

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

JOSH MCLAURIN,)
)
Plaintiff,)
)
v.) Case No. _____
)
GEORGIA REPUBLICAN PARTY, INC.) **TRIAL BY JURY DEMANDED**
)
)
Defendant.)

COMPLAINT FOR DEFAMATION

COMES NOW Plaintiff, Josh McLaurin, and respectfully states his Complaint for Defamation against Defendant Georgia Republican Party, Inc. (“State GOP”) as follows:

INTRODUCTION

1. This Complaint arises from the State GOP’s publication of multiple false and defamatory statements of and concerning Mr. McLaurin, the Democratic nominee for State House District 51 (“HD 51”), in a series of political mailers during the 2018 Election.

2. The area covered by HD 51 has been represented by Republican officials for decades, but data suggests that Mr. McLaurin has a strong chance of winning in 2018.

3. As an extreme measure to keep HD 51 in Republican hands, the State GOP sent multiple pieces of mail to thousands of voters in HD 51 claiming that Mr. McLaurin was subject to “ongoing criminal investigations” when he was not.

4. The truth was that allies of Mr. McLaurin’s opponent, Mr. Kaufman, and the State GOP worked with attorneys to file administrative complaints with Georgia state agencies alleging that Mr. McLaurin had violated certain Georgia statutes. Then, the State GOP attempted to claim that these administrative filings constituted a criminal investigation. It was

false even to label the agencies' automatic processing of these complaints as "investigations" of any sort, much less to say that the complaints triggered any "criminal investigations."

5. The GOP's actions were specifically intended to injure Mr. McLaurin as a means of electing his Republican opponent, Alex Kaufman.

6. The false and defamatory statements assassinated Mr. McLaurin's character and damaged his reputation as a candidate for public office and as an attorney.

7. The State GOP published its false and defamatory statements about Mr. McLaurin with actual malice.

8. As a result of its conduct as herein described, the State GOP crossed the threshold from speech protected by the First Amendment to enter the arena of actionable defamation for which it must be held legally accountable.

9. This lawsuit is necessary to protect individuals from having blatantly false information spewed about them when they offer themselves for public office and to protect Georgia's voters from blatantly false information.

10. If the State GOP is not held accountable for its lies, then politicians and political parties in Georgia will feel free to manufacture whatever lies they can dream up to win elections, the voters will be inundated with false information, and good people will refuse to offer themselves to run for public office.

PARTIES, JURISDICTION, AND VENUE

11. Mr. McLaurin is an individual who resides in Sandy Springs, Georgia.

12. The State GOP is a corporation organized and existing under the laws of the State of Georgia with its principal place of business being located in Atlanta, Georgia.

13. Mr. McLaurin is a citizen of the State of Georgia, Fulton County.

14. The State GOP is a citizen of the State of Georgia, Fulton County.

15. This Court has personal jurisdiction over the Defendant.
16. This Court has subject matter jurisdiction of this action.
17. Venue is proper in this Court.

FACTUAL BACKGROUND

A. Mr. McLaurin qualifies to run, and his eligibility is challenged by ally of Mr. Kaufman and GOP

18. On March 5, 2018, Mr. McLaurin qualified as a Democratic candidate for State Representative for HD 51 in Georgia's General Primary election held on May 22, 2018.

19. The same day, Mr. Kaufman qualified as a Republican candidate for State Representative for HD 51 in the General Primary election.

20. Mr. McLaurin and Mr. Kaufman were the only candidates from any political party to qualify for the race for State Representative in HD 51.

21. On March 20, 2018, an elector in HD 51 named Gabriel Sterling filed a formal challenge to Mr. McLaurin's candidacy claiming that Mr. McLaurin did not meet the legal residency requirements to run for State Representative in HD 51 with the Georgia Secretary of State ("residency challenge").

22. Upon information and belief, Mr. Sterling is a member of the Fulton County Republican Party ("Fulton GOP") and he is an ally of Mr. Kaufman. In June 2016 he had announced he would run as a Republican in HD 51 in 2018, but he later withdrew his intention and began supporting Mr. Kaufman for the seat instead.

