

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
25 BOE 01408

<p>Steven Holland and Michael J Frazier Petitioner,</p> <p>v.</p> <p>North Carolina State Board of Elections Respondent.</p>	<p>FINAL DECISION ON SUMMARY JUDGMENT</p>
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THIS MATTER comes before Administrative Law Judge Linda F. Nelson for consideration of Petitioners' Motion for Summary Judgment (the "Motion"), filed with the Office of Administrative Hearings on October 9, 2025. Respondent North Carolina Board of Elections filed a Response in Opposition to the Motion for Summary Judgment (the "Response") on November 14, 2025, and Petitioners filed a Sur-Reply on December 5, 2025.

After careful consideration of the Motion, the Response and the entire record, the Tribunal finds that there is no genuine issue of material fact and that Petitioners are entitled to judgment as a matter of law.

APPEARANCES

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ISSUES

1. Whether N.C. Gen. Stat. § 163-22(l) requires direct review of State Board of Elections (the "State Board") decisions in Wake County Superior Court bypassing administrative review and thereby depriving the Tribunal of jurisdiction;
2. Whether there exist genuine issues of material fact; and,

3. Whether the State Board erred in determining that Petitioners' submissions, under N.C. Gen. Stat. § 163-22(c) and 08 N.C. Admin. Code 03 .0101, failed to establish a *prime facie* case that certain county election board members breached their statutory duties or engaged in irregularities, incapacity or incompetency by failing to reject the ballots of voters who died before election day.

The Tribunal summarizes the following undisputed facts to provide context for this ruling.¹

UNDISPUTED FACTS

1. On or about November 21, 2024, and again on or about December 4, 2024 (as revised December 15, 2024), Steven Holland and Michael J. Frazier ("Petitioners") submitted materials to the State Board pursuant to 08 NCAC 03 .0101 requesting a hearing on whether certain county election board commissioners breached their duties under Chapter 163 of the North Carolina General Statutes or participated "in irregularities, incapacity or incompetency to discharge the duties of office." These submissions are referred to collectively as the "Request for Hearing."

2. Numbered Memoranda are directives of the State Board. *Resolution on State Board Delegation of Authority to Issue Directives to County Boards*, adopted by the State Board on November 28, 2023.

3. Numbered Memorandum 2022-05, as revised December 15, 2023, directs county election boards to remove ballots cast by voters who voted early in person or by absentee ballot and died before the day of the election.

4. The Request for Hearing alleged that four members of the Rowan County Board of Elections (Loutricia W. Cain, John T. Hudson, Catreila S. Hunter and Kenneth L. Stutts), and three members of the Wake County Board of Elections (Gerry Cohen, Gregg Flynn, and Erica Porter) breached their duties or otherwise acted improperly as county board of election members. These seven individuals are referred to as the "County Board Members."

5. The Request for Hearing alleged that the County Board Members improperly voted not to remove challenged ballots cast by voters who voted early in person or by absentee ballot and died before election day, resulting in these votes being improperly counted. The transcripts of Rowan and Wake County Election Boards' meetings were attached to the Request for Hearing in support of this allegation.

6. The Request for Hearing alleged that removal of such ballots is required by Chapter 163 and Numbered Memorandum 2022-05.

¹ "Since summary judgment is proper only when there is no genuine issue of material fact, summary judgment orders should not include findings of fact." *Raymond v. Raymond*, 257 N.C. App. 700, 708 (2018). Even so, it is neither "uncommon" nor improper for "trial judges to recite uncontested facts upon which they base their summary judgment order." *Id.*

7. The Request for Hearing requested that the State Board conduct a hearing pursuant to N.C. Gen. Stat. § 163-22(c) on the charges against the County Board Members.

