



September 6, 2022

VIA E-MAIL

Roy Q. Lockett, Acting Assistant General Counsel
Christal Dennis, Paralegal
Federal Election Commission
Office of Complaints Examination and Legal Administration
1050 First Street, NE
Washington, DC 20463
Email: CELA@fec.gov

Re: Matter Under Review 8033 (Senator Raphael Warnock, Warnock for Georgia, and Christopher Koob, Treasurer)

Dear Mr. Lockett:

We write on behalf of Senator Raphael Warnock, Warnock for Georgia, and Christopher Koob in his official capacity as Treasurer of Warnock for Georgia (collectively, “Respondents”) in response to the complaint filed by NRSC (“Complainant”) in Matter Under Review 8033 (the “Complaint”). The Complaint alleges violations of the personal use restrictions under the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (the “Commission” or “FEC”) regulations.

In April 2021, a *pro se* plaintiff filed a frivolous lawsuit against Senator Warnock.¹ The lawsuit followed a wave of targeted, baseless lawsuits in Georgia, all aimed at discrediting the legitimacy of Senator Warnock’s status as a U.S. Senator and the election results in the state. State and federal courts in Georgia dismissed every single one of these suits. Complainant now contends that Warnock for Georgia improperly used campaign funds to defend the lawsuit. The Complaint bases this allegation on two fundamentally incorrect assumptions: (1) that because facts referenced in the 2021 lawsuit predate Senator Warnock’s status as an officeholder the litigation did not arise as a result of his status as a U.S. Senator; and (2) that the 2021 lawsuit is a continuation of a lawsuit filed in 2019. The 2021 lawsuit is a completely different lawsuit than the 2019 case and it arose directly as a result of Senator Warnock’s status as a U.S. Senator. As such, the Complaint does not allege any facts that demonstrate Respondents violated the personal use restrictions under federal law. The Commission should find no reason to believe Respondents violated the Act and dismiss the Complaint immediately.

¹ *Complaint, Robertson v. Warnock, et al.*, 1:21-cv-1468-TCB (N.D. Ga. Apr. 11, 2021).

I. Factual Background

Warnock for Georgia is the official campaign committee of Reverend and Senator Raphael G. Warnock.² Senator Warnock first filed as a candidate for U.S. Senate in Georgia on January 30, 2020, to fulfill the remainder of Senator Isakson's term, who resigned from the Senate at the end of 2019.³ No candidate reached 50 percent of the vote in the November 2020 special election, resulting in a special election runoff on January 5, 2021.⁴ The runoff determined control of the U.S. Senate, drawing national attention to Georgia and Senator Warnock.⁵ Senator Warnock won his election to the U.S. Senate on January 6, 2021.⁶ As a result of the nature of the special election, Senator Warnock's initial term ends in 2022. Senator Warnock filed paperwork with the FEC, becoming a candidate for the 2022 U.S. Senate primary election in Georgia on January 18, 2021.⁷

In the fall of 2020 and the spring of 2021, various plaintiffs filed a barrage of lawsuits related to the elections in Georgia.⁸ At least 23 lawsuits were filed in the state trying to overturn the election results and cast doubt on the validity of Senator Warnock and other Democrats' victories.⁹ During this time, on April 21, 2021, Plaintiff Melvin Robertson filed suit, *pro se*, against Senator Warnock and other elected officials, including former Governor Sonny Perdue, former Georgia Attorney General Thurbert Baker, former Atlanta Mayor Kasim Reed, and then-Atlanta Mayor Keisha Lance Bottoms.¹⁰ Service of process occurred at Senator Warnock's official U.S. Senate office located in Atlanta, Georgia.¹¹

The 29-page complaint filed by Mr. Robinson is disjointed and very difficult to comprehend. The vast majority of legal claims referenced in the lawsuit are claims that can only be brought against government actors, including claims under the First, Fourth, and Fourteenth Amendments, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), 42 U.S.C. § 1983, and the Federal Tort Claims Act. To the extent that the lawsuit alleged legal violations that could be brought against a private individual, it was impossible to determine

² FEC Form 1, Statement of Organization, Warnock for Georgia (July 15, 2022), <https://docquery.fec.gov/pdf/103/202207159521895103/202207159521895103.pdf>.

