

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT

IN THE MATTER OF: APPEAL OF)
CHALLENGE TO CANDIDACY OF)
SABRINA BLAIN)

ORDER

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT ("State Board") during a hearing held August 16, 2018, upon the appeal of Sabrina Blain, a candidate for District Court Judge in District 26A ("Candidate-Appellant"), from an adverse decision by the Mecklenburg County Board of Elections ("Mecklenburg Board") on a candidate challenge brought by William Brown ("Challenger-Appellee").

The State Board heard argument from Candidate-Appellant, who appeared *pro se*, and from counsel for Challenger-Appellee, John Snyder III. Having considered the arguments from the parties, relevant statutes, and basing its decision upon the whole record in this Matter, the State Board by vote of six members in the affirmative, hereby finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Challenger-Appellees timely challenged the qualification of Candidate-Appellant under Part 3 of Article 19 of Chapter 163A of the North Carolina General Statutes ("Candidate Challenge").
2. The Mecklenburg Board held a hearing on August 1, 2018, to consider evidence and arguments on the Candidate Challenge. At the same hearing, the Mecklenburg Board considered a separate challenge to Candidate-Appellant's voter registration brought under G.S. § 163A-911. Because each challenge involved Candidate-Appellant's residency and both were filed by Challenger-Appellee, the Mecklenburg Board consolidated its review of the evidence at the hearing.
3. At the conclusion of the evidence and argument, the Mecklenburg Board voted 3:1 to sustain the voter registration challenge, but voted 2:1 on a motion to sustain the Candidate Challenge now on appeal. Mecklenburg Board Member John Gresham abstained from the second vote.
4. Candidate-Appellant proceeded to file her appeal timely with the State Board, which held its hearing on August 16, 2018.

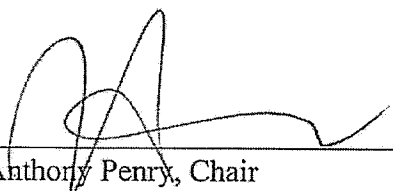
CONCLUSIONS OF LAW

1. The State Board possesses general supervisory authority over the administration of elections and jurisdiction to review candidate challenges on appeal. G.S. §§ 163A-741(a) and 163A-1030(a). This matter is appropriately before the State Board.
2. County boards of elections are established by statute and empowered to adjudicate challenges against candidates for election to offices wholly within that county. G.S. § 163A-1027(1).
3. Under North Carolina law, candidate challenges are distinct in operation and effect from voter registration challenge proceedings. *Compare* G.S. §§ 163A-1029 and 163A-1030 with G.S. §§ 163A-918 and 163A-919. On August 7, 2018, the U.S. District Court for the Middle District of North Carolina permanently enjoined operation of statutes authorizing voter registration challenges “when those challenges are based on change of residency.” *N.C. State Conference of NAACP v. Bipartisan Bd. of Elections & Ethics Enft*, No. 1:16CV1274, 2018 WL 3748172, at 12 (M.D.N.C. Aug. 7, 2018).
4. “Except where required by law to act unanimously,” county boards of election may act only upon the affirmative vote of a *majority* of its members, which statute defines as “three of the four members.” G.S. § 163A-766. The Mecklenburg Board’s decision was not supported by three votes in the affirmative, as required under G.S. § 163A-766. It was, therefore, clear error to sustain the Candidate Challenge as a matter of law.
5. The findings below were not supported by substantial evidence in the whole record, and procedural errors created prejudicial error such that it cannot be determined what facts were found by the affirmative vote of three members.

IT IS THEREFORE ORDERED:

Challenger-Appellee’s Motion to Dismiss Appeal is **DENIED**; and
The decision of the Mecklenburg County Board of Elections is **REVERSED**.

This the fourth day of September, 2018.



J. Anthony Penry, Chair
STATE BOARD OF ELECTIONS & ETHICS
ENFORCEMENT

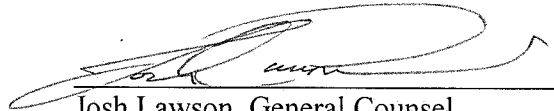
CERTIFICATE OF SERVICE

I, Josh Lawson, general counsel to the North Carolina State Board of Elections & Ethics Enforcement, do hereby certify that I have this day served the foregoing document upon the party to this action by depositing the same into the care and custody of Federal Express for delivery to the recipients below:

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This the fourth day of September, 2018.



Josh Lawson, General Counsel
N.C. State Board of Elections &
Ethics Enforcement