

**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

**In Re: Richard Harden**

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**Case No.: FEC 16-352**

**TO:** Benjamin J. Gibson, Esquire  
Benjamin J. Gibson PA  
517 East 9th Avenue  
Tallahassee, FL 32303

Hugh Taylor  
1357 Martin Luther King Jr. Road  
Crawfordville, FL 32327

**NOTICE OF HEARING (PROBABLE CAUSE DETERMINATION)**

A hearing will be held in this case before the Florida Elections Commission on, **August 16, 2017 at 8:30 am, 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  
August 1, 2017

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.



Response to FEC 16-352 Staff Recommendation

Ben Gibson

to:

Florida Elections Commission

07/28/2017 12:52 PM

Cc:

Cole Kekelis

Hide Details

From: Ben Gibson <ben@gibsonpa.com>

To: Florida Elections Commission <fec@myfloridalegal.com>

Cc: Cole Kekelis <Cole.Kekelis@myfloridalegal.com>

Security:

To ensure privacy, images from remote sites were prevented from downloading. Show Images

1 Attachment



Response FEC 16-352 (In re Richard Harden).pdf

Donna,

Please find attached Respondent's Response to Staff Recommendation for FEC 16-352.

Thank you,  
-Ben

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Ben Gibson, Esq.  
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**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

IN RE: RICHARD HARDEN,

Case No.: FEC 16-352

Respondent.

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**RESPONSE TO STAFF RECOMMENDATION**

COMES NOW the Respondent, Richard Harden, by undersigned counsel and pursuant to section 106.25(4)(c), Florida Statutes, files this response to the Staff Recommendation and shows that the recommended finding of probable cause must be rejected.

**PRELIMINARY STATEMENT**

This complaint alleges that a candidate running for nonpartisan office who accepts an invitation to speak at a candidate forum organized by a political party is “campaigning based on party affiliation” in violation of the Election Code, even if that candidate never states his party affiliation in his speech or in any political advertisement.

This complaint against Respondent, former candidate for reelection to the Wakulla County Commission, Richard Harden,<sup>1</sup> asks this Commission to ignore the actions and words of the Respondent, who never stated his party affiliation, and instead to focus on the party affiliation of the group and voters to whom Respondent spoke. The Complaint presumes that when the Respondent accepts an invitation to speak to a partisan group he adopts that group’s partisan identity and is “campaigning based on party affiliation.” Such a restrictive reading of 106.143(3), Florida Statutes, unnecessarily prevents a candidate for nonpartisan office from reaching key parts of the electorate and limits the ability of political parties and their members to

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<sup>1</sup> Richard Harden was a candidate for reelection to the Wakulla County Commission, District 5. Having received 48.77% of the vote, Harden was defeated in the November 8, 2016 election by Chuck Hess who received 51.23% of the vote. (See <http://www.wakullaelection.com/Election-Results/Election-Results-Archive>).



engage in these local elections.

Wakulla County held nonpartisan elections for County Commission for the first time in 2016. The local Republican Executive Committee hosted a community forum for their members and all members of the general public to come and hear from candidates running for the nonpartisan offices of county commission. Richard Harden, as a candidate for the Wakulla County Commission was invited to the forum and chose to attend. At no time during the forum did he state his party affiliation or distribute any political advertisements stating his party affiliation. Despite this, the Complainant<sup>2</sup> is alleging that probable cause be found that the Respondent “campaigned based on party affiliation” and thus violated section 106.143(3), Florida Statutes. The primary evidence supporting this Complaint is not the message of the Respondent, but the partisan nature of the organizer and venue in which the Respondent delivered his message and the generic partisan signs on display when Respondent spoke.

The Division of Elections (“Division”) has interpreted section 106.143(3), Florida Statutes, to allow nonpartisan candidates to be endorsed by political parties,<sup>3</sup> to accept contributions from political parties,<sup>4</sup> to publicly promote their past experience with a political party,<sup>5</sup> and to publicly support a political party nominee for President.<sup>6</sup> It would be a major policy shift in the way that political parties engage in nonpartisan elections and a misreading of section 106.143(3) for the Commission to hold, as the Complaint and Staff Recommendation suggest, that the Election Code prevents a candidate running for a nonpartisan office from

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<sup>2</sup> Complainant is Hugh Taylor, a resident of Wakulla County involved with a local group of residents known as “Concerned Citizens of Wakulla.” (ROI 4). Concerned Citizens of Wakulla, Inc. lists as one of its officers Commissioner Chuck Hess [EXH. A], who is a member of the Wakulla County Commission and is listed as a Democrat on its website [Exh. B]. Chuck Hess according to an article in the *Wakulla News*, was not invited to participate in the candidate forum because he was a registered Democrat. (ROI 10). As evidence to support the Complaint, an affidavit and video of the candidate forum were provided from Carrie A. Hess (ROI 12), who is the wife of Commissioner Chuck Hess [ROI FN 3].

<sup>3</sup> See DE 03-02 (February 21, 2003).

<sup>4</sup> See *id.*

<sup>5</sup> See DE 10-02, (March 3, 2010) citing *id.*

<sup>6</sup> See DE 16-17 (January 17, 2017).

participating in a local candidate forum organized by a political party, even if that candidate refrains from stating his party affiliation and distributing political advertisements stating his party affiliation.

Under the Election Code, candidates for nonpartisan office are free to accept invitations to speak to all types of groups- both partisan and nonpartisan as long as the candidate's message does not involve campaigning based on party affiliation.<sup>7</sup> Nothing in statute or the Division's advisory opinions places a requirement for a candidate in a nonpartisan election to control the speech and messages of third parties the candidate is unaffiliated with.

It appears that the Staff Recommendation reads section 106.143(3) to either:

- 1) Categorically prevent nonpartisan candidates from participating in a candidate forum organized by a political party; or
- 2) Allow political parties to hold candidate forums with nonpartisan candidates but place a condition on the party that it must invite all nonpartisan candidates.

Either option is a misreading of section 106.143(3), Florida Statutes. Option 1 reads the Code to prevent candidates running for nonpartisan offices from being able to get their message out to key parts of the electorate. Option 2 reads the Code to mandate an "equal time" requirement not found in statute that would cause political party officers to violate their loyalty oaths and transform political parties into nonpartisan organizations, which they are not. The correct reading of section 106.143(3) is that a candidate for a nonpartisan office may attend a candidate forum organized by a political party, however they are prevented from distributing materials that state their political affiliation and they are prevented from campaigning on the basis of their political affiliation (i.e. stating their party affiliation). This reading is in line with

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<sup>7</sup> Section 106.143(3) states in part, "... A candidate for nonpartisan office is prohibited from campaigning based on party affiliation."

the statute, Division of Elections opinions, the common practice throughout the State, and most importantly, does not unconstitutionally interfere with the first amendment rights of candidates or political parties in regards to nonpartisan elections.

#### STATEMENT OF FACTS

On August 11, 2016, the Wakulla County Republican Executive Committee (“WCREC”) held a candidate forum where nonpartisan candidates, including Respondent Richard Harden, were invited to speak to members of the WCREC and the general public in attendance. (SR 21). Candidates for a number of local races were invited to participate including the following candidates for county commission: Richard Harden, Ralph Thomas, Michael Stewart, John Shuff, and Gordon Millender. The general public was invited and encouraged to attend. Not surprisingly, at this WCREC meeting there were indications, that the WCREC supports Republican candidates. There was a generic sign on the podium at the front that clearly read “Vote Republican” and there was another sign that stated “Republicans” with a large elephant graphic. (SR 7, ROI Exhibits 7-8). None of these signs mentioned the Respondent or any candidate for a nonpartisan office. The WCREC is a political organization and it along with its members support Republicans.

Wakulla County Supervisor of Elections, Henry F. Wells, attested that Respondent “got wind” of some concern about the candidate forum and asked the Supervisor about it. (SR 17). Supervisor Wells had previously reached out to the Department of State’s legal office to get guidance and spoke to an attorney on staff who reportedly stated that the candidates would be “skating on thin ice” by attending and speaking at the forum. (SR 17). It is not clear from the Staff Recommendation and Report of Investigation if Supervisor Wells mentioned to Department of State legal staff that the non-partisan candidates would be attending and speaking but would

not be stating their political party affiliation or distributing any political advertisements stating their party affiliation.<sup>8</sup> Supervisor Wells stated in testimony that he told Respondent that “attending was up to [him]” but that the attorney at the Department of State said it would be “skating on thin ice” to attend and speak. (SR 18). Supervisor Wells did tell Respondent that the candidates should not campaign using party in any manner. (SR 18).

At the forum, Chris Russell, Chairman of the WCREC addressed those in attendance and said, “We did invite all registered Republican candidates to come up” in an effort to clarify that no party favoritism was being shown since in some cases there was more than one Republican candidate running for each Commission seat. (SR 8). Respondent was running against Gordon Millender for County Commissioner, District 5, who also attended and spoke at the forum.

Respondent spoke only about the merits of his campaign and “never mentioned anything related to any political party.” (SR 16). Respondent never mentioned his political party affiliation during his speech. (SR 7). He simply closed his speech by stating, “I would ask your vote and your support.” (SR 7). Following the candidate forum, this Complaint was filed by Hugh Taylor as well as several other complaints against other nonpartisan candidates and the organizer of the event alleging that a violation of section 106.143(3), Florida Statutes occurred when Respondent spoke at a candidate forum organized by a political party (SR 4).

## **LEGAL ARGUMENT**

### **I. Probable cause does not exist to believe that Respondent knowingly campaigned based on party affiliation in violation of section 106.143(3), Florida Statutes**

The Staff Recommendation correctly points out section 106.143(3), Florida Statutes that prohibits a candidate from “campaigning based on party affiliation.” (SR 13). Section 106.143(3), states in part:

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<sup>8</sup> The informal legal advice provided over the phone was never memorialized in writing by the Department of State. Supervisor Wells did not request a formal advisory opinion on the matter.

3) . . . A political advertisement of a candidate running for nonpartisan office may not state the candidate's political party affiliation. This section does not prohibit a political advertisement from stating the candidate's partisan-related experience. A **candidate for nonpartisan office is prohibited from campaigning based on party affiliation.** (emphasis added).

Violation of section 106.143(3) is considered a minor violation under Rule 2B-1.003(2)(h), F.A.C. The video evidence cited in the investigative report makes it clear that the Respondent did not state his party affiliation when speaking to the WCREC (SR 7). The staff recommendation correctly points out that the Election Code does not define the word "campaigning." However, the Division of Elections in a 2010 advisory opinion has defined the word by stating that it includes all acts to bring about a candidate's election.

The Staff Recommendation states that "it was an act of campaigning when each nonpartisan candidate [spoke at a candidate forum to encourage or solicit votes]." And goes on to say that "Due to the particular circumstances of this forum, the nonpartisan candidates affiliated themselves very closely with the Republican party by presenting themselves to the public as obvious Republican candidates for nonpartisan offices and choosing to speak behind and among signs encouraging observers to, "Vote Republican." (SR 21). The particular circumstances were as follows:

- 1) A sign stating "Vote Republican" located at the podium and a sign stating "Republicans" with a large elephant graphic on display behind the speakers (SR 21);

2) Newspaper articles, taken together, suggesting that two candidates for nonpartisan office who were registered Democrats were not invited to participate in the forum (SR 5); and

3) The WCREC Chairman's statement that all the registered Republicans were invited (SR 8).

Section 106.143(3) prevents candidates in nonpartisan elections from campaigning based on party affiliation. It does not, as the Staff Recommendation asserts, mandate that candidates in nonpartisan elections completely avoid partisan voters, groups, or venues. Section 106.143(3) regulates the *candidate's* message. It does not require the candidate to regulate and control the message of the organizations and voters it chooses to speak to.<sup>9</sup> Neither does it regulate the message or the behavior of partisan political organizations and their officers. If a candidate for a nonpartisan office were invited to participate in a Democrat, Libertarian, Constitution, or Green Party forum there surely would be partisan signs and statements made in support of those political parties as well.

What is relevant under section 106.143(3) is the speech of the candidate not of the individuals and groups organizing an event. A candidate running for a nonpartisan office is free to bring his nonpartisan message to any group of voters- whether partisan or nonpartisan. Just because a candidate speaks to a group of voters does not mean that the candidate endorses everything that group stands for. The Staff Recommendation seems to assert that when a candidate simply shows up and speaks to a group of partisan political voters, that candidate is now affiliating itself with the partisan group and adopting all of their partisan messages and thus

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<sup>9</sup> The absurdity of this rationale, if taken to its logical conclusion, would prevent a nonpartisan candidate who was registered as a Republican from accepting an invitation to speak to a Democratic group. It also would likely prevent the nonpartisan candidate from speaking to "partisan" groups closely aligned and supportive of candidates from one political party (e.g. NRA, Planned Parenthood, TEA Party, EMILY's List).

“campaigning based on political affiliation.” When in fact, nonpartisan candidates in an effort to campaign should be free to speak to all voters- those aligned with partisan organizations and those not. A candidate running for a nonpartisan office that speaks at a candidate forum organized by a political party without stating their political affiliation is not “campaigning based on party affiliation.” The Commission should reject the staff recommendation and find no probable cause that Respondent violated section 106.143(3), Florida Statutes.

***Respondent lacked the necessary “willfulness”***

Section 106.25(3), provides that, “For the purposes of commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or chapter 104 or the willful failure to perform an act required by this chapter or chapter 104.” If Respondent was found to have “campaigned based on party affiliation,” which he did not, the record clearly reflects that he did not intentionally do so. In fact, the record reflects the exact opposite.<sup>10</sup>

Supervisor Wells’ advice to the Respondent was far from concrete. In fact, the Supervisor told Respondent what was relayed to him by the Department of State lawyer but said “attending was up to the candidate.” (SR 18). The Respondent did receive a copy of chapter 106, Florida Statutes and is familiar with it and understands its requirements (SR 10). Respondent also received a copy of the *Candidate and Campaign Treasurer Handbook* (SR 11). However, nothing in chapter 106 or the *Candidate and Campaign Treasurer Handbook* specifically states that a candidate for a nonpartisan office is categorically prohibited from attending and speaking at an event organized by a political party. The only thing that is clear in chapter 106 and the *Handbook* is that a candidate for nonpartisan office is prohibited from stating his party affiliation

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<sup>10</sup> The *Wakulla News* article attached to the Complaint states as much, “But many of the candidates who attended were unaware of the controversy and the threat of an election complaint. Some who were aware of the controversy said simply that they had received an invitation to speak and were going wherever they were invited.” See SR, Exh. 4, “Republican forum draws concern.”

in political advertisements or campaigning based on party affiliation. The Respondent did neither. There is no statute, rule, or advisory opinion from the Division of Elections that prohibits a candidate for a nonpartisan office from attending and speaking at an event organized by a political party when they refrain from stating their party affiliation. Even if a violation occurred, which it did not, Respondent did not possess the necessary willfulness for a violation, and therefore no probable cause should be found.

**II. Probable cause does not exist because previous Division of Election advisory opinions show that nonpartisan candidates can interact with political parties without being in violation of section 106.143(3)**

The Division of Elections in multiple advisory opinions has made it clear that candidates in a nonpartisan election are allowed to interact with political parties as long as they do not publicly advertise their political party affiliation. Candidates for nonpartisan office can accept contributions from political parties, can be endorsed by political parties, can state and publicly promote their past experience with a particular political party, and can publicly support a Republican or Democrat nominee for President of the United States.<sup>11</sup> Section 106.26(13), Florida Statutes, requires the Commission to “in all its deliberations and decisions, adhere to statutory law and advisory opinions of the division.”

In *Division of Elections Opinion 03-02* (February 21, 2003) (Exh. C), adhered to in *Division of Elections Opinion 10-02* (March 3, 2010), and cited in the Staff Recommendation, the Division advised then Senator Buddy Dyer who was a candidate for the nonpartisan office of Orlando Mayor. Answering a series of questions about the extent a nonpartisan candidate could be involved with a political party, the Division emphasized section 106.143(3) by stating that political advertisement must not be construed as “campaigning based on party affiliation” and “**information stating your political affiliation may not appear in your political advertising.**”

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<sup>11</sup> See DE 03-02 (February 21, 2003).



(See Exh. C). However, the Division did not go so far as to preclude all interaction or involvement with a political party, specifically stating:

- 1) Nonpartisan candidates are allowed to list partisan related experience such as “executive committee of [Republican/Democrat] party” in campaign advertisements;
- 2) Nonpartisan candidates are allowed to accept contributions from political parties;
- 3) Political parties may endorse nonpartisan candidates; and
- 4) Political parties are allowed to make independent expenditures regarding a nonpartisan candidate.

In other words, the only thing the Division has specifically prohibited under section 106.143(3), Florida Statutes, is “stating your political affiliation.” A nonpartisan candidate who speaks at a partisan event without stating their party affiliation is no more “campaigning based on party affiliation” than a nonpartisan candidate who receives contributions, endorsements, and states past experience with a particular political party—all actions specifically authorized by the Division.

Earlier this year, in *Division of Elections Opinion 16-17* (January 17, 2017), (Exh. D) the Division interpreted section 106.143(3) and advised that a candidate for a nonpartisan municipal office was not prohibited from publicly stating that they support a particular candidate for President of the United States. In its analysis, the Division opined that nothing prevents a nonpartisan candidate from stating their opinion or preference for a candidate in other races whether partisan or nonpartisan.

In sum, the Complaint wants this Commission to find that section 106.143(3) allows a candidate for nonpartisan office to publicly state that they support Donald Trump the Republican

nominee for President,<sup>12</sup> to advertise that they formerly held a position with the Republican Party,<sup>13</sup> to be endorsed by the Republican Party,<sup>14</sup> and to accept contributions from the Republican Party, but at the same time find that section 106.143(3) prevents them from participating in a candidate forum organized by a political party, even if the candidate never once mentions his party affiliation. Clearly this reading of the statute goes against the Division of Elections previous advisory opinions of which this Commission is bound by, and therefore the Commission should find no probable cause and dismiss the Complaint.

**III. Probable cause does not exist because section 106.143(3) should not be read to require political parties participating in nonpartisan elections to provide platforms for candidates not of their choosing and violate political party loyalty oaths**

The Staff Recommendation relies partly on an article by *The Wakulla News* reporting that two candidates for nonpartisan offices were not invited to attend and speak at the candidate event because they were registered Democrats (SR 5) and a statement by WCREC Chairman Chris Russell that, “We did invite all the registered Republicans to come up.” (SR 8). The Staff Recommendation implies that if all the candidates had been invited (both registered Republicans and Democrats) then there may not have been a violation.

But this “equal time” requirement can be found nowhere in statute or Division of Election advisory opinions, and presumably that is because the Legislature knows that including such a requirement would potentially cause political party officers, to violate their own party loyalty oaths. Both major political parties in Florida require their political officers to file loyalty oaths (*See Exhs. F & G*).

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<sup>12</sup> DE 16-17 (January 17, 2017).

<sup>13</sup> DE 10-02 (March 3, 2010); DE 03-02 (February 21, 2003).

<sup>14</sup> DE 03-02.

Chris Russell, as the Chairman of the Wakulla County Republican Executive Committee, and organizer of the candidate forum was required as a condition of membership on the County and State Republican Executive Committees to file an oath of party loyalty stating in part:<sup>15</sup>

*I swear or affirm that during my term of party office I will not actively, publicly, or financially support the election of any candidate seeking election against:*

(1) *The Republican Party's nominee in a partisan unitary, general, or special election that includes a Republican nominee; or*

(2) *A registered Republican in a non-partisan election, except that this provision does not apply to judicial races under Chapter 105, Florida Statutes. (Exh. E).*

If Mr. Russell as Chairman of the Wakulla County Republican Executive Committee gave a registered Democrat running in a nonpartisan election against a registered Republican a platform to speak at a Republican Executive Committee meeting, he would likely violate his sworn party loyalty oath.

The Staff Recommendation relies on a statement by Chairman Russell taken out of context. During the introduction of the first nonpartisan candidate Chairman Russell stated, "We did invite all the registered Republican candidates to come up." There were multiple registered Republicans running for the same nonpartisan County Commission seat and not all chose to attend. Chairman Russell in order to make it clear that he was not violating Republican Party of Florida rules and his party loyalty oath stated that all Republicans running were invited.

The Party loyalty oath also states:

*I further swear or affirm that, in a contested Republican primary election, I will not support the nomination of one Republican candidate over another in my capacity as a Republican Executive Committee member unless the Executive Committee has voted to endorse that candidate in accordance with RPOF Rule 8.*

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<sup>15</sup> Each Republican Executive Committee member required by Republican Party of Florida Rule 9 (Exh. F) to sign a party loyalty oath must file the oath with the Chairman of his or her respective State or County Republican Executive Committee (or the Chairman's designee) no later than 30 days after election to party office. The party loyalty oath must be witnessed, verified, or notarized. The Republican Party loyalty oath is made part of the Republican Party of Florida Rules of Procedure and is filed with the Department of State pursuant to section 103.091(3), F.S. (available at: <http://dos.elections.myflorida.com/campaign-docs/?account=4700>).

