

BEFORE THE NORTH CAROLINA STATE BOARD OF ELECTIONS

**IN RE: APPEAL OF DUVAL "BOBBY" KNIGHT
(BARBREY CHALLENGE TO CANDIDACY: WILSON COUNTY SHERIFF)**

CHALLENGER-APPELLEE'S BRIEF

INTRODUCTION

The Wilson County Board of Elections correctly determined, by a 4-1 vote, that Duval "Bobby" Knight is statutorily ineligible to remain a candidate in the Republican primary for Sheriff of Wilson County. Under N.C.G.S. § 163-106.1, North Carolina maintains a bright-line 90-day party affiliation requirement designed to protect the integrity of partisan primaries and prevent strategic party raiding. The objective record in this matter, which Mr. Knight does not dispute, demonstrates that he severed his Republican Party affiliation on December 1, 2025, a mere eleven days before he filed his notice of candidacy on December 12, 2025. This undisputed timeline places Mr. Knight far outside the statutory 90-day requirement.

On appeal, Mr. Knight attempts to obscure this statutory failure with a litany of procedural grievances. However, the record presents, at minimum, two straightforward, dispositive facts that resolve this appeal. First, the burden of proof rested entirely on Mr. Knight to prove his qualification by a preponderance of the evidence. Second, he failed to introduce a single piece of live evidence or rebuttal testimony at the hearing to meet that burden. Even if every procedural error alleged

by Mr. Knight were true, none would be prejudicial, as the objective registration records and Mr. Knight's own admissions render him ineligible as a matter of law.

For the reasons set forth below, the State Board should affirm the Decision and Order of the Wilson County Board of Elections.

JURISDICTION AND STANDARD OF REVIEW

The State Board of Elections possesses appellate jurisdiction over this matter pursuant to N.C.G.S. § 163-127.6, which provides that a single-county panel decision in a candidate challenge proceeding is appealable as of right to the State Board within two business days of the county board's decision. The State Board reviews the matter "on the whole record of the hearing conducted by the panel." *Id.*

Critically, N.C.G.S. § 163-127.5 places the burden of proof squarely upon the challenged candidate, providing that "[t]he burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified." As such, the sole legal question presented is whether Mr. Knight was "affiliated with that party for at least 90 days as of the date of that person filing" within the meaning of N.C.G.S. § 163-106.1.

STATEMENT OF FACTS

The relevant facts are largely undisputed and are established by official government records and sworn testimony presented at the January 6, 2026 evidentiary hearing before the Wilson County Board of Elections.

Testimony and documentary evidence at the hearing showed the following:

Sheriff Calvin Woodard testified under oath that on November 30, 2025, at 9:14 p.m., he announced his retirement from office. Sheriff Woodard further testified that he endorsed Challenger Brandon Barbrey for the office and that his endorsement was made public in the Wilson Daily Times the following morning.

Challenger Brandon Barbrey testified that he arrived at the Board of Elections at 7:12 a.m. on December 1, 2025, to file his notice of candidacy. Mr. Barbrey testified that at 7:14 a.m., he received a text message from Sergeant Steven Creech indicating that Mr. Knight had called Sergeant Creech inquiring about the Sheriff's endorsement. Mr. Barbrey further testified that at or around 8:30 a.m., he received an eight-minute telephone call from Mr. Knight during which Mr. Knight asked whether Barbrey intended to run as a Democrat or Republican. Mr. Barbrey testified that he informed Mr. Knight he was running as a Democrat.

At the hearing, Sergeant Steven Creech corroborated this timeline, testifying that Mr. Knight called him at approximately 7:20 a.m. on December 1, 2025, after learning of Sheriff Woodard's retirement, and asked whether Sergeant Creech knew who the Sheriff was endorsing.

