

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

FLORIDA ELECTIONS COMMISSION,

Petitioner,

vs.

Case Nos. 23-2658FEC
23-2661FEC
23-2662FEC

FRIENDS OF FLORIDA,

Respondent.

_____/

FLORIDA ELECTIONS COMMISSION,

Petitioner,

vs.

Case No. 23-2659FEC

ROBERT BURNS,

Respondent.

_____/

FLORIDA ELECTIONS COMMISSION,

Petitioner,

vs.

Case Nos. 23-2660FEC

ROBERT WILLIAM BURNS, III,

Respondent.

_____/

PRE-HEARING STIPULATION

COMES NOW, PETITIONER, FLORIDA ELECTIONS COMMISSION (“Commission”), by and through its undersigned attorney, and hereby responds to the Order of Pre-Hearing Instructions entered on July 26, 2023, and states as follows:

Attempts to Stipulate.

Counsel for the Petitioner and Respondents, Friends of Florida and Robert William Burns, III (collectively “Respondents”), were working towards the preparation of a joint pre-hearing stipulation when communication ceased. Counsel has not received a confirmation from Respondents as to every section of the below stipulation. When communication ceased, Respondents had previously agreed to the information in Sections A, B, D, F, G, I, J, & K. For Section C, Petitioner has not been provided with Respondents’ exhibits. Therefore, no objections can be made at this time. For Section E, Respondents disagreed with a few of the proposed admissions; however, the admissions were set forth in response to Petitioner’s First Request for Admissions. For Section H, Respondents have not provided a response.

A. Concise Statement of the Nature of the Controversy.

In 2020, the Commission received four sworn complaints from two individuals and a referral from the Division of Elections alleging that Respondents violated Chapters 104, and 106, Florida Statutes.

Following investigation, the Commission found probable cause to charge Robert Burns with violating the following:

- 1) Accepting an excessive cash contribution,
- 2) Certifying that a campaign treasurer’s report was true, correct, and complete when it was not,
- 3) Failing to report contributions,
- 4) Deliberately failing to include information required by Chapter 106, Florida Statutes,
- 5) Making or authorizing prohibited expenditures, and
- 6) Attempting to corruptly influence, deceive, or deter electors in voting.

Following investigation, the Commission found probable cause to charge Friends of Florida with violating the following:

- 1) Accepting an excessive cash contribution,
- 2) Failing to notify its filing officer that no reports would be filed,
- 3) Failing to report contributions,
- 4) Deliberately failing to include information required by Chapter 106, Florida Statutes,
- 5) Making or authorizing prohibited expenditures,
- 6) Failing to include proper disclaimers on political advertisements, and
- 7) Attempting to corruptly influence, deceive, or deter electors in voting.

B. A Brief General Statement of Each Party’s Position.

1. Petitioner:

Robert Burns was the sole member of Friends of Florida, a political committee formerly registered with the Division of Elections. Shortly after the formation of the committee in 2020, Mr. Burns, individually and on behalf of the committee, ceased filing campaign treasurer's reports with the Division of Elections. The committee continued to engage in political activity and campaigned for and against candidates, and accepted contributions and made expenditures, but failed to disclose its financial activity to the public. Respondents failed to report contributions required to be reported, in violation of Section 106.19(1)(b), Florida Statutes. The committee's bank records reflect ten contributions totaling \$42,293.08 that Respondents failed to disclose. Respondents deliberately failed to include information required by Chapter 106, Florida Statutes, when they failed to file campaign treasurer's reports disclosing expenditures made. The committee's bank records reflect 50 expenditures totaling \$43,353.08 that Respondents failed to disclose.

Respondents committed additional violations of the Campaign Financing Act when they made or authorized expenditures without sufficient funds on deposit in May, August, and September of 2020 in violation of Section 106.19(1)(d), Florida Statutes.

Friends of Florida's bank records show that it deposited a \$60 cash contribution, which is excessive and a violation of Chapter 106.09(1)(b), Florida Statutes.

Friends of Florida paid for and published six political advertisements that did not include the required statutory language as set forth in Section 106.143(1)(c), Florida Statutes.

In reporting periods where Friends of Florida had no financial activity to report, it had a duty to notify its filing officer that no report would be filed but failed to do so.

Respondents attempted to corruptly influence, deceive, or deter electors in voting. Respondents published a political advertisement that used inflammatory language and cast a candidate, who was a white individual, as a supporter of the Confederacy in an election where the incumbent was a black individual.

