

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

MICHAEL J. DAUGHERTY,
Contestant,
v.

CIVIL ACTION NO: 2021CV344953

FULTON COUNTY REGISTRATION AND
ELECTION BOARD, DEKALB COUNTY
REGISTRATION AND ELECTION BOARD,
COFFEE COUNTY BOARD OF
REGISTRATION AND ELECTIONS,
GEORGIA STATE ELECTION BOARD,
BRAD RAFFENSPERGER, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF STATE,
RAPHAEL G. WARNOCK, AND THOMAS
JONATHAN OSSOFF,
Defendants.

**SENATOR RAPHAEL WARNOCK'S
ANSWER TO CONTESTANT'S PETITION FOR ELECTION CONTEST**

Senator Raphael Warnock, by and through his attorneys, submits the following Answer to Michael J. Daugherty's ("Contestant") Petition for Election Contest (the "Petition"). Senator Warnock has never been properly and timely served in this case. Accordingly, Senator Warnock was not obligated by any governing rule of Georgia law to file an answer by today's date. Nevertheless, out of an abundance of caution (and particularly in light of Contestant's previous filings of motions for default judgments against other defendants in this matter), and without waiving his right to any of the defenses asserted herein concerning improper service, Senator Warnock files the instant Answer responding to the allegations in the Petition as follows:

FIRST DEFENSE

The Petition should be dismissed because it is moot.

SECOND DEFENSE

The Petition should be dismissed for insufficiency of process and insufficient service of process pursuant to O.C.G.A. § 9-11-12(b)(4) and (5).

THIRD DEFENSE

The Petition should be dismissed for lack of personal jurisdiction, pursuant to O.C.G.A. § 9-11-12(b)(2).

FOURTH DEFENSE

The Petition is barred by laches and should be dismissed.

FIFTH DEFENSE

The Petition should be dismissed because Contestant lacks standing to bring an election contest under O.C.G.A. 21-2-521, as he is neither a candidate nor an “aggrieved elector.”

SIXTH DEFENSE

The Petition should be dismissed for lack of subject matter jurisdiction pursuant to O.C.G.A. § 9-11-12(b)(1).

SEVENTH DEFENSE

The Petition should be dismissed because Contestant fails to state a claim upon which relief can be granted pursuant to O.C.G.A. 9-11-12(b)(6).

EIGHTH DEFENSE

Without waiving the above defenses, or any other defenses to which Senator Warnock may be entitled, Senator Warnock answers the allegations of the Petition as follows. Any admission herein is limited to the express language of the response and shall not be deemed an implied admission of additional facts.

PRELIMINARY STATEMENT

Contestant's Preliminary Statement contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Senator Warnock denies the allegations.

THE PARTIES

1. Senator Warnock lacks sufficient knowledge to either admit or deny the allegations contained in this paragraph and therefore denies the allegations.

2. Senator Warnock admits that the Fulton County Registration and Elections Board conducted the November 3, 2020 general election and the January 5, 2021 run-off election in Fulton County. The remaining allegations contained in this paragraph call for a legal conclusion to which no response is required.

3. Senator Warnock admits that the DeKalb County Registration and Elections Board conducted the November 3, 2020 general election and the January 5, 2021 run-off election in DeKalb County. The remaining allegations contained in this paragraph call for a legal conclusion to which no response is required.

4. Senator Warnock admits that the Coffee County Board of Elections and Registration conducted the November 3, 2020 general election and the January 5, 2021 run-off election in Coffee County. The remaining allegations contained in this paragraph call for a legal conclusion to which no response is required.

5. Senator Warnock admits that Brad Raffensperger, in his official capacity as Georgia Secretary of State, and the Georgia State Elections Board performed their duties as prescribed by law concerning the November 3, 2020 general election and the January 5, 2021 run-off election in Georgia. The remaining allegations contained in this paragraph call for a legal conclusion to which no response is required.

6. Senator Warnock admit that Thomas Jonathan Ossoff was a candidate for U.S. Senate in the November 3, 2020 general election and the January 5, 2021 run-off election. Senator Warnock denies the remaining allegations in the paragraph.

7. Senator Warnock admits that Raphael G. Warnock was a candidate for U.S. Senate in the November 3, 2020 special election and the January 5, 2021 special run-off election. Senator Warnock denies the remaining allegations in the paragraph.

