

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

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FEDERAL ELECTION COMMISSION  
AUGUST 26, 2021 3:24 PM  
OFFICE OF GENERAL COUNSEL

Scott Hogan  
Democratic Party of Georgia  
501 Pulliam St SW  
Suite 400  
Atlanta, GA, 30312  
**Complainant.**

v.

Herschel Walker

Atlanta, GA 30327  
**Respondent.**

**COMPLAINT**

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) against Herschel Walker (“Respondent”). According to public accounts, Mr. Walker privately revealed that he had made a decision to run for U.S. Senate in Georgia before June 29, 2021. And yet he did not file his Statement of Candidacy until nearly two months later - on August 24, 2021. In the meantime, according to Fox News, Mr. Walker began to build his campaign - a process that logically requires the spending of money, especially since it occurred over a 2-month period. Under Federal law, Mr. Walker was required to file a Statement of Candidacy with the Federal Election Commission (“FEC” or “Commission”) within fifteen days of deciding to run for federal office and raising or spending \$5,000 in support of his candidacy. This filing requirement serves a vital public interest - alerting the general public when an individual has decided to seek federal office and begins to raise and spend money to advance their candidacy. Because more than two months elapsed between the time when Mr. Walker’s decision to run for office was made and the filing of his paperwork, the Commission should immediately investigate whether Mr. Walker has spent

over \$5,000 on activities that went beyond merely “testing the waters,” and thus triggered candidacy for federal office without disclosing his candidacy to the Commission as required by law.

### FACTUAL BACKGROUND

According to public reports, Herschel Walker confirmed to multiple individuals that he was planning on running for U.S. Senate in Georgia prior to June 29, 2021. On June 29, in reference to rumors that Mr. Walker may run, former President Donald Trump plainly stated: “He told me he’s going to, and I think he will.”<sup>1</sup> The same day, talk radio host John Fredericks also stated that he had “confirmed Herschel Walker is going to run for U.S. Senate from Georgia,” and that he had heard it “from several people close to him last night, [June 28].”<sup>2</sup>

Also in late June, the Associated Press confirmed that Walker has been “stok[ing] chatter about a Senate bid for months and discussed the race with national party leaders including Senate Minority Leader Mitch McConnell and Florida Sen. Rick Scott, head of the GOP’s Senate campaign committee.”<sup>3</sup> These announcements came several days after June 17, when Mr. Walker tweeted “Georgia on my mind” along with an accompanying video clip in which he said “I’m getting ready” as the camera panned to his car’s Georgia license plate.<sup>4</sup> Finally, Fox News

<sup>1</sup> Ed Kilgore, *Trump Says Herschel Walker Is Running for U.S. Senate*, N.Y. MAG.: INTELLIGENCER (June 29, 2021), <https://nymag.com/intelligencer/2021/06/trump-says-herschel-walker-is-running-for-the-senate.html>.

<sup>2</sup> YouTube, *Fredericks on Walker Running for Senate*, <https://www.youtube.com/watch?v=2mj6DofqxZl>.

<sup>3</sup> Bill Barrow, *In Georgia, Herschel Walker puts GOP in a Holding Pattern*, ASSOCIATED PRESS (June 26, 2021), <https://apnews.com/article/herschel-walker-georgia-campaign-2016-election-2020-senate-elections-1d033027c42e44b0baeb37cfe98a00f7>.

<sup>4</sup> Richard Fausset, *‘I’m Getting Ready’: Football Star’s Cryptic Video Could Upend Georgia Senate Race*, N.Y. TIMES (June 20, 2021), <https://www.nytimes.com/2021/06/19/us/herschel-walker-georgia-senate.html>.

reported that Mr. Walker “has begun to build the beginnings of a campaign,” which includes reaching out to political advisers and aides.<sup>5</sup>

On August 24, 2021, nearly two months after multiple sources confirmed his decision to run for office had been made, Mr. Walker filed a Statement of Candidacy declaring his candidacy for U.S. Senate in Georgia in 2022.<sup>6</sup> He also filed a Statement of Organization for his principal campaign committee, Team Herschel, Inc, on the same day.<sup>7</sup>

## LEGAL ANALYSIS

An individual becomes a “candidate” for purposes of the Federal Election Campaign Act of 1971, as amended (the “Act”) upon receiving contributions or making expenditures in excess of \$5,000 to influence their election for federal office.<sup>8</sup> Such individuals must file a Statement of Candidacy within fifteen days of meeting the threshold for becoming a “candidate.”<sup>9</sup>

Commission regulations allow potential candidates to collect contributions and make expenditures outside of the \$5,000 candidacy threshold solely for the purpose of “testing the waters.”<sup>10</sup> This so-called “testing-the-waters allowance” only applies to activity a candidate conducts “solely for the purpose” of “determining whether [the] individual should become a candidate.” The exemption is not available to individuals who have already decided to become

<sup>5</sup> Paul Steinhauser, *Potential Herschel Walker Senate Run in Georgia Raising Some GOP Concerns*, FOX NEWS (July 7, 2021), <https://www.foxnews.com/politics/potential-herschel-walker-georgia-senate-run-gop-concerns>.

