

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT

IN THE MATTER OF: APPEAL OF)
CHALLENGE TO CANDIDACY OF)
ROBERT BENJAMIN CLARK, III)

ORDER

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT ("State Board") during a hearing held May 5, 2018, upon the appeal of James O'Garra (the "Challenger-Appellant"), from an adverse ruling of a duly appointed Panel appointed by the State Board to hear a challenge to the qualifications of Robert Benjamin Clark, III, a candidate for the Democratic nomination to Senate District 21 (the "Candidate-Appellee").

The State Board heard argument from counsel for the Challenger-Appellant, John Austin, and counsel for the Candidate-Appellee, John Wallace. 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 seven members in the affirmative and one in opposition, hereby finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Challenger-Appellant timely challenged the qualification of Candidate-Appellee by a verified affidavit in the manner prescribed under Part 3 of Article 19 of Chapter 163A of the North Carolina General Statutes (the "Challenge").
2. The Challenge alleged that Candidate-Appellant did not reside within Senate District 21 (the "District").
3. The State Board empaneled members from among the boards of elections sitting in Cumberland and Hoke counties (the "Panel").
4. The Panel conducted a hearing and unanimously found that the Candidate-Appellee met his burden to establish his residency within the District. The Panel issued a written order from which the Challenger-Appellant timely appealed to the State Board.
5. All parties received proper notice of the record materials and of the hearing set before the State Board.

6. Challenger-Appellant argued that the Panel erred when it (1) rejected Challenger-Appellant's "Amended Notice Challenge to Candidate" submitted after the deadline for filing candidate challenges, and (2) concluded that the Candidate-Appellee had met his burden.
7. Challenger-Appellant's "Amended Notice Challenge to Candidate" raised additional challenges as to the residency of Candidate-Appellee, but did not challenge additional bases of qualification.
8. The Panel's findings of fact regarding the residency of the Candidate-Appellee were supported by substantial evidence in the record on this Matter: Candidate-Appellee is domiciled within the District.


CONCLUSIONS OF LAW

1. The State Board has jurisdiction to review this Matter. G.S. § 163A-1030(a).
2. The Panel was properly empowered by statute to hear the Challenge, to evaluate testimony, and to weigh the evidence. G.S. § 163A-1028(c). The State Board finds the Panel did not err in its findings of fact, conclusions of law, and determinations regarding the credibility of witnesses and the weight given to their testimony.
3. The Panel's decision was supported by substantial evidence indicating Candidate-Appellee had met his burden. Substantial evidence supports the conclusion that Candidate-Appellee has not abandoned his domicile within the District, has not evidenced an intent not to return to the District; has not acquired a new domicile outside the District; and has not evidenced an intent to make a permanent domicile outside the District. G.S. § 163A-1029(b).
4. The Panel's determination as to Challenger-Appellant's "Amended Notice Challenge to Candidate" was not error, as the submission was not timely or, in the alternative, the Candidate-Appellee was already on notice as to his burden to prove his residency within the District. G.S. § 163A-1029(a).

IT IS THEREFORE ORDERED:

The decision of the Panel is **AFFIRMED**.

This the tenth day of May, 2018.



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

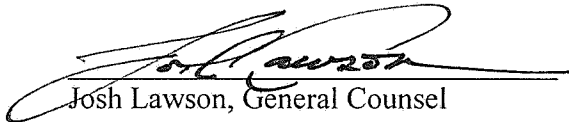
CERTIFICATE OF SERVICE

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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for James O'Garra, Challenger-Appellant
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This the eleventh day of May, 2018.


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