

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Civil Action No. 17 CVS _____

PETITION FOR WRIT OF MANDAMUS
AND MOTION FOR EXPEDITED
HEARING
[N.C. Gen. Stat. §§ 163-22, 163-182.14,
and 163-301]

2017. Following canvass, Petitioner was declared to have defeated incumbent John Hill by one vote. That weekend, November 18-19, Mr. Hill and others, including former Republican state senator and current Winterville Councilman Tony Moore, discovered that a street that was eventually to be annexed into the town of Winterville, but was not yet within the town limits, had been improperly geocoded and ten voters on that street had been given ballots to vote in the municipal election even though their residences were not yet part of the town. Mr. Hill and others brought this to the attention of the County Board of Elections over that weekend. The County Board confirmed the geocoding error over the weekend, and ascertained that of those ten voters, four voters cast retrievable ballots during early voting and six voters cast ballots on Election Day, and those ballots were not retrievable. *See Ex. 1, Councilman won't contest Winterville race where some people improperly voted*, WITN, (Nov. 20, 2017), <http://www.witn.com/content/news/Some-people-voted-in-Winterville-Council-race-that-shouldnt-have-458943873.html>; *see also*, Ex. 2 (Facebook Postings of Councilman John Hill and Councilman Tony Moore)

On Friday, November 17, Mr. Hill timely requested and was granted a recount of the ballots pursuant to § 163-182.7(b) (“a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item....the demand for a recount must be made in writing and must be received by the county board of elections by 5:00 PM on the first business day after the canvass”). A recount occurred on November 21, 2017, with the same result: Richard Hines defeating incumbent John Hill by one vote.

News coverage of the canvass and the recount established that the inadvertent geocoding error was not in secret, and because of the recount, Mr. Hill had until Wednesday, November 22, 2017, to file a protest under the extended administrative deadline for such a protest. 08 NCAC 09 .0106(i) (“Any candidate shall have the right to file an election protest within 24 hours after a recount or by noon of the next business day of the county board office, whichever is later”). Mr. Hill was quoted widely in news coverage and on his Facebook page explaining the reason he considered and declined to file an election protest. *See* Ex. 3, Seth Thomas Gulledge, *Winterville council seat remains in question*, The Daily Reflector, (Nov. 21, 2017), <http://www.reflector.com/News/2017/11/21/Winterville-Recount.html>. But any citizen residing in Winterville had the right to file a protest by 5:00 PM on the second business day after the county board as completed its canvass and declared its results. N.C. Gen. Stat. § 163-182.9(a) and (b)(4)(c). That is, there had been substantial news coverage and Facebook posts relating to the geocoding issues before the deadline for any citizen in the town (beyond just the candidate’s extended deadline) to file a protest on Tuesday November 21. No such protest was filed.

Pursuant to statute, because there was no protest pending, the Chair of the Pitt County Board of Elections, Patrick Nelson, timely issued a certificate of election to Mr. Hines on November 27, 2017. N.C. Gen. Stat. § 163-301 (“Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163-182.5, the chairman of the county board of elections shall issue certifications of election, under the hand and seal of the chairman, to all municipal and special district officers”); *see also*, Ex. 4, Pitt County Board of Elections Certificate of Election for Ricky Hines to the Office of Town Council; Ex. 5, Pitt County Board of Elections Official Letter of Election to Mr. Hines.

On the morning of December 6, 2017, nine days after the County Board issued the certificate of election to Petitioner, Respondent's Executive Director, Ms. Strach, and its General Counsel, Josh Lawson, called David Davis, the director of the County Board of Elections. They informed him that because the geocoding error could have affected the outcome of the election, the county board had improperly or illegally certified the election results. They instructed the County Board to convene in an emergency meeting, which it did that evening. On the basis of their understanding of what Respondents' staff was requesting of them, the County Board decided to hand the matter over to the State Board of Elections for guidance.¹ General Counsel for Respondent then followed up with the County Board the next day and indicated to them that the December 6 letter was insufficient, and that the county board needed to clarify that it was requesting a new election and revoking the certification of election issued to Petitioner.²

On December 7, 2017, the Pitt County Board of Elections further clarified that they requested that the State Board consider a new election, and that the "certification of that contest to Ricky Hines is revoked" pending the decision of this Court.³ The Winterville Town Council met and should have installed Petitioner on December 11, 2017. *See* N.C. Gen. Stat. § 160A-68(a) (noting that newly elected town council should be qualified and sworn no later than the first regularly scheduled meeting of the council in December). Instead, the town council that day voted to allow Mr. Hill to retain the seat despite the election being certified with Petitioner as the winner. *See* Ex. 8, Nikki Crosthwaite, *Coding error causes confusion in Winterville election*,

¹ *See* Ex. 6, December 6, 2017 Letter from Pitt County Board of Elections to Kim Strach, Executive Director of the State Board of Elections.

² Petitioner intends to supplement this Petition with additional affidavits establishing the factual background.

³ *See* Ex. 7, December 7, 2017 Addendum to Letter from Pitt County Board of Elections to Kim Strach, Executive Director of the State Board of Elections.

WNCT, (Dec. 6, 2017), <http://wnct.com/2017/12/06/coding-error-causes-confusion-in-winterville-election/>.

ISSUES PRESENTED AND RELIEF SOUGHT

The issues presented by this Petition are:

1. Have the conditions set out in N.C. Gen. Stat. § 163.182.15(a) for certification of the results of the Winterville Town Council been met?
2. Does the County Board of Elections or State Board of Elections staff have the authority to revoke the certification of an election?
3. Where the State Board of Elections does not current have any appointed members, does the State Board of Elections staff have the authority “to initiate and consider complaints on its own motion” under N.C. Gen. Stat. § 163.182.12 or any other statute conferring supervisory authority on the State Board of Elections specifically?

Petitioner seeks the following relief:

A writ of mandamus issued to Respondent directing Respondent’s Executive Director, Kimberly Westbrook Strach, to notify the Pitt County Board of Elections that:

- a. The conditions for issuance of the certificate of election for the seat on the Winterville Town Council have been met.
- b. The Pitt County Board of Elections should either retract its December 7, 2017 revocation of its November 27, 2017 certificate of election upon Petitioner or reissue the certificate of election in accordance with N.C. Gen. Stat. § 163-182.15(a).

REASONS WHY THE WRIT SHOULD ISSUE

The facts in this case are undisputed. While the procedural posture is unusual, the basic legal principle at issue is not. This Court must act to enforce the fundamental rule that the finality of election results must be respected once a certificate of election has been issued.

Everyone agrees that there was an inadvertent technological error that afforded ten voters living on a street that had not yet been annexed into Winterville a ballot to vote in Winterville municipal elections. There is no accusation of an improper or illegal voting—this was simply a mistake.

Any one of Winterville’s nearly ten thousand residents was entitled to file a protest alleging that the election irregularity with the geocoding mistake was of a scope sufficient enough “to cast doubt on the apparent results of the election.” N.C. Gen. Stat. § 163-182.10(d)(2)(e). The candidate deemed to have lost the election was afforded an extension in the deadline to file an election protest. No one—not the candidate, not Councilman Moore, not any person who read the news coverage of the problem or read their Facebook postings, filed a protest.

In different circumstances, the State Board of Elections, if it existed and had acted prior to certification of the election, could have initiated a protest inquiry on its own motion. But because of ongoing litigation, there is no entity that is statutorily prescribed with the power to do so—State Board of Elections staff does not wield that power. Had there been a properly filed protest, this case would have likely reached this Court as a Petition for Judicial Review of the County Board’s findings of fact and conclusions of law relating to that protest. Or if there had been an acting State Board of Elections, it might have involved itself and resolved this issue without judicial intervention.

But the case arrives in this posture because North Carolina election code establishes procedures for the timely challenge of election results that may be in question, and establishes that only the State Board of Elections has the power to initiate an inquiry outside a timely filed protest. Neither of those options being used or possible here, Petitioner and indeed the voters in Winterville have an interest in seeing election proceedings determined with finality and elected officials assuming office and completing their official duties. *See Hutchinson v. Miller*, 797 F.2d 1279, 1280 (4th Cir. 1986) (“The legitimacy of democratic politics would be compromised if the results of elections were regularly to be rehashed”); *Dale v. Greater Anchorage Area Borough*, 439 P.2d 790, 792 (Alaska 1968) (“public policy demands that election results have stability and finality”), For the reasons and precedent discussed below, this Court should act to ensure that a certificate of election is restored to Petitioner and he is able to immediately assume the office to which he was elected.

1. The County Board of Elections Acted *Ultra Vires* in Revoking the Certification of the November 7, 2017 Election Results.

The County Board of Elections has no statutory authority to “revoke” an election certification. While the county board of elections does have the statutory authority to correct or amend election returns, *See* N.C. Gen. Stat. §§ 163-182.2(5) (noting that preliminary report of tabulation is unofficial), 182.5(a) (noting that county boards during canvass may “pass upon the legality of disputed ballots), 182.7 (giving county board discretion to order recount), that statutory authority ends once the election has been certified. *See Britt v. Board of Canvassers of Buncombe County*, 172 N.C. 797, 90 S.E. 1005 (N.C. 1916) (holding that no supplements to returns are appropriate after a certificate of election has been issued); *cf.* *Bell v. Board of Elections*, 188 N.C. 311, 124 S.E. 311 (N.C. 1924) (upholding a trial court’s decision ordering the county board of elections to amend returns where the request for amendment was made

“before the abstract had been signed.”). The State Board apparently and erroneously explained to the County Board that it improperly or illegally certified the election because it knew about the geocoding error. In completing its canvass, the County Board is instructed by statute to “authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly.” N.C. Gen. Stat. § 182.5(b).

