

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

In Re: Independent Party of Florida

Case No.: FEC 16-048

TO: Independent Party of Florida
Earnest William Bach, Chair
700 Starkey Road, Building 300, Ste. 365
Largo, FL 33771-2334

Division of Elections
500 S Bronough Street, Room 316
Tallahassee, FL 32399

NOTICE OF HEARING (INFORMAL HEARING ON APPEAL OF NOTICE OF INTENT TO REVOKE)

A hearing will be held in this case before the Florida Elections Commission on, **May 18, 2016 at 12:30 pm**, *or as soon thereafter as the parties can be heard*, at the following location: **Senate Office Building, 404 South Monroe Street, Room 110-S, Tallahassee, Florida 32399**

Failure to appear in accordance with this notice will constitute a waiver of your right to participate in the hearing. Continuances will be granted only upon a showing of good cause.

This hearing will be conducted pursuant to Section 106.25, Florida Statutes, which governs your participation as follows:

If you are the Respondent, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission. However, some cases (including those in which consent orders or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless you request to be heard or the Commission requests that your case be considered separately on the day of the hearing, your case will *not* be individually heard.

If you are the Complainant, you may attend the hearing, but you will *not* be permitted to address the Commission. In addition, some cases (including those in which consent orders or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless the Respondent requests to be heard or the Commission requests that the case be considered separately on the day of the hearing, the case will *not* be individually heard.

If you are an Appellant, and you have requested a hearing, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission.

Please be advised that both confidential and public cases are scheduled to be heard by the Florida Elections Commission on this date. As an Appellant, Respondent or Complainant in one case, you will *not* be permitted to attend the hearings on other confidential cases.

The Commission will electronically record the meeting. Although the Commission's recording is considered the official record of the hearing, the Respondent may provide, at his own expense, a certified court reporter to also record the hearing.

If you require an accommodation due to a disability, contact Donna Ann Malphurs at (850) 922-4539 or by mail at 107 West Gaines Street, The Collins Building, Suite 224, Tallahassee, Florida 32399, at least 5 days before the hearing.

See further instructions on the reverse side.

Amy McKeever Toman
Executive Director
Florida Elections Commission
May 3, 2016

Please refer to the information below for further instructions related to your particular hearing:

If this is a hearing to consider **an appeal from an automatic fine**, the Filing Officer has imposed a fine on you for your failure to file a campaign treasurer's report on the designated due date and, by filing an appeal, you have asked the Commission to consider either (1) that the report was in fact timely filed; or (2) that there were unusual circumstances that excused the failure to file the report timely. You are required to prove your case. If the Commission finds that the report was filed timely or that there were unusual circumstances that excused the failure, it may waive the fine, in whole or in part. The Commission may reduce a fine after considering the factors in Section 106.265, Florida Statutes. If the Commission finds that the report was not timely filed and there were no unusual circumstances, the fine will be upheld.

If this is a hearing to consider a **consent order before a determination of probable cause has been made**, the Commission will decide whether to accept or reject the consent order. If the Commission accepts the consent order, the case will be closed and become public. If the Commission rejects the consent order or does not make a decision to accept or deny the consent order, the case will remain confidential, unless confidentiality has been waived.

If this is a hearing to consider a **consent order after a determination of probable cause has been made**, the Commission will decide whether to accept or reject the consent order. If the Commission accepts the consent order, the case will be closed. If the Commission rejects the consent order or does not make a decision to accept or deny the consent order, the Respondent will be entitled to another hearing to determine if the Respondent committed the violation(s) alleged.

If this is a **probable cause hearing**, the Commission will decide if there is probable cause to believe that the Respondent committed a violation of Florida's election laws. Respondent should be prepared to explain how the staff in its recommendation incorrectly applied the law to the facts of the case. *Respondent may not testify, call others to testify, or introduce any documentary or other evidence at the probable cause hearing.* The Commission will only decide whether Respondent should be *charged* with a violation and, before the Commission determines whether a violation has occurred or a fine should be imposed, Respondent will have an opportunity for another hearing at which evidence may be introduced.

If this is an **informal hearing**, it will be conducted pursuant Sections 120.569 and 120.57(2), Florida Statutes; Chapter 28 and Commission Rule 2B-1.004, Florida Administrative Code. At the hearing, the Commission will decide whether the Respondent committed the violation(s) charged in the Order of Probable Cause. The Respondent will be permitted to testify. However the Respondent may not call witnesses to testify.

Respondent may argue why the established facts in the Staff Recommendation do not support the violations charged in the Order of Probable Cause. At Respondent's request, the Commission may determine whether Respondent's actions in the case were willful. The Respondent may also address the appropriateness of the recommended fine. If Respondent claims that his limited resources make him unable to pay the statutory fine, *he must provide the Commission with written proof of his financial resources* at the hearing. A financial affidavit form is available from the Commission Clerk.

**DIVISION OF ELECTIONS
FEC REFERRAL FORM**

To FEC from Division of Elections

The below listed information is being referred for the following reason(s):

- Appeal of Cancellation of Party Certification
- Other:

The Division of Elections is referring this issue to the Florida Elections Commission pursuant to Section 103.095(5), Florida Statutes, and Rule 1S-2.050, Florida Administrative Code, which requires the filing officer to cancel the filings of a party if the party fails to comply with the annual public audit requirements of Section 103.121(2), Florida Statutes.