Similarly, the Florida Democratic Party also has a party loyalty oath for its members. [Exh G. and on file with the Department of State]<sup>16</sup> that states:

*[D]uring my term of office, I will not support the election of the opponent of any Democratic nominee, I will not oppose the election of any Democratic nominee, nor will I support any non-Democrat against a Democrat in any election other than in judicial races. . . .*

Members of political parties are required by their respective bylaws and rules of procedure to take loyalty oaths that prevent them from doing anything that supports someone running against a member of their party, even in a nonpartisan race. The Legislature is presumed to know about party loyalty oaths, especially since many Legislators have filed such oaths themselves. And surely, the Legislature did not intend for members of political parties to be forced to choose between violating their own loyalty oaths or engaging in nonpartisan elections. The Commission should not newly interpret an existing statute to interfere with a political party's rules (*See Republican Party of Miami-Dade Cty. at 1119*, stating, "Florida's Election Code has therefore recognized that a state may not interfere in the internal governance and operations of political parties").

The prohibition on "campaigning based on party affiliation" has to do with the *candidate's* campaigning, not on the campaigning done by third-party private political groups outside of the candidate's control.

**IV. Probable cause does not exist because section 106.143(3) should not be read to unconstitutionally infringe on the First Amendment rights of political parties and candidates in nonpartisan elections**

An agency must enforce its rules in a constitutional manner. See Fla. Pub. Emps. Council 79, AFSCME v. Dep't of Children & Families, 745 So. 2d 487, 491 (Fla. 1st DCA 1999). The Commission should reject the Staff Recommendation and dismiss the Complaint because to do

<sup>16</sup> The Democratic Party Loyalty Oath is made part of the Florida Democratic Party Rules and pursuant to section 103.091(3), F.S., is filed with the Department of State. (*available at: <http://dos.elections.myflorida.com/campaign-docs/?account=1539>*).

otherwise would be to interpret an otherwise constitutional statute (section 106.143(3), Florida Statutes) in an unconstitutional manner. In order to find probable cause, the Commission must conclude that a violation of section 106.143(3), Florida Statutes occurred and that candidates in nonpartisan elections are not allowed to attend and speak at any political party event without violating section 106.143(3). This reading infringes on the constitutional rights of candidates running for nonpartisan offices and the rights of political parties wishing to engage in nonpartisan elections.

***Categorically prohibiting candidates in a nonpartisan election from speaking to political parties would violate the First Amendment***

In Republican Party of Minnesota v. White, 416 F. 3d 738 (8th Cir. 2005) (en banc), the Eighth Circuit determined that the Minnesota partisan activities clause, which prohibited judges and judicial candidates from identifying themselves as members of political organizations, attending political gatherings, or seeking, accepting, or using endorsements from political organizations, violated the First Amendment. Id. at 754–63. If a law restricting the First Amendment rights of judges to attend political gatherings could not survive strict scrutiny, then certainly such a law applied to nonpartisan candidates for county commission could not survive strict scrutiny. See Republican Party of Minnesota v. White, 536 U.S. 765, 793 (2002) (Kennedy, J. concurring) (“Judicial Integrity is . . . a state interest of the highest order.”).

***Political parties have a constitutional right to associate with candidates of their choosing***

In addition to the party loyalty oaths, political parties have a constitutional right to associate with the candidates of their choosing. The right to associate for the advancement of political beliefs is a right protected by the First and Fourteenth Amendments. Ray v. Mortham, 742 So. 2d 1276, 1285 (Fla. 1999). A corresponding provision of the Florida Constitution, likewise, protects the rights of individuals to associate with whom they please and to assemble

with others for political or for social purposes. State v. J.P., 907 So. 2d 1101, 1111 (Fla. 2004). Because individuals exercise their free speech rights by participating in political parties, political parties also possess First Amendment rights. San Francisco County Democratic Cent. Comm. v. Eu, 826 F.2d 814, 818 (9th Cir.1987), *aff'd*, 489 U.S. 214, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989). Indeed, “[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.” Sweezy v. State of N.H. by Wyman, 354 U.S. 234, 250 (1957).

***Political parties have a constitutional right not to associate with certain candidates***

Included within this constitutional protection is the right of political party members "not to associate" with those who do not share their party platforms or rules, so long as they do not engage in prohibited acts of discrimination. Republican Party of Miami-Dade County v. Davis, 18 So. 3d 1112, 1118 (Fla. 3d DCA 2009); see also Roberts v. U.S. Jaycees, 468 U.S. 609, 623 (1984) (“There can be no clearer example of an intrusion into the internal structure or affairs of an association than a regulation that forces the group to accept members it does not desire. Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate.”). Election regulations that impose a severe burden on those rights are subject to strict scrutiny, and courts should uphold them only if they are narrowly tailored to serve a compelling state interest. Libertarian Party of Florida v. Smith, 687 So. 2d 1292, 1294 (Fla. 1996).

The Division of Elections in DE 03-02 made it clear that political parties can endorse one nonpartisan candidate over another. If so, then surely a political party can choose which nonpartisan candidates they would like to come and speak at their meeting. The Commission

should not read section 106.143(3) in a way that places an unconstitutional requirement on political parties to give a platform to all candidates even those not of their choosing.

**V. Probable cause does not exist when weighing all of the factors**

Probable cause exists where the facts and circumstances, of which an [investigator] has reasonably trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed. Dep't of Hwy Safety and Motor Vehicles v. Favino, 667 So. 2d 305, 309 (Fla. 1st DCA 1995) (SR 26).

Section 106.25(4)(f), Florida Statutes, states that the Commission in making its probable cause determination, may consider:

1. The sufficiency of the evidence against the respondent, as contained in the investigator's report;
2. The admissions and other stipulations of the respondent, if any;
3. The nature and circumstances of the respondent's actions;
4. The expense of further proceedings; and
5. Such other factors as it deems material to its decision.

The Respondent has cooperated throughout this investigation and never once mentioned his party affiliation in written or spoken word. Respondent is being held liable purportedly for the wrong actions of others and for a third party and for the venue in which he delivered his nonpartisan message. Given the expense of further investigation and proceedings and the lack of evidence of a violation and lack of knowledge on the part of Respondent, the Commission should reject the staff recommendation and find no probable cause that Respondent violated section 106.143(3), Florida Statutes.

**VI. Probable cause does not exist because the complaint is legally insufficient**

No evidence in the record supports that the Respondent is even affiliated with the Republican Party beyond statements made by people other than the candidate himself. This is telling since section 106.143(3) applies to *candidates* running in nonpartisan races. It prevents the *candidate* from stating a party affiliation or campaigning based on party affiliation. The Respondent never did anything of the sort. The Commission should not presume a violation of section 106.143(3) based on the words or actions of someone other than the candidate, and that is exactly what the Complaint and Staff Recommendation does.

Section 106.143(3) prevents the *candidate* from mentioning party affiliation or campaigning based on party affiliation. It does not prevent a nonpartisan candidate from being associated at all with a political party (*See* DE 10-02; DE 03-02 stating that non-partisan candidates can list partisan related experience such as “executive committee of \_\_\_\_ party” in campaign advertisements). Given that the Complaint relates to actions by a third-party not under the candidate’s control and not the candidate, the Complaint is legally insufficient and there is no probable cause. The Commission should dismiss.

Nothing within chapters 104 or 106 prohibits a candidate for nonpartisan office from speaking at a political party event if that candidate does not state their party affiliation or distribute political advertisements stating their party affiliation.

**CONCLUSION**

Respondent respectfully requests that the Commission reject the Staff Recommendation and find no probable cause that the Respondent violated section 106.143(3), Florida Statutes, and dismiss this complaint.

Dated: July 28, 2017

Respectfully submitted,



/s/ Benjamin J. Gibson  
Benjamin J. Gibson  
Florida Bar No.: 58661  
BENJAMIN J. GIBSON, P.A.  
517 E. 9th Ave.  
Tallahassee, FL 32303  
Phone: (850) 792-5060  
Primary Email: [ben@gibsonpa.com](mailto:ben@gibsonpa.com)  
Secondary Email: [service@gibsonpa.com](mailto:service@gibsonpa.com)

*Counsel for Respondent, Richard Harden*

## EXHIBITS

7/27/2017

Detail by Entity Name

Division of Corporations



Department of State / Division of Corporations / Search Records / Detail By Document Number /

### **Detail by Entity Name**

Florida Not For Profit Corporation  
CONCERNED CITIZENS OF WAKULLA, INC

#### **Filing Information**

**Document Number** N03000006211  
**FEI/EIN Number** 90-0110416  
**Date Filed** 07/21/2003  
**State** FL  
**Status** ACTIVE

#### **Principal Address**

14 EGRET ST N  
CRAWFORDVILLE, FL 32327

Changed: 04/24/2013

#### **Mailing Address**

PO BOX 713  
CRAWFORDVILLE, FL 32326

Changed: 04/25/2017

#### **Registered Agent Name & Address**

HANSON, CHAD W  
14 EGRET STREET NORTH  
CRAWFORDVILLE, FL 32327

#### **Officer/Director Detail**

##### **Name & Address**

Title CH

HESS, CHUCK  
112 LAKE ELLEN CIR  
CRAWFORDVILLE, FL 32327

Title TR

HICKMAN, GAIL B.  
528 HICKORYWOOD DR.  
CRAWFORDVILLE, FL 32327

<http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquiryType=EntityName&directionType=Initial&searchNameOrder=CONCERNEDCITIZEN...> 1/2

## **EXHIBIT A**

7/27/2017

Detail by Entity Name

**Annual Reports**

Report Year	Filed Date
2015	04/17/2015
2016	03/30/2016
2017	04/25/2017

**Document Images**

<a href="#">04/25/2017 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">03/30/2016 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/17/2015 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/28/2014 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">03/24/2013 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/12/2012 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">01/18/2011 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">01/08/2010 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/28/2009 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">01/30/2008 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/28/2007 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/17/2006 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/25/2005 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">04/28/2004 -- ANNUAL REPORT</a>	<a href="#">View image in PDF format</a>
<a href="#">07/21/2003 -- Domestic Non-Profit</a>	<a href="#">View image in PDF format</a>

**EXHIBIT A**



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Chairman, District 1

Commissioner Henry Martin  
District 2

Commissioner Mike Steiner  
Vice Chairman, District 3

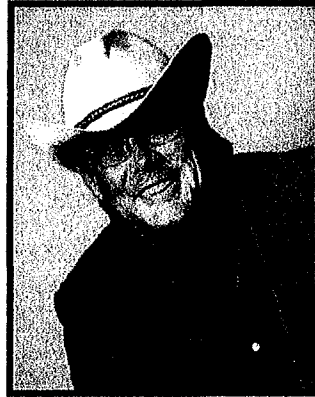
Commissioner Jerry Moore  
District 4

Commissioner Chuck Hess  
District 5

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## Commissioner Chuck Hess

[E-mail](#)   [Print](#)



**Democrat**

Cell Phone #: (850) 570-8786

Email Address: [hess@mywakulla.com](mailto:hess@mywakulla.com)

**Term Ends: 2020**

# EXHIBIT B

February 21, 2003

The Honorable Buddy Dyer  
c/o Mark Herron, Esquire  
Messer, Caparello & Self  
Post Office Box 1876  
Tallahassee, Florida 32302-1876

**RE: DE 03-02  
Activities of Political Parties Relating to Candidates for  
Nonpartisan Municipal Office §97.021(18), §106.08(2),  
§106.021(3), Florida Statutes**

Dear Senator Dyer:

This is in response to your request for an advisory opinion. As a candidate for Mayor of the City of Orlando, the division has the authority to issue an opinion to you pursuant to section 106.23(2), Florida Statutes.

You ask essentially the following questions:

1. Can political advertising for or on behalf of a candidate for a nonpartisan mayoral office refer to the political party affiliation of the candidate?
2. To what extent may a political party make a contribution to or on behalf of a candidate for a nonpartisan mayoral office, and conversely, to what extent may a candidate for a nonpartisan mayoral office accept a contribution of a political party made to or on behalf of such candidate?
3. May a political party make a 3-pack expenditure pursuant to section 106.021(3), Florida Statutes; and, if so, what are the respective reporting responsibilities of the political party and the candidate for nonpartisan mayoral office regarding such an expenditure?
4. May a political party make an independent expenditure for or on behalf of a candidate for a nonpartisan mayoral office?

**EXHIBIT C**

The Honorable Buddy Dyer  
February 21, 2003  
Page Two

You represent in your letter that the municipal office of Mayor is a nonpartisan office pursuant to the Orlando City Charter. Please note that Chapter 106, Florida Statutes, is specifically applicable to municipal offices.

In order to answer your questions, we must first look to the statutory definition of "nonpartisan office." Section 97.021(18), Florida Statutes, defines a "nonpartisan office" to mean, "an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation." This definition applies to all nonpartisan offices.

As to Question 1, as a candidate for a nonpartisan municipal office you are prohibited from campaigning based upon party affiliation. Therefore, you must be very careful that your political advertising cannot be construed as such. Each advertisement would have to be reviewed independently to determine whether it meets this test. However, pursuant to section 97.021(18), Florida Statutes, as a nonpartisan municipal candidate, you may not publicly represent or advertise yourself as a member of any political party. Thus, information stating your political affiliation may not appear in your political advertising. It is permissible, however, for you to list partisan related experience such as "executive committee of \_\_\_\_\_ party" in campaign advertisements. In doing so you would simply be providing information on past experiences as opposed to "campaigning based on party affiliation." Political advertisements done by others in consultation with you would have to meet the same requirements.

As to Question 2, a political party may make a contribution to a candidate for a nonpartisan mayoral office and a candidate for a nonpartisan mayoral office may accept a contribution from a political party. Such contributions would be subject to the limitations contained in section 106.08(2), Florida Statutes.

As to Question 3, pursuant to section 106.021(3), Florida Statutes, a political party may make direct expenditures for "obtaining time, space, or services in or by any communications medium for the purpose of jointly endorsing three or more candidates." Further, pursuant to that section any such expenditures shall not be considered a contribution or expenditure to or on behalf of any such candidate for the purposes of Chapter 106. A nonpartisan mayoral candidate may be endorsed by any or all political parties. Therefore, a political party may make a 3-pack expenditure that would include a candidate for a nonpartisan mayoral office. A political party would report it as an expenditure, but not as a contribution. The candidate would have no responsibility to report it.

As to Question 4, a political party may make an independent expenditure regarding a candidate for a nonpartisan mayoral office.

## EXHIBIT C

The Honorable Buddy Dyer  
February 21, 2003  
Page Three

SUMMARY

A candidate for a nonpartisan mayoral office may not state their political affiliation in their campaign advertising. They may, however, list partisan related experience such as "executive committee of \_\_\_\_\_ party" in campaign advertisements. A political party may make a contribution to a candidate for a nonpartisan mayoral office and a candidate for a nonpartisan mayoral office may accept a contribution from a political party. Such contributions would be subject to the limitations contained in section 106.08(2), Florida Statutes. A political party may make a 3-pack expenditure that would include a candidate for a nonpartisan mayoral office. A political party may make an independent expenditure regarding a candidate for a nonpartisan mayoral office.

Sincerely,

Edward C. Kast  
Director, Division of Elections

Prepared by:  
Sharon D. Larson  
Assistant General Counsel

EK/SDL/ccm

**EXHIBIT C**



**FYI**

**FLORIDA DEPARTMENT OF STATE**

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

January 17, 2017

Mr. John J. Mannion, Jr.  
P.O. Box 620721  
Oviedo, Florida 32762

Re: DE 16-17 Advertising; Nonpartisan  
Candidate; §§ 97.021(22), 106.143(3),  
Florida Statutes.

Dear Mr. Mannion:

As a nonpartisan candidate for municipal office, you have requested an advisory opinion regarding whether, under the Florida Election Code, you may make it known which candidate you support in the Presidential election. Because you are a candidate proposing to take certain actions with respect to the Florida Election Code, the Division is authorized to issue an opinion pursuant to section 106.23(2), Florida Statutes.<sup>1</sup>

**FACTS**

You state that you are a candidate for Oviedo city councilmember, which is a nonpartisan office. You also state that you have been asked whom you support for President of the United States, and you indicate that if you give a response, it may be published. You ask whether stating your preferred candidate would violate the prohibition in section 106.143(3), Florida Statutes, against a nonpartisan candidate "campaigning based on party affiliation."

**ANALYSIS**

Under Florida law, a "nonpartisan office" is defined as "an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party

<sup>1</sup> The Division has authority to interpret provisions of the Florida Election Code, but has no authority to interpret local provisions such as a city ordinance or a city charter. See § 106.23(2), Fla. Stat. Therefore, this opinion limits itself to interpreting the Florida Election Code.

**Division of Elections**  
R.A. Gray Building, Suite 316 • 500 South Bronough Street • Tallahassee, Florida 32399  
850.245.6200 • 850.245.6217 (Fax) [DOS.MyFlorida.com/elections](http://DOS.MyFlorida.com/elections)



**EXHIBIT D**



Mr. John J. Mannion, Jr.  
January 17, 2017  
Page 2 of 2

affiliation." § 97.021(22), Fla. Stat. A candidate for nonpartisan office is restricted on how he or she campaigns, as follows:

A political advertisement of a candidate running for nonpartisan office may not state the candidate's political party affiliation. This section does not prohibit a political advertisement from stating the candidate's partisan-related experience. A candidate for nonpartisan office is prohibited from campaigning based on party affiliation.

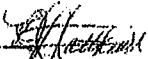
§ 106.143(3), Fla. Stat.

While this provision prohibits a candidate for nonpartisan office from "campaigning based on party affiliation," it does not prohibit such candidate from "stating the candidate's partisan-related experience." *Id.* Nor is there anything in the provision that expressly prohibits the candidate from stating opinions about other races, whether partisan or nonpartisan. Therefore, it is the opinion of the Division that section 106.143(3), Florida Statutes, does not prohibit you as a candidate for the nonpartisan office of city councilmember from stating that you support a particular candidate for President as long as you are not "campaigning based on party affiliation."<sup>2</sup>

#### SUMMARY

Section 106.143(3), Florida Statutes, does not prohibit a candidate for the nonpartisan office of city councilmember from expressing an opinion about another candidate for partisan office as long as the candidate is not "campaigning based on party affiliation."

Respectfully,



Maria I. Matthews, Esq.  
Director, Division of Elections

---

<sup>2</sup> Of course, candidates seeking a nonpartisan *judicial* office are prohibited outright from endorsing *any* candidate. See § 105.071(4), Fla. Stat.

## EXHIBIT D



### Republican Party of Florida Party Loyalty Oath

I, Frank Christopher Russell, swear and/or affirm that during my term of  
(Name of Member - Please write clearly)

office I will not actively, publicly, or financially support the election of any candidate other than the  
Republican Candidate in a partisan unitary, general or special election, or a registered Republican in  
non-partisan elections, other than Judicial races governed under chapter 105, Florida Statutes, if  
there is a registered Republican running for the same office.

Further, in a contested Republican primary election, I will not support the nomination of one  
Republican candidate over another in my capacity as a Republican County Executive Committee member  
unless the Party has voted to endorse under RPOF Rule 8. This rule does not preclude me from  
supporting in any manner my personal Republican candidate of choice, provided I do not express  
such support with public reference to my title or office within the Republican Party of Florida.

Chris Russell  
Signature of Member

[Signature]  
Signature of Witness

2  
County/Precinct #

1/6/15  
Date

Office: R.E.C. Chairman  
(State Committeeman, State Committeewoman; Precinct Committeeman, Precinct Committeewoman;  
Alt. Precinct Committeeman, Alt. Precinct Committeewoman)

[Redacted]  
Address, as it appears on voter registration

[Redacted]  
Email

[Redacted]  
City, State, Zip

[Redacted]  
Phone Number

# EXHIBIT E

## **RULE 9 – Oath of Party Loyalty**

### **A. Form of Party Loyalty Oath**

As a condition of membership on a Republican Executive Committee, each County Republican Executive Committee and State Republican Executive Committee member must sign and file an oath of party loyalty in the following form:

*I swear or affirm that during my term of party office I will not actively, publicly, or financially support the election of any candidate seeking election against:*

- (1) The Republican Party's nominee in a partisan unitary, general, or special election that includes a Republican nominee; or*
- (2) A registered Republican in a non-partisan election, except that this provision does not apply to judicial races under Chapter 105, Florida Statutes.*

*I further swear or affirm that, in a contested Republican primary election, I will not support the nomination of one Republican candidate over another in my capacity as a Republican Executive Committee member unless the Executive Committee has voted to endorse that candidate in accordance with RPOF Rule 8. This provision does not preclude me from supporting in any manner my personal Republican candidate of choice in a contested Republican primary election, provided I do not express such support with public reference to my title or office within the Republican Party of Florida.*

### **B. Filing Instructions for Party Loyalty Oath**

Each Republican Executive Committee member required by this Rule to sign a party loyalty oath must file the oath with the Chairman of his or her respective State or County Republican Executive Committee (or the Chairman's designee) no later than 30 days after election to party office. The party loyalty oath shall be witnessed, verified, or notarized.

