

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

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KELLS HETHERINGTON,  
*Plaintiff,*

v.

GINGER BOWDEN MADDEN, in her  
official capacity as State Attorney,  
et al.,  
*Defendants.*

Case No.  
3:21-cv-671-MCR-EMT

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**PLAINTIFF KELLS HETHERINGTON'S MOTION FOR  
SUMMARY JUDGMENT**

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Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, Plaintiff Kells Hetherington respectfully moves for an order granting summary judgment in his favor: a declaration that Fla. Stat. § 106.143(3)'s restrictions on nonpartisan candidates are unconstitutional, facially and as applied to Mr. Hetherington; permanent injunctive relief barring Defendants, their officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of the injunction, from enforcing the statute's restrictions on nonpartisan

candidates, or any successor to those restrictions; attorney's fees and costs; and any other relief the Court may grant in its discretion.

In support of his motion, Mr. Hetherington relies upon the contemporaneously filed memorandum of points and authorities, accompanying declarations and exhibits, the Complaint, and any other argument or material that the Court may receive or of which the Court may take judicial notice.

### **Oral Argument Requested**

Because of the importance of the issues, Mr. Hetherington requests oral argument, with 20 minutes for each side.

Dated: December 27, 2021

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed a true and correct copy of the foregoing document with the Clerk of Court using the CM/ECF system, which will serve all attorneys of record.

Dated: December 27, 2021

*/s/ Owen Yeates*

Owen Yeates

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**PLAINTIFF KELLS HETHERINGTON'S MEMORANDUM OF  
LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

“[T]he whole point of the First Amendment is to protect speakers against unjustified government restrictions on speech.” *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 754 (2011). It particularly protects candidates’ advocacy, including their right to describe themselves, their values, and their positions in appealing to constituents. A candidate can identify as a Christian, a Satanist, or an atheist; a vegan or an omnivore; a Bernie Bro or a MAGA-maniac—and, perhaps especially, as a Republican or a Democrat. But not in Florida.

Florida’s prohibitions against expressions of partisan affiliation by nonpartisan candidates at Fla. Stat. § 106.143(3) unconstitutionally restrict a candidate’s right “to speak without legislative limit on behalf of his own candidacy.” *Buckley v. Valeo*, 424 U.S. 1, 54 (1976) (per curiam). Candidates’ “unfettered opportunity to make their views known” helps the electorate “intelligently evaluate the candidates’ personal qualities and their positions on vital public issues.” *Id.* at 52-53; see also *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 739 (2008) (noting “right to engage in unfettered political speech”). Expressing

one's party affiliation "is shorthand" for "publicly taking a stance on" many "matters of current public importance." *Winter v. Wolnitzek*, 834 F.3d 681, 688 (6th Cir. 2016) ("*Winter*") (internal quotation marks omitted). Partisan affiliation thus becomes the baseline for voters as they evaluate a candidate's stands and approach to government and attempt "to place each candidate in the political spectrum." *Buckley*, 424 U.S. at 67. And expressions of partisan affiliation are therefore highly protected speech.

That does not change merely because the state omits partisan affiliation from the ballot or declines to give political parties a role in designating the candidates for a particular race. The candidates have the right to label themselves however they wish.

Contrary to this First Amendment guarantee, Florida law punishes candidates who share their partisan affiliation during their campaigns. Indeed, state officials already fined Kells Hetherington for describing himself as a "lifelong Republican" when he ran for the Escambia County School Board in 2018.

The restriction on nonpartisan candidate expression at § 106.143(3) is unconstitutional, facially and as applied. Because the Defendants have not demonstrated any issues of material fact, and the speech restriction is unconstitutional as a matter of law, summary judgment is proper. Mr. Hetherington requests a declaration that the restriction is unconstitutional, injunctive relief, and attorney's fees and costs.

#### STATEMENT OF FACTS

Under Florida law, “[a] candidate for nonpartisan office is prohibited from campaigning based on party affiliation.” Fla. Stat. § 106.143(3). In particular, “[a] political advertisement of a candidate running for nonpartisan office may not state the candidate’s political party affiliation.” *Id.*

The Division of Elections requires that candidates running for nonpartisan office “not publicly represent or advertise [themselves] as . . . member[s] of any political party.” Fla. Div. of Elections, Advisory Opinion DE 2003-02 at 2 (Feb. 21, 2003), [https://bit.ly/2RxvpOR\\_\(Ex. A\)](https://bit.ly/2RxvpOR_(Ex. A)); Fla. Stat. § 106.23(2) (requiring that the Florida Elections Commission (“FEC” or Commission”) follow the Division’s binding opinions). But

candidates may express past party leadership experience, “such as ‘executive committee of \_\_\_\_\_ party.’” *Id.* Florida even allows nonpartisan officeholders to express their affiliation, once the election is over. *See Fla. Div. of Elections, Advisory Opinion DE 2010-02 at 2 (Mar. 3, 2010), <https://bit.ly/3gkP8vF> (Ex. B).*

In 2018, Kells Hetherington ran for a nonpartisan seat on the Escambia County School Board. Hetherington Decl. ¶ 2 (Ex. F). During the campaign, Mr. Hetherington described himself in the Escambia County voter guide as a “lifelong Republican.” Final Order at 3, *Fla. Elections Comm’n v. Hetherington*, Case No. FEC 18-133, F.O. No. FOFEC 20-145W (FEC Sept. 25, 2020) (Ex. C).

Acting on a complaint filed by Escambia County resident and former PTA President Michelle Salzman, the FEC found probable cause that Mr. Hetherington had violated Fla. Stat. § 106.143(3) when he stated that he was “[a] lifelong Republican.” *Id.* On November 19, 2019, the FEC ordered Mr. Hetherington to pay a \$500 fine, which it reduced upon reconsideration in August 2020 to \$200. Final Order at 2, 4 (Ex. C). Mr. Hetherington paid the fine. Hetherington Decl. at ¶ 7 (Ex. F).

Florida law recognizes an individual as a candidate for political office once she has filed qualification papers and subscribed to a candidate's oath, or once she has "appoint[ed] a treasurer and designate[d] a primary depository." Fla. Stat. § 97.021(7)(d); *accord* Fla. Stat. § 106.011(3)(d); *see also* Advisory Opinion DE 2010-02 at 2 (Ex. B) ("This usually occurs when a person first appoints a campaign treasurer and designates a primary campaign depository."). On March 30, 2021, Mr. Hetherington established his candidacy for the 2022 election to the Escambia County School Board by filing Form DS-DE 9, Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates. Hetherington Decl. at ¶ 8 (Ex. F); Appointment of Campaign Treasurer (Ex. G); Statement of Candidate (Ex. H); Pre-File Form (Ex. I). He also established a primary campaign depository. Hetherington Decl. at ¶ 9 (Ex. F).

Mr. Hetherington wished to share his party affiliation in his current campaign, in his candidate statement and in meetings, messages, and conversations with voters and others, but he feared doing so because of the threat that Defendants would enforce Fla. Stat. § 106.143(3).

Hetherington Dec. at ¶¶ 11-12. On April 15, 2021, he filed the present action, requesting a declaration that § 106.143(3) is unconstitutional, facially and as applied to his speech; injunctive relief; nominal damages; and attorney’s fees and costs. Complaint at 10-11 (ECF No. 1). He filed a motion for preliminary injunction on April 26, 2021 (ECF No. 12), which this Court granted on July 14, 2021 (ECF No. 51). While the Court granted the motions to dismiss by the Secretary of State and the Attorney General, as well as the motion to dismiss the FEC Defendants in their individual capacities, it denied the motions to dismiss the State Attorney and the FEC Defendants in their official capacities. Dismissal Order at 13 (ECF No. 50); FEC Dismissal Order at 9 (ECF No. 57).

After a period of limited discovery, Mr. Hetherington now files his motion for summary judgment.

