



October 15, 2018  
Via Email, Mail, and Fax

*Co-Chairs*  
Teresa Wynn Roseborough  
Adam Klein

*Secretary*  
Eleanor H. Smith

*Treasurer*  
David Smith

*General Counsel*  
Nicholas T. Christakos

*President and  
Executive Director*  
Kristen Clarke

William J. Linkous III  
Gwinnett County Attorney  
Email: [william.linkous@gwinnettcountry.com](mailto:william.linkous@gwinnettcountry.com)  
75 Langley Drive  
Lawrenceville, GA 30046

Stephen Day, Chairman  
Gwinnett County Board of  
Registrations and Elections  
75 Langley Drive  
Lawrenceville, GA 30046-6935  
Facsimile: 678-226-7208  
678-226-7209

Ms. Lynn Ledford, Director  
Email: [lynn.ledford@gwinnettcountry.com](mailto:lynn.ledford@gwinnettcountry.com)  
Ms. Krysti Royston, Deputy Director  
Email: [kristi.royston@gwinnettcountry.com](mailto:kristi.royston@gwinnettcountry.com)  
Gwinnett County Voter Registration Office  
455 Grayson Highway, Suite 200  
Lawrenceville, GA 30046

Dear Mr. Linkous, Chairman Day, Director Ledford, and Deputy Director Royston:

We at the Lawyers' Committee for Civil Rights Under Law write to express our concern regarding the large number of absentee ballots that have been rejected by the Gwinnett County Board of Registrations and Elections ("BORE") in advance of the November 2018 general election. The BORE's absentee ballot rejection rate is more than three times the average rejection rate across all of the counties in Georgia.<sup>1</sup>

Gwinnett County's absentee ballot rejection rate is higher than virtually all other Atlanta metro area counties. According to data from the Georgia Secretary of State's office, as of Thursday, October 11, Gwinnett County was responsible for approximately 40 percent of the rejected absentee ballots statewide, even though county residents cast only 12 percent of all absentee ballots in Georgia.<sup>2</sup> Similarly, as of today, October 15, Gwinnett County election officials had rejected 464 absentee ballots, hundreds more than any other Georgia county.<sup>3</sup>

Data from the Georgia Secretary of State's office indicates that the BORE has been rejecting absentee ballots cast by minority voters, particularly Asian-American and

---

<sup>1</sup> See, e.g., Mark Niese & Tyler Estep, *High rate of absentee ballots thrown out in Gwinnett*, Atlanta Journal-Constitution, Oct. 15, 2018, available at <https://politics.myajc.com/news/state--regional-govt--politics/high-rate-absentee-ballots-thrown-out-gwinnett/azdOsCxX2X6mT8PTrgZIJl/>.

<sup>2</sup> Jordan Wilkie, *High Rate of Absentee Ballot Rejection Reeks of Voter Suppression*, WhoWhatWhy, Oct. 12, 2018, available at <https://whowhatwhy.org/2018/10/12/exclusive-high-rate-of-absentee-ballot-rejection-reeks-of-voter-suppression/>.

<sup>3</sup> In Cobb County, the second-highest county, 98 absentee ballots had been rejected as of this weekend.



African-American voters at disproportionately high rates compared to white voters. The disparities, as reflected in the table below, are large and statistically significant:

**Absentee ballots accepted and rejected in Gwinnett County as of 10/15/18**

<b>Race</b>	<b>Absentee ballots counted</b>	<b>Absentee ballots rejected</b>	<b>Total absentee ballots</b>	<b>Rejection rate</b>
Asian	622	108	730	14.8%
Black	2,406	209	2,615	8.0%
Hispanic	382	17	399	4.3%
White	3,135	81	3,216	2.5%
Other	1,896	191	2,087	9.2%
<b>Total</b>	<b>7,315</b>	<b>464</b>	<b>7,779</b>	<b>6.0%</b>

*Co-Chairs*  
Teresa Wynn Roseborough  
Adam Klein

*Secretary*  
Eleanor H. Smith

*Treasurer*  
David Smith

*General Counsel*  
Nicholas T. Christakos

*President and  
Executive Director*  
Kristen Clarke

The Secretary of State’s data indicates that absentee ballots in Gwinnett County are most frequently rejected because voters allegedly provide “insufficient oath information,” or when voters fill out their signatures, year of birth, and addresses on the absentee envelope. Absentee ballots are also being rejected because a voter’s birth year was missing or because they wrote down the current year instead.

