

MACON COUNTY BOARD OF ELECTIONS MEETING
Protest Hearing, Macon County Commissioners Meeting Room
31 May 2022, 3 PM

Participants: Director Melanie Thibault, Deputy Director Judy Fritts, Gary Dills, Kathy Tinsley, Jeff Gillette and John Vanhook. Mrs. Garrison was unable to attend.

Observers: See the attached list completed by observers upon entry into the meeting room. Attachment 2

1. On 26 May 2022, Mr Robert W. Cook filed a protest with the Macon County Board of elections (Attachment 1). The Board agreed to hear the protest (reference Board minutes dated 27 May 2022, attachment 2) and provided the date, location and time of the hearing to Mr Cook, all candidates, media, and local officials. The sections below are a summary of each person's testimony. A complete recoding is available through the Macon County website.
2. Call to Order: Chair Tinsley called the meeting to order at 3PM. She welcomed all in attendance and introduced the Board members present. She reminded all present that we are recording the proceedings and it is streaming live. She also thanked all for their interest in the process and encouraged anyone interested to volunteer as a poll worker. Chair Tinsley then asked Mr Cook to come forward, be sworn and articulate his protest.
3. Mr Cook testimony: The recorder, MS xxxxxx, administered the oath to Mr Cook who responded in the affirmative. Mr Cook noted that the ballot count from the night of the election had a total of 9,844 ballots cast. He also noted that it appeared that if he subtracted Democrat ballots cast, then the number of Republican ballots cast should have been 8,671. When he totaled ballots cast for Sherriff, he contended that 1,339 votes were not there which could have been cast. He noted that he asked the Board office for an explanation and was told the discrepancy was due to multiple candidates in multiple races. Subsequently, Mr Cook had spoken with Mr John Noce, the State Board of Elections Regional point person, who explained to Mr Cook that a coding error in Unity caused the discrepancy.

This coding error is known to have occurred in two counties using the M100 and Unity system. The coding error on Unity did not affect any votes totals. When Mr Noce corrected the coding error, the ballot count from Unity matched the ballot count totals from the M100 tapes. Mr Cook said he understood and accepted that explanation but continued the protest as a public service to try to prevent more conspiracy theories.

4. Director Melanie Thibault testimony: The Chair called Director Thibault to come forward, placed under oath and provide her description of the situation. Director Thibault testified that the Unity report of unofficial election results on 17 May 2022 showed 9786 ballots cast. She and Board members tallied the ballot count from the M100 tapes with a result of 8613 ballot count. On Election night, She and the Board tried to determine what caused the discrepancy but could discern no rational reason. She reported the discrepancy to the State Board of Elections. She also noted that the vote tallies on the Unity report correctly reflected the vote tallies from the M100 tapes. Subsequently Mr Noce explained to her that a coding error in Unity caused the discrepancy. Once he corrected the coding error in the Macon County Unity, the Unity report of ballots cast, and the tapes count of votes casted were both 8613. She further testified that we regret providing uncorroborated rational for the discrepancy when we should have said “we don’t know and have asked the State Board to investigate.”

5. Mr John Noce Testimony: The Chair called Mr John Noce to come forward, placed under oath and provide his description of the situation. Mr Noce identified himself as the State Board of Elections regional technical representative for seventeen of the Western North Caroline counties including Macon County. Mr Noce testified that two of his counties, Graham and Macon, experienced the same discrepancy of incorrect ballot counts on the Unity report on election night. He testified that technical experts at the State Board of Elections identified the cause as a coding error in the Unity system. In short, the coding checked a box telling the Unity system it had three ballot types when in fact there should have been only Democrat, and Republican ballot types. The system correctly identified the number of Democrat and Republican ballots but could not find the third type. Apparently, the computer went to the closest number, that of

Democratic ballots cast, and entered that number. When Mr. Noce removed the check mark from the third ballot type, the Unity reports reflected the current count. This was true in Graham County, Macon County and a mock set up at the State Board of Elections. Mr. Noce further testified that the coding discrepancies did not affect any vote tallies.

6. Other Comments: The Chair asked Mr. Cook if he had further testimony. He reiterated his earlier testimony and testified he understood Mr Noce's explanation.
7. Recess: The Chair directed the Board to recess to the conference room to confer and decide if appropriate.
8. Decision: After conferring, the Chair announced the Board decision: In accordance with NC General Statute 163-182.10(d)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." Consequently, by unanimous vote of members present, the Macon County Board of Elections dismisses the protest by Mr. Robert W. Cook. The Chair directed that the Secretary compile an appropriate report for the State Board of Elections. Attachment 3

Attachments

1. Macon County Board of Elections meeting minutes, 27 May 2022
2. List of Observers to the protest meeting
3. Protest report

Subject: Protest of 17 May 2022 election by Mr. Robert W. Cook.

Findings of fact:

1. On 26 May 2022, Mr Robert W. Cook filed a protest with the Macon County Board of elections (Attachment 1).
2. Mr Cook testified that he noted a discrepancy in ballot totals on the unofficial election reports on 17 May 2022.
3. Mr. Cook testified he did not receive an adequate explanation of what caused the discrepancy until speaking with Mr John Noce of the State Board of Elections.
4. Mr Cook testified he understood Mr Noce's explanation but wanted the protest to continue as a public service.
5. Mrs. Thibault testified that on election night the unofficial report of the 17 May 2022 election results showed a total number of ballots cast as 9786 not 8613 which was the total from the precinct tapes. She and the Board noticed this discrepancy and asked the State Board of Elections to explain.
6. Mrs. Thibault testified that the vote tallies were all correct based on review of precinct and one-stop sites tapes. The only discrepancy was the total ballots cast.
7. Mrs. Thibault testified that, with proper coding in Unity, the actual ballots cast total is 8613 prior to canvass.
8. Mr. Noce testified that the State Board of Elections determined that a coding error in the Unity system caused the ballot report discrepancy. This only occurred with the M100/Unity systems. He reported that Graham County election officials noticed a similar discrepancy due to the coding error. In both cases, with the proper coding in Unity, the ballots cast totals

were correct. Mr Noce also testified that the coding discrepancies did not affect any vote tallies.

