

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT

IN THE MATTER OF: APPEAL OF )  
CHALLENGE TO CANDIDACY OF )  
CURTIS A. COCHRAN )

**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 Jerry Lowery (the “Challenger-Appellant”), from an adverse ruling of the Swain County Board of Elections (“Swain Board”) on a challenge to the qualifications of Curtis A. Cochran, a candidate for the Republican nomination for Swain County Sheriff (the “Candidate-Appellee”).

The State Board heard argument from counsel for the Challenger-Appellant, Jake Epstein, and counsel for the Candidate-Appellee, David A. Sawyer. The Swain Board was represented by counsel Don Wright. Having considered the arguments from the parties, relevant statutes, and basing its decision upon the whole record in this Matter, the State Board by the unanimous vote of eight members in the affirmative, 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. Challenge-Appellant alleged that Candidate-Appellant failed to qualify for the office of sheriff, citing the constitutional rule barring anyone convicted of a felony . . . or the equivalent” from serving. N.C. CONST. art. VII, § 2.
3. The Swain Board conducted a hearing and unanimously found that the Candidate-Appellee met his burden to establish his qualifications. The Swain Board issued a written order from which the Challenger-Appellant timely appeal was filed with the State Board.

4. All parties received proper notice of the record materials and of the hearing set before the State Board. Upon the motion of Candidate-Appellee and following review by the parties, the State Board supplemented the record with additional materials before the Swain Board.
5. Challenger-Appellant assigns procedural and substantive errors to the Swain Board.
6. The Swain Board's findings of fact regarding the qualifications of the Candidate-Appellee were supported by substantial evidence in the record in this Matter: The evidence supports Candidate-Appellee's claim that he is qualified and the record does not contain substantial evidence to the contrary.

#### CONCLUSIONS OF LAW

1. The State Board has jurisdiction to review this Matter. G.S. § 163A-1030(a).
2. The Swain Board was properly empowered by statute to hear the Challenge and to evaluate testimony and consider the evidence submitted to it. G.S. § 163A-1028(c). The State Board finds that no clear error affected the Swain Board's determinations regarding the credibility of witnesses or the weight given to their testimony. To the extent the Swain Board erred in procedure, such error was harmless.
3. The Panel's decision was supported by substantial evidence indicating Candidate-Appellee met his burden. Substantial evidence indicates Candidate-Appellee is qualified for the office he seeks.

IT IS THEREFORE ORDERED:

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

*14 JAP*  
This the tenth day of May, 2018.

  
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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:

Jake Epstein  
*for* Jerry Lowery, Challenger-Appellant  
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David A. Sawyer  
*for*, Curtis A. Cochran, Candidate-Appellee  
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This the fourteenth day of May, 2018.

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

[Note: An initial version of the Certificate contained a typographical error indicating that Mr. Epstein represented Mr. Cochran, and that Mr. Sawyer represented Mr. Lowery. This version corrects that error.]