According to media reports, Gwinnett County officials say that they cannot “draw any conclusions” regarding the rejected absentee ballots and that they are being processed “according to state law.”<sup>4</sup> As the Secretary of State’s office and others acknowledge, however, individual counties are responsible for deciding if an absentee ballot envelope contains information sufficient to establish the identity and eligibility of the voter. County officials, moreover, have discretion when making those determinations.<sup>5</sup>

For example, as you are aware, Georgia law changed last year to require that absentee voter provide their year of birth.<sup>6</sup> This year, after Cobb County election officials used absentee ballots asking only for the voter’s birth month and day, but not the year, election officials decided to take the common-sense approach of accepting absentee ballots that included either “the month and day, or the year, as long as it matches what’s on the voter’s record.”<sup>7</sup> In Gwinnett County, the BORE recently modified its absentee envelopes,<sup>8</sup>

<sup>4</sup> Niese & Estep, *High rate of absentee ballots thrown out in Gwinnett*, *supra*.

<sup>5</sup> Giovanna Drpic, *Voters Question Absentee Ballot Envelopes*, CBS46 News, Oct. 14, 2018, available at [https://www.cbs46.com/news/voters-question-absentee-ballot-envelopes/article\\_d7841ada-ce64-11e8-83f6-cb0f8b49bcd9.html](https://www.cbs46.com/news/voters-question-absentee-ballot-envelopes/article_d7841ada-ce64-11e8-83f6-cb0f8b49bcd9.html).

<sup>6</sup> Ga. Code Ann. § 21-2-384(c)(1).

<sup>7</sup> Drpic, *Voters Question Absentee Ballot Envelopes*, *supra*.

<sup>8</sup> A copy of a Gwinnett County absentee ballot envelope is attached as Exhibit A. It was modified following the county’s designation as a jurisdiction covered under Section 203 of the Voting Rights Act.



which could potentially contribute to voters' confusion when filling out their year of birth or other information. Under these circumstances, BORE officials should err on the side of the voter and accept absentee ballots that would have been counted had the voter written the correct year of birth on the envelope.

*Co-Chairs*

Teresa Wynn Roseborough  
Adam Klein

*Secretary*

Eleanor H. Smith

*Treasurer*

David Smith

*General Counsel*

Nicholas T. Christakos

*President and*

*Executive Director*

Kristen Clarke

To prevent eligible voters from being disenfranchised, providing timely notice of absentee ballot rejections is particularly important. State law requires that the BORE "promptly notify" voters whose absentee ballots have been rejected and inform them of the reason for the rejection.<sup>9</sup> Media reports indicate some voters may remain unaware that their absentee ballots have been rejected more than a week after the fact.<sup>10</sup>

Finally, we understand that more information is necessary to ascertain why so many absentee ballots are being rejected in Gwinnett County, and we want to work with you to ensure that no eligible voter is disenfranchised in the upcoming election. To that end, we are attaching a request for documents pursuant to the Georgia Open Records Act, which is appended as Exhibit B. Furthermore, I would be pleased to meet with the County Attorney and, with his permission, one or more BORE officials to discuss this matter on Friday, October 19, 2018, or another mutually agreeable date.

Thank you for your consideration. Please advise us at your earliest convenience if the BORE will (1) provide expedited information as to why absentee ballots have been rejected due to "insufficient oath information"; (2) count absentee ballots cast by voters who appeared to be confused by the revised absentee ballot envelope's birth year request; (3) provide voters with prompt notice if their absentee ballot is rejected; (4) begin a rolling production of documents in response to our GORA request; and (5) make a representative available to discuss this matter on or around Friday, October 19<sup>th</sup>.

Sincerely,

John Powers

Counsel, Lawyers' Committee for Civil Rights Under Law  
1500 K Street NW, Suite 900  
Washington, DC 20005  
jpowers@lawyerscommittee.org

cc: Frank B. Strickland, Strickland Brockington Lewis LLP  
Richard A. Carothers, Carothers & Mitchell, LLC

<sup>9</sup> Georgia Code § 21-2-386(a)(1)(C).