Name and Account Number

Independent Party of Florida (14481)

Special Comments:

The following documents are included:

- 2014 Annual Audit
- Initial Notice of Intent to Cancel
- Response to Notice of Intent to Cancel
- Division Letter Regarding Variances and Waivers
- Request for Variance and Waiver for 2014 Annual Audit
- Final Order
- Final Notice of Intent to Cancel
- Request for Hearing

RECEIVED
2016 FEB 17 P 2:03
ELECTIONS DIVISION

Comments:

Sent By: Kristi Reid Bronson
Date: February 16, 2016

KRB

KRB/mcc

Independent Party of Florida

700 Starkey Rd.
Bldg. 300 - Suite 365
Largo, FL 33771-2334

(727) 585-1111

flaindyparty@aol.com

<http://www.independentpartyoffloridaparty.org>

RECEIVED
DEPARTMENT OF STATE

2015 MAR 24 AM 9:49

FLORIDA STATE
DIVISION OF ELECTIONS

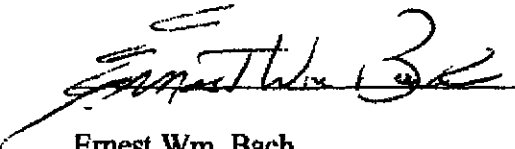
March 19, 2015

Kristi Reid Bronson, Chief
Florida Division of Elections
RA Grey Building, Room 316
500 So. Bronough St.
Tallahassee, FL 32399

Dear Ms. Bronson,

Enclosed please find our 2014 Annual Audit pursuant to Florida Statutes Section 103.121(2)

The Independent Party of Florida is the political party responsible for discharging all Independent Party of Florida affairs within the State of Florida in accordance with Florida Statutes and the Charter and By-Laws of the Independent Party of Florida.


Ernest Wm. Bach
State Chairman
Independent Party of Florida

cc: INT Treasurer

Select Year:

The 2015 Florida Statutes

<u>Title IX</u>	<u>Chapter 103</u>	<u>View Entire Chapter</u>
ELECTORS AND ELECTIONS	PRESIDENTIAL ELECTORS; POLITICAL PARTIES; EXECUTIVE COMMITTEES AND MEMBERS	

103.121 Powers and duties of executive committees.—

(1)(a) Each state and county executive committee of a political party shall have the power and duty:

1. To adopt a constitution by two-thirds vote of the full committee.
2. To adopt such bylaws as it may deem necessary by majority vote of the full committee.
3. To conduct its meetings according to generally accepted parliamentary practice.
4. To make party nomination when required by law.
5. To conduct campaigns for party nominees.
6. To raise and expend party funds. Such funds may not be expended or committed to be expended except after written authorization by the chair of the state or county executive committee.

(b) The county executive committee shall receive payment of assessments upon candidates to be voted for in a single county except state senators, state representatives, and representatives to the Congress of the United States; an affiliated party committee controlled by a leader of the Senate as defined in s. [103.092](#) shall receive payment of assessments upon candidates for the office of state senator, and an affiliated party committee controlled by a leader of the House of Representatives as defined in s. [103.092](#) shall receive payment of assessments upon candidates for the office of state representative; and the state executive committees shall receive all other assessments authorized. All party assessments shall be 2 percent of the annual salary of the office sought by the respective candidate. All such committee assessments shall be remitted to the state executive committee of the appropriate party and distributed in accordance with subsection (5), except that assessments for candidates for the office of state senator or state representative shall be remitted to the appropriate affiliated party committee.

(2) The chair and treasurer of an executive committee of any political party shall be accountable for the funds of such committee and jointly liable for their proper expenditure for authorized purposes only. The funds of each such state executive committee shall be publicly audited at the end of each calendar year and a copy of such audit furnished to the Department of State for its examination prior to April 1 of the ensuing year. When filed with the Department of State, copies of such audit shall be public documents. The treasurer of each county executive committee shall maintain adequate records evidencing receipt and disbursement of all party funds received by him or her, and such records shall be publicly audited at the end of each calendar year and a copy of such audit filed with the supervisor of elections and the state executive committee prior to April 1 of the ensuing year.

(3) Any chair or treasurer of a state or county executive committee of any political party who knowingly misappropriates, or makes an unlawful expenditure of, or a false or improper accounting for,

the funds of such committee is guilty of a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(4) The central committee or other equivalent governing body of each state executive committee shall adopt a rule which governs the time and manner in which the respective county executive committees of such party may endorse, certify, screen, or otherwise recommend one or more candidates for such party's nomination for election. Upon adoption, such rule shall provide the exclusive method by which a county committee may so endorse, certify, screen, or otherwise recommend. No later than the date on which qualifying for public office begins pursuant to s. [99.061](#), the chair of each county executive committee shall notify in writing the supervisor of elections of his or her county whether the county executive committee has endorsed or intends to endorse, certify, screen, or otherwise recommend candidates for nomination pursuant to party rule. A copy of such notification shall be provided to the Secretary of State and to the chair of the appropriate state executive committee.

(5) The state chair of each state executive committee shall return the 2-percent committee assessment for county candidates to the appropriate county executive committees only upon receipt of a written statement that such county executive committee chooses not to endorse, certify, screen, or otherwise recommend one or more candidates for such party's nomination for election and upon the state chair's determination that the county executive committee is in compliance with all Florida statutes and all state party rules, bylaws, constitutions, and requirements.

History.—ss. 20, 21, 23, 28, ch. 6469, 1913; RGS 324, 325, 327, 332; CGL 381, 382, 384, 389; s. 1, ch. 25389, 1949; s. 9, ch. 26329, 1949; s. 7, ch. 26870, 1951; s. 41, ch. 28156, 1953; s. 2, ch. 29935, 1955; s. 1, ch. 57-743; s. 1, ch. 61-157; s. 1, ch. 63-97; ss. 6, 7, 8, ch. 67-353; ss. 10, 35, ch. 69-106; s. 26, ch. 77-104; s. 32, ch. 77-175; s. 50, ch. 79-400; s. 1, ch. 82-160; s. 25, ch. 83-217; s. 2, ch. 83-242; s. 1, ch. 89-256; s. 609, ch. 95-147; s. 64, ch. 2005-277; ss. 3, 30, ch. 2011-6; HJR 7105, 2011 Regular Session.