Although the county board was, after the canvass, aware of the geocoding error, that still did not change the fact that the count it made had been authenticated, and indeed, was confirmed upon recount. Following that canvass, with no protest pending, the Pitt County Board of Elections in this matter was mandated by North Carolina law to certify the election and issue a certificate of election to the candidate with the highest vote count. While N.C. Gen. Stat. § 163-182.15(a) allows for delay in the issuance of a certificate of election where a protest is pending or where a stay by court order has been issued, no such protest had been filed, and no such stay had been issued in this matter. In the absence of a stay or timely filed protest, N.C. Gen. Stat. § 163-301 mandates that the Chairman of the County Board of Elections issue the certificate of election no later than ten days following canvass. Thus, the County Board complied with its statutory duties on both canvass and certification of the election.

Moreover, the State Board of Elections, even if fully constituted, lacks the statutory authority to instruct or demand that the County Board revoke a certificate of election. *See In re Election Protest of Fletcher*, 175 N.C.App. 755, 759, 625 S.E.2d 564, 567 (2006) (“The Board of elections lacks the statutory authority to revoke [candidate’s] certificate of election”); *see also Ledwell v. Proctor*, 221 N.C. 161, 164, 19 S.E.2d 234, 236 (1942) (“certificate of election is not subject to attack except in a civil action in the nature of a *quo warranto* proceeding”). It then follows that the State Board *staff*, acting without any delegation of power via resolution from the

State Board of Elections (that does not exist) under N.C. Gen. Stat. § 163-22(q), did not have the ability to instruct the Pitt County Board of Elections to revoke the certification that it had already issued.

In the initial issuance of a certificate of election to Petitioner, the Pitt County Board of Elections Chair was fulfilling his statutory duty by issuing Mr. Hines his certificate of election, and once such certification was issued, Mr. Hines' right to "be inducted into, and exercise the duties of the office" of Winterville Town Council was "conclusively settle[d] *prima facie*." *In re Election Protest of Fletcher*, 175 N.C.App. at 759, 625 S.E.2d at 567. The revocation of that certification, absent collateral attack in a *quo warranto* action, *Ledwell*, 221 N.C. at 164, 19 S.E.2d at 236, is improper, and the certificate of election must reissue.

2. The State Board of Elections Staff Lack Authority under N.C. Gen. Stat. § 163-182.12 to Initiate Protests or Consider Complaints on its Own Motion.

Respondent's staff is apparently relying upon N.C. Gen. Stat. § 163-182.12 to argue that it had the authority, absent the filing of a protest, to either (1) inform the county board that it had illegally certified the election results or (2) initiate a protest on its own. Though § 163-182.2 states that the State Board of Elections "may consider protests that were not filed in compliance with G.S. 163-182.9," or "may initiate and consider complaints on its own motion," the authority granted under that statute is granted to the appointed State Board of Elections, not its executive director or its general counsel. See N.C. Gen. Stat. §§ 163.20 (requiring a quorum of *members* of the State Board to meet in order to "transact business" and "discharge the duties and functions imposed upon" the State Board of Elections). The Executive Director of the State Board of Elections is empowered to perform only those duties "imposed upon him [or her] by statute and such duties as may be assigned to him [or her] by the State Board of Election." N.C. Gen. Stat. § 163-26. The State Board of Elections has no members due to the September 1, 2017 amendment

to the July 20, 2017 Order of the North Carolina Supreme Court in *Cooper v. Berger*, No. 52PA17-12, attached as Ex. 9. Given that, in effect, there is no State Board of Elections at the present moment, there is no party or entity with the statutory authority to consider untimely protests or “initiate and consider complaints” on its own motion under N.C. Gen. Stat. § 163-182.12. Nor is there a party or entity empowered to assign this duty to the Executive Director. N.C. Gen. Stat. § 163-26.

As this Court has recently noted, the absence of a State Board makes certain actions taken by the county board of elections even more final. See Ex. 10, Order Issuing Writ of Mandamus, *Furgiuele v. N.C. State Bd. of Elections*, Dec. 14, 2017 (“In the absence of appointed and sworn members of the State Board, decisions of the county boards of elections on election protests under Article 15A of Chapter 163 of the General Statutes are final and lack any additional administrative process. Appeals from any such decision lies with the Superior Court in Wake County within the deadline specified in N.C. Gen. Stat. § 163-182.14(b).”) With no State Board empowered to hear or initiate untimely protests, the Pitt County Board of Elections’ canvass became final when no protest was filed on November 22, 2017. 08 NCAC 09 .0106(i). Regardless of the unusual circumstances that bring about the situation at hand, Respondent is not authorized under the statute to circumvent what the law plainly requires.

3. A Mandamus Is Appropriate in This Matter

Because North Carolina law mandates that Mr. Hines be issued a certificate of election under the circumstances, and because it is anticipated that Respondent contends to the contrary, Mandamus is appropriate. “Mandamus is the proper remedy to compel public officials to perform a purely ministerial duty imposed by law.” *In re Alamance Cty. Court Facilities*, 329 N.C. 84, 104, 405 S.E.2d 125, 135 (1991). The State Board of Elections is under an affirmative

duty to supervise the primaries and elections of the state, *see* N.C. Gen. Stat. § 163-22, including municipal elections. *See* N.C. Gen. Stat. § 163-295. Respondent here, or its staff, in its supervisory capacity, are “under legal obligation to perform the act” of issuing a certificate of election, as they are required to do so under N.C. Gen. Stat. § 163-182.15. With no protest pending and no court order in effect, Respondent had no discretion or authority to instruct the County Board to revoke the election certification.

Should this Court grant the Petition and order the Writ as Petitioner requests, this is a narrow ruling that would likely affect no future elections. Nor would it set any dangerous precedent preventing the review of potentially fraudulent election results. As discussed above, in the ordinary course, the State Board of Elections is fully entitled to initiate a protest when it believes that an irregularity has occurred. § 163-182.12. Once the new State Board has been seated, the issue that this Court is faced with here is not likely to recur. Further, as was true in the election at issue, a meritorious election protest may be filed within the statutorily allowed period to request a new election regardless of whether the State Board of Elections has members. §163-182. The State Board of Elections in recent rulings has emphasized how timely compliance with the rules on challenges and protests serve the interests of voters and allow elections to be conducted and regulated with certainty in process, uniformity in application and finality of results. *See* Ex. 11, Order, *In the Matter of: Consideration of Certain Legal Questions Affecting the Authentication of the 2016 General Election*, Nov. 28, 2016. The relief Petitioner requests here is simply in line with that sage guidance.

II. MOTION FOR EXPEDITED HEARING

Petitioner moves this Court for an expedited hearing on this matter. Pursuant to N.C. Gen. Stat. § 1A-1, Rule 7(b), Petitioner offers the following grounds for the motion:

1. The Petition for a Writ of Mandamus seeks enforcement of Petitioner's right to retain his duly issued certificate of election and assume his seat on the Winterville Town Council.
2. Petitioner should have assumed the seat to which he is now legally entitled, following the County Board's certification of his election, on December 11, 2017. Thus, he is already being harmed by being prevented from holding the seat to which he was duly elected. *See Ex. 12, Affidavit of Richard Earl Hines.*
3. As it has in the past at the first meeting in January of any given year, *see Ex. 13* (2017 Winterville Town Council Meeting Schedule), the Winterville Town Council will take up the task of considering the budget and setting priorities for the 2018-2019 budget year. *See Ex. 14* (2018 Winterville Town Council Meeting Schedule).
4. Absent an expedited hearing on this matter, Petitioner is likely to be excluded from, and thus unable to exercise his duties as a duly-elected Councilman, until the budgeting process is well underway. This irreparable harm to the legal interest Petitioner has in assuming office and carrying out his duties is avoidable only by expedited action by this Court. *See Ex. 12.*
5. Counsel for Petitioner is aware that Counsel for Respondent has conferred with the Trial Court Administrator and that the Court has some availability to hear this matter and another, unrelated matter, during the week of February 5. Because of the urgency of having this matter resolved in time for Petitioner to assume office by the time important town matters are taken up in January, Counsel for Petitioner has attempted to consult with counsel for Respondent in order to seek a mutually agreeable schedule prior to February 5 and will continue to do so. Petitioner anticipates that the parties will be able

to make themselves available at a time convenient for the Court. Petitioner would suggest that either party may submit a response or brief before or at the hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays the Court for the following relief:

1. That the Court issue an Order setting a hearing on the petition at the Court's earliest convenience, and allowing either party to submit further briefing as desired;
2. That this Petition for Writ of Mandamus be accepted;
3. That the Court issue a writ of mandamus to Executive Director Strach, ordering her to grant Petitioner the relief requested above; and
4. That the Court grant such other and further relief as the Court deems necessary or appropriate.

Respectfully submitted, this the 20th day of December, 2017.



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SOUTHERN COALITION FOR

SOCIAL JUSTICE

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Suite 101

Durham, NC 27707

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned attorney for petitioners hereby certifies that on this day the foregoing Petition for Writ of Mandamus and Motion for Expedited Hearing was served upon the North Carolina State Board of Elections by email and by hand delivery to the following address:

Mr. Josh Lawson
General Counsel
State Board of Elections & Ethics Enforcement
Third Floor, Dobbs Building
430 N. Salisbury St.
Raleigh, NC 27611
Joshua.lawson@ncsbe.gov

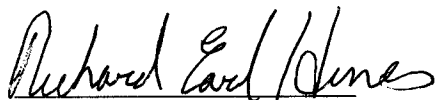
This, the 20th day of December, 2017.