JURISDICTION AND VENUE

8. Senator Warnock denies that jurisdiction is proper in this Court.

9. Senator Warnock denies that venue is proper before this Court.

STATUTORY REQUIREMENTS

10. Senator Warnock lacks sufficient knowledge to either admit or deny the allegations contained in this paragraph and therefore denies the same.

11. Senator Warnock lacks sufficient knowledge to either admit or deny the allegations contained in this paragraph and therefore denies the same.

12. Senator Warnock admits that Thomas Jonathan Ossoff and David Perdue were among the candidates for U.S. Senate in the November 3, 2020 general election, and that Kelly Loeffler and Reverend Raphael Warnock were among the candidates in the special election for U.S. Senate held on November 3, 2020. Senator Warnock further admits that Thomas Jonathan Ossoff and David Perdue were candidates in the Senate run-off election held on January 5, 2021, and that Kelly Loeffler and Reverend Raphael Warnock were candidates in the special run-off election held on January 5, 2021. Senator Warnock denies the remaining allegations in paragraph 12.

13. Senator Warnock admits that the results of the January 5, 2021 run-off election were certified on January 19, 2021. The results of the November 3, 2020 general election were

certified on November 20, 2020. Senator Warnock denies the remaining allegations in paragraph 13.

14. Senator Warnock admits the Fulton County Registration and Elections Board and DeKalb County Registration and Elections Board were the election superintendents for their respective counties for the November 3, 2020 general election and the January 5, 2021 run-off election. Senator Warnock denies the remaining allegations in paragraph 14.

15. Senator Warnock denies the allegations in paragraph 15.

16. Senator Warnock denies the allegations in paragraph 16.

17. Senator Warnock denies the allegations in paragraph 17.

18. Senator Warnock lacks sufficient knowledge to either admit or deny the allegations contained in Exhibit 1 and therefore denies the allegations contained therein.¹

COUNT 1

Senator Warnock admits that Georgia Code § 21-2-522(1), which is set out as prefatory language in Count I, provides for an election contest on the basis of misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result.

1. The first full, unnumbered paragraph 1 of Count 1, beginning with “As reflected in Count 1,” contains a legal conclusion to which no response is required. To the extent a response is required Senator Warnock denies the allegations.²

a. Senator Warnock denies the allegations contained in subparagraph 1(a) of Count 1.

¹ Paragraph 18 of Contestant’s Petition states: “The Contestant avers and incorporates by reference as if state [sic] verbatim herein Exhibits 1-[]” To the extent Petitioner has attempted to incorporate by reference any of the other exhibits attached to his petition in paragraph 18, he has failed to do so. They should not be treated as being incorporated into paragraph 18.

² For ease of reference, Senator Warnock will refer to this as “paragraph 1 of Count 1,” herein.

- b. Senator Warnock admits that Ga. Code §21-2-322(16) states that voting machines used in Georgia must, when properly operated, register or record correctly and accurately every vote cast. The remaining allegations in subparagraph 1(b) of Count 1 are legal conclusions to which no response is required. To the extent a response is required, Senator Warnock denies the allegations.
 - c. Senator Warnock admits that Ga. Code §21-2-367(d) states that county or municipal governing authorities must ensure that optical scanning voting systems are in good working order. All further allegations in subparagraph 1(c) of Count 1 are legal conclusions to which no response is required. To the extent a response is required Senator Warnock denies the allegations. Senator Warnock lacks sufficient information to respond to the allegations regarding the video of the Fulton County Board of Registration and Elections meeting as no video was provided with the Petition.
 - d. Senator Warnock admits that Ga. Code §21-2-324(b) requires that the Secretary certify that voting machines can be safely and accurately used. All further allegations in subparagraph 1(d) of Count 1 are legal conclusions to which no response is required. To the extent a response is required Senator Warnock denies the allegations.
2. Senator Warnock denies the allegations contained in paragraph 2 of Count 1.
- a. Senator Warnock lacks sufficient knowledge to either admit or deny the allegations contained in subparagraph 2(a) of Count 1 and therefore denies the same.
 - b. Senator Warnock lacks sufficient knowledge to either admit or deny the allegations contained in subparagraph 2(b) of Count 1 and therefore denies the same.