Note.—Former ss. 102.27, 102.28, 102.30, 102.35.

Select Year:

The 2015 Florida Statutes

Title IX
ELECTORS AND
ELECTIONS

Chapter 103
PRESIDENTIAL ELECTORS; POLITICAL PARTIES;
EXECUTIVE COMMITTEES AND MEMBERS

[View Entire
Chapter](#)

103.095 Minor political parties.—

(1) Any group of citizens organized for the general purposes of electing to office qualified persons and determining public issues under the democratic processes of the United States may become a minor political party of this state by filing with the department a certificate showing the name of the organization, the names and addresses of its current officers, including the members of its executive committee, accompanied by a completed uniform statewide voter registration application as specified in s. [97.052](#) for each of its current officers and members of its executive committee which reflect their affiliation with the proposed minor political party, and a copy of its constitution, bylaws, and rules and regulations.

(2) Each elector registered to vote in the minor political party in which he or she has so designated has a fundamental right to fully and meaningfully participate in the business and affairs of the minor political party without any monetary encumbrance. The constitution, bylaws, rules, regulations, or other equivalent documents must reflect this fundamental right and must provide for and contain reasonable provisions that, at a minimum, prescribe procedures to: prescribe its membership; conduct its meetings according to generally accepted parliamentary practices; timely notify its members as to the time, date, and place of all of its meetings; timely publish notice on its public and functioning website as to the time, date, and place of all of its meetings; elect its officers; remove its officers; make party nominations when required by law; conduct campaigns for party nominees; raise and expend party funds; select delegates to its national convention, if applicable; select presidential electors, if applicable; and alter or amend all of its governing documents.

(3) The members of the executive committee must elect a chair, vice chair, secretary, and treasurer, all of whom shall be members of the minor political party, and no member may hold more than one office, except that one person may hold the offices of secretary and treasurer.

(4) Upon approval of the minor political party's filing, the department shall process the voter registration applications submitted by the minor political party's officers and members of its executive committee. It shall be the duty of the minor political party to notify the department of any changes in the filing certificate within 5 days after such changes.

(5) The Division of Elections shall adopt rules to prescribe the manner in which political parties, including minor political parties, may have their filings with the Department of State canceled. Such rules shall, at a minimum, provide for:

(a) Notice, which must contain the facts and conduct that warrant the intended action, including, but not limited to, the failure to have any voters registered in the party, the failure to notify the department of replacement officers, the failure to file campaign finance reports, the failure to adopt

and file with the department all governing documents containing the provisions specified in subsection (2), and limited activity.

(b) Adequate opportunity to respond.

(c) Appeal of the decision to the Florida Elections Commission. Such appeals are exempt from the confidentiality provisions of s. 106.25.

(6) The requirements of this section are retroactive for any minor political party registered with the department on July 1, 2011, and must be complied with within 180 days after the department provides notice to the minor political party of the requirements contained in this section. Failure of the minor political party to comply with the requirements within 180 days after receipt of the notice shall automatically result in the cancellation of the minor political party's registration.

History.—s. 46, ch. 2011-40.

Independent Party of Florida

700 Starkey Rd.

Bldg. 300 – Suite 365

Largo, FL 33771-2334

(727) 585-1111

flaindyparty@aol.com

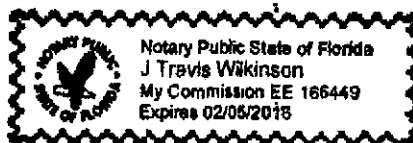
<http://www.independentpartyofflorida.org>

ANNUAL AUDIT

Statement of Support, Revenue and Expenses and Changes In Cash

For the year January 1, 2014 ending December 31, 2014

Cash on hand January 1, 2014	\$ 522.42	
Revenues during 2014: Contributions, loans, in-kind	\$ 1700.92	
Total support and revenues for 2014		\$ 2223.34
Expenditures during 2014:		
Rent	\$ 1400.12	
Telephone	131.49	
Postage	49.00	
Professional subscription	20.00	
Computer set-up and instruction	150.00	
2013 Audit, NormaDean; AIP	25.00	
Florida Dept. of Elections – late fee fine	212.73	
Total Expenditures for year 2014		\$ 1988.34
Balance of Cash On Hand December 31, 2014		\$ 235.00



JTW
3/19/15

Wilkinson Business Solutions, Inc.

Accounting ★ Finance ★ Tax ★ Payroll
Business Initialization ★ Notary Public
Licensed IRS Electronic Filer

1245 S. Missouri Ave.
Clearwater, FL 33765

www.PinellasTax.com
Info@PinellasTax.com

Phone: 727-479-4594
Fax: 727-585-7561

INDEPENDENT ACCOUNT COMPUTATION REPORT

To the Executive Committee

Independent Party of Florida

700 Starkey Rd.

Bldg. 300 Suite 365

Largo, FL 33771-2334

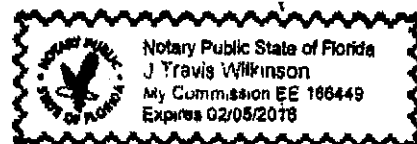
We have compiled the accompanying statement of assets, liabilities, and net assets -- modified cash basis of the Independent Florida Party (A state registered political party) as of December 31, 2014, and the related statement of activities and changes in net assets for the year then ended. We have not audited or reviewed the accompanying financial statements and accordingly, do not express an opinion or provide any assurance about whether the financial statements are in accordance with the modified cash basis of accounting.

Management is responsible for the preparation and fair presentation of the financial statements in accordance with the modified cash basis of accounting and fair designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of financial statements.