³ FEC Form 2, Statement of Candidacy, Raphael Warnock (Jan. 30, 2020), <https://docquery.fec.gov/pdf/302/202001309182424302/202001309182424302.pdf>. Brakkton Booker, *Citing 'Health Challenges,' Republican Sen. Johnny Isakson To Retire At End Of Year*, NPR (Aug. 28, 2019), <https://www.npr.org/2019/08/28/755054723/citing-health-challenges-republican-sen-johnny-isakson-to-retire-at-end-of-year>.

⁴ Michael Bocanegra, *Republican Loeffler, Democrat Warnock head to Georgia Senate Runoff* (Nov. 3, 2020), <https://www.politico.com/news/2020/11/03/georgia-senate-special-election-results-2020-433902>.

⁵ See Steve Peoples, Bill Barrow, and Russ Bynum, *Warnock, Ossoff win in Georgia, handing Dems Senate control*, AP (Jan. 6, 2021), <https://apnews.com/article/Georgia-election-results-4b82ba7ee3cc74d33e68daadaec2cbf3/>.

⁶ Alana Wise, *Democrat Raphael Warnock Wins Georgia Runoff*, NPR (Jan. 6, 2021), <https://www.npr.org/2021/01/06/952429877/democrat-raphael-warnock-wins-georgia-runoff>.

⁷ FEC Form 2, Statement of Candidacy, Raphael Warnock (Jan. 18, 2021), <https://docquery.fec.gov/pdf/262/202101189405151262/202101189405151262.pdf>.

⁸ See David Wicket, *Lawsuits failed, but bills may restrict Georgia voting*, Atlanta Journal-Constitution (Mar. 12, 2021), <https://www.ajc.com/politics/georgia-state-legislature/failed-lawsuits-paved-the-way-for-georgia-voting-restriction-bills/RH232D64CBFZPPT3Z2ZIMJLPJE/>.

⁹ *Id.*

¹⁰ *Complaint, Robertson v. Warnock, et al.*, 1:21-cv-1468-TCB (N.D. Ga. Apr. 21, 2021).

¹¹ Natalie Allison, *Questions arise over Warnock's use of campaign funds to fight lawsuit*, Politico (July 6, 2022), <https://www.politico.com/news/2022/07/06/warnock-used-campaign-funds-to-fight-personal-lawsuit-00044148>.

which of the facts alleged in the complaint correlated to those violations, and against which defendants they were alleged.

To illustrate, throughout the complaint Senator Warnock is referenced nine times. These references including service of process in a case not involving Senator Warnock, allegations of an alleged entrapment scheme, and confusing references to Ebenezer Baptist Church. The references to Senator Warnock include:

- “08/25/2005 the plaintiff did what U.S.District court clerk rule said to service these defendant the server Melanie D. Robertson and her signature on all of them she server summons and complaint to all defendants the plaintiff was was deprived of his tJ.S.constitution right under the first AMENDMENT was violated. Fomer Chief Turner of the Clayton County Ga. police hear about Rev. Warnock was off five million and jobs and Chief Turner after he read the plaintiff appellate briefs and U.S. District briefs by Robertson V. Clayton County Georgia et al case.”
- “Deacon of Ebenezer Baptist church West and judge Steven C. Jones the senior pastor of Ebenezer Baptist church Raphael G.Warnnock said for five million dollar and jobs. i’m go to help put you in jail. the plaintiff was not allow to work and 02/23/2008 the plaintiff lost all his belong at storage locker in ATHENS GA., Rev warnock Solicit Mercy care, primary doctors Grady Hospital, Morehouse school of medicine primary doctors homeless sherlters, Fulton courty homeless sheriters.”
- “Robb pitts, GEOFF DUNCAN,Theodore Jackson, Paul 11. Howard Jr., Keith E.Gaxnmage,Brian Kemp,The plaintiff was injury and these the fact had knowledge of the plaintiff put in a time line Rev. Raphael G. warnock action to treated the plaintiff unconstitution allow this to happen and the event in all these verses TO claim act negligence, 42 U.s.c. § 1983 TO claim act negligence [...]”