8. Before ordering such a hearing, the State Board is required to determine whether charges submitted by a voter under 08 NCAC 03 .0101 are supported by *prima facie* evidence. 08 NCAC 03 .0102. If the State Board finds *prima facie* evidence supporting the charges, it must order a hearing under N.C. Gen. Stat. § 163-22(c) at which the petitioning voter appears and presents evidence and the charged parties may appear to defend themselves. N.C. Gen. Stat. § 163-22(c); 08 NCAC 03 .0103.²

9. The State Board conducted the *prima facie* review of the Request for Hearing at an official meeting held on January 22, 2025 (the “Meeting”).

10. Following discussion, the State Board voted 3 to 2 that the Request for Hearing did not contain “prima facie evidence of a violation of election of laws and duties of a county board member...”. Petition, Exhibit E (Transcript of the *prima facie* review section of the Meeting (the “Transcript”)), at p. 5. As a result, the State Board did not order a hearing under N.C. Gen. Stat. § 163-22(c).

11. Following the Meeting, Petitioners did not receive any written communication from the State Board regarding its decision.

12. On April 15, 2025, Petitioners filed a Petition for Contested Case Hearing (the “Petition”) requesting that the Tribunal determine that the State Board acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously or otherwise failed to act as required by law or rule when it concluded that the Request for Hearing did not establish a *prima facie* case.

13. On June 18, 2025, the State Board filed a Motion to Dismiss asserting that the Tribunal lacked jurisdiction in this matter because

- (a) the claim was moot;
- (b) Petitioners lacked standing under Chapter 150B because they were not “persons aggrieved;” and,
- (c) N.C. Gen. Stat. § 163-22(l) required that the claim be brought in Wake County Superior Court.

14. On July 18, 2025, the Tribunal held a hearing on the Motion to Dismiss and issued an Order for Supplemental Briefing on July 21, 2025. The Parties filed supplemental briefs on August 4, 2025. On August 26, 2025, the Tribunal issued an order denying the Motion to Dismiss.

15. On October 9, 2025, Petitioners filed the pending Motion.

² This paragraph outlines the governing law and is placed in this list of undisputed facts to provide context for the facts.

DISCUSSION

I. The Parties' Claims

Petitioners contend that the State Board erred in determining that the Request for Hearing did not present a *prima facie* case that the County Board Members breached statutory duties by failing to remove certain ballots as required by Chapter 163 and Numbered Memorandum 2022-05. Petitioners argue that this error caused the State Board to decline to order a hearing on the charges, contrary to the requirement of N.C. Gen. Stat. § 163-22(c).

The State Board responds that summary judgment is improper because genuine issues of material fact remain. It also renews its argument that the Tribunal lacks subject matter jurisdiction pursuant to N.C. Gen. Stat. § 163-22(l). On the merits, the State Board maintains that its *prima facie* determination was correct.

The Tribunal first addresses the renewed jurisdictional challenge, then considers whether summary judgment is appropriate, and finally, addresses the merits of the case.

II. Reconsideration of N.C. Gen. Stat. § 163.22(l) as a Bar to Jurisdiction

A. *McFadyen Not Allman Controls*

The State Board asks the Tribunal to reconsider the portion of its August 26, 2025 Order denying the State Board's Motion to Dismiss in which the Tribunal held that its jurisdiction is not barred by N.C. Gen. Stat. § 163.22(l).³ In support of its renewed challenge, the State Board relies on a Court of Appeals decision issued after the Tribunal's Order, *Allman v. Swain County Board of Elections*, 2025 N.C. App. LEXIS 724, 923 S.E.2d 266 (N.C. Ct. App. 2025).

Allman held that N.C. Gen. Stat. § 163-22(l) requires direct review of all State Board decisions in Wake County Superior Court, except those decisions issued pursuant to N.C. Gen. Stat. § 163-278.34.

The *Allman* Court asserted that its holding was consistent with an earlier Court of Appeals decision, *McFadyen v. New Hanover County*, 273 N.C. App. 124, 848 S.E.2d 217 (2020):

We held the Superior Court of New Hanover County was without jurisdiction to hear the plaintiff's appeal because "N.C.G.S. § 163-22(l) requires any appeal taken from a decision of the [State Board] to be filed in the Superior Court of Wake County." 273 N.C. App. at 132, 848 S.E.2d 223. The plaintiff had at no point filed his petition with the OAH, and we did not suggest in our opinion that the OAH was the proper venue for his claims.