Our responsibility is to conduct the compilation in accordance with statements on standards and review services issued by the American Institute of Professional Bookkeepers. The objective of a compilation is to assist management in presenting financial in the form of financial statements without undertaking to obtain and provide any assurance that there are there a no material modification that should be made to the financial statements.

Kind Regards,


J. Travis Wilkinson, PB, QS, CEO
Wilkinson Business Solutions, Inc.





FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

June 24, 2015

Mr. Ernest Wm. Bach, Chairperson
Independent Party of Florida (14481)
700 Starkey Road, Building 300, Suite 365
Largo, Florida 33771-2334

RE: INITIAL NOTICE OF INTENT TO CANCEL

Dear Mr. Bach:

Pursuant to Rule 1S-2.050, Florida Administrative Code, you are hereby notified of the Division's intent to cancel your political party's registration based on the following:

Failure to comply with the 2014 annual public audit requirements of Section 103.121(2), Florida Statutes. The annual audit must be conducted by a certified public accountant licensed in the State of Florida.

If you object to this cancellation you must provide documentation showing that the party's registration and approved status as a political party should not be cancelled. Documentation must be provided within 30 days of the date of this letter to Department of State, Division of Elections, Bureau of Election Records, The R.A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250.

If you have any questions, please call Malcolm Chellman at (850) 245-6267.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristi Reid Bronson".

Kristi Reid Bronson, Chief
Bureau of Election Records

KRB/mcc



Division of Elections
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6240 • 850.245.6260 (Fax) election.dos.state.fl.us
Promoting Florida's History and Culture VivaFlorida.org



18-2.050 Cancellation of Political Party Filings.

(1) Definitions. Except where the context clearly indicates otherwise in this rule, the term "party" means any political party, to include a minor political party. "Division" means the Division of Elections.

(2) Cancellation. The division may cancel the filings by a party, to include its registration and approved status as a party, when:

- (a) The party fails to have any voters registered as party members;
- (b) The party fails to file campaign finance reports for more than 6 months;
- (c) The party fails to comply with the annual public audit requirements of Section 103.121(2), F.S.;
- (d) The party's aggregate reported financial activity during the calendar year is \$500 or less;
- (e) The party fails to maintain a public website;
- (f) The minor political party fails to file with the division the name and address of any replacement officer within 5 days after the death, resignation or removal of a party's officer;
- (g) The minor political party fails to file with the division changes to its filing certificate within 5 days after such change; or
- (h) The minor political party fails to adopt and file with the division the governing documents containing the provisions specified in Section 103.095(2), F.S.

(3) Notification of intent to cancel. The division shall send notification to the party's chairperson of the intent to cancel the party's filing or registration to the most recent address on file with the division for the chairperson. If the notification is returned undeliverable, the division shall send the notification to another officer of the party at the most recent address on file with the division. Within 30 days of the date of the division's mailing of the preliminary notice of intent to cancel, the party may provide additional documentation to the division showing why the party's filing or registration should not be canceled. Upon review of such documentation, if the division determines that the filing or registration should not be canceled, the party will be notified that it is in compliance. If after review of the additional documentation provided, the division determines that the filing or registration should be canceled, a final notice of intent to cancel shall be mailed by the division to the most recent address on file with the division. If no additional documentation is provided by the party within 30 days of the date of the division's mailing of the preliminary notice, the division shall mail a final notice of intent to cancel to the most recent address on file with the division.

(4) Appeal of cancelation. If the party objects to such cancelation, it must file an appeal within 30 days of the date of the division's mailing of the final notice of intent to cancel. The appeal may be accompanied by any documentation or evidence supporting the claim. The appeal must be filed with the division. The division will forward the appeal to the Florida Elections Commission.

(5) Waiver. Failure to timely file an appeal as described herein shall constitute a waiver of any such entitlement.

(6) Hearing request. A party desiring a hearing before the commission must include in the appeal a separate request for hearing.

(7) Appeal not confidential. Appeals under this rule are exempt from the confidentiality provisions of Section 106.25, F.S.

Independent Party of Florida

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Bldg. 300 – Suite 365
Largo, FL 33771-2334

(727) 585-1111

flindyparty@aol.com

<http://www.independentpartyofflorida.org>

RECEIVED
DEPARTMENT OF STATE
2015 JUL 27 AM 9:50
DIVISION OF ELECTIONS
TALLAHASSEE, FL

July 22, 2015

Kristi Reid Bronson, Chief
Florida Division of Elections
RA Grey Building, Room 316
500 So. Bronough St.
Tallahassee, FL 32399

RE: Appeal of Action To Cancel Status As Political Party

Dear Ms. Bronson,

This letter in response to the notice from the division regarding the cancellation of the status of the Independent Party of Florida as a political party due to the alleged lack of annual audit for 2014.

Please first take note that our annual audit for that calendar year was in fact submitted to the division in a timely manner on March 19, 2015. We would ask also that the division take note of the brevity of this audit which required only one typed page which included only 19 expenditures and 6 contribution/deposits for the entire calendar year, a fact that permitted our treasurer to compile said annual report in a time of less than thirty (30) minutes.

As discussed in past years and as agreed to by comments with and from various division staff members, the language of Florida Statutes referred to as that requirement for minor parties to submit an Annual Audit by a Certified Public Accountant is both ambiguous and implied rather than specified. This implied requirement is both a hardship on minor parties since they (1) find it difficult if not impossible to find a CPA who does not charge an excessively significant fee for that service even though the financial statements of those minor parties are minimal, and (2) those minor parties are usually without funds to be able to pay such a fee which, if they did with insufficient funds, would be illegal payments.

As stated above, we continue to peruse the Florida Statutes calling for the annual audit (F.S. Section 103.121(2) and still find the language to be implied rather than specific as to the requirement for the audit to be performed by a CPA, which states that “the funds of each such state executive committee shall be publicly audited at the end of each calendar year.....”