Allison J. Riggs

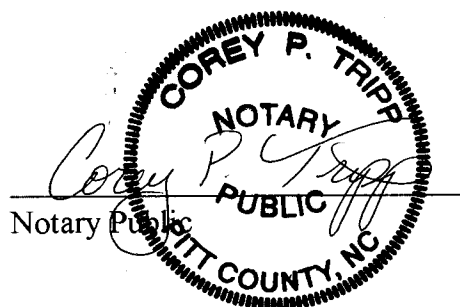
VERIFICATION

I, Richard Earl Hines, having been duly sworn, hereby state that I have read the foregoing Petition for Writ of Mandamus and Motion for Expedited Hearing, and that the same is true to the best of my knowledge.

This the 20th day of December, 2017.


Richard Earl Hines

Sworn to and subscribed before me by
Richard Earl Hines, personally appearing, this
The 20 day of December, 2017.



My Commission Expires:

02/28/2021

Exhibits to Petition

Ex. 1 - *Councilman won't contest Winterville race where some people improperly voted*, WITN, (Nov. 20, 2017), <http://www.witn.com/content/news/Some-people-voted-in-Winterville-Council-race-that-shouldnt-have-458943873.html>

Ex. 2 - Facebook Postings of Councilman John Hill and Councilman Tony Moore

Ex. 3 - Seth Thomas Gullledge, *Winterville council seat remains in question*, The Daily Reflector, (Nov. 21, 2017), <http://www.reflector.com/News/2017/11/21/Winterville-Recount.html>

Ex. 4 - Pitt County Board of Elections Certificate of Election for Ricky Hines to the Office of Town Council

Ex. 5 - Pitt County Board of Elections Official Letter of Election to Mr. Hines

Ex. 6 - December 6, 2017 Letter from Pitt County Board of Elections to Kim Strach, Executive Director of the State Board of Elections

Ex. 7 - December 7, 2017 Addendum to Letter from Pitt County Board of Elections to Kim Strach, Executive Director of the State Board of Elections

Ex. 8 - Nikki Crosthwaite, *Coding error causes confusion in Winterville election*, WNCT, (Dec. 6, 2017), <http://wnct.com/2017/12/06/coding-error-causes-confusion-in-winterville-election/>

Ex. 9 - Order of the North Carolina Supreme Court in *Cooper v. Berger*, No. 52PA17-12

Ex. 10 - Order Issuing Writ of Mandamus, *Furgiele v. N.C. State Bd. of Elections*, Dec. 14, 2017

Ex. 11 - Order, *In the Matter of: Consideration of Certain Legal Questions Affecting the Authentication of the 2016 General Election*, Nov. 28, 2016

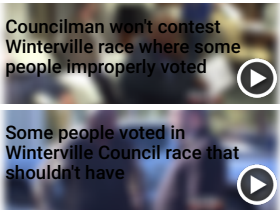
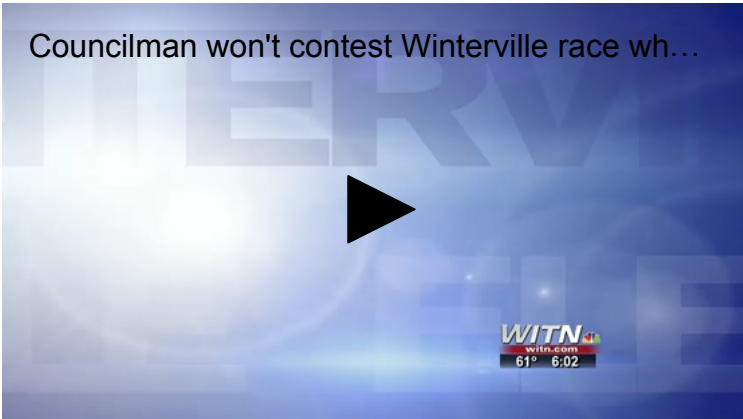
Ex. 12 - Affidavit of Richard Earl Hines

Ex. 13 - 2017 Winterville Town Council Meeting Schedule

Ex. 14 - 2018 Winterville Town Council Meeting Schedule

Exhibit 1

Councilman won't contest Winterville race where some people improperly voted



Posted: Mon 7:46 PM, Nov 20, 2017 | Updated: Tue 8:38 PM, Nov 21, 2017

WINTERVILLE, NC (WITN) A town councilman says he will not contest losing the race by one vote, even though ten people improperly cast ballots.

The Pitt County Board of Elections began going thru 1316 ballots in the Winterville council race at 9:00 a.m. Tuesday for a recount.

On election night incumbent John Hill was the unofficial winner by eight votes.

Following the canvassing of votes last week, including provisional and absentee ballots, his challenger, Ricky Hines, was declared the winner by one vote.

Now it has been discovered that some people who live outside of the town voted.



Those votes came from people in one neighborhood, that according to the town, was developed in 2015 and has yet to be annexed into the city limits, but were allowed to vote in the municipal elections.

Pitt County Board of Elections Director Dave Davis says 10 votes came out of that area and they cannot be separated and uncounted.

Hill said Tuesday afternoon that he would not contest the results. "The votes are still not right, but I'm not going to out Mr Hines and the 10 people through the process of protests and possible court hearings." said Hill is a statement to WITN. "I'm still upset with the system and what happened, but I'm going to concede to Mr Hines."

Previous Story

A town council race in Winterville that is separated by just one vote and headed for a recount, had some people vote that shouldn't have.

On election night incumbent John Hill was the unofficial winner by eight votes.

Following the canvassing of votes last week, including provisional and absentee ballots, his challenger, Ricky Hines, was declared the winner by just one vote.

Now it has been discovered that some people who live outside of the town limits voted and they shouldn't have.

Hill says, "I was ready to resign myself that Mr. Hines had won, and I was happy with that, when word started coming out that people had voted who did not live within town. Flags started going on for me."

Those votes came from people in one neighborhood, that according to the town, was developed in 2015 and has yet to be annexed into the city limits, but were allowed to vote in the municipal elections.

Pitt County Board of Elections Director Dave Davis says 10 votes came out of that area and they cannot be separated and uncounted.

Davis says, "Election day ballots are a secret ballot, we don't know whose ballot is whose."

But Hill says he'll go through the process and will ask for a recount on Tuesday

Hill says, "After that I think we have a really good case for a protest. Of course not because of Mr. Hines and my desire for the community, but more importantly because of the principle of the matter."

Hines, who now stands the winner, agrees with Hill, saying, "He deserves to know and to make sure and his constituents also, or the people who voted for him."

The recount is slated for Tuesday morning at 9:00 a.m.

Elsewhere, Carteret County will recount votes next Monday for the Pine Knoll Shores council seat that ended in a tie, and for one Morehead City town council seat.

Lenoir County will not recount Kinston's town council race between Kristal Suggs and Nathan Perry. Suggs will win the seat.

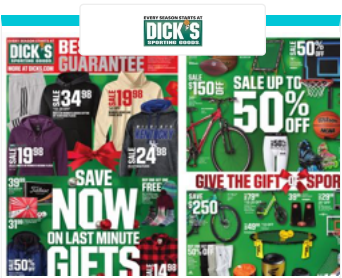
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With us, it's personal.
OPEN LATE ALL WEEK and OPEN CHRISTMAS EVE
Plus, we have special Christmas Eve gift ideas to give the ones you love.

50% OFF select items
33% OFF select items
50% OFF select items

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DICK'S
BEAT ANY GUARANTEE
SALE DATES: DECEMBER 11-18
SAVE UP TO 50% OFF
GIVE THE GIFT OF SPORT

34.99
19.99
24.99
39.99
37.99
50% OFF
150% OFF
250% OFF

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PETSMART
LAST MINUTE GIFTS
7 days of deals
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Exhibit 2



Dr. John Hill
@drjohnhill

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Dr. John Hill
November 18 · 🌐

This election will be the death of me for sure. Yesterday, I received word that one of my opponents beat me by a single vote after the provisional ballots were tabulated. After resigning myself to the fact I lost a very close race (after already being named the unofficial winner.) Late last night I was informed there was/were individual(s) who voted who did not live within the City Limits. After reviewing the voter list myself, there was at least 1 who did not live in town and should not have been allowed to vote. In light of a single vote difference, this is a game changer. The board of elections is doing their research and should have an answer by Monday before 5pm.

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4

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Top Comments ▾



Peter Wagner I might just have to pray for you John.

Like · Reply · 🤔 1 · November 18 at 6:03pm

Linda Westbrook Nobles Prayers,you are what we need!

Like · Reply · November 18 at 5:57pm



Dr. John Hill
November 17 · 🌐

Provisional ballots are in and Mr Hines won the election by a single vote. There are other processes that must take place, but unless there is a mistake or someone voted who did not live within the town limits of Winterville, Mr Hines is your new Councilman.

54° 📶 4G LTE 94% 1:06

Precincts Reported: 3 of 3

NAME ON BALLOT PARTY BALLOT PERCENT

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Government Organization in Winterville,
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Pitt County Sheriff
Law Enforcement Agency

Like



Sam Jones BBQ
Barbecue Restaurant

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Dr. John Hill

November 21 at 5:33pm · 🌐

Congratulations to Councilman Ricky Hines. He worked hard in this election and should feel proud of his accomplishment. I conceded to Mr Hines today after the recount and the fact-finding about the lack of a protest process. Having no recourse to rectify the 10 non-resident voters, I knew I would not hinder Mr Hines (nor the 10 voters) any longer. Best wishes to Mr Hines for the next 2 years.