The Orders of Probable Cause in these matters contain 100 counts. Undersigned counsel for Petitioner recognizes that the Commission found probable cause on counts that

are duplicative in the underlying matters or were settled in a prior complaint. Therefore, Petitioner agrees to dismiss the following counts and proceed on the remaining 64 counts:

Friends of Florida

FEC 20-259: N/A

FEC 20-341: Dismiss Counts 6 & 10

FEC 20-446: Dismiss Counts 1-4, 9-13, 19-24, 28-29

Robert Burns

FEC 20-343: Dismiss Counts 1-2

FEC 20-444: Dismiss Counts 1-4, 9-13, 19-24

2. Respondent:

Robert Burns is the sole member of Friends of Florida, The Relentless Group, and The Space Coast Rocket. The Space Coast Rocket is an online newspaper started by Robert Burns as a journalist in August of 2019, which provides local news to the community with a focus on politics. Friends of Florida was the first Political Action Committee Robert Burns has ever been affiliated with, and has never served as Chair or Treasurer in any organization subject to Florida Campaign Finance laws.

Shortly after filing the first report for Friends of Florida, Robert Burns' home was partially flooded and the documents which contained the log-in credentials to submit his reports were destroyed. He received a call from the Division of Elections inquiring about missed reports which is when he informed them of the lost credentials. Mr. Burns never received another set of log-in credentials from the Division of Elections. Since everything was being tracked electronically through his bank, Mr. Burns was sure he could reconcile the reports once he received the information to gain access back to the system.

When Mr. Burns opened the bank account for Friends of Florida, the bank informed him that a minimum deposit of \$50 was required to open the account. Mr. Burns had \$60 (three \$20 bills) on his person and used that to open the account. He reported it to the Division of Elections as a contribution from The Relentless Group which is a fictitious name for Robert Burns, himself. The funds used to open the account do not fit the definition of "contribution" according to 106.19(1)(b) as the deposit was not made for the purpose of influencing the results of an election or making an

electioneering communication. The deposit was that of an logistical and necessary operational expense to open the required bank account rather than the acceptance of a cash contribution to the PAC.

The Petitioner's totals for contributions and expenditures are inaccurate as they fail to account for credit card chargebacks which repeatedly were withdrawn and redeposited to the bank account. They are not new and separate contributions and expenditures. Mr. Burns was unaware of the chargebacks that resulted in the balance of the bank account to reflect negative while he was continuing to operate under the understanding that the funds were still there.

Friends of Florida did not publish any political advertisements that did not include the required statutory language. However, Facebook when publishing the advertisements themselves, ads their own language to the ad that is not a part of the language submitted by Friends of Florida. The language submitted and approved by Facebook from the Friends of Florida is viewable when clicking on the details of the ad and does not include the added language by Facebook themselves. The language in question is identical to that of the Facebook ads run by Governor Ron DeSantis and every other candidate that ran a political ad on Facebook.

Respondents did not try to corruptly influence an election. Mr. Burns used the information he received about an opposing candidate and created an ad that reflected the information he received. It is not corruption to inform the public about information received about a candidate running for office, even if it is negative. The interpretation of the ad is subjective, and depending on who saw the ad could be taken as a positive or a negative dependent upon whether or not the viewer agreed with the positions portrayed in the ad.

Mr. Burns is a 100% disable combat veteran attributed to extreme PTSD and mental health conditions related to his combat service. He did not and could not have anticipated the EXTREME level of public attacks he would receive directly from the complainant during this campaign. Because of the complainants large social media following and daily defamatory attacks, Mr. Burns suffered physical attacks that resulted in a hospital stay, extreme emotional and mental distress from the endless attacks by the complainant through social media, press conferences, mail pieces to the community,

lawsuits, robo-texts and robo-calls attacking Mr. Burns and his family directly. Any failures of reporting were not intentional are willing, but a symptom of the EXTREME abuse he suffered during the campaign period.