It is our contention that such audit could, and in the case of minor parties, should be permitted to be completed by an educated and legitimately licensed “Public and/or Certified Bookkeeper” who are also required to meet local and state laws and rules relating to their continuing education and licensing laws to function and offer services publicly. In this respect, INT has diligently attempted over the past four years to meet the requirements of the statutes to the best legitimate manner that we could. With that in mind we would ask that the division also take note that our audits for the past three years, while questioned in relation to the implied CPA requirement, the precedent has been set by the division in that they have been accepted for each of those years.

As we have in the past, we would ask two questions;

1 - How can a minor party who cannot find a CPA who will charge a reasonable fee for perusing these obviously simple documents requiring little time, if they do not have the funds to do so. Our queries brought quotes from CPA firms of \$1000 minimum up to a ridiculous \$2500 for our audit, so how do we pay for these services if we/they do not have the funds to do so legally? The simple solution would appear to be the above named suggestion regarding other licensed professionals.

2 - And we believe this question is significant, if the Florida Statutes "require" the annual audit to be performed by a CPA, why does it not specifically state such in F.S. Section 103.121(2), rather than generically "implying" the requirement?

Perhaps this statute should be reviewed and rewritten, but in so doing if it is, we would hope that due consideration is given to the needs and financial aspects of minor parties. However, and if changes are made to the statute language permitting minor parties options for this action, we would strongly recommend the CPA's be a continued requirement for the two major political parties since obviously the consideration of money is no object for them with their considerable financial arrangements and transfers of funds which absolutely require the utmost in the auditing of their processes.

Please send confirmation for receipt of this letter.

Respectfully,

Ernest Wm. Bach

Ernest Wm. Bach

State Chairman

Independent Party of Florida INT

CC: Malcom Chellman, Florida Division of Elections
INT Executive Committee



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

July 23, 2015

Ernest Wm. Bach, Chairperson
Independent Party of Florida (14481)
700 Starkey Road
Building 300, Suite 365
Largo, Florida 33771-2334

Re: Request for information regarding variance and waiver

Dear Mr. Bach:

In your recent correspondence to the Department of State, you inquired about the possibility of relief from the requirements of rule 1S-2.050, Florida Administrative Code. Pursuant to section 120.542(4), Florida Statutes, and rule 28-104.006, Florida Administrative Code, the Department advises you that the remedies of variance and waiver are available when a person subject to an agency rule "demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of [the] rule would create a substantial hardship or would violate principles of fairness," § 120.542(2), Fla. Stat.

I include copies of section 120.542 and rule 28-104.006 with this letter for your consideration. If you need additional information, please contact Brandy Hedges at the address and telephone number indicated below, or by email at brandy.hedges@dos.myflorida.com. Ms. Hedges is the agency clerk for the Department, so you would file with her a petition for variance or waiver regarding one of the Department's rules.

If the Department does not receive such a petition from you within 30 days of the date of this letter, it will presume that you do not intend to file a petition, and it will proceed accordingly.

Sincerely,

Kristi Reid Bronson, Chief
Bureau of Election Records

KRB/jq

Enclosures



120.542, Florida Statutes Variances and waivers.—

(1) Strict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation. A public employee is not a person subject to regulation under this section for the purpose of petitioning for a variance or waiver to a rule that affects that public employee in his or her capacity as a public employee. Agencies are authorized to grant variances and waivers to requirements of their rules consistent with this section and with rules adopted under the authority of this section. An agency may limit the duration of any grant of a variance or waiver or otherwise impose conditions on the grant only to the extent necessary for the purpose of the underlying statute to be achieved. This section does not authorize agencies to grant variances or waivers to statutes or to rules required by the Federal Government for the agency's implementation or retention of any federally approved or delegated program, except as allowed by the program or when the variance or waiver is also approved by the appropriate agency of the Federal Government. This section is supplemental to, and does not abrogate, the variance and waiver provisions in any other statute.

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

(3) The Governor and Cabinet, sitting as the Administration Commission, shall adopt uniform rules of procedure pursuant to the requirements of s. 120.54(5) establishing procedures for granting or denying petitions for variances and waivers. The uniform rules shall include procedures for the granting, denying, or revoking of emergency and temporary variances and waivers. Such provisions may provide for expedited timeframes, waiver of or limited public notice, and limitations on comments on the petition in the case of such temporary or emergency variances and waivers.

(4) Agencies shall advise persons of the remedies available through this section and shall provide copies of this section, the uniform rules on variances and waivers, and, if requested, the underlying statute, to persons who inquire about the possibility of relief from rule requirements.

(5) A person who is subject to regulation by an agency rule may file a petition with that agency, with a copy to the committee, requesting a variance or waiver from the agency's rule. In addition to any requirements mandated by the uniform rules, each petition shall specify:

- (a) The rule from which a variance or waiver is requested.
- (b) The type of action requested.
- (c) The specific facts that would justify a waiver or variance for the petitioner.
- (d) The reason why the variance or the waiver requested would serve the purposes of the underlying statute.

(6) Within 15 days after receipt of a petition for variance or waiver, an agency shall provide notice of the petition to the Department of State, which shall publish notice of the petition in the first available issue of the Florida Administrative Register. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which variance or waiver is sought, and an explanation of how a copy of the petition can be obtained. The uniform rules shall provide a means for interested persons to provide comments on the petition.

(7) Except for requests for emergency variances or waivers, within 30 days after receipt of a petition for a variance or waiver, an agency shall review the petition and request submittal of all additional information that the agency is permitted by this section to require. Within 30 days after receipt of such additional information, the agency

shall review it and may request only that information needed to clarify the additional information or to answer new questions raised by or directly related to the additional information. If the petitioner asserts that any request for additional information is not authorized by law or by rule of the affected agency, the agency shall proceed, at the petitioner's written request, to process the petition.