Perkins Coie LLP and Krevolin & Horst represented Senator Warnock in the lawsuit, filing a motion to dismiss the complaint due to its failure to state a valid claim.¹² The law firms did not represent Ebenezer Baptist Church or any other Defendant in the lawsuit.¹³ The motion to dismiss from Perkins Coie LLP and Krevolin & Horst was short and straightforward – the complaint failed to meet the federal pleading standard as it failed to coherently provide any basis for legal liability against Senator Warnock. This response addressed the deficiency of the complaint as a whole, it did not defend the Senator against any personal claims against him outside of his status as a United States Senator. The federal judge assigned to the case agreed with counsel and Plaintiff Robertson’s complaint was dismissed on December 7, 2021.¹⁴ The legal costs incurred were de-minimis –\$4,520 and \$4,846.92 to each law firm, respectively.

In 2019, Melvin Robertson filed a *different* lawsuit against Senator Warnock, featuring a *different* set of co-defendants and *different* series of allegations.¹⁵ Senator Warnock was never

¹² *Motion to Dismiss, Robertson v. Warnock, et al.*, 1:21-cv-1468-TCB (N.D. Ga. Aug. 3, 2021).

¹³ *See id.* Ebenezer Baptist Church did not respond to the Robertson’s complaint.

¹⁴ *Order Dismissing Complaint, Robertson v. Warnock, et al.*, 1:21-cv-1468-TCB (N.D. Ga. Dec. 7, 2021). Mr. Robertson filed a notice of appeal in the Eleventh Circuit but failed to file an appellant’s brief. The appeal was accordingly dismissed for want of prosecution in February 2022.

¹⁵ *See Amended Complaint, Robertson v. Warnock, et al.*, No. 1:19-cv-04637-SCJ (N.D. Ga. Oct. 30, 2019).

served the 2019 complaint and did not file any response.¹⁶ The lawsuit was dismissed by a federal district court judge as frivolous.¹⁷ Senator Warnock and Warnock for Georgia paid for no legal expenses related to the 2019 complaint.

I. Legal Analysis

The FEC may only find “reason to believe” Respondents violated the Act or Commission regulations if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation.¹⁸ The Complaint here fails to make that showing, as its allegations are false.

The Act enumerates six permissible categories of campaign expenditures.¹⁹ In relevant part, those categories include (1) otherwise authorized expenditures in connection with the candidate’s campaign for Federal office; (2) ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office; and (3) any other lawful purpose, provided that campaign funds “shall not be converted by any person to personal use.”²⁰ A conversion to personal use occurs when a person uses campaign funds “to fulfill any commitment, obligation, or expense . . . that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.”²¹ The Act categorizes certain expenses as *per se* personal use, such as a mortgage payments, clothing, and groceries.²² If an expense does not fall into one of the *per se* personal use categories, the Commission “will determine, on a case-by-case basis,” whether the expense meets the definition of personal use.²³ Legal fees are expressly listed as a type of expense subject to a case-by-case determination.²⁴

The Commission has long recognized that if a candidate “can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.”²⁵ In keeping with this, the Commission has declined to adopt rules that limit the use of campaign funds for legal expenses to only legal matters containing certain subject matter – such as compliance with the election laws.²⁶ Instead, the Commission has adopted a more flexible test, which recognizes that candidates and officeholders may incur legal expenses for a multitude of reasons which fundamentally result from their campaign or officeholder activities. The Commission has clarified that “legal expenses will not be treated as though they are campaign or officeholder related merely because the underlying legal

¹⁶ Natalie Allison, *Questions arise over Warnock’s use of campaign funds to fight lawsuit*, Politico (July 6, 2022), <https://www.politico.com/news/2022/07/06/warnock-used-campaign-funds-to-fight-personal-lawsuit-00044148>.

