

Case No.

*In re. Investigation of election irregularities affecting  
counties within the 9th Congressional District*

# Exhibit

## 7.1.1.1

Description: Brief of Dr. Mark E. Harris and the Mark Harris  
for Congress Committee filed February 12, 2019.



**NORTH CAROLINA**  
**STATE BOARD OF ELECTIONS**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
STATE BOARD OF ELECTIONS

*In re*: Investigation of election  
irregularities affecting counties  
within the 9th Congressional  
District

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BRIEF OF DR. MARK E. HARRIS  
AND THE MARK HARRIS FOR  
CONGRESS COMMITTEE

Dr. Mark E. Harris ("Dr. Harris") and the Mark Harris for Congress Committee ("Committee"), through their undersigned counsel, submit this Brief following the Amended Order of Proceedings entered by the North Carolina State Board of Elections ("State Board"). Dr. Harris and the Committee request that the State Board (1) dismiss the protest or otherwise refuse to issue any remedy on it, depending on what the evidence from the investigation shows, and (2) issue Dr. Harris a Certificate of Election as the winner of the Ninth Congressional District ("Ninth District") contest.

**BACKGROUND**

In the 2018 general election, Dr. Harris defeated two candidates for the Ninth District congressional seat. After each of the eight counties in the Ninth District had canvassed the ballots, Dr. Harris had won by a comfortable margin, defeating his closest opponent by 905 votes. No candidate or voter filed an election protest, and this 905 vote margin of victory remains today.

The State Board's predecessor, the Bipartisan Board of Elections and Ethics Enforcement ("Bipartisan Board"), refused to certify Dr. Harris as the winner of the Ninth District contest. The Wake County Superior Court recently determined

that the Bipartisan Board began its own protest by this proceeding. Because of that protest, the Bipartisan Board scheduled a hearing for January 11, 2019. However, since the Bipartisan Board later dissolved, the hearing never happened. This State Board rescheduled the hearing for February 18, 2019.

Dr. Harris understands that the State Board is investigating alleged ballot harvesting in Bladen and Robeson Counties. Yet, all the election results for all the contests in those counties were certified, except for the Ninth District contest, Seat 2 on the District Court in Judicial District 6B, Bladen County Commissioner District 3, and Bladen Soil and Water Conservation District Supervisor.

### **STANDARD OF REVIEW**

This matter is before the Board on its own protest.<sup>1</sup> N.C. Gen. Stat. § 163-182.12. The Board must issue a written order on the protest that finds facts and makes conclusions of law. §§ 163-182.10(d), 182.11(b). Substantial evidence must support the Board's findings and conclusions. § 163-182.10(d)(2)e. *See also* Am. Order of Proceedings, ¶ 15. Substantial evidence means "relevant evidence a reasonable mind might accept as adequate to support a conclusion." *In re Johnson*, 812 S.E.2d 821, 825 (N.C. 2018). A finding supported by substantial evidence is one backed up by more than "conjecture, guess, surmise, or speculation." *Jenrette Transp. Co. v. Atl. Fire Ins. Co.*, 236 N.C. 534, 539–40, 73 S.E.2d 481, 485 (1952). Rather, the Board must be "reasonably certain about the probabilities arising from a fair consideration of the evidence." *Id.* at 540, 73 S.E.2d at 485.

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<sup>1</sup> *See* General Objections attached to Brief (**Exhibit 7**).

## DISCUSSION

Dr. Harris and the Committee ask the Board to declare Dr. Harris the victor of the Ninth District contest and to issue to him a certificate of election. While the facts are unknown, Dr. Harris and the Committee use this opportunity to highlight what North Carolina's election law allows and requires. The discussion proceeds in three parts:

*First*, the State Board must dismiss or determine to act on its protest. The new election issue arises only if the State Board decides to act on its protest. Unless the evidence conclusively proves irregularities occurred and that those irregularities could have altered the outcome of the election, the protest should be dismissed.

*Second*, if the Board determines to move forward with the protest and to evaluate remedies, the decision on whether to impose any remedy is a discretionary choice. The State Board should not order a new election if the evidence discloses only technical irregularities. North Carolina law places primary importance on the will or intent of the voter. Technical irregularities—like ballot harvesting—do not diminish or impair the Board's ability to determine the voter's will. It would be improper for the State Board to order a new election if the irregularities deal only with the handling of ballots by nonvoters, and the State Board already has certified, or allowed the county boards to certify, other contests on those same ballots. Without conclusive evidence that only certain contests were impacted, it would be arbitrary

and capricious for the State Board to order a new election for only certain races on the ballot.

*Third*, if the State Board does not order a new election, it must certify Dr. Harris as the winner in the Ninth District. State law requires issuance of a certificate of election on the tenth day after the State Board has concluded a protest, unless it has ordered a new election.

**I. Whether irregularities change the outcome of an election must first be answered before a protest proceeds to the discretionary question of whether a new election is appropriate.**

Though the Amended Order of Proceedings focuses on the propriety of a new election, it overlooks the multi-step process that an election protest starts. Before the State Board asks whether a new election is warranted, it first must determine whether it should act on the protest at all.

The State Board should not take its decision on its protest lightly. Without clear evidence to the contrary, the law presumes elections are valid and final. *See, e.g., In re Appeal of Ramseur*, 120 N.C. App. 521, 525, 463 S.E.2d 254, 256 (1995) ("North Carolina law on this issue is well settled. An election or referendum result will not be disturbed for irregularities absent a showing that the irregularities are sufficient to alter the result.") The election must stand, unless there is evidence to "show that the [challenged] votes would have changed the result of the election." *Id.*

**A. Before considering whether a new election is appropriate, the State Board must consider whether to act on its protest or dismiss it.**

The State Board's prior practice and the Amended Order of Proceedings show that the State Board must base its decision on an election protest on the

procedure set forth in § 163-182.10(c) and the findings and conclusions of § 163-182.10(d), except where inapplicable. *See generally* N.C. Gen. Stat. § 163-182.11 ("The State Board shall follow the procedures set forth in subsections (c) and (d) of G.S. 163-182.10 except where they are clearly inapplicable."). As a result, as a threshold matter, the State Board either must dismiss its protest or must determine that there is "substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur *and that it was sufficiently serious to cast doubt on the apparent results of the election.*" § 163-182.10(d)(2)e (emphasis added).

The State Board should dismiss its protest if there is not substantial evidence of any violation, irregularity, or misconduct "sufficient to cast doubt on the results of the election." § 163-182.10(d)(2)c. Irregularity or misconduct alone does not mean a protest moves forward. The State Board must decide whether the irregularity is sufficient to cast doubt on the results of the election. If irregularity or misconduct—no matter its nature or egregiousness—does not cast doubt on the result, the protest should be dismissed.

Only if the State Board determines that the irregularity or misconduct occurred and that it casts doubt on the apparent results of the election would the next step follow of determining a remedy. Felonious conduct, improper actions, and extreme wrongdoing may exist—but a protest moves forward to remedies only if these issues conclusively cast doubt on the results of the election. Any evidence or implication that the wrongdoing or irregularities may not have cast a doubt on the results of the election is enough to stop any protest without the need to call for a new

election. *In re Caldwell Cty. Elecs. Protests*, 2003 WL 25476411, ¶¶ 14–17 & pp. 8–9 (N.C. Super. Ct. Feb. 21, 2003) ("*In re Caldwell County*").

