

## BOARD OF ELECTIONS

**Ken Raymond**  
Chairman

**Stuart Russell**  
Secretary

**Fleming El-Amin**  
Member



**Tim Tsujii**  
Director

**Lamar Joyner**  
Deputy Director

### FORSYTH COUNTY BOARD OF ELECTIONS

#### Larson Preliminary Hearing Minutes

April 01, 2016 – 9.a.m.

#### **Meeting Called to Order**

A special meeting of the Forsyth County Board of Elections was called to order in the fourth floor meeting room on April 1, 2016. The meeting called to order at 9:00 a.m., Chairman Ken Raymond presiding.

Board Members in attendance: Chairman Ken Raymond, Secretary Stuart Russell, and Member Fleming El-Amin (via telephone)

Staff Members in attendance: Director Tim Tsujii, Deputy Director Lamar Joyner, Chris Duffey, and Kimberly Stuck

Other County Staff: Lonnie Albright – Assistant County Attorney

#### **Pledge of Allegiance**

Chairman Raymond led the pledge of allegiance.

#### **Moment of Silence**

Chairman Raymond led a moment of silence.

#### **Election Day Protest - Preliminary Hearing**

Chairman Raymond advised public that hearing was to decide if there was probable cause due to irregularities in the dissemination of the ballots in the South Ward; Mr. John Larson issued the protest. Additionally the public was made aware that Member El-Amin was present via teleconference for consideration and opinions.

Chairman Raymond called for an opening statement from Mr. Larson. Assistant Attorney Albright led the swearing in of Mr. Larson at the request of the Board prior to providing opening statement.

Member El-Amin clarified for the public the governing statute for proceeding is N.C.G.S. § 163-182.10.

Mr. Larson offered his opening statement at the Board's request. Mr. Larson stated that his original protest had been amended; a copy was offered to the Board. Mr. Larson took the opportunity to thank the Board, Director Tsujii and staff for their due diligence.

Chairman Raymond called for consideration of the protest, deferring to Assistant County Attorney Albright noted that the protest complies with the statute.

Secretary Russell motioned to notice a hearing of protest as filed; the protest sufficiently alleged election law irregularities had occurred, which demonstrated probable cause. Chairman Raymond seconded. Chair brought the motion to vote. **Motioned carried unanimously.**

Secretary Russell deferred to Director Tsujii for scheduling of hearing. Mr. Tsujii then deferred to Mr. Larson for his opinion on scheduling. Mr. Larson noted that he would like it as soon as possible to remand it to the State level.

Director Tsujii stated that the Board should move forward with scheduling the hearing as directed by the State in the event that the State Board remands the matter back to the County Board.

County Attorney Albright in light of Director Tsujii's comments; advised that the Board move for the State Board to assume jurisdiction in this matter as well as schedule the hearing within 10 days, per N.C.G.S. 163 § 182.12.

Mr. Tsujii proposed April 8, 2016 so that it could comply within the two week window in accordance with N.C.G.S 163-182.12's (correction from 182.13) which would allow voters to recast their ballot. Director Tsujii noted that it would be prudent for State to take jurisdiction per the Board.

Secretary Russell motioned to schedule hearing on April 8, 2016; Chairman Raymond seconded the motion; **Motion carried unanimously.**

County Attorney Albright advised the Board that he had prepared a Motion Seeking Assumption of Jurisdiction in accordance with N.C.G.S 163 § 182.9, 182.10, 182.12, and 8 NCAC 2.0110, et seq. Secretary Russell read the motion for all in attendance.

Secretary Russell motioned to execute Motion Seeking Assumption of Jurisdiction; Chairman Raymond seconded; **Motion carried unanimously.**

Secretary Russell noted that the race was very close with a margin of six voters; while there is objective evidence of irregularities with the ballots; there is no indication of staff irregularities. Secretary Russell stated he believes Mr. Tsujii has been transparent through the process.

Chairman Raymond concurred with Secretary Russell adding that the Board strives to eliminate as much human error as possible; however, close races illuminate human error. Chairman Raymond noted this in no way reflects poorly on the staff or Director. Member El-Amin thanked Director Tsujii and staff for their expediency; noting staff did a good

job considering the large turnout.

Chairman Raymond inquired of other business; Secretary Russell motioned to adjourn, Chairman Raymond seconded. **Motion carried unanimously.** Meeting adjourned at 9:27 a.m.