¹⁷ *Order, Robertson v. Warnock, et al.*, No. 1:19-cv-04637-SCJ (N.D. Ga. July 30, 2020).

¹⁸ See 52 U.S.C. § 30109(a)(2); 11 C.F.R. § 113.1(g); Statement of Reasons of Comm’rs Mason, Sandstrom, Smith & Thomas, Matter Under Review 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee), (Dec. 21, 2000), at 7.

¹⁹ 52 U.S.C. § 30114(a); see 11 C.F.R. § 113.2.

²⁰ 52 U.S.C. § 30114(a), (b)(1); see 11 C.F.R. §§ 113.1(g), 113.2; see also FEC Advisory Op. 2011-02 (Brown) at 4.

²¹ 52 U.S.C. § 30114(b)(2); see 11 C.F.R. § 113.1(g).

²² 52 U.S.C. § 30114(b)(2); see 11 C.F.R. § 113.1(g)(1)(i).

²³ 11 C.F.R. § 113.1(g)(1)(ii).

²⁴ *Id.* § 113.1(g)(1)(ii)(A).

²⁵ Contribution and Expenditure Limitations and Prohibitions; Personal Use of Campaign Funds; Final Rule, 60 Fed. Reg. 7862, 7867 (Feb. 9, 1995) [hereinafter, “Personal Use E&J”].

²⁶ See Personal Use E&J at 7868.

proceedings have some impact on the campaign or the officeholder's status."²⁷ The question is whether the legal expenses would have arisen irrespective of the individual's candidacy or status as a federal officeholder.²⁸ If not, then the legal expenses are permissible campaign expenses, not personal use.

The legal fees at issue here arose from a nearly incomprehensible complaint filed against Senator Warnock. The timing, service, and nature of the claims in the lawsuit all make clear that the lawsuit, and associated legal fees, would not have arisen irrespective of Reverend Warnock's status as a U.S. Senator.

The lawsuit was filed in April of 2021, three months after Senator Warnock's election; it was served on the Senator at his official U.S. Senate office. At the time, Senator Warnock had been a near constant presence in the news for months, both in Georgia and across the country, due to his historic candidacy and meteoric rise to elected office. He was also the defendant in an election contest related to his campaign, and had been the subject of multiple conspiracy theories and legal proceedings surround the 2020 election.²⁹ In short, the lawsuit came as yet another attempt to use wild, baseless allegations to undermine Senator Warnock's legitimacy as an elected official. This timing and context makes clear that the lawsuit would not have been filed if not for Reverend Warnock's status as a United States Senator.

While it is very difficult to understand the arguments advanced by the plaintiff, the thrust of the lawsuit centers on claims that can only be brought against government actors, including claims under the First, Fourth, and Fourteenth Amendments, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), 42 U.S.C. § 1983, and the Federal Tort Claims Act. In other words – if Senator Warnock had not been a United States Senator at the time of the complaint, there would be no way for the plaintiff to allege these claims. To the extent the lawsuit alleged legal violations that could be brought against a private individual, it was not possible to discern in any meaningful way, which facts alleged in the complaint correlated to those claims or against who the claims were alleged.

In short, the best interpretation of the complaint is that it was filed against Senator Warnock in his official capacity. Other defendants also understood the lawsuit to relate to their duties as government employees. The Georgia Attorney General's Office defended Governor Kemp and Chief Guerrucci in the lawsuit.³⁰ In their motion to dismiss filing, Defendants Governor Brian Kemp and Chief of Police Paul Guerrucci, wrote, "although the allegations are scant and unclear, Plaintiff appears to sue Defendants based on their duties a [sic] state employee."³¹

²⁷ *Id.*

²⁸ Adv. Ops. 2011-07 (Chuck Fleischmann for Congress); 2009-20 (Visclosky); 2009-10 (Visclosky).

