

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA  
ELECTIONS COMMISSION

FLORIDA ELECTIONS COMMISSION,

Petitioner,

vs.

Agency Case No.: FEC 00-006  
DOAH Case No.: 00-2582  
F.O. No.: DOSFEC 06-218

SEN. ALEX DIAZ DE LA PORTILLA,

Respondent.

FINAL ORDER

THIS CAUSE came before the FLORIDA ELECTIONS COMMISSION (Commission) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on August 18, 2006, in Tallahassee, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order, Respondent's Exceptions to the Recommended Order, and Petitioner's Response to Respondent's Exceptions to the Recommended Order. Petitioner was represented by Eric M. Lipman, Assistant General Counsel and Respondent was represented by Mark Herron, Esquire and Benedict Kuehne, Esquire.

Upon review of all the pleadings, the argument of the parties, and after a review of the complete record in this matter, the Commission makes the following findings and conclusions.

RULINGS ON RESPONDENT'S EXCEPTIONS

The Commission reviewed and considered Respondent's Exceptions and ruled as follows:

1. The Commission was unable to rule on Respondent's exceptions because no transcript of the final hearing before the Division of Administrative Hearings (DOAH) was provided. Therefore, the Commission was unable to review the entire record as required Section 120.57(1)(1), Florida Statutes (2006).

#### FINDINGS OF FACT

2. The findings of fact set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

3. There is competent substantial evidence to support the findings of fact.

#### CONCLUSIONS OF LAW

4. The Commission has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 106, Florida Statutes.

5. The conclusions of law set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

#### DISPOSITION

Upon a complete review of the record in this matter, the Commission accepts the disposition recommended by the Administrative Law Judge.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that in the matter of *Florida Elections Commission v. Sen. Alex Diaz De La Portilla*, Agency Case No. FEC 00-006, the Respondent is hereby fined \$1,000 for each of the two (2) violations of Section

106.07(5), Florida Statutes, \$1,000 for each of four violations of Section 106.19(1)(b), Florida Statutes; \$250 for each of the five violations of Section 106.143(1), Florida Statutes, \$250 for each of the five violations of Section 106.143(2), Florida Statutes,<sup>1</sup> and \$250 for the one violation of Section 106.143(4)(a), Florida Statutes.

This Final Order shall take effect upon being filed with the Clerk for the Florida Election Commission. The total fine of \$8,750.00 shall be due and owing within 30 days of entry of this order.

DONE AND ORDERED this 15<sup>th</sup> day of November 2006.

*Chance Irvine*

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Chance Irvine, Chair  
Florida Elections Commission

**NOTICE OF RIGHT TO APPEAL**

Pursuant to Section 120.68, Florida Statutes, the parties may appeal the Commission's Final Order to the appropriate district court of appeal by filing a notice of appeal both with the Clerk of the Florida Elections Commission and the Clerk of the district court of appeal. The notice must be filed within 30

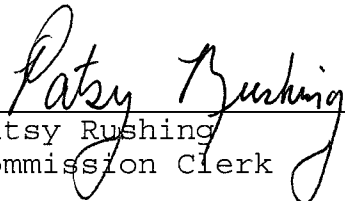
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<sup>1</sup> In *Diaz de la Portilla v. Florida Elections Commission*, 857 So.2d 913 (Fla. 3rd DCA 2003), the court affirmed the Commission's finding that Respondent violated the section of Chapter 106 that prohibits "advertisements without indications of party affiliation." However, the court incorrectly identified the section as 106.132(2). The ALJ also cited to Section 106.132(2). The correct citation is Section 106.143(2), Florida Statutes (1999).

days of the date this Final Order was filed and must be accompanied by the appropriate filing fee.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to: counsel for Respondent, Mark Herron, Esquire, MESSER, CAPARELLO & SELF, P.A., 2618 Centennial Place, Tallahassee, Florida 32308; Benedict Kuehne, Esquire, Sale & Kuehne, P.A., BankAmerica Tower, Suite 3550, 100 Southeast Second Street, Miami, Florida 33133-2154; and Eric M. Lipman, Assistant General Counsel, Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida 32399-0250 this 1 day of December, 2006.

  
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Patsy Rushing  
Commission Clerk

Copies furnished to:

Senator Alex Diaz de la Portilla, Respondent  
Andrew E. Grigsby, Complainant  
Department of State, Division of Elections, Filing Officer