**B. In 2016, the State Board dismissed a protest over voting irregularities because they were not "sufficient to cast doubt on the results of the election."**

After the 2016 general election, a protest was filed about irregularities in absentee ballots in Bladen County. After an evidentiary hearing, then-Vice Chairman, Josh Malcolm, made the following motion:

MR. MALCOLM: Mr. Chairman, I make a motion that the protest brought from Bladen County by the individuals represented by Mr. Branch and Mr. Knight, that protest should be dismissed because there was not substantial evidence of a violation of election law or other irregularity or misconduct sufficient to cast doubt on the results of the election, and therefore that we order this protest be dismissed, and once the motion is done, we'll have another motion based on my earlier remarks.

See Transcript of State Board Proceedings, December 3, 2016 ["2016 Election Tr."], p 216:16-24 (**Exhibit 1**). A majority of the Board approved this motion and thus ended the pending protest about absentee ballot irregularities in Bladen County.

After that motion, the 2016 State Board approved a motion to refer the irregularity issues to the United State Attorney for the Eastern District of North Carolina. Here is Mr. Malcolm's second motion:

MR. MALCOLM: Mr. Chairman, I make a motion that this Board gather and prepare to make available to the United States attorney for the Eastern District of North Carolina any and all information in our possession, notes and otherwise, regarding the election that took place in Bladen County, North Carolina, concerning the federal election for November 8, 2016, and make that—make that made available immediately.

2016 Election Tr., p 217:10-17 (**Exhibit 1**).

This State Board is duty-bound to apply the same standard here. The applicable provisions of law have not changed. If the irregularities are not sufficient to cast doubt on the outcome of the election, the protest should be dismissed.<sup>2</sup> Once the protest is dismissed, the State Board can consider referring any irregularity issues to the appropriate prosecutorial authorities. N.C. Gen. Stat. § 163-22(d).

A member of the Bipartisan Board, former Vice-Chairman Josh Malcolm, initiated this protest. The statutory standard that Mr. Malcolm imposed on Mr. Dowless' protest in 2016 should be the same statutory standard imposed on the protest Mr. Malcolm initiated in 2018 on behalf of the Bipartisan Board. If the irregularities are not sufficient to cast doubt on the outcome of the election, the same motion to dismiss the protest should be made and approved here. Any other outcome would cause the public to lose trust in the electoral process.

**II. Even if the State Board pushes the protest forward to look at remedies for any irregularities, a new election is not an appropriate remedy.**

The remaining arguments assume the State Board does not dismiss its protest. Even if the Board acts on its protest, it is not required to impose *any* remedy.

The remedies available to the State Board on a protest are finite. The State's election code allows for four potential remedies. The State Board: (i) *may* correct returns; (ii) *may* order a discretionary recount; (iii) *may* order a new election; or (iv) *may* order some combination or all of the prior three options.<sup>3</sup> N.C. Gen. Stat.

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<sup>2</sup> Coincidentally, this appears to be the same position advocated by Dan McCready's lawyers in the 2016 election. See **Exhibit 2** (last paragraph).

<sup>3</sup> Given the sizable margin of victory for Dr. Harris by 905 votes, we are not addressing the remedies other than calling for a new election as we do not understand them to be relevant.

§§ 163-182 (definition of "protest"); 163-182.10(d)(2)e; 163-182.13. If the State Board, by majority vote, finds that substantial evidence of irregularities exist and that these irregularities cast doubt on the apparent results of the election, it does not follow that a new election *must* occur. Rather, the State Board may decide to not require a new election or any other remedy.

**A. Calling a new election is a discretionary decision, even if the election had significant irregularities.**

Both the permissive language in the election code and prior case law show that calling a new election is discretionary, even in the face of the worst irregularities. To be clear, it is not anticipated the evidence will show any egregious irregularities. The evidentiary submissions made to the State Board to-date show very, very little in terms of speculated irregularities. In fact, election records show that 8 of the 13 affiants coming from Dan McCready and claiming irregularities in absentee ballots voted in person. New information—unknown to Dr. Harris and the Committee—would have to come forward. Still, even at their worst, the nature and scope of irregularities do not mandate a new election.

**1. Calling a new election is a discretionary decision.**

Both statutes that provide remedies for a protest state that the State Board "may" call for a new election. §§ 163-182; 163-182.13. A discretionary choice by four of the five members of the State Board to call a new election is required. The requirement that more than a simple majority of the State Board's membership is required to call a new election underscores the high standard for a new election.

**2. Under *Caldwell County*, calling a new election is a discretionary decision, even in the face of extraordinary irregularities.**

In *In re Caldwell County*, 2003 WL 25476411 (N.C. Super. Ct. Feb. 21, 2003), the State Board considered a protest, but declined to act on it. The State Board majority vote found conclusive evidence of "widespread buying of votes in the county," and this vote buying was occurring in a political party's office. *Id.* ¶ 4. Even so, the Board did not call a new election.

In the *Caldwell County* case, the issue of vote-buying split the State Board's five members. Three members of the State Board voted for a new election. But two members dissented. Though the dissenting members agreed that there was widespread vote buying, they disagreed with calling for a new election. *Id.* ¶ 11. The Board's 3 to 2 decision led to upholding the original election results under § 163-182.13(a)(4)'s four-vote requirement.

On appeal, the Wake County Superior Court upheld the Board's determination. The Court noted its own view that, "[T]he evidence of record overwhelmingly supports a finding and a conclusion that the undisputed voting improprieties found in th[e] record are sufficient to taint and to cast doubt on the election's fairness requiring [a] new election[], such a conclusion is not mandated or compelled." *Id.* ¶ 13. Even so, the Court held that the dissenting members were "not compelled to address the issues of *taint* and '*doubt on fairness*' as set forth in G.S. 163-182.13(a)(4), if such board member[s] conclude[] that the outcome of an election was not affected or changed by election irregularities or improprieties." *Id.* ¶ 12.

**B. North Carolina law places paramount importance on the intent of the voter, so a new election is not appropriate for violations that do not diminish voter intent.**

Long ago, the General Assembly made a policy judgment: the State Board determines and adheres to the will of the voters. The entire election code reflects this judgment. For example, it makes clear that the Board may not reject an official ballot "because of technical errors in marking it, unless it is *impossible to clearly determine the voter's choice.*" N.C. Gen. Stat. § 163-182.1(a)(2) (emphasis added). Even if it is impossible to ascertain the voter's choice for one item on a ballot, the ballot still must be "counted in all other ballot items." § 163-182.1(a)(3). Likewise, if a ballot scanner rejects a ballot, the rejected ballot *still must be counted* by hand. § 163-182.1(a)(5) (emphasis added). Indeed, the Court of Appeals has recognized that policy judgment. For example, in *In re Protest of Midgette*, 117 N.C. App. 213, 450 S.E.2d 519 (1994), the Court even looked to evidence outside the ballot, all in the name of ascertaining the voter's intent. *See id.* at 219, 450 S.E.2d at 524.

Because the voter's intent is key, any alleged ballot harvesting, standing alone, does not weigh in favor of a new election. To be sure, absentee-by-mail ballot harvesting is illegal, and it should be referred to prosecutors for appropriate action. N.C. Gen. Stat. § 163-226.3(a)(6). But illegality in transmission is not necessarily indicative of invalidity of substance. Without evidence to show that the *contents* of ballots sufficient in number to change the outcome of the election were tampered with, any illegality in how they were delivered should be immaterial to the Board's decision making.