Mr. Barbrey testified that he submitted a public records request and received three voter registration applications for Mr. Knight. The first, from on or around 2012, showed Mr. Knight registered as a Republican. The second, timestamped December 1, 2025 at 5:54 a.m., showed Mr. Knight changing his party affiliation from

Republican to Democrat. The third, timestamped December 1, 2025 at 11:16 a.m., showed Mr. Knight changing his affiliation back to Republican. Mr. Barbrey testified that all three documents bore Mr. Knight's signature, name, date of birth, and driver's license number.

Deputy Director Chandra Murrain testified that when Mr. Knight attempted to file his notice of candidacy on December 3, 2025, the State Elections Information Management System (SEIMS) displayed a notification stating that the person (Mr. Knight) had changed their party, and was not within the 90-day period. As the recording of the hearing reflects, Deputy Director Murrain testified that she informed Mr. Knight he could not file that day, and that Mr. Knight admitted that he had gone in and changed and done some things with his registration. Wilson County election staff declined to override the system's determination. Ms. Murrain further testified that when Mr. Knight was informed that the SEIMS system was not permitting him to file, he and his campaign manager left the Board of Elections office after being given the State Board of Elections' phone number and that it was some time before he returned.

On December 5, 2025, Mr. Knight hand-delivered an affidavit to the State Board of Elections claiming that his party change was the result of a technological mistake. Specifically, he stated in a sworn affidavit that he "mistakenly changed [his] party affiliation to the Democratic Party." Moreover, he stated in the same sworn affidavit that he "immediately noticed [his] mistake," and "at approximately 11:16

am, [he] attempted to correct [his] mistake through the online portal to reflect the correct party affiliation with the Republican Party."

At the hearing, Director Tasha Bell testified that on December 8, 2025, State Board Chief of Staff Brian LiVecchi and General Counsel Adam Stein called her and instructed her to "go in the system and backdate Mr. Knight's application." Director Bell testified that she refused, stating that her "conscience will not let me do that" because doing so would constitute falsifying a record that Mr. Knight had signed. Director Bell testified that she was not satisfied an administrative error had been made. Director Bell further testified that Mr. LiVecchi subsequently sent an email to the Wilson County Board of Elections instructing staff to "back-date" Mr. Knight's registration as an "administrative correction" under what Mr. LiVecchi characterized as "narrow" circumstances. Director Bell testified, and records reflect that, on December 12, 2025, following the administrative override by State Board staff, Mr. Knight filed his notice of candidacy as a Republican.

The hearing also included testimony from Jess Rivera, a candidate for State Senate who was initially denied filing on December 1, 2025, under the same 90-day rule. Ms. Rivera testified that her situation involved an administrative lag where her September 2 in-person party change was not entered into SEIMS until September 9. Director Bell testified that she remedied Ms. Rivera's situation because the physical application was date-stamped, demonstrating an administrative error by staff rather than a user error. This testimony illustrated the uniform application of

the law and the distinction between correctable administrative errors and uncorrectable user errors.

On December 30, 2025, Challenger Barbrey and another candidate, Kenney Raper, filed verified challenges to Mr. Knight's candidacy pursuant to Article 11B of Chapter 163 of the North Carolina General Statutes. As noted, on January 6, 2026, the Wilson County Board of Elections conducted an evidentiary hearing in accordance with N.C.G.S. § 163-127.4. Following public deliberation, by a 4-1 vote, the panel found Mr. Knight not qualified to appear on the Republican primary ballot and sustained the challenges. Mr. Knight filed his notice of appeal to the State Board on January 9, 2026.

ARGUMENT

I. The County Board Correctly Applied the Mandatory 90-Day Affiliation Requirement, Which Mr. Knight Indisputably Violated

N.C.G.S. § 163-106.1 provides in unambiguous terms that "[n]o person shall be permitted to file as a candidate in a party primary unless that person has been affiliated with that party for at least 90 days as of the date of that person filing such notice of candidacy." The General Assembly provided no exception for mistakes, administrative correction, or equitable tolling. The statute establishes a bright-line rule designed to prevent strategic party manipulation and protect the integrity of partisan primaries.