## **RULE 10 – Selection of Delegates and Alternate Delegates to the Republican National Convention**

### **A. Exclusive Method for Selection of Delegates and Alternate Delegates to Republican National Convention**

All delegates and alternate delegates to the Republican National Convention shall be elected as prescribed by this Rule following the Florida Presidential Preference Primary.

# **EXHIBIT F**

**Attachment 2 – Loyalty Oath**

**Florida Democratic Party  
LOYALTY OATH**

County of \_\_\_\_\_, Florida

I, \_\_\_\_\_, having been duly sworn, say that I am a member of the Democratic Party,

that I am a qualified elector of \_\_\_\_\_ County, Florida; that during my term of office, I will not support the election of the opponent of any Democratic nominee, I will not oppose the election of any Democratic nominee, nor will I support any non-Democrat against a Democrat in any election other than in judicial races; that I am qualified under the Constitution and Laws of the State of Florida and the Charter and Bylaws of the Florida Democratic Party to hold the office I am seeking, or to which I have been elected; that I have not violated any of the laws of the State of Florida relating to election or the Charter and Bylaws of the Florida Democratic Party.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

**OPTION 1. SIGNED BY A NOTARY PUBLIC**  
(Use either Option 1 OR Option 2.)

STATE OF FLORIDA COUNTY OF _____	
Sworn to and subscribed before me this _____ day of _____, 20_____, by (name of person making statement) _____	
_____ Signature of Notary Public – State of Florida	
_____ Name of Notary typed, printed or stamped	
<input type="checkbox"/> Personally Known	OR <input type="checkbox"/> Produced Identification
Type of ID Produced: _____	

**OPTION 2. SIGNED BY TWO WITNESSES**  
(Use either Option 1 OR Option 2.)

<b>WITNESS #1</b>	
_____ Date	_____ County
_____ WITNESS #1: Print Name	
_____ Signature	
_____ Address	
_____ City	
_____ State	_____ Zip Code

<b>WITNESS #2</b>	
_____ Date	_____ County
_____ WITNESS #2: Print Name	
_____ Signature	
_____ Address	
_____ City	
_____ State	_____ Zip Code

**CERTIFICATE OF FILING**

I hereby certify that a true copy of this document has been filed with and delivered via electronic mail on this 28th day of July 2017, to:

Agency Clerk  
Florida Elections Commission  
107 West Gaines Street  
Collins Building, Suite 224  
Tallahassee, Florida 32399-1050  
[fec@myfloridalegal.com](mailto:fec@myfloridalegal.com)

/s/ Benjamin J. Gibson  
Benjamin J. Gibson

*Counsel for Respondent,  
Richard Harden*



Notices of Withdrawal as Counsel - FEC Complaint numbers : 16-350; 16-351; 16-352; 16-354; 16-355 and 16-356

Marsha A. Poppell

to:

'Florida Elections Commission'

07/20/2017 11:33 AM

Cc:

"Marsha A. Poppell", 'Ben Gibson'

Hide Details

From: "Marsha A. Poppell" <MPoppell@shutts.com>

To: 'Florida Elections Commission' <fec@myfloridalegal.com>

Cc: "Marsha A. Poppell" <MPoppell@shutts.com>, 'Ben Gibson' <ben@gibsonpa.com>

1 Attachment



Notices of Withdrawal as Counsel.pdf

Good morning:

Attached please find the Notices of Withdrawal as Counsel for Mr. Gonzalez and Ms. Francis.

Thanks and have a great day.



**Marsha A. Poppell**

*Legal Assistant*

---

**Shutts & Bowen LLP**

215 South Monroe Street, Suite 804 | Tallahassee, FL 32301

Direct: (850) 521-0600 x6612 | Fax: (850) 521-0604

[E-Mail](#) | [Website](#)

**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

IN RE: RICHARD HARDEN,

Case No.: FEC 16-352

Respondent  
\_\_\_\_\_ /

**NOTICE OF WITHDRAWAL AS COUNSEL**

PLEASE TAKE NOTICE that Jason Gonzalez and Renatha Francis of Shutts & Bowen, LLP file this Notice of Withdrawal as Counsel of record in the above proceeding for Respondent, Richard Harden. The Respondent will be represented in this proceeding by attorney Ben Gibson.

Respectfully submitted,

*/s/ Jason Gonzalez*

Jason Gonzalez (FBN 146854)

SHUTTS & BOWEN LLP

215 South Monroe Street, Suite 804

Tallahassee, Florida 32301

Telephone: 850-521-0600

Email: [jasongonzalez@shutts.com](mailto:jasongonzalez@shutts.com)

Renatha Francis (FBN 84181)

SHUTTS & BOWEN LLP

200 South Biscayne Boulevard, Suite 4100

Miami, Florida 33131

Telephone: (305) 415-9022

Email: [rfrancis@shutts.com](mailto:rfrancis@shutts.com)

**CERTIFICATE OF FILING**

I hereby certify that a true copy of this document has been filed this 20<sup>th</sup> day of July, 2017,

with:

Agency Clerk  
Florida Elections Commission  
107 West Gaines Street  
Collins Building, Suite 224  
Tallahassee, Florida 32399-1050  
fec@myfloridalegal.com



**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

IN RE: RICHARD HARDEN,

Case No.: FEC 16-352

Respondent.

---

**NOTICE OF APPEARANCE ON BEHALF OF RESPONDENT**

Notice is given that attorney, Benjamin J. Gibson, of the law firm BENJAMIN J. GIBSON, P.A. hereby appears as counsel for Respondent, RICHARD HARDEN, in the above captioned matter. Please forward all copies and direct all future correspondence, pleadings, and papers to the undersigned.

Dated: July 19, 2017

Respectfully submitted,

/s/ Benjamin J. Gibson  
Benjamin J. Gibson  
Florida Bar No.: 58661  
BENJAMIN J. GIBSON, P.A.  
517 E. 9th Ave.  
Tallahassee, FL 32303  
Phone: (850) 792-5060  
Primary Email: [ben@gibsonpa.com](mailto:ben@gibsonpa.com)  
Secondary Email: [service@gibsonpa.com](mailto:service@gibsonpa.com)

*Counsel for Respondent Richard Harden*

**CERTIFICATE OF FILING**

I hereby certify that a true copy of this document has been filed and delivered via electronic mail

on this 19th day of July 2017, with:

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Florida Elections Commission  
107 West Gaines Street  
Collins Building, Suite 224  
Tallahassee, Florida 32399-1050  
[fec@myfloridalegal.com](mailto:fec@myfloridalegal.com)

/s/ Benjamin J. Gibson  
Benjamin J. Gibson

*Counsel for Respondent*  
*Richard Harden*

**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

**In Re: Richard Harden**

---

**Case No.: FEC 16-352**

**STAFF RECOMMENDATION FOLLOWING INVESTIGATION**

Pursuant to Section 106.25(4)(c), Florida Statutes, undersigned counsel files this written recommendation for disposition of the complaint in this case recommending that there is **probable cause** to charge Respondent with violating **Section 106.143(3), Florida Statutes**. Based upon a thorough review of the Report of Investigation submitted on May 24, 2017, the following facts and law support this staff recommendation:

1. On August 19, 2016, the Florida Elections Commission (“Commission”) received a sworn complaint alleging Richard Harden (“Respondent”) violated Chapter 106, Florida Statutes.

2. Respondent was a candidate for re-election to the Wakulla County Commission, District 5, a nonpartisan office.<sup>1</sup> He was defeated in the general election held on November 8, 2016.

3. By letter dated October 25, 2016, the Executive Director notified Respondent that Commission staff would investigate the following statutory provision:

**Section 106.143(3), Florida Statutes:** Respondent, a 2016 candidate for Wakulla County Commission, District 5, campaigned based on his party affiliation, even though the office for which he was running was nonpartisan, as alleged in the complaint.

4. Complainant essentially alleged that Respondent campaigned based on party affiliation while running for a nonpartisan office by attending and speaking at a partisan forum held by the Wakulla County Republican Executive Committee (“WCREC”) on August 11, 2016.

5. Complainant provided three newspaper articles from *The Wakulla News* which addressed the forum. Taken together, the articles suggest that only registered Republican candidates were invited to attend and speak at the forum, that the purpose of the forum was to provide voters an opportunity to hear from Republican candidates, and that two candidates for

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<sup>1</sup> Respondent Richard Harden, as Chairman of the Wakulla County Board of County Commissioners, signed Ordinance No. 2014-07 on July 14, 2014, in which the Board called a referendum election and ordered it to be held in conjunction with the general election on November 4, 2014, for the purpose of determining whether the Wakulla County Home Rule Charter should be amended to designate the offices of elected county officials, including county commissioners, as nonpartisan offices. (Attachment A)

nonpartisan offices were not invited to attend and speak at the event because they were registered Democrats. (ROI Exhibits 2-4)<sup>2</sup>

6. Complainant also provided a video recording of the candidate forum recorded by Carrie Hess. Ms. Hess attested in an affidavit that she attended the forum and made the recording. (ROI Exhibit 6)<sup>3</sup>

7. A review of the video recording revealed that the WCREC Chairman Chris Russell introduced Respondent as a candidate for County Commission, District 5. Although Respondent did not mention his political party affiliation during his speech, which dealt with the merits of his campaign, Respondent closed his speech by stating, "I would ask for your vote and your support." Signs stating, "Vote Republican," were displayed in front of the podium behind which Respondent stood, and also nearby Respondent. Respondent stood in front of a large sign stating, "Republicans," with a large elephant graphic. (ROI Exhibits 7-8)

8. Further review of the video recording also revealed that WCREC Chairman Chris Russell stated during the introduction of the first nonpartisan candidate that, "We did invite all the registered Republican candidates to come up."

9. On January 12, 2016, Respondent filed an Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates form ("DS-DE 9") with the Wakulla County Supervisor of Elections office. (ROI Exhibit 1)

10. On January 12, 2016, Respondent filed a Statement of Candidate form with the Wakulla County Supervisor of Elections office in which he acknowledged that he had been provided access to read and understand the requirements of Chapter 106, Florida Statutes. (ROI Exhibit 13)

11. Henry F. Wells, Wakulla County Supervisor of Elections, attested in an affidavit dated November 28, 2016, that his office provided Respondent with Chapter 106, Florida Statutes, and the *Candidate and Campaign Treasurer Handbook*. Mr. Wells also attested that Respondent was first elected to office in 2012. (ROI Exhibit 10)

12. Section 106.143(3), Florida Statutes, states, in pertinent part, "A candidate for nonpartisan office is prohibited from campaigning based on party affiliation."

13. Rule 2B-1.003(2)(h), F.A.C., designates violation of Section 106.143(3), Florida Statutes, as being a minor violation under certain circumstances. The rule describes Section 106.143(3), Florida Statutes, as including, "...stating a candidate's political party affiliation in a political advertisement in a nonpartisan race, **or any other campaigning by a candidate running for nonpartisan office based on party affiliation** [emphasis added]."

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<sup>2</sup> The Report of Investigation shall be referred to herein as "ROI."

<sup>3</sup> A copy of the video recording is on file with the Florida Elections Commission.

14. While the Florida Election Code does not specifically define “campaigning,” the Department of State, Division of Elections (“Division”) did so in the context of an advisory opinion issued by their office in 2010 and relating to nonpartisan candidate issues. In the opinion, the Division stated, “The Election Code does not define ‘campaigning.’ According to *Black’s Law Dictionary*, it includes all acts done to bring about a candidate’s election. Therefore, the Election Code precludes a nonpartisan candidate from doing **any act to bring about the candidate’s election based upon party affiliation** [emphasis added].” (Attachment B)

15. Pursuant to Section 106.26(13), Florida Statutes, the Commission, “...must, in all its deliberations and decisions, adhere to statutory law and advisory opinions of the division.”

16. Respondent stated in response to the complaint that he was invited to attend and speak at the forum, that during his address he never mentioned anything related to any political party, and that he did not pass out or present any campaign literature to anyone in attendance at the forum. Respondent stated that he simply spoke on the merits of his campaign without any mention of any political party. (ROI Exhibit 9)

17. Henry F. Wells, Wakulla County Supervisor of Elections, stated in a telephonic interview that he had discussed the circumstances of the forum at issue with the legal department of the Division and was told that candidates would be “skating on thin ice” by attending and speaking at the forum. Mr. Wells further stated that he relayed what was told to him by the Division’s legal representative to Respondent in a telephonic conversation a week or two prior to the forum being held on August 11, 2016. Mr. Wells indicated that Respondent had “got wind” of some concern about the forum and asked Mr. Wells about it. (Attachment C)

18. In an affidavit dated March 23, 2017, Mr. Wells summarized his conversation with Respondent. Mr. Wells attested that Respondent called the office with questions on the forum, and Mr. Wells discussed the meaning of nonpartisan races and Section 106.143(3), Florida Statutes. Mr. Wells further attested that he informed Respondent that attending was up to the candidate but that the legal department of the Division had stated that candidates were “skating on thin ice” by doing so. Mr. Wells indicated that he told Respondent that candidates should not campaign using party in any manner. (ROI Exhibit 11)

19. Based upon the information above, it appears that Respondent campaigned based on party affiliation even though the office for which he was running was nonpartisan.

20. “Probable Cause” is defined as a reasonable grounds of suspicion supported by circumstances sufficiently strong to warrant a cautious person in the belief that the person has committed the offense charged. *Schmitt v. State*, 590 So.2d 404, 409 (Fla. 1991). Probable cause exists where the facts and circumstances, of which an [investigator] has reasonably trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed. *Department of Highway Safety and Motor Vehicles v. Favino*, 667 So.2d 305, 309 (Fla. 1<sup>st</sup> DCA 1995).

21. The above facts show that Respondent was a 2016 candidate for Wakulla County Commission, District 5, a nonpartisan office. Respondent attended and spoke at a candidate forum held on August 11, 2016. Only registered Republicans were invited to attend and speak at the forum, which was organized by the WCREC. Signs encouraging those listening to Respondent to,

“Vote Republican,” were on the podium in front of Respondent and were also nearby. Respondent stood in front of a large sign stating, “Republicans,” with a large elephant graphic. Although Respondent did not specifically mention his party affiliation, it was reasonably obvious to the audience that he was a registered Republican. Further, speaking at a candidate forum to encourage or solicit votes is certainly an action taken by the candidate to bring about his election. It was thus an act of campaigning when Respondent did so. Due to the particular circumstances of this forum, Respondent affiliated himself very closely with the Republican party by presenting himself to the public as an obvious Republican candidate for a nonpartisan office and choosing to speak from behind and among signs encouraging observers to, “Vote Republican.” Therefore, Respondent’s participation in the forum amounted to an action taken to bring about his election based on affiliation with a party. By extension, Respondent’s participation at the forum amounted to campaigning based on party affiliation. Moreover, Respondent was cautioned by the Supervisor of Elections about the Division’s opinion on the matter, yet he participated anyway.

Based upon these facts and circumstances, I recommend that the Commission find probable cause to charge Respondent with the following:

**Count 1:**

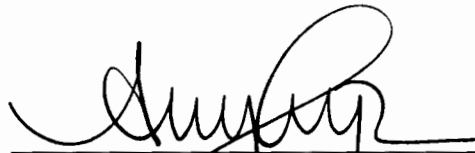
On or about August 11, 2016, Respondent violated Section 106.143(3), Florida Statutes, when Respondent campaigned based on party affiliation even though the office for which he was running was nonpartisan.

Respectfully submitted on June 14, 2017,



\_\_\_\_\_  
Cole H. Kekelis  
Assistant General Counsel

I reviewed this Staff Recommendation this 14th day of JUNE 2017.

  
\_\_\_\_\_  
Amy McKeever Toman  
Executive Director

ORDINANCE NO. 2014- 07

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF WAKULLA COUNTY, FLORIDA, PROVIDING FOR A REFERENDUM ELECTION TO BE HELD ON NOVEMBER 4, 2014, FOR THE PURPOSE OF DETERMINING WHETHER THE WAKULLA COUNTY CHARTER SHOULD BE AMENDED TO REQUIRE NONPARTISAN ELECTION OF ALL ELECTED COUNTY OFFICIALS, WHICH INCLUDES THE BOARD OF COUNTY COMMISSIONERS, THE CLERK OF COURT, THE SUPERVISOR OF ELECTIONS, THE TAX COLLECTOR, THE PROPERTY APPRAISER, AND THE SHERIFF; PROVIDING FOR NOTICE OF THE REFERENDUM ELECTION; PROVIDING FOR THE TITLE AND SUBSTANCE OF THE BALLOT MEASURE; PROVIDING FOR ABSENTEE BALLOTS; PROVIDING FOR APPOINTMENT OF ELECTION BOARDS; PROVIDING FOR CANVASSING BOARD CERTIFICATION OF RESULTS; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS:**

**WHEREAS**, under Article VIII, Section I, Florida Constitution, charter counties shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors; and

**WHEREAS**, the Board of County Commissioners of Wakulla County, Florida (the "Board") enacted the Wakulla County Home Rule Charter, which was subsequently approved by a referendum vote on November 4, 2008 (the "Charter"); and

**WHEREAS**, currently all elected County officials, with the exception of School Board members, are elected under a partisan election; and

**WHEREAS**, the Board wishes to amend the Charter to require the Board of County Commissioners, Clerk of Court, Property Appraiser, Sheriff, Supervisor of Elections, and the Tax Collector (collectively the "Elected County Officials") be elected under a nonpartisan election in accordance with the procedures established herein (the "Proposed Charter Amendment"); and

**WHEREAS**, Section 7.3.1 of the Charter authorizes the Board, upon a supermajority vote, to propose by ordinance amendments or revisions to the Charter not inconsistent with the State Constitution or with general law; and

**WHEREAS**, in accordance with Section 7.3.3 of the Charter, the Board is now required

to call a referendum on the Proposed Charter Amendment for approval during the next general election scheduled more than 90 days after the Proposed Charter Amendment is validated; and

**WHEREAS**, the Board now desires to call a referendum election to present the Proposed Charter Amendment to the general electorate of the County for consideration.

**NOW THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Wakulla County, Florida, that:

**ARTICLE 1. INCORPORATION OF RECITALS.** The above recitals are true and correct and are hereby incorporated by reference.

**ARTICLE 2. PROPOSED CHARTER AMENDMENT.** In the event the Proposed Charter Amendment is approved by a majority vote at the referendum as called for in this Ordinance, a new Section 7.6 of the Charter shall be adopted as follows:

Section 7.6 – Nonpartisan Elections.

7.6.1. Nonpartisan Offices. All elected County officials, which shall include all County Commissioners, the Clerk of Court, the Property Appraiser, the Sheriff, the Supervisor of Elections, and the Tax Collector shall be nonpartisan offices elected through nonpartisan elections, no candidate shall be required to pay any party assessment or be required to state the party of which the candidate is a member. All qualified candidates' names shall be placed on ballot without reference to political party affiliation.

7.6.2. Nonpartisan Elections Procedures.

Unopposed Candidates: The name of an unopposed candidate shall not appear on any ballot and such candidate shall be deemed to have voted for herself or himself at the general election.

Two Qualified Candidates: If only two candidates, neither of whom is a write-in candidate, qualify for any of the offices outlined in Section 7.6.1. above, the names of those candidates shall be placed on the general election ballot.

Three or More Qualified Candidates: If three or more candidates, neither of whom is a write-in candidate, qualify for any of the offices outlined in Section 7.6.1. above, the names of those candidates shall first be placed on the ballot at the primary election. If any candidate for such office receives a majority of the votes cast for such office in the primary election, the name of the candidate who receives such majority shall not appear on any other ballot unless a write-in candidate has qualified for such office. If no candidate for such office receives a majority of the votes cast for such



office in the primary election, the names of the two candidates receiving the highest number of votes for such office shall be placed on the general election ballot. If more than two candidates receive an equal and highest number of votes, the name of each candidate receiving an equal and highest number of votes shall be placed on the general election ballot. In any contest in which there is a tie for second place and the candidate placing first did not receive a majority of the votes cast for such office, the name of the candidate placing first and the name of each candidate tying for second shall be placed on the general election ballot.

The candidate who receives the highest number of votes cast for such office in the general election shall be elected to such office. If the vote at the general election results in a tie, the outcome shall be determined by lot.

7.6.3. Qualification. A candidate for nonpartisan office shall qualify for election to such office by means of either the petitioning process, the payment of a filing fee and an election assessment, or any other means provided in general law.

**ARTICLE 3. REFERENDUM.**

(A) A referendum election is called and ordered to be held in conjunction with the general election on November 4, 2014 (the "November Election"), throughout Wakulla County, Florida, for the purpose of determining whether the Proposed Charter Amendment shall be adopted.

(B) The referendum election shall be held between the hours of 7:00 a.m. and 7:00 p.m. at the same polling places established in Wakulla County for the November Election to be held on said date, and all electors of the County shall be eligible to vote in the referendum election.