---

Ken Raymond, Chairman

---

Date

---

Stuart Russell, Secretary

---

Date

---

Fleming El-Amin, Member

---

Date

Attachments: Motion Seeking Assumption of Jurisdiction  
N.C.G.S 163 § 182.9, 182.10, 182.12  
08 NCAC 02.0110

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

BEFORE THE FORSYTH COUNTY  
BOARD OF ELECTIONS

IN THE MATTER OF:

ELECTION PROTEST BY CANDIDATE  
JOHN CHRISTOPHER LARSON

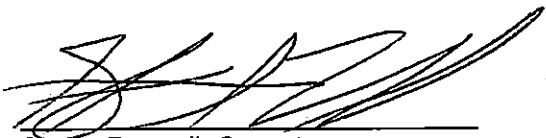
MOTION SEEKING ASSUMPTION OF JURISDICTION BY STATE BOARD OF ELECTIONS

COMES NOW, The Forsyth County Board of Elections, pursuant to N.C. Gen. Stat. §§163-182.9, 182.10, 182.12, and 8 NCAC 2.0110, et seq., hereby moves the North Carolina State Board of Elections to immediately assume jurisdiction in this matter and in support thereof shows unto the Board the following:

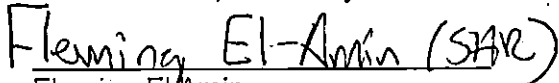
1. John Christopher Larson, is a candidate for the Democratic nomination for Winston Salem City Council's South Ward.
2. Following a canvass of the votes in this race, Mr. Larson timely filed an election Protest pursuant to the provisions of 163-182.9, et seq., on March 29, 2016 at 3:56 o'clock p.m.
3. The Forsyth County Board of Elections, upon notice duly provided, held a preliminary hearing on April 1, 2016 at 9:00 o'clock a.m.
4. The Forsyth County Board of Elections found the "protest" substantially complies with the requirements of N.C. Gen. Stat. 163-182.9 and established "probable cause" to believe that an irregularity occurred.
5. There appears to be substantial evidence that an "irregularity" did occur and that it was sufficiently serious to cast doubt on the apparent results of the election for the Winston Salem City Council's South Ward seat.
6. A known group of voters was given an incorrect ballot style.
7. Further, relevant documents/records to this protest are attached hereto and incorporated herein by reference in support of the relief requested.

WHEREFORE, the Forsyth County Board of Elections respectfully moves and requests the North Carolina State Board of Election to immediately intervene and take over jurisdiction of this matter and authorize the County Board of Elections to allow those voters to recast their votes together with such other and further relief as may be just, fair and proper.

This 1<sup>st</sup> day of April, 2016.



Stuart Russell, Secretary



Fleming El-Amin (STAR)  
Fleming El-Amin



Ken Raymond, Chairman

CERTIFICATE OF SERVICE

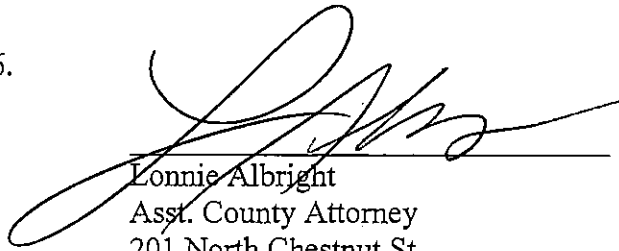
I hereby certify that I have this day served a copy of the foregoing Motion in the above-entitled action in the following manner: by depositing the same, enclosed in postpaid, properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department, addressed to:

Carolyn Highsmith  
3335 Anderson Drive  
Winston Salem, NC 27127

John C. Larson  
448 Factory Row  
Winston Salem, NC 27101

Service being in accordance with Rule 5, Chapter 1A1-1 of the General Statutes of North Carolina.

This 1st day of April, 2016.



Lonnie Albright  
Asst. County Attorney  
201 North Chestnut St.  
5<sup>th</sup> Floor  
Winston Salem, NC 27101  
Telephone: (336) 703-2030

**§ 163-182.9. Filing an election protest.**

(a) Who May File a Protest With County Board. – A protest concerning the conduct of an election may be filed with the county board of elections by any registered voter who was eligible to vote in the election or by any person who was a candidate for nomination or election in the election.

