



NORTH CAROLINA

STATE BOARD OF ELECTIONS

P.O. Box 27255
Raleigh, NC 27611
(866) 522-4723
www.ncsbe.gov

Administrative Denial Recommendation (08 NCAC 02 .0114)

In the Matter of Election Protest of Kevin Crutchfield

I am recommending administrative denial of the above-captioned protest appeal for failure to allege probable cause of an outcome-determinative irregularity, violation of law, or misconduct.

Background

On March 19, 2024, Kevin Crutchfield, a candidate in the Republican Party primary for North Carolina House of Representatives District 82, filed an election protest with the Cabarrus County Board of Elections. In the protest, he stated that the change in the vote margin from the votes cast during early voting and on Election Day “was the result of unethical and irregular acts” by Brian Echevarria (his opponent) and the party leadership of the Cabarrus County Republican Party. Specifically, Crutchfield alleged that campaign literature handed out by his opponent’s electioneering team gave the appearance that his opponent was endorsed by the county party and, as a result, confused voters. The protest included an Appendix I, containing a lengthier statement of the grounds for the protest, including that voters were approached by the opposing candidate and electioneers in a parking lot at a voting site. As further noted in Appendix I, the protest was brought pursuant to the county party’s plan of organization, and the protest requested remedies of a new primary election and the removal from office of certain Cabarrus County Republican Party leaders. The protest also included an Appendix II, containing a number of printed, and mostly unsigned, letters purportedly from voters in the primary. Finally, the protest included an example of the campaign literature at issue—a sample ballot—and a video showing some of the complained-of behavior at a voting site.

In this contest, Echevarria prevailed by 167 votes. The official results of the contest appear below:

NAME ON BALLOT	BALLOT COUNT	PERCENT
Brian Echevarria	4,626	50.92%
Kevin Crutchfield	4,459	49.08%

The Cabarrus Board met on March 25, 2024, to conduct its preliminary consideration of the protest. The Board, in consideration of the protest and all attachments, found that the protest as a whole failed to include any evidence of a defect in the manner in which votes were counted or tabulated, and further found that the protest as a whole failed to establish facts of any outcome-

determinative irregularity or misconduct in the integrity of the election or by election officials. The Board therefore concluded unanimously that the protest “failed to establish probable cause that the election process was conducted in a manner inconsistent with the Constitution and with the North Carolina General Statutes; and further, failed to demonstrate probable cause that Mr. Crutchfield would have been successful but for the alleged irregularities or misconduct.” The Board dismissed the protest in a written order dated March 28, 2024. There is no transcript of the proceeding because this was a preliminary meeting to determine whether the protest documents established probable cause to proceed to an evidentiary hearing.

Crutchfield timely noticed his appeal with the county board on March 28, 2024. The State Board timely received his appeal on April 1, 2024.

Analysis

Pursuant to 08 NCAC 02 .0114(e), the Executive Director of the State Board may review protest filings submitted to the State Board to determine whether to recommend administrative denial. This includes reviewing appeals from dismissals upon preliminary consideration by a county board.

When exercising this authority, pursuant to 08 NCAC 02 .0114(e), the Executive Director follows the same procedures that a county director would follow to recommend administrative dismissal, which are located at 08 NCAC 02 .0114(b). Under those procedures, the Executive Director must provide any recommendation to the State Board for administrative denial within two business days of receiving the filing. If no Board member raises any oral or written objection to the recommendation for administrative denial within two calendar days following the transmission of the recommendation, the Executive Director shall issue a written notice of administrative denial to the individual(s) who has filed the matter.