C. Exhibits.

1. Petitioner's Exhibits.

- 1) Friends of Florida's Statement of Organization of Political Committee (DS-DE 5) form filed March 18, 2020
- 2) Friends of Florida's Appointment of Campaign Treasurer and Designation of Campaign Depository for Political Committees (DS-DE 6) form Filed March 18, 2020
- 3) Letter from the Division of Elections to Friends of Florida Dated March 19, 2020
- 4) 2020 Calendar of Reporting Dates for Political Committees/Independent Expenditures-Only Organizations Registered with the Division of Elections
- 5) List of Friends of Florida's Campaign Treasurer's Reports Filed with the Division of Elections
- 6) Friends of Florida's 2020 M3 Campaign Treasurer's Report & Queued Items Report
- 7) Friends of Florida's 2020 M4 Campaign Treasurer's Report & Queued Items Report
- 8) Letters from the Division of Elections to Friends of Florida Dated June 11, 2020, and June 22, 2020
- 9) Letter from the Division of Elections to Friends of Florida dated July 9, 2020, and USPS Tracking
- 10) Division of Elections' Final Order Cancelling Friends of Florida's Registration as a Political Committee Filed February 23, 2021
- 11) List of Friends of Florida's Campaign Documents on file with the Division of Elections
- 12) Email from Robert Burns to Helen Hinson dated April 11, 2022
- 13) The Space Coast Rocket's Application for Registration of Fictitious Name and Limited Liability Company Information for RB3 Ventures LLC
- 14) The Relentless Group's Fictitious Name Detail and Application for Registration of Fictitious Name
- 15) Facebook Ads Published by Friends of Florida
- 16) Facebook Receipts for Robert Burns
- 17) Letter from TD Bank to Helen Hinson Dated December 23, 2020
- 18) Friends of Florida's PNC Bank Records
- 19) 2020 Primary Election Results

- 20) Official Certificate of County Canvassing Board Martin County Dated August 22, 2020
- 21) United States Census Bureau Decennial Census for Indiantown Village, Florida
- 22) Additional Facebook Receipts for Robert Burns
- 23) Friends of Florida's Raise The Money Records
- 24) Division of Elections' Electronic Filing System (EFS) Credential Request Form
- 25) Friends of Florida's Campaign Finance Activity as of March 13, 2024
- 26) Text messages between Robert Burns and Guyton Stone from August 3, 2020 through August 19, 2020
- 27) Division of Elections' Notice Dated February 4, 2019
- 28) Division of Elections' Political Committee Handbook Rev. 9/27/2019
- 29) Division of Elections' Political Committee EFS User's Guide dated January 2011
- 30) Division of Elections' History Notes on Friends of Florida
- 31) Guyton Stone's Qualifying Documents
- 32) Guy Parker's Qualifying Documents
- 33) Deposition of Robert Burns taken on October 6, 2023

2. Respondent's Exhibits.

- 1) Governor DeSantis Facebook ads
- 2) Facebook posts by complainant Randy Fine
- 3) Robert Burns DD214
- 4) Robert Burns Disability findings
- 5) Florida Today article ref. Robert Burns and Randy Fine
- 6) Florida Politics article ref. Robert Burns and Randy Fine

D. Names and Addresses of All Witnesses.

1. Petitioner's Witnesses.

Robert Burns, Individually and as Chairperson

Friends of Florida
3146 Verdi Circle
Palm Bay, FL 32909

Donna S. Brown, Chief

Bureau of Election Records
Division of Elections
R.A. Gray Bldg., Room 316
500 South Bronough Street
Tallahassee, FL 32399

2. Respondent's Witnesses.

None.

E. Concise Statement of the Facts Which are Admitted and Will Require No Proof at the Hearing.

1. On March 18, 2020, Friends of Florida became registered as a political committee with the Division of Elections.
2. Robert Burns was appointed as chairperson and treasurer for the Friends of Florida.
3. Robert Burns was the sole member of Friends of Florida.
4. Friends of Florida's campaign depository was located at PNC Bank.
5. Robert Burns personally made a \$60 cash contribution to Friends of Florida on March 19, 2020.
6. The fictitious name "The Relentless Group" was not registered with the Division of Corporations until after March 19, 2020.
7. Respondents did not file any campaign treasurer's reports with the Division of Elections after May 10, 2020.
8. Respondents knew they were required to report all contributions received and all expenditures made by the political committee on the committee's campaign treasurer's reports.
9. Respondents did not report any contributions that were received by Friends of Florida after April 30, 2020.
10. Respondents did not report any expenditures that were made by Friends of Florida after April 30, 2020.
11. Respondents were hired by Brian West to consult on the 2020 Indiantown mayoral election.
12. Respondents were hired to advocate for the election of Guyton Stone for Mayor of Indiantown in 2020.

