



VIA HAND-DELIVERY

August 20, 2013

Ms. Kim Strach
Executive Director, State Board of Elections
Mr. Don Wright
Counsel for State Board of Elections
P.O. Box 27255
Raleigh, N.C. 27611-7255
Don.wright@ncsbe.gov

Dear Ms. Strach and Mr. Wright:

Please find enclosed the appeal by Mr. Montravias King from the August 20th order of the Pasquotank County Board of Elections disqualifying Mr. King as a candidate based on residency. From my telephone conversation with Mr. Wright, it is my understanding that the Pasquotank County Board has been directed to not print ballots for the October election until the State Board decides the merits of this appeal. If my understanding is incorrect or the status of Pasquotank's ballot printing changes, please let me know immediately so I can file a motion to stay the Pasquotank's Board's order pending these proceedings.

Thank you for your attention to this matter.

Sincerely,

Clare Barnett
Counsel for Montravias King

Cc: Mr. Mike Cox, Pasquotank County Attorney
Mr. Richard Gilbert, Challenger

**APPEAL OF HEARING PANEL DECISION ON CHALLENGE TO CANDIDACY
TO**

STATE BOARD OF ELECTIONS

(Use of this form is required by G. S. 163-127.6)

This appeal must be delivered or deposited in the mail to the State Board of Elections by the end of the second business day after the hearing panel files its written decision. See G.S. 163-127.6 (a). The State Board is required to make its decision in this appeal based upon the whole record of the hearing conducted by the panel. (See GS 163-127.6 (a)) The hearing panel will forward a record of its proceedings to the State Board, including a copy of the original candidate challenge with any attachments, any written responses to that challenge, a copy of the panel's decision, a transcript, and any other pertinent documents (e.g., subpoenas, affidavits, depositions, notices, exhibits). Do not include material in this appeal that was not part of the record before the hearing panel. You may attach additional sheets in answering the questions below, but they must be numbered. Please print or type your answers.

1. Provide the full name, mailing address, home and business phone, fax number, and e-mail address of person(s) appealing. If you are represented by counsel in this appeal, please provide your counsel's full name, firm name, business mailing address, e-mail address, business phone and fax number.

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2. Are you the person who filed the original challenge or are you the candidate challenged?

Challenger

Candidate Challenged

3. State the name, mailing address, home and business phone, fax number, and e-mail address of the opposing party in this matter (either challenger or candidate challenged). Provide the same information for that person's counsel if the person was represented by counsel before the hearing panel.

Richard Gilbert
1623 Penny Drive
Elizabeth City, N.C. 27909
Email: pmpniron@hotmail.com
Phone: 252-331-1623


4. State the date of the decision of the panel hearing the challenge. August 20, 2013

5. State the legal and factual basis for your appeal and why you think it has merit.

Candidate Montravias King appeals on the grounds that the Board's findings are not supported by competent, material, and substantial evidence in the whole record, and that the Board committed multiple errors of law in its conclusions that violate the federal constitution. Based on the whole record before the Board, Mr. King established that he is a qualified candidate based on his residence. Please see the attached memorandum for a full discussion of these arguments.

6. Have you read and reviewed G.S. 163-127.1 through G.S. 163-127.6, the statutes on challenges to candidacies? Yes No

7. This appeal includes 21 pages of attachments.


Signature of Person Appealing

08/20/13
Date Appeal Signed

Certificate of Service

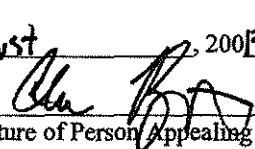
This is to certify that the undersigned has this day served the foregoing Appeal Pursuant to G.S. § 163-127.6 upon the State Board of Elections by:

Hand delivery

Depositing it in the U.S. Mail, first class postage prepaid, properly addressed to
Don Wright, General Counsel
State Board of Elections
P.O. Box 27255
Raleigh, N.C. 27611-7255

I have provided copies to the Hearing Panel and the parties in this matter.

This the 20th day of August, 20013.