³ The Tribunal's Order also denied dismissal on the grounds that Petitioners were "persons aggrieved" and the case was not moot. The State Board has not renewed these challenges.

25 N.C. App. LEXIS 724 at 14-15 (brackets added).

This characterization is incorrect. *McFadyen* did not hold that N.C. Gen. Stat. § 163-22(l) authorizes a direct appeal to the Wake County Superior Court, bypassing the administrative review required by the North Carolina Administrative Procedure Act (the “NCAPA”).

“[W]here a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.” *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). Because *McFadyen* predates *Allman*, and because the two decisions cannot be reconciled on whether N.C. Gen. Stat. § 163-22(l) exempts State Board decisions from administrative review under the NCAPA, *McFadyen* remains controlling authority.

B. *McFadyen* Does Not Exempt State Board Decisions from Administrative Review

The dispute in *McFadyen* arose from the removal of the New Hanover County Director of Elections under a statute (since repealed) that vested the power to remove the county director in the State Board. The plaintiff filed a suit in New Hanover Superior Court challenging his termination and naming, as defendants, his employer, the New Hanover County Board of Elections, the State Board, and several individuals.

The complaint asserted breach of contract claims, as well as federal claims. The case was removed to federal court where the federal claims were dismissed. The remaining claims were remanded to the New Hanover Superior Court.

On remand, the Superior Court dismissed one claim and granted summary judgment in favor of the defendants on the remaining contract claims for damages arising from plaintiff’s termination. 273 N.C. App. at 129, 131, 848 S.E.2d at 221, 222. The plaintiff appealed to the Court of Appeals.

The Court of Appeals held that the termination decision was attributable solely to the State Board, not the county or other parties. The court stated: “Decisions of the State Board related to the performance of its duties are subject to judicial review exclusively in the Superior Court of Wake County.” *Id.* at 129, 848 S.E.2d at 221.

This statement does not mean that all appeals from State Board decisions may be filed directly in Wake County Superior Court without prior administrative review. Rather, it confirms only that *judicial* review—when properly invoked—must occur in Wake County. The *McFadyen* Court was explicit regarding the role of the NCAPA. After reciting the plaintiff’s argument that “he was not required to exhaust administrative remedies before filing this action,” the court stated: “We disagree.” *Id.* at 130, 848 S.E.2d at 221. The court explained that the plaintiff could have pursued relief under the NCAPA, which requires an administrative review followed by a judicial review:

Here, *McFadyen* alleges he “has suffered damages stemming from his loss of employment, lost wages, lost opportunities, and stigmatized reputation.” ...[R]emedies for those damages—including a hearing, reinstatement to his position, and back pay—are available in an administrative proceeding under the NCAPA in this case.

Id. at 131, 848 S.E.2d at 222.

Thus, *McFadyen* held that the plaintiff was required to pursue review under the NCAPA, which would have entailed administrative review followed by judicial review under the substantive law governing State employment, the North Carolina Human Resources Act, Chapter 126 of the North Carolina General Statutes. “The failure to exhaust the administrative and judicial review process bars a later collateral attack on the [State Board’s] decision.” *Id.* at 130, 848 S.E.2d at 221.

In contrast to a claim for damages from his termination under Chapter 126, *McFadyen*’s claim that he was not required to exhaust administrative remedies was not a claim which could be heard in the Office of Administrative Hearings. That claim required *judicial* review. Pursuant to N.C. Gen. Stat. § 163-22(l), the proper venue for a claim that one need not exhaust administrative remedies but could, instead, proceed under contract law, was Wake Court Superior Court.