(b) How Protest May Be Filed. – The following principles shall apply to the filing of election protests with the county board of elections:

- (1) The protest shall be in writing and shall be signed by the protester. It shall include the protester's name, address, and telephone number and a statement that the person is a registered voter in the jurisdiction or a candidate.
- (2) The protest shall state whether the protest concerns the manner in which votes were counted and results tabulated or concerns some other irregularity.
- (3) The protest shall state what remedy the protester is seeking.
- (4) The timing for filing a protest shall be as follows:
  - a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.
  - b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until 5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results.
  - c. If the protest concerns an irregularity other than vote 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.
  - d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:
    1. The ballot has been printed.
    2. The voter registration deadline for that election has passed.
    3. Any of the proceedings will occur within 30 days before election day.

(c) State Board to Prescribe Forms. – The State Board of Elections shall prescribe forms for filing protests. (2001-398, s. 3; 2005-428, s. 4.)

**§ 163-182.10. Consideration of protest by county board of elections.**

(a) Preliminary Consideration. – The following principles shall apply to the initial consideration of election protests by the county board of elections:

- (1) The county board shall, as soon as possible after the protest is filed, meet to determine whether the protest substantially complies with G.S. 163-182.9 and whether it establishes probable cause to believe that a violation of election law or irregularity or misconduct has occurred. If the board determines that one or both requirements are not met, the board shall dismiss the protest. The board shall notify both the protester and the State Board of Elections. The protester may file an amended protest or may appeal to the State Board. If the board determines that both requirements are met, it shall schedule a hearing.
- (2) If a protest was filed before the canvass and concerns the counting and tabulating of votes, the county board shall resolve the protest before the canvass is completed. If necessary to provide time to resolve the protest, the county board may recess the canvass meeting, but shall not delay the completion of the canvass for more than three days unless approved by the State Board of Elections. Resolution of the protest shall not delay the canvass of ballot items unaffected by the protest. The appeal of a dismissal shall not delay the canvass.
- (3) If a protest concerns an irregularity other than the counting or tabulating of votes, that protest shall not delay the canvass.

(b) Notice of Hearing. – The county board shall give notice of the protest hearing to the protester, any candidate likely to be affected, any election official alleged to have acted improperly, and those persons likely to have a significant interest in the resolution of the protest. Each person given notice shall also be given a copy of the protest or a summary of its allegations. The manner of notice shall be as follows:

- (1) If the protest concerns the manner in which the votes were counted or the results tabulated, the protester shall be told at the time of filing that the protest will be heard at the time of the canvass. Others shall be notified as far in advance of the canvass as time permits.
- (2) If the protest concerns a matter other than the manner in which votes were counted or results tabulated, the county board shall comply with rules to be promulgated by the State Board of Elections concerning reasonable notice of the hearing.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.

(c) Conduct of Hearing. – The following principles shall apply to the conduct of a protest hearing before the county board of elections:

- (1) The county board may allow evidence to be presented at the hearing in the form of affidavits or it may examine witnesses. The chair or any two members of the board may subpoena witnesses or documents. Each witness must be placed under oath before testifying.
- (2) The county board may receive evidence at the hearing from any person with information concerning the subject of the protest. The person who made the protest shall be permitted to present allegations and introduce evidence at the hearing. Any other person to whom notice of hearing was given, if present, shall be permitted to present evidence. The board may allow evidence by

affidavit. The board may permit evidence to be presented by a person to whom notice was not given, if the person apparently has a significant interest in the resolution of the protest that is not adequately represented by other participants.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the county board until directed otherwise by the State Board.

(d) Findings of Fact and Conclusions of Law by County Board. – The county board shall make a written decision on each protest which shall state separately each of the following:

(1) Findings of fact. – The findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them.

(2) Conclusions of law. – The conclusions the county board may state, and their consequences for the board's order, are as follows:

a. "The protest should be dismissed because it does not substantially comply with G.S. 163-182.9." If the board makes this conclusion, it shall order the protest dismissed.

b. "The protest should be dismissed because there is not substantial evidence of a violation of the election law or other irregularity or misconduct." If the county board makes this conclusion, it shall order the protest dismissed.

c. "The protest should be dismissed because there is not substantial evidence of any violation, irregularity, or misconduct sufficient to cast doubt on the results of the election." If the county board makes this conclusion, it shall order the protest dismissed.

d. "There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur, and might have affected the outcome of the election, but the board is unable to finally determine the effect because the election was a multicounty election." If the county board makes this conclusion, it shall order that the protest and the county board's decision be sent to the State Board for action by it.

e. "There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur and that it was sufficiently serious to cast doubt on the apparent results of the election." If the county board makes this conclusion, it may order any of the following as appropriate:

1. That the vote total as stated in the precinct return or result of the canvass be corrected and new results declared.

2. That votes be recounted.

3. That the protest and the county board's decision be sent to the State Board for action by it.

4. Any other action within the authority of the county board.

(3) An order. – Depending on the conclusion reached by the county board, its order shall be as directed in subdivision (c)(2). If the county board is not able to determine what law is applicable to the Findings of Fact, it may send its findings of fact to the State Board for it to determine the applicable law.