#### LEGAL STANDARD

A court should “grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. Proc. 56; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). This requires not just



the “existence of *some* alleged factual dispute between the parties,” but “that there be no *genuine* issue of *material* fact.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original). A “material” fact is one that “might affect the outcome of the suit under the governing law.” *BBX Capital v. Fed. Deposit Ins. Corp.*, 956 F.3d 1304, 1314 (11th Cir. 2020) (internal quotation marks omitted).

“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.” *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 210 (2014) (Roberts, C.J., controlling op.). Accordingly, Mr. Hetherington may meet his “initial burden” by pointing to “an absence of evidence to support the [government’s] case.” *Rice-Lamar v. City of Fort Lauderdale*, 232 F.3d 836, 840 (11th Cir. 2000) (internal quotation marks omitted). The government “may not rest upon . . . mere allegations or denials . . . but . . . must set forth specific facts showing that there is a genuine issue for trial.” *Id.* (internal quotation marks omitted) (final alteration in original). This requires that the government “go beyond the pleadings and present competent record evidence.” *In re 3M Combat Arms*

*Earplug Prods. Liab. Litig.*, 474 F. Supp. 3d 1231, 1242 (N.D. Fla. 2020) (internal quotation marks omitted). If the government “fails to make a sufficient showing on an essential element of [the] case . . . then the court must enter summary judgment for” Mr. Hetherington. *Rice-Lamar*, 232 F.3d at 840 (internal quotation marks omitted).

#### ARGUMENT

“The standard for [obtaining] a preliminary injunction is essentially the same as for a permanent injunction with the exception that the plaintiff must show a likelihood of success on the merits rather than actual success.” *Jysk Bed’N Linen v. Dutta-Roy*, 810 F.3d 767, 774 n.16 (11th Cir. 2015) (quoting *Winter v. NRDC, Inc.*, 555 U.S. 7, 32 (2008)). This Court may “determine Plaintiff[’s] actual success on the merits” by issuing “summary judgment.” *League of Women Voters of Fla., Inc. v. Lee*, No. 4:18cv251-MW/CAS, 2019 U.S. Dist. LEXIS 237608, at \*11 n.6 (N.D. Fla. Apr. 22, 2019).

The Court should grant summary judgment here because § 106.143(3) violates the First Amendment in multiple ways, each demanding that the law survive strict scrutiny. Accordingly, the

Defendants must demonstrate that Florida’s “restriction furthers a compelling interest,” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340 (2010) (internal quotation marks omitted), that it “is narrowly tailored to achieve that interest,” *id.*, and that it is “the least restrictive means of achieving” that interest, *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). They have failed to do so. In addition, the speech restriction is unconstitutionally overbroad, and the Defendant’s objections are inapposite.

Given that the other injunction factors favor Mr. Hetherington, and the Defendants have not provided any evidence to sustain their remaining defenses, the Court should permanently enjoin enforcement of § 106.143(3) to Mr. Hetherington’s speech and speech like it.

I. MR. HETHERINGTON HAS SUCCEEDED ON THE MERITS

A. Florida’s speech restriction must survive strict scrutiny

Florida imposes a content-based restriction that burdens political speech. That is, in one go the state managed to violate the First Amendment in two separate ways—with a restriction on political

speech and a content-based distinction—and both require strict scrutiny.

“The First Amendment ‘has its fullest and most urgent application to speech uttered during a campaign for political office.’” *Citizens United*, 558 U.S. at 339 (quoting *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)). Accordingly, “political speech must prevail against laws that would suppress it,” and burdens on “political speech are subject to strict scrutiny.” *Id.* at 339-40 (internal quotation marks omitted); *see also Buckley*, 424 U.S. at 52-53 (noting “particular importance that candidates have the unfettered opportunity to make their views known”).

In prohibiting a nonpartisan candidate from sharing her partisan affiliation, Florida “seeks to restrict directly the offer of ideas by a candidate to the voters.” *Brown v. Hartlage*, 456 U.S. 45, 53 (1982). This limits a candidate’s ability to vigorously advocate her election by prohibiting the messages that she believes will best inform and appeal to her constituents. Accordingly, the law must survive strict scrutiny. *Citizens United*, 558 U.S. at 339-40; *Brown*, 456 U.S. at 53-54

(requiring compelling interest); *Weaver v. Bonner*, 309 F.3d 1312, 1319 (11th Cir. 2002) (requiring strict scrutiny).

But even if § 106.143(3) did not involve political speech, it would still trigger strict scrutiny for restricting speech. The First Amendment guarantees to speakers the right to decide “what to say and what to leave unsaid.” *Hurley v. Irish-Am. Gay, Lesbian and Bisexual Grp.*, 515 U.S. 557, 573 (1995) (quoting *Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n of Cal.*, 475 U.S. 1, 11 (1986) (plurality opinion)); *Fed. Election Comm’n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 477 n.9 (2007) (Roberts, C.J., controlling op.) (“*WRTL II*”) (noting “the fundamental rule . . . that a speaker has the autonomy to choose the content of his own message” (quoting *Hurley*, 515 U.S. at 573)). Like compelled speech, compelled silence also requires strict scrutiny. *See Riley v. Nat’l Fed’n of Blind*, 487 U.S. 781, 796-97, 800 (1988) (noting that “freedom of speech’ . . . necessarily compris[es] the decision of both what to say and what *not* to say,” requiring “means precisely tailored” to a “compelling necessity” (emphasis in original)).

Strict scrutiny also applies because Florida has crafted a content-based restriction to limit political speech. A law is “content based if [it] applies to particular speech because of the topic discussed or the idea or message expressed,” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015), and Section 106.143 applies only when a candidate discusses a particular topic: “the candidate’s political party affiliation.” Fla. Stat. § 106.143(3); *see also Republican Party of Minn. v. White*, 536 U.S. 765, 768, 774 (2002) (“*White I*”) (holding that a law was content based when it prohibited judicial candidates from announcing views on issues); *Siefert v. Alexander*, 608 F.3d 974, 981 (7th Cir. 2010) (holding that a law was content based when it prohibited expressions of party affiliation during judicial campaigns). As a content-based law, Florida’s speech restriction is “presumptively unconstitutional and may be justified only if the government proves that [it is] narrowly tailored to serve compelling state interests.” *Reed*, 576 U.S. at 163.

B. Florida lacks a compelling interest to restrict political speech

In their previous briefs and answers, the Defendants have failed to clearly assert any compelling interest. *See* FEC Answer (ECF No. 58),

FEC Opposition to Preliminary Injunction (ECF No. 28); Madden Answer (ECF No. 60); Madden Opposition to Preliminary Injunction (ECF No. 27). Rather than arguing that the state had a compelling interest, or even asserting a recognized interest under intermediate scrutiny, the FEC Defendants argued that they did not need to provide “a large degree of support” to uphold generically asserted “important regulatory interests.” FEC Opposition at 6-7. And the State Attorney has not addressed the state’s interests. Recognizing that the state had the burden to assert some sort of compelling interest to justify its impositions on the First Amendment, the Court teased out assertions of two compelling interests from the government’s briefing: in protecting the decision to make elections nonpartisan and in preventing voter confusion. Preliminary Injunction Order at 9 (ECF No. 51).

The Supreme Court has not recognized either interest as sufficiently compelling to restrict campaign speech. Florida here prohibits any speech by a nonpartisan candidate mentioning his or her partisan affiliation. But the Supreme Court has “consistently rejected attempts to suppress campaign speech based on” any “legislative objective[]”

other than “preventing corruption or the appearance of corruption.” *McCutcheon*, 572 U.S. at 207 (Roberts, C.J., controlling op.); *id.* at 192 (contrasting permissible regulations targeting corruption from “the impermissible desire simply to limit political speech”). The state has not even mentioned preventing actual or apparent corruption as a potential governmental interest. But even if the Defendants had raised the anti-corruption interest, the restriction here could not further it. The interest in preventing actual or apparent corruption is limited to “a specific type of corruption—‘*quid pro quo*’ corruption,” *id.* at 207—and the law here does not target “dollars for political favors,” *id.* at 192.