Properly understood, *McFadyen* confirms that N.C. Gen. Stat. § 163-22(l) governs the forum for *judicial* review. *McFayden* cannot be read in harmony with *Allman* which, as discussed below, failed to recognize the distinction between administrative and judicial review and failed to consider the context of N.C. Gen. Stat. § 163-22(l) within Chapter 163 in holding that the it bars administrative review.

C. *Allman* Is Not Persuasive

1. *Allman* Failed To Give Effect To The Adjective “Judicial”

N.C. Gen. Stat. § 163-22(l) provides as follows:

Notwithstanding any other provision of law, to obtain *judicial* review of any decision of the State Board rendered in the performance of its duties or in the exercise of its powers under this Chapter, the person seeking review must file a petition in the Superior Court of Wake County.

(Emphasis added).

The *Allman* Court failed to give effect to the adjective “judicial” modifying the word “review.” That failure is reflected in the court’s own paraphrase of the statute, which omits the adjective and any synonym thereof:

First, a plain reading of the statute indicates a clear process: when the State Board makes a decision, a person seeking review of that decision must file a petition in the Superior Court of Wake County. N.C. Gen. Stat. § 163-22(l). The statute does

not indicate the Superior Court of Wake County is to review a decision of the OAH, but the decision of the State Board.

25 N.C. App. LEXIS 724 at 13-14.

By omitting the word “judicial,” the *Allman* Court failed to distinguish judicial review from administrative review.

2. Judicial Review and Administrative Review Are Distinct

In North Carolina, *judicial review* is done by courts established under Article IV of the North Carolina Constitution and, with respect to administrative law, is governed by Article 4 of the NCAPA, subject to very narrow statutory exceptions. N.C. Gen. Stat. § 150B-1(c).

Administrative review, in contrast, is conducted by administrative agencies and is governed by Article 3 or Article 3A of the NCAPA, the “contested case provisions.”⁴

In his concurrence in *McFadyen*, Judge Dietz explained the significance of the distinction in the context of N.C. Gen. Stat. § 163-22(l):

...the General Assembly provided that "judicial review" of any decision by the State Board must occur in Wake County Superior Court. § 163-22(l). ...the use of the term "judicial review," which has a special meaning in the administrative context, suggests that the General Assembly believed decisions of the State Board were subject to settled principles of administrative and judicial review.

McFadyen at 133, 848 S.E.2d at 223.

3. Statutory Exemption from Administrative Review Must Be Explicit

The NCAPA grants the right to administrative review of agency decisions to persons aggrieved by such decisions. The grant is broad: “The contested case provisions of this Chapter apply to all agencies and all proceedings *not expressly exempted* from the Chapter.” N.C. Gen. Stat. § 150B-1(e) (Emphasis added).⁵ The North Carolina Supreme Court has made clear that exemptions from administrative review must be stated clearly and unequivocally:

It is clear that the General Assembly intended only those agencies it expressly and unequivocally exempted from the provisions of the Administrative Procedure Act

⁴ Article 3A governs administrative review only of decisions made by a short list of specified agencies that does not include the State Board. N.C. Gen. Stat. §§ 150-1(e); 150B-23(a); 150B-38(a). Administrative review of State Board decisions, like the decisions of most other agencies, are governed by Article 3. *Id.* For Article 3 cases, administrative law judges employed by OAH, not the agency, issue the administrative final decision.

⁵ The NCAPA does not contain an exemption for the State Board from the “contested case provisions,” except with respect to the implementation of federal HAVA requirements. The HAVA exemption, which is not implicated here, is a full exemption from the NCAPA, not just the contested case provisions, *i.e.*, Article 3.

be excused in any way from the Act's requirements and, even in those instances, that the exemption apply only to the extent specified by the General Assembly. ...The General Assembly has shown itself to be quite capable of specifically and expressly naming the particular agencies to be exempt from the provisions of the Act and has clearly specified the extent of each such exemption.