Lawyers for Governor Cooper and the North Carolina Democratic Party, who happen to now be Dan McCready's lawyers, pointed to this same distinction in 2016. Then, the Perkins Coie law firm wrote the State Board about absentee ballot irregularities in Bladen County:

We do not know what evidence the Board will hear during its hearing to consider this protest. If the Board determines that N.C. Gen. Stat. § 163-226.3(a)(1) was violated, *but that the voters themselves did intend to vote in the manner indicated on their ballots*, then we would respectfully submit that those ballots should be counted.

See Letter from Perkins Coie to Bipartisan Board dated December 2, 2016, **Exhibit 2** (emphasis added). As a result, it appears that Mr. McCready should agree that the intent of the voter—not technical errors or wrongdoing by a nonvoter—is a guiding principle on whether votes should be counted or a new election called.

**C. A new election is appropriate only if there are substantial substantive errors, not technical noncompliance with the election law.**

Irregularities that support a new election usually disenfranchise or potentially disenfranchise voters in a sufficient number to alter the election's outcome. One example of an actionable irregularity is official misconduct in the administration of an election. The case of *In re Appeal of Judicial Review by Republican Candidates for Election in Clay County*, 45 N.C. App. 556, 569–74, 264 S.E.2d 338, 345–48 (1980) ("*In re Clay County*") is instructive. There, the Court of Appeals concluded that the State Board properly called a new election where the county board of elections—election officials—had improperly administered the election. For instance, the county elections supervisor improperly—and without direction—certified absentee ballot applications, a function reserved for the county

board of election's chairman; forged the name of the county board of election's chairman; stored ballots in an unlocked, unattended vault in the office of the register of deeds, who himself was a candidate for re-election and had access to the ballots; improperly, and without authority, issued ballots as absentee ballots; allowed one-stop voting to occur on his desk, rather than in a voting booth; and failed to determine whether one-stop voters who requested assistance completing their ballots were legally eligible for such assistance. *Id.*

In contrast, other cases show that, where the irregularities were merely technical and did not threaten the expression of voter intent, it was proper for a new election not to be called. Consider, for instance, *Davis v. Board of Education*, 186 N.C. 227, 119 S.E. 372 (1923). In *Davis*, the Supreme Court of North Carolina concluded that voting "irregularities not affecting the result of a fair expression of the popular will"—technical errors—did not merit discarding an otherwise proper ballot. *Id.* 119 S.E. at 375. Earlier, in *State v. Nicholson*, 102 N.C. 465, 9 S.E. 545 (1889), the Supreme Court followed the same logic. The defendant alleged a series of electoral irregularities, such as the registrar's failure to administer to each voter the proper oath, as well as the registrar's failure to keep open for inspection the registration book during the entire day. The Court concluded that these irregularities did not affect the outcome or the validity of the election. *Id.* at 547–48.

This Board's past practices show a similar stance. The Board followed this same reasoning in 2016, when it certified Governor Roy Cooper's election despite allegations of absentee-by-mail ballot irregularities much like those at the heart of

this case. In 2016, the election protest was based on the allegation that someone had forged hundreds of absentee-by-mail ballots. More particularly, the protest provided, "The voters of Bladen County, North Carolina, appear to be the victims of a massive scheme to run an absentee ballot mill involving hundreds of ballots." (**Exhibit 3**). Setting aside the will of the voter on a mere technicality is a tough pill to swallow. As then-member Joshua Malcolm stated:

I . . . struggle in trying to understand how we could discard thousands of votes, hundreds of votes as a minimum, when there is no question about, nor has there been any evidence admitted or proffered even in [the] protest . . . about anything to do with the actual voters casting the ballots themselves.

(2016 Election Tr., p 212:9-14, **Exhibit 4**). As the Board's investigator, Joan Fleming, recounted the decision, "After considering the legal arguments . . . the State Board voted to dismiss the Dowless protest under 163-182.10(d)(2)(c)" because "the board found that while improper assistance may have been provided by the individuals who wrote the write-in candidate's name on the ballot without signing the assistance certification, there was insufficient evidence to disqualify the affected ballots[.]" (SBOE Exhibit 2.2.2.1).<sup>4</sup>

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<sup>4</sup> See also *Nageak v. Mallot*, 426 P.3d 930, 946–47 (Alaska 2018) (refusing to order a new election where technical errors by elections officials gave voters multiple ballots, did not request identification from voters, failed to tally votes correctly, telephoned inaccurate results on election night, and did not sign certificate of ballot counts); *Wesley v. Wash. Cty. Democratic Exec. Comm.*, 235 So. 3d 1379, 1384–87 (Miss. 2017) (declining to order a new election because voter intent was intact, even though election result ballot boxes were not properly sealed as required by law, votes were counted by an improper party, and ballot boxes were left unlocked and in the open).

Calling for a new election here would be out of step with past practice. Even though shocking or substantial, technical violations that do not disturb the intent of the voter should not disenfranchise the voter.

**D. A new election is not warranted because any irregularity comes from noncompliance with the election law by someone other than the voter, which does not disturb the voter's intent.**

Similarly, a nonvoter should not disenfranchise a voter. In deciding whether a remedy of a new election is appropriate, it is a meaningful distinction when irregularities occur from the conduct of a nonvoter, instead of a voter.

Once again, Dan McCready's lawyers advocated for this position in 2016, and the State Board followed. In their letter, the Perkins Coie law firm said, "The purpose of this letter is to request that the Board take no action with regard to the Election Protest...that would disenfranchise voters who committed no election law violation[.]" See December 2, 2016, Letter from Perkins Coie to Bipartisan Board, (Exhibit 2).

The nature of any wrongdoing matters here. Any illegal acts of ballot harvesting would be a violation by a nonvoter. The ballot of the voter still would be intact and still should count, and no new election should be called.

**E. The State Board should not call a new election where neither election officials nor the candidates were involved in the wrongdoing; the *Clay County* case does not support a new election if the wrongdoing was committed only by a campaign worker or volunteer.**

The *Clay County* case should not be the basis for any new election here. Irregularities tainted the Clay County election, but those irregularities were caused by election officials and the candidates themselves. Each bad actor was abusing his

or her public position. These public officials were violating the election code and acting outside their duties, and the wrongdoing was within the electoral framework.

Here, if the Board concludes that a campaign worker or volunteer was the only source of wrongdoing, that conclusion would meaningfully distinguish this case from *Clay County*. Any wrongdoing would be based on isolated bad acts of outsiders, not election officials or the candidates themselves. See Affidavit of Bobby Ludlum, ¶¶ 5, 10 (**Exhibit 5**). This case is distinguishable from the *Clay County* case in at least three meaningful ways.

*First*, Dr. Harris and the Committee do not believe that any public official abused his or her position. Based on the publicly available facts, none of the people at the heart of the Board's investigation maintain a public position. This fact makes this case meaningfully different from *Clay County*. "[A]n election should not be enjoined or invalidated unless the true will of the voting public is not reflected, or a statutory requirement has not been substantially complied with *by those responsible for calling, scheduling, and conducting the election*." 26 Am. Jur. 2d Elections § 345 (emphasis added).

*Second*, the people under investigation merely are campaign workers or volunteers, who are a significant degree of distance away from the candidate, Dr. Harris. In other states, courts have noted that election returns cannot be invalidated based on misconduct by "friends and supporters of the contestee." *Nelson v. Sneed*, 83 S.W. 786, 787–90 (Tenn. 1904) (refusing to overturn election results because of misconduct by "friends and supporters of the contestee"). See generally

*Howard v. Cockrell*, 231 Ky. 278 (1929) ("Of course, if overzealous, though lawless, friends should, without notice or knowledge of the candidate, commit such offenses, the candidate ought not to be held accountable[.]").