(8) An agency shall grant or deny a petition for variance or waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. A petition not granted or denied within 90 days after receipt of a completed petition is deemed approved. A copy of the order granting or denying the petition shall be filed with the committee and shall contain a statement of the relevant facts and reasons supporting the agency's action. The agency shall provide notice of the disposition of the petition to the Department of State, which shall publish the notice in the next available issue of the Florida Administrative Register. The notice shall contain the name of the petitioner, the date the petition was filed, the rule number and nature of the rule from which the waiver or variance is sought, a reference to the place and date of publication of the notice of the petition, the date of the order denying or approving the variance or waiver, the general basis for the agency decision, and an explanation of how a copy of the order can be obtained. The agency's decision to grant or deny the petition shall be supported by competent substantial evidence and is subject to ss. 120.569 and 120.57. Any proceeding pursuant to ss. 120.569 and 120.57 in regard to a variance or waiver shall be limited to the agency action on the request for the variance or waiver, except that a proceeding in regard to a variance or waiver may be consolidated with any other proceeding authorized by this chapter.

(9) Each agency shall maintain a record of the type and disposition of each petition, including temporary or emergency variances and waivers, filed pursuant to this section.

History.—s. 12, ch. 96-159; s. 5, ch. 97-176; s. 37, ch. 2010-102; s. 5, ch. 2013-14.

Independent Party of Florida

700 Starkey Rd.
Bldg. 300 – Suite 365
Largo, FL 33771-2334

(727) 585-1111

flindyparty@aol.com

<http://www.independentpartyofflorida.org>

FILED
Brandy Hedges
AUG 19 2015

AGENCY CLERK
DEPARTMENT OF STATE

Attn: Brandy Hedges
General Counsel's Office
500 South Bronough St.
R.A. Gray Bldg.
Tallahassee, FL 32399

August 18, 2015

Re: Request for variance and waiver for 2014 Annual Audit

Dear Ms. Hedges,

Per your July 23rd letter and according to FS120.542 and rule 28-104.006 of the Florida Administrative Code, we submit the following pertinent information relating to our request for a waiver or variance of our Annual Audit for the calendar year 2014.

As presented since 2011 the Independent Party of Florida has each year stated that the requirement of FS103.121(2) is a substantial hardship and creates a violation of the principles of fairness per Fla. Stat. 120.542(2), notwithstanding the additional probability that for INT to make payments to an entity for services rendered, while without legal funds to do so would in fact make such an act illegal.

We sincerely believe that during the time frame of 2011-2014 INT has acted in good faith to submit to the Division of Elections an annual audit each year which was performed by licensed and regulated professionals for whom a reasonable fee for their services has been paid. This continued annual submittal "has demonstrated that the purpose of the underlying statute has been achieved by other means by our party when strict application of the rule would create a substantial hardship and therefore violate those principles of fairness" as previously mentioned.

We would refer you to the financial pages for all of the aforementioned annual audits submitted to document our claims and the additional letters provided with each of those as further documentation, including our most recent letter sent to the DOE on July 22, 2015. As a final note, we would point out that the previous audits for 2011, 2012, 2013 have all been accepted by the Department.

If the Department requires any additional information or comments, we will gladly comply.

Sincerely,

Ernest Wm. Bach

Ernest Wm. Bach
State Chairman

CC: INT Executive Committee

STATE OF FLORIDA
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

FILED
Brandy Hedges
NOV 18 2015
AGENCY CLERK
DEPARTMENT OF STATE
FO 15-50

In re: Independent Party of Florida
(14481), a minor political party registered
with the Division of Elections.

Final Order No. DE-PVW-15-9

91 7108 2133 3934 9642 9985

FINAL ORDER

The Florida Department of State, Division of Elections (the "Division") has before it a request for variance and waiver of the requirements of 103.121(2), Fla. Stat., filed by the Independent Party of Florida ("Petitioner") on August 19, 2015. The Division, being fully advised as to the premises, finds and orders as follows:

Findings of Fact

1. Petitioner is a minor political party registered with the Division. It filed its initial statement of principles, constitution, and by-laws with the Division on May 24, 1993, as the Independent Party. On November 28, 2011, in compliance with section 103.095(6), Florida Statutes, Petitioner reapplied for registration as a minor political party and changed its name to the Independent Party of Florida. The Petitioner's identification number is 14481.

2. The Petitioner filed what it called its 2014 annual audit on March 24, 2015. Attached to that filing was a document entitled "Independent Account Computation Report." The report was provided by Wilkinson Business Solutions, Inc., the entity that compiled the financial information for the report, and stated, among other things, that:

We have not audited or reviewed the accompanying financial statements and accordingly, do not express an opinion or provide any assurance about whether the financial statements are in accordance with the modified cash basis of accounting.

3. On June 24, 2015, the Division mailed an Initial Notice of Intent to Cancel to the Petitioner. The notice stated that the Division's intent to cancel Petitioner's registration was based on Petitioner's failure to comply with the 2014 annual public audit requirement of section 103.121(2), and that the annual audit "must be conducted by a certified public accountant [CPA] licensed in the State of Florida." The Petitioner had to provide documentation in support of any objection to the cancellation within 30 days of the date of the notice.