FEC.gov, Mr. Herschel Walker FEC Form 2 (Aug. 24, 2021) <https://docquery.fec.gov/pdf/667/202108249466558667/202108249466558667.pdf>.

FEC.gov, Team Herschel, Inc. FEC Form 1 (Aug. 24, 2021) <https://docquery.fec.gov/pdf/613/202108249466558613/202108249466558613.pdf>.

<sup>8</sup> See 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3.

<sup>9</sup> 52 U.S.C. 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>10</sup> 11 C.F.R. §§ 100.72, .131.

<sup>11</sup> *Id.* §§ 100.72, .131.

candidates, to activities that indicate an individual has decided to become a candidate, or to activities that are “relevant to conducting a campaign.”<sup>12</sup>

If an individual makes a private decision to become a candidate, he is no longer eligible to raise or spend funds under the testing-the-waters allowance.<sup>13</sup> The FEC has previously determined that once an individual “has moved beyond the deliberative process of deciding to become a candidate, and into the process of planning and scheduling public activities designed to heighten his political appeal to the electorate, then . . . the activity would cease to be within the exemption, and candidacy would arise.”<sup>14</sup> Thus, even a candidate who is careful to craft his public comments to avoid publicly referring to himself as a candidate can trigger candidacy by making expenditures to further his candidacy once a private decision has been made. Though Mr. Walker has been careful about his public statements regarding his status as a candidate, according to multiple sources, Mr. Walker confirmed he made a decision to run for U.S. Senate before June 29, 2021.<sup>15</sup> Accordingly, it appears that a private decision had been made and communicated to Mr. Walker’s confidants at that time, and that Mr. Walker has gone beyond the scope of the testing-the-waters exemption. Further, if, as Fox News reported, Mr. Walker began to build his campaign in June, he has likely raised or spent over \$5,000, triggering

<sup>12</sup> *Id.* § 100.131(b).

<sup>13</sup> *See id.* § 100.72(b); FEC Matter Under Review 5363 (Sharpton), Factual and Legal Analysis; FEC Matter Under Review 6449 (Bruning), Factual and Legal Analysis (stating that candidacy is triggered when “a private decision to become a candidate has been made.”); *see also* FEC Matter Under Review 5693 (Aronsohn), General Counsel’s Report #2 (“The determining factor is whether the individual’s activities “take on a partisan political quality [that] would indicate that a decision has been made to seek nomination for election, or election, to a Federal office”) (citing Advisory Opinion 1981-32);.

<sup>14</sup> Advisory Opinion 1981-32 (Askew).

<sup>15</sup> Ed Kilgore, *Trump Says Herschel Walker Is Running for U.S. Senate*, N.Y. MAG.: INTELLIGENCER (June 29, 2021), <https://nymag.com/intelligencer/2021/06/trump-says-herschel-walker-is-running-for-the-senate.html>

candidacy under the Act.<sup>16</sup> Yet, he failed to file any paperwork with the FEC declaring his candidacy until nearly two months later, on August 24, 2021.

If Mr. Walker made a decision to run for Senate on or before June 29, and made expenditures in excess of \$5,000 in furtherance of his candidacy in the two months that followed, he missed the deadline to file his Statement of Candidacy within fifteen days of his decision. Given the Fox News report, it is highly likely that Mr. Walker has made expenditures exceeding \$5,000 to further his candidacy by traveling to meet with campaign advisors and influential political figures like former President Trump, attending rallies and other public events, and building the foundations of his campaign. Accordingly, the available facts suggest that Mr. Walker may have failed to timely file his Statement of Candidacy with the FEC, denying transparency to the voters of Georgia.

#### **REQUESTED ACTION**

In light of the foregoing, the Commission should immediately investigate whether Respondent did in fact violate the Act, and if so, the exact date that his candidacy began. If a violation is found, we respectfully request the Commission fine Respondent the maximum amount permitted by law.

Sincerely,



Scott Hogan  
Democratic Party of Georgia  
501 Pulliam St SW  
Suite 400  
Atlanta, GA, 30312

<sup>16</sup> Paul Steinhauser, *Potential Herschel Walker Senate Run in Georgia Raising Some GOP Concerns*, FOX NEWS (July 7, 2021), <https://www.foxnews.com/politics/potential-herschel-walker-georgia-senate-run-gop-concerns>.

STATE OF FLORIDA  
COUNTY OF LAKE  
NOTARY INFORMATION

SUBSCRIBED AND SWORN to before me this 26 of August, 2021.  
26th

Identification Provided: Driver License

*Lisette Flores-Aponte*



\_\_\_\_\_  
Notary Signature  
by Scott Hogan

Notary Public      Flores-Aponte  
Lisette

My Commission Expires:  
07/30/2024  
\_\_\_\_\_

Notarized online using audio-video communication