- c. Subparagraph 2(c) of Count 1 contains mere characterizations to which no response is required. To the extent a response is required, Senator Warnock denies the allegations. To the extent Contestant seeks to incorporate Exhibit 10 into subparagraph 2(c) of Count 1, the graphical and numerical portions of the Exhibit speak for themselves. Senator Warnock denies all characterizations included on the exhibit. To the extent Contestant seeks to incorporate Exhibit 1 into subparagraph 2(c) of Count 1, Senator Warnock lacks sufficient knowledge to admit or deny the statements contained therein, and therefore denies the same.
3. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegations contained in paragraph 3 of Count 1, and therefore denies the same.
 - a. Senator Warnock denies Contestant's characterization of Exhibit 2 in subparagraph 3(a) of Count 1 and states that Exhibit 2 speaks for itself. Senator Warnock also denies the additional allegations contained in subparagraph 3(a) of Count 1.
 - b. Senator Warnock denies Contestant's characterization of Exhibit 3 in subparagraph 3(b) of Count 1 and states that Exhibit 3 speaks for itself. To the extent a response is required, Senator Warnock denies the same.
4. Senator Warnock denies Contestant's characterization of Exhibit 4 in paragraph 4 of Count 1 and states that Exhibit 4 speaks for itself. The additional assertions in paragraph 4 of Count 1 are legal conclusions to which no response is required. To the extent a response is required, Senator Warnock denies the same.
 - a. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation contained in subparagraph 4(a) of Count 1 and Exhibit 5, and therefore denies the same. The additional assertions in subparagraph 4(a) are legal conclusions to which

no response is required. To the extent a response is required, Senator Warnock denies the same.

- b. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation contained in subparagraph 4(b) of Count 1 and Exhibit 6, and therefore denies the same.
- c. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation contained in subparagraph 4(c) of Count 1 and Exhibit 7, and therefore denies the same.
- d. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegations contained in paragraphs 4(d), 4(d)(i), 4(d)(ii), 4(d)(iii), 4(d)(iii)(a), and 4(d)(iii)(b) of Count 1 and Exhibit 8, and therefore denies the allegations. Exhibit 12 contains characterizations, speculation, and opinions which do not require a response. To the extent one is required, Senator Warnock denies the allegations. Senator Warnock denies the additional characterizations and legal conclusions contained in paragraphs 4(d), 4(d)(i), 4(d)(ii), and 4(d)(iii) of Count 1.
- e. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegations contained in paragraphs 4(e), 4(e)(i), 4(e)(ii), 4(e)(iii), 4(e)(iv), 4(e)(v), and 4(e)(vi) of Count 1 and Exhibit 8, and therefore denies the same. Exhibit 12 contains characterizations, speculation, and opinions which do not require a response. To the extent one is required, Senator Warnock denies those allegations. Senator Warnock denies the additional characterizations and legal conclusions contained in paragraphs 4(e), 4(e)(i), 4(e)(ii), 4(e)(iii), 4(e)(iv), 4(e)(v), and 4(e)(vi) of Count 1.

5. Senator Warnock denies that the quoted text in paragraph 5 is contained within Ga. Code Ann. § 21-2-70 and denies the legal conclusions contained in that paragraph. Senator Warnock denies that he was informed of any of the allegations contained in subparagraphs 5(a) through 5(e) of Count 1, and lacks sufficient knowledge to admit or deny that any other Defendant was informed of the facts contained in subparagraphs 5(a) through 5(e). Senator Warnock further denies the legal conclusion that any of the allegations contained in subparagraphs 5(a) through 5(e) of Count 1 constitute “misconduct, irregularities, [or] potential fraud.”

- a. Senator Warnock admits that Mr. Favorito made statements to the Fulton County Election Board on 11/13/2020 and 12/10/2020 and testified before a Georgia House Committee on 12/10/2020. Senator Warnock denies that Mr. Favorito testified before any Georgia House Committee on 12/30/2020. Senator Warnock denies all characterizations of Mr. Favorito’s comments contained in subparagraph 5(a) of Count 1 and states that Mr. Favorito’s testimony speaks for itself. Senator Warnock lacks sufficient knowledge to confirm or deny the factual allegations in Mr. Favorito’s testimony and therefore denies the same.
- b. Senator Warnock admits that Ms. Voyles testified before a Georgia Senate Committee on 12/03/2020. Senator Warnock denies that Ms. Voyles testified before any Georgia House Committee on 12/30/2020. Senator Warnock denies the characterizations of Ms. Voyles’s testimony contained in subparagraph 5(b) of Count 1 and states that Ms. Voyles’s testimony speaks for itself. Senator Warnock lacks sufficient knowledge to admit or deny whether Ms. Voyles was employed as a poll manager or the factual allegations contained in her statements and therefore denies the same.

