

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.

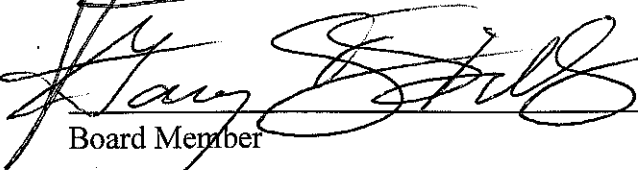
THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

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