23. The residency challenge was based on Georgia law requiring candidates for State Representative to have lived in the State of Georgia for at least two years prior to their election and in the applicable House District for at least one year prior to their election.

24. Mr. Sterling alleged in the residency challenge that Mr. McLaurin was ineligible to hold office as State Representative because he had not lived in either the State of Georgia or HD 51 for a sufficient period of time.

25. Regarding the first allegation, Mr. Sterling noted that Mr. McLaurin had moved from Georgia to New York and lived in New York during parts of 2016. Sterling questioned whether Mr. McLaurin had moved back to Georgia early enough to be eligible to run. The deadline for Mr. McLaurin to move back to Georgia was November 6, 2016 (two years before the election for State Representative).

26. Regarding the second allegation, Mr. Sterling alleged that Mr. McLaurin did not really intend to live at the apartment Mr. McLaurin rented in HD 51 because Mr. McLaurin “maintains a somewhat transitory lifestyle.” Therefore, Mr. Sterling alleged, Mr. McLaurin did not truly establish residency in HD 51 by the deadline of November 6, 2017 (one year before the election for State Representative).

27. To determine if Mr. McLaurin was eligible to run, the Secretary of State referred the matter to the Georgia Office of State Administrative Hearings (“Office of Administrative Hearings”) so that an Administrative Law Judge (“ALJ”) could conduct a hearing on the matter.

B. Fulton GOP sends negative mail about Mr. McLaurin immediately after the residency challenge is filed

28. Well before the Office of Administrative Hearings conducted its hearing on the residency challenge, the Fulton GOP began sending mail to voters in HD 51 regarding the residency challenge filed by one of its members.

29. On or about March 25-27, 2018, just days after Mr. Sterling filed the residency challenge, the Fulton GOP sent a political mailer (the “March Mailer”) to an unknown number of

registered voters in HD 51 that sought to undermine Mr. McLaurin's credibility as a means of electing Mr. Kaufman.

30. The March Mailer quoted a Reporter Newspapers article about the residency challenge and further included the following sentences: "WHERE DOES JOSH MCLAURIN REALLY LIVE???" ; "TRUST IS THE ISSUE – CAN WE TRUST JOSH MCLAURIN???" ; "WHO IS JOSH MCLAURIN AND WHAT IS HE HIDING?" ; and "Can We Really Trust Josh McLaurin?" (A copy of the March Mailer is attached hereto as Ex. A).

C. Residency challenge hearing used to develop alternative attacks

31. On April 20, 2018, ALJ Kimberly Schroer ("ALJ Schroer") held a hearing on the residency challenge at the Office of Administrative Hearings.

32. Mr. McLaurin testified that, by November 6, 2018, he will have been a resident of the State of Georgia for two years and a resident of HD 51 for one year. In addition to his testimony, Mr. McLaurin offered a variety of documents as exhibits corroborating that he met the requirements under Georgia law to run for State Representative.

33. Mr. Sterling, through counsel, acknowledged that the relevant issues for the ALJ to decide were whether Mr. McLaurin established residency in Georgia by November 6, 2016 (the "state deadline") and in HD 51 by November 6, 2017 (the "district deadline").

34. However, the questioning at the hearing did not seriously attempt to prove that Mr. McLaurin had failed to meet these deadlines. Instead, the cross-examination of Mr. McLaurin centered on two issues that were largely immaterial to whether Mr. McLaurin met the state deadline or the district deadline, but that later became the focus of the State GOP's false mailers at issue in this case.

First bogus false-swearing allegation: voter registration

35. First, Mr. McLaurin was asked questions regarding the exact date he believed he reestablished his Georgia citizenship even though the evidence was uncontested that Mr. McLaurin had returned to Georgia permanently as of October 24, 2016 at the latest, which meant that Mr. McLaurin showed he had met the state deadline.

36. Despite being unable to present any evidence that Mr. McLaurin failed to meet the state deadline, the cross examination then sought to establish that Mr. McLaurin was a New York citizen through at least October 14, 2016 based on tax returns in which Mr. McLaurin switched his state tax payments for 2016 from New York to Georgia on October 15, 2016.

