

Florida Elections Commission

2022-2023 Annual Regulatory Plan

Section 120.74(1)(a)

Law enacted or amended on or after October 1, 2021, which creates or modifies the duties or authority of the agency.	1. Must agency adopt rules to implement the law?	2.a. If rulemaking is necessary, has a Notice of Rule Development been published? If yes, provide the Florida Administrative Register citation.	2.b. The date by which the Notice of Proposed Rule is intended to be published.	3. If rulemaking is not necessary, provide a concise explanation.
Chapter 2022-56 Sections 106.08 and 106.113, F.S.	No	N/A	N/A	The amended statutes are self-implementing.
Chapter 2022-73 Sections 104.0616, 104.185, and 104.186, F.S.	No	N/A	N/A	The amended statutes are self-implementing.

Florida Elections Commission
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Section 120.74(1)(b)

Laws not listed pursuant to section 120.74(1)(a) for which the agency expects to implement by rulemaking by July 1, 2023, except emergency rulemaking.	Intent of the rulemaking.
Sections 106.24(5) and 106.26, F.S.	Amend Rule 2B-1.004, F.A.C., regarding the Chair's authority to appoint one or more Commissioners to conduct hearings, in order to resolve cases more efficiently.

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Section 120.74(1)(c)

Laws identified in last year's annual regulatory plan as requiring rulemaking for which Notice of Proposed Rule has not been published.	Has a Notice of Rule Development been published? If yes, provide the Florida Administrative Register citation.	If agency subsequently determined that rulemaking is not necessary, provide a concise explanation.
None	N/A	N/A

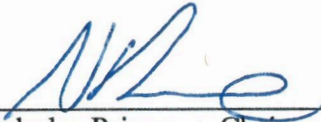
Florida Elections Commission

2022-2023 Annual Regulatory Plan

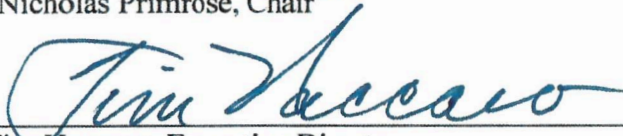
Section 120.74(1)(d)

This certification verifies that the undersigned have reviewed this Annual Regulatory Plan and verify that the Florida Elections Commission (FEC) regularly reviews its rules to determine if those rules remain consistent with FEC's rulemaking authority and the laws implemented and that FEC performed its most recent review during June through September of 2022.

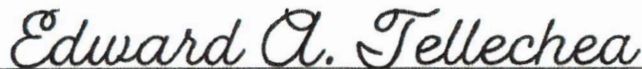
This certification further verifies that because it has not identified in its annual regulatory plan any laws for which rule development is required, FEC is in compliance with Section 120.74(4), Florida Statutes.



Nicholas Primrose, Chair



Tim Vaccaro, Executive Director



Edward A. Tellechea, Counsel for the Commission

SETTLEMENT AGREEMENT

On June 15, 2022, the U.S. District Court for the Northern District of Florida in *American Civil Liberties Union of Florida, Inc. v. Cord Byrd, in his official capacity as Florida Secretary of State, and the Florida Elections Commission*, No. 4:21-cv-190, entered an order granting summary judgment and a permanent injunction against the Florida Elections Commission (the “FEC”) and in favor of Plaintiffs, the American Civil Liberties Union of Florida, Inc., Fair Vote Florida; Our Votes Matter, and Florida Votes Matter (collectively, “Plaintiffs”). *See* ECF No. 73.

On August 4, 2022, the District Court ruled that Plaintiffs were entitled to attorney’s fees. *See* ECF No. 84. The District Court directed that determination of the amount of the award was to proceed in accordance with Local Rule 54.1. *Id.*

In effort to avoid further litigation in this matter, the FEC and Plaintiffs have agreed to settle the attorney’s-fees dispute. In full satisfaction of all attorney’s fees and costs, the FEC shall pay Plaintiffs \$65,000.00 by June 14, 2023. No other dispute exists between the FEC and Plaintiffs in this case.

Should either the FEC or Plaintiffs be forced to obtain judicial relief to enforce the terms of this Settlement Agreement, attorney’s fees may be recovered by the prevailing party. Florida law controls the interpretation of this Settlement Agreement. The FEC and Plaintiffs agree that any enforcement action involving this Settlement Agreement should be brought in Florida state courts. The proper venue for any such action is Leon County, Florida.

All Authorized Representatives signing this Settlement Agreement below agree that they are authorized to sign on behalf of the entities listed below.