13. Friends of Florida knew that it was required to notify the Division of Elections that no report was being filed when it had not received funds, made contributions, or expended reportable funds.
14. Guyton Stone was a 2020 candidate for Mayor of Indiantown.
15. Guy Parker was a 2020 candidate for Mayor of Indiantown.
16. Robert Burns met with Guyton Stone prior to August 18, 2020.
17. Robert Burns has never met with Guy Parker.
18. Respondents paid for the Facebook advertisements that are the subject of the Orders of Probable Cause.
19. Respondents were responsible for the content of the Facebook advertisements that are the subject of the Orders of Probable Cause.
20. On February 19, 2021, Friends of Florida's registration as a political committee was cancelled by the Division of Elections.

F. Concise Statement of The Issues of Law on Which There is Agreement.

1. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 106.25(5), 120.569, and 120.57(1), Fla. Stat. (2020)
2. The Commission has the burden to prove the alleged violations by clear and convincing evidence. Diaz de la Portilla v. Fla. Elec. Comm'n, 857 So. 2d 913, 917 (Fla. 3d DCA 2003).
3. As noted by the Supreme Court of Florida:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the

mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re: Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). The Supreme Court of Florida also explained that, although the “clear and convincing” standard requires more than a “preponderance of the evidence,” it does not require proof “beyond and to the exclusion of a reasonable doubt.” Id.

4. The Commission must prove that Respondents violated a provision of Chapters 104 or 106, Florida Statutes, and that the act or omission constituting the violation was "willful." § 106.25(3), Fla. Stat. (2020). “[T]he determination of willfulness is to be made by the fact-finder based upon the evidence.” Fla. Elec. Comm'n v. Blair, 52 So. 3d 9, 15 (Fla. 1st DCA 2010). Willfulness is a question of fact. § 106.25(3), Fla. Stat. See McGann v. Fla. Elec. Comm'n, 803 So. 2d 763, 764 (Fla. 1st DCA 2001); Beardslee v. Fla. Elec. Comm'n, 962 So. 2d 390, 393 (Fla. 5th DCA 2007); Fugate v. Fla. Elec. Comm'n, 924 So. 2d 74, 76 (Fla. 1st DCA 2006); Guetzloe v. Fla. Elec. Comm'n, 927 So. 2d 942, 945 (Fla. 5th DCA 2006).

G. Concise Statement of the Issues of Fact Which Remain to be Litigated.

1. Petitioner:

Whether Friends of Florida willfully violated Section 106.09(1)(b), Florida Statutes, when it accepted an excessive cash contribution.

Whether Friends of Florida willfully violated Section 106.07(7), Florida Statutes, when it failed to notify the filing officer that no report would be filed.

Whether Friends of Florida willfully violated Section 106.143(1)(c), Florida Statutes, when it failed to include proper disclaimers on political advertisements.

Whether Respondents knowingly and willfully violated Section 106.19(1)(b), Florida Statutes, when they failed to report contributions required to be reported by Chapter 106, Florida Statutes.

Whether Respondents knowingly and willfully violated Section 106.19(1)(c), Florida Statutes, when they deliberately failed to include information required by Chapter 106, Florida Statutes.

Whether Respondents knowingly and willfully violated Section 106.19(1)(d), Florida Statutes, when they made or authorized expenditures prohibited by Chapter 106, Florida Statutes.

Whether Respondents willfully violated Section 104.061(1), Florida Statutes, when they attempted to corruptly influence, deceive, or deter electors in voting.

2. Respondent:

Whether Friends of Florida violated Section 106.09(1)(b), Florida Statutes, when and if it accepted an excessive cash contribution.

Whether Friends of Florida violated Section 106.07(7), Florida Statutes, when it failed to notify the filing officer that no report would be filed.

Whether Friends of Florida willfully violated Section 106.143(1)(c), Florida Statutes, when and if it failed to include proper disclaimers on political advertisements.

Whether Respondents knowingly and willfully violated Section 106.19(1)(b), Florida Statutes, when they failed to report contributions required to be reported by Chapter 106, Florida Statutes.

Whether Respondents knowingly and willfully violated Section 106.19(1)(c), Florida Statutes, when they failed to include information required by Chapter 106, Florida Statutes.

Whether Respondents knowingly and willfully violated Section 106.19(1)(d), Florida Statutes, when they made or authorized expenditures possibly prohibited by Chapter 106, Florida Statutes.

Whether Respondents willfully violated Section 104.061(1), Florida Statutes, when and if they attempted to corruptly influence, deceive, or deter electors in voting.