Empire Power Co. v. N.C. Dep't of Env't, Health & Nat. Res., Div. of Envtl. Mgmt., 337 N.C. 569, 578, 447 S.E.2d 768, 774 (1994) (quoting *Vass v. Bd. of Trustees*, 324 N.C. 402, 407-08, 379 S.E.2d 26, 29. (1989)).

The Legislature is presumed to know the existing law when it legislates. *State v. S. Ry. Co.*, 145 N.C. 495, 542, 59 S.E. 570, 587 (1907). Accordingly, the Tribunal must presume that, had the General Assembly intended to exempt all State Board decisions from administrative review under Article 3 of the NCAPA, it would have done so expressly and unequivocally.

4. The General Assembly Has Used Explicit Exemption Language Elsewhere

The General Assembly has used explicit language in multiple statutes to exempt certain categories of State Board decisions. The NCAPA itself expressly exempts State Board decisions in one narrow circumstance:

This Chapter applies to every agency except: ...**(6)** the State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163.

N.C. Gen. Stat. § 150B-1(c)(6).

Chapter 163 contains three statutes that expressly exempt specific categories of State Board decisions from administrative review:

- N.C. Gen. Stat. § 163-165.7(d) (decertification of voting systems) which provides that “a county may appeal a decision by the State Board ... to the Wake County Superior Court” within 30 days of the notice of the State Board decision—leaving no time for administrative review.
- N.C. Gen. Stat. § 163-165.7(i) (halt of the use of electric poll books) which provides that “[a]ny such action is appealable **only** to the Superior Court of Wake County.” (Emphasis added).
- N.C. Gen. Stat. § 163-182.14 (orders for new elections) which provides that the State Board decision be deemed a “**final decision** for purposes of seeking review of the decision” and that the appeal be filed with Wake County Superior Court within 10 days of the service of the State Board decision. (Emphasis added). Pursuant to the NCAPA, an administrative “final decision” is directly appealable to the judiciary. N.C. Gen. Stat. § 150B-43.

Each of these statutes uses specific and unequivocal language to exclude administrative review and to direct immediate judicial review. By contrast, N.C. Gen. Stat. § 163-22(l) does neither. It does not declare State Board decisions final, does not state that Wake County Superior Court review constitutes the only available appeal, and does not include any filing deadline.⁶ Instead, it addresses the venue for judicial review when judicial review is otherwise available.

5. *Allman's Expedited-Elections Rationale is Misplaced*

The *Allman* Court suggested that N.C. Gen. Stat. § 163-22(l) reflects a legislative intent to resolve election disputes expeditiously. 25 N.C. App. LEXIS 724, 15-16. But statutes that actually require expedited resolution of elections are the very statutes that expressly bypass administrative review, such as those governing new elections, voting system decertification, and poll book suspension discussed above.

There is no need—and no textual basis—to eliminate administrative review for all State Board decisions, including personnel and governance matters, many of which have no connection to the timely resolution of an election.

6. N.C. Gen. Stat. § 163-278.34(f) Does Not Support *Allman's* Reading

The *Allman* Court also relied on N.C. Gen. Stat. § 163-278.34(f), suggesting that statute would be superfluous unless N.C. Gen. Stat. § 163-22(l) were read as a blanket exemption from administrative review. 25 N.C. App. LEXIS 724, fn. 2. This misapprehends the purpose of N.C. Gen. Stat. § 163-278.34(f), which is solely to grant OAH equitable power to hear cases arising under subsections (b) and (c) of the same statute.

N.C. Gen. Stat. § 163-278.34(f), provides as follows:

After assessing a civil penalty under subsection (b) of this section or imposing a civil remedy under subsection (c) of this section, appeal of the decision of the State Board of Elections under this section shall be in accordance with Article 3 of Chapter 150B of the General Statutes.