Furthermore, this case involves not just limits on the quantity of speech, but a prohibition on speech altogether. As the Seventh Circuit noted in striking down another ban on expressing party affiliation, “[t]he state does not have a compelling interest in preventing candidates from announcing their views on legal or political issues, let alone prohibiting them from announcing those views by proxy.” *Siefert*, 608 F.3d at 982.



The Defendants may now assert interests in protecting the decision to make elections nonpartisan and in preventing voter confusion. But under strict scrutiny the “compelling interest [must] support[] *each application* of a statute restricting speech.” *WRTL II*, 551 U.S. at 478 (emphasis in original). That is, the interests it asserts must be recognized as sufficiently compelling to restrict or prohibit political speech, not just as important enough to leave party labels off of general election ballots. As follows, Florida’s speech restriction does not serve those potential interests.

C. Florida’s speech restriction fails narrow tailoring

Florida’s speech restriction fails tailoring because it is overinclusive, it is underinclusive, and there are other alternatives.

1. *The restriction is underinclusive.*

Florida’s speech restriction “cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, [because] it leaves appreciable damage to” any alleged interests “unprohibited.” *Reed*, 576 U.S. at 172 (quoting *White I*, 536

U.S. at 780). It is therefore “hopelessly underinclusive” and unconstitutional. *Id.* at 171.

Florida’s law allows candidates to dance around the issue of partisan affiliation, so long as they do not utter a few magic words. That is, a candidate can all but declare that she is a Republican by sharing all her “partisan-related experience.” Fla. Stat. § 106.143(3); *see also* Advisory Letter DE 2003-02 at 2 (Ex. A) (noting that candidates can state, for example, experience on the “executive committee of \_\_\_\_\_ party in campaign advertisements” (internal quotation marks omitted)).

Candidates are also permitted to discuss membership or experience with explicitly conservative or progressive organizations. All of these statements are proxies to inform the electorate of a candidate’s political party affiliation, yet they are permitted under the statute. This underscores the lack of tailoring.

Second, the provision only prohibits *disclosure* of party membership, not party membership itself. If party membership were truly dangerous, and if the state in fact wanted to ensure that elections and offices were nonpartisan, then it would prohibit candidates from being members of

parties. Instead, it just wants candidates to hide their membership from the voters. “If concern over . . . partisanship and the influence of political parties . . . truly underlies the [law], the authorization to belong (secretly) to a political party amounts to a gaping omission. A party’s undisclosed potential influence on candidates is far worse than its disclosed influence . . . .” *Carey v. Wolnitzek*, 614 F.3d 189, 202 (6th Cir. 2010).

Furthermore, the statute is underinclusive in applying only during campaigns. If protecting the nonpartisan nature of elections and offices were indeed an interest of the highest order, the prohibition on party affiliation would extend beyond the campaign. Yet officeholders may publicize their party affiliation, they just have to wait until they have been elected. Advisory Letter DE 2010-02 at 2 (Ex. B). Thus, while Mr. Hetherington would be fined for declaring during his campaign that he was a “lifelong Republican,” a sitting school board member could make the same statement one day before starting his or her reelection campaign and the day after the election was over. It is far more destructive to voter confidence in the election system to make voters

believe think that they are electing nonpartisan individuals to office, only to shatter their beliefs once the election has passed.

The Courts in *White I* and *White II* confronted laws that prohibited candidates from stating their views on disputed issues during their campaigns, *White I*, 536 U.S. at 768, and from “identify[ing] themselves as members of a political organization,” *Republican Party of Minn. v. White*, 416 F.3d 738, 745 (8th Cir. 2005) (“*White II*”). Like those laws, Florida’s speech restriction is “so woefully underinclusive as to render belief in” the government’s purposes “a challenge to the credulous.” *White II*, 416 F.3d at 757 (quoting *White I*, 536 U.S. at 780); *id.* at 758 (same). If Florida’s purpose “were truly to assure the open-mindedness of” officeholders and to maintain confidence in the system, then Florida “would not . . . restrict[] speech only during a campaign.” *Id.* at 757-58.

Furthermore, as the *White II* Court noted in striking down a restriction on expressing partisan affiliation, “[a] regulation requiring a candidate to sweep under the rug his overt association with a political party for a few months during a judicial campaign, after a lifetime of commitment to that party, is similarly underinclusive in the purported

pursuit of an interest in [an officeholder’s] open-mindedness.” *Id.* at 758. Florida fails to preserve confidence in and thus the integrity of nonpartisan elections and offices.

2. *The restriction is overinclusive.*

Florida’s speech restriction also undermines the state’s asserted interests and is unconstitutional because it is “seriously overinclusive.” *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 805 (2011). That is, if the state were to truly assert an interest in preserving nonpartisan offices and elections, and in avoiding confusion about them, then it might directly attack those purported dangers by prohibiting candidates from stating that they are the Republican or Democratic candidates for nonpartisan offices. *Cf. Winter*, 834 F.3d at 688 (holding that the state may “prevent candidates from identifying themselves as *the* nominee of a political party” (emphasis in original)).

But when the government begins to layer on protections increasingly distant from its interests, those restrictions likewise become increasingly suspect. That is, a “prophylaxis-upon-prophylaxis approach requires that [courts] be particularly diligent in scrutinizing the law’s

fit.” *McCutcheon*, 572 U.S. at 221 (internal quotation marks omitted). Even though “[s]aying ‘I am a Republican’ is shorthand” for “taking a stance on matters of public importance,” *Winter*, 834 F.3d at 688 (internal quotation marks omitted), Florida’s restriction curtails all speech that mentions partisan affiliation, whether in voter guides, campaign rallies, debates, town halls, interviews, going door to door, or even saying hello at the supermarket. As this Court has already noted, this is “an instance of burning the house to roast a pig.” Preliminary Injunction Order at 12 (internal quotation marks omitted). “[S]uch a prophylaxis-upon-prophylaxis approach to regulating expression is not consistent with strict scrutiny.” *WRTL II*, 551 U.S. at 479.

*3. The restriction is not narrowly tailored.*

Under strict scrutiny, the state must show that its speech restriction is “narrowly tailored” to “advanc[ing] a compelling state interest.” *White II*, 416 F.3d at 749 (citing *Eu*, 489 U.S. at 222). The law’s underinclusivity and overinclusivity already show that it fails narrow tailoring. But the law also fails tailoring because it is not “the least

restrictive means to further” the state’s interests. *McCutcheon*, 572 U.S. at 197.

If the government’s interest were one in maintaining nonpartisan offices, or in avoiding confusion about such nonpartisanship, then the least restrictive means of securing those interests would be to forbid *officeholders* from being party members, or at least from announcing their party membership. On the other hand, if the state only had an interest in pretending that candidates were nonpartisan, then the least restrictive means to secure that interest would be to forbid candidates from stating that they are party representatives for office.

Mr. Hetherington is not seeking to state, in his communications or on the ballot, that he is *the* Republican candidate for an Escambia County Schoolboard seat. He is not even seeking to state on the ballot that he is a Republican. *Cf. Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 464 (2008) (Scalia, J., dissenting) (treating non-partisan elections as those “in which party labels have no place on the ballot”). And he is not demanding that the state hold primary elections to choose Republican candidates for schoolboard office. *See In re Springfield*, 818

F.2d 565, 566 (7th Cir. 1987) (“A nonpartisan election is not one without partisanship but one without primary elections to choose parties’ candidates.”).