(Signature of Person Appealing or Counsel Representing Appellant)

Date and time appeal received by State Board of Elections

(To be entered by the State Board of Elections staff)

If you have questions contact: Don Wright, General Counsel, North Carolina State Board of Elections,
P.O. Box 27255, Raleigh, NC 27611-7255, (919) 715-5333.

MONTRAVIAS KING)	
)	
v.)	APPEAL TO THE STATE BOARD
)	OF ELECTIONS
RICHARD GILBERT AND)	
PASQUOTANK COUNTY BOARD)	
OF ELECTIONS)	

MEMORANDUM OF MERITS OF APPEAL

Candidate Montravias King appeals from the August 19 order of the Pasquotank Board of Elections [hereinafter “the Board”] on the grounds that the Board’s findings are not supported by competent, material, and substantial evidence in the whole record, and that the Board committed multiple errors of law in its conclusions.

INTRODUCTION

The right to vote is a fundamental right. *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). The North Carolina Constitution Article VI § 1 guarantees that “Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.” Article VI § 2(1) states:

Residence period for State elections. Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

Equally fundamental is the right of a qualified voter to run for elected office. Under North Carolina Constitution Article VI § 6, “[e]very qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.”

Candidate Montravias King is a rising senior at Elizabeth City State University who has resided on campus since the fall of 2009 and who has been an active member of the college community. Ruling on a challenge to Mr. King’s candidacy based on residency, the Board held that a dormitory address could not be considered a permanent address. Combining the Board’s conclusions of law, the Board’s ruling can be summarized as “We do not know where Mr. King resides because he cannot claim to reside here.” The Board’s conclusions of law are illogical. Under their conclusions, any student who abandons their former home and goes to a dormitory would be completely barred from establishing domicile anywhere. The Board’s conclusions of law classifying dormitories as insufficient addresses for voting purposes would effectively disenfranchise every student who attempts to register at his or her college dormitory address, in clear violation of United States Supreme Court precedent and holdings of the North Carolina Supreme Court.

Evidence presented at the August 13th hearing showed that Mr. King established 1704 Weeksville Road as his permanent address by:

- Registering to vote at that address in 2009 and voting in subsequent elections
- Attending classes every semester and during summer school at that address
- Using that address for the place where he does his banking
- Using that address for medical records

- Obtaining employment in Elizabeth City and using that address with his employer
- Changing his driver's license to that address
- Removing treasured possessions such as photos and mementos from his parents's home and keeping them with him in Elizabeth City
- Actively engaging in community life by serving as President of the ECSU Chapter of the NAACP
- Testifying that he intends to stay in the Fourth Ward after graduation

In their own remarks at the hearing, the Pasquotank Board recognized that Mr. King is an active member of the Elizabeth City community. His testimony, his conduct over the four years he has lived in Elizabeth City, and his very candidacy for city council show that he intends to make the Fourth Ward his permanent home.

FACTS

In August of 2009, Mr. King enrolled as a fulltime student at ECSU and moved into the campus housing, located at 1704 Weeksville Road. In October of 2009, Mr. King changed his voter registration and listed his permanent address as 1704 Weeksville Road. Since that time, he has voted in subsequent local, federal and state elections at that address. He is an active leader in the college community, and has served as President of the ECSU Chapter of the NAACP. In addition to remaining a full-time student, he is also employed by Universal Protection Services, and works in Elizabeth City.

Prior to enrolling at ECSU, Mr. King grew up in and graduated from high school in Snow Hill, North Carolina. After graduating high school in 2009, he moved to a dormitory located at 1704 Weeksville Road in Elizabeth City to attend Elizabeth City State University (ECSU). Since

2009, he has lived on campus each semester and for sessions of summer school each summer. Mr. King testified that he returns to his parents' house during Thanksgiving and Christmas breaks to see his family. Beyond visiting with family during the holidays, he rarely visits Snow Hill.

Mr. King plans to graduate in May of 2014. After graduation, he intends to stay in Elizabeth City's Fourth Ward, to continue working, and to commute to law school at Regent University in Virginia Beach, Virginia, approximately an hour away, if he is admitted to that school.