Mr. Knight's own registration history, which he does not dispute, demonstrates that he changed his party affiliation twice on December 1, 2025. He switched from Republican to Democrat at 5:54 a.m. and then switched back to Republican at 11:16 a.m. This six-hour lapse in Republican Party affiliation breaks the continuous 90-day affiliation required by statute. In light of the fact that the relevant day-count runs from December 1, 2025, Mr. Knight was affiliated with the Republican Party for only eleven days before filing his notice of candidacy on December 12, 2025. He was therefore ineligible to file as a Republican candidate.

II. Mr. Knight Bore the Burden of Proof and Failed to Carry It

N.C.G.S. § 163-127.5(a) places the burden of proof upon the candidate to demonstrate qualification by a preponderance of the evidence. Official government records, including those maintained in the State Elections Information Management System, are entitled to a presumption of regularity and accuracy. The SEIMS record in this case shows a break in Mr. Knight's Republican Party affiliation on December 1, 2025.

At the evidentiary hearing, the challengers presented substantial testimony from six witnesses. Challenger Brandon Barbrey testified regarding an eight-minute telephone call at 8:30 a.m. on December 1, 2025, during which Mr. Knight inquired about Barbrey's party affiliation and learned of Sheriff Woodard's endorsement. Director Tasha Bell testified that she was not satisfied that an administrative error had been made under N.C.G.S. § 163-82.17(e) and refused to backdate or falsify the registration record as requested by State Board staff. Deputy Director Chandra

Murrain witnessed Mr. Knight's attempt to file on December 3, 2025, and testified that Mr. Knight admitted to making the changes online rather than reporting a system failure. Sheriff Calvin Woodard confirmed the timing of his retirement announcement at 9:14 p.m. on November 30, 2025, which served as the catalyst for Mr. Knight's 5:54 a.m. registration change. Sergeant Steven Creech testified that Mr. Knight contacted him at 7:20 a.m. on December 1, 2025, after the first switch but before the second, to gather intelligence on whom the Sheriff was endorsing. Finally, Jess Rivera provided a comparative baseline, testifying that the Board strictly enforced the 90-day rule against her on December 1, 2025, illustrating the uniform application of the law.

In contrast to this substantial evidence, Mr. Knight's counsel presented no live testimony and offered no rebuttal evidence. Mr. Knight relied exclusively on a pre-submitted, self-serving affidavit claiming a technological glitch. He produced no DMV logs, no expert testimony, and no system error report to corroborate his claim. A Board member's demonstration during the hearing showed that the DMV portal requires multiple confirmations before any party change is submitted, including a final "Looks Good" confirmation screen. This demonstration alone, but also compounded by Mr. Barbrey's testimony, undermined Mr. Knight's theory that he accidentally changed his party affiliation.

A self-serving affidavit cannot overcome the presumption of regularity accorded to official records when the affiant refuses to bolster that claim with evidence during the hearing. Under a preponderance standard, the panel was entitled

to credit objective records and sworn testimony over Mr. Knight's uncorroborated narrative. The panel's determination that Mr. Knight failed to meet his burden of proof is supported by substantial evidence and should be affirmed.

III. The Administrative Correction Authority Does Not Cure Voter-Initiated Errors

N.C.G.S. § 163-82.17(e) grants county election directors the discretionary power to correct an "error . . . in designating the party affiliation" only when the director is "satisfied that an error has been made." This authority is discretionary, not mandatory. The statute does not compel correction; it merely permits it when the director is personally satisfied that a genuine administrative error occurred.

Director Tasha Bell testified under oath that she was not satisfied that an error had been made and refused to falsify the record by backdating Mr. Knight's registration. State Board Numbered Memo 2021-09 and related guidance distinguish between administrative errors, meaning system or government errors, and voter mistakes. Personal clicks by a voter are not retroactively correctable absent documentary proof of a system malfunction. The guidance recognizes that administrative corrections are reserved for government mistakes, not a candidate's user error.

