

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

Agenda

November 22, 2016 – 11 a.m.

1. Elections Protest Hearing
2. Meeting Called to Order
3. Pledge of Allegiance
4. Moment of Silence
5. Public Comments
6. Report on Unofficial Write-In Candidates Results
7. Report on Mandatory Hand-To-Eye Audit
8. Approval of Absentee Ballots
9. Approval of Provisional Ballots
10. Re-Mark of Partially Counted Provisional Ballots
11. Tabulation of Absentee Ballots & Provisional Ballots
12. Approval of Meeting Minutes
13. Closed Session (If needed)
14. Adjournment

FORSYTH COUNTY BOARD OF ELECTIONS
Meeting Minutes
November 22, 2016 – 11:00 a.m.

Meeting Called to Order

A meeting of the Forsyth County Board of Elections was called to order in the third floor meeting room on November 22, 2016 at 11:01 a.m., Chairman Raymond presiding.

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

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

Other Staff: Assistant County Attorney – Lonnie Albright

Pledge of Allegiance

Chairman Raymond led the pledge of allegiance.

Moment of Silence

Chairman Raymond led a moment of silence.

Public Comments

Chairman Raymond opened the public comment session with instructions. Speakers were asked to complete a public comment card and would have three minutes or less to speak. The speaker's name and address should be stated for the record. Questions should be included during the allotted time and answers would be given at the close of the session. A speaker's time could not be given to another individual. At the close of the public comment session, no additional statements or questions would be heard from the public. The public comment session included the following speakers:

Patrick Vale – Attorney for NCGOP (McCory) – 3737 Burbank Ave, Winston Salem, NC 27106

Director Tsujii addressed Mr. Vale's inquiry regarding the zero report, noting that Canvass had not taken place however, a zero report would be run at that time.

The Board reviewed the document prepared by Mr. Albright regarding the protest hearing; Secretary Russell offered changes to be included for clarity purposes. Director Tsujii called for a point of clarification regarding protests; stating that four protests had been filed, three had been dismissed and one was sustained to hearing. Secretary Russell requested to wait for document revision before moving forward with discussion.

Chairman Raymond moved to close public comments, Member El-Amin motioned, Secretary Russell seconded; **Motion carried unanimously.**

Report on Unofficial Write-In Candidates Results

Director Tsujii provided the Board with the unofficial Write-In results. Green Party Presidential candidate – Jill Stein 444 votes; Winston Salem Mayoral candidate Joanne Allen 3150 votes;

North Carolina Commissioner of Labor candidate – Brian “BK” Wade 0 votes. Mr. Tsujii stated that the process was conducted in an open forum and the result provided were the unofficial results as of Friday, November 18, 2016, and that additional absentee and curbside ballots were also tabulated Friday, November 18, 2016. Director Tsujii reported that 178,334 total ballots had been cast of the current meeting.

Report on Mandatory Hand-To-Eye Audit

Director Tsujii deferred to Deputy Director Joyner for the Hand/Eye audit report. Mr. Joyner reported that the Hand/Eye audit began November 18, 2016 and was completed Monday, November 21, 2016. Deputy Director Joyner stated that the State Board of Elections chose Precinct 201 – Brown-Douglas Recreation Center from Election Day and Clemmons Library from One-Stop Early Voting. Mr. Joyner stated that 656 ballots were counted and no discrepancies were found with the paper ballots; 7004 votes cast on the I votronic; and 628 curbside ballots were reviewed, no discrepancies found with either. Deputy Director Joyner reported that 10 different machines were used; and audit was done with multiple bi-partisan teams; Secretary Russell was also in attendance along with other observers. The Board thanked Mr. Joyner.

Approval of Absentee Ballots

The Board reviewed 15 Absentee ballots presented by Ms. Gary. Secretary Russell commented on the multiple post markings three days after election. Director Tsujii clarified extension to November 14, 2016 due to holiday and business days. Both Secretary Russell and Member El-Amin inquired of one absentee ballot without a witness signature. Member El-Amin requested the date that the State Board of Elections provided clarification. Mr. Duffey provided date as requested.

Ms. Gary presented the Board with 133 Absentee ballots for approval; four of the absentee ballots were presented for consideration as they were hand delivered to the office. Secretary Russell regarding the hand delivered absentee ballots inquired if they were timely; Director Tsujii stated that standard procedure in the office is to time /date stamp all mail. Secretary Russell stated that the four did not have a postmark from the Post Office and no way to assume receipt date; Member El-Amin noted that they could be included with the 133. Secretary Russell motioned to disapprove due to unclear delivery date; Member El-Amin dissented; **Motion carried by Majority.**

Director Tsujii presented nine ballots with dates that were unclear to the Board for review; Secretary Russell proposed to approved those that reflect November 8, 2016; Chairman Raymond stated that two had dates that could not be determined. The Board concluded that three absentee ballots came in after November 8, 2016. Member El-Amin motioned to disapproved 5, Secretary Russell seconded; **Motion carried unanimously.**

Director Tsujii stated that Board action was needed to change the disposition to 137 Absentee ballots approved. Member El-Amin motioned to accept 137; Secretary Russell seconded; **Motion carried unanimously.**

Approval of Provisional Ballots

Director Tsujii presented the Board with a list of staff recommendations; approximately 1,800, noting that staff had completed 740 to date and research was on going. Mr. Tsujii stated that 359

Provisional ballots had been approved, 259 had been disapproved; 740 Provisional were presented for consideration by the Board.