On July 19, 2013, King filed to run for City Council as a representative of the Fourth Ward, and listed his address as 1704 Weeksville Rd, Box 1163, Elizabeth City, NC 27909, which is located in the Fourth Ward. On August 2, 2013, Richard Gilbert challenged King's candidacy on grounds that he was not a resident of the Fourth Ward. On August 13, 2013 the Pasquotank County Board of Elections conducted an evidentiary hearing, and upheld the challenge to Mr. King. The order was signed by the Pasquotank Board on August 20, 2013. Mr. King now appeals under N.C. Gen. Stat. §163-127.6.

STANDARD OF REVIEW

N.C. Gen. Stat. 163-127.6 requires that "the Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis." In conducting appellate review of a local board, the reviewing body adopts standards similar to the North Carolina Administrative Procedure Act (APA). *Farnsworth v. Jones*, 114 N.C. App. 182, 185 (1994) (appellate review of the State Board of Election's candidacy challenge.) In reviewing whether the Board's decision was supported by sufficient evidence, the

Board applies “the whole record test, which necessitates an examination of all competent evidence before the Board and a determination as to whether the Board's decision was based upon substantial evidence.” *Id.* at 185. The “whole record” standard of inquiry also requires the reviewing body:

“in determining the substantiality of evidence supporting the Board's decision, to take into account whatever in the record fairly detracts from the weight of the Board's evidence. Under the whole evidence rule, the court may not consider the evidence which in and of itself justifies the Board's result, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn.”

Thompson v. Wake County Board of Education, 292 N.C. 406, 410 (1977).

Based upon the whole record before the Board, the Pasquotank Board lacked substantial evidence to support its findings of fact and conclusions of law, as described in the argument section of this memorandum.

Conclusions of law are renewed de novo. *NC Dept of Env't & Nat Res v. Carroll*, 358 N.C. 649, 660 (2004). When considering the application of laws or if constitutional rights have been violated the reviewing body "considers the matter anew and freely substitutes its own judgment for the agency's judgment." *Mann Media, Inc. v. Randolph County Planning Bd*, 356 NC 1, 13 (2002). Based on federal and state case law, the Board's conclusions violate the federal constitution.

A. Burden of Proof

Following N.C. Gen. Stat. 163-127.5 governing candidacy challenges, “the burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the

record as a whole that he or she is qualified to be a candidate for the office.” Where the challenge is based on a change in residence, a candidate must show:

- (1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.
- (2) The acquisition of a new domicile by actual residence at another place.
- (3) The intent of making the newer domicile a permanent domicile.

Id.

Stat. 163-127.5 codifies case law applying the same residency qualifications to candidates as to voters. See, *Farnsworth v. Jones*, 114 N.C. App. 182, 187 (1994) (applying to candidate challenges the voter residency requirements established in *Hall v. Wake County Bd. of Elections* 280 N.C. 600, 605 (1972)) Under North Carolina Constitution Article VI § 6, “[e]very qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.” Thus the requirements for residency are the same for both voters and candidates. There is no ambiguity in the law -- if a person is eligible to vote as a resident at a particular address, they are also eligible to run for office as a resident at that address. King, who registered to vote in 2009 and has voted in every subsequent election, clearly satisfies the requirements to establish domicile as outlined below.

ARGUMENT

1. King showed an actual abandonment of the first domicile, coupled with an intent not to return to the first domicile

Domicile is determined by the intent of the voter. *Lloyd v. Babb*, 296 N.C. 416, 444 (1979). The North Carolina Supreme Court has defined “domicile” as a permanent dwelling place to which the party, when absent, intends to return. *State ex rel. Hannon v. Grizzard*, 89 N.C. 115 (1883). Intent to return is determined by “the evidence of all the surrounding circumstances and the conduct of the person” *Farnsworth v. Jones*, 114 N.C. App. at 187 (1994).