²⁹ See David Wickett, *Lawsuits failed, but bills may restrict Georgia voting*, Atlanta Journal-Constitution (Mar. 12, 2021), <https://www.ajc.com/politics/georgia-state-legislature/failed-lawsuits-paved-the-way-for-georgia-voting-restriction-bills/RH232D64CBFZPPT3Z2ZIMJLPJE/>. See also; David Wickett, *Judge Dismisses lawsuit that sought to overturn Georgia Senate Elections*, Atlanta Journal-Constitution (July 19, 2021), <https://www.ajc.com/politics/judge-dismisses-lawsuit-that-sought-to-overturn-georgia-senate-elections/I6QLFSUFHRBYJFIT7WNRIECM7M/>.

³⁰ See *Complaint, Robertson v. Warnock, et al.*, 1:21-cv-1468-TCB 10 (N.D. Ga. Apr. 21, 2021).

³¹ *Motion to Dismiss, Robertson v. Warnock, et al.*, 1:21-cv-1468-TCB (N.D. Ga. June 17, 2021).

The legal fees incurred by Warnock for Georgia were tied to a simple motion to dismiss and one-page opposition to reconsideration prepared by counsel. The short motion to dismiss argued that the plaintiff failed to allege any plausible or viable claim against Senator Raphael Warnock, it did not discuss or defend any personal conduct on the part of the Senator. The opposition to reconsideration opposed all relief demanded by the plaintiff and requested the court close the case. If the lawsuit had moved forward and it became clear that any single, comprehensible claim was not directly tied to Senator Warnock's status as a candidate or officeholder, the campaign would not have covered those fees. The suit never got that far and was dismissed by the court on December 7, 2021.

Despite all of this, Complainant alleges the payment of the legal fees at issue resulted in personal use of campaign funds for two reasons – the reference to old claims from 2005 in the lawsuit and the existence of an entirely separate lawsuit in 2019.

The Complaint alleges that the claims in the 2021 arise “from events dating back to 2005 – almost 15 years before Warnock ever held or sought federal office.” Yet, the allegations in the lawsuit that date back to 2005 relate to a lawsuit filed by the Plaintiff that did not even involve Senator Warnock.³² There is a reason Complainant does not mention *what events* took place in 2005 involving Senator Warnock – the 2021 lawsuit does not clearly articulate *any events* involving Senator Warnock in 2005. Far from relating to any specific actions of Senator Warnock prior to his election, these allegations appear to have little basis in reality.


The Complaint also incorrectly alleges that the “lawsuit itself was first filed in 2019.” The 2019 lawsuit was an entirely separate lawsuit. The 2021 complaint makes no reference to the 2019 lawsuit, and instead goes on at length about a 2005 lawsuit which again, was unrelated to Senator Warnock. No funds, whether campaign funds or personal funds, were used to defend against the 2019 lawsuit. Senator Warnock, as the Complaint acknowledges, was never even served such lawsuit. There is no indication that Plaintiff Robertson's decision to file a separate, additional lawsuit a year and a half later, after Senator Warnock's election, had any connection to the 2019 lawsuit, aside from the fact that it was filed by the same individual and also included near-indecipherable claims. The existence of the 2019 lawsuit has no bearing on the decision to use campaign funds for the 2021 lawsuit.

II. Conclusion

The 2021 lawsuit was filed against Senator Warnock as a direct result of his position as a federal officeholder. The campaign incurred a de-minimis amount of legal fees to engage counsel to file a short motion to dismiss and one page motion against reconsideration on the grounds that the lawsuit failed to coherently plead an actionable legal claim of any kind against Senator Warnock. A federal judge agreed and granted the motion, ending the case. For all the reasons set forth above, there is absolutely no basis on which the Commission can find that the Respondents violated the personal use restrictions under the Act or Commission regulations.

³² See *Complaint, Robertson v. Warnock, et al.*, 1:21-cv-1468-TCB 10 (N.D. Ga. Apr. 21, 2021).

Yours truly,

A handwritten signature in black ink, appearing to read "Jacquelyn Lopez", with a stylized flourish at the end.

Jacquelyn Lopez
Elizabeth Poston
Emma Anspach