

January 4, 2019

Joshua Malcolm
1 University Drive
Pembroke, NC 28372

Dear Mr. Malcolm:

We write regarding a recent news report detailing frequent communications between you and Jens Lutz, the former Vice Chairman of the Bladen County Board of Elections who resigned suddenly in the wake of the investigation into absentee ballot fraud in the 9th Congressional District. As you know, Mr. Lutz owned a political consulting business with Mr. McRae Dowless, who is at the center of the controversy surrounding alleged absentee ballot fraud in the 9th Congressional District.

WBTB reported that you and Mr. Lutz had frequent contact leading up to and after the 2018 Election, even speaking on Election Day, including multiple text messages and phone calls between April and November of last year. This information on its own of course does not reveal any improper activity, but given Mr. Lutz's connection to Mr. Dowless and your previous public statements about absentee ballot fraud, it does invite questions. Mr. Lutz was the Vice Chairman of the Bladen County Board of Elections, an area of the state in which you yourself admitted knowledge of illicit activities "for years."

In your role as Vice Chairman of the State Board of Elections, you made the motion to not certify the results of the 9th Congressional District race due to absentee ballot irregularities, and in your subsequent role as Chairman of the State Board, you had significant authority over the investigation. At the November 27th State Board of Elections meeting when the board decided to not certify the 9th Congressional District results, Board members were specifically asked to disclose any facts that would present the appearance of a conflict of interest. You did not raise any. You did not readily reveal to WBTB any of your communications with Mr. Lutz and even reportedly attempted to skirt a public records request from the news station. Only when reportedly threatened with the station's attorneys did you produce any type of phone log and even then, it was not a complete one. Your decision to not willingly disclose this information raises concerns and questions about whether you were trying to hide something.

In the interest of full transparency, we request you answer the following questions regarding your relationship with Mr. Lutz and the nature of your communications. Specifically, we are interested in knowing whether you and Mr. Lutz discussed apparent ballot irregularities before the 2018 election. As you know, your predecessor, Andy Penry, resigned as Chairman of the Board of Elections for overt partisan activity shortly after demanding a politically-charged hearing for an old complaint against a Republican incumbent on the first day of early voting. Republicans have called for a nonpartisan investigation into alleged absentee ballot harvesting operations conducted by both parties in Bladen County both this year and in past years. Your actions as well as the actions of former Chairman Penry call into question whether any investigation handled by the State Board of Elections could be carried out objectively.

We are certain that you understand the sensitivity surrounding any potential issues that could cause the public to question the Board's objectivity, and that you understand the vital importance of full transparency. We therefore respectfully request written responses to the following questions in advance of potential legislative hearings into current and past allegations of illegal election activity:

- With which other County Board of Elections Vice Chairs did you communicate in the week before and on Election Day?
- What was the nature of your communications with Mr. Lutz? Did you discuss any election irregularities?
- Why did the attorney for the State Board of Elections initially tell WBTV that there were no phone records of you and Mr. Lutz despite the fact that the text messages alluded to phone conversations? Did you inform the attorney for the State Board of Elections that no phone records existed?
- Why did you not publicly disclose your communications with Mr. Lutz, especially when asked at the November 27th State Board meeting to disclose any possible conflicts of interest?
- Why did WBTV have to threaten you with their lawyers to convince you to turn over any phone records, and why did you not turn over all of the records at that time?
- Are there any other communications between you and Mr. Lutz that were not mentioned in WBTV's reporting?
- Did you and Mr. Lutz at any time discuss the State Board of Elections investigation into the 9th Congressional District?
- Did you provide Mr. Lutz with any information about the investigation that was not available to the public?
- At that November 27th meeting, you said, "I'm very familiar with unfortunate activities that have been happening down in my part of the state, and I am not going to turn a blind eye to what took place, to the best of my understanding, which has been ongoing for a number of years." What did you mean by this? What activities were you aware of? Who made you aware of them? Did you and Mr. Lutz ever discuss any suspicious activities in Bladen County?
- If you were already aware of possible illegal activities going on related to absentee ballots, then why didn't you do anything?
- Did you and Mr. Lutz ever discuss his relationship with McRae Dowless?

We look forward to your responses to our questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry Brown". The signature is fluid and cursive, with the first name "Harry" written in a larger, more prominent script than the last name "Brown".

Sen. Harry Brown

A handwritten signature in blue ink, appearing to read "Kathy Harrington". The signature is fluid and cursive, with the first name "Kathy" written in a larger, more prominent script than the last name "Harrington".

Sen. Kathy Harrington

CC: The Honorable Roy A. Cooper
Governor of North Carolina