**ARTICLE 4. NOTICE.** As required by Section 100.342, Florida Statutes, at least 30 days' notice of the forthcoming referendum, including its purpose and eligibility requirements for voting, shall be published by the Board in a newspaper of general circulation in the County at least twice, once in the fifth week and once in the third week prior to the week in which the election is to be held. Such notice shall contain the text of the proposed ballot question.

**ARTICLE 5. BALLOT LANGUAGE.** The wording and title of the proposition to appear on the ballot on the date of the November Election, as embodied in this Ordinance, shall be as follows:

**CHARTER AMENDMENT PROVIDING FOR NONPARTISAN ELECTION OF ALL ELECTED COUNTY OFFICIALS**

**Shall the charter of Wakulla County, Florida, be amended to require that County Commissioners, the Clerk of Court, the Property Appraiser, the Sheriff, the Supervisor of Elections, and the Tax Collector be nonpartisan offices chosen by vote of the electors in a nonpartisan election instead of one indicating a political party affiliation?**

\_\_\_\_\_ Yes

\_\_\_\_\_ No

**ARTICLE 6. ABSENTEE BALLOTS.** Absentee ballots for said referendum election shall be prepared and made available as provided by law.

**ARTICLE 7. ELECTION BOARDS.** The election boards consisting of the clerks and inspectors appointed to serve for the November Election are hereby appointed to serve in the referendum election.

**ARTICLE 8. CANVASSING BOARD.**

(A) Upon conclusion of the election, the election canvassing board shall deliver the certificates of results, in the manner prescribed by law and appropriate rules and regulations, to the appropriate officials as designated in Section 101.5614, Florida Statutes.

(B) The Wakulla County Canvassing Board shall canvass the returns in said election and shall, as provided by law, certify the results of such referendum to the Board and to the Department of State of the State of Florida to be recorded in appropriate public records.

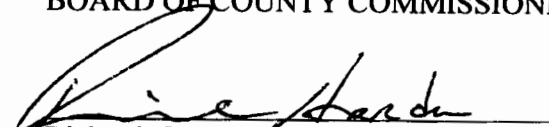
**ARTICLE 9. CODIFICATION IN THE COUNTY CHARTER.** It is the intention of the Board, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Wakulla County Charter, if approved by a majority of the electors voting at the November 4, 2014 General Election.

**ARTICLE 10. SEVERABILITY.** Should any section or provision of this Ordinance or any portion thereof, or any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof other than the part declared to be invalid.

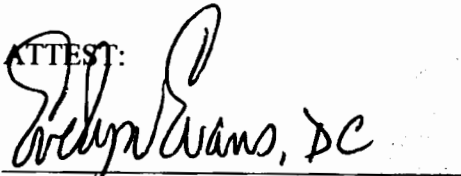
**ARTICLE 11. EFFECTIVE DATE.** A certified copy of this Ordinance shall be effective 10 days after its enactment by the Board and filing with the Department of State.

PASSED AND DULY ENACTED on this 14 day of July, 2014.

WAKULLA COUNTY  
BOARD OF COUNTY COMMISSIONERS

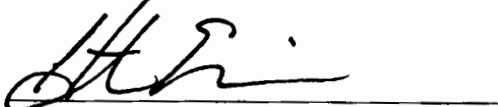
  
Richard Harden, Chairman

ATTEST:

  
Brent X. Thurmond

80  
Clerk of Court

APPROVED AS TO FORM:

  
Heather J. Encinosa  
County Attorney

ATTACHMENT A pg 5 of 5



## FLORIDA DEPARTMENT *of* STATE

**CHARLIE CRIST**  
Governor

**KURT S.  
BROWNING**  
Secretary of State

March 3, 2010

Honorable Scott J. Brock  
Mayor, City of Coral Springs  
9551 W. Sample Road  
Coral Springs, Florida 33065

RE: DE 10-02  
Advertising; Nonpartisan Candidate – posting party  
affiliation on Internet social networking websites  
§ 97.021(20), Florida Statutes.

Dear Mayor Brock:

This letter responds to a request for an advisory opinion submitted by your city attorney on behalf of the City Commission of the City of Coral Springs. Because the members of the City Commission are persons engaged in political activities, the Division of Elections has authority to issue the City Commission an opinion pursuant to section 106.23(2), Florida Statutes (2009).

Your city attorney asks:

May an elected nonpartisan City Commissioner or a candidate for such position post his or her party affiliation on [his or her] personal Facebook page, or does such posting constitute an improper political advertisement or public representation of his or her political affiliation under Chapter 106, Florida Statutes?

Your attorney states that your city ordinance provides “each candidate for elected municipal office shall not campaign as a member of any political party or publicly represent or advertise himself as a member of any political party.” The ordinance further provides that elections for municipal office in Coral Springs are nonpartisan. The Division of Elections has no authority to interpret provisions of municipal charters or ordinances; therefore, this opinion limits itself to the interpretation of Florida’s Election Code (chapters 97-106, Florida Statutes).

Section 97.021(20), Florida Statutes (2009), defines a nonpartisan office as one “for which a candidate is prohibited from campaigning or qualifying for election or retention in office based upon party affiliation.” The Election Code does not define “campaigning.” According to *Black’s Law Dictionary*, it includes all acts done to bring about a candidate’s election.<sup>1</sup> Therefore, the Election Code precludes a *nonpartisan candidate* from doing any act to bring about the candidate’s election *based upon party affiliation*. This prohibition would include campaigning for a nonpartisan office based upon party affiliation on an Internet social networking site. We adhere to our statements in *Division of Elections Opinion 03-02* (February 21, 2003), where we stated to a nonpartisan candidate concerning his political advertisements:<sup>2</sup>

[A]s a nonpartisan municipal candidate, you may not publicly represent or advertise yourself as a member of any political party. Thus, information stating your political affiliation may not appear in your political advertising. It is permissible, however, for you to list partisan related experience such as “executive committee of \_\_\_\_\_ party” in campaign advertisements. In doing so you would simply be providing information on past experiences as opposed to “campaigning based on party affiliation.”

Again, the Election Code’s prohibition is against a nonpartisan *candidate* “campaigning” or qualifying for elected office *based upon party affiliation*. Once candidates are elected, they are no longer “candidates” until they again satisfy the definition of “candidate” contained in sections 97.021(4) and 106.011(16), Florida Statutes. This usually occurs when a person first appoints a campaign treasurer and designates a primary campaign depository. Under state law, therefore, nonpartisan officeholders are not prohibited from publicly representing their party affiliation unless and until they again become a “candidate” at which point they are precluded from campaigning based upon party affiliation.

#### SUMMARY

Florida’s Election Code defines a nonpartisan office as one “for which a candidate is prohibited from campaigning or qualifying for election or retention in office based upon party affiliation.” Therefore, a nonpartisan candidate may never campaign based upon party affiliation. This prohibition would include campaigning for a nonpartisan office based upon party affiliation on Internet social networking sites. However, the Election Code does not prohibit nonpartisan officeholders from publicly representing their party affiliation unless and until they again

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<sup>1</sup> *Black’s Law Dictionary* (6th Ed. 1990).

<sup>2</sup> A “political advertisement” means a paid expression in a statutorily-prescribed communications media which expressly advocates the election or defeat of the candidate. § 106.011(17), Fla. Stat. (2009). A message by a candidate on a social networking site posted without any cost to the candidate would not constitute a paid expression; therefore, it would not be a “political advertisement.” However, depending on the content of the message, such a posting may constitute “campaigning.”

Honorable Scott J. Brock  
March 3, 2010  
Page 3 of 3

become a "candidate" at which point they are precluded from campaigning based upon party affiliation.

Sincerely,

A handwritten signature in black ink, appearing to be 'DLP', with a long horizontal line extending to the right.

Donald L. Palmer  
Director, Division of Elections

cc: Samuel S. Goren, City Attorney, City of Coral Springs

**FLORIDA ELECTIONS COMMISSION**  
**PHONE LOG**  
**Case No.: FEC 16-352**

**Respondent:** Richard Harden

**Complainant:** Hugh Taylor

1. **Date and time:** 01/11/17 @ 10:30 a.m.

**Name:** Henry Wells – Wakulla Co. SOE

**Phone #:** 850-926-7575

**Summary:** I called the supervisor of elections to ask him some additional questions concerning his response to the filing officer affidavit he recently completed.

I reminded him that he stated he had spoken to each candidate “one-on-one” in his office. When asked, Mr. Wells explained he met with Respondent in his (SOE) office when he came to file his paperwork. The supervisor further explained the meeting with Respondent was to go over everything involving a campaign, such as reporting periods, on-line reporting and other information relative to reporting issues. The supervisor said that he believed that he also provided Respondent with a copy of Chapter 105, FS, which he thought, mentioned non-partisan elections. When asked, the supervisor said that he could not recall a date for this meeting but said that it was around the time Respondent filed certain paperwork with his office (01/12/16).

I brought it to his attention that he had attested in his affidavit that he had a telephone conversation with Respondent about non-partisan elections. When asked to elaborate, the supervisor said that Respondent called his office asking questions about an upcoming candidate forum. He said that Respondent “got wind” of some concern about a local candidate forum and asked him about it. He said that he read the section of the election law relative to campaigning based on party affiliation to Respondent over the telephone. He added that he did not advise Respondent that he should or should not attend the forum but re-emphasized what was in the statutes. He stated that he had previously contacted the Division’s “Legal Department” and explained to them what was going on and that the Division’s legal representative told him that they would be “skating on thin ice” by attending and speaking at the forum. When asked, he said that he relayed the message to Respondent—that the Division’s legal representative had stated that they were skating on thin ice. When asked, the supervisor said he did not provide Respondent with anything in writing, rather what he read to him over the telephone. When asked, the supervisor said that he did not recall the date of his telephone conversation with Respondent but thought it to be at least a week or two prior to the forum being held on August 11, 2016. When asked, Mr. Wells said that he did not have any notes from his conversation with Respondent. The supervisor added that he had other telephone calls from other Republican candidates asking him the same thing—questions about the candidate forum—and he said that he told every candidate the same thing he told Respondent. When asked, the supervisor stated that the 2016 campaign was the first year of having non-partisan elections in Wakulla County.

**ATTACHMENT** C

**FLORIDA ELECTIONS COMMISSION**  
**REPORT OF INVESTIGATION**  
**Case No.: FEC 16-352**

**Respondent:** Richard Harden

**Counsel for Respondent:** Jason Gonzalez and Renatha Francis

**Complainant:** Hugh Taylor

On August 19, 2016, the Florida Elections Commission (“Commission”) received a sworn complaint alleging that Respondent violated Chapter 106, Florida Statutes. Commission staff investigated whether Respondent violated the following statute:

Section 106.143(3), Florida Statutes, prohibiting a candidate from campaigning based on his party affiliation while running for nonpartisan office.

**I. Preliminary Information:**

1. Respondent, Richard Harden, was a candidate for re-election to the Wakulla County Commission, District 5; he was defeated in the general election held on November 8, 2016. Respondent was first elected to office in 2012.

2. On January 12, 2016, Respondent’s “APPOINTMENT OF CAMPAIGN TREASURER AND DESIGNATION OF CAMPAIGN DEPOSITORY FOR CANDIDATES” form (DS-DE 9) was filed with the Wakulla County Supervisor of Elections’ office. Respondent appointed Michele Harden to serve as his campaign treasurer. To review the DS-DE 9 form, refer to Exhibit 1.

3. Respondent is represented by Jason Gonzalez and Renatha Francis of the firm, Shutts & Bowen, LLP.

4. Complainant, Hugh Taylor, is a resident of Wakulla County; he is involved with a local group of residents known as “Concerned Citizens of Wakulla.” The group is not a political committee.

**II. Alleged Violation of Section 106.143(3), Florida Statutes:**

5. I investigated whether Respondent violated this section of the election laws by campaigning based on his party affiliation while running for a nonpartisan office.

6. Complainant essentially alleged that Respondent campaigned based on party



affiliation while running for a nonpartisan office<sup>1</sup>.

7. Complainant noted that the Wakulla County Republican Executive Committee (WCREC) held a partisan forum on August 11, 2016. As part of his complaint, Complainant offered a number of articles from the local newspaper, *The Wakulla News*<sup>2</sup>, addressing the forum. Each of the articles will be discussed in the following paragraphs.

**Article titled, “Republican Executive Committee plans forum Aug. 11.”**

8. According to Complainant, the article appeared in the newspaper on July 21, 2016. The article reported that the WCREC would be hosting a Republican Candidates Forum on August 11 at the Senior Citizens Center. The second paragraph of the article reads, “REC Chairman Chris Russell advised that the Executive Committee felt it was vitally important to allow the voters an opportunity to hear firsthand from the Republican candidates that may ultimately represent them.” According to the article, Respondent was one of the candidates who confirmed that he would be present at the forum. To review the newspaper article, refer to Exhibit 2.

**Article titled, “Disappointed about Republican ‘forum.’”**

9. According to Complainant, the article appeared in the newspaper on August 4, 2016. The article appeared to be in the form of a letter to the Editor from a local resident. According to the resident, Al Shylkofski, Chris Russell allegedly indicated that the forum would be exclusively for registered Republican candidates.” To review the letter to the Editor, refer to Exhibit 3.

**Article titled, “Republican forum draws concern.”**

10. According to Complainant, the article appeared in the newspaper on August 18, 2016. According to the article, Respondent attended the event. The article reported that two candidates, Chuck Hess and Nikki Barnes, were not invited because they were registered Democrats. To review the newspaper article titled “Republican forum draws concern,” refer to Exhibit 4.

11. In addition to the newspaper articles, Complainant offered a copy of a document titled, “Wakulla County Charter Review Commission Summary of Proposed Amended/Revised Articles.” Article 2.1 reads, “All candidates shall be nonpartisan in the Primary election, settled by 50% + 1, the top 2 candidates shall go to the General election (unless in conflict w/ Supervisor of Elections Laws).” According to the document, it appears that the articles listed in the document were revised on June 9, 2014. To review charter review summary, refer to Exhibit 5.

12. Complainant offered a video taken at the candidate’s forum as well as an affidavit

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<sup>1</sup> Wakulla County Supervisor of Elections Henry F. Wells stated that the 2016 election was the first year for nonpartisan elections.

<sup>2</sup> The newspaper is delivered by mail to subscribers every Thursday.

from Carrie Hess<sup>3</sup>. In her affidavit, Ms. Hess attested that she attended the candidate's forum at the senior center on August 11, 2016. She further attested that she recorded the events of the forum on her camera. To review the affidavit of Carrie Hess, refer to Exhibit 6.

13. Commission staff reviewed the video from the forum. In it, WCREC Chairman Chris Russell introduced Respondent, and his opponent, Gordon Millender, as County Commission District 5 candidates. Respondent did not mention his political party affiliation during his speech, only speaking about the merits of his campaign. Respondent closed his speech by stating, "I'd like to ask for your vote and support." "Vote Republican" signs were displayed on and near the stage while Respondent addressed those in attendance. To review a still-shot of WCREC Chairman Chris Russell speaking at the forum, refer to Exhibit 7. To review a still-shot of Respondent speaking at the forum, refer to Exhibit 8.

14. Respondent submitted a response to the complaint. Respondent reported that he was invited to attend a Republican Party forum and that he responded to an invitation to speak at the forum. Respondent stated, "During my 4 minute address I never at anytime mentioned anything related to any political party." Respondent further stated, "Not only do I not have any political party affiliation mentioned on any of my campaign literature, I also did not pass out or present any campaign literature to anyone in attendance at the forum which is the subject of this complaint. I simply spoke on the merits of my campaign without any mention of any political party." To review Respondent's response to the complaint, refer to Exhibit 9.

15. Respondent was offered an opportunity to complete and return a questionnaire-affidavit to address additional inquiries from the Commission staff relative to the candidate's forum; Respondent declined to return the questionnaire-affidavit<sup>4</sup>.

16. In an affidavit, Wakulla County Supervisor of Elections Henry Wells was asked whether he or any member of his staff had any conversations with Respondent concerning a provision of Chapter 106, Florida Statutes. Mr. Wells stated, "Telephone about nonpartisan elections ...". To review the affidavit of filing officer, refer to Exhibit 10.

17. In a telephone interview on January 11, 2017, the supervisor of elections was asked to elaborate on his telephone conversation with Respondent. Mr. Wells stated that he believed that Respondent had "got wind" of some concern about the candidate's forum and called him to ask him about it. Mr. Wells explained that he read the section of the election law relative to campaigning based on party affiliation to Respondent over the telephone.

18. The supervisor of elections added that he had previously discussed the circumstances of the candidate's forum with the Division of Elections "Legal Department" and

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<sup>3</sup> In a telephone interview, Ms. Hess said that she was reluctant to answer questions as her husband is the current commissioner representing District 5. She did confirm the statements made in the affidavit—that she attended the forum and recorded the forum by using her camera.

<sup>4</sup> In correspondence dated April 28, 2017, Respondent's counsel, Jason Gonzalez, noted that his client would like to rely upon his response to the complaint. Additionally, counsel stated that his client continues to maintain that the complaint failed "to state a claim, as it does not allege any legally sufficient violation of Chapter 104 or 106, Florida Statutes."

was told by the Division's legal representative that the candidates would be "skating on thin ice" by attending and speaking at the forum. According to Mr. Wells, he relayed what he was told by the Division's legal representative to Respondent as part of his conversation with Respondent over the telephone. When asked, Mr. Wells said that he was unsure of the date of his telephone conversation with Respondent but thought it to be at least a week or two prior to the forum being held on August 11, 2016. Mr. Wells agreed to an affidavit summarizing the telephone interview of January 11, 2017.

19. In an affidavit summarizing the telephone interview of January 11, 2017, Mr. Wells said that Respondent called his office with questions about the candidate's forum. Mr. Wells attested he and Respondent "discussed the Florida Statutes 97.22 [97.021(22)] on meaning of Nonpartisan Races and 106.143(3&11). I informed candidate that attending was up to the candidate and that the DOE legal Dept. stated that candidates were skating on thin ice." Mr. Wells said that he was unsure as to the exact date he spoke with Respondent but thought it was the end of July. Additionally, Mr. Wells attested, "The candidate was informed on the Florida Statutes and that I talked to the State Dept. of Elections, legal and I shared what Mr. Jordan<sup>5</sup> told myself. That the candidates were skating on thin ice in doing so. Never once did I say that the candidates should not attend only shared the FS and what I understood from the FS. Candidates should not campaign using party in any manner per the FS." To review the affidavit from the supervisor of elections summarizing the telephone interview of January 11, 2017, refer to Exhibit 11.

20. In a telephone interview, Mr. Wells stated that he had a discussion with Chris Russell, the chairman of the WCREC, concerning the candidate's forum. Mr. Wells stated that he received a telephone call from Mr. Russell asking him questions relative to the candidate's forum. Mr. Wells explained that he had received an earlier telephone call from a local republican candidate who had asked him about the forum so he (Wells) had called and discussed the circumstances of the candidate's forum with the Division's legal representative.

21. Mr. Wells continued that after explaining the circumstances to the legal department, he was informed that they would be "skating on thin ice." According to Mr. Wells, he relayed what he was told by the legal representative to Mr. Russell when Mr. Russell called his office. Mr. Wells stated that he also read the statute addressing campaigning based on party affiliation with Mr. Russell. He further stated that he did not advise Mr. Russell that he could or could not hold the forum, only reiterating to him the statutes. According to Mr. Wells, Mr. Russell told him that he was "wrong" as he had read the statutes himself. Mr. Wells added that he was unsure of the date of his telephone conversation with Mr. Russell but believed it transpired about a week or so prior to the candidate's forum held on August 11, 2016.

22. As part of the questionnaire-affidavit, Respondent was asked whether he had spoken with Chris Russell or anyone else regarding the forum before the event to inquire whether or not he should attend and speak at the forum. In addition, Respondent was asked about his conversation with the supervisor of elections. Refer to paragraph 15 of my report of investigation. To review a copy of the questionnaire-affidavit, refer to Exhibit 12.

---

<sup>5</sup> W. Jordan Jones, attorney with the Division of Elections.

23. No record was found to indicate that Respondent has previously violated this section of the election laws.

**III. FEC History:**

24. Respondent has no prior history with the Florida Elections Commission.

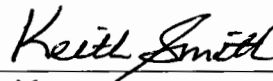
**Conclusion:**

25. On May 11, 2017, I interviewed Jason Gonzalez, Respondent's counsel, by telephone to provide him with a brief overview of the case and to afford him an opportunity for questions or comments. Counsel, addressing the candidate's forum and the presence of the "Vote Republican" signs, said that there was nothing to suggest that his client was responsible for the signs being present at the forum nor any suggestion that he paid for the signs.

26. In an affidavit, Wakulla County Supervisor of Elections Henry F. Wells attested that his office provided Respondent with Chapter 106, Florida Statutes, as well as the *Candidate and Campaign Treasurer Handbook*. Mr. Wells further attested that Respondent was first elected to office in 2012. To review the affidavit of filing officer, refer to Exhibit 10.

27. Respondent executed a Statement of Candidate form indicating that he had been provided access to read and understand the requirements of Chapter 106, Florida Statutes; the form is dated as having been signed January 12, 2016. To review the Statement of Candidate form, refer to Exhibit 13.

