

Legal Brawl Marks Race to Replace Ga. House Judiciary Chairman

When the Georgia Republican Party sent out a campaign mailer claiming Atlanta Democrat Josh McLaurin was the subject of “ongoing criminal investigations,” McLaurin decided the Republicans crossed a line.

An associate with Atlanta’s Krevolin & Horst, McLaurin said the attack by Republican allies of his opponent, attorney Alex Kaufman of Sandy Springs firm Kaufman & Forman, left him “dismayed.”

“Not the idea that I might lose, but they are damaging the entire system,” said McLaurin who has put Georgia GOP Chairman John Watson on notice that the mailer contained false statements made knowingly and with malice. That is a possible prelude to a libel suit, even though McLaurin is a public figure while running for office.

“They are damaging people’s faith in political messaging,” McLaurin said. “Maybe a cynical person laughs that anyone could have faith in political messaging. We are lawyers, but either the ideal of the marketplace of ideas means something to us, or it doesn’t.”

Kaufman, who wouldn’t talk to the Daily Report on the record or answer the majority of questions the newspaper submitted in writing at his request, doubled down on the mailer’s language in an emailed statement.

“It appears that he [McLaurin] committed perjury,” Kaufman said, adding that his opponent also “appears to have illegally accessed and altered Georgia’s online voter file. It is my understanding that he is being investigated for both actions.”

The Georgia GOP followed up with a second mailer repeating the allegations, which began arriving in mailboxes Friday. That prompted McLaurin to tweet: “This mailer ... is false.” He demanded that Kaufman renounce it and “run an honorable race.” Early voting began Monday.

A Disputation of Lawyers

The ongoing brawl, which erupted shortly after McLaurin qualified to run for office last March, has grown to include a disputation of lawyers, both Republicans and Democrats, who have weighed in on behalf of McLaurin or Kaufman.

The two men are looking to succeed former Republican Rep. Wendell Willard. Willard, Sandy Springs’ municipal attorney, retired after 17 years in the state Legislature and anointed Kaufman his political heir.

Vincent Russo, a partner with The Robbins Law Group's new lobbying arm, **RGR**, has spearheaded two administrative complaints to Secretary of State Brian Kemp challenging McLaurin's candidacy. Russo is the state GOP's chief deputy general counsel and serves as counsel to Kemp's gubernatorial campaign. Russo teamed up with RGR partner **David Dove**, Kemp's former chief of staff and legal counsel, in filing the original complaint against McLaurin.

Russo said he filed the complaint last April for Gabriel Sterling, a former Sandy Springs city councilman who ran an unsuccessful campaign for the Fulton County Board of Commissioners last year. Russo said he filed the second administrative complaint on his own after the first complaint was dismissed.

Last month, Bryan Tyson of Atlanta firm Strickland, Brockington Lewis—whose partner, Anne Lewis, is general counsel to the state GOP—also weighed in. He filed a separate ethics complaint with the Georgia Government Transparency and Campaign Finance Commission challenging whether McLaurin accurately reported pro bono legal services on his campaign finance disclosure forms. Tyson did so on behalf of Roger Wise, a GOP activist who has fielded unsuccessful campaigns for the Fulton County Commission and the state Senate.

Rep. Scott Holcomb, D-Atlanta, of Holcomb + Ward, and former Rep. Stacey Evans of Evans Law, who ran unsuccessfully for the Democratic gubernatorial nomination this year, are representing McLaurin. Holcomb is handling McLaurin's defense of the administrative complaints, and Tyson's ethics complaint concerns Holcomb's pro bono services.

Evans weighed in last week as McLaurin's counsel in the threatened libel action.

Republican lawyers and McLaurin's lawyers all agree the complaints to the secretary of state stem from a year he spent living in New York City working for Holland & Knight. McLaurin, who grew up in metro Atlanta, earned his undergraduate and master's degrees at the University of Georgia and attended Yale University's School of Law, where he earned his J.D. in 2014. McLaurin clerked for Judges Jill Pryor and Robin Rosenbaum of the U.S. Court of Appeals for the Eleventh Circuit.