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Write a comment...



Bernard Nobles John, Thanks for your service to the town of Winterville, and of course for what you do at the Winterville Free Will Baptist Church. Hope you have a Happy Thanksgiving.

Like · Reply · 🗨️ 1 · November 21 at 7:12pm



Linda Westbrook Nobles Sorry you didn't get the chance to serve Winterville! Just wasn't in the Lords plan. Thank you for all your service!

Like · Reply · 🗨️ 1 · November 21 at 5:49pm



Dr. John Hill

November 19 · 🌐

I have verified via OPIS that 10 non-residents voted in this past municipal election. This fact affects more than just my race, but all of the municipal races this year. I'm less concerned about how this affects my race as much as I am concerned about how it questions our municipal elections process. Stay Tuned.

If Mr. Hines is the winner (and he may very well be), he deserves to serve with a clean slate and the citizens need the confidence to know the election was fair for ALL candidates of ALL races.



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(252) 230-1845



Typically replies within a few hours

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Dr. John Hill
@drjohnhill

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4



Write a comment...



Kathryn Hill What a wild ride you're having! Hang on!
Like · Reply · December 7 at 6:31am

Top Comments ▼



Dr. John Hill

December 5 at 8:33am · 🌐

When people asked why I didn't file a protest for the recent election, this article is a non-bias report of the state of our board of elections. Thank You Mr Campbell for your effective reporting on this Statewide issue.



4



Write a comment...



Dr. John Hill shared Winterville Police Department's event.

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Typically replies within a few hours
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Tony P Moore

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Tony P Moore shared **Stuff's** video.
December 17 at 5:21pm · 🌐



**Intro**

Public Service

 Self employed

 Former Senator at North Carolina State Senate

 Former Teacher at Pitt County Schools

 Studied Education at Appalachian State University

 Studied Educational Specialist in Administration at East Carolina University

 Studied Associate of Arts Degree at Lenoir Community College

 Studied Personal Development, Health & Physical Education at Barton College

 Studied General College at The University of North Carolina at Chapel Hill

 Went to Winterville High School

 Lives in Winterville, North Carolina

 Married to Susan Moore

 Followed by 232 people



Tony P Moore

Timeline ▾

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Like · 1 · November 24 at 10:45am



Tony P Moore

November 21 at 5:18pm ·

Very disappointed that the Pitt County Elections Board allowed people to vote who are not residents of Winterville. Maybe the Town of Winterville should train it's own staff for the next election cycle!

...



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Exhibit 3

Winterville council seat remains in question



1 of 5
Winterville candidates Ricky Hines and John Hill talk during a recount of votes at the Pitt County Board of Elections Tuesday, Nov. 21, 2017.



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**The Daily Reflector**
about an hour ago

TARBORO — A Chinese tire maker announced Tuesday it would build a \$580 million manufacturing facility in Edgecombe County that eventually will employ 800 people and produce six million tires a year.



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By Seth Thomas Gullledge

The Daily Reflector

Tuesday, November 21, 2017

A Tuesday morning recount confirmed Winterville Town Council candidate Ricky Hines defeated John Hill by one vote, but the results may still be challenged due to the inclusion of 10 ineligible ballots.

Hines won the two-year remainder of the term held by the late Ron Cooper with 425 votes to Hill's 424 votes. David Hooks, who also was running for the seat received 375 votes.

"I'm just elated to be a winner again," Hines said. "The first time, there was a lot of suspense, but for the recount I was figuring it would be the same. I was happy. You just have to let the process play out."

The count was a reversal of election-night results, when the tally showed Hill received 421 votes, Hines 413 and Hooks 374. On Friday, however, 23 supplemental absentee ballots and 122 provisional ballots were added countywide during the official election canvass.

Supplemental absentee ballots are ballots that were mailed and postmarked by 5 p.m. on Election Day — in this case Nov. 7 — but were not received at the election office until the third business day after Election Day, Davis said.

Provisional ballots are votes that have to be certified because of question about the voter's eligibility.

The additions altered the outcome of the Winterville race, but not other races in the county. Hill sent a recount request to the Board of Elections on Friday afternoon.

Though the results of the race are now final, Hill has the chance to challenge the results based on the inclusion of 10 ballots submitted from ineligible voters. The voters in question came from the Mellow Downs subdivision in the south Winterville.

Part of the neighborhood currently is in the process of being annexed, according Pitt County Elections Director Dave Davis, but the process is not complete, meaning they should not have voted in the election.

Davis said of the 10, six people voted on Election Day, so their ballots are not retrievable and it is impossible for the Elections Board to determine for whom they voted. The other four voted at a one-stop site before election day, so their votes can be retrieved.

Davis said the Board of Elections would only make such a decision if an eligible individual protested the vote and a subsequent hearing by the board determined that the protest had merit.

Anyone affected by the outcome had until 5 p.m. on Tuesday to protest but no one did, according to Davis. Because of the recount, the three candidates have until noon today to protest if they wish.

On Tuesday, Hill said he was not sure if he would protest.

"I've got to make a decision, and I need to meet with the folks here at the election's office to decide what our next steps are. Is this worth going through an appeals process and protesting this vote?" he said. "There's several options and I can't guarantee that any of them would be a great option, we just have to weigh out our choices. Again, I'm happy that Mr. Hines won, but I think principle is the concern at this point."

Hill said he believed both candidates would be in a better place if a recount could be conducted without the 10 ineligible votes. He said it would lead to either his own victory or lend more credibility to Hines' victory.

"We know there's an issue, we have identified those, and verified that it is certainly the case, so we have a good case for protest of the vote," he said. "Again this has nothing to do with Mr. Hines, we just want to make sure we're doing our best to keep our election process legitimate and honest."

Hines said he had no control over the perception of credibility, and would do his best at his new role for the town. He said though it is unfortunate that mistake happened, he believes it will serve as a learning experience for everyone involved, and hopefully prevent it from happening again. He said the best prevention of something like this happening though, is getting more residents out to the polls.

"This contest was very close," he said. "We had 1,316 people who voted in Winterville. But just think, we have more citizens than that in Winterville. So if everybody would exercise their right to vote that lives in the municipality, we wouldn't be here, with me winning by one vote, or Mr. Hill losing by one vote."

"Nothing against the people that came out to vote, the 10 that are being questioned. These people were just trying to do the right thing, I don't think there was any malicious intent. They were thinking their subdivision was already

Bless his heart, Steve Schmidt (senior campaign strategist for McCain) on Fox News: "The breathtaking dishonesty of it,...

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annexed in.”

Contact Seth Gullledge at sgulledge@reflector.com and 329-9579

From Today

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[La Casetta offers authentic Italian cuisine](#)



[Dec. 20 Community News](#)



[Jones, Butterfield vote against tax cut](#)



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Exhibit 4

PITT COUNTY
BOARD OF ELECTIONS

CERTIFICATE OF ELECTION FOR

Ricky Hines

TO THE OFFICE OF

TOWN COUNCIL

Issued this 27th of November, 2017

11/07/2017 MUNICIPAL ELECTION

Patrick Nolan

Chair, Board of Elections

David A Davis

Director of Elections

Exhibit 5

PITT COUNTY BOARD OF ELECTIONS

PO BOX 56

GREENVILLE NC 27835

Phone Number: (252) 902-3300 • Fax Number: (252) 830-1157 • PITT.boe@ncsbe.gov

11/27/2017

TO: RICHARD EARL HINES
2452 SURRY LN
WINTERVILLE NC 28590

FROM: PITT COUNTY BOARD OF ELECTIONS

RE: OFFICIAL LETTER OF ELECTION

The PITT COUNTY BOARD OF ELECTIONS met on 11/17/2017 and certified the 11/07/2017 MUNICIPAL ELECTION results. This letter serves as your Official Letter of Election to the office of TOWN COUNCIL. Your *Certificate of Election* is enclosed.

Exhibit 6

TO: Kim Strach, Executive Director NC State Board of Elections & Ethics Enforcement
FROM: Pitt County Board of Elections
RE: Winterville Town Council Unexpired Term Election
DATE: December 6, 2017

Due to the voting of ten ineligible voters, the Pitt County Board of Elections is not able to certify the results of the Town of Winterville Town Council (Unexpired Term Ending 2019) election. With the election being determined by one vote, it is possible that the outcome could have been affected by this irregularity. In consideration of this irregularity, the Pitt County Board of Elections sends this matter to the NC State Board of Elections & Ethics Enforcement who in turn will submit it to the Wake County Superior Court for determination if a new election or other needed action should take place. As follows is supporting information related to the irregularity.

On Election Night candidate John Hill prevailed over candidate Ricky Hines by eight votes. At Canvass nine supplemental absentee ballots and seven provisional ballots were added to the election results. These additional votes resulted in Ricky Hines prevailing over John Hill by one vote. The weekend following Canvass, John Hill identified ten voters who had voted in the Winterville election but were not inside the town boundaries. These voters are on Mockingbird Lane and Oakwood Drive in the Mellon Downs subdivision. This portion of the subdivision is in the process of being annexed, but it is uncertain when the final annexation will take place. When the Board of Elections coded street ranges by election district this portion of the subdivision had inadvertently been coded inside Winterville. This error did not present itself when audits were run comparing map data to voter records. The audit was run again on Monday, November 20 and the error was still not identified. We are in the process of analyzing the audit and very likely designing a new audit method to refine the process.