*Third*, there are no facts to show that Dr. Harris authorized, approved, or knew about any wrongdoing by any individuals. The winning candidate here did not know or participate in ballot harvesting or in any other form of election fraud.

It would be a dramatic and unwarranted shift for this State Board to allow irregularities caused by a campaign worker or volunteer to be sufficient grounds to call a new election, especially when the margin of victory is so high. Campaign workers and volunteers would be individuals at least three-levels removed from the candidate, the campaign manager, and the campaign's central staff. A candidate and the candidate's campaign manager cannot control every staff worker or volunteer at every moment, especially in high-profile contests like Congressional contests that have many more workers and volunteers.

The *Clay County* case does not stand for this type of unrealistic oversight of campaign staff and volunteers, and it should not be read expansively to go to this extreme. The *Clay County* case was unique factually in how it involved public officials—who, sometimes, were the candidates themselves—committing the wrongdoing. Those facts do not exist here.

**F. A new election would be improper when irregularities about the transmission of ballots to the State Board—i.e., ballot harvesting—is the ground for calling a new election, but most contests on the ballot already were certified.**

The prior Bipartisan Board certified the Bladen County Sheriff's contest, where the victor's margin of victory was 1,388 votes. It also certified, or allowed the county boards to certify, every other contest where the winner's margin of victory was equal to or above 1,388 votes.

If the State Board finds taint of fraud or corruption and irregularities based on how absentee ballots were delivered to the State Board (i.e., ballot harvesting), then the "taint" or "irregularity" must impact the entire ballot. Under that scenario, no contests in Bladen County or another affected county should have been certified. It would contradict the rights of all candidates for this new State Board to single out contests on a ballot, when the delivery of the entire ballot to the ballot-box is the basis for irregularities.

The State Board's past actions show as much. In 1978, the State Board, relying on the taint provision, refused to certify any primary contest in Clay County. *See generally In re Clay County*, 45 N.C. App. 556, 264 S.E.2d 338. There, the State Board refused to certify the results "for *any or all* of the offices in contest on that date." *Id.* at 569, 264 S.E.2d at 345 (emphasis added).

The Ninth District contest did not have discrete, individual, or unique ballots. Rather, the ballots contained every contest. If the election were tainted through ballot harvesting or other ballot delivery issues, the prior Bipartisan Board

should have halted certification in every contest in Bladen County, and perhaps in the entire Ninth District. But they did not.

It is our understanding that it would be unprecedented for this State Board to determine that a new election must occur in the Ninth District because of "taint" or irregularities in delivery of ballots to the ballot-box, when other contests on the same ballot in the same county were certified. The irregularities should be dealt with through referral to appropriate prosecutors, as was done in 2016 (2016 Election Tr., p 217, **Exhibit 1**). But a new election should not be called, singling out only one or a few contests on the ballot. This State Board is limited by the choices made by the prior Bipartisan Board.

**III. If the State Board does not call a new election, it is required to certify Dr. Harris as the winner of the Ninth District contest.**

If the State Board does not call for a new election, then it must certify Dr. Harris as the victor. The State Board must issue a certificate of election to Dr. Harris within 10 days of the final decision on the protest. § 163-182.15(b)(1).

The State Board must make a written decision on its protest, even if no remedy follows. § 163-182.10(d); *In re Caldwell County*, 2003 WL 25476411.

However, the Board's mandatory written order, not its permissive remedial action, ends the protest. Because the Board's written order resolves any protest, the Board's declining to impose a particular remedy is not grounds to withhold certification. For example, if there is a motion to call for a new election, but the vote fails 3 to 2 due to the four-vote requirement in § 163-182.13, the protest still concludes without the remedy of a new election. At that point, § 163-182.15(b)(1)

requires the certificate to issue within 10 days. Simply put, the State Board may not withhold a Certificate of Election indefinitely. The election code forbids it.

Case law confirms the mandatory end to electoral limbo. For example, the Superior Court in the *Caldwell County* case upheld the Board's 3 to 2 decision to make findings and conclusions supportive of the protest, but to refuse a new election, and remanded the case "to be certified pursuant to G.S. 163-182.15." 2003 WL 25476411. In fact, if an appeal had not been taken, the State Board's order about the Caldwell County protests reflected that a certificate of election to the winner had to issue when the vote on a new election failed. *See* Order Denying New Election p. 2 (**Exhibit 6**). While certification in the *Caldwell County* case followed a different timeline because of the appeal to Superior Court, the obligation to certify was upheld because the vote to order a new election failed. The Court, and the State Board, followed the statute's terms. Section 163-182.15 required issuing a certificate of election within a prescribed timeframe.

The Board must follow that practice here. If the Board acts on its protest and votes on a new election, and if that vote fails, the Board must issue Dr. Harris a Certificate of Election after the required 10-day period. Any failure to issue a certificate at that time not only would be unprecedented, but it also would violate the Board's mandatory duty under § 163-182.15(d). It also would undermine Dr. Harris' clear legal rights secured by that same statute.

In sum, when the Board acts on its protest, it must issue a written order. That written order, regardless of any remedy or not, concludes the Board's protest.

If the protest is dismissed or if four members of the State Board do not support a new election, the conclusion of the protest requires the State Board under § 163-182.15 to issue the Certificate of Election 10 days later.

### CONCLUSION

For the reasons stated above, Dr. Harris and the Committee request that the State Board issue a Certificate of Election to Dr. Harris declaring him the winner of the Ninth District contest in the 2018 general election.

This the 12th day of February, 2019.

  
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# **EXHIBIT 1**

1 NORTH CAROLINA  
2 COUNTY OF WAKE

BEFORE THE  
STATE BOARD OF ELECTIONS

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4 IN RE: PROTEST OF ELECTION OF |  
LESLIE McCRAE DOWLESS, JR. |  
5 G.S. 162-182.10(a) and |  
G.S. 163-182.12 and |  
6 G.S. 163-182.10(b)-(d) |

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North Carolina Board of Elections

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441 N. Harrington Street

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Raleigh, North Carolina

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SATURDAY, DECEMBER 3, 2016

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1:30 p.m.

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Pages 1 through 253

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Board members present:

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Mr. Grant A. Whitney, Chairman

Ms. Rhonda K. Amoroso, Secretary

21

Dr. Maja Kricker

Mr. Joshua D. Malcolm

22

Judge James L. Baker

23

Also Present:

Ms. Kim Westbrook Strach, Executive Director

24

Mr. Joshua Lawson, General Counsel

MS. Katelyn Love, Special Counsel

25

	T A B L E   O F   C O N T E N T S	
1		
2	Call to Order by Chairman Whitney	3
3	Statement regarding Ethics and Conflicts of Interest pursuant to G.S.138A-15(e)	3
4		
5	Preliminary consideration	3
6	In Re: Protest of Election by Leslie McCrae Dowless, Jr. G.S. 38A-15(a) and G.S. 163-182.12	
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13	Motion that the protest brought from Bladen County by Mr. Dowless be dismissed	216
14	Vote	217
15	Motion that Board make available	217
16	to the United States attorney for	
17	the Eastern District of North Carolina	
18	all information regarding the election	
19	in Bladen County concerning the federal	
20	election for November 8, 2016	
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24	lack of evidence of any irregularities	
25	or any difficulty that would change	
	the outcome of the election	
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1 them either. And they're not being made available in Bladen  
2 County if I'm correct. And even actually Durham County,  
3 they're still waiting to look at the ballots absentee  
4 ballots there. I know it's difficult. Identifiers need to  
5 be redacted and we're in a crunch time right now.