Kaufman is not on record as being directly linked to any of the three administrative complaints. Kaufman earned his law degree from Emory University. Before going into private practice, he worked in the office of former Gov. Sonny Perdue's executive counsel and for Fulton County Superior Court Judge Craig Schwall.

On Tuesday, Evans notified Georgia Republican Party chairman John Watson that the mailer included knowingly false and defamatory statements that were made with malice. Her contention, if proven, could constitute libel, even though McLaurin is a public figure.

Evans' letter said the mailer rested on "a baseless administrative complaint" filed by Kaufman's allies and demanded the Republican Party issue a second mailer retracting the claims.

The mailer cited "ongoing criminal investigations" into "false swearing" and "illegal access and manipulation of the state online voter registration system" and an "ongoing state ethics investigation" it alleged was based on a "failure to report thousands of dollars in campaign contributions."

Kaufman wouldn't comment on the flyer's allegations. His spokesman, Phil Kent, forwarded a statement from a state GOP executive director Carmen Foskey Bergman, who said, "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.'"

The original administrative complaint against McLaurin, dismissed in May, centered on whether McLaurin met the state's residency and citizenship requirements for running for office. State Administrative Law Judge Kimberly Schoer ruled that he met both the state's two-year residency requirement and a one-year requirement for living in House District 51.

To meet the state's residency requirement, McLaurin had to establish his Georgia residency by the Nov. 8, 2016, election and his residency in the House district within a year of next month's Nov. 6 election, Holcomb said.

Schoer ruled on April 30 that McLaurin "convincingly testified at the administrative hearing that he decided to move back to Georgia in the summer of 2016 and made all the necessary arrangements to permanently do so by the end of October 2016, including notifying his employer and his landlord, moving all his belongings to Georgia, changing his mailing address, transferring to and working in the Atlanta office of his employer, and registering to vote in Georgia. Having weighed all the evidence in the record, the court concludes that [McLaurin] has proven that he was a citizen of Georgia on or before Nov. 6, 2016."

Kemp, in a final decision issued on May 18, also concluded McLaurin qualified as a candidate.

Three days later, Russo filed a second complaint with Kemp's office, this time claiming that, when McLaurin registered to vote on Oct. 11, 2016, he falsely stated he was living in Georgia when he was still living in New York. Russo also claimed that, even though the administrative law judge and the secretary of state decided McLaurin's candidacy was legal, McLaurin still allegedly lied when he filled out his qualifying affidavit last March because he claimed to have lived in the state two years and in his district for a year.

State law counts backward from Election Day in determining whether a candidate is a legal resident.

Russo's second administrative complaint, now five months old, became the basis for the mailer's allegations that McLaurin is under criminal investigation. Once it has been investigated by the secretary of state's staff, it may be forwarded to the state Board of Elections for further action.

The state election board has the option of referring the case either to the Fulton County district attorney or the state attorney general for potential prosecution. It can also dismiss it.

"But just because they dismiss it doesn't mean the allegations in the complaint are false," Russo said.

Holcomb called the qualifying form "poorly drafted." McLaurin filled it out consistent with the state legal residency requirements and the length of his residency prior to Election Day on Nov. 6, Holcomb said. How long he had lived in Georgia and the district when he signed up to run for office wasn't relevant to whether he met the residence qualifications, Holcomb said.

McLaurin said Russo is quibbling over what day in October 2016 McLaurin officially ended his New York residency and reestablished his legal residence in Georgia.

McLaurin said when he registered to vote that he had already moved his belongings and his pet back to Georgia, had notified his New York landlord he was terminating his lease and arranged to return to Holland & Knight in Atlanta.

“To be clear, if I had accessed the Georgia voter registration page to update my address a mere four days later, I would not in their view be guilty of a felony,” McLaurin said.

Kemp spokeswoman Candice Broce called the case “open and ongoing,” adding, “I cannot disclose any details.”

A ‘Gotcha’ Moment

Russo said he was obliged to file the complaint to make sure the secretary of state and election board were aware of what he claimed were McLaurin’s transgressions. He said state officials could “take whatever action they want.”