As an initial matter, Crutchfield utilized the incorrect form for his appeal, but this alone should not require dismissal of this appeal. Crutchfield’s appeal form is the one to be used when appealing an administrative dismissal entered by a *county director of elections*. Under 08 NCAC 02 .0112, however, a different form is to be used when it is the *county board* that dismisses a protest. A procedural defect in an appeal, such as using the wrong form when that form is required by an administrative rule, can be grounds for dismissal. Here, though, the mistaken use of the wrong form should be excused. First, the use of the wrong form following a county board’s preliminary dismissal is an understandable error for a nonlawyer to make. Indeed, if accessing an appeal form on the [State Board’s website](#), a protestor is provided the following two options:

- Election Protest Appeal Form (HTML)
- Appeal of Administrative Dismissal of Election Protest Form (PDF)

The text of the link for the second option could understandably be read in a way that the form should be used for all dismissals even though the form itself explains when it is to be used. Second, while the correct form requests more information than the form used by Crutchfield, the additional information that is necessary to resolve the appeal can be identified through other portions of the record, including the protest and the Board's order of dismissal.

Turning to the merits of the appeal, Crutchfield reiterates the grounds of his protest—that the actions of his opponent and the county Republican Party leadership confused voters in a way that led to his opponent receiving a wider margin of votes on Election Day than Crutchfield received during early voting. Importantly, Crutchfield again fails to identify a violation of election law or irregularity or misconduct that occurred in the conduct of the election.

First, Crutchfield takes issue with actions of the opposing candidate and the county party leadership in distributing a sample ballot at a voting site and by email and text message. He claims those actions were in violation of the county party's plan of organization—not a state statute, administrative rule, constitutional provision, or federal law. A county political party is a private organization, and the enforcement of its bylaws or other rules is outside the jurisdiction of the State Board or county board of elections.

Second, Crutchfield claims those alleged violations of the party plan of organization are what led to the alleged voter confusion on Election Day, which then “swung” the election between early voting and Election Day voters. This allegation is quite speculative as to its effect on the results of the election. Crutchfield points to the difference between votes cast during early voting and on Election Day; but this assumes, with no basis, that early voting voters and Election Day voters would vote for candidates in the same proportion. Further, some of the letters in his Appendix II note that the sample ballots were being handed out during early voting as well, which undercuts any inference that divergent outcomes between early voting and Election Day resulted from the alleged misconduct. And even if the claimed misconduct did pertain to the conduct of the election, Crutchfield has only provided letters in his Appendix II from five voters who claim the electioneering that was allegedly in violation of party rules had influenced their votes. This is well below the vote margin of 167 in the contest.

Third, Crutchfield makes an allegation in Appendix I that an unidentified voter reported to unidentified election staff at the Valor Prep voting site that the sample ballot was taped in multiple voting booths. This allegation, however, is not accompanied by documentation, such as a witness statement or an incident report. As such, this allegation is simply a rumor of potential misconduct.

Finally, while Crutchfield requests a new primary as a remedy because the “results are tainted with fraud,” he also requests that county party leadership be removed. The latter is not a remedy provided by either statutes or administrative rules governing election protests, and further serves to illustrate that his complaints are best made to the Cabarrus County Republican Party rather than the Cabarrus County Board of Elections.

Conclusion

Having reviewed Crutchfield's protest appeal, I find and conclude the following:

- The protest was properly dismissed by the Cabarrus County Board for the reasons stated in the County Board's order. The allegations in the protest do not establish probable cause to believe that an outcome-determinative violation of election law or irregularity or misconduct occurred. *See* N.C.G.S. § 163-182.10(a); 08 NCAC 02 .0114(a).
- The issues presented on appeal, which are the same issues presented in the protest, fail to show the county board erred in dismissing the protest and further warrant administrative denial of the appeal for the above-stated reasons.

For these reasons, as Executive Director, I recommend that the appeal should be DENIED.

If no State Board member raises any oral or written objection to the recommendation within two calendar days (on or before Friday, April 5, 2024), the protest appeal will be denied, and Mr. Crutchfield will be notified accordingly.

Issued by Karen Brinson Bell, Executive Director, this 3rd day of April, 2024.

A handwritten signature in blue ink, reading "Karen Brinson Bell". The signature is written in a cursive, flowing style.