A recount was conducted on Tuesday, November 21 at the timely request of John Hill with no change in the Canvass results. An election protest was not filed by any individual, leading to the Pitt County Board of Elections issuing a certificate of election to candidate Ricky Hines for this contest.

Of the ten voters, four cast their ballot during One-Stop early voting and their ballots can be retrieved and deducted if so ordered. However, the remaining six ballots were cast on Election Day at the 1403A2 Winterville South precinct (the precinct the subdivision is located inside) and cannot be retrieved.

There was no malicious intent evident in any part of this matter by any involved party. Street ranges were incorrectly coded and should have been identified with audits that compare map data with voter records. This is a matter that we wish had not occurred and always strive to avoid. Steps are being taken to strengthen the audit process and implement procedures that will ensure situations like this not happen again.

At this time we are handing the matter over to the State Board of Elections & Ethics Enforcement and Wake County Superior Court for guidance as to the next course of action in certifying a candidate for the Town of Winterville (Unexpired Term Ending 2019) contest.





Chair



Secretary

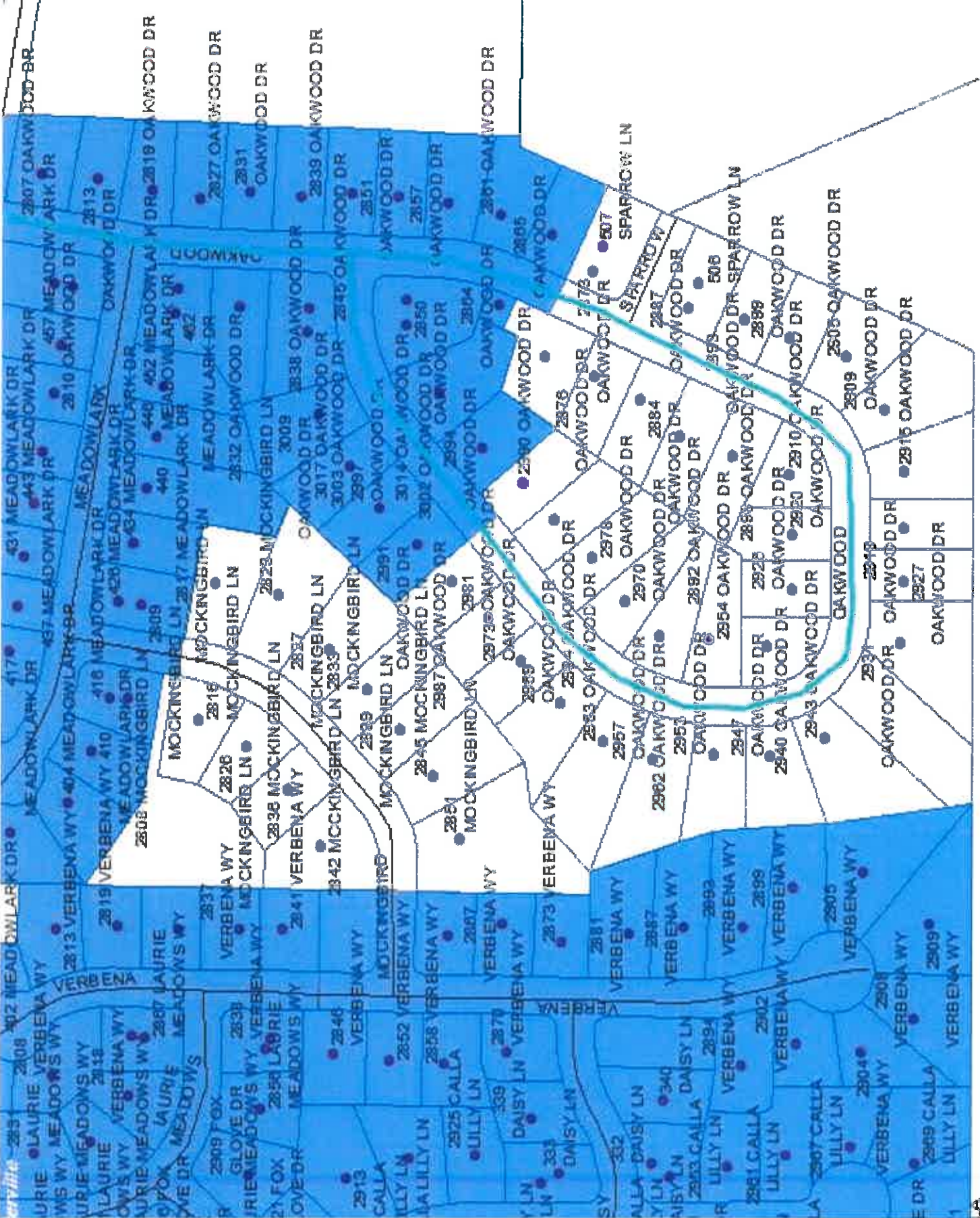


Director



NAME LAST, FIRST, MIDDLE	RESIDENTIAL ADDRESS CITY/STATE/ZIP	RESIDENTIAL ADDRESS FULL STREET	MAILING ADDRESS FULL	TELEPHONE FULL NUMBER	VOTER REGISTRATION NUMBER	JURISDICTION PRECINCT CODE	JURISDICTION MUNICIPALITY CODE	PARTY CODE	GENDER CODE	RACE CODE	ETHNICITY CODE	REGISTRATION DATE	STATUS CODE	VOTED METHOD
ALVES, ALEXANDER JEROME	WINTERVILLE, NC 28590	2842 MOCKINGBIRD LN	2842 MOCKINGBIRD LN	919-288-9807	000030143360	1403A2	I	REP	M	W	NL	04/05/2016	A	IN-PERSON
BECK, LYNNE MARIE	WINTERVILLE, NC 28590	2957 OAKWOOD DR	2957 OAKWOOD DR		000030152311	1403A2	I	REP	F	U	UN	10/07/2016	A	IN-PERSON
FULLER, ANGELA PERKINS	WINTERVILLE, NC 28590	2851 MOCKINGBIRD LN	2851 MOCKINGBIRD LN	252-561-6433	000000102018	1403A2	I	DEM	F	B	NL	04/04/1994	A	IN-PERSON
FULLER, GEORGE EARL	WINTERVILLE, NC 28590	2851 MOCKINGBIRD LN	2851 MOCKINGBIRD LN	252-347-3500	000000077266	1403A2	I	DEM	M	B	NL	10/05/1988	A	IN-PERSON
WALT, ARDEN	WINTERVILLE, NC 28590	2978 OAKWOOD DR	2978 OAKWOOD DR	717-265-4674	000030159283	1403A2	I	DEM	F	W	NL	02/15/2017	A	IN-PERSON
WALT, CHARLES EDWARD IV	WINTERVILLE, NC 28590	2978 OAKWOOD DR	2978 OAKWOOD DR	707-479-5525	000030159281	1403A2	I	DEM	M	W	NL	02/15/2017	A	IN-PERSON

MCCULLOUGH, FRANCINE AUGUSTA	WINTERVILLE, NC 28590	2827 MOCKINGBIRD LN	2827 MOCKINGBIRD LN	240-441-1270	000030142505	1403A2	I	DEM	F	B	NL	03/12/2016	A	ABSENTEE ONESTOP
STUCKEY, ALVA III	WINTERVILLE, NC 28590	2920 OAKWOOD DR	2920 OAKWOOD DR	252-756-2344	000030034311	1403A2	I	DEM	M	W	NL	09/03/2004	A	ABSENTEE ONESTOP
STUCKEY, CATHY MCCLAWHORN	WINTERVILLE, NC 28590	2920 OAKWOOD DR	2920 OAKWOOD DR	252-756-2344	090000042891	1403A2	I	DEM	F	W	NL	03/31/1978	A	ABSENTEE ONESTOP
TROXELL, JOSHUA ALAN	WINTERVILLE, NC 28590	2893 OAKWOOD DR	2893 OAKWOOD DR		000030136583	1403A2	I	REP	M	W	NL	09/21/2015	A	ABSENTEE ONESTOP



PITT BOARD OF ELECTIONS

CANDIDATE DETAIL LIST

CRITERIA: Election: 11/07/2017, Show Contest w/o Candidate: N

CONTEST NAME / SEAT NAME / PARTY	CANDIDATE NAME / NAME ON BALLOT	FILING DATE / RESIDENTIAL ADDRESS CAND PTY	MAILING ADDRESS	HOME PHONE / MOBILE PHONE	WORK PHONE
TOWN OF WINTERVILLE TOWN COUNCIL(UNEXPIRED TERM ENDING 2019)	HILL, JOHN EDWARD JR John Hill	07/20/2017 349 BARREL DR WINTERVILLE, NC 28590		(252) 230-1845 (252) 230-1845	(252) 230-1845
TOWN OF WINTERVILLE TOWN COUNCIL(UNEXPIRED TERM ENDING 2019)	HINES, RICHARD EARL Ricky Hines	07/20/2017 2452 SURRY LN WINTERVILLE, NC 28590	2452 SURRY LN WINTERVILLE, NC 28590	(252) 917-3470 (252) 917-3470	(252) 752-2035
TOWN OF WINTERVILLE TOWN COUNCIL(UNEXPIRED TERM ENDING 2019)	HOOKS, DAVID E David Hooks	07/20/2017 322 BRANCH ST WINTERVILLE, NC 28590		(252) 378-5772 (252) 378-5772	(252) 378-5772

