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December 9, 2013

E-MAIL

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Cameron Quinn
Fairfax County General Registrar
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**Re: Obenshain v. Herring
Richmond Circuit Court Case No. CL13-5272**

Dear Election Officials:

As you may know, it came to our attention over the past weekend that Fairfax County failed to comply with the statutorily-mandated procedures for the handling of counted ballots and unused ballots following the 2013 general election.

I am sure you understand our concern that these materials were not protected by the statutorily-required security measures. We hope you can alleviate our concerns; however, at this point, we simply do not know if the ballots that were belatedly delivered to the Clerk were the same ballots that were cast in the Election and counted on Election Night.

Virginia Code § 24.2-668 required that these materials be provided to the Clerk of the Fairfax County Circuit Court by not later than noon on the day following the completion of the local canvass. The canvass was completed in Fairfax County on Tuesday, November 12, 2013, and, thus, these materials should have been delivered to the Clerk by not later than noon, November 13, 2013.

We have now been advised, however, that Envelopes # 3 and # 6 – containing what are purported to be counted and unused ballots – were not delivered to the Clerk until well after the deadline, with deliveries being made on November 20, November 26 and December 5. This information was provided to the parties by the Clerk, in response to an Order from the Recount Court that all circuit court clerks provide information about any departure from the required security measures.

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Given these concerns – and given the recount hearing already scheduled for today, December 9 – we had no choice but to file a motion with the Court to ask for relief. A copy of that motion is enclosed. The Court is taking no action on our motion until further communication with Fairfax by counsel, so I am writing you now to initiate that communication and to obtain additional facts about the ballots in question.

It would be appreciated if you would provide me with answers, in writing, to the following questions:

1. For each of the following dates – November 20, November 26 and December 5 – please identify the specific precincts for which Envelopes # 3 and # 6 were delivered to the Clerk, and please explain the basis for your knowledge (including the name, address and phone number of any person who provided you with information). Also, please provide copies of any documents that support or otherwise relate to your answer.

2. For each of the specific precincts identified in response to my first question, please explain in detail (a) why the Envelopes # 3 and # 6 were not delivered by noon on November 13, as required by law, (b) when the envelopes were discovered, (c) where the envelopes were discovered, (d) who discovered the envelopes (name, address and phone number of such person(s)), and (e) all other details surrounding their discovery. Again, please explain the basis for your knowledge (including the name, address and phone number of any person who provided you with information), and please provide copies of any documents that support or otherwise relate to your answer.

3. To the extent not already identified in your previous answers, please identify any individual (including the name, address and phone number) who may have information about (a) the failure to deliver these materials as required by law, (b) the discovery of the envelopes, and (c) the delivery of these materials to the Clerk on the dates listed by his certification. *See* Clerk's certification, attached to our enclosed motion.

We ask that you provide your written answers (preferably, under oath) by close of business December 10, 2013. In order to make sure that everyone has the same information, please provide your answers both to me and to counsel for the Herring campaign, Kevin Hamilton, who can be reached at khamilton@perkinscoie.com. Similarly, if you have provided the Herring campaign or the Democratic Party with any information or documents not encompassed in your answers to my specific questions, please provide that information and documentation to me as well.

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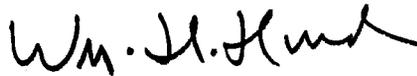
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While these questions are intended to initiate communications, we obviously reserve the right to ask further questions of you and any person who may have information relevant to this issue.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. H. Hurd". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

William H. Hurd

cc: Kevin Hamilton, Esq. (via e-mail)
Don Palmer, Secretary of State Board of Election (via e-mail)