That is, Mr. Hetherington is not challenging any of these alternatives. And the state has not given any evidence to demonstrate that these or any other alternatives are unworkable, or that it needs to erect second, third, and even fourth fences around the law to protect against any hint of partisan danger. For example, the Defendants have not shown that nonpartisan elections have fallen apart in states where candidates can share their party affiliation. *See Wolnitzek*, 614 F.3d at 203 (questioning law when other jurisdictions could meet the asserted interest). And such states exist, e.g., in jurisdictions where federal courts have held that it is unconstitutional to prohibit even judicial candidates from sharing their partisan affiliation. *See White II*, 416 F.3d at 745, 758; *Wolnitzek*, 614 F.3d at 201-04; *cf. Siefert*, 608 F.3d at 983 (holding ban on affiliating with party unconstitutional).

Furthermore, if the state in fact asserts an interest that is not merely nominal—that is, if it asserts an interest not just in controlling



the use of a party name, but in controlling prejudices and biases that might be related to party affiliation—then its interests would be served by recusal. *See White II*, 416 F.3d at 745, 755-56 (discussing recusal as a less restrictive means to prohibiting identification “as members of a political organization”); *Siefert*, 608 F.3d at 981-83 (holding that law failed tailoring because the government had not demonstrated that recusal was an “unworkable alternative”).

Defendants have the burden to demonstrate that these other alternatives are unsatisfactory—that the need to control Mr. Hetherington’s speech is not “mere conjecture,” *Nixon v. Shrink Mo. Gov’t Pac*, 528 U.S. 377, 392 (2000), or that the government’s justifications are not “purely hypothetical,” *Nat’l Inst. of Fam. & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2377 (2018) (internal quotation marks omitted). It has not provided any such evidence.

4. *The restriction fails tailoring as applied to Mr. Hetherington’s speech.*

Section 106.143(3) equally fails tailoring as applied to Mr. Hetherington’s speech. The speech restriction does not advance any asserted interest in maintaining nonpartisan elections or avoiding voter

confusion, because it leaves Mr. Hetherington free to be a party member, to announce partisan affiliation before he is a candidate, and to announce his partisan affiliation after he wins. The law serves only to undermine voters' confidence in the system and in Mr.

Hetherington's reputation for truthfulness by hiding affiliation until after he has won office.

And the provision is also overinclusive as applied to Mr. Hetherington's circumstances. In the nonjudicial race in which Mr. Hetherington is running, partisan affiliation "is shorthand" for taking positions on public issues that voters are rightfully interested to learn. *Winter*, 834 F.3d at 688. Potential constituents would want to know how he will address the issues that come before the school board, as those positions might be indicated through his statements about party affiliation and otherwise.

Furthermore, the validity of recusal as a less restrictive means of achieving a governmental interest only increases in Mr. Hetherington's circumstances. Even with respect to judicial candidates, proponents of such speech restrictions "significantly overstate[] the likelihood of bias

toward particular litigants,” *Siefert*, 608 F.3d at 983, and thus how often recusal would be necessary. In Mr. Hetherington’s situation, the risk related to bias is also much less a concern—because he seeks a position where he is expected to take positions and be responsive to constituents. *See Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 446 (2015).

D. Section 106.143(3) is unconstitutionally overbroad

A law is unconstitutionally overbroad when it encompasses more speech than may be countenanced as within its “plainly legitimate sweep.” *United States v. Williams*, 553 U.S. 285, 292 (2008). The state’s asserted interests in maintaining a nonpartisan election and avoiding confusion might justify it in refusing to hold primary elections to choose a party nominee. The asserted interests might justify the state’s refusal to put party affiliations on the state-produced ballot. They might even justify forbidding candidates from naming themselves as a party’s representative for an office.

But the state’s asserted interests do not justify prohibiting candidates from stating their party affiliation or from urging their constituents to vote for them because they have affiliated with a party

and its positions and perspectives. “[T]he First Amendment . . . cannot tolerate” a limit on the quantity of a candidate’s speech, as it violates the candidate’s right “to speak without legislative limit on behalf of his own candidacy.” *Buckley*, 424 U.S. at 54. Florida’s restriction, however, goes beyond a quantity limit: it prohibits speech altogether.

Contrary to the Florida’s actions, the First Amendment guarantees to a candidate the right to “vigorously and tirelessly to advocate his own election,” including an “unfettered opportunity to make [his] views known.” *Id.* at 52-53. Beyond protecting a candidate’s right to state her views as she sees fit, this First Amendment protection also helps the electorate “intelligently evaluate the candidates’ personal qualities and their positions on vital public issues.” *Id.* at 53; *see also Davis*, 554 U.S. at 739 (noting “right to engage in unfettered political speech”).

Expressing one’s party affiliation “is shorthand” for “publicly taking a stance on” many “matters of current public importance.” *Winter*, 834 F.3d at 688 (internal quotation marks omitted). And it helps voters evaluate a candidate’s stands and approach to government, helping

them “place each candidate in the political spectrum.” *Buckley*, 424 U.S. at 67.

Florida’s restriction thus exceeds the bounds of what might be constitutionally permissible in furthering an interest in nonpartisan elections. And, given the prevalence of nonpartisan elections in Florida, the speech restriction’s “overbreadth [is] substantial, [both] in an absolute sense, [and] also relative to the statute’s plainly legitimate sweep.” *Williams*, 553 U.S. at 292 (emphasis removed). For example, Florida holds nonpartisan elections for 358 school board seats.<sup>1</sup> That number does not include the other nonjudicial, nonpartisan elections in the state, such as elections for county mayor, county commissioner, property appraiser, fire and rescue district seats, community development district seats, and soil and water district seats. It also does not include all the state’s nonpartisan judicial elections. Given the sheer

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<sup>1</sup> See “Florida School Board Composition Information,” Florida School Boards Association, <https://bit.ly/3sfXVBe> (noting 58 boards with 5 members, 6 boards with 7 members, 1 board with 8 members, and 2 boards with 9 members); “2016-2017 Florida School Board Fast Facts,” Florida School Boards Association (May 22, 2016), <https://bit.ly/3sno2X1> (noting nonpartisan).

number of nonjudicial elections in which the First Amendment rights of candidates are violated, the overbreadth of this statute is substantial in an absolute sense. And it is all the more substantial in cutting off all communication about partisan affiliation in these elections, failing to “leave open ample alternative channels for communication of the information.” *Willson v. City of Bel-Nor*, 924 F.3d 995, 1003 (8th Cir. 2019) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

Furthermore, even assuming that restrictions on expressing party affiliation might be valid in judicial races, the speech restriction’s overbreadth is substantial in a relative sense. Consider the 2020 election: Jacksonville held elections for 25 nonjudicial, nonpartisan seats, 15 judicial, nonpartisan seats, and 2 partisan seats;<sup>2</sup> Hillsborough County held elections for 2 nonjudicial, nonpartisan seats, 28 judicial, nonpartisan seats, and 8 partisan seats;<sup>3</sup> Miami-Dade

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<sup>2</sup> See “City elections in Jacksonville, Florida (2020),” Ballotpedia, <https://bit.ly/3tz9Yex>.

<sup>3</sup> See “Municipal elections in Hillsborough County, Florida (2020),” Ballotpedia, <https://bit.ly/32oJVdH>.

County held elections for 28 nonjudicial, nonpartisan seats, 54 judicial, nonpartisan seats, and 1 partisan seat;<sup>4</sup> Orange County held elections for 7 nonjudicial, nonpartisan seats, 19 judicial, nonpartisan seats, and 8 partisan seats;<sup>5</sup> and Pinellas County held elections for 16 nonjudicial, nonpartisan seats, 22 judicial, nonpartisan seats, and 9 partisan seats.<sup>6</sup> Thus, out of a total of 244 seats up for election in 2020 in those five jurisdictions, 78 (or 32%) were nonjudicial, nonpartisan, 138 (or 57%) were judicial, nonpartisan races, and 28 (or 11%) were partisan races. Assuming similar distributions across other cities and counties, and without including the nonpartisan schoolboard races, these figures show that Florida’s law substantially infringes on the protected speech of nonpartisan, nonjudicial candidates, in whose races any asserted interests as to judicial candidates do not apply.