6 We're in a crunch because we have the canvass on  
7 the 9th, I believe that's the drop dead date. So everything  
8 is a little bit more complicated than usual, I guess, based  
9 on the time line.

10 However, again, I think there is a problem here  
11 that's been demonstrated. I would love to see the ballots.  
12 So I don't know that anybody else is interested, but that's  
13 where I'm standing right now.

14 CHAIRMAN WHITNEY: Thank you. Do I have a  
15 motion?

16 MR. MALCOLM: Mr. Chairman, I make a motion  
17 that the protest brought from Bladen County by the  
18 individuals represented by Mr. Branch and Mr. Knight, that  
19 protest should be dismissed because there was not  
20 substantial evidence of a violation of election law or other  
21 irregularity or misconduct sufficient to cast doubt on the  
22 results of the election, and therefore that we order this  
23 protest be dismissed, and once that motion is done, we'll  
24 have another motion based on my earlier remarks.

25 CHAIRMAN WHITNEY: Do I have a second?

1 MS. AMOROSO: Second.

2 CHAIRMAN WHITNEY: Any discussion?

3 (No response)

4 CHAIRMAN WHITNEY: All in favor say aye.

5 (Three votes in favor)

6 CHAIRMAN WHITNEY: Opposed, no.

7 (Chairman Whitney and Ms. Amoroso vote no.)

8 CHAIRMAN WHITNEY: Motion carries. Petition

9 dismissed. We have another motion.

10 MR. MALCOLM: Mr. Chairman, I make a motion  
11 that this Board gather and prepare to make available to the  
12 United States attorney for the Eastern District of North  
13 Carolina any and all information in our possession, notes  
14 and otherwise, regarding the election that took place in  
15 Bladen County, North Carolina, concerning the federal  
16 election for November 8, 2016, and make that--make that made  
17 available immediately.

18 CHAIRMAN WHITNEY: Do I have a second?

19 MS. AMOROSO: Second.

20 CHAIRMAN WHITNEY: All in favor say aye.

21 (Unanimous vote in favor)

22 CHAIRMAN WHITNEY: Opposed, no.

23 (No response)

24 CHAIRMAN WHITNEY: Motion carries unanimously.

25 Okay. Thank you everybody for your participation. We have

# **EXHIBIT 2**

December 2, 2016

Kevin J. Hamilton  
KHamilton@perkinscoie.com  
D. +1.206.359.8741  
F. +1.206.359.9741

**VIA EMAIL TRANSMISSION**

A. Grant Whitney, Jr., Chairman  
Rhonda K. Amoroso, Secretary  
James Baker, Member  
Maja Kricker, Member  
Joshua D. Malcolm, Member  
North Carolina State Board of Elections  
441 North Harrington St,  
Raleigh, North Carolina 27603  
[elections.sboe@ncsbe.gov](mailto:elections.sboe@ncsbe.gov)

**Re: *In re Protest of Election by Leslie McCrae Dowless Jr.***

Dear Members of the North Carolina State Board of Elections:

I write on behalf of Roy Cooper and the North Carolina Democratic Party. The purpose of this letter is to request that the Board take no action with regard to the Election Protest filed by Leslie McCrae Dowless Jr. that would disenfranchise voters who committed no election law violation, and to count their votes, at least with regard to elections that are not implicated in Mr. Dowless's Protest.

Mr. Dowless's Protest alleges that individuals assisting voters, rather than the voters themselves, wrote the name of write-in candidate "Franklin Graham" on "hundreds" of ballots. *See* Protest § 6. The protest appears to be alleging a violation of N.C. Gen. Stat. § 163-226.3(a)(1), which makes it a felony "[f]or any person except the voter's near relative or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance."<sup>1</sup>

---

<sup>1</sup> To the extent Mr. Dowless's Protest alleges that individuals served as a witness for multiple absentee ballots, that is not a violation of law; and it certainly is not a violation of law *by the voter*, who would have no reason to know how many envelopes a particular individual has signed as a witness.

We do not know what evidence the Board will hear during its hearing to consider this protest. If the Board determines that N.C. Gen. Stat. § 163-226.3(a)(1) was violated, but that the voters themselves did intend to vote in the manner indicated on their ballots, then we would respectfully submit that those ballots should be counted.

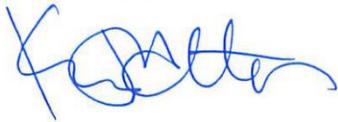
North Carolina law is clear that voter's choices are to be determined and respected. N.C. Gen. Stat. § 163-182.1(a). "No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice." *Id.* § 163-182(a)(2). Improper assistance may be a crime on the part of the *assister*, but it is certainly not a crime committed by the *voter*, much less a reason to disregard his or her ballot. *See id.* § 163-226.3(a)(1).

Even if the Board determines that certain write-in votes were not, in fact, the choice of the voter, North Carolina law still compels the counting of *other votes* on the ballot so long as those votes reflect the voter's choice. "If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined." *Id.* § 163-182.1(a)(3).

Finally, the only election specifically protested by Mr. Dowless was "November 8, 2016, Bladen County, Soil and Water Conservation District Supervisor." Protest § 4. While Mr. Dowless does make a general reference to "all other candidates on the ballot in this November 8, 2016 General Election in Bladen County," *id.*, the removal of any ballots implicated would not "cast doubt on the results of" most of those elections. N.C. Gen. Stat. § 163-182.10(d)(2)c. It would be contrary to the letter and spirit of North Carolina law, and contrary to the Board's order of November 28, 2016, ordering the dismissal of protests that do not allege sufficient numerical issues to cast doubt on the results of an election, to refuse to give effect to voters' intent in elections that are not cast in doubt. Thus, the Board should count voters' choices in the gubernatorial election, and in all other elections that are neither affected by the write-in vote nor close enough to be affected by the potential removal of these votes.

Thank you for your consideration.

Very truly yours,



Kevin J. Hamilton

*Attorney for Cooper for North Carolina and the North Carolina Democratic Party*

# **EXHIBIT 3**

**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 timeframes 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.

McCrae Dowless  
P.O. Box 253  
Elizabethtown, NC 28337

---

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

Home/Business Phone: 910-885-1121  
Email: [Mccrae.Dowless@mail.com](mailto:Mccrae.Dowless@mail.com)

---

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

Registered voter eligible to vote in this election in Bladen County.

Candidate for Soil and Water Conservation District Supervisor.

---

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 8, 2016, Bladen County, Soil and Water Conservation District Supervisor.  
Candidates: McCrae Dowless (Winner), 7,744 votes; Write-In Candidates including Franklin Graham, 3,743 votes.  
Additionally, all other candidates on the ballot in this November 8, 2016 General Election in Bladen County.

---

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.

Yes. The voters of Bladen County, North Carolina, appear to be the victims of a massive scheme to run an absentee ballot mill involving hundreds of ballots, perpetrated by and through the Bladen County Improvement Association PAC.

Upon in-person visual review of mail-in absentee ballots by a forensic handwriting expert, it appears that literally hundreds of fraudulent ballots were cast. These ballots all appear to have been cast in support of a ticket of candidates, but in particular for a write-in candidate for the Bladen County Soil and Water Conservation District Supervisor. Despite the unusually large number of ballots cast for a particular write-in candidate named Franklin Graham, it appears that out of the hundreds of ballots reviewed that voted for Mr. Graham, the handwriting on hundreds of those ballots matches only about a dozen handwriting styles.

