

RESPONSE TO 4/5/18 STATEMENT BY IERB CHAIRMAN SHAWN HANLEY

On Wednesday, April 4, my firm filed two lawsuits in Fulton Superior Court because the Immigration Enforcement Review Board (“IERB”) is violating Georgia’s open records and open meetings laws. Yesterday, the Chair of the IERB issued a public statement regarding the two suits.

The following timeline is provided as background:

- In October 2017, Lieutenant Governor and gubernatorial candidate Casey Cagle began a very public campaign against the City of Decatur that included alleging in TV interviews and on social media that a Decatur Police Department policy violates Georgia’s “sanctuary policy” statute.
- For the past six months, the City of Decatur has explained repeatedly that Mr. Cagle’s allegations are wrong. The Police Department’s policy does not violate Georgia law and is consistent with the 4th Amendment to the U.S. Constitution in regards to arrest, detention and custody of individuals. Furthermore, it does not—as Mr. Cagle erroneously contends—prohibit or restrict officers from communicating or cooperating with federal officials with regard to reporting immigration status information. More information is available at: <http://www.decaturga.com/Home/Components/News/News/711/>.
- The City has hoped for an opportunity to have a fair and impartial review of the actual facts and the actual law that will lead to a reasoned determination. Instead, the issue has been tried and decided on the nightly news and on Mr. Cagle’s campaign Facebook page, where he has conveniently started a “Defund Decatur” petition.

- Using taxpayer-funded resources, the Office of Lieutenant Governor—not Mr. Cagle himself—filed with the IERB a formal complaint against the City on November 6, 2017. This, even though such complaints can only be filed by Georgia residents who are registered to vote (the “Office of Lieutenant Governor” is not a Georgia resident or registered to vote). And although several other local governments have similar policies, the City of Decatur’s policy has been singled out for prosecution.
- In the course of defending the City of Decatur against the IERB complaint, our firm has made requests to the IERB pursuant to the Open Records Act, which have been blocked. We have also observed multiple violations of the Open Meetings Act.
- On Wednesday of this week, my firm filed two lawsuits in Fulton County Superior Court. These suits detail how the IERB is violating the Georgia open records and open meetings laws. The suits also show that the veiled manner in which the IERB is conducting its proceedings is not just detrimental to the City of Decatur, but also to the public as a whole.
- Twenty-four hours after the suits were filed, the IERB Chair issued a public statement to the press.

The press statement provided by Chairman Hanley on April 5 largely fails to address the substance of the open government suits. Instead, the statement directly attacks the City of Decatur and misstates facts involved in the City of Decatur complaint, even though the case is still pending before the Board he chairs. It is no wonder that other cities, school boards and governmental agencies with cases before the IERB do not challenge the manner in which the

IERB conducts its proceedings. The IERB Chair's statement also misrepresents what has transpired in the proceedings involving Decatur.

Most alarmingly, Chairman Hanley suggests that the City of Decatur has not been transparent. However, he fails to mention that he has been asked to recuse himself from further participation in the case against Decatur. This motion is based primarily on comments Chairman Hanley previously made to the AJC, which indicate a clear bias against the City of Decatur and his pre-judgment that the Decatur policy violates Georgia law. Mr. Hanley's latest statements confirm his inability to preside in the IERB case in a fair and impartial manner. A copy of the Motion to Recuse Chairman Hanley is attached.

Specifically, the following provides a response to recent direct statements made by Chairman Hanley:

1. **"It was the hope of the Immigration Enforcement Review Board that Decatur would be cooperative, accountable and transparent after a complaint was filed against the city."**

The City of Decatur has been cooperative, accountable and transparent throughout this process. We have responded to every request from the IERB, we have met every deadline, and we have appeared at every IERB meeting (including the first one after the Lieutenant Governor's Office filed a complaint, for which we received less than 48 hours' notice). Apparently, Mr. Hanley equates providing a vigorous defense against an erroneous complaint as being uncooperative and unaccountable.