37. Mr. McLaurin had updated his Georgia voter registration address in Georgia on October 11, 2016, to reflect the address where he would be living when he voted in Georgia's November 8, 2016 General Election.

38. Upon information and belief, these questions sought to elicit testimony from Mr. McLaurin that he was a New York citizen on October 11, 2016 for the purpose of setting up a false allegation that Mr. McLaurin committed the crime of false swearing.

39. Upon information and belief, the theory of false swearing that these questions sought to pursue was that Mr. McLaurin falsely swore he was a Georgia citizen when changing his voter registration despite really being a New York citizen for at least three more days, from October 11-14, 2016.

40. There was no basis for attempting to set up an allegation of false swearing because, among other reasons, Mr. McLaurin was already a Georgia citizen by the time he updated his Georgia voter registration: in the Initial Decision ALJ Schroer published after the

hearing, she ruled that Mr. McLaurin reestablished Georgia citizenship in September 2016, which was before Mr. McLaurin accessed Georgia’s online voter registration system.

Second bogus false-swearing allegation: candidacy affidavit

41. The second tangential issue on which Mr. McLaurin was cross examined was the Declaration of Candidacy and Affidavit (“Candidacy Affidavit”) he executed on March 5, 2018 when qualifying for the race in HD 51.

42. The purpose of the Candidacy Affidavit is for candidates to affirm that they are eligible under Georgia law to run the race for which they are qualifying.

43. Accordingly, the Candidacy Affidavit form provided by the Secretary of State for each qualifying candidate to execute reads: “I have been a legal resident of the State of Georgia for _____ consecutive years; I have been a legal resident of _____ county for _____ consecutive years; I have been a legal resident of my district (if applicable) for _____ consecutive years”

44. Mr. McLaurin filled these blanks to show that, by November 6, 2018, he will have lived in Fulton County, Georgia for two years and HD 51 for one year, the minimum requirements under Georgia law to run for State Representative.

45. Although Mr. McLaurin’s attestations on the Candidacy Affidavit had nothing to do with whether he in fact met the state deadline or district deadline (the admitted subject of the hearing), questions on cross examination of Mr. McLaurin sought to establish that his attestations on the Candidacy Affidavit were false.

46. Specifically, the questions on cross-examination were designed to get Mr. McLaurin to admit that, as of March 5, 2018—the day of qualifying—Mr. McLaurin had not lived in Georgia for two years or HD 51 for one year.

47. Although it is true that Mr. McLaurin had not lived in Georgia for two years or HD 51 for one year as of March 5, 2018, the Candidacy Affidavit form was not asking Mr. McLaurin to attest to those statements. The only purpose of the Candidacy Affidavit form was to determine Mr. McLaurin's eligibility to run for office, which required measuring the duration of a candidate's residency backwards from November 6, 2018—not March 5, 2018.

48. For this reason, there was no basis for attempting to set up an allegation of false swearing with regard to the Candidacy Affidavit.

D. ALJ and Secretary of State Brian Kemp both reject residency challenge

49. On April 30, 2018, ALJ Schroer issued an Initial Decision in which she concluded that Mr. McLaurin was qualified to run for State Representative in HD 51.

50. On Friday, May 18, 2018, Secretary of State Brian Kemp issued a Final Decision in which he concluded that Mr. McLaurin was qualified to run for State Representative in HD 51.

E. A new complaint is immediately filed with Secretary Of State

51. Early on Monday, May 21, 2018, the business day immediately following Secretary of State Brian Kemp's dismissal of the residency challenge, Vincent Russo, who had represented Mr. Sterling in the first complaint, filed a new complaint with the Secretary of State via email to Chris Harvey, Elections Director (the "Email Complaint").