In particular, one very active absentee ballot “witness,” Deborah Monroe, who was apparently personally validating validated at least 67 mail-in absentee ballots, appears to have written in “Franklin Graham” as a write-in candidate at least 71 times. In further shocking evidence of this scheme, the Bladen County Improvement Association PAC filed reports with the North Carolina State Board of Elections admitting they that it paid Ms. Monroe multiple payments totaling \$550 for “G.O.T.V.” See Attachment at 8, 23, 47.

Other payments which are disclosed on Bladen County Improvement Association PAC contribution reports include the following:

Mary Johnson, witness for 74 ballots, \$450;  
Lola Wooten, witness for 58 ballots, \$500;  
Deborah Cogdell, witness for 45 ballots (including both witnesses on 1 ballot), \$300; and  
Bridgette Keaton, witness for 16 ballots, \$630.

While the Bladen County Improvement Association PAC has many funders, its single largest funder is the North Carolina Democratic Party, supporting the organization with a \$2,500 contribution. See Attachment at 7. Not only was the Democratic Party itself an active supporter of this organization, a number of Democratic campaigns for North Carolina state office made financial contributions to the PAC. These include the Michael Morgan Committee contributing \$1,500, backing the recently-elected Democrat North Carolina Supreme Court Justice; the Committee to Elect Dan Blue III contributing \$1,000, backing the unsuccessful Democratic nominee for North Carolina Treasurer; the Committee to Elect Robert Wilson contributing \$1,000, backing the unsuccessful candidate for the Democratic nomination for Lieutenant Governor, and the Committee to Elect Judge Vince Rozier, contributing \$250, backing the unsuccessful Democratic nominee for North Carolina Court of Appeals.

Several other batches of mail-in absentee ballots of between 5 and 15 have handwriting samples that appear to match.

These are not simply helpful individuals who have attempted to assist a large swath of Bladen County’s voters to cast their ballots. This is the shocking evidence resulting from a blatant scheme to try to impact the voting results of an entire county and perhaps even sway statewide and federal elections. This is clear from the fact that only a very few of the voter assistance sections of these mailed-in absentee ballots have been completed, despite being completed by just a few individuals.

Therefore, it appears that a surprisingly small number of individuals were responsible for casting a very large number of ballots. Few of these ballots were properly indicated as having been completed with assistance by a third party.

I will also be submitting a report from a Forensic Document Examiner that details much of the handwriting analysis outline above. That will be submitted under separate cover as soon as the report is completed.

---

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.

N.C. Gen. Stat. § 163-226.3(a)(1)  
N.C. Gen. Stat. § 163-226.3(a)(2)  
N.C. Gen. Stat. § 163-226.3(a)(3)  
N.C. Gen. Stat. § 163-226.3(a)(7)  
N.C. Gen. Stat. § 163-237  
N.C. Gen. Stat. § 163-275(4)

Additionally, the perpetrators violated numerous federal laws dealing with the open and fair conduct of elections, including 18 U.S.C. § 1341 *as defined by* 18 U.S.C. § 1346.

---

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.

James Brian Hehl, Bladen County Board of Elections  
301 S Syress St.  
Elizabethtown, NC 28337  
910-862-6951  
Details described in the Attachment to this Protest at 1.

Jerol Kivet  
PO Box 590  
Clinton NC 28329

Personally viewed sample of the mail-in absentee ballots and can corroborate their authenticity and details regarding the review of those ballots.

Charlotte Ware  
2161 Southridge Drive  
Belmont, NC 28012  
704-860-7992

Evaluated a sample of the mail-in absentee ballots, with a full report to follow this complaint.

---

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

The Bladen County Board of Elections must invalidate all ballots for any office whatsoever deemed to be fraudulently prepared and cast as described herein. In particular, any of the mail-in absentee ballots which have been traced to this fraudulent scheme must be immediately invalidated as they are not able to be cured.

---

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. The described allegations clearly demonstrate a pattern of fraudulent ballots cast for the election held on November 8, 2016 in Bladen County. The fraud appears to have been intended to influence, in part, the outcome of the Soil and Water Conservation District Supervisor's race, however a ballot deemed fraudulent must similarly not be counted for any office voted.

---

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? 0  
How many pages of attachments are attached? 49

  
Signature of Protestor *by/spr*

# **EXHIBIT 4**

1 NORTH CAROLINA  
2 COUNTY OF WAKE

BEFORE THE  
STATE BOARD OF ELECTIONS

3

4 IN RE: PROTEST OF ELECTION OF |  
LESLIE McCRAE DOWLESS, JR. |  
5 G.S. 162-182.10(a) and |  
G.S. 163-182.12 and |  
6 G.S. 163-182.10(b)-(d) |

7 \_\_\_\_\_ |

8

9

North Carolina Board of Elections

10

441 N. Harrington Street

11

Raleigh, North Carolina

12

13

14

SATURDAY, DECEMBER 3, 2016

15

1:30 p.m.

16

17

Pages 1 through 253

18

19

Board members present:

20

Mr. Grant A. Whitney, Chairman

Ms. Rhonda K. Amoroso, Secretary

21

Dr. Maja Kricker

Mr. Joshua D. Malcolm

22

Judge James L. Baker

23

Also Present:

Ms. Kim Westbrook Strach, Executive Director

24

Mr. Joshua Lawson, General Counsel

MS. Katelyn Love, Special Counsel

25

	T A B L E   O F   C O N T E N T S	
1		
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3	Statement regarding Ethics and Conflicts of Interest pursuant to G.S.138A-15(e)	3
4		
5	Preliminary consideration	3
6	In Re: Protest of Election by Leslie McCrae Dowless, Jr. G.S. 38A-15(a) and G.S. 163-182.12	
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11	G.S. 163-182.10(b)-(d) and G.S. 163-182.12	
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15	Motion that Board make available	217
16	to the United States attorney for	
17	the Eastern District of North Carolina	
18	all information regarding the election	
19	in Bladen County concerning the federal	
20	election for November 8, 2016	
21	Vote	217
22	In re: Protest of Kenneth Register	219
23	Motion to dismiss the protest for	247
24	lack of evidence of any irregularities	
25	or any difficulty that would change	
	the outcome of the election	
	Vote	247
	Consideration of demands for mandatory recount pursuant to G.S. 163-182.7(c)	247
	Adjournment	252

1 the last five hours it seems like you and I especially have  
2 been asking a lot of questions perhaps supportive of each  
3 other about this notion of the oval, and I agree with you,  
4 Ms. Strach, absolutely. As a county board member, that was  
5 the standard, and we would look at ballots when they were  
6 mismarked or not marked properly or something was written  
7 and the oval wasn't--you're absolutely right; we try to  
8 determine the voter's intent.

9 I too struggle in trying to understand how we  
10 could discard thousands of votes, hundreds of votes as a  
11 minimum, when there is no question about, nor has there been  
12 any evidence admitted or proffered even in your protest,  
13 sir, about anything to do with the actual voters casting the  
14 ballots themselves. So I agree with you, Judge, in that  
15 respect.

16 I say all that; I'm pretty clear in my mind, but  
17 I do think some folks need to do some further looking down  
18 in Bladen County. Now, Bladen County is down in my  
19 neighborhood; it's down in southeastern North Carolina, and  
20 you folks who have heard me speak before know that it  
21 bothers me greatly for matters to come from the southeastern  
22 part of the state because that's where I'm from, and I get  
23 a little personally offended about matters coming to this  
24 Board from Robeson, Bladen, Scotland, and all of those  
25 counties' matters that come before us.

