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**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION** **STATE OF FLORIDA
ELECTIONS COMMISSION**

**Florida Elections Commission,
Petitioner,**

v.

**Agency Case No.: FEC 12-321
F.O. No.: FOFEC 14-026W**

**Deborah Sheffield Irby,
Respondent.**

FINAL ORDER

THIS MATTER was heard at an informal hearing held before the Florida Elections Commission (Commission) on February 25, 2014.

APPEARANCES

For Commission Jaakan A. Williams
Assistant General Counsel
107 West Gaines Street
Collins Building, Suite 224
Tallahassee, FL 32399

For Respondent No Appearance

STATEMENT OF THE ISSUE

Whether the Respondent violated Section 106.143(3), Florida Statutes, as alleged in the Order of Probable Cause

PRELIMINARY STATEMENT

On October 18, 2012, the Commission received a sworn complaint alleging violations of Florida's election laws. Staff of the Commission conducted an investigation to determine

whether the facts alleged in the complaint constituted probable cause to believe that the Respondent violated the Florida Election Code

On April 1, 2013, staff recommended to the Commission that there was no probable cause to believe that the Florida Election Code was violated. On May 14, 2013, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violation:

Count 1:

On or about May 22, 2012, Respondent violated Section 106 143(3), Florida Statutes, when the Respondent stated her political party affiliation on a political advertisement while running for nonpartisan office.

Respondent failed to elect a formal administrative hearing be conducted by an administrative law judge from the Division of Administrative Hearings, or elect that the case be resolved by Consent Order, (within 30 days after the date of the filing of the Commission's Order of Probable Cause) and, therefore, the matter was set for an informal hearing before the Commission. At the informal hearing, staff presented the undisputed facts contained in the staff's recommendation, which were adopted as the Commission's findings of fact. The Respondent did not appear at the hearing

FINDINGS OF FACT

1. The Respondent is Deborah Sheffield Irby.
2. Respondent was a candidate for the Opa-Locka City Commission in the 2012 election cycle, a nonpartisan political office
3. During her campaign, Respondent distributed a piece of campaign literature on which she identified herself as a "Proud Democrat "

CONCLUSIONS OF LAW

4. The Commission has jurisdiction over the parties to and subject matter of this

cause, pursuant to Section 106.26, Florida Statutes.

5. Respondent's conduct was willful. Respondent committed the acts while knowing that, or showing reckless disregard for whether, the acts were prohibited or failed to commit an act while knowing that, or showing reckless disregard for whether, the acts were required.

6. Respondent committed 1 count of violating Section 106.143(3), Florida Statutes, when she identified herself as a "Proud Democrat" on a piece of campaign literature while running for a nonpartisan political office.

7. In determining the amount of the civil penalty, the Commission considered the mitigating and aggravating circumstances set forth in Section 106.265, Florida Statutes.

ORDER

WHEREFORE the Commission finds that Respondent has violated the following provisions of Chapter 106, Florida Statutes, and imposes the following fines:

A Respondent violated Section 106.143(3), Florida Statutes, on 1 occasion for identifying herself as a "Proud Democrat" on a piece of campaign literature while running for a nonpartisan political office. Respondent is fined \$1,000 for the 1 count for a total of \$1,000.

Therefore it is

DONE AND ORDERED that Respondent shall remit a civil penalty in the amount of \$1,000, inclusive of fees and costs. The civil penalty shall be paid to the Florida Elections Commission, the Collins Building, Suite 224, 107 West Gaines Street, Tallahassee, Florida 32399-0250, within 30 days of the date this Final Order is received by the Respondent and must be paid by money order, cashier's check or attorney trust account check.

DONE AND ORDERED by the Florida Elections Commission on February 25, 2014.



Tim Holladay, Chair
Florida Elections Commission

Copies furnished to:

Jaakan A. Williams Assistant General Counsel
Debra Sheffield Irby, Respondent (certified mail)
Rose Tydus, Complainant

NOTICE OF RIGHT TO APPEAL

This order is final agency action. Any party who is adversely affected by this order has the right to seek judicial review pursuant to Section 120.68, Florida Statutes, by filing a notice of administrative appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Florida Elections Commission at 107 West Gaines Street, Suite 224, Collins Building, Tallahassee, Florida 32399-1050 and by filing a copy of the notice of appeal with the appropriate district court of appeal. The party must attach to the notice of appeal a copy of this order and include with the notice of appeal filed with the district court of appeal the applicable filing fees. **The notice of administrative appeal must be filed within 30 days of the date of this order is filed with the Commission.** The date this order was filed appears in the upper right-hand corner of the first page of the order.