

## ELECTION PROTEST

(Use of this form is required by G.S. 163-182.9(c))

This form must be filed with the county board of elections within the time frames set out in G.S. 163-182.9 (b)(4). Please print or type your answers. Feel free to use and attach additional sheets if needed to fully answer the questions below. You may also attach relevant exhibits and documents. Please number the pages of such additional sheets and attachments.

1. Full name and mailing address of person filing the protest.

**Ben (Chip) Craig, Candidate**  
P.O. Box 505  
Montreat 28757

**William H. Christy**  
Attorney at Law  
110 N. Dougherty Street  
Black Mountain, NC 28711

2. Home and business phone number, fax number, and e-mail address.

Home	828.669.4411	
Business	828.669.1072	828.669.7642 ext 222
Fax	828.669.5978	828.669.5678
email	<u>chip@greybeardrealty.com</u>	<u>bill@stoneandchristy.com</u>

3. Are you either a candidate or registered voter eligible to vote in the protested election. If a candidate, for what office?

**Candidate for Buncombe County Board of Education, Owen District seat**

4. List the date, location, and exact nature of the election protested. Name all candidates in the election and the number of votes each received. Note the winning candidate(s) elected or nominated.

**November 4, 2008 General Election for Board of Education Owen District**

**(Unofficial results from BCBOE website)**

<b>Chris Bradford</b>	<b>9,270</b>
<b>Ben (Chip) Craig</b>	<b>14,417</b>
<b>Mark Crawford</b>	<b>18,360</b>
<b>Ryan Stone</b>	<b>11,480</b>
<b>Write-in</b>	<b>227</b>

5. Does this protest involve an alleged error in vote count or tabulation? If so, please explain in detail.

No

6. Does this protest involve an irregularity or misconduct not described in number 5 above? If so, please give a detailed description of such misconduct or irregularity and name those who committed such action.

No

7. Please set out all election laws or regulations that you allege were violated in your responses to 5 or 6 above. State how each violation occurred. Please provide the names, addresses, and phone numbers of those who you allege committed such violations.

**Although no violations are alleged in responses to 5 or 6 above, I believe that the relevant statutes and rules that effect this matter are set forth on Attachment to this Protest.**

8. Please provide the names, addresses, and phone numbers of any witnesses to any misconduct alleged by you in this protest, and specify what each witness listed saw or knows.

**No misconduct**

9. What action do you desire the county board of elections to take in this matter?

**Declare Chip Craig the winner of the Owen District seat; in the alternative declare the seat to be vacant pursuant NCGS 163-294.1(c)**

10. Do you contend the allegations set out by you are sufficient to have affected or cast doubt upon the results of the protested election? If your answer is yes, please state the factual basis for your opinion.

**Yes - see attached for factual allegations**


11. Have you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests?

**Yes**

12. How many pages of additional answer are attached to this protest? How many pages of attachments are attached?

**Three additional pages are attached**

  
Signature of Protestor  
Ben (Chip) Craig

  
William H. Christy  
Stone & Christy, PA  
Attorneys for Protestor  
110 N. Dougherty Street  
Black Mountain, NC 28711

Date/Time Filed with County Board  
11/2/08 NP  
(to be filled out by the county board)

## Legal Analysis

1. Chapter 115C concerns school boards. NCGS 115C-37("Election of Board members) says (in relevant part) that "the election shall be conducted according to the provisions of Chapter 163 of the General Statutes then governing primary elections."
2. Local Boards have the ability to modify the general rules that apply to them, and there are numerous local acts, contained in the Sessions Laws, that apply to particular bodies. In Chapter 93 of the 1995 Session Laws there is an act entitled "AN ACT TO PROVIDE THAT THE BUNCOMBE COUNTY BOARD OF EDUCATION SHALL BE ELECTED ON A NONPARTISAN PLURALITY BASIS ON THE DATE OF THE GENERAL ELECTION." The last section of that Act provides as follows:

Sec. 4. Section 7 of Chapter 532 of the Session Laws of 1975, as amended by Section 5 of Chapter 178 of the Session Laws of 1981, reads as rewritten:

"Sec. 7. The election of said members of the Buncombe County Board of Education in the various ~~primary~~ elections as hereinabove provided for shall be governed by the applicable provisions of Chapters 115C and Chapter 163 of the General Statutes, relating to ~~primaries and~~ elections, insofar as the same may be applicable and not in conflict with the expressed terms of this act. The Buncombe County Board of Elections is hereby authorized and empowered to create any necessary precincts, to appoint any necessary election officials and to set up and establish all necessary books and records for the conduct of said elections."
3. This local Act specifically states that the rules of Chapter 163 relating to elections, **and not primaries**, govern the election of Board of Education members.
4. NCGS 163-284.1 provides that elections for school administrative units are a "special district election."
5. NCGS 163-294.1(a) says that it applies to special district elections.
6. NCGS 163-294.1(b) provides, in relevant part, that "If a candidate in a nonpartisan election dies, becomes disqualified, **or withdraws** before election day and after the ballots have been printed, the board of elections shall determine whether there is enough time to reprint the ballots. If there is not enough time to reprint the ballots, and should the deceased or disqualified candidate receive enough votes to be elected, the board of elections shall declare the office vacant, and it shall be filled as provided by law." (Emphasis added)
7. The language of NCGS 163-294.1(b) is very specific; in the section quoted above, there are three distinct situations anticipated for a candidate: death, disqualification or withdrawal. The distinction between the three enumerated

### Factual Analysis

1. Along with others, Chip Craig and Mark Crawford timely filed for the seat in issue.
2. Mark Crawford, by affidavit dated October 1, 2008, filed with the Buncombe County Board of Elections a "Withdrawal of Candidacy." In this document he unequivocally withdrew his candidacy for the Office of School Board (Owen District).
3. Apparently the withdrawal of candidacy by Mark Crawford occurred after the ballots had been printed.
4. Apparently the board of elections determined that there was not enough time to reprint the ballots to remove Mark Crawford's name, so the election proceeded with the ballots containing Mark Crawford's name.
5. It was well publicized that Mark Crawford had withdrawn his candidacy, as there were several references in news articles in the Asheville Citizen Times, apparently based upon information from the Board of Elections.
6. In the general election on November 4, 2008, Mark Crawford received the most votes for the Owen District seat.
7. Apparently the board of elections initially reported that Chip Craig was the winner of the Owen seat, based upon the fact that Mark Crawford had withdrawn his candidacy.
8. On November 5, 2008 someone at the board of elections opined to Chip Craig that in fact he had not won the seat, and that Mark Crawford would be declared the winner.
9. In an article on the first page of the Asheville Citizen Times on November 6, 2008, Mark Crawford announced that he intended to serve as the Owen District representative to the Buncombe County Board of Education because a "plurality" of voters decided that he should serve. It is noteworthy that the article noted that calls to the board of elections were not returned, and apparently no one from the board of elections opined on this matter at that time.