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<sup>4</sup> See “Municipal elections in Miami-Dade County, Florida (2020),” Ballotpedia, <https://bit.ly/2Qvc7ZH>.

<sup>5</sup> See “Municipal elections in Orange County, Florida (2020),” Ballotpedia, <https://bit.ly/2ORGadL>.

<sup>6</sup> See “Municipal elections in Pinellas County, Florida (2020),” Ballotpedia, <https://bit.ly/3diGLP9>.

This is precisely the sort of situation the Court had in mind in establishing the overbreadth doctrine. Many silenced candidates, lacking party support, will “abstain from protected speech” “rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation,” and their silence will harm those candidates and “society as a whole, which is deprived of an uninhibited marketplace of ideas.” *Va. v. Hicks*, 539 U.S. 113, 119 (2003) (citation omitted). Florida’s prohibition of partisan expression in all nonpartisan races is unconstitutionally overbroad.

#### E. The Defendants’ Previous Objections Fail

The Defendants have argued that Mr. Hetherington should find some other language to share his message, and they have disputed whether sharing his partisan affiliation would be valuable to voters. FEC Preliminary Injunction Opp. at 4-5, 9-10 (ECF No. 28). But it matters not a whit whether a candidate could find some other language to convey a forbidden message. Courts “cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.” *Cohen v. Cal.*, 403



U.S. 15, 26 (1971). Were First Amendment protections so easily circumvented, “governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views.” *Id.*; see also *Dana’s R.R. Supply v. Att’y Gen.*, 807 F.3d 1235, 1247 (11th Cir. 2015) (noting that Florida’s attempt to control particular language “deprived [the speaker] of its full rhetorical toolkit” and “the marketplace of ideas of the full range of public sentiment”).

It also doesn’t matter whether the state thinks that partisan affiliation is “a reliable indicator” of what makes a candidate a good officeholder, *Wolnitzek*, 614 F.3d at 203, or whether partisan affiliation accurately shares the message that the candidate intends. Indeed, courts have rejected the position that party affiliation tells nothing to voters. *See id.* at 202 (“A party platform after all is nothing more than an aggregation of political and legal positions, a shorthand way of announcing one’s views on *many* topics of the day.” (emphasis in original)); *Winter*, 834 F.3d at 688 (noting that a statement of partisan affiliation “is shorthand” for taking stances on public issues).

Regardless, “[v]oters often resort to a variety of proxies in selecting judges and other office holders, some good, some bad.” *Wolnitzek*, 614 F.3d at 203. “It is simply not the function of government to select which issues are worth discussing or debating in the course of a political campaign.” *White I*, 536 U.S. at 782 (internal quotation marks omitted).

\* \* \*

Because Florida’s speech restriction fails strict scrutiny and is unconstitutionally overbroad, Mr. Hetherington has demonstrated success on the merits.

## II. THE REMAINING INJUNCTION FACTORS FAVOR MR. HETHERINGTON

Mr. “Hetherington meets the remaining requirements for a preliminary injunction ‘as a necessary legal consequence’” of demonstrating success on the merits in a First Amendment action. Preliminary Injunction Order at 13 (quoting *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020)). Because Florida violates Mr. Hetherington’s “protected speech, continued enforcement, for even minimal periods of time, constitutes a per se irreparable injury.” *Id.* (internal quotation marks omitted); see also *Elrod v. Burns*, 427 U.S.

347, 373 (1976) (noting irreparable injury); accord *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 67 (2020).

Furthermore, because the “nonmovant is the government, . . . the third and fourth requirements—‘damage to the opposing party’ and ‘public interest’—can be consolidated.” *Otto*, 981 F.3d at 870. Given that the state is violating Mr. Hetherington’s First Amendment rights, both of these factors favor an injunction: “It is clear that neither the government nor the public has any legitimate interest in enforcing an unconstitutional ordinance.” *Id.*; *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1276 (11th Cir. 2001) (noting that “the public interest is always served in promoting First Amendment values”); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) (noting that the government “has no legitimate interest in enforcing an unconstitutional ordinance”).

Given that all the considerations for injunctive relief stand in Mr. Hetherington’s favor, this Court should permanently enjoin enforcement of § 106.143(3)’s clauses pertaining to candidates for nonpartisan office.

### III. THE DEFENDANTS HAVE NOT SUPPORTED THE ASSERTED DEFENSES

The Defendants assert a defense of accord and satisfaction, claiming that Mr. Hetherington agreed to pay a reduced fine in accord and satisfaction of the parties' dispute. (FEC Answer at 6-7; Madden Answer at 7) While Florida law allows the Commission and respondents to end an action with a consent agreement, such agreements are "not binding upon either party unless and until it is signed by the respondent and by counsel for the commission upon approval by the commission." Fla. Stat. § 106.25(4)(i)(2). But the FEC has failed to produce evidence of any agreement in force whereby Mr. Hetherington agreed to give up any rights—past, present, or future—in exchange for paying a reduced fine.

Indeed, the only agreement that was ever formed, a consent agreement from fall 2019, stated only that Mr. Hetherington would avoid future violations of Chapter 106, not that he forfeited his right to ever challenge the constitutionality of § 106.143(3). *See* Consent Order, Ex. D.

Moreover, even if the consent agreement had included a provision waiving a future constitutional challenge, the agreement is not in force. After Mr. Hetherington filed a claim in Escambia County Court seeking the return of the fine he paid under the consent agreement, the FEC responded by returning his money order and telling him it would instead “conduct an investigation” as part of the regular enforcement process, hold hearings on the alleged violations, and impose a fine. FEC, March 19, 2019 Letter, Ex. E. That is, the Commission imposed a fine based on its investigation, findings, and conclusions, not on any agreement whereby Mr. Hetherington waived any of his rights. *See* Final Order, Ex. C.

For similar reasons, the Defendants’ defense of waiver/estoppel fails. (FEC Answer at 7; Madden Answer at 7) It is constitutionally dubious whether a victim of unconstitutional government actions could forever and in perpetuity waive all protection from the courts, making himself forever a helpless and powerless victim of future constitutional violations. But the FEC Defendants have failed to provide evidence that any such an agreement ever existed. As already noted, the consent

order required only that Mr. Hetherington avoid future violations of the election laws. There was nothing forbidding him from challenging the constitutionality of those laws. And the agreement is not in force.

Lastly, responding to the FEC Defendant's First Defense and its Motion to Dismiss (FEC Answer at 5 (ECF No. 58); FEC Mot. to Dismiss at 9-10 (ECF No. 39)), this Court has already dismissed the individual capacity claims against the FEC Defendants (Dismissal Order (ECF No. 57)).<sup>7</sup> For the reasons stated in his opposition to the Motion to Dismiss, however, Mr. Hetherington continues to assert that qualified immunity does not apply to the FEC Defendants. (Hetherington Opposition (ECF No. 46)). Mr. Hetherington reserves the issue of qualified immunity for appeal.

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<sup>7</sup> The State Attorney's assertion of qualified immunity is inapposite. (Madden Answer at 8) Qualified immunity is a defense only to individual capacity claims, and the State Attorney was sued in her official capacity. *See Smith v. Allen*, 502 F.3d 1255, 1272 (11th Cir. 2007) ("In contrast, in an official capacity action, the only immunities that can be claimed . . . are forms of sovereign immunity that the entity, *qua* entity, may possess, such as the Eleventh Amendment." (internal quotation marks omitted)), *abrogated on other grounds by Sossamon v. Tex.*, 563 U.S. 277 (2011).

Relatedly, given that that the individual capacity claims have been dismissed, Mr. Hetherington acknowledges that this Court cannot currently grant nominal damages. Mr. Hetherington has not sought nominal damages against the Defendants in their official capacities, such that their asserted defenses as to sovereign immunity are inapposite. (FEC Answer at 6; Madden Answer at 8 (ECF No. 60)). Given that the qualified immunity defenses may be reversed on appeal, restoring the individual capacity claims, Mr. Hetherington reserves the right to seek nominal damages against the FEC Defendants.