The email from State Board Chief of Staff LiVecchi acknowledged that the decision to override was "narrow," premised on Mr. Knight's subjective affidavit, and admitted that a court could disagree with the determination. The county panel, after weighing testimony from Director Bell and other witnesses, reasonably concluded

that no administrative error existed. Because the Director was not satisfied that an error had been made, N.C.G.S. § 163-82.17(e) did not authorize the correction. Granting an exception here would violate the principle of uniform enforcement and create a "strategic glitch" loophole for all future candidates.

IV. The Alleged Procedural and Evidentiary Errors Are Either Meritless or Harmless

Mr. Knight raises several procedural objections on appeal. Each is either factually unsupported or, even if true, caused no prejudice to Mr. Knight.

A. The Panel Properly Managed Hearing Time

Mr. Knight complains that the challenger exceeded argument time. The panel chair possessed discretion to manage time under N.C.G.S. § 163-127.4(c). The record reflects that Mr. Knight's counsel also exceeded time limits without sanction. Any deviation from the Order of Proceedings was applied evenhandedly and caused no prejudice.

B. The Panel Properly Received Public Records

Mr. Knight claims the panel relied on 'unauthenticated' public records. The voter registration records at issue are the Board's own official files, which require no external authentication. Moreover, the panel possessed authority to receive evidence subject to Chapter 8C of the North Carolina General Statutes and to subpoena records on its own motion. No authentication defect exists.

C. The Board Member Demonstration Was Proper

Mr. Knight objects to a Board member's demonstration of the NCDMV online portal during the hearing. The demonstration showed a publicly available interface, was conducted on the record, and Mr. Knight's counsel was afforded the opportunity to cross-examine. No outside facts were introduced. The demonstration merely illustrated the multiple confirmation steps required before a party change is submitted, information already in the public domain.

Mr. Knight's suggestion that the demonstration was improper because it was conducted on a laptop rather than a mobile phone is irrelevant. Both interfaces require the user to affirmatively select a party from a drop-down menu and confirm the choice on a final confirmation screen. The underlying statutory requirement for user confirmation remains unchanged regardless of the device used.

D. Any Error Was Harmless

Even assuming, *arguendo*, any procedural ruling was erroneous, Mr. Knight cannot demonstrate prejudice. He presented no additional evidence that would have changed the outcome. The official record of his party switch exists and was not corrected by a director "satisfied" of an error. Mr. Knight is therefore ineligible regardless of any procedural irregularity. Because the challenged rulings were within panel discretion and caused no prejudice, reversal is unwarranted under harmless-error principles.

V. Substantial Evidence Supports Each Panel Finding

The panel's findings are supported by competent evidence in the record. The finding that Mr. Knight changed his party affiliation twice on December 1, 2025, is confirmed by timestamped applications in the State's registration system. The finding that Mr. Knight lacked 90-day affiliation before his December 12, 2025 filing is mathematically indisputable. The finding that Mr. Knight offered no corroboration of his "glitch" theory or administrative error is consistent with the evidentiary record and the requirements of State Board Numbered Memo 2021-09.

Under the "whole record" standard of review prescribed by N.C.G.S. § 163-127.6, the State Board must affirm the county panel's decision when, as here, the findings are supported by substantial evidence and the conclusions of law are correct.

CONCLUSION

The Wilson County Board of Elections strictly and correctly applied the law. Mr. Knight broke the 90-day continuous affiliation requirement on December 1, 2025. He failed to provide the objective corroboration required by the Board's own guidance to prove a systemic glitch. Because he failed to meet his burden of proof at the county level, and because the alleged procedural errors, which Challenger Barbrey fully rejects, did not alter the undisputed fact of his registration break, the State Board must uphold the disqualification.

For the foregoing reasons, Challenger-Appellee Brandon L. Barbrey respectfully requests that the State Board of Elections affirm the January 7, 2026 Decision and Order of the Wilson County Board of Elections, declare Duval "Bobby"

Knight ineligible to appear on the 2026 Republican primary ballot for Wilson County Sheriff, and direct county staff to remove Mr. Knight from the candidate list and correct ballot proofs accordingly.

Respectfully submitted,

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