Conclusions of Law:

‘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” per NC GS 163-182.10(d)c

By unanimous vote, the Macon County Board of Elections dismisses the protest by Mr. Robert W. Cook.

Board members signatures

Attachment

1. Protest by Mr Robert W. Cook dated 26 May 2022

NORTH CAROLINA

BEFORE THE ELECTIONS BOARD

File No: 22-BOE - 01

MACON COUNTY

**IN THE MATTER OF THE PROTEST
FILED BY ROBERT W. COOK
REGARDING THE
PRIMARY ELECTION HELD
IN MACON COUNTY
ON MAY 17, 2022**

ORDER

This matter came on for a protest hearing on May 31, 2022, before the Macon County Board of Elections (the "Board"). Pursuant to N.C.G.S. § 163-182.10, the Board heard testimony from the Protestor and various other witnesses. Following the presentation of evidence, the Board declared its findings of fact and conclusions of law. This Order memorializes the Board's findings and conclusions.

Having considered the testimony of witnesses and the documentary exhibits presented, the Macon County Board of Elections, by the greater weight of the evidence, makes and enters the following:

FINDINGS OF FACT

1. On 26 May 2022, Mr Robert W. Cook filed a Protest with the Macon County Board of elections alleging a defect in the manner by which votes were counted or results tabulated sufficient to cast doubt on the apparent results of the May 17, 2022, primary election.
2. The Board, in its May 27, 2022, canvass meeting, noted the Protest. The Board made a preliminary consideration of the Protest as required by N.C.G.S. §§ 163-182.10(a) and 163-182.9 and determined that the Protest complied with the formalities required by the latter statute.

3. The Board then recessed its canvass and set the matter of the Protest for hearing on May 31, 2022, at 3:00 pm.
4. The Director promptly served notice of the May 31 Protest on the Protestor, other candidates and all interested parties by personal notification and publication in the local media, pursuant to N.C.G.S. § 163-182.10(b).
5. Chair Kathy Tinsley called the hearing to order at 3:00 pm on May 31, 2022. Other Board members present were John VanHook, Gary Dills and Jeffrey Gillette.
6. Present at the hearing were twenty-three members of media and the public. Ms. Heather Miller from the Macon County Clerk of Court office recorded the proceedings. Members of the media streamed the protest live on the internet and reported in local print and online media.
7. During the course of the hearing, the Board heard from Mr. Robert Cook (the Protestor), Melanie Thibault (Director, Macon County Board of Elections) and John Noce (North Carolina State Board of Elections staff). The Board received written reports showing vote and ballot totals from May 17 and May 23, 2022.
8. Mr Cook testified that he noted a discrepancy in ballot totals on the unofficial election reports on 17 May 2022.
9. Mr. Cook testified he did not receive an adequate explanation of what caused the discrepancy until speaking with Mr John Noce of the State Board of Elections.
10. Mr Cook testified he understood Mr Noce's explanation but wanted the protest to continue as a public service.
11. Mrs. Thibault testified that on election night the total number of ballots cast, as calculated from the precinct tapes, was 8,613. Notwithstanding, Unity, the reporting software which

formatted the results and uploaded them to the North Carolina State Board of Elections (“NCSBE”) website, showed 9,786 ballots cast. She and the Board noticed this discrepancy immediately and she asked the State Board of Elections to investigate and explain the discrepancy.

12. Mrs. Thibault testified that the vote tallies were all correct based on the Board’s review of precinct and one-stop site tapes. The vote tallies were cross-checked by comparing computer media with printed summary tapes, both generated independently by the precinct and one-stop equipment. The Unity software correctly reported all vote tallies.
13. The computer media and summary tapes both agreed that the total votes cast were 8,613. The Unity software reported, 9,786. This was the only discrepancy noted during the primary election.
14. Mr. Noce testified that the State Board of Elections determined that a coding error in the Unity system caused the ballot report discrepancy. This only occurred with some of the M100/Unity systems. He reported that Graham County election officials noticed a similar discrepancy due to the coding error. In both cases, when Mr. Noce corrected the coding error, Unity correctly reported the total number of ballots cast.
15. Mr. Noce also testified that the coding discrepancies did not affect any vote tallies.
16. Mrs. Thibault testified that, with proper coding in Unity, the actual ballots cast total is 8613 prior to canvass.
17. The Board credits the portions of each witness’ testimony described above and adopts these statements as factual findings.

Based on the foregoing findings of fact, the Board makes and enters the following:

CONCLUSION OF LAW

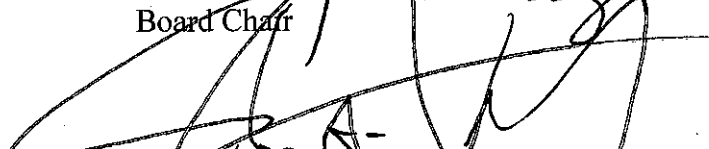
Pursuant to N.C.G.S. § 163-182.10(d)(2)(c), the Macon County Board of Elections concludes as a matter of law that the protest should be dismissed because there is not substantial evidence of any violation, irregularity or misconduct sufficient to cast doubt on the results of the election.


THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT


The Protest filed by Robert W. Cook regarding the primary election held in Macon County on May 17, 2022, is hereby DISMISSED.

This, the 2nd day of June 2022.


Board Chair


Board Member


Board Member


Board Member