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

**Florida Elections Commission,
Petitioner,**

v.

**Marcus A. Davis,
Respondent.**

**Agency Case No.: FEC 11-023
F.O. No.: FOFEC 11-176W**

FINAL ORDER

THIS CAUSE came on to be heard at an informal hearing held before the Florida Elections Commission (Commission) on November 15, 2011.

APPEARANCES

For Commission	Eric M. Lipman General Counsel 107 W. Gaines Street Collins Building, Suite 224 Tallahassee, FL 32399
For Respondent	No appearance

STATEMENT OF THE ISSUE

Whether the Respondent violated Section 106.143(1)(a), Florida Statutes, when he published, displayed or circulated a political advertisement that failed to include the proper political disclaimer.

PRELIMINARY STATEMENT

On February 28, 2011, 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 July 6, 2011, staff drafted a Staff Recommendation recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated. On August 24, 2011, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violations:

Count 1:

During his 2011 campaign for Eatonville Town Council, Respondent violated Section 106.143(1)(a), Florida Statutes, when he published a political advertisement before the election and failed to prominently mark the advertisement with the required disclaimer.

Respondent did not elect to have a formal or informal hearing conducted before the commission, and did not elect to settle the case with a consent order within 30 days after the filing of the Commission's allegations. Therefore, an informal hearing was scheduled, and Respondent was noticed to appear before the Commission on November 15, 2011. At the informal hearing, staff presented the undisputed facts contained in the Staff Recommendation. Respondent did not attend the hearing.

FINDINGS OF FACT

1. Respondent was a first-time candidate for Eatonville Town Council, Seat 5, in the March 5, 2011 municipal elections.
2. On January 31, 2011, the filing officer, Debbie Franklin, provided Respondent with a 2011 Election Qualifying Packet. The packet included, among other information, a copy of Florida's election laws, the July 2010 edition of the *Candidate and Campaign Treasurer's Handbook*, and an information sheet about the laws governing political disclaimers.
3. Respondent purchased political advertisement signs from Ferguson-Ferguson. The disclaimer on this political advertisement stated: "Political Advertisement paid for and approved by the Campaign to Elect Marcus Davis Non partisan Council Seat 5, Town of

Eatonville.” The political advertisement disclaimer is incorrect.

4. A proper disclaimer would have read, “Political advertisement, paid for and approved by Marcus Davis, for Town Council, Seat 5.”

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.

CONCLUSIONS OF LAW

6. The Commission has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 106.26, Florida Statutes.

7. Respondent’s actions were willful.

8. The Respondent violated Section 106.143(1)(a), Florida Statutes, when he published, displayed or circulated a political advertisement that failed to include the proper political disclaimer.

9. 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 Section 106.143(1)(a), Florida Statutes, and imposes a fine of \$100 for the violation.

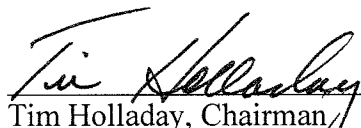
It is thereupon

ORDERED and ADJUDGED that Respondent shall remit a civil penalty in the amount of \$100. The civil penalty shall be paid by money order, cashier’s check, or attorney trust account check and sent to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050, within 30 days of the date this Final

Order is received by Respondent.

DONE AND ORDERED by the Florida Elections Commission on

11-30, 2011.



Tim Holladay, Chairman
Florida Elections Commission

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.

Copies furnished to:

Eric M. Lipman, General Counsel
Marcus A. Davis, Respondent (certified mail)
Gladene Washington, Complainant
Eatonville Town Clerk, Filing Officer