Respectfully submitted on May 24, 2017.



---

Keith Smith  
Investigation Specialist

**Current address of Respondent**

Richard Harden  
Post Office Box 98  
Sopchoppy, Florida 32327

**Current address of Complainant**

Hugh Taylor  
1357 MLK Road  
Crawfordville, Florida 32327

**Current Address of Respondent's Atty.:**

Jason Gonzalez  
Shutts & Bowen LLP  
215 South Monroe Street – Suite 804  
Tallahassee, Florida 32301

Renatha Francis  
Shutts & Bowen LLP  
200 South Biscayne Boulevard, Suite 4100  
Miami, Florida 33131

**Name and Address of Filing Officer:**

The Honorable Henry F. Wells  
Supervisor of Elections  
Post Office Box 305  
Crawfordville, Florida 32326

Copy furnished to: David Flagg, Investigations Manager

**FLORIDA ELECTIONS COMMISSION**  
**REPORT OF INVESTIGATION**  
**Richard Harden -- FEC 16-352**

<b>LIST OF EXHIBITS</b>	
<b>Exhibits #s</b>	<b>Description of Exhibits</b>
Exhibit 1	DS-DE 9
Exhibit 2	Newspaper article dated 07/21/16
Exhibit 3	Letter to the Editor article
Exhibit 4	Newspaper article dated 08/18/16
Exhibit 5	Charter review document
Exhibit 6	Affidavit – Carrie Hess
Exhibit 7	Still-shot of Chris Russell
Exhibit 8	Still-shot of Respondent
Exhibit 9	Respondent's response
Exhibit 10	Filing Officer Q/A
Exhibit 11	Filing Officer affidavit re: call
Exhibit 12	Respondent's Q/A
Exhibit 13	Statement of Candidate

**APPOINTMENT OF CAMPAIGN TREASURER  
AND DESIGNATION OF CAMPAIGN  
DEPOSITORY FOR CANDIDATES**

(Section 106.021(1), F.S.)

(PLEASE PRINT OR TYPE)

RECEIVED

2016 JAN 12 A 9:21

COLLECTIONS  
WAKULLA COUNTY, FLORIDA

OFFICE USE ONLY

NOTE: This form must be on file with the qualifying officer before opening the campaign account.

**1. CHECK APPROPRIATE BOX(ES):**

Initial Filing of Form      Re-filing to Change:  Treasurer/Deputy     Depository     Office     Party

2. Name of Candidate (in this order: First, Middle, Last)

Richard Warren Harden

3. Address (include post office box or street, city, state, zip code)

4. Telephone

(850) 962-4254

5. E-mail address

rharden@centurylink.net

6. Office sought (include district, circuit, group number)

Wakulla County Commission District 5

7. If a candidate for a **nonpartisan** office, check if applicable:

My intent is to run as a Write-In candidate.

8. If a candidate for a **partisan** office, check block and fill in name of party as applicable: My intent is to run as a

Write-In     No Party Affiliation     Nonpartisan Party candidate.

9. I have appointed the following person to act as my  Campaign Treasurer     Deputy Treasurer

10. Name of Treasurer or Deputy Treasurer

Michele Harden

11. Mailing Address

P.O. Box 98

12. Telephone

(850) 962-4254

13. City

Sopchoppy

14. County

Wakulla

15. State

FL

16. Zip Code

32358

17. E-mail address

rharden@centurylink.net

18. I have designated the following bank as my  Primary Depository     Secondary Depository

19. Name of Bank

Centennial Bank

20. Address

21. City

Crawfordville

22. County

Wakulla

23. State

Florida

24. Zip Code

32327

UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING FORM FOR APPOINTMENT OF CAMPAIGN TREASURER AND DESIGNATION OF CAMPAIGN DEPOSITORY AND THAT THE FACTS STATED IN IT ARE TRUE.

25. Date

1-12-2016

26. Signature of Candidate

Richard Warren Harden

27. Treasurer's Acceptance of Appointment (fill in the blanks and check the appropriate block)

I, Michele Harden, do hereby accept the appointment

(Please Print or Type Name)

designated above as:  Campaign Treasurer     Deputy Treasurer.

1-12-2016

Date

**EXHIBIT**

Michele Harden  
Signature of Campaign Treasurer or Deputy Treasurer

# Republican Executive Committee plans forum Aug. 11

Special to The News

The Wakulla County Republican Executive Committee (REC) will be hosting a Republican Candidates Forum on Thursday Aug. 11, at the Senior Citizens Center starting at 6:30 p.m.

REC Chairman Chris Russell advised that the Executive Committee felt it was vitally important to allow the voters an opportunity to hear firsthand from the Republican candidates that may ultimately represent them. The forum will feature candidates running for local, state, and federal office. He noted that 12 of the 14 candidates running for local office are registered Republicans and that the U.S. Congressional District 2 seat has an overwhelming high probability of being filled by a registered Republican. This complements the two school board seats that were up for election this cycle and will remain filled by Republicans as both of those candidates went unopposed.

Russell stated that the number of registered Republicans in Wakulla County has dramatically increased over the last couple of years and he credits that with local voters making a stronger stand on issues they hold dear, such as: constitutional rights, the protection of the unborn, and domestic security. He said more local Republicans are

now getting involved as candidates and pointed out the fact that for the first time in modern history, Wakulla County will elect both a Sheriff and a Property Appraiser that are registered as Republicans. Mr. Russell closed by stating that he appreciated the Christian Coalition's willingness to reschedule the event they previously planned for Aug. 11, that by doing so, more voters will now have an opportunity to hear firsthand from the candidates running to represent them.

The following candidate campaigns have confirmed they will be present at the forum: BOCC District 1 candidate Ralph Thomas, BOCC District 3 candidates John Shuff and Mike Stewart, BOCC District 5 candidates Richard Harden and Gordon Millender, Property Appraiser candidates Ed Brimmer, Brad Harvey, and Steve Remke, Sheriff candidates Charlie Creel, Jared Miller, and Bill Poole, Florida House of Representatives District 7 incumbent Halsey Beshears, State Attorney's Office candidate Pete Williams, and U.S. Congressional District 2 candidates Neal Dunn, Ken Sukhia, and Mary Thomas.

More information about the forum can be found at the REC's home facebook page: [www.facebook.com/wakul](http://www.facebook.com/wakul)

Republicans/

7/21/16

THE WAKULLA  
NEWS.

EXHIBIT "B"

1

2



# The Opinion Page

READERS WRITE:

## Public invited to coalition forum Aug. 8

Editor, The News:

We would love to invite everyone in the county to our first candidate forum, to be held Aug. 8, at 7 p.m. at the Wakulla County Public Library. This forum will be dedicated to those candidates running for office in county commission Districts 3 and 5.

The forum will be in a moderated forum format, with questions from the audience turned in to a moderator, with no questions directly from the floor.

Becoming informed is a civic duty, and we have offered these forums to help citizens know about the candidates and their positions.

on issues. Part of our mission is education and we can think of nothing better than making candidate positions and platforms available to the most people possible.

We believe all candidates should be included as the primary will turn out to be the election that could possibly elect a new commissioner, so we encourage all citizens to drop in and hear the candidates, then get ready to vote.

Remember, early voting starts Aug. 20.

Thank you.

Jennie V. Jones

President

Wakulla County Christian Coalition

## Disappointed about Republican forum

Editor, The News:

I am disappointed by the actions of the Republican Executive Committee Chairman, Chris Russell and the Wakulla County Republican Party for advertising and scheduling a partisan forum whose participants are limited only to "registered" Republican candidates.

I am a registered Republican and believe the public is best served when they have the opportunity to see and hear all candidates.

Wakulla County's local elections are non-partisan (political party candidates not allowed) and, according to Wakulla County's Supervisor of Elections Buddy Wells and Florida law, F.S. 106.143, "A candidate for nonpartisan office is prohibited from campaigning based on

party affiliation."

There is no ambiguity in the Republican Executive Committee (REC) invitation. Chris Russell, the Republican Executive Committee chairman emphasizes that the GOP forum is exclusively for "registered" Republican candidates in a "Special to The News" report in the July 21, The Wakulla News, and on the Wakulla County Republican Party's Facebook page.

Russell, of all people, should know Florida's election laws on non-partisan elections, he led Wakulla County's Charter Review Committee, proposed by Wakulla County Commissioner Ralph Thomas that helped change Wakulla County elections to non-partisan races.

Now, Republican candidates, and arguably Wakulla's Republican Party, face

a sticky situation. The REC's apparent disregard for Florida's elections laws puts Wakulla County's registered Republican candidates in a spot where they, running as non-partisan candidates attending this exclusive GOP forum could make themselves vulnerable to violating Florida's law.

It should not have to be said that Wakulla County's voters deserve an opportunity to ask questions of all candidates and hear them state their positions on how they would serve Wakulla County.

We should all strive to adhere to Florida's laws. Politicians who ignore our laws threaten the public's trust and our freedom.

EXHIBIT

Al Shylkofski

Crawfordville

8/4/14  
THE WAKULLA  
NEWS  
EXHIBIT  
"E"

# Republican forum draws concern

Complaint reportedly filed with state claiming violation of non-partisan elections

By WILLIAM SNOWDEN  
editor@thewakullanews.net

A forum held by Wakulla Republicans last week reportedly drew an elections complaint after local candidates who are registered Democrats were not invited to attend.

The state Elections Commission would not verify a complaint had been filed, but a person close to the matter confirmed that a complaint was filed on Friday, Aug. 12, the day after the forum, against the local executive committee, and the candidates who attended.

All of Wakulla's local races are non-partisan - except the Superintendent of Schools. The political parties can still support candidates with money and other help, but the candidates are not allowed to campaign using their party affiliation.

At the senior center on Thursday night, the local party invited Republican candidates in local and area elections.

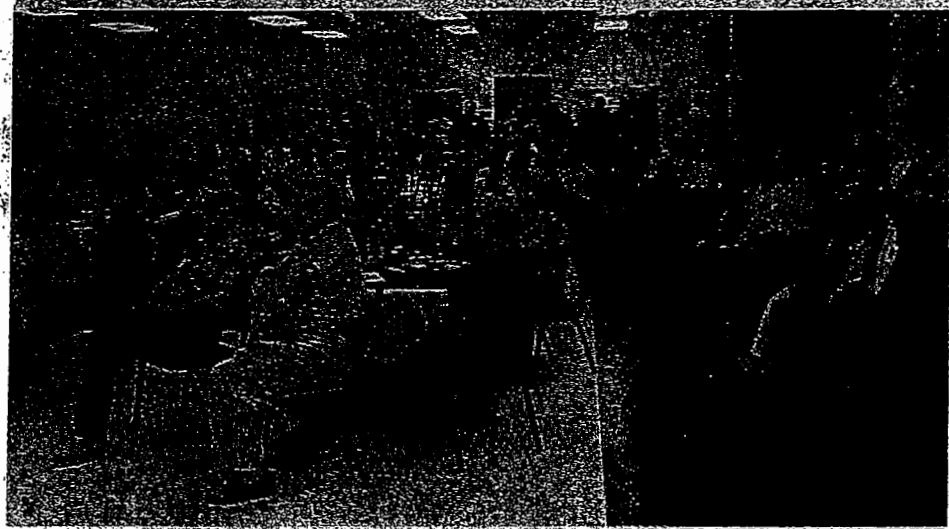


PHOTO BY WILLIAM SNOWDEN

The audience was standing-room only at the GOP forum on Thursday.

Chuck Hess and Nikki Barnes, two candidates in the non-partisan county commission races, were not invited because they are registered Democrats. Howard Kessler, who is a registered Republican, did not attend the forum out of concern that all candidates weren't invited.

Supervisor of Elections Buddy Wells met with Republican Party Chair Chris Russell about the concerns of possible violations and warned that the Republicans were "on thin ice."

Russell and the members of the executive committee reviewed the law and contend there is no violation.

At the start of the Thursday night forum,

which was attended by nearly 200 people and was standing-room only in the senior center, Russell referred to the controversy, but indirectly, reassuring attendees and candidates that "This is not a problem," and "This is nothing new."

But many of the candidates who attended were unaware of the controversy and the threat of an election complaint. Some who were aware of the controversy said simply that they had received an invitation to speak and were going wherever they were invited.

Sheriff Charlie Creel, in an abundance of caution, told the crowd that, on the advice of his attorney, he would not speak at the event.

He offered to talk after the event - and walked away from the podium to silence and a few muffled boos.

Creel and the other two candidates for sheriff, Jared Miller and Bill Poole, are all registered Republicans. Miller had heard of the controversy and went ahead with his stump speech, while Poole was unaware of it and admitted afterwards that he was mystified by Creel's comments.

After the event, Russell would not talk on the record about the controversy.

It's not clear if the Democrats violated the non-partisan laws at their May gala at Wakulla Springs when Barnes and Hess spoke

Turn to Page 5A

5/18/14  
THE  
Wakulla  
news  
(1)  
EXHIBIT  
"7"



EXHIBIT 4 (102)



# Republican forum draws concern

From Front Page

there, but no other candidates spoke. (Barnes was chair of the local Democratic Party until she was required to step down when qualifying as a candidate for county commission.) There was no election complaint filed alleging a violation at the Democratic event.

## CANDIDATES AT THE FORUM

Russell served as Master of Ceremonies at the forum, which included many candidates from local and area races. State Rep. Halsey Beshears, whose district includes Wakulla but who has no opposition for re-election, helped with timekeeping.

Republican congressional candidates Ken Sukhia, Mary Thomas and Neal Dunn gave their stump speeches.

Sukhia, a former federal prosecutor for the Northern District of Florida, said that "People run as conservatives and then govern as moderates." He painted himself as a law-and-order conservative who wants to defend the American way of life.

Thomas, an attorney in the office of Gov. Rick Scott, noted her endorsement by the NRA and said she is the only candidate in the race to endorse Donald Trump for president. That drew applause from the crowd, as it did when she repeated Trump's pledge to "Make America great again."

Dunn, a surgeon, said his three priorities in office will be health care, the economy, and national security. "The White House has more damage to the military than ISIS," he said.

Pete Williams, Republican candidate for state attorney and a former statewide prosecutor, spoke of the problems of different treatment for the same crimes under current state attorney, Willie Meggs, who is retiring and whom Williams never mentioned by name.

Williams vowed to spend one day a week in each county in the circuit to discuss local concerns. Williams will face a Democrat in the November general election, either Sean Desmond or Jack Campbell.

Local candidates at the event, in addition to the sheriff's candidates, included Ralph Thomas, running for re-election to county commission, district 1; Mike Stewart and John Shuff, candidates for district 3; Richard Harden and Gordon Millender for district 5; and two of the three candidates for property appraiser, Steve Remke and Brad Harvey. Ed Brimmer was not at the event, and no reason was given for his absence.

THE WAKULLA  
NEWS

71 (2)

EXHIBIT

4 (202)



# Wakulla County Charter Review Commission Summary of Proposed Amended/Revised Articles

**The following is a list of Articles for which the CRC has voted & approved to amend/revise:**

✓ **Article 2.1 –**

- All candidates shall be nonpartisan in the Primary election, settled by 50% + 1, the top 2 candidates shall go to the General election (unless in conflict w/ Supervisor of Elections Laws)
- Shall be five single member districts for BOCC

✓ **Article 2.3 –**

- Mandatory residency requirement – must provide a declaration/oath of living in district for 6 months prior to qualifying date. Must also provide 3 out of the following 4 other categories providing proof of residency: (1) vehicle registration; (2) voter registration card; (3) Florida Driver's License and/or Florida Identification Card; (4) a notarized statement of residency from home-owner, or homestead exemption card, or leasing/renting statement.
- 

✓ **Article 6 –**

- Add a new subsection regarding "Special Elections/Referendums" that reads all referendums shall take place at the general election

✓ **Article 6.1 –**

- Add language that reads 60% of the electors votes shall be required to pass charter amendments and ordinances.

✓ **Article 6.2 –**

- All local officers shall be subject to recall

✓ **Article 7.4 –**

- Each County Commissioner shall appoint 3 citizens to serve on the Charter Review Commission (totaling 15 members); 12 members shall make a quorum and 2/3 of the 12 members to pass a vote; and the CRC shall be appointed no more than 8 years apart
- The BOCC shall provide CRC a list of no less than 3 attorneys before the 1<sup>st</sup> CRC meeting to allow CRC to rank and provide recommendation to the BOCC for approval

✓ **New Article –**

- The BOCC shall adopt, and adhere to, a debt policy that regulates the acceptance, issuance, and management of debt. The BOCC shall also adhere to the fund balance policy.

*(Revised June 9, 2014)*

AFFIDAVIT

State of Florida

County of Wakulla

I, Carrie A. Hess, swear that I attended the "Wakulla County Republican Executive Committee Republican Candidates Forum" where on the Wakulla County Chamber of Commerce website, the public was invited to "come out to the Senior Citizens Center and meet the Republican Candidates running for all local offices (BOCC, Sheriff, Property Appraiser)..." held on August 11th, 2016 and that I recorded the proceedings on my camera in seven parts, which recordings have been accurately transferred from the original recordings to the thumb drives submitted with this affidavit. Recording in seven parts were necessary due to limitations of my camera.

*Carrie A. Hess*

Carrie A. Hess

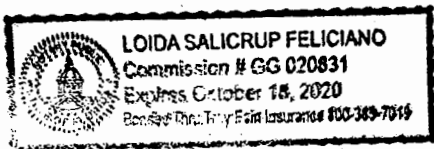


*expired on: 7-12-2022*

Sworn to and subscribed before me this \_\_\_ day of November, 2016

*Loida Salicrup Feliciano*

Notary Public



*Loida Salicrup Feliciano*

Print or stamp name of notary public

NOTARY SEAL

EXHIBIT 6





00:04



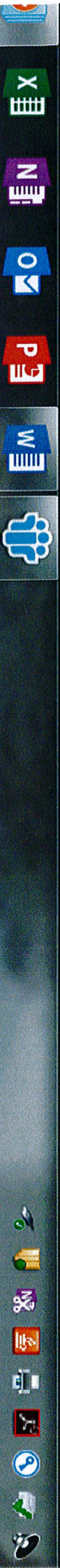
EXHIBIT 7





EXHIBIT

8



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RECEIVED

2016 SEP - 7 P 1:40

Dear Florida Elections Commission

In response to complaint case no. FEC 16-352 that I received in the mail I would like to provide the following response and defense.

I am not in violation of any statute that has been mentioned in case number FEC-16-352. At no time in my campaign have I listed a party affiliation in any campaign literature, sign, or material that has been produced or distributed by my campaign. I have attended multiple forums, debates, and speaking engagements that I have been invited to during my campaign and I have not at anytime campaigned based on party affiliation. I was invited to attend a Republican Party forum on August 11, 2016 and I responded to an invitation to speak at this event. Each speaker was given 4 minutes to speak to a crowd of 200 citizens. During my 4 minute address I never at anytime mentioned anything that related to any political party. Not only do I not have any political party affiliation mentioned on any of my campaign literature, I also did not pass out or present any campaign literature to anyone in attendance at the forum which is the subject of this complaint. I simply spoke on the merits of my campaign without any mention of any political party. The person bringing the complaint, Mr. Hugh Taylor, is a supporter of Mr. Chuck Hess who is a candidate in my race for Wakulla County Commission District 5. Mr. Hugh Taylor's household has financially supported my opponent though his wife, Mary Cortese, with a donation to his campaign of \$100.00 on 6-4-2016. Mr Al Shylkofski, who is mentioned in the complaint as a citizen, is also a financial supporter of my opponent with a donation to Mr. Chuck Hess' campaign of \$50.00 on 2-21-2016 and also a donation of \$50.00 on 7-10-2016.

I believe that Mr. Hugh Taylor, who is a supporter of my opponent in the Wakulla County Commission Dist. 5 race, has filed this complaint with malicious intent toward my campaign. I believe this complaint is filed with malicious intent to injure the reputation of me and my campaign and I believe with his knowledge his complaint contains false accusations. I believe the complainant, Mr. Taylor, has displayed reckless disregard for whether his complaint is accurate. Also, as stated in the complaint under the complainant's exhibit "F" the Wakulla news stated in the newspaper dated August 18, 2016 that a person close to the matter had filed a complaint with the Florida Elections Commission on August 12, 2016 but the date of the complaint that was officially filed and received by the FEC is dated August 19, 2016. This date is after my reputation was maliciously attacked in the Wakulla News Paper.

As stated in the August 18, 2016 issue of Wakulla news "Exhibit F," in May 2016 the Wakulla County Democratic Party held a Gala at Wakulla Springs and only allowed my opponent candidate, Mr. Chuck Hess, and Dist. 3 candidate, Mrs. Nikki Barnes (chairman Wakulla County Democrat Executive Committee), to speak. I was not in attendance, nor was invited to speak at that event, that essentially was identical to the event that was the subject of this complaint. Mr Hugh Taylor, who is a supporter of Chuck Hess and Nikki Barnes, did not find any fault in their action because he is supporting their respective campaigns.