PITT COUNTY, NC (UNOFFICIAL)
MUNICIPAL ELECTION

0023_TOWN OF WINTERVILLE TOWN COUN				0024_TOWN OF WINTERVILLE TOWN COUN						0026_TOWN OF GRIFTON MIXED BEVERAGE ELECTION						
K a t r i n a	M . J o n e s	J o h n n y M o y e	M a r k C . S m i t h	W R I T T E - I N	O V E R R V O T E S	U N D E R R V O T E S	J o h n H e l l	R i c k y H i n e s	D a v i d H o o k s	W R I T T E - I N	O V E R R V O T E S	U N D E R R V O T E S	A g a i n s t	O V E R R V O T E S	U N D E R R V O T E S	
1001 GRIFTON																
1403A1 WINTERVILLE WEST	27	31	23	1	0	42	14	36	9	0	0	3	153	223	0	5
1403A2 WINTERVILLE SOUT	69	175	120	4	0	158	103	85	62	2	0	11				
1403B WINTERVILLE NORTH	119	251	201	3	0	224	124	121	118	0	1	35				
OS AG CENTER	0	2	2	0	0	2	0	1	1	0	0	1	0	0	0	0
OS COUNTY OFFICE	1	4	2	0	0	1	2	0	2	0	0	0	0	0	0	0
OS COMMUNITY SCHOOLS	43	94	79	3	0	81	49	48	36	2	0	15	13	18	0	0
OS WILLIS BUILDING	7	4	3	0	0	8	5	3	3	0	0	0	0	1	0	0
OS WINTERVILLE FIRE STA	127	222	209	3	0	251	123	119	143	1	0	20	6	11	0	2
ABSENTEE MAIL	0	2	1	0	0	1	1	0	0	0	0	1	0	0	0	0
PROVISIONAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TRANSFER	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS	393	785	640	14	0	768	421	413	374	5	1	86	172	253	0	7

November 07, 2017 Municipal Election Results by Contest

Friday, November 17, 2017
Page 3 of 3

Contest	Choice	Party	Total Votes	Election Day	One Stop	Abs Mail	Provisional
VILLAGE OF SIMPSON VILLAGE COUNCIL	Oscar (Jim) Telfaire (Write-In)		44	27	12	4	1
	Mary Staton Moye		89	65	16	6	2
	Dianne Thomas		95	71	22	0	2
	Calvin C Henderson		284	176	98	9	1
TOWN OF WINTERVILLE MAYOR	Doug Jackson		429	239	186	1	3
	Tucker Moore		190	99	91	0	0
	Veronica W Roberson		401	202	195	1	3
	Katrina M Jones		399	215	178	3	3
TOWN OF WINTERVILLE TOWN COUNCIL	Johnny Moye		797	457	326	9	5
	Mark C Smith		644	344	295	3	2
	John Hill		424	241	179	1	3
	Ricky Hines		425	242	171	8	4
TOWN OF WINTERVILLE TOWN COUNCIL(UNEXPIRED TERM ENDING 2019)	David Hooks		375	189	185	1	0
	For		172	153	19	0	0
	Against		253	223	30	0	0
TOWN OF GRIFTON MIXED BEVERAGE ELECTION							

PITT COUNTY

Exhibit 7

TO: Kim Strach, Executive Director NC State Board of Elections & Ethics Enforcement
FROM: Pitt County Board of Elections
RE: Addendum to Winterville Town Council Unexpired Term Election Letter
DATE: December 7, 2017

This serves as an addendum to clarify the letter to Kim Strach dated December 6, 2017.

The intent of said letter is to request the NC State Board of Elections & Ethics Enforcement to consider a new election for the Town of Winterville Town Council (Unexpired Term Ending 2019) contest. The certification of that contest to Ricky Hines is revoked pending the outcome of a decision issued by the State Board and/or Superior Court.


Chair


Secretary


Director



Exhibit 8

Coding error causes confusion in Winterville election



By **Nikki Crosthwaite** (<http://wnct.com/author/nikki-crosthwaite/>)

Published: December 6, 2017, 6:18 pm



WINTERVILLE, N.C. (WNCT) — Former Winterville Town Council member John Hill will keep his seat despite appearing to lose by one vote to Ricky Hines in November's election.

Hill initially prevailed over Hines by eight votes. However, at canvass, nine supplemental absentee ballots and seven provisional ballots were added.

Those votes gave Hines a one-point lead.

But the Pitt County Board of Elections said a coding error allowed people outside the voting district to cast ballots.

Parts of Mockingbird Lane and Oakwood Drive were not annexed into town limits.

The part at the center of the issue is highlighted in gray.



(<https://mgtwnct.files.wordpress.com/2017/12/winterville-annexation-map.jpg>)

The error allowed 10 people to vote in the November election who were not in town boundaries.

The board says any decision regarding a new election is up to the state.

For now, Hill will retain his seat.

Top News



Charlotte uses big second half to upend ECU, 69-50

GREENVILLE, N.C. (AP) – Andrien White scored 30 points on...



/i/1.gif?

(F0CTI1MDA)jG4JMzY5CXZuCTM4NTYyNQlICWNrCWEJmjkxCW8J&fwd=http%3A%2F%2Fdistroscale.com)

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Recount in Winterville Town Council race yields same result
(<http://wnct.com/2017/11/21/recount-in-winterville-town-council-race-yields-same-result/>)



New subdivision zoned and approved for Winterville
(<http://wnct.com/2017/11/21/new-subdivision-zoned-and-approved-for-winterville/>)



'Cops on the Roof:' Pitt County police collect bikes for kids
(<http://wnct.com/2017/12/08/cops-on-the-roof-pitt-county-police-collect-bikes-for-kids/>)



Fire officials provide safety tips ahead of holiday season
(<http://wnct.com/2017/12/12/fire-officials-provide-safety-tips-ahead-of-holiday-season/>)



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Exhibit 9

SUPREME COURT OF NORTH CAROLINA

ROY A. COOPER, III, IN HIS OFFICIAL)
 CAPACITY AS GOVERNOR OF THE STATE)
 OF NORTH CAROLINA)

v.)

PHILIP E. BERGER, IN HIS OFFICIAL)
 CAPACITY AS PRESIDENT PRO TEMPORE)
 OF THE NORTH CAROLINA SENATE;)
 TIMOTHY K. MOORE, IN HIS OFFICIAL)
 CAPACITY AS SPEAKER OF THE NORTH)
 CAROLINA HOUSE OF REPRESENTATIVES;)
 AND THE STATE OF NORTH CAROLINA)

Wake County

ORDER

A three-judge panel of the superior court dismissed plaintiff's complaint because the panel determined that it lacked jurisdiction over the subject matter of plaintiff's claims. Plaintiff now asks this Court to review that determination and to decide whether his claims have merit.

The Constitution of North Carolina vests the superior court with "original general jurisdiction throughout the State." N.C. Const. art. IV, § 12(3). That body is charged with hearing claims in the first instance, even when the issue presented is solely a question of law. By contrast, the Constitution vests this Court with "jurisdiction to review *upon appeal* any decision of the courts below, upon any matter of law or legal inference." *Id.* art. IV, § 12(1) (emphasis added). As we stated in *Greene v. Spivey*: "This is an appellate court. Our function, under the Constitution,

is to review alleged errors and rulings of the trial court, and unless and until it is shown that a trial court ruled on a particular question, it is not given for us to make specific rulings thereon.” 236 N.C. 435, 442, 73 S.E.2d 488, 493 (1952). As a result, without determining that we lack the authority to reach the merits of plaintiff’s claims, we conclude that the proper administration of justice would be best served in the event that we allowed the panel, in the first instance, to address the merits of plaintiff’s claims before undertaking to address them ourselves.

Nevertheless, this Court does have the constitutional authority to “issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts” in this state. N.C. Const. art. IV, § 12(1). The Court also has the inherent authority to do what is reasonably necessary to ensure the proper administration of justice during the consideration of a case that is properly before us. In light of the importance of the issues presented by this case and the fact that a municipal election cycle is in progress, we invoke our authority to order:

1. That this case be certified to the panel with instructions for that court to enter a new order within 60 days that (a) explains the basis for its earlier determination that it lacked jurisdiction to reach the merits of the claims advanced in plaintiff’s complaint and (b) addresses the issues that plaintiff has raised on the merits.
2. That, immediately following the entry of the panel’s new order, this case be certified back to this Court for a final appellate decision.

3. That the order of this Court, dated 20 July 2017, which resolves plaintiff's petition for writ of supersedeas, be amended to add the following paragraph:

“4. Until this case is resolved by the Court, any county board of elections with a vacancy reducing its membership to two members—such that the board cannot meet quorum requirements under Sections 7.(h) and 7.(i) of Session Law 2017-6—may meet and conduct business under N.C.G.S. §§ 163-30 and -31 (2015), with a quorum and unanimous assent of two members.”

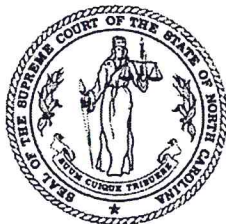
4. That the parties retain the right to petition for the purpose of obtaining any modifications to this order and the prior order of the Court, dated 20 July 2017, that they deem necessary to preserve the status quo and to ensure the orderly and lawful conducting of local and other elections during the consideration of this case by this Court, with any such modification requests to be directed to the panel from the date of the issuance of this order until the panel certifies its new order to this Court in accordance with Paragraph No. 2 above.

By order of the Court in Conference, this the 1st day of September, 2017.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this
the 15th day of September, 2017.