----- *Signature Page to follow* -----

*Am. Civil Liberties Union of Fla., Inc. v. Cord Byrd, in his official capacity as
Florida Secretary of State, and the Florida Elections Commission*
No. 4:21-cv-190

Settlement Agreement Signature Page

/s/ _____
Authorized Representative

/s/  _____
Authorized Representative

Name: _____
Title: _____
Date: _____

Name: Tiffani Lennon
Title: Executive Director, ACLU
Date: December 9, 2022

*On behalf of the Florida Elections
Commission*

*On behalf of the American Civil
Liberties Union of Florida, Inc., Fair
Vote Florida, Our Votes Matter, &
Florida Votes Matter*



Florida Elections Commission

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FEC Litigation Update – January 24, 2023

NetChoice: U.S. District Court, Northern District, Tallahassee Division.

- Tech trade associations NetChoice and CCIA challenge to SB 7072, which prohibits a social media platform from willfully deplatforming a candidate and authorizes the FEC to fine social media platforms that violate the statute \$250,000/\$25,000 per day.
 - 5/27/21 – Complaint filed.
 - 6/30/21 – Order granting Preliminary Injunction.
 - 5/23/22 – Order Affirming Preliminary Injunction RE s. 106.072(2), F.S.
 - 6/22/22 – Order Granting Joint Motion for Stay of the issuance of mandate pending petition for writ of certiorari to U.S. Supreme Court.
 - 9/21/22 – AG's and FEC's Petition for Writ of Certiorari to U.S. Supreme Court filed.
 - 10/24/22 – NetChoice Response and Cross Petition filed.
 - 11/23/22 – AG and FEC Reply Brief and Brief in Opposition to Cross Petition filed.
 - 01/20/23 – Court Conference scheduled.

ACLU: U.S. District Court, Northern District, Tallahassee Division.

- ACLU and other organizations challenge to SB 1890, which sets a \$3,000 contribution limit to political committees that sponsor or oppose a constitutional amendment proposed by initiative.
 - 6/04/21 – Second Amended Complaint and Motion for Preliminary Injunction filed (adds Commission as Defendant).
 - 7/1/21 - Order granting Preliminary Injunction against Commission.
 - 06/15/22 – Order Granting Motion for Summary Judgement and Permanent Injunction in favor of Plaintiffs.
 - 8/04/22 – Order Granting Motion for Entitlement to Attorney's Fees and Costs

Kells Hetherington: U.S. District Court, Northern District, Pensacola Division

- First Amendment challenge to s. 106.143(3), F.S., which prohibits campaigning based upon party affiliation in nonpartisan elections.
 - 4/15/21 – Complaint and Motion for Preliminary Injunction filed.
 - 7/14/21 – Order granting Preliminary Injunction.
 - 12/27/21 – Motions for Summary Judgment filed.

- 11/08/22 – Order Declaring Unconstitutional the portion of s. 106.143(3), F.S., which prohibits campaigning based on party affiliation in nonpartisan elections, both facially and as applied, and Granting Permanent Injunction.
- Court ordered Attorney's Fees and Costs against Defendants.

	COL A03 AGY REQUEST FY 2023-24	COL A04 AGY REQ N/R FY 2023-24	COL A05 AG REQ ANZ FY 2023-24	CODES
	POS AMOUNT	POS AMOUNT	POS AMOUNT	
LEGAL AFFAIRS/ATTY GENERAL				41000000
PGM: FL ELECTIONS COMM				41300000
CAMPAIGN FIN/ELECTN FRAUD				41300100
GOV OPERATIONS/SUPPORT				16
EXEC LEADERSHIP/SUPPRT SVC				1602.00.00.00
LEGAL AFFAIRS				4000000
RETAIN AND RECRUIT QUALIFIED				
FLORIDA ELECTIONS COMMISSION				
PERSONNEL				4003A60
SALARY RATE				000000
SALARY RATE.....	106,000			
=====				
SALARIES AND BENEFITS				010000
ELECTIONS COMMISSION TF -STATE	126,734			2511 1
=====				
TOTAL: RETAIN AND RECRUIT QUALIFIED				4003A60
FLORIDA ELECTIONS COMMISSION				
PERSONNEL				
TOTAL ISSUE.....	126,734			
TOTAL SALARY RATE.....	106,000			
=====				

AGENCY ISSUE NARRATIVE:

2023-2024 BUDGET YEAR NARRATIVE: IT COMPONENT? NO

Legislative Budget Request FY 2023-2024
 Budget Entity: Campaign Finance and Election Fraud Enforcement
 Issue Title: Retain and Recruit Qualified Florida Elections Commission Personnel

Issue Summary:

The Florida Elections Commission (FEC) is requesting \$126,734 in additional Salaries and Benefits and \$106,000 in Rate to provide competitive pay adjustments and to retain specialized staff within the Commission

Issue Description:

The FEC is responsible for enforcing the provisions of Chapters 104 and 106, Florida Statutes, regarding corrupt election practices and campaign finance. Since 2016, public concern regarding elections has increased, and the Commission has experienced a steady increase in cases.