<sup>10</sup> Wilkie, WhoWhatWhy, *supra*.

# Exhibit A

Gwinnett County Board of Registrations and Elections Absentee Ballot Envelope



la inscripción  
información  
el Código

STOP / Haga una pausa

Have you completed and signed the oath? / ¿Ha completado y firmado el juramento?

Have you placed your ballot in the white envelope and sealed it? / ¿Ha colocado su boleta en el sobre blanco y lo ha sellado?

Have you affixed sufficient postage? / ¿Ha colocado suficiente estampillas?

### OATH OF ELECTOR

I, the undersigned, do swear (or affirm) that I am a citizen of the United States and of the State of Georgia; that my residence address, for voting purposes, is as listed below, \_\_\_\_\_ County, Georgia; that I possess the qualifications of an elector required by the laws of the State of Georgia; that I am entitled to vote in the precinct containing my residence in the primary or election in which this ballot is to be cast; that I am eligible to vote by absentee ballot; that I have not marked or mailed any other absentee ballot, nor will I mark or mail another absentee ballot for voting in such primary or election; nor shall I vote therein in person; and that I have read and understand the instructions accompanying this ballot; and that I have carefully complied with such instructions in completing this ballot. I understand the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law O.C.G.A. Section 21-2-384(c), and O.C.G.A. Section 21-2-570.

### JURAMENTO DEL ELECTOR

Yo, el abajo firmante, juro (o afirmo) que, soy un ciudadano de los Estados Unidos y del Estado de Georgia; que mi domicilio para efectos de votación es como se muestra en la parte inferior, Condado de \_\_\_\_\_ Georgia; que cumplo los requisitos de un elector requeridos por las leyes del Estado de Georgia; que tengo derecho a votar en el distrito que comprende mi residencia en la elección primaria o en la elección en que este voto será emitido; que califico para votar mediante boleta de voto ausente; que no he marcado o enviado por correo ninguna otra boleta de voto ausente para votar en dicha elección primaria o en dicha elección y que tampoco rotaré en ese lugar en persona; que he leído y entendido las instrucciones que acompañan esta boleta, y que he cumplido cuidadosamente las instrucciones para completarla. Entiendo que la oferta o la aceptación de dinero o cualquier otro objeto de valor para votar por un candidato en particular, lista de candidatos, tema o lista de temas incluidos en esta elección constituye un acto de fraude electoral y es un delito grave bajo la ley de Georgia O.C.G.A. Section 21-2-384(c), y O.C.G.A. Section 21-2-570.

#### Elector's Residence Address/Dirección de Residencia del Elector

(Street Number/Número de la calle) \_\_\_\_\_ (Street Name/Nombre de la calle) \_\_\_\_\_

(Apartment/Apartamento) \_\_\_\_\_ (City/Ciudad) \_\_\_\_\_ (State/Estado) \_\_\_\_\_ (Zip Code/Código postal) \_\_\_\_\_

Year of Elector's Birth/Año de nacimiento del elector: \_\_\_\_\_

Sign here/Firme aquí: \_\_\_\_\_  
(SIGNATURE OR MARK OF ELECTOR/FIRMA O MARCA DEL ELECTOR)

#### OATH OF PERSON ASSISTING ELECTOR (IF ANY)

I, the undersigned, do swear (or affirm) that I assisted the above-named elector in marking such elector's absentee ballot as such elector personally communicated such elector's preference to me, and that such elector is entitled to receive assistance in voting under provisions of subsection (a) of Code Section 21-2-409. This, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SIGNATURE OF PERSON ASSISTING ELECTOR \_\_\_\_\_

Relationship to Elector \_\_\_\_\_

Reason for assistance (Check appropriate square):

- Elector is unable to read the English language.
- Elector requires assistance due to physical disability.

**PENALTIES:** Georgia law provides, in subsection (b) of Code Section 21-2-409, that no person shall assist more than ten electors in any primary, election, or runoff in which there is no federal candidate on the ballot. Georgia law further provides that any person who knowingly falsifies information so as to vote illegally by absentee ballot or who illegally gives or receives assistance in voting, as specified in Code Sections 21-2-568, 21-2-573 or 21-2-579 shall be guilty of a felony.

