

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT

IN THE MATTER OF: APPEAL OF)
CHALLENGE TO CANDIDACY OF)
ADRIAN L. BOWEN)

ORDER

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT ("State Board") during a telephonic hearing held June 6, 2018, upon the appeal of Adrian L. Bowen ("Candidate-Appellant"), a candidate for the Democratic nomination for Bertie County Sheriff ("Contest"), from an adverse ruling of the Bertie County Board of Elections ("Bertie Board") on a challenge brought by Vivian Clarke ("Challenger-Appellee").

The State Board heard argument from counsel for the Candidate-Appellant, M. Brad Hill, and counsel for the Challenger-Appellee, Paul Faison Winborne. Having considered the arguments and written submissions from the parties, relevant statutes, and basing its decision upon the whole record in this Matter, the State Board by the unanimous vote of nine members in the affirmative, hereby finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Challenger-Appellee timely challenged the qualification of Candidate-Appellant by a verified affidavit in the manner prescribed under Part 3 of Article 19 of Chapter 163A of the North Carolina General Statutes.
2. The Bertie Board found the Candidate-Appellant failed to meet his burden following a duly noticed hearing. Candidate-Appellant timely appealed to the State Board, but the Bertie Board was unable immediately to produce a transcription of proceedings.
3. The State Board enjoined the Bertie Board from canvassing the votes for the primary election for the Democratic nomination for Sheriff of Bertie County until the tenth day following the issuance of a written decision on this matter.
4. On May 8, 2018, the Bertie Board held an election throughout the duration of which Candidate-Appellant's name remained on the official ballot.

5. Uncertified results for the Contest are as follows:

	<u>Votes</u>	<u>Percentage</u>
John Holley	2,641	70.84%
Adrian L. Bowen	1,087	29.16%

6. On May 24, 2018, Challenger-Appellee filed a Motion to Dismiss on the basis that this Matter had become moot.

CONCLUSIONS OF LAW

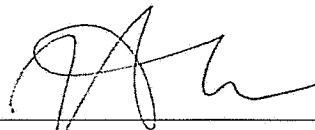
1. The State Board has jurisdiction over this Matter. G.S. § 163A-1030(a).
2. Few remedies are available to an unsuccessful candidate. A new election is discretionary in nature, requiring the agreement of at least five members of the State Board, and may be authorized only after a finding of irregularity, impropriety, or error. G.S. § 163A-1181. Having weighed the unique circumstances delaying consideration of the Challenge and the continuous presence of the Candidate-Appellant's name on the ballot, the State Board determines in its discretion that a new election is not appropriate.
3. Having declined to order a new election, further consideration of this matter on appeal can have no practical effect. Accordingly, this matter is moot. *See Roberts v. Madison Cty. Realtors Ass'n, Inc.*, 344 N.C. 394, 398 (1996) ("A case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy").

IT IS THEREFORE ORDERED:

The Challenger-Appellee's Motion to Dismiss is **GRANTED**.

The Bertie Board is authorized to canvassing votes for the primary election for the Democratic nomination for Sheriff of Bertie County and to issue certificate of nomination in that contest in the manner prescribed in the State Board's Order of May 10, 2018.

This the twentieth day of June, 2018.



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

CERTIFICATE OF SERVICE

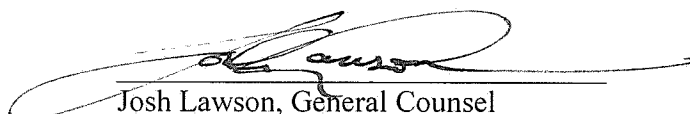
I, Josh Lawson, general counsel to the North Carolina State Board of Elections & Ethics Enforcement, do hereby certify that I have this day served the foregoing document upon the party to this action by depositing the same into the care and custody of Federal Express for delivery to the recipients below:

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This the twenty-first day of June, 2018.



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