52. The Email Complaint was not made in the name of Mr. Sterling, but rather was made directly by Mr. Russo.

53. Mr. Russo is an attorney in the law firm of Robbins Ross Alloy Belinfante Littlefield LLC ("Robbins Firm").

54. The Robbins Firm is also an outside legal counsel for the State GOP.

55. The Email Complaint included the two allegations of false swearing that were alluded to during the hearing at the Office of Administrative Hearings and identified two statutes Mr. McLaurin was alleged to have violated: O.C.G.A. §§ 21-2-561 and 21-2-565.

56. O.C.G.A. §§ 21-2-561 and 21-2-565 fall under Chapter 2 (Elections and Primaries Generally) of Title 21 (Elections) of the Georgia Code.

57. O.C.G.A. § 21-2-33.1 covers “enforcement of chapter [2 of Title 21].”

58. O.C.G.A. § 21-2-33.1 provides that the State Election Board is vested with powers to issue civil penalties, not criminal penalties.

59. Further, O.C.G.A. § 21-2-31(5) provides that “[i]t shall be the duty of the State Election Board...[t]o investigate, *or authorize the Secretary of State to investigate*, when necessary or advisable the administration of primary and election laws and frauds and irregularities in primaries and elections *and to report violations of the primary and election laws either to the Attorney General or the appropriate district attorney who shall be responsible for further investigation and prosecution.*” (emphasis supplied).

60. Thus, the Secretary of State cannot launch an investigation (administrative or otherwise) without the authorization of the State Elections Board.

61. And neither the Secretary of State nor the State Elections Board has referred the Email Complaint to the Attorney General or the Fulton County District Attorney.

62. Upon information and belief, the Secretary of State’s office has an automatic process in place for handling complaints such as the Email Complaint filed on May 21, 2018.

63. Upon information and belief, the normal course for processing such a complaint is to assign a staff member within the Secretary of State’s office whose job is to assemble a

complete record, including the complaint and any responsive statements or documents from the target of the complaint, for transmittal to the State Election Board for review.

64. The staff member assigned to the Email Complaint gave Mr. McLaurin an opportunity to respond, and he did so by submitting a letter to the Secretary of State in response to the Email Complaint on August 17, 2018.

65. Upon information and belief, since Mr. McLaurin filed his response letter, the Secretary of State has not yet transmitted the Email Complaint or related information to the State Election Board.

66. Upon information and belief, since Mr. McLaurin filed his response letter, the State Election Board has not authorized the Secretary of State to investigate the Email Complaint and has not otherwise launched its own investigation or taken any formal action on the Email Complaint.

67. In any event, to date, Mr. McLaurin has received no notice from the Secretary of State or State Election Board that any formal action on the Email Complaint has been taken, apart from the staff member's solicitation of a response to the Email Complaint.

68. Upon information and belief there is not even an ongoing administrative investigation of the Email Complaint, much less a criminal investigation, which would require a referral to the Attorney General or Fulton County District Attorney.

F. In October 2018, the State GOP begins its libelous mail campaign in HD 51

69. In or around the second week of October 2018, the State GOP began sending mail to registered voters in HD 51 that referred to the Email Complaint.

70. The first piece of mail the State GOP sent was a single sheet with printing on both sides (the “First October Mailer”). (A copy of the First October Mailer is attached hereto as Ex. B).

71. On the front side of the First October Mailer, the State GOP printed “JOSH MCLAURIN UNDER INVESTIGATION” at the top and printed below this text a graphic of a manila file folder labeled “Josh McLaurin Candidate for State House.” Ex. B.

72. On the manila file folder, the State GOP printed: “The McLaurin Files – ONGOING CRIMINAL INVESTIGATIONS.” *Id.* (emphasis in original).

73. Below this heading, the State GOP listed two allegations and Georgia statutes ostensibly corresponding with the two allegations in the Email Complaint concerning the two statutes that Mr. McLaurin allegedly violated. *Id.*

74. On the back side of the First October Mailer, the State GOP printed at the top: “What is Josh McLaurin Hiding from North Fulton Voters?” *Id.*

75. Beneath this sentence, the State GOP again printed “ONGOING CRIMINAL INVESTIGATIONS,” and relisted the statutes mentioned in the Email Complaint. *Id.* (emphasis in original).