4. Petitioner responded to the Initial Notice of Intent to Cancel on July 22, 2015, stating, among other things, that the Petitioner timely submitted the audit to the Division and that it was a simple audit consisting of "19 expenditures and 6 contribution/deposits for the entire calendar year" which took the Petitioner's Treasurer less than 30 minutes to complete. Further, Petitioner stated the annual audit requirement was both "ambiguous and implied rather than specified." Petitioner stated that the annual audit requirement is a hardship on minor parties due to the difficulty in finding a reasonably priced CPA and that minor parties "are usually without funds to be able to pay such a fee ..." Finally, Petitioner contended that, in the case of minor parties, the annual audit "should be permitted to be completed by an educated and legitimately licensed 'Public and/or Certified Bookkeeper' who [is] also required to meet local and state laws and rules relating to their continuing education and licensing laws to function and offer services publicly." (Emphasis in original). Petitioner also noted that its audits for the past three years had been accepted by the Division.

5. On August 19, 2015, Petitioner filed a request for variance and waiver, requesting a waiver in 2014 of the requirement of an annual public audit as set forth in 103.121(2). Among other things, the request stated:

We sincerely believe that during the time frame of 2011-2012 [Petitioner] has acted in good faith to submit to the Division of Elections an annual audit each year which was performed by licensed and regulated professionals for whom a reasonable fee for their services has been paid. This continued annual submittal "has demonstrated that the purpose of the underlying statute has been achieved by other means by our party when strict application of the rule would create a substantial hardship and therefore violate those principles of fairness" as previously mentioned. (Emphasis in original).

Petitioner further stated that the requirement of an annual audit "is a substantial hardship and creates a violation of the principles of fairness" pursuant to section 120.542(2), Florida Statutes, in that it might force them to make payments "without the legal funds to do so." Finally, Petitioner noted that the previous audits it had submitted from 2011-2013 had all been accepted by the Division.

Conclusions of Law

6. The Division of Elections has jurisdiction to administer and enforce the provisions of sections 103.091, 103.095, and 103.121, Florida Statutes, as they pertain to political parties. Section 103.121(2) requires that the funds of a party's state executive committee "be publicly audited at the end of each calendar year and a copy of such audit furnished to the Department of State for its examination prior to April 1 of the ensuing years." The Division has jurisdiction to cancel a minor political party's registration for failing to timely file that annual public audit. See § 103.095(5), Fla. Stat.; Rule 1S-2.050, Fla. Admin. Code.

7. Although the Division does have certain leeway to grant variances and waivers to agency rules "when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness" (see § 120.542(2), Fla. Stat.), the Division does not have leeway or authorization to grant variances or waivers to statutes themselves. See § 120.542(1), Fla. Stat.

8. The purported annual audit provided by Petitioner for calendar year 2014 contains an express statement by the preparer that the financial report was "not audited or reviewed" by the preparer and, thus, the preparer did "not express an opinion or provide any assurance about whether the financial statements are in accordance with the modified cash basis of accounting."

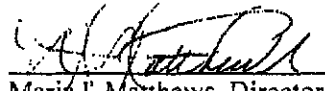
9. Petitioner's own purported audit *disclaims* that it is, in fact, an audit at all, so the Division concludes that the Petitioner's filing with the Division on March 24, 2015, does not satisfy the requirement found in section 103.121(2), Florida Statutes, regardless of the interpretation of "publicly audited." The Division does not have authority to grant a variance or waiver from that requirement.

10. The Division in turn does not need to address the allegations that application of the rule would create a substantial hardship or violate the principles of fairness pursuant to section 120.542(2), Florida Statutes. Additionally, whether Petitioner violated 103.121(2), Fla. Stat., by filing inappropriate audits in prior years does not excuse lack of performance under the statute in future years.

11. The findings of fact and conclusions of law are based on competent substantial evidence that was presented by the Petitioner and found in the Division's records.

WHEREFORE, based upon the foregoing and a complete review of the record, it is ORDERED that the request for waiver by the Independent Party of Florida (14481) is hereby DENIED and, further, that the Final Notice of Intent to Cancel the registration of the Independent Party of Florida (14481) shall be issued pursuant to section 103.095(5), Fla. Stat., and Rule 1S-2.050(2)(c), Fla. Admin. Code.

DONE AND ORDERED at Tallahassee, Florida, this 16 day of November, 2015.



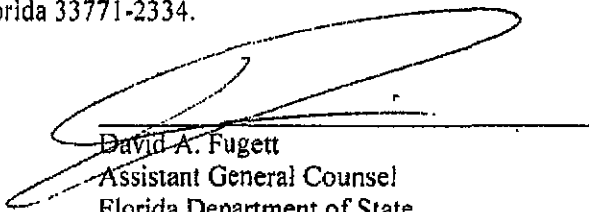
Marja J. Matthews, Director
Division of Elections

NOTICE OF RIGHTS

This Order constitutes final agency action. Judicial review of this proceeding may be instituted by filing a notice of appeal, with the filing fee prescribed by law in the District Court of Appeal, pursuant to Section 120.68, Florida Statutes, and a copy with the clerk of the Florida Department of State. Such notice must be filed within 30 calendar days of the date this order is filed in the official records of the Department of State as indicated in the Certificate of Service. Review proceedings shall be conducted in accordance with the Florida Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order was hand-delivered to the Agency Clerk, Department of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250, that a true and correct copy of the foregoing Final Order was transmitted by e-mail to Ken Plante, Coordinator, the Joint Administrative Procedures Committee, at joint.admin.procedures@leg.state.fl.us, and that a true and correct copy of the foregoing Final Order was mailed on this 16th day of November, 2015, by certified U.S. mail to Mr. Ernest Wm. Bach, Chairperson, Independent Party of Florida (14481), 700 Starkey Road, Building 300, Suite 365, Largo, Florida 33771-2334.