N.C. Gen. Stat. § 163-278.34(c) authorizes the State Board to impose equitable remedies for violations described in N.C. Gen. Stat. § 163-278.34(b), including cease and desist orders. Reviewing such equitable remedies requires judicial power. As a quasi-judicial agency created under Article III of the North Carolina Constitution, the Office of Administrative Hearings has no inherent judicial power. It possesses only “such judicial powers as may be reasonably necessary

⁶ N.C. Gen. Stat. § 163-22(l) does not include any filing period for the appeal to the Wake County Superior Court. If administrative review is bypassed, a limitation on the period for filing is necessary since the NCAPA provides a limitations period for judicial review only by reference to the date of service of an administrative “final decision.” N.C. Gen. Stat. § 150B-45(a). To interpret N.C. Gen. Stat. § 163-22(l) as a statute exempting Board decisions from administrative review, one would have to assume an egregious oversight on the part of the General Assembly to provide for the direct appeal of an agency decision to the judiciary but neglect to specify a time limit for that appeal.

as an incident to the accomplishment of the purposes for which it is created.” N.C. Gen. Stat. § 7A-750.

Subsection (f) supplies an express grant of “such judicial powers” to OAH. Without it, OAH’s authority to review equitable remedies imposed by the State Board under subsection (c) could reasonably be questioned. Notably, subsection (f) applies only to decisions under subsections (b) and (c), not fines imposed under subsection (a). OAH routinely reviews challenges to fines imposed under subsection (a) without jurisdictional objection from the State Board. This practice further undermines *Allman’s* reasoning.

Conclusion

Under *In re Civil Penalty, McFadyen*, issued five years before *Allman*, controls. N.C. Gen. Stat. § 163-22(l) governs the venue of *judicial review*, it does not divest the Office of Administrative Hearings of jurisdiction to conduct administrative review of State Board decisions under Article 3 of the NCAPA. Accordingly, the Tribunal’s exercise of jurisdiction over this matter is proper.

III. No Genuine Issue of Material Fact

A. Standard of Review for Summary Judgment

An administrative law judge may grant summary judgment pursuant to a motion made in accordance with N.C. Gen. Stat § 1A-1, Rule 56 if the motion disposes of all issues in the contested case. N.C. Gen. Stat § 150B-34(e). Summary judgment is appropriate when the movant shows “that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law.” N.C. Gen. Stat § 1A-1, Rule 56(c).

“When examining a summary judgment motion, all inferences of fact must be drawn against the movant and in favor of the party opposing the motion. ... This standard requires the Court to refrain from weighing the evidence or making credibility determinations.” *Bartley v. City of High Point*, 381 N.C. 287, 292, 873 S.E.2d 525, 531 (2022) (citations omitted).

Once a moving party has put the non-moving party on notice that no genuine issues of material fact exist, or that there is no issue on which the moving party bears the burden of proof, the non-moving party must “set forth specific supported facts” demonstrating the existence of a genuine issue for trial. N.C. Gen. Stat. § 1A-1, Rule 56(e); *see also, Dickens v. Puryear*, 302 N.C. 437, 457, 276 S.E.2d 325, 337 (1981) (holding that allegations, speculation, or conjecture are insufficient to defeat summary judgment).

B. Speculation Regarding Motive Is Not Material

The substantive issue in this case is whether the State Board erred in determining that the Request for Hearing did not make a *prima facie* case that the County Board Members breached their statutory duties by failing to remove certain ballots as directed by Numbered Memorandum 2022-05 and governing law.

Although the State Board asserts that “there is a dispute regarding the material facts supporting the State Board’s decision,” it does not cite a single material fact it contends is actually disputed. Instead, the Board relies on portions of the Transcript in which individual State Board members speculated about the motive of the County Board Members for not following Numbered Memorandum 2022-05’s instructions. Response at 7.

Speculation regarding motive is not material to the *prima facie* determination at issue in this case. A *prima facie* case is established where facts are alleged which support, if true, each element of the charged offense without regard to potential defenses. *McCormick on Evidence* § 342. Here, the alleged offense is the failure of the County Board Members to perform duties imposed by Chapter 163. Because there is no affirmative defense to a charge of breach of duty by a county election board member, facts relating to possible justification or motive are irrelevant to the *prima facie* inquiry that was before the State Board and is now before the Tribunal.