In meeting the first prong of domicile, the evidence presented clearly shows that Mr. King abandoned his childhood address, and has no intent to return. Finding # 4 states that King was raised in and graduated from high school in Snow Hill, North Carolina. After graduating high school in 2009, he moved to a dormitory located at 1704 Weeksville Road in Elizabeth City to attend Elizabeth City State University (ECSU). Since 2009, he has lived on campus each semester and for sessions of summer school. Mr. King testified that he returns to his parents' home only during Thanksgiving and Christmas breaks to see his family. Beyond visiting with family during the holidays, he rarely visits Snow Hill.

Finding #8 suggests that the Board believes a student forfeits his domicile if he chooses to visit family or friends in another precinct. This clearly contradicts the legal meaning of the residency provision for voting. This constitutional provision is not "designed to disfranchise a citizen of the State when he leaves his home and goes into another state or into another county of this State for temporary purposes with the intention of retaining his home and of returning to it when the objects which call him away are attained." *State ex rel. Owens v. Chaplin*, 228 N.C. 705, 47 S.E.2d 12, petition for rehearing denied, 229 N.C. 797, 48 S.E.2d 37 (1948). Vacations and holiday trips to his parents' home to spend time with loved ones are clearly temporary trips that do not strip Mr. King of his intent to remain domiciled in Elizabeth City. As noted in *Lloyd v. Babb*, students who "regarded [the university] as their home, leaving it during vacation and going wherever they could to obtain employment, with the intention of returning to University Place at the close of vacation" were considered residents of the place their college was located. *Lloyd v. Babb*, 296 N.C. 416, 446 (1979).

Testimony of the candidate regarding his intent is competent evidence. *Hall*, 280 N.C. at 609. Mr. King testified that he has no intent to return to Snow Hill. Four years ago, in October of

2009, he changed his voter registration from Snow Hill to his dormitory address. After graduation, he intends to keep working for his current employer in Elizabeth City as well as to commute from the Fourth Ward to Regent University Law School if he is accepted. As reflected in Finding # 9, Mr. King changed his address on his North Carolina-issued Driver's License to his dormitory address, demonstrating an intent to stay on at the dormitory address. Additionally, Mr. King removed his treasured mementos like photos and keepsakes from his parents' house and now keeps them with him in Elizabeth City. No evidence presented contradicts Mr. King's testimony that he does not intend to return to his parents' home. Based on the totality of evidence in the record, King clearly established that he abandoned his childhood home and has no present intent to return.

2. King demonstrated the acquisition of a new domicile by actual residence at another place

In *Lloyd v. Babb*, the North Carolina Court defined the intention to establish domicile as "The requisite intention is to make the place one's home for the time at least. If young people have such an intention, even if they intend to move later on, nevertheless 'they have their home in their chosen abode while they remain.'" *Id.* at 488, (citations omitted). His actions demonstrate that Mr. King has chosen 1704 Weeksville Road as his current home. Since the fall of 2009, Mr. King has maintained an actual residence at 1704 Weeksville Road. He has been an active student leader in the NAACP, an organization that advocates for broad civic engagement in every community. He has voted since 2009 using his campus address. Further, he has secured employment in Elizabeth City, and has his campus address on file with his employer, as well as at the place where he does his banking. He also uses his campus address for medical records. It is undisputed that while the dormitories are open, Mr. King maintains a physical presence there. When they are closed, he intends to return to them when they re-open.

3. King demonstrated an intent of making the newer domicile a permanent domicile

Mr. King stated that he plans to continue to reside in the Fourth Ward after his graduation from ECSU. The evidence of Mr. King's four years of studies and leadership, his voting record and employment in Elizabeth City" show that 1704 Weeksville Road is the center of the individual's life now, the locus of his primary concern." *Lloyd v. Babb*, 296 N.C. - at 449. He certainly satisfies *Lloyd's* requirement that a permanent domicile be one where Mr. King "intends to make that place his home for the time at least." *Id.*

A. College students have the right to vote in their college community

The Board's conclusions of law that a dormitory cannot be a permanent residence clearly violate Mr. King's constitutional right to claim his dormitory address as his domicile. College students have a constitutional right to vote in their college community using their dormitory address. *United States v. Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978) (three-judge panel) *aff'd mem. sub nom. Symm v. United States*, 439 U.S. 1105 (1979). Policies that deprive students of their right to vote based solely on living in student housing are in clear violation of the Fourteenth Amendment and the Twenty-Sixth Amendment of United States Constitution and as well as the right to vote enshrined in the state Constitution. The Fourteenth Amendment's Equal Protection Clause requires that "before the right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny." *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972). The Twenty-Sixth Amendment guarantees that the right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age. U.S. Const. amend XXIV. Together, the Fourteenth and Twenty-Sixth Amendments forbid

denying college students the right to vote because they live in university housing. *United States v. Texas*, 445 F. Supp. at 1261.

