

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT

IN THE MATTER OF: APPEAL OF )  
CHALLENGE TO CANDIDACY OF )  
DWIGHT PENLAND )

**ORDER**

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT (“State Board”) during a hearing held April 4, 2018, upon the appeal of Dwight Penland, candidate for the Republican nomination for the Clay County Board of Commissioners (the “Candidate-Appellant”), from an adverse ruling of the Clay County Board of Elections (the “Clay Board”) on a candidate challenge brought by Tommy Davis (the “Challenger-Appellee”).

The State Board heard argument from the Candidate-Appellant, the Challenger-Appellee, and from counsel for the Clay Board, 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 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 by a verified affidavit filed with the Clay Board in the manner prescribed under Part 3 of Article 19 of Chapter 163A of the North Carolina General Statutes (the “Challenge”).
2. The Clay Board properly notified Candidate-Appellant of an evidentiary ~~a public~~ hearing after which the Clay Board voted to sustain the Challenge by a vote of two in the affirmative with one abstaining. The Clay Board entered a judgment for Challenger-Appellee.
3. Candidate-Appellant timely appealed to the State Board, which held a hearing by teleconference following notice to the parties.

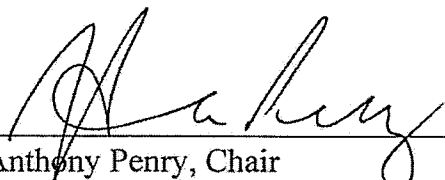
## CONCLUSIONS OF LAW

1. The State Board has jurisdiction to review this matter. G.S. § 163A-1030(a).
2. County boards of elections are established by statute and empowered to adjudicate challenges against candidates for election to offices nested wholly within the county.
3. "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.
4. The Clay 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 Challenge as a matter of law.

IT IS THEREFORE ORDERED:

The decision of the Clay County Board of Elections is **REVERSED**.

This the ninth day of April, 2018.

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

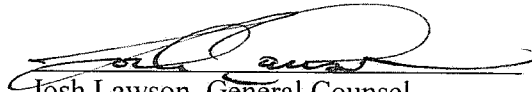
CERTIFICATE OF SERVICE

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:

Dwight Hunter Penland  
Candidate-Appellant  
2042 Low Gap Road  
Haysville, NC 28904  
swood@jackyjones.com

Tommy Davis  
Challenger Appellee  
229 Burnt Schoolhouse Road  
Haysville, NC 28904  
tommydavisgop@gmail.com

This the ninth day of April, 2018.



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

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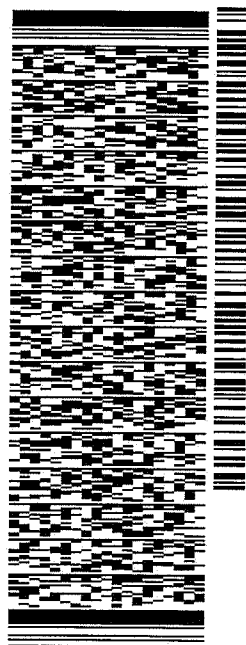
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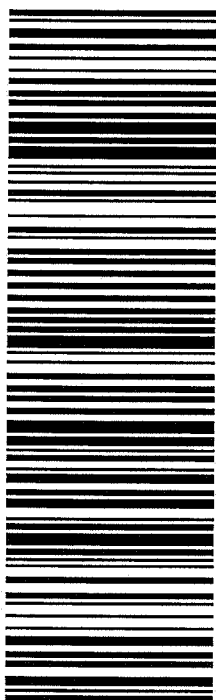
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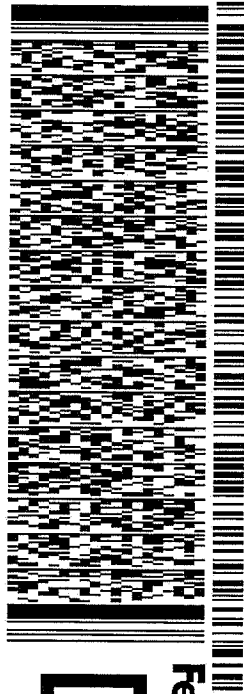
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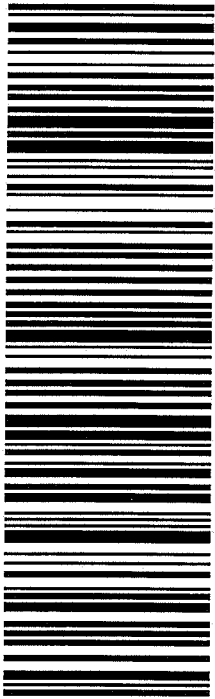
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