#### CONCLUSION

For the foregoing reasons, Mr. Hetherington respectfully requests that this Court grant summary judgment in his favor: holding that the clauses of § 106.143(3) restricting the speech of candidates for nonpartisan office are unconstitutional, facially and as applied to Mr. Hetherington; enjoining Defendants, their officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of the injunction, from enforcing the statute's restriction on nonpartisan candidates, or any

successor to that restriction; and granting attorney's fees, costs, and any other relief that may be appropriate.

Dated: December 27, 2021

/s/ Owen Yeates

Owen Yeates (pro hac vice)

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*Counsel for Plaintiff*



CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the word limits at N.D. Fla. Loc. R. 7.1(F). As measured by Microsoft Word's internal count, the memorandum is 6,656 words, exclusive of the case style, tables of contents and authorities, signature block, and certificates.

Dated: December 27, 2021

/s/ Owen Yeates

Owen Yeates

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed a true and correct copy of the foregoing document with the Clerk of Court using the CM/ECF system, which will serve all attorneys of record.

Dated: December 27, 2021

/s/ Owen Yeates

Owen Yeates

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

---

KELLS HETHERINGTON,  
*Plaintiff,*

v.

GINGER BOWDEN MADDEN, in her  
official capacity as State Attorney,  
et al.,  
*Defendants.*

Case No.  
3:21-cv-671-MCR-EMT

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**DECLARATION OF OWEN YEATES IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT**

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I, Owen Yeates, declare as follows:

1. I am an attorney with the Institute for Free Speech, counsel of record to Mr. Kells Hetherington in this action. I have personal knowledge of the facts stated in this declaration and, if called as a witness, I could and would testify competently to these facts under oath.

2. This Declaration is submitted in support of the Motion for Summary Judgment being filed today by Mr. Hetherington.

3. Attached as **Exhibit A** is a true and correct copy of Advisory Opinion DE 2003-02, by the Florida Division of Elections, available at <https://bit.ly/2RxvpOR>.

4. Attached as **Exhibit B** is a true and correct copy of Advisory Opinion DE 2010-02, by the Florida Division of Elections, available at <https://bit.ly/3gkP8vF>.

5. Attached as **Exhibit C** is a true and correct copy of the Final Order in *Fla. Elections Comm'n v. Hetherington*, Case No. FEC 18-133, filed September 25, 2020.

6. Attached as **Exhibit D** is a true and correct copy of the Consent Order in Case No. FEC 18-133, that Stephanie Cunningham, Assistant General Counsel for the Florida Elections Commission, sent to Mr. Hetherington on September 4, 2018.

7. Attached as **Exhibit E** is a true and correct copy of a letter sent by Stephanie Cunningham of the Florida Elections Commission to Mr. Hetherington on March 19, 2019, as included in the case file for FEC 18-133, stating that the Commission was returning the payment

Mr. Hetherington had made under the Consent Order and would instead proceed with the enforcement process.

8. Attached as **Exhibit F** is a true and correct copy of Mr. Hetherington's Declaration in support of his motion for preliminary injunction, filed previously as ECF No. 12-2.

9. Attached as **Exhibit G** is a true and correct copy of Hetherington's March 30, 2021 Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates form, available at <https://bit.ly/3FfGyrD>.

10. Attached as **Exhibit H** is a true and correct copy of Hetherington's March 30, 2021 Statement of Candidate form, available at <https://bit.ly/3skMifQ>.

11. Attached as **Exhibit I** is a true and correct copy of Hetherington's March 30, 2021 Pre-File Form, available at <https://bit.ly/3mlndxy>.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated: December 27, 2021

/s/ Owen Yeates  
Owen Yeates (pro hac vice)

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*Counsel for Plaintiff*

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?

The Honorable Buddy Dyer  
February 21, 2003  
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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.

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





**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).

Honorable Scott J. Brock

March 3, 2010

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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

---

<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 read 'D. Palmer', 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

**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

**Florida Elections Commission,  
Petitioner,**

v.

**Agency Case No.: FEC 18-133  
F.O. No.: FOFEC 20-145W**

**Kells Hetherington,  
Respondent.**

\_\_\_\_\_ /

**FINAL ORDER**

**THIS MATTER** was heard at an informal hearing held before the Florida Elections Commission (Commission) on November 19, 2019.

**APPEARANCES**

For Commission     Stephanie J. Cunningham  
Assistant General Counsel  
107 West Gaines Street  
Collins Building, Suite 224  
Tallahassee, FL 32399

For Respondent     No Appearance

**STATEMENT OF THE ISSUE**

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

**PRELIMINARY STATEMENT**

On May 25, 2018, 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 Respondent violated the Florida Election Code.

On July 11, 2019, staff recommended to the Commission that there was probable cause to believe that the Florida Election Code was violated. On September 4, 2019, the Commission entered an Order of Probable Cause finding that there was probable cause to charge Respondent with the following violation(s):

**Count 1:**

On or about May 25, 2018, Kells Hetherington violated Section 106.143(3), Florida Statutes, when he campaigned based on party affiliation, even though the office for which he was running was nonpartisan.

Respondent did not timely elect to have a formal administrative hearing before an administrative law judge from the Division of Administrative Hearings and, therefore, the matter was set for an informal hearing before the Commission. At the informal hearing, the Commission adopted the undisputed facts set forth in the Staff's Recommendation as its findings of fact and imposed upon Respondent a fine of \$500.

Following the informal hearing, Respondent requested that this matter be reconsidered and filed a written statement with the Commission. Therefore, a final order was not filed after the informal hearing.

During its August 26, 2020, meeting, the Commission considered Respondent's request for reconsideration and lowered the amount of the civil penalty imposed upon Respondent.

**FINDINGS OF FACT**

1. Respondent was a 2018 candidate for Escambia County School Board, District 2.
2. On April 27, 2018, Respondent acknowledged that he had been provided access to



Chapter 106, Florida Statutes. Additionally, Respondent's filing officer provided Respondent with a copy of the *2018 Candidate and Campaign Treasurer Handbook* as well as the *2018 Escambia County Candidate Handbook*.

3. The race for Escambia County School Board, District 2 was a nonpartisan race. On June 22, 2018, Respondent filed a nonpartisan candidate oath.

4. Respondent published a candidate statement on the Escambia County Supervisor of Elections' website stating the following: "A lifelong Republican, I was raised in the Congregationalist Church. . . . I appreciate your taking the time to take a look at my candidacy and I would be honored to serve as your District 2 School Board [M]ember."

5. The Division of Elections issued advisory opinions DE 03-02 and DE 10-02 regarding the interpretation of Section 106.143(3), Florida Statutes.

6. Respondent campaigned based on political party affiliation when he supplied a statement to be published on his filing officer's website that stated that he was a Republican.

#### CONCLUSIONS OF LAW

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

8. 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.

9. Respondent committed 1 count of violating Section 106.143(3), Florida Statutes, when he campaigned based on political party affiliation even though the office for which he was running was nonpartisan.

10. In determining the amount of the civil penalty, the Commission considered the

mitigating and aggravating circumstances set forth in Section 106.265, Florida Statutes.

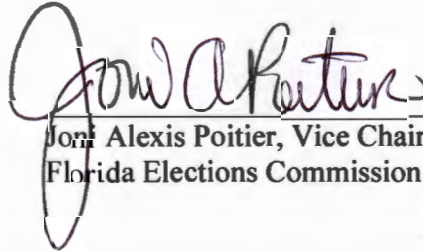
**ORDER**

The Commission finds that Respondent has violated Section 106.143(3), on 1 occasion, and imposes a fine of \$200.