In *Symm v. United States*, the United States Supreme Court upheld the protections of the Fourteenth and Twenty-Sixth Amendments when it summarily affirmed a Texas district court's holding that denying college students who lived in dormitories the right to vote in their college community in violation of the Fourteenth Amendment. *United States v. Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978) (three-judge panel) *aff'd mem. sub nom. Symm v. United States*, 439 U.S. 1105 (1979). In that case, the elections registrar of Waller County, Texas enforced a policy of requiring all students at the historically black university, Prairie View A&M, to fill out a detailed questionnaire to determine their permanent residency. The elections director testified:

that generally students are not regarded by him as residents unless they do something to qualify as permanent residents, such as marrying and living with their spouse or obtaining a promise of a job in Waller County when they complete school. ***He does not regard a dormitory room as a permanent residence***, and regards a permanent residence only as a place with a refrigerator, stove and furniture.”

445 F. Supp. at 1251. (emphasis added).

As a result, almost all dormitory residents were barred from registering. *Id.* at 1249. The district court found this bar on voter registration for dormitory students violated the Equal Protection Clause of the Fourteenth Amendment and the Twenty-Sixth Amendment, by treating students differently than other voters based on their status as students. *Id.* at 1248. In support of this holding, the district court cited two United States Supreme Court cases that held it unconstitutional to deny the right to vote to citizens based 1) on the transitory nature of their residence; and 2) the particular area in which they lived. *Carrington v. Rash*, 380 U.S. 89 (1965)

concerned Texas' constitutional provision prohibiting any member of the armed forces who moved his home to Texas during the course of his military service from voting in an election in Texas so long as he was a member of the armed services. To support this provision, Texas argued that "it has a valid interest in protecting the franchise from infiltration by transients." *Id.* at 93. The Court struck down the provision, and rejected Texas' rationale, holding that a bar on any category of voters because they are assumed to be transient "imposes an invidious discrimination in violation of the Fourteenth Amendment. There is no indication in the Constitution that . . . occupation affords a permissible basis for distinguishing between qualified voters within the State." *Id.* at 96. Here, the Pasquotank Board would bar all students living in dormitories from registering to vote because of the nature of their residence, the very type of classification forbidden by *Carrington*.

Similarly, the Supreme Court held in *Evans v. Cornman*, 398 U.S. 419 (1970), that Maryland could not exclude people who lived on the National Institute of Health's campus from voting in local elections. The Court held that: "In nearly every election, federal, state, and local, for offices from the Presidency to the school board, and on the entire variety of other ballot propositions, appellees have a stake equal to that of other Maryland residents. As the District Court concluded, they are entitled under the Fourteenth Amendment to protect that stake by exercising the equal right to vote." *Id.* at 426 As in *Evans*, North Carolina college students often strongly identify with their college community and want to participate in local political life. They cannot be denied the equal right to vote solely because of their status as students who live on campus.

The *Symm* court also cited the Senate Report No. 26, 92nd Cong. 1st Sess. (1971), on the 26th Amendment explaining that:

forcing young voters to undertake special burdens -- obtaining absentee ballots, or traveling to one centralized location in each city, for example -- in order to exercise their right to vote might well serve to dissuade them from participating in the election. This result and the election procedures that create it, are at least inconsistent with the purpose of the Voting Rights Act, which sought to encourage greater political participation on the part of the young; such segregation might even amount to a denial of their 14th Amendment right to equal protection of the laws in the exercise of the franchise.

