protests. Mr. Ferrell stated that one of the four protests that were filed by Judge Griffin with the Rockingham County Board of Elections has been taken over by the State Board of Elections so that one will not be considered by this Board. He stated that there are three remaining protests that are within the jurisdiction of the Rockingham County Board of Elections to be considered.

Mr. Ferrell stated that NCGS 163-182.10 lays out two initial considerations that the Board needed to consider: 1) where or not the protest substantially complies with NCGS 163-182.9 and where or not it established probable cause, that an election violation has occurred or misconduct. He stated that the State Board decided to take that second part of, the probable cause consideration, off the table for local boards of elections.

Mr. Ferrell stated that at the preliminary hearing shall advance the protest to a hearing to be conducted at a later date if the protest was timely filed and otherwise substantially complies with NCGS 163-182.9 and that is the job of the Board today. He stated the Board will need to determine whether or not the protests were substantially filed in a timely manner and whether or not the protests substantially complies with NCGS 163-182.9.

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Member Cole asked Mr. Ferrell to describe probable cause. Mr. Ferrell responded that probable cause was a legal standard that is relevant to the Board's determination today and it is evidence that an act had occurred. He added that the State Board took this part of the decision off the table for the local boards of elections so the Board only needs to look at the facts. Mr. Ferrell stated that for the purposes of today's meeting the Board was going to assume that there was probable cause because that was what the State Board had ordered the local boards of elections to do.

Mr. Ferrell stated that the Board need to make a decision on the first part of the preliminary consideration of NCGS 163-182.10 which involves looking at NCGS 163-182.9 in making a determination in whether or not the protests applies to that statute. He stated that the order made clear that when the Board is conducting these reviews the Board was not to consider information or evidence outside of the protest documents.

Mr. Ferrell stated that should the Board find that the protests substantially complies with the statute and was timely filed then the Board would need to schedule an evidentiary quasi-judicial hearing on the merits of the protests and this will need to be done quickly.

Mr. Ferrell went through NCGS 163-182.9 Filing an Election Protest with the Board.

Member Cole asked Mr. Ferrell how many other counties were involved in these protests. Mr. Ferrell responded that he was not sure exactly but most of the counties in North Carolina.

Mr. Ferrell stated that the Board will need to go through the three protest and determine if everything that the general statutes lays out is present and the timing. He added that the protest had to be timely filed before it could be heard for consideration. Mr. Ferrell stated that NCGS 163-182.9 talked about the different timings for each type of protest and the part of the statutes that pertains to these protest is 4c. If the protest concerns an irregularity other than voter counting or result tabulation, the protest shall be filed no later than 5:00 p.m. on the second business day after the county board has completed its canvass and declared the results. Mr. Ferrell asked the Director when County Canvass was completed. The Director responded that County Canvass was completed on Friday, November 15th at 11:45 a.m. Mr. Ferrell stated that Canvass was completed on Friday, November 15th and the protestor had 2 business days to turn in his protest paperwork which would have been Tuesday, November 19th by 5:00 p.m. He stated that in the Board's packet there was an email confirmation on when the office received the protest which was 4:57 p.m. on Tuesday, November 19th. Mr. Ferrell stated that he recommended that the Board go through each of the protests separately and make a determination of whether or not the protest complies with NCGS 163-182.9 in terms of content.

Mr. Ferrell went through each of the three protests. He stated that Protest #1 was the Board of Elections counted individuals who were deceased on Elections Day, Protest #2 was the Board of Elections counted individuals who were felons on Elections Day, and Protest #3 was the Board of Elections counted individuals that their registrations were denied and therefore ineligible to vote in this election. He stated that Protest #4 would be handled by the State Board of Elections.

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Mr. Ferrell stated that the Board must determine if Protests #1, #2, and #3 substantially applies to NCGS 163-182.9 including the timeliness requirement.

Member Hampton moved, seconded by Member Schoolfield that Protest #1 substantially complied with the provisions of NCGS 163-182.9 and met the timeliness component. The motion carried unanimously.