C. The Material Facts Relevant to the Timeliness of the Petition

The State Board also contends that there is a disputed issue of material fact concerning whether the Petition was timely filed. Response at 8-9. The State Board identifies several facts it claims are relevant to the timeliness determination. The Tribunal concludes that none of these facts are material.

The Parties do not dispute that the Petition was filed with OAH on April 15, 2025, more than 80 days after the Meeting at which the State Board determined that the Request for Hearing did not establish a *prima facie* case. Nor do the Parties dispute that the State Board did not provide written notice to Petitioners as described in N.C. Gen. Stat. § 150B-23(f). The fact of the filing of the Petition and the fact that the State Board did not send a written notice are the only facts material to the legal determination of timeliness.

Under N.C. Gen. Stat. § 150B-23(f), the limitations period for filing a contested case petition is 60 days, unless another statute provides otherwise. That limitations period does not begin to run until the agency provides the affected person with written notice describing the agency action and informing the person of the right, procedure, and time limit for filing a petition with OAH. *Id.* The notice requirements of 150B- 23(f) are mandatory; the limitations period does not commence until proper notice is given. *See, Abrons Family Practice & Urgent Care P.A. v. NC HHS*, 370 N.C. 443, 450 810 SE.2d 224 (2018); *House of Raeford Farms, Inc. v. State ex rel. Env'tl. Mgmt. Comm'n*, 335 N.C. 556, 565-66, 440 S.E.2d 590 (1994).

The State Board does not allege that it provided Petitioners with the notice required by N.C. Gen. Stat. § 150-23(f). Instead, it asserts that “the State Board provided the required notice under the Open Meetings Law for the Meeting” and that one of the Petitioners viewed the Meeting remotely and the other Petitioner viewed a recording of the Meeting at a later date. Response at 9.

Viewed in the light most favorable to the State Board, these facts are not adequate to start the running of the limitations period. The Tribunal holds that the Petition was timely filed because the State Board did not provide the notice to Petitioners required by N.C. Gen. Stat. § 150B-23(f).

Based on the foregoing, the Tribunal concludes that there are no genuine issues of material fact and thus summary judgment is appropriate.

IV. The Request for Hearing Made a Prima Facie Case

This brings the Tribunal to the substantive issue in the case. Petitioners submitted the Request for Hearing to the State Board pursuant to 08 NCAC 03 .0101, charging that the County Board Members failed to perform their duties of office and requesting that the State Board order a hearing on the matter under N.C. Gen. Stat. § 163-22(c). Before ordering such a hearing, the State Board must determine whether charges submitted by a voter under 08 NCAC 03 .0101 are supported by *prima facie* evidence. 08 NCAC 03 .0102. If the State Board finds the charges are supported by *prima facie* evidence, it must order a hearing under N.C. Gen. Stat. § 163-22(c), at which the petitioning voters may present evidence and the charged individuals may appear and respond. N.C. Gen. Stat. § 163-22(c); 08 NCAC 03 .0103.

The State Board followed the proper procedure by conducting a *prima facie* review of the Request for Hearing at the Meeting. After discussion, however, the State Board determined by majority vote that the Request for Hearing did not present a *prima facie* case and therefore declined to order a hearing.

A *prima facie* case is established where facts are alleged that, if true, support each element of the charged offense. *McCormick on Evidence* § 342. The Request for Hearing asserted that the County Board Members voted to not reject challenged ballots that had been cast by voters who died before election day. Transcripts of the meetings of the Rowan County Board of Elections and of the Wake County Board of Elections at which the votes occurred were attached to the Request for Hearing. The Request further alleged that the County Board Members were required by Chapter 163 and by Numbered Memorandum 2022-05 to reject such ballots. The alleged facts, supported by the attached transcripts, are sufficient to establish a *prima facie* case that the County Board Members acted in violation of the duties imposed on them by Chapter 163.