J. BRYAN BOYD

Clerk of the Supreme Court

Copy to:

North Carolina Court of Appeals
Mr. D. Martin Warf, Attorney at Law, For Berger, Philip E. - (By Email)
Mr. Noah H. Huffstetler, III, Attorney at Law, For Berger, Philip E. - (By Email)
Ms. Candace S. Friel, Attorney at Law, For Berger, Philip E. - (By Email)
Mr. Jim W. Phillips, Jr., Attorney at Law, For Cooper, Roy A. (III) - (By Email)
Mr. Eric M. David, Attorney at Law, For Cooper, Roy A. (III) - (By Email)
Mr. Daniel F.E. Smith, Attorney at Law, For Cooper, Roy A. (III) - (By Email)
Mr. Grayson Kelley, Chief Deputy - (By Email)
Mr. Alexander McC. Peters, Special Deputy Attorney General, For State of N.C. - (By Email)
Mr. John R. Wester, Attorney at Law, For Hunt, James B., Jr., et al. - (By Email)
Mr. J. Dickson Phillips, III, Attorney at Law, For Hunt, James B., Jr., et al. - (By Email)
Mr. Adam K. Doerr, Attorney at Law, For Hunt, James B., Jr., et al. - (By Email)
Mr. Andrew H. Erteschik, Attorney at Law, For Brennan Center for Justice at NYU School of Law, et al. - (By Email)
Ms. Allison J. Riggs, Attorney at Law, For County Board Members - (By Email)
Ms. Anita S. Earls, Attorney at Law, For County Board Members - (By Email)
Ms. Emily E. Seawell, Attorney at Law, For County Board Members - (By Email)
Mr. Alexander McC. Peters, Senior Deputy Attorney General, For State of N.C. - (By Email)
Mr. Kevin Crandall, Attorney at Law, For Hunt, James B., Jr., et al. - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

Exhibit 10

FILED

STATE OF NORTH CAROLINA

2017 DEC 14 PM 1:23

WAKE COUNTY

WAKE CO., C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

17 CVS 15132

SAMUEL F. FURGIUELE, JR.,)
MARSHALL C. ASHCRAFT, and)
CONSTANCE J. ULMER)

Petitioner,)

v.)

THE NORTH CAROLINA STATE)
BOARD OF ELECTIONS & ETHICS)
ENFORCEMENT,)

Respondent.)

ORDER ISSUING WRIT OF MANDAMUS

THIS CAUSE was heard by the undersigned Senior Resident Superior Court Judge at the 12 December 2017 Civil Session of Wake County Superior Court on the 8 December 2017 Petition for Writ of Mandamus submitted by Samuel F. Furgieule, Jr., Marshall C. Ashcraft, and Constance J. Ulmer (collectively, the "Petitioners"). After reviewing the petition, the record, and all other filings submitted by Petitioners and by the North Carolina State Board of Elections & Ethics Enforcement ("Respondent" or "State Board"), and after considering the arguments of counsel for both parties, and noting the unique circumstances of this case, it appears to the Court that Petitioners are entitled to immediate entry of a Writ of Mandamus.

FINDINGS OF FACT

1. On December 8, 2017, Petitioners, three prevailing candidates for election to the Boone Town Council, filed a Petition for Writ of Mandamus and Motion for Expedited Hearing under N.C. Gen. Stat. §§ 163-22 and 163-182.14. Petitioners sought to compel the State Board to direct, through its executive director, that the Watauga County Board of Elections ("Watauga Board") immediately issue certificates of election to Petitioners pursuant to N.C. Gen. Stat. § 163-182.15(a).

2. Elections in North Carolina are conducted under the general supervision of gubernatorial appointees to the State Board, who oversee an executive director and agency staff located in Raleigh. The State Board also appoints members of county boards of elections, who administer elections across the state. *See* N.C. Gen. Stat. § 163-22.
3. Since June 1, 2017, the State Board has lacked seated members due to ongoing proceedings in *Cooper v. Berger, et al.*, 17 CVS 5084 (now on appeal as 52 PA 17-2), though elections operations have continued under statute and as provided under special orders entered by the Supreme Court.
4. The Watauga Board administered an election for the Town of Boone that included voting by mail, early voting at designated one-stop locations, and voting on Election Day (November 7, 2017). Early voting in Watauga County was conducted in accord with a one-stop implementation plan established by the Superior Court of Wake County on October 13, 2017 in *Anderson v. State Bd. Of Elections and Ethics Enforcement*, 17-CVS-12072. The plan included an early voting site at the Appalachian State University (ASU) campus.
5. Following the election, the Watauga Board canvassed results in a meeting held November 17, 2017, as provided by Gen. Stat. § 163-182.5. Canvassed results confirmed that Petitioners received the most votes in their respective contests.
6. On November 16, 2017, Anne-Marie Yates, a registered voter in Watauga County, timely filed an election protest with the Watauga Board under N.C. Gen. Stat. §163-182.9, seeking “[t]o nullify the 2017 Town of Boone Municipal Elections and hold a new election” on the basis that insufficient notice was given regarding the mandated one-stop site on ASU’s campus. The Watauga Board found that there was no probable cause of an irregularity and unanimously dismissed Ms. Yates’ protest by a written order filed November 21, 2017. On the same date, Ms. Yates, through counsel, filed a Notice of Appeal with the Watauga Board and purported to file an Election Protest Appeal with the State Board. Counsel for the State Board immediately notified Ms. Yates’ counsel, Nathan Miller, that, in the absence of a seated State Board, proper appeal lies with the Superior Court of Wake County. The letter also indicated applicable deadlines. Mr.

Miller subsequently disputed the same and contended his client was entitled to a ruling by seated members of the State Board before any subsequent proceeding, and, following receipt of filings in the instant case, he indicated to Respondent that he considered his client to be a necessary party in this action but filed no motions and did not appear.

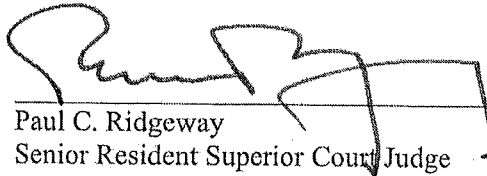
CONCLUSIONS OF LAW

7. In the absence of appointed and sworn members of the State Board, decisions of the county boards of elections on election protests under Article 15A of Chapter 163 of the General Statutes are final and lack any additional administrative process. Appeal from any such decision lies with the Superior Court in Wake County within the deadline specified in N.C. Gen. Stat. § 163-182.14(b). All applicable deadlines governing Ms. Yates' protest have run, and no appeal is now pending.
8. Under the unique and narrow circumstance of a vacant State Board, the agency's inability to resolve petitions and act on other statutorily mandated matters are effectively denials from which review by this Court may be sought. The Court has inherent authority to supply necessary relief to parties whose legal rights are affected by a vacant State Board and to preserve the uniform and orderly operation of elections administration.
9. The deadline for delay of issuance of certifications of election in N.C. Gen. Stat. § 163-182.15(a) has expired. The Watauga Board has not issued certificates of election to the Petitioners and must now do so in the absence of a pending protest and lacking any stay entered by the Superior Court in Wake County. N.C. Gen. Stat. §§ 163-182.15(a), 163-182.15(a)(2), and 163-182.15(a)(3).
10. Mandamus is proper in this case. Petitioners have established a clear legal right to the immediate issuance of certificates of election under the present circumstances, and the State Board, though vacant, is obligated to effectuate the administration of elections in conformity with law. Mandamus directed at the vacant State Board is appropriate and may be executed by the agency's executive director.

IT IS THEREFORE ORDERED that:

1. The Petition for Writ of Mandamus is GRANTED.
2. The State Board of Elections & Ethics Enforcement, by and through its executive director, shall direct the Watauga Board of Elections immediately to issue certificates of elections to the prevailing candidates for Boone Town Council.

This the 14th day of December, 2017.



Paul C. Ridgeway
Senior Resident Superior Court Judge

00433901

CERTIFICATE OF SERVICE

The undersigned attorney for Petitioners hereby certifies that on this day the foregoing **Order Issuing Writ of Mandamus** was served upon the North Carolina State Board of Elections & Ethics Enforcement by hand delivery and by email at the addresses below.

Mr. Josh Lawson
General Counsel
State Board of Elections & Ethics Enforcement
Third Floor, Dobbs Building
430 N. Salisbury St.
Raleigh NC 27611
joshua.lawson@ncsbe.gov

James Bernier
NC Department of Justice
114 W. Edenton Street
Raleigh, NC 27603
jbernier@ncdoj.gov

This the 15th day of December, 2017.