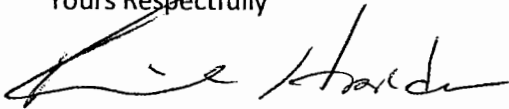
EXHIBIT 9 (102)



I would like to state that during the course of my campaign I have stayed in constant communication with the Wakulla Supervisor of Elections and have made every attempt to honestly and ethically campaign with integrity. I have not at any time identified a party affiliation on any of my campaign literature. I have not at any time mentioned or identified with any political party at any event, debate, or forum that I have been invited to attend.

I further would like to restate that I believe that this complaint is politically motivated and has been filed with malicious intent by Mr. Hugh Taylor to injure my reputation.

Yours Respectfully

A handwritten signature in black ink, appearing to read "Richard Harden", written in a cursive style.

Richard Harden

Wakulla County Commission District 5 candidate

EXHIBIT 9 (202)

KS

**AFFIDAVIT OF FILING OFFICER**  
**Case Number: FEC 16-352**

RECEIVED

STATE OF FLORIDA  
County of Wakulla

2016 NOV 30 A 10: 51

STATE OF FLORIDA  
ELECTIONS COMMISSION

Henry F. Wells, being duly sworn, says:

1. This affidavit is made upon my personal knowledge.
2. I am of legal age and competent to testify to the matters stated herein. I am currently employed by Wakulla County as Supervisor of Elections.
3. Please provide copies of the listed items from the following candidate's campaign file: **Richard Harden**.

Check	ITEM
✓	The Statement of Candidate form.
✓	Appointments of Treasurers and Designation of Campaign Depository form.

4. Please check each item provided to the candidate or his staff, and list the date that the item was provided.

Check	ITEM	DATE
✓	Chapter 106, Florida Statutes	1-12-2016
✓	Candidate and Campaign Treasurer Handbook <u>Please indicate</u> Year. <u>1-2016</u> also @ <u>wakullaelection.com</u>	1-12-2016
✓	Other: <sup>1</sup> <u>Chapter 105 F.S.</u>	1-12-2016

5. Relative to Chapter 106, *Florida Statutes* and the *Candidate and Campaign Treasurer Handbook*, how are these publications provided to the candidate and/or his staff?

- Publications are given directly to the candidate and/or his staff.
- Publications are available in the office, candidate and/or his staff are advised to pick-up the publications for themselves.

<sup>1</sup> Any local publications relative to the Election laws that may have been provided in lieu of the Candidate and Campaign Treasurer Handbook published by the Division of Elections. If your office published the item(s), please send a copy of the item(s) with the affidavit.

EXHIBIT 10 (1 of 3)

- Candidate and/or his staff are advised to download copies of the publications from our website or the Division of Elections' website.

○ Other, please explain. \_\_\_\_\_

6. Did your office offer any candidate workshops or training seminars prior to the November general election?  Yes or  No. If yes, please list all workshops/training seminars that were attended by the candidate and/or his staff, along with the date of attendance. If a staff member attended for the candidate, list his/her name and position. If available, please attach a copy of any attendance sheets from the workshops/training seminars and if available, please provide a copy of the syllabus and outline for the workshops/seminars.

SPOKE TO EACH CANDIDATE - ONE/ONE IN OFFICE

7. Does your office have any record of Richard Harden having sought elective office within your jurisdiction prior to the 2016 election?  Yes or  No. If yes, please list the previous office(s) he ran for, the date(s) of the election(s), and the result(s) of the election(s).

2012 General Election Run For Commissioner District 5

Elected w/ 48.99% OF VOTE - TWO OTHER CANDIDATES @ 30.18% & 20.12%

8. Does your office have any record of Richard Harden having been named as a chairperson or campaign treasurer of a political committee or electioneering communication organization within your jurisdiction?  Yes or  No. If yes, please list the name(s) of the committees.

9. Did you or any member from your staff have any conversations with Richard Harden concerning a provision of Chapter 106, Florida Statutes, at any time during his 2016 campaign?  Yes or  No. If yes, please indicate whether the conversation was in person, in writing, or by telephone and the subject matter of the conversation. If applicable, please provide copies documenting the discussion.

Telephone about Non-partisan elections, Campaign reports & Sign

I SWEAR OR AFFIRM THAT THE INFORMATION CONTAINED IN THIS DOCUMENT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

EXHIBIT 10 (2 of 3)

H. Wells "Buddy"  
**Signature of Affiant**

Sworn to (or affirmed) and subscribed before me this 28<sup>th</sup> day of November, 2016

Debra A. Russell  
**Signature of Notary Public - State of Florida**

**Print, Type, or Stamp Commissioned Name of Notary Public**

Personally Known  or Produced Identification

Type of Identification Produced: \_\_\_\_\_

Case investigator: KS

EXHIBIT 10 (343)

AFFIDAVIT OF FILING OFFICER

Case Number: FEC 16-352

RECEIVED

STATE OF FLORIDA

County of Wakulla

2017 MAR 23 P 4: 19

Henry F. Wells "Buddy", being duly sworn, says:

STATE OF FLORIDA  
ELECTIONS COMMISSION

- 1. This affidavit is made upon my personal knowledge.
- 2. I am of legal age and competent to testify to the matters stated herein. I am currently employed by Wakulla County as Supervisor of Elections

3. Did you have any discussion with **Mr. Harden** concerning the issue of holding and/or attending a candidate's forum to be held by the **Wakulla County Republican Executive Committee** at the senior center? (X) Yes or ( ) No. If yes, please answer the following questions.

A.) Did you speak with Mr. Harden in person or via telephone? Phone \_\_\_\_\_. If you did speak with him, did he initiate contact with you? Yes he called the office with questions on the Forum and I discussed the Florida Statutes 97.22 on meaning of Nonpartisan Races and 106.143 (3&11). I informed candidate that attending was up to the candidate and that the DOE legal Dept. stated that candidates were skating on thin ice.

B.) When (on what date, approximately) did you speak with him?

He called ~end of July to discuss the issue not sure of the exact date.

C.) In the space below, please explain in as much detail as you can, what you told him relative to attending the candidate forum.

The candidate was informed on the Florida Statutes and that I talked to the State Dept. of Elections, legal and I shared what Mr. Jordon told myself. That the candidates were skating on thin ice in doing so. Never once did I say that the candidates should not attend only shared the FS and what I understood from the FS. Candidates should not campaign using party in any manner per the FS.

SWEAR OR AFFIRM THAT THE INFORMATION CONTAINED IN THIS DOCUMENT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

*H. F. Wells*

Signature of Affiant

Sworn to (or affirmed) and subscribed before me this 23 day of March 2017

*Celina L. Greene*

Signature of Notary Public - State of Florida

Print, Type, or Stamp Commissioned Name of Notary Public



CELINA L. GREENE  
MY COMMISSION # GG 005499  
EXPIRES: June 23, 2020  
Bonded Thru Budget Notary Services

Personally Known  or Produced Identification \_\_\_\_\_

EXHIBIT

Type of Identification Produced: 1/1

**AFFIDAVIT OF BACKGROUND INFORMATION**  
**Case Number: FEC 16-352**

**STATE OF FLORIDA**  
**County of Wakulla**

**Richard Harden, being duly sworn, says:**

1. This affidavit is made upon my personal knowledge.
2. I am of legal age and competent to testify to the matters stated herein. I am currently employed by \_\_\_\_\_ as \_\_\_\_\_.
3. Prior to your 2016 campaign, had you ever run for public office? If so, please name the office(s) you ran for and the date(s) of the election(s) you ran in.  
\_\_\_\_\_  
\_\_\_\_\_

4. Have you ever been appointed to act as a campaign treasurer for a candidate? If so, please name the candidate(s) you served as treasurer, the office(s) the candidate ran for, and the dates of the election(s).  
\_\_\_\_\_  
\_\_\_\_\_

5. Have you ever held the office of chairperson or treasurer for a political committee? If so, please list the names and addresses of the committees and dates when you held the position.  
\_\_\_\_\_  
\_\_\_\_\_

6. What action have you taken to determine your responsibilities under Florida's election laws?  
\_\_\_\_\_  
\_\_\_\_\_

7. Do you possess a copy of Chapter 106, Florida Statutes?  Yes  No

8. If so, when did you first obtain it? \_\_\_\_\_

9. Have you read Chapter 106, Florida Statutes?  Yes  No

**EXHIBIT 12 (1 of 3)**

10. Do you possess a copy of the *Candidate and Campaign Treasurer Handbook*?  Yes  No

11. If so, when did you first obtain it? \_\_\_\_\_

12. Have you read the *Candidate and Campaign Treasurer Handbook*?  Yes  No

13. As part of your response to the complaint, you stated you were invited to attend the forum. Relative to the invitation, please provide answers to the following questions:

- o How did you receive the invitation? (i.e. – regular mail delivery, e-mail, etc.).

\_\_\_\_\_

- o Who was the invitation from? \_\_\_\_\_

- o When (on what date, approximately) did you receive the invitation? If available, please provide a copy of the invitation.

\_\_\_\_\_

14. Did you know that the forum was going to be exclusively for registered Republican candidates? If yes, when (on what date, approximately) and how did you learn that it was exclusively for registered Republican candidates?

\_\_\_\_\_

15. Prior to attending the forum on August 11, 2016, had you read about in the newspaper or heard about any concerns from citizens relative to the forum? If yes, please elaborate.

\_\_\_\_\_

16. Did you speak with Chris Russell or anyone else regarding the forum before the event, including whether or not you should attend and speak at the forum? If so, A.) please state whom you spoke with, B.) when you spoke with him/her, and C.) describe the conversation(s) in detail.

A. \_\_\_\_\_

EXHIBIT 12 (2 of 3)

B. \_\_\_\_\_

C. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

17. According to Wakulla County Supervisor of Elections Buddy Wells, you called him with questions about the forum. When (on what date, approximately) and why did you speak with the Supervisor of Elections to discuss the forum? Additionally, in the space below, please describe in detail your conversation with the Supervisor of Elections.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

18. What was your purpose in attending and eventually speaking at the forum?

\_\_\_\_\_

\_\_\_\_\_

**I HEREBY SWEAR OR AFFIRM THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.**

\_\_\_\_\_  
**Signature of Affiant**

Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public - State of Florida

**Print, Type, or Stamp Commissioned Name of Notary Public**

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

\_\_\_\_\_

Case Investigator: KS

EXHIBIT 12 (323)



**STATEMENT OF  
CANDIDATE**

(Section 106.023, F.S.)

(Please print or type)

OF USE ONLY

RECEIVED

2016 JAN 12 A 9:21

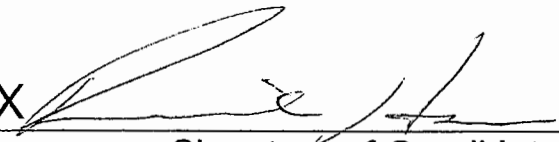
CLERK OF ELECTIONS  
WAKULLA COUNTY, FLORIDA

I, Richard W. Harden,

candidate for the office of Wakulla County Commission Dist. 5,

have been provided access to read and understand the requirements of  
Chapter 106, Florida Statutes.

X



Signature of Candidate

1-12-2016

Date

Each candidate must file a statement with the qualifying officer within 10 days after the Appointment of Campaign Treasurer and Designation of Campaign Depository is filed. Willful failure to file this form is a first degree misdemeanor and a civil violation of the Campaign Financing Act which may result in a fine of up to \$1,000, (ss. 106.19(1)(c), 106.265(1), Florida Statutes).



Complaint numbers: 16-354; 16-355; 16-352; 16-351; and 16-350

Marsha A. Poppell

to:

'keith.smith@myfloridalegal.com'

04/28/2017 03:43 PM

Hide Details

From: "Marsha A. Poppell" <MPoppell@shutts.com>

To: "'keith.smith@myfloridalegal.com'" <keith.smith@myfloridalegal.com>

1 Attachment



Keith Smith ltr 042817.pdf

Mr. Smith:

Attached please find correspondence from Mr. Gonzalez regarding the above referenced complaint numbers.

Thanks so much.

**Shutts**

**Marsha A. Poppell**

*Legal Assistant*

---

**Shutts & Bowen LLP**

215 South Monroe Street, Suite 804 | Tallahassee, FL 32301

Direct: (850) 521-0600 x6612 | Fax: (850) 521-0604

[E-Mail](#) | [Website](#)



JASON GONZALEZ  
PARTNER  
Shutts & Bowen LLP  
215 South Monroe Street  
Suite 804  
Tallahassee, Florida 32301  
DIRECT (850) 521-0600  
FAX (850) 521-0604  
EMAIL JasonGonzalez@shutts.com

April 28, 2017

VIA U.S. MAIL AND E-MAIL

Mr. Keith Smith, Investigator  
Florida Elections Commission  
107 West Gaines Street  
Collins Building, Suite 224  
Tallahassee, Florida 32399-1050  
[keith.smith@myfloridalegal.com](mailto:keith.smith@myfloridalegal.com)

RE: In re: JOHN SHUFF; Case No.: FEC 16-354;  
In re: CHRIS RUSSELL; Case No.: FEC 16-355  
In re: RICHARD HARDEN; Case No.: FEC 16-352;  
In re: GORDON MILLENDER; Case No.: FEC 16-351; and  
In re: RALPH THOMAS; Case No.: FEC 16-350

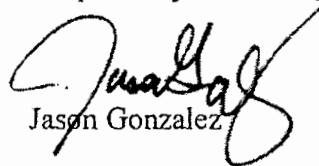
Dear Mr. Smith:

Our client, Mr. Chris Russell, previously filed a response to the affidavit sent by the Florida Elections Commission, case number FEC 16-355. For cases FEC 16-350-52, and FEC 16-354, Messrs. Shuff, Harden, Millender, and Thomas would like to rely upon the answers provided in that previously filed response, and will not be filing separate affidavits.

Our clients continue to maintain that the complaint filed against them fails to state a claim, as it does not allege any legally sufficient violation of Chapter 104 or 106, Florida Statutes. As such, the complaint should be dismissed in its entirety.

Please feel free to contact me with any further questions. Thank you for your consideration in this regard.

Respectfully submitted,



Jason Gonzalez



KS

JASON GONZALEZ  
PARTNER  
Shutts & Bowen LLP  
215 South Monroe Street  
Suite 804  
Tallahassee, Florida 32301  
DIRECT (850) 521-0600  
FAX (850) 521-0604  
EMAIL JasonGonzalez@shutts.com

April 28, 2017

VIA U.S. MAIL AND E-MAIL

Mr. Keith Smith, Investigator  
Florida Elections Commission  
107 West Gaines Street  
Collins Building, Suite 224  
Tallahassee, Florida 32399-1050  
[keith.smith@myfloridalegal.com](mailto:keith.smith@myfloridalegal.com)

RECEIVED  
2017 MAY -2 P 1:41  
STATE OF FLORIDA  
ELECTIONS COMMISSION

RE: In re: JOHN SHUFF; Case No.: FEC 16-354;  
In re: CHRIS RUSSELL; Case No.: FEC 16-355  
In re: RICHARD HARDEN; Case No.: FEC 16-352;  
In re: GORDON MILLENDER; Case No.: FEC 16-351; and  
In re: RALPH THOMAS; Case No.: FEC 16-350

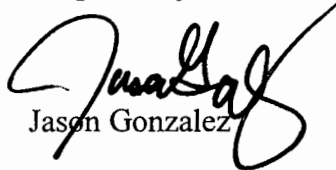
Dear Mr. Smith:

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Our clients continue to maintain that the complaint filed against them fails to state a claim, as it does not allege any legally sufficient violation of Chapter 104 or 106, Florida Statutes. As such, the complaint should be dismissed in its entirety.

Please feel free to contact me with any further questions. Thank you for your consideration in this regard.

Respectfully submitted,

  
Jason Gonzalez



Notices of Appearance - Complaint numbers : 16-354; 16-355; 16-352; 16-351; and 16-350

Marsha A. Poppell

to:

'Florida Elections Commission'

04/26/2017 12:27 PM

Cc:

Renatha Francis

Hide Details

From: "Marsha A. Poppell" <MPoppell@shutts.com>

To: 'Florida Elections Commission' <fec@myfloridalegal.com>

Cc: Renatha Francis <RFrancois@shutts.com>

History: This message has been replied to.

1 Attachment



Notices of Appearance.pdf

Good afternoon:

Attached please find Notices of Appearance for the above referenced complaint numbers.

Thanks.

# Shutts

**Marsha A. Poppell**

*Legal Assistant*

---

**Shutts & Bowen LLP**

215 South Monroe Street, Suite 804 | Tallahassee, FL 32301

Direct: (850) 521-0600 x6612 | Fax: (850) 521-0604

[E-Mail](#) | [Website](#)

**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

IN RE: RICHARD HARDEN,

Case No.: FEC 16-352

Respondent  
\_\_\_\_\_ /

**NOTICE OF APPEARANCE**

Renatha Francis of Shutts & Bowen LLP hereby provides notice of her appearance as co-counsel for Respondent Richard Harden in this matter.

Respectfully submitted,

*/s/ Renatha Francis*

\_\_\_\_\_  
Renatha Francis (FBN 84181)  
SHUTTS & BOWEN LLP  
200 South Biscayne Boulevard, Suite 4100  
Miami, Florida 33131  
Telephone: (305) 415-9022  
Email: rfrancis@shutts.com

*Counsel for Respondent Richard Harden*

**CERTIFICATE OF FILING**

I hereby certify that a true copy of this document has been filed this 26<sup>th</sup> day of April, 2017,

with:

Erin Riley  
Deputy Agency Clerk  
Florida Elections Commission  
107 West Gaines Street  
Collins Building, Suite 224  
Tallahassee, Florida 32399-1050  
fec@myfloridalegal.com



Notices of Substitution of Counsel - Complaint numbers : 16-354; 16-355; 16-352; 16-351; 16-350 and 16-418

Marsha A. Poppell

to:

'Florida Elections Commission'

04/18/2017 01:58 PM

Hide Details

From: "Marsha A. Poppell" <MPoppell@shutts.com>

To: 'Florida Elections Commission' <fec@myfloridalegal.com>

1 Attachment



Notices .pdf

Attached please find the Notices of Substitution of Counsel in the above referenced complaint numbers.

Thanks so much.



**Marsha A. Poppell**

*Legal Assistant*

---

**Shutts & Bowen LLP**

215 South Monroe Street, Suite 804 | Tallahassee, FL 32301

Direct: (850) 521-0600 x6612 | Fax: (850) 521-0604

[E-Mail](#) | [Website](#)

**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

IN RE: RICHARD HARDEN,

Complaint No. 16-352

**NOTICE OF SUBSTITUTION OF COUNSEL**

Notice is hereby given that Daniel E. Nordby of Shutts & Bowen LLP is withdrawing as counsel for Respondent Richard Harden in this proceeding. Mr. Nordby will be leaving the law firm of Shutts & Bowen within the week to accept employment in state government. Effective April 17, 2017, Respondent Richard Harden will be represented in this proceeding by Jason Gonzalez of the law firm of Shutts & Bowen LLP.

/s/ Daniel Nordby

Daniel E. Nordby (FBN 014588)  
Jason Gonzalez (FBN 146854)  
SHUTTS & BOWEN LLP  
215 South Monroe Street, Suite 804  
Tallahassee, Florida 32301  
Telephone: 850-521-0600  
Email: dnordby@shutts.com  
JasonGonzalez@shutts.com  
MPoppell@shutts.com

*Counsel for Respondent*

**CERTIFICATE OF FILING**

I hereby certify that a true copy of this document has been filed via email on April 17, 2017, with:

Agency Clerk  
Florida Elections Commission  
107 West Gaines Street  
Collins Building, Suite 224  
Tallahassee, Florida 32399-1050  
fec@myfloridalegal.com



RECEIVED  
STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

2017 APR 19 A 10:00

IN RE: RICHARD HARDEN,  
\_\_\_\_\_ /

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION  
Complaint No. 16-352

**NOTICE OF SUBSTITUTION OF COUNSEL**

Notice is hereby given that Daniel E. Nordby of Shutts & Bowen LLP is withdrawing as counsel for Respondent Richard Harden in this proceeding. Mr. Nordby will be leaving the law firm of Shutts & Bowen within the week to accept employment in state government. Effective April 17, 2017, Respondent Richard Harden will be represented in this proceeding by Jason Gonzalez of the law firm of Shutts & Bowen LLP.

/s/ Daniel Nordby

Daniel E. Nordby (FBN 014588)  
Jason Gonzalez (FBN 146854)  
SHUTTS & BOWEN LLP  
215 South Monroe Street, Suite 804  
Tallahassee, Florida 32301  
Telephone: 850-521-0600  
Email: dnordby@shutts.com  
JasonGonzalez@shutts.com  
MPoppell@shutts.com

*Counsel for Respondent*

**CERTIFICATE OF FILING**

I hereby certify that a true copy of this document has been filed via email on April 17, 2017, with:

Agency Clerk  
Florida Elections Commission  
107 West Gaines Street  
Collins Building, Suite 224  
Tallahassee, Florida 32399-1050  
fec@myfloridalegal.com

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

IN RE: RICHARD HARDEN,

Respondent  
\_\_\_\_\_ /

Case No.: FEC 16-388

RECEIVED  
2016 DEC -23 P 4: 23  
STATE OF FLORIDA  
ELECTIONS COMMISSION

**NOTICE OF APPEARANCE**

Daniel E. Nordby of Shutts & Bowen LLP hereby provides notice of his appearance as counsel for Respondent Richard Harden in this matter.

