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## VIA EMAIL

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## RE: CONFLICT OF O.C.G.A § 21-2-73 AND RULES 183-1-12-.13, 183-1-14-.06-.14

Dear Members of the Board:

This firm represents VoterGA and Mr. David Cross, a citizen and registered voter in the state of Georgia. Over the past year they have been involved with team of volunteers that have performed a statewide survey and analysis of drop box videos, chain of custody forms and ballot images that were made public records with the passage of SB202 last year. Their analysis has been hindered in part by the destruction of videos and ballot images, which are actions we believe violate state, and perhaps, federal law.

For example, a VoterGA survey of drop box video availability found 65 counties have destroyed their drop surveillance videos for the November 2020 election. State Board of Elections Rule 183-1-14-.06-.14 (5) requires drop box videos to be retained for 30 days. Counties acknowledged during our drop box video survey they interpreted the rule as meaning they only need to retain the videos for 30 days. However, that interpretation is inconsistent with the previously mentioned statute, as the statute provides that *all documents* be preserved for 24 months irrespective of any retention requirement imposed by the rule. Thus, the rule falsely implies videos can be prematurely destroyed or overwritten.

While conducting the ballot image survey, several counties mentioned that a state rule authorizes them to overwrite memory cards containing the ballot images. We confirmed that a rule promulgated by the state election board is in conflict with the statutes governing the preservation of election records such as ballot images and drop box videos. Specifically, O.C.G.A. §21-2-73 provides that “[a]ll primary and election documents on file in the office of the election superintendent of each county, municipal governing authority, superintendent, registrar, committee of a political party or body, or other officer shall be preserved therein for a period of at least 24 months and then the same may be destroyed unless otherwise provided by law.”

However, Rule 183-1-12-.13 (c) allows memory cards holding images to be reused and therefore the data contained therein overwritten after the period for requesting a recount has expired. As a recount must be requested within two (2) days of the certification of an election, and the election must be certified within seventeen (17) days of the election, this period is far shorter than that mandated by statute.

While the cards may only be reused after transferring the data to the clerk of the superior court, the erasure and reuse of the original cards results in the destruction of the original data leaving only the tally result. This is inconsistent with the statute, as the statute provides that *all documents* be preserved for 24 months irrespective of when the recount period has expired. Websters dictionary defines a “document,” among other definitions, as “a computer file containing information input by a computer user and usually created with an application (such as a spreadsheet or word processor,)” and “something (such as a photograph or a recording) that serves as evidence or proof.” As such, the data contained on the memory cards clearly constitute “documents” that fall within the ambit of the statute requiring preservation.

It is important for the board to understand the magnitude of this problem SB202 made ballot images public records in 2021. A VoterGA statewide analysis found 70 counties have been unable to produce their original ballot images for the 2020 election.<sup>1</sup> Over 50 of those counties admitted in writing that the images, which should have been available to the public, have been destroyed. That makes the activity of publicly verifying the still controversial 2020 election results using ballot images totally impossible.

Furthermore, in some cases when images were provided, they showed evidence of apparent electronic tampering. For example, a VoterGA analysis of Fulton mail-in ballot images revealed that the ballot images required to produce the election results were likely electronically altered prior to certification in many different ways. The March 7, 2021 press conference<sup>2</sup> and corresponding slides<sup>3</sup> are on the VoterGA.org event tab.<sup>4</sup>

The foregoing is discussed simply to elucidate the pattern of conduct that has occurred in the past based on an improper interpretation of the Rules. You are currently investigating a 36 point study from Governor Brian Kemp showing the Fulton Co. hand count audit conducted November 14-15 was fatally flawed. This study includes seven apparently falsified tally sheets with 850 to 0 votes for Joe Biden as presented by Mr. Cross in a separate complaint. The study originated from evidence revealed by Mr. Joe Rossi, Mr. Cross, and a VoterGA press conference<sup>5</sup> held on July 13, 2021. It also showed that there was a 60% error rate in the hand count audit

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<sup>1</sup> <https://rumble.com/vozron-74-georgia-counties-cant-produce-original-2020-election-ballot-images.html>

<sup>2</sup> <https://rumble.com/vwmwup-voterga-press-conference-march-7th.html>

<sup>3</sup> <https://voterga.org/wp-content/uploads/2022/04/Media-Advisory-VoterGA-Appeal-Oral-Argument.pdf>

<sup>4</sup> <http://www.voterga.org/events>

<sup>5</sup> <https://rumble.com/vs7cbj-july-13-2021-press-conference.html>

including voter 4,000 duplicate reported votes in the audit. Gov. Kemp's study confirms these facts and coupled with the facts mentioned above demand a public accounting of 2020 election ballots.

As you are aware, there are still sworn affidavits<sup>6</sup> from four senior poll managers and two audit monitors from litigation cases indicating there are thousands of counterfeit mail-in ballots in the certified Fulton County election results. We therefore respectfully request that the board take the following steps to conform to state law and give notice to comply strictly with SB202 in order to protect Georgia elections to the satisfaction of all Georgia voters:

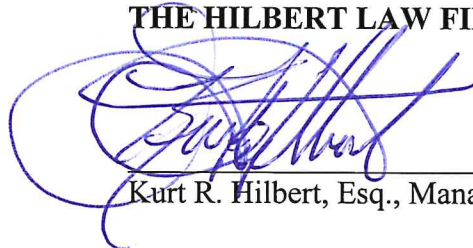
- Revise Rule 183-1-14-.06-.14 (5) so that it comports with the statutory obligations imposed on county election supervisors;
- Revise Rule 183-1-12-.13 (c) ) so that it comports with the statutory obligations imposed on county election supervisors;
- Request a Fulton Co. Superior Court to unseal the ballots from the Fulton Co. 2020 General Election so that they can be publicly available for inspection;
- Place a litigation hold to preserve all 2020 election ballots, and envelopes for absentee ballots for all Georgia counties until all pending litigation involving the election is resolved.

The severity and immediate need to correct these problems cannot be understated. Failure to safeguard Georgia voters with these protective actions will require us to file a declaratory judgment action to unseal or preserve the ballots and invalidate the State Board of Election rules referenced herein to the extent that they are inconsistent and/or conflicting with the statutes.

Further, this is notice that all documents related to the 2020 general election and runoffs must be preserved and not spoliated due to contemplation of civil litigation as required under Georgia law.

Sincerely,

**THE HILBERT LAW FIRM, LLC**



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Kurt R. Hilbert, Esq., Managing Member

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<sup>6</sup> <https://voterga.org/wp-content/uploads/2020/12/notice-of-filing-exhibits.pdf>