# **EXHIBIT 5**

**STATE OF NORTH CAROLINA**

**COUNTY OF BLADEN**

**AFFIDAVIT OF BOBBY R. LUDLUM**

I, Bobby R. Ludlum, being duly sworn, depose and say as follows:

1. I am over 18 years of age and I suffer from no legal disability. I am competent to testify concerning the matters stated herein and the statements contained in this Affidavit are based upon my personal knowledge.

2. I am a retired Air Force Command Chief Master Sergeant and grew up in Bladen County, North Carolina. After serving 31 years in the United States Air Force, I retired with my wife to Bladen County. Since 1996, I have worked regularly as a volunteer poll worker at the polls in Bladen County. In 2012, I was appointed to the Bladen County Board of Elections and have served as Chairman for most of the past four years.

3. As part of my duties with regard to the Bladen County Board of Elections, I regularly interact with members of the staff, including the Elections Director, and am responsible for overseeing compliance of the Bladen County Board of Elections with applicable state and federal election laws.

4. The Bladen County Board of Elections operates in a secure and proper manner. Our elections staff properly secures absentee ballots and other confidential and sensitive information under the jurisdiction of the Board.

5. No Bladen County citizen or other individual has, to my knowledge, ever been given special access to information held by the Bladen County Board of Elections, such as requests for absentee ballots or election results. Our staff provides requested public information as required by law to all citizens.

6. I have read the December 19, 2018 affidavit of Jens Lutz, a former, short-term, Democratic member of the Bladen County Board of Elections. Mr. Lutz served on the Bladen County Board of Elections only from April 2018 until his abrupt resignation on December 8, 2018. Mr. Lutz's affidavit contains false information. Specifically, and first, neither Leslie McCrae Dowless, Jr. nor any other unauthorized person was allowed to take and

copy un-redacted absentee ballot request forms with confidential information on them. This was not allowed. Second, Mr. Dowless was not given greater access to absentee ballot or other information than was given to other citizens. Third, our elections office security was not lax. Fourth, the number of absentee ballots recorded by the elections staff has not been different on multiple occasions from the number of absentee ballots presented to the Bladen County Board of Elections. These statements by Mr. Lutz are not true.

7. With regard to the election staff's count of absentee ballots, I know of only one instance when the number of absentee ballots recorded by the elections staff has been different from the number of absentee ballots presented to the Bladen County Board of Elections. In 2018, when counting the absentee ballots, the Board fed absentee ballots into the D200 ballot counting scanner machine and we came up with one (1) ballot more than the initial staff count of absentee ballots. We eventually realized that the discrepancy was due to the fact that we received an emailed military absentee ballot that does not have an envelope. The one-ballot discrepancy was solved when two of our Board members recounted the absentee ballot envelopes and took the military ballot into account. All members of the Bladen County Board of Elections concurred that was the reason for the discrepancy.

8. Mr. Lutz stated that the Bladen County Board of Elections found forged absentee ballot request forms in 2018. We did and we reported the incident promptly to the State Board of Elections and Ethics Enforcement ("State Board of Elections"). A lady dropped off 165 absentee ballot request forms for the 2018 general election at our Bladen County Board of Elections office. About two to three weeks before the general election, we discovered that three (3) of the forms were forged. One of the three was for a relative of mine who told me that two women had asked if he wanted to request a form. He said no. Our elections staff reported the information to the State Board of Elections staff and requested instructions on how to proceed. The State Board of Elections staff told us to mail the absentee ballots to all 165 of the people named on the ballot request forms except for the three (3) that we knew were incorrect. We complied with those orders, and the State Board of Elections investigator, Joan Fleming, followed up on the investigation after the election.

9. Mr. Lutz stated that our former Elections Director, Cynthia Shaw, could access mail-in absentee ballot results prior to Election Day. It may be that Ms. Shaw had that technological ability but I am not aware of her ever obtaining these results prior to Election Day.

10. The Bladen County Board of Elections retains absentee ballots in a locked room in its office building. Contrary to what Mr. Lutz stated in his affidavit, the key to the absentee ballot room is not kept on a wall in the Bladen County Board of Elections office. Rather, it is kept in the Elections Director's office in a secure location. When I have gone into the absentee ballot room in the past, I have gone accompanied by the Elections Director, who has always obtained the key from her office and accompanied me when I visit the room. In order to maintain security, I do not enter the room by myself. Based on what I know, the Elections Director has not allowed persons to go into the ballot room without being accompanied by her.

11. I have read the December 19, 2018 affidavit of Benjamin M. Snyder, the Chairman of the Bladen County Democratic Party. In it, Mr. Snyder falsely states that I told Mr. Snyder that Leslie MacRae Dowless, Jr. had told Elections Director Cynthia Shaw that he throws ballots in the trash. That is not a true statement. I am not aware of anyone in Bladen County ever throwing ballots in the trash or stating that they have thrown absentee ballots or any type of ballot in the trash.

12. No election protest regarding the Ninth Congressional District election in 2018 was ever filed with the Bladen County Board of Elections.

13. Since the State Board of Elections refused to certify the Ninth Congressional District election at its November 27, 2018 meeting, I have heard many false statements from people alleging errors in the operations of Bladen County elections.

14. I do not have knowledge about what individual groups have done with regards to collecting absentee ballots but I know that the Bladen County Board of Elections has processed all ballots received -- whether by mail-in or hand-delivered absentee ballot, one-stop voting, early voting or voting on Election Day -- in a manner that complies with guidance from the State Board of Elections. In the case of mailed absentee ballots, once the ballot leaves the Bladen County Board of Elections office, we do not have control over the ballots until they are returned to the Bladen County Board of Elections office.

15. Our Bladen County Board of Elections and its staff work hard to make sure that Bladen County citizens receive the public information that they request, know the rules regarding ballots, voting, and other election-related issues. While there may be individuals outside of the Bladen County Board of Elections who have not followed all of the rules regarding absentee ballots, as was alleged in 2016 and 2018, Bladen County elections officials have

operated elections in Bladen County in a manner that is fair to all citizens and in accordance with State law.

This the 10<sup>th</sup> day of January, 2019.

Bobby R. Ludlum  
Bobby R. Ludlum

STATE OF NORTH CAROLINA

COUNTY OF BLADEN

Sworn to (or affirmed) and subscribed before me this the 10<sup>th</sup> day of January, 2019.

Brandon R. Pragosa  
Notary Public

(Official Seal)



My Commission Expires:

June 27<sup>th</sup>, 2023

# **EXHIBIT 6**

BEFORE THE STATE BOARD OF ELECTIONS

NORTH CAROLINA  
WAKE COUNTY

ORDER DENYING NEW ELECTION

IN THE MATTER OF THE  
CALDWELL COUNTY ELECTION  
PROTESTS OF ROGER LEE HUTCHINGS  
AND WILLIAM FRANKLIN WALL, JR.

THIS MATTER CAME BEFORE THE STATE BOARD OF ELECTIONS on January 8, 2003 upon the December 17, 2002 order of the Caldwell County Board of Elections referring this matter for consideration of a new election under the provisions of G.S.163-182.10 (e)(3). Present at the hearing was Democratic Caldwell County Sheriff's candidate and incumbent Roger Lee Hutchings and his counsel Forrest A. Farrell and Warren A. Hutton, Republican Caldwell County Sheriff's candidate Gary M. Clark and his counsel Wallace Repass Jr. and Marshall Hurley, Democratic Caldwell County Commissioner candidate William F. Wall, Jr. and his counsel Bruce Vanderbloemen, and Republican Caldwell County Commissioner candidate Tim Sanders and his counsel Wallace Repass Jr. and Marshall Hurley.