Respectfully submitted,

/s/ Daniel Nordby

Daniel E. Nordby (FBN 014588)  
SHUTTS & BOWEN LLP  
215 South Monroe Street, Suite 804  
Tallahassee, Florida 32301  
Telephone: 850-521-0600  
Email: dnordby@shutts.com

*Counsel for Respondent Richard Harden*

**CERTIFICATE OF FILING**

I hereby certify that a true copy of this document has been filed this 7<sup>th</sup> day of December,

2016, with:

Erin Riley  
Deputy Agency Clerk  
Florida Elections Commission  
107 West Gaines Street  
Collins Building, Suite 224  
Tallahassee, Florida 32399-1050  
fec@myfloridalegal.com



Notices of Appearance

Marsha A. Poppell

to:

'Florida Elections Commission'

12/07/2016 04:56 PM

Cc:

"Daniel E. Nordby"

Hide Details

From: "Marsha A. Poppell" <MPoppell@shutts.com>

To: 'Florida Elections Commission' <fec@myfloridalegal.com>

Cc: "Daniel E. Nordby" <DNordby@shutts.com>

7 Attachments



FEC 16-350.pdf



FEC 16-351.pdf



[REDACTED]



FEC 16-353.pdf



FEC 16-354.pdf



FEC 16-355.pdf



FEC 16-356.pdf

Good afternoon:

Attached please find Notices of Appearance for the following case numbers: FEC 16-350; FEC 16-351; FEC 16-352; FEC 16-353; FEC 16-354; FEC 16-355; and FEC 16-356.

Thanks and have a great evening.



Marsha A. Poppell

Legal Assistant

Shutts & Bowen LLP

215 South Monroe Street, Suite 804 | Tallahassee, FL 32301

Direct: (850) 521-0600 | Fax: (850) 521-0604

[E-Mail](#) | [Website](#)

## Delivery Failure Report

Your message: FEC 16-352  
was not delivered to: snylofm@msn.com  
because: 5.1.0 - Unknown address error 550-'Requested action not taken: mailbox unavailable' (delivery attempts: 0)

What should you do?

- You can resend the undeliverable document to the recipients listed above by choosing the Resend button or the Resend command on the Actions menu.
- Once you have resent the document you may delete this Delivery Failure Report.
- If resending the document is not successful you will receive a new failure report.
- Unless you receive other Delivery Failure Reports, the document was successfully delivered to all other recipients.

Routing path

TLH03/OAG, TLH01/OAG

To: snylofm@msn.com

cc:

Date: 01:28:22 PM AST Today

Subject: FEC 16-352

Dear Mr. Harden,

We are in receipt of your notice of waiver of confidentiality. If you have any questions, please let us know.

Sincerely,

Donna Ann Malphurs  
Agency Clerk

✉ Richard Harden ---10/27/2016 01:01:02 PM---Dear FEC I have received complaint number FEC 16-352 in the mail regarding a complaint that was fil

From: Richard Harden <rharden@centurylink.net>  
To: fec@myfloridalegal.com  
Date: 10/27/2016 01:01 PM  
Subject: Case FEC 16-352 request waiver of confidentiality

Dear FEC

I have received complaint number FEC 16-352 in the mail regarding a complaint that was filed against me. According to your procedures I would like to request to waive my confidentiality concerning case number FEC 16-352. It is my understanding that this will allow me to publicly discuss my case. Thank you.

Richard Harden  
P.O. Box 98  
Sopchoppy, Fl. 32358  
850-962-4254  
rharden@centurylink.net



**FEC 16-352**   
Florida Elections Commission to: snylofm  
Sent by: Donna Malphurs

10/27/2016 01:28 PM

From: Florida Elections Commission/OAG  
To: snylofm@msn.com

---

Dear Mr. Harden,

We are in receipt of your notice of waiver of confidentiality. If you have any questions, please let us know.

Sincerely,

Donna Ann Malphurs  
Agency Clerk

Richard Harden

Dear FEC I have received complaint number FE...

10/27/2016 01:01:02 PM

From: Richard Harden <rharden@centurylink.net>  
To: fec@myfloridalegal.com  
Date: 10/27/2016 01:01 PM  
Subject: Case FEC 16-352 request waiver of confidentiality

---

Dear FEC

I have received complaint number FEC 16-352 in the mail regarding a complaint that was filed against me. According to your procedures I would like to request to waive my confidentiality concerning case number FEC 16-352. It is my understanding that this will allow me to publicly discuss my case. Thank you.

Richard Harden  
P.O. Box 98  
Sopchoppy, Fl. 32358  
850-962-4254  
rharden@centurylink.net



Case FEC 16-352 request waiver of confidentiality

Richard Harden

to:

fec

10/27/2016 01:01 PM

Hide Details

From: Richard Harden <rharden@centurylink.net>

To: fec@myfloridalegal.com

Please respond to snylofm@msn.com

History: This message has been replied to.

Dear FEC

I have received complaint number FEC 16-352 in the mail regarding a complaint that was filed against me. According to your procedures I would like to request to waive my confidentiality concerning case number FEC 16-352. It is my understanding that this will allow me to publicly discuss my case. Thank you.

Richard Harden

P.O. Box 98

Sopchoppy, Fl. 32358

850-962-4254

[rharden@centurylink.net](mailto:rharden@centurylink.net)



## FLORIDA ELECTIONS COMMISSION

107 W. Gaines Street  
Collins Building, Suite 224  
Tallahassee, Florida 32399-1050  
(850) 922-4539

October 25, 2016

Richard Harden  
Post Office Box 98  
Sopchoppy, FL 32358

**RE: Case No.: FEC 16-352: Respondent: Richard Harden**

Dear Mr. Harden:

The Florida Elections Commission has received a complaint alleging that you, the Respondent, have violated Section 106.143(3), Florida Statutes, on one occasion. A copy of the complaint was previously provided to you.

Rule 2B-1.003, Florida Administrative Code, provides for resolving certain cases by a consent order before investigation commences. Under the rule, an alleged violation of Chapter 106 will be considered a minor violation if the following criteria are met:

- (1) The violation is one identified in the rule;
- (2) It is the first time the person is alleged to have committed the violation;
- (3) The person agrees to correct the conduct that resulted in the violation, if feasible; and
- (4) When a violation involves political advertising, the person must be named in the political advertisement and the complainant must not allege that the advertising was either deceptive or influenced the outcome of the election if the violation occurred less than 14 days before the election.

This case meets the criteria set forth above. Therefore, the procedures of the Commission allow you one of two options at this juncture. You may either, (1) enter into a consent order with the Commission staff and pay a small fine, rather than the potential \$1,000 per violation provided for in Section 106.265, Florida Statutes, or (2) not enter into a consent order, in which case the staff will proceed to investigate the allegations in the complaint. The consent order provides that the Respondent neither admits nor denies the allegation(s) in the complaint, and requires the Respondent immediately to correct the violation, if feasible, and to avoid future violations. The consent order does not constitute final action by the Commission until it is accepted and approved by the Commission.



If you choose to resolve this case without an investigation and possible hearing, please sign and return the enclosed consent order, together with payment of the specified fine, within 20 days of the date you receive this letter. Payment of the fine must be by either cashier's check or other certified funds. The signed consent order will then be considered by the Commission at its next available meeting. If the staff does not receive the signed consent order and the fine within 20 days, staff withdraws this offer of settlement and will proceed to investigate the allegations in the complaint.

If you choose to proceed with the investigation, the Commission staff will investigate the following statutory provision:

**Section 106.143(3), Florida Statutes:** Respondent, a 2016 candidate for Wakulla County Commission, District 5, campaigned based on his party affiliation, even though the office for which he was running was nonpartisan, as alleged in the complaint.

You may respond to the violation alleged in the complaint by filing a notarized statement providing any information regarding the facts and circumstances surrounding the allegation. If you choose to file a response to the complaint, you should file the response within 20 days of the date you receive this letter. Your response will be included as an attachment to the investigator's report.

Section 106.25, Florida Statutes, provides that when the investigator completes his or her report, staff will mail you a copy of the investigator's report. Should you choose to file a response to the report, you must file your response with the Commission within 15 days of the date of this letter. If your response is timely filed, the Commission will consider it when determining probable cause.

Commission staff will review the Report of Investigation and make a written recommendation to the Commission on whether there is probable cause to charge you with violating Chapter 104 or 106, Florida Statutes. You will receive a copy of this staff recommendation and will have the opportunity to file a response. Should you choose to do so, your response must be filed with the Commission within 15 days of the date the recommendation is mailed to you. If your response is timely filed, the Commission will consider it when determining probable cause.

The Commission will hold a hearing to determine whether there is probable cause to charge you with a violation. You will receive a notice of hearing at least 14 days before the hearing. The notice of hearing will indicate the location, date, and time of your hearing. If you attend the hearing, you will be permitted to make a brief oral statement to the Commission, but you cannot testify or call others to testify, or introduce any documentary or other evidence.

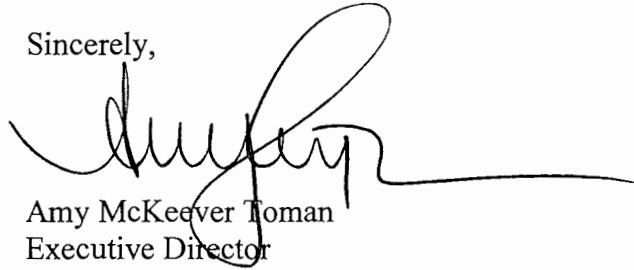
The staff recommendation and the notice of the probable cause hearing will be mailed to the same address as this letter. Therefore, if your address changes, you must notify the Commission of your new address. Otherwise, you may not receive the correspondence from the Commission staff. Failure to receive the documents will not delay the probable cause hearing.

Under section 106.25, Florida Statutes, complaints, Commission investigations, investigative reports, and other documents relating to an alleged violation of Chapters 104 and 106, Florida Statutes, are **confidential** until the Commission finds probable cause or no probable

cause. A breach of confidentiality is a criminal violation of the law. The confidentiality provision does not apply to the person filing the complaint. However, it does apply to you, the Respondent, unless you waive confidentiality in writing. The confidentiality provision does not preclude you from seeking legal counsel. However, if you retain counsel, your attorney must file a notice of appearance with the Commission before any member of the Commission staff can discuss this case with him or her.

If you have any questions, please contact **Cole Kekelis** at the address and telephone number listed above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amy McKeever Toman', with a long horizontal flourish extending to the right.

Amy McKeever Toman  
Executive Director

Enclosures: Consent Order  
AMT/enr

EF

RECEIVED

2016 SEP -7 P 1:40

Dear Florida Elections Commission

STATE OF FLORIDA  
ELECTIONS COMMISSION

In response to complaint case no. FEC 16-352 that I received in the mail I would like to provide the following response and defense.

I am not in violation of any statute that has been mentioned in case number FEC-16-352. At no time in my campaign have I listed a party affiliation in any campaign literature, sign, or material that has been produced or distributed by my campaign. I have attended multiple forums, debates, and speaking engagements that I have been invited to during my campaign and I have not at anytime campaigned based on party affiliation. I was invited to attend a Republican Party forum on August 11, 2016 and I responded to an invitation to speak at this event. Each speaker was given 4 minutes to speak to a crowd of 200 citizens. During my 4 minute address I never at anytime mentioned anything that related to any political party. Not only do I not have any political party affiliation mentioned on any of my campaign literature, I also did not pass out or present any campaign literature to anyone in attendance at the forum which is the subject of this complaint. I simply spoke on the merits of my campaign without any mention of any political party. The person bringing the complaint, Mr. Hugh Taylor, is a supporter of Mr. Chuck Hess who is a candidate in my race for Wakulla County Commission District 5. Mr. Hugh Taylor's household has financially supported my opponent though his wife, Mary Cortese, with a donation to his campaign of \$100.00 on 6-4-2016. Mr Al Shylkofski, who is mentioned in the complaint as a citizen, is also a financial supporter of my opponent with a donation to Mr. Chuck Hess' campaign of \$50.00 on 2-21-2016 and also a donation of \$50.00 on 7-10-2016.

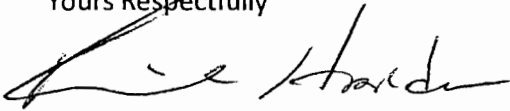
I believe that Mr. Hugh Taylor, who is a supporter of my opponent in the Wakulla County Commission Dist. 5 race, has filed this complaint with malicious intent toward my campaign. I believe this complaint is filed with malicious intent to injure the reputation of me and my campaign and I believe with his knowledge his complaint contains false accusations. I believe the complainant, Mr. Taylor, has displayed reckless disregard for whether his complaint is accurate. Also, as stated in the complaint under the complainant's exhibit "F" the Wakulla news stated in the newspaper dated August 18, 2016 that a person close to the matter had filed a complaint with the Florida Elections Commission on August 12, 2016 but the date of the complaint that was officially filed and received by the FEC is dated August 19, 2016. This date is after my reputation was maliciously attacked in the Wakulla News Paper.

As stated in the August 18, 2016 issue of Wakulla news "Exhibit F," in May 2016 the Wakulla County Democratic Party held a Gala at Wakulla Springs and only allowed my opponent candidate, Mr. Chuck Hess, and Dist. 3 candidate, Mrs. Nikki Barnes (chairman Wakulla County Democrat Executive Committee), to speak. I was not in attendance, nor was invited to speak at that event, that essentially was identical to the event that was the subject of this complaint. Mr Hugh Taylor, who is a supporter of Chuck Hess and Nikki Barnes, did not find any fault in their action because he is supporting their respective campaigns.

I would like to state that during the course of my campaign I have stayed in constant communication with the Wakulla Supervisor of Elections and have made every attempt to honestly and ethically campaign with integrity. I have not at any time identified a party affiliation on any of my campaign literature. I have not at any time mentioned or identified with any political party at any event, debate, or forum that I have been invited to attend.

I further would like to restate that I believe that this complaint is politically motivated and has been filed with malicious intent by Mr. Hugh Taylor to injure my reputation.

Yours Respectfully

A handwritten signature in black ink, appearing to read "Richard Harden". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard Harden

Wakulla County Commission District 5 candidate

The Republican Executive Committee (REC) planned a partisan "forum," exclusively for Republican, for up-coming nonpartisan elections, I quote the following statutes:

**104.43.3(3):**

"(3) Any political advertisement of a candidate running for partisan office shall express the name of the political party of which the candidate is seeking nomination or is the nominee. If the candidate for partisan office is running as a candidate with no party affiliation, any political advertisement of the candidate must state that the candidate has no party affiliation.

A political advertisement of a candidate running for *nonpartisan office may not state the candidate's political party affiliation*. This section does not prohibit a political advertisement from stating the candidate's partisan-related experience. **A candidate for nonpartisan office is prohibited from campaigning based on party affiliation.**"

In attending the partisan Republican Forum, the subject violated 104.43.3(3) in that he campaigned as a Republican Party member in a non-partisan Wakulla County.

Additionally, subject violated the following statute (104.091 below) by aiding, agreeing to attend, confederating, combined with, knew of the felony violation, gave aid to the offender who violated the code (the REC).

**104.091 Aiding, abetting, advising, or conspiring in violation of the code (Chapter. 104)**

(1) Any person, who knowingly aids, abets, or advises the violation of this code shall be punished in like manner as the principal offender.

(2) Any person who agrees, conspires, combines, or confederates with another person to commit a violation of this code shall be punished as if he or she had committed the violation.

(3) Any person who knows of a felony violation of this code and gives any aid to the offender who has violated the code, with intent that the offender avoid or escape detection, arrest, trial or punishment, shall be punished as if he or she had committed the violation. This subsection does not prohibit a member of The Florida Bar from giving legal advice to a client.

The statutes are clear. Subject violated the code by attending a partisan forum in a nonpartisan county, and campaigning as a Republican in a nonpartisan county and telling or inviting others to attend the forum and should be prosecuted to the fullest extent of the law.

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION  
107 West Gaines Street, Suite 224, Tallahassee, Florida 32399-1050  
Telephone Number: (850) 922-4539  
www.fec.state.fl.us

RECEIVED

2016 AUG 19 1P 1E 22

CONFIDENTIAL COMPLAINT FORM

The Commission's records and proceedings in a case are confidential until the Commission rules on the cause. A copy of the complaint will be provided to the person against whom the complaint is brought.

1. PERSON BRINGING COMPLAINT:

Name: AUGUSTA TAYLOR Work Phone: (850) 926-6058  
Address: 1357 MLK RD Home Phone: ( )  
City: CRAWFORDVILLE County: WALHALLA State: FL Zip Code: 32327

2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

A person can be an individual, political committee, committee of continuous existence, political party, electioneering communication organization, club, corporation, partnership, company, association, or any other type of organization. (If you intend to name more than one individual or entity, please file multiple complaints.)

Name of individual or entity: RICHARD HARDEN  
Address: PO BOX 98 Phone: ( )  
City: Spartanburg County: WALHALLA State: FL Zip Code: 32327

If individual is a candidate, list the office or position sought: WALHALLA COUNTY COMMISSION

Have you filed this complaint with the State Attorney's Office? (check one)  Yes  No

3. ALLEGED VIOLATION(S):

Please list the provisions of The Florida Election Code that you believe the person named above may have violated. The Commission has jurisdiction only to investigate the following provisions: Chapter 104, Chapter 106, and Section 105.071, Florida Statutes. Also, please include:

- ✓ The facts and actions that you believe support the violations you allege,
- ✓ The names and telephone numbers of persons you believe may be witnesses to the facts,
- ✓ A copy or picture of the political advertisements you mention in your statement,
- ✓ A copy of the documents you mention in your statement, and
- ✓ Other evidence that supports your allegations.

See  
ATTACHED

\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional materials attached (check one)?  Yes  No

**4. OATH**

STATE OF FLORIDA  
COUNTY OF Wakulla

I swear or affirm, that the above information is true and correct to the best of my knowledge.

[Signature]  
Original Signature of Person Bringing Complaint

Sworn to and subscribed before me this 19th day of

August, 2016

[Signature]  
Signature of Officer Authorized to Administer Oaths or Notary public.

RECEIVED  
2016 AUG 19 1 P 15 22  
STATE OF FLORIDA  
ELECTIONS COMMISSION



SHANNON K. LARSON  
MY COMMISSION # EE 851732  
EXPIRES: January 21, 2017  
Bonded Thru Budget Notary Services

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally known \_\_\_\_\_ Or Produced Identification X

Type of Identification Produced DL

Any person who files a complaint while knowing that the allegations are false or without merit commits a misdemeanor of the first degree, punishable as provided in Sections 775.082 and 775.083, Florida Statutes.

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

107 West Gaines Street, Suite 224, Tallahassee, Florida 32399-1050  
Telephone Number: (850) 922-4539  
www.fec.state.fl.us

RECEIVED

2016 AUG 19 1P 1:22

CONFIDENTIAL COMPLAINT FORM

The Commission's records and proceedings in a case are confidential until the Commission rules on the merits of the cause. A copy of the complaint will be provided to the person against whom the complaint is brought. STATE OF FLORIDA ELECTIONS COMMISSION

1. PERSON BRINGING COMPLAINT:

Name: AUGUSTA TAYLOR Work Phone: (850) 926-6058  
Address: 1357 MILK RD Home Phone: ( )  
City: CRAWFORDVILLE County: WALKULA State: FL Zip Code: 32327

2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

A person can be an individual, political committee, committee of continuous existence, political party, electioneering communication organization, club, corporation, partnership, company, association, or any other type of organization. (If you intend to name more than one individual or entity, please file multiple complaints.)

Name of individual or entity: RICHARD HARDEN  
Address: PO BOX 98 Phone: ( )  
City: Sopchoppy County: WALKULA State: FL Zip Code: 32327

If individual is a candidate, list the office or position sought: WALKULA COUNTY COMMISSION

Have you filed this complaint with the State Attorney's Office? (check one)  Yes  No

3. ALLEGED VIOLATION(S):

Please list the provisions of The Florida Election Code that you believe the person named above may have violated. The Commission has jurisdiction only to investigate the following provisions: Chapter 104, Chapter 106, and Section 105.071, Florida Statutes. Also, please include:

- The facts and actions that you believe support the violations you allege,
- The names and telephone numbers of persons you believe may be witnesses to the facts,
- A copy or picture of the political advertisements you mention in your statement,
- A copy of the documents you mention in your statement, and
- Other evidence that supports your allegations.

See ATTACHED



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional materials attached (check one)?  Yes  No

**4. OATH**

STATE OF FLORIDA  
COUNTY OF Wakulla

I swear or affirm, that the above information is true and correct to the best of my knowledge.

