

STATE OF NORTH CAROLINA  
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT

IN RE PROTEST OF ELLIOTT

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**ORDER**

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS & ETHICS ENFORCEMENT (“State Board”) upon the appeal of candidate Joseph Michael Elliott (Protestor) from an order of the Tyrrell County Board of Elections (Tyrrell Board) purporting to dismiss the protest of election regarding the Democratic nomination contest for the Tyrrell County Sheriff, the apparent winner of which was candidate R. Kevin Sawyer.

The State Board heard the appeal on July 18, 2018 in Raleigh. The State Board heard argument from Protestor and from Attorney John Branch on behalf of Mr. Sawyer. Having considered arguments and written submissions from the parties along with the record and relevant statutes, the State Board hereby finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Protestor and Mr. Sawyer were candidates for Tyrrell County Sheriff in the 2018 Democratic primary election, the apparent outcome of which is as follows:

R. Kevin Sawyer	360	44.17%
Joey Elliott	247	30.31%
Nathan A. McPeak	208	25.52%

2. Protestor timely filed an election protest with the Tyrrell Board on May 22, 2018, regarding the contest for Tyrrell County Sheriff;
3. The Tyrrell Board gave preliminary consideration of the matter on May 25, 2018 as authorized by G.S. § 163A-1178(a) and issued its written order on May 29, 2018;
4. Member Huth of the Tyrrell Board voted to find probable cause and proceed to a protest hearing. Members Lilley and Knight, the other two members present, voted against the motion. Having failed to vote in the affirmative by at least three members, as required by G.S. § 163A-767, the Tyrrell Board in effect failed to find probable cause;
5. Protestor timely appealed to the State Board; and

6. The whole record of the proceeding shows, by substantial evidence, that Mr. Sawyer was domiciled in Tyrrell County for one year prior to the date of the general election, November 6, 2018.

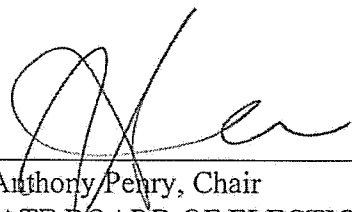
#### CONCLUSIONS OF LAW

1. The State Board has jurisdiction over this Protest pursuant to G.S. §§ 163A-1179(b)(3) and 1180.
2. Any procedural errors by the Tyrrell Board are non-prejudicial in light of the State Board's plenary authority to hear matters constitution elections protests under G.S. § 163A-1180;
3. Protestor failed to meet his burden of proof to show that Mr. Sawyer was not domiciled in Tyrrell county;
4. Mr. Sawyer was eligible to participate as a candidate in the 2018 Democratic primary election for Sheriff of Tyrrell County; and
5. There is no substantial evidence to believe a violation of election law or other irregularity or misconduct occurred that affected the outcome of the election or was sufficiently serious to cast doubt on the apparent results of the election.

IT IS THEREFORE ORDERED:

The protest is dismissed.

This the 24 day of July, 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:

Joseph M. Elliott  
135 Arbor Drive  
Columbia, NC 27925  
Joeyelliott67@gmail.com

John E. Branch, III  
Andrew D. Brown  
*for* R. Kevin Sawyer  
128 E. Hargett Street  
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ABrown@shanahanmcdougal.com

This the twenty-fourth day of July, 2018.

A handwritten signature in black ink, appearing to read "Josh Lawson", with a long horizontal flourish extending to the right.

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