- c. Senator Warnock denies that Ms. Thorne testified before the Georgia House Committee on Governmental Affairs on 12/03/2020 and therefore denies the characterizations of Ms. Thorne's testimony contained in paragraph 5(c) of Count 1. Senator Warnock lacks sufficient knowledge to admit or deny whether Ms. Thorne was employed as a poll manager and poll worker trainer by Fulton County.
- d. Senator Warnock admits that Ms. Thorne and Ms. Voyles were terminated as poll workers on 12/17/20. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegations concerning the reasons for their terminations and therefore denies the same. Senator Warnock admits that the Secretary of State's Office issued a press release containing the statements quoted in subparagraph 5(d) of Count 1.
- e. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation contained in subparagraph 5(e) and therefore denies the same. Senator Warnock denies that Ga. Code § 21-2-324 includes the quoted language in subparagraph 5(e) of Count 1.

COUNT 2

Senator Warnock admits that Georgia Code § 21-2-522(3), which is set out as prefatory language in Count 2, provides for an election contest when illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result.

- 1. Senator Warnock denies the allegations contained in paragraph 1 of Count 2.
 - a. Senator Warnock denies that there was a November 2, 2020 election or that any ballots were adjudicated for any such election. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation that the number of ballots adjudicated in the January 5, 2021 election is unknown and therefore denies the same. The rest of subparagraph 1(a) of Count 2 contains characterizations and legal

conclusions to which no response is required. To the extent a response is required, Senator Warnock denies the allegations.

- i. Sub-subparagraph 1(a)(i) of Count 2 contains legal conclusions to which no response is required. To the extent a response is required, Senator Warnock denies the allegations.
 - ii. Senator Warnock denies the factual allegations in sub-subparagraph 1(a)(ii) of Count 2.
- b. Senator Warnock denies that there was a hand count audit of the November 3, 2020 senatorial election. Subparagraph 1(b) of Count 2 also contains legal conclusions to which no response is required. To the extent a response is required, Senator Warnock denies the same.
- c. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation contained in subparagraph 1(c) of Count 2 and Exhibit 5 and therefore denies the same. Subparagraph 1(c) of Count 2 also contains legal conclusions and mere characterizations to which no response is required. To the extent a response is required, Senator Warnock denies the same.
- d. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation contained in subparagraph 1(d) of Count 2 and Exhibit 5 and therefore denies the same. Subparagraph 1(d) of Count 2 also contains legal conclusions and mere characterizations to which no response is required. To the extent a response is required, Senator Warnock denies the same.
- e. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation contained in subparagraph 1(e) of Count 2 and therefore denies the same.

Subparagraph 1(e) of Count 2 also contains characterizations to which no response is required. To the extent a response is required, Senator Warnock denies the same.

2. Paragraph 2 of Count 2 contains characterizations and legal conclusions to which no response is required. To the extent a response is required, Senator Warnock denies the same. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation contained in Exhibits 19 through 26 and therefore denies the same. Senator Warnock denies the characterizations contained in these exhibits.

- a. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation contained in subparagraph 2(a) of Count 2 and therefore denies the same. Senator Warnock denies that Ga. Code § 21-2-386 describes the physical processing of ballots.
- b. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegations contained in subparagraph 2(b) of Count 2 and therefore denies the same.
- c. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegations contained in subparagraph 2(c) of Count 2 and therefore denies the same.
- d. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegation contained in subparagraph 2(d) of Count 2 and therefore denies the same. Subparagraph 2(d) of Count 2 also contains characterizations to which no response is required. To the extent one is required, Senator Warnock denies the same.

3. Senator Warnock denies the characterizations contained in paragraph 3 of Count 2. Exhibit 12 contains characterizations, speculation, and opinions which do not require a response.

To the extent one is required, Senator Warnock denies those allegations. Exhibits 8 and 9 are links to videos of hearings of Georgia state government committees. Senator Warnock lacks sufficient knowledge to admit or deny the allegations contained in the videos linked at Exhibits 8 and 9 and so denies the same.

