

FILED

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WAKE COUNTY

SUPERIOR COURT JUDGES OFFICE

STATE OF NORTH CAROLINA
BY: S. Smallwood

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

No. 24CV0012440-910

COUNTY OF WAKE

IN RE: PROTEST OF LACY L. CUMMINGS,

Petitioner,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS, et al.,

Respondents.

**ORDER
DENYING PETITIONER'S
MOTION TO STAY
CERTIFICATION**

THIS MATTER was heard on April 29, 2024, by the undersigned Judge of Superior Court, Wake County, pursuant to a motion to stay the certification of nomination filed by Petitioner, Lacy L. Cummings on April 18, 2024. The motion was filed as part of Petitioner's "Petition to Stay Certification and Appeal of the State Board of Election[s] Denial of Protest in the 2024 Robeson County Commissioner Primary," submitted pursuant to N.C.G.S. § 163-182.14. In the petition, Petitioner sought review of the April 10, 2024, decision ("State Board decision") by Respondent North Carolina State Board of Elections ("State Board") to deny his appeal of the dismissal of his protest by Respondent Robeson County Board of Elections ("local board"). Petitioner's election protest regarding the Democratic Primary for Robeson County Commissioner District 5 was originally filed with the local board on March 19, 2024.

With the consent of the parties, the Honorable Hoyt Tessener, Judge of Superior Court, Wake County, entered an order on April 23, 2024, temporarily staying the certification of nomination for the challenged primary until May 3, 2024 to allow time for the instant motion to be heard.

The State Board and local board submitted Responses in Opposition to the Motion to Stay on April 25, 2024. Present at the hearing on April 29, 2024, were counsel for Petitioner, the State Board, the local board, and unnamed Respondent Judy Sampson.

Article 15A of Chapter 163 of the North Carolina General Statutes provides the procedures for counting ballots, canvassing votes, and certifying results in an election, including election protests and appeals of county board and State Board decisions on protest appeals. *See* N.C.G.S. § 163-182.1, et seq. Specifically, a motion to stay the certification of an election or nomination, which can be sought in conjunction with a protest appeal, is governed by section 163-182.14(b), which states, “[t]he Court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to prevail in the appeal.” *Id.*, 163-182.14(b).

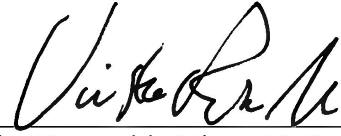
The first two requirements for this Court to issue a stay of certification are not contested in this appeal. Petitioner is an aggrieved party who has appealed a final decision of the State Board to deny his election protest appeal of the local board’s dismissal of his election protest. However, the third requirement, regarding Petitioner’s likelihood of success in his appeal to Superior Court, Wake County, is in dispute.

Based on the written submissions of the parties, and arguments at the April 29, 2024, hearing, the Court concludes Petitioner has not shown that he is likely to prevail in the appeal of the State Board decision. Therefore, he does not meet the standard for a stay under section 163-182.14(b).

IT IS THEREFORE ORDERED that Plaintiffs’ Motion to Stay the certification of nomination for the Democratic Primary for Robeson County Commissioner District 5 is

DENIED. As provided in the April 23, 2024, Consent Order for Temporary Stay, the temporary stay will dissolve on May 3, 2024.

This the 7 day of May, 2024.



The Honorable Vince M. Rozier, Jr.
Superior Court Judge Presiding