EXHIBIT 2
November 8, 2018

Lynn Ledford
Elections Director
Gwinnett County Board of Voter Registrations and Elections
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CC: All Other County Elections Officials¹

Via E-mail and Publication

Re: Demand to Count Absentee Ballots Missing Birthdate Information

To Gwinnett County Board of Voter Registration & Elections, and all other county elections officials,

Publicly available data indicates that Gwinnett County is the only known county that is rejecting absentee ballots solely for failing to include birthdate information, and that nearly 1,200 ballots have been rejected on this basis. However, according to an internal memo from the Georgia Attorney General’s Office, attached as Exhibit A, this is illegal.

The opinion from the Georgia Attorney General’s Office, relying on an opinion from the Georgia Supreme Court, states that while O.C.G.A. § 21-2-386(a)(1)(C) provides that “failure to furnish required information” is a “ground for rejection” of an absentee ballot, that provision “does not mandate the automatic rejection of any absentee ballot lacking the elector’s place and/or date of birth.” Jones v. Jessup, 279 Ga. 531, 533 n.5 (2005). Thus, as the Attorney General’s Office concluded, “an election official does not violate O.C.G.A. § 21-2-386(a)(1)(C) when they accept an absentee ballot despite the omission of a date and month of birth, . . . if the election official can verify the identity of the voter with the voter’s signature.” See Exhibit A.

Most importantly, the Attorney General’s Office concluded that rejecting absentee ballots solely based on missing birthdate information violates federal law. As the Georgia Attorney General’s Opinion goes on to state, “federal law . . . prohibits the denial of the right to vote ‘because of an error or omission on any record or paper . . . if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election.’” 52 U.S.C. § 10101. “Where the election official can verify the identity of the voter by comparing their signature on the absentee ballot envelope with the voter’s signature on file, the

¹ The ACLU of Georgia will be transmitting this letter by e-mail to all county elections officials for whom we have an email address on file.
omission of the additional information . . . day and month of birth would not be material to that voter’s qualifications and the absentee ballot should be counted.” Exhibit A (emphasis added). And as your office is aware, voters whose signatures are deemed not to match must be provided an opportunity to confirm their identity pursuant to court order.

For the reasons provided by the Georgia Attorney General’s Office, we demand that Gwinnett County, and all county officials, count all absentee ballots even if they are missing birthdate information.

Sincerely,

Sean J. Young
Legal Director
ACLU of Georgia