

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Vernon Jones for Georgia)
and Patricia Moore, as treasurer)

MUR 6047

SENSITIVE

**STATEMENT OF REASONS OF
CHAIRMAN STEVEN T. WALTHER,
COMMISSIONER CYNTHIA L. BAUERLY, AND
COMMISSIONER ELLEN L. WEINTRAUB**

On April 21, 2009, the Commission closed the file in this matter after failing to approve a recommendation to dismiss this matter and send a cautionary letter to Vernon Jones for Georgia and Patricia Moore, as treasurer (collectively "the Committee"), regarding allegations that the Committee failed to include adequate disclaimers on campaign materials during the 2004 U.S. Senate race in Georgia, in violation of 2 U.S.C. § 441d(a)(1). Because we believed the complaint's allegations and accompanying exhibits raised important questions about whether the Committee included the disclaimers required by law, we supported a motion to find reason to believe and open an investigation to ascertain whether the law was violated. That motion failed 3-3.

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* ("the Act") requires candidate committees to "clearly state that the communication has been paid for" by the candidate committee. The statute provides explicit requirements for print, radio, and television advertisements. 2 U.S.C. § 441d(c).

The Act requires that the Commission find "reason to believe that a person has committed, or is about to commit, a violation" of the Act as a predicate to opening an investigation into the alleged violation. 2 U.S.C. § 437g(a)(2). "Reason to believe" is a threshold determination that by itself does not establish that the law has been violated. In fact, "reason to believe" determinations indicate only that the Commission found sufficient legal justification to open an investigation to determine whether there is probable cause that a violation of the Act has occurred.¹ Rather than finding reason to believe, the Commission may vote to dismiss matters at the initial stages of an enforcement matter "due to factors such as the small amount or significance of the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an investigation."² We do not believe, however, that these factors are sufficiently supported by the factual record at this stage of the matter.

¹ See 72 Fed. Reg. 12545, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process (March 16, 2007).

² 72 Fed. Reg. at 12546; see also *Heckler v. Chaney*, 470 U.S. 821 (1985).

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The complainant here alleged that the Committee "[f]ailed to disclose who paid for campaign advertising throughout the state" and attached photographs of what appear to be sample signs and photocopies of emails sent by the campaign. These photographs and photocopies do not include the statutorily required disclaimer.

The complaint notification was sent to the Committee on July 30, 2008. The Committee did not respond to the complaint until December 5, 2008. Vernon Jones was a candidate in the primary election for U.S. Senate held on July 15, 2008 and the runoff primary election held on August 5, 2008. The response states that "we were not aware we violated 'the Act' by omitting" "paid for by Vernon Jones for Georgia" from its campaign signs. This acknowledgement indicates that the Committee did not include a disclaimer on any of its campaign signs, and, based on the apparent lack of knowledge of the requirement, one reasonable inference is that the Committee did not include a disclaimer on any communications.

Between July 17, 2008 and the end of 2008, the Committee reported spending more than \$107,000 on a variety of advertising, including \$55,077 on mailers, \$19,870 on billboards, \$15,978 on television advertisements, \$2,421 on radio advertisements, \$1,800 on newspaper advertisements, \$1,426 on phone banks, plus an additional \$2,839 on various signage.³ See Attachment A.

The Committee also states that because this was the "first time our committee ran for a federal office," the Commission should dismiss this matter. There are some first-time candidates who lack resources and are sometimes unable to navigate the intricacies of all campaign finance regulations. This is not such a candidate. This candidate reported raising \$747,589 in 2008 alone. This candidate had also run for multiple state offices: he held office in the Georgia House of Representatives from 1993 to 2001, and then served two terms as CEO of Dekalb County. Based upon this extensive state campaign experience, there is no indication that he was a novice politician who was unaware that disclaimer requirements exist and he certainly had adequate resources to obtain guidance on the matter.

Based upon the complaint, the admission in the response that campaign signs did not include the disclaimer, and the significant amount of money the Committee reported spending on communications, we believe the Commission should have found reason to believe a violation occurred in order to ascertain the scope of the potential violation. If, during a limited investigation, the Committee demonstrated that it did include disclaimers on a significant amount of its communications, the Commission could have subsequently voted to dismiss the matter in

³ It is not clear from the Committee's reports how the Committee spent the remaining \$9,000, as the reported purposes for some disbursements are unclear, ranging from "advertising" to "studio session for commercials" to "Communications services." See Attachment A.

the exercise of its prosecutorial discretion. Based on the foregoing, however, it was premature to dismiss this matter at the outset in the face of potentially significant disclaimer violations.

5/21/09

Date

Steven T. Walther

Steven T. Walther
Chairman

5/22/09

Date

Cynthia L. Bauerly by ^{eb}

Cynthia L. Bauerly
Commissioner

5/26/09

Date

Ellen L. Weintraub

Ellen L. Weintraub
Commissioner

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ATTACHMENT A

**Reported Disbursements Involving Advertising From Vernon Jones for Georgia's
2008 October Quarterly Report and 2008 Year-End Report filed with
the Federal Election Commission**

Date	Amount	Purpose of Disbursement
7/18/08	248.00	Canvassing – phone banking
7/18/08	218.00	Canvassing – phone banking
7/21/08	1,500.00	Sign placement, canvassing, get out the vote
7/21/08	976.00	Advertising
7/21/08	232.00	Advertising
7/21/08	360.00	Advertising
7/25/08	212.00	Canvassing, phone banking
7/25/08	256.00	Canvassing, phone banking
7/28/08	600.00	Studio session for commercials
7/28/08	2,507.00	Mail-piece printing
7/28/08	22,108.78	Postage for mail-piece to voters
7/31/08	501.00	Radio advertising
8/1/08	248.00	Canvassing, phone banking
8/1/08	244.00	Canvassing, phone banking
8/1/08	350.00	Sign placement, canvassing
8/12/08	8,000.00	Design, printing of mail-piece to voters
8/14/08	860.00	Communications Consulting
8/19/08	1,000.00	Communications services
9/15/08	500.00	Communications services
10/1/08	2,278.00	Advertisement – tv
10/2/08	9,000.00	Billboards – advertisement
10/3/08	8,750.00	Advertising – tv
10/3/08	4,950.00	Advertisement – tv
10/6/08	2,507.00	Voter mail piece printing
10/7/08	20,462.00	Balance of voter mail, piece design, printing, distribution
10/12/08	2,000.00	Balance of mail piece printing
10/12/08	1,000.00	Advertisement
10/12/08	1,920.00	Radio advertising
10/17/08	1,800.00	Newspaper advertising
10/19/08	10,870.00	Balance on campaign billboards
12/19/08	989.75	Campaign signage
TOTAL:	\$107,447.53	

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