(e) Rules by State Board of Elections. – The State Board of Elections shall promulgate rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decision. (2001-398, s. 3.)

**§ 163-182.12. Authority of State Board of Elections over protests.**

The State Board of Elections may consider protests that were not filed in compliance with G.S. 163-182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval or where a known group of voters was given an incorrect ballot style, the State Board of Elections may authorize a county board of elections to allow those voters to recast their votes during a period of two weeks after the canvass by the State Board of Elections required in G.S. 163-182.5(c). If there is no State Board canvass after the election, the State Board may authorize the county board to allow the recasting of votes during the two weeks after the county canvass set in G.S. 163-182.5(a). If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. 163-182.13. (2001-398, s. 3; 2005-428, s. 17; 2007-391, s. 12; 2008-187, s. 33(a).)

**08 NCAC 02 .0110            ACTIONS OF COUNTY BOARD AS TO ELECTION PROTESTS**

(a) The county board shall deliver or place in the mail, a copy of an election protest form and any attachments to it, to the State Board of Elections within 24 hours after it is filed. Faxing the protest, with attachments, on that same day it was filed to the State Board shall constitute the required delivery. Sending the protest and attachments, by e-mail, on the same day it was filed shall also constitute the required delivery.

(b) The county board may not consider election protests not filed in time, but shall refer all such untimely protests, along with copies of the protest and attachments, to the State Board of Elections office for consideration of a possible hearing by the State Board of Elections under G.S. 163-182.12.

(c) If after preliminary consideration of a protest, the county board determines that a hearing should be held as authorized by G.S. 163-182.10, the board shall set the hearing no later than ten business days from the date of the preliminary consideration, and shall start no earlier than 8:00 a.m. and no later than 8:00 p.m. at any location set by the county board of elections. The county board may continue hearings for good cause. Only for good cause and upon informing the State Board of Elections office, may a hearing be set on or continued to a weekend day or holiday.

(d) Notice of hearing as required by G.S. 163-182.10 (b)(2) shall be given at least three business prior to the day of the hearing, and the notice required shall be actual notice by any means chosen by the county board. Any oral notice of the hearing shall be followed as soon as possible with a written notice. The oral notice shall constitute valid notice meeting the three-day notice requirement.

- (1) Upon a reasonable and relevant request by a protester or interested person, the chair or any two members of the county board may issue subpoenas for persons or documents. Such subpoenas shall be served in the same matter as allowed in the North Carolina Rules of Civil Procedure.
- (2) The county board shall notify the person protesting, any affected candidate, and any affected officeholder of its decision in a protest hearing no later than 5:00 p.m. the next day after the conclusion of the hearing itself. The board shall file at the board office a written decision within the mandates of G.S. 163-182.10 (d) by 5:00 p.m. five business days after the oral decision is given to the person filing the protest. Such written decision shall be served by any means of actual delivery upon the protestor and any affected candidate or officeholder within 24 hours after being filed at the board office. Nothing herein shall discourage more prompt decisions and written orders.
- (3) All election protest hearings before county boards shall be recorded by a court reporter. The hearing need not be transcribed unless the board's decision is appealed. Upon notice of appeal to the State Board of an election protest, the county board shall cause the record of the hearing to be transcribed and delivered to the State Board, at the county board's expense, within seven business days of the notice of appeal. A county board may cause hearings, that on their face do not present merit to be recorded by mechanical means and not by court reporter only with prior permission of the Executive Director of the State Board of Elections. Any non-transcribed record of the county hearings may be destroyed 60 days after the date of hearing if not appealed, or 60 days after the entry of any final order or decision in an appealed hearing. Transcripts of hearings shall be kept for two years after their creation.
- (4) If the State Board sets an appeal for hearing, it shall designate who shall appear on behalf of the county board.

*History Note: Authority G.S. 163-22; 163-182-10;  
Temporary Adoption Eff. April 15, 2002;  
Eff. August 1, 2004.*