Therefore, it is

**ORDERED** that Respondent shall remit a civil penalty in the amount of \$200, inclusive of fees and costs. The civil penalty shall be paid to the Florida Elections Commission, Collins Building, Suite 224, 107 West Gaines Street, Tallahassee, Florida 32399, within 30 days of the date this Final Order is filed with the Commission and must be paid by money order, cashier's check or attorney trust account check.

**DONE AND ORDERED** by the Florida Elections Commission on August 26, 2020.



Jon Alexis Poitier, Vice Chair  
Florida Elections Commission

Copies furnished to:  
Stephanie J. Cunningham, Assistant General Counsel  
Kells Hetherington, Respondent  
Michelle Salzman, 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 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.

**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

**In Re: Kells Hetherington**  
\_\_\_\_\_ /

**Case No.: FEC 18-133  
F.O. No.: FOFEC <#>**

**CONSENT ORDER**

Respondent, **Kells Hetherington**, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties in this case. The parties jointly stipulate to the following facts, conclusions of law, and order:

**FINDINGS OF FACT**

1. Respondent was a 2018 candidate for Escambia County School Board, District 2.
2. On May 25, 2018, the Commission received a sworn complaint alleging that

Respondent violated the following section(s) of The Florida Election Code on one occasion:

**Section 106.143(3), Florida Statutes:** Respondent, a 2018 candidate for Escambia County School Board, District 2, campaigned based on his party affiliation, even though the office for which he was running was nonpartisan, as alleged in the complaint.

3. No other legally sufficient violation of Chapter 104 or 106, Florida Statutes, was alleged in the complaint.

**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. The Commission considers the allegation(s) contained in the complaint a minor



violation, pursuant to Rule 2B-1.003, Florida Administrative Code.

6. Respondent neither admits nor denies that he violated Section(s) 106.143(3), Florida Statutes, on one occasion(s).

### **ORDER**

7. Respondent and the staff of the Commission have entered into this Consent Order freely and voluntarily.

8. Respondent shall bear his own attorney's fees and costs that are in any way associated with this case.

9. Respondent understands that before this Consent Order is final agency action, it must be approved by the Commission. The Commission will consider this Consent Order at its next available meeting.

10. Respondent voluntarily waives confidentiality upon approval of this Consent Order by the Commission, the right to any further proceedings under Chapters 104, 106, and 120, Florida Statutes, and the right to appeal the Consent Order.

11. Respondent will carefully review Chapter 106, Florida Statutes, and avoid any future violation of the chapter.

12. Respondent agrees to correct immediately, if feasible, the violations alleged in the complaint.

13. Respondent shall remit to the Commission a civil penalty in the amount of \$200, inclusive of fees and costs. The civil penalty shall be paid by cashier's check, money order, good for at least 120 days, or attorney trust account check. The civil penalty shall be made payable to the Florida Elections Commission and sent to 107 West Gaines Street, Collins Building, Suite 224, Tallahassee, Florida 32399-1050, as a condition precedent to the Commission's execution of this Consent Order.

**Respondent** hereby agrees and consents to the terms of this Consent Order on

\_\_\_\_\_.

\_\_\_\_\_  
Kells Hetherington  
10335 Gulf Beach Hwy, Apt. 708  
Pensacola, FL 32507

**Commission staff** hereby agrees and consents to the terms of this Consent Order on

\_\_\_\_\_.

\_\_\_\_\_  
Stephanie J. Cunningham  
Assistant General Counsel  
Florida Elections Commission  
107 West Gaines Street  
The Collins Building, Suite 224  
Tallahassee, FL 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held on

\_\_\_\_\_, in Tallahassee, Florida.

\_\_\_\_\_  
M. Scott Thomas, Chairman  
Florida Elections Commission

Copies furnished to:  
Stephanie J. Cunningham, Assistant General Counsel  
Kells Hetherington, Respondent  
Michelle Salzman, Complainant



**FLORIDA ELECTIONS COMMISSION**

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

March 19, 2019

**CERTIFIED MAIL 9214 8969 0099 9790 1626 7374 38**

Kells Hetherington  
10335 Gulf Beach Hwy, Apt. 708  
Pensacola, FL 32507

**RE: FEC 18-133 – Kells Hetherington**

Dear Mr. Hetherington:

Please see enclosed your money order in the amount of [REDACTED]. Based on the allegations set forth in your Statement of Claim filed in Escambia County, it is clear that you have rejected the minor violation consent order. Therefore, the money order is being returned to you. The Commission staff will conduct an investigation, and then the Commission will hold one or more hearings to determine whether the violation(s) alleged in the complaint occurred and, if so, the amount of the fine to be imposed upon you, if any. If you have any questions, please contact me by email at [Stephanie.Cunningham@myfloridalegal.com](mailto:Stephanie.Cunningham@myfloridalegal.com).

Sincerely,

*Stephanie J. Cunningham*

Assistant General Counsel

Enclosure(s): Money Order

UNITED STATES POSTAL SERVICE		POSTAL MONEY ORDER	
Serial Number	20190419-120	32399 Office	U.S. Dollars and Cents
24403948132			\$200.00
			Two Hundred Dollars and 00/100 *****
Pay to Florida Elections Commission	From Kells Hetherington		Clerk 1
Address 107 West Gaines Street	Address 10335 Gulf Beach Hwy, 708		
Collins Building, Suite 224	Pensacola, FL 32507		
Name Tallahassee, FL 32399			
© 2008 United States Postal Service. All Rights Reserved.		SEE REVERSE WARNING • NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS	
:00000800 2:		PL403948132	

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

---

KELLS HETHERINGTON,

*Plaintiff,*

v.

LAUREL M. LEE, *et al,*

*Defendants.*

Case No.  
3:21cv671-MCR-EMT

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**DECLARATION OF KELLS HETHERINGTON IN  
SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

---

I, Kells Hetherington, declare as follows:

1. I am the Plaintiff in the above referenced action. I am competent to make the statements contained herein and declare the following based on my personal knowledge.

2. After moving to Pensacola, Florida, in 2017, I ran in the 2018 election for a seat on the Escambia County School Board. I grew up watching my father serve our community, holding positions on a town council and other municipal boards, and his service inspired me to do the same. I am especially concerned about the rising cost of public

education in Escambia County coupled with the lagging performance of the school system. Escambia County public schools consistently rank among the worst in the state of Florida. Having said that, I firmly believe in the virtues of public education and I look forward to having my child in the schools here. I want the schools to be excellent for her and for every other young person in Escambia County.

3. During the 2018 campaign, I visited thousands of homes and had countless discussions with voters to explain my positions on important issues and why they should vote for me. I also wrote a statement for the Escambia County voter guide, in which I described myself as a “lifelong Republican,” to help the voters learn more about my background and values.

4. In May 2018, Michelle Salzman, the former president of the Parent Teacher Association filed a complaint with the Florida Elections Commission (“FEC” or “Commission”) alleging multiple violations of Florida’s elections laws.

5. The FEC’s staff conducted an investigation and recommended to the Commission that there was probable cause to support one charge: expressing my partisan affiliation in a nonpartisan election.

6. On November 19, 2019, the FEC entered a decision ordering me to pay a \$500 fine for describing myself as a “lifelong Republican.” After reconsidering the order in August 2020, the FEC reduced the fine to \$200.

7. I paid the fine on March 23, 2021, by sending a check to the FEC. The bank posted the cleared check to my account on April 7, 2021.

8. On March 30, 2021, I established my candidacy for the 2022 Escambia County School Board election by filing Form DS-DE 9, which appoints a campaign treasurer and designates a campaign depository.

9. On April 7, 2021, I established my primary campaign depository.

10. In my current campaign, I will again speak personally with voters, in their homes, in meetings, and on the street and other public locations. I will communicate with them on social media, in mailings, and in other campaign literature. And I will again share my candidate statement in the Escambia County voter guide. In all these situations I intend to share my political party affiliation, telling them that I am a lifelong Republican, to help communicate my positions on issues that are important to the voters. Sharing that I am a lifelong Republican gives voters an important overview or representation of my values when

I don't have the time or opportunity to share every aspect of my platform.