- f. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegations contained in subparagraph 3(f) of Count 2 and therefore denies the same. Subparagraph 3(f) of Count 2 also contains legal conclusions to which no response is required. To the extent a response is required, Senator Warnock denies those allegations.
- g. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegations contained in subparagraph 3(g) of Count 2 and therefore denies the same. Subparagraph 3(g) also contains legal conclusions to which no response is required. To the extent a response is required, Senator Warnock denies those allegations.
- h. Senator Warnock lacks sufficient knowledge to admit or deny the factual allegations contained in subparagraph 3(h) of Count 2 and therefore denies the same. Subparagraph 3(h) of Count 2 also contains characterizations and legal conclusions to which no response is required. To the extent a response is required, Senator Warnock denies those allegations.
- i. Subparagraph 3(i) of Count 2 contains characterizations and legal conclusions to which no response is required. To the extent a response is required, Senator Warnock denies the same.

6. Senator Warnock lacks sufficient knowledge to admit or deny the allegations contained in paragraph 6 of Count 2 and therefore denies the same.

COUNT 3

Senator Warnock admits that Georgia Code § 21-2-522(4), which is set out as prefatory language in Count 3, provides for an election contest for any error in counting the votes or declaring the result of the primary or election, if such error would change the result.

1. Senator Warnock denies the allegations contained in paragraph 1 of Count 3.
 - a. Senator Warnock lacks sufficient knowledge to admit or deny the allegations contained in subparagraph 1(a) of Count 3 and sub-subparagraphs 1(a)(i), 1(a)(ii), and 1(a)(iii) and therefore denies the same.
 - b. Subparagraph 1(b) of Count 3 contains mere characterizations to which no response is required. To the extent a response is required, Senator Warnock denies the same.
 - c. Senator Warnock lacks sufficient knowledge to admit or deny the allegations contained in subparagraph 1(c) of Count 3 and therefore denies the same.
 - d. Senator Warnock lacks sufficient knowledge to admit or deny the allegations contained in subparagraph 1(d) and sub-subparagraphs 1(d)(i), 1(d)(ii), 1(d)(iii), and 1(d)(iv) of Count 3 and therefore denies the same.
2. Senator Warnock denies the allegations contained in paragraph 2 of Count 3.
 - a. Senator Warnock lacks sufficient knowledge to admit or deny allegations contained in paragraph 2(a) of Count 3.
 - b. Senator Warnock lacks sufficient knowledge to admit or deny allegations contained in subparagraph 2(b) of Count 3.
 - c. Senator Warnock lacks sufficient knowledge to admit or deny the allegations contained in subparagraph 2(c) of Count 3 and therefore denies the same.

3. Paragraph 3 of Count 3 contains mere characterizations and legal conclusions to which no response is required. To the extent a response is required, Senator Warnock denies the allegations.

- a. Senator Warnock lacks sufficient knowledge to admit or deny the allegations contained in subparagraph 3(a) of Count 3 and therefore denies the same. Subparagraph 3(a) of Count 3 also contains legal conclusions and characterizations to which no response is required. To the extent such a response is required, Senator Warnock denies the same.³

PRAYER FOR RELIEF

Senator Warnock denies that Contestant is entitled to any of the relief requested in paragraphs (a) through (k) of the Prayer for Relief, and further states that the requested relief is contrary to Georgia law and outside this Court's authority to grant.

Senator Warnock denies any and all remaining allegations contained in the Petition not previously admitted, denied, or otherwise controverted.

WHEREFORE, Senator Warnock respectfully requests that this Court dismiss this action in its entirety.

[signature block on following page]

³ Senator Warnock notes that Contestant has moved to strike this paragraph of the Petition, but that the Court has not yet ruled on his motion. *See* Mot. to Amend. Pet. Entered on 01/25/2021.

Dated: April 9, 2021.

Respectfully submitted,

/s/ Adam M. Sparks

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**Pro Hac Vice Application Forthcoming*

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the within and foregoing **SENATOR
RAPHAEL WARNOCK'S ANSWER TO CONTESTANT'S PETITION FOR ELECTION
CONTEST** via *Odyssey eFileGA*, which will automatically provide notice and service to all
counsel of record.

This 9th day of April 2021.

/s/ Adam M. Sparks
Adam M. Sparks
Georgia Bar No. 341578
Counsel for Senator Warnock