Id. at 1254

The *Symm* court also cited to judicial decisions finding heightened inquiry into residency for dormitory students unconstitutional in Kentucky, California, New Jersey, Vermont, Pennsylvania, Indiana, Mississippi and Michigan.¹ Since *Symm*, additional courts have found that heightened residency inquiries for students are unconstitutional. *See, Williams v. Salerno*, 792 F.2d 323, 328 (2d Cir. 1986) (holding presumption that dormitory cannot be voter "residence" unconstitutional); *Levy v. Scranton*, 780 F. Supp. 897, 903 (N.D.N.Y. 1991) (holding presumption that on-campus living quarters cannot be "residence" for voting purposes unconstitutional); *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 86 (D.C. 1997) (dormitory residents do not have to justify signed declarations of residency).

Taken together, *Symm*, *Carrington* and *Evans* all reflect the United States Supreme Court's well-established principle that categories of voters cannot be denied the right to register based on the assumption that their residence is temporary, or that they are in some way removed

¹ *Frazier v. Callicutt*, 383 F. Supp. 15, 19-20 (N.D. Miss. 1974) (finding violation of due process where student voter registration applications singled out for special inquiry and review); *Sloane v. Smith*, 351 F. Supp. 1299, 1304-05 (M.D. Pa. 1972) (holding required proofs of residence imposing higher burden on students unconstitutional); *Bright v. Baesler*, 336 F. Supp. 527, 534 (E.D. Ky. 1971) (rejecting special student questionnaire as unconstitutional); *Johnson v. Darrall*, 337 F. Supp. 138, 139 (S.D. Ind. 1971) (holding presumption of student non-residence unconstitutional).

from the political community and thus not entitled to vote. Based on Supreme Court precedent, it is unconstitutional to deny college students the right to vote because they live in dormitories.

B. North Carolina Incorporates *Symm*: *Lloyd v. Babb*, 296 N.C. 416 (1979).

The North Carolina Supreme Court recognized *Symm*'s bar against discriminating against students who live in dormitories and incorporated it in the Court's most recent case discussing student residency, *Lloyd v. Babb*, 296 N.C. 416 (1979). In *Lloyd*, individuals challenged the ability of UNC-Chapel Hill students to register to vote in Orange County. The students whose registrations were challenged lived in "in university housing, private dormitories, fraternities and sororities." *Id.* at 431. The Court applied the reasoning in *Symm* and other federal cases to find that requiring students to establish "permanent" residency violated the Fourteenth Amendment by subjecting students to a different burden than the rest of voters. *Id.* at 443. To avoid a constitutional violation, the Court accepted this definition of "permanent" residence:

As to the intended duration of residence, we have often said that domicile is the place of one's actual residence 'with intention to remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode.' **'Expressions such as these should not be taken literally.' The requisite intention is to make the place one's home for the time at least.** If young people have such an intention, even if they intend to move later on, nevertheless 'they have their home in their chosen abode while they remain.'"

Id. at 488 (Citations omitted) (emphasis added).

The Court accepted that domicile is determined by "an intent to stay indefinitely when there was simply not an intention to leave presently," *Id.* at 444, as well as the Restatement's definition that, "To acquire domicile of choice in a place, a person must intend to make that place his home for the time at least." *Id.* at 447 (quoting Restatement Second, Conflict of Laws,

§ 18). *Lloyd* clearly considered the intention of dormitory students to claim residency as acceptable to show bona fide residency. In addition to considering the challenge to thousands of dormitory students' residences brought in the case, the Court referenced the election director in *Symm*'s denial of dorms as a permanent residence, quoting, "He does not regard a dormitory room as a permanent residence." *Id.* at 450 (quoting *United States v. Texas*, 445 F. Supp. at 1251.) The Court also quoted the injunction in *Symm*, which barred "using a presumption of nonresidency, requiring students to fill out a special questionnaire, and not registering students on the same basis and by application of the same standards and procedures, without reference to whether such students have dormitory addresses, whether or not they resided in Waller County prior to attending school, and whether or not they plan to leave Waller County after graduation" *Id.* at 450. Further, *Lloyd* described this pattern of conduct as a "pattern of conduct aimed at preventing students from registering to vote." *Id.* To the extent that *Lloyd* allowed the use of a student questionnaire, it was only allowed "so long as it was not used to keep legal residents from voting." *Id.*

Lloyd recognized that, following *Symm*, and under the federal constitution, students who reside in dormitories can be legal residents for voting purposes. As *Lloyd* considered a challenge to students in dormitories, it clearly held that students residing in university housing cannot be barred from establishing residency simply because they live in university housing. To hold otherwise violates the Fourteenth and Twenty-Sixth Amendments of the United States Constitution by preventing students who are legal residents from voting.