[Signature]  
Original Signature of Person Bringing Complaint

Sworn to and subscribed before me this 19th day of  
August, 2016

[Signature]  
Signature of Officer Authorized to Administer Oaths or Notary public.

RECEIVED  
2016 AUG 19 P 1:22  
STATE OF FLORIDA  
ELECTIONS COMMISSION

 SHANNON K LARSON  
MY COMMISSION # EE 851732  
EXPIRES: January 21, 2017  
Bonded Thru Budget Notary Services

(Print, Type, or Stamp Commissioned Name of Notary Public)  
Personally known \_\_\_\_\_ Or Produced Identification X  
Type of Identification Produced DL

Any person who files a complaint while knowing that the allegations are false or without merit commits a misdemeanor of the first degree, punishable as provided in Sections 775.082 and 775.083, Florida Statutes.

Republican Party Executive Committee  
Wakulla County, Florida

**ADDENDUM TO ELECTIONS COMPLAINT**

**8/19/16**

**NARRATIVE AND EXHIBITS**

1. Wakulla County, Florida, is a charter county. The county recently amended its charter. Article 2.1 plainly states all elections are to be nonpartisan (see attached exhibit "A").

Regardless of whether the subject to the complaint knew about the nonpartisan section of the charter, they 1)., should have known, and 2). Ignorance is no excuse

2. On 7/21 The Republican Party announced a partisan forum to be held August 11<sup>th</sup> (see attached article from "The Wakulla News,"). And I quote: "REC Chairman *Chris Russell advised that the executive Committee felt it was vitally important to allow the voters an opportunity to hear firsthand from the Republican candidates that may ultimately represent them*" (exhibit "B" attached).

The subject either was advised by the Republican Executive committee or read the article or should have read the article.

3. A citizen, Al Shylkofski, after reading the article wrote the Supervisor of elections about the Republican forum and received an email stating both the statute and the penalties for violating statutes 104.43 and 104.271 (exhibit "C" attached)

4. In a Facebook post (undated exhibit "D attached, a representative of the Wakulla County Republican Party or Mr. Chris Russell arrogantly poo-pooed Mr. Shylkofski's concerns.

The subject either was aware of the Facebook post or, as a member of the Republican Party, should have known; failing that, there was enough notice (see #5 below)

5. Mr. Shylkofski then wrote a letter to the Wakulla News, 8/14/16, Questioning the legality of the partisan Republican forum the Republican Executive committee, chaired by Mr. Chris Russell and the danger Mr. Russell and the Republican executive committee were putting Republican candidates in.

Again, the subject either was not aware of the Wakulla News article or should have been aware.

6. The partisan Republican forum was held 8/11 and the news article (exhibit "F" attached) In The Wakulla News reflected the fact that the Wakulla Supervisor of Elections "warned that the Republicans were 'on thin ice.'" Relative to the forum. Additionally Mr. Russell "referred to the controversy, but indirectly, reassuring the attendees and candidates that 'This is not a problem . . .'"

Regardless of the foregoing, the fact that 1). The "controversy" was mentioned (and discounted) at Partisan Republican forum the subject attended and that the Wakulla County Sheriff made the following announcement (Exhibit "F" attached) "Sherriff Charlie Creel, in an abundance of caution, told the crowd that, on the advice of his attorney, he would not speak at the event."

In summation:

There being no doubt Wakulla County is a Charter county, and the Republican Executive committee *and*

The Republican Executive Committee (REC) planned a partisan “forum,” exclusively for Republican, for up-coming nonpartisan elections, I quote the following statutes:

**104.43.3(3):**

“(3)Any political advertisement of a candidate running for partisan office shall express the name of the political party of which the candidate is seeking nomination or is the nominee. If the candidate for partisan office is running as a candidate with no party affiliation, any political advertisement of the candidate must state that the candidate has no party affiliation.

A political advertisement of a candidate running for *nonpartisan office may not state the candidate's political party affiliation*. This section does not prohibit a political advertisement from stating the candidate's partisan-related experience. **A candidate for nonpartisan office is prohibited from campaigning based on party affiliation.**”

In attending the partisan Republican Forum, the subject violated 104.43.3(3) in that he campaigned as a Republican Party member in a non-partisan Wakulla County.

Additionally, subject violated the following statute (104.091 below) by aiding, agreeing to attend, confederating, combined with, knew of the felony violation, gave aid to the offender who violated the code (the REC).

**104.091 Aiding, abetting, advising, or conspiring in violation of the code (Chapter. 104)**

(1) Any person, who knowingly aids, abets, or advises the violation of this code shall be punished in like manner as the principal offender.

(2) Any person who agrees, conspires, combines, or confederates with another person to commit a violation of this code shall be punished as if he or she had committed the violation.

(3) Any person who knows of a felony violation of this code and gives any aid to the offender who has violated the code, with intent that the offender avoid or escape detection, arrest, trial or punishment, shall be punished as if he or she had committed the violation. This subsection does not prohibit a member of The Florida Bar from giving legal advice to a client.

The statues are clear. Subject violated the code by attending a partisan forum in a nonpartisan county, and campaigning as a Republican in a nonpartisan county and telling or inviting others to attend the forum and should be prosecuted to the fullest extend of the law.

## Wakulla County Charter Review Commission Summary of Proposed Amended/Revised Articles

*The following is a list of Articles for which the CRC has voted & approved to amend/revise:*

✓ **Article 2.1 –**

- All candidates shall be nonpartisan in the Primary election, settled by 50% + 1, the top 2 candidates shall go to the General election (unless in conflict w/ Supervisor of Elections Laws)
- Shall be five single member districts for BOCC

✓ **Article 2.3 –**

- Mandatory residency requirement – must provide a declaration/oath of living in district for 6 months prior to qualifying date. Must also provide 3 out of the following 4 other categories providing proof of residency: (1) vehicle registration; (2) voter registration card; (3) Florida Driver's License and/or Florida Identification Card; (4) a notarized statement of residency from home-owner, or homestead exemption card, or leasing/renting statement.
- 

✓ **Article 6 –**

- Add a new subsection regarding "Special Elections/Referendums" that reads all referendums shall take place at the general election

✓ **Article 6.1 –**

- Add language that reads 60% of the electors votes shall be required to pass charter amendments and ordinances.

✓ **Article 6.2 –**

- All local officers shall be subject to recall

✓ **Article 7.4 –**

- Each County Commissioner shall appoint 3 citizens to serve on the Charter Review Commission (totaling 15 members); 12 members shall make a quorum and 2/3 of the 12 members to pass a vote; and the CRC shall be appointed no more than 8 years apart
- The BOCC shall provide CRC a list of no less than 3 attorneys before the 1<sup>st</sup> CRC meeting to allow CRC to rank and provide recommendation to the BOCC for approval

✓ **New Article –**

- The BOCC shall adopt, and adhere to, a debt policy that regulates the acceptance, issuance, and management of debt. The BOCC shall also adhere to the fund balance policy.

*(Revised June 9, 2014)*

# Republican Executive Committee plans forum Aug. 11

Special to The News

The Wakulla County Republican Executive Committee (REC) will be hosting a Republican Candidates Forum on Thursday Aug. 11, at the Senior Citizens Center, starting at 6:30 p.m.

REC Chairman Chris Russell advised that the Executive Committee felt it was vitally important to allow the voters an opportunity to hear firsthand from the Republican candidates that may ultimately represent them. The forum will feature candidates running for local, state, and federal office. He noted that 12 of the 14 candidates running for local office are registered Republicans and that the U.S. Congressional District 2 seat has an overwhelming high probability of being filled by a registered Republican. This complements the two school board seats that were up for election this cycle and will remain filled by Republicans as both of those candidates went unopposed.

Russell stated that the number of registered Republicans in Wakulla County has dramatically increased over the last couple of years and he credits that with local voters making a stronger stand on issues they hold dear, such as constitutional rights, the protection of the unborn, and domestic security. He said more local Republicans are

now getting involved as candidates and pointed out the fact that for the first time in modern history, Wakulla County will elect both a Sheriff and a Property Appraiser, that are registered as Republicans. Mr. Russell closed by stating that he appreciated the Christian Coalition's willingness to re-schedule the event they previously planned for Aug. 11, that by doing so, more voters will now have an opportunity to hear firsthand from the candidates running to represent them.

The following candidate campaigns have confirmed they will be present at the forum: BOCC District 1 candidate Ralph Thomas, BOCC District 3 candidates John Shuff and Mike Stewart, BOCC District 5 candidates Richard Harden and Gordon Millender, Property Appraiser candidates Ed Brimmer, Brad Harvey, and Steve Renke, Sheriff candidates Charlie Creel, Jared Miller, and Bill Poole, Florida House of Representatives District 7 incumbent Halsey Beshears, State Attorney's Office candidate Pete Williams, and U.S. Congressional District 2 candidates Neal Dunn, Ken Sukhfa, and Mary Thomas.

More information about the forum can be found at the REC's home facebook page: [www.facebook.com/wakullarepublicans/](http://www.facebook.com/wakullarepublicans/)

7/21/16

THE WAKULLA  
NEWS.

EXHIBIT "B"

^

**From:** Henry Wells <hwells@mywakulla.com>  
**Date:** July 28, 2016 at 10:05:04 AM CDT  
**To:** "al@activecabling.com" <al@activecabling.com>  
**Subject:** Nonpartisan Questions

2nd HUBIT  
C

Al,

See the information below for Nonpartisan offices and if we can be of further assistance contact the office.

97-021 (22) "Nonpartisan office" means an office for which a candidate is prohibited from campaigning or qualifying for election or retention in office based on party affiliation.

106-143 (3) Any political advertisement of a candidate running for partisan office shall express the name of the political party of which the candidate is seeking nomination or is the nominee. If the candidate for partisan office is running as a candidate with no party affiliation, any political advertisement of the candidate must state that the candidate has no party affiliation. A political advertisement of a candidate running for nonpartisan office may not state the candidate's political party affiliation.

This section does not prohibit a political advertisement from stating the candidate's partisan-related experience. A candidate for nonpartisan office is prohibited from campaigning based on party affiliation.

106-143 (11) Any person who willfully violates any provision of this section is subject to the civil penalties prescribed in s. 106.265.

106.265 Civil penalties.— (1) The commission or, in cases referred to the Division of Administrative Hearings pursuant to s. 106.25(5), the administrative law judge is authorized upon the finding of a violation of this chapter or chapter 104 to impose civil penalties in the form of fines not to exceed \$1,000 per count, or, if applicable, to impose a civil penalty as provided in s. 104.271 or s. 106.19. (2) In determining the amount of such civil penalties, the commission or administrative law judge shall consider, among other mitigating and aggravating circumstances: (a) The gravity of the act or omission; (b) Any previous history of similar acts or omissions; (c) The appropriateness of such penalty to the financial resources of the person, political committee, affiliated party committee, electioneering communications organization, or political party; and (d) Whether the person, political committee, affiliated party committee, electioneering communications organization, or political party has shown good faith in attempting to comply with the provisions of this chapter or chapter 104. (3) If any person, political committee, affiliated party committee, electioneering communications organization, or political party fails or refuses to pay to the commission any civil penalties assessed pursuant to the provisions of this section, the commission shall be responsible for collecting the civil penalties resulting from such action. (4) Any civil penalty collected pursuant to the provisions of this section shall be deposited into the General Revenue Fund. (5) Any fine assessed pursuant to this chapter shall be deposited into the General Revenue Fund. (6) In any case in which the commission determines that a person has filed a complaint against another person with a malicious intent to injure the reputation of the person complained against by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this chapter or chapter 104, the complainant shall be liable for costs and reasonable attorney's fees incurred in the defense of

the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees awarded by the commission

Thank You

*Henry F. Wells "Buddy" MFCEP*

Wakulla County

Supervisor of Elections

850-926-7575

hwells@mywakulla.com

www.wakullaelection.com

EXHIBIT  
"D"



Wakulla County Republican Party Al, your post disproved your own accusation of wrongdoing. I'll show you how. F.S. 106.143 pertains to "Political advertisements circulated prior to election". Please allow me to draw your attention to the word "advertisement". Follow me closely, it's very important that you understand, the statute you quoted applies to advertisements only, not others things that you would like to twist into the statute. You correctly quoted part of 106.143 (3) when you posted "A candidate for nonpartisan office is prohibited from campaigning based on party affiliation." Pay attention now, I don't want to lose or confuse you. Since the statute you quoted pertains to "advertising" and the quote you referenced pertains to "candidates", if you wish to defend your accusation of wrongdoing, you need to produce evidence of "A candidate for nonpartisan office" who is "campaigning based on party affiliation." I'm sure that you understand, the Wakulla County Republican Executive Committee is not a "candidate for nonpartisan office", therefore the statute you referenced is not applicable to the Wakulla County Republican Executive Committee. As a layperson, we understand how you you could be confused by Florida Statutes. We are happy to have this opportunity to clear up your misunderstanding. If this was an honest mistake by you, please leave an apology in the comments below and we will thank you for recognizing your mistake.

--



# The Opinion Page

## READERS WRITE:

### Public invited to coalition forum Aug. 8

Editor, The News:

We would love to invite everyone in the county to our first candidate forum, to be held Aug. 8, at 7 p.m. at the Wakulla County Public Library. This forum will be dedicated to those candidates running for office in county commission Districts 3 and 5.

The forum will be in a moderated forum format, with questions from the audience turned in to a moderator, with no questions directly from the floor.

Becoming informed is a civic duty, and we have offered these forums to help citizens know about the candidates and their positions

on issues. Part of our mission is education and we can think of nothing better than making candidate positions and platforms available to the most people possible.

We believe all candidates should be included as the primary will turn out to be the election that could possibly elect a new commissioner, so we encourage all citizens to drop in and hear the candidates then get ready to vote.

Remember, early voting starts Aug. 20.

Thank you,

Jennie V. Jones

President

Wakulla County Christian Coalition

8/14/14  
THE WAKULLA  
NEWS  
EXHIBIT  
"E"

### Disappointed about Republican 'forum'

Editor, The News:

I am disappointed by the actions of the Republican Executive Committee Chairman, Chris Russell and the Wakulla County Republican Party for advertising and scheduling a partisan forum whose participants are limited only to registered Republican candidates.

I am a registered Republican and believe the public is best served when they have the opportunity to see and hear all candidates.

Wakulla County's local elections are non-partisan (political party candidates not allowed) and according to Wakulla County's Supervisor of Elections Buddy Wells and Florida law F.S. 106.143, "A candidate for nonpartisan office is prohibited from campaigning based on

party affiliation.

There is no ambiguity in the Republican Executive Committee (REC) invitation. Chris Russell, the Republican Executive Committee chairman emphasizes that the GOP forum is exclusively for "registered" Republican candidates in a "Special to The News" report in the July 21, The Wakulla News, and on the Wakulla County Republican Party's Facebook page.

Russell, of all people, should know Florida's election laws on non-partisan elections, he led Wakulla County's Charter Review Committee, proposed by Wakulla County Commissioner Ralph Thomas that helped change Wakulla County elections to non-partisan races.

Now, Republican candidates, and arguably, Wakulla's Republican Party, face

a sticky situation:

The REC's apparent disregard for Florida's elections laws puts Wakulla County's registered Republican candidates in a spot where they, running as non-partisan candidates attending this exclusive GOP forum could make themselves vulnerable to violating Florida's law.

It should not have to be said that Wakulla County's voters deserve an opportunity to ask questions of all candidates and hear them state their positions on how they would serve Wakulla County.

We should all strive to adhere to Florida's laws. Politicians who ignore our laws threaten the public's trust and our freedom.

Al Shylkofski

Crawfordville

# Republican forum draws concern

Complaint reportedly filed with state claiming violation of non-partisan elections

By WILLIAM SNOWDEN  
editor@thewakullanews.net

A forum held by Wakulla Republicans last week reportedly drew an elections complaint after local candidates who are registered Democrats were not invited to attend.

The state Elections Commission would not verify a complaint had been filed, but a person close to the matter confirmed that a complaint was filed on Friday, Aug. 12, the day after the forum, against the local executive committee and the candidates who attended.

All of Wakulla's local races are non-partisan - except the Superintendent of Schools. The political parties can still support candidates with money and other help, but the candidates are not allowed to campaign using their party affiliation.

At the senior center on Thursday night, the local party invited Republican candidates in local and area elections.

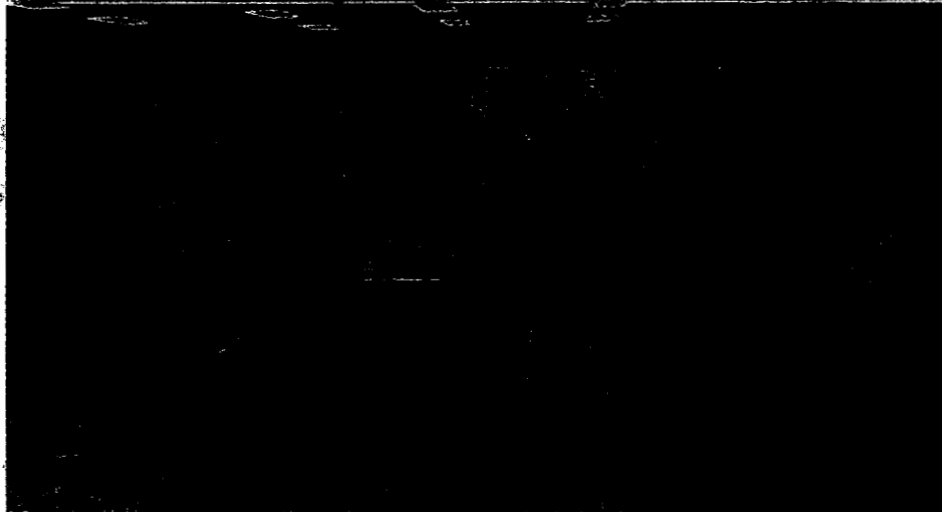


PHOTO BY WILLIAM SNOWDEN

The audience was standing-room only at the GOP forum on Thursday.

Chuck Hess and Nikki Barnes, two candidates in the non-partisan county commission races, were not invited because they are registered Democrats. Howard Kessler, who is a registered Republican, did not attend the forum out of concern that all candidates weren't invited.

Supervisor of Elections Buddy Wells met with Republican Party Chair Chris Russell about the concerns of possible violations and warned that the Republicans were "on thin ice."

Russell and the members of the executive committee reviewed the law and contend there is no violation.

At the start of the Thursday night forum,

which was attended by nearly 200 people and was standing-room only in the senior center, Russell referred to the controversy, but indirectly reassuring attendees and candidates that "This is not a problem," and "this is nothing new."

But many of the candidates who attended were unaware of the controversy and the threat of an election complaint. Some who were aware of the controversy said simply that they had received an invitation to speak and were going wherever they were invited.

Sheriff Charlie Creel, in an abundance of caution, told the crowd that, on the advice of his attorney, he would not speak at the event.

He offered to talk after the event - and walked away from the podium to silence and a few muffled boos.

Creel and the other two candidates for sheriff, Jared Miller and Bill Poole, are all registered Republicans. Miller had heard of the controversy and went ahead with his stump speech, while Poole was unaware of it and admitted afterwards that he was mystified by Creel's comments.

After the event, Russell would not talk on the record about the controversy.

It's not clear if the Democrats violated the non-partisan laws at their May gala at Wakulla Springs when Barnes and Hess spoke

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# Republican forum draws concern

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there, but no other candidates spoke. (Barnes was chair of the local Democratic Party until she was required to step down when qualifying as a candidate for county commission.) There was no election complaint filed alleging a violation at the Democratic event.

## CANDIDATES AT THE FORUM

Russell served as Master of Ceremonies at the forum, which included many candidates from local and area races. State Rep. Halsey Beshears, whose district includes Wakulla but who has no opposition for re-election, helped with timekeeping.

Republican congressional candidates Ken Siskind, Mary Thomas and Neal Dunn gave their stump speeches.

Siskind, a former federal prosecutor for the Northern District of Florida, said that "People run as conservatives and then govern as moderates." He painted himself as a law-and-order conservative who wants to defend the American way of life.

Thomas, an attorney in the office of Gov. Rick Scott, noted her endorsement by the NRA and said she is the only candidate in the race to endorse Donald Trump for president. That drew applause from the crowd, as it did when she repeated Trump's pledge to "Make America great again."

Dunn, a surgeon, said his three priorities in office will be health care, the economy, and national security. "The White House has more damage to the military than ISIS," he said.

Pete Williams, Republican candidate for state attorney and a former statewide prosecutor, spoke of the problems of different treatment for the same crimes under current state attorney, Willie Meggs, who is retiring and whom Williams never mentioned by name.

Williams vowed to spend one day a week in each county in the circuit to discuss local concerns. Williams will face a Democrat in the November general election, either Sean Desmond or Jack Campbell.

Local candidates at the event, in addition to the sheriff's candidates, included Ralph Thomas, running for re-election to county commission, district 1; Mike Stewart and John Staff, candidates for district 3; Richard Harden and Gordon Millender for district 5; and two of the three candidates for property appraiser, Steve Ramke and Brad Harvey. Ed Brimmer was not at the event, and no reason was given for his absence.

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