“There is no malice,” Russo added. “There is a complaint.

“The complaint alleges violations of two [election] statutes. A violation of both of those statutes is a felony. ... Obviously, Mr. McLaurin is a public figure. There is evidence to support the complaint. ... It’s accurate to say he’s under criminal investigation,” he said.

Russo said the second complaint has no relation to the first one that was dismissed, although he said it derived from McLaurin’s testimony at the hearing.

“What we lost on was that he had reestablished his citizenship in Georgia as of Nov. 6, 2016,” Russo said. “I am saying his testimony and evidence in the case showed he wasn’t a resident of Georgia at the time when he registered to vote on Oct. 11 [2016]. ... That’s what the state election board complaint involves.”

“I do think it’s serious, if someone is accessing the Georgia online registration system to register to vote when he is not a resident of the state of Georgia.”

But Holcomb called the claim a political play. “My take is that everything they have done was just to provide some support to these mailers they are sending. ... They knew they didn’t have any basis for any of the claims,” Holcomb said.

In a response to Russo’s complaint, Holcomb said Russo is resting his contention that McLaurin still lived in New York when he registered to vote in Georgia on the date his New York lease officially ended—Oct. 14, 2016—and on his 2016 tax forms, which listed Oct. 15, 2016, as his last day in New York.

“So, according to Mr. Russo, Mr. McLaurin was barred from even updating his Georgia contact information with any Georgia governmental agency—in the middle of his move to Georgia—until the clock ticked midnight at the end of his New York lease,” Holcomb said.

Holcomb accused Russo of trying to create a “gotcha” moment during the campaign.

“For the sake of argument, even if Mr. Russo’s arbitrary and self-serving reading of the code is correct and there were technical discrepancies with Mr. McLaurin’s registration, Mr. McLaurin was not aware of any discrepancies at the time that he registered,” Holcomb said “For his complaint to be successful, Mr. Russo

has to do more than show Mr. McLaurin was wrong—he has to show that Mr. McLaurin knew that Mr. Russo’s reading of the code was correct and that Mr. McLaurin knowingly lied anyway. He cannot.”

McLaurin, he added, voted in the 2016 presidential election in Georgia.

A Final Complaint

Fulton County Republicans filed one final complaint against McLaurin that is also the subject of the mailer allegations. On Sept. 24, Strickland Brockington Lewis partner Bryan Tyson complained to the state campaign finance commission that McLaurin had not properly reported Holcomb’s legal services. Tyson filed it on behalf of Roger Wise, another GOP activist who has previously lost campaigns for the Fulton County Commission and the state Senate.

Candidates are not required to report attorney pro bono services as campaign contributions. But Tyson contends that any firm expenditures, including salaries to associates and staff, are not included in that exemption. While Tyson acknowledged Holcomb “could definitely volunteer his time,” if he employed other firm resources while representing McLaurin, “They should have been paid for by Mr. McLaurin’s campaign or [listed] as an in-kind contribution” as well as subject to campaign contribution limits.

Tyson acknowledged that he doesn’t know whether Holcomb used firm resources or, if he did, to what extent he did so. He said the complaint was based on the scope of the administrative hearing last spring, the evidence presented and letters Holcomb wrote on McLaurin’s behalf defending him against the Republican complaints. “From my review of the record, there appeared to be significant expenditures of firm resources,” he said.

“To my knowledge, I have never seen a campaign finance commission ruling or advisory opinion that allowed a corporate entity or partnership to be a volunteer,” Tyson said. But, he added, “I have never seen a case where anyone tested this issue on one side or the other as to a law firm.”

Tyson said the campaign finance commission has not yet considered whether there is a basis for an investigation of Wise’s complaint and has the option of referring it to the state attorney general for further action.

“Any violation of the campaign finance act is listed as a criminal offense,” Tyson said. “Historically, it has been handled as an administrative matter. ... I wouldn’t consider an ethics investigation as a criminal investigation. ... Most often, these are resolved as a fine to the commission.”