Secretary Totten moved, seconded by Member Hampton that Protest #2 and Protest #3 substantially complied with the provisions of NCGS 163-182.9 and met the timeliness component. The motion carried unanimously.

Mr. Ferrell stated that since the Board found substantial compliance for the provisions in NCGS 163-192.9 and the timeliness component for Protests 1, 2, and 3 the Board must now schedule a hearing for the protests. He stated that the administrative code 08 NCAC 02.0110 prescribes the scheduling of a hearing which is the Board shall schedule the hearing no later than 5 business days from the preliminary considerations meeting so the latest day would be Monday, December 2nd. Mr. Ferrell added that there is another timing requirement, the notice requirement, the notices of the hearing must be given at least 3 business days before the hearing so it cannot be held in less than 3 business day and no later than 5 business days after the preliminary considerations meeting. He stated that he and the Director would need to work on the notice and the notice would not happen by the end of the day so the earliest it would go out would be tomorrow.

Chair Wright asked Mr. Ferrell what would happen if the Board did not have a unanimous decision. Mr. Ferrell responded that it would be the Board's decision and just like any other decisions it would be a majority. He added that there was no requirement in the statute that the Board had to have a unanimous Board decision.

Mr. Ferrell stated that he suggested setting all three hearing protests up for Monday, December 2nd at a certain time and place.

Member Schoolfield asked Mr. Ferrell if all three protests would be heard at the same hearing. Mr. Ferrell responded that due to the timing the Board would have to hold all three hearing at one time. He stated that the notice would reflect all three protests.

Member Schoolfield asked the Director if the Board of Elections had to notify the individuals that are affected by the protests. The Director responded yes.

Mr. Ferrell stated that there has been a request for some data so that will have to be looked into as well. He added that the only request for a subpoena was for certain data and the Director has that information as the custodian of that record.

Mr. Ferrell stated that the next thing the Board needs to do is to set the hearing date, time and place.

Secretary Totten moved, seconded by Member Cole to schedule the Protest Hearing for Monday, December 2, 2024 at 9:00 a.m. at the Board of Elections office. The motion carried unanimously.

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The Director stated that Roy Sawyers would video the hearing.

Member Schoolfield asked how long the hearing would take. Mr. Ferrell responded that he did not have a way to measure how long the hearing will take. He added that he anticipated both parties to be represented at the hearing.

Member Schoolfield asked the Director if she knew if the individuals voted and if they were eligible or not. The Director responded that staff was working on that information.

Member Schoolfield asked who would be paying for this. He had heard that in order states whoever requested it had to pay for it. Mr. Ferrell responded that it was his understanding that the cost would fall to the counties as part of the administration of the election.

Mr. Ferrell stated that was one more thing mentioned in the protest and that was the individuals that voted on Election Day and he asked that the Board subpoena the custodian of those records. He stated that the Director has the data and can make it available to the protestor. Mr. Ferrell did not think it was necessary to subpoena the Director for these records because she will be here.

Member Schoolfield asked if the Board would have access to any of the evidence before the hearing. Mr. Ferrell responded no, all of the evidence is to be recorded on the record at the hearing. He added that the Board is not to discuss anything on this hearing outside of the hearing room. Mr. Ferrell stated that the Board needs to be an impartial decision maker and make decisions solely on the facts and law as presented at the hearing. He stated that part of the record is the information that the Board presently has and the rest of the record will be heard during the hearing, the evidence that comes from the witnesses at the hearing, and then the Board will have to make a decision. Mr. Ferrell stated that should not be any outside investigation, do not answer any outside questions or comments about the hearing, no side conversations.

Mr. Ferrell stated that he and the Director would work on getting the notice out by tomorrow.

ITEM #10 – ADJOURNMENT

At 4:34 p.m. **Member Cole moved, seconded by Member Hampton to adjourn. The motion carried unanimously.**

Respectfully submitted,

Paula P. Seamster, Director

Ophelia Wright, Chair