Lloyd's holding has been codified in N.C. Gen. Stat. 163-57(11) which details residency requirements for voting:

So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law.

College students who live in dormitories are entitled to establish residency under the federal constitution and state statute. As the United States Supreme Court noted in *Dunn v. Blumstein*, 405 U.S. 330, 343-344 (1972), “[a]n appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community.” However, “before that right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny.” *Id.* at 336. There is no compelling, constitutional reason to distinguish students living in dormitories from other groups. Students living in dormitories are fully capable of intending the dorm to be their home “for the time at least,” regardless of the limited timeframe that they can physically occupy the dorms. Allowing dormitory dwellers to register is consistent with federal and state law that allows other transient populations, such as military personnel, and people who are homeless to register and vote in local elections. There is no compelling government interest to treat students who live in dormitories differently than these other groups of voters.

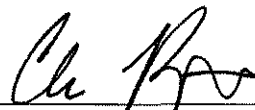
Finally, the Board’s conclusions of law are illogical. The Board is “unclear” if Mr. King abandoned his childhood address, yet the greater weight of the evidence does not show that, under the totality of the circumstances, Mr. King’s childhood home remains “the locus of his primary concern.” Further, the Board argues that it is impossible for Mr. King to attain

permanent residence in a dormitory. As Mr. King abandoned his childhood home, he, in the Board's view, is without a permanent residence and thus he cannot vote anywhere. This complete disenfranchisement of a college student choosing his dorm as his domicile is completely counter to the United States Supreme Court principles and the holding of *Lloyd v. Babb*.

CONCLUSION

For the foregoing reasons, Appellant King asks the State Board of Elections to vacate the decision of the Pasquotank County Board of Elections and to dismiss the challenge to Mr. King's candidacy.

This, the 20th day of August, 2013.



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CERTIFICATE OF SERVICE

The undersigned certifies that that foregoing Appeal and Memorandum has been served this day by hand delivery upon the following:


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The undersigned certifies that that foregoing Appeal and Memorandum has been served this day via email and U.S. Mail upon the following:

Mr. R. Michael Cox
Pasquotank County Attorney
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Mr. Richard Gilbert
1623 Penny Drive
Elizabeth City, N.C. 27909
pmpniron@hotmail.com
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This, the 20th of August, 2013.



Clare R. Barnett
Counsel for Montravias King

NORTH CAROLINA

BEFORE THE PASQUOTANK COUNTY
BOARD OF ELECTIONS

PASQUOTANK COUNTY

ORDER

This matter coming before the Pasquotank County Board of Elections (hereinafter "Board") at a hearing held on August 13, 2013 pursuant to a candidate challenge filed by Richard D. Gilbert against Montravious D. King under Article 11B of G.S. 163. Appearing before the Board were the following: Richard D. Gilbert, the challenger, and Montravious D. King, the challenged candidate, represented by Clare R. Barnett from the Southern Coalition of Social Justice. After hearing the evidence the Board makes the following FINDINGS OF FACT:

1. On July 29, 2013, Montravious D. King (hereinafter "Mr. King") timely filed a Notice of Candidacy for the 4th Ward for the City Council of Elizabeth City.
2. On Mr. Kings Notice of Candidacy he listed 1704 Weeksville Road, Campus Box 1163, Elizabeth City, NC (hereinafter 1704 Weeksville Road) as his address. 1704 Weeksville Road is within the 4th Ward of the City of Elizabeth City and is the general address used by students living on campus at Elizabeth City State University (hereinafter "ECSU").
3. On August 2, 2013, Richard D. Gilbert (hereinafter "Mr. Gilbert"), a resident of the 4th Ward of the City of Elizabeth City, timely filed a Challenge to a Candidacy against Mr. King pursuant Article 11B of Chapter 163 of the North Carolina General Statutes.
4. Mr. King was raised and graduated high school in Snow Hill, North Carolina. Mr. King has been a student at ECSU since the fall semester in 2009. His estimated date of graduation is May 2014.
5. On July 30, 2013, Mr. King moved from his dorm room located at 1704 Weeksville Road to 1624 Peartree Road, Elizabeth City. 1624 Peartree Road is also within the 4th Ward of the City of Elizabeth City.
6. Mr. King vacated his dorm room at ECSU because campus policy provides no student can live on campus between sessions. Mr. King intends to resume living on campus when the dorms open for the fall 2013 semester.
7. While not residing on campus Mr. King cannot keep any of his possessions on campus. In addition, while school is out of session the campus boxes used by students to receive their mail cannot be utilized.

8. Mr. King's parents still reside in Snow Hill. Mr. King stays in Snow Hill during Thanksgiving and Christmas breaks from college.
9. After the challenge was filed, Mr. King changed his address with the North Carolina Department of Motor Vehicles from Snow Hill, NC to 1704 Weeksville Road, Campus Box 1163, Elizabeth City, NC.
10. Mr. King has used 1704 Weeksville Road, Campus Box 1163, Elizabeth City as his address for his paycheck stubs, statements from his eye doctor and has used it as his address for other items such as when cashing checks at "Friendly Check" but does not have any bank statements, memberships or photo identification showing 1704 Weeksville Road as his permanent residence.


Based on the FINDINGS OF FACT the Board makes the following CONCLUSIONS OF LAW:

1. It is not clear if Mr. King has abandoned his former domicile in Snow Hill, North Carolina;
2. Since Mr. King's ECSU dorm room at 1704 Weeksville Road, Elizabeth City, North Carolina is closed for certain periods of time it cannot be used to establish a permanent domicile;
3. Based on the lack of evidence tying Mr. King to 1704 Weeksville Road or to the 4th Ward of Elizabeth City there is a lack of intent to make either his permanent domicile.
4. Mr. King has failed to show by a preponderance of the evidence that he intends to use 1704 Weeksville Road or the 4th Ward of Elizabeth City as his permanent domicile.

Based on the FINDINGS OF FACT and CONCLUSIONS OF LAW it is therefore ORDERED by a 2 to 1 vote that the Challenge filed by Mr. Gilbert is SUSTAINED and Mr. King is ineligible to use 1704 Weeksville Road or the 4th Ward as his address for his candidacy for the 4th Ward of the City of Elizabeth City. Mr. King's name shall not be on the ballot for the 4th Ward of Elizabeth City for the October 2013 Election.

Chairman Godfrey and Board Member Ownley voting yes and Board Member Skinner voting no.

Entered in open session on the 13th day of August, 2013 and signed this 20th day of August 2013.


Elizabeth A. Godfrey
Chairman, Pasquotank County Board of Elections

Filed the 20th day of August, 2013 at 9:15 a.m.

CERTIFICATE OF SERVICE

This is to certify that the undersigned this date served this Order in the above-entitled action upon all parties to this cause by:

Hand delivering a copy hereof to each said party.

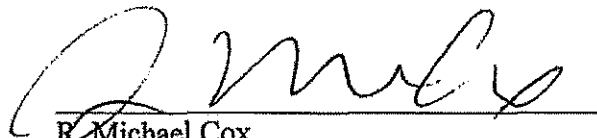
Via email and depositing a copy hereof, postage prepaid, in the U.S. mail, properly addressed to the said parties.

Service by Sheriff to:

Clare Barnett
clare@southerncoalition.org
Southern Coalition for Social Justice
1415 West Highway 54, Suite 101
Durham, NC 27707

Richard D. Gilbert
pmpniron@hotmail.com
1623 Penny Drive
Elizabeth City, NC 27909

This the 20th day of August, 2013.



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