76. The State GOP’s implications and/or statements that Mr. McLaurin was subject to ongoing criminal investigations concerning the two allegations in the Email Complaint, or any allegations, were false. No criminal investigation occurred or began in response to the Email Complaint.

77. Mr. McLaurin retained the undersigned counsel on October 8, 2018 in connection with this action.

78. On October 9, 2018, the undersigned counsel sent a letter to the State GOP demanding retraction of its statements that Mr. McLaurin was subject to any criminal investigation whatsoever.

79. The State GOP has failed and refused to comply.

80. Instead, on or about October 10, 2018, the State GOP issued the following press release via its executive director to the Atlanta Journal Constitution: “McLaurin is under investigation for violating two state statutes, violation of these statutes are felonies under the law, and they are crimes even if he is not prosecuted for them.... I'm not sure what word to use for that type of investigation other than ‘criminal.’”

81. Then, on or about October 12, 2018, the State GOP sent a four-page booklet style mailer (“Second October Mailer”). (A copy of the Second October Mailer is attached hereto as Ex. C).

82. On the front cover of the Second October Mailer was the heading “Ongoing Criminal Investigations Into Candidate Josh McLaurin.” Ex. C.

83. Below this heading, the State GOP listed two allegations and Georgia statutes ostensibly corresponding with the two allegations in the Email Complaint concerning the two statutes that Mr. McLaurin allegedly violated. *Id.*

84. The front cover also claims the above information is part of some “2018 JOSH MCLAURIN OFFICIAL REPORT.” *Id.*

85. The second page of the Second October Mailer states that as to “Josh McLaurin” “On March 5, 2018” there was a “Criminal Investigation into false swearing as he qualified to run for public office.” *Id.*

86. The second page of the Second October Mailer goes on to state that on “October 11, 2016 Josh McLaurin Attempted to register to vote in Georgia while a resident of New York City.” *Id.*

87. The third page of the Second October Mailer states “JOSH MCLAURIN WANTS TO BE YOUR REPRESENTATIVE BUT CANNOT FOLLOW THE LAW.” *Id.*

88. The back cover of the Second October Mailer contains the heading “Ongoing Criminal Investigations Into Candidate Josh McLaurin.” *Id.*

89. Below this heading, the State GOP listed two allegations and Georgia statutes ostensibly corresponding with the two allegations in the Email Complaint concerning the two statutes that Mr. McLaurin allegedly violated. *Id.*

90. The State GOP continues to fail and refuse to retract its false implications and/or statements.

CAUSE OF ACTION FOR DEFAMATION

91. Mr. McLaurin incorporates by reference paragraphs 1-90 of this Complaint as though the same were set forth herein in their entirety.

92. In or around the second week of October 2018, the State GOP published the First October Mailer to registered voters in HD 51 stating that Josh McLaurin was under criminal investigation. It did so specifically by stating the following:

(a) “JOSH MCLAURIN UNDER CRIMINAL INVESTIGATION”

(b) “The McLaurin Files – ONGOING CRIMINAL INVESTIGATIONS.”

(c) “ONGOING CRIMINAL INVESTIGATIONS”

See Ex. B (First October Mailer).

93. The statements in the First October Mailer are blatantly false.

94. The First October Mailer states that Mr. McLaurin is under criminal investigation when, in fact, he is not.

95. The First October Mailer constitutes libel *per se* in that it directly and/or implicitly accuses Mr. McLaurin of committing a crime.

96. The First October Mailer constitutes libel *per se* in that it directly and/or implicitly imputes actions to Mr. McLaurin that injure his professional business reputation.

97. The First October Mailer constitutes libel *per se* in that it directly and/or implicitly imputes actions to Mr. McLaurin that are defamatory and injurious to his reputation on their face and can be so understood without reference to any additional or extrinsic facts.