David A. Fugett
Assistant General Counsel
Florida Department of State
Florida Bar No. 835935
500 South Bronough Street
Tallahassee, Florida 32399



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

November 18, 2015

Mr. Ernest Wm. Bach, Chairperson
Independent Party of Florida (14481)
700 Starkey Road, Building 300, Suite 365
Largo, Florida 33771-2334

RE: FINAL NOTICE OF INTENT TO CANCEL

Dear Mr. Bach:

On June 24, 2015, the Division provided you with a Notice of Intent to Cancel pursuant to Rule 1S-2.050, Florida Administrative Code. The notice informed you of the Division's intent to revoke your party's certification as an active political party based on the committee's failure to meet the following criteria:

Failure to comply with the 2014 annual public audit requirements of Section 103.121(2), Florida Statutes.

The notice advised you to provide documentation showing that the party's registration should not be canceled. The Division received a response to this notification dated July 22, 2015. An additional notice dated July 23, 2015 advised you that remedies of variance and waiver are potentially available when a person subject to agency rule "demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of [the] rule would create a substantial hardship or would violate principles of fairness." The Division received a request for variance and waiver of the requirements of s. 103.121(2), Florida Statutes, on August 19, 2015. Your request for waiver was heard by the Department of State, Division of Elections, and a final order denying your request and ordering the issuance of a Final Notice of Intent to Cancel was filed on November 16, 2015. Accordingly, the Division hereby issues a Final Notice of Intent to Cancel.

If you object to this cancellation you must file a request for hearing within 30 days of the date of this Final Notice of Intent to Cancel. The request must be filed with the Department of State, Division of Elections, Bureau of Election Records, The R.A. Gray Building, Room 316, 500 South



Division of Elections
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399
850.245.6240 • 850.245.6260 (Fax) election.dos.state.fl.us
Promoting Florida's History and Culture VivaFlorida.org



Mr. Ernest Wm. Bach, Chairperson
November 18, 2015
Page Two

Bronough Street, Tallahassee, Florida 32399-0250, and will be forwarded to the Florida Elections Commission for a hearing based upon the notice and any supporting documentation. If you desire a personal appearance before the Commission, you must include in your request for hearing a separate request for a personal appearance. Failure to file a request for a hearing constitutes a waiver of your right to a hearing and will cause a final order to be entered canceling the party's registration.

If you have any questions please call Malcolm Chellman at (850) 245-6280.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristi Reid Bronson". The signature is written in a cursive style with a large, stylized initial "K".

Kristi Reid Bronson, Chief
Bureau of Election Records

KRB/mcc

1S-2.050 Cancellation of Political Party Filings.

(1) Definitions. Except where the context clearly indicates otherwise in this rule, the term "party" means any political party, to include a minor political party. "Division" means the Division of Elections.

(2) Cancellation. The division may cancel the filings by a party, to include its registration and approved status as a party, when:

- (a) The party fails to have any voters registered as party members;
- (b) The party fails to file campaign finance reports for more than 6 months;
- (c) The party fails to comply with the annual public audit requirements of Section 103.121(2), F.S.;
- (d) The party's aggregate reported financial activity during the calendar year is \$500 or less;
- (e) The party fails to maintain a public website;
- (f) The minor political party fails to file with the division the name and address of any replacement officer within 5 days after the death, resignation or removal of a party's officer;
- (g) The minor political party fails to file with the division changes to its filing certificate within 5 days after such change; or
- (h) The minor political party fails to adopt and file with the division the governing documents containing the provisions specified in Section 103.095(2), F.S.

(3) Notification of intent to cancel. The division shall send notification to the party's chairperson of the intent to cancel the party's filing or registration to the most recent address on file with the division for the chairperson. If the notification is returned undeliverable, the division shall send the notification to another officer of the party at the most recent address on file with the division. Within 30 days of the date of the division's mailing of the preliminary notice of intent to cancel, the party may provide additional documentation to the division showing why the party's filing or registration should not be canceled. Upon review of such documentation, if the division determines that the filing or registration should not be canceled, the party will be notified that it is in compliance. If after review of the additional documentation provided, the division determines that the filing or registration should be canceled, a final notice of intent to cancel shall be mailed by the division to the most recent address on file with the division. If no additional documentation is provided by the party within 30 days of the date of the division's mailing of the preliminary notice, the division shall mail a final notice of intent to cancel to the most recent address on file with the division.

(4) Appeal of cancellation. If the party objects to such cancellation, it must file an appeal within 30 days of the date of the division's mailing of the final notice of intent to cancel. The appeal may be accompanied by any documentation or evidence supporting the claim. The appeal must be filed with the division. The division will forward the appeal to the Florida Elections Commission.

(5) Waiver. Failure to timely file an appeal as described herein shall constitute a waiver of any such entitlement.

(6) Hearing request. A party desiring a hearing before the commission must include in the appeal a separate request for hearing.

(7) Appeal not confidential. Appeals under this rule are exempt from the confidentiality provisions of Section 106.25, F.S.

Independent Party of Florida

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flindyparty@aol.com

<http://www.independentpartyofflorida.org>

RECEIVED
2015 DEC 17 AM 10:45

December 11, 2015

Department of State - Division of Elections
Bureau of Election Records
RA Gray Building – Room 316
500 So. Bronough Street
Tallahassee, FL 32399-0250

Attn: Kristi Reid Bronson – Chief

Re: Request For Hearing of Final Order To Cancel DE-PVW-15-9

On Friday December 11, 2015 the office of the Division of Elections was contacted and telephone conversation held with Mr. Malcolm Chellman who answered our questions and offered the necessary requirements to notify the Division with our Request For Hearing on the Final Order To Cancel the certification with the State of Florida as an active political party.

We hereby formally request that hearing on this matter. It is our understanding that no further documentation is required with this request at this time however, if such is the case we would expect timely notification of same from the Division so that we may comply with that requirement

Sincerely,

Ernest Wm. Bach

Ernest Wm. Bach
State Chairman

Original document mailed via USPS on 12/12/15
Copy sent electronically 12/14/15