Since September 2018, the FEC has experienced turnover of 50 percent of all agency staff. The Commission, as with other state agencies, has also experienced challenges in recruiting and retaining qualified personnel due to the Covid-19 Pandemic. For example, one of the agency's most essential positions - the Administrative Assistant II who acts as Complaints Coordinator for the hundreds of sworn complaints and referrals the Commission receives annually - remained vacant from May 2021 to July 2022. The Commission advertised the position four times before finding a suitable candidate. The Commission has also experienced challenges finding suitable candidates for attorney vacancies. Just recently, the Commission advertised for a senior attorney and only received two applications.

	COL A03	COL A04	COL A05	
	AGY REQUEST	AGY REQ N/R	AG REQ ANZ	
	FY 2023-24	FY 2023-24	FY 2023-24	
	POS	AMOUNT	POS	AMOUNT
				AMOUNT
LEGAL AFFAIRS/ATTY GENERAL				41000000
PGM: FL ELECTIONS COMM				41300000
CAMPAIGN FIN/ELECTN FRAUD				41300100
GOV OPERATIONS/SUPPORT				16
EXEC LEADERSHIP/SUPPRT SVC				1602.00.00.00
LEGAL AFFAIRS				4000000
RETAIN AND RECRUIT QUALIFIED				
FLORIDA ELECTIONS COMMISSION				
PERSONNEL				4003A60

The Commission's challenge is exacerbated by the fact that the statewide average for various class codes is significantly higher than Commission salaries for employees serving within those classes. The average of the following class codes falls below the statewide average:

FEC Class Code/Average Salary	Proposed salary average
Administrative Assistant II / \$36,750	\$38,427
Administrative Assistant II-SES / \$40,247	\$43,658
Senior Attorney / \$65,915	\$73,179
Chief Legal Counsel / \$79,035	\$100,176

Commission subject matter requires capable staff, including investigators and other personnel, able to understand complex statutes, financial reports, and bank records; and the loss of even one of the seventeen positions has a significant impact upon the Commission. On average, it takes an employee at least one year to learn and become proficient in FEC subject matter. This requires significant investment in time and training by fellow FEC staff. The Commission anticipates the retirement of three, long-term staff within the next three to five years. Two of those positions include the Agency Clerk and an investigator, each of whom has approximately 20 years' experience working for the Commission. The Commission is requesting additional rate to provide flexibility in funding salary increases to recruit or retain qualified personnel.

Detailed Costs:
 \$106,000 Rate
 Salary and Benefits
 Florida Elections Commission Trust Fund: \$126,734

COL A03		COL A04		COL A05		CODES
AGY REQUEST		AGY REQ N/R		AG REQ ANZ		
FY 2023-24		FY 2023-24		FY 2023-24		
POS	AMOUNT	POS	AMOUNT	POS	AMOUNT	

LEGAL AFFAIRS/ATTY GENERAL	41000000
PGM: FL ELECTIONS COMM	41300000
CAMPAIGN FIN/ELECTN FRAUD	41300100
GOV OPERATIONS/SUPPORT	16
EXEC LEADERSHIP/SUPPRT SVC	1602.00.00.00
LEGAL AFFAIRS	4000000
RETAIN AND RECRUIT QUALIFIED	
FLORIDA ELECTIONS COMMISSION	
PERSONNEL	4003A60

POSITION DETAIL OF SALARIES AND BENEFITS:

FTE	BASE RATE	ADDITIVES	BENEFITS	SUBTOTAL	LAPSE %	LAPSED SALARIES AND BENEFITS
A03 - AGY REQUEST FY 2023-24						
CHANGES TO CURRENTLY AUTHORIZED POSITIONS						
RA01 RATE & SALARY ADJ - BENEFITS NO FTE						
C1111 001	0.00	106,000	20,734	126,734	0.00	126,734
TOTALS FOR ISSUE BY FUND						
2511 ELECTIONS COMMISSION TF						
0.00	106,000		20,734	126,734		126,734

TOTAL: EXEC LEADERSHIP/SUPPRT SVC	1602.00.00.00
BY FUND TYPE	
TRUST FUNDS	126,734
SALARY RATE	106,000

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Florida Elections Commission

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TO: FEC Commissioners

FROM: Tim Vaccaro, Executive Director

DATE: January 24, 2023

SUBJECT: PROPOSED FEC 2023 MEETING DATES

Commissioners, please see the following meeting dates for your consideration.

Tuesday/Wednesday, May 16-17, 2023

Tuesday/Wednesday, August 15-16, 2023

Tuesday/Wednesday, November 14-15, 2023