98. On or about October 12, 2018, the State GOP published the Second October Mailer to registered voters in HD 51 stating that Josh McLaurin was under criminal investigation. It did so specifically by stating the following:

- (a) “Ongoing Criminal Investigations Into Candidate Josh McLaurin”
- (b) “Josh McLaurin” “On March 5, 2018” “Criminal Investigation into false swearing as he qualified to run for public office”
- (c) “October 11, 2016 Josh McLaurin Attempted to register to vote in Georgia while a resident of New York City.”
- (d) “JOSH MCLAURIN WANTS TO BE YOUR REPRESENTATIVE BUT CANNOT FOLLOW THE LAW”
- (e) “Ongoing Criminal Investigations Into Candidate Josh McLaurin”

See Ex. C (Second October Mailer).

99. The Second October Mailer states that Mr. McLaurin is under criminal investigation when, in fact, he is not.

100. The Second October Mailer constitutes libel *per se* in that it directly and/or implicitly accuses Mr. McLaurin of committing a crime.

101. The Second October Mailer constitutes libel *per se* in that it directly and/or implicitly imputes actions to Mr. McLaurin that injure his professional business reputation.

102. The First October Mailer constitutes libel *per se* in that it directly and/or implicitly imputes actions to Mr. McLaurin that are defamatory and injurious to his reputation on their face and can be so understood without reference to any additional or extrinsic facts.

PUBLICATION WITH ACTUAL MALICE

103. Defendant had actual knowledge that the statements made about Mr. McLaurin were false prior to publication.

104. Evidencing a reckless disregard for truth or falsity, Defendant published statements about Mr. McLaurin that clearly contradicted known facts.

105. Evidencing a reckless disregard for truth or falsity, Defendant knowingly and purposely avoided the truth and ignored evidence establishing the falsity of the First October Mailer and Second October Mailer prior to publishing them.

106. On October 9, 2018, the undersigned counsel, on behalf of Mr. McLaurin, sent a letter to the State GOP wherein she stated what the State GOP already knew, which was that a statement that Mr. McLaurin was under criminal investigation was false and defamatory. The letter further sought a retraction and correction. (A copy of the October 9, 2018 letter is attached hereto as Ex. D).

107. Evidencing a continued reckless disregard for truth or falsity, the State GOP failed and refused to publish a retraction and correction of the false and defamatory statements about Mr. McLaurin and instead continued to state and further spread the false and defamatory statements that Mr. McLaurin was under criminal investigation.

DAMAGES

108. The false and defamatory statements were published to third parties and were, in fact, viewed by third parties in HD 51 and beyond.

109. The false and defamatory statements injure Mr. McLaurin's professional business reputation as a candidate for public office and as an attorney, thereby entitling him to *per se* damages.

110. The false and defamatory statements directly and/or implicitly accuse Mr. McLaurin of committing a crime, thereby entitling him to *per se* damages.

111. Despite personally knowing and having received communications further informing them that statements about Mr. McLaurin were false and defamatory and demanding that the statements be retracted and corrected, the State GOP has failed to retract or correct the false and defamatory statements.

112. The conduct of Defendant demonstrates willful misconduct and an entire want of care that raises a conscious indifference to consequences.

113. The false and defamatory accusations were published with constitutional actual malice thereby entitling Mr. McLaurin to an award of punitive damages.

114. The false and defamatory accusations were published with specific intent to injure Mr. McLaurin thereby entitling Mr. McLaurin to an award of punitive damages.

115. Mr. McLaurin is also entitled to an award of punitive damages from Defendant in order to punish it for its unlawful conduct and to penalize and deter them from repeating such unlawful and egregious conduct.

WHEREFORE, Mr. McLaurin demands:

(a) Trial by jury;

- (b) That judgment be entered against Defendant for compensatory damages in an amount to be determined by the enlightened conscience of a jury;
- (c) That judgment be entered against Defendant for punitive damages in an amount in an amount to be determined by the enlightened conscience of a jury to punish and penalize it and deter it from repeating its unlawful conduct;
- (d) That all costs of this action be assessed against Defendant; and
- (e) That this Court award such other relief as it deems proper.

Respectfully submitted this 16th day of October 2018.

/s/ Stacey Godfrey Evans
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State Bar No. 298555

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