H. Concise Statement of the Issues of Law Which Remain for Determination by the Administrative Law Judge.

1. Petitioner:

The legal standard of willfulness to be applied by the fact-finder is not defined in statute or rule; however, the United States Supreme Court has repeatedly held that, “[w]here willfulness is a statutory condition of civil liability, it is generally taken to cover not only knowing violations of a standard, but reckless ones as well.” Safeco Ins. Co. of America v. Burr, 127 S.Ct. 2201, 2208 (2007) citing McLaughlin v. Richland Shoe Co., 486 U.S. 128, 132-133 (1988).

In Safeco, the Court analyzed whether a willful violation under the Fair Credit Reporting Act, whose purpose is to ensure fair and accurate credit reporting, would include a violation committed in reckless disregard. The Court reiterated that, “‘willfully’ is a word of many meanings whose construction is often dependent on the context in which it appears.” Safeco Ins. Co. of America, 127 S.Ct. 2208 citing Bryan v. United States, 524 U.S. 184, 191 (1998). The Court stated that “‘willfully,’ as used in a civil penalty provision, includes ‘conduct marked by careless disregard whether or not one has the right so to act.’” Safeco Ins. Co. of America, 127 S.Ct. 2208 quoting United States v. Murdock, 290 U.S. 389, 395 (1933). The Court stated that the construction reflected common law usage which treated those actions made in “reckless disregard” as “willful” violations and that “a common law term in a statute comes with a common law meaning, absent anything pointing another way.” Safeco Ins. Co. of America, 127 S.Ct. 2208-09 citing Beck v. Prupis, 529 U.S. 494, 500-501 (2000).

The common law has generally understood “recklessness” in the civil liability sphere as conduct violating an objective standard and includes the risk of harm is either known or “so obvious that it should be known.” Safeco Ins. Co. of America, 127 S.Ct. 2214 citing Farmer v. Brennan, 511 U.S. 825, 836 (1994).

In Safeco, the petitioners argued that “willful” was limited to “knowing” violations. The Court was unpersuaded and opined that, as the Fair Credit Reporting Act also used the modifier

“knowingly” in another section of the civil penalty provision, the addition of the modifier would thereby be superfluous and incongruous. Safeco Ins. Co. of America, 127 S. Ct. 2210 (2007).

In terms of applying a criminal intent standard to the Florida Election Code, in Fugate, the Court determined that, “[i]n the absence of a statute or properly promulgated rule defining the term, the case-law derived definition used by the ALJ was reasonable.” In the underlying case, the issue was whether a Respondent willfully violated Section 104.31(1)(a), Florida Statutes (2003), a provision of the Corrupt Practices Act, which forbade a public official from using his or her official authority or influence for the purpose of interfering with an election or coercing or influencing another person’s vote. The ALJ adopted a criminal standard of willfulness and defined the term as an act “that is voluntarily and intentionally performed with specific intent and bad purpose to violate or disregard the requirements of the law.” Fugate v. Fla. Elec. Comm'n, 924 So. 2d 74, 75 (Fla. 1st DCA 2006).

The legal standard to be applied by the fact-finder in this matter for violations of the Campaign Financing Act (Chapter 106, Florida Statutes) is that Respondents either committed the acts while knowing that, or showing reckless disregard for whether the acts were prohibited, or failed to commit an act while knowing that, or showing reckless disregard for whether, the acts were required. For those violations within Chapter 106, Florida Statutes, that specifically include the modifier of “knowingly” (Section 106.19, Florida Statutes), the Respondents must have committed the acts with knowledge that their actions were prohibited or failed to perform an act with knowledge that the act was required.

For violations of the Corrupt Practices Act (Chapter 104, Florida Statutes,) the legal standard to be applied is that of a knowing or reckless disregard standard. However, for those

violations that include modifiers such as “coerce” or “corruptly,” it would be logical to apply a criminal standard of willfulness as the ALJ did in Fugate.

2. Respondent:

I. Concise Statement of Any Disagreement as to the Application of the Rules of Evidence.

There are no current disagreements as to the application of the rules of evidence. The Parties agree that evidence may be taken in accordance with Sections 120.569, and 120.57, Florida Statutes, Rule 28-106.213, Florida Administrative Code, and Chapter 90, Florida Statutes.

J. Pending Motions.

Petitioner’s Motion for Official Recognition.

K. Estimated Length of Time Required for Hearing

The Parties estimate that 2 days should be sufficient time for the final hearing in this case.

Respectfully submitted this 9th day of April 2024.

Robert Burns, Chair
Friends of Florida
Respondents, Pro Se
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