Starting on December 2, 2002, and continuing until the entry of their final order on December 17, 2002, the Caldwell County Board held a hearing in this matter that consisted of seven days of testimony and evidence involving 59 different witnesses, generating 1300 transcript pages, and over 22 hours of videotaped testimony and proceedings. On December 17, 2002, the Caldwell County Board of Elections found substantial evidence that violations of election laws and other irregularities occurred in both the Caldwell County Sheriff's and Commissioner's races to the extent that it cast doubt on the apparent results of the election.

Based upon review of the Caldwell County December 17, 2002 order, review of the transcript of said hearing, and statements and arguments made to the Board by the candidates' counsels, the Board finds as follows:

FINDINGS OF FACT

1. The December 17, 2002 order of the Caldwell County Board of Elections contained sixty-one findings of fact. No party to this action appealed any of the findings of the Caldwell County Board of Elections, and those findings are before this Board unimpeached and unchallenged. The sixty-one findings of fact contained in the December 17, 2002 order of the Caldwell Board of election are hereby incorporated by reference within this order as if they had been fully set out herein.

2. There was substantial vote buying that occurred during the one-stop absentee voting period in Caldwell County.
3. Vote buying, such as occurred in Caldwell County, is a felony prohibited by G.S. 163-275(2), and is also a federal felony in violation of 42 USCS § 1973i(c).
4. This substantial vote buying caused the November 5, 2002 Caldwell County general election to be dishonest and unfair, and entailed fraud and other illegal conduct upon the part of third parties attempting to corrupt the election results.
5. The irregularities and improprieties of the vote buying in the Caldwell County general election tainted the results of the entire election and cast doubt upon its fairness.
6. The State Board of Election voted by a 3-2 margin that a new election should be ordered in this matter based upon G.S. 163-182.13(a)(4). Chairman Leake, Secretary Sims, and Member Cordle voted for a new election. Members Shinn and Winfree voted against a new election.

#### CONCLUSIONS OF LAW

1. That a new election may be ordered on any grounds set out in G.S. 163-182.13(a) upon the agreement of any four members of this Board.
2. Regardless of the substantial evidence of vote buying in this matter, and its inherent taint that casts doubt on the result and fairness of the election, this Board may not order a new election in this matter without a vote of four of its members.

#### IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED :

1. There shall be no new election for Caldwell County Sheriff or County Commissioner.
2. The winners of the November 5, 2002 elections for Caldwell County Sheriff and Commissioner shall have their elections certified pursuant to G.S. 163-182.15.

This the 8<sup>th</sup> of January, 2003.

  
Larry Leake  
Chairman, N.C. State Board of Elections

# **EXHIBIT 7**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
STATE BOARD OF ELECTIONS

*In re*: Investigation of election  
irregularities affecting counties  
within the 9th Congressional  
District

)  
)  
)  
)

GENERAL OBJECTIONS OF  
DR. MARK E. HARRIS  
AND THE MARK HARRIS FOR  
CONGRESS COMMITTEE

In addition to the discussion contained in their brief, Dr. Harris and the Committee raises the following general objections in connection with this proceeding:

1. Dr. Harris and the Committee object to these proceedings because the State Board's secretive procedures violate Dr. Harris' right to due process under the Fourteenth Amendment to the United States Constitution and the State Constitution's Law of the Land Clause. Due process includes minimally sufficient notice. *Peace v. Emp't Sec. Comm'n*, 349 N.C. 315, 322 (1998) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985)). The State Board has failed to satisfy that requirement because it has released neither its report nor any facts supporting its investigation in advance of the February 18, 2019, hearing. Due process also includes the opportunity to be heard. *Id.* By depriving Dr. Harris of constitutionally sufficient notice, the State Board also has deprived Dr. Harris a meaningful opportunity to be heard.

2. Dr. Harris and the Committee object to the State Board's assertion that this matter is not governed by North Carolina's Administrative Procedure Act. *See* N.C. Gen. Stat. ch. 150B. The North Carolina Court of Appeals has concluded that the State Board's actions are subject to review under the

Administrative Procedure Act. *See In re Appeal of Ramseur*, 120 N.C. App 521, 528, 463 S.E.2d 254, 258 (1995); *In re Appeal of Harper*, 118 N.C. App. 698, 700, 456 S.E.2d 878, 879 (1995). Even more, the Administrative Procedure Act specifically exempts certain functions of the State Board from the Act's ambit. N.C. Gen. Stat. § 15B-1(c). Resolution of election protests is not exempted.

3. Dr. Harris and the Committee object to the State Board's assertion that the North Carolina Rules of Evidence, N.C. Gen. Stat. § 8C-1, do not apply here. Under Sections 150B-38 and 150B-41 of the General Statutes, the Rules of Evidence apply to hearings before the State Board.

4. Dr. Harris and the Committee object to the admissibility of the testimony of Mr. McCready's expert, Dr. Stephen Ansolabehere. Dr. Ansolabehere's analysis is not the product of a reliable application of his methodology to the particular facts and circumstances of this case. As a consequence, his ultimate opinion will not be the product of reliable principles and methods applied to the facts of this case. *See* N.C. Gen. Stat. § 8C-1, Rule 702.

5. Dr. Harris and the Committee object to the State Board's assertion that it may draw adverse inferences in the event a non-party individual or entity (1) failed to make themselves available for interviews, (2) failed to produce material requested by subpoena, or (3) fails to attend the February 18, 2019, hearing. The State Board, in the Amended Order of Proceedings, cited *Nantz v. Employment Security Commission*, 290 N.C. 473 (1976), for the proposition that the Board may draw an adverse inference based on a witness' failure to attend. *Nantz* is inapt.

a. *First*, the "adverse inference" discussion in *Nantz* is dicta and will not bind the Superior Court in the event of an appeal. For instance, the agency had sufficient evidence to support its conclusion *without* the adverse inference.

b. *Second*, in *Nantz*, the witness against whom the adverse inference was drawn also was a party to the case. Nothing in *Nantz* suggests that the State Board permissibly may draw an adverse inference based on a non-party witness' failure to testify.

c. *Third*, the case on which *Nantz* relied, *Baxter v. Palmigiano*, 425 U.S. 308 (1976), also analyzed the use of an adverse inference against a party based on *the party's failure to testify*, not the failure of a non-party witness to do so.

d. *Fourth*, nothing in either *Nantz* or *Baxter* supports the State Board's unprecedented assertion that it may draw an adverse inference because a non-party failed to submit to an interview or produce documents when requested. Generally, it is permissible to draw an adverse inference based on a non-party witness' failure to testify only in limited, fact-specific circumstances. *See generally*, *e.g.*, *LiButti v. United States*, 107 F.3d 110 (2d Cir. 1997).

6. Dr. Harris objects to the extent the State Board takes any action outside of its statutory authority, including acting with prosecutorial intent and objectives.

7. Dr. Harris objects to the Board's characterization of this hearing as a "protest." N.C. Gen. Stat. § 163-182(4). At its November 27 and 30, 2018, meetings, the Bipartisan Board of Elections and Ethics Enforcement did not file a "protest." Rather, it initiated "other action"—that is, investigation. Because the Board did not initiate a protest, it was required to certify Dr. Harris as the winner of the Ninth District race by a date certain.

8. Dr. Harris objects to this proceeding because, once the Bipartisan Board dissolved on December 28, 2018, its protest was concluded and it was required to issue a certificate of election under N.C. Gen. Stat. § 163-182.15.

9. Dr. Harris objects to the extent that the State Board, either acting prior to December 28 or once re-constituted under Session Law 2018-146, is acting without authority under applicable law in effect at the time.

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