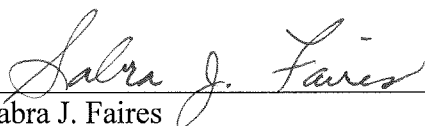

Sabra J. Faires

Exhibit 11

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

IN THE MATTER OF: CONSIDERATION OF)
CERTAIN LEGAL QUESTIONS AFFECTING)
THE AUTHENTICATION OF THE 2016)
GENERAL ELECTION)

ORDER

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS (“State Board”) during a public meeting held November 22, 2016, upon the State Board’s own motion to consider certain legal questions affecting procedures and practices in the authentication of the 2016 general election. The State Board received briefing and heard oral argument from the Republican Party of North Carolina and Pat McCrory Committee, represented by Roger Knight, John Branch, and Brian LiVecchi; the North Carolina Democratic Party and Cooper for North Carolina Committee, represented by Kevin Hamilton (appearing *pro hac vice*); and the Southern Coalition for Social Justice, represented by Allison Riggs. After hearing from the parties, reviewing written briefs and public comment, and having reviewed relevant statutes and authorities, the State Board hereby orders the following pursuant to its authority under G.S. §§ 163-22(a) and 182.12:

1. The uniform application of law is necessary to ensure fundamental fairness in the administration of elections and to preserve due process for each voter.
2. Article 8 of Chapter 163 of the General Statutes (“Article 8”) provides the means by which one voter may challenge the eligibility of another voter. No voter challenge may be entered after the deadline or made indiscriminately. A timely challenge properly sustained against a voter who has cast an absentee ballot will result in the exclusion of that ballot from the canvassed results.
3. Article 15A of Chapter 163 of the General Statutes (“Article 15A”) provides the means by which a voter may protest an election. A successful protest must prove the occurrence of an outcome-determinative violation of election law, irregularity, or misconduct. If a county board of elections (“county board”) finds a violation occurred affecting votes sufficient in number to change the outcome of a single-county contest, the county board must retrieve the ballots improperly cast and note the deduction in the abstract. If a county board finds a violation occurred that did not affect enough ballots to change the outcome of any single-county contest, the county board must forward its findings to the State Board. The State Board shall determine whether all ballots improperly cast are sufficient to change the outcome of any multi-county contest. If so, the State Board will order county boards to retrieve and discount affected ballots and revise its canvass.
4. A protest alleging the occurrence of an election law violation that affected votes sufficient in number to change the outcome of a single-county contest concerns the manner in which votes were counted or tabulated, and therefore such protest must be resolved prior to county canvass as required by G.S. § 163-182.10(a)(2). A protest that does not allege an election law violation regarding a sufficient number of votes to change the outcome of a single-county contest shall not delay the county canvass procedures since the county may not retrieve and discount such ballots. In no case shall the county board delay the timely hearing and decision on a protest timely filed.

5. A protest of election brought under Article 15A may not merely dispute the eligibility of a voter. Such a claim must be brought timely as a challenge under Article 8. Rather, a protest of election may include claims regarding the eligibility of certain voters only as evidence that an outcome-determinative violation of election law, irregularity, or misconduct has occurred.
6. The county board of elections shall dismiss a protest of election that merely disputes the eligibility of a voter. The county board shall instead consider the claim as a voter challenge brought under Article 8 after the election.
7. No county board may retrieve and discount a ballot cast by an unqualified voter unless a challenge was timely brought under Article 8, or the State Board or a county board has found that ineligible voters participated in numbers sufficient to change the outcome of the election. The latter finding may be based on a protest timely brought under Article 15A or pursuant to complaint or directive of the State Board under G.S. §§ 163-22(a) and 182.12.
8. County boards of election must preserve the due process rights of all voters, including adequate notice and a meaningful opportunity to be heard. If a protest brought under Article 15A includes claims regarding the eligibility of certain voters, the county board must provide notice of the protest reasonably calculated to apprise such voters of the pendency of the protest and afford them an opportunity to present their objections. Due process in the context of time-sensitive post-election protests may mean that county boards expedite notice mailings or reach out to affected voters by other means not ordinarily required under Article 8. At a minimum, county boards must provide written notice to affected voters by expedited delivery service, such that notice is received at least three days ahead of any such hearing.
9. If any county board of elections has retrieved and discounted any ballot in a manner inconsistent with this Order in its canvass of the 2016 general election, the county board shall amend its canvass to include the vote. No such re-canvass shall reset any statutory deadline otherwise associated with the canvass of votes.
10. Counties shall proceed to the canvassing of the 2016 general election consistent with this Order, which shall govern future elections unless otherwise directed by this Board.

This the twenty-eighth day of November, 2016.



A. Grant Whitney, Jr., Chair
State Board of Elections

Exhibit 12

AFFIDAVIT OF RICHARD EARL HINES

North Carolina
County of Pitt

Richard Earl Hines, appearing before the undersigned notary and being duly sworn, says that:

1. I currently reside at 2452 Surry Lane, Winterville NC in Pitt County. In the November 7, 2017 municipal election, I ran for election to the Winterville Town Council. After the County Board of Election Canvass, it was determined I won the race by one vote.
2. On November 27, 2017, I received a letter from the Pitt County Board of Elections certifying my election to the Town Council and a certificate of election to that seat.
3. I should have been sworn into office on December 11, 2017, but because the County Board of Elections revoked the certification of my election (at the prompting of the State Board of Elections, as I understand it), I was not allowed to assume the office to which I had been certified as elected.
4. I attended the December 11, 2017, meeting of the Town Council. At that meeting, they voted to elect the Mayor Pro Tem. I should have been allowed to participate in that vote, but I was not.
5. Likewise, at that meeting, the Town Council made clear that they will take up deciding on budget priorities for the 2018-2019 fiscal year budget when they go on a retreat in January of 2018. Having been certified as elected to Town Council, it is critical to me and my constituents that I get to be involved in the important governance decisions that will be made in January of 2018.

Richard Earl Hines

Richard Earl Hines

Sworn to (or affirmed) and subscribed before me this 20 day of November, 2017.

(Official Seal)

Corey P. Trippe
Official Signature of Notary

Corey P. Trippe, Notary Public

Notary's printed or typed name

My commission expires: 02/28/2021

Exhibit 13

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Meetings

The Town Council formal meetings are held the second Monday of every month at 7:00 p.m. in the Town Hall Assembly Room located on the first floor of the Town Hall Building, 2571 Railroad Street, Winterville NC 28590.

Listed below are the dates for the Winterville Town Council Regular Meetings and Budget Meetings.

Winterville Town Council Regular Meetings Calendar

January 9, 2017

February 13, 2017

March 13, 2017

April 10, 2017

May 8, 2017

June 12, 2017

July 10, 2017

NO AUGUST MEETING

September 11, 2017

October 9, 2017

November 13, 2017

December 11, 2017

Notes:

Winterville Town Council FY 2017-2018 Budget Meetings Calendar

DATE	DESCRIPTION	TIME	LOCATION
January 23, 2017	Town Council Retreat/ Budget Update Establishment of 2017-2018 Priorities	5:30pm	WCR
May 1, 2017	Town Council & Manager Progress Meeting	5:30 pm	THECR
May 30, 2017	Town Council Budget Work Session	6:00 pm	WCR
May 31, 2017	Town Council Budget Work Session	6:00 p.m.	WCR
June 5, 2017	Budget Public Hearing	7:00 p.m.	THAR
June 12, 2017	Adoption of the 2017-2018 Budget Ordinance	7:00 p.m	THAR
July 1, 2017	Fiscal Year Begins	N/A	N/A

THAR: Town Hall Assembly Room 2571 Railroad St. Winterville, NC 28590

THECR: Executive Conference Room 2571 Railroad St. Winterville, NC 28590

WCR: Winterville Community Room 2593 Railroad St. Winterville, NC
28590

Town of Winterville, North Carolina
2571 Railroad Street
Winterville, NC 28590
Phone: 252-756-2221 Fax: 252-321-8455

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Exhibit 14

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Town Council Regular Meeting

Date: Monday, January 8, 2018

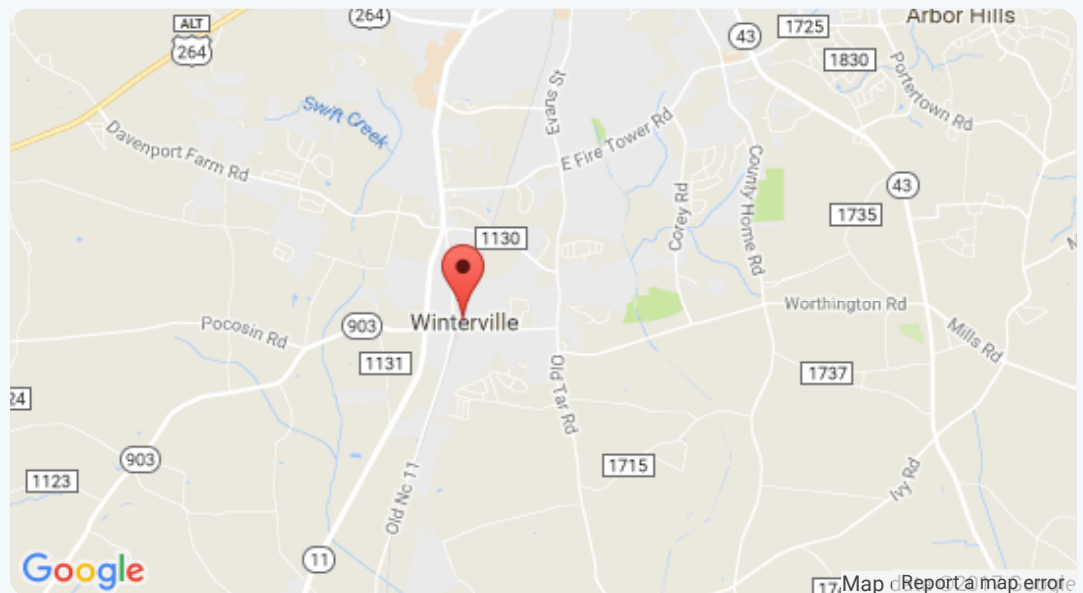
Start Time: 7:00 PM (GMT-05:00) Eastern Time (US & Canada)

End Time: 8:30 PM

Repeats: Monthly until 7/14/2021

Location:

Winterville Town Hall Assembly Room



Get directions from

Town of Winterville, North Carolina
2571 Railroad Street
Winterville, NC 28590
Phone: 252-756-2221 Fax: 252-321-8455

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