#### JURAMENTO DE LA PERSONA QUE ASISTE AL ELECTOR (SI CORRESPONDE)

Yo, el abajo firmante, juro (o afirmo) que ayudé al elector antes nombrado a marcar su boleta de voto ausente con la preferencia que me comunicó personalmente ese elector y que dicho elector tiene el derecho de recibir asistencia para votar en virtud de las disposiciones del inciso (a) de la sección 21-2-409 del código. Este, el día \_\_\_\_\_ de \_\_\_\_\_ del 20\_\_\_\_.

FIRMA DE LA PERSONA QUE ASISTE AL ELECTOR \_\_\_\_\_

RELACIÓN CON DICHA PERSONA \_\_\_\_\_

Razón para recibir asistencia (Marque la casilla adecuada):

- El elector es incapaz de leer el idioma inglés.
- El elector necesita asistencia debido a una discapacidad física.

**SANCIONES:** La ley de Georgia establece en el inciso (b) de la sección 21-2-409 del código que ninguna persona asistirá a más de diez electores en cualquier elección primaria, elección o segunda vuelta en la que no haya ningún candidato federal en la boleta. La ley de Georgia establece que toda persona que falsifique información deliberadamente para votar de manera ilegal mediante boleta de voto ausente o que de manera ilegal dé o reciba asistencia para votar como se especifica en las secciones 21-2-568, 21-2-573 o 21-2-579 del código será culpable de un delito grave.

# Exhibit B

Georgia Open Records Act Request to the Gwinnett County Board of Registrations and Elections

Pursuant to the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.) (“GORA”), the Lawyers’ Committee for Civil Rights Under Law requests all records from the Gwinnett County Board of Registrations and Elections (“BORE”) and any of its members, employees, agents, and assigns, related in any manner whatsoever to the rejection of absentee ballots and absentee ballot applications within the last ninety (90) days. This request includes, but is not limited to, the following categories of records:<sup>1</sup>

1. All documents, records, and communications related to standards, procedures, training materials, rules, guidance, or advice for making the determination as to whether or not to count absentee ballots that are currently in use.
2. Copies of all versions of the absentee ballot envelopes that have been sent to absentee voters during the 2016 and 2018 election cycles;
3. All notices provided to voters whose absentee ballots for the November 2018 election have been rejected;
4. Any and all communications involving the Georgia Secretary of State’s office or any third party, related to the rejection of absentee ballots since May 1, 2018;
5. Logs, documents, records, or data reflecting information concerning the receipt of absentee ballot applications, whether and when the applications were approved, when absentee ballots were received, and the disposition of those ballots; and
6. Enet records evidencing the voter histories of the voters whose absentee ballots for the November 2018 election were rejected.<sup>2</sup>

In accordance with O.C.G.A. § 50-18-71(b), we expect to inspect and copy the requested records within the next three (3) business days. We are prepared to pay reasonable costs incurred in the production and copying of the requested records, but we request that YOU provide us with a good faith estimate of the charges for producing and copying these records in advance by contacting John Powers at (202) 662-8389 for authorization before said costs are incurred if the costs of producing and copying the records will exceed \$50.00. Please also note that we are amenable to receiving copies of the records electronically, so long as the records are legible.

To the extent that you intend to comply with this request, but you anticipate that it may take longer to produce some of the records than others, we request that you produce the records as they become available on a rolling basis, rather than delaying their production until all responsive documents have been gathered. If this request is denied in whole or in part, we ask that you cite in writing the specific statutory exemption upon which you have relied, as required by O.C.G.A. § 50-18-71(d).

---

<sup>1</sup> The term, “records,” as used in this Request, encompasses all varieties of “public record,” as defined in O.C.G.A. § 50-18-70(b)(2), and specifically includes, but is not limited to, all documents, writings, correspondence, notices, reports, memoranda, emails, text messages, databases, photographs, voicemails and any other electronically created and/or stored information.

<sup>2</sup> Without waiving any right to obtain full copies of the requested records in the future, we are amenable to your redaction of the year of birth, driver’s license number, and last four digits of the Social Security number from the records that were produced.