The State Board's discussion during the *prima facie* review portion of the Meeting is not relevant to the Tribunal's legal determination because N.C. Gen. Stat. § 163.22(c) and the rules promulgated thereunder require the *prima facie* determination be based solely on the contents of the Request for Hearing. Nevertheless, the State Board members' discussion during the *prima facie* review illustrates that a majority of the Board members misunderstood the *prima facie* standard. The discussion reflected that the Board members were familiar with the content of the Request for Hearing and acknowledged that the evidence submitted supported the factual allegation that the County Board Members took the action complained of in contravention of Numbered Memorandum 2022-05 and the governing law.

The Chairman of the State Board voted with the majority. His action following the vote that there was no *prima facie* showing also made clear that the majority had misunderstood the *prima facie* standard. Stating that he acted with the consent of the full Board, he directed the Board's General Counsel to contact each of the County Board Members named in the Request for

Hearing and instruct them “to follow the State Board’s requirements as set out in Numbered Memos or otherwise.” Transcript at 6.

CONCLUSION

For the reasons set forth above, the Tribunal concludes that it has subject matter jurisdiction over this contested case and that N.C. Gen. Stat. § 163-22(l) does not divest the Office of Administrative Hearings of authority to conduct administrative review of decisions of the State Board under Article 3 of the North Carolina Administrative Procedure Act.

The Tribunal further concludes that there are no genuine issues of material fact. The Petition was timely filed as a matter of law because the State Board failed to provide written notice required by N.C. Gen. Stat. § 150B-23(f), and speculation regarding the motives of the County Board Members is not material to the legal issues presented.

Finally, the Tribunal concludes that the Request for Hearing alleged facts which establish a *prima facie* case that the County Board Members failed to perform duties imposed by Chapter 163 of the North Carolina General Statutes by voting not to reject ballots cast by voters who died before election day, in contravention of governing law and Numbered Memorandum 2022-05. The State Board therefore erred as a matter of law in determining that the Request for Hearing did not establish a *prima facie* case and in declining to order a hearing pursuant to N.C. Gen. Stat. § 163-22(c).

FINAL DECISION

There being no genuine issue of material fact, Petitioners are entitled to judgment as a matter of law. Accordingly, Petitioners’ Motion for Summary Judgment is **GRANTED**. The decision of Respondent that the Request for Hearing did not present a *prima facie* case is **REVERSED**, and this matter is **REMANDED** to Respondent to order a hearing in accordance with N.C. Gen. Stat. § 163-22(c) and 08 N.C. Admin. Code 03 0103.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of N.C. Gen. Stat. §§ 150B-45 and 163-22(l), any party wishing to appeal this Final Decision must file a Petition for Judicial Review in Wake County Superior Court.

The appealing party must file the Petition for Judicial Review within 30 days after being served with a written copy of this Final Decision. This Final Decision was served on the parties as indicated by the attached Certificate of Service pursuant to 26 NCAC 03.0102, and the Rules of Civil Procedure, N.C. Gen. Stat § 1A-1, Article 2.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition for Judicial Review and requires service of that Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of

Administrative Hearings is required to file the Official Record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. The appealing party must send a copy of the Petition for Judicial Review to the Office of Administrative Hearings at the time the appeal is filed.

STAY OF FINAL DECISION

This Final Decision remains in effect until the person aggrieved moves the reviewing Court for a Stay of the Final Decision and the reviewing Court grants the Stay pursuant to N.C. Gen. Stat. § 150B-48.

SO ORDERED, the 24th day of February, 2026.

A handwritten signature in blue ink that reads "Linda F. Nelson". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

Linda F. Nelson
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 N.C. Admin. Code 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center which will subsequently place the foregoing document into an official depository of the United States Postal Service.

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This the 24th day of February, 2026.



Daniel Chunko
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