



To:

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June 2, 2022

SUBJECT : Fulfillment of Critical Open Records Request for Copy of Ballots

Dear DeKalb Co. Board Members, and Director Smith,

I want to personally thank each of you for your commitment and dedication to ensure the accuracy of the 2022 Primary races by ordering a full hand count audit of the District2 Commission race. The hard work of the staff and volunteers has produced **the real results and outcome that are totally different than the results and outcome the Dominion voting system reported.**

Since your paramount duty is to ensure the accuracy of the election, you are now faced with the obvious need to **perform the same hand count audit for the other races.** We want to join others in urging the board to do that on behalf of all DeKalb voters including many who are our supporters. We are also glad to supply volunteers from the greater metropolitan area for that critical effort.

It is now imperative for the board to fulfill our May 24 Open Records Request (ORR) that seeks a **copy of the actual ballots produced independently of the voting system.** We can accept this copy of actual ballots as a .JPG or another digital format. This copy, produced under your custody and control, will help prove for posterity that the hand count audits conducted are the real results. The timing is urgent since the copies of the ballots must be made prior to transmitting them to the clerk where they are then sealed. O.C.G.A. 21-2-500

O.C.G.A. § 50-18-71 [provides](#) that: *“(a) All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure.”* O.C.G.A. § 50-18-72 provides a list of exemptions that shows **ballots are not exempt.** O.C.G.A. § 50-18-73 provides that: **“Any agency or person who provides access to information in good faith shall not be liable in any action on account of such decision.”** O.C.G.A. § 50-18-74 cites penalties for refusal to comply and failure to cite an explicit ORR exemption. See the appendix for more detail.

Ballots are critical because the Dominion ballot images cannot be trusted. Our [ballot image analysis](#) recently found that the 2020 Fulton ballot images required for tabulation were electronically altered prior to certification. The District2 hand count audit proved the current Dominion system results cannot be trusted either.



The legal counsel from the Office of Secretary of State distributed a May 27 [bulletin](#) with false information to many counties. Here are the false or irrelevant points in that bulletin:

- “OCGA 21-2-574 makes possession of ballots by ‘any person, other than an officer charged by law with the care of ballots’ a felony.” **Our ORR did not request to possess or touch ballots**
- “Physical ballots should always be in your custody and control prior and required to be kept under seal”. **Ballots are only required to be under seal after the Clerk of Court receives them** O.C.G.A. 21-2-500
- “The argument made by the requestors that the ballots are not yet under seal is wrong and has been specifically rejected by Georgia courts.” **The referenced case refers to a CD-ROM with proprietary information that was already under seal** Smith V. DeKalb County, 288 Ga. App.574 (2007)
- “Under no circumstances should local election officials make copies of voted ballots as this would open you up to allegations of copying ballots or attempting to stuff the ballot box” **ORR law explicitly states that the county has no liability for fulfilling a request in good faith** O.C.G.A. 50-18-73
- “Physical ballots other than the ballot images that will be part of your certified election project are not subject to public disclosure and are specifically prohibited by law from being open to public disclosure” **All records are subject to disclosure unless exempt and ballots are not exempt** O.C.G.A. 50-18-71,72

It is clear from this false bulletin that the office of the Secretary of State is attempting to intimidate counties into continuing to conceal actual ballots so that the SOS race be certified on the current unverifiable voting system and the Secretary be declared the winner of the race he oversaw without any transparency. That is unacceptable.

The Secretary of State purchased the current unverifiable voting system over the objections of hundreds of our citizens, despite our [VoterGA recommendations](#) and after ignoring my personal warnings to him before he had even won his primary runoff. As you know, the system accumulates votes in a QR code that the voter cannot read or verify. It is important to understand that the U.S. District Court has already found that **this particular Dominion voting system violates Georgia law.**

Georgia’s voting system must “...print an elector verifiable paper ballot” O.C.G.A. § 21-2-2(7.1). It must also “...produce paper ballots which are marked with the elector’s choices in a format readable by the elector” O.C.G.A. § 21-2-300(a)(2). The U.S. District Court [found](#) in 2020 *Curling v Raffensperger* ruling that: “Plaintiffs and other voters who wish to vote in-person are required to vote on a system that does none of those things.” [pg. 81-82]

For all of these reasons, we are asking you to pass a motion at your next hearing to provide copies of the ballots before they are transmitted to the Clerk of the Court. We are **not** asking that ballots be copied prior to certification because we don’t want to interfere with certification or the auditing of other races. If you do not audit the remaining races or copy the ballots it will force us into litigation which is not beneficial to anyone.

Sincerely,

Garland Favorito
CC: Marshall M. Bandy Jr. (Bandy law firm)



Appendix:

Georgia Open Records Request Law

Key Points

O.C.G.A. § 50-18-71

- (a) All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure.
- (b) (1) (a) Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request;
- (d) In any instance in which an agency is required to or has decided to withhold all or part of a requested record, the agency shall notify the requester of the specific legal authority exempting

O.C.G.A. § 50-18-72

- Provides list of exempt records that does not include ballots

O.C.G.A. § 50-18-73

- Any agency or person who provides access to information in good faith shall not be liable in any action on account of such decision

O.C.G.A. § 50-18-74

- Anyone refusing to provide access to records not subject to exemption from this article, or refusing to provide access to such records within the time limits, or by knowingly and willingly attempting to frustrate the access to records by intentionally making records difficult to obtain or review shall be guilty of a misdemeanor punishable by a fine not to exceed \$1,000.00 (\$2,500 for subsequent violations)