11. For example, in interviews with the media, candidates are often asked for a single quote. Stating that I am a Republican is the fastest way to share the most information. Similarly, in the candidate statement for the Escambia County Supervisor of Elections, it is important to have the freedom to share my party affiliation.

12. I am currently refraining from sharing my party affiliation with voters, however, out of fear that I will again have to face investigation, hearings, and a fine for violating Fla. Stat. § 106.143(3). The previous enforcement action took over two years to complete and I'm worried about enduring that process once again.

13. That the schools are run well is important to me and the future of my family. So, whether I win or lose in the 2022 election, I will run for Escambia County School Board in future elections. I will also run for other nonpartisan offices in my community. It is important to be free to share my party affiliation with the voters regardless of the position I am running for.



14. I will make materially and substantially similar statements about my party affiliation in future campaigns for Escambia County School Board, as well as for other nonpartisan positions in my community.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2021

  
\_\_\_\_\_  
Kells Hetherington



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

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

(PLEASE PRINT OR TYPE)

21 MAR 30 1:00 PM

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

**OFFICE USE ONLY**

**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)**

Kells Luke Hetherington

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

10335 Gulf Beach Highway, Apt 708  
Pensacola, FL 32507

**4. Telephone**

(202) 431-0482

**5. E-mail address**

KellsHetherington@gmail.com

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

D2 Escambia County School Board

**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     \_\_\_\_\_ Party candidate. KH

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

**10. Name of Treasurer or Deputy Treasurer**

Kells Hetherington

**11. Mailing Address**

10335 Gulf Beach Highway, Apt 708

**12. Telephone**

(202) 431-0482

**13. City**

Pensacola

**14. County**

Escambia

**15. State**

FL

**16. Zip Code**

32507

**17. E-mail address**

KellsHetherington@gmail.com

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

**19. Name of Bank**

Centennial Bank

**20. Address**

201 East Garden Street

**21. City**

Pensacola

**22. County**

Escambia

**23. State**

FL

**24. Zip Code**


32502

**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**

March 30, 2021

**26. Signature of Candidate**

X 

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

I, Kells Hetherington, do hereby accept the appointment  
(Please Print or Type Name)

designated above as:  Campaign Treasurer     Deputy Treasurer.

March 30, 2021

Date

X   
Signature of Campaign Treasurer or Deputy Treasurer

# STATEMENT OF CANDIDATE


(Section 106.023, F.S.)

(Please print or type)

OFFICE USE ONLY

'21 MAR 30 1:00PM

I, Kells Hetherington,  
 candidate for the office of Escambia County School Board, 2nd District,  
 have been provided access to read and understand the requirements of  
 Chapter 106, Florida Statutes.

X   
 Signature of Candidate

March 30, 2021  
 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).



**David H. Stafford**  
ESCAMBIA COUNTY  
SUPERVISOR OF ELECTIONS

Post Office Box 12601  
Pensacola, FL 32591-2601  
EscambiaVotes.gov

Phone: (850) 595-3900  
Fax: (850) 595-3914  
soe@escambiovotes.com

*Kells Hetherington*

*2nd District, Escambia County School Board*  
**Office Seeking 2022 Election**

**Candidate Name**

Candidate Received Instructions and/or materials on the following:

- Received Candidate Handbook or told where online to access it. '21 MAR 30 1:00PM  
Escambia County Handbook: <https://escambiovotes.gov/running-for-office>
- Division of Elections Handbook: <http://dos.myflorida.com/elections/forms-publications/publications/>
- Provided access to Florida Statutes Chapter 106 – Campaign Financing and Form DS-DE 84 due within 10 days of pre-filing. Also, Chapter 104 which refers to Violations and Penalties.  
[http://election.dos.state.fl.us/publications/pdf/2014/2014\\_election-laws.pdf](http://election.dos.state.fl.us/publications/pdf/2014/2014_election-laws.pdf)  
<https://dos.myflorida.com/elections/forms-publications/forms/>
- Cybersecurity link's for Campaigns: <https://www.belfercenter.org/CyberPlaybook>  
[https://www.dhs.gov/sites/default/files/publications/DHS%20Campaign%20Checklist\\_FINAL%20October.pdf](https://www.dhs.gov/sites/default/files/publications/DHS%20Campaign%20Checklist_FINAL%20October.pdf)
- Informed of Online Campaign Reports and due dates. Gave report due dates schedule. (Frequency of Campaign Reports will change - see Schedule) ID, Pin(s) and Password will be sent through US Mail.
- Contributions: As of November 1, 2013, \$1,000 aggregate limit to include check, cash and in-kind; \$50 Cash Limit (to include candidate); Contributions from joint checking account is from the person who signed the check. Each contribution, no matter how small shall include address and if over \$100 must include specific occupation (cannot list business owner or sales, etc. – must list specific type of business. Also, contributions/loans from candidates must be listed. If over \$100, must list occupation. Cannot list occupation as “candidate”).
- Expenditures: All transactions should go through campaign account. Must list address and purpose for each expenditure.
- Informed Candidate of the requirement that all printed materials should contain Political Disclaimers, samples are included in handbooks.
- Informed Candidate that the News Media will be notified.

*David H. Stafford*

*March 30, 2021*

**Candidate (or Representative) Signature and Date**

*Kellshetherington@gmail.com*

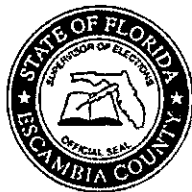
**Email Address for Report Notices and Candidate Information – checked on regular basis**

*m3 - Due 4-12-21*

*Due Date of First Campaign Report*

*turned in*

*Due Date of Statement of Candidate Form (if not turning in at pre-filing)*



**David H. Stafford**  
 ESCAMBIA COUNTY  
 SUPERVISOR OF ELECTIONS

Post Office Box 12601  
 Pensacola, FL 32591-2601  
 EscambiaVotes.gov

Phone: (850) 595-3900  
 Fax: (850) 595-3914  
 soe@escambiovotes.com

*\*Under current Florida law, which is subject to change:*

## Important Dates for Candidates

<p><b>2022 Election Dates</b>  <i>Primary Election: August 23, 2022</i>  <i>General Election: November 8, 2022</i></p>	
<p><b>*Qualifying Dates</b></p>	
<p><i>Judicial Offices</i>                  Noon, April 25, 2022 – Noon, April 29, 2022                  1<sup>st</sup> Day to accept qualifying papers early is April 11, 2022                  (14 days prior to beginning of qualifying)</p>	<p><i>Federal, State &amp; Local Offices</i>                  Noon, June 13, 2022 – Noon, June 17, 2022                  1<sup>st</sup> Day to accept qualifying papers early is May 30, 2022                  (14 days prior to beginning of qualifying)</p>
<p><b>*Petition Submit Deadline</b></p>	
<p><i>Judicial Offices</i>                  Date Pre-filed until Noon, March 28, 2022</p>	<p><i>Federal, State &amp; Local Offices</i>                  Date Pre-filed until Noon, May 16, 2022</p>
<p><b>Voter Registration (Book Closing) Deadline</b></p>	
<p><i>Primary Election: July 25, 2022</i>  <i>General Election: October 11, 2022</i>                  (F.S. 97.055 – on the 29<sup>th</sup> day before each election)</p>	
<p><b>Vote-By-Mail Ballot "Send" Deadline</b></p>	
<p><i>For Absent/Stateside,                  Overseas Military &amp; Overseas Civilian Voters</i>                  Primary Election: July 9, 2022                  General Election: September 24, 2022</p>	<p><i>For Domestic Voters (7-day window)</i>                  Primary Election: July 14 – 21, 2022                  General Election: September 29 – Oct. 6, 2022</p>