Director Tsujii presented the Board with seven Provisional ballots for review and consideration; the One-Stop Early Voting application, Provisional application and original Voter registration were included for review. Secretary Russell motioned to disapprove One-Stop application due to no match; Member El-Amin seconded; **Motion carried unanimously.**

Director Tsujii presented the Board with an Election Day – Provisional and a One-Stop Early voting application, stating that after staff research the signatures believes signatures match. Director Tsujii recommended that the One-Stop application be approved and the Provisional ballot be cancelled due to double vote. Secretary Russell after clarification motioned to approve the One-Stop application and cancel the Provisional ballot; Member El-Amin seconded: **Motion carried unanimously.**

Director Tsujii presented two Provisional ballots to the Board where voter voted in two different One-Stop Early voting locations; Lewisville Public Library and Harper Hill Shopping Center. Secretary Russell motioned to cancel Provisional ballot and let One-Stop Early voting ballot stand; Member El-Amin seconded; **Motion carried unanimously.**

Mr. Tsujii presented the Board with Provisional ballot where a father allegedly used his son's record; noting that the son is the Provisional voter. Secretary Russell motioned to approve the One-Stop Early voting ballot and disapprove the Provisional ballot; Member El-Amin seconded; **Motion carried unanimously.**

Director Tsujii presented the Board with another Provisional and One-Stop application; noting the one in question was regarding the "Jr.". Mr. Tsujii stated that two voters were listed in the database and that the information was included for review. Chairman Raymond stated that the Voter Registration signature was a closer match to the One-Stop Early Voting application than to the Provisional application. Secretary Russell noted that "Jr." voted early. Member El-Amin motioned to accept One-Stop Early Voting application and to cancel the Provisional application; Secretary Russell seconded; **Motion carried unanimously.**

The Board was presented with another Provisional application and One-Stop application for review; Secretary Russell motioned to approve the Provisional application and reject the One-Stop Early voting application; **Motion carried unanimously.**

Director Tsujii presented additional for review; Secretary Russell made a motion for additional Provisional and One-Stop Early voting applications that for consistency purposes, the Provisional be rejected and the One-Stop Early Voting application be accepted; Member El-Amin seconded; **Motion carried unanimously.**

Director Tsujii recapped the additional seven presented; noting that the Board had approved two of the seven.

Director Tsujii reported the following breakdown of the 359 Provisional applications presented for approval:

- 122 – Provisional application had no record/registration found – Ineligible voters
- 23 – Previously Removed.

- 145 – Unreported moved – verified eligible to vote
- 29 – Incorrect precinct
- 15 – Voter had already voted
- 2 – Jurisdictional disputes
- 11 – Same Day Registrations without proof of residency
- 12 – Unrecognized address

Secretary Russell stated that a lot of research had been done; Member El-Amin commended staff. Member El-Amin motioned to accept staff recommendations, Secretary Russell seconded; **Motion carried unanimously.**

Director Tsujii presented 115 (93-Out of precinct/incorrect ballot style, 22-correct ballot wrong precinct) Provisional applications to the Board for Partial approval. Chairman Raymond motioned to accept staff recommendations; Member El-Amin seconded; **Motion carried unanimously.**

Mr. Tsujii presented the Board with 199 Provisional applications for disapproval (35-Removed from County, 6-Previously Denied, 7-Moved out of County/State, 5-After Deadline, 7-Moved out of County greater than 30 days). Member El-Amin inquired if contact would be made with the voters; Director Tsujii stated that after Canvass the applications would lead to registration, all applications will be processed. Chairman Raymond motioned to accept staff recommendations to disapprove 259 Provisional ballots; Member El-Amin seconded; **Motion carried unanimously.**

Director Tsujii remarked that Forsyth County had seen a 69.6 percent voter turnout.

Re-Mark of Partially Counted Provisional Ballots

Mr. Tsujii provided the Board with remarking options. Secretary Russell stated that they would go with staff recommendation. Director Tsujii stated that the correct ballots would be provided for comparison. In the interim of retrieving comparison ballots and remarked ballots; Mr. Tsujii requested to move to Approval of Meeting Minutes and then to resume remarking review.

Approval of Meeting Minutes

Secretary Russell motioned to approve the October 18, 2016 meeting minutes as presented; Member El-Amin seconded; **Motion carried unanimously.**

Resume - Re-Mark of Partially Counted Provisional Ballots

The Board and Director Tsujii reviewed remarked ballots and remarked ballots as necessary.

Director Tsujii stated that the Board would have to make a formal request to move Canvass to November 30, 2016; noting that after looking at other counties, November 30, 2016 will be the latest that it could be moved.

Secretary Russell motioned to move Canvass to November 30, 2016 at 10 a.m.; Member El-Amin seconded; **Motion carried unanimously.**

Chairman Raymond motioned to accept Protest Order with changes; Secretary Russell seconded; **Motion carried unanimously.**

The Board and Director Tsujii verified the Write-In tally and observed the One-Stop Early Voting tabulation process. Mr. Duffey entered the results. Director Tsujii presented reports for

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the Board to review. 178,916 votes cast, noting that the total will be updated again at next meeting.

Adjournment

Secretary Russell motioned to adjourn the meeting; Member El-Amin seconded; Motion carried unanimously. Meeting adjourned at 5:15 p.m.

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Approved:

Ken Raymond, Chair

Date

Stuart Russell, Secretary

Date

Fleming El-Amin, Member

Date

§ 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.

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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.)