The City has pointed out that the "Office of Lieutenant Governor" does not have standing to pursue a complaint. We have asserted objections to the IERB's disregard for due process. We have moved to recuse a Board member (Phil Kent) who made false and

derogatory comments about the City on broadcast television and on Twitter. We have also sought to recuse Chairman Hanley, who also has made inappropriate and prejudicial public comments. The City of Decatur refuses to acquiesce to threats made by powerful state officials. Unfortunately, Mr. Hanley interprets these defensive measures as being uncooperative and unaccountable.

As for transparency, anyone who has read the City's lawsuits filed this week sees the irony in Mr. Hanley's statement: transparency is exactly what the City seeks. In order to further this transparency, we will be posting on the City's website all filings and correspondence we have had with the IERB. In the meantime, we challenge the IERB to take one small step toward public transparency by placing the minutes of all IERB meetings on the IERB's website—like local governments across the State already do.

2. **“An active investigation into the complaint accusations has been ongoing for two months and during this time the city has refused to cooperate with investigators and used delaying tactics to stall this process.”**

Mr. Hanley's statement that the City of Decatur “has refused to cooperate with investigators” is patently false.

First, it is difficult to imagine what kind of “active investigation” is needed. The City of Decatur Police Department policy in question is less than one page. The Georgia statute that the policy is alleged to violate is just over one page. The issue presented is primarily a legal determination. What kind of investigation is needed?

In any event, on January 29, a private investigator hired by the IERB to conduct a “fact-finding investigation” regarding the complaint against the City contacted me. Days later, my

law partner and I met with this investigator and his colleague. They expressed a desire to interview various City officials, yet they weren't sure what they needed to learn from these interviews. Before and after this meeting, we repeatedly asked Chairman Hanley to explain the legal authority for such an investigation since the IERB's own rules do not mention anything of the sort and, to our knowledge, no such investigation had ever been conducted by the IERB. When he failed to do so, we respectfully declined to submit to a process that had not been applied to any other respondent in an IERB proceeding. We explained our reasons in a detailed letter, a copy of which is attached. In an attempt to be cooperative, we offered to answer written questions submitted to us by the IERB. To date, we have received no response to our offer.

Chairman Hanley's contention that the City has "used delaying tactics to stall this process" is also false. To the contrary, the City has repeatedly asked for the IERB to make rulings that will either end the case or move it toward an evidentiary hearing. For example, since November 15, 2017 we have repeatedly asked that the IERB revisit the threshold question of whether a complaint filed by the Office of Lieutenant Governor, rather than an individual, should be dismissed. The IERB made that determination before the City was even given an opportunity to address the issue. After we had made repeated requests, Chairman Hanley stated at the IERB meeting on February 28 that the issue was going to be re-addressed shortly. Over a month later there still has been no determination.

On January 19, 2018, the City asked the IERB to issue a subpoena to Casey Cagle to testify at the evidentiary hearing. A copy of the Motion is attached. So far, no ruling has been

issued. Similarly, on January 23, 2018, the City submitted a request that the evidentiary hearing be transcribed. So far, no response has been provided.

We have also repeatedly asked when the evidentiary hearing will be scheduled, but we have only received indefinite, non-committal responses. On February 28, the IERB chose to hold hearings on fifteen other pending cases, but did not include the complaint made by the Lieutenant Governor' Office. Nonetheless, Mr. Hanley says it is the City that is delaying this case.

We have also submitted Open Records Act requests as part of our preparation for the hearing. The IERB refuses to produce the requested records. Chairman Hanley somehow twists the IERB's blocking tactics into the City using delay tactics.

3. "The IERB takes all of its obligations seriously and we look forward to defending ourselves in court against these frivolous allegations by Decatur."

We suggest that those interested in open and transparent government check with the experts on these issues. The Georgia First Amendment Foundation, open government attorneys such as Holly Manheimer, Peter Canfield and Tom Clyde, and attorneys for local governments would be excellent authorities to express an opinion whether the IERB has conducted itself appropriately. Ultimately, the Georgia Attorney General—which is both the IERB's attorney and the State's official enforcer of the Open Records Act and the Open Meetings Act—will need to weigh in on the validity of the complaints. We are confident that the Attorney General will not characterize these complaints as "frivolous," unlike the clearly biased chair of the IERB.